

Recitals

- (a) The Principal and the Contractor have executed a contract in respect of the Project (**Head Contract**).
- (b) The Works form part of the Project.
- (c) The Subcontractor has agreed to complete the Works.
- (d) This Subcontract sets out the terms on which the parties agree that the Subcontractor will complete the Works.

1 Definitions

In this Subcontract:

Building Code means the *Code for the Tendering and Performance of Building Work 2016*, as amended or replaced.

Business Day means that term as defined in the SOPA.

Commencement Date means the date set out in Item 4.

Completion means that stage when:

- (a) the Works are complete and defect free;
- (b) all tests required by law, this Subcontract or the Contractor to be carried out and passed have been carried out and passed;
- (c) all documents, as built drawings and other information required by the Contractor have been supplied in suitable hardcopy and electronic forms;
- (d) all rubbish, debris, temporary work and equipment has been removed from the Site;
- (e) the Subcontractor has provided the Contractor's Representative with a Deed of Release in the form set out in Schedule 3, executed by an authorised senior representative of the Subcontractor; and
- (f) each of the obligations in Item 5 have been satisfied.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated as confidential on its disclosure; or
- (c) the Subcontractor knows or ought to know is confidential.

Contractor means Robson Civil Projects Pty Ltd.

Contractor's Representative means the person named in Item 11.

Date for Access means the date set out in Item 3.

Date for Completion means the date set out in Item 10, as adjusted in accordance with this Subcontract.

Date of Completion means the date set out in a certificate of Completion issued in accordance with clause 20(b).

Defects Liability Period means the period set out in Item 15, unless extended in accordance with clause 21(b).

Head Contract means the contract referred to in recital A.

Item means an item of the Subcontract Particulars.

Personnel means a party's employees, agents and contractors, excluding the Subcontractor in the case of the Contractor.

Principal means the entity named in Item 13

Project means the project described in Item 12.

Site means the site described in Item 14.

SOPA means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

Subcontract means this document, including the schedules and attachments.

Subcontract Date means the date set out in Item 1.

Subcontract Sum means the sum set out in Item 6, as adjusted in accordance with this Subcontract.

Subcontractor means the party set out in Item 2.

Subcontractor's Representative means the person named in Item 8.

WHS Laws means the *Work Health & Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW).

Works means the works described in Schedule 1.

2 Obligations

The Subcontractor must complete the Works in accordance with this Subcontract and all directions given by the Contractor's Representative and the Contractor must pay the Subcontractor the Subcontract Sum.

3 The Works

The Works include all:

- (a) work specifically referred to in this Subcontract;
- (b) incidental work; and
- (c) work which was or should have been undertaken by the Subcontractor in relation to the Project prior to the Subcontract Date.

4 Subcontractor Warranties

- (a) The Subcontractor warrants to the Contractor and repeats on each day of the term of this Subcontract that:
 - (i) it possesses the skills and experience needed to complete the Works in accordance with this Subcontract;
 - (ii) it will exercise a high standard of care, skill and diligence in completing the Works;
 - (iii) it has and will retain and comply with all licences required to complete the Works in accordance with this Subcontract;
 - (iv) it is responsible for all construction methods and will complete the Works in accordance with all relevant policies of the Principal and Contractor;
 - (v) all material and equipment it supplies under this Subcontract will be new and fit for purpose;
 - (vi) the Contractor's approval of any document will not relieve the Subcontractor of its responsibility for that document;
 - (vii) the Works, when completed, will:
 - (A) comply with this Subcontract, the Head Contract and all relevant laws and Australian Standards; and
 - (B) be fit for their intended purposes;
 - (viii) it was provided with an opportunity to review the Head Contract and, notwithstanding that it may not have done so, it will not do anything that does or could put the Contractor in breach of that contract; and
 - (ix) it is legally entitled to, and has the power to, enter into and perform this Subcontract.
- (b) The Subcontractor acknowledges and agrees that the Contractor:
 - (i) relied on the warranties given in clause 4(a) in entering into this Subcontract; and
 - (ii) would not have done so but for them.

5 Security

- (a) The Subcontractor must provide the Contractor with security in favour of the Contractor:
 - (i) within 3 Business Days after the Subcontract Date;
 - (ii) in the amount set out in Item 7;

- (iii) in the form of an unconditional and irrevocable bank guarantee (with no expiry date) approved by the Contractor's Representative in writing; and
 - (iv) from a licenced bank with a retail outlet in Gosford.
- (b) Subject to its rights under clause 5(c), the Contractor must release to the Subcontractor:
- (i) 50% of the security provided under clause 5(a) within 15 Business Days after the Date of Completion; and
 - (ii) 50% of the security provided under clause 5(a) within 15 Business Days after the date on which the Contractor's Representative issues a final certificate in accordance with clause 25(h).
- (c) The Contractor may at any time convert into money any security and use it to:
- (i) satisfy any debt due from the Subcontractor to the Contractor; and/or
 - (ii) pay any damages the Contractor claims it has or might incur as a consequence of a breach of this Subcontract by the Subcontractor.
- (d) The Subcontractor must not take any steps to stop:
- (i) any issuer of security from paying the Contractor pursuant to the security; or
 - (ii) the Contractor from obtaining payment under security or using moneys so received.
- (e) The Contractor will not be liable for any loss occasioned by the conversion of any security.

6 Documents Generally

- (a) If the Subcontractor discovers any ambiguity or discrepancy in or between any of the documents comprising this Subcontract, it must promptly advise the Contractor's Representative in writing.
- (b) Following its receipt of a notice in accordance with clause 6(a), the Contractor's Representative must give the Subcontractor a direction as to the interpretation that applies and the Subcontractor must comply with such direction at its own cost.

7 Contractor Supplied Documents

- (a) All documents supplied to the Subcontractor by or on behalf of the Contractor:
 - (i) remain the property of the Contractor and must be returned on demand; and
 - (ii) must not be used for any purpose other than the completion of the Works.
- (b) The Subcontractor agrees that:
 - (i) the Contractor does not warrant or assume any duty of care for the accuracy, adequacy or completeness of any information it or anyone on its behalf makes available to the Subcontractor;
 - (ii) the Contractor is not liable upon any claim by the Subcontractor arising out of:
 - (A) the Subcontractor's reliance upon any information made available to it by or on behalf of the Contractor; or
 - (B) a failure by the Contractor to provide it with any information; and
 - (iii) it enters into this Subcontract based on its own investigations and information.
- (c) The Subcontractor releases and indemnifies the Contractor and its Personnel from and against any loss or claim the Subcontractor suffers or incurs as a result of its reliance upon information made available to it by or on behalf of the Contractor.

8 Records

- (a) The Subcontractor must keep and ensure that its subcontractors keep, accurate and complete records

of the Works and all supporting documents (**Records**) for at least 6 years after the Date of Completion.

- (b) At any time up until 6 years after the Date of Completion, the Contractor may require the Subcontractor to produce some or all Records to the Contractor or its nominee(s) and the Subcontractor must promptly comply with such direction.

9 Subcontracting and Assignment

The Subcontractor:

- (a) must not, without the prior written consent of the Contractor's Representative:
 - (i) subcontract the performance of any of its obligation under this Subcontract; or
 - (ii) assign, novate or otherwise seek to transfer any of its rights or obligations under this Subcontract; and
- (b) acknowledges and agrees that it remains liable for the acts and omissions of its Personnel.

10 Contractor's Representative

- (a) The Contractor's Representative acts as the Contractor's agent, is subject to its directions and will act solely in the interests of the Contractor.
- (b) If the Contractor's Representative gives a direction to the Subcontractor, it must comply with that direction.
- (c) The Contractor may change its representative at any time by written notice to the Subcontractor.

11 Subcontractor's Representative

- (a) The Subcontractor must superintend the execution of the Works by a competent representative and, as at the Subcontract Date, that person is the person named in Item 8.
- (b) Subject to any objection from the Contractor, the Subcontractor may change its representative by written notice to the Contractor.
- (c) The Subcontractor acknowledges and agrees that:
 - (i) a direction from the Contractor's Representative is deemed to have been given to the Subcontractor if it is given to the Subcontractor's Representative; and
 - (ii) matters within the knowledge of the Subcontractor's Representative are deemed within the knowledge of the Subcontractor.

12 Project Meetings

The Subcontractor's Representative must attend and constructively participate in all meetings it is directed to attend by the Contractor's Representative.

13 Access

- (a) The Contractor must grant the Subcontractor access to the Site by the Date for Access.
- (b) The Contractor and its Personnel may at any time have access to the Site for any purpose.
- (c) The Subcontractor must:
 - (i) control access to, secure and ensure public safety on the Site;
 - (ii) keep disruptions to all relevant persons to a minimum; and
 - (iii) comply with all directions of authorities and the Contractor's Representative in respect of the Site.

14 Site Conditions

- (a) The Subcontractor warrants that, prior to the Subcontract Date, it:
 - (i) examined the Site and its surroundings;
 - (ii) was given reasonable opportunity to undertake and have others undertake, tests and investigations relating to the Site; and

- (iii) made adequate allowance in the Subcontract Sum for the time and cost of complying with this Subcontract.
- (b) Without limiting clauses 14(a) and 7, the Contractor makes no representation in respect of:
 - (i) Site conditions; or
 - (ii) the existence, location, condition or availability of any utilities.

15 Work Health and Safety

- (a) Without limiting its duties under the WHS Laws, the Subcontractor must:
 - (i) ensure that all Works are carried out in a safe manner;
 - (ii) comply with all safety and security requirements of the Principal and Contractor; and
 - (iii) if directed by the Contractor, provide all access and assistance needed to audit the Subcontractor's work, health and safety records.
- (b) As between the parties and for the purposes of the WHS Laws the Contractor is the 'principal contractor' for the Works and Site.

16 Environment

- (a) The Subcontractor must comply with all Legal Requirements in respect of environmental management including all State and Federal Legislation applicable to the Work or the site and implement all control measures required to prevent pollution and protect the surrounding environment.
- (b) The Subcontractor must do everything possible to protect, preserve and prevent pollution to the environment arising from or in connection with the carrying out of the Work and is responsible for all such harm, damage or pollution, including but not limited to contamination, to the extent caused or contributed to by the Subcontractor or their work. The Subcontractor shall be responsible for the remediation of any such pollution or contamination arising from or in connection with the carrying out of the Work or this Subcontract.
- (c) The Subcontractor must provide to the Contractor, where requested, any data and information that is or may be required by the Contractor, the Principal or any third party to comply with the National Greenhouse and Energy Reporting 2007 (NGER Act) to the extent that such data and information relates to the Work or this Subcontract.

17 Hazardous Substances and Materials

Where the Subcontractor intends to bring onto Site any material or substance that is classified as hazardous or potentially hazardous to health and safety or the environment, the Subcontractor must, before doing so, provide the Contractor with information in respect of such material or substance. The information must include details on the safe handling, storage and use of the material or substance and all precautions to be taken. The Subcontractor must arrange for suitable storage solutions for all such materials or substances to prevent pollution or harm to worker's health and safety.

18 Equipment and Works

- (a) Except to the extent this Subcontract expressly provides otherwise, the Subcontractor must, at its cost, do all things needed to perform its obligations under this Subcontract.
- (b) If the Contractor's Representative discovers equipment or Works which are not in accordance with this Subcontract, it may direct the Subcontractor to:
 - (i) remove it from the Site;
 - (ii) demolish the relevant Works;
 - (iii) reconstruct or correct it; or
 - (iv) not deliver the equipment to the Site.

- (c) If the Subcontractor fails to comply with a direction given under clause 16(b), the Contractor may have the relevant work carried out by others or do so itself and the cost incurred in doing so will be a debt due and payable from the Subcontractor to the Contractor.

19 Variations

- (a) The Subcontractor must not vary the Works except as expressly directed by the Contractor's Representative in writing.
- (b) The Contractor's Representative may direct the Subcontractor to vary the Works by any one or more of the following:
 - (i) increasing, decreasing or omitting any part;
 - (ii) changing its character or quality;
 - (iii) changing its lines, positions or dimensions;
 - (iv) carrying out additional work; or
 - (v) demolishing or removing material or work.
- (c) Where the Contractor's Representative directs a variation, it must also determine a revised Date for Completion and price for the variation using, in the case of the price, the following order of precedence:
 - (i) prior agreement;
 - (ii) applicable rates in this Subcontract; or
 - (iii) reasonable rates or prices,
 and that amount will be added to or deducted (as appropriate) from the Subcontract Sum.
- (d) The Subcontractor agrees that, where a variation involves the omission of Works the Contractor may engage others to perform some or all of those Works or do so itself.

20 Progress and Programming

- (a) The Subcontractor must commence performing the Works on the Commencement Date and complete the Works by the Date for Completion.
- (b) The Subcontractor must, within 2 days after the start of the relevant cause, notify the Contractor's Representative in writing of anything which may delay the Works, giving details of the cause and likely extent of the delay.
- (c) Subject to clause 18(d), the Subcontractor is not entitled to an extension of time or to recover any costs or damages from the Contractor for any delay or disruption in the execution of the Works.
- (d) If the Subcontractor:
 - (i) is delayed in executing Works by a breach of this Subcontract by the Contractor; and
 - (ii) complies with clause 18(b),
 the Contractor's Representative must grant a reasonable extension of time to the Date for Completion as the Subcontractor's sole entitlement for such breach and delay.
- (e) The Contractor's Representative may direct in what order and at what times the Works are carried out and the Subcontractor must comply with such direction.

21 Suspension

- (a) The Contractor's Representative may by written notice direct the Subcontractor to suspend performing some or all of the Works for such time as the Contractor's Representative thinks fit and the Subcontractor must comply with such direction.
- (b) As soon as the Contractor's Representative directs the Subcontractor to do so, it must recommence performing the suspended Works.
- (c) If a negligent act or omission of the Contractor or any of its Personnel caused the suspension, the Contractor will bear the direct costs reasonably incurred by the Subcontractor as a result of the suspension and the Date for Completion will be

adjusted by the Contractor's Representative to take account of the suspension. In all other instances, the Subcontractor is not entitled to an extension of time or to any costs or damages from the Contractor as a result of the suspension.

22 Completion

- (a) The Subcontractor must give the Contractor's Representative at least 7 days' prior notice in writing of its anticipated Date of Completion.
- (b) When the Subcontractor considers that Completion has been reached, it must request in writing that the Contractor's Representative issues a certificate confirming Completion. Within 7 days after receiving such request, the Contractor's Representative must give the parties:
 - (i) a certificate confirming Completion; or
 - (ii) written reasons for not doing so, in which case the Subcontractor must promptly rectify all outstanding issues and this clause 20(b) will reapply.
- (c) If the Works do not reach Completion by the Date for Completion, liquidated damages will be due and payable to the Contractor by the Subcontractor at the rate set out in Item 14 (which the parties agree is a genuine pre-estimate of the Contractor's damages for such delay) for each day after the Date for Completion to and including the earliest of the Date of Completion or termination of this Subcontract by the Contractor.
- (d) If clause 20(c) is held to be void or invalid, the Contractor is entitled to recover general damages from the Subcontractor for its delay.
- (e) In addition to the Contractor's entitlement to liquidated damages under clause 20(c), the Subcontractor must indemnify the Contractor and its Personnel from and against any claim, cost, loss, expense or liability they suffer or incur as a result of a failure of the Works to reach Completion by the Date for Completion.

23 Defects Liability

- (a) At any time prior to the expiry of the last Defects Liability Period, the Contractor's Representative may direct the Subcontractor, at the Subcontractor's cost, to rectify a defect in the Works and may state dates by which rectification works must be commenced and completed.
- (b) Where a defect in the Works is rectified by the Subcontractor, a separate Defects Liability Period will apply in respect of the rectification work and commence on the date such work is finished.
- (c) If defect rectification work is not commenced or completed by the stated dates, the Contractor may complete or have such work completed and the cost of doing so will be a debt due and payable from the Subcontractor to the Contractor.

24 Urgent Action

If urgent action is needed to protect Works, property or people and the Subcontractor fails to take such action, the Contractor may take such action and the costs it incurs in doing so will be a debt due and payable from the Subcontractor to the Contractor.

25 Working Hours

The working hours on the Site are as set out in Item 17.

26 Personnel

The Contractor may exclude from the Site or direct the Subcontractor to do so, any person the Contractor thinks may adversely affect property, persons or the Works and the Subcontractor must ensure compliance with such direction.

27 Payment

- (a) The Contractor must claim payment of the Subcontract Sum progressively in accordance with

Item 16 and this clause 25 and an early payment claim is deemed to have been made on the date for making that claim.

- (b) Each payment claim must be given in writing to the Contractor's Representative and include:
 - (i) detail of the value of Works done;
 - (ii) such other details as are required by the Contractor's Representative;
 - (iii) a duly executed subcontractor's statement and statutory declaration in the forms required by law; and
 - (iv) certificates of currency in respect of the insurances required by this Subcontract.
- (c) The Contractor's Representative must, within 10 Business Days after receiving a payment claim in accordance with clause 25(b), issue to the parties a payment certificate evidencing its opinion of the moneys due from the Contractor to the Subcontractor pursuant to the relevant payment claim and its reasons for any difference.
- (d) The Contractor must pay the Subcontractor the amount set out as payable by the Contractor to the Subcontractor (if any) in the payment certificate by the date that is 30 Business Days after the Contractor's Representative's receipt of the relevant payment claim, however, if the result is a negative balance, the Subcontractor must pay that amount to the Contractor within 5 Business Days after the date of its receipt of the payment certificate.
- (e) Neither a payment certificate nor payment is evidence that Works have been undertaken satisfactorily and payment, other than final payment, is on account only.
- (f) The Contractor is not liable to pay the Subcontractor for unfixed plant and material until it is fixed in the Works.
- (g) Within 28 days after the expiry of the last Defects Liability Period, the Subcontractor must give the Contractor's Representative a payment claim endorsed 'Final Payment Claim'.
- (h) Within 42 days after the expiry of the last Defects Liability Period, the Contractor's Representative must issue to the parties a final certificate evidencing the moneys finally due and payable between the parties in connection with this Subcontract.
- (i) The Contractor must pay the Subcontractor the amount (if any) set out in the final certificate after exercising any set off under clause 25(k) by the date referred to in clause 259d) as if the references to 'relevant payment claim' and 'payment certificate' were references to 'final payment claim' and 'final certificate'.
- (j) After the date for submitting the final payment claim under clause 25(g) has passed, the Subcontractor releases the Contractor from any claim in respect of this Subcontract, except where included in the final payment claim given to the Contractor's Representative by that date and in accordance with clause 25(g).
- (k) If the Contractor has a claim to money against the Subcontractor, whether under this Subcontract or otherwise, the Contractor may set off that money against any sum the Subcontractor is or may be entitled to in connection with this Subcontract.
- (l) If a subcontractor is entitled to suspend Works under the SOPA, the:
 - (i) Subcontractor must promptly give the Contractor's Representative a copy of all relevant communications; and
 - (ii) Contractor may pay the subcontractor all outstanding amounts and such amounts will be due and payable from the Subcontractor to the Contractor.

- (m) In receiving payment claims or issuing payment certificates pursuant to the SOPA, the Contractor's Representative acts as agent of the Contractor.
- (n) To the fullest extent permitted by law, the Subcontractor indemnifies the Contractor and its Personnel from and against all claims or losses they suffer or incur arising out of a:
 - (i) suspension of Works pursuant to the SOPA by a subcontractor;
 - (ii) notice of claim served on the Contractor under the *Contractors Debts Act 1997* (NSW);
 - (iii) subcontractor exercising a statutory lien under section 11(3) of the SOPA; and
 - (iv) failure by the Subcontractor to comply with clause 25(l).
- (o) Except as expressly provided in this Subcontract, the Subcontractor acknowledges and agrees that:
 - (i) the Subcontract Sum is fixed; and
 - (ii) it is not entitled to any payment from the Contractor other than the Subcontract Sum.

28 Taxes and GST

- (a) Subject to the remainder of this clause, the Subcontractor must pay all taxes due in connection with the Works.
- (b) Each party warrants to the other that it is registered for GST and must immediately notify the other if it ceases to be so registered.
- (c) Despite the definition of 'consideration' in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), consideration provided in accordance with this Subcontract is exclusive of GST.
- (d) If consideration given by a party (Payer) in connection with this Subcontract does not include GST and is consideration for a taxable supply for which the party who makes the supply (Supplier) is liable for GST, the Payer must, at the same time as the consideration is given, pay the Supplier an additional amount equal to the consideration multiplied by the rate of GST.

29 Insurances

- (a) Before the Subcontract Date and until the expiry of the last Defects Liability Period, the Subcontractor must effect and maintain the following insurances (together, the **Insurances**):
 - (i) a public liability insurance policy in the names of the parties (including a 'cross liability' clause) for not less than \$20 million per claim;
 - (ii) motor vehicle compulsory third party insurance as required by law and motor vehicle comprehensive and third party property insurance for not less than \$20 million per claim for all vehicles used in connection with the Works;
 - (iii) workers' compensation insurance as required by law; and
 - (iv) if the Works involve building work on existing buildings, asbestos liability insurance for at least \$5 million per claim,
 and ensure that all subcontractors do likewise.
- (b) Whenever requested by the Contractor, the Subcontractor must produce certificates of currency in respect of the Insurances.
- (c) If, after being so requested by the Contractor, the Subcontractor fails to produce certificates of currency in respect of the Insurances, the Contractor may effect the relevant Insurance(s) and the premiums paid will be a debt due and payable from the Subcontractor to the Contractor.
- (d) The Subcontractor must:

- (i) not do or permit, or omit to do, anything which prejudices any Insurance or insurance policy maintained by the Contractor or Principal;
 - (ii) immediately rectify anything which prejudices or could prejudice any Insurance or insurance policy maintained by the Contractor or Principal;
 - (iii) immediately reinstate any Insurance should it lapse;
 - (iv) give full details to its insurer(s) of all matters the non-disclosure of which might prejudice any Insurance;
 - (v) comply with the terms of each Insurance and insurance policy maintained by the Contractor or Principal;
 - (vi) inform the Contractor in writing of anything that may give rise to a claim under any Insurance or insurance policy maintained by the Contractor or Principal and provide ongoing reports; and
 - (vii) to the extent it is able to recover under an Insurance (or could have but for a failure to maintain it), recover and indemnify the Contractor and its Personnel up to the relevant level of cover.
- (e) The Subcontractor must ensure that each Insurance is taken out with an insurer that has a financial rating of at least A by Standard & Poor's.
 - (f) The effecting of the Insurances by the Subcontractor does not limit its obligations and liabilities under or arising out of this Subcontract.

30 Indemnity

- (a) The Subcontractor indemnifies the Contractor and its Personnel from and against all losses, costs, expenses and damages they suffer or incur as a result of or arising out of:
 - (i) a breach of this Subcontract by the Subcontractor;
 - (ii) personal injury (including sickness) to or death of any person;
 - (iii) loss of or damage to property;
 - (iv) any industrial dispute caused or contributed to by the Subcontractor;
 - (v) any unlawful, wilful or negligent act or omission of the Subcontractor or any of its Personnel;
 - (vi) any infringement by the Subcontractor of any intellectual property rights of a third party or any claim against the Contractor in respect of any relevant intellectual property rights; or
 - (vii) any pollution or damage to the environment,
 however, such liability will be reduced proportionally to the extent that a negligent act or omission of the Contractor contributed to the relevant loss, claim, expense or damage.
- (b) Each indemnity in this Subcontract is continuing, separate and independent from the Subcontractor's other obligations and survives the expiry or termination of this Subcontract.

31 Indirect Loss and Proportionate Liability

- (a) To the fullest extent permitted by law, the Contractor will have no liability to the Subcontractor or any of its Personnel under or arising out of this Subcontract for any:
 - (i) loss of revenue, use, production, goodwill, profit, data, business, contract or anticipated savings;
 - (ii) financing costs or increased operating costs; or
 - (iii) other purely financial or economic loss or other special or indirect loss or damage.
- (b) It is agreed that:

- (i) to the fullest extent permitted by law, Part 4 of the *Civil Liability Act 2002* (NSW) (the **Liability Act**) is excluded in relation to claims arising out of this Subcontract; and
- (ii) if any provision of the Liability Act applies to any claim between the parties arising out of this Subcontract, the Subcontractor will indemnify the Contractor and its Personnel against all losses, costs, expenses and claims they suffer which the Subcontractor would be liable but for the operation of the Liability Act.

32 Personal Property Securities Act

If the Contractor determines that this Subcontract (or any transaction in connection with it) is or contains a security interest for the purposes of the *Personal Property Securities Act 2009* (Cth) (**Security Interest**), the Subcontractor agrees (at its expense) to do all things the Contractor requests of it for the purposes of:

- (a) ensuring that the Security Interest is enforceable, perfected and effective;
- (b) enabling the Contractor to apply for any registration, or give any notification, in connection with the Security Interest so the Security Interest has the priority required by the Contractor; and
- (c) enabling the Contractor to exercise all relevant rights in connection with the Security Interest.

33 Dispute Resolution

- (a) If a dispute arises under or in connection with this Subcontract, either party may issue a written dispute notice to the other setting out details of the dispute.
- (b) Within 7 days after a notice is received by a party in accordance with clause 31(a), senior representatives from each party must meet to endeavour to resolve the dispute in good faith.
- (c) If a dispute is not resolved within 15 days after the meeting referred to in clause 31(b), either party may commence litigation to resolve it.
- (d) Despite the existence of a dispute, the Subcontractor must continue to perform the Works in accordance with this Subcontract.
- (e) Nothing in this clause 31 prejudices the right of a party to seek injunctive or urgent relief.

34 Default and Termination

- (a) If the Subcontractor commits a material breach of this Subcontract, the Contractor may give it a written notice to show cause which states:
 - (i) the alleged material breach;
 - (ii) that the Subcontractor is required to show cause in writing; and
 - (iii) the time by which the Subcontractor must do so.
- (b) If the Subcontractor fails to show cause by the required time, the Contractor may immediately terminate this Subcontract by written notice to the Subcontractor.

35 Termination for Insolvency

If the Contractor determines that the Subcontractor is or is likely to soon be insolvent or financially unable to proceed with this Subcontract, to the extent permitted by law, the Contractor may immediately terminate this Subcontract by written notice to the Subcontractor.

36 Termination for Convenience

- (a) Without prejudice to any of the Contractor's other rights under this Subcontract, the Contractor may:
 - (i) at any time, for its sole convenience and by written notice to the Subcontractor, terminate this Subcontract effective from the time and date stated in the notice; and
 - (ii) thereafter, at its discretion, complete the uncompleted Works itself or by others.

- (b) If the Contractor terminates this Subcontract under clause 34(a), the Subcontractor:

- (i) in respect of Works performed in accordance with this Subcontract prior to the termination date, will be entitled to be paid the amount that would have been payable to it if this Subcontract had not been terminated and it had submitted a payment claim to the Contractor;
- (ii) must:
 - (A) stop performing the Works on the termination date; and
 - (B) properly secure the Site; and
- (iii) as a condition precedent to any entitlement to payment, hand over to the Contractor originals of all documents provided to it by or on behalf of the Contractor.

- (c) The amounts the Subcontractor is entitled to under clause 34(b)(i) are a limitation on the Contractor's liability to the Subcontractor arising out of the termination of this Subcontract under this clause 34.

37 Confidentiality

- (a) Subject to clause 35(b), the Subcontractor must not, including after the expiration or termination of this Subcontract, without the prior written consent of the Contractor, divulge or permit its Personnel to divulge (other than to properly perform this Subcontract) any Confidential Information.
- (b) The restrictions in clause 35(a) do not apply to Confidential Information which is:
 - (i) made public through no default of the Subcontractor or any of its Personnel; or
 - (ii) required to be disclosed by law.

38 Media

The Subcontractor must not discuss the Works, the Project, the Principal or the Contractor (including its Personnel) with any media without the Contractor's Representative's prior written approval and must refer all such enquiries to the Contractor's Representative.

39 Notices

A notice under this Subcontract is only effective if it is in writing, signed by the party's Representative, addressed to the other party's Representative and left at the addressee's address or sent to the addressee by mail or email. If:

- (a) left at the addressee's address between 9:00am and 5:00pm on a Business Days and in the presence of a member of the addressee's Personnel, it is taken to have been immediately received;
- (b) sent by mail, it is taken to have been received 3 Business Days after posting; or
- (c) sent by email, section 13A of the *Electronic Transactions Act 2000* (NSW) will apply to determine when it is received.

40 Bar on claims

- (a) If the Subcontractor wishes to make a claim against the Contractor under or arising out of this Subcontract, it must give the Contractor's Representative written notice of the claim within 5 days after the date on which the Subcontractor should have been aware of the thing upon which the claim is based.
- (b) If the Subcontractor fails to comply with clause 38(a), the:
 - (i) Contractor will not be liable upon such claim by the Subcontractor; and
 - (ii) Subcontractor is barred from making such claim.

41 Waiver

Nothing in this Subcontract will be waived, discharged or released unless it is done so in writing.

42 Relationship

Nothing in this Subcontract creates:

- (a) a joint venture, partnership, agency, trust or other fiduciary or employment relationship; or
- (b) any continuing relationship between the parties after the Date of Completion,

and the Subcontractor must not act for or bind the Contractor, nor hold itself out as having the authority to do so.

43 Governing law

This Subcontract is governed by the laws of New South Wales and each party irrevocably submits to the jurisdiction of the courts of that State.

44 Building Code

The Subcontractor must at all times during the term of this Subcontract comply with the Building Code and ensure that all of its Personnel do likewise.

45 Joint and Several Obligations and Liabilities

If the Subcontractor is comprised of two or more persons:

- (a) its obligations and liabilities under this Subcontract bind them jointly and severally; and
- (b) the Subcontractor must not alter its composition or legal status without the prior written consent of the Contractor's Representative.

46 Entire Agreement

This Subcontract contains the entire agreement between the parties in respect of its subject matter and the Subcontractor warrants that it did not rely upon any information or representation made by or provided to it on the Contractor's behalf in entering into this Subcontract.

47 No contra Proferentem

No term of this Subcontract will be construed against a party on the basis that this Subcontract or the relevant term was put forward or drafted by or on behalf of that party.

48 Survival

This clause 46 and clauses 1 - 9, 14 - 22 and 25 - 45 survive the termination or expiration of this Subcontract.