

BuildRight® BCS:2016 – GENERAL CONDITIONS OF SUBCONTRACT

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INTRODUCTION

Application of the Subcontract

1. The Subcontract shall apply to the Subcontract Works as described in the Subcontract Agreement.
2. This is a legally binding document. The Contractor and Subcontractor should seek independent legal advice in relation to the rights and obligations created by the Subcontract prior to signing.
3. The Contractor and the Subcontractor must sign the Subcontract Agreement, initial each page of the General Conditions of Subcontract, and initial any words added or deleted. The Contractor and the Subcontractor must also initial each page of the Plans and Specifications for the project, and initial any alterations made to those documents.
4. The Subcontractor is deemed to have read and to have full knowledge of all the terms of the BuildRight® Conditions of Contract that govern the Head Contract, and agrees to be bound, observe, perform and comply with all the provisions of the Head Contract insofar as they relate and apply to the Subcontract Works, except where inconsistent with the Subcontract, or as varied, and all the powers of the Principal under the Head Contract shall extend to the Subcontract and shall be exercised by the Contractor or the Principal in addition to the rights and obligations contained or implied in the Subcontract.
5. In respect of the Subcontract Works, the Subcontractor undertakes to the Contractor the like obligations and liabilities as are imposed upon the Contractor towards the Principal by the terms of the Head Contract and will indemnify the Contractor from and against the same, and from all claims, demands and proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with the Subcontract or with failure to perform such obligations or fulfil such liabilities.

Definitions and Interpretation

6. The following words and expressions shall have the following meaning ascribed to them for the purpose of the Subcontract:

ADJUDICATION means adjudication under the Construction Contracts Act 2002.

BUILDSAFE® means BuildSafe Security of Payment Trustee Company Limited (company number 2229987) whose registered office is at 9 Anzac Street, Takapuna, Auckland 0622.

CLAIMED AMOUNT means an amount of Progress Payment specified in a Payment Claim that the Subcontractor claims to be due for construction work carried out under the Subcontract.

COMMENCEMENT DATE means the date specified in the Subcontract Agreement for the start of the Subcontract Works.

COMPLETION means that stage in the execution of the Subcontract Works following the expiry of the Security Retention Period, when all minor works and minor defects identified by the Contractor on or before the expiry of the Security Retention Period have been completed and rectified by the Subcontractor, and when all as-built drawings, operating and maintenance manuals, producer statements, warranties, guarantees, and Records of Work have been supplied by the Subcontractor to the Contractor.

CONSENTS means all licenses, approvals, statutory and regulatory consents, and compliance certificates which are required for the Subcontract Works and for the use of the Subcontract Works when completed.

CONTRACTOR means the person who is authorised by the Principal to undertake the Head Contract Works.

DAY means a day of the week other than Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Waitangi Day, a day observed as the anniversary of the province of which

the Site forms a part, and any day in the period commencing on 24 December in any year and ending with the close of 5 January in the following year.

DEFAULT means a default as defined in clauses 126 and 127.

DEFECTS REPAIR PERIOD means the period of twelve (12) months after the date of Practical Completion of the Head Contract Works when the Contractor is responsible for rectifying defects arising from defective workmanship or materials, notified by the Principal during that period when it is presumed that the defect is attributable to the Contractor, unless the contrary is proven.

DISPUTE means any dispute or difference that arises under, out of, or in connection with the Subcontract.

HEAD CONTRACT WORKS means the work that the Contractor is to carry out in accordance with the Head Contract, including Variations and any design work carried out by the Contractor.

HOUSEHOLD UNIT means a building or group of buildings, or part of a building or group of buildings, that is:

- (i) used, or intended to be used, only or mainly for residential purposes; and
- (ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than one household; but

does not include a hostel, boardinghouse, or other specialised accommodation.

NOTICE AND CERTIFICATE OF COMPLETION means the notice to be completed by the Contractor at such time as the Contractor considers the Subcontract Works are complete in all respects following the expiry of the Security Retention Period.

NOTICE OF ADJUDICATION means the notice to be completed by a claimant and sent to all relevant Parties for the purpose of initiating an Adjudication.

NOTICE OF DEFECTS means the notice to be completed by the Contractor specifying any defects in workmanship and/or materials that become apparent during the Defects Repair Period and which require rectification by the Subcontractor.

NOTICE OF DISPUTE means the notice to be completed by any Party giving notice to any other Party of a Dispute which must be resolved by the Parties within two (2) Days of receipt of the notice, or the Party giving notice must refer the Dispute to Adjudication.

NOTICE OF INCOMPLETE WORK means a notice advising the Subcontractor that the Contractor does not accept that the Subcontract Works have reached Completion, and providing details of the items of work which the Contractor requires to be completed before Completion will be certified.

PARTIES means the Parties to the Subcontract as named in the Subcontract Agreement.

PAYMENT CLAIM shall have the same meaning as in the Construction Contracts Act 2002.

PAYMENT SCHEDULE shall have the same meaning as in the Construction Contracts Act 2002.

PLANS AND SPECIFICATIONS means the plans and specifications prepared for the purpose of the Subcontract Works.

PRACTICAL COMPLETION means that stage in the execution of the Head Contract Works when the Head Contract Works are complete save for minor items of work and minor defects which the Principal accepts will not prevent the Head Contract Works from being used for their intended purpose, and completion and/or rectification of which will not prejudice the convenient use and enjoyment of the Head Contract Works and when all Consents, as-built drawings, operating and maintenance manuals, producer statements, guarantees, warranties, and Records of Work have been supplied by the Contractor to the Principal.

PRIME COST SUM means a monetary allowance that is included in the Subcontract Price for the purchase and supply of materials which are to be included in the Subcontract Works, but have not been specified or selected by the Principal at the time of tender. The amount specified for Prime Cost Sums does not include Subcontractor's overheads, margins, preliminary and general costs, coordination of all other trades (including builders' work) and attendances attributed to those works which will be allowed for by the Subcontractor elsewhere in the Subcontract Price.

PRINCIPAL means the person who authorises the Contractor to undertake the Head Contract Works.

PROGRESS PAYMENT means a payment for Construction Work carried out under the Subcontract that is in the nature of an instalment of the Subcontract Price and includes any final payment under the Subcontract.

PROVISIONAL SUM means a monetary allowance for carrying out a specified part of the Subcontract Works, the scope of which has not been defined and/or the Principal's decision to proceed has not been made at the time of tender. It includes all of the Subcontractor's costs, margins, overheads and profit.

RECORD OF WORK means the record of work required to be produced by a licensed building practitioner in respect of Restricted Building Work pursuant to section 88 of the Building Act 2004.

RESTRICTED BUILDING WORK means building work critical to the structural integrity and weathertightness of a residential building. It must be carried out or supervised by appropriately licensed building practitioners.

SCHEDULED AMOUNT means an amount specified in a Payment Schedule that the Contractor proposes to pay to the Subcontractor in response to a Payment Claim.

SECURITY RETENTION PERIOD means the period of twenty (20) Days after the date of Practical Completion.

SITE means the land, buildings and other places made available by the Contractor where the Subcontract Works are to be carried out as identified in the Subcontract.

SUBCONTRACT means this Subcontract between the Contractor and the Subcontractor and includes the Plans and Specifications initialled by the Parties and appended to the Subcontract Agreement, and related documents intended to have contractual force which are listed under 'Additional Documents' in the Subcontract Agreement (together the **Subcontract Documents**).

SUBCONTRACTOR means the person who contracts with the Contractor to carry out a defined part of the Head Contract Works on behalf of the Contractor.

SUBCONTRACT PRICE means the total amount payable by the Contractor to the Subcontractor under the Subcontract for carrying out the Subcontract Works.

SUBCONTRACT WORKS means the work that the Subcontractor is to carry out in accordance with the Subcontract, including Variations and any design work carried out by the Subcontractor.

VARIATION means any change in the Subcontract Works including any increase or decrease or omission of any part of the Subcontract Works; any change to the character or quality of any material or work; any change to the line, level, position, or dimension of any part of the Subcontract Works; any additional demolition or removal of any material or work; or any change to the order in which the Subcontract Works are to be completed. A Variation does not include a change to the Subcontract Works which is so different from the work which the Subcontractor was required to do when the Subcontract was entered into.

WEBSITE means the website for BuildSafe® which can be found at www.buildsafe.co.nz.

WORKING DAY RATE means the daily rate nominated by the Subcontractor in the Subcontract for the purpose of assessing the Subcontractor's entitlement to compensation for the net effect of any Variation or delay that may arise as a result of Default by the Contractor, or any other person for whose acts or omissions

the Contractor is responsible, and is deemed to provide for all on-Site and off-Site overheads and profit, unless the nature and circumstances of the Variation or Default are such that it would be inequitable to use the nominated rate and a reasonable rate shall then be used.

7. Unless the context otherwise requires, in these General Conditions of Subcontract:
- (a) words in the singular shall include the plural and vice versa; words importing a gender include every gender; and references to persons include corporations, partnerships, government and local authorities and agencies, and other incorporated associations or bodies of persons;
 - (b) references to “include” or “including” are to be construed without limitation;
 - (c) a reference to a Party includes its executors, administrators, successors and permitted assigns; and
 - (d) insofar as the provisions of the Subcontract are inconsistent with the terms and conditions in any quotation, tender or other document, the terms of the Subcontract will take precedence over and replace any such inconsistent terms and conditions.

OBLIGATIONS OF THE PARTIES

Subcontractor’s Main Obligations

8. The Subcontractor must carry out and complete the Subcontract Works in a proper and workmanlike manner using reasonable care and skill, in accordance with the building consent, the New Zealand Building Act 2004 and the provisions of the Subcontract. The Subcontractor must:
- (a) supply all labour to carry out and supervise the carrying out of the Subcontract Works;
 - (b) supply all materials, services, temporary works, plant, and equipment necessary to complete the Subcontract Works;
 - (c) complete the Subcontract Works for the Subcontract Price;
 - (d) keep the Contractor informed about the progress of the Subcontract Works;
 - (e) obtain those Consents required to carry out the Subcontract Works if the Contractor and the Subcontractor have agreed in writing that such Consents will not be obtained by the Subcontractor;
 - (f) obtain insurance cover as required by the Subcontract;
 - (g) prepare a health and safety plan for the Subcontract Works and the Site;
 - (h) begin the Subcontract Works on the Commencement Date and carry out and complete the Subcontract Works in a prompt and timely manner by the date for Completion of the Subcontract Works;
 - (i) undertake any Variation to the Subcontract Works requested by the Contractor in accordance with the Subcontract;
 - (j) comply with all proper instructions by the Contractor in relation to the Subcontract Works;
 - (k) inform the Contractor of any change to the licensed building practitioners employed to supervise and carry out Restricted Building Work at the Site;
 - (l) on reaching Completion, promptly serve a Notice of Completion on the Contractor;
 - (m) remedy as soon as practicable, any defects notified during the Defects Repair Period;

- (n) provide all as-built drawings, operating and maintenance manuals, producer statements, guarantees, warranties and Records of Work as reasonably required to the Contractor prior to Completion;
- (o) on the expiry of the Security Retention Period and Completion of the Subcontract Works, serve a Notice of Completion on the Contractor;
- (p) in the event of a Dispute arising under the Subcontract, immediately serve a Notice of Dispute on the Contractor; and
- (q) in the event that any Dispute is not resolved with the Contractor directly within two (2) Days of service of the Notice of Dispute, immediately serve a Notice of Adjudication on the Contractor.

Subcontractor's Warranties

9. The Subcontractor warrants that:

- (a) the Subcontract Works will be carried out:
 - (i) with reasonable care and skill;
 - (ii) in a proper and competent manner;
 - (iii) in accordance with the Plans and Specifications; and
 - (iv) in accordance with the relevant building consent.
- (b) all materials supplied for use in the Subcontract Works (other than materials supplied by the Contractor):
 - (i) will be suitable for the purpose for which they will be used; and
 - (ii) unless otherwise stated in the Subcontract, will be new;
- (c) the Subcontract Works will be carried out in accordance with, and will comply with, all laws and legal requirements, including, without limitation, the Building Act 2004 and the Regulations made pursuant to that Act;
- (d) the Subcontract Works will be completed by the date (or within the period) specified in the Subcontract or, if no date or period is specified, within a reasonable time; and
- (e) if the Subcontract states the particular purpose for which the Subcontract Works are required, or the result that the Principal wishes the Subcontract Works to achieve, so as to show that the Principal relies on the skill and judgement of the Subcontractor, the Subcontract Works and any materials used in carrying out the Subcontract Works will:
 - (i) be reasonably fit for that purpose; or
 - (ii) be of such a nature and quality that they might reasonably be expected to achieve that result.

10. Where the Subcontract Works relate to one or more Household Units, the Principal or a future owner of the building or land in respect of which the Subcontract Works are carried out under the Subcontract may, despite any agreement to the contrary, or any provision of any other enactment or rule of law, take proceedings for a breach of any of the above statutory warranties, as set out in section 362I of the Building Act 2004, whether or not that person was a Party to the Subcontract.

11. The Subcontractor warrants that where the Subcontract Works involve Restricted Building Work, that work will at all material times be carried out or supervised by appropriately licensed building practitioners.

Contractor’s Main Obligations

12. The Contractor must:
- (a) pay the Subcontractor the Subcontract Price (including the price of all Variations);
 - (b) keep the Subcontractor informed of any concerns that the Contractor has about the Subcontract Works;
 - (c) obtain insurance cover as required by the Subcontract;
 - (d) obtain all Consents necessary to carry out the Subcontract Works, unless the Contractor and the Subcontractor have agreed otherwise;
 - (e) give reasonable access to the Site to the Subcontractor and any other authorised persons to enable the Subcontract Works to be completed; and
 - (f) provide all information to the Subcontractor, which has been obtained by or on behalf of the Contractor for the purposes of the Subcontract, regarding the nature of the physical conditions relevant to the Subcontract Works, save that the Contractor does not make any warranty as to the sufficiency or accuracy of such information, and the Subcontractor is responsible for the interpretation of all such information.

Contractor’s Warranties

13. The Contractor warrants that:
- (a) all materials supplied by the Contractor for use in the Subcontract Works will be suitable for the purpose for which they will be used; and
 - (b) unless otherwise stated in the Subcontract, those materials will be new.

Sub-subcontracting Work

14. The Subcontractor may assign or subcontract any portion of the Subcontract Works but shall not assign or subcontract the whole of the Subcontract Works without the written consent of the Contractor.
15. The Subcontractor remains responsible for the acts and omissions of any separate contractors it employs for the purpose of carrying out the Subcontract Works (**Separate Contractors**), and for ensuring that its Separate Contractors are properly licenced to carry out the Subcontract Works and have appropriate insurance in place. The Subcontractor will be responsible for procuring any guarantees from any Separate Contractors and any information and/or documentation in the power or possession of any Separate Contractors necessary to enable the Contractor to obtain a Code Compliance Certificate, and comply with any other regulation requirements.

REPRESENTATIVES

16. The Subcontractor must nominate a representative who is authorised to give and receive on behalf of the Subcontractor any instructions to or from the Contractor or the Contractor’s representative (the **Subcontractor’s Representative**). The Subcontractor’s Representative is responsible for the supervision of the Subcontract Works.

- 17. The Contractor must nominate a representative who is authorised to give and receive on behalf of the Contractor any instructions to or from the Subcontractor or the Subcontractor's Representative (the **Contractor's Representative**).
- 18. The Contractor and the Subcontractor may change their Representative by giving notice in writing to the other Party.

DESIGNS, PLANS AND CONSENTS

Building and Resource Consents

- 19. Unless otherwise agreed, the Contractor shall obtain and pay for all project information memoranda and Consents required for the carrying out of the Subcontract Works, and the Code Compliance Certificate for the use of the Subcontract Works when complete.
- 20. The Subcontractor shall comply with the terms and conditions of all Consents and approvals, as far as such Consents and approvals relate to the Subcontract Works.
- 21. The Subcontractor shall, when requested by the Contractor, provide all documents in its power, possession, or control that relate to the Subcontract Works necessary for obtaining all Consents and approvals for the Subcontract Works.

Code Compliance Certificate

- 22. Unless otherwise agreed, the Contractor shall be responsible for applying for and obtaining the Code Compliance Certificate(s) for the Subcontract Works. The Subcontractor shall provide to the Contractor any information and/or documentation in relation to the Subcontract Works necessary to enable the Contractor to obtain a Code Compliance Certificate.

Plans and Specifications

- 23. In the event of any discrepancy between the Plans and Specifications, the Plans take precedence. Drawings of a larger scale take precedence over drawings of a smaller scale. Figured dimensions take precedence over scaled dimensions.

Design by the Subcontractor

- 24. Where the Subcontract Works include any element of design on the part of the Subcontractor, the Subcontractor shall be responsible for carrying out such design with reasonable skill, care, and diligence. No comment, review, or approval by the Contractor shall relieve the Subcontractor of any responsibility for that part of the Subcontract Works.
- 25. If shop drawings and/or as-built drawings are reasonably required for the proper completion of the Subcontract Works, such drawings shall be supplied to the Contractor on request and in any case prior to Completion.

Copyright in Plans and Designs

- 26. The Subcontract does not transfer any copyright or other intellectual property rights in Plans or designs.
- 27. The Subcontractor and the Contractor each warrant that they have the right to provide any copyright materials or other intellectual property required for the performance of the Subcontract Works. The provision of Plans or designs to a Party entitles them to be used only for the Subcontract.

THE SITE

Possession of the Site

28. The Contractor shall give the Subcontractor possession of the Site or such parts of the Site as are reasonably necessary to enable the Subcontractor to carry out and complete the Subcontract Works on the Commencement Date provided in the Subcontract Agreement.
29. The Contractor shall arrange for the Subcontractor to have reasonable right of entry and do any act upon any adjoining property as may be necessary to carry out the Subcontract Works. Any costs involved in obtaining such right shall be borne by the Contractor.
30. The Subcontractor shall ensure that the Subcontract Works are undertaken so as not to interfere unreasonably with the convenience and rights of adjoining property owners and the public, or with the condition of, access to, or use of any private property or public place, road or footpath.
31. The Subcontractor shall make good as soon as practicable, and at the Subcontractor's expense, any damage to any private or public property which might arise out of or in consequence of carrying out the Subcontract Works.
32. Should the Contractor fail to give possession of the Site in accordance with the Subcontract for any reason other than Default on the part of the Subcontractor, the Subcontractor shall be entitled to an extension of time for Completion of the Subcontract Works. The failure shall be treated as a Variation.

Hours of Work

33. The Subcontractor must not carry out any work on the Site outside of the Contractor's normal working hours without the Contractor's approval.

Services

34. The Contractor shall provide (free of charge) services such as water, power, and lighting. The Subcontractor must only use these services for the purposes of the Subcontract Works.

Labour, Plant, and Materials

35. The Subcontractor shall include in its Subcontract Price everything necessary for the proper completion of the Subcontract Works and the performance of its obligations under the Subcontract. The Subcontractor will be deemed to have made all allowances required for the nature of the Site, the extent and nature of the work, and access for, and carriage of, all labour, plant and materials required for the proper execution of the Subcontract Works, to, from, and on the Site.

Site Boundaries

36. The Contractor must clearly establish the boundaries of the Site and, if survey pegs are required by the Subcontractor to define the Site boundaries, these will be provided by a licenced cadastral surveyor employed by the Contractor. Any costs involved in pegging or verifying the boundaries of the Site shall be borne by the Contractor.
37. The Subcontractor shall be responsible for the care and protection of all boundary pegs and any cadastral survey mark which has at any time been set in or on the ground for the purposes of survey.
38. The Contractor agrees to indemnify the Subcontractor in respect of any expense, loss, action, or claim whatsoever arising out of errors in the position of survey pegs or mistakes as to the correct boundaries of the building Site where the survey pegs and/or Site boundaries are established and fixed by a surveyor employed by the Contractor.

Setting Out

39. Principal grid lines and datum points and heights will be established by the Contractor. The Subcontractor will be responsible for the accurate setting out and coordination of the Subcontract Works from these points.

Scaffolding

40. All scaffolding up to a platform level of 3.0m above ground or floor level necessary for the safe and proper carrying out of the Subcontract Works shall be supplied by the Subcontractor. The provision of additional scaffolding is by negotiation with the Contractor. To the extent that the Contractor provides and erects any scaffolding for any part of the works other than the Subcontract Works, the Subcontractor, its employees and workmen in common with all other persons having the like right, shall for the purposes of the Subcontract Works (but not further or otherwise) be entitled to use any such scaffolding belonging to or provided by the Contractor for a period agreed to at the time of tendering and confirmed in writing or any further period subsequently agreed upon, after which period the Subcontractor will be liable for a hire charge for the time scaffolding remains on site for the sole use of the Subcontractor.

Care of the Site and Subcontract Works

41. The Subcontractor shall be responsible for the Subcontract Works from the Commencement Date until Practical Completion, and for any loss or damage to the Subcontract Works occurring after Practical Completion arising as a result of carrying out its further obligations under the Subcontract.
42. The Subcontractor shall keep the Site and the Subcontract Works clean and tidy and remove all Subcontractor's rubbish and surplus materials at regular intervals.
43. The Subcontractor shall be responsible for the care and protection of all materials in its possession awaiting incorporation into the Subcontract Works.
44. The Subcontractor shall be responsible for loss or damage to the Site and the Subcontract Works arising out of, or in consequence of carrying out, the Subcontract Works.
45. The Subcontractor shall leave the Site and the Subcontract Works clean and tidy upon Practical Completion and Completion of any agreed deferred works or defective works notified by the Contractor during the Defects Repair Period.
46. The Subcontractor shall be responsible for the care and protection of the work undertaken by any Separate Contractors engaged by the Subcontractor. The Subcontractor shall be obliged at all times to exercise reasonable care to ensure that no damage occurs to the separate works arising out of the execution of the Subcontract Works.

Use and Occupation of the Site

47. If the building work involves an existing building occupied by the Principal or the Principal's invitees, the Subcontractor shall use all reasonable endeavours to cause as little inconvenience to those persons and all other persons using the building as is practicable in the circumstances. The Subcontractor must take all reasonable steps to keep the building and the Site safe and secure at all times during the execution of the Subcontract Works.

Unforeseen Physical Conditions

48. The Subcontractor shall notify the Contractor in writing within five (5) Days of becoming aware of any physical condition which the Subcontractor considers could not reasonably have been foreseen at the time of tendering by an experienced Subcontractor, and which will, in the Subcontractor's opinion, increase its costs or delay progress of the Subcontract Works or require an extension of time.
49. Any additional work required because of unforeseen physical conditions shall be treated as a Variation.

Health and Safety

50. The Subcontractor is responsible for the adequacy and safety of all Site operations and work methodologies within the Subcontractor's reasonable control.
51. The Subcontractor shall comply with all requirements of the Health and Safety at Work Act 2015.
52. The Subcontractor shall provide and maintain a safe working environment, and must prepare and work to a Site-specific safety plan for the execution of the Subcontract Works.
53. Compliance with the Site-specific safety plan will not relieve the Subcontractor from any of its duties, obligations and liabilities under the Subcontract, or at law.
54. The Contractor must notify the Subcontractor of any Site-specific safety hazards that the Contractor is aware of and which might not reasonably be apparent to a reasonably experienced Subcontractor.

Use of Alternative Materials or Products

55. 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.
56. If any materials or products required by the Head Contract are not available, or will not be available within the time required to enable the Subcontractor to meet its obligations under the Subcontract, the Subcontractor must notify the Contractor as soon as practicable.
57. Approval to use materials or products differing from those in the Head Contract, and conditions that may be imposed on their use, including obtaining any amendments to any Consents that might be required before making any substitution, does not relieve the Subcontractor of its responsibilities under the Subcontract.

Materials brought onto the Site by the Subcontractor

58. The legal, equitable and beneficial ownership and title to any goods or materials brought onto the Site by the Subcontractor and not affixed to the land shall remain vested in the Subcontractor until such time as the Subcontractor receives payment for those goods and/or materials from the Contractor.

Emergency Action

59. The Subcontractor must take all emergency actions necessary to protect the Head Contract Works and any other property or persons affected by the carrying out of the Subcontract Works. If at any time the Subcontractor is unavailable or unable to take such actions, they may be initiated by the Contractor.

Communications and Signage

60. The Subcontractor must not communicate directly with the Principal or any of the Principal's consultants without prior approval from the Contractor.
61. The Subcontractor must not discuss any matters relating to the Subcontract Works with the media. Any media enquiries must be referred to the Contractor.
62. The Subcontractor must not display advertising or signs on the Site without the written permission of the Contractor.

INSURANCE

Contractor to Insure

63. Unless otherwise agreed in writing, the Contractor shall, from the Commencement date of the Head Contract Works until Completion, keep the Head Contract Works (including the Subcontract Works) insured under a contract works insurance policy that is sufficient to cover the Subcontract Works until the date of Completion, plus an allowance for:
- (a) Variations that the Contractor may direct;
 - (b) demolition, disposal and preparation for making good following a loss;
 - (c) professional fees and similar costs; and
 - (d) increased construction costs and escalation of costs during the reinstatement period.
64. The Contractor shall not cancel or materially change the insurance without the prior written consent of the Subcontractor.

Subcontractor to Insure

65. Where the Subcontract Agreement expressly requires, the Subcontractor shall, from the Commencement Date until Completion, keep the Subcontract Works and all temporary works and materials insured under a contract works insurance policy in the joint names of the Subcontractor and the Contractor.
66. The Subcontractor is responsible for insuring the Subcontract Works, temporary works and materials while not on the Site.
67. The Subcontractor shall not cancel or materially change the insurance without the prior written consent of the Contractor.

Public Liability

68. The Subcontractor shall maintain a public liability insurance policy indemnifying the Contractor and the Subcontractor against claims in respect of loss or damage against property, or injury or death or illness to any person arising out of the operations of the Subcontractor or any of its Separate Contractors in connection with the execution of the Subcontract Works. The policy shall be for an amount of not less than two million dollars, and shall be kept continuously in force until the expiry of the Defects Repair Period and any work required to remedy defects notified during that period has been completed.

Plant, Equipment and Motor Vehicles

69. The Subcontractor is responsible for the insurance of all plant, tools, equipment or other property belonging to the Subcontractor or in its care or control, critical to the carrying out of the Subcontract Works.
70. The Subcontractor must have motor vehicle third party insurance cover for any vehicles used in, or associated with the carrying out of the Subcontract Works.

Professional Indemnity Insurance

71. Where the Subcontractor is required to provide design work, the Subcontractor shall effect professional indemnity insurance for the Subcontractor's design, to cover liability for damage or loss caused by the Subcontractor failing to carry out such design with reasonable skill, care, and diligence. The Subcontractor shall maintain the insurance for a period of six (6) years from the date of Practical Completion.

Proof of Insurance

72. The Subcontractor must, prior to the commencement of the Subcontract Works, provide to the Contractor such certificates as may be required from its insurers or insurance brokers evidencing that any insurance cover which the Subcontractor is responsible for under the Subcontract, is in effect.

COMMENCEMENT AND COMPLETION

Commencement

73. The Subcontractor must commence the Subcontract Works on the date provided in the Subcontract Agreement or within such other time as is agreed, and shall thereafter carry out the Subcontract Works with all reasonable diligence, subject to:
- (a) the issue of any Consents required for the Subcontract Works; and
 - (b) evidence of the insurance cover which the Subcontractor is responsible for under the Subcontract.

Due Date for Completion

74. The Subcontractor must complete the Subcontract Works by the date specified in the Subcontract Agreement, as adjusted for any extensions of time awarded in terms of the Subcontract (**Due Date for Completion**).
75. The Subcontractor hereby indemnifies the Contractor against any loss, cost or expense the Contractor incurs as a consequence of the Subcontractor failing to progress or complete the Subcontract Works in accordance with the terms and conditions of the Subcontract.

Extensions of Time

76. The Contractor shall grant an extension of time for completion of the Subcontract Works if the Subcontractor is fairly entitled to an extension by reason of:
- (a) the net effect of any Variation;
 - (b) weather sufficiently inclement to interfere with the progress of the Subcontract Works;
 - (c) loss or damage to the Subcontract Works or materials, not due to the fault of the Subcontractor;
 - (d) flood, volcanic or seismic events;
 - (e) any strike, lockout, industrial, or protest action;
 - (f) any circumstances not reasonably foreseeable by an experienced subcontractor at the time of tendering, and not due to the fault of the Subcontractor; or
 - (g) Default by the Contractor, or any other person for whose acts or omissions the Contractor is responsible, which is not a Variation.
77. The Contractor shall not be bound to grant an extension of time unless the Subcontractor gives written notice to the Contractor within ten (10) Days of becoming aware of the occurrence of any circumstance relied upon to support a claim for an extension of time.
78. On receipt of notice of a claim for extension of time, the Contractor must investigate the claim, determine whether the Subcontractor is fairly entitled to an extension of time and the period of the extension, and notify the Subcontractor of the decision as soon as practicable.

79. The Contractor may grant an extension of time in relation to the Due Date for Completion where the Contractor deems it appropriate in circumstances where the Contractor is at fault or caused a delay, whether the Subcontractor has made a claim for an extension of time in relation to those circumstances, or not.
80. The Subcontractor shall not be entitled to compensation for time related costs unless the extension of time is granted under clause 76(a) or 76(g) above. Where the Subcontractor has nominated a Working Day Rate, such rate shall be used to calculate the Subcontractor's entitlement to compensation, unless the nature or the circumstances of the Variation are such as to render it inequitable to use that rate, and a reasonable rate shall then be used.

Acceleration

81. Whenever the Subcontractor may be entitled to an extension of time, then *in lieu* of granting an extension of time for all or part of the delay, the Contractor may, following consultation with the Subcontractor, require the Subcontractor to, (if practicable in the reasonable opinion of the Contractor), overcome all or part of the delay by applying additional resources or working longer hours or in whatever manner is required, at a fair cost to be determined as a Variation.

Expedition

82. In any circumstance where there is a critical delay to the Subcontract Works, for which delay the Subcontractor is not entitled to an extension of time, the Subcontractor must take all reasonably necessary steps to overcome the delay at its own cost. The Subcontractor shall ensure the time lost as a result of any and all such delays is overcome at the earliest opportunity. The Subcontractor shall prepare a programme showing the application of all additional resources as are necessary to promptly overcome the delay. In no circumstances shall the provisions of this clause or any programme issued under it, or any consent of the Contractor permit or excuse the Subcontractor from completing the Subcontract Works by the Due Date for Completion.

Security Retention Period

83. The Security Retention Period is twenty (20) Days from the date of Practical Completion.
84. The Contractor must as soon as any defect is discovered and, in any event, on or before the expiry of the Security Retention Period, provide the Subcontractor with a Notice of Defects specifying any defects in the Subcontract Works which the Contractor requires the Subcontractor to rectify.
85. The Subcontractor must promptly rectify all defective work, defective materials and defective fittings in the Subcontract Works notified by the Contractor before the end of the Security Retention Period. The Subcontractor must use every reasonable endeavour to complete the Subcontract Works no later than thirty (30) Days from the date of Practical Completion or as soon as practicable thereafter.

Procedure for Completion

86. On expiry of the Security Retention Period and at such time as the Subcontractor believes on reasonable grounds that it has remedied and completed all defects and omissions notified by the Contractor on or before the expiry of the Security Retention Period, the Subcontractor shall issue a Notice and Certificate of Completion to the Contractor.
87. On receipt of the Notice and Certificate of Completion, the Contractor must, within two (2) Days either:
- (a) sign the Certificate of Completion certifying that the Contractor has inspected the Subcontract Works and accepts that the Subcontract Works are complete; or
 - (b) provide a Notice of Incomplete Work specifying which items of work remain outstanding that the Subcontractor is to rectify and/or complete prior to the Certificate of Completion being signed.

Defects Repair Period

88. The Contractor may, by written notice given before the expiry of the Defects Repair Period, require the Subcontractor to remedy any defect or breach of warranty, including repairing or replacing defective materials used in the Subcontract Works.
89. The Subcontractor shall remedy any defect or breach of warranty notified by the Contractor in writing during the Defects Repair Period within a reasonable time of notification.
90. The Subcontractor is not liable for any defect or breach of warranty to the extent that the defect or breach is caused after Practical Completion by:
- (a) a cause independent of human control;
 - (b) any act or omission, including accidental damage, by a person other than:
 - (i) the Subcontractor;
 - (ii) a person for whom the Subcontractor is responsible in law; or
 - (c) failure on the part of the Principal or Contractor to:
 - (i) carry out normal maintenance; or
 - (ii) carry out, or cause to be carried out, repairs as soon as practicable after the defect becomes apparent.

VARIATIONS

91. The Subcontractor shall carry out any Variation instructed by the Contractor, and the Subcontract Price is to be adjusted accordingly.
92. The value to be paid for any Variation instructed by the Contractor is to be calculated using the rates and prices specified in the Subcontract for that or similar work, but if there are no such rates or prices or if they are inappropriate or inapplicable, then by assessing a fair and reasonable value for the work.
93. The Subcontractor shall not vary the Subcontract Works without a written order from the Contractor.
94. Where an instruction given by the Contractor is not in writing or is not expressly stated to be a Variation, or any matter arises which the Subcontractor considers should be treated as a Variation, the Subcontractor shall, within ten (10) Days of the instruction or becoming aware of the matter, or as soon as practicable thereafter, give written notice to the Contractor of its claim for a Variation.
95. Within ten (10) Days of receipt of the Subcontractor's notice, or as soon as practicable thereafter, the Contractor shall advise the Subcontractor in writing as to whether the instruction or matter involves a Variation and the reasons for that decision.
96. Wherever practicable, the value of any Variation shall be agreed before the work is commenced, however any failure to do so will not invalidate the Variation or the Subcontractor's entitlement to be paid the reasonable value of the Variation including the Subcontractor's off-site overheads and margin.
97. Where the value of a Variation is a negative amount, the value shall not include any allowance for margin.
98. Where the Subcontractor is entitled to an extension of time as a result of the net effect of any Variation, the Subcontractor shall be entitled to compensation for the time-related costs incurred in relation to that extension, and margin. Where the Subcontractor has nominated a Working Day Rate, such rate shall be

used to calculate the Subcontractor's entitlement to compensation unless the nature or the circumstances of the Variation are such as to render it inequitable to use that rate and a reasonable rate shall then be used.

PAYMENT

Payment Claims

99. The Subcontractor may serve on the Contractor a Payment Claim in respect of any costs and expenses incurred by the Subcontractor in making an application for, and/or uplifting any Consents in relation to the Subcontract Works, including but not limited to the costs of obtaining such approvals and professional advice, reports, plans, and drawings as may be necessary in the circumstances and all fees, expenses and levies charged by the building consent authority together with the Subcontractor's associated administration and processing costs. Any amount claimed shall become due and payable by the Contractor two (2) Days after any such Payment Claim is served on the Contractor.
100. The Subcontractor may serve on the Contractor a Payment Claim in respect of all work carried out during each monthly period commencing on the day of the month in which Subcontract Works were first carried out and ending on the last day of that month, and each month after the first period. A Payment Claim is to be calculated in accordance with section 17 of the Construction Contracts Act 2002.
101. The due date for payment of a Payment Claim other than a Payment Claim made under clause 99 above in relation to any Consent is fifteen (15) Days after the relevant Payment Claim is served on the Contractor.

Payment Schedules

102. If the Contractor intends to pay the Subcontractor less than the amount claimed in a Payment Claim, the Contractor **must** respond to the Payment Claim by providing a Payment Schedule to the Subcontractor within fifteen (15) Days after the date the Payment Claim is received.
103. A Payment Schedule must comply with the requirements of the Construction Contracts Act 2002, and if the Scheduled Amount is less than the Claimed Amount, the Payment Schedule must indicate the manner in which the Contractor calculated the Scheduled Amount and the Contractor's reason or reasons for the difference between the Scheduled Amount, state the Claimed Amount, and where the difference is because the Contractor is withholding payment on any basis, indicate the reason(s) for withholding payment.
104. If the Contractor does not provide a Payment Schedule to the Subcontractor or make payment of the Claimed Amount within fifteen (15) Days after the date the Payment Claim was served, the Contractor becomes liable to pay the Subcontractor the whole of the claimed amount on the due date for payment without set-off or deduction irrespective of the merits of the Payment Claim.

Payment Does Not Constitute Approval

105. The issuing of a Payment Schedule or payment of any amount by the Contractor to the Subcontractor does not constitute or imply acceptance of the work undertaken by the Subcontractor, nor does it relieve the Subcontractor of any of its obligations under the Subcontract.

Overpayment

106. If there is any error or over-certification by or on behalf of the Contractor or any other cause that results in the amount paid to the Subcontractor exceeding the amount properly due under the Subcontract, the amount overpaid becomes a debt due from the Subcontractor to the Contractor payable on demand.

Damages for Late Completion

107. The Parties agree that the sum stated as damages for late completion in the Subcontract is a genuine pre-estimate by the Principal of the loss the Principal will likely suffer in the event of delay in completion of the Head Contract Works.

- 108. To the extent that the Subcontractor causes or contributes to such delay and loss, 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.
- 109. The Contractor may, without prejudice to any other method of recovery, deduct in a Payment Schedule from any monies otherwise payable to the Subcontractor under the Subcontract the amount of damages for late completion that has accrued at the end of the period for which the Payment Claim is made.
- 110. Deduction or payment of damages for late completion shall not relieve the Subcontractor from any of its other liabilities or obligations under the Subcontract.

Subcontractor's Final Payment Claim

- 111. The Subcontractor must give the Contractor a final Payment Claim within one (1) month of Completion of the Subcontract Works, or such other time as the Contractor and the Subcontractor may agree in writing.
- 112. Submission of the final Payment Claim shall be conclusive evidence that the Subcontractor has no further claim against the Contractor other than that contained therein, and any matter that is then currently the subject of a dispute resolution process.
- 113. Upon payment of the final Payment Claim, the Contractor ceases to be liable to pay the Subcontractor any further amount under the Subcontract except for the Contractor's obligations to pay any disputed amounts which may subsequently become due and owing to the Subcontractor as a result of a dispute resolution process.
- 114. Notwithstanding the issue of the final Payment Claim, the Subcontractor shall remain liable for the fulfilment of any obligation under the Subcontract which then remains unperformed or not properly performed.

Interest

- 115. The Contractor shall pay the Subcontractor interest compounding monthly on all monies due and payable and remaining unpaid after the expiry of the time provided for payment from and including the date immediately following the date upon which the payment was due, up to and including the date upon which payment is made in full.
- 116. The rate of interest shall be equal to 1.5 times the monthly small to medium sized enterprise overdraft rate published by the Reserve Bank of New Zealand for the relevant period.
- 117. The right to interest shall be in addition to any other remedy that the Subcontractor may be entitled to at law.

Suspension of Work

- 118. If a Claimed Amount is not paid by the due date for payment and no Payment Schedule has been provided by the Contractor in response to the Payment Claim, or if the whole of the Scheduled Amount is not paid by the due date for payment, or the Contractor has not complied with an adjudicator's determination that the Contractor must pay a sum of money to the Subcontractor, the Subcontractor may give the Contractor notice in writing of its intention to suspend the carrying out of the Subcontract Works if the unpaid amount is not paid in full within five (5) Days after the date of the notice.
- 119. If the unpaid amount is not paid in full and work is suspended, the Subcontractor:
 - (a) is not in breach of the Subcontract;
 - (b) shall maintain its rights under the Subcontract and will not be liable for any loss or damage suffered by the Contractor, or any person claiming through the Contractor;

- (c) is entitled to an extension of time and to recover the reasonable costs incurred to demobilise and to remobilise on Site as a consequence of suspending work, as a Variation; and
- (d) may lift the suspension at any time even if the amount has not been paid in full.

Prime Cost Sums and Provisional Sums

120. Prime Cost Sums and Provisional Sums shall be expended only on the written instruction of the Contractor.

Charge-up Subcontract

121. Under a charge-up subcontract, the Subcontractor shall be entitled to be paid at the rates set out in Schedule 2 to the Subcontract Agreement.

122. The Subcontractor shall not be entitled to be reimbursed any cost which:

- (a) is not justified by the Subcontractor's records or was not reasonably and properly incurred in carrying out the Subcontract Works; or
- (b) was incurred due to a Default by the Subcontractor, including remedying defects caused by the Subcontractor, or the Subcontractor's failure to comply with the Subcontract.

123. For each payment claim, the Subcontractor shall provide full details of all amounts claimed.

Cost Fluctuations

124. The Subcontractor shall be deemed to have given due consideration to the prices of all labour, plant, materials and services necessary for the complete and proper execution of the Subcontract Works for the full period of the Subcontract Works as adjusted in terms of the Subcontract.

125. No payment for cost fluctuations will be paid under the Subcontract.

DEFAULT

Acts of Default

126. The Subcontractor commits an act of Default if the Subcontractor:

- (a) fails to proceed with the Subcontract Works with reasonable diligence; or
- (b) refuses or persistently neglects to carry out and complete the Subcontract Works in accordance with its obligations under the Subcontract; or
- (c) fails after receipt of notice in writing from the Contractor to remove or remedy defective work or improper materials; or
- (d) becomes bankrupt, goes into liquidation or has a receiver or statutory manager appointed, and the assignee, liquidator, receiver, or statutory manager fails to make arrangements satisfactory to the Contractor to complete the Subcontract Works.

127. The Contractor commits an act of Default if the Contractor:

- (a) abandons the Subcontract; or
- (b) refuses or persistently fails to fulfil its obligations under the Subcontract; or

(c) becomes bankrupt, goes into liquidation or has a receiver or statutory manager appointed, and the assignee, liquidator, receiver, or statutory manager fails to make arrangements satisfactory to the Subcontractor for continued payment of amounts due under the Subcontract.

128. If either the Contractor or the Subcontractor defaults in the observance or performance of their respective obligations under the Subcontract, the non-defaulting Party may give the defaulting Party notice in writing to remedy the Default within five (5) Days, and if the notified Default is not remedied within that period of time, the non-defaulting Party may, without prejudice to any other remedies available to it, cancel the Subcontract.

129. In the event that the non-defaulting Party cancels the Subcontract pursuant to clause 128, the defaulting Party shall be liable to pay to the non-defaulting Party such costs, damages, or expenses as the non-defaulting Party may be entitled to recover at law.

DISPUTES

Notice of Dispute

130. If a Dispute arises between the Subcontractor and the Contractor under the Subcontract, a Notice of Dispute must immediately be completed and served on the other Party to the Dispute.

131. On receipt of a Notice of Dispute, the Parties must act in good faith and endeavour to resolve the Dispute between them within two (2) Days.

Adjudication

132. If the Dispute notified in the Notice of Dispute remains unresolved after two (2) Days, the Party referring the Dispute must complete a Notice of Adjudication, and send a copy to the other Party.

133. The Adjudication will be conducted in accordance with the Construction Contracts Act 2002.

134. In the event of any Dispute arising in relation to whether or not the Subcontract Works have reached Practical Completion or Completion, the Parties agree that the requirement for the adjudicator to give reasons for the determination may be dispensed with.

Arbitration

135. Any Dispute arising out of, or in connection with the Subcontract, or the subject matter of the Subcontract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the Building Disputes Tribunal.

MISCELLANEOUS

Indemnity by Subcontractor

136. The Subcontractor must indemnify the Contractor against any loss or liability arising from damage to any property or personal injury to anyone, or illness or death of anyone that arises from the Subcontractor carrying out the Subcontract Works. However, the Subcontractor's liability to indemnify the Contractor is reduced proportionally to the extent that the Contractor, or anyone for whom the Contractor is responsible, contributed to the loss or liability.

Compliance with Laws

137. In carrying out the Subcontract Works, the Subcontractor and the Contractor must comply with all statutes, regulations, and by-laws of public authorities having jurisdiction over the Subcontract Works.

Governing Laws

138. The Subcontract shall be governed by the laws of New Zealand.

Assignment

139. The Subcontract can only be sub-let or assigned if both Parties agree in writing. Such consent shall not be unreasonably withheld or delayed.

Waiver

140. Neither Party shall be considered to have waived or released any of its rights under the Subcontract except by agreement in writing.

Notices

141. Any document which is to be given to, or served on the Contractor or the Subcontractor under the Subcontract or the Construction Contracts Act 2002 (or any Regulation made thereunder) shall be sufficiently served if it is:

- (a) handed to that person or their Representative, or delivered to the address stated in the Subcontract Agreement, or as subsequently agreed in writing, in which case such service shall take effect on the day the document is handed or delivered to the addressee; or
- (b) sent by email to the email address stated in the Subcontract Agreement or as subsequently agreed in writing, in which case such service will take effect on the day the email is received at the addressee's electronic address.

142. Where any notice, communication or document is given by email, the sender shall retain evidence of the origin, destination and time of sending each email.

143. If, after reasonable efforts, physical delivery of a document cannot be effected, a document shall be deemed to have been received if it is sent to the addressee's last known place of business, habitual residence, or mailing address by registered letter or any other means that provides a record of the attempt to deliver it.

144. The communication will be deemed to have been received on the day it is so delivered.

Personal Information

145. Any personal information given by one Party to the other must be kept private unless expressly agreed otherwise in writing. The personal information shall only be used for the purpose for which it is given.

Goods and Services Tax

146. All sums are inclusive of Goods and Services Tax (GST) unless otherwise stated or set out in Schedule 1 or Schedule 2 to the Subcontract Agreement for each of the trade/item prices.