

Mirvac National Subcontract

Dated: ^^Date of agreement^^

Mirvac:**[Drafting Note: Delete as applicable]****Mirvac Constructions Pty Limited**

(ACN 003 353 713)
Level 28, 200 George Street
Sydney NSW 2000

Mirvac Constructions (Qld) Pty Limited

(ACN 088 536 476)
Level 9, 340 Adelaide Street
Brisbane QLD 4000

Mirvac Constructions (Vic) Pty Limited

(ACN 088 536 636)
Building 3, Level 5
6 Riverside Quay
Southbank VIC 3006

Mirvac Constructions (WA) Pty Limited

(ACN 095 901 803)
Level 3, 502 Hay Street
Subiaco WA 6008

Subcontractor:

^^Subcontractor Name^^

License No: ^^License No^^

ABN: ^^ABN^^

ACN: ^^ACN^^

Address:

^^Address^^

^^Suburb^^

^^State^^

^^Postcode^^,

Project:

^^Job Description^^

Project No:

^^Job^^

Jurisdiction:

^^New South Wales / Queensland / Victoria / Western Australia / Australian
Capital Territory^^ **[Drafting Note: This should be the State or Territory
where the Site is located. Delete as applicable]**

Site Address:

^^Site Address^^

^^Site Suburb^^

^^Site State^^

^^Site Postcode^^

Trade Package:

^^CCODEDESC^^

**Subcontract Sum
(excluding GST):**

\$^^Project Amount^^

Principal:

^^Principal Name^^

ACN: ^^ACN^^

Formal Instrument of Agreement

This Subcontract is made this [insert date of agreement]

Between: **Mirvac Constructions Pty Limited** (ACN 003 353 713) of Level 28, 200 George Street, Sydney NSW 2000 (**Mirvac**)
Mirvac Constructions (Qld) Pty Limited (ACN 088 536 476) of Level 9, 340 Adelaide Street, Brisbane QLD 4000 (**Mirvac**)
Mirvac Constructions (Vic) Pty Limited (ACN 088 536 636) of Building 3, Level 5, 6 Riverside Quay, Southbank VIC 3006 (**Mirvac**)
Mirvac Constructions (WA) Pty Limited (ACN 095 901 803) of Level 3, 502 Hay Street, Subiaco WA 6008 (**Mirvac**)

[Drafting Note: Delete as applicable]

And: ^^Subcontractor Name^^ (ABN ^^ABN^^) of ^^Address^^, ^^Suburb^^, ^^State^^, ^^Postcode^^ (**Subcontractor**)

The Parties Agree:

A The Subcontractor must diligently, expeditiously and to the satisfaction of Mirvac execute and complete the whole of the works under this Subcontract, namely (including variations under the Subcontract) (**Subcontract Works**) in accordance with the Subcontract.

B Mirvac must pay the Subcontractor: **[Drafting Note: Delete as applicable]**

- (i) **Lump Sum:** the lump sum of ^^price in words^^ (\$^^Project Amount^^)
- (ii) **Schedule of Rates:** the sum of the measured quantity of each section or item of work actually carried out under the Subcontract multiplied by the rate for that section or item indicated in the Schedule of Rates,
- (iii) **Lump Sum and Schedule of Rates:** the lump sum of ^^price in words^^ (\$^^Project Amount^^) including provisional sums of (\$^^Amount^^) for that part of the Subcontract Works referred to in Schedule 21 plus the sum of the measured quantity of each section or item of work (other than the work to which the lump sum relates) actually carried out under the Subcontract multiplied by the rate for that section or item indicated in the Schedule of Rates,

(**Subcontract Sum**), as adjusted in accordance with the Subcontract Terms, for the Subcontractor's due and proper performance of the Subcontract Works in accordance with the Subcontract.

The Subcontract Sum is exclusive of GST which is payable in accordance with clause 13 of the Subcontract Terms.

C Mirvac and the Subcontractor agree that the following documents are the Subcontract Documents and will together comprise the Subcontract:

- (i) this document;
- (ii) the Subcontract Terms annexed hereto;
- (iii) Schedule 1 – Project Particulars;
- (iv) Schedule 2 – Schedule of Facilities;
- (v) Schedule 3 – Schedule of Design Requirements;
- (vi) Schedule 4 – Form of Unconditional Undertaking;
- (vii) Schedule 5 – Substantial Completion Certificate and Deed of Release;
- (viii) Schedule 6 – Final Certificate and Deed of Release;
- (ix) Schedule 7 – Schedule of Industrial Requirements;
- (x) Schedule 8 – Schedule of Health, Safety and Environmental Requirements;

- (xi) Schedule 9 – Building Code Requirements;
 - (xii) Schedule 10 – New South Wales Code of Practice Requirements;
 - (xiii) Schedule 11 – Queensland Code and Queensland Guidelines Requirements;
 - (xiv) Schedule 12 – Moral Rights Consent;
 - (xv) Schedule 13 – Interim Deed of Release;
 - (xvi) Schedule 14 – Schedule of Subcontractor's Warranty;
 - (xvii) Schedule 15 – Schedule of Supplier's Warranty;
 - (xviii) Schedule 16 – Schedule of Quality Requirements;
 - (xix) Schedule 17 – Schedule of Progress Claim requirements;
 - (xx) Schedule 18 – Schedule of Rates;
 - (xxi) Schedule 19 – Statutory Declaration;
 - (xxii) Schedule 20 – Design Consultant's Certificate;
 - (xxiii) Schedule 21 – Subcontract Sum;
 - (xxiv) Schedule 22 – Insurances;
 - (xxv) Schedule 23 – Deed of Guarantee and Indemnity;
 - (xxvi) Schedule 24 – Scope of Works;
 - (xxvii) Schedule 25 - Drawings, Specifications and Other Documents (and the Drawings, Specifications and Other Documents listed in that Schedule).
- D The parties promise to carry out and complete their obligations in accordance with the Subcontract, including the Subcontract Documents.
- E This Subcontract constitutes the entire agreement between the parties and sets out a full statement of the contractual rights and liabilities of Mirvac and the Subcontractor in relation to the Subcontract Works and no negotiations between them nor any document agreed or signed by them prior to the date of this deed in relation to the Subcontract Works is of any contractual effect.
- F Unless otherwise expressly stated in this Subcontract, the Subcontractor acknowledges and agrees that:
- (i) any reference to any 'Mircac' entity in this Subcontract, including within any Schedule or Annexure to this Subcontract, means the party identified and named as Mirvac on the front page of this Subcontract and each such document shall be read and construed, including if provided to or for the benefit of Mirvac pursuant to this Subcontract and for the Subcontract Works on a stand-alone basis after the date of execution of this Subcontract, as if each reference to Mirvac meant the party identified and named as Mirvac on the front page of this Subcontract; and
 - (ii) any reference to the 'Principal' in this Subcontract, including within any Schedule or Annexure to this Subcontract, means the party identified and named as the Principal on the front page of this Subcontract and each such document shall be read and construed, including if provided to or for the benefit of the Principal pursuant to this Subcontract and for the Subcontract Works on a stand-alone basis after the date of execution of this Subcontract, as if each reference to the Principal meant the party identified and named as the Principal on the front page of this Subcontract.

- G By signing this clause G, the Subcontractor:
- (i) acknowledges and agrees that it, and the Subcontractor's Personnel:
 - (a) have read and understood the Mirvac Policies; and
 - (b) have access to at least one of the communication channels of the Mirvac Open Line;
 - (ii) warrants that it, and the Subcontractor's Personnel:
 - (a) will not do, and have not done, anything:
 - I. in breach of the Mirvac Policies; or
 - II. which would put Mirvac personnel in breach of the Mirvac Policies; and
 - (b) will promptly report any behaviour which is contrary to the Mirvac Policies upon becoming aware of any behaviour using the Mirvac Open Line; and
 - (iii) acknowledges Mirvac's rights under clause 22.1 of the Subcontract Terms if the Subcontractor fails to comply with the Mirvac Policies.

Signed by a director of the Subcontractor: _____

Executed as an Agreement

Executed for and on behalf of **Mirvac** by
its authorised representative:

Signature of Witness

Signature of Authorised Representative

Print Name

Print Name

Executed for and on behalf of the
Subcontractor in accordance with
section 127 of the Corporations Act 2001:

Signature of Director/Company Secretary

Signature of Director

Print Name

Print Name



Mirvac National Subcontract Terms

Mirvac National Subcontract Terms

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Agreed terms

1. Definitions

1.1 Definitions

In the Subcontract, unless the context requires otherwise:

Administrator has the meaning in section 9 of the Corporations Act.

Authority means all Australian Commonwealth, State, Territorial and Local Government departments, bodies, municipalities, instrumentalities and public, statutory and other authorities having jurisdiction within Australia over the whole or any part of the Subcontract Works, the Project or the Site.

Building Legislation means any Law regulating or otherwise relating to the Subcontract Works and/or the construction of a dwelling or other residential or domestic premises, including without limitation (collectively and where the context requires any one of):

- (a) where the Site is in New South Wales – the *Home Building Act 1989* (NSW), the *Home Building Regulation 2014* (NSW) and the *Building Products (Safety) Act 2017* (NSW);
- (b) where the Site is in Victoria – the *Domestic Building Contracts Act 1995* (Vic), the *Domestic Building Contracts Regulations 2007* (Vic), the *Building Act 1993* (Vic) and the *Building Regulations 2018* (Vic);
- (c) where the Site is in Queensland – the *Building Act 1975* (Qld), the *Building Fire Safety Regulation 2008* (Qld), the *Building Regulation 2006* (Qld), the *Queensland Building and Construction Commission Act 1991* (Qld) and the *Queensland Building and Construction Commission Regulation 2018* (Qld);
- (d) where the Site is in Western Australia – the *Building Act 2011* (WA), the *Home Building Contracts Act 1991* (WA), the *Home Building Contracts Regulations 1992* (WA), the *Building Regulations 2012* (WA), the *Building Services (Registration) Act 2011* (WA), the *Building Services (Registration) Regulations 2011* (WA), the *Building Services (Complaint Resolution and Administration) Act 2011* (WA), the *Building Services (Complaint Resolution and Administration) Regulations 2011* (WA) and the *Building Services Levy Act 2011* (WA); and
- (e) where the Site is in the Australian Capital Territory – the *Building Act 2004* (ACT) and the *Building (General) Regulation 2008* (ACT).

Business Day means any day other than:

- (a) a Saturday, Sunday or public holiday in the State or Territory where the Subcontract Works are being performed; or
- (b) a day that is excluded under the Security of Payment Act applicable in the State or Territory where the Subcontract Works are being performed.

Carbon Costs means any royalty, tax, excise, levy, fee, payment, rate, duty, charge, liability, cost or expense (including without limitation the costs of acquiring permits, units, allowances or credits to meet the obligations under a Carbon Scheme, the costs of undertaking activities to abate or sequester greenhouse gas emissions, increased input costs passed through by third party suppliers and the costs of any changes to fuel excise or diesel fuel rebates schemes) incurred directly or indirectly in respect of the Subcontract Works and arises out of, is incidental to or results from the implementation of a Carbon Scheme.

Carbon Scheme means any scheme, arrangement or requirement established by law which has, as one of its purposes, the reduction, limitation or management of greenhouse gas emissions or concentrations, including through direct regulation, a carbon tax or levy, changes to fuel excise and diesel fuel rebate schemes, or a market based mechanism such as an emissions trading scheme.

Civil Liability Act means:

- (a) where the Site is in New South Wales – the *Civil Liability Act 2002* (NSW);

- (b) where the Site is in Victoria – the *Wrongs Act 1958* (Vic);
- (c) where the Site is in Western Australia – the *Civil Liability Act 2002* (WA);
- (d) where the Site is in Queensland – the *Civil Liability Act 2003* (Qld); and
- (e) where the Site is in the Australian Capital Territory – the *Civil Law (Wrongs) Act 2002* (ACT).

Claim includes any demand, entitlement, remedy, suit, injury, damages, loss, Cost, liability, action, proceeding or right of action, whether:

- (a) arising out of, under or in any way in connection with the Subcontract or the Subcontract Works; or
- (b) at law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution including restitution based on unjust enrichment,

and includes any claim by the Subcontractor for an addition to or increase in the Subcontract Sum or for an extension of time to the Date for Substantial Completion.

Confidential Information means the Subcontract and its terms, any information relating to the Subcontract Works, the parties' business or operations, or any other information provided by one party to the other party (including Personal Information) under or in connection with the Subcontract.

Construction Drawings means a stage of the Design Documents which provides a level of documentation that clearly defines the design, specification and extent of the Subcontract Works, comprehensively co-ordinated and integrated with all construction requirements in a form that can be directly built from.

Construction Program has the meaning given in clause 14.2(a).

Controller has the meaning in section 9 of the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

COR Requirements means:

- (a) the chain of responsibility aspects of the Heavy Vehicle National Laws or any State or Territory legislation relating to heavy vehicles, as amended from time to time; and
- (b) Mirvac's requirements related to the chain of responsibility aspects of the Heavy Vehicle National Laws or any State or Territory legislation relating to heavy vehicles as amended from time to time that are notified or made available to the Subcontractor.

Cost includes a cost, charge, expense, outgoing, payment, fees or other expenditure of any nature, including GST.

D&BP Act means the *Design and Building Practitioners Act 2020* (NSW).

D&BP Regulation means the *Design and Building Practitioners Regulation 2021* (NSW).

Date for Commencement has the meaning given in clause 14.1(a).

Date for Substantial Completion means the date or dates stated in Schedule 1 upon which the Subcontractor is to bring the Subcontract Works and each Stage of the Subcontract Works to Substantial Completion, as adjusted in accordance with the Subcontract.

Date of Practical Completion of the Project means the date on which Mirvac brings the Project or a relevant stage thereof to Practical Completion (as defined in the Head Contract).

Date of Substantial Completion means:

- (a) the date evidenced in a certificate of Substantial Completion issued under clause 14.13 as the date upon which Substantial Completion was reached; or

- (b) where another date is determined under any dispute resolution provisions under the Subcontract or litigation as the date upon which Substantial Completion was reached, that other date.

day means a calendar day.

DEEP means a digital engineering execution plan that outlines the processes and requirements to develop and use project information models for the delivery of the Project, defines how project information models will be authored, monitored, exchanged and controlled throughout the life cycle of the Project, and includes what information has to be produced for the operation of the Project.

Defect or Defective means:

- (a) any part of the Subcontract Works not in accordance with the Subcontract, and it includes any error, fault, shrinkage, omission or non-conformance (as applicable);
- (b) any Subcontract Works that breach a statutory warranty under the Building Legislation; or
- (c) if any part of the Subcontract Works would have breached the Building Legislation if the Building Legislation applied to any such part of the Subcontract Works.

Defects Liability Period means the period commencing on the Date of Substantial Completion, or if there are Stages the Date of Substantial Completion of the last Stage to achieve Substantial Completion, and expiring at the end of the period specified in Schedule 1 from the later of:

- (a) the Date of Practical Completion of the Project, or if there are stages, the Date of Practical Completion of the last stage to achieve Practical Completion; and
- (b) the Date of Substantial Completion, or if there are Stages, the Date of Substantial Completion of the last Stage to achieve Substantial Completion.

Design Consultant's Certificate means the certificate in the form provided in Schedule 20.

Design Documents means the drawings, plans, specifications, Construction Drawings, Shop Drawings and other information, samples, models, patterns, reports, calculations and the like whether in written or electronic form required by the Subcontract and any other document containing the design or specifications required by or created for the creation of the Subcontract Works, including, where the context so requires, those to be created by or on behalf of the Subcontractor.

Design Error means a Defect, an inconsistency, ambiguity, discrepancy, error, inadequacy, incompleteness or lack of coordination or integration of, between or in any document prepared for the purpose of carrying out the Subcontract Works, including in the Preliminary Design and the Design Documents.

Design Obligations means all tasks necessary to design and specify the Subcontract Works required by the Subcontract and including:

- (a) the obligations identified in the Schedule of Design Requirements; and
- (b) preparation of the Design Documents.

Dispute means any difference or dispute between the parties arising in connection with the subject matter of the Subcontract, including a dispute concerning:

- (a) a direction or instruction by Mirvac; or
- (b) a Claim.

Environment includes:

- (a) anything that comes within the meaning given to that term at common law; and
- (b) anything that comes within the meaning given to that term in any Law in force in the Jurisdiction or applicable to the Subcontract Works or the Site,

and it includes, without limitation, all land, water, atmosphere, climate, sound, odour, taste and the biological factors of animals and plants.

Environmental Laws include any Law regulating or otherwise relating to the Environment including, without limitation, any law relating to land use, planning, pollution of air, water, soil or

groundwater, chemicals, waste, the use of transport, storage and handling of dangerous goods, the health or safety of any person, or any other matters relating to but not limited to the protection of the Environment, health or property.

To avoid doubt, the Environmental Laws include but are not limited to:

- (a) where the Site is in New South Wales - the *Protection of the Environment Operations Act 1997* (NSW), the *Contaminated Land Management Act 1997* (NSW), the *Waste Avoidance and Resource Recovery Act 2001* (NSW), the *Environmentally Hazardous Chemicals Act 1985* (NSW), and the regulations under each of these Acts;
- (b) where the Site is in Victoria – the *Environment Protection Act 1970* (Vic), the *Environment Protection Act 2017* (Vic), the *Pollution of Waters by Oils and Noxious Substances Act 1986* (Vic), and the regulations under each of these Acts;
- (c) where the Site is in Queensland – the *Environmental Protection Act 1994* (Qld) and the regulations under that Act;
- (d) where the Site is in Western Australia – the *Environmental Protection Act 1986* (WA) and the *Pollution of Waters by Oil and Noxious Substances Act 1987* (WA) and the regulations under each of these Acts; and
- (e) where the Site is in the Australian Capital Territory – the *Environment Protection Act 1997* (ACT) and the *Dangerous Substances Act 2004* (ACT) and the regulations under each of these Acts.

Final Certificate and Deed of Release means the form of certificate set out in Schedule 6.

Good Industry Practice means:

- (a) the degree of skill, care, prudence, foresight and operating practice which would reasonably and ordinarily be expected from time to time of a highly skilled and experienced contractor, engaged in the design and construction of works similar to the Subcontract Works;
- (b) a proper and workmanlike manner;
- (c) highly competent standards for the respective trades; and
- (d) using suitably qualified and experienced personnel and sufficient resources to comply with the Subcontract Documents.

GST has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999*.

Head Contract means the agreement, arrangement or understanding with the Principal under which Mirvac will execute certain work, as amended, and of which the Subcontract Works form part.

Heavy Vehicle National Laws means the Heavy Vehicle National Law and Regulations as they apply in the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania and Victoria, the *Road Traffic (Administration) Act 2008* (WA) and the *Road Traffic (Vehicles) Act 2012* (WA) and any other similar laws in any State/Territory relating to heavy vehicles (in force from time to time) and associated regulations; codes of practice; other compliance codes; directions on safety or notices issued by any relevant Authority; and standards, relevant and applicable to any part of the Project or Subcontract Works.

HSE Requirements includes:

- (a) all requirements relating to the Subcontract Works or the Site and arising under the relevant WHS Laws;
- (b) all requirements relating to the Subcontract Works or the Site and arising under the relevant Environmental Laws;
- (c) all requirements set out in the Schedule of Health, Safety and Environmental Requirements; and
- (d) all other health, safety and environmental requirements notified by Mirvac to the Subcontractor from time to time.

Insolvency Event means:

- (a) the Subcontractor suspends payment of its debts generally;
- (b) the Subcontractor is or states it is or is presumed by Law to be insolvent or unable to pay its debts as and when they fall due;
- (c) in relation to the Subcontractor being an individual:
 - (i) they commit an act of bankruptcy for the purposes of the *Bankruptcy Act 1966* (Cth);
 - (ii) a bankruptcy notice is issued against the person;
 - (iii) they become a bankrupt; or
 - (iv) a trustee for creditors or in bankruptcy is appointed in respect of the party's property; or
- (d) in relation to the Subcontractor being a company:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) a Controller or an Administrator is appointed to them or any of their property or they execute a deed of company arrangement;
 - (iii) if the party or any of its directors start developing one or more courses of action that are reasonably likely to lead to a better outcome for the party for the purposes of section 588GA of the Corporations Act;
 - (iv) if the party or any of its directors start to suspect the company may become or be insolvent;
 - (v) an application is made to a court for the winding up of the party;
 - (vi) a liquidator or provisional liquidator is appointed;
 - (vii) a winding up order is made in respect of the party; or
 - (viii) a meeting of its creditors is convened at which it is proposed that it be wound up voluntarily (other than for a members' voluntary winding-up) or such resolution is passed.

Institution means an authorised deposit taking institution that holds an authority to carry on banking business in Australia under the terms of the *Banking Act 1959* (Cth).

Intellectual Property Right means any patent, registered design, trademark or name, copyright or other protected right.

Interim Deed of Release means the form of deed set out in Schedule 13.

Law includes:

- (a) the provisions of a statute, rule, regulation, proclamation, ordinance, direction or by-law, present or future, whether state, federal or otherwise provided it is binding and applicable within Australia;
- (b) the Building Code of Australia and all relevant Australian Standards;
- (c) a requirement, notice, approval, consent, order or direction received from or given by any Authority;
- (d) any requirement in connection with paragraphs (a), (b) or (c) above to pay fees or charges;
- (e) the management of and payment for all works required to be undertaken by Australian statutory authorities and Australian infrastructure authorities in connection with the work under the Subcontract; and
- (f) if clause 19.6 applies, any other applicable requirements prescribed by the D&BP Regulation.

Losses include losses, costs, expenses, damages (liquidated or otherwise) and liabilities of whatsoever kind.

Materials include any goods, material in any form, products, equipment and hardware which is to form part of the Subcontract Works.

Mirvac means the party identified as Mirvac on the front page of the Formal Instrument of Agreement to this Subcontract.

Mirvac Associates means employees, related bodies corporate (as that term is defined in the Corporations Act) and Related Entities, agents, joint venture partners and each trust of which Mirvac or any of its related bodies corporate or Related Entities are the trustee or responsible entity.

Mirvac Open Line means the communication channels available to report behaviour which is contrary to the Mirvac Policies which are:

- (a) Web form: www.yourcall.com.au/report;
- (b) Free call (within Australia): 1300 790 228; and
- (c) Confidential mail to: Head of Internal Audit – Open Line Mirvac, L28, 200 George St Sydney NSW 2000.

Mirvac Policies means the:

- (a) 'Fraud Bribery and Corruption Policy' which is available on the Mirvac website at <https://mirvac-cdn-prd.azureedge.net/-/media/Files/Corporate-Governance/Fraud-Bribery-and-Corruption-Policyv2.pdf?la=en&hash=8A7FBB443333703337AB16A7261E83958F9EC24A> and updated from time-to-time;
- (b) 'Code of Conduct' which is available on the Mirvac website at [https://mirvacau.sharepoint.com/sites/content/Policy_Documents/Forms/AllItems.aspx?id=%2Fsites%2Fcontent%2FPolicy%5FDocuments%2FCode%20of%20Conduct%2Epdf&parent=%2Fsites%2Fcontent%2FPolicy%5FDocuments](https://mirvacau.sharepoint.com/sites/content/Policy_Documents/Forms/AllItems.aspx?id=%2Fsites%2Fcontent%2FPolicy%5FDocuments%2FCode%20of%20Conduct%2Epdf&parent=%2Fsites%2Fcontent%2FPolicy%5FDocuments;); and
- (c) 'Conflict of Interest and Related Party Transactions Policy' which is available on the Mirvac website at https://mirvacau.sharepoint.com/sites/content/Policy_Documents/Forms/AllItems.aspx?id=%2Fsites%2Fcontent%2FPolicy%5FDocuments%2FConflicts%20of%20Interest%20and%20Related%20Party%20Transactions%20Policy%2Epdf&parent=%2Fsites%2Fcontent%2FPolicy%5FDocuments.

Modern Slavery Laws means any law, statute and regulation which prohibits exploitation of a worker, human trafficking, slavery, servitude, forced labour, debt bondage or deceptive recruiting for labour or services, or similar types of conduct, and applicable or otherwise in force in the jurisdiction in which Mirvac or the Subcontractor is registered or conducts business or in which activities relevant to the Subcontract are to be performed.

Moral Rights means rights of integrity of authorship, rights or attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute, that exist, or that may come to exist, anywhere in the world.

Originating Date means the date on which the Subcontractor first became aware, or ought to have been aware, of the claim.

Pay Platform means the PayApps (or alternative service, as notified by Mirvac) cloud collaboration platform portal through which Mirvac manages the progress claim process for the Project.

Personal Information means any information or an opinion, whether true or otherwise or in a material form, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

Plant and Equipment means all vehicles, plant, equipment (including hand-held tools), machinery, facilities, apparatus, appliances and things used, or required to be used, by or on behalf of the Subcontractor or any of the Subcontractor's Personnel in the carrying out of the Subcontract Works but not forming part of the Subcontract Works.

Preliminary Design means concept designs or other information provided by Mirvac and set out in Schedule 1.

Prescribed Notice means a written notice which states:

- (a) that it is a notice under clause 21.3;
- (b) in detail the relevant facts on which the claim is based or alleged to arise;
- (c) the legal bases of the claim (including the relevant clause of the Subcontract that is relied upon); and
- (d) the quantum or likely quantum of the claim with detailed particulars of the method of calculation.

Principal means the party or parties named and identified as the Principal on the front page of the Formal Instrument of Agreement to this Subcontract and being the other party or parties with Mirvac to the Head Contract.

Programming Activities means:

- (a) the supply of drawings and information;
- (b) approvals from Authorities and Mirvac;
- (c) the provision of samples, opening up covered works for inspection and testing of materials or executed work;
- (d) the provision of prototypes and testing;
- (e) the provision and approval of Shop Drawings and as-constructed drawings (allowing for the times required for Mirvac's review and approval);
- (f) the provision of all maintenance and operations manuals (including drafts);
- (g) the supply of essential Materials and Material order dates;
- (h) sequences and labour requirements for commissioning;
- (i) the provision and approval of safety procedures;
- (j) the provision of quality procedures;
- (k) all other activities which have a significant bearing on the time required for Substantial Completion; and
- (l) the rectification of any Defective Subcontract Works.

Project means the project to be completed by Mirvac under the Head Contract and of which the Subcontract Works are a part.

Project Manager means the person nominated in Schedule 1 or any other person notified in writing to the Subcontractor by Mirvac as the manager of the Site from time to time in accordance with clause 4.5(b).

Related Contract means any:

- (a) agreement for lease;
- (b) lease;
- (c) contract of sale;
- (d) development agreement;
- (e) construction contract;
- (f) consultancy agreement; or
- (g) funding agreement,

which the Principal or a Related Entity of Mirvac has entered into in respect of the Project.

Related Entity has the meaning given to that term in the Corporations Act.

Schedule of Design Requirements means the schedule attached as Schedule 3 specifying the design requirements to be satisfied by the Subcontractor (if any).

Schedule of Facilities means the schedule attached as Schedule 2 specifying the facilities to be provided by Mirvac.

Schedule of Health, Safety and Environmental Requirements means the schedule attached as Schedule 8 specifying the environmental, health, safety and sustainability requirements to be satisfied by the Subcontractor.

Schedule of Industrial Requirements means the schedule attached as Schedule 7 specifying the industrial requirements to be satisfied by the Subcontractor.

Schedule of Insurances means the schedule attached as Schedule 22 specifying the insurance requirements to be satisfied by the Subcontractor.

Schedule of Progress Claim Requirements means the schedule attached as Schedule 17 specifying the requirements to be satisfied by the Subcontractor before and as a pre-condition to the submission of a progress claim.

Schedule of Quality Requirements means the schedule attached as Schedule 16 specifying the quality requirements to be satisfied by the Subcontractor.

Schedule of Rates means the schedule attached as Schedule 18, if any, setting out all-inclusive rates and prices for work and to be used for the purposes of valuing Variation claims and progress claims where appropriate.

Schedule of Subcontractor's Warranty means the schedule attached as Schedule 14 specifying the form of warranty to be provided by the Subcontractor.

Schedule of Supplier's Warranty means the schedule attached as Schedule 15 specifying the form of warranty to be provided by each supplier of the Subcontractor.

Second Defects Liability Period means the period commencing on the day that a Defect identified during the Defects Liability Period is remedied so as to comply with the requirements of the Subcontract and expiring on the day being 12 calendar months (or such other period as may be specified in Schedule 1) following that day.

Security of Payment Act means:

- (a) in New South Wales – the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (b) in Victoria – the *Building and Construction Industry Security of Payment Act 2002* (Vic);
- (c) in Queensland – the *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
- (d) in Western Australia – the *Construction Contracts Act 2004* (WA); and
- (e) in the Australian Capital Territory – the *Building and Construction Industry (Security of Payment) Act 2009* (ACT).

Shop Drawings means the documents prepared by the Subcontractor, fabricators, suppliers and trade contractors to a level of detail that identifies the fully documented and dimensioned 'as built' design of the item or work being provided or performed by the Subcontractor, fabricator, supplier or trade contractor.

Site means the land, buildings and other places made available to Mirvac by the Principal for the purposes of the Head Contract and any other land, buildings or places which Mirvac notifies the Subcontractor form part of the Site. It includes all land, buildings and other places made available to the Subcontractor by Mirvac for the purposes of this Subcontract.

Site Conditions includes:

- (a) the physical conditions, the Environment and characteristics of the Site and its surrounds including (but not limited to):
 - (i) physical conditions above, upon and below the Site and its surroundings (including man-made objects below the Site and its surroundings);
 - (ii) topography of the Site, ground surface conditions and subsurface materials (including man-made objects below the Site and its surroundings) to be encountered on the Site and/or its surroundings; and
 - (iii) any form of contamination of the Site or its surroundings;
- (b) conditions resulting from the works of others working on or near the Site; and

- (c) those matters relating to:
 - (i) transportation and conditions of access to or from the Site and any restrictions on the hours or works permitted at the Site;
 - (ii) disposal, handling and storage of material;
 - (iii) Utilities servicing the Site, including water, power and sewerage services;
 - (iv) availability and condition of roads;
 - (v) climatic conditions, rain, surface water run-off and drainage, water seepage, wind, windblown dust and sand;
 - (vi) river and artesian hydrology;
 - (vii) all existing systems and services, above or below ground level and the location of all facilities with which such systems and services are connected; and
 - (viii) heritage, preservation or other Authorities' orders affecting the Site; and
- (d) conditions existing within buildings situated on or forming part of the Site or its surroundings.

Stage means each of the stages comprising a part or parts of the Subcontract Works as stated and identified in Schedule 1, and where the context requires, it means any one of them.

Strata Act means the *Strata Schemes Management Act 2015* (NSW).

Subcontract means the agreement between Mirvac and the Subcontractor and which is constituted by the Subcontract Documents.

Subcontract Documents means the documents described in the Formal Instrument of Agreement and Subcontract Document means any one of them.

Subcontract Sum means the amount stated as the Subcontract Sum in the Subcontract, a breakdown of which may be specified in Schedule 21, as adjusted in accordance with the Subcontract.

Subcontract Works means all the works and services to be executed by the Subcontractor under the Subcontract, including those works identified as the Subcontract Works in the Subcontract.

Subcontract Works Program has the meaning given in clause 14.3(a).

Subcontractor means the party named as the Subcontractor in the Subcontract.

Subcontractor's Personnel means the Subcontractor's employees, officers, subcontractors, suppliers, consultants, agents, advisers or financiers and anyone else for whom the Subcontractor is responsible and the personnel of all of them.

Substantial Completion means when:

- (a) the Subcontract Works are, or if there are Stages, the Stage is, complete except for minor omissions and minor defects:
 - (i) which do not prevent the Subcontract Works or, if there are Stages, the Stage from being reasonably capable of being used for their intended purpose;
 - (ii) in relation to which Mirvac determines that the Subcontractor has reasonable grounds for not promptly correcting;
 - (iii) the making good of which will not prejudice the convenient use and enjoyment of the Subcontract Works or, if there are Stages, the Stage; and
 - (iv) which do not cause a legal impediment to the use of the Subcontract Works or, if there are Stages, the Stage;
- (b) those tests which are required by the Subcontract to be carried out and passed before the Subcontract Works are or, if there are Stages, the Stage is handed over to Mirvac have been carried out and passed;
- (c) all Design Documents (if any), materials, documents and other information required under the Subcontract which are reasonably necessary for the use, operation and maintenance of the Subcontract Works or, if there are Stages, the Stage, have been supplied to Mirvac;

- (d) warranties which the Subcontractor is required to provide under this Subcontract for the Subcontract Works or, if there are Stages, the Stage have been supplied to and accepted by Mirvac;
- (e) where the D&BP Act applies to the Project, the Site is in New South Wales and the Subcontract Works are building works (as defined in the D&BP Act), the Subcontractor has provided to Mirvac all required documents and contractor documents described in section 17(6) of the D&BP Act and in compliance with the D&BP Regulation that relate to the Subcontract Works;
- (f) the matters referred to in Schedule 1 have been completed; and
- (g) any other thing required by the Subcontract (including Schedule 24 - Scope of Works) to be done by the Subcontractor to achieve Substantial Completion has been done by the Subcontractor.

Substantial Completion Certificate and Deed of Release means the form of certificate set out in Schedule 5.

Temporary Subcontract Works means work or things of a temporary nature required in order to execute the Subcontract Works but which does not form part of the Subcontract Works, including Plant and Equipment.

Utilities means the provision of air conditioning, communications, compressed air, drainage, electricity, gas, hydraulics, sewerage, ventilation, water and the like.

Variation means any of the following (otherwise than in relation to any Temporary Subcontract Works or Work Practices, for which the Subcontractor is and remains liable):

- (a) an increase or decrease in or omissions from the Subcontract Works;
- (b) a change in the character or quality of material or work;
- (c) a change in the levels, lines, positions or dimensions of a part of the Subcontract Works; and
- (d) execution of additional or less work.

WHS Laws means any Law regulating or otherwise relating to occupational health and safety or work health and safety including, but without limitation:

- (a) where the Site is in New South Wales – the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW);
- (b) where the Site is in Victoria – the *Occupational Health and Safety Act 2004* (Vic) and the regulations under that Act, including the *Occupational Health and Safety Regulations 2017* (Vic);
- (c) where the Site is in Queensland – the *Work Health and Safety Act 2011* (Qld) and the *Work Health and Safety Regulation 2011* (Qld);
- (d) where the Site is in Western Australia – the *Occupational Safety and Health Act 1984* (WA) and the *Occupational Safety and Health Regulations 1996* (WA);
- (e) where the Site is in the Australian Capital Territory – the *Work Health and Safety Act 2011* (ACT) and the *Work Health and Safety Regulation 2011* (ACT);
- (f) the *Work Health and Safety Act 2011* (Cth) and the *Work Health and Safety Regulations 2011* (Cth); and
- (g) Heavy Vehicle National Laws.

Work Practices means (each as applicable to the Subcontract Works and the Site) work practices and methods, methods of construction, sequencing and programming, temporary works, the movement of labour and Materials, working days or hours, Materials and resource handling and transportation, social, physical and worker distancing measures, supply chain issues, the flow of labour and Materials and anything else which does not form part of the Subcontract Works to be handed over to Mirvac on Substantial Completion but which is required, and/or forms part of each process or step required, to lawfully perform the Subcontract Works, each as amended or restricted from time to time, including by any Authority, Mirvac or as a result of any event or

circumstances beyond the reasonable control of either party, or for the purposes of complying with or satisfying the requirements of any Law.

1.2 Interpretation

- (a) In this Subcontract, unless inconsistent with the context:
 - (i) clause headings are for convenience only and must be ignored in the interpretation of this Subcontract;
 - (ii) a person includes a corporation, partnership, joint venture and government body and where the context permits, the employees, agents, contractors and invitees of that person;
 - (iii) words importing the singular include the plural and vice versa, words importing a gender include the other genders and references to a person must be construed as references to an individual, firm, body corporate, association (whether incorporated or not), Authority or agency;
 - (iv) interpretation of this Subcontract shall not be affected by the fact that one party put forward any part of the Subcontract. The contra proferentem rule does not apply to this Subcontract;
 - (v) a reference to a 'Schedule' means the relevant schedule attached to and forming part of this Subcontract; and
 - (vi) the words 'including', 'includes' or 'included' will be interpreted as though the words 'without limitation' appeared immediately after it wherever occurring.
- (b) Where under a provision of the Subcontract:
 - (i) a number of days is to be taken into account in determining the Date for Substantial Completion or the Subcontractor's entitlement to an extension of time, then the following days will not be counted:
 - (A) Sundays, statutory and public holidays in the State or Territory where the Subcontract Works are being performed, recognised industry non-working days;
 - (ii) any other notice is to be given or any other act, matter or thing is to be done in a stated period of days, then the following days will not be counted:
 - (A) Saturdays, Sundays, statutory and public holidays in the State or Territory where the Subcontract Works;
 - (iii) a number of days is to be taken into account in determining the Subcontractor's liability for liquidated damages, the days will be counted in calendar days.
- (c) If the Subcontract is made up of or includes Stages, then:
 - (i) the interpretations of Date for Substantial Completion, Date of Substantial Completion and Substantial Completion shall apply separately to each Stage;
 - (ii) reference to the Subcontract Works shall mean so much of the Subcontract Works as is comprised in the Stage; and
 - (iii) all provisions of the Subcontract shall apply to each Stage as if it were the only work comprising the Subcontract Works (such that there were a separate subcontract on the terms of this Subcontract for the work comprising the Stage).
- (d) The Subcontractor acknowledges that, to the fullest extent permitted by law, there is no implied duty of good faith on Mirvac toward the Subcontractor.
- (e) Where this Subcontract states or provides that the Subcontractor has no entitlement to an increase in the Subcontract Sum or to any Claim, compensation, relief or remedy, this means that the Subcontractor has no entitlement (including to any Claim) on any basis whatsoever, including without limitation:
 - (i) pursuant to contract;
 - (ii) in tort (including negligence or otherwise, including negligent misrepresentation);

- (iii) on a quantum meruit;
 - (iv) pursuant to quasi-contract;
 - (v) for restitution including restitution based on unjust enrichment;
 - (vi) pursuant to statute; or
 - (vii) pursuant to any other principle of law or equity.
- (f) A reference to any legislation means the legislation as amended from time to time and then in force.
- (g) If a party to the Subcontract includes more than one person, the Subcontract binds them jointly and each of them severally.

2. Subcontractor's Obligations

2.1 Subcontractor to execute Subcontract Works

The Subcontractor must execute and complete the Subcontract Works in accordance with the Subcontract on or before the Date for Substantial Completion. When complete, the Subcontract Works must:

- (a) comply with all the requirements of the Subcontract, including the Subcontract Documents;
- (b) comply with the requirements of all Authorities and all Laws; and
- (c) be fit for purpose.

2.2 Subcontractor's Compliance

The Subcontractor must comply with all of its obligations and responsibilities contained in the Subcontract.

2.3 Facilities by the Subcontractor

The Subcontractor must provide all facilities, Temporary Subcontract Works, Materials and other things necessary or desirable for the proper execution of the Subcontract Works except those which Mirvac is required to provide under the Schedule of Facilities.

2.4 Design

- (a) If required by Schedule 1, the Subcontractor must perform the Design Obligations in accordance with the Schedule of Design Requirements and the other Subcontract Documents and must:
 - (i) carry out and complete the design of the Subcontract Works so that the Design Documents created by or for the Subcontractor:
 - (A) comply with:
 - (I) the requirements of the Subcontract, including the Subcontract Documents, and the Schedule of Design Requirements; and
 - (II) the requirements of all Authorities and all Laws (unless the Subcontract provides otherwise and in which event the Subcontractor must notify Mirvac of the non-compliance and await Mirvac's instruction before it proceeds),
 - (B) are suitable for the Site;
 - (C) are fit for purpose;
 - (D) are suitable for any purpose made known to the Subcontractor prior to the date of the Subcontract;
 - (E) meet standards commensurate with Good Industry Practice;
 - (F) have no Design Errors;

- (G) fully describe the Subcontract Works and enable the construction of the Subcontract Works; and
 - (H) do not infringe any Intellectual Property Right; and
- (ii) in so far as the Subcontractor designs any structure which is to be constructed, the Subcontractor must:
 - (A) consult with Mirvac about how to ensure that risks to health and safety arising from the design during the construction work are:
 - (I) eliminated, so far as is reasonably practicable; or
 - (II) if it is not reasonably practicable to eliminate the risks, minimised so far as is reasonably practicable; and
 - (B) provide to Mirvac a written report in accordance with clause 295 of the *Work Health and Safety Regulation 2017* (NSW) that specifies the hazards relating to the design of that structure which, so far as the Subcontractor is reasonably aware, creates a risk to the health or safety of persons who are to carry out any construction work on the structure or part.
- (b) If Schedule 1 indicates there is a Preliminary Design, the Subcontractor acknowledges and agrees that:
 - (i) prior to the date of the Subcontract:
 - (A) the Preliminary Design was created by or on behalf of Mirvac, the Principal or a Related Entity of Mirvac, and their consultants, and it may contain Design Errors; and
 - (B) it checked and carefully reviewed and considered the Preliminary Design to ensure that it complied with the requirements of the Subcontract, including that it was fit for purpose;
 - (ii) the Subcontractor bears all risks however they may arise as a result of the use by the Subcontractor of the Preliminary Design, including if it contains Design Errors;
 - (iii) the use of the Preliminary Design by the Subcontractor does not affect any of its obligations under the Subcontract or entitle it to make any Claim (including a claim for a Variation) against Mirvac arising from such use;
 - (iv) the Subcontractor remains responsible for ensuring that the Subcontract Works will be fit for purpose; and
 - (v) if the Subcontract Works are designed and constructed in accordance with the Preliminary Design (as may be developed in accordance with the Schedule of Design Requirements or as may be varied under clause 15) the Subcontract Works will comply with clause 2.1.
- (c) The Subcontractor is responsible for identifying and correcting, at its own cost, all Design Errors in any Preliminary Design.
- (d) If Schedule 1 indicates that there is a DEEP that applies to the Subcontract Works, then the Subcontractor acknowledges and agrees that:
 - (i) it has been, or will be, provided with a copy of the DEEP;
 - (ii) the Subcontractor must develop a digital model of the Subcontract Works that complies with the DEEP, which Mirvac will review periodically to monitor and ensure compliance, and the Subcontractor must update this digital model to the extent of any non-compliances with the DEEP;
 - (iii) in performing the Subcontract Works and its Design Obligations, the Subcontractor must comply with the DEEP, including applying the naming and coding conventions in the DEEP to design and the digital model of the Subcontract Works that it prepares; and
 - (iv) as a requirement of achieving Substantial Completion, the Subcontractor must provide to Mirvac the final digital model of the as built Subcontract Works that complies with the DEEP.

2.5 Duty not to Impede or Interfere

The Subcontractor acknowledges that it must not impede or interfere with the progress of Mirvac or of any other contractor, supplier, subcontractor or person on the Site.

2.6 Duty to Inform

The Subcontractor shall immediately inform Mirvac of any event or circumstance which may or is likely to affect the progress or the performance of the Subcontract Works or which may give rise to any claim of whatsoever nature against the Subcontractor or Mirvac and shall take all steps to minimise the effects thereof.

3. No Collusive Agreements

- (a) The Subcontractor warrants that the Subcontractor:
 - (i) has no knowledge of the tender price of any other tenderer for any of the work under the Subcontract;
 - (ii) except as disclosed in its tender, has not entered into any arrangement or understanding to pay or allow any money directly or indirectly to any third party in relation to its tender; and
 - (iii) is not aware of any conflict of interest arising from or in connection with this Subcontract and must immediately upon becoming aware of any such conflict bring it to the attention of Mirvac.
- (b) Without limiting any other right or remedy, in the event of the Subcontractor:
 - (i) paying; or
 - (ii) allowing any money to be paid to any third party,in breach of clause 3(a), Mirvac may recover from the Subcontractor the value of any such payment from the Subcontract, and that amount shall be a debt due and payable by the Subcontractor to Mirvac.
- (c) The Subcontractor represents to and agrees with Mirvac that Mirvac has entered into the Subcontract in reliance on the representations contained in this clause 3 and would not have entered into the Subcontract if the Subcontractor had not made them.

4. Mirvac's Role

4.1 Facilities by Mirvac

- (a) Mirvac must provide facilities to the Subcontractor to the extent stated in the Schedule of Facilities.
- (b) Mirvac does not warrant that the facilities or Materials provided by Mirvac are suitable for the purposes of the Subcontract. The Subcontractor must at its expense supply any further facilities, Temporary Subcontract Works and Materials that it requires to undertake and complete the Subcontract Works.

4.2 Mirvac's powers and instructions

- (a) Mirvac may issue drawings, instructions or directions in relation to any matters concerning the Site, the Subcontract Works or the Project and all related matters. If Mirvac issues an instruction or a direction, other than in writing to the Subcontractor, it must issue the direction in writing within 3 Business Days of the initial direction being given. The Subcontractor must comply with the instructions or directions issued by Mirvac within the time instructed by Mirvac.
- (b) If the Subcontractor fails to comply with Mirvac's instructions or directions, Mirvac may employ others at the Subcontractor's expense and the Subcontractor shall be responsible for all work (including Variations) carried out by others.
- (c) The Subcontractor acknowledges and agrees that:

- (i) Mirvac will not be liable for any Claim; and
- (ii) the Subcontractor releases and waives any entitlement it may have to any Claim against Mirvac,

arising out of or in connection with any drawings, instructions or directions issued by Mirvac in relation to any matters concerning the Site, the Subcontract Works or the Project and all related matters.

4.3 Mirvac's Authority

The Subcontractor shall take instructions and directions only from Mirvac and shall comply with each instruction and direction given by Mirvac. Mirvac's authority shall be exercisable in any case irrespective of whether like authority has been exercised in relation thereto under the Head Contract.

4.4 Approval by Mirvac

The approving, reviewing or checking by Mirvac of anything, including designs, drawings, plans, diagrams, samples, prototypes, substitutes, measurements, Work Practices or other matters employed by the Subcontractor in the execution of the Subcontract Works, will not diminish or affect the Subcontractor's responsibility, including obligations under this Subcontract, for those matters. Mirvac assumes no duty to give advice to the Subcontractor or to supervise the Subcontractor to ensure performance of its obligations under the Subcontract or to exercise a discretion for the benefit of the Subcontractor.

4.5 Mirvac's Representative

- (a) Unless otherwise notified by Mirvac, Mirvac has appointed or intends to appoint the Project Manager to represent Mirvac in all matters under or relating to the Subcontract.
- (b) Mirvac may at any time, and in addition to or as a replacement of the Project Manager, appoint another person to act for Mirvac with the full authority of Mirvac in all matters under or relating to the Subcontract.

5. Security

5.1 Provision and Purpose

- (a) Security shall be provided by the Subcontractor in accordance with Schedule 1.
- (b) If Schedule 1 nominates retention as the approved form of security, Mirvac may retain the percentage stated in Schedule 1 of each payment made to the Subcontractor until the limit stated in Schedule 1 has been reached. Where the original Subcontract Sum has been adjusted by Mirvac by a positive amount, the amount retained by Mirvac as security shall be based and calculated on the adjusted and increased Subcontract Sum.
- (c) If Schedule 1 nominates an unconditional undertaking as the approved form of security, Mirvac will accept an unconditional undertaking in satisfaction of the Subcontractor's obligation to provide security under this clause, subject to such unconditional undertaking being:
 - (i) in the form specified in Schedule 4;
 - (ii) in favour of Mirvac;
 - (iii) issued by an Institution approved by Mirvac (in its absolute discretion); and
 - (iv) where required by Law, duly stamped.
- (d) The purpose of the security is to ensure the due and proper performance of each of the Subcontractor's obligations under this Subcontract.

5.2 Recourse

- (a) Mirvac may have recourse to the security provided under clause 5.1 or clause 12.7(a)(i) at any time.

- (b) If the Site is in Queensland and Mirvac wishes to have recourse to the security, it must notify the Subcontractor in writing that it intends to do so, stating the proposed use and the amount owed (being a debt due), within 28 days of becoming aware (or when it ought reasonably to have become aware) of its entitlement to the amount owed. This clause 5.2(b) does not apply if the Subcontract Works have been taken out of the Subcontractor's hands or the Subcontract has been terminated, or the security is to be used to make a payment into court to satisfy a notice of claim of charge under the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).

5.3 Reduction and Release

- (a) Any moneys retained, or any unconditional undertaking held, shall be retained or held (as the case may be) by Mirvac until it is due for release in accordance with this clause (and subject to any call made on such retention money or undertaking):
 - (i) Mirvac will release the amount of security that is identified in Schedule 1 on the later of:
 - (A) the Date of Substantial Completion (or, if there are Stages, the last Stage to reach Substantial Completion);
 - (B) the Date of Practical Completion of the Project (or, if there are stages, the last stage to reach the Date of Practical Completion of the Project);
 - (C) receipt by Mirvac of a Substantial Completion Certificate and Deed of Release in the form set out in Schedule 5 in accordance with clause 12.13; and
 - (D) receipt by Mirvac of a written request from the Subcontractor for a release of the first undertaking or one half of the retention monies; and
 - (ii) Mirvac will release the remainder of security held under clause 5 on the later of:
 - (A) the expiry of the Defects Liability Period or the Second Defects Liability Period (if any) (or, if there are Stages, the expiry of the last Defects Liability Period or the last Second Defects Liability Period (if any)) for the Subcontract Works;
 - (B) the Subcontractor complying with all of its obligations under the Subcontract;
 - (C) where requested by Mirvac, receipt by Mirvac of a Final Certificate and Deed of Release in the form set out in Schedule 6 in accordance with clause 12.14;
 - (D) receipt by Mirvac of a written request from the Subcontractor for a release of the remaining security held under clause 5; and
 - (E) if the Site is located in NSW, VIC, WA or ACT, resolution of any Claim by Mirvac arising in connection with the Subcontract.
- (b) Upon incorporation of Materials in the Subcontract Works in accordance with the Subcontract, Mirvac shall release the unconditional undertaking provided by the Subcontractor under clause 12.7 for the Materials.
- (c) Interest earned on any moneys held in a retention money trust account under or in connection with this Subcontract will accrue in favour of Mirvac.

5.4 Deed of guarantee and indemnity

- (a) Where:
 - (i) the Subcontractor is a subsidiary (as that term is defined in the Corporations Act); and
 - (ii) Schedule 1 indicates that Mirvac requires a form of deed of guarantee and indemnity,

the Subcontractor must, within 10 Business Days of entering into this Subcontract, provide such a deed of guarantee and indemnity that is duly executed and enforceable and that

guarantees the performance of the Subcontract by the Subcontractor and the discharge and indemnification of the liabilities of the Subcontractor, in a form approved by Mirvac.

- (b) The form of deed of guarantee and indemnity specified in Schedule 23 is approved by Mirvac.

6. The Site

6.1 Subcontractor Informed

- (a) The Subcontractor warrants that it has (before the date of entering into this Subcontract):
 - (i) thoroughly inspected the Site and its surroundings;
 - (ii) undertaken and relies on its own investigations and thorough due diligence of the Site and its surroundings; and
 - (iii) sufficiently informed itself of all matters concerning the Site and its surroundings.
- (b) The Subcontractor is deemed to have allowed in the Subcontract Sum for (and bears absolutely the risk of) all Site Conditions, including all changes which are or may become necessary to the Subcontract Works as a consequence of (including to overcome the effects of) the Site Conditions, such changes subject always to the approval of Mirvac.
- (c) The Subcontractor agrees that it is entirely and solely liable for all Site Conditions (as found on or migrating onto the Site) and:
 - (i) Mirvac will not be liable for any Claim; and
 - (ii) the Subcontractor releases and waives any entitlement it may have to any Claim against Mirvac,arising out of or in connection with the Site, any Site Conditions or anything contained in this clause 6.1.
- (d) Unless otherwise directed by Mirvac, and despite the Subcontractor being entirely liable for any and all Site Conditions (including those covered by this clause 6.1), the Subcontractor agrees that any things of value or archaeological or special interest found on or in the Site will, as between the parties, be the property of Mirvac. Where such an item is found the Subcontractor shall:
 - (i) immediately notify Mirvac;
 - (ii) protect it and not disturb it further until and unless it receives a direction from Mirvac; and
 - (iii) comply with any directions of Mirvac.
- (e) The Subcontractor shall ensure that no damage occurs in the course of the Subcontract Works to any tree. The Subcontractor shall meet the direct and indirect costs of any work (including replacement of any trees of any size) Mirvac considers necessary as a result of the Subcontractor's breach of this provision.
- (f) The Subcontractor unconditionally accepts the quality and adequacy of all prior work carried out or to be carried out by others with which the Subcontract Works are to be integrated or upon the adequacy of which the Subcontract Works are in any way dependent, except for defects or faults in such prior work of which the Subcontractor notifies Mirvac in writing as soon as practicable and in any event before the commencement by the Subcontractor of work in the area of the defect or fault and which notice must detail how the defects or faults will affect the Subcontract Works if not remedied. The Subcontractor shall unless notice of the defect or fault is properly given under this clause 6.1, be liable for all costs with respect to or in connection with making good such faults or defects, and:
 - (i) Mirvac will not be liable for any Claim; and
 - (ii) the Subcontractor releases and waives any entitlement it may have to any Claim against Mirvac,

arising out of or in connection with such faults or defects.

6.2 Access, Possession and Use of Site

- (a) Subject to restrictions on possession of the Site referred to in the Subcontract or other restrictions which Mirvac may advise from time to time and any restrictions arising out of the matters referred to in clause 6.5, the Subcontractor will be entitled to access to so much of the Site as is reasonably necessary to enable the Subcontractor to carry out the Subcontract Works at such times as other activities on the Site permit.
- (b) If Mirvac, in its absolute discretion, permits the Subcontractor to situate an office compound or any other facility on the Site (**Site Compound**), including without limitation, for the purposes of storing Materials, supplies or rubbish, the Subcontractor does so at its own risk and must at its own cost:
 - (i) keep the Site Compound clean, secure and tidy at all times;
 - (ii) comply with any direction given by Mirvac relating to the Site Compound; and
 - (iii) re-locate within the Site or remove from the Site the Site Compound when and in the manner directed by Mirvac.

6.3 Utilities

- (a) The Subcontractor must liaise as necessary with all relevant Authorities and must identify, physically locate and mark all Utilities on the Site which may be affected by the Subcontract Works.
- (b) Where an existing Utility obstructs the Subcontract Works and requires diversion or relocation, then unless the Subcontract expressly provides otherwise, the Subcontract Works shall include relocation or diversion and reinstatement.
- (c) The Subcontractor shall bear all costs and delays of relocating, diverting and reinstating the Utilities.
- (d) Unless permanent disconnection is expressly required all existing Utilities shall be kept in continuous operation.
- (e) In addition to any other obligation, if the Subcontractor is entitled to disconnect or affect any existing Utility (temporarily or permanently), the Subcontractor must before it does so:
 - (i) give Mirvac at least 72 hours prior written notice of any intended disconnection or other interference with Utilities; and
 - (ii) ensure that any disconnection or other interference takes place outside the hours of use of the Utility and outside working or trading hours of any activity of operation that would or may be affected.
- (f) The Subcontractor must immediately notify Mirvac in writing of any damage to Utilities on the Site or on other properties which are caused by or contributed to by an act, default or omission of the Subcontractor, the Subcontractor's Personnel or their visitors.

6.4 Other Properties

- (a) Where the Subcontract Works are to be executed upon or to land, buildings or places other than those made available to Mirvac by the Principal for the purposes of the Head Contract, then:
 - (i) the party stated in Schedule 1 must obtain the appropriate permission which may be subject to conditions as to working space, periods of time, working hours or otherwise; and
 - (ii) the Subcontractor must comply with all conditions attaching to the permission and must make good any damage caused by the Subcontractor to those lands, buildings or places without delay.
- (b) Mirvac will not be liable for any Losses or Claims suffered or incurred by the Subcontractor as a result of complying with the conditions referred to in clause 6.4(a) and/or use of and access to all lands, buildings and places adjoining the Site.

6.5 Co-operation

The Subcontractor acknowledges that other subcontractors and persons will be working on the Site concurrently with and in close proximity to the Subcontractor. The Subcontractor must at all times comply with the requirements of, and co-operate and co-ordinate with, Mirvac and other subcontractors and persons on the Site so as to allow the Project to proceed expeditiously, safely and to the satisfaction of Mirvac. The Subcontractor:

- (a) acknowledges that others may suffer Losses if the Subcontractor fails to co-operate in accordance with this clause 6.5 and that the requirements of others from time to time may prevent the Subcontractor from being granted access in accordance with clause 6.2;
- (b) has allowed for all Costs and contingencies, bears absolutely all risks for; and
- (c) agrees that:
 - (i) Mirvac will not be liable for any Claim; and
 - (ii) the Subcontractor releases and waives any entitlement it may have to any Claim against Mirvac,arising from or in connection with:
 - (iii) the need to work with, co-operate with and co-ordinate with other subcontractors;
 - (iv) any limitation, obstruction or restriction on the Subcontractor's access to the Site, including where it prevents the Subcontractor from performing its works in a continuous or suitably sequenced manner; and
 - (v) any direction or instruction given by Mirvac for the purposes of Site co-ordination and/or pursuant to this clause 6.5.

6.6 Working Hours and Days

- (a) The Subcontractor must, unless otherwise directed or approved by Mirvac, only carry out work on the Site on the days and within the hours specified in Schedule 1 to this Subcontract or such other hours as Mirvac may instruct from time to time.
- (b) Subject to clause 14.7, and subject to the Subcontractor ensuring that all work performed is properly supervised at all times, the Subcontract Sum will be adjusted by a reasonable amount approved by Mirvac in respect of additional costs incurred by the Subcontractor, as verified and approved by Mirvac, as a result of Mirvac instructing the Subcontractor in writing to work outside the hours stated in Schedule 1 to this Subcontract, except to the extent that the instruction by Mirvac arises from any failure of the Subcontractor to comply with this Subcontract or any negligent act or omission of the Subcontractor or the Subcontractor's Personnel.

6.7 Cleaning

The Subcontractor must keep its workplace neat, tidy and safe at all times and as the Subcontract Works proceed, including cleaning each day the Site offices and sheds used by the Subcontractor. The Subcontractor must at its own cost comply with Mirvac's requirements in relation to cleaning and rubbish removal. The Subcontractor shall ensure that all rubbish is removed from the Site before Substantial Completion and that the Subcontract Works are clean in all respects on, and as a requirement of, Substantial Completion.

6.8 HSE Requirements

- (a) The Subcontractor must work safely at all times and is responsible for the health and safety of the Subcontractor's Personnel as well as any other personnel impacted or affected in any way whatsoever by the Subcontract Works. This includes proactively identifying and carrying out any additional actions that need to be undertaken, and requirements that need to be fulfilled, in order to satisfy all obligations under WHS Laws arising in connection with the Subcontract Works, whether or not the actions and tasks require the specialist knowledge and/or expertise of the Subcontractor.
- (b) The Subcontractor warrants that it will comply with and ensure the Subcontractor's Personnel comply with:
 - (i) the Schedule of Health, Safety and Environmental Requirements;

- (ii) all HSE Requirements, Environmental Laws and WHS Laws;
 - (iii) any direction given by an Authority or by Mirvac in relation to safety on or near the Site; and
 - (iv) all notification, reporting and associated obligations under WHS Laws in relation to any incident arising from, or associated with any part of the Subcontract Works which is a notifiable incident (as defined in the relevant WHS Laws).
- (c) The Subcontractor must consult, cooperate and coordinate activities with Mirvac and all other persons who have a duty under WHS Laws in relation to the same matter as the Subcontractor in carrying out the Subcontract Works.
 - (d) The Subcontractor must not do anything, or omit to do anything, that will cause Mirvac to be in breach of WHS Laws.
 - (e) The Subcontractor must ensure that any subcontracts it enters into contain provisions which enable the Subcontractor to comply with its obligations under the Subcontract relating to health and safety.
 - (f) The Subcontractor indemnifies Mirvac, its directors, officers, employees and agents for, any losses, expenses, liabilities, Costs, Claims and actions of whatsoever kind arising out of or in connection with a breach by the Subcontractor of clause 6.8.

6.9 Heavy Vehicle National Laws

- (a) The Subcontractor warrants that it and its subcontractor/s (if any) are familiar with and have the capability and resources to comply with and ensure that the Subcontractor's Personnel comply with COR Requirements and any laws and regulations relating to the licensing and operation of a road transport vehicle, speed, fatigue, mass and dimensions for the loading and unloading of goods, load restraint and vehicle management.
- (b) The Subcontractor must at all times:
 - (i) comply with and ensure the Subcontractor's Personnel comply with their obligations under the COR Requirements and any laws referred to in clause 6.9(a), and upon request, provide Mirvac with evidence of such compliance;
 - (ii) have, and ensure that its subcontractor/s (if any) have, a comprehensive system (including instruction, training, monitoring and auditing) for ensuring compliance with the COR Requirements and any laws referred to in clause 6.9(a);
 - (iii) consult, cooperate and coordinate with Mirvac in relation to compliance with the COR Requirements and any laws referred to in clause 6.9(a); and
 - (iv) take all reasonable steps to prevent any contravention of the COR Requirements and all laws referred to in clause 6.9(a).
- (c) The Subcontractor agrees to cooperate with and do all things necessary to assist Mirvac or its officers, employees or agents in discharging their obligations under the Heavy Vehicle National Laws. This includes cooperating fully with any monitoring activities undertaken by Mirvac to satisfy itself that the Heavy Vehicle National Laws have been complied with and will continue to be complied with.
- (d) In so far as the Subcontractor is required in Schedule 1 to be accredited under the National Heavy Vehicle Accreditation Scheme (**NHVAS**), the Subcontractor warrants that it will maintain accreditation in the following modules: Basic Fatigue Management, Advanced Fatigue Management, Maintenance Management and Mass Management (as amended or varied from time to time) and warrants that it will comply with those modules throughout the duration of the Subcontract Works.
- (e) If the Subcontractor is unable to satisfy the times required by or agreed with Mirvac for performance of the Subcontract Works, on the basis that compliance with those times would amount to a contravention of the COR Requirements or laws referred to in clause 6.9(a), the Subcontractor must immediately notify Mirvac and consult with Mirvac regarding how the Subcontract Works can be performed in compliance with the COR Requirements and the laws referred to in clause 6.9(a).

- (f) Nothing in the Contract requires the Subcontractor or any subcontractor to contravene the COR Requirements or laws referred to in clause 6.9(a).
- (g) In addition to any other conditions contained in this Subcontract, the Subcontractor may only subcontract part of the performance of this Subcontract if the Subcontractor first:
 - (i) satisfies itself that any such subcontractor has in place a system and work practices to ensure its compliance with the COR Requirements; and
 - (ii) provides any such subcontractor with sufficient information, instruction, training and supervision to ensure compliance with the COR Requirements in the provision or performance of the Subcontract Works.
- (h) The Subcontractor must immediately inform Mirvac upon becoming aware of any non-conformance by it or its subcontractor/s (if any) of the COR Requirements in the performance of the Subcontract Works, whether the subject of regulatory investigation or not. The Subcontractor must cooperate with Mirvac in relation to the investigation of the non-conformance, and where appropriate, take steps to immediately rectify the non-conformance.
- (i) In relation to the performance of the Subcontract Works, the Subcontractor must notify Mirvac of any:
 - (i) warning or caution;
 - (ii) request for information or production of documents;
 - (iii) infringement notice;
 - (iv) fine; or
 - (v) commencement of prosecution proceedings,
 by any State or Territory road safety authority or authorised officer in respect of any breach or suspected breach of any Heavy Vehicle National Law in respect of the Subcontract Works. The Subcontractor further undertakes to provide Mirvac with a copy of any such warning, request, notice, fine or proceedings and any response or submissions made by or on behalf of the Subcontractor within 7 days of receiving or making the same.
- (j) In the event of any breach or suspected breach of the Heavy Vehicle National Laws by the Subcontractor in relation to the Subcontract Works, Mirvac will be entitled to, in its sole and absolute discretion:
 - (i) report any breach or suspected breach of the Heavy Vehicle National Laws to any relevant authority, including disclosing any or all documentary materials in relation to the circumstances of any such breach or suspected breach; and/or
 - (ii) require the Subcontractor to explain to the reasonable satisfaction of Mirvac and within a timeframe set by Mirvac
 - (A) the circumstances of the breach or suspected breach;
 - (B) any steps taken to respond to the breach or suspected breach; and
 - (C) any steps taken to prevent any other breach similar to the breach or suspected breach from occurring.
- (k) In addition to any other rights or entitlements of Mirvac under clause 22 of this Subcontract and despite anything to the contrary contained in any other provision of this Subcontract, in the event of any breach or suspected breach of the Heavy Vehicle National Laws by the Subcontractor in relation to the Subcontract Works provided under this Subcontract, or any breach by the Subcontractor of any of this clause 6.9, Mirvac will be entitled, in its sole and absolute discretion:
 - (i) not to pay for the provision of the Subcontract Works in circumstances of breach of the Heavy Vehicle National Laws;
 - (ii) to require that the person(s) responsible for any breach(es), including any subcontractor(s) are not used or engaged to provide services to or on behalf of Mirvac in future;

- (iii) not purchase any further services from any person(s) responsible for any breach(es) of the Heavy Vehicle National Laws;
- (iv) suspend this Subcontract (or any part of it) without further payment until such time as the breach is remedied to the satisfaction of Mirvac; and
- (v) terminate this Subcontract with immediate effect by giving notice in writing to the Subcontractor.

6.10 Environment

The Subcontractor:

- (a) is responsible for taking all appropriate and necessary care and measures to ensure that the Environment on and near the Site is not affected adversely by anything it does and for remedying any damage or making good the Environment as a result of the Subcontractor's acts or omissions; and
- (b) must promptly comply with any direction given by an Authority or by Mirvac in respect to the Environment on and near the Site.

6.11 General Site Requirements

- (a) The Subcontractor is responsible for setting out the Subcontract Works and is responsible for preserving all survey marks until Substantial Completion. The Costs, if any, incurred as a result of additional work carried out by Mirvac due to a failure by the Subcontractor to comply with this clause 6.11 will be a debt immediately due from the Subcontractor to Mirvac.
- (b) Mirvac will not be responsible for any damage, theft or loss of Plant and Equipment belonging to the Subcontractor.
- (c) The Subcontractor is responsible for damage, theft or loss to all Materials and other items to be supplied and fixed by the Subcontractor until the Date of Substantial Completion.
- (d) To the extent applicable to the Subcontract Works, the Subcontractor warrants that:
 - (i) the Subcontractor holds; and
 - (ii) the Subcontractor's Personnel hold,

current certificates attesting to their competence in the occupation for which they have been engaged. The Subcontractor must immediately give Mirvac a copy of all such certificates when requested by Mirvac. The Subcontractor must not allow any person to perform duties for which an approved certificate is not held.
- (e) The Subcontractor is responsible for all scaffolding necessary for the completion of the Subcontract Works.
- (f) The Subcontractor must not erect or cause to be erected any advertising or other signs on or near the Site without the prior written consent of Mirvac.
- (g) The Subcontractor must attend all meetings as and when directed by Mirvac.
- (h) The Subcontractor must ensure that the execution of the Subcontract Works does not cause any nuisance or undue disturbance to any other person. The Subcontractor shall further ensure that it minimises all dust, noise and vibration resulting from the carrying out of the Subcontract Works.

7. Subcontractor's Personnel

7.1 Subcontractor's Supervisor

The Subcontractor warrants that the representative nominated in Schedule 1 has authority to act on behalf of the Subcontractor in all matters relating to the Subcontract Works except those matters for which another representative of the Subcontractor is nominated under the Subcontract. The Subcontractor must ensure that at all times during the execution of the Subcontract Works the Subcontractor's representative is present on the Site. Any instructions

given to the Subcontractor's representative by Mirvac will be deemed as having been given to the Subcontractor. The Subcontractor must not change its representative without Mirvac's written consent, such consent not to be unreasonably withheld.

7.2 Labour

- (a) The Subcontractor shall employ sufficient suitably qualified and experienced labour to complete the Subcontract Works expeditiously, so as to ensure that the Subcontract Works achieve Substantial Completion by the Date for Substantial Completion.
- (b) Without limiting or otherwise restricting clause 14.15, if at any time in the opinion of Mirvac there is insufficient or unsuitable labour, plant or equipment being employed by the Subcontractor, Mirvac may give notice in writing to the Subcontractor allowing the Subcontractor not less than 2 days' notice to provide sufficient or suitable labour, plant or equipment and if the Subcontractor fails to comply with the requirements of the notice, Mirvac may employ at the expense of the Subcontractor additional or suitable labour, plant or equipment which in Mirvac's opinion is necessary or appropriate. The amounts incurred by Mirvac shall immediately become a debt due and payable by the Subcontractor to Mirvac.
- (c) The Subcontractor warrants that it and all of the Subcontractor's Personnel are legally permitted to perform the Subcontract Works in Australia because each person who provides or will provide the Subcontract Works:
 - (i) is an Australian citizen;
 - (ii) has Australian permanent residency status; or
 - (iii) holds a valid visa issued by the Australian Government that would permit that person to provide the Subcontract Works.
- (d) The Subcontractor must:
 - (i) check periodically and confirm that each of the Subcontractor's Personnel satisfies at least one of the legal requirements set out in clause 7.2(c); and
 - (ii) inform Mirvac immediately if it or the Subcontractor's Personnel cease to satisfy any one of the legal requirements set out in clause 7.2(c).

7.3 Removal of Personnel

If instructed by Mirvac, the Subcontractor must remove from the Site any of the Subcontractor's Personnel. The Subcontractor must comply immediately with Mirvac's instruction. The Subcontractor must ensure that these personnel do not return to the Site without the prior written approval of Mirvac.

7.4 Industrial Requirements

- (a) The Subcontractor:
 - (i) must comply strictly with all industrial requirements under all relevant Laws, including wages and industrial and working conditions and lawful employment practices. The Subcontractor represents and warrants (on which Mirvac has relied in entering into this Subcontract) that it does not engage or participate in any sham or pyramid contracting arrangements;
 - (ii) must comply strictly with the Schedule of Industrial Requirements;
 - (iii) is responsible to Mirvac concerning any and all industrial disputes which arise on the Site in connection with the Subcontract Works;
 - (iv) shall take all possible steps and measures to avoid, and to minimise the consequences of, industrial dispute;
 - (v) shall promptly inform Mirvac of any industrial dispute and shall do so prior to taking any action which may affect other subcontractors and subcontractors engaged or to be engaged on the Site;
 - (vi) shall comply at its own cost with any reasonable direction by Mirvac issued with the objective of reducing industrial dispute;

- (vii) shall have no entitlement to additional costs or any extensions of time in respect of any industrial dispute; and
- (viii) shall be liable for the consequences to Mirvac of any industrial dispute caused by the Subcontractor.
- (b) During any industrial or safety dispute or stoppage the Subcontractor shall maintain on Site all of the resources (including, without limitation, the Subcontractor's Personnel) which it would have on Site if there were no such dispute or stoppage. If the Subcontractor breaches this clause 7.4, Mirvac may retain or engage those resources and recover the cost of doing so from the Subcontractor.
- (c) The Subcontractor must ensure that all of the Subcontractor's Personnel comply with the provisions of this clause 7.4.
- (d) The Subcontractor must comply with Schedule 9 - Building Code Requirements, unless otherwise agreed by Mirvac in writing.
- (e) Where the Site is located in New South Wales, the Subcontractor must comply with Schedule 10 - New South Wales Code of Practice Requirements, unless otherwise agreed by Mirvac in writing.
- (f) Where the Site is located in Queensland, the Subcontractor must comply with Schedule 11 - Queensland Code and Queensland Guidelines Requirements, unless otherwise agreed by Mirvac in writing.

8. Subcontract Documents, precedents and copyright

8.1 Discrepancies between Subcontract Documents

- (a) The Subcontract Documents shall be taken as mutually explanatory and what is required by or contained in one shall be binding as if required by or contained in all.
- (b) The Subcontractor warrants that it has reviewed the Subcontract Documents and advised Mirvac in writing of any error, omission, ambiguity, discrepancy, inconsistency or any other problem or fault concerning the Subcontract Documents. In the event of any ambiguity, discrepancy or inconsistency, the Subcontractor shall be deemed to have allowed for the higher standard, quality and quantity (as applicable).
- (c) Notwithstanding and without limiting the Subcontractor's obligations under clause 8.1(b), if the Subcontractor becomes aware of an error, omission, ambiguity, inconsistency, discrepancy or other problem or fault in the Subcontract Documents, the Subcontractor must immediately give written notice to Mirvac of the error, omission, inconsistency, discrepancy or other problem or fault. Mirvac may issue written instructions to the Subcontractor explaining, determining or correcting errors, omissions, ambiguities, inconsistencies, discrepancy or other problem or fault notified by the Subcontractor.
- (d) In giving a direction under this clause 8.1, Mirvac is not bound to apply the order of precedence, if any, set out in Schedule 1 in the event of any inconsistency between the documents there listed.
- (e) The Subcontractor shall comply, at its expense and cost, with any instruction of Mirvac given under clause 8.1(c) as to the interpretation to be adopted.

8.2 No reliance

- (a) Without limiting or affecting any warranty or other obligation of the Subcontractor under this Subcontract, the Subcontractor warrants (and must ensure the Subcontractor's Personnel similarly warrant) that it has not in any way relied upon:
 - (i) any information, data, representation, statement or document provided by Mirvac or, the Principal or anyone on their behalf; or
 - (ii) the accuracy or adequacy of any such information, data, representation, statement or document,
 for the purposes of entering into the Subcontract.

- (b) The Subcontractor acknowledges and agrees, and must ensure that the Subcontractor's Personnel acknowledge and agree, that Mirvac does not warrant, guarantee, make any representation or assume any duty of care or other responsibility to the Subcontractor with respect to the suitability, completeness, accuracy or adequacy of any documents.
- (c) The Subcontractor accepts all risk arising out of its use of, or reliance upon, any document.
- (d) The Subcontractor warrants that it enters into this Subcontract based on its own investigations, interpretations, deductions, information and determinations.
- (e) The Subcontractor acknowledges that it is aware that Mirvac has entered into the Subcontract relying upon the warranties in this Subcontract, including those given under this clause 8.2.

8.3 Copies

Mirvac will supply to the Subcontractor one electronic copy of the Subcontract Documents and any amendments to such documents.

8.4 Intellectual Property Rights

- (a) Intellectual Property Rights and ownership in all Design Documents and other information or documents provided or prepared by or on behalf of the Subcontractor for the Project vest in Mirvac upon their creation and Mirvac grants to the Subcontractor a non-exclusive licence to use those Design Documents and other information and documents for any purpose associated with the Subcontract Works. The Subcontractor shall promptly and when requested by Mirvac do all things necessary, including by signing all documents, to perfect such vesting.
- (b) In the event that the Subcontractor does not own the Intellectual Property Rights in any of the Design Documents, other information or document, the Subcontractor grants to Mirvac a non-exclusive, irrevocable, royalty-free, assignable, worldwide licence to use, adapt, sub-licence and develop the Design Documents, other information or documents for any reason in connection with the Project, including its construction, repair, operation, adaptation and maintenance.
- (c) In the event that Mirvac provides a Preliminary Design, then the Intellectual Property Rights and ownership of the Preliminary Design remains with Mirvac and Mirvac grants to the Subcontractor a non-exclusive licence to use the Preliminary Design for the purpose of performing the Subcontract Works.

8.5 Moral Rights

The Subcontractor:

- (a) without limiting clause 16.1(c), must defend Mirvac and the Principal, their officers, agents, subcontractors and employees against any claim that the use of any design created by or for the Subcontractor for the Subcontract Works infringes any Intellectual Property Rights or Moral Rights; and
- (b) must in respect of any designs and other documents prepared by or for the Subcontractor in respect of the Subcontract Works:
 - (i) give to Mirvac a written consent in the form attached as Schedule 12 and written in favour of Mirvac, the Principal and their respective assigns; and
 - (ii) procure corresponding written consents from any of the Subcontractor's Personnel that are the author or creator of those designs or documents.

8.6 Subcontract Works information

- (a) All information, data, and other documents describing, or providing information relating to, the Subcontract Works or their operation, used, created, written, developed, captured or brought into existence during or through the performance of the Subcontract Works belongs to Mirvac. This includes the following materials:
 - (i) operational data created through the use of sensors or other 'Internet of Things' measuring devices deployed at the Site; and

- (ii) operational data created through tools, devices or other Plant and Equipment used for the performance of the Subcontract Works (including where relevant, any cranes or hoists).
- (b) The Subcontractor must not, and must ensure that its Related Entities and the Subcontractor's Personnel do not use or disclose any such information, data, and other documents describing, or providing information relating to, the Subcontract Works or their operation, for any purposes unrelated to the Subcontract without Mirvac's prior written consent.
- (c) Upon a request by Mirvac from time to time, or on the earlier of:
 - (i) the completion of the Subcontract; or
 - (ii) termination of the Subcontract,
 the Subcontractor must deliver to Mirvac without delay all material (including electronic data) in the Subcontractor's possession or control relating to the Subcontract Works or the Subcontract.

9. Subcontracting, assignment and novation

9.1 Subcontracting

- (a) The Subcontractor shall not subcontract the whole of the Subcontract Works.
- (b) The Subcontractor shall not subcontract any part of the Subcontract Works, unless it has received the prior written consent of Mirvac (which may be withheld at Mirvac's absolute discretion).
- (c) Any subcontracting of the Subcontract Works shall not relieve the Subcontractor from any of its obligations under the Subcontract and the Subcontractor shall remain liable to Mirvac for the work, performance or non-performance of all of the Subcontractor's Personnel.
- (d) The Subcontractor warrants that it has made full and proper enquiries and investigation concerning the financial, ethical, technical and management capabilities of its proposed subcontractors, suppliers and consultants and has provided to Mirvac copies of the results of such enquiries and investigation.
- (e) The Subcontractor shall ensure that all the relevant terms and conditions of this Subcontract are included as terms and conditions of any subcontract. If the Subcontractor is in doubt as to whether any particular terms or conditions are relevant, the Subcontractor shall request and be bound by Mirvac's determination.
- (f) As between the parties, each of the Subcontractor's subcontractors shall be considered the agent and employee of the Subcontractor. The acts and omissions of the Subcontractor's subcontractors and all persons either directly or indirectly acting for it shall be deemed to be the acts and omissions of the Subcontractor and the Subcontractor shall remain liable and responsible to Mirvac hereunder as if no subcontract had been made.
- (g) Nothing contained in any of the Subcontractor's subcontracts shall create any contractual relationship between Mirvac and any of the Subcontractor's subcontractors or create any obligation on the part of Mirvac to pay or see to the payment of any sums to any subcontractor of the Subcontractor.
- (h) Should industrial difficulties develop as a result of the existence of any subcontract or a subcontractor of the Subcontractor which is deemed by Mirvac to be detrimental to the progress of the Subcontract Works, or the operations of Mirvac, the Subcontractor shall upon Mirvac's request immediately terminate the said subcontract without cost or liability to Mirvac and make other arrangements acceptable to Mirvac to perform the Subcontractor's obligations hereunder.

9.2 Assignment and Novation

- (a) The Subcontractor must not assign or novate any of its rights under the Subcontract without the prior written approval of Mirvac, which approval may be withheld in Mirvac's absolute discretion, and then only on terms approved by Mirvac.
- (b) Any purported assignment hereunder without the prior written consent of Mirvac will be void.
- (c) The Subcontractor agrees that Mirvac may assign or novate this Subcontract and/or any or all of its rights and obligations under the Subcontract to the Principal or any other person and the Subcontractor must promptly comply with any direction given by Mirvac concerning any such assignment or novation, including a direction that the Subcontractor execute any deed or document giving effect to any such assignment or novation.

9.3 Preferred Supplier Benefits

Mirvac discloses and the Subcontractor acknowledges that it is aware that Mirvac may receive a benefit (including valuable consideration) from a supplier to the Subcontractor in respect of products for use in the Subcontract Works including but not limited to those which Mirvac may advise are preferred products. The Subcontractor assents to such receipt.

10. The Subcontract Works

10.1 Subcontractor's Warranties concerning Subcontract Works

- (a) Without limiting or otherwise restricting clause 5 of the Schedule of Subcontractor's Warranty, the Subcontractor warrants and agrees that the Subcontract Works will be fit for purpose and free of all Defects for not less than 10 calendar years following the Date of Practical Completion of the Project and the Subcontractor must:
 - (i) ensure that all warranties required to be provided under the Subcontract are in a form and for a duration approved by Mirvac;
 - (ii) ensure that the benefit of each warranty required to be provided under the Subcontract is capable of assignment at Mirvac's option to Mirvac, the Principal, their assigns or any of them or to any other party directed by Mirvac; and
 - (iii) assign the benefit of each warranty to Mirvac, the Principal, their assigns or any of them or to any other party as Mirvac may direct.
- (b) The Subcontractor must enter into, and provide to Mirvac within 5 Business Days of the date of execution of this Subcontract, a warranty in the form contained in the Schedule of Subcontractor's Warranty.
- (c) As a pre-condition of achieving Substantial Completion, the Subcontractor must enter into and provide to Mirvac a warranty in the form contained in the Schedule of Subcontractor's Warranty stating that the Subcontract Works satisfy the requirements of the Subcontract. In the event that the Subcontractor fails to comply with the requirements of this clause 10.1, the Subcontractor agrees that it shall be deemed to have provided to Mirvac a warranty in the form contained in the Schedule of Subcontractor's Warranty on the Date of Substantial Completion and the Subcontractor will be bound by the terms of that warranty as if it had then been duly executed by the Subcontractor.
- (d) Within the period stated in Schedule 1 before the Date of Substantial Completion, and as a pre-condition of achieving Substantial Completion, the Subcontractor must provide to Mirvac, duly executed and in duplicate, a warranty in the form contained in the Schedule of Supplier's Warranty from the Subcontractor's supplier of each item incorporated in the Subcontract Works, including those items indicated in Schedule 1. In the event that the Subcontractor fails to comply with the requirements of this clause 10.1, the Subcontractor agrees that it shall be deemed to have itself provided to Mirvac a warranty in the form contained in the Schedule of Supplier's Warranty on the Date of Substantial Completion and it will be bound by the terms of that warranty as if it had then been duly executed by the Subcontractor.

- (e) In respect of the Subcontract Works, the Subcontractor agrees and warrants on the date of this Subcontract and every day during the period prior to this Subcontract being terminated, that:
- (i) the Subcontract Works will satisfy the requirements of the Subcontract, including the Subcontract Documents;
 - (ii) the Subcontract Works will comply with the requirements of all Authorities and all Laws;
 - (iii) the Subcontract Works will be fit for purpose;
 - (iv) its design and the quality of its workmanship and materials are of a high professional standard and will be fit for purpose;
 - (v) the Subcontract Works will be completed using Good Industry Practice;
 - (vi) the Subcontractor can properly perform and complete the Subcontract Works in accordance with the Subcontract Documents without the need for any Variations;
 - (vii) it and the Subcontractor's Personnel are suitably qualified, licensed and experienced to perform the Subcontract Works and that the work under this Subcontract will be performed in a proper and workmanlike manner and in accordance with highly competent standards of the respective trades;
 - (viii) to the extent that any Building Legislation applies to the Subcontract Works or this Subcontract, any warranties or other requirements which are required to be contained within or covered by any contract pursuant to that legislation are, unless otherwise directed by Mirvac in writing (in its absolute discretion), deemed to be covered, contained and included within this Subcontract for the benefit of Mirvac;
 - (ix) it is familiar with the conditions affecting construction activities in the area in which the Subcontract Works are to be carried out;
 - (x) it has thoroughly inspected the Site, including any prior work, existing structures, materials and Site Conditions;
 - (xi) it has allowed for and, to the extent permitted by law, accepts the risk of all risks, hazards and difficulties arising from or in connection with the Subcontract Works or the Site, including, without limitation whatsoever, materials handling and deliveries, traffic management, out of hours work, other uses and occupiers of the Site and its surrounds, adjacent properties, site safety and public safety;
 - (xii) it has allowed for all necessary Temporary Subcontract Works that it may require to undertake the Subcontract Works and perform its obligations under this Subcontract;
 - (xiii) it has completed its review and inspection of the Subcontract Documents and is satisfied that the provisions of the Subcontract are consistent and that none of them conflict;
 - (xiv) it will perform its obligations with due diligence and within the time stipulated in the Subcontract, utilising expeditious and economical methods in accordance with Good Industry Practice;
 - (xv) has allowed within the Subcontract Sum and the time for reaching Substantial Completion to properly and fully perform and discharge all obligations and requirements stated, set out or described in this Subcontract;
 - (xvi) it is liable for, and bears absolutely the risk of, all Work Practices, including all changes and restrictions (however and whenever arising) imposed on or relating to any such Work Practices; and
 - (xvii) the Subcontractor's Personnel that may or will operate Plant and Equipment where licensing is not required hold a level of experience and competency necessary for the safe operation and use of the Plant and Equipment at all times.

10.2 Care of the Subcontract Works

- (a) The Subcontractor is responsible for the care of and for the risk of loss or damage to and around the Subcontract Works from the date the Site or the relevant part or parts are made available to and including the Date of Practical Completion of the Project. Mirvac shall have no liability whatsoever to the Subcontractor in respect of any such losses or damage howsoever caused, including without limitation, loss occasioned by theft. If loss or damage occurs to anything for which the Subcontractor is responsible for its care or protection, the Subcontractor shall at its expense promptly make good the loss or damage.
- (b) The Subcontractor's responsibilities under clause 10.2(a), to the extent permitted by law, include without limitation:
 - (i) safe work practices;
 - (ii) safe work methods;
 - (iii) protection of persons;
 - (iv) protection of property and the avoidance of damage to the Site, the Subcontract Works and adjoining or adjacent properties. If urgent action is required to avoid damage, Mirvac may take such action (without relieving the Subcontractor of its obligations) at the Subcontractor's cost if the Subcontractor does not take the necessary action upon being required by Mirvac to do so;
 - (v) the avoidance of injury or death to persons; and
 - (vi) repair or remedying any damage to the Subcontract Works, the Site and all adjoining properties.
- (c) If urgent action is necessary to protect the Subcontract Works, anything on or near the Site which is connected with the Subcontract Works, other property or people the Subcontractor must take all necessary action.
- (d) If the Subcontractor fails to take urgent action referred to in clause 10.2(c), in addition to other remedies of Mirvac, Mirvac may take or direct the necessary action. The costs incurred by Mirvac in taking or directing the necessary action shall be a debt due from the Subcontractor to Mirvac. If time permits, Mirvac shall give the Subcontractor prior written notice of the intention to take action pursuant to this clause 10.

11. Materials and Quality

11.1 Suitability

- (a) The Subcontractor must ensure that
 - (i) all Materials and methods of construction used by the Subcontractor are suitable in all respects for their purpose; and
 - (ii) all Materials are new and of a merchantable quality and free from Defects and any lien or incumbrance, including under the *Personal Property Securities Act 2009* (Cth).
- (b) The Subcontractor must ensure that all Temporary Subcontract Works are:
 - (i) safe and suitable in all respects for their purpose; and
 - (ii) if of a structural nature, certified for their structural adequacy by an independent structural engineer to Mirvac's satisfaction.

11.2 Quality

- (a) The Subcontractor acknowledges that the Subcontract Works must be of a level of quality that ensure compatibility in all respects with the Principal's requirements for a high quality project.
- (b) The Subcontractor must comply with all requirements stated in the Schedule of Quality Requirements unless otherwise agreed in writing with Mirvac.

- (c) The Subcontractor acknowledges and agrees that:
 - (i) Mirvac will not be liable for any Claim; and
 - (ii) the Subcontractor releases and waives any entitlement it may have to any Claim against Mirvac,arising out of or in connection with the Subcontractor's compliance with this clause 11.2.

11.3 Building product safety conformance

- (a) Without limiting the operation of clauses 11.1 and 11.2, the Subcontractor must obtain documentation demonstrating that any building products supplied in connection with the Subcontract Works:
 - (i) are certified in accordance with any applicable Australian third party certification scheme; and
 - (ii) are not non-conforming building products.
- (b) In so far as any of the building products supplied in connection with the Subcontract Works have been manufactured in part outside Australia and are identified by the Asbestos Safety and Eradication Agency as 'goods that could contain asbestos', the documentation which the Subcontractor must obtain should include evidence the building product has been tested in accordance with *AS4964 2004 Method for the qualitative identification of asbestos in bulk samples* in a National Association of Testing Authorities (NATA) accredited laboratory (or equivalent) as containing zero (0%) asbestos.
- (c) If requested by Mirvac, the Subcontractor must provide documentation to Mirvac to demonstrate its compliance with clause 11.3(a).
- (d) For the purposes of this clause a building product is any material or other thing associated with, or that could be associated with, a building.
- (e) For the purposes of this clause 11.3, a building product will be a non-conforming building product for an intended use if:
 - (i) the association of the product with a building for the use:
 - (A) is not, or will not be, safe; or
 - (B) does not, or will not, comply with the relevant regulatory provisions; or
 - (ii) the building product does not perform, or is not capable of performing, for the intended use to the standard it is represented to perform by or for the designer, manufacturer, importer, supplier or installer of the building product.
- (f) For the purposes of this clause 11.3, safe means:
 - (i) all risks of injury or illness to a person have been removed, so far as reasonably practicable; or
 - (ii) if it is not reasonably practicable to remove a risk of injury or illness to a person, the risk has been minimised so far as reasonably practicable.

11.4 Work and Materials by Mirvac or Others

- (a) If under the Subcontract Mirvac must supply Materials to the Subcontractor for fixing or installing in the Subcontract Works the Subcontractor must take delivery of those Materials at the location advised by Mirvac and will be responsible (at its cost and expense) for their safe storage, unpacking, handling, sorting, protecting, testing and commissioning.
- (b) Unless otherwise stated in another Subcontract Document:
 - (i) the Subcontractor must use the Materials in a manner which will result in the minimum level of wastage and must return to Mirvac all Materials which are not required for the Subcontract Works;
 - (ii) if a part of the Subcontract Works will be affected by work or Materials supplied or performed by others (including but not limited to Mirvac and its subcontractors) the Subcontractor must inspect the work or Materials. Prior to commencing the

affected part of the Subcontract Works the Subcontractor must advise Mirvac by written notice if any aspect of the work or Materials will not allow the Subcontractor to comply with its obligations under the Subcontract'; and

- (iii) if the Subcontractor does not notify Mirvac as required by clause 11.4(b)(ii) then the work and Materials will be deemed to be sufficient to allow the Subcontractor to comply with its obligations under the Subcontract.
- (c) The Subcontractor acknowledges and agrees that:
 - (i) Mirvac will not be liable for any Claim; and
 - (ii) the Subcontractor releases and waives any entitlement it may have to any Claim against Mirvac,

arising out of or in connection with work or Materials supplied or performed by others (including but not limited to Mirvac and its subcontractors).

11.5 Access to Subcontract Works and Subcontractor's Workshops

The Subcontractor must ensure that Mirvac, its representatives and any other person authorised by Mirvac or the Principal are allowed access at all reasonable times to the Subcontract Works and to the Subcontractor's workshops and other places where Materials intended for the Subcontract Works are being fabricated, stored or kept.

11.6 Covering Up of Work

The Subcontractor must not cover up or put out of view work requiring Authorities' or Mirvac approval or affecting fire rating, sound attenuation, waterproofing, structural soundness or any other matters stated or referred to in or required by Schedule 1 of the Subcontract, without the prior written approval of Mirvac.

11.7 Testing and Samples

- (a) By the date specified in the Construction Program (if any) or any Mid Range or Short Range Program, and/or as otherwise required by the Subcontract Documents or Mirvac, the Subcontractor must, subject to clause 11.8, at its own expense:
 - (i) provide samples of Materials, products, items and finishes to be used in the Subcontract Works and construct prototypes of any part of the Subcontract Works, as required by the Subcontract Documents or Mirvac. The Subcontractor shall allow sufficient time (having regard to the Construction Program (if any) and any short Range or Mid Range Program) for assessment by Mirvac and resubmission of any sample or prototype to Mirvac (if requested by Mirvac);
 - (ii) open up for inspection work covered up; and/or
 - (iii) arrange for, procure and/or carry out testing of Materials or any part of the Subcontract Works (whether fixed or unfixed) or of executed work.
- (b) The Subcontractor must assist Mirvac with any testing as required by Mirvac and must make good any damage to the Subcontract Works or the Project which results from any testing performed by or for the Subcontractor or in connection with the Subcontract Works.
- (c) The Subcontractor shall be solely responsible for the consequences (including any delay and any Losses, Costs or damage including liquidated or general damages under the Head Contract or any Related Contract suffered by Mirvac, the Principal or a Related Entity of the Principal) of the failure to allow reasonable time for the assessment of samples and prototypes.

11.8 Costs of Testing

The cost of opening up or testing (together with the cost of making good damage) incurred by the Subcontractor will be added to the Subcontract Sum unless the opening-up or testing:

- (a) is caused by a failure of the Subcontractor to comply with a term of the Subcontract;
- (b) shows that the Materials or any part of the Subcontract Works or executed works contain a Defect or are not in accordance with the Subcontract; or

- (c) is a requirement of any Subcontract Document.

11.9 Defects

- (a) At any time prior to the expiry of a Defects Liability Period or a Second Defects Liability Period, Mirvac, by written notice, may instruct the Subcontractor to make good a Defect or other matters not in accordance with the Subcontract. The notice may also specify the date by which the rectification of the Defect shall commence and the date by which the Defect or other matter must be made good or completed. Mirvac may issue a notice under this clause 11.9(a) despite having previously issued a similar notice in respect of the same design, work or Materials.
- (b) The Subcontractor must make available sufficient Materials and personnel to carry out and complete promptly and without delay, including delay to the progress of the Subcontract Works, instructions given by Mirvac under clause 11.9(a).
- (c) If the Subcontractor fails to comply promptly with an instruction under clause 11.9(a), or fails to make good any Defect by the date stipulated in any instruction issued (at any time) by Mirvac to rectify a Defect, Mirvac may:
 - (i) carry out or complete the instruction and the Subcontractor will be liable for Costs incurred by Mirvac as a debt due and payable; or
 - (ii) suspend any payment or part thereof that may be or become due to the Subcontractor until the Subcontractor complies with the instruction.

11.10 Defects Liability Periods

- (a) A Second Defects Liability Period will apply if a Defect is notified to the Subcontractor by Mirvac during the Defects Liability Period.
- (b) During the Defects Liability Period and Second Defects Liability Period the Subcontractor must ensure that all work is carried out in a manner which does not cause a nuisance or undue disturbance to any person and must comply, at its expense, with Mirvac's reasonable instructions regarding access, hours of work, work methods, dress and tidiness.

11.11 Making good and acceptance of work

Despite any other provision of the Subcontract, if a part of the Subcontract Works is required to be made good by Mirvac, Mirvac may, in its absolute discretion and instead of directing that the Subcontractor perform the make good work (which may include the rectification of a Defect or completion of incomplete work or Materials), elect to accept the subject work or Materials whereupon there shall be a deemed reduction in the Subcontract Sum by an amount being the greater of:

- (a) the cost of remedying the Defective or incomplete work or Material, priced by Mirvac applying reasonable rates and prices; and
- (b) the value of the resulting decrease in the value to the Principal of the Subcontract Works, including any reasonable loss which Mirvac and/or the Principal are likely to suffer, together with any increase in the operational and maintenance costs which will be incurred by Mirvac and/or the Principal in accepting the Defective or incomplete works or Materials.

11.12 Maintenance and Protection

- (a) Unless otherwise stated in or required by the Subcontract Documents, until the Date of Practical Completion of the Project or another date determined and notified by Mirvac, the Subcontractor must at its cost:
 - (i) maintain and protect the Subcontract Works including, without limitation, Materials supplied to the Subcontractor by Mirvac;
 - (ii) supply, install, monitor and maintain adequate protection, to Mirvac's satisfaction, to the Subcontract Works, having regard to the nature of and risks associated with all others working on the Site, whether or not those works will be undertaken at the same time with or following the Subcontract Works;

- (iii) remove and re-instate any protection to any part of the Subcontract Works, as directed by Mirvac, including for the purposes of enabling other contractors to carry out their works; and
- (iv) dispose of any protection that it has supplied to the Subcontract Works in the manner and at the times directed by Mirvac.
- (b) If a part of the Project is taken over by the Principal before the Date of Practical Completion of the Project or another date determined by Mirvac, then this clause 11.12 will continue to apply to the remainder of the Subcontract Works.
- (c) The Subcontractor must replace protection or temporary coverings provided by others which are removed by the Subcontractor.
- (d) The Subcontractor must make good any damage caused to the property of others whether on or off Site within a reasonable time of the damage occurring. If the Subcontractor fails to make good the damage within a reasonable time the Subcontractor will be liable for Losses suffered by Mirvac in making good the damage.

11.13 Submission of Shop Drawings

The Subcontractor must, at the times nominated or requested by Mirvac, provide Shop Drawings to Mirvac in the form, to the scales and drawing sizes and in the numbers as stated in the Subcontract Documents or, if not stated, as requested or directed by Mirvac.

11.14 Commissioning information for plant, equipment and Utilities

As a condition precedent to Substantial Completion, the Subcontractor must provide to Mirvac all reasonable information regarding the commissioning of plant, equipment and Utilities including, but not limited to:

- (a) a full list of all approvals required to be given by relevant Authorities;
- (b) a full list of all Materials, Utilities and work which must be completed by Mirvac or others and other requirements which must be satisfied before commissioning can commence; and
- (c) a program showing dates, periods, sequences and labour requirements for commissioning.

11.15 As-Constructed Drawings and Operation and Maintenance Information

- (a) The Subcontractor must provide to Mirvac in the form described in Schedule 1 and otherwise in a form acceptable to Mirvac:
 - (i) as-constructed drawings for the Subcontract Works to the scales and in the numbers stated in Schedule 1 or as otherwise directed by Mirvac;
 - (ii) all maintenance and operating manuals referred to in the Subcontract Documents;
 - (iii) all Materials (including spares), documents, operating tools, keys and other information, including those stated in Schedule 1 or elsewhere in the Subcontract Documents, relating to the use, operation and maintenance of the Subcontract Works; and
 - (iv) the names, addresses and telephone numbers of the Subcontractor's Personnel and maintenance supervisor,

before, and as a pre-condition to the Subcontract Works achieving, Substantial Completion.
- (b) If the Subcontractor fails to comply with clauses 11.14 or 11.15(a) Mirvac may suspend any payments or part thereof that may be or become due to the Subcontractor until the Subcontractor rectifies the failure.

11.16 Provision of Drawings and Documents

Upon Substantial Completion, the termination of this Subcontract or the acceptance by Mirvac of the Subcontractor's repudiation of the Subcontract, the Subcontractor must provide to Mirvac all drawings and documents (including Authorities' approvals and any Design Documents) relating to

the Subcontract Works which are in the possession of the Subcontractor or its subcontractors (including its consultants).

11.17 Information Management

The Subcontractor must comply with all requirements specified in the Subcontract Documents or otherwise reasonably requested by Mirvac from time to time regarding any information and documentation created by the Subcontractor for the Subcontract Works, including the style, format, form and manner in which any such information and documentation is to be created and issued. The Subcontractor is not entitled to an increase in the Subcontract Sum or to an extension of time to the Date for Substantial Completion arising out of or in connection with the Subcontractor's compliance with this clause 11.17.

12. Payment

12.1 Progress Claims

- (a) Subject to clause 12.4, the Subcontractor shall submit progress claims at the times or the dates specified in Schedule 1 and in accordance with the Schedule of Progress Claim Requirements and providing full details of the work carried out up to the date specified in Schedule 1 and a detailed breakdown of the amounts claimed.
- (b) The progress claims must list, in addition to the Subcontractor's assessment of the value of work carried out, the value of approved Variations, Variations claimed but not yet approved by Mirvac and any other Claims and causes of action of the Subcontractor based on events or circumstances to the date of the progress claim.
- (c) The Subcontractor's progress claims must be submitted via the Pay Platform to Mirvac as well as in accordance with the Schedule of Progress Claim Requirements. A progress claim submitted in accordance with this clause 12.1(c) will be deemed to have been received at the earlier of:
 - (i) actual receipt of the email notification of the uploading of the relevant progress claim to the Pay Platform; and
 - (ii) 9:00am on the next Business Day after the uploading of the relevant progress claim to the Pay Platform,but if the result is that the progress claim would be deemed to have been received:
 - (iii) on a day that is not a Business Day in the place it is received; or
 - (iv) later than 5:00pm in the place it is received,then the progress claim will be taken to have been duly given or made at 9:00am on the next Business Day.
- (d) Notwithstanding any other provision of the Subcontract, the Subcontractor upon submitting each progress claim hereby releases Mirvac from any Claim arising from or in connection with any event or circumstance occurring before the date of the progress claim not notified in accordance with this clause 12.1.
- (e) Without limiting the provisions of this clause the Subcontractor may not include in its notification any Claim which it does not bona fide intend to pursue or for which it ought to be aware that no proper basis exists.
- (f) The Subcontractor acknowledges and agrees that without limiting any other provision of the Subcontract or the effect of any Law the Subcontractor shall have no entitlement to any payment pursuant to a progress claim unless the progress claim strictly complies with the provisions of this clause 12.1.

12.2 Progress Payments

- (a) The amount to which the Subcontractor is entitled upon a progress claim is the amount contained in a payment schedule issued in respect of that progress claim.

- (b) Within 10 Business Days after a progress claim is submitted to Mirvac, Mirvac may issue to the Subcontractor:
 - (i) a payment schedule; or
 - (ii) if in Western Australia and section 7(1) of the *Construction Contracts Act 2004* (WA) applies, a notice of dispute,
 which (without limitation):
 - (iii) identifies the progress claim to which it relates and which indicates the amount of the payment (if any) that Mirvac proposes to make to the Subcontractor or that the Subcontractor has to make to Mirvac; and
 - (iv) may otherwise allow for, be based on, include and/or deal with any of the matters referred to in clause 12.3 below.

If the Subcontractor fails to make a progress claim under clause 12.1, Mirvac may nevertheless issue a payment schedule or notice of dispute (as the case may be).
- (c) The Subcontractor must deliver to Mirvac a valid tax invoice for:
 - (i) the amount scheduled for payment by Mirvac in a payment schedule or notice of dispute (as the case may be) within 2 Business Days of receiving Mirvac's payment schedule or notice of dispute (as the case may be); or
 - (ii) if Mirvac does not issue a payment schedule or notice of dispute (as the case may be), the amount claimed by the Subcontractor in a progress claim within 12 Business Days after the progress claim is submitted to Mirvac.
- (d) Unless otherwise agreed and unless payment is required to be made earlier under the Laws of the Jurisdiction (the requirements of which shall prevail) the day resulting from adding the number of days specified in Schedule 1 to the date on which Mirvac receives a progress claim submitted in accordance with the Subcontract which includes the matters set out in the Schedule of Progress Claim Requirements and Mirvac shall pay to the Subcontractor the amount (if any) indicated in the payment schedule.
- (e) On the expiry of 30 days after making a progress claim the Subcontractor hereby releases Mirvac from any Claim which is made in that progress claim unless it is:
 - (i) paid by Mirvac;
 - (ii) admitted in writing by Mirvac; or
 - (iii) referred to dispute by the Subcontractor in accordance with clause 23,
 within such period of 30 days.
- (f) Notwithstanding any other provision of the Subcontract but then only to the extent permitted under Law, Mirvac shall not be required to make any progress payment or other payment to the extent that doing so would have the result that the cost to Mirvac of retaining others to complete the Subcontract Works would exceed the unexpended portion of the Subcontract Sum.
- (g) Any amount wrongly included in a progress payment may be deducted from any subsequent progress claim or claims or otherwise recovered by Mirvac from the Subcontractor.

12.3 Calculation of Amount Due for Payment

- (a) Without limiting the Subcontractor's entitlement to receive the Subcontract Sum for performance of the Subcontract as set out in clause 12.13, the amount to be included in any payment schedule issued by Mirvac, including under clause 12.2 above, shall be the amount calculated and approved by Mirvac having regard to matters Mirvac considers relevant. These matters may include:
 - (i) a Bill of Quantities if the whole or a part of the Subcontract Sum is a lump sum and a Bill of Quantities has been supplied to the Subcontractor. If the whole or a part of the Subcontract Sum is a lump sum and a Bill of Quantities has been supplied to the Subcontractor, then:

- (A) the Subcontractor, within 10 days after signing the Subcontract or 5 days prior to making its first progress claim (whichever first occurs), must submit to Mirvac for its approval a priced Bill of Quantities;
 - (B) the Bill of Quantities must be priced in a manner acceptable to Mirvac and so that the total of the extended quantities equals the lump sum. If the Bill of Quantities is not priced in a manner acceptable to Mirvac, Mirvac may price the Bill of Quantities; and
 - (C) Mirvac will not be liable in contract, negligence or otherwise for Losses suffered by the Subcontractor which in any way whatsoever arise out of or are connected with the actual quantities differing from those in a Bill of Quantities;
 - (ii) a Schedule of Rates if the whole or part of the Subcontract Sum is based on a Schedule of Rates. If the whole or part of the Subcontract Sum is based on a Schedule of Rates, then:
 - (A) unless the parties agree otherwise, the parts of the Subcontract Works to which the Schedule of Rates applies will be measured as they proceed by a representative of Mirvac and a representative of the Subcontractor. The measurements will be recorded and signed by both parties. If the two representatives fail to agree on measurements the measurements made by the Mirvac representative will be used to calculate progress payments; and
 - (B) if the actual quantity of an item or work carried out exceeds the quantity shown in the Schedule of Rates by more than 15%, either party may issue a written notice advising the other party of the amount by which the rate for that item should be adjusted. Mirvac must determine a fair adjustment to the rate to be applied to the quantity of work which is in excess of the quantity shown in the Schedule of Rates by more than 15%, within a reasonable time of a written notice being issued under this clause 12.3(a)(ii)(B).
 - (iii) any trade break up totalling the Subcontract Sum and which has been approved by Mirvac;
 - (iv) Mirvac's estimate of the cost of correcting any Defects in the Subcontract Works, together with any such costs previously incurred by Mirvac; and
 - (v) any set-off or other amount to which Mirvac claims to be entitled from the Subcontractor or otherwise pursuant to the Subcontract, including but not limited to any claim for liquidated or other damages.
- (b) The rates or prices in the Bill of Quantities or Schedule of Rates referred to in clauses 12.3(a)(i) and 12.3(a)(ii) respectively are deemed to include the cost of all work, Materials, Plant and Equipment to be provided or required by the Subcontractor to perform the Subcontract Works under the Subcontract. Where an item of work, Materials, Plant or Equipment does not appear in the Bill of Quantities or Schedule of Rates or is unpriced by the Subcontractor the costs associated with that item will be deemed to be included in the rates or prices generally.
 - (c) For the avoidance of doubt, Mirvac shall not be bound to have regard only to the matters contained in the form of a progress claim as referred to in clause 12.1 and the parties agree that no amount, other than amounts included in the payment schedules or a notice of dispute (as the case may be) issued under clause 12.2, shall become due for payment to the Subcontractor until payment becomes due under clause 12.9.

12.4 Interim Deed of Release

The Subcontractor acknowledges and agrees:

- (a) that it is not entitled to claim any payment in excess of 95% of the Subcontract Sum; and
- (b) Mirvac will not be liable for any claim for payment in excess of 95% of the Subcontract Sum,

unless the Subcontractor has provided the Interim Deed of Release in the form set out in Schedule 13.

12.5 Payments on Account Only

Progress payments are made on account only and no payment under the Subcontract or otherwise shall be evidence of the performance of the Subcontract, either wholly or in part, and no payment shall be construed to be an acceptance of Defective, incomplete or improper work.

12.6 Fixed Prices and Rates

The Subcontract Sum and any rates incorporated into the Subcontract are fixed and shall not be subject to rise or fall in costs of labour or Materials or for changes in customs duties, exchange rate fluctuations, new or changed taxes, including sales taxes, or for any other cause.

12.7 Unfixed Materials

- (a) Mirvac shall not be liable to pay for unfixed Materials intended for incorporation in the Subcontract Works but not yet incorporated except where such Materials are set out in Schedule 1 and:
 - (i) the Subcontractor has given to Mirvac an unconditional undertaking for an amount equal to the replacement value of the unfixed Materials, and that unconditional undertaking is:
 - (A) in the form specified in Schedule 4;
 - (B) in favour of the Principal;
 - (C) issued by an Institution approved by Mirvac; and
 - (D) where required by Law, duly stamped;
 - (ii) the unfixed Materials are free from Defects;
 - (iii) the unfixed Materials are in the Subcontractor's possession at all times (except where otherwise directed under the Subcontract);
 - (iv) the Subcontractor has:
 - (A) given to Mirvac photographic evidence of the Materials in the Subcontractor's possession; and
 - (B) on request by Mirvac, allowed Mirvac to inspect the Materials;
 - (v) that the Subcontractor is able to pass title in the plant or Materials clear of any claim, lien, interest or encumbrance to Mirvac upon the making of the payment claimed and that the plant or Materials are properly and safely stored, labelled the property of Mirvac (including any identification, serial or machine numbers) and have been fully paid for; and
 - (vi) that the Materials intended for incorporation are insured for their full replacement value in the names of the Subcontractor, Mirvac and the Principal.
- (b) The Subcontractor shall be responsible and liable for the cost of the insurance to be provided under clause 12.7(a)(vi).

12.8 Payments of Subcontractor's Suppliers and Subcontractors

- (a) If circumstances arise which give Mirvac in its absolute discretion concerns regarding payment of any of the Subcontractor's suppliers and/or subcontractors, including if a supplier or subcontractor has not been paid by the Subcontractor within fourteen (14) days of receipt of payment in respect of such work from Mirvac then Mirvac may make a direct payment to the relevant suppliers and subcontractors.
- (b) Such payments shall be a debt due and owing from the Subcontractor to Mirvac and may be deducted from progress payments or from moneys retained or from the unconditional undertakings or otherwise recovered from the Subcontractor. All payments made under this clause 12.8 shall be treated (and accounted for) as if the payment had been made to the Subcontractor.

12.9 Conditions Precedent to Payment

The Subcontractor will not be entitled to payment for any progress claim unless it has:

- (a) complied with the Schedule of Progress Claim Requirements;
- (b) provided Mirvac with satisfactory evidence including a declaration signed by a director of the Subcontractor in the form annexed as Schedule 19, or as otherwise requested by Mirvac, that no wages, workers' compensation, payroll tax, allowances and other entitlements are due and owing by the Subcontractor and by its subcontractors to their respective employees, and all sums due and payable by the Subcontractor to its suppliers, consultants and subcontractors in connection with the Subcontract Works have been duly paid and all insurances required to be effected by the Subcontractor have been so effected;
- (c) provided the nominated security in accordance with clause 5;
- (d) provided evidence of insurances in accordance with clause 17.2(a);
- (e) provided, and procured from its suppliers, warranties (including in accordance with clause 10.1);
- (f) upon receiving a direction from Mirvac in accordance with clause 14.3(a)(i) or clause 14.3(e), provided an updated Subcontract Works Program approved by Mirvac; and
- (g) provided with the relevant progress claim a Design Consultant's Certificate in the form of Schedule 20 in respect of any Design Obligations carried out in the month the subject of that progress claim and attaching an index of drawings for the relevant Design Documents.

12.10 Provisional Sums

- (a) If the Subcontract Sum includes provisional sums (as referred to in Schedule 21), the Subcontractor is to carry out the work the subject of the provisional sums only upon and strictly in accordance with Mirvac's written instructions.
- (b) The Subcontract Sum is to be adjusted by:
 - (i) for work which is not required to be performed, deducting from the Subcontract Sum the relevant provisional sum allowance; and
 - (ii) for work which is instructed to be performed, by deducting the provisional sum allowance for the work and adding the actual net cost to the Subcontractor of performing the work.

12.11 Set-Off

- (a) Mirvac may:
 - (i) deduct from, or set off against, any amounts due to the Subcontractor under the Subcontract or otherwise at law in respect of the Subcontract Works, or under any other agreement between Mirvac and the Subcontractor (whether in relation to the Project or otherwise); or
 - (ii) have recourse to any retention monies or security provided by the Subcontractor under this Subcontract, or provided by the Subcontractor under any other agreement between Mirvac and the Subcontractor (whether in relation to the Project or otherwise),
- for Losses or Costs which:
- (iii) the Subcontractor is liable to pay under the Subcontract;
 - (iv) for which Mirvac has a bona fide Claim it has suffered, or is likely to suffer, arising out of, or in connection with, the Subcontract or any other agreement between Mirvac and the Subcontractor (whether in relation to the Project or otherwise) including as a result of a breach of the Subcontract by the Subcontractor, or any negligent act or omission by the Subcontractor or the Subcontractor's Personnel, or their visitors; and

- (v) the Subcontractor is required to pay to Mirvac (or is likely to be required to pay to Mirvac, in Mirvac's bona fide opinion) arising out of, or in connection with, the Subcontract, or any other agreement between Mirvac and the Subcontractor (whether in relation to the Project or otherwise).
- (b) Nothing in this clause 12.11 affects the right of Mirvac to recover from the Subcontractor the whole of the debt or Claim or any balance that remains owing.
- (c) In this clause 12.11 Mirvac means the party named as Mirvac in the Subcontract and identified as Mirvac on the front page of the Formal Instrument of Agreement to this Subcontract and any Mirvac Associate. In this clause 12.11 Subcontractor means the party named as the Subcontractor in the Subcontract and identified as the Subcontractor on the front page of the Formal Instrument of Agreement to this Subcontract or any related body corporate, related entity or associated entity (as each such term is defined in the Corporations Act) of the Subcontractor.
- (d) Where Mirvac has a right under or pursuant to clause 12.11, an equivalent right shall be deemed to also be given to each of Mirvac's Associates.
- (e) The Subcontractor agrees that Mirvac holds for itself and on trust for each of Mirvac's Associates, the rights of clause 12.11 expressed to be for the benefit of Mirvac and Mirvac's Associates.
- (f) Each of Mirvac's Associates can rely upon and enforce the rights in clause 12.11 expressed to be for the benefit of Mirvac and Mirvac's Associates as if it were the party named as Mirvac in this Subcontract and despite that person or party not being a party to this Subcontract.
- (g) The Subcontractor must ensure that its Related Entities do not obstruct, prevent or hinder Mirvac or one of Mirvac's Related Entities enforcing the rights in clause 12.11 under another contract.
- (h) This clause 12.11 will survive any termination of the Subcontract.

12.12 Interest

- (a) Interest is to be paid by a party which has failed to make a payment by the time or within the period prescribed by the Subcontract, for the period of time for which the payment remains unpaid. The rate of interest shall be that stated in Schedule 1.
- (b) No party shall be entitled to interest on any amount determined in accordance with clause 23 of the Subcontract.

12.13 Substantial Completion Payment

- (a) As part of the progress claim which immediately follows the Date of Substantial Completion, or if the Subcontract Works are being completed in Stages, the Date of Substantial Completion of the final Stage, the Subcontractor must submit to Mirvac a progress claim that is endorsed as the '**Substantial Completion Payment Claim**'. The Substantial Completion Payment Claim must be submitted in accordance with the Schedule of Progress Claim Requirements and must state all moneys which the Subcontractor considers to be due to it from Mirvac in connection with the Subcontract Works or the Subcontract and provide a detailed breakdown of the amounts claimed.
- (b) Within 10 Business Days of receiving the Substantial Completion Payment Claim, Mirvac will issue to the Subcontractor a Substantial Completion Certificate and Deed of Release stating the Subcontract Sum as at Substantial Completion (**Substantial Completion Subcontract Sum**) and any amount due by Mirvac to the Subcontractor or from the Subcontractor to Mirvac as the case may be.
- (c) The Subcontractor must within 5 Business Days of receipt of the Substantial Completion Certificate and Deed of Release, issue to Mirvac the Substantial Completion Certificate and Deed of Release duly executed by the Subcontractor.
- (d) Upon the earlier of:
 - (i) receipt by Mirvac of the Substantial Completion Certificate and Deed of Release duly executed by the Subcontractor; and

- (ii) expiry of 5 Business Days after the issue of the Substantial Completion Certificate and Deed of Release to the Subcontractor (and whether it has been executed or not),

the Subcontractor hereby releases Mirvac from any liability whatsoever in connection with the Subcontract or the Subcontract Works with the exception of any payment claim under clause 12.14 or any Claim for which a Notice of Dispute has been issued under clause 23 prior to the date of the Substantial Completion Certificate.

- (e) Subject to the Subcontractor having provided the executed Substantial Completion Certificate and Deed of Release in accordance with clause 12.13(c), and subject to any right of set-off, within 20 Business Days of the date of the Substantial Completion Payment Claim Mirvac shall pay to the Subcontractor any amount shown as payable by Mirvac to the Subcontractor in the Substantial Completion Certificate and Deed of Release.

12.14 Final Payment

- (a) If the Site is located in Queensland, within 5 Business Days after the expiry of the defects liability period under the Head Contract, Mirvac must give the Subcontractor a notice which:
 - (i) states the date on which the Defects Liability Period will end; and
 - (ii) either the amount of security to be released to the Subcontractor if the security is not required to correct Defects or if the security is required to correct Defects, the date upon which the security will be released to the Subcontractor.
- (b) Within 10 Business Days after the expiry of the Defects Liability Period or Second Defects Liability Period (if any), if the Subcontractor considers moneys to be due to it from Mirvac in connection with the Subcontract Works or the Subcontract, the Subcontractor must submit to Mirvac a final payment claim endorsed '**Final Payment Claim**'. Any Final Payment Claim must be submitted in accordance with the Schedule of Progress Claim Requirements and must state all moneys which the Subcontractor considers to be due to it from Mirvac in connection with the Subcontract Works or the Subcontract and provide a detailed breakdown of the amounts claimed.
- (c) If the Subcontractor issues a Final Payment Claim pursuant to clause 12.14(b), within 10 Business Days after receiving the Final Payment Claim, Mirvac must issue to the Subcontractor a Final Certificate and Deed of Release stating the final Subcontract Sum (**Final Subcontract Sum**) and any amount finally due by Mirvac to the Subcontractor or from the Subcontractor to Mirvac as the case may be. Mirvac may, in its absolute discretion, issue a Final Certificate and Deed of Release even if the Subcontractor does not issue a Final Payment Claim pursuant to clause 12.14(b), in which case the Final Certificate and Deed of Release is to be issued within 10 Business Days (or such longer period as Mirvac considers reasonable) after the time for receiving the Final Payment Claim (notwithstanding that no Final Payment Claim has been submitted).
- (d) If Mirvac has issued a Final Certificate and Deed of Release to the Subcontractor pursuant to clause 12.14(c), the Subcontractor must within 10 Business Days of receipt issue to Mirvac the Final Certificate and Deed of Release, duly executed by the Subcontractor.
- (e) Upon the earlier of:
 - (i) receipt by Mirvac of the Final Certificate and Deed of Release duly executed by the Subcontractor; and
 - (ii) expiry of 15 Business Days after the time for receiving the Final Payment Claim (and whether any Final Payment Claim has been received, or any Final Certificate and Deed of Release has been issued, or executed or not),

the Subcontractor hereby releases Mirvac from any liability whatsoever in connection with the Subcontract or the Subcontract Works with the exception of any Claim for which a Notice of Dispute has been issued prior to that date under clause 23.

- (f) If the Subcontractor has issued a Final Payment Claim pursuant to clause 12.14(b), within 20 Business Days of receipt of the Final Payment Claim, Mirvac shall pay to the Subcontractor any amount shown as payable by Mirvac to the Subcontractor in any Final Certificate and Deed of Release, subject to:
 - (i) any right of set off; and
 - (ii) the Subcontractor having provided a duly executed Final Certificate and Deed of Release pursuant to clause 12.14(d).

12.15 Security of Payment

- (a) The Subcontractor must give Mirvac a copy of any notice given to the Subcontractor, or to any party engaged in the Subcontract Works (including any supplier or secondary subcontractor), under the Security of Payment Act. The Subcontractor must give the copy of the notice to Mirvac on the day on which it is received by the person to whom it is addressed.
- (b) If Mirvac becomes aware that any party engaged in the Subcontract Works is, or will be entitled to, suspend work under the Security of Payment Act then Mirvac may (in its absolute discretion and without having any obligation to do either):
 - (i) pay the party giving the notice such money; or
 - (ii) provide such security to the party giving the notice,
 as will bring to an end that party's right to suspend work under the Security of Payment Act.

 Mirvac shall be entitled to recover from the Subcontractor as a debt due the amount of any money so paid or for which security has been given.
- (c) Where the following applies:
 - (i) the *Building and Construction Industry Security of Payment Act 1999* (NSW) (**NSW SOP Act**), for the purposes of section 17(3) of the NSW SOP Act; or
 - (ii) the *Building and Construction Industry (Security of Payment) Act 2009* (ACT) (**ACT SOP Act**), for the purposes of section 19(1) of the ACT SOP Act,
 the parties agree that, the Subcontractor chooses the Resolution Institute as the authorised nominating authority for receiving adjudication applications.
- (d) Where the *Building and Construction Industry Security of Payment Act 2002* (Vic) (**Victoria SOP Act**) applies, the parties agree that, for the purposes of section 18(4) of the Victoria SOP Act, the agreed authorised nominating authorities for receiving adjudication applications are:
 - (i) the Resolution Institute;
 - (ii) Rialto Adjudications Pty Ltd; and
 - (iii) the Australian Solutions Centre.
- (e) Where the *Construction Contracts Act 2004* (WA) (**WA SOP Act**) applies, the parties agree that, for the purposes of section 26 of the *WA SOP Act*, the prescribed appointor for an adjudication application is the Resolution Institute.
- (f) To the extent permitted by law, the times for making progress claims prescribed in clause 12.1(a) are:
 - (i) for the purposes of the NSW SOP Act, the date for service payment claims under section 13 of the NSW SOP Act; and
 - (ii) for the purposes of the Security of Payment Act (other than the NSW SOP Act) as applicable, the reference date as defined under the applicable Security of Payment Act (other than the NSW SOP Act).
- (g) The parties agree that:

- (i) a payment schedule issued pursuant to clauses 12.2(b), 12.13(b) or 12.14(b) is a payment schedule for the purposes of the Security of Payment Act as applicable; and
 - (ii) a notice of dispute issued pursuant to clauses 12.2(b), 12.13(b) or 12.14(b) is a notice of dispute for the purposes of the WA SOP Act.
- (h) Where the NSW SOP Act applies, if Mirvac receives a payment withholding request from a subcontractor under a section 26A of the NSW SOP Act, Mirvac will be entitled to withhold the amount in the request from any payment due to the Subcontractor without any obligation on Mirvac to consider whether the notice is valid and whether section 26B(2) of the NSW SOP Act applies.
- (i) The Subcontractor must indemnify Mirvac against all Losses, Costs or Claims of any nature suffered or incurred by Mirvac arising directly or indirectly out of:
 - (i) a suspension pursuant to the Security of Payment Act by a party engaged in the Subcontract Works;
 - (ii) a failure of the Subcontractor to comply with this clause 12.15;
 - (iii) any lien claimed over unfixed plant or equipment forming part of the Subcontract Works by a subcontractor of the Subcontractor;
 - (iv) where the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) (**QLD SOP Act**) applies, any claim made by a subcontractor under Chapter 4 of the QLD SOP Act;
 - (v) where the *Contractors Debts Act 1997* (NSW) applies, any claim made by a subcontractor under the *Contractors Debts Act 1997* (NSW); and
 - (vi) where the NSW SOP Act applies, a payment withholding request being served on Mirvac under section 26A of the NSW SOP Act in respect of money that is or may become payable by Mirvac to the Subcontractor for the Subcontract Works.
- (j) If the Site is in New South Wales, the Subcontractor and Mirvac agree that Mirvac will provide to the Subcontractor a copy of a ledger containing the information required pursuant to clause 16(3) of the *Building and Construction Industry Security of Payment Regulations 2020* (NSW) at least once every six months, commencing from the date of the Subcontract. This clause 12.15(j) applies only if the Site is in New South Wales.

12.16 Payments by the Principal

Notwithstanding any other provision of this Subcontract, the Subcontractor agrees that the Principal may, if requested by Mirvac, make payments direct to the Subcontractor on account of moneys due or owing by Mirvac to the Subcontractor under or in connection with this Subcontract. If the Principal makes any payment direct to the Subcontractor, the Subcontractor warrants that, to the extent permitted by law and unless otherwise stated by the Principal:

- (a) Mirvac's rights under this Subcontract or otherwise will not be prejudiced;
- (b) the Principal will not assume any liability to the Subcontractor for any Claim that the Subcontractor may have under this Subcontract or otherwise in respect of the Project;
- (c) it will not rely on any such payment in making, and the Principal will not be liable upon, any Claim against the Principal arising under or in connection with the Subcontract, the Subcontract Works or the Project; and
- (d) the payment will be taken as having been made by Mirvac and the amount then due or owing by Mirvac to the Subcontractor will be reduced by the amount of the payment made by the Principal.

12.17 PPSA

- (a) In this clause 12.17 'PPSA' means the *Personal Property Securities Act 2009* and any regulations made under or pursuant to that legislation, as amended from time to time.
- (b) For the purposes of this clause the terms used in this clause 12.17 have the same meaning as contained in the PPSA.

- (c) If either party determines that this Subcontract is or contains a security interest for the purposes of the PPSA (each such interest hereinafter referred to as an '**Interest**'), the Subcontractor must, at its cost and immediately upon and subject to Mirvac's prior written request:
 - (i) do all things reasonably required (including execution of documents) to ensure Mirvac has a continuously perfected security interest (as defined in the PPSA) created in the Interest. This includes, but is not limited to:
 - (A) providing details of any item of collateral sufficient to complete registration of the Interest in accordance with the requirements of the PPSA;
 - (B) enabling Mirvac to apply for registration of or give any notification in relation to the Interest; and
 - (C) enabling Mirvac to exercise rights in relation to the Interest; and
 - (ii) procure from any person considered by Mirvac to be relevant to its security position, such agreements and waivers as Mirvac may at any time require to ensure Mirvac attains the highest ranking security possible in respect of the Interest.
- (d) The Subcontractor must not, except with Mirvac's express written consent, allow to be, or be liable to become, perfected or attached in favour of any person, any Interest, and whether to the Subcontractor or to any other person or party.
- (e) Where permitted by the PPSA, the Subcontractor waives any right to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- (f) Mirvac and the Subcontractor agree to contract out of sections 96, 125, 129, 142 and 143 of the PPSA and nothing in those provisions shall apply to the Subcontract.
- (g) To the extent permitted by the PPSA:
 - (i) the provisions of Chapter 4 of the PPSA which are for the benefit of the Subcontractor or which place obligations on Mirvac will apply only to the extent that they are mandatory or Mirvac agrees to their application in writing; and
 - (ii) where Mirvac has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- (h) For the purposes of section 275(6) of the PPSA, the Subcontractor agrees and undertake that the terms of the Subcontract and any information pertaining to the Subcontract shall be kept confidential at all times. The Subcontractor must not disclose the terms of the Subcontract or any information pertaining to the Subcontract, except as otherwise required by law or that is already in the public domain (not through the default of the Subcontractor).
- (i) The Subcontractor hereby consents and appoints Mirvac to be an interested person and the Subcontractor's authorised representative for the purposes of section 275(9) of the PPSA.
- (j) Any breach of the requirements of this clause 12.17 by the Subcontractor shall be deemed to be a substantial breach of this Subcontract.

13. GST

13.1 Goods and Services Tax (GST)

- (a) All amounts and consideration in respect of a supply made under or in connection with the Subcontract are exclusive of GST to the extent it is not otherwise expressly included.
- (b) If GST is imposed on or in respect of any supply made under or in connection with the Subcontract, then the consideration payable for that supply is increased by an amount determined by multiplying the consideration otherwise payable by the rate at which GST is imposed. Amounts payable under this clause 13.1(b) will be payable at the same time the other consideration for the supply is payable.

- (c) If there is an adjustment to the consideration payable for a supply, then Mirvac must issue an Adjustment Note to the Subcontractor and, in addition to the amendment to the GST exclusive consideration payable for the relevant supply, either:
 - (i) Mirvac must pay an additional amount to the Subcontractor calculated as the increase in the consideration payable for the relevant supply multiplied by the prevailing GST rate; or
 - (ii) the subcontractor must refund an amount to Mirvac calculated as the decrease in the consideration payable for the relevant supply multiplied by the prevailing GST rate.

Mirvac may deduct from or set off against any amount otherwise owing to the Subcontractor any amount which is required to be refunded by the Subcontractor under clause 13.1(c)(ii).
- (d) Each party: warrants to the other that at the time of each supply occurring it will have an Australian Business Number and will be registered for GST purposes.
- (e) Any policy of insurance to be effected or maintained under the Subcontract must cover any liability for GST which may arise upon settlement of a claim pursuant to that policy.

13.2 Recipient Created Tax Invoices and Other Tax

The parties agree that:

- (a) Mirvac can issue tax invoices in respect of all supplies under or in connection with the Subcontract;
- (b) subject to clause 13.1(c), the Subcontractor must issue to Mirvac a valid tax invoice in respect of each progress claim in accordance with clause 12.2(c) and being an invoice that complies with the GST Law and contains both the Subcontractor's and Mirvac's ABN;
- (c) if Schedule 1 indicates that Mirvac will issue recipient created tax invoices, then:
 - (i) the Subcontractor acknowledges and agrees that recipient created tax invoices will be issued by Mirvac;
 - (ii) subject to the terms of this Subcontract, the Subcontractor will not issue tax invoices in respect of supplies under or in connection with the Subcontract;
 - (iii) a progress claim under the Subcontract is not a tax invoice; and
 - (iv) if for any reason one or more of the criteria which must be satisfied to allow Mirvac to issue recipient created tax invoices is not satisfied such that Mirvac cannot issue a tax invoice in respect of supplies made under or in connection with the Subcontract then the Subcontractor must, when requested by Mirvac, issue a tax invoice (being an invoice that complies with GST Law and contains both the Subcontractor's and Mirvac's ABN) to Mirvac for the amount specified by Mirvac. If Mirvac has made a request under this clause 13.2(c)(iv), Mirvac will not be required to make a payment under this Subcontract to which the request relates until the Subcontractor has provided a tax invoice in relation to that payment in the form and the amount required by Mirvac.
- (d) The Subcontractor acknowledges that it is registered for GST when it enters into the Subcontract and that it will notify Mirvac if it ceases to be registered. The Subcontractor agrees that Mirvac is entitled to, and hereby authorises Mirvac to, set off and withhold from any payment which is due or payable to the Subcontractor any amount which Mirvac is obliged to set off or withhold from that payment pursuant to any Law.
- (e) Mirvac acknowledges that it is registered for GST when it enters into this Subcontract and that it will notify the Subcontractor if it ceases to be registered or if it ceases to satisfy any of the requirements of any relevant tax ruling relating to the issue of recipient created tax invoices.

13.3 Interpretation

Terms defined in the *GST Law* (as that term is defined under the *A New Tax System (Goods and Services Tax) Act 1999*) have the same meaning in the Subcontract unless provided otherwise.

14. Time for Performance

14.1 Commencement and Completion

- (a) The Subcontractor must commence the Subcontract Works on the Date for Commencement stated in Schedule 1. If no Date for Commencement is stated in Schedule 1 the Date for Commencement will be the date agreed by the parties or, failing agreement, determined by Mirvac.
- (b) The Subcontractor must:
 - (i) proceed with the Subcontract Works with due expedition and without delay; and
 - (ii) ensure the Subcontract Works achieve Substantial Completion by the Date for Substantial Completion.

14.2 Construction Program

- (a) The Subcontractor acknowledges that:
 - (i) Mirvac may, in its absolute discretion, issue to the Subcontractor an overarching indicative construction program for the Project or part thereof (**Construction Program**);
 - (ii) if Mirvac has issued to the Subcontractor a Construction Program, it has examined (or will examine, as the case may be) the Construction Program;
 - (iii) any Construction Program issued by Mirvac will not necessarily list all activities or items of work required for completion of the Subcontract Works or interfaces with the work of other contractors; and
 - (iv) no allowance has been made in the Construction Program for the impact of delays or disruption of any nature whatsoever that may subsequently occur in the performance of the Subcontract Works.
- (b) Mirvac may, at any time, update or amend any Construction Program that has been issued pursuant to clause 14.2(a)(i). The Subcontractor must provide written notice to Mirvac within 5 Business Days of receipt of the updated or amended Construction Program if the Subcontractor is of the reasonable opinion that, taking all reasonable steps and measures, it will not be able to comply with the updated Construction Program. If the Subcontractor does not respond within 5 Business Days, the Subcontractor is deemed to be of the reasonable opinion that it is able to comply with the updated Construction Program.
- (c) The Subcontractor must not depart from any Construction Program that has been issued by Mirvac pursuant to clause 14.2(a)(i) and as updated and amended pursuant to clause 14.2(b) without reasonable cause or the prior consent of Mirvac.

14.3 Subcontract Works Program

- (a) If:
 - (i) requested by Mirvac in writing;
 - (ii) the Subcontract Works include off-site manufacturing or pre-assembly activities, then, within 5 Business Days after receiving a direction under clause 14.3(a)(i) or the date of the Subcontract (if clause 14.3(a)(ii) applies), the Subcontractor must submit to Mirvac a program (**Subcontract Works Program**) which must:
 - (iii) be consistent with the dates shown in any Construction Program that may have been provided by Mirvac pursuant to clause 14.2(a)(i) and any Mid Range Program that may have been provided by Mirvac pursuant to clause 14.4(c) for commencement and completion of:
 - (A) the Subcontract Works;
 - (B) the Stages of the Subcontract Works (if any); and
 - (C) the activities and items required for completion of the Subcontract Works,

making due allowance for any delays that have occurred in the period between:

- (D) the date of the Subcontract, or if Mirvac has issued an amended Construction Program in accordance with clause 14.2(b), then the date on which the last amended Construction Program was issued to the Subcontractor; and
 - (E) the date on which Mirvac issued its direction in accordance with clause 14.3(a)(i);
- (iv) show all on and off-Site activities necessary to permit weekly comparisons between the planned progress of the Subcontract Works as programmed and the actual progress of the Subcontract Works;
 - (v) show the dates and/or periods for the Programming Activities (as relevant);
 - (vi) allow for the activities of other contractors on the Site which may impact the Subcontract Works;
 - (vii) include labour forecasts for each programmed activity and expected labour productivity rates;
 - (viii) indicate the critical path of the Subcontract Works;
 - (ix) show any further information that Mirvac may require; and
 - (x) be submitted in the form of a Gantt Bar Chart (showing links) in a format acceptable to Mirvac (which may include native files).
- (b) Following receipt of an updated Subcontract Works Program in accordance with clause 14.3(a), Mirvac may:
 - (i) approve the updated Subcontract Works Program;
 - (ii) provide comments on the updated Subcontract Works Program; or
 - (iii) reject the updated Subcontract Works Program.
 - (c) If Mirvac provides comments on the updated Subcontract Works Program in accordance with clause 14.3(b)(ii), or rejects the Subcontract Works Program in accordance with clause 14.3(b)(iii) the Subcontractor must within 5 Business Days after receiving those comments or rejection (as the case may be), submit a further Subcontract Works Program to Mirvac and clause 14.3(a) will apply to that revised program.
 - (d) If the Subcontract Works Program has been re-submitted by the Subcontractor pursuant to clause 14.3(c) on at least one prior occasion and remains unacceptable to Mirvac (in its absolute discretion), Mirvac may appoint a suitably qualified consultant to prepare a Subcontract Works Program and the Subcontractor will be liable for any costs incurred or losses suffered by Mirvac including fees paid by Mirvac to the consultant, which shall immediately become a debt due and payable by the Subcontractor to Mirvac.
 - (e) If:
 - (i) at any time Mirvac issues to the Subcontractor an updated Construction Program pursuant to clause 14.2(b) or an updated Mid Range Program pursuant to clause 14.4(c), the Subcontractor must; or
 - (ii) at any time in the Subcontractor's discretion, the Subcontractor may, submit to Mirvac for review a revised or updated Subcontract Works Program incorporating changes or amendments recommended by the Subcontractor (including as may be required to maintain consistency with any updated Construction or Mid Range Program) and the provisions of clause 14.3(a) above will apply.
 - (f) The Subcontractor must not depart from the Subcontract Works Program without reasonable cause or the prior consent of Mirvac.

14.4 Short and Mid Range Programs

- (a) Mirvac may, in its absolute discretion, issue to the Subcontractor no more than weekly a short range program which covers a two to four week period following the date of the short

range program and will detail particular activities relevant to the Subcontract Works and as may be shown on any Construction Program or any Subcontract Works Program (**Short Range Program**).

- (b) The Subcontractor must not depart from the Short Range Program most recently issued by Mirvac without reasonable cause or the prior consent of Mirvac.
- (c) Mirvac may, in its absolute discretion, issue to the Subcontractor a medium range program which covers the three to five month period following the date of the medium range program which will detail particular activities relevant to the Subcontract Works and as may be shown on any Construction Program or any Subcontract Works Program (**Mid Range Program**).
- (d) The Subcontractor must not depart from the Mid Range Programs most recently issued by Mirvac without reasonable cause or the prior consent of Mirvac.

14.5 General Subcontractor obligations

- (a) The furnishing of a Construction Program, any Short Range Program, any Mid Range Program or the review, rejection or approval of, or any comment or direction by Mirvac upon or in connection with a Subcontract Works Program, a program, a revised program, amended program or change to a program or schedule whatsoever will not:
 - (i) relieve the Subcontractor from any of its liabilities or obligations under the Subcontract, including its obligation to meet all milestones, to reach Substantial Completion by the Date for Substantial Completion or not to depart from any Subcontract Works Program, any Short or Mid Range Program or any Construction Program (without reasonable cause or the prior consent of Mirvac);
 - (ii) affect the time for performance of Mirvac's obligations;
 - (iii) evidence or constitute a direction by Mirvac to accelerate, disrupt, prolong or vary any or all of the Subcontract Works; and
 - (iv) evidence or constitute the granting of any extension of time for Substantial Completion.
- (b) The Subcontractor must, and at its own cost and risk, comply with any request by Mirvac relating to the sequencing of the Subcontract Works.
- (c) Mirvac may, at any time, direct the Subcontractor to provide further programming information in any form or manner and the Subcontractor must comply with Mirvac's direction.
- (d) If at any time the progress of the Subcontract Works under the Subcontract has fallen behind that shown in the Construction Program (if any), the Subcontract Works Program (if any) or any Short or Mid Range Program, or otherwise is not in accordance with the Subcontract, the Subcontractor must, notwithstanding clause 6.6, at its own expense take all necessary corrective action so as to ensure that progress is maintained in accordance with the Subcontract. Such corrective action may include the working of overtime and additional shifts, the application of additional resources to carry out the Subcontract Works under the Subcontract and the adjustment and rescheduling of activities. Mirvac from time to time may direct the Subcontractor to provide details of the corrective action it plans to take under this clause 14.5(b)(d).
- (e) The Subcontractor agrees that Mirvac and its representatives are not obliged to do or refrain from doing anything so as to enable the Subcontractor to achieve Substantial Completion before the Date for Substantial Completion. The Subcontract further agrees that the time for performance of Mirvac's obligations will not be affected by the Subcontractor's desire or attempts to achieve Substantial Completion before the Date for Substantial Completion.

14.6 Notice of Delay and Claim for Extension of Time

- (a) If it appears to the Subcontractor that the progress of the Subcontract Works (or a part thereof) may be delayed for any reason whatsoever the Subcontractor must:

- (i) take all reasonable steps to minimise or avoid the delay and its effects including, without limitation, reprogramming the Subcontract Works and reallocating resources; and
 - (ii) immediately give Mirvac written notice providing details of the causes of the delay and the likely effect, if any, on the progress of the Subcontract Works and the Date for Substantial Completion and of the steps that the Subcontractor proposes to take to minimise or avoid the delay and its effects.
- (b) If the Subcontractor considers that it is entitled to an extension to the Date for Substantial Completion:
 - (i) the Subcontractor must give written notice to Mirvac of its intention to claim an extension to the Date for Substantial Completion not later than the time period stated in Schedule 1 after the cause of the delay first arose; and
 - (ii) the Subcontractor must give further written notice to Mirvac of the period of extension of time claimed not later than seven (7) days after the expiration of the period stated in clause 14.6(b)(i). Where it is not practicable to give this notice the Subcontractor must advise Mirvac in writing on a weekly basis of the likely period of extension of time to be claimed.

14.7 Extension of Time

The Subcontractor may be entitled to an extension of time for carrying out the Subcontract Works (including in reaching Substantial Completion) as assessed by Mirvac if, and only if:

- (a) Substantial Completion will be delayed by an event which is of the type stated in Schedule 1;
- (b) the delay affected activities which are critical to achieving Substantial Completion by the Date for Substantial Completion;
- (c) the Subcontractor has used all reasonable endeavours to minimise or overcome the duration and the consequences of the delay;
- (d) the Subcontractor has provided the notices required by (and in accordance with) clauses 14.6(a)(ii), 14.6(b)(i) and 14.6(b)(ii);
- (e) the cause of the delay was beyond the reasonable control of the Subcontractor;
- (f) neither the delay, its cause, nor the criticality of activities is in any way connected with an act or omission of the Subcontractor (including by compression of the time the Subcontractor has within which to perform the Subcontract Works, or by compression of the program, or the Subcontractor accelerating the Subcontract Works or the program other than at the direction of Mirvac under clause 14.15(b)); and
- (g) if the delay has more than one cause, each of the causes is an event of the type stated in Schedule 1.

14.8 Assessment

- (a) When both causes of delay listed in Schedule 1 and causes of delay not listed in Schedule 1 overlap, then, to the extent that the delays or part of them are concurrent, the Subcontractor shall not be entitled to an extension of time.
- (b) In determining whether the Subcontractor is entitled to an extension of time:
 - (i) Mirvac may, but is not obliged to, have regard to the Construction Program (if any), the Subcontract Works Program (if any), any Short or Mid Range Program, and any previous programs;
 - (ii) Mirvac may assess whether the Subcontractor will be delayed in reaching Substantial Completion by using all of the information available to it at the time that the determination is made (regardless of when the determination is made) and Mirvac is not restricted to considering only that information available at the time of the cause of the delay or at the time the Subcontractor's Claim for an extension of time is submitted; and

- (iii) Mirvac shall have regard to whether the Subcontractor has taken all reasonable steps to minimise or avoid the occurrence of the delay and minimise the consequences of the delay.
- (c) Within 20 Business Days after receiving the Subcontractor's claim for an extension of time pursuant to clause 14.6(b)(i), Mirvac will give to the Subcontractor a written direction evidencing the extension of time so assessed or, if there are Stages, the extension of time so assessed in respect of each Stage by a period equal to the period by which, as a result of the delay, the Date of Substantial Completion is likely to exceed the Date for Substantial Completion, as determined by Mirvac.
- (d) If Mirvac directs that the Subcontract Works be accelerated under clause 14.15 and the Subcontractor is performing the acceleration, the extension of time will be reduced by the number of days saved as a result of the acceleration directed by Mirvac.
- (e) If Mirvac fails to respond to the Subcontractor's claim for an extension of time in accordance with clause 14.8(c) the Subcontractor must re-submit the Subcontractor's claim for an extension of time pursuant to clause 14.6(b)(i).
- (f) Within 10 Business Days after receiving the Subcontractor's re-submitted claim for an extension of time pursuant to clause 14.8(e), Mirvac will give the Subcontractor a written direction in accordance with clause 14.8(c).
- (g) A delay or failure by Mirvac to grant an extension of time or to grant an extension of time within 28 days or to give the Subcontractor notice in writing of the reason within 28 days shall not cause the Date for Substantial Completion to be set at large.

14.9 Limit of Extension of Time

- (a) Subject to clause 14.9(b), if the progress of the Subcontract Works is delayed in circumstances where the progress of the works under the Head Contract is delayed, then the Subcontractor will not be entitled to an extension of time in excess of the period of the extension of time granted to Mirvac under the Head Contract.
- (b) Clause 14.9(a) does not apply to limit any extension of time granted to the Subcontractor under this Subcontract to the extent that Mirvac has not been granted an extension of time under the Head Contract, or the duration of any extension of time granted to Mirvac under the Head Contract is less than it would have otherwise been, due to an act, default or omission of Mirvac.

14.10 Mirvac may Extend

Mirvac may, in its absolute discretion and for its own convenience, extend the Date for Substantial Completion at any time and from time to time before the issue of the Final Certificate and Deed of Release for any reason but Mirvac has no obligation to extend, or to consider whether to extend, the Date for Substantial Completion.

14.11 Delay Losses

- (a) The Subcontractor acknowledges that the progress and completion of the Subcontract Works may be delayed, disrupted or interfered with, including by one or more of the various parties involved in the Project or on the Site and that, as a result, the Subcontractor may incur Losses and/or damages (**Delay Losses**). The Subcontractor represents, warrants and agrees that:
 - (i) it will not be entitled to any Delay Losses or to any delay or disruption costs or damages arising from or in connection with any delay to the Subcontract Works (including any delay which entitles the Subcontractor to an extension of time); and
 - (ii) it bears absolutely the risk for all Delay Losses and all delay and disruption costs and damages arising from or in connection with any delay to the Subcontract Works
- (b) The Subcontractor acknowledges and agrees that:
 - (i) Mirvac will not be liable for any Claim; and

- (ii) the Subcontractor releases and waives any entitlement it may have to any Claim against Mirvac,

arising from or in connection with any Delay Losses, any delay or disruption costs and/or any delay or disruption to the Subcontract Works.

- (c) This clause 14.11 is only intended to limit and/or exclude Mirvac's liability. It is not intended to and does not create, either expressly or impliedly, whether in isolation, in combination with any other term or fact or otherwise, any entitlement on the part of the Subcontractor.

14.12 Suspension of the Subcontract Works

- (a) Mirvac by written notice may instruct the Subcontractor to suspend the performance of all or a part of the Subcontract Works for the time or times Mirvac thinks fit. The Subcontractor must comply with such instructions.
- (b) The Subcontractor must promptly recommence the performance of all or part of the Subcontract Works upon being instructed to do so by Mirvac.
- (c) If Mirvac is solely responsible for the need to suspend, and the suspension is not in any way related to any act, default or omission of the Subcontractor, any of the Subcontractor's Personnel or any other subcontractor, or any work, health, safety or Authority requirements relating to the Subcontract Works or the Site (including Work Practices), Mirvac will pay the reasonable costs of the Subcontractor necessarily and unavoidably incurred by the Subcontractor by an increase in the Subcontract Sum subject to the Subcontractor having taken all steps to minimise and mitigate its Costs and Losses and expenses as a direct result of the suspension.
- (d) In no circumstances will the Subcontractor be entitled to any Costs, Losses or expenses if it fails to minimise or mitigate its Costs and Losses as a direct result of the suspension, or is in breach of the Subcontract at the time the Subcontract Works are suspended.
- (e) Other than as set out in clause 14.12(c), the Subcontractor has no entitlement to any Costs or Losses associated with the suspension.

14.13 Substantial Completion

- (a) The Subcontractor shall give Mirvac at least 10 Business Days written notice of the date upon which the Subcontractor anticipates that Substantial Completion will be achieved.
- (b) When the Subcontractor is of the opinion that Substantial Completion has been achieved, the Subcontractor shall in writing request Mirvac to issue a certificate of Substantial Completion. Within 10 Business Days after receiving the request, Mirvac shall give the Subcontractor either a certificate of Substantial Completion evidencing the Date of Substantial Completion or written reasons for not doing so. If Mirvac notifies the Subcontractor of any Defects and/or incomplete works, the Subcontractor shall then correct such Defects and/or incomplete works and shall repeat the procedure described in this clause 14.13.
- (c) If Mirvac is of the opinion that Substantial Completion has been reached, Mirvac may issue a certificate of Substantial Completion even though no request has been made.

14.14 Liquidated Damages

- (a) If the Subcontractor fails to bring the Subcontract Works to Substantial Completion by the Date for Substantial Completion, the Subcontractor must pay to Mirvac by way of liquidated damages the amount stated in Schedule 1 for every day after the Date for Substantial Completion up to and including the Date of Substantial Completion.
- (b) If this Subcontract is terminated under clause 22 (other than in accordance with clause 22.6) the Subcontractor will remain liable under this clause 14.14 until the Subcontract Works reach Substantial Completion. The amount of liquidated damages will be reduced to the extent that any delay in bringing the Subcontract Works to Substantial Completion is due to:
 - (i) unreasonable delay by Mirvac in employing another person to carry out and complete the Subcontract Works; or

- (ii) the default of the other person in carrying out and completing the Subcontract Works.
- (c) The Subcontractor agrees that the amount of liquidated damages payable under this clause 14.14 is an agreed and genuine pre-estimate of Mirvac's damages, and is neither extravagant nor unconscionable in comparison to the loss that would be suffered, if Substantial Completion does not occur by the Date for Substantial Completion.
- (d) The Subcontractor agrees that Mirvac may deduct from any progress payment due under the Subcontract the amount of any liquidated damages then due and owing, as at the date that Mirvac certifies the Subcontractor's progress claim.
- (e) Nothing in this clause 14.14 limits or affects Mirvac's right to claim and be paid general damages.

14.15 Acceleration

- (a) Mirvac may direct the Subcontractor at any time to accelerate the Subcontract Works by means of overtime, additional labour and/or equipment resources, additional shifts, resequencing the Subcontract Works or otherwise.
- (b) Subject to clause 14.15(c), if as a result of the direction under clause 14.15(a) the Subcontractor achieves such acceleration by completing the Subcontract Works at an earlier date as specified by Mirvac then:
 - (i) if the Subcontractor incurs additional costs, Mirvac may pay the Subcontractor its direct and reasonable additional costs in so accelerating progress of the Subcontract Works as determined by Mirvac by an increase to the Subcontract Sum; and
 - (ii) if the Subcontractor saves costs in so accelerating progress of the Subcontract Works, Mirvac may decrease the Subcontract Sum by an amount that is equal to the aggregate savings of the Subcontractor as determined by Mirvac.
- (c) If the direction under clause 14.15(a) is a result of Mirvac determining that the Subcontractor is behind its scheduled progress as measured against the Construction Program (if any), the Subcontract Works Program (if any), any Short or Mid Range Program or other estimate of progress, then the Subcontractor must at its own expense, accelerate the progress of the Subcontract Works in accordance with the direction under clause 14.15(a).

14.16 Use or Occupation Prior to Substantial Completion

Mirvac may at any time use or occupy any part of the Subcontract Works, whether or not it is sufficiently complete. The Subcontractor's obligations are not affected by such use or occupation and the Subcontractor agrees that it will not claim or otherwise allege that:

- (a) the Subcontract Works have reached Substantial Completion by reason of any such use or occupation; or
- (b) the time for reaching Substantial Completion has been set at large.

15. Variations

15.1 Variations by Mirvac

- (a) Mirvac, by written notice, may instruct a Variation at any time prior to the Date of Practical Completion of the Project and the Subcontractor must comply promptly with that instruction within the time specified by Mirvac. The Subcontractor will not be entitled to payment for a Variation unless the Subcontractor first provides Mirvac with a copy of a written instruction from Mirvac to execute the Variation.
- (b) If the Subcontractor considers that a drawing, instruction or direction issued by Mirvac, although not stated to involve a Variation, in fact involves a Variation, then the Subcontractor must give written notice to Mirvac within three (3) days of receipt of the drawing, instruction or direction, and always before commencing work, setting out, in

detail, the nature of the Variation as well as the time and cost impact of undertaking the Variation. Compliance with this clause 15.1 will be a condition precedent to any claim the Subcontractor may have, including for an extension of time or for an increase in the Subcontract Sum, arising from or in connection with a Variation.

- (c) Mirvac may instruct a Variation which decreases the scope of the Subcontract Works or omits any part of the Subcontract Works. Any such Variation may be for the purpose of having that part executed by any other person before or following the Date for Substantial Completion.
- (d) There is no limit on the scope of a Variation which Mirvac may instruct.
- (e) No Variation of any item of the Subcontract, including the Subcontract Works, will be effective unless it is in writing and signed by Mirvac.
- (f) If the Subcontractor refuses to carry out a Variation which has been instructed by Mirvac under this Subcontract, without prejudice to its other rights, Mirvac may direct the work to be done by another person and that person may enter upon the Subcontract Works for the purpose of carrying out the Variation. The Subcontractor shall be liable for, and will pay to Mirvac on demand, the costs incurred by Mirvac in arranging and procuring for another person or party to perform the relevant Variation work.

15.2 Variations After the Date for Substantial Completion

If Mirvac instructs a Variation after the Date for Substantial Completion which is likely to delay the achievement of Substantial Completion, the Subcontractor within five (5) days of receipt of the instruction must give Mirvac written notice of the likely period of delay and, notwithstanding clause 14.7, Mirvac must extend the Date for Substantial Completion by the number of days by which Substantial Completion is delayed as a result of the execution of the Variation.

15.3 Measurement of Variations

- (a) As soon as practicable but in any event not later than the number of days stated in Schedule 1 after receipt of an instruction for a Variation, the Subcontractor must supply Mirvac with measurements and estimated costs of undertaking the Variation as well as the impact of the Variation on the Subcontractor's ability to achieve Substantial Completion by the Date for Substantial Completion sufficient to allow Mirvac to value the Variation. The Subcontractor will not be entitled to payment for a Variation if it does not comply with this clause 15.3(a).
- (b) If Mirvac is not satisfied with these measurements it may arrange for alternative measurements which it may use to value the Variation. The Subcontractor will be liable for Losses suffered by Mirvac in arranging for alternative measurements.

15.4 Valuation of Variations

- (a) Variations will be valued by Mirvac as follows:
 - (i) where the Variation is to a part of the Subcontract Works to which a lump sum relates and a Bill of Quantities exists, then the prices, rates and amounts set out in the priced Bill of Quantities approved by Mirvac will be used;
 - (ii) where the Variation is to a part of the Subcontract Works to which a Schedule of Rates relates, the prices, rates and amounts set out in the Schedule of Rates will be used; or
 - (iii) where there is no priced Bill of Quantities approved by Mirvac or no Schedule of Rates or if, in Mirvac's opinion, the Bill of Quantities or Schedule of Rates cannot be applied reasonably to the Variation, then Mirvac will determine a fair valuation, and the Subcontract Sum will be increased or decreased by the valuation as the case may require.
- (b) Despite clause 15.4(a), Mirvac may instruct the Subcontractor to carry out a Variation as day works. Variations carried out as day works will be valued as follows:
 - (i) if the Variation involves work, plant or equipment for which a rate is stated in Schedule 1, that rate will be used;

- (ii) if the Variation involves work, plant or equipment for which a rate is not stated in Schedule 1, Mirvac will determine a fair rate; and
 - (iii) if the Variation involves Materials, the invoiced cost to the Subcontractor (after deducting any trade or other discounts) will be used together with the percentage stated in Schedule 1 for overhead and profit.
- (c) If Mirvac instructs the Subcontractor to carry out a Variation as day works, the Subcontractor must present its daily record of labour, Plant and Equipment hours worked and the quantity of Materials used for Mirvac's approval on the day when the hours are worked and the Materials are used. The Subcontractor will not be entitled to payment for the whole or part of a Variation in respect of which it does not comply with this clause 15.4(c).
- (d) For the avoidance of doubt, the Subcontractor agrees that any endorsement by Mirvac or the Project Manager of any record of labour, plant or equipment hours worked or supplied or the quantity of Materials used, will not:
 - (i) constitute an acceptance or approval by Mirvac of that daily record;
 - (ii) constitute an instruction or direction that the Subcontractor carry out a Variation;
 - (iii) entitle the Subcontractor to submit a claim in respect of the labour, plant or equipment hours worked or supplied or the quantity of Materials used, unless the Subcontractor has complied with this clause 15 and Mirvac is satisfied that the works the subject of that claim are a Variation to the Subcontract Works; or
 - (iv) otherwise entitle the Subcontractor to an adjustment to the Subcontract Sum or extension of time to the Date for Substantial Completion.

15.5 No Variation for Detail Design

The Subcontractor acknowledges that the detailed design of the Subcontract Works may be incomplete at the date of the Subcontract. Mirvac shall be entitled to provide detailed design documentation to the Subcontractor after the date of the Subcontract. The Subcontractor shall comply with any such documentation as if that documentation had been provided on the date of the Subcontract. The Subcontractor shall have no Claim or relief where the detailed design documentation is generally consistent with the design disclosed in the Subcontract or is work which should otherwise have been contemplated or inferred by a competent contractor upon an inspection of the relevant Subcontract Documents or to ensure that the relevant work was fit and suitable for its purpose(s).

15.6 Changes in Law

- (a) If a Law:
 - (i) necessitates a change to the design of the Subcontract Works (other than in relation to any Temporary Subcontract Works or Work Practices);
 - (ii) comes into effect after the date of the Subcontract;
 - (iii) causes the Subcontractor to incur more or less cost than otherwise would have been incurred;
 - (iv) is not in any way related to any Temporary Subcontract Works or Work Practices; and
 - (v) could not have been anticipated by a competent subcontractor at the date of the Subcontract,

then to the extent that such change has not been caused or contributed to by the Subcontractor or the Subcontractor's Personnel, and causes the Subcontractor to incur more or less cost than otherwise would have been incurred, the difference shall be valued under clause 15.4.
- (b) Otherwise, the Subcontractor bears absolutely the risk of, including costs of compliance with, all Laws, including changes in Laws (irrespective of when such changes occur or take effect).
- (c) The Subcontractor acknowledges and agrees that:

- (i) Mirvac will not be liable for any Claim; and
 - (ii) the Subcontractor releases and waives any entitlement it may have to any Claim against Mirvac,
- arising from or in connection with any Laws, including changes in Laws (irrespective of when such changes occur or take effect).
- (d) Notwithstanding any other term or condition of this Subcontract, the Subcontractor agrees that it will not be entitled to the payment of any Carbon Costs or any additional payment, any increase in the Subcontract Sum, any extension of time or any other compensation, relief or remedy arising from or in connection with any Carbon Scheme.

16. Indemnities

16.1 Indemnity

The Subcontractor indemnifies Mirvac (including each of its directors, officers, employees and agents) and the Principal from and against any Losses, Costs or Claim they may suffer or incur:

- (a) in respect of:
 - (i) any loss of or damage to Mirvac's property or any third party property;
 - (ii) injury, disease, illness or death of any person; and
 - (iii) financial loss consequent upon clauses 16.1(a)(i) or 16.1(a)(ii);
 - (b) in respect of a breach by the Subcontractor of clause 6.8;
 - (c) relating to a claim that the use of any design created by or for the Subcontractor for the Subcontract Works infringes any Intellectual Property Rights or Moral Rights;
 - (d) in respect of any claim made under or pursuant to the Building Legislation;
 - (e) in respect of all Claims of the Subcontractor's Personnel;
 - (f) in respect of any suspension by a party engaged in the Subcontract Works (other than the Subcontractor) or a breach of clause 12.15;
 - (g) in respect of the Subcontractor not having an Australian Business Number or being registered for GST purposes;
 - (h) in respect of any industrial disputes;
 - (i) in respect of a breach by the Subcontractor of clause 19.5(a);
 - (j) in respect of Mirvac terminating the Subcontract;
 - (k) for which Mirvac may be liable under the Head Contract (whether for late completion, late handover or otherwise); and
 - (l) under any Related Contract (whether for late completion, late handover or otherwise),
- arising out of or in connection with a breach of the Subcontract by the Subcontractor, or an act or omission of the Subcontractor or the Subcontractor's Personnel, or the execution or completion of the Subcontract Works. The indemnity in this clause 16.1 will reduce to the extent that a breach by Mirvac of the Subcontract caused or contributed to the Loss, Costs or Claim.

16.2 Subcontractor's Liability

- (a) The Subcontractor is liable for, and hereby releases and forever discharges Mirvac from and against, all Claims, including claims for any increase in the Subcontract Sum, any extension of time (except to the extent expressly provided for in clause 14.6) and any other compensation, relief or remedy whatsoever, which relate to, or arise from or in connection with, any obligation, requirement or other thing for which the Subcontractor is responsible or liable under this Subcontract.
- (b) The Subcontractor's liability under this clause 16.2 is in addition to any other liability, including the Subcontractor's liability to Mirvac for any damages (including liquidated

damages under clause 14.14) payable under this Subcontract or otherwise under general law.

- (c) Where the Subcontractor gives an indemnity under or pursuant to this Subcontract for the benefit of Mirvac, an equivalent indemnity shall be deemed to also be given for the benefit of each of Mirvac's Associates.
- (d) The Subcontractor agrees that Mirvac holds for itself and on trust for each of Mirvac's Associates, the benefit of each indemnity in the Subcontract expressed to be for the benefit of Mirvac and Mirvac's Associates.
- (e) Each of Mirvac's Associates can rely upon and enforce each indemnity in the Subcontract expressed to be for the benefit of Mirvac and Mirvac's Associates as if it were the party named as Mirvac in this Subcontract and despite that person or party not being a party to this Subcontract.
- (f) All indemnities and warranties given by the Subcontractor under or pursuant to this Subcontract for the benefit of Mirvac or Mirvac's Associates survive the termination of this Subcontract.

16.3 Civil Liability Act

- (a) The parties agree that, to the extent permitted by law, the operation of the Civil Liability Act is excluded in relation to all and any rights, obligations and liabilities under this Subcontract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise at law or in equity.
- (b) The Subcontractor's agreement of sole responsibility and the indemnities contained in the Subcontract shall apply despite the provisions of the Civil Liability Act.
- (c) If, despite clauses 16.3(a) and 16.3(b) the Civil Liability Act does apply, then:
 - (i) the Subcontractor acknowledges and agrees that, for the purposes of the Civil Liability Act, the Subcontractor is entirely and solely responsible for any failure to take reasonable care on the part of any of its personnel; and
 - (ii) the Subcontractor undertakes to Mirvac, as a separate and independent absolute obligation not subject to any duty to take reasonable skill and care, to:
 - (A) rectify or complete any of the Subcontract Works which is Defective or incomplete or which is not in conformance with the requirements of the Subcontract and which would otherwise be a breach of the Subcontractor's obligations under the Subcontract; and
 - (B) compensate Mirvac for any Costs, Losses or expense incurred by Mirvac as a result of having such work rectified or completed.

17. Insurance

17.1 Insurances

- (a) The Subcontractor must effect and maintain in a form appropriate to the Subcontractor's activities and acceptable to Mirvac the insurances stated in and required by the Schedule of Insurances.
- (b) The Subcontractor must ensure that all insurances to be effected and maintained under this Subcontract are on terms and from a reputable insurer approved by Mirvac (such approval not to be unreasonably withheld).
- (c) The Subcontractor must ensure that the Subcontractor's subcontractors and consultants, if within a category stated in the Schedule of Insurances, effect and maintain professional indemnity insurance pursuant to the Schedule of Insurances.

17.2 Evidence of Insurance

- (a) The Subcontractor must produce to Mirvac evidence of the insurances that it is required to effect and maintain under the Schedule of Insurances before commencing the

Subcontract Works. Such evidence must include but not be limited to insurer issued certificates of currency and policy schedules for each policy of insurance.

- (b) If the Subcontractor fails to produce evidence in accordance with clause 17.2(a), Mirvac may, without limitation to Mirvac's other rights under the Subcontract, effect the insurances and the premiums paid by Mirvac shall be deducted from the Subcontract Sum. No further payment will be made to the Subcontractor until the Subcontractor provides such evidence of insurance.
- (c) Any delay in the commencement or the continuance of the Subcontract Works resulting from the failure of the Subcontractor to comply with the insurance requirements under this clause 17 or otherwise shall not entitle the Subcontractor to any extension of time to the Date for Substantial Completion.

18. Title and risk

18.1 Passing of Title Risk

Title to all Materials, equipment and other goods delivered to the Site or other point of delivery nominated by Mirvac for incorporation in the Subcontract Works shall pass to Mirvac upon delivery thereto, or if payment has been made by Mirvac to the Subcontractor prior to delivery, upon such payment being made. Provided however that risk in the Materials, equipment and other goods (including without limitation, risk for theft and damage to goods) shall remain with the Subcontractor until the later of the date on which the goods are incorporated into the Subcontract Works and the Date of Practical Completion of the Project.

18.2 Clear Title

The Subcontractor warrants that the Materials, equipment and other goods are and, at the time property will pass, will be, free and clear of all liens, charges and encumbrances and that the Subcontractor has and, at the time the property therein will pass will have a good and clear title to same and that Mirvac shall have and enjoy quiet possession of the Materials, equipment and other goods.

18.3 Part Payment

- (a) Where any part payment for the Materials, equipment and other goods is made by Mirvac, title to and property in the partly completed Materials, equipment and other goods and parts to be used in its manufacture and then on hand shall pass to Mirvac and the same shall be appropriately marked. Risk therein shall remain with the Subcontractor.
- (b) Should title not have passed to Mirvac as the result of part payment for the Materials, equipment and other goods then title shall pass when the Materials, equipment and other goods are delivered to Mirvac and its acceptance of the Materials, equipment and other goods is indicated by notice in writing to the Subcontractor. Risk in the Materials, equipment and other goods shall pass to Mirvac upon Substantial Completion.

19. Compliance with Authority Requirements

19.1 Authorities' Compliance

- (a) The Subcontractor must comply with and give all notices required by any Law or by an Authority, including any Authority with whose systems the Subcontract Works are or will be connected. The Subcontractor must promptly (and so that there is no delay to the Subcontract Works) procure, pay for and obtain all permits and other consents needed to properly perform the Subcontract Works.
- (b) The Subcontractor must pay all Costs, fees or charges legally demandable under any Law or by an Authority in respect of the Subcontract Works or the Subcontractor's Personnel. The Subcontract Sum will only be adjusted by the actual amount of any increase in fees or charges which occurs after the date of the Subcontract, which could not at the date of the Subcontract have been contemplated by a competent subcontractor and which is paid by the Subcontractor.

19.2 Compliance with Legislation and Awards

Prior to commencing work on the Site the Subcontractor must make itself aware of, and must in the performance of the Subcontract Works comply with, all the procedural requirements for the Subcontract Works and the Site relating to industrial matters (including all relevant Laws, awards, codes of practice and other lawful requirements), safety and environmental matters which may apply to the Subcontract, the Subcontract Works or the Site.

19.3 Privacy

- (a) The Subcontractor must establish effective measures to safeguard Personal Information from unauthorised access, modification, use, interference, loss or disclosure.
- (b) If the Subcontractor becomes aware or suspects that:
 - (i) there has been unauthorised disclosure or use of any Personal Information by it or one of the Subcontractor's Personnel (**Data Contravention**);
 - (ii) there has been unauthorised access to any Personal Information (**Data Breach**); or
 - (iii) Personal Information has been lost in circumstances where unauthorised access to, or unauthorised disclosure of, the Personal Information may occur (**Loss of Data**),then the Subcontractor must immediately notify Mirvac of that Data Contravention, Data Breach or Loss of Data.
- (c) The Subcontractor must:
 - (i) promptly disclose to Mirvac all information relevant to that actual or suspected Data Contravention, Data Breach or Loss of Data;
 - (ii) investigate whether a Data Contravention, Data Breach or Loss of Data has occurred; and
 - (iii) provide Mirvac with access to the copies of relevant records relating to the investigation.
- (d) Without limiting the Subcontractor's other obligations under the Subcontract, if the Subcontractor becomes aware of a Data Contravention, Data Breach or Loss of Data, the Subcontractor must, at its own cost:
 - (i) take all reasonable steps to contain and remedy the Data Contravention, Data Breach or Loss of Data;
 - (ii) promptly take appropriate remedial action to:
 - (A) mitigate any loss or interference with privacy flowing from the incident; and
 - (B) prevent the affected Personal Information from further misuse or breach, as appropriate, depending on the nature and circumstances of the particular Data Contravention, Data Breach or Loss of Data.

19.4 Confidentiality

- (a) Without limiting clause 19.5(a) but subject to clause 19.5(h), the Subcontractor must not, and must ensure that its Related Entities and the Subcontractor's Personnel do not, disclose Confidential Information or use Confidential Information for purposes unrelated to the Subcontract.
- (b) Subject to clause 19.4(c), the Subcontractor must ensure that information provided to or obtained by the Subcontractor in connection with the Subcontract, the Subcontract Works or the operations of Mirvac or the Principal or contained in any documentation prepared by the Subcontractor or which relates to the Subcontract will not, without Mirvac's prior written consent, be used or disclosed by the Subcontractor or any other person and the Subcontractor warrants that no such information will be advertised, published, released, supplied or communicated to any other person for any purpose without Mirvac's prior written consent.

- (c) The Subcontractor may disclose Confidential Information:
 - (i) to the extent required by law or any applicable stock exchange listing rule, or to any taxation authority (but only that portion of the Confidential Information which it is required to disclose);
 - (ii) to the Subcontractor's Personnel, its Related Entities, its accountants or auditors, and under an express or implied obligation to the Subcontractor to keep the Confidential Information confidential; and
 - (iii) to bona fide prospective purchasers or financiers of, or investors in, the Subcontractor's business provided that, before disclosure the purchasers, financiers or investors have agreed in writing with the Subcontractor to comply with substantially the same obligations in respect of Confidential Information as those imposed on the Subcontractor under the Subcontract.
- (d) This clause 19.4 survives termination of this Subcontract.

19.5 Modern slavery

- (a) The Subcontractor must ensure that:
 - (i) in performing its obligations in connection with the Subcontract, the Subcontractor must and will ensure that the Subcontractor's Personnel:
 - (A) do not engage in any conduct or omission which may contravene any Modern Slavery Laws; and
 - (B) comply with any Mirvac policy relating to modern slavery; and
 - (ii) it does all things required or necessary to mitigate or reduce modern slavery risks in its operations and supply chains and stay in compliance with all applicable Modern Slavery Laws.
- (b) The Subcontractor must use reasonable endeavours to ensure the terms of the contractual commitment entered into with any of the Subcontractor's Personnel to provide goods or services in connection with this Subcontract, permit termination of such commitments where the Subcontractor has reasonable grounds to believe there has been, or is likely to be, a breach of any applicable Modern Slavery Laws.
- (c) The Subcontractor represents and warrants on the date of this Subcontract and every day during the period prior to this Subcontract being terminated, to Mirvac that:
 - (i) neither the Subcontractor nor the Subcontractor's Personnel:
 - (A) have been convicted of any offence involving modern slavery and human trafficking; and
 - (B) having made reasonable enquiries, to the best of its knowledge, have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of any Modern Slavery Laws; and
 - (ii) it conducts its business in a manner that is consistent with Modern Slavery Laws.
- (d) The Subcontractor must implement due diligence procedures for its own suppliers, and other participants to ensure that there is no, or there is no risk of, slavery or human trafficking or similar types of conduct in its supply chains.
- (e) The Subcontractor must promptly notify Mirvac as soon as it becomes aware of a potential, suspected or actual breach by it or the Subcontractor's Personnel of any Modern Slavery Laws in connection with the Subcontract.
- (f) The Subcontractor must cooperate in good faith with Mirvac in investigating the circumstances relevant to any potential, suspected or actual breach of any Modern Slavery Laws, whether or not notification has been given under clause 19.5(e).
- (g) If Mirvac know of or has reasonable grounds to suspect a past, present or potential breach by the Subcontractor or the Subcontractor's Personnel of any applicable Modern Slavery Laws or any of their own policies relating to modern slavery, in connection with the

Subcontract, Mirvac may give notice in writing to the Subcontractor requiring an explanation, copies of documents, and access (for the purposes of interview by internal or external lawyers) to the Subcontractor's Personnel.

- (h) The Subcontractor must give such assistance and access to the documents and the Subcontractor's Personnel as Mirvac may reasonably require under clause 19.5(g) and must provide (at the Subcontractor's cost) all reasonable assistance (including the provision of information) to Mirvac in order to allow them to comply with Mirvac's obligations under the Modern Slavery Laws.
- (i) The Subcontractor must establish and maintain policies and procedures to ensure that the Subcontractor and the Subcontractor's Personnel comply with the obligations set out in clause 19.5(a). The Subcontractor must ensure that its policies and procedures as contemplated in this clause 19.5(i) contain requirements that training will be provided to the Subcontractor's Personnel, as the case may be, in relation to the matters addressed by those policies and procedures.
- (j) The Subcontractor must, to the fullest extent possible, require its suppliers to implement their own binding guidelines for ethical behaviour and compliance with Modern Slavery Laws.

19.6 D&BP Act

- (a) This clause 19.6 applies only if the Site is in New South Wales, the Subcontract Works are Building Works (as that term is defined in the D&BP Act) and the relevant provisions within the D&BP Act apply to the Project.
- (b) In this clause 19.6, terms capitalised and otherwise undefined have the meanings given in the D&BP Act or the D&BP Regulation (as the case may be).
- (c) If the Subcontractor does not have Design Obligations (as identified in Schedule 1), then the Subcontractor acknowledges and agrees that:
 - (i) Mirvac has provided or will provide the Subcontractor with:
 - (A) Regulated Designs, and where Mirvac considers it appropriate, Design Compliance Declarations in respect of the Regulated Designs;
 - (B) other design work and specifications,for the Subcontract Works (**Design Package**);
 - (ii) the Design Package is of a sufficient level of details to enable the Subcontractor to provide an accurate Subcontract Sum for the Subcontract Works and performance of the Subcontractor's obligations under this Subcontract; and
 - (iii) the Subcontractor must undertake the Subcontract Works and its obligations under the Subcontract in accordance with the Design Package.
- (d) If the Subcontractor is required to prepare Regulated Design or a Variation to any Regulated Design as part of the Subcontract Works, the Subcontractor warrants that on and from the date of the Subcontract and until the Date of Substantial Completion, the Subcontractor, and someone within its employ, is a Registered Design Practitioner that is Adequately Insured and whose registration authorises it to provide a Design Compliance Declaration in respect of each Regulated Design and Variation to Regulated Design that the Subcontractor prepares.
- (e) The Subcontractor must ensure:
 - (i) any Regulated Design prepared as part of the Subcontract Works, and any Variation to a Regulated Design that is prepared as part of the Subcontract Works:
 - (A) is prepared by a Registered Design Practitioner that is Adequately Insured in accordance with the D&BP Act and whose registration authorises it to provide a Design Compliance Declaration in respect of the Regulated Design; and
 - (B) is accompanied by a Design Compliance Declaration that complies with the requirements of the D&BP Act and the D&BP Regulation; and

- (C) satisfies the requirements of Construction Issued Regulated Design, is compliant with the D&BP Act and D&BP Regulation and also any relevant guidelines issued by any Authority;
- (ii) all Design Compliance Declarations provided by or on behalf of the Subcontractor pursuant to clause 19.6(e)(i)(B) as part of the Subcontract Works (including in respect of Variations):
 - (A) comply with the applicable requirements of the D&BP Act (including section 8(1)) and the D&BP Regulation; and
 - (B) are promptly provided to Mirvac in accordance with the timeframes prescribed in the D&BP Act and the D&BP Regulation;
- (iii) and warrants that any Professional Engineering Work in a Prescribed Area of Engineering undertaken as part of the Subcontract Works is performed by a Registered Professional Engineer that is Adequately Insured in accordance with the D&BP Act;
- (iv) and warrants that any Specialist Work undertaken as part of the Subcontract Works will be performed by a Registered Specialist Practitioner whose registration under the D&BP Act authorises them to carry out that Specialist Work; and
- (v) when performing any Variation, it must do all things reasonably necessary to ensure that Mirvac complies with section 20 of the D&BP Act, including:
 - (A) where the Variation is not to a Building Element or Performance Solution in a Regulated Design, ensuring that the Variation is recorded in accordance with section 20(1) of the D&BP Act, and providing to Mirvac a copy of that record; and
 - (B) providing a Design Compliance Declaration in respect of variations to any Regulated Designs promptly (and in any event, before the work the subject of the variation is commenced).
- (f) The Subcontractor must promptly issue to Mirvac all Regulated Designs, Construction Issued Regulated Designs, Design Compliance Declarations, Required Documents and Contractor Documents that relate to the Subcontract Works in accordance with and when required by the D&BP Act and D&BP Regulation, and as and when directed by Mirvac, to enable Mirvac (or its delegate) to lodge documentation in a timely manner and so as not to cause delays to the Subcontract Works, the Project or the issue of any construction certificate, occupation certificate or other certificate in connection with the Project.
- (g) The Subcontractor must immediately notify Mirvac in writing if:
 - (i) any registration it has under the D&BP Act is, or is likely to be varied, suspended or cancelled, or if the Subcontractor is subject to disciplinary action or has committed an offence under the D&BP Act;
 - (ii) the Subcontractor is obliged to notify the Secretary of an event pursuant to section 60 of the D&BP Act;
 - (iii) the Subcontractor becomes aware of any investigation or order being undertaken or issued pursuant to Part 7 of the D&BP Act or Part 3 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (NSW) (RAB Act)*; or
 - (iv) the Subcontractor is aware that the Subcontract Works, or parts thereof, do not or are unlikely to comply with any Laws or applicable requirements prescribed for the purposes of section 8(3) of the D&BP Act. The Subcontractor must comply with any instructions or directions issued by Mirvac in respect of the non-compliance at its own cost. The Subcontractor acknowledges and agrees that Mirvac will not be liable for any Claim and it releases and waives any entitlement it may have to any Claim against Mirvac arising out of or in connection with any such instruction or direction.
- (h) The Subcontract Works must, and the Subcontractor warrants that the Subcontract Works will:

- (i) comply with all applicable requirements prescribed for the purposes of sections 8(1) and 8(3) of the D&BP Act; and
 - (ii) be built in accordance with all Regulated Designs relating to the Subcontract Works for which a Design Compliance Declaration has been obtained, including any Variation to a Regulated Design for which a later Design Compliance Declaration was obtained (regardless of whether the Regulated Designs were procured by the Subcontractor).
- (i) The Subcontractor indemnifies Mirvac against all Losses, Costs or Claims of any nature suffered or incurred by Mirvac arising directly or indirectly out of any false or misleading Design Compliance Declaration provided by the Subcontractor in respect of the Subcontract Works.

19.7 Anti Corruption

- (a) In this clause 19.7, the following terms have the following meanings:

Anti-Corruption Laws means the applicable anti-corruption statutes of jurisdictions where the Parties conduct business, and the rules and regulations thereunder.

Anti-Money Laundering and Counter-Terrorism Financing Laws means the applicable anti-money laundering and counter-terrorism financing statutes of jurisdictions where the Parties conduct business, and the rules and regulations thereunder including, but not limited to, the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

Associate means in relation to a party,

- (i) a Related Body; or
- (ii) an employee, officer, agent, adviser or consultant of that party or of a Related Body of that party but does not include a partner or joint venturer of a party.

Corporations Act means the Corporations Act 2001 (Cth).

Related Body Corporate has the meaning given to that term in the Corporations Act.

Related Body has the meaning given to Related Body Corporate, but on the basis that subsidiary has the meaning given to Subsidiary in this Agreement and that body corporate includes any entity and a trust.

Subsidiary has the meaning given to that expression in the Corporations Act but so that:

- (i) a trust will be treated as if it were a body corporate and a unit or other beneficial interest in the trust will be treated as if it were a share in that body corporate; and
- (ii) a body corporate or other entity which is not a body corporate will also be treated as a Subsidiary of a body corporate or another entity which is not a body corporate if it is controlled by that body corporate or other entity (expressions used in this paragraph have the meanings given for the purposes of Division 6 of Part 1.2 of the Corporations Act).

- (b) The Subcontractor represents and warrants:

- (i) it has not, nor its Associates, have been charged or prosecuted for any contravention of Anti-Corruption Laws or the Anti-Money Laundering and Counter-Terrorism Financing Laws, and to the best of its knowledge and belief is not being investigated for any such conduct;
- (ii) to its knowledge, neither it nor its Associates acting on behalf of it have taken and will not take any action in furtherance of an offer, payment, promise to pay, or authorisation or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any person to improperly influence official action by that person for the benefit of it or its Associates, or to otherwise secure an improper business advantage for it or its Associates;
- (iii) each of it, its Related Bodies and to the best of its knowledge, its Associates (excluding Related Bodies) has conducted its business in compliance in all material respects with the Anti-Corruption Laws and the Anti-Money Laundering

and Counter-Terrorism Financing Laws and has instituted and maintained and will continue to maintain policies and procedures designed to promote and achieve compliance with such laws and with the representation and warranty contained herein;

- (iv) no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the it, its Related Bodies and to the best of its knowledge, its Associates (excluding Related Bodies), with respect to an alleged breach of the Anti-Corruption Laws or the Anti-Money Laundering and Counter-Terrorism Financing Laws is pending or, to the knowledge of it, threatened;
- (v) neither:
 - (A) the Subcontractor, its Related Bodies and to the best of its knowledge, any of its Associates (excluding Related Bodies) is an individual or entity (Person) that is, or is owned or controlled by a Person that is the subject of any economic sanctions, laws, regulations, embargoes or restricted measures administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury, the Australian Department of Foreign Affairs or other relevant sanctions authority (collectively, **Sanctions**); nor
 - (B) each of it , its Related Bodies and to the best of the Buyer's knowledge, any of its Associates (excluding Related Bodies) is located, organised or resident in a country or territory that is, or whose government is, the subject of Sanctions (including, without limitation, the Crimea region of the Ukraine, Cuba, Iran, North Korea, Sudan and Syria);
- (vi) it will not, directly or indirectly, use the proceeds of the engagement, or lend, contribute or otherwise make available such proceeds to any Associate, joint venture partner or other Person:
 - (A) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or
 - (B) in any other manner that will result in a violation of Sanctions by any Person;
- (vii) for the past five years, it has not knowingly engaged in, is not now knowingly engaged in, and will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions;
- (viii) each warranty in clauses (i) to (vii) is a continuing warranty given on each day that this agreement remains in place between the Parties; and
- (ix) subject to the terms of this agreement, if the Subcontractor delegates its or part of its functions or obligations under this agreement to a third party, it must ensure similar obligations and undertakings as clauses (i) to (viii) are provided by such third party.

20. Claims against Subcontractor

20.1 Claims by Mirvac

Without limiting clauses 5 and 12.11, if Mirvac:

- (a) becomes aware of any Defective or omitted work concerning the Subcontract Works not remedied by the Subcontractor;
- (b) becomes aware of any claim by a third party arising out of or in connection with the Subcontract Works due to an act, default, omission or negligence of the Subcontractor; or

- (c) supplies any labour, Materials, equipment or supervision to the Subcontractor for the purposes of performing the Subcontractor's obligations under this Subcontract or otherwise performs the Subcontractor's obligations under this Subcontract, including in circumstances where the Subcontract is terminated under clause 22,

then, notwithstanding any other provision of this Subcontract, Mirvac may claim payment (plus, in the case of clause 20.1(c) an amount of 15% in addition to, the cost of the things supplied by Mirvac) from the Subcontractor in respect of such matter (and where it relates to any Defective or omitted work or claim by a third party, for the value of all Costs and Losses which have been or, in Mirvac's opinion, are likely to be incurred) and Mirvac may deduct any such amounts from the amount of any progress payment entitlement or from any retention or security held by Mirvac. The amount of Mirvac's claim to payment under this clause 20.1 shall immediately become a debt due and payable by the Subcontractor to Mirvac.

21. Notification of Claims

21.1 Acknowledgement by the Subcontractor

The Subcontractor acknowledges that it is critical to Mirvac that Mirvac is made aware, immediately after the Subcontractor becomes aware, of anything that may result in a possible increase in the Subcontract Sum, a Variation, delay, extension of time or any other claim that may increase the amount payable under or in connection with the Subcontract. Among other reasons the early advice of such matters by the Subcontractor may allow Mirvac time to consider ways of minimising or avoiding such matters, and enable Mirvac to comply with provisions of the Head Contract.

21.2 Conditions Precedent

Where the Subcontract (including in this clause 21) requires the Subcontractor to give a notice it is a condition precedent to any entitlement of the Subcontractor in respect of the matter which is to be the subject of the Notice (**Notice Subject Matter**) that such notice is given in the specified form, containing all required details and within the specified time. The Subcontractor acknowledges and agrees that:

- (a) Mirvac will not be liable for any Claim; and
- (b) the Subcontractor releases and waives any entitlement it may have to any Claim against Mirvac,

arising out of or in connection with the Subcontractor's failure to satisfy this condition precedent or the Notice Subject Matter.

21.3 Requirement for Notices Otherwise

- (a) If the Subcontractor has or alleges that it has an entitlement under the Subcontract (whether in respect of an adjustment to the Subcontract Sum or to payment on any other basis) and the Subcontract does not otherwise require the Subcontractor to give notice of the entitlement or alleged entitlement then the Subcontractor must within the number of days specified in Schedule 1 of the Originating Date give Mirvac the Prescribed Notice.
- (b) If the Subcontractor has or alleges that it has any other entitlement or Claim on any basis whatsoever (including, but not limited to, negligence, breach of contract, restitution, breach of duty or under or in connection with the *Consumer and Competition Act 2010* (Cth) or *Fair Trading Act 1987* (NSW)) it must within the number of days specified in Schedule 1 of the Originating Date give to Mirvac the Prescribed Notice.
- (c) If the Subcontractor fails to give Mirvac the Prescribed Notice within the number of days specified in Schedule 1 of the Originating Date, the Subcontractor agrees that:
 - (i) Mirvac will not be liable for any Claim; and
 - (ii) the Subcontractor releases and waives any entitlement it may have to any Claim against Mirvac,

arising out of or connected with the Notice Subject Matter.

22. Default and Termination

22.1 Default by the Subcontractor

- (a) If the Subcontractor commits a breach of this Subcontract, including if it defaults in one or more of the following respects:
- (i) wholly or partly suspends the Subcontract Works without reasonable cause;
 - (ii) fails to proceed with the Subcontract Works with due expedition and without delay;
 - (iii) fails to proceed with the Subcontract Works in a competent manner;
 - (iv) fails to comply or unreasonably delays in complying with a written direction given by Mirvac;
 - (v) fails to proceed with the Subcontract Works in accordance with the Construction Program (if any), the Subcontract Works Program (if any), or any Short or Mid Range Program without reasonable cause or Mirvac's consent;
 - (vi) fails to comply with clause 3;
 - (vii) fails to provide security in accordance with clause 5;
 - (viii) fails to provide evidence of insurance in accordance with clause 17;
 - (ix) fails to comply with the Mirvac Policies;
 - (x) fails to comply with the Modern Slavery Laws in accordance with clause 19.5(a); or
 - (xi) fails to comply with a provision of the Subcontract,
- then Mirvac may send the Subcontractor a written notice specifying the breach and requiring the Subcontractor to remedy such breach to the satisfaction of Mirvac within the period specified in the notice as determined by Mirvac in its absolute discretion.
- (b) If within the period specified by Mirvac in the written notice referred to in clause 22.1(a), the Subcontractor fails to rectify the breach or, in the event of a default under clauses 22.1(a)(ii) or 22.1(a)(v), fails to satisfy Mirvac that the breach will be rectified without further delay to the progress of the Subcontract Works, then Mirvac may (without prejudice to any other rights or remedies) by written notice to the Subcontractor:
- (i) terminate this Subcontract; or
 - (ii) take out of the hands of the Subcontractor the whole or any part of the Subcontract Works remaining to be completed and suspend payment until it becomes due and payable pursuant to clause 22.5(e).
- (c) If the Subcontractor commits a breach of this Subcontract, including if it defaults in one of the respects listed or referred to above in this clause 22.1, and Mirvac has previously issued a notice to the Subcontractor under this clause 22.1, Mirvac may, without prejudice to any other rights or remedies and upon reliance on the previously issued notice (without being under any obligation to issue any further or new notice), exercise a right referred to in clauses 22.1(b)(i) or 22.1(b)(ii).

22.2 Insolvency Event

- (a) Subject to any applicable statutory stay on the exercise of rights, including under sections 415D, 434J and 451E of the *Corporations Act 2001* (Cth) (as applicable), if an Insolvency Event occurs in respect of the Subcontractor or in respect of the parent company providing the deed of guarantee and indemnity in accordance with clause 5.4 of the Subcontract, Mirvac may, without giving a default notice, exercise the rights under clause 22.1(b).
- (b) The rights and remedies given by this clause 22.2 are additional to any other rights and remedies and they may be exercised notwithstanding that there has been no breach of contract.

22.3 Take Out

- (a) Mirvac may immediately after it has taken any action under clause 22.1(b)(ii) complete (or engage a third party to complete) any part of the Subcontract Works taken out of the Subcontractor's hands and may:
 - (i) use Materials, Temporary Subcontract Works and other things intended for the Subcontract Works; and
 - (ii) without payment of compensation to the Subcontractor:
 - (A) take possession of, and use such of the Temporary Subcontract Works and other things on or in the vicinity of the Site as were used by the Subcontractor; and
 - (B) contract with such of the Subcontractor's subcontractors, suppliers and consultants,
as are required by Mirvac to facilitate completion of the Subcontract Works.
- (b) If Mirvac takes possession of the Temporary Subcontract Works or other things, Mirvac shall maintain them and, subject to clause 22.3(d), on completion of the work, shall return such of them as are surplus.
- (c) When any part of the Subcontract Works taken out of the Subcontractor's hands has been completed, Mirvac shall assess the costs thereby incurred and shall certify as moneys due and payable accordingly the difference between those costs and the amount which would otherwise have been paid to the Subcontractor if the work had been completed by the Subcontractor.
- (d) If the Subcontractor is indebted to Mirvac, then Mirvac may, without limiting any other right of Mirvac under the Subcontract or otherwise, retain any Temporary Subcontract Works or other things taken under clause 22.3(a) until the debt is satisfied. If after reasonable notice, the Subcontractor fails to pay the debt, Mirvac may sell the Temporary Subcontract Works or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess (as determined by Mirvac) shall be paid to the Subcontractor.

22.4 Subcontractor's De-Registration or Non-Compliance with Industrial, Health, Safety and Environmental Requirements

If the Subcontractor:

- (a) is required to be registered or licensed under any Law for the purposes of or incidental to the execution of the Subcontract Works and that registration or licence is cancelled, withdrawn or suspended; or
- (b) breaches a provision of the Subcontract relating to industrial, environmental, health and/or safety matters, such breach including a failure to comply with:
 - (i) the Schedule of Health, Safety and Environmental Requirements;
 - (ii) the HSE Requirements;
 - (iii) the Environmental Laws; or
 - (iv) the WHS Laws,

Mirvac may, without prejudice to any other rights or remedies, by written notice to the Subcontractor, terminate this Subcontract.

22.5 Provisions on Termination

If this Subcontract is terminated under clauses 22.1(b)(i), 22.2 or 22.4 then (without prejudice to any other rights or remedies available to Mirvac):

- (a) Mirvac may, at the Subcontractor's expense, employ and pay other persons to carry out and complete the Subcontract Works and Mirvac and the other persons may:

- (i) enter upon the Site, the Subcontractor's premises or a place where Materials intended for use in the Subcontract Works are stored and take possession of those Materials;
 - (ii) use all Temporary Subcontract Works, including Plant and Equipment, and Materials intended for delivery to or placed on or adjacent to the Site; and
 - (iii) purchase all Materials and do all other acts and things necessary for the carrying out and completion of the Subcontract Works in accordance with the Subcontract,
- (b) the Subcontractor must not and must ensure that a person claiming under the Subcontractor does not, without the express prior written consent of Mirvac, remove Materials, Temporary Subcontract Works or temporary buildings from the Site, the Subcontractor's premises or a place where they are located or stored;
- (c) the Subcontractor, if and when requested by Mirvac, must assign to Mirvac the benefit of agreements for the hire or supply of Materials or Temporary Subcontract Works or for the execution of work under the Subcontract. Mirvac may pay the hirer, the supplier or the subcontractor if payment has not been made by the Subcontractor. The Subcontract Sum will be reduced by the amount of any such payment made by Mirvac;
- (d) the Subcontractor, if and when requested by Mirvac, must remove from the Site all or part of the Temporary Subcontract Works, including its temporary buildings, Plant and Equipment and Materials. If within a reasonable time after receipt of Mirvac's request the Subcontractor fails to comply, Mirvac may notify the Subcontractor in writing of its intention to remove or sell any of the property of the Subcontractor and to hold the proceeds to the credit of the Subcontractor, less all reasonable Losses suffered by Mirvac together with the amount of other Claims that Mirvac may have against the Subcontractor whether connected with the Subcontractor or otherwise; and
- (e) subject to Law, until the Subcontract Works have reached Substantial Completion, Mirvac will not be obliged, whether by a provision of the Subcontract or otherwise, to make payment to the Subcontractor.

22.6 Termination by Notice for Mirvac's convenience

- (a) The Subcontractor acknowledges and agrees that Mirvac may at any time and for any reason in its absolute discretion terminate this Subcontract by written notice to the Subcontractor.
- (b) The Subcontractor, if and when requested by Mirvac, must remove from the Site all or a part of the Temporary Subcontract Works, including temporary buildings, Plant and Equipment and rubbish.
- (c) Upon any termination pursuant to clause 22.6(a), Mirvac's liability to the Subcontractor, whether in contract, negligence, or otherwise will be limited solely to the following:
 - (i) the unpaid value of the Subcontract Works properly performed and completed in accordance with the Subcontract prior to termination (calculated in accordance with clause 12);
 - (ii) the cost of Materials properly ordered and intended for incorporation in the Subcontract Works for which the Subcontractor has paid or is legally bound to pay and the property in which will pass to Mirvac upon payment by Mirvac (subject to the Subcontractor's duty to mitigate such costs); and
 - (iii) the reasonable costs of removal from the Site of the Temporary Subcontract Works, including temporary buildings, Plant and Equipment (subject to the Subcontractor's duty to mitigate such costs).
- (d) The amount to which the Subcontractor is entitled under this clause 22.6 shall be full compensation for the termination and the Subcontractor:
 - (i) will not be entitled to any further payment, compensation, relief or remedy whatsoever from or in connection with the termination of the Subcontract; and

- (ii) shall have no right to initiate any Claim, counterclaim or proceedings under the Subcontract or at law other than in respect of the amount payable under this clause 22.6.
- (e) The Subcontractor must include the provisions of this clause 22.6 in its subcontracts, supply agreements and any other agreement it enters into in respect of the Subcontract Works.
- (f) Mirvac will not be obliged to make any payment whatsoever until the Subcontractor has satisfied its obligations under clause 22.6(b).
- (g) Mirvac has relied on the Subcontractor's acceptance of the terms of this clause 22.6 in entering into this Subcontract and the Subcontractor agrees that the exercise of any right given by this clause 22.6 will not give rise to any grounds for the Subcontractor to allege or claim that Mirvac has breached or repudiated the Subcontract.

22.7 Effect of Termination

The termination of this Subcontract under this clause 22 will not affect or prejudice:

- (a) any other right or remedy of Mirvac, including its right under common law to terminate the Subcontract for the Subcontractor's repudiation or rescission; or
- (b) any warranty or indemnity given by the Subcontractor under this Subcontract or otherwise pursuant to Law.

23. Dispute Resolution

23.1 Notice of Dispute

If a Dispute arises between Mirvac and the Subcontractor, either party may issue a notice of dispute, in writing, to the other party (**Notice of Dispute**). The Notice of Dispute must identify the particulars of the Dispute.

23.2 Conference

Within 10 Business Days after receiving a Notice of Dispute under clause 23.1, senior representatives of the parties must confer at least once, in an effort to resolve the Dispute. All aspects of such conference(s) will be without prejudice.

23.3 Court

Nothing will prejudice the right of a party to institute proceedings to enforce a payment, which is due under the Subcontract, or seek urgent or injunctive relief.

23.4 Head Contract Disputes

If a Dispute arises out of or in connection with this Subcontract whether raised before or after Substantial Completion (**Issue**) and the Issue or an aspect of the Issue has been the subject of a determination, finding or award under the Head Contract or a Related Contract then that determination, finding or award so far as it relates to the Issue or an aspect of the Issue will be binding on the Subcontractor. Where appropriate, Mirvac will use reasonable endeavours to consult with the Subcontractor in relation to the Issue prior to the making of the determination, finding or award under the Head Contract or the Related Contract.

23.5 Consolidation of Disputes

Where 2 or more Disputes arise out of or are connected with the Project (whether or not they involve the Subcontractor) the Subcontractor, if requested by Mirvac, must consent to:

- (a) the consolidation of the determination of the Disputes;
- (b) the Dispute being heard at the same time or one immediately after the other; or
- (c) the proceedings on one Dispute being stayed until the determination of any other of them.

24. General

24.1 Notices

- (a) A notice or other document required or authorised to be issued to or served on a party hereto must be in writing and will be deemed to have been received at the earlier of the time of actual receipt and:
 - (i) if the notice is delivered by hand to the receiver, at the time of delivery;
 - (ii) if the notice is posted in a postage paid envelope addressed to the receiver, 3 days from the date of posting; and
 - (iii) if the notice is sent by email, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient (or if received after 5pm in the place it is received or on a day which is not a Business Day in the place it is received, then the email is deemed to be received at 9.00am on the next Business Day).

The Subcontractor's email address is stated in Schedule 1.

- (b) In addition to the requirements of this clause 24.1, the parties agree that Mirvac may (in its absolute and sole discretion):
 - (i) serve notices and other documents relating to this Subcontract or the Subcontract Works in electronic form via its Electronic Document Control (**EDC**) system; and
 - (ii) in writing, authorise the Subcontractor to serve notices and other documents relating to this Subcontract or the Subcontract Works in electronic form via Mirvac's EDC system, but the Subcontractor will not be permitted to do so in the absence of any such written authorisation.

24.2 Entire Agreement

The Subcontract constitutes the entire agreement between the parties in respect of the subject matter of the Subcontract and supersedes all prior agreements, representations, warranties, promises, statements, negotiations and letters.

24.3 Variation, Waiver, Discharge or Release

- (a) None of the terms and conditions of this Subcontract shall be varied, waived, discharged or released either at law or in equity except with the prior written consent of Mirvac in each instance. For the removal of doubt, any agreement or direction which will or may affect, vary, waive, discharge or release any requirement or obligation arising under or in connection with this Subcontract, must be approved in writing by Mirvac.
- (b) No waiver of a breach of the Subcontract by the Subcontractor or of any rights of Mirvac (including but not limited to rights to insist upon the giving of notices) or arising upon default by the Subcontractor under the Subcontract will be effective unless it is in writing and signed by Mirvac. A waiver of one breach or right by Mirvac will not amount to a waiver in respect of any breaches or rights.

24.4 Retrospectivity

This Subcontract applies retrospectively for the benefit of Mirvac to any work or services carried out prior to the date of this Subcontract by or for the Subcontractor, which is the subject of the Subcontract Works.

24.5 Severability

- (a) The invalidity of any portion of this Subcontract shall not affect the validity of the remaining portion and, unless substantial performance of this Subcontract is prevented or made impossible by any such invalidity, the Subcontract shall continue in effect.
- (b) If a provision of this Subcontract is invalid or unenforceable in a jurisdiction:
 - (i) the provision is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and

- (ii) it does not affect the validity or enforceability of:
 - (A) that provision in another jurisdiction; or
 - (B) the remaining provisions.

24.6 Inspection of Subcontractor's Records

- (a) Within the times and at the locations requested by Mirvac, the Subcontractor must make available for inspection by Mirvac all of its records and other documents in its possession, including but not limited to payroll and taxation records, to allow Mirvac to ascertain:
 - (i) whether the Subcontractor has complied with its obligations under Subcontract;
 - (ii) whether the Subcontractor has paid all relevant taxes, duties or other statutory fees and charges;
 - (iii) whether the Subcontractor has made payments to its subcontractors and suppliers (whether in relation to the Subcontract Works or otherwise) in accordance with the terms of relevant subcontracts and supply agreements; and
 - (iv) the solvency or otherwise of the Subcontractor.
- (b) If Mirvac is not satisfied with the results or findings of any investigation under this clause 24.6, the Subcontractor shall promptly, and within the time nominated by Mirvac, address such dissatisfaction to the satisfaction of Mirvac.

24.7 Capabilities

Upon written request by Mirvac, the Subcontractor must provide at any time during performance of the Subcontract Works evidence which is satisfactory to Mirvac as to its financial capabilities to carry out and complete the Subcontract Works. If the Subcontractor fails to satisfy Mirvac, Mirvac may proceed under clause 22.2 as if the Subcontractor was insolvent.

24.8 Effect of Exclusions or Modifications

Any term of the Subcontract which purports to exclude or modify the effect of any condition, warranty, guarantee, right or remedy will not apply to the extent that such exclusion or modification is not permitted by law including under the provisions of the *Competition and Consumer Act 2010* (Cth) or the *Fair Trading Act 1987* (NSW). Such conditions, warranties, guarantees, rights and remedies as may not be excluded or modified and which would otherwise apply to the Subcontract will apply to the Subcontract.

24.9 Shareholding of the Subcontractor

The Subcontractor warrants, in addition to any other warranty given under this Subcontract, that it will not, without the prior written consent of Mirvac, permit a change in the beneficial ownership of any substantial holding (as that term is defined in the Corporations Act) of the shares in the Subcontractor.

24.10 Depreciation Schedule

The Subcontractor shall if and when requested by Mirvac assist Mirvac in the preparation of a depreciation schedule in respect of the Subcontract Works in accordance with the reasonable requirements of Mirvac or of the applicable Laws, including the *Income Tax Assessment Act 1936* (Cth).

24.11 Governing law

The laws of the Jurisdiction will govern the Subcontract and any arbitration, litigation or other dispute resolution procedures. The parties submit to the non-exclusive jurisdiction of the courts of the Jurisdiction.

Schedule 1– Project Particulars

PART A

1.1 Date for Substantial Completion: **Insert date or alternatively a number of days from a milestone that can be objectively determined, eg “## days following the Date for Commencement”**

Or

Refer to the Date for Substantial Completion for each Stage below

[Drafting Note: Delete One]

1.1 **[Drafting Note: Delete table describing Stages if not applicable (ie if there are not Stages)]**

Date for Substantial Completion of each Stage:

Stage	Description	Date for Substantial Completion
1.	[means the XXXX, as more fully described in the Scope of Works]	[Insert a date or period of time]
2.	[means the XXXX, as more fully described in the Scope of Works]	[Insert a date or period of time]
3.	[means the XXXX, as more fully described in the Scope of Works]	[Insert a date or period of time]
4.	[means the XXXX, as more fully described in the Scope of Works]	[Insert a date or period of time]
5.	[means the XXXX, as more fully described in the Scope of Works]	[Insert a date or period of time]

1.1 Defects Liability Period: **12 months**
(if nothing stated 12 months)

1.1 Second Defects Liability Period: **12 months**
(if nothing stated 12 months)

1.1 Project Manager: **[insert name]**

1.1 Additional requirements for Substantial Completion:

- all Materials, plant, equipment, services and installations have been demonstrated to perform as required by this Subcontract both under normal conditions and under simulated emergency conditions;
- all normal and emergency start up and shut down functions perform in sequence without interruption or malfunction;
- all Materials, plant and equipment have been demonstrated to the satisfaction of Mirvac to have been physically completed, commissioned, tested and is in a continuously useable condition;
- the Subcontractor has provided to Mirvac all warranties which are available from suppliers

and manufacturers for the plant or goods used in or provided for the Subcontract Works; and

5. the Subcontractor has performed the following:
 - (a) the removal of all Subcontractor's rubbish, Plant and Equipment and surplus material from the Site and from the Works, other than as is required for the carrying out of the Subcontractor's obligations in the Defects Liability Period;
 - (b) the cleaning of any glass and sanitary fixtures including but not limited to windows and other external glazing forming part of the Subcontract Works;
 - (c) the vacuuming of any carpeted areas and soft and hard surfaces forming part of the Subcontract Works;
 - (d) the handing over to Mirvac of any documents in its possession issued by or evidencing approvals of any Authority in connection with the Subcontract Works;
 - (e) the handing over to Mirvac of all keys forming part of or required for the Subcontract Works, tagged appropriately;
 - (f) the handing over of all necessary certificates for various building elements and Materials used for the Subcontract Works;
 - (g) the provision to Mirvac by the Subcontractor of all as built drawings, operation and maintenance manuals, information required under the Subcontract which are required for the use, operation and maintenance of the Subcontract Works, and certification from the Subcontractor that the as built design of the Subcontract Works complies with the Subcontract;
 - (h) the provision of all Design Consultant's Certificates in accordance the Subcontract;
 - (i) the provision of a Moral Rights consent, if required pursuant to clause 8.5(b);
 - (j) any other obligation under the Subcontract that prevents or hinders the issue of an occupation certificate or permit.

2.4(a) Design Obligations:

Apply/Do not apply to the Subcontract.

2.4(b) Preliminary Design:

There is a Preliminary Design /There is not a Preliminary Design.

(if nothing stated, there is a Preliminary Design)

2.4(d)	DEEP:	A DEEP applies to the Subcontract Works / A DEEP does not apply to the Subcontract Works (if no election is made, a DEEP does not apply to the Subcontract Works) Drafting Note: A DEEP will typically only apply where the Subcontractor has Design Obligations AND is performing one of the following types of engineering or works: Mechanical Electrical Hydraulic Fire protection Technology Security Façade Architectural steel work Structural steel work
5.1	Approved Form of Security:	Retention moneys or unconditional undertaking (if nothing stated retention moneys)
5.1	Security amount: Retention moneys/amount retained from each progress payment until limit (in the next item below) is reached:	10% (if nothing stated 10% and if the Site is in Queensland, 10% is the maximum amount that can be retained from each progress payment)
5.1	Limit of security: Value of Unconditional Undertakings or limit of security amount/retention moneys (based on the adjusted Subcontract Sum (but only accounting for positive adjustments)):	5% (if nothing stated 5% of the adjusted Subcontract Sum (but only accounting for positive adjustments) and if the Site is in Queensland, 5% is the maximum amount of security which can be held under a subcontract).
5.3(a)(i)	First release of security:	50% of security required to be held under clause 5 (if nothing stated 50%, if the Site is in Queensland Mirvac is entitled to retain a maximum security value of 2.5% of the Subcontract Sum after the Date of Practical Completion of the Project)
5.4	Parent Company Deed of Guarantee and Indemnity:	Is required/Is not required to be provided by the Subcontractor. (if nothing stated, it is not required to be provided)
6.4(a)(i)	Other Properties:	Subcontractor/Mirvac must procure access (if nothing stated, the Subcontractor must procure access)
6.6	Working Hours:	Mon – Fri: [insert]am – [insert]pm Sat: [insert]am – [insert]pm (If nothing stated Mon - Fri 7:00am to 5:00pm, Sat 7:30am to 2:00pm)

6.9(d)	Heavy Vehicle National Laws	National Heavy Vehicle Accreditation Scheme required: ☐ Yes or ☐ No
7.1	Subcontractor's representative:	Name: [insert] Title: [insert] Contact Number: [insert]
8.1	Order of Precedence of Subcontract Documents:	1. Subcontract, including Subcontract Terms; 2. Scope of Works for [insert] dated [insert] ; 3. Drawings, Specifications & other documents attached as or referred to in Schedule 25; and 4. All other Subcontract Documents.
10.1(d)	Time for giving Supplier Warranties:	10 Business Days (if nothing stated 10 Business Days)
10.1(d)	Supply items for which the Subcontractor is required to provide Warranties:	1. [insert] 2. [insert]
11.6	Other works not to be covered up before inspection:	[insert]
11.15(a)(i)	Scales of as-constructed documents to be supplied:	Scale: 1:100 (if nothing stated, 1:100)
11.15(a)	Form of as-constructed documents to be supplied: If hard copy, no. of as-constructed documents to be supplied:	Hard Copy / Electronic Editable form. No: 5 (if nothing stated, 5 copies)
11.15(a)(iii)	Other Information to be supplied:	Nil
12.1(a)	Date for submitting progress claims:	21st day of each month in which Subcontract Works are carried out; and within 10 Business Days of the earlier of: - the expiry of the Subcontract; - the date the Subcontract is terminated; and - a direction to do so by Mirvac. (if nothing stated, 21 st day of each month)
12.2(d)	Time for making payment:	20 Business Days
12.7	Unfixed Materials:	[insert list and replacement value of any Unfixed Materials]
12.12	Rate of Interest for overdue payments:	Nil (if nothing stated, nil)
13.2(c)	Recipient created tax invoices	Mirvac will / will not issue recipient created tax invoices

[Drafting Note: Prior to the roll out and use of Yardi for payment processes (circa end 2021), the default position is that RCTIs will not be issued. After Yardi is rolled out and used for

payment processes, use of RCTIs is the default provision]

- 14.1 Date for Commencement: The date of the Subcontract
[insert a different date if the Subcontractor is not required to commence Subcontract Works until a later date, but note that that Subcontract Works include all off site activities, design, fabrication and manufacture etc]
- 14.6(b) Time within which EOT's must be claimed: 48 hours
(if nothing stated 48 hours)
- 14.7(a) and 14.8(a) Delays for which EOT's granted:
1. A delay caused by the act, default or omission of Mirvac or any of Mirvac's employees or agents (but not the acts, defaults or omissions of any other contractor, supplier or consultant, whether engaged by Mirvac or not, or any act or omission permitted under the Subcontract).
 2. A delay caused by a Variation instructed by Mirvac.
 3. A delay caused by Mirvac instructing the Subcontractor to suspend the performance of all or a part of the Subcontract Works (except to the extent that the suspension is required or contributed to by reason of an act or omission of the Subcontractor or the Subcontractor's Personnel).

- 14.14(a) Rate of liquidated damages: \$[insert] per day
Or
Refer to rate of liquidated damages for each Stage below.

[Drafting Note: Delete One]

- 14.14(a) **[Drafting Note: Delete if not applicable, ie if there are no Stages]**
Rate of liquidated damages of each Stage:

Stage	Description	Rate of liquidated damages per Stage
1.	[means the XXXX, as more fully described in the Scope of Works]	\$[insert] per day
2.	[means the XXXX, as more fully described in the Scope of Works]	\$[insert] per day
3.	[means the XXXX, as more fully described in the Scope of Works]	\$[insert] per day
4.	[means the XXXX, as more fully described in the Scope of Works]	\$[insert] per day
5.	[means the XXXX, as more fully described in the Scope of Works]	\$[insert] per day

- 15.3(a) Variations - time for giving measurements/costs: 5 days
(if nothing stated 5 days)

- 15.4(b) Day Labour Rates: Normal Time +1/2 Double

- | | | | |
|--------------------------------------|-----------------|-----------------|-----------------|
| ☐ Supervisor: | \$[insert] / hr | \$[insert] / hr | \$[insert] / hr |
| ☐ Tradesman: | \$[insert] / hr | \$[insert] / hr | \$[insert] / hr |
| ☐ Labourer | \$[insert] / hr | \$[insert] / hr | \$[insert] / hr |

15.4(b) **% for overhead and profit:** 0%

(if nothing stated, nil))

21.3 **Time for giving of notices of Prescribed Notice** 48 hours

24.1 **Subcontractor's Email address:** [insert]

Schedule 2 – Schedule of Facilities

The Subcontractor must provide all facilities necessary for the execution of the Subcontract Works unless otherwise stated in this Schedule 2.

[Please mark either Subcontractor or Mirvac below to identify responsibility for the relevant facilities]

Facility		Provided by / the responsibility of Subcontractor	Provided by / the responsibility of Mirvac
1.	Lighting		
1.1	General access lighting		
1.2	Task lighting:		
2.	Electricity*		
2.1	Installation of 1 ø 240 volt power to the Site:		
2.2	Installation of 3 ø 415 volt power to the Site:		
2.4	Installation of 1 ø 240 volt power to power boards located in the general work area and Mirvac provided site accommodation: If provided by Mirvac it will be provided in locations determined by Mirvac.		
2.5	Installation of 3 ø 415 volt power outlets at locations determined by Mirvac in the general work area: If provided by Mirvac, [.....] number of outlets will be provided.		
2.9	Cost of electricity for the following purposes: [insert]		X
2.10	Leads, plug tops and safety lead stands:	X	
2.11	Cost of all lead and equipment testing will be borne by:	X	
2.12	*Mircac may impose reasonable restrictions on the use of electricity supply where others require the use of the electricity supply.		
3.	Accommodation		
3.1	The following sheds, accommodation and related equipment: [insert] (if nothing stated - nil) The Subcontractor must provide all other accommodation, including change rooms, store rooms and offices, which are: (a) necessary to comply with Law, awards, industrial agreements, the Site agreement or Mirvac's requirements; or (b) required for the proper execution of the Subcontract Works,		X

Facility		Provided by / the responsibility of Subcontractor	Provided by / the responsibility of Mirvac
	to a standard and in a location acceptable to Mirvac. The Subcontractor must maintain and clean all sheds, accommodation and related equipment used by the Subcontractor.		
4.	Plant and Equipment		
4.1	The following Plant and Equipment: [insert] (if nothing stated - nil) The Subcontractor must clean all Plant and Equipment after use and make good damage other than normal wear and tear		X
5.	Toilet Accommodation and Washing Facilities		
5.1	The following toilet accommodation and washing facilities: [insert] (if nothing stated - nil)		X
6.	Cold Water		
6.1	The following cold water facilities: [insert] (if nothing stated - nil) Mircac will determine the location of the water supply. Mircac may change the location of the water supply as construction proceeds.		X
7.	First Aid		
7.1	First aid facilities		X
8.	Personnel Movement and Materials Handling		
8.1	The following personnel movement facilities, for the period and hours specified below: [insert] (if nothing stated - nil) Period of provision: [insert] (if nothing stated – not applicable) Hours of provision: [insert] (if nothing stated – not applicable)		X
8.2	The following hoisting facilities: [insert] (if nothing stated - nil)		
8.3	The following crane facilities: [insert] (if nothing stated - nil)		
8.4	The following horizontal materials handling facilities: [insert] (if nothing stated - nil)		X
8.5	Where facilities are to be provided by Mirvac under this item 8:	N/A	

Facility		Provided by / the responsibility of Subcontractor	Provided by / the responsibility of Mirvac
	(a) they will only be provided while they are required for Mirvac's purposes; (b) the Subcontractor may be allowed reasonable use of the facilities, subject to the need of Mirvac or others engaged on the Project; (c) the Subcontractor must provide Mirvac with details of personnel and materials to be moved and the proposed date and time; and (d) Mirvac may, in its absolute discretion, alter the times at which any facilities are provided (including where necessary in order to carry out maintenance, or due to the effects of wind and weather). The Subcontractor shall not be entitled to any Claim against Mirvac in relation to, or arising from or in connection with, any change in the times at which any facility provided by Mirvac operates or any ceasing of the operations of any facility.		
8.6	Loading and unloading Materials:	X	
9.	Scaffolding		
9.1	Initial supply, erection and final removal of the following scaffolding (in accordance with the Scaffolding plans/matrix (if provided)): - Location: [insert] - Type and extent: [insert] - Duration: [insert]		X
9.2	Adjustment and moving of scaffolding and/or planks will be carried out by: If by Mirvac, the number of adjustments/movements will not exceed [insert].		
9.3	If: (a) the type of extent of scaffolding; (b) the number of movements or adjustments of scaffolding; or (c) the duration of supply of scaffolding supplied by Mirvac for use by the Subcontractor, differ from those stated in this item 9 and Mirvac thereby incurs additional costs, then the Subcontractor must pay to Mirvac those costs together with a reasonable amount for overhead and profit.	N/A	
9.4	Supply, erect, adjust, dismantle, re-erect where necessary and finally removal of the following scaffolding: [all scaffolding not provided by Mirvac]	X	
9.5	All scaffolding, whether supplied by Mirvac or the Subcontractor, must comply with the requirements of all relevant authorities	N/A	
10.	Safety Equipment		

Facility		Provided by / the responsibility of Subcontractor	Provided by / the responsibility of Mirvac
10.1	All handrails, safety screens, coverings to floor openings, safety harness and the like which are: (a) necessary to comply with the Subcontractor's HSE Management Plan (as defined in Schedule 8) and Law, awards, industrial agreements, the Site agreement or Mirvac's requirements; or (b) required for the safe and proper execution of the Subcontract Works and the protection of persons and property.	X	
11.	Setting Out Information		
11.1	Provide one grid line on each axis and one datum on each level.		[Either Mirvac or not applicable]
11.2	All other setting out	X	
12.	Waste Removal		
12.1	Rubbish Skips		
12.2	Wheelie/Otto/Sulo Bins		
13.	Other Services		
13.1	[insert]		

Schedule 3 – Schedule of Design Requirements

The Subcontractor warrants that it will comply with the following requirements:

1. Design by the Subcontractor

If Schedule 1 states that Design Obligations apply, the Subcontractor must, in accordance with the Subcontract (including this Schedule) and without prejudice to clause 3 of this Schedule, carry out the Design Obligations.

The Design Obligations include the development, correction and finalisation of any Preliminary Design referred to in Schedule 1 and included in or attached to the Subcontract and the undertaking of all tasks necessary to design, document, develop, correct, specify and finalise all designs for those parts and components of the Subcontract Works.

The Subcontractor must properly perform the Design Obligations and the Subcontractor warrants that all such designs and the Subcontract Works generally, when complete, will be fit for purpose and will each comply in all respects with:

- (a) the Subcontract, including the Subcontract Documents and this Schedule of Design Requirements and all documents referred to in the Subcontract;
- (b) the requirements of all Laws and all Authorities, all relevant Australian Standards and the Building Code of Australia;
- (c) standards commensurate with Good Industry Practice; and
- (d) the requirements of Mirvac and any consultant requested by Mirvac from time to time, (hereinafter collectively referred to as the "**Mirvac's Design Requirements**").

In the event of any discrepancy between the Mirvac Design Requirements, the Subcontractor shall be deemed to have allowed for the higher standard, quantum or quality and which higher standard, quantum or quality shall, unless otherwise directed by Mirvac, apply.

The Subcontractor must:

- (i) carry out the Design Obligations and submit design information under clause 5 of this Schedule at the times requested by Mirvac and otherwise in accordance with any Construction Program, any Subcontract Works Program or any Short or Mid Range Program, and if requested by Mirvac, updated by the Subcontractor and approved by Mirvac (**Design Program**);
- (ii) co-ordinate its performance of the Design Obligations, preparation of all Design Documents (created by or for the Subcontractor) and all other related matters with the designs and/or requirements of all other consultants and all Authorities having jurisdiction over Subcontract Works;
- (iii) ensure that all designs created by or for the Subcontractor comply with and satisfy all of the requirements, including any restrictions, easements and other limitations arising from, relating to or imposed by the Site or the Subcontract Works and any designs prepared or provided by Mirvac or its consultants. In this regard, the Subcontractor will be liable for any additional costs arising from or in connection with any amendments or modifications approved by Mirvac and that may be required to the designs or documents of any other consultant for the Project or which otherwise arise as a consequence of or in connection with the designs created by or for the Subcontractor; and
- (iv) provide the Design Consultant's Certificate in accordance with clause 12.9(g) of the Subcontract Terms.

2. Mirvac's Requirements, Information and Co-ordination

- 2.1 The Subcontractor warrants that it has carefully checked the Subcontract Documents forming part of and/or referred to in the Subcontract, including any Preliminary Design, and that all such

documents are suitable, appropriate, correct and adequate for their stated purpose or, if no purpose is stated, their intended purpose.

- 2.2 The Subcontractor acknowledges and agrees that the Design Obligations include the obligation to identify and correct any and all Design Errors or Defects, in any Designs Documents, including any Preliminary Design, provided or made available to the Subcontractor and the Subcontractor agrees that it will be entirely liable for all such Design Errors.
- 2.3 The Subcontractor must take all steps necessary from time to time to clarify and confirm Mirvac's Design Requirements with Mirvac.

3. Professional Services

- 3.1 The Subcontractor warrants and represents that it has the necessary skill, care, diligence, experience and ability to perform the Design Obligations and to co-ordinate and complete the Subcontract Works. The Subcontractor acknowledges that Mirvac has entered into this Subcontract in reliance upon such warranties and representations.
- 3.2 The Subcontractor must carry out the Design Obligations with the degree of professional skill, care, experience and diligence expected of a specialised consultant experienced in providing services equal or similar to those required to properly perform the Design Obligations.
- 3.3 The Subcontractor must effect and maintain on terms and in a form acceptable to Mirvac and appropriate to the Subcontractor's activities, professional indemnity insurance, such insurance including cover in respect of liability arising from a breach of a professional duty or from a negligent act, error or omission by the Subcontractor or its personnel in accordance with the Schedule of Insurances.

4. Design

- 4.1 The Subcontractor warrants that the Design Obligations will:
 - (a) be undertaken only by or under the direction and direct control of properly and suitably qualified and experienced consultants, including architect, engineer or surveyor as appropriate, and each such consultant having not less than 5 years relevant practical experience; and
 - (b) be performed in accordance with the requirements of the Subcontract and all relevant Laws and the requirements of all Authorities.
- 4.2 Whenever requested by Mirvac, the Subcontractor must provide to Mirvac all calculations, certificates and other information relating to Design Documents created by or for the Subcontractor. This includes the requirement under clause 12.9(g) of the Subcontract Terms that the Subcontractor issue with each progress claim a Design Consultant's Certificate given by the author of any part of the Design Documents and which is on terms set out in Schedule 20 including that:
 - (a) the Design Documents referred to in the index of drawings attached to the Design Consultant's Certificate:
 - (1) are fit for the purpose stated in the Subcontract, or if not stated, the intended purpose; and
 - (2) comply with the relevant requirements of the Subcontract, including the Subcontract Documents and the Schedule of Design Requirements;
 - (b) if the Subcontract Works which are the subject of the Design Documents referred to in the index of drawings attached to the Design Consultant's Certificate are constructed in accordance with the Design Documents, those Subcontract Works will be fit for the purpose stated in the Subcontract, or if not stated, the intended purpose; and
 - (c) the design of those parts of the Subcontract Works designed by the Consultant and the subject of the attached index of drawings attached to the Design Consultant's Certificate complies with the Subcontract Documents, the requirements of all Authorities and all Laws.
- 4.3 Mirvac may engage a suitably qualified consultant to review the suitability of the designs created by or for the Subcontractor. If any designs created by or for the Subcontractor are found to be faulty, defective, inconsistent with the requirements of this Schedule or unsuitable, without prejudice to Mirvac's other rights, the Subcontractor shall immediately correct the Design Documents and will be

liable to Mirvac for all costs suffered or incurred by Mirvac from or in connection with such fault, defect, inconsistency or unsuitability. The Subcontractor must co-operate fully with that consultant.

5. Design Development

- 5.1 All Design Documents created by or for the Subcontractor as part of its performance of the Design Obligations must be submitted to Mirvac for review in accordance with the Design Program and, in any event, at a time and in a manner which will allow Mirvac a reasonable time (such time not to be less than 14 days) to review and comment on such Design Documents. If any Design Documents are rejected, the Subcontractor must promptly re-submit amended Design Documents to Mirvac and Mirvac will (at the Subcontractor's risk, including time and cost) have a further 14 days to review such designs.
- 5.2 Reviews undertaken or comments by or on behalf of Mirvac, will not alter or relieve the Subcontractor of its obligations under this Subcontract and the Subcontractor will at all times remain liable for all Design Obligations, including all Design Documents created by or for the Subcontractor.
- 5.3 Mirvac does not assume or owe any duty of care to the Subcontractor:
- (a) to (and is under no obligation to) review or check; or
 - (b) in reviewing or checking,
- any Design Documents submitted by the Subcontractor for errors, omissions, Defects, faults, discrepancies, inconsistencies, ambiguities or compliance with the requirements of the Subcontract.
- 5.4 The Subcontractor must not commence fabrication or construction of any part of the Subcontract Works until all relevant Design Documents, including all "for-construction" documents, have been submitted to Mirvac in accordance with clause 5.1 of this Schedule and Mirvac has had at least 14 days to review such Design Documents and has not rejected them.
- 5.5 Where required by Mirvac, all Design Documents created by or for the Subcontractor must be reviewed by a properly qualified and experienced independent consultant ("the Reviewing Consultant") acceptable to Mirvac. The Reviewing Consultant must provide a written certification to a level of detail and in a format approved by Mirvac and the written certification must be included with the Design Documents to be submitted pursuant to and in accordance with clauses 5.1 – 5.4 of this Schedule.
- 5.6 The Subcontractor must ensure that:
- (a) any Reviewing Consultant providing written certification in accordance with clause 5.5 of this Schedule effects and maintains professional indemnity insurance for not less than the amount specified in the Schedule of Insurances in respect of liability arising from a breach of professional duty or from a negligent act, error or omission by the Reviewing Consultant or its personnel in accordance with the Schedule of Insurances as if references to the Subcontractor in that Schedule were references to the Reviewing Consultant;
 - (b) the Reviewing Consultant providing the written certification, upon request, provides Mirvac with evidence of the terms and currency of the insurance policy referred to in clause 5.6(a) of this Schedule; and
 - (c) the Reviewing Consultant, if requested by Mirvac, complies with the requirements of clause 6 of this Schedule.

6. The Consultant

In the event that the Subcontractor has entered into (or intends to enter into) an agreement ("**the Consultative Agreement**") with a third party ("**the Consultant**") for the performance of any services in relation to its Design Obligations the following will apply:

- 6.1 The Subcontractor must ensure:
- (a) the execution of the Consultative Agreement by the Subcontractor and the Consultant;
 - (b) the Consultant executes a Deed of Adherence and Warranty in the format shown in Annexure A hereto at the time the Consultative Agreement is executed; and
 - (c) a copy of the Deed of Adherence and Warranty, executed by the Consultant, is provided to Mirvac as soon as practicable after execution.
- 6.2 In the event of the termination of this Subcontract or termination of the Subcontractor's employment the Subcontractor must assign, if requested by Mirvac and then on such terms requested by Mirvac, the benefit of the Consultative Agreement to Mirvac.
- 6.3 Without the prior written consent of Mirvac, the Subcontractor must not either:
- (a) terminate the Consultative Agreement; or
 - (b) change any provisions of the Consultative Agreement.
- 6.4 At least 10 days prior to the provision by the Subcontractor of any design brief or other information to the Consultant, the design brief or other information must be submitted to Mirvac for review in accordance with clause 5 of this Schedule.
- 7. General**
- 7.1 The Subcontractor acknowledges and agrees that it:
- a) accepts total responsibility for and assumes the risk of all increased Costs and expenses or damages and Losses, including those arising from or in connection with delay or disruption; and
 - b) will not be entitled to any increase in the Subcontract Sum, any additional payment or any extension of time for reaching Substantial Completion,
- arising out of or in connection with the requirements of this Schedule, including any direction given by Mirvac under or in connection with this Schedule.
- 7.2 The Subcontractor must keep available on the Site for the use of Mirvac, Mirvac and any person authorised by Mirvac, one complete set of the final approved Design Documents and the Subcontract issued to the Subcontractor for the Subcontract Works.
- 7.3 The Subcontractor's obligations and warranties given by it under the Subcontract and this Schedule remain unaffected notwithstanding:
- (a) that design work (including any Preliminary Design) has been carried out by or on behalf of Mirvac and attached to the Subcontract;
 - (b) the involvement of any consultant engaged by Mirvac or the Subcontractor;
 - (c) any supervision, receipt or review of, or comment or direction on, or approval of or expression of satisfaction or dissatisfaction by or on behalf of Mirvac or any consultant engaged by Mirvac;
 - (d) any direction given by Mirvac pursuant to the Subcontract, including this Schedule;
 - (e) any change to the Design Documents or method of work or alteration to the Materials to be incorporated in the Subcontract Works directed by Mirvac;
 - (f) the making available to or the provision to the Subcontractor by or on behalf of Mirvac (whether before or after the date of the Subcontract) of any information or data relating to the Design Obligations, the Subcontract Works or the Site, including any of the Mirvac Design Requirements; or
 - (g) any Variation.
- 7.4 Further, and unless the context otherwise requires, any term used in this Schedule which is defined in the Subcontract Terms shall have the meaning given to that term in the Subcontract Terms.

ANNEXURE A

THE FORMAT OF THE DEED OF ADHERENCE AND WARRANTY

THIS DEED POLL is made on the _____ day of _____ 20[insert], in favour of

1. [Mirvac Constructions Pty Limited / Mirvac Constructions (Qld) Pty Limited / Mirvac Constructions (Vic) Pty Limited / Mirvac Constructions (WA) Pty Limited] ("Mirvac")
by
2. [insert] ABN [insert] of [insert].
("the Consultant").

RECITALS

- A. Mirvac has entered into (or intends to enter into) an Agreement with [insert] ("the Client") for the design and construction of a project at [insert] known as [insert] ("the Project").
- B. Mirvac has entered into (or intends to enter into) a Subcontract ("the Subcontract") with [insert] ("the Subcontractor") for the design ("the Design"), supply and installation of [insert].
- C. The Subcontractor has engaged (or intends to engage) the Consultant in a consultative capacity ("the Consultative Agreement") to provide services ("the Services") which include but are not limited to:
[list services to be provided]
- D. A copy of the Consultative Agreement is attached hereto and marked [insert].

THIS DEED POLL WITNESSES

1. The Consultant warrants to Mirvac and the Client that:
 - 1.1 the Design will be fit for the purpose stated in the Subcontract, or if not stated, the intended purpose;
 - 1.2 the Design will satisfy the requirements of the Subcontract, including the Subcontract Documents and the Schedule of Design Requirements;
 - 1.3 if the Subcontract Works are constructed in accordance with the Design, the Subcontract Works will be fit for the purpose stated in the Subcontract, or if not stated, the intended purpose. will be fit for construction.
 - 1.4 the Design of those parts of the Subcontract Works designed by the Consultant complies with the requirements of all Authorities, all Laws, all relevant Australian Standards and the Building Code of Australia.
2. The Consultant must perform its obligations under the Consultative Agreement for the benefit of Mirvac, the Client and the Subcontractor.
3. The Consultant acknowledges that Mirvac will rely upon the performance by the Consultant of its obligations under the Consultative Agreement in order for Mirvac to perform its obligation to the Client (and its assigns) in relation to the Project.
4.
 - 4.1 Prior to commencing to perform the Services, the Consultant must effect a professional indemnity insurance policy for an amount of [insert] (amount in words - if nothing stated \$5 million) and maintain the policy for a period of seven (7) years after completion of the Project.
 - 4.2 The policy must be in a form and with an insurer acceptable to Mirvac (acting reasonably).
 - 4.3 Mirvac may inspect the policy and the Consultant must not change the policy without Mirvac's prior written consent.
5. If the Subcontract is terminated or the Subcontractor's employment is terminated, the Consultant must do all things necessary to novate its obligations under the Consultative Agreement to the benefit of Mirvac immediately upon a written offer by Mirvac to satisfy the Subcontractor's obligations to the Consultant pursuant to the Consultative Agreement.

6. The Consultant must:
 - 6.1 co-operate and co-ordinate its Services with the Subcontractor, Mirvac and other consultants and contractors associated with the Project;
 - 6.2 carry out the Services with the degree of professional skill, care and diligence expected of a professional consultant providing the same or similar services;
 - 6.3 comply with instructions from Mirvac regarding:
 - (a) the Project safety policy;
 - (b) the Project quality assurance policy;
 - (c) attendance at meetings; and
 - (d) inspections and reports in relation to the Services.
7. The Consultant acknowledges that without the prior written approval of Mirvac it must not:
 - 7.1 terminate the Consultative Agreement;
 - 7.2 agree to any changes to the Consultative Agreement; or
 - 7.3 subcontract all or any part of the Services.
8. Nothing in this Deed Poll imposes an obligation on Mirvac.

EXECUTED AS A DEED POLL

Executed for and on behalf of
the **Consultant** in
accordance with section 127 of
the Corporations Act 2001:

)

.....
Secretary/Director

.....
Director

.....
Name (Please Print)

.....
Name (Please Print)

Schedule 4 – Form of Unconditional Undertaking

This Undertaking ("this Undertaking") made the _____ day of _____ 20____

By _____

(hereinafter called "the **Bank**")

For the benefit of:

[Mirvac Constructions Pty Limited / Mirvac Constructions (Qld) Pty Limited / Mirvac Constructions (Vic) Pty Limited / Mirvac Constructions (WA) Pty Limited], its successors and assigns (hereinafter called "Mirvac") **[Drafting Note: Delete as applicable]**

Whereas

A. By contract dated the _____ day of _____ 20____ ("**Subcontract**")

[insert] (hereinafter referred to as "the Subcontractor") entered into an agreement with Mirvac for the completion of the Subcontract Works as described.

B. Pursuant to the provisions of the Subcontract, the Subcontractor is to provide security to Mirvac.

Now This Agreement Witnesses

At the request of the Subcontractor and in consideration of Mirvac accepting this undertaking:

1. The Bank unconditionally undertakes and covenants to pay on demand without reference to the Subcontractor and notwithstanding any notice given by the Subcontractor to the Bank not to pay same, any sum or sums which may from time to time be demanded in writing by Mirvac to a maximum aggregate sum of [insert] dollars (\$[insert]).
2. The Bank's liability under this Undertaking shall be a continuing liability and shall continue until payment is made under this Undertaking of the said maximum aggregate sum, this Undertaking is returned to the Bank or Mirvac notifies the Bank that this Undertaking is no longer required.
3. The liability of the Bank under this Undertaking shall not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Bank) in any way of the stipulations or provisions of the Subcontract or Variation of the Subcontract Works (as defined in the Subcontract) or acts or things to be executed, performed and done under the Subcontract or by reason of any breach or breaches of the Subcontract by the Subcontractor or Mirvac.
4. This Undertaking shall be governed by and construed in accordance with the laws of the State or Territory where the site in relation to which the Subcontract Works are being performed is situated.

Executed as a deed.

Signed for and on behalf of _____)

_____)

by its duly constituted Attorney _____)

under Power of Attorney No. _____)

_____)

in the presence of _____)

_____)

_____)

Schedule 5 – Substantial Completion Certificate and Deed of Release

EXECUTED AS A DEED POLL IN FAVOUR OF [Mirvac Constructions Pty Limited / Mirvac Constructions (Qld) Pty Limited / Mirvac Constructions (Vic) Pty Limited / Mirvac Constructions (WA) Pty Limited] ("Mirvac") [Drafting Note: Delete as applicable]

by _____ of _____
 _____ ("the **Subcontractor**").

RECITALS:

- A. Pursuant to a Subcontract dated [insert] "the **Subcontract**") the Subcontractor agreed to carry out the [insert trade] works for a project situated at [insert] (the "**Subcontract Works**").
- B. The Subcontractor has agreed to settle all claims, whether past, present or future and whether known or unknown at the date of this deed, under or arising out of or in connection with the Subcontract on the terms and conditions set out in this deed poll with the exception of the Subcontractor's right to make a payment claim under clause 12.14 of the Subcontract and any Claim for which a Notice of Dispute has been issued prior to the date of this Substantial Completion Certificate and Deed of Release under clause 23.

OPERATIVE PART:

1. The Subcontract Sum payable is made up as follows:

Original Subcontract Sum	\$
Variations	\$
Additions	\$
Deductions	\$
Substantial Completion Subcontract Sum including retention (the " Substantial Completion Subcontract Sum ")	\$
Less Retention	\$
Substantial Completion Subcontract Sum excluding retention	\$
Substantial Completion Amount due from Mirvac/Subcontractor to Mirvac/Subcontractor* (including all retention monies) (delete as applicable)	\$

2. The Subcontractor hereby releases and forever discharges Mirvac from and against all claims (including claims based on statute, common law, unjust enrichment or equity and whether past, present or future and whether known or unknown at the date of this deed) arising out of or in connection with the Subcontract or the Subcontract Works (hereinafter referred to as "**Claims**") with the exception of the Subcontractor's entitlement to be paid such portion of the Substantial Completion Subcontract Sum (as set out in clause 1) not yet paid as at the date of this deed poll, the Subcontractor's entitlement to a payment claim under clause 12.14 of the Subcontract and in respect of any Claim for which a Notice of Dispute has been issued prior to the date of this deed poll under clause 23 of the Subcontract.
3. This deed poll may be relied on and enforced by Mirvac in accordance with its terms even though Mirvac is not a party to it. This deed poll may be amended only by another deed poll approved by Mirvac.

4. The Subcontractor warrants that all workers, subcontractors, suppliers, consultants and others who have at any time been employed by the Subcontractor on work under the Subcontract have at the date of this deed been paid all moneys due and payable to them in respect of their employment on work under the Subcontract and that all suppliers engaged by the Subcontractor have been paid all money due and payable to them in respect of all plant and goods used in or provided for the Subcontract Works (hereinafter referred to as **"Third Party Entitlements"**).
5. The Subcontractor hereby indemnifies and agrees to keep indemnified Mirvac from and in respect of all Claims and Third Party Entitlements.
6. The parties acknowledge and agree that terms used in this deed poll shall have the same meaning as the terms defined in the Subcontract unless the context requires otherwise.

DATED this day of 20

Executed as a Deed Poll

Executed by

ACN

pursuant to Section 127 of the

Corporations Act 2001 (Cth)

in the presence of:

.....

Director/Secretary

Director

.....

Name (please print)

Name (please print)

Schedule 6 – Final Certificate and Deed of Release

EXECUTED AS A DEED POLL IN FAVOUR OF [Mirvac Constructions Pty Limited / Mirvac Constructions (Qld) Pty Limited / Mirvac Constructions (Vic) Pty Limited / Mirvac Constructions (WA) Pty Limited] ("Mirvac") [Drafting Note: Delete as applicable]

by _____ of _____ ("the Subcontractor").

RECITALS:

- A. Pursuant to a Subcontract dated [insert] "the Subcontract") the Subcontractor agreed to carry out the [insert trade] works for a project situated at [insert] (the "Subcontract Works").
- B. The Subcontractor has agreed to settle all claims, whether past, present or future and whether known or unknown at the date of this deed, under or arising out of or in connection with the Subcontract on the terms and conditions set out in this deed poll with the exception of any Claim for which a Notice of Dispute has been issued prior to the date of this deed poll under clause 23 of the Subcontract.

OPERATIVE PART:

1. The Final Subcontract Sum payable is made up as follows:

Original Subcontract Sum	\$
Variations	\$
Additions	\$
Deductions	\$
Final Subcontract Sum including retention (the "Final Subcontract Sum")	\$
Less Retention	\$
Final Subcontract Sum excluding retention	\$
Final Amount due from Mirvac/Subcontractor to Mirvac/Subcontractor* (including all retention monies) (delete as applicable)	\$

2. The Subcontractor hereby releases and forever discharges Mirvac from and against all claims (including claims based on statute, common law, unjust enrichment or equity and whether past, present or future and whether known or unknown at the date of this deed) arising out of or in connection with the Subcontract or the Subcontract Works (hereinafter referred to as "Claims") with the exception of the Subcontractor's entitlement to be paid such portion of the Final Subcontract Sum (as set out in clause 1) not yet paid as at the date of this deed poll and any Claim for which a Notice of Dispute has been issued prior to the date of this deed poll under clause 23 of the Subcontract.
3. This deed poll may be relied on and enforced by Mirvac in accordance with its terms even though Mirvac is not a party to it. This deed poll may be amended only by another deed poll approved by Mirvac.
4. The Subcontractor warrants that all workers, subcontractors, suppliers, consultants and others who have at any time been employed by the Subcontractor on work under the Subcontract have at the date of this deed been paid all moneys due and payable to them in respect of their employment on work under the Subcontract and that all suppliers engaged by the Subcontractor have been paid all money due and payable to them in respect of all plant and goods used in or provided for the Subcontract Works (hereinafter referred to as "Third Party Entitlements").

5. The Subcontractor hereby indemnifies and agrees to keep indemnified Mirvac from and in respect of all Claims and Third Party Entitlements.
6. The parties acknowledge and agree that terms used in this deed poll shall have the same meaning as the terms defined in the Subcontract unless the context requires otherwise.

DATED this day of 20

Executed as a Deed Poll

Executed by

ACN

pursuant to Section 127 of the
Corporations Act 2001 (Cth)

in the presence of:

.....

Director/Secretary Director

.....

Name (please print) Name (please print)

Schedule 7 – Schedule of Industrial Requirements

The Subcontractor warrants that it will comply with the following requirements:

1. The Subcontractor must comply with all legislative requirements at its cost including, without limitation, in respect of industrial matters, all State and Federal legislation and codes of conduct which apply or may apply to the Subcontract Works or the Site.
2. The Subcontractor must ensure that all persons it retains (as employees or otherwise) are paid at the rates and on the conditions prescribed by any relevant award, agreement, determination or judgment.
3. The Subcontractor must:
 - (i) comply with the requirements for good and lawful industrial relations at the Site and which are appropriate to or for this Site; and
 - (ii) manage all industrial relations matters concerning the Subcontract Works.
4. The Subcontractor is liable for and must pay as and when it falls due all superannuation and redundancy in respect of the Subcontractor's employees. The Subcontractor shall indemnify and keep indemnified Mirvac and the Principal against any claim whatsoever by any party in respect of the Subcontractor's employees in connection with superannuation and redundancy.
5. The Subcontractor acknowledges that it has informed itself of all industrial requirements concerning the Site and its obligations under the Subcontract and that the Subcontract Sum is deemed to include all relevant and necessary allowances which are or may become due and payable in connection with the Subcontract Works.
6. The Subcontractor has included in the Subcontract Sum for an audit by an independent auditing agency as required with respect to financial records associated with employment of labour.
7. The Subcontractor must ensure that all subcontractors the Subcontractor engages for the Subcontract Works also comply with the requirements stated or referred to in this Schedule 7.
8. The Subcontractor is deemed to have made full allowance in the Subcontract Sum for all costs and expenses relating to or arising from compliance with the requirements stated or referred to in this Schedule 7.

Schedule 8 – Schedule of Health, Safety, Environmental and Sustainability Requirements

A. General

Health, safety, the environment and sustainability are central to Mirvac's core business values. Mirvac's vision is simple - a culture where incidents that compromise health, safety, or the environment are unacceptable. The Subcontractor must ensure that Mirvac's values and vision as they relate to health, safety, the environment and sustainability are achieved.

B. Definitions

In this Schedule 8:

- "HSE"** means Health, Safety and the Environment, which is the term used by Mirvac for the integration of work health and safety management as well as environmental management and sustainability and where the context requires, it means any one of them.
- "HSE Management Plan"** means a document which identifies the HSE risks associated with the performance of the Subcontract Works and the specific scope of works to be undertaken by the Subcontractor and the Subcontractor's Personnel and sets out the arrangements for managing those HSE risks in accordance with the HSE Requirements. The HSE Management Plan shall include as a minimum those things outlined in item C.(2)a. of this schedule.
- "Incident"** includes any occurrence which results in actual or has the potential to cause injury or ill health or damage to the environment;
- "Job Safety & Environment Analysis" or "JSEA"** means a Safe Work Method Statement or similar document which complies with the relevant provisions of the WHS laws and is used to identify task specific HSE management requirements applicable to the Workplace, the Site and the Subcontract Works and which includes as a minimum:
- (1) the name and registered office, ABN/ACN and contact details of the Subcontractor or any subcontractor engaged by the Subcontractor to undertake the Subcontract Works.
 - (2) the signature and date of management of the Subcontractor or its Workplace and Site representative undertaking the Subcontract Works.
 - (3) a description of how specific work tasks are to be carried out.
 - (4) identification of work activities assessed as having medium to high health and safety risks.
 - (5) identification of work activities assessed as having medium to high (significant) environment impacts.
 - (6) identification of all risks to health and safety and environmental impacts relevant to the work activities to be completed.
 - (7) a description of the control measures that will be applied to the work activities.

- (8) list the person(s) responsible for ensuring the control measures are implemented.
- (9) include a description of any plant, equipment or product/hazardous substances to be used in the Subcontract Works.
- (10) the qualifications of the Subcontractor's employees, contractors or agents that shall undertake the Subcontract Works.
- (11) identify any training or permits required to do the Subcontract Works.

“Workplace” means any place, area or location (including the Site) that a person is required to access to undertake their duties in the performance of, or in any way in connection with, the Subcontract Works.

“Principal Contractor” means a Principal Contractor as that term is defined in the WHS Laws.

Otherwise, unless the context requires otherwise, terms used in this Schedule 8 that are defined elsewhere in the Subcontract have the same meaning in this Schedule 8.

C. HSE Obligations & Responsibilities of the Subcontractor

General

- (1) It is an essential requirement of the Subcontract that the Subcontractor and each of the Subcontractor's Personnel comply with the obligations outlined in clause 6.8 of the Subcontract Terms and:
 - a. the Workplace Risk Management Plan (**WRMP**) and
 - b. the Mirvac Minimum Requirements (**MMRs**) relevant to the Subcontract Works; and
 - c. all Mirvac policies and procedures (as amended) that are made accessible to the Subcontractor, including at the following website: <https://www.mirvac.com/Residential/mirvac-hse-documentation>.

HSE Management Plan

- (2) The Subcontractor must submit to Mirvac a comprehensive, detailed and site-specific HSE Management Plan (**HSEMP**) for the Subcontractor and its respective subcontractors within one (1) week of execution of the Subcontract.
- (3) The HSEMP must satisfy the WHS Laws and include as a minimum:
 - I. A description of the Subcontract Works;
 - II. A company policy signed and dated by senior management outlining strategic directions and objectives for health, safety and environment in the Workplace;
 - III. Details of responsibility and accountabilities for key personnel charged with health, safety and environment management and supervisory duties;
 - IV. An organisational flow chart showing the management reporting structure for HSE;
 - V. The qualifications and training of key personnel charged with health, safety and environment management and supervisory duties;
 - VI. The nominated person trained as a Workplace Health and Safety Officer or HSE Representative where 30 or more employees or contractors are to be engaged by the Subcontractor at the specific workplace;
 - VII. A JSEA or equivalent document detailing the hazards, risks and control measures to be implemented so that job tasks to be undertaken can be done so in a manner that is safe and minimises risk to the environment;

- VIII. The person that shall monitor the effectiveness of control measures detailed in the HSE Management Plan and JSEA or equivalent and verify that the control measures are being implemented;
 - IX. Details on how inspection and audit of the implementation of the HSEMP and JSEA or equivalent shall be undertaken, by who and at what time intervals;
 - X. A register of plant and equipment (including any electrical and lifting gear) to be used in the Workplace and records of maintenance, inspection and where relevant registration by the Regulatory Authority;
 - XI. A statutory declaration attesting to, and evidence of, the competency of all employees, agents or other workers that may or will operate plant and equipment where licensing is not required and that all such individuals hold a level of experience and competency necessary for the safe operation and use of the plant and equipment at all times;
 - XII. A register of supply of personal protective equipment to employees or contractors engaged by the Subcontractor;
 - XIII. A register of training undertaken by employees or contractors to be engaged by the Subcontractor including WHS general industry induction/safety awareness training; training in the contents of the JSEA and in the company HSEMP or their equivalent, risk management training for supervisors; and training in the use of any hazardous substances or dangerous goods to be used when performing the Subcontract Works and the Subcontractor's obligations under the Subcontract;
 - XIV. Details of Workplace consultation arrangements for workers, including employees or contractors engaged by the Subcontractor to undertake the work;
 - XV. A register of Certificates of Competency held by persons that shall be required to undertake tasks which require a certificate, including licenses held for any work classified as high risk work as prescribed by the National Standard for Licensing Persons Performing High Risk Work;
 - XVI. A register and risk assessment for any hazardous substances or dangerous goods to be used when performing the Subcontract Works and the Subcontractor's obligations under the Subcontract, and a Safety Data Sheet (with an issue date not greater than 5 years) for each and every product or substance to be used;
 - XVII. A procedure for reporting Incidents that occur during, or that are associated with, any part of the Subcontract Works;
 - XVIII. Details and certificates of currency for Workers Compensation and Public Liability Insurance; and
 - XIX. Details of the Subcontractor's provider for injury management and Return to Work services and the Subcontractor's Rehabilitation Policy, the name of its Rehabilitation Coordinator and a suitable duties register.
- (4) The Subcontractor's HSEMP must be:
- a. prepared in accordance with the Mirvac Workplace Risk Management Plan (**WRMP**) and conform to Mirvac's HSE Requirements; and
 - b. signed off and dated by a person who has the authority to ensure that the HSEMP is followed.
- (5) The Subcontractor's HSEMP may be approved or rejected by Mirvac (acting reasonably). The Subcontractor will amend the HSEMP following receipt of any comments made by Mirvac to ensure that the HSEMP complies with the Mirvac WRMP and HSE Requirements.
- (6) The Subcontractor must:

- a. meet with Mirvac Site Management and HSE personnel a minimum of three (3) weeks prior to commencing works onsite to review the WRMP and the HSEMP and all safety documentation. Any amendments or alterations as instructed by Mirvac's HSE representative and/or as deemed necessary are to be completed promptly so as not to affect the Subcontractors ability to work on site. The subcontractor must sign both the HSEMP and WRMP and ensure the signed plans are returned to Mirvac prior to the commencement of the Subcontract Works;
 - b. review the HSEMP at regular intervals, with evidence of review maintained and available on request. Any changes to the HSEMP are to be addressed by reviewing and amending the existing HSEMP with provision of changes to Mirvac for review; and
 - c. not commence any works on the Site unless and until the Permit For Works To Proceed has been issued to the Subcontractor by Mirvac. In the event that Mirvac accepts the HSEMP, Mirvac will issue the Subcontractor with a Permit For Works To Proceed or its equivalent.
- (7) The Subcontractor must ensure:
 - a. the Subcontract Works are performed safely and at all times in accordance with the HSEMP and WRMP; and
 - b. Mirvac's safety requirements, as outlined in "Services Provider Tender & High Risk Work HSE Assessment" are satisfied.
- (8) The Subcontractor must:
 - a. conduct hazard identification and risk analysis on an ongoing basis to ensure safe systems of work are prepared and implemented which eliminate risks to health and safety (or minimise the risks to health and safety so far as reasonably practicable, if it is not practicable to eliminate the risks) and minimises impacts on the environment;
 - b. prepare a compliant Job Safety and Environmental Analysis (**JSEA**) for all required tasks, including any "High Risk Construction Work" within the meaning of WHS Laws, and provide the JSEA to Mirvac prior to commencement of the work;
 - c. comply with and ensure the Subcontractor's Personnel comply with the JSEA;
 - d. ensure all relevant critical controls listed in the Mirvac Site Specific Project Risk & Opportunity register for any activities associated with the Subcontract Works are inserted into the JSEA, or equivalent, and reviewed monthly, at a minimum, or more frequently if required by the Subcontractor or WHS Laws.
- (9) The Subcontractor must have a mechanism in place for staying abreast of changes in the WHS Laws and applying these to the HSEMP.
- (10) The Subcontractor must identify triggers for material changes in the HSEMP in respect of which updates will be provided to Mirvac as soon as possible on these changes, including:
 - a. Material changes in key health and safety risks;
 - b. Material changes in the nature of the activities being undertaken;
 - c. Key personnel changes; and
 - d. Change of law.
- (11) If a risk to health, safety or the environment arises, the Subcontractor must immediately comply with any direction given by Mirvac that the Subcontractor stop work and not resume work until directed by Mirvac.
- (12) The Subcontractor must immediately notify Mirvac when any corrective work which it has been instructed to undertake has been completed. A record of HSE instructions and their timely close-out must be maintained at all times by the Subcontractor.

- (13) The Subcontractor must store, remove and dispose of all construction materials and waste at the Site in a safe, lawful and proper manner and otherwise to the satisfaction of Mirvac.

Personnel and Personnel Capabilities

- (14) The Subcontractor must:
- a. nominate an employee to be elected as an HSE committee/HSE consultation group/work group member to attend the workplace HSE committee/HSE consultation group/work group meetings;
 - b. where one or more workers at the Site request a Health and Safety Representative (**HSR**), participate in the election of a HSR in compliance with the relevant legislation. Any elected or nominated HSR is to complete the accredited HSR Training within a 3-month period of starting on site and provide proof of completion/attendance to Mirvac;
 - c. provide a Supervisor and/or director for HSE Implementation Reviews as requested by Mirvac with a review period not to exceed 6 months;
 - d. ensure Director(s) conduct regular HSE related inspections at intervals agreed with Mirvac and provide evidence of these inspections to the Site HSE resource;
 - e. ensure all site personnel attending a Mirvac project hold a current industry impairment training card / certification (IITC), or equivalent, issued by the Building Trades Group or another suitably qualified organisation; and
 - f. ensure the Subcontractor's Personnel hold the appropriate qualification, certification and task specific training that is required to perform the Subcontract Works including any additional refresher training that may be required.
- (15) The Subcontractor must ensure all workers engaged in the performance of the Subcontract Works have completed the following within the two years prior to starting on site:
- a. a recognised WHS General Industry Induction/Safety Awareness Training course;
 - b. Mirvac Company HSE online induction;
 - c. Mirvac's site specific Health & Safety induction;
 - d. Work activity induction training;
 - e. Manual handling and hazardous manual task risk reduction training; and
 - f. Provide, participate and consult in the development of detailed workplace specific JSEAs.

Copies of all certificates of competency, licences and other qualifications as determined necessary to complete any work shall be copied and attached to the record or where no copier is available the serial numbers of certificates of competency shall be recorded.

- (16) The Subcontractor must:
- a. ensure Site Supervisors have undertaken WHS Risk Management/Line Managers Training, are familiar with the Work Safe Stay Safe behavioural requirements and have completed any safety behaviour-based training required by Mirvac, providing Mirvac with evidence of this training prior to works commencing on site. A trained Site Supervisor should be available for the full duration of the Subcontract Works and be contactable twenty-four (24) hours a day, seven (7) days per week to respond to all emergency issues raised by Mirvac, Authorities or the like;
 - b. attend training courses provided by Mirvac or its nominees;

- c. ensure the health, safety and welfare of the Subcontractor's Personnel and that the health and safety of other persons at or near the Workplace or the Site (including members of the public) is not put at risk from the Subcontract Works;
 - d. so far as reasonably practicable, ensure that the Subcontractor's Personnel perform all duties in a manner which will ensure their own and others health and safety and ensure the Subcontract Works do not put at risk the health and safety of members of the public, Clients or others;
 - e. ensure compliance with Mirvac's UV Radiation/Sunlight requirements. This includes but is not limited to nomination of UV as a risk in all JSEAs or SWMSs and the like prepared for outdoor works. Control measures as a minimum should include availability of brim and neck flap for safety helmets, sunglasses complying to AS/NZS1067 and sun screen lotion with a minimum rating of SPF 30+ and the requirement of all site personnel to wear long sleeved shirts at all times.
- (17) The Subcontractor must provide to Mirvac weekly records of the number of the Subcontractor's Personnel at the Workplace or the Site, and the hours worked including:
- a. the number of labour hire workers on site;
 - b. the number of indigenous employees and labour hire workers on site; and
 - c. the number of apprentices and young workers on site.
- (18) The Subcontractor must:
- a. notify Mirvac of the name and qualifications of the Subcontractor's supervisor(s);
 - b. induct all workers and the Subcontractor's Personnel prior to commencement of the Subcontract Works. Such induction must include workplace specific induction training and work activity induction training including the health safety environment control measures to be carried out for the work and not permit any person to commence works unless they:
 - i have been inducted into the JSEA or equivalent for the Subcontractor's Workplace and Site activities; and
 - ii hold a current card or other agreed method for providing proof of completion of the workplace induction relevant to the Site at all times while at the Workplace or Site. The induction card or other agreed method shall be provided at the Workplace or the Site specific induction and a photocopy of the card or other agreed method or record of its serial number shall be recorded on Mirvac Group Workplace Induction Record. Persons unable to demonstrate completion of WHS General Industry Induction/Safety Awareness Training (e.g. White Card requirement in NSW) shall not be inducted and shall be excluded from the Workplace and the Site;
 - c. assist in the implementation of and encourage the establishment of workplace consultative arrangements, toolbox talks, and other activities aimed at identifying, discussing and resolving health safety and environment issues;
 - d. use a combination of communication processes, e.g. HSE committee/HSE consultation group/work group meetings, toolbox or pre-start talks and other consultative arrangements, to consult with the Subcontractor's Personnel in regard to the hazards, risks and control measures that have the potential to impact on their health, safety or welfare and the environment and in particular the work activities they are to undertake including any changes to the scope of that work. Agreed consultative arrangements for the Workplace or the Site may be further outlined in a Mirvac Group Consultation Statement displayed prominently at the Workplace. The Subcontractor must actively participate in HSE meetings, toolbox talks (a

minimum of 1 per week to be conducted), daily pre-start talks, and other consultative arrangements;

- e. supply and use the correct personal protective equipment provided, including the provision of personal protective equipment for visitors to site. All personal protective equipment shall conform to the appropriate Australian/New Zealand Standard at all times and must include Head Protection, Occupational Protective Footwear, Hi Visibility Apparel, Protective Clothing, Eye Protection, Hearing Protection, Hand Protection, Ultra Violet Light Protection and any other personal protective equipment applicable to the Subcontract Works;
 - f. provide adequate labour for a mandatory weekly work group area clean up at a 1: 14 worker ratio for a period of two (2) hours. The Subcontractor will supply equipment to its nominated employees to conduct the work;
 - g. provide details of the Subcontractors Return to Work Coordinator. If the Subcontractor does not have a representative, Mirvac will recommend a company prior to commencing works;
 - h. actively participate in injury management, suitable duties and return to work programs.
- (19) Mirvac has a zero tolerance of violence against women as supported by our efforts to obtain White Ribbon Workplace Accreditation. Violence against women is defined by the United Nations as “any act of gender based violence that results in or is likely to result in physical, sexual or physiological harm or suffering to women”. The Subcontractor acknowledges and undertakes to uphold a zero tolerance towards violence against any person in the workplace in its interaction with employees, agents and subcontractors of the Mirvac and in delivery of the Scope of Works.
- (20) Inform Mirvac, for approval, if it intends to subcontract any works out and provide details of how it will ensure that the subcontractor for this segment of work meets all the requirements of this document. The Subcontractor will provide evidence it has reviewed its Subcontractor’s Health Safety Environment Plan, or equivalent, and safety documentation against Mirvac’s Service Provider Authority for Works to Proceed Parts A and B, prior to issuing to Mirvac for review. The Subcontractor must provide information and assistance to Mirvac, if requested, in relation to reviewing and monitoring the effectiveness of this new Subcontractor’s implementation of the HSEMP, including the JSEA or equivalent.

D. Corrective Action Responses

- (21) Should the Subcontractor feel that satisfactory action has not been taken on a reported HSE concern, the following procedure should be adopted:
- a. The Subcontractor shall notify either the HSE representative (where elected), the HSE committee representative (where elected), Mirvac’s Workplace Health and Safety Officer or Mirvac’s Workplace Manager and in all events Mirvac’s representative on Site;
 - b. The above nominated representative and the Subcontractor must then consult with Mirvac’s Workplace Manager;
 - c. Where the HSE issue is still not satisfactorily resolved, the parties shall advise the HSE committee or other consultative group which shall convene a meeting to discuss the issue;
 - d. The HSE committee or other consultative group shall consider the HSE issue and make recommendation on the action required to resolve the issue;
 - e. Where resolution of the issue cannot be achieved at a workplace level, Mirvac’s Construction Manager and Division/Regional HSE Manager shall be consulted and provide a directive or seek specialist advice from the Group General Manager Health Safety Environment;
 - f. Should the matter still remain unresolved at the Workplace level Mirvac’s Workplace Manager shall (subject to the approval of the Construction Manager) contact the relevant statutory authority to assist in resolution of the issue; and

- g. Where the relevant statutory authority is consulted any decision made by the authority will be binding.

E. Consequences for failing to comply

- (22) Without limiting any other provision of the Subcontract, a failure by the Subcontractor, the Subcontractor's Personnel or their agents to comply with the requirements of this Schedule 8 shall be deemed to a substantial breach of the Subcontract. Additionally, and without limiting Mirvac's rights elsewhere under the Subcontract, if the Subcontractor the Subcontractor's Personnel or their agents fails to comply with the requirements of this Schedule 8, Mirvac:
 - a. may (at the expense and risk of the Subcontractor) direct the cessation of the Subcontract Works or any part of them, until such time as the HSE Requirements are adhered to by the Subcontractor to the satisfaction of Mirvac, and Mirvac may recover all costs and losses of so doing from the Subcontractor as a debt due to Mirvac. This right also applies to plant and equipment that does not comply with statutory requirements, HSE Requirements, Australian Standards, Manufacturers specifications or Codes of Practice or Industry Standards and in which event the relevant plant or equipment may be confiscated or isolated by Mirvac. Confiscated or isolated plant or equipment must not be used until they comply with statutory requirements, HSE Requirements, Australian Standards, Manufacturers specifications or Codes of Practice or Industry Standards; and
 - b. reserves the right of dismissal from the Workplace or the Site of any individual person identified as having engaged in gross or dangerous misconduct in relation to imminent and serious potential for risks to health and safety or potential impacts of material harm on the environment and to further report any serious act to the relevant statutory authorities to consider criminal proceedings.

F. Notification and reporting obligations

- (23) The Subcontractor must:
 - a. promptly notify Mirvac in writing of any incident, lost time injury, property or environmental damage which occurs during the performance of, or that is associated with any part of, the Subcontract Works; and
 - b. notify Mirvac immediately (and in any event, within 1 hour of) any incident that is required under WHS Laws to be notified to an Authority.
- (24) The Subcontractor will conduct or procure an investigation into the incident if requested by Mirvac.
- (25) The Subcontractor will provide (if the information or document is in the possession or control of the Subcontractor), or procure (if the information or document is not in the possession or control of the Subcontractor) the provision to Mirvac within 5 Business Days all information and documents, of the type identified below, requested by Mirvac in relation to any work health and safety issue arising from or in connection with the Subcontract Works:
 - a. a copy of any notice issued by an Authority requiring the Subcontractor or the Subcontractor's Personnel to provide information or documents to the Authority;
 - b. a copy of any information or document provided by the Subcontractor or the Subcontractor's Personnel to an Authority;
 - c. details of any legal proceedings commenced against the Subcontractor or the Subcontractor's Personnel by an Authority;
 - d. an investigation report prepared by or at the instruction of the Subcontractor or the Subcontractor's Personnel;

and the parties agree that the Subcontractor will not be required to provide information in breach of the *Privacy Act 1988 (Cth)*, information that is subject to legal professional privilege (except in

respect of information provided pursuant to subclause (d)) or is otherwise not permitted by law to be disclosed.

- (26) The Subcontractor will provide Mirvac with such assistance as Mirvac reasonably requires in relation to any investigation or legal proceedings concerning any incident notifiable to an Authority under WHS Laws.
- (27) The Subcontractor must report to Mirvac, on a monthly basis, on the following:
- a. data on lag and lead key performance indicators, which may change over time, including:
 - i. number of lost time injuries
 - ii. number of working days lost due to injury
 - iii. the prognosis of any injured worker, the status of any damaged property, environmental damage, and
 - iv. the progress of the implementation and outcomes of any corrective actions, status of return to work plans and identification of workers on alternate duties,
 - b. records of all corrective and preventative actions taken by the Subcontractor following any health and safety incident, and audits of such actions;
 - c. cooperation, coordination, and interface issues with other contractors;
 - d. summary updates relating to community issues and potential community issues;
 - e. complaints received by the Subcontractor in relation to the Subcontract Works;
 - f. interactions with WHS Authorities;
 - g. safety culture initiatives;
 - h. industry WHS matters of relevance such as new equipment or technology that eliminates or reduces risks; a major incident involving other parties
 - i. other key issues that have the potential to affect the Subcontract Works; and
 - j. details of the status, implementation, operation and effectiveness of the WHS management plan including processes for collecting information on incidents, hazards and risks, and responding to that information in a timely way, and processes for verifying the Subcontractor's risk management, incident response, legal compliance, and resource allocation mechanisms re WHS are working;
 - k. any other information Mirvac reasonably requires.
- (28) Where medical treatment is required for an injury, the Subcontractor's supervisor is to accompany the injured person to the nominated medical centre and provide WorkCover medical certificates and Return to Work Plans for all injured employees.

G. HSE audit

- (29) Without limiting Mirvac's rights to conduct an audit under any other term of the Subcontract, the Subcontractor must:
- a. carry out audits of compliance with WHS Laws by the Subcontractor and the Subcontractor's Personnel and provide written copies of the results of such audits as Mirvac reasonably requires; and
 - b. assist Mirvac or another third party appointed by Mirvac to conduct audits of the Subcontractor's compliance with health and safety obligations by the Subcontractor and the Subcontractor's Personnel.

- (30) If the Subcontractor is required to conduct an audit under this paragraph it must do so within the time reasonably required by Mirvac and promptly report in writing to Mirvac on the outcome of the audit.
- (31) If Mirvac conducts an audit under this clause the Subcontractor must cooperate with Mirvac and provide access, at all reasonable times and on reasonable notice, to:
 - a. data, records and any other information in the possession or control of the Subcontractor; and/or
 - b. the Subcontractor's Personnel for the purpose of obtaining information for the audits.
- (32) If an auditor identifies any breach of the WHS Laws, the Subcontractor must, within a reasonable timeframe given the nature of the breach and at its own cost, do all things necessary to remedy that breach.
- (33) The Subcontractor must supply to Mirvac such information about the WHS management systems as requested by Mirvac and must at all times keep Mirvac informed of all relevant information that becomes known to the Subcontractor concerning the safe use, supply and maintenance and/or storing of plant or substances.

H. National Greenhouse and Energy Reporting Act 2007 (NGER Act)

- (34) Mirvac may be required to comply with the provisions of the NGER Act and to report on and disseminate information relating to greenhouse gas emissions, greenhouse gas projects, energy production and energy consumption, and for other purposes. In the event that Mirvac or any related entity is required to comply with the provisions of the NGER Act, as may be notified by Mirvac to the Subcontractor from time to time, then the Subcontractor agrees to promptly and at its own cost:
 - a. procure and make available to Mirvac, in a form and at the times requested by Mirvac, all information, data and other documents requested or sought by Mirvac such that Mirvac (and any related entity) can comply with its obligations under the NGER Act; and
 - b. do all things necessary or requested by Mirvac to ensure that Mirvac (and any related entity) is not in breach of its obligations under the NGER Act.

I. Non-Compliance with Health, Safety and Environmental Requirements

- (35) Without limiting any other provision of this Subcontract (including clauses 6.8, 16 and 22 of the Subcontract Terms), if the Subcontractor breaches a provision of the Subcontract relating to environmental, health and / or safety matters, such breach including a failure to comply with:
 - a. the Schedule of Health, Safety and Environmental Requirements;
 - b. the HSE Requirements;
 - c. the Environmental Laws; or
 - d. the WHS Laws,
- (36) The Subcontractor must immediately pay to Mirvac by way of liquidated damages the amount of \$50,000. Any payment made by the Subcontractor under this paragraph I of Schedule 7 shall be a debt due and owing from the Subcontractor to Mirvac and may be deducted from progress payments, from moneys retained or from the unconditional banker's undertakings provided by the Subcontractor under the Subcontract.
- (37) The Subcontractor agrees that the amount of liquidated damages payable under this paragraph I of Schedule 7 is an agreed and genuine pre-estimate of Mirvac's administrative and management costs arising from a breach by the Subcontractor of a provision of the Subcontract relating to environmental, health and / or safety matters. Nothing in this clause limits or affects Mirvac's right to claim and be paid damages for any other loss arising from a breach by the Subcontractor of a provision of the Subcontract relating to environmental, health and / or safety matters.

J. Alcohol & Other Drugs

- (38) The Mirvac Alcohol & Other Drugs Policy (**AOD Policy**) applies to all workplaces under the management or control of a Mirvac entity. The AOD Policy, amongst other things, identifies those activities which are prohibited including:
- a. undertaking safety critical roles or work at high risk workplaces under the influence of AODs;
 - b. using illegal drugs or prescription drugs which impairs a person's ability to perform their duties; and
 - c. driving a motor vehicle or operating plant or equipment whilst impaired by AOD.
- (39) The Subcontractor must have an approach to managing drug and alcohol issues which ensures none of the Subcontractor's Personnel attending the Workplace or the Site do so under the influence of alcohol or other drugs. If instructed by Mirvac, the Subcontractor must remove from the Site any of the Subcontractor's Personnel who attend the Workplace or the Site under the influence of alcohol or other drugs. The Subcontractor must comply immediately with Mirvac's instruction and must ensure that these personnel do not return to the Site without the prior written approval of Mirvac.
- (40) Without limiting the previous paragraph, whenever Mirvac is the Principal Contractor the Alcohol & Other Drug Procedure (**AOD Procedure**) applies. The Procedure applies to all persons attending the construction site, including Mirvac employees, Service Providers' employees and visitors. The purpose of the Procedure is to manage alcohol and other drugs and their effects on workers' fitness for work whilst performing duties or attending the workplace. The Procedure establishes a regime for drug and alcohol tests and ensures Mirvac Constructions has a mechanism to appropriately manage the misuse of alcohol and other drugs in the workplace through education, counselling, rehabilitation and discipline, where required. The Subcontractor acknowledges the AOD Procedure was provided to it during the tender process and agrees to require the Subcontractor's Personnel to comply with the AOD Procedure. The AOD Procedure is also available on request.

K. Sustainability Obligations

- (41) Mirvac is a partner of the Australian Sustainability Supply Chain School (ASSCS). The aim of the ASSCS is to improve sustainability knowledge and competency across the supply chain in Australia's construction and infrastructure industry. Mirvac encourages its subcontractors to become members of the ASSCS. Please join the ASSCS by signing up for free, complete the self-assessment for your company and target bronze membership by using at least five resources online within 6 months of signing up.
- (42) Mirvac's strategy for a sustainable future called is 'This Changes Everything'. To assist Mirvac to achieve its strategy, the Subcontractor agrees to:
- a. Provide all reasonable assistance to enable Mirvac to achieve the goals set out in This Changes Everything and Mirvac's Reconciliation Action Plan.
 - b. Actively work with Mirvac to meet waste reduction and recycling targets and minimise packaging coming to site.
 - c. Use best endeavours to provide details of social enterprise and Indigenous businesses engaged directly by the subcontractor.
 - d. Have a written environmental policy (which will be provided to Mirvac on request).
 - e. Use its best endeavours to have a written environmental management plan which identifies and minimises the energy, water and waste impacts of the works undertaken by the Subcontractor.

- f. Ensure the Subcontractor's Personnel attend all sustainability educational programs delivered or arranged by Mirvac, within reason, which aim to increase awareness of environmental and social sustainability issues.

L. Vendor Code of Conduct

The Subcontractor warrants that it has read and understood, and agrees to be bound by, the Mirvac Vendor Code of Conduct (details of which may be accessed at <http://www.mirvac.com/contact-us/vendors>).

Schedule 9 - Building Code Requirements

1. Mirvac must comply with the *Code for the Tendering and Performance of Building Work 2016* ("**Code**") made under section 34 of the *Building and Construction Industry (Improving Productivity) Act 2016* ("**Act**") on the Project in order to undertake present and future Australian Government directly or indirectly funded construction projects. A copy of the Code is available at <https://www.abcc.gov.au/building-code/building-code-2016>.
2. Mirvac is required by the Code to require all subcontractors engaged to perform work on this Project to comply with the Code.
3. The Subcontractor warrants that, at the time that it entered into the Subcontract with Mirvac the Subcontractor's work practices and the industrial instruments (as defined in the Code), to which the Subcontractor is a party, comply with the Code.
4. The Subcontractor agrees that whilst carrying out the Works under the Subcontract, it and its subcontractors will continue to comply with the Code on this Project and on any other project where the Subcontractor is required to comply with the Code.
5. Compliance with the Code will not relieve the Subcontractor from responsibility to perform the Subcontract and the Works under the Subcontract or from liability for any defect in the Works arising from compliance with the Code.
6. Where a change in the Subcontract is proposed and that change would affect compliance with the Code, the Subcontractor must submit a report to Mirvac specifying the extent to which the Subcontractor's compliance with the Code will be affected.
7. The Subcontractor must maintain adequate records of the compliance with the Code by:
 - (a) the Subcontractor;
 - (b) any subcontractors or consultants engaged by the Subcontractor to perform any of the work under the Subcontract or on or in connection with the Project; and
 - (c) its related entities (as defined in the Code) which are or will be performing work under the Subcontract or on or in connection with the Project.
8. If the Subcontractor does not comply with the requirements of the Code in the performance of this Subcontract such that a sanction is applied by the Australian Building & Construction Commission ("ABCC"), without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Subcontractor or a Related Entity in respect of work funded by the Commonwealth or its agencies.
9. While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, the Subcontractor may give preference to subcontractors and sub-consultants that have a demonstrated commitment to:
 - (a) adding and/or retaining trainees and apprentices;
 - (b) increasing the participation of women in all aspects of the industry; or
 - (c) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
10. The Subcontractor must not appoint a subcontractor or consultant in relation to the Project where:
 - (a) the appointment would breach an exclusion sanction imposed by the Minister for Employment or the ABCC;
 - (b) the subcontractor or consultant is covered by, or its related entities are covered by, an enterprise agreement that does not meet the requirements of section 11 of the Code;
11. For the purpose of monitoring the Subcontractor's compliance with the Code, the Subcontractor must permit an inspector, the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position with the ABCC, full access to the place or places at which Works under the Subcontract are being or have been carried out and to any place of business where documents relevant to a Compliance Purpose are held or located.

12. Without limiting clause 11 of this Schedule and clause 74 of the Act, the Subcontractor must permit an inspector, the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position appointed or engaged by the ABCC with access to:
- (a) inspect any work, material, machinery, appliance, article or facility;
 - (b) inspect and copy any record relevant to the Project and work under the Subcontract;
 - (c) interview any person; and
 - (d) request the Subcontractor to produce a specified document within a specified period, as is necessary for a Compliance Purpose.
13. For the purpose of monitoring compliance with the Code by:
- (a) related entities (as defined in the Code) of the Subcontractor engaged on or in connection with the Project or the Works under the Subcontract; and
 - (b) subcontractors engaged by the Subcontractor on or in connection with the Project or the Works under the Subcontract,
- (together, **Third Party Compliance**),
- the Subcontractor agrees to require that its subcontractors and its related entities (as defined in the Code) permit an inspector, the Commonwealth or any person authorised by the Commonwealth, including a person appointed or engaged by the ABCC:
- (c) full access to the place or places at which work under the Subcontract or in connection with the Project are being or have been carried out and to any place of business where documents relevant to Third Party Compliance are held or located; and
 - (d) without limiting Clause 13(c) of this Schedule and clause 74 of the Act, to:
 - (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to the Project and work under the Subcontract;
 - (iii) interview any person; and
 - (iv) request such subcontractor or related entity (as defined in the Code) to produce a specified document within a specified period in person, by fax or by post,
- as is necessary for Third Party Compliance.
14. The Subcontractor must ensure that all subcontracts to which it is a party in connection with the Project or the Works under the Subcontract impose obligations on subcontractors to such contracts equivalent to the obligations imposed on the Subcontractor under Clauses 1 to 14 of this Schedule.

Schedule 10 – New South Wales Code of Practice Requirements

1. Mirvac must comply with and meet any obligations imposed by the New South Wales Government's NSW Industrial Relations Guidelines: Building and Construction Procurement (**New South Wales Guidelines**) on the Project in order to undertake present and future New South Wales Government building and construction work. A copy of the New South Wales Guidelines is available at: <https://www.industrialrelations.nsw.gov.au/industries/key-industries-in-nsw/building-and-construction/>.
2. Mirvac is required by the New South Wales Guidelines to require all subcontractors engaged to perform work on this Project to comply with and meet obligations imposed by the New South Wales Guidelines.
3. The Subcontractor warrants that, at the time that it entered into the Subcontract with Mirvac:
 - (a) the Subcontractor's work practices and the industrial instruments (as defined in the New South Wales Guidelines) to which the Subcontractor is a party, comply with the New South Wales Guidelines;
 - (b) it and its related entities (as defined in the New South Wales Guidelines) have complied with:
 - (i) the New South Wales Guidelines on all its other projects to which the New South Wales Guidelines apply or have applied; and
 - (ii) all applicable legislation, court and tribunal orders, directions and decisions, and industrial instruments;
 - (c) that neither it, nor any of its related entities, are subject to a sanction or other circumstance that would preclude the Subcontractor from performing the Works or tendering for work to which the New South Wales Guidelines apply.
4. The Subcontractor agrees that whilst carrying out the Works under the Subcontract, it and its subcontractors will continue to comply with the New South Wales Guidelines on this Project and on any other project where the Subcontractor is required to comply with the New South Wales Guidelines.
5. Compliance with the New South Wales Guidelines will not relieve the Subcontractor from responsibility to perform the Subcontract and the Works under the Subcontract or from liability for any defect in the Works arising from compliance with the New South Wales Guidelines.
6. Where a change in the Subcontract is proposed and that change would affect compliance with the New South Wales Guidelines, the Subcontractor must submit a report to Mirvac specifying the extent to which the Subcontractor's compliance with the New South Wales Guidelines will be affected.
7. The Subcontractor must maintain adequate records of the compliance with the New South Wales Guidelines by:
 - (a) the Subcontractor;
 - (b) any subcontractors engaged by the Subcontractor to perform any of the work under the Subcontract or on or in connection with the Project; and
 - (c) its related entities (as defined in the New South Wales Guidelines) which are or will be performing work under the Subcontract or on or in connection with the Project.
8. The Subcontractor acknowledges that the Treasurer and Minister for Industrial Relations has overall responsibility for the implementation of the New South Wales Guidelines and the Construction Compliance Unit (**CCU**) in NSW Industrial Relations is responsible for monitoring compliance and to receive reports of alleged breaches.
9. The Subcontractor acknowledges that where it, or a related entity, fails to comply with the New South Wales Guidelines, a sanction may be imposed on the Subcontractor or its related entity or both.

10. Where a sanction is imposed:
- (a) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (b) the State of New South Wales (through its agencies, Ministers and the CCU) is entitled to:
 - (i) record, publicise and disclose details of the non-compliance with the New South Wales Guidelines, the sanction and the identity of the party; and
 - (ii) take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Subcontractor, or its related entities, in respect of work to which the New South Wales Guidelines apply.
11. The Subcontractor agrees and gives its consent (or reaffirms its consent), and confirms that its related entities agree and give their consent (or reaffirm their consent), to the disclosure of information concerning the Subcontractor's, and the Subcontractor's related entities', compliance with the New South Wales Guidelines, including disclosure of details of past conduct relating to the New South Wales Guidelines and whether or not sanctions have been imposed on the Subcontractor or its related entities. The consent (or reaffirmation of consent) by the Subcontractor, its related entities and any proposed or subsequent subcontractors, is given to the State of New South Wales, its agencies, Ministers and the CCU (and its authorised personnel) for purposes including:
- (a) the exercise of their statutory or portfolio responsibilities;
 - (b) investigating and checking, claims and assertions made by the Subcontractor in any documents provided as part of its expression of interest or tender response (including, but not limited to, any Workplace Relations Management Plans or Work Health Safety Management Plan);
 - (c) monitoring, investigating and enforcing the New South Wales Guidelines; and
 - (d) ensuring, facilitating and promoting compliance with the New South Wales Guidelines.
- The Subcontractor acknowledges that this consent is not limited to this Project, as parties are expected to comply with the New South Wales Guidelines on future projects to which they apply.
12. Without limiting the obligations and requirements in the New South Wales Guidelines, the Subcontractor acknowledges and undertakes to comply with its positive obligations under the New South Wales Guidelines, including to:
- (a) comply with any Workplace Relations Management Plan and Work Health Safety Management Plan;
 - (b) allow New South Wales Government authorised personnel to:
 - (i) access other premises relevant to performance of the Works;
 - (ii) monitor and investigate compliance with the New South Wales Guidelines;
 - (iii) inspect any work, material, machinery, appliance, article, or facility;
 - (iv) inspect and copy any record relevant to the Project; and
 - (v) interview any person,as is necessary to demonstrate compliance with the New South Wales Guidelines;
 - (c) notify Mirvac and the CCU (or nominee) and the Client of any alleged breaches of the New South Wales Guidelines and of voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach;
 - (d) report any threatened or actual industrial action that may impact the Project, project costs, related contracts or timelines to Mirvac, the CCU (or nominee) and the Client within 24 hours of the threatened or actual industrial action and provide regular updates to Mirvac, the CCU (or nominee) and the client about the steps being taken to resolve the threatened or actual industrial action;
 - (e) take all steps reasonably available to prevent, or resolve, industrial action which adversely affects, or has the potential to adversely affect, the delivery of the Project or other related contracts on time and within budget; and

- (f) take all reasonably available steps to prevent, or bring to an end, unprotected industrial action occurring on, or affecting the Project, including by pursuing legal action where possible. Any such legal action must be conducted (and where appropriate, concluded) in a manner consistent with the guiding principles and objectives of the New South Wales Guidelines, namely supporting outcomes of compliance with the law, productivity in delivering the Project on time and within budget, maintaining a high standard of safety and protecting freedom of association.
13. The Subcontractor acknowledges and agrees that in respect of its privately funded building and construction work (to which the New South Wales Guidelines apply) it, and its related entities, will:
- (a) comply with the New South Wales Guidelines;
 - (b) maintain adequate records of compliance with the New South Wales Guidelines;
 - (c) allow New South Wales Government authorised personnel to:
 - (i) access the sites and premises;
 - (ii) monitor and investigate compliance with the New South Wales Guidelines;
 - (iii) inspect any work, material, machinery, appliance, article, or facility;
 - (iv) inspect and copy any record relevant to the project; and
 - (v) interview any person,
- as is necessary to demonstrate compliance with the New South Wales Guidelines.
14. The Subcontractor must ensure that all subcontracts to which it is a party in connection with the Project or the Works under the Subcontract impose obligations on subcontractors to such contracts equivalent to the obligations imposed on the Subcontractor under Clauses 1 to 14 of this Schedule.

Schedule 11 – Queensland Code and Queensland Guidelines Requirements

1. Mirvac must comply with and meet any obligations imposed by the Queensland Government's Queensland Code of Practice for the Building and Construction Industry (**Queensland Code**) and the Queensland Government's Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry (**Queensland Guidelines**) (as published by the Department of Justice and Attorney-General) on the Project in order to undertake present and future Queensland Government building and construction work. Copies of the Queensland Code and Queensland Guidelines are available at <https://www.forgov.qld.gov.au/building-policies-and-standards>.

In addition to the terms defined in the Subcontract, terms used in this Schedule have the same meaning as is attributed to them in the Queensland Guidelines.

2. Mirvac is required by the Queensland Code and the Queensland Guidelines to require all subcontractors engaged to perform work or services on this Project to comply with, and meet any obligations imposed by, the Queensland Code and the Queensland Guidelines.
3. The Subcontractor warrants that, at the time that it entered into the Subcontract with Mirvac:
 - 3.1 the Subcontractor's work practices and the industrial instruments, to which the Subcontractor is a party, comply with the Queensland Code and the Queensland Guidelines;
 - 3.2 it and its related entities have complied and will continue to comply with:
 - 3.2.1 all aspects of the Queensland Code and the Queensland Guidelines (including on this Project and on all its other projects to which the Queensland Code and the Queensland Guidelines apply or have applied); and
 - 3.2.2 all applicable legislation, court and tribunal orders, directions and decisions, and industrial instruments; and
 - 3.3 neither it, nor any of its related entities, are subject to a sanction in connection with the Queensland Code or the Queensland Guidelines that would have precluded it from tendering for work or services to which the Queensland Code and the Queensland Guidelines apply.
4. The Subcontractor agrees that whilst carrying out the Works under the Subcontract, it will continue to comply with the Queensland Code and the Queensland Guidelines on this Project and on any other project where the Subcontractor is required to comply with the Queensland Code and the Queensland Guidelines.
5. The Subcontractor bears the cost of ensuring its compliance with the Queensland Code and the Queensland Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the Queensland Guidelines. The Subcontractor is not entitled to make a claim for reimbursement or an extension of time from the Client Agency or the State of Queensland for any such costs.
6. Compliance with the Queensland Code and/or the Queensland Guidelines does not relieve the Subcontractor from responsibility to perform the Works and any other obligations under the Subcontract, or from liability for any defect in the Works or from any other legal liability, whether or not arising from its compliance with the Queensland Code or the Queensland Guidelines.
7. Where a change in the Subcontract or the Works is proposed, and that change would, or would be likely to, affect compliance with the Queensland Code and/or the Queensland Guidelines, the Subcontractor must immediately notify the Client Agency (or nominee) of the change, or likely change and specify:
 - 7.1 the circumstances of the proposed change;
 - 7.2 the extent to which compliance with the Queensland Code and the Queensland Guidelines will, or is likely to be, affected by the change; and

- 7.3 what steps the contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan) and the Client Agency will direct the contractor as to the course it must adopt within 5 Business Days of receiving notice.
8. The Subcontractor must maintain adequate records of the compliance with the Queensland Code and Queensland Guidelines by:
 - 8.1 the Subcontractor;
 - 8.2 any subcontractors engaged by the Subcontractor to perform any of the Works on, or in connection with, the Project; and
 - 8.3 its related entities (as defined in the Queensland Guidelines) which are or will be performing any of the Works on, or in connection with, the Project.
9. The Subcontractor acknowledges that the Department of Justice and Attorney-General, through the Building Construction Compliance Branch (BCCB), has responsibility for enforcing, and ensuring compliance with, the Queensland Code and Queensland Guidelines.
10. The Subcontractor acknowledges that where it, or a related entity, does not comply with, or fails to meet any obligation imposed by, the Queensland Code or the Queensland Guidelines, a sanction may be imposed against the Subcontractor or its related entities or both in connection with the Queensland Code or the Queensland Guidelines.
11. The Subcontractor acknowledges and agrees that where a sanction is imposed:
 - 11.1 it is without prejudice to any rights that would otherwise accrue to the parties; and
 - 11.2 the State of Queensland (through its agencies, Ministers and the BCCB) is entitled to:
 - 11.2.1 record and disclose details of the non-compliance with the Queensland Code or the Queensland Guidelines and the sanction; and
 - 11.2.2 take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Subcontractor, or its related entities, in respect of work or services to which the Queensland Code and the Queensland Guidelines apply.
12. The Subcontractor agrees and gives its consent (or reaffirms its consent), and confirms that its related entities agree and give their consent (or reaffirm their consent), to the disclosure of information concerning the Subcontractor's, and the Subcontractor's related entities', compliance with the Queensland Code, the Queensland Guidelines, including disclosure of details of past conduct relating to the Queensland Code and the Queensland Guidelines and whether or not sanctions have been imposed on the Subcontractor or its related entities. The consent (or reaffirmation of consent) by the Subcontractor, its related entities and any proposed or subsequent subcontractors, is given to the State of Queensland, its agencies, Ministers and the BCCB (and its authorised personnel) for purposes including:
 - 12.1 the exercise of their statutory or portfolio responsibilities;
 - 12.2 investigating and checking, claims and assertions made by the Subcontractor in any documents provided as part of its expression of interest or tender response (including, but not limited to, any Workplace Relations Management Plans or Work Health Safety and Rehabilitation Management Plans);
 - 12.3 monitoring, investigating and enforcing the Queensland Code and Queensland Guidelines; and
 - 12.4 ensuring, facilitating and promoting compliance with the Queensland Code and Queensland Guidelines.

The Subcontractor acknowledges that this consent is not limited to this Project, as parties are expected to comply with the Queensland Code and Queensland Guidelines on future projects to which they apply.
13. Without limiting the obligations and requirements in the Queensland Guidelines, the Subcontractor acknowledges and undertakes to comply with its positive obligations under the Queensland Code and Queensland Guidelines, including to:
 - 13.1 comply with any Workplace Relations Management Plan and Work Health Safety and Rehabilitation Management Plans;

- 13.2 allow, and take reasonable steps to facilitate, Queensland Government authorised personnel (including personnel of the BCCB) to:
 - 13.2.1 enter and have access to sites (including the Site) and premises controlled by the Subcontractor and otherwise relevant to the carrying out of the Works;
 - 13.2.2 inspect any work, material, machinery, appliance, article, or facility;
 - 13.2.3 inspect and copy any record relevant to the Project;
 - 13.2.4 have access to personnel; and
 - 13.2.5 interview any person,
 as is necessary for the Queensland Government authorised personnel to monitor and investigate compliance with the Queensland Code and the Queensland Guidelines, by the Subcontractor, its subcontractors and related entities (including through relevant contractual provisions and documentation);
- 13.3 agree to and comply with (and ensure that its subcontractors and related entities agree to and comply with) a request from Queensland Government authorised personnel (including personnel of the BCCB) for the production of specified documents by a certain date, whether in person, by post or electronic means;
- 13.4 notify Mirvac, the BCCB (or nominee), the Client Agency and the Client of any alleged breaches of the Queensland Code and Queensland Guidelines and of voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach;
- 13.5 notify Mirvac, the Director, the BCCB (or nominee), the Client Agency and the Client of any threatened, impending, possible, probable or actual unlawful industrial conduct or breach of the Queensland Guidelines within 24 hours of becoming aware of threatened, impending, possible, probable or actual unlawful conduct or breach and provide Mirvac and the BCCB with advice of its response (actual and/or proposed) to the unlawful industrial conduct or remedy to the breach as soon as practicable after becoming aware of the unlawful conduct or remedy to the breach;
- 13.6 report any threatened or actual industrial action that may impact the Project, project costs, related contracts or timelines to Mirvac, the BCCB (or nominee) and the Client within 24 hours and provide regular updates about the steps being taken to resolve the threatened or actual industrial action;
- 13.7 take all steps reasonably available to prevent, or resolve, industrial action which adversely affects, or has the potential to adversely affect, the delivery of the Project or other related contracts on time and within budget; and
- 13.8 take all reasonably available steps to prevent, or bring to an end, unprotected industrial action occurring on, or affecting the Project, including by pursuing legal action where possible. Any such legal action must be conducted (and where appropriate, concluded) in a manner consistent with the guiding principles and objectives of the Queensland Guidelines, namely supporting outcomes of compliance with the law, productivity in delivering the Project on time and within budget,

maintaining a high standard of safety and protecting freedom of association.

14. The Subcontractor acknowledges and agrees that in respect of its privately funded building and construction work (to which the Queensland Guidelines apply) it, and its related entities, will:
 - 14.1 comply with the Queensland Code and the Queensland Guidelines;
 - 14.2 maintain adequate records of compliance with the Queensland Code and the Queensland Guidelines;
 - 14.3 allow Queensland Government authorised personnel to:
 - 14.3.1 access the sites and premises;
 - 14.3.2 monitor and investigate compliance with the Queensland Code and the Queensland Guidelines;
 - 14.3.3 inspect any work, material, machinery, appliance, article, or facility;
 - 14.3.4 inspect and copy any record relevant to the Project;

14.3.5 interview any person as is necessary to demonstrate compliance with the Queensland Code and the Queensland Guidelines; and

14.3.6 ensure subcontractors similarly do, or allow, for each of these obligations,

as is necessary to demonstrate compliance with the Queensland Code and the Queensland Guidelines.

15. The Subcontractor must:

15.1 ensure that all subcontracts to which it is a party in connection with the Project or the Works under the Subcontract impose obligations on subcontractors to such contracts equivalent to the obligations imposed on the Subcontractor under Clauses 1 to 14 of this Schedule; and

15.2 not appoint or engage a subcontractor in relation to the Project where that appointment or engagement would breach a sanction imposed on the subcontractor in relation to the Queensland Code or the Queensland Guidelines.

Schedule 12 – Moral Rights Consent

DRAFT LETTER

Date

[insert] (the Principal)

and

[Mirvac Constructions Pty Limited / Mirvac Constructions (Qld) Pty Limited / Mirvac Constructions (Vic) Pty Limited / Mirvac Constructions (WA) Pty Limited] [Drafting Note: Delete as applicable]
(Mirvac)

Re: [insert project name]

[insert site address]

[insert site suburb] [insert state] [insert postcode]

(the Project)

Moral Rights

To the extent that any moral rights (as such term is defined in the *Copyright Act 1968* (Cth) and including any rights of integrity of authorship, rights or attribution of authorship, rights not to have authorship falsely attributed, and/or rights of a similar nature conferred by statute that exist, or that may come to exist, anywhere in the world) exist or come to exist in works created by me for the Project (the "Rights"), I hereby irrevocably and unconditionally, but only to the extent permitted by law:

- (a) waive the Rights; and
- (b) consent to the use, treatment, alteration and/or attribution of such works created by me for the Project as deemed appropriate by the Principal and/or Mirvac, or any other party authorised by it, which may otherwise be deemed an infringement of the Rights.

I will not make any claim in respect of any infringement or contravention of the Rights arising from, or in connection with the use, treatment or alteration and/or attribution of, or dealing with the works created by me for the Project by or on behalf of the Principal and/or Mirvac, or any other party authorised by it. I authorise the Principal and/or Mirvac to provide a copy of this consent to the owner(s) of any building on which I have worked or with which my work is associated.

.....

Signed by the employee (without intervention from any party)

.....

Name of employee

Schedule 13 – Interim Deed of Release

EXECUTED AS A DEED POLL IN FAVOUR OF [Mirvac Constructions Pty Limited / Mirvac Constructions (Qld) Pty Limited / Mirvac Constructions (Vic) Pty Limited / Mirvac Constructions (WA) Pty Limited] [Drafting Note: Delete as applicable] ("Mirvac")

by _____ of _____ ("the Subcontractor").

RECITALS:

- A. Pursuant to a Subcontract dated [insert] ("the Subcontract") the Subcontractor agreed to carry out the [insert trade] works for a project situated at [insert] (the "Subcontract Works").
- B. The Subcontractor has agreed to settle all claims, whether past, present or future and whether known or unknown at the date of this deed, under or arising out of or in connection with the Subcontract on the terms and conditions set out in this deed poll with the exception of any Claim for which a Notice of Dispute has been issued prior to the date of this deed poll under clause 23 of the Subcontract.

OPERATIVE PART:

1. The Subcontractor acknowledges and agrees that as at the date of this deed poll:
 - a. the Subcontract Sum is [insert];
 - b. Mirvac has paid to the Subcontractor an amount equivalent to [95%] of the Subcontract Sum; and
 - c. subject to any Variations directed in accordance with Subcontract after the date of this deed poll, the balance of the Subcontract Sum payable to the Subcontractor is [insert amount – 5%] ("Outstanding Sum").
2. The Subcontractor hereby releases and forever discharges Mirvac from and against all claims (including claims based on statute, common law, unjust enrichment or equity and whether past, present or future and whether known or unknown at the date of this deed) arising out of or in connection with the Subcontract or the Subcontract Works (hereinafter referred to as "Claims") with the exception of the Subcontractor's entitlement to be paid the Outstanding Sum and any Claim for which a Notice of Dispute has been issued prior to the date of this deed poll under clause 23 of the Subcontract.
3. This deed poll may be relied on and enforced by Mirvac in accordance with its terms even though Mirvac is not a party to it. This deed poll may be amended only by another deed poll approved by Mirvac.
4. The parties acknowledge and agree that terms used in this deed poll shall have the same meaning as the terms defined in the Subcontract unless the context requires otherwise.

DATED this _____ day of _____ 20____

Executed as a Deed Poll

Executed by

ACN

pursuant to Section 127 of the
Corporations Act 2001 (Cth)

in the presence of:

.....

Director/Secretary

Director

.....

Name (please print)

Name (please print)

Schedule 14 – Schedule of Subcontractor's Warranty

THIS DEED POLL is made on, 20.....
By.....ABN.....
of.....("the Subcontractor").

RECITALS:

- A. The Subcontractor and [Mirvac Constructions Pty Limited / Mirvac Constructions (Qld) Pty Limited / Mirvac Constructions (Vic) Pty Limited / Mirvac Constructions (WA) Pty Limited], its [Drafting Note: Delete as applicable] entered into an agreement to perform the Works (Subcontract).
- B. It is a requirement of the Subcontract that the Subcontractor execute this Deed Poll for the benefit of the Beneficiaries.

OPERATIVE PROVISIONS

The Subcontractor warrants and agrees, for the benefit of the Beneficiaries, that:

1. Commencing on the Date of Practical Completion of the Project, the Works will:
 - (a) satisfy the requirements of the Subcontract, including the Subcontract Documents;
 - (b) comply with the requirements of all Authorities and all Laws; and
 - (c) be fit for the purpose stated in the Subcontract, or if not stated, the intended purposes.
2. There are no Defects in the Subcontract Works known to the Subcontractor which have not been notified in writing to Mirvac.
3. The Works are clear of all liens and encumbrances.
4. The Subcontractor indemnifies the Beneficiaries against all loss, damage, cost and expense (**Losses**) which the Beneficiaries suffer or are liable for arising out of the Subcontractor's failure to achieve Substantial Completion by the Date for Substantial Completion.
5. The Subcontractor indemnifies the Beneficiaries against all Losses which the Beneficiaries suffer, or are liable for, arising out of or in connection with the Subcontractor's breach of the Subcontract or any act or omission of the Subcontractor.
6. Commencing on the Date of Practical Completion of the Project, the parts of the Subcontract Works described in the first column of the table in Schedule 1 to this Deed Poll will satisfy and comply fully with the requirements of the Subcontract for the longer of:
 - (i) the duration (if any) in the second column of the table in Schedule 1 to this Deed Poll; or
 - (ii) 10 calendar years.
7. The Beneficiaries may assign the benefits and rights under this Deed Poll.
8. This Deed Poll is governed by the Governing Law.

WORKS: means the whole of the work to be executed in accordance with the Subcontract by the Subcontractor, including variations provided for by the Subcontract.

PROJECT: [Project]

BENEFICIARIES: [Mirvac Constructions Pty Limited / Mirvac Constructions (Qld) Pty Limited / Mirvac Constructions (Vic) Pty Limited / Mirvac Constructions (WA) Pty Limited]
[Drafting Note: Delete as applicable]

[Principal]

GOVERNING LAW: Laws of the State or Territory in which the Project site is located

Unless the context requires otherwise, terms used in this deed that are defined in the Subcontract have the same meaning in this deed.

SCHEDULE 1 – WARRANTY ITEMS AND PERIODS

Column 1 - Description of part of Subcontract Works covered by clause 6 of this Deed Poll	Column 2 - Duration of warranty / guarantee
[insert]	[insert] YEARS
[insert]	[insert] YEARS
The balance of the Subcontract Works (ie. parts of the Subcontract Works not covered above)	10 YEARS

Executed as a **DEED POLL**.

Executed by Insert)
(ABN Insert) in accordance with)
section 127 of the Corporations Act 2001:)
)

Director/Company Secretary

Director

Name of Director/Company Secretary
(BLOCK LETTERS)

Name of Director
(BLOCK LETTERS)

Schedule 15 – Schedule of Supplier's Warranty

THIS DEED POLL is made on, 20.....

By.....ABN.....
of.....("the Supplier").

RECITALS:

- A. The Supplier wishes to supply or has supplied..... ("the Product")
to.....("Subcontractor") for the project known
as("the Project").
- B. It is a requirement imposed by [Mirvac Constructions Pty Limited / Mirvac Constructions (Qld) Pty Limited / Mirvac Constructions (Vic) Pty Limited / Mirvac Constructions (WA) Pty Limited] [Drafting Note: Delete as applicable] on the Subcontractor that the Supplier warrant that the Product will satisfy the relevant requirements of the Specification.
- C. The Specification ("Specification") is dated,
titledand consists of pages.
- D. The Supplier has agreed to execute this Deed Poll.

THIS DEED WITNESSES THAT THE SUPPLIER HEREBY COVENANTS, WARRANTS,

GUARANTEES AND AGREES with and for the benefit of the persons named in Schedule 1 to this deed as follows:

1. Commencing on the Date of Practical Completion of the Project, the Product will satisfy and comply fully with the requirements of the Specification for a duration for the longer of:
 - (i) the duration (if any) in the second column of the table in Schedule 2 to this Deed; and
 - (ii) 10 calendar years.
2. Commencing on the Date of Practical Completion of the Project, the Product will be:
 - (i) of merchantable quality and fit for its stated purpose, if or not stated, the intended purpose; and
 - (ii) free from Defects and any lien or incumbrance, including under the *Personal Property Securities Act 2009* (Cth).
3. The persons named in Schedule 1 may assign the benefits and rights accrued under this Deed Poll.
4. This Deed Poll is governed by and constructed in accordance with the laws of the State or Territory in which the Project is situated.

Unless the context requires otherwise, terms used in this deed that are defined in the Subcontract have the same meaning in this deed.

SCHEDULE 1 - PERSONS NAMED IN THE SCHEDULE TO THE DEED

[Mirvac Constructions Pty Limited / Mirvac Constructions (Qld) Pty Limited / Mirvac Constructions (Vic) Pty Limited / Mirvac Constructions (WA) Pty Limited] ***Drafting Note: Delete as applicable***

[Principal]

SCHEDULE 2 – WARRANTY ITEMS AND PERIODS

COLUMN 1 - DESCRIPTION OF PRODUCTS COVERED BY THIS DEED	COLUMN 2 - DURATION OF WARRANTY/GUARANTEE
[insert]	[insert] YEARS
[insert]	[insert] YEARS

EXECUTED AS A DEED POLL by:

EXECUTED by [insert])

PTY LIMITED)

(ABN [insert]))

pursuant to s127(1) of the)

Corporations Act 2001 (Cth))

in the presence of:

.....

Director/Secretary

.....

Director

.....

Print Name

.....

Print Name

Schedule 16 – Schedule of Quality Requirements

The Subcontractor must comply with the following quality requirements.

1. Generally

- 1.1 The Subcontract Works must be performed in accordance with the Subcontract as well as any other procedures to achieve quality as defined in AS/NZS ISO 9000-2000, and this must be documented, implemented and monitored, such that no deficiencies or non-conformances remain in the Subcontract Works at Substantial Completion.
- 1.2 The Subcontractor must implement a quality assurance (QA) system for the Subcontract Works that is generally in accordance with the requirements of AS/NZS ISO 9000-2000 series.
- 1.3 Prior to commencement of the Subcontract Works the Subcontractor must review their proposed quality system with Mirvac and obtain Mirvac's approval to implement the system.
- 1.4 The Subcontractor's QA system and records may be audited by Mirvac at any time during the course of, and after completion of the Subcontract Works. The Subcontractor must co-operate with Mirvac in this regard and provide reasonable access to quality records.
- 1.5 Notwithstanding any statements to the contrary in any part of the technical specifications, terms of the Subcontract or the Subcontractors Quality System, no part of the quality system shall be used to pre-empt, preclude or otherwise negate the technical requirements of the Subcontract Documents. The quality system is to be in aid in recording conformance or otherwise with the Subcontract Documents and in no way will it relieve the Subcontractor of its responsibility to comply with Subcontract Documents.

2. QA System Requirements

2.1 Staff Organisation

The Subcontractor must appoint a management representative (quality manager) who will be responsible for the Subcontractors QA system for the Subcontract Works (including any goods and services provided by suppliers to the Subcontractor) and for the Subcontractor's participation in Mirvac's overall QA system. Mirvac may nominate a Project quality assurance representative (PQAR) who will be responsible for Mirvac's Project QA System.

2.2 Inspection and Test Plans (ITP)

The Subcontractor must develop a system of planned inspection and tests to verify the supply, manufacturing and construction process of the Subcontract Works. The ITP must identify the acceptance criteria for any particular part of the Subcontract Works, and be able to establish conformance to the specified requirements. The ITP, and all associated checklists, must be approved by Mirvac for use on the Subcontract Works prior to commencement.

2.3 Non Conformances

The QA system must identify and document instances where the functioning of the QA system or Subcontract Works do not comply with the requirements of the Subcontract Documents. A summary of non-conformances and corrective actions shall be issued to Mirvac monthly (or as otherwise agreed). The Subcontractor must implement a conformance completion system involving progressive listing and sign off of defects, outstanding work and non-conformances, leading to Substantial Completion.

2.4 The Subcontractor must ensure that their QA system is applied to all components of the Subcontract Works that are provided by subcontractors and suppliers to the Subcontractor.

2.5 Inspection Measuring and Test Equipment

The QA system must require that all testing and measuring equipment be regularly checked for accuracy and records of calibration certificates be kept on the Project.

2.6 Internal Auditing

The Subcontractor must ensure that planned and documented quality audits are carried out on all aspects of the Subcontractor's QA system and also that of their suppliers and subcontractors.

The Subcontractor must provide Mirvac with a copy of the following QA system documentation:

- Project Quality Plan including an organisational chart setting out reporting responsibilities, to be submitted before Subcontract Works commence.
- Inspection and test plans and any associated checklists, to be submitted before Subcontract Works commence.
- Inspection reports, testing and commissioning results.
- Details of proposed internal and independent audits and copies of the associated audit reports.
- Non-conformance/corrective action summary report to be submitted monthly.
- Calibration records and test results of all inspection measuring and test equipment used in the Subcontract Works.
- Quality records as detailed within the Subcontract Works Specifications.
- Quality assurance records that may be requested by Mirvac from time to time.

Schedule 17 – Schedule of Progress Claim Requirements

1. Without limiting or otherwise restricting clause 12.1(c) of the Subcontract, the Subcontractor is required to use the Pay Platform to submit all Progress Claims. The Pay Platform can be accessed from <https://au.payapps.com>, or such other address that Mirvac notifies to the Subcontractor.
2. The Subcontractor has included for all costs, including subscription costs, and will have no Claim against Mirvac in relation to the use of the Pay Platform.
3. All Progress Claims must include the following items and information to constitute a valid Progress Claim:
 - ☐ A **Subcontract Works Claim Schedule**: as a minimum, the Subcontract Works Claim Schedule is to show a break-up of the Subcontract Works on a level by level basis (or as otherwise agreed with Mirvac), and is to show the following for each item in the break-up:
 - Previous Claims: % Claimed and Value Claimed
 - This Claim: % Claimed and Value Claimed
 - Total Claims: % Claimed and Value Claimed
 - ☐ If the Progress Claim includes an amount in respect of a Variation, a **Variations Summary Claim Schedule** in a format acceptable to Mirvac.
 - ☐ A **Declaration for Remuneration, Workers Compensation and Payroll Tax** – in format attached at Schedule 19;
 - ☐ Reference the Subcontract number.
 - ☐ Up to date receipts for payment of superannuation for all workers employed by the Subcontractor.
 - ☐ Up to date receipts for payment of redundancy for all workers employed by the Subcontractor.
 - ☐ Up to date receipts for payment of top up insurance for all workers employed by the Subcontractor.
 - ☐ Certificate of Currency for **Workers Compensation** insurance.
 - ☐ Certificate of Currency for **Public Liability** insurance.
 - ☐ Certificate of Currency for **Professional Indemnity** insurance (if required under Schedule 22).
4. A payment schedule provided to the Subcontractor via the Pay Platform is a valid payment schedule as defined by the relevant Security of Payment Act.
5. The following persons are authorised signatories for any Declarations signed on behalf of the Subcontractor:
Authorised Signatory #1: _____
Authorised Signatory #2: _____
6. Unless Mirvac is to issue a recipient created tax invoice, a valid tax invoice (in accordance with clause 12.2(c)) must be issued to Mirvac at email: invoices@mirvac.com as a pre-condition of any payment.

Schedule 18 – Schedule of Rates

1. All rates nominated in this Schedule of Rates are fixed for the duration of the Subcontract.
2. This Schedule of Rates shall be used for payment in respect of additions and/or deletions to the Subcontract Works and for the valuation of claims for payment in accordance with the Subcontract Terms.
3. All rates shall be inclusive of costs for management, design (to the extent provided for in the Subcontract), administration, supervision, overheads, profits, Workers Compensation and all other insurances, payroll tax and all other taxes, customs duty, escalation of prices and wages to Substantial Completion, safety measures and costs complying with all obligations under the Subcontract.
4. All rates including a **labour** component shall be inclusive of the costs of supervision and associated costs, wages paid, all award payments and all other allowances and payments which are or may become due and payable in respect of each of the Subcontractor's Personnel. Labour rates shall be paid for hours worked only and not for lunch / "smoko" breaks
5. All rates including a **supply** component shall be inclusive of all costs for materials, equipment, plant, labour, procurement, payment of fees, transportation, handling (on and off site), delivery, storage, wastage, and complying with the specification and testing as necessary.
6. All rates including an **installation** component shall be inclusive of all costs for materials, equipment, plant labour, supervision, procurement, transportation, handling (on and off site), delivery, payment of fees, setout, storage, wastage, environmental controls, safety, cleaning, protection (including removal), complying with the specification and testing as necessary, commissioning, and certification.
7. All rates involving **plant or equipment** shall be inclusive of the costs of depreciation, fuel, electricity, consumables, registration, transportation, and delivery to and removal from site.
8. All rates are exclusive of GST.
9. The Subcontract's rates are:

Description of Work	Rate
[insert]	[insert]
[insert]	[insert]

If there are none, insert "Not Applicable"

Schedule 19 – Statutory Declaration

Subcontractor

Subcontract Works

I, _____ of _____

(name)

(address)

declare as follows:

1. I am a director/partner of the Subcontractor and have the authority to make this statutory declaration on its behalf.
2. This statutory declaration is made pursuant to clause 12.1 of the Subcontract in relation to Progress Claim No. [insert] submitted by the Subcontractor on _ / _ / 20__
3. We have received progress payments on the above Works for work performed to _ / _ / 20__
4. All monies due and owing by us to our employees, contractors, suppliers and consultants in relation to the Project up to and including the date of this declaration have been duly paid in accordance with the terms and conditions of their respective contracts.
5. All remuneration, wages, superannuation, allowances and other entitlements payable to employees have been paid as legally required up to and including the date of this declaration.
6. Insurance policies as required under this Subcontract relating to the Works remain in force and all insurance premiums have been paid as required by the insurers.
7. At the date of this declaration the Subcontractor:-
 - (i) is registered for GST; and
 - (ii) is not in breach of any obligation or any agreement in respect of industrial matters all State and Federal legislation and codes of conduct which apply or may apply to the Works or the Site.
8. All persons introduced to the site of the works under the Subcontract by the Subcontractor:
 - (i) are appropriately trained and inducted;
 - (ii) have read and understand all relevant safe work method statements; and
 - (iii) have complied with and are complying with:
 - (1) all safe work method and other statements and management plans relating to the Site and the Subcontract Works; and
 - (2) the requirements of all laws, including as they relate to work, health and safety.
9. The Subcontractor has complied with and is complying with:
 - (i) all safe work method and other statements and management plans relating to the Site and the Subcontract Works; and
 - (ii) the requirements of all laws, including as they relate to work, health and safety
10. With the exception of any works described immediately below, all works and services (including design services) performed by the Subcontractor up to the date of this declaration have been properly performed and comply with the requirements of the Subcontract and the Subcontract Documents, including all applicable laws:

.....(describe any non-conforming work).
11. The following consultants, suppliers and subcontractors have invoked the dispute resolution procedure under their subcontract or supply agreement:

[*insert list of consultants, suppliers and subcontractors that have invoked the dispute resolution procedure under their subcontract or supply agreement/*none].

I hereby indemnify Mirvac from and against any claim, cost, loss, expense or damages suffered pursuant to any breach of this declaration. And I make this declaration conscientiously believing the same to be true.

Date:

Signature of Director/Partner

Signature of Witness

(Print Name)

(Print Name)

VERIFICATION:

* please cross out any text that does not apply:

I, a

[name of authorised witness]

[qualification of authorised witness]

certify the following matters concerning the making of this * statutory declaration/affidavit by the person who made it:

1. * I saw the face of the person OR * I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.
2. * I have known the person for at least 12 months OR * I have not known the person for at least 12 months, but I have confirmed the person's identify using an identification document and the document I relied on was

.....
[describe identification document relied on]

.....
[signature of authorised witness]

.....
[date]

NOTE : THERE ARE SEVERE PENALTIES FOR THE MAKING OF FALSE DECLARATIONS.

If the Site is situated in NSW, then the following declaration must also be provided:

Statutory Declaration

(Oaths Act (NSW) Eighth Schedule)

REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note 1 – see back of form)

For the purposes of this Statement a “subcontractor” is a person (or other legal entity) that has entered into a contract with a “principal contractor” to carry out work.

This Statement must be signed by a “subcontractor” (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the “subcontractor” has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts).

Subcontractor:

ABN:.....

(Business Name)

of

.

(Address of Subcontractor)

has entered into a contract with

ABN:.....

(Business Name of Principal Contractor)

(Note 2)

Subcontract

number/identifier

(Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive

(Note 4)

subject of the payment claim dated:/...../.....

(Note 5)

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with and complete (b) to (h) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) to (h) below. You must tick one box.
(Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../.....
(Note 7)
- (c) All remuneration payable to relevant employees for work under the Subcontract for the above period has been paid.
(Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement.
(Note 9)

- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period state above.
(Note 10)
- (f) Every subcontractor, supplier and consultant to the Subcontractor and any other person or legal entity entitled to payment by the Subcontractor for or in connection with the Subcontract and the works the subject of this declaration has been paid all amounts and monies due and payable to it by the Subcontractor up to and including the date of this declaration.
- (g) All persons introduced to the site of the works under the Subcontract by the Subcontractor:
 - (i) are appropriately trained and inducted;
 - (ii) have read and understand all relevant safe work method statements; and
 - (iii) have complied with and are complying with:
 - (1) all safe work method and other statements and management plans relating to the Site and the Subcontract Works; and
 - (2) the requirements of all laws, including the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW).
- (h) The Subcontractor has complied with and is complying with:
 - (i) all safe work method and other statements and management plans relating to the Site and the Subcontract Works; and
 - (ii) the requirements of all laws, including the *Work Health and Safety Act 2011*(NSW) and the *Work Health and Safety Regulation 2017* (NSW).
- (i) With the exception of any works described immediately below, all works and services (including design services) performed by the Subcontractor up to the date of this declaration have been properly performed and comply with the requirements of the Subcontract and the Subcontract Documents, including all applicable laws:

.....(describe any non-conforming work).

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1900*.

SUBSCRIBED and DECLARED)
 at)
 this day of)
 before me:

 Signature

 Name and Position

 A Justice of the Peace/Solicitor (*Note 3*)

VERIFICATION:

* please cross out any text that does not apply:

I, a

[name of authorised witness]

[qualification of authorised witness]

certify the following matters concerning the making of this * statutory declaration/affidavit by the person who made it:

3. * I saw the face of the person OR * I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.
4. * I have known the person for at least 12 months OR * I have not known the person for at least 12 months, but I have confirmed the person's identify using an identification document and the document I relied on was

.....
[describe identification document relied on]

.....
.....
[signature of authorised witness] *[date]*

NOTE: *Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.*

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.
A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.
2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.
Section 127(6) of the *Industrial Relations Act 1996* defines remuneration as '*remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees*'.
Section 127(11) of the *Industrial Relations Act 1996* states '*to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor*'.
5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7,500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in respective legislation. This is currently up to seven years.

Offences in Respect of a False Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the SafeWork NSW website www.safework.nsw.gov.au, Revenue NSW website www.revenue.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Schedule 20 – Design Consultant's Certificate

(clause 12.9(g))

To: [Mirvac Constructions Pty Limited / Mirvac Constructions (Qld) Pty Limited / Mirvac Constructions (Vic) Pty Limited / Mirvac Constructions (WA) Pty Limited] **[Drafting Note: Delete as applicable]**

ABN [insert]

(Mirvac)

and

[insert]

ABN [insert]

(Principal)

From: [insert]

ABN [insert]

(Consultant)

We refer to the Subcontract (**Subcontract**) between Mirvac and [insert] (**Subcontractor**) dated [insert] for the design and construction of the Subcontract Works.

Terms in this certificate have the meaning given to them in the Subcontract.

In accordance with the terms of the Subcontract, I certify that:

1. the attached index of drawings for the Design Documents:
 - (a) are fit for the purpose stated in the Subcontract, or if not stated, the intended purpose; and
 - (b) comply with the relevant requirements of the Subcontract, including the Subcontract Documents and the Schedule of Design Requirements;
2. if the Subcontract Works which are the subject of the attached index of drawings for the Design Documents are constructed in accordance with the Design Documents, those Subcontract Works will be fit for the purpose stated in the Subcontract, or if not stated, the intended purpose; and
3. the design of those parts of the Subcontract Works designed by the Consultant and the subject of the index of drawings for the Design Documents complies with the Subcontract Documents, the requirements of all Authorities and all Laws.

Consultant: _____

Date: _____

Schedule 21 – Subcontract Sum

Insert a detailed breakdown of Subcontract Sum
(including detailed listing of any Provisional Sums)

[insert]

Schedule 22 – Insurances

1.	PUBLIC AND PRODUCT LIABILITY	
	Procured by	Subcontractor
	Insurer	[insert]
	Limit of cover	No less than \$20,000,000 in respect of any single occurrence [Limit of cover should be no less than \$50,000,000 for structural or façade packages. Senior Commercial Manager approval required if a lower limit of cover is proposed]
	Expiration date:	[insert]
	The Subcontractor's public and product liability policy must: (a) be effective by the earlier of the date of the Subcontract or the commencement of the Subcontract Works and must be maintained until the later of the expiry of the Defects Liability Periods (including Second Defects Liability Periods) or the completion of the making good of Defects; (b) be effected by a reputable insurer approved by Mirvac and must cover the risks as are customary, together with: (i) all losses and liabilities referred to in clauses 16.1(a) of the Subcontract Terms; (ii) workers recourse claims, including worker to worker claims (being the liability for accidents where a worker is injured by the negligent act of another worker of a different employer) and on site injury claims (being the liability for an injury suffered by a worker resulting from a breach of duty at common law, under statute or otherwise); and (iii) completed operations; and (c) name Mirvac as a Named Insured (or indemnify Mirvac's liability as Principal) for liability arising out of the Subcontract works.	
2.	WORKERS COMPENSATION	
	Procured by	Subcontractor
	Insurer	[insert]
	Limit of cover	The Subcontractor must ensure that its Workers Compensation insurance complies with all relevant laws, including with respect to the level/amount of cover.
	Expiration date	[insert]
	The Subcontractor's workers' compensation policies must: (a) be effective by the earlier of the date the Subcontract was made or the commencement of the Subcontract Works and must be maintained until the later of the expiry of the Defects Liability Periods (including Second Defects Liability Periods) or the completion of the making good of Defects; and (b) cover against any liability loss claim or proceeding whatsoever whether arising by virtue of any statute relating to worker's or accident compensation or employers' liability or any	

	statutory re-enactment thereof or regulatory scheme of like nature or at common law as a result of personal injury or death of any person employed by the Subcontractor (including employee, directors and principals) in or about the execution of the Subcontract Works.	
3.	PLANT AND EQUIPMENT	
	Required	[Yes, the Subcontractor must procure plant and equipment insurance / No, the Subcontractor is not required to procure plant and equipment insurance]
	Procured by	Subcontractor / Not applicable
	Insurer	[insert] / Not applicable
	Limit of cover	\$(insert) / Not applicable
	Expiration date	[insert] / Not applicable
	Policy must be: (a) effective by the earlier of the date of the Subcontract was made and the commencement of the Subcontract Works and must be maintained until the Date of Substantial Completion of the Subcontract Works. (b) sufficient to ensure the repair or replacement of Plant and Equipment upon loss or damage thereto.	
4.	PROFESSIONAL INDEMNITY	
	Required	Yes / No [PI insurance must be obtained by the Subcontractor if the Subcontractor is performing design (including on a design and construct basis, or as design development), or if the Subcontractor is providing professional advice (which is unlikely for most packages). PI is not required if the Subcontractor is neither performing design nor providing professional advice.]
	Procured by	Subcontractor
	Insurer	[insert]
	Limit of cover	\$10,000,000 with one automatic reinstatement. [Senior Commercial Manager approval required if a lower limit of cover is proposed. The limit of cover should be no less than \$20,000,000 if the package involves structural or façade design, design development or professional advice]
	Expiration date	[insert]
	Policy must: (a) be approved by Mirvac; and (b) be effective before the Subcontractor commences professional duties whether in respect of design, specification, supervision or otherwise and must be maintained for not less than 7 years after the expiry of the Defects Liability Periods (including Second Defects Liability Periods) unless it is unable to continue to maintain the full insurance during this period and Mirvac give written approval to reduce or discontinue the insurance; (c) be endorsed to amend any general exclusion for claims in respect of personal injuries and/or property damage so that claims which arise in connection with an alleged breach of professional duty are covered by the indemnity. The Subcontractor's consultants and subcontractors (including other subcontractors and consultants further down the subcontract chain) required to effect and maintain professional indemnity insurance and limit of cover:	
	Category	Levels of cover

	All subcontractors or consultants providing professional services or professional advice	(if nothing stated, \$5,000,000) [INSERT LEVEL OF PI COVER REQUIRED TO BE HELD]
	[Insert names of any subcontractors or consultants who are obliged to have PI in place. If none, insert "Not applicable"]	
	The professional indemnity insurance policy effected by each consultant and subcontractor within the category identified above must: (i) be approved by Mirvac; and (ii) be effective before the consultant or subcontractor (as the case may be) commences professional duties whether in respect of design, specification, supervision or otherwise and must be maintained for not less than 7 years after completion of the Project).	
5.	MOTOR VEHICLE INSURANCE	
	Procured by	Subcontractor
	Insurer	[insert]
	Limit of cover	The motor vehicle insurance policy must have a third party liability limit of \$20,000,000.
	Expiration date	[insert]
	Policy must be effected and maintained in force for the period of the Subcontract and cover registered motor vehicle third party liability insurance in respect of all motor vehicles (which expression shall include: (a) any item of plant or equipment which is licensed as a motor vehicle or which is required to be so licensed in accordance with the requirements of any statute; and (b) any unregistered vehicles, plant and equipment which are capable of being registered and which might be used in areas which might be considered public roads for the purposes of the Motor Accidents Act), belonging to or under the physical or legal care or custody of the Subcontractor in connection with the Subcontract Works or in connection with the Subcontract or any activity directly or indirectly connected therewith.	
6.	CONTRACT WORKS INSURANCE	
	Procured by	Mirvac
	Mirvac will effect and maintain contract works insurance in respect of the Project. Mirvac will provide the Subcontractor with a copy of the certificate of currency relating to such insurance upon request.	
7.	OTHER	
	[Specify if any other insurances required to be effected. If none stated, not applicable] .	

8. CROSS LIABILITY PROVISIONS

The provisions of this item 8 apply only to the Public and Product Liability insurance to be effected by the Subcontractor under item 1 above.

- 8.1 Wherever insurance is effected in joint names, the policy of insurance shall provide that insofar as the policy may cover more than one insured all insurance and endorsements shall operate in the same manner as if there were a separate policy of insurance covering each party comprising the insured.
- 8.2 The policy shall provide further that the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties comprising the

insured and that failure by any insured to observe and fulfil the terms of the policy shall not prejudice the insurance in regard to any other insured.

- 8.3 The policy shall provide further that its cover extends to each and every claim that might be made by any employee of the Principal, Mirvac or the Subcontractor or any subcontractor of the Subcontractor or any other subcontractor of Mirvac.

9. **INSURANCE CONDITIONS**

- 9.1 All insurances effected by the Subcontractor shall be subject to the approval of Mirvac as to the adequacy and terms of insurance and unless otherwise agreed with, Mirvac shall be effected specifically for the Subcontract Works and the Subcontractor shall provide all such documentation, information and assistance as may be required by Mirvac in this regard. ~~Without limiting the generality thereof, Mirvac may require the Subcontractor to insure with a particular insurer.~~
- 9.2 The Subcontractor shall lodge evidence of renewal of all insurances that have been effected pursuant to this Subcontract from time to time throughout the period of the Subcontract.
- 9.3 The Subcontractor must not do or fail to do anything which might prejudice the coverage of any insurance required to be maintained by the Subcontractor under this Contract.
- 9.4 Where the insurance covers public and products liability or professional liability, cover the Subcontractor for its potential liability to Mirvac assumed by virtue of the exclusion under this Contract of the Proportionate Liability Legislation.
- 9.5 All insurances to be effected and maintained by the Subcontractor pursuant to this Subcontract must:
- (a) without affecting any other obligation under this Subcontract, provide a principal's indemnity in favour of Mirvac; and
 - (b) act as primary insurance such that any insurance effected by Mirvac is not called upon to contribute to any claim made on the Subcontractor's insurance.

10. **INSURANCE EXCESSES**

The Subcontractor is liable for, and must promptly pay, all excess or deductible amounts applicable to or payable in connection with any insurances effected or otherwise taken out for or in respect of the Subcontract Works and/or the Subcontract, including the contract works insurance that is taken out by Mirvac and any other policy of insurance that is to be effected and maintained by Mirvac (to the extent any such excess or deductible is incurred due to an event caused by the Subcontractor or any associate of the Subcontractor).

Schedule 23 – Deed of Guarantee and Indemnity

EXECUTED AS A DEED POLL THISDAY OF 20[insert]

GIVEN BY:

[insert entity and ABN/ACN number] of [insert address] (the “Guarantor”)

IN FAVOUR OF:

[Insert [Mirvac Constructions Pty Limited / Mirvac Constructions (Qld) Pty Limited / Mirvac Constructions (Vic) Pty Limited / Mirvac Constructions (WA) Pty Limited] and ABN/ACN number] of [insert address] (“Mircvac”)

RECITALS

- (A) Pursuant to a subcontract dated [insert date] (the “Subcontract”) made between Mirvac and [insert Subcontractor entity and ABN/ACN number] (the “Subcontractor”), the Subcontractor agreed to perform the design and construction of [insert works] for the [insert project name] project situated at [insert Site] (“Works”).
- (B) The Subcontractor has agreed to procure from the Guarantor, for the benefit of Mirvac, a guarantee and indemnity in respect of the Guaranteed Obligations (as such term is defined in clause 15 below).
- (C) The Guarantor:
 - (i) has read the Subcontract;
 - (ii) is aware of the Subcontractor's obligations to Mirvac under the Subcontract; and
 - (iii) at the request of Mirvac, agrees to provide this guarantee and indemnity in favour of Mirvac in respect of the Guaranteed Obligations, on the terms and conditions of this Deed.

OPERATIVE PROVISIONS

- (1) At the request of Mirvac, the Guarantor hereby represents, warrants and agrees, for the benefit of Mirvac, as follows:
 - (i) the Guarantor irrevocably and unconditionally guarantees to Mirvac the due and punctual performance, observance and fulfilment of all of the Guaranteed Obligations by the Subcontractor;
 - (ii) the Guarantor indemnifies, and agrees to keep indemnified, Mirvac from and against all claims, losses, damages, costs, liabilities and expenses which Mirvac suffers or incurs and which:
 - (a) arise from or in connection with the act, default or omission of the Subcontractor, including a failure of or by the Subcontractor to perform, observe or fulfil the Guaranteed Obligations; or
 - (b) are caused by or arise out of or in connection with any of the Guaranteed Obligations, including to the extent any such Guaranteed Obligations are or may be void or unenforceable, including as a result of:
 - (A) any legal limitation, disability or incapacity relating to the Subcontractor;
 - (B) any delay, neglect or failure to register or perfect the Subcontract or obtain any consent or authorisation necessary to give legal effect to the Subcontract (other than by reason of an act or omission of Mirvac);

- (C) the Subcontractor's failure to comply with any law, official directives or government policies and procedures; or
- (D) any death, mental incapacity, winding up, liquidation, bankruptcy, insolvency, voluntary administration, composition of debts, scheme of reconstruction, official management, receivership, assignment of property, scheme of arrangement or other incapacity, insolvency or demise on the part of or entered into by the Subcontractor,

whether or not Mirvac should have known about the same; and

- (iii) without limiting and in addition to the foregoing, if at any time the Subcontractor have failed to perform any of their respective obligations under the Subcontract, the Guarantor will promptly (after being made aware of such non-performance by Mirvac) perform and satisfy the Subcontractor's obligations.
- (2) The terms of this Deed extend to any variation of, or amendment to, the Subcontract and to any agreement supplemental thereto agreed between Mirvac (on the one part) and the Subcontractor (on the other part) or otherwise permitted by the terms of the Subcontract.
 - (3) The terms of this Deed shall continue and shall remain in full force and effect until fulfilment of the Guaranteed Obligations in accordance with the terms of the Subcontract. Mirvac is to give a formal written discharge of this Deed if it is satisfied that the Guaranteed Obligations and the obligations of the Guarantor under this Deed have been satisfied in full.
 - (4) This Deed shall be governed by and construed and construed according to the laws of the [insert relevant State or Territory] Australia. The parties submit to the exclusive jurisdiction of the Courts of [insert relevant State or Territory], Australia.
 - (5) If at any time any dispute or difference shall arise between Mirvac and the Guarantor in connection with this Deed, the dispute resolution provisions in the Subcontract shall apply to any such dispute.
 - (6) The Guarantor is deemed to be a principal debtor jointly and severally liable with the Subcontractor to discharge the Guaranteed Obligations.
 - (7) The Guarantor's obligations under this Deed:
 - (i) are principal obligations and not ancillary or collateral to any other obligation;
 - (ii) may be enforced against the Guarantor without Mirvac being required to exercise any right, power or remedy it may have against the Subcontractor or any other person under the Subcontract or otherwise;
 - (iii) are not affected by any act, omission, matter or thing which but for this clause might affect the Guarantor's obligations in whole or in part, including without limitation any one or more of the following (whether occurring with or without the consent of any person):
 - (a) the winding up of, or the appointment of an administrator, receiver or provisional liquidator to the Subcontractor or any other person;
 - (b) the fact that Mirvac or any other person exercises or refrains from exercising any right, power or remedy under the Subcontract or otherwise, or fails to recover, by exercise of any such right, power or remedy, any moneys due or payable from the Subcontractor to Mirvac;
 - (c) failure by Mirvac to give notice to the Guarantor of any breach by the Subcontractor of the terms of Subcontract;
 - (d) the making, variation, replacement, assignment, novation, discharge or transfer of any agreement or transaction between Mirvac and the Subcontractor, including the Subcontract, or Mirvac and the Guarantor,
 - (iv) are not affected by, and survive, termination of the Subcontract.
 - (8) The obligations of the Guarantor under this Deed are continuing obligations and such obligations shall not be considered as wholly or partially satisfied or discharged by the payment at any time or times hereafter of any sum or sums of money for the time being due to Mirvac under the Subcontract or by any settlement of account or any other matter or thing whatsoever but shall

extend to cover and be security for all sums of money at any time due to Mirvac as aforesaid notwithstanding any special payment, settlement of account or other matter or thing whatsoever.

- (9) To the fullest extent permitted by law, all legislation that at any time directly or indirectly:
- (i) lessens, varies or affects in favour of the Guarantor any obligation under this Deed; or
 - (ii) delays, prevents or prejudicially affects the exercise by Mirvac of any right, power or remedy given by this Deed,

is excluded from this Deed.

- (10) Mirvac may:
- (i) assign or encumber any of its rights under this Deed at any time without the consent of the Guarantor, with the assignment of the whole or any part of the Guaranteed Obligations; and
 - (ii) provide any information it has in relation to the Guarantor to any proposed or actual assignee or person holding the benefit of any encumbrance over such rights.

The Guarantor must sign any documents reasonably required by Mirvac to give effect to such assignment.

The Guarantor is not entitled to assign or otherwise deal with its rights and obligations under this Deed without the prior written consent of Mirvac.

- (11) The Guarantor must not, without the written consent of Mirvac:
- (i) take any steps to enforce a right or claim against the Subcontractor in respect of any money paid by the Guarantor under this Deed; or
 - (ii) have or exercise any rights as surety in competition with Mirvac.
- (12) If any provision of this Deed is illegal, void or unenforceable, the Deed is ineffective only to the extent of such illegality, voidness or unenforceability.
- (13) The Guarantor acknowledges that, prior to the execution of this Deed, it has obtained, or has been given the opportunity to obtain, independent legal advice regarding the content and effect of this Deed.
- (14) The Guarantor acknowledges and agrees that it is bound by the terms of this Deed for the benefit of the Principal, even though the Principal is not a party to this Deed.
- (15) In this Deed, "**Guaranteed Obligations**" means all of the Subcontractor's obligations and liabilities under, arising from, relating to or otherwise in connection with the Subcontract.

EXECUTED AS A DEED POLL BY THE GUARANTOR FOR THE BENEFIT OF MIRVAC

EXECUTED as a deed poll by **[insert entity name and ABN/ACN number]** pursuant to s127(1) of the *Corporations Act 2001* (Cth) in the presence of:

Director

Director/Company Secretary

Print Name

Print Name

Schedule 24 – Scope of Works

Design and Building Practitioners Act 2020 – NSW only

Where clause 19.6 of the Subcontract Terms applies and the Subcontractor is preparing regulated design/s (as defined in the D&BP Act) as part of the Subcontract Works then the Subcontractor must provide:

1. construction issued regulated design (as defined in the D&BP Regulation) in accordance with the D&BP Act and D&BP Regulation; and
2. design compliance declarations in accordance with the D&BP Act and D&BP Regulation which:
 - (a) state that the regulated designs (as defined in the D&BP Act) prepared by the Subcontractor comply with the requirements of the Building Code of Australia and any other requirements or matters prescribed in the D&BP Act and D&BP Regulation for the purpose of section 8(a) of the D&BP Act; and
 - (b) state whether or not other standards, codes or requirements have been applied in preparing the design; and
 - (c) are in the form prescribed by the D&BP Regulation;
3. a list of persons who prepared the regulated designs and identifying the work done by each person, and any other document relevant to the Subcontract Works required under section 17(6) of the D&BP Act.

[Delete the text above if the project is not in NSW, or the project does not have a multi-storey residential component. Otherwise, retain the text above, or otherwise insert it in the Scope of Work.]

[Mirvac to insert SoW]

Schedule 25 – Drawings, Specifications and Other Documents

[Mirvac to insert]