

insert project name

**Design & Construct Subcontract (Victoria)
Amended AS4903-2000**



insert name of Subcontractor
ABN **insert ABN of Subcontractor**

Purchase Order No.: insert

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**FORMAL INSTRUMENT OF AGREEMENT
FOR DESIGN AND CONSTRUCT SUBCONTRACT
AS4903 – 2000**

AGREEMENT made on _____ day of _____ 2021.

PARTIES

J. Hutchinson Pty Ltd ABN 52 009 778 330

of 70-72 Cecil Street, South Melbourne VIC 3205

(Main Contractor)

and

Insert ABN **Insert**

of **insert address**

(Subcontractor)

Purchase Order No.: **Insert**

RECITALS:

- A. The *Main Contractor* is undertaking the Australian Unity Refurbishment project (***Project***).
- B. The *Main Contractor* called for tenders for subcontract construction work associated with the *Project* and the *Subcontractor* submitted a tender.
- C. In reliance of the information provided in that tender and the *Subcontractor's* representation that it is experienced in the construction work required under this *Subcontract*, the *Main Contractor* has agreed to engage the *Subcontractor* to carry out construction work on and subject to the terms and conditions set out in this *Subcontract*.

OPERATIVE PROVISIONS:

1 Definitions:

Unless otherwise defined, in this Formal Instrument of Agreement defined terms have the same meaning as in the Subcontract conditions for design and construct.

2 Completion of work

The *Subcontractor* shall undertake all *WUS* and otherwise perform all of its obligations in accordance with this *Subcontract*.

3 Payment to Subcontractor

The *Main Contractor* shall pay the *Subcontractor* in accordance with the *Subcontract*.

4 The subcontract sum

The *subcontract sum* is the amount properly payable to the *Subcontractor* for the *WUS* in accordance with the *Subcontract* as may be adjusted in accordance with the *Subcontract* which at the *date of acceptance of tender* is [#Insert in numbers and in words including *provisional sums* but excluding *GST*.#]

5 Subcontract documents and order of precedence

The *Subcontract* is comprised of the following documents and in the case of any ambiguity, discrepancy or inconsistency the documents will apply in the order of precedence as listed:

- (a) this Formal Instrument of Agreement;
- (b) Annexure Part A;
- (c) Subcontract Conditions for design and construct as amended by Annexure Part B – Deletions, amendments and additions;
- (d) Annexure Part C – Approved form of undertaking;
- (e) Annexure Part D - Special Conditions;
- (f) Annexure Part E – Main Contractor’s Project Requirements;
- (g) Annexure Part F – Programme;
- (h) Annexure Part G – Warranties;
- (i) Annexure Part H – Deeds of novation;
- (j) Annexure Part I – Declaration by Subcontractor;
- (k) Annexure Part J – Deed of Release – Practical Completion;
- (l) Annexure Part K – Deed of Release – Final;
- (m) Annexure Part L – Notice of Proposed Variation;
- (n) Annexure Part M – Deed of Guarantee and Indemnity;
- (o) Annexure Part N – Moral Rights Consent;
- (p) Annexure Part O - Program Requirements;
- (q) Annexure Part P - Aged Care Certification Requirements;
- (r) Annexure Part Q - Australian Unity in Occupation Requirements; and
- (s) Annexure Part R - COVID Management Plan.

Notwithstanding any other clause of this *Subcontract*, if any annexure in this *Subcontract* includes any text supplied by the *Subcontractor* which is, or incorporates any part of the *Subcontractor’s* standard terms and conditions, then that does not form part of the *Subcontract*.

6 Entire Contract

This *Subcontract* constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

7 Variation

The *Subcontract* must not be varied except by a later written document executed by all parties.

8 Further assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this *Subcontract*.

9 Time for doing acts

If:

- (a) the time for doing any act or thing required to be done; or
- (b) a notice period specified in the *Subcontract*,

expires on a day other than a *business day*, the time for doing that act or thing or the expiration of that notice period is extended until the following *business day*.

If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following *business day*.

10 Severance

If any clause or part of any clause in this *Subcontract* is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this *Subcontract* without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

11 Counterparts

This *Subcontract* may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

12 Warranties of Capacity

Each party warrants to each other party that:

- (a) it has the power to enter into this *Subcontract* and has obtained all necessary authorisations to allow it to do so; and
- (b) this *Subcontract* creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms,

the *Subcontractor* warrants that it has not entered into this *Subcontract* in the capacity of trustee of any trust;

Executed as a deed.

EXECUTED by [REDACTED])
 ABN [REDACTED] by its duly authorised)
 representative:)

.....
 Name of Authorised Representative

.....
 Signature of Authorised Representative

.....
 Date of Signature

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

.....
 Signature of Director

.....
 Signature of Director / Company Secretary

.....
 Name of Director

.....
 Name of Director / Company Secretary

.....
 Date of Signature

.....
 Date of Signature

OR

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

.....
 Signature of Sole Director/Company Secretary

.....
 Witness

.....
 Name of Director

.....
 Name of Witness

.....
 Date of Signature

.....
 Date of Signature

Amended from
4903—2000
(Incorporating Amendment No. 1)

Australian Standard™

**Subcontract conditions for
design and construct (Victoria)**

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Australian Chamber of Commerce and Industry
Australian Procurement and Construction Council
AUSTROADS
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This Standard was issued in draft form for comment as DR 98019. AS 4903—2000
(Incorporating Amendment No. 1)

Australian Standard™

Subcontract conditions for design and construct (Victoria)

Originated as AS 4303—1995.
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PREFACE

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee OB/3, General Conditions of Contract.

This Standard incorporates Amendment No. 1 (March 2005). 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.

This Standard is the result of a consensus among Australian and New Zealand representatives on the Joint Committee to produce it as an Australian Standard.

AS 4903—2000 *General conditions of subcontract for design and construct* is a part of the suite of conditions of contract based on AS 4000—1997 *General conditions of contract*.

This Standard covers the following types of project procurement methods:

- (a) design and construct;
- (b) design development and construct; and
- (c) design, novate and construct.

If the project procurement method chosen for the main contract results in the subcontract incorporating design functions, then if the project procurement method is:

- (a) **design and construct**—the *Main Contractor* would provide the *Main Contractor's* project requirements, would not normally provide a detailed *preliminary design* and would not require novation;
- (b) **design development and construct**—the *Main Contractor* would provide the *Main Contractor's* project requirements, would always provide a *preliminary design* and accordingly would complete Annexure Part A *Item 14* and *Item 15*;
- (c) **design, novate and construct**—the *Main Contractor* would provide the *Main Contractor's* project requirements, would always provide a *preliminary design*, would complete Annexure Part A *Item 14* and *Item 15* and would complete Annexure Part A *Item 24* stating which *secondary subcontract* (including consultant's agreement) or selected *secondary subcontract* is to be novated to the Subcontractor.

Subclauses 8.8, 29.2 and 34.7A, prefixed by *, are optional, and may be omitted in the Contract, where necessary, without making consequential amendments but such omission should be clearly shown on the face of the document by striking out these subclauses or indicating clearly in Annexure Part B or elsewhere that they are *not to apply*. See paragraph (i) of clause 1 for the effect of stating deletions in Annexure Part B.

WARNINGS

- 1) **This Standard is not recommended for use as part of the agreement between the Main Contractor and a consultant. AS 4904—2001 *Consultant's Agreement* has been developed for this purpose.**
- 2) **Users of this Australian Standard are warned that clause 15 (Damage to persons and property other than WUS) does not limit the liability of parties for special, indirect or consequential losses.**

This unlimited liability applies notwithstanding any limitations or exclusions permitted under insurance clauses 16A (Insurance of WUS), 16B (Professional indemnity insurance) and 17 (Public liability insurance).

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

- 3) In relation to insurances, the parties should have regard to clause 16A regarding the availability during the tender period of a copy of the insurance policy in relation to WUS, and subclause regarding proof of evidence of insurances generally, before WUS commences under the Subcontract.
- 4) Main Contractors should ensure that their specific requirements are fully and completely incorporated in the Main Contractor's project requirements obtaining specialist advice if necessary. Where a Subcontractor provides a proposed design as part of its tender the parties should consider whether that design should form part of the Main Contractor's project requirements.
- 5) The risk allocation, drafting, interpretation and construction of this Standard are interrelated. Users who alter the Standard do so at their own risk and should obtain specialist advice as to whether it is suitable for a particular project.
- 6) Subcontractors should ensure that they satisfy the requirements of payment for unfixed plant and materials.
- 7) 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.

STANDARDS AUSTRALIA

Australian Standard

Subcontract Conditions for design and construct

1 Interpretation and construction of Subcontract

1.1 Definitions

In the *Subcontract*, except where the context otherwise requires:

Aged Care Certification Requirements Means the requirements set out in Annexure Part P (if any);

approvals means any approval, statutory or otherwise, required by any *authority* directly or through an entity or person authorised by an *authority* to require the approval;

Australian Unity in Occupation Requirements means the document provided to the Subcontractor in Annexure Part Q as updated and / or notified to the Subcontractor from time to time;

authority means any Commonwealth, State and local government council, parliament, department, office, body and instrumentality and any public or statutory body, corporation, instrumentality, authority, person or entity which in any way governs, regulates, controls or effects any aspect of the *WUS*;

Benchmark Aged Care Room means the room(s) nominated as being the benchmark aged care room(s) to which Clause 50 applies;

Benchmark Assisted Living Residence means the residence(s) nominated as being the benchmark assisted living residence(s) to which Clause 50 applies;

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;

Buildability Issue means any ambiguity, discrepancy, inconsistency or lack of coordination on integration of, between or in any documents comprising the *Subcontract* which cause a problem or complexity relating to the means, methods or techniques by which *the Subcontract Works* are performed or the coordination or integration of the work under the *Subcontract*;

Building Act means the *Building Act 1993* (Vic), as amended from time to time;

business day means a day that is not a Saturday, Sunday or public holiday in Victoria.

certificate of practical completion has the meaning in subclause 34.6;

claim means any claim, right of action or demand (or similar legal entitlement), in any jurisdiction, including but not limited to at law, in tort (including negligence), under statute, in equity including quantum meruit or restitution based on unjust enrichment, for rectification, frustration or for any other legal or equitable remedy;

Claim Documentation means:

- (a) documentation demonstrating the *tests* required to be undertaken, and are capable of being undertaken, for any particular item of *WUS*, have been completed and the results demonstrate that the item of *WUS* are in compliance with the requirements of the *Subcontract*; and

- (b) those listed at Item 41;
- compensable cause** Not used.
- construction plant** means appliances and things used in the carrying out of *WUS* but not forming part of the *Subcontract Works*;
- construction program** has the meaning in clause 32;
- COVID Management Plan** means the plan attached in Annexure Part R, as updated from time to time by the *Subcontractor* and approved by the *Subcontract Superintendent*;
- date for practical completion** means:
- (a) where *Item 11(a)* provides a date for *practical completion*, the date;
 - (b) where *Item 11(b)* provides a period of time for *practical completion*, the last day of the period,
- but if any *EOT* for *practical completion* is directed by the *Subcontract Superintendent* or allowed in any dispute resolution process, it means the date resulting therefrom;
- date of acceptance of tender** means the date on which the Formal Instrument of Agreement is executed by the *Main Contractor*;
- date of practical completion** means:
- (a) the date evidenced in a *certificate of practical completion* as the date upon which *practical completion* was reached; or
 - (b) where another date is determined in any dispute resolution process as the date upon which *practical completion* was reached, that other date;
- deed of guarantee, undertaking and substitution** means a properly completed and executed copy of the deed in the form of Annexure Part M, or as directed by the *Subcontract Superintendent*;
- deed of release – practical completion** means a properly completed and executed copy of the deed in the form of Annexure Part J;
- deed of release – final** means a properly completed and executed copy of the deed in the form of Annexure Part K;
- defect** includes any defect, shrinkage, error, fault, omission or other deficiency in the *WUS* and any aspect of the *WUS* or *Subcontract Works* which is not in accordance with the *Subcontract*;
- defects liability period** has the meaning in clause 35;
- defects report** means a written report detailing:
- (a) the *defects* that existed at *practical completion* or were identified during the *defects liability period*;
 - (b) the date that each *defect* was fully rectified; and
 - (c) the *Subcontractor's* plan for rectifying *defects* prior to the end of the *defects liability period* that have not been rectified at the time of the report;

<i>design documents</i>	means the drawings, specifications and other information, samples, models, patterns and the like required by the <i>Subcontract</i> and created (and including, where the context so requires, those to be created by the <i>Subcontractor</i>) for the construction of the <i>Subcontract Works</i> ;
<i>Design Finalisation Period</i>	has the meaning given in the <i>main contract</i> , or as directed by the <i>Main Contractor</i> or <i>Subcontract Superintendent</i> ;
<i>direction</i>	includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement but must be written;
<i>dispute</i>	has the meaning in clause 42;
<i>Domestic Building Act</i>	means the <i>Domestic Building Contracts Act 1995</i> (Vic);
<i>EOT (from 'extension of time')</i>	has the meaning in subclause 34.4;
<i>excepted risk</i>	has the meaning in subclause 14.3;
<i>fax point</i>	means the central facsimile address for each progress claim and the <i>final payment claim</i> stated in <i>Item 21</i> ;
<i>final certificate</i>	has the meaning in subclause 37.4;
<i>final payment</i>	has the meaning in clause 37;
<i>final payment claim</i>	means the final payment claim referred to in subclause 37.4;
<i>Good Industry Practice</i>	Means: <ul style="list-style-type: none"> (a) acting honestly and to the best of the <i>Subcontractor's</i> ability; (b) acting in accordance with all <i>legislative requirements</i> and directions by <i>authorities</i>; (c) acting with the degree of skill, care and diligence to be expected of a qualified, thorough, skilful and professional contractor highly experienced in performing works the same, or similar to (and no less complex than) the <i>Works</i> and (without limiting the foregoing) complying with relevant international and Australian standards; (d) acting in a manner which allows for the <i>Subcontract Works</i> to be undertaken in accordance with the <i>program</i>; and (e) using suitably qualified and experienced personnel and sufficient resources to comply with the <i>Subcontract</i>;
<i>GST</i>	means any form of goods and services tax payable under the <i>GST Act</i> ;
<i>GST Act</i>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
<i>intellectual property right</i>	means any patent, registered design, trademark or name, copyright or other protected right;
<i>Included Matter</i>	means any work or activity necessary or incidental to the performance of the <i>Subcontract Works</i> , or to comply with the <i>Subcontract</i> , to correct a <i>defect</i> or address a <i>Buildability Issue</i> ;

<i>Item</i>	means an <i>Item</i> in Annexure Part A;
<i>Land Owner</i>	means the owners of the <i>site</i> as specified in <i>Item 13A</i> of Annexure Part A;
<i>latent condition</i>	has the meaning in subclause 25.1;
<i>legislative requirement</i>	includes: <ul style="list-style-type: none"> (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where <i>WUS</i> or the particular part thereof is being carried out; (b) certificates, licences, consents, permits, <i>approvals</i> and requirements of persons (including an adjoining owner or municipal or private building surveyor under the <i>Building Act</i>) having jurisdiction in connection with the carrying out of <i>WUS</i>; and (c) fees and charges payable in connection with the foregoing;
<i>main contract</i>	means the agreement between the <i>Principal</i> and the <i>Main Contractor</i> ;
<i>main contract dispute</i>	means a <i>claim</i> or <i>dispute</i> the subject of clauses 41 and 42 of the <i>main contract</i>
<i>main contract works</i>	means the whole of the <i>work</i> to be carried out and completed in accordance with the <i>main contract</i> , including <i>variations</i> provided for by the <i>main contract</i> , which by the <i>main contract</i> is to be handed over to the <i>Principal</i> ;
<i>Main Contractor</i>	means the party stated in <i>Item 1</i> ;
<i>Main Contractor's project requirements</i>	means the documents and information set out in Annexure Part E; and <ul style="list-style-type: none"> (a) shall include the stated purpose for which the <i>Works</i> are intended; (b) may include the <i>Principal's</i> or <i>Main Contractor's</i> design, timing and cost objectives for the <i>Subcontract Works</i> ; and (c) where stated in Annexure Part A, shall include a <i>preliminary design</i>; (d) includes the <i>Australian Unity in Occupation Requirements</i>;;
<i>notice of proposed acceleration</i>	has the meaning in clause 32A;
<i>notice of proposed variation</i>	has the meaning in subclause 36.2;
<i>PPSA</i>	means <i>Personal Property Securities Act 2009</i> (Cth);
<i>PPSA register</i>	means the register established under the <i>PPSA</i> ;
<i>payment schedule</i>	has the meaning in subclause 37.2;
<i>practical completion</i>	is that stage in the carrying out and completion of <i>WUS</i> when: <ul style="list-style-type: none"> (a) <i>the Subcontract Works</i> are complete, fit for their intended purpose and comply with all requirements of the <i>Subcontract</i> and <i>legislative requirements</i> except for minor <i>defects</i> (as determined by the <i>Subcontract Superintendent</i>) which, in the opinion of the <i>Subcontract Superintendent</i>: <ul style="list-style-type: none"> (i) do not prevent <i>the Subcontract Works</i> from being lawfully used in a full and uninterrupted manner for their intended purpose (which for the avoidance of doubt may include the intended occupation by residents

- under contractual arrangements with the *Principal*);
- (ii) do not require immediate rectification; and
 - (iii) the immediate making good of which is not immediately practicable;
 - (iv) the existence of or the making good of by the *Subcontractor* will not materially inconvenience the *Main Contractor* or the *Principal* or prejudice the convenient use of the *Subcontract Works*;
- (b) those *tests* which are required by the *Subcontract* to be carried out and passed before the *Subcontract Works* reach *practical completion* have been carried out and passed;
 - (c) documents and other information required under the *Subcontract* which, in the *Subcontract Superintendent's* opinion, are essential for the acceptance, use, occupation, operation and maintenance of the *Subcontract Works* have been supplied and (where required by this *Subcontract* or directed by the *Principal* or *Main Contractor*) assigned to the *Principal* by the *Subcontractor*;
 - (d) all permits, *approvals*, certificates and other authorisations required under relevant *legislative requirements* to be issued by any *authority* before the *Subcontract Works* can be used for its intended purpose (whether stated or inferred) have been supplied to the *Subcontract Superintendent*;
 - (e) an occupancy permit for the *Subcontract Works* has been issued (if necessary);
 - (f) all of the *Subcontractor's* material and equipment, including but not limited to cranes, scaffolding, signage, hoardings, builder's sheds and building debris have been removed from the *site* and the *Subcontract Works* have been professionally cleaned not more than 10 *business days* prior to *practical completion* (including cleaning of all surfaces and cleaning and polishing of glass, tile, natural or chromed metal finishes and the insides of all joinery);
 - (g) all "as-built/as-installed" drawings and other documents required under the *Subcontract* have been provided to the *Main Contractor*;
 - (h) there is no physical or legal impediment (for which the *Subcontractor* is responsible) to the *Main Contractor* and/or the *Principal's* use and occupation of the *Subcontract Works* at the *site* and the requirements of *authorities* have been satisfied;
 - (i) the *Subcontractor* has provided a report evidencing that the *Subcontract Works* have satisfied the *Aged Care Certification Requirements*; and
 - (j) the *Subcontractor* has completed all induction and training of the *Main Contractor's* and/or the *Principal's* personnel and nominees concerning the use of the *Subcontract Works* in accordance with the *Main Contractor's* project requirements;

preliminary design means the documents stated *Item 15*;

Principal means the *Principal* to the *main contract* stated in *Item 7*;

practical completion means the progress claim issued by the *Subcontractor* to the *Subcontract Superintendent* under subclause 37.1 following *practical completion*;
progress claim

<i>Project</i>	means the project described at Annexure Part A;
<i>provisional sum</i>	has the meaning in clause 3 and includes monetary sum, contingency sum and prime cost item;
<i>public and product liability policy</i>	has the meaning in clause 17;
<i>qualifying cause of delay</i>	means: <ul style="list-style-type: none"> (a) delay or disruption caused by any act or omission of the <i>Subcontract Superintendent</i>, the <i>Main Contractor</i> or its consultants, agents or other contractors (not being employed by the <i>Subcontractor</i>) not being an act or omission authorised by this <i>Subcontract</i>; (b) delay or disruption caused by any act or omission of the <i>Superintendent</i>, the <i>Principal</i> or its consultants, agents or other contractors (not being employed by the <i>Subcontractor</i>) not being an act or omission contemplated by this <i>Subcontract</i> or the <i>main contract</i>; or (c) stated in Item 34, <p>in connection with this <i>Subcontract</i> which causes a delay to the critical path of the <i>construction program</i>;</p>
<i>schedule of rates</i>	means any schedule included in the <i>Subcontract</i> which, in respect of any section or item of <i>work</i> to be carried out, shows the rate or respective rates of payment for the execution of that <i>work</i> and which may also include lump sums, <i>provisional sums</i> , other sums, quantities and prices;
<i>secondary subcontract</i>	means a subcontract between the <i>Subcontractor</i> and a <i>secondary subcontractor</i> ;
<i>secondary subcontractor</i>	means a subcontractor or supplier to the <i>Subcontractor</i> and includes a <i>Subcontractor's consultant</i> ;
<i>security</i>	means: <ul style="list-style-type: none"> (a) cash; (b) retention moneys; (c) bonds or inscribed stock or their equivalent issued by a national, state or territory government; (d) interest bearing deposit in a bank carrying on business at the place stated in <i>Item 13(c)</i>; (e) an approved unconditional undertaking or an approved performance undertaking given by an approved financial institution or an approved insurance company and in a form approved by the <i>Main Contractor</i> (the form in Annexure Part C is approved); or (f) other form approved by the party having the benefit of the <i>security</i>;
<i>Security of Payment Act</i>	means <i>Building and Construction Industry Security of Payment Act 2002</i> (Vic);
<i>security interest</i>	has the same meaning as under the <i>PPSA</i> ;
<i>selected secondary subcontract work</i>	has the meaning in subclause 9.3;

<i>selected secondary subcontractor</i>	has the meaning in subclause 9.3;
<i>separable portion</i>	means a portion of <i>the Subcontract Works</i> identified as such in the <i>Subcontract</i> or by the <i>Subcontract Superintendent</i> pursuant to clause 4;
<i>site</i>	means the lands and other places to be made available and any other lands and places made available to the <i>Subcontractor</i> by the <i>Main Contractor</i> for the purpose of the <i>Subcontract</i> ;
<i>Subcontract</i>	has the meaning in clause 5 of the Formal Instrument of Agreement;
<i>Subcontract Materials</i>	means all material: <ul style="list-style-type: none">(g) provided by the <i>Subcontractor</i> to the <i>Main Contractor</i>; or(h) brought, or required to be brought, into existence by the <i>Subcontractor</i>, as part of, or for the purpose of, carrying out the work under the <i>Subcontract</i>.
<i>subcontract sum</i>	has the meaning in clause 4 of the Formal Instrument of Agreement;
<i>Subcontract Superintendent</i>	means the person stated in <i>Item 5</i> as the Subcontract Superintendent or other person from time to time appointed in writing by the <i>Main Contractor</i> to be the Subcontract Superintendent and notified as such in writing to the <i>Subcontractor</i> by the <i>Main Contractor</i> and, so far as concerns the functions exercisable by a <i>Subcontract Superintendent's Representative</i> , includes a <i>Subcontract Superintendent's Representative</i> ;
<i>Subcontract Superintendent's Representative</i>	means an individual appointed in writing by the <i>Subcontract Superintendent</i> under clause 21;
<i>Subcontractor</i>	means the party stated in <i>Item 3</i> ;
<i>Subcontractor's consultant</i>	means any person engaged by the <i>Subcontractor</i> to perform consultancy services in connection with <i>WUS</i> and includes any <i>Main Contractor's</i> consultant whose prior contract is novated to the <i>Subcontractor</i> under subclause 9.4;
<i>Subcontractor's design obligations</i>	means all tasks necessary to design and specify <i>the Subcontract Works</i> required by the <i>Subcontract</i> , including preparation of the <i>design documents</i> and, if the documents stated in <i>Item 15</i> as describing the <i>Main Contractor's project requirements</i> include a <i>preliminary design</i> , developing the <i>preliminary design</i> ;
<i>Superintendent</i>	means the person stated in <i>Item 9</i> as the Superintendent or other person from time to time appointed in writing by the <i>Principal</i> to be the Superintendent under the <i>main contract</i> and notified as such in writing to the <i>Subcontractor</i> by the <i>Main Contractor</i> and, so far as concerns the functions exercisable under the <i>main contract</i> by a Superintendent's Representative, includes a Superintendent's Representative;
<i>survey mark</i>	in clause 26 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 <i>WUS</i> ;
<i>temporary works</i>	means <i>work</i> used in carrying out and completing <i>WUS</i> , but not forming part of the <i>Subcontract Works</i> ;
<i>test</i>	has the meaning in subclause 30.1 and includes examine and measure;
<i>the Subcontract Works</i>	means the whole of the <i>work</i> to be carried out and completed in accordance with the

Subcontract generally set out in the *Main Contractor's project requirements*, including *variations* provided for by the *Subcontract* (and *Included Matters*), which by the *Subcontract* is to be handed over to the *Main Contractor*;

variation has the meaning in clause 36;

work includes the provision of materials; and

WUS (from 'work under the Subcontract') means the *work* which the *Subcontractor* is or may be required to carry out and complete under the *Subcontract* and includes *variations*, remedial work, construction plant and temporary works,

and like words have a corresponding meaning.

1.2 Interpretation

In the *Subcontract*:

- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) time for doing any act or thing under the *Subcontract* shall, if it ends on day which is not a *business day*, be deemed to end on the next *business day*;
- (c) clause headings, subclause headings and the table of contents in these Subcontract Conditions shall not form part of, these Conditions and shall not be used in the interpretation of, the *Subcontract*;
- (d) 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;
- (e) communications between the *Main Contractor*, the *Subcontract Superintendent* and the *Subcontractor* shall be in the English language;
- (f) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in *Item 12*;
- (g) unless otherwise provided, all references to monetary amounts in the *Subcontract* (including prices, amounts to be invoiced, payments due and price adjustments) are in the currency in *Item 13(a)* and payments shall be made in that currency at the place in *Item 13(b)*;
- (h) the law governing the *Subcontract*, its interpretation and construction, is the law of the jurisdiction in *Item 13(a)*;
- (i) if pursuant to Annexure Part B to these Subcontract Conditions, clauses or their parts in these Conditions are deleted, the *Subcontract* shall be read and construed as though the clause or its part has been deleted, whether or not that particular clause or its part has been struck from these Conditions;
- (j) each indemnity given by the *Subcontractor* under the *Subcontract* is a continuing obligation separate and independent from the obligations of the *Subcontractor* and survives termination of the *Subcontract*;
- (k) it is not necessary for the *Main Contractor* to incur expense or to make any payment before enforcing a right of indemnity and the *Subcontract Superintendent* may include an indemnified amount in any certification under subclause 37.2 as an amount due and owing from the *Subcontractor* to the *Main Contractor*;

- (l) a reference to legislation or a legal provision includes:
 - (i) any modification or substitution of that legislation or legislative provision; and
 - (ii) any subordinate legislation issued under that legislation or legislative provision including under that legislation or legislative provision as modified or substituted;
- (m) a reference to clause, subclause paragraph, annexure or a schedule is a reference to clause, subclause, paragraph of, or annexure or schedule to, the *Subcontract*;
- (n) a reference to a person includes that person's successors and permitted assignees and novatees;
- (o) an obligation or warranty on the part of two or more persons binds them jointly and severally and an obligation or warranty in favour of two or more persons benefits them jointly and severally;
- (p) the words "including" and "includes" are not words of limitation and will be read as if followed by the words "without limitation";
- (q) a word that is derived from a defined word has a corresponding meaning;
- (r) a reference to "shall" designates a mandatory obligation to do the thing referred to;
- (s) a reference to a thing includes each part of that thing;
- (t) when the *Main Contractor* or *Principal* 'may' exercise a right or remedy, the *Main Contractor* and/or *Principal* has an absolute discretion whether or not to do so, and is not required to exercise the discretion in good faith or having regard to, or for the benefit of, the *Subcontractor*;
- (u) neither the *Subcontract* nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (v) this *Subcontract* constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite:
 - (i) any prior agreement in conflict or at variance with the *Subcontract*; or
 - (ii) any correspondence or other documents (including the *Subcontractor's* standard commercial terms) relating to the subject matter of the *Subcontract* which may have passed between the parties prior to the award date and which are not included in the *Subcontract*;
- (w) Any provision in this *Subcontract* which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and such illegality, voidness or unenforceability will not invalidate any other provision of the *Subcontract*;
- (x) All representations, warranties and indemnities are separate and continuing obligations and survive termination or discharge of this *Subcontract*, and an indemnity in favour of the *Principal* or the *Main Contractor* extends to and is for the benefit of its officers and employees.
- (y) All obligations to indemnify under this *Subcontract* are independent and survive termination or expiry of the *Subcontract*, but it is not necessary for the *Main Contractor* or *Principal* to incur any liability or expense or to make any payment before enforcing a right of indemnity, provided that the liability has been incurred and the expense or payment is payable by the *Main Contractor* and/or *Principal*;

- (z) The rights and remedies conferred on the *Main Contractor* and the *Principal* under the *Subcontract* are in addition to and not in substitution of its rights and remedies elsewhere under the *Subcontract* or otherwise at law; and
- (aa) To the maximum extent permitted by law, the *Subcontractor* must not assert or lodge any lien, caveat or other proprietary right over the *site*.

2 Nature of Subcontract

2.1 Performance and payment

The *Subcontractor* shall carry out and complete *WUS* in accordance with the *Subcontract* and *directions* authorised by the *Subcontract*.

The *subcontract sum* is not subject to adjustment for rise and fall, including in respect of any *site* allowance, or by reason of fluctuations in exchange rates or changes in the cost of labour and materials or industrial conditions, or for any other adjustment for any reason.

The *Main Contractor* shall pay the *Subcontractor* in accordance with the *Subcontract*.

Minor items not expressly provided in the *Subcontract*, but which are necessary or incidental to the performance of the *Subcontractor's* obligations under the *Subcontract*, shall be supplied and executed by the *Subcontractor* without adjustment to the *subcontract sum*.

2.2 Main Contract

The *Subcontractor*:

- (a) acknowledges that the *Main Contractor* has entered into the *main contract* with the *Principal* under which the *Main Contractor* has agreed to deliver the *main contract works*;
- (b) warrants that it has informed itself as to all documents, obligations, liabilities and terms contained in the *main contract*;
- (c) acknowledges that the *main contract* was, and is, available for inspection and review at the head office of the *Main Contractor*;
- (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*;
- (e) acknowledges and agrees that:
 - (i) it obtains no rights or benefits under the *main contract*;
 - (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*; and
 - (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 2.2(f) 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*;
- (f) shall co-operate and co-ordinate performance of the *Subcontract Works* with the *Main Contractor* and others carrying out *work* on or about the *site* so as to enable the *Main Contractor* to complete its *work* under the *main contract* in accordance with the requirements of the *main contract*;
- (g) in connection with the *Subcontract Works*:

- (i) assumes to the *Main Contractor* the same obligations as the *Main Contractor* has assumed to the *Principal* under the *main contract*;
 - (ii) shall perform and discharge each of the *Main Contractor's* obligations under or associated with the *main contract* as part of the *Subcontract*; and
 - (iii) shall, and shall ensure that its employees, *secondary subcontractors* or agents, comply with each of the rules and policies of the *Principal* (including relating to health, safety and environment) as notified by the *Main Contractor* from time to time by notice to the *Subcontractor* in writing;
- (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*; and
- (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*.

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.

Without limitation to the preceding paragraph of this subclause 2.2, the *Subcontractor* shall:

- (j) provide notice to the *Main Contractor* of any *claims* for variations, EOTs and adjustments of the *subcontract sum* within sufficient time and in sufficient detail to allow the *Main Contractor* to comply with any corresponding provision of the *main contract*; and
- (k) assume the same responsibility as the *Main Contractor* has assumed to the *Principal* in respect of the carrying out, completion, standard and quality of *the Subcontract Works*.

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*.

2.3 Subcontractor's warranties

Without limiting the generality of subclause 2.1, the *Subcontractor* warrants to the *Main Contractor* that the *Subcontractor*:

- (a) has the appropriate capacity, skills, qualifications and experience for the execution and completion of *work* under this *Subcontract* to the standard required by the *Subcontract*;
- (b) at all times will be suitably qualified and experienced, and will exercise due skill, care and diligence in the execution and completion of *WUS*;
- (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*;
- (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;
- (e) shall carry out and complete the *Subcontractor's design obligations* to accord with the *Main Contractor's project requirements* and, if subclause 9.4 applies, accept the novation and retain the *Main Contractor's* consultants for any *work* the subject of a prior contract with the *Main Contractor*;
- (f) shall produce *design documents* which are consistent with the *Main Contractor's project requirements* and all legislative requirements;

- (g) has taken into account the time and cost of finalising the *design documents* (including the coordinating any consultants novated to the *Subcontractor* pursuant to clause 9.4), and made full allowance for such in the *date for practical completion* and the *subcontract sum*;
- (h) will not substitute any material or equipment specified in the *Main Contractor's project requirements*, unless such substitution is specifically approved in writing by the *Subcontract Superintendent*; and
- (i) must carry out and complete *WUS* in accordance with the *design documents* so that *the Subcontract Works*, when completed, shall:
 - (i) be fit for their intended purpose;
 - (ii) be free from *defects* (including in design);
 - (iii) comply with all the requirements of the *Subcontract* (including the *Main Contractor's project requirements*) and all *legislative requirements*;
 - (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 50;
 - (v) contain materials and finishes according to the samples and prototypes approved by the *Superintendent* pursuant to clauses 48 and 49 respectively;
 - (vi) has taken into account all of the risks for which the *Subcontractor* is responsible under this *Subcontract* in relation to the *WUS* and made full allowances for those risks in the *subcontract sum*;
 - (vii) in undertaking the *WUS*, the *Subcontractor* will ensure that it does not cause nuisance or unnecessary or unreasonable, annoyance or disturbance (including dust, vibrations or noise) to any adjoining property; and
 - (viii) comply with all relevant Australian Standards to the extent that they are not inconsistent with the requirements of the *Subcontract* and the *legislative requirements*.
- (j) subject to clause 9, the *Subcontractor's consultants* identified in the *Subcontractor's* tender are suitably qualified and experienced;
- (k) the *Subcontractor* has inspected the *site* and its surroundings and:
 - (i) made all necessary enquiries of all *authorities* as to their requirements for the *site*, the surrounding area and *the Subcontract Works* and taken this into account when determining the *subcontract sum*; and
 - (ii) agrees that the *site* is suitable for the construction of *the Subcontract Works*.

The *Subcontractor* warrants to the *Main Contractor* that any information provided by the *Contractor* to the *Main Contractor* or the *Subcontract Superintendent* pursuant to the *Subcontract* is complete in respect of the subject matter to which the information relates and is accurate and not misleading.

Without limiting the warranties given under this clause 2.3, the *Subcontractor* must, exercising *Good Industry Practice*, consult and coordinate with the relevant building surveyor in connection with the *Works*.

If *the Subcontract Works* include domestic building work as regulated by the *Domestic Building Act*, the *Subcontractor* shall comply with the warranties contained in Special Condition 1 of Annexure Part D.

2.4 Warranties unaffected

The warranties remain unaffected notwithstanding:

- (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*;
- (b) that the *Subcontractor* has entered into a novation of any prior contract between the *Main Contractor* and a *Main Contractor's* consultant under subclause 9.4 and thereafter has retained that consultant in connection with *WUS*;
- (c) any amendment, receipt or review of, or comment or *direction* on, the *design documents* by the *Subcontract Superintendent*; or
- (d) any *variation*.

2.4A Notice of Conflict of Warranties

- (a) If the *Subcontractor* considers that any *direction* of the *Subcontract Superintendent*, the *Main Contractor*, the *Superintendent* or *Principal* or *variation* would affect the *Subcontractor's* ability to provide any of the warranties under the *Subcontract* then the *Subcontractor* must, before complying with the *direction* or *variation*, provide written notice to the *Subcontract Superintendent* of:
 - (i) the *Subcontractor's* opinion;
 - (ii) express details of which warranties (including clause references) and the extent to which the warranties would be affected and how; and
 - (iii) any alternatives the *Subcontractor* proposes for proceeding with the *direction* or *variation* without those warranties being affected.
- (b) If despite receiving the *Subcontractor's* notice under clause 2.4A(a) the *Superintendent* confirms in writing the deletion or *variation* without an amendment which would remove the effect on the warranties as notified by the *Subcontractor*, then the *Subcontractor* will be relieved of its obligation to provide the warranty:
 - (i) to the extent specified in the *Subcontractor's* notice under clause 2.2A(a); or
 - (ii) where the *Main Contractor* or *Principal* disputes the *Subcontractor's* opinion in its notice under clause 2.2A(a):
- (c) to the extent subsequently agreed in writing by the parties; or
- (d) determined under any dispute resolution process.

2.5 Bill of quantities

The Alternative in *Item 16(a)* applies.

Alternative 1

A *bill of quantities* forms part of the *Subcontract* and shall be priced in accordance with subclause 2.6.

Alternative 2

A *bill of quantities* does not form part of the *Subcontract* and shall not be priced in accordance with subclause 2.6 unless so stated in *Item 16(a)*.

2.6 Priced bill of quantities

Where a *bill of quantities* is to be priced:

- (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 carrying out the whole of the *work* to which the *bill of quantities* relates;
- (b) the *Subcontractor* shall lodge the *bill of quantities* so priced and extended with the *Subcontract Superintendent* before the expiration of the time for lodgement stated in *Item 16(c)* or such further time as may be directed by the *Subcontract Superintendent* from time to time; and
- (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.

If the aggregate amount in a priced *bill of quantities* does not equal the sum accepted for the *work*, the subject of the *bill of quantities*, the *Subcontract Superintendent* shall (unless the parties agree within 7 days after notification) determine an appropriate correction of errors and inconsistencies in rates and prices therein, so that the aggregate amount equals such sum.

2.7 Quantities

Quantities in a *bill of quantities* or *schedule of rates* are estimated quantities only. The *Subcontractor* warrants that:

- (a) it placed no reliance on the accuracy or adequacy of the quantities or items of work in the *bill of quantities* or *schedule of rates*; and
- (b) it entered into the *Subcontract* based on its own investigations, interpretations and information,

and is aware that the *Main Contractor* entered the *Subcontract* relying on these warranties.

The *Subcontract Superintendent* is not required to give a *direction* by reason of the actual quantity of an item required to perform the *Subcontract* being greater or less than the quantity shown in a *bill of quantities* which forms part of the *Subcontract* or *schedule of rates*.

2.8 Not used

2.9 No warranty by Main Contractor

Without limiting subclause 2.10:

- (a) no information, data, representation, statement or document (including in any document forming part of the *Subcontract*) made available to the *Subcontractor* prior to, during or after the *date of acceptance of tender*, shall constitute a warranty, guarantee or representation of any kind by the *Subcontract Superintendent*, the *Main Contractor* or anyone on behalf of the *Main Contractor* as to the accuracy or adequacy of such information, data, representation, statement or document; and
- (b) to the extent permitted by law, the *Subcontractor* shall not be entitled to an *EOT* or to make any *claim* against the *Main Contractor* in connection with any such information, data, representation, statement or document.

2.10 Non-Reliance

The *Subcontractor* warrants that:

- (a) it did not in any way rely upon:
 - (i) any information, data, representation, statement or document made or provided to the *Subcontractor* by the *Main Contractor* or anyone on behalf of the *Main Contractor*; or
 - (ii) the accuracy or adequacy of any such information, data, representations, statement or document,

prior to or at the time of entering into the *Subcontract*, except to the extent that any such information, data, representation, statement or document (including quantities in a *schedule of rates*) forms part of the *Subcontract*;

- (b) it enters into the *Subcontract* based on its own investigations, interpretations, deductions, information and determinations; and
- (c) it has and, for the purposes of properly and adequately carrying out *the Subcontract Works* prior to entering into the *Subcontract*, investigated and satisfied itself in all respects as to the *site* and its surroundings (including without limitation all *site* conditions (aboveground or underground), access, facilities and services).

The *Subcontractor* acknowledges that it is aware that the *Main Contractor* has entered into the *Subcontract* relying upon the warranties in subclauses 2.10(a), 2.10(b) and 2.10(c).

2.11 Subcontractor's design

- (a) The *Subcontractor* shall give each of the *Subcontract Superintendent* and the *Main Contractor* one hard copy and one electronic copy of the *design documents*, at the time required by the *construction program*, or if no time is stated in the *construction program*, within a reasonable time.
- (b) If, within 7 days of receipt of the *design documents* in accordance with subclause 2.11(a), either the *Subcontract Superintendent* or the *Main Contractor* gives the *Subcontractor* a notice stating that the *design documents* are not acceptable the *Subcontractor* shall:
 - (i) amend the *design documents* to comply with the requirements of the *Subcontract* and any comments by the *Subcontract Superintendent* and the *Main Contractor*; and
 - (ii) promptly submit the amended *design documents* to the *Subcontract Superintendent* and the *Main Contractor*, in which case the process outlined in subclauses 2.11(a) and 2.11(b) applies to the amended *design documents*.
- (c) The *Subcontractor* shall maintain a register of all *design documents* and, upon request, shall provide the *Subcontract Superintendent* and the *Main Contractor* with a copy of the register.
- (d) The *Subcontractor* shall not commence a part of *WUS* until:
 - (i) the *design documents* relevant to that part of *WUS* have been provided to the *Subcontract Superintendent* and the *Main Contractor* in accordance with subclauses 2.11(a) and 2.11(b); and
 - (ii) the *design documents* have been reviewed and are acceptable to the *Main Contractor* and *Subcontract Superintendent* or the time period by which the *Subcontract Superintendent* and the *Main Contractor* are to review and comment on the *design documents* has expired.
- (e) The *Subcontractor* shall not amend the *design documents* unless the proposed amendments have been reviewed by the *Subcontract Superintendent* and the *Main Contractor* in accordance with subclause 2.11(b).

2.12 Obligations unaffected

The obligations of the *Subcontractor* under the *Subcontract* remain unaffected notwithstanding:

- (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*;
- (b) the involvement of *secondary subcontractors* in the carrying out of *WUS*; and
- (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*.

2.13 Subcontractor's acknowledgement

- (a) The *Main Contractor* is relying on the skill, care and diligence of the *Subcontractor* in the carrying out and completion of *WUS*.
- (b) Any provision for the *Main Contractor* or the *Subcontract Superintendent* to review or to give consent, approval or *direction* in respect of the *design documents* is only to give the *Main Contractor* or the *Subcontract Superintendent* an opportunity to monitor the design and specification for the *Works* for the purposes of this subclause 2.13. The *Subcontractor* remains fully responsible for designing the relevant part of the *Subcontract Works* in accordance with the *Subcontract*.

3 Provisional sums

A *provisional sum* included in the *Subcontract* shall not itself be payable by the *Main Contractor* but where pursuant to a *direction* the work or item to which the *provisional sum* relates is carried out or supplied by the *Subcontractor*, the work or item shall be priced by the *Subcontract Superintendent*, and the difference shall be added to or deducted from the *subcontract sum*.

Where any part of such work or item is carried out or supplied by a *secondary subcontractor*, such work shall be priced by the *Subcontract Superintendent* who shall allow such amount assessed to be payable by the *Subcontractor* to the *secondary subcontractor* for the work or item, disregarding:

- (a) any damages payable by the *Subcontractor* to the *secondary subcontractor* or vice versa; and
- (b) any deduction of cash discount for prompt payment.

Subject to where otherwise stated in this *Subcontract*, the *Subcontractor* agrees that the amount of any *provisional sum* does not include any amount for preliminaries, overheads and profit associated with that *provisional sum* as such amounts are deemed to have been included in the *subcontract sum*.

All consumables, construction facilities, *construction plant*, *temporary works*, professional and technical services, royalties, taxes (excluding *GST*), transport costs, equipment costs, supervision, labour and material costs and other services, charges and other costs necessary to perform the *provisional sum work* is deemed to be included in the *subcontract sum* and will not form part of any adjustment under this clause or clauses 34 and 36.

4 Separable portions

Separable portions may be directed by the *Subcontract Superintendent*, who shall clearly identify for each, the:

- (a) portion of the *Subcontract Works*;
- (b) *date for practical completion*; and
- (c) respective amounts for *security*, bonus, liquidated damages and delay damages (all calculated pro rata according to the ratio of the *Subcontract Superintendent's* valuation of the *separable portion* to the *subcontract sum*).

5 Security

5.1 Provision

Security shall be provided in accordance with *Item 19* or *Item 20* and shall be in a form, and on terms and conditions approved by the *Main Contractor* in its absolute discretion.

If the amount payable to the *Subcontractor* exceeds the *subcontract sum* due to adjustments in accordance with this *Subcontract*, the *Main Contractor* may require the *Subcontractor* to provide additional *security*.

The *Main Contractor* is not required to pay any amount to the *Subcontractor* until such additional *security* is provided.

5.2 Recourse

The *Main Contractor* may have recourse to *security*:

- (a) where an amount due to the *Main Contractor* under the *Subcontract* or otherwise remains unpaid after the time for payment; or
- (b) in respect of any *claim* for payment (liquidated or otherwise) the *Main Contractor* may have against the *Subcontractor* under the *Subcontract* or otherwise,

on the giving of written notice to the *Subcontractor*.

The provisions of this subclause 5.2 survive the termination or expiration of the *Subcontract*.

5.3 Change of security

At any time a party providing retention moneys or cash *security* may substitute another form of *security*. To the extent that another form of *security* is provided, the other party shall not deduct, and shall promptly release and return, retention moneys and cash *security*.

5.4 Reduction and release

- (a) Subject to clause 40A and 34.6, the *Main Contractor's* right to then have recourse to the *security*, upon the later of:
 - (i) the issue of the *certificate of practical completion* of the last *separable portion* to achieve *practical completion* and compliance by *Subcontractor* with clause 34.6A;
 - (ii) the due date for payment of the progress claim immediately following *practical completion*;
 - (iii) the issue by the *Subcontractor* to the *Main Contractor* of a *deed of release – practical completion*; and
 - (iv) the *Main Contractor* has received its performance security from the *Principal*.

the *Main Contractor's* entitlement to *security* (other than in *Item 19(e)*) shall be reduced to the percentage or amount in *Item 19(f)* and any *security* in excess of the entitlement must be released and returned within 15 *business days* to the *Subcontractor*.

- (b) The *Main Contractor's* entitlement to *security* in *Item 19(e)* shall cease 15 *business days* after incorporation into the *Subcontract Works* of the plant and materials for which that *security* was provided.
- (c) Subject to the *Main Contractor's* right to then have recourse to the *security*, upon the later of:
 - (i) the issue of the *final certificate*;
 - (ii) issue by the *Superintendent* of a notice of completion under clause 50;
 - (iii) the issue by the *Subcontractor* to the *Main Contractor* of a *deed of release – final*;
 - (iv) the *Main Contractor* has received its maintenance security from the *Principal*,

the *Main Contractor's* entitlement to *security* ceases and *security* must be released and returned within 10 *business days* to the *Subcontractor*.

- (d) Upon a party's entitlement to *security* ceasing, that party shall release and return forthwith the *security* to the other party.

5.5 Trusts and interest

Except where held by a government department or agency or a municipal, public or statutory authority, any portion of *security* (and interest earned thereon) which is cash or retention moneys, shall be held in trust for the party providing them until the *Main Contractor* or the *Subcontractor* is entitled to receive them.

Interest earned on *security* not required to be held in trust shall belong to the party holding that *security*.

5.6 Deed of guarantee, undertaking and substitution

Where the *Subcontractor* is a related or subsidiary corporation (as defined in the applicable corporations law of the jurisdiction), the *Subcontractor* shall submit as part of its first *progress claim*, or when directed by the *Subcontract Superintendent*, a *deed of guarantee, undertaking and substitution*.

5.7 Principal's Right to Security

The parties expressly acknowledge and agree that, to the extent that the *Subcontract* allows the *Main Contractor* to hold *security* which is greater than an amount equal to 2.5% of the *subcontract sum* after *practical completion*, the *Main Contractor* does not hold the additional *security* for the rectification of *defects*, but rather holds the additional *security* to secure the recovery of any costs, expenses, damages or liabilities which may become payable to the *Main Contractor* under the *subcontract* as a result of the *Subcontractor's* performance of the *WUS* or any breach of contract by the *Subcontractor*.

The *Subcontractor* further acknowledges that the *Main Contractor* may continue to hold *security* where the *Subcontract* may otherwise require it to be released or after termination of the *Subcontract* for any reason, to the extent of any bona fide claim by the *Main Contractor* under or in connection with the *Subcontract*.

Where the *Subcontract* is terminated by reason of the *Subcontractor* repudiating the *Subcontract*, having an event referred to in subclause 39.11 occur in respect of it or otherwise, the *Main Contractor* may immediately have recourse to and apply *security* in respect of any *claim* to money which the *Main Contractor* may have against the *Subcontractor* whether for damages (including liquidated damages) or otherwise.

5.8 No limitation

Nothing in this clause 5 prohibits the *Main Contractor* from recovering any amount owed by the *Subcontractor* to the *Main Contractor* in any circumstances in another way apart from having recourse to *security*.

5.9 Replacement of Security

If the *security* provided by the *Subcontractor* pursuant to this clause 5 ceases to comply with the requirements of this clause 5 prior to issue of the *final certificate*, the *Subcontractor* must promptly replace such *security* on the same terms as the original *security* was held.

6 PPSA

6.1 The Main Contractors Personal Property

For the purposes of this clause 6:

- (a) the ***Main Contractors Personal Property*** means all personal property the subject of a *security interest* granted in favour of the *Main Contractor* under this *Subcontract*; and
- (b) words and phrases used in this clause 6 that have defined meanings in the *PPSA* have the same meaning as in the *PPSA* unless the context otherwise indicates.

6.2 Further assurance

If the *Main Contractor* determines that this *Subcontract* (or a transaction in connection with it) is or contains a *security interest*, the *Subcontractor* agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the *Main Contractor* asks and considers necessary for the purposes of:

- (a) ensuring that the *security interest* is enforceable, perfected and otherwise effective; and/or
- (b) enabling the *Main Contractor* to apply for any registration, complete any financing statement or give any notification, in connection with the *security interest*; and/or
- (c) enabling the *Main Contractor* to exercise rights in connection with the *security interest*.

6.3 Registration

The *Main Contractor* need not give any notice under the *PPSA* (including notice of a verification statement) unless the notice is required by the *PPSA* to be given.

The *Subcontractor* shall give to the *Main Contractor* notice of registration or verification of registration of any *security interest* it registers on the *PPSA register* in connection with *WUS*.

For the avoidance of doubt, any *security interest* in favour of the *Subcontractor* ceases on the issue of the *certificate of practical completion*.

The *Subcontractor* shall cause to be removed all data from the *PPSA register* it has registered or caused to be registered in connection with *WUS* prior to achieving *practical completion*.

The *Subcontractor* indemnifies the *Main Contractor* against all loss, cost, damage or expense that the *Main Contractor* suffers or incurs in connection with the registration of a *security interest* in connection with *WUS* or the failure to remove the registered data relating to a *security interest* from the *PPSA register*.

6.4 Notices to be given to the Main Contractor

The *Subcontractor* shall notify the *Main Contractor* as soon as the *Subcontractor* becomes aware of any of the following:

- (a) if any personal property which does not form part of the *Main Contractor's Personal Property* becomes an accession to the *Main Contractor's Personal Property* and is subject to a *security interest* in favour of a third party, that has attached at the time it becomes an accession;
- (b) if any of the *Main Contractor's Personal Property* is located or situated outside Australia; or
- (c) upon request by the *Main Contractor*, of the present location of the *Main Contractor's Personal Property*.

6.5 Negative undertakings

The *Subcontractor* shall not:

- (a) create any *security interest* or lien over any of the *Main Contractor's Personal Property* whatsoever;
- (b) sell, lease or dispose of its interest in the *Main Contractor's Personal Property*;
- (c) give possession of the *Main Contractor's Personal Property* to another person except where the *Main Contractor* expressly authorises it to do so;
- (d) permit any of the *Main Contractor's Personal Property* to become an accession to or commingled with any asset that is not part of the *Subcontract Works*;

- (e) change its name without first giving the *Main Contractor* 15 *business days*' notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.

6.6 Costs and expenses relating to the PPSA and registration

Everything the *Subcontractor* is required to do under this clause 6 is at the *Subcontractor's* expense.

6.7 Confidentiality for the purposes of the PPSA

Neither the *Main Contractor* nor the *Subcontractor* will disclose information of the kind mentioned in section 275(1) of the *PPSA* and the *Subcontractor* will not authorise, and will ensure that no other party authorises, the disclosure of such information. This subclause 6.7 does not prevent disclosure where such disclosure is required under section 275 of the *PPSA* because of the operation of section 275(7) of the *PPSA*.

7 Service of notices

7.1 Form of Notices

Any notice or other communication (notice) to be given under this *subcontract* must be:

- (a) in writing;
- (b) signed by:
 - (i) the party giving it; or
 - (ii) that party's solicitor if the solicitor states in the notice or the covering correspondence that it acts for that party; and
- (c) be given or served by delivery to the party's address referred to in subclause 7.2

7.2 Address for services

Subject to subclause 7.4, the address:

- (a) of the *Main Contractor* is specified in *Item 21*;
- (b) of the *Subcontract Superintendent* is specified in *Item 21*;
- (c) of the *Subcontractor* is specified in *Item 21*; and
- (d) of a party's solicitor is as noted on that solicitor's correspondence,

or such other address as either party may from time to time notify to the other and stated to be for the purpose of the service of notices under the *Subcontract*, referencing this subclause 7.2.

7.3 Deemed service

Subject to subclause 7.4, a notice which is:

- (a) hand delivered:
 - (i) before 5.00 pm on any *business day* is deemed to be given at the time and on the date of delivery; or
 - (ii) otherwise deemed to be given at 9.00 am on the next *business day*; or
- (b) sent by email transmission (and having regard to the sending party's electronic equipment report as to the time and date of delivery of the email transmission):

- (i) before 5.00 pm on any *business day*, in which case it is deemed to be given at the time and on the date it was delivered; or
- (ii) otherwise deemed to be given at 9.00 am on the next *business day*,
unless an undeliverable response is received by the sender and in that case the email transmission is not considered to have been given; or
- (c) sent by facsimile transmission:
 - (i) before 5.00 pm on any *business day* is deemed to be given at the time and on the date that the sender's facsimile machine records that the facsimile was successfully commenced; or
 - (ii) otherwise deemed to be given at 9.00 am on the next *business day*,
provided that the sender's facsimile machine records that the facsimile was successfully completed in full in that transmission; or
- (d) sent by prepaid ordinary mail within Australia, in which case it is deemed to be given at 9.00 am on the day that is 3 *business days* after the date of posting.

For the purpose of this clause 7, any communications contained in the body of any electronic mail will not be accepted as valid notice.

Where the *Main Contractor* elects, electronic mail will include an electronic document management system such as Aconex. Where an electronic document management system is specified, the *Subcontractor* must comply with the *Main Contractor's* directions and protocols for using that system.

7.4 No email delivery

Notices under the following clauses are only deemed properly served under the *Subcontract* if delivered to the party's physical address:

- (a) a notice under clause 39;
- (b) notices served under or for the purposes of the *Security of Payment Act*;
- (c) any notice or document clause 40.1;
- (d) a notice under clause 40.3;
- (e) a notice under clause 41; and
- (f) a notice of dispute under clause 42,

but such notices must also be copied by email transmission.

7.5 Security of Payment Act notices

The *Subcontractor* must ensure a copy of any written communication it delivers or arranges to be delivered to the *Main Contractor* of whatever nature in relation to the *Security of Payment Act* (including a payment claim under the *Security of Payment Act*) is provided to the *Subcontract Superintendent* at the same time it is delivered to the *Main Contractor*.

A *payment schedule* issued by the *Subcontract Superintendent* under subclause 37.2 is a *payment schedule* for the purposes of the *Security of Payment Act*.

Without limiting any other provision of the *Subcontract*, the *Subcontractor* shall immediately give to the *Main Contractor* and the *Principal* a copy of any notice that the *Subcontractor* receives from another party under sections 16, 17 or 27 of the *Security of Payment Act*.

8 Subcontract documents

8.1 Discrepancies

Figured shall prevail over scaled dimensions in a discrepancy. The several documents forming the *Subcontract* are to be taken as mutually explanatory of one another.

Otherwise, if either party discovers any inconsistency, ambiguity, inconsistency or discrepancy in any document prepared for the purpose of carrying out *WUS*, that party shall give the *Subcontract Superintendent* written notice of it. The *Subcontract Superintendent*, thereupon, and upon otherwise becoming aware, shall direct the *Subcontractor* as to the interpretation and construction to be followed.

If compliance with any *direction* under this subclause 8.1 causes the *Subcontractor* to incur more or less cost than the *Subcontractor*, having complied with clause 2.3(c), could reasonably have anticipated at the time of tendering, the *direction* shall not entitle the *Subcontractor* any extra payment or an extension of time.

8.2 Main Contractor-supplied documents

The *Main Contractor* shall supply to the *Subcontractor* the documents and number of copies thereof, both stated in *Item 22*.

They shall:

- (a) remain the *Main Contractor's* property and be returned to the *Main Contractor* on written demand; and
- (b) not be used, copied nor reproduced for any purpose other than *WUS*.

8.3 Subcontractor-supplied documents

The *Subcontractor* shall supply to the *Subcontract Superintendent* the documents and number of copies at the times or stages stated in *Item 23*

Other documents and information required by the *Subcontract*, unless elsewhere stated in the *Subcontract*, shall be supplied not less than 20 Business Days before the *work* described in the documents is commenced and shall be in a form satisfactory to the *Subcontract Superintendent*.

If the *Subcontractor* submits a document to the *Subcontract Superintendent*, then except where the *Subcontract* otherwise provides:

- (a) the *Subcontract Superintendent* shall not be required to check that document for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Subcontract*;
- (b) notwithstanding subclause 2.1, any *Subcontract Superintendent's* acknowledgment or approval shall not prejudice the *Subcontractor's* obligations; and
- (c) if the *Subcontract* requires the *Subcontractor* to obtain the *Subcontract Superintendent's direction* about the document, the *Subcontract Superintendent* shall give, within the time stated in *Item 24*, the appropriate *direction*, including reasons if the document is not suitable.

A *direction* by the *Subcontract Superintendent* to vary anything in the *design documents* shall be a *variation* to *WUS* only to the extent that the *design documents*, before such *variation*, complied, or would have complied, with the *Main Contractor's project requirements*.

Except as otherwise provided in the *Subcontract*, copies of documents supplied by the *Subcontractor* shall be the *Main Contractor's* property but shall not be used or copied otherwise than for the use, repair, maintenance or alteration of the *Subcontract Works*.

Without limiting any other provision of this *Subcontract*, the parties agree that the *preliminary design* including *Aged Care Certification Requirements* is to be finalised by the *Subcontractor* during the *Design*

Finalisation Period. The *Subcontractor* undertakes to complete such *design documents* in collaboration, and in full cooperation, with the *Main Contractor* and *Principal* so that the *design documents* when completed are acceptable to the *Principal* acting reasonably.

The *Subcontractor* must not commence construction of the part of the *WUS* to which any *design documents* which it has submitted to the *Subcontract Superintendent* applies, unless the *Subcontract Superintendent* has had 14 days to review the *design documents* and has not rejected the *design documents*.

If any *design documents* are rejected, the *Subcontractor* must submit amended documents to the *Main Contractor* and the *Subcontract Superintendent* within 5 days of their rejection and not proceed with any work under the *Subcontract* related to the rejected *design documents* until they are accepted (or deemed accepted) in accordance with this clause 8.3.

The *Subcontractor* must submit to the *Subcontract Superintendent* any documents (in final form) which the *Subcontractor* intends to submit to an *authority* or other third party or to comply with a *legislative requirement*

If at any stage the *Main Contractor* or the *Superintendent* is of the view that the *design documents* are not being developed in accordance with the requirements of the *Subcontract*, then the *Main Contractor* or the *Subcontract Superintendent* may notify the *Subcontractor* and the *Subcontractor* must, within the time required by the *Subcontract Superintendent*, modify the design accordingly.

The *Principal* and *Main Contractor* shall be entitled to review all intermediate revisions of *design documents* during design development between formal submissions to the *Subcontract Superintendent*.

8.4 Design Meetings

The *Subcontractor* shall attend meetings at the request of the *Main Contractor* or *Subcontract Superintendent* at such times and locations as requested.

The *Subcontractor* shall promptly provide to the *Main Contractor* such information or documents as requested by the *Main Contractor* for the purposes of any meeting.

8.5 Design Amendment

The *Subcontractor* must not make a design amendment to the *preliminary design*, the *design documents*, the design approved under this *Subcontract* or substitute any materials specified in the *Main Contractor's project requirements (Design Amendment)* without notifying the *Subcontract Superintendent* in writing of its proposed *Design Amendment* and receiving a *direction* from the *Subcontract Superintendent* to present its proposed *Design Amendment* submission, in which case the *Subcontractor* shall comply with any review and re-design process as instructed by the *Subcontract Superintendent*.

The *Subcontractor* shall not be entitled to make any *claim* for an adjustment to the *subcontract sum* for any costs it incurs, or for an extension of time for any delay it experiences, arising from or in connection with a *Design Amendment*.

8.6 Availability

The *Subcontractor* shall keep available to the *Subcontract Superintendent* and the *Main Contractor*:

- (a) on *site*, one complete set of documents affecting *WUS* and supplied by a party or the *Subcontract Superintendent*; and
- (b) at the place of manufacture or assembly of any significant part of *WUS* off *site*, a set of the documents affecting that part.

8.7 Confidential information

The *Subcontractor* must keep details of this *Subcontract*, the *WUS* and the *Project* and all information provided to (or by) the *Subcontractor* relating to the *Subcontract*, the *WUS* and the *Project* (**Confidential Information**) confidential and must not provide, disclose or use such *Confidential Information* except:

- (a) with the prior written consent of the *Main Contractor*;
- (b) if required by any *legislative requirement*;
- (c) for the purposes of performing the *Subcontractor's* obligations under and in accordance with this *Subcontract* or to obtain legal advice in relation to the *Subcontract* under a similar obligation of confidentiality; or
- (d) to the extent the *Confidential Information* is in the public domain (other than by reason of the *Subcontractor's* breach of this *Subcontract*).

If required by the *Main Contractor*, the *Subcontractor* must enter into a separate confidentiality agreement with the *Main Contractor* and/or the *Principal* by which the *Subcontractor* agrees to maintain its obligations of confidentiality as set out in this subclause 8.7.

The *Subcontractor* undertakes to only produce documents to a Regulator when required at law to do so and acknowledges that this obligation is material, including for purposes of commercial confidentiality and personal privacy.

8.8 Media

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The *Subcontractor* shall not disclose any information concerning the project for distribution through any communications media without the *Main Contractor's* prior written approval (which may be withheld in its absolute discretion). The *Subcontractor* shall refer to the *Main Contractor* any enquiries from any media concerning the project.

8.9 Records

The *Subcontractor* must keep, maintain and make available to the *Main Contractor* for inspection and copying all documents, records and registers as required by the <https://subbies.hutchies.com.au/resources/requirements> (or as directed) (**Subcontractor Information**) and assist the *Main Contractor* in relation to any audit by the *Main Contractor* of the *Subcontractor Information* including in order to ensure compliance by the *Subcontractor* and/or the *Main Contractor*, with any *legislative requirement*.

The *Subcontractor* must also ensure that its personnel fully co-operate with the *Main Contractor* and its professional advisers in connection with the *Subcontractor Information*.

8.10 Signage

The *Subcontractor* agrees that the *Principal* will have the exclusive right to advertise on cranes and the hoarding on and around the site. The *Subcontractor* will only be permitted to display its own signage (excluding signage required by a *legislative requirement*) with the prior written approval of the *Main Contractor* or *Principal*.

8.11 Warranty documentation

As a condition precedent to *practical completion*, the *Subcontractor* must provide to the *Superintendent*:

* See Preface

- (a) all warranties required by the *Subcontract*, in favour of both the *Main Contractor* and the *Principal*;
- (b) completed and executed original warranties in the form (if any) set out in Annexure Part G for the work or materials and for the respective durations, as specified (if any) set out in Annexure Part G; and
- (c) to the extent not caught by the above, all warranties required by the *Main Contract* to the extent they apply to the *WUS* or the *Subcontractor Works*, in favour of both the *Main Contractor* and the *Principal*,

but nothing in this subclause 8.11 relieves the *Subcontract* of any of its obligations or liabilities under the *Subcontract*.

9 Assignment and secondary subcontracting

9.1 Assignment

The Subcontractor shall not assign, novate, charge, pledge or otherwise deal with or encumber the Subcontract or any payment or other right, benefit, or interest under the Subcontract without the prior written consent of the *Main Contractor*, which consent may be given or withheld (or may be given subject to conditions) in the *Main Contractor's* sole and absolute discretion.

The *Main Contractor* may assign the *Subcontract* or any payment or other right, benefit or interest in the *Subcontract* by written notice to the *Subcontractor*. The *Main Contractor* may novate the *Subcontract* to the *Principal* or any nominee of the *Principal* and the *Subcontractor* hereby consents to such novation and must promptly execute documentation required by the *Main Contractor* to affect such novation.

9.2 Secondary subcontracting generally

The *Subcontractor* shall engage and retain any subconsultants or subcontractors identified in the *Subcontractor's* tender.

The *Subcontractor* shall not without the *Subcontract Superintendent's* prior written approval (which approval may be given or withheld, including on terms, in the discretion of the *Subcontract Superintendent*):

- (a) subcontract or allow a *secondary subcontractor* to subcontract any work described in *Item 25*; or
- (b) allow a *secondary subcontractor* to assign a *secondary subcontract* or any payment or any other right, benefit or interest thereunder.

With a request for approval, the *Subcontractor* shall give the *Subcontract Superintendent* written particulars of the work to be subcontracted and the name and address of the proposed *secondary subcontractor*. The *Subcontractor* shall give the *Subcontract Superintendent* other information which the *Subcontract Superintendent* reasonably requests, including the proposed *secondary subcontract* documents without prices.

Within 21 days after the *Subcontractor's* request for approval, the *Subcontract Superintendent* shall give the *Subcontractor* written notice of approval or of the reasons why approval is not given.

Approval will be conditional upon the *secondary subcontract* including:

- (c) provision that the *secondary subcontractor* shall not:
 - (i) assign the *Subcontract* or any payment or any other rights, benefits or interest thereunder; nor
 - (ii) subcontract *WUS*,

without the prior written approval of the *Main Contractor* (which approval may be given or withheld, including on terms, in the *Main Contractor's* absolute and sole discretion);

- (d) provision that the *secondary subcontractors* must comply with all *legislative requirements* (including those relating to the engagement of employees and subcontractors and health and safety);
- (e) provision that enables the *Main Contractor* to audit the *secondary subcontractor's* obligation to comply with all *legislative requirements*;
- (f) provision that the *secondary subcontractor* shall not novate the *secondary subcontract* without the *Main Contractor's* prior consent (which may be given or withheld, including on terms, in the *Main Contractor's* sole and absolute discretion);
- (g) provision that if the *Subcontract* is terminated and upon the *secondary subcontractor* being paid the sum certified by the *Subcontract Superintendent* as owing to the *secondary subcontractor*, the *Subcontractor* and the *secondary subcontractor* shall, after the *Main Contractor* has done so, promptly (and in any event, within 5 *business days*) execute a deed of novation in the form of Annexure Part H – Section 1 – and for the purpose of effecting such novation only, the *Subcontractor* hereby irrevocably appoints the *Superintendent* under the *main contract* to be the *Subcontractor's* attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the *Subcontractor* accordingly; and
- (h) provisions which may be reasonably necessary to enable the *Subcontractor* to fulfil the *Subcontractor's* obligations to the *Main Contractor*.

9.3 Selected secondary subcontract work

If the *Main Contractor* has included in the invitation to tender a list of one or more *selected secondary subcontractors* for particular *work*, the *Subcontractor* must subcontract that *work* to a *selected secondary subcontractor* and thereupon give the *Subcontract Superintendent* written notice of that *selected secondary subcontractor's* name.

If the *Main Contractor* specifies the terms and conditions upon which the *selected secondary subcontractor's* subcontract is to be entered into, the *Subcontractor* must ensure that the subcontract includes those terms and conditions.

If no subcontractor on the *Main Contractor's* list will subcontract to carry out the *selected secondary subcontract work*, the *Subcontractor* shall provide a list for the written approval of the *Subcontract Superintendent*.

9.4 Novation

When directed by the *Main Contractor*, the *Subcontractor*, without being entitled to compensation, shall promptly execute a deed of novation in the form in Annexure Part H – Section 2, such deed being between the *Main Contractor*, the *Subcontractor* and the *secondary subcontractor* or *selected secondary subcontractor* stated in *Item 26* for the particular part of the *WUS*.

9.5 Subcontractor's responsibility

The *Subcontractor* shall be liable to the *Main Contractor* and entirely responsible (including for the purposes of the *Wrongs Act 1958*) for the acts, defaults and omissions of *secondary subcontractors* (including *selected secondary subcontractors*) and employees and agents of *secondary subcontractors* as if they were those of the *Subcontractor*.

Approval to subcontract shall not relieve the *Subcontractor* from any liability or obligation under the *Subcontract*.

9.6 Subcontractor's warranties

The *Subcontractor* must, as a condition of *practical completion*, provide to the *Subcontract Superintendent* all warranties which the *Subcontract* requires, and in the form required by the *Subcontract Superintendent*, to be provided by:

- (a) the *Subcontractor*; and
- (b) any *secondary subcontractor*,

in favour of both the *Main Contractor* and the *Principal* severally.

Nothing in this subclause 9.6 relieves the *Subcontractor* of any of its obligations or liabilities under this *Subcontract*.

10 Intellectual property rights

10.1 Warranties and indemnities

The *Main Contractor* warrants that, unless otherwise provided in the *Subcontract*, the *Main Contractor's* project requirements, design, materials, documents and methods of working, each specified in the *Subcontract* or provided or directed by the *Main Contractor* or the *Subcontract Superintendent* shall not infringe any *intellectual property right*.

The *Subcontractor* warrants that any other design, materials, documents and methods of working, each provided by the *Subcontractor*, shall not infringe any *intellectual property right*.

The *Subcontractor* shall indemnify the *Main Contractor* and the *Principal* against such infringements.

10.2 Intellectual property rights granted to the Main Contractor and Principal

The Alternative in Item 27 applies.

Alternative 1

Copyright in all design documents will remain the property of the *Subcontractor*, but the *Subcontractor* grants an irrevocable, transferrable, perpetual, assignable, royalty-free licence (which licence can be sub-licensed on the same terms) to the *Main Contractor* and the *Principal* to use, amend and reproduce all *design documents*. Such licence shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, the *Project*, the *Subcontract Works* and the copying of the documents for such purposes.

The *Subcontractor* shall, if requested by the *Main Contractor*, take all steps, including the execution of any documents to perfect the licence and to provide evidence of the *Subcontractor's* rights to the licensed material and to grant the license.

This license will survive termination of the *Subcontract* on any basis.

Alternative 2

Copyright and property in the *design documents* (and, as between the *Main Contractor* and the *Subcontractor*, any part of the *preliminary design* produced under a prior contract between the *Main Contractor* and a *Main Contractor's* consultant novated under subclause 9.4) hereby vest in the *Main Contractor*, and the *Main Contractor* grants to the *Subcontractor* an irrevocable licence to use the *design documents* for *WUS*. Such vesting shall not extend to components of the design which have been developed by the *Subcontractor* for general use in the *Subcontractor's work* and have not been specially developed for incorporation in the *design documents*.

The *Subcontractor* shall do everything necessary to perfect such vesting.

The *Subcontractor* shall ensure that the *design documents* are used, copied and supplied only for the purpose of *WUS*.

10.3 Moral Rights

In this subclause 10.3, *Moral Rights* means the moral rights granted to an author under Part IX of the *Copyright Act 1968* (Cth).

The *Subcontractor* warrants that no person will make any claim pursuant to Part IX of the *Copyright Act 1968* (Cth) in connection with the *Subcontract Works*.

The *Subcontractor* must ensure that each person engaged by or on behalf of the *Subcontractor* who is the holder of any *Moral Rights* in connection with any *Subcontract Works* gives a signed written consent (in the form included in Annexure Part N) that operates in favour of the *Main Contractor* and the *Principal* (on a joint and several basis) which allows the *Main Contractor* and the *Principal* to deal with the *Moral Rights* in their discretion without infringing any person's *Moral Rights*.

The *Subcontractor* indemnifies and keeps indemnified the *Main Contractor* and the *Principal*, its officers, employees and agents from and against all or any losses, actions or claims, suffered or incurred by them arising from or in connection with, whether directly or indirectly, any infringement of any person's *Moral Rights* or anything that the *Main Contractor* or the *Principal* does in relation to the *Subcontract Works*.

11 Legislative requirements

11.1 Compliance

The *Subcontractor* shall satisfy and comply with all *legislative requirements*, including obtaining all *approvals* and certificates from relevant *authorities*, except those in *Item 28(a)* and (b) or directed by the *Subcontract Superintendent* to be satisfied by or on behalf of the *Main Contractor*. For the avoidance of doubt, the *Subcontractor* will not be relieved of any responsibility to comply with all *legislative requirements* as a result of a *variation*.

The *Subcontractor*, upon finding that a *legislative requirement* is at variance with the *Subcontract* or the *Main Contractor's project requirements*, shall promptly give the *Subcontract Superintendent* written notice thereof. The *Superintendent* shall direct the *Subcontractor* as to how the inconsistency must be addressed.

The *Subcontractor* shall:

- (a) give the *Main Contractor* copies of:
 - (i) documents it gives to persons having jurisdiction at the time it submits such documents including notices; and
 - (ii) all documents (including *approvals* and other notices) that persons having jurisdiction issue to it within 2 *business days* after receiving such documents; and
- (b) to the extent permitted by law, indemnify the *Main Contractor* against any loss, cost, damage or expense suffered by the *Main Contractor* in connection with a failure by the *Subcontractor* to comply with its obligations under this subclause 11.1.

The *Main Contractor* shall, if requested in writing by the *Subcontractor*, take reasonable steps as may be required by the *Subcontractor* to assist the *Subcontractor* in obtaining the *approvals* referred to in this subclause 11.1.

11.2 Changes

If a *legislative requirement*, other than a requirement of a relevant building surveyor under the *Building Act*:

- (a) necessitates a material change:
 - (i) to the *Subcontract Works*;
 - (ii) to so much of WUS as is identified in *Item 28(c)*;

or

- (iii) in a fee or charge or payment of a new fee or charge;
- (b) comes into effect after the date of the *Subcontract* but could not reasonably then have been anticipated by a competent subcontractor;
- (c) could not reasonably have been anticipated by a competent contractor exercising *Good Industry Practice*; and
- (d) causes the *Subcontractor* to incur more or less cost than otherwise would have been incurred,

except to the extent caused or contributed to by the *Subcontractor*, the difference shall be assessed by the *Subcontract Superintendent* and added to or deducted from the *subcontract sum*.

The *Subcontractor* shall use all reasonable endeavours to minimise or mitigate the effects of a change in *legislative requirements*.

11.3 Security of Payment Act

The parties acknowledge that their rights and obligations under the *Subcontract* are subject to the provisions of the *Security of Payment Act* to the extent that they apply, and where there is any inconsistency between the *Subcontract* and the *Security of Payment Act*, the *Security of Payment Act* applies to the extent necessary to avoid the inconsistency.

11.4 Industrial relations

- (a) The *Subcontractor* must prior to entering the *main contract*, provide to the *Main Contractor*:
 - (i) a copy of any *Enterprise Agreement* and evidence of approval by the Fair Work Commission applicable to any of the *Subcontractor's* employees engaged on *site* or in connection with the *Subcontract*. The *Main Contractor* is not required to provide access to the *site* until such satisfactory evidence is provided to it; and
 - (ii) evidence of its compliance with:
 - (A) all relevant industrial instruments;
 - (B) all *legislative requirements* with respect to superannuation; and
 - (C) any applicable redundancy schemes;
- (b) be responsible for and manage all aspects of industrial relations with respect to its employees and workers;
- (c) ensure that the rates of pay and terms and conditions of employment specified in all relevant industrial instruments and any relevant laws, for all employees and workers engaged by the *Subcontractor*, are always observed;
- (d) ensure that any *directions* given by the *Main Contractor* from time to time in relation to *WUS* including but not limited to, the entry and exit of vehicles to and from the *site*, the delivery of materials to the *site*, the storage of materials at the *site*, the parking of vehicles at the *site*, and all other such matters affecting the project as a whole are strictly observed;
- (e) comply with a request by the *Main Contractor* to confirm compliance by sighting any of the *Subcontractor's* relevant documents; and
- (f) indemnify the *Main Contractor* against all costs, losses, damages or expenses suffered by the *Main Contractor* arising out of or in connection with a breach of the *Subcontractor's* obligations under this subclause 11.4.

If the *Main Contractor* incurs a delay, loss or damage under the *main contract* as a result of any industrial dispute involving the *Subcontractor's* employees, workers, agents or *secondary subcontractors*, the *Subcontractor* is wholly liable for the delay and any additional cost incurred by the *Subcontractor*. Any costs, losses, damages or expenses suffered by the *Main Contractor* as a result of such delays shall be certified by the *Subcontract Superintendent* as moneys due and payable from the *Subcontractor* to the *Main Contractor*.

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, on the *site* or any other *site* occupied by the *Main Contractor* or *Subcontractor* and any cost and time consequences of industrial relations shall be deemed to be included in the *subcontract sum* and the *date for practical completion*.

The *Subcontractor* warrants that it has allowed for payment to its employees and workers in accordance with all terms and conditions stated in any applicable industrial instrument or laws or as required by subclause 11.4(c) above in the *subcontract sum*.

The *Subcontractor* shall ensure that any contracts with *secondary subcontractors* or supply and consultancy agreements for the *WUS* contain requirements equivalent to the requirements of this subclause 11.4.

12 Protection of people, property and environment

12.1 General

Insofar as compliance with the *Subcontract* permits, the *Subcontractor* shall:

- (a) provide all things and take measures necessary to protect people and property;
- (b) avoid unnecessary interference with the passage of people and vehicles; and
- (c) prevent nuisance and unreasonable noise, dust, air pollution, odour and vibration, and disturbance and inconvenience to owners and occupiers of, and visitors to, properties neighbouring the *site* when carrying out the work under the *Subcontract* including ensuring that these do not exceed levels stipulated by the local Authority or in the *Australian Unity in Occupation Requirements*;
- (d) minimise disruption or inconvenience to the *Principal*, *Land Owners*, occupiers, tenants and third parties of the *site* in their occupation or use of any part of the *site* and other contractors working on the *site*;
- (e) procure for itself the access, occupation or use of or relevant rights over any land in addition to the *site*, which the *Subcontractor* may require for carrying out the work under the *Subcontract* or otherwise for the purposes of the *Subcontract* including obtaining all necessary *approvals* and complying with all *legislative requirements* regarding access to or from, or work on or near, property adjoining or in the vicinity of the *site*, (including satisfying any obligations of the *Principal* or *Main Contractor* under the *Building Act* regarding protection work);
- (f) not use any obscene or abusive language on the *site* or within hearing distance of the *site*;
- (g) not play music or radio stations at a volume that may be heard outside the boundaries of the *site*;
- (h) not smoke on or in the vicinity of the *site*;
- (i) wear appropriate attire; and
- (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 of, or any other persons having an interest in, any land referred to in paragraph (e).

If the *Subcontractor* damages or the employees or agents of the *Subcontractor* damage property, including public utilities and services and property on or adjacent to the *site*, the *Subcontractor* shall promptly rectify the damage and pay any compensation which the law requires the *Subcontractor* to pay.

The *Subcontractor* must, and must ensure that its employees, subcontractors and agents do not park vehicles or place construction plant or equipment in any area other than those specified by the *Subcontract Superintendent* by notice in writing.

The *Subcontractor*, its employees, subcontractors and agents must not enter into communications with an owner or occupier of a neighbouring property unless the *Superintendent* has directed otherwise, and must direct any notices received from owners or occupiers of neighbouring properties to the *Superintendent* and *Principal* upon receipt.

If the *Subcontractor* fails to comply with an obligation under this clause 12, the *Main Contractor*, after the *Subcontract Superintendent* has given reasonable written notice to the *Subcontractor* and in addition to the *Main Contractor's* other rights and remedies, may have the obligation performed by others. The cost thereby incurred shall be certified by the *Subcontract Superintendent* as moneys due from the *Subcontractor* to the *Main Contractor*.

12.2 Work Health and Safety

In performing *WUS*, the *Subcontractor* shall be responsible for ensuring that the *Subcontractor* and its employees, agents, *secondary subcontractors* or *consultants* carry out and complete the *Subcontract Works* safely and in accordance with all *legislative requirements* including those pursuant to the *Occupational Health and Safety Act 2004 (Vic) (WHS Law)* and those requirements listed at <https://subbies.hutchies.com.au/resources/requirements>

Without limiting the generality of the preceding paragraph and subclauses 11.1 and 11.2, the *Subcontractor* shall comply with all *legislative requirements*, codes of practice, and standards (including Australian Standards) in relation to work health and safety.

The *Subcontractor* must consult, cooperate and coordinate with the *Main Contractor* and any other persons on the *site* that have a work health and safety duty.

The *Subcontractor* acknowledges that the *Main Contractor* has been appointed the 'Principal Contractor' for the purposes of (and as defined in) the *WHS Law*.

In addition to its obligations under this clause 12.2 and generally under the *Subcontract*, the *Subcontractor* shall not interfere with, disturb, impede or obstruct the carrying out by the Principal Contractor of the Principal Contractor's obligations, and will cooperate and comply with any *direction* of the Principal Contractor.

The *Subcontractor* shall provide:

- (a) a safe working environment;
- (b) safe systems of work;
- (c) adequate facilities in compliance with *legislative requirements* for the welfare of all persons at any workplace under the control or management of the *Subcontractor*; and
- (d) information, instruction, training and supervision reasonably necessary to ensure that all of its employees and its *secondary subcontractor's* employees are:
 - (i) aware of the content of the *Main Contractor's* work health and safety management plan; and
 - (ii) safe from injury and risks to safety, health and welfare.

The *Subcontractor* shall instruct its employees, and *secondary subcontractors* to:

- (e) follow safe work practices and procedures at all times;
- (f) take reasonable care for their own safety; and
- (g) take reasonable care for the health and safety of anyone else who may be affected by anything that they do or fail to do,

in connection with *WUS*.

If requested by the *Subcontract Superintendent*, the *Subcontractor* shall provide the following information about the *Subcontractor's* work health and safety systems and those of its *secondary subcontractors*:

- (h) safe working practices and procedures; or
- (i) work health and safety policies, procedures, training, induction, auditing and performance monitoring.

The *Subcontractor* shall ensure that all employees, *secondary subcontractors* and consultants have completed an appropriate induction prior to commencement on *WUS*.

If requested by the *Main Contractor*, the *Subcontractor* shall conduct an audit of work health and safety in the manner and within the time specified by the *Main Contractor* in its request.

The *Subcontractor* is not entitled to claim any additional cost or expense, any adjustment to the amount it is entitled to be paid, an *EOT*, or to make a *claim* in connection with complying with this clause.

12.3 Work Health and Safety – plant and equipment

All plant and equipment supplied by the *Subcontractor* for use in carrying out *WUS* shall:

- (a) comply in all respects with all *legislative requirements*, codes of practice and standards (including Australian Standards); and
- (b) be operated and maintained in accordance with the manufacturer's specifications and have sound reduced by means of silencers, acoustic linings, shields, acoustic sheds or screens.

Only persons appropriately trained and holding current licences or operators' certificates may be permitted to operate plant, equipment and vehicles at the *site*.

12.4 Noise

The *Subcontractor* shall:

- (a) take all reasonable measures to minimise the generation of noise while carrying out *WUS*; and
- (b) use its reasonable endeavours to ensure that *WUS* complies with environmental protection agency guidelines.

12.5 Details of accidents on site

The *Subcontractor* shall give to the *Subcontract Superintendent* (in such form as the *Subcontract Superintendent* may require) the particulars of all incidents or accidents to the *Subcontractor's* employees, agents or *secondary subcontractors* involving, or potentially involving, death or serious injury while carrying out *WUS*. The *Subcontract Superintendent* may require reporting of other work health and safety matters within its discretion.

12.6 Fire Protection

Without limiting the *Subcontractor's* responsibilities under other clauses of the *Subcontract*, the *Subcontractor* shall:

- (a) provide and maintain adequate firefighting equipment on the *site*;
- (b) take all necessary measures, to the reasonable satisfaction of the *Subcontract Superintendent*, to prevent fire during *WUS*; and
- (c) take action to prevent damage to or destruction by fire of *WUS*, equipment and property in and surrounding the *site*.

12.7 Environmental requirements

The *Subcontractor* shall ensure that in carrying out *WUS* it (and its subcontractor) complies with all *legislative requirements* and other requirements of the *Subcontract* for the protection of the environment, it does not pollute, contaminate or otherwise damage the environment, and shall immediately make good any pollution, contamination or damage to the environment arising out of, or in connection with, *WUS*.

The *Subcontractor* shall immediately notify the *Main Contractor* immediately when it becomes aware of any environmental incident or harm or potential harm within the meaning of the *Environmental Protection Act 1970* (Vic) whether caused by the *Subcontractor*, the *Subcontractor's* employees, workers, agents or *secondary subcontractors* in connection with their activities on the *site*.

12.8 Design Hazards

The *Subcontractor* shall:

- (a) so far as is reasonably practicable, consult with a designers of the whole or any part of *the Subcontract Works* about how to ensure that health and safety risks arising from the design during construction of *the Subcontract Works* are, so far as is reasonably practicable:
 - (i) eliminated; or
 - (ii) if subclause 12.8(a)(i) is not reasonably practicable, minimised; and
- (b) give to the *Main Contractor* a written report specifying the design hazards so far as the *Subcontractor* is reasonably aware which create a risk to the health and safety of persons who are carrying out construction of the whole or any part of *the Subcontract Works* and are associated with the particular design and not with other designs of the same type of structure (*Design Hazard Report*).

12.9 Main Contractor's rights

If the *Subcontractor* fails to comply with an obligation under this clause 12, in addition to any other remedies of the *Main Contractor*, the *Subcontract Superintendent* may, after giving reasonable notice in writing to the *Subcontractor*, do such things and take such steps to achieve compliance. The reasonable cost incurred by the *Main Contractor* shall be a debt due and payable from the *Subcontractor* to the *Main Contractor*.

12.10 Subcontractor's indemnity

The *Subcontractor* indemnifies the *Main Contractor* against all *claims* made against the *Main Contractor*, or losses, damages, costs or expenses (including but not limited to legal costs on a solicitor and own client basis) which the *Main Contractor* suffers or incurs arising out of or in connection with a breach or alleged breach of the *Subcontractor's* obligations under this clause 12 and any action, proceeding, investigation or allegation of a breach by WorkSafe Victoria.

13 Urgent protection

If urgent action is necessary to protect *WUS*, other property or people and the *Subcontractor* fails to take the action, in addition to any other remedies of the *Main Contractor*, the *Subcontract Superintendent* may take the necessary action. If the action was action which the *Subcontractor* should have taken at the *Subcontractor's* cost, the *Subcontract Superintendent* shall certify the cost incurred as moneys due from the *Subcontractor* to the *Main Contractor*.

If time permits, the *Subcontract Superintendent* shall give the *Subcontractor* prior written notice of the intention to take action pursuant to this clause 13.

14 Care of the work and reinstatement of damage

14.1 Care of WUS

Except as provided in subclause 14.3, the *Subcontractor* shall be responsible for care of:

- (a) the whole of *WUS* from and including the date of commencement of *WUS* until the *site* is handed over to the *Main Contractor* or a person designated by the *Main Contractor* in writing after the *date of practical completion*, at which time responsibility for the care of the *Subcontract Works* (except to the extent provided in subclause 14.1(b) and 14.1(c)) shall pass to the *Main Contractor*;
- (b) after the *date of practical completion*, any loss or damage to the *WUS* and *Subcontract Works* arising from any act or omission of the *Subcontractor* during the *defects liability period* or from an event which occurred prior to the *date of practical completion*; and
- (c) outstanding *work* and items to be removed from the *site* by the *Subcontractor* after 4:00 pm on the *date of practical completion* until completion of outstanding *work* or compliance with clauses 29, 30 and 35.

Without limiting the generality of subclause 14.1(a), the *Subcontractor* shall be responsible for the care of unfixed items accounted for in a *payment schedule* and the care and preservation of things entrusted to the *Subcontractor* by the *Main Contractor* or brought onto the *site* by *secondary subcontractors* for carrying out *WUS*.

14.2 Reinstatement

If loss or damage, other than that caused by an *excepted risk*, occurs to *WUS* during the period of the *Subcontractor's* care, the *Subcontractor* shall, at its cost, rectify such loss or damage.

In the event of loss or damage being caused by any of the *excepted risks* (whether or not in combination with other risks), the *Subcontractor* shall to the extent directed by the *Subcontract Superintendent*, rectify the loss or damage and shall be entitled to claim a *variation*. If loss or damage is caused by a combination of *excepted risks* and other risks, the *Subcontract Superintendent* in pricing the *variation* shall assess the proportional responsibility of the parties.

14.3 Excepted risks

The *excepted risks* causing loss or damage, for which (as between the *Main Contractor* and the *Subcontractor*) the *Main Contractor* is liable, are:

- (a) any negligent act or negligent omission of the *Superintendent*, the *Principal*, the *Subcontract Superintendent*, the *Main Contractor* or the consultants, agents, employees or other contractors (not being employed by the *Subcontractor*) of the *Principal* or the *Main Contractor*;
- (b) Not used;
- (c) Terrorism (to the extent it is not insured), war, invasion, acts 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 its *secondary subcontractors* or either's employees or agents;
- (e) use or occupation of any part of *WUS* by the *Principal*, the *Main Contractor* or the consultants, agents or other contractors (not being employed by the *Subcontractor*) of either of them; and
- (f) Not used.

15 Damage to persons and property other than WUS

15.1 Indemnity by Subcontractor

Insofar as this subclause 15.1 applies to property, it applies to property other than *WUS*.

The *Subcontractor* shall indemnify the *Main Contractor* and *Land Owners* against:

- (a) loss of or damage to the *Principal's*, the *Main Contractor's* or *Land Owners'* property including existing property in or upon the *site* or those places which *WUS* is being carried out;
- (b) *claims* in respect of nuisance, unreasonable noise or disturbance in excess of those permitted by any *authority* and any *legislative requirements*, personal injury or death or loss of, or damage or trespass to, any other property
- (c) pure economic loss;
- (d) any damage, liability, costs (including legal fees), demands, actions, suits, proceedings and expenses; and
- (e) any *claims* by the agents, employees or *secondary subcontractors* of the *Subcontractor*,

arising out of or as a consequence of the carrying out of *WUS* howsoever caused or any act or omission of the *Subcontractor* or any person for whom the *Subcontractor* is responsible, or

- (f) notwithstanding clause 34.7, any loss, liability or claim arising due to a breach of the *Subcontract* or negligence by the *Subcontractor* (or an employee or agent of the *Subcontractor* acting within the scope of their authority),

but the indemnity shall be reduced proportionally to the extent that the act or omission of the *Superintendent*, the *Principal*, the *Land Owners*, the *Subcontract Superintendent*, the *Main Contractor* or the consultants, agents or other contractors (not being employed by the *Subcontractor*) of the *Principal* or the *Main Contractor* contributed to the injury, death, loss or damage.

Any loss, cost, damage or expense which is or may be incurred by the *Main Contractor* to which the indemnity under this subclause 15.1 applies shall be an amount due and payable from the *Subcontractor* to the *Main Contractor*.

This subclause 15.1 shall not apply to:

- (g) the extent that the *Subcontractor's* liability is limited by another provision of the *Subcontract*;
- (h) exclude any other right of the *Principal* or the *Main Contractor* or *Land Owners* to be indemnified by the *Subcontractor*;
- (i) things for the care of which the *Subcontractor* is responsible under subclause 14.1;
- (j) *claims* in respect of the *Main Contractor's* right to have *WUS* carried out.

Each indemnity given by the *Subcontractor* under the *Subcontract* is a continuing obligation separate and independent from the obligations of the *Subcontractor* and survives termination of the *Subcontract*.

15.2 Proportionate liability

- (a) The parties agree that, to the extent permitted by law, the operation of Part IVAA of the Wrongs Act 1958 (Vic)) is excluded in relation to all and any rights, obligations and liabilities arising out of or in connection with this *Subcontract* whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) The *Subcontractor* must include the following terms in each *secondary subcontract* it enters into in relation to any part of the *WUS*:

- (i) to the extent permitted by law, the operation of Part IVAA of the *Wrongs Act 1958* (Vic) shall be excluded in relation to all rights, obligations and liabilities arising out of or in connection with each *secondary subcontract* or the work of the *secondary subcontractor* whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise; and
 - (ii) the *secondary subcontractor* warrants in favour of the *Main Contractor* and will execute on request a deed in favour of the *Main Contractor* warranting that the *secondary subcontract* will not seek to rely upon any of the provisions of Part IVAA of the *Wrongs Act 1958* (Vic) in any proceedings taken by the *Main Contractor* against the *Subcontractor* or the *secondary subcontractor* arising out of or in connection with the work of the *secondary subcontractor* required to be executed by it under this *secondary subcontract*.
- (c) Without limiting paragraphs 15.2(b)(i) and 15.2(b)(ii) above, the *Main Contractor* and the *Subcontractor* agree and acknowledge that, for the purposes of the Part IVAA of the *Wrongs Act 1958* (Vic), the *Subcontractor* is entirely responsible for any loss, damage, cost, *claim* or expense suffered or incurred by the *Main Contractor* arising out of or in connection with any breach or negligent act or omission on the part of the *Subcontractor*, its employees, agents and subcontractors, in performance of this *Subcontract*.
- (d) To the extent permitted by law (and without limiting paragraphs (a), (b) and (c) above, the *Subcontractor* indemnifies the *Main Contractor* for the difference (if any) between:
 - (i) the amount of any loss for which, but for Part IVAA of the *Wrongs Act 1958* (Vic), the *Main Contractor* would have been entitled to recover from the *Subcontractor* arising out of or in connection with an act or omission of the *Subcontractor* under this document; and
 - (ii) the liability of the *Subcontractor* to the *Main Contractor* as determined by the court or tribunal pursuant to Part IVAA of the *Wrongs Act 1958* (Vic) arising out of or in connection with such act or omission of the *Subcontractor*.
- (e) If, despite the previous paragraphs, Part IVAA of the *Wrongs Act 1958* (Vic) does apply, then:
 - (i) the *Subcontractor* acknowledges and agrees that, for the purposes of Part IVAA of the *Wrongs Act 1958* (Vic), the *Subcontractor* is entirely and solely responsible for any failure to take reasonable care on the part of any of its subcontractors, employees or agents; and
 - (ii) the *Subcontractor* undertakes to the *Main Contractor*, as a separate and independent obligation, to:
 - (A) rectify or complete any of the *Subcontract Works* which is defective or incomplete or which is not in conformance with the requirements of this *Subcontract*; or
 - (B) compensate the *Main Contractor* for any cost, loss or expense incurred by the *Main Contractor* as a result of having such work rectified or completed.

16 Insurance of the Subcontract Works

Before commencing *WUS*, the *Subcontractor* shall effect and maintain a policy of insurance in relation to loss or damage to *WUS* which complies with *Item 29(a)* and provide a copy to the *Main Contractor*.

The insurance policies to be provided by the *Subcontractor* under the *Subcontract* shall:

- (a) separately name the *Main Contractor* and the *Subcontractor* as named insured;

- (b) cover the *Main Contractor*, the *Subcontractor* and all *secondary subcontractors* employed from time to time in relation to *WUS* for their respective rights, interests, and liabilities; and
- (c) unless otherwise specified elsewhere in the *Subcontract*, be effected with an insurer and on terms both approved in writing by the *Main Contractor*, which approval shall not be unreasonably withheld.

The policy shall be maintained until the *Subcontractor* ceases to be responsible for the care of *WUS*.

16A Professional indemnity insurance

Before commencing *WUS*, the *Subcontractor* shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 30(a)*.

The insurance shall be maintained until the *final certificate* is issued and thereafter for the period stated in *Item 30(b)*.

The *Subcontractor* shall ensure that every *Subcontractor's consultant*, if within a category stated in *Item 30(c)*, shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 30(c)* applicable to that category.

Each such *Subcontractor's consultant's* professional indemnity insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 30(d)*.

17 Public and product liability insurance

17.1 Subcontractor to insure

Before commencing *WUS*, the *Subcontractor* shall effect and maintain until the *final certificate* is issued, a *public and product liability policy*.

The policy shall:

- (a) be an occurrence based policy and name the *Principal*, the *Main Contractor* and the *Subcontractor* as separate insureds;
- (b) cover the:
 - (i) respective rights and interests; and
 - (ii) liabilities to third parties and the *Land Owners*;of the parties, the *Principal*, *Superintendent*, *Subcontract Superintendent*, and *secondary subcontractors* from time to time, in connection with the *WUS*;
- (c) cover the parties' respective liability to each other and the *Land Owners* for loss or damage or destruction to property (other than property required to be insured by clause 16) and the death, disease or illness (including mental illness) of, or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);
- (d) be endorsed to cover the use of any *construction plant* not covered under a comprehensive or third party motor vehicle insurance policy;
- (e) provide insurance cover for an amount in respect of public and product liability as stated in *Item 31(a)*;
- (f) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in *Item 31(b)* ; and
- (g) be with an insurer and otherwise in terms both approved in writing by the *Main Contractor* (which *approvals* shall not be unreasonably withheld).

18 Insurance of employees and insurance required by law

Before commencing *WUS*, the *Subcontractor* shall insure against liability for death, disease or illness (including mental illness) of, or injury to persons employed, or deemed by *legislative requirements* to be employed by the *Subcontractor*, including liability by statute and at common law. The insurance cover shall be maintained until completion of all *WUS* and for the duration of the *defects liability period*.

Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the *Main Contractor's* statutory and common law liability to the *Subcontractor's* employees.

The *Subcontractor* shall ensure that all *Subcontractor's consultants* and *secondary subcontractors* have similarly insured their employees.

The *Subcontractor* shall also take out and maintain all insurances required by *legislative requirements* (including the *Building Act*).

19 Inspection and provisions of insurance policies

19.1 Proof of insurance

Before the *Subcontractor* commences *WUS* and whenever requested in writing by the *Main Contractor*, the *Subcontractor* shall provide satisfactory evidence of such insurance effected and maintained to the satisfaction of and approval of the *Main Contractor*.

All insurances required by this *Subcontract* must be effected with insurers approved by, and on terms acceptable to, the *Main Contractor*. The *Subcontractor* must provide the *Main Contractor* with certificates of currency for all insurance required by this *Subcontract* on request by the *Main Contractor*.

Insurance shall not limit liabilities or obligations under other provisions of the *Subcontract*.

19.2 Failure to produce proof of insurance

If the *Subcontractor* fails to provide evidence of satisfactory insurance before commencing *WUS* in breach of subclause 19.1, 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 subclause 19.1.

If after being so requested, the *Subcontractor* fails promptly to provide satisfactory evidence of compliance with clauses 16, 17 or 18 or in accordance with subclause 19.1, then without prejudice to other rights or remedies, the *Main Contractor* may insure and the cost thereof shall be certified by the *Subcontract Superintendent* as moneys due and payable from the *Subcontractor* to the *Main Contractor*. Where the defaulting party is the *Subcontractor*, the provision of the satisfactory evidence of insurance being effected and maintained is a pre-condition to payment under clause 37. If the evidence of insurance is not provided or is false, the *Main Contractor* is entitled to withhold payment in full until satisfactory evidence of insurance is provided.

19.3 Notices from or to insurer

The *Subcontractor* shall ensure that each policy contains provisions acceptable to the *Main Contractor* which:

- (a) requires the insurer to inform both parties, whenever the insurer gives a party or a *Subcontractor's consultant* or a *secondary subcontractor* a notice in connection with the policy;
- (b) provides that a notice of claim given to the insurer by either party, the *Subcontract Superintendent*, a *Subcontractor's consultant* or a *secondary subcontractor* shall be accepted by the insurer as a notice of claim given by both parties, the *Subcontract Superintendent*, the *Subcontractor's consultant* and the *secondary subcontractor*; and
- (c) requires the insurer, whenever the *Subcontractor* fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

In addition the *Subcontractor* shall:

- (d) notify the *Main Contractor* of any occurrence that may give rise to a *claim* under any insurance;
- (e) diligently and properly pursue any *claim* which it has under any insurance; and
- (f) keep the *Main Contractor* informed of all developments involving a *claim*.

If the *Subcontractor* breaches this subclause 19.3 and clause 19, and loses its right to claim under an insurance policy which it would have been entitled to claim if it had complied with this subclause 19.3 and clause 19, then the *Subcontractor* has no *claim* against the *Main Contractor* in connection with the circumstances which gave rise to a right to claim under the insurance policy.

19.4 Notices of potential claims

The *Subcontractor* shall, as soon as it becomes aware, inform the *Main Contractor* in writing of any occurrence that may give rise to a *claim* under an insurance policy required by clause 16 or 17 and shall keep the *Main Contractor* informed of subsequent developments concerning the *claim*. The *Subcontractor* shall ensure that *Subcontractor's consultants* and *secondary subcontractors* in respect of their operations similarly inform the parties.

If loss of or damage to any part of the *Subcontract Works* occurs whilst the *Subcontractor* bears the risk of loss of or damage to the *Subcontract Works* under clause 14.1, the *Subcontractor* must:

- (g) make the *Subcontract Works* and the *site* safe and secure;
- (h) notify the relevant insurers and comply with their instructions; and
- (i) promptly consult with the *Subcontract Superintendent* and *Main Contractor* (and, if required the *Superintendent* and *Principal*) to discuss the steps to be taken to:
 - (i) comply with its obligations under clause 14.2; and
 - (ii) ensure that, to the greatest extent possible, the *Subcontractor* continues to comply with its other obligations under this *Subcontract*.

19.5 Settlement of claims

Without limiting subclause 14.2, if loss or damage to *WUS* occurs whilst the *Subcontractor* is responsible for the care of *WUS*, the *Subcontractor* shall:

- (a) make the *Subcontract Works* and the *site* safe and secure;
- (b) notify the relevant insurers to comply with their instructions; and
- (c) properly consult with the *Main Contractor* or the *Subcontract Superintendent* to discuss steps to be taken to comply with its insurance obligations under the *Subcontract*,

Upon settlement of a *claim* under any insurance policy held pursuant to the *Subcontract*, the money received from the insurance will be paid by the insurer directly to the *Main Contractor* where possible under the said policy, failing which, the *Subcontractor* shall pay any amount received to the *Main Contractor*. Upon receipt of money from the *Subcontractor* or the insurer, the *Main Contractor* may either:

- (d) pay the money to the *Subcontractor* immediately; or
- (e) require the *Subcontractor* to rectify the loss or damage to *WUS* and claim for payment in the same manner as in clause 37, at which time the *Subcontract Superintendent* shall assess the *claim* and certify such amount of the insurance money as is necessary or available for the cost of reinstating the loss or damage.

The money received from the insurance, excluding any amount required to pay for *secondary subcontractors* with respect to reinstatement of the loss and damage, shall be the limit of the *Subcontractor's* entitlement to payment for reinstatement of the loss or damage. The *Subcontractor* shall be liable for any shortfall of insurance money to reinstate loss or damage.

19.6 Cross liability

Any insurance required to be effected in accordance with the *Subcontract* shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them.

19.7 Insurances generally

Any insurance required to be effected in accordance with the *Subcontract*:

- (a) must cover the *Subcontractor's* obligations and indemnities in connection with the *Subcontract*;
- (b) must be obtained from reputable, Australian-based insurers holding authorisation from the Australian Prudential Regulation Authority; and
- (c) are subject to approval by the *Main Contractor*, whose approval shall not be unreasonably withheld.

The *Subcontractor* must:

- (d) before making a *claim* under the insurance of any other party, pursue a *claim* under the *Subcontractor's* insurance effected pursuant to this clause 19 and clauses 16, 17 or 18 for the full extent of the *Subcontractor's* liability;
- (e) bear the cost of any deductible payable under a relevant insurance policy in proportion to its responsibility for the cause of that loss or damage the subject of the *claim*; and
- (f) before commencing *WUS*, effect and maintain until the *final certificate* the additional insurance policies in *Item 29(b)* in addition to the insurance policies required by clauses 16, 17 and 18.

The *Subcontractor* must ensure that it:

- (g) does not do anything which prejudices any insurance;
- (h) if necessary, rectifies anything which might prejudice any insurance;
- (i) reinstates an insurance policy if it lapses;
- (j) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the *Subcontract Superintendent*;
- (k) immediately notifies the *Subcontract Superintendent* of any event which may result in an insurance policy lapsing or being cancelled; and
- (l) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

20 Subcontract Superintendent

- (a) The *Main Contractor* shall ensure:
 - (i) that at all times there is a *Subcontract Superintendent*; and
 - (ii) that the *Subcontract Superintendent* complies with the terms of the *Subcontract*,

which *Subcontract Superintendent* is the agent of the *Main Contractor* (and not an independent certifier, assessor or valuer) and may be an employee of the *Main Contractor*.

- (b) The *Subcontract Superintendent* may only give a *direction* orally where it is required urgently for the protection of persons from injury or death or to prevent loss or damage to property but shall within 3 *business days* confirm it in writing.
- (c) If the *Subcontractor* in writing requests the *Subcontract Superintendent* to confirm an oral *direction*, the *Subcontractor* shall not be bound to comply with the *direction* until the *Subcontract Superintendent* does so.
- (d) Except in the circumstances in subclause 20(b) any oral *direction* of the *Subcontract Superintendent*:
 - (i) is not a *direction* under the *Subcontract*; and
 - (ii) has no effect,

and the *Subcontractor* is not obliged to comply with the oral *direction*.

The *Subcontractor* agrees that in issuing any documents under the *Security of Payment Act* (including payment schedules), the *Subcontract Superintendent* or *Superintendent* acts as the *Main Contractor's* or *Principal's* agent, as the case may be. The *Subcontract Superintendent* and the *Superintendent* is not the *Main Contractor's* or *Principal's* agent for the purpose of receiving any documents under the *Security of Payment Act* (including payment claims) and the *Subcontractor* must serve such documents on the *Main Contractor* or *Principal* (as the case may be) at the same time as the *Subcontract Superintendent* or *Superintendent*.

21 Subcontract Superintendent's Representative

The *Subcontract Superintendent* may from time to time appoint individuals to exercise delegated *Subcontract Superintendent's* functions, provided that:

- (a) no aspect of any function shall at any one time be the subject of delegation to more than one *Subcontract Superintendent's Representative*;
- (b) delegation shall not prevent the *Subcontract Superintendent* exercising any function;
- (c) the *Subcontract Superintendent* forthwith gives the *Subcontractor* written notice of respectively:
 - (i) the appointment, including the *Subcontract Superintendent's Representative's* name and delegated functions; and
 - (ii) the termination of each appointment; and
- (d) if the *Subcontractor* makes a reasonable objection to the appointment of a *Subcontract Superintendent's Representative*, the *Subcontract Superintendent* shall terminate the appointment.

The *Subcontractor* shall forthwith notify the *Subcontract Superintendent* if the *Subcontractor* receives a purported *direction* from other than the *Subcontract Superintendent*, the *Main Contractor* or those authorised by either of them.

22 Subcontractor's representative

The *Subcontractor* shall superintend *WUS* personally or by a competent representative. Matters within a *Subcontractor's* representative's knowledge (including *directions* received) shall be deemed to be within the *Subcontractor's* knowledge. The *Subcontractor's* representative shall be authorised to negotiate with the *Subcontract Superintendent* and the *Main Contractor* on behalf of the *Subcontractor*, and to bind the *Subcontractor* contractually in respect of matters in connection with the performance of the *WUS*.

The *Subcontractor* shall forthwith give the *Subcontract Superintendent* written notice of the representative's name and any subsequent changes.

If the *Subcontract Superintendent* makes a reasonable objection to the appointment of a representative, the *Subcontractor* shall terminate the appointment and appoint another representative.

23 Subcontractor's employees and secondary subcontractors & meetings

23.1 Subcontractor's employees and secondary subcontractors

The *Subcontractor* shall employ persons and *secondary subcontractors* that are careful, skilled and experienced in their respective trades and professions in all activities connected with the *WUS*

The *Subcontract Superintendent* may direct the *Subcontractor* to have removed, within a stated time, from the *site* or from any activity of *WUS*, any person employed on *WUS* who, in the *Subcontract Superintendent's* opinion, is incompetent, negligent or guilty of misconduct.

23.2 Pre-start meeting

The *Subcontractor* shall, prior to the date the *Main Contractor* gives the *Subcontractor* sufficient possession of the *site* to commence *WUS*, attend a pre-start meeting to be held at the address and at a time directed by the *Subcontract Superintendent*.

The meeting shall address the following matters:

- (a) construction and *site* specific issues;
- (b) lines of communication and authority levels;
- (c) possession of the *site*;
- (d) frequency and venue of *site* meetings;
- (e) progress payments;
- (f) working hours;
- (g) safety requirements;
- (h) insurance;
- (i) scope of works;
- (j) programs; and
- (k) resources.

If the *Subcontractor* does not comply with this subclause 23.2 the *Main Contractor* shall be entitled to withhold *site* possession under clause 24, until such time as the topics for the pre-start meeting have been resolved to the *Main Contractor's* satisfaction.

The *Subcontractor* shall not be entitled an *EOT* or to make a *claim* in connection with the pre-start meeting on withholding of *site* possession under this subclause 23.2.

24 Site

24.1 Access

Before the expiry of the time stated in *Item 32(a)*, the *Main Contractor* shall give the *Subcontractor* access to the *site* sufficient to enable the *Subcontractor* to commence and carry out the *Subcontractor's design obligations*.

Subject to subclause 23.2 and provided the *Subcontractor* has complied with subclause 19.1, the *Main Contractor* shall before the expiry of the time in *Item 32(b)*, give the *Subcontractor* access to sufficient of

the *site* for commencement of *WUS* on *site*. If the *Main Contractor* has not given the *Subcontractor* access of such of the *site* to enable the *Subcontractor* to carry out all of *WUS*, the *Main Contractor* shall give the *Subcontractor* access of such further portions of the *site* as may, from time to time, be necessary for carrying out *WUS*. Subject to subclause 39.7, delay by the *Main Contractor* in giving access shall not be a breach of the *Subcontract*.

Access to the *site* shall confer on the *Subcontractor* a right to only such use and control as is necessary to enable the *Subcontractor* to carry out *WUS* and shall exclude camping, residential purposes and any purpose not connected with *WUS*, unless approved by the *Subcontract Superintendent*.

The *Subcontractor* shall notify the *Main Contractor* in writing of the names of each of the *secondary subcontractors*, agents or advisers as a condition of those *secondary subcontractors*, agents or advisers having access to the *site*.

The *Subcontractor* must only access the *site* from the access points directed by the *Subcontract Superintendent*.

24.2 Access for Main Contractor and others

The *Principal* and the *Principal's* employees, consultants and agents may at any reasonable time have access to any part of the *site* for any purpose. The *Subcontractor* acknowledges and agrees that it will not have exclusive access to the *site*.

The *Subcontractor* shall permit persons engaged by the *Principal* or by the *Main Contractor* to carry out work on the *site* other than *WUS* and shall :

- (a) cooperate with them and carefully coordinate and interface the *Subcontractor's* work with the work to be carried out by other contractors or subcontractors; and
- (b) carry out the work under the *Subcontract* so as to avoid interfering with, disrupting or delaying the work of other contractors.

The *Subcontractor* shall at all reasonable times give the *Subcontract Superintendent*, the *Superintendent*, the *Principal* and the *Main Contractor* access to *WUS*, whether at the *site* or elsewhere.

The *Main Contractor* shall use reasonable endeavours to ensure that none of the persons referred to in this subclause 24.2 impedes the *Subcontractor* while exercising a right of access.

24.3 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:

- (a) take precautions to prevent their loss, removal or damage; and
- (b) give the *Subcontract Superintendent* written notice of the discovery.

If compliance with obligations under this clause 24.3 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 assessed by the *Subcontract Superintendent* and added to or deducted from the *subcontract sum*.

24.4 Adjoining owners and property

The *Subcontractor* must ensure that no damage or loss is caused to the property of any third party outside the *site* in carrying out *WUS*. The *Subcontractor* must promptly rectify any damage or loss caused to the satisfaction of the third party. If the *Subcontractor* fails to do so the *Main Contractor* may have the rectification work carried out on its behalf and deduct the cost incurred from the *subcontract sum* or otherwise recover the amount as a debt due and owing from the *Subcontractor* to the *Main Contractor*.

The *Subcontractor* must:

- (a) comply with the *Principal's* and the *Main Contractor's* obligations under any access agreements (notified to the *Subcontractor* in writing by the *Main Contractor* or included in this *Subcontract*); and
- (b) not do or omit to do anything under the *Subcontract* which may cause a breach of any obligation under those access agreements.

25 Latent conditions

25.1 Scope

Latent conditions are hazardous materials which differ materially from the physical conditions which should reasonably have been anticipated by a competent subcontractor at the date of the *Subcontract* if the *Subcontractor*, exercising *Good Industry Practice*, had inspected and examined:

- (a) all written information made available by the *Main Contractor* to the *Subcontractor* for the purpose of tendering;
- (b) all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries;
- (c) the *site* and its near surrounds; and
- (d) all information set out in this *Subcontract*.

25.2 Notification

The *Subcontractor* shall promptly, and before the *latent condition* is disturbed (and no later than 1 *business* day of becoming aware), give the *Subcontract Superintendent* written notice of the general nature thereof.

The *Subcontractor* shall bear all risk in relation to the rectification of any *latent conditions* encountered.

25.3 Variation

Not used.

25.4 Non-reliance

The *Subcontractor*:

- (a) warrants generally that it did not in any way rely upon:
 - (i) any information, data, representation, statement or document made by or provided to the *Subcontractor* by the *Main Contractor* or anyone on behalf of the *Main Contractor* or the *Principal*; or
 - (ii) the accuracy or adequacy of any such information, data, representation, statement or document, for the purposes of entering into the *Subcontract*, except to the extent that any such information, data, representation, statement or document forms part of the *Subcontract*;
- (b) warrants that it enters into this *Subcontract* based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that the *Main Contractor* has entered into the *Subcontract* relying upon the warranties in paragraphs (a) and (b).

26 Setting out the Subcontract Works

26.1 Setting out

The *Main Contractor* shall ensure that the *Subcontract Superintendent* gives the *Subcontractor* the data, *survey marks* and like information necessary for the *Subcontractor* to set out *the Subcontract Works*, together with those *survey marks* specified in the *Subcontract*. Thereupon the *Subcontractor* shall set out *the Subcontract Works* in accordance with the *Subcontract*.

26.2 Errors in setting out

The *Subcontractor* shall rectify every error in the position, level, dimensions or alignment of any *WUS* after promptly notifying the *Subcontract Superintendent* and unless the *Subcontract Superintendent* within 3 days directs otherwise.

26.3 Care of survey marks

The *Subcontractor* shall keep in their true positions all *survey marks* supplied by the *Subcontract Superintendent*.

The *Subcontractor* shall reinstate any *survey mark* disturbed, after promptly notifying the *Subcontract Superintendent* and unless the *Subcontract Superintendent* within 3 days directs otherwise.

27 Cleaning up

The *Subcontractor* shall keep the *site* and *WUS* clean and tidy and regularly remove rubbish and surplus material.

Prior to the *date for practical completion*, the *Subcontractor* shall remove *temporary works* and *construction plant*. The *Subcontract Superintendent* may extend the time to enable the *Subcontractor* to perform remaining obligations.

It is a precondition to *practical completion* that the *Subcontractor* comply with this clause 27.

If the *Subcontractor* fails to comply with the preceding obligations in this clause 27, the *Subcontract Superintendent* may direct the *Subcontractor* to rectify the non-compliance and the time for rectification.

If:

- (a) the *Subcontractor* fails to comply with such a *direction*; and
- (b) that failure has not been made good within 3 days after the *Subcontractor* receives written notice from the *Subcontract Superintendent* that the *Main Contractor* intends to have the subject *work* carried out by others,

the *Main Contractor* may have that *work* so carried out and the *Subcontract Superintendent* shall certify the cost incurred as moneys due from the *Subcontractor* to the *Main Contractor*. The rights given by this paragraph are additional to any other rights and remedies.

28 Materials, labour and construction plant

Except where 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.

In respect of any materials, machinery or equipment to be supplied by the *Subcontractor* in connection with the *Subcontract*, the *Subcontract Superintendent* may direct the *Subcontractor* to:

- (a) supply to the *Main Contractor* or the *Subcontract Superintendent*, prior to commencement of *WUS*, particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and

- (b) arrange reasonable inspection at such place or sources by the *Subcontract Superintendent*, the *Main Contractor* and persons authorised by the *Main Contractor*.

The *Subcontract Superintendent* may give the *Subcontractor* a written *direction* not to remove materials or *construction plant* from the *site*. Thereafter the *Subcontractor* shall not remove them without the *Subcontract Superintendent's* prior written approval (which shall not be unreasonably withheld).

29 Quality

29.1 Quality of material and work

Unless otherwise provided the *Subcontractor* shall use suitable new and fit for purpose materials and proper and tradesmanlike workmanship in accordance with *Good Industry Practice*, and shall supply everything necessary for the proper performance of the *Subcontractor's* obligations and discharge of the *Subcontractor's* liabilities under the *Subcontract*.

29.2 Quality assurance

*

If the *Subcontract* elsewhere requires further quality assurance, the *Subcontractor* shall:

- (a) plan, establish and maintain a conforming quality system; and
- (b) ensure that the *Subcontract Superintendent* and the *Superintendent* have access to the quality system of the *Subcontractor* and *secondary subcontractors* so as 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 discharge the *Subcontractor's* other obligations under the *Subcontract*.

29.3 Defective work

If the *Subcontract Superintendent* or *Main Contractor* becomes aware of any *defect* or *work* done (including material provided) by the *Subcontractor* which does not comply with the *Subcontract*, the *Subcontract Superintendent* shall as soon as practicable give the *Subcontractor* written details thereof. If the subject *work* has not been rectified, the *Subcontract Superintendent* may direct the *Subcontractor* to do any one or more of the following (including times for commencement and completion) at the *Subcontractor's* cost:

- (a) remove the material from the *site*;
- (b) demolish the *work*;
- (c) redesign, reconstruct, replace or correct the *work*; and
- (d) not deliver it to the *site*.

Without limiting clause 35, if:

- (e) the *Subcontractor* fails to comply with such a *direction*; and
- (f) that failure has not been made good within 5 days after the *Subcontractor* receives written notice from the *Subcontract Superintendent* that the *Main Contractor* intends to have the subject *work* rectified by others,

the *Main Contractor* may have that *work* so rectified and the *Subcontract Superintendent* shall certify the cost incurred as moneys due from the *Subcontractor* to the *Main Contractor*.

* See Preface

If no time is specified by the *Subcontract Superintendent*, the time for such removal, demolition, redesign, reconstruction, replacement or correction shall be deemed to be one month from the date of the *Subcontract Superintendent's direction* under this clause 29.3. The *Subcontractor* must comply with a *direction* given under this clause 29.3.

29.4 Variations due to Defective Material or Work

Instead of a *direction* pursuant to clause 29.3, the *Subcontract Superintendent* may direct a *variation* under clause 36. The *variation* shall be valued under clause 36.4 and—

- (a) if the *variation* causes an increase or decrease in the value to the *Main Contractor* of the *Subcontract Works*, the *subcontract sum* shall be decreased accordingly. 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* pursuant to clause 29.3, regard shall not also be had to the difference.

29.5 Acceptance of defective work

Instead of a *direction* pursuant to subclause 29.3, the *Subcontract Superintendent* may direct the *Subcontractor* that the *Main Contractor* elects to accept the subject *work*, whereupon the work shall be assessed as if it were a *variation* and the *subcontract sum* will be decreased accordingly.

29.6 Timing

The *Subcontract Superintendent* may give a *direction* pursuant to this clause 29 at any time before the issue of the *final certificate*.

29.7 Generally

Nothing in this clause 29 prejudices 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 *Subcontract Superintendent* is not obliged to give a *direction* pursuant to subclause 29.4 to assist the *Subcontractor*.

Except to the extent that to do so would be inconsistent with a *direction* pursuant to clause 29.4 or 29.5 and notwithstanding that the *Superintendent* has not given a *direction* pursuant to clause 29.3, the *Subcontractor* shall promptly remove, demolish, redesign, reconstruct, replace or correct material or *work* that is not in accordance with the *Subcontract*.

The *Subcontractor* is not entitled to rely upon any progress payment, inspections or *tests* carried out by the *Principal* or the *Main Contractor*.

Nothing in clause 29 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 *Subcontract Superintendent* shall not be obliged to give a *direction* pursuant to clause 29.4 or 29.5 to assist the *Subcontractor*.

30 Examination and testing

30.1 Tests

At any time before the issue of the *final certificate*, the *Subcontract Superintendent* may inspect the *WUS* and direct that any *WUS* be tested. The *Subcontractor* shall give such assistance and samples and make accessible such parts of *WUS* as may be directed by the *Subcontract Superintendent*. On completion of the

tests, the *Subcontractor* shall promptly make good the *work* tested so that it fully complies with the *Subcontract*.

30.2 Covering up

The *Subcontract Superintendent* may direct that any part of *WUS* shall not be covered up or made inaccessible without the *Subcontract Superintendent's* prior written *direction*.

30.3 Who conducts

Tests shall be conducted as provided elsewhere in the *Subcontract* or by the *Subcontract Superintendent* or a person (which may include the *Subcontractor*) nominated by the *Subcontract Superintendent*.

30.4 Notice

The *Subcontract Superintendent* or the *Subcontractor* (whichever is to conduct the *test*) shall give reasonable written notice to the other of the date, time and place of the *test*. If the other does not attend, the *test* may nevertheless proceed.

30.5 Delay

Without prejudice to any other right, if the *Subcontractor* or the *Subcontract Superintendent* delays in conducting a *test*, the other, after giving reasonable written notice of intention to do so, may conduct the *test*.

30.6 Completion and results

On completion of the *tests*, the *Subcontractor* shall make good the *WUS* so that it fully complies with the *Subcontract*.

Results of *tests* shall be promptly made available by each party to the other and to the *Subcontract Superintendent*.

30.7 Costs

Costs in connection with testing pursuant to this clause 30 shall be borne by the *Main Contractor* except where the *Subcontract* otherwise provides or the *test* is consequent upon, or reveals a failure of the *Subcontractor* to comply with the *Subcontract* (including this subclause 30.7), or the test is consistent with a subcontractor exercising *Good Industry Practice*.

Where the *Main Contractor* or the *Principal* have incurred costs for which the *Subcontractor* is responsible under this subclause 30.7, those costs shall be certified by the *Subcontract Superintendent* as moneys due from the *Subcontractor* to the *Main Contractor*.

30.8 Costs of Inspection

The *Main Contractor* reserves the right to charge the *Subcontractor* for the *Main Contractor's* reasonable costs of:

- (a) inspection of the work under the *Subcontract* which reveals non-compliance with the *Subcontract*;
- (b) inspections to assess *practical completion* of the *WUS* where the *Main Contractor* gives reasons for not issuing a *certificate of practical completion* in accordance with clause 34.6;
- (c) inspections of any *defect* rectification work.

30.9 Common law rights not affected

Neither the *Main Contractor's* or the *Principal's* rights, nor the *Subcontractor's* liability, whether under the *Subcontract* or otherwise according to law in respect of *defects*, whether before or after the expiration of the *defects liability period*, will be affected or limited by:

- (a) the rights conferred upon the *Main Contractor* or *Subcontract Superintendent* by this clause 29 or any other provision of the *Subcontract*;
- (b) the failure by the *Main Contractor* or the *Subcontract Superintendent* to exercise any such rights; or
- (c) any instruction of the *Subcontract Superintendent* under clause 29.

31 Working hours

If the working hours and working days on the *site* are not stated elsewhere in the *Subcontract*, they shall be as notified by the *Main Contractor* to the *Subcontractor* before commencement of work on *site*. They shall not be varied without the *Subcontract Superintendent's* prior written approval, except when, in the interests of safety of persons or property, the *Subcontractor* finds it necessary to carry out *WUS* otherwise, whereupon the *Subcontractor* shall give the *Subcontract Superintendent* written notice of those circumstances as early as possible.

The *Subcontractor* shall consider any request of the *Main Contractor* with respect to working hours including the working of a six day week.

The *Subcontractor* must, at its cost, attend, and if required by the *Main Contractor* procure that its subcontractors and consultants attend, meetings as and when reasonably required by the *Main Contractor*.

32 Programming

- (a) The *Subcontract Superintendent* shall give to the *Subcontractor* the information, materials, documents and instructions by the times or within the periods both stated in *Item 33*.
- (b) The *Subcontractor* shall give the *Subcontract Superintendent* reasonable advance notice of when the *Subcontractor* needs information, materials, documents or instructions from the *Subcontract Superintendent* or the *Main Contractor*, and in any event not less than 5 *business days'* notice.
- (c) The *Main Contractor* and the *Subcontract Superintendent* shall not be obliged to give any information, materials, documents or instructions earlier than expressly stated in the *Subcontract*.
- (d) The *Subcontractor* 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 co-ordination of *WUS* into the work under the *main contract*, the *Main Contractor* and the *Subcontractor* shall co-ordinate *WUS* with the work under the *main contract*.
- (e) The *Subcontract Superintendent* may direct in what order and at what time the various stages or portions of *WUS* shall be carried out. If the *Subcontractor* can reasonably comply with the *direction*, the *Subcontractor* shall do so. If the *Subcontractor* cannot reasonably comply, the *Subcontractor* shall give the *Subcontract Superintendent* written notice of the reasons.
- (f) A *construction program* is a written statement showing the dates by which, or the times within which, the various stages or portions of *WUS* are to be carried out or completed. A preliminary form of the proposed *construction program* provided at the date of *Subcontract* is set out in Annexure Part F. The *construction program*, including any revised *construction program*, must include the details listed in Annexure Part O and must:
 - (i) at all times be consistent with the achievement of *practical completion* of the *WUS* by the *date for practical completion*;
 - (ii) show the critical path and all float, in the form reasonably required by the *Subcontract Superintendent*;
 - (iii) be in both hard copy format and electronic format compatible with Microsoft Project which is capable of interrogation and manipulation; and

- (iv) as and when revised, expressly highlight revisions made to a superseded version of the *construction program*.
- (g) The *Subcontract Superintendent* may direct the *Subcontractor* to give the *Subcontract Superintendent* a *construction program* within the time and in the form directed, which may include a critical path analysis which indicates the sequence of activities which constitute the critical path. Notwithstanding any lack of *direction* to provide a *construction program*, the *Subcontractor* shall give to the *Subcontract Superintendent* a revised and updated *construction program*:
 - (i) within the 10 *business days* of the date of *Subcontract*;
 - (ii) following any award of an *extension of time*;
 - (iii) within 24 hours of the *Subcontractor* failing to achieve a programmed milestone;
 - (iv) within 48 hours if the *Superintendent* considers the *Contractor* may not meet the *date for practical completion* or is not progressing the work under the *Subcontract* with due expedition and without delay, indicating the remedial action to be taken by the *Subcontractor* so as to meet the *date for practical completion*;
 - (v) if the *Main Contractor* is not reasonably satisfied that the updated *construction program* submitted under clause 32 has been correctly or adequately revised to meet the *date for practical completion*; or
 - (vi) as otherwise requested by the *Subcontract Superintendent* from time to time.

The *Subcontract Superintendent* may:

- (vii) accept the revised *construction program*, in which case, upon acceptance it will become the new approved *construction program* for the purposes of the *Subcontract*;
- (viii) direct necessary amendments or revisions to the *construction program*, in which case the *Subcontractor* must implement those amendments or revisions within the time and in the form directed by the *Subcontract Superintendent*; and
- (ix) reject the *construction program*, providing reasons for rejection, in which case the *Subcontractor* will be required to resubmit a revised and updated *construction program* in accordance with this clause 32.
- (h) The *Subcontractor* shall not, without reasonable cause, depart from a *construction program*, as included in the *Subcontract* or approve by the *Subcontract Superintendent*. The *Subcontractor* shall report progress against the approved *construction program* to the *Subcontract Superintendent* in accordance with the requirements of the *Subcontract Superintendent* at intervals no longer than monthly unless directed otherwise.
- (i) Subject to the *Subcontractor's* compliance with subclause 32(j), if compliance with a *direction* under clause 32(e), except those pursuant to the *Subcontractor's* default (including failure to exercise *Good Industry Practice*), causes the *Subcontractor* to incur more or less cost than otherwise would have been incurred had the *Subcontractor* not been given the *direction*, the *Subcontractor* may make a *claim*, which is to be valued under subclause 36.4.
- (j) The *Subcontractor* shall, within 5 days after receiving a *direction* under this clause 32, notify the *Subcontract Superintendent* whether the *Subcontractor* can comply with the *direction* together with details of:
 - (i) the effect on the *construction program* (including the *date for practical completion*);
 - (ii) all costs (including time related costs, if any) of complying with the *direction* and how that cost has been determined, including any quotations or supporting documentation; and
 - (iii) any changes in labour, plant, activities, or hours of work required to comply with the *direction*.

- (k) If the *Subcontractor* does not strictly comply with the requirements set out in this clause 32 it shall not be entitled to make a *claim*.
- (l) No *direction*, review of, comment upon, or approval of, or failure to review, approve or comment upon, a *construction program* shall:
 - (i) relieve the *Subcontractor* from or alter its liabilities or any obligations under the *Subcontract*, any statute or at common law, especially (without limitation) the obligation to achieve *practical completion* by the *date for practical completion*; or
 - (ii) affect the time for carrying out of the *Main Contractor's* or *Subcontract Superintendent's* obligations under the *Subcontract* or constitute a *direction* to accelerate or vary the work under the *Subcontract*, or evidence an entitlement to an extension of time.

If at any time the *Subcontractor* does not provide a revised *construction program* when required under this clause, the *Subcontractor* acknowledges that the *Main Contractor* may engage a third party to prepare a revised *construction program* and the reasonable cost incurred by the *Main Contractor* in doing so shall be a debt due from the *Subcontractor* to the *Main Contractor*.

The *Subcontractor* has in calculating the number of days it will take to bring the work under the *Subcontract* to *practical completion*, made the reasonable allowances set out in Item 49. In the event that the *Subcontractor* does not incur delays for the number of days listed in Item 49, this will not bring forward the *date for practical completion*. The parties acknowledge that the allowances set out in Item 49 are nominated for the purpose of complying with the *Domestic Building Act*. The *Subcontractor's* entitlements to an extension of time for *practical completion* are set out exclusively in subclause 34.3.

32A Acceleration

- (a) The *Subcontract Superintendent* may at any time:
 - (i) give the *Subcontractor* written *direction* for the *Subcontractor* to accelerate the carrying out of *WUS* (*Acceleration Order*), and therein instruct the *Subcontractor* to accelerate the work under the *Subcontract* by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay; and
 - (ii) give such an instruction whether or not the cause of delay for which the *Subcontractor* has given its claim under clause 34.3 otherwise entitles the *Subcontractor* to an extension of time.
- (b) If the *Subcontract Superintendent* gives the *Subcontractor* the *Acceleration Order* under clause (a), the *Subcontractor* must accelerate the *WUS* to overcome or minimise the extent and effect of some or all of the delay as instructed.
- (c) If the acceleration is necessary as a result of a *qualifying cause of delay* then:
 - (i) a written *direction* to accelerate under this clause 32A will entitle the *Subcontractor* to be paid by the *Main Contractor* the lesser of:
 - (A) the net costs unavoidably incurred by it as a result of the acceleration, and such costs shall be valued in accordance with subclause 36.4;
 - (B) the amount approved in the *Subcontract Superintendent's direction* under subclause 32A(c)(i); and
 - (C) the amount approved by the *Principal* under the *Main Contract* as determined by the *Subcontract Superintendent* as being applicable to the *Subcontractor's* acceleration; and
 - (ii) the *Subcontractor* shall take all steps possible to mitigate the actual net direct extra costs reasonably incurred as a result of the acceleration.

- (d) If the *Acceleration Order* only applies to part of the delay, the *Subcontractor's* entitlement to any extension of time which it otherwise would have had will only be reduced to the extent to which the instruction to accelerate requires the *Subcontractor* to accelerate to overcome the delay.
- (e) The *Subcontractor* is not entitled to any *variation*, costs or *claim* except in so far as set out in subclause 32A(c) and (d).
- (f) The *Subcontractor's* entitlement (if any) under this clause 32A will be its only entitlement arising out of the *direction* including in respect of any approved claim for an *EOT* properly notified under this *Subcontract* to the *date for practical completion* which the *Subcontractor* might have had but for the *notice of proposed acceleration*.
- (g) The *Main Contractor's* right to liquidated damages in accordance with subclause 34.7 shall not be prejudiced by any *direction* given, or complied with, in accordance with this clause 32A.

33 Suspension

33.1 Subcontract Superintendent's suspension

The *Subcontract Superintendent* may direct the *Subcontractor* to suspend the carrying out of the whole or part of *WUS* for such time as the *Subcontract Superintendent* thinks fit:

- (a) because of an act or omission of:
 - (i) the *Principal*, the *Superintendent*, the *Subcontract Superintendent*, the *Main Contractor* or the *Principal's* or the *Main Contractor's* employees, consultants, agents or other contractors (not being employed by the *Subcontractor*); or
 - (ii) the *Subcontractor*, a *Subcontractor's consultant*, a *secondary subcontractor* or the employees or agents of any of them;
- (b) for the protection or safety of any person or property;
- (c) to comply with a court order;
- (d) because of a *main contract dispute*;
- (e) because suspension of work under the *main contract*, in the *Subcontract Superintendent's* opinion, prevents *WUS*;
- (f) due to any other reason given by the *Principal* or *Main Contractor* in their absolute and sole discretion; or
- (g) due to suspension under the *main contract*.

33.2 Subcontractor's suspension

If the *Subcontractor* wishes to suspend the carrying out of the whole or part of *WUS* otherwise than pursuant to subclause 39.9, the *Subcontractor* shall obtain the *Subcontract Superintendent's* prior written approval. The *Subcontract Superintendent* may approve the suspension and may impose conditions of approval.

33.3 Recommencement

As soon as the *Subcontract Superintendent* becomes aware that the reason for any suspension no longer exists, the *Subcontract Superintendent* shall direct the *Subcontractor* to recommence suspended *WUS* as soon as reasonably practicable.

The *Subcontractor* may recommence *WUS* suspended pursuant to subclause 33.2 or 39.9 at any time after reasonable notice to the *Subcontract Superintendent*.

33.4 Cost

The *Subcontractor* shall bear the cost of suspension pursuant to subclauses 33.1(a)(ii) and 33.2. If the *Subcontractor* made the protection, safety, court order or suspension of work necessary, the *Subcontractor* shall bear the cost of suspension pursuant to subclauses 33.1(b) or 33.1(c).

Provided that the suspension is not as a result of or in connection with any act, default or omission by the *Subcontractor*, a *secondary subcontractor* or the employees or agents of any of them, if the *Subcontractor* otherwise incurs more or less cost than otherwise would have been incurred, the difference shall be assessed by the *Subcontract Superintendent* and added to or deducted from the *subcontract sum*.

The *Subcontractor*:

- (a) must mitigate the costs arising from any suspension under this clause 33; and
- (b) shall not be entitled to the double recovery of costs pursuant to this clause 33 and subclause 34.9.

34 Time and progress

34.1 Progress

The *Subcontractor* shall proceed with *WUS* with due diligence and without delay and shall ensure that *WUS* reaches *practical completion* by the *date for practical completion*.

If a part of the *Subcontract Works* has reached a stage equivalent to that of *practical completion* but another part of the *Subcontract Works* has not reached such a stage and the parties cannot agree upon the creation of *separable portions*, the *Subcontract Superintendent* may determine that the respective parts shall be *separable portions*.

In using a *separable portion* that has reached *practical completion*, the *Main Contractor* shall not hinder the *Subcontractor* in the performance of the work under the Subcontract.

34.2 Notice of delay

As soon as it becomes evident to the *Subcontractor* that anything may delay to *WUS*, the *Subcontractor* shall promptly (and in any event within 1 *business day* of the potential delay becoming evident to the *Subcontractor*) give the *Subcontract Superintendent* written notice of:

- (a) the possible delay and the cause;
- (b) how the potential delay will affect its current *construction program*;
- (c) the measures which are available to overcome the delay or potential delay; and
- (d) the expected effect that the delay or potential delay will have on the expected date that the *Subcontractor* will reach *practical completion*.

When it becomes evident to the *Subcontractor* that anything, including an act or omission of the *Main Contractor*, the *Subcontract 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 2 *business days* of the occurrence of the delay) notify the *Subcontract Superintendent* in writing with details of:

- (e) the delay and the cause;
- (f) how the delay will affect its current *construction program*;
- (g) the measures which are available to overcome the delay;
- (h) the measures which are being or will be taken to overcome the delay; and

- (i) the expected effect that the delay will have on the expected date that the *Subcontractor* will reach *practical completion*.

34.3 Claim

The *Subcontractor* shall be entitled to a reasonable extension of time to the *date for practical completion* as the *Subcontract Superintendent* assesses ('*EOT*'), if:

- (a) the *Subcontractor* has been delayed in reaching *practical completion* by the *date for practical completion* by a *qualifying cause of delay*; and
- (b) as a condition precedent to any entitlement, the *Subcontractor* gives the *Subcontract Superintendent*, within 7 *business days* of the occurrence of the delay, a written claim for an *EOT* evidencing the facts of causation and of the delay to *WUS* (including extent).

If further delay results from a *qualifying cause of delay* evidenced in a claim under subclause 34.4(b), the *Subcontractor* shall claim an *EOT* for such delay by giving the *Subcontract Superintendent* a written claim evidencing the facts of that delay every 10 *business days* thereafter.

It is a condition precedent to the *Subcontractor's* entitlement to an extension of time that the *Subcontractor* must:

- (c) strictly comply with clause 34;
- (d) not have caused, or contributed to the delay;
- (e) have taken all necessary steps (including committing additional resources, working additional hours and resequencing activities) to preclude the cause of the delay, avoid the occurrence of delay and minimise the consequences of the delay;
- (f) have actually been delayed in reaching *practical completion*; and
- (g) not have been given an instruction to accelerate under clause 32A.

In the event that the *Subcontractor* fails to comply with the conditions precedent in this clause within the times required, then:

- (h) the *Subcontractor* has no entitlement to an extension of time;
- (i) the *Subcontractor* must comply with the requirement to reach *practical completion* by the *date for practical completion*; and
- (j) any principle of law or equity (including those which might otherwise entitle the *Subcontractor* to relief and the 'prevention principle') which might otherwise render the *date for practical completion* immeasurable or damages (liquidated or otherwise) unforeseeable, does not apply.

34.4 Assessment

When both non-qualifying and *qualifying causes of delay* overlap, then to the extent that the delays are concurrent, the *Subcontractor* is not entitled to an *EOT*.

In assessing each *EOT* the *Subcontract Superintendent* shall disregard questions of whether:

- (a) *WUS* can nevertheless reach *practical completion* without an *EOT*; or
- (b) the *Subcontractor* can accelerate,

but shall have regard to whether:

- (c) the *Subcontractor* has taken all reasonable necessary steps to preclude the occurrence of the cause and minimise the consequences of the delay; and

- (d) the *Subcontractor* has caused, or contributed to the delay,

and shall proportionately reduce the *Subcontractor's* entitlement to an extension of time having regard to these matters.

34.5 Extension of time

Within 35 days after receiving the *Subcontractor's* claim for an *EOT*, the *Subcontract Superintendent* shall give to the *Subcontractor* and the *Main Contractor* a written *direction* evidencing the *EOT* so assessed, either:

- (a) granting the claim for an *EOT* in full;
- (b) granting part of the claim for an *EOT* giving reasons why the claim is partly rejected; or
- (c) rejecting the claim giving reasons why the claim for an *EOT* is rejected.

The *Subcontract Superintendent* will only grant an extension of time under this clause 34.5 if and to the extent that the activity or activities delayed cause a delay to the critical path of the *construction program* approved by the *Subcontract Superintendent* under clause 32.

Notwithstanding that the *Subcontractor* is not entitled to or has not claimed an *EOT*, the *Subcontract Superintendent* may, for the *Main Contractor's* benefit only, and in its sole and absolute discretion, at any time and from time to time before issuing the *final certificate* direct an *EOT*. Notwithstanding subclause 34.9, the *Subcontractor* shall not be entitled to delay costs or to make any *claim* in connection with an *EOT* directed under this paragraph.

34.6 Practical completion

The *Subcontractor* shall give the *Subcontract Superintendent* at least 14 days written notice of the date upon which the *Subcontractor* anticipates that *practical completion* will be reached.

When the *Subcontractor* is of the opinion that *practical completion* has been reached, the *Subcontractor* shall in writing request the *Subcontract Superintendent* to issue a *certificate of practical completion*. Within 14 days after receiving the request, the *Subcontract Superintendent* shall give the *Subcontractor* and the *Main Contractor* either a *certificate of practical completion* evidencing the *date of practical completion* or written reasons for not doing so.

If the *Subcontract Superintendent* is of the opinion that *practical completion* has been reached, the *Subcontract Superintendent* may issue a *certificate of practical completion* even though no request has been made.

The issue of a *certificate of practical completion* shall not constitute approval of any *work* or other matter nor shall it prejudice any *claim* by the *Main Contractor*.

The *Subcontractor* acknowledges that the *Main Contractor* may, in its sole and absolute discretion:

- (a) instruct the *Subcontract Superintendent* to issue a *certificate of practical completion* notwithstanding that the *Subcontract Works* have not achieved *practical completion* and there are residual *defects* in the *Subcontract Works*, in which case the *Subcontract Superintendent* will issue a *certificate of practical completion*:
 - (i) certifying the *date of practical completion*;
 - (ii) specifying a list of *defects* and omissions that the *Subcontractor* must complete as soon as possible after the *date of practical completion*; and
 - (iii) specifying a time by which those works must be completed (***Post Practical Completion Works***); and

- (b) elect to withhold the percentage or amount of security referred to in Item 48 of Annexure Part A from the security that is otherwise required to be released upon issue of the *certificate of practical completion* until the *Post Practical Completion Works* are completed in accordance with the *Subcontract* to the *Main Contractor's* satisfaction, as assessed by the *Subcontract Superintendent*.

The *Subcontractor* must complete the *Post Practical Completion Works*:

- (c) having regard to the *Main Contractor's* and the *Principal's* requirements and constraints on access to the *site*;
- (d) with due expedition and without delay; and
- (e) committing all necessary resources to complete the *Post Practical Completion Works* within the time specified by the *Subcontract Superintendent* and in accordance with the *Subcontract*.

34.6A Matters to be attended to before Practical Completion

Within 4 *business days* of the issue of the *Subcontractor's* notice of anticipated *practical completion*, the *Subcontractor* must:

- (a) deliver to the *Main Contractor* the following:
 - (i) all shop drawings, as built drawings and manuals as required by the *Subcontract* or requested by the *Subcontract Superintendent* in a substantially developed draft form to the satisfaction of the *Main Contractor*; and
 - (ii) all original warranties;
- (b) provide evidence of compliance with all relevant aspects of the quality assurance system including having undertaken all final inspections and testing of the *Subcontract Works* required by that system;
- (c) provide a certification from the relevant consultant that all building services have been installed and are operating in accordance with the *Main Contractor's project requirements* and this *Subcontract*; and
- (d) provide an asset register to the *Main Contractor* which complies with the *Main Contractor's* then current Hard Cat standard requirements (or equivalent) set out in the *Main Contractor's project requirements* as amended from time to time and notified by the *Main Contractor*);
- (e) provide evidence that the aged care facility meets the *Aged Care Certification Requirements*; and
- (f) provide evidence of compliance with the handover requirements set out in the *Main Contractor's project requirements*.

Within 15 *business days* of the *date of practical completion*, the *Subcontractor* must deliver to the *Main Contractor* final forms of any documents which were previously provided in draft form pursuant to paragraph (a) of this clause 34.6A.

Nothing in this clause 34.6A limits the *Subcontractor's* obligation to provide these documents as a condition of satisfying paragraph (c) of the definition of *practical completion*. The *Subcontractor* acknowledges the *Main Contractor's* right under clause 5.4 to retain any *security* until this obligation has been complied with and *practical completion* has been certified.

34.7 Liquidated damages

If *WUS* does not reach *practical completion* by the *date for practical completion*, the *Subcontract Superintendent* may certify, as a debt due and payable to the *Main Contractor*, liquidated damages at the rate stated in *Item 35(a)* for every day after the *date for practical completion* to and including the earlier of:

- (a) the *date of practical completion*; or
- (b) termination of the *Subcontract*; or
- (c) the *Main Contractor* taking *WUS* out of the hands of the *Subcontractor*.

Liquidated damages certified under this subclause 34.7 are a debt due and payable by the *Subcontractor* to the *Main Contractor* accruing daily. The *Main Contractor* may recover the amount of liquidated damages:

- (d) on written demand from the *Subcontractor*;
- (e) by deducting the amount from any amount certified by the *Subcontract Superintendent* under subclause 37.2; or
- (f) from any *security*,

progressively and even though *practical completion* has not occurred.

In the event that *practical completion* has not been achieved and the *Subcontract Superintendent* has certified the value of liquidated damages due to the *Main Contractor*, liquidated damages will continue to accrue daily (irrespective of whether or not any payment of any claimed liquidated damages has been made) until such time as *practical completion* occurs.

If an *EOT* is directed after the *Subcontractor* has paid or the *Main Contractor* has set off liquidated damages under the *Subcontract*, the *Main Contractor* shall forthwith repay to the *Subcontractor* those liquidated damages as represent the days the subject of the *EOT*.

34.7A Indemnity for late completion of Main Works

*

In addition to the *Subcontractor's* liability under subclause 34.7, if:

- (a) the *Main Contractor* becomes liable to pay the *Principal* liquidated damages under the *main contract* because the *main contract works* are not completed by the date required by the *main contract*; and
- (b) the proximate cause of the delay is the *Subcontractor's* failure to achieve *practical completion* of the *WUS* by the *date for practical completion*,

then the:

- (c) *Subcontract Superintendent* may certify as due and payable to the *Main Contractor* liquidated damages at the rate stated in *Item 35(a)* for each day that the *Subcontractor's* failure to achieve *practical completion* of the *WUS* by the *date for practical completion* results in the *Main Contractor* becoming liable to pay the *Principal* liquidated damages; and
- (d) *Subcontractor* indemnifies the *Main Contractor* against damages other than liquidated damages which become due and payable by the *Main Contractor* to the *Principal*.

If the *Subcontractor's* delay is not the sole cause of the *Main Contractor's* liability for damages, the *Subcontractor's* liability under this subclause 34.7A will be reduced proportionately having regard to the other causes of delay.

If after the *Subcontractor* has paid or the *Main Contractor* has set off liquidated damages, the *Superintendent* directs an *EOT* for the cause of the *Subcontractor's* delay, the *Main Contractor* shall forthwith repay to the *Subcontractor* such of those liquidated damages as represent the days the subject of the *EOT*.

* See Preface

34.8 Bonus for early practical completion

If the *date of practical completion* is earlier than the *date for practical completion* the *Subcontract Superintendent* shall certify as due and payable to the *Subcontractor* the bonus in *Item 36(a)* for every day after the *date of practical completion* to and including the *date for practical completion*.

The *Subcontractor* hereby waives that part of a bonus exceeding the *Item 36(b)* amount.

34.9 Delay costs

Not used.

35 Defects liability

35.1 Defects Liability Period

The *defects liability period* means the period specified in *Item 39*.

35.2 Rectification of defects

- (a) The *Subcontractor* must carry out *defect rectification work* at times and in a manner causing as little inconvenience to the occupants or users of *the Subcontract Works* as is reasonably possible and in accordance with the reasonable requirements of the *Main Contractor* and the *Principal*.
- (b) As soon as possible after the *date of practical completion*, the *Subcontractor* shall rectify all *defects* existing at the *date of practical completion*, including the *Post Practical Completion Works*.
- (c) During the *defects liability period*, the *Subcontract Superintendent* or the *Main Contractor* may give the *Subcontractor* a *direction* to rectify a *defect* which:
 - (i) identifies the *defect* and the date for completion of its rectification;
 - (ii) may state a date for commencement of the rectification;
 - (iii) may contain instructions as to how the *defect* rectification work must be carried out; and
 - (iv) may state whether there shall be a separate *defects liability period* therefor (not exceeding one year, commencing at 4:00 pm on the date the rectification is completed and governed by this clause 35).
- (d) If no timetable is provided by the *Subcontract Superintendent*, *defects* must be rectified as soon as practicable after notification.
- (e) If the rectification is not commenced or completed by the stated dates or otherwise in accordance with this clause 35, the *Main Contractor* may have the rectification carried out by others but without prejudice to any other rights and remedies the *Main Contractor* may have. The cost thereby incurred shall be certified by the *Subcontract Superintendent* as moneys due and payable to the *Main Contractor*.
- (f) If it is necessary for the *Subcontractor* to carry out rectification work the *Subcontractor* shall do so at times and in a manner which cause as little inconvenience to the occupants or users of *the Subcontract Works* as is reasonably possible.
- (g) Where the *Subcontractor* carries out rectification works during the *defects liability period*, it must follow all directions of the *Subcontract Superintendent* and/or the *Main Contractor* in relation to *site* access and occupational health and safety.

35.3 Common law rights preserved

Neither the *Main Contractor's* rights, nor the *Subcontractor's* liability, whether under the *Subcontract* or otherwise at law in respect of *defects*, whether before or after the expiration of the *defects liability period*, are affected or limited by:

- (a) the rights conferred upon the *Main Contractor* or *Subcontract Superintendent* by this clause 35 or any other provision of the *Subcontract*; or
- (b) the failure by the *Main Contractor* or the *Subcontract Superintendent* to exercise any such rights.

36 Variations

36.1 Directing variations

The *Subcontractor* shall not vary *WUS* except as directed in writing by the *Subcontract Superintendent* in writing.

The *Subcontract Superintendent*, before the *date of practical completion*, may direct the *Subcontractor* to vary *WUS* by any one or more of the following:

- (a) increase, decrease or omit any part or add new *work*;
- (b) change the character or quality;
- (c) change the levels, lines, positions or dimensions;
- (d) carry out additional *work*;
- (e) demolish or remove material or *work* no longer required by the *Main Contractor*,

(*variation*).

No *variation* directed by the *Subcontract Superintendent* shall be regarded as repudiation of the *Subcontract* by the *Main Contractor* even if the *variation* requires additional work outside of the general scope of the *Subcontract Works* or omits any part of the *Subcontract Works* for the purpose of the omitted *work* being carried out by the *Main Contractor* or another party engaged by the *Main Contractor*.

36.2 Variations requested by the Subcontract Superintendent

The *Subcontract Superintendent* may give the *Subcontractor* written *notice of proposed variation*.

The *Subcontractor* shall within 5 days (or such further period as agreed with the *Subcontract Superintendent*) of receiving the *notice of proposed variation* from the *Subcontract Superintendent*, complete the *notice of proposed variation*, notifying the *Subcontract Superintendent* whether the proposed *variation* can be effected, together with, if it can be effected, the *Subcontractor's* estimate of the:

- (a) description of the nature and extent of the proposed *variation*;
- (b) effect on the *construction program* (including the *date for practical completion*); and
- (c) costs (including all warranties related costs, if any) of the proposed *variation* and how the costs have been estimated, including any quotations and supporting documentation and any allowance for the *Subcontractor's* margin or overheads or administration costs.

The *Subcontractor* acknowledges that a valuation under clause 36.4 shall in no circumstances exceed the time and cost estimates provided in the notice provided by the *Subcontractor* pursuant to this clause 36.2.

The *Subcontract Superintendent* may direct the *Subcontractor* to give a detailed quotation for the proposed *variation* supported by measurements or other evidence of cost.

The *Subcontract Superintendent* shall note any changes to the proposed *variation* (including costs of the proposed *variation*), on the *notice of proposed variation*, sign the *notice of proposed variation* and provide a copy to the *Subcontractor* as approval to carry out the *variation*. The *Subcontractor* shall sign the *notice of proposed variation* and shall be bound by the terms of the *notice of proposed variation*.

The *Subcontractor* must bear its own costs of compliance with this subclause 36.2.

36.3 Variations for convenience of Subcontractor

The *Subcontractor* may, where the *Subcontractor* considers that a *variation* is necessary, give the *Subcontract Superintendent* a completed *notice of proposed variation*.

The *Subcontractor's* request shall:

- (a) be in the form of a *notice of proposed variation*;
- (b) state that the proposed *variation* is for the convenience of the *Subcontractor*; and
- (c) comply with the requirements of subclause 36.2.

If the *Subcontractor* requests the *Subcontract Superintendent* to direct a *variation* for the convenience of the *Subcontractor*, the *Subcontract Superintendent* may (but shall not be obliged to) do so. The *direction* shall be written and may be conditional and may be refused in the *Main Contractor's* or *Subcontract Superintendent's* absolute discretion. Unless the *direction* provides otherwise, the *Subcontractor* shall be entitled to neither extra time nor extra money in respect of the *variation* or anything arising out of the *variation* which would not have arisen had the *variation* not been approved.

36.4 Pricing

The *Subcontract Superintendent* shall, as soon as possible, assess the price of each *variation* using the following order of precedence:

- (a) prior agreement;
- (b) applicable rates or prices in the *Subcontract*;
- (c) rates or prices in a priced *bill of quantities*, *schedule of rates* or schedule of prices, even though not *Subcontract* documents, to the extent that it is reasonable to use them; and
- (d) reasonable rates or prices, which shall include a reasonable amount for profit and overheads,

and any deductions shall include a reasonable amount for profit but not overheads.

That price shall be added to or deducted from the *subcontract sum*.

36.5 Notification of variations

Despite any other provision of the *Subcontract*:

- (a) if the *Main Contractor* gives the *Subcontractor* a *direction* which, in the opinion of the *Subcontractor*, involves a *variation*, other than a *direction* which the *Subcontract Superintendent* expressly acknowledges in writing involves a *variation*, the *Subcontractor* shall notify the *Subcontract Superintendent*:
 - (i) that in the opinion of the *Subcontractor* the *direction* involves a *variation*, and
 - (ii) of the *Subcontractor's* estimate of the additional *work* necessary to give effect to the *variation* (including any likely delay and cost),

before the *Subcontractor* gives effect to the *direction*, but not later than 5 *business days* after receipt by the *Subcontractor* of the *direction*.

- (b) if the *Subcontractor* fails to notify the *Subcontract Superintendent* in accordance with this subclause 36.5, the *Subcontractor* shall not be entitled to any *claim* (including for any payment or an *EOT*) in connection with the *Subcontract Superintendent's* direction.

37 Payment

37.1 Progress claims

- (a) The *Subcontractor* may only make a progress claim in connection with the *WUS* at the times stated in *Item 40*. For the avoidance of doubt, no right to submit a progress claim arises during the period following *7 business days* after the *certificate of practical completion* is issued until the time for making the *final payment claim* under subclause 37.4 unless otherwise prescribed by law.
- (b) An early progress claim shall be deemed to have been made on the date for making that claim worked out under subclause 37.1(a).
- (c) Each progress claim shall be given in writing to the *Subcontract Superintendent* and shall include:
 - (i) the relevant Claim Documentation;
 - (ii) an executed declaration in the form of Annexure Part I by the *Subcontractor's Representative* which states that as at that date, no wages or other moneys are due and owing by the *Subcontractor* to employees, agents, creditors or *secondary subcontractors* in connection with the carrying out of the *Subcontract Works*;
 - (iii) evidence that all insurances which the *Subcontractor* is required to effect under this *Subcontract* are current and maintained: and
 - (iv) details of the contractual value of *WUS* done and may include details of other moneys then due to the *Subcontractor* pursuant to provisions of the *Subcontract*.

37.2 Certificates

- (a) The *Subcontract Superintendent* must issue to the *Main Contractor* and the *Subcontractor* a *payment schedule* within:
 - (i) *10 business days* after receiving a progress claim made under subclause 37.1; or
 - (ii) in the case of a *payment schedule* issued in response to a claim for payment made under the *Security of Payment Act*, such longer period which (without having reference to subclause 37.2(a)(i)) may be allowed under the *Security of Payment Act* for issuing a *payment schedule*,

which *payment schedule*:

- (iii) identifies the progress claim to which it relates;
 - (iv) states the amount of the payment, if any, that the *Main Contractor* proposes to make (*scheduled amount*);
 - (v) if the *scheduled amount* is less than the claimed amount, state why the *scheduled amount* is less, and if it is less because the *Main Contractor* is withholding payment for any reason, the *Main Contractor's* reason for withholding payment; and
 - (vi) states the amount of retention moneys and moneys due from the *Subcontractor* to the *Main Contractor* pursuant to the *Subcontract*.
- (b) If the *Subcontractor* does not make a progress claim in accordance with subclause 37.1 the *Subcontract Superintendent* may choose to issue a *payment schedule* with details of the calculations and issue the certificate dealing with the matters in subclauses 37.2(a)(iv) and 37.2(a)(vi).
- (c) The *Subcontract Superintendent*:

- (i) in receiving a progress claim does so as an agent of the *Main Contractor* for the purposes of the *Security of Payment Act*; and
 - (ii) may issue *payment schedules* by email to the email address stated in *Item 21*.
- (d) The *Main Contractor* shall within 30 *business days* after the *Subcontract Superintendent* receives the progress claim, pay to the *Subcontractor* the balance of the *payment schedule* after deducting retention moneys and setting off such of the certificate in subclause 37.2(a)(iv) as the *Main Contractor* elects to set off. If that setting off produces a negative balance, the *Subcontractor* shall pay that balance to the *Main Contractor* within 15 *business days* after receiving written notice thereof.
- (e) Neither a *payment schedule* nor a payment of moneys shall be evidence that the subject *WUS* has been carried out satisfactorily nor shall they prejudice any *claim* by or defence by the *Main Contractor*. Payment other than *final payment* shall be payment on account only.

37.2A Information required from the Contractor

Without limiting the *Subcontractor's* obligations under this *Subcontract* and prior to each payment under clause 37.2, the *Subcontractor* must ensure that it has:

- (a) provided the *Main Contractor* with *security* for the amount (if any) required under clause 5;
- (b) effected the insurance required by the *Subcontract* and (if requested) provided evidence of this to the *Subcontract Superintendent*;
- (c) complied with its programming obligations under clause 32;
- (d) complied with clause 38
- (e) correctly completed and provided to the *Main Contractor* detailed pricing schedules for the *Subcontract Works*;
- (f) provided the *Main Contractor* with a statutory declaration which has been:
 - (i) executed not before the date the relevant progress certificate was issued; and
 - (ii) duly executed by a representative of the *Subcontractor* who is in a position to know the facts declared; and
- (g) provided the *Main Contractor* with the Consultant Progress Statements where required.

The *Subcontractor* must submit prior to submitting its first payment claim under clause 37.1, and with each update of the *construction program*, an indicative cash flow consistent with the then current *construction program*.

37.3 Unfixed plant and materials

The *Main Contractor* shall not be liable to pay for unfixed plant and materials that are not incorporated into the *Subcontract Works* unless they are listed in *Item 42* and the *Subcontractor*:

- (a) provides the additional *security* in *Item 19(e)*; and
- (b) satisfies the *Subcontract Superintendent* that the subject plant and materials:
 - (i) have been paid for;
 - (ii) are properly stored and protected and labelled the sole and exclusive property of the *Main Contractor*; and
 - (iii) are appropriately insured.

Upon payment to the *Subcontractor* the subject plant and materials are deemed to be the unencumbered property of the *Main Contractor*.

37.4 Final payment claim and certificate

- (a) The *Subcontractor* may only make a 'Final Payment Claim' in connection with the *WUS* at the time stated in *Item 40*.
- (b) A *final payment claim*:
 - (i) must be written and endorsed 'Final Payment Claim';
 - (ii) satisfy the requirements of a *progress claim* under subclause 37.1(c) and include all claims whatsoever in connection with the subject matter of the *Subcontract*; and
 - (iii) must be accompanied by a *deed of release – final*.
- (c) The *Subcontractor* acknowledges and agrees that at the time of issuing its final payment claim it warrants to the *Main Contractor* that *the Subcontract Works* (including rectification of any *defects* during the *defects liability period*) have been completed in accordance with this *Subcontract* and operated and maintained throughout the *defects liability period* in accordance with the *Main Contractor's project requirements* and any documentation supplied to the *Main Contractor* by the *Subcontractor*.
- (d) After the time for submission of the *final payment claim* under this subclause 37.4, the *Subcontractor* releases the *Main Contractor* from, and indemnifies the *Main Contractor* against, any *claim* not included in the *final payment claim*. All such *claims*, which have not already been barred under the *Subcontract*, shall be barred after the expiration of the period for lodging a *final payment claim*.
- (e) The *Subcontract Superintendent* must issue to the *Main Contractor* and the *Subcontractor* a *final certificate* within:
 - (i) 10 business days after receiving the *final payment claim* (or whether the *Subcontractor* fails to provide such a *claim*, the expiration of the period specified in this clause 37.4, and the satisfaction of all of the *Subcontractor's* obligations under the *Subcontract*); or
 - (ii) in the case of a *payment schedule* issued in response to a claim for payment made under the *Security of Payment Act*, such longer period which (without having reference to subclause 37.4(e)(i)) may be allowed under the *Security of Payment Act* for issuing a *payment schedule*,

which *final certificate* will evidence the moneys finally due and payable between the *Subcontractor* and the *Main Contractor* on any account whatsoever in connection with the subject matter of the *Subcontract*.

- (f) Those moneys certified as due and payable shall, provided that the *Subcontractor* has completed, executed and delivered the *deed of release – final*, be paid by the *Main Contractor* or the *Subcontractor*, within 30 *business days* after the *Subcontract Superintendent* receives the *final payment claim*.
- (g) The *final certificate* shall be conclusive evidence of accord and satisfaction, and in discharge of each party's obligations in connection with the subject matter of the *Subcontract* except for:
 - (i) fraud or dishonesty relating to *WUS* or any part thereof or to any matter dealt with in the *final certificate*;
 - (ii) any *defect* or omission in *the Subcontract Works* or any part thereof which was not reasonably apparent at the end of the last *defects liability period*; and
 - (iii) any accidental or erroneous inclusion or exclusion of any *work* or figures in any computation or an arithmetical error in any computation.

37.5 Interest

Interest in *Item 43* shall be due and payable after the date of default in payment until (but not including) the date of payment.

37.6 Other moneys due

The *Main Contractor* may elect that moneys due and owing (or moneys claimed to be due and owing) otherwise than in connection with the subject matter of the *Subcontract* also be due to the *Main Contractor* pursuant to the *Subcontract*.

37.7 Set off

Without limiting the *Main Contractor's* other rights and remedies under the *Subcontract* or otherwise at law, the *Main Contractor* may at any time and from time to time deduct from moneys otherwise due to the *Subcontractor* (including from an amount certified in a *payment schedule*):

- (a) any debt or other moneys due from the *Subcontractor* to the *Main Contractor* (including liquidated damages under subclause 34.7) whether under the *Subcontract* or otherwise at law;
- (b) all losses, costs, expenses and damages suffered or incurred by the *Main Contractor* (including damages for breach of contract at law) in respect of which the *Subcontractor* is or may be liable;
- (c) any claim to money which the *Main Contractor* may have against the *Subcontractor* as a result of an act or omission of the *Subcontractor* or the carrying out of the *WUS*; and
- (d) any claim to money which the *Main Contractor* may have against the *Subcontractor* whether under this *Subcontract* or otherwise.

The provisions of this subclause 37.7 survive the termination or expiration of the *Subcontract*.

37.8 GST

- (a) Unless otherwise specified, all amounts payable under this *Subcontract* are exclusive of *GST* and shall be calculated without regard to *GST*.
- (b) If a supply made under this *Subcontract* is a taxable supply, the recipient of that taxable supply (*recipient*) shall, in addition to any other consideration pay to the party making the taxable supply (*supplier*) the amount of *GST* in respect of the supply.
- (c) The *recipient* will only be required to pay an amount of *GST* to the *supplier* if and when the *supplier* provides a valid, individually numbered tax invoice to the *recipient* in respect of the taxable supply.
- (d) If there is an adjustment to a taxable supply made under this *Subcontract* then the *supplier* shall provide an adjustment note to the *recipient*.
- (e) The amount of a party's entitlement under this *Subcontract* to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or liabilities.

38 Payment of workers, Subcontractor's consultants and secondary subcontractors

38.1 Workers, Subcontractor's consultants and secondary subcontractors

The *Subcontractor* shall give in respect of a progress claim, and as a precondition to payment, documentary evidence (annexed to the declaration in Annexure Part I) of the payment of moneys due and payable to:

- (a) workers of the *Subcontractor* and of the *secondary subcontractors*;
- (b) *Subcontractor's consultants*; and
- (c) *secondary subcontractors*,

in respect of *WUS* the subject of that *claim*.

If the *Subcontractor* is unable to give such documentary evidence, the *Subcontractor* shall give other documentary evidence of the moneys so due and payable to workers, *Subcontractor's consultants* and *secondary subcontractors*.

Documentary evidence, except where the *Subcontract* otherwise provides, shall be to the *Subcontract Superintendent's* satisfaction.

38.2 Withholding payment

Subject to the next paragraph, the *Main Contractor* may withhold moneys certified due and payable in respect of the progress claim until the *Subcontractor* complies with subclause 38.1.

The *Main Contractor* shall not withhold payment of such moneys in excess of the moneys evidenced pursuant to subclause 38.1 as due and payable to workers, *Subcontractor's consultants* and *secondary subcontractors*.

38.3 Direct payment

Before *final payment*, the *Main Contractor*, if not aware of a relevant relation-back day (as defined in the *Corporations Act 2001* (Cth)) may pay unpaid moneys the subject of subclause 38.1 directly to a worker, *Subcontractor's consultant* or a *secondary subcontractor* where:

- (a) permitted by law;
- (b) given a court order in favour of the worker, *Subcontractor's consultant* or *secondary subcontractor*;
- (c) requested in writing by the *Subcontractor*; or
- (d) otherwise entitled or required to.

Such payment and a payment made to a worker, *Subcontractor's consultant* or *secondary subcontractor* in compliance with a *legislative requirement* shall be deemed to be part-satisfaction of the *Main Contractor's* obligation to pay pursuant to subclause 37.2 or 37.4, as the case may be.

38.4 Labour dockets

Any labour docket signed by either the *Main Contractor*, the *Subcontract Superintendent* or the *Subcontract Superintendent's Representative*, does not constitute an approval for a *variation*, or indicate that the day labour costs contained therein are approved.

38.5 Security of Payment Act

The *Subcontractor* shall promptly give the *Main Contractor*, the *Subcontract Superintendent*, the *Principal* and the *Superintendent* a copy of any notice that the *Subcontractor* receives from a claimant under the *Security of Payment Act* or that the *Subcontractor* has been required to supply under the *Security of Payment Act*.

If the *Subcontractor* suspends performance of the *Subcontract Works* in accordance with the *Security of Payment Act*, the *Subcontractor* is not entitled to make any *claim* against the *Main Contractor* for any costs, losses, damages or expenses in connection with such suspension other than a *claim* for loss or expenses incurred by the *Subcontractor* as a result of the removal by the *Main Contractor* from the *Subcontract* of any part of the *Subcontract Works*.

If the *Main Contractor* becomes aware that a *secondary subcontractor* is entitled to suspend work (which forms part of *WUS*) in accordance with the *Security of Payment Act*, the *Main Contractor* may, in its absolute discretion, pay the *secondary subcontractor* such money that is, or may be, owing to that *secondary subcontractor* in respect of the work forming part of *WUS* and any amount paid by the *Main Contractor* shall be certified by the *Subcontract Superintendent* as a debt due and payable by the *Subcontractor* to the *Main Contractor*.

The *Subcontractor* indemnifies the *Main Contractor* against all *claims* made against, or losses, damages or expenses (including but not limited to legal costs on a solicitor and own client basis) which the *Main Contractor* may suffer or incur arising out of or in connection with:

- (a) a suspension by a *secondary subcontractor* of *work*, which forms part of *WUS*, under the *Security of Payment Act*;
- (b) any notice of claim being served on the *Main Contractor* pursuant to the *Security of Payment Act* by a subcontractor;
- (c) any lien claimed over unfixed plant or material pursuant to section 12A of the *Security of Payment Act* by a subcontractor of work which forms part of the *WUS*; or
- (d) a failure by the *Subcontractor* to comply with this subclause 38.5 or any other obligation of the *Subcontractor* under this *Subcontract* relating to the *Security of Payment Act*.

The *Subcontractor* agrees that:

- (a) it has chosen the Resolution Institute (Victoria) as the authorised nominating authority to which any adjudication application under the *Security for Payment Act* is to be made; and
- (b) it shall make any adjudication application to that authorised nominating authority (unless the *Main Contractor* in its absolute discretion considers an alternative nominating authority).

39 Default or insolvency

39.1 Preservation of other rights

If a party breaches (including repudiates) the *Subcontract*, nothing in this clause 39 shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

39.2 Subcontractor's default

If the *Subcontractor* commits a breach of the *Subcontract*, the *Main Contractor* may, give the *Subcontractor* a written notice to show cause why the *Main Contractor* should not exercise a right referred to it in subclause 39.4.

Breaches include, but are not limited to:

- (a) failing to:
 - (i) perform properly the *Subcontractor's design obligations*;
 - (ii) provide *security*;
 - (iii) provide evidence of insurance;
 - (iv) comply with a *direction* of the *Subcontract Superintendent* made under this *Subcontract*;
 - (v) use the materials or standards of *work* required by the *Subcontract*;
 - (vi) comply with any *legislative requirement*;
 - (vii) comply with its obligations under this *Subcontract* relating to the *Security of Payment Act*; or
 - (viii) proceed with *the Subcontract Works* in a competent manner;
- (b) wrongful suspension of *work*;
- (c) substantial departure from a *construction program* without reasonable cause or the *Subcontract Superintendent's* approval;

- (d) failing to proceed with due expedition and without delay to reach *practical completion* by the *date for practical completion*;
- (e) in respect of clause 38, knowingly providing documentary evidence or a statutory declaration containing an untrue statement;
- (f) failure of the *Subcontractor* or the *Subcontractor's secondary subcontractors* and consultants to be licenced as required by any *legislative requirement*; and
- (g) any other breach of the *Subcontract*.

39.3 Main Contractor's notice to show cause

A notice under subclause 39.2 shall state:

- (a) that it is a notice under clause 39 of the *Subcontract*;
- (b) the alleged breach;
- (c) that the *Subcontractor* is required to show cause in writing why the *Main Contractor* should not exercise a right referred to in subclause 39.4;
- (d) the date and time by which the *Subcontractor* must show cause (which shall not be less than 2 clear *business days* after the notice is received by the *Subcontractor*); and
- (e) the place at which cause must be shown.

A notice to show cause must either contain particulars of how the breach will be remedied and an enforceable undertaking to do so, or an enforceable undertaking to pay the *Main Contractor* reasonable compensation arising from the breach.

39.4 Main Contractor's rights

If the *Subcontractor* fails to show reasonable cause by the stated date and time, the *Main Contractor* may by written notice to the *Subcontractor*:

- (a) take out of the *Subcontractor's* hands the whole or part of the *work* remaining to be completed and suspend payment until it becomes due and payable pursuant to subclause 39.6; or
- (b) terminate the *Subcontract*.

Upon giving a notice under clause 39.2, the *Main Contractor* may suspend payments to the *Subcontractor* until the earlier of—

- (c) the date upon which the *Subcontractor* shows reasonable cause;
- (d) the date upon which the *Main Contractor* takes action under clause 39.4(a) or 39.4(b);
- (e) the date which is 7 days after the last day for showing cause in the notice under clause 39.2.

If the *Main Contractor* exercises the right under clause 39.4(a), the *Subcontractor*:

- (f) 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 39.6; and
- (g) must immediately hand over to the *Main Contractor* all *design documents* and any documents provided by the *Main Contractor* under clause 8.3.

39.5 Take out

The *Main Contractor* shall complete or procure completion of *work* taken out of the *Subcontractor's* hands and may:

- (a) use materials, equipment and other things intended for *WUS*; and
- (b) without payment of compensation to the *Subcontractor*:
 - (i) take possession of, and use, such of the *construction plant* and other things on or in the vicinity of the *site* as were used by the *Subcontractor*;
 - (ii) contract with such of the *Subcontractor's consultants* and *secondary subcontractors*; and
 - (iii) take possession of, and use, such of the *design documents*,

as are reasonably required by the *Main Contractor* to facilitate completion of *WUS*.

If the *Main Contractor* takes possession of *construction plant*, *design documents* or other things, the *Main Contractor* shall maintain them and, subject to subclause 39.6, on completion of the *work*, shall return such of them as are surplus.

The *Subcontract Superintendent* shall keep records of the cost of completing the *work*.

39.6 Adjustment on completion of work taken out

When *work* taken out of the *Subcontractor's* hands has been completed, the *Subcontract Superintendent* shall assess the cost thereby incurred and the loss suffered by the *Main Contractor* by reason of the taking of the *work* out of the hands of the *Subcontractor* or the events leading up to and resulting in the taking of the *work* out of the hands of the *Subcontractor* and shall certify as moneys due and payable accordingly the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the *Subcontractor* if the *work* had been completed by the *Subcontractor*.

If the *Subcontractor* is indebted to the *Main Contractor*, the *Main Contractor* may retain *construction plant* or other things taken under subclause 39.5 until the debt is satisfied. If after reasonable notice, the *Subcontractor* fails to pay the debt, the *Main Contractor* may sell the *construction plant* or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the *Subcontractor*.

If, under clause 37, the time for the *Subcontractor* to submit a progress claim or the *Main Contractor* to make payment falls between:

- (a) the date on which *work* is taken out of the hands of the *Subcontractor* under clause 39.4; and
- (b) the date on which the *Subcontract Superintendent* is obliged to issue the relevant certificate under this clause 39.6,

then the time for making the progress claim or making payment (as applicable) is deferred until 7 days after the date of receipt of the certificate under this clause 39.6, at which time the *Main Contractor* may deduct from moneys otherwise due to the *Subcontractor* the amount of any debt due from the *Subcontractor* to the *Main Contractor* under this clause.

39.7 Main Contractor's default

If the *Main Contractor* commits a material breach of the *Subcontract*, the *Subcontractor* may, by hand or by registered post, give the *Main Contractor* a written notice to show cause.

Material breaches are limited to failing to:

- (a) rectify inadequate *Subcontractor's* access to the *site* if that failure continues for longer than the time stated in *Item 44(a)*;

- (b) rectify inadequate *Subcontractor's* non-exclusive access to the *site* if that failure continues for longer than the time stated in *Item 44(b)*; or
- (c) make a payment which is not the subject of a *dispute* and which is due and payable pursuant to the *Subcontract*.

39.8 Subcontractor's notice to show cause

A notice given under subclause 39.7 shall state:

- (a) that it is a notice under clause 39 of these Subcontract Conditions;
- (b) the alleged material breach;
- (c) that the *Main Contractor* is required to show cause in writing why the *Subcontractor* should not exercise a right referred to in subclause 39.9;
- (d) the date and time by which the *Main Contractor* must show cause (which shall not be less than 7 clear days after the notice is received by the *Main Contractor*); and
- (e) the place at which cause must be shown.

39.9 Subcontractor's rights

If the *Main Contractor* fails to show reasonable cause by the stated date and time, the *Subcontractor* may, by written notice to the *Main Contractor*, suspend the whole or any part of *WUS*.

The *Subcontractor* shall remove the suspension if the *Main Contractor* remedies the breach.

The *Subcontractor* may, by written notice to the *Main Contractor*, terminate the *Subcontract* if, within 28 days after the date of suspension under this subclause 39.9 the *Main Contractor* fails:

- (a) to remedy the breach; or
- (b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the *Subcontractor*.

If the *Subcontractor* terminated the *Subcontract* under this clause 39.9 or if the *Main Contractor* repudiates the *Subcontract* and the *Subcontractor* otherwise terminates the *Subcontract*, the *Subcontractor* will:

- (c) be entitled to claim damages; and
- (d) not be entitled to a quantum meruit.

This survives termination of the *Subcontract*.

39.10 Termination

If the *Subcontract* is terminated pursuant to subclause 39.4(b) or 39.9, the rights and liabilities of the parties shall be the same as they would have been at law had the defaulting party repudiated the *Subcontract* and the other party elected to treat the *Subcontract* as at an end and recover damages. For the avoidance of doubt, if the *Main Contractor* repudiates the *Subcontract* and the *Subcontractor* elects to accept the repudiation and terminate the *Subcontract*, the *Subcontractor* shall not be entitled to *quantum meruit* but will be entitled to damages.

If the *Main Contractor* has terminated the *Subcontract*, the *Main Contractor* may also, without payment of compensation, take possession of the *design documents*.

Upon termination of the *Subcontract*, the *Subcontractor* shall:

- (a) immediately return to the *Main Contractor* any property of the *Main Contractor* in the possession of the *Subcontractor*, its employees, agents or *secondary subcontractors*; and
- (b) provide the *Main Contractor* with any manufacturers' and suppliers' warranties and installation certifications relating to the *Subcontract Works* that are in existence at the date of termination.

This subclause 39.10 will survive the expiration, termination or frustration of the *Subcontract*.

39.11 Insolvency

If:

- (a) a party makes a statement that it is insolvent or from which it may be reasonably deduced that the person is insolvent, or a person stops or suspends payment of all or a class of debts, or threatens to stop or suspend payment of all or a class of its debts;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if that person:
 - (i) commits an act of bankruptcy;
 - (ii) has a creditor's petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or
 - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth) or like provision under the law governing the *Subcontract*; or
- (d) in relation to a party being a corporation:
 - (i) where a person becomes insolvent within the meaning of section 95A, or is taken to have failed to comply with a statutory demand under section 459F(1), or must be presumed by a court to be insolvent under section 459C(2), or is the subject of a circumstance specified in section 461 (whether or not an application to court has been made under that section) or, if the person is a Part 5.7 body, is taken to be unable to pay its debts under section 585, of the *Corporations Act 2001* (Cth);
 - (ii) it enters a deed of company arrangement with creditors;
 - (iii) a controller or administrator is appointed;
 - (iv) an application is made to a court for its winding up and not stayed within 14 days;
 - (v) a winding up order is made in respect of it;
 - (vi) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up);
 - (vii) a mortgagee of any of its property takes possession of that property;
 - (viii) a step is taken under sections 601AA, 601AB or 601AC of the *Corporations Act 2001* (Cth) to cancel its registration;
 - (ix) an analogous or equivalent event to any listed above occurs to a party in any jurisdiction; or
- (e) the *Subcontractor* abandons the work under the *Subcontract*,

then, where the other party is:

(A) the *Main Contractor*, the *Main Contractor* may, without giving a notice to show cause, exercise any right under subclause 39.4; or

(B) the *Subcontractor*, the *Subcontractor* may, without giving a notice to show cause, exercise its rights under subclause 39.9.

The rights and remedies given by this subclause 39.11 are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of the *Subcontract*.

40 Termination other than for breach

40.1 Termination for frustration

If the *Subcontract* is frustrated:

- (a) the *Subcontract Superintendent* shall issue a *payment schedule* for *WUS* carried out to the date of frustration, evidencing the amount which would have been payable had the *Subcontract* not been frustrated and had the *Subcontractor* been entitled to and made a progress claim on the date of frustration;
- (b) the *Main Contractor* shall pay the *Subcontractor*:
 - (i) the amount due to the *Subcontractor* evidenced by all unpaid certificates;
 - (ii) the cost of materials and equipment reasonably ordered by the *Subcontractor* for *WUS* and which the *Subcontractor* is liable to accept, but only if they will become the *Main Contractor's* property upon payment; and
 - (iii) the costs reasonably incurred:
 - (A) removing *temporary works* and *construction plant*;
 - (B) returning to their place of engagement the *Subcontractor* and its employees engaged in *WUS* at the date of frustration; and
 - (C) by the *Subcontractor* in expectation of completing *WUS* and not included in any other payment; and
- (c) each party shall promptly release and return all *security* provided by the other.

For the avoidance of doubt, if the *Subcontract* is frustrated, the *Subcontractor's* entitlement is limited to the amount payable as determined under this subclause 40.1 which shall not exceed the *subcontract sum*.

40.2 Main contract ended

If the *main contract* is ended for any reason the *Main Contractor* may:

- (a) terminate the *Subcontract* on the giving of written notice of termination; or
- (b) novate this *Subcontract* to the *Principal* or any other person.

For the purpose of effecting the novation referred to in subclause 40.2(b), the *Subcontractor*:

- (c) agrees to promptly execute a deed of novation in the form approved by the *Main Contractor*; and
- (d) irrevocably appoints the *Subcontract Superintendent* and the *Main Contractor* to be the *Subcontractor's* attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the *Subcontractor* accordingly.

Subject to:

- (a) the *Main Contractor's* rights under any other provision of this *Subcontract* including clause 5 and subclause 37.7; and
- (b) provision by the *Subcontractor* to the *Subcontract Superintendent* of the appropriate *Claim Documentation* within 5 business days after termination,

if the *Subcontract* is terminated under this subclause 40.2 the *Main Contractor* shall pay to the *Subcontractor*:

- (c) the amount due to the *Subcontractor* shown in any unpaid *payment schedules*;
- (f) the amount certified by the *Subcontract Superintendent* for *WUS* carried out to the date of the termination, evidencing the amount which would have been payable had the *Subcontract* not been terminated and had the *Subcontractor* been entitled to and made a progress claim on the date of termination; and
- (g) the cost of materials reasonably ordered by the *Subcontractor* for *WUS*, which the *Subcontractor* cannot return or for which the order cannot be cancelled, but only if the materials become the property of the *Main Contractor* upon payment.

The *Subcontractor* is not entitled to any other *claim*, including any *claim* for loss of profits, costs, losses, damages or expenses suffered or incurred, other than those amounts payable under this subclause 40.2.

40.3 Termination for convenience

The *Main Contractor* may terminate the *Subcontract* in its absolute discretion by giving the *Subcontractor* written notice. Subject to:

- (a) the *Main Contractor's* rights under any other provision of this *Subcontract* including clause 5 and subclause 37.7; and
- (b) provision by the *Subcontractor* to the *Subcontract Superintendent* of the appropriate *Claim Documentation* within 5 business days after termination,

the *Main Contractor* shall pay to the *Subcontractor*:

- (c) the amount due to the *Subcontractor* evidenced by any unpaid *payment schedule* issued under subclause 37.2;
- (d) the contractual value of *WUS* carried out by the *Subcontractor* in accordance with the *Subcontract* up to termination but not yet claimed in a progress claim as if the *Subcontractor* had made a progress claim under subclause 37.1 at termination;
- (e) the *Subcontractor's* reasonable costs incurred in demobilising from the *site* not already included in another payment; and
- (f) the reasonable cost incurred by the *Subcontractor* for materials and goods which were reasonably (and not prematurely) ordered for the *Subcontract Works* and which are no longer required provided they are:
 - (i) delivered to the *Subcontractor* for *WUS* and which the *Subcontractor* is liable to accept;
 - (ii) not delivered but the *Subcontractor* is legally liable to accept the delivery of such materials and goods; and
 - (iii) such materials and goods become the property of the *Main Contractor* upon payment by the *Main Contractor*; and
 - (iv) the costs are not already included in another payment.

For the purposes of this subclause 40.3, the term “reasonable cost” means actual additional costs reasonably incurred by the *Subcontractor*.

Other than those amounts expressly payable under this subclause 40.3, the *Subcontractor* is not entitled to any other *claim* in connection with termination by the *Main Contractor* under this clause 40.

The *Subcontractor* shall:

- (g) on the day of termination cease carrying out *WUS* and immediately make safe the *WUS*;
- (h) take all steps possible to mitigate the costs referred to in subclauses (e) and (f) above;
- (i) if directed by the *Main Contractor* to do so:
 - (i) assign or novate in favour of the *Main Contractor* any sub-subcontracts (including without limitation for the provision of any materials) or rights under any sub-subcontracts entered into or obtained by the *Subcontractor* in connection with *WUS* or the *Subcontract Works*; and
 - (ii) terminate any other sub-subcontracts and recover from the *secondary subcontractor* any property, documentation, material or information of the *Main Contractor* or the *Subcontract Superintendent*,in each case, with effect on and from the date of termination;
- (j) on or before the date of termination deliver to the *Main Contractor* all property, documentation or information of the *Main Contractor* or the *Subcontract Superintendent* provided to the *Subcontractor* in connection with *WUS* or the *Subcontract Works*; and
- (k) on or before the date of termination, deliver to the *Main Contractor* any of the materials or *WUS* which under the *Subcontract* has become the property of the *Main Contractor*.

The amount to which the *Subcontractor* is entitled under this clause 40.3 will be a limitation upon the *Main Contractor's* liability to the *Subcontractor* arising out of, or in any way in connection with, the termination of the *Subcontract* (whether under this clause 40.3 or otherwise) and the *Subcontractor* may not make any *claim* of any kind against the *Main Contractor* arising out of, or in any way in connection with, the termination of the *Subcontract* other than for the amount payable under this clause 40.3.

This clause 40.3 survives termination or expiration of this *Subcontract*.

40A Documents

If this *Subcontract* is terminated in accordance with clause 39 or 40 or otherwise upon issue of the *final payment claim*, the *Subcontractor* must immediately provide the *Main Contractor* with, upon written request, either:

- (a) all or some specified confidential information and materials which the *Principal* or *Main Contractor* has provided to the *Subcontractor*, the *Subcontractor's* employees or subcontractors, and all or some specified *Subcontract Materials* and copies of the *Subcontract Materials* in a form capable of re-use by the *Main Contractor* or *Principal* (at the discretion of the *Principal*); or
- (b) written confirmation that the confidential information and materials referred to in clause 40A(a) has been permanently destroyed.

The *Main Contractor* may withhold release of any *security* then held by the *Main Contractor* until the *Subcontractor* has complied with this clause 40A.

41 Notification of claims

41.1 Communication of claims

Notwithstanding any other provision of the *Subcontract*, the *Main Contractor* will not be liable upon any *claim* (other than a progress claim under clause 37) by the *Subcontractor* in respect of any matter arising out of or in connection with the *Subcontract*, the subject matter of the *Subcontract* or otherwise, including but not limited to, any *claim* for any form of loss or damages unless:

- (a) a notice of claim, together with full particulars thereof is lodged in writing with the *Main Contractor* and the *Subcontract Superintendent* not later than the time specified in this *Subcontract*, or if no time is stated, 5 *business days* after the date the *Subcontractor* becomes aware or should have become aware of the occurrence of the events or circumstances on which the *claim* is based; and
- (b) the notice outlines the legal basis of the *claim* and full details of the likely quantum.

41.2 Liability for failure to communicate

If the *Subcontractor* does not give the *Main Contractor* and the *Subcontract Superintendent* the notice in accordance with subclause 41.1, the *Subcontractor* shall not be entitled to the *claim* and the *Main Contractor* shall be released for all time from the *claim*.

The provision of a notice in accordance with subclause 41.1 is a precondition to any such claim for payment.

41.3 Subcontract Superintendent's decision

Within 10 *business days* after receipt of a notice of claim under subclause 41.1, the *Subcontract Superintendent* shall assess the notice of claim and notify the parties in writing of the decision. Unless a party within a further 21 days after such notification gives a notice of *dispute* under subclause 42.1 which includes such decision, the *Subcontract Superintendent* shall certify the amount of that assessment to be moneys then due and payable.

42 Dispute resolution

42.1 Notice of dispute

If a difference or *dispute* (together called a '*dispute*') between the parties arises in connection with the subject matter of the *Subcontract*, including a *dispute* concerning:

- (a) a *Subcontract Superintendent's direction*; or
- (b) a *claim*:
 - (i) in tort;
 - (ii) under statute;
 - (iii) for restitution based on unjust enrichment or other quantum meruit; or
 - (iv) for rectification or frustration,or like *claim* available under the law governing the *Subcontract*,

then either party shall, by hand or by registered post, give the other and the *Subcontract Superintendent* a written notice of *dispute* adequately identifying and providing details of the *dispute*. The notice must specify:

- (c) the *dispute* or difference;
- (d) particulars of the party's reasons for being dissatisfied; and

- (e) the position which the party believes is correct.

Notwithstanding the existence of a *dispute*, the parties shall, subject to clauses 39 and 40 and subclause 42.4, continue to perform the *Subcontract*.

42.2 Conference

Within 7 days after receiving a notice of *dispute*, the parties shall confer at least once to resolve the *dispute* or agree on the methods of doing so. At every such conference each party shall be represented by the Chief Executive Officer or equivalent person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

42.2A Independent Expert

If the *dispute* is not resolved within 7 days of the conference under clause 42.2 (or within such further time as the parties may agree) either party may refer the *dispute* to an independent expert (*Expert*) for determination in accordance with, and subject to, the current edition of the Resolution Institute Expert Determination Rules.

The *Expert's* determination shall be final and binding except in the case of fraud or bad faith.

Unless the parties agree upon an *Expert*, either party may request a nomination from the Chair of Resolution Institute.

The parties agree that nothing in this clause 42.2A constitutes an arbitration agreement within the meaning of the *Commercial Arbitration Legislation*.

If the *dispute* has not been resolved in accordance with clause 42, either party may commence proceedings in an appropriate court with jurisdiction.

42.3 Main contract disputes affecting the Subcontract

When the *Main Contractor* becomes aware of a *main contract dispute* which touches or concerns *work*, material or the performance of *WUS*, the *Main Contractor* shall give the *Subcontractor*:

- (a) a notice setting out adequate details of the *main contract dispute*; and
- (b) a copy of the *main contract* provisions relating to notification of claims and resolution of disputes.

If the *Main Contractor* has complied with this subclause, the *Main Contractor* may give written notice to the *Subcontractor* requiring any *dispute* which affects the *main contract dispute* to be resolved as part of the *main contract dispute*.

42.4 Summary relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the *Subcontract* or to seek injunctive or urgent declaratory relief.

42.5 Disputes under the Main Contract

If the *Principal* or any other person having the right to do so, condemns any materials, workmanship or design of the *Subcontractor* or refuses to include their value in any progress or *final payment* to the *Main Contractor* then that condemnation or refusal is conclusive as between the *Main Contractor* and the *Subcontractor* as to those matters.

If any *dispute* or difference arises between the *Main Contractor* and the *Subcontractor* in respect of any fact, matter or thing which is the subject of or relates to a *dispute* or difference between the *Main Contractor* and the *Principal* under the *Main Contract* or which has been resolved under the dispute resolution procedure contained in the *Main Contract* (including the outcome of any court proceedings initiated between those parties) then subclauses 42.1 to 42.3 will not apply but instead:

- (a) subject to subclause 42.5(b), the *Subcontractor* will be bound by the outcome of the dispute resolution procedure contained in the *Main Contract* (including the outcome of any court proceedings initiated between the *Main Contractor* and the *Principal*);
- (b) subject to the final paragraph of this subclause 42.5, the *Main Contractor* must, at the request of the *Subcontractor*, take such steps as are reasonably open to it under the provisions of the *Main Contract* to attempt to achieve a resolution of the *dispute* or difference under the *Main Contract* which is reasonably satisfactory to the *Subcontractor*; and
- (c) the *Subcontractor* must co-operate with and assist the *Main Contractor* in respect of the *dispute* or difference, including the provision of documents and any other things reasonably required by the *Main Contractor*.

If the *Main Contractor* is requested by the *Subcontractor* to take the steps set out in subclause 42.5(b), the *Subcontractor*:

- (d) must provide the *Main Contractor* with an indemnity against all reasonable costs and expenses the *Main Contractor* may incur as a result of complying with this request; and
- (e) must, if required by the *Main Contractor*, lodge with the *Main Contractor* such *security* (including a bank undertaking or cash) as the *Main Contractor* may require in support of the indemnity in subclause 42.5(d).

43 Waiver of conditions

Except as provided at law or in equity or elsewhere in the *Subcontract*, none of the provisions of the *Subcontract* shall be varied, waived, discharged or released, except with the prior written consent of the parties.

44 Services and facilities

44.1 Provision of services and facilities

The *Main Contractor* and the *Subcontractor* shall provide, in good order and working condition, the services and facilities stated in Item 46 as being provided by that party.

Except as provided in this subclause 44.1 or elsewhere in the *Subcontract*, the *Subcontractor* shall provide all other services and facilities necessary for the execution and completion of *WUS*.

The *Subcontractor* shall use services or facilities provided by the *Main Contractor* only for the carrying out of *WUS*.

44.2 Compliance

All services and facilities provided by the *Main Contractor* and the *Subcontractor* shall comply with all *legislative requirements* applicable from time to time to *WUS*.

44.3 Additional services or facilities

If pursuant to a request of the *Subcontractor*, the *Main Contractor* agrees to provide services or facilities additional to those provided by the *Main Contractor* in Item 46, the *Subcontractor* shall pay a reasonable charge (which shall not be less than the cost to the *Main Contractor*) for the provision of such additional services or facilities. The rates of hire and the conditions relating to their provision shall be agreed in writing prior to the provision of such additional services or facilities.

45 Main Contractor May Act

The *Main Contractor* may, either itself or by a third party, carry out an obligation under the *Subcontract* which the *Subcontractor* was obliged to carry out but which it failed to carry out within the time required in accordance with the *Subcontract* and after notice was given to the *Subcontractor* by the *Main Contractor* of its intention to exercise a right under this clause 45. The costs, liabilities, losses and damages suffered or

incurred by the *Main Contractor* in so carrying out such a *Subcontract* obligation will be a debt due from the *Subcontractor* to the *Main Contractor*.

46 Reporting and attendance at meetings

The *Subcontractor* must provide, on request, any information and documents, in the form and by the time instructed, to the *Main Contractor* and the *Subcontract Superintendent*.

The *Subcontractor* acknowledges that the provision of the documents or information is for the purpose of the *Main Contractor* complying with its obligations under the *main contract*, and it agrees that it will do all things necessary or requested by the *Main Contractor* or *Subcontract Superintendent* to furnish the *Main Contractor* with the information or documents it requires.

The *Subcontractor* agrees that it will, on request by the *Main Contractor* or *Subcontract Superintendent*, attend any *Project* meetings at such times and locations instructed.

The *Subcontractor* acknowledges and accepts that it will have no entitlement to additional time or costs arising in connection with complying, or the consequences of failing to comply, with its obligations under this clause.

47 Building Code 2016

47.1 Definitions

For the purpose of this clause 45:

ABCC means the body referred to in subsection 29(2) of the *Act*;

ABC Commissioner means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the *Act*;

Act means the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth);

Building Code means the *Code for the Tendering and Performance of Building Work 2016*, which is available at <https://www.legislation.gov.au/Details/F2016L01859>;

Building Contractor has the same meaning as in the *Act*;

Building Industry Participant has the same meaning as in the *Act*;

Building Work has the same meaning as in subsection 3(4) of the *Building Code*;

Commonwealth Funded Building Work means *Building Work* in items 1-8 of Schedule 1 of the *Building Code*;

Enterprise Agreement has the same meaning as in the *Fair Work Act 2009* (Cth);

Exclusion Sanction has the same meaning as in subsection 3(3) of the *Building Code*;

Guidelines means any guidelines issued by any State Government for the implementation of the *Building Code*;

Letter of Compliance means a letter of compliance issued by the *ABCC* certifying that an *Enterprise Agreement* is compliant with the *Building Code*;

Related Entity has the same meaning as in subsection 3(2) of the *Building Code*; and

Sub-subcontractor means a *secondary subcontractor*, a *Building Contractor* or *Building Industry Participant* who the *Subcontractor* has entered, or proposes to enter, into a sub-subcontract with to undertake any *WUS*.

47.2 Application

This clause 45 applies where the *main contract* includes *Commonwealth Funded Building Work* or where required by the *Main Contractor*.

47.3 Obligations

- (a) The *Subcontractor*:
 - (i) declares as at the date of commencement of this *Subcontract* in relation to the *WUS*; and
 - (ii) must ensure that during the term of this *Subcontract* in relation to the *Subcontract Works*, that it and its *Sub-subcontractors*:
 - (iii) comply with the *Building Code* and the *Guidelines*;
 - (iv) are not covered by an *Enterprise Agreement* that does not meet the requirements of section 11 of the *Building Code*;
 - (v) are not subject to an *Exclusion Sanction*;
 - (vi) will only use products in relation to the *Subcontract Works* that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;
 - (vii) unless approved otherwise by the *ABC Commissioner*, are not excluded from performing *Building Work* funded by a state or territory government; and
 - (viii) comply with any applicable Workplace Relations Management Plan approved by the *ABCC* in accordance with Part 6 of the *Building Code* that applies to the *WUS* and the *Guidelines*.
- (b) Without limiting and notwithstanding subclause 47.3(a), the *Subcontractor* will ensure that remedial action is taken to rectify any behaviour on the part of it and its *Sub-subcontractors* that is non-compliant with the *Building Code* and the *Guidelines*.
- (c) The *Subcontractor* must every six months during the term of this *Subcontract* advise the *Main Contractor* whether:
 - (i) it has in the preceding 6 months or since it last advised the *Main Contractor*, whichever is the earliest, had an adverse decision, *direction* or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or the *Migration Act 1958* (Cth); or
 - (ii) it has in the preceding 6 months or since it last advised the *Main Contractor*, whichever is the earliest:
 - (A) been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) to a *Building Contractor* or *Building Industry Participant*; or
 - (B) owed any unsatisfied judgement debts to a *Building Contractor* or *Building Industry Participant*.
- (d) Compliance with the *Building Code* and the *Guidelines* does not relieve the *Subcontractor* from responsibility to perform this *Subcontract*, or from liability for any defect in the *Subcontract Works* arising from compliance with the *Building Code* and the *Guidelines*.
- (e) The *Subcontractor* must notify the *ABCC* of any breach or suspected breach of the *Building Code* and the *Guidelines* as soon as practicable but no later than 2 working days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.

- (f) The *Subcontractor* acknowledges the powers and functions of the *ABC Commissioner* and the *ABCC* under the *Act* and the *Building Code* and will ensure that it and its *Sub-subcontractors* comply with any requests made by the *ABCC* and the *ABC Commissioner* within those powers and functions, including but not limited to requests for entry under section 72 of the *Act*, requests to interview any person under section 74 of the *Act*, requests to produce records or documents under sections 74 and 77 of the *Act* and requests for information concerning matters relating to the *Building Code* under subsection 7(c) of the *Building Code*. The *Subcontractor* acknowledges the powers and functions of the *State Government* under the *Guidelines*, and will ensure that it and its *Sub-subcontractors* comply with any requests made by anyone authorised under the *Guidelines*.
- (g) The *Subcontractor* must only enter into a sub-subcontract for any of the *Subcontract Works* where:
- (i) the *Sub-subcontractor* has submitted a declaration of compliance, including the further information outlined in Attachment A to the declaration of compliance, in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the *Building Code*; and
 - (ii) the sub-subcontract with the *Sub-subcontractor* contains clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the *Building Code*.

48 Samples and Technical Information

The *Subcontractor* shall submit to the *Subcontract Superintendent* such samples of and technical information relating to any materials, finishes or equipment as may be instructed by the *Subcontract Superintendent* or as required by the *Main Contractor's project requirements*.

Each sample shall be labelled by the *Subcontractor* so as to provide a means of identification.

The *Subcontract Superintendent* shall promptly notify the *Subcontractor* of any objection it might reasonably have to a sample submitted by the *Subcontractor* but if there is no such objection, one sample shall be placed in safe keeping in a sample room to be provided by the *Subcontractor* at the *Subcontractor's* cost on or adjacent to the *site*. If the *Subcontract Superintendent* objects to any such samples the *Subcontractor* shall prepare such further alternative samples as may be required by the *Subcontract Superintendent*.

Unless stated otherwise in this *Subcontract*, the *Subcontractor* shall carry out the work under the *Subcontract* to no lesser standard than that shown in the samples of materials, finishes or equipment which are acceptable to the *Subcontract Superintendent*.

49 Prototypes

Where the *Subcontract* requires a prototype for any part of the *Subcontract Works* (including in relation to the *Benchmark Aged Care Room* or *Benchmark Assisted Living Residence*) or where the *Subcontract Superintendent* otherwise directs that a prototype is required, then the *Subcontractor* must not commence the *Works* in respect of which the prototype is required unless, the *Subcontractor* has constructed the element of the prototype (at a location approved by the *Superintendent*) at least 30 days (or such shorter time as otherwise agreed between the parties) before the *Subcontractor* implements that element of the prototype into the *Works*. The prototype must incorporate any samples kept in the sample room pursuant to clause 48.

Prototypes required under this *Subcontract* include but are not limited to those elements listed in Item 47 of Annexure Part A.

If the *Subcontract Superintendent* rejects any prototype, then the *Subcontractor* must, without being entitled to any addition to the *subcontract sum* or any extension of time, either reconstruct the prototype which does comply with the requirements of the *Subcontract* or complete those parts of the *Subcontract Works* to which the prototype relates with alternative materials or construction methods approved by the *Subcontract Superintendent*.

50 Benchmark Assisted Living Residence And Benchmark Aged Care Room

The *Subcontractor* shall complete the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* in accordance with the *Subcontract* and to the satisfaction of the *Subcontract Superintendent* having regard to the requirements of the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* set out below, by the *date for practical completion* of Separable Portion 1A and 1B.

The *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* shall include:

- (h) all internal finishes and services (including without limitation all kitchen appliances, installed and completed and fully operational), joinery, temporary power and lighting and external windows which are to be undertaken by the *Subcontractor* pursuant to the *Subcontract*; and
- (i) any samples kept in the sample room pursuant to clause 48 and approved prototypes pursuant to clause 49.

The *Subcontractor* shall engage in consultation with the *Main Contractor* and *Principal* and relevant consultants (including the architect and the interior designer) in relation to all finishes, fixtures and fittings within the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* (including but not limited to whitegoods, cooking equipment and sanitary fixtures and fittings) prior to undertaking any works in connection with the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* and must incorporate any comments provided during such consultation in the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room*.

The *Subcontractor* acknowledges and agrees that the consultation process in relation to the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* is a continuing obligation and that the *Main Contractor*, the *Principal*, the *Subcontract Superintendent* and / or *Superintendent* may at any time, without limiting their rights under this *Subcontract*, inspect the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* and provide additional comments to the *Subcontractor* which must be incorporated in the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room*.

The *Subcontractor* shall immediately notify the *Subcontract Superintendent* in writing when the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* are, in the opinion of the *Subcontractor*, complete.

Within 14 days of receipt by the *Subcontract Superintendent* of the *Subcontractor's* notice, the *Subcontract Superintendent* shall certify that the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* are complete or provide to the *Subcontractor* a schedule setting out the works required to be completed to bring the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* to completion. The *Subcontractor* shall promptly undertake the works set out in the *Subcontract Superintendent's* schedule of works and thereafter repeat the process set out in this Clause 50 until the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* are certified by the *Subcontract Superintendent* as complete in accordance with this Clause 50.

The *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* shall be deemed to be complete on the date that the *Subcontract Superintendent* issues a notice pursuant to this Clause 50 stating that the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* are complete. Nothing in this Clause 50 shall extend the date by which the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* are to be complete or cause the date by which the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* are to be complete to be set at large.

It is a condition precedent to the *Subcontract Superintendent* issuing a notice that the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* are complete that the requirements of *practical completion* (to the extent relevant and excluding connection of utilities, as determined by the *Subcontract Superintendent*) to the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room*, are satisfied.

When complete, and until an equivalent aged care room and residence with all same features as the approved *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* is completed to the satisfaction of the *Subcontract Superintendent* on site (On-Site Benchmark), the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* will serve as a benchmark of the quality and standard of workmanship and finish that is required of the *Subcontractor's WUS* and as such no unit or room shall be

constructed to a quality or standard of workmanship or include any finish which in the opinion of the *Subcontract Superintendent* is less than that of the *Benchmark Assisted Living Residence* or *Benchmark Aged Care Room* (as relevant). Once the *On-Site Benchmarks* have been completed to the satisfaction of the *Subcontract Superintendent*, that aged care room and residence will serve as the *Benchmark Assisted Living Residence* or *Benchmark Aged Care Room* (as relevant) for the purpose of this *Subcontract*.

The *Subcontractor* shall ensure that once complete, the *Benchmark Assisted Living Residence* and *Benchmark Aged Care Room* are properly secured at all times except for the purpose of inspections by the *Main Contractor*, *Subcontract Superintendent*, *Superintendent*, the *Principal* or any person or persons authorised by the same persons.

The *Subcontractor* acknowledges and accepts that it will have no entitlement to additional time or costs arising in connection with complying, or the consequences of failing to comply, with its obligations under this clause 50.

**ANNEXURE to the Australian Standard
General Conditions of Subcontract for
Design and Construct**

Part A

Part A— Contract Particulars

<i>Item</i>	<i>Clause</i>	<i>Particulars</i>
<i>Item 1</i>	<i>Main Contractor</i> (subclause 1.1)	J Hutchinson Pty Ltd ABN 52 009 778 330
<i>Item 2</i>	<i>Main Contractor's address</i>	70-72 Cecil Street, South Melbourne VIC 3205
<i>Item 3</i>	<i>Subcontractor</i> (subclause 1.1)	 ABN
<i>Item 4</i>	<i>Subcontractor's address</i>	
<i>Item 5</i>	<i>Subcontract Superintendent</i> (subclause 1.1)	 ABN
<i>Item 6</i>	<i>Subcontract Superintendent's</i> <i>address</i>	
<i>Item 7</i>	<i>Principal</i> (subclause 1.1)	 ABN
<i>Item 8</i>	<i>Principal's address</i>	
<i>Item 9</i>	<i>Superintendent</i> (subclause 1.1)	 ABN
<i>Item 10</i>	<i>Superintendent's address</i>	
<i>Item 11</i> †	(a) <i>Date for practical completion</i> (subclause 1.1) OR (b) <i>Period of time for practical</i> <i>completion</i> (subclause 1.1)	

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

<i>Item</i>	<i>Clause</i>	<i>Particulars</i>
<i>Item 12</i>	Governing law (subclause 1.2(h))	Victoria
<i>Item 13</i>	(a) Currency (subclause 1.2(g))	AUD\$
	(b) Place for payments (subclause 1.2(g))	The <i>Main Contractor's</i> address
	(c) Place of business of bank (subclause 1.2(g))	The place nearest to where the <i>site</i> is located
<i>Item 13A</i>	Land Owner (clause 1)	
<i>Item 14</i>	Not used.	
<i>Item 15</i>	<i>Preliminary design</i> (subclause 1.1)	<p>(a) A <i>preliminary design</i> * is included * is not included in the <i>Main Contractor's</i> project requirements.</p> <p>If neither deleted, a <i>preliminary design</i> is not included</p> <p>(b) The <i>preliminary design</i> documents are:</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p>
<i>Item 16</i>	<i>Bill of quantities</i> (subclause 2.5)	
	(a) Alternative applying (subclause 2.5)	If nothing stated, Alternative 1 applies
	(b) If Alternative 2 applies, is the <i>bill of quantities</i> to be priced? (subclause 2.5)	No / Yes (delete one) If neither deleted, the <i>bill of quantities</i> shall be priced
	(c) Lodgement time (subclause 2.6(b))	If nothing stated, 21 days after the <i>date of acceptance of tender</i>
<i>Item 17</i>	Not used.	
<i>Item 18</i>	<i>Provisional sum</i> , percentage for profit and attendance (clause 3)	5%

* Delete one

Item	Clause	Particulars
<i>Item 19 † Subcontractor's security</i>		
	(a) Form (clause 5)	Cash or unconditional bank guarantees
	(b) Amount or maximum percentage of <i>subcontract sum</i> (clause 5)	5% of the <i>subcontract sum</i>
	(c) If retention moneys, percentage of each <i>progress certificate</i> (clause 5 and subclause 37.2)	10%, until the limit in <i>Item 19(b)</i>
	(d) Time for provision (except for retention moneys) (clause 5)	Within 5 <i>business days</i> after the <i>date of acceptance of tender</i>
	(e) Additional <i>security</i> for unfixed plant and materials (subclauses 5.4 and 37.3)	\$TBA
	(f) <i>Subcontractor's security</i> upon <i>certificate of practical completion</i> is reduced to (subclause 5.4)	2.5% of the <i>subcontract sum</i>
<i>Item 20 † Main Contractor's security</i>		
	(a) Form (clause 5)	Not applicable – the <i>Main Contractor</i> will not provide <i>security</i> .
	(b) Amount or maximum percentage of <i>subcontract sum</i> (clause 5)	None.
	(c) Time for provision (clause 5)	Not applicable.
	(d) <i>Main Contractor's security</i> upon <i>certificate of practical completion</i> is reduced by (subclause 5.4)	Not applicable.
<i>Item 21 Address for notices</i> (clause 7)		
<i>Main Contractor</i>		Physical
		Email
		Fax

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

<i>Item</i>	<i>Clause</i>	<i>Particulars</i>	
	<i>Subcontract Superintendent</i>	Physical	
		Email	
		Fax	
	<i>Subcontractor</i>	Physical	
		Email	
		Fax	
<i>Item 22</i>	<i>Main Contractor-supplied documents (subclause 8.2)</i>	<i>Document</i>	<i>No. of copies</i>
		1 <i>Main Contractor's project requirements</i>	
		2	
		3	
		4	
		5	
		If nothing stated, 3 copies of the drawings, specification, <i>bill of quantities</i> or <i>schedule of rates</i> (if any)	
<i>Item 23</i>	Documents, numbers of copies, and the times or stages at which they are to be supplied by the <i>Subcontractor</i> (subclause 8.3)	<i>Document</i>	<i>No. of copies</i>
			<i>Time/stage</i>
		1	
		2	
		3	
		4	
		5	
<i>Item 24</i>	<i>Time for Subcontract Superintendent's direction about documents (subclause 8.3)</i> <i>business days</i>	
		If nothing stated, 15 <i>business days</i>	
<i>Item 25</i>	Secondary subcontracting (subclause 9.2)	<i>Work by Subcontractor's consultants</i>	<i>Work by others</i>

<i>Item</i>	<i>Clause</i>	<i>Particulars</i>
<hr/>		
<i>Item 26</i>	Novation (subclause 9.4)	<i>Secondary subcontractor or selected secondary subcontractor</i>
		Particular part of the <i>preliminary design or WUS</i>
<hr/>		
<hr/>		
<hr/>		
<hr/>		
<hr/>		
<hr/>		
<hr/>		
<i>Item 27</i>	<i>Intellectual property rights granted to the Main Contractor, the Alternative applying (subclause 10.2)</i>	Alternative 2.
<hr/>		
<i>Item 28</i>	<i>Legislative requirements</i>	
	(a) Those already excepted under the <i>main contract</i> (subclause 11.1)	None.
	(b) Those excepted under the <i>Subcontract</i> (subclause 11.1)	None.
	(c) Identified <i>WUS</i> (subclause 11.2)	None.
<hr/>		
<i>Item 29</i>	<i>Subcontractor's Insurance</i> (subclause 15.1 and clause 16)	
	(a) <i>Subcontractor's Insurance</i> for Contract Works <i>WUS</i>	
	(b) Other insurance to be held by the <i>Subcontractor</i>	Type of insurance.....to the value of
		Type of insurance.....to the value of
		Type of insurance.....to the value of
<hr/>		
<i>Item 30</i>	Professional indemnity insurance (clause 16A)	

Item	Clause	Particulars	
	(a) Levels of cover of <i>Subcontractor's</i> professional indemnity insurance shall be not less than	\$10,000,000	If nothing stated, \$5,000,000
	(b) Period for which <i>Subcontractor's</i> professional indemnity insurance shall be maintained after issue of the <i>final certificate</i>	7 years	If nothing stated, 6 years
	(c) Categories of <i>Subcontractor's</i> consultants and levels of cover of <i>Subcontractor's</i> consultants' professional indemnity insurance	Category	Levels of cover
			\$
			\$
			\$
		If nothing stated, \$1,000,000	
	(d) Period for which each <i>Subcontractor's</i> consultant's professional indemnity insurance shall be maintained after issue of the <i>final certificate</i>	7 years	If nothing stated, 6 years
Item 31	Public and product liability insurance (clause 17)		
	(a) Level of <i>Subcontractor's</i> insurance for public and product liability	\$40,000,000	If nothing stated, \$20,000,000 each and every occurrence.
	(b) Amount per occurrence shall be not less than	\$20,000,000	If nothing stated, \$20,000,000 each and every occurrence
Item 32	(a) Time for giving access (subclause 24.1)	within days of <i>date of acceptance of tender</i>	
		If nothing stated, 14 days	
	(b) Time for giving non-exclusive possession (subclause 24.1)	within days of <i>date of acceptance of tender</i>	
		If nothing stated, 14 days	
Item 33	The information, materials, documents or instructions and the times by, or periods within which they are to be given to the <i>Subcontractor</i> (clause 32)	Documents or instructions	Times/Periods

<i>Item</i>	<i>Clause</i>	<i>Particulars</i>
		1
		2
		3
		4
		5
<i>Item 34</i>	<i>Qualifying causes of delay, causes of delay for which EOTs will be granted (subclauses 1.1 and 34.3)</i>	<p>1. <i>excepted risk</i> under clause 14.3;</p> <p>2.</p> <p>3. <i>variation</i>, except under clause 29.5 and 36.3;</p> <p>4. change in <i>legislative requirement</i> to which clause 11.2 applies;</p> <p>5. a suspension for which the <i>Subcontractor</i> is not responsible under clause 33.1;</p> <p>6. a <i>claim</i> under clause 24.3;</p> <p>7. a State-wide or nation-wide industrial action that effects all sites in metropolitan Melbourne occurring before the <i>date for practical completion</i> where such industrial action directly affects the <i>site</i>;</p> <p>8. subject to the <i>Subcontractor's</i> demonstration of its:</p> <p>(A) complying with its <i>COVID Management Plan</i></p> <p>(B) sequencing the work under the Contract and employing construction methodologies and practices that minimise the impacts of COVID-19 on the <i>Subcontract Works</i>; and</p> <p>(C) complying with any directions of the <i>Subcontract Superintendent</i> in connection with mitigating the impacts of COVID-19,</p> <p>impacts of COVID-19 on the <i>Works</i>, being:</p> <p>(D) Federal or State government actions taken in response to COVID-19;</p> <p>(E) restrictions or shortages in the supply of labour directly caused by COVID-19; or</p> <p>(F) delays in transport, quarantine or customs clearances of any item intended to be used in performing work under the Contract or incorporated into the <i>Works</i>,</p> <p>which the <i>Subcontractor</i> could not have anticipated at the date of <i>Subcontract</i>,</p> <p>other than due to a breach, act or omission of the <i>Subcontractor</i>.</p>

<i>Item</i>	<i>Clause</i>	<i>Particulars</i>
<i>Item 35 †</i>	(a) <i>Subcontract liquidated damages, rate (subclause 34.7)</i>	\$TBA per day
	(b) <i>Main contract liquidated damages, rate (subclause 34.7(a))</i>	\$30,000 per day
<i>Item 36</i>	<i>Bonus for early practical completion (subclause 34.8)</i>	
	(a) Rate	n/a
	(b) Limit	\$.....
		OR
		% of subcontract sum
		If nothing stated, there is no waiver
<i>Item 37</i>	<i>Maximum daily delay costs (subclause 34.9)</i>	n/a
<i>Item 38</i>	<i>Not Used</i>	
<i>Item 39</i>	<i>Defects liability period (clause 35)</i>	Means:
		<input checked="" type="checkbox"/> Option 1: the period:
		(i) commencing on the <i>date of practical completion</i> at 4:00 pm; and
		(ii) continuing until the later of the date which is:
		(A) 15 <i>business days</i> after the <i>Subcontractor</i> submits the <i>defects report</i> ;
		(B) one year after the <i>date of practical completion</i> of the last <i>separable portion</i> to reach <i>practical completion</i> ; and
		(C) the <i>Main Contractor's</i> defect liability period for the project expires.
		<input type="checkbox"/> Option 2: the period:
		(iii) commencing on the <i>date of practical completion</i> at 4:00 pm; and
		(iv) continuing until the later of the date which is:
		(A) 15 <i>business days</i> after the <i>Subcontractor</i> submits the <i>defects report</i> ; and
		(B) the date of expiry of the last <i>defects liability</i>

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

Item	Clause	Particulars
		<i>period under the Main Contract.</i>
		<input type="checkbox"/> Option 3:
		If no election is made, Option 2 applies.
Item 40	<i>Progress claims</i> (subclause 37.1)	
	(a) Times for progress claims	<p>(a) Prior to <i>practical completion</i>, once per month on or after the last <i>business day</i> of the month.</p> <p>(b) At <i>practical completion</i>, within 7 <i>business days</i> after the issue of the <i>certificate of practical completion</i>.</p> <p>(c) With respect to the <i>final payment claim</i>, within 5 <i>business days</i> after the expiration of the last <i>defects liability period</i>.</p> <p>(d) If applicable, within 5 <i>business days</i> after the <i>Subcontract</i> has been terminated for any reason.</p>
	OR	
	(b) States of <i>WUS</i> for <i>progress claims</i>	Not used.
Item 41	<i>Additional Claim Documentation</i> (subclause 37.1)	<p>insert</p> <p>If no information is inserted then the <i>Subcontractor</i> shall provide all documentation as reasonably requested by the <i>Main Contractor</i>.</p> <p>In addition to the above, the <i>Subcontractor</i> must include in its:</p> <ul style="list-style-type: none"> • first progress claim, a fully executed copy of the <i>deed of guarantee, undertaking and substitution</i>; • <i>practical completion</i> progress claim a: <ul style="list-style-type: none"> ○ <i>deed of release – practical completion</i>; and • <i>final payment claim</i> a: <ul style="list-style-type: none"> ○ <i>deed of release – final</i>.
Item 42	Unfixed plant and materials for which <i>payment claims</i> may be made (subclause 37.3)	None.
Item 43	Interest rate on overdue payments (subclauses 37.5)	<p>0% per annum.</p> <p>If nothing stated, 5% per annum.</p>
Item 44	(a) Time for <i>Main Contractor</i> to rectify inadequate access (subclause 39.7(c))	60 days.
	(b) Time for <i>Main Contractor</i> to rectify inadequate non-	28 days.

<i>Item</i>	<i>Clause</i>	<i>Particulars</i>
		exclusive possession (subclause 39.7(d))
<i>Item 45</i>	<i>Not Used.</i>	
<i>Item 46</i>	Services and facilities (clause 44)	
	(a) Electricity	
	(i) Installation of 240 volts: Supply shall be provided by the <i>Main Contractor</i> at the following points	
	(ii) Installation of 240 volts: Supply shall be provided by the <i>Subcontractor</i> at the following points	
	(iii) Installation of 415 volts: Supply shall be provided by the <i>Main Contractor</i> at the following points	
	(iv) Installation of 415 volts: Supply shall be provided by the <i>Subcontractor</i> at the following points	
	(v) Cost of Electricity provided to the <i>Subcontractor</i> shall be borne by the	* Main Contractor * <i>Subcontractor</i>
	NOTE: The <i>Subcontractor</i> shall provide leads for the <i>Subcontractor's</i> own use.	
	(b) Adequate artificial lighting shall be provided by the	* Main Contractor * <i>Subcontractor</i>
	(c) Scaffolding	
	(i) Initial supply and erection and final removal of scaffolding at the following locations	

- * ~~Main Contractor~~
- * Subcontractor

(ii) Adjustment and moving of scaffolding or planks or both shall be carried out by and at the cost of the ~~Main Contractor~~
* Subcontractor

(i) Cranage facilities (including provision of qualified operators) shall be borne by the

* ~~Main Contractor~~
* Subcontractor

(iii) Description of crane facilities if provided by *Subcontractor*

(iv) Hoisting facilities shall be provided by the

~~* Main Contractor~~
* Subcontractor

(v) Description of hoisting facilities if provided by *Subcontractor*

★ Delete one

<i>Item</i>	<i>Clause</i>	<i>Particulars</i>
	(vi)	Labour to handle materials to be lifted by crane shall be provided by the * Main Contractor * Subcontractor
	(e)	Other plant or equipment
	(i)	Other items of plant or equipment to be provided or made available by the <i>Main Contractor</i> for the use of the <i>Subcontractor</i> shall be as follows
	
	(ii)	The date of provision or availability of such other items of plant or equipment shall be
	(iii)	A qualified operator for such plant or equipment shall be provided by * Main Contractor the * Subcontractor
(f)	Telephones and fax	If a telephone service of facsimile machine, or both, are provided by the <i>Main Contractor</i> for the <i>Subcontractor's</i> use, the <i>Subcontractor</i> shall pay for outward calls or transmissions.
(g)	General	
	(i)	Space for the erection of the <i>Subcontractor's</i> sheds and storage facilities shall be provided by the <i>Main Contractor</i> .
	(ii)	Toilet accommodation and washing facilities shall be provided by the <i>Main Contractor</i> .
	(iii)	Adequate water and boiling water for drinking purposes shall be provided by the <i>Main Contractor</i> .
	(iv)	Adequate water and hot water for cleaning purposes shall be provided by the <i>Main Contractor</i> at the following locations:

* Delete one

* Delete one

<i>Item</i>	<i>Clause</i>	<i>Particulars</i>
	(v) Other services and facilities (specify) by the *Main Contractor / *Subcontractor
	by the *Main Contractor / *Subcontractor
	by the *Main Contractor / *Subcontractor
<i>Item 47</i>	<i>Clause 47</i>	
<i>Item 48</i>	<i>Clause 34.6 (Post Practical Completion Works)</i>	
<i>Item 49</i>	<i>Allowance for purposes of Domestic Building Contracts Act</i>	
	<i>Clause 32 (last paragraph)</i>	

* Delete one

Part A

Separable Portions

- This section should be completed only if the *Subcontract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Subcontract Works* should also be a *separable portion*.

Item	Clause	Particulars
	<i>Separable portion</i> (subclause 1.1)	TBA
	Description of <i>separable portion</i> (subclause 1.1)	
Item 11	(a) <i>Date for practical completion</i> (subclause 1.1)	
	OR	
	(b) <i>Period of time for practical completion</i> (subclause 1.1)	
Item 19	<i>Subcontractor's security</i>	
	(a) Form (clause 5)	
	(b) Amount or maximum percentage of <i>subcontract sum</i> (clause 5)	5% of the <i>subcontract sum</i>
	(c) If retention moneys, percentage of each <i>progress certificate</i> (clause 5 and subclause 37.2)	10%, until the limit in Item 19(b)
	(d) Time for provision (except for Within 5 <i>business days</i> after the <i>date of acceptance of tender</i> retention moneys) (clause 5)	
	(e) Additional <i>security</i> for unfixed plant and materials (subclauses 5.4 and 37.3)	\$
	(f) <i>Subcontractor's security</i> upon <i>certificate of practical completion</i> is reduced to (subclause 5.4)	2.5% of the <i>subcontract sum</i>

<i>Item</i>	<i>Clause</i>	<i>Particulars</i>
<i>Item 35</i>	(a) <i>Subcontract liquidated damages, rate</i> (subclause 34.7)	\$.....per day
	(b) <i>Main contract liquidated damages, rate</i> (subclause 34.7(a))	\$.....per day
<i>Item 36</i>	Bonus for early <i>practical completion</i> (subclause 34.8)	
	(a) Rate	\$.....per day
	(b) Limit	\$.....
		OR
		% of <i>subcontract sum</i>
		If nothing stated, there is no waiver
<i>Item 37</i>	Maximum daily delay costs (subclause 34.9)	\$.....per day

<i>Item</i>	<i>Clause</i>	<i>Particulars</i>
	<i>Separable portion</i> (subclause 1.1)	TBA
	Description of <i>separable portion</i> (subclause 1.1)	
<i>Item 11</i>	(a) <i>Date for practical completion</i> (subclause 1.1)	
	OR	
	(b) <i>Period of time for practical completion</i> (subclause 1.1)	
<i>Item 19</i>	<i>Subcontractor's security</i>	
	(a) Form (clause 5)	
	(b) Amount or maximum percentage of <i>subcontract sum</i> (clause 5)	5% of the <i>subcontract sum</i>
	(c) If retention moneys, percentage of each <i>progress certificate</i> (clause 5 and subclause 37.2)	10%, until the limit in <i>Item 19(b)</i>
	(d) Time for provision (except for Within 5 <i>business days</i> after the <i>date of acceptance of tender</i> retention moneys) (clause 5)	
	(e) Additional <i>security</i> for unfixed plant and materials (subclauses 5.4 and 37.3)	\$
	(f) <i>Subcontractor's security</i> upon <i>certificate of practical completion</i> is reduced to (subclause 5.4)	2.5% of the <i>subcontract sum</i>
<i>Item 35</i>	(a) <i>Subcontract liquidated damages, rate</i> (subclause 34.7)	\$.....per day
	(b) <i>Main contract liquidated damages, rate</i> (subclause 34.7(a))	\$.....per day
<i>Item 36</i>	Bonus for early <i>practical completion</i> (subclause 34.8)	

<i>Item</i>	<i>Clause</i>	<i>Particulars</i>
	(a) Rate	\$.....per day
	(b) Limit	\$.....
		OR
		% of <i>subcontract sum</i>
		If nothing stated, there is no waiver
Item 37	Maximum daily delay costs (subclause 34.9)	\$.....per day

**Annexure to the Australian Standard
Subcontract Conditions**

Part B

Part B – Deletions, amendments and additions

1 The following clauses have been deleted from the Subcontract Conditions in AS 4903—2000

Deletions have been made throughout the document.

2 The following clauses have been amended and differ from the corresponding clauses in AS 4903—2000

Amendments have been made throughout the document.

3 The following clauses have been added to AS 4903—2000

Additions have been made throughout the document.

You may request a comparison of this Subcontract to show the changes to the Australian Standard.

**Annexure to the Australian Standard
General Conditions of Subcontract for
Design and Construct**

Part C

- This form may also be used where the *Main Contractor* is required to provide an unconditional undertaking, by substituting *Main Contractor* for *Subcontractor* and vice versa, wherever occurring.

Part C - Approved form of undertaking

(clause 1— *security*)

At the request of ('the *Subcontractor*') and in consideration of ('the *Main Contractor*') accepting this undertaking in respect of the *Subcontract* for ('the Project') ('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 20

**Annexure to the Australian Standard
Subcontract Conditions****Part D****Part D – Special Conditions**

1. Warranties implied from the Domestic Building Act

Without limiting any other warranty given under the *Subcontract*, the *Subcontractor* warrants that:

- (a) *the Subcontract Works* will be carried out in a proper and workmanlike manner and in accordance with the drawings and specifications set out in the *Subcontract*;
- (b) all materials to be supplied by the *Subcontractor* for use in *the Subcontract Works* will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the *Subcontract*, those materials will be new;
- (c) *the Subcontract Works* will be carried out in accordance with, and comply with, all laws and legal requirements including, without limiting the generality of this warranty, the *Building Act 1993* (Vic) and the regulations made under that act;
- (d) *WUS* will be carried out with reasonable care and skill and will be completed by the date (or within the period) specified by the *Subcontract*;
- (e) if *the Subcontract Works* consist of the erection or construction of a home, or if it is intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, the home will be suitable to occupation at the time *WUS* is completed;
- (f) if the *Subcontract* states that the particular purpose for which *the Subcontract Works* are required, or the result which the *Main Contractor* wishes *the Subcontract Works* to achieve, so as to show that the *Main Contractor* relies on the *Subcontractor's* skill and judgment, the *Subcontractor* warrants that *the Subcontract Works* and any material used in carrying out *the Subcontract Works* will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result; and
- (g) any *provisional sum* included by the *Subcontractor* in the *Subcontract* has been calculated with reasonable care and skill taking account of all the information reasonable available at the date the *Subcontract* is made, include the nature and location of the *Site*.

For the purposes of this clause, any term defined in the *Domestic Building Act* and not defined in the *Subcontract*, has the meaning given to that term in the *Domestic Building Act*.

Annexure to the Australian Standard
General Conditions of Subcontract for
Design and Construct

Part E

Part E – Main Contractor's Project Requirements

The *Main Contractor's project requirements* commence on the next page.

insert *Main Contractor's project requirements* document along with any other documents describing the *Subcontract Works* including:

- *Scope of works*
- *Tender interview*
- *Document register*
- *Quality Handbook Sections*
- *Subcontractor Minimum HSE Requirements*
- *the Principal's WHS Plan included at Part J of the head contract.*

**Annexure to the Australian Standard
General Conditions of Subcontract for
Design and Construct**

Part F

Part F – Construction Program

The *construction program* commences on the next page.

insert *construction program*

**Annexure to the Australian Standard
General Conditions of Subcontract for
Design and Construct**

Part G

Part G – Warranties

Trade	Warranty Period	Notes
Demolition	n/a	
Groundworks	n/a	
Site Retention	n/a	
Piling	25 years	
Paving	7 years	
Road works	n/a	
Irrigation	2 years	
Termite Protection	1 year	Chemical spray
Landscaping	1 year	
Concrete	15 years	Precast concrete 7 years
Concrete Finishes	12 years	Moisture resistance - 20 years
Masonry	12 years External 7 years Internal	
Stone Cladding	12 years	
Structural Steel	25 years	Coatings 10 years
Steel Coatings	10 years	
Sprayed Fire Protection	10 years	
Fabricated Metalwork	7 years	
Metal Products	7 years	Mechanical 2 years
Glazed Balustrades	7 years	
Fencing	7 years	
Carpentry	7 years	
Joinery	7 years	
Timber Flooring	7 years	
Membranes & Tanking	7 years	Torch on membranes
Insulation	7 years	
Roofing	10 years	6 years on workmanship
Cladding	10 years	
Sealants (incl. fire rated sealants)	10 years	
Doors & Hardware	7 years	Operators 2 years

Trade	Warranty Period	Notes
Glazed Entries & Windows	10 years	
Internal Glazing	10 years	
Linings	7 years	
Render & Hard Plaster	7 years	
Tiling & Stone Flooring	7 years	
Ceilings	7 years	
Resilient Materials & Vinyl	7 years	
Carpet	3 years	
Special Coatings	7 years	
Painting	7 years	
Statutory signage & Graphics	7 years	
Toilet Partitions	7 years	
Sanitary ware	7 years	
Appliances	2 years	
Complete Installations	7 years	
Vertical Transportation		Refer Services Specifications
Hydraulic Services		Refer Services Specifications
Fire Protection Services		Refer Services Specifications
Mechanical Services		Refer Services Specifications
Electrical Services		Refer Services Specifications
Security & Audio-Visual		Refer Services Specifications
Food Service Equipment	2 years	

The form of the warranty commences on the following page.

Subcontractor Warranty

Date #

Parties

Name #AU Principal Entity and ACN# as trustee for #Trust# #Trust ABN#

Short form name **Outgoing Party**

Notice details Address: 271 Spring Street, Melbourne VIC 3000

Attention: #

Name J. Hutchinson Pty. Ltd. ABN

ABN 52 009 778 330 **Incoming Party**

Short form name Address: #Contractor's Address#

Notice details Attention: [#]

Name #

ABN #

Short form name **Subcontractor**

Notice details Address: # Attention:

#

Agreed Terms

1. Definitions

In this Deed, unless otherwise defined or the context otherwise requires, the following terms have the meanings indicated.

Contractor means the party named as such in the title to this Deed;

Defect means any defect in the Subcontractor's Work, including (but not limited to):

- (a) any failure to comply with this Deed;
- (b) any failure to comply with the Subcontract; or
- (c) any work not complete which the Subcontractor was required to complete pursuant to this Deed or the Subcontract.

Building Contract means the agreement between the Principal and the Contractor for the construction of the Works;

Subcontract means the agreement between the Contractor and the Subcontractor bearing the date identified as such in the title to this Deed;

Subcontract Works means the work the subject of the Subcontract as described in Annexure 1 of this Deed;

Subcontract Works Warranty Period means the period described as such in Annexure 1 of this Deed; and

Works has the meaning given in the Building Contract.

2. General Interpretation

In this Deed, unless the context otherwise requires:

- (a) unless otherwise defined in this Deed terms used in this Deed which are defined in the Building Contract have the same meaning as they do in the Building Contract.
- (b) the singular includes the plural and vice versa
- (c) a reference to any gender includes all other genders;
- (d) headings and the table of contents are intended for ease of reference only and are not to be taken to affect the interpretation or construction of this Deed;
- (e) a reference to any obligation includes a liability and a duty and a reference to performance includes observance;
- (f) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this Deed;
- (g) a reference to any deed or document is to that deed or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time; and
- (h) a reference to a person includes a corporation, firm, partnership, association, trust, joint venture, authority, state or government or other legal entity and vice versa.

3. Warranty

- (a) The Subcontractor warrants to the Principal and the Contractor that:
 - (i) the Subcontractor will fully comply with all of its obligations under this Deed and the Subcontract;

- (ii) the Subcontract Works will be completed:
 - (A) in accordance with this Deed and the Subcontract;
 - (B) in accordance with the all relevant regulations and standards;
 - (C) in a good and workmanlike manner;
 - (D) using materials of merchantable quality and which are fit for their intended purpose; and
 - (E) so that the Subcontract Works will be fit for the purpose for which they are required.
 - (iii) it has, and will maintain, the skill and experience to properly fulfil its obligations under this Deed and the Subcontract; and
 - (iv) subject to fair wear and tear the Subcontract Works will remain free from Defects for the Subcontract Works Warranty Period.
- (b) The Subcontractor agrees to indemnify and hold harmless the Principal, its respective officers, employees, agents and representatives and the Contractor from and against all costs and expenses (including all consequential or subsequent loss, expense or damage sustained by the Principal) arising out of or in any way connected with the Subcontract or a breach of the warranties contained in this Deed.
- (c) The Subcontractor agrees that the warranties and indemnities set out in this Deed extend to the acts defaults and neglects of any subcontractor, supplier, employee or agent of the Subcontractor as fully as if they were the acts defaults or neglects of the Subcontractor or the employees or agents of the Subcontractor.

4. Reduction of Indemnity

If any loss, damage or expense is caused partly by an act, default or omission of the Principal or the Contractor or their respective agents or employees, then any entitlement of the Principal or the Contractor pursuant to any indemnity provided for in this Deed shall be reduced proportionally having regard to the impact of the act, default or omission.

5. Rectification of Defects in Subcontract Works

5.1 Notice

The Principal or Contractor may give the Subcontractor written notice of any Defect appearing in the Subcontract Works. The notice may specify the value of the Defect and the time within which the Subcontractor must rectify the Defect.

5.2 Subcontractor to Rectify

- (a) The Subcontractor must rectify any Defect in respect of which the Principal or Contractor has served a notice on the Subcontractor.
- (b) The Defect must be rectified:
 - (i) to the satisfaction of the Principal or Contractor;
 - (ii) at the Subcontractor's expense; and
 - (iii) within the time specified in the notice or if the notice does not specify a time within a reasonable time from receipt of the notice.

5.3 Principal or Contractor may Rectify

If the Subcontractor fails to rectify any Defect within the time required, the Principal or Contractor may arrange for the Defect to be rectified at the Subcontractor's expense.

6. **Obligation to continue**

Notwithstanding any breach by the Contractor of the Subcontract and any provision in the Subcontract, the Subcontractor must continue to diligently fulfil its obligations under the Subcontract until the Subcontract has been brought to an end pursuant to this Deed.

7. **Principal's Rights**

- (a) The rights of the Principal pursuant to this Deed are in addition to and do not derogate from any other rights which the Principal may have including the rights of the Principal under the Building Contract.
- (b) The rights of the Principal pursuant to any clause of this Deed are cumulative and the rights arising under one clause do not derogate from rights arising under any other clause.

8. **Assignment by Principal or Contractor**

The Principal or Contractor may assign their interest in this Deed at any time without notice to the Subcontractor.

9. **Notices**

9.1 **Address for Service**

- (a) Any notice to be given or served under or arising out of a provision of this Deed must be in writing and delivered by hand or sent by prepaid post or email or served.
- (b) For the purpose of this clause the address of a party is the address set out in the Schedule or the address which that party notifies to the other party.

9.2 **Deemed Receipt**

A notice delivered or sent in accordance with clause 9 will be deemed to have been given and received:

- (a) if delivered, upon receipt;
- (b) if posted, 3 **Business Days** after posting;
- (c) not used; and
- (d) if delivered by email upon a read receipt confirming that the email has been opened.

10. **No Waiver**

A failure of a party at any time to require full or part performance of any obligations under this Deed will not affect in any way the rights of that party to require that performance subsequently.

11. **Governing Law**

This Deed is governed by the laws applying in the State in which the Subcontract Works are performed. Each party irrevocably and unconditionally submits to the nonexclusive jurisdiction of the Courts of that State.

12. Further Assurances

Each party to this Deed must do or cause to be done anything necessary or desirable to give effect to this Deed, and will refrain from doing anything which might prevent full effect being given to this Deed.

13. Counterparts

This Deed may be executed in any number of counterparts. All counterparts taken together will be deemed to constitute the one document.

14. Severability

- (a) The parties agree that a construction of this Deed which results in all provisions being enforceable is to be preferred to a construction which does not so result.
- (b) If, despite the application of the preceding paragraph, a provision of this Deed is illegal or unenforceable:
 - (i) if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
 - (ii) in any other case, the whole provision is severed;and the remainder of this Deed continues to have full force and effect.
- (c) The preceding paragraph does not apply where its application alters the basic nature of this Deed or is contrary to public policy.

EXECUTED as a deed

Executed by the Principal in accordance with
Section 127 of the *Corporations Act*
2001 (Cth) in the presence of

_____ ☐ _____

Signature of director

☐
Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Executed by the Contractor in accordance
with Section 127 of the *Corporations Act 2001*
(Cth) in the presence of

_____ ☐ _____

Signature of director

Signature of director/company secretary

Name of director (print)

Name of director/company secretary (print)

Executed by the Subcontractor in accordance
with Section 127 of the *Corporations Act 2001*
(Cth) in the presence of

_____ ☐ _____

Signature of director

Signature of director/company secretary

Name of director (print)

Name of director/company secretary (print)

Annexure 1

Subcontract Works	[#Insert description]
Subcontract Works Warranty Period	[#Insert period] years

Trade	Warranty Period	Notes
Demolition	N/A	
Groundworks	N/A	
Site Retention	N/A	
Piling	25 years	
Paving	7 years	
Road works	N/A	
Irrigation	2 years	
Termite Protection	1 year	Chemical spray
Landscaping	1 year	
Concrete	15 years	Precast concrete 7 years
Concrete Finishes	12 years	Moisture resistance - 20 years
Masonry	12 years External 7 years Internal	
Stone Cladding	12 years	
Structural Steel	25 years	Coatings 10 years
Steel Coatings	10 years	
Sprayed Fire Protection	10 years	
Fabricated Metalwork	7 years	
Metal Products	7 years	Mechanical 2 years
Glazed Balustrades	7 years	
Fencing	7 years	
Carpentry	7 years	
Joinery	7 years	
Timber Flooring	7 years	
Membranes / Tanking	7 years	Torch on membranes
Insulation	7 years	
Roofing	10 years	6 years on workmanship
Cladding	10 years	
Sealants (incl. fire rated sealants)	10 years	
Doors / Hardware	7 years	Operators 2 years

Trade	Warranty Period	Notes
Glazed Entries / Windows	10 years	
Internal Glazing	10 years	
Linings	7 years	
Render / Hard Plaster	7 years	
Tiling / Stone Flooring	7 years	
Ceilings	7 years	
Resilient Materials / Vinyl	7 years	
Carpet	3 years	
Special Coatings	7 years	
Painting	7 years	
Statutory signage / Graphics	7 years	
Toilet Partitions	7 years	
Sanitary ware	7 years	
Appliances	2 years	
Complete Installations	7 years	
Vertical Transportation		Refer Services Specifications
Hydraulic Services		Refer Services Specifications
Fire Protection Services		Refer Services Specifications
Mechanical Services		Refer Services Specifications
Electrical Services		Refer Services Specifications
Security / Audio-Visual		Refer Services Specifications
Food Service Equipment	2 years	

**Annexure to the Australian Standard
General Conditions of Subcontract for
Design and Construct**

Part H

Part H- Deed of novation

Section 1 – Deed of novation (subclause 9.2(g))

This Deed made the day of 20
between..... (the *Main Subcontractor*;
of ACN ABN
and (the *Subcontractor*;
of ACN ABN
and (the *secondary subcontractor*;
of ACN ABN
and (the *Incoming Subcontractor*;
of ACN ABN
witness that:

1. Upon receipt by the *secondary subcontractor* of the sum certified by the *Subcontract Superintendent* as owing under the prior contract described in the Schedule hereto:
 - (a) the prior contract shall be discharged;
 - (b) the *secondary subcontractor* shall release the *Subcontractor* from the further performance of the prior contract and from all *claims* and demands in connection with the prior contract;
 - (c) the *Incoming Subcontractor* shall punctually perform the obligations of the *Subcontractor* under the prior contract as far as they are not performed. The *Incoming Subcontractor* acknowledges itself bound by the provisions of the prior contract as if the *Incoming Subcontractor* had been named in the prior contract; and
 - (d) the *secondary subcontractor* shall punctually perform like obligations and be bound to the *Incoming Subcontractor* as if the provisions of the prior *subcontract* were incorporated herein.
2. The *Subcontractor* and the *secondary subcontractor* each warrant to the *Incoming Subcontractor* and the *Main 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 *Subcontractor*.
3. The *Main Subcontractor* and *secondary subcontractor* each indemnifies the *Incoming Subcontractor* from all *claims* and demands of the *Subcontractor*, *Main Contractor* and *secondary subcontractor* in connection with the prior contract.
4. A dispute between:

- (a) the *Main Contractor* and the *secondary subcontractor* in connection with the *Subcontract Superintendent's* certification of the sum owing under the prior contract; or
 - (b) the *Incoming Subcontractor* and the *secondary subcontractor* in connection with clause 1(d) or 1(d), shall be resolved pursuant to the provisions of AS 4903—2000 General conditions of subcontract for design and construct which for the purposes of this clause 4 are incorporated herein.
5. This Deed shall be governed by the laws of the jurisdiction stated in clause 1 of the *Subcontract* between the *Main Contractor* and *Subcontractor*.

Schedule

In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals.

THE COMMON SEAL of the *Main Contractor*
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Director

.....
Name (please print)

.....
Name (please print)

THE COMMON SEAL of the *Subcontractor*
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Director

.....
Name (please print)

.....
Name (please print)

THE COMMON SEAL of the *secondary subcontractor*
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

THE COMMON SEAL of the *Incoming Subcontractor*
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

Section 2 – Deed of novation (subclause 9.4)

In the Deed where applicable

- *outgoing party* is the main contractor;
- *incoming party* is the subcontractor;
- *continuing party* is the secondary subcontractor, selected secondary subcontractor or subcontractor's consultant, as the case may be.

This Deed made the day of 20
 between (the *outgoing party*)
 of ACN ABN
 and (the *incoming party*)
 of ACN ABN
 and (the *continuing party*)
 of ACN ABN

witness that:

1. Upon receipt by the *continuing party* of all moneys owing under the prior contract:
 - (a) the *incoming party* shall punctually perform the obligations of the *outgoing party* under the prior contract prescribed in the Schedule hereto as far as they are not performed. The *incoming party* acknowledges itself bound by the provisions of the prior contract as if the *incoming party* had been named as the *outgoing party* in the prior contract;
 - (b) the *continuing party* punctually perform like obligations and be bound to the *incoming party* as if the provisions of the prior contract were incorporated herein; and
 - (c) the *outgoing party* and *continuing party* 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 *outgoing party* and *continuing party* each warrant to the *incoming party* 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 governing law of the prior contract between the *outgoing party* and *continuing party*.

Schedule

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

In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals.

THE COMMON SEAL of the *outgoing party*
was affixed to this document in the presence of:

.....
Secretary/Director
.....
Name (please print)

.....
Director
.....
Name (please print)

THE COMMON SEAL of the *incoming party*
was affixed to this document in the presence of:

.....
Secretary/Director
.....
Name (please print)

.....
Director
.....
Name (please print)

THE COMMON SEAL of the *continuing party*
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 Subcontract for
Design and Construct**

Part I

Part I - Declaration by Subcontractor

TO J Hutchinson Pty Ltd (ACN 009 778 330) *(Main Contractor)*

of 70-72 Cecil Street, South Melbourne VIC 3205

FOR *(Project)*

I, *(Print name)*
of *(Address)* in the State of Victoria, make the following
statutory declaration under the **Oaths and Affirmations Act 2018**, in relation to the Agreement between J.
Hutchinson Pty. Ltd (ACN 009 778 330) (The *Main Contractor*) and

..... *(The Subcontractor)*

(Registered Business/Entity Name)

Subcontract for [insert particulars] (“the *Subcontract*”)

1. I, *(Print name)* hold the position of *(Director, Partner, Sole Trader etc)* for the above named *Subcontractor*. 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 to make this declaration on its/his behalf.
2. All *(Name of the Subcontractor)* EMPLOYEES, WORKERS, SECONDARY SUBCONTRACTORS and SUPPLIERS who at any time have carried out work or supplied goods under the *Subcontract* have been paid in full all monies due and payable to them inclusive of any amounts owing under any industrial instrument and all mandatory statutory obligations, payments, charges or taxes (including but not limited to Goods and Services Taxes and Superannuation where applicable) up to the date of the submission by the Subcontractor of Payment Claim Number.....

I declare that the contents of this statutory declaration are true and correct and I make it knowing that making a statutory declaration that I know to be untrue is an offence.

Declared at [insert] this day of [insert].

[Signature of person making this declaration,
which must be signed in front of an authorised
witness]

Before me, _____

A person authorised under section 30(2) of the **Oaths and Affirmations Act 2018** to witness the signing of a statutory declaration. (eg. Justice of the Peace, Pharmacist, Police Officer, Court Registrar, Bank Manager, Medical Practitioner, Dentist).

**Annexure to the Australian Standard
General Conditions of Subcontract for
Design and Construct**

Part J

Part J - Deed of Release – Practical Completion

BETWEEN J Hutchinson Pty Ltd (ACN 009 778 330) (Main Contractor)
of 70-72 Cecil Street, South Melbourne VIC 3205
AND [insert] (Subcontractor)
of [insert]
FOR [insert] (project)

Release & Indemnity

- 1 The *Subcontractor* acknowledges that the value of work carried out by the *Subcontractor* arising out of the *Subcontract Works* or the *Subcontract* agreement up to and including the date of this Deed is as follows:

Original Subcontract Sum	\$	
Total of all adjustments & approved variations	\$	
Subcontract Sum at Practical Completion	\$	
Less previous net payments	(\$)
Final balance owing (inclusive of retention)	\$	
Less retention terms (< >% of \$< >)	(\$)
Balance owing at <i>Practical Completion</i> (exclusive of retention)	\$	

- 2 The *Subcontractor*, upon receipt of the sum of \$[insert] being the final balance owing for all works performed up to the date of this Deed (exclusive of retention) in the terms of *Subcontract* number [insert] agrees to:
- (a) release and discharge the *Main Contractor* and the *Subcontract Superintendent* from all *claims*, demands, debts, accounts, costs, liens, actions and proceedings whether known or unknown which the *Subcontractor* has or might have against the *Main Contractor* or the *Subcontract Superintendent* howsoever arising under the *Subcontract* or out of its performance; and
 - (b) indemnify and keep indemnified the *Main Contractor* and the *Subcontract Superintendent* and their officers, servants and agents, from and against all *claims*, demands, debts, accounts, expenses, costs, liens, actions and proceedings, whether known or unknown, by any person, corporation or firm howsoever arising under the *Subcontract* or out of its performance.

Executed as a deed poll as delivered on the date of execution.

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

.....
Signature of Director	Signature of Director / Company Secretary
.....
Name of Director	Name of Director / Company Secretary
.....
Date of Signature	Date of Signature

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

.....
Signature of Sole Director/Company Secretary	Witness
.....
Name of Director	Name of Witness
.....
Date of Signature	Date of Signature

*** This Deed of Release form is to be signed by incorporated Subcontractors and returned to the Main Contractor, as a condition of reaching Practical Completion, receiving payment and reduction of retention.**

**Annexure to the Australian Standard
General Conditions of Subcontract for
Design and Construct**

Part K

Part K - Deed of Release - Final

BETWEEN J Hutchinson Pty Ltd (ACN 009 778 330) *(Main Contractor)*
of 70-72 Cecil Street, South Melbourne VIC 3205
AND [insert] *(Subcontractor)*
of [insert]
FOR [insert] *(project)*

It is agreed:

- 1 The *Subcontractor* acknowledges that the value of work carried out by the *Subcontractor* arising out of the *Subcontract Works* or the *Subcontract* agreement up to and including the date of this Deed is as follows:

Original Subcontract Sum	\$	
Total of all adjustments & approved variations	\$	
Final Subcontract Sum	\$	
Less previous net payments	(\$)
Final balance owing (inclusive of retention)	\$	
Less retention terms (< >% of \$< >)	(\$)
Final balance owing (exclusive of retention)	\$	

- 2 The *Subcontractor*, upon receipt of the sum of \$[insert] being the final balance owing (exclusive of retention) in the terms of *Subcontract* number [insert] agrees to:
- (a) release and discharge the *Main Contractor* and the *Subcontract Superintendent* from all claims, demands, debts, accounts, costs, liens, actions and proceedings whether known or unknown which the *Subcontractor* has or might have against the *Main Contractor* or the *Subcontract Superintendent* howsoever arising under the *Subcontract* or out of its performance; and
 - (b) indemnify and keep indemnified the *Main Contractor* and the *Subcontract Superintendent* and their officers, servants and agents, from and against all claims, demands, debts, accounts, expenses, costs, liens, actions and proceedings, whether known or unknown, by any person, corporation or firm howsoever arising under the *Subcontract* or out of its performance.

Executed as a deed poll as delivered on the date of execution by the *Subcontractor*

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

.....
Signature of Director	Signature of Director / Company Secretary
.....
Name of Director	Name of Director / Company Secretary
.....
Date of Signature	Date of Signature

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

.....
Signature of Sole Director/Company Secretary	Witness
.....
Name of Director	Name of Witness
.....
Date of Signature	Date of Signature

*** This Deed of Release form is to be signed by incorporated Subcontractors and returned to the Main Contractor, as a condition of final payment and release of retention.**

**Annexure to the Australian Standard
General Conditions of Subcontract for
Design and Construct**

Part L

Part L - Notice of Proposed Variation

TO J Hutchinson Pty Ltd (ACN 009 778 330) *(Main Contractor)*
of 70-72 Cecil Street, South Melbourne VIC 3205

FROM [insert] *(Subcontractor)*
of [insert]

FOR [insert] *(project)*

1. Can the proposed *variation* be effected? (yes/no)
2. Effect on the *construction program* (including the *date for practical completion*):
3. Cost of the proposed *variation* (if material is to be annexed, specify the annexures)

NB.

If *variation* for convenience of *Subcontractor*, costs assessed by *Subcontract Superintendent* may be nil.

4. Description of the *variation* (if the description is by way of any annexure, specify the annexure):
5. If *variation* sought by *Subcontractor*, state the reason for the *variation* (is it for the convenience of *Subcontractor*).

.....

Signature of the *Subcontractor's*
 duly authorised representative Dated

.....

Signature of the *Subcontract Superintendent*
 or the *Main Contractor's* duly authorised
 representative Dated

**Annexure to the Australian Standard
General Conditions of Subcontract for
Design and Construct**

Part M

Part M - Deed of Guarantee and Indemnity

THIS DEED OF GUARANTEE AND INDEMNITY is dated the _____ day of _____ 20 .

TO J Hutchinson Pty Ltd (ACN 009 778 330) (*Main Contractor*)
of 70-72 Cecil Street, South Melbourne VIC 3205
 FROM [insert] (*Guarantor*)
of [insert]
 FOR [insert] (*project*)

INTRODUCTION:

- A** The Guarantor is a director of [insert name of subcontractor] (ACN: [insert]) (*the Subcontractor*).
- B** The *Main Contractor* and the *Subcontractor* have entered into a subcontract for the performance of construction work by the Subcontractor at [insert details of the project] (*the Subcontract*).
- C** The Guarantor is aware of the *Subcontractor's* obligations to the *Main Contractor* under the *Subcontract* and agrees to provide this guarantee with respect to the *Subcontractor's* performance of its obligations to the *Main Contractor* on the terms and conditions of this deed.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

- (a) **Business Day** means any day which is not a Saturday, Sunday or public or bank holiday in Victoria;
- (b) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (c) **Fully Enforceable** means:
 - (i) enforceable in accordance with the terms of the *Subcontract* against the *Subcontractor*; and
 - (ii) not open to disclaimer by any liquidator appointed to the *Subcontractor* under Part 5.6 of the Corporations Act;

- (d) **Guaranteed Money** means all:
 - (i) present or future indebtedness of the *Subcontractor* to the *Main Contractor* either alone or in conjunction with any other person under the *Subcontract* or on any account whatsoever; and
 - (ii) other liabilities of the *Subcontractor* to the *Main Contractor*, present or future, actual or contingent (including, without limitation, liabilities as surety or guarantor);
- (e) **Guaranteed Obligations** means all the *Subcontractor's* obligations under the *Subcontract* or arising out of, or in connection with, the subject matter of the *Subcontract*, including without limitation, all obligations arising out of the *Subcontractor's* performance of the *Subcontract*.
- (f) **Loss** includes a loss, damage, liability, cost, charge, expense, penalty, compensation, fine, outgoing or payment.

1.2 Interpretation

In this deed, unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes:
 - (i) any statutory modification or substitution of that legislation or legislative provision; and
 - (ii) any subordinate legislation issued under that legislation or legislative provision including under that legislation or legislative provision as statutorily modified or substituted;
- (c) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (d) the **introduction** forms part of this deed;
- (e) a reference to a **person** includes that person's successors and permitted assignees and novatees;
- (f) **including** and **includes** are not words of limitation;
- (g) a word that is derived from a defined word has a corresponding meaning;
- (h) **monetary amounts** are expressed in Australian dollars;
- (i) the singular includes the plural and vice-versa;
- (j) words importing one gender include all other genders;
- (k) a reference to a thing includes each part of that thing; and
- (l) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 GUARANTEE AND INDEMNITY

2.1 Undertaking

The Guarantor unconditionally guarantees to the *Main Contractor* the due and punctual:

- (a) payment of all the Guaranteed Money; and
- (b) performance of all of the Guaranteed Obligations.

2.2 Enforcement

- (a) If the *Subcontractor* fails to perform or observe any Guaranteed Obligation, the *Main Contractor* may at any subsequent time give the Guarantor written notice of the Subcontractor's failure.
- (b) If within 10 *Business Days* after giving that notice, the *Subcontractor* has failed to remedy the failure, the Guarantor must (without further notice from the *Main Contractor*) immediately perform or observe that Guaranteed Obligation or otherwise procure its performance or observance.

2.3 Indemnity

The Guarantor unconditionally indemnifies the *Main Contractor* against any *claim*, Loss or damage caused by, or resulting from, the:

- (a) Subcontractor's failure to perform the Guaranteed Obligations;
- (b) Guaranteed Obligations being unenforceable in whole or in part; or
- (c) Guaranteed Money being, in whole or in part, not recoverable from the *Subcontractor*, or having been recovered, if they are repaid or restored for any reason.

3 CONSEQUENCES OF DEFAULT BY SUBCONTRACTOR

- (a) If the Subcontractor defaults in the due and punctual payment of the Guaranteed Money, or any part of them, the Guarantor shall pay those moneys on demand to, or as directed by, the *Main Contractor*.
- (b) If the *Subcontractor* defaults in the due and punctual performance of any of the Guaranteed Obligations, or the Guarantor is otherwise required to indemnify the *Main Contractor* against *claim*, Loss or damage under subclause 2.3, the Guarantor shall pay the amount of any *claim*, Loss or damage on demand to, or as directed by, the *Main Contractor*.
- (c) The Guarantor is deemed to be a principal debtor jointly and severally liable with the *Subcontractor* to discharge the Guaranteed Obligations.

4 GUARANTOR'S OBLIGATIONS

The Guarantor's obligations under this deed:

- (a) are principal obligations and not ancillary or collateral to any other obligation;
- (b) may be enforced against the Guarantor without the *Main Contractor* being required to exercise any right, power or remedy it may have against the *Subcontractor*;
- (c) are not affected by any act, omission, matter or thing which but for this clause might affect the Guarantor's obligations in whole or in part, including without limitation any one or more of the following (whether occurring with or without the consent of any person):

- (i) the grant to the *Subcontractor* or any other person of any waiver or other indulgence or concession or a whole or partial discharge or release of the Subcontractor or any other person;
- (ii) the bankruptcy or death of, the winding up of, or the appointment of an administrator, receiver or provisional liquidator to, the *Subcontractor* or any other person;
- (iii) the fact that the *Main Contractor* or any other person exercises or refrains from exercising any right, power or remedy under the *Subcontract* or otherwise, or fails to recover, by exercise of any such right, power or remedy, any moneys due or payable from the Subcontractor to the *Main Contractor*;
- (iv) failure by the *Main Contractor* to give notice to the Guarantor of any breach by the Subcontractor of the terms of the Subcontract;
- (v) the making, variation, replacement, discharge or transfer of any agreement, transaction or arrangement between the Subcontractor and the *Main Contractor*, including the *Subcontract*, or the *Main Contractor* and the Guarantor;
- (vi) completion of the building work the subject of the *Subcontract*;
- (vii) termination of the Subcontract by either the *Main Contractor* or the *Subcontractor*; or
- (viii) the *Subcontractor's* obligations under the *Subcontract* being or becoming wholly or partially illegal, void, voidable or unenforceable.

5 EXTENT OF GUARANTEE AND INDEMNITY

5.1 Continuing guarantee

This deed is a continuing guarantee and indemnity and will remain in full force and effect until all of the Guaranteed Obligations have been fulfilled.

5.2 Principal and independent obligation

The undertaking and indemnity in this deed is a principal and independent obligation of the Guarantor and is not ancillary or collateral to any other obligation.

6 VARIATION

This deed extends to cover the *Subcontract* as amended, varied or replaced at any time including, without limitation, any increase in the obligations of the Guarantor or the Subcontractor in consequence.

7 LIMITATION ON LIABILITY

Despite anything to the contrary in this deed, the liability of the Guarantor under this deed will be no greater than it would have been if:

- (a) the Guarantor was named as a party to the Subcontract in place of the *Subcontractor*; and
- (b) the *Subcontract* was fully enforceable.

8 WAIVER OF RIGHTS OF GUARANTOR

The Guarantor waives in favour of the *Main Contractor* all rights (whether at law or otherwise) against the *Subcontractor* so far as necessary to give effect to this deed.

9 EXCLUSION OF SUBROGATION AND OTHER RIGHTS

The Guarantor must not, either directly or indirectly, until the Guaranteed Obligations have been performed or observed in full:

- (a) *claim*, exercise or attempt to exercise a right of set-off or counterclaim or any other right or raise any defence of itself or the Subcontractor which might reduce or discharge its liability under this deed;
- (b) call on the *Main Contractor* to sue or take proceedings against the Subcontractor; and
- (c) *claim* to be entitled to the benefit of any *security* or guarantee now or subsequently held for the Guaranteed Obligations by the *Main Contractor*, whether by way of contribution, indemnity, subrogation, marshalling or otherwise.

10 GENERAL PROVISIONS**10.1 Entire agreement**

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

10.2 Variation

This deed must not be varied except by a later written document executed by all parties.

10.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

10.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this deed.

10.5 Governing law and jurisdiction

- (a) The laws applicable in Victoria govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of Victoria and any courts competent to hear appeals from those courts.

10.6 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

10.7 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

10.8 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the expiration or termination of this deed for any reason will not merge on the occurrence of that event but will remain in full force and effect.

10.9 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

10.10 Notices

Any notice, demand, consent, approval, request or other communication (**notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:

- (a) hand delivered;
- (b) sent by facsimile transmission; or
- (c) sent by prepaid ordinary mail within Australia.

A notice is given if:

- (a) hand delivered, on the date of delivery;
- (b) sent by facsimile transmission during any *Business Day*, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted but, if the transmittal is recorded as after 5.00pm Queensland time, it is taken to be given on the next *Business Day*; or
- (c) sent by prepaid ordinary mail within Australia, on the date that is 3 *Business Days* after the date of posting.

EXECUTED as a deed and delivered on the date of execution by the Guarantor

EXECUTED by the Guarantor in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....
Signature of Director

.....
Signature of Director / Company Secretary

.....
Name of Director

.....
Name of Director / Company Secretary

.....
Date of Signature

.....
Date of Signature

EXECUTED by Guarantor in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....
Signature of Sole Director/Company Secretary

.....
Witness

.....
Name of Director

.....
Name of Witness

.....
Date of Signature

.....
Date of Signature

EXECUTED by **J HUTCHINSON PTY LTD ACN 009 778 330** in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....
Signature of Sole Director/Company Secretary

.....
Witness

.....
Name of Director

.....
Name of Witness

.....
Date of Signature

.....
Date of Signature

**Annexure to the Australian Standard
General Conditions of Subcontract for
Design and Construct**

Part N

Part N – Moral Rights Consent

TO J Hutchinson Pty Ltd (ACN 009 778 330) (*Main Contractor*)
of 70-72 Cecil Street, South Melbourne VIC 3205

AND [insert] (*Principal*)
of [insert]

FOR [insert] (*project*)

I, [name] of [address], consent to and authorise the *Principal* and the *Main Contractor* to do anything to or in respect of any work in which copyright exists created or produced by me during the course of the performance of the work or relating to the work (**Material**) pursuant to the Subcontract for [insert] between the *Main Contractor* and the *Subcontractor* dated [insert date] including the use, dealing, reproduction, transmission, publication, exhibition, adaptation or destruction of that Material:

1. without attribution of authorship to me as the author of the Material; and/or
2. bearing the name of the Principal and/or the Main Contractor; and/or
3. even if its results in “derogatory treatment” of the Material which may be prejudicial to my honour or reputation, provided that I am not named as author of the Material which is the product of such “derogatory treatment”; and/or
4. by changing, relocating, demolishing or destroying any three dimensional reproduction of that Material without notice to or consultation with me.

I agree to do all such things and execute all such documents as the *Principal* and/or the *Main Contractor* reasonably requests in order to give full effect to this consent.

The consent I have given in this document is genuinely given and is not provided by me under duress and in full knowledge that I am giving up rights granted to me pursuant to Part IX of the *Copyright Act 1968*.

.....

Signature of the *Subcontractor's*
duly authorised representative

.....

Dated

Annexure to the Australian Standard General Conditions of Subcontract for Design and Construct

Part O

Part O – Program Requirements

Program Requirements (Clause 32)

Construction program to include sufficient detail of administrative and trade activity to fully describe the *Subcontractor's* planning of the *Subcontract Works* and the method of achieving *practical completion* by the *date for practical completion* and must include:

- (a) the interdependencies of each component part of the work under the *Subcontract*;
- (b) appropriate periods for the review by the *Main Contractor* or the *Subcontract Superintendent* of documents to be produced by the *Subcontractor*;
- (c) any allowances made in the construction program for delays to the provision of the work under the *Subcontract* or any component parts of the work under the *Subcontract* outside the *Subcontractor's* control;
- (d) a separate time line for each discrete component of the work under the Contract and a completion date for each of those components;
- (e) the allocation of *Subcontractor's* resources to enable it to diligently perform the work under the *Subcontract* and to meet the *date for practical completion* and any other documentation identified in the construction program;
- (f) procurement sequencing for the construction phase of the *Subcontract Works*, if applicable;
- (g) the *Subcontractor's* understanding of the tasks and resources required to perform the work under the *Subcontract* in accordance with this *Subcontract*;
- (h) *site* accessibility restrictions applicable;
- (i) appointment of key subcontractors;
- (j) finalisation of project inspection and test plan;
- (k) procurement for key elements of the *Subcontract Works*;
- (l) inspection and testing for key elements of the *Subcontract Works*;
- (m) off-site fabrication for key elements of the *Subcontract Works*;
- (n) provision and approval of samples for key elements of the *Subcontract Works*;
- (o) milestone and key dates for items such as the approval of *authorities*;
- (p) milestone and key dates for the performance of work by consultants;
- (q) appropriate periods, milestone and key dates for the review by the *Main Contractor* or the *Subcontract Superintendent* of documents to be produced by the Contractor;
- (r) detailed design and provision of shop drawings;
- (s) on-site trade activities;

(t) commissioning of *the Subcontract Works* including key dates for testing by *authorities*, acceptance testing and commissioning of items of equipment, systems and co-ordination of separate fitout contractors; and

(u) provision of manuals, survey records, certificates, warranties, quality records and such other items as are required by this *Subcontract* to be provided prior to the *date for practical completion*.

The *construction program* shall be accompanied by a calendar specific to *the Subcontract Works* and showing all working days as well as weekends, public and statutory holidays, rostered days off (which are generally recognised by the building industry) and the Christmas and Easter closedown.

**Annexure to the Australian Standard
General Conditions of Subcontract for
Design and Construct**

Part P

Part P – Aged Care Certification Requirements

#[Hutchinson insert]#

**Annexure to the Australian Standard
General Conditions of Subcontract for
Design and Construct**

Part Q

Part Q – Australian Unity in Occupation Requirements

#/[Hutchinson insert]/#

**Annexure to the Australian Standard
General Conditions of Subcontract for
Design and Construct**

Part R

Part R – COVID Management Plan

#[Hutchinson insert]#

AMENDMENT CONTROL SHEET

AS 4903—2000

Amendment No. 1 (2005)

SUMMARY: This Amendment applies to Clause 41 (a) and (c) of Annexure Part A.

Published on 30 March 2005.

NOTES

Standards Australia

Standards Australia is an independent company, limited by guarantee, which prepares and publishes most of the voluntary technical and commercial standards used in Australia. These standards are developed through an open process of consultation and consensus, in which all interested parties are invited to participate. Through a Memorandum of Understanding with the Commonwealth government, Standards Australia is recognized as Australia's peak national standards body. For further information on Standards Australia visit us at

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Australian Standards are prepared by committees of experts from industry, governments, consumers and other relevant sectors. The requirements or recommendations contained in published Standards are a consensus of the views of representative interests and also take account of comments received from other sources. They reflect the latest scientific and industry experience. Australian Standards are kept under continuous review after publication and are updated regularly to take account of changing technology.

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