

MAJOR WORKS SUBCONTRACT

Project: DECEPTION BAY RD INTERCHANGE

Subcontract Number: 42398036

BMD CONSTRUCTIONS PTY LTD - ABN 59 010 126 100

and

HVAC AUSTRALIA PTY LTD – ABN 15 102 771 817

Signing Page

Executed as an agreement on

9/08/2021

RFE: RFA-141-4239-00204.

Executed by BMD CONSTRUCTIONS PTY LTD -
ABN 59 010 126 100 by its duly authorised officer:

RFS: RFA-141-4239-00448.

Officer Signature



PROJECT MANAGER

Officer Position
(BLOCK LETTERS)

NATASHA ROY

Officer Name
(BLOCK LETTERS)

Date

9/08/2021

Executed by HVAC AUSTRALIA PTY LTD - ABN 15
102 771 817 by its duly authorised officer:

Officer Signature



GORDON WADDELL

Officer Name
(BLOCK LETTERS)

Officer Position
(BLOCK LETTERS)

C.O.O.

19/5/2021

Date



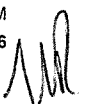
Table of Contents

1. Introduction	8
2. Definitions	8
3. Interpretation	18
4. Subcontract and Main Contract	18
4.1 Execution of Subcontract	18
4.2 Subcontract Documents	19
4.3 Joint Venture Subcontractors	19
4.4 Main Contract provisions	19
5. Commencement and Completion	19
6. Nature of Contract	19
6.1 Subcontract Price	19
6.2 Bill of Quantities	20
7. Design Obligations	20
7.1 Application of design obligations	20
7.2 Design Obligation	20
7.3 WHS Design Responsibility	21
7.4 Submission of Design in Time to Allow Re-Work	21
7.5 Design Documents	21
7.6 Design Presentation	21
7.7 Design Intent	21
7.8 Design Certification	22
8. Provisional Sums and Provisional Quantity Item	22
9. Security	23
9.1 Giving Security	23
9.2 Recourse to Security	23
9.3 Release of Security	23
9.4 Parent Company Guarantee	23
10. Subcontractor's warranties	23
10.1 Express warranties	23
10.2 Warranties Remain Unaffected	24
11. Site	24
11.1 Access Preconditions	24
11.2 Access	25
11.3 Setting out and surveys	25
11.4 Existing Structures	25
11.5 Prior Works	26
11.6 Temporary Works	26
11.7 Talent Release	26
12. Legislative Requirements, Standards and Permits	26
12.1 Compliance	26
12.2 Permits	27
13. Programming	27
13.1 Co-ordination and Co-operation	27
13.2 Paramount obligation	27



13.3	Main Contract programs	27
13.4	Programs	27
13.5	Matters Unaffected	27
13.6	Labour and Resources	28
14.	Suspension	28
15.	Separable Portions	28
16.	Contractor's Representative	29
17.	Regulatory Compliance	29
17.1	Health and safety requirements	29
17.2	Environmental Requirements	29
17.3	Damage to Environment	30
17.4	Copies of documents	30
17.5	Audit of Subcontractor	30
17.6	Reporting of incidents	31
17.7	Emissions and Energy Reporting	31
17.8	COR Laws	32
17.9	Building Product Legislation	32
18.	Acceleration	32
19.	Time and Progress	33
19.1	Notice of Delay	33
19.2	Claiming an EOT	33
19.3	Discretion to extend time	34
19.4	Grant of an EOT	34
19.5	Delay and Disruption Costs	34
20.	Delays by the Subcontractor	34
21.	Variations	35
21.1	No Variation	35
21.2	Identifying Variations	35
21.3	Directing Variations	35
21.4	Valuation	35
21.5	Variations Generally	36
22.	Site Conditions	36
22.1	General	36
22.2	Site Conditions	36
23.	Completion and Payment	37
23.1	Payment Claims	37
23.2	Payment Schedules and payment	37
23.3	Invoicing	38
23.4	Unfixed plant and materials	39
23.5	Certificate of Completion	39
23.6	Final Payment Claim	39
23.7	Increase in costs or charges	40
23.8	Security of Payments	40
23.9	Payment of workers and subcontractors	41
23.10	Set-off	41
24.	Urgent Protection	41
25.	Responsibility for and reinstatement of Work Under Subcontract	41

25.1	Responsibility	41
25.2	Reinstatement of the Work Under Subcontract	41
26.	Risk and Indemnity	42
26.1	Indemnity for Damage to Persons and Property	42
26.2	Proportionate Liability	42
27.	Insurance	42
27.1	Obligation to obtain and maintain Policies of Insurance	42
27.2	Public Liability Insurance	42
27.3	Worker's Compensation Insurance	43
27.4	Motor Vehicle Insurance	43
27.5	Contract Works Insurance	44
27.6	Construction Plant and Equipment Insurance	44
27.7	Professional Indemnity Insurance	45
27.8	Asbestos Insurance	45
27.9	General Insurance Requirements	45
27.10	Airside location	45
27.11	Waiver of Subrogation and Cross Liability	45
27.12	Deductibles	45
28.	Supply of Facilities and Equipment	46
29.	Assignment and Subcontracting	46
30.	Management, testing and notices	46
30.1	Supervision	46
30.2	Key Personnel	46
30.3	Testing	47
30.4	Service of Notices	47
30.5	Email Notices	47
30.6	Notices	47
30.7	Project Communication Platform	47
31.	Intellectual Property	48
31.1	General	48
31.2	Ownership of IP	48
31.3	Moral Rights	48
32.	Termination	49
32.1	Termination of the Main Contract	49
32.2	Termination for Convenience	49
32.3	Termination or Step In for cause	50
32.4	Contractor's Rights	50
32.5	Subcontractor's entitlement following termination for cause	51
32.6	Rights following termination or Step In	51
32.7	General rights after Termination or Step In	52
33.	Subcontractor's employees and Sub-subcontractors	52
34.	Defects Liability Period	52
35.	Industrial Relations	53
36.	Confidentiality	53
37.	Dispute Resolution	53
37.1	Identification and Notice	53



37.2	Consolidation of disputes	53
37.3	Dispute Resolution Process	54
37.4	Bar to Claim	54
37.5	Continue to perform	54
38.	Not Used	54
38.1	Not Used	54
38.2	Not Used	54
39.	GST and Taxation	54
39.1	GST	54
39.2	Taxation	55
40.	Release	55
41.	Security Interests	56
41.1	Application of clause	56
41.2	Interpretation	56
41.3	Registration of security interest	56
41.4	Costs of registration etc.	56
41.5	Waiver of verification statement	56
41.6	Contracting out	56
41.7	Subcontract not to disclose information	56
42.	General	56
42.1	Severance	56
42.2	Survival of Subcontract	56
42.3	Amendment of the Subcontract	57
42.4	Counterparts	57
42.5	Entire Subcontract	57
42.6	Waiver	57
42.7	Ethical Business Practices	57
42.8	Local Industry Participation	57
43.	Modern Slavery	57
43.1	Subcontractor's warranties	57
43.2	Subcontractor's Obligations	58
43.3	Audits	58
43.4	Protection of disclosing persons	58
43.5	Non-compliance	58
Appendix 1 – Schedule of Items		59
Appendix 2 – Separable Portions		64
Appendix 3 – Special Conditions of Subcontract		65
Appendix 4 – Scope of Work		71
Appendix 5 – Minimum Design Review Time		73
Appendix 6 – Subcontract Price		74
Appendix 7 – Contractor's Management Plans		75
Appendix 8 – Statutory Declaration		77
Appendix 9 – Code Compliance		78
Appendix 10 – Approved form of Undertaking		81
Appendix 11 – Main Contract Requirements		82
Appendix 12 – Form of Deed of Release		83

NR

Appendix 13 – Moral Rights Consent



General Conditions of Subcontract

1. Introduction

The Subcontractor has agreed to perform the Works at the Site for the Subcontract Price.

This subcontract sets out the terms and conditions upon which the Contractor and the Subcontractor agree that the Works are to be performed.

2. Definitions

These meanings apply unless a contrary intention is specified:

Access Preconditions	has the meaning given to it under clause 11.1(a).
Adverse Action	includes: (a) any action or threatened action: (i) to dismiss the disclosing person and/or any other person from employment or otherwise end their engagement with the Subcontractor or the Subcontractor's Associates; (ii) to cause injury to the disclosing person and/or any other person; (iii) to alter the disclosing person's and/or any other person's position with the Subcontractor or the Subcontractor's Associates to that person's prejudice; (iv) to discriminate between the disclosing person and/or any other person, and other persons employed, or otherwise engaged, by the Subcontractor or the Subcontractor's Associates; (v) to refuse to employ or otherwise engage the disclosing person and/or any other person; (vi) to refuse to use the services of, or supply to, the disclosing person and/or any other person; and (vii) to discriminate against the disclosing person and/or any other person in the terms or conditions on which the Subcontractor or the Subcontractor's Associates offers to employ or otherwise engage that person, (b) any action taken against a person on the basis of any contractual, civil or criminal liability that may be incurred by that person due to their disclosure of information under clause 43; and repeated unreasonable behaviour towards a person or group of persons (beyond the scope of reasonable management action carried out in a reasonable manner) and that behaviour creates a risk to the health and safety of that person or group of persons.
Adverse Financial Event	means: (a) a breach by the Subcontractor of clause 17.5(b); or (b) any material change in the financial circumstances of the Subcontractor that the Contractor reasonably considers is adversely affecting, or will adversely affect, the Subcontractor's performance of the Work Under Subcontract or the Subcontractor's ability to meet all of its obligations under the Subcontract.
Anti-Bribery and Anti-Corruption Legislation	means any Legislative Requirements or similar instrument in connection with the prohibition of bribery, corruption or money laundering and any applicable

	trade controls or sanctions (including by virtue of the place of domicile or operations of the Parties and their Related Entities).
Approvals	means any necessary approvals, authorisations, consents, permissions, permits, determinations, exemptions, certificates, memoranda of understandings, notices, licenses or waivers made under any Legislative Requirements or by any Authority, (including any conditions attached thereto) and under any renewal, amendment or variation thereof which must be obtained or satisfied (as the case may be) to perform the obligations under the Subcontract.
Associates	mean those entities in the Subcontractor's supply chains including those entities' assigns, affiliates and their respective agents or contractors.
Author	means any person, including a relevant employee of the Subcontractor or its Personnel, who is an author of any Copyright Works, which are assigned or licensed to the Contractor under this Subcontract.
Authorised Nominating Authority or Prescribed Appointer	means the following organisation for Queensland, the Queensland Building and Construction Commission
Authority	includes any governmental or semi-governmental or local governmental authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality.
Bill of Quantities	means the document of that name, if any, included in the Subcontract at Appendix 6 as a bill of quantities issued to the Subcontractor by or on behalf of the Contractor, stating estimated quantities of work to be carried out.
Building Product Authority	means any authority, government body, official or court having jurisdiction under Building Product Legislation, and includes: (a) a "commissioner", "inspector", "secretary" or "minister"; and (b) their delegates, representatives, employees and agents.
Building Product Legislation	means: (a) the <i>Building Products (Safety) Act 2017 No 69 (NSW)</i>; (b) the <i>Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017 (QLD)</i>; (c) regulations made under those Acts; and (d) any other Legislative Requirements in relation to building product standards.
Business Day	means the following days in which the Services are being performed, is a day that is not: (e) a Saturday or Sunday; (f) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done; or (g) any day occurring within any of the following periods: (i) 22 to 24 December inclusive; (ii) 27 to 31 December inclusive; and (iii) 2 to 10 January inclusive.
Certificate of Completion	has the meaning given to it at clause 23.5(a)(i).
Claim	includes any claim for an increase in the Subcontract Price, for payment of money (including damages) or for an Extension of Time, at law, under



	contract, in equity, under statute, in tort (for negligence or otherwise including negligent misrepresentation) or for restitution: (a) in connection with the Subcontract; (b) in connection with any Direction given by the Contractor's Representative; or (c) in connection with the Work Under Subcontract, the Project or the conduct of any Party prior to the Subcontract.
Code of Conduct	means any code of conduct or business practice rules of the Principal which are notified to the Subcontractor, as amended from time to time.
Completion	is that stage in the carrying out and completion of Work Under Subcontract when: (a) the Works are complete except for minor Defects: (i) which do not prevent the Works from being reasonably capable of being used for their intended purpose and do not cause any impediment to the use or occupation of the Works; (ii) which the Contractor's Representative determines the Subcontractor has reasonable grounds for not promptly rectifying; and (iii) rectification of which, individually or collectively, will not prejudice the work of other contractors or the convenient use of the Works; (b) those tests or commissioning activities which are required by the Subcontract to be carried out and passed before the Works reach Completion have been carried out and satisfied; (c) documents and other information required under the Subcontract which, in the opinion of the Contractor's Representative, are necessary for the use, operation and maintenance of the Works, have been supplied; and (d) the Site has been left clean and tidy and all rubbish and excess material has been removed.
Contractor	is the party set out at Item 1.
Contractor's Representative	is the person identified in Item 3.
Contractor's Management Plans	means: (a) the management plans set out in Appendix 7; and (b) any other document issued to the Subcontractor and notified as a "Contractor's Management Plan" from time to time.
Contractor's Safety Policy	means the safety policy documents set out at (available at https://www.bmd.com.au/wp-content/uploads/2018/12/Safety-Policy.pdf), as amended by the Contractor from time to time.
Copyright Works	are any copyright works forming part of the Works or the Documents or any other documentation which the Subcontractor is required to provide under the Subcontract.
COR Laws	means all applicable Legislative Requirements relating to fatigue management, speed and mass, dimension and load restraint compliance requirements generally referred to as "Chain of Responsibility" laws or "Heavy Vehicle" laws.
COR Systems	means policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance with COR Laws.



Corrupt Conduct	means any act or omission of the Subcontractor or its Personnel that amounts to: (c) a breach of Anti-Bribery and Anti-Corruption Legislation; (d) offering, giving or agreeing to give to any person, or soliciting, accepting or agreeing to accept from any person (either directly or indirectly) anything of value in order to obtain, influence, induce or reward any improper advantage; (e) means any payment made to secure or expedite a government action by a government official or employee (but excludes a payment specifically authorised by the written domestic law of the country in which it is made); or (f) any material non-compliance with a Code of Conduct.
Date for Commencement	means the date identified in Item 12 by which the Works must commence on Site.
Date for Completion	means: (a) where Item 13 provides a date for Completion, that date; or (b) where Item 13 provides a period of time for Completion, the last day of that period, but if any EOT is Directed by the Contractor's Representative or allowed in any Dispute, it means the resulting date.
Date of Completion	means: (a) the date evidenced in a Certificate of Completion as the date upon which Completion was reached; or (b) where another date is determined in any Dispute, that other date.
Deed of Release	means the deed of release in the form set out in Appendix 12 to be executed and delivered under clause 23.6.
Defect or Defective	includes, in relation to the Work Under Subcontract, any: (a) omission; (b) error; (c) inconsistency; (d) fault; (e) non-compliance; (f) breach of Legislative Requirements; (g) deficiency; (h) flaw; (i) irregularity; (j) material imperfection; (k) similar condition; or (l) any aspect of the Work under Subcontract that is not in accordance with the Subcontract.
Defects Liability Period	means the period set out in Item 46 and includes any extension of that period under clause 34(e) for any Works performed to rectify Defects.
Direct or Direction	includes any agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order or requirement received from the Contractor or the Contractor's Representative. "Directed" has a corresponding meaning.



Dispute	any dispute, difference or disagreement arising between the Parties relating to the interpretation of the Subcontract or any matter arising out of or in connection with the Subcontract or the Work Under Subcontract.
Documents	means: (a) material in whatever form relating or connected to the Work Under Subcontract or the Subcontract, including documents, specifications, designs, plans, reports, products, equipment, information, data, concepts, inventions, processes, formulae, know-how, graphic layouts, images and software; and (b) if Item 16 states that the Subcontractor has design obligations, all design documents created under clause 7.
Due Date	has the meaning given to it under clause 23.2(e).
Environment	includes the meaning given to that term at common law and in any Legislative Requirements including any land, water, atmosphere, climate, sound, odour, taste, the biological factor of animals and plants and the social factor of aesthetic.
Environmental Requirements	means: (a) all Legislative Requirements relating to the Environment; and (b) the environmental policies and procedures of the Principal and the Contractor, as amended from time to time.
Excusable Delay	means: (a) a breach of the Subcontract by the Contractor; (b) a material act of prevention by the Contractor, but excluding any acts permitted by the Subcontract or arising for reasons beyond the reasonable control of the Contractor; (c) Force Majeure Events; (d) suspension of the Work Under Subcontract under clause 14, Directed by the Contractor or the Contractor's Representative, provided that the suspension was not required, caused or contributed to by an act or omission of the Subcontractor or its Personnel; (e) Variations directed by the Contractor under clause 21 (subject to clause 21), other than any variations for the convenience of the Subcontractor; and (f) any delay events listed in Item 14. However, even if listed in Item 14, inclement weather, the effects of inclement weather and industrial unrest are not Excusable Delays where they occur after the Date for Completion.
Extension of Time or EOT	means a time extension in relation to the performance of the Work Under Subcontract (including in relation to the achievement of Completion by the Date for Completion).
Final Certificate	has the meaning given to it under clause 23.2(b)
Final Claim	has the meaning given to it under clause 23.6(a).
Financial Reports	means a cash flow statement, balance sheet and profit and Loss statement for the Subcontractor that shows the financial circumstances of the Subcontractor as at the date of the Contractor's request, which is prepared in accordance with Australian accounting standards by a Certified Public Accountant or Chartered Accountant.
Force Majeure Event	means the following circumstances:



	(a) fire, explosion, epidemic, flood, tropical cyclone and earthquake; (b) civil disturbances or riots; and (c) acts of war and terrorist incidents, provided that: (d) it is beyond the reasonable control and without any fault or negligence of the Party claiming force majeure; and (e) only to the extent those circumstances or the effects thereof could not have been reasonably mitigated, prevented or avoided by the Party claiming force majeure taking reasonable steps.
GST	has the same meaning as in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Hazardous Materials	means any hazardous materials including asbestos, any form of organic or chemical matter whether solid, liquid, gas, odour, heat, sand, vibration, radiation or substance which makes or has the capacity to make the Environment: (a) unsafe or unfit for habitation or occupation by persons or animals; (b) degraded in its capacity to support plant life; (c) contaminated; or (d) otherwise environmentally degraded.
Insolvency Event	means: (a) the Party suspends payments of its debts generally; (b) the Party is or states they are or is presumed by law to be insolvent; (c) the Party is insolvent or is financially unable to proceed with its obligations under the Subcontract; (d) execution is levied against the Party by a creditor; (e) if the Party is a natural person or a partnership and: (i) commits an act of bankruptcy; (ii) is made bankrupt; (iii) has a bankruptcy petition presented against him or her or presents his or her own petition; (iv) makes a proposal for a scheme of arrangement or a composition; or (v) is required to present a debtor's petition or has a sequestration order made under Part X of the Bankruptcy Act 1966 (Cth); or (f) if the Party is a corporation: (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement; (ii) it enters a deed of company arrangement with creditors; (iii) a controller, administrator or liquidator is appointed; (iv) an application is made to a court for its winding up and not stayed within 10 Business Days; (v) a winding up order is made in respect of the corporation; or (vi) it resolves by special resolution that it be wound up voluntarily;



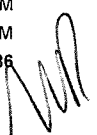
	(g) an act is done or an event occurs which, under the laws from time to time of a country having jurisdiction in relation to that Party, has an analogous or similar effect to any of the events in paragraphs (a) to (f) of this definition; or (h) the Subcontractor suffers an Adverse Financial Event.
Intellectual Property Rights	means all existing and future intellectual property rights and proprietary rights (whether registered or unregistered) throughout the world (including existing and future copyright) in: (a) all materials or things, including patents, copyright, rights in circuit layouts, registered designs, trademarks, documents, reports, photographs, video tapes, statements, diagrams, technical information, plans, drawings, calculations and tables, schedules whether existing, created, improved or developed before, during or after the date of this Subcontract; (b) all materials or things created, generated, improved or developed by the Subcontractor (or any other person engaged by or on behalf of the Subcontractor) arising out of or in connection with this Subcontract; (c) all results, information and material brought into existence or obtained by or on behalf of the Subcontractor in the course of, as a result of, or arising out of or in connection with this Subcontract; and (d) any application or right to apply for registration of any of the rights in paragraphs (a), (b) or (c).
Ipso Facto Laws	means <i>Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017</i> (Cth).
Item	means an Item set out in Appendix 1 to the Subcontract.
Key Personnel	means the Subcontractor's Representative and such other personnel nominated as key personnel at Item 45, or any replacements of such key personnel pursuant to the Subcontract (and Key Person means each of the Key Personnel individually).
Legislative Requirements	includes all applicable: (a) legislation, ordinances, regulations, by-laws, local laws, orders and proclamations, Approvals; (b) principles of law or equity; (c) standards, codes and guidelines; (d) directions or notices issued by any statutory or government authority; and (e) fees, rates, taxes, levies and charges payable in respect of those things referred to in paragraphs (a) to (d) above, as amended from time to time, whether or not existing at the date of execution of the Subcontract.
Loss or Losses	means Losses, damages, costs, charges, expenses, penalties, interest and fines including those Losses arising as a result of Claims, demands, actions, proceedings or suits by any person.
Main Contract	means the agreement between the Contractor and the Principal in relation to the Project.
Main Contract Works	means all of the works to be carried out and completed in accordance with the Main Contract.
Minimum Design Review Time	means, for the elements of the Work Under Subcontract identified in Appendix 5, the timeframes in which design documents for those elements of

	Work Under Subcontract need to be submitted to the Contractor pursuant to clause 7.4.
Modern Slavery	means: (a) any conduct involving the use of any form of slavery, human trafficking, exploitation, forced labour practices or servitude to exploit children or other persons taking place in operations and/or supply chains; (b) any other slavery-like practices; and any conduct constituting an offence and/or as otherwise defined as Modern Slavery, under Modern Slavery Law.
Modern Slavery Law	means any primary or delegated/subordinate legislation (and any binding or non-binding guidelines issued by any entity or person so authorised under Modern Slavery Law), applicable in Australia, any State or Territory and/or otherwise applicable to the Contractor from time to time with respect to reporting on and/or addressing the risks of Modern Slavery, including in business operations and supply chains and with respect to related purposes including but not limited to the <i>Modern Slavery Act 2018 (Cth)</i> and the <i>Modern Slavery Act 2018 (NSW)</i> .
Moral Rights	means the 'moral rights of an author' (as defined in section 189 of the <i>Copyright Act 1968 (Cth)</i>) in relation to any work in which copyright may subsist under that Act and rights of a similar nature conferred by statute that exist, or may come to exist, anywhere in the world.
Notice of Dispute	has the meaning given to it under clause 37.1.
Parties	means the Subcontractor and the Contractor together, and " Party " means either of them.
Payment Claim	has the meaning given to it under clause 23.1(b).
Payment Schedule	has the meaning given to it under clause 23.2(a).
Personnel	means any employee, director, officer, agent, contractor, consultant or representative employed or engaged by the Subcontractor or a Related Entity of the Subcontractor.
Plant Assessor Portal	means the cloud-based platform used to manage machinery risk assessments and compliance documentation as notified by the Contractor to the Subcontractor from time to time.
Principal	is the Party identified at Item 7.
Project	means the project identified at Item 9.
Project Communication Platform	means the Project Communication Platform identified at Item 49.
Proportionate Liability Legislation	means the following legislation for Queensland, the <i>Civil Liability Act 2003 (Qld)</i>
Provisional Quantity Item	means a quantity of work specified as such in Appendix 6 for an item of work to be provided by the Subcontractor for which the nature (but not the exact quantity) of which is specified in the Subcontract. The amounts obtained by extending provisional quantities at the rates set out in Appendix 6 (which rates are deemed to include all overheads and profit and [extra costs for delay]) form part of the Subcontract Price. Provisional Quantity Items shall be adjusted in accordance with clause 8(d).
Provisional Sum	includes monetary sum, contingency sum and prime cost item specified in Appendix 6 which is included in the Subcontract Price but is not payable except in accordance with clause 8.
Reference Date	has the meaning given to it under clause 23.1(b).



Related Entity or Related Entities	adopts the meaning given to that term in the <i>Corporations Act 2001</i> (Cth).
Schedule of Rates	means the schedule, if any, included in the Subcontract at Appendix 6 which, in respect of any section or item of work to be carried out, identifies the rate or rates of payment for the execution of that work and which may also include lump sums, Provisional Sums, other sums, quantities and prices.
Scope of Works	means the scope of work attached to Appendix 4.
Security	means: (a) upfront cash security; (b) retention moneys; or (c) unconditional undertaking(s) in the form set out in Appendix 10 issued by a body corporate that is authorised to carry on banking business in Australia under section 9 of the <i>Banking Act 1959</i> (Cth) or any other financial institution approved in writing by the Contractor, or any combination of the above as identified in Item 19.
Separable Portion	means any portion of the Works identified as a separable portion: (a) in Appendix 2; or (b) as directed by the Contractor's Representative pursuant to clause 15.
Site	means the location where the Main Contract Works or the Works are being carried out together with any adjacent or nearby location which is used for access, Temporary Works or other activities relating to the Project.
Site Conditions	means any physical conditions on, under or over the surface of, or at or in the vicinity of, the Site including: (a) ground water, ground water hydrology and the effects of any de-watering; (b) physical and structural conditions above, upon and below the ground including any in-ground services or works and partially completed structures; (c) topography, ground surface conditions and geology including seismic conditions, rock, other materials and sub-surface conditions; (d) climatic and weather conditions, rain, surface water run-off and drainage, water seepage, windblown dust and sand, and seasons; and (e) Hazardous Materials.
SOP Legislation	means the following legislation for Queensland, the <i>Building Industry Fairness (Security of Payment) Act 2017</i> (QLD).
Step In	has the meaning given to it under clause 32.3(b)(iv)A.
Subcontract	means this agreement between the Contractor and the Subcontractor to regulate the Works as comprised by the documents listed in their order of precedence at Item 23.
Subcontract Price	has the meaning given to it under clause 6.
Subcontractor	is the Party identified in Item 4.
Subcontractor's Representative	is that person identified in Item 6.
Substantial Breach	means any substantial or material breach of the Subcontract, including:

	(a) failing to: (i) provide Security; (ii) provide evidence of insurance; (iii) comply with a Direction of the Contractor's Representative; (iv) use the materials or standards of work required by the Subcontract; (v) comply with WHS Requirements; or (vi) comply with Environmental Requirements; (b) wrongful suspension of work; (c) any delay without reasonable cause or the Contractor's Representative's written approval; (d) failing to proceed with due expedition and without delay; (e) knowingly providing untrue documentary evidence, particularly in respect of clause 23.9; (f) an Insolvency Event of the Subcontractor; (g) a breach of clause 7.8; (h) a breach of clause 11.1(a) (i) a breach of clause 17.9; (j) a breach of clause 42.7; (k) any breach of the Subcontract where the facts or circumstances giving rise to that breach are similar (in nature or effect) to facts or circumstances that gave rise to a previous breach of the Subcontract by the Subcontractor; or (l) any act or omission of the Subcontractor that causes the Contractor to be in breach of the Main Contract.
Sub-subcontractor	means any third Party engaged by the Subcontractor in connection with the Work Under Subcontract.
Superintendent	is the "superintendent", "principal's representative" or similar person under the Main Contract who is: (a) identified in Item 8; or (b) otherwise replaced by the Principal and notified to the Subcontractor in writing from time to time.
Temporary Works	means works used in the execution of the Work Under Subcontract but not forming part of the Works.
Unfixed Items	means any plant, equipment, materials, goods, items or other things that are intended for incorporation in the Works but not yet incorporated in the Works.
Variation	means a change in the extent, scope, quantity (including increase, decrease or omission), character or quality of any material or Work Under Subcontract.
WHS Requirements	means: (a) all Legislative Requirements relating to workplace health and safety and COR Laws; (b) COR Systems; (c) any rehabilitation policy and procedure notified by the Contractor to the Subcontractor; and (d) the Contractor's Safety Policy



	as amended from time to time.
Work Under Subcontract	includes all work, services, activities, tasks and other things which the Subcontractor is or may be required to carry out and complete under the Subcontract and includes Variations, remedial work, design of the Works (if applicable), provision of plant, supply of equipment and materials, the design, construction and removal of any Temporary Works and the provision of all documents required by the Subcontract.
Works	means the whole of the work to be performed in accordance with the Subcontract and handed over to the Contractor, including all of the work to be performed by the Subcontractor and all Variations.

3. Interpretation

In the Subcontract:

- (a) references to a person include an individual, firm, partnership or body (corporate or unincorporated) or other legal entity as the context requires;
- (b) reference to a Party includes that Party's executors, administrators, successors and permitted assigns;
- (c) unless stated otherwise in writing, all sums and rates will be deemed to exclude GST;
- (d) 'including' and similar terms are not terms of limitation;
- (e) clause headings are not part of the Subcontract and may not be used in interpretation of the Subcontract;
- (f) all amounts will be in Australian dollars unless the Contractor's Representative otherwise states in writing;
- (g) the contra proferentem rule does not apply and no part of the Subcontract may be interpreted against the interests of the Party responsible for the drafting or the inclusion of that provision or part in the Subcontract;
- (h) other than the achievement of Completion by the Date for Completion, where the time for doing anything falls on a day that is not a Business Day, it will be deemed to fall due on the next Business Day;
- (i) words in the singular include the plural and words in the plural include the singular, as determined in accordance with the context;
- (j) derivative words (words formed from another by derivation) have a similar or the same meaning as the word defined, unless another meaning is expressly provided by the Subcontract;
- (k) all communications purported to be under the Subcontract must be in English;
- (l) the Subcontract will be interpreted in accordance with and the Parties submit to the non-exclusive jurisdiction of the courts of, the jurisdiction identified in Item 11;
- (m) if the Subcontract refers to any Legislative Requirements, it is a reference to Legislative Requirements as updated, superseded or replaced from time to time;
- (n) if terms are used from any Legislative Requirements, the Subcontract will be deemed to have adopted those terms as if they have been defined in the Subcontract; and
- (o) should any part of the Subcontract be determined to be void, unenforceable or otherwise excluded from the Subcontract, the Subcontract will be read as if that part was excluded.

4. Subcontract and Main Contract

4.1 Execution of Subcontract

In relation to the execution of this Subcontract, if Item 50 states:

- (a) that DocuSign will not be used, the Subcontractor must execute the Subcontract and send a copy to the Contractor within 10 Business Days of the Contractor forwarding the Subcontract to the Subcontractor for execution; and
- (b) that DocuSign will be used, the Subcontractor:
 - (i) acknowledges that the Contractor has implemented the DocuSign system and agrees to the use of the DocuSign system to communicate its execution of the Subcontract;
 - (ii) must ensure it has the necessary hardware to ensure DocuSign can be utilised;
 - (iii) is responsible for all of their costs associated with its use of the DocuSign system; and

- (iv) must, within 10 Business Days of the Contractor forwarding the Subcontract to the Subcontractor for execution via DocuSign, execute the Subcontract using DocuSign and return it to the Contractor via DocuSign.

4.2 Subcontract Documents

- (a) The Subcontract between the Parties is comprised of the documents set out in Item 23. In the event of inconsistency, discrepancy or ambiguity, the documents comprising the Subcontract should be interpreted in the listed order of precedence in Item 23, subject only to the extent that a different order of precedence imposes on the Subcontractor a greater or higher requirement, standard, level of service or scope, in which case that order of precedence will apply.
- (b) If any ambiguity, discrepancy, conflict or inconsistency is discovered by the Subcontractor, it must promptly give notice to the Contractor's Representative and the Contractor's Representative may Direct the Subcontractor as to the course the Subcontractor must adopt. The Subcontractor must comply with any such Direction promptly.
- (c) The Subcontractor warrants that it has:
 - (i) carefully reviewed and diligently examined the documents set out in Item 23 prior to entering into the Subcontract; and
 - (ii) satisfied itself that the documents set out in Item 23 are suitable for the Subcontractor to perform its obligations under this Subcontract.

4.3 Joint Venture Subcontractors

If the Subcontractor is comprised of one or more persons:

- (a) the obligations and liabilities of those persons as the Subcontractor under the Subcontract are joint and several;
- (b) the Contractor may proceed against all or any one of them in respect of the Subcontractor's obligations in the Contractor's discretion, and is not obliged to make any claim against all of the persons comprising the Subcontractor; and
- (c) any indemnity given by the Subcontractor under this Subcontract is given by each person comprising the Subcontractor in respect of all persons comprising the Subcontractor.

4.4 Main Contract provisions

- (a) The Subcontractor acknowledges that the Main Contract entered into by the Contractor for the Project requires the Subcontractor to comply with the provisions set out in Appendix 11, and that those provisions form part of this Subcontract.
- (b) The Work Under Subcontract includes anything reasonably required to be done or not done by the Subcontractor to enable the Contractor to comply with, and to not place the Contractor in breach of, the Main Contract.

5. Commencement and Completion

The Subcontractor must:

- (a) commence performance of the Work Under Subcontract on the Date for Commencement;
- (b) proceed with the Work Under Subcontract with due expedition and without delay;
- (c) bring the Works to Completion by the Date for Completion;
- (d) not suspend the progress of the Work Under Subcontract except where expressly permitted to do so under Legislative Requirements or where Directed to do so by the Contractor's Representative under clause 14; and
- (e) complete the Work Under Subcontract and rectify any Defects in accordance with the Subcontract.

6. Nature of Contract

6.1 Subcontract Price

- (a) The Contractor will pay the Subcontract Price to the Subcontractor for the:
 - (i) performance of the Work Under Subcontract; and
 - (ii) delivery and handover of the Works,



in accordance with the Subcontract.

- (b) Unless the Subcontract provides otherwise, the Subcontract Price is inclusive of the cost of:
 - (i) any ancillary or miscellaneous items of a kind which are commonly used or supplied in conjunction with the Work Under Subcontract; and
 - (ii) the Subcontractor's compliance with its obligations under the Subcontract and all taxes (other than GST) and statutory charges.
- (c) The Contractor will pay the Subcontractor for the performance of the Work Under Subcontract and the delivery of the Works:
 - (i) where Item 10 specifies a lump sum, the lump sum;
 - (ii) where Item 10 specifies that the Schedule of Rates applies, the sum of the products ascertained by multiplying the measured quantity of each section or item of work actually carried out under and in accordance with the Subcontract (as determined by the Contractor's Representative) by the rate accepted by the Contractor for the section or item; or
 - (iii) where Item 10 specifies that both a lump sum and the Schedule of Rates applies, the aggregate of the sums referred to in clause 6.1(c)(i) and 6.1(c)(ii),

as adjusted by any additions or deductions made pursuant to the Subcontract (the "**Subcontract Price**").

6.2 Bill of Quantities

- (a) This clause 6.2 applies if:
 - (i) Item 25 states that the Bill of Quantities forms a part of the Subcontract; and
 - (ii) Item 15 specifies that limits of accuracy apply.
- (b) Where, other than by reason of a Directed Variation, the actual quantity of an item required to perform the Subcontract is greater or less than the quantity for that item shown in the Bill of Quantities and the Subcontractor is to be paid for that item in accordance with the Schedule of Rates:
 - (i) where the greater or lesser quantity is within the limits stated in Item 15, the rate shall apply; and
 - (ii) where the greater or lesser quantity is outside the limits stated in Item 15, a Variation will be deemed to have occurred.

7. Design Obligations

7.1 Application of design obligations

This clause 7 applies to:

- (a) the performance of all Temporary Works; and
- (b) to the extent that Item 16 states that the Subcontractor has design obligations, the Work Under Subcontract set out in Item 17.

7.2 Design Obligation

The Subcontractor must carry out and complete the design (including any design interfaces, amended designs or re-design work) of the Work Under Subcontract stated in Item 17 and all Temporary Works. The Subcontractor represents, warrants and promises that the design will:

- (a) be fully and professionally completed without error, omission or Defect;
- (b) comply with the provisions of the Subcontract;
- (c) be fit for the purposes specified in or reasonably ascertained from the Subcontract and that upon Completion, the Works will operate and function in accordance with those purposes;
- (d) be fully co-ordinated with other components of the Works and the Main Contract Works;
- (e) comply with all Legislative Requirements; and
- (f) not infringe Intellectual Property Rights.

7.3 WHS Design Responsibility

- (a) The Subcontractor acknowledges that in relation to the Work Under Subcontract it is the person conducting a business or undertaking that designs plant, substances or structures.
- (b) The Subcontractor must comply with all applicable Legislative Requirements in relation to its role as a person conducting a business or undertaking that designs plant, substances or structures.
- (c) Without limiting the generality of clause 7.3(b), the Subcontractor must provide to the Contractor's Representative a written report that specifies the hazards relating to the design of the structure that so far as the Subcontractor is reasonably aware:
 - (i) create a risk to the health or safety of persons who are to carry out any Construction Work (as that term is defined in Legislative Requirements in relation to work health & safety) on the structure or part; and
 - (ii) are associated only with the particular design and not with other designs of the same type of structure.

7.4 Submission of Design in Time to Allow Re-Work

The Subcontractor must submit its design:

- (a) in accordance with any program for the design provided by the Contractor (which may be amended from time to time);
- (b) by the Minimum Design Review Time(s); and
- (c) in any event, within sufficient time to allow reasonable times for:
 - (i) the Contractor's Representative to comment upon that design and submit it to the Principal; and
 - (ii) re-design or amended design work if required by the Principal or the Contractor,

so that any re-design or amended design work taking into account the requirements of the Principal or the Contractor can be carried out by the Subcontractor without causing any delay in the progress of the Work Under Subcontract or the Main Contract Works.

7.5 Design Documents

- (a) The Subcontractor must provide design documents and samples as required by the Contractor and for the Contractor to comply with its design obligations under the Main Contract in respect of the Work Under Subcontract. Design documents may include, drawings, specifications, workshop drawings, as-built drawings, operating and maintenance manuals, calculations, test certificates, surveys, reports and schedules.
- (b) With any submission of design documents, the Subcontractor must provide the Contractor with the number of originals and copies in the electronic format as stated in Item 18.

7.6 Design Presentation

The Subcontractor must:

- (a) make design presentations to the Principal, the Contractor and their representatives at such times as required by the Contractor; and
- (b) ensure such design presentations include appropriate representation from the designer, other relevant consultants and personnel, and provide copies of design documents other relevant information required by the Contractor or the Principal to properly consider the design.

7.7 Design Intent

- (a) For the purposes of this clause, 'Design Intent' means the design principles, shapes, forms, outlines, materials, finishes, colours, quality and types of materials and finishes, systems, concepts, and standards and relationships between all and any of these as inferred, shown, evidenced or reasonably contemplated by the Subcontract.
- (b) Unless otherwise expressly permitted by the Subcontract, the Subcontractor must not depart from the Design Intent.
- (c) If the Subcontractor proposes to depart from the Design Intent and such departure is not expressly permitted by the Subcontract, the Subcontractor must:



- (i) as soon as it becomes aware of the need for or desirability of such departure, but in any event no later than when it submits its design to the Contractor's Representative pursuant to clause 7.4, clearly specify the proposed departure and the reasons for the proposed departure; and
 - (ii) not implement any work the subject of the proposed departure until the Contractor's Representative has commented on the design of that work and has not rejected it,
- but otherwise the Subcontractor must continue to perform the Work Under Subcontract.
- (d) The Subcontractor acknowledges and agrees that the Contractor's Representative's comment on the design under this clause 7.7 may be subject to the Principal's acceptance of the proposed departure and may be subject to conditions.

7.8 Design Certification

- (a) The Subcontractor must:
- (i) employ a designer for the Work Under Subcontract who is appropriately and professionally qualified; and
 - (ii) provide to the Contractor's Representative (prior to any design work commencing and at such other time as the Contractor's Representative may require), details of the designer's qualifications.
- (b) At any time during the performance of the Subcontract, the Contractor's Representative may require the Subcontractor to provide:
- (i) a verification certificate (design) issued by authorised persons of the Subcontractor's designer certifying that the Works have been designed in accordance with the requirements of the Subcontract; and
 - (ii) a verification certificate (construction) issued by authorised persons of the Subcontractor's designer certifying that the Works have been constructed in accordance with the design prepared by the designer and that the works are in accordance with the requirements of the Subcontract.
- (c) To the extent required by the Main Contract, the Contractor's Representative may direct alternative forms of verification certificates and the Subcontractor must provide verification certificates in that form.

8. Provisional Sums and Provisional Quantity Item

- (a) Provisional Sums, if any, are stated in Appendix 6 and shall not themselves be payable to the Subcontractor. If the Schedule of Rates includes provisional quantities, those quantities are estimates only and shall not be used for the measurement of any units of work or items.
- (b) Where the Contractor's Representative Directs the Subcontractor to perform work to which a Provisional Sum relates, that work will be valued, and the Subcontract Price adjusted, under clause 21.4 (by deducting the relevant Provisional Sum and adding the valuation), provided however that the Subcontract Price is deemed to already include the Subcontractor's on-Site and off-Site overheads and profit in respect of the Provisional Sum items.
- (c) Where the Contractor's Representative does not direct the Subcontractor to perform work to which a Provisional Sum relates, that work will be deemed to have been deleted from the Work Under Subcontract and the relevant Provisional Sum will be deducted from the Subcontract Price together with a reasonable amount for the Subcontractor's On-Site and off-Site overheads and profit in respect of the applicable Provisional Sum work.
- (d) If, in respect of any work for which a Provisional Quantity Item is included in the Subcontract, the Contractor's Representative directs that a greater or lesser quantity than the provisional quantity shall be carried out, or that no work shall be carried out, or makes no direction to carry out the work, the value of the difference between the Provisional Quantity Item and the quantity carried out pursuant to any direction, calculated at the rate for that work stated in the Subcontract, shall be certified by the Contractor's Representative and shall be taken into account in determining the final Contract Price payable under the Subcontract. Where no rate for that work has been stated in the Subcontract, but a provisional quantity of work has been nominated and an amount for that Provisional Quantity Item has been tendered, the relevant rate for the Provisional Quantity Item shall be obtained by dividing the tendered amount by the provisional quantity for that Item.

9. Security

9.1 Giving Security

- (a) Unless Security is in the form of retention moneys, it must be provided to the Contractor by the Subcontractor not less than five (5) Business Days before the commencement of the Work Under Subcontract.
- (b) Security must be in the form and for the amounts set out in Items 19 and 20 respectively.
- (c) If the Subcontract Price increases by more than 10% after the Security has been provided, the Contractor may require the Subcontractor to increase the Security to ensure that it complies with the amounts required by Item 20, having regard to the increased Subcontract Price.
- (d) If Security is required by Item 19 to be provided in a form other than upfront cash security, and is not provided, the Contractor may deduct retention from monies due to the Subcontractor until the amount of Security specified in Item 20 is reached.
- (e) If at any time the Contractor has recourse to the Security or retention moneys it may, to the extent required to maintain the required level of Security:
 - (i) require the Subcontractor to provide more Security; or
 - (ii) deduct money from payments under clause 23.
- (f) Any interest earned on Security will belong to the Party holding that Security.

9.2 Recourse to Security

- (a) Without limiting the unconditional nature of the Security, the Contractor may have recourse to the Security whenever the Contractor claims to be entitled to payment of monies by the Subcontractor whether under the Subcontract or otherwise.
- (b) Irrespective of any Dispute, the Subcontractor must not institute any proceedings, or exercise any right or take any steps to injunct or otherwise restrain:
 - (i) the financial institution that issued the Security from paying the Contractor pursuant to the Security;
 - (ii) the Contractor from taking any steps for the purpose of making a demand under the Security or receiving payment under the Security, or otherwise exercising its rights under the Security; or
 - (iii) the Contractor using the money received under the Security.

9.3 Release of Security

- (a) Subject to clause 9.3(b), the Security held by the Contractor under the Subcontract will be released as follows:
 - (i) 50% of Security will be released within 20 Business Days of a written request from the Subcontractor after a Certificate of Completion for the Work Under Subcontract has been issued;
 - (ii) the balance of any Security held by the Contractor will be released within 20 Business Days of a written request from the Subcontractor after:
 - A. the expiry of the Defects Liability Period; and
 - B. the Subcontractor providing a signed and completed copy of the Deed of Release; and
 - (iii) if any particular Security was provided by the Subcontractor in relation to plant or materials, the Contractor's entitlement to retain that Security will cease 20 Business Days after the relevant plant and materials have been incorporated into the Works.
- (b) If there are any Disputes outstanding in connection with any Defects in the Works or any obligation of the Subcontractor to pay monies to the Contractor, then the date for release of any Security will be 20 Business Days after the date on which the last of those Disputes is resolved.

9.4 Parent Company Guarantee

Not Used

10. Subcontractor's warranties

10.1 Express warranties

The Subcontractor warrants that:

- (a) it will carry out the Work Under Subcontract:
- (i) in accordance with the Subcontract and Legislative Requirements;
 - (ii) in a proper and workmanlike manner to the standard expected of an experienced and competent subcontractor performing similar works in Australia;
 - (iii) using experienced and skilled personnel so that the Work Under Subcontract is executed in accordance with the Subcontractor's obligations under the Subcontract;
- so that, upon Completion, the Works will:
- (iv) be free of Defects (other than to the extent contemplated by paragraph (a) of the definition of 'Completion');
 - (v) be in accordance with all Legislative Requirements;
 - (vi) be in accordance with the Subcontract and the Main Contract;
 - (vii) be carried out to the satisfaction of the Contractor's Representative (who should, in determining whether the Work Under Subcontract has been carried out to its satisfaction, act reasonably);
 - (viii) be free of liens, charges and encumbrances; and
 - (ix) be fit for the purpose set out in or that may reasonably be inferred from this Subcontract and the Main Contract;
- (b) any designs, drawings, specifications, other documents or method or working used by the Subcontractor will not infringe any patent, registered design, trademark or name, copyright or other protected right;
- (c) it will comply with all lawful Directions, including in relation to site rules and procedures;
- (d) it will ensure that (in relation to the performance of the Work Under Subcontract) the Site is always clean and tidy during and after the performance of the Work Under Subcontract;
- (e) it has informed itself of the requirements of the Main Contract and all relevant documents relating to the Work Under Subcontract and the Main Contract Works; and
- (f) where the Project has received or will receive any direct or indirect funding from:
- (i) the Commonwealth Government, the Subcontractor will comply with the requirements set out at Part D of Appendix 9 if required by Item 22.

10.2 Warranties Remain Unaffected

The Subcontractor acknowledges and agrees that each of the representations, warranties and promises given in this Subcontract will remain unaffected and the Contractor does not assume any responsibility or liability for the performance of the Work Under Subcontract, notwithstanding any one or more of the following:

- (a) that design work has been carried out by or on behalf of the Contractor or the Principal and included in the Subcontract;
- (b) the review, comment or Direction upon, or rejection or approval of, any document forming part of the Subcontract or any other document or information provided by the Subcontractor or its Personnel;
- (c) any Variation; or
- (d) any failure by or on behalf of the Contractor, to do any of the things referred to in subclauses 10.2(a) and 10.2(b).

11. Site

11.1 Access Preconditions

- (a) Prior to commencing the Work Under Subcontract or accessing the Site, the Subcontractor must:
- (i) validly execute and return the Subcontract in accordance with clause 4.1;
 - (ii) substantiate its compliance with clause 27.1 including by providing the certificates of currency for all insurances required under clause 27.1;
 - (iii) provide the Security in accordance with clause 9; and
 - (iv) comply with its obligations under clause 33(e).

(the **Access Preconditions**).

- (b) Unless and until all of the Access Preconditions have been satisfied, the Contractor may in its absolute discretion refuse the Subcontractor access to all or any part of the Site (including by revoking any access that has already been granted) and the Subcontractor shall have no Claim or entitlement in connection with the Contractor's refusal (or revocation) of access.

11.2 Access

Subject to being provided with access to the Site by the Principal and the Subcontractor complying with its obligations under the Subcontract, the Contractor will give the Subcontractor access to the Site or sufficient part of the Site to permit the performance of the Work Under Subcontract. The Subcontractor acknowledges and agrees that:

- (a) it is not entitled to sole possession of any part of the Site;
- (b) other Parties, including the Contractor and third Parties, will be performing work on the Site;
- (c) it has made sufficient allowances in the Subcontract Price for reasonable coordination, cooperation and interaction with other Parties on the Site;
- (d) it must permit and facilitate, as reasonably necessary, the Contractor, Contractor's Representative, Principal and Superintendent (and others authorised by any of those Parties), access at all reasonable times to the Site and the Works;
- (e) any delay by the Contractor in giving access pursuant to this clause 11 will not be a breach of the Subcontract;
- (f) it must comply with Contractor's Management Plans at all times;
- (g) it must not place the Contractor or Principal in breach of any agreements, protocols, deeds of agreement and memoranda of understanding entered into with other owners of the Site and surrounds;
- (h) it must (at its cost):
 - (i) ensure its Personnel satisfy all required induction requirements (including police checks and training certifications) prior to them accessing the Site;
 - (ii) submit any induction, safety and site management documents reasonably required by the Contractor and satisfy the Contractor that the Subcontractor has adequate safety and site management practices in place prior to accessing the Site;
 - (iii) provide evidence of compliance with clause 11.2(h)(i) whenever requested by the Contractor's Representative or Principal;
- (i) it must take all necessary and practicable precautions to minimise construction noise and dust on and around the Site; and
- (j) other than where required to do so by Legislative Requirements, it must not install any signage (including signwriting on hoarding or anti gawk screens) featuring its logo or marketing material, on any part of the Works without the prior written consent of the Contractor's Representative.

11.3 Setting out and surveys

The Contractor will supply to the Subcontractor the information and survey marks necessary to enable the Subcontractor to set out the Works.

Upon receipt of such information and survey marks, the Subcontractor must set out the Works in accordance with this Subcontract.

11.4 Existing Structures

In the performance of the Work Under Subcontract, the Subcontractor:

- (a) may only modify or remove existing structures or services within the Site:
 - (i) in accordance with the Scope of Works; or
 - (ii) as instructed by the Contractor's Representative;
- (b) must obtain (at its own cost):
 - (i) all necessary Approvals; and

- (ii) prior written approval of the Contractor's Representative, before any connection, disconnection or interference with existing structures and services;
- (c) if required by Item 21, must carry out investigations to verify services locations prior to any excavations; and
- (d) will be responsible for the cost arising out of any damage to existing services and structures.

11.5 Prior Works

If the Work Under Subcontract interfaces with or is dependent upon any prior or pre-existing work or Documents (**Prior Work**), the Subcontractor must before proceeding with the relevant work:

- (a) using appropriately experienced and skilled personnel, carefully check and review such Prior Work; and
- (b) urgently notify the Contractor's Representative including details if in its opinion any Prior Work is unsatisfactory or unsuitable for any reason.

11.6 Temporary Works

Notwithstanding the generality of clause 7:

- (a) prior to establishing any Temporary Works, the Subcontractor must provide the Contractor with its design, material specifications and methodology for those Temporary Works;
- (b) if required by the Contractor, the Subcontractor must at its own cost provide certification from a registered engineer (approved by the Contractor) that the Subcontractor's design, materials and methodology proposed for the Temporary Works comply with:
 - (i) the requirements of the Subcontract; and
 - (ii) all applicable requirements of Authority and Legislative Requirements;
- (c) the Subcontractor must not modify the design, materials or methodology for any Temporary Works after it has received the certification contemplated by clause 11.6(b) without written Direction from the Contractor and the Contractor is not obliged to give such a Direction unless the Subcontractor provides from the certifying engineer, certification in the form contemplated by clause 11.6(b) in respect of the proposed modifications;
- (d) the Subcontractor must ensure that the use of the Temporary Works complies with and is not used for any other purpose than its intended and certified use and prior to its application has conducted all necessary inspection and testing required in verifying its compliance;
- (e) if the Subcontractor fails to perform any obligation under this clause, the Contractor may:
- (f) direct a suspension of the Work Under Contract, and such a suspension will be deemed to have occurred under clause 14(a)(ii); and
 - (i) engage a registered engineer to certify the Subcontractor's proposed design, materials and methodology (**Remedial Certification**); and
- (g) the Subcontractor will bear the time and cost effects of the Remedial Certification and all related costs and Losses where the Remedial Certification shows that the design, materials or methodology is not in accordance with the Subcontract.

11.7 Talent Release

The Subcontractor acknowledges and agrees that the Contractor and its authorised representatives may take photographs, videos and sound recordings of complete or incomplete work at any place where that work is being performed. The Contractor and its related entities may retain and use that media for any operational, business or marketing related purpose.

12. Legislative Requirements, Standards and Permits

12.1 Compliance

The Subcontractor must:

- (a) comply with, and ensure the Works comply with, all Legislative Requirements; and
- (b) other than to the extent expressly required otherwise by this Subcontract, ensure that the Work Under Subcontract complies with the requirements of:

- (i) all applicable Australian technical standards and codes including Australian Standards; and
- (ii) any other technical standards notified to the Subcontractor by the Contractor's Representative.

12.2 Permits

The Subcontractor must obtain and maintain all permits and Approvals and pay all fees required for the performance of the Work Under Subcontract.

13. Programming

13.1 Co-ordination and Co-operation

The Subcontractor must:

- (a) co-operate and avoid interfering with, disrupting or delaying the work of the Contractor's other subcontractors and others engaged by the Contractor or the Principal; and
- (b) take all steps requested by the Contractor to co-ordinate the Work Under Subcontract with the Main Contract Works.

13.2 Paramount obligation

The Subcontractor's obligation to achieve Completion by the Date for Completion is paramount and this clause 13 is to be construed so as not to derogate from that obligation.

13.3 Main Contract programs

- (a) The Contractor may prepare and provide to the Subcontractor, programs, including project programs and short-range programs, which may be updated from time to time during the course of the Main Contract Works. When updating these programs, the Contractor will take into account actual progress and estimates of the likely performance of the Main Contract Works during the relevant periods based on information available. The Subcontractor must provide all information required by the Contractor to assist the Contractor in this regard.
- (b) The purpose of the Contractor's programs is to facilitate the day to day co-ordination and integration of the Work Under Subcontract and the work of the Contractor's other contractors. These programs are not statements of contractual obligations and are not to be construed as Directions by the Contractor. If the programs show completion of the Works later than the Date for Completion, then, after consultation with the Contractor, the Subcontractor must take whatever reasonable steps are necessary to achieve Completion by the Date for Completion in a manner that does not delay or disrupt the work by the Contractor or other contractors.

13.4 Programs

- (a) The Contractor's Representative may, acting reasonably, Direct in what order or at what time the various stages or portions of the Work Under Subcontract must be carried out. If the Subcontractor cannot reasonably comply, it must notify the Contractor's Representative of the reasons. Compliance with any Direction under this clause 13.4 is deemed to be included in the Subcontract Price.
- (b) If Directed by the Contractor's Representative to do so, the Subcontractor must:
 - (i) within the time period reasonably required by the Contractor's Representative, prepare and provide a program of the Work Under Subcontract or any part thereof which must be in such form and contain such details as are reasonably required by the Contractor's Representative (which must show the critical path) and be based upon the latest version of the Contractor's programs to have been provided to the Subcontractor; and
 - (ii) thereafter provide the Contractor with weekly updates (including a detailed four-week look ahead) to take account of:
 - A. changes to the critical path;
 - B. changes to the Contractor's programs;
 - C. delays which may have occurred; and
 - D. any extensions or reductions of time granted or determined under clause 19.

13.5 Matters Unaffected

- (a) The Contractor may:



- (i) provide to the Subcontractor a program prepared by or on behalf of the Contractor or the Principal; or
 - (ii) give comment, approval or rejection in relation to a program or update provided by the Subcontractor.
- (b) Irrespective of whether the Contractor does or does not do any of the things contemplated by clause 13.5(a):
- (i) the Subcontractor is not relieved from any liability or obligation under the Subcontract;
 - (ii) it shall not be evidence of, or constitute the, granting of an EOT or an instruction to accelerate, disrupt, prolong or vary the performance of the Work Under Subcontract; and
 - (iii) the Parties agree that it does not affect:
 - A. the time for the performance of the Contractor's obligations; or
 - B. the Contractor's rights under the Subcontract or otherwise at law.

13.6 Labour and Resources

- (a) The Subcontractor must employ sufficient labour, plant and materials to complete the Works expeditiously by the Date for Completion and in accordance with all Directions of the Contractor's Representative.
- (b) If, in the Contractor's opinion, there is insufficient labour, plant and materials being employed by the Subcontractor, then the Contractor's Representative may, without prejudice to any other remedy, after giving three (3) Business Days written notice to the Subcontractor employ, at the expense of the Subcontractor, additional labour, plant and materials to assist the Subcontractor to complete the Works by the Date for Completion and the cost incurred by the Contractor will be a debt due and payable by the Subcontractor to the Contractor.

14. Suspension

- (a) The Contractor's Representative may, at its discretion, Direct the Subcontractor to suspend the carrying out of the whole or part of the Work Under Subcontract for such time as the Contractor's Representative thinks fit. This includes, if the Contractor's Representative is of the opinion that it is necessary:
 - (i) because of an act or omission of:
 - A. the Contractor's Representative, the Contractor or its employees, consultants, agents or other contractors (not being employed by the Contractor); or
 - B. the Subcontractor or its Personnel;
 - (ii) for the protection or safety of any person or property; or
 - (iii) to comply with a court order.
- (b) The Subcontractor will bear the cost of suspension pursuant to clause 14(a)(i)B and where the Subcontractor made suspension pursuant to clauses 14(a)(ii) or 14(a)(iii) necessary. If the suspension is due to an act or omission under clause 14(a)(i)A and the suspension causes the Subcontractor to incur more or less cost than would otherwise have been incurred (including an amount for onsite overheads but not offsite overheads, profit, Loss of profit or Loss of revenue), the difference will be assessed by the Contractor's Representative and added to or deducted from the Subcontract Price.

15. Separable Portions

- (a) In addition to the Separable Portions set out at Appendix 2 (if any), the Contractor's Representative may at any time prior to the Date of Completion create a Separable Portion for the Works. The Contractor's Representative is not obliged to create a Separable Portion at the request of the Subcontractor or for any other reason.
- (b) The interpretations of:
 - (i) Date for Completion;
 - (ii) Date of Completion;
 - (iii) Completion; and
 - (iv) Defects Liability Period,

and clause 9, 19, 23 and 25 shall apply separately to each Separable Portion and references therein to the Works and to Work Under Subcontract shall mean so much of the Works and the Work Under Subcontract as is comprised in the relevant Separable Portion.

- (c) If the Subcontract does not make provision for the amount of Security or liquidated damages applicable to a Separable Portion (including one created pursuant to this clause 15), the Contractor's Representative may determine for such Separable Portions the amount of Security or liquidated damages applicable.

16. Contractor's Representative

- (a) The Contractor has appointed the person identified in Item 3 as the Contractor's Representative, who is the agent of the Contractor and not an independent certifier or valuer.
- (b) Where necessary, the Contractor's Representative may give a Direction orally. However, it shall confirm that oral Direction in writing as soon as is practical.

17. Regulatory Compliance

17.1 Health and safety requirements

- (a) The Subcontractor must:
- (i) carry out and complete its obligations under this Subcontract in accordance with the WHS Requirements;
 - (ii) consult with the Contractor in relation to how its obligations under the Subcontract can be undertaken in a way that prevents or minimises all risks to health and safety;
 - (iii) where required by statute or the Contractor, submit workplace health and safety plans, work method statements and the like to the Contractor for approval prior to commencing work on the Site or at any other time during the carrying out of the Works;
 - (iv) comply with all lawful Directions of the Contractor in connection with the WHS Requirements;
 - (v) ensure the health and safety of all its employees, agents or Sub-subcontractors while on the Site; and
 - (vi) ensure that:
 - A. other persons are not exposed to risk of injury or illness arising out of the Subcontractor's activities on Site; and
 - B. all of its Personnel comply with all WHS Requirements and all Directions, plans, statements, policies and procedures of the Contractor, under the Main Contract or by any statutory authority concerning workplace health and safety on or around the Site.
- (b) To the maximum extent permitted by Legislative Requirements, the Subcontractor indemnifies the Contractor against any Loss or damage suffered or incurred by the Contractor arising out of, or in connection with:
- (i) a breach of clause 17.1(a); and
 - (ii) a failure of the Subcontractor to comply with any WHS Requirements.

17.2 Environmental Requirements

- (a) The Subcontractor must:
- (i) carry out and complete its obligations under this Subcontract in accordance with the Environmental Requirements;
 - (ii) comply with the Main Contract and all policies, procedures, plans, statements and Directions relating to the protection of the Environment;
 - (iii) ensure that the activities of its employees, agents or Sub-subcontractors do not cause or contribute to environmental damage, harm or nuisance;
 - (iv) execute the Work Under Subcontract in such a way that avoids unlawful pollution of the Site and its surroundings;
 - (v) where required by the Environmental Requirements, the Contractor or the Principal, submit environmental management plans, work method statements and any other documents relating to

the protection of the Environment to the Contractor's Representative for its approval prior to commencing work on the Site or at other times as required; and

- (vi) not disturb any monitoring stations or other facilities set up in relation to environmental management.
- (b) The Subcontractor must provide environmental or statutory reports required by Legislative Requirements, the Contractor's Representative or the Principal, including:
 - (i) quantity of wastes generated, reused, recycled and disposed of at a land fill or approved third Party site;
 - (ii) monitoring results (noise, dust; water, water use source and quantity, soil quality, emissions);
 - (iii) extent of compliance with environmental Legislative Requirements;
 - (iv) details of incidents and community complaints, suggestions and recommendations;
 - (v) nature of visits by officers of Authorities; and
 - (vi) details of audits and inspections, corrective actions and close out statistics.
- (c) Environmental Indemnity

To the maximum extent permitted by Legislative Requirements, the Subcontractor indemnifies the Contractor against any Loss or damage suffered or incurred by the Contractor, arising out of, or in connection with:

 - (i) a breach of clause 17.2(a); and
 - (ii) a failure of the Subcontractor to comply with any Environmental Requirements.

17.3 Damage to Environment

- (a) Except to the extent that it is the unavoidable result of the performance of the Work Under Subcontract in accordance with environmental best practice and this Subcontract, the Subcontractor is responsible for and must make good, any damage to the Environment caused by the performance of the Work Under Subcontract (including any unlawful pollution of the Site or its surroundings).
- (b) The Subcontractor must:
 - (i) immediately report any environmental damage or pollution caused or contributed to by the performance of the Work Under Subcontract;
 - (ii) at its cost, clean up and make good any environmental damage or pollution of the Site and its surroundings that is contrary to Legislative Requirements and is caused or contributed to by the performance of the Work Under Subcontract; and
 - (iii) comply with all Directions of the Contractor's Representative in relation to cleaning up and making good any environmental damage or pollution.

17.4 Copies of documents

The Subcontractor must provide to the Contractor's Representative copies of any notices, correspondence or directions issued by any statutory authority relating to workplace health and safety or the Environment within 24 hours of receipt.

17.5 Audit of Subcontractor

- (a) The Contractor may at any time undertake an audit of the Subcontractor's performance of its obligations under the Subcontract to ensure that the Subcontractor, its employees, and Sub-subcontractors are compliant with the requirements of the Subcontract including the WHS Requirements and Environmental Requirements. The Subcontractor must provide all reasonable access and assistance to the Contractor to facilitate any audit.
- (b) The Contractor's Representative may at any time require the Subcontractor to provide (within 5 Business Days) Financial Reports or a solvency statement signed by one or more directors of the Subcontractor.

17.6 Reporting of incidents

The Subcontractor must:

- (a) immediately report any near miss or incident relating to workplace health and safety or the Environment reportable under the WHS Requirements or the Environmental Requirements to the Contractor; and
- (b) provide the Contractor with reasonable assistance in investigating any such near miss or incident.

17.7 Emissions and Energy Reporting

- (a) In this clause 17.7:
 - (i) **"Data"** includes data, information, records and reports.
 - (ii) **"Emissions and Energy Data"** means:
 - A. any Data of the type that a registered corporation or any other person may be required by the NGER Legislation to keep or to provide to other Parties concerning greenhouse gas emissions, energy production or energy consumption;
 - B. any Data of the type that a registered corporation or any other person may be entitled to provide under the NGER Legislation concerning reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project; and
 - C. any other Data concerning environmental emissions or energy production, use, consumption or efficiency of the type that any person may be required by Legislative Requirements to keep or provide to any statutory authority.
 - (iii) **"NGER Legislation"** means the *National Greenhouse and Energy Reporting Act 2007* (Cth) and the regulations and any legislative instruments under that Act.
- (b) If:
 - (i) Item 24 states that the Subcontractor is required to; or
 - (ii) if the Contractor's Representative notifies the Subcontractor that the Subcontractor is required to, provide Emissions and Energy Data to Contractor's Representative, then the Subcontractor must at no extra cost to the Contractor:
 - (iii) provide the Subcontractor's Emissions and Energy Data to the Contractor in the same manner, form and level of detail, based on the same methods and at the same times required by the Contractor;
 - (iv) keep all of its Emissions and Energy Data as may be required to enable the Subcontractor to discharge its obligations under clause 17.7(iii);
 - (v) retain records of its activities that are the basis of Subcontractor's Emissions and Energy Data for any financial year, for a period of not less than seven (7) years from the end of the year in which the performance of the Work Under Subcontract took place; and
 - (vi) permit the Subcontractor's Emissions and Energy Data to be examined, monitored, measured, copied, audited and verified by any persons appointed or approved for that purpose by Contractor, the Principal or any person with statutory authority to do so and cooperate with and provide all reasonable assistance to any such persons, including giving access to premises, plant and equipment, producing and giving access to documents (including any records kept and retained under clauses 17.7(iv) and 17.7(v)) and answering questions.
- (c) Without limiting this clause 17.7, the Subcontractor must assist the Contractor and the Principal to comply with the NGER Legislation in relation to any aspect of the Subcontractor's activities in connection with the Work Under Subcontract.
- (d) The Subcontractor acknowledges and agrees that Contractor may provide or otherwise disclose the Subcontractor's Emissions and Energy Data to the Principal or any government or statutory authority (or both), without notice to the Subcontractor.
- (e) In addition to its obligations under clause 17.7, the Subcontractor must:
 - (i) if so required by Contractor's Representative, report to the Contractor on any matter in connection with clause 17.7; and



- (ii) submit, at no extra cost to the Contractor, any report required by this clause 17.7:
 - A. in writing;
 - B. in a form and containing such details, data and other information as required by Contractor; and
 - C. at times required by Contractor.

17.8 COR Laws

To the extent heavy vehicles are used in the performance of the Work Under Subcontract, the Subcontractor:

- (a) acknowledges that it is a primary duty holder under the COR Laws with responsibility for developing COR Systems;
- (b) must ensure that any heavy vehicles are appropriately maintained with loads that do not exceed vehicle mass or dimension limits, are appropriately secured, and operators carrying freight containers have a valid container weight declaration and drivers do not exceed speed limits or regulated driving hours, do not drive while impaired by fatigue and observe minimum rest requirements;
- (c) must proactively provide reasonable assistance to the Contractor to enable the Contractor to satisfy its duties and responsibilities under COR Laws;
- (d) must obtain and maintain, and ensure that each of its personnel obtains and maintains all Approvals required to enable the applicable activity, function or task to be undertaken lawfully;
- (e) shall undertake any audits or monitoring requested by the Contractor to demonstrate compliance with this clause 17.8; and
- (f) warrants that it is familiar with and has the capability and resources to comply with COR Laws and ensure that its Personnel comply with all COR Laws.

17.9 Building Product Legislation

- (a) Without limiting any other clause in the Subcontract, the Subcontractor must at its cost:
 - (i) comply with, and ensure its Personnel comply with, the Building Product Legislation; and
 - (ii) not do anything or fail to do anything that may cause the Contractor or the Principal to breach the Building Product Legislation.
- (b) The Subcontractor must immediately provide the Contractor with copies of all notices, reports and other correspondence sent or received under or in connection with the Building Product Legislation which:
 - (i) relate to the Work Under Subcontract or the Main Contract Works;
 - (ii) relate to the operations of the Subcontractor; or
 - (iii) may adversely affect the ability of the Subcontractor to perform the Work Under Subcontract.
- (c) The Subcontractor must first consult with and take into account any reasonable comments of the Contractor's Representative before:
 - (i) sending any notices contemplated by clause 17.9(b); or
 - (ii) responding or agreeing to any undertaking or commitment to any Building Product Authority in connection with the Building Product Legislation.
- (d) Compliance by the Subcontractor with its obligations under this clause 17.9 does not limit any of the Subcontractor's other obligations under this Subcontract or entitle the Subcontractor to any Claim.
- (e) **Building Product Legislation Indemnity**
To the extent permitted by law, the Subcontractor must indemnify the Contractor against any damage, expense or liability suffered or incurred by the Contractor arising out of or in any way in connection with the Subcontractor's failure to comply with this clause 17.9.

18. Acceleration

- (a) Whether or not the Subcontractor is entitled to an EOT to the Date for Completion under clause 19, the Contractor's Representative may Direct the Subcontractor to take all steps identified by the Contractor's Representative to accelerate, expedite or reorder the Work Under Subcontract so that:

- (i) the Work Under Subcontract reaches Completion by the Date for Completion without the need for an EOT; or
 - (ii) the Work Under Subcontract reaches Completion by a date identified by the Contractor's Representative in its Direction (including a date earlier than the Date for Completion).
- (b) Should the Contractor's Representative Direct that the Work Under Subcontract be accelerated under this clause 18:
- (i) the Subcontractor will not be entitled to all or part of an EOT to which it may otherwise have been entitled; and
 - (ii) where the event or circumstance causing the delay is otherwise beyond the reasonable control of the Subcontractor, as the Subcontractor's sole and exclusive entitlement in connection with the acceleration, the Subcontractor will be entitled to be paid an amount valued in accordance with clause 21.4 for its additional direct costs properly and reasonably incurred as a result of the Direction to accelerate, expedite or reorder the performance of the Works.
- (c) The Subcontractor must, if requested, advise the Contractor's Representative about possible alternatives for achieving acceleration and their estimated cost.
- (d) No direction by the Contractor or the Contractor's Representative will be taken to constitute a direction under clause 18 unless it is in writing and expressly states that it is an "acceleration direction" given under that clause.
- (e) If the scope of the Work Under Subcontract is reduced for any reason (including because of a Variation), and that reduction in scope has enabled, or is likely to enable, the Subcontractor to achieve Completion earlier than it would otherwise have done so, the Contractor's Representative is entitled to determine a reasonable reduction to the Date for Completion. Any such reduction of time will not constitute an acceleration direction under this clause 18.

19. Time and Progress

19.1 Notice of Delay

If the Subcontractor becomes aware of anything which may delay the Work Under Subcontract (**Delay Event**) it must, within 3 Business Days, notify the Contractor's Representative of the potential Delay Event.

19.2 Claiming an EOT

- (a) The Subcontractor is entitled to claim an EOT only if:
- (i) the Subcontractor is or will be delayed in reaching Completion by the Date for Completion by an Excusable Delay; and
 - (ii) within the number of Business Days set out in Item 26 of when the Subcontractor should reasonably have first become aware of the Delay Event, the Subcontractor gives the Contractor's Representative a written claim setting out the background, effect and duration (or estimated duration if the delay event has not concluded) for an EOT.
- (b) If the Delay Event has not concluded by the time the notice under clause 19.2(a)(ii) is due, the Subcontractor must provide an updated claim for an EOT every five (5) Business Days until the delay has ceased.
- (c) The Subcontractor will not be entitled to an EOT unless:
- (i) it has issued each of the notices required by this clause 19 within the timeframe stated for each notice;
 - (ii) the Delay Event is beyond the reasonable control of the Subcontractor;
 - (iii) the Delay Event was not caused or contributed to by an act, omission or default of the Subcontractor or any Party under the control of the Subcontractor or for whom the Subcontractor is responsible (including Sub-subcontractors, suppliers, consultants, employees and agents);
 - (iv) it has taken all reasonable steps to minimise the impact of the Delay Event;
 - (v) there are no concurrent delays caused by other events or circumstances for which the Subcontractor is not entitled to an EOT;
 - (vi) the Subcontractor has demonstrated its entitlement to an EOT to the reasonable satisfaction of the Contractor's Representative;



- (vii) the delay affects an activity on the critical path of the Work Under Subcontract; and
- (viii) no reasonable reprogramming or alteration of sequences of activities or other method could avoid the delay.

19.3 Discretion to extend time

- (a) The Contractor's Representative may, at any time and in its absolute discretion, Direct an EOT to the Date for Completion for any reason for the benefit of the Contractor.
- (b) The Subcontractor acknowledges:
 - (i) that the mechanism in this clause 19.3 is a discretionary right of the Contractor's Representative which may be exercised by the Contractor's Representative for the sole benefit of the Contractor and does not:
 - A. impose any obligations on the Contractor's Representative;
 - B. give rise to any duty to act in good faith; or
 - C. in any way constitute a waiver or relaxation of any requirements under this Subcontract; and
 - (ii) that any EOT directed under this clause 19.3 will not entitle the Subcontractor to any delay or disruption costs under any circumstances.

19.4 Grant of an EOT

- (a) Subject to clauses 19.1, 19.2 and 19.3 the Contractor's Representative will determine and certify any EOT to the Date for Completion within a reasonable time after receiving (as relevant):
 - (i) all of the notices required under this clause 19;
 - (ii) the last update of a claim for an EOT for an ongoing delay; and
 - (iii) any further information that the Contractor's Representative requests in relation to a claim for an EOT.
- (b) No delay (including an Excusable Delay), nor any failure or delay by the Contractor's Representative to grant an Extension of Time, nor the giving of an acceleration direction under clause 18, will set the Date for Completion or any other time at large.

19.5 Delay and Disruption Costs

- (a) The Subcontractor must take all reasonable and practical steps to avoid or minimise delay and disruption costs.
- (b) Delay and disruption costs (if any) arising from a Variation are deemed to be included in the value of the Variation determined under clause 21.4 and there is no other basis (whether under the Subcontract or otherwise at law) on which the Subcontractor may claim delay costs or disruption costs arising from a Variation.
- (c) Subject to clause 19.5(b), the Subcontractor acknowledges and agrees that it will have no entitlement to any delay or disruption costs and that its sole and exclusive entitlement arising out of any delay or disruption is an EOT in accordance with clause 19.4.

20. Delays by the Subcontractor

- (a) The Subcontractor acknowledges and agrees that:
 - (i) the achievement of Completion by the Date for Completion is critical to the Contractor being able to achieve the contractual completion dates under the Main Contract;
 - (ii) the Contractor is relying on the skill and expertise of the Subcontractor to perform its obligations under the Subcontract in accordance with the Subcontract and so as to achieve Completion by the Date for Completion; and
 - (iii) in addition to the Contractor's own Losses, damages are payable by the Contractor to the Principal under the Main Contract if the Contractor does not achieve completion by contractual completion dates stated in the Main Contract.

21. Variations

21.1 No Variation

- (a) The Subcontractor will not vary the Works except as Directed in writing by the Contractor or the Contractor's Representative.
- (b) The Contractor's Representative may Direct the Subcontractor to vary the Works at any time before Completion.

21.2 Identifying Variations

- (a) If the Subcontractor considers that any Direction given by the Contractor or the Contractor's Representative is or would constitute a Variation, the Subcontractor:
 - (i) must before implementing the Direction notify the Contractor's Representative in writing that it considers the Direction is or would constitute a Variation; and
 - (ii) will only be entitled to claim an adjustment to the Subcontract Price if:
 - A. the Subcontractor provides a written notice to the Contractor's Representative under clause 21.2(a)(i) before implementing the Direction; and
 - B. the Contractor's Representative issues a written notice confirming that the Direction is a Variation.
- (b) If the Subcontractor gives notice under clause 21.2(a), the Contractor's Representative may:
 - (i) confirm that the Direction constitutes a Variation, in which case clause 21.3 will apply;
 - (ii) notify the Subcontractor that the Direction does not constitute a Variation and that the Subcontractor must execute the work which was the subject of the Direction, but that the Subcontractor may refer any claimed entitlement for resolution under clause 37; or
 - (iii) withdraw the Direction.
- (c) Compliance with this clause 21.2 is a precondition to the Subcontractor being entitled to make any Claim arising out of or in connection with any Direction that the Subcontractor considers is a Variation.
- (d) The Contractor's Representative may refer a proposed Variation to the Subcontractor and Direct that the Subcontractor provide, within 10 Business Days (unless a longer period is agreed to by the Contractor's Representative) in response to the proposed Variation, a written notice containing:
 - (i) particulars of the Subcontractor's proposed adjustment to the Subcontract Price for carrying out the proposed Variation;
 - (ii) the effect (if any) of the proposed Variation on the Work Under Subcontract, the Date for Completion and the Subcontractor's ability to comply with any of its obligations under the Subcontract; and
 - (iii) any other relevant information related to carrying out the proposed Variation.
- (e) All costs incurred by the Subcontractor in connection with pricing or administering Variations are deemed to be included in the Subcontract Price.

21.3 Directing Variations

In response to the notice provided by the Subcontractor under clause 21.2(d), the Contractor's Representative may at its discretion:

- (a) Direct the Subcontractor to carry out the Variation based on the Subcontractor's notice, in which case the Date for Completion and the Subcontract Price will be deemed to be amended in accordance with the notice;
- (b) decline to proceed with the Variation; or
- (c) reject the quotation and Direct that the Subcontractor carry out the works subject of the Variation and that the Variation be valued in accordance with clause 21.4.

21.4 Valuation

- (a) Variations will be valued in one or more of following ways, using the following order of precedence:
 - (i) prior agreement;

- (ii) applicable rates or prices in the Subcontract;
 - (iii) rates or prices in the Schedule of Rates, to the extent that it is reasonable to use them; or
 - (iv) reasonable rates and prices, which should include an amount for the Subcontractor's profit and overheads equivalent to the percentage identified in Item 47.
- (b) Any valuation for delay or disruption will include an amount for onsite overheads but must not include any offsite overheads, profit, Loss of profit or Loss of revenue.
- (c) Negative Variations shall include an amount for margin (profit and overheads) equivalent to the percentage identified in Item 47.
- (d) The amount determined under this clause 21.4 will be added to or deducted from the Subcontract Price.
- (e) The Subcontractor must comply with a Direction under clause 21 as soon as practicable, notwithstanding that a price for the Variation has not been determined.

21.5 Variations Generally

- (a) No Variation will vitiate, render invalid or constitute a repudiation of the Subcontract on the ground of the extent the Works are added to, reduced or omitted.
- (b) The Contractor's Representative is not required to request a notice under clause 21.2 prior to Directing that any Work Under Subcontract that is the subject of a Variation commence.
- (c) If the Subcontractor requests that the Contractor's Representative Direct a Variation for the convenience of the Subcontractor, the Contractor's Representative may do so at its absolute and sole discretion. The Direction may be conditional. Unless the Direction expressly provides otherwise, the Subcontractor will not be entitled to an EOT or an adjustment to the Subcontract Price.
- (d) The Contractor's Representative is not obliged or required to approve a Variation for the sole benefit or convenience of the Subcontractor.
- (e) The Contractor may carry out, or engage others to carry out, any of the Work Under Subcontract removed or deleted by way of a Variation.

22. Site Conditions

22.1 General

- (a) The Subcontractor represents and warrants that before submitting its tender or offer for the award of the Subcontract and before entering into the Subcontract, it:
- (i) fully and properly satisfied itself as to:
 - A. the requirements of the Subcontract;
 - B. existing Site Conditions;
 - C. the existence, nature, use and occupancy of any buildings, roadways, watercourses, infrastructure, improvements, other structures and land on and surrounding the Site; and
 - D. all other circumstances, conditions and requirements pertaining to or in connection with the performance of the Work Under Subcontract; and
 - (ii) fully and properly satisfied itself that the Subcontract Price covers the cost to the Subcontractor of complying with its obligations under the Subcontract.
- (b) The Subcontractor acknowledges and agrees that the Contractor does not warrant or make any representation or assume any duty of care with respect to:
- (i) the completeness, accuracy, suitability, adequacy or content of any Site information provided to the Subcontractor by or on behalf of the Contractor;
 - (ii) any interpretations, deductions, opinions or conclusions set out in any such Site information; or
 - (iii) the suitability or adequacy of, or any other aspect of, the Site or any Site Conditions.

22.2 Site Conditions

- (a) If during the performance of the Work Under Subcontract, the Subcontractor becomes aware of a Site Condition that will or may impact the Subcontractor's performance, the Subcontractor must forthwith and where possible before the Site Condition is disturbed, give written notice thereof to the Contractor's

Representative (including details) and thereafter provide all information that the Contractor's Representative reasonably requests concerning the Site Condition and its potential impact on the Work Under Subcontract.

- (b) The Subcontractor assumes the risk of all Site Conditions, including the matters described in clauses 22.1(a)(i) and 22.1(a)(ii) and directions given by the Contractor's Representative to deal with any Site Conditions found upon, above or below the surface of the Site or its surroundings in order to properly perform the Work Under Subcontract in accordance with the Subcontract.

23. Completion and Payment

23.1 Payment Claims

- (a) The Subcontractor is only entitled to claim payment of the Subcontract Price in accordance with this clause 23.1 for performance of the Work Under Subcontract.
- (b) The Subcontractor may submit a written claim for payment to the Contractor's Representative (**Payment Claim**):
 - (i) prior to the Date of Completion, monthly on the day identified in Item 27;
 - (ii) on the day falling 20 Business Days after the Date of Completion; and
 - (iii) as a Final Claim in accordance with clause 23.6,
(each a **Reference Date**).
 - (iv) The Parties agree that where applicable, the Reference Date is the "reference date" for the purposes of the SOP Legislation.
- (c) Each Payment Claim must:
 - (i) be for the value of the Work Under Subcontract carried out;
 - (ii) include the Subcontractor's determination of:
 - A. the value of the Work Under Subcontract completed by the Subcontractor up to the day before the Reference Date identified in Item 27 (and provide evidence supporting the Subcontractor's determination of the value of the Work Under Subcontract completed);
 - B. the value of any Variations undertaken by the Subcontractor up to the day before the Reference Date identified in Item 27;
 - C. the cost of rectifying any Defect in the Work Under Subcontract;
 - D. any money which is due, or which might become due, from the Subcontractor to the Contractor in connection with the Work Under Subcontract or the Subcontract; and
 - E. the amount paid or certified to be paid to the Subcontractor up to and including in relation to the previous Payment Claim;
 - (iii) set out the amount claimed by the Subcontractor in the current Payment Claim or being paid to the Contractor by the Subcontractor, calculated with reference to the amounts identified in accordance with clause 23.1(c)(i)
 - (iv) include the documentary evidence identified in clause 23.9; and
 - (v) include copies of any invoices for materials, goods or items to be incorporated into the Works, for which the Subcontractor is claiming.

23.2 Payment Schedules and payment

- (a) Within 10 Business Days or the timeframe prescribed under SOP Legislation (whichever is longer) of receipt of a Payment Claim or the Final Claim (as the case may be), the Contractor's Representative must assess the Payment Claim or Final Claim (as the case may be) and issue a payment schedule to the Subcontractor identifying the Payment Claim to which it relates and stating the amount (if any) which is to be paid by the Contractor to the Subcontractor or by the Subcontractor to the Contractor, including, if applicable, the Contractor's Representative's assessment of any retention moneys due from the Subcontractor to the Contractor (**Payment Schedule**).
- (b) Where a Payment Schedule is in response to a Final Claim, the Payment Schedule shall be deemed to be the final certificate (**Final Certificate**).



- (c) If the amount in the Payment Schedule or Final Certificate (as the case may be) is different from the amount claimed by the Subcontractor, the Contractor's Representative shall set out the reasons for the difference including any reasons for withholding payment.
- (d) The Subcontractor acknowledges and agrees that:
- (i) despite the information provided by the Subcontractor, the amount of any payment to be made to the Subcontractor will be (subject to clause 23.2(d)(ii) and 23.2(d)(iii)) the Contractor's Representative's assessment of the value of the Work Under Subcontract performed during the period covered by the Payment Claim calculated as follows:
 - A. where the Subcontract Price includes a lump sum, the portion of the lump sum representing the percentage of the Work Under Subcontract that are satisfactorily completed by the Subcontractor during the period covered by the Payment Claim; or
 - B. where the Subcontract Price includes a Schedule of Rates, the Contractor's Representative's assessment of the quantity of work satisfactorily carried out under the Subcontract during the period covered by the Payment Claim by the rates in Appendix 6;
 - (ii) without limiting the rights of the Contractor under clause 23.10, the Contractor is not obliged to make any payment to the Subcontractor for any Works which are Defective; and
 - (iii) the Contractor may, if the Subcontractor fails to comply with any of its obligations under clause 4.1 (execution of the Subcontract), clause 9 (security), clause 13 (programming), clause 23.9 (payment of its Personnel), clause 27.1 (insurance), clause 33(e) (management of its Personnel) or clause 23.6(a) (Final Claim pre-requisites), and has not remedied the failure, withhold the whole amount assessed by the Contractor's Representative as payable to the Subcontractor in a Payment Schedule or Final Certificate (as the case may be).
- (e) The due date for payment is:
- (i) if the Contractor is to pay, the number of days set out in Item 28 after receipt by the Contractor's Representative of a Payment Claim or the Final Claim; or
 - (ii) if the Subcontractor is to pay, the date on which the last of the following occurs:
 - A. the Contractor has submitted a tax invoice for the relevant amount; and
 - B. the expiry of the period of:
 - I. 15 Business Days after receipt by the Contractor's Representative of a Payment Claim or the Final Claim (as the case may be); or
 - II. 5 Business Days after the issue by the Contractor's Representative of the Payment Schedule or Final Certificate (as the case may be),
- in each case (a **Due Date**).
- (f) On or before the Due Date for payment, the Contractor must pay to the Subcontractor or the Subcontractor must pay to the Contractor (as the case may be) the amount set out in the Payment Schedule or Payment Certificate (as the case may be).
- (g) If the Subcontractor does not issue a Payment Claim in accordance with clause 23.1, the Contractor's Representative may issue the Payment Schedule or Final Certificate (as the case may be) setting out its view as to any payment due from or to the Subcontractor.
- (h) Neither a Payment Schedule, Notice of Dispute or Final Certificate or payment of money or acceptance of payment will be evidence that the relevant Work Under Subcontract has been carried out satisfactorily or in accordance with the Subcontract. Payment is on account only.

23.3 Invoicing

- (a) The Contractor may:
- (i) require the Subcontractor to use the Contractor's electronic invoice system and, if so, the Subcontractor must submit any Payment Claims or invoices payable under this Subcontract by:
 - A. sending invoices to invoices@bmd.com.au; and
 - B. to the Email address identified in item 2; and
 - C. to the Email address identified in item 3; and

- (ii) notify the Subcontractor that it will issue recipient created tax invoices (**RCTI**) in respect of all taxable supplies provided by the Subcontractor.
- (b) If the Contractor notifies the Subcontractor under clause 23.3(a)(ii) that it will issue RCTIs, then:
 - (i) the Subcontractor must not issue tax invoices in respect of taxable supplies made under this Subcontract; and
 - (ii) the Contractor must provide a valid RCTI to the Subcontractor on or before making payment in respect of the relevant taxable supplies made under this Subcontract.
- (c) If the Contractor does not notify the Subcontractor under clause 23.3(a)(ii) (or, at any time following a notification under clause 23.3(a)(ii), the Contractor provides the Subcontractor with a further notice stating that the Contractor will not, after the date of such further notice, issue RCTIs, the Subcontractor must, within 2 Business Days after receiving a Payment Schedule under clause 23.2(a), provide a valid tax invoice to the Contractor in the amount set out as payable in the Payment Schedule.

23.4 Unfixed plant and materials

- (a) The Contractor is not liable to pay for Unfixed Items unless they are listed in Item 29 and the Subcontractor:
 - (i) provides the additional security required by the Contractor;
 - (ii) satisfies the Contractor's Representative that the Unfixed Items have been paid for, delivered to or immediately available for delivery to the Site (or a location nominated by the Contractor's Representative), properly stored and protected, and labelled as the property of the Contractor;
 - (iii) has effected appropriate insurance in the Contractor's name if required by the Contractor's Representative to protect the Contractor's interest in the Unfixed Items; and
 - (iv) has established to the Contractor's Representative's satisfaction that the relevant Unfixed Items have not been prematurely ordered or delivered to Site.
- (b) Upon payment to the Subcontractor or the incorporation of the Unfixed Items into the Works, whichever occurs earlier, the subject Unfixed Items become the unencumbered property of the Contractor.
- (c) Notwithstanding the above, the Subcontractor remains responsible for the care of the Unfixed Items until the Subcontractor's responsibility for the Work Under Subcontract ceases in accordance with clause 25.1.

23.5 Certificate of Completion

- (a) The Subcontractor must notify the Contractor's Representative when it is of the view that Completion has been achieved. Within 10 Business Days of receipt of the Subcontractor's notice, the Contractor's Representative will either:
 - (i) issue a certificate stating that Completion has been achieved (**Certificate of Completion**); or
 - (ii) notify the Subcontractor in writing of its reasons for not issuing a Certificate of Completion, in which case this clause 23.5(a) shall reapply until a Certificate of Completion is issued.
- (b) Notwithstanding clause 23.5(a), the Contractor's Representative may, in its absolute discretion, issue a Certificate of Completion whenever it believes Completion has been reached. The Contractor's Representative is not obliged to exercise this discretion for the benefit of the Subcontractor.
- (c) The issue of any certificate under this clause 23.5 does not constitute approval or acceptance of any of the Work Under Subcontract. It will not prejudice any claim the Contractor has against the Subcontractor.

23.6 Final Payment Claim

- (a) Within 10 Business Days after the last of the following to occur:
 - (i) the expiry of the Defects Liability Period for the whole of the Works;
 - (ii) the Subcontractor having rectified all Defects that have become apparent during the Defects Liability Period;
 - (iii) the Subcontractor having provided a statutory declaration, in the form set out in Appendix 8, stating that all remuneration payable to the Subcontractor's Personnel has been paid; and
 - (iv) the Subcontractor having provided a signed and completed copy of the Subcontractor's Deed of Release,

the Subcontractor must give the Contractor's Representative a written final Payment Claim (**Final Claim**).

- (b) The Contractor's Representative will respond to the Final Claim by issuing a Final Certificate in accordance with clause 23.2.
- (c) If the Subcontractor does not issue a Final Claim within 10 Business Days after being Directed to do so by the Contractor's Representative the Contractor's Representative may issue a Final Certificate and clause 23.2(d) to 23.2(e)(ii) will apply.
- (d) Other than to the extent any unresolved issues or Dispute is identified as an "Excepted Matter" in the signed and completed Subcontractor's Deed of Release, on and from the date of the Final Certificate the Subcontractor shall be absolutely barred from making any further claims against the Contractor and the Contractor will be unconditionally and irrevocably released from all actions, claims, demands and proceedings of every kind and nature (whether under the Subcontract or otherwise at law) that the Subcontractor had or has or might in the future have:
 - (i) under, arising out of, or in any way in connection with, the Subcontract; or
 - (ii) arising out of, or in any way in connection with, the Work Under Subcontract, the Project or either Party's conduct before the Subcontract.
- (e) Nothing in this clause 23.6 or the Subcontractor's Deed of Release prejudices any right or remedy that the Contractor had or has or might in the future have, whether under the Subcontract or otherwise at law (including in respect of Defects or any "Excepted Matter" in the Subcontractor's Deed of Release).

23.7 Increase in costs or charges

- (a) The Subcontract Price (including rates, as applicable) is fixed and will not be subject to rise and fall for the period of the Subcontract.
- (b) Any increases to the cost of carrying out the Work Under Subcontract caused by an increase in taxation or other government levy or impost other than GST before or after the date of the Subcontract, must be paid by the Subcontractor.

23.8 Security of Payments

- (a) In issuing any documents under the SOP Legislation (including Payment Schedules or Notices of Dispute), the Contractor's Representative acts as the Contractor's agent.
- (b) The Contractor's Representative is not the Contractor's agent for the purpose of receiving any documents under the SOP Legislation (including Payment Claims or the Final Claim) and the Subcontractor must serve such documents on the Contractor and the Contractor's Representative at the same time.
- (c) Nothing in the Subcontract will affect, restrict or limit the Subcontractor's right to:
 - (i) make an adjudication application in relation to a payment dispute under the SOP Legislation; and
 - (ii) exercise any rights it has under the SOP Legislation.
- (d) The Parties agree that any adjudication application under the SOP Legislation must be made to the Authorised Nominating Authority or Prescribed Appointer.
- (e) Notwithstanding anything else in the Subcontract, the Subcontractor must immediately give the Contractor's Representative a copy of any notice the Subcontractor:
 - (i) receives from a Sub-subcontractor under the SOP Legislation; and
 - (ii) require that each Sub-subcontractor immediately give the Subcontractor and the Contractor's Representative a copy of any notice that the Subcontractor receives from another Party under the SOP Legislation.
- (f) If the Contractor becomes aware that a Sub-subcontractor is entitled to suspend the carrying out of work (which forms part of the Work Under Subcontract) under the SOP Legislation, the Contractor's Representative may, (at its absolute discretion) pay the Sub-subcontractor such money that is or may be owing to the Sub-subcontractor in respect of work forming part of the Work Under Subcontract and any amount paid by the Contractor under this clause 23.8 is recoverable from the Subcontractor as a debt due and payable to the Contractor.
- (g) The Subcontractor indemnifies the Contractor against all damage, expenses (including lawyers' fees and expenses on a solicitor/client basis), Losses (including financial Loss) or liability of any nature suffered or incurred by the Contractor arising out of:

A handwritten signature in black ink, appearing to be 'MUR' or similar, located in the bottom left corner of the page.

- (i) a suspension by a Sub-subcontractor of the carrying out of work (which forms part of the Work Under Subcontract) under the SOP Legislation; or
- (ii) a failure of the Subcontractor to comply with its obligations under this clause 23.8.

23.9 Payment of workers and subcontractors

- (a) If required by Item 30, the Subcontractor must give in respect of each Payment Claim reasonable documentary evidence demonstrating payment of all amounts due and payable to its Personnel, including a statutory declaration in the form set out in Appendix 8 (by a representative of the Subcontractor who is in a position to know the facts declared).
- (b) Documentary evidence, except where the Subcontract otherwise provides, must be to the Contractor's Representative's reasonable satisfaction. The Contractor may set-off, deduct or withhold moneys certified due and payable in respect of a Payment Claim until the Subcontractor complies with this clause 23.9.

23.10 Set-off

- (a) Without limiting any other right the Contractor may have under this Subcontract or otherwise at law, the Contractor may deduct or set-off from payments to the Subcontractor or any Security any amounts which:
 - (i) the Subcontractor must reimburse the Contractor or the Contractor's Related Entities;
 - (ii) the Contractor pays on the Subcontractor's behalf;
 - (iii) the Contractor incurs or will incur in connection with the exercise of Step In;
 - (iv) the Subcontractor owes to the Contractor or the Contractor's Related Entities; or
 - (v) the Contractor claims is owing to it or the Contractor's Related Entities,whether arising under or in connection with the Subcontract or otherwise.
- (b) The rights of the Contractor in this clause 23.10 are in addition to and not in limitation of any other rights which the Contractor or its Related Entities may have to set-off, counterclaim or withhold payment under this Subcontract or any other agreement between the Parties and their Related Entities.

24. Urgent Protection

- (a) The Contractor, Superintendent or Principal may, at their discretion, take any reasonable steps they deem necessary to protect the Work Under Subcontract, other property or people. If the Contractor proposes to take such steps, it will, if reasonably practical advise the Subcontractor prior to taking the steps.
- (b) If the steps should have been taken by the Subcontractor at its own cost, the Contractor's Representative will certify the cost incurred by the Contractor as due and payable from the Subcontractor to the Contractor.

25. Responsibility for and reinstatement of Work Under Subcontract

25.1 Responsibility

The Subcontractor's responsibility for the Work Under Subcontract is:

- (a) the care of the whole of the Work Under Subcontract, including Unfixed Items, from and including the date the Subcontractor commences the Work Under Subcontract to 4:00pm on the Date of Completion; and
- (b) for the care of incomplete parts of the Work Under Subcontract and items to be removed from the Site by the Subcontractor after 4:00pm on the Date of Completion until Completion of outstanding parts of the Works or compliance with the Subcontractor's other obligations generally.

25.2 Reinstatement of the Work Under Subcontract

- (a) The Subcontractor must take all proper and reasonable steps to protect from damage the Work Under Subcontract including any materials and equipment of the Contractor or of any of its agents or other subcontractors. If Loss or damage occurs to the Work Under Subcontract during the period the Subcontractor is responsible for its care, the Subcontractor must, at its cost, rectify and make good such Loss or damage.
- (b) If the Subcontractor fails or neglects to immediately commence making good such damage, and to diligently progress and complete repairs within a reasonable time as Directed by the Contractor or the Contractor's Representative, then the Contractor may make or cause to be made good such damage at the Subcontractor's expense and any costs incurred by the Contractor will be a debt due and payable by the Subcontractor to the Contractor.



- (c) If the Subcontractor commences any work, the Subcontractor is deemed to have accepted the previous work performed by or on behalf of the Contractor including by any other subcontractor and the Subcontractor is not entitled to make any Claim in respect of the previous work and the Subcontractor is liable for all costs incurred by the Contractor in making good any resulting Defects.

26. Risk and Indemnity

26.1 Indemnity for Damage to Persons and Property

- (a) The Subcontractor indemnifies the Contractor against:
- (i) Loss of or damage to property of the Principal, including existing property in or upon which the Works are being carried out;
 - (ii) Loss of or damage to property of the Contractor or to any third Party on the Site; and
 - (iii) claims by any person against the Principal or the Contractor in respect of personal injury, death or Loss of or damage to any property,
- in connection with the Work Under Subcontract or the Subcontract.
- (b) However, the indemnity in this clause 26.1 will be reduced proportionally to the extent that a wrongful act or omission of the Contractor, the Contractor's Representative or others for whom the Contractor (not being engaged by the Subcontractor) is responsible has caused or contributed to the injury, death, Loss or damage.

26.2 Proportionate Liability

- (a) To the extent permitted by Law, Proportionate Liability Legislation (or any equivalent statutory provision in any other state or territory or of the Commonwealth) is excluded in relation to all and any rights, obligations or Liabilities of any Party under this Subcontract whether such rights, obligations or Liabilities are sought to be enforced in contract, tort or otherwise.
- (b) If any of the provisions of Proportionate Liability Legislation are applied to any claim by the Contractor against the Subcontractor (whether in contract, tort or otherwise), the Subcontractor will indemnify the Contractor against any Loss which the Contractor is not able to recover from the Subcontractor because of the operation of Proportionate Liability Legislation.
- (c) Without limiting the above, the rights, obligations and Liabilities of the Contractor and the Subcontractor under this Subcontract with respect to proportionate liability are as specified in this Subcontract and not otherwise, whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

27. Insurance

27.1 Obligation to obtain and maintain Policies of Insurance

Before commencing the Works at the Site, the Subcontractor must effect the following policies of insurance in accordance with this clause 27.1:

- (a) where required by Item 31, a contract works insurance policy;
- (b) where required by Item 33, a public and products liability insurance policy;
- (c) where required by Item 34, a professional indemnity insurance policy;
- (d) where required by Item 42, an asbestos insurance policy;
- (e) a workers' compensation policy;
- (f) a motor vehicle liability insurance policy; and
- (g) where the Work Under Subcontract will be performed using construction plant and equipment, a construction plant and equipment insurance policy,

unless notified by the Contractor's Representative in writing that a specified policy is not required (which may include instances where the Principal or the Contractor hold policies of insurance which cover the Subcontractor).

27.2 Public Liability Insurance

- (a) If Item 33 states that the Subcontractor needs to effect a public liability insurance policy, that policy must:
- (i) name or otherwise identify the Principal, the Subcontractor and the Contractor as persons covered by the policy or to whom the insurance cover provided by the policy extends;

- (ii) cover the Principal, the Superintendent, the Contractor, the Contractor's Representative, the Subcontractor and all of the Subcontractor's Sub-subcontractors and consultants (**Insured Parties**) employed from time to time in relation to the Works, for the Insured Parties':
 - A. respective rights and interests;
 - B. liability to each other for Loss, Loss of use, or damage to property (other than damage to the Works) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy); and
 - C. liability to third Parties;
 - (iii) be for an amount in respect of any one occurrence not less than the sum stated in Item 35;
 - (iv) have a deductible of no more than the amount set out in Item 36; and
 - (v) be maintained for the duration of the Subcontract.
- (b) If Item 33 states that the Subcontractor does not have to effect a public liability insurance policy:
- (i) the Contractor must effect, or must ensure that the Principal effects, a policy of public and product liability insurance insuring against liabilities to third Parties. This insurance will be subject to the limits, exclusions, conditions, excesses and deductibles noted in the policy; and
 - (ii) the Subcontractor must:
 - A. satisfy itself as to the nature, extent and the terms of this insurance (and the Subcontractor is deemed to have done so);
 - B. if the Subcontractor considers prudent or appropriate, take out insurance to insure any risks not covered by the Contractor's or the Principal's insurance (as applicable) and cover any limits, exclusions, conditions, excesses or deductibles in that insurance;
 - C. if it makes a claim under the Contractor's or the Principal's insurance (as applicable), must comply with the claims procedures applicable to that insurance and keep the Contractor fully informed of any such claims;
 - D. to the extent responsible for the claim, bear the cost of any excesses and deductibles under the Contractor's or the Principal's insurance (as applicable) and be responsible for any Loss or damage not covered by the insurance; and
 - E. acknowledges and agrees that the Contractor does not warrant or make any representation or assume any duty of care with respect to, the adequacy, content or coverage of the Contractor's or the Principal's insurance (as applicable).

27.3 Worker's Compensation Insurance

- (a) The workers' compensation policy must:
 - (i) cover statutory and common law liability for death or injury to persons employed by the Subcontractor in connection with the performance of the Works; and
 - (ii) be maintained in accordance with Legislative Requirements.
- (b) The Subcontractor must ensure that:
 - (i) where permitted by law, the workers' compensation policy extends to provide indemnity to the Principal and the Contractor for their respective statutory liability to the Subcontractor's employees; and
 - (ii) each of its Personnel has or is covered by similar insurance.

27.4 Motor Vehicle Insurance

- (a) Before commencing the Work Under Subcontract, the Subcontractor must take out a policy of motor vehicle insurance. This policy must be maintained for the duration of the Subcontract and cover legal liability in respect of:
 - (i) injury to people; and
 - (ii) damage to property,arising out of the vehicles used by the Subcontractor in the performance of the Work Under Subcontract.

- (b) The policy of motor vehicle insurance must, in respect of any one occurrence, be for an amount not less than the sum stated in Item 37.

27.5 Contract Works Insurance

- (a) If Item 31 states that the Subcontractor is required to effect a contract works insurance policy, that policy must:
- (i) name or otherwise identify the Insured Parties as persons covered by the policy or to whom the insurance cover provided by the policy extends;
 - (ii) cover the respective rights and interests of the Insured Parties from time to time whenever engaged in the Work Under Subcontract;
 - (iii) cover the whole of the Work Under Subcontract for automatic reinstatement including goods, materials (including materials supplied by other Parties such as the Contractor and the Principal), plant and equipment stored off Site or in transit against Loss and damage resulting from any cause whatsoever;
 - (iv) cover the Insured Parties for all liability for Loss, Loss of use, or damage to the Works and other things that may be brought onto the Site by the Subcontractor for the purpose of carrying out the Works (but may exclude the cost of making good fair wear and tear or gradual deterioration);
 - (v) be for an amount not less than the replacement value of the Work Under Subcontract;
 - (vi) have a deductible of no more than the amount set out in Item 32; and
 - (vii) must be maintained until the Subcontractor ceases to be responsible for anything pursuant to clause 25.
- (b) If Item 31 states that the Subcontractor does not have to effect a contract works insurance policy:
- (i) the Contractor must effect, or must ensure that the Principal effects, a contract works insurance policy insuring against Loss or damage to the Work Under Subcontract. This insurance may also insure the Main Contract Works and will be subject to the limits, exclusions, conditions, excesses and deductibles noted in the policy; and
 - (ii) the Subcontractor must:
 - A. satisfy itself as to the nature, extent and the terms of this insurance (and the Subcontractor is deemed to have done so);
 - B. if the Subcontractor considers prudent or appropriate, take out insurance to insure any risks not covered by the Contractor's or the Principal's insurance (as applicable) and cover any limits, exclusions, conditions, excesses or deductibles in that insurance;
 - C. if it makes a claim under the Contractor's or the Principal's insurance (as applicable), must comply with the claims procedures applicable to that insurance and keep the Contractor fully informed of any such claims;
 - D. to the extent responsible for the claim, bear the cost of any excesses and deductibles under the Contractor's or the Principal's insurance (as applicable) and be responsible for any Loss or damage not covered by the insurance; and
 - E. acknowledges and agrees that the Contractor does not warrant or make any representation or assume any duty of care with respect to, the adequacy, content or coverage of the Contractor's or the Principal's insurance (as applicable).

27.6 Construction Plant and Equipment Insurance

Any construction plant and equipment insurance policy effected or maintained by the Subcontractor must:

- (a) be maintained for the duration of the Subcontract;
- (b) be for an amount or amounts not less than stated in Item 38; and
- (c) provide cover for:
 - (i) Loss of or damage to property;
 - (ii) death or injury to any person; and
 - (iii) Loss of or damage to construction plant and equipment.



27.7 Professional Indemnity Insurance

If required by Item 34, the Subcontractor must effect a policy of professional indemnity insurance to cover liability for breach of professional duty (whether owed in contract or otherwise) by the Subcontractor and its Personnel in performing the Work Under Subcontract. The insurance policy must:

- (a) provide cover of not less than the amount stated in Item 39 for any one claim and in the aggregate;
- (b) be maintained for the period set out in Item 40; and
- (c) have a deductible of no more than the amount set out in Item 41.

27.8 Asbestos Insurance

- (a) If required by Item 42 the Subcontractor must effect a policy of asbestos insurance that covers liability for exposure to asbestos by the Subcontractor's Personnel in performing the Work Under Subcontract. The insurance policy must:
 - (i) be maintained for the duration of the Subcontract; and
 - (ii) be for an amount not less than stated in Item 43.
- (b) Unless otherwise Directed by the Contractor, asbestos insurance shall be effected and maintained in accordance with clause 27.8(a) promptly after the Subcontractor has become aware of the presence of asbestos and before the commencement of any Works on Site involving asbestos.

27.9 General Insurance Requirements

- (a) All insurances effected by the Subcontractor must:
 - (i) be effected with a reputable insurer and on appropriate industry terms approved in writing by the Contractor's Representative (acting reasonably). An insurer will be deemed to be reputable where it has a Standard & Poor's claims paying ability rating of at least A- and has been approved by the Australian Prudential Regulation Authority; or
 - (ii) be with a self-insurance scheme approved in writing by the Contractor's Representative.

To the extent the insurance policy constitutes a "contract of general insurance" (for the purposes of section 48 of the *Insurance Contracts Act 1984* (Cth), it must name the Contractor as a third-Party beneficiary (for the purposes of section 48 of that Act).

27.10 Airside location

- (a) Not Applicable

27.11 Waiver of Subrogation and Cross Liability

The insurance policies required under this Subcontract:

- (a) to be effected in accordance with the Subcontract by the Subcontractor in joint names shall include a cross liability clause for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby);
- (b) must provide that any non-disclosure or failure to observe and fulfil the terms of the policy by one insured does not prejudice the right of any other insured to claim on the policy; and
- (c) shall include a requirement that the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured.

27.12 Deductibles

- (a) The Subcontractor is liable for and must pay all deductibles or excesses payable under a policy of insurance required to be effected or maintained under the Subcontract.
- (b) Where there is any other policy of insurance held by the Contractor or the Principal which responds to a claim caused or contributed to by the Subcontractor, then the Subcontractor will be liable for the payment of the deductible or excess to the extent that the Subcontractor caused or contributed to the claim, and if the Contractor pays the deductibles or excess directly to the insurer, those amounts will be a debt due and payable under the Subcontract.

28. Supply of Facilities and Equipment

- (a) The Contractor will provide adequate sanitary facilities, and water and any other services or facilities specified in Item 44. However, the Subcontractor is wholly responsible for:
- (i) the supply, delivery and hoisting of all its own materials;
 - (ii) the supply, erection and dismantling of scaffold (unless specifically provided otherwise elsewhere in this Subcontract);
 - (iii) its own temporary sheds located as Directed; and
 - (iv) all other services and facilities.
- (b) However, in the event that the Subcontractor is permitted to use any scaffolding, hoisting, plant or storage areas or other services or facilities belonging to or provided by the Contractor or any third Party, such use is on the express condition that no warranty or other liability on the part of the Contractor or of its other Sub-subcontractors will be created or implied in regard to the fitness, condition or suitability of the items provided. The Subcontractor releases and discharges the Contractor from any Claim against the Contractor in respect of the items, other services or facilities so provided or any failure to provide them.

29. Assignment and Subcontracting

- (a) The Subcontractor must not, without the Contractor's Representative's prior written approval (which may be on such terms as the Contractor's Representative deems appropriate), assign or subcontract the whole or any part of the Work Under Subcontract. The Subcontractor remains responsible and liable for the actions and omissions of its Personnel as if they were the acts or omissions of the Subcontractor.
- (b) Any permission to assign or sublet any part of the Subcontract or the Works will not discharge the Subcontractor from any liability under the Subcontract.
- (c) The Contractor may assign or novate its right, title and interest in the Subcontract to any third Party with the financial capacity and ability to complete the obligations under this Subcontract upon written notice to the Subcontractor.

30. Management, testing and notices**30.1 Supervision**

- (a) At all times whilst actually engaged on the Works the Subcontractor must have a competent and suitably qualified foreman or representative appointed to the position of Subcontractor's Representative. The Subcontractor's Representative must be authorised and able to take and carry out such Directions as may be given by the Contractor or the Contractor's Representative. The Subcontractor's Representative may be changed by written notice to the Contractor's Representative provided the Contractor's Representative raises no reasonable objection.
- (b) Matters within the knowledge of a foreman or representative of the Subcontractor, including the Subcontractor's Representative, will be deemed to be within the knowledge of the Subcontractor.

30.2 Key Personnel

- (a) The Subcontractor must:
- (i) not replace a Key Person other than in accordance with clause 30.2(b); and
 - (ii) in relation to Personnel engaged to perform the Work Under Subcontract, use its best endeavours to minimise turnover.
- (b) The Subcontractor may only replace a Key Person:
- (i) if the Contractor's Representative directs that the relevant person is to be removed from the Work Under Subcontract;
 - (ii) where the Subcontractor proposes that replacing the relevant person is best for the Project and the Contractor agrees; or
 - (iii) if the relevant person dies, becomes seriously ill, for serious and evidenced family reasons or resigns from the employment of the Subcontractor.
- (c) Where clause 30.2(b) applies, the Contractor's Representative may refuse a proposed Key Person replacement that lacks equivalent qualifications, skills and experience of the person being replaced. The Subcontractor remains liable for the performance of all Key Persons regardless of any approval of the Contractor's Representative.

- (d) The Subcontractor must pay the Contractor's reasonable additional induction and training costs associated with the replacement of any Key Personnel and general staff turnover.

30.3 Testing

- (a) The Contractor's Representative may direct that any of the Work Under Subcontract be tested. The Subcontractor will provide such assistance and samples and make accessible such part of the Work Under Subcontract as may be required. If necessary, on completion of the tests, the Subcontractor must make good the Work Under Subcontract so that it fully complies with the Subcontract.
- (b) The Subcontractor must ensure that any testing required to be carried out by an independent authority is carried out by an approved member of the National Association of Testing Authorities Australia (NATA).
- (c) The Subcontractor must at its cost perform all testing that:
 - (i) is required by the Subcontract; or
 - (ii) indicates the Work Under Subcontract does not comply with the Subcontract in any respect.

30.4 Service of Notices

A notice (and other documents) will be deemed to have been given and received:

- (a) if addressed or delivered to the relevant address Item 2 and Item 5 or last communicated in writing to the person giving the notice, on the earliest date of:
 - (i) actual receipt; or
 - (ii) six (6) Business Days after posting;
- (b) if a notice is delivered or sent in electronic form agreed in this contract (or any other electronic form agreed in writing between the Parties) after 5:00pm on any day or on a day that is not a Business Day, the notice will be deemed to have been received on the next Business Day;
- (c) if sent in accordance with clause 30.7, in accordance with clause 30.7(d); and
- (d) if sent in accordance with clause 30.5, in accordance with clause 30.5.

30.5 Email Notices

Notice (and other documents) transmitted by electronic mail (**Email**) to that Party's Email is treated as having been received when the sender's Email system generates a report indicating the sender's date, time and transmission to the recipient's Email address and the recipient did not receive an 'out of office' or 'undeliverable' notification. For the purpose of this clause 30.5, the address and Email address of a Party is the address and Email address which is specified in Items 2 and 5.

30.6 Notices

- (a) Unless Item 48 states that notices can be issued by Email, notices issued by Email do not constitute a valid notice under the Subcontract. If Item 48 states that notices can be issued by Email, each Party shall maintain an Email address throughout the performance of this Subcontract and notify the other Party of any change in its Email address.
- (b) In the Subcontract, notices include any Directions, requests, Payment Claims, certificates and other communications given under the Subcontract.

30.7 Project Communication Platform

- (a) This clause 30.7 applies if Item 49 identifies a Project Communication Platform that will be used.
- (b) The Subcontractor must use the Project Communication Platform in relation to this Subcontract, and unless Directed otherwise by the Contractor's Representative, must ensure that each of its Sub-subcontractors is required under its subcontract to use the Project Communication Platform in connection with the Work Under Subcontract.
- (c) The Parties must give any notice or Direction that the Party is entitled or required to give under the Subcontract to the other Party by lodging it through the Project Communication Platform.
- (d) A notice or Direction given in accordance with clause 30.7(a) is deemed to be in writing and delivered to the other Party on the later of when:
 - (i) the notice or Direction has been uploaded on the Project Communication Platform by the first Party; and

- (ii) the first Party has sent an Email to the other Party's Email address shown in Items 2 and 5 notifying it that the Direction has been uploaded on the Project Communication Platform.
- (e) Each Party must maintain an Email address throughout the performance of the Work Under Subcontract and notify the other Party of any change in its Email address.
- (f) Each Party shall register itself on the Project Communication Platform. The Subcontractor warrants that it has, and will (at its own cost) maintain the minimum software, hardware and other infrastructure required to operate the Project Communication Platform.
- (g) Subject to clause 31.2, to the extent permitted by law, as between the Subcontractor and Contractor, all data and information in relation to the Work Under Subcontract on the Project Communication Platform vests in the Contractor from its upload to the Project Communication Platform.

31. Intellectual Property

31.1 General

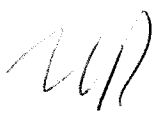
- (a) The Subcontractor warrants that, unless otherwise provided in the Subcontract, design, materials, documents and methods of working do not infringe the Intellectual Property Rights of any third Party.
- (b) The Subcontractor indemnifies the Contractor against all Losses, damages, liabilities, claims and expenses (including legal costs and defence or settlement costs) arising out of any infringement of any Intellectual Property Rights belonging to a third Party, by the execution of the Work Under Subcontract by the Subcontractor and its Personnel.
- (c) The Parties agree that other than as provided below in this clause 31, nothing in this Subcontract transfers ownership in, or otherwise grants any rights in relation to any Intellectual Property Rights of a Party.

31.2 Ownership of IP

- (a) The Parties agree that there may be Intellectual Property Rights in the Documents which vested in the Subcontractor prior to the date of this Subcontract (**Pre-Existing Subcontractor IP**).
- (b) The Subcontractor irrevocably assigns to the Contractor all Intellectual Property Rights (which are not Pre-Existing Subcontractor IP) in and to all Documents.
- (c) The Subcontractor irrevocably grants to the Contractor and its Related Entities a perpetual, transferable, non-exclusive, royalty free licence to use and exercise all of the Intellectual Property Rights in the Pre-Existing Subcontractor IP for any purpose in connection with the Main Contract Works or the Project.
- (d) The Subcontractor indemnifies the Principal, the Contractor and the officers, employees and agents of the Principal and the Contractor, against any damage, Loss, liability, cost, charge, expense, outgoing or payment suffered or incurred, arising out of or in connection with:
 - (i) the use of the Documents; or
 - (ii) the infringement of any Intellectual Property Right,by the Principal, the Contractor and their respective Related Entities, successors and assigns.

31.3 Moral Rights

- (a) The Subcontractor must not infringe or cause to be infringed the Moral Rights of any Author.
- (b) The Subcontractor warrants that it will procure upon request from the Contractor, from each Author, an executed Moral Rights Consent in the form at Appendix 13 (**Consent**) requiring that the Author will not enforce any Moral Rights that he or she may have, presently or in the future, in the Copyright Works.
- (c) The Subcontractor represents, warrants and promises that the Contractor, the Principal and each of their successors, assigns and licensees may:
 - (i) exercise any rights in relation to the Copyright Works, without identifying any person as the individual responsible for creating any particular material comprising the Copyright Works;
 - (ii) have the Copyright Works bear the name of the Principal or any other person associated with the Project; and
 - (iii) modify, alter, adapt, distort or otherwise change any of the Copyright Works as they deem fit in their discretion, including adaptation or translation into other dimensions, format or media of those Copyright Works and changing, relocating, demolishing or destroying any two- or three-



dimensional reproduction of those Copyright Works without notice to, or consultation with, the Author.

- (d) The Subcontractor must use its best endeavours to ensure that the Consent required by clause 31.3(c) is genuinely given and not obtained by duress or by the making of any false or misleading statement.
- (e) The Subcontractor indemnifies the Principal, the Contractor and the officers, employees and agents of the Principal and the Contractor, against any damage, Loss, liability, cost, charge, expense, outgoing or payment suffered or incurred, arising out of or in connection with the Subcontractor's breach of this clause 31.3.

32. Termination

32.1 Termination of the Main Contract

In the event that:

- (a) the Main Contract terminates or ends for any reason; or
- (b) under the Main Contract, work which includes some or all of the Works is taken out of the hands of the Contractor,

the Contractor may (in its absolute discretion):

- (c) by written notice to the Subcontractor, immediately terminate the Subcontract under:
 - (i) clause 32.2; or
 - (ii) if the termination or take out under the Main Contract is in any way attributable to an act or omission of the Subcontractor, clause 32.3(b)(ii) (in which case, a Substantial Breach shall be deemed to have occurred); or
- (d) Direct the Subcontractor to execute a deed of novation (which novates this Subcontract to the Principal or its nominee) in the form Directed by the Contractor's Representative within three (3) Business Days of the Contractor's Representative's Direction and without the Subcontractor being entitled to any Claim.

32.2 Termination for Convenience

- (a) The Contractor's Representative may on giving five (5) Business Days written notice to the Subcontractor terminate the Subcontract at any time and for any reason whatsoever. Subject to any right of set-off the Contractor may exercise, if the Subcontract is terminated in accordance with this clause, the Contractor's liability in respect of any Claim by the Subcontractor arising out of or in connection with such termination will be limited solely to those amounts listed in clause 32.2(b) below.
- (b) If the Subcontract is terminated under this clause the Contractor shall only be liable to pay to the Subcontractor:
 - (i) for work performed up to the date of termination;
 - (ii) to the extent that they are not included in amounts otherwise paid or payable to the Subcontractor:
 - A. the reasonable cost of plant, equipment, materials, goods, items and other things reasonably ordered by the Subcontractor for incorporation into the Works, which the Subcontractor is legally liable to accept, but only if:
 - I. the plant, equipment, materials, goods, items and other things are delivered to the Site (or other place as Directed), are adequately and indelibly labelled the property of the Contractor and are free from any claims and any liens, charges and other encumbrances; and
 - II. ownership passes to the Contractor upon their delivery to and acceptance by the Contractor; and
 - B. costs reasonably incurred by the Subcontractor in demobilisation.
- (c) Following a termination under this clause 32.2 any Security then held by the Contractor must be released to the Subcontractor.
- (d) Termination of the Subcontract under this clause 32.2 is without prejudice to any right or remedy of either Party that had accrued as at the date of termination.

32.3 Termination or Step In for cause

- (a) If the Subcontractor commits any breach of the Subcontract, the Contractor's Representative may give the Subcontractor a written notice to show cause. The notice must state:
- (i) that it is a notice under this clause 32.3;
 - (ii) the alleged breach;
 - (iii) that the Subcontractor is required to show cause why the Contractor should not exercise its right to terminate the Subcontract;
 - (iv) the date and time by which the Subcontractor must show cause, which must not be less than five (5) Business Days after the date of the notice; and
 - (v) the place at which cause must be shown.
- (b) If the Subcontractor:
- (i) does not show reasonable cause by the date and time required by a notice issued under clause 32.3(a);
 - (ii) commits a Substantial Breach; or
 - (iii) experiences an Insolvency Event,
- the Contractor may:
- (iv) either:
 - A. immediately Step In to perform (either itself or through others) the whole or any part of the remaining Works (**Step In**) and (provided that the Contractor is not prohibited from doing so under the Ipso Facto Laws) suspend payment until it becomes due and payable pursuant to clause 32.6; or
 - B. provided that the Contractor is not prohibited from doing so under the Ipso Facto Laws, terminate the Subcontract with immediate effect by written notice to the Subcontractor and suspend payment unless and until it becomes due and payable pursuant to clause 32.5,
- (c) If the Contractor Steps In, in addition to its rights under clause 32.4:
- (i) the Subcontractor must (at its cost):
 - A. not do anything to hinder, disrupt or prevent the Contractor from Stepping In or performing any part of the Works;
 - B. urgently provide all reasonable assistance and access to the Contractor to facilitate the Step In;
 - C. continue to perform any of the Work not subject to Step In in accordance with the Subcontract; and
 - (ii) the Contractor may, in its absolute discretion (and with no obligation to do so for the benefit of the Subcontractor) by further written notice:
 - A. end the Step In, in which case the Subcontractor must continue to perform its obligations under the Subcontract and the Contractor will give reasonable assistance to the Subcontractor to ensure that the process of transition is effected smoothly;
 - B. end the Step In and exercise its right of immediate termination under clause 32.3(b)(iv)B; or
 - C. expand the Step In to the whole or any additional part of the Works not then subject to Step In.
- (d) The Contractor shall be entitled to set-off any amount which it incurs or will incur in connection with the exercise of a Step In.

32.4 Contractor's Rights

- (a) If the Contractor exercises any of its rights under clause 32.3(b), the Contractor may:
- (i) use materials, equipment, Documents and other things intended for the Work Under Subcontract; and



- (ii) without payment or compensation to the Subcontractor:
 - A. take possession of, and use such of the equipment, materials, Documents and other things as were being used by the Subcontractor; and
 - B. contract with the Subcontractor's Sub-subcontractors and consultants, as reasonably required by the Contractor to facilitate completion of the Work Under Subcontract.

- (b) If the Contractor takes possession of the equipment, materials or other things, the Contractor will maintain them and, subject to clause 32.6, on completion of the Work, shall return them as are surplus.

32.5 Subcontractor's entitlement following termination for cause

- (a) Without prejudice to any of the Contractor's other rights under the Subcontract or otherwise:
 - (i) following completion of the Main Contract Works, as the Subcontractor's sole and exclusive entitlement to payment following a termination under clause 32.3, the Subcontractor will be entitled to be paid an amount (if any) calculated as follows:

$$T = A + B - C$$

Where:

T = termination amount payable (if any).

A = the Subcontract value of Works completed but not paid for prior to the date of termination, assuming the Subcontractor had made a Payment Claim on the date of termination.

B = the reasonable cost of plant, equipment, materials, goods, items and other things reasonably ordered by the Subcontractor for incorporation into the Works, which the Subcontractor is legally liable to accept, but only if:

- i. the plant, equipment, materials, goods, items and other things are delivered to the Site (or other place as Directed), are adequately and indelibly labelled the property of the Contractor and are free from any claims and any liens, charges and other encumbrances; and
- ii. ownership passes to the Contractor upon delivery to and acceptance by the Contractor.

C = any and all liability of the Subcontractor to the Contractor arising out or in connection with the termination, the Subcontract or the Project.

- (b) within a reasonable time following completion of the Main Contract Works, the Contractor's Representative must assess whether any amount is payable to the Subcontractor or the Contractor under clause 32.5(a)(i) and issue its assessment to the Subcontractor; and
- (c) within 10 Business Days following receipt of the Contractor's Representative's assessment under 32.5(b), the Subcontractor must issue a Final Claim which will be payable in accordance with and subject to clause 23.

32.6 Rights following termination or Step In

If under clause 32.3 the Contractor:

- (a) exercises Step In; or
- (b) terminates the Subcontract,

and the costs incurred by the Contractor in connection with the termination or exercise of Step In (as the case may be), the completion of the Works and/or the Step In are greater than the amount that would have otherwise been payable to the Subcontractor under the Subcontract, the difference will be a debt due and payable from the Subcontractor to the Contractor.

If the Subcontractor is indebted to the Contractor, the Contractor may retain any equipment, materials or other things taken under clause 32.4 until the debt is satisfied.

32.7 General rights after Termination or Step In

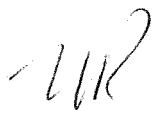
- (a) The Contractor may itself or by engaging others carry out any work or services which would have been performed by the Subcontractor but for the termination or Step In (as the case may be) and the Subcontractor shall have no Claim or entitlement in connection with the Contractor doing so.
- (b) Following termination, the Subcontractor must comply with all reasonable directions given by the Contractor relating to the cessation of the Work Under Subcontract, the handover of the Works (whether or not completed) and demobilisation from the Site. The Contractor will not be liable for, and the Subcontractor releases and discharges the Contractor from any liability, Losses, costs, expenses or damage in connection with the termination of the Subcontract or Step In under this clause 32 other than that expressly provided under this clause 32.

33. Subcontractor's employees and Sub-subcontractors

- (a) The Contractor's Representative may, at its sole discretion, Direct the Subcontractor to remove from the Site or from any activity connected with the Work Under Subcontract, any Personnel who, in the opinion of the Contractor's Representative, is guilty of misconduct, is incompetent or negligent or is otherwise interfering with the orderly progress of the Work Under Subcontract or other work at the Site.
- (b) The Subcontractor must comply with a Direction made by the Contractor's Representative under this clause 33 within the time specified by the Contractor's Representative.
- (c) Unless stated otherwise or the context requires otherwise, references to the Subcontractor will be deemed to include references to the Subcontractor's Personnel.
- (d) The Subcontractor must not without the written approval of the Contractor's Representative subcontract any of the Work Under Subcontract. Notwithstanding the engagement of any Sub-subcontractors, the Subcontractor remains wholly responsible for the carrying out of the Work Under Subcontract.
- (e) The Subcontractor must:
 - (i) comply, including providing assistance and documentation where required, with the Contractor's pre-award evaluation process and ensure that the evaluation remains current at all times during the performance of the Work Under Subcontract; and
 - (ii) ensure, unless agreed by the Contractor's Representative in writing, that the Subcontractor is working entirely under their own systems. The Subcontractor must also ensure (at its own cost):
 - A. all Personnel who are required to access the Site:
 - I. register details with BMD's Contractor Management System (**CMS**);
 - II. have completed a functional capacity evaluation to the minimum required standard;
 - III. have completed a clean drug and alcohol screen;
 - IV. have completed all required BMD Online Training (**BOLT**) modules; and
 - V. have uploaded confirmation of tickets and other qualifications; and
 - B. any plant to be used on Site has been recorded in the Plant Assessor Portal and has a current plant risk assessment completed, unless advised by the Contractor's Representative that this is not required.

34. Defects Liability Period

- (a) The Defects Liability Period will commence at 4:00pm on the Date of Completion and will be in place for the period or until the time identified in Item 46.
- (b) The Subcontractor must carry out rectification of Defects:
 - (i) at times and in a manner causing as little inconvenience to the occupants or users of the Works as is reasonably possible; and
 - (ii) in accordance with all Directions.
- (c) As soon as possible after the Date of Completion, the Subcontractor must rectify all Defects existing at the Date of Completion.



- (d) At any time prior to the expiry of the Defects Liability Period, the Contractor's Representative may Direct the Subcontractor to rectify a Defect. The Direction must identify the Defect and may state dates for commencement and completion of rectification of the Defect.
- (e) A further 12 months Defects Liability Period will apply to any Defect rectification work carried out during the Defects Liability Period. This further Defects Liability Period commences from the date the Contractor's Representative provides written notice to the Subcontractor that the Defect has been satisfactorily rectified.
- (f) If rectification of any Defect is not commenced or completed by the dates stated in the Contractor's Representative's Direction, the Contractor may itself or through others carry out the rectification and all costs, Loss or damage suffered or incurred by the Contractor will be a debt due and payable by the Subcontractor to the Contractor.

35. Industrial Relations

- (a) The Subcontractor is responsible for the employee relations with its workforce and the workforce of any of its Sub-subcontractors.
- (b) The Subcontractor will immediately notify the Contractor's Representative of any industrial action or dispute or potential industrial action or dispute affecting the Subcontractor's workforce or the workforce of any of its Sub-subcontractors.
- (c) The Subcontractor will immediately notify the Contractor's Representative of any request for entry into the Site by an employee or official of an industrial association. Further, if any employee or official of an industrial association is on the Subcontractor's work area site the Subcontractor will immediately notify the Contractor's Representative.

36. Confidentiality

Documents and other information supplied by the Contractor or the Principal must be regarded as confidential and must not be disclosed to a third Party except:

- (a) with the prior written consent of the Contractor's Representative;
- (b) where the Subcontractor is required to do so by Legislative Requirements or court order;
- (c) where the Subcontractor is required to by stock exchange; or
- (d) for the express purpose of seeking professional advice and that disclosure is necessary for that advice.

All video or photography is banned on the Site unless approved by the Contractor's Representative.

The Subcontractor indemnifies the Contractor against all Losses, damages, liabilities, claims and expenses (including legal costs and defence or settlement costs on a solicitor client basis) arising out of any breach of this clause 36.

37. Dispute Resolution

37.1 Identification and Notice

If there is a Dispute between the Parties, either Party may issue a notice under this clause 37.1 (**Notice of Dispute**) which must:

- (a) be in writing;
- (b) note that it is made under this clause 37.1;
- (c) adequately identify and provide details of the Dispute (if applicable) and other facts on which the Dispute is based; and
- (d) adequately specify that, if relevant, the Subcontractor proposes to make a Claim and identify in detail the legal basis of the Claim (identifying the specific term or terms of the Subcontract) and details of any amount of money claimed and how it has been calculated.

37.2 Consolidation of disputes

- (a) If requested by the Contractor's Representative, the Subcontractor must co-operate with the Contractor regarding the consolidation of the dispute process (including timing) or proceedings with those involving other Parties (including the Principal) in relation to similar matters or issues.
- (b) This may include a requirement from the Contractor that any Dispute be consolidated into a dispute under the Main Contract and be regulated in accordance with the provisions of the Main Contract.

37.3 Dispute Resolution Process

- (a) Within 10 Business Days of service of a Notice of Dispute, the Parties must confer at least once to attempt to resolve the Dispute. At all such conferences each Party must be represented by a person with authority to agree to a resolution of the Dispute.
- (b) If the Dispute has not been resolved within 20 Business Days of service of the Notice of Dispute, the Contractor and Subcontractor must confer within a further five (5) Business Days to ascertain whether they agree that the Dispute will first be subject to an alternative dispute resolution process (such as conciliation, mediation, expert appraisal, or expert determination or such other alternative dispute resolution process as may be appropriate in the circumstances of the dispute) and, if they so agree, the Dispute will be referred to such process.
- (c) If the Contractor and the Subcontractor do not agree to refer the Dispute to an alternative dispute resolution process and if the Dispute has not been resolved within 25 Business Days of service of the Notice of Dispute, the Dispute must be referred to mediation (**Mediation Referral Date**). Should the Dispute be referred to mediation, the Parties agree that:
- (i) a mediator is to be appointed by agreement between the Parties or, failing such agreement, within 10 Business Days of the referral to mediation, the mediator is to be appointed by the Authorised Nominating Authority or Prescribed Appointer;
 - (ii) each Party must bear its own costs for the mediation save that the Parties must share equally the mediator's fees;
 - (iii) each Party may be legally represented at the mediation if they so wish; and
 - (iv) the mediation will be conducted on a without prejudice basis and complete confidentiality must be preserved in respect of the mediation and any documents and information used at or in relation to the mediation.
- (d) If the Dispute has not been resolved within 30 Business Days of the Mediation Referral Date, either Party may commence litigation.
- (e) Nothing in this clause 37 will prejudice the right of either Party to seek injunctive or urgent declaratory relief.

37.4 Bar to Claim

- (a) To the extent not prohibited by Legislative Requirements, if there is a Dispute, then the Subcontractor must serve the Notice of Dispute within 10 Business Days of first becoming aware of the Dispute arising. If the Subcontract fails to serve a Notice of Dispute strictly in accordance with clause 37.1 and this clause 37.4:
- (i) the Contractor will not be liable for any Claim by the Subcontractor and the Subcontractor will be absolutely barred from making any Claim against the Contractor arising out of or in connection with the Dispute; and
 - (ii) any relevant determination or valuation of the Contractor will be final and binding on the Subcontractor and not subject to any further dispute under this clause 37 or otherwise.

37.5 Continue to perform

Notwithstanding the existence of a Dispute, the Subcontractor must continue to perform the Work Under Subcontract.

38. Not Used**38.1 Not Used****38.2 Not Used****39. GST and Taxation****39.1 GST**

Each Party acknowledges and agrees that:

- (a) at the time of entering into the Subcontract, it is registered for GST;
- (b) it will promptly provide written evidence of its GST registration if so requested by the other Party; and
- (c) it will promptly notify the other Party in writing if it ceases to be registered for GST.

NR

In respect of payments to be calculated under or in connection with the Subcontract:

- (d) when calculating the amount payable or other consideration to be provided for a supply, the amounts used in the calculation will exclude any GST component; and
- (e) if the Subcontract Price is increased or reduced by an amount calculated by reference to a Loss, cost or expense incurred by a Party, then the amount will be reduced by any input tax credit to which that Party is entitled in respect of that Loss, cost or expense.

For each supply made by a Party (**Supplier**) under or in connection with the Subcontract on which GST is imposed:

- (f) the consideration payable or to be provided for that supply will be increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST; and
- (g) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided,

subject to a valid tax invoice being provided in respect of the GST exclusive consideration.

39.2 Taxation

Unless otherwise expressly provided in this Subcontract, the Subcontractor must pay all taxes due in connection with the Subcontract.

The Subcontractor acknowledges and agrees that it will be liable for and has made adequate allowance in the Subcontract Price for:

- (a) all taxes other than GST;
- (b) all costs relating to currency exchange rate variations;
- (c) all duties including, stamp duty, customs duty and import duty; and
- (d) all costs relating to the imposition of any new taxes, duties or the like, or a change in any of them.

40. Release

- (a) The Contractor will not be liable to the Subcontractor and the Subcontractor agrees that it will be deemed to be barred from making any Claim (and releases and discharges the Contractor from any Claim) or commencing any action, proceeding, application or similar:

- (i) in respect of a matter or circumstances in connection with:
 - A. a breach of the Subcontract by the Contractor;
 - B. the subject matter of the Subcontract; or
 - C. any Direction by the Contractor or the Contractor's Representative; or
- (ii) to the extent there is no other express timeframe in the Subcontract applicable to the Claim or proposed claim, in respect of a Claim or proposed Claim by the Subcontractor:
 - A. under or in connection with the Subcontract;
 - B. for any payment under the Subcontract;
 - C. for any valuation or other determination made by the Contractor or the Contractor's Representative under the Subcontract;
 - D. for damages for negligence or any other tort;
 - E. for damages or any other remedy under any statute; or
 - F. for quantum meruit or for restitution or based on unjust enrichment,

unless within 10 Business Days after the first day upon which the Subcontractor could reasonably have been aware of the matter at issue or the circumstances of the Claim the Subcontractor has submitted a prescribed notice to the Contractor.

- (b) A prescribed notice is a notice titled "Prescribed Notice" which includes particulars of all of the following:
 - (i) states that it is made under this clause 40 of the Subcontract;

- (ii) the breach, act, omission, Direction, approval or other circumstance or event on which the claim is or will be based;
 - (iii) the provision of the Subcontract or other basis for the claim or proposed claim;
 - (iv) the quantum or likely quantum of the claim; and
 - (v) any measures taken by the Contractor to reduce the impact of the circumstance or event on which the claim is based.
- (c) Upon the expiry of five (5) Business Days from the receipt of the Final Certificate, the Subcontractor will be barred from making any Claim against the Contractor unless the Subcontractor has signed and provided to the Contractor the Subcontractor's Deed of Release in the form set out in Appendix 12 and identified the Dispute or the Claim as an Excepted Matter in the Schedule of the Deed of Release.

41. Security Interests

41.1 Application of clause

This clause 41 applies to the extent that the Subcontract (or a transaction related to it) constitutes or creates a security interest in favour of the Contractor for the purposes of the *Personal Property Securities Act 2009* (Cth) (PPSA).

41.2 Interpretation

Unless inconsistent with another provision of the Subcontract or the context otherwise requires, any term in this clause 41 which is defined in the PPSA shall be construed in accordance with that definition.

41.3 Registration of security interest

The Subcontractor agrees to promptly at its cost do anything (including amending the Subcontract or executing any new document) which the Contractor reasonably requires for the purposes of:

- (a) ensuring that the Contractor's security interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective under the PPSA;
- (b) enabling the Contractor to gain first priority (or any other priority agreed to by the Contractor in writing) for its security interest; and
- (c) enabling the Contractor to exercise rights in connection with the security interest.

41.4 Costs of registration etc.

The Contractor shall bear all its own costs and expenses incurred or payable in effecting, maintaining or releasing any registration or other document or process in respect of any security interest.

41.5 Waiver of verification statement

The Subcontractor waives its rights under section 157 of the PPSA to receive a copy of a verification statement in relation to registration events, where the collateral is described in the registration as commercial property.

41.6 Contracting out

To the extent that Chapter 4 of the PPSA applies to any security interest in respect of the Subcontract (or a transaction related to it), the Parties contract out of PPSA sections 95, 96, 117, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142, and 143.

41.7 Subcontract not to disclose information

The Parties agree not to disclose information of the kind that can be requested under section 275(1) of the PPSA.

42. General

42.1 Severance

If any provision of the Subcontract is or becomes illegal, invalid, unenforceable or void in a particular jurisdiction, the legality, validity and enforceability of the Subcontract will not be affected (unless the Subcontract is rendered incapable of operation in the absence of such provision) and the Subcontract will be read as if the part had been deleted in that jurisdiction only.

42.2 Survival of Subcontract

- (a) The warranties, indemnities and covenants in the Subcontract are continuing, separate and independent obligations and will survive termination or the end of the Subcontract.

- (b) The following clauses survive completion, expiry or termination of the Subcontract 2 (Definitions), 3 (Interpretation), 9.2 (Recourse to Security), 9.3 (Release of Security), 17.2(c) (Environmental Indemnity), 17.9(e) (Building Product Legislation Indemnity), 23.8 (Security of Payments), 23.10 (Set-off), 26 (Risk and Indemnity), 31 (Intellectual Property), 32 (Termination), 36 (Confidentiality), 37 (Dispute Resolution), 41 (Security Interests) and this 42.2 (Survival of Subcontract) and Appendix 9.
- (c) Nothing in this clause 42.2 prevents any other provision of the Subcontract, as a matter of interpretation, also surviving the completion of the Subcontract and any termination of the Subcontract.

42.3 Amendment of the Subcontract

An amendment or variation to, or waiver under, the Subcontract is not effective unless it is in writing and signed by both Parties.

42.4 Counterparts

The Subcontract may be executed in counterparts. The executed counterparts together constitute one contract and each executed counterpart constitutes an original of the Subcontract.

42.5 Entire Subcontract

- (a) This Subcontract applies to the execution of the Work Under Subcontract whether executed before, on or after the date of this Subcontract.
- (b) Except where expressly provided otherwise in the Subcontract, the Subcontract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.
- (c) The Subcontractor acknowledges and agrees that it has not entered into the Subcontract in reliance on, or as a result of any statement or conduct by the Contractor of any kind (including without limitation, any representation, warranty, advice or undertaking).
- (d) The Subcontractor's quotes, tender or proposal (as the case may be) will not form part of this Subcontract and nothing in its tender will limit, reduce or in any way modify the obligations of the Parties set out in this Subcontract.
- (e) Any invoice issued by the Subcontractor, whether under this Subcontract, in relation to the Work Under Subcontract or otherwise, will not form part of this Subcontract and under no circumstances will any invoice issued by the Subcontractor limit, reduce or in any way modify the terms of this Subcontract.

42.6 Waiver

- (a) The failure of a Party at any time to require full or partial performance of any provision of the Subcontract will not affect in any way the full right of that Party to require that performance of that provision subsequently.
- (b) The waiver by any Party of a breach of a provision of the Subcontract will not be deemed a waiver of all or part of that provision or of any provision or of the right of that Party to avail itself of its rights subsequently.

42.7 Ethical Business Practices

- (a) The Subcontractor must not, and must ensure that any of its Personnel do not, commit any Corrupt Conduct.
- (b) The Subcontractor indemnifies the Contractor for any Loss or damage arising out of or in connection with a breach of this clause 42.7

42.8 Local Industry Participation

The Subcontractor must:

- (a) maximise local industry participation in the performance of the Work Under Subcontract; and
- (b) whenever requested by the Contractor, report on local industry participation in a level of detail and in a form reasonably requested by the Contractor.

43. Modern Slavery

43.1 Subcontractor's warranties

- (a) The Subcontractor warrants that at the Date for Commencement and until the Date of/for Completion/for the Term of the Contract:

- (i) the information provided by it under this clause is true and not false or misleading in a material particular at the time it is provided to the Contractor;
 - (ii) its direct conduct (as opposed to the conduct of its supply chain) under this Contract shall not constitute Modern Slavery;
 - (iii) the Subcontractor if it becomes aware that Modern Slavery is taking place in its operations and/or supply chains will notify the Contractor;
 - (iv) it has put in place reasonable processes, procedures, investigations and compliance systems and has taken (and will continue to take) reasonable actions and investigations to ensure that the warranties made in this clause 43.1 are valid and will continue to be valid at all times until the Date of/for Completion/cessation of the Term of the Contract.
- (b) The Subcontractor must procure from the Subcontractor's Associates identical warranties as contained under this subclause, to the reasonable satisfaction of the Contractor.

43.2 Subcontractor's Obligations

Without limiting the operation of any other clause in this Contract, the Subcontractor must, from the commencement of this Contract and until the termination of this Contract:

- (a) provide information as requested by the Contractor from time to time and which is reasonably required by the Contractor to comply with its obligations under Modern Slavery Law; and
- (b) procure from the Subcontractor's Associates contractual obligations similar to those contained in this subclause, to the reasonable satisfaction of the Contractor.

43.3 Audits

The Subcontractor must provide all reasonable assistance and do all things reasonably required by the Contractor to enable the Contractor, or any person engaged by the Contractor, to undertake any audit, checks or observations of the Subcontractor or the Subcontractor's Associates in connection with this Contract, for the purpose of validating the Subcontractor's compliance with this clause 43. This assistance includes without limitation providing:

- (a) access to all necessary information held by the Subcontractor and/or the Subcontractor's Associates;
- (b) entry to the premises of the Subcontractor and/or the Subcontractor's Associates without prior notice; and
- (c) access to speak freely, without interference from or in the presence of any representative of the Subcontractor or the Subcontractor's Associates, with any person employed, contracted or otherwise engaged by the Subcontractor and/or the Subcontractor's Associates in connection with this Contract, whether or not they are located at the premises referred to in paragraph (b).

43.4 Protection of disclosing persons

Notwithstanding the operation of any other provision of this Contract, the Subcontractor must not, and must procure to the reasonable satisfaction of the Contractor that the Subcontractor's Associates must not, take Adverse Action against any person employed, contracted or otherwise engaged by the Subcontractor and/or the Subcontractor's Associates or any other third party due to their disclosure of information in good faith for the purpose of this clause 43.

43.5 Non-compliance

In its absolute discretion, the Contractor may consider a breach of this clause 43 reason to terminate the Contract under clause 32.2 or a Substantial Breach under clause 32.3.



Appendix 1 – Schedule of Items

This Appendix is part of the Subcontract and must be interpreted in accordance with the order of precedence set out in Item 23 of this Appendix 1.

Item Number	Description	Details
1.	Contractor	BMD CONSTRUCTIONS PTY LTD - ABN 59 010 126 100
2.	Contractor's Contact Details	Address: 1 Sandpiper Avenue Port of Brisbane Qld 4178 Email: 141-4239-mailbox@bmd.com.au
3.	Contractor's Representative (clause 16)	Name: Matthew Richardson Email: Matthew.Richardson@bmd.com.au
4.	Subcontractor	Name: HVAC AUSTRALIA PTY LTD ABN: 15 102 771 817
5.	Subcontractor's Contact Details	Address: 50 RIVER RD REDBANK QLD 4300 Email: Miguel.Adam@hvac.com.au
6.	Subcontractor's Representative (clause 30.1)	Miguel Adam
7.	Principal (clause 2)	DEPT OF TRANSPORT AND MAIN ROADS
8.	Superintendent (clause 2)	JACOBS
9.	Project (clause 2)	DECEPTION BAY RD INTERCHANGE
10.	Subcontract Price (clause 2)	Subcontract Type: Schedule of Rates only Refer Appendix 6 Total Subcontract Value: The Sum of the Scheduled Rates multiplied by quantities approved by the Contractor
11.	Jurisdiction (the State or Territory where the Works are located)	QLD
12.	Date for Commencement (clause 5)	18/05/2021
13.	Date for Completion / Period of time for Completion (clause 5)	09/08/2022
14.	Excusable Delays (clause 2)	Nil



Item Number	Description	Details
15.	Limits of accuracy (clause 6.2)	Not Applicable
16.	Subcontractor has design obligations (clause 7)	No
17.	Parts of the Work Under Subcontract which the Subcontractor must design (clause 7)	Not Applicable
18.	Number of originals and copies of design documents to be provided to the Contractor (clause 7)	Not Applicable
19.	Form of Security (clause 9)	Cash Retention
20.	Amount of Security (clause 9)	5% of each Payment Claim until 5% of the contract value is held. An additional 5% cash retention is to be held on all materials (to be released upon delivery of materials to site)
21.	Does the Subcontractor need to carry out investigations to verify services locations (clause 11.4(c))	No
22.	Building Code (clause 10.1(f))	Not Applicable
23.	Documents forming the Subcontract (in order of precedence)	(a) Main Contract requirements set out Appendix 11 to the Subcontract; (b) this Appendix 1 to the Subcontract; (c) Special Conditions of Subcontract, attached as Appendix 3 to the Subcontract; (d) the General Conditions of Subcontract; (e) Scope of Works, attached as Appendix 4 to the Subcontract; (f) Subcontract Price Breakdown / Schedule of Rates, attached as Appendix 6 to the Subcontract; (g) any Contractor's Management Plans set out in Appendix 7; (h) the Contractor's Safety Policy; (i) Approved form of Unconditional Undertaking, attached as Appendix 10; (j) applicable requirements under Appendix 9; (k) if Item 25 states so, the Bill of Quantities; (l) all other Appendices
24.	Whether the Subcontractor is obliged to provide	Yes



Item Number	Description	Details
	Emissions and Energy Data to Contractor (clause 17.7)	
25.	Bill of Quantities forms a part of the Subcontract (clause 6.2)	Yes
26.	Time for submission of EOT claim (clause 19.2(a)(ii))	10 Business Days
27.	Day of each calendar month on which Payment Claims must be submitted (clause 23.1)	25th day of each month
28.	Period in which the Contractor will pay amounts owing to the Subcontractor pursuant to a Payment Schedule (clause 23.2)	60 calendar days from end of month
29.	Unfixed Plant and Materials for which the Contractor will pay the Subcontractor (clause 23.4)	Nil
30.	Whether a Statutory Declaration is required (clause 23.9)	Yes, a Statutory Declaration is required.
31.	Whether the Subcontractor is required to maintain contract works insurance (clause 27.1(a))	Yes, Subcontractor is required to maintain contract works insurance
32.	Maximum contract works insurance deductibles amount (clause 27.5)	a. Major Perils - \$300,000.00 b. LEG3 - \$300,000.00 c. All Others - \$50,000.00
33.	Whether the Subcontractor is required to maintain public and products liability insurance policy (clause 27.1(b))	Yes, Subcontractor is required to maintain public and products liability insurance
34.	Whether the Subcontractor is required to maintain a professional indemnity insurance policy (clause 27.1(c))	No, Subcontractor is not required to maintain professional indemnity insurance

Item Number	Description	Details		
35.	The amount of public liability insurance must not be less than (clause 27.2)	\$20,000,000.00 per occurrence.		
36.	Maximum public liability insurance deductibles amount (clause 27.2)	a. Worker to Worker - \$250,000.00 b. All others - \$100,000.00		
37.	The amount of motor vehicle insurance must not be less than (clause 27.4)	\$20,000,000.00 per occurrence		
38.	The amount of construction plant and equipment insurance must not be less than for any one occurrence (clause 27.6(b))	\$10,000,000.00 per occurrence in respect of clauses 27.6(c)(i) and 27.6(c)(ii) and the market value of the construction plant and equipment in accordance with 27.6(c)(iii)		
39.	Professional Indemnity Insurance amount (clause 27.7))	Not Applicable		
40.	Professional Indemnity Insurance period of cover (clause 27.7)	Not Applicable		
41.	Maximum Professional Indemnity insurance deductibles amount (clause 27.7)	Not Applicable		
42.	Whether the Subcontractor is required to maintain a asbestos insurance policy (clause 27.1(d))	No		
43.	The amount of asbestos insurance must not be less than (clause 27.8)	Not Applicable		
44.	Facilities and Equipment to be provided by the Contractor (clause 28)	nil		
45.	Key Persons (clause 30.2)	Name	Role	Period of Engagement

Item Number	Description	Details
46.	Defects Liability Period (clause 34)	the later of: (a) 12 calendar months after the date of issue of the Certificate of Completion; (b) where there are Separable Portions, 12 calendar months after the Date of Completion of the last Separable Portion to be completed; The Defects Liability Period will be in place for the period or until the time specified here.
47.	Percentage for profit and overheads (clause 21.4)	10%
48.	Will Emails be used for Notices (clause 30.6)	No
49.	Will a project Communication Platform be used on the project (clause 30.7)	Not Applicable
50.	Will DocuSign be used on the project for execution of the Subcontract (clause 4.1)	No



Appendix 2 – Separable Portions

(clause 2 and 15)

Separable Portion	Subcontract Price	Date for Completion	Security	Liquidated damages*
Gantry C-05	\$57,459.00	23 August 2021	Cash retention 2 x 2.5% (additional 5% for materials to be returned upon delivery to site)	\$2000 per day
Gantry C-01	\$32,468.00	19 July 2021	Cash retention 2 x 2.5% (additional 5% for materials to be returned upon delivery to site)	\$2000 per day
Gantry C-02	\$55,294.00	11 November 2021	Cash retention 2 x 2.5% (additional 5% for materials to be returned upon delivery to site)	\$2000 per day
Gantry OH-01	\$147,012.00	2 September 2021 (night shift)	Cash retention 2 x 2.5% (additional 5% for materials to be returned upon delivery to site)	\$2000 per day
Gantry C-04	\$53,785.00	21 January 2022	Cash retention 2 x 2.5% (additional 5% for materials to be returned upon delivery to site)	\$2000 per day
Gantry C-03	\$55,067.00	9 August 2022	Cash retention 2 x 2.5% (additional 5% for materials to be returned upon delivery to site)	\$2000 per day

*Liquidated damages capped at 5% of total contract value



Appendix 3 – Special Conditions of Subcontract

This Appendix is part of the Subcontract and must be interpreted in accordance with the order of precedence set out in Item 23 of Appendix 1.

(1) Site Location

The site office and main amenities are located at the site compound off 1 Arthur Drewett Drive, Burpengary. The Subcontractor has inspected and familiarised himself with the site location and the site-specific conditions and has taken this into account at the time the tender price was agreed with Contractor.

Contacts for the project are:

Gary Grant (Site Superintendent)	0419 782 367
Dean Searle (Foreman)	0408 402 968
Katie ODonoghue (Senior Project Engineer)	0467 734 254
Madeline Walkington (Project Engineer)	0409 627 796
James Carroll (Site Engineer)	0429 150 734

(2) Inductions

The Subcontractor shall provide experienced personnel/operators capable of undertaking the works described.

Admittance to site will be provided upon completion of the following induction requirements:

- a) Where the Subcontractor is not required to undertake work whilst on site, the Subcontractor shall undertake a Visitor Induction and be escorted at all times whilst on site by a person who is fully inducted to site; or
- b) Where the Subcontractor is required to undertake work whilst on site, but not expecting to undertake further work on additional site visits, the Subcontractor shall undertake a short term induction and be escorted by a fully inducted person whilst on site; or
- c) Where the Subcontractor is required to undertake work on site on multiple occasions, a full project induction shall be undertaken.

Any work undertaken on site shall be undertaken in accordance with a relevant Safe Work Method Statement approved by the Contractor.

Site inductions will be presented at the Contractors site office and will be approximately 2 hours in duration. Inductions will only be undertaken at pre-scheduled times, as advised by the Contractor. The Contractor may elect to run special one-off inductions for large groups of the subcontractor's personnel upon request.

Attendees will be required to present the following documents upon induction:

- a) Blue or White Card (Construction Industry);
- b) Drivers Licence;
- c) Plant Licence or Recognised Training Certificate for any plant they shall operate;
- d) Verification of Competency for any plant they shall operate;
- e) Plant Risk Assessment for any plant they shall operate;
- f) If completing high risk work their High Risk Licence must be present.

The Subcontractor must:

- g) Provide for personnel attending inductions at the Subcontractors own cost;
- h) Ensure all employees hold and present the relevant documentation detailed above;
- i) Ensure all personnel attend the site induction

The Subcontractor must also provide:

1. Safe Work Method Statements (SWMS)/Job Safety Environmental Analysis (JSEA) for review, to the satisfaction of BMD and approval by the Client;
2. Compliance with overarching site policies and procedures of the Client and including BMD's Safety Management System;
3. The Subcontractor must obtain certification and or approval for use, for all construction plant and equipment proposed for use on the site(s) prior being mobilised to the site(s); i.e. meet BMD requirements.

(3) Safety

The Subcontractor shall be conversant with and carry out the Work in accordance with the Workplace Health & Safety Act 2011. At all times the Subcontractor shall conform to the Contractor's Safety Management Plan and shall comply with the Site Rules as made available during a project induction.

The Subcontractor shall ensure that all its employees, including the employees of any Secondary Subcontractors, shall work in a safe manner and shall abide by all safety regulations and site rules issued to the Subcontractor from time to time. The Subcontractor shall remove from site any of its employees, including the employees of any Secondary Subcontractors that do not work in a safe manner or do not comply with all safety regulations and site rules. The Subcontractor shall not be entitled to claim for any additional costs or time incurred due to the removal of any employee, including the employees of any Secondary Subcontractors, under this clause.

The Contractor reserves the right to audit the safety records of the Subcontractor, giving sufficient notice to do so.

The Subcontractor acknowledges that the Main Contract is one falling within section 35 of the Fair Work (Building Industry) Act 2012 (CT), and as such, the Contractor is Federally Accredited under this scheme. The Subcontractor will be required to operate to the same or higher standard as the Contractor's management plans (as detailed in this Appendix), systems and procedures to ensure the Contractor's accreditation is maintained and compliant.

(4) Personnel Protective Equipment

This worksite requires mandatory PPE and job specific PPE, as detailed in the individual task WMS and the following site-wide requirements.

- a. The worksite has been designated as requiring the following mandatory PPE, all items to meet relevant BMD Standard & Australian Standards and be worn at all times:
 - (i) Long sleeve shirt and high visibility with reflective striping.
 - (ii) Long cotton trousers or denim jeans.
 - (iii) Jackets be high visibility with reflective striping.
 - (iv) Foot Protection
 - (v) Hard hat
 - (vi) Protective eyewear
- b. The worksite will implement the following PPE requirements depending on specific task requirements:
 - (i) Protective gloves
 - (ii) Ear protection
 - (iii) Additional face/eye protection (e.g. face shield)
 - (iv) Additional clothing protection (e.g. chaps)
 - (v) Additional footwear protection (e.g. gumboots for wet ground works).
 - (vi) Any other PPE as specific to suit the works being carried out and as identified in the relevant SWMS/ JSA's
- c. The Subcontractor must:
 - (i) Provide all employees and/or Subcontractors with the aforementioned PPE.
 - (ii) Ensure their workforce arrives on site with the aforementioned PPE.
 - (iii) Ensure their workforce uses and complies with the site rules regarding PPE.

(5) Mandatory HSE Instructions

The Subcontractor is to ensure that they comply with all of BMD's Mandatory HSE Work Instructions, including but not limited to the following:

- Cutting Concrete Pipes;
- Electrical Works Commissioning, Decommissioning and Modifications;
- Fixed-Blade Knives;
- Loading and Unloading of Materials Delivery;
- Site Establishment Connection to Temporary Power Supply;
- Quick Hitches;
- Star Picket Drivers.

(7) Mobile Plant / Equipment

All mobile plant / equipment mobilised to site must compile with BMDs Plant and Equipment Management Core Operating Procedure (COP).

All operators/personnel shall maintain up to date information and training records through BMD's Contractor Management System (CMS).

(8) Safety Work Method Statements (SWMS)

The Subcontractor is to provide a Safety Health & Environmental Work Method Statement (SWMS) at the time of Contract award, for each site-specific task or activity for BMD to provide a review and approval. The contractor is to keep a signed field copy near each work activity at all times. All personnel working within the area must be signed on prior to commencing any works.

JHA cards are to be utilised for all tasks to ensure the work crews assess the associated risks, hazards and controls prior to commencing works. JHA cards will be completed prior to the commencement of every task, the second RESTART or immediately after an incident occurs. JHA's MUST be reviewed daily and a new one completed at a minimum every 7 days or per task change.

(9) Contractor Management System (CMS)

All workers are to undertake CMS training (online) and maintain current tickets/qualifications on the CMS system including, but not limited to a Queensland Construction Blue / White Safety Induction Card or equivalent, drivers licence, operator competencies and Verification of Competency.

(10) Access and Entry to the Site

Access to the site is only by way of nominated entrances / exits and the Subcontractor shall ensure that all visitors, its employees and those of its Subcontractors comply with the foregoing.

The subcontractor is not permitted to enter the site via unauthorised access points under any circumstance.

The Contractor will provide:

- (i) Access to the locations of permanent works on site by way of existing trails, haul roads and perimeter roads as detailed.

The Subcontractor must provide:

- (i) Protection of existing infrastructure for access to works.
- (ii) All access requirements for temporary works.

(11) Environment

The Contractor will provide where required:

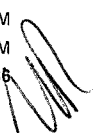
- (i) Task/work area specific erosion and sediment control measures.

The Subcontractor shall as required:

- (ii) Coordinate with appropriate BMD personnel by way of email request 24 hours prior to works for all additional clearing requirements.
- (iii) Removal of any Subcontractor generated rubbish or left over material/s from the site;
- (iv) Ensure all trucks and plant are clean and free from any contaminants before they arrive and leave site each day, including provision for Weed/ Seed and DPI Fire Ant free zone certificates where required;
- (v) Ensure to the Subcontractors best ability, that no mud or dirt is transported onto local roads;
- (vi) Any plant/ equipment spills are to be immediately contained to the Subcontractors best ability using spill kits (request from BMD Supervisor and are located in various vehicle and locations on ground). The spill is to be recorded (no matter how small) and reported to a BMD Supervisor or Engineer. The details will need to be recorded and inputted to an Incident Report and subsequently close out;
- (vii) Ensure measures are taken as required to protect the environment against the Subcontractors necessary Scope of Works;
- (viii) Ensure all SDS information sheets have been provided to the Contractor, for approval, prior to works proceeding.
- (ix) Conduct all construction plant servicing site and ensure that any spills or waste products are immediately notified, cleaned up and/or disposed of in the appropriate manner.

(12) Site Services & Facilities

Provision for site facilities

A handwritten signature in black ink, appearing to be 'J. Smith', located at the bottom right of the page.

- a. The Contractor will not provide telephones, facsimiles, data transmission, printing or office equipment for the use of the Subcontractor.
- b. The Subcontractor must:
 - (i) maintain on a daily basis lunch, change, ablution and any other facilities (if provided) in a clean and tidy condition;
 - (ii) maintain storage areas so as not to impede other Main Contract works; and
 - (iii) disconnect all electrical appliances outside working hours.
- c. If facilities and storage areas are not maintained to the satisfaction of the Contractor's Representative, he/she may direct others to undertake such maintenance on behalf of the Subcontractor with all costs so incurred being to the account of the Subcontractor.
- d. The Subcontractor must not store combustible or hazardous materials or dangerous goods in any of the facilities or material storage areas.

Provision for lighting and Electricity

- a. The Contractor will provide:
 - (i) lighting in areas to be used in common with others for access only (if required)
- b. The Subcontractor must provide:
 - (i) all task lighting (if required)
 - (i) all other electrical power to enable the performance of the work under the Subcontract;
 - (ii) leads and safety stands

Provision for Signage

No Subcontractor's signage is permitted on site unless directly related to the performance of the works i.e. safety and advisory signage or as otherwise approved by the Contractors Representative.

(13) On Site Refuelling

Refuelling of light vehicles is to be performed off site where possible. Where plant/machinery and/or heavy vehicles require refuelling on site, refuelling must be done in accordance with the following,

- 1. The engine must be stopped.
- 2. The vehicle / mobile equipment must be parked as per the parking rules.
- 3. No smoking or naked flames within the area while fuelling is in progress.

If the mobile diesel fuel tank (or any other mobile refuelling unit) is to be used for refuelling heavy mobile equipment and stationary equipment, the following rules apply:

- 4. Positive radio contact shall be established
- 5. The heavy equipment shall be positioned on level ground, ensuring the equipment is easily accessible.
- 6. The operator shall park as per the parking rules, leave the cab and stand with the technician during refuelling activities.
- 7. The operator shall wait until the mobile diesel fuel tank has left the area before reboarding the equipment.

(14) Delivery of materials to site

No deliveries should be organised to site unless approved prior by BMD Management. Further to other requirements in the Subcontractors Safety Management Plan, delivery of materials shall be managed so as to control the hazard of fall from height.

(15) Lifting Equipment

The subcontractor shall comply with the following requirements during all lifting activities:

- i. BMD Lifting Equipment Management Core Operating Procedure (COP) (available upon request)
- ii. All lifting equipment to be periodically inspected and tagged on a quarterly basis by a competent person. All inspections are to be recorded on a lifting equipment register and up to date copy supplied to BMD and available upon request.
- iii. The subcontractor is to provide lift plans and assessments where required (i.e. not-routine lifts)

(16) Compliance



Project Quality to be managed in accordance with BMD's Quality Management Plan. The Subcontractor's work must further be in compliance with all relevant authorities where applicable to the scope of works.

The subcontract must provide the following industrial verifications before any work can commence;

1. Workers Comp Policy verified as existing and current.
2. Public Liability Policy as appropriate to the scope of services to be provided.
3. Motor Vehicle / Plant Insurances, as appropriate to the scope of services to be provided.

(17) Payment

All invoices to be submitted to BMD no later than 25th of the month clearly stating contract number **42398036** and BMD Construction's ABN and address. The subcontractor is required to supply a statutory declaration with monthly invoices as detailed in Appendix 6 of this contract.

(18) Responsibility Matrix

The table below indicates the site facilities and the party responsible for provision.

Where particular site facilities are required it is assumed that the Subcontractor will provide under this Scope of Works included within the Subcontract Price.

Item	Description	Provided By		Comments
		Subcontractor	Contractor	
1	Site Crib Huts and Site Ablutions		✓	
2	Transportation to and from site	✓		
3	First Aid facilities		✓	
4	First Aider		✓	
5	On site safety induction	✓		
6	Laydown area for materials		✓	
7	Handling of materials on site	✓		
8	Provision of small tools	✓		All to have current Test and Tag
9	Parking on site		✓	
10	Power for Works		✓	
11	Lighting for night shift		✓	
12	Supply of water		✓	
13	Clearing waste to designated areas	✓		
14	Unloading/loading of materials	✓		All mobilisation of equipment to be unloaded by Subcontractor.
15	Loading out of materials from laydown areas to work area/s.	✓		All permanent materials to be loaded out by subcontractor
16	Loading out, shifting or re-moving of materials from areas to other vicinities or work area/s.	✓		
17	On Site Testing Requirements		✓	
18	Provision of all plant for the Works	✓		
19	Provision of initial Survey set-out heights via RL's pegged in the ground for the Subcontractor to reduce and provide any further set-out as required to facilitate works. Provision for any additional survey further to initial set-out shall be at the discretion of the Contractor.		✓	
20	Mobilisation of plant and equipment to site and between work areas	✓		
21	Demobilisation of plant and equipment from site	✓		
22	Transportation of personnel around site	✓		



23	Responsibility for security and protection of equipment whilst on site	✓		
24	Craneage	✓		
25	Delineation of works area from main site / other simultaneous subcontractors, via use of appropriate delineation (as identified in the approved SWSM).		✓	
26	Fuel Supply (Diesel)	✓		
27	Concrete Pump			N/A



Appendix 4 – Scope of Work

This Appendix is part of the Subcontract and must be interpreted in accordance with the order of precedence set out in Item 23 of Appendix 1.

Scope of Works – General

The scope of works is for the supply, manufacture and installation of gantry structures for the Deception Bay Road project. This shall include but not be limited to the following:

- Supply workshop drawings for each gantry structure;
- Supply RPEQ certification for lifting lugs on each gantry structure;
- Handling, transporting and storing of fabricated steelwork and aluminium components, including the submission of a procedure as per MRTS61 (Hold Point 4);
- Supply and delivery of gantry hold downs to site (1 x BP1, 4 X BP2, 2 x BP3, supplied as assembled cages);
- Supply, delivery and erection of 6No. gantry structures (OH01, C01, C02, C03, C04 & C05), including the submission of a procedure as per MRTS61, CI 9.1 (Hold Point 5).

Scope of Works – Detailed

The scope of works included the supply of all materials for the construction of the gantry structures, excluding mortar/grout and concrete. This shall include but not be limited to the following:

- Supplying the lifting and temporary support structures (as per Drawing No. 838510/A, Note 12.2);
- Supplying the load sharing devices for the lifting support structures (2 per lifting structure, as per Drawing No. 838510/A);
- Supplying columns and beams for the gantries (with certified lifting lugs).

Gantry Structure [C-01]

- Baseplate type 'BP1';
- Splice joint type 'SJ1';
- All stiffeners type 'S3' for the baseplate (12 per base plate);
- All M20 8.8/F Bolts required for splice joint (12 per joint);
- Anchor plate type 'A';
- All M30 threaded rods required for anchor plate (12 per plate);
- All nuts required for anchor plate (4 each side of anchor plate);
- All capping plate types 'CP1' and 'CP2';
- All countersunk screws (8 per 'CP1');
- All connections Type 1 (see Drawing No. 838523/A for details);
- Installation of gantry structure (day works).

Gantry Structures [C-02], [C-03], [C-04] & [C-05]

- Baseplate type 'BP2';
- Splice joint type 'SJ2';
- All stiffeners type 'S2' for the baseplate (20 per base plate);
- All M30 8.8/F Bolts required for splice joint (14 per joint);
- Anchor plate type 'B';
- All M36 threaded rods required for anchor plate (20 per plate);
- All nuts required for anchor plate (4 each side of anchor plate);
- All capping plate types 'CP1' and 'CP2';

- All countersunk screws (8 per 'CP1');
- All connections Type 2 (see Drawing No. 838523/A for details);
- Installation of gantry structure (day works).

Gantry Structure [OH-01]

- Baseplates type 'BP3';
- Splice joints type 'SJ3';
- All stiffeners type 'S1' for the baseplate (20 per base plate);
- All M30 8.8/F Bolts required for splice joint (14 per joint);
- Anchor plate type 'C';
- All M36 threaded rods required for anchor plate (20 per plate);
- All nuts required for anchor plate (4 each side of anchor plate);
- All capping plate type 'CP2';
- All connections Type 1 (see Drawing No. 838523/A for details);
- Installation of gantry structure (night works).

The works must be done in accordance with Supplementary Specification SS006 (including TMR Technical notes) and Project Drawings:

TITLE	DRAWING ID.	DRAWING NO.	REVISION
GENERAL NOTES - GANTRY STRUCTURES	GS00-NL-01	838509	A
GENERAL NOTES - GANTRY STRUCTURES	GS00-NL-02	838510	B
GANTRY STRUCTURES - GENERAL ARRANGEMENT - C-01	GS00-GA-01	838511	B1
GANTRY STRUCTURES - GENERAL ARRANGEMENT - C-02	GS00-GA-02	838512	B1
GANTRY STRUCTURES - GENERAL ARRANGEMENT - C-03	GS00-GA-03	838513	B1
GANTRY STRUCTURES - GENERAL ARRANGEMENT - C-04	GS00-GA-04	838514	B1
GANTRY STRUCTURES - GENERAL ARRANGEMENT - C-05	GS00-GA-05	838515	B1
GANTRY STRUCTURES - GENERAL ARRANGEMENT - OH-01	GS00-GA-06	838516	B1
GANTRY STRUCTURES - STEELWORK ARRANGEMENT - OH-01	GS00-SW-01	838517	A
GANTRY STRUCTURES - PILE SCHEDULE	GS00-PI-01	838518	B1
GANTRY STRUCTURES - PILE DETAILS	GS00-PI-02	838519	B
GANTRY STRUCTURES - TYPICAL STEEL DETAILS - SHEET 1	GS00-ST-01	838520	A
GANTRY STRUCTURES - TYPICAL STEEL DETAILS - SHEET 2	GS00-ST-02	838521	A
GANTRY STRUCTURES - TYPICAL STEEL DETAILS - SHEET 3	GS00-ST-03	838522	A
GANTRY STRUCTURES - TYPICAL STEEL DETAILS - SHEET 4	GS00-ST-04	838523	A
GANTRY STRUCTURES - ANCHOR PLATE DETAILS - SHEET 1	GS00-AP-01	838524	A
GANTRY STRUCTURES - ANCHOR PLATE DETAILS - SHEET 2	GS00-AP-02	838525	A
GANTRY STRUCTURES - PILECAP DETAILS - SHEET 1	GS00-PC-01	838526	A
GANTRY STRUCTURES - PILECAP DETAILS - SHEET 2	GS00-PC-02	838527	A



SS006

SUPPLEMENTARY
SPECIFICATION FOR
SUPPLY AND
INSTALLATION OF
GANTRY STRUCTURES

CONTRACT NO. CN-12858



Contents

1. Introduction	3
2. Measurement of Work	3
2.1 Work Items	3
2.2 Work Operations	3
3. General Requirements	4
4. Supplementary Requirements	4
4.1 Storage, Handling and Transport	4
4.2 Bending of Sections	4
5. Reporting	4
6. Payment	4



1. Introduction

This Specification applies to fabrication, supply and erection of steel for the gantry support structures.

This Supplementary Specification shall be read in conjunction with Standard Specification MRS78 Fabrication of Structural Steelwork.

2. Measurement of Work

2.1 Work Items

In accordance with the provisions of Clause 2 of MRS01 Introduction to Standard Specifications, the Supplementary Work Items covered by this Supplementary Specification are listed in Table 2.1.

Table 2.1 - Work items

Item No.	Description	Unit of Measurement	No. of
90116	Supply and installation of gantry structure [C-01]	each	1
90116	Supply and installation of gantry structure [C-02]	each	1
90116	Supply and installation of gantry structure [C-03]	each	1
90116	Supply and installation of gantry structure [C-04]	each	1
90116	Supply and installation of gantry structure [C-05]	each	1
90116	Supply and installation of gantry structure [OH-01]	each	1

2.2 Work Operations

2.2.1 Gantry Structures

Item 90116 Supply and installation of gantry structure [C-01]

Item 90116 Supply and installation of gantry structure [C-02]

Item 90116 Supply and installation of gantry structure [C-03]

Item 90116 Supply and installation of gantry structure [C-04]

Item 90116 Supply and installation of gantry structure [C-05]

Item 90116 Supply and installation of gantry structure [OH-01]

Work Operations incorporated in the above items include:

- Work Operations listed in Clause 2.1.5 of MRS01 Introduction to Specifications
- Supply and manufacture of all steel components for steel gantries as appropriate (as shown in Drawing Series Nos. GS00GA). All components to be manufactured, installed and finished in accordance with MRS78.
- Supply of fastening bolts, hold-down bolts, nuts and washers as shown in Drawing Series Nos. GS00GA.
- Supply and manufacture of (as appropriate) base plates, splice plates, anchor plates, stiffeners, lifting lugs, and capping plates (as shown in Drawing Series Nos. GS00GA) installed and finished in accordance with MRS78
- Galvanising of components
- Transport to the Site
- Preparation of the Site storage area

- h) Unloading at the Site
- i) Storage at the Site, and
- j) Preparation and submission for approval of Shop Drawings
- k) Preparation and certification of a temporary works lifting/rigging design

3. General Requirements

This specification shall be read in conjunction with the following documents, however, where a discrepancy exists between these documents and this specification, then this specification shall apply:

- MRTS14 Road Furniture
- MRTS78 Fabrication of Structural Steelwork;
- TMR Technical Note 62
- TMR Technical Note 66
- TMR Technical Note 68

4. Supplementary Requirements

In addition to the Work Operations and General Requirements listed above, the Contractor shall make provision for:

4.1 Storage, Handling and Transport

Following the fabrication of steelwork, all elements shall be handled, stacked and stored so that they are not damaged, bent or twisted. Use nylon slings or other approved methods during handling of all coated steel. Before delivery to the nominated delivery point, steel work shall be stored clear of the terrain on suitable supports to prevent damage or distortion.

All fabricated elements shall be clearly marked to enable identification during transit and on delivery to site. The Contractor shall take all necessary measures to prevent damage to the steelwork elements. The Contractor shall use non-abrasive strap slings or lifting lugs to handle the elements.

Packing, handling and storage facilities shall be of non-metallic type. Handling, transport and/or storage shall not proceed until the procedure has been approved by the Superintendent.

4.2 Bending of Sections

The Contractor shall submit a methodology for the bending of the large radii steel sections.

5. Reporting

The Contractor shall prepare and submit a safe work method statement (SWMS) to the Administrator 28 days before commencement of the works for review and acceptance outlining the:

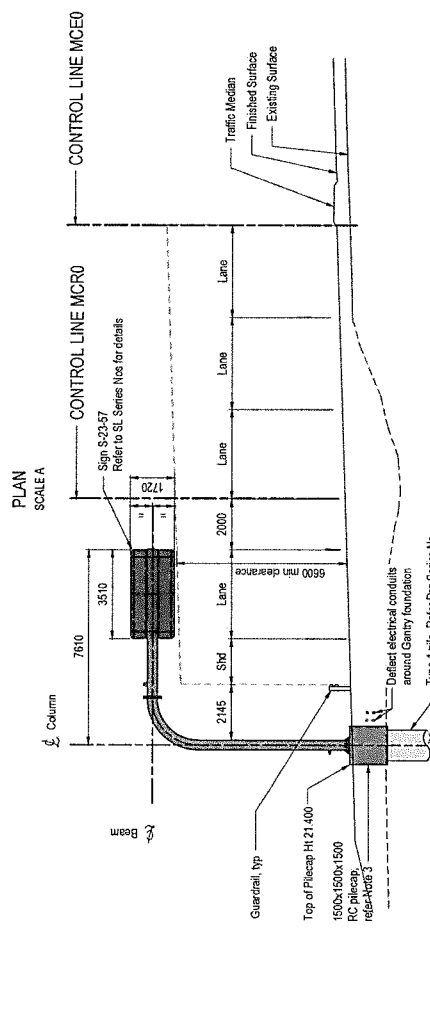
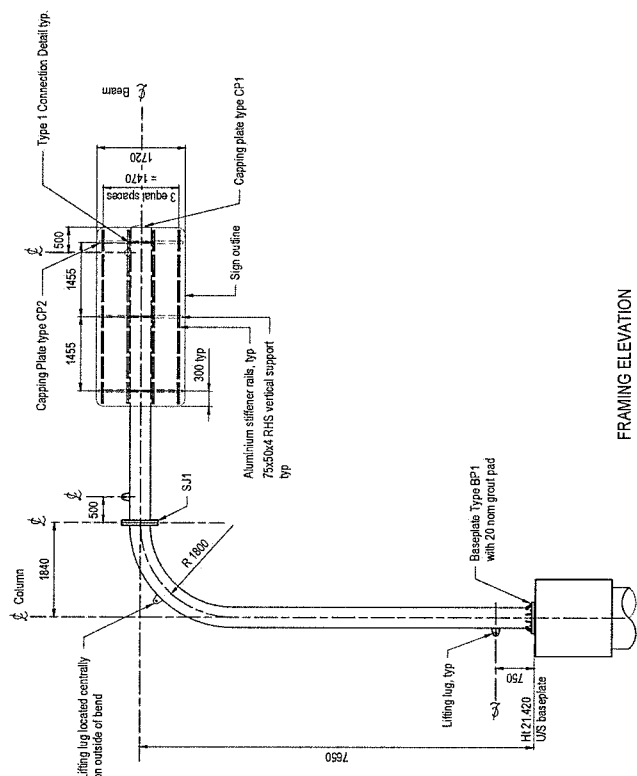
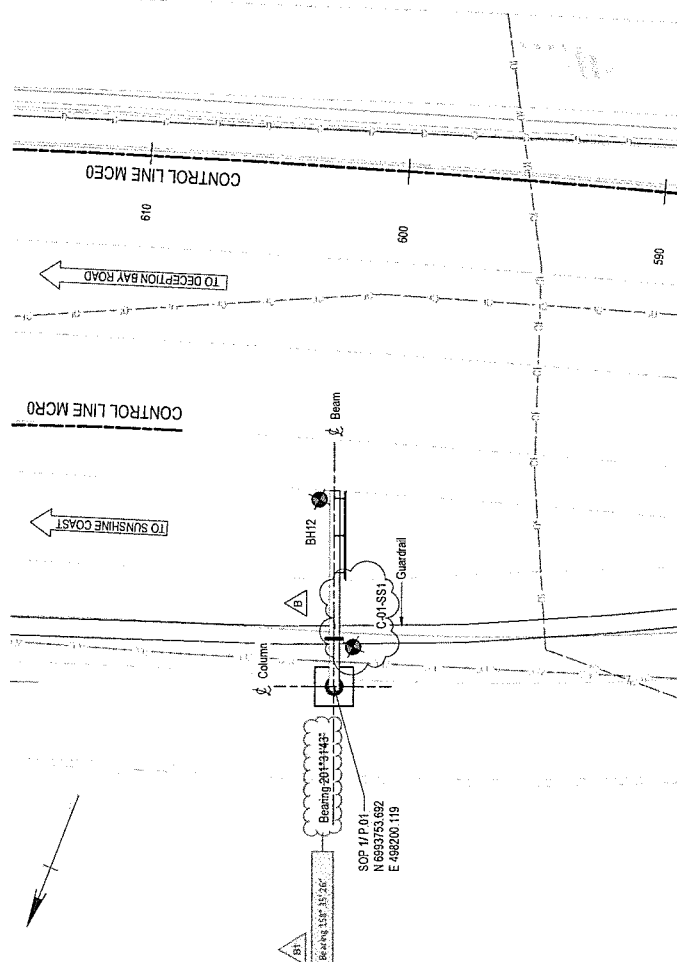
- Bending procedures;
- Lifting procedures;
- Rigging diagrams;
- Lifting & rigging design and certification;

6. Payment

Payment shall be measured in accordance with MRS01 Introduction to Specifications.

NR

[illegible]



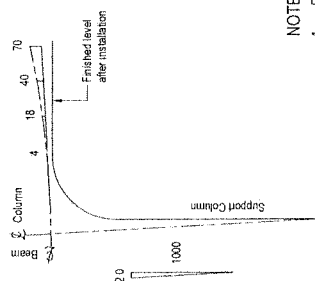
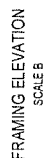
NOTES

1. For General Notes refer Drg Series No GS00-NL-01 and GS00-NL-02.
2. For Gantry Schedule and all other structural steel details refer Drg Series No GS00-ST-01 to GS00-ST-04.
3. For pile cap details refer Drg Series No GS00-PC-01 and GS00-PC-02.

TILT DIAGRAM NTS

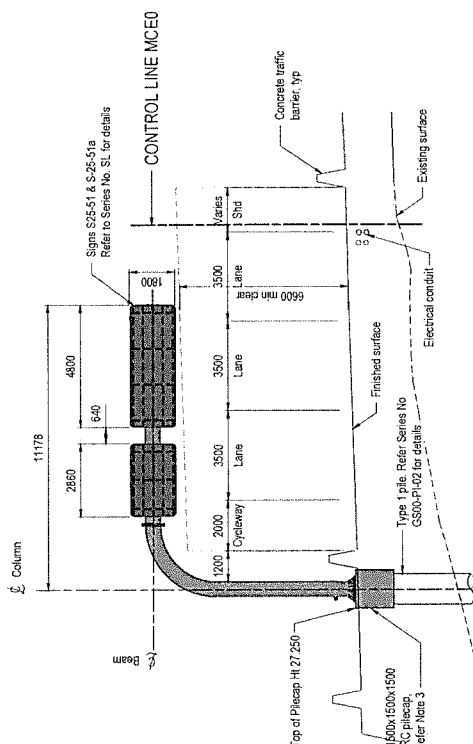
ELEVATION SCALE A

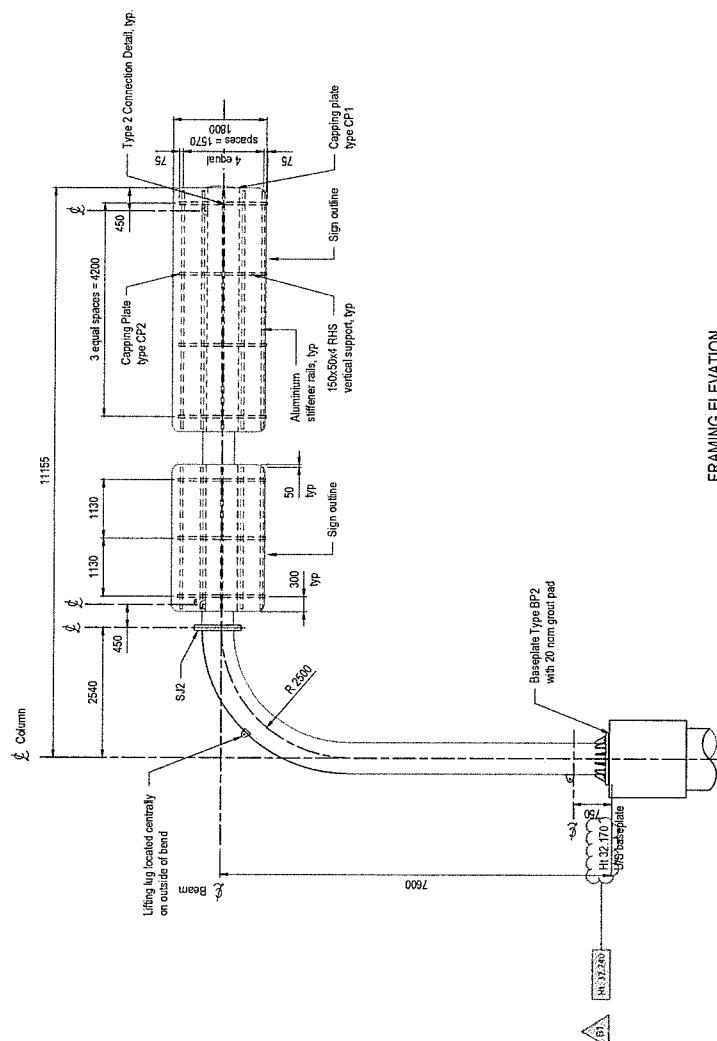
BRIDGE DESIGN CRITERIA AS 5100:2017				DESIGN SPEED NA				EARTHQUAKE CATEGORY BECD-1				BARRIER PERFORMANCE LEVEL NA				BRIDGE TYPE: NA				BIS No.			
Associated Job No				A				MORETON BAY REGIONAL COUNCIL				DECEPTION BAY ROAD INTERCHANGE UPGRADE				GANTRY STRUCTURES				Queensland Government			
Auxiliary Drg Nos				A				BRUCE HIGHWAY (BRISBANE - GYMPIE)				GENERAL ARRANGEMENT - C-01				ENGINEERING CERTIFICATION (REC)				Job No			
Height				A				CTL CHGE				11.04km - 16.00km				Design Reviews (REC)				Contract No			
Origin				A				Preceding RP				From start to end of job				Design Reviews (REC)				Drawing No			
Survey				A				30				From end to following RP				Design Reviews (REC)				Series Number			
Books				A				1.28				Through Change from RTT 100M to CARR 2 Ch. 11.04 to 16.00km				Design Reviews (REC)				WBSE Detail (02/14)			
Dimensions shown in millimetres except where shown otherwise				A				4.960				No. 2508				Design Reviews (REC)				Contract No			
Dimensions shown in millimetres except where shown otherwise				A				1.860				No. 2508				Design Reviews (REC)				Drawing No			
Dimensions shown in millimetres except where shown otherwise				A				5				No. 2508				Design Reviews (REC)				Series Number			
Dimensions shown in millimetres except where shown otherwise				A				5				No. 2508				Design Reviews (REC)				WBSE Detail (02/14)			
Dimensions shown in millimetres except where shown otherwise				A				5				No. 2508				Design Reviews (REC)				Contract No			
Dimensions shown in millimetres except where shown otherwise				A				5				No. 2508				Design Reviews (REC)				Drawing No			
Dimensions shown in millimetres except where shown otherwise				A				5				No. 2508				Design Reviews (REC)				Series Number			
Dimensions shown in millimetres except where shown otherwise				A				5				No. 2508				Design Reviews (REC)				WBSE Detail (02/14)			



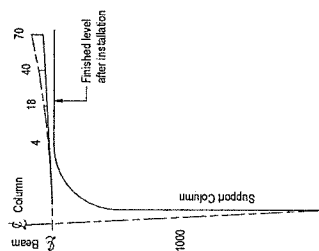
2. For Gantry Schedule and all other structural steel details refer Drg Series No GS00-ST-01 to GS00-ST-04.

NTS
TILT DIAGRAM

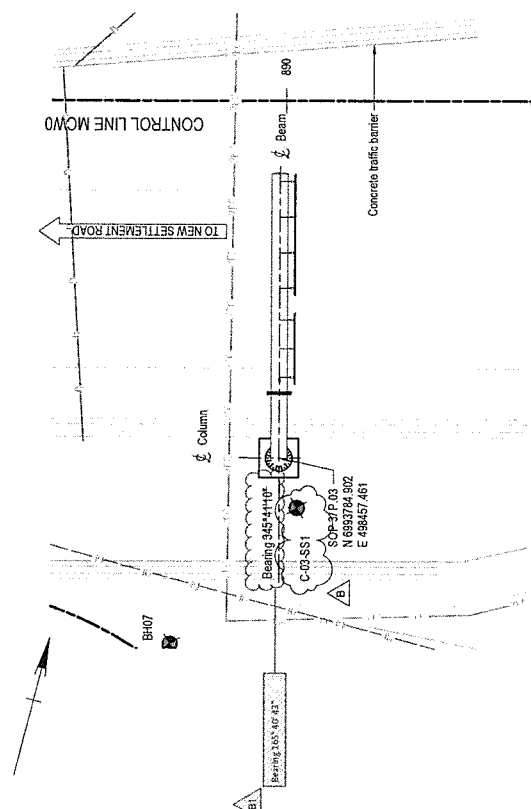
ELEVATION
SCALE A



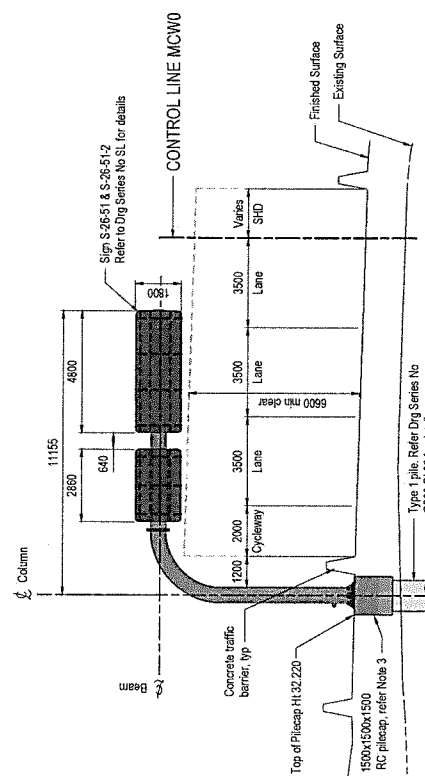
FRAMING ELEVATION
SCALE B



NTS
TILT DIAGRAM



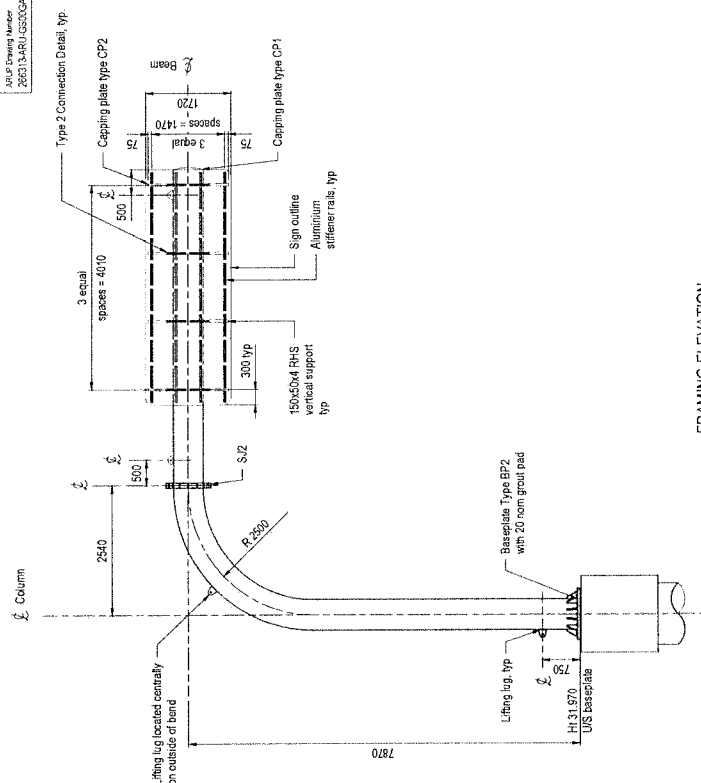
PLAN
SCALE A

ELEVATION
SCALE

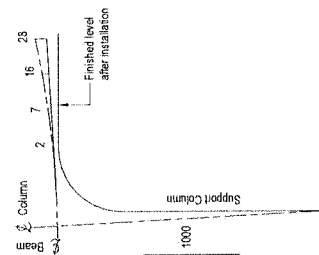
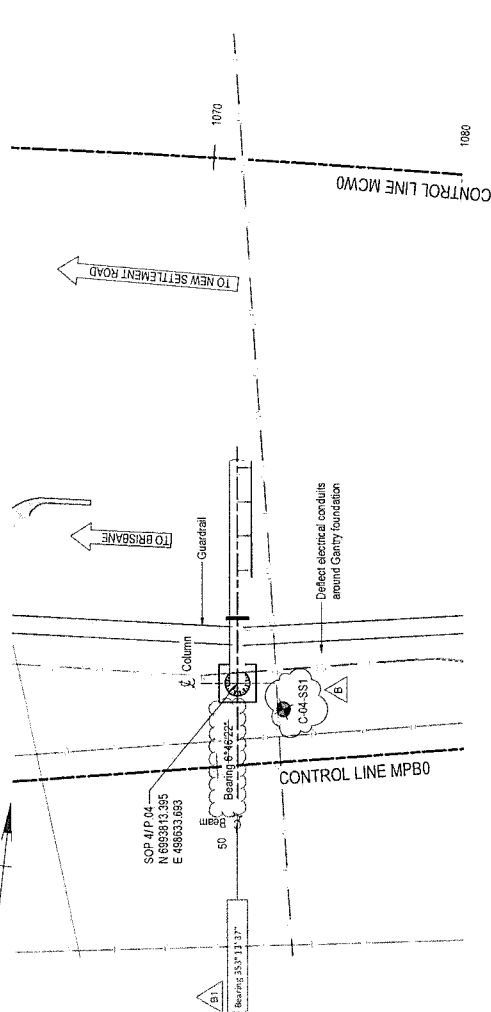
NOTES

1. For General Notes refer Drg Series No GS00-NL-01 and GS00-NL-02.
2. For Gantry Schedule and all other structural steel details refer Drg Series No GS00-ST-01 to GS00-ST-04.
3. For pile cap details refer Drg Series No GS00-PC-01 and GS00-PC-02.

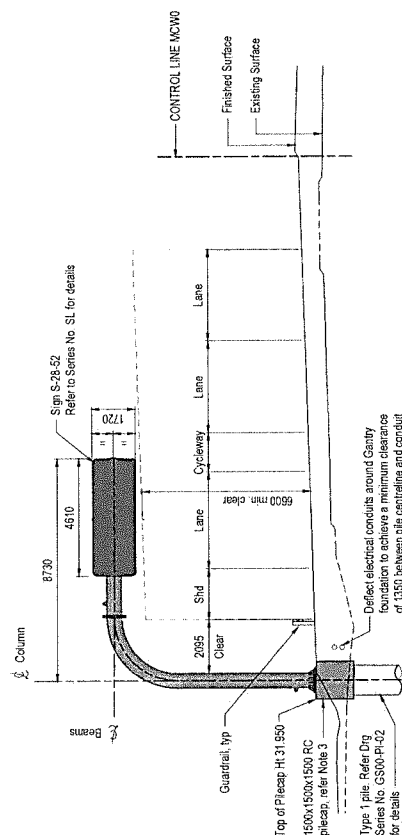
[illegible]



FRAMING ELEVATION
SCALE B

TILT DIAGRAM
NTS

PLAN
SCALE A

ELEVATION
SCALE A

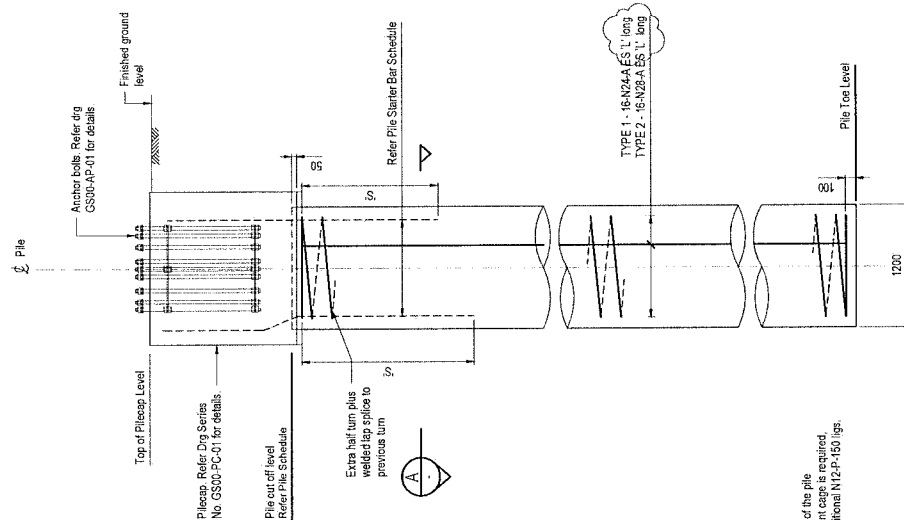
NOTES

1. For General Notes refer Drg Series No GS00-NL-01 and GS00-NL-02.
2. For Gantry Schedule and all other structural steel details refer Drg Series No GS00-ST-01 to GS00-ST-04
3. For pile cap details refer Drg Series No GS00-PC-01 and GS00-PC-02.

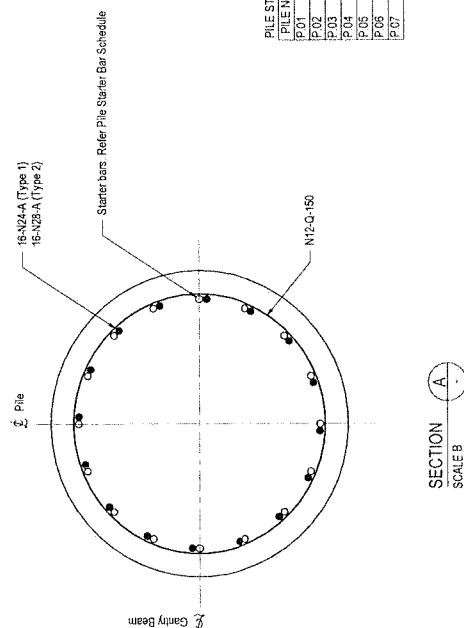
[illegible]



IN LCC # 070310-000 - DRAGONWIFE



1200 DIA CAST-IN-PLACE PILE
WITH TEMPORARY LINER
SCALE A

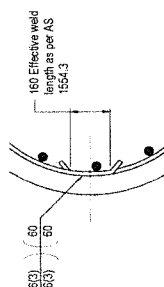


SECTION
SCALE B

PILE No.	STARTER BAR	STARTER BAR SCHEDULE
P01	16-N24-A ES	1350
P02	16-N24-A ES	1350
P03	16-N24-A ES	1350
P04	16-N24-A ES	1350
P05	16-N28-A ES	1700
P06	16-N28-N ES	1700
P07	16-N28-N ES	1700

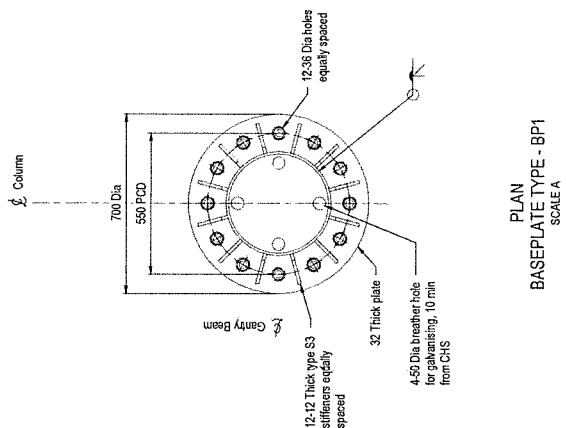
PILE AND TEMPORARY LINER NOTES

1. For General Bids, refer to Div. Series No. GS200-NL-01 AND GS200-NL-02
2. For the Subcontract General Arrangement drawings
3. For the Plans and Specifications refer to Div. Series No. GS200-P1-01
4. For the Plans and Specifications refer to Div. Series No. GS200-P1-02
5. Refer to the California Geotechnical Report (28313-AR-GE-RPT-10001) for details of the interpreted geotechnical conditions, design assumptions and criteria
6. Ground conditions assumed for the design are to be verified by a Geotechnical Assessor. The Geotechnical Assessor shall be appointed by the Contractor and shall be a P.E.QE Geotechnical Engineer in accordance with ARTS23A
7. All in-situ tests shall be conducted in accordance with ASTM D6333
8. Test lengths shown in the Pile Schedule on Sheet No. VSR-B0331 are the minimum
9. Temporary steel liners may be required to provide stability to the walls during drilling
10. Where temporary liners are used, the liner is to progressively be removed whilst constructing the pile (i.e. when pouring concrete into the drilled hole)
11. In the case of significant changes to the ground conditions observed on site to those considered in the design (refer to the actual ground conditions observed on site), the Administrator shall be notified to review the design
12. No pile shall be terminated above the pile toe levels in the pile schedule unless approved otherwise by the Administrator

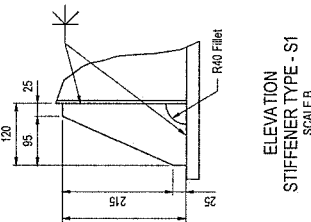
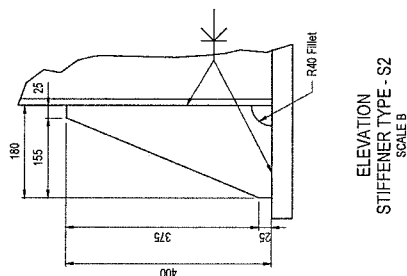


WELDED LAP SPICE DETAIL
NTS

[illegible]



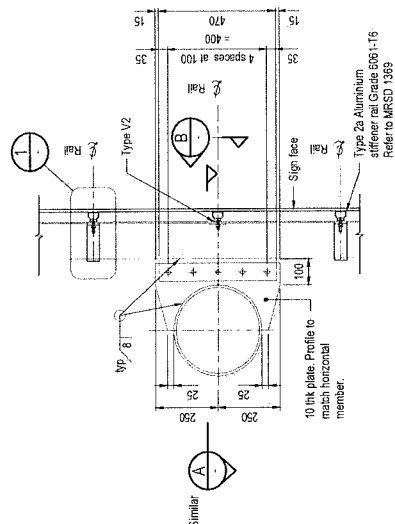
MEMBER & CONNECTION SCHEDULE			
Gartry No.	Column Size	Base Size	Splice Plate
C-01	406 x 145 CHS	406 x 93 CHS	S1/1
C-02	610 x 127 CHS	610 x 127 CHS	S1/2
C-03	610 x 127 CHS	610 x 127 CHS	S1/2
C-04	610 x 127 CHS	610 x 127 CHS	S2
C-05	610 x 160 CHS	610 x 160 CHS	S2
OH-01	610 x 160 CHS	813 x 160 CHS	S1/3
			S1/3

[illegible]

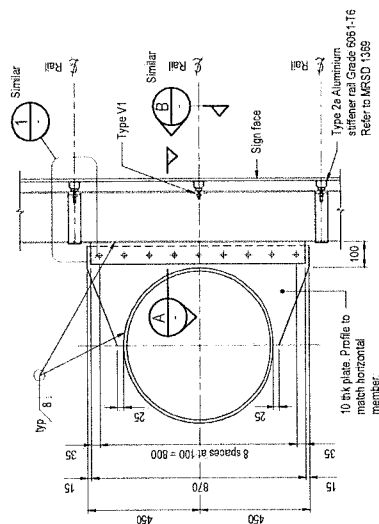


- For General Notes refer to GSD04-NL-01 and GSD03-NL-022.
For Gantry Schedule refer to GSD04-NL-01 and GSD03-NL-022.
CHS Wall shall be welded on the inside face only, then back gauged to achieve a Detail Category E in accordance with the AASHTO for the Standard Specifications for Bridge Structural Supports. For Highway Signs, Luminaires, and Traffic Signals (2011).
The Fabricator shall check finish of the splice joint in the workshop to ensure that the joint satisfies TMR's tolerances of:
• maximum gap less than 1"mm; and
• not exceed 0.5mm over at least 5% of the container

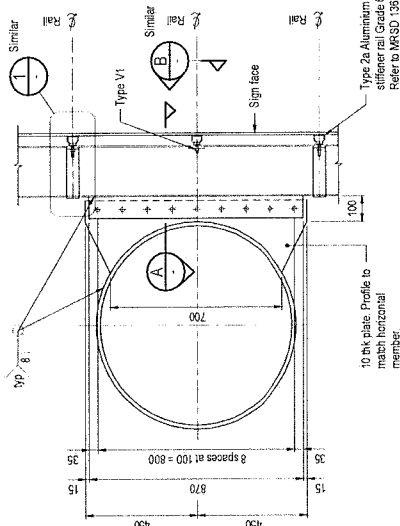
WJ-1901-020710-50 - 030410Z 0408199



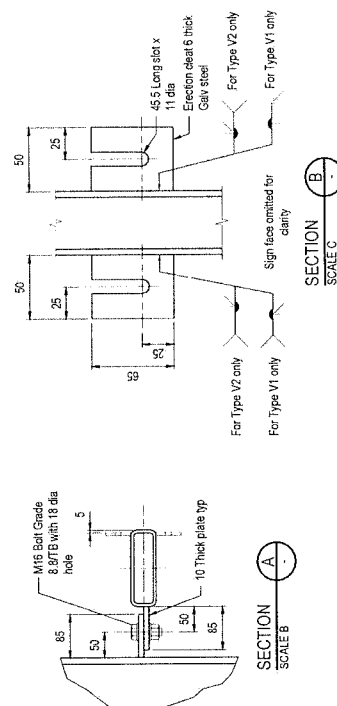
SECTION
TYPE 1 CONNECTION DETAIL
SCALE A



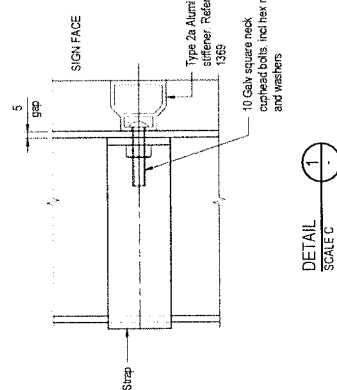
SECTION
TYPE 2 CONNECTION DETAIL
SCALE A



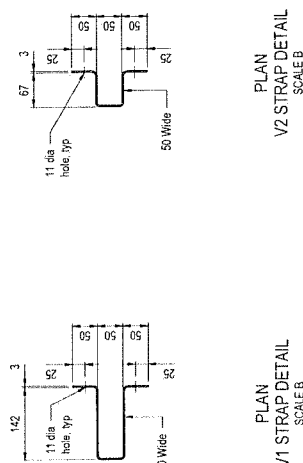
SECTION
TYPE 3 CONNECTION DETAIL
SCALE A



SECTION _____
SCALE B



DETAIL 1
SCALE C



PLAN
1/1 STRAP DETAIL
SCALE:

PLAN
1/2 STRAP DETAIL
SCALE B

NOTES

1. For General Notes refer Drg Series No. GS00-NL-01 and GS00-NL-02.
2. All strap plates shall be Grade 450 Z275 in accordance with AS1397. Bolt holes to be drilled prior to galvanising.
3. Tolerances of straps shall be in accordance with AS1365.

 Queensland Government									
Job No. 250/HQ/482286									
Contract No. CN-12858									
Drawing No. 839523									
Sheet Number G500-ST-04 of 04									
MSB Date (YYYY) 18/04/2017									
BIS No.									
BRIDGE TYPE N/A									
DECEPTION BAY ROAD INTERCHANGE UPGRADE									
GANTRY STRUCTURES									
TYPICAL STEEL DETAILS - SHEET 4									
ENGINEERING CERTIFICATION (RPEQ)									
ENGINE AREA									
NAME									
SIGNATURE									
DATE									
1981									
09/04/20									
Design Review (RPEQ)									
Design Review (RPEQ)									
E									
09/04/20									
Date (YYYY)									
18/04/20									
Barrier Performance Level BDDC-1									
Earthquake Category BDDC-1									
Design Speed 11A									
Moreton Bay Regional Council									
Bruce Highway (Brisbane - Gympie)									
11.04km - 16.00km									
CTL CHGE									
Reference Points									
From start to following RP									
From end to following RP									
Preceding RP									
20									
1.28									
4.90									
1.960									
5									
Threats classified from BRT (Table 1) CAR 2.2ch, 11.04-16.00m									
Design Loading N/A									
Scale									
0 100 200 300 400 mm									
A									
0 50 100 150 200 mm									
B									
0 20 40 60 80 mm									
C									
Dimensions shown in millimetres unless otherwise stated									
Survey Data									
GD494									
Date									
MG494 (Z56)									
Horizontal									
Height									
AHD Derived									
Survey									
MR1008/76									
Books									
Associated Job Nos									
GD494									
Auxiliary Dig Nos									
Horizontal									
Height									
AHD Derived									
Survey									
MR1008/76									
Books									
Associated Job Nos									
GD494									
Auxiliary Dig Nos									
Horizontal									
Height									
AHD Derived									
Survey									
MR1008/76									
Books									
Associated Job Nos									
GD494									
Auxiliary Dig Nos									
Horizontal									
Height									
AHD Derived									
Survey									
MR1008/76									
Books									
Associated Job Nos									
GD494									
Auxiliary Dig Nos									
Horizontal									
Height									
AHD Derived									
Survey									
MR1008/76									
Books									
Associated Job Nos									
GD494									
Auxiliary Dig Nos									
Horizontal									
Height									
AHD Derived									
Survey									
MR1008/76									
Books									
Associated Job Nos									
GD494									
Auxiliary Dig Nos									
Horizontal									
Height									
AHD Derived									
Survey									
MR1008/76									
Books									
Associated Job Nos									
GD494									
Auxiliary Dig Nos									
Horizontal									
Height									
AHD Derived									
Survey									
MR1008/76									
Books									
Associated Job Nos									
GD494									
Auxiliary Dig Nos									
Horizontal									
Height									
AHD Derived									
Survey									
MR1008/76									
Books									
Associated Job Nos									
GD494									
Auxiliary Dig Nos									
Horizontal									
Height									
AHD Derived									
Survey									
MR1008/76									
Books									
Associated Job Nos									
GD494									
Auxiliary Dig Nos									

Appendix 5 – Minimum Design Review Time

(clause 7.4)

Not Applicable

A handwritten signature in black ink, appearing to be "nvl", located at the bottom left of the page.

Appendix 6 – Subcontract Price

This Appendix is part of the Subcontract and must be interpreted in accordance with the order of precedence set out in Item 23 of Appendix 1.

Item	Description	Qty	Unit	Rate (exc GST)	Total (\$)
1	Workshop Drawings (all gantries)	1	EA	\$13,500.00	\$13,500.00
2	Lifting certification (RPEQ for all lifting points)	1	EA	\$5,625.00	\$5,625.00
3	Supply, delivery and installation of gantry structure [C-01]	1	EA	\$32,468.00	\$32,468.00
4	Supply, delivery and installation of gantry structure [C-02]	1	EA	\$55,294.00	\$55,294.00
5	Supply, delivery and installation of gantry structure [C-03]	1	EA	\$55,067.00	\$55,067.00
6	Supply, delivery and installation of gantry structure [C-04]	1	EA	\$53,785.00	\$53,785.00
7	Supply, delivery and installation of gantry structure [C-05]	1	EA	\$57,459.00	\$57,459.00
8	Supply, delivery and installation of gantry structure [OH-01]	1	EA	\$141,162.00	\$141,162.00
9	E/O Night installation (OH-01)	1	EA	\$5,850.00	\$5,850.00
10	Gantry HDs – supply and deliver to site as assembled cages	1	EA	\$14 200.00	\$14,200.00
					\$434,410.00

Payment schedule

REQUESTED PAYMENT SCHEDULE				
PAYMENT #	DESCRIPTION	APPROX DATE OF INVOICE. Or when works are completed	VALUE	PRICE VALIDITY DATE
PAYMENT 1	DETAILING	30/05/2021	\$13,500.00	30/05/2021
PAYMENT 2	RPEQ CERTIFICATION	30/06/2021	\$5,625.00	30/05/2021
PAYMENT 3	GANTRY HD's	30/06/2021	\$14,200.00	30/05/2021
PAYMENT 4	ALL MATERIALS	30/06/2021	\$197,567.00	30/05/2021
PAYMENT 5	Supply and delivery of Gantry Structure (OH-01), 13-05-2021	Progress claims on TMR/BMD Witness points and Hold points	\$54,764.00	30/05/2021
PAYMENT 6	Installation of Gantry Structure (OH-01) Night shift	Progress claims on TMR/BMD Witness points and Hold points	\$18,950.00	30/05/2021
PAYMENT 7	Supply and delivery of Gantry Structure (C-05), 15-08-2021	Progress claims on TMR/BMD Witness points and Hold points	\$22,952.00	30/05/2021
PAYMENT 8	Installation of Gantry Structure (C-05)	Progress claims on TMR/BMD Witness points and Hold points	\$8,105.00	30/05/2021
PAYMENT 9	Supply and delivery of Gantry Structure (C-02), 01-09-2021	Progress claims on TMR/BMD Witness points and Hold points	\$23,045.00	30/05/2021
PAYMENT 10	Installation of Gantry Structure (C-02)	Progress claims on TMR/BMD Witness points and Hold points	\$8,105.00	30/05/2021
PAYMENT 11	Supply and delivery of Gantry Structure (C-01), 08-09-2021	Progress claims on TMR/BMD Witness points and Hold points	\$11,139.00	30/05/2021
PAYMENT 12	Installation of Gantry Structure (C-01)	Progress claims on TMR/BMD Witness points and Hold points	\$8,105.00	30/05/2021
PAYMENT 13	Supply and delivery of Gantry Structure (C-04), 18-11-2021	Progress claims on TMR/BMD Witness points and Hold points	\$22,097.00	30/05/2021
PAYMENT 14	Installation of Gantry Structure (C-04)	Progress claims on TMR/BMD Witness points and Hold points	\$8,105.00	30/05/2021
PAYMENT 15	Supply and delivery of Gantry Structure (C-03), 05-08-2022	Progress claims on TMR/BMD Witness points and Hold points	\$22,946.00	30/05/2021
PAYMENT 16	Installation of Gantry Structure (C-03)	Progress claims on TMR/BMD Witness points and Hold points	\$8,305.00	30/05/2021

*Payment 4 – all materials (\$197,567.00)

An additional 5% cash retention is to be held on the invoice of materials which shall be released upon site delivery of individual gantries (i.e. 5% of \$32,927.833 per gantry) . A full set of photos of the materials must also be supplied with each invoice.

**Payments 5-16

A full set of photos of the progress must also be supplied and attached with each invoice.



The Subcontractor acknowledges and agrees that:

- (a) Scheduled items are lump sum;
- (b) the rate for a scheduled item is deemed to include all things necessary to perform the scheduled item in accordance with the Subcontract (even though all of those things may not be separately itemised) and all on-Site and off-Site overheads and profit in connection with the scheduled item;
- (c) if the priced schedule of rates includes any quantities, those quantities are only approximate or estimated quantities and the Contractor did not rely on the completeness, accuracy or adequacy of those quantities;
- (d) any descriptions of work in the priced schedule (including descriptions of scheduled items) are only general descriptions and the Subcontractor did not rely on those descriptions as being a complete description of the work covered;
- (e) if the priced schedule omits an item which should have been included, the omitted item is deemed to be included in the items that are identified in the priced schedule; and
- (f) the Contractor has not warranted or made any representation or assumed any duty of care or liability with respect to, the completeness, accuracy or adequacy of any quantities included or any descriptions of work in the priced schedule (including descriptions of scheduled items).

Appendix 7 – Contractor's Management Plans

A handwritten signature in black ink, appearing to be 'MR' or similar, located at the bottom left of the page.

This Appendix is part of the Subcontract and must be interpreted in accordance with the order of precedence set out Item 23 of Appendix 1.

- A. **Project management plan**
- B. **Traffic management plan**
- C. **Environmental management plan**
- D. **Working near services management plan**
- E. **Quality Management Plan**



Appendix 8 – Statutory Declaration

Subcontractor's Statutory Declaration Contractor's Payment Claim



Queensland Government

C7851

Contract Number:

CN-12858

In regard to —

Payment claim number

dated

'the payment claim'

to carry out the following work —

'the Work'

Oaths Act 1867

Queensland

I

Declarant's name and position

for the Subcontractor

Company name

ACN

of

Address

in the State of Queensland, being a person in a position to know the facts asserted to, do solemnly and sincerely declare that in respect of the subcontracted part of the work under the Contract to which this declaration applies —

1. I am duly authorised to make this declaration on behalf of the subcontractor
2. all subcontractors have been paid all that is due and payable to them up to the date of the payment claim
3. all wages and claims (relating to the payment claim) of workmen employed on or about the Works, including the workmen employed by subcontractors, have been paid in accordance with the various Industrial Awards or Enterprise Agreements that apply
4. all workmen employed or subcontracted by the subcontractor have been engaged strictly in accordance with the provisions of the Contract
5. the subcontracted part of the Works have been carried out by the subcontractor in compliance with the provisions of the *Work Health and Safety Act 2011* and subordinate legislation
6. where the payment claim is the Final Payment Claim (as defined in Clause 42.7 of the *General Conditions of Contract*) where applicable to the subcontractor:
 - a. any claims for royalties on timber, gravel or other material have been satisfied
 - b. any claims for damage or injury to property have been satisfied
7. supporting documentary evidence regarding this declaration will be promptly provided by the subcontractor, where reasonably available, when requested by the Administrator in accordance with Clause 43 of the *General Conditions of Contract*
8. the Director-General, Department of Transport and Main Roads or appropriate delegate is authorised to provide copies of this Declaration to third parties

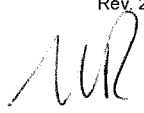
and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the *Oaths Act 1867*.

Declared and signed by	Declarant's signature	Date of declaration			
		on the	day of		20xx
before	Title of person before whom declaration is made	Signature			

The Department of Transport and Main Roads collects personal information on this form so that you may make the declaration. The information on this on this form is accessible by authorised departmental officers and external personnel who are engaged to administer the Contract who will not disclose your personal details to a third party without your consent unless required to do so by law.

Notes:

1. This Statutory Declaration must be witnessed by a solicitor, barrister, Justice of the Peace, Commissioner of Declarations or other person authorised under the *Oaths Act 1867* as amended.
2. A person who wilfully makes a false statement in a statutory declaration under the *Oaths Act 1867* as amended is guilty of an offence under that Act, punishment for which may include a fine and/or imprisonment.



Appendix 9 – Code Compliance

This Appendix is part of the Subcontract and must be interpreted in accordance with the order of precedence set out in Item 23 of Appendix 1.

PART A – NEW SOUTH WALES

Not Applicable

PART B – QUEENSLAND

Not Applicable

PART C – WESTERN AUSTRALIA

Not Applicable

PART D – FEDERAL BUILDING CODE

1. In this Part D:
 - (a) **ABC Commissioner** means the commissioner of the Australian Building and Construction Commission referred to in subsection 15(1) of the *BCIIP Act*.
 - (b) **ABCC** means the body referred to in subsection 29(2) of the *BCIIP Act*.
 - (c) **Building Work** has the meaning given to that term in subsection 3(4) of the Code.
 - (d) **BCIIP Act** means the Building and Construction Industry (Improving Productivity) Act 2016 (Cth).
 - (e) **Code** means the Code for the *Tendering and Performance of Building Work 2016 (Cth)* (available at www.employment.gov.au/building-code) as amended or replaced from time to time.
 - (f) **Declaration of Compliance** means a declaration in substantially the same form as the model declaration of compliance applicable to contractors and Subcontractors in relation to the Code.
 - (g) **Exclusion Sanction** has the meaning given to that term in subsection 3(3) of the Code.
 - (h) **Industrial Instrument** means an award or agreement, however designated, that:
 - (i) is made under or recognised by an industrial law (within the meaning of the Fair Work Act 2009 (Cth) as amended from time to time); and
 - (ii) relates to the relationship between an employer and the employer's employees.
 - (i) Related Entity has the meaning given to that term in subsection 3(2) of the Code.
2. The Subcontractor acknowledges that the Contractor must comply with the Code on the Project.
3. The Subcontractor must comply with any reasonable direction from the Contractor to ensure that the Subcontractor must comply with any reasonable direction from the Contractor to ensure that the Subcontractor complies with any obligations that may apply to it under the Code.
4. The Subcontractor declares as at the date of this Subcontract that, in relation to the Work Under Subcontract, it and its Subcontractors and each related entity:
 - (a) complies with, and acts consistently with, the Code;
 - (b) meets the requirements of section 11 of the Code;



- (c) is not subject to an Exclusion Sanction;
 - (d) only uses products that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;
 - (e) unless approved by the ABC Commissioner, is not excluded from performing Building Work funded by a state or territory government; and
 - (f) (if one is applicable on the Project) complies with the Workplace Relations Management Plan approved by the ABCC in accordance with Part 6 of the Code.
5. During the term of the Subcontract, the Subcontractor must:
- (a) provide, every six months, whether:
 - (i) it has in the preceding six months or since it last advised the Contractor, whichever is the earliest:
 - A. had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or the Migration Act 1958 (Cth); or
 - B. it has been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payment that are due to persons in respect of building work) to a Building Contractor or Building Industry Participant (as those terms are defined in the BCIIIP Act); or
 - C. owed any unsatisfied judgment debts to a Building Contractor or Building Industry Participant (as those terms are defined in the BCIIIP Act);
 - (b) other than in relation to paragraphs 4(c) and 4(e), comply with (and ensure that its Subcontractors and each related entity comply with) paragraphs 4(a) to 4(f) above; and
 - (c) immediately notify the Contractor upon becoming aware of any non-compliance by the Subcontractor, its subcontractors or related entities with any of paragraphs 4(a) to 4(f) above.
6. The Subcontractor acknowledges and agrees that compliance with the Building Code does not relieve the Subcontractor from any responsibility or obligation under this Subcontract, or from liability for any defect in the Subcontract Materials arising from compliance with the Code.
7. The Subcontractor must promptly:
- (a) notify the ABCC of:
 - (i) any breach or suspected breach of the Code as soon as practicable, but no later than 2 Business Days after becoming aware of the breach or suspected breach, and advise the ABCC of the steps proposed to be taken by the Subcontractor to rectify the breach; and
 - (ii) the steps taken to rectify any breach of the Code within 14 days of providing a notification under subclause (i); and
 - (b) give the Contractor a copy of any notification given by the Subcontractor to the ABCC under subclause (a) and respond to any requests for information by the Contractor concerning matters related to the Code so as to enable the Contractor and the Principal to comply with their obligations under section 28 of the Code.
8. The Subcontractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIIIP Act and the Code and must ensure that it (and must procure that its Subcontractors and each related entity) complies with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests:
- (a) for entry under section 72 of the BCIIIP Act;
 - (b) to interview any person under section 74 of the BCIIIP Act;
 - (c) to produce records or documents under sections 74 and 77 of the BCIIIP Act; and
 - (d) for information concerning matters relating to the Code under subsection 7(c) of the Code.
9. The Subcontractor must not enter into a subcontract for any aspect of the Work Under Subcontract unless:
- (a) the Subcontractor has submitted a Declaration of Compliance, including the further information outlined in Attachment A to the Declaration of Compliance, which the Subcontractor agrees is

substantially in the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Code (located in Part 4 in the document entitled "Model Clauses Type B" available at abcc.gov.au); and

- (b) the subcontract with the Subcontractor includes an equivalent clause to this Part D of this Appendix.
- 10. The Subcontractor must provide the Commonwealth with any Subcontractor's Declaration of Compliance referred to in clause 8(a) promptly upon request.
- 11. The Subcontractor must maintain adequate records of the compliance with the Code by:
 - (a) the Subcontractor; and
 - (b) the Subcontractor's Personnel; and
 - (c) any related entity of the Subcontractor.

The Subcontractor must ensure that all of its subcontracts for building work as defined in the Code, impose obligations on subcontractors and consultants engaged to do such building work, which are equivalent to the obligation in this Part D of this Appendix under the Subcontract

Part E – Subcontractor's Charges Act 1974 (Qld)

- 1. The Subcontractor indemnifies the Contractor against any liability, loss, cost, damage or expense or any kind suffered or incurred by the Contractor as a result of any charge lodged under the Subcontractor's Charges Act 1974 (Qld) which are lodged, notified or made as a consequence of the Subcontractor's failure to pay to or the Subcontractor's delay in making payments to any Subcontractor.
- 2. Notwithstanding anything else in this Subcontract, the Subcontractor must immediately:
 - (a) give the Contractor's Representative a copy of any notice the Subcontractor has been required to supply to a Subcontractor under section 9A of the Subcontractors' Charges Act 1974 (Qld) setting out the Subcontractor's name; and
 - (b) notify the Contractor's Representative if it becomes aware that a 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 Subcontractor forming part of the Works and Services;
 - (c) the Subcontractor indemnifies the Contractor against all damage, expenses (including lawyers' fees and expenses on a solicitor/client basis), losses (including financial loss) or liability of any nature suffered or incurred by the Contractor arising out of a notice of claim of charge being served on the Subcontractor under section 10(1) of the Subcontractors' Charges Act 1974 (Qld); and
 - (d) for the purposes of this Part E of this Appendix, a reference to a Subcontractor refers to any party engaged by the Subcontractor, any of that Subcontractor's subcontractors or any other party engaged to carry out work which forms part of the Works and Services.

PART F – Worker's Liens Act 1893 (SA)

Not Applicable

PART G – Contractors Debts Act 1997 (NSW)

Not Applicable

Appendix 10 – Approved form of Undertaking

This Appendix is part of the Subcontract and must be interpreted in accordance with the order of precedence set out in Item 23 of Appendix 1.

At the request of HVAC AUSTRALIA PTY LTD ABN 15 102 771 817 ('Subcontractor') and in consideration of BMD CONSTRUCTIONS PTY LTD ('Contractor') accepting this undertaking in respect of the Subcontract for [insert description of Services] [insert financial institution] ('*financial institution*') unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the *Contractor* to a maximum aggregate sum of [insert aggregate sum in words] (\$[aggregate sum]).

The undertaking is to continue until notification has been received from the *Contractor* that the sum is no longer required by the *Contractor* or until this undertaking is returned to the *financial institution* or until payment to the *Contractor* by the *financial institution* of the whole of the sum or such part as the *Contractor* may require.

Should the *financial institution* be notified in writing, purporting to be signed by an authorised representative for and on behalf of the *Contractor* that the *Contractor* desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the *financial institution* will make the payment or payments to the *Contractor* forthwith without reference to the Subcontractor and notwithstanding any notice given by the Subcontractor not to pay same.

Provided always that the *financial institution* may at any time without being required so to do pay to the *Contractor* the sum of [insert sum in words] (\$[insert sum]) less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the *Contractor* and thereupon the liability of the *financial institution* hereunder shall immediately cease.

Dated at.....this.....day of.....20.....



Appendix 11 – Main Contract Requirements

This Appendix is part of the Subcontract and must be interpreted in accordance with the order of precedence set out in Item 23 of Appendix 1.

Indigenous Engagement/Procurement/Training (Installation only)

Major Projects Skills Guarantee Requirements (Installation only)

Local Jobs First Policy/LIDP Requirements (Installation only)

A handwritten signature in black ink, appearing to be a stylized "M" or "W" followed by a flourish.

Appendix 12 – Form of Deed of Release

This Appendix is part of the Subcontract and must be interpreted in accordance with the order of precedence set out in Item 23 of Appendix 1.

WARNING STATEMENT

This Deed of Release must only be used in accordance with clause (Final Payment Claim and Certificate) of the Subcontract. If any amendments are required to the Deed, legal advice should be sought BEFORE issuing.

DEED OF RELEASE

THIS DEED POLL is made on the..... day of20.....

PARTIES:

BMD CONSTRUCTIONS PTY LTD ('the **Contractor**')
AND

HVAC AUSTRALIA PTY LTD ('**Subcontractor**')
AND

Concerning the Subcontract between the Contractor and the Subcontractor dated
..... ('**Subcontract**') for DECEPTION BAY RD
INTERCHANGE ('**Project**'), Subcontract Number: 42398036

In consideration of the Determination, the Subcontractor agrees:

1. DEFINITIONS AND INTERPRETATION

In this Deed Poll:

- (a) 'Claim' adopts the meaning given to it in clause 2 of the Subcontract.
- (b) 'Determination' means the determination by the Contractor set out in the Final Certificate.
- (c) 'Excepted Matter' means:
 - (i) unresolved issues which are listed in the Schedule below;
 - (ii) any Claim by the Subcontractor arising out of, or in any way in connection with, a breach of the Subcontract by the Contractor occurring after the date of this Release, or a Variation Directed by the Contractor after the date of the Release; and
 - (iii) any action, Claim, demand or proceedings by the Subcontractor against the Contractor for an indemnity or a contribution in respect of any action, Claim, demand or proceedings by a third party against the Subcontractor:
 - (A) for personal injury, death or damage to physical property, or for infringement of any intellectual property right, to the extent the injury, death, damage or infringement is caused by any breach of the Subcontract by the Contractor or by any negligent act or omission of the Contractor; or
 - (B) for damage to physical property, or for pure economic Loss, to the extent the damage or Loss is the unavoidable result of the construction of the Works in accordance with the Subcontract.
- (d) 'Final Certificate' adopts the meaning given to it in clause 23.6 of the Subcontract; and
- (e) other capitalised terms used in this Deed Poll have the same meaning as given to them in the Subcontract.

A handwritten signature in black ink, appearing to be 'MUR'.

2. ACKNOWLEDGEMENT AND RELEASE

This Deed Poll is the Deed of Release referred to in sub clause of the Subcontract.

To the extent not prohibited by law, the Subcontractor:

- (a) agrees that, except for the release of Security, the amount identified in the Final Certificate as being owing to the Subcontractor by the Contract, is the final payment due to the Subcontractor in connection with the Subcontract;
- (b) releases the Contractor and its employees, agents, successors and permitted assigns from all past, present and future Claims, whether known or unknown; and
- (c) further to the Subcontract, indemnifies the Contractor against:
 - (i) any encumbrances (whether by way of lien, charge, retention of title, attachment or otherwise) over or in respect of the Work Under Subcontract or any part thereof, including any plant, equipment, materials, goods items and other things supplied under the Subcontract and forming part of the Works; and
 - (ii) any Claim brought by any person seeking payment of an amount in connection with the Work Under Subcontract.

This Deed Poll does not affect:

- (a) any of the Subcontractor's obligations or liabilities under the Subcontract or otherwise at law (including with respect to defects and to pay any amount to the Contractor);
- (b) any of the Contractor's past, present or future rights or entitlements, whether under the Subcontract or otherwise at law (including with respect to defects and Excepted Matters);
- (c) any of the Subcontractor's rights or entitlements with respect to Excepted Matters; or
- (d) the Contractor's obligation under the Subcontract to pay the amount (if any) identified in the Final Certificate or to release any Security as required by the Subcontract.

The Subcontractor acknowledges that it has waived and relinquished all encumbrances (whether by way of lien, charge, retention of title, attachment or otherwise) over or in respect of the Works or any part thereof, including any plant, equipment, materials, goods, items and other things supplied under the Subcontract and forming part of the Works.

SCHEDULE

Excepted Matters
List of Excepted Matters under clause 1(c)(i) which remain unresolved:



EXECUTED as a Deed Poll

day of

20

Executed and delivered by the Subcontractor in
accordance with section 127 of the *Corporations Act*
2001 (Cth):

Director/company secretary

Director

Name of director/company secretary
(BLOCK LETTERS)

Name of director
(BLOCK LETTERS)



Appendix 13 – Moral Rights Consent

(Refer Clause 31.3)

1. In this Consent:

- (a) **Contractor** means BMD CONSTRUCTIONS PTY LTD;
- (b) **Documents** means any reports, correspondence, memos, drawings, specifications, briefs, plans, photographs, samples, models, patterns and similar materials in any form created for or relating to the Works;
- (c) **Moral Rights** means a right of attribution of authorship, a right not to have authorship falsely attributed, a right to integrity of authorship and any other analogous rights arising under any statute (including the Copyright Act 1968 (Cth)) that exists or that may come to exist anywhere in the world;
- (d) **Principal** means DEPT OF TRANSPORT AND MAIN ROA and ;
- (e) **Works** means the Supply & Installation of Gantries .

2. I, _____(name), freely give this consent to the Principal. I have been informed and understand that the Contractor is under a contractual obligation to obtain consents from individuals who are authors of the Documents. I am or may become one of the authors of one or more of the Documents and I acknowledge that the Principal is or will become the owner of copyright in the Documents.

3. By signing this document, I unconditionally and irrevocably waive and agree not to enforce any Moral Rights that I may have, presently or in the future, in the Documents. Without limiting the generality of this consent, I acknowledge that the Principal may:

- (a) exercise any and all rights in relation to the Documents, without identifying any person as the individual responsible for creating any particular material comprising the Documents;
- (b) have the Documents bear the name of any person associated with the Works;
- (c) modify, alter, adapt, distort or otherwise change any of the Documents as they deem fit in their absolute discretion, including:
 - (i) adaptation or translation into other dimensions, format or media of those Documents; and
 - (ii) changing, relocating, demolishing or destroying any two or three-dimensional reproduction of those Documents without notice to, or consultation with, me; and
- (d) authorise any person to do any of the acts referred to in clauses 3(a) to (c).

4. I confirm that this consent extends to any act or omission of the Principal (or any act or omission authorised by the Principal) occurring prior to or after the date of this consent.

Executed as a deed

.....(signature)

.....(date)

A handwritten signature in black ink, appearing to be 'M. M.', located in the bottom right corner of the page.

