

<b>Standard Works Contract</b>		MPA Construction Group Pty Ltd ABN 69 088 793 113 L2, 99 King St, Melbourne VIC 3000 PH: +61. 3 8620 5700 Email: enquiry@mpa.com.au
<b>Project Name</b>		
<b>Subcontractor</b>		
<b>Subcontractor No.</b>		

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**Formal Instrument of Agreement**

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**Parties Contractor**

**Subcontractor**

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**Introduction**

**A** The Contractor wishes to appoint the Subcontractor to carry out and complete the Subcontract Works as further set out in the General Conditions of Subcontract, and the Subcontractor has agreed to accept that appointment on the terms contained in this agreement.

**B** The Subcontractor agrees to execute the Subcontract Works in accordance with the provisions of the Subcontract.

**It is agreed**

**1. Interpretation**

- (1) The terms defined in the General Conditions of Subcontract have the same meaning in this agreement as the meaning given to them in the General Conditions of Subcontract.
- (2) If there is any inconsistency between this agreement and the General Conditions of Subcontract, this agreement prevails.

**2 Documents and information**

- (1) The Subcontract comprises the following documents which will have priority in the following order of precedence:
  - (a) this Formal Instrument of Agreement;
  - (b) Special conditions as set out in Schedule 2;
  - (c) these General Conditions of Subcontract;
  - (d) all other Schedules to these General Conditions of Subcontract; and
  - (e) all other documents described in Item 10.
- (2) The Subcontractor acknowledges and agrees that it has not relied on any information provided by the Contractor to the Subcontractor before the Execution Date, which does not form part of the Subcontract Documents and has used and relied on its own endeavours and efforts to verify the accuracy and sufficiency of that information.

**3. Subcontractor's acknowledgements**

The Subcontractor acknowledges that:

- (1) it has carefully examined all Subcontract Documents (including any Scope of Works), the Site and its surroundings to the extent necessary to perform its obligations under the Subcontract;
- (2) it has examined all information relevant to the risks, contingencies and other circumstances affecting its obligations under the Subcontract; and
- (3) it has satisfied itself as to:
  - (a) the correctness and sufficiency of the Subcontract Sum and that it includes an allowance for the cost of complying with the Subcontract; and
  - (b) all other matters and things necessary for the due and proper execution and completion of the Subcontract and the performance of the Subcontractor's obligations under the Subcontract.

**4. Entire understanding**

The Subcontract:

- (1) is the entire agreement and understanding between the parties on everything connected with the subject matter of the Subcontract; and
- (2) supersedes any prior agreement, correspondence, documentation or discussion on anything connected with that subject matter.

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**General Conditions**

**1 Definitions and interpretation**

**1.1 Definitions**

In this Subcontract:

- (1) **Approval** means any licence, permit, consent, approval, certification, authorisation or other requirement of any person, authority, body or other organisation having jurisdiction in connection with the construction or use of the Subcontract Works;
- (2) **Authorised Persons** means the Principal, the Contractor, any assignee or sub-licensee of the Principal or the Contractor in relation to the Material or any contractor of the Principal or the Contractor in relation to the Project;
- (3) **Buildability** means any ambiguity, inadequacy, inconsistency, discrepancy, omission, incompleteness or lack of coordination or integration, of, between or in any documents which make up the Subcontract which may cause:
  - (a) a problem, inadequacy or deficiency in the Subcontract Works; or
  - (b) the coordination or integration of the Subcontract Works;
- (4) **Business Day** has the meaning given to it under the Security of Payment Act;
- (5) **Claim** means any request, demand or entitlement in relation to, arising out of or in connection with this Subcontract or the Subcontract Works for payment, damages (whether under this Subcontract or otherwise) including: in tort, for breach of contract or quasi contract, misrepresentation and damages under any statute, except any statute which cannot be excluded by agreement, or unjust enrichment, restitution or under any other principle of law or equity;
- (6) **Communication Platform** means an online document management and web collaboration system approved by the Contractor from time to time;
- (7) **Confidential Information** means this Subcontract, the documents and all other information of a confidential character whether written or oral which is given to or obtained or learned by the Subcontractor, or developed by the Subcontractor for the purpose of performing the Subcontract Works or in connection with the Project including information about the Principal or Contractor or the Principal's or Contractor's business, operations, customers, products, marketing strategies, future development plans, technical information, intellectual property, survey results, pricing information, marketing information and commercial information of any other nature relating to or developed in connection with the business of the Principal or Contractor;
- (8) **Construction Program** means the program attached as Schedule 4;
- (9) **Contractor's Representative** means the person identified in Item 2 or a nominated replacement who must, when performing its role under the Subcontract, act reasonably;
- (10) **Date for Practical Completion** means the date stated in Item 3 as adjusted from time to time by the Contractor in accordance with this Subcontract, or as allowed in any dispute resolution process;
- (11) **Date of Practical Completion** means, subject to clause 18.2, the date which the Contractor's Representative certifies as the date upon which Practical Completion is achieved;
- (12) **Default Rate** means 5% per annum;
- (13) **Defaulting Party** has the meaning given in clause 1.1(20);
- (14) **Defect** means any work that is defective, faulty or incomplete or otherwise not in accordance with this Subcontract;
- (15) **Defects Liability Period** means, subject to clause 19.3, the period commencing on the Date of Practical Completion and continuing until the expiration of the defects liability period under the Head Contract, or if there are several, the last to expire;
- (16) **Execution Date** means the date of this Subcontract stated on the signing page of the Formal Instrument of Agreement;
- (17) **GST** has the meaning given in clause 24.1(1);
- (18) **GST Act** has the meaning given in clause 24.1(1);
- (19) **GST law** has the meaning given in clause 24.1(3);
- (20) **Head Contract** means the contract between the Contractor and the Principal specified in Item 4;
- (21) **Insolvency Event** means the happening of any of these events in relation to a party (**Defaulting Party**):
  - (a) execution or other process of a court or authority or distress is levied for an amount exceeding \$10,000 upon any of the Defaulting Party's property and is not satisfied, set aside or withdrawn within 7 days of its issue;
  - (b) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Defaulting Party which is not satisfied within 7 days;
  - (c) the Defaulting Party suspends payment of its debts;
  - (d) where the Defaulting Party is a body corporate:
    - (i) the Defaulting Party becomes an externally-administered body corporate under the *Corporations Act 2001* (Cth);

- (ii) steps are taken by any person towards making the Defaulting Party an externally-administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 days);
  - (iii) a controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) is appointed over any of the property of the Defaulting Party or any steps are taken for the appointment of a controller (but not where the steps taken are reversed or abandoned within 14 days);
  - (iv) the Defaulting Party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001* (Cth); or
  - (v) a resolution is passed for the reduction of capital of the Defaulting Party or notice of intention to propose such a resolution is given, without the prior written consent of the other party;
- (e) where the Defaulting Party is a natural person:
- (i) the Defaulting Party authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors;
  - (ii) a person holding a security interest in assets of the Defaulting Party enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or
  - (iii) the Defaulting Party commits an act of bankruptcy; or
- (f) an event happens analogous to an event specified in clauses 1.1(21)(a) to 1.1(21)(e) to which the law of another jurisdiction applies and the event has an effect in that jurisdiction similar to the effect which the event would have had if the law of Australia applied;
- (22) **Intellectual Property Rights** means all patents, copyrights and related rights, database rights, utility models, design rights, trademarks, service marks, rights in undisclosed or confidential information (such as knowhow, trade secrets and inventions) (whether patentable or not) and other rights of a like nature (whether registered or unregistered) and all applications for such rights as may exist anywhere in the world;
- (23) **Item** means or refers to any item under Schedule 1;
- (24) **Law** includes:
- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the jurisdiction applicable to the Subcontract Works;
  - (b) certificates, licences, consents, permits, approvals, industry codes of practice, and requirements of organisations having jurisdiction applicable to the Subcontract Works; and
  - (c) fees and charges payable in connection with the above;
- (25) **Linked Claim** is any claim, potential claim, entitlement or potential entitlement of the Subcontractor against the Contractor under this Subcontract in respect of the same circumstances, acts or omissions as a claim, potential claim, entitlement or potential entitlement of the Contractor against the Principal under the Head Contract, but excluding a breach of this Subcontract by the Contractor that is not caused by a breach by the Principal of the Head Contract and excluding the Subcontractor's entitlement to be paid the Subcontract Sum (unadjusted as at the Execution Date);
- (26) **Materials** has the meaning given in clause 16.1;
- (27) **Modern Slavery** means:
- (a) conduct defined as "modern slavery" in the *Modern Slavery Act 2018* (Cth); and/or
  - (b) any other exploitation of a worker, human trafficking, slavery, servitude, any form of forced or compulsory labour, the worst forms of child labour, debt bondage or deceptive recruiting for labour or services, forced marriage, or similar types of conduct;
- (28) **Modern Slavery Laws** means:
- (a) the *Modern Slavery Act 2018* (Cth), *Modern Slavery Act 2015* (UK) or any other similar legislation that requires entities to report in relation to the modern slavery or human rights risk of their entity and/or their response to that risk; and
  - (b) any other law, statute or regulation which prohibits Modern Slavery and is applicable or otherwise in force in the jurisdiction(s) in which the Subcontractor is registered or conducts business or in which activities relevant to the Contract are to be performed;
- (29) **National Construction Code** means the code published by the Australian Building Codes Board, including the Building Code of Australia and Plumbing Code of Australia, as amended from time to time;
- (30) **Notice** has the meaning given in clause 27.1(1);
- (31) **Payapps** means an electronic system for the making and assessment of payment claims (<https://au.payapps.com>), or any other replacement project management web collaboration software application approved by the Contractor from time to time;

- (32) **Personnel** includes the officers, employees, agents, advisers, auditors, consultants, subcontractors of the Subcontractor and each of their officers, employees, agents, advisers, auditors, consultants or subcontractors and includes the Subcontractor's Representative and any other person for whom the Subcontractor is responsible;
- (33) **Practical Completion** means subject to clause 18.2 and any other pre-condition to Practical Completion contained in this Subcontract, that stage of the Subcontract Works when the Contractor's Representative has determined that the Subcontract Works are complete and fit for their intended purpose and use (except for minor Defects or omissions);
- (34) **Principal** means the person specified in Item 6;
- (35) **PPS Law** means:
- (a) the PPSA and any regulations made under the PPSA, as amended from time to time; and
  - (b) any amendment made to any other legislation as a consequence of the PPSA or any regulations made under the PPSA, including, without limitation, amendments to the *Corporations Act 2001* (Cth);
- (36) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- (37) **Project** means the specific project or undertaking stated in Item 1 in respect of which the Subcontractor is engaged to execute the Subcontract Works;
- (38) **Relevant Jurisdiction** means the State or Territory stated in Item 26;
- (39) **Safety Legislation** means:
- (a) any legislation applicable to work health and safety, environment protection, dangerous goods and electrical safety;
  - (b) regulations made under that legislation; and
  - (c) any directions on safety or notices issued by any relevant authority or any code of practice or compliance code of practice appropriate or relevant to the Subcontract Works,
- as amended from time to time;
- (40) **Safety Requirements** means any direction, instruction, request or requirement relevant or necessary for compliance by the Subcontractor with Safety Legislation, and including any such matter of which the Subcontractor has been informed by the Contractor or Contractor's Representative orally or in writing;
- (41) **Scope of Works** means:
- (a) the scope or works; and
  - (b) the document transmittal of drawings, specifications and other documents,
- set out in Schedule 3 and any modification of such documents;
- (42) **Security** means the performance security that the Subcontractor is required to provide in accordance with clause 9;
- (43) **Security of Payment Act** means the *Building and Construction Industry Security of Payment Act 2002* (VIC);
- (44) **Site** means the site specified in Item 5 and any other lands and other places to be made available to the Subcontractor by the Contractor for the purposes of this Subcontract;
- (45) **Site Safety Plan** has the meaning given to it in clause 14.1(1)(b);
- (46) **Standard Procurement Guidelines** means the Contractor's guidelines set out in Schedule 9, as amended from time to time;
- (47) **Subcontract** means this agreement between the Contractor and the Subcontractor constituted by the Subcontract Documents;
- (48) **Subcontract Documents** means the documents listed in the Formal Instrument of Agreement;
- (49) **Subcontract Sum** means the amount stated in Item 7;
- (50) **Subcontractor's Representative** means the person identified as such in Item 8 or a nominated replacement whose appointment has been approved by the Contractor;
- (51) **Subcontract Works** means the whole of the work to be executed in accordance with this Subcontract, including as set out in Item 9 and including all Variations;
- (52) **Supplier Code of Conduct** means the Contractor's codes set out in Schedule 9, as amended from time to time;
- (53) **Supplies** has the meaning given in clause 24.1(2); and
- (54) **Variation** means any change in the Subcontract Works, including an addition or omission in the scope, quality or character of the Subcontract Works.

## 1.2 Interpretation

- (1) Reference to:
- (a) one gender includes the others;
  - (b) the singular includes the plural and the plural includes the singular;

- (c) a person includes a body corporate;
  - (d) a party includes the party's executors, administrators, successors and permitted assignees;
  - (e) a thing includes the whole and each part of it separately;
  - (f) a statute, regulation, code or other law or a provision of any of them includes:
    - (i) any amendment or replacement of it; and
    - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
  - (g) dollars means Australian dollars unless otherwise stated.
- (2) Measurements of physical quantities must be in legal units of measurement of Australia.
  - (3) "Including" and similar expressions are not words of limitation.
  - (4) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
  - (5) Headings and any table of contents or index are for convenience only and do not form part of this Subcontract or affect its interpretation.
  - (6) A provision of this Subcontract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Subcontract or the inclusion of the provision in this Subcontract.
  - (7) Other than in relation to issuing a progress claim, if an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
  - (8) To the maximum extent permitted by law (and except as otherwise expressly provided in this Subcontract) all terms, conditions, promises, undertakings, representations, warranties and statements (whether express, implied, written, oral, collateral, statutory or otherwise) which would be implied or incorporated into this Subcontract are excluded and the Subcontractor will have no entitlement to make any Claim in relation to any of them.

### 1.3 Parties

- (1) If a party consists of more than 1 person, this Subcontract binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) If the Subcontractor is a trustee, it is bound both personally and in its capacity as a trustee.

### 1.4 Special conditions

The special conditions set out in Schedule 2 (if any) are included in this Subcontract and the parties must comply with such conditions. To the extent of any inconsistency between the special conditions and any other provision of this Subcontract, the special conditions prevail.

## 2 The Subcontract Works

### 2.1 Performance of the Subcontract Works

- (1) The Subcontractor must carry out and complete the Subcontract Works with due care and skill to the satisfaction of the Contractor, in a manner that ensures, so far as is reasonably practicable, the health and safety of all workers and other persons and in accordance with the highest standards of the respective trades using the industry's best practices and otherwise in accordance with the requirements of this Subcontract, all Laws, all requirements of relevant authorities, all relevant Australian Standards and the National Construction Code.
- (2) The Contractor may, at any time, and without prejudice to any other right available to the Contractor, reject any work or materials which do not comply with this Subcontract. The Subcontractor must rectify or replace any rejected work or materials at its own cost and time in accordance with the directions of the Contractor (including any time period directed by the Contractor), failing which the Contractor may rectify or replace such work or materials or have such work or materials rectified or replaced by others, the costs of which will be a debt due from the Subcontractor to the Contractor.
- (3) The Subcontractor acknowledges that the Contractor relies on the Subcontractor to perform the Subcontract Works with all due skill, care and diligence and that the Contractor has entered into this Subcontract relying on the warranties given by the Subcontractor set out in clause 4.

### 2.2 Quantities

Any schedule of rates does not form part of this Subcontract. Quantities in a schedule of rates are estimated quantities only and the Subcontractor is not entitled to make a Claim in relation to any errors in or increases required to those quantities.

## 3 Commencement and Site access

### 3.1 Commencement and Access to Site

- (1) The Subcontractor must commence performance of the Subcontract Works without delay on and from the date notified to the Subcontractor by the Contractor.
- (2) On and from the date notified to the Subcontractor by the Contractor under clause 3.1(1), the Contractor will grant access to sufficient parts of the Site to enable the Subcontractor to commence the relevant Subcontract Works. Any delay in granting the

Subcontractor access to the Site is not a breach of contract. Unless the Contractor's Representative directs otherwise, the Subcontractor must only access the Site during the hours and on the days provided for in accordance with Item 11.

- (3) Notwithstanding this clause 3, if the Subcontractor has not complied with clause 11.1, the Contractor may refuse to grant the Subcontractor access to the Site until the Subcontractor complies with the requirements of that clause.
- (4) The Subcontractor must comply with all requirements set by the Contractor concerning the security of the Site and, in particular, any requirements relating to ensuring that the Site is secured from unauthorised access.

### 3.2 Other works on the Site

- (1) The Subcontractor acknowledges and agrees that it is not entitled to exclusive access to the Site and that the Contractor and others will be carrying out work on or about the Site at the same time as the Subcontractor is carrying out the Subcontract Works.
- (2) The Subcontractor must:
  - (a) consult, co-ordinate, co-operate and liaise with the Contractor and other contractors and personnel on the Site;
  - (b) consult, co-ordinate its work with the work and activities being carried out by others on the Site so as to not create any hazards or risks to health and safety of any workers or other persons or cause delay to the work and activities being carried out by others on the Site; and
  - (c) do everything reasonably necessary to integrate the Subcontract Works with the works or activities being performed by others in respect of the Project.
- (3) The Subcontractor has no Claim against the Contractor in any way relating to the carrying out of work or activities by others.

### 3.3 Removal of persons from Site

The Contractor's Representative may direct the Subcontractor to remove from the Site any person whom the Contractor's Representative considers to be disruptive, incompetent, negligent or guilty of misconduct or adopts unsafe practices or acts. The written approval of the Contractor's Representative must be obtained by the Subcontractor before the Subcontractor employs another person on Site.

## 4 Subcontractor warranties

The Subcontractor represents and warrants, in addition to and without limiting any other warranty given by the Subcontractor under this Subcontract that:

- (1) it has thoroughly examined the contents of all the Subcontract Documents, all other information or documentation made available either orally or in writing to it, including relevant extracts of the Head Contract, and obtained all other information necessary to complete the Subcontract Works;
- (2) it and its employees, subcontractors and consultants, at all times are and will remain suitably qualified, licenced and experienced;
- (3) it and its employees, subcontractors and consultants, have not been convicted of any offence, and has not engaged in any conduct, contravening Modern Slavery Laws or otherwise involving Modern Slavery;
- (4) it and its employees, subcontractors and consultants, have not been, or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of any Modern Slavery Laws;
- (5) it has entered into this Subcontract without relying on any representation by the Contractor, the Principal or any person;
- (6) it has the requisite skill, judgment, ability, capacity and experience of buildings and projects of the size, nature and standard of the Subcontract Works, that it is experienced in the construction of projects similar to the Subcontract Works and that it will provide the necessary resources, personnel, skill and expertise required in order to comply with all of its obligations in accordance with the Subcontract and that the completed Subcontract Works will be fit for their intended purpose and free from Defects and deficiencies;
- (7) it has thoroughly inspected the Site and its adjacent surroundings;
- (8) the Subcontractor will do all things reasonably necessary to enable performance by the Contractor of its obligations and enjoyment of the benefits under the Head Contract and so as to ensure no breach or loss under the Head Contract by the Contractor;
- (9) the Subcontractor in undertaking the Subcontract Works will comply with all the requirements of or to be inferred from this Subcontract including, without limitation, the requirements of the National Construction Code, all relevant statutes, standards (including all Australian Standards), Law, legislation, codes of practices and all authorities having jurisdiction over the Subcontract Works (as amended from time to time);
- (10) it has determined the nature and extent of the Subcontract Works and made all necessary allowances in the Subcontract Sum, including (without limitation) allowance for:
  - (a) the amount of temporary works, materials, labour, plant and equipment necessary to complete the Subcontract Works in accordance with its obligations under this Subcontract; and
  - (b) all ancillary and other works and expenditure and the supply of all items whether or not expressly mentioned in this Subcontract but which are necessary for the satisfactory completion of the Subcontract Works;
- (11) it has considered its obligations under this Subcontract and that both the Subcontract Sum and Date for Practical Completion are reasonable and each contain all necessary allowances taking into account the risk, responsibilities and costs allocated to the Subcontractor, whether expressly or otherwise;



- (12) it will provide, as a pre-condition to Practical Completion, executed warranties from its subcontractors and/or suppliers in the form required and approved by the Principal;
- (13) it will attend to and rectify any Defect, subsequent consequential damages and costs in accordance with the warranties provided for the duration of the warranty period stated in Schedule 7;
- (14) it is responsible for and bears all risks in connection with the construction of the Subcontract Works, including the responsibility for the co-ordination, management, interface of the processes and overcoming any Buildability issues;
- (15) it has obtained, or will be able to obtain, all necessary consents, permits or authorisations (other than those which the Contractor is required to obtain in accordance with the Subcontract) necessary for it to carry out the Subcontract Works in accordance with the requirements of the Subcontract;
- (16) all registrations, permits, licences, qualifications and other requirements of its trade (including but not limited to pursuant to any laws regulating labour hire in any way) are in full force and effect at all times; and
- (17) it is a GST registered entity.

## **5 Buildability**

- (1) Without limiting clause 4, the Subcontractor warrants to the Contractor that the Subcontractor has reviewed the Subcontract Documents and has satisfied itself that the Subcontract Sum and the Date for Practical Completion are sufficient for the performance of the Subcontract Works, notwithstanding any issues of Buildability.
- (2) Unless otherwise stated in this Subcontract, the Subcontractor has no Claim against the Contractor arising out of or in any way connected with any issue of Buildability including in any Subcontract Document or any other document (whether prepared before or after the Execution Date and whether prepared by or for the Contractor or by or for the Subcontractor). Without limiting the power of the Contractor's Representative under this clause 5, the Subcontractor is responsible for, accepts the risk of, and must carry out all work, required to deal with and overcome the effects of, any issues of Buildability.
- (3) If the Subcontractor discovers any issue of Buildability in any document prepared for the purpose of executing the Subcontract Works, including between the documents constituting the Subcontract Documents, the Subcontractor must notify the Contractor's Representative in writing of the issue of Buildability.
- (4) If any issue of Buildability is discovered and brought to the attention of the Contractor's Representative, the Contractor's Representative must direct the Subcontractor as to the interpretation to be followed by the Subcontractor in carrying out the Subcontract Works. The Subcontractor must comply with any direction given to the Subcontractor by the Contractor's Representative under this clause 5 and has no Claim for compliance with this clause 5.

## **6 Subcontract Documents**

### **6.1 Discrepancies**

- (1) Should the Subcontractor encounter any discrepancies, contradictions, omissions, ambiguity, errors, faults or inconsistencies in or between the Subcontract Documents, the Subcontractor must promptly notify the Contractor's Representative in writing.
- (2) The Subcontractor, must at its own cost, comply with any direction of the Contractor's Representative as to the interpretation to be adopted in resolving the discrepancy, contradiction, omission, ambiguity, error, fault or inconsistency.

### **6.2 Supply of documents by the Contractor**

Unless this Subcontract expressly provides otherwise, information or documents of any nature provided by or on behalf of the Contractor to the Subcontractor at any time (other than the Subcontract Documents) are furnished to the Subcontractor solely for its convenience only and are not guaranteed, whether in terms of their accuracy, adequacy or sufficiency. The Contractor has no liability whatsoever to the Subcontractor in tort (including negligence), contract, statute or otherwise (except to the extent that such liability cannot be excluded) concerning or in any way connected with any interpretations, deductions, inferences drawn or conclusions made by the Subcontractor in relation to such information or documents or any errors, omissions, representations or misrepresentations contained in the same.

## **7 Administration and personnel**

### **7.1 Contractor's Representative**

The Contractor's Representative:

- (1) gives directions and at all times carries out its functions under this Subcontract on behalf of and as the agent of the Contractor and not as an independent certifier or assessor; and
- (2) may be replaced or dismissed by the Contractor, at any time in its sole discretion.

### **7.2 Compliance with directions**

The Subcontractor must promptly comply with any direction given by the Contractor's Representative in connection with this Subcontract or the Subcontract Works.

### **7.3 Subcontractor's Representative**

The Subcontractor's Representative:

- (1) must be present on Site whenever any Subcontract Works are being undertaken and in any event during normal working hours;

- (2) has the full authority of the Subcontractor to receive instructions from and notices given by the Contractor's Representative in respect of all matters relating to this Subcontract or the Subcontract Works;
- (3) must attend any Site meetings as requested by the Contractor's Representative;
- (4) may be replaced from time to time by the Subcontractor subject to the Contractor's consent, which will not be unreasonably withheld; and
- (5) must be replaced by an alternative Subcontractor's Representative upon receipt by the Subcontractor of a written notice by the Contractor's Representative requesting the replacement.

## **8 Assignment and subcontracting**

### **8.1 Assignment**

- (1) The Subcontractor must not assign or otherwise deal with this Subcontract or any right, benefit or interest under this Subcontract without the prior written consent of the Contractor. If such consent is given, it may be given in whole, in part or subject to whatever conditions the Contractor requires.
- (2) The Contractor may assign or novate or otherwise deal with the whole or any part of this Subcontract without the Subcontractor's prior written consent. The Subcontractor irrevocably consents to any novation of this Subcontract to the Principal or any other person directed by the Contractor. The Subcontractor agrees to do all things (including executing a deed of novation) necessary or desirable to give effect to a novation of this Subcontract.
- (3) The Subcontractor irrevocably appoints the Contractor, immediately after any breach by the Subcontractor of its obligations under clause 8.1(2), to be the true and lawful attorney of the Subcontractor, with full authority and power to execute a deed of novation on behalf of the Subcontractor in respect of the Subcontract.

### **8.2 Subcontracting**

- (1) The Subcontractor must not engage any secondary subcontractor in connection with the Subcontract Works without first obtaining the prior written consent of the Contractor's Representative (which consent shall not be unreasonably withheld).
- (2) The Subcontractor remains fully responsible for the Subcontract Works, including to ensure, so far as is reasonably practicable, the health and safety of any of the secondary subcontractor's workers, and is not relieved from any liability or obligation under this Subcontract, notwithstanding any subcontracting of the Subcontract Works or any consent granted under clause 8.2(1).
- (3) The Subcontractor must obtain all relevant documentation evidencing that the secondary subcontractor has the relevant training, skills, licences and expertise, and must make this documentation available to the Contractor on request.
- (4) The Subcontractor must require its secondary subcontractors to implement their own binding guidelines for ethical behaviour and compliance with Modern Slavery Laws.
- (5) The Subcontractor must ensure that the terms of any arrangements entered into with secondary subcontractors in connection with the Subcontract Works:
  - (a) include provisions that are at least as onerous as those set out in clause 14A; and
  - (b) permit termination of those arrangements where the Subcontractor reasonably believes there has been, or is likely to be a breach by a secondary subcontractor, or its personnel, of any applicable Modern Slavery Laws.

### **8.3 Intention to suspend**

- (1) The Subcontractor must promptly give to the Contractor's Representative a copy of any notice of intention to suspend work that the Subcontractor receives from any of its secondary subcontractors under the Security of Payment Act if that work forms part of the Subcontract Works.
- (2) If the Contractor receives a copy of a notice of intention to suspend work or a secondary subcontractor otherwise suspends or threatens to suspend work, the Contractor may, in its absolute discretion, pay the secondary subcontractor the whole or any part of the money that it states that it is owed by the Subcontractor for its work and the amount of the payment made by the Contractor is a debt due from the Subcontractor to the Contractor. Such payment does not relieve the Subcontractor of any of its obligations or liabilities under this Subcontract.
- (3) The Subcontractor indemnifies the Contractor against any liability, damage, loss, cost or expense (including legal costs) incurred by the Contractor arising from:
  - (a) a suspension by any of its secondary subcontractors under the Security of Payment Act if the relevant work forms part of the Subcontract Works;
  - (b) any failure of the Subcontractor to notify the Contractor under clause 8.3(1); and
  - (c) an assignment under the Security of Payment Act of the Contractor's obligation to pay money owed to the Subcontractor under this Subcontract to a secondary subcontractor.

## **9 Security**

### **9.1 Form of Security**

The form of required Security is specified in Item 13.

**9.2 Purpose of security**

Security required under this clause 9 is for the purpose of ensuring the due and proper performance of this Subcontract and to allocate the burden of financial risk upon the Subcontractor pending resolution of any dispute or difference.

**9.3 Retention Monies**

- (1) This clause 9.3 applies if the form of required Security specified in Item 13 is cash retention.
- (2) The Contractor is entitled to retain the percentage specified in Item 13 of each progress payment until the amount retained equals the percentage of the Subcontract Sum set out in Item 14.
- (3) The right to any interest accruing on retention monies vests in the Contractor.

**9.4 Recourse to Security**

- (1) If the Contractor considers that it has incurred or might in the future incur any liability, cost, expense, loss or damage of any kind as a consequence of any act, default, breach or omission of the Subcontractor in relation to this Subcontract or any other agreement with the Subcontractor, the Contractor may have recourse to the Security and may use the proceeds in any manner it sees fit.
- (2) The Subcontractor agrees that it will not institute any proceedings, exercise any right or take any steps to instruct or otherwise restrain:
  - (a) the financial institution that issued the Security from paying the Contractor pursuant to the Security;
  - (b) the Contractor from taking any steps for the purpose of making a demand under any Security, receiving payment under any Security, or otherwise exercising its rights under any Security; or
  - (c) the Contractor using the Security or any money received under the Security.

**9.5 Reduction of Security**

Subject to the exercise of any right of recourse that the Contractor may have to Security, the Contractor's entitlement to Security will be reduced to 50% of the amount set out in Item 14 on the Date of Practical Completion for the whole of the Subcontract Works and provided that the Subcontractor has given the Contractor an executed Deed of Release in the form set out in Schedule 5, the Contractor must return the released portion of the Security within 15 Business Days of receipt of a written request for the release from the Subcontractor.

**9.6 Release of Security**

Subject to the exercise of any right of recourse that the Contractor may have to Security, the Contractor's entitlement to the balance of the Security will cease on the later of the issue of the final payment schedule under clause 21.8 and the date on which all Defects identified during the Defects Liability Period have been rectified. Provided that the Subcontractor has given the Contractor an executed Deed of Final Release in the form set out in Schedule 6, the Contractor must return the balance of the Security within 15 Business Days of receipt of a written request for the release of Security from the Subcontractor.

**9.7 Parent company or director guarantee**

If the Subcontractor is a corporation that is related to or is a subsidiary of another corporation as defined in the *Corporations Act 2001* (Cth), operates under a trust structure or the owners of the business are otherwise requested by the Contractor to provide a guarantee and indemnity, the Subcontractor must, if requested by the Contractor, provide the Contractor within 10 Business Days of that request, and as a precondition to the entitlement to payment under or in connection with this Subcontract:

- (1) a deed of guarantee and indemnity in a form acceptable to the Contractor and duly executed by the guarantor corporation; or
- (2) a deed of guarantee and indemnity in a form acceptable to the Contractor and duly executed by one or more of the owners, directors or beneficiaries of the trustee or trust (as applicable),

for the benefit of the Contractor guaranteeing the performance of the obligations and the discharge of the liabilities of the Subcontractor under this Subcontract.

**10 Indemnity by the Subcontractor**

- (1) The Subcontractor indemnifies the Contractor against any Claim, damage (including damages for breach of contract at law), loss, liability, cost or expense (including legal fees and expenses) which the Contractor suffers, incurs or may suffer or incur (including any liability the Contractor may have to the Principal or any third party) arising out of or in connection with:
  - (a) any negligence, act, omission or default of the Subcontractor or any of its Personnel;
  - (b) any failure by the Subcontractor or its Personnel to comply with any Safety Legislation or Safety Requirements;
  - (c) any alleged infringement or infringement of any Intellectual Property Rights by:
    - (i) the performance of the Subcontract Works; or
    - (ii) the Materials, or use of or other dealing with any Materials; or
  - (d) alleged breach or breach of any person's moral rights (as per the meaning and definition given to that term in the *Copyright Act 1968* (Cth)) in respect of any Material by the Authorised Persons.
- (2) The Subcontractor's liability to indemnify the Contractor under clause 10(1) is reduced proportionally to the extent that a wrongful act or omission of the Contractor contributed to the Claim, damage, loss, liability, cost or expense.

## **11 Insurance**

### **11.1 Insurance required by Subcontractor**

- (1) The Subcontractor must effect and maintain the insurance policies stated in Item 15, Item 16, Item 17, Item 18 and Item 19 in the amounts and for the periods stated in those items.
- (2) The Subcontractor must ensure that its secondary subcontractors are similarly insured or covered by the insurance required under this clause 11.1 for the relevant work to be performed by those secondary subcontractors.
- (3) In respect of public liability insurance policy required under clause 11.1(1), that policy must:
  - (a) name the Principal and the Contractor as named insured and cover those parties, and all secondary subcontractors to the Subcontractor, for their respective rights and interests and liabilities to third parties, and as between the Contractor and the Subcontractor, their liability to each other for death, personal injury or loss or damage to property arising out of the Subcontract Works;
  - (b) include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any party comprising the insured, and for the purposes of which the insurer accepts the term "insured" as applying to each party comprising the insured as if a separate insurance policy were issued to each of them; and
  - (c) provide that a notice of claim given to the insurer by the Principal, Contractor or Subcontractor will be accepted by the insurer as a notice of claim given by the Subcontractor.
- (4) Notwithstanding clause 11.3, the insurances referred to in this clause 11.1 must extend to include the Contractor as a named insured or, where this is unobtainable, contain an agreement by the insurer to waive all rights of subrogation against the Contractor.
- (5) Before commencing any work and upon request, the Subcontractor must promptly provide to the Contractor's Representative copies of insurance policies together with certificates of currency. The Subcontractors failure to comply with this clause 11.1(5) entitles the Contractor (without being obliged to do so) to effect and maintain such insurance and the cost incurred is a debt due by the Subcontractor to the Contractor.

### **11.2 Notice of claims or likely claims**

The Subcontractor must as soon as practicable give Notice to the Contractor's Representative of any occurrence which may give rise to a claim under an insurance policy. The Subcontractor must give all information and assistance requested by the Contractor's Representative in respect of any such claim or possible claim.

### **11.3 Effect of insurances**

The effecting or failure to effect insurance by either the Subcontractor or the Contractor does not in any way limit or reduce any of the Subcontractor's obligations or liabilities under this Subcontract or at law.

## **12 Construction**

### **12.1 Quality**

The Subcontractor must do all things necessary to comply with any quality assurance system notified by the Contractor's Representative or must, if requested by the Contractor's Representative, implement its own quality assurance system approved by the Contractor's Representative.

### **12.2 Reports and meetings**

- (1) The Subcontractor must attend any meetings required by the Contractor in respect of the Subcontract Works and the Project, including with respect to progress, review, co-ordination and consultation, at a time and location notified by the Contractor.
- (2) The Contractor's Representative may at any time direct the Subcontractor to submit a report or provide records to the Contractor's Representative containing such information as is reasonably requested by the Contractor's Representative.

### **12.3 Protection of work and materials**

- (1) The Subcontractor is, until Practical Completion, responsible for and must protect from damage or loss the Subcontract Works and other things and materials brought on to the Site by or for the Subcontractor. If any damage or loss occurs the Subcontractor must at its own cost promptly make good the damage or loss and fully and sufficiently reinstate and replace the things, damages or loss.
- (2) If the Subcontractor fails to make good the damage or loss after the Contractor's Representative has given the Subcontractor notice that it intends to have that work carried out by others if the Subcontractor does not carry out the work within the period specified by the Contractor's Representative, the Contractor's Representative may have that work carried out by others and any cost incurred is a debt due from the Subcontractor to the Contractor.
- (3) Despite any other provision of this Subcontract, the Subcontractor accepts as full payment for any reinstatement or replacement of the Subcontract Works that is the subject of an insurance claim, the amount of insurance proceeds recovered by the Contractor or Subcontractor in respect of that reinstatement or replacement.
- (4) If urgent action is necessary to protect the Subcontract Works, other property or people, the Contractor may take necessary action to protect the Subcontract Works. If the action taken by the Contractor was, in the opinion of the Contractor's Representative, action which the Subcontractor should have taken, the cost incurred by the Contractor is a debt due from the Subcontractor to the Contractor.

**12.4 Protection of people and property**

In the performance of the Subcontract Works the Subcontractor must take all reasonably practicable measures and provide all things reasonably necessary to protect people and property.

**12.5 Cleaning up**

The Subcontractor must keep the Site and the Subcontract Works clean and tidy and must regularly and properly remove rubbish from the Site or as directed by the Contractor's Representative. If the Subcontractor fails to comply with this clause 12.5, the Contractor may take necessary action to clean and tidy the Site, and the cost incurred by the Contractor will be deemed a debt due from the Subcontractor to the Contractor.

**13 Laws and approvals**

**13.1 Laws**

- (1) The Subcontractor must in executing the Subcontract Works, provide for and satisfy all relevant Laws and must ensure that its Personnel satisfy all relevant Laws.
- (2) If a new Law or a change in a Law comes into effect after the Execution Date which could not reasonably have been anticipated by a competent and experienced subcontractor at the Execution Date, and necessitates a change to the Subcontract Works, the Contractor's Representative will direct a Variation under clause 20.1(1).

**13.2 Approvals**

Except for those Approvals listed in Item 20, the Subcontractor must obtain (and pay all charges and costs associated with those Approvals) and comply with all Approvals and ensure that they are in full force and effect at all times. The Subcontractor must promptly provide copies of all Approvals obtained.

**14A Modern Slavery and Standard Procurement Guidelines**

**14A.1 Modern Slavery**

- (1) The Subcontractor must:
  - (a) comply with Modern Slavery Laws;
  - (b) not, and must not permit its personnel (including suppliers and subcontractors) to engage in:
    - (A) Modern Slavery; or
    - (B) any activity, practice or conduct that constitutes an offence under Modern Slavery Laws (or would constitute an offence under Modern Slavery Laws had those activities, practices or conduct occurred in Australia);
  - (c) cooperate with the Contractor, and do all things reasonably requested by the Contractor, to ensure the Contractor does not contravene Modern Slavery Laws;
  - (d) promptly provide the Contractor with all information and records reasonably requested by the Contractor to assist the Contractor in:
    - (A) complying with any applicable reporting obligations under Modern Slavery Laws; or
    - (B) undertaking due diligence on its supply chain, including by way of a questionnaire issued periodically;
  - (e) have in place, and maintain in place at all times, adequate and reasonable policies, controls, procedures and training designed to prevent, detect, assess, manage and remedy (as appropriate) Modern Slavery risks in its operations and supply chain;
  - (f) use reasonable efforts to procure that its personnel and any supply chain participants comply with Modern Slavery Laws, including having in place, and maintaining in place at all times, adequate and reasonable policies, controls, procedures and training designed to ensure compliance with Modern Slavery Laws;
  - (g) comply with the mandatory reporting requirements under Modern Slavery Laws (if applicable) and provide a copy of any modern slavery statements (as defined under Modern Slavery Laws) to the Contractor;
  - (h) ensure all personnel engaged by it in any form:
    - (A) receive a contract in writing in a language understood by them;
    - (B) provide their labour of their own free will;
    - (C) have the right to work in the jurisdiction in which they work;
    - (D) are not required to make any payment to the Subcontractor or any other third party in exchange for their engagement;
    - (E) do not have their passport or other travel or identity documents retained or withheld by the Subcontractor or any other person on behalf of the Subcontractor;
    - (F) are of legal working age;
    - (G) are paid at least a living wage and provided with all legally mandated benefits;

- (H) are not required to work (including overtime) more than the maximum hours per week prescribed by law;
  - (I) are not subject to corporal punishment or mentally, physically, sexually or verbally abusive or inhumane treatment or cruel or abusive disciplinary practices in the workplace;
  - (J) are not subject to discrimination on any ground (including race, national or social origin, birth, age, disability, gender, sexual orientation, religion, union membership or political opinions); and
  - (K) can access a grievance mechanism to safely report any instances of Modern Slavery in the operations and supply chains used by the Subcontractor in the performance of the Subcontract Works;
- (i) notify the Contractor as soon as reasonably practicable if it becomes aware of any potential, suspected or actual instance of Modern Slavery in its operations or supply chain or breach by it or its personnel (including its subcontractors or suppliers) of any Modern Slavery Laws in connection with the Subcontract Works;
  - (j) take all reasonable action to rectify the breach and/or minimise the risk of Modern Slavery in its operations and supply chain, including where relevant by addressing any practices of other entities in its supply chains; and
  - (k) cooperate in good faith with the Contractor in investigating the circumstances relevant to any potential, suspected or actual breach of any Modern Slavery Laws, whether or not notification has been given under this clause 14A.
- (2) If the Contractor knows of or has reasonable grounds to suspect a past, present or potential breach by the Subcontractor or its personnel (including its secondary subcontractors or suppliers) of any applicable Modern Slavery Laws or any of their own policies relating to modern slavery, in connection with the Subcontract Works, the Contractor may give notice in writing to the Subcontractor requiring an explanation, copies of documents, and access (for the purposes of interview by internal or external lawyers) to the Subcontractor's personnel and/or secondary subcontractors.
  - (3) The Subcontractor must give such assistance and access to the documents and the Subcontractor's personnel and/or secondary subcontractors as the Contractor may reasonably require and must provide (at the Subcontractor's cost) all reasonable assistance (including the provision of information) to the Contractor in order to allow it to comply with the Contractor's obligations under Modern Slavery Laws.
  - (4) The Subcontractor indemnifies the Contractor and its related entities and personnel in respect of any liability incurred in connection with the Subcontractor's breach of this clause 14A.
  - (5) If the Subcontractor is in breach of this clause 14A, the Contractor may notify the Subcontractor of the breach and require that the Subcontractor undertake, within 10 Business Days, remedial action to rectify the breach, ensure the Subcontractor's compliance with Modern Slavery Laws and minimise the risk of Modern Slavery in the Subcontractor's operations and supply chain.
  - (6) If the Subcontractor fails to take the action required by clause 14A(5), then without limiting any other rights it may have, the Contractor may immediately terminate this Contract by written notice to the Subcontractor.

**14A.2 Supplier Code of Conduct and Standard Procurement Guidelines**

- (1) The Contractor will provide the Subcontractor with copies of, or links to, the Supplier Code of Conduct and the Standard Procurement Guidelines.
- (2) The Subcontractor must comply with the Supplier Code of Conduct and the Standard Procurement Guidelines, to the extent to which such codes and guidelines relate to the Subcontract Work.
- (3) A failure by the Subcontractor to comply with the Supplier Code of Conduct and the Standard Procurement Guidelines, to the extent to which such codes and guidelines relate to the Subcontract Work, will be a material breach of this Subcontract.

**14 Work health and safety**

**14.1 Health and safety compliance**

- (1) The Subcontractor:
  - (a) must comply with all relevant Safety Legislation and Safety Requirements;
  - (b) must establish and maintain a work procedure that ensures workplace safety on the Site (**Site Safety Plan**) and provide a copy of the Site Safety Plan to the Contractor;
  - (c) warrants that it is familiar with and has the capability and resources to comply with all relevant Safety Legislation and Safety Requirements;
  - (d) must perform all relevant functions and fulfil all relevant duties under all relevant Safety Legislation of an employer or otherwise applicable to the role of the Subcontractor; and
  - (e) must ensure (and must ensure that all subcontractors engaged to perform work on its behalf) at all times exercise all necessary precautions for the health and safety of all persons including its employees, all Subcontractor's employees, the Contractor's employees, the Principal's employees and members of the public who may be affected by any of the Subcontract Works.

**14.2 Contractor's health and safety policies and procedures**

The Subcontractor must (and must ensure that all workers and subcontractors engaged to perform work on its behalf) inform itself of all work health and safety policies, procedures, Site safety rules or measures implemented or adopted by the Contractor or the Principal.



#### 14.3 Consultation, co-operation and co-ordination

The Subcontractor must, so far as is reasonably practicable, 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:

- (1) so that relevant information about health and safety matters, issues, hazards or risks can be shared and discussed;
- (2) to allow all parties to be involved in any decision making process concerning health and safety matters, issues or risks;
- (3) to achieve effective co-ordination of activities to ensure optimal health and safety risk management; and
- (4) to enable the Contractor and the Subcontractor and other relevant parties to comply with their respective obligations under all relevant Safety Legislation.

#### 14.4 Subcontractor's reporting obligations

The Subcontractor must:

- (1) immediately notify the Contractor of any accident, injury, near-miss, property or environmental damage which occurs during the carrying out of or is associated with any part of the Subcontract Works;
- (2) in the event an accident, injury, near-miss, property or environmental damage constitutes an incident which requires notification as required by the Safety Legislation, the Subcontractor must immediately provide the Contractor with all information necessary to allow the Contractor to report the incident;
- (3) immediately notify the Contractor of any notice or order issued under the Safety Legislation, and provide evidence of the actions taken to comply with the notice or order, evidence of satisfaction or otherwise of the action taken and confirmation that the notice or order has been lifted;
- (4) within 2 days of any such incident, provide a written report to the Contractor, and when new information becomes available, provide an updated written report, containing complete details of the incident, including the result of any investigation and any recommendation or strategy for prevention of a recurrence;
- (5) 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 carry out any part of the Subcontract Works in a manner that is safe and without any risk to health; and
- (6) maintain records and make reports concerning the health, safety and welfare of people, and damage to property, as the Contractor's Representative reasonably requires.

### 15 Environmental protection

#### 15.1 Compliance

- (1) The Subcontractor must comply with all Laws in respect of environmental matters and the protection or preservation of the environment including all state and federal legislation and codes of practice which apply to the Subcontract Works or the Site.
- (2) The Subcontractor must do everything possible to protect and preserve the environment from harm or damage arising from or in connection with the carrying out of the Subcontract Works and is responsible for all such harm or damage to the extent caused or contributed to by the Subcontractor or the Subcontract Works.

#### 15.2 Noise and Vibration

Without limiting the Subcontractor's obligation to comply with all Laws including all state and federal legislation and codes of practice, the Subcontractor must take all reasonable steps to minimise vibration and noise arising from the Subcontract Works.

### 16 Intellectual property rights

#### 16.1 Intellectual property rights granted to the Contractor

The Subcontractor agrees that all present and future copyright and other Intellectual Property Rights of the Subcontractor in all drawings, reports, specifications, calculations, documents and other material provided or prepared by the Subcontractor or its Personnel in connection with the Subcontract Works (the **Materials**), vests in the Contractor.

#### 16.2 Moral rights

- (1) The term "author" in this clause 16.2 is to be interpreted as bearing the same meaning as under the *Copyright Act 1968* (Cth).
- (2) The Subcontractor must ensure that no person will make any claim under Part IX of the *Copyright Act 1968* (Cth) arising out of or connected with the Materials.
- (3) The Subcontractor must obtain a written consent that operates for the benefit of the Authorised Persons, from each author of the Materials to the fullest extent validly permitted by Part IX of the *Copyright Act 1968* (Cth), genuinely consenting to the doing of any acts or omissions that would, except for the giving of the consent, constitute a breach of the author's rights under Part IX of the *Copyright Act 1968* (Cth), prior to that author commencing work on any Materials.
- (4) The Subcontractor must deliver to the Contractor's Representative any consents obtained by the Subcontractor under this clause 16.2 within 5 Business Days of a request being made to that effect by the Contractor's Representative.

**16.3 Use of the Subcontract Documents**

The Contractor licences the Subcontractor and any secondary subcontractors approved under this Subcontract to use the Materials and the Subcontract Documents for the purpose of executing the Subcontract Works.

**17 Time**

**17.1 Practical Completion**

The Subcontractor must achieve Practical Completion by the Date for Practical Completion.

**17.2 Subcontractor's Program**

- (1) If directed by the Contractor, the Subcontractor must supply to the Contractor's Representative a program (native editable format in MS Project or Primavera) for the Subcontract Works no later than 5 Business Days before commencement of any work or by such other time directed by the Contractor's Representative.
- (2) The Subcontractor's program must be developed from and consistent with the Construction Program.
- (3) The Subcontractor must not depart from the program for the Subcontract Works supplied under clause 17.2(1) and/or the Construction Program (as applicable) without reasonable cause.
- (4) The Contractor's Representative may at any time direct the Subcontractor to supply an updated program. The Subcontractor must within the time stated in the direction supply a further updated program which must identify the changes made to the previous program.
- (5) The supply of a program (or of an updated program) or any review, comment or approval of it (or failure to do so) by the Contractor's Representative does not:
  - (a) relieve the Subcontractor from, or alter any of its obligations under, this Subcontract including the obligation not to depart, without reasonable cause, from an earlier program; or
  - (b) entitle the Subcontractor to make any Claim.
- (6) The Subcontractor's program (or any updated program) and the Construction Program forms part of this Subcontract.

**17.3 Contents of the program**

Each program provided by the Subcontractor under clause 17.2 must include:

- (1) the date of commencement and the Date for Practical Completion;
- (2) the sequence and timing of each component of the Subcontract Works, including a critical path network analysis in the form of a time scaled bar chart;
- (3) the dates when the Subcontractor is required to provide any information or materials in connection with the Subcontract Works; and
- (4) all other information reasonably required by the Contractor's Representative.

**17.4 Order and timing of Subcontract Works**

- (1) The Contractor's Representative may direct the Subcontractor to re-sequence, reschedule, recover or adjust activities, or postpone the Subcontract Works and the Subcontract Sum is deemed to include allowance for the Subcontractor's cost of compliance with any such direction.
- (2) The Contractor's Representative may direct the Subcontractor to accelerate the Subcontract Works.

**17.5 Suspension**

- (1) The Contractor's Representative may at any time and for any reason suspend the whole or any part of the Subcontract Works by written notice to the Subcontractor. If the Contractor's Representative does so, the Subcontractor must not recommence work on the whole or on the relevant part of the Subcontract Works until the Contractor's Representative, directs the Subcontractor to do so in writing.
- (2) Any cost incurred by the Subcontractor due to a suspension under this clause 17.5 is to be borne by the Subcontractor.

**17.6 Contractor's Representative may extend**

- (1) At any time, in its absolute discretion and without being under any obligation to do so, the Contractor's Representative may, under this clause 17.6, extend the Date for Practical Completion. The Contractor's Representative is not under any circumstances obliged to exercise this discretion reasonably, fairly, or for the benefit of the Subcontractor.
- (2) Any extension to the Date for Practical Completion granted in accordance with clause 17.6(1) will not entitle the Subcontractor to any delay or disruption costs.

**18 Practical Completion**

**18.1 Notice**

The Subcontractor must notify the Contractor's Representative in writing when it considers it has achieved Practical Completion.

**18.2 Requirements**

The achievement of Practical Completion requires, in addition to any other requirement of this Subcontract, compliance with the following:



- (1) the Subcontract Works (including equipment, plant services and installation) have been demonstrated and tested to the satisfaction of the Contractor's Representative to perform as required by this Subcontract;
- (2) the Subcontractor has provided to the Contractor's Representative all warranties, guarantees and manuals and drawings required under this Subcontract (including an executed version of Schedule 7) or reasonably requested by the Contractor's Representative, in a format acceptable to the Contractor's Representative, and any other warranties which are available from suppliers and manufacturers for the equipment, plant or materials used in or provided for the Subcontract Works;
- (3) the Subcontractor has:
  - (a) provided all necessary information for the operation and maintenance of the Subcontract Works;
  - (b) removed all rubbish, plant and surplus material from the Site, other than plant and equipment required for the carrying out of the Subcontractor's obligations in the Defects Liability Period; and
  - (c) procured all certificates and approvals from all necessary authorities as required by this Subcontract;
- (4) the Subcontractor has complied with any requirements stated in Item 21; and
- (5) the Contractor has achieved the stage equivalent to practical completion under the Head Contract.

### 18.3 Practical Completion

When the Contractor's Representative is of the opinion that the Subcontract Works have achieved Practical Completion and that the Subcontractor has complied with all other relevant obligations, the Contractor's Representative must certify Practical Completion by issuing a certificate to that effect to the Subcontractor.

### 18.4 Liquidated damages

- (1) If the Date of Practical Completion is not achieved by the Date for Practical Completion, the Subcontractor must pay the amount for liquidated damages at the rate set out in Item 22 for every day after the Date for Practical Completion until and including the earlier of:
  - (a) the Date of Practical Completion; or
  - (b) the date that this Subcontract is terminated.
- (2) The parties agree that the liquidated damages payable under this clause 18.4 is a fair, reasonable and genuine pre-estimate of the loss or damage the Contractor is likely to suffer and incur as a result of the breach referred to in clause 18.4 and does not constitute a penalty.
- (3) The liability of the Subcontractor under this clause 18.4 is not and is not deemed to be inclusive of, nor does it in any way limit or reduce, any amount for which the Subcontractor is liable under any indemnity under this Subcontract (including in respect of any liability the Contractor has to the Principal).
- (4) If liquidated damages are found to be void, voidable, or unenforceable on any basis so that the Contractor is not entitled to claim liquidated damages for the Subcontractor's failure to reach Practical Completion by the Date for Practical Completion, the Contractor is entitled to claim general law damages if the Subcontractor fails to reach Practical Completion by the Date for Practical Completion.

### 18.5 Separable portions

- (1) If any part of the Subcontract Works has reached a stage equivalent to Practical Completion, the Contractor's Representative may determine that such part of the Subcontract Works becomes a separable portion.
- (2) The definitions of Practical Completion, Defects Liability Period, Date for Practical Completion and Date of Practical Completion and clauses 17, 18 and 19 apply separately to each separable portion.
- (3) In this clause 18.5, references to the Subcontract Works mean so much of the Subcontract Works as is comprised in the relevant separable portion.

## 19 Defects Liability Period

### 19.1 Rectification up to the end of the Defects Liability Period

- (1) The Subcontractor must promptly (and in any event immediately commence to) rectify any Defect that is found to exist in the Subcontract Works at, or prior to, the Date of Practical Completion or at any time during the Defects Liability Period.
- (2) The Subcontractor must, when directed by the Contractor's Representative to do so, rectify any Defect and such rectification is at the Subcontractor's risk and cost and the Subcontractor will have no Claim in respect of that direction. The direction may, without limitation, require the Subcontractor to remove material from the Site, demolish work, reconstruct, replace or correct the material or Subcontract Works. The Contractor's Representative may direct the times within which the Subcontractor must commence and complete rectification of a Defect. The Subcontractor must notify the Contractor's Representative when rectification of a Defect has been completed.

### 19.2 Rectification of warranty items

Without limiting the Subcontractor's obligations under clause 19.1 or otherwise under this Subcontract, within the warranty period stated in Schedule 7, the Subcontractor must rectify any Defect (and any damage caused by that Defect) arising in any warranty item listed in Schedule 7 within 5 Business Days of a request by the Contractor to do so or such other period directed by the Contractor.

**19.3 Contractor's Representative may fix further Defects Liability Period**

The Contractor's Representative may fix a further Defects Liability Period in respect of work to be rectified under clause 19.1 or 19.2 which is effective for a period specified by the Contractor's Representative but such a period must not exceed any defects liability period or further defects liability period required under the Head Contract in respect of such rectification work.

**19.4 Defects rectified by others**

If the Subcontractor fails to rectify any Defect in accordance with clause 19.1 and/or 19.2, the Contractor's Representative may:

- (1) have the Defect rectified by others (including the Principal) and the Contractor may recover all costs of so doing (including of the Principal so doing) as a debt due from the Subcontractor to the Contractor; or
- (2) accept the Defect and recover its assessment of any consequent reduction in value of the Subcontract Works or claim upon the Contractor by the Principal as a debt due from the Subcontractor to the Contractor.

**20 Variations**

**20.1 Variations**

- (1) The Contractor's Representative may direct a Variation by notice in writing to the Subcontractor. The Subcontractor must commence performing any Variation directed by the Contractor's Representative promptly. Any Variation performed by the Subcontractor will be priced in accordance with clause 20.2.
- (2) If the Subcontractor considers that any direction that is not stated to be a Variation, is nevertheless a Variation, the Subcontractor must notify the Contractor's Representative in writing within 2 Business Days of the direction and before commencing the work the subject of the direction.
- (3) The Subcontractor has no Claim for a Variation:
  - (a) if the Subcontractor fails to strictly comply with the notice requirements in clause 20.1(2);
  - (b) if the Subcontractor undertakes works prior to receipt of Variation directed in writing; or
  - (c) where a change to Subcontract Works is required as a result of any error, Defect or issue of Buildability (including the manner in which the Subcontractor has interpreted the Subcontract Documents).

**20.2 Valuation of Variations**

- (1) Variations will be valued as follows:
  - (a) agreement of the parties; or
  - (b) failing agreement under clause 20.2(1)(a) by the Contractor applying reasonable rates and prices (excluding any time related costs or allowances).
- (2) Subject to clauses 20.1(3) and 20.2(3), the value of any Variation must be added to or deducted from the Subcontract Sum.
- (3) Despite clause 20.2(1), if a direction to carry out a Variation under this Subcontract is the result of a direction to the Contractor under the Head Contract, to the extent permitted by law, the Subcontractor is not entitled to be paid for that Variation any amount which is greater than the amount to which the Contractor is entitled to be paid for that Variation under the Head Contract.

**20.3 Omissions**

If any part of the Subcontract Works is reduced or omitted by a Variation, the Contractor may retain or arrange for others to carry out the reduced or omitted parts of the Subcontract Works. Nothing in this clause 20.3 constitutes grounds to allege that the Contractor has wrongly repudiated the Subcontract.

**21 Payment**

**21.1 Payapps**

- (1) The Subcontractor agrees and acknowledges that:
  - (a) Payapps will be utilised for the making and assessment of payment claims;
  - (b) the Subcontractor will do all things reasonably required to implement Payapps as the system for the making and assessment of payment claims for the Subcontract;
  - (c) the Subcontractor will have no Claim against the Contractor in relation to Payapps or the use of it;
  - (d) the Subcontractor must pay the monthly subscription to Payapps for the duration of the Subcontract Works; and
- (2) a progress certificate or payment schedule provided to the Subcontractor via Payapps is a valid payment schedule as defined in the Security of Payment Act.

**21.2 The Subcontract Sum**

- (1) Subject to the performance by the Subcontractor of its obligations under this Subcontract, the Contractor must pay to the Subcontractor the Subcontract Sum as adjusted in accordance with this Subcontract.
- (2) The Subcontractor agrees that the Subcontract Sum:

- (a) includes all costs, expenses, fees and charges incurred by the Subcontractor in performing all its obligations under this Subcontract; and
- (b) is not subject to any rise and fall, foreign exchange adjustment or any other adjustment except to the extent expressly provided by this Subcontract.

**21.3 Timing of Progress claims**

- (1) The Subcontractor may submit a progress claim to the Contractor's Representative using Payapps at monthly intervals on the day of the month stated in Item 23, in respect of work performed by the Subcontractor up to the end of the relevant month.
- (2) If a progress claim is submitted early then it is deemed to be submitted on the day of the month stated in Item 23, and assessed accordingly. If a progress claim (including a payment claim) is submitted after the day of the month stated in Item 23, then it is deemed to be submitted on the day of the month stated in Item 23 of the following month.

**21.4 Content of progress claims**

In each progress claim the Subcontractor must include:

- (1) the Subcontractor's opinion as to the value of the work performed by the Subcontractor to the end of the relevant month;
- (2) the value of any Variations approved in writing by the Contractor (in accordance with clause 20);
- (3) sufficiently detailed evidence to enable the Contractor's Representative to assess the claim, including break ups of areas of the works, labour, materials and equipment when requested by the Contractor's Representative; and
- (4) a completed statutory declaration contained in Schedule 8.

**21.5 Payment schedule**

- (1) Within 10 Business Days of receipt of a progress claim validly submitted under clause 21.3, the Contractor's Representative must assess the progress claim and provide to the Subcontractor a payment schedule via Payapps, identifying the progress claim to which the payment schedule relates and certifying the amount the Contractor's Representative reasonably considers is due to the Subcontractor or the Contractor as the case may be. If the amount is more or less than the amount claimed by the Subcontractor, the Contractor's Representative must set out why and the reasons for the difference and if it is less because the Contractor is withholding payment for any reason, the Contractor's reasons for withholding payment.
- (2) The Contractor's Representative may allow in any payment schedule, adjustment for amounts paid under this Subcontract by the Contractor, and amounts that otherwise may be retained, deducted or claimed by the Contractor from the Subcontractor (whether or not there has been a final determination as to the amount claimed or the amount claimed is disputed) under this Subcontract.
- (3) Upon issue of a payment schedule the Subcontractor must within 2 Business Days and as a pre-condition to payment, issue a corresponding tax invoice to the Contractor for the value nominated in the payment schedule unless the Contractor has elected to issue a recipient created tax invoice for that amount.
- (4) The payment schedule issued under clause 21.5(1) will be deemed to be a payment schedule served under the Security of Payment Act, unless the Contractor serves on the Subcontractor a payment schedule on its own within the time prescribed under the Security of Payment Act.

**21.6 Progress payments**

Subject to any rights to set off under this Subcontract and on the satisfaction of the pre-conditions to payment set out in clause 21.5(3), the Contractor must pay the Subcontractor the amount certified for payment to the Subcontractor in the payment schedule provided by the Contractor's Representative within 30 Business Days of receipt of a progress claim validly submitted under clause 21.3.

**21.7 Final Progress Claim**

- (1) Within 20 Business Days of the later of the completion by the Subcontractor of all notified Defects and the expiry of the Defects Liability Period, the Subcontractor must submit to the Contractor's Representative a final progress claim endorsed "Final Progress Claim".
- (2) The Final Progress Claim must state all money which the Subcontractor considers to be due to it from the Contractor in connection with this Subcontract and the Subcontract Works.
- (3) The date determined in accordance with clause 21.7(1) is the 'reference date' for the purpose of the Security of Payment Act.

**21.8 Final payment schedule**

- (1) Within 10 Business Days of the receipt of the Subcontractor's Final Progress Claim, the Contractor's Representative must assess the Final Progress Claim and issue a final payment schedule to the Contractor and the Subcontractor identifying the progress claim to which the payment schedule relates and certifying the final payment amount payable by the Contractor to the Subcontractor or by the Subcontractor to the Contractor, as the case may be.
- (2) The Contractor's Representative may allow in the final payment schedule adjustment for amounts paid under this Subcontract and amounts that otherwise may be retained, deducted or claimed by the Contractor from the Subcontractor (whether or not there has previously been a final determination as to the amount claimed or the amount claimed is disputed) under this Subcontract.
- (3) Upon issue of the final payment schedule the Subcontractor must within 2 Business Days and as a pre-condition to payment:
  - (a) issue a corresponding tax invoice to the Contractor for the value nominated in the final payment schedule (if a payment is due to the Subcontractor) unless the Contractor has elected to issue a recipient created tax invoice for that amount; and

- (b) provide to the Contractor an executed Deed of Final Release in the form set out in Schedule 6.

**21.9 Final payment**

- (1) Subject to any rights to set off under this Subcontract and on the satisfaction of the pre-conditions to payment set out in clause 21.8(3), the Contractor must pay to the Subcontractor the amount certified in the final payment schedule within 30 Business Days after the progress claim is submitted by the Subcontractor.
- (2) If the final payment schedule certifies an amount due from the Subcontractor to the Contractor, the Subcontractor must pay the Contractor the amount certified in the final payment schedule on the first Business Day of the month after the Contractor issues the final payment schedule.

**21.10 Effect of payment**

Any payment made by the Contractor to the Subcontractor is deemed to be a payment on account only and is not evidence of the value of the work (excepted as provided under clause 21.8) or that the work has been satisfactorily completed.

**21.11 Set off**

Without limiting the Contractor's other rights and remedies under this Subcontract or otherwise, the Contractor may at any time deduct or set off from any retention monies provided by the Subcontractor and/or moneys otherwise due to the Subcontractor (including from an amount certified in a payment schedule) any money due or claimed to be due from the Subcontractor to the Contractor (including liquidated damages under clause 18.4) whether under this Subcontract or otherwise and any losses, costs, expenses and damages suffered or incurred by the Contractor (including damages for breach of contract at law) in respect of which the Subcontractor is or may be liable.

**21.12 Interest**

Interest at the Default Rate will be payable on any amount due and payable under this Subcontract from the date of default in payment.

**22 Default and termination**

**22.1 Notice of Subcontractor Default**

If in the opinion of the Contractor, the Subcontractor commits a substantial breach of this Subcontract then, without limiting any other right it may have, the Contractor may by notice in writing serve upon the Subcontractor a notice entitled "Notice of Subcontractor Default". Upon giving a Notice of Subcontractor Default, the Contractor may suspend payments to the Subcontractor until the substantial breach is remedied.

**22.2 Contents of Notice of Subcontractor Default**

A Notice of Subcontractor Default given under clause 22.1 must:

- (1) state that it is given under clause 22.1;
- (2) identify and particularise the substantial breach complained of; and
- (3) specify a time which is at least 7 days from the date the Notice of Subcontractor Default is given within which the Subcontractor is either to remedy the substantial breach or to show cause to the Contractor's satisfaction why the Contractor ought not exercise its rights under clause 22.3.

**22.3 Failure by Subcontractor to remedy or show cause**

- (1) If the Subcontractor fails either to remedy the substantial breach or to show cause to the Contractor's satisfaction why the Contractor ought not exercise its rights under this clause 22.3, the Contractor may:
- (a) by notice in writing to the Subcontractor engage others to, or itself, carry out any part or the whole of the remaining Subcontract Works; or
- (b) terminate this Subcontract (including after first exercising its rights to engage others to, or itself, carry out any part or the whole of the remaining Subcontract Works).
- (2) If the Contractor engages others to carry out, or itself carries out, any part or the whole of the remaining Subcontract Works, the Contractor's Representative must determine the cost so incurred by the Contractor and any other loss or damage sustained by the Contractor as a consequence and the amount determined constitutes a debt due and owing by the Subcontractor to the Contractor.
- (3) If the Contractor terminates this Subcontract it has the same entitlements and the Subcontractor has the same liabilities as each would at law, had the Subcontractor repudiated this Subcontract and the Contractor terminated this Subcontract by acceptance of the Subcontractor's repudiation.

**22.4 Substantial breaches**

For the purposes of clause 22.1, a substantial breach by the Subcontractor includes (but is not limited to):

- (1) failure to proceed in accordance with the current approved Subcontractor's program and/or the Contractor's Program (as applicable) and/or with due expedition and without delay (regardless of whether or not the Date for Practical Completion has passed);
- (2) failure to use the materials or standards of workmanship required by this Subcontract;
- (3) failure to provide evidence of insurances required by this Subcontract;
- (4) failure to comply with any direction of the Contractor's Representative issued under a provision of this Subcontract;
- (5) failure to comply with any of the health and safety requirements identified in clause 14;

- (6) failure to maintain any licence or approval required of the Subcontractor for the performance of the Subcontract Works;
- (7) any act or omission by the Subcontractor that results or may result in the Contractor being in breach of the Head Contract;
- (8) failure to comply with clause 8.2(1); and
- (9) failure to comply with clause 14A

**22.5 Subcontractor unable or unwilling to complete**

If the Subcontractor advises the Contractor that the Subcontractor is unable or unwilling to complete performance of this Subcontract, the Contractor may immediately (and without serving upon the Subcontractor a Notice of Subcontractor Default) exercise its rights under clause 22.3 to engage others, or itself, carry out any part or the whole of the remaining Subcontract Works or terminate this Subcontract (including after first exercising its rights to engage others to, or itself, carry out any part or the whole of the remaining Subcontract Works).

**22.6 Procedure upon termination or taking work out of hands**

Despite any other provision of this Subcontract, if the Contractor terminates this Subcontract or engages others to carry out or itself carries out any part or the whole of the remaining Subcontract Works (including by way of Variation), the Contractor may without payment of compensation to the Subcontractor:

- (1) take possession of all documents, information and the like in the Subcontractor's possession which is connected with the Subcontract Works and reasonably required by the Contractor to facilitate completion of the Subcontract Works;
- (2) take an assignment of the Subcontractor's rights and benefits under any secondary subcontracts including any warranties and guarantees. The Subcontractor must do all things necessary to effect such an assignment; and
- (3) take possession of such plant, equipment and other things on or about the Site that are owned by the Subcontractor and are reasonably required by the Contractor to facilitate completion of the Subcontract Works. The Contractor must return any plant, equipment and other things which are surplus to the Subcontractor on completion of the work, subject to the Subcontractor satisfying the debt to the Contractor as determined under clause 22.3(2).

**22.7 Contractor's default**

If the Contractor fails to pay an amount certified as payable under clause 21.6 of this Subcontract, then without limiting any other right it may have, the Subcontractor may by notice in writing serve upon the Contractor a notice entitled "Notice of Contractor Default".

**22.8 Contents of Notice of Contractor Default**

A Notice of Contractor Default given under clause 22.7 must:

- (1) state that it is given under clause 22.7;
- (2) identify and particularise the amount certified as payable under clause 21.6 but not paid; and
- (3) specify a time which is at least 5 Business Days from the date the Notice of Contractor Default is given within which the Contractor must either:
  - (a) make payment of the amount;
  - (b) compromise the claim of the Subcontractor to the Subcontractor's satisfaction; or
  - (c) identify the basis on which it is entitled to refrain from paying the amount certified.

**22.9 Failure by Contractor to make payment or compromise claim**

- (1) If the Subcontractor is entitled to serve a Notice of Contractor Default and having been served with a valid Notice of Contractor Default, the Contractor fails within the time specified either to:
  - (a) pay the amount certified as payable;
  - (b) compromise the claim to the satisfaction of the Subcontractor (acting reasonably); or
  - (c) identify any basis on which it is entitled to refrain from paying the amount certified,
 the Subcontractor may by notice in writing to the Contractor suspend the Subcontract Works.
- (2) If the Contractor fails to do one of the things referred to in clause 22.9(1)(a) to (c) within 30 days of the Subcontractor suspending the Subcontract Works under clause 22.9(1), the Subcontractor may by notice in writing to the Contractor terminate this Subcontract.
- (3) If the Subcontractor validly terminates this Subcontract under clause 22.9(2) the Subcontractor is entitled to be paid:
  - (a) any outstanding amounts due to the Subcontractor under the payment schedule;
  - (b) an amount for the value of work done in the period between when the last progress claim was submitted and the date that this Subcontract was terminated, as determined by the Contractor's Representative in accordance with this Subcontract;
  - (c) the cost of materials reasonably ordered by the Subcontractor for the Subcontract Works, which the Subcontractor is liable to accept, but only if the materials become the property of the Contractor upon payment as determined by the Contractor's Representative;

- (d) the reasonable cost of removal of plant and equipment as determined by the Contractor's Representative; and
  - (e) all Security to which the Contractor is not otherwise entitled.
- (4) The Subcontractor agrees that its entitlements under clause 22.9(3):
- (a) does not include any entitlement to Claim for:
    - (i) loss of revenue, loss of profit or any other indirect losses; or
    - (ii) damages in connection with this Subcontract or its termination; and
  - (b) are the Subcontractor's full compensation for all work performed under this Subcontract and for any Claims of the Subcontractor arising out of or in connection with this Subcontract or its termination under clauses 22.9, 22.11 or 22.12.

#### 22.10 **Insolvency**

- (1) Without prejudice to any other right either party may have, the Contractor may terminate this Subcontract by notice in writing upon the date stated in the notice if the Subcontractor is subject to an Insolvency Event.
- (2) Despite any other provision of this Subcontract, from the date the Contractor is entitled to terminate this Subcontract under clause 22.10(1):
  - (a) the Contractor is deemed to have become entitled to recourse to all retention monies still held by the Contractor; and
  - (b) the Subcontractor has no entitlement to (or to make any Claim in respect of) and the Contractor has no obligation to return to the Subcontractor any retention monies still held by the Contractor.
- (3) The Contractor is not required to make any payment to the Subcontractor following an Insolvency Event of the Subcontractor.

#### 22.11 **Termination for convenience**

- (1) Without limiting any other right available to the Contractor under this Subcontract or at law, the Contractor may at any time and for whatever reason (including its convenience) terminate this Subcontract by Notice in writing to the Subcontractor.
- (2) If the Contractor terminates this Subcontract under clause 22.11(1), the Subcontractor's entitlements are limited to those set out in clause 22.9(3).

#### 22.12 **Termination of the Head Contract**

- (1) Without limiting any other right available to the Contractor under this Subcontract or at law, if the Head Contract is terminated at any time for any reason, the Contractor may terminate this Subcontract by notice in writing to the Subcontractor.
- (2) If the Contractor terminates this Subcontract under clause 22.12(1), the Subcontractor's entitlements are limited to those set out in clause 22.9(3) and, notwithstanding clause 22.9(3), the Subcontractor is not entitled to be paid any amount which is greater than the amount to which the Contractor is entitled to be paid upon termination under the Head Contract for the Works the subject of this Subcontract.

### 23 **Dispute resolution**

#### 23.1 **Notice**

- (1) If a dispute or difference arises between the Contractor and Subcontractor out of or in connection with the Subcontract Works or this Subcontract, either party may give the other a written notice specifying the dispute or difference. The notice must specify in reasonable detail the nature of the dispute or difference and the notice must specify in reasonable detail the legal basis of any Claim made by the party serving the notice.
- (2) Neither party may commence proceedings (other than for injunctive or other urgent relief) in respect of any dispute or difference between them, unless a notice under clause 23.1(1) has been served and the procedures in clause 23.2 have been complied with.

#### 23.2 **Meetings**

- (1) Within 5 Business Days after receiving a notice of dispute under clause 23.1(1), the parties must confer at least once to resolve the dispute. At every such conference each party must be represented by a person having authority to agree to such resolution of the dispute.
- (2) If a dispute or difference notified under clause 23.1(1) has not been settled within 10 Business Days of the date of that notice, the dispute will be referred to mediation.
- (3) Each party must undertake genuine and good faith negotiations on a without prejudice basis with a view to resolving the dispute or difference.
- (4) If the dispute or difference involves or may involve the Principal, at the option of the Contractor and if the Principal agrees, the Principal may participate in any meeting held under this clause 23.2.

#### 23.3 **Mediation**

- (1) If the dispute is referred to mediation, a mediator to be agreed between the parties or failing agreement within 5 Business Days of the referral, by a mediator chosen by the Chair of the Resolution Institute or the Chair's nominee. The Resolution Institute Mediation Rules (current at the Execution Date) as amended apply to the mediation, except where they conflict with this clause 23.3.
- (2) If the dispute is referred to mediation, the parties agree that:



- (a) each party shall bear its respective costs of the mediation save that the mediator's fees, fees for mediation rooms and costs of shared equipment, facilities and services of the mediation shall be shared equally between the parties;
- (b) the venue for the mediation shall be agreed between the parties or failing such agreement, shall be nominated by the mediator appointed;
- (c) each party may be legally represented in the mediation if they so wish;
- (d) complete confidentiality will be preserved in respect of the mediation and any documents and information used at or in relation to the mediation; and
- (e) mediation proceedings, including any documents and information used at or in relation to the mediation, must not be used as evidence in any subsequent legal proceedings or litigation and the parties agree not to compel the mediator to give evidence as to any matter in relation to the mediation in any legal proceedings.

#### 23.4 **Litigation**

- (1) Subject to clause 23.4(2), neither the Contractor nor the Subcontractor may initiate any litigation out of or in connection with the Subcontract Works or this Subcontract unless they have first complied with clauses 23.1 to 23.3 in relation to the dispute or difference which is the subject of the litigation.
- (2) Clause 23.4(1) does not prevent either party from instituting proceedings to enforce payment due under clause 21 or to seek urgent injunctive or declaratory relief in respect of a dispute or difference arising under this Subcontract.

#### 23.5 **Adjudication under the Security of Payment Act**

If the Subcontractor applies for adjudication under the Security of Payment Act, then the parties agree that the authorised nominating authority in respect of such an adjudication application is the authorised nominating authority or one of the authorised nominating authorities stated in Item 25.

#### 23.6 **Linked Claims**

- (1) Notwithstanding any other provision of this Subcontract, in respect of a Linked Claim, the Subcontractor:
  - (a) will not have any entitlement from the Contractor for any amount or any other relief or remedy greater than the amount payable or relief or remedy allowable to the Contractor under the Head Contract in respect of the Linked Claim; and
  - (b) otherwise releases the Contractor from any Linked Claim.
- (2) To the extent requested by the Contractor, the Subcontractor must fully co-operate with and assist the Contractor with pursuing the Linked Claim and prepare and provide the Contractor with all information and documents necessary for the Contractor to pursue the Linked Claim.

#### 23.7 **Continued performance**

Despite the existence of a dispute or difference, the Contractor and the Subcontractor must continue to perform this Subcontract.

### 24 **Goods and services tax**

#### 24.1 In this clause 24.1:

- (1) **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;
- (2) **Supplies** means the Subcontract Works; and
- (3) words or expressions used in this clause 24 which have a particular meaning in the **GST law** (as defined in the GST Act), and any applicable legislative determinations and Australian Taxation Office public rulings have the same meaning, unless the context otherwise requires.

24.2 The Supplies made by the Subcontractor under this Agreement are taxable supplies and unless GST is expressly included, the consideration to be paid or provided under any other clause of this Agreement for any supply made under or in connection with this Agreement does not include GST.

24.3 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.

24.4 To the extent that any consideration payable to a party under this Agreement is determined by reference to a cost incurred by a party, or to a price, value, sale, revenue or similar amount, the GST exclusive amount of that cost, price, value, sale, revenue or similar amount must be used.

24.5 The Contractor may elect to issue a recipient created tax invoice for any consideration payable to a party under this Agreement. In such circumstances the Subcontractor will no longer be required to issue a tax invoice to the Contractor under clause 21.5 or 21.8.

### 25 **Security of payment**

#### 25.1 **Service of notices under the Security of Payment Act**

- (1) The Subcontractor must ensure that a copy of any correspondence it gives or arranges to be given to the Contractor in relation to the Security of Payment Act, including a payment claim under the Security of Payment Act, is at the same time given to the Contractor's Representative.

- (2) If the Subcontractor becomes aware that a secondary subcontractor has referred a claim to adjudication under the Security of Payment Act or is entitled to suspend work under the Security of Payment Act, the Subcontractor must immediately give to the Contractor's Representative a copy of all correspondence (including correspondence from any secondary subcontractor) relating to the Security of Payment Act and that suspension.

**26 Confidential Information**

- (1) The Subcontractor must maintain and take all steps necessary to maintain all Confidential Information in strictest confidence.
- (2) Clause 26(1) does not apply to Confidential Information which the Subcontractor proves to the Contractor's reasonable satisfaction:
- (a) is in the public domain (other than by a breach of this clause 26);
  - (b) was obtained from a third party without breach by that third party of any obligation of confidence;
  - (c) was already in the Subcontractor's possession (as evidenced by written records) when provided by or on behalf of the Contractor;
  - (d) is permitted to be disclosed under the express terms of this Subcontract; or
  - (e) is required to be disclosed by Law.
- (3) Subject to clause 6.2, the Subcontractor may disclose Confidential Information to its Personnel, auditors, insurers, financiers or other professional advisors for the purposes of performing the Subcontract Work, seeking professional legal, accounting or tax advice or to defend itself from a claim.
- (4) The Subcontractor must ensure that all persons referred to in clause 26(3) who receive or have access to the Confidential Information observe confidentiality provisions equivalent to those contained in this Subcontract.

**27 Notices**

**27.1 Form of Notice**

- (1) A notice or other communication connected with this Subcontract (**Notice**) has no legal effect unless it is in writing.

**27.2 How to give a Notice and when Notice is received**

- (1) A Notice must be given using one of the methods set out in the table below.
- (2) Subject to clause 27.2(4), a Notice will be treated as having been given to and received by the addressee at the time set out in the table below. However, if that time is after 5pm on a Business Day or is not on a Business Day, then the Notice will be treated as having been given to and received by the addressee at 9am on the next Business Day.

Method of giving Notice	When Notice will be treated as having been given and received
By the Communication Platform	At the time the Communication Platform confirms delivery has been effected to the addressee.
By hand at the address of the addressee set out in this Agreement or last notified in writing.	Upon delivery.
By prepaid priority post from an address in Australia to the address of the addressee set out in this Agreement or last notified in writing.	On the third Business Day (at the address to which it is posted) after posting.
By email to the email address of the addressee set out in this Agreement or last notified in writing.	On the day it is sent.

- (3) A Notice given in a manner provided by clause 27 will be treated as validly given to and received by the addressee even if the addressee has been liquidated or deregistered.
- (4) A Notice under clause 22.1, 22.3, 22.7, 22.9, 22.10, 22.11, 22.12 or 23.1 or any Notice under the Security of Payment Act must be given by the Communication Platform (if used) or given by email. If a Notice is given by any other method, the Subcontractor must also provide a copy of the notice by the Communication Platform (if used) or email on the same day, in accordance with clause 27.2(2).

**28 Proportionate liability**

The Subcontractor indemnifies the Contractor against the difference (if any) between:

- (1) the amount of any loss, damage, cost and expense suffered or incurred by the Contractor for which, but for Part IVAA of the *Wrongs Act 1958* (Vic), the Contractor would otherwise have been entitled to recover from the Subcontractor; and
- (2) the liability of the Subcontractor to the Contractor as determined by any court under Part IVAA of the *Wrongs Act 1958* (Vic).



**29 Personal Property Securities Act**

- (1) A term defined in the PPS Law has the same meaning when used in this clause 29.
- (2) The Contractor may, by notice to the Subcontractor at any time, require the Subcontractor to take all steps, provide all information (including serial numbers) or do any other thing that the Contractor considers necessary or desirable to:
  - (a) ensure that this Subcontract (or any related document) or any security interest arising under it, is enforceable against the Subcontractor or any third party;
  - (b) protect, perfect, record or better secure, or obtain or preserve the priority of, the security position of the Contractor or the Principal under this Subcontract (or any related document); or
  - (c) overcome any defect or adverse effect arising from the PPS Law on the Contractor's or Principal's security position or the rights or obligations of the Contractor under or in connection with this Subcontract or any encumbrance or document contemplated by this Subcontract.
- (3) The Subcontractor must comply with the requirements of a notice under clause 29(2) within the time stated in the notice at the cost of the Subcontractor.
- (4) Subject to any other clause of this Subcontract which expressly permits the disclosure of such information, the parties agree that neither of them will disclose any information of the kind mentioned in section 275(1) of the PPSA. The Subcontractor waives any right it has under section 275(7)(c) of the PPSA to authorise disclosure of such information. This clause 29(4) survives the termination of this Subcontract.
- (5) To the extent permitted by the PPSA, the Contractor has no obligation to give, and the Subcontractor waives any rights to receive, any notice, statement or copies of any documents under the PPSA, including any notice or statement referred to in sections 95, 118, 121(4), 130, 135 or 157 of the PPSA.
- (6) To the extent that Chapter 4 of the PPSA would otherwise apply to enforcement by the Contractor of any security interest in collateral, the parties agree that the following provisions of the PPSA are excluded:
  - (a) to the extent section 115(1) of the PPSA allows them to be excluded: sections 125, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA; and
  - (b) to the extent section 115(7) of the PPSA allows them to be excluded: sections 129(2) and (3), 132, 133(1)(b) (as it relates to the security interest of the Contractor), 134(2), 135, 136(3),(4) and (5).
- (7) To the extent that it is lawful to do so, the Subcontractor waives its right to receive any notice required to be given by the Contractor under the PPSA whether the obligation to give that notice arises on or after the Execution Date.

**30 General**

**30.1 Continuing obligations**

All indemnities and warranties are continuing indemnities and warranties in favour of the Contractor despite any final payment, the completion of the Subcontract Works or the termination of this Subcontract. It is not necessary for the Contractor to incur expense or to make any payment before enforcing a right of indemnity.

**30.2 Amendment to Subcontract**

Except as provided in clause 20, amendment or variation to this Subcontract is not effective unless it is in writing and signed by the parties.

**30.3 Status of Subcontractor**

The Subcontractor is an independent professional person and, in performing the Subcontract Work, is not for any purpose a partner, joint venturer, servant, agent or employee of the Contractor.

**30.4 Reading down and Severability**

- (1) If any provision of this Subcontract is unenforceable, illegal or void or makes this Subcontract or any part of it unenforceable, illegal or void, but would not be unenforceable, illegal or void if it were read down and it is capable of being read down, that provision will be read down accordingly.
- (2) If, notwithstanding 30.4(1) any provision in this Subcontract is still unenforceable, illegal or void or makes this Subcontract or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Subcontract remains in force.

**30.5 Costs and outlays**

Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of the Subcontract.

**30.6 Governing law and jurisdiction**

The Parties accept the laws of the Relevant Jurisdiction as the governing law of this Subcontract and both Parties hereby submit to the non-exclusive jurisdiction of those courts and any court hearing appeals from those courts.

**30.7 Waiver**

The Contractor's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

A waiver is not effective unless it is in writing.

**Schedule 1– Particulars**

Item 1	The Project (clause 1.1)	# Insert name and description of the Project.#
Item 2	Contractor's Representative (clause 1.1)	Name: # insert # Address: # insert # Phone: # insert # Email: # insert #
Item 3	Date for Practical Completion (clause 1.1)	Option 1 The date which is #insert period# working days after the Commencement Date. Option 2 #insert date#
Item 4	Head Contract (clause 1.1)	#description of head contract#
Item 5	Site (clause 1.1)	#site#
Item 6	Principal (clause 1.1)	#Principal's name and ACN/ABN#
Item 7	Subcontract Sum (clause 1.1)	means the lump sum in the amount of \$[insert]
Item 8	Subcontractor's Representative (clause 1.1)	Name: # insert # Address: # insert # Phone: # insert # Email: # insert #
Item 9	Subcontract Works (clause 1.1)	The construction and completion of #work# and associated works as more particularly described or reasonably to be inferred from the Subcontract Documents.
Item 10	Subcontract Documents (clause 1.1)	#insert #
Item 11	Hours and days for access to the Site (clause 3)	Monday to Saturday: 7:00am to 5:30pm (subject to change as directed by the Contractor in writing)
Item 12	Subcontracting (clause 8.2(1))	Only with prior written approval by the Contractor.
Item 13	Required form of Security (clause 9.1 and 9.3)	Cash retention  [insert] % of each progress claim
Item 14	Required amount of Security (clauses 9.3)	5% of the Subcontract Sum.

Item 15	Public liability insurance to be taken out by Subcontractor (clause 11.1)	Level of cover: #insert # Period of insurance: To be effected and maintained from the Execution Date until the date one year after expiry of the last Defects Liability Period.
Item 16	Insurance for temporary works and any plant and equipment supplied by the Subcontractor for use on the Site to be taken out by Subcontractor (clause 11.1)	Yes. As required by the Subcontractor to complete the Subcontract Works.
Item 17	Workers compensation insurance to be taken out by Subcontractor (clause 11.1)	To be taken out by the Subcontractor in accordance with all current Laws.
Item 18	Professional indemnity Insurance to be taken out by Subcontractor (clause 11.1)	<ul style="list-style-type: none"> <li>Level of cover: the professional indemnity insurance policy must have an annual policy limit which is not less than \$#insert#, such limit to be applicable to any one claim and for all claims made in the aggregate annually.</li> <li>Period of insurance: To be effected and maintained until 7 years after issue of the Date of Practical Completion.</li> </ul>
Item 19	Subcontract Works insurance to be taken out by Subcontractor (clause 11.1)	Contract works insurance (including coverage of the Subcontract Works).
Item 20	Approvals not being obtained by the Subcontractor (clause 13.2)	#insert#
Item 21	Additional Practical Completion Requirements (clause 18.2(4))	<p>Additional materials to be supplied and work to be completed include:</p> <ol style="list-style-type: none"> <li>complete submission of quality assurance systems and records for all site activities;</li> <li>completion of all obligations as required by the Subcontract Documents; and</li> <li>completion of all obligations as required to satisfy all relevant completion obligations including in the Head Contract.</li> </ol>
Item 22	Liquidated damages rate (clause 18.4)	<p>#insert# per calendar day</p> <p>(If nothing stated, \$#insert# per calendar day)</p>
Item 23	Subcontractor to submit progress claims (clause 21.3)	The last Business Day of each month.
Item 24	Content to be supplied by the Subcontractor with each progress claim	<ol style="list-style-type: none"> <li>A payment claim in an acceptable format; and</li> <li>Provision of a duly executed Statutory Declaration (clause 21.4(4) and Schedule 8).</li> </ol>
Item 25	Authorised nominating authority for Security of Payment Act (clause 23.5)	<p>Resolution Institute</p> <p>Rialto Adjudications Pty Ltd</p> <p>RICS Dispute Resolution Service</p>
Item 26	Relevant Jurisdiction	Victoria

## Schedule 2 – Special Conditions

**a. Section 1 - Head Contract pass through conditions;**

Unless expressly stated otherwise, the provisions of this Schedule 2 Section 1 are additional to and do not limit, delete, replace or supersede any other provisions of the Subcontract. Any ambiguity, inconsistency or conflict between a provision of this Schedule 2 Section 1 and any other provision of the Subcontract, will be resolved in accordance with clause 6.1 of the General Conditions of the Subcontract;

# to be inserted and completed #

**b. Section 2 - Agreed amendments, additions and deletions to the General Conditions of the Subcontract;**

The following amendments, deletions and additions apply to the General Conditions of this Subcontract.

# to be inserted and completed #

### **Schedule 3 – Scope of Works**

(Clause 1.1)

**a. Section 1 – Scope of Works**

**b. Section 2 – Document Transmittal**

**Schedule 4 – Construction Program**

**Schedule 5 – Deed of Release**

(Clause 9.5)

**To** **MPA Construction Group Pty Limited** (ABN 69 088 793 113) of Level 2, 99 King St, Melbourne VIC 3000 (the **Contractor**)

**Project** The construction of **# description of the Subcontract Works#** as further described in the Subcontract (the **Subcontract Works**)

**Contractor** **MPA Construction Group Pty Limited** (ABN 69 088 793 113) of Level 2, 99 King St, Melbourne VIC 3000 (the **Contractor**)

**Subcontractor** **#Full name of Party#**  
(ACN # Party's ACN (if applicable) #)  
of **#address of Party#** (the **Subcontractor**)

**Head contract** Contract made between the Principal and the Contractor on .....  
(the **Head Contract**)

**Subcontract** Contract made between the Contractor and the Subcontractor on .....  
(the **Subcontract**)

- 1 The Subcontractor agrees that, to the extent permitted by law, except for the amounts specified in this clause 1, the total monies payable or that may in the future become payable under or in any way arising out of or connected with the Subcontract or the Subcontract Works or any other work (**Other Work**) executed by the Subcontractor, its secondary Subcontractors and/or suppliers on or about the site of the Subcontract Works is \$..... (including the retention amount) (**Practical Completion Payment**).
- 2 The Practical Completion Payment does not include the amount for retention of \$.....but in circumstances where the Contractor is entitled to terminate the Subcontract under clause 22.10 of the Subcontract the Subcontractor acknowledges and agrees that the Contractor is entitled to the proceeds of all then held retention and the Subcontractor has no entitlement to have that retention returned.
- 3 The Subcontractor acknowledges and agrees that to the extent permitted by law, payment by the Contractor to the Subcontractor of the Practical Completion Payment is acceptance by the Subcontractor of full and final payment to the Subcontractor of all amounts due and payable at Practical Completion of the whole of the Subcontract Works and any Other Work, except for amounts described in clause 1 above (if any).
- 4 To the extent permitted by law, on and from the date of this Deed, the Subcontractor waives, releases and forever discharges the Contractor from all or any liabilities, claims, actions, demands, suits, proceedings, damages, expenses, costs and the like (whether direct, indirect or consequential, past, present or future, certain or contingent, ascertained or not ascertained) howsoever arising under or in connection with the Subcontract or in any way connected with execution of the Subcontract Works and any Other Work. The Subcontractor indemnifies and keeps indemnified the Contractor from all such liabilities, claims, entitlements, actions, demands, suits, proceedings, damages, expenses, costs and the like, which but for this provision, the Subcontractor may have had or may arise at any time.
- 5 Clause 4 does not apply in respect of the amounts described in clause 1 above (if any).
- 6 The Subcontractor certifies that at Practical Completion of the Subcontract Works:
  - (1) all wages and allowances, including in respect of overtime and loadings, which become due and payable to all persons who have at any time been employed by the Subcontractor on the Subcontract Works have been paid in full;
  - (2) all entitlements which have or should have accrued in respect of all persons who have at any time been employed by the Subcontractor on the Subcontract Works, including in relation to annual leave, personal leave and RDOs, have been properly accounted for in accordance with any applicable legislation and legally binding agreement, award, workplace agreement or workplace policy;
  - (3) all secondary Subcontractors engaged by the Subcontractor on the Subcontract Works and all suppliers to the Subcontractor of plant, equipment and material for the Subcontract Works have been paid in full; and
  - (4) all contributions and payments to any scheme for superannuation, long service leave, redundancy and severance pay or the like as required by legislation and any applicable and legally binding award or workplace agreement have been paid in full.
- 7 Upon signing this release, the Subcontractor hereby agrees and warrants to the Contractor that commencing on the Date of Practical Completion of the Subcontract Works, the Subcontract Works will satisfy the requirements of the Subcontract; the Subcontractor has performed its obligations under the Subcontract in accordance with the Subcontract and all applicable legislative requirements; and the complete Subcontract Works will be fit for their purposes and free from defects and deficiencies.
- 8 All defects, omissions, other faults or instances of non-compliance with the Subcontract Works within the defects liability period and or warranty period stated in clause 19 of the Subcontract will be rectified by the Subcontractor to the reasonable satisfaction of the Contractor within the time stipulated by the Contractor. Where the Subcontractor fails to comply with a direction by the Contractor within the time specified, the Contractor must rectify the defective work and any loss or damage suffered or incurred by the Contractor will be a debt due from the Subcontractor to the Contractor.

Executed as a DEED POLL on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Executed by # Subcontractor# ACN #ACN# in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....  
Director/Company Secretary

.....  
Director

.....  
Name of Director/Company Secretary  
(BLOCK LETTERS)

.....  
Name of Director  
(BLOCK LETTERS)

**Schedule 1 – Variation schedule**

Original Subcontract Sum	\$
Approved Variations	\$
<b>Final agreed Subcontract Sum</b>	\$
<i>less Retention</i>	\$
<i>less Paid to date</i>	\$
<b>Amount due and owing</b>	\$



**Schedule 6 – Deed of Final Release**

(Clause 9.6)

**To** **MPA Construction Group Pty Limited** (ABN 69 088 793 113) of Level 2, 99 King St, Melbourne VIC 3000 (the **Contractor**)

**Project** The construction of **# description of the Subcontract Works#** as further described in the Subcontract (the **Subcontract Works**)

**Contractor** **MPA Construction Group Pty Limited** (ABN 69 088 793 113) of Level 2, 99 King St, Melbourne VIC 3000 (the **Contractor**)

**Subcontractor** **#Full name of Party#**  
(ACN # Party's ACN (if applicable) #)  
of **#address of Party#** (the **Subcontractor**)

**Head contract** Contract made between the Principal and the Contractor on .....  
(the **Head Contract**)

**Subcontract** Contract made between the Contractor and the Subcontractor on .....  
(the **Subcontract**)

- 1 The Subcontractor agrees that, to the extent permitted by law, the total monies payable or that may in the future become payable under or in any way arising out of or connected with the Subcontract or the Subcontract Works or any other work (**Other Work**) executed by the Subcontractor, its secondary Subcontractors and/or suppliers on or about the site of the Subcontract Works is \$..... (**Final Payment**) plus performance security in the amount of \$..... (**Security**).
- 2 The Subcontractor acknowledges and agrees that to the extent permitted by law, payment by the Contractor to the Subcontractor of the Final Payment and release by the Contractor of the Security is acceptance by the Subcontractor of full and final payment to the Subcontractor of all amounts due and payable in connection with the whole of the Subcontract Works and any Other Work.
- 3 To the extent permitted by law, on and from the date of this Deed, the Subcontractor waives, releases and forever discharges the Contractor from all or any liabilities, claims, actions, demands, suits, proceedings, damages, expenses, costs and the like (whether direct, indirect or consequential, past, present or future, certain or contingent, ascertained or not ascertained) howsoever arising under or in connection with the Subcontract or in any way connected with the execution of the Subcontract Works and any Other Work. The Subcontractor indemnifies and keeps indemnified the Contractor from all such liabilities, claims, entitlements, actions, demands, suits, proceedings, damages, expenses, costs and the like, which but for this provision, the Subcontractor may have had or may arise at any time.

Executed as a DEED POLL on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Executed by **# Subcontractor#** ACN **#ACN#** in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....  
Director/Company Secretary

.....  
Director

.....  
Name of Director/Company Secretary  
(BLOCK LETTERS)

.....  
Name of Director  
(BLOCK LETTERS)

**Schedule 1 – Variation schedule**

Original Subcontract Sum	\$
Approved Variations	\$
<b>Final agreed Subcontract Sum</b>	\$
<i>less Retention</i>	\$
<i>less Paid to date</i>	\$
<b>Amount due and owing</b>	\$



**Schedule 7 - Subcontractor Warranties**

**Warranty Schedule**

Without in any limiting this Schedule 7;

1. Each Warranty Period commences from the stage equivalent to practical completion under the Head Contract;
2. Warranties shall anticipate normal commercial maintenance and not require excessively frequent maintenance for the warranty to remain valid;
3. Warranties must not be conditional upon the Subcontractor or warranting party supplying the preventative maintenance;
4. Warranties offered by a supplier shall be supported by a warranty on workmanship by the Subcontractor for the Warranty Period; and

Where a warranty is required under the Subcontract and not listed as a Warranty Item in the table below, the Warranty Period for that Warranty Item shall be a minimum of one year, or further period as required by the Principal under the Head Contract.

Warranty Item	Warranty Period
# Insert #	

**Schedule 8 – Statutory Declaration**

PROJECT: [#Project] (“Project”)

SUBCONTRACTOR: [#Subcontractor entity] (“Subcontractor”)

DATE OF SUBCONTRACT WITH CONTRACTOR: (“Subcontract”)

PERIOD COVERED BY THIS PROGRESS CLAIM: (“Payment Period”)

I, \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_  
(Name) (Address) (Occupation)

, do solemnly and sincerely declare under the *Oaths and Affirmations Act 2018* as follows:

1. all employees and workers who are, or have been engaged, by the Subcontractor on the Project have been paid their full remuneration, allowances and other entitlements for work done in connection with the Subcontract during the Payment Period. All payments have been made in accordance with the applicable award or industrial agreement;
2. all moneys due and owing by the Subcontractor to all contractors, subcontractors, suppliers, consultants and others who have been engaged by the Subcontractor in relation to the Project, have been duly paid in accordance with the *Building and Construction Industry Security of Payment Act 2002* (VIC) or otherwise under the relevant contracts;
3. all workers and others who have been engaged by the Contractor in relation to the Contract have at the date of submitting the payment claim been paid all moneys due and payable to them in respect of their engagement in relation to the Contract;
4. all payroll tax due in respect of employees who performed the work in connection with the Subcontract, as at the date of submitting the payment claim has been paid;
5. the Subcontractor has received a written statement from its subcontractors engaged to perform Work under the Contract in relation to those matters listed above in paragraphs (1) to (4) inclusive and all statements received by the Subcontractor from its subcontractors, and suppliers in connection with the Project were:
  - (i) given to the Subcontractor in its capacity as 'principal contractor' under the *Workers Compensation Act 1958* (VIC), the *Payroll Tax Act 2007* (VIC) and the *Occupational Health and Safety Act 2004* (VIC) ("Acts"); and
  - (ii) given by the subcontractors and suppliers in their capacity as 'subcontractors' under the Acts;
6. all insurance policies as required under the Subcontract remain in force and all insurance premiums have been paid as required by the insurers;
7. all amounts accrued, due and payable, and which have been included in the calculation of previous payments by the Contractor to the Subcontractor, have been duly paid; and
8. I am authorised to make this declaration on behalf of the above named Subcontractor.

I declare that the contents of this statutory declaration are true and correct and I make it knowing that making a statutory declaration that I know to be untrue is an offence.

Declared at \_\_\_\_\_ on \_\_\_\_\_ by \_\_\_\_\_

\_\_\_\_\_  
Name of person making the declaration

\_\_\_\_\_  
Signature of person making the declaration

in the presence of an authorised witness, who states:

I, [name of authorised witness], a [qualification to be authorised witness], a person authorised under section 30(2) of the *Oaths and Affirmations Act 2018* to witness the signing of a statutory declaration.

.....  
Signature of authorised witness

Date:

**Schedule 9 – Supplier Code of Conduct and Standard Procurement Guidelines**

**a.** Supplier Code of Conduct

**b.** Standard Procurement Guidelines