

# **SUBCONTRACT**

between

**CONTRACTOR**  
(Contractor)

and

**SUBCONTRACTOR**  
(Subcontractor)



SERVICES GROUP

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delivering the edge

**FORMAL INSTRUMENT OF AGREEMENT**



A subcontract made on the DAY day of MONTH 20[XX]

BETWEEN

CONTRACTOR  
(called the Contractor)

AND

SUBCONTRACTOR  
(called the Subcontractor)

jointly referred to as the "Parties"

IT IS AGREED:

**1 The Subcontract**

- 1.1. The following document together comprise the Subcontract:
  - 1.1.1. This Formal Instrument of Agreement;
  - 1.1.2. Schedule 1 – Details
  - 1.1.3. Schedule 2 – Special Conditions
  - 1.1.4. Schedule 3 – Subcontractor Deed of Release
  - 1.1.5. Schedule 4 – Form of Acceptance of Variation Quotation
  - 1.1.6. Schedule 5 – Subcontract Pre-award Interview
  - 1.1.7. Schedule 6 – Subcontract Work;
  - 1.1.8. Schedule 7 – Scope of Works;
  - 1.1.9. Schedule 8 – Specification and Finishing Schedules;
  - 1.1.10. Schedule 9 – Subcontract Drawings;
  - 1.1.11. Schedule 10 – Programme;
  - 1.1.12. Schedule 11 – Post Tender Interview
  - 1.1.13. Schedule 12 – Insurances;
  - 1.1.14. Schedule 13 – Statutory Declaration; and
  - 1.1.15. Schedule 14 – Progress Claim Dates

1.2. If there is any ambiguity, inconsistency or conflict between the provisions of any of the Documents referred to in clause 1.1, unless otherwise stated, the Documents take precedence in the above order.

1.3. The Subcontract constitutes the entire, final and concluded agreement between the Parties and supersedes any previous arrangements, correspondence, tenders, representations, proposals, understandings and communications, whether oral or in writing.

**2 The Subcontract Sum**

The Subcontract Sum shall be for the sum of **SUM AMOUNT** plus the addition of the prescribed GST.

The Parties agree that the Subcontractor is to carry out and complete the Subcontract Works in exchange for the Subcontract Sum and in accordance with the terms and conditions of this Subcontract.

**EXECUTED AS AN AGREEMENT**

Executed by **[INSERT CONTRACTOR]** (ABN **[INSERT]**) in accordance with section 127(1) of the Corporations Act 2001 by being signed by authorised persons for the company:

.....  
Signature of Director

.....  
Signature of Director (or Company Secretary)

.....  
Print Name

.....  
Print Name

Executed by **[INSERT SUBCONTRACTOR]** (ABN **[INSERT]**) in accordance with section 127(1) of the Corporations Act 2001 by being signed by authorised persons for the company:

.....  
Signature of Director

.....  
Signature of Director (or Company Secretary)

.....  
Print Name

.....  
Print Name

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**TABLE OF CONTENTS**

1	Applicable Law.....	4
2	Scope of Subcontract Works.....	4
3	Head contract obligations.....	4
4	Access to Superintendent and consultants .....	4
5	Quality Assurance .....	5
6	Environmental .....	5
7	Subcontract Documents .....	5
8	Evidence of Agreement/Documents.....	6
9	Bills of quantities/schedule of quantities .....	6
10	Assignment and sub-letting .....	6
11	Guarantees/warranties .....	6
12	Drawings and Site dimensions.....	6
13	Subcontractor to inform itself .....	7
14	Latent Conditions .....	7
15	Statutory requirements .....	7
16	Subcontractor’s Representatives.....	8
17	Control of employees .....	8
18	Safety .....	8
19	Responsibility for Subcontract Work .....	9
20	Possession of Site .....	9
21	Setting out work .....	10
22	Acceptance of previous work .....	10
23	Materials.....	10
24	Examination and testing of materials and work .....	10
25	Variations.....	11
26	Notification of claims.....	12
27	Liability for defects .....	12
28	Site cleaning.....	13
29	Contractor’s Work Schedule and Subcontractor’s program .....	13
30	Delay and Extension of Time .....	14
31	Acceleration.....	15
32	Payment.....	15
33	Payment of Employees .....	17
34	Retention Fund & Additional Security .....	17
35	Using Retentions/Additional Security.....	17
36	Indemnities.....	18
37	Insurance .....	18
38	Evidence of Insurance.....	18
39	Insurance Notices .....	19
40	Notices.....	19
41	Industrial Relations .....	19
42	Not used .....	20
43	GST .....	20
44	The Building and Construction Industry Payment Act .....	20
45	Protection of persons and property .....	21
46	Urgent Protection .....	21
47	Provisional Sums.....	21
48	Temporary Light and Power .....	22
49	Intellectual Property Rights .....	22
50	Contractor’s default.....	22
51	Subcontractor’s defaults.....	23
52	Determination of Head Contact .....	24
53	Dispute Resolution .....	24
54	General Right of Set Off / Waiver of Conditions.....	24
55	Waiver of Conditions .....	24
56	Limitation of Liability .....	24
57	Confidentiality .....	25
58	Interpretation and Definitions.....	25

**1 Applicable Law**

The Subcontract shall be governed by and construed in accordance with the laws in force in the state specified in Schedule 1.

**2 Scope of Subcontract Works**

- (a) The Subcontractor shall carry out and complete the whole of the Subcontract Works as shown and/or described in the Subcontract Documents (including all minor items of work to be inferred from for the proper execution and completion of the Subcontract Works) as well as Variations to the Subcontract Works directed by the Contactor:
  - (I) in accordance with the Contractor’s Directions and the time required by the Contactor;
  - (II) on or before the Date for Practical Completion; and
  - (III) in a proper and tradesman like manner.
- (b) The Subcontractor acknowledges that it must make allowance for:
  - (I) minor items not expressly mentioned in the Subcontract Documents but which are necessary for the proper execution and completion the Subcontract Works; and
  - (II) slight variations in dimensions shown on drawings which may be caused by unavoidable inequalities in the size of materials.

**3 Head contract obligations**

- (a) The Subcontractor acknowledges and agrees that:
  - (I) the terms of the Head Contract are incorporated into this Subcontract;
  - (II) the Head Contract was, and is, available for inspection and review at the head office of the Contractor; and
  - (III) it has informed itself as to all Documents, obligation, liabilities and terms contained in the Head Contract;
  - (IV) subject to clause 3(b) herein, all duties, obligations and liabilities expressed in the Head Contract to be duties owed by the Contractor under the Head Contract shall be taken to be duties, obligations and liabilities owed by the Subcontractor to the Contractor under this Subcontract; and
  - (V) it is a term of this Subcontract that the Subcontractor must not do or omit to do any act or thing that would cause the Contractor to be in breach of any of its obligations under the Head Contract.
- (b) Except to the extent that the terms of this Subcontract imposes a higher or more onerous obligation on the Subcontractor than the equivalent obligation under the Head Contract (in which case the term of the Subcontract shall apply), where there exists any inconsistency or ambiguity between the terms of the Head Contract and this Subcontract, the terms of the Head Contract shall apply.
- (c) Without limitation to clause 3(b), the Subcontractor must:
  - (I) provide notice to the Contractor of any claims for Variations, Extension of Time and adjustments of the Subcontract Sum in accordance with the Subcontract and in sufficient detail to allow the Contractor to comply with any requisite provisions of the Head Contract; and
  - (II) assume the same responsibility as the Contractor has assumed to the Principal under the Head Contract in respect of any design, carrying out, completion, standard and quality of the Subcontract Works.
- (d) All the powers of the Principal, the Principal’s Representative or Superintendent under the Head Contract as against the Contractor extend to this Subcontract and may be exercised by the Contractor as against the Subcontractor under this Subcontract.

**4 Access to Superintendent and consultants**

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The Subcontractor is expressly forbidden to directly approach the Principal or Superintendent, or the Principal’s consultants or agents in connection with any matter concerning the Subcontract Works without prior consent from the Contractor.



**5 Quality Assurance**

- (a) The Subcontractor shall be responsible for providing quality assurance to meet the requirements of the Head Contract and the Contractor’s specific requirements.
- (b) The Contractor may request that the Subcontractor provides the Subcontractor’s Inspection and Test Plan (ITP) to the Contractor prior to commencing Subcontract Works on the Site.

**6 Environmental**

- (a) The Subcontractor must:
  - (I) comply with the Contractor’s environmental policy and all legislative requirements relating to the environment;
  - (II) take all necessary steps to avoid damaging the environment, the Site or property adjacent to or nearby the Site; and
  - (III) promptly notify the Contractor of any environmental issues or incident relating to the Subcontract Works and provide the Contractor with a copy of any notice received by the Subcontractor or its Secondary Subcontractors from any authority in relation to such matters.
- (b) If the Subcontractor causes any damage to the environment, fails to take adequate steps to protect the environment or fails to adhere to any applicable laws relating to the environment, the Subcontractor must remedy any such damage or failure at its own cost. If the Contractor gives Direction for the purpose of remedying any such damage or failure, the Subcontractor must comply with those instructions promptly.

**7 Subcontract Documents**

- (a) The Subcontract Documents shall be read as complementary Documents and anything required by or contained in one but not another shall be equally binding as if required by or contained in all of them.
- (b) If the Subcontractor finds any ambiguity, discrepancy, inconsistency or error in the Subcontract Documents (“anomaly”), it must immediately advise the Contractor in writing about the anomaly and the Contractor shall direct the Subcontractor as to the interpretation to be followed. No such Direction shall be considered a Variation to the Subcontract Works or be reason for adjustment of the Subcontract Sum unless the Contractor otherwise directs a Variation under clause 25.
- (c) If the Subcontractor makes a written request for additional drawings and/or any other written information from the Contractor (“Additional Details”) necessary for the purpose of executing the Subcontract Works, then the Additional Details supplied to the Subcontractor by the Contractor will be deemed to be part of the original Subcontract Documents.
- (d) All Documents supplied to the Subcontractor by the Contractor for the purpose of executing the Subcontract Works shall be returned to the Contractor on demand in writing and shall not be used by the Subcontractor for any purpose other than execution of the Subcontract Works.
- (e) If the Subcontract requires the Subcontractor to provide drawings and other written information (the “Subcontractor Details”), then the Subcontractor must, at its cost, supply the required copies of the Subcontractor Details to the Contractor for approval.
- (f) If the Contractor considers that such Subcontractor Details are suitable for use, the Contractor shall approve them and return a copy of the Subcontractor Details to the Subcontractor. The copies of the Subcontractor Details remaining in the Contractor’s possession shall become the Contractor’s property. The Subcontractor Details do not form part of the Subcontract Documents.
- (g) Notwithstanding the approval of the Subcontractor Details, the Subcontractor shall be bound to carry out and complete the Subcontract Works strictly in accordance with Subcontract Documents and shall not be relieved from full responsibility for the accuracy of the Subcontractor Details except in so far as any error in omission from the

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Subcontractor Details has been caused by an error in or omission from any Document which the Contractor has issued independently for the purpose of this Subcontract.

- (h) During the execution of the Subcontract Works, one complete set of drawings, specifications and other written information supplied to or by the Subcontractor shall be kept by the Subcontractor on the Site or other location approved in writing by the Contractor.

**8 Evidence of Agreement/Documents**

- (c) The execution of the FIA by the parties is a condition precedent to any payment by the Contractor to the Subcontractor under the Subcontract or otherwise at law in relation to the Subcontract.
- (d) The parties must take all reasonable steps to ensure that the FIA is executed before commencement of the Subcontract Works.
- (e) The Subcontractor acknowledges that:
  - (I) this Subcontract contains the entire understanding of the parties with respect to the subject matter of the Subcontract and the Subcontract Works; and
  - (II) it has not relied on any representations by the Contractor or any other person, other than those expressly contained in the Subcontract.

**9 Bills of quantities/schedule of quantities**

Where bills of quantities or schedule or quantities are provided by the Contractor to the Subcontractor, these are provided as a guide only and are not guaranteed to be correct and do not form part of the Subcontract Documents unless specified in Item 6A of Schedule 1.

**10 Assignment and sub-letting**

- (a) The Subcontractor shall not assign, mortgage, charge, encumber or sub-let any portion of the Subcontract Works under the Subcontract without the prior written consent of the Contractor.
- (b) Notwithstanding any consent given under clause 10(a), the Subcontractor shall not be relieved of responsibility for the act, default and neglect of any person in relation to the part of the Subcontract Works have been assigned or sub-let.

**11 Guarantees/warranties**

- (a) The Subcontractor shall provide the Contractor such guarantees or warranties as are specified in the Subcontract in respect of the Subcontract Works and shall ensure that the Principal shall have the benefit of any guarantee or warranty and be able to enforce the guarantee or warranty directly against the party giving them.
- (b) The Subcontractor must indemnify the Contractor against all loss and damage suffered or incurred by the Contractor as a result of any breach of clause 11(a) by the Subcontractor as a result of the Principal being unable to enforce a guarantee or warranty directly against the Subcontractor or the party giving the guarantee or warranty.

**12 Drawings and Site dimensions**

- (a) The Subcontractor shall be responsible for and shall verify all sizes, dimensions, set out and details on the Site to its own satisfaction. Any dimensions or details issued by the Contractor or by the Principal shall be deemed to be issued as a guide only.
- (b) The Subcontractor shall not make any claim against the Contractor to recover any cost, loss, expenses or damages arising out of or in connection with the Subcontractor’s failure to adequately check Site measurements.
- (c) The Subcontractor shall be responsible for, and pay all costs involved in, the preparation, amendment and review of all workshop drawings, including penetration drawing where required. Review by the Contractor of the drawings shall not render it liable for any errors or omissions in the drawings.

Initial	
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**13 Subcontractor to inform itself**

- (a) The Subcontractor warrants that prior to the execution of this Subcontract, it has:
  - (I) examined all the Site Information;
  - (II) examined all the information, and inspected the Site and conducted its own tests to assess the risks, contingencies and other circumstances, including Latent Conditions, relevant to the execution of the Subcontract Works ;
  - (III) informed itself of the nature of the work and materials necessary for the performance of the Subcontract Works and the means of access to and the facilities for delivery to the Site;
  - (IV) informed itself as to the availability of labour and the industrial relations environment;
  - (V) obtained all necessary professional advice and assistance in relation to the execution of the Subcontract Works; and
  - (VI) not relied upon any Documents or information supplied by the Contractor, including the Site Information, in entering into the Subcontract and accepts all risks associated with any inadequacy, error or inaccuracy in the Site Information.
- (b) Failure by the Subcontractor to do all or any of the things it has warranted to have done under this clause 13 will not relieve the Subcontractor of the liability to complete the Subcontract Works in accordance with the Subcontract.
- (c) The Subcontractor acknowledges that:
  - (I) in no circumstances whatsoever does the Contractor makes a warranty, representation, assume a duty of care to the Subcontractor or takes any responsibility with respect to the sufficiency or accuracy of any information or data provided to the Subcontractor, whether or not contained in the Subcontract Documents or Site Information;
  - (II) the provision of the Site Information and anything contained in the Site Information shall not affect the assumption by the Subcontractor of the risk of Latent Conditions under clause 14;
  - (III) the Subcontractor is not entitled to make any claims against the Contractor in relation to the Subcontract Works because the Contractor has provided inaccurate, incomplete or inadequate Site Information; and
  - (IV) the Contractor shall not be liable, whether in contract or tort, for negligent misrepresentation, misinformation or otherwise.

**14 Latent Conditions**

- (a) The Subcontractor agrees:
  - (I) to assume the risk of all Latent Conditions;
  - (II) to perform all work and provide all materials necessary to overcome any Latent Conditions at its own cost so that the Subcontract Works are completed by the Date for Practical Completion for the Subcontract Sum and without any delay; and
  - (III) that the Subcontractor shall have no claim against the Contractor arising from the existence of any Latent Condition.

**15 Statutory requirements**

- (a) The Subcontractor shall carry out and complete the Subcontract Works in accordance with the requirements of all relevant statutory authorities and laws, including paying all necessary fees and obtaining all necessary consents, approvals and certificates. The Subcontractor shall before commencing any part of the Subcontract Works produce to the Contractor all such relevant consents, approvals and certificates.
- (b) The Subcontractor shall comply with the requirements of the *Environmental Protection Act 1994* (Qld), subordinate legislation and the conditions of the Project Environmental Plan (where applicable).
- (c) Prior to the issue of the Final Certificate or upon demand in writing made by the Contractor to the Subcontractor, the Subcontractor shall surrender to the Contractor any Documents in its possessions issued by or evidencing the approval of public, municipal or other authorities in connection with the Subcontract Works.

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- (d) The Subcontractor must indemnify the Contractor against all loss and damage, including any penalty imposed by a statutory authority as a result of any environmental damage to the Site or the area surrounding the Site or the breach of any statute arising from the performance of the Subcontract Works.

**16 Subcontractor’s Representatives**

- (a) The Subcontractor shall nominate in writing a responsible person in its Site organisation as the Subcontractor’s representative who will be authorized to receive instructions and make binding decisions for and on behalf of the Subcontractor. In lieu of a nomination by the Subcontractor, this person shall be the supervisor or foreman of the Subcontractor on Site. The Subcontractor must ensure that at all times there is a Subcontractor’s representative and that any change of the Subcontractor’s representative is notified to the Contractor in writing.
- (b) The Subcontractor shall maintain throughout the duration of the Subcontract Works a competent supervising foreman and any Directions given to the supervising foreman by the Contractor shall be deemed to be given to the Subcontractor.
- (c) The Subcontractor shall ensure that the Subcontractor’s representative or an appropriate senior manager of the Subcontractor attends all meetings as requested by the Contractor throughout the duration of the Subcontract Works.
- (d) If at any time during the Subcontract Works the Contractor determines that the Subcontractor’s representative is unsuitable to perform the role, the Subcontractor must promptly remove that person from Site and immediately replace the Subcontractor’s representative with a new Subcontractor’s representative to the Contractor’s satisfaction.

**17 Control of employees**

- (a) The Subcontractor shall employ, and ensure that its Secondary Subcontractors employ, in connection with the Subcontract Works, persons who are careful, skilled and experienced in their respective trades and occupations.
- (b) The Subcontractor must comply with all Directions of the Contractor to remove or have removed from the Site, within such time as the Contractor directs, any person employed by the Subcontractor or by any of its Secondary Subcontractors who, in the reasonable opinion of the Contractor, misconducts themselves or is incompetent or negligent in the performance of their duties.
- (c) Any such person shall not be further employed in connection with the Subcontract Works without the prior approval of the Contractor.

**18 Safety**

- (a) The Subcontractor shall:
  - (I) be responsible for training, instructing and directing its employees in safe working practices;
  - (II) provide, at its cost, to all employees Personal Protective Equipment, and ensure that employees are trained in the correct use, maintenance and storage of PPE items. The Subcontractor must monitor its employees compliance of the Site PPE requirements;
  - (III) observe and ensure that its Secondary Subcontractors and employees observe all relevant legislation governing safe working practices and conditions and any safety work instruction issued by the Principal Contractor;
  - (IV) submit its Site specific Workplace Health and Safety Plan and Safe Work Method Statements, in accordance with the *Workplace Health and Safety Regulations 2011* (Qld) to the Contractor’s project manager within the earlier of 10 Business Days of award of the Subcontract or 10 Business Days prior to commencement of the Subcontract Works on Site. The Subcontractor will not be permitted to commence the Subcontract Work on the Site until its submitted Safe Work Method Statements have been approved;
  - (V) prior to commencing the Subcontract Works on the Site, submit the following completed Documents:
    - i. Electrical Equipment Register;
    - ii. Hazardous Substance Register;

Initial	
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- iii. Material Safety Data Sheets;
  - iv. Employee Training and Qualification Register; and
  - v. Registered Plant Register,
- (VI) promptly notify the Contractor of any notifiable incident within the meaning of the *Work Health and Safety Act 2011* (Qld); and
- (VII) indemnify the Contractor against any liability, expense, loss or penalty suffered or incurred by the Contractor as a result of the Subcontractor's failure to comply with clause 18.

**19 Responsibility for Subcontract Work**

- (a) From the date of the Subcontractor's commencement of the Subcontract Works until the Contractor receives the certificate of Practical Completion under the Head Contract, the Subcontractor shall, at its own expense be responsible for the care of all Subcontract Works, including:
- (I) all materials and plant which are the property of the Subcontractor or its Secondary Subcontractors, servants or agents which are used or intended to be used for the purpose of carrying out the Subcontract Work ;
  - (II) all materials and plant entrusted to the Subcontractor or its Secondary Subcontractors, servants or agents by the Contractor for the purpose of carrying out Subcontract Work ; and
  - (III) the protection, care, up-keep and maintenance of the Subcontract Works.
- (b) If loss or damage occurs to the Subcontract Works while the Subcontractor is responsible for its protection and maintenance, the Subcontractor shall at its own cost promptly make good the loss or damage.

**20 Possession of Site**

- (a) The Subcontractor must commence the Subcontract Works from the date nominated in Item 12 or another date advised by the Contractor and carry out the Subcontractor Work in accordance with the Contractor's Directions and the Contractor's Works Schedule. If the Subcontractor fails to commence the Subcontract Works by the date it is required to commence the Subcontract Works, , then the Subcontractor shall be liable to the Contractor for any loss, damage, cost or expense incurred by the Contractor by reason of such failure.
- (b) The Subcontractor shall at all reasonable times permit the Contractor and any person authorised in writing by the Contractor to have access to the Subcontract Works and shall provide every reasonable facility necessary for the supervision, examination and/or testing of:
- (I) the Subcontract Works ;
  - (II) materials supplied at the Site or at any place where the Subcontract Works are being carried out; or
  - (III) materials that are being prepared or stored for the Subcontract Works.
- (c) The Subcontractor acknowledges that the Contractor and other subcontractors will be carrying out other work on the Site concurrently with the performance of the Subcontract Works. The Subcontractor shall full co-operate with the Contractor and other subcontractors engaged by the Contractor and shall co-ordinate its own work with that being carried out by the Contractor, and other subcontractors in such a manner as will mitigate any delays.
- (d) The Subcontractor warrants that is has made due allowance to absorb any reasonable delay resulting from restricted access to the Site or the Subcontract Works and the need to interface with the Contractor and other subcontractors.
- (e) Until full or partial access to the Site is given to the Subcontractor under clause 20(a), the Subcontractor shall not deliver materials to or perform work on the Site without written approval from the Contractor.
- (f) Unless the Subcontract otherwise provides or the Contractor gives prior written approval, the Subcontractor must not use the Site or allow it to be used for any purpose not connected with the Subcontract Works.
- (g) The Subcontractor shall neither take or employ anyone to video or photograph the Site or any part of the Project without the prior written approval of the Contractor.
- (h) Any valuable minerals, fossils, articles, objects of antiquity, objects of anthropological or archaeological interest, coins or articles of value found on the Site during the carrying out of the Subcontract Works shall remain the property of the Contractor. The Subcontractor shall, immediately upon discovery of such items, notify the Contractor

of the discovery, and if so directed by the Contractor, take precautions to prevent the loss, removal or damage to any such articles or property.

**21 Setting out work**

- (a) The Contractor shall supply the information necessary to enable to Subcontractor to set out the Subcontract Works.
- (b) Subject to clause 21(a) hereof, the Subcontractor shall at its own expense set out the Subcontract Works on the Site correctly and in accordance with the Subcontract and Subcontract Documents.
- (c) Except in so far as the Subcontract Work is required to be covered or removed, the Subcontractor shall preserve and maintain in their true positions all Survey Marks.
- (d) Should any Survey Mark be disturbed or obliterated, the Subcontractor shall immediately notify the Contractor and shall, unless the Contractor otherwise directs, rectify such disturbance or obliteration to the satisfactions of the Contractor at the Subcontractor's cost.
- (e) If at any time during the progress of the Subcontract Works any error is discovered in the position, level, dimensions or alignment of any part of the Project (including the Subcontract Works), the Subcontractor shall, immediately upon discovery of such error, notify the Contractor and shall unless the Contractor otherwise directs, at its cost, rectify the error. The Contractor will only be liable for the costs of rectification where the error has been caused by incorrect data issued by the Contractor .
- (f) Notwithstanding the Contractor checking the setting out of work on the Site by the Subcontractor, Subcontractor shall not be relieved of any responsibility for the correct setting out of the Subcontract Works.

**22 Acceptance of previous work**

- (a) The Subcontractor may elect not proceed to carry out any part of the Subcontract Works which covers or otherwise makes inaccessible a part of the Subcontract Works previously performed by another subcontractor if, in the reasonable opinion of the Subcontractor, the previous work is unsatisfactory or unsuitable to allow the Subcontractor to perform the Subcontract Works, unless the Contractor issues a written instruction overriding the Subcontractor's objection and the Contractor accepts responsibility for such work proceeding.
- (b) Subject to clause 22(a), commencement of any Subcontract Work by the Subcontractor shall be conclusive evidence that the Subcontractor accepts the previous work and requires no extra payments or special recompenses and such commencement shall render the Subcontractor liable for all costs, loss, expenses or damage incurred by the Contractor in making good any resultant defects.

**23 Materials**

- (a) All materials, plant and equipment, including scaffolding and Site accommodation, necessary for the performance of the Subcontract Works are to be supplied by the Subcontractor.
- (b) In the event that the Subcontractor, its employees or Secondary Subcontractors are permitted to use any crane, scaffolding, hoist or other equipment provided by the Contractor for the purpose of carrying out the Subcontractor Works, such use shall be on the express condition that no warranty or other liability on the part of the Contractor or its other subcontractors shall be created or implied in regard to the fitness, availability, adequacy, condition or suitability of the crane, scaffolding, hoist or other equipment.
- (c) The Subcontractor is responsible for the protection and security of all materials, tools, equipment, goods and executed Subcontract Works, including temporary coverings and the replacement of any protection or temporary coverings provided by others and removed by the Subcontractor to gain access or otherwise.

**24 Examination and testing of materials and work**

- (a) At any time prior to the making of a payment by the Contractor to the Subcontractor, the Contractor may direct that any materials or the Subcontract Works be tested. The Subcontractor shall provide such assistance and samples and make accessible each part of the Subcontract Works as may be required. On completion of the tests, the Subcontractor shall make good the Subcontract Works so that it fully complies with this Subcontract.

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- (b) The Contractor may direct that any part of the Subcontract Works shall not be covered up or made inaccessible without the Contractor’s prior approval.
- (c) Tests shall be conducted as provided in the Subcontract or by the Contractor.
- (d) Before conducting a test under this Subcontract, the Contractor or the Subcontractor shall give reasonable notice to the other of the time, date and place of the test.
- (e) Without prejudice to any other rights or remedies under this Subcontract, if the Subcontractor delays in conducting a test, the Contractor, after giving reasonable notice of intention to do so, may conduct the test.
- (f) Results of tests shall be promptly made available by each party to the other party.
- (g) Costs of and incidental to testing shall be borne by the Contractor or paid by the Contractor to the Subcontractor unless:
  - (I) this Subcontract provides that the Subcontractor shall bear the costs of the test;
  - (II) the test was required to be conducted by the Subcontractor;
  - (III) the test shows that the materials or Subcontract Works are not in accordance with this Subcontract;
  - (IV) the test is in respect of the Subcontract Works covered up or made inaccessible without the Contractor’s prior approval; or
  - (V) the test is consequent upon failure of the Subcontractor to comply with a requirement of this Subcontract.
- (h) Where the cost of and incidental to testing are not to be borne by the Contractor, they shall be borne by the Subcontractor or paid by the Subcontractor to the Contractor on demand.

**25 Variations**

- (a) The Contractor may direct the Subcontractor in writing to carry out a Variation to the Subcontract Works
- (b) The Subcontractor shall vary the Subcontract Work as required by the Contractor and no Variation shall void this Subcontract. All Variations to the Head Contract works approved by the Superintendent under the Head Contract, including omitting the whole of the Subcontract Works shall be treated as a Variation to the Subcontract and valued accordingly.
- (c) Where reasonably possible, the price of a Variation is to be agreed or determined prior to the Subcontractor carrying out the Variation. However, if directed in writing by the Contractor, the Variation to the Subcontract works shall be promptly carried out by the Subcontractor notwithstanding that the price of the Variation has not been agreed or determined.
- (d) Where the Contractor directs a Variation to the Subcontract Works, the Subcontractor shall, within 7 days, submit to the Contractor in writing:
  - (I) pricing and methodology for calculating the price of the Variation; and
  - (II) full supporting details for the pricing of the Variation, including timesheets and original invoices for labour, plant and materials.
- (e) If the Subcontractor considers that any Direction (other than a Variation Direction) involves a Variation, then the Subcontractor shall immediately but no later than 2 Business Days after receipt of the Direction and prior to acting upon the Direction, submit a written notice entitled “Notice of Claimed Variation” setting out detailed particulars and supporting information as to the basis for which the Subcontractor contends that the Direction involves a Variation.
- (f) In the absence of a notice under clauses 25(d), the Contractor reserves the right to calculate the Subcontractor’s price on its behalf or decline a Variation in its entirety.
- (g) The Subcontractor must only vary the Subcontract Works or omit any part of the Subcontract Works after a written Variation Direction from the Contractor in accordance with clause 25(a).
- (h) Not used
- (i) The price of a Variation is:
  - (I) if Contractor deems that the rates or prices in the schedule of quantities, bill of quantities or schedule of prices are applicable those prices or rates; or

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- (II) otherwise, a reasonable price agreed upon by the Subcontractor and the Contractor or failing agreement by the parties, a fair and reasonable valuation which is to be made by the Contractor.
- (j) Notwithstanding clause 25(i), where a Variation has been valued for the purpose of the Head Contract, the Contractor may, at its discretion, apply with respect to the price of the Variation, the value payable to the Contractor under the Head Contract.
- (k) The Subcontract Sum may only be adjusted by a Variation approved by the Contractor and the adjustment is to be included by the Subcontractor in its next progress claim after carrying out the Subcontract Works the subject of Variation.
- (l) The Subcontractor must not:
  - (I) make a claim for a Variation if the cost of the Subcontract Work is less than the amount identified in Item 19 of Schedule 1; or
  - (II) aggregate any Variation claims. Each Variation must be claimed separately.
- (m) The Subcontractor shall notify the Contractor of all Variation claims in accordance with clause 25 as a prerequisite to any entitlement to be paid under the Subcontract or at general law for performing the Variation to the Subcontract Works.
- (n) The Subcontractor shall in no circumstances be entitled to a Variation to the Subcontract Works unless it strictly complies with clause 25 and compliance with this clause shall be a condition precedent to any entitlement to claim a Variation.

**26 Notification of claims**

- (a) The Contractor shall not be liable for any claim, action, demand or proceeding by the Subcontractor, whether under the Subcontract or at general law or in respect of or arising out of:
  - (I) a breach of contract;
  - (II) a Direction from the Contractor (including a Direction to perform a Variation); or
  - (III) an adjustment to the Subcontract Sum or otherwise,
 unless within 7 days (or a lesser time required under the Head Contract) of the date which the Subcontractor could have become aware of the breach, Direction or entitlement to bring the claim, action, demand or proceeding, the Subcontractor gives the Contractor a prescribed notice.
- (b) For the purpose of this clause 26, a prescribed notice is a notice in writing which includes full particulars of:
  - (I) the breach, Direction or circumstances on which the claim, action, demand or proceedings is based;
  - (II) the clause of the Subcontract or other basis for the claim, action, demand or proceeding; and
  - (III) the quantum of the claim, action, demand or proceeding and the method of calculation.

**27 Liability for defects**

- (a) Any defects which may appear at any time up to the expiration of the Defects Liability Period shall, upon a Direction by the Contractor, be rectified by the Subcontractor at its own cost within the period specified in the Direction.
- (b) Where the Subcontractor fails to comply with a Direction under this clause 27(a), the Contractor after giving written notice to the Subcontractor, may have the defects rectified by other subcontractors. The Contractor may deduct from the retention fund or any security held any costs incurred in rectifying the defects under clause 27(b).
- (c) Should the retention monies or security be insufficient, the Contractor may recover the cost of rectifying the defect from the Subcontractor as a debt due from the Subcontractor to the Contractor.
- (d) Where, during the Defects Liability Period, the Contractor directs the Subcontractor to rectify a defect, a separate Defects Liability Period for the Subcontract Works which is the subject of the defect will commence on completion of the rectification works and extend for a further period equal to the first Defects Liability Period.
- (e) The Contractor may hold the balance of the retention fund until expiration of the last Defects Liability Period.

**28 Site cleaning**



- (a) The Subcontractor shall at its own cost and to the satisfaction of the Contractor:
  - (I) during performance of the subcontractor works and at Practical Completion of the Subcontract Works or as otherwise reasonably directed by the Contractor, clean-up and properly remove from the Site all rubbish and surplus material arising from the execution of the Subcontract and leave the Site in a condition suitable for handing over to the Contractor; and
  - (II) at Practical Completion of the Subcontract Works, remove all temporary buildings, temporary works, constructional plant and equipment the Subcontractor may have constructed or brought onto the Site for the purpose of carrying out the Subcontract Works.
- (b) If the Subcontractor fails to comply with any obligation imposed on it by clause 28, the Contractor may, after giving notice in writing to the Subcontractor, have the cleaning work performed by other subcontractors and the cost incurred by the Contractor in so doing shall be a debt due to the Contractor from the Subcontractor.

**29 Contractor’s Work Schedule and Subcontractor’s program**

- (a) The Subcontractor must commence and progress the Subcontract Works in a manner and at a rate of progress satisfactory to the Contractor and otherwise in accordance with the Contractor’s Work Schedule as may be amended from time to time.
- (b) The Subcontractor will, at its own cost, where necessary, take all necessary steps to expedite the performance of the Subcontract Works and avoid delays in the progress of the Subcontract Works, the Project and the Contractor’s Work Schedule. The Subcontractor must carry out and complete the Subcontract Works within a sufficient time to allow the Contractor to achieve Practical Completion of the Project in accordance with the Head Contract.
- (c) The Subcontractor is to work up to 6 days a week (Monday to Saturday) and during such hours as are necessary to comply with the Contractor’s Work Schedule.
- (d) The Subcontractor shall within 7 days after the commencement of the Subcontract Works or the date of execution of the FIA, whichever is earlier, and from time to time thereafter as directed by the Contractor, supply a program showing the dates by which or the times within which the various stages or parts of the Subcontract Works are to be executed.
- (e) Any program provided by the Subcontractor must comply with the Contractor’s Work Schedule which may be amended by the Contractor from time to time so that the Subcontractor is obligated to provide further programs as required and directed to by the Contractor.
- (f) The Subcontractor must adhere to that program unless a deviation is approved or directed by the Contractor, but the Subcontractor shall always be responsible for complying with all of its obligations in respect of the timely completion of the Subcontract Works.
- (g) If any program is not provided within the time required, the Contractor may direct in what order, and by what dates or by which times the various stages or parts of the Subcontract Works shall be executed (the “Timing Direction”).
- (h) Notwithstanding any Direction given by the Contractor for the Subcontractor to:
  - (I) deviate from the Contractor’s Work Schedule; or
  - (II) adhere to the Timing Direction,
 the Subcontractor is not entitled to make a claim for reimbursement of any cost, expense or loss unless the claim was notified under clause 26 and is a Variation directed by the Contractor under clause 25.
- (i) The Subcontractor acknowledges and agrees that it:
  - (I) has notice of the period of completion of the Project and will complete the Subcontract Works by the Date for Practical Completion;
  - (II) will carry out the Subcontract Works only during the hours agreed under the Subcontract unless the Contractor has previously approved or directed in writing otherwise, in which case the Subcontractor may be required to meet any additional cost of supervision incurred by the Contractor as a debt due and owing;
  - (III) has reviewed the Contractor’s Work Schedule and is satisfied that it can complete the Subcontract Works within the time required under the Subcontract; and

Initial	
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- (IV) will supply, at its own cost, all necessary resources, including labour, plant and equipment in order to carry out the Subcontract Works in accordance with this clause 29.
- (j) If the Subcontractor fails to bring the Subcontract Works to Practical Completion by the Date for Practical Completion, the Subcontractor must pay the Contractor liquidated damages at the amount specified in Item 9 of Schedule 1 until the Date of Practical Completion as determined by the Contractor. The Subcontractor acknowledges that the liquidated damages rate is a genuine pre-estimate of the loss incurred by Contractor.
- (k) If the Project does not reach Practical Completion under the Head Contract in accordance with the Head Contract or the Contractor’s Work Schedule and one of the causes of such delay is any act or omission of the Subcontractor, including delay by the Subcontractor in completing the Subcontract Works, the Subcontractor shall indemnify the Contractor against any claim, loss, cost or damage incurred as a result of the delay including damages, losses, or costs payable by the Contractor to the Principal under the Head Contract in the amount stated in Item 9 of Schedule 1 or at law.
- (l) If in the interest of the safety of the workers or to protect life or property, the Subcontractor deems it necessary to carry out work outside normal working hours or working days prior to obtaining the approval of the Contractor, the Subcontractor shall notify the Contractor in writing of the said circumstances as soon as practicable.

**30 Delay and Extension of Time**

- (a) The Subcontractor is only entitled to an EOT to the Date for Practical Completion where:
  - (I) the progress of the Subcontract Works is actually delayed by a Qualifying Delay;
  - (II) the Subcontractor gives the Contractor a written notice, within 2 days after the commencement of the Qualifying Delay, setting out the cause of the Qualifying Delay and an estimate of the extent of the Qualifying Delay ;
  - (III) if the Qualifying Delay continues for more than 7 days, the Subcontractor provides a further written notice on the 7<sup>th</sup> day after the commencement of the Qualifying Delay to the Contractor stating that the Qualifying Delay continues and providing an estimate of when the Qualifying Delay;
  - (IV) the Subcontractor gives the Contractor a written notice, within 2 days after the Qualifying Delay ceases, claiming an EOT and providing details of the extent of the Qualifying Delay and the grounds on which the claim is based;
  - (V) the Subcontractor has taken reasonable steps to avoid and mitigate the effect of the Qualifying Delay.
- (b) The Contractor will inform the Subcontractor within 28 days of receiving a claim for an EOT (“Advice on EOT”):
  - (I) whether or not the Contractor has granted any EOT; and
  - (II) if no Advice on EOT is given, then the claim is deemed to be rejected.
- (c) The Subcontractor’s strict compliance with the provisions of this clause is a precondition to any right of the Subcontractor to receive an EOT.
- (d) Notwithstanding that the Subcontractor is not entitled to or has not claimed an EOT, the Contractor may, at any time and from time to time before the issue of the certificate of final completion under the Head Contract, by notice in writing to the Subcontractor, extend the Date for Practical Completion for any reason in the Contractor’s absolute discretion and without being under any obligation to do so. An EOT granted by the Contractor does not entitle the Subcontractor to:
  - (I) an increase in the Subcontract Sum;
  - (II) give rise to any liability for damages arising out of or in connection with the Qualifying Delay;
  - (III) set time at large in respect of the Subcontractor; or

Initial	
Initial	

- (IV) vitiate the Subcontract.

**31 Acceleration**

- (a) The Contractor may direct the Subcontractor to accelerate the execution of the Subcontract Works or to recover any delay in the execution of the Subcontract Works (the “Acceleration Direction”) provided that the Contractor’s Direction must:
  - (I) be in writing;
  - (II) contain details of the Subcontract Works to be accelerated and the time by which the accelerated work is to be completed; and
  - (III) be signed by an authorised representative of the Contractor.
- (b) The Subcontractor must not comply with the Acceleration Direction until the Contractor and the Subcontractor have agreed in writing as to:
  - (I) the amount to be paid to the Subcontractor; and
  - (II) the manner in which the Subcontract Sum is to be adjusted and how the adjustment will be paid to the Subcontractor.
- (c) Subject to clause 31(b), the Subcontractor must take steps, measures and calculations that are necessary to comply with the Acceleration Direction, including the rescheduling, redeployment and employment of workers, plant, equipment and other resources.
- (d) In the event that the Subcontractor is directed to accelerate the Subcontract Works under clause 31(a), the Contractor shall not be liable for any additional costs incurred by or on behalf of the Subcontractor.

**32 Payment**

- (a) On or before the date stated in Item 14 of Schedule 1 (the “Reference Date”), the Subcontractor must give a progress claim to the Contractor in writing (in a format approved by the Contractor):
  - (I) stating the value of the Subcontract Works carried out by the Subcontractor to the Reference Date ; and
  - (II) including a schedule of Variations stating the Variations directed by the Contractor under clause 25 to the Reference Date (providing the Subcontractor has complied with clause 25 in relation to each Variations claimed) together with:
    - A. the description of the work directed to be carried out under each Variation;
    - B. any prices that have been agreed or valued in accordance with clause 25(i); and
    - C. the prices that have not been agreed or valued (the “Variations not agreed”),
  - (III) including signed statutory declarations, in the format required by the Contractor and attached to the Subcontractor Documents, to evidence that the Subcontractor has :
    - A. paid all of the Subcontractor’s Secondary Subcontractors, and employees all amounts due at law in respect of the Subcontract Works;
    - B. paid all superannuation, redundancy payments or other statutory fund contributions, to which any relevant receipts should be attached ;
    - C. claimed for all work carried out by the Subcontractor up to the date of the progress claim in accordance with the Subcontract; and
    - D. effected and continues to have any required insurance cover under the Subcontract, to which should be attached any relevant insurance Documents unless previously provided.

For the avoidance of doubt, a progress claim can only be submitted once per month and a Reference Date shall not arise during the period following 7 Business Days after the Date of Practice Completion until the time for make the final progress claim under clause 32(g).

- (b) The amount payable to the Subcontractor in respect of each progress claim is the Contractors assessment of:
  - (I) the value of the Subcontract Works (excluding Variations) carried out by the Subcontractor and claimed to the Reference Date for this progress claim; and

Initial	
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- (II) the value of any Variations to the Subcontract Works carried out by the Subcontractor and claimed to the Reference Date for the progress claim which increases the Subcontract Sum and has been previously approved or valued in writing by the Contractor in accordance with clause 25(i),
- less
- (III) the total amount already paid under the Subcontract to the Subcontractor by the Contractor;
- (IV) the value of any Variations which decrease the Subcontract Sum and have been previously approved or valued in writing by the Contractor under clause 25(i);
- (V) any amount which the Contractor may withhold, retain or deduct in accordance with the Subcontract or otherwise, including retentions under clause 34;
- (VI) any other amount asserted or claimed by the Contractor under clause 54; and
- (VII) where any part of the Subcontract Works are defective, the estimated cost of remedying the defective work.
- (c) In determining the amount payable to the Subcontractor in respect of each progress claim, the assessment is to exclude any amount:
- (I) for work performed by the Subcontractor after the Reference Date for this progress claim;
- (II) which comprises a claim for damages by the Subcontractor;
- (III) claimed by the Subcontractor that has not been earlier notified under clause 25; and
- (IV) for Variations not agreed.
- (d) No amount is payable to the Subcontractor in respect of any progress claim unless:
- (I) the Subcontractor has returned an unamended executed FIA to the Contractor; and
- (II) the Subcontractor has strictly complied with clause 32(a).
- (e) If the Contractor disputes all or any part of the progress claim or the final progress claim, the Contractor shall give the Subcontractor a written notice, in the form of a payment schedule under the Act, setting out the amount in dispute and the details of the dispute within 10 Business Days of the progress claim being received.
- (f) The Contractor is to pay the amount payable to the Subcontractor in accordance with clause 32 within the time for payment set out in Item 15 of Schedule 1. Payment other than payment of the Subcontractor's final progress claim is payment on account only.
- (g) The Subcontractor is to submit its final progress claim within 21 days after the Defects Liability Period expires or within such other time as is requested by the Contractor in writing. The final progress claim is to be endorsed "Final Progress Claim" and is to include:
- (I) a final statement setting out the details of all monies claims or owed under this Subcontractor or in connection with the subject matter of this Subcontract; and
- (II) a release by the Subcontractor, in the written form provided by the Contractor, and attached to the Subcontract Documents (the "Final Release") in respect of all claims on any account whatsoever that the Subcontractor may have against the Contractor under this Subcontract or in connection with the subject matter of the Subcontract, which are not contained in the final statement.
- (h) After the expiration of the time for submitting the Subcontractor's final progress claim, any potential claim that Subcontractor could have made against the Contractor shall be barred.
- (i) As a condition precedent to receiving payment in respect of the final progress claim, the Subcontractor must:
- (I) execute the Final Release in Schedule **X**; and
- (II) provide all warranties, as-built manuals, drawings, training and spare materials as required by the Subcontractor or referred to in the specification.
- (j) Payment by the Contractor, at any time, where the Subcontractor has not complied with clause 32(a) to 32(d), does not preclude or operate as a waiver of:
- (I) the Contractor's rights to rely on clause 32 in respect of any other future payment claim; or
- (II) the exercise and enforcement of any other right, power or remedy provided by law or under this Subcontract.

**33 Payment of Employees**

- (a) The Subcontractor shall ensure that all persons engaged on the Subcontract Work are paid all wages, benefits and allowances in accordance with all relevant industrial instruments and other statutory requirements and are employed subject to such conditions to which they may be or become entitled to by virtue of any statute, award, registered agreement, determination, judgment, order of any competent court, board, commission or other industrial tribunal in force from time to time.
- (b) If any wages and/or allowances remain unpaid by the Subcontractor, the Contractor may withhold from the Subcontractor an amount sufficient to satisfy such unpaid wages and/or allowances until the Subcontractor shall provide adequate evidence of payment, failing which the Contractor may make direct payment and account to the Subcontractor for the same as a debt due and owing.

**34 Retention Fund & Additional Security**

- (a) Subject to this Subcontract, the Contractor may deduct and retain the percentage set out in Item 16 of Schedule 1 from any progress payment to the Subcontractor and the total amount retained from all progress payments shall constitute the retention fund.
- (b) Where stated in Item 16 of Schedule 1, the Subcontractor must provide the Contractor with additional security, both in the form and provided by the financial institution approved of in writing by the Contractor, and of the amount stated in Item 16 of Schedule 1. The additional security is to be lodged with the Contractor prior to the Subcontractor commencing the Subcontract Works.
- (c) The retention fund, and any additional security provided by the Subcontractor under clause 34(b), shall secure the Subcontractor's performance of its obligations under this Subcontract, including its obligations to rectify any defects in the Subcontract Works.
- (d) Prior to Practical Completion, the total of:
  - (i) the retention fund; and
  - (ii) any additional security provided by the Subcontractor under clause 34(b)),
 shall not exceed 5% of the Subcontract Sum unless section 67L(2) of the *Queensland Building and Construction Commission Act 1991* (Qld) applies.
- (e) On Practical Completion of the Subcontract Works, the Contractor must, on the Subcontractor's written request, release to the Subcontractor that part of the retention fund, together with any additional security provided under this clause 34, in excess of 2.5% of the Subcontract Sum unless section 67N(2) if the *Queensland Building and Construction Commission Act 1991* (Qld) applies.
- (f) The Contractor may hold the balance of the retention fund, and any additional security provided under this clause 34 until the later of:
  - (i) the expiration of the last Defects Liability Period; or
  - (ii) 30 days after the issue of the final certificate under the Head Contract.
- (g) The Contractor is entitled to retain any interest that may be earned on the retention fund.

**35 Using Retentions/Additional Security**

- (a) The Contractor may recover from the retention fund, use any security provided by the Subcontractor under clause 34 or otherwise set-off from any amount due to the Subcontractor to make payment in respect of:
  - (i) any debt or other amount due from the Subcontractor to the Contractor; or
  - (ii) any claim to payment which the Contractor may have against the Subcontractor whether for damages or otherwise;

under this Subcontract or at law relating to the Subcontract Works or otherwise under any other contract or agreement between the Contractor and Subcontractor.

Initial	
Initial	

- (b) The Contractor may include, in any deduction under this clause 35, its reasonable costs in administering the deduction.

**36 Indemnities**

- (a) The Subcontractor must rectify any damage to property, including property in or in the vicinity of the Subcontract Works damage) caused or contributed to by the Subcontractor or its Secondary Subcontractors, employees or agents.
- (b) The Subcontractor must indemnify the Contractor against liability or claims in respect of:
  - (I) loss or damage to property, including existing property on or around the Subcontract Works and the Project; and
  - (II) personal injury or death to any person, whatsoever, arising out of, or as a consequence of, the carrying out of the Subcontract Works by the Subcontractor.
- (c) In the event that the Subcontractor fails to rectify the damage as required by clause 36(a), the Contractor may have the damage rectified and claim the costs as a debt due and payable by the Subcontractor.

**37 Insurance**

- (a) The Subcontractor must effect and maintain the following insurance cover on terms of coverage satisfactory to the Contractor for the duration of the Subcontract Works:
  - (I) public and products liability insurance in respect of third party personal injury or property damage to an amount not less than that stated in Schedule 1 per occurrence;
  - (II) in respect of motor vehicles, plant and equipment, any required statutory insurance including compulsory third party insurance where required;
  - (III) in respect of its employees, Work Cover or any similar insurance required by law; and
  - (IV) in respect of claims for breach of professional duty, professional indemnity insurance for an amount not less than that stated in Item 18 of Schedule 1 per occurrence.
- (b) The Subcontractor must ensure that all of its Secondary Subcontractors have insured against liability for death of, or injury to, its employees, including liability under statute and at general law.
- (c) The Subcontractor must ensure that all plant and equipment for use in respect of the Subcontract Works is registered in accordance with all applicable statutes.
- (d) The Subcontractor must not cancel or alter any policy without 14 days prior written notice to the Contractor.
- (e) The Contractor reserves the right to deduct from any progress payment moneys for any insurance excess the Contractor may incur as a result of negligence or damage by the Subcontractor in performance of work under this Subcontract.

**38 Evidence of Insurance**

- (a) The Subcontractor must provide satisfactory evidence to the Contractor that:
  - (I) any required insurance cover, including insurance cover required by Secondary Subcontractors in respect of their employees on the Project, has been effected (including copies of the certificate of currency, and, if required, the policy of insurance) within 7 days after commencement of the Subcontract Works on Site or after the Subcontractor signs the FIA, whichever is the earlier; and
  - (II) as required in clause 32 and if called upon, produce evidence satisfactory to the Contractor that all such insurances are current.
- (b) It is the Subcontractor’s responsibility to provide updated insurance particulars to the Contractor within 30 days of the date of expiry of its insurance policies as outlined in Item 18 of Schedule 1.

Initial	
Initial	

- (c) The Contractor may withhold payment of any amount due to the Subcontractor until the Subcontractor complies with this clause 38.
- (d) The Subcontractor is in breach of this Subcontract if it fails to keep all required policies of insurance current. If this occurs, the Contractor may arrange for the relevant policy to be effected and the cost will be a debt due from the Subcontractor to the Contractor.

**39 Insurance Notices**

Each policy of insurance, other than Work Cover, required by this Subcontract, shall:

- (a) be effected prior to the commencement of the Subcontract Works and maintained until expiry of the last Defects Liability Period;
- (b) include the Contractor and anyone named by the Contractor as a joint insured;
- (c) include a waiver by the insurer of its subrogated rights against any joint insured;
- (d) contain a covenant by the insurer that it will not cancel or lapse the insurance policy before giving the Contractor 30 days' notice of its intention to do so; and
- (e) provide that a notice of claim provided by one party will be deemed to be a notice on behalf of all insured parties.

**40 Notices**

- (a) Subject to this clause 40, any notice given under with this Subcontract shall be deemed to be sufficiently given if:
  - (I) delivered or sent by pre-paid post or certified mail to the address shown in Items 7 or 8 (as applicable) of Schedule 1 or last communicated in writing to the person giving the notice; ;
  - (II) sent by email; or
  - (III) sent by facsimile transmission to the facsimile number shown in Items 10 or 11 (as applicable) of Schedule 1.
- (b) In the case of a notice sent by pre-paid post and not certified mail, the notice shall be deemed to have been received two Business Days after the date of its posting.
- (c) Notwithstanding anything to the contrary herein, the parties must deliver any Document or notice in respect of the Act (including a payment claim under the Act) by:
  - (I) sending a facsimile to the facsimile numbers shown in Item 10 or 11 of Schedule 1 (as applicable); and
  - (II) hand delivering a copy to the other party at the Site.

**41 Industrial Relations**

- (a) The Subcontractor agrees:
  - (I) to manage all aspects of industrial relations with respect to its employees;
  - (II) to ensure that the rates of pay and terms of employment in all relevant industrial instruments and laws, for all employees engaged by the Subcontractor, are always observed in full; and
  - (III) to ensure that any Directions given by the Contractor in relation to the security of the Subcontract Works, the entry and exit of vehicles to and from the Site, the delivery of materials to the Site, the storage of materials at the Site, the parking of vehicles at the Site and all other such matters affecting the Project as a whole are strictly observed.
- (b) The Contractor reserves the right to confirm compliance by sighting any of the Subcontractor's relevant Documents.
- (c) If the Contractor incurs a delay, loss or damage under the Head Contract or in carrying out the Project as a result of any industrial dispute involving the Subcontractor's employees, agents or Secondary Subcontractors, the Subcontractor will be wholly liable for the delay and any additional costs, loss or damage incurred by the Contractor as a result of such industrial dispute .
- (d) The Subcontractor is not entitled to any payment, damages or compensation as a result of any industrial dispute and the Contractor is not liable in respect of any additional cost or delay arising out of any industrial dispute whether caused by the Subcontractor or not, on the Site or any other site occupied by the Contractor or Subcontractor.

Initial	
Initial	

- (e) The Subcontractor acknowledges that in agreeing to the Subcontract Sum, the Subcontractor has made an allowance to pay its employees in accordance with any applicable industrial instrument or laws.

**42 Not used**

**43 GST**

- (a) It is agreed that the Subcontract Sum in Schedule 1 is exclusive of GST.
- (b) Notwithstanding any other clause in the Subcontract, if, by the operation of the GST Legislation, any supply made under or in connection with the Subcontract constitutes a Taxable Supply, then the following shall apply:
  - (I) the Recipient of the Taxable Supply must determine and pay to the Supplier of the Taxable Supply the amount of GST required to be accounted for by the Australian Tax Office in respect of the supply in addition to any amount or consideration expressed as payable elsewhere in this Subcontract.
  - (II) unless otherwise agreed:
    - A. the Recipient can issue Recipient Created Tax Invoices (“RCTI”) in respect of the supplies;
    - B. where the Recipient is the Contractor, the Contractor may issue a RCTI with any payment schedule under clause 32;
    - C. the Supplier will not issue Tax Invoices in respect of the supplied;
    - D. the Supplier warrants that it is registered for GST when it enters into the Subcontract and that it will notify the Recipient of it ceases to be registered; and
    - E. the Recipient warrants that it is registered for GST when it enters into the Subcontract and that it will notify the Supplier if it ceases to be registered.
- (c) In this clause 43, the expressions “Taxable Supply”, “Recipient”, “Supplier”, “GST” “Recipient Created Tax Invoices” and “Tax Invoices” have the meanings given to those expressions in the GST Legislation.
- (d) This clause will survive termination or expiry of this Subcontract.

**44 The Building and Construction Industry Payment Act**

- (a) In this Subcontract the terms used in relation to the Act have the same meaning as the Act.
- (b) The Subcontractor must, if it becomes aware that any person with whom it has a contract in respect of the Subcontract Works is entitled to suspend work pursuant to the Act, promptly notify the Contractor and provide a copy of any Document in relation to the Act which the Subcontractor has received from that person.
- (c) Subject to anything in this Subcontract, the amount (if any) set out in a payment schedule as the amount of payment which the Contractor proposes to make to the Subcontractor is, for the purposes of the Act, the amount of the progress payment calculated in accordance with the Subcontract which the Subcontractor is entitled to be paid under the Subcontract.
- (d) Failure to set out in a payment schedule an amount which the Contractor is entitled to retain, deduct, withhold or set-off does not prejudice the Contractor’s right to subsequently exercise a right to retain, deduct withhold or set off any amount in a later payment schedule or otherwise. The Contractor may correct any error or omission in a payment schedule in a subsequent payment schedule.
- (e) If the Subcontractor suspends the whole or any part of the Subcontract Works pursuant to the Act:
  - (I) the suspension shall not of itself affect the Date for Practical Completion;
  - (II) the Contractor shall not be liable for any costs, expenses, damages, losses or other liability including delay or disruption costs whatsoever suffered or incurred by the Subcontractor as a result of the suspension;
  - (III) the Contractor may direct the Subcontractor to omit the whole or part of the suspended work from the Subcontract Works as a Variation under clause 25 and thereafter the Contractor may engage other subcontractors to carry out the suspended work;
  - (IV) the Contractor may end the Subcontract by written notice to the Subcontractor.

Initial	
Initial	

- (f) If the Contractor becomes aware that any person with whom the Subcontractor has a contract or other arrangement in respect of the Subcontract Works is entitled to suspend work pursuant to the Act, the Contractor may pay the person such money that is or may be owing to the person in respect of that work, and any amount paid by the Contractor shall be a debt due from the Subcontractor to the Contractor.
- (g) The Subcontractor shall indemnify the Contractor against all loss and damage, suffered or incurred by the Contractor arising out of a suspension pursuant to the Act by any person which forms part of the Subcontract Works.

**45 Protection of persons and property**

- (a) Where appropriate to the execution of the Subcontract Works, the Subcontractor shall:
  - (I) provide, erect and maintain all barricades, guards, fencing, temporary roadways and footpaths, signs and lightings; and
  - (II) provide and maintain all watching and traffic flagging, lawfully required by any public or municipal authority or necessary for the protection of the Subcontract Works, other property or the safety and convenience of the public, and shall remove the same when no longer required.
- (b) The Subcontractor shall:
  - (I) avoid obstruction or damage to roadways and footpaths, drains and water courses and public utility and other services on or adjacent to the Site which are visible or the location of which can be ascertained by the Subcontractor from the appropriate authority or Subcontractor Documents;
  - (II) avoid interference with or damage to property on or adjacent to the Site;
  - (III) prevent nuisance or inconvenience to the owners, tenants and occupiers of properties adjoining the Site and to the public; and
  - (IV) comply in all respects with the requirements of any agreements that may be made from time to time with adjoining owners or for the protection of adjoining property, to which the Contractor may be subject. Extracts from such agreements are available for inspections at the Contractor's office.
- (c) Where an event mentioned in clause 45(b)(I) to 45(b)(III) occurs, the Subcontract shall immediately remove the obstruction or provide temporary protection to property (as the case may be) and at its cost rectify the damage caused by the Subcontractor, its Secondary Subcontractors, servants or agents.
- (d) If the Subcontractor fails to comply with clause 45(c), the Contractor may carry out remedial works and deduct the cost thereof from any moneys due or thereafter to become due to the Subcontractor by the Contractor under the Subcontract and to recover any deficiency then remaining as a debt due to the Contractor by the Subcontractor.

**46 Urgent Protection**

If urgent action is necessary to protect the Subcontract Works, other property or people and the Subcontractor fails to take such action, the Contractor may take the necessary action. If the action taken by the Contractor was action which the Subcontractor should have taken at the Subcontractor's cost, the cost incurred by the Contractor shall be a debt due from the Subcontractor.

**47 Provisional Sums**

Where provisional sums are included in this Subcontract (whether so described as prime cost sums, prime cost items or otherwise) in respect of any materials, good or work to be incorporated into the Subcontract Works by the Subcontractor:

- (a) such sums shall be net and shall include the cost of packing, carriage and delivery at the Site;
- (b) the Subcontractor shall in sufficient time to prevent delay being occasioned in the progress of the Subcontract Works, request that the Contractor provides, in writing, all necessary Directions regarding the selection and supply of the materials or goods comprising provisional sums and the Contractor shall respond to any such request promptly;
- (c) the Subcontractor shall acquire, obtain and take delivery of any materials or goods and shall be responsible for the storage and safe keeping of such items and for any loss or damage that may occur; and

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(d) the Subcontractor has deemed to have allowed all attendance costs including overheads, margin and waste within the Subcontract Sum for the provisional sums included in the Subcontract. The provision sum itself does not include such attendance costs. In adjusting the provisional sum (unless otherwise allowed for in the Head Contract):

- (I) where the value of the actual Subcontract Works performed for the provisional sum is less than the allowance, the Subcontract Sum will be reduced by the difference in value between the allowance and the actual value of the Subcontract Works together with an allowance for overheads and margin calculated in accordance with the Head Contract; or
- (II) where the actual value of the Subcontract Works performed for the provisional sum is greater than the allowance, the Subcontract Sum will be increased by the difference in value between provisional sum and the value of Subcontract Works.

**48 Temporary Light and Power**

- (a) Temporary single-phase power will be supplied by the Contractor and will be shared by all subcontractors on Site up to the limit stipulated by the local power authority. The Subcontractor at its own cost is to provide any power required by the Subcontractor in addition to that supplied by the Contractor.
- (b) The Contractor shall provide main access lighting. The Subcontractor at its own cost shall provide any lights required in the Subcontractor’s immediate work area.
- (c) It is the Subcontractor’s responsibility to ensure all of the electrical equipment to be used on Site by the Subcontractor during the execution of the Subcontract Works fully complies with the current *Work Health and Safety Act 2011* (Qld) and all other relevant laws. The Contractor reserves the right to test any item of the Subcontractor’s equipment suspected of non-compliance with this clause 48(c) and the *Work Health and Safety Act 2011* (Qld). All costs incurred by the Contractor associated with distribution to the Site’s electrical supply, either full or in part, caused directly by the Subcontractor’s failure to comply with this clause 48 will be considered as being a debt due from the Subcontractor to the Contractor.

**49 Intellectual Property Rights**

- (a) The Subcontractor warrants that the designs, materials, Documents and methods of working provided by the Subcontractor do not infringe any patent, registered design, trademark or name, copyright or other intellectual property right.
- (b) The Subcontractor must indemnify the Contractor in respect of any claim against, or loss or damage incurred by the Contractor arising out of a breach of clause 49(a).
- (c) To the extent permitted by law, ownership of copyright in all design Documentation, including drawings, specifications, models, samples and calculations, prepared by the Subcontractor or the Contractor for the purpose of the Subcontract Works is assigned to the Contractor upon its creation.
- (d) The Contractor grants the Subcontractor a license to use design Documentation prepared by the Subcontractor or the Contractor for the purpose of the construction, alteration or repair of the Subcontract Works only.

**50 Contractor’s default**

- (a) If the Contractor:
  - (I) fails to rectify a failure to make a payment due and payable under this Subcontract within 28 days’ of a written notice from the Subcontract notifying the Contractor of such default; or
  - (II) enters into liquidation (other than a voluntary winding up by Members for the purpose of reconstruction or amalgamation),

the Subcontractor may, within 14 days, give a notice in writing to the Contractor :

- (I) requesting that the Contractor’s default be rectified; and
- (II) stating the Subcontractor’s intention to determine the Subcontract if the Contractor’s breach is not rectified within 14 days.

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- (b) If the Contractor fails to rectify the default within 14 days (provided that the matter has not been submitted to dispute resolution under clause 53) the Subcontractor may, by notice in writing, at the expiration of fourteen (14) days, determine this Subcontract.

**51 Subcontractor’s defaults**

- (a) If the Subcontractor breaches this Subcontract in any of the following respects:
  - (I) the Subcontractor defaults in the performance or observance of any essential condition;
  - (II) the Subcontractor discontinues or suspends the Subcontract Works;
  - (III) the Subcontractor fails to proceed with the Subcontract Works with reasonable diligence, in a competent manner, or in accordance with the Contractor’s Directions;
  - (IV) the Subcontractor fails to provide a program under clause 29 (d);
  - (V) the Subcontractor fails to provide a Site specific workplace health and safety plan under clause 18(a)(IV);
  - (VI) the Subcontractor fails to comply with a written Direction from the Contractor requiring the Subcontractor to rectify defective work;
  - (VII) if the Subcontractor is a natural person, it commits an act of bankruptcy petition, a sequestration order is made against the Subcontractor or it enters a Part IX or Part X agreement under the *Bankruptcy Act 1966* (Cth);
  - (VIII) if the Subcontractor is a company, it takes or has instituted against it, any action whether voluntary or compulsory, which has an object or which may result in a winding up of the company, other than the voluntary winding up by its members for the purpose of reconstruction or amalgamation or becomes externally administered body corporate as that term is defined in s 9 of the *Corporations Act 2001* (Cth); or
  - (IX) there is a material and adverse change, or a material and adverse accumulation of changes, in the financial circumstances of the Subcontractor such that the Contractor forms the opinion that the Subcontractor is insolvent or is not capable of completing the Subcontract Works and the Subcontractor fails to provide the Contractor, within a reasonable time, with sufficient financial and accounting reports certified by a qualified accountant which demonstrates to the satisfaction of the Contractor the Subcontractor’s capacity to complete the Subcontract Works in accordance with this Subcontract,

then, the Contractor may, upon written notice to the Subcontractor:

  - A. take the Subcontract Works wholly or partly out of the control of the Subcontractor; or
  - B. determine this Subcontract.
- (b) After exercising a right under clause 54(a), the Contractor may complete the Subcontract Works (or such part as has been taken out of the hands of the Subcontractor) and , without payment or compensation to the Subcontractor:
  - (I) take such actions and make such arrangements as it deems proper for the completion of the Subcontract Works; and
  - (II) take possession of and use any materials, buildings, plant, tools, equipment and other items intended for the Subcontract Works or in carrying out the Subcontract Works, including items intended for delivery to the Site, as is reasonably required for completion of the Subcontract Works.
- (c) If the Contractor takes possession of anything under clause 51(b)(II), the Contractor is to maintain such items and, subject to clause 51(d), is to return such items if there is a surplus on completion of the Subcontract Works.
- (d) All costs and damages suffered or incurred by the Contractor as a result of the Subcontractor’s breach of the Subcontract shall be deducted from the amount which would otherwise have become payable to the Subcontractor if the Subcontract Works had been completed by the Subcontractor.
- (e) If the Subcontractor is indebted to the Contractor, the Contractor may retain the items taken under clause 51(b)(II) until the debt is satisfied. If after a reasonable notice, the Subcontractor fails to pay the debt, the Contractor may sell the items taken and apply the proceeds together with its reasonable administrative costs to the satisfaction of the debt and the costs of sale. Any excess is to be paid to the Subcontractor.

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**52 Determination of Head Contract**

- (a) Should the Head Contract or the Contractor’s employment thereunder be determined at any stage and for any reason whatsoever then the Contractor by notice in writing to the Subcontractor may determine this Subcontract.
- (b) Where termination occurs pursuant to clause 52(a), the Subcontractor shall be entitled to claim for costs for reasonable vouched third party costs of demobilizing its equipment from the Site, but in no circumstance shall it be entitled to recover loss of profit in respect of any Subcontract Works yet to be performed.

**53 Dispute Resolution**

If a Dispute arises, either party may give the other party a written notice of dispute adequately identifying and providing details of the dispute and the relief sought. The dispute is to be resolved in accordance with the procedure in clause 53.

- (a) The giving of the notice of dispute is a precondition to the taking of any proceedings in a court, tribunal or adjudication under the Act and the contents of the notice are binding upon the party giving the notice in any subsequent proceedings.
- (b) Within three (3) days after receiving a notice of dispute, the duly authorised representative of both parties are to meet and attempt to resolve the Dispute.
- (c) Subject to clause 53(b), if the Dispute has not been resolved within 14 days after giving the notice of dispute, the Dispute is to be referred to mediation.
- (d) The mediator shall be a person agreed upon by the parties.
- (e) The costs of the mediation are to be shared equally between the parties.
- (f) If:
  - (I) mediation fails to resolve the dispute; or
  - (II) the parties cannot agree on a mediator to mediate the Dispute within 14 days,
- (g) then the parties may commence proceedings. Notwithstanding the existence of a Dispute, the parties must, subject to the Subcontract, continue to perform the Subcontract.
- (h) Nothing in the clause 53 prejudices:
  - (I) either party’s right to institute proceedings to seek injunctive or urgent declaratory relief; or
  - (II) the Contractor’s rights under clause 35.

**54 General Right of Set Off / Waiver of Conditions**

Without limiting the Contractor’s rights under any other provision in this Subcontract, the Contractor may deduct from any moneys payable to the Subcontractor any sum which the Contractor asserts is payable by the Subcontractor to the Contractor:

- (a) , whether or not the Contractor’s claim arises by way of damages, debt, restitution or otherwise arising out of the Subcontract; or
- (b) where the Contractor’s claim arises out of any other subcontractor or which is independent of the Subcontract.

**55 Waiver of Conditions**

The Contractor and Subcontractor acknowledge and agree that none of the terms of the Subcontract shall be varied, waived, discharges or released, except with the prior consent in writing of the Contractor in each instance.

**56 Limitation of Liability**

- (a) Notwithstanding anything in this Subcontract, the Contractor’s liability to the Subcontract shall be limited to the Subcontract Sum.
- (b) The Contractor party shall not be liable for any Consequential Loss suffered or incurred by the Subcontractor.

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**57 Confidentiality**

- (a) The parties shall ensure that they do not disclose Confidential Information except:
- (I) as required by law;
  - (II) to obtain finance for its obligations under this Subcontract and on a similarly confidential basis;
  - (III) to a related body corporate of either party for the purposes contemplated under this Subcontract and on a similarly confidential basis;
  - (IV) with the other party's written consent and on a similarly confidential basis.

**58 Interpretation and Definitions**

- (a) In the interpretation of the Subcontract Documents;
- (I) no rule of construction shall apply to the disadvantage of one party on the basis that that party has put forward the Subcontract Documents or any of them.
  - (II) words importing a gender include every gender and the neutral gender (it).
  - (III) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.
  - (IV) headings shall not form part of this Subcontract and shall not be used in the interpretation of the Subcontract.
  - (V) references to the words "Agreement", "Subcontract" or "Conditions of Subcontract" means the terms and conditions contained in this Subcontract.
  - (VI) references to legislation or regulations include any modification or re-enactment of them, and any instrument, regulations or orders issued under them.
  - (VII) a provision given by more than one person or party binds them jointly and severally. A provision in favour of more than one person or party is for their joint and several benefit. A reference to more than one person or party is to all or any of those persons or parties.
  - (VIII) a reference to a thing includes the whole or any part of that thing.
  - (IX) if a word or phrase is defined, its grammatical forms have a corresponding meaning.
  - (X) reference to a "person" or a word denoting an individual, person, firm, partnership, association (whether or not incorporated), corporation, authority, government, government agency or any other body or entity (in each case whether or not having separate legal personality), includes any of them.
  - (XI) one clause does not limit the effect of another unless otherwise stated.
  - (XII) this Subcontract may be executed in any number of counterparts (including facsimile counterparts). Each counterpart is deemed an original and all counterparts together constitute one instrument, which is deemed to be dated on the date which the last party signs the Subcontract.
  - (XIII) a party's rights and remedies under this Subcontract are cumulative with and not exclusive of that party's rights and remedies at law.
  - (XIV) where a party executes this Subcontract in their capacity as trustees, this Subcontract is binding on that person both personally and in their capacity as trustee.

(b) In this Subcontract:

**'Act'** means the *Building Construction Industry Payment Act 2004* (Qld).

**'Business Days'** are as defined under the *Acts Interpretation Act 1954* (Qld).

**'Confidential Information'** includes all Documents, samples, models, patterns and other information provided by one party to another party in connection with the Subcontract.

**'Consequential Loss'** means any loss, damage, cost, expense or liability suffered or incurred by any person (including under an indemnity) whether arising in contract, tort (including for negligence), under statute or on any other basis in law or equity which is indirect or consequential including, without limitation and without being limited by the meaning of "indirect or consequential", loss of profit, loss of revenue, loss of contract, loss of production, loss of goodwill, loss of use, loss of business opportunity or any similar loss or cost.

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**'Contractor'** means the person names in the Subcontract as Contractor and includes its authorised representative and the Contractor's project manager or its nominee.

**'Contractor's Work Schedule'** means the Document setting out the programme and sequencing for construction, fit out and commissioning of the Project to achieve Practical Completion of the Project and which the Subcontractor acknowledges has been made available for inspection and review at the Site office of Contractor. The Document may be amended from time to time and may be supplemented with additional information and/or Documents as required to further describe the sequencing or programme in greater details. This Document may also be referred to as the Contractor's programme, construction programme or similar.

**'Date for Practical Completion'** means the date shown in Item 13 of Schedule 1 by which the Subcontract Works are to have reached Practical Completion having reference to the Contractor's Work Schedule and any Extension of Time granted by the Contractor.

**'Date of Practical Completion'** means the date directed by the Contractor to be the date that the Subcontracts Work have reached Practical Completion.

**'days'** means calendar days.

**'Direction'** includes agreement, approval, authorization, certificate, communication, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request, or requirement.

**'Dispute'** means a dispute or disagreement between the Subcontractor and Contractor, either during the progress of the Subcontract Works or after any breach, determination, abandonment or the end of the Subcontract, as to the construction of this Subcontract or as to any matter or thing in connection with the subject matter of this Subcontract.

**'Defects Liability Period'** means the period stated in item 17 of Schedule 1.

**'Documents'** means any document in writing including any book, compact disk, drawing, DVD, film, negative, graph, map, photograph, plan, sound track, tape, or any part of a document in writing or any other document as defined above.

**'Extension of Time'** or **'EOT'** has the meaning in clause 30.

**'FIA'** means the Formal Instrument of Agreement

**'GST Legislation'** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) including any amendments or subsequent legislation, in conjunction with all regulations and rulings pertaining thereto.

**'Head Contract'** means the contract between the Principal and the Contractor for the execution of the Project, which the Subcontractor acknowledges it has had the opportunity to review.

**'Latent Condition'** means any physical condition or characteristic of the Site and its surrounds, including below ground conditions, all natural and artificial things, asbestos, contamination and other environmentally hazardous substances, concrete cracking and spalling, facilities, utilities and services on or below surface and, if the whole of the Subcontract Works involve work to an existing building, those things obscured behind walls, ceilings and the floors, which differ from the conditions and characteristics which should reasonably have been anticipated by a competent subcontractor at the time of the Subcontractor's tender.

**'month'** means calendar month.

**'Practical Completion'** in respect of the Subcontract Works has the meaning under the Head Contract in respect of the Project so far as it is applicable to the Subcontract Works.

**'Principal'** means [insert principal's name].

**'Principal Contractor'** means the principal contractor under the Head Contract.

**'Principal's Representative'** means the principal's representative under the Head Contract.

**'Project'** means the whole of the work to be executed under the Head Contract, a brief description of which is contained in Item 4 of Schedule 1.

**'Qualifying Delay'** means:

- (a) a Variation in the Subcontract Works notified properly in accordance with clause 25;
- (b) a Latent Condition;

- (c) inclement weather or conditions resulting from inclement weather;
- (d) a strike, lockout, civil commotion or industrial action affecting the Site and other work sites;
- (e) a delay in the progress of the Subcontract Works that would entitle the Contractor to an Extension of Time to the Date for Practical Completion of the Project under the Head Contract; and

a delay in the progress of the Subcontract Works caused by an act or omission of the Contractor, its Secondary Subcontractors or its agents.

**'Reference Date'** means:

- (a) for monthly progress claims, the date of each calendar month referred to in Schedule 1 for the making of progress claims where the Subcontractor has:
  - (I) submitted a progress claim in accordance with clause 32(a);
  - (II) provided to the Contractor with the progress claim, the information and other things required by clause 32(a);
- (b) for the final progress claim, the date referred to in clause 32 where the Subcontractor has:
  - (I) submitted a progress claim in accordance with clause 32(f); and
  - (II) provided to the Contractor with the progress claim, the information and other things require by clause 32 (a) and (f).

**'Site'** means that land and such other places to be made available to the Subcontractor by the Contractor for the purpose of carrying out the Subcontract Works.

**'Site Information'** means any information relevant to the Site that is supplied or made available to the Subcontractor by or on behalf of the Contractor whether or not the information comprises part of the Subcontract.

**'Subcontract'** means this subcontract between the Contractor and Subcontractor.

**'Subcontract Documents'** means the Documents identified in Item 3 of Schedule 1 and for the avoidance of doubt, does not include the Subcontractor's quotation.

**'Subcontract Sum'** means the sum set out in Item 5 of Schedule 1 (which amount is exclusive of GST) as adjusted in accordance with this Subcontract including any adjustment in accordance with this Subcontract.

**'Subcontract Works'** means the whole of the work to be executed by the Subcontractor under this Subcontract, a description of which is provided in Item 2 of Schedule 1 and contained in the Subcontract Documents described in Item 3 of Schedule 1 and includes any Variation to the works under this Subcontract.

**'Survey Mark'** means a survey peg, survey mark, bench mark, reference mark, level mark or any other mark used or intended to be used for the purpose of setting out, checking and measuring the Subcontract Work.

**'Secondary Subcontractor'** means the Subcontractor's subcontractors, suppliers and consultants.

**'Superintendent'** means the superintendent under the Head Contract.

**'Variation'** means any variation to the Subcontract Works, including by:

- (a) increasing, decreasing or omitting any part of the Subcontract Works;
- (b) changing the character or quality of the Subcontractor Works;
- (c) changing the levels, lines, positions or dimensions;
- (d) carrying out additional work; or
- (e) demolishing or removing material or work no longer required by the Contractor.

**'Work Cover'** means the insurance policy issued by Work Cover under the *Workers Compensation and Rehabilitation Act 2003* (Qld).

**SCEHDULE 1 - DETAILS**

Item #	Description	Detail
1	Law of State applicable	Queensland Law
2	Subcontract works	
3	Subcontract Documents	Formal Instrument of agreement Scope of Work Document dated Conditions of Subcontract Drawings – Refer to Document transmittals dated Specifications – Refer to Document transmittals dated Contractor’s QA Requirements Provisional sums Subcontract pre-award minutes dated Other Documents Environmental Policy
4	Project: The construction of what is specified in the details (in this row) on the Site; as more particularly described in drawings and specifications prepared by or on behalf of the Contractor	
5	Subcontract sum	
6	Type of contract	Lump Sum / Schedule of Rates
6A	Bill of Quantities Schedule of Quantities	DO NOT form part of the subcontract DO NOT form part of the subcontract
7	The address of the Contractor for service of this document is	
8	The address of the Subcontractor for service of this document is	
9	Liquidated damages for the Subcontract Works Liquidated damages of the Principal under the Head Contract	\$ per calendar day \$ per calendar day
10	Facsimile no. for Contractor	
11	Facsimile no. for Subcontractor	
12	Anticipated date of completion	
13	Date for Practical Completion of the Subcontract Works	
14	Date of month for submission of claims	DAY of the month or next working day
15	Period/time for payment of claims	[NUMBER] Business Days
16	Percentage of progress payments to be withheld and/or form of security Additional security	Retention: 10 per cent to a maximum of 5 per cent of the Subcontract Sum, as adjusted Nil
17	Defects liability period	12 months from Practical Completion of the Project
18	Insurance	
a	Public and Products Liability Risk Insurance	
	Name of Insurer	
	Policy Number	
	Expiry Date	
	Limit of Cover	\$

Item #	Description	Detail
b	Motor Vehicles, Plant and Equipment Insurance	
	Name of Insurer	
	Policy Number	
	Expiry Date	
	Limit of Cover	\$
c	Work Cover Insurance	
	Name of Insurer	
	Policy Number	
	Expiry Date	
	Limit of Cover	\$
d	Professional Indemnity Insurance	
	Name of Insurer	
	Policy Number	
	Expiry Date	
	Limit of Cover	\$
19	Variation lower limit	\$
20	Name of Arbitrator	
21	Subcontractor's security costs in Arbitration	\$ If left blank then 10% of the Subcontract Sum

**SCHEDULE 2 – SPECIAL CONDITIONS**

The General Conditions of Contract shall be amended by the following Special Conditions of Contract:



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### SCHEDULE 3 – SUBCONTRACTOR DEED OF RELEASE



**PROJECT** :  
**SUBCONTRACTOR** :  
**CONTRACTOR** :  
**AGREEMENT** :

The Contractor and the Subcontractor have entered into the Subcontract agreement detailed above.

The Subcontractor warrants each of the following:-

- a) The Subcontractor has paid all wages and salaries due and owing to any employee of the Subcontractor engaged in the performance of the Subcontract Works.
- b) The Subcontractor has complied with all statutory obligations in relation to all employees of the Subcontractor engaged in the performance of the Subcontract Work, including, but not limited to, all obligations to remit tax payments to the Australian Tax Office.
- c) The Subcontractor has paid all employee entitlements including superannuation and redundancy payments which are due for payment.
- d) The Subcontractor has paid all amounts due and owing to any third party in respect of the supply of goods, materials and services to the Subcontractor for the performance of the Subcontract Works.
- e) At the date of this declaration, the Subcontractor has made a claim for all entitlements relating to the performance of the Subcontract, whether due under the Subcontract as money or extensions of time or as damages, for any matter which has arisen prior to the date of the progress claim to which this deed relates.
- f) The final adjusted Subcontract Sum is set out in this deed;

The Subcontractor declares has attached a statement identifying all of the Subcontractor’s outstanding claim that it will make in respect of any fact, matter or thing which occurred prior to the date of submitting this Subcontractor Deed of Release to the Contractor.

The Subcontractor acknowledges and agrees that the requirement to provide this Subcontractor Deed of Release or the inclusion of any claim attached to this Deed of Release, in no way whatsoever prejudices the Contractor’s entitlement to reject or refuse to accept any claim that does not comply with the requirements of the relevant provisions of the Subcontractor.

The Subcontractor acknowledges and agrees that any claim in respect of any fact, matter or thing which occurred prior to the date of submitting this Subcontractor Deed of Release to the Contractor, that is not identified in the attached claims, is deemed to be abandoned by the Subcontractor and is barred.

The Subcontractor releases and forever discharges the Contractor, its agents, and employees from any claims, action, demands, damages, liabilities, expenses and costs arising from or in any way connected with the Subcontract and the performance of the Subcontract Works.

The Subcontractor acknowledges that the Contractor may plead this Deed as bar to any claim, proceedings, action or application commenced or continued by the Subcontractor in relation to the Subcontract or Subcontract Works.

The Subcontractor confirms the provisions for warranties, guarantees and confidentiality of the Subcontract and that any payments made to the Subcontract, will not in any manner be or constitute an acceptance of defective Subcontract Works.

The Subcontractor agrees that the final adjusted Subcontract Sum is as follows:

Original Subcontract: \$  
Variations to Subcontract: \$  
Final adjusted Subcontract Sum (excl. GST): \$

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**Signed for and on behalf of the Subcontractor**

	Authorised Signatory	Witness
Signature		
Printed Name in full		
Position Held		
Dated		

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**SCHEDULE 4 – FORM OF ACCEPTANCE OF VARIATION QUOTATION**



Project :  
 Subcontract Number :  
 Subcontract For :  
 Variation Number :  
 Subcontractor :  
 Attention :

1. This order is or involves a Variation to the Subcontract Works and is given pursuant to clause 25(a) of the General Conditions of Subcontract.
2. You are ordered to carry out the Variation.
3. The Variation [does/does not] vary the money payable to the Subcontractor for the execution of the Subcontract Works.
4. Rise and fall shall not apply to this Variation.
5. The value of the Variation has been agreed between the Contractor and Subcontractor as an increase/decrease of \$[XXXX].
6. The Subcontract Sum up to and including this Variation is ..... (Refer to attached.)
7. This Variation will/will not delay the Subcontract Works. The Date for Practical Completion up to and including this Variation is ...
8. All costs for any disruption or delay to the Subcontract Works resulting from this Variation are deemed to be included in the agreed or determined price for this Variation.
9. Agreement as to Variation pricing, Extension of Time, acceleration and include cost of disruption, shall be Final and binding upon both parties and shall not be reopened or subject to any Variation or further consideration under any circumstances.

.....  
 CONTRACTOR Date

The Subcontractor acknowledges receipt of the above Variation and accepts the terms upon which it is given

.....  
 Subcontractor Date

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**SCHEDULE 5 – SUBCONTRACT PRE-AWARD INTERVIEW**



<b>PROJECT:</b>	<b>PROJECT NO.:</b>
_____	_____
<b>TRADE:</b>	<b>DATE:</b>
_____	_____
<b>SUBCONTRACTOR UNDER CONSIDERATION</b>	
_____	<b>BSA</b>
_____	<b>ABN</b>
<b>PRESENT</b>	_____
_____	_____

ITEM	YES	NO	COMMENT
<b>COMPANY</b>			
1. Explain the structure of your organisation: Number of Employees Office Based Site Based			
2. Please explain your current workload and your ability to resource this Project:			
3. What resources do you have available? (a) Labour (b) Plant (c) Materials (d) Supervisor's name (e) Supervisor's experience			
4. Can you mobilize sufficient labour for the Project start date?			
5. Do you have current certificates of currency for: (a) Public Liability (b) Work Cover (c) Professional Indemnity (\$5million)			
6. Do you understand the excess for all insurance claims are payable by the Subcontractor/s responsible for the claim?			
7. Do you have a current QBCC license to undertake the proposed Subcontract Works?			
<b>QUOTATION</b>			
8. Can you confirm that your tender is a fixed price and is based upon the Documents contained within the proposed subcontract, invitation to tender, addendums and all prior correspondence?			
<b>ITEM</b>	<b>YES</b>	<b>NO</b>	<b>COMMENT</b>
9. Are you satisfied with your tender and have you			

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Initial	

visited the Site and ascertained conditions including access? Note: Parking will not be permitted within the Site compound except with the express permission of Site management.			
10. Have you arithmetically checked your tender?			
11. Have you allowed any provisional sums or PC rates within your price?  If so, what are they?			
12. Have you included in your price and/or rates to obtain approvals and to pay all fees to all authorities with jurisdiction over your work?			
13. Are the figures quoted in your tender price exclusive of GST?			
14. Have you allowed to work up to 6 days per week (Monday to Saturday) and such hours as necessary to comply with the Schedule?			
15. What is your hourly rate in the event of direct labour being required?			
16. Do you understand and accept that your progress claims must: (a) <b>Be lodged by 19<sup>th</sup> of the month</b> (b) Include forecast value of work complete to the end of the month? (c) Is post dated the last day of the month?			
17. Does your submission include for Project deliverables including: Warranties/guarantees/manuals/form 16's etc?			
18. Do you understand and accept all manuals and as built are to be submitted 1 month prior to Practical Completion. Failure to do so can result in withholding the sum of \$10,000 from your most recent progress claim.			
19. Do you confirm that your tender price is fully conforming to the specification and drawings?			
20. Do you understand that the Defects Liability Period is 12 months from Date of Practical Completion under the Head Contract?			
21. Do you understand the contract requirements regarding shop drawings?			
22. Confirm your price includes for taking Site measurements as necessary to prepare shop drawings?			
23. Do you intend to subcontract any of your Subcontract Work? If so, do you understand that it will be subject to written approval?			

ITEM	YES	NO	COMMENT
24. Do you agree with the following key dates? (a) Subcontract commencement date of: (b) Subcontract Date for Practical Completion of:			
25. Will you comply with the Christmas shutdown period if noted (if applicable)?			
26. Do you understand that prior to the 1 <sup>st</sup> progress payment being made the following items must be forwarded: (a) Certificate of Currencies for Public Liability and Work Cover insurance (b) Compliant Subcontract Programme (c) All Safety Documentation requested (d) Signed subcontract			
27. Do you understand and accept that the form of Subcontract will be the standard subcontract agreement including special conditions?			
28. Are you aware that the subcontract includes the following: (a) Liquidated damages for the Subcontract Works at the rate of \$2500 per calendar day under subcontract; and (b) Liquidated damages under the Head Contract of \$1500 per calendar day			
29. Are you aware that payment will only be made for items incorporated into the works on site i.e. No "off site" payments for materials or works undertaken?			
30. Does your price include for coordination of works with other trades and return visits to complete the works?			
31. Do you understand that security is in the form of cash retention at the rate of 10% up to a maximum of 5% of the Subcontract Sum which will be reduced to 2.5% following Practical Completion under the Head Contract?  Do you also understand that is a Bank guarantee is offered in lieu that it will be unconditional and without expiry date?			
32. Do you agree to submit progress claims in the format agreed between the subcontractor and CV Service Group and to adopt the RCTI method of claiming?			
33. Do you understand that you will be required to execute a Deed of Release prior to release of final payment?			

ITEM	YES	NO	COMMENT
<b>SITE CONDITIONS</b>			
34. Do you understand you are required to submit within 2 weeks after notification of award of contract your program confirming shop drawings, procurement, manufacture, installation, start/finish dates, commissioning and the applicable resources?			
35. Do you understand that it will be compulsory for an appropriate representative from your company to attend all meetings as required for you Subcontract Works?  And who will represent you on Site with authority to accept instructions from us and represent you during Site meetings?			
36. No media publicity or advertising is to be made without written consent.			
37. Confirm your acceptance that where we provide any craneage or hoisting, we will co-ordinate and allocate priorities for each subcontractor's usage.			
38. Do you understand the sequencing of these works will be generally in accordance with our construction programme, however the sequencing may alter and work methods may change and this will be at the sole discretion of CV Services Group.			
39. Are there any items which have critical delivery dates?			
40. Do you understand the subcontract with regard to: (a) Vehicles off loading (b) Material storage on Site (c) Setting out the works (d) Handling materials			
41. Do you understand that you are required to correct all defects within the contract period?			
42. Do you know you are responsible for the care, protection, maintenance and up keep of your own work up to the date of Practical Completion of the Head Contract?			
43. Do you know that you are required to clean up all your working areas on a daily basis?			
44. Do you accept that should you fail to clean up rubbish generated within the time advised, this rubbish will be cleaned up by subcontract labour and back charged at the rate of \$75 per man hour (minimum 8 hours)			

ITEM	YES	NO	COMMENT
<b>WORKPLACE HEALTH AND SAFETY</b>			
45. Do you know you are bound by law to comply with the applicable Workplace Health and Safety Act & Regulations? Also do you understand that you must comply with the requirements of the relevant Codes of Practice and Australian Standards associated with your industry or the work to be performed?			
46. Does your company develop an annual training plan for employees? You must provide photocopied evidence of employee licenses, inductions, qualification and competency applicable to their employed role with your company with your work method statements.			
47. Do you understand that each of your workers must have successfully completed the General Construction Industry Induction and must provide evidence, Induction Card, during the Site specific induction? (No card, No entry). No worker under the age of 15 years old is permitted to work on a project.			
48. Do you understand that you are required to provide a Safe Work Method Statements for all the Constructions Activities your employees will perform under this contract? These need to be submitted for approval at tender award and at least 10 working days prior to commencing on Site. You cannot commence work activities until your Safe Work Method Statements have been approved.			
49. Do you understand that you also need to provide an electrical Equipment Register, Hazardous Substance Register, Material Safety Data Sheets (for all hazardous substances to be used on the Project), Risk Assessment for the Hazardous Substances and any other register applicable to the work performed e.g. crane operations (lifting equipment), use of fall arrest equipment (service register), mobile plant, scaffolding equipment.			
50. Do you understand that you are required to provide documentary verification that plant and equipment is properly maintained e.g. Maintenance record, daily logbooks and pre-start checklist and inspection reports where applicable?			
51. Do you understand that you must adhere to safety management systems and any safety plan procedures and safety rules associated with the Site?			



ITEM	YES	NO	COMMENT
52. Do you understand that you must provide the relevant Personal Protective Equipment to your workers applicable to the work task/activities they will perform on Site? Are workers trained in the correct use, fit and storage of PPE items? You must provide evidence of the provision of applicable PPE and evidence that the workers PPE is current and in good serviceable condition.			
53. Do you understand that there is a legal obligation for your workers to report all accidents, incidents, near misses and hazards immediately to the Site Foreman and/or Site Workplace Health and Safety Officer?			
<b>QUALITY</b>			
54. Do you have a documented quality system that will be applied to the Project?			
55. Do you understand that Quality Assurance will be implemented on this Project? If you are not in possession of your own system you will need to carry out inspections, complete the necessary Documentation and generally perform the tasks as required by CV Services Group Quality Assurance System. (E.g. Completion of ITP's, compliance with Hold/Witness Points, Submission of Certificates, Warranties and Details of Works).			
56. Do you understand that environmental restrictions will apply to this Project including but not limited to noise and dust requirements and that you have included all costs within your tender to comply with all environmental laws.			
57. Do you understand it is your responsibility to comply with the Environmental Protection Act as amended from time to time?			
58. Do you also understand your responsibility to gain any licenses for any Environmentally Relevant Activity being performed by you?			

Preliminary Checklist				
Item		Subcontractor	Supplied by	Comments
Safety & Access Lighting				
Task Lighting				
240 volt Power				
Power leads/stands				
Water				
Toilet Accommodation				
Crib Sheds				
Office				
Store and Lockup Area				

Item		Subcontractor		Comments
Telephone/Mobile/ Facsimile				
Hoisting				
Craneage				
Horizontal Movement				
Perimeter Scaffolding				
All other scaffold/access equipment				
Survey (control datum & 2 grids per floor)				
Survey (Detail)				
Shop Drawings				
Samples & Prototypes				
First Aid Certificate Holder				
Labour for Unloading of Materials & Transport about Site				
Rubbish Removal to bins				
Site Security				

We acknowledge that this record of Interview does not constitute authority to proceed or any acknowledgement by CV Services Group that they will proceed with an award of Contract.

Signed on Behalf of the subcontractor	
Authorised Signatory	
Position Held	
Print Name in Full	
Date	

Initial	
Initial	