

**Optical Fiber (OF) Network Communication  
System for Nadi & Nausori Airport - Contract  
Documents**

**Dated**

April 2022

**CONSTRUCTION AGREEMENT**

**Optical Fiber (OF) Network  
Communication System for Nadi &  
Nausori Airport**

**FIJI AIRPORTS LIMITED**

**CONTRACTOR**

**FOR USE WITH NZS 3910:2013**

# **(a) Contract Agreement**

## **CONTRACT AGREEMENT**

**DATE**

**2022**

**Contract No:**

**Contract Title: NADI INTERNATIONAL AIRPORT GATES 1-3 & 2 CODE 3 OFFGATE STANDS**

### **PARTIES**

**(1) AIRPORTS FIJI LIMITED ("Principal")**

**(2) ("Contractor")**

### **BACKGROUND**

- A The Principal is undertaking the Optical Fibre Network communication cable is intended to replace the aging copper underground communication at Nadi & Nausori airport and provide the required reliable communication system. The Nadi airport will have a hybrid network communication system using Fiber Optical communication and Radio link solution and Nausori airport will have a fully Fibre Optical communication solutions. to support the current and future CNS/MET system for ATC operations. ("**Project**")
- B The Contract Works form part of the Project.
- C The Contractor has submitted a contract tender price to carry out, complete handover and remedy the Contract Works.
- D The Principal has accepted the Contractor's submission upon and subject to the terms and conditions of this Contract.
- E This Contract is split into two separable Portions. SP1 and SP2. SP1 is Nausori and SP2 is Nadi.

### **AGREED TERMS**

#### **1. DEFINITIONS**

Words and phrases in this Contract Agreement will have the meanings given to them in 1.2 of the General Conditions (as supplemented and amended by the Special Conditions in Schedules 1 and 2), unless the context requires otherwise.

#### **2. CONTRACTOR TO PERFORM THE CONTRACT WORKS**

The Contractor agrees to carry out, complete, handover and remedy defects in relation to the Contract Works in accordance with the Contract.

### 3. PRINCIPAL TO PAY THE CONTRACT PRICE

The Principal agrees to pay the Contractor the Contract Price of \$????????? **Fijian Dollars** or such greater or lesser sum as shall become payable under the Contract, together with Value Added Tax (where applicable), at the times and in the manner provided in the Contract.

### 4. EACH PARTY TO FULFIL ALL OTHER OBLIGATIONS

Each party agrees to:

- (a) the terms and conditions as set out in the Contract; and
- (b) carry out and fulfil all other obligations imposed on that party by the Contract.

### 5. CONTRACT DOCUMENTS

The Contract is comprised of the following documents:

*The Contract terms and conditions*

- (a) this Contract Agreement;
- (b) Schedule 1: Special Conditions of Contract - Specific Conditions of Contract – as attached;
- (c) Schedule 2: Special Conditions of Contract - Other Conditions of Contract – as attached;
- (d) the General Conditions of Contract NZS 3910:2013 (being clauses 1 - 15 of NZS 3910:2013);

*The Contract Works*

- (e) Schedule 17: Technical Specifications – as attached;
- (f) Schedule 18: Drawings – as attached;
- (g) Schedule 19: The Method of Works Plan - as referenced, listed or attached;

*The Price*

- (h) Schedule 20: Schedule of Prices - as attached;

*The Other Schedules*

- (i) The other schedules to the Contract being:
  - (i) Schedule 3: Form of Contractor's Performance Bond - as attached;
  - (ii) Schedule 4: Form of Principal's bond – NOT USED;
  - (iii) Schedule 5: Form of Contractor's bond in lieu of retentions refer schedule 3 ;
  - (iv) Schedule 6: Form of Producer Statement – Construction – as per NZS 3910:2013;
  - (v) Schedule 7: Information on Contractor arranged construction insurance - as per NZS 3910:2013;
  - (vi) Schedule 8: Information on Contractor arranged plant insurance - as per NZS 3910:2013;
  - (vii) Schedule 9: Information on public liability insurance - as per NZS 3910:2013;

- (viii) Schedule 10: Information on Contractor arranged motor vehicle insurance - as per NZS 3910:2013;
- (ix) Schedule 11: Information on Contractor arranged professional indemnity insurance - as per NZS 3910:2013;
- (x) Schedule 12: Information on Principal arranged construction insurance - as per NZS 3910:2013;
- (xi) Schedule 13: Forms of Contractor and Subcontractor warranty - as attached;
- (xii) Schedule 14: Agreement for off-site Materials (Contractor and Subcontractor) - NOT USED;
- (xiii) Schedule 15: Practical Completion Certificate - as per NZS 3910:2013;
- (xiv) Schedule 16: Final Completion Certificate - as per NZS 3910:2013;
- (xv) Schedule 21: Form of Continuity Deed - as attached;
- (xvi) Schedule 22: Form of Parent Company Guarantee - as attached;

*The tender documents*

- (j) Schedule 24: post tender correspondence and documents - as referenced, listed or annexed;
- (k) Schedule 25: Contractor's tender – as referenced, listed or annexed; and
- (l) Schedule 26: notices to tenderers – as referenced, listed or annexed.

## **6. ORDER OF PRECEDENCE**

The documents comprising the Contract shall be taken as mutually explanatory, but in the case of ambiguity or conflict the priority of documents shall be as listed in clause 5 above, with each document prevailing over a document lower in the list.

## **7. OPERATIONAL CONTINUITY**

- (a) The Contractor acknowledges and agrees that the Principal's Airport is to remain fully operational throughout the Contract Works acknowledging that the Principal will provide the Contractor access to defined parts of the Airport for the purposes of carrying out the Contract Works during defined hours of works and such defined parts will change in accordance with an agreed works programme as set out in the Method of Works Plan.
- (b) The Contractor acknowledges that this is a fundamental requirement for the undertaking of the Contract Works by the Contractor.

## **8. READABILITY**

This clause is included to assist with the readability of the Contract:

- (a) the General Conditions are comprised of clauses 1 - 15 of NZS 3910:2013;
- (b) the Special Conditions are comprised of:
  - (i) Schedule 1 - Special Conditions of Contract - Specific Conditions of Contract; and

- (ii) Schedule 2 - Special Conditions of Contract - Other Conditions of Contract;
- (c) the General Conditions are, for the purposes of the Contract:
  - (i) supplemented as set out in Schedule 1 - Special Conditions of Contract – Specific Conditions of Contract; and
  - (ii) amended as set out in Schedule 2 – Special Conditions of Contract – Other Conditions of Contract;
- (d) all Schedules to NZS 3910:2013 are either incorporated by reference, deleted or replaced, as set out in this Contract Agreement; and
- (e) where the General Conditions make reference to a Schedule, such reference will be deemed to be a reference to the corresponding Schedule in this Contract Agreement.

**Executed as an agreement.**

**EXECUTED** for and on behalf  
of **FIJI AIRPORTS LIMITED** as the  
Principal by its Authorised Signatory(s)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Print Name]

in the presence of:

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

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

**Note:**  
-Person authorised by constitution - signature must be witnessed

**EXECUTED** for and on behalf )  
of **TBA Contractor** as the Contractor )

by its Authorised Signatory(s) / )  
Attorney(s)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Print Name]

in the presence of:

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

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

**Note:**

- Person authorised by constitution - signature must be witnessed
- Agents authorised under s55 Companies Act are authorised to act on behalf of the Company.

**(b) Preferred Tenderer**



**(Preferred Tenderer letter) go in here)**

# **(c) & (d) Special Conditions of Contract**

**SPECIAL CONDITIONS OF CONTRACT**

The Special Conditions of Contract are comprised of:

1. Schedule 1 Special Conditions of Contract – Specific Conditions of Contract; and
2. Schedule 2 Special Conditions of Contract – Other Conditions of Contract.

## SCHEDULE 1 SPECIAL CONDITIONS OF CONTRACT – SPECIFIC CONDITIONS OF CONTRACT

Clause numbers below refer to clauses in the General Conditions.

NZS3910:2013 Conditions of Contract for Building and Civil Engineering Construction.

Clause	Title and subject matter	Specific condition data <i>(expand cells if required or add a reference to further detail provided in Schedule 2)</i>
<b>1</b>	<b>INTERPRETATION</b>	
<b>1.2</b>	<b>Definitions</b>	
	The Principal is:	Airports Fiji Limited
	of:	AFL Compound, Namaka, Nadi Airport, Nadi.
<b>1.2, 10.2</b>	<b>Separable portions</b>	
	Are there any separable portions in this contract?	Yes
	If yes, describe the Separable Portions (SP)	SP1 All works excluding Sp2 SP2 Nadi Airport Works  Refer Respective Bills of Quantities and Separable portions diagram included in
<b>2.</b>	<b>THE CONTRACT</b>	
<b>2.1</b>	<b>Type of contract</b>	
	This contract is a:	Measure and value contract governed by 2.3
<b>2.5</b>	<b>Local authority contracts, contracts in public places, and road contracts</b>	
2.5.1	Is this Contract a local authority contract to which 2.5.2 applies?	No
2.5.3	Is this contract a contract in a public place to which B1 and B2 of Appendix B apply?	No
2.5.4	Is this contract a road contract to which Appendix B applies?	No
	If yes, the allowance under B3 shall be:	
<b>2.6</b>	<b>Evidence of contract</b>	
2.6.2	How is the Contract Agreement to be executed?	As stated in 2.6.2

Clause	Title and subject matter	Specific condition data <i>(expand cells if required or add a reference to further detail provided in Schedule 2)</i>
2.7	<b>Documents prepared by the Engineer or Principal</b>	
2.7.1	Copies of the Contract shall be supplied without charge to the Contractor in the following electronic form:	PDF
2.8	<b>Documents prepared by the contractor</b>	
2.8.2	Copies of documents referred to in 2.8.2 shall be supplied without charge to the Engineer:	
	Number of hard copy sets:	Three
	In the following electronic form:	PDF
3.	<b>BONDS</b>	
3.1	<b>Contractor's bond</b>	
3.1.1	Is a Contractor's Bond required?	Yes
3.1.2	If yes, the amount of the Contractor's Bond shall be:	<p>The Contractor shall provide two bonds to the Principal under clause 3.1.2 which shall be for an aggregate maximum of 5% of the Contract Price of each applicable Separable Portion as follows:</p> <p>(a) <b>Bond 1:</b> one of 2.5% of the Contract Price with the bond not being released until the Contract Works of each Separable Portion have reached Practical Completion, in accordance with the Contract; and</p> <p>(b) <b>Bond 2:</b> one of 2.5% of the Contract Price not being released until on the date of issue of all Final Completion Certificates for the applicable Separable Portions).</p> <p>Each Separable Portion will have its own Bonds established.</p>
3.2	<b>Principal's bond</b>	
3.2.1	Is a Principal's Bond required?	No
4.2	<b>Nominated subcontractors</b>	
4.2.1	Nominated subcontractors are:	Nil, noting that a Deed of Supplier Payment shall be entered into by the Contractor for the Supply of Readymix Concrete which enables

Clause	Title and subject matter	Specific condition data <i>(expand cells if required or add a reference to further detail provided in Schedule 2)</i>
		the Principal to pay for Concrete on the Contractor's behalf.
<b>5.</b>	<b>GENERAL OBLIGATIONS</b>	
<b>5.4</b>	<b>Possession of the site</b>	
5.4.1	The contractor shall be given possession of the site	
	(a) On the following date	16 January 2020 for the undertaking of Enabling work activities, however the Principal may change this date at its sole discretion.
5.4.3	Limits on the contractor's right of entry to adjoining properties are:	The Contractor is responsible for arranging for itself, at its own cost, the right of access and the use of or appropriate rights in respect of (including the right to enter upon and do any act upon) any adjoining property or other property which it may choose to use for carrying out the Contract Works, where it requires
<b>5.5</b>	<b>Separate contractors</b>	
5.5.1	Separate contractors who may be carrying out work on the site concurrently with the Contract Works are:	<ul style="list-style-type: none"> <li>• The Principal's maintenance contractors</li> <li>• Air Terminal Services</li> <li>• Matrix Security Services</li> <li>• JUHI</li> <li>• JUHI's nominated installation contractors</li> <li>• The Principal's staff and AGL installation team.</li> </ul>
5.5.2	Are facilities for separate contractors required?	No
<b>5.6</b>	<b>Care of the works and site</b>	

Clause	Title and subject matter	Specific condition data <i>(expand cells if required or add a reference to further detail provided in Schedule 2)</i>
5.6.6(g)	Further risks specifically excepted are:	The Contractor accepts the risk that the asphalt surfacing of the airside areas are in a dilapidated state and the damage caused to the asphalt surface of the central 18m of the runway by construction vehicles will need to be remediated at no cost to the principal, noting that traffic management will need to be implemented to restrict construction vehicles to outer runway outer surface areas
<b>5.10</b>	<b>Programme</b>	
5.10.4	Is the programme required to be a comprehensive programme?	Yes
5.10.4(e)	If yes, other requirements for the comprehensive programme are:	<p>Liaison and meetings (including monthly over the life of the project) with the Principal's appointed scheduling consultant to further develop the program such that it fully completed and reflects the following:</p> <ul style="list-style-type: none"> <li>- The contract program needs to be further developed and expanded to reflect an adequate level of detail. This program needs to be supported by plant productivity and assessment calculations on the key activities such that the specific requirements for the plant and equipment (and any necessary redundancy planning ) are explicitly understood.</li> <li>- inclement weather is allocated proportionately across the program and tracked monthly.</li> <li>- Compliance with the programming requirements of the Operational Specification.</li> </ul> <p>The Contractor agrees to work with the scheduler such that the Contractor's program is fully reflective of the intent of this engagement such that equipment planning and redundancy is clearly documented.</p>
5.10.5	The comprehensive programme shall use the following software:	Microsoft Project
5.10.6	Updates of the comprehensive programme shall be provided at the following intervals:	The lesser of monthly or following an event affecting the programme

Clause	Title and subject matter	Specific condition data <i>(expand cells if required or add a reference to further detail provided in Schedule 2)</i>
<b>5.11</b>	<b>Compliance with laws</b>	
5.11.3	Exceptions to the Principal's obligations to obtain licences under 5.11.3 are:	The Contractor shall be responsible for payment and recovery of any refundable deposits associated with any licences required by a territorial authority
5.11.4	Exceptions to the Contractor's obligation to give notices and obtain other licences under 5.11.4 are:	No Exceptions
<b>5.17</b>	<b>Safety plan</b>	
	Is a Site-specific safety plan required to be prepared by the contractor?	Yes – to be submitted within 15 Days of the Acceptance of Tender
<b>5.18</b>	<b>Quality plan</b>	
	Is a quality plan required to be prepared by the Contractor?	Yes – to be submitted within 15 Days of the Acceptance of Tender
<b>5.19</b>	<b>Traffic management plan</b>	
	Is a traffic management plan required to be prepared by the Contractor?	Yes – to be submitted within 15 Days of the Acceptance of Tender
<b>5.20</b>	<b>As-built drawings and operation and maintenance manuals</b>	
5.20.1(a)	Are as-built drawings required to be prepared by the Contractor?	Yes
5.20.1(b)	Are operation and maintenance manuals required to be prepared by the Contractor?	Yes
<b>6.</b>	<b>THE ENGINEER</b>	
<b>6.1</b>	<b>Appointment of Engineer</b>	
6.1.2	The Engineer is:	TBA
	whose professional qualification is:	TBA
<b>8.</b>	<b>INSURANCES</b>	
<b>8.1</b>	<b>General</b>	
8.1.1	The party identified below shall arrange the following insurances referred to in the following clauses:	
	8.3 or 8.8 Construction	Contractor



Clause	Title and subject matter	Specific condition data <i>(expand cells if required or add a reference to further detail provided in Schedule 2)</i>
	8.8 Existing structure(s) and contents	Principal, except the Fiji Airways Taxiway refer NTT0010 regarding Contractor required obligations (refer 8.8.2 (a))
	8.4 Plant	Contractor
	8.5 or 8.9 Public liability	Contractor
	8.5.2 Motor vehicle liability	Contractor
	8.6 Professional indemnity	<p>Contractor, Professional Indemnity Insurance is required where the Contractor has a design risk under the contract terms. On this contract the design risk for the concrete and asphalt mix design has been transferred to the Contractor.</p> <p>The Contractor may at its own risk utilise the Supplier's Professional Indemnity or Product Liability policies to address the requirements of this professional indemnity obligation. However, the Principal may at its sole discretion reject insurances that do not meet the terms of the contract and require the Contractor to provide the Professional Indemnity Insurance.</p>
8.1.6	The following forces of nature shall be specifically insured under 8.3 or 8.8 as applicable:	
	(a) Landslip:	Yes
	(b) Earthquake:	Yes
	(c) Tsunami:	Yes
	(d) Tornado:	Yes
	(e) Cyclone:	Yes
	(f) Storm:	Yes
	(g) Flood:	Yes
	(h) Lightning strike:	Yes
	(i) Volcanic activity:	Yes
	(j) Hydrothermal activity:	Yes

Clause	Title and subject matter	Specific condition data <i>(expand cells if required or add a reference to further detail provided in Schedule 2)</i>
	(k) Geothermal activity:	Yes
<b>8.3, 8.8</b>	<b>Construction insurance</b> <i>(These items are required to be completed whether the contractor or the Principal is the insuring party (see 8.1 above))</i>	
8.3.2, 8.8	The following shall have their respective interests noted in the construction insurance policy:	Contractor and its Subcontractors and Airports Fiji Limited as Principal
8.3.3, 8.8	Where construction insurance is required (see 8.1 above), the amount of insurance to be effected for the Contract Works and Materials shall be for not less than the sum of the Contract Price, after the acceptance of the tender or other offer, plus the following allowances:	
	(a) An allowance for the Cost of demolition, disposal and preparation for replacement work, equal to:	
	(ii) The percentage in the right hand column of the contract price adjusted as above:	5%
	(b) An allowance for professional fees including the cost of clerks of works and inspectors, equal to:	
	(ii) The percentage in the right hand column of the contract price adjusted as above:	\$ Nil
	(c) An allowance for items to be incorporated in the contract works, the cost of which is not included in the contract price, equal to:	
	(i) The amount in the right hand column:	\$ Nil
	(d) An allowance for an increase in the contract price due to variations, equal to:	
	(ii) The percentage of the contract price adjusted as above, stated in the right hand column:	10%
	(e) An allowance for increased construction costs due to inflation, equal to:	
	(i) The amount in the right hand column:	\$ Nil
<b>8.4</b>	<b>Contractor arranged plant insurance</b>	
	Where plant is required to be insured (see 8.1 above):	
	(b) The Contractor shall insure each item of plant on the site having a current market value of more than:	\$100,000.00
<b>8.5</b>	<b>Contractor arranged public liability insurance</b>	

Clause	Title and subject matter	Specific condition data <i>(expand cells if required or add a reference to further detail provided in Schedule 2)</i>
8.5.1	Where required (see 8.1 above), public liability insurance shall be effected by the Contractor for an amount not less than:	\$10,000,000.00
	Such public liability insurance shall include cover for:	
	<ul style="list-style-type: none"> <li>For liability arising out of vibration, weakening or removal of support of not less than:</li> </ul>	\$5,000,000.00
	<ul style="list-style-type: none"> <li>Liability for loss or damage to underground services not less than:</li> </ul>	\$1,000,000.00
	<ul style="list-style-type: none"> <li>For liability arising from the use of construction machinery, including hired plant, except when being used as a motor vehicle as defined in the Land Transport Act 1998, of not less than;</li> </ul>	\$5,000,000.00
8.5.2	Where required (see 8.1 above), motor vehicle third party liability insurance shall be effected for an amount not less than:	\$1,000,000.00
<b>8.6</b>	<b>Contractor arranged professional indemnity insurance</b>	
8.6.1	Where required (see 8.1 above), professional indemnity insurance for design by the Contractor shall be effected for an amount not less than	
	<ul style="list-style-type: none"> <li>For any one claim:</li> </ul>	\$5,000,000.00
	<ul style="list-style-type: none"> <li>And for an amount: in the aggregate of:</li> </ul>	\$5,000,000.00
8.6.2	Sub-limits of liability for design of parts of the Contract  Works by Subcontractors shall be not be less than: <del>(list specific part(s) of Contract Works and applicable \$ sub-limits for any one claim and for an amount in the aggregate, or state if not required)</del>	\$5,000,000.00
<b>8.8</b>	<b>Principal arranged construction insurance (refer also to 8.3)</b>	
	In accordance with 8.7.2, the insurance policy wording title for 8.8.1 and 8.8.2 (a), (b), and (c) is:	NA
	In accordance with 8.7.2, the extraordinary exclusions, conditions, warranties or endorsements to the policy for 8.8.1 and 8.8.2 (a), (b), and (c) are:	NA
8.8.1	Where the Principal is required to effect construction insurance (see 8.1 above):	
	The lead insurer is:	NA

Clause	Title and subject matter	Specific condition data <i>(expand cells if required or add a reference to further detail provided in Schedule 2)</i>
	Address of lead insurer:	NA
	The Nominal Deductibles are:	
	• For damage arising out of the Contract Works	NA
	• For other claims:	NA
	• For natural perils:	NA
8.8.2(a)	The existing structures are:	Fiji Airports carry their own MDBI policy for their own properties. Deductible is 50,000 and for natural perils it is \$50,000 or 5% whichever is greater.
	The lead insurer is:	Broker is Marsh, various insurers
	Address of lead insurer:	NA
	The Nominal Deductibles are:	
	• For damage arising out of the Contract Works	\$50,000
	• For other claims:	\$50,000
	• For natural perils:	\$50,000
8.8.2(b)	Other structures in the vicinity are:	NA
	The replacement value to be insured is:	NA
	The lead insurer is:	NA
	Address of lead insurer:	NA
	The Nominal Deductibles are:	
	• For damage arising out of the Contract Works	\$50,000
	• For other claims:	NA
	• For natural perils:	NA
8.8.2(c)	Contents insurance:	
	The replacement value to be insured is:	NA
	The lead insurer is:	NA

Clause	Title and subject matter	Specific condition data <i>(expand cells if required or add a reference to further detail provided in Schedule 2)</i>
	Address of lead insurer:	NA
	The Nominal Deductibles are:	
	• For damage arising out of the Contract Works	NA
	• For other claims:	NA
	• For natural perils:	NA
<b>9.</b>	<b>VARIATIONS</b>	
<b>9.3</b>	<b>Valuation of variations</b>	
9.3.9	For On-site Overheads:	
	<b>A.1.</b> The prices and rates in the Schedule of Prices are inclusive of full allowance for On-site Overheads	Applies
9.3.10	For Off-site Overheads and Profit:	
	a. The prices and rates in the Schedule of Prices are inclusive of full allowance for Off-site Overheads	Applies
9.3.11	For time-related Cost, the Working Day rate in compensation for time-related On-site Overheads and Off- site Overheads and Profit in relation to an extension of time to be applied in accordance with 9.3.11 is:	Require Time related costs to be certified by the Engineer as reasonably and necessarily incurred due subject to the daily cap of \$10,000 and the maximum cap of 20% of the Contract Value shall be due and payable to the Contractor.  Except as stated, the Contractor has no claim of any kind whatsoever for delay or disruption costs arising out of the Works Under Contract.
	a. Reasonable compensation	Applies
9.3.15	For processing of Variations, the percentage to be paid in accordance with 9.3.15 is:	
	a. Shall not be paid	Applies

Clause	Title and subject matter	Specific condition data <i>(expand cells if required or add a reference to further detail provided in Schedule 2)</i>
<b>10</b>	<b>TIME FOR COMPLETION</b>	
<b>10.2</b>	<b>Due Date for Completion</b>	
10.2.1	The periods to be used for calculating the Due Date for Completion are:	
	a. For the Contract Works:	<p>Separable Portion 1 to be for 100 Calendar days from the date of mobilisation. The Program for Separable Portion 1 includes for ?? calendar days of inclement weather.</p> <p>Separable Portion 2 to be for 40 Calendar days from the completion of Separable Portion 1. The Program for Separable Portion 2 includes for ?? calendar days of inclement weather.</p>
10.3.1(b)	Allowance for inclement weather sufficient to interfere with the works	Specified in 10.3.9 of Schedule 2
<b>10.4</b>	<b>Practical Completion Certificate</b>	
10.4.5	Prior to issue of the Practical Completion Certificate:	Select one to apply (a), (b) or (c)
	a. Producer Statements in the form of Schedule 6 are required	Applies
	<b>A.2.</b> As-Built drawings as set out in the Specification are required	Applies
<b>10.5</b>	<b>Damages for late completion</b>	
	Liquidated damages shall be applied as follows:	
	In respect of the Contract Works	\$500.00 per calendar day.
<b>10.6</b>	<b>Bonus for early completion</b>	
10.6.1	Is a bonus to be payable?	No
<b>11.</b>	<b>DEFECTS LIABILITY</b>	
<b>11.1</b>	<b>Defects Notification Period</b>	
	The defects notification Period shall be: <i>(three months unless otherwise stated)</i>	

Clause	Title and subject matter	Specific condition data <i>(expand cells if required or add a reference to further detail provided in Schedule 2)</i>
	For the Contract Works:	52 weeks
<b>11.3</b>	<b>Final Completion Certificate</b>	
11.3.2	Prior to issue of the Final Completion Certificate:	
	a. Warranties issued in accordance with 11.5	Applies
	b. Guarantees issued in accordance with 11.6	Applies
<b>11.5</b>	<b>Warranties</b>	
11.5.1	Prior to issue of the Final Completion Certificate,	
11.5.2	The Contractor shall provide warranties as set out in Schedule 13, for the following items of work:	<p>Applies</p> <p>For the following Subcontractors, the Contractor will provide a Subcontractor warranty in the form set out in Schedule 13A and continuity guarantee in the form set out in Schedule 21, with each duly signed by both the Contractor and the applicable Subcontractor:</p> <ul style="list-style-type: none"> <li>• Fibre optic cabling</li> <li>• Active Equipment</li> </ul> <p>To the extent that the Contractor has not subcontracted packages of the Contract Works, the Contractor will provide the Contractor warranty in the form set out in Schedule 13B, duly signed by the Contractor.</p>
<b>11.6</b>	<b>Guarantees</b>	
11.6.1	A Parent Company Guarantee is required	Does not apply.
<b>12.</b>	<b>PAYMENTS</b>	
12.1	<b>Contractor's payment claims</b>	

Clause	Title and subject matter	Specific condition data <i>(expand cells if required or add a reference to further detail provided in Schedule 2)</i>
12.1.3(b)(i) ii)	a. Advances for Materials delivered to the Site but which have yet to be incorporated in the Contract Works shall be made subject to the following conditions.	Advances up to the total of 50% of the Contract sum of the BoQ item as applicable will be payable to the Contractor as an advance for materials, provided the sum is secured against a Bank Guarantee and Schedule 14 is completed and provided the cost of the materials can be substantiated by supplier invoice or similar to the satisfaction of the Engineer.
12.1.3(b)(i) v)	Advances for Temporary Works or Plant	Advances up to the total of 50% the plant value substantiated by supplier invoice , provided the sum is secured against a Bank Guarantee and Schedule 14 is completed, transit insurance is in place to the satisfaction of the Engineer.
	a. Advances for Temporary Works or Plant shall not be made	Applies only to major plant procurement of greater than \$100,000 and excludes Temporary Works
12.1.3(b)( v)	Advances for Materials not yet on Site	
	a. Advances for Materials not on Site shall be made, subject to the following conditions	Advances up to the total of 50% of the Contract sum for the associated BoQ item will be payable to the Contractor as an advance for materials, provided the sum is secured against a Bank Guarantee and Schedule 14 is completed and provided the cost of the materials can be substantiated by supplier invoice or similar to the satisfaction of the Engineer.
12.3	Retention monies	



Clause	Title and subject matter	Specific condition data <i>(expand cells if required or add a reference to further detail provided in Schedule 2)</i>
	<b>12.3.1, 12.3.2</b> Retentions shall or shall not apply as follows:	
12.3.1	Retentions shall apply.	Applies
12.3.2	And the limit of the total sums retained shall be in accordance with the following:	
	a. For the Contract Works, a total retention of: 5% until 5% of the Contract Sum is reached With a defects liability retention of half the total retention	Applies
	b. The retention scale in the right hand column	N/A
12.3.3	Bond in lieu of retention shall not apply	Applies
	a. The Contractor shall provide a bond in lieu of retentions	N/A
<b>12.8</b>	<b>Cost fluctuations</b>	
	a. Cost fluctuations shall not be paid	Applies
<b>12.13</b>	<b>Goods and services tax (Value Added Tax)</b>	
<b>12.13.2</b>	Payment Schedules provided by the Engineer	
	a. Shall not be in the form of a tax invoices	Applies
<b>13</b>	<b>DISPUTES</b>	
<b>13.4</b>	<b>Arbitration</b>	
<b>13.4.3</b>	If required, the arbitrator shall be nominated by the following person:	President of the Mediators' and Arbitrators' Institute of NZ
<b>15</b>	<b>SERVICE OF NOTICES</b>	
<b>15.1.2</b>	For the purpose of service of written notice:	
	a. The address of the Principal is:	
	Postal address:	Airports Fiji Limited AFL Compound, Namaka, Nadi Airport, Nadi
	Delivery address:	As above

Clause	Title and subject matter	Specific condition data <i>(expand cells if required or add a reference to further detail provided in Schedule 2)</i>
	Mark for the attention of:	Ashley Kumar
	Email address:	ashleyk@fijiairports.com.fj
	Other agreed means of electronic communication and address detail:	Email only
	b. The address of the Contractor is:	Insert
	Postal address:	Insert
	Delivery address:	Insert
	Mark for the attention of:	Insert
	Email address:	Insert
	Other agreed means of electronic communication and address detail:	Email only
	c. The address of the Engineer is:	
	Postal address:	Insert
	Delivery address:	Insert
	Mark for the attention of:	Insert
	Email address:	Insert
	Other agreed means of electronic communication and address detail:	Email only

## SCHEDULE 2: SPECIAL CONDITIONS OF CONTRACT - OTHER CONDITIONS OF CONTRACT

The provisions in this Schedule are in addition to, but follow the clause numbering set out in, the General Conditions. All references are references to the clauses in the General Conditions (as amended by this Schedule).

**1.2 Add** new definitions as follows:

**Airport** means Nadi International Airport.

**Airside** Means the area within an airport perimeter designated for the operation, use, parking or maintenance of aircraft, to include all areas incidental to such uses, up to and including the point of departure or arrival from or into a terminal building used for:

- (a) The embarkation and/or disembarkation of passengers;
- (b) The loading and/or unloading of baggage or cargo;

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(c) Access/egress for authorised personnel to move between the Airside and Non-Airside areas.

**Claim** means any claim for any right or entitlement to any additional payment, or to any extension of time, a Variation, any additional Cost, adjustment of the Contract Price or any other form of relief under, in relation to or in connection with the Contract or otherwise.

**Guarantor** means [•] who will provide a Parent Company Guarantee to the Principal in accordance with clause 11.6.

**HSWA** Means the Health and Safety at Work Act 1996.

**Insolvency Event** Occurs when a Person:

- (a) Becomes bankrupt;
- (b) Goes into liquidation;
- (c) Has a receiver, administrator or statutory manager appointed;
- (d) Is insolvent or unable to pay its indebtedness as it falls due;
- (e) Stops or suspends, or threatens to stop or suspend, payment of any of its indebtedness, or begins negotiations or takes any proceedings to reschedule any of its indebtedness;
- (f) Makes, or proposes to make, an assignment, arrangement, moratorium or composition with, or for the benefit of, its creditors in respect of or affecting any of its indebtedness (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Principal);
- (g) Something having a substantially similar effect to (a) to (f) happens in connection with that Person under the law of any jurisdiction

**Landside** Means areas close or adjacent to Airside or Non-Airside such that activities or things upon those Landside areas from time to time have real potential in the Principal's view to affect or interfere with airport operations on or about the Airside or Non-Airside areas.

**Method of Works Plan** Means the plan setting out (including but without limitation):

- (a) the different parts of the Airport on or over or under which the Contractor will have access for carrying out the Contract Works;
- (b) the dates and times on which the Contractor requires access to the different parts of the Airport; and
- (c) incidental access routes, either within the area where the Contract Works will be carried out and / or to and from that area, to carry out the Contract Works.

**Non-Airside** Means all other areas within an airport perimeter which do not fall within the Airside boundaries accessible to the public, terminal buildings, other than any movable air-bridges or similar equipment which provide direct access to aircraft and which, for the purposes of this definition, shall be considered Airside.

**Parent Company Guarantee** means a Parent Company Guarantee substantially in the form set out in Schedule 22.

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**Insert the following at the end of the definition of Site:** "and, for the avoidance of doubt, the places on or over or under which the Contract Works are to be carried out shall change in accordance with the Methods of Works Plan".

**Shift** Means each period during which the Contractor is entitled to access parts of the Airport for carrying out the Contract Works as set out in the Method of Works Plan.

**Add** a new clause "2.7.8":

**2.7.8** The Specifications are divided into various sections for convenience and reference only. No claims will be accepted in respect of work not specifically mentioned in a particular section but which is provided for, expressed or implied elsewhere in the Specifications or the Drawings.

**2.8.2 Add** in the second sentence after the words "...such documents" the words ", and including design calculations,".

**2.9.1 Delete** the contents and **substitute:**

The Contractor shall not directly or indirectly assign or transfer any of its rights or purport to novate any of its obligations arising out of this Contract to a third party without the Principal's prior written consent. Such consent shall not be unreasonably withheld or delayed.

**Add** a new clause "2.11 Joint and several liability":

**2.11 Joint and several liability**

If the Contractor is a joint venture, consortium or other unincorporated grouping of two or more Persons:

- (a) Those Persons shall be jointly and severally liable to the Principal for all obligations, duties and liabilities of the Contractor under the Contract;
- (b) Those Persons shall nominate a leader with authority to bind the Contractor and each of these Persons, and shall notify the Principal in writing accordingly; and
- (c) The composition or legal status of the Contractor shall not be altered without the written consent of the Principal.

**3.1.2 Delete** in the first line "2 Months" and **substitute** "1 Month".

**Add** at the end of the paragraph:

The bond issuer shall be a registered bank in Fiji with a long term unsecured credit rating of A+ or higher, to be demonstrated to the Principal's satisfaction. If the credit rating of the issuer is at any time lower than that required above, then the Contractor must, within 10 Working Days of such event becoming known to the Contractor, provide the Principal with replacement Contractor's Bonds which meet the requirements of clause 3. The Principal agrees to release the existing Contractor's Bonds upon receipt of replacement Contractor's Bonds which meet the requirements of clause 3.

**5.1.6 Delete** the contents and **substitute:**

The parties acknowledge that the Principal has made information relating to the physical conditions relevant to the Contract Works as set out in the Specifications available to the Contractor. The Principal makes no warranty as to the sufficiency or accuracy of such information. The Contractor shall be responsible for the interpretation of all such information for the purposes of the Contract Works.

**5.3 Delete** the contents and **substitute** new clauses "5.3.1", "5.3.2", "5.3.3" and "5.3.4":

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**5.3.1** The Engineer or the Principal may object to and direct the Contractor to remove from the Contract Works or Site any employee of the Contractor or of a Subcontractor who by reason of serious misconduct (including the use of words of a sexual nature or physical behaviour or actions of a sexual nature), incompetence, or negligence in the proper performance of his or her duties is a danger to safety or welfare. An employee required to be removed shall not again be employed upon the Contract Works without the permission of the Engineer or the Principal.

**5.3.2** Where any work is carried out by a Subcontractor Airside or where there is potential either for works to affect the Airport operations of the Principal or others or where such works will potentially interfere with the general public using the Airport, then such work shall be carried out under the direct supervision of and in the presence of the Contractor at all times. The Principal may, in its sole discretion, agree to vary this requirement.

### **5.3.3 Airport Security and The Issue Of Airport Identity Cards.**

**5.3.3.1** The Contractor acknowledges that:

- (a) under the Section 20(2) of the Civil Aviation (Security) Act 1994, the Minister of Transport has designated Nadi International Airport and the associated air navigation installations as a security airport.
- (b) security is of paramount importance to the Principal.

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### **5.3.4 Character of Workers, Equipment And Methods”**

**5.3.4.1** The Contractor shall,

- a) At all times, employ sufficient labour and equipment to undertake the Contract Works to full completion in the manner and time required by the Contract, Drawings, and Specifications.
- b) All workers shall have sufficient skill and experience to perform properly the Contract Works assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the Contract Works satisfactorily.
- c) Any person employed by the Contractor or by any Subcontractor who violates any operational regulations or operational safety requirements and/or, in the opinion of the Engineer, does not perform his work in a proper and skilful manner or is intemperate or disorderly shall, at the written request of the Engineer, be removed forthwith by the Contractor or Subcontractor employing such person, and shall not be employed again in any portion of the Contract Works without approval of the Engineer.
- d) Should the Contractor fail to remove such persons or person, or fail to furnish suitable and sufficient personnel for the proper execution of the Contract Works, the Engineer may suspend the Contract Works by written notice until compliance with such orders.

**5.3.4.2** All equipment that is proposed to be used on the Contract Works shall be of sufficient size and in such mechanical condition as to meet requirements of the Contract Works and to produce a satisfactory quality of work.

Equipment used on any portion of the Contract Works shall be such that no injury to previously completed work, adjacent property, or existing airport facilities will result from its use. When the methods and equipment to be used by the Contractor in accomplishing the Contract Works are not prescribed in the Contract, the Contractor is free to use any methods or equipment that will accomplish the Contract Works in conformity with the requirements of the Contract, Drawings, and Specifications.

Failure to maintain the necessary equipment at the redundancy levels as required by the Engineer based on the Contractor's programme shall entitle the Principal to procure the plant and equipment required at the Contractor's cost and deduct any costs incurred in the

procurement delivery and operation of the equipment from the contract sum. In order for this to occur it is necessary that:

- i. The Contractor is failing to have adequate operational equipment onsite to meet the program requirements, and/or
- ii. The Contractor failing to have the necessary redundancy of equipment for critical airside works which may have operational impacts (potential impact on runway and taxiway operations).

The Engineer will then provide notice of the Contractor's failure in accordance with this clause to the Contractor and should the Contractor fail to provide a satisfactory response to the notice within 3 working days to the Engineer, the Principal shall at their sole discretion procure the required equipment.

The ownership of the procured equipment will remain that of the Contractor at the completion, or handover, of the works.

The necessary redundancy levels are determined as follows, noting all equipment will comply with the requirements stated in the project specification:

5.4.1

No	Equipment Type and Characteristics	Minimum Number
1	insert	1

Deleted and replaced with the following:

5.4.1 The Principal will provide the Contractor with the first possession of the Site on the date provided in the Special Conditions and the Contractor shall be given possession of the Site in parts progressively in accordance with the Method of Works Plan so that the Site will change in accordance with the Method of Works Plan. The Contractor must not be present on any part of the Airport unless and for so long as access to that part of the Airport is scheduled in the Method of Works Plan or the Principal or Engineer has permitted this in writing. The Contractor must follow the reasonable directions of the Engineer and the Principal from time to time in the use of and access over and across any parts of the Site that are not being actively worked on by the Contractor. Possession of the Site will confer on the Contractor a right to only such use and control of the Site as is necessary to enable the Contractor to carry out the Contract Works, and will be subject to any restrictions set out in the Contract. The Contractor acknowledges and agrees that it will have non-exclusive possession of the Site and will be required to share possession of the Site with others. Notwithstanding the foregoing, the Contractor has primary responsibility for safety and security at the Site.

5.4.2 In the second line **delete** "Special Conditions" and **substitute** "Contract".

5.4.3 Delete the first three sentences.

**Add** new clauses

5.4.7 Where the Site includes any operational part of the Airport, the Principal's facilities or any other entity's facilities, the Principal reserves the right to gain access to the Site for the purpose of carrying out routine or emergency operational or maintenance works on these facilities. The Contractor will be advised by the Engineer of routine access requirements and shall make provision for these to be carried out. Such access to facilities may be a condition of the Contractor's site access permit. The Principal shall use its reasonable endeavours to ensure that its work on the Site shall not interfere with the Contract Works but if the Contractor can demonstrate to the Engineer's satisfaction, acting reasonably, that the Principal's work causes an actual delay to the critical path and delays the Contractor from achieving Practical Completion by the Due Date for Completion, the Contractor will be entitled to an extension of time provided that the Contractor has used all reasonable endeavours to minimise and mitigate any such adverse effect and such emergency

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operation or maintenance works did not arise from an act of or contributed to by the Contractor or any person for which the Contractor is responsible.

**5.4.8** The Contractor's possession of the Site involves specific portions of the airfield and will take place over a defined time period (typically for the operational taxiway zone, during the evening curfew hours when the Airport is not operating) on a daily basis before being handed back in its entirety to the Principal before the Airport re-opening for operations. The time period, by location, is defined in the Method of Works Plan (as defined in the Specifications) which forms part of the Contract. The Contractor must hand back control and possession of the Site in its entirety to the Principal at the end of each period during which the Contractor is entitled to access parts of the Airport for carrying out the Contract Works as set out in the Method of Works Plan (**Shift**). For the avoidance of doubt, the Contractor cannot be deemed to have handed back control and possession of the Site to the Principal until it has complied with all end of Shift obligations set out in the Contract and the Specifications, as determined by the Engineer.

**5.13.1 Delete** first paragraph and **substitute**:

The Contractor (not the Principal) shall arrange for the searching of records to determine the existence and position of pipes, cables and other existing utilities on or about the Site regardless of whether such pipes, cables and other existing utilities are owned by the Principal. The cost of this investigative work shall be included in the Contract Price.

**5.13.4 Delete** paragraph and **substitute**:

As a result of the Contractor's investigations under 5.13.1, should any existing utility require relocation or alteration as approved by the Engineer, then the Contractor will immediately inform the Engineer of such requirement. The Engineer will then direct the Contractor how to proceed. The Contractor will not proceed until it receives direction from the Engineer and must comply with such direction. Any such direction will not be deemed to constitute a Variation solely by virtue of being so directed, and will not be a Variation where:

- (a) the alteration has been necessitated by any act or omission of the Contractor or any Subcontractor or any other person to which the Contractor is responsible ;
- (b) the alteration is temporary (temporary support, diversion and/or maintenance of underground utilities, whether shown on Drawings or not, will not be a Variation); or
- (c) the alteration could reasonably have been foreseen when tendering by an experienced contractor.

**5.13.5 Delete** paragraph and **substitute**:

Should any existing utility require relocation or alteration as approved by the Engineer, then the Contractor will immediately inform the Engineer of such requirement. The Engineer will then direct the Contractor how to proceed. The Contractor will not proceed until it receives direction from the Engineer and must comply with such direction.

**5.21.1 Add** paragraph at the end:

The Principal shall also be copied into the written notification of such matters.

**Add** new clause "**5.22 Publicity**":

## **5.22 Publicity**

**5.22.1** The Contractor must not and will ensure that anyone under the control of the Contractor (including Subcontractors) must not make any public announcement or representation to the public or to any media representative concerning this Contract or in relation to the operations or security at Nadi International Airport without the prior written consent of the Principal.

**Add** new clause "**5.23 Operational continuity**":

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## 5.23 Operational continuity

**5.23.1** The Contractor acknowledges and agrees that the Site and areas adjacent to or in the vicinity of the Site are part of an operational Airport (including buildings, plant, equipment, services, and utilities associated with the Airport) that are to remain operational during the performance of the Contract Works.

**5.23.2** The Contractor further acknowledges and agrees that it is of fundamental importance that the Contract Works do not in any way (directly or indirectly) interrupt or disturb the ongoing operation of the Airport other than as required by the Contract Works and agreed with the Engineer (including the interruption or disturbance of any service and/or utility needed by such facilities), and the Contractor will take all steps necessary (including restricting noise, dust, vibration and traffic movement) to ensure that the Contract Works do not in any way interrupt or disturb the operation of the Airport other than as required by the Contract Works and agreed with the Engineer.

**5.23.3** The Contractor shall take all steps and precautions necessary to ensure the continuous operation and provision of all services and utilities that may be affected in any way by the Contract Works and to avoid any disruption of services or utilities caused directly or indirectly by the Contract Works other than as required by the Contract Works and agreed with the Engineer.

**5.23.4** The Contractor warrants and undertakes to the Principal that it has made full allowance in the Contract Price for complying with the requirements of 5.23 and that the Contractor is not entitled to, and will not make, any claim for a Variation for complying with 5.23

**6.7.7 – 6.7.9 ADD** new clauses 6.7.7 to 6.7.9 as follows:

6.7.7 In addition to clauses 6.7.1, the Engineer may suspend the Contract Works if, in respect of more than three separate Shifts:

- (a) debris is found on the runway, taxiway and/or apron pavement areas after the Contractor's sweep and readiness for Site possession hand back to the Principal; or
- (b) the Contractor has not handed back control and possession of the Site in its entirety to the Principal by the deadline for the end of the Shift.

6.7.8 If the Engineer suspends the Contract Works under clause 6.7.7:

- (a) the Contractor will not be entitled to any claim for any right or entitlement to any additional payment, or to any extension of time, a Variation, any additional Cost, adjustment of the Contract Price or any other form of relief under, in relation to or in connection with the Contract or otherwise;
- (b) clause 6.7.4 shall not apply; and
- (c) the Contractor will be entitled to continue with the Contract Works only once the Contractor demonstrates to the Engineer's reasonable satisfaction that the Contractor has made the necessary changes to its working procedures and personnel to ensure that its activities do not in any way result in any of the matters referred to in clause 6.7.6 occurring in respect of any one Shift (not three Shifts as referred to in 6.7.7).

6.7.9 In addition to clauses 6.7.7 to 6.7.8, if any of the matters referred to in clause 6.7.6 occur in respect of any one Shift, the Engineer may instruct the Contractor to change its working procedures and personnel to ensure that its activities do not in any way result in any of the matters referred to in clause 6.7.6 occurring in respect of any future Shift.

**6.8.1 Add** at the end:

The Engineer's power under 6.8 to take emergency action shall extend to failure by the Contractor to comply with the health and safety requirements of the Contract.

**7.1.1 Add** at the end

where such loss, liability, damages, fines, penalties, expenses or costs arise as a direct result of the Contractor's breach of Contract or negligence.



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7.1.5 **Add** at the end

To the extent permitted by law, the maximum aggregate liability of the Contractor to the Principal under or in connection with this Contract, whether in contract, tort (including negligence), under statute or otherwise at law is 50% of the Contract Price.

**Add** new clause **7.1.6**

Notwithstanding any other term in the Agreement, the Contractor shall not be liable to the Principal for any consequential, indirect, special, punitive or exemplary damages, loss of use, loss of anticipated savings (whether direct or indirect) or for any loss of profit, revenue or product arising in relation to the Contract Works.

**Add** new clause **"8.2.9"**:

**8.2.9** The Contractor shall ensure that all Subcontractors shall take out and maintain similar insurances as referred to in 8.4 and 8.5 for their personnel, work, owned and non-owned and/or hired motor vehicles and/or construction equipment.

8.7.2 **Delete** the words "of which notice has been given in the Special Conditions".

**Add** new clause **"8.7.8"**:

**8.7.8** In effecting any insurance under the terms of this Contract, the Principal shall not be taken as:

(a) Warranting or representing that it has insured the Contractor and Subcontractors against liability or against loss or damage other than to the extent that any claim in terms of the policies may be paid by the insurers thereof; or,

(b) Relieving the Contractor or any Subcontractor of any responsibility, duty or obligation imposed generally at law or specifically under the Contract.

**Add** new clause **"8.7.9"**:

**8.7.9** All claims proceeds under the insurances arranged by the Principal under 8.8.1 will be payable to the Principal. The Principal will reimburse the Contractor in respect of any progress claim approved by the Engineer for reinstatement or repairs to the Contract Works, or any part thereof, including loss or damage to any Materials, provided that such claim has been accepted by the insurers and the proceeds from insurers have been received in full by the Principal in respect of such progress claim.

9.2.2 **Delete** in the third line after "1 Month" the words "or as soon as practical thereafter" and **substitute** "(time being of essence)".

**Add** at the end:

If the Contractor fails to give written notice to the Engineer or the Engineer's Representative within this time period then such instruction shall not entitle the Contractor to a Variation in connection with the relevant matter for which the Contractor is claiming a Variation. The service of a notice for a Variation within the relevant time period is a condition precedent to a right to be granted a Variation.

9.2.3 **Delete** in the third lines the words "or as soon as practical thereafter".

**Add** at the end:

If the Contractor fails to give written notice to the Engineer within this time period then such matter shall not entitle the Contractor to a Variation in connection with the relevant matter for which the Contractor is claiming a Variation. The service of a notice for a Variation within the relevant time period is a condition precedent to a right to be granted a Variation.

9.2.4 **Delete** in the first and second lines the words "or as soon as practical thereafter".

9.5.3 **Add** in the second line after "practicable" the words ", but no later than 20 Working Days after encountering the conditions,".

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**Add** at the end of the paragraph:

If such details are not forwarded by the Contractor within the time stated the Contractor shall not be entitled to an additional payment claim and/or an extension to the programme. The service of a notice for a Variation within the relevant time period is a condition precedent to a right to be granted a Variation and/or an extension to the programme.

10.3.1(b) **Delete** contents and **substitute** with:

Weather sufficiently inclement to interfere with progress of critical path activities for the works as agreed with the Engineer beyond any allowance provided in the Special Conditions and as applied in 10.3.9.

10.3.2(b) **Delete** in the second line after “extension,” the words “as soon as practicable thereafter” and **substitute** “except as otherwise set out in the Contract”.

10.3.2 Insert the following at the end:

- (d) The circumstance relied upon as the grounds for the extension is a circumstance specified or referred to in 10.3.1;
- (e) The Contractor demonstrates to the Engineer's satisfaction, acting reasonably, that the circumstance causes an actual delay to the critical path and delays the Contractor from achieving Practical Completion by the Due Date for Completion; and
- (f) If the extension of time claimed by the Contractor is affected by concurrent delay, the claim is only for the net effect of the relevant concurrent delay, and then only to the extent that such concurrent delay entitles the Contractor to an extension of time. For example, concurrent delay, for the purposes of this clause 10.3.2(f), is where there is a delay cause that, on its own, would entitle the Contractor to an extension of time (for example, delay by the Principal in providing site access) together with another delay cause that, on its own, would not entitle the Contractor to an extension of time (for example delay by the Contractor in procuring materials or equipment so that it would not have been able to carry out work on that part of the Site if access had been provided when due).

**Add** new clause **10.3.8**

**10.3.8** The Contractor and Principal each acknowledge that the Contract Works are to be undertaken in an operating environment namely Nadi Airport. Due to the nature of the Principal's Airport operation the Principal may (notwithstanding 6.7) require access to the Site at any time in relation to Airport operations. If this event occurs the Contractor will, if required, and at the Engineer's request, cease work on the Site and/or vacate and clear the Site for such period of time as the Engineer directs. Such event will be deemed to be circumstances not reasonably foreseeable by an experienced Contractor for the purposes of 10.3.1(f) except where such event occurs as a direct result of the Contractor's actions or omissions in breach of this Contract.

**Add** new clause **10.3.9**

Allowance for delays to the Critical Path activity due to inclement weather for SP 1 shall be 117 calendar days.

In submitting its tender, the Contractor makes allowance in its programme for the allowance stated in this clause for weather sufficiently inclement to interfere with the progress of the works and this is a reasonable time, taking into consideration the climatic and other factors prevailing in the locality of the work during periods of the year that the work will be carried out.

Notwithstanding any other provisions in the Contract, entitlement for an extension of time will be assessed once the Contract Works have achieved Practical Completion. An extension of time for weather sufficiently inclement to interfere with progress of the Contract Works under 10.3.1(b), shall not be awarded until the full 18 calendar week allowance for inclement weather is consumed.

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The Contractor, on a day-to-day basis, shall record actual inclement weather days and the impact of such weather on the Contract Works and must forward that information to the Engineer before 5pm on the day to which the information relates. If such details are not forwarded by the Contractor to the Engineer within the specified time the Contractor may not be entitled to an extension of time at the discretion of the Engineer. The service of this information within the relevant time period is a condition precedent to a right to be granted an extension of time.

Weather sufficiently inclement to interfere with progress of the Contract Works means:

- (1) prevent work for 50% or more of the Contractor's workshift;
- (2) delay work critical to the timely completion of the project; and
- (3) be documented by the Contractor. The Contractor shall notify the Engineer in writing if work cannot proceed on a given date, within 2 calendar days of an "unusually inclement" weather day. The Engineer will use such written notification in determining the number of days for which work was delayed during each month.

Inclement weather may be agreed between the Contractor and the Engineer prior to commencement of that day's work where the forecast weather prevents commencement of critical weather dependant activities.

10.4.1 **Add** at the end of the clause:

Due to the location and nature of the Contract Works being on the Airport runway, little opportunity will be available for the Contractor to be subsequently given access by the Principal to attend to minor defects and minor omissions. The Contractor must complete all of the Contract Works, including any Separable Portions, to the specified standard prior to Practical Completion so that any follow up defect or incomplete works is minimised.

**Add new clause 10.5.4**

The maximum aggregate liability of the Contractor to the Principal for delay in relation to the Contract Works, whether in liquidated damages or otherwise, is the Principal's sole and exclusive remedy for delay and is limited to 20% of the Contract Price.

11.1 **Add** at the end of the paragraph:

If any part of the Contract Works is replaced or repaired during the Defects Notification Period, except for minor defects as agreed with the Engineer, the replacement or repaired item shall carry an extended Defects Notification Period of no less than 104 weeks calculated from the date of completion of such replacement or repair works to the satisfaction of the Principal. If the Principal requires, at its sole discretion, in respect of the extended Defects Notification Period for replaced or repaired items, the Contractor must maintain the relevant insurances and bonds during the extended Defects Notification Period and comply with all other associated provisions applying during the Defects Notification Period.

11.2.1 **Add** in the second line after "defective" the words "design which the Contractor is responsible for,".

11.3.2(b) **Add** at the end "within 2 Weeks of the Practical Completion Certificate."

12.1.1 **Delete** the contents and **substitute**:

The Contractor shall submit a draft payment claim to the Engineer for approval in the Engineer's absolute discretion as to its format, and the Contractor shall comply with any conditions of such approval or discretions that the Engineer may make in relation to the format. The Contractor and Engineer shall use their best endeavours to reach agreement on the claimed amounts prior to the

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submission of the Contractor's payment claim. Payment claims submitted by the Contractor shall not be in the form of a VAT invoice, other than as specified in 12.13.2.

12.1.3(b) **Revise** the contents as follows:

**Delete** at the end of the paragraph (v) “, and”.

**Delete** at the end of the paragraph (vi) “,”.

**Add** new paragraphs “(b)(vii)” and “(b)(viii)”:

(b)(vii) Separately identify, for each item, the sum certified by the Engineer in the previous Progress Payment Schedule, and

(b)(viii) Separately identify, for each item, the claimed amount for the relevant period to which the payment claim relates;

12.1.3(c) **Delete** contents and **substitute**:

Indicate the due date for payment which shall be not earlier than 10 Working Days or later than 15 Working Days after the date of service of the claim or such other timeframe as is specified in the Special Conditions.

**Add** new clause “**12.14 Setoff**”:

Without limiting the Principal's rights under the Contract the Principal may deduct from any money due or that may otherwise be due to the Contractor:

- (a) any money due, or a reasonable estimate of amounts which will become due, from the Contractor to the Principal whether under or in connection with the Contract or otherwise; and
- (b) all losses, costs, charges, damages or expenses which the Principal has incurred or paid and for which the Contractor is or may be liable to make reimbursement to the Principal or to any corporation which is a subsidiary of or related to the Principal within the meaning of the Corporations Act but has failed to pay or reimburse.

If the Contractor becomes aware that it or any other party engaged by the Contractor for the Works may have a right to suspend work then the Contractor must immediately notify the Principal giving details and copies of all relevant notices and correspondence.

If the Principal becomes aware that any party engaged in the Works by the Contractor is, or will be, entitled to suspend any work then the Principal may (in its absolute discretion and without having any obligation to do so) either:

- (c) pay the party giving the notice such money; or
- (d) take other action which is reasonably necessary or appropriate,

in order to bring to an end that party's suspension or right to suspend.

The Principal shall be entitled to recover from the Contractor as a debt due the amount of any money paid or any other cost, expense or liability incurred by the Principal pursuant to this clause

Suspension by the Contractor pursuant to any entitlement to suspend (whether under the Contract or otherwise at law) will not give rise to any entitlement to an extension of time or additional payment and the Contractor shall have no Entitlement except to the extent that a right arising under legislation cannot be excluded.

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13.2.2 **Add** in the third line after “the Engineer” the words “, the Principal”.

14.2.1 **Delete** in the first line of paragraph (b) “subletting” and **substitute** the word “subcontracting”.

**Delete** at the end of paragraph (b), “or”.

**Delete** at the end of paragraph (c), “,” and substitute “; or”

**Add** the new paragraphs “(d) – (g)”:

- (d) Safety issues pursuant to the Specifications;
- (e) the Contractor failing to provide a Parent Company Guarantee in accordance with 11.6;
- (f) the Contractor failing to comply with 3.1.2 or 3.1.3;
- (g) if, in respect of more than three separate Shifts:
  - (i) debris are found on the runway, taxiway and/or apron pavement areas after the Contractor’s sweep and readiness for Site possession handback to the Principal;or
  - (ii) the Contractor has not handed back control and possession of the Site in its entirety to the Principal by the deadline for the end of the Shift.

14.2.2 **Delete** contents and **substitute**:

In the event of the Contractor:

- (a) Becoming bankrupt;
- (b) Going into liquidation;
- (c) Having a receiver or statutory manager appointed; or
- (d) Being in default of any one or more material obligations under the Contract that in the opinion of the Engineer (certified in writing to the Principal), has not been or is not being remedied by the Contractor;

the Principal may at its option, upon giving notice to the Contractor, either terminate the Contract with immediate effect or resume exclusive occupancy of the Site.

## **NEW CLAUSES**

**Add** new clause “**12.14 Setoff**”:

Without limiting the Principal's rights under the Contract the Principal may deduct from any money due or that may otherwise be due to the Contractor:

- (e) any money due, or a reasonable estimate of amounts which will become due, from the Contractor to the Principal whether under or in connection with the Contract or otherwise; and
- (f) all losses, costs, charges, damages or expenses which the Principal has incurred or paid and for which the Contractor is or may be liable to make reimbursement to the Principal or to any corporation which is a subsidiary of or related to the Principal within the meaning of the Corporations Act but has failed to pay or reimburse.

If the Contractor becomes aware that it or any other party engaged by the Contractor for the Works may have a right to suspend work then the Contractor must immediately notify the Principal giving details and copies of all relevant notices and correspondence.

If the Principal becomes aware that any party engaged in the Works by the Contractor is, or will be, entitled to suspend any work then the Principal may (in its absolute discretion and without having any obligation to do so) either:

- 
- (g) pay the party giving the notice such money; or  
(h) take other action which is reasonably necessary or appropriate,  
in order to bring to an end that party's suspension or right to suspend.

The Principal shall be entitled to recover from the Contractor as a debt due the amount of any money paid or any other cost, expense or liability incurred by the Principal pursuant to this clause

Suspension by the Contractor pursuant to any entitlement to suspend (whether under the Contract or otherwise at law) will not give rise to any entitlement to an extension of time or additional payment and the Contractor shall have no Entitlement except to the extent that a right arising under legislation cannot be excluded.

## **15. DUTIES TAXES AND EXEMPTIONS**

- a) The Contractor is responsible for the payment of all duties, port levies and taxes arising from this Contract.
- b) The Contractor will facilitate and provide shipping and invoice documentation as required for the provision of duty free concessions (if provided) to the satisfaction of the Fiji Revenue and Customs Service.
- c) The Contractor agrees that all 100% of all savings to the Contract Sum achieved through the provision of a duty free concession agreement with the Fiji Government as provided by the Principal will be deducted from the Contract Sum. The Principal will receive 100% of these savings.

## **16. AIRSIDE ACCESS**

- a) The Contractor shall arrange and pay for all required police checks and identification to enable access to the site by the Contractor's staff. This includes the cost of any necessary translation of foreign records by an independent translation service approved by the Principal and other relevant authorities.
- b) The Principal and other relevant authorities may refuse access to site at their sole discretion based on the police record or absence of valid documentation.
- c) Delay in the provision of access to site to the Contractor's staff due to lack of police records provided in an acceptable format is not a claimable delay.

## **18. FORCE MAJUERE**

### **18.1 Force Majeure Event**

For the purposes of clause 18 of this contract, a force majeure event means any of the following:

- (a) storm, flood, typhoon or cyclone;
- (b) earthquake, landslide and other natural disasters;
- (c) any operation of the forces or nature of catastrophic proportion;
- (d) acts of terrorism;
- (e) riot or civil commotion, hostilities of war whether declared or not, political unrest, military action or coups d'état;
- (f) any industrial action not initiated on site and of National (Fiji wide) application; and

- 
- (h) Significant airport wide emergency events requiring the evacuation of the Airport.

#### 18.2 Notice of Force Majeure event

Where a party is unable, wholly or in part, by reason of Force Majeure, to carry out any obligations under the Contract and that party:

- (a) notifies the other party within 5 calendar days of becoming aware of the Force Majeure event with reasonably full particulars of the cause and, insofar as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation;
- (b) states in such notice that it is seeking the benefit of this clause;
- (c) uses all possible diligence and endeavors to avoid, remove and mitigate the effect of the Force Majeure event ; and
- (d) has not caused or contributed to the Force Majeure event,

then except as otherwise provided for in the Contract, that obligation is suspended so far as it is directly affected by Force Majeure during the continuance of the Force Majeure event.

#### 18.3 Costs

Where the effect of the suspended obligation is to reduce the cost to the Contractor of complying with this Contract then such cost reduction during the continuance of the Force Majeure event will be passed on to the Principal by way of a reduction in the amounts payable by the Principal pursuant to this Contract.

Costs arising which are subject to coverage under the Insurances required to be provided by the Contractor shall remain with the Contractor including any deductibles arising. Where not subject to such insurance coverage and where the effect of the suspended obligation is to increase the cost to the Contractor of complying with this Contract, then such cost increase will be passed on to the Principal as an increase to the amount payable by the Principal pursuant to this Contract.

Where the effect of such suspension is to suspend the entire obligations of the Contractor under this Contract then the obligation of the Principal to pay the Contractor will be suspended in full during the continuance of the Force Majeure event, except for progress certificates issued in respect of the period prior to the date that the Force Majeure event commenced.

#### 18.4 Duty to consult

In the case of a Force Majeure event that exceeds 30 calendar days, the parties shall consult with each other and decide whether the Contract should be terminated, whether the Contractual obligations thereby affected should be cancelled or whether the performance of such obligations should be reprogrammed.

#### 18.5 Sole recourse

Save for as expressly provided in this clause 18, any other costs, losses or savings due to Force Majeure, be borne, incurred or retained as the case may be by the party incurring or receiving the same.

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**(f) Schedule 17: Technical Specifications & Appendices including Schedules (g) 18 Drawings &, (h) 19 Method of Works Plan.**



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(f) Schedule 17: Technical Specifications, includes:

- Tech Spec Appendix A: (g) Schedule 18: Design Drawings
- Tech Spec Appendix B: (h) Schedule 19: Method of Works Plan (MoWP)
- Tech Spec Appendix C: CAAF SD 139 Annex 5

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## **(i) Schedule 20: Prices**



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## **(j) Other Schedules**

### Schedule 3 – Form of contractor's performance bond

**DATE**

**PARTIES**

**BOND PROVIDER** [ ] of (correspondent bank to insert address) ("**Bond Provider**")

**PRINCIPAL** AIRPORTS FIJI LIMITED ("**Principal**")

**CONTRACTOR** INSERT CONTRACTOR NAME ("**Contractor**")

**BACKGROUND**

- A The Principal and Contractor (the Contractor) are the parties to a construction contract in respect of the OPTIC FIBRE NETWORK COMMUNICATIONS SYSTEM FOR NADI & NAUSORI dated ???/ (the Contract) pursuant to which the Contractor will perform the Contract Works (as defined in the Contract).
- B The Contract requires the Contractor to provide the Principal with a contractor's performance bond.

**It is declared:**

- 1 The Bond Provider unconditionally and irrevocably undertakes to the Principal to pay the Principal immediately on demand made by the Principal any sum or sums which may from time to time be demanded by the Principal in accordance with clause 2 up to a maximum of \$ **(5% of the Contract Price)** (the "**Maximum Amount**").
- 2 Any demand by the Principal pursuant to clause 1 shall be made in writing to the Bond Provider's address specified above demanding payment by the Bond Provider of an amount up to the Maximum Amount (less the aggregate of all previous payments made by the Bond Provider under this deed) which such demand shall be conclusive evidence for the Bond Provider's purposes (only) of the existence of such claim and the amount payable without further enquiry by the Bond Provider. The amount demanded shall be paid forthwith on demand by the Bond Provider to a bank account in Fiji nominated by the Principal without reference to the Contractor and notwithstanding any notice by the Contractor to the Bond Provider not to pay the amount demanded.
- 3 The undertaking contained in this Deed shall be a continuing undertaking and the liability of the Bond Provider under it shall not be affected in any way for any reason, and without limitation, the Bond Provider shall remain liable notwithstanding:
  - (a) any alteration in the terms of the Contract between the Contractor and the Principal; or
  - (b) any alteration in the extent or nature of the obligations to be completed, observed or performed by the Contractor under the Contract; or
  - (c) any allowance of time by the Principal or otherwise under the Contract;
  - (d) the forbearance or waiver by the Principal in respect of any of the Contractor's obligations or in respect of any default on the part of the Contractor; or
  - (e) any other thing which, but for this provision, may operate to release, prejudicially affect or discharge or in any way relieve the Bond Provider from any obligation under this deed.

- 4 The undertaking contained in the Deed shall terminate upon the earlier of the following events:
- (a) upon payment by the Bond Provider of the Maximum Amount in accordance with clauses 1 or 8; or
  - (b) such earlier date as may be agreed in writing by the Bond Provider and the Principal; or
  - (c) For Bond 1: the date certified by the Engineer under the Contract that Practical Completion has occurred for the entire Contract Works (including any Separable Portions), with a copy of the Engineer's Practical Completion Certificate (where relevant) to be provided to the Bond Provider by the Principal.
- For Bond 2: the date of issue of all Final Completion Certificates for the Contract Works (including any Separable Portions) in accordance with the requirements of the Contract, with a copy of the Final Completion Certificates to be provided to the Bond Provider by the Principal.
- Advice note: Amend this sub clause to provide for the particulars of Bond 1 or Bond 2 as asset out 3.1.2
- 5 The Principal can at any time and without notice to the Contractor make demand on the Bond Provider of any sum or sums under clause 1.
- 6 For the avoidance of doubt, the Bond Provider may not assign any right or obligation contained in this Deed.
- 7 This Deed shall be governed by the laws of Fiji and all parties submit to the non-exclusive jurisdiction of the Courts of Fiji.
- 8 Notwithstanding anything else in this Deed, the Bond Provider reserves the right, at any time and without being required, to pay to the Principal the Maximum Amount, less any amount or amounts the Bond Provider may previously have paid under this deed. Upon payment of that amount, the Bond Provider's liability under this Deed immediately ceases and determines.

Signing

**EXECUTED** as a **DEED** for and on behalf )  
 of [**BOND PROVIDER**] )  
 by its Authorised Signatory / Attorney ) \_\_\_\_\_ Signature

\_\_\_\_\_  
 [Print Name] in the presence of

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

\_\_\_\_\_  
 Full name

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 Occupation

**Note:**  
 -Person authorised by constitution - signature must be witnessed  
 - Agents authorised under s55 Companies Act are authorised to act on behalf of the Company.

**Address of the Bank**

Physical address:

Postal address:

Facsimile:

Telephone:

Attention:

**Schedule 4 – Form of principal's bond**

-----DELETED-----



**Schedule 5 Form of contractor's bond in lieu of Retentions**

NOT USED

## Schedule 6 – Form of Producer Statement – Construction

<b>ISSUED BY</b>		<i>(Contractor)</i>
<b>TO</b>	<b>Airports Fiji Limited (AFL)</b>	<i>(Principal)</i>
<b>IN RESPECT OF</b>	OPTIC FIBRE NETWORK COMMUNICATIONS SYSTEM FOR NADI & NAUSORI	<i>(Description of Contract Works)</i>
<b>AT</b>	<b>Nadi International Airport</b>	<i>(Address)</i>

**tba** (*Contractor*) has contracted to AFL (*Principal*) to carry out and complete certain building works in accordance with a Contract titled OPTIC FIBRE NETWORK COMMUNICATIONS SYSTEM FOR NADI & NAUSORI ("the Contract")

I \_\_\_\_\_ (*Duly Authorised Agent*) a duly authorised representative of **tba** (*Contractor*) believe on reasonable grounds that **Tba** (*Contractor*) has carried out and completed:

- All
- Part only as specified in the attached particulars of the contract works in accordance with the Contract  
*enter details of attached particulars*

Date \_\_\_\_\_

\_\_\_\_\_  
*(Signature of Authorised Agent on behalf of)*

\_\_\_\_\_  
*(Contractor)*

\_\_\_\_\_  
*(Address)*

## Schedule 7 – Information on contractor arranged construction insurance

### To whom it may concern:

From \_\_\_\_\_ (Name of insurance company)  
 \_\_\_\_\_ (Branch)  
 \_\_\_\_\_ (Address)

We confirm having effected construction insurance for:

\_\_\_\_\_ (The Contractor)  
**Airports Fiji Limited (AFL)** (The Principal)  
 In respect of **OPTIC FIBRE NETWORK COMMUNICATIONS SYSTEM FOR NADI & NAUSORI** (Project title)  
 Policy wording title is \_\_\_\_\_

The following provisions apply:

- Project specific policy  
 Annual run-off policy  
 Annual cut-off policy

We advise that special terms, copy attached, have been applied to this policy

Select yes or no

### 8.1.6

The following forces of nature are insured:

- |  |  |   |
|--|--|---|
| <input checked="" type="checkbox"/> landslip   | <input checked="" type="checkbox"/> earthquake       | <input checked="" type="checkbox"/> tsunami |
| <input type="checkbox"/> tornado               | <input checked="" type="checkbox"/> cyclone          | <input checked="" type="checkbox"/> storm   |
| <input checked="" type="checkbox"/> flood      | <input checked="" type="checkbox"/> lightning strike | <input type="checkbox"/> volcanic activity  |
| <input type="checkbox"/> hydrothermal activity | <input type="checkbox"/> geothermal activity         |   |

### 8.3.3

The sums insured are ( VAT exclusive):

Contract Price	\$	_____
(a) Costs of demolition	\$	_____
(b) Professional fees	\$	_____
(c) Value of items to be incorporated	\$	_____
(d) An allowance for an increase in construction costs	\$	_____
(e) An allowance for increased reconstruction costs	\$	_____
<b>TOTAL SUM INSURED</b>	<b>\$</b>	_____

The policy deductibles are ( VAT inclusive):

		\$	_____
Non-earthquake		\$	_____
Natural disaster	% of _____ minimum of	\$	_____
Other (name)	_____	\$	_____

**8.2.3(a)**

**Construction period** from \_\_\_\_\_

**Insurance maintenance period** \_\_\_\_\_

**Policy expiry date** \_\_\_\_\_

Policy cover terms included are:

- 8.2.2** Discretionary cancellation clause *Select yes or no*
- 8.2.3** Reinstatement provision on building and contents *Select yes or no*
- 8.2.3** Severally insured *Select yes or no*
- No settlement delay due to exercise of subrogation *Select yes or no*
- 8.2.4** Void *ab initio* for non-payment of premium without prior notification *Select yes or no*

Policy extensions included are:

			Sub-limit (if applicable)
<b>8.3.1</b>	Transit (in Fiji)	<i>Select yes or no</i>	\$ <b>200,000</b>
<b>8.3.1</b>	Materials in storage (in Fiji)	<i>Select yes or no</i>	<b>5% of contract sum</b>
	Testing and commissioning	<i>Select yes or no</i>	\$ <b>2 million</b>
	Expediting expenses	<i>Select yes or no</i>	\$ _____
	Overseas airfreight	<i>Select yes or no</i>	\$ _____

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

This insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

**Insurance Company Stamp** \_\_\_\_\_ **Date** \_\_\_\_\_

*(Or name of insurance broking company confirming cover)*

**SIGNED BY** \_\_\_\_\_

**SIGNATORY TITLE** \_\_\_\_\_

*(Clause numbers refer to NZS 3910:2013 and are for information only.)*

### Schedule 8 – Information on contractor arranged plant insurance

To whom it may concern:

From \_\_\_\_\_ (name of insure company)  
 \_\_\_\_\_ (Branch)  
 \_\_\_\_\_ (Address)

1. We confirm having effected Plant insurance for:

\_\_\_\_\_ The Contractor)

In respect of **OPTIC FIBRE NETWORK COMMUNICATIONS SYSTEM FOR NADI & NAUSORI** (Project title)

Policy wording title is \_\_\_\_\_

We advise that special terms, copy attached, have been applied to this policy Select yes or no

The following provisions apply:

- Annual policy
- Project specific policy

Policy expiry date November 20 2020

8.4

The sums insured are ( VAT exclusive):

- All items of Plant Sum insured \$ \_\_\_\_\_
- OR
- Valued schedule of construction Plant insured (copy attached)

The policy deductible ( VAT inclusive) is: \$ \_\_\_\_\_

Policy cover terms included are:

- 8.2.2** Discretionary cancellation clause Select yes or no
- 8.2.3(a)** Reinstatement provision Select yes or no
- 8.2.4** Void *ab initio* for non-payment of premium without prior notification Select yes or no
- No settlement delay due to exercise of subrogation Select yes or no

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

This insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

**Insurance Company Stamp** \_\_\_\_\_ **Date** \_\_\_\_\_  
 (Or name of insurance broking company confirming cover)

**SIGNED BY** \_\_\_\_\_

**SIGNATORY TITLE** \_\_\_\_\_

(Clause numbers refer to NZS 3910:2013 and are for information only.)

○ **Schedule 9 – information on public liability insurance**

**To whom it may concern:**

From \_\_\_\_\_ (Name of insurance company)  
 \_\_\_\_\_ (Branch)  
 \_\_\_\_\_ (Address)

We confirm having effected public liability insurance to indemnify the Principal and the Contractor against legal liability to third parties for damage, loss or injury caused by an act or omission of the Contractor arising out of the performance of the Contract Works.

\_\_\_\_\_ (The Contractor)  
**Airports Fiji Limited (AFL)** 2. \_\_\_\_\_ (The Principal)  
 In respect of **OPTIC FIBRE NETWORK COMMUNICATIONS SYSTEM FOR NADI & NAUSORI** \_\_\_\_\_ (Project title)  
 Policy wording title is \_\_\_\_\_

We advise that special terms, copy attached, have been specifically applied to this project Select yes or no

The following provisions apply:

- Annual policy
- Project specific policy

Policy expiry date \_\_\_\_\_ (completion of defects liability period)

**8.5, 8.9**

The limit of indemnity ( VAT exclusive)	\$ _____	<b>(iii)</b>
Sub-limit insured for ( VAT exclusive)		
Vibration, removal, or weakening of support	\$ _____	<b>(iv)</b>
Natural Disaster Management Act 1998	\$ _____	<b>(v)</b>
Underground services	\$ _____	<b>(vi)</b>
Deductible ( VAT inclusive) is	\$ _____	<b>(vii)</b>
Deductible for vibration, removal, or weakening of support ( VAT inclusive)	\$ _____	<b>(viii)</b>
Deductible for underground services ( VAT inclusive)	\$ _____	<b>(ix)</b>

The policy also covers liability arising out of:

- The ownership/use of Plant not required to be registered for road use Select yes or no
- The use of hired Plant Select yes or no
- The ownership/use of watercraft over 8 m Select yes or no
- The ownership/use of aircraft Select yes or no
- The use of explosives Select yes or no

**8.2, 8.7**

Policy cover terms included are:

Reinstatement provisions	<i>Select yes or no</i>
Number of reinstatements	<u>3</u>
Discretionary cancellation clause	<i>Select yes or no</i>
Void <i>ab initio</i> for non-payment of premium without prior notification	<i>Select yes or no</i>
Severally insured	<i>Select yes or no</i>
No settlement delay due to exercise of subrogation	<i>Select yes or no</i>

We undertake that this policy will not be cancelled or amended by us without written advice to the insured party which has arranged the insurances.

This insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

**Insurance Company Stamp** \_\_\_\_\_ **Date** \_\_\_\_\_  
*(Or name of insurance broking company confirming cover)*

**SIGNED BY** \_\_\_\_\_

**SIGNATORY TITLE** \_\_\_\_\_

*(Clause numbers refer to NZS 3910:2013 and are for information only.)*

## Schedule 10 – Information on contractor arranged motor vehicle insurance

### To whom it may concern:

From \_\_\_\_\_ (Name of insurance company)  
 \_\_\_\_\_ (Branch)  
 \_\_\_\_\_ (Address)

We confirm having effected motor fleet insurance for

\_\_\_\_\_ (The Contractor)  
 In respect of OPTIC FIBRE NETWORK COMMUNICATIONS SYSTEM FOR NADI & NAUSORI (Project title)  
 Policy wording title is \_\_\_\_\_

We advise that special terms, copy attached, have been applied to this policy Select yes or no

The following provisions apply:

- Annual policy  
 Project specific policy

Policy expiry date November 20 2020

### 8.5.2

The limits of liability are ( VAT exclusive):

Section 2 – Liability \$ 1,000,000  
 For any one occurrence arising out of the same event

The policy deductibles are:

Section 2 – Liability ( VAT inclusive) \$ \_\_\_\_\_  
 Plus under age penalties

### 8.2

Policy cover terms included are:

Section 2 Liability automatic reinstatement Select yes or no  
 Discretionary cancellation clause Select yes-or no  
 Void *ab initio* for non-payment of premium without prior notification Select yes-or no  
 No settlement delay due to exercise of subrogation Select yes-or no

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

This insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.



**Insurance Company Stamp** \_\_\_\_\_ **Date** \_\_\_\_\_  
*(Or name of insurance broking company confirming cover)*

**SIGNED BY** \_\_\_\_\_

**SIGNATORY TITLE** \_\_\_\_\_

*(Clause numbers refer to NZS 3910:2013 and are for information only.)*

## Schedule 11 - Information on Contractor arranged Professional Indemnity Insurance

To whom it may concern:

From \_\_\_\_\_ *(Name of insurance company)*  
 \_\_\_\_\_ *(Branch)*  
 \_\_\_\_\_ *(Address)*

We confirm having effected professional indemnity insurance for:

\_\_\_\_\_ *(The Contractor)*  
 In respect of **OPTIC FIBRE NETWORK COMMUNICATIONS SYSTEM FOR NADI & NAUSORI** *(Project title)*  
 Policy wording title is \_\_\_\_\_

We advise that special terms, copy attached, have been applied to this policy *Select yes or no*

The following provisions apply:

- Annual policy
- Project specific policy

Policy expiry date **November 20 2027** \_\_\_\_\_

**8.6.1**

The limit of indemnity ( VAT exclusive)	\$ <b>5,000,000</b>	_____ any one occurrence
	\$ _____	in the aggregate during the period of insurance.
Deductible ( VAT inclusive)	\$ _____	_____

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

This insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

**Insurance Company Stamp** \_\_\_\_\_ **Date** \_\_\_\_\_  
*(Or name of insurance broking company confirming cover)*

**SIGNED BY** \_\_\_\_\_

**SIGNATORY TITLE** \_\_\_\_\_

*(Clause numbers refer to NZS 3910:2013 and are for information only.)*

- **Schedule 12 – Information on Principal arranged construction insurance**

**NOT USED**



- (ii) if the notice or document is posted in a postage paid registered envelope addressed to the recipient, at the time when it would be received in the ordinary course of registered post then prevailing;
- (iii) any notice transmitted by facsimile will, subject to receipt of an error free transmission report by the transmitter, be deemed to have been received on the date of transmission; or
- (iv) any notice sent by email will be deemed to have been received when receipt of the email is acknowledged by the receiving party by return email or otherwise in writing, except that return emails generated automatically will not constitute an acknowledgement.

If a notice or document is received after 5:00pm on a day, or on a day that is not a Working Day, the notice will be deemed to be received on the next Working Day;

- (o) the undertakings, warranties, covenants, agreements and other obligations of the Contractor and/or the Subcontractor shall bind and be deemed to have been given or assumed by each of them severally and by both of them jointly and severally; and
- (p) except as herein expressly modified or where inconsistent with the context reference and terms herein shall have the same meaning as is ascribed to them in the Contract.

2. The Subcontractor and the Contractor warrant and covenant to the Principal, up to the date that is five years ("*Warranty Period*") from the date of the Defects Liability Certificate (Refer Schedule 17 Technical Specification 2.22), that:

- (a) the Warranted Works will be free from defects;
- (b) all Materials and Plant used in the Warranted Works shall be fit for purpose;
- (c) all Materials supplied by the Subcontractor will be new, unused, free from defects, of good quality and in accordance with the provisions of the Contract; and
- (d) all work involved in carrying out the Warranted Works will be carried out in a good and workmanlike manner and in accordance with the provisions of the Contract.

3. The Subcontractor and/or the Contractor agree that, if within the Warranty Period, the Subcontractor and/or Contractor is advised by the Principal in writing of any defect in the Warranted Works for which the Subcontractor and/or Contractor is liable under the terms of this warranty, the Subcontractor and/or Contractor shall at its own expense and risk, promptly, in a good and workmanlike manner, and to the standard required by the Contract:

- (a) repair all defects in the Warranted Works; and
- (b) make good any loss or damage to buildings, structures or services in which the Warranted Works are performed or situated caused by any defect or repairs or replacements in or to the Warranted Works,

occurring during the Warranty Period, the Subcontractor and/or Contractor will remedy the defect no later than within five working days of the Principal's notice of the defect. If any building consent or other statutory approval or consent is required for any repair or make good work, the Subcontractor and/or the Contractor will obtain such consent or approval at its own cost. The Subcontractor and/or Contractor will carry out the remedial work without unnecessary inconvenience to any land owner or occupant.

4. If the Subcontractor and/or the Contractor do not repair any defect or make good any loss or damage within the period referred to in clause 3 above, the Principal may, without being under any obligation to

do so (and without prejudice to the Principal's rights under the Contract or otherwise), carry out the repair work and/or make good the loss or damage and recover all costs incurred in doing so from the Subcontractor and/or the Contractor as a debt due and payable but without releasing the Subcontractor or the Contractor from any obligation or liability. Such costs may include the cost of all labour, Plant, Materials travelling and other charges incurred by the Principal in repairing such defect or making good any such loss or damage. The Principal may not proceed to carry out such repair or make good work without first giving the Subcontractor and the Contractor written notice.

5. Neither the Subcontractor nor the Contractor shall not be liable for any defect loss or damage solely attributable to:
  - (a) any wilful act or negligence of the Principal;
  - (b) war;
  - (c) earthquake or any other forces of nature that could not have been reasonably foreseen by the Subcontractor (but excluding earthquakes and any other forces of nature, the effect of which was, or should reasonably have been, incorporated or taken into account or otherwise catered for in the Warranted Works);
  - (d) fire, explosion, subsidence or slips (not caused or contributed to by the Contractor or its respective employees, representatives, agents or contractors (including the Subcontractor) and for which the Contractor is not otherwise responsible for under the Contract);
  - (e) fair wear and tear; and
  - (f) failure by the Principal or any other Person to maintain the Warranted Works in accordance with good industry practices, and any manufacturer's stated or recommended instructions or requirements provided to the Principal by the Subcontractor or Contractor.
6. Neither the Subcontractor nor the Contractor shall not be liable for any defect, loss or damage resulting from any neglect or delay on the part of the Principal to give notice of any defect, loss or damage within a reasonable time of such defect, loss or damage becoming known to the Principal.
7. The warranty in clause 2 shall be deemed to be a continuing warranty so that the Principal shall be entitled from time to time and at all times during the Warranty Period to give notice of any defect, damage or loss (or any one or more of the same), to which clause 3 applies, notwithstanding that on any other occasion prior to giving such notice, the Principal may have already given notice to the Subcontractor and/or the Contractor in respect of such defects, damages or losses or any other defects, damage or losses to which this deed applies.
8. The warranty and covenants on the part of the Subcontractor and the Contractor contained in this deed:
  - (a) will not be deemed to be in substitution for or limit in any way the Subcontractor's liability to the Principal or to the Contractor as a Subcontractor under the Contract; and
  - (b) are in addition to the obligations of the Contractor under the Contract, at law or otherwise and will not be deemed to be in substitution for or limit in any way the Contractor's liability to the Principal under the Contract.

Accordingly, the Principal shall not be precluded from exercising any rights it may have against the Contractor in respect of any defects or damages or losses to which this deed may apply, nor shall the exercise of the Principal's rights hereunder be conditional upon the exercise of those rights, and the Subcontractor shall not be excused in whole or in part in respect of its liability under this deed by reason

of any default on the part of the Contractor or any other subcontractor of the Contractor, whether or not such default caused or contributed to the defects, damage or losses complained of by the Principal hereunder.

9. If this deed is executed before completion of the Warranted Works, no variation to the Warranted Works subsequent to the execution of this deed will be deemed to vary the liability of the Subcontractor or the Contractor under this deed, and all references to the Warranted Works will be deemed to include the Warranted Works as originally specified together with such variations, and the issuing of any certificate of completion or any other certificate in respect of the Warranted Works or any part of the Warranted Works (or of the Contract Works or any part of the Contract Works) will not affect the liability of the Subcontractor or the Contractor under this deed.
10. **Assignment and novation**
- (a) Neither the Subcontractor nor the Contractor may assign, charge or novate, whether in part or in whole, any of their rights, benefits or obligations under this deed without the prior written consent of the Principal (which it may or may not give at its discretion).
  - (b) The Principal may assign, charge or novate all or any part of its rights and/or obligations under this deed to any assignee, chargee or novatee of the Principal under the Contract or to any other Person without the Subcontractor and/or the Contractor's consent.
  - (c) The Subcontractor and the Contractor must, if and when requested by the Principal, promptly do all things and execute all such documents reasonably necessary to give effect to any assignment, charge or novation by the Principal, including in the case of a novation, entering into a deed of novation with the Principal and the relevant Person nominated by the Principal in a form required by the Principal.
11. **General**
- (d) The Subcontractor and Contractor acknowledge and agree that the rights and benefits under this deed will accrue to and be enforceable by the Principal.
  - (e) Each party must do or use its reasonable endeavours to cause to be done anything necessary or desirable to give effect to this deed and the arrangements set out in this deed, and will refrain from doing anything which might prevent full effect being given to this deed.
  - (f) A waiver of any provision of this deed will not be effective unless given in writing, and then it will be effective only to the extent that it is expressly stated to be given. A failure, delay or indulgence by either party in exercising any power or right will not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right will not preclude further exercises of that power or right or the exercise of any other power or right.
  - (g) If any one or more of the provisions contained in this deed is invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained in this deed will not in any way be affected or impaired.
  - (h) No amendment or other modification of this deed will be effective unless it is in writing, is dated and is signed by a duly authorised representative of each party.
  - (i) This deed may be executed in counterparts (including facsimile or electronic copies of counterparts) and provided that each party has duly executed a counterpart, the counterparts together will constitute a valid and binding deed between the parties.

- (j) This deed is governed by, and must be construed in accordance with, the law of Fiji. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Fiji to hear and determine all disputes and proceedings under or in connection with this deed.

**EXECUTION**

**Executed** as a deed

**EXECUTED** by [•] as Subcontractor  
by

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

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

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

\_\_\_\_\_  
Witness to both signatures

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

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**Address of the Subcontractor**

Physical address:

Postal address:

Facsimile:

Email:

Telephone:

Attention:



**EXECUTED** by **Contractor** as Contractor  
by

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

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

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

\_\_\_\_\_  
Witness to both signatures

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

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**Address of the Contractor**

Physical address:

Postal address:

Facsimile:

Email:

Telephone:

Attention:

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

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

**SCHEDULE**

[Subcontract to be annexed]



- (iv) any notice sent by email will be deemed to have been received when receipt of the email is acknowledged by the receiving party by return email or otherwise in writing, except that return emails generated automatically will not constitute an acknowledgement.

If a notice or document is received after 5:00pm on a day, or on a day that is not a Working Day, the notice will be deemed to be received on the next Working Day; and

- (h) except as herein expressly modified or where inconsistent with the context reference and terms herein shall have the same meaning as is ascribed to them in the Contract.

2. The Subcontractor and the Contractor warrant and covenant to the Principal, up to the date that is five years ("*Warranty Period*") from the date of the Defects Liability Certificate (Refer Schedule 17 Technical Specification 2.22), that:
  - (a) the Warranted Works will be free from defects;
  - (b) all Materials and Plant used in the Warranted Works shall be fit for purpose;
  - (c) all Materials supplied by the Contractor will be new, unused, free from defects, of good quality and in accordance with the provisions of the Contract; and
  - (d) all work involved in carrying out the Warranted Works will be carried out in a good and workmanlike manner and in accordance with the provisions of the Contract.
3. The Contractor agrees that, if within the Warranty Period, the Contractor is advised by the Principal in writing of any defect in the Warranted Works for which the Contractor is liable under the terms of this warranty, the Contractor shall at its own expense and risk, promptly, in a good and workmanlike manner, and to the standard required by the Contract:
  - (a) repair all defects in the Warranted Works; and
  - (b) make good any loss or damage to buildings, structures or services in which the Warranted Works are performed or situated caused by any defect or repairs or replacements in or to the Warranted Works,occurring during the Warranty Period, the Contractor will remedy the default no later than within five working days of the Principal's notice of the defect. If any building consent or other statutory approval or consent is required for any repair or make good work, the Contractor will obtain such consent or approval at its own cost. The Contractor will carry out the remedial works without unnecessary inconvenience to any land owner or occupier.
4. If the Contractor does not repair any defect or make good any loss or damage within the period referred to in clause 3 above, the Principal may, without being under any obligation to do so (and without prejudice to the Principal's rights under the Contract or otherwise), carry out the repair work and/or make good the loss or damage and recover all costs incurred in doing so from the Contractor as a debt due and payable but without releasing the Contractor from any obligation or liability. Such costs may include the cost of all labour, Plant, Materials travelling and other charges incurred by the Principal in repairing such defect or making good any such loss or damage. The Principal may not proceed to carry out such repair or make good work without first giving the Contractor written notice.
5. The Contractor shall not be liable for any defect loss or damage solely attributable to:
  - (a) any wilful act or negligence of the Principal;
  - (b) war;

- (c) earthquake or any other forces of nature that could not have been reasonably foreseen by the Contractor (but excluding earthquakes and any other forces of nature, the effect of which was, or should reasonably have been, incorporated or taken into account or otherwise catered for in the Warranted Works);
  - (d) fire, explosion, subsidence or slips (not caused or contributed to by the Contractor or its respective employees, representatives, agents or contractors and for which the Contractor is not otherwise responsible for under the Contract);
  - (e) fair wear and tear; and
  - (f) failure by the Principal or any other Person to maintain the Warranted Works in accordance with good industry practices, and any manufacturer's stated or recommended instructions or requirements provided to the Principal by the Subcontractor or Contractor .
6. The Contractor shall not be liable for any defect, loss or damage resulting from any neglect or delay on the part of the Principal to give notice of any defect, loss or damage within a reasonable time of such defect, loss or damage becoming known to the Principal.
7. The warranty in clause 2 shall be deemed to be a continuing warranty so that the Principal shall be entitled from time to time and at all times during the Warranty Period to give notice of any defect, damage or loss (or any one or more of the same), to which clause 3 applies, notwithstanding that on any other occasion prior to giving such notice, the Principal may have already given notice to the Contractor in respect of such defects, damages or losses or any other defects, damage or losses to which this deed applies.
8. The warranty and covenants on the part of the Contractor contained in this deed:
- (a) will not be deemed to be in substitution for or limit in any way the Contractor's liability to the Principal under the Contract; and
  - (b) are in addition to the obligations of the Contractor under the Contract, at law or otherwise and will not be deemed to be in substitution for or limit in any way the Contractor's liability to the Principal under the Contract.
9. If this deed is executed before completion of the Warranted Works, no variation to the Warranted Works subsequent to the execution of this deed will be deemed to vary the liability of the Contractor under this deed, and all references to the Warranted Works will be deemed to include the Warranted Works as originally specified together with such variations, and the issuing of any certificate of completion or any other certificate in respect of the Warranted Works or any part of the Warranted Works (or of the Contract Works or any part of the Contract Works) will not affect the liability of the Contractor under this deed.
10. **Assignment and novation**
- (a) The Contractor may not assign, charge or novate, whether in part or in whole, any of its rights, benefits or obligations under this deed without the prior written consent of the Principal (which it may or may not give at its discretion).
  - (b) The Principal may assign, charge or novate all or any part of its rights and/or obligations under this deed to any assignee, chargee or novatee of the Principal under the Contract or to any other Person without the Contractor's consent.

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

**11. General**

- (a) The Contractor acknowledges and agrees that, the rights and benefits under this deed will accrue to and be enforceable by the Principal.
- (b) The Contractor must use its reasonable endeavours to cause to be done anything necessary or desirable to give effect to this deed and the arrangements set out in this deed, and will refrain from doing anything which might prevent full effect being given to this deed.
- (c) A waiver of any provision of this deed will not be effective unless given in writing, and then it will be effective only to the extent that it is expressly stated to be given. A failure, delay or indulgence by the Contractor or the Principal in exercising any power or right will not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right will not preclude further exercises of that power or right or the exercise of any other power or right.
- (d) If any one or more of the provisions contained in this deed is invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained in this deed will not in any way be affected or impaired.
- (e) No amendment or other modification of this deed will be effective unless it is in writing, is dated and is signed by a duly authorised representative of the Contractor and the Principal.
- (f) This deed is governed by, and must be construed in accordance with, the law of Fiji. The Contractor and the Principal irrevocably submit to the non-exclusive jurisdiction of the courts of Fiji to hear and determine all disputes and proceedings under or in connection with this deed.

**EXECUTION**

**Executed as a deed**

**EXECUTED** by **Contractor** as Contractor  
by

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

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

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

\_\_\_\_\_  
Witness to both signatures

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

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**Address of the Contractor**

Physical address:

Postal address:

Facsimile:

Email:

Telephone:

Attention:

## Schedule 14 – Agreement for Off-site materials

### THIS AGREEMENT

is dated the [Click to enter day](#) day of [Click to enter month](#) 20 [Click to enter year](#)

### BETWEEN

[Click to enter text](#) (‘the Principal’)

### AND

[Click to enter text](#) (‘the Contractor’)

### AND

[Click to enter text](#) (‘the Subcontractor’)

### INTRODUCTION

- A** By a contract dated the [Click to enter day](#) day of [Click to enter month](#) 20 [Click to enter year](#) and known as OPTIC FIBRE NETWORK COMMUNICATIONS SYSTEM FOR NADI & NAUSORI AIRPORT (‘the Contract’) made between the Principal and the Contractor, the Contractor agreed to carry out the work and obligations imposed on the Contractor by the Contract (‘the Contract Works’).
- B** The Contractor and the Subcontractor have entered into a subcontract for the performance of part of the Contract Works and/or the supply of Materials described in Schedule A to this agreement (‘the Materials’) and intended to be used by the Contractor and/or the Subcontractor in the Contract Works.
- C** The Contractor or the Subcontractor (as nominated in Schedule C) (‘the Bailee’) proposes to store the Materials at the premises of the Bailee (‘the Premises’) as identified in Schedule B as bailee for the Principal, for the purpose of storage, fabrication, sub-assembly, or as otherwise required for the Contract Works prior to being delivered to the Site for incorporation into the Contract Works.
- D** The Contractor has requested the Principal to authorise the Engineer to certify payment for the Materials notwithstanding that the Materials have not been delivered to the Site.
- E** The Principal has agreed to authorise the Engineer to certify payment for the Materials, notwithstanding that the Materials have not been delivered to the Site, subject to all the provisions of this agreement having been fulfilled.

### SCHEDULE A

Description of Materials inclusive of work performed on them:

[Click to enter text](#)

### SCHEDULE B

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

[Click to enter text](#)

### SCHEDULE C

‘The Bailee’ shall be:

The Contractor

OR

The Subcontractor



**IT IS AGREED AS FOLLOWS:**

1. **THE** Materials to which this agreement relates are those described in Schedule A to this agreement, all of which Materials are currently on the Premises identified in Schedule B.
2. **THE** Premises identified in Schedule B are in the sole control of the party identified in Schedule C and that party shall act as bailee of the Materials until such time as the Materials are delivered to the Site or taken possession of by the Principal.
3. **THE** undertakings, warranties, covenants, agreements and other obligations of the Contractor or the Subcontractor shall bind and be deemed to have been given or assumed by each of them severally and by both of them jointly.
4. **THE** Contractor and the Subcontractor agree that they will cause the Materials to be set apart at the Premises and be clearly and visibly marked individually or in sets as being the property of the Principal and their destination as being the Site. The method used to mark the Materials and the procedures by which the mark is applied to the Materials shall be as required by the Contract or as otherwise approved by the Principal.
5. **NEITHER** the Contractor nor the Subcontractor will permit, allow, or cause the Materials to be taken away from the Premises, except:
  - (a) For the purpose of being transported to the Site and used in the Contract Works; or
  - (b) That the Principal may at its sole discretion take possession of the Materials for use other than for the Contract Works;provided that:
  - (c) Where the Principal takes possession of any Materials under clause 5(b) above, and the Contractor thereby suffers delay or the Contractor or the Subcontractor incurs additional cost, the taking of possession shall be treated as a Variation under the Contract, unless the taking of possession is pursuant to clauses 14.2.1 or 14.2.2 of the Contract; and
  - (d) Where the Principal takes possession of any Materials under clause 5(b) above, and additional work has been carried out on those Materials since being paid for by the Principal, the Principal shall pay the Contractor for that additional work in accordance with the Contract before taking possession of the Materials.
6. **THE** Engineer, upon being satisfied that the Materials have been set apart and marked as required by this agreement, and upon the Contractor providing satisfactory evidence that the requirements of clauses 12 and 20 below have been fully satisfied, shall include in any Payment Schedule issued by the Engineer under the Contract a sum representing the reasonable value of such Materials calculated in accordance with the Contract.
7. **UPON** the Principal having made payment for the Materials, less any retentions or deductions prescribed in the Contract, title to such Materials shall immediately vest in the Principal free of all security interests, charges and encumbrances of any nature whatsoever.
8. **WHERE** the Contractor receives payment for Materials and the Subcontractor is entitled to some or all of the Principal's payment, the Contractor shall promptly pay the Subcontractor for such Materials.
9. **UPON** the request of the Subcontractor, the Engineer shall advise the Subcontractor whether the Contractor has received any payment from the Principal for such Materials.
10. **THE** Contractor and the Subcontractor agree that the Materials will be held by the Contractor or the Subcontractor solely as bailee for the Principal and such bailment will constitute a security interest in favour of the Principal for the purpose of the Personal Property Securities Act 1999 ('the PPSA').
11. **THE** Principal shall (at the Contractor's reasonable cost) register a financing statement on the Personal Property Securities Register ('the PPSR') listing the Principal as secured party and the Contractor and the Subcontractor as debtors for any security interest arising from the bailment of the Materials referred to in this agreement.
12. **THE** Bailee shall promptly do all things including executing any documents and providing all information which the Principal requires to ensure that the Principal receives and maintains at all times a first ranking security interest in the Materials. This shall include procuring from any third party who has registered a financing statement against

the Bailee, a waiver, in a form acceptable to the Principal, of any security interest or claim which might otherwise extend to the Materials or their proceeds.

13. **THE** Bailee shall not discharge or amend any financing statement registered under clause 11 above without the prior written consent of the Principal.
14. **NOTHING** in sections 114(1)(a), 133, and 134 of the PPSA shall apply to this agreement.
15. **ANY** rights of the Contractor and the Subcontractor as debtors under sections 116, 120(2), 121, 125, 126, 127, 129, 131, and 148 of the PPSA shall not apply to this agreement.
16. **THE** Bailee hereby grants to the Principal reasonable, free, and unencumbered right of access to the Premises to:
  - (a) Inspect the Materials, and verify or undertake the marking and setting apart of the Materials;
  - (b) Take possession of the Materials for the purpose of delivery to the Site and inclusion in the Contract Works;
  - (c) Remove the Materials from the Premises for the purpose of delivery to the Site and inclusion in the Contract Works; and
  - (d) Take possession of the Materials for use other than for the Contract Works,and in each case in a manner that does not cause damage to any other property at the Premises. The Bailee shall take all steps and do all things as shall be necessary to ensure that the Principal obtains access to the Premises for the purposes of this agreement.
17. **THE** Bailee shall not, except as permitted in clause 5, remove or cause or permit the Materials to be moved from the Premises. The Bailee shall nevertheless be responsible to the Principal for any loss or damage thereto and for any costs of storage or handling.
18. **THE** Bailee shall, when required to do so by the Contractor or the Principal, arrange for the transportation of the Materials to the Site. Such transportation shall be at the cost of the Bailee in all things including loading, unloading, and freight.
19. **WHERE** the Materials are not insured under the construction policy provided in accordance with 8.3.1 or 8.8.1 of the Contract, the Bailee shall, at its expense:
  - (a) Effect a material damage insurance policy covering all of the Materials subject to this agreement in the name of the Principal to the satisfaction of the Principal, as provided in 8.2.1 of the Contract for the full duration of the off-site storage. Such insurance may include an exclusion for loss or damage sustained during processing;
  - (b) Effect a transit insurance policy for transit of all the Materials from the Premises to the Site in the name of the Principal to the satisfaction of the Principal, as provided in 8.2.1 of the Contract for the full duration of the off-site storage.
20. **WITHIN** 15 Working Days of the date of this agreement, the Bailee shall furnish the Principal and the Contractor with evidence of such insurance.
21. **THE** Bailee represents and warrants to the Principal and to the Contractor (where applicable) that:
  - (a) It has good and clear title to the Materials;
  - (b) It has the ability to assign and transfer the Materials to the Principal or the Contractor; and
  - (c) The Materials will be transferred to the Principal or the Contractor free of any security interest.
22. **THE** Bailee undertakes that, if it charges or mortgages all or any part of its property (either real or personal), assets, or undertaking, it will obtain written confirmation from the chargee or mortgagee that the charge or the mortgage over such property, assets, or undertaking does not extend to the Materials once they have been paid for by the Principal or the Contractor (as applicable).
23. **NOTHING** in this agreement shall be deemed to limit, waive, or affect the Engineer's powers under the Contract to order the removal from the Site or the Premises of Materials which are not in accordance with the Contract and the substitution by the Contractor at its own risk and expense of proper Materials. Nothing in this agreement shall be

deemed to limit, waive or affect any other powers conferred on the Engineer and/or the Principal under the Contract.

- 24. **EACH** party shall pay its own costs of and incidental to the negotiation, preparation, execution, and any amendment of this agreement.
- 25. **WORDS** and phrases in this agreement shall have the same meanings as are ascribed to them under the Contract except where the context or any express provision of this agreement requires otherwise.

**SIGNED BY** [Click to enter text or paste signature](#) *(Authorised Signatory)*

of [Click to enter text](#) *(Principal)*

**SIGNED BY** [Click to enter text or paste signature](#) *(Authorised Signatory)*

of [Click to enter text](#) *(Contractor)*

**SIGNED BY** [Click to enter text or paste signature](#) *(Authorised Signatory)*

of [Click to enter text](#) *(Subcontractor)*

○ **Schedule 15 – Practical Completion Certificate**

This Practical Completion Certificate is issued under 10.4.3(a) or 10.4.4.

<b>Contract for</b>	<b>OPTIC FIBRE NETWORK COMMUNICATIONS SYSTEM FOR NADI &amp; NAUSOR AIRPORTI</b>	<i>(Contract name and number if applicable)</i>
<b>Principal</b>	<b>Airports Fiji Limited (AFL)</b>	<i>(Insert name of Principal)</i>
<b>Contractor</b>		<i>(Insert name of Contractor)</i>

This certificate relates to:

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

*(Specify Separable Portion if applicable)*

Receipt of the Contractor’s notice dated \_\_\_\_\_ and issued in accordance with 10.4.2 is acknowledged.

In accordance with  10.4.3(a) or  10.4.4 *(select one)*, the Engineer certifies that the Contract Works or Separable Portion to which this certificate relates qualify for a Practical Completion Certificate under 10.4, notwithstanding that there may be minor omissions and/or minor defects (as listed in the attached schedule) which satisfy the criteria in 10.4.1 (a), (b), and (c).

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

Practical Completion was achieved

on \_\_\_\_\_ at \_\_\_\_\_.

Signed by the Engineer \_\_\_\_\_  
 Name \_\_\_\_\_  
 Date \_\_\_\_\_

**SCHEDULE**

The following omissions and/or defects have been assessed as being of a minor nature satisfying the criteria in 10.4.1(a), (b), and (c) and were identified during an inspection carried out by the Engineer or Engineer’s Representative on

\_\_\_\_\_ *date*

*(List minor omissions and defects )*

*Enter text*

○ **Schedule 16 – Final Completion Certificate**

This certificate is a Final Completion Certificate issued under 11.3.1.

<b>Contract for</b>	<b>OPTIC FIBRE NETWORK COMMUNICATIONS SYSTEM FOR NADI &amp; NAUSOR AIRPORTI</b>	<i>(Contract name and number if applicable)</i>
<b>Principal</b>	<b>Airports Fiji Limited (AFL)</b>	<i>(Insert name of Principal)</i>
<b>Contractor</b>		<i>(Insert name of Contractor)</i>

This certificate relates to:

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

*(Specify Separable Portion if applicable)*

In accordance with 11.3.1, the Engineer certifies that the Contract Works or Separable Portion to which this certificate relates qualify for a Final Completion Certificate issued under 11.3

on \_\_\_\_\_ at \_\_\_\_\_.

Signed by the Engineer \_\_\_\_\_  
Name \_\_\_\_\_  
Date \_\_\_\_\_

## **Schedule 17 – Specifications**

## **Schedule 18 – Drawings**

## **Schedule 19 – Method of Works Plan**



## **Schedule 20 – Schedule of Prices**

## Schedule 21 – Form of Continuity Deed

DATE

2022

PARTIES

AIRPORTS FIJI LIMITED (Principal)

[NAME OF SUBCONTRACTOR] (Subcontractor)

Contractor (Head Contractor)

### BACKGROUND

- A. The Principal and the Head Contractor have entered into a contract dated [ ] ("Head Contract").
- B. Under the Head Contract, the Head Contractor has agreed to construct, complete, deliver and correct defects to certain works described in the Head Contract ("**Works**") and to carry out and fulfil the obligations imposed upon the Head Contractor under the Head Contract.
- C. The Head Contractor has, with the consent of the Principal, engaged the Subcontractor to carry out part of the Works ("**Subcontract Works**") and to carry out and fulfil certain obligations imposed in relation to the Head Contract under a subcontract ("**Subcontract**").
- D. The Subcontractor has agreed to, among other things, provide a duty of care covenant to the Principal on the terms set out in this deed.

### GENERAL

#### 1. HEAD CONTRACT

1.1 The Subcontractor acknowledges that:

- (a) it has received a copy of all parts of the Head Contract relevant to the Subcontract Works and to this deed and it has read and understood those; and
- (b) it is a subcontractor of the Head Contractor and is not a contractor of the Principal.

#### 2. SUBCONTRACTOR'S DUTY OF CARE

2.1 The Subcontractor warrants and undertakes to the Principal, any person to whom the Subcontract is novated and all owners, lessees, occupiers and operators of the completed Subcontract Works in addition to the Principal (each, a "**Relevant Party**" and together the "**Relevant Parties**"), that:

- (a) in carrying out the Subcontract Works, the Subcontractor will utilize standards, practices, methods and procedures conforming to law and which exhibit the degree of skill, diligence, prudence and foresight which would be expected from a skilled and experienced contractor engaged in the same type of undertaking as the Subcontract Works under the same or similar circumstances, and acknowledges and agrees that the Relevant Parties will be relying upon the same;
- (b) all warranties and guarantees it provides or issues for the Subcontract Works pursuant to its contract with the Head Contractor will be provided or issued also for the benefit of the Relevant Parties and

shall apply for such periods of time and be limited in such manner as provided in the documents creating those obligations.

### 3. CONTINUITY

3.1 The Subcontractor covenants with the Principal that if the Head Contract is terminated, expires or lawfully comes to an end (including as a result of mutual agreement between the parties thereto), the Principal elects to resume possession of the Site or the Subcontractor becomes entitled to terminate the Subcontract pursuant to its terms, before the Subcontractor has completed the Subcontract Works, the Subcontractor will:

(a) if:

(i) required by the Principal; and

(ii) the Principal has committed to pay for work to be done and material to be supplied in accordance with the Subcontract from the date the Principal gives notice to the Subcontractor of the Principal's intention to directly engage the Subcontractor,

complete the Subcontract Works in accordance with the Subcontract and the Subcontractor agrees (without prejudice to the enforcement rights of other Relevant Parties) that the Subcontract shall be directly enforceable by the Principal; and/or

(b) accept, upon early termination of the Head Contract, a novation of the Subcontract to the Principal and the Subcontractor shall take all necessary action as reasonably required by the Principal to give full effect to that novation; and

(c) in any case, not terminate the Subcontract or, suspend the Subcontract Works without first providing the Principal with a reasonable opportunity to remedy the relevant breach or default.

3.2 The Subcontractor acknowledges and agrees that it shall have a duty of care to the Relevant Parties to complete the Subcontract Works in accordance with the Subcontract (or the novated Subcontract, as applicable).

### 4. BENEFIT OF ASSIGNMENT

4.1 The Subcontractor shall not assign or transfer any of its rights or obligations under this deed or the Subcontract. The parties acknowledge that the Subcontractor can subcontract the Subcontract Works in accordance with the terms of the Subcontract.

4.2 The Principal may, without the consent of the Subcontractor, assign and/or transfer its rights or obligations under this deed to any person.

### 5. RIGHTS ADDITIONAL TO HEAD CONTRACT

5.1 The Principal's rights under this deed are in addition to and do not derogate from any other rights the Principal may have under the Head Contract.

### 6. NOTICES

6.1 Each notice or other communication under this deed is to be writing and is to be made by facsimile, personal delivery, email or registered post to the addressee at the facsimile number, email address or

address, and shall be marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other party. The initial facsimile number, address, email address and relevant person or office holder of each party is set out under the name at the end of this deed.

6.2 No communication shall be effective until received. Communications are, however, deemed to be received:

- (a) in the case of personal delivery, when delivered;
- (b) in the case of a letter, on the third business day after posting;
- (c) in the case of a facsimile, on the business day on which it is dispatched or, if dispatched after 5.00pm (in the place of receipt) on a business day or on a non-business day, on the next business day after the date of dispatch; and
- (d) in the case of email, when acknowledged by the addressee in writing or by return email or otherwise in writing except that return emails generated automatically shall not constitute an acknowledgement.

## **7. NO WAIVER**

7.1 A failure of party, at any time, to require full or part performance of any obligations under this deed will not in any way affect the rights of that party to require that performance subsequently.

## **8. GOVERNING LAW**

8.1 This deed is governed by the laws of Fiji. Each party unconditionally and irrevocably submits to the non-exclusive jurisdiction of the Courts of Fiji.

## **9. FURTHER ASSURANCES**

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

## **10. SEVERABILITY**

10.1 If any provision of this deed is illegal or unenforceable, then:

- (a) if the provision would not be illegal or unenforceable if a word or words were omitted, that word or words are severed, and
- (b) in any other case, the whole provision is severed, and, except where the basic nature of this deed is altered, as altered, in contrary to public policy, the remainder of this deed continues to have full force and effect.

## **11. INTERPRETATION**

11.1 In this deed, unless the context otherwise requires:

- (a) words importing the singular number include the plural number;
- (b) words importing the plural number include the singular number;

- (c) words of any gender include the other gender and bodies corporate;
- (d) covenants given in this document by more than one person shall bind each of them jointly and severally;
- (e) a party includes its successors and permitted assigns;
- (f) paragraph headings and table of contents are not to be used to construe this document;
- (g) references to a clause or clauses shall unless otherwise specified be a reference to the corresponding clause or clauses in this deed.

11.2 Except where expressly provided to the contrary all references in this deed to 'including', 'includes' or 'include' shall be read as if that reference is followed by the words 'without limitation'.

**12. GENERAL**

12.1 This deed may be executed in any number of counterparts. Each counterpart constitutes an original of this document, all of which together constitute one instrument.

12.2 Without limiting any other mode of delivery, this deed will be delivered by a party to this deed on the earlier of:

- (a) physical delivery of an original of this deed, executed by that party, into the custody of another party to this deed or its solicitors; and
- (b) transmission by that party, its solicitors or any other person authorised in writing by that party of a facsimile, photocopied or scanned copy of an original of this deed, executed by that party, to another party to this deed or its solicitors.

**EXECUTION**

Executed as a deed.

**EXECUTED** as a **DEED** for and on behalf )  
of **AIRPORTS FIJI LIMITED** )

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

**Address for communications to Airports Fiji Limited:**

Address: [•]

Facsimile: [•]

Email: [•]

Attention: [•]

**EXECUTED** as a **DEED** for and on behalf )  
of **[HEAD CONTRACTOR]** )

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

**Address for communications to Head Contractor:**

Address: [•]

Facsimile: [•]

Email: [•]

Attention: [•]

**EXECUTED** as a **DEED** for and on behalf )  
of **[SUBCONTRACTOR]** )

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

**Address for communications to Subcontractor:**

Address: [•]

Facsimile: [•]

Email: [•]

Attention: [•]

**COPY OF SUBCONTRACT/TERMS OF ENGAGEMENT**

[To be attached]

## **Schedule 22 - Form of Parent Company Guarantee**

**NOT USED**



**Schedule 24: post tender correspondence and documents – as attached;**

**Schedule 25: Contractor’s tender – as attached;**

**Schedule 26: notices to tenderers – as attached.**

**Schedule 27: Deed of Supplier Payment – Ready -mix Concrete supply**

