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CONDITIONS OF SUBCONTRACT

1.0 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Subcontract, the following words and phrases have the following meanings:

'Aconex' means the website www.aconex.com.au.

'Amount Claimed' has the same meaning as in the Deed of Release.

'Australian Government Funded Project (AGFP)' means:

- (a) a project that is undertaken by or on behalf of the Australian Government; or
- (b) a project where the Australian Government funding contribution is at least \$5 million and this represents at least 50% of the total construction project value; or
- (c) a project where the Australian Government funding contribution is \$10 million or more, irrespective of the proportion of the Australian Government funding; or
- (d) a project where the Australian Government provides a package of financial assistance in advance of construction that has an identified capital component and it is an explicit component of the grant; or
- (e) a project which has been identified as an Australian Government Funded Project in Schedule 1.

'Base Works' means those works (which are not part of the Subcontract Works):

- (a) upon which the Subcontract Works are to be carried out; or
- (b) which are otherwise relevant to the Subcontract Works or the Subcontractor's ability to carry out the Subcontract Works in compliance with this Subcontract.

'Breach of Obligation' means a breach of any obligation including breach of a duty of care including negligence, breach of contract, breach of a statutory duty, breach of any of the Legislative and Industrial Requirements, breach of trust or any other obligation.

'Business Day' means a day other than:

- (a) a Saturday or a Sunday;
- (b) a day that is wholly or partly observed as a public holiday throughout Victoria; and
- (c) 27, 28, 29, 30 or 31 December.

'Claim' includes any claim, notice, demand, action or similar for an increase in any amount payable under the Subcontract, for payment of money (including damages or any costs for delay, disruption or inconvenience) whether under or in connection with the Subcontract or otherwise, for an extension of time or for a Variation.

'Code' means the National Code of Practice for the Construction Industry 1997, and includes the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry and the Australian Government Industry Guidelines for the National Code of Practice for the Construction Industry, as amended from time to time.

'Contamination' means a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance of any kind which makes or may make the Site unsafe, unfit, or harmful for habitation, use or occupation by any person or animal or is such that any part of the Site does not satisfy or adversely exceeds the contamination criteria or standards published, or adopted from time to time by the Victorian Environment Protection Authority.

'Contract Programme' means the Contract Programme referred to in clause 28 and may show the order in which the Subcontract Works are to be completed and the date by which the Subcontract Works, and any part or parts of the Subcontract Works that the Contractor may, in its discretion, decide to separately identify on the programme, are to be completed in accordance with this Subcontract, but which is not a Subcontract Document other than for the purpose of identifying the Date for Substantial Completion if no date is otherwise specified in Schedule 1.

'Contractor' means the person, company or entity described as such in Schedule 1.

'Contractor Policies' means the policies and procedures of the Contractor (copies of which will be provided to the Subcontractor on request), including but not limited to, its Occupational Health and Safety Management Plan, Environmental Management Plan, Industrial Relations Plan and such other policies and procedures notified by the Contractor to the Subcontractor from time to time.

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'**Contractor's Agents**' means any employee, agent or other person for which the Contractor is responsible.

'**Damaging Act**' means any act of default or omission (including a Breach of Obligation).

'**Date for Substantial Completion**' means the date referred to as such in Schedule 1 or such other date as is determined in accordance with this Subcontract.

'**Date of Substantial Completion**' means the date certified by the Contractor as the date upon which the Subcontract Works reached the stage of Substantial Completion or such other date as may be determined as a consequence of the resolution of any dispute between the Contractor and the Subcontractor.

'**Date of the Subcontract**' means the date stated in the executed Formal Instrument.

'**Deed of Release**' means a deed of release executed by the Subcontractor in the form at Schedule 8 to this Subcontract.

'**Defect**' means:

- (a) any work or material (being part of the Subcontract Works) that is not in accordance with this Subcontract; or
- (b) any work or material (being part of the Subcontract Works) that has not been performed or supplied; or
- (c) any work or material (being part of the Subcontract Works) that is not in accordance with the Head Contract or is otherwise not accepted under the Head Contract; or
- (d) a breach of the Subcontractor's Design Obligations.

'**Defects Liability Period**' means the period from the Date of Substantial Completion to the date that the last defects liability period under the Head Contract expires. Where there are Separable Portions, the Defects Liability Period for each Separable Portion commences on the Date of Substantial Completion for that respective Separable Portion and extends to the date that the last defects liability period under the Head Contract expires.

'**Delaying Event**' means any event identified in Schedule 1 as a Delaying Event.

'**Dispute or Difference**' means any dispute or difference which is in any way connected with, or arises out of or in relation to this Subcontract (including the interpretation or termination of the Subcontract), the Subcontract Works, including any Variation, or any Damaging Act of the Contractor or the Subcontractor or one of the Subcontractor's Agents, whether that dispute or difference arises before or after the ending of the Subcontract.

'**Final Certificate**' means the final certificate to be provided pursuant to clause 43.

'**Formal Instrument**' means the formal instrument identified as such and signed, sealed and delivered as a deed by the parties in respect of this Subcontract.

'**Hazardous Substance**' means any substance which causes or might reasonably be expected to cause (whether previously, currently or in the future) damage or injury to or be harmful to any person or property or to the environment generally.

'**Head Contract**' means the contract between the Contractor and the Principal which is described as such in Schedule 1.

'**Head Contract Direction**' means a direction given to the Contractor pursuant to the Head Contract in so far as the direction relates to the Subcontract Works or the activities of the Subcontractor.

'**Head Contract Entitlement**' means the entitlement of the Contractor pursuant to the Head Contract in respect of the relevant matter.

'**Head Contract Obligation**' means an obligation under the Head Contract that has a nexus with the Subcontract Works or the activities of the Subcontractor or the satisfaction of which may be impacted by the Subcontract Works, by their performance by the Subcontractor or by the activities of the Subcontractor.

'**Head Contract Requirement**' means a requirement under the Head Contract that has a nexus with the Subcontract Works or the activities of the Subcontractor or the satisfaction of which may be impacted by the Subcontract Works, by their performance by the Subcontractor or by the activities of the Subcontractor.

'**Industrial Matter**' means:

- (a) any matter in any way connected with the Subcontract Works and which relates to a Claim for payment for or on behalf of any employee or Secondary Subcontractor of the Subcontractor or any employee of a Subcontractor to the Subcontractor including any Claim for a payment in the nature of a site allowance; and
- (b) any delay, dispute, disruption or inefficiency connected with or relating to an action of any employee or

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Secondary Subcontractor of the Subcontractor or any employee of a Secondary Subcontractor to the Subcontractor.

'Industrial Waste' means any waste containing any substance or materials which are potentially harmful to any person or property or the environment generally arising from the Subcontract Works or any other related activity.

'Insolvency Event' means the happening of any of these events:

- (a) an application to a court for an order or an order is made that a body corporate be wound up;
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate, or one of them is appointed;
- (c) a meeting is convened or a resolution is passed to appoint an administrator, receiver, receiver and manager or controller in respect of a body corporate or any part of its property or assets;
- (d) a body corporate enters into, or resolves to enter into a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium, rescheduling or readjustment of all or a material part of its indebtedness;
- (e) a party becomes an externally administered body corporate under the *Corporations Act 2001* (Cth) or in the case of the Subcontractor is taken to have failed to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001* (Cth);
- (f) the members or creditors of a body corporate resolve that the body corporate should be wound up, or otherwise be dissolved, or the company gives notice of intention to do so, except to reconstruct or amalgamate while solvent, or is otherwise wound up or dissolved;
- (g) the Subcontractor is or states that it is or is found by a court of competent jurisdiction to be unable to pay its debts when they fall due;
- (h) a natural person (or, where a party is more than one person, any of those natural persons comprising the party) commits an act of bankruptcy within the meaning of section 40 of the *Bankruptcy Act 1966* (Cth);
- (i) the Subcontractor takes any step to obtain protection or is granted protection from its creditors under any applicable laws; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

'Legislative and Industrial Requirements' means all legislative and regulatory requirements applying to or relating to or in any way connected with the Subcontract Works, the performance of the Subcontract Works or the conduct of the Subcontractor or, where the context requires, any of the Subcontractor's Agents, in carrying out the Subcontract Works or any other applicable requirement, including any requirement, obligation or prohibition arising under or in connection with:

- (a) Acts, Ordinances, regulations, by-laws, orders, and proclamations of the Commonwealth and the State or Territory pursuant to which the work under the Subcontract or any part thereof is being carried out including all applicable occupational health and safety, environment protection, dangerous goods and electricity safety legislation, regulations and codes made in respect of same, together with any directions on safety or notices issued by any relevant authority;
- (b) any applicable and legally binding industrial instrument (including any award or any collective or enterprise agreement);
- (c) any relevant superannuation scheme or redundancy scheme whether arising under an applicable law, industrial agreement or otherwise;
- (d) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of Subcontract Works (the fees and charges in respect of which the Subcontractor is responsible and is not entitled to any adjustment of the Subcontract Sum in connection with);
- (e) the Code;
- (f) the Building Code of Australia.

'Other Contractors' means, in relation to the Project, subcontractors to the Contractor (other than the Subcontractor) and

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contractors to the Principal (other than the Contractor).

'Plant' means all plant and services necessary for the proper performance of the Subcontractor's obligations under the Subcontract including hoistage, crantage, scaffolding, lighting, water, switchboards, telephones, rubbish storage and removal, and so on.

'Pollution' means a discharge, emission or deposit which brings about a detrimental change in the condition of the environment including one or more of the conditions of the environment referred to in sections 39(1), 41(1) or 45(1) of the *Environmental Protection Act 1970* (Vic).

'Principal' means the person or entity described as such in Schedule 1.

'Practical Completion' means the issue of a certificate under the Head Contract indicating that the works to be executed under the Head Contract have reached the stage of Practical Completion within the meaning of the Head Contract or the issue of a certificate under the Head Contract which is of similar effect to the issue of such a certificate.

'Progress Claim' is the document described in clause 39 to be issued in accordance with clause 39.

'Project' means the work to be carried out under the Head Contract.

'Provisional Sum' includes monetary sum, contingency sum and prime cost item exclusive of Goods and Services Tax as identified in Schedule 7 of the Subcontract Documents.

'Related Head Contract Dispute' means any dispute or difference which arises or has arisen out of or in connection with the Subcontract and:

- (a) the resolution of the Dispute or Difference involves the resolution of a factual matter which may also fall to be resolved as part of the resolution of the dispute or difference under the Head Contract; or
- (b) one or more of the items which is the subject of the Dispute or Difference is an item in respect of which the Contractor might be entitled to a payment under the Head Contract and the Contractor's entitlement under the Head Contract is the subject of a dispute or difference under the Head Contract.

'Relevant Material Suppliers' means suppliers engaged directly or indirectly by the Subcontractor of:

- (a) materials integral to the construction of the Subcontract Works or other works constructed for the purposes of the Head Contract; or
- (b) prefabricated components which are to form part of the Subcontract Works or other works constructed for the purposes of the Head Contract.

'Retention Moneys' mean the moneys referred to in clause 40.

'Schedule of Rates' means the rates identified in Schedule 9 which rates shall be used for valuation purposes only unless expressly stated otherwise in the Formal Instrument.

'Secondary Subcontract' means any agreement between the Subcontractor and a Secondary Subcontractor or between Secondary Subcontractors.

'Secondary Subcontractors' means any contractor or supplier to the Subcontractor, whether engaged directly or indirectly by the Subcontractor.

'Security of Payment Act' means the *Building and Construction Industry Security of Payment Act 2002* (Vic) as amended;

'Site' means the site described as such in Schedule 1.

'Statement of Completion' means the document issued by the Subcontractor pursuant to and that complies with clause 42.

'Subcontract' means the contract between the Contractor and the Subcontractor constituted by the Subcontract Documents.

'Subcontract Documents' means the documents described as such in Schedule 1.

'Subcontract Programme' means the programme described as such in clause 28.2.

'Subcontract Risks' means all risks associated or connected with the carrying out of the Subcontract Works (whether ascertainable or not) including risks associated or connected with or arising in relation to:

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Contractor	Subcontractor

- (a) all Industrial Matters; and
- (b) delays, disruption, loss of productivity, cost increases, re-execution of work or modification of the methodology for the carrying out of the Subcontract Works caused by:
 - (i) adverse Site or weather conditions; or
 - (ii) the physical conditions and characteristics of the Site (including sub-surface, latent conditions or hidden defects and asbestos or contamination of any kind) and its surroundings; or
 - (iii) the Subcontract Works progressing at a rate different than may have been anticipated by the Subcontractor; or
 - (iv) the availability and occupation of part of the Works as described in the Subcontract; or
 - (v) any ambiguity, discrepancy, omission or other defect in the Subcontract Documents.
- (c) the availability of labour or materials necessary for the carrying out of the Subcontract Works; and
- (d) all Head Contract Directions, Head Contract Obligations and Head Contract Requirements; and
- (e) any other matter in respect of which, pursuant to the Subcontract, the Subcontractor is required to accept the risk.

'Subcontract Sum' means the amount described as such in Schedule 1 and as adjusted from time to time pursuant to this Subcontract.

'Subcontract Warranties' means the warranties given by the Subcontractor to the Contractor pursuant to clause 3.1.

'Subcontract Works' means the works generally described in the Subcontract Documents, Variations and any other work not described in those documents if that other work:

- (a) should reasonably have been anticipated by an experienced and competent contractor as being necessary for the carrying out of the Subcontract Works; or
- (b) was otherwise capable of inference from the Subcontract Documents;
- (c) results from the performance by the Subcontractor of the Subcontractor's Design Obligations; or
- (d) is necessary to ensure that the Contractor is not in breach of its obligations to the Principal in connection with the Head Contract Obligations and the Head Contract Requirements.

'Subcontractor' means the person, company or entity described as such in Schedule 1.

'Subcontractor's Agents' means any employee, consultant, supplier or agent of the Subcontractor, any of their employees, and any Secondary Subcontractor and its employees or other person for whom the Subcontractor is ultimately responsible.

'Subcontractor's Design Obligations' means the obligations arising pursuant to clause 6 of the Subcontract.

'Subcontractor's Representative' means the Subcontractor's Representative as described in clause 14.

'Substantial Completion' is that stage in the execution of the Subcontract Works when:

- (a) the Subcontract Works are complete except for minor defects;
- (b) those tests which are required by this Subcontract or the Head Contract to be carried out and passed before the Subcontract Works reach Substantial Completion, have been carried out and passed;
- (c) the Subcontractor has delivered to the Contractor the following:
 - (i) all original warranties;
 - (ii) all notices, permits, approvals and certificates required to be obtained from relevant authorities;
 - (iii) as-built drawings and operating and maintenance manuals for the Subcontract Works; and

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Contractor	Subcontractor

- (iv) all documents and other information required under this Subcontract which, in the opinion of the Contractor, are essential for the use, operation and maintenance of the Subcontract Works; and
- (d) the Subcontractor has:
 - (i) thoroughly cleaned the Site and the Subcontract Works including all services relevant to the Subcontract Works; and
 - (ii) complied with all relevant aspects of the Quality Assurance System including, but not limited to, having undertaken all final inspections and testing of the Subcontract Works required by that system; and
- (e) all Head Contract Directions, Head Contract Obligations and Head Contract Requirements have been satisfied.

'**Superintendent**' means the person fulfilling that role (or the role of Architect) under the Head Contract or if there is no such person or role, the Principal.

'**Valuation clause**' means clause 35.

'**Variation**' means any:

- (a) increase, decrease or omission or reduction to or of any part of or all of the Subcontract Works; or
- (b) change to the character or quality of any material or work forming any part of or all of the Subcontract Works; or
- (c) change to the levels, lines, positions or dimensions of any part or all of the Subcontract Works; or
- (d) additional work to the Subcontract Works; or
- (e) demolition or removal of material or work forming part of the Subcontract Works but no longer required by the Contractor; or
- (f) any combination of the above.

1.2 Interpretation

In this Subcontract, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of this Subcontract;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause or paragraph or schedule or annexure is a reference to a clause or paragraph or schedule or annexure to this Subcontract unless provided for otherwise;
- (e) a reference to a document, deed or agreement, including this Subcontract, includes a reference to that document, deed or agreement as novated, altered or replaced from time to time;
- (f) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- (g) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (h) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- (i) no rule of construction applies to the disadvantage of the Contractor on the basis that the Contractor put forward this Subcontract or any part of it;
- (j) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation, as applicable; and
- (k) a reference to any of the words "include", "includes" and "including" is to be read as if followed by the words "without limitation";
- (l) a reference to an "entitlement" includes any right or entitlement.

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1.3 Severability

If a provision of this Subcontract is illegal or unenforceable:

- (a) and the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
- (b) in any other case, the whole provision is severed and the remainder of this Subcontract continues to have full force and effect.

1.4 Joint Parties

If any party to this Subcontract consists of two or more persons this Subcontract shall benefit and bind such persons jointly and severally and this Subcontract shall be read and construed accordingly.

1.5 Legislative Instruments

Any reference to a Legislative and Industrial Requirement including an Act of Parliament, regulation, code or standard is a reference to the Act, regulation, code or standard as it exists from time to time or any modification, republication (with or without amendment) or replacement (in part or in whole) of the Act, regulation, code or standard.

2.0 PRIMARY OBLIGATIONS

2.1 Subcontractor’s Primary Obligations

The Subcontractor must:

- (a) complete the Subcontract Works in accordance with the Subcontract and the Subcontract Documents; and
- (b) otherwise comply with this Subcontract.

2.2 Contractor’s Primary Obligations

The Contractor must:

- (a) pay to the Subcontractor the Subcontract Sum and in accordance with and subject to the terms of this Subcontract and the Contractor’s rights at law.

3.0 SUBCONTRACT WARRANTIES, RISKS AND INDEMNITIES

3.1 Subcontractor Warranties

The Subcontractor warrants to the Contractor that the Subcontractor:

- (a) is competent and experienced in the execution of works of a type contemplated by this Subcontract;
- (b) will at all times be suitably qualified and experienced, and will exercise due skill, care and diligence in the execution and completion of the Subcontract Works;
- (c) will execute and complete the Subcontract Works in accordance with this Subcontract so that the Works, when completed, shall:
 - (i) be fit for their intended purpose; and
 - (ii) comply with all the requirements of the Subcontract;
- (d) has taken into account all of the Subcontract Risks;
- (e) has made allowance in the Subcontract Sum for and acknowledges and accepts that the Subcontract Sum includes:
 - (i) all matters contained in or capable of inference from the several documents forming part of the Subcontract;
 - (ii) all matters which might impact upon the Subcontractor’s ability to complete the Subcontract Works or to

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complete the Subcontract Works within any particular time, cost or quality constraints;

(iii) performance of the Subcontract Works; and

(iv) the Subcontract Risks;

- (f) has informed itself as to all matters which might impact on the Subcontract Risks;
- (g) has, or will be able to, obtain all the necessary consents, permits or authorities necessary in order for the Subcontractor to carry out the Subcontract Works;
- (h) has carefully examined the Subcontract Documents and there are no ambiguities, discrepancies omissions or other defects in the Subcontract Documents including but not limited to any ambiguity, discrepancy, omission or other defect in the Subcontract Documents which could require a variation to the Subcontract Works;
- (i) owns (or is otherwise entitled to use, adapt and modify) the copyright or other intellectual property in relation to the Subcontract Works.
- (j) is not insolvent within the meaning of s.95A of the *Corporations Act 2001* (Cth) or otherwise and there is no unfulfilled or unsatisfied judgment or Court Order outstanding against the Subcontractor;
- (k) is a registered Building Practitioner (within whatever category as is necessary so as to permit the Subcontractor to enter into this Subcontract and perform the Subcontract Works without the Subcontractor being in breach of its statutory obligations) pursuant to the *Building Act 1993* (Vic) and its registration has not been suspended;
- (l) carries the insurance required under the *Building Act 1993* (Vic);
- (m) in the offer to the Contractor, in any interview or discussion leading up to the entering of this Subcontract or in response to any request from the Contractor, provided accurate and complete information and has not provided any false, inaccurate or misleading information or failed to provide any material information relevant to the Subcontractor's ability to carry out the Subcontract Works;
- (n) reviewed the Provisional Sums included in the Subcontract (if any) and they are reasonable and not understated or undervalued;
- (o) has not been sanctioned by any court, tribunal, government or government agency or authority for a breach of the Code;
- (p) has met and will meet all its obligations in respect of superannuation, redundancy and long service leave payments as applicable;
- (q) will, without limiting or reducing its obligations generally under this Subcontract, ensure that the Subcontract Works and all temporary works comply with applicable Australian Standards; and

provides for the benefit of the Contractor guarantees and warranties of the nature set out in Schedule 3 in respect of particular goods, services, materials, plant and equipment for the relevant period set out in Schedules 4 and 5 irrespective of whether such guarantees and warranties are separately provided by the Subcontractor to the Principal pursuant to clause 33.2.

Each Subcontract Warranty shall be given full effect in its own right. No individual warranty will be read down by reason of the existence, or absence, of any other warranty.

3.2 Subcontractor Risks

The Subcontractor accepts the risk of and responsibility for the Subcontract Risks and acknowledges and agrees that it is not entitled to make any Claim against the Contractor as a result of or in connection with the Subcontract Risks, except to the extent expressly provided for in the Subcontract.

3.3 Subcontractor Indemnities

The Subcontractor indemnifies the Contractor:

- (a) in respect of a breach of any of the Subcontract Warranties;
- (b) in respect of any liability the Contractor might have to the Principal where that liability arises as a result of a Damaging Act by the Subcontractor or the Subcontractor's Agents;

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- (c) in respect of any liability the Contractor has or might have to third parties (including Other Contractors and Secondary Subcontractors) in connection with any act or omission (including a Damaging Act) of the Subcontractor or the Subcontractor's Agents; and
- (d) in respect of any Damaging Act by the Subcontractor or the Subcontractor's Agents.

4.0 SUBCONTRACTOR'S GENERAL OBLIGATIONS

4.1 Subcontractor's General Obligations:

Without limiting the Subcontractor's primary obligations under and in connection with the Subcontract, the Subcontractor must:

- (a) execute and complete the Subcontract Works competently, professionally, to a high standard, free of Defects and to the satisfaction of the Contractor and the Superintendent;
- (b) proceed regularly and diligently with the Subcontract Works;
- (c) bring the Subcontract Works to Substantial Completion by the Date for Substantial Completion;
- (d) make good any damage done to the Subcontract Works which arises from any Damaging Act of the Subcontractor or the Subcontractor's Agents;
- (e) do all things necessary to ensure that the Head Contract Obligations are met to the satisfaction of the Contractor and the Superintendent;
- (f) work in a co-operative manner with Other Contractors;
- (g) not interfere with, delay or damage the work of the Contractor, the Principal or Other Contractors;
- (h) comply with directions given by the Contractor pursuant to this Subcontract;
- (i) comply with all Legislative and Industrial Requirements and Contractor Policies (to the extent that such policies are not inconsistent with Legislative and Industrial Requirements);
- (j) ensure that all of the Subcontractor's Agents comply with all Legislative and Industrial Requirements and Contractor Policies (to the extent that such policies are not inconsistent with the Legislative and Industrial Requirements);
- (k) initiate and implement remedial action to rectify behaviour that does not comply with Legislative and Industrial Requirements or Contractor Policies. This includes a requirement on the Subcontractor to ensure that all of the Subcontractor's Agents rectify any non-compliant behaviour;
- (l) if requested by the Contractor (which request may be made from time to time by the Contractor) provide evidence in a form satisfactory to the Contractor (which evidence may include certificates from third parties and statutory declarations) that the Subcontractor has complied with all Legislative and Industrial Requirements;
- (m) if requested by the Contractor (which request may be made from time to time by the Contractor) provide evidence in a form satisfactory to the Contractor (which evidence may include certificates from third parties and statutory declarations) that one or more of the Subcontractor's Agents have complied with all Legislative and Industrial Requirements;
- (n) comply with the Head Contract Obligations and Head Contract Requirements and, without limitation, perform the Subcontract Works in a manner that does not put the Contractor in breach of its obligations to the Principal whether under the Head Contract or otherwise;
- (o) co-operate fully with the Contractor in attending interviews and meetings as required by the Contractor;
- (p) faithfully and honestly provide information, acknowledgements and undertakings where requested by the Contractor;
- (q) comply with the obligations, acknowledgments and undertakings given by it in the Subcontract; and
- (r) in addition to any reporting obligations contained elsewhere in the Subcontract Documents, ensure that it reports any of the following to the Contractor immediately after it becomes aware of their occurrence:

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- (i) any breaches or alleged breaches of the Code by the Subcontractor or any of the Subcontractor's Agents or any other conduct or event which may jeopardise the Subcontractor's compliance with the Code, whether occurring before or during the performance of the works or any Variation;
- (ii) any disputes or disagreements relating to workplace relations or occupational health, safety and rehabilitation matters which may impact on the Contract Programme, project costs, the Head Contract, Subcontract or other related contracts;
- (iii) any threatened or actual industrial action that does, may or will impact on the Subcontract Works or other works performed directly or indirectly under the Head Contract;
- (iv) any discharge, emission, deposit or disturbance of any Pollution or Contamination, whether or not that discharge, emission, deposit or disturbance was caused by the Subcontractor;
- (s) at the earliest possible opportunity, notify the Contractor of any remedial action being taken by the Subcontractor or any of the Subcontractor's Agents to rectify non compliance with the Code or, where no remedial action is taken, the reasons for the inaction;
- (t) to facilitate its reporting obligations in paragraphs (r) and (s) above, establish a clear and effective reporting structure in respect of the Subcontract Works and any Variation;
- (u) ensure that any employees, agents, Relevant Material Suppliers, Secondary Subcontractors and consultants engaged in connection with the Subcontract Works or any Variation:
 - (i) notify the Subcontractor of the events set out in paragraph (r) above as soon as they become aware of their occurrence;
 - (ii) notify the Subcontractor of the matters set out in paragraph (s) at the earliest possible opportunity; and
 - (iii) establish a clear and effective reporting structure to fulfil these reporting obligations.
- (v) allow site entry to a union representative only in strict compliance with the procedures governing entry and inspection under the *Fair Work Act 2009* (Cth) and occupational health and safety legislation (see clause 17 of the Subcontract). The Subcontractor must immediately inform the Contractor on becoming aware of entry to the Site of any person under or in purported reliance of the *Fair Work Act 2009* (Cth);
- (w) allow Site entry to a Workplace Inspector to monitor compliance with the Code;
- (x) on the request of the Contractor, promptly provide copies to the Contractor of any industrial agreements binding on the Subcontractor;
- (y) not make any Claim against the Contractor in respect of damage, death, delay, injury or loss to third parties caused by the operation of the Subcontract Works arising from an act or omission of the Subcontractor in the performance of the Subcontract Works; and
- (z) without limiting or reducing its obligations generally under this Subcontract, ensure that the Subcontract Works and all temporary works comply with applicable Australian Standards.

5.0 DOCUMENTS

5.1 Ambiguities and Discrepancies

If the Subcontractor discovers any ambiguity or discrepancy in or between the Subcontract Documents, it must immediately notify the Contractor. The Contractor must direct the Subcontractor as to the proper interpretation of the Subcontract Documents. The Subcontractor must comply with that direction. The Subcontractor is not entitled to make any Claim against the Contractor as a result of or in connection with the direction given by the Contractor under this clause.

5.2 As Built Drawings

The Subcontractor must progressively produce and maintain as-built drawings describing the Subcontract Works. These as-built drawings must be in the form acceptable to the Contractor and insofar as is relevant to the Subcontract Works, record positions of all pipes, conduits, ducting and associated equipment including the location of all access and inspection points and control valves. The Subcontractor must make these as-built drawings

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available to the Contractor on request.

5.3 Supply of Documents by Subcontractor

- (a) The Subcontractor must supply to the Contractor five hard copies and one electronic copy (or such other number as may be stated in Schedule 1) of:
 - (i) the documents described in Schedule 1; and
 - (ii) any other document relevant to the Subcontract Works which is requested by the Contractor.
- (b) The documents supplied by the Subcontractor must:
 - (i) be in a form satisfactory to the Contractor and the Superintendent; and
 - (ii) be provided at those times stated in Schedule 1 or, if no times are stated, not less than five Business Days (or such other time as may be stated in Schedule 1) before the work described in those documents is commenced.

5.4 Review of Documents

The Contractor is not bound to review or comment upon any document provided by the Subcontractor or to check the documents for errors, omissions or compliance with the requirements of this Subcontract. The delivery of documents by the Subcontractor or the Contractor's receipt of, review of, or comment on the documents shall not relieve the Subcontractor from responsibility for the Subcontractor's errors or omissions or obligations to comply with the requirements of the Subcontract.

6.0 DESIGN OF THE SUBCONTRACT WORK

6.1 Review and Completion of Design of the Subcontract Work

The Subcontractor must:

- (a) review the design of the Subcontract Works before commencing any part of the Subcontract Work; and
- (b) complete the design of the Subcontract Works.

6.2 Responsibility for Design

The Subcontractor warrants that:

- (a) the design of the Subcontract Works (including the design as completed by the Subcontractor):
 - (i) is suitable and adequate for the Subcontractor to proceed with the Subcontract Work; and
 - (ii) is, and will be, suitable and fit for the purpose for which the Subcontract Works are intended or will be put, including any purpose which can be inferred from the Head Contract or this Subcontract; and
 - (iii) will ensure that any building or structure resulting from or effected by the design will be safe, fit for occupation and without risks to the health of persons using it; and
- (b) the Subcontract Works or the Subcontractor's ability to proceed with the Subcontract Works will not be adversely affected by the design of the Subcontract Works (including the design as completed by the Subcontractor); and

The Subcontractor indemnifies the Contractor in respect of any defect, inadequacy or omission in the design of the Subcontract Works (including the design as completed by or on behalf of the Subcontractor).

6.3 Responsibility for Design Retained

The obligations of the Subcontractor arising pursuant to clause 6 remain unaffected notwithstanding that the Contractor may have provided to the Subcontractor a partially or fully completed design of the Subcontract Works. The Subcontractor will consider the adequacy of any design provided to it and will, unless specifically giving notice to the Contractor in writing to the contrary, adopt the design and be considered to be the designer of such design.

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6.4 Submission of Design

Any:

- (a) design required under the Subcontract to be developed or carried out by the Subcontractor; and
- (b) shop drawings or related documentation to be prepared by the Subcontractor,

shall be submitted to the Contractor in accordance with any Contract Programme within sufficient time for the Contractor, the Superintendent and any Consultants or authorities to comment on that design or documentation and for re-design work or amendment of design work, if required after a reasonable time for review, to be carried out by the Subcontractor without causing any delay to the progress of the Subcontract Works or the Head Contract Works. The Subcontractor shall at its cost carry out any such re-design or re-documentation.

7.0 INTELLECTUAL PROPERTY

Copyright, other intellectual property rights and property in documents and designs produced by or used by the Subcontractor for or in relation to the Subcontract Works hereby vest in the Contractor. The Subcontractor shall do everything necessary to perfect such vesting and to ensure that no person will make any Claim under the *Copyright Act 1968* (Cth) including Part IX of that legislation. Until such vesting is perfected the Subcontractor grants or will procure the granting to the Contractor an irrevocable, assignable and royalty-free licence to use the documents and designs at no cost to the Contractor. Such licence shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts, or additions or alterations to the Subcontract Works).

The Subcontractor must obtain from each author of any copyright work a waiver of their moral rights (moral rights having the meaning set out in section 189 of the Copyright Act 1968 (Cth)) with respect to any documents and designs produced by such author for or in relation to the Subcontract Works.

The Subcontractor indemnifies the Contractor in respect of any Claim brought against the Subcontractor or the Contractor in connection with copyright, other intellectual property rights (including moral rights) and property in documents and designs produced by or used by the Subcontractor and whether ownership is vested in the Contractor or the Contractor has the benefit of the same under licence.

8.0 ASSIGNMENT AND SECONDARY SUBCONTRACTING

8.1 No Assignment

The Subcontractor is not entitled to assign any right or entitlement under or in connection with the Subcontract (including any right to payment) without the Contractor's prior written consent.

8.2 Partial Prohibition on Secondary Subcontracting

- (a) The Subcontractor must not, without the prior written approval of the Contractor, subcontract any part of the Subcontract Works other than the work described in Schedule 1. The Subcontractor must provide to the Contractor any information as to the proposed Secondary Subcontract or Secondary Subcontractor which the Contractor reasonably requests (which may include a copy of the Secondary Subcontractor's public liability policy of insurance, which must be for an amount equal to or greater, and on the same terms as that required to be provided by the Subcontractor, pursuant to clause 12). The Contractor is not obliged to give its approval of the Subcontractor's request and if it does give its approval that approval may be subject to whatever conditions the Contractor considers appropriate.
- (b) Unless otherwise expressly provided in writing by the Contractor, approval to subcontract shall be conditional upon the Secondary Subcontract including:
 - (i) a provision that the Secondary Subcontractor shall not assign or subcontract without the consent in writing of the Contractor;
 - (ii) provisions which may be reasonably necessary to enable the Contractor to fulfill the Contractor's obligations to the Principal or to any other person, including but not limited to any person engaged in or affected by the performance of the Subcontract Works;
 - (iii) provisions requiring the Secondary Subcontractor to fulfill and comply with all obligations of the

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Subcontractor under the Subcontract including the provisions of clauses 9, 10, 11 and 12 of the Subcontract; and

(iv) such other provisions as may be reasonably required by the Contractor.

8.3 Subcontractor's Responsibility

Approval to subcontract shall not relieve the Subcontractor from any liability or obligation under this Subcontract. The Subcontractor shall be liable to the Contractor for the acts and omissions of Secondary Subcontractors and employees and agents of the Secondary Subcontractors as if they were acts or omissions of the Subcontractor.

9.0 PROTECTION OF PEOPLE AND PROPERTY

9.1 Primary Obligation

The Subcontractor shall, in respect of the Subcontract Works:

- (a) provide all things and take all measures necessary to protect people and property and to comply with all Legislative and Industrial Requirements;
- (b) comply with emergency safety and security procedures applicable to the Site as notified to the Subcontractor by the Contractor from time to time;
- (c) avoid unnecessary interference with the passage of people and vehicles; and
- (d) prevent nuisance and unreasonable noise and disturbance.

9.2 Making Good Damage

- (a) If the Subcontractor or the Subcontractor's Agents damage property, including but not limited to public utilities and services and property on or adjacent to the Site, the Subcontractor shall promptly make good the damage and pay any compensation which the law requires the Subcontractor to pay.
- (b) If the Subcontractor fails to comply with an obligation under this clause, in addition to any other remedies of the Contractor, the Contractor may have the subject work carried out by other persons and the reasonable cost incurred by the Contractor in doing so shall be a debt due from the Subcontractor to the Contractor.

9.3 Indemnity by Subcontractor

The Subcontractor hereby indemnifies and shall keep indemnified the Contractor against:

- (a) loss of or damage to property of the Contractor or the Principal, including existing property in or upon which the Subcontract Works is being carried out;
- (b) any and all liability, costs (including legal costs on a solicitor/own client basis, and whether or not the subject of a court order), expenses or loss incurred by the Contractor from or associated with Claims, demands or proceedings whether at common law or pursuant to any statute or otherwise by any person against the Contractor or the Principal in respect of personal injury or death or loss of or damage to any property; and
- (c) any liability or expenses from or associated with any Claim by the Victorian WorkCover Authority or any other person pursuant to Section 138 of the *Accident Compensation Act 1985* (Vic), and any associated costs relating to injury sustained by any person,

arising out of or as a consequence of or during the carrying out of the Subcontract Works.

10.0 CARE OF THE WORK AND REINSTATEMENT OF DAMAGE

10.1 Care of the Work under the Contract

The Subcontractor is responsible for the care of the whole of the Subcontract Works from and including the date of commencement of the Subcontract Works until 4:00pm on the Date of Substantial Completion. Thereafter, the Subcontractor must take all reasonable measures and precautions to protect and not to damage the Subcontract Works in the completion of outstanding work or compliance with the Subcontractor's Obligations under this Subcontract.

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10.2 Reinstatement

If loss or damage occurs to the Subcontract Works during the period for which the Subcontractor is responsible for the care thereof the Subcontractor shall, at the Subcontractor's cost, rectify such loss or damage so that the Subcontract Works conforms in every respect with the provisions of this Subcontract.

11.0 URGENT PROTECTION

If urgent action is necessary to protect the Subcontract Work, other property or people and the Subcontractor fails to take the action then, in addition to any other remedies of the Contractor, the Contractor may take the necessary action. If the action was action which the Subcontractor should have taken, the cost incurred by the Contractor in taking such action shall be a debt due from the Subcontractor to the Contractor.

12.0 INSURANCE

12.1 Obligation to Insure and Evidence of Insurance

The Subcontractor must, prior to commencing the Subcontract Works and whenever requested in writing by the Contractor:

- (a) effect the policies of insurance set out in this part in a form acceptable to the Contractor; and
- (b) in relation to any policy of insurance in respect of liability for death of or injury to persons employed in respect of the Subcontract Works, ensure that all Secondary Subcontractors comply with any obligation as to insurance which is imposed upon any such Secondary Subcontractor; and
- (c) produce evidence to the satisfaction and approval of the Contractor of the insurance required by this clause (including insurance required of Secondary Subcontractors) having been effected. The Subcontractor must produce a copy of any insurance policy if requested as evidence of the insurance required by this clause.

If the Subcontractor does not comply with this clause, the Contractor may withhold moneys otherwise due to the Subcontractor unless and until the Subcontractor complies with this clause.

12.2 Insurance Does Not Limit Obligations

The effecting of insurance does not limit the liabilities or obligations of the Subcontractor under other provisions of this Subcontract.

12.3 Type of Insurance Required

The insurance required to be effected by the Subcontractor pursuant to this part is as set out in Schedule 1, or where no requirements are set out in Schedule 1 as follows:

- (a) a public and products (completed operations) liability policy of insurance which includes cover in respect of liabilities to third parties, and which is for an amount in respect of any one occurrence not less than the sum stated in Schedule 1 (or if no sum is stated the sum of \$20,000,000); and
- (b) a policy of insurance in respect of the Subcontractor's liability for death of or injury to persons employed by the Subcontractor including liability by statute and at common law, and which is for an amount in respect of any one occurrence not less than the sum stated in Schedule 1 (or if no sum is stated the sum of \$20,000,000); and
- (c) where permitted by law, a policy of insurance (which policy may be included as part of the policy required by the preceding paragraph) which indemnifies the Contractor for the Contractor's statutory liability to persons employed by the Subcontractor, and which is for an amount in respect of any one occurrence not less than the sum stated in Schedule 1 (or if no sum is stated the sum of \$20,000,000); and
- (d) a professional indemnity insurance policy with a total aggregate cover of not less than the sum stated in Schedule 1 (or, if no sum is stated, the amount of \$10,000,000); and
- (e) a motor vehicle third party liability policy of insurance which includes cover in respect of liabilities for the loss of or damage to any physical property, and which is for an amount in respect of any one occurrence not less than the sum stated in Schedule 1 (or if no sum is stated the sum of \$20,000,000); and

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- (f) a contracts works policy of insurance in respect of the Subcontract Works which includes among other things cover in respect of any loss or damage resulting from any cause whatsoever. Such insurance must be in effect before the Subcontractor commences the Subcontract Works and be maintained until the Subcontractor ceases to be responsible for the care of the Subcontract Works. Without limiting the generality of the obligation to insure, the policy shall cover the Subcontractor's liabilities under clause 10 and things in storage off Site and in transit to the Site. Such insurance shall be for an amount not less than the sum stated in Schedule 1 (or if no sum is stated the sum is not less than twice the Subcontract Sum). Such insurance must not include a clause that purports to limit or exclude the response or cover of the policy because a separate policy may have been effected by the Contractor, the Principal or other third party; and
- (g) insurance covering constructional plant and equipment (whether mobile or immobile), tools, tackle, employees' effects, temporary hutments, scaffolding and the like and all the property of the Subcontractor and Secondary Subcontractor or for which the Subcontractor is responsible, against any damage to, or loss or destruction of, to that property. Such insurance must be in effect at all times during the Subcontract Works and the sum insured in respect of such property must be at least the current market value of the property; and
- (h) where the Subcontract Works include the removal of asbestos, the Subcontractor and the relevant licensed asbestos removal subcontractor must at all times during the Subcontract Works have in effect a public liability policy protecting the interests of the Contractor and Principal and their Related Bodies Corporate (as defined in the *Corporations Act 2001* (Cth)) and covering (amongst other things) those asbestos removal activities upon terms reasonably acceptable to the Contractor for a minimum of \$5,000,000 in respect of any single event or circumstance.

12.4 Requirements of Insurance

Unless otherwise directed by the Contractor any policy of insurance required to be effected pursuant to this part must:

- (a) be in the joint names of the Contractor and the Subcontractor so as the insurance applies to each named insured as separate insured (apart from policies of professional indemnity and worker's compensation, which will be in the name of the Subcontractor only, and where appropriate, any Secondary Subcontractor retained by the Subcontractor);
- (b) cover the Contractor, the Subcontractor, the Principal, all consultants and all subcontractors employed from time to time (including by the Subcontractor) in relation to the Subcontract Works for their respective rights and interests;
- (c) be maintained until the Final Certificate is issued pursuant to this Subcontract, save for professional indemnity insurance, which must be maintained until the expiry of seven years after the issue of the Final Certificate;
- (d) be effected or maintained with an insurer authorised to carry on business under the *Insurance Act 1973* (Cth), or if effected or maintained with an insurer operating its business out of a country other than Australia, such an insurer must provide the Contractor with written evidence of its authority to carry on a business as an insurer in that country;
- (e) contain provisions that require the insurer, whenever the insurer gives the Contractor or the Subcontractor a notice of cancellation or other notice concerning the policy, to at the same time inform the other party in writing that the notice has been given;
- (f) provide that a notice of claim given to the insurer by the Contractor or the Subcontractor shall be accepted by the insurer as a notice of claim given by the Contractor and the Subcontractor;
- (g) require the insurer, whenever the party fails to renew the policy or to pay a premium, to immediately give notice in writing thereof forthwith to the Contractor prior to the insurer giving any notice of cancellation; and
- (h) in respect of any insurance required to be effected in joint names, shall include a cross liability clause for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby) and a clause in which the insurer agrees to waive all rights of subrogation against any of the persons comprising the insured.

In the event the Subcontractor's insurer does not agree to clause 12.4(e) and/or clause 12.4(g), the Subcontractor must ensure that such notices are provided to the Contractor immediately upon receipt by the Subcontractor.

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Without limiting the obligations on the Subcontractor set out above, the Contractor may require any policy of insurance required to be effected by the Subcontractor to be effected with an insurer acceptable to the Contractor and in terms acceptable to the Contractor.

12.5 Failure to Produce Proof of Insurance

If after being requested the Subcontractor fails to produce evidence of insurance as required by this part the Contractor may:

- (a) effect and maintain the insurance and pay the premiums, in which case the amount paid shall be a debt due from the Subcontractor to the Contractor; and
- (b) even where the Contractor has acted in accordance with paragraph (a) of this clause refuse payment until the Subcontractor:
 - (i) produces evidence of insurance as required by this part; and
 - (ii) pays to the Contractor any debt which has accrued under this clause.

The rights given by this clause are in addition to any other right.

12.6 Notices of Potential Claims

The Subcontractor shall, as soon as practicable, inform the Contractor in writing of any occurrence that may give rise to a claim under a policy of insurance required by this clause and shall keep the Contractor informed of subsequent developments concerning the claim. The Subcontractor shall ensure that Secondary Subcontractors in respect of their operations similarly inform the Contractor.

12.7 Deductibles or Excess

Where:

- (a) the Contractor or the Principal effects a policy of insurance in respect of the Subcontract Works or in respect of works including the Subcontract Works;
- (b) the Contractor or the Principal makes a claim under such insurance policy in respect of loss of or damage to the Subcontract Works which is caused or contributed to by an act or omission of the Subcontractor or its Secondary Subcontractors and Suppliers; and
- (c) any payment in respect of such claim is subject to a deductible or excess for which the Contractor is responsible,

the Subcontractor shall reimburse the Contractor the amount of any such deductible or excess as identified in Schedule 1 and any other costs incurred by the Contractor in respect of such claim including but not limited to legal costs (on a solicitor/own client basis, and whether or not the subject of a court order).

Without limiting the Subcontractor's liability under this clause or the Subcontract generally in respect of loss of or damage to the Subcontract Works the Subcontractor must claim on contracts works insurance policies effected by it and be solely responsible for meeting the deductible or excess of same without recourse to the Contractor and must not unless the Contractor in its sole discretion agrees (which discretion the Contractor is not obliged to exercise at all or in the Subcontractor's favour) make any claim on similar policies effected by the Contractor, the Principal or other third party.

12.8 Insurance by Secondary Subcontractors

The Subcontractor must ensure that all Secondary Subcontractors effect and maintain insurance on the same terms as the Subcontractor under this clause 12.

13.0 CONTRACTOR'S REPRESENTATIVE

The Contractor may from time to time appoint individuals to exercise any functions or powers of the Contractor under this Subcontract. The appointment of such an individual or individuals shall not prevent the Contractor from exercising any function.

INITIAL	
Contractor	Subcontractor

14.0 SUBCONTRACTOR'S REPRESENTATIVE

14.1 Subcontractor's Representative

The Subcontractor must nominate a representative to act on its behalf pursuant to this clause. The Subcontractor's Representative must:

- (a) be on Site when any work is being carried out; and
- (b) be responsible for discharging the responsibilities of the Subcontractor on the Site; and
- (c) be empowered by the Subcontractor to receive any notice or direction which may be given by the Contractor pursuant to this Subcontract.

The Subcontractor's Representative has the authority to act on behalf of and bind the Subcontractor.

A direction is deemed to be given to the Subcontractor if it is given to the Subcontractor's Representative and matters within the knowledge of the Subcontractor's Representative are deemed to be within the knowledge of the Subcontractor.

If, in the opinion of the Contractor, the Subcontractor's Representative is not competent or the Contractor is otherwise dissatisfied with the Subcontractor's Representative, the Contractor is entitled to give a notice to the Subcontractor requiring the Subcontractor to replace the Subcontractor's Representative and the Subcontractor will forthwith comply with the requirements of that notice at its own cost and without an entitlement to an adjustment to the Subcontract Sum.

14.2 Key Personnel

The personnel named in Schedule 10:

- (a) are appointed to positions of responsibility on behalf of the Subcontractor in respect of its carrying out of the Subcontract Works; and
- (b) must remain dedicated to the performance of the Subcontract Works.

The Subcontractor must not change, replace or remove any key personnel without the prior written approval of the Contractor.

15.0 CONTROL OF SUBCONTRACTOR'S EMPLOYEES AND SECONDARY SUBCONTRACTORS

15.1 Removal of Workers

The Contractor may (unless such direction would contravene the *Workplace Relations Act 1996* (Cth), as preserved by the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth); the *Fair Work Act 2009* (Cth), the *Building and Construction Industry Improvement Act 2005* (Cth), the Code or a law of the State or Territory in which the Subcontract Works are being performed or that otherwise applies to the Subcontractor in respect of the Subcontract Works or a law of the Commonwealth proscribing discrimination) direct the Subcontractor to remove from the Site or from any activity connected with the Subcontract Works or any Variation, any person engaged in connection with such works. The person shall not thereafter be engaged on the Site or otherwise in connection with the Works without the written approval of the Contractor. The removal will not entitle the Subcontractor to any extension of time or compensation.

15.2 Employee Training

The Subcontractor must ensure that all employees of the Subcontractor and any other person undertaking any part of the Subcontract Works and engaged on the Site are provided with such information, instruction, training and supervision as is necessary to enable them to perform their work in a manner that is safe and without risk to health. Without limiting the obligation set out in the previous sentence, the information, instruction, training and supervision must meet or exceed the minimum level of information, instruction, training and supervision required by all relevant Legislative and Industrial Requirements.

16.0 INDUSTRIAL RELATIONS

INITIAL	
Contractor	Subcontractor

The Subcontractor must in carrying out the Subcontract Works:

- (a) assume sole responsibility for and manage all aspects of industrial relations;
- (b) ensure that the rates of pay and conditions of employment specified in all relevant industrial awards, enterprise, workplace and project agreements and any relevant statutory requirements, for all employees engaged by it and any of its Secondary Subcontractors are observed in full; and
- (c) keep the Contractor's Representative informed of any industrial relations problems or issues which affect or are likely to affect the carrying out of the Subcontract Works.

16.1 Warranty in Respect of Industrial Relations

By undertaking the Subcontract Works, the Subcontractor warrants to the Contractor:

- (a) that it will, upon request by the Contractor, provide to the Contractor copies of any and all relevant industrial instruments (whether certified/lodged or not).
- (b) that applicable industrial instruments (whether certified/lodged or not) and the Subcontractor's workplace arrangements and practices comply with the Code.
- (c) that the Subcontractor or any of its related entities has never been sanctioned by the Australian Government or any other State or Territory Government for a breach of the Code.
- (d) that the Subcontractor has complied and will continue to comply with the terms of any applicable and legally binding industrial instruments, including any awards and workplace agreements.

16.2 Australian Government Funded Project

Without limiting any other obligations placed on the Subcontractor under the Subcontract, where the Project is an Australian Government Funded Project, then:

- (a) In addition to any other obligation placed upon the Subcontractor under this Subcontract, the Subcontractor must comply with the Code.
- (b) Compliance with the Code shall not relieve the Subcontractor from responsibility to perform the Subcontract, or from liability for any defect in the Subcontract Works arising from compliance with the Code.
- (c) Where a change in the Subcontract is proposed and that change would affect compliance with the Code, the Subcontractor must immediately submit a report to the Contractor specifying the extent to which the Subcontractor's compliance with the Code will be affected.
- (d) The Subcontractor must maintain adequate records of the compliance with the Code by:
 - (i) the Subcontractor;
 - (ii) the Subcontractor's Secondary Subcontractors;
 - (iii) the Subcontractor's consultants; and
 - (iv) the Subcontractor's Related Entities (as defined in the Code).
- (e) The Subcontractor must not appoint a Secondary Subcontractor or consultant in relation to the Project where:
 - (i) the appointment would breach a sanction imposed in connection with the Code; or
 - (ii) the Secondary Subcontractor or consultant has had a judicial decision against them relating to employee entitlements, not including decisions under appeal, and has not paid the Claim.
- (f) The Subcontractor agrees to require that it and its Secondary Subcontractors, consultants and Related Entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, with access to:
 - (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to the Project and Subcontract Works the subject of this Subcontract; and

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Contractor	Subcontractor

(iii) interview any person,

as is necessary to demonstrate its compliance with the Code and related guidelines.

For the avoidance of doubt, this clause also applies in relation to new privately funded construction work.

- (g) Additionally, the Subcontractor and its Related Entities will, on request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, produce a specified document within a specified period, in person, by fax or by post.
- (h) The Subcontractor must ensure that all its Secondary Subcontractors and consultants impose obligations on their subcontractors equivalent to the obligations under this clause 16.2.

17.0 OCCUPATIONAL HEALTH AND SAFETY

17.1 Warranty and Compliance in Respect of Occupational Health and Safety

- (a) This clause 17.0 applies, notwithstanding anything provided elsewhere in this Subcontract.
- (b) The Subcontractor must, so far as is reasonably practicable, provide and maintain a working environment that is safe and without risk to health.
- (c) The Subcontractor acknowledges that for the purposes of the Legislative and Industrial Requirements the Subcontractor has management and control of such parts of the Site at which and at all times during which the Subcontractor carries out Subcontract Works.
- (d) The Subcontractor:
 - (i) shall comply with the Legislative and Industrial Requirements; and
 - (ii) warrants that it is familiar with and has the capability, skills and resources to comply with the Legislative and Industrial Requirements; and
 - (iii) shall perform all relevant functions and fulfil all relevant duties under the Legislative and Industrial Requirements of an employer or otherwise applicable to the role of the Subcontractor under this Subcontract including notification of incidents.
- (e) The Subcontractor shall at all times identify and exercise all necessary precautions for the health and safety of all persons including the Subcontractor's employees, any Secondary Subcontractor's employees, the Contractor's employees and members of the public who may be affected by the Subcontract Works. The Subcontractor shall, upon request by or on behalf of the Contractor, demonstrate compliance with such requirements including, but not limited to, providing evidence of measures taken to achieve such compliance.
- (f) In the performance of the Subcontract Works, the Subcontractor and any Secondary Subcontractor shall comply with the Contractor's policies and procedures for the Site. It is the responsibility of the Subcontractor to be familiar with all provisions in the Contractor's policies and procedures prior to the first occasion on which the Subcontractor or any person employed by or engaged by the Subcontractor enters the Site.

17.2 Consultation, Co-operation and Co-ordination

- (a) The Subcontractor shall consult, co-operate and co-ordinate activities with the Contractor any suppliers or contractors or other persons engaged in or associated with the Subcontract Works:
 - (i) to achieve effective co-ordination of activities to ensure optimal health and safety risk management; and
 - (ii) to enable the Contractor and the Subcontractor and other parties to comply with their respective obligations under the Legislative and Industrial Requirements.

17.3 Provision and Maintenance of Plant and Safety Equipment

- (a) The Subcontractor shall supply all plant necessary to ensure the provision of any part of the Subcontract Works in a manner that is safe and without risks to health. The Subcontractor must ensure that all plant supplied by it is maintained in a condition that is safe and without risks to any person.

INITIAL	
Contractor	Subcontractor

- (b) The Subcontractor shall supply all safety equipment necessary to ensure the provision of any part of the Subcontract Works in a manner that is safe and without risks to health including, but not limited to safety access platforms, ladders, mobile or static scaffolds, scissor or boom lifts, handrails, barricades, guards, fencing, temporary roads, footpaths, warning signs, safety and task lighting, observation/monitoring equipment, personal protection equipment, traffic flagging, safety helmets, clothing and protection of services.

17.4 Permits, Licences, Certification and Approvals

- (a) If the Subcontractor or any Secondary Subcontractor is required by the Legislative and Industrial Requirements to have a permit, licence, certification or approval in order to perform or provide the Subcontract Works, then the Subcontractor must at its own expense ensure that such permit, licence, certification or approval is obtained and held prior to the first occasion on which any person employed by or engaged by the Subcontractor enters the Site and must ensure such permit, licence, certification or approval is held and maintained and that there is full compliance with any conditions for the duration of the Subcontract Works and provide the Contractor with evidence of the permit, licence, certification or approval and compliance on request.

17.5 Site Induction

- (a) The Subcontractor shall, prior to the commencement of the Subcontract Works ensure that the Subcontractor's Representative and key personnel complete the Contractor's site induction process.
- (b) The Subcontractor shall ensure that prior to commencing work at the Site the Subcontractor's employees, Secondary Subcontractors, consultants and any of their employees commencing work related to this Subcontract:
 - (i) have completed the Subcontractor's toolbox meeting which complies with the Legislative and Industrial Requirements; and
 - (ii) have read and understood the Site Safety Plan, Safe Work Method Statements and Job Safety Analysis worksheets and
 - (iii) completed the Contractor's site induction.
- (c) The Subcontractor shall immediately provide completed and signed induction forms to the Contractor.
- (d) The Subcontractor shall immediately advise the Contractor if it believes that any of the matters set out in this clause (a) and (b) has not been completed.
- (e) Failure by the Subcontractor to ensure completion of the induction process in accordance with this clause 17.5 may result in the removal of persons from the site by the Contractor of which the Subcontractor shall have no Claim.
- (f) The cost of providing the Contractor's site induction, the Subcontractor's toolbox meeting and any Subcontractor site induction, along with each employee attending the Contractor's site induction and any safety meetings (including wages relating to such attendance), shall be borne by the Subcontractor.

17.6 Meetings

- (a) The Subcontractor shall conduct weekly tool box meetings with relevant people including the Subcontractor's employees, Secondary Subcontractors, consultants and any of their employees and shall provide copies of the minutes of those meetings to the Contractor.
- (b) The Subcontractor shall, as requested by the Contractor from time to time, attend meetings for the purpose of discussing occupational health and safety issues, including any environmental management issues, arising in relation to the Project.
- (c) The Subcontractor shall advise the Contractor of, and the Contractor may attend, any meetings between the Subcontractor and other parties where such meetings relate to occupational health and safety or environmental issues arising in relation to the Project.

17.7 Subcontractor Reporting Obligations

- (a) The Subcontractor shall:

INITIAL	
Contractor	Subcontractor

- (i) inform the Contractor immediately upon becoming aware of entry to the Site of any person under or in purported reliance on Part 8 of the *Occupational Health and Safety Act 2004 (Vic)*. The Subcontractor shall accompany such person for the duration of the entry to the Site and ensure compliance with the provisions of the said Part 8 and any additional requirements imposed by the Legislative and Industrial Requirements. The Subcontractor shall upon and in accordance with any request by the Contractor provide a written report to the Contractor in respect of the entry to the Site; and
- (ii) promptly notify the Contractor of any hazard, incident, accident, injury, property or environmental damage which occurs during the carrying out of and associated with the provision of any part of the Subcontract Works. The Subcontractor shall, within two days of any such incident, provide a written report to the Contractor giving complete details of the event, including the results of investigations into its cause and any recommendations or strategies for prevention of a recurrence; and
- (iii) immediately advise the Contractor in writing of any act, fact or circumstance associated with the activities of the Subcontractor or any other person relevant to the ability of the Subcontractor to provide any part of the Subcontract Works in a manner that is safe and without risks to health; and
- (iv) maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Contractor may reasonably require.

17.8 Subcontractor Provision of Information

- (a) The Subcontractor shall, prior to the commencement of the Subcontract Works, prepare and make available to the Contractor the following material which complies with the Legislative and Industrial Requirements:
 - (i) an occupational health and safety system manual; and
 - (ii) a project specific occupational health and safety management plan which satisfactorily addresses issues including, but not limited to, safety policies, Safe Work Method Statements, Job Safety Analysis, site procedures, safety auditing, inductions, tool box meetings, rehabilitation; and
 - (iii) a project specific traffic management plan which makes allowance for the requirements of the Contractor including the provision of qualified staff and materials for directing traffic and pedestrians, if applicable; and
 - (iv) an assessment and identification of the risks associated with the Subcontract Works and details of the risk assessment(s) and of appropriate risk control measures to control all such risks.
- (b) The Subcontractor shall, during the course of the Subcontract Works, prepare and make available to the Contractor:
 - (i) its Safe Work Method Statement(s) detailing the tasks to be completed by the Subcontractor in the performance of the Subcontract Works and assessing the potential hazards associated with those tasks and detailing how those hazards will be eliminated or controlled; and
 - (ii) a skills and competencies assessment register confirming that the Subcontractor's employees and Secondary Subcontractors employees have undertaken a risk management review in accordance with the Legislative and Industrial Requirements and are trained to a level of competency sufficient to ensure health and safety while on the Site; and
 - (iii) an electrical equipment register listing all electrical equipment the Subcontractor intends to bring on to the Site and utilise in the performance of the Subcontract Works and recording all testing and maintenance of that equipment; and
 - (iv) a plant and machinery register specifying the equipment and appliances to be used by the Subcontractor in the performance of the Subcontract Works, including a risk assessment in relation to the use of such equipment and appliances and records of all testing and maintenance of that equipment; and
 - (v) a hazardous substances register, including material safety data sheets outlining all hazardous substances to be used by the Subcontractor on the Site; and
 - (vi) an induction register together with copies of all signed induction forms completed by the Subcontractor's employees, Secondary Subcontractors and consultants.

INITIAL	
Contractor	Subcontractor

17.9 Use of Secondary Subcontractors

- (a) Without limiting the restrictions on secondary subcontracting set out in clause 8, any Secondary Subcontract must:
 - (i) contain a provision that the Secondary Subcontractor shall not assign or subcontract without the consent in writing of the Contractor;
 - (ii) contain a provision that the Subcontractor must comply with, and ensure that any and all Secondary Subcontractors comply with the Legislative and Industrial Requirements. The Subcontractor shall, upon reasonable request by or on behalf of the Contractor, demonstrate compliance with such requirements including, but not limited to, providing evidence of measures taken to achieve such compliance; and
 - (iii) contain provisions which may be reasonably necessary to enable the Contractor and the Subcontractor to fulfil their respective obligations under all Legislative and Industrial Requirements.

17.10 Termination for Health and Safety Breach

- (a) The Subcontractor shall, to the extent permitted by law, indemnify the Contractor against any costs, loss, liability or expense which the Contractor may suffer, incur or be liable for arising out of or as a result of non-compliance or breach by the Subcontractor or any Secondary Subcontractor engaged by it or any other person engaged in the performance of any part of the Subcontract Works of any requirement of this clause 17.0. That indemnity shall extend to any costs incurred by the Contractor in taking steps to ensure compliance by it or the Subcontractor or any of the Subcontractor’s Agents or any other person engaged in the performance of any part of the Subcontract Works with the Legislative and Industrial Requirements, where such or equivalent steps should have been taken by the Subcontractor in compliance with this clause 17.0.
- (b) Any breach by the Subcontractor of any part of this clause 17.0 shall be considered a substantial breach by the Subcontractor of its obligations under this Subcontract.

18.0 ENVIRONMENTAL PROTECTION

18.1 Environmental Management

The Subcontractor warrants that:

- (a) its employees and Secondary Subcontractors are properly trained and will be adequately instructed by it in relation to complying with all relevant environmental procedures associated with the performance of the Subcontract Works; and
- (b) it will ensure compliance with all relevant environmental laws, regulations, guidelines and directions in connection with the performance of the Subcontract Works and that it takes the time and cost associated with such matters.

The Subcontractor shall, prior to the commencement of the Subcontract Works, prepare and make available upon request to the Contractor its environmental management plan.

18.2 Pollution

The Subcontractor must ensure that its employees and Secondary Subcontractors:

- (a) do not Pollute, Contaminate or otherwise damage the Site or the environment; and
- (b) ensure any Hazardous Substance or Industrial Waste required for or produced by the Subcontract Works is handled safely and in order to avoid injury or damage to any person or property or the environment generally;
- (c) do not allow any Hazardous Substance or Industrial Waste to be abandoned or left on, or to be discharged from the Site;
- (d) make good any Pollution, Contamination, or damage to the Site or the environment caused by the performance of the Subcontract Works; and
- (e) comply with the Contractor’s directions in respect to the discharge into the Site or the atmosphere of smoke, dust, or other Contaminants or the creation of undue noise.

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Contractor	Subcontractor

18.3 Reporting Obligations

- (a) The Subcontractor acknowledges that the Contractor may be required under the *National Greenhouse and Energy Reporting Act 2007* (Cth) (**NGER Act**) to report on greenhouse gas emissions, energy production and energy usage arising out of all activities performed by the Subcontractor which form part of the Subcontract Works.
- (b) If requested by the Contractor to do so, the Subcontractor must at its own cost provide on a monthly basis and at such other times reasonably requested by the Contractor, a statement in a form acceptable to the Contractor, setting out all information required under the NGER Act and any similar statutory requirements in respect of the Subcontractor's greenhouse gas emissions, energy production and energy usage arising out of or in connection with the Subcontractor's performance of the work under the Subcontract (**Subcontractor Energy Consumption Monthly Report**).
- (c) The Subcontractor must not do anything that will put the Contractor in breach of its obligations under environmental statutory requirements, including meeting any reporting obligations.
- (d) The Subcontractor must make and keep and ensure all Secondary Subcontractors make and keep accurate records relating to the information provided in the Subcontractor Energy Consumption Monthly Progress Report. The Subcontractor must make those records available to the Contractor and the Principal upon reasonable notice to inspect, audit and copy and must retain those records for a period of seven years from the end of the year in which the relevant activities took place.
- (e) The Subcontractor has no entitlement to make any Claim against the Contractor arising out of or connected with an Australian emissions trading scheme or any similar scheme introduced after the execution of the Subcontract.

19.0 CONTRACTOR'S DIRECTIONS

19.1 General

The Subcontractor must comply with any one or more directions given by the Contractor that relate to the obligations of the Subcontractor under the Subcontract or the Subcontract Works.

19.2 Time for Compliance with Directions

Where the Contractor gives a direction under this Subcontract, the Contractor may, as part of the direction or subsequent to the direction, prescribe a time within which the direction must be complied with. The Subcontractor must comply with the direction within the prescribed time.

19.3 Directions Under the Head Contract

If the Contractor receives a Head Contract Direction:

- (a) the Contractor is entitled to give to the Subcontractor a corresponding direction (or amended direction) to give effect to the Head Contract Direction;
- (b) the Contractor's direction given under paragraph (a) may be effected by the delivery to the Subcontractor by the Contractor of a copy of the Head Contract Direction;
- (c) the Subcontractor must comply with such a direction so as to ensure that the Contractor complies with the Head Contract Direction in accordance with the Head Contract; and
- (d) the Subcontractor will not be taken to have complied with the direction until the Contractor is taken to have complied with the Head Contract Direction.

19.4 Payment in Respect of Directions Under the Head Contract

The Subcontractor's entitlement if any to payment as a result of complying with a direction which was given pursuant to clause 19.3 shall always be subject to the terms of the Subcontract and shall not, in any circumstances (including cases where a Damaging Act is involved) exceed the Head Contract Entitlement.

19.5 Non Compliance with Direction

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Contractor	Subcontractor

If the Subcontractor does not comply with any direction of the Contractor the Contractor may, in addition to any other right which it may have, engage others to effect compliance with the direction. Any cost, loss or damage suffered or incurred by the Contractor in connection with such failure to comply and engagement shall be a debt due by the Subcontractor to the Contractor.

19.6 Notice by Subcontractor as to Time and Cost Implications

Upon the giving of a direction by the Contractor to the Subcontractor (including a direction under clause 34), the Subcontractor must, prior to complying with the direction and within the time stated by the Contractor or if no time is stated within two Business Days of the giving of the direction, notify the Contractor in writing as to whether compliance with the direction will involve a Claim by the Subcontractor.

19.7 Basis of Claim

Any notice given by the Subcontractor pursuant to clause 19.6 must state the basis upon which any such Claim will be made including (where applicable) the particular Subcontract clause (if any) upon which the Claim is made. The Subcontractor must also state the anticipated amount of any Claim for additional money and the anticipated time by which an extension of time to the Date for Substantial Completion will be sought. If the Contractor is of the view that the information provided by the Subcontractor is not adequate to enable the Contractor to properly understand the basis or extent of the Subcontractor's foreshadowed Claim the Contractor may direct the Subcontractor to provide further information. Any such direction by the Contractor will be treated as if it were a direction under clause 19.1.

19.8 Failure of Subcontractor to Give Notice

If the Subcontractor does not comply with Cause 19.6 and clause 19.7 it will not be entitled to make any Claim against the Contractor resulting from or in connection with the direction.

19.9 Response to Subcontractor's Notice

The Contractor may rescind directions previously given by the Contractor within five Business Days after receipt from the Subcontractor of a notice given pursuant to clause 19.6 and 19.7 in which case the Subcontractor waives the right to make any Claim against the Contractor. The Contractor is not taken to have accepted that the Subcontractor has any Claim or entitlement in respect of the direction notwithstanding that the Contractor does not rescind any direction and the Subcontractor's entitlement, if any, will be determined in accordance with this Subcontract.

20.0 OTHER CONTRACTORS

20.1 Shared Access to the Site

The Subcontractor acknowledges that:

- (a) the Contractor may not have unrestricted possession of or access to all of the Site;
- (b) the Subcontractor will not have unrestricted access to all of the Site;
- (c) the Subcontract Works are being carried out as part of other works and there will be Other Contractors working on the Site; and
- (d) any failure by the Contractor to procure sufficient access to the Site for the Subcontractor shall be taken not to be a breach of the Subcontract by the Contractor but may be an act of the Contractor the sole remedy for which will be an entitlement in the Subcontractor to claim an extension of time in accordance with and subject to clause 29.

20.2 Subcontractor's Responsibilities

The Subcontractor must:

- (a) work in a co-operative manner with all Other Contractors; and
- (b) engage in such consultation with the Contractor and any other party as the Contractor may reasonably require; and

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Contractor	Subcontractor

- (c) not interfere with, delay or damage the work of Other Contractors; and
- (d) comply with all instructions of the Contractor regarding the co-ordination between the Subcontractor and the Other Contractors; and
- (e) immediately advise the Contractor in writing of any delay, interference or damage caused by the Other Contractors; and
- (f) immediately advise the Contractor in writing of any act, fact or circumstance associated with the activities of Other Contractors relevant to the ability of the Subcontractor to undertake the Subcontract Works in a manner that is safe and without risks to health.

20.3 No Claim

The Subcontractor releases the Contractor from any Claim where the Claim is in any way connected with or arises out of an act or omission of the Other Contractors.

20.4 Indemnity

The Subcontractor indemnifies and will keep indemnified the Contractor in respect of any breach by the Subcontractor of its obligations under clause 20.2. The Contractor may deduct from any moneys otherwise due to the Subcontractor an amount in respect of the Subcontractor's liability to the Contractor pursuant to this indemnity.

21.0 SETTING OUT OF THE WORKS

21.1 Survey Marks

The Subcontractor must keep all survey marks in their true positions. If a survey mark is disturbed or obliterated, the Subcontractor must immediately notify the Contractor and, unless the Contractor otherwise directs, the Subcontractor must reinstate the survey mark.

21.2 Errors in Setting Out

If the Subcontractor discovers an error in the position, level, dimensions or alignment of any Subcontract Works, the Subcontractor must immediately notify the Contractor and, unless the Contractor otherwise directs, the Subcontractor must rectify the error.

If the error has been caused by incorrect information, survey marks or data supplied by the Contractor, the cost incurred by the Subcontractor in rectifying the error shall be valued under the Valuation clause.

22.0 THE BASE WORKS

22.1 Inspection of Base Works

The Subcontractor must inspect the Base Works before commencing any part of the Subcontract Works which may be affected by the Base Works.

22.2 Defects in Base Works

If the Subcontractor becomes aware or should have become aware of any condition in the Base Works, or any inadequacy in or omission from the Base Works, which may affect the Subcontract Works or the Subcontractor's ability to carry out the Subcontract Works in compliance with the Subcontract, the Subcontractor must, before proceeding with the Subcontract Works, advise the Contractor, in writing, of the condition, inadequacy or omission. The Contractor may, upon receipt of advice from the Subcontractor, give a direction to the Subcontractor as to the carrying out of the Subcontract Works, the timing of the Subcontract Works or a Variation to the Subcontract Works. The Subcontractor must comply with any such direction.

22.3 Responsibility for Base Works

If the Subcontractor does not advise the Contractor in accordance with clause 22:

- (a) the Subcontractor warrants that:

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Contractor	Subcontractor

- (i) the Base Works are suitable for the Subcontractor to proceed with the Subcontract Works; and
- (ii) the Subcontract Works or the Subcontractor's ability to proceed with the Subcontract Works will not be adversely affected by the Base Works; and
- (b) the Subcontractor indemnifies the Contractor in respect of any condition in the Base Works, or any inadequacy in or omission from the Base Works, which affects the Subcontract Works or the Subcontractor's ability to carry out the Subcontract Works in compliance with this Subcontract.

23.0 THE SUBCONTRACT WORKS

23.1 Quality

The Subcontractor must use materials and standards of workmanship required by this Subcontract. In the absence of any requirement to the contrary, the Subcontractor shall use suitable new materials and proper and tradesmanlike workmanship.

23.2 Quality Management

The Subcontractor must:

- (a) have in place a quality management system as described in Schedule 1, or if no such system is described a quality management system which complies with AS/NZS ISO 9001; and
- (b) use such quality management system in relation to the carrying out of the Subcontract Works; and
- (c) provide the Contractor with access to the quality management system, and associated documents, to enable monitoring and quality auditing.

Any quality management system shall be used only as an aid to achieving compliance with the Subcontract and to document such compliance. Such system shall not relieve the Subcontractor of the responsibility to comply with this Subcontract.

23.3 Quality Assurance Plan

Prior to commencing the Subcontract Works, the Subcontractor shall provide for the approval of the Contractor a project specific quality assurance plan which details all quality assurance procedures to be followed for the Subcontract Works to be specific to the Subcontract Works and include:

- (a) an organisational chart with a description of the quality assurance responsibilities and authorities for each person;
- (b) documentation control procedures;
- (c) a flow chart detailing the stages of the Subcontract Works and the major milestones for quality assurance with a summary of the procedures to be followed;
- (d) a time and responsibility schedule for the preparation of inspection and test plans;
- (e) procedures to apply to quality assurance of purchased and/or subcontracted parts of the Subcontract Works;
- (f) quality audit procedures to apply to the Subcontract Works;
- (g) corrective actions procedures; and
- (h) all general requirements described in the Subcontract Documents.

If the Contractor advises the Subcontractor in writing of any deficiency in the quality plan, the Subcontractor must promptly correct the deficiency at no cost to the Contractor.

Once approved, the quality plan shall not be changed without the approval of the Contractor.

23.4 Quality Reports

Quality reports shall be provided in writing by the Subcontractor to the Contractor monthly as follows:

- (a) the quality assurance status of the Subcontract Works (in reference to the Subcontractor's quality plan);

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- (b) a description of any problems or defective work and the corrective action being undertaken;
- (c) a list of all shop drawings approved by the design consultants and/or the Contractor during the period covered by the report and the name of the design consultant or firm who or which approved the shop drawing;
- (d) a list of all samples approved by the design consultants during the period covered by the report; and
- (e) subject to the Contractor approving otherwise, a certificate or statement signed by each design consultant confirming that:
 - (i) as far as the consultant is aware construction of the Subcontract Works accords in all material respects with the design or detailing; and
 - (ii) any material non-conformance of construction of which the consultant is aware as at the end of the period covered by the report and which has arisen or occurred since the last certificate or statement was signed by the relevant design consultant.

23.5 Defective Material or Work

If the Subcontractor discovers a Defect, the Subcontractor must, as soon as practicable notify the Contractor of the Defect.

If:

- (a) the Contractor discovers a Defect;
- (b) the Contractor receives notification from the Subcontractor pursuant to this clause; or
- (c) the Superintendent is of the opinion there is a Defect (which opinion may be apparent from a Head Contract Direction),

the Contractor may direct the Subcontractor:

- (d) to remove the material from the Site;
- (e) to demolish the work;
- (f) to redesign, reconstruct, replace or correct the material or work;
- (g) not to deliver the material or work to the Site; and/or
- (h) to comply with any Head Contract Direction, Head Contract Obligation or Head Contract Requirement in relation to the Defect.

The Contractor may direct the times within which the Subcontractor must commence and complete the removal, demolition, redesign, reconstruction, replacement, correction, or compliance referred to in this clause. The Subcontractor is not entitled to make any Claim against the Contractor as a result of or in connection with the direction given by the Contractor under this clause.

If the Subcontractor fails to comply with a direction issued by the Contractor pursuant to this clause within the time specified, the Contractor may have that work the subject of the direction carried out by other persons and any cost, loss or damage suffered or incurred by the Contractor in connection with such failure to comply and effecting of work by others shall be a debt due from the Subcontractor to the Contractor.

23.6 Variations due to Defective Material or Work

Instead of a direction pursuant to clause 23.5, the Contractor may notify the Subcontractor that the Contractor has elected to accept the Defect. In such a case the likely cost of remedying the Defect (or, at the election of the Contractor, the compensation due to the Contractor for the Defect) as determined by the Contractor may be deducted from the Subcontract Sum.

The Subcontractor's obligations and liabilities under the Subcontract or at law continue to apply in respect of the Subcontract, any Defect and any work performed in connection with any Defect (whether by the Subcontractor, the Contractor or any third party engaged by the Contractor) notwithstanding any direction or notification by the Contractor under clause 23.5 or clause 23.6.

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23.7 Manufacture and Supply of Materials

The Contractor may direct the Subcontractor to supply particulars of:

- (a) the mode and place of manufacture;
- (b) the source of supply;
- (c) the performance capacities; and
- (d) other information,

in respect of any materials, machinery or equipment to be supplied by the Subcontractor under or used in connection with this Subcontract. The Subcontractor must comply with a direction under this clause.

23.8 Samples

Where samples are required and approved by the Superintendent or the Contractor, all materials thereafter shall be at least equal quality to such sample. Any material not of equal quality to the sample shall be deemed to be a Defect.

23.9 Trial Areas of Work

The Contractor may direct the Subcontractor to complete reasonable trial areas of parts of the Subcontract Works to set the general minimum standard of work. Subject to any direction of the Contractor to the contrary, a failure by the Subcontractor to maintain any minimum standard shall be deemed to be a Defect.

23.10 Liens and Charges

The Subcontractor warrants and must ensure that all equipment and materials supplied by it under the Subcontract are free of all Claims and encumbrances whatsoever. The Subcontractor shall indemnify the Contractor and hold the Contractor free and harmless against any and all Claims by persons furnishing labour, equipment and materials in connection with the performance of the Subcontract Works.

24.0 EXAMINATION AND TESTING

24.1 Ordering of Tests

At any time before the expiry of the Defects Liability Period the Contractor may direct that any material or Subcontract Works be tested. The Subcontractor shall provide such assistance and samples and make accessible such parts of the Subcontract Works as may be required by the Contractor. On completion of the tests, the Subcontractor shall promptly make good the work tested so that it fully complies with this Subcontract.

24.2 Covering Up of Work

The Contractor may direct that any part of the Subcontract Works shall not be covered up or made inaccessible without the Contractor's prior approval.

24.3 Conduct of Tests

The tests shall be conducted as provided in this Subcontract or by the Contractor or a person nominated by the Contractor. Results of tests shall be promptly made available by each party to the other and to the Contractor.

24.4 Costs of Tests

- (a) Costs of and incidental to testing shall be borne by the Subcontractor or paid by the Subcontractor to the Contractor unless this Subcontract provides that the Contractor shall bear the costs.

24.5 Off Site Inspection and Tests

The Subcontractor must grant or procure access for the Contractor to the Subcontractor's premises and those of Secondary Subcontractors at all times upon request for the purpose of the Contractor inspecting work in progress and materials and components required for the Subcontract Works, including all relevant documentation and certification.

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24.6 Subcontractor Remains Responsible

The Subcontractor remains responsible for quality of the work carried out under this Subcontract even though the Contractor may have had work tested or otherwise indicated that work is in accordance with this Subcontract or otherwise acceptable.

25.0 PLANT AND FACILITIES

25.1 Provision of Plant

The Subcontractor must supply all Plant and facilities (unless specified otherwise in Schedule 1) necessary for the performance of the Subcontract Works by the Subcontractor, its employees or any Secondary Subcontractor or other person performing any part of the Subcontract Works, in accordance with the Subcontract in a manner that is safe and without risks to health. The Subcontractor must ensure that all Plant supplied by it is maintained in a condition that is safe and without risks to any person.

25.2 Removal of Plant

The Contractor may, by written notice to the Subcontractor, direct the Subcontractor not to remove from the Site items of Plant specified in the notice. Thereafter, the Subcontractor must not remove the item of Plant specified in the notice without the prior written approval of the Contractor.

25.3 Plant Owned by Others

The Subcontractor shall, upon request by the Contractor, notify the Contractor in writing of the name and address of the owner or holder of a security interest in any Plant. The Contractor may, in order to avoid seizure by the owner or holder of a security interest in any Plant, pay to the owner or such holder the amount of any overdue instalment or other sums payable by the Subcontractor in respect of such Plant. In the event of the Contractor making a payment under this clause the Contractor may recover the amount as a debt due from the Subcontractor.

25.4 Facilities

The Subcontractor must, unless otherwise indicated in Schedule 1 provide all of the facilities for the carrying out of the Subcontract Works.

26.0 WORKING HOURS

26.1 Working Hours

The working hours and working days for work on the Site shall be:

- (a) as stated in Schedule 1; or
- (b) if not so stated, as notified by the Contractor to the Subcontractor prior to commencement of work on Site.

26.2 Variation

The working hours and working days must not be varied without the prior approval of the Contractor except when, in the interests of safety of the Subcontract Works or to protect life or property, it is necessary for the Subcontractor to carry out work at other times. In such cases the Subcontractor shall notify the Contractor in writing of the circumstances as early as possible.

26.3 No Claim

The Subcontractor shall not be entitled to any payment whatsoever from the Contractor and shall have no Claim by reason of the Subcontractor working outside the working hours or on any other than the working days stated in this Subcontract notwithstanding that the Contractor may have approved the carrying out of work during those times, or by reason of the working hours or working days being varied (including more limited or extended) to those noted in the Subcontract or notified by the Contractor to the Subcontractor.

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27.0 CLEANING UP

27.1 Site

The Subcontractor shall keep the Site and the Subcontract Works clean and tidy. The Subcontractor shall regularly remove rubbish and surplus material. The Subcontractor shall ensure that the Site and means of access to and egress from the Site are at all times safe and without risks to health.

27.2 After Substantial Completion

Within ten Business Days after the Date of Substantial Completion, the Subcontractor shall remove any temporary works and construction plant.

28.0 PROGRAMMING

28.1 General

The Contract Programme is set out at Schedule 6. The Contractor may, from time to time, issue to the Subcontractor a revised Contract Programme.

28.2 Provision of Programme

The Subcontractor must, if requested by the Contractor, provide to the Contractor a Subcontract Programme within the time directed by the Contractor and, if further requested by the Contractor, provide further Subcontract Programmes also within the time or times directed by the Contractor. All such Subcontract Programmes must be in accordance with:

- (a) the requirements set out in Schedule 1 (if any); and
- (b) any further requirements of the Contractor including a requirement that the Subcontract Programme show the as-built programme status to the date of the Subcontract Programme and the look-ahead programme for the remaining Subcontract Works.

28.3 Obligations Unaffected

The submission by the Subcontractor of a Subcontract Programme, the acceptance of or acquiescence in the Subcontract Programme by the Contractor or a direction by the Contractor in relation to the Subcontract Programme or the issue by the Contractor of a Contract Programme:

- (a) does not constitute the provision of any notice or Claim under any provision of this Subcontract;
- (b) does not relieve the Subcontractor of the obligation:
 - (i) to proceed regularly and diligently with the Subcontract Works; or
 - (ii) to bring the Subcontract Works to Substantial Completion by the Date for Substantial Completion; and
- (c) does not constitute an extension of time to the Date for Substantial Completion or any other basis of or entitlement to make a Claim by the Subcontractor against the Contractor.

28.4 Compliance with Programme

The Subcontractor shall not, without reasonable cause, depart from a Contract Programme or a programme submitted in accordance with this clause.

28.5 Separable Portions

The Contractor may determine that parts of the Subcontract Works comprise separable portions. Upon making that determination the Contractor must acting reasonably determine the Date for Substantial Completion of any such separable portion, notify the Subcontractor of the extent of any such separable portions and their respective Dates for Substantial Completion and the liquidated damages payable in respect of each Separable Portion (by reference to the value of the works comprised in the separable portions as a percentage of the original Subcontract Sum). clauses 10, 12, 29, 30, 31, 32 and 42 apply to each Separable Portion and a reference to the Subcontract Works and Substantial Completion in those clauses shall be read as the Subcontract Works and Substantial Completion

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relevant to that Separable Portion.

29.0 DELAYS AND EXTENSION OF TIME

29.1 Notice of Delays

If the Subcontractor considers that a delay in the progress of the Subcontract Works is likely to occur or has occurred, it must give notice to the Contractor as soon as practicable, and in any event, within 48 hours of the commencement of the event which may or has given rise to the delay, including the nature, cause and likely extent of the delay.

29.2 Extension of Time

If:

- (a) the Subcontractor is delayed in progressing the Subcontract Works such that the Subcontract Works will not reach the stage of Substantial Completion by the Date for Substantial Completion and each of the following is satisfied;
 - (i) the delay is caused by an act, default or omission of the Contractor or the Contractor's Agents, including by way of variation (other than by way of variation for the Subcontractor's convenience and at its request), or by a Delaying Event;
 - (ii) the Subcontractor has otherwise strictly complied with the notification requirements of clause 29.1;
 - (iii) there is no other bar to claiming or being entitled to an extension of time to the Date for Substantial Completion under the Subcontract; and
 - (iv) the delay is on the critical path,

then the Subcontractor shall be entitled to an extension of time as determined by the Contractor to the Date for Substantial Completion. For the avoidance of doubt no entitlement arises when one or more of the above requirements is not satisfied including where a notice of delay is given outside the timeframe contemplated in clause 29.1.

29.3 Concurrent Delays

Where more than one event causes concurrent delays and at least one of those events is not a cause identified in clause 29.2(a)(i), then to the extent that the delays are concurrent, the Subcontractor shall not be entitled to an extension of time to the Date for Substantial Completion.

29.4 Additional Resources

The Subcontractor must, at its own cost, take all steps to minimise the effect of any delay including reallocation of resources, reprogramming and the commitment of additional resources.

29.5 Extension of Time Sole Remedy

The right of the Subcontractor to make a claim for an extension of time pursuant to this clause is the Subcontractor's sole remedy in respect of any delay or disruption under or in connection with the Subcontract. The Subcontractor is not entitled to any increase or adjustment to the Subcontract Sum or any other monetary compensation or damages (including damages for Breach of Obligation) as a result of any such delay.

29.6 Extension of Time Otherwise

Notwithstanding that the Subcontractor is not entitled to or has not claimed an extension of time, the Contractor may at any time and from time to time before the issue of the Final Certificate under this Subcontract by notice in writing to the Subcontractor extend the time for Substantial Completion for any reason in its absolute discretion and solely for its benefit. Any dispute arising out of the exercise of this discretion by the Contractor shall not be capable or susceptible to challenge or review by the Subcontractor whether under clause 47 or otherwise.

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29.7 Time Not Set at Large

A delay or failure by the Contractor to grant a reasonable, or any, extension of time shall not cause the Date for Substantial Completion to be set at large.

30.0 LIQUIDATED DAMAGES

30.1 Liability

If the Subcontractor fails to reach Substantial Completion by the Date for Substantial Completion:

- (a) the Subcontractor indemnifies the Contractor in respect of:
 - (i) any Claim, demand or suit brought against the Contractor by Other Contractors where that Claim arises out of or in connection with the Subcontractor's failure; and
 - (ii) any Claim, demand or suit brought against the Contractor by the Principal (including a claim for liquidated damages under the Head Contract) where that Claim arises out of or in connection with the Subcontractor's failure; and
- (b) the Subcontractor shall be indebted to the Contractor for liquidated damages (in respect of matters other than those referred to in paragraph (a) of this clause) at the rate stated in Schedule 1 for every day after the Date for Substantial Completion to and including the Date of Substantial Completion or the date that the Contract is terminated pursuant to this Subcontract or otherwise, whichever first occurs.

30.2 Interim Deduction

The Contractor may at any time deduct from moneys otherwise due to the Subcontractor and/or have recourse to the Security or Retention Moneys for the amount in respect of which the Subcontractor is or may be indebted to the Contractor pursuant to clause 30.1(b) and the amount being the Contractor's estimate of the Subcontractor's liability to the Contractor that might accrue under clause 30.1(a).

30.3 Refund of Excessive Deduction

If the Date for Substantial Completion is extended after the Subcontractor has paid or the Contractor has deducted liquidated damages or money on account of a liability pursuant to clause 30.1(a) or 30.1(b) the Contractor shall, at the time of the next progress payment, repay to the Subcontractor any liquidated damages paid or deducted or any money held in respect of the period of extension to the Date for Substantial Completion.

31.0 SUBSTANTIAL COMPLETION

31.1 Notice that the Subcontract Works have Reached Substantial Completion

When the Subcontractor is of the opinion that the Subcontract Works will within five Business Days reach Substantial Completion, the Subcontractor must notify the Contractor, specifying the date on which, in the Subcontractor's opinion, the Subcontract Works will reach Substantial Completion.

The Subcontractor must give a further notice to the Contractor specifying the date when it is of the opinion that the Subcontract Works have reached Substantial Completion.

31.2 Contractor's Response

Within ten Business Days of receipt from the Subcontractor of a notice from the Subcontractor that the Subcontractor is of the opinion that the Subcontract Works have reached Substantial Completion, the Contractor must:

- (a) issue a certificate of Substantial Completion to the Subcontractor; or
- (b) issue a notice to the Subcontractor identifying those items which must be attended to prior to the Subcontract Works being considered to have reached Substantial Completion; or
- (c) issue a notice to the Subcontractor stating that the Works have not reached Substantial Completion and are so far from Substantial Completion that the Contractor has declined to issue a notice under clause 31.2(b).

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If the Contractor issues a notice under clause 31.2(b), the Subcontractor must, as soon as practicable, attend to the matters listed in that notice. Upon the Subcontractor having attended to the matters listed in the notice, the Subcontractor must give a further notice to the Contractor pursuant to clause 31.1 advising of its opinion that the Subcontract Works have reached Substantial Completion. This clause 31 will continue to apply until the Contractor issues a certificate of Substantial Completion.

If the Contractor issues, or is deemed to have issued, a notice under clause 31.2(c), the Subcontractor must continue to progress the Subcontract Works in accordance with this Subcontract.

31.3 Effect of Certificate

A certificate of Substantial Completion is not evidence that the Subcontract Works have been executed in accordance with this Subcontract.

31.4 Failure to Issue

If no certificate or notice is issued by the Contractor pursuant to clause 31.2 within ten Business Days of receipt of a notice from the Subcontractor pursuant to clause 31.1 that it is of the opinion that Substantial Completion has been reached, the Contractor shall be deemed to have issued a notice under clause 31.2(c).

32.0 DEFECTS LIABILITY

32.1 Rectification of Defects Existing at Substantial Completion

As soon as possible after the Date of Substantial Completion, the Subcontractor shall rectify any Defect existing at the Date of Substantial Completion.

32.2 Rectification of Defects Arising During the Defects Liability Period

At any time before the expiry of the Defects Liability Period, the Contractor may direct the Subcontractor to rectify any Defect at times and by a time determined by the Contractor. The Subcontractor must carry out rectification work in accordance with any such direction and at times and in a manner which causes as little inconvenience to the Contractor and the occupants or users of the Subcontract Works as is reasonably possible.

32.3 Additional Defects Liability Period

The direction may provide that in respect of the rectification work there shall be a separate Defects Liability Period of a stated duration not exceeding the original Defects Liability Period. The separate Defects Liability Period shall commence on the date the rectification work is completed. This clause shall apply in respect of the rectification work and the Defects Liability Period for that rectification work.

32.4 Rectification of Defects By Others

If the Subcontractor does not carry out and complete the rectification work directed by the Contractor in accordance with the Contractor's direction, the Contractor may have the rectification work carried out by others. Without prejudice to any other rights that the Contractor may have against the Subcontractor with respect to such Defect and the Subcontractor's failure to comply with the Contractor's direction, all costs of and associated with the rectification work incurred by the Contractor shall be a debt due from the Subcontractor to the Contractor.

33.0 GUARANTEES AND WARRANTIES

33.1 Subcontractor's Guarantees and Warranties

- (a) The Subcontractor must:
 - (i) assign the benefit of any guarantee or warranty which the Subcontractor enjoys to the Contractor or its nominee; or
 - (ii) if the benefit of any guarantee or warranty cannot be assigned to the Contractor, hold that guarantee or warranty on trust for the Contractor or the Contractor's nominee.
- (b) Where any guarantee or warranty is held on trust by the Subcontractor, the Subcontractor must cooperate

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fully with the Contractor in the enforcement of the guarantee or warranty. The Subcontractor hereby irrevocably appoints the Contractor as attorney of the Subcontractor for the purpose of enforcing the benefit of the guarantee or warranty with full power to act in the name of the Subcontractor for this purpose.

33.2 Specific Guarantees and Warranties Required

The Subcontractor warrants the satisfactory performance of Subcontract Works including particular works, materials, plant and equipment for the periods set out in the Subcontract Documents.

Without limiting that warranty and in addition to it, the Subcontractor must provide to the Contractor within 14 days of execution by the Subcontractor of this Subcontract or before the commencement of the Subcontract Works whichever is the earlier the guarantees and warranties described in Schedule 1 and the guarantees and warranties as otherwise required by the Contractor including in order to comply with its obligations under the Head Contract. These guarantees and warranties must:

- (a) be in favour of the Contractor, Principal and other nominee of the Contractor as stipulated by the Contractor;
- (b) be accompanied by comparable warranties from the original supplier of the relevant material or plant or the person performing the work in respect of which the guarantee or warranty is given or such other person as may be approved by the Contractor;
- (c) be in a form approved by the Contractor (including if required be executed by way of deed); and
- (d) otherwise be to the satisfaction of the Contractor and the Superintendent.

The Contractor may withhold payment otherwise due to the Subcontractor unless and until the Subcontractor has complied with this clause. Further the Subcontractor indemnifies the Contractor against any cost, loss, damage or expense (including consequential loss) incurred or suffered by the Contractor in connection with any Claim made or that could be made by the Principal or its assigns in connection with guarantees and warranties given by the Subcontractor to the Principal or to the Contractor pursuant to this clause (including under any deed of warranty).

34.0 VARIATIONS

34.1 Variations to the Subcontract Work

The Contractor may direct a Variation at any time and for any reason by written notice headed "Variation Direction". The Contractor is not obliged to direct the Subcontractor to carry out a Variation for the convenience or benefit of the Subcontractor. The Subcontractor must comply with any Variation direction. The Subcontractor shall not vary the Subcontract Works except as directed by the Contractor in accordance with this clause or otherwise expressly provided for in the Subcontract.

34.2 No Variations to invalidate the Subcontract

No Variation shall invalidate or vitiate this Subcontract.

34.3 Deleted Work

If, in respect of a Variation directed by the Contractor part of the Subcontract Works is deleted or omitted from the Subcontract Works, the Contractor may itself carry out, or engage others to carry out and complete, any such works. The Subcontractor is not entitled to any compensation as a result of the Contractor exercising this right.

34.4 Payment for Variations

Subject to clause 34.5 the Subcontract Sum will be adjusted, in respect of Variations directed strictly in accordance with clause 34.1, in accordance with the Valuation clause.

34.5 No Entitlement

The Subcontractor is not entitled to any increase in the Subcontract Sum where a Variation has been directed due to a breach of any of the Subcontractor Warranties.

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35.0 VALUATION

35.1 Application of clause

Where:

- (a) an item is to be valued under this Valuation clause; or
- (b) there is no specific mechanism specified elsewhere in the Subcontract for the valuation of the item;

the item shall be valued under this clause. The item shall be valued by the Contractor determining what it considers to be a reasonable value for the item and the Contractor may take into account rates set out in the Schedule of Rates, Schedule 9, for that purpose. In determining that value, the Contractor is not obliged to consider or make allowance for, among other things:

- (i) the overhead costs (whether off Site or on Site) incurred by the Subcontractor;
- (ii) administration costs incurred by the Subcontractor;
- (iii) profit claimed by the Subcontractor, in excess of 5%;
- (iv) delay or disruption or time-related costs or damages of any nature whatsoever;
- (v) the valuation given to the item under a Head Contract valuation process.

35.2 Deferral of Valuation

Where an item to be valued under this clause might (for the purpose of the Head Contract) fall to be valued under the Head Contract (either in its own right or as part of other items) the Contractor may, in its discretion, defer the valuation of the item until the item under the Head Contract has been valued under the Head Contract.

35.3 Adjustment to Valuation

Where an item to be valued under this clause has been valued by the Contractor prior to a relevant valuation being made under the Head Contract and a relevant valuation is then made under the Head Contract the Contractor may, but is not obliged to, adjust its valuation of the item taking into account the Head Contract valuation.

36.0 PROVISIONAL SUMS

- (a) Provisional Sums as set out in Schedule 7 shall be included in the Subcontract Sum including for the purpose of calculating Retention Moneys but shall not be payable to the Subcontractor by the Contractor unless as provided for in this clause.
- (b) Where, and only where, at the prior written direction of the Contractor the work or item to which a Provisional Sum relates is performed or supplied by the Subcontractor (whether personally or via a Secondary Subcontractor) then the Subcontractor shall claim payment in accordance with clause 39.
- (c) Subject to the Contractor's rights under the Subcontract and at law generally, and provisions (d) and (e) below, the Subcontract Sum will be adjusted up or down taking into account the amount reasonably and necessarily expended by the Subcontractor in performing Provisional Sums (if anything) as determined by the Contractor in its sole discretion as compared to the original allowance for the Provisional Sums in the Subcontract Sum.
- (d) In the event that the Contractor determines that sum of all amounts reasonably and necessarily expended exceeds the sum of the original Provisional Sum allowances in Schedule 7 by more than 25%, then the Subcontractor may also claim a fixed and capped percentage for overhead and margin against the excess sum (being the sum beyond 25% above the sum of the original Provisional Sum allowances) at the percentage stated in Schedule 1.
- (e) In the event that the Contractor determines that sum of all amounts reasonably and necessarily expended is below the sum of the original Provisional Sum allowances in Schedule 7 by more than 25%, then the Contractor may also deduct a fixed and capped percentage against the excess sum

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(being the sum beyond 25% below the sum of the original Provisional Sum allowances) at the percentage stated in Schedule 1.

37.0 GOODS AND SERVICES TAX

- (a) In this clause
- (i) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended (**GST Act**) or any replacement or other relevant legislation and regulations;
 - (ii) words or expressions used in this clause which have a particular meaning in the **GST Law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
 - (iii) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
 - (iv) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
 - (v) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.
- (b) Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Subcontract for any supply made under or in connection with this Subcontract does not include GST.
- (c) To the extent that any supply made under or in connection with this Subcontract is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is to be paid or provided.
- (d) To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.
- (e) To the extent that any consideration payable to a party under this Subcontract is determined by reference to a cost incurred by a party, or is determined by reference to a price, value, sales, revenue or similar amount, the GST exclusive amount of that cost, price, value, sales, revenue or similar amount must be used.
- (f) Despite any other clause of this Subcontract, if the parties agree in Schedule 1 of the Subcontract then:
- (i) the party who is the recipient will issue tax invoices in the form of recipient created tax invoices in respect of taxable supplies made to the recipient under this Subcontract; and
 - (ii) the party making the taxable supplies (**Supplier**) will not issue tax invoices in respect of the taxable supplies the Supplier makes to the recipient under this Subcontract.
- (g) The Supplier acknowledges that it is registered for GST, or will be registered for GST by the date of this Subcontract and agrees that it will notify the recipient if it ceases to be registered.
- (h) The recipient acknowledges that it is registered for GST, or will be registered for GST by the date of this Subcontract and agrees that it will notify the Supplier if it ceases to be registered.
- (i) The recipient may issue an adjustment note in relation to GST adjustment events, where appropriate.

38.0 SECURITY OF PAYMENT ACT

38.1 Service of Notices under the Security of Payment Act

The Subcontractor must give or serve on the Contractor's Representative (where appointed) a copy of any notice or Claim served on the Contractor in connection with the Security of Payment Act.

For the avoidance of doubt, the Contractor's Representative is authorised on behalf of the Contractor to receive

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Security of Payment Act Claims and give or serve Security of Payment Act payment schedules on behalf of the Contractor, and act on the Contractor's behalf in respect of any adjudication process under the Security of Payment Act.

If the Subcontractor becomes aware that a Secondary Subcontractor is entitled to or has given notice of intention to suspend work pursuant to the Security of Payment Act the Subcontractor must promptly and without delay notify the Contractor accordingly and give the Contractor a copy of any written communication from the Secondary Subcontractor confirming that intention.

38.2 Authorised Nominating Authority

If the Subcontractor applies for adjudication (including review adjudication) under the Security of Payment Act the authorised nominating authority for the purpose of the Security of Payment Act in respect of the adjudication is to be one of:

- (a) RICS Dispute Resolution Service, business address c/o- Arrus Knoble, Suite 510, 530 Little Collins Street, Melbourne VIC 3000, postal address PO Box 7815, Waterfront Place, Brisbane QLD 4001, telephone 1300 953 459, fax 1300 953 529
- (b) Building Adjudication Victoria Inc, business and postal address c/o Romauld Andrew, 205 William Street, Melbourne VIC 3000, telephone 03 9225 7326, fax 03 9670 8916
- (c) Rialto Adjudicators Pty Ltd, business and postal address Level 46, 525 Collins Street, Melbourne VIC 3000, telephone 03 9629 6269, fax 03 9629 4775

38.3 Suspension of Subcontract Works under the Security of Payment Act

If the Subcontractor suspends the whole or part of the work under the Subcontract pursuant to the Security of Payment Act:

- (a) the suspension shall not affect the Date for Substantial Completion but may be a ground for an extension of time under clause 29.2;
- (b) for the avoidance of doubt and notwithstanding any other provision of the Subcontract to the contrary (if any) the Contractor is not liable for any costs, expenses, damages, losses or other liability, including delay or disruption costs suffered by the Subcontractor as a result of the suspension;
- (c) the Contractor may terminate the Subcontract or direct the Subcontractor to omit the whole or part of the suspended work and the Contractor may engage others to carry out the suspended work. If the Subcontract is terminated in accordance with this clause the parties entitlements are as if the Subcontract was terminated pursuant to clause 45.1.

38.4 Secondary Subcontractor suspension

If a Secondary Subcontractor is entitled to suspend work pursuant to the Security of Payment Act, the Contractor may pay the Secondary Subcontractor such money that is or may be owing to the Secondary Subcontractor in respect of that work, and any amount so paid by the Contractor shall be a debt due from the Subcontractor to the Contractor. Payment by the Contractor pursuant to this clause does not relieve the Subcontractor of any of its obligations or liabilities under the Subcontract.

38.5 Indemnity

The Subcontractor shall indemnify the Contractor against all damage, expense (including lawyer's fees and expenses on a solicitor/client basis), loss (including consequential, economic and pure economic loss) or liability of any nature suffered or incurred by the Contractor arising out of:

- (a) a suspension by a Secondary Subcontractor of work which forms part of the Subcontract Works pursuant to the Security of Payment Act; and
- (b) a failure by the Subcontractor to comply with its obligations under clause 38.1.

38.6 General Indemnity

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The Subcontractor indemnifies the Contractor from and against all loss, expense or damage suffered or incurred by the Contractor (including as a result of a claim made against the Contractor by a third party), to the extent caused or contributed to by the Subcontractor failing to comply with any of its obligations under this Subcontract or any negligent act or omission of the Subcontractor or any of those for whom it is responsible.

39.0 PAYMENT

39.1 Progress Payments - Entitlement and Process

The Subcontractor is entitled to progress payments in relation to the Subcontract Works in accordance with, and subject to, this clause 39 and this Subcontract generally. The Subcontractor must deliver a Progress Claim as provided for in clauses 39.2 and 39.3.

39.2 Time for Delivery of Progress Claim

The Subcontractor must deliver to the Contractor a Progress Claim at the times stated in Schedule 1 or upon completion of the stages of the Subcontract Works stated in Schedule 1.

A Progress Claim issued other than at the time specified in Schedule 1 or absent satisfaction of the conditions precedent set out at clause 39.2A or absent the content and accompanying documents set out in clause 39.3 is invalid.

39.2A Conditions Precedent

The Subcontractor's entitlement to deliver a Progress Claim under clause 39 is conditional upon the Subcontractor having:

- (a) complied with clause 12.1;
- (b) complied with its programming obligations under clause 28;
- (c) complied with clause 40.1; and
- (d) executed the Subcontract.

39.3 Content of Progress Claim

A Progress Claim:

- (a) must comply with the requirements of the Contractor and the Superintendent; and
- (b) must comply with the requirements set out in Schedule 1 and must:
 - (i) be supported by evidence of the amount claimed to be due to the Subcontractor and such information as the Contractor may reasonably require; and
 - (ii) set out the work and the value of work carried out by the Subcontractor in the performance of the Subcontract Works excluding Variations and Provisional Sums to the date of the Progress Claim; and
 - (iii) set out the work and the value of work of any Variations and Provisional Sums carried out to the date of the Progress Claim; and
 - (iv) set out the amounts (including amounts due in respect of a Damaging Act) otherwise due or claimed to be due from the Contractor to the Subcontractor and the Subcontractor to the Contractor including which clause or clauses the Subcontractor relies upon in support of any entitlement in its favour and a description of the acts, defaults or omissions relied upon; and
 - (v) set out the amounts previously paid by the Contractor to the Subcontractor in respect of the Subcontract Works, Variations and Provisional Sums; and
 - (vi) set out the amounts previously claimed under this Subcontract in respect of the Subcontract Works, Variations and Provisional Sums; and
 - (vii) set out the Retention Moneys to be deducted pursuant to this Subcontract; and
 - (viii) set out the amount which the Subcontractor asserts is payable to the Subcontractor in accordance with

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this Subcontract;

- (ix) be accompanied by a statutory declaration prepared by an officer of the Subcontractor approved by the Contractor stating that;
 - (A) all moneys included in previous progress payments in respect of work carried out or materials supplied by Secondary Subcontractors or suppliers to the Subcontractor or employees of the Subcontractor have been paid by the Subcontractor to those Secondary Subcontractors, suppliers and employees; and
 - (B) any other monies which are payable by the Subcontractor to its employees or Secondary Subcontractors which have become payable as at the date of the statutory declaration have been paid where those monies relate to time spent on the Project by employees of the Subcontractor; and
- (x) in respect of off-site or unfixed plant and materials, include the amount claimed (if any) pursuant to clause 39.4, including the Security required under that clause;
- (xi) be accompanied by all relevant documentation evidencing (to the satisfaction of the Contractor) the Subcontractor's full compliance with all Legislative and Industrial Requirements together with the items and matters referred to in the statutory declaration.

39.4 Off Site Or Unfixed Materials

- (a) The Subcontractor is not entitled to claim or receive payment for off-site or unfixed plant and materials (**'Materials'**) until the Materials are incorporated into the Subcontract Works, unless the Subcontractor establishes to the satisfaction of the Contractor that the Materials for which payment is claimed:
 - (i) physically exist;
 - (ii) are properly and securely stored;
 - (iii) are clearly marked at all times as the property of the Contractor;
 - (iv) are free from any charge, licence or encumbrance by or from any third party;
 - (v) full title to the Materials will vest in the Contractor on payment to the Subcontractor of the value of the Materials, notwithstanding that the items concerned may be still subject to some further manufacturing or fabrication process; and
 - (vi) all risks insurance cover for the value of the Materials naming the Contractor as the owner, has been taken out by the Subcontractor at the Subcontractor's Cost;

and the Contractor, in its absolute discretion, consents in writing.

- (b) As a condition precedent to the obligation of the Contractor to make any payment of any Materials under this clause, the Subcontractor must provide the Contractor with security in the form of an unconditional undertaking from a bank approved by the Contractor in favour of the Contractor, the Principal or both (in the absolute discretion of the Contractor) in an amount equal to the total sum claimed or to be claimed by the Subcontractor under this clause.
- (c) The Contractor shall release the security referred to in paragraph (b) above within 14 days of:
 - (i) the incorporation into the Subcontract Works of the Materials; and
 - (ii) provision by the Subcontractor of a written statement that title in the Materials has passed to the Contractor.
- (d) The Subcontractor acknowledges and agrees that the Subcontract Sum includes allowance for all purchase, import, storage and transport costs, taxes, duties and charges in connection with Materials and that under no circumstances will the Subcontract Sum be adjusted due to changes to those costs, taxes, duties and charges for any reason.

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39.5 Warranty in Respect of a Progress Claim

By making a Progress Claim, the Subcontractor warrants to the Contractor that:

- (a) it has completed the work which is the subject of the Progress Claim in accordance with the requirements of the Subcontract; and
- (b) there are no Defects in the work which is the subject of the Progress Claim; and
- (c) it has paid the Secondary Subcontractor’s and suppliers all moneys in respect of work carried out and materials supplied in relation to the work which was the subject of the immediately preceding Progress Claim; and
- (d) it has paid the Subcontractor’s employees all moneys in respect of the work which is the subject of the Progress Claim; and
- (e) the figures in the Progress Claim are accurate; and
- (f) the Subcontractor has complied with all of the obligations imposed on the Subcontractor by this Subcontract where those obligations have fallen to be complied with at the time of the making of the Progress Claim;
- (g) the Subcontractor is not aware of any Claim against the Contractor which is not identified in one of the Progress Claims, an earlier Progress Claim or a notice previously given to the Contractor in accordance with this Subcontract; and
- (h) all information and documentation provided in and accompanying the Progress Claim is complete and accurate.

39.6 Validity of Progress Claim

A document which is relied upon by the Subcontractor as being a Progress Claim that does not comply with clauses 39.2 and 39.3 or the Subcontract generally is not a valid Progress Claim and does not give rise to any obligation in the Contractor to take any step or make any payment.

39.7 Contractor’s Assessment of Subcontractor’s Progress Claim

The Contractor may, within ten Business Days of receipt of a Progress Claim which satisfies all the requirements of clause 39.2 and clause 39.3, issue to the Subcontractor a payment schedule identifying the Progress Claim to which it relates and the amount of payment which, in the opinion of the Contractor, is to be made by the Contractor to the Subcontractor or by the Subcontractor to the Contractor. If the amount identified in the payment schedule as payable by the Contractor to the Subcontractor is less than the amount claimed in the Progress Claim, the Contractor may set out the reasons for the difference in the payment schedule. If no payment schedule is issued within time then it will be deemed that the Contractor has issued a payment schedule identifying that no amount is owing, save that the Contractor may issue a revised payment schedule at its absolute discretion at any time prior to the date for delivery of the next Progress Claim.

The Contractor may at its absolute discretion and for its benefit also issue to the Subcontractor a payment schedule within 10 Business Days of the time for delivery of a Progress Claim as stated in clause 39.2 notwithstanding that the Subcontractor has not met the clause 39.2A preconditions or has not delivered a valid Progress Claim in accordance with this Subcontract.

39.8 Progress Claim - Payment

If the payment schedule identifies an amount payable by the Contractor to the Subcontractor then unless the recipient-created tax invoice arrangement applies the Subcontractor must deliver to the Contractor a valid tax invoice for the amount assessed in the payment schedule within 15 Business Days following the issue by the Contractor of the payment schedule.

If a payment schedule issued pursuant to clause 39.7 identifies an amount payable by the Contractor to the Subcontractor or the Subcontractor to the Contractor as the case may be, then, without prejudice to any other right the Contractor has or might have pursuant to the Subcontract or at law and in the case of the payment schedule identifying an amount payable by the Contractor to the Subcontractor and the Subcontractor having complied with the first paragraph of this clause 39.8, the party to make payment must pay the amount identified as payable in a payment schedule issued under clause 39.7 within 25 Business Days following the issue by the Contractor of the

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payment schedule.

39.9 Consequences of Payment

Subject to the terms of this Subcontract a payment made pursuant to this Subcontract:

- (a) shall not prejudice the right of either party to dispute whether the amount so paid is the amount properly due and payable; and
- (b) shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only.

40.0 SECURITY / RETENTION MONEYS

40.1 Provision of Security/Retention Moneys

The Subcontractor must provide:

- (a) Retention moneys which the Contractor may deduct from money which would otherwise be due to the Subcontractor ("Retention Moneys"); or
- (b) an unconditional undertaking or undertakings in a form approved by the Contractor issued by a financial institution approved by the Contractor ("Security"),

as nominated and to the value stated in Schedule 1.

Where Security is to be provided, the Subcontractor must provide the Security to the Contractor within the period stated in Schedule 1.

40.2 Conversion of Security and Recourse to Retention Moneys

The Contractor may call upon the Security or have recourse to Retention Moneys:

- (a) where the Contractor has become entitled to exercise a right under this Subcontract in respect of the Security or Retention Moneys; or
- (b) in order to satisfy any Claim that, in the Contractor's opinion, it has or may have against the Subcontractor whether in connection with the Subcontract or otherwise for a debt, damages or by way of set off.

40.3 Replenishment of Security/Retention Moneys

If the Contractor has recourse to the Security or Retention Moneys, the Contractor may:

- (a) deduct further amounts pursuant to clause 40.2 or, by notice in writing direct the Subcontractor to provide further amounts to replenish the Retention Moneys; or
- (b) require that the Subcontractor provide additional Security,

so that the Contractor holds the full amount of Retention Moneys or Security at all times as set out in Schedule 1.

40.4 Release of Security/Retention Moneys

If the Subcontractor has provided Security or Retention Moneys then subject to the Contractor having already had recourse to the same or believing it may have a right to have recourse to the same, the Contractor shall release fifty percent of the Security or Retention Moneys following both:

- (a) execution and delivery of the Substantial Completion Deed pursuant to clause 42.4 or 42.5; and
- (b) ten Business Days having passed from the date of receipt by the Contractor of a notice from the Subcontractor requesting the partial release of Security or Retention (which request must not be made until after execution and delivery of the Substantial Completion Deed pursuant to clause 42.4 or 42.5).

The balance shall be dealt with in accordance with the terms of this Subcontract including clause 43.4.

If there are Separable Portions then this clause 40.4 only takes effect in respect of the last Separable Portion to have the Contractor issue a certificate of Substantial Completion or a direction to deliver a Statement of

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Completion.

40.5 Interest and trust

The Contractor does not hold Security or Retention Moneys on trust for the benefit of the Subcontractor. Any interest earned on the Security or Retention Moneys is owned by the Contractor regardless of whether the Contractor has recourse to the Security or Retention Moneys.

41.0 OTHER FINANCIAL MATTERS

41.1 Set Off

The Contractor may deduct from moneys due to the Subcontractor any moneys due or that the Contractor claims is or might become due from the Subcontractor to the Contractor or its related entities whether under the Subcontract, another subcontract or agreement (including on other projects) or otherwise including any entitlement the Contractor may have to damages from the Subcontractor for breach of this Subcontract.

41.2 No Rise and Fall

The Subcontractor acknowledges and agrees that:

- (a) unless otherwise expressly provided for in this Subcontract the Subcontract Sum is not subject to any cost adjustment or adjustment for rise and fall for any reason, including:
 - (i) any site allowances or industrial awards or agreements or any changes to any industrial awards or agreements;
 - (ii) fluctuations in exchange rates; or
 - (iii) changes in the cost of labour or materials; and
- (b) the Subcontractor is not entitled to be paid or reimbursed for payments which the Subcontractor may be obliged to make on behalf of its employees in respect of any superannuation fund, scheme or arrangement for the benefit of workers or any other similar employee fund which is in existence at the Date of the Subcontract or which comes into existence after the Date of the Subcontract.

41.3 Debt Due and Payable

Without prejudice to the rights of the Contractor to set off under clause 41.1 or at law or to have recourse to the security in accordance with clause 40, the Contractor may demand payment at any time of any debt due from the Subcontractor to the Contractor or its related entities whether under the Subcontract or otherwise and such debt shall be payable 5 Business Days after the demand is made.

42.0 FINAL PAYMENT

42.1 Entitlement and Process - Delivery of a Statement of Completion

Within ten Business Days of the issue by the Contractor of a certificate of Substantial Completion or when directed by the Contractor the Subcontractor must deliver to the Contractor a Statement of Completion.

42.2 Content of Statement of Completion

The Statement of Completion must be entitled "Statement of Completion" and must include all of the matters set out in clause 39.3 together with the details of all Claims, including any evidence relied upon in relation to such Claims, which the Subcontractor has, or may have, in connection with the Subcontract Works.

If a document purporting to be a Statement of Completion is delivered by the Subcontractor but that document does not comply with the requirements of this clause the document will not be taken to be the Statement of Completion.

42.3 Contractor's response to Statement of Completion

The Contractor must review the Statement of Completion and determine the amount it says is then payable from the Contractor to the Subcontractor or from the Subcontractor to the Contractor and issue its assessment to the

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Subcontractor (“**Substantial Completion Assessment**”).

42.4 Deed of Release

Within ten Business Days of receiving the Substantial Completion Assessment, the Subcontractor must execute and deliver a Deed of Release in accordance with Schedule 8 and which identifies the Amount Claimed in the Deed of Release as the amount of the Substantial Completion Assessment (but no more), excluding Security and Retention Moneys. Where the Amount Claimed is a positive amount in favour of the Subcontractor, the Subcontractor must also deliver to the Contractor at the same time a valid tax invoice for the Amount Claimed (unless the recipient-created tax invoice arrangement applies).

Subject to and upon strict compliance with the preceding paragraph, the Contractor will pay the Amount Claimed excluding Security and Retention within a further 30 Business Days.

The issue of the Substantial Completion Assessment, the execution of the Deed of Release (whether pursuant to clause 42.4 or 42.5) and the payment of any amount by the Contractor to the Subcontractor or the Subcontractor to the Contractor whether in accordance with the Deed of Release or otherwise does not preclude any claim then or later by the Contractor against the Subcontractor pursuant to the Subcontract or otherwise including for breach of contract, negligence or on any other basis whether accruing before or after the execution or issue of the Deed of Release.

42.5 Non Delivery of the Statement of Completion

If the Subcontractor does not deliver a valid and complying Statement of Completion or a valid and complying Deed of Release as required by the preceding clauses within the prescribed time, the Subcontractor will be deemed to have delivered to the Contractor:

- (a) a Statement of Completion with a nil amount inserted in respect of Claims which the Subcontractor has, or may have, against the Contractor (whether under this Subcontract or otherwise);
- (b) a Deed of Release in the prescribed form with a nil amount inserted as ‘the Amount Claimed’ (as defined in the Deed of Release).

The Subcontractor irrevocably appoints the Contractor as the Subcontractor’s attorney for the purpose of executing a Statement of Completion and a Deed of Release to record, and to give further effect to, the requirements of this clause 42.5.

43.0 FINAL CERTIFICATE

43.1 Issue

After the later of:

- (a) the issue of a final certificate or equivalent under the Head Contract; or
- (b) the expiry of the final Defects Liability Period to have expired;

the Contractor may issue to the Subcontractor a Final Certificate endorsed ‘Final Certificate’.

43.2 Content

The Contractor must determine the final amount payable by it to the Subcontractor or by the Subcontractor to it as the case may be in connection with the Subcontract and state that amount in the Final Certificate. If in the Final Certificate the Contractor determines an amount is payable to the Subcontractor (“**Further Amount**”), it will pay that Further Amount (excluding Security or Retention Moneys) within 14 Business Days after:

- (a) the issue of a valid tax invoice for the Further Amount (unless the recipient-created tax invoice arrangement applies); and
- (b) the provision by the Subcontractor of a further deed of release validly executed and in the form of Schedule 8 but entitled “Deed of Release – Final Certificate” and with the Amount Claimed stated to be the Further Amount.

If in the Final Certificate the Contractor determines an amount is payable by the Subcontractor to the Contractor, the Subcontractor must pay that amount within 14 Business Days of provision of the Final Certificate by the

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Contractor to the Subcontractor. Nothing in this clause limits any other rights or entitlements that the Contractor has in respect of any claim or set-off against the Subcontractor.

43.3 Rights of the Contractor After the Issue of the Final Certificate

The issue of the Final Certificate and payment of any amount by the Subcontractor to the Contractor pursuant to the Final Certificate or otherwise does not preclude any Claim by the Contractor for breach of contract, negligence or on any other basis against the Subcontractor whether accruing before or after the issue of the Final Certificate.

43.4 Release of Security/Retention Moneys

Within ten Business Days after the later of:

- (a) the issue by the Contractor to the Subcontractor of a Final Certificate; and
- (b) the final release of security under the Head Contract; and
- (c) receipt by the Contractor of a written request from the Subcontractor for release of Security or Retention then held by the Contractor,

the Contractor shall release to the Subcontractor any Security or Retention Moneys then held by the Contractor and to which it has not had recourse. If the Subcontractor fails to issue the request contemplated by clause 43.4(c) within 1 year of the earlier of the dates referred to in 43.4(a) or (b) then, to the extent the Contractor then holds Retention the Subcontractor forfeits any entitlement it has in connection with such Retention and releases the Contractor from any claim for release of or return of that Retention.

44.0 TERMINATION BY THE CONTRACTOR

44.1 Breach by the Subcontractor

If the Subcontractor commits a substantial breach the Contractor may give the Subcontractor a notice requiring it to show cause why the Subcontract should not be terminated or why works should not be taken out of the Subcontractor's hands. A substantial breach by the Subcontractor includes, but is not limited to, the Subcontractor:

- (a) without reasonable cause suspending the carrying out of the Subcontract Works before the Date of Substantial Completion;
- (b) failing to proceed with the Subcontract Works regularly and diligently;
- (c) failing to proceed with the Subcontract Works in a competent manner;
- (d) refusing or persistently neglecting to comply with a direction from the Contractor which is given in accordance with the terms of this Subcontract; or
- (e) failing to comply with any of its obligations under the Code, including any failure to ensure Code compliance by the Subcontractor's Agents.

44.2 Contents of the Show Cause Notice

A notice given under clause 44 must:

- (a) state that it is a notice given under clause 44;
- (b) specify the alleged substantial breach;
- (c) require the Subcontractor to show cause by notice to the Contractor why the Contractor should not exercise its rights under this clause; and
- (d) specify the time and date, not less than 48 hours after the notice is given to the Subcontractor, by which the Subcontractor must show cause.

Notwithstanding any other right the Contractor has in connection with this Subcontract or at law, the Contractor may suspend payments to the Subcontractor until the date when the Contractor determines the Subcontractor has validly shown cause or, if the Contractor determines that the Subcontractor has not validly shown cause, the date when the Subcontract is terminated or the remaining works are taken out of the hands of the Subcontractor.

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44.3 Following the Show Cause Notice

If, by the time specified in the notice given under clause 44, the Contractor determines that the Subcontractor has failed to show cause why the Contractor should not exercise its rights under this clause, the Contractor may either terminate this Subcontract by notice to Subcontractor or take some or all of the remaining Subcontract Works out of the Subcontractor’s hands.

44.4 Termination where the Subcontractor is Insolvent

The Contractor, without giving notice to show cause, may terminate the Subcontract or take works out of the Subcontractor’s hands by giving notice to the Subcontractor of same if the Subcontractor is affected by an Insolvency Event.

44.5 Rights and Liabilities of the Parties Following Termination by the Contractor

If the Contractor terminates this Subcontract or takes the remaining works out of the Subcontractor’s hands in accordance with clause 44, the respective rights and liabilities of the Contractor and the Subcontractor will be:

- (a) the Contractor will not be obliged to make any further payment in respect of the work taken out of the hands of the Subcontractor or not yet performed in accordance with the Subcontract at the date of termination;
- (b) the Contractor will not be obliged to make any payment to the Subcontractor in relation to the work completed by the Subcontractor until such payment becomes due under this clause;
- (c) the Contractor may complete the Subcontract Works;
- (d) the Contractor may, without obligation or making payment, take possession of all plant and other things on or in the vicinity of the Site as are owned by the Subcontractor and are reasonably required by the Contractor to facilitate completion of the Subcontract Works; and
- (e) if the Contractor completes the Subcontract Works, the Contractor will determine the cost, loss, damage and expense incurred in completing the Subcontract Works along with the value of its accrued rights in connection with the Subcontract at the date of termination or date of works being taken out of the Subcontractor’s hands in accordance with clause 44. Without limiting any other rights the Contractor has under the Subcontract or at law, if the combined cost, loss, damage and expense incurred by the Contractor and the value of its accrued rights is greater than the amount which would have been paid to the Subcontractor if the Subcontract Works had been completed by the Subcontractor, the difference shall be a debt due from the Subcontractor to the Contractor.

45.0 OTHER TERMINATION

45.1 Termination other than under clause 44

The Contractor may give notice to the Subcontractor terminating this Subcontract:

- (a) if the Head Contract is terminated or comes to an end for any reason; or
- (b) for the sole convenience of the Contractor,

in which case this Subcontract will be terminated as and from the date of service of such notice (which notice must state that it is given pursuant to this clause).

45.2 Payment on Termination

If the Contractor terminates this Subcontract pursuant to clause 45 then the Subcontractor is entitled to payment of the value of that part of the Subcontract Works executed by the Subcontractor to the date of termination subject to the accrued rights of the Contractor under the Subcontract and at law along with amounts previously paid (“Termination Value”).

The Contractor shall determine the Termination Value.

In determining the value of that part of the Subcontract Works executed by the Subcontractor to the date of termination, the Contractor may take into account, among other things, the percentage of the Subcontract Works completed compared to the Subcontract Sum on a pro rata basis or such other method determined by the

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45.3 No Quantum Meruit

For the avoidance of doubt, the Subcontractor is not entitled to payment on a quantum meruit whatever the basis of termination whether under clause 44, clause 45 or otherwise at law (including if the Contractor repudiates the Subcontract and the Subcontractor accepts that repudiation). Should the Contractor repudiate the Subcontract and the Subcontractor accept that repudiation, the Subcontractor's entitlements whether under the Subcontract or otherwise at law, shall be limited to the damages that are proven by the Subcontractor.

45.4 No Other Claims

The amount to which the Subcontractor is entitled under clause 45 is its sole remedy for termination by the Contractor under clause 45 or by way of repudiation and the Subcontractor has no right to make any other Claim for compensation or costs for such termination or repudiation.

45.5 Novation

If requested by the Principal and the Contractor, the Subcontractor will take all steps necessary to effect a novation of this Subcontract on terms determined by the Principal and Contractor such that the Principal steps into the shoes of the Contractor.

46.0 TIME FOR NOTIFICATION OF CLAIMS

46.1 Subcontractor's Prescribed Notice

The Subcontractor must, within 14 days after the first day upon which an experienced and competent contractor could reasonably have been aware of the Breach of Obligation or an entitlement to make a Claim (whichever is the earlier), give to the Contractor the prescribed notice (as described in clause 46.2). The Contractor is not liable upon any Claim by the Subcontractor in respect of or arising out of a Breach of Obligation unless the Subcontractor has strictly complied with this clause.

This clause does not extend the time within which the Subcontractor must act to preserve a right or entitlement where that time is governed by any other clause of the Subcontract.

46.2 The Prescribed Notice

The prescribed notice is a notice in writing which includes particulars of all of the following:

- (a) the breach, act, omission, direction, approval or circumstances on which the claim is or will be based;
- (b) the clause of the Subcontract or other basis for the claim or proposed claim; and
- (c) the quantum or likely quantum of the claim.

46.3 Limitation on Claim

The Subcontractor will not be entitled to any amount in excess of the quantum or likely quantum notified pursuant to this clause 46 whether pursuant to the terms of this Subcontract or by way of damages for breach of contract or other obligation or at law. If the Subcontractor does not notify a quantum or likely quantum in the prescribed notice required under this clause 46, the Subcontractor will not be entitled to any amount, whether pursuant to this Subcontract or by way of damages for breach of contract or other obligation or at law, in respect of the Claim.

46.4 Release

The Subcontractor releases the Contractor from any Claim where the Subcontractor has not strictly complied with the provisions of this clause 46 in respect of that Claim or the subject matter of that Claim.

47.0 DISPUTES

47.1 Prohibition Against Other Action

If any Dispute or Difference arises this clause must be followed to the extent that it is not inconsistent with

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Legislative and Industrial Requirements.

47.2 Interlocutory Relief

A party must not, except in the case of urgent interlocutory or declaratory relief or in the case of the Contractor seeking to enforce a debt due under the Subcontract, commence litigation until it has complied with this clause.

47.3 Head Contract Dispute

Where there is a Related Head Contract Dispute:

- (a) the procedure established by clause 47 following the service of a Notice of Dispute in accordance with clause 47.4 is suspended until the Related Head Contract Dispute has been finally resolved; and
- (b) the Contractor may determine that facts underlying the Dispute or Difference are resolved on the same basis as the Related Head Contract Dispute; and
- (c) the Subcontractor indemnifies the Contractor against any Claim the Subcontractor has, or may have had but for this clause, against the Contractor in relation the Dispute or Difference.

47.4 Notice of Dispute

The party desiring to bring the dispute forward for resolution must give to the other party a notice entitled "Notice of Dispute" setting out the nature and summary of the dispute.

47.5 Further Steps Required Before Proceeding

A senior manager of each party must meet to attempt to resolve the Dispute or Difference within five Business Days after service of the Notice of Dispute. If the Dispute or Difference is unable to be resolved at that meeting the Chief Executive Officer or one or more directors of each party must attempt to resolve the Dispute or Difference within 20 Business Days of the service of the Notice of Dispute. If the Dispute or Difference is not resolved within that time in accordance with this clause, either party shall have the right to pursue the resolution of the Dispute or Difference through litigation.

48.0 GENERAL

48.1 Release and Indemnity

The Subcontractor:

- (a) Where any indemnity is given under this Subcontract the indemnity is in respect of any loss damage or expense, including:
 - (i) loss of profit; and
 - (ii) consequential loss; and
 - (iii) liability to third parties; and
 - (iv) legal costs (on a solicitor own client basis, and whether or not the subject of a court order) in respect of enforcing the indemnity or defending any claim brought by a third party in respect of a matter which is the subject of the indemnity; and

is given in respect of any such loss damage or expense arising from or in any way connected with the Damaging Act or other event in respect of which the indemnity is given.

- (b) Where any release is given or required to given by this Subcontract the party giving the release indemnifies the party enjoying the benefit of the release in respect of any liability which arises out of or in any way connected with the subject matter of the release.
- (c) Where the entitlement of the Subcontractor is prescribed by this Subcontract or limited by this Subcontract the Subcontractor hereby releases the Contractor from any Claim which it might have had against the Contractor in so far as that Claim is in excess of any entitlement the Subcontractor may have had otherwise.

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48.2 Head Contract Direction, Obligation or Requirement

A reference to a Head Contract Direction, Obligation or Requirement is a reference to a Head Contract Direction, or a Head Contract Obligation, or a Head Contract Requirement or a combination of each of these as may be relevant.

48.3 Pass Through Obligations

- (a) The Subcontractor acknowledges that the obligations of the Contractor under the Head Contract and the requirements of the Head Contract includes the Head Contract Requirements and the Head Contract Obligations.
- (b) Without limiting any other obligation imposed on the Subcontractor, the Subcontractor must comply with all of the Contractor’s obligations under the Head Contract that relate to or form part of the Subcontract or the Subcontract Works, including, but not limited to, the Head Contract Obligations and the Head Contract Requirements, and must do all that is necessary to ensure that the Contractor complies with and is not in breach of the Contractor’s obligations under the Head Contract.

48.4 Entire Understanding

This Subcontract:

- (a) constitutes the entire agreement and understanding between the parties on everything connected with the subject matter of this Subcontract; and
- (b) in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

48.5 Notice

A party giving notice or notifying under this Subcontract:

- (a) must do so in writing directed to the recipient’s address specified in the Subcontract, as varied by any notice; and
- (b) may be
 - (i) hand delivered; or
 - (ii) sent by pre-paid ordinary mail; or
 - (iii) sent by facsimile to the party’s current fax number for notices; or
 - (iv) sent via the Aconex document control system.

For the avoidance of doubt, a communication by way of electronic mail other than the Aconex document control system is not a valid communication for the purpose of this clause 48.5

- (c) A notice given in accordance with this clause is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid ordinary mail, three Business Days after the date of posting;
 - (iii) if sent by facsimile, when the sender’s facsimile system generates a message confirming successful transmission of the total number of pages of the notice.
 - (iv) if sent via the Aconex document control system, when the system generates a message confirming successful transmission inclusive of attachments;
- (d) If a communication is given ;
 - (i) after 5:00pm in the place of receipt; or
 - (ii) on a day which is not a Business Day,

It is taken as having been given at 9:00am on the next Business Day.

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48.6 Waiver

The failure of a party at any time to require performance of any obligation under this Subcontract is not a waiver of that party's right:

- (a) to insist on performance of, or claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and
- (b) at any other time to require performance of that or any other obligation under this Subcontract.

48.7 Discretion of the Contractor

The Contractor, in exercising any power or discretion (including determination or assessment power) conferred upon it in or reserved to it by this Subcontract or at common law is not obliged to exercise the power or discretion either reasonably or fairly and is not obliged to exercise the power or discretion for the benefit or convenience of the Subcontractor.

48.8 Public Holidays

When the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Subcontract, falls on a Saturday, Sunday or Statutory or Public Holiday, then the time for giving the notice, issuing the certificate, making the payment or doing the other act shall be deemed to be the day next following which is not a Saturday, Sunday or Statutory or Public Holiday.

48.9 Contractor's Powers

Any remedy, power or entitlement given to the Contractor in any clause of this Subcontract is in addition to any remedy, power or entitlement which the Contractor may have under any other clause or clauses of this Subcontract or under general principles of law.

48.10 Liability and Indemnity

To the extent permissible by law, the Subcontractor:

- (a) is and remains fully and wholly liable to the Contractor in respect of performance of its obligations in connection with the Subcontract and that liability extends to and includes liability connected with works and services provided by, and acts and omissions of, others engaged by the Subcontractor including the Subcontractor's Agents whose acts and omissions will be deemed to be acts and omissions of the Subcontractor;
- (b) is not entitled to the benefit of statutory provisions otherwise applying to limit or apportion the Subcontractor's liability to the Contractor;
- (c) indemnifies the Contractor in respect of all loss, damage cost and expense (including consequential loss) suffered or incurred by the Contractor flowing from or connected with any works and services provided by, or act or omission of, others engaged by the Subcontractor including the Subcontractor's Agents whose acts and omissions will be deemed to be acts and omissions of the Subcontractor in connection with the Subcontract Works or the Subcontract.

48.11 No Release

If for whatever reason the Contractor has had Subcontract Works performed by persons other than the Subcontractor (including Other Contractors) the Subcontractor remains liable to the Contractor for the whole of the Subcontract Works as if it had completed the Subcontract Works and the Subcontractor is not released from any liability by reason of the performance of the Subcontract Works by others.

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