

AGREEMENT DETAILS			
Contract No	[REDACTED]	Award Date	[REDACTED]
Client	[REDACTED]	Submission due date	[REDACTED]
Contract Name / Type	Design & Construct Subcontract (Victoria) Amended AS4903-2000	Review Date	14/2/2021
Nature of Contract	Lump Sum	Contract Value	[REDACTED]
Location / Site	[REDACTED]	On Site Duration / Term of Engagement	[REDACTED]
Scope Of Work	Not reviewed		

Checks	Client Position	Clause	Agree or Depart Suggestion	TCR Item
1. Limitation of liability	Silent		Depart Request cap	
2. Consequential losses	Silent		Depart Request exclusion	
3. Liquidated damages	Subcontract Liquidated Damages are set at \$ [REDACTED] per day, with no cap. In addition to the Subcontract Damages, [REDACTED] is also liable for Main Contract Damages at \$ [REDACTED] per day, with no cap.	GC Error! Reference source not found.	Depart Propose [REDACTED]% per week capped at [REDACTED]% Remove Main Contract damages	
4. Insurance	Standard insurances required to be provided are: <ul style="list-style-type: none"> • Works insurance: no amount specified. • Public Liability insurance: \$ [REDACTED]. • Professional Indemnity: \$ [REDACTED] with a 7 year run off period 	GC 15 - 19	Note / Depart [REDACTED] and its insurance advisors to confirm acceptance. Note; suggest Subcontract works shall be provided by the client	
5. Indemnity obligations	The <i>Subcontractor</i> shall indemnify the <i>Main Contractor</i> and <i>Land Owners</i> against: (a) loss of or damage to the <i>Principal's</i> , the <i>Main Contractor's</i> or <i>Land Owners'</i> property including existing property in or upon the <i>site</i> or those places which <i>WUS</i> is being carried out;	GC 15	Agree	

	<p>(b) <i>claims</i> in respect of nuisance, unreasonable noise or disturbance in excess of those permitted by any <i>authority</i> and any <i>legislative requirements</i>, personal injury or death or loss of, or damage or trespass to, any other property</p> <p>(c) pure economic loss;</p> <p>(d) any damage, liability, costs (including legal fees), demands, actions, suits, proceedings and expenses; and</p> <p>(e) any <i>claims</i> by the agents, employees or <i>secondary subcontractors</i> of the <i>Subcontractor</i>,</p> <p>Indemnities provided by [REDACTED] will be reduced proportionately.</p>			
6. Defects liability	<p>The DLP continues until the later of the date which is:</p> <p>(A) On year after the date for PC; and</p> <p>(B) The Main Contractor's defect liability period for the project expires.</p>	GC 39	Depart Request deletion of Item 39 (C) of Annexure Part A	
7. Security and retention	<p><i>Security</i> shall be provided in accordance with [REDACTED] or [REDACTED] and shall be in a form, and on terms and conditions approved by the <i>Main Contractor</i> in its absolute discretion.</p> <p>Cash or unconditional BG's are accepted, [REDACTED] % of the <i>Subcontract Sum</i>.</p> <p>Clause 5.4(a)(iv), (c)(iv) –With respect to the release, the security will only be released if the <i>Main Contractor</i> has received its performance security from the <i>Principal</i>.</p>	GC 5.1 Annex.A	Depart Delete clause 5.4(a)(iv) and clause 5.4(c)(iv)	
8. Payment terms	<p>Prior to <i>practical completion</i>, once per month on or after the last <i>business day</i> of the month.</p>	GC37	Depart Request payment within 20 days	

	<p>The <i>Subcontract Superintendent</i> must issue to the <i>Main Contractor</i> and the <i>Subcontractor</i> a <i>payment schedule</i> within 10 <i>business days</i> after receiving a progress claim.</p> <p>The <i>Main Contractor</i> shall within 30 <i>business days</i> after the <i>Subcontract Superintendent</i> receives the progress claim, make payment.</p>			
9. Rights and liabilities upon termination	<p>If the <i>Subcontract</i> is frustrated:</p> <p>(f) the <i>Subcontract Superintendent</i> shall issue a <i>payment schedule</i> for <i>WUS</i> carried out to the date of frustration, evidencing the amount which would have been payable had the <i>Subcontract</i> not been frustrated and had the <i>Subcontractor</i> been entitled to and made a progress claim on the date of frustration;</p> <p>(g) the <i>Main Contractor</i> shall pay the <i>Subcontractor</i>:</p> <p>(i) the amount due to the <i>Subcontractor</i> evidenced by all unpaid certificates;</p> <p>(ii) the cost of materials and equipment reasonably ordered by the <i>Subcontractor</i> for <i>WUS</i> and which the <i>Subcontractor</i> is liable to accept, but only if they will become the <i>Main Contractor's</i> property upon payment; and</p> <p>(iii) the costs reasonably incurred:</p> <p>(A) removing <i>temporary works</i> and <i>construction plant</i>;</p> <p>(B) returning to their</p>	GC 40	Agree	

	<p>place of engagement the <i>Subcontractor</i> and its employees engaged in <i>WUS</i> at the date of frustration; and</p> <p>(C) by the <i>Subcontractor</i> in expectation of completing <i>WUS</i> and not included in any other payment; and</p> <p>(h) each party shall promptly release and return all <i>security</i> provided by the other.</p>			
10. Variations	<p>The <i>Subcontractor</i> shall within 5 days (or such further period as agreed with the <i>Subcontract Superintendent</i>) of receiving the <i>notice of proposed variation</i> from the <i>Subcontract Superintendent</i>, complete the <i>notice of proposed variation</i>, notifying the <i>Subcontract Superintendent</i> whether the proposed <i>variation</i> can be effected.</p> <p>The mark-up (profit and OH) specified for variations is █ %</p>	GC 36	Agree	
11. Design responsibility	Yes, this contract is a D&C form of contract			
12. Milestone / Key dates and durations				
13. Dispute resolution	A reasonable dispute resolution process exists.	GC 42	Agree	
14. Delays / EOT	<p>As soon as it becomes evident to the <i>Subcontractor</i> that anything may delay to <i>WUS</i>, the <i>Subcontractor</i> shall promptly (and in any event within <u>1 business day</u> of the potential delay becoming evident to the <i>Subcontractor</i>) give the <i>Subcontract Superintendent</i> written notice of delay.</p> <p>When it becomes evident to the <i>Subcontractor</i> that anything, including an act or omission of the Main Contractor, the <i>Subcontract</i></p>	GC 34	Depart Request extension to notice periods Remove the Not Used under Delay Costs	

	<p>Superintendent, the Principal or the Superintendent or the Main Contractor's or Principal's employees, consultants, other contractors or agents, has delayed or is delaying the work under the Subcontract, the Subcontractor shall promptly (and in any event within <u>2 business days</u> of the occurrence of the delay) notify the Subcontract Superintendent in writing with details of:</p> <ul style="list-style-type: none"> (a) the delay and the cause; (b) how the delay will affect its current construction program; (c) the measures which are available to overcome the delay; (d) the measures which are being or will be taken to overcome the delay; and (e) the expected effect that the delay will have on the expected date that the Subcontractor will reach practical completion. <p>The <i>Subcontractor</i> shall be entitled to a reasonable extension of time to the date for <i>practical completion</i> as the <i>Subcontract Superintendent</i> assesses ('<i>EOT</i>'), if:</p> <ul style="list-style-type: none"> (a) the <i>Subcontractor</i> has been delayed in reaching <i>practical completion</i> by the <i>date for practical completion</i> by a <i>qualifying cause of delay</i>; and (b) as a condition precedent to any entitlement, the <i>Subcontractor</i> gives the <i>Subcontract Superintendent</i>, within 7 business days of the occurrence of the delay, a written claim for an <i>EOT</i> evidencing the facts of causation and of the delay to <i>WUS</i> (including extent). 			
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	Failure to comply with notice periods may result in time barring.				
15. Delay entitlements	Time	Cost	✓ ×		
• Delays in Access by client	✓	×	GC 34.3	Depart Request delay costs	
• Suspension by client	✓	✓	GC 33.4	Agree	
• Cyclones			Silent	Depart	
• Force Majeure			Silent	Depart	
• Inclement Weather	×	×		to make sufficient allowances for inclement weather, or advise if it wishes to clarify	
• COVID	✓		GC 34.3	Depart Request delay costs	
• Change in Law	✓	✓	GC 11.2	Depart Only entitled if the change is material. Request deletion of “material”	
• Latent Conditions (site only)	×	×	GC 25	Depart	
• Errors/ delays in client’s documents	×	×	GC 2.9 GC 2.10 GC 8.1	Depart	
• Delays by client’s other contractors	✓	×	GC 34.3	Depart Request delay costs	
• Delays in client’s free issued equipment	✓	×	GC 34.3	Depart Request delay costs	
• Acceleration	n/a	✓	GC 32	Depart The amount is contingent upon the amount approved by the Principal	
• Rise and Fall	×	×	Silent	to make sufficient allowances for any rise in material or labour prices	
• Variations	✓	✓	GC 36	See above	

• Contaminated Material	×	×	GC 25	Depart	
• Minerals, fossils, relics	✓	✓	GC 24.3	Agree	
16. Other					

Commercial/Risk Observations, Recommendations and General Notes

1. Clarification Suggested – Clause 2.2 (Main Contract).

- (b) warrants that it has informed itself as to all documents, obligations, liabilities and terms contained in the *main contract* – **request this is deleted.**
- (c) acknowledges that the *main contract* was, and is, available for inspection and review at the head office of the *Main Contractor* – **request this is deleted.**
- (d) shall do all things necessary to enable performance by the *Main Contractor* of its obligations and enjoyment by the *Main Contractor* of the benefits under the *main contract* and so as to ensure no breach or loss under the *main contract* by the *Main Contractor* – **request this is deleted.**
- (e)(ii) the *Subcontract Works* to be performed by the *Subcontractor* for the *subcontract sum* includes anything reasonably required of the *Subcontractor* by the *Main Contractor* to enable the *Main Contractor* to comply with the *main contract* so far as they relate to the *WUS* – **request this is deleted.**
- (e)(iii) the *subcontract sum* includes an allowance to compensate the *Subcontractor* for all risks and contingencies which are associated with the co-operation and co-ordination referred to in subclause [REDACTED] and for the avoidance of doubt, the carrying out of *work* by such others is deemed not to be an act, default or omission by the *Main Contractor* or the *Superintendent* for the purposes of subclauses (a) and (b) of the definition of *qualifying cause of delay* – **request this is deleted.**
- (g)(i) assumes to the *Main Contractor* the same obligations as the *Main Contractor* has assumed to the *Principal* under the *main contract* – **request this is deleted.**
- (h) shall perform the *Subcontract Works* in such a manner to ensure that the *Subcontract Works* comply with the *main contract* and so as to enable the *Main Contractor* to comply with its obligations under the *main contract* – **request this is deleted.**
- (i) shall deliver the *Subcontract Works* in a manner to ensure that the *Subcontract Works*, when completed, will comply with the *main contract* so that the *Principal* cannot claim damages against the *Main Contractor* for breach of the *main contract* as a result of any act or omission (including negligence) by the *Subcontractor* in performing the *Subcontract Works* – **request this is deleted.**
- where the *main contract* imposes an obligation that is inconsistent with an obligation under the *Subcontract*, the obligation under the *main contract* prevails to the extent of the inconsistency – **request this is deleted.**
- all the powers of the *Principal* or the *Superintendent* as against the *Main Contractor* under the *main contract* extend to the *Subcontract* and may be exercised by the *Main Contractor* as against the *Subcontractor* under the *Subcontract* – **request this is deleted.**

2. Clarification Suggested – Clause 2.3 (Subcontractor's warranties).

- (c) has examined any *preliminary design* included in the *Main Contractor's project requirements* and that such *preliminary design* is suitable, appropriate and adequate for the purpose stated in the *Main Contractor's project requirements* and for enabling the *Subcontractor* to meet the requirements of the *Subcontract* – **request this is deleted.**
- (d) all designs, materials and methods of construction of the *WUS* whether by the *Subcontractor* or otherwise shall be suitable in all respects for the intended purpose – **request the insertion of "as specified in the Subcontract".**

- (i)(i) be fit for their intended purpose – request the insertion of “as specified in the Subcontract”.
- (i)(iv) be of at least an equivalent standard of quality to the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* as approved by the *Superintendent* pursuant to clause [REDACTED] – does [REDACTED] agree with this requirement.

3. Clarification Suggested – Clause 2.4 (Warranties unaffected).

- (a) that design work (including the *preliminary design*) has been carried out by or on behalf of the *Main Contractor* and included in the *Main Contractor’s project requirements* – request this is deleted.

4. Clarification Suggested – Clause 2.12 (Obligations unaffected).

- (a) that design of the *Subcontract Works* or any part of the *Subcontract Works* (except for any design carried out by or on behalf of the *Subcontractor* as part of *WUS*) has been carried out by or on behalf of the *Main Contractor* – request this is deleted.
- (c) the *Main Contractor* giving to the *Subcontractor* any information, data or documents obtained by the *Main Contractor* for the purposes of the *Subcontract Works* before the date of *Subcontract* – request this is deleted.

5. Clarification Suggested – Clause 11.4 (Industrial relations)

- (a) The *Subcontractor* must prior to entering the *main contract* – request this is changed to *Subcontract*.
- Second para. following part (f). The *Subcontractor* is not entitled to any *claim* as a result of any industrial dispute and the *Main Contractor* is not liable for any additional cost or any delay arising out of any industrial dispute, whether caused by the *Subcontractor* or not – request this is changed to allow entitlement if the matter was not caused by the *Subcontractor*.

6. Clarification Suggested – Clause 12.1 (General)

- (e) the *Subcontractor* shall obtain all necessary *approvals* regarding access – request this is deleted.
- (j) indemnify the *Main Contractor* and the *Land Owners* against any claim against the *Main Contractor* or the *Land Owners* by the owner or occupier – request additional wording. [REDACTED] shall only indemnify against its own actions, not generally.

7. Clarification Suggested – Clause 14.1 (Care of the WUS)

- The *Subcontractor* is responsible for the care of the security of the site – does this fall within [REDACTED] scope? If not, a qualification will be required.

8. Clarification Suggested – Clause 27 (Cleaning up)

- The *Subcontractor* shall keep the *site* and *WUS* clean and tidy and regularly remove rubbish and surplus material – Request deletion of reference to *Site*.

9. Note – Clause 32 (Programming)

- [REDACTED] shall ensure any free issue materials, documentation etc is listed out in Item 33 OF Annexure Part A.

10. Clarification Suggested – Clause 39 (Show cause)

- The *Subcontractor* shall remedy a breach and show cause by a period no less than 2 Business Days – Request 7 Business Days.

11. Note – Annexure Part A (Services and Facilities)

- [REDACTED] to review Item 46 of Annexure Part A to ensure it aligns with scope of work.
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