

Fulton Hogan Seymour Whyte JV
Subcontract Agreement
28010A1-CON-000PMSM00-TMP-0001_B

Contract No. 12.164.01
Supply and Installation of Fauna Poles and Ladder

Project	Bruce Highway Upgrade Project Caloundra Road to Sunshine Motorway
Revision	B
Issue Date	26/06/2017

CR2SM

Caloundra Road to
Sunshine Motorway



Fulton Hogan Seymour Whyte Joint Venture
Subcontract Agreement

Document Control

Revision History Register

The following revision register provides details on all versions of this document.

**To be updated by the Originator/person revising document.*

Revision No	Revision Date	Status	Amendment Summary	Prepared By	Reviewed By	Approved By

Formal Instrument of Agreement

Parties **Fulton Hogan Seymour Whyte Joint Venture** ABN 23 446 040 210
of 120 Cresswell Road, Meridan Plains, Qld, 4551
(Contractor)

Full name of Subcontractor ACN # # Subcontractor's ABN (if
applicable) #
of # address of Subcontractor #
(Subcontractor)

Introduction

- A** This agreement is for the supply and installation of fauna poles and ladders.
- B** The Contractor wishes to appoint the Subcontractor to carry out and complete the Subcontract Works as more particularly set out in the General Conditions of Subcontract, and the Subcontractor has agreed to accept that appointment on the terms contained in this deed.
- C** The Subcontractor agrees to execute the Subcontract Works in accordance with the provisions of the Subcontract.

It is agreed

1. Interpretation

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

2. Subcontractor's acknowledgements

The Subcontractor acknowledges that:

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

3. Documents and information

- (6) In this deed Non-Subcontract Documents means any documents provided to the Subcontractor before the Execution Date and which do not form part of the Subcontract Documents, including any bill of quantities, schedule of prices, geotechnical or soil report, asbestos audit or existing conditions survey.
- (7) The Subcontractor acknowledges and agrees that the Non-Subcontract Documents were furnished solely for the Subcontractor's convenience and are not guaranteed.
- (8) The Subcontractor acknowledges and agrees that it has not relied on any information provided by the Contractor to the Subcontractor before the Execution Date which does not form part of the Subcontract Documents (including the Non-Subcontract Documents or the information contained in the Non-Subcontract Documents) and has used and relied on its own endeavours and efforts to verify the accuracy and sufficiency of that information.
- (9) The Subcontractor warrants that it is entering into this Subcontract:
 - (a) solely on the basis of its own investigations and determinations as to the obligations and liabilities assumed or to be assumed by the Subcontractor and risks involved in performing its obligations under this Subcontract; and
 - (b) without relying on any representation by the Contractor or any other person purporting to represent the Contractor.

4. Execution of counterparts

This deed may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.

5. Entire understanding

The Subcontract:

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

Executed as an agreement on

Signed for and on behalf of **Fulton
Hogan Seymour Whyte Joint Venture**
ABN number 23 446 040 210 by its
authorised representative in the
presence of:

.....
Signature of authorised representative

.....
Signature of witness

.....
Name of authorised representative
(BLOCK LETTERS)

.....
Name of witness
(BLOCK LETTERS)

.....
Address of witness

Executed by **#NAME OF
SUBCONTRACTOR#** ACN
#INSERT# in accordance with
section 127 of the *Corporations Act
2001*:

.....
Director

.....
Director/company secretary

.....
Name of director
(BLOCK LETTERS)

.....
Name of director/company secretary
(BLOCK LETTERS)

.....
Signature of witness

.....
Name of witness
(BLOCK LETTERS)

.....
Address of witness

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General Conditions of Subcontract

1 Definitions and interpretation

1.1 Definitions

In this Subcontract:

- (1) **Approval** means any licence, permit, consent, approval, certification, authorisation or other requirement of any person, authority, body or other organisation having jurisdiction in connection with the construction or use of the Subcontract Works;
- (2) **Authorised Persons** means the Principal, the Contractor, any assignee or sub-licensee of the Principal or the Contractor in relation to the Material or any contractor of the Principal or the Contractor in relation to the Project;
- (3) **Bank Guarantee** means an unconditional undertaking in a form and from a financial institution approved by the Contractor;
- (4) **Business Day** means a day that is not:
 - (a) a Saturday or Sunday;
 - (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done; or
 - (c) any day occurring within any of the following periods:
 - (i) 22 to 24 December;
 - (ii) 27 to 31 December;
 - (iii) 2 to 10 January;
- (5) **Claim** means any request, demand or entitlement in relation to, arising out of or in connection with this Subcontract or the Subcontract Works for payment, an Extension of Time, damages (whether under this Subcontract or otherwise) including; in tort, for breach of contract or quasi contract, misrepresentation and damages under any statute, except any statute which cannot be excluded by agreement, or unjust enrichment, restitution or under any other principle of law or equity;
- (6) **Commencement Date** has the meaning given in Schedule 1 Item 11;
- (7) **Confidential Information** means this Subcontract, the Documents and all other information of a confidential character whether written or oral which is given to or obtained or learned by the Subcontractor, or developed by the Subcontractor for the purpose of performing the Subcontract Works or in connection with the Project including information about the Principal or the Principal's business, operations, customers, products, marketing strategies, future development plans, technical information, intellectual property, survey results, pricing information, marketing information and commercial information of any other nature relating to or developed in connection with the business of the Principal;
- (8) **Contractor's Representative** means the person identified as such in of Item 2 or a nominated replacement;
- (9) **Date for Substantial Completion** means the date or duration for Substantial Completion stated in Item 4 as adjusted from time to time by the Contractor in accordance with this Subcontract, or as allowed in any dispute resolution process;
- (10) **Date of Substantial Completion** means, subject to clause 24.2, the date which the Contractor's Representative certifies as the date upon which Substantial Completion is achieved;
- (11) **Defect** means any work that is defective, faulty or incomplete or otherwise not in accordance with this Subcontract;

- (12) **Defects Liability Period** means, subject to clause 20.3, the period commencing on the Date of Substantial Completion and continuing until the expiration of the defects liability period under the Head Contract stated in Schedule 1 – Item 9, or if there are several, the last to expire;
- (13) **Drawings and Specifications** means those drawings and specifications in Schedule 4;
- (14) **Execution Date** means the date of this Subcontract stated on the signing page of the Formal Instrument of Agreement;
- (15) **Extension of Time** means an extension of the Date for Substantial Completion;
- (16) **Head Contract** means the contract between the Contractor and the Principal specified in Item 5;
- (17) **Item** means or refers to any item under Schedule 1;
- (18) **Insolvency Event** means the happening of any of these events in relation to a party (Defaulting Party):
 - (a) execution or other process of a court or authority or distress is levied for an amount exceeding \$10,000 upon any of the Defaulting Party's property and is not satisfied, set aside or withdrawn within 5 Business Days of its issue;
 - (b) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Defaulting Party which is not satisfied within 5 Business Days;
 - (c) the Defaulting Party suspends payment of its debts;
 - (d) where the Defaulting Party is a body corporate:
 - (i) the Defaulting Party becomes an externally-administered body corporate under the *Corporations Act 2001*;
 - (ii) steps are taken by any person towards making the Defaulting Party an externally-administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 10 Business Days);
 - (iii) a controller (as defined in section 9 of the *Corporations Act 2001*) is appointed of any of the property of the Defaulting Party or any steps are taken for the appointment of a controller (but not where the steps taken are reversed or abandoned within 10 Business Days);
 - (iv) the Defaulting Party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*; or
 - (v) a resolution is passed for the reduction of capital of the Defaulting Party or notice of intention to propose such a resolution is given, without the prior written consent of the other party;
 - (e) where the Defaulting Party is a natural person:
 - (i) the Defaulting Party authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors;
 - (ii) a person holding a security interest in assets of the Defaulting Party enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or
 - (iii) the Defaulting Party commits an act of bankruptcy; or
 - (f) an event happens analogous to an event specified in clauses 1.1(18)(a) to 1.1(18)(e) to which the law of another jurisdiction applies and the event has an effect in that jurisdiction similar to the effect which the event would have had if the law of Australia applied;

- (19) **Insurance Bond** means an unconditional undertaking in a form and from a provider approved by the Contractor;
- (20) **Law** includes:
 - (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the jurisdiction applicable to the Subcontract Works;
 - (b) certificates, licences, consents, permits, approvals, industry codes of practice, and requirements of organisations having jurisdiction applicable to the Subcontract Works; and
 - (c) fees and charges payable in connection with the above;
- (21) **Linked Claim** is any claim, potential claim, entitlement or potential entitlement of the Subcontractor against the Contractor under this Subcontract in respect of the same circumstances, acts or omissions as a claim, potential claim, entitlement or potential entitlement of the Contractor against the Principal under the Head Contract, but excluding a breach of this Subcontract by the Contractor that is not caused by a breach by the Principal of the Head Contract and excluding the Subcontractor's entitlement to be paid the Subcontract Price (unadjusted as at the Execution Date);
- (22) **Materials** has the meaning given in clause 18.1;
- (23) **Personnel** includes the officers, employees, agents, advisers, auditors, consultants, subcontractors of the Subcontractor and each of their officers, employees, agents, advisers, auditors, consultants or subcontractors and includes the Subcontractor's Representative and any other person for whom the Subcontractor is responsible;
- (24) **Principal** means the person specified in Item 7;
- (25) **PPS Law** means:
 - (a) the PPSA and any regulations made under the PPSA, as amended from time to time; and
 - (b) any amendment made to any other legislation as a consequence of the PPSA or any regulations made under the PPSA, including, without limitation, amendments to the *Corporations Act 2001* (Cth);
- (26) **PPSA** means the Personal Property Securities Act 2009 (Cth);
- (27) **Project** means the specific project or undertaking stated in Item 1 in respect of which the Subcontractor is engaged to execute the Subcontract Works;
- (28) **QBCC** means the Queensland Building and Construction Commission Act 1991 (Qld);
- (29) **Safety Legislation** means:
 - (a) any legislation applicable to work health and safety, environment protection, dangerous goods and electricity safety;
 - (b) regulations made under that legislation; and
 - (c) any directions on safety or notices issued by any relevant authority or any code of practice or compliance code appropriate or relevant to the Subcontract Works,as amended from time to time;
- (30) **Safety Requirements** means any direction, instruction, request or requirement relevant or necessary for compliance by the Subcontractor with Safety Legislation, and including any such matter of which the Subcontractor has been informed by the Contractor or Contractor's Representative orally or in writing;
- (31) **Schedule of Rates** means the rates and prices set out in Schedule 3;
- (32) **Security** means the performance security that the Subcontractor is required to provide in accordance with clause 9;

- (33) **Security of Payment Act** means the Building Industry Fairness Security of Payments Act 2017 (Qld);
- (34) **Site** means the land so described in Item 6;
- (35) **Subcontract** means the agreement between the Contractor and the Subcontractor constituted by the Subcontract Documents;
- (36) **Subcontract Documents** means:
 - (a) the Formal Instrument of Agreement;
 - (b) these General Conditions of Subcontract;
 - (c) all Schedules to these General Conditions of Subcontract; and
 - (d) all other documents described in Item 13;
- (37) **Subcontract Price** means the sum stated in Item 8;
- (38) **Subcontractor's Representative** means the person identified as such in Item 3 or a nominated replacement whose appointment has been approved by the Contractor;
- (39) **Subcontract Works** means the whole of the work to be executed in accordance with this Subcontract, including as set out in Item 10 and including all Variations;
- (40) **Substantial Completion** means subject to clause 24.2 and any other pre-condition to Substantial Completion contained in this Subcontract, that stage of the Subcontract Works when the Contractor's Representative has determined that the Subcontract Works are complete;
- (41) **Substantial Defect** means a material defect in the Subcontract Works and includes, but is not limited to:
 - (a) any Defect that represents an immediate threat to persons or property damage; or
 - (b) any Defect that causes nuisance or discomfort to building occupants, adjoining owners or the general public; and
- (42) **Variation** means any change in the Subcontract Works, including an addition or omission in the scope, quality or character of the Subcontract Works.

1.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a party includes the party's executors, administrators, successors and permitted assigns;
 - (e) a thing includes the whole and each part of it separately;
 - (f) a statute, regulation, code or other law or a provision of any of them includes:
 - (i) any amendment or replacement of it; and
 - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
 - (g) dollars means Australian dollars unless otherwise stated.
- (2) Measurements of physical quantities must be in legal units of measurement of Australia.
- (3) Communications between the Contractor and the Subcontractor must be in English.
- (4) "Including" and similar expressions are not words of limitation.

- (5) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (6) Headings and any table of contents or index are for convenience only and do not form part of this Subcontract or affect its interpretation.
- (7) A provision of this Subcontract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Subcontract or the inclusion of the provision in the Subcontract.
- (8) Unless this Subcontract expressly provides otherwise, the Subcontractor must perform all of its obligations under this Subcontract at its own cost and expense.
- (9) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- (10) Whenever the Contractor is required to act reasonably, what is reasonable under the circumstances is to be judged having regard to the terms of the Subcontract. Except where it is expressly stated that the Contractor must act reasonably, in exercising a right, power or function under the Subcontract, the Contractor may decide whether and in what manner it does so in its own discretion and is under no obligation to consider the interests of any other person or party, including the Subcontractor.
- (11) The word "shall" designates a mandatory obligation on a party to do the act to which it refers.
- (12) To the maximum extent permitted by law (and except as otherwise expressly provided in this Subcontract) all terms, conditions, promises, undertakings, representations, warranties and statements (whether express, implied, written, oral, collateral, statutory or otherwise) which would be implied or incorporated into this Subcontract are excluded and the Contractor shall have no entitlement to make any Claim against the Principal in relation to any of them.

1.3 Parties

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

1.4 Special conditions

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

2 The Subcontract Works

2.1 Performance of the Subcontract Works

- (1) The Subcontractor must carry out and complete the Subcontract Works in a proper and workmanlike manner to the satisfaction of the Contractor and in accordance with the highest standards of the respective trades using industry best practices and otherwise in accordance with the requirements of this Subcontract.
- (2) The Contractor may, at any time, and without prejudice to any other right available to the Contractor, reject any work or materials which do not comply with this Subcontract. The Subcontractor must rectify or replace any rejected work or materials at its own cost in accordance with the directions of the Contractor (including any time period directed by the Contractor), failing which the Contractor may rectify or replace such work or materials or

have such work or materials rectified or replaced by others, the costs of which will be a debt due from the Subcontractor to the Contractor.

2.2 Quantities

- (1) Any Schedule of Rates does not form part of the Subcontract (except for the purpose of clause 19.3. Quantities in a Schedule of Rates are estimated quantities only and the Subcontractor is not entitled to make a Claim in relation to any errors in or increases required to those quantities.

3 Commencement and Site access

3.1 Commencement Date

- (1) The Contractor will notify the Subcontractor of the Commencement Date at least 5 Business Days prior to the Commencement Date.
- (2) If the Contractor wishes to notify a Commencement Date as a date which occurs after the period stated in 0, it may do so by directing a Variation under clause 19.1(1).

3.2 Access to Site

- (1) The Subcontractor must commence performance of the Subcontract Works without delay on the Commencement Date.
- (2) On and from the Commencement Date, the Contractor will grant access to sufficient parts of the Site to enable the Subcontractor to commence the relevant Subcontract Works. Any delay in giving the Subcontractor access to the Site is not a breach of contract, but may entitle the Subcontractor to claim an Extension of Time under and subject to clause 22. Unless the Contractor's Representative directs otherwise, the Subcontractor must only access the Site during the hours and on the days provided for in accordance with Item 12.
- (3) Notwithstanding this clause 3, if the Subcontractor has not complied with clause 11.1, the Contractor may refuse to give the Subcontractor access to the Site until the Subcontractor complies with the requirements of that clause.

3.3 Other works on the Site

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

3.4 Removal of persons from Site

The Contractor's Representative may direct the Subcontractor to remove from the Site any person whom the Contractor's Representative considers to be disruptive, incompetent, negligent or guilty of misconduct. The written approval of the Contractor's Representative must be obtained by the Subcontractor before the Subcontractor subsequently employs the person on Site or has the person involved in activities in any way connected with the Subcontract Works.

4 Subcontractor warranties

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

- (1) it has thoroughly examined and acquired knowledge of the contents of all the Subcontract Documents, all other information or documentation made available either orally or in writing to it by the Contractor before entering into this Subcontract, including relevant extracts of the Head Contract, and obtained all other information necessary to complete the Subcontract Works;
- (2) it and its employees, Subcontractors and consultants, at all times are and will remain suitably qualified and experienced;
- (3) it has entered into this Subcontract without relying on any representation by the Contractor, the Principal or any person purporting to represent the Contractor or the Principal;
- (4) it has thoroughly inspected the Site and its adjacent surroundings, including any prior work, existing structures or materials and physical conditions (whether naturally occurring or in consequence of human activity) on, in, over or under the Site and its surroundings;
- (5) all materials supplied by it will be of merchantable quality and in accordance with the Drawings and Specifications, and the Scope of Works requirements set out in Schedule 9 and unless otherwise stated in this Subcontract, those materials will be new;
- (6) the Subcontract Works will be completed within the time stipulated in the Subcontract and in accordance with the program requirements in Schedule 9 (if any) and the completed Subcontract Works will be in accordance with the Drawings and Specifications and free from defects and deficiencies;
- (7) the Subcontractor must do all things necessary to enable performance by the Contractor of its obligations and enjoyment by the Contractor of the benefits under the Head Contract and so as to ensure no breach or loss under the Head Contract by the Contractor;
- (8) the Subcontractor and Subcontract Works comply with all the requirements of or to be inferred from, this Subcontract including, without limitation, the requirements of the Building Code of Australia, all relevant statutes, standards (including all Australian Standards), regulations, codes, legislation and all authorities having jurisdiction over the Subcontract Works (as amended from time to time);
- (9) it has determined the nature and extent of the Subcontract Works and has and made all necessary allowances in the Subcontract Price, including (without limitation) allowance for:
 - (a) the amount of temporary works, materials, labour, plant and equipment necessary to complete the Subcontract Works in accordance with its obligations under this Subcontract; and
 - (b) all ancillary and other works and expenditure and the supply of all items whether or not expressly mentioned in this Subcontract but which are necessary for the satisfactory completion of the Subcontract Works;
- (10) it has considered its obligations under this Subcontract and that both the Subcontract Price and Date for Substantial Completion are reasonable and each contain all necessary allowances taking into account the risk, responsibilities and costs allocated to the Subcontractor, whether expressly or otherwise;
- (11) it will provide, as a pre-condition to Substantial Completion, a written warranty from its subcontractors and/or suppliers for those items listed in Schedule 7 that they will remain free from defects for the period stated in that Schedule, in a form acceptable to the Contractor;
- (12) it will comply with any further purposes or requirements set out in, or which can be reasonably inferred from the material set out in Schedule 4, Schedule 9, Schedule 10, 9.1, Schedule 11 and Schedule 12;

- (13) it will attend to and rectify any Defect, subsequent consequential damages and costs in accordance with the warranties provided for the duration of the warranty period stated in Schedule 7;
- (14) it has made proper allowance for all matters which might impact on its ability to complete the Subcontract Works or to complete the Subcontract Works within any particular time, cost or quality constraints subject to the express provisions of this Subcontract;
- (15) it has obtained, or will be able to obtain, all necessary consents, permits or authorisations (other than those which the Contractor is required to obtain in accordance with the Subcontract) necessary for it to carry out the work under the Subcontract and the Subcontract Works in accordance with the requirements of the Subcontract;
- (16) it has and will continue to comply with all applicable laws, regulations and applicable requirements relating to anti-bribery and anti-money laundering;
- (17) it has not engaged in any collusive or anti-competitive arrangement or understanding in connection with its tender for, or entry into, the Subcontract;
- (18) all registrations, permits, licences, qualifications and other requirements of its trade are in full force and effect at all times; and
- (19) it is a GST registered entity.
- (20) Without limiting any other right or remedy, the Contractor may recover from the Subcontractor the value of any payment or other benefit made directly or indirectly to an unsuccessful tenderer or a trade or industry association in breach of the warranty in clause 4(17).

5 Design

5.1 Application

- (1) This clause 5 applies if Item 14 states that design work is required.

5.2 Design Obligations

- (1) The Subcontractor:
 - (a) must prepare all detailed design documents required by this Subcontract or which in the Contractor's Representative's opinion is necessary for the completion of the Subcontract Works (Design Documents); and
 - (b) warrants, in addition to and without limiting any other warranty given by the Subcontractor under this Subcontract that the design of the Subcontract Works and the Subcontract Works themselves when constructed will be:
 - (i) fit for its intended purpose;
 - (ii) free from design errors and Defects;
 - (iii) compliant with Head Contract requirements and works to be performed in connection with the Head Contract; and
 - (iv) compliant with any further purposes or requirements set out in, or which can be reasonably inferred from the material set out in Schedule 4 or Schedule 5.
- (2) The Subcontractor must submit to the Contractor all Design Documents and number of copies stated in this Subcontract or in a form satisfactory to the Contractor at the times or stages specified in Schedule 5 or, where no times or stages are specified, within a reasonable time before the Subcontract Works described in the Design Documents is to be commenced.
- (3) If this Subcontract requires the Subcontractor to obtain the Contractor's direction about a Design Document, the Subcontractor must not use or proceed with that Design Document until the Subcontractor receives the Contractor's consent to do so.

- (4) If the Contractor rejects any Design Document submitted by the Subcontractor, the Subcontractor must promptly resubmit the Document with amendments so it complies with this Agreement.
- (5) Clauses 5.2(3) and 5.2(4) reapply to the resubmitted Design Document as if it were the first submission, until the Subcontractor receives the Contractor's consent under clause 5.2(3).
- (6) The Subcontractor must not amend any Design Document which has been issued to the Contractor without first obtaining the Contractor's consent.
- (7) The Contractor shall not be required to check any Design Document for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the Subcontract.
- (8) Any review by, the consent to use or approval by the Contractor of any Design Document submitted by or on behalf of the Subcontractor does not:
 - (a) constitute an acceptance by the Contractor of any responsibility in connection with the Design Document or Subcontract Works; nor
 - (b) prejudice, or relieve the Subcontractor from, the Subcontractor's obligations under the Subcontract (including its responsibility or liability for any defects, errors or omissions whatsoever contained in the Design Document).
- (9) Without limiting the foregoing, the Subcontractor must comply with, and provide any Design Documents as requested by the Contractor and otherwise at the times and in a state which enables the Contractor to comply with, any design review process contained in the Head Contract as advised by the Contractor in Schedule 5.

5.3 Progress Claims

- (1) If this clause 5 applies the Subcontractor must in addition to the requirements stated in clause 23.3 include in each progress claim a certificate from each of the Subcontractor's consultants in a form approved by the Contractor certifying that the Subcontract Works are:
 - (a) in accordance with the Subcontract and when completed, will be fit for its purpose and will comply with the Subcontract;
 - (b) in compliance with all applicable legislation; and
 - (c) fully installed and commissioned (if applicable).

5.4 Acceptance of work by others

- (1) If the Subcontractor is required by this Subcontract or the Contractor to take over or develop work or documents provided by or on behalf of the Contractor or the Principal (other than the Subcontractor or its Personnel) (Base Works), or to integrate the Subcontract Works or the Design Documents with any Base Works, the Subcontractor must:
 - (a) carefully check and review such Base Works before proceeding with the relevant Subcontract Works or Design Documents; and
 - (b) immediately (and in any case before proceeding with the relevant Subcontract Works or Design Documents) notify the Contractor including details if in its opinion any Base Work contains any defect or is unsatisfactory or unsuitable for any reason.
- (2) If the Subcontractor gives a notice under clause 5.4(1)(b), the Contractor may:
 - (a) notify the Subcontractor that it disagrees with the Subcontractor's notice, in which case the Subcontractor must proceed with the relevant Subcontract Works and Design Documents;
 - (b) direct a Variation under clause 19.1(1) to address the defect or unsatisfactory or unsuitable Base Works; or

- (c) notify the Subcontractor that the Contractor assumes responsibility for remedying the defect or unsatisfactory or unsuitable Base Works, in which case the Subcontractor must proceed with the Subcontract Works and Design Documents on that basis.
- (3) If Subcontractor proceeds with any Subcontract Works or Design Documents in any way affected by Base Works before giving a notice under clause 5.4(1)(b) or, if it did give such notice, before the Contractor gives a notice under clause 5.4(2)(b) or 5.4(2)(c):
 - (a) the Subcontractor shall be deemed to accept that the Base Work is suitable, satisfactory and without any defect; and
 - (b) the Subcontractor has no Claim in respect of the Base Work.

5.5 Substantial Completion

- (1) In addition to the requirements stated in clause 24.2, the achievement of Substantial Completion requires the Subcontract Works (including equipment, plant services and installation) to have been demonstrated and tested to the satisfaction of the Contractor's Representative to meet the design performance requirements of this Subcontract both under normal conditions and under emergency conditions.

6 Subcontract Documents

6.1 Discrepancies

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

6.2 Evidence of Subcontract

The Subcontractor is not entitled to payment under or in connection with this Subcontract and the Contractor is not obliged to make any payment to the Subcontractor until this Subcontract is executed by the Subcontractor and an original executed copy returned to the Contractor.

6.3 Supply of documents by the Subcontractor

The Subcontractor must, at least 15 Business Days before and as a precondition to Substantial Completion, give the Contractor all warranties, guarantees, operating manuals, maintenance manuals and "as built" drawings applicable to the Subcontract Works which are required by the Head Contract (as advised by the Contractor from time to time) or this Subcontract.

6.4 Supply of documents by the Contractor

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

7 Administration and personnel

7.1 Contractor's Representative

The Contractor's Representative:

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

7.2 Compliance with directions

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

7.3 Subcontractor's Representative

The Subcontractor's Representative:

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

8 Assignment and subcontracting

8.1 Assignment

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

8.2 Subcontracting

- (1) The Subcontractor must not engage any secondary subcontractor in connection with the Subcontract Works without first obtaining the prior written consent of the Contractor's Representative.

- (2) The Subcontractor remains fully responsible for the Subcontract Works, is not relieved from any liability or obligation under this Subcontract, notwithstanding any subcontracting of the Subcontract Works or any consent granted under clause 8.2(1).

8.3 Intention to suspend

- (1) The Subcontractor must promptly give to the Contractor's Representative a copy of any notice of intention to suspend work that the Subcontractor receives from any of its secondary subcontractors under the Security of Payment Act if that work forms part of the Subcontract Works.
- (2) If the Contractor receives a copy of a notice of intention to suspend work or a secondary subcontractor otherwise suspends or threatens to suspend work, the Contractor may, in its absolute discretion, pay the secondary subcontractor the whole or any part of the money that it states that it is owed by the Subcontractor for its work and the amount of the payment made by the Contractor is a debt due from the Subcontractor to the Contractor.
- (3) Payment by the Contractor of any amount under clause 8.3(2) does not relieve the Subcontractor of any of its obligations or liabilities under this Subcontract.
- (4) The Subcontractor indemnifies the Contractor against any liability, damage, loss, cost or expense (including legal costs on a full indemnity basis) incurred by the Contractor arising from:
 - (a) a suspension by any of its secondary subcontractors under the Security of Payment Act if the relevant work forms part of the Subcontract Works;
 - (b) any failure of the Subcontractor to notify the Contractor under clause 8.3(1); and
 - (c) an assignment under the Security of Payment Act of the Contractor's obligation to pay money owed to the Subcontractor under this Subcontract to a secondary subcontractor.
- (5) The Subcontractor's liability under clause 8.3(4) is in addition to the Subcontractor's liability under clause 24.4 to the extent that payment made under that clause is not sufficient to or does not compensate the Contractor for the damage, loss, cost and expense referred to in clause 8.3(4).

8.4 Notification of charge

The Subcontractor must immediately notify the Contractor and the Contractor's Representative if:

- (1) the Subcontractor has been required to supply information to a secondary subcontractor under section 9A of the *Subcontractors' Charges Act 1974* (Qld); or
- (2) it becomes aware that a secondary subcontractor intends to exercise a statutory charge under section 10(1) of the *Subcontractors' Charges Act 1974* (Qld) in respect of work done by the secondary subcontractor forming part of the Subcontract Works.

9 Security

9.1 Form of Security

9.2 The form of required Security is specified in Item 16.

9.3 Purpose of security

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

9.4 Retention Monies

- (1) This clause 9.4 applies if the form of required Security is cash retention.

- (2) The Contractor is entitled to retain 10% of each progress payment until the amount retained equals the percentage of the Subcontract Price set out in Item 17.
- (3) The Contractor does not hold retention monies on trust for the Subcontractor and is not required to act in a fiduciary capacity with respect to retention monies held.
- (4) The right to any interest accruing on retention monies vests in the Contractor.

9.5 **Bank Guarantee**

- (1) This clause 9.5 applies if the form of required Security is Bank Guarantee or Insurance Bonds.
- (2) Within 5 Business Days after the Execution Date, the Subcontractor must provide to the Contractor 2 Bank Guarantees or Insurance Bonds each for 50% of the amount stated in Item 17.
- (3) If the Subcontractor has not supplied the required bank guarantee or insurance bond prior to the date for payment, cash retention will be held at 10%, progressively until a retention = 5% of the expected contract sum is held. If the bank guarantee or insurance bond is subsequently supplied the cash retentions will be released in the next progress payment.

9.6 **Recourse to Security**

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

9.7 **Reduction of Security**

- (1) Provided that the Subcontractor has given the Contractor an executed Deed of Release in the form set out in Schedule 6, and subject to the exercise of any right of recourse that the Contractor may have to security, the Contractor must return the percentage stated in Item 18 or, if no percentage is stated return 50 per cent of Security held by the Contractor under clause 9.3 on the later of 30 days after:
 - (2) the Date of Substantial Completion for the whole of the Subcontract Works;
 - (3) the date of practical completion (or equivalent) under the Head Contract; and
 - (4) the date on which all Defects identified at any time at or prior to the dates in clause 9.7(2) or 9.7(3) have been rectified.

9.8 **Release of Security**

Provided that the Subcontractor has given the Contractor an executed Deed of Final Release in the form set out in Schedule 6, and subject to the exercise of any right of recourse that the Contractor may have to Security, the Contractor will release the balance of the amount then held as Security under clause 9.5 on the later of 30 days after the issue of the final payment schedule under clause 23.9 and the date on which all Defects identified during the Defects Liability Period have been rectified.

9.9 Parent company guarantee

If the Subcontractor is a corporation that is related to or is a subsidiary of another corporation as defined in the Corporations Act 2001 (Cth), the Subcontractor must, if requested by the Contractor, give the Contractor within 14 days of that request and as a precondition to payment under clause 23, a deed of guarantee and indemnity in a form acceptable to the Contractor and duly executed by the Subcontractor and the other corporation for the performance of the obligations and the discharge of the liabilities of the Subcontractor under this Subcontract.

9.10 Limit on the amount of Security after Substantial Completion

The parties expressly acknowledge that to the extent that the Subcontract allows the Contractor to hold security which is greater than an amount equal to 2.5% of the Subcontract Price after Substantial Completion of the Subcontract Works, the Contractor does not hold the additional security in relation to the need to correct defects, but holds the additional security instead to secure the recovery of any costs, expenses, damages or liabilities which may become payable to the Contractor under the Subcontract as a result of the Subcontractor's performance of the work under the Subcontract or any breach of contract by the Subcontractor.

10 Indemnity by the Subcontractor

- (1) The Subcontractor indemnifies the Contractor against any claim, damage (including damages for breach of contract at law), loss, liability, cost or expense (including legal fees and expenses) which the Contractor suffers, incurs or may suffer or incur (including any liability the Contractor may have to the Principal or any third party) arising out of or in connection with:
 - (a) the Subcontractor failing to comply with any of its obligations under or arising out of this Subcontract;
 - (b) any negligence, act, omission or default of the Subcontractor or any of its Personnel;
 - (c) any failure by the Subcontractor or its Personnel to comply with any Safety Legislation or Safety Requirements;
 - (d) any alleged infringement or infringement of any Intellectual Property by:
 - (i) the performance of the Subcontract Works; or
 - (ii) the Materials or use of or other dealing with any Materials; or
 - (e) alleged breach or breach of any person's moral rights (as defined and given meaning to that term in the *Copyright Act 1968* (Cth)) in respect of any Material by the Authorised Persons.
- (2) The Subcontractor's liability to indemnify the Contractor under clause 10(1) is reduced proportionally to the extent that a wrongful act or omission of the Contractor contributed to the claim, damage, loss, liability, cost or expense.
- (3) The Subcontractor indemnifies the Contractor against the difference (if any) between:
 - (a) the amount of any losses, liabilities, costs and other expenses suffered or incurred by the Contractor for which, but for Chapter 2, Part 2 of the *Civil Liability Act 2003* (QLD), the Contractor would otherwise have been entitled to recover from the Subcontractor; and
 - (b) the liability of the Subcontractor to the Contractor as determined by any court under Chapter 2, Part 2 of the *Civil Liability Act 2003* (QLD).
- (4) At the Contractor's request, the Subcontractor must at the Subcontractor's expense defend any action against the Contractor for any such alleged infringement or infringement of Intellectual Property referred to in clause 10(1)(d) or any alleged breach or breach of any person's Moral Rights referred to in clause 10(1)(e).

- (5) The Subcontractor's liability under clause 10(1) is in addition to its liability under clause 24.4 to the extent that payments made under clause 24.4 are not sufficient to or do not compensate the Contractor for its actual cost, loss, damage and expense suffered and liabilities incurred under clause 10(1).

11 Insurance

11.1 Insurance required by Subcontractor

- (1) The Subcontractor must, as a precondition to any entitlement to payment in connection with this Subcontract, effect and maintain the insurance policies stated in Item 19, Item 20, Item 21, Item 22 and Item 23 in the amounts and for the periods stated in those items and upon terms and with an insurer approved by the Contractor.
- (2) The Subcontractor must ensure that its secondary subcontractors are similarly insured or covered by the insurance required under this clause 11.1 for the relevant work to be performed by those secondary subcontractors.
- (3) Without limiting the rest of this clause 11.1, the Subcontractor must inform the Contractor whenever the insurer gives the Subcontractor a notice in connection with the policy that may have a material effect on the availability of cover under the policy.
- (4) If the Subcontractor is required to have in place a public liability insurance policy under clause 11.1(1), that policy must:
 - (a) be in the joint names of the Principal, the Contractor and the Subcontractor and cover those parties and all secondary subcontractors to the Subcontractor for their respective rights and interests and liabilities to third parties and as between the Contractor and the Subcontractor, their liability to each other for death, personal injury or loss or damage to property arising out of the Subcontract Works;
 - (b) include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any party comprising the insured and for the purposes of which the insurer accepts the term "insured" as applying to each party comprising the insured as if a separate insurance policy were issued to each of them; and
 - (c) provide that a notice of claim given to the insurer by the Principal, Contractor or Subcontractor will be accepted by the insurer as a notice of claim given by the Subcontractor.
- (5) Before commencing any work and whenever requested by the Contractor's Representative, the Subcontractor must promptly provide to the Contractor's Representative copies of certificates of currency confirming the insurance policies required by this clause 11.1.
- (6) If requested by the Contractor's Representative, the Subcontractor must promptly provide to the Contractor's Representative copies of insurance policies required by this clause 11.1.
- (7) The Subcontractor's continued compliance with the provisions of this clause 11.1 is a precondition to the Subcontractor's right to access the Site pursuant to clause 3.2.

11.2 Insurance required by Contractor

- (1) The Contractor or Principal will be responsible for causing the insurances set out in Item 24 to be taken out.
- (2) The Contractor must promptly when requested by the Subcontractor provide to the Subcontractor copies of certificates of currency for the insurance policies required by this clause 11.2.
- (3) The Subcontractor must satisfy itself that the insurance to be taken out by the Contractor under this clause 11.2 is satisfactory for its stated purpose and effect any other or additional insurance which a reasonable and competent subcontractor would effect.

- (4) The Subcontractor must comply with the terms of the insurance policies to be taken out by the Contractor under this clause 11.2 and is responsible for all excesses payable on any insurance claim under such insurance unless the relevant claim does not relate in any way to the Subcontract Works.

11.3 Failure to provide evidence of insurance

If the Subcontractor fails to provide to the Contractor copies of certificates of currency or, if requested, insurance policies in accordance with the requirements of this Subcontract, the Contractor may (without being obliged to do so) effect and maintain such insurance and the cost incurred is a debt due by the Subcontractor to the Contractor.

11.4 Notice of claims or likely claims

The Subcontractor must as soon as practicable inform the Contractor's Representative in writing of any occurrence which it ought reasonably expect may give rise to a claim under an insurance policy required by this Subcontract. The Subcontractor must give all information and assistance requested by the Contractor's Representative in respect of any such claim or possible claim.

11.5 Effect of insurances

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

12 Site conditions

12.1 Notification and risk

- (1) For the purposes of this clause Latent Conditions are any physical conditions on or under the Site or its surroundings, including contamination and artificial things but excluding weather or access conditions, which differ materially from the physical conditions which should reasonably have been anticipated by an experienced and qualified subcontractor in the position of the Subcontractor at or prior to the Execution Date, if the Subcontractor had:
- (a) examined all information made available by the Contractor to the Subcontractor;
 - (b) examined all information relevant to the risks, contingencies and other circumstances relating to the Site and/or the Subcontract Works and available by the making of enquiries; and
 - (c) inspected and carried out all possible investigations in relation to the Site and its surroundings.
- (2) If during the execution of the work under the Subcontract, the Subcontractor becomes aware of a Latent Condition, the Subcontractor shall promptly and where possible before the Latent Condition is disturbed, give written notice thereof to the Contractor, specifying:
- (a) the Latent Condition encountered and in what respects it differs materially;
 - (b) the additional work and additional resources which the Subcontractor estimates to be necessary to deal with the Latent Condition;
 - (c) the time the Subcontractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Substantial Completion;
 - (d) the Subcontractor's estimate of the cost of the measures necessary to deal with the Latent Condition; and
 - (e) other details reasonably required by the Contractor.
- (3) Delay caused by a Latent Condition may justify an extension of time under clause 22 if the Subcontractor complies with the notification requirements required by clause 22.2.

- (4) If a Latent Condition causes the Subcontractor to carry out additional works which the Subcontractor could not reasonably have anticipated as at the Execution Date a valuation shall be made under clause 19.3 in respect of all necessarily incurred direct costs, excluding any amounts for profit and attendance.
- (5) Except to the extent expressly set out in this clause 12, the Subcontractor assumes the risk associated with, and has no entitlement to make a Claim in relation to the Site and its surroundings, including:
 - (a) any delay to the Subcontract Works;
 - (b) any increased cost, loss or expense caused by or arising out of any prior work, existing structures or materials, physical conditions (whether naturally occurring or in consequence of human activity), or any contamination on, in, over or under the Site or its surroundings; or
 - (c) otherwise in any way impacting on the Site (including any extra work, materials or redesign required as a result of the condition of the Site and its surroundings).

12.2 Archaeological or other finds

Any things of value or archaeological or special interest found on or under the Site are, as between the parties, the property of the Contractor. If such an item is found the Subcontractor must immediately notify the Contractor's Representative in writing and must comply with all directions of the Contractor's Representative pertaining to the item. Any things of value or of archaeological or special interest found on or under the Site or its surroundings may be a Latent Condition and the Subcontractor should notify as such in accordance with clause 12.1.

13 Construction

13.1 Subcontractor's obligations

- (1) The Subcontractor must diligently and regularly perform its obligations under this Subcontract and carry out the construction of the Subcontract Works in accordance with this Subcontract.
- (2) In addition to any other rights of the Contractor under this Subcontract or at law, the Contractor may perform or have others perform any obligation of the Subcontractor which the Subcontractor has failed to perform after notice from the Contractor requiring performance. The Contractor may recover the costs and expenses of it or others performing the obligation as a debt due to the Contractor by the Subcontractor.

13.2 Construction method

- (1) The Subcontractor must, within 10 Business Days of the Execution Date, provide a complete and competently prepared construction method statement for the Subcontract Works including particulars of the mode and place of manufacture, the source of supply, performance capabilities and any other information in respect of any materials, plant or equipment to be supplied by the Subcontractor or used in connection with the Subcontract Works.
- (2) The Subcontractor must not bring onto the Site any plant or equipment to which it does not have title unless the supply or hire agreement for the plant or equipment contains a provision that:
 - (a) requires the supplier or hirer (as the case may be), to immediately notify the Contractor of any failure of the Subcontractor to pay any monies in accordance with the supply or hire agreement; and
 - (b) gives the Contractor the option (but does not require it) to remedy that default within a period of an additional 5 Business Days.

- (3) Before commencing the Subcontract Works, the Subcontractor must provide the Contractor's Representative with copies of supply or hire agreements for the critical items of plant or equipment stated in Item 25 that it brings onto the Site.
- (4) The Contractor in its absolute discretion, may on behalf of the Subcontractor make payments directly to any such supplier or hirer out of monies payable to the Subcontractor and if such monies are insufficient, any deficiency is a debt due and payable by the Subcontractor to the Contractor.

13.3 Quality

- (1) The Subcontractor must do all things necessary to comply with any quality assurance system notified by the Contractor's Representative or must, if requested by the Contractor's Representative, implement its own quality assurance system approved by the Contractor's Representative.
- (2) The Subcontractor acknowledges and agrees that the Contractor's Representative may require any quality assurance system implemented by the Subcontractor to require performance of the following:
 - (a) inspection and check listing of work on completion;
 - (b) identification and rectification of Defects, including progressing the rectification of Defects in accordance with any request of the Contractor;
 - (c) provision of records on request;
 - (d) reporting of non-conformance;
 - (e) provision of samples and prototypes;
 - (f) provision of access to the Subcontractor's systems and records by the Contractor's Representative and any persons authorised by the Contractor's Representative for the purpose of inspection and audit; and
 - (g) provision of access for the Contractor, Contractor's Representative and any person authorised by the Contractor or the Contractor's Representative to any place where the Subcontract Works, or part of the Subcontract Works are being carried out.

13.4 Reports and meetings

The Subcontractor must attend any meetings required by the Contractor in respect of the Subcontract Works and the Project, including with respect to progress, review, co-ordination and design, at a time and location notified by the Contractor.

The Contractor's Representative may at any time direct the Subcontractor to submit a report or provide records to the Contractor's Representative containing such information as is reasonably requested by the Contractor's Representative. The direction may specify that compliance with the direction is a precondition to the issuing of a payment schedule. If the direction provides that compliance with the direction is a precondition to the issuing of a payment schedule, then it is such a precondition.

13.5 Acceptance of work by others

- (1) If the Subcontractor is required by this Subcontract or the Contractor to integrate the Subcontract Works with any existing works (Existing Works), it must carefully check and review such Existing Works before proceeding with the relevant Subcontract Works.
- (2) The Subcontractor must immediately (and in any case before proceeding with the relevant Subcontract Works) notify the Contractor including details if in its opinion any Existing Works contains any defect or is unsatisfactory or unsuitable for any reason.
- (3) If the Subcontractor gives a notice under clause 13.5(2), the Contractor may:

- (a) notify the Subcontractor that it disagrees with the Subcontractor's notice, in which case the Subcontractor must proceed with the relevant Subcontract Works;
 - (b) direct a Variation under clause 19.1(1) to address the defect or unsatisfactory or unsuitable Existing Works; or
 - (c) notify the Subcontractor that the Contractor assumes responsibility for remedying the defect or unsatisfactory or unsuitable Existing Works, in which case the Subcontractor must proceed with the Subcontract Works on that basis.
- (4) If Subcontractor proceeds with any Subcontract Works in any way affected by Existing Works before giving a notice under clause 13.5(2) or, if it did give such notice, before the Contractor gives a notice under clause 13.5(3)(b) or 13.5(3)(c):
- (a) the Subcontractor shall be deemed to accept that the Existing Works is suitable, satisfactory and without any defect; and
 - (b) the Subcontractor has no Claim in respect of the Existing Works.

13.6 Protection of work and materials

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

13.7 Urgent protection

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

13.8 Testing

- (1) At any time before Substantial Completion, the Contractor's Representative may direct that any part of the work or materials comprising the Subcontract Works be tested. If the direction requires the Subcontractor to perform the testing, the Contractor's Representative may observe and must be promptly provided with the results of any test performed.
- (2) The reasonable and actual costs of and incidental to testing are to be added to the Subcontract Price unless such testing:
 - (a) reveals work or materials not in accordance with this Subcontract;
 - (b) is consequent upon a failure of the Subcontractor to comply with this Subcontract; or
 - (c) was required to be performed by the Subcontractor or has otherwise been included in the Subcontract Price as part of the work to be undertaken by the Subcontractor under any other provision of this Subcontract.

13.9 Protection of people and property

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

13.10 Cleaning up

The Subcontractor must keep the Site and the Subcontract Works clean and tidy and must regularly remove rubbish from the Site or as directed by the Contractor's Representative.

14 Laws and approvals

14.1 Laws

- (1) The Subcontractor must in executing the Subcontract Works, provide for and satisfy all relevant Laws and must ensure that its Personnel satisfy all relevant Laws, except those directed in writing by the Contractor to be satisfied by or on behalf of the Contractor.
- (2) If the Subcontractor discovers that a Law is at variance with the Subcontract, it must promptly give the Contractor written notice and must comply with any direction of the Contractor in relation to such a variance.
- (3) Where a new Law or a change in a Law occurs after the Date of Execution and an experienced subcontractor in the position of the Subcontractor could not have anticipated that new Law or change in a Law then, to the extent any direction under this clause by the Contractor to deal with that new Law or change in Law results in a change to the Subcontract Works, the Subcontractor will be entitled to claim its unavoidable direct costs resulting from that change.
- (4) Except to the extent expressly stated in this clause, the Subcontractor has no Claim arising as a result of a new Law or a change in a Law.

14.2 Approvals

- (1) Except for those Approvals listed in Item 26, the Subcontractor must obtain (and pay all charges and costs associated with those Approvals) and comply with all Approvals and ensure that they are in full force and effect at all times.
- (2) The Subcontractor must promptly provide to the Contractor's Representative copies of all Approvals obtained by the Subcontractor.

15 Industrial relations

15.1 Compliance

- (1) The Subcontractor must comply, and must ensure that its Personnel comply, with all Laws in respect of industrial and workplace matters, including:
 - (a) all state and federal legislation and legally enforceable codes of practice which apply to the Subcontract Works or the Site; and
 - (b) all applicable legally enforceable agreements, awards and workplace agreements.
- (2) The Subcontractor must make available upon reasonable notice whatever documents and records the Contractor's Representative requests to see concerning compliance with this clause.

15.2 Industrial disputes

- (1) The Subcontractor must do everything possible to avoid and minimise the consequences of industrial disputes of any kind.

- (2) The Subcontractor is responsible for and assumes all risks of and incidental to all industrial actions, actions, bans, limitations and disputes (whether lawful or unlawful) in relation to industrial relations or employment issues both on and off Site with its Personnel.

16 Work health and safety

16.1 Concurrent work health and safety obligations of Subcontractor

The Subcontractor must, so far as is reasonably practicable, provide and maintain a working environment that is safe and without risk to health for persons carrying out or affected by the Subcontract Works.

16.2 Health and safety compliance

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

16.3 Contractor's health and safety policies and procedures

- (1) Without limiting clause 16.2, the Subcontractor must ensure the Subcontract Works are delivered in accordance with:
 - (a) any occupational health and safety policies and procedures issued by the Contractor or the Principal from time to time including the requirements of the Contractor's site management plan; and
 - (b) if the Contractor has been appointed as the principal contractor under the Safety Legislation, the Contractor's health and safety co-ordination plans.
- (2) The Subcontractor must inform itself of all occupational health and safety policies, procedures or measures implemented or adopted by the Contractor or the Principal, including but not limited to the Contractor's site management plan. If the Subcontractor does not have a copy of the Contractor's site management plan, it should request a copy from the Contractor by contacting the Contractor's head office. A copy of the Contractor's site management plan will also be available on site for review by the Subcontractor.

16.4 Consultation, co-operation and co-ordination

- (1) The Subcontractor must so far as is reasonably practicable consult, co-operate and co-ordinate activities with the Contractor, any suppliers or contractors or other persons engaged in or associated with the Subcontract Works:
 - (a) to achieve effective co-ordination of activities to ensure optimal health and safety risk management; and
 - (b) to enable the Contractor and the Subcontractor and other relevant parties to comply with their respective obligations under all relevant Safety Legislation.

16.5 Provision and maintenance of plant

The Subcontractor must supply all plant necessary to ensure that all the Subcontract Works is carried out in a manner that is safe and without any risk to health. The Subcontractor must ensure that all plant supplied by it is maintained in a condition that is safe and without risk to any person.

16.6 Subcontractor's reporting obligations

The Subcontractor must:

- (1) Immediately notify the Contractor of any accident, injury, property or environmental damage which occurs during the carrying out of or is associated with any part of the Subcontract Works. The Subcontractor must, within two days of any such incident, provide a written report to the Contractor containing complete details of the incident, including the result of any investigation into its cause and any recommendation or strategy for prevention of a recurrence;
- (2) immediately advise the Contractor in writing of any act, fact or circumstance associated with the activities of the Subcontractor or any other person relevant to the ability of the Subcontractor to carry out any part of the Subcontract Works in a manner that is safe and without any risk to health;
- (3) provide in writing, with each monthly progress report, the total hours worked during the previous month on the Site by its staff including supervisory and administrative staff and also separately by its subsidiary subcontractors; and
- (4) maintain records and make reports concerning the health, safety and welfare of people, and damage to property, as the Contractor's Representative reasonably requires.

16.7 Subcontractor provision of information

- (1) The Subcontractor must, or must ensure that its agents or subsidiary subcontractors:
 - (a) obtain and consider information on the requirements for safe use of, and the risk to health and safety of all persons from plant or substances supplied under the Subcontract or used for the purpose of carrying out any of the Subcontract Works;
 - (b) as far as its reasonably practicable, supply those persons using or exposed to such plant or substances with adequate health and safety information concerning the plant or substances; and
 - (c) ensure that any such plant or substances are safe when properly used or stored.
- (2) The Subcontractor must at all times inform the Contractor of all relevant information which becomes known to the Subcontractor (or its agents or subsidiary subcontractors) concerning the safe use, supply, maintenance or storing of the plant or substances. The Subcontractor must also inform the Contractor in relation to such plant and substances as required by Safety Legislation.

17 Environmental protection

17.1 Compliance

The Subcontractor must comply with all Laws in respect of environmental matters and the protection or preservation of the environment including all state and federal legislation and codes of practice which apply to the Subcontract Works or the Site.

17.2 Hazardous substances and materials

If the Subcontractor intends to bring onto the Site any material or substance which may be hazardous to health and safety, the Subcontractor must, before doing so, give information to the Contractor's Representative in respect of such material or substance. The information must include

plans for the safe handling, storage and use of the material or substance and precautions to be taken.

17.3 Preventative measures and contamination

The Subcontractor must do everything possible to protect and preserve the environment from harm or damage arising from or in connection with the carrying out of the Subcontract Works and is responsible for all such harm or damage, including but not limited to any contamination, to the extent caused or contributed to by the Subcontractor or the Subcontract Works.

17.4 Noise and Vibration

- (1) The Subcontractor must comply with the requirements of *AS 2436 Guide to noise control on construction, maintenance and demolition sites* and all associated codes and guidelines of the Environmental Protection Agency.
- (2) Without limiting the Subcontractor's above obligation and its obligation to comply with all laws, the Subcontractor shall take all reasonable steps to minimise vibration and noise arising from the Subcontract Works, and will obtain prior approval from the Contractor's Representative or Contractor for any Subcontract Works that exceed the permitted noise levels required by the Contractor.

18 Intellectual property rights

18.1 Intellectual property rights granted to the Contractor

The Subcontractor agrees that all present and future copyright and other intellectual property rights of the Subcontractor in all drawings, reports, specifications, calculations, documents and other material provided or prepared by the Subcontractor or its Personnel in connection with the Subcontract Works, including the Design Documents (if any) (the **Materials**) vests in the Contractor.

18.2 Moral rights

- (1) The term "author" in this clause 18.2 is to be interpreted as bearing the same meaning as under the *Copyright Act 1968* (Cth).
- (2) The Subcontractor must ensure that no person will make any claim under Part IX of the *Copyright Act 1968* (Cth) arising out of or connected with the Materials.
- (3) The Subcontractor must obtain a written consent that operates for the benefit of the Authorised Persons, from each author of the Materials to the fullest extent validly permitted by Part IX of the *Copyright Act 1968* (Cth), genuinely consenting to the doing of any acts or omissions that would, except for the giving of the consent, constitute a breach of the author's rights under Part IX of the *Copyright Act 1968* (Cth), prior to that author commencing work on any Materials.
- (4) The Subcontractor must deliver to the Contractor's Representative any consents obtained by the Subcontractor under this clause 18.2 within 5 Business Days of a request being made to that effect by the Contractor's Representative.

18.3 Use of the Subcontract Documents

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

19 Variations

19.1 Variations

- (1) The Contractor's Representative may direct the performance of a Variation by notice in writing to the Subcontractor. The Subcontractor must execute any Variation directed by the Contractor's Representative.
- (2) If the Subcontractor considers that any direction that is not stated in writing by the Contractor's Representative to be a Variation is nevertheless a Variation the Subcontractor must notify the Contractor's Representative in writing within the period stated in Item 27 of the direction and before commencing the work the subject of the direction.
- (3) If the Subcontractor fails to notify the Contractor's Representative under clause 19.1(2) (including within the time required under the Subcontract) then to the extent permitted by law the Subcontractor has no Claim in connection with the direction or any extra work performed as a consequence.
- (4) The Subcontractor has no Claim for a Variation where a change to Subcontract Works is required as a result of any error or Defect (including the manner in which the Subcontractor has interpreted the Subcontract Documents). Any changes to the design at the request of or for the benefit of the Subcontractor shall be made at the Subcontractors' own costs. Any such change shall be submitted to the Contractor for approval.

19.2 Quotation for Variations

- (1) If the Contractor's Representative requests the Subcontractor to provide a quotation for a proposed Variation the Subcontractor must provide a detailed quotation for the work, supported by measurements or other evidence of cost, accompanied by details of any Extension of Time the Subcontractor seeks, within 5 Business Days of the request by the Contractor's Representative.
- (2) In response to any quotation provided by the Subcontractor to the Contractor's Representative under clause 19.2(1) the Contractor's Representative may:
 - (a) require the Subcontractor to execute the Variation on the terms of the quotation;
 - (b) decline to proceed with the Variation; or
 - (c) reject the quotation and require the Subcontractor to carry out the Variation, in which case the Variation must be valued by the Contractor's Representative in accordance with clause 19.3 and any Extension of Time must be assessed by the Contractor's Representative in accordance with clause 22.

19.3 Valuation of Variations

- (1) Variations will be valued as follows:
 - (a) agreement of the parties;
 - (b) failing agreement of the parties, by the application of any applicable rates or prices included in the Schedule of Rates or elsewhere in the Subcontract (excluding any time related costs or allowances); or
 - (c) failing agreement or determination under clauses 19.3(1)(a) or 19.3(1)(b), by the Contractor applying reasonable rates and prices (excluding any time related costs or allowances).
- (2) Subject to clauses 19.1(4), the value of any Variation must be added to or deducted from the Subcontract Price.

19.4 Omissions

If any part of the Subcontract Works is reduced or omitted by a Variation, the Contractor may retain or arrange for others to carry out the reduced or omitted parts of the Subcontract Works. Nothing

referred to in this clause 19.4 constitutes grounds to allege that the Contractor has wrongly repudiated the Subcontract.

20 Defects Liability Period

20.1 Rectification up to the end of the Defects Liability Period

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

20.2 Rectification of warranty items

Without limiting the Subcontractor's entitlement under clause 20.1 or otherwise under this Subcontract, within the warranty period stated in Schedule 7, the Subcontractor must:

- (1) immediately rectify any Substantial Defect (and any damage caused by that Substantial Defect) arising in any warranty item listed in Schedule 7; and
- (2) rectify any other Defect (and any damage caused by that Defect) arising in any warranty item listed in Schedule 7 within 5 Business days of a request by the Contractor to do so.

20.3 Contractor's Representative may fix further Defects Liability Period

The Contractor's Representative may fix a further Defects Liability Period in respect of work to be rectified under clause 20.1 or 20.2 which is effective from the date of rectification for a period of no more than the Defects Liability Period, and if no period is expressly fixed the Defects Liability Period.

20.4 Defects rectified by others

If the Subcontractor fails to rectify any Defect in accordance with clause 20.1 and/or 20.2, the Contractor's Representative may have the Defect rectified by others (including the Principal) and the Contractor may:

- (1) recover all costs of so doing (including of the Principal so doing):
 - (a) as a debt due from the Subcontractor to the Contractor;
 - (b) through an adjustment to the Subcontract Price or adjustment to any retention amount;
 - (c) an offset through any amount owing to the Subcontractor by the Contractor; or
 - (d) as a debt due and payment by the Subcontractor to the Contractor; or
- (2) accept the Defect and recover its assessment of any consequent reduction in value of the Subcontract Works or claim upon the Contractor by the Principal as a debt due from the Subcontractor to the Contractor.

21 Time

21.1 Substantial Completion

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

21.2 Subcontractor's Program

- (1) The Subcontractor must supply to the Contractor's Representative a program for the Subcontract Works no later than 5 Business Days before commencement of any work or by such other time directed by the Contractor's Representative.
- (2) The Subcontractor's program must be developed from and consistent with the Contractor's program with which the Contractor is required to comply in the performance of the work under the Head Contract, if such a Contractor's program or extract of it has been supplied to the Subcontractor.
- (3) The Subcontractor must not depart from the program for the Subcontract Works supplied under clause 21.2(1) without reasonable cause.
- (4) The Contractor's Representative may at any time direct the Subcontractor to supply an updated program. The Subcontractor must within the time stated in the direction supply a further updated program which must identify the changes made to the previous program.
- (5) The supply of a program (or of an updated program) or any review, comment or approval of it (or failure to do so) by the Contractor's Representative does not:
 - (a) relieve the Subcontractor from, or alter any of its obligations under, this Subcontract including the obligation not to depart, without reasonable cause, from an earlier program; or
 - (b) entitle the Subcontractor to make any Claim.
- (6) The Subcontractor's program (or any updated program) and the Contractor's program (if any) do not form part of this Subcontract.

21.3 Contents of the program

Each program provided by the Subcontractor under clause 21.2 must include:

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

21.4 Order and timing of Subcontract Works

The Contractor may direct the Subcontractor to re-sequence, reschedule or adjust activities, accelerate or postpone the Subcontract Works and the Subcontractor must comply with such direction or give reasons why it cannot. The Subcontract Price is deemed to include allowance for the Subcontractor's cost of compliance with any such direction unless it is agreed by the parties that such direction is a Variation to the Subcontract Works, then a valuation shall be made in accordance with clause 19.

21.5 Suspension

- (1) The Contractor's Representative may at any time and for any reason suspend the whole or any part of the Subcontract Works by written notice to the Subcontractor. If the Contractor's Representative does so, the Subcontractor must not recommence work on

the whole or on the relevant part of the Subcontract Works until the Contractor's Representative, directs the Subcontractor to do so in writing.

- (2) Any cost incurred by the Subcontractor due to a suspension under this clause 21.5 is to be borne by the Subcontractor unless the suspension is expressly stated to be a Variation, then a valuation shall be made in accordance with clause 19. The cause of the suspension may be a ground for an Extension of Time under and subject to clause 22.

21.6 Milestones

If any milestone and any relevant milestone date are referred to in Item 28 the Subcontractor must bring that portion of the Subcontract Works which comprises the milestone to the stage of completion by relevant milestone date specified in Item 28.

22 Delay

22.1 Notification of delay

- (1) If the Subcontractor becomes aware of anything that may cause delay to the Subcontract Works, the Subcontractor must provide the Contractor with written notice of the cause and estimated length of delay within the period stated in Item 29 of becoming aware, or the date when the Subcontractor ought reasonably to have become aware, of the cause.
- (2) If the Subcontractor wishes to claim an Extension of Time in respect of a delay to the Subcontract Works, the Subcontractor must within the period stated in Item 30 of the earlier of when the Subcontractor became aware, or should reasonably have become aware of the commencement of the delay, give the Contractor a written claim for an Extension of Time to the Date for Substantial Completion with all necessary supporting documentation, setting out:
 - (a) the cause of delay;
 - (b) the period during which the cause or delay existed or is expected to exist;
 - (c) the measures which the Subcontractor has or will adopt to overcome or minimise the delay; and
 - (d) the critical activities delayed as identified on the Subcontractor's program.
- (3) If at the time the Subcontractor is required to give a notice under clause 22.1(2), the duration or impact of the delay is not ascertainable then the Subcontractor must in the notice state what details are not yet known and must give a further notice or notices advising those details promptly once they are known.
- (4) If the delay continues for a period of 7 days or more the Subcontractor must give the Contractor (in addition to the notice required under clause 22.1(2)) written notice every 7 days from the commencement of the delay until after the delay has ceased setting out the information required under clause 22.1(2).

22.2 Conditions precedent to Extension of Time

- (1) The Subcontractor is entitled to an Extension of Time only if:
 - (a) the Subcontractor is delayed in achieving Substantial Completion by the Date for Substantial Completion by:
 - (i) a breach of this Subcontract by the Contractor;
 - (ii) a failure by the Contractor to give the Subcontractor sufficient access to carry out the Subcontract Works as required by clause 3.2;
 - (iii) a Latent Condition under clause 12.1;
 - (iv) a Variation directed under clause 19.1(1) or 19.2(2)(a), other than a Variation due to the Subcontractor's default or any defective work;

- (v) an act or omission by the Contractor or the Contractor's Representative which is not authorised, provided for or anticipated by this Subcontract;
 - (vi) a suspension directed under clause 21.5, other than a suspension as a result of a breach of this Subcontract by the Subcontractor;
 - (vii) a Force Majeure event under clause 37.4; or
 - (viii) any other event listed in Item 31;
 - (b) the Subcontractor has strictly complied with clauses 22.1(1) and 22.1(2);
 - (c) the Contractor's Representative considers that the delay has occurred to activities on the critical path of the Subcontractor's program (as approved by the Contractor's Representative and updated from time to time) supplied under clause 21.2; and
 - (d) the Subcontractor has taken all reasonable steps to minimise or avoid the effect of the delay on the progress of the Subcontract Works.
- (2) If more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a cause listed in clause 22.2(1)(a), then to the extent that the events are concurrent, the Subcontractor is not entitled to an Extension of Time.
- (3) Despite any other clause contained in this Subcontract, if the cause of delay the subject of a written notice under clause 22.1(2) relates to a cause which has also been suffered by the Contractor and is the subject of a claim being made by or to be made by the Contractor under the Head Contract, then the Subcontractor's entitlement to an Extension of Time under this clause 22 is capped at any extension of time allowed to the Contractor under the Head Contract.

22.3 Failure to give notice

The Subcontractor is not entitled to maintain any Claim in connection with any delay in achieving Substantial Completion by the Date for Substantial Completion unless notice is given strictly in accordance with clause 22.1.

22.4 Response by Contractor's Representative

If the Subcontractor is entitled to an Extension of Time, the Contractor's Representative must, within 10 Business Days after the Subcontractor has complied with clause 22.1, grant by notice in writing to the Subcontractor any Extension of Time to which the Contractor's Representative considers the Subcontractor entitled.

22.5 Contractor's Representative may extend

At any time, the Contractor's Representative may, under this clause, grant an Extension of Time to the Subcontractor for the benefit of the Contractor regardless of whether or not the Subcontractor has made a claim for Extension of Time. The Subcontractor has no beneficial entitlements under this clause.

22.6 Delay costs

- (1) The Subcontractor bears the risk of and is liable for all increased costs, losses, expenses and damages (including damages for breach of contract) connected with the execution of the Subcontract Works resulting from delay or disruption in the progress of the Subcontract Works.
- (2) Any entitlement which the Subcontractor has to an Extension of Time contained elsewhere in this Subcontract, or costs for a Variation under clause 19 is the Subcontractor's sole remedy for any delay or disruption in the progress of the Subcontract Works.

23 Payment

23.1 The Subcontract Price

- (1) Subject to the performance by the Subcontractor of its obligations under this Subcontract, the Contractor must pay to the Subcontractor the Subcontract Price as adjusted in accordance with this Subcontract.
- (2) The Subcontractor acknowledges and agrees that the Subcontract Price:
 - (a) includes all costs, expenses, fees and charges incurred by the Subcontractor in performing all its obligations under this Subcontract; and
 - (b) is not subject to any rise and fall, foreign exchange adjustment or any other adjustment except to the extent expressly provided by this Subcontract in Item 32.

23.2 Timing of Progress claims

- (1) The Subcontractor may submit a progress claim to the Contractor's Representative at monthly intervals on the day of the month stated in Item 33, in respect of work performed by the Subcontractor up to that day.
- (2) The date stated in Item 33 is a reference date within the meaning of the Security of Payment Act.
- (3) If a progress claim is submitted early then it is deemed to be submitted on the day of the month stated in Item 33, and assessed accordingly. If a progress claim (including a payment claim) is submitted after the day of the month stated in Item 33, then the Contractor's Representative shall use its discretion to determine whether it should be assessed in relation to the following month.

23.3 Content of progress claims

- (1) In each progress claim the Subcontractor must include:
 - (a) the Subcontractor's opinion as to the value of the work performed by the Subcontractor to the date of the progress claim and notification of all other Claims which the Subcontractor then has against the Contractor whether under this Subcontract or otherwise;
 - (b) sufficiently detailed evidence to enable the Contractor's Representative to assess the claim, including break ups of areas of the works, labour, materials and equipment when requested by the Contractor's Representative; and
 - (c) evidence to the satisfaction of the Contractor's Representative in the form of a completed statutory declaration contained in Schedule 14 satisfying the Contractor's Representative that:

All persons who have at any time been employed by the Subcontractor on the Subcontract Works have, to the date of the progress claim, in respect of their employment on the Subcontract Works:

 - (i) been paid all money payable to them required by legislation and any applicable and legally binding award or workplace agreement; and
 - (ii) had accrued in respect of them all employment entitlements, including in respect of annual leave, personal leave and RDOs, required by legislation or any applicable and legally binding award or workplace agreement;
 - (d) the Subcontractor has made all contributions and payments to any scheme for superannuation, long service leave, redundancy and severance pay or the like as required by legislation and any applicable and legally binding award or workplace agreement; and
 - (e) all secondary subcontractors of the Subcontractor have to the date of the progress claim been paid all monies due and payable to them in respect of the Subcontract Works.

23.4 Validity of progress claims

- (1) Failure by the Subcontractor to comply with the requirements of clause 23.3 invalidates the claim. The Contractor's Representative may request additional information in respect of any progress claim (valid or otherwise) and the Subcontractor must promptly provide any additional information so requested. The provision of the additional information does not validate an invalid progress claim unless expressly confirmed by the Contractor's Representative (who is under no obligation to do so). An invalid progress claim that is validated by the Contractor's Representative is deemed to have been submitted on the day of the month stated in Item 33 of the following month.
- (2) Unless this Subcontract expressly provides otherwise in Item 43, the Subcontractor is not entitled to payment for any item of unfixed plant or materials not incorporated into the Subcontract Works.

23.5 Payment schedule

- (1) Within 15 Business Days of receipt of a progress claim validly submitted under clauses 23.2, 23.3 and 23.4, the Contractor's Representative must assess the progress claim and provide to the Subcontractor a payment schedule identifying the progress claim to which the payment schedule relates and certifying the amount the Contractor's Representative reasonably considers is due to the Subcontractor or the Contractor as the case may be. If the amount is more or less than the amount claimed by the Subcontractor, the Contractor's Representative must set out why and the reasons for the difference and if it is less because the Contractor is withholding payment for any reason, the Contractor's reasons for withholding payment.
- (2) The Contractor's Representative may allow in any payment schedule adjustment for amounts paid under this Subcontract by the Contractor and amounts that otherwise may be retained, deducted or claimed by the Contractor from the Subcontractor (whether or not there has been a final determination as to the amount claimed or the amount claimed is disputed) under this Subcontract.

23.6 Progress payments

- (1) The Contractor must pay the Subcontractor the amount certified for payment to the Subcontractor in the payment schedule provided by the Contractor's Representative or the amount of the payment the Contractor has indicated in a payment schedule under the Security of Payment Act that the Contractor proposes to make, as the case may be, by the later of:
 - (a) the date of satisfaction of the pre-conditions to payment set out in this Subcontract, including in clauses 9, 11.1, 23.2, 23.3, 23.4 and 23.10 of this Subcontract; and
 - (b) the period stated in Item 35 after the Subcontractor issues a valid payment claim.
- (2) Within the period stated in Item 36 after the provision of the payment schedule to the Subcontractor, the Subcontractor must pay to the Contractor any amount the Contractor's Representative has certified in the payment schedule is payable by the Subcontractor to the Contractor.

23.7 Final Progress Claim

- (1) Within 30 days of the later of the completion by the Subcontractor of all Defects or the expiry of Defects Liability Period, the Subcontractor must submit to the Contractor's Representative a final progress claim endorsed "Final Progress Claim".
- (2) The Final Progress Claim must state all money which the Subcontractor considers to be due to it from the Contractor in connection with the Subcontract and the Subcontract Works.
- (3) Despite any other provision of this Subcontract, on the expiration of the period for lodging the Final Progress Claim, to the extent permitted by law, any Claim which the Subcontractor could have made against the Contractor and has not made is barred and the Subcontractor releases the Contractor in respect of all such Claims.

23.8 Final payment schedule

- (1) Within 10 Business Days of the receipt of the Subcontractor's Final Progress Claim, the Contractor's Representative must assess the Final Progress Claim and issue a final payment schedule to the Contractor and the Subcontractor identifying the progress claim to which the payment schedule relates and certifying the final payment amount payable by the Contractor to the Subcontractor or by the Subcontractor to the Contractor, as the case may be.
- (2) The Contractor's Representative may allow in the final payment schedule adjustment for amounts paid under this Subcontract and amounts that otherwise may be retained, deducted or claimed by the Contractor from the Subcontractor (whether or not there has previously been a final determination as to the amount claimed or the amount claimed is disputed) under this Subcontract.

23.9 Final payment

- (1) The Contractor must pay to the Subcontractor or the Subcontractor must pay to the Contractor (as the case may be) the amount certified in the final payment schedule, by the later of:
 - (a) the date of satisfaction of the pre-conditions to payment set out in this Subcontract, including in clauses 9, 11.1, 23.2, 23.3, 23.4 and 23.10 and the provision by the Subcontractor to the Contractor of an executed Deed of Final Release in the form set out in Schedule 6); and
 - (b) the period stated in Item 35 after the Subcontractor issues a valid Subcontractor's Final Progress Claim.
- (2) However, the Contractor is not required to make a final payment under clause 23.9(1) if Subcontractor notifies the Contractor under clause 25.1 that a dispute or difference has arisen, after the issue of the final payment schedule.

23.10 Tax invoice

Refer to Clause 28 with reference to invoice generation.

23.11 Effect of payment

Any payment made by the Contractor to the Subcontractor is deemed to be a payment on account only and is not evidence of the value of the work (excepted as provided under clause 23.8) or that the work has been satisfactorily completed.

23.12 Set off

Without limiting the Contractor's other rights and remedies under the Subcontract or otherwise, the Contractor may at any time deduct or set off from any retention monies or Bank Guarantee provided by the Subcontractor and/or moneys otherwise due to the Subcontractor (including from an amount certified in a payment schedule) any money due or claimed to be due from the Subcontractor to the Contractor (including liquidated damages under clause 24.4) whether under the Subcontract or otherwise and any losses, costs, expenses and damages suffered or incurred by the Contractor (including damages for breach of contract at law) in respect of which the Subcontractor is or may be liable.

23.13 Interest

- (1) Any amount owed by the Contractor to the Subcontractor under or in connection with the Subcontract which is not paid by the Contractor by the time for payment does not entitle the Subcontractor to interest on the amount, save in the circumstances set out in clause 23.13(2).

- (2) If any amount payable by the Contractor to the Subcontractor under clause 23.6(1) remains unpaid after the time for payment, the Contractor is required to pay interest on the unpaid amount for each day the amount is unpaid.
- (3) If any amount payable by the Subcontractor to the Contractor under or in connection with this Subcontract remains unpaid after the time for payment, the Subcontractor is required to pay interest on the unpaid amount for each day the amount is unpaid.
- (4) Interest payable pursuant to this clause 23.13 is to be calculated at the rate set out under section 67P(3)(a) of the QBCC Act.

24 Substantial Completion

24.1 Notice

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

24.2 Requirements

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

- (1) the Subcontract Works (including equipment, plant services and installation) have been demonstrated and tested to the satisfaction of the Contractor's Representative:
 - (a) to be supplied and constructed in accordance with the Drawings and Specifications and the terms of this agreement; and
 - (b) to perform as required by this Subcontract both under normal conditions and under emergency conditions; and
 - (c) to have been tested, commissioned and be in a continually usable condition;
- (2) the Subcontractor has provided to the Contractor's Representative all warranties, guarantees and manuals and drawings required under this Subcontract (including an executed version of Schedule 7) or reasonably requested by the Contractor's Representative, in a format acceptable to the Contractor's Representative, and any other warranties which are available from suppliers and manufacturers for the equipment, plant or materials used in or provided for the Subcontract Works;
- (3) the Subcontractor has:
 - (a) handed over all necessary information required by the Contractor's Representative for the operation and maintenance of the Subcontract Works;
 - (b) removed all rubbish, plant and surplus material from the Site, other than plant and equipment required for the carrying out of the Subcontractor's obligations in the Defects Liability Period; and
 - (c) procured all certificates and approvals from all necessary authorities to the extent the Subcontractor is required by this Subcontract to procure them; and
- (4) the Subcontractor has complied with any requirements stated in Item 38.

24.3 Substantial Completion

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

24.4 Liquidated damages

- (1) If the Date of Substantial Completion is not achieved by the Date for Substantial Completion, the Subcontractor must pay or allow the Contractor the amount for liquidated damages at the rate set out in Item 37 for every day after the Date for Substantial Completion until and including the earlier of:
 - (a) the Date of Substantial Completion; or
 - (b) the date that this Subcontract is terminated.
- (2) The liability of the Subcontractor under this clause 24.4 is not and is not deemed to be, inclusive of nor does it in any way limit or reduce, any amount for which the Subcontractor is liable under any indemnity under this Subcontract (including in respect of any liability the Contractor has to the Principal).
- (3) If liquidated damages are found to be void, voidable or unenforceable on any basis so that the Contractor is not entitled to claim liquidated damages for the Subcontractor's failure to reach Substantial Completion by the Date for Substantial Completion, the Contractor is entitled to claim general law damages if the Subcontractor fails to reach Substantial Completion by the Date for Substantial Completion.

24.5 Separable portions

- (1) If the Subcontract Works is divided into separable portions, then the scope of works of each separable portion and the applicable completion dates or durations will be identified in Item 39.
- (2) If any part of the Subcontract Works has reached a stage equivalent to Substantial Completion, the Contractor's Representative may determine that such part of the Subcontract Works becomes a separable portion.
- (3) The definitions of Substantial Completion, Defects Liability Period, Date for Substantial Completion and Date of Substantial Completion and clauses 9, 20, 21, 22 and 24 apply separately to each separable portion.
- (4) In this clause 24.5, references to the Subcontract Works mean so much of the Subcontract Works as is comprised in the relevant separable portion. The amount of the liquidated damages and security applicable to a separable portion are such proportion of the amount applicable to the whole of the Subcontract Works as the value of the separable portion bears to the Subcontract Price.

25 Default and termination

25.1 Notice of Subcontractor Default

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

25.2 Contents of Notice of Subcontractor Default

A Notice of Subcontractor Default given under clause 25.1 must:

- (1) state that it is given under clause 25.1;
- (2) identify and particularise the substantial breach complained of; and
- (3) specify a time which is at least 5 Business Days from the date the Notice of Subcontractor Default is given within which the Subcontractor is either to remedy the substantial breach or to show cause to the Contractor's satisfaction why the Contractor ought not exercise its rights under clause 25.3.

25.3 Failure by Subcontractor to remedy or show cause

- (1) If the Subcontractor fails either to remedy the substantial breach or to show cause to the Contractor's satisfaction why the Contractor ought not exercise its rights under this clause 25.3, the Contractor may:
 - (a) by notice in writing to the Subcontractor engage others to, or itself, carry out any part or the whole of the remaining Subcontract Works; or
 - (b) terminate this Subcontract (including after first exercising its rights to engage others to, or itself, carry out any part or the whole of the remaining Subcontract Works).
- (2) If the Contractor engages others to carry out or itself carries out any part or the whole of the remaining Subcontract Works, the Contractor's Representative must determine the cost so incurred by the Contractor and any other loss or damage sustained by the Contractor as a consequence and the amount determined constitutes a debt due and owing by the Subcontractor to the Contractor.
- (3) If the Contractor terminates this Subcontract it has the same entitlements and the Subcontractor has the same liabilities as each would at law, had the Subcontractor repudiated the Subcontract and the Contractor terminated this Subcontract by acceptance of the Subcontractor's repudiation.

25.4 Substantial breaches

For the purposes of clause 25.1, a substantial breach by the Subcontractor includes (but is not limited to):

- (1) suspension of the Subcontract Works;
- (2) failure to commence performance the Subcontract Works in accordance with clause 3.2(1);
- (3) failure to proceed with due expedition and without delay (regardless of whether or not the Date for Substantial Completion has passed);
- (4) failure to use the materials or standards of workmanship required by this Subcontract;
- (5) failure to provide evidence of insurances required by this Subcontract;
- (6) failure to comply with any direction of the Contractor's Representative issued under a provision of this Subcontract;
- (7) failure properly to protect any person or property;
- (8) failure to maintain any licence or approval required of the Subcontractor for the performance of the Subcontract Works;
- (9) failure to immediately confirm, upon request for confirmation by the Contractor's Representative, that the Subcontractor is able and willing to complete performance of the Subcontract in accordance with its obligations;
- (10) failure to comply with clause 16;
- (11) failure to complete any milestone by any relevant milestone date as required by clause 21.6;
- (12) any act or omission by the Subcontractor that results or may result in the Contractor being in breach of the Head Contract; and
- (13) failure to complete the Design Documents by the times advised by the Contractor as required by clause 5.

25.5 Subcontractor unable or unwilling to complete

If the Subcontractor advises the Contractor that the Subcontractor is unable or unwilling to complete performance of this Subcontract, the Contractor may immediately (and without serving upon the Subcontractor a Notice of Subcontractor Default) exercise its rights under clause 25.3 to

engage others, or itself, carry out any part or the whole of the remaining Subcontract Works or terminate this Subcontract (including after first exercising its rights to engage others to, or itself, carry out any part or the whole of the remaining Subcontract Works).

25.6 Procedure upon termination or taking work out of hands

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

- (1) take possession of all documents (including design documentation), information and the like in the Subcontractor's possession which is connected with the Subcontract Works and reasonably required by the Contractor to facilitate completion of the Subcontract Works;
- (2) take an assignment of the Subcontractor's rights and benefits under any secondary subcontracts including any warranties and guarantees. The Subcontractor must do all things necessary to effect such an assignment; and
- (3) take possession of such plant, equipment and other things on or about the Site as are owned by the Subcontractor and are reasonably required by the Contractor to facilitate completion of the Subcontract Works. The Contractor must return any plant, equipment and other things which are surplus to the Subcontractor on completion of the work, subject to the Subcontractor satisfying the debt to the Contractor as determined under clause 25.3.

25.7 Contractor's default

If the Contractor fails to pay an amount certified as payable under clause 23.6 of this Subcontract, then without limiting any other right it may have, the Subcontractor may by notice in writing serve upon the Contractor a notice entitled "Notice of Contractor Default".

25.8 Contents of Notice of Contractor Default

A Notice of Contractor Default given under clause 25.7 must:

- (1) state that it is given under clause 25.7;
- (2) identify and adequately particularise the amount certified as payable under clause 23.6 but not paid; and
- (3) specify a time which is at least 10 Business Days from the date the Notice of Contractor Default is given within which the Contractor must either:
 - (a) make payment of the amount;
 - (b) compromise the claim of the Subcontractor to the Subcontractor's satisfaction; or
 - (c) identify the basis on which it is entitled to refrain from paying the amount certified.

25.9 Failure by Contractor to make payment or compromise claim

- (1) If the Subcontractor is entitled to serve a Notice of Contractor Default and having been served with a valid Notice of Contractor Default, the Contractor fails within the time specified either to:
 - (a) pay the amount certified as payable;
 - (b) compromise the claim to the satisfaction of the Subcontractor (acting reasonably); or
 - (c) identify any basis on which it is entitled to refrain from paying the amount certified,the Subcontractor may by notice in writing to the Contractor suspend the Subcontract Works.

- (2) If the Contractor fails to do one of the things referred to in clause 25.9(1)(a) to (c) within a 60 days of the Subcontractor suspending the Subcontract Works under clause 25.9(1), the Subcontractor may by notice in writing to the Contractor terminate this Subcontract.
- (3) If the Subcontractor validity terminates this Subcontract under clause 25.9(1) the Subcontractor is entitled to be paid:
 - (a) any outstanding amounts due to the Subcontractor under the payment schedule;
 - (b) an amount for the value of work done in the period between when the last progress claim was submitted and the date that the Subcontract was terminated, as determined by the Contractor's Representative in accordance with this Subcontract;
 - (c) the cost of materials reasonably ordered by the Subcontractor for the Subcontract Works, which the Subcontractor is liable to accept, but only if the materials become the property of the Contractor upon payment as determined by the Contractor's Representative;
 - (d) the reasonable cost of removal of plant and equipment as determined by the Contractor's Representative; and
 - (e) all security to which the Contractor is not otherwise entitled.
- (4) The Subcontractor agrees that its entitlements under this clause 25.9 are the Subcontractor's full compensation for all work performed under this Subcontract and for any Claims of the Subcontractor arising out of or in connection with this Subcontract or its termination under this clauses 25.9, 25.11 or 25.12.

25.10 Insolvency

- (1) Without prejudice to any other right either party may have, the Contractor may terminate this Subcontract by notice in writing upon the date stated in the notice if the Subcontractor is subject to an Insolvency Event.
- (2) Despite any other provision of this Subcontract, from the date the Contractor is entitled to terminate this Subcontract under clause 25.10(1):
 - (a) the Contractor is deemed to have become entitled to recourse to all retention monies and Bank Guarantees still held by the Contractor; and
 - (b) the Subcontractor has no entitlement to (or to make any Claim in respect of) and the Contractor has no obligation to return to the Subcontractor any retention monies or Bank Guarantees still held by the Contractor.

25.11 Termination for convenience

- (1) Without limiting any other right available to the Contractor under this Subcontract or at law, the Contractor may at any time and for whatever reason (including its convenience) terminate this Subcontract.
- (2) If the Contractor terminates this Subcontract under clause 25.11(1), the Subcontractor's entitlements are limited to those set out in clause 25.9(3).

25.12 Termination of the Head Contract

- (1) Without limiting any other right available to the Contractor under this Subcontract or at law, if the Head Contract is terminated at any time for any reason, the Contractor may terminate this Subcontract by notice in writing to the Subcontractor.
- (2) If the Subcontractor terminates this Subcontract under clause 25.12(1), the Subcontractor's entitlements are limited to those set out in clause 25.9(3).

26 Dispute resolution

26.1 Notice

- (1) If a dispute or difference arises between the Contractor and Subcontractor out of or in connection with the Subcontract Works or this Subcontract, either party may give the other a written notice specifying the dispute or difference. The notice must specify in reasonable detail the nature of the dispute or difference and the notice must specify in reasonable detail the legal basis of any Claim made by the party serving the notice.
- (2) Neither party may commence proceedings (other than for injunctive or other urgent relief) in respect of any dispute or difference between them, unless a notice under clause 26.1(1) has been served and the procedures in clauses 26.2 and 26.3 (inclusive) have been complied with. Nothing in this clause 26 prevents the parties from agreeing to resolve, or seek to resolve, their dispute by any other method agreed upon by the parties.

26.2 Meeting

- (1) If a dispute or difference notified under clause 26.1(1) has not been settled within 5 Business Days of the date of that notice, either party may, by written notice to the other, require that a person holding a position of senior management of each of the Contractor and the Subcontractor meet and undertake genuine and good faith negotiations on a without prejudice basis with a view to resolving the dispute or difference.
- (2) If a meeting is required under this clause by either party, then each party must ensure attendance on its behalf by a person holding a position of senior management. Each party must use its best endeavours to ensure that a meeting required under this clause takes place within 5 Business Days of the receipt of a valid written notice requiring the meeting.
- (3) If the dispute or difference involves or may involve the Principal, at the option of the Contractor and if the Principal agrees, the Principal may participate in any meeting held under this clause 26.2.

26.3 Mediation or Expert Determination

- (1) If the dispute or difference is not resolved within 15 Business Days of the giving of notice under clause 26.1, the parties must either refer the dispute or difference to mediation in accordance with clause 26.3(3) or if agreed by the parties proceed to an alternative means of dispute resolution agreed by the parties which the parties may elect to be either final and binding or non-binding.
- (2) If the alternative means of dispute resolution agreed by the parties under clause 26.3(1) is elected by the parties to be non-binding, a party may upon the conclusion or outcome of the alternative dispute resolution refer the dispute or difference to mediation in accordance with clause 26.3(3).
- (3) If a dispute or difference is referred to mediation as referred to under clause 26.3(1), the parties agree that:
 - (a) a mediator is to be appointed by agreement between the parties or failing such agreement within 10 Business Days of the referral to mediation, is to be appointed by the Chair of Resolution Institute or their nominee;
 - (b) each party must bear its own costs of the mediation save that the parties must share equally the mediator's fees, fees for mediation rooms and costs of shared equipment, facilities and services of the mediation;
 - (c) the parties must agree the venue for the mediation and if they cannot agree, the mediator appointed must nominate the venue;
 - (d) each party may be legally represented in the mediation if they so wish;
 - (e) complete confidentiality must be preserved in respect of the mediation and any documents and information used at or in relation to the mediation; and

- (f) mediation proceedings including any documents and information used at or in relation to the mediation must not be used as evidence in any legal proceedings and the parties agree not to compel the mediator to give evidence as to any matter in relation to the mediation in any legal proceedings.

26.4 Litigation

- (1) Subject to clause 26.4(2), neither the Contractor nor the Subcontractor may initiate any litigation out of or in connection with the Subcontract Works or the Subcontract unless they have first complied with clauses 26.1 to 26.3 in relation to the dispute or difference which is the subject of the litigation.
- (2) Clause 26.4(1) does not prevent either party from instituting proceedings to enforce payment due under clause 23 or to seek urgent injunctive or declaratory relief in respect of a dispute or difference arising under this Subcontract.

26.5 Disputes under the Head Contract

- (1) If the Principal or any other person having the right to do so, condemns any materials, workmanship or design of the Subcontractor or refuses to include their value in any progress or final payment to the Contractor then that condemnation or refusal is conclusive as between the Contractor and the Subcontractor as to those matters.
- (2) In the case of any dispute or difference arising out of any condemnation or refusal, the provisions for dispute resolution between the Contractor and the Subcontractor under clause 26 do not apply. Instead, the Contractor agrees that at the reasonable direction of the Subcontractor, the Contractor must take such steps as are reasonably open to the Contractor under the Head Contract relating to dispute resolution to contest the condemnation or refusal.
- (3) The Subcontractor indemnifies the Contractor against all costs and expenses that it may be subject to by reason of complying with a direction under clause 26.5(2) and must lodge with the Contractor any security required by the Contractor against those costs and expenses. Any money that the Contractor recovers is for the benefit of the Subcontractor, subject to any just claim or entitlement of the Contractor.

26.6 Linked Claims

- (1) To the extent requested by the Contractor, the Subcontractor must fully co-operate with and assist the Contractor with pursuing the Linked Claim and prepare and provide the Contractor with all information and documents necessary for the Contractor to pursue the Linked Claim including upon the request of the Contractor the attendance of meetings.

26.7 Continued performance

- (1) Despite the existence of a dispute or difference, the Contractor and the Subcontractor must continue to perform this Subcontract.
- (2) This clause 26 continues in force even where the Subcontract has been fully performed, terminated or rescinded or where the parties or any of them have been discharged from the obligation to further perform the Subcontract for any reason.

27 Claims

To the extent permitted by law, the Subcontractor does not have any right to make any Claim against the Contractor and is absolutely barred from making any Claim, unless:

- (1) the Subcontractor gives to the Contractor:
 - (a) a written notice within the period stated in Item 40 after the circumstances on which a Claim is based first arises, that it intends to make a Claim; and
 - (b) a further written notice within the period stated in Item 41 of the notice under clause 27(1)(a) providing detailed particulars of the basis for and the quantification of the

Claim sufficient to enable the Contractor to make an informed assessment of the merits of the Claim; or

- (2) another provision of this Subcontract provides a procedure and prescribes a time for the making of the Claim and the Subcontractor complies in all respects with the requirements in those other provisions (including as to time).

28 Goods and services tax

28.1 Definitions/ interpretation

In this clause 28:

- (1) GST means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (GST Act) or any replacement or other relevant legislation and regulations;
- (2) words or expressions used in this clause which have a particular meaning in the GST law (as defined in the GST Act), any applicable legislative determinations and Australian Taxation Office public rulings, have the same meaning, unless the context otherwise requires;
- (3) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
- (4) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
- (5) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

28.2 Payment of GST

- (1) Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Subcontract for any supply made under or in connection with this Subcontract does not include GST.
- (2) To the extent that any supply made under or in connection with this Subcontract is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time as the GST exclusive consideration is to be paid or provided.
- (3) A Tax Invoice must be provided either by:
 - a) if the Contractor is the Recipient of the supply the Contractor providing the Subcontractor with a recipient created tax invoice ("RCTI") on or before making payment in respect of the supply; or
 - b) if the Subcontractor is the Recipient of the supply, the Subcontractor providing the Contractor with a Tax Invoice before the due date for payment of the supply.
- (4) If clause 28.2(3) applies:
 - a) the Subcontractor must not issue a Tax Invoice in respect of any supply it makes to the Contractor, and
 - b) the Contractor must notify the Subcontractor if it ceases to comply with any of the requirements of any taxation ruling issued by an authority relating to the creation of RCTIs.
- (5) If and to the extent an adjustment event arises in respect of a supply made under or in connection with the Agreement, then:

- a) if the Supply Party's corrected GST Amount is less than the previously attributed GST Amount, the Supply Party must refund the difference to the Recipient;
 - b) if the Supply Party's corrected GST Amount is greater than the previously attributed GST Amount, the Recipient must pay the difference to the Supply Party; and
 - c) the Contractor will issue an adjustment note to the Subcontractor.
- (6) To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.
- (7) To the extent that any consideration payable to a party under this Subcontract is determined by reference to a cost incurred by a party, or to a price, value, sales, revenue or similar amount, the GST exclusive amount of that cost, price, value, sales, revenue or similar amount must be used.

29 Security of payment

29.1 The role of the Contractor's Representative

The Subcontractor acknowledges, for the avoidance of doubt, that to the extent Contractor has an entitlement to issue a payment schedule(s) (or its equivalent) or any other document or notice under the Security of Payment Act, it may do so by the Contractor's Representative who acts as the Contractor's agent in that regard.

29.2 Service of notices under the Security of Payment Act

- (1) The Subcontractor must immediately provide to the Contractor's Representative a copy of any notice or document:
 - (a) served by the Subcontractor on the Contractor under or in connection with Security of Payment Act; and
 - (b) received by the Subcontractor from any third party in connection with the Works where that notice or document is provided under the Security of Payment Act. In such event, the Contractor may, in its absolute discretion, pay such third party the money that it is owed by the Subcontractor and the amount of such payment will be a debt due from the Subcontractor to the Contractor. Payment by the Contractor of any amount under this Clause 29.2 will not relieve the Subcontractor of any of its obligations and liabilities under or in connection with this Subcontract.
- (2) A notice given under the Security of Payment Act must not be sent by email

29.3 No limit on legislation

Nothing in the Subcontract affects restricts or limits the Subcontractor's right to:

- (1) make an adjudication application in relation to a payment dispute under section 79 of the Security of Payment Act; or
- (2) suspend the Subcontract Works under section 98 of the Security of Payment Act.

29.4 Adjudication

The parties agree that, if the Subcontractor applies for adjudication under the Security of Payment Act, the authorised nominating authority in respect of such an adjudication application is one of the bodies stated in Item 42.

30 Confidential Information

- (1) The Subcontractor must maintain and take all steps necessary to maintain all Confidential Information in strictest confidence.
- (2) Clause 30(1) does not apply to Confidential Information which the Subcontractor proves to the Contractor's reasonable satisfaction:
 - (a) is in the public domain (other than by a breach of this clause 30).
 - (b) was obtained from a third party without breach by that third party of any obligation of confidence;
 - (c) was already in the Subcontractor's possession (as evidenced by written records) when provided by or on behalf of the Contractor;
 - (d) is permitted to be disclosed under the express terms of this Subcontract; or
 - (e) is required to be disclosed by Law.
- (3) Subject to clause 6(4), the Subcontractor may disclose Confidential Information to its Personnel, auditors, insurers, financiers or other professional advisors for the purposes of performing the Subcontract Work, seeking professional legal, accounting or tax advice or to defend itself from a claim.
- (4) The Subcontractor must ensure that all persons referred to in clause 30(3) who receive or have access to the Confidential Information observe confidentiality provisions equivalent to those contained in this Subcontract.
- (5) The Subcontractor must not issue for publication any information concerning the Works and / or Services, the Contract or the Project in any media without the written consent of the Contractor. The Subcontractor must refer to the Contractor any enquires from any media sources.

31 Notices

31.1 Form of Notice

- (1) A notice or other communication connected with this Subcontract (Notice) has no legal effect unless it is in writing.
- (2) Any Notice by a party may be given and may be signed by its solicitor.

31.2 How to give a Notice and when Notice is received

- (1) A Notice must be given using one of the methods set out in the table below.
- (2) Subject to clause 31.2(3), a Notice will be treated as having been given to and received by the addressee at the time set out in the table below. However, if that time is after 5pm on a Business Day or is not on a Business Day, then the Notice will be treated as having been given to and received by the addressee at 9am on the next Business Day.

Method of giving Notice	When Notice will be treated as having been given and received
By hand at the address of the addressee set out in this Subcontract or last notified in writing.	Upon delivery.
By prepaid post from an address in Australia to the address of the addressee set out in this Subcontract or last notified in writing.	On the third Business Day (at the address to which it is posted) after posting.

By email to the email address of the addressee set out in this Subcontract or last notified in writing.	On the day it is sent.
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- (3) A Notice under clause 25 or 26 or any Notice under the Security of Payment Act must be given by hand or prepaid post, plus copy given by email on the same day, in accordance with Clause 31.2(2). The Notice referred to in this Clause 31.2(3) will be treated as having been given to and received by the addressee at the time set out in Clause 31.2(2) for giving the Notice by hand or prepaid post (as applicable).
- (4) A Notice given in a manner provided by Clause 31 will be treated as validly given to and received by the addressee even if:
- (a) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or
 - (b) the Notice is returned unclaimed.

32 General

32.1 Continuing obligations

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

32.2 Retrospectivity

- (1) This Subcontract applies to all Subcontract Work performed by the Subcontractor to the Contractor and any preliminary services or work in relation to the subject matter of this Subcontract performed by the Subcontractor, including any Subcontract Work, preliminary services or work performed by the Subcontractor before the Execution Date.
- (2) The parties acknowledge and agree that all payments made by the Contractor to the Subcontractor before the Execution Date have been paid on account of the liability of the Principal to pay fees and other amounts specified in the Contract.

32.3 Amendment to Subcontract

Except as provided in clause 19, amendment or variation to the Subcontract is not effective unless it is in writing and signed by the parties.

32.4 Status of Subcontractor

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

32.5 Severability

If any provision in this Subcontract is unenforceable, illegal or void or makes this Subcontract or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Subcontract remains in force.

32.6 Further assurance

Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to the Subcontract.

32.7 Entire understanding

The Subcontract is the entire agreement and understanding between the parties on everything connected with the subject matter of the Subcontract and supersedes any prior agreement or understanding on anything connected with that subject matter.

32.8 Costs and outlays

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

32.9 Governing law and jurisdiction

The law of the state or territory specified in Item 44 governs the Subcontract. The parties submit to the non-exclusive jurisdiction of the courts of that state or territory and of the Commonwealth of Australia.

32.10 Waiver

The Contractor's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

33 Personal Property Securities Act

- (1) A term defined in the PPS Law has the same meaning when used in this clause.
- (2) The Contractor may, by notice to the Subcontractor at any time, require the Subcontractor to take all steps, provide all information (including serial numbers) or do any other thing that the Contractor considers necessary or desirable to:
 - (a) ensure that this Subcontract (or any related document) or any security interest arising under it, is enforceable against the Subcontractor or any third party;
 - (b) protect, perfect, record or better secure, or obtain or preserve the priority of, the security position of the Contractor under this Subcontract (or any related document); or
 - (c) overcome any defect or adverse effect arising from the PPS Law on the Contractor's security position or the rights or obligations of the Contractor under or in connection with this Subcontract or any encumbrance or document contemplated by this Subcontract.
- (3) The Subcontractor must comply with the requirements of a notice under clause 33(2) within the time stated in the notice at the cost of the Subcontractor.
- (4) Subject to any other clause of this Subcontract which expressly permits the disclosure of such information, the parties agree that neither of them will disclose any information of the kind mentioned in section 275(1) of the PPSA. The Subcontractor waives any right it has under section 275(7)(c) of the PPSA to authorise disclosure of such information. This clause 33(4) survives the termination of this Subcontract.
- (5) To the extent permitted by the PPSA, the Contractor has no obligation to give, and the Subcontractor waives any rights to receive, any notice, statement or copies of any documents under the PPSA, including any notice or statement referred to in sections 95, 118, 121(4), 130, 135 or 157 of the PPSA.
- (6) To the extent that Chapter 4 of the PPSA would otherwise apply to enforcement by the Contractor of any security interest in collateral, the parties agree that the following provisions of the PPSA are excluded:

- (a) to the extent section 115(1) of the PPSA allows them to be excluded: sections 125, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA; and
 - (b) to the extent section 115(7) of the PPSA allows them to be excluded: sections 129(2) and (3), 132, 133(1)(b) (as it relates to the security interest of the Contractor), 134(2), 135, 136(3)(4) and (5).
- (7) To the extent that it is lawful to do so, the Subcontractor waives its right to receive any notice required to be given by the Contractor under the PPSA whether the obligation to give that notice arises on or after the Execution Date.

34 Federal Building Code

- (1) If the Building Code applies to this project it will be identified in Item 45.
- (2) If applicable the Building Code revision which applies to the Contractor on this Project is identified in Item 46.
- (3) When the Contractor are working under the 2013 Code and the Subcontractor's compliance with the Building Code 2016 is required on this project it will be identified in Item 48. The requirements of the Code and associated contract clauses are outlined in Schedule 12.
- (4) Compliance with the Code and Guidelines will not relieve the Subcontractor from responsibility to perform this Agreement, or from liability for any defect in the Works.

35 Australian State Specific Building and Construction Code Compliance

If compliance with an Australian State Specific Building and Construction Code is required on this project it will be identified in Item 49. If compliance with the Australian State Building and Construction Code is applicable then that requirement forms part of the contract. The requirements of the State Code and associated contract clauses are outlined in Schedule 13.

Compliance with the Code will not relieve the Subcontractor from responsibility to perform this Agreement, or from liability for any defect in the Works.

36 Industrial Action

- (1) The Subcontractor will immediately inform the Contractor of any threatened or actual industrial actions related to the Project.
- (2) The Subcontractor will ensure that all of its Personnel will comply with the Contractor's directions regarding industrial action.

37 Force Majeure

37.1 Operation

- (1) No delay or failure in performance (except for payment obligations) by either party shall constitute default or give rise to any Claim for damages to the extent such delay or failure is caused by Force Majeure.

37.2 Meaning of Force Majeure

- (1) "Force Majeure" means an act, event or circumstance that:
- (2) delays, adversely affects or renders impossible the affected party's performance of its obligations under this Subcontract;
- (3) is beyond the reasonable control of the affected party, and not due to its fault or negligence or breach of this Subcontract;

- (4) was not reasonably foreseeable or if reasonably foreseeable, could not have been prevented or avoided by the affected party through the exercise of reasonable diligence;
- (5) and includes, to the extent the above requirements are satisfied, named, catastrophic or severe storms, floods, tornadoes, hurricanes, typhoons, cyclones, tsunamis or credible threats of tsunamis, earthquakes and other acts of God, wars, civil disturbances, riots, terrorist attacks or credible threats of terrorist attacks, revolts, insurrections, sabotage, piracy, commercial embargoes, epidemics, fires, explosions, and actions or inaction of a regulatory authority and that were not requested, promoted, or caused by the affected party; and
- (6) For avoidance of doubt, Force Majeure shall not include any of the following:
 - (a) economic hardship;
 - (b) changes in market conditions;
 - (c) late delivery or failure of construction equipment or materials;
 - (d) labour shortages or unavailability;
 - (e) shortage of materials, consumables, equipment or utilities;
 - (f) weather or climatic events or conditions (other than those described in the first paragraph above); and
 - (g) non-performance or delay by supplier or sub-subcontractors.

37.3 Force Majeure Notice

- (1) In addition to the requirements under clause 22, if the Subcontractor's performance of this Subcontract is delayed by a Force Majeure occurrence, Subcontractor shall provide the Contractor with written notification of the delay and its estimated duration within twenty-four (24) hours of the occurrence.
- (2) During the on-going occurrence, the Subcontractor shall take all actions to minimise and mitigate the effect of the Force Majeure occurrence.

37.4 Consequence of a Force Majeure Event

- (1) If, provided the Subcontractor complies with the requirements of clause 22, the Subcontractor is delayed in achieving Substantial Completion by a Force Majeure event and the requirements of the Force Majeure Notice have been satisfied, the Subcontractor will be entitled to an Extension of Time. Any costs arising as a result of a Force Majeure event are the responsibility of the respective parties.

38 Exclusion of Indirect or Consequential Loss

- (1) Despite any other provision of this Subcontract neither party is liable to the other (including as a result of wrongful or unlawful conduct) for any:
 - (a) special exemplary or punitive damages
 - (b) loss of revenue or anticipated revenue (other than the consideration and compensation payable to the Contractor under this Subcontract);
 - (c) loss of profit or anticipated profit;
 - (d) loss of information;
 - (e) increased cost of procuring or supplying the works;
 - (f) loss of opportunity, goodwill or reputation;
 - (g) loss of, damage to or corruption of data;
 - (h) business interruption of any kind;

- (i) loss of production;
 - (j) increased operating cost; and
 - (k) loss of contracts, including third party contracts.
- (2) But that limitation of liability excludes liability:
- (a) which cannot be limited at law;
 - (b) which arises out of the Subcontractor's abandonment of its obligations under the deed;
 - (c) to the extent that the Subcontractor receives (or ought to have received) proceeds from any insurance;
 - (d) in respect of personal injury or illness of any person or loss of or destruction of or damage to third party property; and
 - (e) any breach by the Subcontractor of its obligations in respect of Intellectual Property or Confidential Information.

39 Trustee provisions

- (1) This clause applies if the Subcontractor or any person of which the Subcontractor is comprised is a trustee of a trust (each a Trustee).
- (2) Each Trustee:
 - (a) enters into this Agreement in its own capacity and in its capacity as trustee;
 - (b) is personally bound and bound in its capacity as trustee.
- (3) Each Trustee represents and warrants to the Contractor that, to the extent that it enters into this Agreement in its capacity as trustee of a trust:
 - (a) the trust is validly constituted and has not terminated, nor has any action been taken to wind up, terminate or resettle the trust, nor has the date or any event occurred for the vesting of the assets of the trust.
 - (b) it is the sole trustee of the trust, it has not given any notice of resignation and no action has been taken to remove it or to appoint an additional trustee of the trust.
 - (c) it has power under the documents establishing the trust (Trust Deed) to enter into this Agreement and to perform its obligations under this Agreement.
 - (d) all action has been taken that is necessary or desirable under the Trust Deed or at Law to authorise its entry into this Agreement and to perform its obligations under this Agreement.
 - (e) it is entering into this Agreement as part of the proper administration of the trust, for the commercial benefit of the trust and for the benefit of the beneficiaries of the trust.
 - (f) it has the right to be indemnified out of the assets of the trust in relation to any liability arising under or in connection with:
 - (i) the Date of this Agreement.
 - (ii) the performance of the obligations of the Contractor of this Agreement.
 - (iii) the Subcontractor's rights under this Agreement.
 - (iv) the assets of the trust are sufficient to satisfy the Trustee's right to indemnification described in paragraph (f) in full.
 - (v) it has not released or disposed of its equitable lien over the assets of the trust.

- (vi) it is not in breach of any material obligations imposed on it in its capacity as trustee of the trust, whether under the Trust Deed or otherwise.
- (4) The representations and warranties in clause 39.3 are taken to be made:
 - (i) on the date of this Agreement; and
 - (ii) on the date on which each Payment Claim is made under this Agreement; and
 - (iii) on the date on which any payment is made to the Contractor under or in connection with this Agreement.

40 Survival of provisions

- (1) Clauses 1 (Definitions & Interpretation), 6 (Subcontract Documents), 23.12 (Set Off), 10 (indemnity by the Subcontractor), 26 (Dispute Resolution), 29 (Security of Payment), 30 (Confidential information) and 38 (Exclusion of Indirect or Consequential Loss) survive the end of this Agreement.

Schedule 1 – Particulars

Item 1	The Project (clause)	Fulton Hogan Seymour Whyte Joint Venture – Caloundra Road To Sunshine Motorway Project.
Item 2	Contractor's Representative (clause 1.1)	Name: Cameron Bell Address: 120 Cresswell Road, Meridan Plains QLD 4551 Phone: 07 5420 6500 Email: finance@fhswjv.com.au
Item 3	Subcontractor's Representative (clause 1.1)	Name: # insert # Address: # insert # Phone: # insert # Email: # insert #
Item 4	Date for Substantial Completion (clause 1.1)	The Date of Substantial Completion is # insert date #. #OR# The Date of Substantial Completion is #insert duration# after the Commencement Date.
Item 5	Head Contract (clause 1.1)	Department of Transport and Main Roads contract with Fulton Hogan Seymour Whyte JV – Caloundra Road To Sunshine Motorway Project NCHD-3074
Item 6	Site (clause 1.1)	Bruce Highway Updgrade (Caloundra Road to Sunshine Motorway) (CR2SM).
Item 7	Principal (clause 1.1)	Department of Tansport and Main Roads ABN : 39 407 690 291
Item 8	Subcontract Price (clause 1.1)	The Subcontract Price is \$AUD [amount] made up as follows: (a) Lump Sum(s) ex GST: \$[insert]
Item 9	Defects Liability Period (clause 1.1)	The defects liability period under the Head Contract expires on 24 calendar months after Substantial Completion
Item 10	Subcontract Works (clause 1.1)	The supply and installation of fauna poles and ladders, and associated works as more particularly described or reasonably to be inferred from the Subcontract Documents.

Item 11	Commencement Date (clause 3)	The date directed by the Contractor, which date will fall between #Contractor to insert# and #Contractor to insert#.
Item 12	Hours and days for access to the Site (clause 3)	The normal working hours of the site are: From 6.30am to 6.00pm Monday to Friday (including prestart attendance) From 6.00am to 3:00pm Saturday (including prestart attendance) (NOTE – Meal breaks will not be paid for) The Contractor may vary the working hours to include overtime and/or night work. If overtime or night work is undertaken it will be paid for at the applicable rates in Item 10 of Schedule 1. Excludes public holidays
Item 13	Subcontract Documents (clause 1.1)	The Subcontract Documents are, in declining order of precedence: (a) any Special Conditions contained in Schedule 2; (b) the General Conditions of Subcontract; (c) the other Schedules to this Subcontract; (d) the following additional documents issued by the Contractor to the Subcontractor from time to time: (i) Subcontractor Safety & Enviro Pack (ii) Details from the Project OH & S Plan relevant to the Subcontractor Work Package (iii) Workplace Risk Assessments completed by the Contractor applicable to the Subcontractor Work Package (iv) Site Induction requirements (v) Reporting procedures (vi) Site Evacuation Plan (vii) Industrial Relations requirements
Item 14	Is design work included (clause 5)	No (If nothing is stated design work is not included and clause 5 does not apply)
Item 15	Subcontracting (clause 8.2(1))	Only with prior written approval by the Contractor.

Item 16	Required form of Security (clause 9.1)	Not Applicable
Item 17	Required amount of Security (clauses 9.4 and 9.5)	Not Applicable
Item 18	The percentage to which the Contractor's entitlement to security or retention moneys is reduced (clause 9.7)	50%
Item 19	Public liability insurance to be taken out by Subcontractor (clause 11.1)	Level of cover: \$20 million Period of insurance: To be effected and maintained from the earlier of the Commencement Date or Execution Date until Substantial Completion
Item 20	Insurance for temporary works and any plant and equipment supplied by the Subcontractor for use on the Site to be taken out by Subcontractor (clause 11.1)	No As required by the Subcontractor to complete the Subcontract works.
Item 21	Workers compensation insurance to be taken out by Subcontractor (clause 11.1)	To be taken out by the Subcontractor in accordance with all current Laws.
Item 22	Professional indemnity Insurance to be taken out by Subcontractor (clause 11.1)	Not Required
Item 23	Motor vehicle / Plant insurance to be taken out by the Subcontractor (clause 11.1)	Level of cover: Full value of motor vehicles and plant on site. Period of insurance: To be effected and maintained from the Execution Date until the Date of Substantial Completion

Item 24	Subcontract Works insurance to be taken out by Contractor or Principal (clause 11.2)	Contract works insurance (including coverage of the Subcontract Works) Taken out by Fulton Hogan Seymour Whyte Joint Venture
Item 25	Critical items of plant or equipment (clause 13.2(3))	#insert#
Item 26	Approvals not being obtained by the Subcontractor (clause 14.2(1))	Environmental Approvals Land Access Agreements
Item 27	Notice period for Subcontractor's notice of a direction not stated to be a Variation (clause 19.1(2))	2 Business Days
Item 28	Milestones (clause 21.6)	Milestone: _____ Milestone Date: _____
Item 29	Notice period for Subcontractor's notice of delay (clause 22.1(1))	2 Business Days
Item 30	Notice period for Subcontractor to claim an Extension of Time (clause 22.1(2))	5 Business Days
Item 31	Events entitling the Subcontractor to an extension of time (clause 22.2)	Optional items which may be inserted: (i) None
Item 32	Extent the Subcontract Price is subject to rise and fall (clause 23.1(2)(b))	None

Item 33 Subcontractor to
submit progress
claims
(clause 23.2)

The Contractor to create tax invoices:

☐ Yes ☒ No

Monthly on the 23rd day of each month.

Where the 23rd of the month falls on a weekend or public holiday, claims must be submitted on the last working day prior to the 23rd.

Payment Claims are to be marked for the attention of the Contractor's Administrator and properly submitted by emailing to Finance@fhswjv.com.au

The conditions precedent to any entitlement to payment in respect of the Work under the Subcontract include that the Subcontractor must:

- (a) have complied with clause 11 (insurance);
- (b) have complied with clause 21.2 (program);
- (c) have rectified any Defect in any Work under the Subcontract to which the payment relates;
- (d) (have issued) a tax invoice/payment claim in accordance with clause 23;
- (e) have provided Quality Assurance records as required by the Contractor or Project Quality Plan;
- (f) have provided a Statutory Declaration stating that all workers and subcontractors have been paid all monies due and payable to them in respect of their employment and services on the project as set out in Schedule 14;
- (g) have provided the information required for NGER / EEO reporting requirements, including as set out in Schedule 15 or otherwise directed by the Contractor from time to time; and
- (h) have provided a Weed Hygiene Declaration as set out in Schedule 16 or otherwise directed by the Contractor from time to time; and where new plant or product has been brought to Site.
- (i) Have provided labour returns, including number of:
 - (i) Workers employed on site,
 - (ii) number of apprentices, trainees, or cadets,
 - (iii) number of man days worked on site
 - (iv) number of labour hours worked on site
 - (v) number of training hours attributed to site
 - (vi) number and extent of any Lost Time Injuries attributed to the site
 - (vii) number of Medical Treatment Cases attributed to site
 - (viii) number of First Aid Cases attributed to the site
 - (ix) number of Indigenous hours / personal worked on site

For both the period of the progress claim and Year to Date for the works on site

Item 34	Address and email for service of notices and payment claims under the Building Industry Fairness Security of Payments Act 2017 (Qld) (clause 31)	Contractor's details Address: 120 Cresswell Road, Meridan Plains, Qld, 4551 Email: Finance@fhswjv.com.au Subcontractor's details Address: #address# Email: #email#
Item 35	Period of payment by Contractor (clause 23.6(1)(b))	45 Days after end of the month the invoice relates to.
Item 36	Period of payment by Subcontractor (clause 23.6(2))	45 Days after end of the month the invoice relates to.
Item 37	Liquidated damages rate (clause 24.4)	None
Item 38	Additional Substantial Completion Requirements (clause 24.2(4))	None
Item 39	Separable Portions (clause 24.5)	None
Item 40	Notice period for notification of claim (clause 27(1)(a))	2 Business Days
Item 41	Notice period for submission of details of claim (clause 27(1)(b))	2 Business Days
Item 42	Authorised nominating authorities (clause 29.4)	The Registrar of the Adjudication Registry under the Building Industry Fairness Security of Payments Act 2017 (Qld).

Item 43	Unfixed plant or materials for which payment may be made notwithstanding that they are not incorporated into the Subcontract Works (clause 23.4(2))	None
Item 44	State or territory governing this Subcontract (clause 32.9)	Queensland
Item 45	Federal Building Code (clause 34 (1))	Does the Building Code apply to this Subcontract? Yes
Item 46	The Revision of the Building Code which applies to the Contractor on this project. (clause 34 (2))	2013
Item 47	The Contractor under 2013 Building Code. Subcontractor Compliance with the 2016 Building Code (clause 34 (4))	Yes
Item 48	Queensland Code (clause 35)	Yes

Schedule 2 – Special Conditions

2.1 TIMESHEETS

The Subcontractor must submit to the Contractor for verification, at the end of every shift, a daily record of:

- Prestart attendance
- Hours of work.
- Breaks
- Overtime hours.
- Stand down Time
- Quantity of subcontract works completed

The daily record must be on a CR2SM “docket” and signed off by the Subcontractor and the Contractor’s Supervisor. The signed dockets and their content is what will make up the Subcontractors monthly claim.

Additional docket books can be provided to the Subcontractor by the Contractor upon request.

2.2 TRAINING POLICY

Works under this Subcontract may be subject to Principal requirements in respect of the Training of Personnel employed on the site.

All Personnel are required to work under this Subcontract and work is to be carried out in accordance with the Queensland Government Building and Construction Training Policy. Details of this policy can be found at: <https://training.qld.gov.au/site/employers/Documents/trainingpolicy/qg-building-construction-training-policy.pdf>

2.3 CHECKLIST OF ALLOWANCES

ITEM	SUPPLIED BY		PAID FOR BY	
	FHSWJV	SUB CONTRACTOR	FHSWJV	SUB CONTRACTOR
Site Facilities				
Meal and change rooms	X		X	
Toilet facilities	X		X	
Washing/shower facilities	X		X	
Safe keeping of tools and personal belongings		X		X
Secured storage area		X		X
Bunded storage area		X		X
Temporary Electrical Services				
Generators (within 30m from work area)		X		X
Cost of Electricity		X		X
Supply of Power leads		X		X

ITEM	SUPPLIED BY		PAID FOR BY	
	FHSWJV	SUB CONTRACTOR	FHSWJV	SUB CONTRACTOR
Lighting				
External floodlighting for night work	X		X	
Task lighting		X		X
First Aid				
First aid cabinets/kits		X		X
Trained First Aiders		X		X
Fire Prevention				
Fire extinguishers		X		X
Fire blankets		X		X
Water Supply				
Drinking water (at amenities only)	X		X	
Water for dust control	X		X	
Water for work activities	X		X	
Communication Services				
Telephone/fax		X		X
Waste Disposal and Recycling				
Construction waste bins (skips) at specified locations	X		X	
Recycling bins	X		X	
Disposal of construction waste off site	X		X	
Carting and tipping of spoil and construction waste to a designated stockpile		X		X
Plant				
Cranage - other		X		X
Materials Handling – unloading, transport to point of use		X		X

ITEM	SUPPLIED BY		PAID FOR BY	
	FHSWJV	SUB CONTRACTOR	FHSWJV	SUB CONTRACTOR
Handling and lifting equipment/hoists		X		X
Cherry pickers, scissor lifts, etc.		X		X
Excavation and trenching equipment		X		X
Air compressors, jackhammers, etc.		X		X
Concrete Pumps		X		X
Traffic Control				
Establishment and maintenance of TMPs / traffic control devices / signage	X		X	
Provision of traffic controllers	X		X	
Safety and Environmental Provisions				
Erosion and sedimentation control- implementation	X		X	
Erosion and sedimentation control- maintenance		X		X
Dust control		X		X
Control of water quality, monitoring and control	X		X	
Emergency liquid absorbent materials, boom kits etc. (Spill Kits)		X		X
Temporary access / egress to work areas	X		X	
Mandatory, & cautionary signage etc.	X		X	
Provision of bunded storage for liquid chemicals		X		X
Personal protective equipment		X		X
Fauna Spotter	X		X	
Arborist		X		X

ITEM	SUPPLIED BY		PAID FOR BY	
	FHSWJV	SUB CONTRACTOR	FHSWJV	SUB CONTRACTOR
Subcontract Works				
Supply of all permanent and temporary materials		X		X
Application for Ground Penetration Permit (GPP) (Subcontractor must provide the Contractor with a minimum of 24 hours' notice of requirement.)		X		X
Collection of GPP and walk through of work area prior to commencement of works by subcontractor.		X		X
Any Additional clearing and tree works		X		X
Working in Confined Spaces		X		X
Miscellaneous				
Survey control	X		X	
Initial Set Out	X		X	
Parking (At site facilities only)	X		X	
Additional Set Out – Maintenance & Preservation of survey set out (any additional survey)		X		X

Schedule 3– Subcontract Price and Schedule of Rates

Subcontract Lump Sum (LS) \$\$ price made up of:

Item Description	Quantity	Rate	Total Item Cost
Supply of Polypropylene coated wire rope grid fauna ladder with galvanised steel conductor main support cables, and all required fixings and materials to install.	1	\$\$	\$\$
Supply of Hardwood Timber Fauna Poles and Stay Cables, and all required fixings and materials to install.	2	\$\$	\$\$
Supply and installation of Reinforced concrete anchor blocks for stay cables and all required fixings and materials to install.	4	\$\$	\$\$
Installation of fauna poles, ladder and all required materials.	LS	\$\$	\$\$

The above rates include all materials and requirements to supply and install the fauna poles and ladder as per the drawings and specifications in Schedule 4, and the cost of all allowances specified in Schedule 2, Item 2.3.

Schedule 4– Drawings and Specifications

Drawings

Drawing Number	Revision	DTMR Reference	Drawing Description
28010A1-DES-000STOS01-DRG-0521	A	732316	Miscellaneous Structures Rope Ladder Crossing General Arrangement
28010A1-DES-000STOS01-DRG-0522	A	732317	Miscellaneous Structures Rope Ladder Crossing Details – Sheet 1
28010A1-DES-000STOS01-DRG-0523	A	732318	Miscellaneous Structures Rope Ladder Crossing Details – Sheet 2
28010A1-DES-000STOS01-DRG-0524	A	732319	Miscellaneous Structures Rope Ladder Crossing Details – Sheet 3
28010A1-DES-000STOS01-DRG-0006	A	732300	Miscellaneous Structures Fauna Crossing – General Notes Sheet 1
28010A1-DES-000STOS01-DRG-0007	A	732301	Miscellaneous Structures Fauna Crossing – General Notes Sheet 2

Specifications

Identification	Title
MRSD 1043	Standard Bar Shapes Typical Details and Notes
MRTS01	Technical Specification – Introduction to Technical Specifications
MRTS02	Technical Specification – Provision for Traffic
MRTS04	Technical Specification – General Earthworks
MRTS50	Technical Specification – Specific Quality System Requirements
MRTS51	Technical Specification – Environmental Management
MRTS70	Technical Specification - Concrete

MRTS71	Technical Specification – Reinforcing Steel
MRTS78	Technical Specification – Fabrication of Structural Steelwork
AS/NZS 1163	Cold-formed structural steel hollow sections
AS/NZS 1214	Hot-dip galvanized coatings on threaded fasteners (ISO metric coarse thread series)
AS/NZS 1252	High strength steel bolts with associated nuts and washers for structural engineering
AS/NZS 1554.1	Structural steel welding Welding of steel structures
AS/NZS 1554.3	Structural steel welding Welding of reinforcing steel
AS/NZS 1594	Hot-rolled steel flat products
AS/NZS 3679.1	Cold-formed structural steel hollow sections
AS/NZS 1906.1-2007	Retroreflective materials and devices for road traffic control purposes Retroreflective sheeting
AS/NZS 4671	Steel Reinforcing Materials
AS/NZS 4680	Hot-dip galvanized (zinc) coatings on fabricated ferrous articles
AS/NZS 17632-B	Welding consumables - Tubular cored electrodes for gas shielded and non-gas shielded metal arc welding of non-alloy and fine grain steels - Classification (ISO 17632:2004, MOD)
AS/NZS ISO 14341-B	Welding consumables - Wire electrodes and weld deposits for gas shielded metal arc welding of non alloy and fine grain steels - Classification (ISO 14341:2010, MOD)
AS 1111.1	ISO metric hexagon bolts and screws— Product grade C - Part 1: Bolts
AS 1112.1	ISO metric hexagon bolts and screws— Product grade C - Screws
AS1222.1	Steel conductors and stays - Bare overhead Galvanized (SC/GZ)
AS 1237	Plain washers for metric bolts, screws and nuts for general purposes General plan
AS1390	Cup head bolts with ISO metric coarse pitch threads
AS1604.1	Specification for preservative treatment Sawn and round timber

AS3818.10	Timber—Heavy structural products— Visually graded – General Requirements
AS3818.11	Timber - Heavy Structural Products - Visually graded - Utility Poles
AS5100.5	Bridge Design Part 5: Concrete
AS5100.6	Bridge Design Part 6: Steel and Composite Construction
AS5604	Timber—Natural durability ratings

Schedule 5—~~Design development requirements~~ Not Applicable

Schedule 6– Deed of Release/ Deed of Final Release

(Clauses 9.7 and 9.8)

[Note: Subcontractor to include the relevant paragraphs depending on whether a Deed of Release or Deed of Final Release is being issued under the Subcontract.]

To **Fulton Hogan Seymour Whyte Joint Venture ABN 23 446 040 210. 120 of : Cresswell Road, Meridan Plains, Qld, 4551 (the Contractor)**

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

Principal **Department of Transport and Main Roads**
ABN 39 407 690 291
of 232 Adelaide Street, Brisbane, Queensland, 4000 (the **Principal**)

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

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

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

- 1 [Deed of Release only] The Subcontractor agrees that, to the extent permitted by law, except for the amounts specified in clause 3 below, the total monies payable or that may in the future become payable under or in any way arising out of or connected with the Subcontract or the Subcontract Works or any other work (**Other Work**) executed by the Subcontractor, its secondary Subcontractors and/or suppliers on or about the site of the Subcontract Works is \$..... (including the retention amount) (the **Substantial Completion Payment**).
- 2 [Deed of Final Release only] The Subcontractor agrees that, to the extent permitted by law, the total monies payable or that may in the future become payable under or in any way arising out of or connected with the Subcontract or the Subcontract Works or any other work (**Other Work**) executed by the Subcontractor, its secondary Subcontractors and/or suppliers on or about the site of the Subcontract Works is \$..... (the **Final Payment**) plus performance security in the amount of \$..... (the **Security**).
- 3 [Deed of Release only] The Substantial Completion Payment does not include the amount for retention of \$.....but in circumstances where the Contractor is entitled to terminate the Subcontract under clause 25.10 of the Subcontract the Subcontractor acknowledges and agrees that the Contractor is entitled to the proceeds of all then held retention and the Subcontractor has no entitlement to have that retention returned.
- 4 [Deed of Release only] The Subcontractor acknowledges and agrees that to the extent permitted by law, payment by the Contractor to the Subcontractor of the Substantial Completion Payment is acceptance by the Subcontractor of full and final payment to the Subcontractor of all amounts due and payable at Substantial Completion of the whole of the Subcontract Works and any Other Work, except for amounts described in clause 3 above (if any).
- 5 [Deed of Final Release only] The Subcontractor acknowledges and agrees that to the extent permitted by law, payment by the Contractor to the Subcontractor of the Final Payment and release by the Contractor of the Security is acceptance by the Subcontractor of full and final payment to the Subcontractor of all amounts due and payable in connection with the whole of the Subcontract Works and any Other Work.
- 6 [Deed of Release & Deed of Final Release] To the extent permitted by law, the Subcontractor waives, releases and forever discharges the Contractor from all or any liabilities, claims, actions, demands, suits, proceedings, damages, expenses, costs and the like (whether direct, indirect or consequential, past, present or future, certain or contingent, ascertained or not ascertained) howsoever arising under or in connection with the Subcontract or in any way connected with execution of the Subcontract Works and any Other Work. The Subcontractor indemnifies and keeps indemnified the Contractor from all such liabilities, claims, entitlements, actions, demands, suits, proceedings, damages, expenses, costs and the like, which but for this provision, the Subcontractor may have had or may arise at any time.

- 7 [Deed of Release only] Clause 6 does not apply in respect of the amounts described in clause 3 above (if any).
- 8 [Deed of Release only] The Subcontractor certifies that at Substantial Completion of the Subcontract Works:
- (1) all wages and allowances, including in respect of overtime and loadings, which become due and payable to all persons who have at any time been employed by the Subcontractor on the Subcontract Works have been paid in full;
 - (2) all entitlements which have or should have accrued in respect of all persons who have at any time been employed by the Subcontractor on the Subcontract Works, including in relation to annual leave, personal leave and RDOs, have been properly accounted for in accordance with any applicable legislation and legally binding agreement, award, workplace agreement or workplace policy;
 - (3) all secondary Subcontractors engaged by the Subcontractor on the Subcontract Works and all suppliers to the Subcontractor of plant, equipment and material for the Subcontract Works have been paid in full; and
 - (4) all contributions and payments to any scheme for superannuation, long service leave, redundancy and severance pay or the like as required by legislation and any applicable and legally binding award or workplace agreement have been paid in full.
- 9 [Deed of Release only] Upon signing this release, the Subcontractor hereby agrees and warrants to the Contractor that commencing on the Date of Substantial Completion of the Subcontract Works, the Subcontract Works will satisfy the requirements of the Subcontract; the Subcontractor has performed its obligations under the Subcontract in accordance with the Subcontract and all applicable legislative requirements; and the complete Subcontract Works will be fit for their purposes and free from defects and deficiencies.
- 10 [Deed of Release only] All defects, omissions, other faults or instances of non-compliance with the Subcontract Works within the defects liability period and or warranty period stated in clause 19 shall be rectified by the Subcontractor to the reasonable satisfaction of the Contractor within the time stipulated by Contractor. Where the Subcontractor fail to comply with a direction by the Contractor within the time specified, the Contractor shall rectify the defective work and any loss or damage suffered or incurred by the Contractor will be a debt due from the Subcontractor to the Contractor.

Executed as a DEED on the _____ day of _____ 20____

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

Director

Director/Company Secretary

Name of Director
(BLOCK LETTERS)

Name of Director/Company Secretary
(BLOCK LETTERS)

Signature of witness

Name of witness
(BLOCK LETTERS)

Address of witness

Schedule 7 – Subcontractor Warranties Not Applicable

WARRANTY ITEM	WARRANTY PERIOD

Schedule 8 – Scope of Works and Program Requirements

The Subcontractor Works include, but are not limited to, the supply and installation of Fauna Poles and Ladder in accordance with the Subcontract, the Drawings and Specifications listed in Schedule 4, and the responsibilities further clarified below:

1. Works provided by the Subcontractor:

- 1.1 Supply all plant, labour and materials to complete Subcontract Works by the Date for Substantial Completion
- 1.2 The construction methodology shall be in accordance with the Subcontract, the Drawings and Specifications and the manufacturer's requirements.

2 Subcontractor's Responsibilities:

- 2.1 The Subcontractor is, except as otherwise stated, responsible for the provision of all management, supervision, labour, materials, plant, equipment, consumables, tools, overheads, taxes, wages, accommodation, transport, site allowances and preparation of all quality documentation to carry out the works.
- 2.2 All deliveries to Site are to be at times and at site entry points approved by the Contractor; The Subcontractor is responsible for obtaining any permits and/or escort vehicles required to transport materials to Site
- 2.3 Make full allowance in the Subcontract Price for any cost impact due to inclement weather delays. The Subcontractor does not have all weather access to Site. The Contractor will determine when the Site can be safely accessed during and after an inclement weather event;
- 2.4 Provide specialist input and assistance in developing work method statements and provide advice on staging of works to maximize productivity;
- 2.5 Provide a minimum of 24 hours' notice for any hold or witness points;
- 2.6 The Subcontractor, in collaboration with the Contractor, shall create and maintain a four-week 'look ahead' program;
- 2.7 Ensure all Drawings used for construction of the Works are the current revision.
- 2.8 The Subcontractor must provide all craneage and specialised expertise personnel, required for the delivery and unloading of materials, and installation of the works.
- 2.9 The Subcontractor must ensure that vehicles carrying construction material over State controlled roads and Local Government controlled surface streets comply with the vehicle weight limit requirements set out in the Transport Operations (Road User Management) Act, and with any other vehicle weight limit requirements imposed by duly constituted Statutory Authorities on whose roads such vehicles operate. Provision of escort / pilot vehicles for transport of the goods is the responsibility of the Subcontractor where required.
- 2.10 The Subcontractor is responsible for the rectification of any damage beyond fair wear and tear to surface streets attributable to its operations. If the Subcontractor fails to rectify the damage, the Contractor may, after giving reasonable notice, arrange for the necessary rectification work to be carried out and the cost incurred will be a debt due from the Subcontractor to the Contractor.
- 2.11 Caution must be exercised in relation to the operation of Construction vehicles over drainage or other structures. The Subcontractor will be liable for all costs of rectification necessary due to damage to the works.
- 2.12 Provide personnel with Working at Heights competency, and any training required including use of equipment, to carry out the Subcontract Works.

3 Contractor's Responsibilities

- 3.1** Approvals/Land Access Agreements to Site
- 3.2** Identification, relocation or protection of existing services; and
- 3.3** Initial Survey setout
- 3.4** Provision of traffic control resources including police supervision, barriers and signs within the Project boundary for the purpose of installation of the Fauna Crossing Poles and Rope Crossings.(If Required)

Schedule 9– Safety Obligations

9.1 Safety Management Plan

- (a) The Contractor's Safety Management Plan
*The Subcontractor shall execute the works or provide the product or service in compliance with the Contractor's Safety Management Plan.
- ~~(a) Subcontractor Safety Management Plan
The Subcontractor shall execute the works or provide the product or service in compliance with the Subcontractor's own Safety Management Plan. The Subcontractor's Safety Management Plan must be provided to the Contractor not less than 3 weeks prior to commencement of work under the Agreement.~~

9.2 Inductions

- (a) Prior to commencement on site all persons must have received Construction Industry Induction and will be inducted in the safety and environmental requirements of the site.
- (b) The following information must also be provided prior to induction or access to the site will not be provided:
 - (i) Copies of relevant certificates of competency
 - (ii) Evidence of General Industry Induction.
- (c) The Induction may include drug and alcohol screening tests. If the Subcontractor personnel fail that test they will not be allowed to commence work and the Subcontractor will provide other resources. The Subcontractor personnel may be required to take further random drug and alcohol tests.
- (d) The Subcontractor is liable for the cost of inductions and all associated tasks.

9.3 Specific Competency of Plant Operators

- (a) If the Subcontractor provides an operator, that operator must be qualified (and licenced if required by law) skilled and competent to operate the plant.
- (b) For high risk items of plant and equipment (as defined in Workplace Health and Safety Regulations), the Subcontractor must provide (at its own cost) evidence of the Plant Operators competency in the form of:
 - (i) Licence to perform high risk work
- (c) For all other items of plant, the Subcontractor shall provide (at its own cost) evidence of the Plant Operators competency in the form of:
 - (i) Licence to perform high risk work, or
 - (ii) Verification of Competency (VOC) Assessment under the Subcontractor's own VOC system (where approved by the Contractor), or
 - (iii) National Unit of Competency, or
 - (iv) Other prior training, or
 - (v) Demonstrated prior experience.
- (d) The Contractor will assess the information provided and accept it or undertake its own Verification of Competency assessment.
- (e) Operators who are assessed as not being competent for the works required will not be allowed to undertake those works and must be replaced by a competent operator.

9.4 Concurrent work health and safety obligations of Subcontractor

The Subcontractor must, so far as is reasonably practicable, provide and maintain a working environment that is safe and without risk to health for persons carrying out or affected by the Subcontract Works.

9.5 Health and safety compliance

- (a) The Subcontractor:

- (i) must comply with all relevant Safety Law and Safety Requirements;
 - (ii) warrants that it is familiar with and has the capability and resources to comply with all relevant Safety Law and Safety Requirements; and
 - (iii) must perform all relevant functions and fulfil all relevant duties under all relevant Safety Law of an employer or otherwise applicable to the role of the Subcontractor.
- (b) The Subcontractor must (and must ensure that all subcontractors engaged to perform work on its behalf) at all times identify and exercise all necessary precautions for the health and safety of all persons including its employees, all subcontractor's employees, the Contractor's employees and members of the public who may be affected by the Subcontract Works.

9.6 Contractor's health and safety policies and procedures

- (a) Without limiting clause 16.2, the Subcontractor must ensure the Subcontract Works are delivered in accordance with:
 - (i) any occupational health and safety policies and procedures issued by the Contractor or the Principal from time to time including the requirements of the Contractor's site management plan; and
 - (ii) if the Contractor has been appointed as the principal contractor under the Safety Law, the Contractor's health and safety co-ordination plans.
 - (iii) The Subcontractor must inform itself of all occupational health and safety policies, procedures or measures implemented or adopted by the Contractor or the Principal, including but not limited to the Contractor's site management plan. If the Subcontractor does not have a copy of the Contractor's site management plan, it should request a copy from the Contractor by contacting the Contractor's head office. A copy of the Contractor's site management plan will also be available on site for review by the Subcontractor.

9.7 Consultation, co-operation and co-ordination

- (b) The Subcontractor must so far as is reasonably practicable consult, co-operate and co-ordinate activities with the Contractor, any suppliers or contractors or other persons engaged in or associated with the Subcontract Works:
 - (i) to achieve effective co-ordination of activities to ensure optimal health and safety risk management; and
 - (ii) to enable the Contractor and the Subcontractor and other relevant parties to comply with their respective obligations under all relevant Safety Law.

9.8 Subcontractor's reporting obligations

- (c) The Subcontractor must:
 - (i) Immediately notify the Contractor of any accident, injury, property or environmental damage which occurs during the carrying out of or is associated with any part of the Subcontract Works. The Subcontractor must, within two days of any such incident, provide a written report to the Contractor containing complete details of the incident, including the result of any investigation into its cause and any recommendation or strategy for prevention of a recurrence;
 - (ii) immediately advise the Contractor in writing of any act, fact or circumstance associated with the activities of the Subcontractor or any other person relevant to the ability of the Subcontractor to carry out any part of the Subcontract Works in a manner that is safe and without any risk to health;
 - (iii) provide in writing, with each monthly progress report, the total hours worked during the previous month on the Site by its staff including supervisory and administrative staff and also separately by its subsidiary subcontractors; and

- (iv) maintain records and make reports concerning the health, safety and welfare of people, and damage to property, as the Contractor's Representative reasonably requires.

9.9 Subcontractor provision of information

- (d) The Subcontractor must, or must ensure that its agents or subsidiary subcontractors:
 - (i) obtain and consider information on the requirements for safe use of, and the risk to health and safety of all persons from plant or substances supplied under the Subcontract or used for the purpose of carrying out any of the Subcontract Works;
 - (ii) as far as its reasonably practicable, supply those persons using or exposed to such plant or substances with adequate health and safety information concerning the plant or substances; and
 - (iii) ensure that any such plant or substances are safe when properly used or stored.
- (e) The Subcontractor must at all times inform the Contractor of all relevant information which becomes known to the Subcontractor (or its agents or subsidiary subcontractors) concerning the safe use, supply, maintenance or storing of the plant or substances. The Subcontractor must also inform the Contractor in relation to such plant and substances as required by Safety Law.

9.10 Personal Protective Equipment

- (a) The Contractor's Workplace Health and Safety policy requires a minimum level of PPE to be worn on site at all times and the supply of these items will be deemed included in the subcontract price.
- (b) Minimum PPE requirements are:
 - (i) Long pants,
 - (ii) Hi-Vis vests
 - (iii) Long sleeved shirt (sleeves down),
 - (iv) Hard hat,
 - (v) Safety boots,
 - (vi) Safety glasses to Australian Standards,
 - (vii) Gloves for any labour/manual work.
- (c) The Subcontractor is responsible for the supply and training in the use of all PPE items for its employees and enforcement of the minimum standards of use.

9.11 Fatigue Management

The Subcontractor may be working for the Contractor and others. It is the Subcontractor's responsibility to actively manage fatigue and working hours of their employees and other workers under their control. The Subcontractor is to notify the Contractor when Daily / Weekly / Monthly, legislative limits are being approached and is to refuse undertaking work which would breach these limits. No additional payment or extension of time shall be granted for complying with the requirements of this clause.

9.12 Provision and maintenance of plant

The Subcontractor must supply all plant necessary to ensure that all the Subcontract Works is carried out in a manner that is safe and without any risk to health. The Subcontractor must ensure that all plant supplied by it is maintained in a condition that is safe and without risk to any person.

9.13 Delivery of Plant, Equipment and Materials

All material deliveries must occur during the working hours specified in Item 14 Schedule 1 unless approved by the Contractor.

9.14 Plant and Equipment

- (a) The Subcontractor agrees that all Plant/ Equipment and Light Vehicles used for the Service must be approved and undergo inspection by the Contractor prior to commencement of work at its own cost.
- (b) The Contractor may at any time reject any Plant/ Equipment or Light Vehicles found to be inferior or defective or damaged.
- (c) If the Subcontractor replaces any Plant/ Equipment or Light Vehicle without obtaining prior approval from the Contractor, then the Contractor has the right to refuse any loads to the Subcontractor until approval for the replacement Plant/ Equipment or Light Vehicles is granted (such approval not to be unreasonably withheld).
- (d) Where applicable, it is a condition of hire that the Plant/ Equipment and Light Vehicles are fitted with seat belts.
- (e) It is a requirement of the Agreement that the Plant/ Equipment and Light Vehicles are fitted with:
 - (i) reversing squawkers
 - (ii) roof mounted flashing amber lights
 - (iii) two-way radio
 - (iv) fit-for purpose load covers (that do not require the driver to stand in or on the truck body)
 - (v) fire extinguisher
 - (vi) first aid kit

9.15 Powered Mobile Plant

- (a) Plant Induction

Prior to commencement on site of any powered mobile plant for the first time the following actions are required:

 - (i) A plant risk assessment sheet must be provided.
 - (ii) A copy of the last Service Worksheet and the plant service schedule is to be supplied.
 - (iii) The plant must undergo a Pre-start Inspection by the Plant Operator in the presence of the Contractor's Representative.
 - (iv) When new or replacement plant is to be brought onto site, the Subcontractor must give sufficient advance notice to allow for the Pre-start Inspection to be arranged and provide all other requirements of this section prior to issue of a new plant permit.
- (b) Daily Pre-commencement Checks

Prior to commencement of work each day the Operator must inspect the plant, including all attachments, and provide a record of each inspection to the Contractor. Any faults must be identified on the inspection record. Where the fault presents an immediate safety concern, the plant must be stood down until the fault is fixed. Other faults which are minor and do not present an immediate safety concern must be repaired by the date specified by the Contractor's Representative.
- (c) Maintenance

All plant must be serviced and maintained in accordance with the manufacturer's specification and schedule. A copy of the service record must be provided to the Contractor.
- (d) Safety Equipment

It is a condition of hire that if under the Law a new item of plant must be fitted with safety equipment, such as ROPs, FOPs, seat belts etc. then any similar item of plant must be fitted with the same legislated level of safety equipment regardless of the age of the item of plant. All safety equipment must be maintained in a serviceable and satisfactory working order.

(e) Identification

The Subcontractor must ensure identification of each item of powered mobile plant via an identification marking fixed in prominent locations. The identification marking will be of sufficient size and locations to be clearly visible to other plant or workers for purpose of call up. It must constitute a combination of letters and numbers, with a maximum of 2 letters and a maximum of 3 numbers in the format.

9.16 Hazardous Good and Materials

If the Subcontractor's works include the supply of Hazardous Goods and Materials these must be identified to the Contractor prior to delivery to site and MSDS Sheets, means of storage, and applicable risk assessments associated with the storage use and disposal of these Hazardous Goods and Materials, supplied to the site. The Hazardous Goods must be appropriately labelled.

9.17 Heavy Vehicle National Law

- (a) The Subcontractor and the Contractor acknowledge and agree that State and Commonwealth Law creates a legal chain of responsibility affecting all commercial transport operators. The Subcontractor agrees that it will strictly abide by this Law at all times and any failure on the part of the Subcontractor to comply with chain of responsibility legislation will entitle the Contractor to terminate this Subcontract without notice.
- (b) The Subcontractor agrees to comply with the Contractor's Safety, Quality, Environmental, Fitness for Duty, Drug and Alcohol and other policies, procedures and work methods as varied from time to time and as advised by the Contractor to the Subcontractor. The Subcontractor agrees to ensure that the Subcontractor and/or any driver engaged by the Subcontractor will comply with these policies, procedures and work methods and any programs for continuous improvement in areas of risk management which the Contractor may have in place.
- (c) The Subcontractor agrees that where the actions of the Subcontractor or any driver engaged by the Subcontractor are such as to cause concern regarding the capability of such person to perform any tasks required by the Contractor, then such person may be required to undergo a drug and/or alcohol test before any tasks are assigned.
- (d) The Subcontractor agrees that the Subcontractor and any driver engaged by the Subcontractor will adhere to all State and Commonwealth Laws in relation to driver fatigue prevention, driving hours, the environment and all transport safety matters and the Contractor's requirements in relation to these matters.
- (e) The Subcontractor agrees that the Subcontractor will strictly observe and adhere to all requirements of the National Heavy Vehicle Accreditation Scheme (NHVAS) in respect of Fatigue, Maintenance and Mass Management and will provide copies of all relevant records to the Contractor as required, including where such information is required in order for the Contractor to meet its obligations under the NHVAS, or where one of the Contractor's customers has requested the information. (Failure to provide this information may result in disciplinary action).
- (f) Where the Contractor provides a mass accreditation, the Subcontractor must provide the Contractor with all documentation requested by the Contractor that is required in order for the Contractor to comply with this accreditation.
- (g) The Subcontractor agrees that any driver engaged by the Subcontractor may be screened by the Contractor to perform cartage work on behalf of the Contractor. The approval process may include interview, licence eligibility checks and pre engagement medical examination.
- (h) The Subcontractor further agrees, that the Subcontractor or any driver engaged by the Subcontractor may be required to undergo periodical medical examinations. The results of such examination, regarding fitness to drive commercial motor vehicles must be made available to the Contractor.
- (i) The Subcontractor must ensure that all drivers engaged comply with the Contractor's fatigue management guidelines. The Subcontractor is required to provide a driver for its truck as and when required by the Contractor. Such driver must be able to legally perform any tasks required

by the Contractor without exceeding the regulated driving hours. The Subcontractor is responsible for ensuring that regulated driving hours are adhered to and adequate and appropriate records of these hours are maintained.

- (j) As part of its policy to ensure compliance with fatigue management Law, the Contractor needs to ensure that any drivers engaged by the Subcontractor are observing such Law. For this purpose, the Subcontractor agrees to make available to the Contractor copies of all drivers' log books, work diaries pages or work sheets as and when required by the Contractor.
- (k) The Subcontractor will make available all drivers and employees where required by the Contractor for the purposes of providing training relevant to the tasks to be carried out pursuant to this Subcontract.

9.18 Safe System of Work

Where the Subcontractor dictates and controls the Method of Working applicable to the tasks to be undertaken then the Subcontractor will ensure that JSEAs / SWMS will be provided for all activities they undertake at the Contractor Workplace and that they will perform their work in accordance with such JSEA/SWMS.

Where the Subcontractor's work includes high risk activities the Subcontractor must provide safe work method statements for those activities.

The Subcontractor's personnel must be trained in the application of these method statements and the Subcontractor will monitor its personnel for compliance.

Where the Method of Working is dictated and controlled by the Contractor then the Contractor will supply, communicate and control the JSEA/SWMS and the Subcontractor will work in accordance with those JSEA/SWMS.

Schedule 10– Environmental Requirements

10.1 Environmental Management Plan

- (a) The Contractor's Environmental Management Plan

*The Subcontractor must execute the works or provide the product or service in compliance with the Contractor's Environmental Management Plan.

- ~~(b) Subcontractor's Environmental Management Plan~~

~~*The Subcontractor must execute the works in accordance with the controls detailed in the Subcontractor's own Environmental Management Plan. The Subcontractor's Environmental Management Plan must be provided to the Contractor not less than 3 weeks prior to commencement of work under the Agreement.~~

10.2 Subcontractor's Responsibilities

The Subcontractor is responsible for the following that relates, directly or indirectly, to the work activity that is carried out under this Subcontract Contract.

10.3 Law

All Subcontractors are required to comply with all relevant environmental legislation, codes of practice and Australian Standards applicable to the scope of work and the State in which the work is to be undertaken.

10.4 Hazardous substances and materials

If the Subcontractor intends to bring onto the Site any material or substance which may be hazardous to health and safety, the Subcontractor must, before doing so, give information to the Contractor's Representative in respect of such material or substance. The information must include plans for the safe handling, storage and use of the material or substance and precautions to be taken.

10.5 Preventative measures and contamination

The Subcontractor must do everything possible to protect and preserve the environment from harm or damage arising from or in connection with the carrying out of the Subcontract Works and is responsible for all such harm or damage, including but not limited to any contamination, to the extent caused or contributed to by the Subcontractor or the Subcontract Works.

10.6 Noise and Vibration

- (a) The Subcontractor must comply with the requirements of AS 2436 Guide to noise control on construction, maintenance and demolition sites and all associated codes and guidelines of the Environmental Protection Agency.
- (b) Without limiting the Subcontractor's above obligation and its obligation to comply with all laws, the Subcontractor shall take all reasonable steps to minimise vibration and noise arising from the Subcontract Works, and will obtain prior approval from the Contractor's Representative or Contractor for any Subcontract Works that exceed the permitted noise levels required by the Contractor.

10.7 Environmental risk identification and management measures

- (a) Environmental risk identification and management measures are to be provided for all works in one of the following formats as agreed with the Contractor:
- (b) Where the Subcontractor controls the method of working in relation to their scope of works and where specified in this document, the Subcontractor will ensure an Environmental Management Plan (EMP) is submitted to the Contractor for approval prior to commencement of their works and subsequently ensure that the plan will be implemented in full, or
- (c) Where the method of working is controlled by the Contractor the Subcontractor will ensure its works comply with the Contractor's Environmental Management Plan (EMP) which is available for viewing at the site offices, and/or as communicated by the Site Team, or
- (d) Where the method of working is controlled by the Contractor the Subcontractor will ensure all applicable environmental risks and management measures, controls, monitoring and inspections

are detailed in a work method statement submitted to the Contractor for approval prior to commencement of their works and subsequently ensure that the plan will be implemented in full.

10.8 Minimum reporting requirements

- (a) The Subcontractor shall provide all information required by the Contractor which includes the following as a minimum:
- (b) Report all Incidents or complaints, verbally within 2 hours and in a written form within 24 hours of when the incident occurred or was first discovered, whichever occurred first. Incident reports must be raised for potential events (i.e. near misses) and actual events that can/or have resulted in:
 - (i) A breach of legal requirements;
 - (ii) Environmental damage or harm as a result of odour, noise, dust, sediment or other pollutants resulting from emissions to air, soil and water;
 - (iii) Impacts upon vegetation, flora, fauna, indigenous heritage values and community.
- (c) Provide environmental or statutory reports as required by this contract, or requires reporting by the Principal Contractor or Principal or as further detailed within the contract schedules: Reports are to be provided at the times stipulated and may include information on:
 - (i) The type and quantity of energy source (Diesel, Petrol, LPG, Natural Gas, Ethanol, Waste Oil, Electricity, Steam and others used) that result in Scope 1 and Scope 2 Emissions under the National Greenhouse and Energy Reporting Act 2007 (NGER Act). Refer Schedule 15.
 - (ii) Quantity of wastes generated, reused, recycled and disposed of at a land fill or approved third party site
 - (iii) Monitoring results (noise; dust; water, water use source and quantity, soil quality, emissions etc.
 - (iv) Extent of compliance with environmental statutory requirements
 - (v) Details of incidents and community complaints, suggestions and commendations
 - (vi) Nature of visits by authorized officers (council, EPA etc.)
 - (vii) Details of audits and inspections, corrective actions and close out statistics
 - (viii) Weed Hygiene Declaration – a submitted 'Weed Hygiene Declaration' form must be signed and submitted when bringing items or plant on to Site as a precondition to any entitlement for work performed in the month in which the plant or item was brought to Site. Refer Schedule 13. Further information regarding the relating Biosecurity Act 2014, can be obtained from Biosecurity Queensland on 13 25 23.
- (d) The Subcontractor shall comply with all reasonable directions from the Contractor to reduce environmental risk resulting from the work carried out by the Subcontractor. This includes, as a minimum, taking immediate actions to prevent and where not possible to minimise the extent of environmental damage and pollution arising from environmental incidents.
- (e) The Subcontractor shall provide access to all environmental or related records and allow for the attendance of the Subcontractors environmental representative during audits/inspections that are carried out by the Contractor, the Principal or other relevant authorities in relation to the contract works.
- (f) The following are the minimum requirements for control of environmental risk and the Subcontractor shall ensure that the following management practices are implemented where applicable to the scope of works. Please note the following list is not exhaustive and all environmental risks must be controlled:
 - (i) Approvals

- All licences, approvals, permits relating to the works that will be carried out by the Subcontractor shall be obtained by the Subcontractor, a copy supplied to the Contractor prior to works and a copy held on site during the works.
 - The Subcontractor must ensure any staff working under any licence or approval, must be aware of the conditions and how to comply.
- (ii) Waste Management
- Manage resources and processes to keep waste generation low
 - Provide receptacles/facilities for reuse/recycling of waste or materials generated from their works where such facilities are not provided by the Contractor
 - All waste or recycling storage areas are to be kept in a safe and tidy manner and only in designated area.
 - Waste shall be disposed of by a licensed waste transporter and at a facility licensed to accept the type of waste for disposal. Disposing wastes at a third party site is not permitted without the Contractor and/or the Contractor's Principals written approval.
 - Waste disposal records for all waste disposed off site shall be kept for the period required by legislation.
 - Littering on site is not allowed. All contaminated material stockpiles or hazardous wastes (e.g. contaminated or acid sulphate soils, asbestos etc.), must be approved by the Contractor and only be stored on site with appropriate safety and environmental controls.
 - Concrete washout wastes (chutes or truck bodies) must only be disposed of in constructed wash out bays and following approval by the Contractor.
- (iii) Storage, Handling and Use of Chemicals
- All chemicals, (e.g. hydrocarbons including fuels; dangerous goods; hazardous chemicals), irrespective of the quantity, must be stored/handled/used in a manner so as to prevent potential for spillage on to soil or discharge, directly or indirectly, into water ways.
 - All relevant storage, including mobile storage or tanker equipment is to be in accordance with AS1940:2004 The storage and handling of flammable and combustible liquids and any Safety Law
 - Appropriate chemical storage licences are to be held and a copy provided to the Contractor.
 - Material safety data sheets and approval of chemicals to be in accordance with the OH&S requirements of this contract.
- (iv) Erosion & Sediment Control
- Where the provision of Erosion and Sediment Controls is the Subcontractors responsibility then significant care should be demonstrated to ensure that sediment controls are installed correctly and maintained to ensure their effectiveness. After each rain event check the integrity of controls and establish additional controls as required.
 - Any retained water must achieve or be treated to a level acceptable for discharge and confirmed as suitable under the legislation/ approvals/ client specifications prior to discharge.
 - Where Erosion and Sediment Controls are provided by others, then the Subcontractor shall ensure that their works or activities do not alter, damage, interfere with or in any way compromised the Erosion and Sediment Controls without immediately rectifying the integrity of these controls and informing the Contractor of these events.
- (v) Dust

- Dust must be controlled on site (e.g. via watering, covering loads, wind breaks, stabilisation and site speed controls).
- Where Subcontractors vehicles exit the work site or haul roads onto public roads they must ensure they only use approved exits and that their vehicles or equipment do not carry debris off site.
- (vi) Heritage – Archaeological and/or Indigenous
 - Where the provision of barricades to Heritage Areas is part of the Subcontractor's Scope of Works, then ensure that the barricades are in place prior to commencement of the works and ensure these barriers are maintained for the duration of the Subcontractor's works.
 - Where the provision of barricades to Heritage Areas is provided by others then ensure that the barricades are not compromised by your work or activities
 - In the event of any impact to the barriers or heritage site that they immediately replace them and inform the Contractor.
 - If a heritage item is unearthed during the Subcontractor's works then immediately stop work and notify the Contractor.

Schedule 11 — Quality Requirements

11.1 Quality Management Plan

(a) The Contractor's Quality Management Plan

*The Subcontractor must execute the works or provide the product or service in compliance with the Contractor's Quality Management Plan.

~~(b) Subcontractor's Quality Management Plan~~

~~*The Subcontractor must execute the works or provide the product or service in compliance with the Subcontractor's own Quality Management Plan. The Subcontractor's Quality Management Plan must be provided to the Contractor not less than 3 weeks prior to commencement of work under the Agreement.~~

~~*Where the Subcontractor works under its own Quality Assurance System, relevant details of such system must be provided to the Contractor 21 days prior to commencement of work. Quality documentation must be completed and submitted to the Contractor as the Subcontract Works progress. Should the Subcontractor fail to provide the appropriate quality assurance documentation in a timely manner, the Contractor may, at its discretion, withhold payment until such time that the Subcontractor rectifies the status of the quality assurance documentation to the Contractor's satisfaction.~~

Where no Quality system is provided by the Subcontractor, the Subcontractor must work under the Contractor's Quality Assurance System and its documentation, which includes, but is not limited to Inspection and Test Plans (ITP), Checklists, Test Requests, material conformance testing, material density and moisture testing, Non Conformance Reports and Corrective Action Requests. The Subcontractor must familiarize themselves with the operation of the Contractor's Quality System and Project Quality Plan. It is deemed that the Subcontractor has allowed in their price the cost of compliance with the Contractor's Quality System and Project Quality Plan.

It is the Subcontractor's responsibility to ensure all ITP's are signed off by the Subcontractor's representative and the Principal's representatives prior to progressing past nominated hold points. Repeated non-compliance will be considered to be a breach of the subcontract.

The Subcontractor is required to provide 48 hours' notice for inspection of a conforming lot. In the event a lot is found to not conform with contract documents, the Subcontractor shall, in a timely manner, carry out at their own cost all necessary rectification work to make the lot conforming.

Documentation for Closed Out Quality Lots will comprise whatever Quality Assurance documents completed by the Subcontractor and submitted to the Contractor. i.e. ITP's, and conformance documentation, including compliance test reports, compliance survey reports, etc. which are needed to confirm that these Lots comply with the specification.

In accordance with Head Contract provisions, payment of all or part of the Subcontractors progress claim may be withheld until the Contractor is satisfied with the Quality Assurance documentation submitted by the Subcontractor.

Repair and rectification of nonconforming works must be submitted for the Contractor's acceptance before proceeding with any rectification/repair work.

11.2 General

(a) The Subcontractor will complete whatever tests and provide whatever documentation may be required to ensure that their works under this agreement comply with the specification.

(b) The Head Contract documents are available for viewing at the site offices and/or as communicated by the Contractor.

(c) The Subcontractor agrees to attend quality meetings on site as and when required.

(d) Subcontractor's Quality Representative must be nominated together with contact details.

(e) Where applicable all Warranties/Guarantees must be provided in the name of the Principal within the nominated timeframe.

11.3 Quality Assurance

- (a) Completed Quality documentation providing assurance that the quality of the work or provision of service meets the specified requirements must be completed and submitted to the Contractor as the service is provided or as the Works progress.
- (b) Quality Assurance Documentation required to be submitted shall include (but not be limited to) the following as applicable:
 - (i) Inspection and Test Plans
 - (ii) Compliance Inspection Checklists
 - (iii) Registers
 - (iv) Conformance/Product Test Reports
 - (v) Equipment Calibration Records
 - (vi) Manufacturers recommendations for materials or products used or to be used by the Subcontractor
 - (vii) Evidence of training

11.4 Competency and Training

The Subcontractors shall ensure that all employees of the Subcontractor are competent to fulfil the Quality Assurance requirements of the Subcontractor's scope of works.

11.5 Non-conforming Work

Where a particular part of the product work or service does not meet the requirements of the specification a Non-conformity Report shall be raised under the Quality System that is being used. The Non-conformance automatically constitutes a HOLD POINT and the product/work/service is "quarantined" or suspended until the Non-conformity is corrected to the satisfaction of all parties and the Hold Point has been released

11.6 Variations to Quality Requirements

Variations to Quality requirements must be agreed to in writing by the Contractor. The Subcontractor shall provide all information as may be needed to support the request for variation and comply with the timescales for notification of variation as advised in this agreement (if applicable).

11.7 Costs

All costs associated with meeting the Quality requirements are deemed to be included in the Subcontractor's price to provide the product work or service under this Agreement.

Schedule 12 – Compliance with Building Code 2016



Australian Government

**Australian Building and
Construction Commission**

Head contractors and subcontractors covered by the Building Code 2013 on a Commonwealth funded building project should provide this information statement to subcontractors when calling for or receiving expressions of interest or tenders on or after 2 December 2016 to inform them they will become code covered entities.

This information statement should be provided in place of using the Building Code 2013 or Code for the Tendering and Performance of Building Work 2016 model clauses.

Head contractors and subcontractors are covered by the Building Code 2013 on a Commonwealth funded building project if they submitted a tender for building work in relation to that project prior to 2 December 2016.

ABCC INFORMATION STATEMENT TO SUBCONTRACTORS

By submitting an expression of interest or tender (howsoever described) for building work for this project on or after 2 December 2016, you will become subject to the Code for the Tendering and Performance of Building Work 2016, which is available at <https://www.legislation.gov.au/Details/F2017C00125> (Building Code 2016), in other words a code covered entity. Once a building contractor is subject to the Building Code 2016, it and its related entities must comply with the Building Code 2016 on all new projects for building work described in Schedule 1 of the Building Code 2016, including projects that are privately funded.

The head contractor on this project is subject to the Building Code 2013 and is not a code covered entity under the Building Code 2016 in relation to this project. The head contractor will therefore not monitor your compliance with the Building Code 2016 in relation to building work for this project. The Australian Building and Construction Commission (ABCC) will monitor your compliance with the Building Code 2016.

You are not required to provide an ABCC Letter of Compliance to the head contractor to demonstrate your eligibility to tender with either the Building Code 2013 or the Building Code 2016 in relation to building work for this project.

No Relief

Compliance with the Building Code 2016 does not relieve the Subcontractor from responsibility to perform this Subcontract, or from liability for any defect in the Works arising from compliance with the Building Code 2016.

Notification

The Subcontractor must notify the ABCC of any breach or suspected breach of the Building Code 2016 as soon as practicable but no later than 2 working days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.

Requirements

If you are awarded building work for this project and subsequently engage subcontractors to undertake any of this building work you are required to comply with section 8 of the Building Code 2016, including ensuring those subcontractors meet the eligibility requirements set out in section 23 at the time of lodging any expression of interest or tender (howsoever described) for that building work. Model clauses and tender documentation are available on the ABCC website which can be used when engaging subcontractors for this project ([Model Clause Type C \(Word – 170K | PDF – 500K\)](#)).

General Requirements

The Building Code 2016's requirements for code covered entities include these matters:

- compliance with certain laws, including designated building laws, work health and safety laws, the Competition and Consumer Act 2010 and the Migration Act 1958

- security of payment compliance
- unregistered agreements
- prohibited content for enterprise agreements made since 2 December 2016
- sham contracting
- collusive practices
- above-entitlements payments
- engagement of non-citizens or non-residents
- protecting freedom of association
- right of entry
- reporting and notification requirements and
- managing drug and alcohol issues in the workplace.

is available on the ABCC's website at www.abcc.gov.au.

* This information statement should only be provided to subcontractors that could be required to comply with the Building Code 2016 by section 34 of the Building and Construction Industry (Improving Productivity) Act 2016 (the Act). Section 34(3) of the Act states that the Building Code 2016 cannot require a person to comply with the code in respect of particular building work (the current work) unless:

- the person is a building contractor (as defined in the Act) that is a constitutional corporation
- the person is a building industry participant (as defined in the Act) and the current work is to be carried out in a Territory or Commonwealth place or
- the person is the Commonwealth or a Commonwealth authority.

Schedule 13– Compliance with State Specific Building and Construction Code

Application and interpretation

In addition to terms defined in this Subcontract, terms used in this Schedule 13 (under the heading Queensland Code and Queensland Guidelines), have the same meaning as is attributed to them in 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).

The Queensland Code and Queensland Guidelines are available at <http://www.justice.qld.gov.au/building-and-construction-industry-guidelines>.

Primary Obligation

The Subcontractor must comply with, and meet any obligations imposed by, the Queensland Government's Code of Practice for the Building and Construction Industry (Queensland Code) and Queensland Guidelines.

The Subcontractor must notify the Building Construction Compliance Branch (BCCB) (or nominee), the Principal and the Contractor 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.

Where the Subcontractor is authorised to engage a Sub-subcontractor or consultant, and it does so, the Subcontractor must ensure that any secondary contract imposes on the Sub-subcontractor or consultant equivalent obligations to those in this Part B of Schedule 6 (under the heading Queensland Code and Queensland Guidelines), including that the Sub-subcontractor or consultant must comply with, and meet any obligations imposed by, the Queensland Code and the Queensland Guidelines.

The Subcontractor must not appoint or engage another party in relation to the Project where that appointment or engagement would breach a sanction imposed on the other party in relation to the Queensland Code or Queensland Guidelines.

Access and information

The Subcontractor must maintain adequate records of compliance with the Queensland Code and Queensland Guidelines by it, its Sub-subcontractors, consultants and related entities.

The Subcontractor must allow, and take reasonable steps to facilitate, Queensland Government authorised personnel (including personnel of the BCCB) to:

- i. enter and have access to sites and premises controlled by the Subcontractor, including the Site;
- ii. inspect any work, material, machinery, appliance, article or facility;
- iii. access information and documents;
- iv. inspect and copy any record relevant to the Project;
- v. have access to personnel; and
- vi. interview any person,
- vii. as is necessary for the authorised personnel to monitor and investigate compliance with the Queensland Code and Queensland Guidelines, by the Subcontractor, its Sub-subcontractors, consultants and related entities.

The Subcontractor warrants that at the time of entering into this Subcontract, neither it, nor any of its related entities, are subject to a sanction in connection with the Queensland Code or Queensland Guidelines that would have precluded it from tendering for work to which the Queensland Code and Queensland Guidelines apply.

If the Subcontractor does not comply with, or fails to meet any obligation imposed by, the Queensland Code or Queensland Guidelines, a sanction may be imposed against it in connection with the Queensland Code or Queensland Guidelines.

Where a sanction is imposed:

- i. it is without prejudice to any rights that would otherwise accrue to the parties;
- ii. the State of Queensland (through its agencies, Ministers and the BCCB), the Principal and the Contractor, are entitled to:

- iii. record and disclose details of non-compliance with the Queensland Code or Queensland Guidelines and the sanction; and/or
- iv. 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 Queensland Code and Queensland Guidelines apply.

Compliance

The Subcontractor bears the cost of ensuring its compliance with the Queensland Code and 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 Contractor, the Principal or the State of Queensland for such costs.

Compliance with the Queensland Code and Queensland Guidelines does not relieve the Subcontractor from responsibility to perform the works and any other obligation under the Subcontract, or from liability for any defect in the Subcontract Works or from any other legal liability, whether or not arising from its compliance with the Queensland Code and Queensland Guidelines.

Where a change in the Subcontract, the Work under the Subcontract or Subcontract Works is proposed, and that change would, or would be likely to, affect compliance with the Queensland Code and Queensland Guidelines, the Subcontractor must immediately notify the Contractor and the Principal (or nominee) of the change, or likely change and specify:

- v. the circumstances of the proposed change;
- vi. the extent to which compliance with the Queensland Code and Queensland Guidelines will, or is likely to be, affected by the change; and
- vii. what steps the Subcontractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan),
- viii. and the Contractor will direct the Subcontractor as to the course it must adopt within 5 Business Days of receiving notice.

Schedule 14 – Statutory Declaration (Template)

Oaths Act 1867 (Qld)

PROJECT: Fulton Hogan Seymour Whyte JV - Bruce Highway - Caloundra Road to Sunshine Motorway ("Project")

SUBCONTRACTOR: [Insert name][insert ABN] ("Subcontractor")

DATE OF CONTRACT WITH CONTRACTOR: [insert contract execution date] ("Subcontract")

PERIOD COVERED BY THIS PROGRESS CLAIM: [insert period] ("Payment Period")

TO WIT

I, _____ of _____,
(Name) (Address) (Occupation)

, do solemnly and sincerely declare as follows:

1. That all employees who are, or have been engaged, by the Subcontractor on the Project have been paid their full remuneration for work done in connection with the Subcontract during the Payment Period. Superannuation and redundancy payments (if payable) have also been paid in full to the relevant person, trustee or entity for the Payment Period. All payments have been made in accordance with the applicable award or industrial agreement;
2. The provisions of the *Building and Construction Industry (Portable Long Service Leave) Act 1991 (QLD)* as amended, have been fully complied with;
3. All consultants, suppliers and Sub-subcontractors who are, or at any time have been, engaged by the Subcontractor on the Project have been paid in full all amounts that have become payable to them under the terms of their agreement with the Subcontractor;
4. All amounts accrued, due and payable, and which have been included in the calculation of previous payments by the Contractor to the Subcontractor, have been duly paid;
5. A health and safety plan and safe work method statements have been prepared by the Subcontractor and reviewed to ensure they cover all activities to be carried out during the next payment period in accordance with the Safety Law;
6. The provisions of the Building Code of Australia have been fully complied with; and
7. I further declare that I am authorised to make this declaration on behalf of the above named Subcontractor.

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

Signature of declarant:.....

Made and subscribed at

this day of20

before me:

Signature of authorised witness:

Name of authorised witness:

A Justice of the Peace¹

¹ Or any other person authorised to administer an oath under the *Oaths Act 1867 (Qld)*.

Schedule 15– NGER Reporting (Template)

	National Greenhouse Energy Reporting Subcontractor Data Capture Form									
	PLEASE USE ACTUAL AMOUNTS WHERE POSSIBLE. IF NOT DESCRIBE THE METHOD USED TO ESTIMATE OR APPORTION ENERGY USE									
Subcontractor Name & Address										
Subcontractor ABN:							Subcontractor Contract Number:			
Reporting Period							Date Submitted to FHSWJV:			
Facility (site / project) name and address										
Energy type	Actual	Estimate	Unit s	Notes	Energy type	Actual	Estimate	Unit s	Notes	
Power					Lubricants					
Electricity (only if metered)			kWh		Petroleum based Oil (other than oil used for energy purposes)			L		

Renewable (e.g. Wind, Solar, Geothermal)			kWh		Grease			kg	
--	--	--	-----	--	--------	--	--	----	--

Energy type	Actual	Estimate	Units	Notes	Energy type	Actual	Estimate	Units	Notes
Fuel - Stationary¹					Fuel - Transport²				
Diesel Stationary ¹			L		Diesel Transport ²			L	
Biodiesel Stationary ¹ (e.g. B5, B20 - include name here _____)			L		Biodiesel Transport ² (e.g. B5, B20 - include name here _____)			L	
Unleaded Petrol Stationary ¹			L		Unleaded Petrol Transport ²			L	
Ethanol Blends Stationary ¹ (e.g. E10)			L		Ethanol Blends Transport ² (e.g. E10)			L	
Ethanol Blends Transport ² (e.g. E10)			L						
Jet A1 (AVTUR)			L						
LPG Stationary ^{3, 1}			L		Solvents				
LPG Transport ^{3, 2}			L		Bulk Solvents (e.g. thinners, WD40, RP7 etc.)			L	
CNG Stationary ^{4, 1}			m ³						

CNG Transport ^{4, 2}			m ³		Explosives				
Natural Gas in a pipeline			GJ		Diesel component only			L	

Notes:

1. Definition of "Stationary" is heavy plant or machinery, the purpose of which is not to transport goods. This category includes plant that moves soil such as dump trucks and scrapers, as well as road-registered plant such as rollers and graders. This category also includes anything with an engine not used for transport, e.g. generators, pumps, etc.

2. Definition of "Transport" is vehicles that are road-registered and transport goods or people. This category includes trucks, light vehicles, buses etc.

3. LPG is Liquefied Petroleum Gas. It is bottled gas.

4. CNG is Compressed Natural Gas. It is the gas that is used to fuel vehicles and some stationary plant.

UNITS:

kWh = kilowatt hours; L = Litres; kg = kilograms (1000g); kL - kilolitres (1000L); m³ = cubic metres

Subcontractor SIGNATURE (sign and print name)

By signing, the representative authorises that information is accurate and comprehensive.

Schedule 16 – Weed Hygiene Declaration (Template)

Weed hygiene declaration

Part 1: Sale or supply of things

(Examples of 'things' include fodder, grain, seed, livestock, gravel, sand, soil, mulch, packing material, machinery, vehicles or water)

This declaration is valid for supplying the thing/things specified below from to (please provide dates)

1. Thing (please tick the relevant box and provide a brief description)

☐ Fodder ☐ Grain/seeds ☐ Sand/gravel ☐ Machinery ☐ Mulch ☐ Livestock ☐ Other

Amount Description
(e.g. weight, size of load, number of items) (e.g. cattle, hay, dozer)

2. Has the thing been moved through, stored in, come from, or used in a place infested with:

	Yes	No	Maybe
Parthenium	☐	☐	☐
Giant rat's tail grass, American rat's tail grass, giant Parramatta grass, Parramatta grass	☐	☐	☐
Prickly acacia	☐	☐	☐
Other (provide details)	☐	☐	☐

3. If you answered 'yes' or 'maybe' in question 2, then what actions have been taken to remove or ensure that there is no weed reproductive material*? (please tick the relevant boxes and specify steps taken)

*Please refer to the definition of 'weed reproductive material' in the explanatory notes.

☐ Nil ☐ Washing/cleaning ☐ Quarantine period ☐ Chemical treatment ☐ Certified clean Other

Steps taken

4. To the best of my knowledge the thing described above still contains a weed listed in question 2 above.

Yes	No	Maybe
☐	☐	☐

I, of

town state telephone

declare that the information that I have provided in this declaration is true and correct and I have read the accompanying explanatory notes before completing this declaration.

Signature Date

Part 2: Transport of contaminated things

(Vehicle includes anything used for carrying any thing or any person by land, water or air, and includes equipment or machinery capable of moving on land)

This declaration is valid for transport and movement of vehicles and other things from to (please provide locations)

1. Movement of vehicles—The vehicle described as: make

registration no. or engine/frame no. was clean* prior to entry to (destination)

*Please refer to the definition of 'clean' in the explanatory notes.

2. Transport of contaminated things—If you are transporting anything contaminated or possibly contaminated with any declared weed, what actions are being used to contain the weed reproductive material?

☐ Nil ☐ Covered with tarpaulin ☐ Enclosed within container ☐ Chemically treated Other

Actions:

I, of

town state telephone

*If same as Part 1 please write 'as above'

declare that the information that I have provided in this declaration is true and correct and I have read the accompanying explanatory notes before completing this declaration.

Signature Date

Explanatory notes

This declaration was developed in response to landholders, rural industry, community and government desire to minimise the impact of weeds on their business and on the environment. It has been developed to assist in preventing the spread of weeds and other contaminants, and to meet the requirements of section 45 of the *Land Protection (Pest and Stock Route Management) Act 2002*. A completed declaration provides information on the status of a 'thing', whether it is contaminated or free of weedy material. 'Part 1: Sale or supply of things' of the declaration should be completed by the supplier then given to the receiver before they receive the thing. The receiver can then make an informed decision and take precautions to prevent new infestations. It can also provide written assurance that a vehicle is clean before entering a property.

Why use this declaration?

This declaration can provide:

- a supplier with a way of meeting the requirements of section 45 (2) of the Act, if they are supplying any thing that is or could be contaminated with the weeds listed below
- a person obtaining a thing with information on whether the thing is clean of weed reproductive material or has been infested
- assurance that a vehicle was clean* prior to entry onto a property
- assurance that any contaminated or potentially contaminated thing is being moved so as not to spread the contaminant
- assurance that a product is free of other weedy reproductive material.

Section 45 of the Act makes it an offence to supply a thing that is contaminated with a Class 1 weed or any of the Class 2 weeds listed below. However, for the Class 2 weeds, a person does not breach section 45 if they provide a written notice (Part 1 of this declaration) that states that the thing is or may be contaminated. The written notice must be filled and given to the receiver before the thing is supplied.

List of Class 2 species

The following Class 2 pests are prescribed in section 45(1)(b) of the Act. These weeds are readily able to infest a wide range of products, from livestock to grain and vehicles. These weeds have a major effect on pasture production and have the capacity to invade large areas of Queensland.

Common name	Species
American rat's tail grass	<i>Sporobolus jacquemontii</i>
Giant Parramatta grass	<i>Sporobolus fertilis</i>
Giant rat's tail grass	<i>Sporobolus pyramidalis</i> and <i>S. natalensis</i>
Parramatta grass	<i>Sporobolus africanus</i>
Parthenium	<i>Parthenium hysterophorus</i>
Prickly acacia	<i>Acacia nilotica</i>

Across Queensland, isolated outbreaks of declared plants such as those listed above are found on properties and roadsides each year. Outbreaks of these declared plants are often located hundreds of kilometres from core infestations. These outbreaks occur as a result of machinery, livestock, vehicles, fodder, grain, material and equipment contaminated with weed seeds being transported across the state. A high percentage of seed from prickly acacia and giant rats tail grass remains viable after being eaten and excreted by cattle.

*Definitions

Clean:

- For vehicles, machinery and equipment, clean means that no soil and/or organic matter that may contain weed reproductive material is on or in areas that are accessible during cleaning and maintenance work. A checklist and guidelines that show areas that are required to be clean are available at www.biosecurity.qld.gov.au
- A vehicle is considered to remain clean if it leaves its point of origin clean and only travels on sealed roads or well-maintained unsealed roads.
- For livestock, clean means that animals are internally and externally free of the reproductive material of any declared plant listed in the Land Protection (Pest and Stock Route Management) Regulation 2003. If livestock are suspected to be infested with a declared weed, then they should be quarantined within a weed-free paddock or pen for a 14-day period.

Weed reproductive material means any part of the plant that is capable of producing another plant by sexual or asexual reproduction. Examples include seeds, bulbs, rhizomes, tuber, stem or leaf cutting and the whole plant.

Well-maintained unsealed road means roads that do not have vegetation growing on or encroaching onto the area occupied by traffic.

For further information, please contact Biosecurity Queensland on 13 25 23.



Queensland Government

PR10_4996