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Task 1, Occasion 1
AS2545

Project: RC5-521 Kirwan Ambulance Station
7 Hinchinbrook Drive
Thuringowa Central, Queensland 4817

Submittal #143.0 - 24-011 Lockers | Agreement with Subby

Distribution Summary

Distributed by Melissa Parsons (RCQ Construction) on 12 Aug, 2020

To Kim Huntington (Kirkbuild Commercial Joinery Pty Ltd), Daniel Ogden (RCQ Construction)

Message Good afternoon Kim, Please find attached copy of the Executed Agreement for the Kirwan Lockers package Reminder that progress claims and supporting documents are due on the 20th of the month for works to the end of the month. If you have any trainees/apprentices or indigenous staff that can assist with the project even in the workshop that would be very much appreciated Thansk Melissa

Attachments [521 Lokers Agreement EXECUTED.pdf](#)

Name	Response	Attachments	Comments
Kim Huntington (Kirkbuild Commercial Joinery Pty Ltd)	Submitted		

Revision	0	Submittal Manager	Melissa Parsons (RCQ Construction)
Status	Closed	Date Created	6 Aug, 2020
Issue Date	6 Aug, 2020	Spec Section	
Responsible Contractor	RCQ Construction	Received From	Daniel Ogden (RCQ Construction)
Received Date		Submit By	
Final Due Date	10 Aug, 2020	Lead Time	28 day(s)
		Cost Code	24-001 - Joinery
Location		Type	Agreement

Approvers

Ball in Court

Distribution Melissa Parsons (RCQ Construction), Daniel Ogden (RCQ Construction)

Description Good morning Kim

Please find attached for your review

- 1) Kirwan Lockers Agreement - Please print this in colour, initial every page, scan back in colour and send back to us
- 2) Kirwan Lockers Progress Claim Please use your template (due on the 20th of the month for works to the end of the month, should the 20th fall on weekend or public holiday then the next following working day)
- 3) Sched 2 - Subcontractor Stat Dec (to be signed by a JP or C.Dec and returned with the claim on the 20th)
- 4) Sched 7 - Training Policy (to be filled out for any trainee, apprentice or someone who undertakes training on that is working on the Kirwan Ambulance Station project, on site or in the workshop. To be submitted with the claim)
- 5) Sched 8 - Site Personal Register, to be filled out and submitted with the claim on the 20th

Please print out your agreement in colour, initial every page, sign the signing page, scan back in colour and return back to us

Jimmy Murray is your site safety manager for submission of SWMS and inductions (jmurray@rcq.net.au)
Lloyd Miller is your site manager (lmiller@rcq.net.au)
Daniel Ogden is the CA for all progress claims to be submitted on the 20th of the month (dogden@rcq.net.au & townsville@rcq.net.au)

Should you have any questions please don't hesitate to give us a call to discuss on 07 4771 3077

thanks
Mellissa

Submittal Workflow

Name	Sent Date	Due Date	Returned Date	Response	Attachments
General Information Attachments					521 Lockers Agreement.pdf Sched 12 - Info for Subcontractors BIF Act.pdf Sched 2 - Request to Sub Subcontract.pdf 521 Lockers PC Template.xls Sched 2 - Subcontractor Stat Dec.docx Sched 7 - Training Policy Statement.docx Sched 8 - Site Personnel Register.xlsx
Kim Huntington	7 Aug, 2020	10 Aug, 2020	7 Aug, 2020	Submitted	Contract signed - KCJ.pdf (Current)

AS2545

**Formal instrument of
agreement for the
construction of Lockers**

Kirwan – Replacement Ambulance Station

RCQ Projects Pty Ltd (**Main Contractor**)

Kirkbuild Commercial Joinery Pty Ltd (**Subcontractor**)

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Formal instrument of agreement for the construction of Supply & Install Lockers

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Details

Date

Parties

Main Contractor

Name RCQ Projects Pty Ltd
ACN 614 089 066

Notice details Attention Andrew Collyer
 Address 212/2 Emporio Place, Maroochydore, Queensland 4558
 Email townsville@rcq.net.au
 Fax 07 5459 1899

Subcontractor

Name Kirkbuild Commercial Pty Ltd
ACN 602 530 736
QBCC Licence 1307956

Notice details Attention Trevor Falkenburg
 Address Shed 3b, 160 Toongarra Road, Wulkuraka QLD 4305
 Email asmin@kirkbuild.com.au
 Fax 07 3496 7990

Background

- A The Main Contractor sought tenders for the construction of the Works in connection with the Project and the Subcontractor submitted a tender.
- B The Subcontractor has represented and continues to represent to the Main Contractor that it has the skill, experience, ability and resources required to carry out and complete work under the Subcontract in accordance with the Subcontract.
- C In reliance on the Subcontractor's representations, the Main Contractor wishes to engage the Subcontractor to carry out and complete work under the Subcontract.
- D The Subcontractor agrees to accept the engagement on the terms of the Subcontract.

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Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In the Subcontract:

- (a) the following terms have the following meanings:

Term	Definition
Business Day	means a day that is not a Saturday, Sunday or public holiday, special holiday or bank holiday in the place where the Works will be situated.
Drawings	means the drawings in Schedule 3.
Formal Instrument of Agreement	means this document.
General Conditions	means the amended AS2545-1993 Subcontract Conditions as contained in Schedule 1 including its annexures.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Project	means the Kirwan – Replacement Ambulance Station project.
Scope of Works	means the documents in Schedule 2.
Specification	means the specification in Schedule 4.
Subcontract	means the agreement between the Main Contractor and the Subcontractor comprising the documents listed in clause 4.

- (b) all other terms have the meanings given in the General Conditions, unless the context clearly indicates otherwise.

1.2 Interpretation

In the Subcontract:

- (a) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, the contract and references to the contract include any schedules or annexures;
- (b) a reference to a party to the Subcontract or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

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- (d) a reference to a document or agreement (including a reference to the contract) is to that document or agreement as amended, supplemented, varied or replaced;
- (e) a reference to the Subcontract includes the agreement recorded by this Formal Instrument of Agreement;
- (f) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) if any day on or by which a person must do something under the contract is not a Business Day, then the person must do it on or by the next Business Day;
- (h) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (i) a reference to '\$' or 'dollar' is to Australian currency; and
- (j) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', or 'for example' (or similar phrases) do not limit what else might be included.

2. Performance

- (a) The Subcontractor must carry out and complete work under the Subcontract for the Main Contractor in accordance with the terms of the Subcontract.
- (b) In consideration of the execution and completion of work under the Subcontract in accordance with the Subcontract, the Main Contractor must pay the Subcontract Sum to the Subcontractor in accordance with the Subcontract.
- (c) The Subcontract applies to all work carried out by the Subcontractor in connection with the Project before this Formal Instrument of Agreement was executed.

3. Subcontract Sum

- (a) The Subcontract Sum is a fixed lump sum of [REDACTED] excluding GST.
- (b) The Subcontract Sum (together with any additions or deductions provided for by the Subcontract):
 - (i) includes all items of work under the Subcontract necessary for the Subcontractor to carry out and complete work under the Subcontract in accordance with the Subcontract;
 - (ii) is deemed to include all necessary components, works or services reasonably inferable as necessary to complete the Works strictly in compliance with the Subcontract and in a complete and serviceable condition; and
 - (iii) is not subject to adjustment except to the extent expressly provided for in the Subcontract.

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4. Evidence of Subcontract

4.1 Subcontract documents

The Subcontract is comprised of the following documents:

- (a) this Formal Instrument of Agreement;
- (b) the General Conditions;
- (c) the Scope of Work;
- (d) the Drawings;
- (e) the Specifications;
- (f) the Project Documents; and
- (g) any other schedules to this Formal Instrument of Agreement.

4.2 Order of precedence

- (a) Subject to 4.2(b), in the event of any ambiguity, inconsistency or discrepancy between any of the documents comprising the Subcontract, the documents shall be read in the following order of priority:
 - (i) this Formal Instrument of Agreement;
 - (ii) Annexure Part B to the General Conditions;
 - (iii) the General Conditions;
 - (iv) Annexure Part A to the General Conditions;
 - (v) the Scope of Work;
 - (vi) the Drawings;
 - (vii) the Specifications;
 - (viii) the Project Documents.
- (b) Where one document imposes duties, standards or obligations on the Subcontractor which are greater than those arising under another document which describes the work under the Subcontract or the Works, then the Subcontractor must meet or discharge that greater duty, standard or obligation.

5. General

5.1 Amendments

The Subcontract may only be amended by written agreement between all parties.

5.2 Counterparts

This Formal Instrument of Agreement may be signed in any number of counterparts. All counterparts together make one instrument.

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5.3 Entire agreement

- (a) The Subcontract supersedes all previous agreements about its subject matter. The Subcontract embodies the entire agreement between the parties.
- (b) To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, is withdrawn and has no effect except to the extent expressly set out or incorporated by reference in the Subcontract.
- (c) Each party acknowledges and agrees that it does not rely on any prior conduct or representation by the other party in entering into the Subcontract.

5.4 Further assurances

Each party must do all things reasonably necessary to give effect to the Subcontract and the transactions contemplated by it.

5.5 No waiver

- (a) The failure of a party to require full or partial performance of a provision of the Subcontract does not affect the right of that party to require performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under the Subcontract may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

5.6 Governing law and jurisdiction

- (a) Queensland law governs the Subcontract.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.

5.7 Severability

- (a) A clause or part of a clause of the Subcontract that is illegal or unenforceable may be severed from the Subcontract and the remaining clauses or parts of the clause of the Subcontract continue in force.
- (b) If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from the Subcontract in the relevant jurisdiction, but the rest of the Subcontract will not be affected.

5.8 Costs

Each party bears its own costs in relation to the preparation and signing of the Subcontract.

6. Notice

6.1 Method of giving notice

A notice, consent or communication under the Subcontract is only effective if it is:

- (a) in writing in English, signed by or on behalf of the person giving it;

- (b) addressed to the person to whom it is to be given; and
- (c) given as follows:
 - (i) delivered by hand to that person's address;
 - (ii) sent to that person's address by prepaid mail or by prepaid airmail, if the address is overseas;
 - (iii) sent by fax to that person's fax number where the sender receives a transmission confirmation report from the despatching machine indicating the transmission has been made without error and showing the relevant number of pages and the correct destination fax number or name of recipient; or
 - (iv) sent by email to that person's email address.

6.2 When is notice given

A notice, consent or communication given under clause 6.1 is given and received on the corresponding day set out in the table below. The time expressed in the table is the local time in the place of receipt.

If a notice is	It is given and received on
Delivered by hand or sent by fax	(a) That day, if delivered by 5.00pm on a Business Day; or (b) The next Business Day, in any other case.
Sent by email	At the time of departure from the sender's mail server unless the sender receives an automated message generated by the recipient's mail server (Failure Message) that the email has not been delivered within two hours. For the avoidance of doubt any response generated by or at the instigation of the recipient (including an 'out of office' message) will not be a Failure Message.
Sent by post	(a) Three Business Days after posting, if sent within Australia; or (b) Seven Business Days after posting, if sent to or from a place outside Australia.

6.3 Address for notices

A person's address, fax number and email address are those set out in the Subcontract, or as the person otherwise notifies the sender.

Signing page

EXECUTED as an agreement.

Executed by RCQ Projects Pty Ltd:



Signature of Authorised Representative

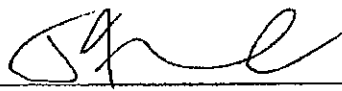


Signature of Witness

JUSTIN SPINTON
Name of Authorised Representative (print)

MELISSA LEES
Name of Witness (print)

Executed by Kirkbuild Commercial Joinery Pty Ltd



Signature of Authorised Representative



Signature of Witness

Trevor Falkenburg
Name of Authorised Representative (print)

Tatiana Baker-Clark
Name of Witness (print)

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Schedule 1

General Conditions

AS 2545—1993
(Incorporating Amendment No. 1)

Australian Standard®

Subcontract conditions

Licence permits: 6 copies, usage term of 3 months.

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The following interests are represented on Committee OB/3:

Australian Chamber of Commerce and Industry
Australian Electrical and Electronic Manufacturers Association
Australian Institute of Project Management
Australian Institute of Purchasing and Supply Management
Australian Institute of Quantity Surveyors
Australian Mining Industry Council
AUSTROADS
Construction Industry Engineering Services Group
Electricity Supply Association of Australia
Institution of Engineers Australia
Law Council of Australia
Master Builders Australia
Metal Trades Industry Association of Australia
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Process Engineers and Constructors Association
Railways of Australia Committee
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Suggestions for improvements to Australian Standards, addressed to the head office of Standards Australia, are welcomed. Notification of any inaccuracy or ambiguity found in an Australian Standard should be made without delay in order that the matter may be investigated and appropriate action taken.

PREFACE

This Standard was prepared by the Standards Australia Committee on General Conditions of Contract to supersede AS 2545—1987, *Subcontract conditions* to provide a set of compatible subcontract conditions involving site work on projects where AS 2124—1992, *General conditions of contract*, is in use as the head contract between the Main Contractor and the Principal.

This edition of the Standard has been revised to be compatible with AS 2124—1992, AS 2125—1992 and AS 2127—1992, and is therefore recommended for use in conjunction with them. As far as possible, Clause numbers in this Standard are parallel with the corresponding provisions in AS 2124.

This Standard incorporates Amendment No. 1 (October 2000). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure or part thereof affected.

A form of formal instrument of agreement, and general conditions of tendering and form of tender are also included as an annexure at the end of AS 2545. Attention is drawn to the desirability for the parties to this contract to execute the formal instrument of agreement at the earliest opportunity, immediately after the necessary documents to form part of the subcontract are prepared. (See Clause 6.2 in this Standard in relation to the procedure for execution of the formal instrument of agreement.)

To be compatible with AS 2124—1992, this document mirrors it, on a clause by clause basis, unless the subject matter makes it inappropriate to do so. However, the difference between this edition of AS 2545 and the 1987 edition, is, with a number of appropriate exceptions, the same as the difference between AS 2124—1986 and AS 2124—1992. The latter differences are summarized in Doc 2124N Notes on Changes in the General Conditions of Contract, 4th edition (AS 2124—1992), as compared with the 3rd edition (AS 2124—1986).

Attention is invited to the provisions of Clause 49 in which the details of services and facilities to be provided are to be agreed between the parties, and indicated in the Annexure.

WARNING: Users of this Australian Standard are warned that Clause 17 (damage to persons and property) does not limit the liability of parties for special, indirect or consequential losses.

This unlimited liability overrides any limitations or exclusions permitted under Insurance Clauses 18 (Insurance of the Works) and 19 (Public Liability Insurance).

Parties wishing to limit their liability should seek insurance and legal advice before entering a contract under this Standard.

Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

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STANDARDS AUSTRALIA

Australian Standard

Subcontract conditions

NOTE: Clauses prefixed by an asterisk can be omitted without making consequential amendments.

1 CONSTRUCTION OF SUBCONTRACT

The law governing the Subcontract, its interpretation, any agreement to arbitrate and the conduct of any arbitration or litigation is the law of the State or Territory stated in the Annexure.

Unless otherwise provided, prices are in Australian currency and payments shall be made in Australian currency at the place stated in the Annexure.

Communications between the Main Contractor, the Main Contractor's Representative and the Subcontractor shall be in the English language.

Measurements of physical quantities shall be in Australian legal units of measurement within the meaning of the National Measurement Act 1960 as amended from time to time.

Where provisions in the Subcontract Conditions are expressed to be alternatives and the Subcontract fails to state which alternative applies, the first alternative shall apply.

2 INTERPRETATION

In the Subcontract, except where the context otherwise requires—

'Bill of Quantities' means a document named therein as a Bill of Quantities issued to tenderers by or on behalf of the Main Contractor, stating estimated quantities of work to be carried out;

'Constructional Plant' means appliances and things used in the execution of the work under the Subcontract but not forming part of the Works;

'Date of Acceptance of Tender' means the date which appears on the notice in writing of acceptance of the tender;

'Date for Substantial Completion' means—

- (a) where the Annexure provides a date for Substantial Completion, the date;
- (b) where the Annexure provides a period of time for Substantial Completion, the last day of the period,

but if any extension of time for Substantial Completion is granted by the Main Contractor's Representative or allowed in any arbitration or litigation, it means the date resulting therefrom;

'Date of Substantial Completion' means—

- (a) the date certified by the Main Contractor's Representative in a Certificate of Substantial Completion issued pursuant to Clause 42.5, to be the date upon which Substantial Completion was reached; or
- (b) where another date is determined in any arbitration or litigation as the date upon which Substantial Completion was reached, that other date;

'day' means calendar day;

'Drawings' means the drawings referred to in the Subcontract and any modification of such drawings notified to the Subcontractor by the Main Contractor's Representative and includes such other drawings as may from time to time be supplied to the Subcontractor by the Main Contractor's Representative, or the use of which has been permitted by the Main Contractor's Representative, for the purposes of the Subcontract;

'Main Contract' means the agreement between the Principal and the Main Contractor;

'Main Contractor' means the Main Contractor stated in the Annexure;

'Main Contractor's Representative' means the person stated in the Annexure as the Main Contractor's Representative or other person from time to time appointed in writing by the Main Contractor to be the Main Contractor's Representative for the purposes of the Subcontract, and notified as such in writing to the Subcontractor by the Main Contractor;

'Main Contract Works' means the whole of the work to be executed under the Main Contract;

'month' means calendar month;

'person' includes a firm or body corporate or unincorporate or an individual;

'Priced Bill of Quantities' means the Bill of Quantities priced and lodged by the Subcontractor with the Main Contractor's Representative and corrected where necessary from time to time under Clause 4.3;

'Principal' means the Principal stated in the Annexure;

'provisional sum' includes monetary sum, contingency sum and prime cost item;

'Schedule of Rates' means any schedule included in the Subcontract which, in respect of any section or item of work to be carried out, shows the rate or respective rates of payment for the execution of that work and which may also include lump sums, provisional sums, other sums, quantities and prices;

'secondary subcontract' means a subcontract between the Subcontractor and a secondary subcontractor;

'secondary subcontractor' means a subcontractor to the Subcontractor;

'Separable Portion' means a portion of the work under the Subcontract described in the Subcontract as a Separable Portion or which the Main Contractor's Representative has determined pursuant to Clause 35.4 shall be a Separable Portion;

'Site' means the lands and other places to be made available and any other lands and places made available to the Subcontractor by the Main Contractor for the purpose of the Subcontract;

'Specification' means the specification referred to in the Subcontract and any modification of such specification thereafter directed or the use of which has been permitted by the Main Contractor's Representative pursuant to powers contained in the Subcontract;

'Subcontract' means the agreement between the Main Contractor and the Subcontractor;

'Subcontractor' means the person bound to execute the work under the Subcontract;

'Subcontract Sum' means—

(a) where the Main Contractor accepted a lump sum, the lump sum;

(b) where the Main Contractor accepted rates, the sum ascertained by calculating the products of the rates and the corresponding quantities in the Bill of Quantities or Schedule of Rates;

(c) where the Main Contractor accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),

including provisional sums but excluding any additions or deductions which may be required to be made under the Subcontract;

Handwritten signature/initials: *MP*

'Substantial Completion' is that stage in the execution of the work under the Subcontract when—

- (a) the Works are complete except for minor omissions and minor defects—
 - (i) which do not prevent the Works from being reasonably capable of being used for their intended purpose; and
 - (ii) which the Main Contractor's Representative determines that the Subcontractor has reasonable grounds for not promptly rectifying; and
 - (iii) rectification of which will not prejudice the convenient use of the Works; and
- (b) those tests which are required by the Subcontract to be carried out and passed before the Works reach Substantial Completion have been carried out and passed; and
- (c) documents and other information required under the Subcontract which, in the opinion of the Main Contractor's Representative, are essential for the use, operation and maintenance of the Works have been supplied;

'Superintendent' means the person stated in the Annexure as the Superintendent or other person from time to time appointed in writing by the Principal to be the Superintendent and notified as such in writing to the Subcontractor by the Main Contractor and, so far as concerns the functions exercisable by a Superintendent's Representative, includes a Superintendent's Representative;

'Temporary Works' means works used in the execution of the work under the Subcontract but not forming part of the Works;

'work under the Subcontract' means the work which the Subcontractor is or may be required to execute under the Subcontract and includes variations, remedial work, Constructional Plant and Temporary Works;

'Works' means the whole of the work to be executed in accordance with the Subcontract, including variations provided for by the Subcontract, which by the Subcontract is to be handed over to the Main Contractor.

NOTE: In addition to these definitions, some terms, specific to a clause, are defined in that clause. Refer to the Index.

The clause headings and sub-clause headings in the Subcontract Conditions shall not form part of the Subcontract Conditions and shall not be used in the interpretation of the Subcontract.

Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.

Words importing a gender include every gender.

3 NATURE OF SUBCONTRACT

3.1 Performance and Payment

The Subcontractor shall execute and complete the work under the Subcontract.

The Main Contractor shall pay the Subcontractor—

- (a) for work for which the Main Contractor accepted a lump sum, the lump sum;
- (b) for work for which the Main Contractor accepted rates, the sum ascertained by multiplying the measured quantity of each section or item of work actually carried out under the Subcontract by the rate accepted by the Main Contractor for the section or item,

adjusted by any additions or deductions made pursuant to the Subcontract.

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3.2 Quantities

Quantities in a Bill of Quantities or Schedule of Rates are estimated quantities only.

- 5 A direction shall not be required to be given by the Main Contractor's Representative by reason of the actual quantity of an item required to perform the Subcontract being greater or less than the quantity shown in the Bill of Quantities or Schedule of Rates.

3.3 Adjustment for Actual Quantities—Schedule of Rates

10 Where otherwise than by reason of a direction of the Main Contractor's Representative to vary the work under the Subcontract, the actual quantity of an item required to perform the Subcontract is greater or less than the quantity shown in the Schedule of Rates—

- 15 (a) where the Main Contractor accepted a lump sum for the item, the difference shall be valued under Clause 40.5 as if it were varied work directed by the Main Contractor's Representative as a variation;
- 20 (b) where the Main Contractor accepted a rate for the item, the rate shall apply to greater or lesser quantities provided that where limits of accuracy are stated in the Annexure the rate shall apply to the greater or lesser quantities within the limits and quantities outside the limits shall be valued under Clause 40.5 as if they were varied work directed by the Main Contractor's Representative as a variation.

25 If a Schedule of Rates omits an item which should have been included, the item shall be valued under Clause 40.5 as if it were extra work directed by the Main Contractor's Representative as a variation.

4 BILL OF QUANTITIES

4.1 Purpose of the Bill of Quantities

Alternative 1

35 A Bill of Quantities forms part of the Subcontract only to the extent provided in the Subcontract.

Alternative 2

40 A Bill of Quantities shall not form part of the Subcontract.

Alternative 3

45 A Bill of Quantities forms part of the Specification.

4.2 Pricing and Lodgment

Where there is a Bill of Quantities—

- 50 (a) all items included in the Bill of Quantities shall be priced and extended by the Subcontractor and the prices as extended shall, on addition, equal the sum accepted by the Main Contractor for the execution of the whole of the work to which the Bill of Quantities relates;
- 55 (b) the Subcontractor shall lodge the Bill of Quantities so priced and extended with the Main Contractor's Representative before the expiration of the time for lodgment stated in the Annexure or such further time as may be directed by the Main Contractor's Representative from time to time;
- 60 (c) notwithstanding any other provision of the Subcontract, the Subcontractor shall not be entitled to payment until the Subcontractor has lodged the Bill of Quantities, so priced and extended.

4.3 Errors in Pricing

65 Any errors in extension or addition or both, or correction of incorrect or inconsistent rates or prices (including the insertion of rates or prices wrongly omitted and the deletion of rates or prices wrongly included) discovered by the Main Contractor or the Subcontractor

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in the Priced Bill of Quantities shall be notified to the Main Contractor's Representative in writing by the party making the discovery and corrected in a manner agreed between the Subcontractor and the Main Contractor's Representative or, in the event of failure to agree, as determined by the Main Contractor's Representative so that the total of all items in the Priced Bill of Quantities continues to equal the sum accepted by the Main Contractor for the execution of the whole of the work to which the Bill of Quantities relates.

4.4 Errors in Bills of Quantities

If the Priced Bill of Quantities is in error in that it—

- (a) contains an incorrect quantity in relation to any item included therein; or
- (b) contains an item which should not have been included therein; or
- (c) omits an item which should have been included therein;

then —

- (i) in a case of Clause 4.4(a) where the item is deficient in quantity or in the case of Clause 4.4(c)—upon application in writing to the Main Contractor's Representative by the Subcontractor; and
- (ii) in a case of Clause 4.4(a) where the item is excessive in quantity or in the case of Clause 4.4(b)—upon notification in writing to the Subcontractor by the Main Contractor's Representative,

the lump sum accepted by the Main Contractor for the execution of the whole of the work to which the Bill of Quantities relates shall except when the value of the error is less than \$400, be adjusted by such amount as is required to correct the error, determined in the manner provided by Clause 40.5 for the valuation of variations as if the correction were a variation under Clause 40.

The Bill of Quantities shall be deemed to be in error as aforesaid to the extent that the items and quantities included in it differ from those required for the execution of the Works in accordance with the drawings and specification referred to in the Subcontract, measured in accordance with the method of measurement evidenced by the Subcontract.

5 SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS

5.1 Purpose

Security, retention moneys and performance undertakings are for the purpose of ensuring the due and proper performance of the Subcontract.

5.2 Provision of Security

If it is provided in the Annexure that a party shall provide security then the party shall provide security in the amount stated in the Annexure and in accordance with this Clause.

5.3 Form of Security

The security shall be in the form of cash, bonds or inscribed stock issued by the Australian Government or the Government of a State or Territory of Australia, interest bearing deposit in a trading bank carrying on business in Australia, an approved unconditional undertaking given by an approved financial institution or insurance company, or other form approved by the party having the benefit of the security.

The party having the benefit of the security shall have a discretion to approve or disapprove of the form of an unconditional undertaking and the financial institution or insurance company giving it or other form of security offered. The form of unconditional undertaking attached to these Subcontract Conditions is approved.

If the security is not transferable by delivery it shall be accompanied by an executed transfer or such other documentation as is necessary to effect a transfer of the security. The costs (including all stamp duty or other taxes) of and incidental to the transfer and retransfer shall be borne by the party providing the security.

5.4 Time for Lodgment of Security

Security shall be lodged within 28 days of the Date of Acceptance of Tender.

5.5 Recourse to Retention Moneys and Conversion of Security

A party may have recourse to retention moneys and/or cash security and/or may convert into money security that does not consist of money where—

- (a) the party has become entitled to exercise a right under the Subcontract in respect of the retention moneys and/or security; and
- (b) the party has given the other party notice in writing for the period stated in the Annexure, or if no period is stated, five days, of the party's intention to have recourse to the retention moneys and/or cash security and/or to convert the security; and
- (c) the period stated in the Annexure or if no period is stated, five days has or have elapsed since the notice was given.

5.6 Substitution of Security for Retention Moneys

The Subcontractor shall be at liberty at any time to provide in lieu of retention moneys, security in any of the forms permitted by Clause 5.3. To the extent that such security is provided, the Main Contractor shall not deduct retention moneys and shall forthwith release retention moneys.

* 5.7 Reduction of Security and Retention Moneys

Upon issue of the Certificate of Substantial Completion, the Main Contractor's entitlement to security and retention moneys shall be reduced to the percentage thereof stated in the Annexure or, if no percentage is stated, to 50 percent thereof.

Subject to the first paragraph of Clause 5.7, if in the opinion of the Main Contractor's Representative it is reasonable to further reduce the Main Contractor's entitlement to security and retention moneys, that entitlement shall be reduced to the amount which the Main Contractor's Representative determines to be reasonable.

The Main Contractor shall, within 14 days of the Main Contractor's Representative making such a determination, release security and retention moneys in excess of the entitlement.

5.8 Release of Security

If the Subcontractor has provided additional security pursuant to Clause 42.4, the Main Contractor shall release that additional security within 21 days of incorporation into the Works of the unfixed plant or materials in respect of which the additional security was furnished.

If the Main Contractor has provided security, then when the Subcontractor has been paid all moneys finally due to the Subcontractor under the Subcontract or a Separable Portion, the Subcontractor shall release the security lodged by the Main Contractor in respect of the Subcontract or the Separable Portion, as the case may be.

If the Subcontractor has provided security, then the Main Contractor shall release it when required by Clause 42.8.

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5.9 Interest on Security and Retention Moneys

Alternative 1

A party holding retention moneys and/or cash security shall forthwith deposit the money in an interest bearing account in a bank. That party shall nominate the bank and the type of account. The account shall be in the joint names of the Main Contractor and the Subcontractor and shall be one from which moneys can only be drawn with the signatures of two persons, one appointed by each of the Main Contractor and the Subcontractor. The moneys shall be held until the Main Contractor or the Subcontractor is entitled to receive them.

Interest earned on security lodged by the Subcontractor and on retention moneys belongs to the Subcontractor. Interest earned on security lodged by the Main Contractor belongs to the Main Contractor.

Upon the Main Contractor or the Subcontractor becoming entitled to receive any moneys, including interest in the account, the other party shall forthwith have that party's appointee sign all documentation necessary to withdraw the moneys and shall give the signed documentation to the other party.

Alternative 2

A party holding retention moneys or cash security shall own any interest earned on the retention moneys or security. Except where retention moneys or cash security are held by a government department or agency or a municipal, public or statutory authority, retention moneys or cash security shall be held in trust by the party holding them for the other party until the Main Contractor or the Subcontractor is entitled to receive them.

5.10 Deed of Guarantee, Undertaking and Substitution

Where—

- (a) a party is a corporation that is related to or is a subsidiary of another corporation as defined in the Corporations Law as amended from time to time; and
- (b) the Main Contractor has included in the Subcontract tender documents a form of Deed of Guarantee, Undertaking and Substitution;

that party shall, if requested by the other party in writing within 7 days after the Date of Acceptance of Tender lodge with the other party, within 14 days after that request having been made, a Deed of Guarantee, Undertaking and Substitution in the form included in such tender documents duly executed by the first party and that other corporation for the performance of the obligations and the discharge of the liabilities of the first party under the Subcontract.

For the purpose of Clause 5.10, the terms 'corporation' and 'subsidiary' have the meanings defined in the Corporations Law.

6 EVIDENCE OF SUBCONTRACT

6.1 Subcontract in Absence of Formal Instrument of Agreement

Unless a Formal Instrument of Agreement is executed by the parties, the agreement in writing between the parties for the execution of the work under the Subcontract, including documents or parts of documents to which reference may properly be made to ascertain the rights and obligations of the parties, shall evidence the Subcontract.

6.2 Formal Instrument of Agreement

If the conditions of tender require a Formal Instrument of Agreement, the Main Contractor shall prepare in duplicate a Formal Instrument of Agreement and shall, within 28 days after the Date of Acceptance of Tender, forward it to the Subcontractor with a request that it be executed.

Within 14 days after being requested in writing by the Main Contractor so to do, the Subcontractor shall execute both copies of the Formal Instrument of Agreement in the manner directed in writing by the Main Contractor and return them to the Main Contractor.

Within 14 days after receipt from the Subcontractor of the two copies of the Formal Instrument of Agreement duly executed by the Subcontractor, the Main Contractor shall execute both copies, have them stamped (unless they are exempt from duty) and forward one copy to the Subcontractor.

The Main Contractor's Representative may extend the periods under Clause 6.2 by notice in writing to the parties.

The Main Contractor shall bear the cost of any stamp duty payable on the Subcontract.

7 SERVICE OF NOTICES

A notice shall be deemed to have been given when it is received by the person to whom it is addressed or is delivered to the address of that person stated in the Subcontract or last communicated in writing by that person to the person giving the notice, whichever is the earlier.

The Main Contractor, the Subcontractor and the Main Contractor's Representative shall each notify the others of a change of address.

Without limiting the generality of 'notice', it includes a document.

8 SUBCONTRACT DOCUMENTS

8.1 Discrepancies

The several documents forming the Subcontract are to be taken as mutually explanatory of one another. If either party discovers an ambiguity or discrepancy in any document prepared for the purpose of executing the work under the Subcontract, that party shall notify the Main Contractor's Representative in writing of the ambiguity or discrepancy. In the event of an ambiguity or discrepancy being discovered and brought to the attention of the Main Contractor's Representative or discovered by the Main Contractor's Representative, the Main Contractor's Representative shall direct the Subcontractor as to the interpretation to be followed by the Subcontractor in carrying out the work.

If the direction causes the Subcontractor to incur more or less cost than the Subcontractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 40.5.

8.2 Dimensions

Where any discrepancy exists between figured and scaled dimensions, the figured dimensions shall prevail.

8.3 Supply of Documents by Main Contractor

The Main Contractor shall supply to the Subcontractor the number of copies stated in the Annexure, or if no number is stated then 3 copies of the Drawings, Specification, Bill of Quantities (if any) and other documents required by the Subcontract to be supplied to the Subcontractor by the Main Contractor.

Documents supplied to the Subcontractor by the Main Contractor shall remain the property of the Main Contractor and shall be returned by the Subcontractor to the Main Contractor on demand in writing. The documents shall not, without the prior written approval of the Main Contractor, be used, copied or reproduced for any purpose other than the execution of the work under the Subcontract.

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8.4 Supply of Documents by Subcontractor

If the Subcontract requires the Subcontractor to supply documents, the Subcontractor shall supply the number of copies stated in the Annexure, or if no number is stated then 5 copies.

If the Subcontractor submits documents to the Main Contractor's Representative, then—

- (a) the Main Contractor's Representative shall not be bound to check the documents for errors, omissions or compliance with the requirements of the Subcontract; 10
- (b) notwithstanding the provisions of Clause 23, the Main Contractor's Representative's approval shall not relieve the Subcontractor from responsibility for the Subcontractor's errors or omissions or compliance with the requirements of the Subcontract; 15
- (c) if the Subcontract provides that the Subcontractor must obtain the Main Contractor's Representative's direction whether documents are suitable or are not suitable then within the time stated in the Annexure (or if no time is stated then within 28 days) after receipt of the documents, the Main Contractor's Representative shall notify the Subcontractor that the documents are suitable or are not suitable; 20
- (d) if the Main Contractor's Representative notifies the Subcontractor that the documents are not suitable, the Main Contractor's Representative shall give reasons why the documents are not suitable, and the Subcontractor shall submit new or amended documents for the Main Contractor's Representative's direction under this Clause; 25
- (e) the Main Contractor's Representative shall not reject documents which are in accordance with the requirements of the Subcontract. 30

Copies of documents supplied by the Subcontractor shall be the property of the Main Contractor but shall not be used or copied otherwise than for the use, maintenance or alteration of the Works or the Main Contract Works by the Main Contractor, the Principal, the Superintendent and their identified consultants. 35

8.5 Availability of Documents

Whilst work under the Subcontract is being performed, one complete set of Drawings, Specification and other written information supplied by the Main Contractor, the Main Contractor's Representative and the Subcontractor shall be kept by the Subcontractor at the Site or other location approved in writing by the Main Contractor and shall be available at all times for reference by the Main Contractor, the Main Contractor's Representative and any persons nominated in writing by either of them. 40

During the manufacture or assembly of any significant part of the work under the Subcontract away from the part of the Site where the Works are to be constructed, a set of the drawings and written information relevant to that part of the work shall be kept by the Subcontractor at the place of manufacture or assembly and shall be available for reference by the Main Contractor, the Main Contractor's Representative and any person nominated in writing by either of them. 45

8.6 Confidential Information

Drawings, specifications and other information, samples, models, patterns and the like, supplied by either the Subcontractor or the Main Contractor and marked or otherwise identified as confidential shall be regarded as confidential, and shall not be disclosed to a third party other than the Principal, the Superintendent and their identified consultants for the purpose of the execution, use, maintenance or alteration of the Main Contract Works except with the prior agreement of the other party to the Subcontract. 50

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If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else other than the Principal, the Superintendent and their identified consultants any confidential matter even after the issue of the Final Certificate pursuant to Clause 42.8 or the earlier termination of the Subcontract.

* 8.7 Media Releases

The Subcontractor shall not issue any information, publication, document or article for publication concerning the project in any media without prior approval of the Main Contractor, which approval shall not be unreasonably withheld. The Subcontractor shall refer to the Main Contractor any enquiries concerning the project from any media.

9 ASSIGNMENT AND SECONDARY SUBCONTRACTING

9.1 Assignment

Neither party shall, without the prior written approval of the other and except on such reasonable terms and conditions as are determined in writing by the other, assign the Subcontract or any payment or any other right or benefit or interest thereunder.

9.2 Secondary Subcontracting

The Subcontractor shall not without the written approval of the Main Contractor's Representative which approval shall not be unreasonably withheld, subcontract or allow a secondary subcontractor to assign or subcontract work described in the Annexure.

With a request for approval the Subcontractor shall provide to the Main Contractor's Representative particulars in writing of the work to be subcontracted and the name and the address of the proposed secondary subcontractor.

The Subcontractor shall provide to the Main Contractor's Representative other information which the Main Contractor's Representative reasonably requests, including the proposed secondary subcontract documents without prices.

Within 28 days after a request by the Subcontractor for approval to subcontract work, the Main Contractor's Representative shall advise the Subcontractor of approval or the reasons why approval is not given.

Approval may be conditional upon the secondary subcontract including—

- (a) provision that the secondary subcontractor shall not assign or subcontract without the consent in writing of the Subcontractor;
- (b) provisions which may be reasonably necessary to enable the Subcontractor to fulfil the Subcontractor's obligations to the Main Contractor.

9.3 Subcontractor's Responsibility

Approval to subcontract shall not relieve the Subcontractor from any liability or obligation under the Subcontract. Except where the Subcontract otherwise provides, the Subcontractor shall be liable to the Main Contractor for the acts and omissions of secondary subcontractors and employees and agents of secondary subcontractors as if they were acts or omissions of the Subcontractor.

10 SELECTED AND NOMINATED SECONDARY SUBCONTRACTORS

10.1 Definitions

If the Subcontract provides that certain work or the supply of certain items shall be subcontracted to a Selected or Nominated Secondary Subcontractor, the work or the supply of the items is 'Selected Secondary Subcontract Work' or 'Nominated Secondary Subcontract Work' as the case may be, and:

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'Selected Secondary Subcontractor' means a secondary subcontractor identified in the Subcontractor's tender from a list of secondary subcontractors provided by the Main Contractor in the tender documents for Selected Secondary Subcontract Work. The list may include one or more secondary subcontractors.

'Nominated Secondary Subcontractor' means—

- (a) a secondary subcontractor to whom the Subcontractor is directed by the Main Contractor's Representative to subcontract Nominated Secondary Subcontract Work; or
- (b) a secondary subcontractor named in the Subcontract with whom the Main Contractor has entered into a prior contract for the Nominated Secondary Subcontract Work, which prior contract requires the secondary subcontractor to assign the prior contract to the Subcontractor and a copy of which prior contract is included in the tender documents; or
- (c) a secondary subcontractor named in the Subcontract with whom the Main Contractor has entered into a prior contract for the Nominated Secondary Subcontract Work, which requires the secondary subcontractor to enter into deed of novation with the Subcontractor for the Nominated Secondary Subcontract Work and a copy of which deed of novation is included in the tender documents.

'Nominated Secondary Subcontract Work' shall relate only to work or the supply of items for which a Provisional Sum has been included in the Subcontract.

10.2 Selected Secondary Subcontract

If the Subcontract includes Selected Secondary Subcontract Work the Subcontractor shall subcontract the Selected Secondary Subcontract Work to a Selected Secondary Subcontractor.

If the tender documents specify the terms and conditions upon which the secondary subcontract is to be entered into, the secondary subcontract shall include those terms and conditions.

10.3 Nominated Secondary Subcontract

If the Subcontract includes Nominated Secondary Subcontract Work, at such time as is necessary to avoid delay to the Subcontractor, the Main Contractor's Representative shall direct the Subcontractor to subcontract the Nominated Secondary Subcontract Work to a Nominated Secondary Subcontractor.

If the Subcontract provides that the Main Contractor may assign to the Subcontractor the benefit of a prior contract made between the Main Contractor and a Nominated Secondary Subcontractor, the Subcontractor shall, when directed by the Main Contractor's Representative, accept the assignment of that prior contract.

If the Subcontract provides that the Main Contractor may novate to the Subcontractor a prior contract made between the Main Contractor and a Nominated Secondary Subcontractor in respect of Nominated Secondary Subcontract Work, the Subcontractor shall when directed by the Main Contractor's Representative, execute a deed of novation of that prior contract in the form included in the tender documents and unless the Subcontract otherwise provides, the Subcontractor shall give the Main Contractor credit for payments made by the Main Contractor to the Nominated Secondary Subcontractor in respect of the Nominated Secondary Subcontract Work.

The Subcontractor shall ensure that the provisions of the secondary subcontract are severally set out in the secondary subcontract documents, so that the secondary subcontract is fully expressed and complete in itself and includes provisions—

- (a) that in respect of the Nominated Secondary Subcontract Work, the Nominated Secondary Subcontractor will undertake towards the Subcontractor obligations and liabilities which will enable the Subcontractor to discharge the Subcontractor's obligations and liabilities to the Main Contractor under the terms of the Subcontract;

- (b) that the Nominated Secondary Subcontractor will indemnify the Subcontractor against loss resulting from any failure by the Nominated Secondary Subcontractor to perform such obligations or fulfil such liabilities;
- (c) that the Nominated Secondary Subcontractor will indemnify the Subcontractor against loss resulting from any negligence by the Nominated Secondary Subcontractor and the Nominated Secondary Subcontractor's servants and agents and against any misuse by them of any Constructional Plant or Temporary Works provided by the Subcontractor for the purposes of the secondary subcontract;
- (d) that the Nominated Secondary Subcontractor will lodge security in a form provided by Clause 5.3 and that security and retention moneys shall be calculated on the same scale and on the same basis respectively as apply in the Subcontract;
- (e) equivalent to those in Clause 44.

The Subcontractor shall not be obliged to enter into a secondary subcontract with a Nominated Secondary Subcontractor against whom the Subcontractor raises reasonable objection.

If the Subcontractor declines to enter into a secondary subcontract with the Nominated Secondary Subcontractor on the ground that the Nominated Secondary Subcontractor refuses to enter into a secondary subcontract containing provisions in paragraphs (a) to (e) of Clause 10.3, the Main Contractor's Representative shall nominate another Nominated Secondary Subcontractor or direct the Subcontractor to enter into a secondary subcontract with the Nominated Secondary Subcontractor on such other terms as the Main Contractor's Representative specifies. In the latter event—

- (i) the Subcontractor shall not be bound to discharge obligations and liabilities under the Subcontract to the extent that the secondary subcontract terms so specified by the Main Contractor's Representative are inconsistent with the discharge; and
- (ii) if the Subcontractor suffers loss arising out of the refusal of the Nominated Secondary Subcontractor to accept such provisions the Main Contractor shall pay to the Subcontractor the amount of loss which the Subcontractor could not reasonably avoid.

10.4 Provisions applying generally to Selected and Nominated Secondary Subcontract Work

If the Subcontractor is required by Clause 10 to enter a secondary subcontract, or to accept an assignment or to execute a deed of novation, the Subcontractor shall proceed promptly to do so and shall notify the Main Contractor's Representative in writing as soon as the secondary subcontract, assignment or novation has been effected.

With the consent of the Subcontractor, the Main Contractor's Representative may direct the Subcontractor to perform Selected or Nominated Secondary Subcontract Work.

Notwithstanding Clause 16.2 if the Subcontractor is to be responsible to the Main Contractor for the design or suitability of Selected or Nominated Secondary Subcontract Work, as distinct from the quality or workmanship, the responsibility shall be expressly stated in the Subcontract and the Subcontractor's liability for the design or suitability of the Selected or Nominated Secondary Subcontract Work shall only be that which is expressly stated in the Subcontract.

Except as herein contained, and subject to any reasonable objection made by the Subcontractor pursuant to this Clause—

- (i) the Main Contractor shall have no liability to a Selected or Nominated Secondary Subcontractor arising from the secondary subcontract between the Subcontractor and Selected or Nominated Secondary Subcontractor; and

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- (ii) the Main Contractor shall not be liable to the Subcontractor for any act, default or omission or breach of contract by a Selected or Nominated Secondary Subcontractor, arising from the secondary subcontract between the Subcontractor and Selected or Nominated Secondary Subcontractor.

*** 10.5 Direct Payment of Nominated Secondary Subcontractor**

In respect of Nominated Secondary Subcontract Work performed by a Nominated Secondary Subcontractor, the Main Contractor shall make payment directly to the Nominated Secondary Subcontractor. Except where the Subcontractor has accepted an assignment of the benefit of a prior contract made between the Main Contractor and a Nominated Secondary Subcontractor—

- (a) such payment shall be made on behalf of the Subcontractor; and
- (b) if the Subcontractor reasonably requests the Main Contractor in writing not to make a payment to the Nominated Secondary Subcontractor, the Main Contractor shall withhold payment but under no circumstances, including bankruptcy or winding up of the Subcontractor, shall payment be made to the Subcontractor.

The Main Contractor as stakeholder shall hold retention moneys and security provided by a Nominated Secondary Subcontractor and shall disburse or apply the retention moneys or security as jointly requested by the Subcontractor and the Nominated Secondary Subcontractor or in accordance with the decision of an arbitrator or Court.

10.6 Termination of Nominated Secondary Subcontract

The Subcontractor shall not unreasonably terminate a secondary subcontract for Nominated Secondary Subcontract Work and as early as possible the Subcontractor shall notify the Main Contractor's Representative of the Subcontractor's intention to terminate and the reasons. If a Nominated Secondary Subcontractor repudiates or abandons the secondary subcontract or it is terminated, the Subcontractor shall forthwith notify the Main Contractor's Representative in writing and the Main Contractor's Representative shall proceed under Clause 10.3 to nominate a Nominated Secondary Subcontractor to complete the secondary subcontract work and Clause 11(b) shall apply.

11 PROVISIONAL SUMS

A provisional sum included in the Subcontract shall not itself be payable by the Main Contractor but where at the direction of the Main Contractor's Representative the work or item to which the provisional sum relates is performed or supplied by—

- (a) the Subcontractor, the work or item shall be valued under Clause 40.5;
- (b) a secondary subcontractor to the Subcontractor the Main Contractor shall pay the Subcontractor the amount payable by the Subcontractor to the secondary subcontractor for the work or item, disregarding any damages payable by the Subcontractor to the secondary subcontractor or vice versa, plus the amount or percentage thereon for profit and attendance stated in the Annexure or, where not so stated, as stated elsewhere in the Subcontract; and
- (c) a Nominated Secondary Subcontractor pursuant to a prior contract made between the Main Contractor and a Nominated Secondary Subcontractor, the benefit of which has been assigned to the Subcontractor, the Main Contractor shall pay the Subcontractor the amount stated in the Annexure or the percentage for profit and attendance stated in the Annexure of the amount payable by the Main Contractor to the Nominated Secondary Subcontractor for the work or item or, where no amount or percentage is stated, as stated elsewhere in the Subcontract, disregarding any damages payable by the Main Contractor to the Nominated Secondary Subcontractor or vice versa.

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The amount payable to a secondary subcontractor for materials or goods is to be taken to be the nett cost to the Subcontractor (disregarding any deduction of cash discount for prompt payment).

12 LATENT CONDITIONS

12.1 Definition

Latent Conditions are—

- (a) physical conditions on the Site or its surroundings, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by the Subcontractor at the time of the Subcontractor's tender if the Subcontractor had—
 - (i) examined all information made available in writing by the Main Contractor to the Subcontractor for the purpose of tendering; and
 - (ii) examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and
 - (iii) inspected the Site and its surroundings; and
- (b) any other conditions which the Subcontract specifies to be Latent Conditions.

12.2 Notification

If during the execution of the work under the Subcontract, the Subcontractor becomes aware of a Latent Condition, the Subcontractor shall forthwith and where possible before the Latent Condition is disturbed, give written notice thereof to the Main Contractor's Representative.

If required by the Main Contractor's Representative, the Subcontractor shall provide to the Main Contractor's Representative a statement in writing specifying—

- (a) the Latent Condition encountered and in what respects it differs materially;
- (b) the additional work and additional resources which the Subcontractor estimates to be necessary to deal with the Latent Condition;
- (c) the time the Subcontractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Substantial Completion;
- (d) the Subcontractor's estimate of the cost of the measures necessary to deal with the Latent Condition; and
- (e) other details reasonably required by the Main Contractor's Representative.

12.3 Extension of Time and Cost

Delay caused by a Latent Condition may justify an extension of time under Clause 35.5.

If a Latent Condition causes the Subcontractor to—

- (a) carry out additional work;
 - (b) use additional Constructional Plant; or
 - (c) incur extra cost (including but not limited to the cost of delay or disruption),
- which the Subcontractor could not reasonably have anticipated at the time of tendering, a valuation shall be made under Clause 40.5.

12.4 Time Bar

In making a valuation pursuant to Clause 12.3, regard shall not be had to the value of additional work carried out, additional Constructional Plant used or extra cost incurred more than 21 days before the date on which the Subcontractor gives the written notice required by the first paragraph of Clause 12.2.

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13 PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

The Main Contractor warrants that unless otherwise provided in the Subcontract—

- (a) design; 5
- (b) materials;
- (c) documents; and
- (d) methods of working, 10

specified in the Subcontract or provided or directed by the Main Contractor or the Main Contractor's Representative will not infringe any patent, registered design, trademark or name, copyright or other protected right. 15

The Subcontractor warrants that any other design, materials, documents and methods of working provided by the Subcontractor will not infringe any patent, registered design, trademark or name, copyright or other protected right. 20

14 STATUTORY REQUIREMENTS

14.1 Complying with Statutory Requirements 25

The Subcontractor shall comply with the requirements of—

- (a) Acts of the Commonwealth;
- (b) Acts and Ordinances of the State or Territory in which the work under the Subcontract or any part thereof is carried out; 30
- (c) Ordinances, regulations, by-laws, orders and proclamations under the Acts and Ordinances;
- (d) persons acting in the exercise of statutory powers enabling them to give directions affecting the work under the Subcontract. 35

If a requirement is at variance with a provision of the Subcontract, as soon as the Subcontractor discovers the variance the Subcontractor shall notify the Main Contractor's Representative in writing specifying the difference. 40

If a requirement necessitates a change to the Works or so much of the Temporary Works or method of working as may be specified in the Subcontract, the Main Contractor's Representative shall direct a variation under Clause 40.1. 45

Except to the extent that the Subcontract provides reimbursement in respect of a requirement referred to in Clause 14.1 the Subcontractor shall bear the cost of complying with the requirement, whether the requirement existed at the time of tendering or not. 50

* 14.2 Payment Where There is No Variation 50

If a requirement does not necessitate a variation under Clause 40 but is—

- (a) a change after the 28th day prior to the date of closing of tenders in a requirement referred to in Clause 14.1 (a), (b) or (c); or 55
- (b) a requirement referred to in Clause 14.1 (d),

which necessitates a change in the Temporary Works or the Subcontractor's method of working and thereby causes the Subcontractor to incur more or less cost than the Subcontractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 40.5. 60

14.3 Notices and Fees 65

The Subcontractor shall give the notices necessary to comply with the requirements referred to in Clause 14.1.

The Subcontractor shall pay any fees or charges necessary to comply with the requirements referred to in Clause 14.1. 70

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If a requirement necessitates the provision or expansion of services of a municipal, public or statutory authority in relation to the Works or the Temporary Works, the Subcontractor shall pay any fee or charge payable to the authority for the services and to the extent to which the services are not included in the work under the Subcontract, the fee or charge shall be reimbursed by the Main Contractor to the Subcontractor.

If after the 14th day prior to the date of closing of tenders there is required to be paid by the Subcontractor to a municipal, public or statutory authority in relation to the Works or the Temporary Works—

- (a) an increase or decrease in a fee or charge, the difference shall be valued under Clause 40.5; and
- (b) there is a new fee or charge, that fee or charge shall be reimbursed by the Main Contractor to the Subcontractor.

14.4 Documents Evidencing Approvals of Authorities

The Subcontractor shall give the Main Contractor copies of documents issued to the Subcontractor by municipal, public or other statutory authorities in respect of the work under the Subcontract and, in particular, any approvals of work.

15 PROTECTION OF PEOPLE AND PROPERTY

Except to the extent that the Main Contractor is required by Clause 49 to provide things or take measures, in so far as compliance with the requirements of the Subcontract permits, the Subcontractor shall—

- (a) provide all things and take all measures necessary to protect people and property;
- (b) avoid unnecessary interference with the passage of people and vehicles;
- (c) prevent nuisance and unreasonable noise and disturbance.

Without limiting the generality of the Subcontractor's obligations, they include the provision of barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, watching, traffic flagging, safety helmets and clothing, removal of obstructions and protection of services.

If the Subcontractor or the employees or agents of the Subcontractor damage property, including but not limited to public utilities and services and property on or adjacent to the Site, the Subcontractor shall promptly make good the damage and pay any compensation which the law requires the Subcontractor to pay.

If the Subcontractor fails to comply with an obligation under Clause 15 the Main Contractor may, in addition to any other remedy, perform the obligation on the Subcontractor's behalf and the cost incurred by the Main Contractor shall be a debt due from the Subcontractor to the Main Contractor.

16 CARE OF THE WORK AND REINSTATEMENT OF DAMAGE

16.1 Care of the Work Under the Subcontract

From and including the earlier of the date of commencement of work and the date on which the Subcontractor is given access to the Site to 4 p.m. on the Date of Substantial Completion of the Works, the Subcontractor shall be responsible for the care of the work under the Subcontract.

Without limiting the generality of the Subcontractor's obligations, the Subcontractor shall be responsible for the care of unfixed items the value of which has been included in a payment certificate under Clause 42.1, things entrusted to the Subcontractor by the Main Contractor for the purpose of carrying out the work under the Subcontract, things brought on to the Site by secondary subcontractors for that purpose, the Works, the Temporary Works and Constructional Plant and the Subcontractor shall provide the storage and

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protection necessary to preserve these items and things and the Works, the Temporary Works and Constructional Plant.

After 4 p.m. on the Date of Substantial Completion the Subcontractor shall remain responsible for the care of outstanding work and items to be removed from the Site by the Subcontractor and shall be liable for damage occasioned by the Subcontractor in the course of completing outstanding work or complying with obligations under Clauses 30.6, 31.1 and 37.

16.2 Reinstatement

If loss or damage (except loss or damage which is the direct consequence, without fault or omission on the part of the Subcontractor, of an Excepted Risk defined in Clause 16.3) occurs to anything while the Subcontractor is responsible for its care, the Subcontractor shall at the Subcontractor's own cost promptly make good the loss or damage.

16.3 Excepted Risks

The Excepted Risks are—

- (a) any negligent act or omission of the Principal, the Superintendent, the Main Contractor, the Main Contractor's Representative or the employees, consultants or agents of any of them;
- (b) any risk specifically excepted in the Subcontract;
- (c) war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Subcontractor or the Subcontractor's employees or agents;
- (e) use or occupation by the Principal, the Main Contractor or the employees or agents of either of them or other contractors to the Principal or the Main Contractor (not being employed by the Subcontractor or a Nominated Subcontractor engaged by the Main Contractor pursuant to a prior contract the benefit of which has been assigned to the Subcontractor pursuant to the Subcontract) of any part of the Works or the Temporary Works;
- (f) defects in the design of the work under the Subcontract other than a design provided by the Subcontractor.

17 DAMAGE TO PERSONS AND PROPERTY OTHER THAN THE WORKS

17.1 Indemnity by Subcontractor

The Subcontractor shall indemnify the Main Contractor against—

- (a) loss of or damage to property of the Main Contractor, including existing property in or upon which the work under the Subcontract is being carried out;
- (b) claims by any person against the Main Contractor in respect of personal injury or death or loss of or damage to any property,

arising out of or as a consequence of the carrying out by the Subcontractor of the work under the Subcontract, but the Subcontractor's liability to indemnify the Main Contractor shall be reduced proportionally to the extent that the act or omission of the Main Contractor or employees or agents of the Main Contractor may have contributed to the loss, damage, death or injury.

Clause 17.1 shall not apply to—

- (i) the extent that the liability of the Subcontractor is limited by another provision of the Subcontract;

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- (ii) exclude any other right of the Main Contractor to be indemnified by the Subcontractor;
- (iii) things for the care of which the Subcontractor is responsible under Clause 16.1;
- (iv) damage which is the unavoidable result of the construction of the Works in accordance with the Subcontract; and
- (v) claims in respect of the right of the Main Contractor to construct the work under the Subcontract on the Site.

17.2 Indemnity by the Main Contractor

The Main Contractor shall indemnify the Subcontractor in respect of damage referred to in Clause 17.1(iv) and claims referred to in Clause 17.1(v).

18 INSURANCE OF THE WORKS

On or before the Date of Acceptance of Tender, the Main Contractor shall cause to have in force a policy of insurance in relation to the work under the Subcontract in the terms of the policy or proposed policy included in the documents on which the Subcontractor tendered or if not so included, a copy of which was provided to the Subcontractor following receipt by the Main Contractor of a written request by the Subcontractor for a copy of the policy. The policy or proposed policy shall include the name of the insurer. The Main Contractor shall maintain or cause to be maintained the policy while ever the Subcontractor has an interest therein and the Main Contractor shall pay or cause to be paid all premiums thereon.

19 PUBLIC LIABILITY INSURANCE

Alternative 1

On or before the Date of Acceptance of Tender, the Main Contractor shall cause to have in force in relation to the work under the Subcontract a policy of insurance in the terms of the policy or proposed policy included in the documents on which the Subcontractor tendered or if not so included, a copy of which was provided to the Subcontractor following receipt by the Main Contractor of a written request from the Subcontractor for a copy of the policy. The policy or proposed policy shall include the name of the insurer. The Main Contractor shall maintain or cause to be maintained the policy while ever the Subcontractor has an interest therein and the Main Contractor shall pay or cause to be paid all premiums thereon.

Alternative 2

Before the Subcontractor commences work, the Subcontractor shall take out a Public Liability Policy of insurance in the joint names of the Principal, the Main Contractor and the Subcontractor which covers the Principal, the Superintendent, the Main Contractor, the Main Contractor's Representative and the Subcontractor and all secondary subcontractors employed from time to time in relation to the work under the Subcontract for their respective rights and interests and covers their liabilities to third parties. The policy shall also cover the Subcontractor's liability to the Main Contractor and Main Contractor's liability to the Subcontractor for loss of or damage to property (other than property required to be insured by Clause 18) and the death of or injury to any person (other than liability which is required by law to be insured under a Workers Compensation Policy of insurance).

The Public Liability Policy of insurance shall be for an amount in respect of any one occurrence not less than the sum stated in the Annexure and, unless otherwise specified elsewhere in the Subcontract, shall be effected with an insurer and in terms both approved in writing by the Main Contractor which approvals shall not be unreasonably withheld. The policy shall be maintained until the Final Certificate is issued under Clause 42.8.

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20 INSURANCE OF EMPLOYEES

Before commencing work the Subcontractor shall insure against liability for death of or injury to persons employed by the Subcontractor including liability by statute and at common law. The insurance cover shall be maintained until all work including remedial work is completed.

The insurance shall be extended to indemnify the Principal and the Main Contractor for their respective statutory liabilities to persons employed by the Subcontractor.

The Subcontractor shall ensure that every secondary subcontractor to the Subcontractor is similarly insured.

21 INSPECTION AND PROVISIONS OF INSURANCE POLICIES

21.1 Proof of Insurance

Before the Subcontractor commences work and whenever requested in writing by the other party, a party liable to effect or maintain insurance shall produce evidence to the satisfaction and approval of the other party of the insurance effected and maintained.

The effecting of insurance shall not limit the liabilities or obligations of a party under other provisions of the Subcontract.

21.2 Failure to Produce Proof of Insurance

If, after being requested in writing by the other party so to do, a party fails to produce evidence of compliance with insurance obligations under Clauses 18, 19 or 20 which is to the satisfaction and approval of the other party, the other party may effect and maintain the insurance and pay the premiums. The amount paid shall be a debt due from the party in default to the other party. Where the defaulting party is the Subcontractor, the Main Contractor may refuse payment until evidence of compliance with insurance obligations under Clauses 18, 19 and 20 is produced by the Subcontractor to the satisfaction and approval of the Main Contractor. The rights given by Clause 21.2 are in addition to any other right.

21.3 Notices from or to the Insurer

The party effecting insurance under Clause 18 or 19 shall ensure that each policy of insurance contains provisions acceptable to the other party that will—

- (a) require the insurer, whenever the insurer gives the Principal, the Main Contractor or the Subcontractor, a notice of cancellation or other notice concerning the policy, at the same time, to inform the other party in writing that the notice has been given;
- (b) provide that a notice of claim given to the insurer by the Principal, the Superintendent, the Main Contractor, the Main Contractor's Representative or the Subcontractor shall be accepted by the insurer as a notice of claim given by the Principal, the Superintendent, the Main Contractor, the Main Contractor's Representative and the Subcontractor; and
- (c) require the insurer, whenever the party fails to renew the policy or to pay a premium, to give notice in writing thereof forthwith to the Principal, the Main Contractor and the Subcontractor and prior to the insurer giving any notice of cancellation.

21.4 Notices of Potential Claims

The Subcontractor shall, as soon as practicable, inform the Main Contractor in writing of any occurrence that may give rise to a claim under a policy of insurance required by Clause 18 or 19 and shall keep the Main Contractor informed of subsequent developments concerning the claim. The Subcontractor shall ensure that secondary subcontractors in respect of their operations similarly inform the Main Contractor.

Where a policy of insurance required by the Subcontract has been effected by the Main Contractor, the Main Contractor shall similarly inform the Subcontractor.

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21.5 Settlement of Claims

Upon settlement of a claim under the insurance specified by Clause 18—

- 5 (a) to the extent that the work under the Subcontract needing reinstatement has been the subject of a payment or allowance by the Main Contractor to the Subcontractor, if the Subcontractor has not completed reinstatement of that work, moneys received shall, if not paid into a joint account pursuant to the Main Contract, be paid into a trust account in the name of the Main Contractor at a bank agreed upon by the parties. As the Subcontractor proceeds to reinstate the loss or damage, the Main Contractor's Representative shall certify against the Subcontract trust account for the cost of reinstatement; and
- 10 (b) to the extent that the work to be reinstated has not been the subject of a payment or allowance by the Main Contractor to the Subcontractor, the Subcontractor shall be entitled immediately to receive from moneys received, the amount of money so paid in relation to any loss suffered by the Subcontractor relating to that work under the Subcontract (including the supply of goods and materials on site whether or not incorporated in the Works).

21.6 Cross Liability

Any insurance required to be effected by the Subcontractor in joint names in accordance with the Subcontract other than the insurance referred to in Clause 20, shall include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured and 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).

22 CLERK OF WORKS AND INSPECTORS

The Main Contractor's Representative shall forthwith notify the Subcontractor in writing of the name of any Clerk of Works or inspector appointed by the Principal or the Superintendent.

23 MAIN CONTRACTOR'S REPRESENTATIVE

The Main Contractor shall ensure that at all times there is a Main Contractor's Representative and that in the exercise of the functions of the Main Contractor's Representative under the Subcontract, the Main Contractor's Representative—

- 45 (a) acts honestly and fairly;
- (b) acts within the time prescribed under the Subcontract or where no time is prescribed, within a reasonable time; and
- 50 (c) arrives at a reasonable measure or value of work, quantities or time.

If, pursuant to a provision of the Subcontract enabling the Main Contractor's Representative to give directions, the Main Contractor's Representative gives a direction, the Subcontractor shall comply with the direction.

In Clause 23 'direction' includes agreement, approval, authorization, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

Except where the Subcontract otherwise provides, a direction may be given orally but the Main Contractor's Representative shall as soon as practicable confirm it in writing.

If the Subcontractor in writing requests the Main Contractor's Representative to confirm an oral direction, the Subcontractor shall not be bound to comply with the direction until the Main Contractor's Representative confirms it in writing.

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24 DIRECTIONS BY OTHERS

The Main Contractor's Representative may from time to time appoint individuals to exercise any functions of the Main Contractor's Representative under the Subcontract but not more than one such individual shall be delegated the same function at the same time. The appointment of such an individual shall not prevent the Main Contractor's Representative from exercising any function.

The Main Contractor's Representative shall forthwith notify the Subcontractor in writing of—

- (a) the appointment and the name of each individual so appointed and the functions delegated to that individual;
- (b) the termination of the appointment of each individual.

If the Subcontractor makes a reasonable objection to the appointment of any such individual, the Main Contractor's Representative shall terminate the appointment.

No direction shall have any force or effect under the Subcontract unless given by the Main Contractor's Representative or an individual authorized to give that direction.

If anyone other than the Main Contractor's Representative or any individual so authorized by the Main Contractor's Representative purports to give the Subcontractor a direction, the Subcontractor shall forthwith notify the Main Contractor's Representative.

25 SUBCONTRACTOR'S REPRESENTATIVE

The Subcontractor shall personally superintend the execution of the work under the Subcontract or, at all times during which any activities relating to the execution of the work under the Subcontract are taking place, have a competent representative present on the Site and, if required by the Main Contractor's Representative, at other places at which activities relating to the execution of the work under the Subcontract are taking place.

The Subcontractor shall forthwith notify the Main Contractor's Representative in writing of the name of the representative and of any subsequent changes. Any direction defined in Clause 23 shall—

- (a) if it relates to the execution of work on the Site and is given to the representative on the Site; or
- (b) if it relates to the execution of work at any other place and is given to the representative at the other place,

be deemed to have been given to the Subcontractor.

Matters within the knowledge of a representative of the Subcontractor shall be deemed to be within the knowledge of the Subcontractor.

If the Main Contractor's Representative makes a reasonable objection to the appointment of a representative, the Subcontractor shall terminate the appointment and appoint another representative.

26 CONTROL OF SUBCONTRACTOR'S EMPLOYEES AND SECONDARY SUBCONTRACTORS

The Main Contractor's Representative may direct the Subcontractor to have removed from the Site or from any activity connected with the work under the Subcontract, within such time as the Main Contractor's Representative directs, any person employed in connection with the work under the Subcontract who, in the opinion of the Main Contractor's Representative, is guilty of misconduct or is incompetent or negligent. The person shall not thereafter be employed on the Site or on activities connected with the work under the Subcontract without the prior written approval of the Main Contractor's Representative.

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27 SITE**27.1 Access to Site**

5 The Main Contractor shall on or before the expiration of the time stated in the Annexure give the Subcontractor access to the Site or sufficient of the Site to enable the Subcontractor to commence work. If the Main Contractor has not given the Subcontractor access to the whole Site, the Main Contractor shall from time to time give the Subcontractor access to such further parts of the Site as may be necessary to enable the Subcontractor to execute the work under the Subcontract in accordance with the requirements of the Subcontract. The Main Contractor shall advise the Subcontractor in writing of the date upon which access to the Site or any part thereof will be available.

10 Notwithstanding the provisions of Clause 27.1, if the Subcontractor is in breach of Clause 21.1, the Main Contractor may refuse to give the Subcontractor access to the Site or any part of the Site until the Subcontractor has complied with the requirements of Clause 21.1.

15 The Subcontractor is not entitled to sole possession of any part of the Site. The Subcontractor acknowledges that the Main Contractor and others will be carrying out work on the Site concurrently with the performance of the work under the Subcontract.

27.2 Access for the Main Contractor and Others

20 The Subcontractor shall allow to the Main Contractor, to the Main Contractor's Representative, to the Principal, to the Superintendent, to other authorized consultants for the Main Contract Works and to their respective authorized representatives, to the Clerk of Works and inspectors under the Main Contract, to other subcontractors and to others engaged by the Main Contractor or the Principal, access at all reasonable times to the Works.

25 The Subcontractor shall also allow to the Main Contractor, the Main Contractor's Representative, the Principal, the Superintendent, to other authorized consultants for the Main Contract Works and to their respective authorized representatives, and to the Clerk of Works and inspectors access to all places where work under the Subcontract is being performed and shall provide all facilities for such access as may be reasonably necessary.

30 If requested by the Subcontractor, the Main Contractor shall provide to the Subcontractor the names of the persons entitled to such access.

35 The Main Contractor shall ensure that the Subcontractor is not impeded in the execution of the Subcontractor's work by any persons referred to in Clause 27.2, whilst exercising the right of access given by Clause 27.2.

27.3 Delivery of Materials to and Work on Site Before Access

40 Until access to the Site or part of the Site is given to the Subcontractor under Clause 27.1, the Subcontractor shall not deliver materials to or perform work on the Site or part of the Site, as the case may be, unless approval is given in writing by the Main Contractor's Representative.

27.4 Use of Site by Subcontractor

45 Unless the Subcontract otherwise provides or the Main Contractor's Representative gives prior written approval, the Subcontractor shall not use the Site or allow it to be used for—

- 50 (a) camping;
- 55 (b) residential purposes; or
- 60 (c) any purpose not connected with the work under the Subcontract.

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27.5 Finding of Minerals, Fossils and Relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the Site shall, as between the parties, be and remain the property of the Main Contractor. Immediately upon the discovery of these things the Subcontractor shall take precautions to prevent their loss, removal or damage and shall notify the Main Contractor's Representative of the discovery.

If compliance with obligations under Clause 27.5 causes the Subcontractor to incur more or less cost than the Subcontractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 40.5.

28 SETTING OUT THE WORKS**28.1 Setting Out**

The Main Contractor's Representative shall supply to the Subcontractor the information and survey marks necessary to enable the Subcontractor to set out the Works and the survey marks specified in the Subcontract. Upon receipt of any necessary information and survey marks, the Subcontractor shall set out the Works in accordance with the Subcontract and shall provide all instruments and things necessary for that purpose.

28.2 Care of Survey Marks

The Subcontractor shall keep in their true positions all survey marks supplied by the Main Contractor's Representative.

If a survey mark is disturbed or obliterated, the Subcontractor shall immediately notify the Main Contractor's Representative and, unless the Main Contractor's Representative otherwise directs, the Subcontractor shall reinstate the survey mark.

If the disturbance or obliteration is caused by a person other than the Subcontractor, or a secondary subcontractor to the Subcontractor or the agents of either of them, the cost incurred by the Subcontractor in reinstating the survey mark shall be valued under Clause 40.5.

28.3 Errors in Setting Out

If the Subcontractor discovers an error in the position, level, dimensions or alignment of any work under the Subcontract, the Subcontractor shall immediately notify the Main Contractor's Representative and, unless the Main Contractor's Representative otherwise directs, the Subcontractor shall rectify the error.

If the error has been caused by incorrect information, survey marks or data supplied by the Main Contractor's Representative, the cost incurred by the Subcontractor in rectifying the error shall be valued under Clause 40.5.

28.4 Survey Mark Defined

'Survey mark' in Clause 28 means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work under the Subcontract.

29 MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT**29.1 Provision of Materials, Labour and Constructional Plant**

Except to the extent that the Subcontract otherwise provides, the Subcontractor shall supply everything necessary for the proper performance of the Subcontractor's obligations and discharge of the Subcontractor's liabilities under the Subcontract.

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29.2 Removal of Materials and Constructional Plant

From time to time the Main Contractor's Representative may by written notice to the Subcontractor direct the Subcontractor not to remove from the Site Constructional Plant or materials. Thereafter, the Subcontractor shall not remove the materials or the Constructional Plant without the prior written approval of the Main Contractor's Representative, which approval shall not be unreasonably withheld.

29.3 Manufacture and Supply of Materials

The Main Contractor's Representative may direct the Subcontractor to supply particulars of—

- (a) the mode and place of manufacture;
- (b) the source of supply;
- (c) the performance capacities; and
- (d) other information,

in respect of any materials, machinery or equipment to be supplied by the Subcontractor under or used in connection with the Subcontract.

30 MATERIALS AND WORK

30.1 Quality of Materials and Work

The Subcontractor shall use the materials and standards of workmanship required by the Subcontract. In the absence of any requirement to the contrary, the Subcontractor shall use suitable new materials.

*30.2 Quality Assurance

The Subcontractor shall, if requirements are so stated in the Subcontract—

- (a) plan, establish and maintain a quality system which conforms to those requirements;
- (b) provide the Main Contractor's Representative with access to the quality system of the Subcontractor and each of the secondary subcontractors to the Subcontractor to enable monitoring and quality auditing.

Any such quality system shall be used only as an aid to achieving compliance with the Subcontract and to document such compliance. Such system shall not relieve the Subcontractor of the responsibility to comply with the Subcontract.

NOTE: The inclusion of Quality Assurance requirements in the Subcontract will require detailed clauses in the Specification or elsewhere in the Subcontract which have regard to the Quality Standard selected for the work.

30.3 Defective Materials or Work

If the Main Contractor's Representative discovers material or work provided by the Subcontractor which is not in accordance with the Subcontract, the Main Contractor's Representative may direct the Subcontractor to—

- (a) remove the material from the Site;
- (b) demolish the work;
- (c) reconstruct, replace or correct the material or work; or
- (d) not to deliver the material or work to the Site.

The Main Contractor's Representative may direct the times within which the Subcontractor must commence and complete the removal, demolition, replacement or correction.

If the Subcontractor fails to comply with the direction issued by the Main Contractor's Representative pursuant to Clause 30.3 within the time specified by the Main Contractor's Representative in the direction and provided the Main Contractor's Representative has given the Subcontractor notice in writing that after the expiry of 5 days from the date on which the Subcontractor receives the notice the Main Contractor intends to have the work carried out by other persons, the Main Contractor may have the work of removal, demolition, replacement or correction carried out by other persons and the cost incurred by the Main Contractor in having the work so carried out shall be a debt due from the Subcontractor to the Main Contractor.

30.4 Variations due to Defective Materials or Work

Instead of a direction under Clause 30.3, the Main Contractor's Representative may direct a variation pursuant to Clause 40. The variation shall be valued under Clause 40.5 and—

- (a) if the variation causes an increase or decrease in the value to the Main Contractor of the Works, regard shall also be had to the increase or decrease; and
- (b) if the variation results in the Subcontractor incurring more or less cost than would reasonably have been incurred had the Subcontractor been given a direction under Clause 30.3, regard shall also be had to the difference.

30.5 Acceptance of Defective Materials or Work

Instead of a direction under Clause 30.3 or 30.4, the Main Contractor's Representative may notify the Subcontractor that the Main Contractor elects to accept the material or work notwithstanding that it is not in accordance with the Subcontract. In that event the resulting increase or decrease in the value to the Main Contractor of the Works and any other loss suffered by the Main Contractor shall be valued under Clause 40.5.

30.6 Generally

The Main Contractor's Representative shall give either a direction under Clause 30.3 or 30.4 or a notice under Clause 30.5 as soon as practicable after the Main Contractor's Representative becomes aware that material or work is not in accordance with the Subcontract. The Main Contractor's Representative may give the direction or notice at any time before the issue of the Final Certificate under Clause 42.8.

Except to the extent that to do so would be inconsistent with a direction under Clause 30.4 or a notice under Clause 30.5 and notwithstanding that the Main Contractor's Representative has not given a direction under Clause 30.3, the Subcontractor shall promptly remove, demolish, replace or correct material or work that is not in accordance with the Subcontract.

A progress payment, or a test or a failure by the Main Contractor's Representative or anyone else to disapprove any material or work shall not prejudice the power of the Main Contractor's Representative to subsequently give a direction under Clause 30.3 or 30.4 or a notice under Clause 30.5.

Nothing in Clause 30 shall prejudice any other right which the Main Contractor may have against the Subcontractor arising out of the failure of the Subcontractor to provide material or work in accordance with the Subcontract.

The Main Contractor's Representative shall not be obliged to give a direction under Clause 30.4 or a notice under Clause 30.5 to assist the Subcontractor.

31 EXAMINATION AND TESTING

31.1 Main Contractor's Representative May Order Tests

In Clause 31 'test' includes examine and measure.

At any time prior to the issue of the Final Certificate, the Main Contractor's Representative may direct that any material or work under the Subcontract be tested. The Subcontractor shall provide such assistance and samples and make accessible such parts of the work under the Subcontract as may be required by the Main Contractor's

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Representative. On completion of the tests, the Subcontractor shall make good the work under the Subcontract so that it fully complies with the Subcontract.

31.2 Covering Up of Work

The Main Contractor's Representative may direct that any part of the work under the Subcontract shall not be covered up or made inaccessible without the Main Contractor's Representative's prior approval.

31.3 Who Conducts Tests

Tests shall be conducted as provided in the Subcontract or by the Main Contractor's Representative or a person (which may include the Subcontractor) nominated by the Main Contractor's Representative.

31.4 Notice of Tests

Before conducting a test under the Subcontract, the party conducting the test, being the Main Contractor's Representative or the Subcontractor, shall give reasonable notice in writing to the other of the time, date and place of the test. If the other does not then attend, the test may nevertheless proceed.

31.5 Procedure if Tests Delayed

Without prejudice to any other right, if the Subcontractor or the Main Contractor's Representative delays in conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.

31.6 Results of Tests

Results of tests shall be promptly made available by each party to the other and to the Main Contractor's Representative.

31.7 Costs of Testing

Costs of and incidental to testing shall be valued under Clause 40.5 and shall be borne by the Main Contractor or paid by the Main Contractor to the Subcontractor unless—

- (a) the Subcontract provides that the Subcontractor shall bear the costs of the test if the test is one which the Subcontractor was required to conduct other than pursuant to a direction under Clause 31.1;
- (b) the test shows that the material or work is not in accordance with the Subcontract;
- (c) the test is in respect of work under the Subcontract covered up or made inaccessible without the Main Contractor's Representative's prior approval where such was required;
- (d) the test is consequent upon a failure of the Subcontractor to comply with a requirement of the Subcontract.

Where such costs are not to be borne by the Main Contractor, they shall be borne by the Subcontractor or paid by the Subcontractor to the Main Contractor.

31.8 Access for Testing

If during the Defects Liability Period—

- (a) the Main Contractor or the Main Contractor's Representative asserts that material or work is not in accordance with the Subcontract; and
 - (b) the Subcontractor requests permission to test the material or work,
- the Main Contractor shall not unreasonably refuse the Subcontractor access to test the material or work.

32 WORKING HOURS

The working hours and working days shall be as stated in the Subcontract and if not so stated as notified by the Main Contractor's Representative to the Subcontractor prior to commencement of work on Site and shall not be varied without the prior approval of the Main Contractor's Representative except when, in the interests of safety of the work under

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the Subcontract or to protect life or property the Subcontractor finds it necessary to carry out work outside the working hours or on other than the working days stated in the Subcontract. In such cases the Subcontractor shall notify the Main Contractor's Representative in writing of the circumstances as early as possible.

All costs attributable to the contract administration by or on behalf of the Main Contractor of work during times approved pursuant to the last paragraph shall be borne by the Main Contractor.

33 PROGRESS AND PROGRAMMING OF THE WORKS

33.1 Rate of Progress

The Subcontractor shall proceed with the work under the Subcontract with due expedition and without delay.

The Subcontractor shall not suspend the progress of the whole or any part of the work under the Subcontract except where the suspension is under Clause 44.9 or is directed or approved by the Main Contractor's Representative under Clause 34.

The Subcontractor shall give the Main Contractor's Representative reasonable advance notice of when the Subcontractor requires any information, materials, documents or instructions from the Main Contractor's Representative, the Main Contractor, the Superintendent or the Principal.

Upon the request of the Main Contractor's Representative, the Subcontractor shall provide to the Main Contractor's Representative all information which may be reasonably required to enable the proper coordination of the Main Contract Works.

Upon the request of the Subcontractor, the Main Contractor's Representative shall provide to the Subcontractor all information which may be reasonably required to enable the proper coordination of the work under the Subcontract with the Main Contract Works.

The Main Contractor and the Main Contractor's Representative shall not be obliged to furnish any information, materials, documents or instructions earlier than the Main Contractor or the Main Contractor's Representative, as the case may be, should reasonably have anticipated at the Date of Acceptance of Tender.

The Subcontractor shall permit the execution of work on the Site by persons engaged by the Main Contractor or the Principal and shall co-operate with the Main Contractor's other subcontractors and with others engaged by the Main Contractor or the Principal and subject to the Main Contractor being responsible for the overall coordination of the work under the Subcontract into the Main Contract Works, the Main Contractor and the Subcontractor agree to coordinate the execution of the work under the Subcontract with the execution of the Main Contract Works.

The Main Contractor's Representative may direct in what order and at what time the various stages or parts of the work under the Subcontract shall be performed. If the Subcontractor can reasonably comply with the direction, the Subcontractor shall do so. If the Subcontractor cannot reasonably comply, the Subcontractor shall notify the Main Contractor's Representative in writing, giving reasons.

If compliance with the direction causes the Subcontractor to incur more or less cost than otherwise would have been incurred had the Subcontractor not been given the direction, the difference shall be valued under Clause 40.5.

33.2 Construction Program

For the purposes of Clause 33, a 'construction program' is a statement in writing showing the dates by which, or the times within which, the various stages or parts of the work under the Subcontract are to be executed or completed.

A construction program shall not affect rights or obligations in Clause 33.1.

The Subcontractor may voluntarily furnish to the Main Contractor's Representative a construction program.

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The Main Contractor's Representative may direct the Subcontractor to furnish to the Main Contractor's Representative a construction program within the time and in the form directed by the Main Contractor's Representative.

The Subcontractor shall not, without reasonable cause, depart from—

- (a) a construction program included in the Subcontract; or
- (b) a construction program furnished to the Main Contractor's Representative.

The furnishing of a construction program or of a further construction program shall not relieve the Subcontractor of any obligations under the Subcontract including the obligation to not, without reasonable cause, depart from an earlier construction program.

34 SUSPENSION OF THE WORKS

34.1 Suspension by the Main Contractor's Representative

If the Main Contractor's Representative considers that the suspension of the whole or part of the work under the Subcontract is necessary—

(a) because of an act or omission of—

- (i) the Principal, the Superintendent or an employee, consultant or agent of the Principal; or
- (ii) the Main Contractor, the Main Contractor's Representative, another subcontractor or an employee or agent of any of them;
- (iii) the Subcontractor, a secondary subcontractor to the Subcontractor or an employee or agent of either;

(b) for the protection or safety of any person or property; or

(c) to comply with an order of a court,

the Main Contractor's Representative shall direct the Subcontractor to suspend the progress of the whole or part of the work under the Subcontract for such time as the Main Contractor's Representative thinks fit.

34.2 Suspension by Subcontractor

If the Subcontractor wishes to suspend the whole or part of the work under the Subcontract, otherwise than under Clause 44.9, the Subcontractor shall obtain the prior approval of the Main Contractor's Representative. The Main Contractor's Representative may approve of the suspension and may impose conditions of approval.

34.3 Recommencement of Work

As soon as the Main Contractor's Representative becomes aware that the reason for any suspension no longer exists, the Main Contractor's Representative shall direct the Subcontractor to recommence work on the whole or on the relevant part of the work under the Subcontract.

If work is suspended pursuant to Clause 34.2 or 44.9, the Subcontractor may recommence work at any time after reasonable advance notice to the Main Contractor's Representative.

34.4 Cost of Suspension

Any cost incurred by the Subcontractor by reason of a suspension under Clause 34.1 or Clause 34.2 shall be borne by the Subcontractor but if the suspension is due to an act or omission of the Principal, the Superintendent or an employee, consultant or agent of the Principal, or is due to an act, default or omission of the Main Contractor, the Main Contractor's Representative or an employee or agent of either of them, and the suspension causes the Subcontractor to incur more or less cost than otherwise would have been incurred but for the suspension, the difference shall be valued under Clause 40.5.

34.5 Effect of Suspension

Suspension shall not affect the Date for Substantial Completion but the cause of suspension may be a ground for extension of time under Clause 35.5.

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35 TIMES FOR COMMENCEMENT AND SUBSTANTIAL COMPLETION

35.1 Time for Commencement of Work on the Site

The Subcontractor shall give the Main Contractor's Representative 7 days' notice of the date upon which the Subcontractor proposes to commence work on the Site. 5

The Main Contractor's Representative may reduce the period of notice required.

The Subcontractor shall commence work on the Site within 14 days after the Main Contractor has given the Subcontractor possession of sufficient of the Site to enable the Subcontractor to commence work. 10

The Main Contractor's Representative may extend the time for commencement of work on the Site. 15

35.2 Time for Substantial Completion

The Subcontractor shall execute the work under the Subcontract to Substantial Completion by the Date for Substantial Completion. 20

Upon the Date of Substantial Completion the Subcontractor shall give possession of the Works to the Main Contractor.

35.3 Separable Portions 25

The interpretations of—

- (a) Date for Substantial Completion; 30
- (b) Date of Substantial Completion;
- (c) Substantial Completion,

and Clauses 5.7, 16, 35, 37, 38, 42.3 and 42.5 shall apply separately to each Separable Portion and references therein to the Works and to work under the Subcontract shall mean so much of the Works and the work under the Subcontract as is comprised in the relevant Separable Portion. 35

If the Subcontract does not make provision for the amount of security, retention moneys, liquidated damages or bonus applicable to a Separable Portion, the respective amounts applicable shall be such proportion of the security, retention moneys, liquidated damages or bonus applicable to the whole of the work under the Subcontract as the value of the Separable Portion bears to the value of the whole of the work under the Subcontract. 40

35.4 Use of Partly Completed Works 45

If a part of the Works has reached Substantial Completion but another part of the Works has not reached Substantial Completion and the parties cannot agree upon the creation of Separable Portions, the Main Contractor's Representative may determine that the respective parts shall be Separable Portions. 50

In using the Separable Portion that has reached Substantial Completion, the Main Contractor shall not hinder the Subcontractor in the performance of the work under the Subcontract. 55

35.5 Extension of Time for Substantial Completion

When it becomes evident to the Subcontractor that anything, including an act or omission of the Principal, the Superintendent, the Main Contractor, the Main Contractor's Representative, the Main Contractor's other subcontractors or the employees, consultants, other contractors or agents of any of them may delay the work under the Subcontract, the Subcontractor shall promptly notify the Main Contractor's Representative in writing with details of the possible delay and the cause. 60

When it becomes evident to the Main Contractor that anything which the Main Contractor is obliged to do or provide under the Subcontract may be delayed, the Main Contractor shall give notice to the Main Contractor's Representative who shall notify the Subcontractor in writing of the extent of the likely delay. 65

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If the Subcontractor is or will be delayed in reaching Substantial Completion by a cause described in the next paragraph and within 21 days after the delay occurs the Subcontractor gives the Main Contractor's Representative a written claim for an extension of time for Substantial Completion setting out the facts on which the claim is based, the Subcontractor shall be entitled to an extension of time for Substantial Completion.

The causes are—

- (a) events occurring on or before the Date for Substantial Completion which are beyond the reasonable control of the Subcontractor including but not limited to—
industrial conditions;
inclement weather;
- (b) any of the following events whether occurring before, on or after the Date for Substantial Completion—
 - (i) delays caused by—
—the Principal;
—the Superintendent;
—the Main Contractor;
—the Main Contractor's Representative;
—the Main Contractor's other subcontractors;
—the employees, consultants, other contractors or agents of any of the above;
 - (ii) actual quantities of work being greater than the quantities in the Bill of Quantities or the quantities determined by reference to the upper limit of accuracy stated in the Annexure (otherwise than by reason of a variation directed under Clause 40);
 - (iii) latent conditions;
 - (iv) variations directed under Clause 40;
 - (v) repudiation or abandonment by a Nominated Secondary Subcontractor;
 - (vi) changes in the law;
 - (vii) directions by municipal, public or statutory authorities but not where the direction arose from the failure of the Subcontractor to comply with a requirement referred to in Clause 14.1;
 - (viii) delays by municipal, public or statutory authorities not caused by the Subcontractor;
 - (ix) claims referred to in Clause 17.1(v);
 - (x) any breach of the Subcontract by the Main Contractor;
 - (xi) any other cause which is expressly stated in the Subcontract to be a cause for extension of time for Substantial Completion.

Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a cause referred to in the preceding paragraph, then to the extent that the delays are concurrent, the Subcontractor shall not be entitled to an extension of time for Substantial Completion.

In determining whether the Subcontractor is or will be delayed in reaching Substantial Completion regard shall not be had to—

- whether the Subcontractor can reach Substantial Completion by the Date for Substantial Completion without an extension of time;
- whether the Subcontractor can, by committing extra resources or incurring extra expenditure, make up the time lost.

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With any claim for an extension of time for Substantial Completion, or as soon as practicable thereafter, the Subcontractor shall give the Main Contractor's Representative written notice of the number of days extension claimed.

If the Subcontractor is entitled to an extension of time for Substantial Completion the Main Contractor's Representative shall, within 35 days after receipt of the notice of the number of days extension claimed, grant a reasonable extension of time. If within the 35 days the Main Contractor's Representative does not grant the full extension of time claimed, the Main Contractor's Representative shall before the expiration of the 35 days give the Subcontractor notice in writing of the reason.

In determining a reasonable extension of time for an event causing delay, the Main Contractor's Representative shall have regard to whether the Subcontractor has taken all reasonable steps to preclude the occurrence of the cause and minimize the consequences of the delay.

Notwithstanding that the Subcontractor is not entitled to an extension of time the Main Contractor's Representative may at any time and from time to time before the issue of the Final Certificate by notice in writing to the Subcontractor extend the time for Substantial Completion for any reason.

A delay by the Main Contractor or the failure of the Main Contractor's Representative to grant a reasonable extension of time or to grant an extension of time within 35 days shall not cause the Date for Substantial Completion to be set at large but nothing in this paragraph shall prejudice any right of the Subcontractor to damages.

35.6 Damages for Delay in Reaching Substantial Completion

If the Subcontractor fails to reach Substantial Completion by the Date for Substantial Completion the Subcontractor shall be indebted to the Main Contractor for—

- (a) extra costs incurred by the Main Contractor for extended overheads and other damages excluding damages referred to in Clause 35.6(b); and
- (b) if the failure by the Subcontractor causes the Main Contractor to be in breach of the Main Contract, damages whether liquidated or otherwise which the Main Contractor thereby becomes liable to pay the Principal.

The Subcontractor's indebtedness under Clause 35.6(a) shall be liquidated and the Subcontractor shall pay the Main Contractor liquidated damages at the rate stated in the Annexure for every day after the Date for Substantial Completion to and including the Date of Substantial Completion or the date that the Subcontract is terminated under Clause 44, whichever first occurs.

The Subcontractor's indebtedness under Clause 35.6(b) is not included in the liquidated damages applicable to Clause 35.6(a).

If after the Subcontractor has paid damages, liquidated or otherwise, or such damages have been deducted, the time for Substantial Completion is extended, the Main Contractor shall forthwith repay to the Subcontractor any damages paid or deducted in respect of the period up to and including the new Date for Substantial Completion.

*** 35.7 Limit on Damages for Delay**

The Subcontractor's liability under Clause 35.6(a) is limited to the amount stated in the Annexure.

The Subcontractor's liability under Clause 35.6(b) is limited to the amount stated in the Annexure.

*** 35.8 Bonus for Early Substantial Completion**

If the Date of Substantial Completion is earlier than the Date for Substantial Completion the Main Contractor shall pay the Subcontractor the bonus stated in the Annexure for every day after the Date of Substantial Completion up to and including the Date for Substantial Completion.

The total of the bonus shall not exceed the limit stated in the Annexure.

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36 DELAY OR DISRUPTION COSTS

Where the Subcontractor has been granted an extension of time under Clause 35.5 for any delay caused by any of the events referred to in Clause 35.5 (b)(i), the Main Contractor shall pay to the Subcontractor such extra costs as are necessarily incurred by the Subcontractor by reason of the delay.

Where the Subcontractor has been granted an extension of time under Clause 35.5 for any delay caused by any other event for which payment of extra costs for delay and disruption is provided for in the Annexure or elsewhere in the Subcontract, the Main Contractor shall pay to the Subcontractor such extra costs as are necessarily incurred by the Contractor by reason of the delay.

Nothing in Clause 36 shall—

- (a) oblige the Main Contractor to pay extra costs for delay or disruption which have already been included in the value of a variation or any other payment under the Subcontract; or
- (b) limit the Main Contractor's liability for damages for breach of contract.

Notwithstanding anything hereinbefore provided in Clause 36, the Main Contractor's liability to pay extra costs for delay or disruption caused by the Principal, the Superintendent or the employees, consultants, other contractors or agents of either of them or to pay damages for breach of contract where such breach is caused by breach of the Main Contract by the Principal shall only be to the extent to which the extra costs incurred or damages suffered by the Subcontractor have been recovered by the Main Contractor from the Principal or included in the reimbursement to the Main Contractor by the Principal by reason of delay in the progress of the Main Contract Works.

37 DEFECTS LIABILITY

The Defects Liability Period shall commence on the Date of Substantial Completion.

As soon as possible after Substantial Completion, the Subcontractor shall rectify any defects or omissions in the work under the Subcontract existing at Substantial Completion.

Unless otherwise stated in the Annexure or elsewhere in the Subcontract, the Defects Liability Period shall be a period expiring on the expiration of the Defects Liability Period under the Main Contract or if there are several, then the last to expire.

Where the date of expiration of the Defects Liability Period is the same as the date of expiration of the Defects Liability Period under the Main Contract, the Main Contractor's Representative shall within 14 days of becoming aware of the date of expiration of the Defects Liability Period under the Main Contract, inform the Subcontractor in writing of that date.

At any time prior to the 21st day after the expiration of the Defects Liability Period, the Main Contractor's Representative may direct the Subcontractor to rectify any omission or defect in the work under the Subcontract existing at the Date of Substantial Completion which becomes apparent prior to the expiration of the Defects Liability Period. The direction shall identify the omission or defect and state a date by which the Subcontractor shall complete the work of rectification and may state a date by which the work of rectification shall commence. In respect of such work of rectification, if the Superintendent directs pursuant to the Main Contract, a separate Defects Liability Period of a stated duration, there shall be a corresponding Defects Liability Period under the Subcontract. The separate Defects Liability Period shall commence on the date the Main Contractor completes the work of rectification pursuant to the Main Contract. Clause 37 shall apply in respect of the work of rectification and the Defects Liability Period for that work of rectification.

If the Subcontractor's work of rectification is not commenced or completed by the stated dates, the Main Contractor may have the work of rectification carried out at the Subcontractor's expense, but without prejudice to any other rights that the Main

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Contractor may have against the Subcontractor with respect to such omission or defect, and the cost of the work of rectification incurred by the Main Contractor shall be a debt due from the Subcontractor.

If it is necessary for the Subcontractor to carry out work of rectification, the Subcontractor shall do so at times and in a manner which cause as little inconvenience as is reasonably possible to the work under the Main Contract and to the occupants and users of the Works.

38 CLEANING UP

The Subcontractor shall keep the Site and the work clean and tidy. The Subcontractor shall regularly remove rubbish and surplus material.

Within 14 days after the Date of Substantial Completion the Subcontractor shall remove Temporary Works and Constructional Plant.

The Main Contractor's Representative may extend the time for removal of Temporary Works or Constructional Plant necessary to enable the Subcontractor to perform remaining obligations.

Notwithstanding the provisions of Clause 44, if the Subcontractor fails to comply with any obligation imposed on the Subcontractor by Clause 38, the Main Contractor's Representative may, after the Main Contractor's Representative has given reasonable notice in writing to the Subcontractor, have the work of cleaning and tidying up carried out by other persons and the reasonable cost incurred by the Main Contractor in having the work so carried out may be recovered by the Main Contractor as a debt due from the Subcontractor to the Main Contractor. The rights given by this paragraph are in addition to any other right.

39 URGENT PROTECTION

If urgent action is necessary to protect the work under the Subcontract, other property or people and the Subcontractor fails to take the action, the Main Contractor may take the necessary action. If the action was action which the Subcontractor should have taken at the Subcontractor's cost, the cost incurred by the Main Contractor shall be a debt due from the Subcontractor.

If time permits, the Main Contractor's Representative shall give the Subcontractor prior written notice of the Main Contractor's intention to take action under Clause 39.

40 VARIATIONS

40.1 Variations to the Work

The Main Contractor's Representative may direct the Subcontractor to —

- (a) increase, decrease or omit any part of the work under the Subcontract;
- (b) change the character or quality of any material or work;
- (c) change the levels, lines, positions or dimensions of any part of the work under the Subcontract;
- (d) execute additional work; and/or
- (e) demolish or remove material or work no longer required by the Main Contractor.

The Subcontractor shall not vary the work under the Subcontract except as directed by the Main Contractor's Representative or approved in writing by the Main Contractor's Representative under Clause 40.

The Subcontractor is bound only to execute a variation which is within the general scope of the Subcontract.

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The Subcontractor shall not be bound to execute a variation directed after Substantial Completion unless the variation is in respect of rectification work referred to in Clause 37.

40.2 Proposed Variations

Upon receipt of a notice in writing from the Main Contractor's Representative advising the Subcontractor of a proposed variation under Clause 40, the Subcontractor shall advise the Main Contractor's Representative whether the proposed variation can be effected. If the variation can be effected, the Subcontractor shall —

- (a) advise the Main Contractor's Representative of the effect which the Subcontractor anticipates that the variation will have on the construction program and time for Substantial Completion; and
- (b) provide an estimate of the cost (including delay costs, if any) of the proposed variation.

The Main Contractor shall reimburse the Subcontractor for the reasonable costs of complying with the requirements of Clause 40.2.

40.3 Pricing the Variation

Unless the Main Contractor's Representative and the Subcontractor agree upon the price for a variation, the variation directed or approved by the Main Contractor's Representative under Clause 40.1 shall be valued under Clause 40.5.

The Main Contractor's Representative may direct the Subcontractor to provide a detailed quotation for the work of a variation supported by measurements or other evidence of cost.

40.4 Variations for the Convenience of the Subcontractor

If the Subcontractor requests the Main Contractor's Representative to approve a variation for the convenience of the Subcontractor, the Main Contractor's Representative may do so in writing. The approval may be conditional.

Unless the Main Contractor's Representative otherwise directs in the notice approving the variation, the Subcontractor shall not be entitled to—

- (a) an extension of time for Substantial Completion; or
- (b) extra payment,

in respect of the variation or anything arising out of the variation which would not have arisen had the variation not been approved.

The Main Contractor's Representative shall not be obliged to approve a variation for the convenience of the Subcontractor.

40.5 Valuation

Where the Subcontract provides that a valuation shall be made under Clause 40.5, the Main Contractor shall pay or allow the Subcontractor, or the Subcontractor shall pay or allow the Main Contractor, as the case may require, an amount ascertained by the Main Contractor's Representative as follows —

- (a) if the Subcontract prescribes specific rates or prices to be applied in determining the value, those rates or prices shall be used;
- (b) if Clause 40.5(a) does not apply, the rates or prices in a Priced Bill of Quantities or Schedule of Rates shall be used to the extent that it is reasonable to use them;
- (c) to the extent that neither Clause 40.5(a) or 40.5(b) apply, reasonable rates or prices shall be used in any valuation made by the Main Contractor's Representative;
- (d) in determining the deduction to be made for work which is taken out of the Subcontract, the deduction shall include a reasonable amount for profit and overheads;

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- (e) if the valuation is of an increase or decrease in a fee or charge or is a new fee or charge under Clause 14.3, the value shall be the actual increase or decrease or the actual amount of the new fee or charge without regard to overheads or profit;
- (f) if the valuation relates to extra costs incurred by the Subcontractor for delay or disruption, the valuation shall include a reasonable amount for overheads but shall not include profit or loss of profit; 5
- (g) if Clause 11(b) applies, the percentage referred to in Clause 11(b) shall be used for valuing the Subcontractor's profit and attendance; and 10
- (h) daywork shall be valued in accordance with Clause 41.

When under Clause 40.3 the Main Contractor's Representative directs the Subcontractor to support a variation with measurements and other evidence of cost, the Main Contractor's Representative shall allow the Subcontractor the reasonable cost of preparing the measurements or other evidence of cost that has been incurred over and above normal overhead cost. 15

41 DAYWORK 20

The Main Contractor's Representative may direct that—

- (i) quantities greater than the upper limit of accuracy referred to in Clause 3.3 shall be carried out as Daywork; 25
- (ii) work under the Subcontract forming part of a variation directed by the Superintendent to be carried out as daywork under the Main Contract; or 30
- (iii) a variation due to defective work or materials directed by the Main Contractor's Representative under Clause 30.4, 30

shall be carried out as Daywork. 35

The Subcontractor shall thereafter each day record particulars of all resources used by the Subcontractor for the execution of the Daywork and each day furnish to the Main Contractor's Representative the particulars and copies of time sheets, wages sheets, invoices, receipts and other documents evidencing the cost of the Daywork. The Main Contractor's Representative may direct the manner in which matters are to be recorded. 40

In determining the value of Daywork regard shall be had to—

- (a) the amount of wages and allowances paid or payable by the Subcontractor at the rates obtaining on the Site at the time as established by the Subcontractor to the satisfaction of the Main Contractor's Representative or at such other rates as may be approved by the Main Contractor's Representative; 45
- (b) the amount paid or payable by the Subcontractor in accordance with any statute or award applicable to day labour additional to the wages paid or payable under Clause 41(a); 50
- (c) the amount of hire charges in respect of Constructional Plant approved by the Main Contractor's Representative for use on the work in accordance with such hiring rates and conditions as may be agreed between the Main Contractor's Representative and the Subcontractor or, in the absence of agreement, in accordance with such rates and conditions as may be determined by the Main Contractor's Representative; 55
- (d) the amounts paid for services, secondary subcontracts and professional fees; 60
- (e) the actual cost to the Subcontractor at the Site of all materials supplied and required for the work; and
- (f) the charge stated in the Annexure or, if no charge is stated, a charge agreed between the Main Contractor's Representative and the Subcontractor to cover overheads, administrative costs, site supervision, establishment costs, attendance and profit, or, in the absence of agreement, a reasonable charge determined by the Main Contractor's Representative. 65

Amounts payable for Daywork shall not be subject to adjustment for rise and fall in costs notwithstanding that the Subcontract may provide for adjustment for rise and fall in costs. 70

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42 CERTIFICATES AND PAYMENTS

42.1 Payment Claims, Certificates, Calculations and Time for Payment

At the times for payment claims stated in the Annexure and upon issue of a Certificate of Substantial Completion and within the time prescribed by Clause 42.7, the Subcontractor shall deliver to the Main Contractor's Representative claims for payment supported by evidence of the amount due to the Subcontractor and such information as the Main Contractor's Representative may reasonably require. Claims for payment shall include the value of work carried out by the Subcontractor in the performance of the Subcontract to that time together with all amounts then due to the Subcontractor arising out of or in connection with the Subcontract or for any alleged breach thereof.

Within 21 days after receipt of a claim for payment, the Main Contractor's Representative shall issue to the Main Contractor and to the Subcontractor a payment certificate stating the payment which, in the opinion of the Main Contractor's Representative, is to be made by the Main Contractor to the Subcontractor or by the Subcontractor to the Main Contractor. The Main Contractor's Representative shall set out in the certificate the calculations employed to arrive at the amount and, if the amount is more or less than the amount claimed by the Subcontractor, the reasons for the difference. The Main Contractor's Representative shall allow in any payment certificate issued pursuant to this Clause 42.1 or any Final Certificate issued pursuant to Clause 42.8 or a Certificate issued pursuant to Clause 44.6, amounts paid under the Subcontract and amounts otherwise due from the Main Contractor to the Subcontractor and/or due from the Subcontractor to the Main Contractor arising out of or in connection with the Subcontract including but not limited to any amount due or to be credited under any other provisions of the Subcontract.

If the Subcontractor fails to make a claim for payment under Clause 42.1, the Main Contractor's Representative may nevertheless issue a payment certificate.

Subject to the provisions of the Subcontract, within 35 days after receipt by the Main Contractor's Representative of a claim for payment or within 14 days of issue by the Main Contractor's Representative of the Main Contractor's Representative's payment certificate, whichever is the earlier, the Main Contractor shall pay to the Subcontractor or the Subcontractor shall pay to the Main Contractor, as the case may be, an amount not less than the amount shown in the Certificate as due to the Subcontractor or to the Main Contractor as the case may be, or if no payment certificate has been issued, the Main Contractor shall pay the amount of the Subcontractor's claim. A payment made pursuant to this Clause shall not prejudice the right of either party to dispute under Clause 47 whether the amount so paid is the amount properly due and payable and on determination (whether under Clause 47 or as otherwise agreed) of the amount so properly due and payable, the Main Contractor or Subcontractor, as the case may be, shall be liable to pay the difference between the amount of such payment and the amount so properly due and payable.

Payment of moneys shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only, except as provided by Clause 42.8.

Notwithstanding Clause 42.4, the Main Contractor shall be obliged to pay for an item of unfixed plant and materials where that item is—

- (i) to be imported into Australia, provided the Subcontractor has given the Main Contractor a clean on board bill of lading or its equivalent, drawn or endorsed to the order of the Main Contractor and, where appropriate, a customs invoice for the item; or
- (ii) listed in the Annexure and which is not an item to be imported into Australia, provided the Subcontractor establishes to the satisfaction of the Main Contractor's Representative that the Subcontractor has paid for the item, and the item is properly stored, labelled the property of the Main Contractor and adequately protected.

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Upon payment to the Subcontractor of the amount which includes the value of the item, the item shall be the property of the Main Contractor free of any lien or charge.

Except as provided in the Subcontract, the Main Contractor shall not be obliged to pay for any item of unfixed plant and materials which is not incorporated in the Works. 5

*** 42.1A Where the Subcontractor is a Nominated Subcontractor**

Notwithstanding Clause 42.1, if the Subcontractor is a Nominated Subcontractor to whom the Main Contractor is directed by the Superintendent to subcontract Nominated Subcontract Work pursuant to the first paragraph of Clause 10.3 of the Main Contract, the Main Contractor shall not be obliged to make a progress payment to the Subcontractor in respect of the value of any work performed by the Subcontractor— 10

- (a) until 7 days after the Main Contractor has been paid by the Principal in respect of the work; and 15
- (b) greater than the Main Contractor has been paid by the Principal in respect of the work. 20

Clause 42.1A does not apply if the reason for delay or failure by the Principal to make payment to the Main Contractor is a default of the Main Contractor. 25

42.2 Correction of Payment Certificates

At any time, and from time to time, the Main Contractor's Representative may by a further certificate correct any error which has been discovered in any previous certificate, other than a Certificate of Substantial Completion or Final Certificate. 30

42.3 Retention Moneys

The Main Contractor may deduct from moneys otherwise due to the Subcontractor amounts up to the limit of the percentages, if any, stated in the Annexure of so much of the value of the respective items stated in the Annexure as is included in the calculation of a payment. 35

42.4 Unfixed Plant and Materials

Alternative 1

If the Subcontractor claims payment for plant or materials intended for incorporation in the Works but not incorporated, the Main Contractor shall not be obliged to make payment for the plant or materials unless the Subcontractor provides additional security in one of the forms provided by Clause 5.3 in an amount equal to the payment claimed for the plant or materials. 40

Alternative 2

If the Subcontractor claims payment for plant or materials intended for incorporation in the Works but not incorporated the Main Contractor shall not be obliged to make payment for such plant or materials but the Main Contractor may make payment, if the Subcontractor establishes to the satisfaction of the Main Contractor's Representative that— 50

- (a) such plant or materials have reasonably but not prematurely been delivered to or adjacent to the Site; 55
- (b) ownership of the plant and materials will pass to the Main Contractor upon the making of the payment claimed; and 60
- (c) such plant or materials are properly stored, labelled the property of the Main Contractor and adequately protected. 65

Upon payment to the Subcontractor of the amount claimed, the plant or materials the subject of the claim shall be the property of the Main Contractor free of any lien or charge.

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Alternative 3

The Subcontractor shall not be entitled to payment for plant or materials not incorporated in the Works.

42.5 Certificate of Substantial Completion

The Subcontractor shall give the Main Contractor's Representative at least 14 days' notice of the date upon which the Subcontractor anticipates that Substantial Completion will be reached.

When the Subcontractor is of the opinion that Substantial Completion has been reached, the Subcontractor shall in writing request the Main Contractor's Representative to issue a Certificate of Substantial Completion. Within 14 days of the receipt of the request, the Main Contractor's Representative shall give to the Subcontractor and to the Main Contractor a Certificate of Substantial Completion stating the Date of Substantial Completion or give the Subcontractor in writing the reasons for not issuing the Certificate.

When the Main Contractor's Representative is of the opinion that Substantial Completion has been reached, the Main Contractor's Representative may issue a Certificate of Substantial Completion, whether or not the Subcontractor has made a request for its issue.

42.6 Effect of Certificates

The issue of a payment certificate or a Certificate of Substantial Completion shall not constitute approval of any work or other matter nor shall it prejudice any claim by the Main Contractor or the Subcontractor.

42.7 Final Payment Claim

Within 21 days after the expiration of the Defects Liability Period, or where there is more than one, the last to expire, the Subcontractor shall lodge with the Main Contractor's Representative a final payment claim and endorse it 'Final Payment Claim'.

The Subcontractor shall include in that claim all moneys which the Subcontractor considers to be due from the Main Contractor under or arising out of the Subcontract or any alleged breach thereof.

After the expiration of the period for lodging a Final Payment Claim, any claim which the Subcontractor could have made against the Main Contractor and has not made shall be barred.

42.8 Final Certificate

Within 28 days after receipt of the Subcontractor's Final Payment Claim or, where the Subcontractor fails to lodge such a claim, the expiration of the period specified in Clause 42.7 for lodgement of the Final Payment Claim by the Subcontractor, the Main Contractor's Representative shall issue to the Subcontractor and to the Main Contractor a final payment certificate endorsed 'Final Certificate'. In the certificate the Main Contractor's Representative shall certify the amount which in the Main Contractor's Representative's opinion is finally due from the Main Contractor to the Subcontractor or from the Subcontractor to the Main Contractor under or arising out of the Subcontract or any alleged breach thereof.

Unless either party, either before the Final Certificate has been issued or not later than 8 days after the issue thereof, serves a notice of dispute under Clause 47, the Final Certificate shall be evidence in any proceedings of whatsoever nature and whether under the Subcontract or otherwise between the parties arising out of the Subcontract, that the Works have been completed in accordance with the terms of the Subcontract and that any necessary effect has been given to all the terms of the Subcontract which require additions or deductions to be made pursuant to the Subcontract, except in the case of—

- (a) fraud, dishonesty or fraudulent concealment relating to the Works or any part thereof or to any matter dealt with in the said Certificate;

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- (b) any defect (including omission) in the Works or any part thereof which was not apparent at the end of the Defects Liability Period, or would not have been disclosed upon reasonable inspection at the time of the issue of the Final Certificate; or
- (c) any accidental or erroneous inclusion or exclusion of any work, plant, materials or figures in any computation or any arithmetical error in any computation.

Within 14 days after the issue of the Final Certificate which certifies a balance owing by the Main Contractor to the Subcontractor, the Main Contractor shall release to the Subcontractor any retention moneys or security then held by the Main Contractor.

42.9 Interest on Overdue Payments

If any moneys due to either party remain unpaid after the date upon which or the expiration of the period within which they should have been paid then interest shall be payable thereon from but excluding the date upon which, or the expiration of the period within which they should have been paid, to and including the date upon which the moneys are paid. The rate of interest shall be the rate stated in the Annexure and if no rate is stated the rate shall be 18 percent per annum. Interest shall be compounded at six monthly intervals.

42.10 Set Offs by the Main Contractor

The Main Contractor may deduct from moneys due to the Subcontractor any money due from the Subcontractor to the Main Contractor otherwise than under the Subcontract and if those moneys are insufficient, the Main Contractor may, subject to Clause 5.5, have recourse to retention moneys and, if they are insufficient, then to security under the Subcontract.

42.11 Recourse for Unpaid Moneys

Where, within the time provided by the Subcontract, a party fails to pay the other party an amount due and payable under the Subcontract, the other party may, subject to Clause 5.5, have recourse to retention moneys, if any, and, if those moneys are insufficient, then to security under the Subcontract and any deficiency remaining may be recovered by the other party as a debt due and payable.

43 PAYMENT OF WORKERS AND SECONDARY SUBCONTRACTORS

- (a) Before the Main Contractor makes each payment to the Subcontractor, the Main Contractor's Representative may, not less than five days before a payment certificate is due, in writing request the Subcontractor—
 - (i) to give the Main Contractor's Representative a statutory declaration by the Subcontractor or, where the Subcontractor is a corporation, by a representative of the Subcontractor who is in a position to know the facts declared, that all workers who have at any time been employed by the Subcontractor on work under the Subcontract have at the date of the request been paid all moneys due and payable to them in respect of their employment on the work under the Subcontract; and
 - (ii) to provide documentary evidence to the Main Contractor's Representative that at the date of the request all workers who have been employed by a secondary subcontractor of the Subcontractor have been paid all moneys due and payable to them in respect of their employment on the work under the Subcontract.
- (b) Not earlier than 14 days after the Subcontractor has made a claim for payment under Clause 42.1, and before the Main Contractor makes that payment to the Subcontractor, the Subcontractor shall give to the Main Contractor's Representative a statutory declaration by the Subcontractor or, where the Subcontractor is a

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corporation, by a representative of the Subcontractor who is in a position to know the facts declared, that all secondary subcontractors of the Subcontractor have been paid all moneys due and payable to them in respect of work under the Subcontract.

(c) If the Subcontractor fails—

(i) within five days after a request by the Main Contractor's Representative under Clause 43(a), to provide the statutory declaration, or the documentary evidence (as the case may be) required pursuant to Clause 43; or

(ii) to comply with Clause 43(b),

notwithstanding Clause 42.1, the Main Contractor may withhold payment of moneys due to the Subcontractor until the statutory declaration or documentary evidence (as the case may be) is received by the Main Contractor's Representative.

If the Subcontractor provides to the Main Contractor's Representative satisfactory proof of the maximum amount due and payable to workers and secondary subcontractors of the Subcontractor by the Subcontractor, the Main Contractor shall not be entitled to withhold any amount in excess of the maximum amount.

At the written request of the Subcontractor and out of moneys payable to the Subcontractor, the Main Contractor may on behalf of the Subcontractor make payments directly to any worker or secondary subcontractor of the Subcontractor.

If a worker or secondary subcontractor of the Subcontractor obtains a court order in respect of moneys referred to in Clause 43(a) or (b) and produces to the Main Contractor the court order and a statutory declaration that it remains unpaid, the Main Contractor may pay the amount of the order, and costs included in the order, to the worker or secondary subcontractor and the amount paid shall be a debt due from the Subcontractor to the Main Contractor.

After the making of a sequestration order or a winding up order in respect of the Subcontractor, the Main Contractor shall not make any payment to a worker or secondary subcontractor of the Subcontractor without the concurrence of the official receiver or trustee of the estate of the bankrupt or the liquidator as the case may be.

44 DEFAULT OR INSOLVENCY

44.1 Preservation of Other Rights

If a party breaches or repudiates the Subcontract, nothing in Clause 44 shall prejudice the right of the other party to recover damages or exercise any other right.

44.2 Default by the Subcontractor

If the Subcontractor commits a substantial breach of contract and the Main Contractor considers that damages may not be adequate remedy, the Main Contractor may give the Subcontractor a written notice to show cause.

Substantial breaches include but are not limited to—

- (a) suspension of work, in breach of Clause 33.1;
- (b) failing to proceed with due expedition and without delay, in breach of Clause 33.1;
- (c) failing to lodge security, in breach of Clause 5;
- (d) failing to use the materials or standards of workmanship required by the Subcontract, in breach of Clause 30.1;
- (e) failing to comply with a direction of the Main Contractor's Representative under Clause 30.3, in breach of Clause 23;
- (f) failing to provide evidence of insurance, in breach of Clause 21.1; and/or

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- (g) in respect of Clause 43, knowingly providing a statutory declaration or documentary evidence which contains a statement that is untrue.

44.3 Requirements of a Notice by the Main Contractor to Show Cause

A notice under Clause 44.2 shall—

- (a) state that it is a notice under Clause 44 of the Subcontract Conditions;
- (b) specify the alleged substantial breach;
- (c) require the Subcontractor to show cause in writing why the Main Contractor should not exercise a right referred to in Clause 44.4;
- (d) specify the time and date by which the Subcontractor must show cause (which time shall not be less than 7 clear days after the notice is given to the Subcontractor); and
- (e) specify the place at which cause must be shown.

44.4 Rights of the Main Contractor

If by the time specified in a notice under Clause 44.2, the Subcontractor fails to show reasonable cause why the Main Contractor should not exercise a right referred to in Clause 44.4, the Main Contractor may by notice in writing to the Subcontractor—

- (a) take out of the hands of the Subcontractor the whole or part of the work remaining to be completed; or
- (b) terminate the Subcontract.

Upon giving a notice under Clause 44.2, the Main Contractor may suspend payments to the Subcontractor until the earlier of—

- (i) the date upon which the Subcontractor shows reasonable cause;
- (ii) the date upon which the Main Contractor takes action under Clause 44.4(a) or (b); or
- (iii) the date which is 7 days after the last day for showing cause in the notice under Clause 44.2.

If the Main Contractor exercises the right under Clause 44.4(a), the Subcontractor shall not be entitled to any further payment in respect of the work taken out of the hands of the Subcontractor unless a payment becomes due to the Subcontractor under Clause 44.6.

44.5 Procedure when the Main Contractor Takes Over Work

If the Main Contractor takes work out of the hands of the Subcontractor under Clause 44.4(a) the Main Contractor shall complete that work and the Main Contractor may without payment of compensation take possession of such of the Constructional Plant and other things on or in the vicinity of the Site as are owned by the Subcontractor and are reasonably required by the Main Contractor to facilitate completion of the work.

If the Main Contractor takes possession of Constructional Plant or other things, the Main Contractor shall maintain the Constructional Plant and, subject to Clause 44.6, on completion of the work the Main Contractor shall return to the Subcontractor the Constructional Plant and any things taken under this Clause which are surplus.

44.6 Adjustment on Completion of the Work Taken Out of the Hands of the Subcontractor

When work taken out of the hands of the Subcontractor under Clause 44.4(a) is completed the Main Contractor's Representative shall ascertain the cost incurred by the Main Contractor in completing the work and shall issue a certificate to the Main Contractor and the Subcontractor certifying the amount of that cost.

If the cost incurred by the Main Contractor is greater than the amount which would have been paid to the Subcontractor if the work had been completed by the Subcontractor, the difference shall be a debt due from the Subcontractor to the Main Contractor. If the cost incurred by the Main Contractor is less than the amount that would have been paid to the

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Subcontractor if the work had been completed by the Subcontractor, the difference shall be a debt due to the Subcontractor from the Main Contractor. The Main Contractor shall keep records of the cost in a similar manner to that prescribed in Clause 41.

If the Subcontractor is indebted to the Main Contractor, the Main Contractor may retain Constructional Plant or other things taken under Clause 44.5 until the debt is satisfied. If after reasonable notice, the Subcontractor fails to pay the debt, the Main Contractor may sell the Constructional Plant or other things and apply the proceeds to satisfaction of the debt and the costs of sale. Any excess shall be paid to the Subcontractor.

44.7 Default of the Main Contractor

If the Main Contractor commits a substantial breach of contract and the Subcontractor considers that damages may not be an adequate remedy, the Subcontractor may give the Main Contractor a written notice to show cause.

Substantial breaches include but are not limited to—

- (a) failing to make a payment, in breach of Clause 42.1;
- (b) failure by the Main Contractor's Representative to issue a Certificate of Substantial Completion, or give the Subcontractor, in writing, the reasons for not issuing the Certificate within 14 days of receipt of a request by the Subcontractor to issue the Certificate, in breach of Clause 42.5;
- (c) failing to produce evidence of insurance, in breach of Clause 21.1;
- (d) failing to give the Subcontractor access to sufficient of the Site, in breach of Clause 27.1, but only if the failure continues for longer than the period stated in the Annexure; and/or
- (e) failing to lodge security in breach of Clause 5.

44.8 Requirements of a Notice by the Subcontractor to Show Cause

A notice under Clause 44.7 shall—

- (a) state that it is a notice under Clause 44 of the Subcontract Conditions;
- (b) specify the alleged substantial breach;
- (c) require the Main Contractor to show cause in writing why the Subcontractor should not exercise a right referred to in Clause 44.9;
- (d) specify the time and date by which the Main Contractor must show cause (which shall not be less than 7 clear days after the notice is given to the Main Contractor); and
- (e) specify the place at which cause must be shown.

44.9 Rights of Subcontractor

If, by the time specified in a notice under Clause 44.7, the Main Contractor fails to show reasonable cause why the Subcontractor should not exercise a right referred to in Clause 44.9, the Subcontractor may by notice in writing to the Main Contractor suspend the whole or any part of the work under the Subcontract.

The Subcontractor shall lift the suspension if the Main Contractor remedies the breach but if within 28 days after the date of suspension under Clause 44.9, the Main Contractor fails to remedy the breach or, if the breach is not capable of remedy, fails to make other arrangements to the reasonable satisfaction of the Subcontractor, the Subcontractor may by notice in writing to the Main Contractor terminate the Subcontract.

The Subcontractor shall be entitled to recover from the Main Contractor any damages incurred by the Subcontractor by reason of the suspension.

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44.10 Rights of the Parties on Termination

If the Subcontract is terminated under Clause 44.4(b) or Clause 44.9 the rights and liabilities of the parties shall be the same as they would be at common law had the defaulting party repudiated the Subcontract and the other party had elected to treat the Subcontract as at an end and recover damages.

44.11 Insolvency

If—

- (a) a party informs the other party in writing or creditors generally that the party is insolvent;
- (b) a party commits an act of bankruptcy;
- (c) a bankruptcy petition is presented against a party;
- (d) a party is made bankrupt;
- (e) a meeting of creditors of a party is called with a view to—
 - (i) entering a scheme of arrangement or composition with creditors; or
 - (ii) placing the party under official management;
- (f) a party enters a scheme of arrangement or composition with creditors;
- (g) a resolution is passed at a meeting of creditors to place a party under official management;
- (h) a party is placed under official management;
- (i) a receiver of the property or part of the property of a party is appointed;
- (j) an application is made to a court for the winding up of a party and not stayed within 14 days;
- (k) a winding up order is made in respect of a party; and/or
- (l) execution is levied against a party by creditors, debenture holders or trustees or under a floating charge

then—

where the other party is the Main Contractor, the Main Contractor may, without giving a notice to show cause, exercise the right under Clause 44.4(a); or
 where the other party is the Subcontractor, the Subcontractor may, without giving a notice to show cause, exercise the right under Clause 44.9.

The rights given by Clause 44.11 are in addition to any other rights and may be exercised notwithstanding that there has been no breach of contract.

*** 45 TERMINATION BY FRUSTRATION**

If, under the law governing the Subcontract, the Subcontract is frustrated, the Main Contractor shall pay the Subcontractor—

- (a) for work executed prior to the date of frustration, the amount which would have been payable if the Subcontract had not been frustrated and the Subcontractor had made a progress claim on the date of frustration;
- (b) the cost of materials reasonably ordered by the Subcontractor for the work under the Subcontract, which the Subcontractor is liable to accept, but only if the materials become the property of the Main Contractor upon payment;
- (c) costs reasonably incurred by the Subcontractor in the expectation of completing the whole of the work under the Subcontract and not included in any payment by the Main Contractor;
- (d) all retention moneys and security;
- (e) the reasonable cost of removal of Constructional Plant;

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- (f) the reasonable cost of returning to their place of recruitment the Subcontractor's employees engaged in the work under the Subcontract at the date of frustration.

46 TIME FOR NOTIFICATION OF CLAIMS

46.1 Subcontractor's Prescribed Notice

The Main Contractor shall not be liable upon any claim by the Subcontractor in respect of or arising out of a breach of the Subcontract unless within 28 days after the first day upon which the Subcontractor could reasonably have been aware of the breach, the Subcontractor has given to the Main Contractor's Representative the prescribed notice.

The Main Contractor shall not be liable upon any other claim by the Subcontractor for any extra cost or expense in respect of or arising out of any direction or approval by the Main Contractor's Representative unless within 42 days after the first day upon which the Subcontractor could reasonably have been aware of the entitlement to make the claim, the Subcontractor has given to the Main Contractor's Representative the prescribed notice.

The prescribed notice is a notice in writing which includes particulars of all the following—

- (a) the breach, act, omission, direction, approval or circumstances on which the claim is or will be based;
- (b) the provision of the Subcontract or other basis for the claim or proposed claim; and
- (c) the quantum or likely quantum of the claim.

This Clause 46.1 shall not have any application to—

- (i) any claim for payment to the Subcontractor of an amount or amounts forming part of the Contract Sum;
- (ii) any claim for payment for a variation directed by the Main Contractor's Representative or to be made pursuant to Clause 12.3;
- (iii) any claim for an extension of time for Substantial Completion;
- (iv) the provisions of Clause 46.2; or
- (v) any breach of contract by the Principal or direction of the Superintendent to which Clause 47.4 applies.

46.2 Time for Disputing Main Contractor's Representative's Direction

If the Main Contractor's Representative—

- (a) has given a direction (other than a decision under Clause 47.2) pursuant to the Subcontract; and
- (b) has served a notice in writing on each party that if a party wishes to dispute the direction then that party is required to do so under Clause 47,

the direction shall not be disputed unless a notice of dispute in accordance with Clause 47.1 is given by one party to the other party and the Main Contractor's Representative within 42 days after the date of service on that party of the notice pursuant to Clause 46.2.(b).

47 DISPUTE RESOLUTION

47.1 Notice of Dispute

If a dispute between the Subcontractor and the Main Contractor arises out of or in connection with the Subcontract, including a dispute concerning a direction given by the Main Contractor's Representative, then either party shall deliver by hand or send by certified mail to the other party and to the Main Contractor's Representative a notice of dispute in writing adequately identifying and providing details of the dispute.

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Notwithstanding the existence of a dispute, the Main Contractor and the Subcontractor shall continue to perform the Subcontract and subject to Clause 44, the Subcontractor shall continue with the work under the Subcontract and the Main Contractor and the Subcontractor shall continue to comply with Clause 42.1.

A claim in tort, under statute or for restitution based on unjust enrichment or for rectification or frustration, may be included in an arbitration.

47.2 Further Steps Required Before Proceedings

Within 14 days after service of a notice of dispute, the parties shall confer at least once, and if the dispute is one to which Clause 47.4 applies, at the option of either party and provided the Superintendent so agrees, in the presence of the Superintendent, to attempt to resolve the dispute and failing resolution of the dispute, to explore and if possible agree on methods of resolving the dispute by other means including (if the dispute is one to which Clause 47.4 applies) whether it is therefore to be resolved pursuant to the dispute resolution procedures of the Main Contract. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute.

In the event that the dispute cannot be so resolved or if at any time either party considers that the other party is not making reasonable efforts to resolve the dispute, either party may by notice in writing delivered by hand or sent by certified mail to the other party, refer such dispute to arbitration or litigation.

47.3 Arbitration

Arbitration shall be effected by a single arbitrator who shall be nominated by the person named in the Annexure, or if no person is named, by the Chairperson for the time being of the Chapter of the Institute of Arbitrators Australia in the State or Territory named in the Annexure. Such arbitration shall be held in the State or Territory stated in the Annexure.

Unless the parties agree in writing, any person agreed upon by the parties to resolve the dispute pursuant to Clause 47.2 shall not be appointed as an arbitrator, nor may that person be called as a witness by either party in any proceedings.

Notwithstanding Clause 42.9, the arbitrator may award whatever interest the arbitrator considers reasonable.

If one party has overpaid the other, whether pursuant to a Main Contractor's Representative's certificate or not and whether under a mistake of law or fact, the arbitrator may order repayment together with interest.

47.4 Claims or Disputes Affecting the Main Contract Works

When the Main Contractor becomes aware of a breach of the Main Contract by the Principal or a direction given by the Superintendent under the Main Contract which breach or direction affects work, material or the performance of work under the Subcontract, and provided that the Main Contractor's Representative has—

- (a) promptly served on the Subcontractor a notice setting out adequate details of the breach or sent a written copy of the Superintendent's direction, as the case may be; and
- (b) when complying with Clause 47.4(a) or previously, provided to the Subcontractor a written copy of the relevant provisions of the Main Contract relating to the notification of claims and resolution of disputes,

the Main Contractor, by notice promptly given in writing by the Main Contractor's Representative to the Subcontractor, may require any claim or dispute to be made by the Subcontractor arising out of the breach or direction to proceed under or be resolved pursuant to the provisions of the Main Contract.

The Subcontractor, on receipt of the latter notice given by the Main Contractor's Representative, shall—

- (i) promptly acknowledge in writing the receipt of the Main Contractor's Representative's said notice; and

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- (ii) if the Subcontractor requires the Main Contractor, on behalf of the Subcontractor, to make a claim or to serve a notice of dispute on the Principal in respect of the breach or direction, the Subcontractor shall, in writing and within a reasonable time to enable the Main Contractor to comply with the provisions of the Main Contract, request the Main Contractor either to give a prescribed notice, a copy of which shall be served either with the Subcontractor's request or within a reasonable time thereafter to enable the Main Contractor to comply with the provisions of the Main Contract relating to service thereof on the Superintendent, or, where appropriate, to serve a notice of dispute in respect of the breach or direction.

Upon the receipt of the Subcontractor's written request given under Clause 47.4(ii), the Main Contractor shall take such steps as are reasonably necessary to proceed in accordance with the Main Contract with the Subcontractor's claim or dispute. The Subcontractor shall comply with the Main Contractor's reasonable requirements in respect to providing details of the claim or dispute.

The Subcontractor shall indemnify the Main Contractor, to the extent of the Subcontractor's interest in respect of the claim or dispute, against all costs and expenses that may reasonably be incurred by the Main Contractor by reason of complying with the request of the Subcontractor given under Clause 47.4(ii). The Subcontractor shall, with the request, lodge with the Main Contractor reasonable cash or other security against such costs and expenses and any moneys the Main Contractor may recover shall be for the benefit of the Subcontractor to the extent of the Subcontractor's interest in the claim or dispute.

If the Main Contractor is in breach of any provision of the Main Contract or of this Clause 47.4 relating to the notification of the claim or in proceeding with the dispute and the breach was not due to any act or omission of the Subcontractor, nothing in Clause 47.4 shall prevent the Subcontractor from thereafter proceeding pursuant to Clause 47.1 and 47.2 as if the dispute was not a dispute to which the provisions of Clause 47.4 apply.

47.5 Summary or Urgent Relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under Clause 42 or to seek urgent injunctive or declaratory relief in respect of a dispute under Clause 47 or any matter arising under the Subcontract.

48 WAIVER OF CONDITIONS

Except as provided at law or in equity or elsewhere in the Subcontract, none of the terms of the Subcontract shall be varied, waived, discharged or released, except with the prior consent in writing of the Main Contractor in each instance.

49 SERVICES AND FACILITIES

Services and facilities shall be provided as stated in the Annexure.

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**ANNEXURE to the Australian Standard
Subcontract conditions**

PART A

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This Annexure shall be issued as part of the tender documents for the Subcontract and is to be attached to the Subcontract Conditions and shall be read as part of the Subcontract.

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The law applicable is that of the State or Territory of:
(Clause 1)

Queensland

Payments under the Subcontract shall be made at:
(Clause 1)

Maroochydore

The Main Contractor:
(Clause 2)

RCQ Projects Pty Ltd

(A.C.N. 614 089 066)

The address of the Main Contractor:

Level 1, Tenancy 212 Emporio Place

Maroochydore

Queensland 4558

The Main Contractor's Representative:
(Clause 2)

Andrew Collyer

The address of the Main Contractor's Representative:

4/458 Flinders Street

Townsville

Queensland 4810

The Principal:
(Clause 2)

The State of Queensland through the Director

General Department of Housing & Public Works
(A.C.N.)

The address of the Principal:

Department of Housing and Public Works

Level 3, AM60, 60 Albert Street Brisbane QLD 4001

The Superintendent:
(Clause 2)

Department of Housing and Public Works

North Queensland Region

The address of the Superintendent:

9-15 Langton Street

Garbutt Queensland 4814

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The Date or period for Substantial Completion: (Clause 2 and Clause 35.2):	To meet the Main Contractor's programme.
Limits of accuracy applying to quantities for which the Main Contractor accepted a rate or rates in the Subcontract: (Clause 3.3(b))	Not stated.
Bill of Quantities—the alternative applying: (Clause 4.1)	Alternative 2.
The time for lodgment of the priced copy of the Bill of Quantities: (Clause 4.2)	Not Applicable.
# Subcontractor shall provide security in the amount of: (Clause 5.2)	5% of the total adjusted contract sum.
# Main Contractor shall provide security in the amount of: (Clause 5.2)	Nil.
# The period of notice required of a party's intention to have recourse to retention moneys and/or to convert security: (Clause 5.5)	
The percentage to which the entitlement to security and retention moneys is reduced: (Clause 5.7)	50%.
Interest on retention moneys and security—the alternative applying: (Clause 5.9)	Alternative 2.
The number of copies to be supplied by the Main Contractor: (Clause 8.3)	1 electronic copy.
The number of copies to be supplied by the Subcontractor: (Clause 8.4)	1 electronic copy.
The time within which the Main Contractor's Representative must give a direction as to the suitability of documents: (Clause 8.4 (c))	14 days.

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Work which cannot be subcontracted without approval: (Clause 9.2)	All
The amount or percentage for profit and attendance: (Clause 11(b))	5%
The amount or percentage for profit and attendance: (Clause 11(c))	5%
Public Liability Insurance—the alternative applying: (Clause 19)	Alternative 2
The amount of Public Liability Insurance under alternative 2 shall be not less than: (Clause 19)	\$20,000,000
The time for giving access to the Site: (Clause 27.1)	Upon execution of the contract document
# Liquidated Damages per day: (Clause 35.6(a))	\$1,200 / day
# Limit on Liquidated Damages under Clause 35.6(a): (Clause 35.7)	
# Limit on Damages under Clause 35.6(b): (Clause 35.7)	
# Bonus per day for early Substantial Completion: (Clause 35.8)	Not Applicable
# Limit of bonus: (Clause 35.8)	Not Applicable

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Extra costs for Delay or Disruption :
(Clause 36)

Event

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.....
.....
.....
.....

The Defects Liability Period:
(This entry is to be completed only if the
date of expiry of the Defects Liability
Period is to be different from that
contained in the Main Contract)
(Clause 37)

.....

The charge for overheads, profit, etc.
for Daywork:
(Clause 41(f))

7.5%
.....

Times for payment claims:
(Clause 42.1)

.20th day of each month for works up to 30th day

Unfixed plant and materials for which payment
claims may be made notwithstanding that they
are not incorporated in the Works
(Clause 42.1(ii)).

Not applicable
.....
.....
.....

Retention Moneys on:
(Clause 42.3)

- (a) work incorporated in the Works and any
work or items for which a different amount
of retention is not provided,.....% of the
value until% of the Subcontract Sum
is held;
- (b) items on Site but not yet incorporated in
the Works,.....%;
- (c) items off Site but in Australia,.....%;
- (d) items not in Australia%;
- (e) disbursements incurred by the
Subcontractor for customs duties, freight,
marine insurance, primage, landing and
transport in respect of the work under the
Subcontract%;

Where there are Separable Portions, these items shall be deleted.

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Unfixed Plant and Materials—the alternative applying: (Clause 42.4)	Alternate 3
The rate of interest on overdue payments: (Clause 42.9)	0.1%
The delay in giving access to sufficient of the Site which shall be a substantial breach: (Clause 44.7(d))	Four (4) weeks
The person to nominate an arbitrator: (Clause 47.3)	Chairperson, Queensland Building & Construction
Location of arbitration: (Clause 47.3)	Brisbane

SERVICES AND FACILITIES (Clause 49)

A. ELECTRICITY

- (i) Installation of 240 Volts ~~will not~~ ^{will} be supplied on Site by the Main Contractor at the following points: Refer to site delivery plan which will be updated from time to time.
- (ii) Installation of 415 Volts ~~will not~~ ^{will} supplied on Site by the Main Contractor at the following points:
- (iii) Cost of electricity supplied will be borne by the ~~Subcontractor.~~ ^{*Main Contractor.}
- (iv) Cost of connection to power supply will be borne by the ~~Subcontractor.~~ ^{*Main Contractor.}
- (v) Supply of leads will be by ~~Subcontractor.~~ ^{*Main Contractor.}

B. SCAFFOLDING

- (i) Initial supply and erection and final removal of scaffold will be carried out by the ~~Subcontractor.~~ ^{*Main Contractor.}
- (ii) Adjustment and moving of scaffold and/or planks will be carried out by the ~~Subcontractor.~~ ^{*Main Contractor.}
- (iii) Cost of hire of scaffolding will be borne by the ~~Subcontractor.~~ ^{*Main Contractor.}

C. HOISTING (INCLUDING CRANAGE)

- (i) Hoisting facilities including services by necessary operators will be provided by the ~~Subcontractor.~~ ^{*Main Contractor.}
- (ii) Labour to handle materials to be hoisted or lifted will be supplied by the ~~Subcontractor.~~ ^{*Main Contractor.}
- (iii) If by Main Contractor materials shall be handled from to
- (iv) Charge for hoisting and crange facilities (if any) to be at following rates:

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* Delete as appropriate.

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- D. Constructional plant to be supplied
or made available by main contractor
for use by subcontractor as follows:

.....
.....
.....
This plant will be supplied or made available
in good order and condition for use by the
Subcontractor in carrying out the work under
the Subcontract and, if supplied, shall be
returned on the following date or dates:

.....
.....
NOTE: The cost of cleaning and/or repair other than
due to normal wear and tear will be charged to the Subcontractor.

E. ~~TELEPHONES~~

~~If a telephone service is installed by the Main Contractor
it will be available for the Subcontractor
who will be charged for outward calls.~~

F. GENERAL

- (i) Space for erection of Subcontractor's
sheds will be provided by Main Contractor
- (ii) Lavatory accommodation and washing
facilities will be provided by Main Contractor
- (iii) ~~Water and Boiling Water~~ for all reasonable
purposes necessary under the Subcontract
will be provided by Main Contractor

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¶ Separable Portions

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- | | | |
|----|---|---|
| 1. | Separable Portion: | |
| 2. | Subcontractor shall provide security in the amount of:
(Clause 5.2) | |
| | Main Contractor shall provide security in the amount of:
(Clause 5.2) | |
| | The period of notice required of a party's intention to have recourse to retention moneys and/or to convert security:
(Clause 5.5) | |
| 3. | The Date for Substantial Completion:
(Clause 35.2) | |
| 4. | Liquidated Damages per day:
(Clause 35.6) | |
| 5. | Limit on: | |
| | (a) Liquidated Damages under Clause 35.6(a): | |
| | (b) Damages under Clause 35.6(b):
(Clause 35.7) | |
| 6. | Bonus per day for early Substantial Completion:
(Clause 35.8) | |
| 7. | Limit of bonus:
(Clause 35.8) | |
| 8. | Extra Costs for Delay or Disruption:
(Clause 36) | <div style="display: flex; justify-content: space-between;"> <u>Event</u> </div> <div style="border-top: 1px solid black; height: 10px; width: 100%;"></div> <div style="border-top: 1px solid black; height: 10px; width: 100%;"></div> <div style="border-top: 1px solid black; height: 10px; width: 100%;"></div> |
| 9. | Defects Liability Period (This entry is to be completed only if the date of expiry of the Defects Liability Period is to be different from that contained in the Main Contract):
(Clause 37) | |

- ¶ Use this part of the Annexure where there are Separable Portions and ensure that the description of the Separable Portions covers all the work under the Subcontract. Make a separate column for each Separable Portion.

APPROVED FORM OF UNCONDITIONAL UNDERTAKING

(Clause 5.3)

At the request of ('the Subcontractor') and in
 consideration of ('the Main Contractor')
 accepting this undertaking in respect of the contract for
 (Identification of Work)

('the Financial Institution') unconditionally undertakes to pay on demand any sum or sums which may
 from time to time be demanded by the Main Contractor to a maximum aggregate sum of \$
 (.....)

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

Should the Financial Institution be notified in writing, purporting to be signed by
 for and on behalf of the Main Contractor that the Main 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 Main 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 Main Contractor the sum of \$

(.....)
 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 Main Contractor and thereupon the liability of the Financial
 Institution hereunder shall immediately cease.

DATED at this day of 19.....

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**ANNEXURE to the Australian Standard
Subcontract conditions****PART B**

NOTE: This table is intended for easy reference to clauses that may have been deleted, amended or added to Australian Standard 2545—1993.

1 The following Clauses have been deleted from the Subcontract Conditions in AS 2545—1993:

Refer to Annexure Part B to the general conditions

2 The following Clauses have been amended and differ from the corresponding Clauses in

Refer to Annexure Part B to the general conditions

3 The following Clauses have been added to those of AS 2545—1993:

Refer to Annexure Part B to the general conditions

(Clause 42.5)

I am of the opinion that ~~Substantial Completion of~~

was reached on
 (Date of Substantial Completion)

Signed:
Main Contractor's Representative
Date

* Insert 'the Works' or, where there are Separable Portions, the description of the Separable Portion.

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**AUSTRALIAN STANDARD
GENERAL CONDITIONS OF TENDERING AND FORM OF TENDER**

- 1 Tender documents, upon which the tenderer is to tender are:

(The tender documents should be specifically listed in each case.)

- 2 Tenderers must complete the Tender Form provided and lodge it with any accompanying schedules or information in a sealed envelope endorsed with the Subcontract number at the place and by the time stated in the invitation to tender.
- 3 The Main Contractor is not bound to accept the lowest or any tender.

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FORM OF FORMAL INSTRUMENT OF AGREEMENT FOR SUBCONTRACT

AGREEMENT made the _____ day of _____ 19____

BETWEEN _____
 of (address) _____
 _____ (A.C.N. _____) (called the Subcontractor)

AND _____
 of (address) _____
 _____ (A.C.N. _____) (called the Main Contractor).

IT IS AGREED that the annexed documents marked as follows:

<u>TITLE</u>	<u>MARK</u>
Tender, dated _____	_____
Letter of acceptance, dated _____	_____
AS 2545—1993 Subcontract conditions and Annexure (Agreement Signed and all pages initialled by parties)	_____
Specification _____	_____
Drawing Numbers: _____	_____
_____	_____
_____	_____
Other Documents: _____	_____
_____	_____
_____	_____

(Use extra sheets if necessary to list all documents and drawings)

_____ shall together comprise the contract between the parties AND if the Subcontractor or the Main Contractor is two or more persons then they shall be bound jointly and severally.

Signed by the Subcontractor _____

Signed by the Main Contractor _____

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TENDER FORM

Name of person,
firm or company
tendering

USE

BLOCK

LETTERS

address

of

hereby tender(s) to perform the work for:

Description
of works

(Contract No.) in

accordance with the following Documents:

List Documents:

(The documents on
which the tender is
based should be
specifically listed)

When the tender documents
provide that the tender is
to a lump sum only, (2)
does not apply.

When the tender documents
provide that the tender is
to be a Schedule of Rates
only, (1) does not apply.

If the tenderer is a firm the
full names of the individual
members of the firm must
be stated here.

Insert date.

1 For the lump sum of

(\$); and

2 At the rates in the attached Schedule of Rates

DATED this day of 19

Signature of Tenderer

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Handwritten signature/initials: *FF 140*

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AMENDMENT CONTROL SHEET

AS 2545—1993

Amendment No. 1 (2000)

REVISED TEXT

SUMMARY: This amendment applies to the Preface.

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Annexure Part B to AS2545- 1993

Special Conditions

Kirwan – Replacement Ambulance Station

RCQ Projects Pty Ltd (Main Contractor)

Kirkbuild Commercial Joinery Pty Ltd (Subcontractor)

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Annexure Part B to AS2545: Special Conditions

This document is to be inserted as Annexure Part B to AS2545-1993. To the extent of any inconsistency this document takes precedence over the General Conditions to AS2545-1993.

1. Interpretation

1.1 Add the following before the definition of 'Bill of Quantities':

"**Best Practice Principles**' means the Queensland Government guidelines titled "Best practice principles: Quality, safe workplaces (Version 1.0 August 2018)" or any guidelines which replaces those guidelines;"

1.2 Add the following after the definition of 'Bill of Quantities':

"**BIF Act**' means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) and the regulations made under or in respect of that Act;"

1.3 Add the following after the definition of 'Drawings':

"**Ethical Supplier Mandate**' means the Queensland Government policy titled "Buy Queensland: Ethical Supplier Mandate" or any policy that replaces that policy;

"**Ethical Supplier Threshold**' means the Ethical Supplier Threshold described in the Queensland Procurement Policy;"

1.4 Add the following after the definition of 'provisional sum':

"**Queensland Procurement Policy**' means the Queensland Government policy titled "Queensland Procurement Policy 2018" or any policy which replaces that policy;"

2. Performance and Payment

2.1 Add after the first sentence:

"The Subcontractor must fulfil any commitments in relation to the Best Practice Principles made in its tender for work under the Subcontract when executing and completing the work under the Subcontract."

3. Secondary subcontracting

3.1 Delete clause 9.2 and insert the following:

"The Subcontractor shall not without the written approval of the Main Contractor's Representative which approval shall not be unreasonably withheld, subcontract or allow a secondary subcontractor to assign or subcontract any of the work under the Subcontract.

A request for approval to sub subcontract any of the work under the Subcontract pursuant to this clause must be made by the Subcontractor to the Main Contractor's Representative in the form attached in Schedule 1 to these Conditions.

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With a request for approval the Subcontractor shall provide to the Main Contractor's Representative particulars in writing of the work to be subcontracted and the name and the address of the proposed secondary subcontractor.

The Subcontractor shall provide to the Main Contractor's Representative other information which the Main Contractor's Representative reasonably requests, including the proposed secondary subcontract documents without prices and execute any necessary request for approval required to be given to the Superintendent.

As soon as practicable after a request by the Subcontractor for approval to subcontract work, the Main Contractor's Representative shall advise the Subcontractor of approval or the reasons why approval is not given.

Approval may be conditional upon the secondary subcontract including—

- (a) provision that the secondary subcontractor shall not assign or subcontract without the consent in writing of the Subcontractor;
- (b) provisions which may be reasonably necessary to enable the Subcontractor to fulfil the Subcontractor's obligations to the Main Contractor;
- (c) provisions required by the Superintendent.

The Subcontractor acknowledges and agrees that approval to subcontract the Work under the Subcontract must be given by the Superintendent."

4. Latent conditions

4.1 In clause 12.1:

Delete the word "the" as appearing before the word "Subcontractor" in the third line of paragraph (a) and insert in its place the words "a competent and experienced".

5. Statutory Requirements

5.1 Add new subclause:

"14.5 Work Health and Safety Act 2011

- (a) Definitions

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;

'inspector', 'notifiable incident', 'principal contractor', 'regulator', 'structure' and 'workplace' have the same meanings as in the Act.

- (b) The Subcontractor and its officers, employees and agents must discharge their respective duties under the Act and the Regulation in connection with the work under the Subcontract.

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- (c) The Subcontractor will indemnify the Main Contractor against any claim, action, demand, loss, damage, cost or expense which may be brought against, or suffered or incurred by, the Main Contractor as a result of or in connection with:
 - (i) any breach of this Clause by the Subcontractor;
 - (ii) any breach by the Subcontractor of its obligations under the Act, the Regulation or any other regulation in connection with health and safety;
 - (iii) any enforcement of obligations imposed on the Subcontractor under the Act, the Regulation or any other regulations.
- (d) If a notifiable incident occurs at the workplace at which the work under the Subcontract is being undertaken, the Subcontractor must:
 - (i) immediately notify the regulator and the Main Contractor's Representative of the notifiable incident; and
 - (ii) take all reasonably practicable steps to secure the work under the Subcontract where the notifiable incident occurred until an inspector arrives at the Site or any earlier time that an inspector directs."

6. Training Policy

6.1 Insert new clause:

"29.1A Training Policy

- (a) In this clause:
 - (i) 'Aboriginal or Torres Strait Islander' means a person of Aboriginal or Torres Strait Islander descent who identifies as an Aboriginal or Torres Strait Islander and is accepted as such by the community in which he or she lives;
 - (ii) 'Apprentice' or 'Trainee' has the meaning given to it in the Training Policy;
 - (iii) 'Training Policy' means the Queensland Government Building and Construction Training Policy, published by the Department of Employment, Small Business and Training and located at www.training.qld.gov.au/trainingpolicy.
- (b) The Subcontractor must comply with the Training Policy and take all steps required by the Main Contractor to assist the Main Contractor to comply with the Training Policy in respect to the Main Contract.
- (c) The Subcontractor's obligations under this clause include but are not limited to:
 - (i) Providing such information, documentation and assistance to the Main Contractor as required to complete:
 - (A) Compliance Plans as required under the Training Policy;
 - (B) Practical Completion Compliance Report as required under the Training Policy;
 - (C) Indigenous Economic Opportunities Plan as required under the Training Policy;

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- (D) Reporting requirements at Practical Completion in respect to the Indigenous Economic Opportunities Plan as required under the Training Policy,

within the times required by the Main Contractor to comply with the Training Policy;

- (ii) Ensuring that Aboriginal and Torres Strait Islander Apprentices and/or Trainees, and local Aboriginal and Torres Strait Islander workers work the Deemed Hours applicable to the work under the Subcontract as set out in the Training Policy;
- (iii) Ensuring that the Subcontractor complies with the Indigenous Economic Opportunities Plan."

7. Queensland Procurement Policy

7.1 Insert new clause:

"29.1B Queensland Procurement Policy

The Subcontractor must, and must ensure its secondary subcontractors, in carrying out the work under the Subcontract, comply with:

- (a) the principles of the Queensland Procurement Policy and any requirements under the Main Contract in this regard; and
- (b) the Ethical Supplier Threshold.

The Subcontractor acknowledges that a failure to comply with the Principal's policies that apply to the work under the Subcontract or the Subcontractor's obligations under the Subcontract can result in the imposition of a demerit or sanction under the Ethical Supplier Mandate."

8. Working Hours

8.1 Delete the second paragraph of clause 32 and insert the following:

"In approving a variation to the working hours or working days specified in the Subcontract the Main Contractor's Representative may attach conditions. Such conditions may include but are not limited to a prohibition of or restriction on the performance of work which requires inspection and may also include a requirement that the Subcontractor meets the costs of contract administration including but not limited to costs of inspections by or on behalf of the Main Contractor, of work during times approved by the Main Contractor's Representative that are outside of the hours specified in the Subcontract."

9. Extension of Time for Substantial Completion

9.1 Delete subclause (b)(ii).

10. Limit on Damages for Delay

10.1 Delete clause 35.7.

11. Bonus for Early Substantial Completion

11.1 Delete clause 35.8.

12. Certificates and Payments

12.1 In clause 42.1:

Delete "Within 21 days" in the first line of paragraph two and insert in its place "Within 15 Business Days (as the term Business Days is defined in the BIF Act)".

Delete "35 days" in the first line of paragraph four and insert in its place "25 Business Days".

Add the following sentence to the end of the last paragraph of Clause 42.1:

"Nothing in this Subcontract shall oblige the Main Contractor to pay for work that is not in accordance with the Subcontract."

12.2 In clause 42.8:

Delete "Within 14 days" in the first line of the first paragraph and insert in its place "Within 10 Business Days".

Add in the first paragraph at the end of the first sentence:

"or give the Subcontractor in writing the reasons for not issuing the certificate."

Delete the final paragraph and insert:

"Subject to the Main Contractor's rights to set-off pursuant to Clause 42.10 and to have recourse to security and retention pursuant to Clause 5.5, within 28 days of the issuance of a Final Certificate which certifies a balance owing by the Main Contractor to the Subcontractor, and later of:

- (a) the finalisation of any dispute that has been commenced in accordance with Clause 47; and
- (b) the finalisation of any claim, adjudication or proceeding commenced pursuant to or in connection with the BIF Act, including proceedings commenced by the Main Contractor to recover an amount the subject of a payment claim pursuant to the BIF Act,

the Main Contractor shall release to the Subcontractor any retention moneys or security then held by the Main Contractor."

12.3 In clause 42.10:

Amend the subclause heading to "General Right of Set Off"

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Delete/Insert:

"Without limiting the Main Contractor's rights under any other provision in the Subcontract and notwithstanding the provisions of or the issue of a certificate by the Main Contractor's Representative under Clause 42.1 and 44.6, the Main Contractor may deduct from any moneys due to the Subcontractor any sum which is payable by the Subcontractor to the Main Contractor whether or not the Main Contractor's right to payment arises by way of damages, debt, restitution or otherwise and whether or not the factual basis giving rise to the Main Contractor's right to payment arises out of this Subcontract, any other contract, or is independent of any contract. If the moneys payable to the Subcontractor are insufficient to discharge the liability of the Subcontractor to pay such sum to the Main Contractor, the Main Contractor may have recourse to retention moneys (whether or not these are held by the Main Contractor in alternative form pursuant to Clause 42.1, and if they are insufficient, to security provided under Clause 5.2 of the Contract. Nothing in this Clause shall affect the right of the Main Contractor to recover from the Subcontractor the whole of such moneys or any balance that remains owing."

13. Payment of workers and secondary subcontractors

13.1 In clause 43(a)(i):

At the end of subclause 43(a)(i), insert:

"The statutory declaration must be in the form in Schedule 2 to these Conditions and if requested include reasonable supporting documentary evidence of the matters therein".

14. Default or Insolvency

14.1 In clause 44.2:

Delete "and/or" at the end of subparagraph (f).

Delete subparagraph (g).

Add the following subparagraphs:

- "(h) Failing to comply in any respect with the requirements of Clause 9.2;
- (i) Failing to comply with any requirement or request made pursuant to the requirements of Clause 43;
- (j) Providing a statutory declaration pursuant to Clause 43 which is false, misleading or deceptive in any respect;
- (k) Committing an act of insolvency as defined by Clause 44.11;
- (l) Failing to lodge a Deed of Guarantee Undertaking and Substitution in breach of Clause 5.10;
- (m) Failing to maintain all necessary licences that are required for the Subcontractor to perform all of its obligations under the Subcontract; and/or
- (n) Failing to comply in any respect with the requirements of Clause 29.1A or Clause 29.1B".

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14.2 In clause 44.3:

Delete from subclause (d) the words and punctuation:

"(which time shall not be less than 7 clear days after the notice is given to the Subcontractor)"

14.3 In clause 44.4:

Replace the second paragraph with the following:

"Notwithstanding any other provision of this Subcontract, upon the giving of a notice under Clause 44.2:

(c) the Subcontractor is not entitled to make a claim for payment; and

(d) the Main Contractor may suspend payments to the Subcontractor

until the earlier of:

(i) the date upon which the Subcontractor shows reasonable cause;

(ii) the date upon which the Main Contractor takes action under Clause 44.4(a) or (b);
or

(iii) the date which is 7 days after the last day for showing cause in the notice under Clause 44.2."

14.4 In clause 44.11:

Delete/Insert:

"If:

(a) The Subcontractor informs the other party in writing or creditors generally that the Subcontractor is insolvent or it is financially unable to proceed with the Subcontract;

(b) Execution is levied against the Subcontractor by a creditor;

(c) The Subcontractor, being an individual person, or a partnership including an individual person, and that person;

(i) Commits an act of bankruptcy;

(ii) Has a bankruptcy petition presented against it;

(iii) Presents a debtor's petition or a declaration of an intention to present a debtor's petition to the Official Receiver;

(iv) Is made bankrupt;

(v) Under Part IX of the Bankruptcy Act 1966 (Cth):

(A) Makes a written proposal for a debt agreement; and

(B) The proposal becomes a debt agreement; or

(vi) Makes a proposal for a deed of assignment, deed of arrangement or a composition; or

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- (vii) Under Part X of the Bankruptcy Act 1966 (Cth):
 - (A) Has a deed of assignment or deed of arrangement made;
 - (B) Accepts a composition;
 - (C) Is required to present a debtor's petition, or
 - (D) Has a sequestration order made; or
- (d) The Subcontractor is a corporation and:
 - (i) A notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) The Subcontractor enters a deed of company arrangement with creditors;
 - (iii) A controller or administrator is appointed;
 - (iv) A meeting of creditors is called with a view to:
 - (A) Entering a scheme of arrangement or composition with creditors; or
 - (B) Appointing a controller or administrator to the party;
 - (v) A receiver of the property or part of the property of the Subcontractor is appointed;
 - (vi) The Subcontractor takes or commences or has taken, commenced or instituted against it any process, action or proceeding, whether voluntary or compulsory, which has an object or may result in the winding up of the company, other than a voluntary winding up by members for the purpose of reconstruction or amalgamation, or a controller or administrator is appointed or enters into a compromise or other arrangement with its creditors or a receiver or receiver and manager is appointed to carry on the Subcontractor's business for the benefit of the creditors or any of them;
 - (vii) A winding up order is made; or
 - (viii) Execution is levied by creditors, debenture holders or trustees or under a floating charge;

then the Main Contractor may, without giving a notice to show cause, exercise the rights under Clause 44.4 (a) or 44.4 (b).

The rights given by this Clause 44.11 are in addition to any other rights and may be exercised notwithstanding that there has been no breach of Subcontract."

15. Records and Access to Records

15.1 Insert new clause:

"50. RECORDS AND ACCESS TO RECORDS

- (a) The Subcontractor shall make and keep and shall ensure that every secondary subcontractor makes and keeps accurate and complete records of:

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- (i) its tender, including without limitation the preparation and submission of that tender;
 - (ii) tenders received by it, whether accepted or not;
 - (iii) the execution and completion of the work under the Subcontract or of the work under the secondary subcontract; and
 - (iv) compliance with commitments made in their respective tenders relating to the local benefits test contained in the Queensland Procurement Policy.
- (b) The records referred to in Clause 50(a) shall include records that are required to be created or provided, or that are otherwise referred to, under the Subcontract or under the secondary subcontract, as well as other records including but not limited to those that:
- (i) relate to the Subcontractor's or a secondary subcontractor's tender, including tender preparation, submission, negotiation, evaluation, estimates and calculations;
 - (ii) relate to design, including design calculations, option studies, opinions, reviews and reports;
 - (iii) relate to the execution and completion of the work under the Subcontract or the secondary subcontract, including without limitation labour, subcontracts, subcontractors, consultants, materials, equipment, resourcing, planning, progress, delay, inspection, examination, testing, compliance, approval, safety, risk, variations, claims, payment, cost and cost to complete;
 - (iv) are required to demonstrate compliance with commitments made in the Subcontractor's or a secondary subcontractor's tender relating to the local benefits test contained in the Queensland Procurement Policy, including payroll records, management records and time recordings; and
 - (v) are in a format or stored on any medium, including without limitation photographs, electronic files, telecommunications or social media.
- (c) The records referred to in Clause 50(a) shall not be destroyed without the prior written approval of the Principal.
- (d) Without limiting any other provision of the Subcontract, the Main Contractor or its agent may at any time after giving written notice to the Subcontractor that an audit shall be undertaken pursuant to this Clause 50(d), undertake an audit in respect of the Subcontractor's compliance with Clause 9.2 or the records referred to in clause 50(a) for the purposes of verifying the Subcontractor's compliance with the commitments made in its tender relating to the local benefits test contained in the Queensland Procurement Policy. In undertaking the audit, the Main Contractor or its agent shall have the right to inspect and copy any record referred to in Clause 50(a) and to access any of the Subcontractor's systems and processes which are in any way connected with secondary subcontracting. Upon receipt of written notice of the audit pursuant to this Clause 50(d), the Subcontractor shall promptly and at its own cost provide the Main Contractor or its agent with every reasonable facility necessary to undertake the audit, including but not limited to:

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- (i) providing to the Main Contractor or its agent any record requested for inspection or copying pursuant to Clause 50(e);
 - (ii) making staff available to the Main Contractor or its agent to access or explain systems, processes or any record referred to in Clause 50(a); and
 - (iii) arranging and providing access to the Subcontractor's or secondary subcontractor's workplaces, sites, premises or facilities.
- (e) Subject to the Subcontractor's right to claim legal professional privilege in respect of any record, which is hereby maintained, the Main Contractor shall have the right to inspect and to copy at any time any record referred to in Clause 50(a). In the case of any records referred to in Clause 50(a) stored on a medium other than in writing, the Subcontractor shall make available forthwith upon request such facilities as may be necessary to enable a legible reproduction thereof to be provided to the Main Contractor.
- (f) Where a record referred to in Clause 50(a) is created, maintained or stored by the Subcontractor or a secondary subcontractor in an electronic format, it shall be provided to the Main Contractor in its native, operable form or such other format as may be reasonably required by or acceptable to the Main Contractor.
- (g) Where a record referred to in Clause 50(a) is stored on a medium licensed from a third party, where the Main Contractor is a party to the communication, the Subcontractor must provide the Main Contractor with a copy of such records in an external electronic storage device, readable on the Main Contractor's information technology system, or such other format as may be reasonably required by the Main Contractor, each month until the issuance of the Final Certificate.
- (h) The Subcontractor shall comply in all respects with any request made pursuant to Clause 50(e) to inspect or copy records referred to in Clause 50(a), or any audit undertaken pursuant to Clause 50(d), and shall not be entitled to refuse audit, inspection or copying of any record referred to in Clause 50(a) on any basis whatsoever other than on the basis that legal professional privilege attaches to the record."

16. Information Privacy Act

16.1 Insert new clause:

"51. INFORMATION PRIVACY ACT

- (a) If the Subcontractor collects or has access to Personal Information in order to carry out work under the Subcontract, the Subcontractor must:
 - (i) if the Principal is an 'agency' within the meaning of the *Information Privacy Act 2009 (Qld)* (IPA), comply with Parts 1 and 3 of Chapter 2 of the IPA in relation to the discharge of its obligations under the Subcontract as if the Subcontractor was the Principal;
 - (ii) not use Personal Information other than in connection with carrying out work under the Subcontract, unless required or authorised by law;

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- (iii) not disclose, or transfer outside of Australia, Personal Information without the prior written consent of the Principal, unless required or authorised by law;
 - (iv) ensure that its officers, employees, agents and subcontractors do not access, use or disclose Personal Information other than in connection with carrying out work under the Subcontract;
 - (v) ensure that its sub-contractors who have access to Personal Information comply with obligations the same as those imposed on the Subcontractor under this Clause;
 - (vi) fully co-operate with the Main Contractor and Principal to enable the Main Contractor and/or Principal to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
 - (vii) comply with such other privacy and security measures as the Main Contractor and/or Principal may reasonably require from time to time.
- (b) On request by the Main Contractor, the Subcontractor must obtain from its employees, officers, agents or subcontractors carrying out work under the Subcontract, an executed deed of privacy in a form acceptable to the Main Contractor (which must also be approved by the Principal).
 - (c) The Subcontractor must immediately notify the Main Contractor on becoming aware of any breach of Clause 51(a).
 - (d) This Clause will survive the termination or expiry of the Subcontract.
 - (e) In this Clause, 'Personal Information' is information or an opinion, including information or an opinion forming part of a database, whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion."

17. Goods and Services Tax (GST) and Pay As You Go (PAYG)

17.1 Insert new clause:

"52. GOODS AND SERVICES TAX (GST) AND PAY AS YOU GO (PAYG)

52.1. Definitions

- (a) Terms defined by the GST Law and PAYG Law and used (without separate definition) in this Clause, shall have the meaning given to them by the GST Law or PAYG Law.
- (b) For the purposes of this Clause:

'GST Law' has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

'PAYG Law' means any Act dealing with or relating to the PAYG system referred to in Schedule 1 of the *Taxation Administration Act 1953* (Cth).

52.2. Payment of GST

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Where a party is obliged to provide consideration to another party for a taxable supply made under or in connection with the Subcontract:

- (a) any amount which the Contract provides:
 - (i) is to be the amount of the consideration;
 - (ii) is to (or may) be used to calculate the amount of the consideration (and the amount of the consideration so calculated); or
 - (iii) is included (provisionally or otherwise) in the consideration,shall be taken to include GST payable in connection with the taxable supply unless the amount is specifically stated to exclude GST;
- (b) where, despite Clause 52.2(a), any consideration to be provided for a taxable supply is exclusive of GST, the party providing the consideration must also pay the GST payable in respect of the taxable supply, when the consideration is provided; and
- (c) no other provision of the Subcontract shall apply to give the Subcontractor any claim in connection with GST.

52.3. Liability Net of GST

Where under or in connection with the Subcontract a party is required to pay an amount which is (or is to be calculated by reference to) any cost, expense, loss or other liability suffered or incurred by another party that amount shall be (or be calculated by reference to) the cost, expense, loss or other liability net of any input tax credits available to the other party or the representative member of its GST Group.

52.4. Notification of GST Registration Status

- (a) The Subcontractor warrants to the Main Contractor that:
 - (i) the Subcontractor is registered for GST; and
 - (ii) the Subcontractor's ABN stated in the Subcontract (or otherwise notified by the Subcontractor to the Main Contractor) is correct.
- (b) The Subcontractor must notify the Main Contractor immediately if it ceases to be registered for GST at any time.

52.5. Tax Withholding

- (a) Whenever the Subcontractor does not have an ABN or the Main Contractor becomes aware that the Subcontractor's ABN notified to it is incorrect or the Main Contractor otherwise reasonably considers itself bound by PAYG Law to do so, the Main Contractor shall be entitled to withhold from any payment otherwise due to the Subcontractor under or in connection with the Subcontract, amounts calculated and to be withheld in accordance with the PAYG Law.
- (b) Subject to Clause 52.5(c), each time the Subcontractor makes a claim for any payment under or in connection with the Subcontract, the Subcontractor shall be taken to warrant to the Main Contractor that it is an Australian resident for the purposes of the foreign resident withholding provisions in Subdivision 12-FB of the *Taxation Administration Act 1953* (Cth).

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- (c) The warranty in Clause 52.5(b) shall not apply to the extent the Subcontractor has notified the Main Contractor in writing that it is not an Australian resident before any claim for payment is made.

52.6. Tax Invoices

A party making a Taxable Supply to another party under this Subcontract shall issue a Tax Invoice to the other party, setting out the amount of the GST payable by that other party. The party shall do so at the time the other party is required to pay the consideration for the Taxable Supply."

18. Information for Subcontractors

18.1 Insert new clause:

"53. INFORMATION FOR SUBCONTRACTORS

- (a) The Queensland Government has enacted the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) to assist in providing security of payment and timely payments for subcontractors in the building and construction industry.
- (b) The *Building and Construction Industry Payments Act 2004* (Qld) and the *Subcontractors' Charges Act 1974* (Qld) have been repealed and have been replaced by the *Building Industry Fairness (Security of Payment) Act 2017*.
- (c) Further information on the *Building Industry Fairness (Security of Payment) Act 2017*, including approved forms, can be accessed on the Queensland Building and Construction Commission website at www.qbcc.qld.gov.au."

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SCHEDULE 1 – REQUEST FOR APPROVAL FOR SECONDARY SUBCONTRACTING

Re: Subcontract for
specify the Subcontract and the Head Contract

Subcontractor
specify the subcontractor proposing to sub subcontract

Pursuant to Clause 9.2 of the Conditions of Subcontract I request approval to enter into a sub subcontract for
specify the nature of the work

The proposed sub subcontractor is
.....

specify the Sub Subcontractor's name

ACN: ABN:
of

specify the Sub Subcontractor's address

Licence Number: Category:
Trade: Restrictions (if any):
and the total value of the proposed subcontract is \$

specify the subcontract value

I confirm that:

1. the proposed sub subcontract documents incorporate AS2545-1993 or AS4303-1995 Australian Standard Subcontract Conditions (as applicable) as the general conditions of contract, amended only to reflect the Head Contract Conditions of Contract*;
(* delete if the total value of the proposed subcontract is less than \$50,000)
2. if the Best Practice Principles (as that term is defined in the Contract) are applicable, the subcontractor has complied and will continue to comply with Clause 9.2 when procuring and entering into the sub subcontract;
3. the proposed sub subcontractor:
 - (a) has a personal services business determination in effect from the Australian Taxation Office under the *Income Tax Assessment Act 1997* (Cth); or
 - (b) in relation to the work to be performed under the subcontract:
 - (i) will be paid to achieve a specified result or outcome; and
 - (ii) is required to supply the plant and equipment or tools of trade needed to perform the work; and
 - (iii) will be liable for the cost of rectifying any defect in the work performed.

I warrant that if approval is granted, the sub subcontract will be entered into in accordance with the above.

Signed
Subcontractor
Date/...../.....

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SCHEDULE 2 – STATUTORY DECLARATION BY SUBCONTRACTOR

Clause 43.2

Oaths Act 1867

Queensland

To Wit

I, of

.....

in the State of Queensland, do solemnly and sincerely declare that, in relation to the Contract between the State of Queensland through

The Director General, Department of Housing & Public Works ("the Principal") and

RCQ Projects Pty Ltd ("the Contractor") for

Kirwan Ambulance Station Replacement ("the Contract").

..... ("the Subcontractor")

is a Subcontractor to the Contractor for part of the work under the Contract, namely:

- (1) I hold the position of I am in a position to know the facts contained herein and to bind the Subcontractor by the terms of this declaration, and I am duly authorised by the Subcontractor to make this declaration on its/their behalf.
- (2) All the Subcontractor's workers who at any time have been engaged on work under the Contract by the Subcontractor have been paid in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to the date of submission by the Contractor of Payment Claim No
- (3) All subcontractors of the Subcontractor have been paid all that is due and payable to them up to the date of submission by the Contractor of Payment Claim No in respect of their part of the work under the Contract.
- (4) All sub subcontractors performing work under the Contract have been informed of the existence of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).
- (5) The Subcontractor has fulfilled or complied with any commitments made in its tender for the subcontract works relating to:
 - (a) the local benefits test contained in the Queensland Government's Queensland Procurement Policy; or
 - (b) the best practice principles contained in the Queensland Government guidelines document titled "Best practice principles; Quality, safe workplaces" (Version 1.0 August 2018).

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

.....

Name of Subcontractor

Signature of Subcontractor

Taken and declared before me at

in the State of

this day of 20.....

.....
A Justice of the Peace/ Legal Practitioner/ Commissioner of Declarations

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Schedule 2

Scope of Works

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SCOPE OF WORKS
” Supply and Install Lockers ”
Rev 1 (21/04/2020)

Note:

Sections 1 – 14 inclusive below outline RCQ Construction (hereafter referred to as RCQ) general Site Management policies for all trades. Sections 15 and beyond detail the scope of works as it applies to the subcontract issued for this trade package.

The Subcontractor shall provide all supervision, labour, materials and equipment necessary to carry out the complete works associated with the Supply and Install Lockers package, as detailed on the drawings and in accordance with the requirements of the specification, general and special conditions of Subcontract and the programme. All work shall be in strict accordance with the relevant Australian Standards; any recognised industry Codes of Practice; Federal, State, Local Authority and other general legislative requirements; and the conditions of any particular Development or Operational Works approvals issued for the project. Work shall include for, but not necessarily be limited to the following:

1. General Requirements

- 1.1 Allow to inspect the site and accept the site conditions as found.
- 1.2 Inspect, where appropriate to the trade, any substrates and notify RCQ, prior to commencement, of any remedial works required. Once work is started, it shall be deemed that the substrate is suitable for any applied finishes.
- 1.3 Allow to work in conjunction with, and coordinate with, other Trades/Subcontractors notwithstanding that exclusive access to the works will not necessarily be granted to the Subcontractor.
- 1.4 Touch-up and/or repair to RCQ's satisfaction, all surface treatments damaged during performance of the Works.
- 1.5 Allow for any obvious works required but not mentioned specifically herein nor detailed on the drawings.

2. Set Out

- 2.1 Set out all work required for the installation of the Works under the Subcontract, from a datum and control grids provided by RCQ. RCQ may at its absolute discretion, and by prior agreement with the Subcontractor, provide additional set out lines and datums, pinned or otherwise. It is recommended that the Subcontractor engages RCQ's project surveyor to do any additional set out that the Subcontractor so requires.
- 2.2 RCQ will provide:
 - Primary level control
 - Primary grid control, and,
 - A grid control plan.
- 2.3 Allow for site measuring as required to confirm dimensions prior to the commencement of manufacture or installation on site.
- 2.4 All other survey or resurvey work necessary for the completion of the Subcontract Works shall be borne by the Subcontractor. This work is to be carried out by competently qualified personnel and, whenever so directed by RCQ, shall be performed by an accredited surveyor. RCQ may provide assistance to the Subcontractor in setting out the subcontract works but the Subcontractor shall be responsible for the adequacy and accuracy of that set-out.

3. Clean Up

- 3.1 All rubbish and other construction debris generated by the Subcontractor is to be removed on an as-generated-basis from work areas and placed in 'skips' provided by RCQ or as otherwise directed by RCQ in accordance with the Subcontract Agreement. Skips are located on ground level and will be moved by RCQ from time to time to suit the project.

- 3.2 Any other specialised debris removal equipment and necessary to remove rubbish and construction debris from its work areas, shall be provided by the *Subcontractor*.
- 3.3 Allow to maintain work areas in a clean and tidy condition in accordance with the subcontract agreement.
- 3.4 On the completion of the day's work, leave work areas in the same condition as presented upon the commencement of work in those areas.

4. **Safety**

- 4.1 Provide all safety rails, barricades, warning lights, Personal Protective Equipment (PPE) and the like required to carry out the *Works* to the complete satisfaction of RCQ's Site Management, the Department of Workplace Health & Safety, QLD and any other statutory authorities.
- 4.2 The *Subcontractor* must immediately comply with any Health, Safety or Environmental Instructions given by RCQ.
- 4.3 All the *Subcontractor's* site personnel, including visiting supervisors, management and supplier representatives, are to wear 'high-visibility' personal protective equipment and clothing (excluding high visibility singlets).
- 4.4 Step ladders (must be industrial duty) will only be allowed on site if used in accordance with Workplace Health and Safety regulations. Industrial duty platform ladders are acceptable and preferred. If necessary for undertaking particular types of work, specialised work platforms are to be provided by the *subcontractor*. Work platforms are to be approved by RCQ's Workplace Health & Safety Officer.
- 4.5 Allow for attendance of all staff at a toolbox meeting prior to the commencement of work on site and at regular intervals in accordance with site procedures established for the project and outlined at the project pre-start meeting.
- 4.6 The *Subcontractor* is to arrange for the appointment of a senior / experienced staff member to act as a representative, selected in accordance with the Workplace Health & Safety Act, QLD, to attend and make a contribution to weekly site safety management meetings and to perform an active role on the Site Safety Committee.
- 4.7 RCQ supports and conforms to a non-smoking policy on all sites – this is no-smoking Site.

5. **Programme**

- 5.1 Comply with the RCQ's construction programme as amended from time to time, and which is based on a 6-day working week. The *Subcontractor* is responsible for co-ordinating with other trades and RCQ's Site Manager regarding appropriate co-ordination of the works.
- 5.2 The site working hours are 6:30am to 6:00pm Monday to Friday and 6:30am to 4:00pm on Saturdays. Notwithstanding the site hours, the *Subcontractor* will agree to provide adequate labour and other resources and work whatever hours are necessary to meet RCQ's overall construction program for the whole of the works.
- 5.3 In addition to the above and that detailed in the subcontract agreement the subcontractor is to allow for all costs associated with maintaining RCQ's progress of the works.

6. **Non-conforming Building Products**

- 6.1 The *Subcontractor* warrants and acknowledges that all building products and materials provided as part of their Subcontract Agreement are;
- i) Safe;
 - ii) Compliant with all relevant regulatory provisions; and
 - iii) Fit for their intended purposes.
- 6.2 The *Subcontractor* agrees to provide any accompanying information confirming the above information as may be required by regulation.

- 6.3 Should the *Subcontractor* become aware that a product or material is non-conforming, they must notify RCQ immediately.

7. **Materials Handling**

- 7.1 When loading / unloading materials, personnel must not exceed working at height restrictions, i.e. 2.0m without fall protection.
- 7.2 The *Subcontractor* is to provide all horizontal and vertical material handling necessary for the completion of its *Subcontract Works*.
- 7.3 All lifting methods and equipment used are to be in accordance with RCQ's 'General Lifting Requirements' which are available on request.
- 7.4 The *Subcontractor* is to give a minimum notice of five (5) days' notice for the delivery and storage of bulk materials on site. Generally bulk materials will not be stored on site. Materials on site are required to be installed in four (4) days. This may be varied by mutual agreement with RCQ prior to the delivery.
- 7.5 For all other deliveries to the Site, the *Subcontractor* shall provide twenty-four (24) hours notice to the RCQ Site Manager.
- 7.6 Storage of materials on site is as approved at the absolute discretion of RCQ's Site Manager and is to be confined to the site area/s nominated by RCQ.
- 7.7 The *Subcontractor* is responsible for moving stored materials on site as directed by RCQ to suit the works on site.
- 7.8 No materials are to be unloaded or stored on the ground outside the Site boundary.

8. **Scaffolding / Access to Works**

- 8.1 RCQ will supply, erect, maintain and remove all general scaffolding (excluding mobile scaffolds) with a working platform above 2.4 metres in height. Any adjustment and moving of scaffold and / or planks to these scaffolds will be undertaken by RCQ's nominated scaffolders. *Subcontractors'* staff found altering or removing scaffolding without authorisation may be immediately removed from site.

9. **Site Facilities**

- 9.1 Common use ablution and lunchroom facilities will be provided by RCQ. These site facilities are non-smoking areas. The provision of lunch rooms (for exclusive use by the individual subcontractor) and *Subcontractor's* site offices shall be the responsibility of the *Subcontractor* and must be of a standard, and in locations, as approved by RCQ's Site Manager.
- 9.2 RCQ will arrange for a common distribution point for electricity adjacent to RCQ Representatives' Site offices. Connection of services to the *Subcontractor's* facilities shall be the responsibility of the *Subcontractor*, as will the provision of fire protection and security arrangements.
- 9.3 The provision of space on site for accommodation units or the storage of materials will be on an 'as available' basis. RCQ will not be responsible for the provision of such areas but will use all reasonable endeavours to make areas available throughout the construction of the works.
- 9.4 The *Subcontractor* is responsible for moving (including services disconnection and reconnection) storage containers, site offices and the like as directed by RCQ to suit the works on site.

10. **Task Lighting**

- 10.1 RCQ will provide temporary lighting for the following areas:
- Access/egress paths (minimum of 40 Lux)

- Out of hours access (minimum of 40 Lux)
 - General lighting levels for normal movement and the carrying out of general work, clean up and the like.
- 10.2 The *Subcontractor* is to allow for all necessary task lighting. Task lighting must conform to the following minimum standards:
- Must be a commercially manufactured system.
 - All lights are to be fitted with guards.
 - Lights are to be permanently fixed to stands that have been designed and manufactured for their intended purpose or otherwise fixed to walls and / or ceilings in accordance with regulations and in a manner approved by RCQ's Site Management and safety representatives.
 - Lights and fittings, other than permanently installed units, are to be periodically checked and tagged as required during the execution of the *subcontract works*, by a certified electrician.
 - Task lighting must have a minimum rating of 160 Lux for general work areas as detailed in AS – 1630.2.4: 1997 Interior Lighting.

11. Temporary Power

- 11.1 RCQ shall provide temporary single phase 240V / 10A power within the site boundary to within 30 metres of the work face.
- 11.2 The *Subcontractor* shall make allowance for and be responsible for distribution of power from this point to any work area where it requires power or to provide its own temporary power where it exceeds the provisions noted in item 11.1.
- 11.3 *Subcontractor's* power leads will be elevated above the floor wherever practicable, particularly in access-ways and corridors.
- 11.4 The *Subcontractor* is responsible for testing and tagging its electrical equipment.

12. Temporary Water

- 12.1 RCQ shall provide temporary water at various locations around the site.
- 12.2 RCQ shall provide drinking fountains at various locations around the site. RCQ may choose at its discretion to provide additional drinking fountains wherever else or whenever they deem necessary.

13. General Items

- 13.1 There will be no long term parking on site unless otherwise authorised by RCQ's Site Manager.
- 13.2 The *Subcontractor* is to ensure that the operation of its machinery does not occur within close proximity to any building or air intake systems located either on site or on adjoining properties.
- 13.3 The *Subcontractor* is to ensure that any plant and equipment used in the works, and likely to be impacted by Fire Ant control legislation, is visually inspected and cleaned before being allowed on site.
- 13.4 The *Subcontractor* is to ensure that jackhammers and other noisy hand held tools used in the performance of the works are fitted with effective silencers in accordance with the manufacturer's recommendations. All silencers, tools and equipment are to be maintained in a first class condition. The *subcontractor* is to ensure that any compressor sets or machinery with exhaust are fitted with acoustic canopies and special engine exhaust silencers.
- 13.5 When working in public areas, the *Subcontractor* is to provide, prior to the commencement of any work that could potentially obstruct public movement, suitably qualified personnel dedicated to provide direction for vehicles and pedestrian traffic.

- 13.6 The *Subcontractor* is totally responsible for achieving the required tolerances. No assistance given by *RCQ* will in any way reduce or negate this responsibility. All areas not meeting with the *Contract Documents* will be rectified as directed by *RCQ*, at the subcontractor's expense. Failure to carry out rectification as directed will result in work being carried out by others and the costs deducted from the *Subcontractor's* contract sum in accordance with the provisions of the *subcontract*.
- 13.7 The documentation management system utilised on the project is Procore. <http://www.procore.com>. *Subcontractor* is to supply prior to commencement a representative or a number of representatives who need access to the project drawings and documents.
- 13.8 It is the *Subcontractors* responsibility to ensure they have access to and are utilising the most current and correct version or revision of drawings and documents.

14. **Adjoining Owners & Key Stakeholders**

- 14.1 If works are to be undertaken that may be considered dangerous, annoying or disruptive, the *Subcontractor* shall give notice to *RCQ* prior to commencement of the works and, in sufficient time for *RCQ* to give any appropriate notice to key stakeholders including, but not limited to, the relevant owners and occupiers of adjoining and nearby premises.
- 14.2 The *Subcontractor* shall ensure that the planning and implementation of the works is such as to minimise the impact on these stakeholders. The *Subcontractor* shall be responsible for the repair and / or reinstatement of any property damaged as a result of the execution of the works.
- 14.3 The *Subcontractor* shall comply with any Federal, State or Local Authority restrictions imposed on the project as a condition of approval or otherwise and, any *RCQ* imposed project specific restrictions.

15. **Trade Specific Requirements**

Outline of Scope for this Package:

- 15.1 Included but not limited are the following key items for this package:
- Supply and install 72 "Z" lockers to the locker room
 - Provide all materials movement
 - Provide all labour and equipment necessary for project installation

Specific Description of the Scope of Works:

- 15.2 Ensure ordering of materials and items are conducted immediately as directed to maintain and achieve program objectives. The Queensland Ambulance Service will be taking occupation of the building and timeframes are critical to the successful handover of the project.
- 15.3 Personal Lockers are too padlock-able, fixed shelf and hanging rail, Invincible 1A HMR, Minimum 1800mm High x 600mm Wide x 500mm deep with latch lock installed on 100mm timber framed laminated finished plinth and secure to the wall (where detailed) as banks of lockers
- 15.4 Personal Lockers to be constructed from moisture resistance (MR) board covered in low pressure laminate
- 15.5 Allow for Colour schemes as approved and specified and as detailed in the internal finishes schedule
- 15.6 Allow for delivery, move to ground floor locker room area installation as per program.
- 15.7 Provide sufficient manpower to maintain program.
- 15.8 All floors finishes must be installed complete, prior to Personal lockers

Prior to Commencement on Site:

Prior to commencement on site the *Subcontractor* shall:

- 15.9 Confirm that all lead times for any design, documentation, plant or equipment procurement and installation, can be completed within the time frames stipulated in the construction program. If there are any problems with lead times for plant, equipment or other components, the *Subcontractor* shall:
- Offer an alternative for review by RCQ with the Subcontractor's tender submission, or
 - At the time the Subcontractor first became, or a competent Subcontractor should have become aware, of the issues relating to that plant or equipment, offer an alternative for review by RCQ.
- 15.10 Alternatively, any circumstances or conditions upon which acceptance of the *Subcontractor's* programme is based must be as agreed with RCQ's Project Manager.
- 15.11 Provide a detailed construction programme applicable to this project within 1 week of award.
- 15.12 Provide Shop Drawings in DWG and PDF formats, and design detail drawings. Site measure areas allocated for the works.
- 15.13 Provide a Procurement Schedule for all major items of plant and equipment.
- 15.14 Nominate a supervisor who is experienced in the trade package works being undertaken for the project. The supervisor must have the authority to act for and on behalf of the *Subcontractor* in his capacity and have authority to receive or provide direction, receive and answer email correspondence, make decisions and have authority to order plant, equipment & materials, from site as may be required on a daily basis for the duration of the works under the subcontract
- 15.15 Liaise with RCQ's site management, and obtain their approval, regarding areas to be allocated for pre-fabrication or pre-assembly of components, storage of materials and paths of travel required to complete the works
- 15.16 Agree with RCQ's site management the specific sequence and timing for undertaking the works including delivery and unloading times, structure cycle times, approximate timetables for crane lifts, etc.
- 15.17 Provide RCQ's Site Manager, at least five (5) business days prior to commencement of the works, a site specific Work Method Statement.
- 15.18 Deliver the required plant, materials and other equipment to site as agreed with RCQ's Site Manager.
- 15.19 Make itself aware of all the works comprising the entire project including, but not limited to, all structural, architectural and other services drawings and all other documents as listed in the document register for the project.
- 15.20 Submit samples and/or product data sheets for approval.

Execution of the Works:

In completing the works the *Subcontractor* shall:

- 15.21 Ensure all works associated with this package are completed in accordance with all current relevant codes and regulations and in accordance with the specific approvals issued for the project. The *Subcontractor* has allowed for all aspects of the project as documented to complete their works as a fixed lump sum contract price.
- 15.22 Subcontract works to be completed in a tradesman like manner. The *Subcontractor* shall notify of any defective or incomplete works and seek RCQ's further position. The commencement by the subcontractor of the works in any area will be deemed as an acceptance of those substrates, finishes, levels and the like. The *subcontractor* shall not be entitled to make a claim for, nor to be reimbursed for, any costs for making good the subcontract works or to claim for or be granted an Extension of Time, for completing the subcontract works.
- 15.23 The *Subcontractor* shall allow for their site manager to attend site meetings and to liaise with RCQ's site manager on a regular basis.
- 15.24 Coordinate and cooperate with other trades. The *Subcontractor* shall be deemed to have made allowances in their tender price for the fact that various concurrent activities may be undertaken on site at the same time as these contract works. Accordingly, exclusive possession of site or parts of the site will not be granted to the subcontractor.
- 15.25 Include for full responsibility of all aspects of the contract. Variation works will not be agreed unless a variation request has been provided and agreed to by the RCQ Project Manager in writing. A Site Instruction is not an acknowledgement or an agreement to costs.

- 15.26 Ensure that materials and standards of work prescribed in the design documents and intended for incorporation in the works are, fit for the purpose specified in the contract documents, consistent with the nature and character of the works, and, in accordance with the contract.
- 15.27 Actively liaise with RCQ, the project consultants and other end users and stakeholders as required to ensure that the design is in accordance with the scope of works defined in the subcontract and is delivered for the subcontract sum and within the design and construction programme agreed for the works

16. Works Specifically Noted By Others (Exclusions)

The following works are specifically noted as excluded from this package however does not limit the *Subcontractor's* responsibility to coordinate and interface its works with these items:

- 16.1 Coat Hooks
- 16.2 Wall Clocks
- 16.3 Food Lockers
- 16.4 Bench Seats
- 16.5 Toilet & Shower Partitions

17. Completion & Handover

Upon completion the *Subcontractor* shall:

- 17.1 Inspect the completed work with RCQ's Site Management to verify completion and approval of the works undertaken.
- 17.2 Undertake a defects inspection on a level by level basis to ensure quality is maintained. The Subcontractor has included for adequate labour, equipment and materials to progressively rectify defective works prior to completion and handover.
- 17.3 Promptly rectify any works not approved providing enough resources so as to not delay the following trades or the issue of certificates of classification
- 17.4 Handover all certificates, inspection and test reports, as-builts, data sheets and the like to enable a certificate of classification to be issued for the works
- 17.5 Lodge all warranties for the various products, the commencement date for all warranties is from the date of practical completion which will be advised to *Subcontractor* prior to the actual date occurring, all warranties will form part of the Operation and Maintenance Manuals
- 17.6 Provide operation & maintenance manuals to the satisfaction of RCQ; including all installation, maintenance, and operating, cleaning and other instruction.
- 17.7 On completion of the project, demobilise from the site all plant and equipment utilised in completing the works.

18. Defects Liability Period:

During the defects liability period, the *Subcontractor* shall:

- 18.1 Attend to and rectify any issues relating to the subcontract.
- 18.2 Undertake any scheduled inspections or maintenance, including any required recording or certification of any such inspections or service, either as recommended by the relevant manufacturer, or required by statute, for the duration of the defects liability period and at end, or immediately after the end of the defects liability period.

19. **Warranties**

19.1 As per the QAS brief and manufacturers recommendation

20 **Pricing Schedule**

No	Description	Unit	Qty	Rate	Total
	Lockers (36 x two door lockers)	LS	1		
Total (excluding GST)					

Progress Claims, RCTI's and Payments

We draw your attention to the payment terms in the Subcontract Agreement including the reference dates for submitting payment claims, the methods of service for submitting payment claims.

Unless stated otherwise, we have agreed that Recipient Created Tax Invoices (RCTI's) apply to this Subcontract Agreement. RCQ will issue an RCTI with all progress payments which shall be the tax invoice.

Under the RCTI agreement you are required to submit progress claims and you will NOT issue tax invoices.

21 ~~**Other Items Relating to this Scope of Works**~~

Schedule 3

Drawings



RCQ Construction

Printed on Thu 4 Jun 2020 at 12:09 pm AEST

Job #: RC5-521 Kirwan Ambulance Station
7 Hinchinbrook Drive
Thuringowa Central, Queensland 4817

Drawings Included In Trade: Lockers and Benchseats

Drawing No.	Drawing Title	Revision	Drawing Date	Received Date	Set
A00.01	DRAWING LIST AND 3D VIEWS				
A01.01	SITE PLAN	A	23/4/2020	23/4/2020	For Construction
A02.01	GROUND FLOOR PLAN	B	3/6/2020	3/6/2020	For Construction
A02.03	UPPER ROOF PLAN	B	29/5/2020	29/5/2020	For Construction
A02.04	LOWER ROOF PLAN	A	23/4/2020	23/4/2020	For Construction
A02.05	PARTITION PLAN	A	23/4/2020	23/4/2020	For Construction
A02.06	GROUND FLOOR SLAB PLAN	B	29/5/2020	29/5/2020	For Construction
A03.01	REFLECTED CEILING PLAN	A	23/4/2020	23/4/2020	For Construction
A04.01	BUILDING ELEVATIONS	A	23/4/2020	23/4/2020	For Construction
A05.01	BUILDING SECTIONS	A	23/4/2020	23/4/2020	For Construction
A06.01	DETAIL SECTIONS SHEET 1	B	29/5/2020	29/5/2020	For Construction
A06.02	DETAIL SECTIONS SHEET 2	B	29/5/2020	29/5/2020	For Construction
A08.01	DOOR AND WINDOW SCHEDULE	B	29/5/2020	29/5/2020	For Construction
A08.02	DOOR SIGNAGE	C	3/6/2020	3/6/2020	For Construction
A08.03	EXTERNAL SIGNAGE	B	3/6/2020	3/6/2020	For Construction
A12.01	ROOM LAYOUTS - OIC OFFICE	A	3/6/2020	3/6/2020	For Construction
A12.02	ROOM LAYOUTS - REST ROOM	A	23/4/2020	23/4/2020	For Construction
A12.03	ROOM LAYOUTS - MULTIPURPOSE / TRAINING	A	23/4/2020	23/4/2020	For Construction
A12.04	ROOM LAYOUTS - DAY ROOM	A	23/4/2020	23/4/2020	For Construction
A12.05	ROOM LAYOUTS - COPY/WRITE UP	A	23/4/2020	23/4/2020	For Construction
A12.06	ROOM LAYOUTS - LOCKER ROOM	A	23/4/2020	23/4/2020	For Construction
A12.07	ROOM LAYOUTS - AMENITIES	A	23/4/2020	23/4/2020	For Construction
A12.08	ROOM LAYOUTS - KITCHEN / DINING	A	23/4/2020	23/4/2020	For Construction
A12.09	ROOM LAYOUTS - KITCHEN / DINING - ELEVATIONS	A	23/4/2020	23/4/2020	For Construction
A12.10	ROOM LAYOUTS - PCS STORE	A	23/4/2020	23/4/2020	For Construction
A12.11	ROOM LAYOUTS - STORE	A	23/4/2020	23/4/2020	For Construction
A12.12	ROOM LAYOUTS - LAUNDRY	A	23/4/2020	23/4/2020	For Construction
A12.13	ROOM LAYOUTS - JOINERY DETAILS AND NOTES	A	23/4/2020	23/4/2020	For Construction
A14.01	EXTERNAL COLOURS OPTION 1	A	24/4/2020	24/4/2020	For Construction
A15.01	EXTERNAL WORKS DETAILS	A	23/4/2020	23/4/2020	For Construction

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Schedule 4

Specifications



RCQ Construction

Printed on Thu 4 Jun 2020 at 12:09 pm AEST
Job #: RCS-521 Kirwan Ambulance Station
7 Hinchinbrook Drive
Thuringowa Central, Queensland 4817

Specifications Included In Trade: Lockers and Benchseats

Number	Description	Revision	Issued Date	Received Date	Set
00-001 - PROJECT BRIEF DOCUMENTS					
QAS-B01.00	QAS BRIEF & SPECIFICATIONS	1.4	9/10/2019	11/12/2019	PPR 12/1/20
QAS-B02.00	QAS ROOM DATA SHEETS	1.4	20/9/2019	11/12/2019	PPR 12/1/20
01-002 - ARCHITECTURAL					
TAA-A-SCH-001	ARCHITECTURAL EXTERNAL AND INTERNAL FINISHES SCHEDULE	E	15/5/2020	15/5/2020	FOR CONSTRUCTION
TAA-A-SCH-002	ARCHITECTURAL FFE SCHEDULE	E	24/4/2020	24/4/2020	FOR CONSTRUCTION
TAA-A-SPC-01	GENERAL REQUIREMENTS SPECIFICATION	B	24/4/2020	24/4/2020	FOR CONSTRUCTION

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Schedule 5

Project Documents



RCQ Construction

Printed on Thu 4 Jun 2020 at 12:09 pm AEST
Job #: RC5-521 Kirwan Ambulance Station
7 Hinchinbrook Drive
Thuringowa Central, Queensland 4817

Documents Included In Trade: Lockers and Benchseats

Name	File Version	Uploaded/Created By	Uploaded/Created On	Version Comments	Date Attached To Tender Package
Kirwan Ambulance Station/22.0 Procurement/24-011 Lockers and Bench Seats					
Kirwan Ambulance Station/22.0 Procurement/24-011 Lockers and Bench Seats/01 Subcontract					
20200309 RCQ - Form of Subcontract of Agreement.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
20200309 RCQ - Special Conditions to AS2545.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
AS 2545-1993 - General Conditions - Master template.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
OBCC Form S49 PBA Notice of PBA before Entering SC.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
Kirwan Ambulance Station/22.0 Procurement/24-011 Lockers and Bench Seats/02 Scope of Work					
Lockers Bench Seat BOQ.xlsx	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
Scope of Work - Lockers and Bench Seats.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
Kirwan Ambulance Station/22.0 Procurement/24-011 Lockers and Bench Seats/03 Programme					
200510 - Kirwan QAS Construction Programme Rev 2.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
Kirwan Ambulance Station/22.0 Procurement/24-011 Lockers and Bench Seats/05 HC Deed Requirements					
AS4300-1995 C10 Part E Deed of Novation.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
AS4300-1995 C19, 211 Part D Deed of Novation.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
Kirwan Ambulance Station/22.0 Procurement/24-011 Lockers and Bench Seats/06 HSE Requirements					
APP-HSE-05B HSE Requirements for Subcontractors.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
Kirwan Ambulance Station/22.0 Procurement/24-011 Lockers and Bench Seats/07 Training & Indigenuous Requirements					
0. Queensland Government Building and Training.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
1. Qld Gov Bldg & Training Policy.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
2. Qld Gov Bldg & Training Policy - Facts Sheet.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
3. Qld Gov Bldg & Training Policy Guidelines for Contractors.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
4. A06 - IEO Overview - Kirwan QAS.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
Sched 7 - Training Policy Statement.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
Kirwan Ambulance Station/22.0 Procurement/24-011 Lockers and Bench Seats/08 Form of SC Deed Poll					
Sched 5 - Form of Subcontractor Deed Poll.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
Kirwan Ambulance Station/22.0 Procurement/24-011 Lockers and Bench Seats/09 Progress Claim Documents					
Progress Claim Template.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
Sched 12 - Info for Subcontractors BIF Act.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
Sched 2 - Request to Sub Subcontract.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
Sched 2 - Subcontractor Stat Dec.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
Sched 8 - Site Personnel Register.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm
Subcontract Deed of Release.pdf	1	Melissa Parsons	4/6/20 at 12:07 pm		4/6/20 at 12:09 pm

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KIRWAN QAS

CONSTRUCTION DELIVERY PROGRAMME REV 1

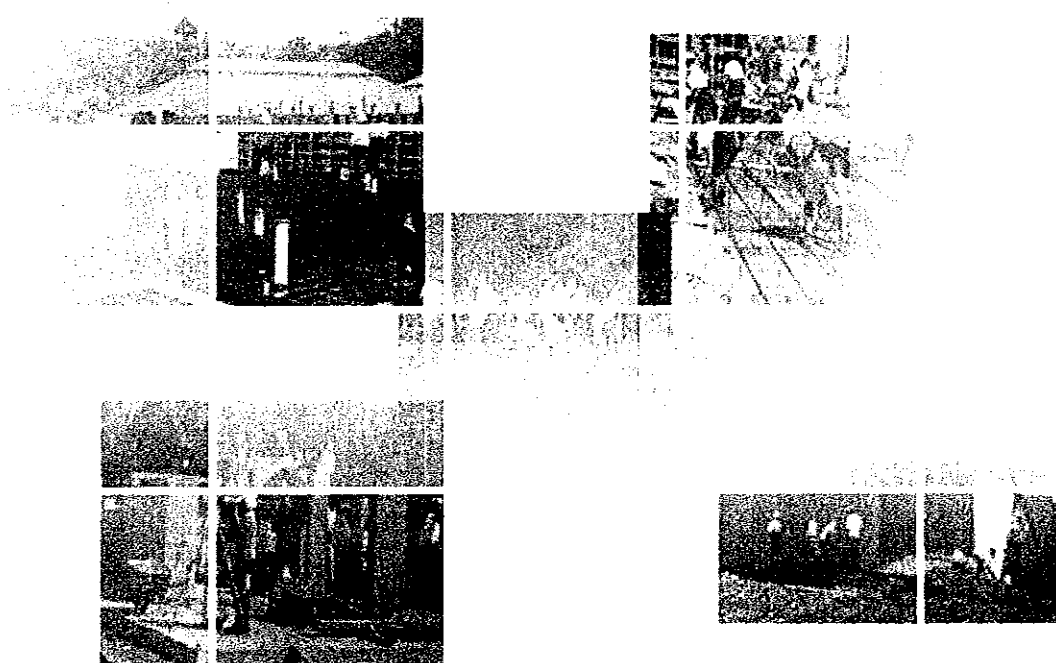
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Name	Duration	Start	Finish	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	524	525	526	527	528	529	530	531	532	533	534	535	536	537	538	539	540	541	542	543	544	545	546	547	548	549	550	551	552	553	554	555	556	557	558	559	560	561	562	563	564	565	566	567	568	569	570	571	572	573	574	575	576	577	578	579	580	581	582	583	584	585	586	587	588	589	590	591	592	593	594	595	596	597	598	599	600	601	602	603	604	605	606	607	608	609	610	611	612	613	614	615	616	617	618	619	620	621	622	623	624	625	626	627	628	629	630	631	632	633	634	635	636	637	638	639	640	641	642	643	644	645	646	647	648	649	650	651	652	653	654	655	656	657	658	659	660	661	662	663	664	665	666	667	668	669	670	671	672	673	674	675	676	677	678	679	680	681	682	683	684	685	686	687	688	689	690	691	692	693	694	695	696	697	698	699	700	701	702	703	704	705	706	707	708	709	710	711	712	713	714	715	716	717	718	719	720	721	722	723	724	725	726	727	728	729	730	731	732	733	734	735	736	737	738	739	740	741	742	743	744	745	746	747	748	749	750	751	752	753	754	755	756	757	758	759	760	761	762	763	764	765	766	767	768	769	770	771	772	773	774	775	776	777	778	779	780	781	782	783	784	785	786	787	788	789	790	791	792	793	794	795	796	797	798	799	800	801	802	803	804	805	806	807	808	809	810	811	812	813	814	815	816	817	818	819	820	821	822	823	824	825	826	827	828	829	830	831	832	833	834	835	836	837	838	839	840	841	842	843	844	845	846	847	848	849	850	851	852	853	854	855	856	857	858	859	860	861	862	863	864	865	866	867	868	869	870	871	872	873	874	875	876	877	878	879	880	881	882	883	884	885	886	887	888	889	890	891	892	893	894	895	896	897	898	899	900	901	902	903	904	905	906	907	908	909	910	911	912	913	914	915	916	917	918	919	920	921	922	923	924	925	926	927	928	929	930	931	932	933	934	935	936	937	938	939	940	941	942	943	944	945	946	947	948	949	950	951	952	953	954	955	956	957	958	959	960	961	962	963	964	965	966	967	968	969	970	971	972	973	974	975	976	977	978	979	980	981	982	983	984	985	986	987	988	989	990	991	992	993	994	995	996	997	998	999	1000	1001	1002	1003	1004	1005	1006	1007	1008	1009	1010	1011	1012	1013	1014	1015	1016	1017	1018	1019	1020	1021	1022	1023	1024	1025	1026	1027	1028	1029	1030	1031	1032	1033	1034	1035	1036	1037	1038	1039	1040	1041	1042	1043	1044	1045	1046	1047	1048	1049	1050	1051	1052	1053	1054	1055	1056	1057	1058	1059	1060	1061	1062	1063	1064	1065	1066	1067	1068	1069	1070	1071	1072	1073	1074	1075	1076	1077	1078	1079	1080	1081	1082	1083	1084	1085	1086	1087	1088	1089	1090	1091	1092	1093	1094	1095	1096	1097	1098	1099	1100	1101	1102	1103	1104	1105	1106	1107	1108	1109	1110	1111	1112	1113	1114	1115	1116	1117	1118	1119	1120	1121	1122	1123	1124	1125	1126	1127	1128	1129	1130	1131	1132	1133	1134	1135	1136	1137	1138	1139	1140	1141	1142	1143	1144	1145	1146	1147	1148	1149	1150	1151	1152	1153	1154	1155	1156	1157	1158	1159	1160	1161	1162	1163	1164	1165	1166	1167	1168	1169	1170	1171	1172	1173	1174	1175	1176	1177	1178	1179	1180	1181	1182	1183	1184	1185	1186	1187	1188	1189	1190	1191	1192	1193	1194	1195	1196	1197	1198	1199	1200	1201	1202	1203	1204	1205	1206	1207	1208	1209	1210	1211	1212	1213	1214	1215	1216	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HSE Requirements for Subcontractors

Version 9

Date Reviewed: 12/07/2017



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Introduction

This information pack has been prepared to outline the requirements of Subcontractors, Suppliers and Service Providers working on RCQ Construction projects with respect to Work Health Safety and Environmental (HSE) management performance. This document serves as a general summary of these requirements.

All applicable project, local, national and international environment, health & safety legislation and recognised codes, standards and other external requirements must be complied with at all times. Where there is a difference between RCQ Construction requirements and those required by legislation, recognised codes, standards and other external requirements, the higher standard must be applied.

RCQ Construction HSE Principles

RCQ Construction is committed to the principle of operating incident and injury free wherever we have a presence and exploring every opportunity to have a positive impact on the environment. RCQ Construction's HSE Principles have been developed and endorsed by RCQ Construction's senior management team to describe our commitment to HSE.

Project Specific Requirements

Subcontractors and their agents must not discuss with any persons/organisations any matter in relation to any issues or items involving RCQ Construction sites, equipment or people without the expressed authority of the Site Manager. Use of cameras is prohibited without authority of the Site Manager. For further information, refer to Project Specific Rules / Client Specific Rules for the particular project.

HSE Administration

HSE is administrated as a minimum on all sites via the following principals.

Subcontractor obligations			
Site Induction	Daily sign in	Daily prestart	Weekly tool box talk
OHS Committee representative		Participate in housekeeping teams	

Inductions and Employees

Worker Induction/Orientation (off-site or on-site)

Before commencing work on a project all personnel must report to the project office where they will receive a site specific induction and hold the appropriate entry level industry specific induction and subcontractor SWMS training.

Visitors

All visitors entering the project site or office must receive a visitor induction, be given adequate HSE instructions, and be accompanied while upon the premises.

Health Safety & Environment Resources

A competent person from the Subcontractor (e.g. certified work health and safety adviser) must be on site all times while high risk works are being conducted to provide supervision of work activities and respond to any emergencies.

Mandatory Documentation

No work will be permitted until all documentation requirements have been satisfied. Blank templates are provided in this document.

- Relevant Insurance
- WorkCover certificate
- Site safety management plan
 - Safety plan includes
 - Safety/Environment Policy
 - Contractor Details
 - Responsibilities of site personnel
 - Plant Register
 - Plant Risk Assessments
 - Hazardous substance register
 - Hazardous substance Risk Assessments
 - Electrical register
- Safe work method statements
- All activity that generates Silica dust must have appropriate dust collection systems in place,
 - Cutting cement Sheet – this includes 4/5 inch cutter/grinder use
 - Cutting Hebel
 - Cutting Block work
 - Concrete patching (concrete grinding or scabbling)
 - Cutting Floor tiles
- Certificates of competence – The employer signs off on workers competence
 - Plant, ie, quick cut saw and other high risk plant
 - Major Plant & Machinery
 - PPE
 - SWMS
- Appropriate equipment to perform work safely
- Equipment in good condition.
- Compliance with the section detailing Ladders in this document

Irrespective of SWMS being accepted or purported to be accepted, RCQ management reserves the right to determine if an activity is unsafe or there is an imminent risk of injury. Where such a determination has been made, the sub-contractor will be instructed to stop work and modify the method of work to ensure the activity is safe. *Note: In this circumstance, sub-contractors are not automatically entitled to claim a variation just because the change in method differs from an accepted or purported to be accepted SWMS.*

Template is provided in this document for the convenience of the sub-contractor

Additionally, the following will apply based on the opinion of a RCQ manager, RCQ site management or an RCQ HSE advisor. If this provision is unclear, it must be referred to the RCQ Risk & Compliance Manager.

- Site environmental management plan or method of work where relevant. I.e, where work impacts on the environment, such as civil works, paint washing stations ect.

Safety Plan Checklist	Further Action/Comments
✓ Safety Plan ✓ Identifies the Site ✓ Company ABN ✓ Contact details ✓ Safety Plan Signed ✓ Responsibilities detailed ✓ Policies Signed & Dated ✓ SWMS for activities ✓ Competency Certificates Signed ✓ A Plant register ✓ Plant certifications as applicable ✓ A Hazardous substance register ✓ A Electrical tool register	
SWMS Checklist	Further Action/Comments
Company details: ✓ ABN number on all SWMS ✓ Address on all SWMS ✓ Contact details on all SWMS ✓ Name of senior manager who has approved the SWMS on all SWMS ✓ Names of workers consulted in the development of the SWMS ✓ Person responsible for ensuring compliance with SWMS ✓ Are measures in place to ensure compliance with the SWMS? ✓ Person responsible for reviewing SWMS controls ✓ How will the SWMS control measures be reviewed ✓ Any OHS legislation and relevant standards/codes applicable to the activity/work	
Scope of work: ✓ Start date, duration, type of work ✓ High risk work activities nominated ✓ Consultation with relevant contractors ✓ Step-by-step sequence of undertaking the activity/work ✓ Risk assessment of each risk identified using a risk rating matrix	
Training and staffing details: ✓ Skills required ✓ Details of training ✓ List of high risk work licenses and certificate numbers ✓ WHS responsibilities nominated ✓ White/Blue Card & SWMS/WHSMIP induction training ✓ Any pre-starts requirements (e.g. permits) required for the activity/work.	
Hazardous chemical detailed in relevant SWMS: ✓ Is there a register of all chemicals ✓ Copy of SDS sheets ✓ Risk assessment of hazardous chemicals ✓ Nominate the SWMS detailing its use	
Plant and Equipment detailed in relevant SWMS: ✓ Maintenance/service records/logs ✓ Register of plant and equipment	
PPE requirements detailed in relevant SWMS: ✓ PPE identified for specific activities	
Other issues: Has the project WHSMIP been referred to during the development of the SWMS? i.e. work at heights Permit to Work system?	

Competence

Proof of competence

Proof of competence (e.g. certificates, licence's, training records, or knowledge testing) must be provided for any employees of Subcontractors/Service Providers conducting specialist or high risk activities. Subcontractors/Service Providers are also required to provide such information for any organisations that they employ to complete the works.

All plant and vehicle operators must be competent (e.g. certified/licensed/undergoing formal training) to operate the plant or vehicles they are assigned to and be briefed on their use and particular hazards associated with the site. Assessments must be made to ensure the competency of drivers with respect to the specific vehicle, the site conditions, the work to be completed, and any statement of attainment of competency.

Where plant will be operated that does not require a licence, the sub-contractor will submit verification in the form of a statement of attainment if there is training available from a training organisation, otherwise a **Certificate of Competency** by the subcontractor attesting to the competency of the person working for the subcontractor. Such a certificate must be signed by a senior manager working for the subcontractor.

Planning

Health Safety & Environment Plan

All Subcontractors are required to prepare and submit details of its HSE and rehabilitation management system.

All Subcontractors are required to prepare and submit site specific safe work method statements for all works or activities defined as high risk or job safety analysis statements as deemed necessary or appropriate by RCQ Construction.

The Subcontractor will prepare and submit a HSE Management Plan.

Risk Management

Hazards are to be eliminated where ever possible, or reduced through the application of effective control measures in line with the Hierarchy of Controls prescribed by WHS Regulation. Tools that can be used to manage hazards and risks include the Project Risk Register, Safe Work Method Statements and a Job Hazard Analysis. Records of this risk management process are to be maintained.

High risk activities are those activities that present significant risks to persons, property and/or the environment if not adequately managed (refer to list of High Risk Activities in this document).

Planning and Inspection

Safe Work Method Statements (SWMS) must be completed by all Subcontractors and Service Providers undertaking High Risk Activities to detail the safe systems of work they will adopt for works. All ground and civil works must be assessed and the safest practicable methods employed to carry them out with all work being planned and conducted in accordance with the requirements of the High Risk Activities.

Permit to Work

The RCQ Construction Permit to Work (PtW) procedures must be adopted in all instances where a PtW is required; the Subcontractor's PtW procedure can only be used where approved by the RCQ Construction Project Manager.

Activity Communication

HSE Pre-Start Talks must be conducted daily. Whole of site weekly Toolbox Talks must be attended by all persons on site where topics relevant to the activities occurring at or around the operation are discussed. **Toolbox talks are to occur weekly.**

All work groups require Pre-Start Talks to ensure they are aware of how risks to environment and safety are to be managed. Pre-Start Talks must be conducted at the start of each day or shift, or when conditions or tasks change that could increase or introduce new environment or safety risks. **Records of prestarts will be made on an RCQ prestart template.**

Pre-Start Talks must ensure that operatives undertaking the work clearly understand the method of work (e.g. SWMS, JSA, Permit to Work) associated with the task as well as creating an awareness of adjacent activities and the need to address change management scenarios should they arise. **A pre-start talk must be completed daily prior to starting work.**

Controls

Activity Controls

Adequate numbers of competent supervisors must be in place to monitor work activities and to ensure they are conducted as planned.

All plant and equipment must meet the operational and inspection criteria established by the manufacturer and / or legislative requirements and / or client requirements.

Safety and Environmental Hazards

Where any work activity or hazard is observed which could result in a serious injury or environmental damage, immediate action must be taken (including a conversation with those conducting the activity and/or those responsible for the area or hazard) to stop the activity or control the situation. Details of the hazard, as well as any action items, must be recorded.

Regular performance monitoring by the subcontractor (such as inspections and audits) must occur to ensure risks are effectively controlled. Daily checks must be made of all high risk works (e.g. those subject to SWMS/PtW). Performance monitoring reports must be provided regularly (e.g. weekly inspections, audit reports).

Incident Reporting

All workplace incidents, including those for insurance purposes on RCQ Construction projects must be recorded and reported immediately to an authorised RCQ Construction representative (e.g. HSE Advisor, Site Supervisor, Project Manager etc.).

All Subcontractors will be required to cooperate with the site HSE Advisor in all aspects of injury management and return to work including provision of medical certificates and other documents.

Maintenance of Tools and Equipment

An effective inspection, testing and preventative maintenance regime must be implemented covering all tools, equipment and vehicles used on site. Registers must be provided and maintained. All electrical tools and equipment being used on the site (other than extra low voltage) must be regularly inspected, tested and tagged (e.g marked as safe to use). Registers must be provided and maintained. **Template Provided in Appendices**

Public Protection

All reasonably practicable means must be employed to protect the public from any hazards arising from the works, including tripping/slips hazards, falling materials, changes to pedestrian walkways, existing traffic conditions and the movement of vehicles into/out of the site.

Housekeeping

Housekeeping must be effectively managed to maintain a clean and tidy work site. Combustibles, flammables and other dangerous materials must be stored safely and clearly identified, e.g. highly flammable materials must be kept in fire resistant containers.

Personal Protective Equipment (PPE)

Any items of task specific PPE must be provided and worn if the need is identified by risk assessment, e.g. appropriate hearing protection in areas where noise levels exceed 85 dB(A). Where specific hazards and associated risks have been identified in the risk assessment, the most appropriate and highest level of PPE must be listed in the task specific SWMS. The minimum standard across all RCQ Construction sites are:

- Safety helmet – with a sunbrim for outdoor work
- Safety gloves – applicable to the task
- Safety boots as appropriate to the task
- Hi-viz shirt or hi-viz vest over the top
- Safety glasses appropriate to the task.

RCQ Construction has deemed hand and eye injuries to be a priority on all sites. All workers must have suitable safety gloves for the task and safety glasses on their person at all times when on site.

Manual Handling

Manual tasks must be assessed and any appropriate equipment or aids must be provided as a primary method of eliminating the need for manual handling before work is undertaken. Any workers required to be involved in manual handling operations must be instructed in and follow safe manual lifting methods.

Working Alone

Working alone should be avoided. If it cannot be avoided, effective measures must be implemented to eliminate or control the hazards associated with working alone by means of a Risk Assessment. The assessment must be reviewed and agreed by the Project Manager prior to any works or activities requiring working alone commences.

Plant

Maintenance of Plant

A documented inspection, testing and preventative maintenance regime must be implemented covering all plant and equipment used for ground works. Proof must be provided prior to the use or engagement of any plant or machinery on site.

The following must be provided for all plant that is not hand tools

- Plant register
- Plant risk assessment
- Plant prestarts (Frequency determined by HSE Advisor)

Registers must be provided and maintained. **Template Provided in Appendices**

Safe Use of Plant

Effective measures must be in place for managing the use of all mobile plant and machinery used for ground and civil works, including but not limited to bobcats, excavators, backhoes, graders, scrapers, bulldozers, dump trucks, rollers and compactors and similar, to ensure that the work is planned and conducted in accordance with the requirements for High Risk Activities.

All plant must be only be used for the purpose for which it was designed and in-line with manufacturer instructions.

All operator mobile phones (or other personal electronic equipment such as music players) must be turned off when plant is in use.

During any use of vehicles on-site seatbelts must be worn.

Cranes and Lifting Equipment

Cranes and other lifting equipment (including excavators and other similar equipment) must be structurally sound, fit for purpose, fitted with appropriate safety devices (such as safe load indicators, overload alarms, burst/hydraulic lock out valves, earthing, anemometers, and warning lights) and marked with a means of identification and safe working load.

All lifting gear and rigging, including rubbish removal skips, must be structurally sound, fit for purpose and designed for lifting (with certified lifting points and safe working load identified).

Any subcontractor bringing lifting gear on site or any item that is lifted must;

- Include a register of lifting gear
- SWL must be indicated on each item
- Engineer certificates of SWL on non-proprietary items (i.e home made lifting lugs)

All crane erection, climbing and dismantling must be planned and conducted in accordance with the requirements for High Risk Activities. An exclusion zone must be established. Erection, climbing and dismantling of tower cranes should only be performed outside of working hours. Before any work commences an appropriate Permit to Work must be in place approved by persons with the appropriate limits of authority.

All crane or other lifting equipment operators and slingers / riggers / dogmen must be competent to perform their role. A competent person must be appointed to develop an overall lifting plan or lift study and oversee all lifting activities.

Safe Use of Cranes and Lifting Equipment

Work involving cranes and lifting equipment must be planned and conducted in accordance with the requirements for High Risk Activities. All rubbish removal skips, must not be filled above their top edge and must be covered to prevent loose material falling out while they are being lifted. Daily lifting coordination meetings must be held where more than one crane is in use.

Maintenance of Cranes and Lifting Equipment

An effective inspection, testing and preventative maintenance regime must be implemented covering all cranes and lifting equipment (including cranes, hoists, chains, hooks, slings, etc.) used. Documentation of the listed regimes must be provided to the project prior to use. Registers must be provided and maintained.

Specific Physical Risk Controls

Light vehicles

All drivers and passengers must abide by road rules when operating a vehicle (i.e. have a valid driver's licence, to wear a seat belt, not overload the vehicle).

Fall Prevention

Work at height should be eliminated as far as possible. Where work at height cannot be eliminated, the most practical form of physical barrier must be installed to provide fall restraint to prevent persons or materials falling. Where necessary, harnesses must also be used but only as a secondary means of fall restraint.

If work at height is required and it is not practical to install physical barriers, or work needs to occur outside the physical barrier, full body harnesses must be used to provide either fall restraint or fall arrest protection. Proof of training and correct use of all harness types must be provided before use. Work at heights equipment registers must be provided and maintained.

Perimeter Protection

All structures under construction or demolition (including the construction/demolition floor) from which persons or materials can fall must be effectively protected by physical barriers of sufficient height and strength to prevent people and materials from falling or being blown off the edge of the structure, e.g. screens, scaffolds, guard rails.

Access Systems

Access to general work areas or floors should be provided by the full permanent solution where ever possible. Where this is not possible, temporary staircases of adequate width and complete with handrails should be provided.

Scaffolds, Temporary Works and Working Platforms

All proprietary systems shall be designed erected and used in accordance with the manufacturer's recommendations and have appropriate engineering sign-off as necessary.

Ladders

The use of platform ladders is permitted as a safer means of working at height.

All other types of ladders are **prohibited** unless compliance with the following principals or requirements is strictly complied with;

- A Risk Assessment must be undertaken that is directly related to each task the step ladder will be used on. i.e, a generic risk assessment or JSA will **not** be suitable to cover all circumstances.
- Where a Risk Assessment or JSA has been accepted by site management the ladder may only be used for conducting short duration work **ONLY** (i.e. work lasting less than 15 minutes) or work in confined locations where it is impossible to place a platform ladder safely and only if three points of contact can be maintained.

Temporary access ladder to the formwork deck that is used by form workers only is excluded from these provisions.

Excavations, Piling and Tunnelling

Excavations must be benched, shored or battered back/sloped to a safe angle as determined by a competent engineer in the excavation design process.

Works on, over or adjacent Water

Where water is present, measures must be taken to prevent drowning. When working adjacent to water, personnel must wear life jackets (where there is a chance of drowning) and suitable safe rescue equipment is available within or near the work area, and persons are trained in the correct use.

Temporary Electrical Supply

Electrical supply panels must be sufficient in number, located in close proximity to work areas to minimise trailing cables, secured to prevent unauthorised access. All electrical circuits, including mobile generator sources, must be protected by an Earth Leakage Circuit Breaker (ELCB), Residual Current Device (RCD) or a Ground Fault Circuit Interrupter (GFCI), fitted at the source and in compliance with AS 3012.

Work on Electrical Systems

Works on live electrical systems must not be undertaken, except where deemed absolutely necessary by a competent person for fault-finding, testing/commissioning work or where the electrical supply cannot be interrupted.

Where work on electrical systems is carried out, effective precautions must be taken to eliminate electrocution and work must be planned and conducted to address any risks identified. Prior to any work commencing, all work on electrical systems must have a Permit to Work in place. A Lock-Out Tag-Out (LOTO) procedure must be in place and included in any SWMS. Any work on electrical circuits, equipment and tools must only be carried out by a competent person.

Work in or adjacent to a Railway

Work in or adjacent to a railway must not be undertaken unless a risk assessment has been undertaken by a qualified and competent track protection person to ensure that appropriate levels of work site protection have been provided to all workers and work activities at all times.

A qualified and competent track protection person must be in attendance at all times when working in or adjacent to a Railway to monitor work site protection and liaise with train operations control centres. A Work Site Protection Plan is to be completed in conjunction with the risk assessment and all control measures are to be briefed to all personnel on site using the Pre Work Briefing (Rail) or equivalent Client or Track Manager's briefing form/s.

Lighting

Adequate lighting which matches the demands of the job and the location must be provided to supplement natural light as required to ensure works can be conducted safely. AS/NZS 1680.2.4:1997 Table E1, part 5 – Building Construction Sites

The level of illumination should match the demands of the job and the location. The following are examples for minimum lighting levels at the workplace:

- „ general access ways and base lighting to rooms, stairways: 40 LUX
- „ typical building work (e.g. bricklaying, plastering, gyprock and electrical): 160 LUX.

If adequate lighting cannot be provided, the room or area should be suitably locked out and not used. Task lighting is the responsibility of the sub-contractor.

Chemicals Hazardous to Health

Any work in the vicinity of hazardous chemicals must be planned and conducted in accordance with the requirements for High Risk Activities. A hazardous substance register must be submitted for all hazardous substances used on site. A Hazardous substance Risk Assessment must be provided for all substances that are hazardous **Template Provided in Appendices**

Fire Prevention Measures

Fire loadings and sources of ignition must be risk assessed and appropriate fire precautions must be taken. Flash back arrestors must be in place on both ends on supply hoses and gauges for oxy acetylene welding and cutting sets. All hot works processes that are likely to produce sources of ignition such as burning, grinding, heating, welding, flame cutting, etc. must be controlled and the work must be planned and conducted in accordance with the requirements for High Risk Activities including the use of PtW.

Smoking must be prohibited in all areas of the site.

High Risk Activities

The following activities are defined as high risk activities and include those which have been legislated as high risk construction work.

A high risk activity is any work:

- Involving work at heights that includes:
- Use of suspended access equipment (e.g. Bosun's Chairs, Cradles, Gondolas, Swing Stages);
- Use of an Elevated Working Platform (e.g. scissor lift, boom lift);
- Installation, use and dismantling of Powered Vertical Access Equipment (e.g. Mast Climbers,

- People or Material Hoists and Building Maintenance Units);
- Metal frame erection;
- Concrete formwork erection;
- Cladding and façade work;
- Access to and work on roofs;
- Work within or near penetrations, risers, shafts and voids (including lift/elevator installation and maintenance);
- Work on a telecommunications tower, power pole or other installation;
- Erection, use and dismantling of scaffolds (e.g. façade, mobile); or
- Any activity not described above requiring the use of a fall arrest or fall restraint harness as the primary means of fall protection.
- Involving any structural alteration or repair that requires temporary support to prevent collapse;
- Involving any demolition work;
- Involving the use, removal, transport or handling of hazardous materials and any dangerous or highly toxic chemicals including those involving or likely to involve asbestos;
- In or near a confined space;
- Creating, accessing or maintaining excavations;
- Involving piling, directional boring or drilling;
- On or near chemical, fuel or refrigerant lines;
- On or near energised electrical installations or services;
- In an area that may have a contaminated or flammable atmosphere;
- Involving explosives;
- Involving tilt-up or precast concrete;
- On, in or adjacent to a road, railway, shipping lane or other traffic corridor;
- In an area of the workplace where there is any movement of powered mobile plant;
- Installation, maintenance and commissioning of machinery and/or plant process equipment;
- Involving heavy mobile work equipment co-ordination;
- Involving the use of heavy plant for civil and ground works (e.g. bobcats, excavators, backhoes, graders, dump trucks, rollers and compactors);
- In an area where there are artificial extremes of temperature;
- In, near or over water or other liquids where there is a risk of drowning;
- Involving diving work;
- On, or near, a pressurised gas distribution mains and consumer piping;
- On or adjacent to, energised systems, e.g. electrical, hydraulic, pneumatic (LOTO);
- Creating, accessing or maintaining bridges and related structures including the placement of spans and pre/post tensioning;
- Involving tower crane erection, climbing and dismantling;
- Involving mobile cranes that requires any lifting operation including:
 - Load slinging;
 - Crane management; or
 - Lifting over work areas, thoroughfares or public areas;
- Hot works, including welding and grinding;
- Requiring strict environmental controls to prevent air, noise, and soil or water pollution.
- Any work activity not listed above but which has been assessed as high risk due to the potential to harm workers, the public, property or the environment.

Environment

Stormwater, Sediment and Erosion Control

All activities where land is cleared, excavated or disturbed must implement and maintain sediment and erosion control devices to prevent topsoil loss and the degradation of land quality as well as the export of soil, silt or sediment offsite.

All project operations must prevent water pollution by employing adequate controls to prevent any pollutants from entering adjacent drainage areas such as watercourses, water bodies and stormwater systems through uncontrolled discharges.

Air and Noise Emissions

All activities involving excavation or disturbance of soils or vegetation must explore preventative controls and then implement physical controls (e.g. covering of stockpiles, water spraying) to prevent and/or minimise the generation of dust and to reduce or eliminate dust being introduced to the atmosphere.

All noise and vibration related impacts on occupants, visitors and surrounding activities/owners must be assessed and mitigation measures put in place.

Heritage and Artefacts

Any activities that involve the discovery of items that may be of cultural or archaeological significance must cease until competent persons are able to make a determination on the status of any potential artefact(s).

Materials Selection

Products and materials containing recycled content or packaging should be used as a preference to non-recycled (virgin) materials. This information should be retained and reported.

All timber products should be from proven legal sources. All construction timber should also be from sources that undertake sustainable land management practices and are supported by relevant recognised industry documentation (e.g. Forestry Stewardship Council certification) to confirm the timber was grown and harvested in a sustainable manner.

All manufactured products such as paints, carpets, furnishings, sealants, adhesives used within internal spaces or buildings should be preferably selected to emit low/ no Volatile Organic Compounds (VOCs).

All refrigeration and/or cooling equipment must not contain or use chlorofluorocarbon (CFC) gases.

Any soil or fill materials imported to site for landscaping purposes, including recycled aggregates, must be accompanied by documentation to validate that the materials are suitable for use onsite in accordance with any legislative requirements.

Waste Management

All recyclable solid wastes (paper/ cardboard/ plastic/ glass/ timber/ metals/ fluorescent lighting/ printer cartridges/ICT equipment) should be segregated for recycling purposes and volumes reported.

References

RCQ Construction HSE Principles
Project Work Health and Safety Management Plan
Risk Register
Traffic Management Plan
Environmental Management Plan
Emergency Management Plan
HSE: 06 Non-compliance with HSE requirements
SP: 33 Permit to Work
APP-PEP: 03A Subcontractor Safe Work Method Statement Review Checklist
APP-PEP: 06A Plant and Equipment Register
APP-SP: 07A Hazardous Chemicals Register
APP-SP: 07B Hazardous Chemicals Risk Assessment Form
APP-SP: 15 Electrical Register
RCQ-HRM Social Media Policy and Procedure
APP-PEP-03A Subcontractor SWMS Checklist
APP-PEP-03A.1 Subcontractor Documentation Checklist

Health Safety & Environmental Principles

RCQ Construction has established a set of Principles to encourage a level of commitment to HSE that goes beyond complying with legislative requirements, and demonstrates a real commitment to sustained improvement in HSE outcomes.

Principle 1

RCQ Construction will demonstrate a tangible commitment to developing a HSE culture within the company and across the building and construction industry.

Principle 2

RCQ Construction will demonstrate HSE leadership at all stages of the construction process by acting as exemplars in relationships with other industry participants.

Principle 3

RCQ Construction will strive to develop cooperative business relationships to ensure that time, cost and quality objectives do not compromise a commitment to HSE.

Principle 4

RCQ Construction will ensure that safe design and constructability is considered at the planning and procurement stages to reduce or eliminate hazards and control risks before construction commences.

Principle 5

RCQ Construction will ensure that effective consultation and communication arrangements are in place so that all parties are aware of HSE considerations and of their responsibilities.

Principle 6

RCQ Construction will ensure that a systematic approach is taken to the management of HSE hazards and risks.

Principle 7

RCQ Construction will ensure the maintenance of effective HSE measures across the construction project life cycle and are able to respond to changes in the construction environment.

Principle 8

RCQ Construction will monitor report and benchmark HSE performance at the site, project management and company levels to improve and compare HSE performance.

Safety Plan

Details	
Sub-Contractor:	Kirkbuild Commercial Joinery Pty Ltd
ABN	75 602 530 736
Contact Person	Trevor Falkenburg
Contact Number	07 3496 7900 or 0400 709 255
Project Name:	QAS Kirwan
Location:	7 Hinchinbrook Dr, Kirwan
Client:	
Project Description:	Supply & Install of Louvers
Estimated Duration of Works:	TBA

TB MP

Policy

Management is firmly committed to a policy enabling all work activities to be carried out safely, and with all possible measures taken to remove or reduce risks to the health, safety and welfare of workers and anyone else who may be affected by our operations.

We are committed to ensuring we comply with the *Work Health and Safety Act*, the *Work Health and Safety Regulations* and applicable Codes of Practice and Australian Standards as far as possible.

Responsibilities

Management:

Will provide and maintain as far as possible:

- a safe working environment
- safe systems of work
- plant and substances in safe condition
- facilities for the welfare of workers
- information, instruction, training and supervision that is reasonably necessary to ensure that each worker is safe from injury and risks to health
- a commitment to consult and co-operate with workers in all matters relating to health and safety in the workplace
- a commitment to continually improve our performance through effective safety management.

Workers:

Each worker has an obligation to:

- comply with safe work practices, with the intent of avoiding injury to themselves and others and damage to plant and equipment
- take reasonable care of the health and safety of themselves and others
- wear personal protective equipment and clothing where necessary
- comply with any direction given by management for health and safety
- not misuse or interfere with anything provided for health and safety
- report all accidents and incidents on the job immediately, no matter how trivial
- report all known or observed hazards to their supervisor or manager.

Application of this policy

We seek the co-operation of all workers, customers and other persons. We encourage suggestions for realising our health and safety objectives to create a safe working environment with a zero accident rate.

This policy applies to all business operations and functions, including those situations where workers are required to work off-site.

Policy authorised by:

Date:

MP
FF

Roles and responsibilities

Sub-Contractors

Contractors who are engaged for this project are responsible for:

- fulfilling the duties of PCBU for their own operations
- identifying all high risk construction work associated with their activities and ensuring safe work method statements are developed and implemented
- complying with the duties as listed under 'Workers'
- following all safety policies and procedures and site rules
- complying with the site WHS Management Plan
- complying with any direction given to them by the principal contractor
- undertaking site-specific induction before starting work and signing off that they have completed this induction
- ensuring the workers they engage undertake site specific
- ensuring they have the correct tools and equipment and these are in a serviceable condition for the task
- <INSERT ANY OTHER RESPONSIBILITIES FOR CONTRACTORS>.

Workers

All workers on this project (including those employed by contractors) are responsible for:

- taking reasonable care of their own health and safety
- taking reasonable care that their conduct does not adversely affect others
- complying with instruction, so far as they are reasonably able
- cooperating with reasonable notified policies or procedures
- <INSERT ANY OTHER RESPONSIBILITIES FOR WORKERS>.

People with specific WHS roles and responsibilities

<List the names of those with specific WHS roles and their specific responsibilities>

Name		Responsibility	
Name		Responsibility	
Name		Responsibility	

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Electrical Equipment Register (if Applicable- Insert N/A if not) Inspect, test and tag all electrical equipment, including extension leads.					
Company:					
Equipment description	Manufacturer	Serial number	Date of inspection and test	Result	Date for next inspection and test
Electrical item			Frequency of inspection and test		
Tools and leads			Every three months		
RCD unit (sub-board earth leakage device)			Trip-test on a monthly basis Calibrate every three months		

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Certificate of Competency – Plant & Machinery

Company:

This certificate certifies that employees listed herein are competent in the use of plant and equipment detailed below and have met the requirements of safe working within the scope of manufacturer's instructions, regulations, codes of practice and known work methodologies.

Plant Type:			
Plant Identification:			
Employer Representative:			
Position:			
Employer Rep Signature			
Date:			
Employee Name:	Role	Signature	Date

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Certificate of Competency - SWMS

Company:

This certificate certifies that employees listed herein are competent in the following SWMS work processes, including the use of plant and equipment and have met the requirements of safe working within the scope of manufacturer's instructions, regulations, codes of practice and known work methodologies.

SWMS competent in		
SWMS:	SWMS:	SWMS:
SWMS:	SWMS:	SWMS:
SWMS:	SWMS:	SWMS:
SWMS:	SWMS:	SWMS:

Employer Representative:			
Position:			
Employer Rep Signature			
Date:			
Employee Name:	Role	Signature	Date

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Certificate of Competency - PPE

Company:

This certificate certifies that employees listed herein are competent in using the following safety equipment within the scope of manufacturer's instructions, regulations, codes of practice and known work methodologies.

Work PPE	
Safety Glasses	Safety Boots
Safety Face Shield	Safety Harness
Safety Hard Hat	
Safety Gloves	

Employer Representative:			
Position:			
Employer Rep Signature			
Date:			
Employee Name:	Role	Signature	Date

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Certificate of Competency - Tools

Company:

This certificate certifies that employees listed herein are competent in the following work processes, plant and equipment and have met the requirements of safe working and/or operation of plant within the scope of manufacturer's instructions, regulations, codes of practice and known work methodologies.

Work process, plant and equipment type	
Using Grinders	Using Quick Cut
Using Drills	Using Power Tools
Using Hand Tools	Ladders
Using Lifting Aids	Nailing Tools

Employer Representative:			
Position:			
Employer Rep Signature			
Date:			
Employee Name:	Role	Signature	Date

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**ANNEXURE to the Australian Standard
General Conditions of Contract for Design and
Construct**

PART D

DEED OF NOVATION

(Clause 9.2(iii))

This Deed made the day of 19
between ("Principal")
of ACN
and ("the Contractor")
of ACN
and ("the subcontractor")
of ACN
and ("the Incoming Contractor")
of ACN
witnesses that—

- 1 Upon receipt by the subcontractor of the sum certified by the Superintendent as owing under the prior contract prescribed in the Schedule hereto—
 - (a) the prior contract shall be discharged;
 - (b) the subcontractor shall release the Contractor from the further performance of the prior contract and from all claims and demands in connection with the prior contract;
 - (c) the Incoming Contractor shall punctually perform the obligations of the Contractor under the prior contract as far as they are not performed. The Incoming Contractor acknowledges itself bound by the provisions of the prior contract as if the Incoming Contractor had been named in the prior contract; and
 - (d) the subcontractor shall punctually perform like obligations and be bound to the Incoming Contractor as if the provisions of the prior contract were incorporated herein.
- 2 The Principal and subcontractor each warrant to the Incoming Contractor that—
 - (a) subcontract work carried out to the date hereof is in accordance with the provisions of the prior contract; and
 - (b) all claims and demands in connection with the prior contract have been made to the Contractor.
- 3 The Principal and subcontractor each indemnifies the Incoming Contractor from all claims and demands of the Contractor, Principal and subcontractor in connection with the prior contract.
- 4 A dispute or difference between—
 - (a) the Principal and the subcontractor in connection with the Superintendent's certification of the sum owing under the prior contract; or
 - (b) the Incoming Contractor and the subcontractor in connection with Clause 1(c) or 1(d),
 shall be resolved pursuant to the provisions of AS 4303—1995 General Conditions of Subcontract for Design and Construct which for the purposes of this Clause 4 are incorporated herein.

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- 5 This Deed shall be governed by the laws in force in the State or Territory stated in the provisions of the agreement between the Principal and Contractor and in the event that no State or Territory is so stated then in accordance with the law for the time being in force in that State or Territory in which the project is being carried out.

Schedule

Documents:

.....

.....

.....

.....

In witness whereof the parties have executed this Deed of Novation by affixing their seals.

THE COMMON SEAL of (Principal)
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

THE COMMON SEAL of (Contractor)
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

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THE COMMON SEAL of (subcontractor)
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

THE COMMON SEAL of (Incoming Contractor)
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

**ANNEXURE to the Australian Standard
General Conditions of Contract for Design and
Construct**

PART E

DEED OF NOVATION

(Clause 10)

This Deed made the day of 19
between ("Principal")
of ACN
and ("the Contractor")
of ACN
and ("the subcontractor")
of ACN
witnesses that—

- 1 Upon receipt by the subcontractor of all moneys owing under the prior contract—
 - (a) the Contractor shall punctually perform the obligations of the Principal under the prior contract prescribed in the schedule hereto as far as they are not performed. The Contractor acknowledges itself bound by the provisions of the prior contract as if the Contractor had been named as the Principal in the prior contract;
 - (b) the subcontractor shall punctually perform like obligations and be bound to the Contractor as if the provisions of the prior contract were incorporated herein; and
 - (c) the Principal and subcontractor shall each release and forever discharge the other from the further performance of the prior contract and from all claims and demands in connection with the prior contract.
- 2 The Principal and subcontractor each warrant to the Contractor that preliminary design or Selected Subcontract Work, as the case may be, carried out to the date hereof, is in accordance with the provisions of the prior contract.
- 3 This Deed shall be governed by the laws in force in the State or Territory stated in the provisions of the agreement between the Principal and Contractor and in the event that no State or Territory is so stated then in accordance with the law for the time being in force in the State or Territory in which the project is being carried out.

Schedule

Documents:

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In witness whereof the parties have executed this Deed of Novation by affixing their seals.

THE COMMON SEAL of (Principal)
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

THE COMMON SEAL of (Contractor)
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

THE COMMON SEAL of (subcontractor)
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

SCHEDULE 5 – FORM OF SUBCONTRACTOR DEED POLL**Clause 9.2**

THIS DEED POLL is made at on the day of 20.....

BY (ABN)
of ("the Subcontractor").

IN FAVOUR OF: The State of Queensland through The Director General, Department of Housing and Public Works
(hereinafter with its successors in office called "the Principal").

RECITALS

- A. The Principal has entered into an agreement with: RCQ Projects Pty Ltd ("the Contractor") for the Kirwan Ambulance Station Replacement ("the Project").
- B. The Subcontractor has or will have an agreement ("the Subcontract") with the Contractor or a subcontractor of the Contractor for the execution and completion and/or supply of the ("the Subcontract Works") for the Project.
- C. It is or will be a condition of the Subcontract that the Subcontractor executes this Deed Poll.

This deed poll provides as follows:

(1) The Subcontractor warrants that:

- (a) it will make and keep accurate and complete records of:
 - (i) its tender, including without limitation the preparation and submission of that tender;
 - (ii) tenders received by it, whether accepted or not;
 - (iii) the execution and completion of the work under the Subcontract; and
 - (iv) its compliance with commitments made in its tender relating to best practice principles contained in the Queensland Government guidelines document titled "Best practice principles: Quality, safe workplaces" (Version 1.0 August 2018) (the "Best Practice Principles") or the local benefits test contained in the Queensland Government's Queensland Procurement Policy;
- (b) The records referred to in Clause 1.a. above shall include records that are required to be created or provided, or that are otherwise referred to, under the Subcontract, as well as other records including but not limited to those that:
 - (i) relate to the Subcontractor's tender, including tender preparation, submission, negotiation, evaluation, estimates and calculations;
 - (ii) relate to design, including design calculations, option studies, opinions, reviews and reports;
 - (iii) relate to the execution and completion of the work under the Subcontract, including without limitation labour, subcontracts, subcontractors, consultants, materials, equipment, resourcing, planning, progress, delay, inspection, examination, testing, compliance, approval, safety, risk, variations, claims, payment, cost and cost to complete;
 - (iv) are required to demonstrate compliance with commitments made in the Subcontractor's tender relating to best practice principles contained in the Best Practice Principles or the local benefits test contained in the Queensland Government's Queensland Procurement Policy; and
 - (v) are in a format or stored on any medium, including without limitation photographs, electronic files, telecommunications or social media;
- (c) subject to the Subcontractor's right to claim legal professional privilege in respect of any record, which is hereby maintained, permit the Principal or its agents to inspect and to copy at any time any records

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referred to in Clause 1.a. or 1.b., provide electronic copies of such records in native file, operable format and provide any access to the Subcontractor's sites, premises or facilities necessary for an inspection referred to in this paragraph.,

- (d) without limiting the previous paragraphs, the Subcontractor shall permit the Principal to undertake an audit of the records referred to in clause 1(a) and 1(b) for the purposes of verifying the Subcontractor's compliance with any commitments made in its tender relating to the local benefits test contained in the Queensland Procurement Policy or (where applicable) the Best Practice Principles.
- (2) The Subcontractor consents to the Principal disclosing or providing copies of any records which the Principal or its agent inspects or copies in accordance with Clause 1 of this Deed Poll to the Contractor.
- (3) This Deed Poll is governed by and construed in accordance with the laws of Queensland.
- (4) The Subcontractor hereby submits to the non-exclusive jurisdiction of the courts of Queensland and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.
- (5) This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal.

EXECUTED as a DEED POLL

on theday of 20..... by

.....
Name of Company – Subcontractor

.....
ACN

in accordance with s.127 of the *Corporations Act 2001*

.....
Name of Director

.....
Signature of Director

.....
Name of Director / Secretary

.....
Signature of Director / Secretary

OR

.....
Name of Person – Subcontractor

.....
Signature of Person – Subcontractor

In the presence of:

.....
Name of Witness

.....
Signature of Witness

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