

## SUBCONTRACT

Between:

*Insert name of Fletcher Entity* (**Contractor**)

*Insert* (**Subcontractor**)

Project: *Insert*

Package: *Insert*

Date: *Insert*

**CONTENTS**

<b>SCHEDULE 1: SUBCONTRACT PARTICULARS</b>	<b>5</b>
<b>SCHEDULE 2: GENERAL CONDITIONS OF SUBCONTRACT</b>	<b>8</b>
<b>SCHEDULE 3: SUBCONTRACTOR SCOPE OF WORKS</b>	<b>37</b>
<b>SCHEDULE 4: SUBCONTRACTOR’S INSURANCE CERTIFICATE</b>	<b>38</b>
<b>SCHEDULE 5: PARTICULAR SITE RULES</b>	<b>41</b>
<b>SCHEDULE 6: FORM OF SUBCONTRACTOR WARRANTY AND GUARANTEE</b>	<b>45</b>
<b>SCHEDULE 7: HEALTH AND SAFETY</b>	<b>46</b>
<b>SCHEDULE 8: FORM OF BONDS</b>	<b>49</b>
<b>SCHEDULE 9: FORM OF AGREEMENT RELATING TO ADVANCE PAYMENT FOR MATERIALS</b> <b>52</b>	
<b>SCHEDULE 10: SUBCONTRACTOR PRICE BREAKDOWN &amp; UNIT RATES</b>	<b>58</b>
<b>SCHEDULE 11: PROGRAMME</b>	<b>59</b>
<b>SCHEDULE 12: FORM OF PARENT COMPANY GUARANTEE</b>	<b>60</b>
<b>SCHEDULE 13: PRACTICAL COMPLETION CERTIFICATE</b>	<b>66</b>
<b>SCHEDULE 14: FINAL COMPLETION CERTIFICATE</b>	<b>67</b>
<b>SCHEDULE 15: QUALITY</b>	<b>68</b>

## SUBCONTRACT AGREEMENT

**SUBCONTRACT NUMBER:** *Insert*

**THIS AGREEMENT** is made on *Insert*

**BETWEEN:**

***INSERT FULL LEGAL NAME OF FLETCHER ENTITY*** (company number *Insert*) whose registered office is at 810 Great South Road, Penrose, Auckland (the **Contractor**)

and

***INSERT FULL LEGAL NAME OF SUBCONTRACTOR*** (company number *Insert*) whose registered office is at *Insert* (the **Subcontractor**)

### BACKGROUND

- A The Contractor has entered into a Contract (the **Head Contract**) with *Insert* (**the Principal**) for *Insert* located at *Insert*.
- B The Contractor wishes to engage the Subcontractor to carry out the Subcontract Works which form part of the work comprised in the Head Contract.
- C The Subcontractor has represented to the Contractor that it has the required resources, skill, expertise and experience to carry out the Subcontract Works on the terms and conditions of the Subcontract.
- D Based on the Subcontractor's representations, the Contractor has decided to engage the Subcontractor to carry out the Subcontract Works.
- E The Subcontractor has agreed to such engagement upon and subject to the terms and conditions of the Subcontract.

**IT IS AGREED** as follows:

**1 Subcontractor to perform the Subcontract Works**

The Subcontractor will carry out the Subcontract Works in accordance with the Subcontract.

**2 Contractor to pay the Subcontract Sum**

The Contractor will pay the Subcontractor the Subcontract Sum together with (where applicable) GST at the times and in the manner provided in the Subcontract, in consideration of the Subcontractor's agreements in clauses 1 and 3 of this Subcontract Agreement.

**3 Each party to fulfil all other obligations**

Each party will carry out and fulfil all other obligations imposed on that party by the Subcontract.

**4 Subcontract**

The Subcontract comprises the following documents:

- (a) the Subcontract Agreement;
- (b) the Subcontract Particulars and the Special Conditions of Subcontract, annexed at Schedule 1;
- (c) the General Conditions of Subcontract, annexed at Schedule 2;
- (d) Subcontractor scope of work, annexed at Schedule 3;

- (e) the Subcontractor price breakdown on unit rates, annexed at Schedule 10;
- (f) the Particular Site Rules, annexed at Schedule 5; and
- (g) the other Schedules and documents referred to in the Subcontract.

If there is any ambiguity, discrepancy, conflict or inconsistency in or between the documents that constitute the Subcontract, the order of precedence as set out in clause 4 above applies.

**5 Readability**

To assist with the readability of the Subcontract, the General Conditions annexed in Schedule 2 are, for the purpose of the Subcontract:

- (a) supplemented as set out in the Subcontract Particulars (at Schedule 1); and
- (b) amended and supplemented as set out in the Special Conditions (at the end of Schedule 1).

**6 Entire agreement**

The Subcontract constitutes the entire agreement between the Contractor and the Subcontractor with respect to the subject matter of the Subcontract and supersedes all prior communications, negotiations and agreements with respect to the subject matter of the Subcontract. The parties will not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature in respect of the subject matter of the Subcontract not recorded in the Subcontract. Notwithstanding the foregoing this provision will not limit the liability of a party in respect of fraudulent acts or omissions of that party, and for the avoidance of any doubt this provision is not intended to and nor will it limit or prejudice any rights and/or remedies of a party at law, equity or otherwise in relation to or in connection with the Subcontract.

**EXECUTED** as an agreement

**EXECUTED** by

the **CONTRACTOR** by:

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Print name

**EXECUTED** by

the **SUBCONTRACTOR** by:

\_\_\_\_\_  
Director/Authorised Signatory

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Director/Authorised Signatory

\_\_\_\_\_  
Print name

**SCHEDULE 1: SUBCONTRACT PARTICULARS**

1. Parties		
<b>Subcontractor</b>	<p><i>Insert Legal name and full address of Subcontractor</i></p> <p><b>Trading as:</b> <i>Insert trading name if different to legal name. Delete if not required</i></p>	<p><b>Contact</b></p> <p><b>Name:</b></p> <p><b>Position:</b></p> <p><b>Phone:</b></p> <p><b>Email:</b></p>
<b>Contractor</b>	<p><i>Insert full legal name of Fletcher entity</i></p> <p>810 Great South Road Penrose Auckland</p>	<p><b>Contact</b></p> <p><b>Name:</b></p> <p><b>Position:</b></p> <p><b>Phone:</b></p> <p><b>Email:</b></p>

2. Agreement - terms that apply	
<p>The Contractor and the Subcontractor agree to enter into the Subcontract for the Subcontract Works on the terms set out herein.</p>	
<b>Description of Subcontract Works</b>	<p>The Subcontract Works are more particularly described in Schedule 3.</p>
<b>Site</b>	<p><i>Insert a brief description of the Site</i></p>
<b>Subcontract Sum</b>	<p><b>Insert</b>, excluding GST.</p>
<b>Pricing model</b>	<p>This Subcontract is: <i>Drafting note: select one, delete others</i>]</p> <ul style="list-style-type: none"> <li>• Fixed price lump sum</li> <li>• Measure and value</li> <li>• Measure and value with lump sum items</li> <li>• Cost reimbursement</li> </ul> <p>Except as varied by the terms of this Subcontract, the Head Contract provisions relevant to the Subcontract pricing model shall apply. Where no such Head Contract provisions are relevant to the Subcontractor pricing model (because the pricing model is different to the Head Contract type) the General Conditions at clause 2 of NZS3910:2013 will apply.</p>
<b>Pre-Start Documents</b>	
<b>Commencement Date</b>	<p><i>Drafting note: select one, delete others</i>]</p> <ul style="list-style-type: none"> <li>• 5 Working Days after being notified by the Contractor</li> <li>• As stated in the Subcontract programme</li> <li>• On <b>Insert date</b></li> </ul>
<b>Working Hours</b>	<p><b>Insert</b></p>
<b>Submission of Payment Claims</b>	<p>Due date: Monthly, by the 25<sup>th</sup> of the month</p> <p>Address: <b>Insert email address or physical address</b></p>

2. Agreement - terms that apply	
	Addressee: <b>Insert name of Contractor’s Representative or other name as applicable.</b> Reference: Each Payment Claim must identify the Subcontract.
<b>Contractor’s Representative</b>	<b>Insert name of Contractor’s Representative</b>
<b>Defects Notification Period</b>	<b>Insert</b> from Practical Completion of the Subcontract Works.
<b>Due Date for Completion</b>	<b>Insert</b>
<b>Documents required for Practical Completion</b>	
<b>Tests for Practical Completion</b>	<b>Insert</b>
<b>Insurance required to be arranged by the Subcontractor</b>	The Subcontractor is required to effect the following insurances for the amounts specified: (a) Contract Works: Yes / No [ <i>Drafting note: Delete Yes or No as applicable – if Principal Arranged Contract Works delete Yes</i> ] Contract Works insurance for not less than the Subcontract Sum and in addition, adequate reinstatement allowances (but excluding loss arising from Earthquake and Fire (except fire arising from the Subcontract Works); (b) Public Liability: Yes / No [ <i>Drafting note: Delete Yes or No as applicable – if Principal Arranged Public Liability Insurance delete Yes</i> ] Public Liability insurance for not less than <i>Insert Drafting note: Default position to be \$10m, increasing to \$20m, for Airports, DHBs, Universities</i> per occurrence in respect of public liability and in the aggregate during the period of insurance in respect of products liability; (c) motor vehicle third party liability insurance for at least [Insert] <i>Drafting note: Default position to be \$10m, increasing to \$20m, for Airports, DHBs, Universities</i> per occurrence; (d) construction plant and machinery insurance if critical or over \$20,000 market value any one item; and (e) such other insurances as may be required by law.
<b>Is the Subcontractor required to have professional indemnity insurance?</b>	Yes / No If yes, the Subcontractor is required to effect professional indemnity insurance of not less than <b>insert</b> for any one claim and in the annual aggregate. If no, the Subcontractor is not required to effect professional indemnity insurance.
<b>Is the Subcontractor required to provide a Performance Bond?</b>	Yes / No If yes, clause 4 of the General Conditions will apply. If no, clause 4 of the General Conditions will not apply.
<b>Amount of Performance Bond if required:</b>	<b>Insert</b>
<b>Is the Subcontractor entitled to claim advances for off-site materials?</b>	Yes / No If yes, clause 8.15 of the General Conditions will apply. If no, clause 8.15 of the General Conditions will not apply.
<b>Is the Subcontractor required to provide a</b>	Yes / No

2. Agreement - terms that apply	
<b>Parent Company Guarantee</b>	If yes, clause 5 of the General Conditions will apply, and the guarantor will be <i>insert</i> (the <b>Guarantor</b> ). If no, clause 5 of the General Conditions will not apply.
<b>Do retentions apply?</b>	Yes / No [ <i>Drafting note: Delete Yes or No as applicable</i> ] If yes, clause 10 of the General Conditions will apply. If no, clause 10 of the General Conditions will not apply.
<b>If retentions apply, the level of retentions, and release of retentions will be:</b>	<i>Drafting note: Insert rate of retentions e.g.</i> 10% of the first \$200,000 payable and 5% thereafter <i>insert</i> % of total retentions withheld to be released once the Subcontractor has satisfactorily completed all obligations needed to achieve Practical Completion of the Subcontract Works. <i>insert</i> % of total retentions withheld to be released at the end of the Defects Notification Period and provided the Subcontractor has completed all of its obligations necessary to achieve Final Completion.
<b>May the Subcontractor provide bond(s) in lieu of retentions?</b>	Yes / No If yes, the Subcontractor may provide up to 2 bonds in lieu of retentions using the form in Schedule 8. Each bond would be for 50% of the total estimated retention amount, with, as the case may be, one bond releasing on the issue of the Practical Completion Certificate for the Subcontract Works and one bond releasing on issue of the Final Completion Certificate for the Subcontract Works. Clause 4.2 of the General Conditions will also apply to bonds in lieu of retentions.
<b>Liquidated damages, if applicable, will be:</b>	<i>Insert</i> per calendar day
<b>Is a warranty for the works or a continuity guarantee required?</b>	Yes, a warranty is required for <i>the Subcontract Works / the following items</i> : [insert description of warranty required and warranty period] Yes, a continuity guarantee is required. If applicable, see Schedule 6 for the forms required.
<b>Service of Notices</b>	<i>Insert method</i>

3. Special Conditions of Subcontract	
<p><i>If you have any questions regarding amendments please contact your National Commercial Manager or FB Legal contact. Amendments to the standard form of subcontract will potentially impact the level of delegated authority for approval. It is the responsibility of the person executing the Subcontract to ensure they have the appropriate delegated authority to do so.</i></p>	

**SCHEDULE 2: GENERAL CONDITIONS OF SUBCONTRACT**

**1 DEFINITIONS, INTERPRETATION AND THE HEAD CONTRACT**

**1.1 Definitions**

In the Subcontract, unless the context requires otherwise:

**Defect** includes all defects, faults, omissions, shrinkages, undue deterioration and other faults which are due to design (to the extent the Subcontractor is responsible for design), materials or workmanship not being in accordance with the Subcontract.

**Due Date for Completion** means the date for completion of the Subcontract Works in the Subcontract Particulars, as may be adjusted for extensions of time, if any, awarded under clause 13.2.

**Encumbrance** means any mortgage, lien, pledge, claim, charge, retention of title, security or encumbrance of any kind, including any security interest under the Personal Property Securities Act 1999.

**Engineer** means the engineer, architect, contract administrator, independent certifier or other supervising authority who may be appointed under the Head Contract.

**General Conditions** means clauses 1 – 43 of these General Conditions of Subcontract set out in this Schedule 2 to the Subcontract.

**GHG Emissions** means emissions of Greenhouse gases from all sources, categorised as Scope 1, 2 and 3 Emissions as defined by “A Corporate Accounting and Reporting Standard” published by the Greenhouse Gas Protocol.

**Good Industry Practice** means, without limiting or prejudicing any higher standards or higher requirements under the Subcontract and unless otherwise defined in the Head Contract, the exercise of that degree of skill, care, diligence, prudence (including good, safe and prudent practice) and foresight that would reasonably be expected to be observed by a highly skilled and highly experienced contractor engaged in carrying out activities the same as or similar to the Subcontract Works under the same or similar circumstances.

**GST** means goods and services tax payable under the Goods and Services Tax Act 1985 or any similar tax under any replacement legislation.

**Head Contract Works** means the works that the Contractor has agreed to execute on the project under the Head Contract.

**Health & Safety Management Plan** means the Site specific health & safety management plan that is to be submitted by the Subcontractor for the Contractor’s approval under clause 28.3.

**H&S Legislation** means all statutes, regulations and other subordinate legislation in force, or that may come into force, in New Zealand prior to Final Completion under the Head Contract in respect of health and safety (including the Health and Safety at Work Act 2015, all regulations made under that Act and all published codes of practice, standards and guidelines).

**Insolvency Event** means, in respect of the applicable entity, that entity:

- (a) being placed into bankruptcy, liquidation, administration, receivership or statutory management or having an official assignee, liquidator, receiver, trustee, manager, administrator, statutory manager or similar appointed in respect of it or all or any of its business or property;
- (b) being unable, or presumed by law unable, to pay its debts as they fall due;
- (c) entering into an assignment for the benefit of or entering into or making any arrangement or composition with, its creditors;

- (d) being subject to a resolution or any proceeding for the winding up or liquidation of that entity (whether on a voluntary or involuntary basis) other than for a bona fide solvent reconstruction and other than where such resolution or proceeding is formally discharged or dismissed in full within 10 Working Days of the initiation thereof; or
- (e) being subject to any event which is analogous to any of the events listed in paragraphs (a) to (d).

**Subcontract** means this subcontract entered into between the Contractor and the Subcontractor which is comprised of the documents listed at clause 4 of the Subcontract Agreement.

**Final Completion Certificate** means the certificate issued under clause 18.

**Practical Completion** means that stage in the execution of the Subcontract Works when:

- (a) such works or any separable portion thereof are complete except for minor defects which do not prevent such works from being used for their intended purposes, and
- (b) all documents required to be provided, tests for Practical Completion, and other matters required to be completed pursuant to this Subcontract have been duly provided or completed;

**Practical Completion Certificate** means a certificate issued by the Contractor when the Subcontract Works has reached Practical Completion;

**Subcontract Sum** means the sum stated in Schedule 1 or such greater or lesser sum as may become payable under the terms of the Subcontract.

**Subcontract Works** means the work that the Subcontractor is or may be required to carry out and complete under the Subcontract including variations.

**Sustainable Product Certifications** means any certifications defined in the Fletcher Building 'Sustainability Certified Products' document (which can be accessed at <https://fletcherbuilding.com/assets/1-about-us/documents/revenue-sustainable-products.pdf>) and any third party product sustainability certifications relevant to the product supplied.

**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.

## 1.1 Interpretation

In the Subcontract, unless the context requires otherwise:

- (a) where the words "includes" or "including" are used in the Subcontract, they are deemed to be followed by the words "without limitation";
- (b) a reference to any legislation includes a modification of that legislation or legislation enacted in substitution for that legislation and a regulation, order-in-council and other instrument from time to time issued or made under that legislation;
- (c) headings and the table of contents are included for the purpose of ease of reference only and are not to have any effect on construction and interpretation;
- (d) a reference to days, other than Working Days, is a reference to any calendar day of the year;
- (e) a reference to currency is a reference to New Zealand currency;
- (f) if an obligation falls to be performed or a right is to be exercised on or by a day that is not a Working Day then, unless otherwise specified, that obligation is due to be performed or that right may be exercised on the Working Day next following that day; and

- (g) none of the terms nor any of the parts of the Subcontract are to be construed against a party, by reason of the fact that a term or a part was first proposed or was drafted by that party.

## 2 HEAD CONTRACT CONDITIONS

- 2.1 Unless expressly excluded in this Subcontract, the Head Contract (including the terms and conditions and all documents comprising the Head Contract) shall apply to the Subcontract in so far as it relates to the Subcontract Works as if the Contractor was the Principal and the Engineer under the Head Contract and the Subcontractor was the Contractor under the Head Contract. The Subcontractor agrees to undertake like obligations and liabilities as are imposed in the Head Contract.
- 2.2 The Subcontractor is deemed to have read and to have full knowledge of all the terms and conditions of the documents comprising the Head Contract and acknowledges such Head Contract documents have been provided to or have been made available for review at the office of the Contractor. The Subcontractor agrees to be bound by, observe, perform and comply with the provisions of the Head Contract in so far as they relate to the Subcontract Works.
- 2.3 Notwithstanding anything contained in the Subcontract, the Subcontractor is not entitled to any extension of time, or variation or any payment by way of adjustment of price, extras, damages, compensation or otherwise unless:
  - (a) the Contractor is granted or made the same under the Head Contract (whether paid or not); or
  - (b) the event giving rise to the claim is something that the Subcontract expressly states the Subcontractor has entitlement to claim for, even if there is no entitlement for the Contractor to claim under the Head Contract; or
  - (c) the event giving rise to the claim is the result of a breach of Subcontract or other act of prevention the fault or neglect of the Contractor (other than an act of prevention contemplated by the Subcontract); or
  - (d) the Subcontractor has complied with all notice requirements in the Subcontract and the sole reason for the Contractor not being awarded the same under the Head Contract is the Contractor's failure to submit a claim under the Head Contract in time.
- 2.4 In the event of any discrepancy between the Head Contract and the Subcontract, the Subcontractor's obligations are deemed to be cumulative.

## 3 GENERAL OBLIGATIONS

- 3.1 In carrying out the Subcontract Works, the Subcontractor shall complete, handover to the Contractor, and remedy Defects in the Subcontract Works and provide everything (whether of a temporary or permanent nature) specified or inferred from, the Subcontract.
- 3.2 Without limiting clause 3.1 or any other clause in the Subcontract, the Subcontractor warrants to the Contractor that the Subcontractor:
  - (a) is satisfied that the Subcontract Sum will be sufficient to cover the cost of performing all of its obligations under and in connection with the Subcontract and the costs of all things and all matters required for the due and proper and punctual performance of the construction and completion of the Subcontract Works;
  - (b) has taken into consideration all information which is relevant to the risks, contingencies and other circumstances which would in any way affect the Subcontract Works and/or the Subcontract Sum;
  - (c) has inspected and examined the Site, its surroundings and the information available in connection therewith and has satisfied itself as to the form and nature of the Subcontract Works and the access it may require;

- (d) shall not claim and will not be entitled to any increase in the lump sum prices or unit rates appearing in Schedule 10 by virtue of any difference between the quantities of work or materials completed or expanded by the Subcontractor and those quantities of work or materials appearing in Schedule 10;
- (e) is complying, and will comply, with all applicable laws;
- (f) it will carry out and complete the Subcontract Works:
  - (i) in accordance with Good Industry Practices;
  - (ii) in accordance with all applicable laws, regulations and relevant consents and so that the Subcontract Works are operable in compliance with all applicable laws, regulations and relevant consents;
  - (iii) regularly and diligently so that completion of the Subcontract Works is achieved no later than the Due Date for Completion;
  - (iv) to a high quality and to the reasonable satisfaction of the Contractor; and
  - (v) so as to be free from any Defects.
- (g) will ensure that all materials used in and forming all or part of the Subcontract Works are in accordance with the provisions of the Subcontract, suitable for the purpose for which they will be used, of good quality and unless otherwise stated in the Subcontract, new, and all workmanship used or employed in the Subcontract Works has been used, or employed to the highest standard and in accordance with Good Industry Practice applicable to the Subcontract Works;
- (h) is fully experienced; properly qualified, equipped and organised; and is financially capable to perform the Subcontract Works in accordance with the Subcontract;
- (i) will immediately notify the Contractor of any error or omission it may discover in any drawings or specifications provided by or on behalf of the Contractor; and

3.3 The Subcontractor acknowledges and agrees that where the Subcontract describes parts of the Subcontract Works in general terms, but not in complete detail, the Subcontract Works include all incidental work and/or services that can reasonably be inferred as necessary to complete the Subcontract Works.

3.4 No warranty or undertaking given by the Subcontractor in the Subcontract will be interpreted as limiting any other warranty or undertaking given by the Subcontractor in the Subcontract.

#### 4 **PERFORMANCE BOND**

4.1 If required by the Subcontract Particulars, the Subcontractor must provide a Performance Bond from a NZ registered surety (such surety to be approved by the Contractor), in the form included in Schedule 8 and for the amount set out in the Subcontract Particulars.

4.2 The surety under the Performance Bond is to be and remain a financial institution with a Standard & Poors long term unsecured credit rating of A- or higher, to be demonstrated to the Contractor's satisfaction. If the credit rating of the surety is at any time lower than this, then the Subcontractor shall notify the Contractor within 5 Working Days of such event, and if required by the Contractor, provide to the Contractor a replacement bond which meets the requirements of this clause.

4.3 The Subcontractor is required to deliver the Performance Bond within 5 Working Days of entering into the Subcontract Agreement and in any case prior to commencing the Subcontract Work.

4.4 The Contractor may call on the Performance Bond if the Subcontractor is in default of its obligations under the Subcontract or at law.

**5 PARENT COMPANY GUARANTEE**

- 5.1 If required by the Subcontract Particulars, the Subcontractor must provide a Parent Company Guarantee in the form included in Schedule 12.
- 5.2 The Subcontractor is required to deliver the Parent Company Guarantee duly executed by the Guarantor within 5 Working Days of entering into the Subcontract Agreement and in any case prior to commencing the Subcontract Work.

**6 INDEMNITY**

- 6.1 To the maximum extent permitted by law, the Subcontractor will keep and hold the Contractor and each of its officers, agents and employees indemnified against all liability, damage, cost, loss, claim, proceeding, expense, fine, or penalty incurred by the Contractor as a consequence of:
  - (a) Defect in the Subcontract Works;
  - (b) any personal injury, death, breach of statutory warranty, damage to property not forming part of the Head Contract Works, or damage to the Head Contract Works or Site arising as a result of the Subcontract Works, unless the liability, cost, loss, claim or proceeding is caused by the fault or neglect of the Contractor, Principal or their servants;
  - (c) the Subcontractor failing to progress or complete the Subcontract Works in accordance with the terms and conditions of the Subcontract including completing the Subcontract Works by the Due Date for Completion;
  - (d) any negligence of the Subcontractor; or
  - (e) any breach of the Subcontract by the Subcontractor, including the Subcontractor’s warranties, guarantees and policies set out in this Subcontract.
- 6.2 Any costs, damages, fines, penalties, losses and expenses incurred by the Contractor as a result of any of the matters listed in clause 6.1 will be payable by the Subcontractor on demand by the Contractor.

**7 INSURANCE**

- 7.1 The Subcontractor will hold and maintain in full force and effect the insurance policies, and for the amounts specified, in the Subcontract Particulars until the Subcontractor’s obligations under the Subcontract have been fulfilled.
- 7.2 The insurance policies effected by the Subcontractor shall unless otherwise provided for in the Head Contract:
  - (a) at all times be with the insurers acceptable to the Contractor and in terms approved by the Contractor, such acceptance and approval shall not be unreasonably withheld; and
  - (b) be primary to and respond in priority to any policies that may be affected by the Contractor.
- 7.3 The ‘Contract Works’ policy (if required) shall be in the joint names of the Subcontractor, the Contractor, and the Principal and have clauses covering:
  - (a) that the rights of each insured will not be affected by a breach of policy condition by any other insured; and
  - (b) off-site storage and transit of materials.
- 7.4 The ‘Public and Products Liability’ policy (if required) shall have clauses covering:
  - (a) The Contractor for its vicarious liability arising out of the actions of the Subcontractor; and

- (b) cross liability such that the insurance shall apply to each insured as if a separate policy has been issued to each insured; and
  - (c) that the rights of each insured will not be affected by a breach of policy condition by any other insured; and
  - (d) a waiver of right of subrogation in the favour of the Contractor.
  - (e) if undertaking any Subcontract Works that could cause damage from vibration, removal or weakening of support cover to the limit of the Policy.
  - (f) if undertaking any Subcontract Works that involves penetration into the ground, cover for damage to underground services to the limit of the Policy.
- 7.5 The 'Motor Vehicle Liability' policy (if required) shall include a clause covering vicarious liability incurred by the Contractor arising from the Subcontractors use of a 'Motor Vehicle'.
- 7.6 The 'professional indemnity' policy in the name of the Subcontractor for the amount specified in the Subcontract Particulars and maintained for a period not less than ten (10) years from Practical Completion of the Head Contract.
- 7.7 The 'construction plant and machinery' policy shall be in the name of the Subcontractor for the amount specified in Subcontract Particulars.
- 7.8 In the event of any claim for liability, loss, damage to, or as a consequence of carrying out, the Subcontract Works, the Subcontractor shall be liable to pay:
- (a) any deductible under the insurances provided by the Subcontractor, and
  - (b) any deductible under any other insurance provided for the Subcontractor.
- 7.9 The Subcontractor's insurance certificate (the form of which is set out at Schedule 4) shall form part of the Subcontract and must be completed and executed by the Subcontractor's insurer(s) or Insurance Broker and delivered to the Contractor before the Subcontractor issues its first Payment Claim and promptly upon request from the Contractor from time to time.
- 7.10 Nothing in this clause limits the Subcontractor's liability or responsibility under any other provision of the Subcontract.

## 8 PAYMENT

- 8.1 For the purposes of the Subcontract and any related agreements:
- (a) unless expressly agreed to the contrary, any amount payable by the Contractor to the Subcontractor in relation to the Subcontract is stated as an exclusive of GST but inclusive of all other taxes and duties;
  - (b) the Subcontractor warrants that it is registered for GST at the time of entering into the Subcontract and that it will notify the Contractor if it ceases to be registered for GST; and
  - (c) if an amount payable under or in connection with the Subcontract is calculated or determined by reference to an expense, cost, loss or outgoing of a party (**Relevant Expense**) including any amount calculated in relation to the cost of materials, the amount of the Relevant Expense for the purpose of calculating the payment is to be reduced by an amount equal to any deductible input tax credit or any deduction from output tax available to the person as a result of incurring the Relevant Expense, or where that person is a member of a group as contemplated by section 55 of the Goods and Services Tax Act 1985, to the representative member of that group.

8.2 In accordance with Section 19K of the Goods and Services Tax Act 1985, the Contractor and Subcontractor agree that the Contractor will issue the tax invoice in respect of a taxable supply of goods and services made by a Subcontractor to simplify the administration of invoicing and payments between the Contractor and Subcontractor. The Subcontractor and Contractor agree the Subcontractor shall not issue a tax invoice for a taxable supply made under this Subcontract.

**Preconditions to payment**

8.3 It shall be a condition precedent to any payment under the Subcontract that the following conditions have been satisfied:

- (a) the Subcontract Agreement, appendices thereto and associated documents have been completed, and signed by the Subcontractor and returned to the Contractor;
- (b) where applicable, the Performance Bond has been delivered in accordance with clause 4 and is and remains compliant with the requirements of that clause;
- (c) where applicable, the Parent Company Guarantee has been delivered in accordance with clause 5;
- (d) the insurance certificates evidencing the required insurance policies have been delivered in accordance with clause 7.9, and the relevant insurances are and remain in full force and effect;
- (e) the Subcontractor’s quality plan has been provided and approved by the Contractor in accordance with clause 24;
- (f) all information requested in relation to the Subcontractor’s health and safety performance under clause 28 has been provided within a reasonable timeframe;
- (g) all guarantees and warranties have been delivered in accordance with clause 31.1 and those guarantees and warranties remain in full force and effect;
- (h) any part of the claim that relates to variations instructed through the Head Contract is separately calculated and labelled as such with appropriate substantiation; and
- (i) the Subcontractor has completed and delivered to the Contractor the necessary pre-start documents including health & safety information referred to in Schedule 7.

**Payment Claims**

8.4 The Subcontractor may (and if requested by the Contractor, will), at the time, to the address and to the addressee identified in the Subcontract Particulars, submit to the Contractor a payment claim in writing (not being the final payment claim) detailing:

- (a) the Subcontract to which the payment claim relates;
- (b) the Subcontract Work performed and the relevant period to which the payment claim relates, including supporting evidence to show that work has in fact been completed;
- (c) the amount claimed for the Subcontract Work performed and the due date for payment, which will be the last Working Day of the following month;
- (d) the manner in which the Subcontractor calculated the claimed amount;
- (e) amounts paid by the Contractor in relation to any previous payment claim; and
- (f) that the payment claim is made under the Construction Contracts Act 2002

(each a **Payment Claim**).

- 8.5 Payment Claims received later than the last Working day on or before the due date for payment claims specified in the Subcontract Particulars are deemed to have been received on the due date for the next payment claim. Subcontractor will submit its payment claims (including any invoices and supporting information) in such format and through such method as the Contractor may require (i.e. by email, electronic accounts payable system and/or other online platform).
- 8.6 The Subcontractor warrants that each Payment Claim will include all claims against the Contractor arising during the relevant period. The Subcontractor waives any right to pursue claims for matters arising during the relevant period which the Subcontractor knew about, or ought reasonably have known about, that were not included in the relevant Payment Claim.

**Payment Schedules and Payment**

- 8.7 The Contractor will, within 20 Working Days following receipt of a valid Payment Claim on or before the due date specified in the Subcontract Particulars in compliance with clause 8.5, issue to the Subcontractor, in writing, a payment schedule in the form of a buyer-created tax invoice detailing:
- (a) the relevant Payment Claim to which it relates;
  - (b) the scheduled amount, being the amount payable to the Subcontractor in respect of the Subcontract Works (the **Scheduled Amount**); and
  - (c) where the Scheduled Amount is different to the amount claimed by the Subcontractor in the Payment Claim:
    - (i) the manner in which the Contractor calculated the Scheduled Amount;
    - (ii) the reasons for any difference between the Scheduled Amount and the amount claimed in the relevant Payment Claim; and
    - (iii) if the Contractor is withholding payment on any basis, reason(s) for withholding payment.

(each a **Payment Schedule**).

- 8.8 The Contractor will pay the Subcontractor the Scheduled Amount on the last working day of the month following the applicable due date for a Payment Claim (for example, where a Payment Claim is received by the Contractor on 25 April, the Scheduled Amount relating to that Payment Claim will be payable on 31 May).

**Final Payment Claim**

- 8.9 Upon completion of the Subcontract Works and no later than 10 Working Days after the Contractor notifies the Subcontractor that Practical Completion has been achieved, the Subcontractor shall submit to the Contractor a final payment claim in writing, endorsed with the phrase "Final Payment Claim", detailing:
- (a) the Subcontract to which the final payment claim relates;
  - (b) the Subcontract Work performed in the period following the date of the previous Payment Claim issued by the Subcontractor, including supporting evidence to show that work has in fact been completed;
  - (c) the amount claimed for the Subcontract Works performed and the due date for payment, which will be 90 Working Days from the date of receipt of the final payment claim;
  - (d) a complete statement and detailed description and cost breakdown of any other claims in respect of the Subcontract Works to which the Subcontractor considers itself entitled to be paid and which have not yet been paid (whether the same are agreed or disagreed upon by the parties);
  - (e) amounts paid by the Contractor in relation to any previous Payment Claims; and

(f) that the final payment claim is made under the Construction Contracts Act 2002.

(the **Final Payment Claim**).

8.10 All claims that the Subcontractor may have must be included in the Final Payment Claim and by submitting the Final Payment Claim the Subcontractor waives any right to bring any further claims under this Subcontract relating to events that occurred prior to the date of the Final Payment Claim.

8.11 If the Subcontractor fails to submit the Final Payment Claim within the time stated in clause 8.9, the Contractor is entitled to determine a reasonable amount for the Subcontractor’s final payment claim and notify the Subcontractor of that amount. In those circumstances, the Subcontractor waives its right to submit a final payment claim, and must instead follow the process in clause 8.14 if it disputes the assessment amount.

**Final Payment Schedule and Payment**

8.12 The Contractor will, no later than (90) Working Days following:

- (a) receipt of the Final Payment Claim submitted by the Subcontractor in accordance with clause 8.9; or
- (b) the date of notification of the Contractor’s assessment of the Subcontractor’s final account in accordance with clause 8.10,

issue to the Subcontractor, in writing, a final payment schedule in the form of a buyer created tax invoice which:

- (i) identifies the Final Payment Claim;
- (ii) sets out the final scheduled amount being the amount payable to the Subcontractor in respect of the final payment claim (the **Final Scheduled Amount**); and
- (iii) where the Final Scheduled Amount is different to the amount claimed by the Subcontractor in the Final Payment Claim:
  - (A) the manner in which the Contractor calculated the Final Scheduled Amount;
  - (B) the reasons for any difference between the Final Scheduled Amount and the amount claimed in the Final Payment Claim; and
  - (C) if the Contractor is withholding payment on any basis, reason(s) for withholding payment.

(the **Final Payment Schedule**).

8.13 The Contractor will pay the Subcontractor the Final Scheduled Amount no later than the last Working Day of the calendar month which is 90 Working Days from:

- (a) the date of receipt of the Final Payment Claim; or
- (b) the date of notification of the Contractor’s assessment of the Subcontractor’s final account in accordance with clause 8.10.

8.14 The Final Payment Schedule will be deemed accepted by the Subcontractor, and therefore final and binding, unless the Subcontractor serves a notice of dispute within 20 Working Days of receiving the Final Payment Schedule. Any such notice of dispute shall contain sufficient particulars and supporting evidence so as to allow the Contractor to understand the Subcontractor’s objection.

**Advance payment for materials**

8.15 Unless otherwise provided in the Subcontract Particulars, advance payment for materials which are on the Site but unfixed or for materials which are not yet on the Site may be made at the sole discretion of the Contractor.

The Contractor in exercising that discretion is entitled to require the Subcontractor to satisfy the Contractor in respect of each of the following minimum requirements:

- (a) the materials have been made available for inspection by the Contractor (or their nominee) and are, to the satisfaction of the Contractor, appropriately secured and protected and stored separately from other goods and materials at a location acceptable to the Contractor;
- (b) title in the materials will, upon advance payment for materials being made as requested, vest in the Contractor free of any lien, charge, pledge, mortgage or other encumbrance and that the materials are clearly marked as the property of the Contractor and insured for the Contractor;
- (c) the materials are required to meet the reasonable requirements of the construction programme(s) and are not prematurely delivered to the Site;
- (d) the Subcontractor has incurred a liability to pay for the materials and has demonstrated that liability to the satisfaction of the Contractor;
- (e) the materials are in New Zealand and are manufactured and ready for incorporation into the Subcontract Works; and
- (f) the Subcontractor must execute and deliver to the Contractor the Agreement relating to Advance Payment for Materials in the form set out in Schedule 9 (or such other form as the Contractor may agree).

**Other payment terms**

8.16 It is acknowledged and agreed that the Contractor may, by any Payment Schedule or otherwise, correct any previous Payment Schedule or the value previously allowed for any Subcontract Work, whether or not payment has previously become due or been made in respect of such Subcontract Work. A Payment Schedule shall not constitute approval of any Subcontract Work or release the Subcontractor from any obligation under this Subcontract.

8.17 It is acknowledged and agreed that the above procedures constitute a mechanism for determining the number of progress payments, the interval between those payments, the amount of each payment, the date when they become due and the period for service of payment claims and payment schedules for the purposes of the Construction Contracts Act 2002 and take effect in place of the provisions of sections 16 to 18, 20(1) and 22(b) (i) of that Act.

**9 DEDUCTIONS, SET-OFF AND WITHHOLDING**

9.1 The Contractor is entitled to set-off, deduct or withhold against and from any sums that would otherwise be due to the Subcontractor any amount in respect of genuine claims it may have against the Subcontractor in relation to or in connection with:

- (a) the Subcontract; or
- (b) any other legally binding agreement between the Subcontractor and the Contractor (or any of the Contractor’s related companies),

including under any indemnities, overpayments, loss and damages (whether liquidated or otherwise).

**10 RETENTIONS**

10.1 The retentions to be held by the Contractor out of progress payments due to the Subcontractor's obligations shall be as set out in the Subcontract Particulars. Retentions can only be used by the Contractor in accordance with the Construction Contracts Act 2002 to remedy defects in the performance of Subcontractor’s obligations under the Subcontract.

- 10.2 Retentions will be released as set out in the Subcontract Particulars, subject to the Subcontractor having rectified any notified defects in the performance of its obligations under the Subcontract before the applicable retention amount is released.
- 10.3 Unless the Subcontractor has remedied the defects in the performance of its contractual obligations within 10 working days of receiving notice under the Construction Contracts Act 2002, the Contractor may use the retentions to remedy those notified defects. The Contractor’s written notice to the Subcontractor shall set out:
- (a) that it intends to use retentions for the purpose of remedying defects in performance of the Subcontractor’s obligations under the Subcontract; and
  - (b) details of the defects to be remedied.

**11 PROGRAMME**

- 11.1 The Subcontractor shall ensure that the Subcontract Works are carried out in a manner that complies with the Contractor’s construction Programme as amended from time to time (**Contractor’s Programme**). A copy of the version of the Contractor’s Programme that is current as at the date of the Subcontract is set out at Schedule 11.
- 11.2 Before commencing the Subcontract Works on Site, the Subcontractor shall prepare and submit for the Contractor’s approval its own programme for the Subcontract Works. The Subcontractor’s programme must:
- (a) be in a form and format approved by the Contractor;
  - (b) include the Commencement Date and the Date for Completion;
  - (c) include lead times for plant, materials and equipment;
  - (d) clearly identify the critical path for the Subcontract Works showing activity duration estimates and dependencies between activities; and
  - (e) comply with any requirements of the Head Contract.
- 11.3 The Subcontractor shall monitor, maintain, revise and update its programme as required by the Contractor from time to time. Any such instruction will not constitute a variation for the purposes of clause 12.
- 11.4 Upon request by the Contractor the Subcontractor shall promptly make available its programme (or revisions and updates) in the electronic format requested by the Contractor.
- 11.5 Any approved programme may be used by the Contractor to monitor progress of the Subcontract Works and assess claims for extension of time but no programme, approved programme or Contractor’s Programme shall form part of the Subcontract and any departure from or amendment of a programme shall not entitle the Subcontractor to any claim, including a claim for extension of time. The Subcontractor’s entitlement to an extension of time shall only arise in accordance with clause 13.

**12 VARIATIONS**

- 12.1 The Contractor may vary the Subcontract Works whether by way of alteration, addition or omission by instructing the Subcontractor to do so in writing (whether or not any work omitted is subsequently carried out by a separate subcontractor or by the Contractor itself). No variation will invalidate the Subcontract.
- 12.2 The Subcontractor shall only vary the Subcontract Works as directed in writing by the Contractor.
- 12.3 Where the Subcontractor considers any other matter should be treated as a variation on the terms of this Subcontract, it shall be a condition precedent of that matter being treated as a variation, that the Subcontractor provides written notice to the Contractor of its considered entitlement to a variation within 5 Working Days (or such other time as advised by the Contractor) of the date when the Subcontractor knew

about, or ought to have known about (whichever is earlier) the circumstances which are relied on as grounds entitling the Subcontractor to a variation.

- 12.4 The Contractor may require the Subcontractor to carry out the variation prior to reaching agreement as to its value.

**Contractor requested quotation**

- 12.5 If requested by the Contractor from time to time, the Subcontractor must provide the Contractor with quotations for proposed variations. Unless otherwise agreed, such quotations must be provided to the Contractor within 3 Working Days of the Contractor’s request.

**Contractor issues variation instruction**

- 12.6 Within 7 Working Days of the Contractor’s Representative issuing a written instruction in accordance with clause 12.1 and where possible prior to carrying out the work, the Subcontractor shall provide pricing for the variation with sufficient information to substantiate its price (including cost breakdown), applying the schedule of rates in Schedule 10 insofar as it is applicable. The Subcontractor’s provision of pricing does not oblige the Contractor to accept the Subcontractor’s price. Failure to comply with this clause will allow the Contractor to value the variation at what it considers fair and reasonable rates which will be deemed a full and final assessment. The Contractor may require the Subcontractor to carry out the work comprising the variation prior to reaching agreement as to its value.

**Daywork**

- 12.7 The Contractor may order that work required for a Variation be carried out on a daywork basis, in accordance with clause 26.

**13 DUE DATE FOR COMPLETION AND EXTENSIONS OF TIME**

- 13.1 The Subcontractor must complete the Subcontract Works, including the provision of documents required as a precondition to completion as set out in the Subcontract Particulars, by the Due Date for Completion.
- 13.2 The Subcontractor’s entitlement to claim an extension of time under the Subcontract is subject to the following:
- (a) the grounds for the claimed extension of time must be:
    - (i) an event for which the Contractor receives an extension of time under the Head Contract; or
    - (ii) for the net effect of any variation instructed by the Contractor in accordance with clause 12; or
    - (iii) default by the Contractor, or any other person for whose acts or omissions the Contractor is responsible, which is not a variation under clause 12.
  - (b) the form of claim must comply with, and contain the information required by, the Head Contract;
  - (c) the Subcontractor must provide sufficient evidence to satisfy the Contractor that the event or circumstance which has given rise to the Subcontractor’s extension of time claim has caused an actual delay to the Subcontractor’s critical path, as shown on the Subcontractor’s programme, which the Subcontractor could not have reasonably mitigated or overcome; and
  - (d) notice of the claim must be given within 5 Working Days of the event which is relied on as the ground for the extension first arising or which could reasonably have been identified by the Subcontractor as having arisen; and
  - (e) the notice either gives details of the period of extension sought or is followed within a reasonable time by a further notice giving such details.

Full compliance with the foregoing is a condition precedent to the grant of an extension in respect of the relevant matter and the Subcontractor will not be entitled to an extension of time in relation to or in connection with the matter if the Subcontractor fails to comply with the required notice provisions.

- 13.3 Where the effect of any ground for an extension of time is of a continuing nature, the Subcontractor shall give written updates to the Contractor every 10 Working Days.
- 13.4 Whenever the Subcontractor may be entitled to an extension of time to the Due Date for Completion, then in lieu of granting a time extension for all or part of the delay, the Contractor, following consultation with the Subcontractor, may require the Subcontractor to overcome all or part of the delay, applying additional resources or working longer hours or in whatever manner is required, at a fair cost to be determined as a variation.
- 13.5 The Contractor may, at its sole and absolute discretion and notwithstanding any other provision of the Subcontract to the contrary, at any time and from time to time and for any reason it considers sufficient but without being under an obligation to do so, by notice to the Subcontractor unilaterally extend any Due Date for Completion. For the avoidance of any doubt, any such extension will not require the Subcontractor to slow down the progress of the Subcontract Works and the Subcontractor is entitled to complete the Subcontract Works prior to the date of any such extended Due Date for Completion.
- 13.6 If an extension of time is granted, the Subcontractor is not entitled to compensation for costs incurred in relation to the extension, unless the extension was a result of a variation or a default by the Contractor.

**14 DAMAGES FOR LATE COMPLETION**

- 14.1 If the Subcontractor fails to complete all or any part of the Subcontract Works on or before the Due Date for Completion, then the Subcontractor shall pay the Contractor the amount of liquidated damages set out in the Subcontract Particulars for each day in the period commencing on the Due Date for Completion until the date the Subcontractor achieves Practical Completion.
- 14.2 The Subcontractor acknowledges and agrees that:
  - (a) the sum stated as liquidated damages in the Subcontract Particulars is not a penalty and is proportional to the Contractor’s legitimate interests in requiring the Subcontractor to perform its obligations under the Subcontract to complete the Subcontract Works by the Due Date for Completion; and
  - (b) any failure to state a sum as liquidated damages in the Subcontract Particulars (or where “no liquidated damages are payable”, “nil”, “not applicable” or similar wording is stated), is without limitation or prejudice to the Contractor’s right to claim general damages for delay in completion of the Subcontract Works.
- 14.3 Payment of deduction of amounts due under this clause 14 for late completion shall not relieve the Subcontractor from any of its other liability or obligations under the Subcontract.

**15 INABILITY TO PERFORM**

If the Subcontractor becomes aware that it may not or will not be able to meet any of its present or future obligations under the Subcontract (including, without limitation, complying with the warranties set out in the Subcontract or completing the Subcontract Works by the Due Date for Completion), the Subcontractor shall immediately notify the Contractor's Representative and the Subcontractor will follow all directions of the Contractor's Representative to avoid, remedy or mitigate such breach or anticipated breach.

**16 ACHIEVEMENT OF PRACTICAL COMPLETION**

- 16.1 When the Subcontractor has:
  - (a) completed the Subcontract Works,

- (b) provided all documents required as a precondition to Practical Completion as set out in the Subcontract Particulars in draft form;
- (c) provided confirmation that all Tests for Practical Completion have been successfully completed; and  
it believes that the Subcontract Works qualifies for the issue of a Practical Completion Certificate, the Subcontractor must notify the Contractor’s Representative accordingly.

16.2 Withing 10 Working Days of receipt of such notice the Contractor will inspect the Subcontract Works and shall either:

- (a) issue a Practical Completion Certificate to the Subcontractor stating the date and time at which the Subcontract Works were completed; or
- (b) give the Subcontractor written notice of the work to be altered or completed in order to qualify for a Practical Completion Certificate.

**17 DEFECTS LIABILITY**

17.1 In the event that the Contractor notifies the Subcontractor of any Defect in the Subcontract Works at any time prior to the expiry of the Defects Notification Period, the Subcontractor will at the Contractor’s option, and at the Subcontractor’s own cost and risk, promptly repair, replace or otherwise make good such Defect within 10 Working Days of receipt of written notice by the Contractor or such other time as agreed with the Contractor.

17.2 The Contractor will, where applicable, give the Subcontractor reasonable access to the Site to enable the Subcontractor to perform its obligations under clause 17.

17.3 If the Subcontractor fails to promptly remedy any Defect in accordance with clause 17, the Contractor may, by notice to the Subcontractor carry out the remedial work itself or by others. The Contractor shall be entitled to recover all of its costs in doing so from the Subcontractor as a debt due and payable and the Contractor will be entitled to call on the security under the Subcontract including retentions and the Performance Bond (if applicable).

17.4 If any part of the Subcontract Works is replaced or repaired during the Defects Notification Period, the replacement or repaired item will be subject to a further Defects Notification Period (commencing from the date that the item has been replaced or repaired to the satisfaction of the Contractor).

**18 ACHIEVEMENT OF FINAL COMPLETION**

18.1 Within 30 days after the latest of the:

- (a) the expiry date of the Defects Notification Period;
- (b) the Subcontractor having supplied all documents required as a precondition to Practical Completion as set out in the Subcontract Particulars in final form; and
- (c) the Subcontractor having remedied any defects notified during the Defects Notification Period (as may have been extended),

the Contractor will issue to the Subcontractor the Final Completion Certificate in the form set out at Schedule 14 certifying that the Subcontractor has achieved Final Completion of the Subcontract Works.

**19 SITE ACCESS AND COORDINATION, HOURS OF WORK AND SETTING OUT**

**Site access and coordination**

19.1 Subject to the Subcontractor providing the Contractor with pre-start documents listed in the Subcontract Particulars, and those documents being to the Contractor’s satisfaction, the Subcontractor will be provided with

access to the Site on the Commencement Date specified in the Subcontract Particulars. If no Commencement Date is specified, the Subcontractor will be provided with access to the Site at times and as instructed by the Contractor’s Representative.

- 19.2 Possession of the Site will confer on the Subcontractor a right to only such use of the Site as is necessary to enable the Subcontractor to carry out the Subcontract Works, and will be subject to any restrictions (including legal restrictions such as easements) or other matters set out in the Subcontract.
- 19.3 The Subcontractor acknowledges and agrees that it will have non-exclusive possession of the Site and will be required to share possession of the Site with third parties, including other contractors and subcontractors. The Subcontractor will coordinate and cooperate with other contractors and subcontractors on the Site and warrants that the Subcontract Sum is sufficient to cover the cost of all coordination and cooperation. Any costs incurred by the Contractor as a result of insufficient coordination or cooperation by the Subcontractor will be deducted from monies due to the Subcontractor.
- 19.4 Without limiting any other clause in the Subcontract, the Subcontractor acknowledges and agrees that: the Subcontractor is required to inspect other subcontractors’ shop drawings prior to carrying out any Subcontract Work in any part of the Site, to identify any possible areas of conflict;

**Hours of Work**

- 19.5 No part of the Subcontract Works shall be executed outside the working hours specified in the Subcontract Particulars unless the express written approval of the Contractor’s Representative has been obtained. Any costs incurred by the Contractor as a result of the Subcontractor having, for any reason whatsoever, to carry out the Subcontract Works outside of the Subcontractor’s working hours will be deducted from monies due to the Subcontractor.

**Setting out**

- 19.6 The Subcontractor will be responsible for accurate setting out and co-ordination of the Subcontract Work together with checking set out, dimensions of openings, verification of dimensions and the like, prior to commencement of any section of the Subcontract Work at the Site.

**20 DOCUMENTATION**

- 20.1 The Contractor shall provide free of charge to the Subcontractor one (1) set of documents relating to the Subcontract Works. Design related documents for construction will be available on Site for perusal by the Subcontractor.
- 20.2 During the course of the Subcontract Works the Contractor may issue to the Subcontractor additional documentation either directly relating to the Subcontract Works or for general information and coordination. Where such additional documentation is for coordination, the Subcontractor will promptly carry out any coordination required and such coordination will not constitute a variation for the purposes of clause 12. Any costs incurred by the Contractor in issuing such documentation may at the Contractor’s sole discretion be charged to the Subcontractor and be recovered from the Subcontractor by way of deduction from monies due to the Subcontractor.

**21 INTELLECTUAL PROPERTY**

- 21.1 The Subcontractor’s pre-existing intellectual property shall remain the property of the Subcontractor. The Subcontractor grants the Contractor an unrestricted, royalty-free licence to use, copy, store, adapt, and communicate the Subcontractor’s intellectual property in the Subcontract Works to the extent reasonably required to enable the Contractor, the Principal or any other party who might at any time have an interest in the Subcontract Works, to construct, remedy defects in or maintain the Subcontract Works. This licence will survive the cancellation, frustration or avoidance of this Subcontract.

## 22 DESIGN REVIEW AND RESPONSIBILITY

22.1 The Subcontractor has fully reviewed all aspects of the design, including drawings and specifications forming part of the Subcontract, which affect the Subcontract Works and is satisfied the design does not contain any errors or inadequacies which will in any way affect the integrity of the Subcontract Works, the requirement for the Subcontract Works to meet the Building Code and/or any applicable New Zealand Standard, or the ability of the Subcontractor to fulfil its obligations under the Subcontract. The Subcontractor shall notify the Contractor immediately if it receives new design documents during the course of the Subcontract which may compromise these matters.

22.2 Insofar as the Subcontractor is required to carry out any design and or specification work necessary to fulfil its obligations under the Subcontract then the following conditions will apply:

- (a) the Subcontractor shall provide Professional Indemnity Insurance as set out in the Subcontract Particulars;
- (b) design documentation shall be provided by the Subcontractor promptly upon request (and no later than 3 Working Days following such request), including drawings, specifications, calculations and any other necessary documentation required to complete the design in accordance with the Contractor's requirements for review and approval by the Contractor and the Principal;
- (c) in the event the Subcontractor's design documentation submitted under clause 22.2(b) is not approved, the Subcontractor must re-submit amended design documentation within 5 Working Days for further review and approval by the Contractor and Principal;
- (d) the Subcontractor acknowledges and agrees that the process of approval set out at clauses 22.2(b) and 22.2(c) will continue until the Contractor and the Principal have approved the design documentation, and the Subcontractor must not commence construction of the Subcontract Works relating to any design which is the subject of the Contractor's and Principal's review and approval until such approval is received;
- (e) the Subcontractor must ensure that periods for design documentation submission and re-submission are incorporated into its programme;
- (f) the Subcontractor shall comply with the intellectual property requirements identified in the Head Contract;
- (g) without limiting clause 3, the Subcontractor warrants that any design work it carries out in order to fulfil its obligations under the Subcontract is:
  - (i) fit for purpose; and
  - (ii) in accordance with the laws of New Zealand, the Head Contract and Good Industry Practice; and

the Subcontractor remains responsible for the design regardless of whether the design has been reviewed, approved, commented on and/or accepted by the Contractor.

## 23 SHOP AND AS-BUILT DRAWINGS

23.1 The Subcontractor shall provide "shop" and "for manufacture" drawings in accordance with the Head Contract, or as required by the Contractor. Drawings shall be submitted through the Contractor for the Principal or its agent's approval in ample time to ensure that manufacture and supply can be carried out to meet the Contractor's Programme requirements. A minimum of five (5) copies shall be provided unless specified otherwise. The Subcontractor retains full responsibility for any errors or omissions detailed on these drawings at all times.

23.2 The Subcontractor shall provide copies of "As Built" drawings, and maintenance and equipment manuals in the format and numbers required by the Head Contract. "As Built" drawings and manuals must receive the approval of the Principal or its agent before release of any retentions held under clause 10.

**24 QUALITY ASSURANCE**

- 24.1 The Subcontractor will comply with, and ensure the Subcontract Works comply, all applicable quality requirements in the Subcontract, including but not limited to those set out in the Head Contract, and in Schedule 15 (Quality).
- 24.2 The Subcontractor shall prepare, maintain and administer a quality plan for the execution of the Subcontract Works, in accordance with the requirements in Schedule 15, which will describe the Subcontractor’s procedures for meeting the quality requirements of the Subcontract.
- 24.3 The Subcontractor must obtain the Contractor’s approval of its quality plan and such approval shall be a condition precedent to payment under the Subcontract. Compliance with the quality plan shall not relieve the Subcontractor from any of its duties, obligations or liabilities under the Subcontract.
- 24.4 The Contractor may, from time to time, carry out audits of the Subcontractor's compliance with the quality requirements of the Subcontract. The Subcontractor shall cooperate fully with the Contractor (including allowing inspections of work and records and providing copies of records and information as reasonably required) and promptly rectify any non-conformance.

**25 TITLE OF GOODS**

- 25.1 Title in goods supplied pursuant to this Subcontract shall pass to the Contractor upon delivery to the Site or designated place of storage, or payment, whichever is the earlier.
- 25.2 The Subcontractor warrants that at the time title in the goods is transferred to the Contractor under clause 25.1, it has or will have full title to the goods free of all Encumbrances to ensure that full title in such goods passes to the Contractor under clause 25.1.
- 25.3 The Subcontractor must not remove the goods from the Site or any designated place of storage without the prior written approval of the Contractor.
- 25.4 Where goods are stored offsite by the Subcontractor and payment has been made pursuant to clause 25.1 above, the goods must be clearly marked as the property of the Contractor and set aside in a secure area, separate from other goods and materials not relating to the Subcontract.

**26 DAYWORK**

- 26.1 The Contractor may from time to time instruct the Subcontractor in writing to undertake works on a daywork basis, provided that the work:
  - (a) is of a relatively minor nature not involving significant mobilisation of additional labour or plant, or substantial planning and supervision;
  - (b) is able to be done concurrently with other work on Site, as such the Subcontractor irrevocably waives its entitlement to an extension of time;
  - (c) does not by reason of interference or disruption increase the cost of any other part of the Subcontract Works.
- 26.2 In determining the value of daywork the rates in Schedule 10 will apply. If daywork rates are not stated in Schedule 10, then the Contractor and Subcontractor shall endeavour to agree daywork rates prior to the work commencing, and failing such agreement the Contractor shall fix such rates as it sees fair and reasonable and the Subcontractor shall be bound by such rates.

26.3 For all work executed on a daywork basis, the Subcontractor shall keep records each day that include:

- (a) the name and role of the person who instructed the daywork;
- (b) the date the daywork was undertaken;
- (c) names and job titles of the specific workers who undertook the daywork;
- (d) time and location of each task;
- (e) timesheets of time spent by each worker; and
- (f) what was carried out and completed.

26.4 Full particulars and copies of the daywork records shall be submitted to the Contractor’s Representative by midday on the next working day following the day of execution of the daywork, otherwise the Subcontractor waives any right to claim for those dayworks and the Contractor shall not be liable to make payment to the Subcontractor for such daywork. The Contractor shall not be liable to make payment to the Subcontractor for daywork which is not authorised in writing by the Contractor prior to such daywork being undertaken. Daywork records must be approved by the Contractor as a pre-condition to payment.

**27 DAMAGE**

27.1 If any loss or damage occurs to the Subcontract Works or materials prior to Practical Completion, or while the Subcontractor is on Site during the Defects Notification Period, the Subcontractor shall:

- (a) attend urgently to any matters with safety or environmental impacts;
- (b) notify the Contractor of the loss or damage and its cause; and
- (c) repair the loss or damage to the extent necessary to complete the Subcontract Works and to meet the Subcontractor's obligations under this Subcontract. Such repair of loss or damage shall be carried out without additional payment by the Contractor unless and to the extent the necessity to repair such loss or damage arises from an excepted risk as defined by the Head Contract. If the loss or damage is caused by an excepted risk, subject to clause 2.3, the repair shall be treated as a Variation.

**28 HEALTH AND SAFETY**

28.1 The Subcontractor acknowledges that it is a “person conducting a business or undertaking” for the purpose of the H&S Legislation.

28.2 At any workplace relevant to the Subcontract, the Subcontractor will be responsible for:

- (a) ensuring the health, safety and welfare of all workers and any other persons;
- (b) consulting, coordinating and cooperating (including by providing all requested information, including for example man hours worked) with the Contractor and relevant third parties in respect of performance of the Subcontract Works;
- (c) implementing best industry practice health and safety measures, and establishing and maintaining safe and healthy working practices, equipment and conditions at all times;
- (d) ensuring it only uses workers who are suitably experienced, licensed, trained and assessed as competent to carry out the activities involved in the Subcontract Works. Where Subcontractor workers are under training, the Subcontractor shall supply active supervision to ensure the Subcontract Works is carried out safely and to the required standards; and
- (e) ensuring all plant and equipment is fit for purpose and compliant with Fletcher Plant Minimum Standards (see Schedule 15) prior to being brought to Site and used. Plant and vehicles must be fitted with flashing

beacons, reversing beepers, seat belts to compliance standards, roll over protection systems (ROPS) and any other project specific requirements prior to being used on site, and that all electrical leads and power tools, harnesses (and other safety critical equipment) must be certified, tested and tagged.

28.3 Subcontractor shall comply (and ensure all persons under its control comply) with:

- (a) H&S Legislation;
- (b) the Contractor’s health and safety requirements, including those set out in Schedule 7;
- (c) the Contractor’s reasonable instructions regarding health and safety when on Site; and
- (d) the Contractor’s security and access requirements for the Site (as notified to the Subcontractor from time to time).

28.4 The Subcontractor will submit a Health & Safety Management Plan for the Subcontract Works (including critical risk controls) to the Contractor for approval 10 Working Days prior to commencement of the Subcontract Works at the Site which must comply and be consistent with:

- (a) the requirements of the Contractor in Schedule 7; and
- (b) the Contractor’s Site-specific health and safety plan (*NB. If the Subcontractor has not received a copy of this prior to commencement on Site it must request one from the Contractor’s Representative*).

28.5 If requested by the Contractor, the Subcontractor will provide information in relation to health and safety, including of its operations and personnel. The Subcontractor will implement and carry out an audit and inspection regime if required by the Contractor and/or any H&S Legislation to ensure compliance by all persons involved with the Subcontract Works with the H&S Legislation and the health and safety policies and systems of the Contractor and the Subcontractor. The Contractor reserves the right, at its absolute discretion, to order the immediate removal from the Site of any person it believes is not complying with the Subcontractor’s health and safety obligations (and such removal will not constitute a variation).

28.6 The Subcontractor will provide on Site at all times during the undertaking of the Subcontract Works a competent and fully informed supervisor who will control and supervise the Subcontract Works in accordance with the Contractor’s requirements and who has a good understanding of safe work practices including hazard identification and risk management, including the development of take analysis or Job Safety Environmental Analysis and has responsibility for the health and safety of any person undertaking the Subcontract Works. Should the Contractor be required to direct, organise or otherwise supervise the Subcontractor’s workers due to a lack of competent supervision by the Subcontractor, the Contractor shall charge the Subcontractor and recover by way of deduction any costs incurred from monies due to the Subcontractor.

28.7 The Subcontractor will ensure that it reports to the Contractor (in a form acceptable to the Contractor):

- (a) events (including injuries, incidents and near misses) and hazards/risks identified in relation to the Subcontract Works, which must be reported verbally immediately to the Contractor’s Representative and followed up with written notification by the end of the Subcontractor’s shift that day;
- (b) following identification of hazards/risks under (a) above, to the extent the Subcontractor will report as soon as practicable on management (critical risk controls and processes to eliminate or minimise) of the hazards and risks associated with the Subcontract Works; and
- (c) immediately following any accidents causing injury or death and any events, injuries, illnesses or incidents which are required by law to be notified, arising on or resulting from the Subcontract Works, will provide the Contractor with:
  - (i) any relevant investigation reports that result;

- (ii) any relevant updates to the Subcontractor’s health and safety management systems that result; and
- (iii) information of the appropriate remedial action taken by the Subcontractor.

28.8 The Subcontractor will maintain an accident register in accordance with the requirements of the H&S Legislation and will provide a copy to the Contractor on request.

28.9 The Contractor may, at any time during performance of the Subcontract Works, conduct a compliance audit with respect to the Subcontractor’s compliance with its health and safety obligations under the Subcontract. The Subcontractor must immediately comply with all requests and requirements of the Contractor in relation to or in connection with any such audit. In addition, if the Contractor is of the opinion that the Subcontractor has failed to comply with any part of this clause 28, the Contractor may advise the Subcontractor and instruct the Subcontractor to suspend or not commence the Subcontract Works or part of the Subcontract Works until the Subcontractor complies with this clause 28. Any such instruction will not constitute a variation.

28.10 Health and Safety warranties:

Without limitation or prejudice to clause 28.2 and 28.3, the Subcontractor warrants to the Contractor (so far as is applicable to the Subcontract Work) that the Subcontractor and its employees, agents, and any other person carrying out any works or services on the Site under the care of control of the Subcontractor, will so far as is reasonably practicable ensure that no act or omission:

- (a) causes a hazard, significant hazard, harm or serious harm or gives rise to any event, injury, illness or incident that is required by law to be notified in respect of any worker of the Subcontractor or Contractor or any person lawfully on the Site; or
- (b) is a breach of any duty or obligation of the Contractor or Subcontractor under H&S Legislation; or
- (c) does or is likely to give rise to the issue of an improvement or prohibition notice, enforcement proceedings or a prosecution under H&S Legislation against the Subcontractor or the Contractor;

and the Subcontractor further warrants that it and its employees, agents, and any other person carrying out any works or services on the Site under the care or control of the Subcontractor, will comply with the H&S Legislation, the Health and Safety Management Plan and any health and safety rules, handbooks, instructions, policies and procedures issued or provided by the Contractor to the Subcontractor from time to time.

28.11 Drugs and Alcohol Policy:

The Subcontractor shall ensure all personnel under its control (including, but not limited to, employees and contractors), are not under the influence of drugs and/or alcohol whilst on Site.

The Subcontractor warrants to the Contractor that the Subcontractor shall comply with the Contractor’s ‘drug and alcohol policy’ referred to in Schedule 7 which shall form part of this Subcontract and which makes all persons on Site subject to random drug detection and testing procedures as well as ‘just cause’ and post accident/incident drug and/or alcohol testing procedures. The Subcontractor shall ensure that any person under its control entering the Site for any reason is fully informed of and accepts the above policy and procedures as a condition of entry to Site. The Subcontractor shall ensure it has employment arrangements and/or conditions of engagement arrangements with any person or organisation undertaking the Subcontract Works or part thereof, which will allow, and not prohibit, the Contractor from implementing the above policy and procedures.

28.12 For avoidance of doubt, breach of clause 28 (Health and Safety) by the Subcontractor will be considered a material breach of this Subcontract.

## 29 ESG REPORTING

29.1 If requested by the Contractor, the Subcontractor shall, at its cost, provide in the form, to the extent, in the manner, to whom, and at times requested by the Contractor, data, records and information relating to environmental, sustainability and governance issues, including as to:

- (a) GHG Emissions associated with the Subcontractor’s activities under this agreement (which may be provided to the Contractor directly, or via a third-party supply chain portal nominated by the Contractor);
- (b) Energy production or energy consumption; and
- (c) Waste data relating to the Subcontractor’s activities under this agreement, including type of waste, volume or tonnage, and disposal route (landfill or diversion).

29.2 If product supply is part of this agreement, if requested by the Contractor, the Subcontractor shall, at its cost, provide the Contractor with any sustainable product certifications that it holds.

29.3 The Subcontractor shall:

- (a) Collect and keep all data, information and records as may be required to enable the Subcontractor to discharge its obligations under clause 29.1 and in any event hold such data, information and records for a minimum of seven years;
- (b) Ensure such data, information and records are accurate;
- (c) Advise whether the data, information or records or any part of the data, information or records, has been validated by independent audit and, if so, to what verification standard; and
- (d) Permit any persons appointed or approved by the Contractor to examine, monitor, measure, copy, audit and/or verify such data, information and records and will cooperate with, and provide all reasonable assistance to any such persons (including providing access to premises, plant and the Subcontractor’s equipment, producing and giving access to documents and answering any relevant questions).

## 30 SUBCONTRACTOR WARRANTIES AND REPRESENTATIONS

30.1 The warranties and representations set out in this clause 30 do not in any way limit any other warranties given by the Subcontractor elsewhere in the Subcontract.

30.2 Resource Management Act 1991 and its amendments and regulations (the **RMA**):

The Subcontractor warrants and represents to the Contractor (so far as is applicable to the Subcontract Work) that the Subcontractor will comply with the RMA and will not do or omit to do anything, or to use materials, substances or processes:

- (a) which would or could discharge a contaminant into the environment, cause the emission of noise to exceed a reasonable level, cause an adverse effect on the environment;
- (b) which is a breach of any duty or obligation of the Subcontractor or Contractor under the RMA or any resource consents; or
- (c) which does or is likely to give rise to the issue of an abatement notice, enforcement proceedings or an excessive noise direction under the RMA against the Subcontractor, the Contractor or the Principal.

30.3 Hazardous Substances and New Organisms Act 1996 and its amendments (the **HSNO**):

The Subcontractor warrants and represents to the Contractor (so far as is applicable to the Subcontract Work) that the Subcontractor will not do or omit to do anything or to use materials, substances or processes:

- (a) which is a breach of any duty or obligation of the Contractor or Subcontractor under the HSNO; or
- (b) does or is likely to give rise to the issue of any enforcement notice, proceedings or prosecution under the HSNO against the Subcontractor or the Contractor.

30.4 Building Act 2004, regulations passed pursuant to the Building Act 2004 and the Building Code and amendments (the **Building Act**):

The Subcontractor warrants and represents to the Contractor (in so far as is applicable to the Subcontract Work) that the Subcontractor will comply with all the requirements and obligations imposed under the Building Act, the Building Code, all regulations made under that Act, all published codes of practice, standards and guidelines and any amendments to the same.

30.5 Environmental Policy:

The Subcontractor warrants and represents to the Contractor that the Subcontractor shall comply with:

- (a) the law, the provisions of the Head Contract, and the Contractor's requirements, the Contractor's reasonable instructions from time to time in relation to environmental matters and the requirements of the Contractor's Environmental Plan or other plans;
- (b) the requirements of any resource consents that relate to the Project;
- (c) any environmental objectives, procedures, instructions, site management plans, workplans prepared and waste recycling or reuse targets set by the Contractor and/ or required by the Head Contract and issued to the Subcontractor from time to time. The Subcontractor acknowledges and agrees to use its best endeavours to minimise any waste produced in the carrying out of the Subcontract Works.

30.6 The Subcontractor shall prepare and comply with any Job Safety Environmental Analysis (or equivalent document) as approved by the Contractor.

30.7 The Subcontractor will ensure that it reports to the Contractor (in a form acceptable to the Contractor):

- (a) Environmental events (incidents, breaches and near misses) and hazards/risks identified in relation to the Subcontract Works, which must be reported verbally immediately to the Contractor's Representative and followed up with written notification by the end of the Subcontractor's shift that day;
- (b) following identification of hazards/risks under (a) above, to the extent the Subcontractor will report as soon as practicable on management (critical risk controls and processes to eliminate or minimise) of the hazards and risks associated with the Subcontract Works; and
- (c) immediately following any incidents which will or is likely to give rise to regulatory action (including an abatement notice), arising on or resulting from the Subcontract Works, will provide the Contractor with:
  - (i) any relevant investigation reports that result;
  - (ii) any relevant updates to the Subcontractor's environmental management systems that result; and
  - (iii) information of the appropriate remedial action taken by the Subcontractor.

30.8 The Subcontractor will maintain an environmental incident register and will provide a copy to the Contractor on request.

30.9 The Contractor may, at any time during performance of the Subcontract Works, conduct a compliance audit with respect to the Subcontractor's compliance with its environmental obligations under the Subcontract. The

Subcontractor must immediately comply with all requests and requirements of the Contractor in relation to or in connection with any such audit. In addition, if the Contractor is of the opinion that the Subcontractor has failed to comply with any part of this Subcontract in relation to its environmental obligations including this clause 30, the Contractor may advise the Subcontractor and instruct the Subcontractor to suspend or not commence the Subcontract Works or part of the Subcontract Works until the Subcontractor complies with the Subcontract. Any such instruction will not constitute a variation or grounds for an extension of time.

30.10 The Subcontractor warrants and represents that it has read and understood the Contractor’s Supplier Code of Conduct, which is available at <https://fletcherbuilding.com/assets/4-investor-centre/other-documents/supplier-code-of-conduct-20200501.pdf>. The Subcontractor agrees that it will comply with the Supplier Code of Conduct, as may be amended from time to time, in the performance of the Subcontract Works.

30.11 Prior Representations:

- (a) The Subcontractor represents, warrants and undertakes on a continuing basis that all information and representations made by the Subcontractor to the Contractor in writing prior to or after the date of this agreement in response to any pre-qualification or procurement process leading to this agreement are:
  - (i) True, complete and correct and not misleading (including through non-disclosure); and
  - (ii) Shall not limit any other obligation under this agreement.
- (b) The Subcontractor will notify the Contractor promptly should it become aware that any representations made to the Contractor were untrue, incorrect or misleading at the time, or where the representations made at the time were true, correct and not misleading but the position has now materially changed.
- (c) The Subcontractor acknowledges that the Contractor has, in entering into this agreement and during the term, relied on clause 30 and the Subcontractor’s representations. Should any of the Subcontractor’s representations be untrue or misleading in any material respect, or the Subcontractor be in breach of this clause 30, it will be considered a material breach by the Subcontractor.

**31 WARRANTIES AND GUARANTEES**

31.1 If required by the Subcontract Particulars, the Subcontractor shall deliver to the Contractor:

- (a) three signed copies of the Subcontractor Warranty and Guarantee in the form set out in Schedule 6; and
- (b) signed copies (in numbers to be advised by the Contractor) of any other form of warranty or guarantee required in accordance with the Subcontract Particulars or the Head Contract.

31.2 Notwithstanding the terms and conditions of the warranties and guarantees issued by the Subcontractor under clause 31.1, it is expressly understood and accepted by the Subcontractor that it shall without limitation be solely responsible for all the undertakings, warranties, covenants, agreements and other obligations of the Contractor and the Subcontractor as set out in the guarantee(s) and including the performance of them.

**32 SUPPLIER WARRANTIES AND GUARANTEES**

32.1 The Subcontractor will ensure that any warranties or guarantees obtained from suppliers relating to the Subcontract Works:

- (a) name the Contractor as a joint beneficiary; or
- (b) are able to be freely assigned to the Contractor and to the Principal if required by the Head Contract.

Where such warranties or guarantees are assignable, the Subcontractor agrees to assign these to the Contractor promptly upon request.

32.2 The Subcontractor agrees to provide the Contractor copies of any warranties or guarantees obtained from suppliers relating to the Subcontract Works promptly upon request by the Contractor.

**33 SUBCONTRACTING AND ASSIGNMENT**

33.1 The Subcontractor shall not assign, change, novate or subcontract all or any part of its rights and/or obligations under the Subcontract without the prior approval and written consent of the Contractor. For the purposes of this clause any change in ownership or controlling interest in the Subcontractor shall be deemed to be an assignment.

33.2 The Contractor may, without the consent of the Subcontractor, assign (including by way of security), charge or novate all or any part of its rights and/or obligations under the Subcontract to any other person.

33.3 Both parties agree to execute all documentation reasonably required by the assigning, charging or novating party in order to effect and/or formalise any permitted assignment, charge or novation.

**34 FRUSTRATION**

34.1 The Subcontractor shall have no right to claim the Subcontract is frustrated unless it is no longer possible to complete the Subcontract Works.

**35 DISPUTES**

**General**

35.1 If either party notifies the other in writing of any dispute relating to this Subcontract, the parties must endeavour to resolve it in good faith.

35.2 Every dispute or difference concerning this Subcontract shall be dealt with under this clause 35.

35.3 Any dispute arising out of or in relation to this Subcontract will first be referred to the senior management of both parties to use their best endeavours to resolve the dispute.

**Adjudication**

35.4 If any dispute or difference of any kind whatsoever shall arise between the Contractor and the Subcontractor under the Subcontract either party may refer that dispute or difference to adjudication in accordance with the provisions of the Construction Contracts Act 2002 and the provisions herein.

35.5 If the matter in dispute involves a claim by the Subcontractor against the Contractor and the Contractor makes a claim against the Principal either in respect of the same matter or depending wholly or in part on an issue or on issues which are the same or substantially similar then:

- (a) the Subcontractor shall give the Contractor all reasonable assistance in the adjudication of the Contractor's claim and shall make available all relevant particulars and evidence within its possession or control;
- (b) both parties hereby consent to extending the time for responding to the Subcontractor's claim by such time as is necessary to allow the Contractor to have received and had 5 Working Days in which to consider the Principal's response to the claim in the Head Contract adjudication;
- (c) both parties hereby consent to extending the time for determining the Subcontractor's claim by such time as is necessary to allow the prior determination of the Head Contract adjudication; and
- (d) the Subcontractor shall for the purposes of the adjudication be bound by the findings of fact and by the determination made in respect of the Contractor's claim to the extent that the same involves any issue or issues which are the same or substantially the same as issues which are relevant to the

Subcontractor's claim and the Subcontractor's claim shall be determined in a manner consistent with all such findings and decisions.

35.6 Any notice by the Subcontractor under part 3 of the Construction Contracts Act 2002 must be in an envelope clearly marked "Adjudication Document" and served by hand delivery between the hours of 8.30 am and 5 pm upon the following persons:

- (a) the Contractor's Representative; and
- (b) The General Manager, [insert name of the Fletcher Contracting entity], 810 Great South Road, Penrose, Auckland.

Service shall be deemed to have been effected upon delivery of the notice to whomever is the second person to be served. Any notice under part 3 of the Construction Contracts Act 2002 which does not comply strictly with both of the above conditions shall be deemed invalid and of no effect until the conditions are fulfilled.

**Arbitration**

35.7 If any dispute or difference of any kind whatsoever shall arise between the Contractor and the Subcontractor under the Subcontract either party may give to the other party a notice that a dispute exists, specifying its nature, the point(s) in issue and its intention to refer the dispute to arbitration. If the parties fail to resolve such dispute by further consultation within a period of thirty (30) days from the date upon which such notice of dispute has been given, then either party may, by written notice, require the dispute to be referred to arbitration for determination before a sole arbitrator, as follows:

- (a) in accordance with the Arbitration Act 1996 (and clause 5 of Schedule 2 of that Act applies);
- (b) by a sole arbitrator agreed upon by the parties and failing agreement, by an arbitrator appointed by AMINZ or equivalent body at the request of either party;
- (c) the seat and location of the arbitration will be Auckland, New Zealand;
- (d) the language of the arbitration will be English; and
- (e) the award of the arbitrator will be final and binding on the parties, subject to the rights of appeal on a question of law pursuant to clause 5 of Schedule 2 of the Arbitration Act.

35.8 The agreement to arbitrate contained in this clause is governed by, and will be interpreted in accordance with, the laws of New Zealand.

35.9 Nothing in the agreement to arbitrate prevents either the Contractor or the Subcontractor from seeking an interim injunction or other urgent interim relief for any conduct or threatened conduct that is or would be a material breach of this Subcontract.

**Dispute Consolidation**

35.10 If the matter in dispute between the Subcontractor and the Contractor concerns the same subject matter that comprises a dispute between the Contractor and the Principal, or between the Contractor and another Subcontractor then:

- (a) The Subcontractor shall give the Contractor all reasonable assistance in the prosecution or defence of the dispute between the Contractor and the Principal or other subcontractor and shall make available all relevant particulars and evidence within its possession or control.
- (b) At the Contractor's election, the dispute between the Contractor and the Subcontractor will be consolidated and/or heard together with any adjudication, arbitration, or court proceedings to determine the dispute between the Contractor and the Principal or other subcontractor. In that event, the Subcontractor expressly waives its rights to refer the relevant matter in dispute to arbitration under

clause 35.7. The Subcontractor will do all things reasonably required by the Contractor to give effect to this clause.

- (c) The Subcontractor will be bound by the relevant findings of fact and rulings of law in the adjudication, arbitration, or court proceedings determining the dispute between the Contractor and the Principal or other subcontractor and the dispute between the Contractor and the Subcontractor will be determined in a manner consistent with such findings and rulings.

35.11 Any time periods within which notice of arbitration is required to be given under the Head Contract shall apply in respect of any claim by the Subcontractor under this Subcontract.

## 36 TERMINATION

36.1 The Contractor may terminate the Subcontract or any part of it if:

- (a) the Subcontractor is in default of or fails to observe or comply with the Subcontract and that default has not been remedied within 48 hours of notice to remedy the same;
  - (b) the Subcontractor is in breach of a material term of the Subcontract;
  - (c) an Insolvency Event occurs in relation to the Subcontractor or the Guarantor;
  - (d) the Subcontractor breaches any of its obligations under this Subcontract or any other binding agreement between the Subcontractor and the Contractor (or any of the Contractor’s related companies) regarding health, safety, the environment, or the Contractor’s drug and alcohol policy;
  - (e) the Principal requires the Subcontract to be terminated as provided for under the Head Contract; or
  - (f) the Head Contract is terminated by the Principal for any reason,
- by giving written notice to the Subcontractor.

If the Contractor terminates the Subcontract under clause 36.1, the Contractor may recover from the Subcontractor any cost, damage, loss or expense incurred as a result of the breach of the Subcontract. Without prejudice to any other method of recovery, the Contractor may deduct the amount of the damages, costs or losses from any payment that would otherwise be payable to the Subcontractor under the Subcontract.

36.2 The Contractor may terminate the Subcontract for convenience, at its absolute discretion, by giving the Subcontractor 5 Working Days’ notice.

36.3 If the Contractor terminates the Subcontract under clause 36.2, the Subcontractor shall be entitled to be paid in accordance with the Subcontract for all works completed up to the date of termination. The Contractor shall be entitled to any other costs which it can demonstrate are a direct result of such early termination but the Subcontractor shall not be entitled to any payment on account of its anticipated profit or for preliminary and general costs in respect of unfinished work or any consequential loss of any kind whatsoever.

36.4 If the Contractor reasonably considers there has been or will be a material breach by the Subcontractor of any of its obligations under the Subcontract (which shall include, without limitation, any breach of the Subcontract in relation to health, safety or the environment), then in addition to and without prejudice to any other rights and remedies of the Contractor under this Subcontract or at law, the Contractor may elect to do any or all of the follows:

- (a) Suspend the Subcontract Works with immediate effect, as may be reasonable in order to:
  - (i) prevent a risk of harm or further harm to person, property or the environment,

- (ii) prevent a breach or further breach of the Subcontractor’s obligations under the Subcontract; and/or
  - (iii) enable the implementation of agreed corrective actions by the Subcontractor to eliminate the identified risk or restore compliance with the Subcontractor’s obligations under the Subcontract.
- (b) Require the immediate removal from Site of any of the Subcontractor’s personnel who in the Contractor’s reasonable opinion is a danger to the safety or welfare of any person, property or the environment. Any person required to be removed shall not again be engaged upon the Subcontract Works without the prior permission of the Contractor.
  - (c) Carry out (or arrange for the carrying out by others) of any emergency work the Contractor reasonably considers to be urgent, due to any environmental or safety issues, or because significant inconvenience to third parties or the Principal might arise. Where work carried out under this clause involves work which the Subcontractor was liable to do at its own expense under the Subcontract, the reasonable cost of such work shall be recoverable by the Contractor from the Subcontractor.

37 The exercise by the Contractor of its rights under clause 36.4 shall not entitle the Subcontractor to any variation or extension of time.

**38 CONTRACTOR’S REPRESENTATIVE**

38.1 Except where expressly set out in the Subcontract, any general matters concerning the Head Contract or the Subcontract may be discussed with the Contractor’s Representative otherwise all correspondence shall be directed to the Contractor in the manner agreed.

**39 AUDIT, INSPECTION AND TESTING**

39.1 The Subcontractor will maintain a complete and correct set of records (including, without limitation, vouchers, receipts, correspondence, invoices, details in relation to any rebate arrangements, memoranda and documents relating to the Subcontract Works and will keep full and accurate records of all of its activities in connection with the Subcontract.

39.2 The Subcontractor will preserve its records relating to the Subcontract and will provide any records to the Contractor promptly upon request.

39.3 Without limiting any other clause in the Subcontract, the Subcontractor acknowledges and agrees that at all times, the Contractor and its authorised nominees will have the right to:

- (a) inspect and test, or witness the inspection or testing of, any and all of the materials and workmanship furnished by the Subcontractor or its employees, agents and representatives;
- (b) access the off-Site premises of the Subcontractor for the purpose of conducting inspections and testing relevant to the Subcontract Works;
- (c) issue to the Subcontractor any report arising from any such inspections or audits; and
- (d) the Subcontractor agrees to fully cooperate and comply with any such recommendations and reasonable requirements; and
- (e) no such activity on the part of the Contractor and their authorised nominees shall relieve the Subcontractor from any obligation or responsibility.

**40 CONFIDENTIALITY**

40.1 The Subcontractor will at all times (including after the termination of the Subcontract) keep confidential:

- (a) the subject matter, and the terms and conditions, of the Subcontract;

- (b) information acquired by the Subcontractor in anticipation of, or in connection with, the performance of the Subcontract in circumstances that can reasonably be taken to indicate such information is confidential;
- (c) any other information obtained directly or indirectly from or on behalf of the Contractor under or in connection with the Subcontract, including any information relating to the financial position or business of the Contractor; and
- (d) any claim, dispute or difference in relation to or in connection with the Subcontract, (being, **Confidential Information**) except to the extent:
  - (e) disclosure is made to a professional advisor of the Subcontractor provided that the Subcontractor informs the advisor of the confidential nature of the information and the advisor unconditionally and irrevocably agrees in writing to keep the information confidential (such written agreement must be obtained prior to disclosure being made);
  - (f) the information becomes generally known to the public without fault on the part of the Subcontractor;
  - (g) the information is required to be provided to the Subcontractor’s officers, employees or agents to perform the Subcontract Works, provided that the Subcontractor informs the person of the confidential nature of the information and the person unconditionally and irrevocably agrees in writing to keep the information confidential (such written agreement must be obtained prior to disclosure being made); or
  - (h) the Subcontractor has a statutory obligation to disclose such information or is required to make such disclosure by a court of law.

40.2 If the Subcontractor is required to disclose any matter or information covered by 39.1(h), the Subcontractor will use its reasonable endeavours to obtain undertakings that confidential treatment will be accorded to the information by the Person to whom it is disclosed.

**41 MEDIA CONTACT**

The Subcontractor shall not make any public announcement, respond to media requests, issue any press release or other information (including digital images) concerning this Subcontract, its subject matter, the Project, the Contractor or the Principal, in any media or in its marketing material, including on social media, without the prior written approval of the Contractor. The Subcontractor shall refer to the Contractor any enquiries from any media or third parties, including members of the public, concerning the same.

**42 COMMUNICATION**

Except where, as part of the scope of the Subcontract Work, the Subcontractor is required to communicate directly with the Principal or the Principal’s representative under the Head Contract or to the extent required to comply with clause 30.3, the Subcontractor is expressly forbidden to approach directly the Principal or its agents in respect of any matter arising out of the Head Contract, the Subcontract or the Subcontract Works without the prior written consent of the Contractor.

**43 REMEDIES AND WAIVERS**

43.1 Time is of the essence in respect of all dates and times for compliance by the Subcontractor with its obligations under the Subcontract. However, no relaxation, forbearance, delay or indulgence by the Contractor in enforcing any of the terms and/or conditions of the Subcontract or any no delay in exercising, a right of the Contractor under the Subcontract, will prejudice, affect or restrict the rights of the Contractor under the Subcontract.

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

43.3 Any waiver by the Contractor of its rights, powers and/or remedies under this clause 42 will not operate as a waiver of its rights, powers and/or remedies in respect of any subsequent or continuing breach of the Subcontract.

43.4 The rights and remedies of the Contractor under the Subcontract are cumulative of one another and a right or remedy of the Contractor under the Subcontract will not be construed to limit or prejudice any other right or remedy of the Contractor under the Subcontract.

#### 44 **GOVERNING LAW**

The Subcontract is governed by, and is to be construed in accordance with, New Zealand law. Without prejudice to clause 34, the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

#### 45 **NOTICES**

45.1 Any notice or document required to be given under this Agreement must be in writing and must be given by the means for service of notices set out in the Subcontract Particulars. Subject to the last paragraph of this clause a notice or document is taken to have been received:

- (a) if the notice or document is delivered by hand to the receiver, at the time of delivery;
- (b) if the notice or document is posted in a postage paid registered envelope addressed to the receiver, at the time when it would be received in the ordinary course of registered post then prevailing;
- (c) if the notice or document is sent by email or other form of electronic transmission permitted by the Subcontract Particulars, when receipt of the email or electronic communication is acknowledged by the receiving party by return email or otherwise in writing, except that return emails or electronic communication generated automatically will not constitute an acknowledgment.

If a notice or document is received after 5.00pm on a day or on a day that is not a Working Day, the notice will be deemed to be received on the next Working Day.

#### 46 **SEVERABILITY AND NON-MERGER**

46.1 Should any part or portion of the Subcontract be held invalid, the remainder of the agreement shall continue in force and effect as if the invalid portion had been deleted provided however that the parties to this agreement may negotiate a valid and enforceable provision in replacement of the invalid portion.

46.2 The warranties and indemnities contained in the Subcontract will not merge with completion of the Subcontract Works by the Subcontractor.

**SCHEDULE 3: SUBCONTRACTOR SCOPE OF WORKS**

Subcontract #: *Insert*  
Subcontractor Name: *Insert*  
Project: *insert*

**SCHEDULE 4: SUBCONTRACTOR’S INSURANCE CERTIFICATE**

Head Contract:	Insert	Located at: Insert
Subcontract Works:	Insert	
This certifies that:	Insert (the <b>Subcontractor</b> )	

Has effected and paid the premium(s) for the following Insurance Policies as required by the Subcontract Particulars.

These insurance policies have been arranged on the basis that they are primary and provide more specific insurance and will respond in priority to any policies effected by the Contractor.

These policies meet the insurance requirements of the Subcontract Agreement applicable to the Subcontract Works and, except as noted below, do not contain any exclusions or omissions that would not reasonably be expected to be applied to insurance coverage in respect of the Subcontract Works.

**INSURANCE POLICIES**

<b>CONTRACT WORKS INSURANCE – Project Specific Y/N or Annual Policy Y/N</b>			
Cover to apply to physical loss and or damage to the Subcontract Works			
Policy Ref: <i>insert</i>	Sum Insured/Limit	\$Subcontract Sum	Expires: <i>insert</i>
	Deductible	\$ <i>insert</i>	
Insurance Company Stamp/Insurance Broker Stamp	<i>insert</i>		
Insurance Company Signature/Insurance Company Signature Print Name	<i>insert</i>	Date: <i>insert</i>	
<b>PUBLIC AND PRODUCTS LIABILITY INSURANCE – Project Specific Y/N or Annual Policy Y/N</b>			
Cover to apply to legal liability for third party bodily injury and or property damage			
Policy Ref: <i>insert</i>	Limit of Indemnity	\$ <i>insert</i>	Expires: <i>insert</i>
	Deductible	\$ <i>insert</i>	
Clauses <i>insert</i>	Vibration and Removal of Support Underground Services	Limits of Indemnity \$ <i>insert</i> \$ <i>insert</i>	
Insurance Company Stamp/Insurance Broker Stamp	<i>insert</i>		
Insurance Company Signature/Insurance Company Signature Print Name	<i>insert</i>	Date: <i>insert</i>	

<b>CONSTRUCTION PLANT AND MACHINERY INSURANCE</b>		
Cover to apply to all plant and equipment items that are necessary for carrying out the Subcontract Work.		
Policy Ref: <i>insert</i>	Sum Insured/Limit Deductible	Expires: <i>insert</i>
	\$ <i>insert</i> \$ <i>insert</i> <i>insert</i>	
Insurance Company Stamp/Insurance Broker Stamp	<i>insert</i>	
Insurance Company Signature/Insurance Company Signature Print Name	<i>insert</i>	Date: <i>insert</i>
<b>MOTOR VEHICLE LIABILITY</b>		
Minimum Level of Indemnity Required is \$ (Insert)		
Cover to apply to all Motor Vehicles under the care, custody and control of the Subcontractor during the execution of the Subcontract Work and shall include Vicarious Liability.		
Policy Ref: <i>insert</i>	Limit of Indemnity Deductible	Expires: <i>insert</i>
	\$ <i>insert</i> \$ <i>insert</i>	
Insurance Company Stamp/Insurance Broker Stamp	<i>insert</i>	
Insurance Company Signature/Insurance Company Signature Print Name	<i>insert</i>	Date: <i>insert</i>

<b>PROFESSIONAL INDEMNITY Project Specific Y/N or Annual Policy Y/N</b>		
<i>(Delete if not required)</i> Minimum Level of Indemnity Required is \$		
Applies to the legal liability arising out of the provision of professional services.		
Policy Ref: <i>insert</i>	Limit of Indemnity    \$ <i>insert</i>  Excess                        \$ <i>insert</i>	Expires: <i>insert</i>
Insurance Company Stamp/Insurance Broker Stamp	<i>insert</i>	
Insurance Company Signature/Insurance Company Signature  Print Name	<i>insert</i>	Date: <i>insert</i>

<b>PROTECTION AND INDEMNITY (for waterborne craft only)</b>		
<i>(Delete if not required)</i> Minimum Level of Indemnity Required is \$		
In the event that the Subcontractor is an owner or operator of waterborne craft to be utilised in the Subcontract, Protection and Indemnity insurance (including for wreck removal) has been effected.		
Policy Ref: <i>insert</i>	Limit of Indemnity    \$ <i>insert</i>  Deductible                \$ <i>insert</i>	Expires: <i>insert</i>
Insurance Company Stamp/Insurance Broker Stamp	<i>insert</i>	
Insurance Company Signature/Insurance Company Signature  Print Name	<i>insert</i>	Date: <i>insert</i>

## **SCHEDULE 5: PARTICULAR SITE RULES**

### **1 SIGN BOARDS**

The Subcontractor shall not erect or display notice or advertising boards or signs on site without the written approval of the Contractor.

### **2 SITE MEETINGS**

The Subcontractor will be required to provide senior representation at site meetings as considered necessary by the Contractor.

### **3 PARKING**

No parking is available to the Subcontractor on site. All Subcontractors are to ensure that staff do not attempt to park on site and create congestion. The Contractor will not be responsible for providing any parking or meeting any parking costs for the Subcontractor.

### **4 SITE ACCOMMODATION**

The provision of messing facilities, stores, huts, offices, and the like is the Subcontractor's responsibility and the extent and siting of such facilities shall be subject to the Contractor's approval. The Subcontractor shall provide all temporary services it may require for these facilities. Toilet and wash-room facilities may be provided by the Contractor.

On completion of its works, the Subcontractor shall remove its sheds, clear its storage areas and arrange for the disconnection of all services to its sheds.

Where it is agreed that the Subcontractor may use messing facilities/stores, huts, offices, or suchlike provided by the Contractor the Subcontractor is responsible for the cleaning and maintenance of same to the Contractor's requirements.

### **5 MATERIALS HANDLING**

- (a) Subject to the availability of reasonable access and floor space, the Subcontractor may at its own risk, store on Site its materials and plant where directed by the Contractor.

Deliveries will require to be made only to the loading zone(s) stipulated by the Contractor and at times to suit construction sequences and programme.

The Contractor will not be responsible for any waiting time, trucking charges etc. for any reason whatsoever.

The Subcontractor is responsible for the unloading, hoisting, storage and depositing of its materials and plant at the required work areas.

Overloading of floors will not be permitted. Allowance should be made to replenish materials on a regular basis.

If such plant or material is required to be moved or relocated so work can proceed in a particular area, the Subcontractor must move these items as directed at its own cost. If the Subcontractor fails to move such items within 24 hours of notice or other agreed time, then the cost of moving the items will

be undertaken by the Contractor and any costs involved will be deducted from payments due to the Subcontractor. Protection and security of the items will remain the Subcontractor's responsibility.

- (b) Where the Contractor provides permanent hoisting equipment on Site, the Subcontractor will be afforded the use of this equipment, subject to the following conditions:
  - (i) any hoisting is carried out under the absolute control and direction of the Contractor and at times agreed with the Contractor;
  - (ii) the size and weight of the material / plant to be hoisted is within the capacity of the hoisting equipment;
  - (iii) the supply of all slings and / or transporting apparatus, cages etc. is the responsibility of the Subcontractor and must be to the approval of the Contractor;
  - (iv) all labour other than the crane driver and dogman is to be provided by the Subcontractor; and
  - (v) any costs incurred by the Contractor associated with hoisting the Subcontractor's plant and materials, outside the Contractor's normal working hours, will be charged to the Subcontractor and deducted from monies due to the Subcontractor.

Where permanent hoisting equipment is not provided on site by the Contractor as above, the Subcontractor shall provide any hoisting equipment specifically needed for the purposes of performing the Subcontract Works.

## 6 REMOVAL OF WASTE, DEBRIS AND RUBBISH

- (a) The Subcontractor is responsible for keeping its work areas safe, clean and tidy to the satisfaction of the Contractor and shall, within 24 hours of its creation, remove all waste, debris, dust and rubbish arising from the Subcontract Works.

The Subcontractor shall place all waste, debris and rubbish into bins provided by the Contractor at street level.

Hazardous waste is not to be placed in any bins. Subcontractors will be responsible for containerising, removing from site and disposing of any hazardous waste generated by their subcontract works.

The Subcontractor is responsible for removing proprietary packaging including, but not limited to polystyrene, plastic wrappings, cardboard containers, timber pallets and the like from site.

- (b) Should the Subcontractor fail to comply with a) above the Contractor may, without notice carry out the clean-up, removal and disposal of the Subcontractor's waste, debris and rubbish and any costs involved will be deducted from monies due to the Subcontractor.

## 7 TEMPORARY SERVICES

- (a) Power and Cabling

Electrical power will be supplied free of charge to the Subcontractor subject to the following conditions:

- (i) Temporary power will be supplied to sub-boards or lifeguards only.

- (ii) Leads and transformers beyond these boards or lifeguards will be provided by and are the responsibility of the Subcontractor. All electrical equipment must be maintained in good condition and tested and tagged at intervals not exceeding three (3) months.
  - (iii) Suitable electric lighting in access ways fixed in a semi-permanent position will be provided by the Contractor at its discretion. Any other lighting requirements of the Subcontractor will be its responsibility to provide, as will be the supply of electrical light bulbs or strip lighting. Halogen lights are not permitted to be used on Site due to risk of fire.
  - (iv) Should the draw-off of any Subcontractor's equipment be beyond the capacity of the sub-board supplied, the Contractor will provide additional power supply at the Subcontractor's cost or direct the Subcontractor to provide appropriate auxiliary generating plant.
- (b) Water
- Will be provided free of charge at outlets in the building selected by the Contractor.

**8 SCAFFOLDING**

- (a) Where the Contractor provides and erects any scaffolding for any part of the Head Contract Works, the Subcontractor, in common with all other persons having the like right, shall be entitled to use such scaffolding for a period (or extended period) agreed in writing by the Contractor's Representative so long as it remains properly erected on site. The Subcontractor is not permitted to make any alterations to the scaffold. The Subcontractor will be liable for the cost of:
  - (i) any hire charges arising from the scaffolding remaining in place for the specific use of the Subcontractor, and/or
  - (ii) any alterations or additions to the scaffolding including the moving of scaffold planks required by the Subcontractor for its own purposes. (The Contractor shall, unless otherwise agreed, effect all such alterations and additions to the scaffolding, including the moving of scaffold planks).
- (b) Any scaffolding required for the Subcontract Works shall be provided by the Subcontractor.
- (c) For the purpose of this section "scaffolding" shall mean any temporary access structure whether fixed or mobile.

**9 TEMPORARY PLANT AND EQUIPMENT**

The Subcontractor shall provide all the temporary plant, equipment and tools it requires for the proper performance of the Subcontract Works.

**10 PROTECTION**

- (a) The Subcontractor is responsible for protection of its work. Any damage to its work and the cost of subsequent remedial work will be the responsibility of the Subcontractor. If the Subcontractor can prove that any other Subcontractor(s) or person(s) is (are) liable for the damage then the Contractor will assist the Subcontractor to recover costs associated with the repair of the damaged work.
- (b) The Subcontractor is responsible for the protection of other trades work where the carrying out of the Subcontract Works may in any way interfere with, damage, mark or otherwise deface the other trades work.

Any costs incurred by the Contractor as a result of damage being caused to other trades work by the Subcontractor will be deducted from monies due to the Subcontractor.

**11 PENETRATIONS, CHASES, SLEEVES, CONDUIT, BOLTS AND THE LIKE**

The Subcontractor shall check all structural, architectural and services drawings for details of any penetrations, chases, sleeves, bolts etc. required for its work and shall provide to the Contractor, drawings detailing the size and location of all penetrations, chases, sleeves, bolts etc. prior to construction being carried out.

The Subcontractor is responsible for core drilling all its penetrations and for forming any chases required.

Where core drilling is not appropriate and where agreed with the Contractor, the Contractor will form the penetrations and will also cast in sleeves, bolts etc.

Any costs incurred by the Contractor as a result of detailed information not being received in sufficient time for incorporating penetrations, sleeves, bolts etc. during construction, will be charged to the Subcontractor.

The Subcontractor shall provide any sleeves, bolts etc. required to be cast in and is responsible for fire, soundproofing or waterproof sealing of same.

**12 ATTENDANCE**

The Subcontractor will be responsible for the provision of all bolts, openings, nogs, nibs, dwangs, etc necessary for the execution of its work. Arrangements may be made with the Contractor to carry out this work in accordance with approved drawings, provided always that they are issued in time for incorporation into the works. The responsibility for the correct positioning of such items however, will remain with the Subcontractor concerned and all such work will be carried out to the Subcontractor's account. The work of other trades must not be cut away, made good or interfered with in any way without prior arrangement with the Contractor.

**13 DEWATERING OF WORK AREAS**

Immediately following a period of wet weather, the Subcontractor shall remove all casual water remaining from its work areas with all labour and equipment necessary to enable work to continue with the minimum delay. If the Subcontractor is sharing work areas with other Subcontractors, then it shall work with the other Subcontractors in those areas to remove all casual water remaining.

**14 RADIOS AND PORTABLE MUSIC DEVICES**

Radios and portable music devices including those utilising headsets are not permitted on Site.

**SCHEDULE 6: FORM OF SUBCONTRACTOR WARRANTY AND GUARANTEE**

Subcontract #: *Insert*  
Subcontractor Name: *Insert*  
Project: *insert*

**SCHEDULE 7: HEALTH AND SAFETY****1.1 What you the Subcontractor Needs to Know**

- (a) The Contractor is a part of the Fletcher Construction division of Fletcher Building group, and is committed to:
- a. Providing a safe and healthy work place which prevents personal injury, identifies and manages all risks and hazards and insists upon safe methods and work practices at all times; and
  - b. Protecting the environment from damage and minimising nuisance from its operations and activities through effective planning and site management and controls on projects it undertakes.

It is expected that all subcontractors share this commitment.

- (b) The Subcontractor must comply with the requirements of the Contractor's Critical Risk Handbook, Life Saving Rules, Drugs & Alcohol policy, and Site-Specific Safety Plan when attending the Site and carrying out the Subcontract Works.
- (c) The Subcontractor's Health and Safety Management Plan prepared for the Subcontract Works will need to be aligned with those requirements, including critical risk controls as applicable to the scope of the Subcontract Works.
- (d) A copy of the **Critical Risk Handbook** can be found here:

a. [Critical Risk Handbook](#)

- (e) The **Life Saving Rules** are:

- (i) *We always obey exclusion zones.*
- (ii) *We always come to work free from the influence of drugs or alcohol.*
- (iii) *We never work unprotected at height.*
- (iv) *We never walk or work in a live traffic lane.*
- (v) *We never enter or work beside an unprotected excavation.*
- (vi) *We always keep ourselves and others clear of suspended loads.*
- (vii) *We never drive or operate while using a handheld mobile phone or without wearing a seatbelt, where fitted.*
- (viii) *We always isolate, lockout and test before working on plant and equipment.*
- (ix) *We always locate and expose utilities before using mechanical digging.*

- (f) More information on the Life Saving Rules can be found here: [Guide to Life Saving Rules](#)

- (g) The Contractor's drug and alcohol policies (as applicable) can be found here:

- (i) [Drug & Alcohol Standard – NZ Only](#)

- (ii) [Overseas Drug and Alcohol Standard – Outside NZ only](#)
- (h) Without limiting the Contractor’s other rights under the Subcontract, a breach (or suspected breach) of the Life Saving Rules, critical risk controls, or any other health and safety and environmental requirements by the Subcontractor (and persons under its control) will result in a ‘Playing Fair’ investigation, in conjunction with the Contractor’s Representative, and the Contractor reserves the right to, at its absolute discretion, order the immediate removal from the Site of any person it believes is not complying with its health, safety and environmental policies and procedures.
- (i) The Subcontractor must not bring any banned items to Site, and must get approval from the Contractor for use of any restricted items:
  - a. [Banned Items Register](#)
  - b. [Restricted Items Register](#)

## 1.2 What you the Subcontractor needs to do:

### *Pre-qualification*

- (a) In New Zealand: The Subcontractor must [Register with Totika](#) and [Prequalify with Fletcher](#) as a pre-condition for commencement of any work.
- (b) For Subcontractors based and working outside New Zealand you must complete and submit the following to the Contractor as a pre-condition for commencement of any work:
  - a. [N06.18 Subcontractor Capability Assessment](#)
  - b. [D02.01 Subcontractor HSE Capability Assessment](#)

### *Drugs and Alcohol*

- (c) The Subcontractor shall have a drug and alcohol policy that includes pre-employment, reasonable cause and post incident testing and random testing if applicable. The Subcontractor must be able to demonstrate that the policy is current and effective and **will provide a copy of their policy to the Contractor prior to commencement on Site and provide evidence of a recent (within the last 3 months) negative drug test for each of its personnel that will be required to work on the Site.** Where no policy exists, or the policy does not include the required testing regime, the Subcontractor undertakes to the Contractor that testing will be permitted in accordance with the Contractor’s policy requirements and must **provide evidence of a recent (within the last 3 months) negative drug test for each of its personnel that will be required to work on the Site.**
- (d) The Subcontractor shall ensure that all personnel under its control (including, but not limited to, employees, labour hire and sub-subcontractors), are not under the influence of drugs and/or alcohol whilst on Site. Without limiting any other rights or remedies of the Contractor, where any Subcontractor or person under its control is found to have returned a non-negative test or refuses to take a test, they shall be immediately ordered from Site and shall not return.

### *Health and Safety Management Plan*

- (e) The Subcontractor is required to prepare and submit for approval a Health and Safety Management Plan for the Subcontract Works no less than 10 Working Days prior to commencement on Site. Without limiting the Subcontractor’s obligations in respect of this, the criteria the Contractor will use to assess and approve the Safety Plan is as follows:
  - a. Compliance / consistency with the Contractor’s health and safety requirements

b. [Site Specific Safety Plan Checklist](#)

**Work Methodology**

- (f) The Subcontractor shall also develop and submit a work methodology that describes how they will carry out their work (activities and tasks) that might involve a critical risk exposure (as per the Critical Risk Handbook) and outline the critical risk controls they will put in place to manage the risks:
  - a. to a level that is Safe as is Reasonably Practicable (**SFAIRP**); and
  - b. to ensure they avoid nuisance and prevent damage to property and the environment.
- (g) The Contractor recommends the Subcontractor use the following Job Safety Environmental Analysis (**JSEA**) template to document their methodology for each of the activities and tasks, although an equivalent document can be used:
  - a. [Job Safety Environmental Analysis](#)
- (h) The submitted work methodology must be reviewed and approved by the Contractor prior to the Subcontractor commencing the relevant work (critical risk activity). The Subcontractor must allow a reasonable time for this process.

**Operator competency attestation**

- (i) The Subcontractor shall complete an attestation for all its workers who will be operating plant and equipment on Site as to their competency to perform their tasks, and must submit this for each person prior to them starting on Site. The Contractor will review the attestation and Subcontractor workers may be subject to further competency assessment by the Contractor’s assessors to verify the attestation and operator competency. The attestation must be completed using the following form
  - a. [Subcontractor OCA Attestation Form](#)

**Plant Condition Report**

- (j) The Subcontractor shall complete a Plant Condition Report in respect of the plant and equipment to be used on Site for the Subcontract Works to confirm it is fit for purpose and compliant with Contractor’s minimum plant standards prior to being brought to Site and used.
- (k) The Plant Condition Report must be completed using the following form:
  - a. [Subcontractor Plant Condition Report](#)
- (l) This must be submitted before the relevant plant and equipment is used on Site. Fletcher will review the Plant Condition Report and the Subcontractor plant may be inspected by the Contractor’s assessors upon arrival to Site to verify compliance.

## SCHEDULE 8: FORM OF BONDS

**[Drafting note: this form is to be used for Performance Bonds and Bonds in Lieu of Retentions]**

**DATE:** [•]

### THIS BOND IS GIVEN BY

[•] (the **Financial Institution**)

### BACKGROUND

- A **[Insert full legal name of Fletcher Entity]** (the **Contractor**) and **[insert name of Subcontractor]** (the **Subcontractor**) are party to a construction contract dated [•] for the [•] (the **Subcontract**).
- B The Contract requires the Subcontractor to provide the Contractor with a [state : performance bond OR bond in lieu of retentions].
- C At the request of the Subcontractor, the Financial Institution has agreed to provide this bond for the benefit of the Contractor and, where applicable, the entities set out in clause 8 below.

### BY THIS BOND:

- 1 Words and expressions defined in the Subcontract and not otherwise defined in this bond have the same meanings when used in this bond.
- 2 The Financial Institution unconditionally (subject to clause 3) and irrevocably undertakes to the Contractor to pay immediately any sum or sums which may from time to time be demanded by the Contractor up to a maximum aggregate amount of NZ\$[•] (**Guaranteed Amount**) without any reference to the Subcontractor, and notwithstanding any notice or representation of the Subcontractor to the Financial Institution not to pay the same.
- 3 Any demand made by the Contractor under clause 2 must:
- 3.1 be in writing;
  - 3.2 be addressed to the Financial Institution either at the address set out on the execution page or at the registered office of the Financial Institution;
  - 3.3 state the amount required to be paid; and
  - 3.4 state the bank account to which the amount demanded is to be paid.
- The amount demanded (up to the Guaranteed Amount) shall be paid to the bank account advised by the Contractor to the Financial Institution in the demand.
- 4 The undertaking contained in clause 2 is unconditional (subject to clause 3) and irrevocable and the liability of the Financial Institution under this bond will not be affected in any way for any reason and, without limitation, the Financial Institution will not be released from any liability:
- 4.1 by any invalidity, illegality or unenforceability of the Subcontract;
  - 4.2 by any alteration, amendment or variation to the terms of the Subcontract;

- 4.3 by any allowance of time by the Contractor under the Subcontract;
- 4.4 by any forbearance or forgiveness or indulgence in respect of any matter or thing concerning the Subcontract on the part of the Contractor;
- 4.5 by the insolvency, bankruptcy, winding up or reorganisation of the Subcontractor (including, without limitation, where the Subcontractor is placed into receivership, voluntary administration and/or liquidation);
- 4.6 by the termination of the Subcontract or of the Subcontractor’s engagement under the Subcontract or by the Contractor resuming possession of the Site;
- 4.7 by the novation of the Subcontract;
- 4.8 by any dispute or disagreement whatsoever between the Contractor and the Subcontractor under or in relation to the Subcontract; nor
- 4.9 by any other act, omission, matter or thing (whether similar to the foregoing or otherwise) whereby the obligations of the Financial Institution under this bond might (but for this provision), under any applicable law or otherwise, be discharged or affected,

notwithstanding that any such occurrence is (where applicable) made, granted or given without the consent or knowledge of the Financial Institution.

- 5 The undertaking contained in clause 2 is a continuing undertaking and will remain in force until the earlier of the following:
  - 5.1 receipt by the Financial Institution from the Contractor of a signed [Drafting note: for performance bonds state: **Practical Completion Certificate** / OR for bonds in lieu of retentions state either **Practical Completion Certificate** OR **Final Completion Certificate** as the case may be];
  - 5.2 receipt by the Financial Institution of written notification signed for and on behalf of the Contractor that the undertaking is no longer required by the Contractor which notification may be given at any time by the Contractor in its discretion; and
  - 5.3 payment by the Financial Institution to the Contractor of the Guaranteed Amount under this bond.
- 6 The Financial Institution may at any time, without being required to do so, pay to the Contractor the Guaranteed Amount, less any sum or sums it may have previously paid against demands by the Contractor under this bond and thereafter the liability of the Financial Institution under this bond shall cease and determine.
- 7 All payments under this bond shall be made in New Zealand dollars and shall be free of any set-off, withholding or deduction of any kind whatsoever.
- 8 The Contractor may, without the Financial Institution's consent, assign its rights and benefits under this bond to any permitted assignee, chargee or novatee of the Contractor under the Subcontract. The Contractor may also assign its rights and benefits under this bond to any other entity, with the Financial Institution’s consent (such consent not to be unreasonably withheld or delayed). The Contractor will notify the Financial Institution of any such assignment.
- 9 This bond is governed by and will be construed in accordance with the laws of New Zealand and the Financial Institution irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand and any courts

which have jurisdiction to hear appeals from any of those courts and waives any right to object to proceedings being brought in those courts.

10 For the purposes of the Contracts (Privity) Act 1982, the obligations imposed on the Financial Institution under this bond are intended to be enforceable by the Contractor as well as any assignee of the Contractor under clause 8 above.

**EXECUTION**

**Executed** as a deed

**[Insert name of Financial Institution]** by its  
Attorney  
in the presence of:

\_\_\_\_\_

Name of witness:

Occupation:

Address:

\_\_\_\_\_

Signature of Attorney

\_\_\_\_\_

Name of Attorney

**Address of the Financial Institution**

Physical address:

Postal address:

Facsimile:

Telephone:

Attention:

## SCHEDULE 9: FORM OF AGREEMENT RELATING TO ADVANCE PAYMENT FOR MATERIALS

DATE: [●]

### PARTIES

**[Insert full legal name of Fletcher Entity]** (the **Contractor**)

**[Name of Subcontractor]** (the **Subcontractor**)

### BACKGROUND

- A **[Insert name of Principal]** (the **Principal**) and the Contractor are parties to a contract dated [●] for **[Insert]** (the **Contract**).
- B The Contractor has subcontracted a portion (or portions) of the works under the Contract to the Subcontractor pursuant to a contract between the Contractor and the Subcontractor dated [●] (the **Subcontract**).
- C The Subcontractor has requested the Contractor make an advance payment to the Subcontractor for the Materials. A more detailed description of the Materials is given in the Schedule to this Agreement.
- D It is a precondition to the advance payment under the Contract that the Contractor and the Subcontractor enter into this Agreement.

**IT IS AGREED** as follows:

## 2 DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

In this Agreement, unless the context otherwise requires:

- (a) **Advance Payment** means such payment as is being requested from the Contractor by the Subcontractor under the Subcontract for the Materials (whether such payment is a full or partial payment for the Materials).
- (b) **Subcontract Works** has the meaning assigned to it in the Subcontract.
- (c) **Encumbrance** means any mortgage, lien, pledge, claim, charge, retention of title, security or encumbrance of any kind, including any security interest.
- (d) **Materials** mean all materials which are supplied by the Subcontractor to the Contractor and for which the Contractor is making the Advance Payment under this Agreement, including those materials described in the Schedule to this Agreement.
- (e) **Person** means a natural person and a partnership, body of persons, firm, company, or organisation whether corporate or not.
- (f) **PPSA** means the Personal Property Securities Act 1999 (New Zealand).
- (g) **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.

- (h) A **security interest** means a security interest as defined in the PPSA.
- (i) Words and expressions defined in the Subcontract and not otherwise defined in this Agreement have the same meanings when used in this Agreement.

## 2.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) warranties and covenants given in this Agreement by more than one person or entity bind each of them jointly and severally;
- (b) paragraph headings are not to be used to construe this Agreement;
- (c) words importing the singular number include the plural number and vice versa;
- (d) words of any gender include the other gender and bodies corporate;
- (e) a party includes its successors, permitted assigns and permitted novatees;
- (f) except where expressly provided to the contrary all references in this Agreement to “including”, “includes” or “include” are to be read as if that reference is followed by the words “without limitation”;
- (g) references to a clause, Schedule, or clauses will, unless otherwise specified, be a reference to the corresponding clause, Schedule or clauses in this Agreement; and
- (h) the rule of construction known as contra proferentem will not apply to this Agreement.

## 3 IDENTITY OF MATERIALS, SALE, PAYMENT AND TITLE TRANSFER

3.1 The Subcontractor will ensure that the Materials are:

- (a) set apart, appropriately physically secured and protected at the premises of the Subcontractor or at the Site, as the case may be; and
- (b) clearly and visibly marked individually or in sets as being the property of the Contractor and their destination as being Materials for the Subcontract. The material used to mark the Materials and the procedure by which the mark is applied to the Materials is to be such material and procedure stipulated in writing by the Contractor.

3.2 The Contractor will, on being reasonably satisfied that clause 3.1 has been complied with, and subject to any other conditions in the Subcontract also being satisfied, make the Advance Payment to the Subcontractor in accordance with the Subcontract for the Materials (provided that the Contractor is entitled, at its sole discretion, to make the Advance Payment at any time before such conditions have been met).

3.3 Notwithstanding any terms contained in the Subcontract, the Subcontractor and the Contractor agree that:

- (a) the Contractor agrees to buy, and the Subcontractor agrees to sell the Materials in accordance with the terms of this Agreement;
- (b) the terms of the Subcontract will continue to apply only to the extent they are not inconsistent with this Agreement;

- (c) title to the Materials will pass from the Subcontractor to the Contractor, free from any Encumbrance, on the earlier of the time that title is specified to pass under the Subcontract, or the time the Advance Payment is made by the Contractor to the Subcontractor under clause 3.2 of this Agreement (provided that where the Advance Payment is made before Materials have been ascertained and appropriated such that title can pass pursuant to section 18 of the Sale of Goods Act 1908, title to those Materials will pass as soon as those Materials are sufficiently ascertained and appropriated for title to pass under that provision); and
- (d) for the avoidance of doubt, following the Advance Payment being made, the Subcontractor will not be entitled to rely on any terms contained in the Subcontract or elsewhere which create or provide for a security interest, including any term which purports to retain title to the Materials.

3.4 The Contractor and the Subcontractor acknowledge that until the Materials have been fixed to the facilities at the Site, the Subcontractor holds the Materials as a gratuitous bailee of the Contractor and that a fiduciary relationship in that regard exists between the Contractor and Subcontractor. The rights of the Contractor under this Agreement are in addition to and not in substitution for or reduction of its rights or remedies as a bailor at law and no provision of this Agreement will be deemed to limit or restrict those rights and remedies.

#### 4 **WARRANTIES**

- 4.1 The Subcontractor warrants to the Contractor that each sale of Materials is in the ordinary course of the Subcontractor's business and does not breach any terms of any security granted by it to any of its creditors.
- 4.2 The Subcontractor warrants to the Contractor that title to the Materials will be transferred from the Subcontractor to the Contractor free of all Encumbrances.
- 4.3 The Subcontractor warrants, and agrees to ensure that, following the Advance Payment, the Contractor's interest in the Materials will, at all times prior to the Materials being fixed to the facilities at the Site, have priority over any third party's interest in the Materials. In particular, the Subcontractor:
  - (a) will ensure that the Contractor's title to the Materials is reflected in all relevant contracts for the supply of materials, goods or services and warrant that no supplier or subcontractor or other party will purport or attempt directly or indirectly to retain ownership of the Materials in a manner which is inconsistent with the Contractor's rights under this Agreement;
  - (b) will ensure that any payments made by the Contractor under the Subcontract are applied in the first instance to repay any debt in respect of the Materials;
  - (c) will, for the term of the Contract, only grant or permit a security interest to be granted to a third party after obtaining that third party's binding acknowledgement that the interest does not extend to the Materials.
- 4.4 The warranties in this Agreement are deemed to be repeated on each occasion when the Principal makes a payment to the Contractor in relation to the Materials.

#### 5 **ACCESS**

- 5.1 The Subcontractor grants to the Contractor and their respective agents free and unencumbered access to any premises where any Materials are located to:
  - (a) inspect the Materials, the mark and verify the setting apart of the Materials;
  - (b) take possession of the Materials; and/or

(c) remove the Materials from the premises.

5.2 The Subcontractor will take all steps and do all things required to ensure that the Contractor obtains access to the premises in accordance with the provisions of this Agreement.

## 6 RISK OF LOSS OR DAMAGE TO THE MATERIALS

Notwithstanding any other provision of this Agreement, the Subcontractor is responsible to the Contractor for any loss or damage to the Materials and for the cost of storage (if any) and handling. The Subcontractor will on request promptly provide to the Contractor evidence that the Materials are insured against all risks to the Contractor's satisfaction (including insurance while such Materials are in transit).

## 7 TRANSPORTATION OF MATERIALS

7.1 The Subcontractor will, if required to do so by the Contractor, arrange for the Materials to be transported to the Site. Transportation will be at the cost of the Subcontractor (including, loading, unloading, insurance and freight costs).

7.2 The Subcontractor will not permit, allow or cause the Materials to be taken away from the Subcontractor's premises, except for the purpose of being transported to the Site.

## 8 LIABILITY GENERALLY

8.1 Nothing in this Agreement removes or affects any right or authority of the Contractor under the Subcontract (including any rights it may have that may conflict with or be inconsistent with this Agreement).

8.2 The Subcontractor indemnifies the Contractor against any cost, damage, claim, expense, loss or liability resulting from or caused by any failure of the Subcontractor to comply with or perform any of its obligations under this Agreement.

## 9 DISPUTE RESOLUTION

9.1 Any dispute or difference (a **Dispute**) between the Subcontractor and the Contractor arising out of this Agreement will be referred to arbitration in accordance with the provisions of the Arbitration Act 1996 or any statutory re-enactment or modification thereof.

9.2 The Dispute will be referred to a sole arbitrator. If the Subcontractor and the Contractor fail to agree upon a sole arbitrator within 15 days after receipt of the notice of Dispute, the arbitrator will be appointed by the then President of the Arbitrators' and Mediators' Institute of New Zealand (or by his or her nominee).

10 Notwithstanding clauses 9.2 and 9.3, if any dispute or difference arises under this Agreement which is related to a dispute or difference under the Subcontract, the parties agree that, subject to any discretion to the contrary of a court, arbitrator or mediator, as the case may be, the dispute or difference is to be dealt with at the same time and in conjunction with the dispute or difference under the Subcontract.**ASSIGNMENT AND NOVATION**

10.1 The Subcontractor may not assign, charge or novate, whether in part or in whole, any of their rights, benefits or obligations under this Agreement without the prior written consent of the Contractor (which it may or may not give at its discretion).

10.2 The Contractor may assign, charge or novate all or any part of its rights and/or obligations under this Agreement to any Person without the Subcontractor's consent.

10.3 The Subcontractor must, if and when requested by the Contractor, promptly do all things and execute all such documents reasonably necessary to give effect to any assignment, charge or novation by the Contractor, including in the case of a novation, entering into a deed of novation with the Contractor and the relevant Person nominated by the Contractor in a form required by the Contractor.

**11 MISCELLANEOUS**

**11.1 Notices**

Any notice or document required to be given under this Agreement must be in writing and may be given by hand, post, facsimile or email to the party’s address for service of notices set out in the execution pages of this Agreement. Subject to the last paragraph of this clause 11.1, a notice or document is taken to have been received:

- (a) if the notice or document is delivered by hand to the receiver, at the time of delivery;
- (b) if the notice or document is posted in a postage paid registered envelope addressed to the receiver, at the time when it would be received in the ordinary course of registered post then prevailing;
- (c) if the notice or document is transmitted by facsimile, and subject to receipt of an error free transmission report by the transmitter, on the date of transmission; or
- (d) if the notice or document is sent by email, when receipt of the email is acknowledged by the receiving party by return email or otherwise in writing, except that return emails generated automatically will not constitute an acknowledgment.

If a notice or document is received after 5.00pm on a day or on a day that is not a Working Day, the notice will be deemed to be received on the next Working Day.

**11.2 Further assurances**

Each party must do or use its reasonable endeavours to cause to be done anything necessary or desirable to give effect to this Agreement and the arrangements set out in this Agreement, and will refrain from doing anything which might prevent full effect being given to this Agreement.

**11.3 No waiver**

A waiver of any provision of this Agreement will not be effective unless given in writing, and then it will be effective only to the extent that it is expressly stated to be given. A failure, delay or indulgence by any party in exercising any power or right will not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right will not preclude further exercises of that power or right or the exercise of any other power or right.

**11.4 Severability**

If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained in this Agreement will not in any way be affected or impaired.

**11.5 Amendment**

No amendment or other modification of this Agreement will be effective unless it is in writing, is dated and is signed by a duly authorised representative of each party.

**11.6 Counterparts**

This Agreement may be executed in counterparts (including facsimile or electronic copies of counterparts) and provided that each party has duly executed a counterpart, the counterparts together will constitute a valid and binding Agreement between the parties.

11.7 **Governing law**

This Agreement is governed by and will be construed in accordance with the laws of New Zealand, and without limitation or prejudice to clause 9 the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand and any courts which have jurisdiction to hear appeals from any of those courts and waive any right to object to any proceedings being brought in those courts.

**EXECUTION**

**EXECUTED** by [●] as Subcontractor  
by

**EXECUTED** by [●] as Contractor  
by

**SCHEDULE**

*[Insert a detailed description of the Materials for which the Advance Payment is being made]*

**SCHEDULE 10: SUBCONTRACTOR PRICE BREAKDOWN & UNIT RATES**

*Insert*

**SCHEDULE 11: PROGRAMME**

*Insert*

## SCHEDULE 12: FORM OF PARENT COMPANY GUARANTEE

**DATE:** [●]

### **PARTIES**

[●] (the **Contractor**)

[●] (the **Guarantor**)

### **BACKGROUND**

- A The Contractor and [insert] (the **Subcontractor**) are the parties to a construction contract dated [●] relating to the [●] (the **Contract**).
- B The Contract requires the Subcontractor to deliver up this deed to the Contractor.
- C The Guarantor wishes to enter into this deed to enable the Subcontractor to comply with its obligations under the Contract, and in consideration of the Contractor agreeing to enter into the Contract with the Subcontractor.

**IT IS AGREED** as follows:

### **1 DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this deed:

- (a) the term **Guaranteed Obligations** means all indebtedness or obligations of the Subcontractor to the Contractor arising out of or in relation to the Contract, and **Guaranteed Obligation** means any such indebtedness or obligation; and
- (b) words and expressions defined in the Contract and not otherwise defined in this deed have the same meanings when used in this deed.

#### **1.2 Interpretation**

In this deed, unless the context otherwise requires:

- (a) paragraph headings are not to be used to construe this deed;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words of any gender include the other gender and bodies corporate;
- (d) a party includes its successors, permitted assigns and permitted novatees;
- (e) except where expressly provided to the contrary all references in this deed to “including”, “includes” or “include” are to be read as if that reference is followed by the words “without limitation”;
- (f) references to a clause or clauses will, unless otherwise specified, be a reference to the corresponding clause or clauses in this deed; and
- (g) the rule of construction known as contra proferentem will not apply to this deed.

## 2 **GUARANTEE AND INDEMNITY**

2.1 In consideration of the Contractor agreeing to enter into the Contract with the Subcontractor, the Guarantor:

- (a) guarantees to the Contractor the payment of all Guaranteed Obligations in the same currency and at the same place and at the same time as each Guaranteed Obligation is payable by the Subcontractor; and
- (b) guarantees to the Contractor the performance of all Guaranteed Obligations at the same time and in the same manner as each Guaranteed Obligation is to be performed by the Subcontractor in accordance with the Contract; and
- (c) will indemnify the Contractor for any loss suffered or incurred, directly or indirectly, by the Contractor due to any failure by the Subcontractor to perform any Guaranteed Obligation in accordance with the Contract.

2.2 If any Guaranteed Obligation, or any guarantee or indemnity in clause 2.1, is void or unenforceable for any reason, the Guarantor is liable to the Contractor as a separate and independent obligation and by way of indemnity for the same amount and in the same currency as the Guarantor would be liable if the Guaranteed Obligation, or the guarantee or indemnity in clause 2.1, were not void or unenforceable.

2.3 The Guarantor will make all payments due under this deed on demand.

## 3 **CONTRACTOR OBLIGOR**

As between the Contractor and the Guarantor, the Guarantor is a Contractor obligor in respect of each Guaranteed Obligation, with identical but separately enforceable Guaranteed Obligations to those of the Subcontractor. The Contractor may demand payment from the Guarantor of any Guaranteed Obligation or the performance of any Guaranteed Obligation without first taking any steps or proceedings against the Subcontractor in relation to that Guaranteed Obligation or under any other security the Contractor may hold from time to time.

## 4 **RIGHTS NOT AFFECTED OR DIMINISHED**

4.1 The rights of the Contractor, and the liability of the Guarantor, under this deed are not to be affected, impaired or discharged by anything whatsoever which might otherwise affect, impair or discharge such rights or liability, nor is the Contractor liable to the Guarantor in respect of any act or thing whether or not any of the Guarantor's rights of subrogation or otherwise are prejudiced.

4.2 Without in any way prejudicing the provisions of clause 4.1, the Contractor, without the Guarantor's consent, may:

- (a) vary the terms of any Guaranteed Obligations;
- (b) compound with or grant time or other indulgences to the Subcontractor or to or for any other person or entity;
- (c) deal with, exchange, release, modify, or not perfect or enforce, any encumbrance, security or right which the Contractor now has or may in the future have against the Subcontractor or any other person or entity; and/ or
- (d) novate any contract(s) to the Subcontractor.

4.3 The rights of the Contractor under this deed are in addition to and not in substitution for or reduction of the Contractor's rights under the Contract or at law or otherwise and no provision of this deed will be deemed to limit or restrict those rights.

4.4 The Guarantor by this deed authorises the Subcontractor and the Contractor to make any alteration, amendment or variation to the Contract and/or the Contract Works (as defined in the Contract), and agrees that any actual or contingent indebtedness or obligations of the Subcontractor arising out of or in relation to such matters will form part of the Guaranteed Obligations.

## 5 CONTINUING SECURITY

This deed is a continuing security. It cannot be discharged by payment of the whole or any part of any sums at any time owing by the Subcontractor to the Contractor. It will only be discharged when all obligations, duties, liabilities, warranties and undertakings of the Subcontractor under the Contract have been satisfied and performed in full.

## 6 GUARANTOR NOT TO COMPETE

The Guarantor will not exercise:

- (a) any right to prove in the bankruptcy, insolvency, administration or liquidation of the Subcontractor in competition with the Contractor;
- (b) any other right of a surety to discharge any liability; or
- (c) any right of subrogation or indemnity which the Guarantor may have against the Subcontractor;

for so long as any Guaranteed Obligations remain outstanding.

## 7 LIABILITY NO GREATER THAN SUBCONTRACTOR'S LIABILITY

Subject always to clause 2.2 above, the Guarantor's liability or obligations under this deed will be no greater than the Subcontractor's liability or obligations under the Contract.

## 8 BINDING FINDINGS AND RULINGS

In the event that the Contractor brings proceedings against the Subcontractor, the Guarantor will be bound by any findings of fact as well as any interim or final award, determination or judgment made by an arbitrator or the court in such proceedings.

## 9 DISPUTE RESOLUTION

9.1 Any dispute or difference (a **Dispute**) between the Contractor and the Guarantor arising out of this deed will be referred to arbitration in accordance with the provisions of the Arbitration Act 1996 or any statutory re-enactment or modification thereof.

9.2 The Dispute will be referred to a sole arbitrator. If the Contractor and the Guarantor fail to agree on the appointment of a sole arbitrator within 15 days after receipt of the notice of Dispute, the arbitrator will be appointed by the then President of the Arbitrators' and Mediators' Institute of New Zealand (or by his or her nominee).

9.3 Notwithstanding clauses 9.1 and 9.2, if any dispute or difference arises under this deed which is related to a dispute or difference under the Contract, the parties agree that, subject to any discretion to the contrary of a

court, arbitrator or mediator, as the case may be, or unless otherwise required by the Contractor, the dispute or difference is to be dealt with at the same time and in conjunction with the dispute or difference under the Contract.

**10 ASSIGNMENT AND NOVATION**

10.1 The Guarantor must not assign, charge or novate, whether in part or in whole, any of its rights, benefits or obligations under this deed without the prior written consent of the Contractor (which it may or may not give at its discretion).

10.2 The Contractor may assign, charge or novate all or any part of its rights and/or obligations under this deed to any permitted assignee, chargee or novatee of the Contractor under the Contract or to any other Person without the Guarantor's consent.

10.3 The Guarantor must, if and when requested by the Contractor, promptly do all things and execute all such documents reasonably necessary to give effect to any assignment, charge or novation by the Contractor, including in the case of a novation, entering into a deed of novation with the Contractor and the relevant Person nominated by the Contractor in a form required by the Contractor.

**11 MISCELLANEOUS**

**11.1 Notices**

Any notice or document required to be given under this deed must be in writing and may be given by hand, post, facsimile or email to the party's address for service of notices set out in the execution pages of this deed. Subject to the last paragraph of this clause 11.1, a notice or document is taken to have been received:

- (a) if the notice or document is delivered by hand to the receiver, at the time of delivery;
- (b) if the notice or document is posted in a postage paid registered envelope addressed to the receiver, at the time when it would be received in the ordinary course of registered post then prevailing;
- (c) if the notice or document is transmitted by facsimile, and subject to receipt of an error free transmission report by the transmitter, received on the date of transmission; or
- (d) if the notice or document is sent by email, when receipt of the email is acknowledged by the receiving party by return email or otherwise in writing, except that return emails generated automatically will not constitute an acknowledgment.

If a notice or document is received after 5.00pm on a day or on a day that is not a Working Day, the notice will be deemed to have been received on the next Working Day.

**11.2 Further assurances**

Each party must do or use its reasonable endeavours to cause to be done anything necessary or desirable to give effect to this deed and the arrangements set out in this deed, and will refrain from doing anything which might prevent full effect being given to this deed.

**11.3 No waiver**

A waiver of any provision of this deed will not be effective unless given in writing, and then it will be effective only to the extent that it is expressly stated to be given. A failure, delay or indulgence by either party in exercising any power or right will not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right will not preclude further exercises of that power or right or the exercise of any other power or right.

**11.4 Severability**

If any one or more of the provisions contained in this deed is invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained in this deed will not in any way be affected or impaired.

**11.5 Amendment**

No amendment or other modification of this deed will be effective unless it is in writing, is dated and is signed by a duly authorised representative of each party.

**11.6 Counterparts**

This deed may be executed in counterparts (including facsimile or electronic copies of counterparts) and provided that each party has duly executed a counterpart, the counterparts together will constitute a valid and binding deed between the parties.

**11.7 Governing law**

This deed is governed by and will be construed in accordance with the laws of New Zealand, and without limitation or prejudice to clause 9 the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand and any courts which have jurisdiction to hear appeals from any of those courts and waive any right to object to any proceedings being brought in those courts.

**EXECUTION**

**Executed** as a deed

**EXECUTED** by [●] as Contractor  
by

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Witness to signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**Address of the Contractor**

Physical address:

Postal address:

Facsimile:

Email:

Telephone:

Attention:

**EXECUTED** by [•] as Guarantor by

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Witness to signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**Address of Guarantor**

Physical address:

Postal address:

Facsimile:

Email:

Telephone:

Attention:

*NOTE: This document is to be executed as a deed. Accordingly:*

*- companies should sign by two directors, unless there is only one director of the company in which case that director should sign and his/her signature should be witnessed by another person (as well as signing, the witness should record his/her name, occupation and address); and*

*- where a party to this deed is an individual, that person should sign and his/her signature should be witnessed by another person (as well as signing, the witness should record his/her name, occupation and address)*

**SCHEDULE 13: PRACTICAL COMPLETION CERTIFICATE**

This certificate is a Practical Completion Certificate issued under clause 16.2.

**Subcontract for** *Insert Subcontract Package and Subcontract No*

**Contractor** *Insert*

**Subcontractor** *Insert*

This certificate relates to:

- (a) The whole of the Subcontract Works referred to above;
- (b) The following Separable Portion

*Specify Separable Portion if applicable*

The Contractor certifies that the Subcontract Works or Separable Portion to which this certificate relates qualify for a Practical Completion Certificate under, notwithstanding that there may be minor omissions and/or minor defects (as listed in the attached schedule).

The Subcontractor 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 *Insert* Working Days of the date of this certificate.

Practical Completion was achieved on *Insert date*.

Signed by the Contractor *Insert*

Name *Insert*

Date *Insert*

**SCHEDULE**

The following omissions and/or defects have been assessed as being of a minor nature were identified during an inspection carried out by the Contractor on *Insert*.

*List minor omissions and defects*

**SCHEDULE 14: FINAL COMPLETION CERTIFICATE**

This certificate is a Final Completion Certificate issued under clause 18.1

**Subcontract for** *Insert Subcontract Package and Subcontract No*

---

**Contractor** *Insert*

---

**Subcontractor** *Insert*

---

This certificate relates to:

- (a) The whole of the Subcontract Works referred to above;
- (b) The following Separable Portion

*[Specify Separable Portion if applicable]*

The Contractor certifies that the Subcontract Works or Separable Portion to which this certificate relates qualify for a Final Completion Certificate on *Insert date*.

Signed by the Contractor *Insert.*

---

Name *Insert.*

---

Date *Insert.*

---

**SCHEDULE 15: QUALITY****1. QUALITY MANAGEMENT SYSTEM**

- 1.1 The Subcontractor shall establish, implement, and maintain a documented Quality Management System (QMS) that complies with industry standards and acceptable to the Contractor.
- 1.2 The QMS shall include procedures and processes necessary to ensure that all work performed under this subcontract meets the specified quality requirements, contractual obligations, and relevant standards.
- 1.3 The QMS shall provide for the planning and accomplishment of activities affecting quality under suitably controlled conditions
- 1.4 Controlled conditions include the use of appropriate systems and equipment, suitable environmental conditions, and assurance that prerequisites for a given activity have been addressed. The QMS shall provide for any special controls, processes, test equipment, tools, and skills to attain the required quality level and for verification of work.
- 1.5 The Subcontractor shall designate a responsible individual or team to oversee the QMS and ensure its effectiveness throughout the duration of the subcontract.
- 1.6 The Subcontractor agrees to cooperate with the Contractor's quality assurance inspections, audits, and reviews as necessary to verify compliance with the QMS.

**2. QUALITY MANAGEMENT PLAN**

- 2.1 Prior to commencing work under this subcontract, the Subcontractor shall develop and submit for approval a detailed Quality Management Plan (QMP) to the Contractor for the Subcontract Works. The Contractor may request revisions or additional information be provided by the Subcontractor for the QMP as it considers necessary.
- 2.2 The QMP shall outline the Subcontractor's approach to ensuring quality of the Subcontract Works throughout the project, so that the Subcontract Works will meet the quality requirements of the Subcontract, including procedures, processes, and responsibilities for quality assurance and quality control, including for:
  - (a) Materials and workmanship;
  - (b) monitoring and maintaining performance, including of any sub-subcontractors;
  - (c) record keeping;
  - (d) the documentation for signing-off the Subcontract Works as complete;
  - (e) procedures to ensure that all persons engaged in undertaking the Subcontract Works are appropriately qualified, experienced, trained or working directly under the supervision of such persons to maintain quality standards;
  - (f) inspection and testing;
  - (g) auditing the quality plan;
  - (h) any Head Contract quality requirements that relate to the Subcontract Works; and
  - (i) consistent with AS/NZS ISO 9001:2016 (Quality management systems – Requirements); and

- (j) any other requirements for quality set out in the Subcontract.

### 3. DELIVERABLES

- 3.1 The Subcontractor confirms that the Subcontract Works and all materials, equipment, and workmanship provided under this Subcontract shall conform to and comply the requirements specified in the Subcontract documents and applicable standards.
- 3.2 Within a reasonable time after the commencement of the Subcontract Work, the Subcontractor shall submit a schedule of ALL deliverables for each specification. The schedule shall be reviewed and approved by the Contractor.
- 3.3 The Subcontractor shall prepare and maintain written, detailed Inspection procedures detailing the inspection and testing that will be performed to verify that the Subcontract Works and all items to be supplied conform to the requirements of the Subcontract (ITP) (the Contractor can provide an ITP Template for use, if requested). Before the start of an inspection, the Subcontractor shall submit the ITP to the Contractor for review and approval. The Contractor may request revisions or additional information be provided by the Subcontractor for the ITP.
- 3.4 The Subcontractor shall submit to the Contractor digital copies of applicable deliverables as required by the Subcontract documents within any specified programme dates, including, but not limited to:
- (a) Product Data Sheets: Such as catalogue data, diagrams, colour charts, and other data published by the manufacturer, as well as evidence of compliance with safety and performance standards. To demonstrate conformance to the specified requirements, catalogue numbers alone will not be acceptable. The data shall include the name and address of the nearest service and maintenance organization that regularly stocks repair parts. Product data submittals shall reference the applicable specification or drawing, and be complete for each item of work.
  - (b) Shop Drawings: Detailed and precise drawings, diagrams, schedules and other data which provide details of the specified components of the Subcontract Works prepared by the Subcontractor to illustrate some portion of the Subcontract Works.
  - (c) Samples: Physical examples as specified within the Specifications (Eg., door hardware, paint, glazing, etc.)
  - (d) Photographs: At the end of each calendar month a series of photographs which are to include work in progress throughout the calendar month. No less than (12) photos shall be taken per month. Photos are to be submitted to the Contractor through the project's document management system.
  - (e) [Specify any other specific requirements]

### 4. INSPECTIONS, RECORDS & REPORTING

- 4.1 The Subcontractor shall provide evidence of competency of persons undertaking the Subcontract Works through certifications, training records, or other appropriate documentation as requested by the Contractor.
- 4.2 The Subcontractor grants the Contractor the right to access all facilities, laboratories, and other premises where work under this Subcontract is being performed, including the right to inspect,

observe, and evaluate work progress, quality control procedures, and compliance with contractual requirements.

4.3 If requested, the Subcontractor shall provide the Contractor with access to and copies of all pertinent records, inspection reports, QA documents, test results, certifications and any other documents and evidence necessary to verify compliance with the Subcontract.

4.4 The Subcontractor shall prepare, maintain, and implement a written process to address Subcontractor's capability of tracing items to the raw material from which the item was fabricated. In this regard the Subcontractor shall maintain records that clearly identify:

- (a) The origin and source of all materials used, including suppliers and manufacturers.
- (b) Details of material specifications, grades, and certifications relevant to the project requirements.
- (c) Dates of receipt, storage, and use of each batch or lot of materials.
- (d) Any relevant test results, inspection reports, or certificates of conformity associated with the materials.

4.5 The Subcontractor shall notify the Contractor of each non-conformance in the Subcontract Works upon engineering, inspection, or testing within three (3) working days of the becoming aware of the non-conformance. The notice shall consist of a written description of the non-conformance, an assessment of the cause, and the proposed corrective action. The proposed corrective action should be aimed at preventing recurrence of the non-conformance issue and ensuring compliance with the requirements of the Subcontract.

4.6 Upon approval from the Contractor (not to be unreasonably withheld), the Subcontractor shall, at its cost, promptly carry out any corrective or remedial action plan to address the identified non-conformance in the Subcontract Works.

4.7 Non-conformances may include but are not limited to:

- (a) deviations from agreed specifications and Subcontract requirements
- (b) defects in materials and workmanship
- (c) failure to meet standards or regulatory requirements.