

Memorandum of Understanding

relating to the industry's support of the revision of industry-standard construction contract NZS3910

between

the **Ministry of Business, Innovation and Employment**
(representing the **Construction Sector Accord**)

and

the **New Zealand Infrastructure Commission, Te Waihanga**

(together, the **Commissioners**);

and

Organisations each representing a category or segment of the construction industry (together, the **Representative Bodies**)

This **Memorandum of Understanding (MoU)** is made on

2021

between (1) **The Commissioners** (the Ministry of Business, Innovation and Employment (**MBIE**) (representing the Construction Sector Accord (the **Accord**)) and the New Zealand Infrastructure Commission, Te Waihanga (**Te Waihanga**))

and (2) **Representative Bodies**, Organisations each representing a category or segment of the construction industry listed in Schedule 1,

together, the **Parties**.

Introduction

- A. NZS 3910:2013 *Conditions of contract for building and civil engineering construction* (**NZS 3910**) is used as the foundation for the majority of New Zealand contracts in the building, engineering, construction and infrastructure industry sectors (the **Sector**).
- B. The Parties recognise the need to update NZS 3910 and its suite of related standard contracts to reflect current legislation, market requirements and conditions.
- C. The Parties have decided to commence a project to review and update NZS 3910 and create a new automated version of NZS 3910 with smart document features (the **Project**).
- D. The Project requires a commissioning agent who will instigate the Project and commit to ensuring that the costs of the Project are met. The Parties have agreed that the Commissioners will be the commissioning agent on the basis set out in this MoU.
- E. MBIE, on behalf of the Commissioners, will engage Standards New Zealand (**Standards NZ**) to manage the process of revising NZS 3910 in line with the Standards NZ Scoping Report dated March 2021, [available online](#). Standards NZ will work with the Commissioners and invite relevant stakeholders to participate in the committee responsible for inputting into the revision process (the **Development Committee**).
- F. The Commissioners will also look to engage one or more third parties to provide legal drafting services and create an automated version of NZS 3910 with smart document features.
- G. MBIE, on behalf of the Accord, and the Representative Bodies will jointly fund the Project as described in this MoU.
- H. The Representative Bodies will either fund their financial contribution to the Project directly, or facilitate financial contributions from supporting entities within the category or segment of the Sector they represent (**Supporting Entities**).

Purpose of this MoU

This MoU has been developed between the Parties in order to:

- A. Acknowledge the progress made by the various industry groups that have worked together through the project scoping phase to initiate the commissioning of the Project;
- B. Set out the roles of:

- (i) the Commissioners as representatives of both the Crown and the Sector;
 - (ii) the Representative Bodies as representatives of different categories or segments of the Sector that will encourage their members and other entities to become Supporting Entities and facilitate financial support of the Project from those Supporting Entities;
 - (iii) the Supporting Entities as businesses, agencies, organisations and representatives of professions from across the Sector,
- each of whom will support the Project and have a vested interest in its success;
- C. Agree the Project financial contributions will be made and / or facilitated by MBIE representing the Accord (on behalf of the construction sector) and the Representative Bodies; and
 - D. Propose a framework for ensuring fair representation of the various professions and perspectives through the Project (noting the independence and authority of Standards NZ to make their own determinations in relation to the Project).
 - E. Set out how:
 - (i) the Commissioners will work with Standards NZ on behalf of the Sector to advise on the composition of the Development Committee so that it represents the views of the Sector and acts in the best interests of the industry and New Zealand (while acknowledging that Standards NZ has sole authority to make appointments to the Development Committee); and
 - (ii) the Representative Bodies will support the Project by encouraging broad participation in the process from their members and other entities, and by facilitating financial support from their members and other entities that become Supporting Entities.

It is agreed

1. MoU interpretation

1.1 Non-binding

The Parties acknowledge that this MoU is intended as a statement of mutually agreed intentions and it is not intended to create legally enforceable rights or obligations. The parties agree, however, that they are bound in good faith to observe and perform their obligations under this MoU.

1.2 Relationship with Standards NZ

While Standards NZ is not a party to this MoU, for transparency and context, Standards NZ will be provided with a copy of this MoU to further guide its approach to delivering the review and update of NZS 3910.

On behalf of the joint Commissioners, MBIE will hold a Service Level Agreement with Standards NZ for the delivery of the review and update of NZS 3910.

1.3 Variations and amendments

The Parties may vary this MoU in writing by mutual agreement.

2. Term

This MoU will start on the date on which it is signed by the Parties and will continue until terminated in accordance with this MoU.

3. Relationship principles

3.1 Nature of relationship

The Parties acknowledge and agree that:

- (a) They will give effect to this MoU and establish a framework for the Project in accordance with the principles and objectives of the Accord;
- (b) This MoU is not intended to establish an escalation process for managing any issues in relation to the Project, for example the resolution of any contentious legal issues. These will be addressed through the Project's own governance structure;
- (c) They will promote the Project to their members and stakeholders, and ensure there are regular and fair communications with their stakeholders about the Project's progress and outcomes; and
- (d) While putting forward their own views and perspectives, they will take an approach that is in the best interests of the Sector, and ensure that their representatives do the same.

3.2 Behaviour

The Parties acknowledge that the success of the Project is:

- (a) based on good faith and a high degree of co-operation, transparency and use of efficient processes; and
- (b) dependent on the ability of leaders across the Sector to navigate any challenges and risks in an open and pragmatic way.

3.3 Initiation and funding of the Project

The Parties acknowledge that over the past 18 months, a stakeholder group made up of interested parties from across the Sector has come together to progress the review of NZS 3910. They have supported the scoping of the Project and have incurred time and cost to get the Project to this stage. The Commissioners acknowledge the work that has been undertaken to date.

As stakeholders across the Sector are expected to benefit from the Project, the Project costs will be shared by MBIE (representing the Accord) as well as a number of Representative Bodies from the Sector. The Project requires a commissioner that is able to commit to paying the costs of the Project from the contributions provided. The Commissioners have agreed to perform this function on behalf of the wider Sector.

The Representative Bodies agree to either directly fund their financial contribution to the Project, or facilitate commitments to, and collection of, financial contributions from their members and other entities that are Supporting Entities. Each Representative Body is required to fund contributions towards Project costs specified in the table set out in clause 4.5.

The Representative Bodies will account for, and maintain records of, the contributions received from their Supporting Entities within the category or segment of the Sector they represent.

MBIE, on behalf of the Commissioners, will, within one month of signing this MoU, invoice the Representative Bodies for their estimated contribution towards Project costs in two equal instalments. The first invoice will be due and payable within two months of the signing of this MoU. The second invoice will be due and payable within 12 months of the signing of this MoU.

MBIE will administer the Project funds and make Project cost payments as directed by the Commissioners.

4. Project Costs

4.1 Standards NZ costs

The estimated costs to deliver the review and update of NZS 3910 by Standards NZ is set out in the following table:

Total Milestone	Estimated payment date	Estimated cost (exc. GST)
Phase 1.0 – Initiation	Month 3	\$16,198
Phase 2.1 – Development (Meeting 1)	Month 4	\$28,719.5
Phase 2.2 – Development (Meeting 2)	Month 7	\$28,719.5
Phase 2.3 – Development (Meeting 3)	Month 10	\$28,719.5
Phase 2.4 – Development (Meeting 4)	Month 13	\$28,719.5
Phase 3.0 – Public consultation	Month 19	\$47,180
Phase 4.0 – Standards Approval Board	Month 20	\$5,693
Phase 5.0 – Publication & project closure	Month 21	\$27,775
Total Standards NZ Fee		\$211,724
Contingency – Additional meetings (and rounding)		\$48,276
TOTAL		\$260,000

4.2 Other Project costs

The Project will incur additional costs that are not included in the Standards NZ costs set out in clause 4.1 above. Estimated budgets for the additional costs are set out in the table below:

Item	Estimated payment date	Estimated budget cost (exc. GST)
Legal writer and support	To be confirmed	\$250,000
Smart Document Features	To be confirmed	\$150,000
TOTAL		\$400,000

4.3 Total Project costs

The estimated total Project costs are set out in the following table:

Item	Estimated cost (exc. GST)
Standards NZ costs	\$260,000
Other Project costs	\$400,000
TOTAL	\$660,000

4.4 Changes to the estimated Project costs

Any changes to the Project costs that impact this MoU will be discussed between the Parties to decide whether this MoU should be varied as a result.

4.5 Payment and distribution of Project costs

The total estimated cost of the Project, in clause 4.3 above, will be shared by MBIE (representing the Accord), and the Representative Bodies in the proportions outlined below:

Sector group	Proportion of total Project costs	MBIE or Representative Body	Estimated contribution towards Project costs
The Accord representing the entire Construction Sector	25%	MBIE (representing the Accord)	\$165,000
Client Sector	25%	New Zealand Infrastructure Commission, Te Waihangā	\$43,500
		The Property Council of New Zealand	\$16,500
		Auckland Council	\$15,000
		Department of Corrections	\$15,000
		Ministry of Education	\$15,000
		Kāinga Ora	\$15,000
		Ministry of Justice	\$15,000
		Ministry of Health	\$15,000
		New Zealand Defence Force	\$15,000
Contractors Sector	25%	Civil Contractors New Zealand	\$65,000
		Registered Master Builders – (Vertical Leaders Forum)	\$65,000
		Specialist Trade Contractors Federation	\$35,000
Consultant Sector	25%	NZ Construction Industry Council (NZCIC)	\$165,000
Total			\$660,000

If the total actual Project costs exceed the total estimated Project costs, the Commissioners may seek additional contributions from both MBIE (representing the Accord) and Representative Bodies and vary this MoU accordingly.

If the Commissioners do not receive sufficient contributions to cover the Project costs, they reserve the right to end the Project and terminate this MoU without agreement of any other of the Parties to this MoU.

Any unused Project funds remaining at the time of termination, will, after discharging any financial liabilities for the Project, be refunded to MBIE (representing the Accord) and the Representative Bodies, on a pro-rata basis, relative to each party's contribution set out in the above table.

If the contributions exceed the actual Project costs, the surplus funds remaining at the completion of the Project will be refunded to MBIE (representing the Accord) and the Representative Bodies on a pro-rata basis relative to each party's contribution set out in the above table.

Each Representative Body will distribute any refunds on a pro-rata basis relative to each Supporting Entity's financial contribution.

5. Project representation

5.1 Development Committee representation

Nominations for members of the Development Committee will be sought by Standards NZ from organisations across the Sector, with appointments being made by Standards NZ. Standards NZ will endeavour to appoint sufficiently experienced and qualified individuals to the Development Committee, and in a way that creates a committee with a broad and representative set of viewpoints.

The Commissioners will work with Standards NZ to advise them on proposed members of the Development Committee to achieve an effective and balanced representation of the different bodies and perspectives from across the Sector, and to ensure that members have the requisite knowledge and expertise. The members of the Development Committee will be responsible for nominating a suitable Chairperson.

The Commissioners will consult with Representative Bodies and members of the Accord governance groups, to consider their perspectives on the make-up of the Development Committee, noting that final decisions on members rests with Standards NZ. The Representative Bodies may collaborate with each other and the Sector to share their views with the Commissioners on any nominations called for by Standards NZ.

The Commissioners will support the Representative Bodies and their Supporting Entities in being acknowledged within the revised NZS 3910 publication for their financial contribution to the Project, subject to agreement with Standards NZ.

5.2 Governance

The governance arrangements for this MoU are set out in Schedule 1.

6. Disagreements

If any Representative Body is not satisfied with any matter arising out of, or in connection with, this MoU that Representative Body will advise the Commissioners of the circumstances surrounding the issue as soon as reasonably practicable.

The Representative Body and the Commissioners will use all reasonable efforts in good faith to resolve any issues raised by any party through negotiations between a director (or equivalent) of each party with authority to settle the disagreement, in accordance with this clause 6 as expeditiously as possible.

Each party will, to the extent practicable to do so in the circumstances, continue to perform its obligations under this MoU while any disagreement is being resolved.

7. Termination

This MoU may be terminated by agreement in writing signed by authorised representatives of two or more of the Parties, including at least one of the Commissioners.

Any Party that does not support any proposed expansion of the scope of the Project may withdraw from this MoU by giving at least one month's written notice to the Commissioners.

8. General

8.1 New Zealand law

New Zealand law will apply to this MoU and the parties irrevocably submit to the exclusive jurisdiction of the New Zealand courts.

8.2 Counterparts

This MoU may be executed in any number of counterparts (including any facsimile or scanned PDF counterpart), each of which shall be deemed to be an original, but all of which together shall constitute the same instrument. No counterpart shall be effective until each party has executed at least one counterpart.

Signatures

The Commissioners

SIGNED by the **Sovereign in Right of New Zealand** acting by and through a duly authorised representative of the **Ministry of Business, Innovation and Employment** representing the **Construction Sector Accord**



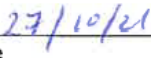
Signature

Phillippa Fox

Name

Deputy Chief Executive, Building, Resources
and Markets

Position



Date

SIGNED for and on behalf of the **New Zealand Infrastructure Commission, Te Waihanga**



Signature

Ross Copland

Name

Chief Executive

Position

Nov 1, 2021

Date

The Representative Bodies

SIGNED for and on behalf of the **New Zealand Infrastructure Commission, Te Waihanga**



Signature

Ross Copland

Name

Chief Executive

Position

Nov 1, 2021

Date

SIGNED for and on behalf of the **Property Council of New Zealand**


Leonie Freeman Nov 8, 2021 12:17 GMT+13

Signature

Leonie Freeman

Name

CEO

Position

Nov 8, 2021

Date

SIGNED for and on behalf of **Auckland Council**



Signature

Helen Wild

Name

General Counsel

Position

8 November 2021

Date

SIGNED for and on behalf of the **Department of Corrections (a Client Crown Entity and member of the Accord Agency Working Group)**



Signature

Stephen O'Neill

Name

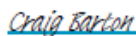
Director Asset Management

Position

Nov 3, 2021

Date

SIGNED for and on behalf of the **Ministry of Education (a Client Crown Entity and member of the Accord Agency Working Group)**



Craig Barton (Nov 2, 2021 10:28 GMT+13)

Signature

Craig Barton

Name

Group Manager - Infrastructure Procurement

Position

Nov 2, 2021

Date

SIGNED for and on behalf of **Kāinga Ora
Ministry of Justice (a Client Crown Entity and
member of the Accord Agency Working
Group)**



Andrea Morton

Name

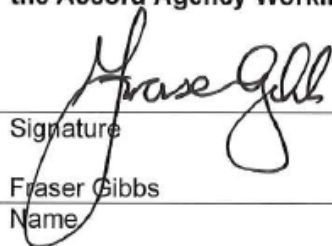
Director - Procurement & Supplier Management

Position

November 8 2021

Date

SIGNED for and on behalf of the **Ministry of
Justice (a Client Crown Entity and member of
the Accord Agency Working Group)**



Signature

Fraser Gibbs

Name

General Manager Commercial and Property

Position

5/11/2021

Date

SIGNED for and on behalf of the **Ministry of
Health (a Client Crown Entity and member of
the Accord Agency Working Group)**



Signature

Karen Mitchell

Acting Deputy Director-General

2 November 2021

SIGNED for and on behalf of **New Zealand Defence Force (a Client Crown Entity and member of the Accord Agency Working Group)**


Wally Butt (Nov 3, 2021 08:31 GMT+13)

Signature

Wally Butt

Name

General Manager Estate Delivery

Position

Nov 3, 2021

Date

SIGNED for and on behalf of **Civil Contractors New Zealand**



Signature

Peter Silcock

Name

CEO

Position

Nov 1, 2021

Date

SIGNED for and on behalf of the **Registered Master Builders - Vertical Leaders Forum**


D A Kelly (Nov 6, 2021 16:00 GMT+13)

Signature

D A Kelly

Name

Chief Executive

Position

Nov 6, 2021

Date

SIGNED for and on behalf of the **Specialist Trade Contractors Federation**


Signature

GRANT R. PRICE
Name

PRESIDENT
Position

3/11/2021
Date

SIGNED for and on behalf of the **NZ Construction Industry Council (NZCIC)**



Signature

Graham Burke

Name

Executive Director

Position

Nov 1, 2021

Date

SCHEDULE 1: GOVERNANCE

1. Representative Bodies

1.1 Representative Bodies

The Representative Bodies are:

- (a) New Zealand Infrastructure Commission, Te Waihanga;
- (b) The Property Council of New Zealand;
- (c) Auckland Council;
- (d) Client Crown Entities (Accord Agency Working Group) incorporating:
 - (i) Department of Corrections;
 - (ii) Ministry of Education;
 - (iii) Kāinga Ora;
 - (iv) Ministry of Justice;
 - (v) Ministry of Health; and
 - (vi) New Zealand Defence Force;
- (e) Civil Contractors New Zealand;
- (f) Registered Master Builders - Vertical Leaders Forum;
- (g) Specialist Trade Contractors Federation; and
- (h) NZ Construction Industry Council (NZCIC)

2. Representatives

2.1 Appointment of representatives

- (a) Each party will appoint, and maintain during the term of this MoU, a suitably qualified and experienced person to lead the relationship with other Parties to this MoU.
- (b) A party may change its representative at any time by giving written notice to the other party.

2.2 Identity

- (a) The identity and contact details for the MBIE / Accord representative is set out below:

Name: Alison Murray

Title: Director of Construction Procurement Transformation, Digital, Communications & Transformation Branch, MBIE

Postal address: PO Box 1473, Wellington 6140, New Zealand

Physical address: 25 The Terrace, Wellington 6011

Email address: alison.murray@mbie.govt.nz

- (b) The identity and contact details for the Te Waihangā representative is set out below:

Name: John Hemi

Title: Special Adviser, Infrastructure Delivery, Te Waihangā

Postal address: DX SX33303

Physical address: Level 7, 95 Customhouse Quay, Wellington, 6011

Email address: john.hemi@tewaihangā.govt.nz

- (c) The identity and contact details for the Property Council representative are set out below:

Name: Ed Crook

Title: Partner Russell McVeagh

Postal address: PO Box 8, Shortland Street, 1140

Physical address: Vero Centre, 48 Shortland Street, Auckland

Email address: ed.crook@russellmcveagh.com

- (d) The identity and contact details for the Auckland Council representative are set out below:

Name: Fleur Aldridge

Title: Principal Solicitor, Construction & Infrastructure

Postal address: 135 Albert Street, Auckland 1010

Physical address: 135 Albert Street, Auckland 1010

Email address: fleur.aldridge@aucklandcouncil.govt.nz

- (e) The identity and contact details for the Department of Corrections representative are set out below:

Name: Stephen O'Neill

Title: Director Asset Management

Postal address: Private Box, 1206, Wellington

Physical address: 44-52 The Terrace, Mayfair House, Wellington

Email address: Stephen.o'neill2@corrections.govt.nz

- (f) The identity and contact details for the Ministry of Education representative are set out below:

Name: Rebecca Robertshawe

Title: Director – TPHM Legal

Postal address: PO Box 1666 Wellington 6140

Physical address: Mātauranga House, 33 Bowen Street, Wellington 6011

Email address: Rebecca.robertshawe@education.govt.nz

- (g) The identity and contact details for the Kāinga Ora representative are set out below:

Name: Trina Lincoln

Title: Associate General Counsel Construction

Postal address: National Office, PO Box 2628, Wellington 6140

Physical address: 107 Carlton Gore Road, Newmarket, Auckland

Email address: trina.lincoln@kaingaora.govt.nz

- (h) The identity and contact details for the Ministry of Justice representative are set out below:

Name: Fraser Gibbs

Title: General Manager, Commercial and Property

Postal address: DX SX10088

Physical address: Level 4, 19 Aitken Street, Wellington 6011

Email address: fraser.gibbs@justice.govt.nz

- (i) The identity and contact details for the Ministry of Health representative are set out below:

Name: Karen Mitchell

Title: Deputy Director-General

Postal address: PO Box 5013

Physical address: 113 Molesworth Street, Thorndon

Email address: Karen.Mitchell@health.govt.nz

- (j) The identity and contact details for the New Zealand Defence Force representative are set out below:

Name: Walter Butt
 Title: GM Estate Delivery
 Postal address: Private Bag 39996, Wellington
 Physical address: 34 Bowen Street, Wellington
 Email address: walter.butt@nzdf.mil.nz

- (k) The identity and contact details for the Civil Contractors New Zealand representative are set out below:

Name: Peter Silcock
 Title: CEO
 Postal address: PO Box 12013, Wellington 6144
 Physical address: 21 Fitzherbert Tce, Thorndon, Wellington 6011
 Email address: peter@civilcontractors.co.nz

- (l) The identity and contact details for the Registered Master Builders - Vertical Leaders Forum representative are set out below:

Name: David Kelly
 Title: Chief Executive
 Postal address: PO Box 1796 Wellington
 Physical address: L14, 2 Hunter Street, Wellington
 Email address: david.kelly@masterbuilder.org.nz

- (m) The identity and contact details for the Specialist Trade Contractors Federation representative are set out below:

Name: GRAHAM BURKE
 Title: EXECUTIVE OFFICER
 Postal address: P.O. Box 456, Wellington 6140
 Physical address: —
 Email address: graham@grahamburke.co.nz

- (n) The identity and contact details for the New Zealand Construction Industry Council (NZCIC) representative are set out below:

Name: Graham Burke

Title: Executive Director

Postal address: PO Box 448, Wellington 6140

Physical address: Level 4, Solnet House, 70 The Terrace, Wellington

Email address: graham@nzcic.co.nz

2.3 **Scope of role**

Each representative will serve as his or her appointer's primary point of contact with the other parties in relation to this MoU.