

SCHEDULE 2A – QUEENSLAND

Where the site is located in Queensland, these Special Conditions apply and take precedence over the Subcontract Conditions to the extent of any inconsistency.

1. SECURITY OF PAYMENT

1.1 DEFINITIONS

- > **BCIPA** means the *Building and Construction Industry Payments Act 2004* (Qld).
- > **Business Day** means a day that is not a Saturday, Sunday or a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done, but does not include:
 - » 22 to 24 December;
 - » 27 to 31 December; and
 - » 2 to 10 January.
- > **Complex Payment Claim** means a payment claim which is:
 - » for an amount more than \$750,000 (exclusive of GST); and
 - » endorsed as a payment claim under BCIPA.
- > **QBCC Act** means the *Queensland Building and Construction Commission Act 1991* (Qld).
- > **Reference Date** means the date stated in, or worked out under, the Subcontract Conditions as the date on which a payment claim may be made.
- > **Standard Payment Claim** means a payment claim which is not a Complex Payment Claim.

1.2 PROGRESS CERTIFICATES

Progress certificates shall be issued:

For a Standard Payment Claim	Within 10 Business Days after the Contractor receives the payment claim
For a Complex Payment Claim	Within 15 Business Days after the Contractor receives the payment claim if the claim was served 90 days or less after the reference date to which the claim relates; or Within 30 Business Days after the Contractor receives the payment claim if the claim was served more than 90 days after the reference date to which the claim relates.

Notwithstanding any other provision of the Subcontract, a failure by the Contractor to pay all or part of the amount claimed in a Complex Payment Claim before the date by which the clause requires the Contractor to issue a statement for that claim:

- > does not entitle the Subcontractor to suspend the performance of the work or the Works under the Subcontract;
- > does not constitute a substantial breach of the Subcontract; and
- > for the purposes of section 67(O) of the QBCC Act, the parties are deemed to be in dispute over the amount to be paid in relation to that claim.

1.3 SUSPENSION BY SECONDARY SUBCONTRACTORS

If any secondary subcontractor at any time suspends the provision by it of work, services, materials or other things (which form part of the work under the Subcontract) or takes any other action pursuant to the BCIPA, despite any other provision of the Subcontract:

- > the Subcontractor shall not be relieved of any of its obligations under the Subcontract and the suspension or other action by the secondary subcontractor shall not entitle the Subcontractor to any claim (including without limitation for any extension of time);
- > the Subcontractor shall immediately provide to the Contractor full details of the circumstances giving rise to the secondary subcontractor's right or alleged right to suspend or take other action; and
- > without limiting the rights of the Contractor under the Subcontract, the Subcontractor shall indemnify the Contractor against any loss, expense or damage of any nature, including financial loss and legal costs on an indemnity basis, suffered or incurred by the Contractor arising out of or in connection with:
 - » a suspension by a secondary subcontractor of work, which forms part of the Works, under the BCIPA; and
 - » a failure by the Subcontractor to comply with clause 1.3(b).

1.4 SUSPENSION AND CLAIM NOTICES

- > The Subcontractor shall:
 - » promptly give the Contractor a copy of any notice the Subcontractor:
 - receives from a secondary subcontractor under sections 19, 20 or 30 of the BCIPA; or
 - has been required to supply to a secondary subcontractor under section 9A of the *Subcontractors' Charges Act 1974* (Qld) setting out the Contractor's name;
 - » ensure that each secondary subcontractor promptly gives the Contractor a copy of any notice that the secondary subcontractor promptly gives the Contractor a copy of any notice that the secondary subcontractor receives from another person under sections 19, 20 or 30 of the BCIPA.
- > Without limiting the rights of the Contractor under the Subcontract:
 - » if the Contractor becomes aware that a secondary subcontractor is entitled to suspend work under section 33 of the BCIPA, the Contractor may pay the secondary subcontractor such money that is, or may be, owing to the secondary subcontractor for work forming part of the work. The Contractor may recover from the Subcontractor each amount paid as a debt; and

- » the Subcontractor shall indemnify the Contractor against any loss, expense or damage of any nature, including financial loss and legal costs on an indemnity basis, suffered or incurred by the Contractor arising out of or in connection with:
 - a suspension by a secondary subcontractor of work, which forms part of the work, under section 33 of the BCIPA;
 - a notice of claim being served on the Contractor under section 10 of the *Subcontractors' Charges Act 1974* (Qld);
 - a failure by the Subcontractor to comply with clause 1.4(a) of these Special Conditions.

2. NOTICE OF USE OF SECURITY

The parties agree that for the purposes of section 67J of the QBCC Act (**Relevant Section**) to the extent it applies:

- > to the extent that the Relevant Section applies, the Subcontractor accepts that any payment statement or certificate issued by the Contractor under the Subcontract which refers to an amount owed by the Subcontractor to the Contractor shall be taken to be advice from the Contractor of the proposed use of security held by the Contractor to obtain the amount owed; and
- > to the extent required by the Relevant Section, the Contractor shall give to the Subcontractor on the Contractor's behalf any notice required pursuant to paragraph (1) of the Relevant Section to ensure the Contractor's rights to use security are not prejudiced.

3. WORK HEALTH AND SAFETY

For the purposes of this clause:

- > **Act** means the *Work Health and Safety Act 2011* (Qld), as amended from time to time;
- > **Regulation** means the *Work Health and Safety Regulation 2011* (Qld), as amended from time to time;
- > **workplace, inspector, notifiable incident, principal contractor, structure and regulator** have the same meanings as the Act.

From the date of Subcontract:

- > the Subcontractor shall comply with and discharge all obligations imposed on the Subcontractor as a person who conducts a business or undertaking and otherwise, by the Act, the Regulation and any other regulation in connection with health and safety; and
- > the Subcontractor shall, in performing its obligations under the Subcontract, take into account and take appropriate action having regard to any information given to the Subcontractor by the Contractor or any other person, about hazards and risks at or in the vicinity of the workplace where WUS is being carried out.

The Subcontractor shall indemnify the Contractor against any claim, action, demand, loss, damage, cost or expense which may be brought against, or suffered or incurred by the Contractor as a result of or in connection with:

- > any breach of this clause by the Subcontractor;
- > any breach by the Subcontractor of its obligations under the Act, the Regulation or any other regulation in connection with health and safety;

- > any enforcement of obligations imposed on the Subcontractor under the Act, the Regulation or any other regulations.

If a notifiable incident occurs at the workplace at which WUS is being undertaken, the Subcontractor shall:

- > immediately notify the regulator and the Main Contractor's Representative of the notifiable incident; and
- > take all reasonably practicable steps to secure the site where the notifiable incident occurred until an inspector arrives at the site or any earlier time that an inspector directs.

4. LICENCE

- > The Subcontractor shall not carry out work under the Subcontract which requires a licence under the QBCC Act unless it holds the proper licence permitting the Subcontractor to lawfully carry out that work under the Subcontract.
- > If the Subcontractor is unable to carry out work under the Subcontract which requires a licence under the QBCC Act because it has failed, refused, or been unable to obtain a proper licence or has had its licence suspended or cancelled, or has had conditions imposed on its licence, then the Subcontractor shall be in substantial breach of the Subcontract.

[WHERE THE HEAD CONTRACT IS QUEENSLAND GOVERNMENT DEPARTMENT OF TRANSPORT AND MAIN ROADS C7830 (TMR)]:

- > **Insert:** TMR Special Conditions.

SCHEDULE 2B – NEW SOUTH WALES

Where the site is located in New South Wales, these Special Conditions apply and take precedence over the Subcontract Conditions to the extent of any inconsistency.

1. SECURITY OF PAYMENT

1.1 DEFINITIONS

- > **Business Day** means a day that is not a Saturday, Sunday or a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done, but does not include 27, 28, 29, 30 or 31 December.
- > **Payments Act** means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

1.2 SUSPENSION BY SECONDARY SUBCONTRACTORS

If any secondary subcontractor at any time suspends the provision by it of work, services, materials or other things (which form part of the work under the Subcontract) or takes any other action pursuant to the Payments Act, despite any other provision of the Subcontract:

- > the Subcontractor shall not be relieved of any of its obligations under the Subcontract and the suspension or other action by the secondary subcontractor shall not entitle the Subcontractor to any claim (including without limitation for any extension of time);
- > the Subcontractor shall immediately provide the Contractor full details of the circumstances giving rise to the secondary subcontractor's right or alleged right to suspend or take other action; and
- > without limiting the rights of the Contractor under the Subcontract, the Subcontractor shall indemnify the Contractor against any loss, expense or damage of any nature, including financial loss and legal costs on an indemnity basis, suffered or incurred by the Contractor arising out of or in connection with:
 - » a suspension by a secondary subcontractor of work, which forms part of the Works, under the Payments Act; and
 - » a failure by the Subcontractor to comply with clause 1.2(b).

1.3 SUSPENSION AND CLAIM NOTICES

- > The Subcontractor shall:
 - » promptly give the Contractor a copy of any notice the Subcontractor:
 - receives from a secondary subcontractor under sections 15, 16 or 24 of the Payments Act; or
 - has been required to supply to a secondary subcontractor under section 15(1) of the *Contractors Debts Act 1997* (NSW) setting out the Contractor's name;
 - » promptly notify the Contractor if it becomes aware that a secondary subcontractor intends to exercise a statutory lien, under section 11(3) of the Payments Act, over unfixed plant and materials supplied by the Subcontractor for use in carrying out the Works under the Subcontract.
- > Without limiting the rights of the Contractor under the Subcontract, if the Contractor becomes aware that a secondary subcontractor is entitled to suspend work under section 27 of the Payments Act, the Contractor may pay the secondary subcontractor such money that is, or

- may be, owing to the secondary subcontractor for work forming part of the Works under the Subcontract and the Contractor may recover any amount paid as a debt.
- > Without limiting the rights of the Contractor under the Subcontract, the Subcontractor shall indemnify the Contractor against any loss, expense or damage of any nature, including financial loss and legal costs on an indemnity basis, suffered or incurred by the Contractor arising out of or in connection with:
 - » a suspension by a secondary subcontractor of work, which forms part of the Works under the Subcontract, under section 27 of the Payments Act;
 - » a notice of claim being served on the Contractor under Part 2 of the *Contractors Debts Act 1997* (NSW);
 - » a secondary subcontractor exercising a statutory lien, under section 11(3) of the Payments Act, over unfixed plant or materials supplied by the secondary subcontractor for use in carrying out work forming part of the Works under the Subcontract; and
 - » a failure by the Subcontractor to comply with clause 1.3(a)(i) and (ii) of these Special Conditions.
 - > If the Contractor is served with a payment withholding request under section 26A of the Payments Act by a secondary subcontractor or any other party in connection with any work carried out or material supplied by the Subcontractor to the Contractor forming part of the Works under the Subcontract and the Contractor consequently retains money that is or becomes payable by the Contractor to the Subcontractor under the Subcontract:
 - » the Contractor is not in breach of its payment obligations under the Subcontract as a result only of the retention of such money in such circumstances; and
 - » the Subcontractor waives its rights and releases the Contractor from liability in respect of all losses or expenses of any nature suffered or incurred by the Subcontractor, and may not terminate, rescind or treat as repudiated the Subcontract arising out of or in connection with the Contractor retaining such money in such circumstances.

2. SUBCONTRACTOR'S STATEMENT

- > Each progress claim shall be accompanied by a duly written statement in a form approved by the Contractor and which complies with the Subcontractor's obligations under section 127 of the *Industrial Relations Act 1996* (NSW), Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW) and section 175B of the *Worker's Compensation Act 1987* (NSW) to provide a statement to the "principal contractor" as contemplated by those acts.
- > At the date of the Subcontract, a duly completed signed written statement in the form issued by the New South Wales government, accompanied (except where the Subcontractor is a sole trader or partnership without workers or subcontractors) by the required certificate of currency in respect of its workers compensation insurance, which shall comply with the requirements of this clause 2.

3. RETENTION

If the *Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015* (NSW) (**Retention Money Trust Account Regulation**) applies to the Subcontract:

- > the Contractor may withdraw money from the trust account it has established in accordance with the Retention Money Trust Account Regulation to satisfy its entitlements under the Subcontract Conditions; and
- > the Contractor is entitled to retain any interest which accrues on the security in the trust account established by the Contractor in accordance with the Retention Money Trust Account Regulation.

4. EXCLUSION OF PROPORTIONATE LIABILITY

To the extent that proportionate liability is excluded under the main contract then, to the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW), and any equivalent statutory provision, is excluded in relation to all rights, obligations and liabilities in connection with the Subcontract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.

[WHERE THE HEAD CONTRACT IS NEW SOUTH WALES GOVERNMENT GC21 (EDITION 2) GENERAL CONDITIONS OF CONTRACT (GC21)]:

Insert: GC21 Special Conditions.