

# Letter of Engagement

## "Design & Construct Subcontract Agreement"

**PROJECT:** 56-60 Burwood Road, Burwood NSW 2134  
**TRADE:** Fire Services (Wet)  
**DATE:** Tuesday, 23 October 2018

**TO:**



**ATTN:**



Dear



We hereby enclose your subcontract agreement in duplicate for review and execution, of the Wet Fire Services for Design and Construction works on the above project.

Please complete the following when executing your subcontract:

- Sign every page in bottom right hand corner
- Sign at the end of each Annexure, where indicated
- Include Safe Work Method Statement
- Include Safety Induction Statement & Register
- Include Insurance Public Liability Certificate Of Currency
- Include Insurance Workers Compensation Certificate Of Currency
- Include Insurance Personal Injury and Accident Insurance Certificate Of Currency (*if applicable*)

Please return both fully executed subcontracts and return both signed originals to our postal address (*Builtcom Constructions – Suite 3F, Level 3, 470-474 Church Street, Parramatta NSW 2150*).

We will then endorse both copies and return one duly executed original copy to you for your records.

Yours faithfully

Patrick Essavian  
**Builtcom Constructions**

P: (02) 8212 5592

F: (02) 8079 5975

Email: [patrick@conquest.net.au](mailto:patrick@conquest.net.au)

# Subcontract Agreement

Project: 56-60 Burwood Road,

Burwood NSW 2134

Project No.: 39

Trade: Fire Services (Wet)

Subcontract Agreement between

Builtcom Constructions Pty Ltd  
ACN 609 255 423  
(Contractor)

of

Suite 3F, 470-474 Church Street  
Parramatta NSW 2150

and

Subcontractor:

Address:

ACN/ABN:

The Contractor agrees with the Subcontractor that pursuant to the terms and conditions of this Contract, the Subcontractor must perform and undertake all of the Works for the Project.

**WARNING**

The Contractor has strongly recommended and advised and the Subcontractor acknowledges that prior to signing this document that it obtain independent legal advice.

## Subcontract Details

A.	<b>Principal</b>	Name	Builtcom Constructions Pty Ltd
		ACN	609 255 423
		ABN	85 609 255 423
B	<b>Subcontractor</b>	Name	[REDACTED]
		ACN	[REDACTED]
		ABN	[REDACTED]
C.	<b>Guarantor(s)</b>	1.	[REDACTED] - Director
		2.	
		3.	
D	<b>Contractor</b>	Name	Builtcom Constructions Pty Ltd
		ACN	609 255 423
		ABN	85 609 255 423
1.	<b>Date for commencement "Notice of Commencement"</b>	If nothing stated, the date for commencement shall be the date of this Subcontract.	
2.	<b>Date for completion of stages and practical completion</b>	If nothing stated, as per the Contractor's Construction Program. Stages are to be completed as per the Contractor's Construction Program Terms of Agreement.	
3.	<b>Liquidated damages</b>	\$ [REDACTED] per calendar day.  Please refer to <b>Annexure C</b> as to calculation of genuine estimate.	
4.	<b>Reference date</b>	<input type="checkbox"/> The completion of a milestone in accordance with the Schedule of Subcontract Milestones; or <input type="checkbox"/> Completion of the Project in accordance with Item 2 above, whichever is the earlier and subject to Clause 13 of this Contract; or <input checked="" type="checkbox"/> The 23rd day of each month. [Select only one option]	
5.	<b>Design Brief</b> See Annexure "A" – Design Brief	Note: the scope of works herein includes but is not limited to the Design Brief attached to this Contract or <b>Annexure A</b> .	
6.	<b>Sub-contract Sum</b>	\$ [REDACTED] (Incl. GST)  If nothing stated, per the attached Pricing Schedule detailed in <b>Annexure G</b>	
7.	<b>Retention Sum</b>	If nothing stated, then 5% of the Sub-Contract Sum.	
7A.	<b>Subcontract Documents List</b>	See Annexure A	
8.	<b>GST</b> on the Subcontract Sum	\$ [REDACTED]  Note: the Subcontract Sum includes GST, levies and any other government taxes. The Subcontractor shall be responsible for all payments in force at the date of this Subcontract or subsequently prevailing.	

9.	Site allowance	\$NIL	
		<i>Note: If at any time a site, project, productivity or any other allowance is paid, then all costs associated are deemed to be included by the Subcontractor. No variations to the Subcontract Sum are applicable for allowance whatsoever.</i>	
10.	Defect Liability Period	If nothing stated, then 104 weeks following Completion	
11.	Documents forming part of the agreement	<p>The Subcontract documents shall include, but are not limited to the following:</p> <p>11.1 Subcontract Agreement</p> <p>11.2 Design Brief</p> <p>11.3 Pricing Schedule</p> <p>11.4 Deed of Release</p> <p>11.5 Break-Up of Costs</p> <p>11.6 Contractor License</p> <p>11.7 Public Liability Insurance Certificate</p> <p>11.8 Workers Compensation Insurance Certificate</p> <p>11.9 Drawings and specifications</p> <p>11.10 Subcontract Program</p> <p>11.11 Contractor's Construction Program</p>	
12.	Site address	56-60 Burwood Road, Burwood	
13.	Insurance	Public Liability	\$
		Workers' Compensation	\$
14.	Date for possession	<p>23<sup>rd</sup> October 2018</p> <p><i>If applicable and nothing stated, the date for possession is seven (7) days after the date of this Subcontract.</i></p>	
15.	Guarantee and Indemnity	As per <b>Annexure E</b>	
16.	Sub-Contract Program	As per <b>Annexure D</b>	
17.	Contractor's Representative	Patrick Essavian	
18.	Subcontractor's Representative	Tim Nguyen	
19.	Warranties	As per <b>Annexure F</b>	
20.	Security	Deposit Bond	\$NIL
		Cash Deposit	\$NIL
21.	Subcontractor's address for service of notices	Address	[REDACTED]
		Phone	[REDACTED]
		Fax	[REDACTED]
		Email	[REDACTED]
	Contractor's address for service of notices	Address	Level 3, Suite 3F, 470-474 Church St, Parramatta
		Phone	(02) 8212 5592
		Fax	(02) 8079 5975
		Email	patrick@conquest.net.au

## Formal Agreement

### Background

- A. The *Contractor* wishes to engage the *Subcontractor* to design and construct *the Works* in accordance with the *Subcontract Agreement*.
- B. The *Subcontractor* has agreed to design and construct *the Works* in accordance with the *Subcontract Agreement*.

### Operative Provisions

1. The Contractor and the Subcontractor agree to carry out and complete their respective obligations in accordance with the:
  - (a) attached Subcontract Conditions;
  - (b) Subcontract Details; and
  - (c) other documents referred to therein as constituting the *Contract*.
2. In consideration of the *Subcontractor* performing its obligations under the *Contract*, the Contractor agrees to pay the *Subcontractor* the *Sub-Contract sum*.

Dated:

Executed as a **Deed**

**Executed by Builtcom Constructions  
Pty Ltd ACN 609 255 423** in accordance  
with section 127 of the *Corporations Act  
2001* (Cth):

.....  
Signature of Director/Secretary

.....  
Name of Director/Secretary

.....  
Signature of Director

.....  
Name of Director

**Executed by Builtcom Constructions  
Pty Ltd ACN 609 255 423** in accordance  
with the *Corporations Act 2001* (Cth) and  
by:

.....  
Signature of Authorised Representative

.....  
Name of Authorised Representative

.....  
Signature of Witness

.....  
Name of Witness

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

.....  
Signature of Director/Secretary

.....  
Signature of Director

.....  
Name of Director/Secretary

.....  
Name of Director

**Executed by the Subcontractor** in the  
presence of: [if an individual]

.....  
Signature of Subcontractor

.....  
Signature of Witness

.....  
Name of Subcontractor

.....  
Name of Witness

## Subcontract Terms

### 1. DEFINITIONS

In this Contract, except where the context otherwise requires:

- 1.1 **Acceleration Notice** means a written instruction under Clause 30 by the Contractor to the Subcontractor to accelerate the progress of the Works. Such notice is titled "Acceleration Notice".
- 1.2 **Agreement** means if referred to this Contract or this Subcontractor's Agreement.
- 1.3 **Authority** means any government or governmental, semi-governmental, quasi-governmental, administrative, fiscal or judicial body, department, commission, authority, statutory authority, local authority, Council, tribunal or agency.
- 1.4 **Approved ADI** means an authorised deposit-taking institution approved under section 87 of the *Property, Stock and Business Agents Act 2002* or approved by the Chief Executive by order in writing.
- 1.5 **Bill of Quantities** means a document named therein as a bill of quantities issued to tenderers by or on behalf of a Contractor, stating estimated quantities of work to be carried out;
- 1.6 **Business Day** means any day other than a Saturday, Sunday or public holiday or 27, 28, 30 or 31 December from 9:00am to 5:00pm.
- 1.7 **Certificate of Practical Completion** means the certificate as described and referred to in Clause 15.
- 1.8 **Certificate of Commencement of the Defects Liability Period** means the certificate described and referred to in Clause 13.
- 1.9 **Chief Executive** means the Chief Executive of the Office of Finance and Services.
- 1.10 **Codes of Practice** means all relevant codes that apply to the Works including but not limited to Australian Standards, an Authority's condition, National Construction Code, Office of Fair Trading Guide to Standards and Tolerances and any other guide, code, principles or subordinate legislation in effect from time to time.
- 1.11 **Confidential Information** means information disclosed in the Subcontract Documents and any other documents or information disclosed or made known to the Subcontractor.
- 1.12 **Contract** means this Subcontractor's Agreement.
- 1.13 **Contractor** means the person or entity identified at Item D in the Subcontract Details of this Contract.
- 1.14 **Contractor's Construction Program** means the Contractor's Construction Program included in the Subcontract Document at Item 11.18 of the Subcontract Details being a statement and timetable detailing the dates by which, or the times within which, the various stages or portions of the Works are to be carried out and/or completed.
- 1.15 **Contractor's Representative** means the person appointed in Item 17 of the Subcontract Details as the Contractor's Representative or other person from time to time appointed in writing by the Contractor to be the Contractor's Representative and notified as such in writing to the Subcontractor by the Contractor.
- 1.16 **Date for Completion of Stages** means the date stated in Item 2 of the Subcontract Details or any date that may be extended pursuant to Clause 9.
- 1.17 **Date for Practical Completion** means the date stated in Item 2 of the Subcontract Details or any date that may be extended pursuant to Clause 9.
- 1.18 **Date for Possession** means the date stated in Item 14 of the Subcontract Details.
- 1.19 **Demolition material** means any construction and demolition waste including excavated material (whether VENM, ENM or other), concrete, bricks and masonry items, timber, plasterboard and packaging material.
- 1.20 **Design and Construct** means the design and construction of the Works.
- 1.21 **Direction** includes agreement, approval, assessment, authorization, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.
- 1.22 **Dispute** has the meaning in Clause 38.
- 1.23 **Final Payment Claim** means a final payment claim given by the Subcontractor to the Contractor's Representative under Clause 16.
- 1.24 **Head Contract** means the contract between the Contractor and the Principal thereunder.
- 1.25 **Home Warranty Cover** means insurance under a contract of insurance required to be entered into by or under Part 6 of the *Home Building Act 1989* (NSW) (if applicable).
- 1.26 **Indemnity Basis** means in relation to Clause 40, all costs, including fees, charges, disbursements and expenses incurred by a party to litigation in undertaking proceedings, provided they have not been unreasonably incurred or are not of an unreasonable amount.
- 1.27 **Intellectual property right** means any patent, registered design, trademark or name, copyright or other protected right.
- 1.28 **Item** means any item in the Schedule annexed to this Contract.
- 1.29 **Month** means calendar month.
- 1.30 **Latent site conditions** has the meaning in Clause 5.2(f).
- 1.31 **Liquidated Damages** means the damages payable by the Subcontractor in accordance with Clause 10 and at the rate stated in Item 3 of to the Subcontract Details.
- 1.32 **Payment Certificate** means a certificate of payment submitted in accordance with Clause 14.
- 1.33 **Payment Claim** means a claim for payment submitted in accordance with Clause 14.
- 1.34 **Payment Schedule** means a schedule prepared in response to a payment claim in accordance with Clause 14.5.
- 1.35 **Practical Completion** has the meaning in clause 15.
- 1.36 **Pricing Schedule** means the prices and costings agreed by the Contractor to pay an accepted rate for any products or services to be provided by the Subcontractor and as detailed and described in any Pricing Schedule attached to Annexure G.
- 1.37 **Principal** means the person or entity identified at item A to the Subcontract Details of this Agreement.
- 1.38 **Project** means the project stated on the front page of the Contract and further described in the Subcontract Details.
- 1.39 **Reference Date** means the date on which a claim for a progress payment may be made in relation to work carried out or undertaken to be carried out (or related goods and services supplied or undertaken to be supplied) under the Contract referred to at Item 4 of the Subcontract Details of this Contract.
- 1.40 **Retention Monies** means the quantum of the moneys held as a Retention Sum.
- 1.41 **Retention Sum** means a certain percentage of the Subcontract Sum determined at Clause 20.2 of this Contract which the Contractor is entitled to retain as Retention Monies.
- 1.42 **Schedule of Subcontract Milestones** means the document in the form of Annexure B.
- 1.43 **Secondary subcontract** means a subcontract between the Subcontractor and a secondary subcontractor.
- 1.44 **Secondary subcontractor** means a subcontractor to the Subcontractor.
- 1.45 **Security** means security in the form of costs or bank guarantee or other form approved by the Contractor under clause 20.19.
- 1.46 **Selected secondary subcontract work** has the meaning in Clause 35.
- 1.47 **Selected secondary subcontractor** has the meaning in Clause 35.
- 1.48 **Site** means the land particularly identified in Item 12 of the Subcontract Details and other places to be made available by the Contractor to the Subcontractor for the purpose of performing the Works, and includes any existing buildings, services, or other improvements.
- 1.49 **Subcontractor** means the entity or person engaged by the Contractor to carry out the Works and named as that party at the front page of this Contract.
- 1.50 **Subcontract Adjustment Advice** means a written notice from the Subcontractor to the Contractor made pursuant to Clause 12.9 of this Contract.
- 1.51 **Subcontractor's Construction Program** means the Subcontractors



Construction Program included in the Subcontract Document at Item 11.13 of the Subcontract Details being a statement showing the dates by which, or the times within which, the various stages or portions of the Works are to be carried out and/or completed.

1.52 **Subcontract Documents** means all documents listed in Item 11 of the Subcontract Details.

1.53 **Subcontract Program** means the program referred to in Item 11.17 of the Subcontract Details.

1.54 **Subcontractor's Representative** means the person stated in Item 18 of the Subcontract Details as the Subcontractor's Representative or other person from time to time appointed in writing by the Subcontractor to be the Subcontractor's Representative and notified as such in writing to the Contractor's Representative by the Subcontractor.

1.55 **Subcontract Sum** means the amount stated in Item 6 of the Subcontract Details.

1.56 **Sub-Subcontractor** means any contractor engaged by the Subcontractor to perform the Works on behalf of the Subcontractor and includes any Secondary Subcontractor.

1.57 **Survey marks** 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 the Works.

1.58 **Target Date** means the milestone date or dates referred to in the Subcontract Program.

1.59 **Temporary works** means works used in carrying out and completing the Works, but not forming the Works.

1.60 **Tender** means the quotation of price or the Subcontract Sum provided by the Subcontractor to the Contractor prior to entering into this Contract or the quoted or proposed costings provided by the Subcontractor as to the costs to complete the Scope of Works which the Contractor has relied upon when entering into this Contract.

1.61 **WH&S** means Work Health and Safety as defined in *Work Health and Safety Act 2011* (NSW).

1.62 **Works** means the whole or any part of the Works to be designed and constructed by the Subcontractor in accordance with this Contract and more importantly as described in the attached Design Brief which forms part of this Contract, and is attached at Item 5 of the Subcontract Details and is to include any variations provided for or allowed by this Contract.

## 2. INTERPRETATION

2.1 The clause, headings and sub-clause headings in this Contract shall not form part of this Contract and shall not be used in the interpretation of this Contract.

2.2 A reference to this document means this Contract and includes any variation or replacement of it;

2.3 "includes" means includes without limitation

2.4 References to legislation or provisions of legislation include changes or re-enactments of the legislation and

statutory instruments and regulations issued under, the legislation;

2.5 Words denoting the singular include the plural and vice versa; words denoting individuals or persons include bodies corporate and vice versa; references to documents or agreements also mean those documents or agreement as changed, novated or replaced, and words denoting one gender include all genders;

2.6 Grammatical forms of defined words or phrases have corresponding meanings;

2.7 Parties must perform their obligations on the dates and times fixed by reference to the capital city of the state of New South Wales;

2.8 If the day on or by which anything is to be done is a Saturday, a Sunday or a statutory or public holiday in the place in which it is to be done, then it must be done on the next Business Day;

2.9 References to a party are intended to bind their executors, administrators and permitted transferees;

2.10 Obligations under this agreement affecting more than one party bind them jointly and each of them severally;

2.11 Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;

2.12 A reference to a debt due from a party is deemed to be a reference to a debt immediately due and payable that may be set off against amounts otherwise due to the party owing the debt.

2.13 A provision of, or a right created under this Contract may not be:

(a) waived, except in writing signed by the party granting the waiver;

(b) varied, except in writing signed by the parties.

Except where this Contract requires a party to exercise any right, power or remedy within a specified time, to delay or neglect in exercising a right, power or remedy in one instance does not prevent its exercise in any other instance.

2.14 In the interpretation of this Contract no rule of construction applies to the disadvantage of one party on the basis that it put forward this Contract or any part of it.

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

2.16 Measurements of physical quantities shall be in legal units of measurement of the jurisdiction where the Site is located.

2.17 If it is shown that a particular provision of this Contract is voidable, illegal or unenforceable, or if this Contract would be voidable, illegal or unenforceable unless a particular provision was removed, then that provision shall be and is hereby deemed to be removed from this Contract, without affecting the validity, legality and enforceability of the remainder of this Contract, which shall then be read and take effect as if that provision was not included.

## 3. SUBCONTRACTOR'S OBLIGATIONS AND RESPONSIBILITIES

3.1 The Subcontractor must, in consideration of the Subcontract Sum stated at Item 6 of the Subcontract Details, Design and Construct the Works in accordance with this Contract and as detailed and described in the Design Brief identified in Item 5 of the Subcontract Details, in a proper and workmanlike manner in accordance with this Contract and in accordance with the Subcontract Documents, WorkCover Authority, Codes of Practice, *Work Health & Safety Act 2011* (NSW), *Home Building Act 1989* (NSW), Contractor's Corporate Management System, statutes, by-laws, awards and regulations applying in the State of NSW for the time being in force and affecting or in any way relating to the Works or the Head Contract works as a whole and any amendments thereto.

3.2 The Subcontractor warrants that it has satisfied itself as to the accuracy of any designs, plans or specifications which is required to perform the Works and that the design, plan or specification will be fit for its intended purpose.

3.3 The Subcontractor must perform and observe all its other obligations under this Contract.

3.4 The Design Brief shall include all the work specifically referred to in this Contract and the Subcontract Documents, all and any variations thereto as may be instructed, directed, authorised, sanctioned or required under the terms of this Contract and all minor items of work to be inferred there from to ensure the proper execution and completion of the Works to the absolute satisfaction of the Contractor and for the proper performance by the Subcontractor of its obligations under this Contract.

3.5 The Subcontractor agrees and expressly warrants that:

(a) it is fully aware of the nature and extent of the Works to be performed;

(b) it is aware of, and has, the resource levels and financial resources required to execute the Works in accordance with this Contract;

(c) it must commence execution of the Works and thereafter diligently proceed to execute and complete the Works in accordance with the requirements of this Contract so as to bring the Works to Practical Completion by the Date for Practical Completion; and

(d) any work and/or materials not expressly referred to in or required by this Contract but which is necessary for the satisfactory completion and performance of the Works shall be provided by the Subcontractor at its own cost without any adjustment to the Subcontract Sum.

3.6 The Subcontractor further warrants to the Contractor that the Subcontractor:

(a) at all times shall be and is qualified, licensed with the appropriate Authority and experienced to execute the Works and shall exercise all necessary due care, skill and diligence in the exercise and completion of the Works under this Contract;



- (b) shall execute and complete the Works in accordance with this Contract, so that the Works, when completed, shall:
- (i) be fit for its intended purpose; and
  - (ii) comply with all the requirements of this Contract, an Authority Approval, and required Codes of Practice and all legislative requirements.
- 3.7 The Subcontractor hereby accepts and acknowledges that any approval by any Authority for any part of the Works is not sufficient or determinative and is not to be deemed as evidence that the Subcontractor has complied with the requirements of this Contract and/or the Subcontract Documents unless expressly approved by the Contractor or the Contractor Representative.
- 3.8 Before commencement of any of the Works under this Contract, the Subcontractor must issue a Subcontractor's Construction Program a minimum of seven (7) Business Days prior to the Commencement of the Works on the Site.
- 3.9 The Contractor need not make any payment under this Contract to the Subcontractor unless the Subcontractor has complied with and continues to comply with this Clause 3 and Clause 28 as to insurance requirements.
- 3.10 At all times there must be a person appointed by the Subcontractor to act with its full authority in all matters relating to this Contract as the Subcontractor and must keep the Contractor informed in writing of the name of that person, and of any change. If the Contractor or Contractor's Representative reasonably objects to the person appointed from time to time, the Subcontractor must immediately replace that person.
- 3.11 The Subcontractor's Representative(s) may, at the discretion of the Contractor, become a member of a WH&S Committee and must attend all WH&S meetings.
- 3.12 The Subcontractor must establish and maintain a work procedure which ensures workplace safety for the Subcontractor, his employees and any other person on the Site. This includes but is not limited to a duty to inspect and ensure any and all equipment is fit for its purpose.
- 3.13 The Subcontractor shall give necessary notices and pay any fees relevant to the Subcontractor's work and will comply with all provisions and requirements, Statutory or otherwise, relevant to the Works.
- 3.14 If the Subcontractor or his employees or any Secondary subcontractor be permitted to use any scaffolding or equipment belonging to or provided by the Contractor then such is on the express condition that no warranty or other liability on the part of the Contractor will be created or implied as to the condition or suitability of the said scaffolding or equipment or otherwise.
- 3.15 If the Subcontractor is a company or a related or subsidiary corporate as defined in the *Corporations Act 2001* (Cth), the Directors of the Subcontractor will be required to provide a duly executed and enforceable Deed of Guarantee and Indemnity on the date of this Contract in accordance with Item 15 of the Subcontract Details and the Deed at Annexure E.
- 3.16 The Subcontractor acknowledges that such Deed of Guarantee and Indemnity will act as a joint and several guarantee, and in the event of default of the Subcontractor under this Contract, the Contractor may hold the Guarantors jointly and/or severally liable for the performance of the Subcontractor.
- 4. AUTHORISED PERSONS**
- 4.1 The Contractor must ensure that there must be a person nominated as a Contractor's Representative and at Commencement will be the person named at Item 17 of the Subcontract Details.
- 4.2 The Subcontractor must ensure that at all times there is a Subcontractor's Representative.
- 4.3 The Subcontractor must promptly comply with all directions and instructions given by the Contractor's Representative(s).
- 4.4 The Contractor's Representative(s) must, for the purpose of discharging its functions under this Contract, have:
- (a) after reasonable notice to the Subcontractor, access to any place on the Site where work under this Contract is being carried out or materials are being prepared or stored; and
  - (b) access to the Site and the Works under this Contract.
- 4.5 Neither this Contract nor any other document creates a partnership, joint venture or fiduciary relationship between the Contractor and the Subcontractor. The Subcontractor is not authorised to act as the agent of the Contractor and the Subcontractor must not represent itself as an agent of the Contractor or as being in a partnership or a joint venture with the Contractor. The Subcontractor must not enter into any contract, agreement, arrangement, deed or other arrangement with any third party as agent for or on behalf of the Contractor or Principal.
- 5. SUBCONTRACTOR TO INFORM HIMSELF**
- 5.1 The Contractor has and the Subcontractor hereby acknowledges that the Contractor has made available to the Subcontractor all necessary and required information in relation to the Works in order to understand, acknowledge and be able to perform the Works before entering into this Contract. The Contractor makes no representations or warranties as to the accuracy or sufficiency of such information. The Subcontractor is responsible for the interpretation of all such information for the purposes of undertaking and performing the Works and its ability to execute the Works. This includes the Subcontractor satisfying itself prior to the Commencement of the Works that it has read and understood all of the Subcontractor Documents and particularly, that the design and specifications are fit for purpose and the Subcontractor is able to perform the Works in accordance with the information, documentation and plans made available to the Subcontractor.
- 5.2 The Subcontractor, in agreeing to and accepting the Subcontract Sum has prior to execution of this Contract hereby warranted and acknowledged to have:
- (a) examined all the information made available to it by the Contractor for the purpose of tendering or quoting for the Works including consideration of all available the Drawings, Plan Specifications, Terms of Agreements, Bill of Quantities (if Bill of Quantities are provided they are not warranted or guaranteed to be correct and it shall be deemed that the Subcontractor has checked the accuracy thereof), Conditions of Tendering, reports, maps, diagrams, Subcontract Conditions, and the like; and
  - (b) examined carefully and acquired actual knowledge of the contents of the Site and has adequately considered all drawings, specifications, schedules, Conditions of Tendering, Sub Contract Documents and any other information available to the Subcontractor for the purposes of performing the Works.
  - (c) Inspected the Site before tendering or quoting for the Works or entering into this Contract;
  - (d) examined all information relevant to the risks, contingencies and other circumstances which could affect its Tender, it performing the Works, and which is obtainable by the making of any enquiries; and
  - (e) informed itself and examined the Site and all its physical and environmental conditions and circumstances including sub surface and other Latent site conditions which may have an effect on the Works both above and below the surface of the Site and the climatic conditions at or near the Site; and
  - (f) *considered any potential Latent site conditions* which are physical conditions on the Site and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent Subcontractor at the time of entering into the Contract if the Subcontractor had inspected:
    - (i) All written information made available by the Contractor to the Subcontractor for the purposes of tendering or for the Contract;
    - (ii) All information influencing the risk allocation in the Subcontractor's Tender and reasonably obtainable by the making of reasonable enquiries; and
    - (iii) The Site and its near surrounds.
  - (g) informed itself of the nature of the work and materials, plant and equipment necessary for the execution of the Works under this Contract, the means of access to the Site, and transport facilities for deliveries to the Site; and
  - (h) informed itself as to the availability of labour and the accommodation required; and
  - (i) made proper allowance in its Tender for all award payments, site allowances,

- registered or approved industrial or other agreements that regulate terms and conditions of employment and the insurance requirements payable by the Subcontractor to or in respect to its employees, agents, or sub Subcontractors and for all labour, material and other resources and things necessary to enable it to comply with its obligations under this Contract; and
- (j) that it has satisfied itself as to the accuracy of any design, plan or specification which it is required to utilise in the performance of its Works whether the said design, plan or specification was prepared by the Subcontractor or by others and that the Works on completion, will be in accordance with the intended design, plan or specification aforesaid and will be fit for purpose.
- 5.3 The Subcontractor by entering into this Contract shall be deemed to have inspected and examined the Site fully and carefully and to have satisfied itself on all matters pertaining thereto which could affect any aspect of the Works and has made due allowance thereof in the Subcontract Sum to perform the Works and the Subcontractor shall not be entitled to claim and shall not claim any adjustment of the Subcontract Sum or to the Date for Practical Completion of the Works or any stage thereof for any delay, cost, loss expense or damage whatsoever sustained in connection with any failure of the Subcontractor to ascertain the actual physical condition and characteristics of the Site including but not limited to surface conditions and previously completed work of others.
- 5.4 Unless otherwise provided for in this Contract, the Contractor does not warrant and shall not be liable in contract, tort or to the extent permitted by law under any statute or otherwise for any costs, losses, expenses or damages suffered or incurred by the Subcontractor, whether arising by or out of the negligence or otherwise of the Contractor, Contractor's Representative, or its employees, consultants or agents, howsoever caused, arising out of or in connection with any prior representations made by the Contractor or any person on behalf of the Contractor, any inference or assumption made by the Subcontractor or the completeness, adequacy, accuracy or content of the information (collectively referred to in this Subcontract as "the information") made available or disclosed to the Subcontractor by the Contractor or any person on behalf of the Contractor prior to the parties entering into this Contract, regardless of whether the information was made available or disclosed for the purpose of tendering or forms part of the Subcontract Documents or whether the information is made available or disclosed to the Subcontractor for its convenience only or otherwise.
- 5.5 The Subcontractor:
- (a) warrants that it has not entered into this Contract on reliance on any representations, warranty, promise or statement made by the Contractor or any person on behalf of the Contractor; and
- (b) acknowledges that it is aware that the Contractor has entered into this Contract relying upon the warranties and representations made by the Subcontractor to the Contractor; and
- (c) releases and indemnifies the Contractor from any claim against the Contractor about any fact, matter or thing arising out of or in any way connected with that information or data whether under this Contract or (in as far as permitted by law) any other principle of law which it now has or in the future may have.
- 6. SUBCONTRACT SUM**
- 6.1 Unless otherwise stated herein, the Subcontract Sum is the amount stated in Item 6 of the Subcontract Details and the Subcontract Sum is calculated in accordance with the Pricing Schedule and is not subject to any adjustment on account of any rise and/or fall in labour rates (including any extra amounts payable on account of the conditions in which any work is carried out and any change in the cost of statutory and/or other overheads) cost of materials and plant rates on any account whatsoever.
- 6.2 If Item 6 of the Subcontract Details and if applicable, Annexure G includes in the Pricing Schedule, an amount for a Bill of Quantities for the Works for which the Subcontractor has accepted by way of rates then the Subcontract Sum will be the sum of the products ascertained by multiplying the measured quantity of each section or item or Work actually carried out pursuant to this Contract by the rate accepted by the Contractor for the section or item adjusted by any additions or deductions made pursuant to this Contract. Under no circumstances, will any prices agreed upon be extended beyond the Pricing Schedule (if applicable).
- 7. SUBCONTRACT DOCUMENTS**
- 7.1 The Subcontract Documents detailed in Item 11 of the Subcontract Details shall be read as integral and complementary and in conjunction with this Contract and what is required by one of them shall be binding as if required by all of them unless expressly stated otherwise.
- 7.2 The Subcontractor acknowledges that the documents referred to in Item 11 of the Subcontract Details were provided to the Subcontractor prior to the execution of this Contract and are now deemed to be encompassed and comprised into this Contract.
- 7.3 The Subcontractor shall promptly notify the Contractor in writing should it discover any ambiguity, discrepancy, inconsistency, error, omission or other fault in any document prepared for the purpose of executing the Works issued under this Contract or in any Subcontract Documents. The Contractor may issue a direction to the Subcontractor as to the interpretation to be followed by the Subcontractor in carrying out the Works. The Subcontractor shall comply with any such Direction at its cost, provided that such Direction is consistent with the general character and quality of the work required to be carried out under this Contract.
- 7.4 The Subcontractor will not be entitled to claim or receive any extension of time for any delay in the execution of the work under this Contract, or to claim or to recover, as a variation or otherwise, costs, loss, expense, damage or liability incurred by it by reason of the resolution of an ambiguity, discrepancy, inconsistency, error, omission or other fault not brought to the attention of the Contractor prior to the entering into and execution of this Contract.
- 7.5 The Subcontract Documents shall:
- (a) remain the Contractor's property and be returned to the Contractor on written demand; and
- (b) not be used, copied nor reproduced for any purpose other than the Works.
- 7.6 The Subcontractor shall keep available to the Contractor's Representative and the Contractor:
- (a) on Site, one complete set of the Subcontract Documents;
- (b) at the place of manufacture or assembly of any significant part of the Works off Site, the Subcontract Documents which affect that part.
- 7.7 The Subcontractor irrevocably agrees that it shall not disclose or otherwise reveal directly or indirectly to a third party the Confidential Information without prior specific written consent of the Contractor unless for the purpose of undertaking the Works.
- 7.8 The Subcontractor agrees not to circumvent or attempt to circumvent this Contract and/or the Confidential Information in an effort to gain a benefit while excluding the Contractor.
- 8. INTELLECTUAL PROPERTY RIGHTS**
- 8.1 The Subcontractor warrants that, unless provided in this Contract, design, materials, Subcontract Documents, methods of working, or provided or directed by the Contractor or the Contractor's Representative shall not infringe any intellectual property right.
- 8.2 The Subcontractor irrevocably indemnifies the Contractor against such respective infringements.
- 9. COMMENCEMENT AND COMPLETION**
- 9.1 The Subcontractor must promptly, upon being given access and if applicable possession of the Site, commence the Works on the date nominated in Item 1 of the Subcontract Details of this Contract.
- 9.2 The Subcontractor must regularly and diligently execute and complete the Works so that Practical Completion is achieved by the Date of Practical Completion or the Date for Completion of Stages stated in Item 2 of the Subcontract Details.
- 9.3 The Subcontractor must take all necessary action required to ensure it meets the requirements of the Subcontractor's Construction Program. The Contractor may seek to amend the Construction Program or vary the various stages or portion of the Works to be carried out. The Subcontractor must do all what is reasonably necessary to comply with any varied Direction of the Construction Program. Unless otherwise directed however, the Subcontractor shall

not, without reasonable cause, depart from the Subcontractor's Construction Program.

###### 10. LIQUIDATED DAMAGES

- 10.1 If the Subcontractor fails to complete the Works or any stage of the works by any Target Date or by the Date for Practical Completion or fails to complete any stage of the Works by the due date specified by the Contractor or the Contractor's Representative or within any extended time approved in writing by the Contractor, the Subcontractor will then be indebted to the Contractor for Liquidated Damages at a rate stated in Item 3 of the Subcontract Details for every day during which the Works or the relevant stage or stages shall remain incomplete.
- 10.2 If the Subcontractor fails to reach Practical Completion by the Date for Practical Completion or complete a stage of its Works by the due date the stage is required to be completed or by any Target Date, the Contractor is entitled, when issuing any Payment Certificate to issue with it a provisional assessment in writing of the amount then provisionally due by way of Liquidated Damages and the Contractor may deduct and/or set off such amount from the amount certified and the amount so deducted shall be taken in partial satisfaction of the indebtedness of the Subcontractor to the Contractor for the amount due under 10.1.
- 10.3 If the Subcontractor fails to reach any Target Date by the date shown in the Subcontractor's Construction Program for completion by that Target Date, the Subcontractor shall pay and allow to the Contractor by way of Liquidated Damages the sum stated in Item 3 of the Subcontract Details for every day after the scheduled date for completion of the Target Date shown in the Subcontractor's Construction Program to the date of actual completion of the Target Date or the date that this Contract is terminated pursuant to this Contract, whichever first occurs.
- 10.4 Nothing in this clause shall limit the Contractor's entitlement to general damages for delay to the Works failing to reach Practical Completion by the Date for Practical Completion as specified in Item 2 of the Subcontract Details in addition to any Liquidated Damages.
- 10.5 A failure by the Contractor at any time to demand payment or to back charge (deduct), withhold or set off the Liquidated Damages will not amount to a waiver of or otherwise affect the Contractor's rights and entitlements to recover Liquidated Damages.
- 10.6 The Subcontractor acknowledges that the rate for Liquidated Damages set out in Item 3 of the Subcontract Details represents a genuine and reasonable pre-estimate of the amount of loss or damage, as calculated at the date of this Contract, which the Contractor is likely to suffer if the Subcontractor fails to reach Practical Completion by the Date for Practical Completion or fails to reach completion of any stage, Target Date or milestone by the agreed date for that stage or milestone. The Subcontractor acknowledges and accepts that the calculation of Liquidated Damages comprises of but is not necessarily limited

to the matters contained in Annexure C to this Contract. The Subcontractor warrants that it will not challenge the rate for Liquidated Damages as being in the nature of a penalty.

###### 11. EXTENSIONS OF TIME

- 11.1 If the Subcontractor is or will be delayed in reaching Practical Completion or completion of a stage of works by the due date or a Target Date specified in this Contract by:
- (a) any act, default or omission on the part of the Contractor or the Contractor's Representative;
  - (b) any industry wide dispute; or
  - (c) any variation directed by the Contractor in accordance with this Contract;
  - (d) conditions of the Site; or
  - (e) disruptive weather conditions including but not limited to storms, hail and natural disasters which physically preclude the Subcontractor from completing the Works;
  - (f) the Subcontractor must as soon as possible and in any case within two-(2) Business Days after the delay occurs, give to the Contractor or the Contractor's Representative written notice seeking an extension of time for Practical Completion that:
    - (i) includes a detailed statement of the facts on which the request is based;
    - (ii) the estimated delay in reaching Practical Completion or the estimated delay in reaching completion of a stage of works;
    - (iii) precisely identifies how the delay involves an activity which is or by virtue of the delay becomes critical to the maintenance of progress in the execution of the Works.
- 11.2 Within ten-(10) Business Days of the Contractor or the Contractor's Representative receiving a notice for an extension of time to reach Practical Completion, the Contractor or the Contractor's Representative must give to the Subcontractor a written Direction evidencing its determination of any extension to be granted and the new Date for Practical Completion.
- 11.3 If the Subcontractor fails to give the notice required of this clause within the time stated, the Subcontractor shall not be entitled to any extension of time arising out of or connected or in any way brought about by the relevant delay.
- 11.4 If the Contractor does not grant an extension of time or grants an extension less than the extension of time claimed, the Contractor shall notify the Subcontractor in writing of the reason.
- 11.5 In determining whether the Subcontractor is or will be delayed in reaching Practical Completion or completion of a stage of works by the due date specified in this Contract, regard shall:
- (a) be had to whether the Subcontractor can reach Practical Completion by the Date for Practical Completion or completion of a stage of works by the due date specified in this Contract without an extension of time;

(b) be had to whether the Contractor has been granted an extension of time for the delay under the Head Contract; and

(c) be had to whether the Subcontractor can, by committing extra resources or incurring extra expenditure, make up the time lost.

11.6 If after making a claim for an extension of time in accordance with this Clause 11, circumstances occur which cause the Subcontractor to believe that the delay in reaching Practical Completion or completion of a stage of works by the due date or Target Date specified in this Contract will be greater than that stated in the notice pursuant to clause 11, the Subcontractor may lodge a further notice pursuant to clause 11 of this clause as if those circumstances were themselves a further delay event.

11.7 A delay by the Contractor or the failure of the Contractor's Representative to grant an extension of time or to grant an extension of time shall not cause the Date for Practical Completion or completion of a stage of Works or Target Date by the due date specified in this Contract to be extended.

11.8 An extension of time can only be given for delays occurring on days on which the Subcontractor usually carries out the Works.

11.9 The Contractor may in its absolute discretion make a fair extension of time in respect of any delays not caused or contributed to by any act or default of the Subcontractor.

11.10 Notwithstanding any other provisions of this Contract, the Subcontractor shall not be entitled to any extension of time to the Date for Practical Completion of the Works or any stage thereof or Target Date unless it has taken proper and reasonable steps both to preclude the occurrence of the cause of the delay and avoid or minimise the consequences thereof.

11.11 Notwithstanding any other provisions of this Contract, where any delay is for duration of less than one-(1) full day, the Subcontractor shall not be entitled to claim an extension of time, as a consequence of such delay.

###### 12. VARIATIONS

12.1 The Contractor or the Contractor's Representative may vary the Works and direct the Subcontractor to do any one or more of the following:

- (a) increase, decrease or omit any part of the Works under this Contract;
- (b) execute additional work;
- (c) change the character or quality of any material or work or of anything described in this Contract;
- (d) change the character or quality of any material or work such as may be necessary due to the existence of a Latent site condition;
- (e) change the levels, Survey marks, lines, positions or dimensions of any part of the Works under this Contract;
- (f) demolish or remove material or Works no longer required by the Contractor.

- 12.2 The Subcontractor shall not vary the Works under this Contract except as expressly directed by the Contractor or the Contractor's Representative in writing.
- 12.3 The Contractor or the Contractor's Representative must provide to the Subcontractor written notice of a proposed variation under Clause 12.1 of this Clause. The Subcontractor must notify the Contractor's Representative within two-(2) business days in writing as to whether the proposed variation can be effected. In the event the variation can be effected, the Subcontractor must within the two-(2) business ) day period, in writing:
- notify the Contractor's Representative of the effect which the Subcontractor anticipates that the variation will have on the time for Practical Completion and completion of a stage of the Works or Target Date to which the variation relates;
  - provide an estimate of the cost including but not limited to Subcontractor's price, for the variation supported by all measurements, quantities, rates and other information used by the Subcontractor in determining such price, delay or disruption costs and the costs or effect on any applicable warranty, of the proposed variation;
  - if the notice relates to works being decreased or omitted from the Works, the work not now required is to be deducted from the Subcontract Sum. Cost in this case means the actual expense or amount saved by the Contractor because the work is now not required to be done;
  - If notice is not received by the Contractor from the Subcontractor within ) two-(2) business days, it is deemed that the Subcontractor has accepted the variations at no cost to the Contractor.
- 12.4 The notification pursuant to this Clause 12 of a proposed variation shall not of itself amount to a Direction to the Subcontractor to so vary the work.
- 12.5 The Contractor's Representative may direct the Subcontractor to provide a detailed quotation for the work of a variation supported by measurements or other evidence of cost.
- 12.6 If the Subcontractor requests the Contractor's Representative to direct a variation for the convenience of the Subcontractor, the Contractor's Representative may direct that variation but may only do so in writing. The Direction may be conditional. The Contractor's Representative is not and shall not be obliged to direct a variation for the convenience of the Subcontractor.
- 12.7 If the Contractor or the Contractor's Representative agrees to a proposed variation at the request of the Subcontractor pursuant to this Clause, the variation must be dated and signed by the Contractor's Representative and the Subcontractor in order to be valid. If the variation is not signed, the Subcontractor shall not be entitled to claim and shall not claim any adjustment to the Subcontract Sum, or to the Date for Practical Completion of the Works or any stage thereof or Target Date for any delay, costs, loss, expense, or damage whatsoever consequent upon its obligation to comply with this Clause.
- 12.8 The Subcontractor shall vary the Works as required by the Contractor but shall not be entitled to claim payment for any variation not authorised in writing.
- 12.9 No variation shall result in any increase to the Subcontract Sum unless within two-(2) days of being directed to effect work that the Subcontractor considers constitutes a variation, the Subcontractor shall have notified the Contractor in writing of the nature and cost implications of such variation, including the Subcontractor's price for the variation supported by all measurements, quantities, rates and other information used by the Subcontractor in determining such price and the Subcontractor has issued a variation number and a Subcontract Adjustment Advice. If the Subcontractor fails to do so, it shall not be entitled to claim and shall not claim any adjustment of the Subcontract Sum or to the Date for Practical Completion of the Works or any stage thereof or Target Date for any delay, cost, loss, expense, or damage whatsoever consequent upon its obligation to comply with this Clause.
- 12.10 No claim of the Subcontractor for the cost of executing extra work or supplying extra materials or goods not required by the Subcontract Documents need be met by the Contractor unless the Contractor has given a written instruction and written approval for same.
- 12.11 If the Subcontractor carries out work, which he considers to be a variation, not in accordance with this Clause 12, then those unauthorised works will be at the Subcontractor's absolute sole risk and the Subcontractor shall not include those unauthorised works in any Payment Claim.
- 12.12 The cost referred to in Clause 12.3, unless otherwise agreed, will be calculated by the Contractor's Representative as follows:
- for all labour costs whether performed by the Subcontractor's employees, agents, officers, directors or subcontractors, the rates for such labour as determined by the Contractor's Representative.
  - for all materials is the actual cost of the materials to the Subcontractor. The Subcontractor must provide the Contractor's Representative evidence of payment for materials by the Subcontractor together with all quotations, invoices, receipts and other documentary evidence which tends to prove the actual cost of materials.
- 13. DEFECTS LIABILITY PERIOD**
- 13.1 The Defects Liability Period is stated in Item 10 of the Subcontract Details and commences on the date of the Contractor issuing the Subcontractor with a Certificate of Commencement of the Defects Liability Period.
- 13.2 The Contractor may issue a Certificate of Commencement of the Defects Liability Period at any time in its absolute discretion.
- 13.3 The Subcontractor must, after the commencement of the Defects Liability Period, immediately rectify any defects or omissions in the work under this Contract.
- 13.4 The Subcontractor must ensure that a competent and appropriately qualified and licensed person who is contactable by the Contractor is appointed by the Subcontractor at all times during the Defects Liability Period and any separate Defects Liability Period to rectify all defects or omission in the work.
- 13.5 At any time during the Defects Liability Period, the Contractor's Representative may direct and instruct the Subcontractor to promptly rectify any defect or omission in the Works under this Contract. The Direction must identify the defect or omission and state the date by which the Subcontractor must complete the rectification work and may state a date by which the rectification work must commence.
- 13.6 The Direction in respect of defects or rectification work shall be deemed to provide a separate Defects Liability Period at the discretion of the Contractor. The separate Defects Liability Period shall commence on the date the rectification work is completed.
- 13.7 If it is necessary for the Subcontractor to carry out rectification work, the Subcontractor must do so at the times and in a manner which cause as little inconvenience and is suitable to the occupants of the Works as is reasonably possible.
- 13.8 In the event the rectification work is not commenced or completed by the stated dates, the Contractor's Representative may have the defects and rectification work carried out by a third party at the Subcontractor's expense, without prejudice to any rights or entitlements the Contractor may have against the Subcontractor with respect to the defect or omission and the cost and expense of the rectification of the work incurred by the Contractor shall be a debt due from the Subcontractor to the Contractor.
- 14. CLAIMS & PAYMENTS**
- 14.1 The Subcontractor must deliver to the Contractor, Payment Claims on the date stated in Item 4 of the Subcontract Details. Claims for progress payments under this Clause shall be supported by evidence of the following:
- the amount due to the Subcontractor; provided that such amount does not exceed the maximum percentage of the Subcontract Sum claimable for specific milestone or stage of works which comprises or constitutes the Payment Claim, as stated in the Schedule of Subcontract Milestones under the heading "Value of Work";
  - the total amount previously certified;
  - precise details of the value of the work carried out by the Subcontractor in the performance of this Contract to that time together with details of the value of work to be completed and details of all amounts then otherwise due to the Subcontractor arising out of this Contract;
  - the amount which the Contractor may be entitled to retain as a Retention Sum at that time pursuant to Clause 20 and Item 7 of the Subcontract Details;

- (e) proof of valid Insurances and certificates of currency;
- (f) a statutory declaration by the Subcontractor and/or the Sub Subcontractor that no wages are due and owing by it in respect of the Works at the date of payment to any consultant, suppliers, Secondary subcontractors or employees pursuant to section 31 (H) (I) and (2) of the Payroll Tax Act 1971 (NSW);
- (g) Work Method Statements, Site Specified Safety Plans, Rehabilitation Policy, Site Plan, WH&S inspections and WH&S records; and
- (h) Quality Assurance documentation including quality records verifying that all work and material is in accordance with the requirements of this Contract and Inspection and Test Plans; and
- (i) Certification(s) and Warranties; and
- (j) ABN Details; and
- (k) Subcontractor's Construction Program for the Works if directed by the Contractor;
- (l) any Goods and Services Tax payable by the Subcontractor; and
- (m) identify all and any defects arising in the Works;
- (n) A completed "Schedule of Subcontract Milestones" in the form of Annexure B signed off by an authorised representative of the Contractor
- 14.2 Any Payment Claim received prior to the finalisation of a stage and/or completion of the Project or Target Date must be made on the Reference Date and the Subcontractor must make no more than one-(1) Payment Claim per Reference Date.
- 14.3 A Payment Claim shall be deemed for all purposes to have been received notwithstanding when it was actually received by the Contractor, on the Reference Date or the finalisation of a stage in accordance with the Subcontractor's Construction Program and/or completion of the Project as stated in Item 4 of the Subcontract Details.
- 14.4 Any Payment Claim received after finalisation of a particular stage shall be deemed for all purposes to be a Payment Claim received on the following Reference Date. Notwithstanding anything in this Contract to the contrary, any certification or payment of any Payment Claim otherwise than in accordance with the terms of this Clause 14 shall not be deemed to be a waiver of the requirements of this Clause 14.
- 14.5 The Contractor's Representative or Contractor shall at its discretion assess the claim and issue to the Subcontractor a Payment Schedule stating the amount of payment which is approved to be made by the Contractor to the Subcontractor within 10 days of receipt of a Payment Claim. The Contractor's Representative shall set out in the Payment Schedule the calculations made to arrive at the amount certified and, if the amount is more or less than the amount claimed by the Subcontractor, the reasons for the difference. In valuing the Works which are the subject of the Payment Claim, the Contractor's Representative, or the Contractor (as the case may be) shall have regard to maximum percentage of the Subcontract Sum (or the stages of Works) claimable for the Works which are the subject of the Payment Claim, as stated in the Schedule of Subcontract Milestones in Annexure B under the heading "Value of Work".
- 14.6 The amount certified by the Contractor's Representative or Contractor shall be payable by the Contractor to the Subcontractor on the last working day of the month following the month in which the Payment Claim was (or was deemed to be) submitted. The Subcontractor shall have no claim on any account whatsoever against the Contractor if, notwithstanding the terms of this Clause, the Contractor fails to pay the amount certified to the Subcontractor for a period of fourteen (14) days after the due date for payment.
- 14.7 The Subcontractor may not make a claim for payment under this Clause 14 in respect of a variation, or anything arising out of a variation unless:
- Clause 11 of this Contract has been complied with; and
  - the price for the variation has been agreed to in writing between the Subcontractor and the Contractor's Representative or Contractor.
- 14.8 Any Payment Claim made under the Building and Construction Industry Security of Payment Act 1999 shall be made at the time when a claim for payment may be made by the Subcontractor under this Clause 14. Nothing in this Contract is intended to create a right to make a claim under the Building and Construction Industry Security of Payment Act 1999, to extend the time at which such a claim may be made pursuant to that Act or to provide a period for the purpose of Section 13(4) (a) of that Act.
- 14.9 Payment of any monies by the Contractor to the Subcontractor shall not be evidence of the value of work carried out or admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only.
- 14.10 The Contractor shall not be obliged to pay for any item of unfixed plant or materials that is not incorporated into the Works.
- 14.11 The Contractor may deduct from monies due or claimed to be due to or from the Subcontractor (whether on account of a breach of contract, delay costs or otherwise) to the Contractor and if those monies are insufficient, the Contractor may at his election have recourse to any Security under this Contract.
- 14.12 Notwithstanding anything in this Contract to the contrary, the Contractor is entitled at any time and from time to time to issue a Subcontract Sum reconciliation statement which sets out the Contractor's assessment of the amount then due and payable to the Subcontractor. The Contractor shall be under no obligation to make any payment to the Subcontractor in excess of any amount shown in that statement as being due and payable to the Subcontractor.
- 14.13 Notwithstanding anything in this Contract to the contrary, the Contractor is not be obliged to make any payment to the Subcontractor in connection with any Payment Claim or Schedule until the Subcontractor provides to the Contractor a tax invoice in the amount stated in the relevant Payment Certificate.
- 14.14 The parties acknowledge and agree that the Subcontractor shall render its tax invoice to the Contractor by way of *recipient created tax invoice* and that the Subcontractor must not issue its own Tax Invoice.
- 15. PRACTICAL COMPLETION**
- 15.1 The Subcontractor must bring the Works to Practical Completion by the Date for Practical Completion stated in Item 2 of the Subcontract Details.
- 15.2 The Contractor or the Contractor's Representative may in its absolute discretion issue a Certificate of Practical Completion to the Subcontractor at any time.
- 15.3 The parties agree that the Subcontractor's works will not be deemed complete whether practically or otherwise until the Contractor has issued on the Subcontractor a Certificate of Practical Completion.
- 15.4 Practical Completion occurs on the date recorded on the Certificate of Practical Completion.
- 15.5 In order for the Contractor to determine when the Works are at Practical Completion the Contractor or the Contractor's Representative may have regard to the following:
- the Works are complete including rectification of defects;
  - any approvals required for occupation (if required by the Contractor) have been obtained from the relevant authorities and copies of documents evidencing the approvals have been provided to the Contractor; and
  - all certifications, indemnities and warranties have been provided to the Contractor's Representative or the Contractor.
  - the expiration of any Defects Liability Period.
  - the Works are complete including rectification of any defects but for any defects which the Contractor's Representative determines the Subcontractor has reasonable grounds for not promptly rectifying and the rectification of which will not prejudice the convenient use of the Works for the usual purposes; and
  - those tests which are required by this Contract to be carried out and passed before the Works reach Practical Completion; and
  - certificates, testing, documents and other information required under this Contract which, in the Contractor's opinion, are essential for the use, operation and maintenance of the Works have been supplied and completed;

- (h) performance of all obligations by the Subcontractor pursuant to Clause 21.11 of this Contract; and
- (i) all of the matters referred to in Item 5 of the Subcontract Details and the Design Brief have been completed.
- 16. FINAL CLAIM**
- 16.1 The Subcontractor must submit to the Contractor's Representative a claim for final payment when:
- (a) the Defects Liability Period has ended and the Subcontractor has rectified all defects and finalised all incomplete work it became aware of by instruction from the Contractor's Representative or Contractor or from its own observations during the Defects Liability Period; and
- (b) the Works have been completed in accordance with the provisions of this Contract; and endorse it 'Final Payment Claim'.
- 16.2 The Subcontractor must submit a Final Payment Claim within 21 days of the expiry of the Defects Liability Period.
- 16.3 In addition to claims for payment required to be included in a Payment Claim under Clause 13 of this Contract, the Subcontractor must include in the Final Payment Claim all other claims in connection with the Works which the Subcontractor considers to be due from the Contractor including damages arising out of any alleged breach of this Contract. All such claims, which have not already been barred, shall be barred after the expiration of the period for lodging a Final Payment Claim unless included in the Final Payment Claim and the Contractor shall be taken to be released and discharged.
- 16.4 If the Subcontractor fails to comply with Clause 16.2 of this clause the Contractor may determine the final claim.
- 16.5 After a final claim has been made or treated as having been made pursuant to Clause 16.4, the Subcontractor is not entitled to make any further claims on the Contractor under this Contract.
- 17. FINAL CERTIFICATE**
- 17.1 Within fourteen (14) Business Days of receipt of the Final Payment Claim, the Contractor's Representative must promptly assess the Final Claim. If the Contractor's Representative requires further information to assess the Final Claim, the Contractor's Representative may request the Subcontractor for such information. The Subcontractor must promptly provide the Contractor's Representative any additional information the Contractor's Representative requests.
- The Contractor's Representative must within the ten (10) Business Days period after receiving the final claim or the additional information requested, issue to the Subcontractor and to the Contractor a final certificate of the final amount due from the Contractor to the Subcontractor, if any.
- 17.2 The Final Certificate must:
- (a) identify the amount of GST that has been included;
- (b) give written reasons for any difference between the final amount certified and the amount claimed; and
- (c) notify the Contractor of its obligation to release any remaining Security.
- 17.3 If the Subcontractor fails to give the Contractor's Representative any additional information within a reasonable time, the Contractor's Representative must promptly assess the claim on the basis of the information the Contractor's Representative has.
- 17.4 On receiving the Final Certificate from the Contractor's Representative, the Subcontractor must prepare a tax invoice, if applicable, equal in value to the final certificate and present both documents to the Contractor's Representative for payment.
- 17.5 The amount stated as owing in the final certificate must be paid by the Contractor within one calendar month of the Contractor's Representative issuing a Final Certificate to the Subcontractor and to the Contractor, or, within one month of the Contractor's Representative receiving from the Subcontractor a tax invoice (if applicable) and final certificate as stated in Clause 17.4 above.
- 17.6 The Contractor is not required to pay the Subcontractor pursuant to Clause 17 until the Subcontractor duly executes and delivers a Deed of Release to the Contractor in the form required by the Contractor which documents (among other things) that the amount payable in the Final Certificate is in complete satisfaction of this Contract.
- 18. EFFECT OF CERTIFICATES**
- 18.1 The issue of a Payment Certificate or a Certificate of Commencement of the Defects Liability or a Certificate of Practical Completion shall not constitute approval of any work or other matter nor shall it prejudice any claim the Contractor may have against the Subcontractor.
- 19. INTEREST ON OVERDUE AMOUNTS**
- 19.1 No interest is payable on any monies due and payable to the Subcontractor.
- 20. SECURITY & RETENTION MONIES**
- 20.1 Security and Retention Monies are for the purpose of ensuring the due and proper performance of the Works in accordance with this Contract by the Subcontractor.
- 20.2 The Contractor may retain 10% of each Payment Claim until it reaches the Retention Sum stipulated at Item 7 of the Subcontract Details.
- 20.3 The parties agree that clauses 20.4 to 20.13 inclusive shall only apply if the contract sum under the Head Contract is at least \$20,000,000.00 or at any point in time increases to at least \$20,000,000.00
- 20.4 The Contractor must ensure that the Retention Monies are paid into and retained in a trust account established with an Approved ADI, which may be established in the Contractor's discretion as a separate:
- (a) trust account for the Retention Monies held in respect of the Subcontractor;
- (b) trust account for the Retention Monies held in connection with a particular construction project of the Contractor; or
- (c) trust account for the Retention Sum held in connection with two (2) or more (or all) construction projects of the Contractor.
- 20.5 The Contractor shall ensure that the name of the account and the description of the account in the records of the Contractor include the name of the Contractor and the words "Trust Account".
- 20.6 The Contractor shall ensure that he approved ADI is notified in writing that the account is a trust account required to be established.
- 20.7 The Contractor shall, within fourteen (14) days after establishing a Retention Sum trust account, notify the Chief Executive in writing of the following:
- (a) the name of the approved ADI and the branch or BSB number of the branch of the approved ADI at which the account has been established;
- (b) the name of the account;
- (c) the number of the account; and
- (d) the opening balance of the account (if any).
- 20.8 The Contractor shall not withdraw money from the trust account except:
- (a) for the purpose of the payment of the money in accordance with the terms of this Contract;
- (b) as may be agreed in writing by the Contractor and the Subcontractor; or
- (c) in accordance with an order of a Court or Tribunal.
- 20.9 The Retention Sum held by the Contractor is not available for the payments of the debts of the Contractor, or liable to be attached or taken in execution for satisfying a judgment against the Contractor.
- 20.10 The Contractor shall keep records in relation to the trust account established by the Contractor showing the amounts deposited into or withdrawn from the account.
- 20.11 The Contractor shall retain records made in relation to the trust account for not less than three (3) years from the date which the records were first created.
- 20.12 The parties acknowledge that the Chief Executive has powers to:
- (a) request, in writing, any of the following parties to provide specified information that is related to the enforcement or administration of the trust account:
- (i) Contractor;
- (ii) Subcontractor; or
- (iii) the Approved ADI.
- (b) require the provision of information with respect to any of the following matters:
- (i) the value of the Head Contract agreement;
- (ii) the Retention Monies retained by the Contractor under this Contract; and/or
- (iii) the trust account established by the Contractor for this Contract.
- 20.13 A person to whom a direction is given under Clause 20.12 must comply with the direction by providing the required



information in writing to the Chief Executive within seven-(7) business days after the direction is given or within such a longer period as may be specified in the direction or as the Chief Executive may allow by notice in writing to that person.

20.14 The Contractor may make demand on and utilise the Retention Monies to pay for any debt due from the Subcontractor or for any costs, expenses or damages which the Contractor has incurred, or may in the future incur, due to any act or omission of the Subcontractor which the Contractor asserts is a breach of this Contract.

20.15 The Subcontractor must not take any steps whatsoever to prevent the Contractor from making any demand, including any interlocutory proceedings for any breach of this Contract.

20.16 If the Contractor makes demand on the Retention Monies the Subcontractor must then provide further Retention Monies to the Contractor to meet the requirements of this Contract.

20.17 The Contractor's entitlement to Security shall, upon Practical Completion of the Project, but subject to any variation in accordance with Clause 11, be reduced to 50% of the Retention Monies.

20.18 The Contractor shall release 50% of the Retention Sum and/or Security on the date of Practical Completion. The Contractor shall release the balance of the Retention Monies twelve months following the expiration of the Defect Liability Period.

20.19 The Subcontractor must if stated at Item 20 of the Subcontract Details provide Security in the amount stated therein. The Security must be in the form of cash, a bank guarantee, or other form approved by the Contractor. If the Security is not transferrable by delivery, the Subcontractor must provide to the Contractor an executed transfer or such other documentation as is necessary to affect a transfer of the Security. The costs including, but not necessarily limited to Stamp Duty or other taxes of and incidental to the transfer and retransfer, shall be borne by the Subcontractor. The Subcontractor must provide Security on the date of this Contract.

20.20 The Contractor may have recourse to Security, Retention Monies or both and may convert into money security that does not consist of money in circumstances where the Contractor has become entitled to exercise of right under this Contract as a result of the Subcontractor's breach or an amount is due to the Contractor by the Subcontractor under or in connection with this Contract.

20.21 The Contractor may make demand on and utilise the Security, Retention Monies or both to pay for any debt due from the Subcontractor or for any costs, expenses or damages which the Contractor has incurred or might in the future incur, due to any act or omission of the Subcontractor as a result of the Subcontractor's breach of this Contract.

20.22 Should the Contractor make demand on the Security, Retention Monies or both, the Subcontractor must not take any steps whatsoever to prevent the

Contractor making demand including, but not necessarily limited to any interlocutory or other Court proceedings.

20.23 If the Contractor makes demand on the Security, Retention Monies or both, the Subcontractor must provide further Security to the Contractor to meet the requirements of this Contract.

20.24 Without prejudice to any other right, the Contractor may set off or deduct from any monies due to the Subcontractor from any Payment Claim. If those monies are insufficient to meet any amount payable to the Contractor by the Subcontractor then the Contractor may have recourse to any Retention Monies and, if they are insufficient then to any Security under this Contract.

20.25 Interest earned on the Security shall belong to the party holding that Security.

## 21. PERFORMANCE & EXECUTION OF DESIGN BRIEF

21.1 Except as may be provided in this Contract or as may be instructed by the Contractor, the Subcontractor is and shall remain responsible for all construction means, methods, techniques, sequences and procedures employed by it for the execution of the Works and for coordinating all portions of and the execution of all portions of the Works.

21.2 In the absence of any requirement to the contrary, the Subcontractor shall only use new materials and proper and tradesman like workmanship. All materials and workmanship shall be of a kind which is suitable and fit for its purpose and consistent with the nature and character of that part of the Works for which it is used.

21.3 Upon request by the Contractor, the Subcontractor shall furnish evidence to prove that all materials and workmanship applied in connection with the Works are of the respective kinds and standards shown or described in the Design Brief and the Subcontract Documents or if not so shown or described then of an appropriate kind and of satisfactory standard.

21.4 The Subcontractor shall control the quality of the Works through the implementation of a quality assurance system. That system must ensure that all aspects of the Works are planned, checked and fully documented and that the performance of the Subcontractor in terms of quality is able to be monitored and audited by the Contractor at any time during the course of and after the completion of the Works. The Subcontractor shall ensure that the quality system is properly, fully and professionally implemented during the course of the Works.

21.5 Should the Contractor issue a Direction requiring the Subcontractor to open up for inspection any work covered up or to arrange for or carry out any testing of any materials or goods (whether or not already incorporated in the Works) or of any executed work then the cost of such opening up or testing (together with the cost of making good in consequence thereof) shall be added to the Subcontract Sum unless:

(a) such opening up or testing is consequent upon failure of the Subcontractor to

comply with some provision of this Contract;

(b) the opening up or testing shows that such work, materials or goods are not in accordance with this Contract.

21.6 If the Contractor or the Contractor's Representative discovers material or work provided by the Subcontractor which is not in accordance with this Contract or to an appropriate Codes of Practice or standard, the Contractor's Representative shall as soon as practicable notify the Subcontractor identifying the work and giving reasons why it is not in accordance with this Contract. The Contractor's Representative may direct the Subcontractor and the Subcontractor shall promptly do one or more of the following, as determined by the Contractor's Representative acting reasonably but otherwise in its absolute discretion:

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

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

The Contractor may give a Direction pursuant to this clause at any time and from time to time before the issue of the Final Certificate, notwithstanding the making of any progress payment. Nothing in this clause shall prejudice any other right which the Contractor may have against the Subcontractor in connection with any failure to provide work in accordance with this Contract.

21.7 The Contractor is hereby authorised to issue any Direction arising out of or in connection with any matter of whatsoever nature in connection with the Works which the Contractor considers is appropriate to be the subject of a Direction and to otherwise fulfill any other function, expressly or impliedly referred to in or required by the terms of this Contract. The Subcontractor shall comply promptly with any such Direction.

21.8 If the Subcontractor fails to comply with a direction issued by the Contractor's Representative pursuant to this Clause 21 within the time specified by the Contractor's Representative in the direction and provided the Contractor's Representative has given the Subcontractor a further notice in writing and after the expiry of two (2) days from the date on which the Subcontractor receives the further notice that the Contractor intends to have the work of removal, demolition, redesign, reconstruction, replacement or correction carried out by other persons, the Contractor may have that work carried out by other persons.

The actual cost incurred by the Contractor as certified by the Contractor's



Representative shall be a debt due from the Subcontractor to the Contractor, or may be deducted by the Contractor from any monies which may then be or thereafter become payable to the Subcontractor by the Contractor (including any retention monies then held by the Contractor) and if such monies are insufficient for this purpose, the Contractor may claim the amounts due or the balance thereof under any Security provided by the Subcontractor pursuant to this Contract.

The Subcontractor shall remain responsible to the Contractor for such work executed by others as if the same had been executed by the Subcontractor pursuant to this Contract and the Subcontractor shall have no claim on any basis whatsoever against the Contractor in connection with any action taken pursuant to this clause.

21.9 Notwithstanding the limitations imposed by Sections 18E and 48K of the Home Building Act 1989 (NSW), the Subcontractor hereby extends the statutory warranty periods for its Works as detailed herein and generally warrants that:

- (a) the materials supplied and all Works performed shall be durable, free from defects, acceptable in appearance and finish, and safe for a period of ten (10) years after the date expiry of the Defects Liability Period and if during that ten (10) year period, any defect or fault in the materials supplied or Works performed by the Subcontractor is identified and the cause of that defect or fault is caused by the Subcontractor, then the Subcontractor must at the Contractor's election:
  - (i) return to Site and carry out any necessary repair required to rectify such defect or fault at his own cost; or
  - (ii) pay to the Contractor the reasonable costs of rectifying the defect or fault as determined by the Contractor.
- (b) the Works will be performed in a proper and workmanlike manner and in accordance with this Contract;
- (c) all materials supplied by the Subcontractor will be good and suitable for the purpose for which they are used and that, unless otherwise stated in this Contract, they will be new;
- (d) the Works will be done in accordance with, and will comply with all Codes of Practice, the Home Building Act 1989 (as amended) (NSW), the Environmental Planning and Assessment Act 1979 (NSW), the Building Code of Australia, Australian Standards and all other relevant legislative requirements;
- (e) the Works and any material used in doing the work will be reasonably fit for their stated purpose as required under this Contract;
- (f) the Works will be done with due diligence, within the time stipulated in this Contract;
- (g) if the Works consist of the construction of a dwelling as defined by the Home Building Act 1989 (NSW), the making of

alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the Works will result in a dwelling that is reasonably fit for occupation as a dwelling;

- (h) it is aware of all relevant legislative requirements in connection with work health and safety;
- (i) it accepts the entire responsibility for compliance with all relevant work health and safety legislative requirements by it, its workers and Sub-Subcontractors involved in carrying out the Works;
- (j) the Works and every part thereof will be carried out and completed in accordance with good and safe work practices so as to comply strictly with this Contract;
- (k) if in connection with the carrying out of the Works, the Subcontractor is required to carry out any work or do anything which may reasonably pose a threat to the safety of the Contractor's employees or consultants or agents or any other person on or about the Site or any other place for which the Contractor is or may be responsible, in addition to any other obligation to give notice or otherwise, the Subcontractor shall take all necessary steps to ensure that such threat or danger is absolutely and totally averted and will not proceed with such work until the safety of every person possibly affected by such work is assured, and that the Subcontractor is aware that the Contractor has entered into this Contract in reliance upon such warranties.

21.10 The Subcontractor shall:

- (a) utilise, and ensure that its workmen utilise, the most practical methods available of noise suppression on all machinery of whatsoever description to ensure that the noise level emanating from the Site during the execution of the Works is kept to a minimum and within the requirements of any code, standard or law;
- (b) ensure that all persons engaged by it in connection with the Works avoid nuisance and trespass to adjacent and adjoining properties and the owners or occupiers thereof and the public from dust, debris, noise, obstruction or vibration emanating from the Works;
- (c) provide all things and take all measures necessary to protect people and property;
- (d) avoid unnecessary interference with the passage of people and vehicles.

21.11 The Subcontractor must prior to Practical Completion provide to the Contractor:

- (a) all certificates, warranties and guarantees which have not already been provided by the Subcontractor to the Contractor at each stage of completion of the Works; and
- (b) all certificates and warranties and guaranties from manufacturers and suppliers of products and material used on or incorporated into the Works in a form satisfactory to the Contractor [warranties and guarantees are to be for a minimum period of twelve (12) years] and

- (c) all certification inclusive of Council's 'Form 6' for supply and installation of essential and non-essential Works and services. All certificates are to be in a form satisfactory to the Contractor; and
- (d) all performance and test results in a form satisfactory to the Contractor; and
- (e) all maintenance and operating manuals in a form satisfactory to the Contractor; and
- (f) an executed Deed of Guarantee and Indemnity; and
- (g) all as-built drawings in a form satisfactory to the Contractor.

The Contractor shall not be entitled to any release of retention or Security or final payment pending its compliance in full with the above.

21.12 Upon Practical Completion, the subcontractor hereby releases and indemnifies the Contractor and any related entities or associated group of companies against all liability relating to or arising out of the works provided and/or supplied by the sub-contractor to the Contractor under this Contract, whenever and wherever performed or situated. For that purpose, the subcontractor hereby releases and indemnifies and forever discharges the contractor, its related entities and all of its associated group of companies from all and any actions, costs, claims, demands, proceedings and any loss, expense or damage howsoever arising from the dispute and relating to the works provided by the subcontractor.

## 22. THE SITE, THE SITE ACCESS, SITE MEETINGS & SITE INSTRUCTIONS

- 22.1 The Subcontractor will not be given exclusive possession of the Site but will be given access to those parts or areas of the Site from the Date of Possession as is necessary to enable the Subcontractor to execute the Works in accordance with this Contract.
- 22.2 Access to the Site (whether in whole or in part) shall confer on the Subcontractor a right only to such use and control of the Site as is necessary to enable the Subcontractor to execute and perform the Works.
- 22.3 Before Design and Construction work commences, the Subcontractor must comply to the extents specified in this Contract with requirements for industrial relations, environmental, safety (including under all Work Health and Safety legislation) and quality management, under statutory requirements and any other requirements specified in this Contract to be complied with by the Subcontractor before Design and Construction work commences. The Subcontractor is not entitled to access to the Site or any part of the Site until the Subcontractor demonstrates to the Contractor that it complies with those requirements.
- 22.4 The Subcontractor acknowledges that, prior to execution of this Contract, it inspected the Site, its access and its surroundings and has:
  - (a) examined all information relevant to the risks, contingencies and other circumstances having an effect on this

Contract and obtainable by the making of reasonable enquiries; and

- (b) examined all information made available in writing by the Contractor to the Subcontractor (the Subcontractor being hereby deemed to have satisfied itself that such information is complete and sufficient to enable the Subcontractor to carry out the Works).
- 22.5 The Subcontractor must provide the Contractor and the Contractor's Representative with access to all areas where the Works are being carried out, manufactured, obtained or purchased. The Subcontractor at all times remains responsible for the proper access to all persons within the Site and for the proper security at all times at the Site.
- 22.6 Should conditions beneath the surface of the Site be found to differ from those shown or described in or otherwise contemplated by this Contract, the Subcontractor shall immediately notify the Contractor in writing and seek instructions before continuing with any relevant construction work.
- 22.7 The Subcontractor must keep the Site and the Work clean and tidy and must regularly remove rubbish. Should the Subcontractor fail to adhere to same, the Contractor may clean tidy and remove rubbish at the expense of the Subcontractor.
- 22.8 The Subcontractor shall indemnify and keep indemnified the Contractor in relation to any claim of whatsoever nature arising out of the Subcontractor's failure to comply with the obligations required of it under this Clause 22.
- 22.9 The Subcontractor shall be responsible for the supervision of the Works so as to ensure that they are executed in accordance with this Contract. The Subcontractor shall maintain on Site a competent English-speaking and qualified Foreman who is required to monitor and supervise daily all Works that are in progress. Any direction or requests given to the foreman either verbally or in writing, by the Contractor or the Contractor's Representative shall be deemed to have been given or made directly to the Subcontractor.
- 22.10 The Subcontractor (or its representative) must attend meetings, whether urgent or otherwise, on request by the Contractor or Contractor's Representative.
- 22.11 The Subcontractor must ensure they are adequately parked and any expense incurred in relation to parking is the Subcontractor's responsibility.
- 22.12 The Contractor may issue instructions, Directions, notices or orders to the Subcontractor in respect of any work or thing under this Contract including, but not limited to the programming execution, quality, character or extent of the Works, and the Subcontractor shall comply with such Directions, instructions and notices. This applies to any Directions provided by the Contractors Representative.
- 22.13 If the Subcontractor receives from the Contractor or the Contractor's Representative an instruction, Direction, notice or order which it considers to constitute or involve a variation, but is not stated as such, the Subcontractor must

comply with the conditions of Clause 11 in relation to variations.

- 22.14 The Subcontractor shall keep the Site clean and tidy and shall regularly remove any rubbish or surplus material. If the Subcontractor does not do so, the Contractor may do the cleaning and/or removal of any rubbish and all costs and expenses associated with the rubbish removal so incurred by the Contractor shall be a debt due by the Subcontractor to the Builder.
- 22.15 The Subcontractor shall be responsible for all levels and dimensions as set out by its employees, agents or subcontractors from set out points, recovery marks and date and levels that may be established by the Contractor.
- 22.16 If the Subcontractor supplies any materials for the purpose of installation or incorporation into the Works at the Site and those materials are stored or kept on Site for any period of time, the parties agree that upon those materials passing onto the Site, the Contractor shall have title in those Materials and may deal with those Materials in its absolute discretion.
- 23. SUSPENSION OF WORKS**
- 23.1 The Contractor's Representative may direct the Subcontractor to suspend the whole or part of the Works at any time. If the suspension is due to an act or omission of the Contractor or those for whom it is responsible and the suspension causes the Subcontractor to incur more or less cost than would otherwise have been incurred but for the suspension, the difference shall be valued by the Contractor's Representative and added to or deducted from the Subcontract Sum as the case may require.
- 23.2 If the Subcontractor wishes to suspend the whole or part of the Works under this Contract, the Subcontractor shall obtain the prior written approval of the Contractor's Representative. The Contractor's Representative may approve the suspension and may impose conditions of approval.
- 23.3 The Contractor's Representative may suspend the Works pursuant to Clause 23.1 if it is of the opinion that it is necessary:
- (a) because of an act, default or omission of the Subcontractor or Secondary subcontractor or either's employees or agents of this Contract;
  - (b) for the protection or safety of any person or property;
  - (c) to comply with a Court order;
  - (d) because of a dispute under the Head Contract; or
  - (e) because of a suspension of work under the Head Contract, in the opinion of the Contractor's Representative prevents the Works.
- 23.4 The Subcontractor may recommence work at any time after reasonable notice to the Contractor's Representative.
- 23.5 As soon as the Contractor's Representative becomes aware that the reason for any suspension no longer exists, the Contractor's Representative shall direct the Subcontractor to

recommence work immediately on the whole or on the relevant part of the work under this Contract.

- 23.6 The Subcontractor shall bear the cost of suspension pursuant to Clause 23.1 and Clause 23.2.

## **24. HOURS OF WORK**

- 24.1 The Subcontractor shall perform its work on days and during ordinary work hours, six days a week, Monday to Friday between the hours of 7:00am to 6:00pm and Saturday between the hours of 8:00am and 6:00pm unless restricted by any Development Approval by an Authority. No part of the Works must be executed outside the ordinary working hours without the consent of the Contractor or the Contractor's Representative, which must not be unreasonably withheld. Any penalties imposed by an Authority as a consequence of the Subcontractor's failure to comply with the hours of work is to be set off in accordance with Clause 31.
- 24.2 The Subcontractor must comply with the Construction Zone (if a Construction Zone is provided) approved times and all Council, Police, Transit Authority, Parking and Street requirements, as amended from time to time.
- 24.3 The Subcontractor shall provide a twenty-four (24) hour contact number for emergencies and/or urgent work. The Subcontractor must carry out any such emergency and/or urgent work immediately, if required by the Contractor.
- 24.4 If urgent action is necessary to protect the Works incidental and relating to this Contract and the Subcontractor fails to take action, in addition to any other remedies of the Contractor, the Contractor's Representative may take necessary action to protect the Works.
- 24.5 If the action was an action that the Subcontractor should have performed at the Subcontractor's cost, the Contractor's Representative shall certify the reasonable cost incurred by the Contractor which shall be a debt due from the Subcontractor to the Contractor.
- 24.6 The Subcontractor has no entitlement to claim and must not claim any adjustment to the Subcontract Sum or to the Date for Practical Completion of the Works or any stage thereof or Target Date or for any overtime, shift work, acceleration cost, delay, loss, expense, or damage whatsoever save except where the Contractor expressly agrees to pay for the same in writing prior to execution of the Works.
- 25. REMOVAL OF THE WORKMEN**
- 25.1 The Contractor's Representative may require removal from the Works of any person employed by the Subcontractor who in the opinion of the Contractor's Representative is incompetent or is guilty of misconduct.
- 26. DAMAGE**
- 26.1 Insofar as compliance with this Contract permits, the Subcontractor shall:
- (a) Take all 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 and disturbance.
- 26.2 If loss or damage occurs to the Works under this Contract during the period for which the Subcontractor is responsible for the Site and Works thereof, the Subcontractor must, at the Subcontractor's cost, rectify such loss or damage so that the Works under this Contract conforms in every respect with the provisions of this Contract.
- 26.3 The Subcontractor must pay to the Contractor the cost of making good any damage done by him or his employees or Sub subcontractors to the Works or anything on the Site incurred by Contractor or of any other subcontractor.
- 26.4 The Subcontractor must take all necessary steps to protect the Works including where necessary the provision of temporary covers and protection to prevent damage. Should any damage be caused by the Subcontractor or its employees or others carrying out Works under this Contract in whatever manner then the Subcontractor shall rectify or repair or replace the damage immediately upon verbal or written request from the Contractor or the Contractor's Representative or alternatively the Contractor may at its absolute discretion and without notice to the Subcontractor may rectify or repair or replace the damage on behalf of the Subcontractor and at the Subcontractor's expense and the cost of doing so shall be a debt due by the Subcontractor to the Contractor.
- 26.5 The Subcontractor must attend to rectification of defective works immediately, should the defective work be hazardous to the health or safety of any person or to the public.
- 27. DEFECTS**
- 27.1 The Contractor considers the Subcontractor to be an expert in the Design and Construction of the Works and holds the Subcontractor responsible for its Works. The Contractor requires at Practical Completion the Works to be defect free.
- 27.2 The Subcontractor must identify at the completion of each stage of its Works, all defects, whether minor or otherwise, in its Works and inform the Contractor or Contractor's Representative(s), in writing, of the defects and the date the defects will be rectified and completed for inspection by the Contractor or the Contractor's Representative(s). Should the Subcontractor or Subcontractor's Representative(s) fail to rectify and complete the defects prior to the date notified, the Subcontractor will become immediately liable to the Contractor for expenses incurred and associated with inspecting the defective Works following an initial inspection conducted by the Contractor or the Contractor's Representative(s).
- 27.3 The Subcontractor must maintain the Works until completion and thereafter make good all defects that may subsequently appear or be discovered during the Defects Liability Period stated in Item 10 of the Subcontract Details.
- Such rectification shall be carried out by the Subcontractor at times and in a manner which causes as little inconvenience as is reasonably possible to others working on or occupying the Site.
- 27.4 The Subcontractor must ensure that a competent and appropriately qualified and licensed person who is contactable by the Contractor is appointed by the Subcontractor at all times during the Defects Liability Period.
- 27.5 If defects are not rectified within two-(2) days of a written request from the Contractor (or such lesser period as the Contractor shall in his absolute discretion deem sufficient in the circumstances) the Contractor may remedy or engage some other person to remedy the defects and the cost of doing so shall be a debt due by the Subcontractor to the Contractor. A separate Defects Liability Period shall commence on the date the rectification work is completed.
- 27.6 The Defect Liability period as noted in Item 10 of the Subcontract Details shall commence on the date the Contractor issues a Certificate of Commencement of the Defects Liability Period.
- 28. INDEMNITY & INSURANCES**
- 28.1 The Subcontractor must indemnify and keep indemnified the Contractor against:
- (a) loss of or damage to property of the Contractor, including existing property in or upon which the Works are being carried out; and
- (b) claims by any person against the Contractor in respect of personal injury or death or loss of or damage to property
- (c) arising out of or as a consequence of the carrying out by the Subcontractor of the Works. The Subcontractor's liability to indemnify the Contractor shall be reduced proportionately to the extent that the act or omission of the Contractor or the Contractor's Representative, Contractor's other contractors, employees, consultants or agents contributed to the loss, damage, death, or injury.
- 28.2 To the extent permitted by law, Part 4 of the Civil Liability Act 2002 (NSW) is excluded in relation to all and any rights, obligations or liabilities of either party under this Contract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise. Without limiting the general nature of the above, the rights, obligations and liabilities of the parties relating to proportionate liability are as specified in this Contract and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- 28.3 The Subcontractor must include, in any further contract that it entered into with a third party for the carrying out of the Works, a term that, to the extent permitted by law, the application of Part 4 of the Civil Liability Act 2002 (NSW) is excluded in relation to all and any rights, obligations or liabilities of either party under each further contract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- 28.4 Before the Subcontractor commences work under this Contract, the Subcontractor must:
- (a) effect a public liability policy of insurance of not less than the amount referred to in Item 13 the Subcontract Details in the joint names of the Contractor and the Subcontractor which covers the Contractor, the Contractor's Representative, the Subcontractor, all consultants, all Sub-Subcontractors and other persons employed or with an interest in the Site in respect of personal injury to or death arising by accident of any person whomsoever (not being a person who at the time of the accident is defined as a worker of the insured under any statute relating to workers compensation insurance) and in respect of any injury, loss or damage whatsoever arising by accident to any property, real or personal, including property (other than the Works) belonging to the Contractor or in which it is interested and where the accident arises out of or is caused by the execution of the Works. The public liability policy shall be for an amount in respect of any one occurrence not less than the amount referred to in Item 13 of the Subcontract Details. The policy should be maintained until the Final Certificate is issued.
- (b) obtain workers compensation insurance which will insure against liability for death of or injury to persons employed or contracted by the Subcontractor including liability by statute and at common law. The insurance cover shall be maintained until all work including remedial work is completed. Where permitted by law, the insurance policy shall be extended to indemnify the Contractor for the Contractor's statutory liability to persons employed by the Subcontractor. If Workers Compensation cover cannot be legally obtained, insure under a personal accident policy of insurance to cover personal accidents and related liability.
- (c) obtain Home Warranty Cover pursuant to the *Home Building Act 1989* (NSW);
- (d) must ensure that the Secondary subcontractors have similarly insured their employees and shall, when requested by the Contractor's Representative provide evidence of such insurance affected by the Sub-Subcontractors.
- (e) obtain Construction Risk Insurance which shall ensure that any insurance cover will be maintained during the course of all work that is completed. Such insurance must cover the Contractor, the Contractor's representative, the Subcontractor, all consultants, all sub Subcontractors and other person's employed or with an interest in the Site. The value of the Construction Risk Insurance must be for at least the full reinstatement value of the Works and include all fixed and unfixed materials stored on Site.
- (f) obtain professional indemnity insurance noting the Works include Design and Construction.
- 28.5 Before the Subcontractor commences work under this Contract and in accordance with the provisions of this

Contract and whenever requested in writing by the Contractor's Representative or the Contractor, a party liable to effect or maintain insurance must produce evidence to the satisfaction and approval of the Contractor of the insurance effected, is kept current and maintained.

28.6 The Subcontractor must take all necessary and required action to ensure that every Sub-Subcontractor and consultant engaged or contracted by the Subcontractor is at all times insured;

- (a) for Workers Compensation and related liability in accordance with the requirements of the Workers Compensation Act 1987 (NSW) and related Work Health and Safety Act 2011 (NSW); or
- (b) if Workers Compensation cover cannot be legally obtained, insure under a personal accident policy of insurance to cover personal accidents and related liability.

28.7 The Subcontractor must ensure that each policy required to be effected and maintained under this Contract, including any Secondary subcontract or agreements with consultants is in effect for the relevant period specified in this Contract and specifically for all times where the Subcontractor continues to perform the Works.

28.8 If this Contract requires the Subcontractor to take out additional insurance, all such policies must:

- (a) require the insurer to notify the Contractor at the same time as the insurer receives or gives any notice consenting to the policy must provide the Contractor at least 14 days' notice before any proposed cancellation of a policy; and
- (b) provide that a notice of claim given to the insurer by the Principal, the Contractor, the Subcontractor, or a Sub-Subcontractor, supplier or consultant will be accepted by the insurer as a notice of a claim given by all of the insured.

28.9 If the Subcontractor fails to comply with this Clause 28, where possible, the Contractor may do any of the following at its absolute discretion:

- (a) effect and maintain that insurance and pay the necessary premiums. If required to do so the Contractor may recover from the Subcontractor the cost of the premiums and the Contractor's reasonable costs of effecting and maintaining the insurance, as a deduction from the Subcontract Sum or will be deemed a debt due to the Contractor by the Subcontractor; or
- (b) terminate this Contract without notice and without penalty.

28.10 The Subcontractor must bear all excesses under the policies of insurance taken out by the Contractor which relate to the Works of the Subcontractor.

28.11 Whenever insurance is to be effected in joint names, the policy of such insurance shall provide that in so far as the policy may cover more than one insured all insuring agreements and endorsements with the exception of limits of liability shall operate in the same manner as if there

were a separate policy of insurance covering each party comprising the insured. Such policy shall provide that the insurer waives all rights, remedies and relief to which it might become entitled by subrogation against any other parties comprising the insured and that failure by any insured to observe and fulfill the terms of the policy shall not prejudice the insurance in regard to any other insured.

28.12 The effecting of insurance shall not limit the liabilities and obligations of the Subcontractor under other provisions of this Contract.

28.13 The Subcontractor must immediately inform the Contractor in writing of any occurrence that may give rise to a claim under a policy of insurance required under this clause 28 and must keep the Contractor informed of subsequent developments concerning the claim. The Subcontractor must ensure that each Sub-Subcontractor informs it of the occurrence of any circumstance that may give rise to a claim under a policy of insurance and must inform the Contractor in writing of any occurrence that may give rise under a policy of insurance which it is required to ensure is maintained by a Sub-Subcontractor and keep the Contractor informed of subsequent developments concerning such claim.

28.14 Upon settlement of a claim of insurance:

- (a) the Contractor is entitled to receive monies paid as a payment or allowance by the Contractor to the Subcontractor;
- (b) to the extent the work to be reinstated has not been the subject of a payment or allowance by the Contractor to the Subcontractor, the Subcontractor shall be entitled immediately to receive from monies received, the cost of effecting the reinstatement, including the supply of goods and materials on site whether or not incorporated into the Works; and
- (c) the Subcontractor authorises payment of a claim.

## 29. DELAYS

29.1 If in the opinion of the Contractor the Subcontractor at any time is not employing or providing sufficient suitable supervision, labour, men, plant, materials or goods to carry out the Works within the time provided for by the Contractor's Construction Program, the Contractor may after giving two (2) business days' written notice (or such lesser period as the Contractor shall in its absolute discretion deem sufficient in the circumstances) employ such number of additional supervision, labour, men, plant and purchase materials and manufacture goods as it considers reasonable and necessary and the cost of doing so shall be a debt due by the Subcontractor to the Contractor. The Contractor may apply the whole or any part of the monies, which may be or before due to the Subcontractor herein in repayment of such debt.

29.2 Where the Contractor so requests the Subcontractor shall provide within two (2) business days (or such less period as the Contractor shall in its absolute discretion deem sufficient in the circumstances) of the request a Subcontractor's Construction Program which must be in

parallel and consistent with the current Contractor's Construction Program. Revisions to same shall be executed by the Subcontractor as requested by the Contractor at no additional cost to the Contractor.

29.3 The Contractor shall be entitled to direct the Subcontractor to undertake any work or part of the Works in any sequence whatsoever whether in accordance with the Contractor's Construction Program or a Subcontractor's Construction Program approved by the Contractor or otherwise.

29.4 Where this Contract states an anticipated Date of Commencement or the Contractor's Construction Program states a date for commencement for a stage or stages of the Works and the Contractor fails to give the Subcontractor access to the Site on the day, such failure shall not be a breach of this Contract and the Subcontractor has no entitlement to claim and shall not claim any adjustment of the Subcontract Sum or of the Date of Practical Completion of the works or any stage thereof or any delay, cost, loss, expense or damage consequent upon such failure to provide access to the Site other than in accordance with Clause 9 of this Contract.

29.5 Where the Subcontractor cannot commence off-site fabrication or manufacture for any reason whatsoever whether prevented by some act or omission of the Contractor or the Contractor's Representative or its servants or its agents or otherwise, the Subcontractor shall not be entitled to claim and shall not claim any adjustment of the Subcontract Sum or of the Date of Practical Completion of the Works or any stage thereof or for any delay, cost, loss, expense or damage arising out of or in connection therewith other than in accordance with Clause 11 of this Contract.

## 30. ACCELERATION NOTICE

30.1 The Contractor or the Contractor's Representative may instruct the Subcontractor to accelerate progress of the carrying out of the Works. The instruction must be in the form of a written Acceleration Notice, and the Subcontractor must comply unless, before taking any steps to accelerate, it demonstrates to the satisfaction of the Contractor that the acceleration as instructed cannot be reasonably achieved.

30.2 The Subcontractor is not entitled to any additional payment under this Clause 30 unless both parties have agreed on an additional payment.

30.3 Whenever possible, the parties must agree on the steps to be taken and basis for acceleration before the Subcontractor takes those steps.

## 31. DEDUCTIONS BY CONTRACTOR

31.1 Any debt due or sum claimed by the Contractor under this Contract, whether liquidated or unliquidated, may be deducted from any sums held by or to be paid the Contractor (whether by way of bank guarantee, Security, Retention, progress payment, other amount or otherwise) and if those funds are insufficient, any deficiency remaining may be recovered by the Contractor as a debt

due and payable, or to become due from the Subcontractor.

### 32. CO-ORDINATION WITH OTHER SUBCONTRACTORS

32.1 The Subcontractor must co-ordinate its Works with other work proceeding on the Site and shall not disrupt the work of other subcontractors. The Subcontractor shall indemnify and keep indemnified the Contractor in respect of all fees, fines, penalties, delays, costs, losses, expenses or any damages of any nature whatsoever from any other subcontractor or third party caused by or arising out of any failure of the Subcontractor to co-ordinate the Works with other works proceeding on the Site.

32.2 The Subcontractor has no entitlement to claim and cannot claim any adjustment of the Subcontract Sum or to the Date of Practical Completion of the Works or any stages thereof or a Target Date for any delay, cost, loss, expense or damage whatsoever consequent upon any failure by the Subcontractor to co-ordinate its Works with other works proceeding on the Site or for the failure of any other subcontractor or third party to co-ordinate their Works with that of the Subcontractor.

### 33. SUBCONTRACTOR'S WARRANTIES

33.1 For each trade or area of work, the Subcontractor must provide to the Contractor, before the Subcontractor completes its Work, a warranty in the form of Annexure F to remedy any defect and to remedy or replace design, materials or workmanship which has not complied with this Contract.

33.2 Clause 33.1 does not affect any of the Subcontractor's other obligations under this Contract.

### 34. DISCREPANCIES

34.1 All documents shall be mutually explanatory and anything contained in one but not in another shall be equally binding as if contained in all documents.

34.2 If the Subcontractor discovers any ambiguity or discrepancy in any document then it shall notify the Contractor in writing of the ambiguity or discrepancy. In the event of the ambiguity or discrepancy being discovered and brought to the attention of the Contractor, or discovered by the Contractor, the Contractor shall direct the Subcontractor as to the interpretation to be followed by the Subcontractor in the carrying out of the work.

34.3 The Subcontractor shall not be entitled to claim and shall not claim any adjustment of the Subcontract Sum or to the Date of Practical Completion of the Works or any stage thereof or Target Date for any delay, cost, loss, expense or damage whatsoever in consequence out of its obligation to comply with this clause or with any Contractor's Direction given pursuant to this clause.

### 35. ASSIGNMENT & SUBCONTRACTING

35.1 The Subcontractor will not assign any payment, right to receive payment, proceeds of this Subcontract or any other right, benefit or interest arising in this Contract (or from the Works) or Secondary subcontractor any portion of this Contract to a Secondary

subcontractor without the written consent of the Contractor.

35.2 The Contractor reserves the right to approve all Secondary subcontractors and labour employed by the Subcontractor in connection with the Works and reserves the right to remove from the Site any person with whom the Contractor believes is not performing in a diligent, competent and safe tradesman like manner.

35.3 The Subcontractor shall not subcontract any of the Works or assign the Works or any right, benefit or interest there under to any Secondary subcontractor without the prior written consent of the Contractor. The Contractor may impose conditions on any such consent. No consent by the Contractor under this clause shall relieve the Subcontractor of any of its obligations or liabilities under this Contract and the Subcontractor shall be liable for the acts, defaults and omissions of its subcontractors as if they were the acts, defaults, omissions of the Subcontractor.

35.4 If the Contractor has included in its invitation to Tender or in any of the Subcontract Documents one or more Selected secondary subcontractors for particular Works, the Subcontractor shall subcontract that work to a Selected secondary subcontractor and thereupon give the Contractor's Representative written notice of that Selected Secondary subcontractor's name.

### 36. DEFAULT

36.1 If a party breaches or repudiates this Contract, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right.

36.2 If either party commits a substantial breach of this Contract, the other party may give to the party who committed the breach a written notice to show cause. That notice shall:

- (a) state that it is a notice under this clause;
- (b) specify the alleged substantial breach;
- (c) require the party who committed the breach to show cause in writing why the party giving the notice should not exercise a right referred to in this clause as the case may be;
- (d) specify the time and date by which the party who committed the breach must show cause (being not less than 2 calendar days after the notice is given to that party); and
- (e) specify the place at which cause must be shown.

36.3 Substantial breaches as noted in Clause 36.2 of this clause on the part of the Subcontractor include, but are not limited to:

- (a) becomes insolvent;
- (b) a breach of any provisions of this Contract;
- (c) failing to provide evidence of insurance or any statement in relation to it;
- (d) failing to maintain a current building licence;

(e) failing to comply with a Direction of the Contractor or the Contractor's Representative;

(f) failing to use materials or standards of workmanship required by this Contract;

(g) wrongful suspension of work;

(h) failing to proceed with due expedition and without delay;

(i) knowingly or recklessly providing a statutory declaration or documentary evidence which contains a statement that is untrue;

(j) failure to provide the written statement referred to in Section 31H of the Pay-roll Tax Act 1971 (as amended) in accordance with this Contract;

(k) departure from the Subcontractor's Construction Program without reasonable cause or the Contractor's Representative's prior written approval;

(l) Failing to rectify defective works in accordance with the Contractor's or Contractor Representative Direction or instruction;

(m) Failing to respond to any notice provided pursuant to Clause 35(d) within the time allowed;

(n) Failing to diligently and with due process pursue and complete the performance of the Works.

36.4 If the Subcontractor is the party who fails to show reasonable cause, the Contractor may, by written notice to the Subcontractor:

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

Upon the Contractor giving of the notice to the Subcontractor, the Contractor may suspend payments to the Subcontractor.

If the Contractor exercises the right under clause 36.4(a) the Subcontractor shall not be entitled to any further payments in respect of the work taken out of the hands of the Subcontractor.

36.5 If the Contractor takes work out of the hands of the Subcontractor, the Contractor shall complete that work and the Contractor may without payment of compensation take possession of:

- (a) the Construction plant materials, Temporary works, tools and other things on or in the vicinity of the Site as are owned by the Subcontractor;
- (b) the design documents and other documents, information, materials and the like produced by the Subcontractor; and
- (c) all books of account and all other records relating to the Works

that are reasonably required by the Contractor to facilitate completion of the Works. The Contractor shall keep records of the costs associated in completing the Works.

If the Contractor takes possession of the constructional plant, design documents or other things but not materials as described at Clause 22.16, the

Contractor shall maintain them and on completion of the Works the Contractor shall return to the Subcontractor those documents and any things taken.

36.6 In the event work is taken out of the hands of the Subcontractor and completed by the Contractor, the Contractor's Representative shall ascertain the cost incurred by the Contractor in completing the work and shall issue a certificate to the Contractor and the Subcontractor certifying:

- (a) the amount of that cost and setting out the calculations employed to arrive at that cost;
- (b) the amount which would otherwise have been paid to the Subcontractor if the work had been completed by the Subcontractor; and
- (c) the difference.

In the event the costs incurred are greater than the amount which would have been paid to the Subcontractor if the work had been completed by the Subcontractor, the difference shall be a debt due by the Subcontractor to the Contractor.

36.7 Notwithstanding any certificate issued by the Contractor's Representative given pursuant to this Clause, the actual cost incurred by the Contractor for works taken out of the hands of the Subcontractor under this clause shall be a debt due and payable from the Subcontractor to the Contractor and may be deducted by the Contractor from any monies or may be payable by the Contractor to the Subcontractor and/or may be the subject of a progress payment made by the Contractor to the Subcontractor pursuant to this Contract.

36.8 The Contractor shall complete work taken out of the Subcontractor's hands and may:

- (a) use materials, equipment and other things intended for Works; 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 subcontractors; and
  - (iii) take possession of, and use, such of the design documents, as are reasonably required by the Contractor to facilitate completion of Works taken out.

36.9 The Contractor shall keep records of the cost of completing the work taken out.

36.10 For the purposes of this clause, the parties acknowledge that any costs incurred by the Contractor will be as a "subcontractor" and the Contractor may seek recovery for payment against the Subcontractor under the *Building and Construction Industry Security of Payment Act 1999 (NSW)*.

36.11 Without limiting any other part of this Subcontract, if the Subcontractor is indebted to the Contractor, the Contractor may retain security or Retention Monies, or both, and set off the same against the

debt that is due and payable or commence proceedings for the debt due.

36.12 In the event this Contract is terminated, the respective rights and obligations of the parties shall be as follows:

- (a) the Subcontractor shall with all reasonable dispatch and in such manner and with such precautions to avoid injury, death or damage to person or property remove from the Works all construction plant, Temporary works and any other equipment, plant, tools, goods and materials which are not the subject of clause 36.5; and
- (b) after taking into account amounts previously paid, the Subcontractor shall be paid by the Contractor:
  - (i) the contract value of work executed and completed as at the date of termination;
  - (ii) the costs of materials or goods properly ordered for the Works for which the Subcontractor shall have paid or for which the Subcontractor is legally bound to pay and on such payment by the Contractor any material so paid for shall become the property of the Contractor; and
  - (iii) Notwithstanding anything in this clause to the contrary, the Contractor shall be entitled to set off against any amount so payable any amounts claimed from the Subcontractor in connection with any breach by the Subcontractor of this Contract.

### 37. INSOLVENCY

37.1 A party to this Agreement shall be deemed insolvent if:

- (a) a party informs the other party in writing or creditors generally that the party is insolvent or is financially unable to proceed with this Contract;
- (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 bankruptcy 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
- (d) in relation to a party being a corporation:
  - (i) notice is given of a meeting of creditors with a view to the corporation entering a Deed of Company Arrangement;
  - (ii) the party enters a deed of company arrangement with creditors;
  - (iii) controller or administrator is appointed;

(iv) an application is made to a court for the winding-up of the party;

(v) a winding-up order is made in respect of the party;

(vi) it resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up); or

(vii) a mortgagee of any property of the party takes possession of that property, then, where the other party is:

- (A) the Contractor, the Contractor, may, without giving notice to show cause, exercise a right under clause 35(4); or
- (B) the Subcontractor, the Subcontractor may, without giving a notice to show cause, exercise the right to suspend work under clause 22.

The rights given by this clause are in addition to any rights.

### 38. DISPUTE RESOLUTION

38.1 If a dispute or difference arises out of or in relation to this Contract, the parties must continue to perform their obligations as required under this Contract unless the Contractor's Representative determines that the dispute involves a breach of this Contract which renders performance of the obligations of the respective parties impossible.

38.2 Where any dispute or difference arises hereunder or in any way in connection with this Contract or the Works or otherwise and whether or not this Contract has been determined, either party shall give notice in writing adequately identifying and providing details of the dispute and shall deliver by hand or facsimile or registered post to the other of such dispute or difference.

38.3 A party served with a notice of dispute may give a written response to the notice to the other party and to the Contractor's Representative within fourteen (14) days of the receipt of the notice.

38.4 Within seven (7) days of service on the Contractor's Representative of a notice of dispute or within fourteen (14) days of the receipt by the Contractor's Representative of the written response, whichever is the earlier, the Contractor's Representative shall give each party written decision on the dispute together with reasons for the decision.

38.5 If either party is dissatisfied with the decision of the Contractor's Representative or if the Contractor's Representative fails to give a written decision on the dispute within the time required under clause 36.4, the parties shall within fourteen (14) days of the date upon which the decision should have been given by the Contractor's Representative, confer at least once to attempt to resolve or agree on methods of resolving the dispute.

38.6 If a dispute cannot be resolved between the parties or the other party is not making reasonable efforts to resolve the dispute, upon seven (7) days written notice either party may refer the dispute to expert determination before an expert agreed



between the parties. If parties cannot agree on an expert, the chairperson of the New South Wales Chapter of The Institute of Arbitrators Australia shall nominate the expert.

- 38.7 The Contractor and Subcontractor shall pay one half (1/2) of the experts costs, each. The Contractor and Subcontractor shall bear its own costs in respect of any dispute or difference.
- 38.8 The expert must not act as an arbitrator and, as a condition of appointment, the expert must agree to issue a written decision within fourteen (14) days after the expert's appointment, unless the parties agree in writing to a longer period.
- 38.9 Any expert determination is to be conducted in accordance with the Rules for Expert Determination of Commercial Disputes of The Institute of Arbitrators & Mediators Australia.
- 38.10 The decision of the expert is not subject to review under this Contract. If any party disputes the decision of the expert it may begin any legal proceedings available to it.
- 38.11 If it is shown that a particular provision of this Contract is voidable, illegal or unenforceable, or if this Contract would be voidable, illegal or unenforceable unless a particular provision was removed, then that provision shall be and is hereby deemed to be removed from this Contract, without affecting the validity, legality and enforceability of the remainder of this Contract, which shall then be read and take effect as if that provision was not included.
- 38.12 The parties agree that any communications whether verbally or written specified as being "without prejudice" must not be revealed or used in any other proceedings except for the question of costs.

### 39. GOODS AND SERVICES TAX

- 39.1 The work under this Agreement is subject to GST. All prices will be treated as GST inclusive unless specifically stated in writing to be "plus GST" or words of a similar effect.
- 39.2 The Subcontractor is the party liable to pay the proper amount of GST applicable to the Works.
- 39.3 A party will not be obliged to pay any amount in respect of GST to the other party unless and until a tax invoice that complies with the GST legislation has been issued in respect of that GST. Each party agrees to do all things, including providing invoices or other documentation, that may be necessary and desirable to:
- (a) Enable or assist the other party to claim input tax credits to the maximum extent possible; or
  - (b) Itself claim all input tax credits that might be available to it in order to reduce the amount recoverable from the other party under this Contract.
- 39.4 For the purposes of this Contract, GST means the tax payable on taxable supplies under the GST legislation which is referable to the A New Tax System (Goods and Services Tax) Act 1999 and any related Act imposing such tax or legislation that is enacted to validate,

recapture or recoup such tax. Any terms defined in GST legislation will have the meaning given to them in GST legislation.

### 40. CHARGE OVER PERSONAL PROPERTY COLLATERAL OF THE SUBCONTRACTOR

- 40.1 The Subcontractor as the beneficial owner states that it is absolutely entitled to grant this security interest and in consideration of the Contractor agreeing to enter into this Contract hereby charges in favour of the Contractor all his personal property present and future and wheresoever situated with the payment to the Contractor of all monies secured by this Contract. Such security interest shall be a non-circulating and specific security interest on all of the abovementioned personal property now or in the future belonging to the Subcontractor and a circulating security interest on all other assets and property of the Subcontractor.
- 40.2 The Subcontractor must not create any security interest ranking in priority or of equal rank to this Contract without first obtaining the Contractor's written consent. The Contractor must not before this circulating security interest becomes non-circulating create a security interest on any of his Personal Property.
- 40.3 In the event of the Subcontractor's default of this Contract, the Contractor may appoint a receiver and or manager of the Subcontractor as the case may be without derogating from its other rights under this Contract.
- 40.4 The Subcontractor irrevocably appoints the Contractor and any receiver or manager appointed by the Contractor to be the Subcontractor's joint and several attorneys to execute, sign and perform in his name and on his behalf all agreements, contracts, Instruments, acts and things whatsoever which the Subcontractor is required or reasonably expected to execute, sign and perform under the covenants contained in this Contract and generally to use the Subcontractor's name in the exercise of all or any of the powers conferred on the Contractor or any receiver or manager appointed by the Contractor as the case may be.
- 40.5 For the purposes of this paragraph:
- (a) Financing statement has the meaning given to it by the PPSA;
  - (b) Financing change statement has the meaning given to it by the PPSA;
  - (c) "Security agreement" means the security agreement under the PPSA created between the Subcontractor and the Contractor whether described as a security interest, charge or other expression herein and without limiting those other expressions; and
  - (d) "Security interest" has the meaning given to it by the PPSA and without limiting the meaning in the PPSA includes this document however described and when executed as a guarantee.
- 40.6 The Subcontractor agrees that the Subcontractor's execution of their respective parts of this Contract and the provisions set out herein constitute a security agreement for the purposes of the PPSA and create the security interest

as set out in the respective executed document.

- 40.7 The Subcontractor shall indemnify or pay the Contractor at the Contractor's sole discretion for all expenses incurred or to be incurred in registering a financing statement or financing change statement in the PPSR or releasing any interest thereunder.
- 40.8 The Subcontractor shall not create or cause or set in chain to be created a financing statement or financing change statement in respect of a security interest without the prior written consent of the Contractor.
- 40.9 The Subcontractor shall not register, cause to be registered or do any action or execute anything which may enable the registration of a financing statement or a financing change statement in relation to the Personal Property Secured herein in favour of a third party without the prior written consent of the Contractor.
- 40.10 The Subcontractor shall immediately advise the Contractor of any material change in its business practices, corporate structure, financial structure and solvency which would otherwise jeopardise the security interests of the Contractor.
- 40.11 The Contractor and the Subcontractor agree that sections 96, 115 and 125 of the PPSA do not apply to the security interest created by the Contract.
- 40.12 The Subcontractor hereby waives his rights to receive notices under sections 95, 118, 121 (4), 130, 132 (3)(d) and 132 (4) of the PPSA.
- 40.13 The Subcontractor waives its, his, her and their rights as a grantor and or a debtor pursuant to sections 142 and 143 of the PPSA.
- 40.14 The parties agree that the Subcontractor is the debtor for the purposes of Section 275(6)(a) of the PPSA and that the parties will not disclose information of the kind mentioned in Section 275(1) of the PPSA. This clause constitutes a confidentiality agreement for the purpose of Section 275(6)(a) of the PPSA.
- ### 41. CHARGE OVER REAL PROPERTY OF SUBCONTRACTOR
- 41.1 To the extent that any monies remain outstanding between the Subcontractor and the Contractor, that indebtedness shall constitute a charge over any real property held by the Subcontractor and such charge may be registered by the Contractor as a charge and constitutes in the Contractor a caveatable interest. The Subcontractor shall neither raise complaint nor require the lapsing of a caveat or charge as the case may be where the Contractor registers such interest pursuant to this Contract. This chargeable interest accrues and is applicable under the *Real Property Act 1900* (NSW) and applicable interstate land registration statute and under the Common Law.
- ### 42. NOTICES
- 42.1 A notice (and other documents) shall be deemed to have been given and received if:
- (a) served personally on the Subcontractor or the Subcontractor's Representative at the address stated in Item 21 of the



Subcontract Details or on the Contractor or the Contractor's Representative as the case may be;

- (b) sent by prepaid post addressed to the person to whom it is necessary or required to be given at the address appearing herein or at his last known place of abode or business three days after posting; or
- (c) sent by facsimile on the number appearing herein or to the last known facsimile number upon confirmation of correct transmission of facsimile; or
- (d) emailed directly to the Subcontractor or the Subcontractor's Representative's email address upon confirmation of correct transmission of email.

#### 43. DEBT COLLECTION COSTS

- 43.1 The Subcontractor must pay to the Contractor any debt collection costs, including any legal fees on an Indemnity Basis and costs associated with recovering or attempted recovery of an amount under this Contract, including defence of such debt recovery claim.

#### 44. NEGOTIATIONS AND COVENANT

- 44.1 The Subcontractor expressly covenants that, at the time of entering into this agreement, it employs more than 20 part-time or full-time employees. Such employees do not include a casual employees, except if that casual employee is employed by the Subcontractor on a regular and systemic basis.
- 44.2 The parties acknowledge and warrant that the Contractor has entered into this contract in reliance upon the representation given by the Subcontractor at Clause 45.1 above and expressly relies on the basis that this agreement does not constitute a "small business contract" as defined in section 23, Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*.

- 44.3 The parties acknowledge and warrant that by entering into this agreement, they have been provided with an effective opportunity to negotiate the terms of this agreement.

- 44.4 The parties acknowledge that this agreement was prepared specifically for this transaction and that this version of the agreement was drafted after discussions relating to the transaction which is the subject of this agreement.

#### 45. GOVERNING LAW

- 45.1 The Law governing this Contract, its interpretation and construction is the law of New South Wales. The parties hereto submit to the jurisdiction of the Courts of that State and of any court in appeal there from.

#### 46. FORCE MAJEURE

- 46.1 For the purposes of this Clause, "Force Majeure" means an act of foreign enemies, war, blockade or insurrection, act or terrorism, riot or civil disturbance, landslide, earthquake, flood, epidemic or any other serious, disruptive matter of similar character to the extent that any such events or circumstances did not arise directly or indirectly as a result of any act or omission of the Subcontractor.
- 46.2 Where an event of force majeure occurs, the party prevented from or delayed in performing its obligations under this Agreement must immediately notify the other party giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing that party from, or delaying that party in performing its obligations under this Agreement and that party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its performance of the Agreement and to fulfill its obligations under the Agreement.
- 46.3 As soon as the Contractor becomes aware that the reason for the suspension no longer exists, the Contractor shall direct the Subcontractor to recommence the work suspended as soon as

reasonably practicable. The Subcontractor may recommence work suspended pursuant to this clause at any time after reasonable notice to the Contractor.

- 46.4 An event of force majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event.

- 46.5 The Subcontractor has no entitlement and the Contractor no liability for:

- (a) Any costs, losses, expenses, damages or the payment of any part of the Subcontract Sum during an event of force majeure; and
- (b) Any delay costs in any way incurred by the Subcontractor due to an event of force majeure.

- 46.6 Nothing in this clause shall restrict or otherwise modify the operation of Clauses 40 and 41 hereof.

#### 47. COUNTERPART

- 47.1 This Agreement may be executed in any number of counterparts each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document. The exchange of executed counterparts by email or facsimile create a binding agreement.

#### 48. FURTHER ASSURANCE AND GOOD FAITH

- 48.1 Each party must promptly at its own cost do all things (including but not limited to executing all documents) necessary or desirable to give full effect to this Contract.
- 48.2 Each Party must act in good faith, honestly and reasonably in the performance of its obligations under this Contract with the object of achieving the commercial efficacy intended under this Contract.

## Annexure A

### Design Brief

**ANNEXURE A  
DESIGN BRIEF****GENERAL DESIGN BRIEF**

**The subcontractor is to provide all labour, materials, plant, equipment and supervision to complete the works in accordance with the drawings, specifications and contract documents including but not limited to the following, items of work:**

- 1.** The subcontractor acknowledges that they have visited the site and has informed themselves fully as to the nature and of the existing building and site conditions. No claims in respect to existing site conditions will be recognised by the Builder.
- 2.** All electrical equipment is to be tested and tagged on a three-monthly basis consistent with relevant Code requirements.
- 3.** The Builder, on a shared basis, will provide lunchrooms, change rooms and ablutions. The Subcontractor will provide labour to keep their area of the facilities clean on a daily basis.
- 4.** The subcontractor is to keep work areas clean and free of waste material on a daily basis. The builder will supply waste bins. Provide all necessary labour and equipment to progressively remove rubbish/spoil generated by your work to a position designated by the Builder. This must be done on a daily basis or as instructed by the Builder.
- 5.** Nomination and company details of all subcontractors scheduled to be commissioned for carrying out portions of the works covered in the contract. Permission must be attained from the contractor prior to any work being commissioned to another subcontractor.
- 6.** Provide MSDS for materials and solvents bought to site.
- 7.** All persons are to be inducted by Builder prior to commencing works on site.
- 8.** Allow to attend all site meetings as deemed necessary by the Builder.
- 9.** Provision of a suitably qualified First Aid Person.
- 10.** A site-specific Safe Work Method Statement and Risk Assessment must be submitted prior to the commencement of works on site. All employees working on site must read and sign acknowledging that they have understood the Safe Work Method Statement and Risk Assessment for the subcontract works.
- 11.** The Subcontractor is to provide all task specific lighting required in the execution of the works.
- 12.** The Subcontractor shall carry out the works in a thoroughly safe manner and shall be bound to comply with the requirements of relevant Authorities having jurisdiction over the works including arranging all necessary inspections required by such Authorities at the appropriate stages and obtain from them certificates of compliance with the regulations.
- 13.** Provision to comply with the requirements of the Builtcom Constructions Site Safety Plan.
- 14.** Comply with all relevant Acts, By-law and regulations including paying all necessary permits, fees, and the like as required. Comply fully with Local Council conditions of

approval (a copy of which may be obtained from Builtcom Constructions Pty Ltd). Comply fully with the BCA and all Australian Standards and other local or statutory requirements that may be applicable.

15. Provide proof of training in the use of all equipment and tools as necessary in the carrying of subcontract works.
16. Provide all necessary personal safety equipment for all employees, which must be used such as hard hats, safety boots, goggles, gloves, earmuffs and the like.
17. Comply with Council noise and hours of work restraints and environmental guidelines.
18. Allow to comply with the following Development Application consent conditions for construction hours:

**7:00am – 5:30pm, Monday – Friday**

**7:00am –1:00pm, Saturday**

Coordination of the works with the Builder and other trades and full cooperation as necessary to meet the Builders programme(s). Allow for return visits and/or works out-of-sequence as necessary. No claims will be recognised by the Builder in respect to the out-of-sequence works.

19. Allow for out of hours where required to maintain program.
20. Allow for all necessary fencing/bunting, signage, warning lights, barricades and any additional requirements raised by Work Cover or other statutory authority in relation to your trade works.
21. Provide protection to all materials and finished work during transportation, handling and installation. Maintain protection until Practical Completion Date of Project or until otherwise requested by the Builder.
22. Provide all scaffolding, hoisting, back propping, materials movement and access in compliance with Work Cover Authority requirements.
23. Provide regular evidence of compliance with award conditions and payments including redundancy payments, superannuation contributions, workers compensation, top-up (24-hour accident insurance) with CTAS or industry approved equivalent.
24. No payment will be made until this subcontract has been fully completed and signed Certificates of Currency for all necessary insurance's have been produced and the completed prescribed declaration form returned.
25. Retention will be up to a maximum 10% of the contract value with 50% released on Practical Completion of the Contract and final release following conclusion of defects liability period (104 weeks).
26. The Subcontractor must ensure they have subscribed to and downloaded PlanGrid to be up to date with all current drawings relating to the project site. It is the Subcontractors responsibility to inform themselves.

**FIRE SERVICES (WET) PLACEMENT DESIGN BRIEF**

The design brief includes for all labour, materials, plant and equipment to carry out the Fire Services (Wet) placement works and associated works, all in accordance with the sub-contract documentation, including everything necessary for the proper and timely completion of the works in a properly coordinated and safe manner, including but not limited to the following items:

1. Allow for the supply and installation of all necessary signage raised by SafeWork NSW or other statutory authority in relation to your trade works.
2. Provide protection to all materials and finished work during transportation, handling and installation. Maintain protection until Practical Completion Date of Project or until otherwise requested by the Builder.
3. Subcontractor is to co-ordinate with structure and services contractors for penetration requirements. Provision of penetrations and necessary cut-outs are always to be fire rated.
4. Alternate solutions proposed by the subcontractor require the subcontractor to submit detailed documentation demonstrating compliance with the design intent of the project.
5. Subcontractor is deemed to have included for all variance related costs pertaining to the design as per the D&C agreement.
6. The Subcontractor is to create, develop, revise and provide ongoing modification of the design documents, in PDF, DWF/CAD, until work-as-executed drawings are issued and approved in writing by the Head Contractor.
7. The Subcontractor is to produce detailed "For Construction" and "As Built" drawings including but not limited to drawings, specifications, schematics and schedules.
8. The Subcontractor is to produce detailed layouts confirming size and locations of penetrations and service outlet location.
9. The Subcontractor is aware fire collars are to be used for ALL penetrations and has made appropriate provisions.
10. The Subcontractor must ensure they have allowances for the supply and installation of Storz valves as per FRNSW requirements.
11. The Subcontractor is aware location of all fire services are to be approved by the Head Contractor in writing prior to commencing any work. The Subcontractor has allowed to change drawings as necessary and instructed by the Head Contractor.
12. The Subcontractor is to provide all products as specified in the Contract Documentation. Where alternate products are proposed, as part of design intent, the Subcontractor to submit detailed documentation demonstrating compliance with the

design intent of the project including calculations and the associated cred its.

13. The Subcontractor is to co-ordinate with design team including but not limited to Architects, Structural Engineer, Consultants, Engineers and Sydney Water Co-ordinator.
14. The Subcontractor is to take full responsibility of the Wet Fire design co-ordination with Architectural, Structural and all other services design drawings.
15. The Subcontractor is responsible for all pressure enquiries and all associated works as required including co-ordination with Sydney Water, Council and all relevant authorities relating to the sprinkler system and any other fire system they have installed. The Subcontractor is to ensure project pressure requirement has been satisfied as per relevant authority guidelines.
16. The Subcontractor is aware the design must comply with Australian Standards, Building Code of Australia, FRNSW, Section J, and relevant authority requirements.
17. The Subcontractor is to issue a design certificate confirming compliance with contract documents, authority requirements and as requested by the Head Contractor.
18. The Subcontractor is to provide Operational & Maintenance Manuals, Warranties, Certificates for all plant supply and installed and/or relevant to their works.
19. The Subcontractor to take full design and construct (D&C) responsibility.
20. The Subcontractor must ensure that the hydrant system is designed in allowance for only 1x fire storage tank in basement 4.
21. Supply and installation of sprinkler heads to the side of the balcony wall for all units. The sprinkler head must be white and a sprayer head to be discrete against the wall.
22. The Subcontractor must ensure all sprinkler heads are protected to prevent any debris/dust/paint getting on them (must be confirmed in submitted ITP's).

#### ***Combined Automatic Fire Sprinkler and Hydrant System***

23. Supply and install a combined automatic fire sprinkler and hydrant system throughout the building, including fire hydrant risers, jacking pumps, Storz valves, Fire extinguishers (permanent), landing valves, alarm valves, and monitored isolation valves in the scissor fire stairs and 150mm ring main on Ground Level designed to comply with AS2118.1-2005, AS2118.6- 2010, AS2419-2012, NCC 2015, FRNSW, and requirements of the Fire Engineering Report.
24. Supply and install an annular test facility to test the town main supply and drain into sump pit provided in the pump room.
25. Supply and install an automatic sprinkler jacking pump to pressurize the sprinkler installation above the town main incoming pressure
26. Supply and install gauges and pressure switches to operate the EWIS and for a call out

signal to the fire brigade.

27. Supply and install monitored isolation valves with flow switches and solenoid test assemblies for each level of the building
28. Supply and install 68° black sprinkler heads (extended coverage 4.3m x 4.3m) on exposed pipework to Basement 4, standard galvanised sprinkler heads to other basement levels. (all upper levels to have white sprinkler heads).
29. The Fire Services Contractor shall provide hydraulic calculations using ACADS-SSG Hyena program and comply with AS2118.1-1999 Section 12 including nodding diagrams and schematics with graphs showing water supply, pump curves, and duty points for approval by the Head Contractor.
30. Comply with the requirements of the Fire Engineering Report for the project
31. The primary painting of all sprinkler pipes and metal surfaces other than galvanised surfaces. The finish painting of all exposed pipework as per the following:
  - i. B4: Black sprinkler head, black pipes
  - ii. B3-B1: Standard sprinkler head with red pipes
  - iii. Gf, 2-11: White sprinkler head (pipes not exposed)
  - iv. L1: Concealed sprinkler heads to all areas (white plate) except for sprinkler in the lobby area which should be black.
32. Supply and install labels to all fire services pipes to comply with AS1345- 1995 and other relevant standards, legislations and authorities.
33. Supply and install all traffolyte (or equivalent) type signage to fire equipment, maintenance tags and location signs.
34. The Subcontractor must allow for the supply and install of 2x Alarm valves complete with stop valves, testing valves, labels and hydraulic alarm gong ready for connection to water supply from the Authority's Main.
35. The Subcontractor must allow for the supply and install of flow switches, complete with solenoid testing valve (excl. wiring to a new Fire Indicator Panel provided by others).
36. The Subcontractor must allow for the provision of scaffolding for sprinkler installation up to 4 m.
37. The Subcontractor must allow for the provision of penetrations through structural walls, floors and ceilings.
38. The Subcontractor must allow for the Sealing & fire rating of all fire services penetrations.
39. The Subcontractor must allow complete all pressure testing and commissioning the system on completion of the work.
40. The Subcontractor must issue of a Certificate of Compliance for this essential service at final tests and Quality check.
41. One-year preventive maintenance & monthly testing to Australian Standard.



42. The Subcontractor must allow for the supply and installation of the permanent fire extinguishers to all basements (4x) of the building with One-year preventive maintenance & 6 monthly testing to Australian Standard.
43. The Subcontractor must allow for the supply and installation of 5 kg. CO<sup>2</sup> extinguishers in Electrical Switch room/ Comm room
44. The Subcontractor must allow for the supply and installation of 4.5 kg. dry chemical extinguishers in plant rooms.
45. The Subcontractor must Issue of a Certificate of Compliance for this essential service at final tests and Quality

**Fire Services General:**

46. The Subcontractor is to supply and install all penetrations, sleeves, fire stoppings or fire collars as required by the works.
47. The Subcontractor is to maintain and submit records, ITP's (per level) including the provision of notices for Inspection by the relevant inspector, engineer and Head Contractor.
48. The Subcontractor is to supply & install all access panels required and co-ordinate works with plasterboard trade.
49. The Subcontractor must be granted approval of the access panel locations by the Head Contractor prior to the installation of works.
50. The Subcontractor has a 24-months defects liability period and overall warranty for all materials and workmanship, which is to commence from the date Practical Completion.
51. The Subcontractor acknowledges that no core-hole penetrations are to be drilled following the completion of slabs due to the nature of post tensioned stressed slabs (ground floor and level 2). Should any holes be required to be drilled, the Subcontractor shall, at all costs, engage an 'x-ray' scan of the area of the slab for potential coring, subject to approval within writing by both the Structural Engineer and the Head Contractor.
52. The Subcontractor is to ensure on completion there is not water leaks under any circumstances and maintain a testing regime to ensure this is the case.
53. The Subcontractor is to provide all necessary fire rating, fire collars in floors and wall, and pipe including the lagging of all fire services where required.
54. Subcontractor is to include for the supply and installation of all cast-in items as required to complete the works.
55. Upon site commencement of any works, the subcontractor is deemed to have accepted substrate conditions.
56. The subcontractor shall coordinate their works with that of other trades and make

adjustments as necessary to pipe runs to suit.

**Materials Handling/Plant & equipment**

57. All material handling relating to subcontract works is the responsibility of the Subcontractor. The Head Contractor shall provide craneage on a shared basis.
58. Craneage is to be booked a minimum of 48 hours in advance.
59. Loading and unloading of materials will be allowed only within the confines of the site. The Head Contractor required must be notified 1 week notice for all deliveries as Burwood Council regulations, any deliveries unallowed for and caught by rangers will have fines passed onto the Subcontractor.
60. The Subcontractor is to notify the Head Contractor of delivery of any plant and equipment 48 hours prior to float. Any delivery of machinery needs to be unloaded directly onto the site. If this is not possible, rubber mats need to be used on public roads to avoid any damage being caused to the asphalt. Damage caused to roads and public ways will be the responsibility of the Subcontractor.
61. The sub-contractor shall be responsible for supplying all plant and equipment necessary for completion of the subcontract works. The sub-contractor shall be responsible for storage and protection of his materials and equipment on site.
62. Subcontractor is responsible for all materials and equipment. All plant and material installed must be protected at no extra cost to the Head Contractor.
63. The Subcontractor is responsible for all horizontal and vertical movement of materials and equipment.
64. The Subcontractor is responsible for all task lighting
65. The Subcontractor will be responsible for the placing of rubbish from the use of the amenities in bins supplied by the Head Contractor.
66. The Subcontractor shall provide a full-time on-site project supervisor/foreman to co-ordinate the works with other Subcontractors and consultants in the execution of the works, take and receive instruction from the Head Contractor and make commitments on behalf of the Subcontractor.

**END**

<b>Project</b>	
<b>Trade</b>	
<b>Company name</b>	
<b>ABN</b>	
<b>Director name</b>	
<b>Contact no.</b>	

Milestone no.	Description	Completed (%)	Value of work (% of contract amount)	Comments (including any pending or defective work)
1				
2				
3				
4				
5				
6				

☐ Yes ☐ No

<b>Verified by Project Manager</b>
<b>Name</b>
<b>Signature</b>
<b>Date</b>

**\*\* Progress claims will only be processed if a tick has been placed in the yes box**

**Annexure C****Clause 9**

Liquidated damages – matters and rates to be taken into consideration

**Liquidated Damages:**

Liquidated Damages-

**\$4,000.00**

Payable under this Agreement as agreed between the Contractor and Subcontractor.

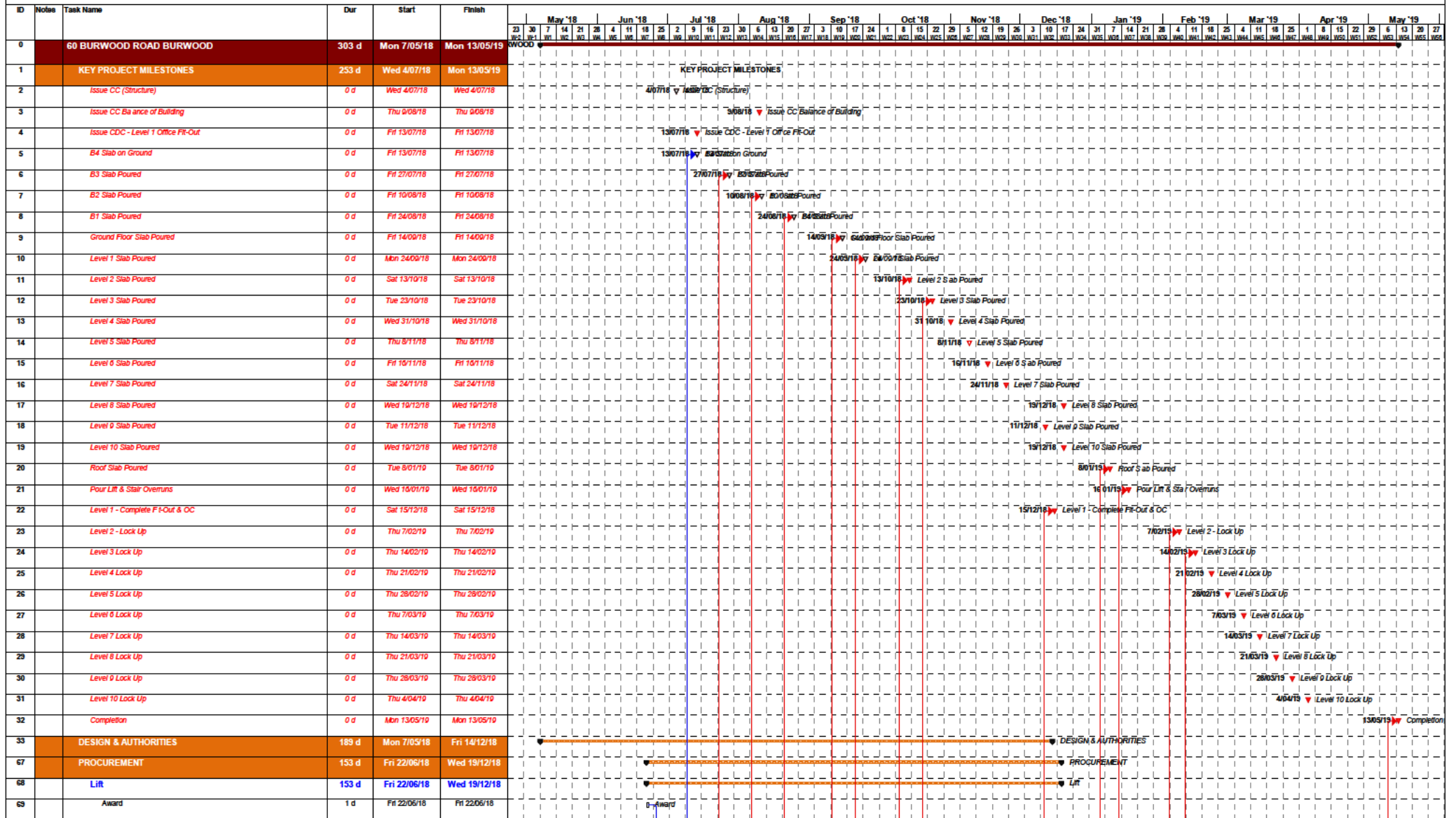
Per Calendar Day

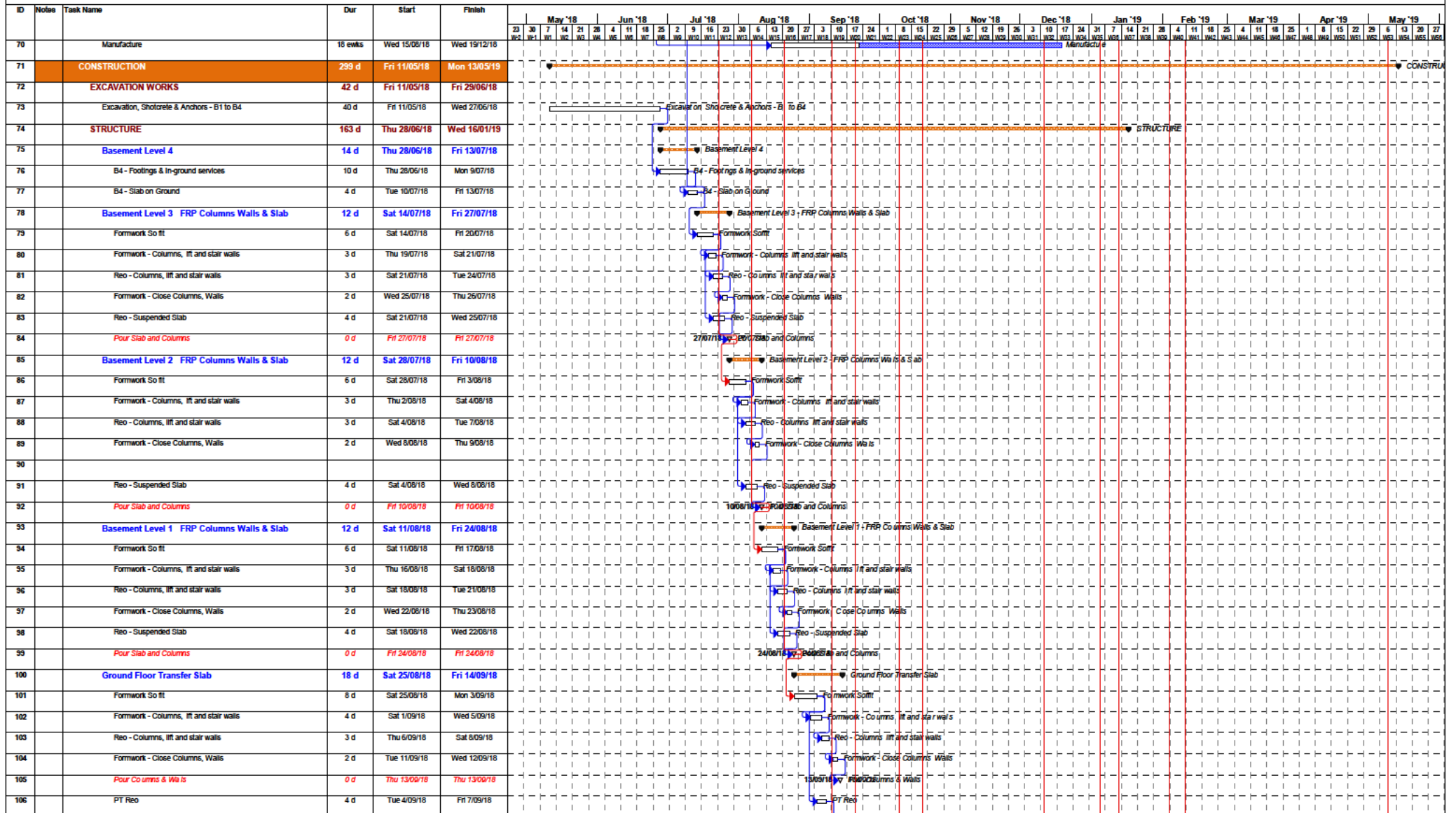
Daily rates to be taken into consideration

<b>Description of Costs</b>	<b>Amount of Cost</b>	<b>Per Day</b>
1. Project Manager	\$800.00	Per day
2. Site Manager	\$600.00	Per day
3. Safety Coordinator	\$400.00	Per day
4. Contracts Administrator	\$400.00	Per day
5. Secretary	\$200.00	Per day
6. Site Foreman	\$500.00	Per day
7. Laborer	\$200.00	Per day
8. Project Coordinator	\$500.00	Per day
9. Interest costs	\$590.00	Per day
10. Telephone & Mobile Phone Costs	\$15.00	Per day
11. Construction Cleaning	\$175.00	Per day
12. Loading Zone Fees	\$22.00	Per day
13. Contractors All Risk Liability Insurance	\$30.00	Per day
14. Public Liability Insurance	\$15.00	Per day
15. Workers Compensation	\$15.00	Per day
16. First Aid Maintenance	\$5.00	Per day
17. Stationary	\$5.00	Per day
18. Temporary Fencing Hire	\$15.00	Per day
19. Safety Handrails Hire	\$5.00	Per day
20. Site Office Hire	\$11.00	Per day
21. Ablutions Hire	\$10.00	Per day
22. Lunch Room Shed Hire	\$10.00	Per day
23. Furniture Hire	\$5.00	Per day
24. Temporary Power	\$10.00	Per day
25. Temporary Water	\$10.00	Per day
26. Temporary Sewer	\$10.00	Per day
27. Site Security	\$75.00	Per day
28. Site Construction Cleaning & Maintenance	\$100.00	Per day
29. Crane Hire	\$2000.00	Per day
30. Hoist Hire	\$300.00	Per day
31. Scaffold Hire	\$380.00	Per day
32. Rubbish Chute Hire	\$20.00	Per day
33. Site Vehicle	\$40.00	Per day

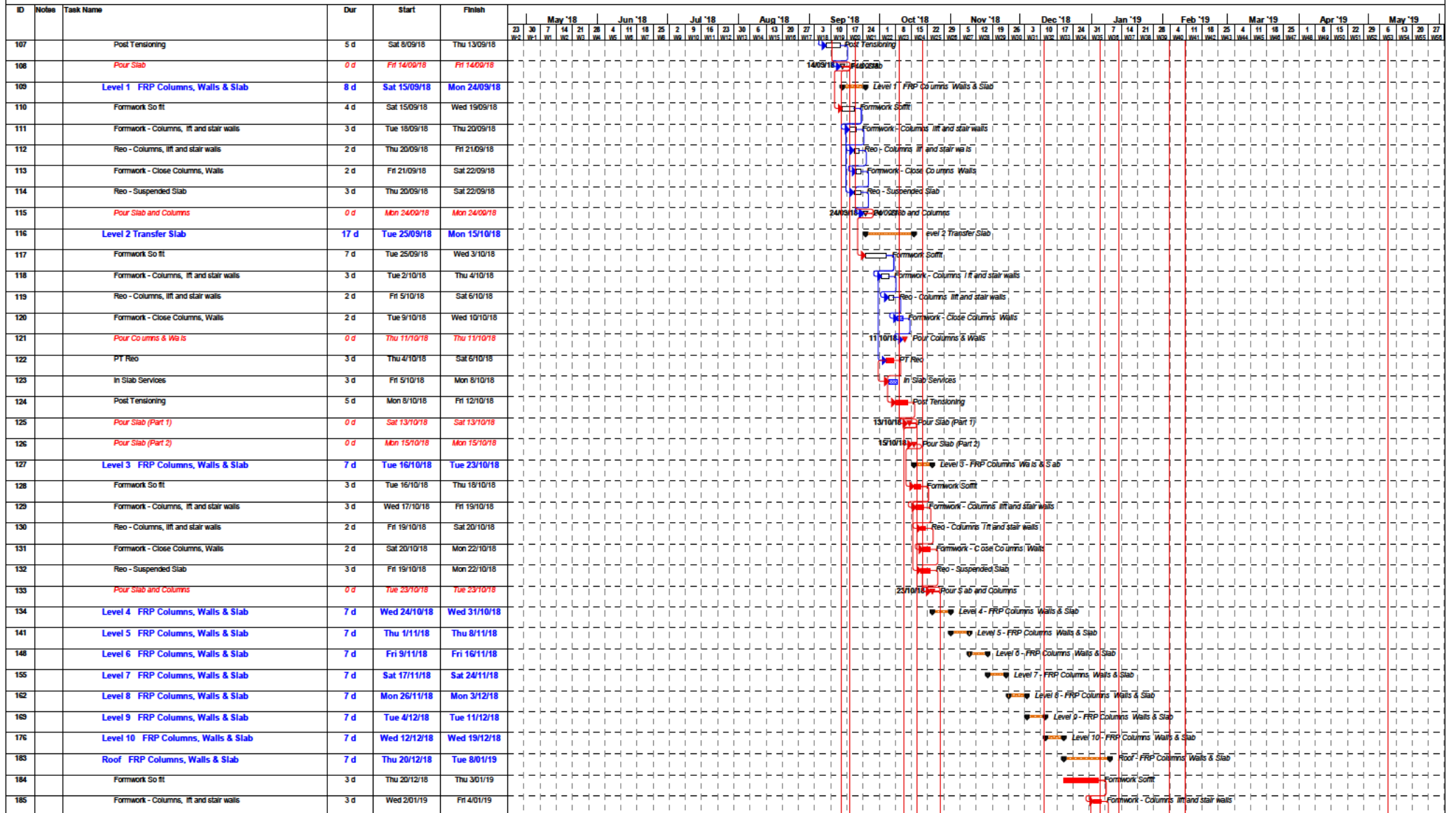
## Annexure D

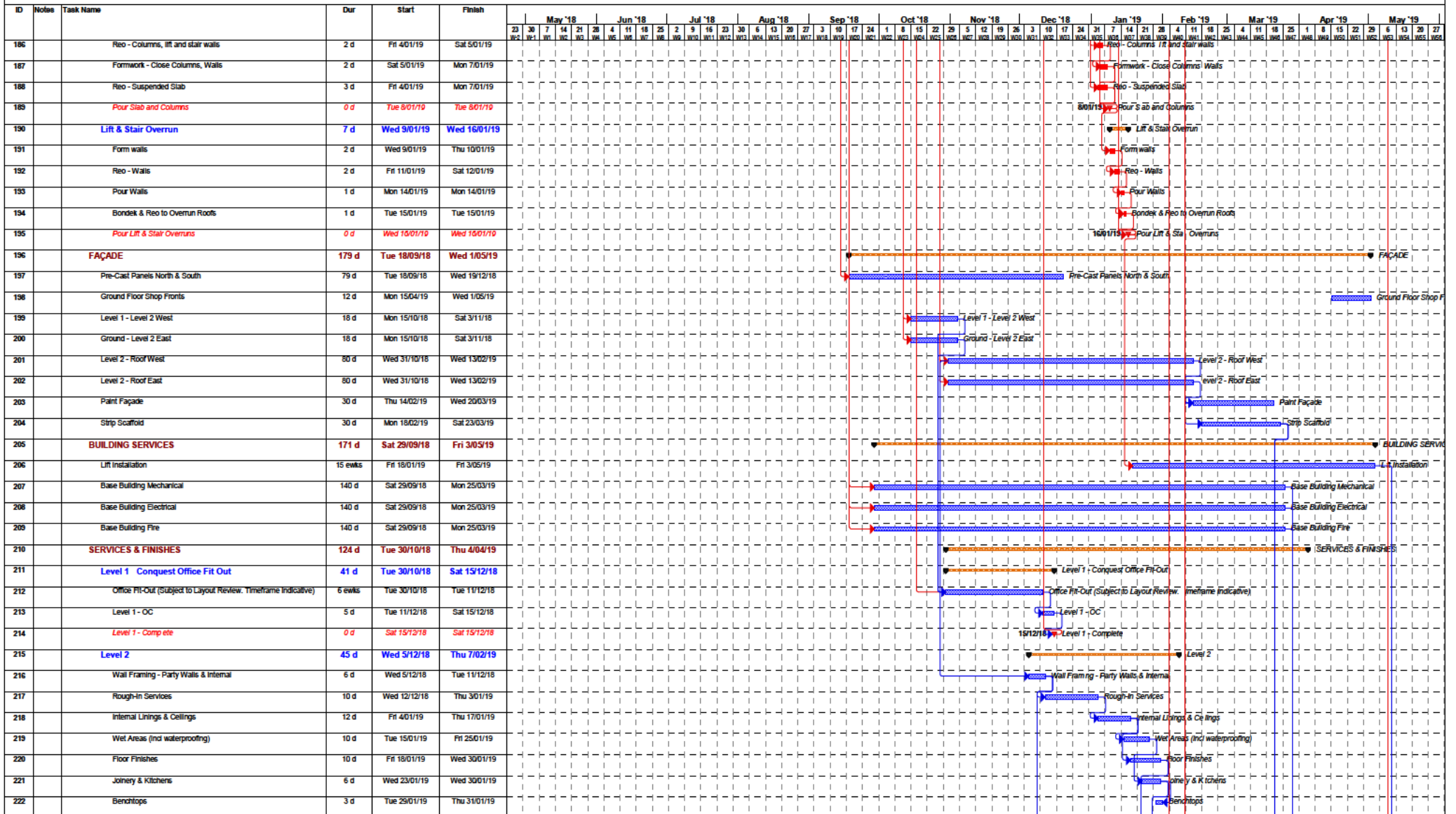
### Sub-Contract Program

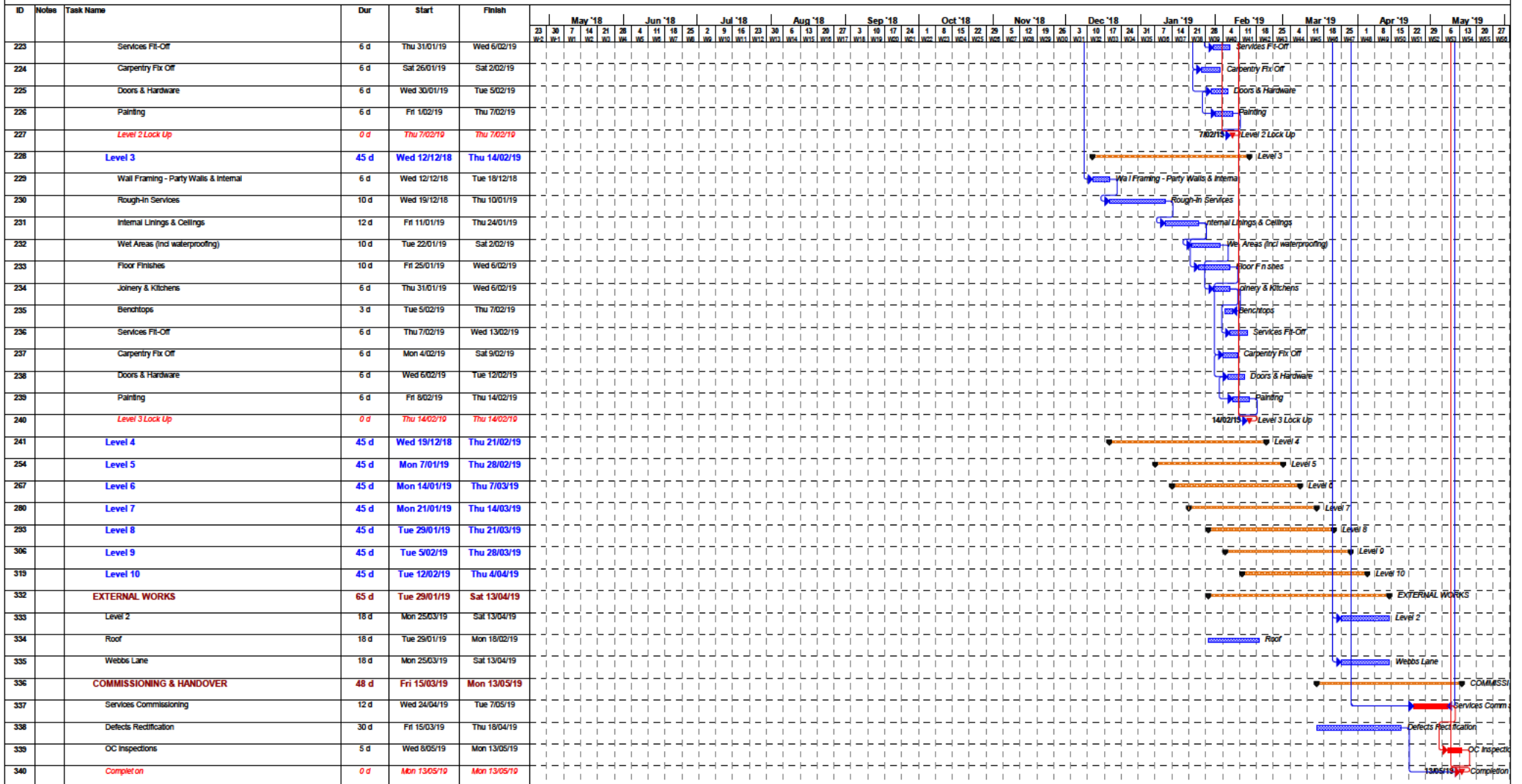












### Annexure E

#### Deed of Guarantee and Indemnity

THIS DEED is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

#### PARTIES:

1. Builtcom Constructions Pty Ltd ACN 609 255 423 of Level 1, 181 Macquarie Street, Parramatta NSW 2124 (Contractor)
2. The party in Item 1 of this Deed (Guarantor)
3. The party in Item 2 of this Deed (Subcontractor)

#### RECITALS:

- A. The Contractor has requested the Guarantor provide a Guarantee and Indemnity guaranteeing the performance of the Subcontractor under the Subcontract Agreement.
- B. The Guarantor has before execution of this Guarantee and Indemnity inspected understood and approved the Subcontract Agreement.
- C. The Guarantor has made his own enquiries prior to entering into this Deed and has agreed to guarantee and indemnify the Subcontractor as set out in this Guarantee and Indemnity.

#### WITNESSES

##### 1. INTERPRETATION

- 1.1 In this Deed unless the context otherwise requires:
  - (a) reference to a person includes any other entity recognised by law and vice versa;
  - (b) words importing the singular number include the plural and vice versa;
  - (c) any reference to any of the parties by their defined terms includes that party's executors, administrators or permitted assigns, or being a company, its successors or permitted assigns;
  - (d) every agreement or undertaking expressed or implied by which more than one person agrees or undertakes any obligation or derives any benefit binds or enures for the benefit of such persons jointly and each of them severally;
  - (e) reference to an Item is a reference to an Item in the Schedule to this Deed;
  - (f) clause headings are for reference purposes only;

##### 2. DEFINITIONS

- 2.1 For the purpose of this Deed:
  - (a) "Bankruptcy" includes assignment for the benefit of creditors, arrangement or composition with creditors, bankruptcy and death;
  - (b) "Consumer Legislation" means any Australian legislation which restricts the terms of or invalidates guarantees and indemnities given to support financial obligations;
  - (c) "Contractor" means Builtcom Constructions Pty Ltd ACN 609 255 423

of Level 1, 181 Macquarie Street, Parramatta NSW 2124;

- (d) "Debt" means all money which the Subcontractor whether directly or indirectly or contingently or otherwise at any time and from time to time is or becomes liable either alone or jointly or severally to pay to the Contractor on any account including without limitation:
  - (i) on or upon any guarantee bond account document negotiable or other instrument including this Guarantee and/or the Subcontract Agreement and/or any collateral security;
  - (ii) by reason of any matter or thing by which the Contractor is or may become in any manner a creditor of the Subcontractor;
  - (iii) on the account of any other person or upon the order or request or under the authority of the Subcontractor;
  - (iv) arising from anything done or omitted to be done by the Subcontractor which gives rise to payment, expense or loss by the Contractor;

- (e) "Guarantee and Indemnity" means the guarantee and indemnity contained in this Deed;

- (f) "Liquidation" includes official management, compromise, arrangement, amalgamation, reconstruction, winding up and dissolution.

- (g) "Personal Property" includes but is not limited to uncalled capital, goods, chattels moveable fixtures and fittings (even if temporarily affixed to realty for their better enjoyment), stock in trade, plant, book debts, and goodwill

- (h) "Subcontractor" means the person named in Item 2;

- (i) "Subcontract Agreement" means all of the documents described in Item 3 of this Deed dated the day referred to at Item 4 of this Deed.

- 2.2 In this Deed, except to the extent that such interpretation shall be excluded by or be repugnant to the context:
  - (a) "Guarantor" shall mean and include the Guarantor named at Item 1 and his executors, administrators and assigns or (in the case of a company) the Guarantor and its successors and assigns and when two or more parties are included in the word "Guarantor", shall mean and include every person and company who or which is guarantor and each or any of them, their, his or its assigns and the executors and administrators or successors of each guarantor;

- (b) Where this Guarantee and Indemnity includes or refers to more than one party as:
  - (i) the Guarantor, this Guarantee and Indemnity shall be binding on them jointly and severally and on every two or more of them jointly and if not executed or otherwise binding on any one or more of them will nevertheless be fully binding on the others of them;
  - (ii) the Contractor, this Guarantee and Indemnity may be relied upon by each such party separately without reference to the others as if the Guarantor had executed a separate guarantee and indemnity in favour of each party constituting the Contractor; or
  - (iii) the Subcontractor, this Guarantee and Indemnity shall be fully enforceable in relation to the separate indebtedness (or joint indebtedness where appropriate) of each party constituting the Subcontractor as if a separate guarantee and indemnity had been executed in relation to each party constituting the Subcontractor.

3. GUARANTEE & INDEMNITY

- 3.1 In consideration of the Contractor entering into a Subcontract Agreement with the Subcontractor, the Guarantor agrees to grant to the Contractor an irrevocable and unconditional guarantee for the due and punctual performance of the Subcontract Agreement by the Subcontractor and the due and punctual performance of all of the obligations undertakings and provisions contained in or implied by the Subcontract Agreement and any associated documents other than those imposed on the Contractor and indemnifies the Contractor against all loss, damage, costs and expenses suffered or incurred by the Contractor as a result of any failure by any person, including sub subcontractors, to fulfil the requirements of the Subcontract Agreement on the due date or as a result of any breach of any of the covenants and conditions contained in or implied by the Subcontract Agreement or associated documents.

4. CONTINUING GUARANTEE AND INDEMNITY

- 4.1 The Guarantee and Indemnity is continuing and irrevocable and the obligations of the Guarantor are absolute and unconditional in all circumstances. The Contractor is not obliged to take any action against any person or under any security prior to claiming from the Guarantor.

5. NON WAIVER

- 5.1 The Guarantee and Indemnity will not be abrogated, modified, prejudiced, affected

or considered as wholly or partially discharged by any one or more of:

- (a) any time, credit, indulgence or concession extended by the Contractor to the Subcontractor or any other person;
- (b) any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any rights of the Contractor against the Subcontractor or any other person;
- (c) any variation of the Subcontract Agreement or of any term, covenant or condition contained in or implied by the Subcontract Agreement or any of the associated documents and the Guarantor will be deemed to have consented to any such variation and in particular without limitation this Guarantee and Indemnity extends to:
  - (i) any extension of the period for performance;
  - (ii) any variation to the works required under the Subcontract Agreement;
  - (iii) any other variation in the obligations set out in the Subcontract Agreement or any of the associated documents, whether or not such variations are formalised in writing and whether or not the Guarantor is aware of those variations;
- (d) the neglect or omission of the Contractor to enforce any such rights;
- (e) the winding-up, bankruptcy or death of the Subcontractor or any party to the Subcontract Agreement or any of the associated documents;
- (f) the lack of power of any Guarantor to enter into this Guarantee and Indemnity;
- (g) any other obligation arising between the Contractor and the Subcontractor being or becoming unenforceable in whole or in part for any reason;
- (h) any release or discharge of the Debts, the Subcontractor, the Subcontract Agreement or any of the associated documents or any other security or person;
- (i) any other person who is intended to execute this Guarantee and Indemnity or be a guarantor not executing this Guarantee and Indemnity or being bound;
- (j) reduction of the Debt to nil;
- (k) any change in the name, style, constitution or otherwise of the Subcontractor or any other person;
- (l) where the Subcontractor is or becomes a partnership or firm, any change that may be made whether by death or otherwise in the partnership or firm or of any persons at any time constituting or trading under the name of the partnership or firm;
- (m) any other matter or thing.

## **6. PRINCIPAL OBLIGATION**

- 6.1 This Guarantee and Indemnity is a principal obligation and will not be treated as ancillary or collateral to any other obligation to the intent that this Guarantee and Indemnity is enforceable

notwithstanding that the Subcontract Agreement and any associated documents or any other obligations arising between the Contractor and the Subcontractor or any other person becomes in whole or part unenforceable for any reason.

- 6.2 This Guarantee and Indemnity is in addition to and not in substitution for any other rights which the Contractor may have.
- 6.3 The Guarantor acknowledges that it has not relied on any warranty or representation made by or on behalf of the Contractor to induce it to enter this Guarantee and Indemnity and that it has made and will continue to make without reliance on the Contractor its own independent investigation of the financial condition, performance by the Subcontractor and its employees and that the Contractor has no duty or responsibility at any time to provide the Guarantor with any information relating to the condition and other affairs of the Subcontractor or any other person.
- 6.4 The Contractor may release or compromise the obligations of any one or more Guarantor, without affecting the liability of the remaining Guarantors.

## **7. OTHER SECURITY**

- 7.1 This Guarantee and Indemnity will not prejudicially affect or be prejudicially affected by any other security guarantee or indemnity at any time held by the Contractor and such security guarantee or indemnity will be deemed to be collateral and the Guarantor must not as against the Contractor in any way claim the benefit or seek the transfer of any security guarantee or indemnity or any part of them.

## **8. LIQUIDATION OR BANKRUPTCY OF THE SUBCONTRACTOR**

- 8.1 In the event of the liquidation or bankruptcy of the Subcontractor:
- (a) the Guarantor will not prove in such liquidation or bankruptcy in competition with the Contractor without the Contractor's prior written consent;
  - (b) the Guarantor will immediately, if required by the Contractor, in writing prove in any such liquidation or bankruptcy for all money owed to the Guarantor and will not exercise or attempt to exercise any right of set off against the Subcontractor;

## **9. INDEMNITY**

- 9.1 Notwithstanding anything contained in this Guarantee and Indemnity and that the whole or any part of this Contract may be irrecoverable from the Subcontractor by the Contractor (whether by reason of any legal limitation, or in the capacity in which the Subcontractor is purporting to act or any other fact, matter or circumstance whatsoever and whether or not any of the transactions relating to such performance has been void ab initio or has been subsequently avoided or whether or not any of the matters or facts relating thereto have been or ought to have been within the knowledge of the Contractor) whereby the whole or any part of such money in respect to failure of performance under

the Subcontract Agreement is not recoverable by the Contractor from the Guarantor as a surety, then and in any such case the Guarantor as a separate and additional liability under this Deed hereby indemnifies the Contractor in respect of such money and as principal debtor agrees with the Contractor to pay to the Contractor on demand an amount equal to the amount of such money and the terms of this Deed shall mutatis mutandis apply as far as possible to this indemnity and the money covered by this indemnity shall be deemed to be part of the Debt.

## **10. CHARGE OVER PERSONAL PROPERTY COLLATERAL OF THE GUARANTOR**

- 10.1 The Guarantor as the beneficial owner states that it is absolutely entitled to grant this security interest and hereby charges in favour of the Contractor all his personal property present and future and wheresoever situated with the payment to the Contractor of all monies secured by this Deed. Such security interest shall be a non-circulating and specific security interest on all of the abovementioned personal property now or in the future belonging to the Guarantor and a circulating security interest on all other assets and property of the Guarantor.
- 10.2 The Guarantor must not create any security interest ranking in priority or of equal rank to this Deed without first obtaining the Contractor's written consent. The Guarantor must not before this circulating security interest becomes non-circulating create a security interest on any of his Personal Property.
- 10.3 In the event of the Guarantor's default of this Deed, the Contractor may appoint a receiver and or manager of the Guarantor as the case may be without derogating from its other rights under this Deed.
- 10.4 The Guarantor irrevocably appoints the Contractor and any receiver or manager appointed by the Contractor to be the Guarantor's joint and several attorneys to execute, sign and perform in his name and on his behalf all agreements, deeds, Instruments, acts and things whatsoever which the Guarantor is required or reasonably expected to execute, sign and perform under the covenants contained in this Deed and generally to use the Guarantor's name in the exercise of all or any of the powers conferred on the Contractor or any receiver or manager appointed by the Contractor as the case may be.

## **11. CHARGE OVER REAL PROPERTY OF GUARANTOR**

- 11.1 To the extent that any monies remain outstanding between the Guarantor and the Contractor, that indebtedness shall constitute a charge over any real property held by the Guarantor and such charge may be registered by the Contractor as a charge and constitutes in the Contractor a caveatable interest. The Guarantor shall neither raise complaint nor require the lapsing of a caveat or charge as the case may be where the Contractor registers such interest pursuant to this Deed. This chargeable interest accrues and is

applicable under the *Real Property Act 1900* (NSW) and applicable interstate land registration statute and under the Common Law.

## **12. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA") FACILITATION**

### **12.1 For the purposes of this paragraph**

- (a) Financing statement has the meaning given to it by the PPSA;
- (b) Financing change statement has the meaning given to it by the PPSA;
- (c) "Security agreement" means the security agreement under the PPSA created between the Guarantor and the Contractor whether described as a security interest, charge or other expression herein and without limiting those other expressions; and
- (d) "Security interest" has the meaning given to it by the PPSA and without limiting the meaning in the PPSA includes this document however described and when executed as a guarantee.

12.2 The Guarantor agrees that the Guarantor's execution of their respective parts of this Deed and the provisions set out herein constitute a security agreement for the purposes of the PPSA and create the security interest as set out in the respective executed document.

12.3 The Guarantor shall indemnify or pay the Contractor at the Contractor's sole discretion for all expenses incurred or to be incurred in registering a financing statement or financing change statement in the PPSR or releasing any interest thereunder.

12.4 The Guarantor shall not create or cause or set in chain to be created a financing statement or financing change statement in respect of a security interest without the prior written consent of the Contractor.

12.5 The Guarantor shall not register, cause to be registered or do any action or execute anything which may enable the registration of a financing statement or a financing change statement in relation to the Personal Property Secured herein in favour of a third party without the prior written consent of the Contractor.

12.6 The Guarantor shall immediately advise the Contractor of any material change in its business practices, corporate structure, financial structure and solvency which would otherwise jeopardise the security interests of the Contractor.

12.7 The Contractor and the Guarantor agree that sections 96, 115 and 125 of the PPSA do not apply to the security interest created by this Deed.

12.8 The Guarantor hereby waives his rights to receive notices under sections 95, 118,

121 (4), 130, 132 (3)(d) and 132 (4) of the PPSA.

12.9 The Guarantor waives its, his, her and their rights as a grantor and or a debtor pursuant to sections 142 and 143 of the PPSA.

12.10 The parties agree that the Guarantor is the debtor for the purposes of Section 275(6)(a) of the PPSA and that the parties will not disclose information of the kind mentioned in Section 275(1) of the PPSA. This clause constitutes a confidentiality agreement for the purpose of Section 275(6)(a) of the PPSA.

## **13. NOTICES**

13.1 Any notice or statement to be given or demand to be made upon the Guarantor under this Guarantee and Indemnity:-

- (a) will be effectively signed on behalf of the Contractor if it is executed by the Contractor, any of its officers, its solicitors or its attorney;
- (b) may be served by being delivered personally or being left at or posted in a prepaid envelope or wrapper to the address of the Guarantor specified in this Guarantee and Indemnity or the registered office, place of business or residence of the Guarantor last known to the Contractor or by being sent to the Guarantor by telex or facsimile transmission.

13.2 A demand or notice if:

- (a) posted will be deemed served two business days after posting;
- (b) sent by facsimile transmission will be deemed served upon conclusion of transmission.

13.3 Any such method of service will be valid and effectual even though the Guarantor does not receive the document or if the document is returned to the Contractor through the post unclaimed.

## **14. GOVERNING LAW**

14.1 This Guarantee and Indemnity is governed by and construed in accordance with the law for the time being in force in the place specified in New South Wales and the Guarantor agrees to submit to the non-exclusive jurisdiction of the Courts of New South Wales.

## **15. ASSIGNMENT**

15.1 The Contractor may assign, novate or participate its rights and/or obligations under this Guarantee and Indemnity and/or the Subcontract Agreement or any of the associated documents and/or any other collateral document or security or any part of them. The Guarantor must execute such documents as in the opinion of the Contractor are reasonably necessary for such purposes. The benefit of all provisions of this Guarantee and

Indemnity will enure mutatis mutandis for the benefit of any such assignee, novatee or participant as if such assignee, novatee or participant was included within the term the "Contractor". The Guarantor must not assign, novate, transfer or deal with its rights or obligations under this Guarantee and Indemnity or under the Subcontract Agreement or any of the associated documents or any other collateral document or security.

## **16. SEVERABILITY**

16.1 If any term, agreement or condition of this Guarantee and Indemnity or the application of this Guarantee and Indemnity to any person or any circumstance is or becomes illegal, invalid or unenforceable in any jurisdiction, it will be severed and none of the remaining terms, agreements, conditions or applications in any other jurisdiction will be affected.

## **17. NO REPRESENTATIONS TO THE GUARANTOR**

17.1 It is agreed that the Guarantor does not execute this Guarantee and Indemnity as a result of or because of any promise, representation, statement or information of any kind given or offered by or on behalf of the Contractor whether in answer to any enquiry by or on behalf of the Guarantor or not.

## **18. FURTHER ASSURANCE AND GOOD FAITH**

18.1 Each party must promptly at its own cost do all things (including but not limited to executing all documents) necessary or desirable to give full effect to this Deed.

18.2 Each Party must act in good faith, honestly and reasonably in the performance of its obligations under this Deed with the object of achieving the commercial efficacy intended under this deed.

## **19. ACCURACY OF INFORMATION**

19.1 All information contained in this Deed is true, correct and accurate in all material respects to the best of the Parties' knowledge, and is not misleading because of any omission or ambiguity or for any other reason.

## **20. INTERPRETATION OF THIS DEED**

20.1 The legal doctrine that a construction less favourable to the person putting forward this instrument should be adopted against it shall not apply to this Deed.

## **21. DEED IF UNDATED**

21.1 If this Deed is undated and there is no contrary intention stated, the date of this Deed is the date of last execution by a party.

## **22. TIME IS OF THE ESSENCE**

22.1 Time is of the essence in this document in respect of any obligation to pay monies.



**Executed as a Deed**

**Executed by Builtcom Constructions Pty Ltd ACN 609 255 423** in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....  
Signature of Director/Secretary

.....  
Signature of Director

.....  
Name of Director/Secretary

.....  
Name of Director

**Executed by Builtcom Constructions Pty Ltd ACN 609 255 423** in accordance with the *Corporations Act 2001* (Cth) and by:

.....  
Signature of Authorised Representative

.....  
Signature of Witness

.....  
Name of Authorised Representative

.....  
Name of Witness

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

.....  
Signature of Director/Secretary

.....  
Signature of Director

.....  
Name of Director/Secretary

.....  
Name of Director

**Executed by the Guarantor** in the presence of:

.....  
Signature of Witness

.....  
Signature of Guarantor

.....  
Name of Witness

.....  
Name of Guarantor

**Executed by the Subcontractor** in the presence of:

.....  
Signature of Subcontractor

.....  
Signature of Witness

.....  
Name of Subcontractor

.....  
Name of Witness

## Schedule to the Deed of Guarantee and Indemnity

Item	Description	Details	
1	The Guarantor	Name	[REDACTED]
		Address	[REDACTED]
2	The Subcontractor	Name	[REDACTED]
		ACN	[REDACTED]
		Address	[REDACTED]
3	Subcontract Agreement	(a) Subcontract Agreement between Contractor and Subcontractor	
		(b) All documents annexed to the Subcontract Agreement	
4	Date of Subcontract Agreement		



## Annexure F

### Warranty Deed

THIS DEED is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

#### PARTIES:

1. **Builtcom Constructions Pty Ltd ACN 609 255 423** of Level 1, 181 Macquarie Street, Parramatta NSW 2124 (Contractor)

#### AND

2. The person or entity described at Item 1 of the Schedule of this Deed. (Subcontractor).

#### TERMS OF DEED

##### RECITALS

- A. The Contractor and Subcontractor have entered into a Subcontract Agreement which is described at Item 2 in the Schedule to this Deed (**this Contract**).
- B. It is a condition of that Agreement that the Subcontractor will warrant that the work to be performed and all material supplied will comply with all aspects of this Contract and the Design Brief.
- C. In order to receive payment for the Works performed by the Subcontractor, the Contractor has requested this Deed of Warranty.

##### 1. WARRANTY

- 1.1 The Subcontractor warrants that all work performed and all materials supplied by the Subcontractor as part of the Works or products and material have complied with:
  - (a) in every respect with the requirements of this Contract;
  - (b) the applicable industry standards, including, without limitations, the Building Code of Australia and any applicable Australian standards, to the extent that the quality of materials or standard of workmanship is not specified in this Contract; and
  - (c) being fit for the purposes for which they are required.
- 1.2 The Subcontractor warrants that it has used reasonable skill and care in performing all work associated with the Works as defined in this Contract or products including full compliance with the Design Brief as detailed in this Contract.

- 1.3 The Subcontractor agrees that the period for which the warranties referred to at Clause 1.1 and 1.2 commences upon the expiry of the Defects Liability Period as defined in this Contract and continues for a period of ten-(10) years.

##### 2. MAKING GOOD OR REPLACEMENT

- 2.1 The Subcontractor promises and undertakes to replace or make good, to the reasonable satisfaction of this Contract, any of the Works for works or products which, within the warranty period defined at Clause 1.3 of this Deed, are found to:
    - (a) be of a lower standard or quality than referred to in Clause 1 of this Deed; or
    - (b) have deteriorated to such an extent that they are no longer fit for the purposes for which they were required;
    - (c) be defective;
  - 2.2 Nothing in this Clause 2, affects the Subcontractor's liability until any limitation period under statute expires.
- ##### 3. COSTS
- 3.1 The Subcontractor hereby accepts all liability to meet the reasonable costs of any work necessary:
    - (a) to carry out any part of the Works to enable the requirements of Clause 2 of this Deed to be carried out; or
    - (b) restore or make good of the Works after carrying out those requirements, whichever the Contractor requires.
- ##### 4. INDEMNITY
- 4.1 The Subcontractor indemnifies and keeps indemnified the Contractor against claims, actions and loss or damage arising out of breach by the Subcontractor.
- ##### 5. NOTICE OF DEFECTS
- 5.1 The Contractor may notify the Subcontractor in writing if it considers there have been any breach of the provisions of this Deed.
- ##### 6. REMEDY
- 6.1 The Subcontractor must remedy the breaches notified to it under this Deed within the reasonable time after the Contractor gives notice but no later than

seven (7) days from the date of any notice.

##### 7. FAILURE TO REMEDY

- 7.1 If the Subcontractor fails to carry out and complete the Works specified in the Contractor's notice within the period determined by the Contractor to be reasonable in the circumstances or within two-(2) business days of being served with the notice, the Contractor may give written notice to the Subcontractor that the Contractor intends to have the work carried out by others. This notice must allow a reasonable period of time for the Subcontractor to respond.
  - 7.2 If the Subcontract fails to complete the work by the date specified in Clause 7(1), or another date agreed by the parties, the Contractor may have the work carried out by others, and a Subcontractor indemnifies the Contractor for the reasonable costs and expenses of doing so.
- ##### 8. URGENT ACTION BY CONTRACTOR
- 8.1 The Contractor may take any urgent action it deems necessary to protect the Works, other property or people as a result of a breach.
  - 8.2 The Subcontractor agrees that the Contractor taking such action does not affect any obligation of the Subcontractor under this Deed.
  - 8.3 The Subcontractor indemnifies the Contractor for the reasonable costs and expenses paid or payable and associated in taking action.
- ##### 9. ASSIGNMENT
- 9.1 The Contractor may assign the benefit of this Deed to the owner or operating authority of the Works and must give notice of that assignment to the Subcontractor.
- ##### 10. RELIANCE
- 10.1 The Contractor has relied upon this Deed of Warranty in relation to the Works and any Payment Claim as defined in this Contract made by the Subcontractor in making any payments to the Subcontractor.

**Executed as a Deed**

**Executed by Builtcom Constructions Pty Ltd ACN 609 255 423** in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....  
Signature of Director/Secretary

.....  
Signature of Director

.....  
Name of Director/Secretary

.....  
Name of Director

**Executed by Builtcom Constructions Pty Ltd ACN 609 255 423** in accordance with the *Corporations Act 2001* (Cth) and by:

.....  
Signature of Authorised Representative

.....  
Signature of Witness

.....  
Name of Authorised Representative

.....  
Name of Witness

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

.....  
Signature of Director/Secretary

.....  
Signature of Director

.....  
Name of Director/Secretary

.....  
Name of Director

**Executed by the Subcontractor** in the presence of:

.....  
Signature of Subcontractor

.....  
Signature of Witness

.....  
Name of Subcontractor

.....  
Name of Witness

## Schedule to the Warranty Deed

Item	Description	Details
1	The Subcontractor	Name
		ACN
		ABN
2	Date of the Subcontractor Agreement	

## Annexure G

Pricing Schedule

### ANNEXURE G

Subcontract Sum (as per Item 6 Schedule 1)

NET Subcontract Sum	\$ [REDACTED]	EXCLUDING GST
ADD GST	\$ [REDACTED]	GST
<hr/>		
GROSS Subcontract SUM	\$ [REDACTED]	INCLUDING GST

**ASIC - Current Extract -**

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database under section 1274A of the Corporations Act 2001.  
Please advise ASIC of any error or omission which you may identify.

**IDENTIFICATION**

ACN: [REDACTED]  
ABN: [REDACTED]  
Current Company Name: [REDACTED]  
Registered in: New South Wales  
Place of Registration:  
Registration Date: 27/06/1996  
Previous State Number:  
Governance Type:  
Review Date: 27/06/2019

**CURRENT COMPANY DETAILS**

Name: [REDACTED]  
Period from: [REDACTED]  
Name Start: [REDACTED]  
Status: [REDACTED]  
Type: [REDACTED]  
Class: [REDACTED]  
Subclass: [REDACTED]  
Disclosing Entity: [REDACTED]

**CURRENT COMPANY ADDRESS**

Address Type: [REDACTED]  
Address: [REDACTED]  
Period from: [REDACTED]  
Address Type: [REDACTED]  
Address: [REDACTED]  
Period from: [REDACTED]

Doc# 2E2941293

Doc# 1E6648797

**CURRENT COMPANY OFFICERS**

Role: [REDACTED]  
Name: [REDACTED]  
Address: [REDACTED]  
Date of Birth: [REDACTED]  
Place of Birth: [REDACTED]  
Appointment Date: [REDACTED]  
Cease Date: [REDACTED]

Doc# 6E0435162

Role: [REDACTED]  
Name: [REDACTED]  
Address: [REDACTED]  
Date of Birth: [REDACTED]  
Place of Birth: [REDACTED]  
Appointment Date: [REDACTED]  
Cease Date: [REDACTED]

Doc# 6E0435162

**CURRENT SHARE CAPITAL**

Class:		Doc# 0E1051233 ((AR 1996))
Number of Issued "Shares" :		
Amount Paid:		
Amount Due:		
Class:		Doc# 0E1051233 ((AR 1996))
Number of Issued "Shares" :		
Amount Paid:		
Amount Due:		

Note: For each class of shares issued by a proprietary company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

**CURRENT(SHAREHOLDERS/MEMBER)**

Class:		Doc# 2E0380481
Number of Shares Held:		
Beneficially Owned:		
Fully Paid:		
Name:		
ACN:		
Address:		
Joint Holding:		
Class:		Doc# 2E0379749
Number of Shares Held:		
Beneficially Owned:		
Fully Paid:		
Name:		
ACN:		
Address:		
Joint Holding:		

**DOCUMENTS RELATING TO EXTERNAL ADMINISTRATION AND/OR APPOINTMENT OF CONTROLLER**

Note: This extract may not list all documents relating to this status. State and Territory records should be searched.

No record

**SATISFIED CHARGES**

Note: On January 30, 2012 the Personal Property Securities Register (PPS Register) has commenced. The details of current charges will only be available from the PPS Register and the details of satisfied charges (as at 30th January 2012) can be obtained from ASIC. Further information can be obtained from [www.ppsr.gov.au](http://www.ppsr.gov.au).

No record

**ASIC DOCUMENTS (except charges)**

Notes:

- A date or address shown as UNKNOWN has not been updated since the ASIC to over the records in 1991.
- Data from Documents with no Date Processed are not included in the Extract.
- Documents with "xxx" pages have not yet been imaged and are not available via DOCIMAGE. Imaging takes approximately 2 weeks from date of lodgement.
- Documents already listed under charges are not repeated here.

Form Type	Date Received	Date Processed	Effective Date	Pages	Doc No
205	12/10/2018	12/10/2018	26/09/2018	2	
Notification of Resolution Changing Company Name					
205	08/10/2018	08/10/2018	26/09/2018	2	
Notification of Resolution Changing Company Name - Not Approved					
484	23/11/2017	23/11/2017	27/10/2017	2	
Change to Company Details Appointment or Cessation of A Company Officeholder Updated by 6E0 435 192					
370	23/11/2017	24/11/2017	23/11/2017	2	

## Notification By Officeholder of Resignation or Retirement Updates 6E0 435 232

484	23/11/2017	23/11/2017	27/10/2017	2	
	Change to Company Details Appointment or Cessation of A Company Officeholder				
484	23/08/2017	23/08/2017	23/08/2017	2	
	Change to Company Details Appointment or Cessation of A Company Officeholder				
484	29/12/2015	29/12/2015	29/12/2015	2	
	Change to Company Details Change of Registered Address				
484	04/03/2015	04/03/2015	04/03/2015	2	
	Change to Company Details Change Officeholder Name Or Address				
484	28/03/2014	28/03/2014	26/03/2014	2	
	Change to Company Details Changes to (Members) Share Holdings				
484	28/03/2014	28/03/2014	26/03/2014	2	
	Change to Company Details Changes to (Members) Share Holdings				
484	26/02/2014	26/02/2014	26/02/2014	2	
	Change to Company Details Change of Registered Address Change Officeholder Name or Address Change Member Name or Address				
205	19/08/2013	19/08/2013	13/08/2013	4	
	Notification of Resolution Changing Company Name				
484	14/07/2011	14/07/2011	01/07/2011	2	
	Change to Company Details Change of Registered Address				
484	05/07/2010	05/07/2010	05/07/2010	2	
	Change to Company Details Change of Principal Place Of Business (Address)				
484	25/07/2008	25/07/2008	25/07/2008	2	
	Change to Company Details Change Officeholder Name or Address Change Member Name or Address				
316	05/12/2002	05/12/2002	29/11/2002	3	
	Annual Return Annual Return - Proprietary Company				
316	03/12/2001	18/12/2001	30/11/2001	3	
	Annual Return Annual Return - Proprietary Company				
316	22/01/2001	21/02/2001	22/01/2001	3	
	Annual Return Annual Return - Proprietary Company				
316	27/01/2000	08/03/2000	27/01/2000	3	
	Annual Return Annual Return - Proprietary Company				
316	27/01/1999	27/01/1999	27/01/1999	3	
	Annual Return Annual Return - Proprietary Company				
203	23/11/1998	23/11/1998	20/11/1998	1	
	Notification of Change of Address				
316	28/01/1998	30/01/1998	28/01/1998	4	
	Annual Return Annual Return - Proprietary Company				
316	04/02/1997	08/02/1997	29/01/1997	4	
	Annual Return Annual Return - Proprietary Company				
304	08/07/1996	08/07/1996	28/06/1996	2	
	Notification of Change to Officeholders of Australian Company Updated by 009 395 968 Updated by 009 395 969				
209	04/07/1996	04/07/1996	28/06/1996	1	
	Notice of Redemption of Redeemable Preference Shares				
207	04/07/1996	04/07/1996	28/06/1996	2	
	Notification of Allotment of Shares				
370	04/07/1996	04/07/1996	04/07/1996	2	
	Notice of Retirement or Resignation By Director or Secretary Updates 010 857 232				
370	04/07/1996	04/07/1996	04/07/1996	2	
	Notice of Retirement or Resignation By Director or Secretary Updates 010 857 232				



203	04/07/1996	04/07/1996	28/06/1996	1
Notification of Change of Address				
215	01/07/1996	01/07/1996	27/06/1996	1
Notification of Initial Appointment of Officeholders				
204	27/06/1996	27/06/1996	27/06/1996	1
Certificate of Registration Division 1 Pt 2.2				
201	27/06/1996	27/06/1996	27/06/1996	4
Application For Registration as a Proprietary Company				

**PRE-ASIC DOCUMENTS**

No record

**ANNUAL RETURNS**

No record

**FINANCIAL REPORTS**

No record

**CURRENT CONTACT ADDRESS FOR ASIC USE ONLY**

Note: Section 146A of the Corporations Act 2001 states 'A contact address is the address to which communications and notices are sent from ASIC to the company.'

Address Type: Contact address for ASIC use only

Address: PO BOX 88  
POTTS POINT NSW 2011

Period from: 28/02/2014



ASIC

Australian Securities & Investments Commission

## Business Name Details

Extracted from ASIC's database at AEST 17:33:01 on 23/10/2018

Business name:

Status:

Registration date:

Renewal date:

Address for service of documents:

Principal place of business:

Holder(s) details:

Debtor representative(s): not applicable

Notified successor(s): not applicable

Regulator: Australian Securities and Investments Commission