

SUBCONTRACT GENERAL CONDITIONS

SECTION 1 INTERPRETATION AND DEFINITIONS

1.1 Interpretation

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

1.2 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2 CONTRACTS

2.1 Head Contract

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

2.2 Subcontract Works

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

2.3 Subcontractor's Tender

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

2.4 Signing

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

SECTION 3 SUBCONTRACTOR'S BONDS AND GUARANTEES

3.1 Performance Bond

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

i. 3.2 Bonds in Lieu of Retentions

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

3.3 Guarantees

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

SECTION 4 SUB-LETING OR ASSIGNING

- 4.1.1 The Subcontractor must not sub-let or assign the Subcontract Works, or any part of the Subcontract Works, without prior written consent from the Contractor. This consent must not be unreasonably withheld. Any change in the effective control of the Subcontractor requires written consent from the Contractor.
- 4.1.2 Assignment or sub-letting does not change the responsibility of the Subcontractor under this

Subcontract. The Subcontractor will remain responsible for the acts, defaults or neglects of any of their subcontractors, including any subcontractor's agents or personnel, to the same extent as if they were the direct acts, defaults or neglects of the Subcontractor.

SECTION 5 GENERAL OBLIGATIONS

5.1 Care of Works

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

5.2 Compliance with Legislation

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

5.3 Site Conditions and Inspection of Surfaces

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

5.4 Services

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

5.4.3 Regardless of the provisions of 5.4.1, any services, materials or consumables required for testing, commissioning or operation of the Subcontract Works required by this Subcontract must be provided by the Subcontractor at their own expense.

5.5 Scaffolding

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

5.6 Hoisting

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

5.7 Use of Work or Facilities Provided by Others

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

5.8 Cleaning

- 5.8.1 The Subcontractor must remove any debris brought about by their operations and must keep the Subcontract Works and any part of the site or Head Contract Works affected by their operations clean and tidy.
- 5.8.2 If the Contractor provides bins for waste removal, the Subcontractor may place their waste in these bins, but otherwise the Subcontractor is responsible for their own waste removal. If the Contractor has provided separate bins for different types of waste, the Subcontractor must only use these bins for the types of waste allowed.
- 5.8.3 If the Subcontractor does not keep the area affected by the Subcontract Works clean and tidy, the Contractor may, after written notification to the Subcontractor, carry out cleaning on the Subcontractor's behalf, and may, without prejudice to any other method of recovery, deduct the cost of cleaning from payments which would otherwise be payable to the Subcontractor under this Subcontract.
- 5.8.4 If the Subcontractor encounters any hazardous materials they must immediately notify the Contractor who will advise on the procedure to be followed. The Subcontractor is responsible for any hazardous materials they bring onto site and must remove any that are not used or required for the Subcontract Works.

5.9 Health and Safety

5.9.1 The Subcontractor will:

- a) comply with the Principal's and Contractor's health and safety policies and procedures;
- b) so far as reasonable practicable, ensure the health and safety of its workers, while they are at work, ensure the health and safety of other workers whose activities are influenced or directed by the Subcontractor and ensure that any other person on or near the building site is not exposed to risks and/or hazards;
- c) so far as reasonable practicable, ensure the provision and maintenance of a work environment that is without risks to health and safety, the provision and maintenance of safe plant and structures, and ensure the safe use, handling and storage of plant, substances and structures;
- d) so far as reasonable practicable, ensure the provision of adequate facilities for the welfare of workers carrying out the work for the Subcontractor, including ensuring access to those facilities;
- e) so far as reasonable practicable, ensure the provision and maintenance of safe systems of work, including methods to systematically identify risks and hazards, including any new risks and hazards;
- f) so far as reasonable practicable, ensure that it eliminates any risk and/or hazard if reasonably practicable, or, if not, that it minimizes the risk and/or hazard and protects workers and/or any other person who is on or near the building site from the risk/hazard;
- g) so far as reasonable practicable, ensure that any worker involved in carrying out the Subcontract Works and any separate contractor or other person who is on site is not unnecessarily exposed to risks and/or hazards which are under the Subcontractor's control; and
- h) so far as reasonable practicable, have proper procedures for dealing with emergencies that may arise,

and otherwise comply with health and safety legislation and all approved codes of practice under health and safety legislation (together "**H&S Requirements**") at all times in performing its obligations under this Subcontract.

5.9.2 Without limiting clauses 5.9.1, the Subcontractor will:

- a) prior to commencing the Subcontract, ensure that it has appropriate health and safety plans and procedures which address the means by which the Subcontractor intends to meet its obligations under clause 5.9.1 (including a site specific health and safety plan), and provide such plans and procedures to the Contractor;
- b) when undertaking the Subcontract, ensure that its workers and subcontractors comply with those health and safety plans and procedures and are appropriately trained, inducted and/or supervised;
- c) so far as is reasonably practicable, consult, co-operate with and co-ordinate its activities with all other PCBUs on site in respect of health and safety matters; and
- d) maintain a register of accidents, investigate accidents and identify their cause, and notify the Contractor of any accident or incident that under the H&S Requirements must be notified to WorkSafe NZ and provide a copy of any written reports provided to, and correspondence received from, WorkSafe NZ.

5.10 Hours of Work

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

5.11 Quality Assurance

- 5.11.1 Notwithstanding anything contained in this Subcontract, the Subcontractor will carry out the Subcontract Works in accordance with best industry practice and will comply with all reasonable requirements of the Contractor relating to quality assurance. Materials are to be new, of good quality and suitable for their intended purpose and all statutory warranties and guarantees, including those provided for in the Building Act 2004 and the Consumer Guarantees Act 1993, apply to the Subcontractor in relation to the Subcontract Works.

5.12 Use of Alternative Materials or Products

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

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

- 5.13.1 If required for the Subcontract Works, shop drawings, as-built drawings, operating and maintenance manuals and construction producer statements will be supplied by the Subcontractor by the times specified in the Subcontract Specific Conditions.

5.14 Communication with Principal, Engineer, Consultants and Media

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

5.15 Subcontractor Attendance at Meetings

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

SECTION 6 DESIGN AND PRODUCER STATEMENTS

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

Works.

SECTION 7 INDEMNITY

- 7.1.1 The Subcontractor agrees to indemnify the Contractor against any loss, liability, or cost suffered by the Contractor arising from, or as a consequence of, the Subcontractor carrying out the Subcontract Works, or remedial works, or their failure to:
- a) comply with statutes, regulations or by-laws;
 - b) obtain consents required by this Subcontract;
 - c) comply with the requirements of 5.9 Health and Safety. The parties acknowledge that this indemnity shall not cover any fine or infringement fee payable under the Health and Safety at Work Act 2015;
 - d) transfer full and unencumbered title of any materials, plant, equipment or other item supplied for the Head Contract Works and for which payment has been made in accordance with this Subcontract; or
 - e) comply with this Subcontract;
- other than where the loss, liability or cost is an unavoidable result of carrying out the Subcontract Works or remedial works.
- 7.1.2 The Subcontractor's liability to indemnify the Contractor will be reduced proportionately to the extent that the Contractor, its servants or agents, have contributed to the loss, liability or cost.
- 7.1.3 Without prejudice to any other method of recovery, the Contractor is entitled to retain any damages, costs, losses, or expenses arising from 7.1.1 out of any payments which would otherwise be payable to the Subcontractor under this Subcontract.

SECTION 8 INSURANCE

8.1 General

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

8.2 Contract Works Insurance

- 8.2.1 The Subcontractor is responsible for insuring their Subcontract Works, temporary works and materials while not on the site.
- 8.2.2 If the Contractor agrees that the Subcontractor is not required to have in place Contract Works Insurance for the Subcontract Works on site:
 - a) The Subcontract Works, materials and temporary works will be covered by insurance put in place by the Principal or the Contractor under the Head Contract; and
 - b) The Subcontractor must be an insured party under the insurance put in place by the Principal or the Contractor under the Head Contract, but only for the risks and subject to the conditions stipulated in these policies.
- 8.2.3 Unless otherwise provided under 8.2.2, the Subcontractor must insure their Subcontract Works, Temporary Works and materials whether fixed in position or not. The period and sum insured must be as stated in the Subcontract Specific Conditions. The Subcontractor's policy must include automatic extension of cover for variations to the Subcontract Works.

8.3 Plant and Equipment Insurance

- 8.3.1 The Subcontractor is responsible for insurance of plant, tools, equipment or other property belonging to them, or provided by them, or in their care.
- 8.3.2 The Subcontractor must insure critical items of plant as required by the Subcontract Specific Conditions.

8.4 Public Liability Insurance

- 8.4.1 The Subcontractor must have public liability policy(s) to insure for their legal liability to third parties for property damage and/or bodily injury caused by an act or omission of the Subcontractor arising out of the performance of this Subcontract.
- 8.4.2 The minimum amount of public liability insurance must be the amount stated in the Subcontract Specific Conditions (but not less than \$5,000,000) for any one claim or series of claims arising out of the same event.
- 8.4.3 The policy must include both the Principal and Contractor as jointly insured for their liability arising out of actions of the Subcontractor.
- 8.4.4 The insurance must include liability arising out of the use of any plant and equipment necessary to perform the Subcontract.
- 8.4.5 If required in the Subcontract Specific Conditions, the policy must include vibration, weakening and removal of support extensions to the full amount stated.

8.5 Motor Vehicle Liability Insurance

- 8.5.1 The Subcontractor must have motor vehicle third party insurance for their legal liabilities arising out of the use of any motor vehicle in undertaking this Subcontract.
- 8.5.2 The insurance must include third party personal injury and property damage cover for a minimum amount of NZD\$2,000,000 (two million dollars) or the amount specified in the Subcontract Specific Conditions, for any one claim or series of claims arising out of the same event.

8.6 Professional Indemnity Insurance

- 8.6.1 If the Subcontractor designs any part of the Subcontract Works and if stated in the Subcontract Specific Conditions, the Subcontractor must have professional indemnity insurance.
- 8.6.2 The limit of indemnity under this insurance must be at least the amount specified in the Subcontract Specific Conditions for any one claim or series of claims arising out of the same event.
- 8.6.3 The Subcontractor must have this insurance in place for at least six years after practical completion of the whole of the Head Contract Works and provide evidence of this to the Contractor on request.

SECTION 9 VARIATIONS

9.1 Variations

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

9.2 Value of Variation to the Work

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

9.3 Termination of the Subcontract Due to Variation

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

SECTION 10 TIME

10.1 Times for Commencement and Completion

- 10.1.1 The Subcontractor must carry out and complete the Subcontract Works as required by the Contractor's current construction programme (which has been issued to the Subcontractor) in order to ensure no delay to the progress and completion of the Head Contract Works.
- 10.1.2 Revisions to the Contractor's current construction programme, or to the times when the Subcontractor is to carry out and complete any part of the Subcontract Works, must be communicated to the Subcontractor in a timely manner.

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

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

10.2 Extensions of Time

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

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

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

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

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

10.3 Compensation for Extension of Time

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

10.4 Subcontractor Failure to Complete

10.4.1 If the Subcontractor fails to complete the Subcontract Works within the time specified in the Contractor's current construction programme, the Subcontractor indemnifies the Contractor for an equitable proportion of any liquidated damages that the Contractor may become liable for under the Head Contract, or alternatively such damages as the Contractor may suffer as a result of the Subcontractor's default.

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

SECTION 11 DEFECTS

11.1.1 If required by the Contractor, the Subcontractor must inspect their own work and issue a list of defects in the Subcontract Works to the Contractor.

11.1.2 Any defects or faults which appear in the Subcontract Works prior to practical completion of the Head Contract Works, or during the defects liability period stipulated in the Head Contract, must, upon notification in writing by the Contractor, be remedied by the Subcontractor at their own cost.

11.1.3 The remedial work must be carried out by the Subcontractor within the time stated in the notice to avoid delay to the Head Contract Works or unnecessary inconvenience to occupiers.

11.1.4 If the Subcontractor fails to carry out remedial work in accordance with the notice, the Contractor may, upon further written notification, carry out the work on the Subcontractor's behalf and at the

Subcontractor's cost. This cost becomes a debt immediately due to the Contractor. Without prejudice to any other method of recovery, the Contractor is entitled to deduct the costs of carrying out remedial work from any payments which would otherwise be payable to the Subcontractor under this Subcontract.

- 11.1.5 The Contractor may instruct the Subcontractor not to remedy any defect or fault. The Contractor may, in consultation with the Subcontractor, agree upon an amount payable by the Subcontractor to compensate for not remedying the defect or fault. Without prejudice to any other method of recovery, this amount may be deducted from any payment due to the Subcontractor under this Subcontract.
- 11.1.6 Nothing in this Section 11 limits the Subcontractor's liability for defective works whether arising in law or equity or whether pursuant to contract, tort, or by statute.

Section 12 PAYMENTS

12.1 Payment Claims

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

12.2 Payment Schedules and Payments

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

12.3 Final Account

- 12.3.1 On or before the date stated in the Subcontract Specific Conditions, the Subcontractor must submit to the Contractor their final account covering the whole of the Subcontract Works and

including, where applicable, variations, fluctuations and adjustments to provisional or prime cost sums. The Subcontractor's final account must be accompanied by full documentation to substantiate all items and amounts claimed. The Subcontractor must provide sufficient further information to substantiate any claims within five Working Days of being requested to do so by the Contractor.

- 12.3.2 If the Subcontractor fails to submit their final account within the time stated in the Subcontract Specific Conditions, or does not supply the information required by the Contractor to enable it to substantiate the claims within the specified time, the Contractor is entitled to determine the reasonable amount of the Subcontractor's final account and notify the Subcontractor of that amount.
- 12.3.3 The Contractor is not required to pay the Subcontractor for any matter relating to the Subcontract Works that occurred prior to the date of the Subcontractor's final account if it was not included in the Subcontractor's final account and if it was not notified in writing to the Contractor prior to the Contractor's determination under 12.3.2.
- 12.3.4 Claims for variations submitted with the final account and not previously claimed will be due for payment 44 Working Days after the end of the month in which they are claimed.

12.4 Retentions

- 12.4.1 Payments will be subject to retentions as specified in the Subcontract Specific Conditions.
- 12.4.2 Retentions may be released in two stages. Part of the retention amount may be held after Practical Completion to cover maintenance and rectification of defects. The dates for release of retentions are given in the Subcontract Specific Conditions.
- 12.5 Items Not Fixed in the Works and Transfer of Title
 - 12.5.1 The Subcontractor is only entitled to payment for any materials, plant, equipment or other items supplied but not fixed in the Head Contract Works if the Head Contract allows payment for them. The conditions in the Head Contract relating to payment for these items must have been satisfied and the Subcontractor must also satisfy the Contractor that the Subcontractor's suppliers have no claim to ownership of the items.
 - 12.5.2 Ownership of any materials, plant, equipment or other item supplied, intended or required for the Head Contract Works transfers to the Contractor immediately upon payment to the Subcontractor.

12.5 Payments Not Constituting Approval

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

12.6 Over Payment

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

12.7 Cost Fluctuations

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

SECTION 13 DISPUTES AND REMEDIES

13.1 Negotiate in Good Faith

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

13.2 Adjudication

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

13.3 Arbitration

13.3.1 If any dispute cannot be resolved in accordance with 13.1 above, it must be referred to arbitration in accordance with the provisions of the Arbitration Act 1996.

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

13.4 Consolidation of Disputes

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

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

SECTION 14 DEFAULT

14.1 Default by the Subcontractor and Remedies

14.1.1 If the Subcontractor:

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

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

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

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

14.1.4 If the Contractor limits the extent of this Subcontract to the proven capacity of the Subcontractor under 14.1, the Contractor may recover from this Subcontractor any cost, damage, loss or expense incurred as a result of the breach of the Subcontract. Without prejudice to any other

method of recovery, the Contractor may deduct the amount of such damages, costs or losses from any payments which would otherwise be payable to the Subcontractor under this Subcontract.

14.2 Default by Contractor and Remedies

14.2.1 If:

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

without prejudice to any other rights or remedies, the Subcontractor may, by written notice, terminate the Subcontract. The Contractor is liable for the value of any work actually and properly executed at the date of such termination, including any variations and cost fluctuations as appropriate. The Subcontractor may also recover from the Contractor any cost reasonably incurred by the Subcontractor in expectation of completing the Subcontract Works, but only if this cost is not covered by other payments and not reasonably recoverable by the Subcontractor by any other means. The Contractor must also pay to the Subcontractor any costs reasonably incurred in the removal of the Subcontractor's plant and carrying out the Contractor's instructions for making the Subcontract Works secure or safe.

14.3 Default by Principal and Remedies

14.3.1 If the Contractor suspends work under the Head Contract (under the provisions of the Construction Contracts Act 2002) the Contractor may suspend this Subcontract. The Subcontractor must resume work when the suspension has been lifted. Notice of suspension and notice of lifting of suspension must be given in writing. The Subcontractor is not entitled to recover any costs incurred solely as a consequence of a suspension under this clause, unless the Contractor is entitled to recover these costs under the Head Contract.

14.3.2 If the Principal defaults on a payment, or if the Contractor believes with good cause that the Principal may default on a payment, then the Contractor may suspend this Subcontract. The suspension will continue until there is no longer a default, or good cause to consider a default may occur. Notice of suspension and notice of lifting of suspension must be given in writing.

14.3.3 If the Contractor has directed the Subcontractor to suspend work under 14.3.1 or 14.3.2 and the suspension continues for 10 Working Days, the Subcontractor may terminate this Subcontract 15 Working Days after giving written notice of their intention to terminate. If the suspension is lifted within the notice period the Subcontractor cannot terminate the Subcontract. The Contractor is only liable for the value of any work actually and properly completed at the date of the termination, including any variations and cost fluctuations as appropriate.

14.3.4 If the Head Contract is terminated due to default by the Principal, the Contractor must terminate the Subcontract. The Contractor will be liable for the value of any work actually and properly undertaken prior to the termination, including any variations and cost fluctuations allowed by this Subcontract. The Subcontractor may also recover from the Contractor any cost reasonably incurred by the Subcontractor in expectation of completing the Subcontract Works, but only if this cost is not covered by other payments and not reasonably recoverable by the Subcontractor by any other means. The Contractor must also pay to the Subcontractor any costs reasonably incurred in the removal of the Subcontractor's plant, and in carrying out the Contractor's instructions for making the Subcontract Works secure or safe.

SECTION 15 URGENT WORK

15.1.1 If it is impractical for the Subcontractor to carry out work of an urgent nature, because there is insufficient time to give them adequate notice to carry out the work, and the delays that would result from waiting for them to carry out the work would result in significant costs to the Contractor, or create a health and safety risk, the Contractor may carry out that work at the Subcontractor's expense.

15.1.2 In the event of the Contractor carrying out work under clause 15.1.1 the Contractor must notify the Subcontractor as soon as practicable, but not later than one working day, after

commencing the work.

- 15.1.3 The Subcontractor is entitled to receive a full breakdown of costs for the work carried out at the Subcontractor's expense under 15.1.1. A full breakdown of these costs must be provided to the Subcontractor within 10 Working Days of the Subcontractor requesting them, and these costs must be fair and reasonable.

SECTION 16 SERVICE OF NOTICES

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