



## **SUBCONTRACT**

**[Insert Project Name]**

**[Insert Head Contractor's Name]**  
(Head Contractor)

**[Insert Subcontractor's Name]**  
(Subcontractor)

**[Insert Subcontract Name]**

**SUBCONTRACT NO.: [Insert Contract No.]**

# Reference Schedule

Item		Details		
1.	Head Contractor's details	Name:		
		ABN:		
2.	Subcontractor's details	Name:		
		ABN:		
3.	Principal's details	Name:		
		ABN:		
4.	Project Details			
5.	Head Contract (Clause 6)		Contract dated [Date of head contract] between the Head Contractor and [Principal] for [Head contract works/project]	
6.	Design Obligations (Clause 5.1(d))	Required?	*[yes / no] *Delete as necessary	
7.	Security (Clause 8)	Amount	*Retention at the amount of 10% of each payment claim up to a maximum of 5% of the Subcontract Sum. <b>OR</b> *2 bank guarantees each in the amount of 2.5% of the Subcontract Sum and in the form reasonably acceptable to the Head Contractor. * Delete as necessary. If nothing selected, bank guarantees are required	
8.	Review of Deliverables (Clause 9)	Review Schedule	<b>Deliverable</b>	<b>Time for Review</b>
9.	Head Contractor's Representative (Clause 11)	Name:		
		Address:		
		Telephone:		
		Email:		
10.	Subcontractor's Representative (Clause 11)	Name:		
		Address:		
		Telephone:		
		Email:		
11.	Subcontracting and Assignment (Clause 12)	Nominated Subcontractors	<b>Name</b>	<b>Scope</b>
12.	Key Personnel (Clause 14)		<b>Name</b>	<b>Role</b>
13.	Management Plan (Clause 16)		<input type="checkbox"/> Health and Safety; <input type="checkbox"/> Cultural Heritage; <input type="checkbox"/> Environmental Management <input type="checkbox"/> Quality Assurance; <input type="checkbox"/> Traffic Management <input type="checkbox"/> Other: (list)	

## Reference Schedule

Item		Details																		
			* If not selected, the plan is not required to address the topic																	
14.	Insurances Required (Clause 25)		<table border="1"> <thead> <tr> <th>Amount</th> <th>Period</th> </tr> </thead> <tbody> <tr> <td>Subcontract Works</td> <td>*Full reinstatement value of the Works OR [insert other] * Delete as necessary</td> <td>From the Date for Commencement until Practical Completion of the Works</td> </tr> <tr> <td>Workers' compensation insurance</td> <td>As required by law in respect of the Subcontractor's employees</td> <td>From the Date for Commencement until the end of the last Defects Liability Period</td> </tr> <tr> <td>Public liability insurance</td> <td>No less than \$20,000,000 in respect of any one occurrence and for an unlimited number of claims</td> <td>From the Date for Commencement until the end of the last Defects Liability Period</td> </tr> <tr> <td>Professional indemnity insurance</td> <td>*[Required / Not required] No less than \$5,000,000 in respect of any one occurrence and for an unlimited number of claims * Delete as necessary ** Note that PI is required if the Subcontractor has Design Obligations</td> <td>*[N/A] or From the Date for Commencement until the date 6 years after the end of the last Defects Liability Period * Delete as necessary</td> </tr> <tr> <td>Third party motor vehicle insurance</td> <td>As required by law for each vehicle used by the Subcontractor in connection with the work under the Subcontract</td> <td>At all times whilst using vehicles in connection with the work under the Subcontract</td> </tr> </tbody> </table>	Amount	Period	Subcontract Works	*Full reinstatement value of the Works OR [insert other] * Delete as necessary	From the Date for Commencement until Practical Completion of the Works	Workers' compensation insurance	As required by law in respect of the Subcontractor's employees	From the Date for Commencement until the end of the last Defects Liability Period	Public liability insurance	No less than \$20,000,000 in respect of any one occurrence and for an unlimited number of claims	From the Date for Commencement until the end of the last Defects Liability Period	Professional indemnity insurance	*[Required / Not required] No less than \$5,000,000 in respect of any one occurrence and for an unlimited number of claims * Delete as necessary ** Note that PI is required if the Subcontractor has Design Obligations	*[N/A] or From the Date for Commencement until the date 6 years after the end of the last Defects Liability Period * Delete as necessary	Third party motor vehicle insurance	As required by law for each vehicle used by the Subcontractor in connection with the work under the Subcontract	At all times whilst using vehicles in connection with the work under the Subcontract
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15.	Site (Clause 26)	Time for giving access	* If nothing stated, 25 Business Days after the date of the Subcontract																	
16.	Timing (Clause 27)	Working Hours: (Clause 27.1(a))	* If nothing stated, 9am to 5pm Monday to Friday																	
		Date for Commencement (Clause 27.1)	*If nothing stated, 25 Business Days after the Subcontract is executed																	
		Date for Practical Completion: (Clause 27.1(d))	*If nothing stated, the Date for Practical Completion as defined under the Head Contract																	
		Other causes of delay for which the Date for Practical Completion will be extended: (Clause 27.5)	*If nothing stated, there are no other causes																	
		Maximum delay costs per day (Clause 27.7)	*If nothing stated, \$500 per day.																	
		Liquidated damages																		

## Reference Schedule

Item		Details		
		(Clause 27.8)	*If nothing stated, \$500 per day.	
17.	<b>Payment Claims: (Clause 29)</b>	Payment claims may be submitted on: (Clause 29.1)	The last day of each month in which work under the Subcontract is carried out up to and including the month in which Practical Completion is achieved.	
		Payment sent to: (Clause 29.1)	[INSERT EMAIL ADDRESS OR PHYSICAL ADDRESS]	
18.	<b>Defects and other non-conformance (Clause 31)</b>	The Defects Liability Period is: (Clause 31.1)		
			*If nothing stated, 12 months	
19.	<b>Liability (Clause 37)</b>	The Subcontractor's liability is limited to: (Clause 37.1(a))		
			* If nothing stated, 200% of the Subcontract Sum	
20.	<b>Notices (Clause 39.4)</b>	Subcontractor's address for notices:	Postal:	
			Email:	
		Head Contractor's address for notices:	Postal:	
			Email:	
Nominated Document Management System:				

# General Conditions

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Date of Subcontract: [Date]

Parties:

[Insert Head Contractor's Name] of [Insert Head Contractor's address].

(Head Contractor)

[Insert Subcontractor's Name] of [Insert Subcontractor's address].

(Subcontractor)

Background:

- A. The Head Contractor has accepted the Subcontractor's offer to carry out the work under the Subcontract.
- B. Under the Head Contract, the Head Contractor is liable to the Principal to complete the Project.
- C. The work under the Subcontract is an essential and integral part of the works required to complete the Project and the Parties wish to enter into this Subcontract to record the terms of their agreement to carry out the work under the Subcontract.

The Parties agree:

## 1. CONTRACT

- 1.1 The Subcontract comprises:
  - (a) the Reference Schedule;
  - (b) these General Conditions; and
  - (c) Schedule 1 - the Scope of Work;
  - (d) Schedule 2 - Price Schedule;
  - (e) Schedule 3 - Statutory Declaration;
  - (f) Schedule 4 - **Other**.

1.2 The Subcontract constitutes the entire, final and concluded agreement between the Parties. It supersedes all prior representations, agreements, statements and understandings between the Head Contractor and the Subcontractor (whether oral or in writing).

1.3 If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 1.1, then the documents will take precedence in the order set out in clause 1.1 with the Reference Schedule being the highest in the order.

## 2. PERFORMANCE AND PAYMENT

2.1 The Subcontractor must, at its expense, carry out and complete the work under the Subcontract and comply with all of its other obligations under the Subcontract in accordance with this Subcontract and Directions given pursuant to it.

2.2 The Head Contractor must pay the Subcontractor the Subcontract Sum adjusted in accordance this Subcontract for work under the Subcontract carried out and completed in accordance with the Subcontract and directions given pursuant to it.

## 3. PROVISIONAL SUMS

3.1 A Provisional Sum included in the Subcontract Sum shall not of itself be payable, but where, pursuant to a Direction of the Head Contractor the work the subject of the Provisional Sum is undertaken, the work shall be priced by the Head Contractor as if it were a Variation and added to or deducted from the Subcontract Sum.

The Subcontractor must not carry out the work the subject of a Provisional Sum without being directed to do so by the Head Contractor. If the Head Contractor does not direct the Subcontractor to carry out work the subject of a Provisional Sum, then the Head Contractor may have such work carried out by others without payment of compensation to the Subcontractor.

## 4. NATURE OF RELATIONSHIP

4.1 The Subcontractor is an independent Subcontractor of the Head Contractor. Neither the Subcontractor nor its Personnel are employees, servants, agents or partners of the Head Contractor, nor are they authorised to bind the Head Contractor in any way and they must not represent, imply or hold out to any third party to the contrary. The Subcontractor is solely responsible for payments required to be made to its Personnel for the performance of work in connection with this Subcontract and solely responsible for determining the manner in which it complies with its obligations under the Subcontract. The Subcontractor must provide such materials, equipment, knowledge and Personnel as the Subcontractor deems necessary to comply with its obligations and under this Subcontract.

## 5. WARRANTIES, REPRESENTATIONS AND ACKNOWLEDGEMENTS

5.1 The Subcontractor must ensure, and warrants and represents that:

(a) **(Improper Conduct)** neither the Subcontractor nor any of its Personnel engaged in any Improper Conduct in connection with the Procurement Process. The Subcontractor must not, and must ensure that its Personnel do not, engage in any Improper Conduct in connection with the Subcontract;

(b) **(Ability)** the Subcontractor and its Personnel:

(i) have the experience, skills, expertise and resources;

(ii) hold all necessary competencies, licences, accreditations, qualifications, permits, clearances or other authorisations,

# General Conditions

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- which are required for the Subcontractor to comply with its obligations under this Subcontract, and will maintain such competencies, licences, accreditation, qualifications, permits, clearances or other authorisations at all times during the performance of the work under the Subcontract;
- (c) **(Standard of work)** the Subcontractor will, and to the extent applicable to them will ensure that its Personnel, carry out and complete the work under the Subcontract and its other obligations in connection with this Subcontract in accordance with Good Industry Practice and to the standard of skill, care and diligence expected of a skilled and competent subcontractor experienced in constructing works similar to the work under the Subcontract;
- (d) **(Design)** if the Reference Schedule states that the Subcontractor has design obligations, the Subcontractor will carry out and complete the Subcontractor's Design Obligations:
- (i) in accordance with Good Industry Practice and to the standard of skill, care and diligence expected of a skilled and competent professional experienced in designing works similar to the Works;
  - (ii) so that the Design Documents accord with the requirements specified in the Scope of Work;
  - (iii) so that the Works (or where the Subcontractor is not responsible for designing the whole of the Works, the part of the Works for which the Subcontractor is responsible for designing), when completed, and each part of such Works, shall be fit for the purposes stated in the Scope of Works;
- (e) **(Deliverables)** all Deliverables will comply with the requirements of the Subcontract (including the Scope of Work) and applicable law, be fit for the purpose for which they are provided and otherwise be prepared in accordance with Good Industry Practice and of a standard and quality expected of a skilled and competent professional experienced in the preparation of documents similar to the Deliverables;
- (f) **(Works)** the Works and any materials and work carried out by the Subcontractor in connection with the Works shall be prepared in accordance with Good Industry Practice and free from defects and shall comply in all respects with the Subcontract and any applicable standard, plan, requirement, code, guideline, policy, standard drawing or standard specification included or incorporated by reference into the Subcontract or, if none is included or incorporated, any Australian standards applicable to the materials, and any applicable law. Materials shall, unless otherwise agreed by the Head Contractor, be new.
- (g) **(Investigations)** the Subcontractor has:
- (i) carefully, thoroughly and critically reviewed, examined, investigated and checked all Head Contractor Supplied Information, the Site Conditions and other information available by the making of reasonable enquiries;
  - (ii) made a full and thorough assessment of all risks associated with carrying out and completing the work under the Subcontract and complying with its other obligations under the Subcontract; and
  - (iii) drawn its own conclusions from that review, examination, investigation, check and assessment,
- and is satisfied that the Head Contractor Supplied Information and Site Conditions are appropriate and adequate to enable the Subcontractor to comply with its obligations under the Subcontract;
- (h) **(Subcontract Sum)** except to the extent that the Subcontract expressly allows an adjustment, the Subcontract Sum allows for and is the Subcontractor's sole entitlement to monetary compensation for compliance with all of the Subcontractor's obligations under the Subcontract (including compliance with any Direction given pursuant to it) and all risks of carrying out and completing the work under the Subcontract not expressly borne by the Head Contractor under the Subcontract;
- (i) **(Legal capacity)** the Subcontractor has the full power, authority and capacity to enter into this Subcontract and that the Subcontractor's obligations under this Subcontract are valid and binding on it, and enforceable against it.
- 5.2 **(Warranties unaffected)** The warranties and representations given in clause 5.1 remain unaffected notwithstanding:
- (a) that any part of the Head Contractor Supplied Information was prepared by or on behalf of the Head Contractor;
  - (b) any review of, comment on any Deliverables by or on behalf of the Head Contractor;
  - (c) any inspection or testing of the Works by the Head Contractor;
  - (d) any Direction in connection with any Deliverables by or on behalf of the Head Contractor or any Direction for a Variation, unless, prior to complying with the Direction the Subcontractor has given the Head Contractor written notice that compliance with the Direction will affect the warranty and the manner in which it will be so affected.
6. **HEAD CONTRACT OBLIGATIONS**
- 6.1 **(Warranty)** The Subcontractor warrants that it has informed itself as to the obligations imposed on the Head Contractor which are contained in the Head Contract.
- 6.2 **(Head Contract)** The Subcontractor acknowledges that the Head Contract was, and is, available for inspection and review at the head office of the Head Contractor.
- (a) **(Head Contract obligations)** In connection with the Subcontract Works the Subcontractor shall perform its obligations under the Subcontract in a timely manner and so as not to put the Head Contractor in breach of its obligations to the Principal under the Head Contract; and

# General Conditions

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(b) shall perform and discharge each of the Head Contractor's obligations under or associated with the Head Contract as and to the extent set out in Schedule 4 as part of the Subcontract.

6.3 **(Inconsistency)** Where the Head Contract imposes an obligation that is inconsistent with an obligation under the Subcontract, the obligation under the Head Contract prevails to the extent of the inconsistency.

(a) **(Notices)** The Subcontractor shall provide notice to the Head Contractor of any claims for variations, extensions of time and adjustments of the Subcontract Sum in within sufficient time and in sufficient detail to allow the Head Contractor to comply with any corresponding provision of the Head Contract.

## 7. CONFLICT OF INTEREST

7.1 **(Warranty and representation)** The Subcontractor warrants and represents that to the best of its knowledge and belief, after making diligent enquiries, as at the date of this Subcontract, no Conflict of Interest exists. The Subcontractor must not have, and must take all reasonable steps to ensure its Personnel do not have, a Conflict of Interest.

7.2 **(Notice of Conflict of Interest)** If, prior to the expiration of the last Defects Liability Period, a Conflict of Interest arises, or appears likely to arise, the Subcontractor must notify the Head Contractor immediately in writing and take such steps to resolve or otherwise deal with the Conflict of Interest to the Head Contractor's reasonable satisfaction.

7.3 **(Record of Conflict of Interest)** The Subcontractor must keep a record of each Conflict of Interest that arises and how it was managed.

## 8. SECURITY

8.1 **(Form of security)** Within 10 Business Days after the date of the Subcontract, the Subcontractor shall provide security in the form and in the amount(s) stated in the Reference Schedule.

8.2 **(Recourse to security)** The Head Contractor may have recourse to the security where the Subcontractor fails to pay an amount due under the Subcontract within the time required by the Subcontract and 5 Business Days has elapsed after the Head Contractor has given the Subcontractor notice of its intention to have recourse.

8.3 **(Return of security)** Subject to the Subcontract:

(a) one half of the security shall be returned to the Subcontractor within 25 Business Days after Practical Completion; and

(b) subject to any defects being rectified by the Subcontractor, the balance shall be returned to the Subcontractor within 25 Business Days after the end of the Defects Liability Period.

## 9. REVIEW OF DELIVERABLES

9.1 The Subcontractor must submit the Deliverables identified in the Reference Schedule to the Head Contractor for review by the Head Contractor at the times stated in the Reference Schedule. A Direction to change anything in a Deliverable shall constitute a Variation only to the extent

that, before such a Direction, the Deliverable complied with the Subcontract.

## 10. INTERPRETATION OF DOCUMENTS

10.1 **(Interpretation)** Figured dimensions shall prevail over scaled dimensions. The documents describing work under the Subcontract are to be taken as mutually explanatory of each other, and anything shown in one such document shall be deemed to be shown in all. Work which is not expressly shown in the documents, but which is obviously and indispensably necessary for the proper completion of work under the Subcontract is deemed to be included.

10.2 **(No warranty)** The Head Contractor does not warrant the accuracy, adequacy or completeness of the Head Contractor Supplied Information.

10.3 **(Discovery of issue)** The Subcontractor shall have 10 Business Days to review the Head Contractor Supplied Information and must notify the Head Contractor if it discovers any error, ambiguity, or discrepancy in or between, or omission from, any document describing the work under the Subcontract, any Head Contractor Supplied Information or any other document comprising the Subcontract **(Document Issue)**. The Head Contractor shall give the Subcontractor a Direction as to the interpretation to be followed in the event that any such Document Issue is discovered by either Party.

10.4 **(No adjustment)** The Subcontractor shall not be entitled to any adjustment of the Subcontract Sum in connection with any Document Issue or the Subcontractor's compliance with a Direction under the clause 10.3.

## 11. REPRESENTATIVES

11.1 **(Head Contractor's Representative)** The Head Contractor's Representative is appointed as the Head Contractor's authorised representative and shall be able to exercise any of the Head Contractor's rights or functions under this Subcontract. The Head Contractor's Representative is not an independent certifier or valuer. No other person is permitted to exercise any right or function of the Head Contractor without the express written consent of the Head Contractor or the Head Contractor's Representative. The Subcontractor must notify the Head Contractor immediately if it receives a purported direction in connection with the work under the Subcontract from any person other than the Head Contractor's Representative. The Head Contractor shall not be liable upon any Claim relating to a direction given to the Subcontractor by any person other than the Head Contractor's Representative.

11.2 **(Subcontractor's representative)** The Subcontractor must have present on Site at all times an authorised representative for the purpose of managing the work under the Subcontract and must notify the Head Contractor in writing of the details of the nominated representative. If the Head Contractor reasonably objects to the nominated representative, the Subcontractor shall nominate another representative.

11.3 **(Change of representative)** Either Party must notify the other of a change in representative prior to effecting the change.

# General Conditions

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## 12. DIRECTIONS

- 12.1 The Head Contractor may give a Direction to the Subcontractor either orally or in writing. Unless the Subcontract expressly provides otherwise, the Subcontractor must comply with all Directions given pursuant to this Subcontract at the Subcontractor's expense.

## 13. SUBCONTRACTING AND ASSIGNMENT

- 13.1 **(Nominated Subcontractors)** The Subcontractor must engage the subcontractors and consultants identified in the Reference Schedule to perform the scope identified in the Reference Schedule.

- 13.2 **(Consent to subcontracting or assignment)** The Subcontractor must not Subcontract or assign the whole or any part of its obligations under this Subcontract without the prior written consent of the Head Contractor. In determining whether to grant its consent to the engagement of a subcontractor or subconsultant, the Head Contractor may have regard to any matter which the Head Contractor considers relevant. The Head Contractor may assign or novate the whole or any part of its rights and obligations under the Subcontract in its absolute discretion and without obtaining the consent of the Subcontractor.

- 13.3 **(Responsibility for subcontractors and subconsultants)** The Subcontractor acknowledges that it is responsible for all of the acts, omissions and defaults of its subcontractors and subconsultants, as if the subcontractors and subconsultants were the Subcontractor itself.

## 14. PERSONNEL

- 14.1 **(Obligation to provide key personnel)** The Subcontractor must provide the key personnel (if any) identified in the Reference Schedule to perform the nominated roles during the period or periods stated in the Subcontract or where no period is stated, until the end of the last Defects Liability Period.

- 14.2 **(Replacement of key personnel)** If any key person is not available due to circumstances beyond the reasonable control of the Subcontractor, the Subcontractor must promptly notify the Head Contractor and arrange for a replacement of equal or superior skills, experience and expertise to assume the role of the key person.

- 14.3 **(Conduct of Personnel)** The Subcontractor must, and must ensure that its Personnel at all times whilst on the Site (including when entering or exiting the Site) and otherwise when carrying out work under the Subcontract:

- (a) do not engage in any unlawful behaviour;
- (b) act and behave in a professional and courteous manner;
- (c) comply with:
  - (i) any law (including WHS Law), standards and codes of practice applicable to the Subcontractor, its business or its obligations under the Subcontract;
  - (ii) all directions of the Head Contractor given pursuant to the Subcontract;
  - (iii) all reasonable directions of the Principal Contractor as defined in the WHS Law;

- (iv) any applicable policies, guidelines, procedures and codes of the Head Contractor which are identified in the Subcontract or which are publicly available or otherwise made known to the Subcontractor from time to time; and

- (v) any other requirements of the Head Contractor relating to conduct of the Subcontractor and its Personnel.

- (d) Use all reasonable endeavours not to cause (directly or indirectly) any nuisance or interference to the owners, tenants or occupiers of properties on or adjacent to the places where the Works are to be carried out, or to the public generally.

- 14.4 **(Removal)** The Head Contractor may at any time direct the Subcontractor to remove any of the Subcontractor's Personnel from the Site if the Head Contractor reasonably believes that:

- (a) the Subcontractor is in breach of clause 14.3 or a warranty given and representation made in clause 5.1(a) in respect of that person; or
- (b) the person is responsible for any other breach of the Subcontract by the Subcontractor.

- 14.5 **(Industrial relations)** The Subcontractor remains solely responsible for the management of industrial relations relating to its personnel. The Subcontractor must promptly inform, and keep informed, the Head Contractor in relation to any potential or actual industrial relations issues which could affect the ability of the Subcontractor to comply with its obligations under the Subcontract.

## 15. INTELLECTUAL PROPERTY

- 15.1 **(Background IP)** Nothing in this clause affects Background IP.

- 15.2 **(Ownership)** All Intellectual Property Rights in the Head Contractor Supplied Information are, as between the Head Contractor and the Subcontractor, the property of the Head Contractor. All Intellectual Property Rights in the Design Documents and As-Constructed Drawings vest in the Head Contractor.

- 15.3 **(Licence)** The Head Contractor grants the Subcontractor a royalty free, non-exclusive, non-transferable licence to use the Head Contractor Supplied Material and the Design Documents and As-Constructed Drawings for work under the Subcontract.

- 15.4 **(Warranty and representation by the Subcontractor)** The Subcontractor warrants and represents that the Subcontractor has not infringed and will not infringe any Intellectual Property Rights of a third party in connection with the performance of its obligations under the Subcontract and that the Deliverables will not infringe the Intellectual Property Rights of a third party.

## 16. MANAGEMENT PLAN

- 16.1 If the Reference Schedule provides for any Management Plan, the Subcontractor must, prior to the provision of any of the work under the Subcontract submit to the Head Contractor for approval the relevant Management Plan(s) which:



# General Conditions

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- (a) address the matters listed in Reference Schedule;
  - (b) are consistent with the Subcontract, accepted industry standards for such plans and applicable law; and
  - (c) are otherwise in a form satisfactory to the Head Contractor, acting reasonably.
- 16.2 If the Head Contractor has been appointed as the principal contractor under the WHS Law, the Subcontractor and its Personnel, and any relevant Management Plan the Subcontractor must provide, must comply with the Head Contractor's work health and safety management plan.
- 17. MEETINGS, RECORDS AND REPORTS**
- 17.1 **(Meetings)** The Subcontractor, or the Subcontractor's Representative must, when reasonably required by the Head Contractor, meet and discuss the performance of the work under the Subcontract and/or any other matter concerning the Head Contractor in connection with the Subcontract. The Subcontractor must ensure that such other Personnel of the Subcontractor as may be directed by the Head Contractor also attend meetings reasonably required by the Head Contractor.
- 17.2 **(Work Records)** The Subcontractor must create and maintain the Work Records. The Subcontractor must comply with any Direction by the Head Contractor to allow the Head Contractor or its representatives to access and copy the whole or any part of the Work Records. For any Directions given under this clause, the Subcontractor may redact any reasonably confidential (including financial) matters from the Work Records. A Direction under this clause may be given at any time up to the later of:
- (a) the end of the Defects Liability Period; and
  - (b) the final resolution of any dispute notified pursuant to clause 36.
- 17.3 **(Reports)** The Subcontractor must create and submit to the Head Contractor the reports required by the Subcontract under the Scope of Works, at the times as reasonably requested by the Head Contractor, or otherwise stated in the Subcontract.
- 18. INSPECTION AND TESTING**
- 18.1 **(Contractor's obligation)** Where the Subcontract provides that certain work is to be tested by the Subcontractor, the Subcontractor must ensure that the required inspections and tests are undertaken. The Subcontractor shall not be entitled to payment for any inspections and tests that have not been undertaken. The Head Contractor may request documentary evidence from the Subcontractor that the inspections and tests have been undertaken and passed and the Subcontractor must provide such evidence requested to the Head Contractor.
- 18.2 **(Head Contractor's right to inspect or test)** The Head Contractor may but shall not be obliged to inspect and test the Works and any or all work under the Subcontract.
- 18.3 **(Costs)** Costs of inspections and tests by the Head Contractor pursuant to clause 18.2 shall be borne by the Head Contractor unless:
- (a) the Subcontract provides that the inspection or test is to be undertaken by the Subcontractor;
  - (b) the inspection or test is in consequence of a failure by the Subcontractor to comply with the Subcontract;
  - (c) the inspection or test shows that the work is not in accordance with the Subcontract.
- 19. LEGISLATION AND OTHER REQUIREMENTS**
- 19.1 **(Compliance)** The Subcontractor must perform its obligations under this Subcontract, and ensure that its Personnel perform their part of those obligations consistently and in accordance with:
- (a) all applicable law;
  - (b) Good Industry Practice;
  - (c) the requirements of the Subcontract;
  - (d) all applicable industry standards, guidelines, codes and procedures;
  - (e) the plans, policies and procedures of the Head Contractor which are made known to the Subcontractor from time to time;
  - (f) any Management Plan approved under clause 14;
- but doing so shall not relieve the Subcontractor from any other obligation or liability under the Subcontract or at law.
- 19.2 **(Approvals)** The Subcontractor must, prior to the Date for Commencement, advise the Head Contractor in writing of any Approvals required to be obtained by the Head Contractor for the carrying out and completion of the work under the Subcontract, and must provide reasonable assistance to the Head Contractor to enable those Approvals to be obtained. The Subcontractor must comply with the requirements of all such Approvals, whether obtained before or after the date of this Subcontract.
- 20. SAFETY AND ENVIRONMENT**
- 20.1 **(General obligations)** The Subcontractor must:
- (a) perform its obligations under this Subcontract and ensure that its Personnel perform their part of those obligations safely and in a manner that will prevent pollution, contamination or damage to property or the environment; and
  - (b) take all measures necessary to protect the property and the environment in the performance of its obligations under the Contract.
- 20.2 **(WHS)** In performing the work under the Subcontract, the Subcontractor shall be responsible for ensuring its Personnel perform and complete the work under the Subcontract safely and in accordance with all legislative requirements, codes of practice, and standards (including Australian Standards) and the WHS Law. If requested by the Head Contractor, the Subcontractor shall conduct an audit of its workplace health and safety in the manner and within the time specified by the Head Contractor in its request. The Subcontractor is not entitled to claim any cost, expense or adjustment, or extension to the Date for Practice Completion arising out of or in connection with complying with this clause.
- 20.3 **(Protection)** The Subcontractor must take all measures necessary to protect people and

# General Conditions

property (including the work under the Subcontract) in the performance of its obligations under the Subcontract. The Subcontractor shall be responsible for the care of the Works from the date on which the Subcontractor commences work under the Subcontract until 5pm on the Date of Practical Completion and at all other times whilst the Subcontractor has management and control of the Site.

20.4 **(Rectification of damage)** The Subcontractor must promptly rectify:

- (a) any damage to any property (including the Works) which is caused by the Subcontractor or its Personnel in connection with the performance of its obligations under the Contract;
- (b) any damage to the work under the Subcontract, which occurs whilst the Subcontractor is responsible for its care.

The Subcontractor shall be entitled to claim the cost which it reasonably and necessarily incurs in making good any such damages to the extent that the act or omission or Wilful Misconduct of the Head Contractor or Head Contractor's Personnel caused or contributed to the damage and/or the Head Contractor failed to mitigate the damage.

20.5 **(Urgent action)** If urgent action is necessary to protect persons, property (including the Works) or the environment in connection with the performance of the Subcontractor's obligations under the Contract, and the Subcontractor has not taken that action, the Head Contractor may take such action itself or have it undertaken by others without prior notice to the Subcontractor. The cost reasonably incurred by the Head Contractor in doing so shall be a debt due and owing by the Subcontractor to the Head Contractor and may be deducted from any payments otherwise owing to the Subcontractor.

20.6 **(Monetary penalties)** The Subcontractor shall be responsible for, and the Head Contractor may deduct from any monies otherwise owing to the Subcontractor, or failing that, recover from the Subcontractor as a debt due and owing, an amount equal to, any fines or other monetary penalties imposed by any Authority on the Head Contractor in connection with a breach of this clause by the Subcontractor.

## 21. HEAVY VEHICLE NATIONAL LAW

21.1 **(Definitions)** Terms used in this clause which are defined in the National Law have the same meaning as in that law unless the context otherwise requires.

21.2 **(Primary obligation)** The Supplier must ensure that, so far as is reasonably practicable, the safety of the Supplier's transport activities. Without limiting this, the Supplier must, so far as is reasonably practicable:

- (a) eliminate public risks and, to the extent it is not reasonably practicable to eliminate public risks, minimise the public risks; and
- (b) ensure the Supplier's conduct does not directly or indirectly cause or encourage:
  - (i) the driver of the heavy vehicle to contravene the National Law; or

- (ii) the driver of the heavy vehicle to exceed a speed limit applying to the driver; or

- (iii) another person, including another party in the chain of responsibility, to contravene the National Law.

21.3 **(Notice)** The Supplier must immediately notify the Purchaser if the Supplier considers that anything in this Contract, or any act or omission of the Purchaser or its respective officers, employees, agents or representatives has or is likely to directly or indirectly cause or encourage the Supplier or any employee or subcontractor of the Supplier:

- (a) being the driver of a heavy vehicle to contravene the National Law; or
- (b) being the driver of a heavy vehicle to exceed a speed limit applying to the driver; or
- (c) being another person, including another party in the chain of responsibility, to contravene the National Law.

## 22. HANDLING OF INFORMATION

22.1 **(Obligation of confidence)** A Party must not use the other party's Confidential Information for a purpose other than performing this Subcontract. A party may not disclose the other Party's Confidential Information to a third party other than in the Exceptional Circumstances. The Parties must take reasonable steps to prevent the unauthorised disclosure to or use by any other person, firm or company of the Confidential Information.

22.2 **(Breach of Confidentiality)** If a Party becomes aware of a suspected or actual breach of clause 22.1, that Party must immediately notify the other Party and take reasonable steps required to prevent or stop the actual breach. The Parties acknowledge that damages will not be an adequate remedy for such a breach.

22.3 **(Return of Confidential Information)** The Disclosee of Confidential Information must return or destroy (at the Discloser's discretion) material containing Confidential Information when it is no longer required by the Disclosee or when otherwise directed by the Discloser, subject to any record keeping requirements at law.

22.4 **(Personnel)** The Parties use all reasonable endeavours to ensure that its Personnel are aware of and comply with the obligations of confidentiality in this clause 22.

22.5 **(Information Privacy Act)** If the Subcontractor collects or has access to 'Personal Information' as that term is defined in the Information Privacy Act 2009 (Qld) in order to carry out work under the Subcontract, the Subcontractor must comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under this Subcontract as if the Subcontractor was the Head Contractor.

## 23. MEDIA

23.1 The Subcontractor shall not disclose any information concerning the Project for distribution through any communications media without the Head Contractor's prior written approval (which shall not be unreasonably

# General Conditions

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withheld). The Subcontractor shall refer to the Head Contractor any enquiries from any media concerning the Project to the Head Contractor.

## 24. INDEMNITY

24.1 The Subcontractor indemnifies the Head Contractor and the Head Contractor's Personnel against:

- (a) loss of or damage to property of the Head Contractor; and
- (b) Claims by any person against the Head Contractor in respect of personal injury or death, or loss of or damage to property of any party, or breach of Intellectual Property Rights; and
- (c) liability arising from the Wilful Misconduct of, or infringement of confidentiality or Intellectual Property Rights by, the Subcontractor or its Personnel,

which arise as a result of the performance of the Subcontractor's obligations under this Subcontract, but the indemnity will be reduced to the extent that the act or omission or Wilful Misconduct of the Head Contractor or the Head Contractor's Personnel caused or contributed to the liability, loss, damage, injury or death.

## 25. INSURANCE

25.1 **(Insurances required)** The Subcontractor must effect and maintain the insurances nominated in the Reference Schedule in the amounts and for the durations nominated and any other insurance which the Subcontractor considers is necessary to protect its interests.

25.2 **(Terms of insurances)** The insurances required by clause 25.1 shall be on terms acceptable to the Head Contractor (acting reasonably) and, in respect of public liability insurance shall note the Head Contractor as an interested party. The Subcontractor must comply with the terms and conditions of any policy of insurance effected under this clause 25.

25.3 **(Evidence of currency)** Prior to commencing work on the Site, and whenever requested by the Head Contractor, the Subcontractor must provide the Head Contractor with a copy of the relevant certificate of currency and other evidence reasonably required by the Head Contractor. The Head Contractor may suspend the Subcontract and/or withhold payment from the Subcontractor until such evidence is provided.

25.4 **(Subcontractor and consultant insurance)** The Subcontractor must ensure that its subcontractors or consultants have equivalent insurance to the extent that it is applicable to their part of the work under the Subcontract.

25.5 **(Effect on liability)** Nothing in this clause, nor the Subcontractor's compliance or non-compliance with it, shall be taken to limit or reduce the Subcontractor's liability under the Subcontract or at law.

## 26. SITE

26.1 **(Access)** The Head Contractor will give the Subcontractor sufficient, but non-exclusive, access to the Site to carry out the Works by the later of time stated in the Reference Schedule

and the time at which the Subcontractor has given the Head Contractor:

- (a) the relevant Management Plan(s);
- (b) the evidence of insurance required by clause 25.3;
- (c) where bank guarantees are to be provided, the security referred to in clause 8.1; and
- (d) any other documents which the Scope of Works provides are to be given to the Head Contractor before commencing work on the Site.

26.2 **(Condition of Site)** The Subcontractor must:

- (a) keep the Site clean and tidy and regularly remove debris and rubbish resulting from the Works;
- (b) promptly on achieving Practical Completion or following termination of the Subcontract, remove all its plant, equipment and facilities from the Site, unless otherwise directed by the Head Contractor; and
- (c) as far as possible, leave the Site in a condition at least equal to the condition of the Site prior to the commencement of the work under the Subcontract, same for fair wear and tear.

26.3 **(Site Conditions)** The Subcontractor is not entitled to any adjustment of the Subcontract Sum in connection with any Site Conditions differing from those anticipated by the Subcontractor at the date of the Subcontract, and the Subcontractor must take all necessary steps to overcome such conditions at its expense. The Subcontractor acknowledges and warrants that, before signing the Subcontract, it has done each of the following:

- (a) It has inspected all geotechnical and other site information provided to it by the Head Contractor.
- (b) It has checked all available information about the site and its environments and surrounds.
- (c) It has familiarised itself with all usual and likely activities which will occur on the site and surrounding environment before completion of the works under Subcontract which are relevant to the Subcontractor's ability to discharge its obligations in accordance with the Subcontract.

26.4 **(Setting Out)** The Subcontractor is responsible for setting out the Works and obtaining all necessary information other than Head Contractor Supplied Information, to facilitate this. If the Subcontractor requires Head Contractor Supplied Information to facilitate the setting out of the Works then the Subcontractor must advise the Head Contractor of that information at least 7 days prior to the date on which it is required.

26.5 **(Adjoining Works)** The Subcontractor acknowledges that other contractors may be executing other works on Site which may interface with the works under Subcontract. The Subcontractor agrees that it will be responsible for coordination of its work with that of Contractors so as not to disrupt, impede or adversely affect those other Contractors in the execution of their work and the Subcontractor shall indemnify the Head Contractor for any liability the Head Contractor may incur to other

# General Conditions

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Contractors or the Principal as a result of the Subcontractor's failure to comply with this clause.

## 27. TIMING

27.1 **(Commencement, progress and completion)** The Subcontractor must commence work on or before the Date for Commencement and must carry out the work under the Subcontract:

- (a) only within the working hours described in the Reference Schedule or otherwise notified to the Subcontractor by the Head Contractor;
- (b) with due expedition and without delay;
- (c) in accordance with any requirements of the Subcontract as to the order and timing of the work under the Subcontract (including any program included in the Subcontract or agreed between the Parties);
- (d) so that Practical Completion is achieved by the Date for Practical Completion.

27.2 **(Program)** If directed to do so by the Head Contractor, the Subcontractor must prepare and submit for approval a construction program in sufficient detail to enable the Head Contractor to monitor progress of the work under the Subcontract, comply with its obligations under the Subcontract and to properly assess any claims for an extension of the Date for Practical Completion. The program must comply with all requirements of the Subcontract, and the Head Contractor's program for the Head Contract, and must otherwise be in the form of a Gantt chart showing, as a minimum all critical activities, a defined critical path and any critical times for action to be taken or information to be given by the Head Contractor. Approval of a program by the Head Contractor shall not constitute the granting of an extension of the Date for Practical Completion or otherwise affect the Subcontractor's obligations under the Subcontract.

27.3 **(Order and Timing)** The Head Contractor may give the Subcontractor a Direction as to the Order and Timing of the work under the Subcontract and the Subcontractor must if it can reasonably do so, comply with that Direction.

27.4 **(Notification of delay)** The Subcontractor must promptly notify the Head Contractor if the Subcontractor is or will be delayed in carrying out the work under the Subcontract and must do all things reasonably necessary to prevent or mitigate the delay.

27.5 **(Claim for Extension of Date for Practical Completion)** Subject to clause 35, if the Subcontractor is delayed in achieving Practical Completion by the Date for Practical Completion because of:

- (a) an act or omission of the Head Contractor or its Personnel; or
- (b) a Variation; or
- (c) inclement weather, such that it is not safe to proceed with the Works on the Site;
- (d) a Force Majeure Event; or
- (e) any other event or circumstance stated in the Reference Schedule,

then the Head Contractor shall extend the Date for Practical Completion by the period for which in the Head Contractor's reasonable opinion the Subcontractor is delayed, having regard to the extent of the delay, any contribution to the delay by the Subcontractor, any mitigation of the delay which has not been effected by the Subcontractor and whether or not the Subcontractor can nevertheless reach Practical Completion by the Date for Practical Completion without an extension of time. Where a delay for which the Subcontractor would otherwise be entitled to an extension of time overlaps with another delay for which the Subcontractor is not entitled to an extension of time, then the Subcontractor shall not be entitled to an extension of time to the extent of the overlap.

27.6 **(Extension of Time in the absence of a claim or entitlement)** The Head Contractor may, at any time and for any reason, extend the Date for Practical Completion, whether or not the Head Contractor is required to do so under clause 27.5, but is not obliged to exercise this right for the benefit of the Subcontractor.

27.7 **(Delay costs)** Subject to clause 35, if the Subcontractor is entitled to an extension of the Date for Practical Completion pursuant to clause 27.5(a), then for each day of the extension of time to which it is so entitled, the Subcontractor shall also be entitled to payment of the direct costs which it reasonably and necessarily incurs by reason of the delay, up to a maximum per day of the amount stated in the Reference Schedule. The Subcontractor shall not be entitled to any monetary compensation in connection with an extension of time granted pursuant to clauses 27.5(b), 27.5(c), 27.5(d), 27.5(e) or 27.6. The Head Contractor shall not be liable upon any other claim in connection with delay or disruption to, or prolongation of, the work under the Subcontract.

27.8 **(Practical Completion)** The Subcontractor must give the Head Contractor 14 days written notice of the date on which it anticipates that Practical Completion will be reached and must give the Head Contractor written notice promptly when it believes Practical Completion has been reached. When the Head Contractor is of the opinion that Practical Completion has been reached, the Head Contractor shall issue a certificate stating the date on which, in the Head Contractor's opinion, Practical Completion was reached (such date may be earlier than the date the certificate is issued).

27.9 **(Liquidated damages)** If the Subcontractor does not achieve Practical Completion by the Date for Practical Completion, the Subcontractor shall be indebted to the Head Contractor for liquidated damages at the rate stated in the Reference Schedule for each day from the Date for Practical Completion until the Date of Practical Completion or the date that the Subcontract is terminated (whichever is earlier). Such damages may be certified by the Head Contractor's Representative and deducted by the Head Contractor at any time after the Date for Practical Completion, even though Practical Completion has not yet been reached. If, for any reason, the Head Contractor's entitlement to liquidated damages under this clause 27.8 is void or unenforceable, the Subcontractor shall be liable to the Head Contractor for general damages.

# General Conditions

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- 27.10 (Partly completed works) If a part of the works under Subcontract has reached a stage equivalent of Practical Completion, but another part of the works under Subcontract has not reached such a stage, the Head Contractor in its absolute discretion may determine the respective parts shall be Separable Portions and take possession, control and/or use of the works under Subcontract which have achieved an equivalent state of Practical Completion. In using the Separable Portion that has reached Practical Completion, the Head Contractor shall not hinder the Subcontractor in the performance of the works under Subcontract.
- (b) an itemised schedule of the work under the Subcontract for which payment is claimed;
- (c) a supporting statement declaring that the Subcontractor's employees, workers, subcontractors and suppliers who at any time have been used by the Subcontractor in the work under the Subcontract have at that date been paid all money due and payable to them in relation to the work under the Subcontract;
- (d) other documentary evidence of the work under the Subcontract reasonably required by the Head Contractor.

## 28. VARIATIONS

- 28.1 (Variations) The Head Contractor may, at any time prior to the expiration of the Defects Liability Period, direct a Variation. The Subcontractor cannot vary the work under the Subcontract without a written direction to do so from the Head Contractor.
- 28.2 (Payment for Variations) Subject to clause 35, the Subcontract Sum shall be adjusted for each Variation directed by the Head Contractor in accordance with clause 28.1:
- (a) by the amount agreed by the Parties; or
- (b) where no agreement is reached within 10 Business Days of the date on which the parties start discussing the relevant Variation, by the Head Contractor using applicable rates, prices or margins in the Subcontract; or
- (c) where there is no agreement and there are no applicable rates, prices or margins, by a reasonable amount determined by the Head Contractor.

The Subcontractor shall not otherwise be entitled to any payment in connection with a Variation.

- 28.3 (Omissions) Where the Head Contractor directs a Variation omitting or reducing any part of the work under the Subcontract then the Head Contractor may subsequently carry out that part of the work under the Subcontract itself or engage others to do so on its behalf. The Subcontractor shall not be entitled to any monetary compensation in connection with an omission or reduction, and such omission or reduction shall not invalidate or constitute repudiation of the Subcontract.

## 29. PAYMENT

- 29.1 (Time for payment claims) The Subcontractor may claim payment at the times stated in the Reference Schedule, at Practical Completion and at the end of the Defects Liability Period, by emailing the claims to the address stated in the Reference Schedule. For clarity, there are no further reference dates under the *Building Industry Fairness (Security of Payments) Act 2017* (Qld) between the Date of Practical Completion and the end of the Defects Liability Period.
- 29.2 (Evidence of amount due) The Subcontractor must, unless otherwise directed by the Head Contractor, provide the following to the Head Contractor as evidence of the amount properly payable to the Subcontractor:
- (a) a valid tax invoice;

The Head Contractor may withhold payment of any amount included with a payment claim in respect of which the Subcontractor has not complied with clause 29.2.

- 29.3 (Certification) The Head Contractor's Representative shall, within 15 Business Days after receiving the payment claim, certify as due and payable the amount which the Head Contractor's Representative reasonably believes is due from the Head Contractor to the Subcontractor or from the Subcontractor to the Head Contractor after deducting from the amount claimed by the Subcontractor any amount due from the Subcontractor to the Head Contractor.

- 29.4 (Payment) The Head Contractor shall pay the amount certified by electronic transfer to the Subcontractor's nominated bank account 25 Business Days from end of month.

- 29.5 (Effect of payment) All payments made by the Head Contractor to the Subcontractor are made on account only. The Subcontract Sum shall be the Subcontractor's only entitlement to monetary compensation for the provision of the work under the Subcontract.

- 29.6 (Final Payment) Where directed to do so by the Head Contractor, as a pre-condition to entitlement to payment of its final invoice, the Subcontractor must provide to the Head Contractor:

- (a) a statutory declaration in the form contained in Schedule 3, dated after all Works and Deliverables have been provided; and
- (b) a supporting statement declaring that the Subcontractor's employees, workers, subcontractors and suppliers who at any time have been used by the Subcontractor in the work under the Subcontract have at that date been paid all money due and payable to them in relation to the work under the Subcontract

## 30. GST

- 30.1 (GST not included) Unless expressly included, the consideration expressed to be payable under any other clause of, or schedule to, this Subcontract for any supply made under or in connection with this Subcontract does not include GST.

- 30.2 (Liability for GST) To the extent that any supply made under or in connection with this Subcontract is a taxable supply by one Party to this Subcontract to another such Party, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply.

# General Conditions

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- 30.3 **(Assistance)** Each Party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other Party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable pursuant to any supply made under or in connection with this Subcontract.
- 30.4 **(Reimbursement or indemnity)** If a payment to a Party under this Subcontract is a payment by the other Party by way of reimbursement or indemnity that is calculated by reference to the GST inclusive amount of a loss, cost or expense incurred by that Party, then the payment is to be reduced by the amount of any input tax credit to which that Party is entitled in respect of that loss, cost or expense before the payment is increased for GST pursuant to clause 30.1.
- 31. DEFECTS AND OTHER NON-COMPLIANCE**
- 31.1 **(Defects and omissions)** Where any part of the work under the Subcontract does not comply with the Subcontract the Head Contractor may, at any time up to the end of the Defects Liability Period, direct the Subcontractor to rectify the non-compliance. The Head Contractor may also direct the manner and timing of the rectification. If the Subcontractor fails to comply with a direction under this clause 31.1, then the Head Contractor may after giving 10 Business Days' written notice to the Subcontractor (except in the case of emergency, in which case no notice is required) carry out the rectification itself or engage others to do so on its behalf.
- 31.2 **(Failure to comply with other obligations)** Where the Subcontractor fails to comply with any other obligation under the Subcontract, the Head Contractor may, after giving notice to the Subcontractor (except in the case of emergency, in which case no notice is required) carry out the comply with the obligation itself, or engage others to do so on its behalf.
- 31.3 **(Cost)** The cost incurred by the Head Contractor taking any action under clause 31.1 and/or clause 31.2 shall be a debt due and owing by the Subcontractor to the Head Contractor.
- 31.4 **(Extension of Defects Liability Period)** Unless otherwise directed by the Head Contractor, any rectification work undertaken by the Subcontractor pursuant to clause 31.1 shall have a separate Defects Liability Period of a duration equal to the Defects Liability Period but which commences on the date on which the rectification work is completed.
- 32. NON-CONFORMING BUILDING PRODUCTS**
- 32.1 **(Defined Terms)** In this clause, the terms 'person in the chain of responsibility', 'building product', 'Minister', 'non-conforming building product' and 'required information' each have the respective meanings given to those terms in the *Queensland Building and Construction Commission Act 1991 (Qld) (QBCC Act)*.
- 32.2 **(Acknowledgement)** The Subcontractor acknowledges that, to the extent that the Subcontractor is a person in the chain of responsibility, it has obligations under Part 6AA of the QBCC Act in relation to non-conforming building products and:
- (a) warrants that no building products incorporated into the Works are non-conforming building products or the subject of a warning statement issued by the Minister;
- (b) must ensure that it, and its sub-subcontractors, provide all required information for a building product incorporated into the Works to the Head Contractor upon installation of the building product into the Works; and
- (c) agrees to provide all required information and any other information relevant to a building product to the Head Contractor within the timeframes requested by the Head Contractor.
- 32.3 **(Failure to comply)** If the Subcontractor installs a building product without the required information, the Head Contractor will be entitled to do either of the following in its sole and absolute discretion:
- (a) request the required information from the Subcontractor, in which case the Subcontractor will provide the required information as soon as reasonably practicable, or
- (b) direct the Subcontractor to remove the building product from the Works and replaced with a building product that is not non-conforming pursuant to clause 31 of the Subcontract.
- 32.4 **(Precondition to Practical Completion)** The Subcontractor shall, as a precondition to achieving Practical Completion, provide to the Head Contractor a signed statutory declaration confirming that all required information has been obtained and provided to the Head Contractor and that no non-conforming building products have been installed or incorporated into the Works.
- 32.5 **(Indemnity)** The Subcontractor shall indemnify and shall keep indemnified the Head Contractor against all loss, costs, liabilities, claims, damages or expense caused or contributed to any breach of its obligations under this clause 32, or by any act of omission of the Subcontractor which are contrary to its obligations under the QBCC Act.
- 33. SUSPENSION**
- 33.1 **(Suspension)** The Head Contractor may direct the Subcontractor to suspend the work under the Subcontract at any time and for any reason.
- 33.2 **(Costs of suspension)** If the suspension is expressly permitted by this Subcontract, is directed due to the negligence or Wilful Misconduct of the Subcontractor or its Personnel or is directed due to a breach of the Subcontract by the Subcontractor then the Subcontractor shall bear the costs of the suspension. Otherwise, the Head Contractor shall be liable for the direct costs which the Subcontractor demonstrates it has reasonably, necessarily and not prematurely incurred by the Subcontractor by reason of the suspension and which the Subcontractor demonstrates it cannot reasonably mitigate.
- 34. TERMINATION**
- 34.1 **(Termination for convenience)** The Head Contractor may at any time, in its absolute discretion, terminate this Subcontract by giving 25 Business Days' written notice to the Subcontractor.

# General Conditions

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- 34.2 **(Termination for breach)** Where a Party (**defaulting Party**) has committed a Substantial Breach, the other Party may terminate this Subcontract by giving 5 Business Days' written notice to this effect to the defaulting Party. If the defaulting Party is the Subcontractor, the Head Contractor may exercise its rights under clause 34.3.
- 34.3 **(Take out)** Where the Subcontractor has committed a Substantial Breach or is subject to an Insolvency Event, the Head Contractor may by giving written notice to the Subcontractor:
- (a) take out of the Subcontractor's hands the whole or part of the Subcontractor's obligations remaining to be completed under the Subcontract;
  - (b) itself perform, or engage others to perform the obligations taken out of the hands of the Subcontractor; and
  - (c) suspend payment to the Subcontractor unless and until it becomes due and payable under clause 34.4.
- 34.4 **(Payment on take out)** On completion of the obligations of the Subcontractor which have been taken out of the hands of the Subcontractor, the Head Contractor shall determine the cost incurred in completing those obligations and the cost which would have been paid to the Subcontractor had the Subcontractor completed those obligations and the difference shall be a debt due and payable to the Subcontractor or to the Head Contractor as the case may be. Otherwise, the Subcontractor shall not be entitled to any further monetary compensation in respect of the obligations taken out of the hands of the Subcontractor.
- 34.5 **(Payment on termination)** If the Subcontract is terminated:
- (a) by the Head Contractor pursuant to clause 34.2 then the Head Contractor must, subject to the Subcontract, pay the Subcontractor the amount to which the Subcontractor is entitled to for the part of the work under the Subcontract supplied up to and including the date of termination less:
    - (i) any costs reasonably incurred by the Head Contractor in connection with the termination (including legal costs) or the breach on which the termination is founded;
    - (ii) any costs reasonably incurred in engaging another Subcontractor to complete the work under the Subcontract; and
    - (iii) any loss suffered or incurred in connection with the Head Contractor's loss of or reduction in funding to the extent caused or contributed to by the termination or the breach on which the termination is founded; or
  - (b) by the Subcontractor pursuant to clause 34.2 or by the Head Contractor pursuant to clauses 34.1 or 34.2 then the Head Contractor must, subject to the Subcontract, pay the Subcontractor:
    - (i) the amount to which the Subcontractor is entitled to for the part of the work under the Subcontract supplied up to and including the date of termination;
    - (ii) any costs reasonably, necessarily and not prematurely incurred by the Subcontractor prior to the termination in the expectation of carrying out the whole of the work under the Subcontract;
    - (iii) any costs reasonably and necessarily incurred by the Subcontractor in returning the Subcontractor's Personnel and equipment to their place of engagement;
    - (iv) an additional amount equal to 5% of the balance of the Subcontract Sum (as adjusted pursuant to the Subcontract) remaining after deducting:
      - A. all payments made by the Head Contractor to the Subcontractor pursuant to the Subcontract (including pursuant to clauses 34.5(b)(i) to 34.5(b)(iii)); and
      - B. all amounts which the Head Contractor's Representative is required to deduct pursuant to clause 29.3;
- the payments of which shall be deemed as adequate to compensate the Subcontractor for any loss (including Specified Loss) suffered or incurred by reason of the termination, except that the aggregate amount payable to the Subcontractor under the Subcontract shall not exceed the amount which would have been payable had the Subcontract not been terminated and the Subcontractor had completed the work under the Subcontract in accordance with the Subcontract.
- The amount payable by the Head Contractor to the Subcontractor pursuant to this clause shall be the Subcontractor's sole entitlement to monetary compensation in connection with the termination of this Subcontract and the Subcontractor shall have no other Claim for payment or otherwise in connection with the termination.
- 34.6 **(Actions following termination)** Unless otherwise directed by the Head Contractor, where the Subcontract is terminated pursuant to this clause, the Subcontract must secure the Works in a safe and proper manner and in accordance with the Head Contractor's direction. The Subcontractor must comply with all other reasonable directions of the Head Contractor in connection with the termination.
35. **NOTIFICATION OF CLAIMS**
- 35.1 Notwithstanding anything else in this Subcontract, the Head Contractor shall not be liable upon any Claim by the Subcontractor:
- (a) **(Extension of time)** for an extension of the Date for Practical Completion pursuant to clause 27.5 unless the Subcontractor gives the Head Contractor a written notice of the delay within 5 Business Days after the first occurrence of the delay and gives the Head Contractor a written claim for an extension of the Date for Practical Completion within 15 Business Days after the first occurrence of the delay;
  - (b) **(Delay costs)** for monetary compensation in connection with an extension of the Date for Practical Completion pursuant to clause 27.7 or otherwise unless the Subcontractor gives the Head Contractor a written notice that it intends to claim delay costs within 5 Business Days of the first occurrence of the delay and gives the

# General Conditions

Head Contractor a claim for monetary compensation within 15 Business Days after the delay first occurs.

- (c) **(Variation)** in connection with a Direction for a Variation pursuant to clause 28.2 unless the Head Contractor has expressly stated in writing that the Direction is a Variation, or the Subcontractor gives the Head Contractor a written notice that it considers the Direction is a Variation within 3 Business Days of the Direction being given, and where practicable before complying with it, and gives the Head Contractor a written claim for an adjustment to the Subcontract Sum within 10 Business Days after the work the subject of the Variation is completed;
- (d) **(Other Directions)** in connection with any other Direction under the Subcontract unless the Subcontractor gives the Head Contractor a written notice of the Subcontractor's intention to make the Claim, identifying the Direction and the general basis of the Claim and (if possible) the estimated quantum of the Claim within 10 Business Days after the Direction is given.
- (e) **(Other Claims)** in connection with any other matter arising out of the Subcontract (including a Claim for a breach of Subcontract but not including a claim for payment of the Subcontract Sum) unless the Subcontractor gives the Head Contractor a written notice of the Subcontractor's intention to make the Claim, identifying the general basis of the claim, and (if possible) the estimated quantum of the claim within 15 Business Days after the first occurrence of the events on which the Claim is based.

## 36. DISPUTE RESOLUTION

- 36.1 **(Negotiation)** If a Party gives written notice to the other of a dispute under this Subcontract, representatives of the Parties shall promptly confer to attempt to resolve the dispute.
- 36.2 **(Expert determination)** If the dispute is not resolved within 35 days after the giving of the notice (or such longer period as may be agreed by the Parties) a Party may by written notice to the other Party refer the dispute for expert determination which shall be conducted in accordance with the expert determination rules published by the Resolution Institute current as at the date of the Subcontract.
- 36.3 **(Head Contract disputes)** When the Head Contractor becomes aware of a dispute under the Head Contract which touches or concerns work, material or the performance of work under the Subcontract, the Head Contractor may give the Subcontractor:
  - (a) a notice setting out adequate details of the Head Contract dispute; and
  - (b) written notice requiring any dispute which affects the Head Contract dispute to be resolved as part of the Head Contract dispute.
- 36.4 **(Urgent action)** This clause 36 does not prevent any Party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required or to commence proceedings in connection with any matters the subject of a decision by an

adjudicator under the *Building Industry Fairness (Security of Payments) Act 2017* (Qld).

## 37. LIABILITY

- 37.1 **(Limitation of liability)** To the extent permitted by law, the Subcontractor's liability to the Head Contractor in connection with the Subcontract is limited to, and will not exceed the greater of:
  - (a) the amount specified in the Reference Schedule; and
  - (b) the amount of any insurance proceeds payable under any policy of insurance effected under this Subcontract, or which would have been payable had the Subcontractor complied with clause 25 or the terms of the insurance policies.
- 37.2 **(Exclusion of Specified Loss)** Subject to clause 37.3, to the extent permitted by law, neither Party shall in any circumstances be liable to the other for Specified Loss in connection with the Subcontract.
- 37.3 **(Exceptions)** Clauses 37.1 and 37.2 do not apply to limit or exclude liability:
  - (a) which cannot be limited at law;
  - (b) arising from personal injury or death, property damage, an infringement of confidentiality or Intellectual Property Rights, Wilful Misconduct or fraud.
  - (c) of either party to the extent that the party is indemnified under a policy of insurance required to be effected under the Subcontract or would have been if the party had effected and maintained the insurance policy in accordance with the Subcontract, lodged and diligently pursued a claim under the policy and complied with the terms of the policy;
  - (d) of the Subcontractor to the extent that the Subcontractor is entitled to recover that liability from any other third party (including any subcontractor, consultant or supplier of the Subcontractor) or would have been entitled to recover that liability but for any act or omission of the Subcontractor,

and amounts referred to in subclauses 37.3(a), 37.3(b), 37.3(c) or 37.3(d) shall not be included in calculating whether the liability limit of a party has been reached.

## 38. DEFINITIONS

- 38.1 In this Subcontract, unless the context otherwise requires:
  - (a) **Approvals** means certificates, licences, accreditations, clearances, authorisations, consents, permits, approvals, determinations and permissions from any Authority and any related fees and charges;
  - (b) **As Constructed Drawings** means drawings of the completed Works as constructed which, unless the Head Contractor otherwise directs shall comply with AS 1100.101-1992: Technical Drawing - General as amended or replaced from time to time;
  - (c) **Authority** means any Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation,



# General Conditions

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- statutory body or instrumentality or any other person having jurisdiction over the project;
- (d) **Background IP** means Intellectual Property Rights and which are made available by a Party for the purposes of the work under the Subcontract which are in existence at the date of the Subcontract or brought into existence after the date of the Subcontract other than as in connection with the Subcontract;
- (e) **Business Day** means:
- (i) when used in clause 28.3, has the meaning given in the *Building Industry Fairness (Security of Payments) Act 2017* (Qld);
  - (ii) otherwise a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (f) **Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including under contract, at law (including a breach of contract), under statute, in equity, in tort (including for negligence), in quasi-contract, for unjust enrichment and to the extent permitted by law pursuant to any other principle of law;
- (g) **Confidential Information** means all information, trade secrets and knowledge of or disclosed by a party (**Discloser**) to another party (**Disclosee**) that
- (i) is by its nature confidential;
  - (ii) is designated or marked by the Discloser as confidential; or
  - (iii) the Disclosee knows or ought to know is confidential,
- but does not include information which
- (iv) is or becomes public knowledge other than by breach of this deed or any other confidentiality obligation; or
  - (v) is independently developed by a party while having no knowledge of or access to the other party's Confidential Information.
- (h) **Conflict of Interest** means having an interest (whether personal, financial or otherwise) which conflicts, may conflict, or which may reasonably be perceived as conflicting with the Subcontractor's ability to perform its obligations under this Subcontract fairly, objectively and independently;
- (i) **Contractor** means the entity identified in as such in the Reference Schedule;
- (j) **Date for Commencement** means the date stated in the Reference Schedule
- (k) **Date for Practical Completion** means the date stated in the Reference Schedule;
- (l) **Date of Practical Completion** means the date stated in a certificate of Practical Completion issued by the Head Contractor pursuant to clause **Error! Reference source not found.**27.8 as the date on which Practical Completion was reached (which may be a date earlier than the date on which the certificate is issued) or where another date is agreed between the parties or determined in any expert determination or
- litigation, means the date so agreed or determined;
- (m) **Defects Liability Period** means the period commencing on Practical Completion and expiring at the end of the period described in the Reference Schedule;
- (n) **Deliverables** means those documents (whether in electronic or hard copy format) required under this Subcontract to be handed over to the Head Contractor by the Subcontractor (and all information, advice, designs and recommendations in those documents) including:
- (i) the Design Documents;
  - (ii) the Management Plan;
  - (iii) any reports produced under clause 17;
  - (iv) As Constructed Drawings;
  - (v) anything else which the Subcontract expressly or impliedly requires the Subcontractor to provide to the Head Contractor;
- (o) **Design Documents** means the drawings, specifications and other information, samples, models, patterns and the like required by the Subcontract and created or to be created by the Subcontractor for the design and construction of the Works to bring the Works to Practical Completion;
- (p) **Design Obligations** means all tasks necessary to design and specify the Works required by the Subcontract, including preparation of the Design Documents;
- (q) **Directions** includes a direction, agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
- (r) **Discloser** and **Disclosee** have the meanings given in clause 38.1(g);
- (s) **Document Issue** has the meaning given in clause 10.2;
- (t) **Exceptional Circumstances** means disclosure:
- (i) for the purpose of performing this Subcontract;
  - (ii) with the other Party's consent;
  - (iii) to a professional adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential;
  - (iv) to any of its Personnel who are bound to keep the information confidential and to who it is necessary to disclose the information;
  - (v) to comply with the law or a requirement of an Authority (including a stock exchange); and
  - (vi) to the extent necessary to enforce its rights or defend a claim or action under the Subcontract.
- (u) **Force Majeure Event** means any event or circumstance which is beyond the reasonable control of the parties which causes a delay in the performance of the work under the Subcontract and could not have reasonably been

# General Conditions

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- expected to have been prevented, avoided or overcome including:
- (i) a natural disaster including fire, flood, lightning or earthquake;
  - (ii) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;
  - (iii) pandemic, epidemic or quarantine restriction;
  - (iv) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any Authority; or
  - (v) national or state-wide strikes, lockouts, industrial or labour disputes, work bans, blockades or picketing provided that they are not caused by, or directed solely at, the Subcontractor.
- (v) **General Conditions** means these general conditions;
- (w) **Good Industry Practice** means the standards (including any relevant Australian Standard), practices, policies, methods, acts and procedures generally followed or approved by relevant industries and contractors in Australia with respect to work under the Subcontract, and that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from an experienced, competent and skilled subcontractor for work of a similar nature to the work under the Subcontract;
- (x) **Head Contract** means the contract identified in the Reference Schedule, a copy of which is available for inspection and review at the office of the Head Contractor;
- (y) **Head Contractor** means the party identified in the Reference Schedule;
- (z) **Head Contractor's Representative** means the person identified as such in the Reference Schedule or otherwise notified to the Subcontractor from time to time by the Head Contractor;
- (aa) **Head Contractor Supplied Information** means any and all reports, maps, data, plans, drawings, specifications, diagrams or other information made available to the Subcontractor by or on behalf of the Head Contractor in connection with the work under the Subcontract, but excluding any information which forms part of this Subcontract or is provided by or on behalf of the Subcontractor;
- (bb) **Insolvency Event** in respect of a Party, means the Party:
- (i) becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation; or
  - (ii) enters into a debt agreement, a deed of assignment or a deed of arrangement under the Bankruptcy Act 1966 (Cth), or, being a company, enters into a deed of company arrangement with its creditors,
- or an administrator or controller is appointed; or
- (iii) has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets;
- (cc) **Intellectual Property Rights** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, drawings, circuit layouts and all other rights resulting from intellectual activity in the construction, project management, industrial, scientific, literary or artistic fields;
- (dd) **Improper Conduct** means engaging in misleading or deceptive conduct in relation to the Procurement Process or the Subcontract;
- (i) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other tenderer, or any other person in connection with the Procurement Process;
  - (ii) failing to disclose a Conflict of Interest in breach of clause 7;
  - (iii) attempting to improperly influence any Personnel of the Contractor, or violate any applicable law regarding the offering of inducements in connection with the Procurement Process or the Subcontract;
  - (iv) accepting or inviting improper assistance of employees or former employees of the Contractor in preparing its tender or any Claim against the Contractor in connection with the Subcontract;
  - (v) using any information improperly obtained, or obtained in breach of any obligation of confidentiality in connection with the Procurement Process or the Contract; or
  - (vi) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence.
- (ee) **Management Plan** means a written plan which complies with the requirements of clause 16;
- (ff) **National Law** means the Heavy Vehicle National Law (Queensland);
- (gg) **Nominated Document Management System** means the system identified in the Reference Schedule;
- (hh) **Personnel** includes the officers, employees, agents, representatives, consultants, subconsultants, Subcontractors and subcontractors of a Party (as the context requires) and any other person or entity for whom a Party is vicariously liable but in respect of the Head Contractor, does not include the Subcontractor;
- (ii) **Practical Completion** means that stage in the work under the Subcontract when the:
- (i) all of the work under the Subcontract which the Subcontractor is to carry out under the Subcontract has been carried out and completed, except for minor defects or omissions:

# General Conditions

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- A. which do not prevent the Works from being reasonably capable of being used for their stated purpose;
- B. the Head Contractor's Representative determines the Subcontractor has grounds for not properly rectifying; and
- C. the rectification of which will not prejudice the convenient use of the Works;
- (ii) all Deliverables have been provided in accordance with the Subcontract;
- (iii) all tests and inspections which are required by the Subcontract to be carried out and passed have been carried out and passed;
- (iv) documents and other information required under the Subcontract which are essential for the use, operation and maintenance of the Works have been supplied;
- (jj) **Procurement Process** means the procurement process (if any) undertaken by the Principal or Head Contractor pursuant to which the Parties have entered the Subcontract;
- (kk) **Provisional Sum** means:
  - (i) a sum identified by the terms 'provisional' or 'if ordered' or analogous term in Schedule 2; and
  - (ii) if an item is identified by the terms 'provisional' or 'if ordered' or analogous term in Schedule 2, the sum allocated to that item in Schedule 2;
- (ll) **Scope of Works** means the work, reports, assessments, investigations and other matters as set out in Schedule 1 to this Subcontract.
- (mm) **Site** means the site or sites to be made available by the Head Contractor at which work under the Subcontract is to be carried out;
- (nn) **Site Conditions** means the conditions at, on or under the Site and its surrounds which could be reasonably anticipated by a competent subcontractor having undertaken the inspections and obligations required under clause 25.3, including the location of existing services, subsurface geotechnical conditions, facilities at the Site, means of access to and from the Site and seasonal and climatic conditions at the Site;
- (oo) **Specified Loss** includes any of the following whether direct, indirect, special or consequential:
  - (i) loss of use, production, profit, income, revenue, business, contract, opportunity or anticipated saving;
  - (ii) liability for loss or damage suffered by third parties;
  - (iii) increase in financing costs;
  - (iv) increase in operating costs;
  - (v) legal costs (on a solicitor and client basis);
  - (vi) fines levied;
  - (vii) loss of reputation or embarrassment, and the cost of abating or reducing such;
  - (viii) any other financial or economic loss not expressly referred to in the preceding paragraphs, and any indirect, special or consequential loss, damage, cost, expense or penalty not expressly referred to in the preceding paragraphs howsoever arising;
- (pp) **Subcontract** means the agreement between the Head Contractor and the Subcontractor for the carrying out of the work under the Subcontract, comprised of the documents described in clause 1.1;
- (qq) **Subcontract Sum** means the lump sum identified in Schedule 2, excluding Provisional Sums and any additions or deductions to be made pursuant to the Subcontract;
- (rr) **Subcontractor** means the party identified in the Reference Schedule;
- (ss) **Substantial Breach** includes:
  - (i) a failure to remedy a breach of a warranty given or representation made, or any other obligation under this Subcontract within 10 Business Days after being given a written notice to do so;
  - (ii) a breach that is incapable of remedy of an obligation under this Subcontract; or
  - (iii) if the defaulting Party is the Subcontractor, the consistent or repeated breach of the Subcontract by the Subcontractor, even if those individual breaches would not themselves otherwise constitute a substantial breach of the Subcontract and even though those breaches may be promptly remedied by the Subcontractor;
- (tt) **Variation** means a change in the character, quantity, quality, dimensions or other aspect of the work under the Subcontract, and includes an omission of any part of the work under the Subcontract or the Subcontractor's obligations under the Subcontract;
- (uu) **WHS Law** means the Work Health and Safety Act (QLD), and any regulations made under it, and all other applicable occupational health and safety legislation, regulations, rules, Codes of Practice and Australian Standards as amended from time to time;
- (vv) **Wilful Misconduct** means a material breach of a provision of this Subcontract or a law committed with reckless disregard for the consequences and in circumstances where the breaching Party knows or ought to know that those consequences would likely result from the breach and which is not due to an honest mistake oversight, error of judgement, accident or negligence;
- (ww) **work** includes the provision of materials or goods;
- (xx) **Work Records** means proper and adequate records, accounts and supporting documents in accordance with generally accepted accounting principles and as required by law about all aspects of work under the Subcontract, including the performance of work under the Subcontract and whether timeframes and performance requirements under the Subcontract are met, all cost and design calculations, records as to the

# General Conditions

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progress of the work under the Subcontract, diary records of daily tasks, complete photographic records, a record of the attendance on Site of Personnel, plant and equipment records, cost to date and cost to complete calculations, time sheets records and all necessary supporting documents, invoices, records and related financial statements in any format whatsoever (but not including any documents which are subject to legal professional privilege);

(yy) **work under the Subcontract** means the whole of the work which the Subcontractor is or may be required to carry out and complete under the Subcontract, including Variations and remedial work.

## 39. GENERAL PROVISIONS

39.1 **(Binding on successor)** This Subcontract shall be for the benefit of and binding upon the Parties and their heirs, executors, successors and permitted assigns.

39.2 **(Governing law)** This Subcontract is governed by the law of Queensland and the law of the Commonwealth of Australia in force in Queensland. The Parties submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.

39.3 **(Further assurance)** The Parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under this Subcontract.

39.4 **(Service of notices)** A notice or other communication shall be deemed to have been given and received upon the earlier of actual receipt, or delivery to the intended recipient at the address or email address stated in the Subcontract or as last notified in writing by the intended recipient, or upon it being successfully uploaded to the Nominated Document Management System, but a notice or communication sent only by email shall not be deemed to have been given and received if:

(a) the sender receives a notification from the email system of the sender or the intended recipient which indicates that the email cannot be read by the intended recipient; or

(b) the intended recipient demonstrates that the notice or communication could not be legibly displayed by the intended recipient's email system at that time.

39.5 **(Waiver)** No waiver by a Party of a provision of this Subcontract is binding unless made in writing. Any waiver is limited to the particular instance, and does not affect the subsequent enforceability of the provision.

39.6 **(Severance)** If a provision of this Subcontract is void or unenforceable it must be severed from this Subcontract and the provisions that are not void or unenforceable are unaffected by the severance.

39.7 **(Cumulative rights)** The rights and remedies of a Party provided in this Subcontract are in addition to the rights or remedies conferred on the Party elsewhere in the Subcontract, at law or in equity.

39.8 **(Counterparts)** This Subcontract may be executed in any number of counterparts and when executed communication of the fact of execution to the other Party may be made by sending evidence of execution by email.

39.9 **(Contra proferentem)** The contra proferentem rule and other rules of construction will not apply to disadvantage a Party whether that Party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.

39.10 **(Current versions)** Except to the extent otherwise provided in the Subcontract, where the Subcontract includes or incorporates by reference any standard, plan, requirement, code, guideline, policy, standard drawing or standard specification then the Subcontractor must comply with the version of that standard, plan, requirement, code, guideline, policy, standard drawing or standard specification which is current as at the date of the Subcontract, and the sums, rates or prices in the Subcontract shall be deemed to have allowed for compliance with that version.

39.11 **(Joint and several obligations)** An obligation of two or more parties binds them jointly and each of them severally. An obligation incurred in favour of two or more parties is enforceable by them severally.

39.12 **(Headings)** Headings are for reference purposes only and must not be used in interpretation.

39.13 **(Law)** A reference to 'law' includes all:

(a) legislation (including subordinate legislation), local laws, by-laws, orders, ordinances, awards, requirements and proclamations of a local government authority, the State of Queensland, the Commonwealth or other Authority having jurisdiction and any related fees and charges; and

(b) certificates, licences, accreditations, clearances, authorisations, Approvals, consents, and permits and any related fees and charges,

which are applicable to the Subcontractor or the Subcontract or which are otherwise in force at any place where an obligation under this Subcontract is carried out and a reference to a statute includes all regulations and subordinate legislation and amendments.

39.14 **(Other references)** A reference to:

(a) a clause is to a clause in this Subcontract unless expressly stated otherwise;

(b) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes email and facsimile;

(c) a monetary amount is a reference to an Australian currency amount.

39.15 **(Grammatical forms)** Where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning. Words importing the singular number include the plural number and words importing the plural number include the singular number.

39.16 **(Clauses to survive termination)** Clauses 15, 17.2, 22, 23, 24, 25, 29, 32, 34 and 37 survive

# General Conditions

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the expiration or earlier termination of this Subcontract.

# Execution

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Executed as an Agreement:

## EXECUTED BY THE HEAD CONTRACTOR

SIGNED for and on behalf of [INSERT NAME AND ACN  
OF HEAD CONTRACTOR] in accordance with section  
127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Full name of Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Full name of Director/Secretary

## EXECUTED BY THE SUBCONTRACTOR

SIGNED for and on behalf of the [INSERT NAME AND  
ACN OF SUBCONTRACTOR] in accordance with  
section 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Full name of Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Full name of Director/Secretary

# Schedule 1 - Scope of Work

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[Scope of Work to be inserted into execution copy of Subcontract]

## Schedule 2 - Price Schedule

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[Price schedule is to be inserted into execution copy of Subcontract]



# Schedule 3 - Statutory Declaration

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*Oaths Act 1867*  
STATUTORY DECLARATION

QUEENSLAND  
TO WIT

I, [insert name of person signing] of [insert address] in the State of Queensland, do solemnly and sincerely declare that, in relation to the contract between [insert Head Contractor's name] and [insert Subcontractor's name] (**Subcontractor**), identified as contract no. [insert contract no.] (**Subcontract**) for the provision of [describe Works](**Works**):

1. I hold the position of . Having made all reasonable inquiries, I am in a position to know the facts contained herein. I am duly authorised by the Subcontractor to make this declaration on its behalf.
2. The Works provided in connection with the Subcontract comply in all respects with the requirements of the Subcontract.
3. All other obligations to be performed pursuant to the Subcontract have been performed in accordance with the Subcontract.
4. Each claim for payment which the Subcontractor has submitted in connection with the Subcontract and all documentary evidence provided in support of such claims, is true and correct in every material respect.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867*.

Taken and declared at )  
this No. day of Month Year )  
before me: )

- 
- Solicitor    Justice of the Peace  
 Commissioner for declarations

## Schedule 4 - Other documents

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[Other documents to be inserted (if any) such as documents/drawings/specifications from the Head contract]