



FOR RESIDENTIAL & COMMERCIAL BUILDING WORK IN **QUEENSLAND**



Subcontract Agreement - Basic

SCHEDULE

(SC-1) (07/2018.4)

BETWEEN

CONTRACTOR

Name	Win Constructions Queensland Pty Ltd		
	(as it appears on the QBCC licence)		
Trading as	Win Constructions Queensland Pty Ltd		
Address	Two Main Street Hervey Bay QLD 4655		
ABN	98 129 366 105	QBCC licence number	1135950
Phone 1	0741945133	Phone 2	
Email address	admin@wcq.com.au		
Facsimile number			

AND

SUBCONTRACTOR

Name	Steven Brocklehurst		
	(as it appears on the QBCC licence)		
Trading as	SolarGain Pty Ltd		
Address	Unit 7/8-10 Boat Harbour Drive Pialba QLD 4655		
ABN	26 136 092 405	QBCC licence number	1214636
Phone 1	0409407262	Phone 2	
Email address	steven.brocklehurst@solargain.com.au		
Facsimile number			

CLAUSE 1(a)

Brief description of the Subcontract Works

As per quoted works

Site address	42 Taylor Street Hervey Bay QLD 4655
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CLAUSE 1(b)

GST Exclusive Subcontract Sum	\$9,990.91
GST on GST Exclusive Subcontract Sum	\$999.09
Subcontract Sum (GST inclusive)	\$10,990.00
Subcontract Sum (words)	Ten Thousand Nine Hundred and Ninety Dollars

CLAUSE 5(b)

Date for Commencement	21/11/2019
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CLAUSE 7(c)

Latent Condition Margin (if nothing stated, 10%)	10%
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**CLAUSE 8(a)**Party responsible for insuring the **Subcontract Works**☐ Contractor ☒ Subcontractor

(if nothing stated, the Subcontractor)

CLAUSE 12(a)

Payment claims are to be submitted each

☐ Week ☐ Fortnight ☒ Monthon the 27 day of each month **Day** of the period**CLAUSE 12(c)**Time for payment (if nothing stated, 25 **Business Days**)**25 Business Days****CLAUSE 12(d)**Interest on overdue amounts (minimum interest as per Clause **12(d)**)**CLAUSE 13(a)**Is retention applicable to this **Subcontract** (if nothing stated, retention does not apply)☒ Yes ☐ No

Percent to be retained by Contractor

5%

(maximum 5% of the **GST Exclusive Subcontract Sum**)**CLAUSE 13(d)(ii)**Percent to be retained by Contractor on **Completion**

2.5%

(maximum 2.5% of the **GST Exclusive Subcontract Sum**)**CLAUSE 14(c)****Prime Cost Item and Provisional Sum Margin** (if nothing stated, 10%)

10%

CLAUSE 15(c)**Variation Margin** (if nothing stated, 10%)

7.5%

CLAUSE 21(a)**Date for Completion**

04/04/2020

CLAUSE 22(a)**Defects Liability Period** (if nothing stated, 6 Months)

12

CLAUSE 24(a)

Liquidated damages (GST inclusive)

\$0.00 per **Day**

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ANNEXURE

ANNEXURE A - SCOPE AND EXTENT OF WORK

The supply of materials, labour, plant and equipment for the construction of

As per quoted works

SUBCONTRACT DOCUMENTS

SPECIFICATIONS (set out Specification Section/s, Page Nos)

	Details
1.	Supply and install 40 x solar panels 315 kw jinko and three phase inverter 10.0kw dual tracker

DRAWINGS (set out Drawing Nos)

Drawing No.	Issue	Prepared by	Brief description of drawing

BILL OF QUANTITIES (set out relevant sections of BOQ)

	Details
1.	

OTHER DOCUMENTS (set out any other relevant documents)

	Details
1.	

INSURANCES (refer Clause 8)

Type	Insurer	Policy number	Expiry date	Cover \$
Contract Works				
WorkCover	Work Cover Queensland	WAD160906247	30/09/2020	
Personal Accident				
Public Liability	QBE Insurance (Australia)	4TA000488PIP	12/11/2019	\$20,000,000.00

ANNEXURE B - SPECIAL CONDITIONS (Clause 28) (if applicable)

NOTE: These Special Conditions may contain amendments, deletions and additions to the General Conditions of the Subcontract.

If the terms of these Special Conditions or any one of them are inconsistent with any one or more of the General Conditions of the Subcontract, then to the extent of any such inconsistency these Special Conditions shall prevail.

Special Condition No.	General Condition affected	Details
SC-		



AGREEMENT

AGREEMENT

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

SIGNED - CONTRACTOR

Signed by, or for and on behalf of, the Contractor

Signature

DocuSigned by:
Caite Reid
410CFD85E0F14BD...

Printed name

CAITE REID

Date

21/11/2019 | 11:20 AEST

SIGNED - SUBCONTRACTOR

Signed by, or for and on behalf of, the Subcontractor

Signature

DocuSigned by:
Steven Brocklehurst
BCAF16E268CF446...

Printed name

STEVEN BROCKLEHURST

Date

21/11/2019 | 11:36 AEST

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SUBCONTRACT AGREEMENT - BASIC - GENERAL CONDITIONS

1 SUBCONTRACT WORKS & SUBCONTRACT SUM

- a) The Subcontractor shall carry out and complete the **Subcontract Works**:
 - i) in an appropriate and skilful way;
 - ii) with reasonable care and skill;
 - iii) in accordance with the **Subcontract Documents**; and
 - iv) if the Subcontractor is required to supply materials under this **Subcontract**, then subject to the **Subcontract**, the materials to be supplied must be suitable, new and free of defects.
- b) The Contractor shall pay to the Subcontractor the **Subcontract Sum** in the manner and at the times stated in the **Subcontract**.
- c) Where goods and materials delivered to Site by the Subcontractor are subject to "retention of title" then the Subcontractor's retention of title shall only have effect up to the time the goods or materials are installed.

2 ASSIGNMENT & SUBCONTRACTING

- a) Neither party to the **Subcontract** may assign the **Subcontract** or any right, benefit or interest under the **Subcontract** without the other party's written consent.
- b) The Subcontractor may engage other Subcontractors to carry out any part but not the whole of the **Subcontract Works** but is not relieved from the Subcontractor's obligations under the **Subcontract**.

3 SUBCONTRACT DOCUMENTS

- a) The Contractor warrants to the Subcontractor:
 - i) the accuracy and suitability of the **Subcontract Documents** and any other document or data that the Contractor may give to the Subcontractor;
 - ii) that the **Subcontract Documents** and any other document or data that the Contractor may give to the Subcontractor comply with all **Statutory Requirements** relating to the **Subcontract Works**; and
 - iii) that use of the design, materials, documents and methods specified in all documents and data given by the Contractor does not infringe copyright, moral rights or any other intellectual property right.
- b) The Contractor indemnifies the Subcontractor against any claim, loss, expense or liability arising out of a breach of Clause 3(a).
- c) Subject to Clause 3(d), any ambiguity, inconsistency or error in or between the **Subcontract Documents** shall be resolved by applying the following order of precedence:
 - i) special conditions;
 - ii) these general conditions of **Subcontract**;
 - iii) specification;
 - iv) drawings; and
 - v) other **Subcontract Documents**,
 provided that figures shall always prevail over scaled dimensions in the event of any ambiguity or inconsistency between them.
- d) Any ambiguity, inconsistency or error discovered by the Subcontractor shall be resolved by giving a notice setting out the details to the Contractor for a **Direction** on how the ambiguity is to be resolved. If the **Direction** given involves more or less work then the **Direction** shall be a **Variation** under the **Subcontract**.

4 COMPLIANCE WITH STATUTES

- a) The Subcontractor shall:
 - i) comply with all **Statutory Requirements** relating to the **Subcontract Works**; and
 - ii) unless otherwise agreed, obtain all consents, approvals and permits necessary for the carrying out of the **Subcontract Works**.
- b) The Subcontractor shall give any notice or report and pay any fee in order to comply with Clause 4(a).
- c) If the cost to the Subcontractor:
 - i) in complying with any **Statutory Requirement** increases after the entering into of the **Subcontract** by the parties; or
 - ii) in carrying out the **Subcontract Works** increases after the entering into of the **Subcontract** by the parties as a result of the introduction or increase of any tax, charge, levy or regulation, the amount of the increase shall be added to the **Subcontract Sum**.
- d) If the Subcontractor's compliance with a **Statutory Requirement** requires a **Variation** to the **Subcontract Works**, the Subcontractor shall give the Contractor a written notice setting out the reason for, and the details of, the **Variation**.
- e) On the giving of a notice under Clause 4(d), the **Subcontract Works** are deemed to be varied to that extent necessary to permit the Subcontractor to comply with the **Statutory Requirement** and the cost to the Subcontractor of the **Variation**, together with the **Subcontractor's Margin** on that cost, shall be added to the

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Subcontract Sum.**5 COMMENCEMENT**

- a) The Contractor shall give the Subcontractor reasonable access to the **Site** on the **Date for Commencement** for the Subcontractor to carry out the **Subcontract Works**.
- b) The Subcontractor shall commence carrying out the **Subcontract Works** on the **Date for Commencement**.
- c) The Contractor may provide the Subcontractor with a revised **Date for Commencement**.

6 ACCESS

- a) The Subcontractor is entitled to reasonable access to the **Site** and the **Subcontract Works** from the **Date for Commencement** until:
 - i) the Subcontractor reaches **Completion** under the **Subcontract**; or
 - ii) the **Subcontract** is terminated.
- b) The Contractor is responsible for ensuring adequate access to the **Site** for the Subcontractor to complete the **Subcontract Works**.

7 LATENT CONDITIONS

- a) On becoming aware of the existence of a **Latent Condition**, the Subcontractor shall promptly give the Contractor a written notice:
 - i) setting out details of the **Latent Condition**; and
 - ii) requiring the Contractor to give the Subcontractor a written **Direction** setting out full details of the work that the Subcontractor is required to carry out to remedy or otherwise overcome the **Latent Condition**.
- b) On the giving of a notice under Clause 7(a), the Contractor shall promptly give the Subcontractor a written **Direction** setting out full details of the work that the Subcontractor is required to carry out to remedy or otherwise overcome the **Latent Condition**, together with all necessary specifications, drawings and other design documents for that work.
- c) On the giving of a **Direction** under Clause 7(b):
 - i) the **Subcontract Works** are deemed to be varied to include the work that the Subcontractor is required to carry out under the **Direction**; and
 - ii) the cost to the Subcontractor in carrying out the **Variation** required under the **Direction**, together with the **Latent Condition** Margin stated in the Schedule on that cost, shall be added to the **Subcontract Sum**.

8 INSURANCE**Subcontract/Construction Works Insurance**

- a) The party named in the Schedule shall effect and maintain a policy of construction works insurance over the **Subcontract Works**, from the **Date for Commencement** or the **Start Date**, whichever is the earlier, until the **Subcontract Works** reach, or are deemed to reach, **Completion** under Clause 21, that:
 - i) is in the joint names of the Contractor, the Subcontractor and the Subcontractor's Subcontractors for the carrying out of the **Subcontract Works**; and
 - ii) is for an amount not less than the **Subcontract Sum** (inclusive of GST) stated in the Schedule.

Public Liability Insurance

- b) The Subcontractor shall effect and maintain a policy of public liability insurance in respect of third party personal injury or property damage, from the **Date for Commencement** or the **Start Date**, whichever is the earlier, until the expiration of the **Defects Liability Period**, that:
 - i) is in the joint names of the Contractor and the Subcontractor;
 - ii) is for an amount not less than \$5,000,000.00 per occurrence; and
 - iii) operates as though a separate policy of public liability insurance is held by each of the co-insured (provided that the overall amount insured will apply as though there are not separate policies held by each of the co-insured).

WorkCover and Other Statutory Insurances

- c) The Subcontractor shall effect and maintain the following insurance policies:
 - i) WorkCover or any other workers' compensation insurance required by a **Statutory Requirement** relating to the **Subcontract Works**; and
 - ii) any other insurance required by a **Statutory Requirement** relating to the **Subcontract Works**.
- d) A party required to effect and maintain a policy of insurance under this Clause shall:
 - i) effect and maintain the policy of insurance with an insurer; and
 - ii) if the other party gives a written notice requiring a copy of the policy of insurance, give the other party a copy of the current policy of insurance within five (5) **Business Days** after the giving of the notice.
- e) Subject to the provisions of the *Workers Compensation and Rehabilitation Act 2003* (the Act) the Subcontractor shall provide within 7 **Days** of a written request from a Contractor:

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- i) documentation confirming insurance status; and/or
- ii) details of "injury data" as defined under the Act.

Where the Contractor requests to become involved with the rehabilitation of the Subcontractors injured worker then the Subcontractor shall provide to the Contractor a statement of an injured workers rehabilitation plan and allow reasonable involvement of the Contractor in the workers rehabilitation.

9 INDEMNITY

- a) The Subcontractor indemnifies, and will keep indemnified, the Contractor against any claim, loss expense or liability arising out of:
 - i) any negligent act or omission of the Subcontractor, the subcontractor's consultants, agents, employees or other Subcontractors;
 - ii) any breach of contract or statutory duty by the Subcontractors, the Subcontractor's consultants, agents, employees or other Subcontractors;
 - iii) damage which is the unavoidable result of the construction of the **Subcontract Works** in accordance with the **Subcontract**;
 - iv) any defect of the **Subcontract Works**;
 - v) any defect in the design of the **Subcontract Works** provided by the Subcontractor.
- b) The Subcontractor shall take reasonable steps to mitigate any loss or damage caused, or contributed to, by the cause listed in Clause **9(a)**.

10 DAMAGE AND SITE CLEANING

- a) The Subcontractor must:
 - i) pay to the Contractor any cost incurred by the Contractor in making good any damage done by the Subcontractor, its agents, workers, employees or subcontractors to the **Subcontract Works** or property of the Contractor or of any other Subcontractor;
 - ii) keep the Subcontractor's part of the **Site** clean and tidy; and
 - iii) so far as is reasonably possible, leave the **Subcontract Works** in a state fit for immediate use or occupation before vacating the **Site**.
- b) If the Subcontractor fails to comply with Clause **10(a)** the Contractor may have the rectification or cleaning carried out by others and the cost is a debt due and payable by the Subcontractor to the Contractor.

11 WORKPLACE HEALTH, SAFETY & ENVIRONMENTAL PROTECTION

- a) The Subcontractor where applicable shall ensure that any person carrying out the works complies with the relevant:
 - i) Work Health and Safety legislation; and
 - ii) Environmental legislation,
- b) The Subcontractor shall:
 - i) ensure all **Statutory Requirements** are complied with;
 - ii) shall prepare a Safe Work Method Statement in respect of high risk construction activities forming part of the **Subcontract Works**;
 - iii) ensure that an employer, self-employed person or persons conducting a business or undertaking, involving a high risk construction activity provides the Subcontractor with a copy of their Safe Work Method Statement prior to commencing work;
 - iv) ensure that all common plant, plant, housekeeping, inductions, hazardous substances, work at height, falling objects and other regulatory requirements are identified and managed to prevent or minimise exposure to the risk of injury or illness;
 - v) ensure that an employer, self employed person, persons conducting a business or undertaking provides adequate information, instruction, training and supervision to prevent or minimise exposure to the risk of fatality, injury or illness; and
 - vi) report all injuries, illnesses and dangerous events to the Contractor.
- c) The Contractor may exclude or remove from the **Site** any person who in the Contractor's opinion fails to comply with this clause.

12 PAYMENT

- a) The Subcontractor shall submit Payment Claims to the Contractor on the following reference dates:
 - i) the times stated in the Schedule (or, if any time stated in the Schedule is not a Business Day, the next Business Day); and
 - ii) on the Subcontract Works reaching Completion.
- b) A Payment Claim shall set out:
 - i) details of:
 - A) the work carried out by the Subcontractor to which the Payment Claim relates;
 - B) the amount that the Subcontractor claims for payment by the Contractor for that work; and

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- C) any other amount arising out of, or in connection with, the Subcontract that the Subcontractor claims for payment by the Subcontractor; and
 - ii) the total amount that the Subcontractor claims for payment by the Contractor.
 - c) On the submission of a Payment Claim under Clause **12(a)**, or the final claim under Clause **23**, the Contractor shall:
 - i) pay to the Subcontractor the total amount of the Payment Claim, or the final claim, by the time stated in the Schedule for payment or the date **25 Business Days** after the **Submission Date**, whichever is the earlier; or
 - ii) if the Contractor disputes all or any part of the total amount of the Payment Claim, or the final claim:
 - A) give the Subcontractor a written notice setting out the amount in dispute and details of the dispute by the time stated in the Schedule for payment or the date ten (10) **Business Days** after the **Submission Date**, whichever is the earlier; and
 - B) pay to the Subcontractor the amount of the Payment Claim, or the final claim, that is not disputed by the Contractor by the time stated in the Schedule for payment or the date **25 Business Days** after the **Submission Date**, whichever is the earlier.
 - d) The Contractor shall pay interest, calculated on a daily basis, to the Subcontractor on any overdue amount under this Clause, including any part of the amount of a Payment Claim, or the final claim, wrongly withheld by the Contractor, up to and including the date on which the overdue amount is paid by the Contractor at the rate stated in the Schedule or the rate comprising the annual rate, as published from time to time by the Reserve Bank of Australia, for 90 Day bills plus 10%, whichever is the higher.
 - e) Payment, other than payment of the Subcontractor's final claim, is payment on account only.

13 SECURITY / RETENTION

- a) If retention is applicable to the Subcontract the Contractor may deduct from any amount due to the Subcontractor, and retain, the percentage of the amount due stated in the Schedule or 10% of the amount due, whichever is the lesser, until the total amount retained by the Contractor equals 5% of the **GST Exclusive Subcontract Sum**.
- b) The amount retained by the Contractor under Clause **13(a)** shall secure the performance of the Subcontractor's obligations under the Subcontract, including the Subcontractor's obligation to rectify defects.
- c) In replacement to, or instead of, all or any part of the amount retained, or that could be retained, by the Contractor under Clause **13(a)**, the Subcontractor may, at any time, give to the Contractor one or more bank guarantees, bonds or other valuable securities.
- d) The Contractor shall release to the Subcontractor:
 - i) all or that part of the amount retained by the Contractor under Clause **13(a)** for which the Subcontractor may give to the Contractor one or more bank guarantees, bonds or other valuable securities under Clause **13(c)** on the giving of the one or more bank guarantees, bonds or other valuable securities to the Contractor;
 - ii) that part of the amount retained by the Contractor under Clause **13(a)**, or any bank guarantee, bond or other valuable security securing an amount, in excess of 2.5% of the **GST Exclusive Subcontract Sum on Completion**; and
 - iii) the remainder of the amount retained by the Contractor under Clause **13(a)**, or any bank guarantee, bond or other valuable security given by the Subcontractor to the Contractor under Clause **13(c)** and not released by the Contractor to the Subcontractor under Clause **13(d)(ii)**, on the expiration of the **Defects Liability Period**.
- e) The Contractor may:
 - i) deduct from any amount due by the Contractor to the Subcontractor under the **Subcontract** an amount due by the Subcontractor to the Contractor;
 - ii) use all or any part of the amount retained by the Contractor under Clause **13(a)** to obtain an amount due by the Subcontractor to the Contractor; or
 - iii) convert and use any bank guarantee, bond or other valuable security given by the Subcontractor to the Contractor under Clause **13(c)** to obtain an amount due by the Subcontractor to the Contractor, only if the Contractor gives the Subcontractor a written notice setting out details of:
 - iv) the proposed deduction, use or conversion and use; and
 - v) the amount due, within **28 Days** after the Contractor becomes aware, or ought reasonably to have become aware, of the Contractor's entitlement to obtain the amount due.

14 PRIME COST ITEMS & PROVISIONAL SUMS

- a) Where a Prime Cost Item or Provisional Sum is included in the **Subcontract**, the Contractor shall give the Subcontractor all necessary **Directions** regarding the selection and supply of materials, goods or work

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comprising the Prime Cost Item or Provisional Sum in sufficient time to ensure that the progress of the **Subcontract Works** is not delayed.

- b) If the actual cost to the Subcontractor in carrying out the work or supplying the item comprising the Prime Cost Item or Provisional Sum is less than that estimated and included in the **Subcontract Sum**, the difference shall be deducted from the **Subcontract Sum**.
- c) If the actual cost to the Subcontractor in carrying out the work or supplying the item comprising the Prime Cost Item or Provisional Sum is greater than that estimated and included in the **Subcontract Sum**, the difference, together with the **Prime Cost Item and Provisional Sum Margin** stated in the Schedule on the difference, shall be added to the **Subcontract Sum**.
- d) The Subcontractor must give to the Contractor a copy of any invoice, receipt or other document relating to the actual cost incurred by the Subcontractor for any Prime Cost Item or Provisional Sum prior to or when seeking payment for the relevant item or work.

15 VARIATIONS

- a) The Contractor may direct the Subcontractor in writing to carry out a **Variation** to the **Subcontract Works** which is within the general scope of the **Subcontract** and the Subcontractor shall proceed with the **Variation** unless directed otherwise.
- b) Where the Contractor directs a **Variation** of the **Subcontract Works**, the Subcontractor shall, within ten (10) **Business Days**, submit to the Contractor in writing:
 - i) pricing of, or methodology for calculating the price of, the **Variation**.
 - ii) full supporting details for the pricing of the **Variation**.
- c) On the giving of a notice under Clause 15(b), the **Subcontract Sum** shall be adjusted by:
 - i) the agreed price; or
 - ii) in the absence of any agreement on the price of the **Variation**, or on calculating the price of the **Variation**:
 - A) the reasonable valuation of the **Variation**; and
 - B) if the **Variation** increases, or will increase, the cost to the Subcontractor in carrying out the **Subcontract Works**, the **Variation Margin** stated in the Schedule on that reasonable valuation.
- d) Where the Contractor directs a **Variation** omitting some of the **Subcontract Works**, the **Variation** shall be valued as a nett deduction excluding any allowance for overheads and profit.

16 TERMINATION BY CONTRACTOR

- a) A substantial breach of the **Subcontract** by the Subcontractor includes, but is not limited to:
 - i) suspension of the **Subcontract Works** by the Subcontractor otherwise than in accordance with Clause 18 or Clause 21(f); and
 - ii) failure by the Subcontractor to carry out the **Subcontract Works** with reasonable diligence or in a competent manner.
- b) If the Subcontractor is in substantial breach of the **Subcontract**, the Contractor may give the Subcontractor a written notice by registered post or delivery to the Subcontractor:
 - i) setting out full details of the substantial breach;
 - ii) requiring the Subcontractor to remedy the substantial breach within five (5) **Business Days** after the giving of the notice; and
 - iii) stating the Contractor's intention to terminate the **Subcontract** if the Subcontractor fails to remedy the substantial breach within five (5) **Business Days** after the giving of the notice.
- c) If the Subcontractor fails to remedy the substantial breach set out in the notice given by the Contractor under Clause 16(b) within five (5) **Business Days** after the giving of the notice, the Contractor may, without prejudice to any other right or remedy, terminate the **Subcontract** by giving a written notice of termination by registered post or delivery to the Subcontractor.
- d) Should the Head Contract be terminated for any reason the Contractor may terminate this **Subcontract** and shall be only liable to reimburse the Subcontractor in respect of work already carried out and any other loss properly and necessarily incurred in connection with the **Subcontract Works** and in respect of which the Subcontractor is unable to mitigate against and the Subcontractor shall not be entitled to recover loss of profit on the part of the **Subcontract Works** not executed at the date of termination hereof.

17 TERMINATION BY SUBCONTRACTOR

- a) A substantial breach of the **Subcontract** by the Contractor includes, but is not limited to:
 - i) failure by the Contractor to pay to the Subcontractor any amount due to the Subcontractor under the **Subcontract** by the time for the payment of the amount due under the **Subcontract**;
 - ii) unreasonable interference with, or obstruction of, the carrying out of the **Subcontract Works** by the Contractor, the Contractor's consultants, agents or Subcontractors;

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- iii) any delay in the carrying out of the **Subcontract Works** caused by:
 - A) a claim or proceeding being taken, or threatened to be taken, by a third party; or
 - B) a dispute with an adjoining or neighbouring owner or occupier, that did not arise as a result of any act or omission of the Subcontractor.
- b) If the Contractor is in substantial breach of the **Subcontract**, the Subcontractor may give the Contractor a written notice by registered post or delivery to the Contractor:
 - i) setting out full details of the substantial breach;
 - ii) requiring the Contractor to remedy the substantial breach within five (5) **Business Days** after the giving of the notice; and
 - iii) stating the Subcontractor's intention to terminate the **Subcontract** if the Contractor fails to remedy the substantial breach within five (5) **Business Days** after the giving of the notice.
- c) If the Contractor fails to remedy the substantial breach set out in the notice given by the Subcontractor under Clause 17(b) within five (5) **Business Days** after the giving of the notice, the Subcontractor may, without prejudice to any other right or remedy, terminate the **Subcontract** by giving a written notice of termination by registered post or delivery to the Contractor.

18 SUSPENSION

- a) If the Contractor:
 - i) fails to comply with an order of a Court or Tribunal given in favour of the Subcontractor in relation to any issue arising out of, or in connection with, the Subcontract; or
 - ii) is in substantial breach of the Subcontract, the Subcontractor may give the Contractor a written notice:
 - A) setting out details of the Contractor's failure or substantial breach;
 - B) stating the Subcontractor's intention to suspend the **Subcontract Works** if the Contractor fails to remedy the failure or substantial breach within five (5) **Business Days** after the giving of the notice.
- b) If the Contractor fails to remedy the failure or substantial breach set out in the notice given by the Subcontractor under Clause 18(a) within five (5) **Business Days** after the giving of the notice, the Subcontractor may, without prejudice to any other right or remedy, suspend the **Subcontract Works** by giving a written notice of suspension to the Contractor.
- c) The Subcontractor shall recommence the works within five (5) **Business Days** after the Contractor:
 - i) remedies the failure or substantial breach set out in any notice given by the Subcontractor under Clause 18(a); and
 - ii) gives the Subcontractor a written notice:
 - A) stating that the failure or substantial breach has been remedied; and
 - B) requiring the Subcontractor to recommence the **Subcontract Works**.
- d) Should the Head Contract be suspended for any reason the Contractor may suspend this **Subcontract** and shall be only liable to reimburse the Subcontractor in respect of work already carried out and any other loss properly and necessarily incurred in connection with the suspension of the **Subcontract Works** and in respect of which the Subcontractor is unable to reasonably mitigate against.

19 Termination for Insolvency

19.1 Either party may terminate Subcontract for insolvency

Subject to Clause 19.3, either the Subcontractor or the Contractor may terminate the **Subcontract** immediately on giving written notice to the other party, if the other party:

- a) commits an act of bankruptcy, or is made bankrupt;
- b) makes a composition or other arrangement with creditors;
- c) assigns assets for the benefit of creditors generally;
- d) being a company, becomes insolvent, enters into a deed of company arrangement, has a controller, administrator or receiver appointed, or is in liquidation.

19.2 Requirements of notice

A written notice under Clause 19.1 must set out the ground or grounds relied on by the relevant party for the termination.

19.3 Enforceability of Clause 19.1 if the other party is a company

If 'the other party' referred to in Clause 19.1 is a company and enters into certain arrangements for the purpose of avoiding being wound up in insolvency or appoints an administrator, then the right to terminate the **Subcontract** pursuant to Clause 19.1 may be limited by the *Corporations Act 2001* (Cth).

20 EXTENSION OF TIME

- a) The Subcontractor is entitled to an extension of the **Date for Completion** if the progress of the **Subcontract Works** is delayed as a result of any of the following causes:
 - i) a delay in the progress of the works required under the Head Contract other than a delay caused or

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- contributed to by the Subcontractor;
 - ii) an act or omission of the Contractor, the Contractor's consultants, agents or subcontractors;
 - iii) a **Variation** of the **Subcontract Works**;
 - iv) a **Latent Condition**;
 - v) a breach of the **Subcontract** by the Contractor;
 - vi) a suspension of the **Subcontract Works** in accordance with Clause **18** or Clause **21(f)**;
 - vii) inclement weather or conditions resulting from inclement weather;
 - viii) a strike, lockout, civil commotion or industrial action affecting:
 - A) any person in the carrying out of the **Subcontract Works**; or
 - B) the manufacture or supply of materials to be used in the **Subcontract Works**;
 - ix) a shortage, or delay in the delivery, of materials to be used in the **Subcontract Works**;
 - x) the unavailability of any labour (whether under a subcontract or a contract of employment) necessary for the Subcontractor to carry out the **Subcontract Works** with reasonable diligence;
 - xi) an act of prevention by the Contractor not otherwise covered by this Clause; or
- b) If, at any time prior to the **Subcontract Works** reaching **Completion**, the Subcontractor believes that the progress of the **Subcontract Works** was delayed as a result of a cause set out in Clause **20(a)**, the Subcontractor shall give the Contractor a written notice within five (5) **Business Days** of the delay occurring setting out:
 - i) the cause of the delay;
 - ii) the time during which the carrying out of the **Subcontract Works** was delayed; and
 - iii) the extension of the **Date for Completion** that the Subcontractor claims as a result of the delay.
- c) On the giving of a notice under Clause **20(b)**, the Contractor shall:
 - i) give the Subcontractor a written notice granting the extension of the **Date for Completion** that the Subcontractor claims in the notice; or
 - ii) if the Contractor disputes the Subcontractor's entitlement to all or any part of the extension of the **Date for Completion** that the Subcontractor claims in the notice, give the Subcontractor a written notice:
 - A) stating that the Contractor disputes the Subcontractor's claim for an extension of the **Date for Completion**;
 - B) setting out full details of the dispute; and
 - C) granting any part of the Subcontractor's claim for an extension of the **Date for Completion** that is not disputed by the Contractor,
 within five (5) **Business Days** after the giving of the notice under Clause **20(b)**.
- d) Notwithstanding that the Subcontractor is not entitled to an extension of the **Date for Completion** under this Clause, the Contractor may in its sole discretion and for its benefit, at any time prior to the submission by the Subcontractor of a final claim in accordance with Clause **23**, extend the **Date for Completion** for any reason by giving the Subcontractor a written notice setting out the extension of the **Date for Completion**.
- e) Where the progress of the **Subcontract Works** is delayed as a result of a cause set out in Clause **20(a)(i), (ii), (iii), (iv), (v), (vi), or (xi)**, any increase in the cost to the Subcontractor in carrying out the **Subcontract Works**, including supervision and off-Site overheads, arising directly or indirectly out of the delay shall be added to the **Subcontract Sum**.

21 COMPLETION

- a) The Subcontractor shall ensure that the **Subcontract Works** reach **Completion** by the **Date for Completion**.
- b) On **Completion** of the **Subcontract Works**, the Subcontractor shall give the Contractor a written notice stating that the **Subcontract Works** have reached **Completion**.
- c) If the Contractor disputes that the **Subcontract Works** have reached **Completion**, the Contractor shall give the Subcontractor a written notice stating that the Contractor disputes that the **Subcontract Works** have reached **Completion** and setting out full details of the further work that the Contractor believes is required to be carried out for the **Subcontract Works** to reach **Completion** within five (5) **Business Days** after the giving of the notice under Clause **21(b)**.
- d) If the Contractor does not give the Subcontractor a notice in accordance with Clause **21(c)**, the **Subcontract Works** are deemed to have reached **Completion** on the date of the giving of the notice under Clause **21(b)**.
- e) If the Contractor gives a notice under Clause **21(c)**, the Subcontractor shall:
 - i) if the Subcontractor disputes that any further work is necessary for the **Subcontract Works** to reach **Completion**, give the Contractor a written notice of dispute under Clause **25(b)**; or
 - ii) if the Subcontractor does not dispute that further work is necessary for the **Subcontract Works** to reach **Completion**, carry out the further work necessary for the **Subcontract Works** to reach **Completion** and then give the Contractor a further written notice stating that the **Subcontract Works** have reached **Completion** under Clause **21(b)**.

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- f) If the Subcontractor gives the Contractor a written notice of dispute under Clause **25(b)** in accordance with Clause **21(e)(i)**, the **Subcontract Works** are deemed to be suspended from the date of the giving of the notice until the date five (5) **Business Days** after the date on which the dispute is resolved or decided.

22 DEFECT LIABILITY PERIOD

- a) If, after the **Subcontract Works** have reached **Completion** but prior to the expiration of the **Defects Liability Period**, the Contractor becomes aware of any defective or incomplete work, the Contractor shall give the Subcontractor a written **Direction**:
- setting out full details of the defective or incomplete work; and
 - requiring the Subcontractor to rectify the defective work or complete the incomplete work.
- b) On the giving of a **Direction** under Clause **22(a)**, the Subcontractor shall within anytime that may be stated by the Contractor in the **Direction**, and at the Subcontractor's own cost:
- rectify any part of the **Subcontract Works** that is defective; and
 - complete any part of the **Subcontract Works** that is incomplete.
- c) If the Subcontractor fails to comply with a **Direction** given by the Contractor under Clause **22(a)** then the Contractor may have the work rectified or the materials removed and replaced by others and the cost is a debt due and payable by the Subcontractor to the Contractor.

23 FINAL CLAIM

- On the expiration of the **Defects Liability Period**, the Subcontractor shall, within five (5) **Business Days**, submit a final claim to the Contractor setting out:
- the total amount of the Payment Claims submitted by the Subcontractor to the Contractor under Clause **12(a)**;
 - the total amount of the payments made by the Contractor to the Subcontractor under the **Subcontract** up to and including the date on which the Subcontractor submits the final claim;
 - details of:
 - any work carried out by the Subcontractor to which the final claim relates;
 - the amount that the Subcontractor claims for payment by the Contractor for any such work; and
 - any other amount arising out of, or in connection with, the **Subcontract** that the Subcontractor claims for payment by the Contractor; and
 - the total amount that the Subcontractor claims for payment by the Contractor.

24 LIQUIDATED DAMAGES

- a) If the Subcontractor fails to ensure that the **Subcontract Works** reach **Completion** by the **Date for Completion**, the Contractor shall, on **Completion**, give the Subcontractor a written notice by registered post or delivery to the Subcontractor:
- setting out full details of:
 - the date that the Contractor believes to be the **Date for Completion**;
 - the time that the Contractor believes to be the time from the **Date for Completion** up to and including the date on which the **Subcontract Works** reached **Completion** under Clause **21**; and
 - the liquidated damages that the Contractor calculates on that time at the rate stated in the Schedule; and
 - claiming a total amount of liquidated damages, which amount shall not be greater (but may be less) than the calculation of liquidated damages required to be set out in the notice under Clause **24(a)(i)(C)**, for payment by the Subcontractor,
- provided that the Contractor gives the Subcontractor any such notice by no later than **28 Days** after the date on which the **Subcontract Works** reached **Completion** under Clause **21**.
- b) If the Contractor gives a notice under Clause **24(a)**, the Subcontractor shall:
- pay to the Contractor the total amount of liquidated damages that the Contractor claims in the notice; or
 - if the Subcontractor disputes all or any part of the total amount of liquidated damages that the Contractor claims in the notice:
 - give the Contractor a written notice setting out the amount in dispute and details of the dispute; and
 - pay to the Contractor the amount of the liquidated damages that the Contractor claims in the notice that is not disputed by the Subcontractor, by the date **15 Business Days** after the giving of the notice.
- c) Unless the Contractor gives a notice strictly in accordance with Clause **24(a)**, the Contractor is not entitled to liquidated damages or any other amount, including any claim for damages at law, for any failure by the Subcontractor to ensure that the **Subcontract Works** reach **Completion** by the **Date for Completion**.

25 DISPUTE RESOLUTION

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- a) Except to the extent that any litigation that may be commenced is for the recovery of an amount due under Clause **12** or for injunctive or declaratory relief in relation to any matter arising out of, or in connection with, the **Subcontract**, the requirements of this Clause are a condition precedent to either party commencing (or, if wrongly commenced, continuing) litigation.
- b) If a dispute or difference arises out of, or in connection with, the **Subcontract**, either party may give the other party a written notice of dispute setting out the details of the dispute including any amount in dispute.
- c) Any notice that:
 - i) the Contractor may give under Clause **12(c)(ii)(A)** or Clause **20(c)(ii)**; or
 - ii) the Subcontractor may give under Clause **24(b)(ii)(A)**,
 is deemed to be a notice of dispute under Clause **25(b)**.

'Without Prejudice' Conference

- d) The parties shall arrange, and participate in, a 'without prejudice' conference between them, or their authorised representatives, in an attempt to resolve the dispute or difference set out in the notice of dispute within five (5) **Business Days** after the giving of the notice of dispute.
- e) Subject to one of the parties being a member of **Master Builders Queensland**:
 - i) if either party gives a written notice to **Master Builders Queensland** and the other party requesting that **Master Builders Queensland** appoint a person to facilitate discussion in the 'without prejudice' conference, **Master Builders Queensland** may appoint such a person; and
 - ii) on any appointment of a person by **Master Builders Queensland** under Clause **25(e)(i)**, the parties shall permit that person to make suitable arrangements for, and to facilitate discussion in, the 'without prejudice' conference.

Mediation or Arbitration

- f) If the parties fail to resolve all of the dispute or difference set out in the notice of dispute during the 'without prejudice' conference, or if the party given the notice of dispute fails to participate in a 'without prejudice' conference within five (5) **Business Days** after the giving of the notice of dispute, then either party may give the other party a written notice referring all or any part of the dispute or difference to mediation or arbitration.
- g) If the parties refer all or any part of the dispute or difference set out in the notice of dispute to mediation or arbitration but fail to agree on the person to be appointed as the mediator or the arbitrator, then either party may give a written notice to the **President** and the other party requesting that the **President** appoint (as the case may be):
 - i) a mediator to facilitate the mediation; or
 - ii) an arbitrator to decide all or that part of the dispute or difference referred to arbitration.
- h) If either party gives a notice under Clause **25(g)**, the **President** shall give to the parties a written notice setting out the name and contact details of (as the case may be):
 - i) the mediator appointed by the **President** to facilitate the mediation; or
 - ii) the arbitrator appointed by the **President** to decide all or that part of the dispute or difference referred to arbitration.
- i) On the giving of a notice under Clause **25(h)**, the parties shall:
 - i) request the mediator or the arbitrator named in the notice to make suitable arrangements for (as the case may be) the mediation or the arbitration; and
 - ii) participate in (as the case may be) the mediation or the arbitration and pay the costs of the mediation (including the costs of the mediator) or the costs of the arbitration (including the costs of the arbitrator) in equal shares unless otherwise agreed by the parties or decided by the arbitrator.
- j) If the parties fail to:
 - i) refer any part of the dispute or difference set out in the notice of dispute to mediation or arbitration within:
 - A) five (5) **Business Days** after the 'without prejudice' conference; or
 - B) if the party given the notice of dispute fails to participate in a 'without prejudice' conference, ten (10) **Business Days** after the giving of the notice of dispute, or
 - ii) resolve all of the dispute or difference set out in the notice of dispute during any mediation, then either party may commence litigation in relation to any part of the dispute or difference set out in the notice of dispute that is not:
 - iii) referred to mediation or arbitration under Clause **25(f)**; or
 - iv) resolved during any mediation.
- k) Notwithstanding the giving of a notice of dispute, the parties shall, subject to the **Subcontract**, continue to perform the **Subcontract**.

26 NOTICES, ELECTRONIC COMMUNICATIONS AND EXCHANGE OF CONTRACT

26.1 Methods for giving notices and other documents

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Unless expressly stated otherwise elsewhere in the **Subcontract**, and subject to Clause **26.2**, any written notice, or other document, to be given by a party under the **Subcontract** is deemed to have been given and received:

- a) if delivered by hand to the other party, at the time of delivery;
- b) if the other party is a company and the notice is left at its registered office or a principal place of business, at the time that the notice is left at the registered office or principal place of business;
- c) if sent by pre-paid or registered post to the other party at the address of the other party stated in the Subcontract, or another address notified by the other party in writing, at 9.00am on the date that is two (2) **Business Days** after the date of posting;
- d) if sent by facsimile transmission to the other party at the facsimile number of the other party stated in the **Subcontract**, or another facsimile number notified by the other party in writing, at the time set out in a written confirmation of the successful transmission of the facsimile; or
- e) if sent by email to the other party at the email address of the other party stated in the **Subcontract**, or another email address notified by the other party in writing, at the time when the email leaves the relevant system for generating, sending, receiving, storing or otherwise processing electronic communications used by the party whom, or on whose behalf, the email has been sent.

26.2 **Notices given outside of usual business hours**

If any written notice, or other document, is given at a time after 5.00pm on a **Business Day**, or during a **Day** that is not a **Business Day**, the notice, or other document, is deemed to have been given at 9.00am on the next **Business Day**.

26.3 **Consent to electronic communications**

- a) The parties agree that facsimile transmission and email communications from either party to the other constitute an 'electronic communication' as that term is defined in the *Electronic Transactions Act 1999 (Cth)* and corresponding State legislation including the *Electronic Transactions (Queensland) Act 2001*.
- b) The parties agree that any written notice, or other document, to be given by a party under the Subcontract may be given and received via facsimile transmission or email, or both.

26.4 **Exchange of Contract**

- a) This **Subcontract** may be executed in counterparts.
- b) A counterpart may be a copy of this Subcontract printed from a facsimile or email transmission.
- c) All counterparts together are taken to constitute one instrument and will not be binding until executed counterparts are exchanged.
- d) A copy of this **Subcontract** which has been executed by a party may be relied upon by a party to the same extent as if it was an original of this **Subcontract** executed by the party.

27 **GOODS AND SERVICES TAX**

- a) For the purposes of the **Subcontract**, the terms "ABN", "GST", "GST law", "registered", "tax invoice" and "taxable supply" have the meanings given to them in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- b) The Subcontractor warrants that the Subcontractor is:
 - i) the holder of any ABN stated in the Schedule; and
 - ii) registered and will continue to be registered until the expiration of the **Defects Liability Period**.
- c) The **Subcontract Sum** includes GST.
- d) Where the **Subcontract Works**, or any part of the Works, constitute a taxable supply, the Subcontractor shall comply in every respect with GST law.
- e) The Payment Claims that the Subcontractor submits under Clause **12(a)**, and the final claim that the Subcontractor submits under Clause **23**, shall be in the form of a tax invoice.

28 **SPECIAL CONDITIONS**

If applicable, the special conditions set out in Annexure B shall take effect as express terms of the **Subcontract**. The special conditions shall prevail over these general conditions of contract to the extent of any inconsistency.

29 **DEFINITIONS**

In the **Subcontract**, unless the context otherwise requires:

Business Days	has the meaning given in section 36 of the <i>Acts Interpretation Act 1954 (Qld)</i> , but does not include 27, 28, 29, 30 or 31 December of any Year ;
Completion	means when the Subcontract Works are substantially completed except for minor defects or omissions which do not prevent the Subcontract Works from being reasonably capable of being used for their intended purpose and all as built drawings, warranties, certificates have been provided to the Contractor;
Date for Commencement	means the time stated in the Schedule;
Date for Completion	means the time stated in the Schedule as extended from time to time in accordance with the Subcontract , or any such other date as may be determined in any arbitration or litigation;

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Days	means calendar Days ;
Defects Liability Period	means the time stated in the Schedule, which commences on the date that the Works reach Practical Completion under the Head Contract;
Direction	includes, but is not limited to, any agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
Fortnight	means a time of 2 Weeks ;
GST Exclusive Subcontract Sum	means the GST Exclusive Subcontract Sum stated in the Schedule as adjusted from time to time in accordance with the Subcontract or, if no amount is stated in the Schedule, that amount of the Subcontract Sum that does not relate to the GST;
Latent Condition	means any physical condition above, on or below the Site , or the areas surrounding the Site , which differs substantially from the physical conditions which could reasonably have been expected by the Subcontractor at the time of the entering into of the Subcontract by the parties;
Master Builders Queensland	means Queensland Master Builders Association Industrial Organisation of Employers or any successor;
Month	means calendar Month ;
President	means the President from time to time of Master Builders Queensland ;
Prime Cost Item and Provisional Sum Margin	means the percentage stated in the Schedule in coverage of the Subcontractor's administration, management and supervisory costs, overheads and profit;
Site	means the land located at the Site address stated in the Schedule, any areas surrounding or near that land which are to be made available by the Contractor to the Subcontractor under the Subcontract and any buildings or other structures on the land and any such surrounding areas;
Site Information	means all information, documents and data about or describing the Site , or the siting of the Subcontract Works , and includes, but is not limited to, the results of soil tests, survey drawings and details of easements, building covenants and planning restrictions;
Start Date	means the date on which the Subcontractor physically commences the carrying out of the Subcontract Works on the Site ;
Statutory Requirement	includes, but is not limited to, any act, regulation, by-law, permit, approval and any Direction from, or requirement of, a local government or other entity having jurisdiction over the carrying out of the Subcontract Works ;
Subcontract	means the agreement between the Subcontractor and the Contractor recorded in the Subcontract Documents ;
Subcontract Documents	means the special conditions under Clause 28 , these general conditions of Subcontract, including the Schedule and Annexures to them, and the specification, the drawings, and any other documents set out in Annexure A;
Subcontract Sum	means the Subcontract Sum (inclusive of GST) stated in the Schedule as adjusted from time to time in accordance with the Subcontract ;
Subcontract Works	means the whole of the work that the Subcontractor is required under the Subcontract to carry out in accordance with Clause 1(a) , a brief description of which is set out in the Schedule, and includes Variations and the rectification of any part of the Subcontract Works that is defective;
Subcontractor's Margin	means the percentage on an amount in coverage of the Subcontractor's administration, management and supervisory costs, overheads and profit, being 10% unless otherwise agreed by the parties;
Submission Date	means the date on which the Subcontractor submits (as the case may be) the Payment Claim, or the final claim, to the Contractor.
Variation	whether agreed by the parties, deemed under the Subcontract or otherwise, means to vary the Subcontract Works by: - changing the nature or scope of the work that the Subcontractor is required to carry out under the Subcontract, including the omission of work from the Subcontract Works; or - changing the manner or sequencing in which the Subcontractor is required to carry out the work under the Subcontract;
Variation Margin	means the percentage stated in the Schedule in coverage of the Subcontractor's administration, management and supervisory costs, overheads and profit;

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Week	means calendar Week ;
Year	means calendar Year .

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Subcontract Agreement

Special Conditions

HOW TO USE THIS ADDENDUM

Following changes to building industry legislation, please ensure this Special Conditions addendum is added to each Subcontract Agreement prior to signing. For assistance, contact Master Builders on 1300 30 50 10.

SC1 Insert a definition of Head Contract in Clause 29:

“Head Contract” means the contract between the Contractor and a principal for work that includes the **Subcontract Works**.

SC2 Insert Clause 12(f):

12(f) Subclause 12(g) will apply only to the extent that Chapter 2 of the *Building Industry Fairness (Security of Payment) Act 2017 (Qld)* (“**BIF Act**”) applies to the **Head Contract**.

SC3 Insert new Clause 12(g):

12(g) Notwithstanding any contrary requirement in the **Subcontract**, all payments to the Subcontractor from the Contractor pursuant to the **Subcontract** must be paid to the Subcontractor in accordance with Chapter 2 of the **BIF Act**.

SC4 Insert Clause 13(f):

13(f) Subclause 13(g) will apply only to the extent that Chapter 2 of the *Building Industry Fairness (Security of Payment) Act 2017 (Qld)* (“**BIF Act**”) applies to the **Head Contract**.

SC5 Insert Clause 13(g):

13(g) Notwithstanding any contrary requirement in the **Subcontract**, all cash retention held under the **Subcontract** must be held and released in accordance with Chapter 2 of the **BIF Act**.

SC6 Insert Clause 30:

30. PAYMENT SCHEDULES

- (a) This Clause **30** will apply only to the extent that Chapter 3 of the *Building Industry Fairness (Security of Payment) Act 2017 (Qld)* (“**BIF Act**”) applies to the **Subcontract**.
- (b) Clause **12(g)(ii)(A)** is amended by deleting “ten (10)” from line 2 and replacing with “fifteen (15)”.