

Section 17 Agreements

LAND ACQUISITION RESOLUTION SERVICE

JULY 2022



kia tau
YOUR EXPERTS
IN DISPUTE
RESOLUTION



Overview

Land Acquisition Resolution Service (LARS) is a free and independent mediation service to help landowners and the Crown quickly reach agreements during the acquisition process.

Memorandum of Agreement Pursuant to the Public Works Act 1981 (S17 Agreement)

Once you and the Crown have reached agreement regarding the property acquisition, the mediator will guide you through the process of drafting an agreement. This agreement is made under section 17 of the Public Works Act 1981 and, as a public record, will not be confidential.

No settlement is binding unless and until it is in writing and signed by both you and the Crown. The mediator will work with both of you to draft this and you can get legal advice before signing.

The agreement is a 'Memorandum of Agreement Pursuant to the Public Works Act 1981' and a template will be forwarded to you before the mediation. The agreement is known as a Section 17 Agreement and will be either for the full or partial acquisition of the land. The following details are contained in the agreement:

- Details of the parties (landowner and Crown)
- Details of the property to be acquired
- Compensation
- The acquisition agreement reached between you and the Crown
- Schedule A – Standard Terms and Conditions (Full Acquisition) - see page 3
- Schedule A – Standard Terms and Conditions (Partial Acquisition) - see page 9
- Schedule B – Special Terms and Conditions including the settlement date, any additional compensation, GST provisions and the Chattels included in the sale.

Each agreement is unique to the parties involved, so the mediator will work through each of these sections with you. The Standard Terms and Conditions apply to all agreements made under section 17 of the Public Works Act 1981. You can find a copy of these terms in the following pages.

Get in touch

For more information or to request a full copy of the agreement template, please get in touch with the LARS team. You can phone 0800 60 43 73 or email us at LARS@fairwayresolution.com.

Full acquisition

Schedule A: Standard Terms and Conditions

1 Definitions

In this agreement, unless the context requires otherwise:

- (a) *Additional Compensation* means the amount on the front page of this agreement, being additional compensation payable pursuant to sections 72(1) and 72A or section 72C (as specified in **Schedule B** of this agreement) of the PWA;
- (b) *Authorities* means all or any government, local, statutory or non-statutory authorities or bodies having jurisdiction over the Land;
- (c) *Chattels* means the chattels listed in **Schedule B** of this agreement;
- (d) *Compensation* means the amount on the front page of this agreement, being the amount that the parties have agreed that the Owner is entitled to pursuant to Part 5 of the PWA for the taking of the Land on the terms set out in this agreement, but does not include disturbance costs pursuant to section 66 of the PWA;
- (e) *Contaminant* has the meaning of that word as defined in the RMA;
- (f) *Crown* means Her Majesty the Queen acting by and through the Minister for Land Information New Zealand, and includes the Crown's agents, employees, contractors and invitees and where the context requires, includes Waka Kotahi;
- (g) *Fixtures* means all buildings and other improvements on the Land;
- (h) *GST* means goods and services tax arising pursuant to the GST Act;
- (i) *GST Act* means the Goods and Services Tax Act 1985;
- (j) *Land* means the land described on the front page of this agreement;
- (k) *Owner* means the owner described on the front page of this agreement, and includes the Owner's successors, permitted assigns, agents, employees, contractors and invitees;
- (l) *Permitted Encumbrances* means the encumbrances listed in **clause 2 (a) (i) to 2 (a)()** on page **2** of this agreement (if applicable)
- (m) *Project* means the project described on the front page of this agreement;
- (n) *PWA* means the Public Works Act 1981;
- (o) *RMA* means the Resource Management Act 1991;
- (p) *Settlement Date* means the date specified in **Schedule B**;
- (q) *Settlement Statement* means a statement showing the Compensation, Additional Compensation and any rates or other amounts payable under this agreement on the Settlement Date;
- (r) *Waka Kotahi* means New Zealand Transport Agency and includes its agents, employees, contractors and invitees;
- (s) *Working Day* has the meaning given in the PWA, and excludes the provincial anniversary

day observed where the Land is situated; and

- (t) Where obligations bind more than one person, those obligations bind those persons jointly and severally.

2 No Commitment

The Owner acknowledges and agrees that, until accepted in writing, this agreement is only an offer to sell to the Crown, its acceptance will not be anticipated and the Owner will not enter into any consequential commitments in anticipation of this offer being accepted by the Crown. Any variation of this agreement is not binding on the Crown unless it is signed by the Crown.

3 Disturbance Costs

The Crown will, in accordance with section 66 of the PWA, reimburse the Owner's reasonable disturbance costs incurred in this transaction on production of an account and/or GST invoices in the name of and addressed to the Owner.

4 Full and Final Settlement and Possession

- (a) To facilitate settlement, the Owner or the Owner's solicitor will provide the Crown with the Settlement Statement and a GST invoice (if applicable) for payment of the Compensation, the Additional Compensation and any rates or other amounts payable under this agreement on the Settlement Date no later than 10 working days before the Settlement Date.
- (b) The Owner acknowledges that the Crown will tender settlement by way of funds drawn on the account of Waka Kotahi.
- (c) On the Settlement Date:
 - (i) vacant possession of the Land will be given to the Crown (other than any licence, lease or tenancy provided for in **Schedule B** of this agreement);
 - (ii) subject to **clauses 4(a), 6(b) and 7(c) of this Schedule A**, the Crown will pay the Compensation, the Additional Compensation and any rates or other amounts payable under this agreement on the Settlement Date to the Owner;
 - (iii) to the extent that there are any outstanding rates payable in respect of the current rating year, the Owner will pay any such amount required to fully clear the rates for the current rating year either before or on settlement;
 - (iv) net rates to the end of the current rating year (including any water rates and/or charges for water supply) will be apportioned (for the avoidance of doubt, rates in respect of the Settlement Date are the responsibility of and belong to the Owner);
 - (v) the Owner will provide the Crown with any keys and remote door openers for the Fixtures that are held by the Owner, together with any alarm codes and will cancel any alarm monitoring contracts that may be in force where appropriate;
 - (vi) the Owner will deliver to the Crown's solicitor any documents that the Owner is required to provide to the Crown on settlement in accordance with the terms of this agreement.
- (d) The Crown will acquire the Land by declaration pursuant to the PWA unless the Crown elects to acquire the Land by transfer pursuant to the Land Transfer Act 2017, in which case, the Owner will transfer the land to the Crown on the Settlement Date in accordance with the provisions for settlement by E-dealing set out in Schedule B of this agreement;
- (e) As soon as practicable after the Settlement Date, the Owner or the Owner's solicitor will

forward a notice to the relevant territorial and / or local authorities advising of the change of ownership of the Land. The Crown will provide the notice at its expense and forward it to the Owner within a reasonable time prior to the Settlement Date.

5 Owner to Pass Good and Clear Title

- (a) The Owner will provide to the Crown a good and clear title to the Land.
- (b) The Owner will, at the request of the Crown, provide the Crown with all documents of consent by or from persons with a registered or unregistered interest in the Land (other than in respect of the Permitted Encumbrances) and other consents that are necessary in executed and registrable form (either in paper or electronic form for E- dealing), sign any documents and plans and do anything within the power of the Owner that may reasonably be required to pass good and clear title to the Crown or to facilitate the Crown taking title by transfer or declaration, freed and discharged from all mortgages, charges, claims, estates or interests of whatever kind (other than the Permitted Encumbrances).
- (c) The Owner indemnifies the Crown against any losses or damages that the Crown may incur as a result of a breach of **clause 5(a)** or **clause 5(b) of this Schedule A** by the Owner.

6 Mortgages and Encumbrances

- (a) The Owner will, with all due speed and diligence, advise whether the Land is, at the date of this agreement, or will be, at the Settlement Date, subject to any registered or unregistered mortgage, lien, charge, or any other encumbrance securing money. If the Land is or will be so subject, the Owner or the Owner's solicitor will forward to the Crown statements from each mortgagee, holder of the lien or charge, and other encumbrancee (other than in respect of the Permitted Encumbrances) setting out the amount required to be paid to it in discharge or reduction of the mortgage debt, for the release of the lien or charge, or in discharge of any other encumbrance securing money.
- (b) The Owner authorises the Crown to retain and pay (if demanded) to the persons entitled the whole or a sufficient portion of the Compensation to release the Land from all such mortgages, liens, charges or other encumbrances securing money.

7 Insurance, Owner's Obligations and Pre-Settlement Inspection

- (a) Insurance premiums payable in respect of the Fixtures and any Chattels will not be apportioned on the Settlement Date and the Fixtures and Chattels will remain at the sole risk of the Owner until possession is given and taken.
- (b) The Owner will, up to and including the Settlement Date and the giving and taking of possession, and at the Owner's expense, maintain the Land, Fixtures and Chattels in the same order and condition as at the date of this agreement, fair wear and tear excepted.
- (c) If any damage (excluding fair wear and tear) is done to the Land, Fixtures and Chattels prior to the Settlement Date other than by the Crown, such damage will be made good by the Owner prior to the Settlement Date or the cost of making good such damage will be deducted from the Compensation. This provision applies until settlement has been completed notwithstanding that an inspection of the Land may have been made under **clause 7(d) of this Schedule A** before the Settlement Date.
- (d) The Owner agrees to a duly authorised representative of the Crown entering onto the Land for a pre-settlement inspection of the Land, Fixtures and Chattels and their state of repair prior to settlement and at a time to be agreed between the parties, but in any event, close enough to the Settlement Date to satisfy the Crown that at settlement the Land is in the condition required by this agreement.
- (e) The Crown will, as soon as reasonably practicable after the pre-settlement inspection, notify

the Owner of any defect in, or damage to, the Land, the Fixtures and/or the Chattels that has occurred in the period between the date of this agreement and the date of the pre-settlement inspection.

- (f) If the Owner is required to make good the damage or defect, the Crown will be entitled to re-inspect the Land, the Fixtures and the Chattels before settlement to ensure compliance with any requirement to make good.

8 Owner's Warranties

- (a) The Owner warrants and undertakes at the date of this agreement that:
 - (i) the Owner has disclosed to the Crown the existence of any requirement or notice from any tenant or Authority that affects the Land (other than any requirement or notice given in relation to the Project);
 - (ii) the Owner has disclosed to the Crown the existence of any consent or waiver given by the Owner pursuant to the RMA that directly or indirectly affects the Land (other than any consent or waiver given in relation to the Project); and
 - (iii) the Land is not subject to a "short term lease" as that term is defined by section 207 of the Property Law Act 2007 and as at the Settlement Date, the Land will not be subject to a "short term lease".
- (b) The Owner warrants and undertakes as at the Settlement Date that:
 - (i) there are no arrears of rates (including any water rates and/or charges for water supply) outstanding on the Land, with the rates being paid to the end of the current rating year;
 - (ii) the Owner has delivered to the Crown all notices and requirements received after the date of this agreement from any tenant or Authority unless the Owner has satisfied the notice or requirement (if the Owner has failed to deliver to the Crown or satisfy any notices or requirements, the Owner will be liable for any costs or penalties arising from such failure);
 - (iii) the Owner has not given any consent or waiver in relation to any application pursuant to the RMA that directly or indirectly affects the Land (other than any consent or waiver given in relation to the Project);
 - (iv) where under section 100 of the Building Act 2004, any building on the Land requires a compliance schedule, all obligations imposed on the Owner under the Building Act 2004 have been complied with; and
 - (v) where the Owner has done or caused or permitted to be done on the Land any works:
 - a. any permit, resource consent or building consent required by law was obtained;
 - b. the works were completed in compliance with those permits or consents; and
 - c. where appropriate, a code compliance certificate was issued for those works.
 - (vi) to the best of the Owner's knowledge:
 - a. there are no Contaminants present on or under the Land;
 - b. the Owner has not dealt with any Contaminants on the Land except in accordance with the RMA;
 - c. no one has ever used any part of the Land as a landfill or waste dump except

for occasional and immaterial disposal of non-toxic domestic waste; and

- d. there are not currently, nor have there been in the past, any storage tanks on the Land.
- (c) Settlement will not be deferred, but the Crown reserves its right to seek compensation from the Owner and reserves all its remedies at law or in equity if the Owner breaches any warranty granted in **clauses 8(a) and 8(b) of this Schedule A**.

9 Compensation Certificate

The Crown may register a Compensation Certificate pursuant to section 19 of the PWA against the Record of Title to the Land to facilitate settlement.

10 Land to be Declared Road

- (a) Should the Crown decide to take the Land or any part thereof by declaration under section 114 of the Public Works Act 1981, the Owner consents to the Land or part thereof, being declared Road or limited access road and/or State Highway pursuant to section 88 of the Government Roading Powers Act 1989 and/or section 103(1) of the Land Transport Management Act 2003.
- (b) The Owner acknowledges and agrees that the Crown's land requirement is subject to alteration on completion of design plans for the Project and accordingly, only part of the Land may be required for road construction and the balance of the Land may be acquired as severance as described in section 119 of the PWA. Notwithstanding this, the Crown may legalise the taking of the Land as land acquired for use in connection with a road pending completion of survey and declaration as road and severance pursuant to sections 114 and 119 of the PWA.

11 No Objection

The Owner will not lodge any proceedings in any court or tribunal in relation to any designation or resource consents in respect of the Project or any alteration of the designation for the Project in the future, or participate in any such proceedings, or take, participate in or fund any other action or make any claim that may have the effect of preventing or interfering with the Crown's plans in relation to the Land or the Project. These requirements will not merge on settlement.

12 General

The parties acknowledge and agree that where any obligation, agreement or warranty of the parties in this agreement remains unperformed at the Settlement Date, that obligation, agreement or warranty will not merge on settlement of this agreement and, notwithstanding any rule of law or equity to the contrary, will continue until fully performed.

13 Counterparts and Electronic Execution

- (a) This agreement may be executed in any number of counterparts (including facsimile or scanned PDF counterpart), each of which will be deemed an original, but all of which, together, will constitute the same instrument. No counterparts will be effective until each party has executed at least one counterpart. A party may enter into this agreement by signing a counterpart copy and sending it to the other party, including by facsimile or email.
- (b) The production of an emailed copy or copies of this agreement signed by all parties will be deemed to be sufficient to satisfy the requirements of the Property Law Act 2007.
- (c) In the case of email, any notice or document is deemed to have been served when sent to

the email address provided by each party or party's lawyer to the other.

- (d) In accordance with the Contract and Commercial Law Act 2017, the parties agree that any notice or document that must be given in writing by one party to the other may be given in electronic form and by means of electronic communication.

14 Dispute Resolution

- (a) Any dispute which may arise between the parties concerning the interpretation of this agreement or relation to any other matter arising under this agreement (other than concerning the compensation or any statutory decision, which will be determined in accordance with the PWA) will be actively and in good faith negotiated by the parties with a view to a speedy resolution of such disputes.
- (b) If the parties cannot agree on any dispute resolution technique within 15 working days of any dispute being referred in writing by one party to the other, then the dispute will be settled by reference to arbitration with the exception of any matters requiring a statutory decision.
- (c) Except as otherwise expressly provided in this Agreement, the reference shall be to a single arbitrator if one can be agreed upon, or to two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to their arbitration), such arbitration to be carried out in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.
- (d) The parties will co-operate to ensure the expeditious conduct of any arbitration. In particular, each party will comply with any reasonable time limits sought by the other for settling terms of reference, interlocutory matters and generally all steps preliminary and incidental to the hearing and determination of the proceedings.

Partial acquisition

Schedule A: Standard Terms and Conditions

1 Definitions (add new definitions as required for your purposes)

In this agreement, unless the context requires otherwise:

- (a) *Additional Compensation* means the amount on the front page of this agreement, being additional compensation payable pursuant to section 72(1) and 72A or section 72C (as specified in **Schedule B** of this agreement) of the PWA;
- (b) *Authorities* means all or any government, local, statutory or non-statutory authorities or bodies having jurisdiction over the Required Land;
- (c) *Balance Land* means the balance of the Land following acquisition of the Required Land;
- (d) *Compensation* means the amount on the front page of this agreement (comprising the Consideration for the Supply of the Required Land and the Consideration for Injurious Affection), being the amount that the parties have agreed that the Owner is entitled to pursuant to Part 5 of the PWA for the taking of the Required Land on the terms set out in this agreement, but does not include disturbance costs pursuant to section 66 of the PWA;
- (e) *Consideration for the Supply of the Required Land* means the amount on the front page of this agreement;
- (f) *Consideration for Injurious Affection* means the amount on the front page of this agreement;
- (g) *Contaminant* has the meaning of that word as defined in the RMA;
- (h) *Crown* means Her Majesty the Queen acting by and through the Minister for Land Information New Zealand and includes the Crown's agents, employees, contractors and invitees and where the context requires includes Waka Kotahi;
- (i) *GST* means goods and services tax arising pursuant to the GST Act;
- (j) *GST Act* means the Goods and Services Tax Act 1985;
- (k) *Land* means the land described in this agreement;
- (l) *Owner* means the owner described on the front page of this agreement, and includes the Owner's successors, permitted assigns, agents, employees, contractors and invitees;
- (m) *Permitted Encumbrances* means the encumbrances listed in **clause 2 (a) (i)** to **2 (a)()** on page **2** of this agreement (if applicable)
- (n) *Plan* means the plan **insert plan reference** annexed at **Schedule C**;
- (o) *Project* means the project described on the front page of this agreement;
- (p) *PWA* means the Public Works Act 1981;
- (q) *Required Land* means that part or those parts of the Land required by the Crown described on the front page of this agreement;
- (r) *RMA* means the Resource Management Act 1991;

- (s) *Settlement Date* means the date specified in **Schedule B**:
- (t) *Settlement Statement* means a statement showing the Compensation, Additional Compensation and other amounts payable under this agreement on the Settlement Date;
- (u) *Waka Kotahi* means New Zealand Transport Agency and includes its agents, employees, contractors and invitees.
- (v) *Working Day* has the meaning given in the PWA, and excludes the provincial anniversary day observed where the Land is situated; and
- (w) Where obligations bind more than one person, those obligations bind those persons jointly and severally.

2 No Commitment

The Owner acknowledges and agrees that, until accepted in writing, this agreement is only an offer to sell to the Crown, its acceptance will not be anticipated and the Owner will not enter into any consequential commitments in anticipation of this offer being accepted by the Crown. Any variation of this agreement is not binding on the Crown unless it is signed by the Crown.

3 Disturbance Costs

The Crown will, in accordance with section 66 of the PWA, reimburse the Owner's reasonable disturbance costs incurred in this transaction on production of an account and/or GST invoices in the name of and addressed to the Owner.

4 Full and Final Settlement and Possession

- (a) To facilitate settlement, the Owner or the Owner's solicitor will provide the Crown with the Settlement Statement and a GST invoice (if applicable) for payment of the Compensation, the Additional Compensation and any other amounts payable under this agreement on the Settlement Date no later than 10 working days before the Settlement Date.
- (b) The Owner acknowledges that the Crown will tender settlement by way of funds drawn on the account of Waka Kotahi.
- (c) On the Settlement Date:
 - (i) vacant possession of the Required Land will be given to the Crown (other than any licence, lease or tenancy provided for in **Schedule B** of this agreement); and
 - (ii) subject to **clauses 4(a), 6(b) and 7(c) of this Schedule A** the Crown will pay the Compensation, the Additional Compensation and any other amounts payable under this agreement on the Settlement Date to the Owner.
 - (iii) the Owner will provide the Crown with any keys and remote door openers for the fixtures that are held by the Owner, together with any alarm codes and will cancel any alarm monitoring contracts that may be in force where appropriate;
 - (iv) the Owner will deliver to the Crown's solicitor any documents that the Owner is required to provide to the Crown on settlement in accordance with the terms of this agreement.

5 Owner to Pass Good and Clear Title

- (a) The Owner will provide to the Crown a good and clear title to the Required Land.
- (b) The Owner will, at the request of the Crown, provide the Crown with all documents of consent by or from persons with a registered or unregistered interest in the Required Land (other than in respect of the Permitted Encumbrances) and other consents that are necessary in executed and registrable form (either in paper or electronic form for E- dealing), sign any documents and plans and do anything within the power of the Owner that may reasonably be required to pass good and clear title to the Crown or to facilitate the Crown taking title declaration, freed and discharged from all mortgages, charges, claims, estates or interests of whatever kind (other than the Permitted Encumbrances).
- (c) The Owner indemnifies the Crown against any losses or damages that the Crown may incur as a result of a breach of **clause 5(a)** or **clause 5(b) of this Schedule A** by the Owner.

6 Mortgages and Encumbrances

- (a) As the issue of the declaration pursuant to the PWA will free and discharge the Required Land of any mortgages, charges, claims, estates, or interests of whatever kind (other than the Permitted Encumbrances) the Owner will, with all due speed and diligence, advise whether the Required Land is, at the date of this agreement, or will be, at the Settlement Date, subject to any registered or unregistered mortgage, lien, charge, or any other encumbrance securing money. If the Required Land is or will be so subject, the Owner or the Owner's solicitor will forward to the Crown statements from each mortgagee, holder of the lien or charge, and other encumbrancee (other than in respect of the Permitted Encumbrances) setting out the amount required to be paid to it in discharge or reduction of the mortgage debt, for the release of the lien or charge, or in discharge of any other encumbrance securing money.
- (b) The Owner authorises the Crown to retain and pay (if demanded) to the persons entitled the whole or a sufficient portion of the Compensation to release the Required Land from all such mortgages, liens, charges or other encumbrances securing money.

7 Insurance and Owner's Obligations

- (a) Insurance premiums payable in respect of the Required Land will not be apportioned and the Required Land will remain at the sole risk of the Owner until possession is given and taken.
- (b) The Owner will, up to and including the Settlement Date and the giving and taking of possession, at the Owner's expense, maintain the Required Land, and any buildings and improvements thereon in the same order and condition as at the date of this agreement, fair wear and tear excepted.
- (c) If any damage (excluding fair wear and tear) is done to the Required Land prior to the Settlement Date other than by the Crown, such damage will be made good by the Owner prior to the Settlement Date or the cost of making good such damage will be deducted from the Compensation.
- (d) The Owner agrees to a duly authorised representative of the Crown entering onto the Required Land for a pre-settlement inspection of the Required Land and their state of repair prior to settlement and at a time to be agreed between the parties, but in any event, close enough to the Settlement Date to satisfy the Crown that at settlement the Required Land is in the condition required by this agreement.

8 Rates

Rates (including any water rates, and/or charges for water supply) in respect of the Required Land will not be apportioned on the Settlement Date.

9 Owner's Warranties

- (a) The Owner warrants and undertakes at the date of this agreement that:
- (i) the Owner has disclosed to the Crown the existence of any requirement or notice from any tenant or Authority that affects the Required Land (other than any requirement or notice in respect of the Project);
 - (ii) the Owner has disclosed to the Crown the existence of any consent or waiver given by the Owner pursuant to the RMA that directly or indirectly affects the Required Land (other than a consent or waiver given in relation to the Project); and
 - (iii) the Required Land is not subject to a "short-term lease" as that term is defined by section 207 of the Property Law Act 2007 and as at the Settlement Date, the Required Land will not be subject to a "short term lease"
- (b) The Owner warrants and undertakes at the Settlement Date that:
- (i) there will be no arrears of rates or water rates or charges outstanding on the Required Land;
 - (ii) the Owner has delivered to the Crown all notices and requirements received after the date of this agreement from any tenant or Authority unless the Owner has satisfied the notice or requirement (if the Owner has failed to deliver to the Crown or satisfy the notice or demand, the Owner will be liable for any costs or penalties arising from such failure);
 - (iii) the Owner has not given any consent or waiver in relation to any application pursuant to the RMA that directly or indirectly affects the Required Land (other than any requisition or notice in respect of the Project);
 - (iv) where, under section 100 of the Building Act 2004, any building on the Required Land requires a compliance schedule, all obligations imposed on the Owner under the Building Act 2004 have been complied with; and
 - (v) where the Owner has done or caused or permitted to be done on the Required Land any works:
 - a. any permit, resource consent or building consent required by law was obtained;
 - b. the works were completed in compliance with those permits or consents; and
 - c. where appropriate, a code compliance certificate was issued for those works.
 - (vi) to the best of the Owner's knowledge:
 - a. there are no Contaminants on or under the Required Land;
 - b. the Owner has not dealt with any contaminants on the Required Land except in accordance with the RMA;
 - c. no one has ever used any part of the Required Land as a landfill or waste dump except for occasional and immaterial disposal of non-toxic domestic waste; and
 - d. there are not currently, nor have there been in the past, any storage tanks on the Required Land.

- (c) Settlement will not be deferred, but the Crown reserves its right to seek compensation from the Owner and reserves all its remedies at law or in equity if the Owner breaches any warranty granted in **clauses 9(a) and 9(b) of this Schedule A**.

10 Compensation Certificate

The Crown will register a Compensation Certificate pursuant to section 19 of the PWA against the Record of Title to the Land as soon as practicable following the date that this agreement is signed by all parties. The Crown will notify the Owner as soon as the Compensation Certificate has been registered.

11 Legalisation Survey

- (a) The Crown will survey the Required Land from the Balance Land and complete all legalisation actions required at no cost to the Owner, as soon as reasonably practicable after completion of the Project (or earlier at the sole discretion of the Crown). The Crown may enter the Land at any time upon reasonable written notice to undertake the survey.
- (b) The Owner acknowledges that on completion of the Crown taking title to the Required Land, the Balance Land may have new appellations based on the survey prepared for the Crown's acquisition of the Required Land and if so, the Owner will be provided with a new Record of Title for the Balance Land based on those new appellations, at no cost to the Owner.

12 Land to be Declared Road

- (a) Should the Crown decide to take the Required Land or any part thereof by declaration under section 114 of the Public Works Act 1981, the Owner consents to the Required Land or part thereof, being declared Road or limited access road and/or State Highway pursuant to section 88 of the Government Roading Powers Act 1989 and/or section 103(1) of the Land Transport Management Act 2003.
- (b) The Owner acknowledges and agrees that the Crown's land requirement is subject to alteration on completion of design plans for the Project and accordingly, only part of the Required Land may be required for road construction and the balance of the Required Land may be acquired as severance as described in section 119 of the PWA. Notwithstanding this, the Crown may legalise the taking of the Required Land as land acquired for use in connection with a road pending completion of survey and declaration as road and severance pursuant to sections 114 and 119 of the PWA.

13 No Objection

The Owner will not lodge any proceedings in any court or tribunal in relation to any designation or resource consents in respect of the Project or any alteration of the designation for the Project in the future, or participate in any such proceedings, or take, participate in or fund any other action or make any claim that may have the effect of preventing or interfering with the Crown's plans in relation to the Required Land or the Project. These requirements will not merge on settlement.

14 General

The parties acknowledge and agree that where any obligation, agreement or warranty of the parties in this agreement remains unperformed at the Settlement Date, that obligation, agreement or warranty will not merge on settlement of this agreement and, notwithstanding any rule of law or equity to the contrary, will continue until fully performed.

15 Counterparts and Electronic Execution

- (a) This agreement may be executed in any number of counterparts (including facsimile or scanned PDF counterpart), each of which will be deemed an original, but all of which, together, will constitute the same instrument. No counterparts will be effective until each party has executed at least one counterpart. A party may enter into this agreement by signing a counterpart copy and sending it to the other party, including by facsimile or email;
- (b) The production of an emailed copy or copies of this agreement signed by all parties is to be deemed to be sufficient to satisfy the requirements of the Property Law Act 2007;
- (c) In the case of email, any notice or document is deemed to have been served when sent to the email address provided by each party or party's lawyer to the other; and
- (d) In accordance with the Contract and Commercial Law Act 2017, the parties agree that any notice or document that must be given in writing by one party to the other may be given in electronic form and by means of electronic communication.

16 Dispute Resolution

- (e) Any dispute which may arise between the parties concerning the interpretation of this agreement or relation to any other matter arising under this agreement (other than concerning the compensation or any statutory decision, which will be determined in accordance with the PWA) will be actively and in good faith negotiated by the parties with a view to a speedy resolution of such disputes.
- (f) If the parties cannot agree on any dispute resolution technique within 15 working days of any dispute being referred in writing by one party to the other, then the dispute will be settled by reference to arbitration with the exception of any matters requiring a statutory decision.
- (g) Except as otherwise expressly provided in this agreement, the reference shall be to a single arbitrator if one can be agreed upon, or to two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to their arbitration), such arbitration to be carried out in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.
- (h) The parties will co-operate to ensure the expeditious conduct of any arbitration. In particular, each party will comply with any reasonable time limits sought by the other for settling terms of reference, interlocutory matters and generally all steps preliminary and incidental to the hearing and determination of the proceedings.