**This document contains changes as agreed with the NSW Government to allow users to see changes made by the ACT Government. This version includes only the further changes made to version 2 updated 19 April 2013. Refer to the previous version 2 and this version 3.**



**ACT Government modified version for use in the Australian Capital Territory**

**Amended GC21 Subcontract**

**for Design (to the extent specified) and Construction**

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| --- | --- | --- |
| **GC21 Subcontrac**t  September 2003 including revisions to 2 September 2009  Modified for Territory use as at April 2013 and further modified as at July 2019. |  |  |
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  + Department of Housing
  + Roads and Traffic Authority
  + State Rail Authority
  + Sydney Water

Legal advice was provided by Baker & McKenzie, Solicitors and Attorneys.

This GC21 Subcontract has been amended for use by the Australian Capital Territory and is used with the permission of the NSW Construction Agency Co-ordination Committee. Any Special Conditions of the Subcontract further modify the ACT modified GC21 Subcontract.

Contact details for Government Codes and Guidelines

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###### The GC21 Subcontract

The GC21 Subcontract has been prepared for use with the GC21 (Edition 1) General Conditions of Contract (“GC21”). It reflects the principles of GC21 and many of its provisions.

It reflects many of the initiatives outlined in the NSW Government White Paper **Construct New South Wales**, especially those dealing with business practices, security of payment, and management and workforce development. Both GC21 and the GC21 Subcontract are designed to put into practice the vision in **Construct New South Wales** of a construction industry which embraces co-operative contracting, and is seamlessly client-focussed, efficient, innovative, and environmentally responsible.

The GC21 Subcontract extends the GC21 framework down the contract chain when the head contract uses GC21.

###### Using this document

All defined words and phrases have initial capitals (except for ‘day’) and are in italics in the GC21 Subcontract unless they are one of the following 12 basic terms, which appear too often for italics to be used:

|  |  |
| --- | --- |
| * Consultant | * Site |
| * Contract | * Subcontract |
| * Contractor | * Subcontractor |
| * Date of Subcontract | * Subcontract Works |
| * day | * Sub-subcontractor |
| * Principal | * Supplier |

Notes are provided to guide the parties and these notes form part of the Subcontract. Attachments 1, 2 and 3 do not form part of the Subcontract.

This section deals with the purpose and structure of the Subcontract. It allocates responsibilities and sets up the procedures for making the Subcontract work. Underlying it are the basic principles of GC21: co-operative contracting, enhanced communication, clear definition of roles, responsibility for outcomes, and focus on enabling best practice.

**Roles and relationships**

Although the parties have different responsibilities, co-operation is a key element of the Subcontract.

###### General responsibilities

* 1. The Subcontractor must:
     1. *Design* and construct the Subcontract Works to *Completion* in accordance with the Subcontract; and

*The extent of the Subcontractor’s Design obligations is specified in Subcontract Information item 37A.*

* + 1. perform and observe all its other obligations under the Subcontract.
  1. The Contractor must:

1. pay the Subcontractor the *Subcontract Price* for its performance, in accordance with and subject to the Subcontract. The basis of payment may be lump sum, *Schedule of Rates* or a combination of these as referred to in clause 59 and specified in *Subcontract Information* item 43; and
2. perform and observe all its other obligations under the Subcontract.
3. The Contractor may give instructions to the Subcontractor concerning the Subcontract Works and anything connected with the Subcontract Works, and the Subcontractor must comply at its own cost unless an entitlement to payment is specified under clause 60.1.

###### Authorised persons

1. The Subcontractor must ensure that at all times there is a person appointed to act with its full authority in all matters relating to the Subcontract as the *Subcontractor’s Authorised Person* and must keep the Contractor informed in writing of the name of that person, and of any change. If the Contractor reasonably objects to the person appointed from time to time, the Subcontractor must replace that person.
2. The Contractor must ensure that there is a person appointed to act on behalf of the Contractor in relation to the Subcontract as the *Contractor’s Authorised Person.* The Contractor must keep the Subcontractor informed in writing of the name of that person and of any change. The person does not act as independent certifier, assessor or valuer. The person acts only as agent of the Contractor.
3. The Contractor will advise the Subcontractor in writing if the *Contractor’s Authorised Person* delegates any of its powers to others.

###### Co-operation

.1 The parties must do all they reasonably can to co-operate in all matters relating to the Subcontract, but their rights and responsibilities under the Subcontract (or otherwise) remain unchanged unless the parties agree in writing to change them.

###### Duty not to hinder performance

.1 Each party must do all it reasonably can to avoid hindering the performance of the other under the Subcontract.

###### Early warning

1. Each party must do all it reasonably can to promptly inform the other of anything of which it becomes aware which is likely to affect the time for *Completion*, cost or quality of the Subcontract Works, and the parties must then investigate how to avoid or minimise any adverse effect on the Subcontract Works and *Scheduled Progress*.
2. Clause 5.1 does not change the rights and responsibilities of either party under the Subcontract, unless they agree in writing to change them.
3. Neither party may disclose in any *Issue* resolution proceedings (including *Expert Determination* and litigation) anything discussed or provided under clause 5.1.

###### Evaluation and monitoring

As the project proceeds, regular meetings (usually monthly) allow the parties to evaluate performance and identify priorities for improvement. These meetings allow others concerned with the Works to participate, where appropriate.

1. If required by the Contractor, the Subcontractor must meet regularly with those concerned with the Contract, at the times specified by the Contractor, to evaluate and monitor performance of the Subcontract and project using the Performance Evaluation and Performance Evaluation Record forms in Attachments 2 and 3.

*These forms list appropriate topics for performance assessment and allow progress to be monitored as the project proceeds. The parties may amend the forms to suit the specific attributes of the Subcontract and project. The forms provide a structure for evaluation and for discussion, and focus on achievable improvements in project communication and management.*

1. Participation in meetings does not give the participants any additional rights or responsibilities.
2. Attachments 1, 2 and 3 are not part of the Subcontract. Nothing concerning or in connection with them changes either party’s rights and responsibilities, or can be relied on or used by one party against another in any proceedings.
3. Each party and any others who participate in the evaluation and monitoring meetings must meet their own costs for attendance at the meetings, and the parties to the Contract will share equally the other costs.

### The Subcontract

###### The Subcontract

The Subcontract is formed by the signing of the *Subcontract Agreement* by the parties, or by the Contractor sending a letter awarding the Subcontract to the Subcontractor *(Letter of Award)*.

1. The Subcontract is made up solely of the *Subcontract Documents*, which supersede all understandings, representations and communications between the parties related to the subject matter of the Subcontract made before the Date of Subcontract. The *Subontract Documents* are:
   1. this GC21 Subcontract;
   2. the *Subcontract Information*;
   3. annexed Schedules;
   4. *Contractor’s Documents* (at the Date of Subcontract); and
   5. any documents listed in *Subcontract Information* item 17 as *Reference Subcontract Documents*.

*The Letter of Award (or the Subcontract Agreement, if used instead) is a Reference Subcontract Document.*

1. The *Subcontract Documents* must be read as a whole, and anything in one such document must be read as included in all other such documents, unless the context requires otherwise.
2. The terms of the Subcontract cannot be amended or waived unless both parties agree in writing.
3. The Contractor must give the Subcontractor the number of copies of the *Contractor’s Documents* in *Subcontract Information* item 18.

###### Assignment

.1 The Subcontractor must not assign a right or benefit under the Subcontract without first obtaining the Contractor’s consent in writing.

###### Governing law of the Subcontract

.1 The Subcontract is governed by the laws of the Australian Capital Territory, and the parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

###### Scope of the Subcontract Works, Temporary Work and work methods

**The Subcontract Works**

1. The scope of the Subcontract Works is described in brief in *Subcontract Information* item 3 and more specifically in the *Contractor’s Documents* and other *Subcontract Documents* (as applicable), and includes:
   1. all the work specifically referred to in or otherwise contemplated by the Subcontract;
   2. all items not specifically referred to or described in the Subcontract which nonetheless are required to complete the Subcontract Works and achieve the effective and efficient use and operation of the Subcontract Works;
   3. all items referred to in one or more of the *Subcontract Documents* or otherwise necessary for the Subcontract Works to be fit for the purposes required by the Subcontract but omitted from other *Subcontract Documents*. Those omitted items are included in the scope of the Subcontract Works, unless the context requires otherwise; and
   4. all items of work reasonably inferred from the *Subcontract Documents* as necessary to properly execute and complete the Subcontract Works.
2. The Subcontractor acknowledges that:
3. it is both experienced and expert in work of the type and scale of the Subcontract Works; and
4. it has made full allowance in the *Subcontract Price* for the matters referred to in clause 10.1.
5. The Subcontractor acknowledges that *Variations* instructed by the Contractor will cause the scope of the Subcontract Works to change.

***Temporary Work***

1. The Subcontractor must carry out and be responsible for all *Temporary Work*, and carry out, perform, provide and do everything necessary including all ancillary or other work for or in connection with the *Design* and construction of the Subcontract Works, subject to the following:
   1. The Contractor may instruct the Subcontractor at any time to use a particular method or type of *Temporary Work* and the Subcontractor must comply with the Contractor’s instruction.
   2. Subject to clause 10.4.3, if the Contractor’s instruction directly causes the Subcontractor to incur necessarily and unavoidably any extra costs when compared with the costs the Subcontractor would have incurred had the Contractor not given the instruction, the Subcontractor may be entitled to those extra costs and an extension of time under clause 54 (if applicable).
   3. If the need for the instruction in clause 10.4.1 arises from the Subcontractor’s own act or omission, then the Subcontractor is not entitled to those extra costs or extensions of time.

###### Work methods

1. The Subcontractor is free to use any work method, subject to the following:
2. The Subcontractor is solely responsible for all work methods, whether specified in the Subcontract or not.
3. The Subcontractor warrants that it has undertaken all necessary investigation and inquiry to satisfy itself that all work methods specified in the Subcontract or which the Subcontractor otherwise proposes to use are appropriate for the purposes of the Subcontract.
4. If a particular work method is specified in the Subcontract, the Subcontractor must use it.
5. If a particular work method is specified in the Subcontract but it is not possible to use that method, the Subcontractor must use another method without entitlement to extra cost or an extension of time.
6. If a particular work method for which the Subcontractor is responsible is impractical and the Subcontractor, with or without the instruction of the Contractor, uses another work method by necessity to complete the Subcontract Works, the Subcontractor is not entitled to an extension of time or extra cost.
7. The Contractor may instruct the Subcontractor at any time to use a particular work method.
8. Subject to clauses 10.5.4 and 10.5.5, if the Contractor’s instruction directly causes the Subcontractor to incur necessarily and unavoidably any extra costs when compared with the costs the Subcontractor would have incurred had the Contractor not given the instruction, the Subcontractor is entitled to those extra costs (if it demonstrates to the reasonable satisfaction of the Contractor that it has incurred such extra costs) and may be entitled to an extension of time under clause 54 (if applicable).

### Statutory Requirements and Guidelines

###### Statutory Requirements

1. The Subontractor is responsible for:
   1. compliance with all *Statutory Requirements*, subject to clause 53, except if (because of the nature of the requirement) only the Contractor or others can comply; and
   2. the giving of all notices necessary to comply with *Statutory Requirements* and the payment of all necessary fees, charges and other imposts, other than those notices and imposts to be given or paid by the Contractor under the Subcontract or the Principal (or given or paid by the Contractor or the Principal prior to the Date of Subcontract).

*Clause 53 deals with changes in Statutory Requirements*

1. Upon request by the Contractor and as a condition of achieving *Completion*, the Subcontractor must give to the Contractor all original documents issued by authorities or providers of services, including those evidencing approvals, authorisations and consents in connection with the Subcontract Works and the Site.

###### Goods and Services Tax

The *Subcontract Price* and any associated amount is Goods and Services Tax inclusive.

1. In this clause 12 the expressions “adjustment note”, “consideration”, “Goods and Services Tax”, “GST”, “input tax credit”, “supply”, “tax invoice”, “recipient”, and “taxable supply” have the meanings given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth) and the expression “net dollar margin” has the meaning given in the guidelines issued by the Australian Competition and Consumer Commission.

###### Calculation of GST

1. Unless otherwise expressly stated in the Subcontract, all prices, rates or other sums payable or for which payment is to be made under or in accordance with the Subcontract, include an amount for GST.
2. No additional amount on account of GST is payable by a party who receives a taxable supply under or in connection with the Subcontract. All amounts payable reflect the GST- inclusive market value of the taxable supply.
3. Any contract entered into by a party to the Subcontract with a third party which involves supplies being made, the cost of which will affect the cost of any supplies made under or in connection with the Subcontract, must include a clause including equivalent terms to clauses 12.2, 12.3 and 12.4.

###### GST invoices

1. Each party must immediately notify the other party if it ceases to be registered for GST.
2. Each party acknowledges and warrants that at the time of entering into the Subcontract, it is registered for the GST.
3. As a condition precedent to any amount on account of GST being due from the receipient to the party making the supply (Supplier) in respect of a taxable supply, the Supplier must provide a tax invoice to the receipient in respect of that supply.
4. If the amount paid to the Supplier in respect of GST:
   1. is more than the GST on the supply, then the receipient shall refund the excess to the receipient; or
   2. is less than the GST on the supply, then the receipient shall pay the deficiency to the Supplier.
5. Each tax invoice provided by the Subcontractor must include (in addition to any requirements of *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth) the following:
6. the Contractor’s reference number;
7. the amount due to the Subcontractor and the basis for the calculation amount;
8. the amount of any GST paid or payable by the Subcontractor in respect of that part of the Works which is the subject of the tax invoice;
9. if a discount is applicable, the discounted price; and
10. the Subcontractor’s address for payment.
11. If there is any change in GST liability associated with any supply by the Subcontractor under this Contract, the consideration payable for the supply must be varied so that the Subcontractor’s net dollar margin remains the same.

###### Reimbursable expenses

1. If the Subcontract requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (“reimbursable expense”) suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party must be the sum of:
2. the amount of the reimbursable expense net of input tax credits (if any) to which the other party (or its representative member) is entitled in respect of the reimbursable expense; and
3. to the extent that the other party’s recovery from the first party is consideration for a taxable supply to the first party, any GST payable in respect of that supply.

###### Contractor supplies

1. If the Contractor makes any supply to the Subcontractor as a consequence of any matter arising under or in connection with this Subcontract, the Subcontractor must pay to the Contractor on demand an amount equal to any GST payable in relation to that supply.

###### Pay As You Go

1. If the Subcontractor does not quote its ABN in its tender (to be provided in *Subcontract Information* item 8) or on its *Payment Claims* or invoices, or the Subcontractor does not otherwise advise the Contractor of its ABN relating to the service, the Contractor will withhold tax from payments in accordance with the *A New Tax System (Pay As You Go) Act 1999* (Cwlth).

###### Fines and penalties

1. Nothing in this clause requires the Contractor to pay any amount on account of a fine, penalty, interest or other amount for which the Subcontractor is liable as a consequence of failure by the Subcontractor to comply with legislation which governs GST.

###### Compliance with codes

The ACT Government has established codes of practice and agreed to be bound by codes of practice, which address principles and standards of behaviour in the construction industry.

1. Subject to the express provisions of the Subcontract, the parties must comply with the relevant provisions of the *Codes*.
2. Compliance with the *Codes* does not relieve the Subcontractor from responsibility to perform the Subcontract, or from liability for any defect in the Works arising from compliance with the *Codes*.
3. Where a change to the Subcontract is proposed and that change would affect the compliance with a *Code*, the Subcontractor must submit a report to the *Contractor’s Authorised Person* specifying the extent to which the Subcontractor’s compliance will be affected.
4. The Subcontractor must maintain adequate records of the compliance with the *Codes* by itself and any of its Sub-subcontractors (if any). The Subcontractor must permit the Contractor or any person authorised by the Contractor to have access to these records and to its premises, as is necessary to allow validation of its progress in complying with the *Codes*.
5. If the Subcontractor does not comply with the requirements of the *Codes* in the performance of this Contract such that a sanction is applied by the Principal, the Principal, without prejudice to any rights that would otherwise accrue, will be entitled to record that non-compliance and take it into account in the evaluation of any future tenders that may be lodged by the Subcontractor or a related corporation in respect of work for the Principal.
6. The Subcontractor must not appoint a Sub-subcontractor, Consultant or Supplier in relation to the Subcontract where the appointment would breach a sanction imposed by the Principal.
7. The Subcontractor must ensure all Sub-subcontracts for works on the project contain provisions which replicate those set out in this clause.

###### Collusive arrangements

1. The Subcontractor warrants and represents to the Contractor and agrees with the Contractor that it is a fundamental condition of the Subcontract that:
   1. the Subcontractor has no knowledge of the tender price of any other tenderer for the Subcontract;
   2. except as disclosed in its tender, and by agreement in writing with the Contractor, it has not entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to a trade or industry association or to or on behalf of any other tenderer in relation to its tender or this Subcontract, nor paid or allowed any money on that account, nor will it pay or allow any money on that account; and
   3. if the Subcontractor pays to a trade association, industry association or another tenderer or pays to anyone on behalf of a trade association, industry association or another tenderer any money in breach of clause 14.1.2, the Subcontractor must immediately give the Contractor written notice of such an event and such money is deemed to be held on trust for and becomes immediately payable to the Contractor. The Subcontractor must use its best endeavours to recover the money and pay it to the Contractor. If it fails to do so within the time specified in a notice by the Contractor to the Subcontractor or otherwise (in the absence of a notice) within a reasonable time, the Contractor will be entitled to withhold, deduct or set off from any payment due to the Subcontractor on any account an equivalent sum or make a demand against the *Undertakings* provided under clause 37.
2. If in the opinion of the Contractor, the Subcontractor has entered into a collusive arrangement then without prejudice to any other rights or remedies, the Subcontractor may have:
3. the Contractor may by notice in writing terminate this Subcontract;
4. if the Subcontractor has received any money or allowance from or on behalf of another tenderer in relation to the Subcontract Works, that money or value of the allowance will be held in trust for, and will become immediately payable to the Contractor.
5. The Subcontractor:
   1. warrants to the Contractor that at the Date of Contract no conflict of interest exists or is likely to arise in the performance of the Subcontractor’s obligations under this Subcontract;
   2. must, if a conflict, or risk of conflict of interest arises during the performance of the Subcontractor’s obligations under this Subcontract:
      1. immediately notify the Contractor in writing of that conflict or risk; and
      2. comply with the requirements of the Contractor to eliminate or otherwise deal with that conflict or risk.

###### Work health and safety management

The Subcontractor must be committed to creating a safe working environment and to continuous improvement in work health and safety.

1. The Subcontractor is responsible for and must comply with the requirements of the Subcontract for work health and safety, subject to the express provisions of the *WHS Legislation*. This includes, without limitation, compliance with any *Territory* policy relating to work health and safety on ACT Government construction sites.
2. Where applicable, as indicated in *Subcontract Information* item 16, at least 14 days before starting *Design* and construction, the Subcontractor must document, submit and implement an work health and safety management plan which complies with the *WHS Legislation* and any *Territory* policy relating to work health and safety.
3. Where applicable, as indicated in *Subcontract Information* item 16, at least 14 days before starting construction, the Subcontractor must document, submit and implement “Safe Work Method Statements” which comply with the *Work Health and Safety Regulation 2011* (ACT).
4. The Subcontractor must systematically manage its work health and safety management processes in accordance with any systems, plans, standards and codes specified in the Subcontract.
5. The Subcontractor must comply with the *WHS Management Plan* of the Contractor and the *WHS Legislation*.
6. The Subcontractor must demonstrate to the Contractor, whenever requested, that it has met and is meeting at all times its obligations under clauses 15.1 to 15.5

###### Industrial relations management

The Subcontractor must manage industrial relations at the enterprise level, and to integrate industrial relations management activities into subcontract planning and management, subject to the Contractor’s overall control of industrial relations management on the Site.

1. The Subcontractor must manage all aspects of industrial relations in connection with its Sub-subcontractors, Suppliers and Consultants, and keep the Contractor informed of industrial relations issues which affect or are likely to affect the carrying out of the Subcontract Works.
2. The Subcontractor must systematically manage its industrial relations management processes in accordance with any strategies, plans, standards and codes specified in the Subcontract.
3. The Subcontractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under clauses 16.1 to 16.2.

###### Quality management

The Subcontractor must and it must also ensure that its Sub-subcontractors, Suppliers and Consultants systematically plan and manage their work to achieve specified quality outcomes, reduce the occurrence and costs of error and waste and to achieve continuous improvement in the quality of the product or service provided.

1. The Subcontractor must systematically manage its processes in accordance with any quality management systems, plans, standards and codes specified in the Subcontract.
2. The Subcontractor must:
   1. submit documentation required by the Subcontract by the time or times specified in the Subcontract;
   2. review and update the Subcontractor’s quality management procedures and documentation so they remain adequate at all times to manage and ensure the quality of the Subcontract Works complies with the requirements of the Subcontract;
   3. control non-conforming services and/or products and undertake corrective and preventative action as and when necessary;
   4. establish, maintain and keep records of all activities related to the management of quality; and
   5. provide sufficient access to the workplace, and to information, records and other relevant documentation, resources (including personnel), and all other things necessary to allow the Contractor to carry out reviews, surveillance and audit of the Subcontractor’s procedures and conformance with the contractual quality management requirements.
3. The Subcontractor must demonstrate to the Contractor, whenever requested, that it has met and is meeting at all times its obligations under clauses 17.1 to 17.2.

###### Environmental management

The Contractor requires the Subcontractor to implement a systematic approach to the management of environmental impacts of the Subcontract.

1. Environmental management requirements specified in the Subcontract may be in addition to, but are not in substitution for, any environmental management obligations of the Subcontractor under the laws of the *Territory* or the *Commonwealth*.
2. The Subcontractor must systematically manage its environmental management processes in accordance with the systems, plans, standards and *Codes* specified in the Subcontract.
3. The Subcontractor must demonstrate to the Contractor, whenever requested, that it has met and is meeting at all times its obligations under clauses 18.1 and 18.2.

###### Training management

The Subcontractor must integrate training and skills development into its enterprise planning and management.

1. Training management requirements specified in the Subcontract may be in addition to, but are not in substitution for, any training obligations of the Subcontractor under statute, industrial award, enterprise or workplace agreement, or other workplace arrangements approved under laws of the *Territory* or the *Commonwealth*.
2. The Subcontractor must systematically manage its training management processes in accordance with any codes, policies, standards, guidelines, plans or systems specified in the Subcontract.
3. The Subcontractor must demonstrate to the Contractor, whenever requested, that it has met and is meeting at all times its obligations under clause 19.2.

###### Affirmative action

1. The Subcontractor must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cwlth).
2. The Subcontractor must systematically manage its affirmative action processes in accordance with the codes, policies, standards, guidelines, plans or systems specified in the Subcontract.
3. The Subcontractor must demonstrate to the Contractor, whenever requested, that it has met and is meeting at all times its obligations under clauses 20.1 and 20.2. The Subcontractor must not enter into a Sub-subcontract with a Sub-subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cwlth).
4. **Authorisation for access to other records, non-disclosure of *Territory Information and Personal Information***

###### Release of Information Use of Information Qualified Privilege Release and Indemnity

**Non-disclosure of Territory Information and Personal Information**

1. The Subcontractor must:
   1. take all reasonable measures to ensure that *Territory Information* and *Personal Information* accessed or held by the Subcontractor in connection with the Subcontract is protected against loss and against unauthorised access, use, modification, disclosure or other misuse in accordance with reasonable procedures for that purpose notified by the Contractor to the Subcontractor in writing from time to time;
   2. take all reasonable measures to ensure that only authorised personnel of the Subcontractor approved by the Contractor have access to *Territory Information* and *Personal Information*;
   3. not disclose *Territory Information* and *Personal Information* without the prior written consent of the Contractor except as required by law;
   4. immediately notify the Contractor if the disclosure of *Territory Information* or

*Personal Information* is required by law;

* 1. only use *Territory Information* and *Personal Information* for the purposes of fulfilling the Subcontractor’s obligations under the Subcontract;
  2. not transfer *Territory Information* or *Personal Information* outside the Territory or allow any person (other than an authorised person approved by the Contractor) outside the Territory to have access to it, without the prior written approval of the Contractor;
  3. ensure that any employees of the Subcontractor or any Sub-subcontractor, Consultant or Supplier, requiring access to any *Territory Information* or *Personal Information* make as undertaking in writing in a form advised by the Contractor to not access, use, disclose or retain any *Territory Information* or *Personal Information* except in performing their duties of employment or obligation under the Subcontract with the Subcontractor and is informed that failure to comply with the undertaking may be a criminal offence and may lead the Subcontractor to take action against the employee, Sub-subcontractor, Consultant or Supplier;
  4. comply with the “Information Privacy Principles” set out in the *Privacy Act 1988*

(Cwlth) as if they were provisions of this Subcontract;

* 1. in respect of any *Personal Information* co-operate with any reasonable request or direction of the Contractor arising from or in connection with the exercise of the functions of Privacy Commissioner under the *Privacy Act 1988* (Cwlth) as if they were provisions of this Subcontract;
  2. immediately notify the Contractor in writing if the Subcontractor becomes aware of a breach of this clause 21.1; and
  3. indemnify the Contractor from and against any claim in respect of any matter arising from a breach of the Subcontractor’s obligations under this clause 21.1.

1. The Subcontractor acknowledges that the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this Subcontract (other than to a person to whom the Subcontractor is authorised to publish or disclose the fact or document) may be an offence under the *Crimes Act 1900* (ACT).
2. A complaint received alleging an interference with the privacy of an individual by the Subcontractor, a Sub-subcontractor, Consultant or Supplier, will be handled in accordance with the following procedures:
3. if the complaint is received by the Contractor or the Principal, the Contractor will notify the Subcontractor of only those details of the complaint necessary to minimise any breach or prevent further breaches;
4. if the complaint is received by the Subcontractor, the Subcontractor must immediately notify the Contractor and the Principal of the nature of the complaint but must only release *Personal Information* concerning the complainant with the complainant’s consent; and
5. after the Contractor has given ore received notice in accordance with clause 21.3.1 or 21.3.2, the Contractor will keep the Subcontractor informed of the progress with the complaint as it relates to the actions of the Subcontractor in connection with the allegations of an interference with the privacy of an individual.

###### Long service levy

1. Before commencing *Design* or construction work, the Subcontractor must:
   1. Pay to the ACT Long Service Leave Authority or the Authority’s agent the amount of the long service levy payable in respect of the building and/or construction work under the *Long Service Leave (Portable Schemes) Act 2009* (ACT); and
   2. produce to the Principal the documentary evidence of payment of that amount.

###### Media releases and enquiries

1. The Subcontractor must obtain the Contractor’s prior written consent to:
   1. any press release or advertisement it wishes to make or place concerning the Subcontract, the Principal, the Contractor or the Subcontract Works; or
   2. the release for publication in any media of any information, publication, document or article concerning the Subcontract, the Principal, the Contractor or the Subcontract Works.
2. The Subcontractor must refer any media enquiries concerning the Subcontract, the Principal, the Contractor or the Subcontract Works to the Contractor, for the Contractor’s prior written consent to any response, which consent may be given or withheld, in the Contractor’s absolute discretion.
3. The Subcontractor must ensure that all Consultants, Sub-subcontractors and Suppliers engaged by the Subcontractor for the performance of the Subcontract, comply with the requirements of this clause 23 and obtain the Contractor’s prior written consent (through the Subcontractor) before responding to enquiries or publishing anything of the type referred to in clause 23.

###### Registration and licences

1. All vehicles and plant used in performing work in connection with the Subcontract must be properly registered by the Subcontractor, if required by law to be registered.
2. The Subcontractor must ensure that all drivers who operate vehicles or plant in performing work in connection with the Subcontract are properly and appropriately licensed as required by law to operate those vehicles or plant.
3. Whenever requested by the Contractor, the Subcontractor must provide promptly, documentary evidence of compliance with clauses 24.1 and 24.2.

### Management duties

###### Time management

The Subcontractor must actively manage progress, anticipating and responding to events to stay on schedule.

1. The Subcontractor must commence *Design* and construction of the Subcontract Works on Site in accordance with the *Subcontract Program* (or the contractual program as referred to in clause 25.6, as applicable).
2. The Subcontractor must carry out *Design* and construction of the Subcontract Works in accordance with *Scheduled Progress*.
3. Whenever requested, the Subcontractor must demonstrate to the Contractor that it is achieving *Scheduled Progress*.
4. If the Subcontractor is not achieving *Scheduled Progress*, the Contractor may instruct the Subcontractor to take all reasonable steps to achieve *Scheduled Progress*, at the Subcontractor’s cost.
5. The parties acknowledge that an instruction under clause 25.4 is not an *Acceleration Notice*.
6. The Subcontractor must submit to the Contractor a program which complies with clause

25.9 within 14 days of the Date of Subcontract. Until the Subcontractor provides this program complying with clause 25.9, the program submitted by the Subcontractor with its tender shall be the contractual program, if the Contractor so advises the Subcontractor in writing.

1. The Contractor need not respond to the Subcontractor concerning the program submitted. If the Contractor raises no objection and the program submitted by the Subcontractor under this clause 25 complies with clause 25.9, it becomes the *Subcontract Program*. If the program does not comply with clause 25.9, the Subcontractor must promptly and in any event within 14 days of being notified by the Contractor of the non-compliance, submit to the Contractor a further program complying with the requirements for the *Subcontract Program* in clause 25.9.
2. The Subcontractor must update and resubmit the *Subcontract Program* when directed by the Contractor acting reasonably, taking into account actual progress, any changed circumstances and the effects of delays and approved extensions of time.
3. The *Subcontract Program* must comply with the following requirements:
   1. show the dates of, or, in the case of future activities and events, the dates for commencement and completion of *Design* and construction activities, other significant events, *Milestones* and the Subcontract Works and also include *Contractual Completion Dates*;
   2. reflect *Scheduled Progress* and be consistent with all constraints on access, performance and co-ordination;
   3. show the logical relationship between activities and events shown in the program, identify time leads and lags, resource and other constraints and the sequence of activities which constitute the critical path or critical paths;
   4. show the dates when the Subcontractor will require information, documents, materials or instructions from the Contractor and the dates when the Subcontractor will provide information or documents to the Contractor. These dates are to be consistent with dates which the Contractor could reasonably have anticipated at the Date of Subcontract that this information, documents, materials and instructions would be required and provided; and
   5. be in such form and include such detail as the Contractor reasonably requires and be accurate, comprehensive and complete in all respects; and
   6. show dates when the Subcontractor proposes to seek any approvals for *Statutory Requirements* and the expected response times for those approvals.

When requested by the Contractor, the Subcontractor must provide the *Subcontract Program* in electronic form to the Contractor. All of the requirements of clauses 25.9.1

to 25.9.5 must be accessible and clearly shown in the electronic form of the *Subcontract Program*. The software used by the Subcontractor must be acceptable to the Contractor.

1. The Subcontractor will not be entitled to make a *Subcontractor’s Claim* for an extension of time under clause 54.3 or otherwise, until the Subcontractor has submitted to the Contractor a *Subcontract Program* in conformance with clause 25.9, notwithstanding the references to the contractual program in clauses 25.1 & 25.6. The *Subcontract Program* submitted in respect of a *Subcontractor’s Claim* for an extension of time must be the *Subcontract Program* current (as adjusted under clause 25.8) at the time of the event or events giving rise to the *Subcontractor’s Claim*.
2. All extension of time *Subcontractor’s Claims* must show how the Subcontractor has been or will be delayed in reaching *Completion*, by specific reference to an activity or activities on the then current (as adjusted under clause 25.8) critical path or paths of the *Subcontract Program*.
3. Provision of the *Subcontract Program* does not relieve the Subcontractor of any of its obligations under the Subcontract.

###### Working days and hours of work

.1 The Subcontractor must observe *Statutory Requirements* which regulate working days and hours of work and any requirements of the Contractor which regulate working days and hours of work, as specified in *Contract Information* Item 39.

###### Intellectual property

1. The Subcontractor assigns or otherwise transfers *Intellectual Property Rights* in all *Data* created specifically for the Subcontract, upon its creation, to the Principal. The Subcontractor, at its own cost, will do all things necessary, including execution of all necessary documentation, to vest ownership of all such *Intellectual Property Rights* in the Principal.
2. The Subcontractor must include provisions in all Sub-subcontracts and agreements with Consultants to ensure that *Intellectual Property Rights* in all *Data* created specifically for the Subcontract is assigned or otherwise transferred to the Principal upon its creation. The Subcontractor, Sub-subcontractors and Consultants are granted licences to use the *Data* for the purposes of the Subcontract.
3. For *Data* provided by or for the Subcontractor, but not created specifically for the Subcontract, the Subcontractor must obtain irrevocable royalty-free licences to allow the Principal to use, operate, maintain, modify and decommission the Subcontract Works.
4. Licences referred to in clause 27.3 must apply from the *Date of Subcontract* or (if the *Data* has not then been created or is not then available) from the date the *Data* is created or becomes available (as applicable) in perpetuity.
5. The Subcontractor is responsible for the timely payment of all royalties and fees for *Intellectual Property Rights* in connection with the Subcontract and the Subcontract Works. The Subcontractor indemnifies the Contractor and the Principal against any claims (including *Subcontractor’s Claims*), actions, and loss or damage arising out of any failure to make these payments or any infringement or alleged infringement of *Intellectual Property Rights* in relation to the *Data* provided by or for the Subcontractor and used under the Subcontract or required to use, operate, maintain, modify or decommission the Subcontract Works.
6. The Subcontractor must ensure that *Data* created specifically for the Subcontract by or for the Subcontractor is only used by the Subcontractor and Sub-subcontractors, Suppliers and Consultants for the purposes of the Subcontract.
7. The Subcontractor must maintain all *Data* secret and confidential and disclose it only to those persons to whom disclosure is reasonably necessary for the purposes of the Subcontract. This provision does not relate to *Data* which is generally available to the public or which is required to be disclosed by law. This provision survives termination or expiry of the Subcontract or of the Subcontractor’s employment under the Subcontract.

###### Licences and approvals

.1 The Subcontractor must obtain at its own cost all licences, authorisations, approvals and consents necessary to carry out the Subcontract Works in accordance with the Subcontract.

###### Care of people, property and the environment

1. The Subcontractor is liable for and indemnifies the Contractor against loss or damage to:
   1. the Subcontract Works, from the date the Subcontractor begins carrying out the Subcontract Works; and
   2. the Site and anything brought onto the Site for the purposes of the Subcontract, from the date the Subcontractor is given access to the Site (or the relevant part of the Site), arising out of carrying out work for or in connection with the Subcontract,

until and including the *Actual Completion Date* of the whole of the Subcontract Works.

1. After the *Actual Completion Date* of the whole of the Subcontract Works, the Subcontractor remains liable for and indemnifies the Contractor against loss or damage arising out of performing *Variations*, making good *Defects*, and removing *Materials* from the Site.
2. The Subcontractor is liable for and indemnifies the Contractor against all claims, actions, and loss or damage and all other liability arising out of carrying out the Subcontract Works:
3. to or in connection with any property (other than property covered under clause 29.1); and
4. arising out of personal injury or death.
5. The Subcontractor’s liability for and responsibility to indemnify the Contractor under clauses 29.1, 29.2 and 29.3 is reduced to the extent that an *Excepted Risk* contributes to an injury or death or loss or damage to property.
6. The Subcontractor is responsible for all of the following:
7. preventing personal injury or death, or loss or damage to the Site, the Subcontract Works and the *Temporary Work*;
8. preventing loss or damage to adjoining and other properties and the environment arising out of carrying out the Subcontract Works;
9. the locating and care of existing services;
10. repairing or making good loss or damage to the Subcontract Works, the environment and the Site arising out of carrying out the Subcontract Works; and
11. bearing the cost of repairing, or making good, loss or damage to adjoining and other properties and the environment arising out of carrying out the Subcontract Works.
12. If urgent action is required to avoid death, injury, loss or damage, and the Subcontractor does not take the necessary action immediately when the Contractor requests it, the Contractor may take the action (without relieving the Subcontractor of its obligations), at the Subcontractor’s cost with the Contractor’s costs being recoverable as a deduction from the *Subcontract Price*.

###### Notices and instructions in writing

1. Notices must be sent to the relevant persons at the relevant postal or other addresses specified in *Subcontract Information* items 4 to 11.
2. All notices must be in writing, and all instructions by the Contractor must be in writing or confirmed in writing as soon as practicable, where given orally when urgent action is required;

### Sub-subcontractors, Suppliers and Consultants

Contractual relationships between the Subcontractor, Sub-subcontractors, Suppliers and Consultants must be on a similar basis to those between the Contractor and Subcontractor. Clause 34 specifies which clauses also apply to Consultants and Suppliers.

###### Sub-subcontractor relationships

1. The Subcontractor is solely responsible for all Sub-subcontractors and for their acts and omissions, and for the termination of any Sub-subcontract and replacement of any Sub- subcontractor.
2. The Subcontractor indemnifies the Contractor against all claims (including *Claims*), actions, and loss or damage and all other liability arising out of any acts or omissions of Sub-subcontractors.
3. The Contractor must provide to the Subcontractor, before the Subcontractor begins work, a copy of the following clauses, schedules and *Subcontract Information* items in the Contract:
   1. clause 62;
   2. clause 66;
   3. clauses 72 to 76;
   4. *Contract Information* items 20 to 22 and 50; and
   5. Schedules 10 and 11.
4. The Subcontractor must make *Payment Claims* in accordance with clauses 62 and 65, and the Contractor must pay the Subcontractor in accordance with clauses 63 and 65.
5. The Contractor must comply with clauses 37.7 to 37.8.

###### Requirements for all Sub-subcontracts

1. The Subcontractor must include in each Sub-subcontract (including agreements with Suppliers) written provisions which bind the Sub-subcontractor to all of the following:
2. those of the Subcontractor’s obligations under this Subcontract which are to be performed by the Sub-subcontractor;
3. the provisions of the Subcontract applying to termination for convenience (clause 78);
4. instructions of the Contractor issued to the Subcontractor which necessarily apply to the Sub-subcontractor; and
5. provisions equivalent to clauses of Schedules 10 and 11of the Subcontract (modified to reflect the changed parties).
6. Each Sub-subcontract must require the Subcontractor to pay the Sub-subcontractor within 15 *Business Days* of the Sub-subcontractor claiming payment in accordance with the

Sub-subcontract.

###### Further Sub-subcontract requirements

Clause 31.8 applies only to Sub-subcontracts worth more than the amount in *Subcontract Information* item 21. It applies in addition to clauses 31.6 and 31.7.

1. The Subcontractor must include written provisions acceptable to the Contractor, to the effect of those in this clause 31.8, in each Sub-subcontract of value more than the amount in *Subcontract Information* item 21 (which must be the same as the amount in *Contract Information* item 21 of the Contract); and the Subcontractor must ensure that each subcontract entered into by a Sub-subcontractor of more than that value includes written provisions to the same effect.
2. Any Sub-subcontract which:
   1. requires the Sub-subcontractor to provide a cash security to the Subcontractor; or
   2. allows the Subcontractor to deduct retention money from any payment made by it to the Sub-subcontractor,

must allow the Sub-subcontractor to provide an undertaking in a form equivalent to the relevant *Undertaking* in Schedule 2 in place of a cash security or retention money.

1. The Subcontractor may only withhold amounts from *Progress Payments* that may properly be withheld by the Subcontractor under the relevant Sub-subcontract or agreement with a Supplier.
2. Each Sub-subcontract must include provisions equivalent to clauses 37.6 to 37.8 and 66 of the Subcontract, and must prescribe a rate of interest the same as the rate prescribed under clause 66.
3. Each Sub-subcontract must include provisions equivalent to clauses 73 to 76 of the Subcontract, except that they are not to apply if the only remedy sought by the Sub-subcontractor is an order that the Subcontractor pay to it an amount which is not disputed to be payable under the Sub-subcontract.
4. Each Sub-subcontract must require the Subcontractor to provide to the Sub- Subcontractor, before the Sub-subcontractor starts work, a copy of clauses 31.8, 66, 73 to 76 of the Subcontract, and notify the Sub-subcontractor of the rate of interest for late payments.

###### Engaging Sub-subcontractors

1. The Subcontractor must not subcontract the whole of the Subcontract Works, but may subcontract parts of the Subcontract Works in accordance with this clause 32.
2. When requested, before engaging any Sub-subcontractors, the Subcontractor must provide to the Contractor the names and addresses of proposed Sub-subcontractors. The Contractor may object to the appointment of any proposed Sub-subcontractor on reasonable grounds. If the Contractor objects to any proposed Sub-subcontractor, the Subcontractor must at its own cost propose another Sub-subcontractor.
3. If instructed by the Contractor, the Subcontractor must take a novation of the contracts of specified Contractor’s consultants, subcontractors or suppliers, on the terms specified in the Subcontract.
4. If the Subcontractor terminates a Sub-subcontract, clauses 31, 32, and 33 apply to any replacement Sub-subcontract.
5. provisions equivalent to clauses of Schedules 10 and 11of the Subcontract (modified to reflect the changed parties).

###### Sub-subcontractors’ warranties

1. For each trade or area of work listed in *Subcontract Information* item 25, the Subcontractor must provide to the Contractor, before the Subcontractor completes its work, a warranty to the Principal in the form of Schedule 1 (Subcontractor’s Warranty) to remedy any *Defects* and to remedy or replace *Design*, *Materials* or workmanship which does not comply with the Subcontract.
2. Clause 33.1 does not affect any of the Subcontractor’s other obligations under the Subcontract.

###### Consultant and Supplier relationships

.1 Clauses 31.1, 31.2 and 32 apply to Consultants in the same way they apply to Sub- subcontractors, unless the context requires otherwise.

.2 Clauses 31.1, 31.2, 31.3 (excluding clauses 31.3.1 and 31.3.5), 31.4, 32 and 33 apply to Suppliers in the same way they apply to Sub-subcontractors, unless the context requires otherwise.

# Carrying out the Subcontract Works

This section deals with design and construction activities. It contains most of the provisions in the GC21 Subcontract conditions that apply to the physical carrying out of the Subcontract Works, and also covers procedures for payment.

### Starting

###### Start-up workshop

Under the Contract, the Principal convenes the start-up workshop at the beginning of the Contract. The start-up workshop is held to encourage the parties and others concerned with the Contract to work co-operatively. See Attachment 1.

1. If requested by the Contractor, the Subcontractor must attend a start-up workshop convened by the Principal.
2. Each party and any others who participate in the workshop must meet their own costs for attendance at the start-up workshop, and the parties to the Contract will share equally the other costs.

###### Insurance

**Contractor’s obligations**

1. The Subcontractor acknowledges that, under the Contract, the Contractor must take out (and pay all premiums for) the following insurance policies (unless the Contractor has notified the Subcontractor within 14 days of the Date of Subcontract that the Principal has effected public liability, asbestos liability and marine liability policies of insurance which include cover for the Contractor, Consultants, Subcontractors and Suppliers), which (apart from that under clause 36.1.3) must cover the Subcontractor as an insured:
   1. Not used
   2. a public liability policy of insurance to cover loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Subcontract Works, as specified in *Subcontract Information* item 27;
   3. (if required in *Subcontract Information* item 28) a professional indemnity policy of insurance to cover liability for breach of professional duty (whether in contract or otherwise) arising out of any negligence, whether in relation to errors in design, documentation, supervision or other professional duties of the Contractor (whether in contract or otherwise), as specified in *Subcontract Information* item 28, and extended to include cover for any breach of all such professional duties carried out on behalf of the Subcontractor by Sub-subcontractors, Suppliers or Consultants;
   4. if any work for or in connection with the Subcontract includes asbestos decontamination, an asbestos liability policy of insurance to cover risks with asbestos decontamination work, as specified in *Subcontract Information* item 29; and
   5. a marine liability policy of insurance, as specified in *Subcontract Information* item 30.

.1A. The Subcontractor acknowledges that under the Contract, the Principal must take out the

*Policy*.

1. The Contractor must provide copies of the policies of insurance taken out by the Contractor under clause 36.1, or by the Principal (as applicable) if requested by the Subcontractor. The Subcontractor may itself take out and maintain any additional insurances which it considers necessary.

###### Subcontractor’s obligations

1. Before starting work under the Subcontract, the Subcontractor must:
2. insure for the minimum amount specified in Subcontract Information item 31, and pay all premiums for all Workers’ Compensation and related liability in accordance with the requirements of the *Workers Compensation Act, 1951* (ACT);
3. Not used; and
4. insure for any other risks as required under the Subcontract.
5. The Subcontractor must ensure that every Sub-subcontractor and Consultant is insured at all times:
   1. for Workers’ Compensation and related liability in accordance with the requirements of the *Workers Compensation Act 1951* (ACT); or
   2. Not used.

###### Approval

1. The Subcontractor must obtain the written approval of the Contractor for all insurers and for the terms and conditions of the policies it is required to maintain under the Subcontract.

###### Policy requirements

1. The Subcontractor must ensure that each policy required to be effected and maintained under the Subcontract, under Sub-subcontracts or agreements with Consultants is in effect for the relevant period specified in the contract.
2. If the Subcontract requires the Subcontractor to take out additional insurance, all such policies must:
3. require the insurer to notify the Contractor (other than in relation to Workers Compensation and personal accident) at the same time as the insurer receives or gives any notice concerning the policy, and at least 7 days before any proposed cancellation of a policy; and
4. 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 claim given by all of the insured.

###### Proof of Cover

1. Before the Subcontractor starts any work for or in connection with the Subcontract and whenever requested in writing by the Contractor, the Subcontractor must supply proof that all insurance policies required under the Subcontract and under Sub-subcontracts are current.
2. The Contractor need not make any payment under the Subcontract to the Subcontractor unless the Subcontractor has complied with and continues to comply with clause 36.8.
3. If the Subcontractor fails to comply with clauses 36.3, 36.4, 36.5 and 36.8,where possible, the Contractor may effect and maintain that insurance and pay the necessary premiums. 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 Price*.

###### Excesses

1. The Subcontractor must bear all excesses under the policies of insurance taken out by the Contractor under clause 36.1 which relate to the Subcontract Works.

###### Claims

1. The Subcontractor must, as soon as practicable, inform the Contractor in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Subcontract and must ensure that the Contractor is kept fully informed of subsequent action and developments concerning the claim. The Subcontractor must take such steps as are necessary or appropriate to ensure that a Sub-subcontractor, Supplier or Consultant (as applicable) will, in respect to an event or claim of a like nature arising out of or relating to the operations or responsibilities of the Sub-subcontractor,

Supplier or Consultant (as applicable), take in relation to the Contractor similar action to that which the Subcontractor is required to take under this clause 36.12.

1. If there is a claim for significant damage or destruction under the *Policy* (as determined by the Principal, acting reasonably):
2. all settlement amounts must be paid by the insurer directly to the Principal;
3. the Contractor may decide to have the Subcontract Works reinstated, or may decide not to proceed with the Subcontract Works, as instructed by the Principal under the Contract, without creating any default by the Contractor under the Subcontract; and
4. the Subcontractor must reinstate the Subcontract Works if instructed to by the Contractor and except as otherwise provided in the Subcontract may only make a *Subcontractor’s Claim* for payment for reinstatement of the Subcontract Works up to the relevant amount of any insurance settlement.

###### No limitation

1. The requirements for insurance to be effected and maintained do not affect or limit the Subcontractor’s liabilities or other obligations under the Subcontract.

###### Security

The Subcontractor is required to provide security to the Contractor in the form of cash security, retention money or *Undertakings* to pay on demand, provided by financial institutions on the Subcontractor’s behalf.

###### Provision of Security

1. Within 14 days after the Date of Subcontract the Subcontractor must give the Contractor the *Completion Undertaking* and the *Post-Completion Undertaking* for the amounts calculated as specified in *Contract Information* items 33 and 34, or equivalent cash security. The *Undertakings* must be in the form specified in Schedule 2 (Undertaking).

Otherwise, the Contractor is entitled to deduct equivalent amounts in retention money at the time of making *Progress Payments*.

1. All *Undertakings* must be provided by a bank, building society, credit union or insurance company acceptable to the Contractor.

###### Return of Security

1. Unless the Contractor has made or intends to then make a demand against any

*Undertaking*, the Contractor must return *Undertakings* to the Subcontractor as follows:

* 1. the *Completion Undertaking* within 14 days after the *Actual Completion Date* of the whole of the Subcontract Works; and
  2. the *Post-Completion Undertaking* at the end of the period in *Contract Information* item 35 (or 12 months if no period is specified there) after the *Actual Completion Date* of the whole of the Subcontract Works provided all *Defects* then known have been remedied and otherwise when all *Defects* then known are remedied.

1. When *Completion* of a *Milestone* is achieved, the Contractor may (in its absolute discretion) agree to a proportionate reduction in the level of security held, based on the proportion of the Subcontract Works in the *Milestone*.
2. The Subcontractor must not prevent the Contractor making any demand against the *Undertakings* (or the equivalent cash security or retention money), or prevent the provider of an *Undertaking* complying with the *Undertaking* or any demand by the Contractor.

###### Cash Security

1. If the Contractor receives or retains security in cash or converts security to cash, that security is held in trust by the Contractor from the time it receives, retains or converts it.
2. If the Contractor receives payment under the Contract for, or on account of, work done or *Materials* supplied by the Subcontractor, and does not pay the Subcontractor the whole amount to which the Subcontractor is entitled under the Subcontract, the difference is held in trust for payment for the work done or *Materials* supplied.
3. The Contractor must deposit all money it receives in trust under clauses 37.6 and 37.7 into a trust account in a bank selected by the Contractor no later than the next *Business Day*, and:
4. the money must be held in trust for whichever party is entitled to receive it until it is paid in favour of that party (subject to clause 37.5 and 67);
5. the Contractor must maintain proper records to account for this money and make them available to the Subcontractor on request; and
6. any interest earned by the trust account is owned by the party which becomes entitled to the money held in trust.

###### Site access

1. Subject to compliance by the Subcontractor with the provisions of clauses 38.2 and 38.3, within the time period stated in *Contract Information* item 13, or, if no time period is stated, then within 14 days of the *Date of Subcontract*, the Contractor must give the Subcontractor access to the Site, or enough of it to allow for start of *Design* and construction of the Subcontract Works.

If the Contractor does not give the Subcontractor access to the Site or enough of it to allow for start of *Design* and construction of the Subcontract Works by the time specified in clause 38.1, the Subcontractor may be entitled to an extension of time under clause 54 as its sole remedy and, notwithstanding clause 55, will not be entitled to any costs, losses, expenses or damages under clause 55, or otherwise.

1. The Subcontractor must meet all its obligations under the Subcontract to provide *Undertakings* (or the equivalent cash security) and effect insurance before it is entitled to start any work for or in connection with the Subcontract.

*Refer to clauses 36 (Insurance) and 37 (Security).*

1. Before *Design* or construction work commences the Subcontractor must comply to the extent specified in the Subcontract with requirements for industrial relations, environmental, safety (including under all *WHS Legislation*) and quality management, other *Statutory Requirements* and any other requirements specified in the Subcontract 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.
2. Where required for the purposes of the Contract and the Subcontract, at all reasonable times the Subcontractor acknowledges that the Principal (including its authorised employees and agents) and the Contractor will require access to the Site and to the premises of the Subcontractor and must arrange for such access to the premises of Sub- subcontractors, Suppliers and Consultants. This may include for the purpose of surveillance, audit, inspection, *Testing*, certification, recording of information in any form or for any other reasonable purpose required by the Principal and the Contractor in connection with the Contract and the Subcontract.

###### Engagement of Valuer

1. At the discretion of the Principal and the Contractor, a *Valuer* may be engaged under the Contract to determine the value and time associated with *Variations* and other matters referred to the *Valuer* under the Contract.
2. To the extent specified in the Subcontract, the Subcontractor is bound by any determination of the *Valuer*.

### The Site

###### Site information

1. The parties acknowledge that:
   1. at the Date of Subcontract, the Contractor has provided in good faith the geotechnical or other information concerning the Site as specified in *Subcontract Information* items 36A and 36B;
   2. the information specified in *Subcontract Information* items 36A and 36B does not form part of the Subcontract;
   3. the Contractor does not guarantee the completeness of the information specified in *Contract Information* item 36A;
   4. the Contractor does not guarantee the accuracy, quality or completeness of the information specified in *Contract Information* item 36B;
   5. the Contractor accepts no duty of care in connection with information listed in

*Subcontract Information* item 36B (or with having provided it);

* 1. the Subcontractor warrants that it:
     1. has made its own inquiries (including the checking of information provided by the Contractor) concerning the Site;
     2. did not in any way rely on the completeness of the information provided by the Contractor specified in *Subcontract Information* Item 36A other than as a guide for ascertaining what *Further Site Information* the Subcontractor considers it needs to obtain under clause 40.3; and
     3. did not in any way rely on the information (which information could contain errors, omissions and other inaccuracies) provided by the Contractor, as specified in *Subcontract Information* item 36B; and
  2. the Subcontractor also warrants that it has made its own interpretations, deductions and conclusions from the information provided by the Contractor and did not in any way rely on interpretations, deductions and conclusions made by or for the Contractor.

*Other information concerning the Site may be included in the Contract.*

1. The Subcontractor warrants that it has:
2. examined the Site and surrounds and satisfied itself through its own investigation as to the condition and characteristics which may be encountered on, in or under the Site (including sub-surface conditions) and as to the further geotechnical or other information for the Site that may be required to be obtained by the Subcontractor; and
3. made its own assessment of the risks, contingencies and other circumstances which might affect the Subcontract Works and has allowed fully for these in the *Subcontract Price* (subject to clause 41).
4. If the Contractor considers that further geo-technical or other information for the Site is required, it may obtain *Further Site Information* and must give the Contractor details of *Further Site Information* as it is obtained.
5. *Further Site Information* does not include any information in the *Subcontract Documents* or information which by the Subcontract the Subcontractor is required to otherwise obtain.
6. Except if the Subcontract provides otherwise, the Subcontractor must bear the cost of obtaining *Further Site Information*.

###### Site Conditions

Early warning should serve to reduce the severity of possible cost and time implications when adverse *Site Conditions* are encountered. For this purpose, the Subcontractor is encouraged to obtain *Further Site Information* in advance of construction.

1. The Subcontractor agrees that it has no other entitlement arising out of or in connection with *Site Conditions* other than as referred to in this clause 41.
2. If the Contractor encounters, in the execution of the Subcontract Works (including when obtaining *Further Site Information*), *Site Conditions* which are materially adverse in comparison to the *Site Conditions* which the Subcontractor should have reasonably foreseen at the Date of Subcontract, having regard to the warranty in clause 40.2, the Subcontractor must notify the Contractor in writing forthwith and in any event within 7 days of encountering these *Site Conditions* (and prior to making any related *Subcontractor’s Claim*), giving full details of:
   1. the *Site Conditions* encountered;
   2. the manner in which they are said to be materially adverse (having regard to the warranty in clause 40.2), together with information supporting this contention;
   3. the effect on the Subcontract Works;
   4. subject to clause 41.8, the estimated additional cost (if any) of dealing with the

*Site Conditions* encountered and the additional work and resources involved;

* 1. the delay (if any) to progress of the Subcontract Works; and
  2. any other relevant matters.

The Contractor may request the Subcontractor to provide any further information relating to the circumstances of the *Site Conditions* encountered.

1. The Subcontractor is solely responsible for dealing with the *Site Conditions* encountered in a manner so as to minimise any extra costs and in a manner to which the Contractor has no objection.
2. Subject to clause 41.8:
3. the Subcontractor will be entitled as an adjustment to the *Subcontract Price* to its direct, reasonable additional costs (including costs of delay or disruption), necessarily and unavoidably incurred by the Subcontractor in dealing with materially adverse *Site Conditions*, from the date of provision to the Contractor of the written notice required by clause 41.2, having taken all reasonable steps to minimise the costs in dealing with materially adverse *Site Conditions*; and
4. the Subcontractor may also be entitled to an extension of time for *Completion* under clause 54 for delays caused by the materially adverse *Site Conditions* occurring from the date of provision to the Contractor of the written notice required by clause 41.2.
5. If a *Variation* is instructed or agreed as a result of *Site Conditions* shown by *Further Site Information* given to the Contractor no later than 21 days before construction on the relevant part of the Site would have started, but for the *Variation*, it must be dealt with (including the matters of value and extension of time for *Completion*) under the *Variation* procedures in clause 52.
6. If a *Variation* is instructed or agreed as a result of *Site Conditions*, but the Subcontractor does not give to the Contractor the *Further Site Information* within the time provided in clause 41.5;
7. the *Variation* must be valued under clause 52 but the value of the *Variation* must exclude the costs of any aborted work arising out of the *Variation*; and
8. no payment will be made to the Subcontractor for costs of delay or any aborted work under any other provision of the Contract or otherwise.
9. Clause 41.6 applies regardless of any provisions to the contrary in the Subcontract.
10. Notwithstanding anything in clause 41, when specified in *Contract Information* item 41 that the Subcontractor is to bear the full risk of encountering and dealing with materially adverse *Site Conditions*:
11. the Subcontractor is not entitled to the costs of dealing with materially adverse *Site Conditions*; and
12. notwithstanding clause 54, if the Subcontractor is or will be delayed in reaching *Completion* as a result of dealing with materially adverse *Site Conditions*, the Subcontractor will not be entitled to an extension of time for *Completion*.
13. If a *Variation* is instructed or agreed as a result of *Site Conditions*, the parties’ rights and obligations are not affected by clause 41.8.

### Design

The Subcontractor has some design, design coordination and design management responsibility. The extent of *Design* by the Subcontractor may be as little as shop detailing, as much as the full *Design* of the Subcontract Works, or it may be some requirement in between, and Clause 43 applies in all these cases.

In addition, the Subcontractor may be required to check, adopt and be responsible for design carried out before the *Date of Subcontract* by the Contractor or by the Principal. In that case, it is specified in *Contract Information* item 38, and clause 44 applies.

###### Ambiguities

Clause 42 applies to all *Subcontract Documents*, including *Contractor’s Documents*.

1. The Subcontractor, in addition to any responsibility to check *Contractor’s Documents* under clause 44 (if applicable), must check the *Subcontract Documents* and notify the Contractor of any ambiguities, inconsistencies or discrepancies at least 21 days before the Subcontractor proposes to use them for *Design* or construction (including procurement, manufacture or fabrication of any part of the Subcontract Works) or for other Subcontract purposes.
2. The Contractor must resolve any ambiguities, inconsistencies or discrepancies in the *Subcontract Documents* which are notified by the Subcontractor to the Contractor for resolution.
3. Subject to clause 42.4, if the resolution in clause 42.2 results in the Subcontractor incurring increased or reduced costs than the Subcontractor should reasonably have anticipated at the time of tender, the *Subcontract Price* must be adjusted by the difference in costs agreed or valued under the procedures in clause 52 (and where applicable, dealt with under clauses 72 to 75). In the assessment of what the Subcontractor should reasonably have anticipated (as referred to above) regard must be had to the provisions of the Subcontract, in particular clause 10, and to whether the ambiguity, inconsistency or discrepancy was (or should have been) reasonably apparent to the Subcontractor at the time of tender.
4. If the Subcontractor fails to take the steps required in clause 42.1, and a *Variation* is instructed by the Contractor due to any ambiguity, inconsistency or discrepancy:
   1. the Subcontractor will not be entitled to costs for delay or the cost of any aborted work (including *Design*) resulting from the *Variation*; except that
   2. if clause 44 is not applicable, the Subcontractor will be entitled to the reasonable and unavoidable cost of any aborted work (including *Design*) if the ambiguity, inconsistency or discrepancy is included in the *Contractor’s Documents* forming part of the *Subcontract Documents*.

###### Subcontractor’s Documents

1. The Subcontractor must carry out all necessary design to complete *Design* of the Subcontract Works (whether or not it is responsible under clause 44.1 for the Contractor’s design in the *Contractor’s Documents*) and so produce *Subcontractor’s Documents* which meet the requirements of all of the following:
   1. the Subcontract;
   2. Contractor’s instructions;
   3. *Statutory Requirements*;
   4. the Building Code of Australia (if required in *Contract Information* item 37B), and relevant Australian Standards; and
   5. if no other standard is specified in the Subcontract, then good industry standards applicable to the Subcontract Works.
2. The Subcontractor acknowledges that the Subcontractor must not change the Contractor’s design in the *Contractor’s Documents* without the Contractor’s prior written approval. Whenever requested by the Contractor, the Subcontractor must promptly confirm in writing that *Subcontractor’s Documents* are consistent with and comply with the *Contractor’s Documents* and other relevant *Subcontract Documents*. If the Contractor’s design is required to be changed (with the Contractor’s prior written approval), the *Variation* must be dealt with under the procedures in clause 52.
3. The Subcontractor warrants that *Subcontractor’s Documents* and any related *Design*, materials, documents and methods of working will not infringe any *Intellectual Property Rights*. The Subcontractor indemnifies the Principal and the Contractor against any costs, losses, expenses or damages arising out of the Subcontractor infringing any *Intellectual Property Rights*.
4. The Subcontractor must produce *Subcontractor’s Documents* which will ensure that the Subcontract Works and every part of them are fit for the purposes required by the Subcontract. This responsibility is reduced to the extent that the *Subcontractor’s Documents* are not fit because of design work by the Contractor for which the Contractor retains responsibility.

*The Contractor retains responsibility for design work by the Contractor except as provided by clause 44, if it applies.*

1. The requirements of clause 43.4 are not reduced or affected by any *Variations*.

###### Adopting Contractor’s Documents

This clause only applies when this is indicated in *Subcontract Information* item 38. It does not replace any other provisions of the Subcontract, but adds further responsibilities when required.

If clause 44 applies, the Subcontractor must accept full responsibility for design carried out by the Contractor (or the Principal) before the *Date of Subcontract*, in addition to *Design* to be carried out by the Subcontractor.

1. If *Contract Information* item 38 specifies that the Subcontractor must accept full responsibility for design carried out by the Contractor (or the Principal) before the Date of Subcontract, then before submitting *Subcontractor’s Documents* to the Contractor in accordance with clause 45 the Subcontractor (at its own cost) must:
   1. check, and notify the Contractor of details (together with appropriate supporting documents) of any *Fault* in the *Contractor’s Documents*;
   2. amend the documents to correct *Faults* so that, on *Completion*, the Subcontract Works and every part will be fit for the purposes required by the Subcontract; and
   3. accept and adopt the *Contractor’s Documents* as if the Subcontractor prepared them so that they (amended by the Subcontractor as necessary) become *Subcontractor’s Documents* when submitted under clause 45.

*See clause 43 for requirements applying to Subcontractor’s Documents.*

1. Subject to any provisions of the Subcontract which provide for change to the *Contractor’s Documents* and clause 42, the Contractor must instruct a *Variation* if the Subcontractor notifies the Contractor of a *Fault* in the *Contractor’s Documents* and the Contractor requires a change to the Subcontract Works as a result.
2. If *Contractor’s Documents* adopted by the Subcontractor contain a *Fault* not notified to the Contractor by the Subcontractor in accordance with clause 44.1.1:
3. the Subcontractor will be responsible for, and not entitled to payment for delays or the cost any of aborted work arising out of the *Fault*; and
4. the value of any *Variation* the Contractor instructs as a result of the *Fault* must not include the cost of such delays or aborted work.
5. The Subcontractor acknowledges that the Contractor’s design is incomplete and may contain *Faults* or conflict with *Statutory Requirements* or the Building Code of Australia (if applicable, as referred to in *Contract Information* item 37B) or other codes or standards which the Subcontractor is required to comply with under the Subcontract.
6. The Contractor makes no representation concerning Contractor’s design and the Subcontractor is not entitled to rely on the completeness or accuracy of the Contractor’s design.
7. The Contractor relies on the Subcontractor to identify and remedy *Faults* in the

*Contractor’s Documents*.

###### Submitting Subcontractor’s Documents

1. The Subcontractor must submit *Subcontractor’s Documents* (as developed progressively and in stages, but so that each part is complete and in sufficient detail to explain what is proposed) to the Contractor at least 21 days before the date the Subcontractor proposes to use them for construction (including procurement, manufacture or fabrication) of any part of the Subcontract Works. The Subcontractor must provide the number of copies of the *Subcontractor’s Documents* specified in *Subcontract Information* item 19 when submitting *Subcontractor’s Documents*.
2. To the extent specified in the Subcontract, the Subcontractor must undertake design review and consider the *Design* with those persons specified in the *Subcontract Documents*, or those persons identified by the Contractor, including those involved in using or occupying any part of the Subcontract Works as *End Users*. The Subcontractor must carry out such design review and consideration with the Contractor and those other persons and develop the *Design* and *Subcontractor’s Documents* using the outcomes of this review and consideration. The Subcontractor must then submit to the Contractor for its consideration any necessary amendments to the *Contractor’s Documents* proposed by the Subcontractor, including those arising out of the design review and consideration, prior to the Subcontractor submitting *Subcontractor’s Documents*, as referred to in clause 45.1.
3. The Contractor need not respond to the Subcontractor about the *Subcontractor’s Documents* submitted.
4. If the Contractor objects to the *Subcontractor’s Documents*, the Subcontractor must take the objections into account and discuss them with the Contractor. The Subcontractor must correct any *Fault* in the *Subcontractor’s Documents*.
5. Notwithstanding the design review and consideration by others under clause 45, the Subcontractor remains fully responsible for all *Subcontractor’s Documents*.
6. Nothing the Contractor does or omits to do in connection with this clause 45 makes the Contractor liable for *Subcontractor’s Documents*, or prevents the Contractor from relying on or enforcing a right, under the Subcontract or otherwise.

###### Innovation

This clause provides an incentive to the Subcontractor to improve its service to the Contractor by innovation. If the Contractor accepts the Subcontractor’s proposal, the Subcontractor benefits by retaining immediate savings in its costs; the Principal or Contractor benefit from the added value to the Works, reduced operating or maintenance costs, or similar savings. Alternatively, if stated in *Subcontract Information* Item 42, the parties agree to share the savings in costs derived from an innovation.

1. The Subcontractor may submit in writing to the Contractor, at its own cost, a detailed proposal for changes to the Subcontract Works, including *Design* or *Materials*, which is likely to offer significant benefits (including long-term or repeated benefits) to the Principal or the Contractor.
2. If the Contractor requires it, and if the Subcontractor wants to proceed with the proposal, the Subcontractor must provide (at no cost to the Contractor and the Principal) a report on the details, implications and benefits of the proposal. The report must be prepared by a Consultant acceptable to the Contractor and the Principal.
3. The proposal must not include anything which might adversely affect the quality of *Design* or construction or operation or maintenance of the Subcontract Works. Proposed changes must be consistent with the purpose and intent of the Subcontract and the Subcontract Works.
4. The Contractor must consider the Subcontractor’s proposal, but is not bound to accept any proposal or proposed changes. No *Subcontractor’s Claim* will arise out of the Contractor’s consideration of or failure to accept any proposal or proposed changes.
5. Subject to clause 46.7 and 46.8, if the Contractor accepts any changes proposed by the Subcontractor, any actual direct saving in the cost to the Subcontractor of the Subcontract Works resulting from the changes will be for the benefit of the Subcontractor.
6. The Contractor may accept the proposed changes subject to conditions.
7. The Subcontractor is fully responsible to the Contractor for the compliance of the Subcontract Works and for the changes and their consequences.
8. Notwithstanding the provisions of clause 46.5, if indicated in *Subcontract Information* item 42, the savings in the cost to the Subcontractor of the Subcontract Works with the changes proposed by the Subcontractor and accepted by the Contractor under clause 46 must be shared by the Subcontractor and the Contractor in the proportions of the savings stated in *Subcontract Information* item 42. The calculated savings must include the assessed reduction in the costs of the Subcontract Works to the Subcontractor and Sub- subcontractors and Suppliers, less any costs incurred by the Contractor in assessing or implementing the changes, including but not limited to related design work.

### Construction

###### Setting out the Works

1. The Subcontractor must set out and construct the Subcontract Works at the locations and levels specified in or required by the Subcontract.
2. The Subcontractor may request in writing from the Contractor any necessary additional information to be provided by the Contractor relating to setting out the Subcontract Works not included in the *Subcontract Documents*. The Subcontractor must make the request at least 14 days prior to the date the Subcontractor proposes to use the information for set out for construction of the part of the Subcontract Works to which the information applies. As soon as practicable, the Contractor must provide any additional information which it has or can reasonably obtain.
3. While carrying out the Subcontract Works, if the Subcontractor discovers or is made aware of any error in the location, level, dimension or alignment of the Subcontract Works:
   1. the Subcontractor must notify the Contractor;
   2. the Contractor need not respond to the Subcontractor about any error;
   3. the Contractor may instruct the Subcontractor regarding necessary rectification work and the subcontractor must comply;
   4. the Subcontractor must rectify any error to ensure that the Subcontract Works comply with the Subcontract; and
   5. if an error occurs because of the Contractor’s design for which the Contractor retains responsibility and causes the Subcontractor to incur necessarily and unavoidably any extra costs, the Subcontractor may be entitled to those extra costs and an extension of time under clause 54.
4. The Subcontractor must give the Contractor a copy of a survey showing the Subcontract Works as constructed on the Site, including the relationship of the Subcontract Works to any relevant property boundaries, easements, (including any right of way) and improvements on the Site. If requested in writing by the Subcontractor, the Contractor may agree (but is not obliged to do so) by notice in writing that certain matters can be excluded from the survey. The survey must be performed by a registered surveyor or other surveyor to whom the Contractor has no objection.

###### Construction

1. The Subcontractor must supply all *Materials* and construct the Subcontract Works in accordance with all of the following:
   1. the Subcontract;
   2. the *Subcontractor’s Documents*;
   3. the Contractor’s instructions concerning the Subcontract Works;
   4. *Statutory Requirements*;
   5. the Building Code of Australia (if applicable, as referred to in *Subcontract Information* item 37B), and relevant Australian Standards; and
   6. if no other standard is specified in the Subcontract, then good industry standards applicable to the Subcontract Works.
2. The Subcontractor must comply with this clause 48 and ensure that the Subcontract Works and every part of them are fit for the purposes required by the Subcontract. This responsibility is reduced to the extent that the Subcontract Works are not fit because of design work by the Contractor for which the Contractor retains responsibility.

*The Contractor retains responsibility for design work by the Contractor except as provided by clause 44, if it applies.*

1. The provisions of clause 48.2 are not reduced or affected by any *Variations*.

###### Testing

1. The Subcontractor must:
   1. *Test* (at its own cost) all parts of the Subcontract Works specified in the Subcontract to be *Tested*;
   2. give the Contractor the opportunity to witness the *Tests* by giving reasonable notice; and
   3. make the results available to the Contractor.
2. The Contractor may instruct the Subcontractor at any time to *Test* any part of the Subcontract Works. The Contractor must pay for the *Tests* (as an addition to the *Subcontract Price*) if the results of the *Tests* show full compliance with the Subcontract. Otherwise, the Subcontractor must pay.
3. The Subcontractor must repeat the *Tests* (at its own cost) of all parts of the Subcontract Works where *Defects* have been found, until the results of these *Tests*, as reported in writing to the Contractor, confirm that all *Defects* have been made good and that the Subcontract Works comply with the Subcontract.

###### Defects

The Contractor considers the Subcontractor to be an expert in *Design* and construction of the Subcontract Works and holds the Subcontractor responsible for its work. The Contractor requires *Completion* to be defect-free.

These *Defects* provisions are to ensure that the Subcontract Works are constructed to the standards required by the Contractor. The Contractor can also rely on its common law rights. Also refer to clause 71 which deals with *Defects* after *Completion*.

1. The Subcontractor must identify and promptly make good all *Defects* so that the Subcontract Works comply with the Subcontract. This requirement does not affect any other remedy or right of the Contractor.
2. At any time before *Completion*, the Contractor may instruct the Subcontractor to make good *Defects* within the time specified in a *Defect Notice* issued by the Contractor.

*A similar provision applies after Completion under clause 71.1.*

1. If the Subcontractor fails to make good the *Defects* in the time specified in the *Defect Notice*, the Contractor may have the *Defects* made good by others and then:
   1. the cost will be a debt due to the Contractor and may be deducted from the

*Subcontract Price*, unless a *Variation* applies under clause 50.5; and

* 1. the Subcontractor will be responsible for the work involved in making good the

*Defects* as if the Subcontractor had performed the work.

1. Nothing in this clause 50:
2. reduces the Subcontractor’s warranties and other liabilities and obligations under the Subcontract; or
3. affects the Contractor’s common law right of damages.
4. If at any time before *Completion* the Subcontractor becomes aware of any defect which results from design or other work or actions for which it is not responsible, it must:
5. promptly notify the Contractor; and
6. make good the defect as a *Variation* under clause 52 if instructed to by the Contractor.

###### Acceptance with Defects not made good

1. The Contractor, in its absolute discretion (and at any time, whether before or after *Completion*), may accept that specific *Defects* defined by the Contractor need not be made good.
2. Before the Contractor does so:
   1. the Contractor may propose deductions from the *Subcontract Price*, and any terms it requires;
   2. if the Subcontractor agrees with the deductions and the terms, the *Subcontract Price* will be adjusted accordingly; and
   3. if the Subcontractor agrees with the terms but not with the proposed deductions:
      1. the Subcontractor is bound by any determination of the *Valuer* under the Contract in respect of the deductions (provided their value if separately

identifiable in the *Valuer’s* certificate) adjusted to take account of the

*Contractor’s Margin*; or

* + 1. if there is no *Valuer* under the Contract or if there is no separately identifiable value determined by the *Valuer* under the Contract, the Contractor must determine a reasonable price for the deductions under clause 52.5.

1. If the parties do not agree in writing on the Contractor’s terms, the Subcontractor must make good the *Defects* defined by the Contractor.
2. The Subcontractor remains liable for *Defects* whether known or not known at the time the Contractor accepts that defined *Defects* need not be made good under this clause 51.

### Changes to work

###### Variations

**Variation instructions**

1. The Contractor may instruct *Variations* in writing at any time before *Completion* (and after *Completion* in accordance with clause 71.1), and the Subcontractor must comply with these instructions.
2. Unless the Contractor considers that urgent or special circumstances exist and instructs the Subcontractor to proceed, the Subcontractor must not begin to carry out a *Variation* until:
   1. the parties have agreed on its value (including delay costs under clause 55.1) and time implications; or
   2. a party to the Contract has made a request to the *Valuer*, if a *Valuer* is engaged; or
   3. where no *Valuer* is engaged under the Contract, the Contractor makes a determination under clause 52.5 and instructs the Subcontractor to proceed,

in each case in accordance with clause 52.4.

###### Variation Pricing

1. When requested to by the Contractor, the Subcontractor must advise the Contractor of its price (including amounts for any delay costs claimed in accordance with clause 55.1) for a proposed *Variation* and its effect (if any) on the time for *Completion*, or on any other matter specified, within the time specified in the request. In advising the Contractor of its effect on the time for *Completion*, the Subcontractor thereby acknowledges its responsibility to take all reasonable steps:
2. to carry out the work concurrently with other work whenever possible; and
3. to otherwise minimise the effects of the *Variation* on the *Contractual Completion Date*, including for any *Subcontract Milestone*.

###### Valuer’s determination

1. If the parties agree that a *Variation* applies, they must endeavour to agree in writing on its value and effect on the time for *Completion* (if any). Failing agreement on value or time, then:
2. the Subcontractor is bound by any determination of the *Valuer* under the Contract in respect of that *Variation*, if:
   1. its value is separately identifiable in the *Valuer’s* certificate; and
   2. before the determination, the Subcontractor was given an opportunity to provide information or make known its views to the *Valuer*, either directly or as part of a submission by a party to the Contract;
3. but if there is no such determination by the *Valuer* under the Contract, then the Contractor must determine reasonably the value or the adjustment to the time for *Completion* or both (whichever is not agreed), in accordance with clause 52.5.

###### Contractor’s determination

1. The Contractor must make any determination under clause 52.4.2 as follows:
2. If a *Variation* involves additional or increased work, its value is the sum of the following:
   1. the additional reasonable material and plant costs of the Subcontractor;
   2. the additional reasonable costs of Sub-subcontract work involved in carrying out the *Variation*;
   3. the additional percentage in *Subcontract Information* item 48A on the total costs of clauses 52.5.1(1) and 52.5.1(2), which allows for the *Subcontractor’s Margin*; and
   4. the additional labour costs of the Subcontractor at the hourly rate in

*Subcontract Information* item 48B.

1. If a *Variation* involves decreased or omitted work, its value is that of the work included in the *Subcontract Price*:
   1. as specified in the Subcontract, or otherwise as determined by the Contractor based on the rates and sums in the Subcontract or otherwise applying at the Date of Subcontract; and
   2. including a reasonable *Subcontractor’s Margin* and a reasonable allowance for any time-dependent costs not included in the *Subcontractor’s Margin* which will not be incurred as a result of the decreased or omitted work.
2. The Contractor must not include any *Subcontractor’s Margin* in the costs in clauses 52.5.1(1) and 52.5.1(2).
3. The Contractor must not include any amount in the valuation of Subcontract work under clause 52.5.1(2), for extra costs, losses or expenses attributable to any default or negligence of the Subcontractor.
4. The Contractor must not include any amount in the valuation of a *Variation* for costs of delay or disruption caused by the *Variation*.
5. If the *Variation* involves an omission or decrease in work, the Contractor must determine a reasonable reduction to the time for *Completion.*
6. The *Subcontract Price* must be adjusted to account for the value of the *Variation*.

###### Disputed Variations

1. If the parties do not agree that a *Variation* applies, all issues relating to the claimed

*Variation* must be dealt with under the *Issue* resolution procedure in clauses 72 to 75.

1. The Subcontractor acknowledges that the development of *Design* by the Subcontractor does not constitute a *Variation*.
2. Regardless of any other provision of the Subcontract, if the Subcontractor considers that a *Variation* applies but the Contractor has not instructed a *Variation*, the Subcontractor must make its *Subcontractor’s Claim* within 5 days from the start of the event giving rise to the *Variation*, or from the time when the event should have become known to the Subcontractor with reasonable diligence on its part (as applicable).

*Refer also to clause 72.3.*

1. *Variations* instructed by the Contractor must be generally consistent with or of a similar nature to the work included in the Subcontract Works at the *Date of Subcontract*.

###### Variations under the Contract

1. If a *Variation* (as defined in the Contract) is instructed under the Contract which results in a substantial change (including any omission or decrease of work) in the Subcontract Works, the Subcontractor must comply with the Contractor’s instructions to vary the Subcontract Works. This does not cause any default on the part of the Contractor or any entitlement of the Subcontractor to compensation (other than in the case of a *Variation* requiring the Subcontractor to carry out increased or extra work or changed work).

###### Changes in Statutory Requirements

.1 If *Statutory Requirements* change after the Date of Subcontract and a change to the Subcontract Works may be required as a result, the Subcontractor must promptly notify the Contractor. The Contractor must instruct a *Variation* under clause 52 if the Contractor requires a change to the Subcontract Works as a result.

### Changes to time

The Subcontractor is responsible for managing progress to meet *Contractual Completion Dates* for *Subcontract Milestones* (if any) and for the Subcontract Works. These dates or times for *Completion* are initially given in the *Subcontract Information*, but may be adjusted under clauses 41 (Site Conditions), 52 (Variations), 54 (Extensions of time), and 56 (Acceleration).

###### Extensions of time

Under the conditions set out in clause 54 the Contractor will extend the time for *Completion* if there is nothing the Subcontractor can reasonably do to avert circumstances beyond its control to avoid delay. Refer also to clauses 25 Time management and 69 Completion.

1. If the Subcontractor is or will be delayed in reaching *Completion*, the Subcontractor will be entitled to an extension of time for *Completion* for the number of days assessed by the Contractor, if the Subcontractor satisfies the Contractor that all the following conditions apply:
   1. The cause of the delay was beyond the control of the Subcontractor (including an act, default or omission of the Contractor, but not including a *Variation* instructed or agreed by the Contractor or otherwise determined).

*Extensions of time for Variations are dealt with under clause 52 or under clauses 72 to 75.*

* 1. The Subcontractor has taken all reasonable steps to avoid and minimise the delay and its effects.
  2. The Subcontractor has given to the Contractor each of the notices required under clauses 54.2 and 54.3.
  3. The delay occurred to an activity or activities on a critical path of the then current *Contract Program*, as provided for in clause 25, and the Subcontractor has submitted this *Contract Program* with the notice required under clause 54.3.

1. The Subcontractor must give the Contractor notice of the delay, its cause, relevant facts, and its expected impact, as soon as practicable (and in any event within 3 days) after the delay commenced.
2. Within 7 days of commencement of the delay, the Subcontractor must give the Contractor notice of the extension of time claimed, together with the information required under clause 25.11 and other information sufficient for the Contractor to assess the *Subcontractor’s Claim*. If the delay continues for more than 7 days, the Subcontractor must give a further notice every 14 days thereafter, until after the delay ends, if the Subcontractor wishes to make a *Subcontractor’s Claim* for a further extension of time, together with further information of the kind required by this clause 54.3.
3. An extension of time is only given for delays occurring on days on which the Subcontractor usually carries out work for the Subcontract.
4. When concurrent events cause a delay in reaching *Completion* and one or more of the events is within the control of the Subcontractor, then to the extent that the events are concurrent, the Subcontractor will not be entitled to an extension of time for *Completion* notwithstanding that another cause of the delay is such that the Subcontractor would have had an entitlement to an extension of time.
5. The Contractor may in its absolute discretion for the benefit of the Contractor extend the time for *Completion* at any time and for any reason, whether or not the Subcontractor has made a *Subcontractor’s Claim* for an extension of time. The Subcontractor is not entitled to an extension of time for *Completion* under this clause 54.6 unless the Contractor exercises its discretion to extend the time for *Completion*.
6. This clause 54 is subject to the provisions of any other clause in the Subcontract which entitles the Subcontractor to an extension of time for *Completion*.

###### Delay costs

**Delays caused by the Contractor**

Clauses 55.1 and 55.2 prescribe the Subcontractor’s rights when the Contractor causes a delay to the Subcontractor in reaching *Completion*. Where prescribed in the Subcontract, the Subcontractor may be entitled to payment of delay costs which are caused by a specified delaying event. Otherwise, the Subcontractor is not entitled to extra payment for delay, disruption or interference of any nature whatsoever caused by the Contractor (including for a breach of the Subcontract by the Contractor).

1. The Subcontractor is entitled to delay costs at the rate or rates in *Contract Information* item 51A, for the number of days by which the time for *Completion* is extended because of a delay caused only by:
   1. a *Variation*, other than one for which, under clauses 41.6, 42.4 and 44.3, there is no payment for delays; or

*Clause 41.6 deals with Site Conditions, 42.4 with ambiguities in the Contract Documents, and 44.3 with Faults in Contractor’s Documents.*

* 1. a breach of the Subcontract by the Contractor which causes delay, disruption or interference to the Subcontractor carrying out the Subcontract Works.

1. The rate or rates of delay costs will be reduced where the Principal (or anyone authorised by the Principal) is using or occupying any part of the Works prior to *Completion*, under clause 68. This reduction in the delay costs will be determined by the Contractor acting reasonably. The reduced rate or rates of delay costs will be the same proportion of the full rate or rates as is the value (as agreed by the parties or failing agreement, as determined reasonably by the Contractor) of the remaining work to achieve *Completion* to the *Subcontract Price.*
2. The Subcontractor’s only remedies for delay, disruption or interference of any nature whatsoever caused by the Contractor (including for a breach of the Subcontract by the Contractor, as referred to in clause 55.1.2) whether under the Subcontract, at law or otherwise, are an extension of time for *Completion* under clauses 41, 52 or 54, and delay costs under clause 55.1 and 55.2.

###### Delay to Completion

If indicated in *Subcontract Information* Item 51, the Subcontract provides for liquidated damages to be payable by the Subcontractor to the Contractor, if the Subcontractor fails to achieve *Completion* by the *Contractual Completion Date*.

1. If the Subcontractor fails to achieve *Completion* by the *Contractual Completion Date* as required by clause 69, the Subcontractor will be liable to pay the Contractor liquidated damages as a debt due and owing at the rate stated in *Subcontract Information* item 51B for every day after the *Contractual Completion Date* to and including the *Actual Completion Date*. If, however, the Subcontract is terminated under clauses 78 or 79, before the Subcontractor reaches *Completion*, any applicable liquidated damages for failure to achieve *Completion* by the *Contractual Completion Date* will run to the date of termination of the Subcontract.
2. The Contractor, in its absolute discretion, may demand payment of the liquidated damages amount from the Subcontractor or may deduct, withhold or set-off the liquidated damages amount from any amount otherwise payable to, or security provided by the Subcontractor. A failure by the Contractor at any time to demand payment or to deduct, withhold or set-off the liquidated damages will not amount to a waiver of or otherwise affect the Contractor’s rights and entitlements.
3. If the *Contractual Completion Date* is extended after the Subcontractor has paid or the Contractor has deducted liquidated damages, the excess amount of liquidated damages paid by the Subcontractor or deducted by the Contractor will be payable by the Contractor to the Subcontractor, subject to any right of set-off which the Contractor may have.
4. The amount of liquidated damages will be reduced where the Principal or the Contractor (or anyone authorised by the Principal or the Contractor) is using or occupying any part of the Subcontract Works prior to *Completion*, under clause 68. This reduction in the amount of liquidated damages otherwise payable under the Subcontract will be determined by the Contractor acting reasonably. The reduced amount will be an amount which is in the same proportion to the full amount of liquidated damages otherwise payable as is the value (as agreed by the parties or failing agreement, as determined reasonably by the Contractor) of that part of the Subcontract Works used or occupied is to the *Subcontract Price*.
5. The Subcontractor acknowledges that the rate for liquidated damages set out in *Subcontract Information* item 51B represents a genuine pre-estimate of the amount of loss or damage, as calculated at the Date of Subcontract, which the Contractor is likely to suffer if the Subcontractor fails to reach *Completion* by the *Contractual Completion Date*. The Subcontractor warrants that it will not challenge the rate for liquidated damages as being in the nature of a penalty.
6. The provisions of clauses 55.4 to 55.8 apply to a failure by the Subcontractor to achieve *Completion* by the *Contractual Completion Date*, in respect of the Subcontract Works and also in respect of any *Milestones*.

###### Acceleration

1. The Contractor may instruct the Subcontractor to accelerate progress of the carrying out of the Subcontract Works. The instruction must be in the form of an *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.
2. The Subcontractor is not entitled to payment under this clause 56 if no *Acceleration Notice* is issued.
3. Whenever possible, the parties must agree on the steps to be taken and basis for payment for acceleration before the Subcontractor takes those steps, or failing agreement, the Contractor must determine a reasonable value.
4. The Contractor must pay the Subcontractor for acceleration (as an addition to the *Subcontract Price*) if it achieves the acceleration instructed by the Contractor, but the value must take into account any relevant extensions of time which may be granted under clauses 41, 52 or 54 for delay during the period of acceleration.

###### Contractor’s suspension

1. The Contractor may instruct the Subcontractor to suspend progress of the Subcontract Works and *Temporary Work*, and the Subcontractor must comply.
2. The Subcontractor must resume carrying out the Subcontract Works and *Temporary Work*

when instructed to by the Contractor.

1. If the need for the suspension arises from the Contractor’s own act or omission, then the Subcontractor will be entitled to:
   1. any extension of time granted under clauses 52 or 54; and
   2. (as an addition to the *Subcontract Price*) its reasonable, direct Site and off-Site costs of the suspension, unavoidably incurred, having taken all reasonable steps to minimise the costs.
2. The Subcontractor has no other remedies in connection with the suspension.

###### Subcontractor’s suspension

1. The Subcontractor may suspend work for or in connection with the Subcontract if the Contractor:
   1. has both;
      1. become liable to pay the Subcontractor the full amount of a *Payment Claim* made in accordance with clause 62 (excluding payments already made), or the *Scheduled Amount*; and
      2. failed to pay it within the time prescribed by clause 63,

or

* 1. fails to pay the amount of a determination by an adjudicator under the *Building and Construction Industry (Security of Payment) Act 2009* (ACT).

1. Before it suspends work under this clause 58, the Subcontractor must give the Contractor at least 2 *Business Days* notice of its intention to do so. The Subcontractor may suspend work on expiry of the 2 *Business Days* if it has still not been paid.
2. The Subcontractor must resume all work within 3 *Business Days* of having been paid the amount referred to in clause 58.1.
3. If the Subcontractor elects to suspend work under this clause 58, then it may be entitled to an extension of time under clause 54, but despite clause 55, the Subcontractor will not be entitled to delay costs or damages under clause 55.

### Payment

###### The Subcontract Price

1. The *Subcontract Price*, and the rates and/or lump sums it includes, are not adjusted for rise or fall in the cost of labour or *Materials* provided by the Subcontractor, or for new, changed or increased taxes, duties or other imposts, unless expressly stated in the Subcontract.

*If specified in Subcontract Information item 40 that rise and fall adjustments are to be made, the provisions of Schedule 8 (Cost Adjustment Formula) apply.*

###### Schedules of Rates

1. At the Date of Subcontract, quantities in a *Schedule of Rates* are estimated only, and the Contractor does not guarantee either the estimated quantities or the descriptions of the items.
2. If a *Schedule of Rates* is included in the Subcontract, the *Subcontract Price* is the sum of the products of the quantities and the relevant rate for each item in the *Schedule of Rates*, plus all lump sums (if any). Before an item is completed, the estimated quantity is used in the calculation of the *Subcontract Price*. After an item is completed, the actual quantity measured in accordance with the Contract will be used in the calculation of the *Subcontract Price*.
3. The Subcontractor is entitled to payment of the *Subcontract Price* calculated for actual quantities measured in accordance with the Subcontract.

###### Provisional Sums and Provisional Quantities

*Provisional Sums and Provisional Quantities (if any) are shown in a Reference Subcontract Document listed at Contract Information item 17.*

1. The Subcontractor must carry out work which is the subject of a *Provisional Sum* as instructed by the Contractor, on the terms the Contractor specifies in the instruction.
2. If the Contractor instructs the Subcontractor to carry out work which will be the subject of a *Provisional Sum* the *Subcontract Price* will be adjusted as follows:
   1. The amount of the *Provisional Sum* specified in the Subcontract must be deducted from the *Subcontract Price*.
   2. The cost of work performed by a Sub-subcontractor or a Supplier under a Sub- subcontract or by a Consultant (excluding any amount payable due to default or negligence of the Subcontractor) must be added to the *Subcontract Price*, together with the amount calculated by applying the *Provisional Sum* margin percentage stated in *Subcontract Information* item 47 to the cost of work.
   3. The cost of any work performed directly by the Subcontractor, and the cost of *Materials* supplied directly by the Subcontractor (including in each case a reasonable allowance for overhead and profit), must be added to the *Subcontract Price* without a *Provisional Sum* margin.
3. If the Contractor does not instruct the Subcontractor to carry out work which is the subject of a *Provisional Sum* the amount allowed in the *Subcontract Price* for that work must be deducted from the *Subcontract Price*.
4. If the Contractor instructs the Subcontractor to carry out work which is the subject of a *Provisional Quantity* and that instruction requires the Subcontractor to carry out a greater or lesser quantity of work than the *Provisional Quantity*, including that no work the subject of the *Provisional Quantity* will be carried out, the *Subcontract Price* must be adjusted by the amount calculated by multiplying the contract rate applicable to the *Provisional Quantity* work by the difference between the *Provisional Quantity* and the quantity of work carried out.

###### Entitlements

1. Except as otherwise expressly stated under the Subcontract, the *Subcontract Price* is only to be increased if required under any of the following clauses:
   1. clause 10.4 (Temporary Work);
   2. clause 10.5 (Work methods);
   3. clause 41 (Site Conditions);
   4. clause 42 (Ambiguities);
   5. clause 49 (Testing);
   6. clause 52.5 (Variations);
   7. clause 55.1.1 (Delay costs);
   8. clause 56.4 (Acceleration);
   9. clause 57.3 (Contractor’s suspension);
   10. clause 59.3 (Subcontract Price - Schedules of Rates);
   11. clause 59.6 (Subcontract Price - Provisional Sums);
   12. clause 59.8 (Subcontract Price - Provisional Quantities); and
   13. clause 66 (Interest on late payments).
2. The *Subcontract Price* may be decreased if required by the Subcontract. Clauses that allow decreases in the *Subcontract Price* include:
3. clause 29.6 (Care of people and property);
4. clause 36.10 (Insurance – Proof of Cover)
5. clause 42 (Ambiguities);
6. clause 50.3 (Defects);
7. clause 51.2 (Acceptance with Defects not made good);
8. clause 52.5 (Variations);
9. clause 59.3 (Subcontract Price - Schedules of Rates);
10. clause 59.6, 59.7 & 59.8 (Subcontract Price - Provisional Sums and Provisional Quantities); and
11. clause 71.1 (After Completion).
12. The Subcontractor is not entitled to any other payments related to the subject matter of the Subcontract, under the Subcontract or otherwise, except:
    1. under clauses 64, 78 and 79;
    2. for breach of the Subcontract; or
    3. where this exclusion is not permitted by law.

###### Prepayment

*Prepayment* is an advance payment against the *Subcontract Price* which provides early cash flow to the Subcontractor, Sub-subcontractors, Suppliers and Consultants. They can keep the *Prepayment*, until it is deducted from amounts otherwise payable towards the end of the series of *Progress Payments* or *Milestone Payments*, unless the Subcontractor requests earlier return of *Undertakings* provided to the Principal in respect of the *Prepayment*. *Prepayment* may be utilised by the Subcontractor, Sub-subcontractors, Suppliers and Consultants for any purpose related to the Subcontract.

1. The Subcontractor may claim *Prepayment*, as advance payment against the *Subcontract Price* (separate from *Payment Claims*) at any time before achieving *Completion* if all the following apply:
   1. the total amount claimed for *Prepayment* is no more than the amount in

*Subcontract Information* item 44;

* 1. if required by the Contractor, and in consideration of the Principal accepting the *Undertaking* and providing the *Prepayment*, the Subcontractor has provided an *Undertaking* (additional to Undertakings required under clause 37) to the Principal for the amount of the *Prepayment* allocated to the Subcontractor; and
  2. the Contractor has assigned those *Prepayment* amounts directly to the Subcontractor, in writing, and has notified the Principal of the assignment.

1. The Subcontractor is entitled to receive payment of the amount claimed within 14 days after all the conditions in clauses 61.1.1 and 61.1.2 have been met.
2. The Contractor must cause the *Undertaking* provided for *Prepayment* to be returned, after deducting the value of the *Prepayment* made (as adjusted by any earlier such deductions) from payments otherwise payable to the Subcontractor, as follows:
3. on achieving *Completion* of the whole of the Subcontract Works;
4. as requested in writing by the Subcontractor; or
5. when the total of the *Prepayment* made (as adjusted by such deductions) and

*Payment Claims* to date equals or exceeds the *Subcontract Price*.

###### Payment Claims

The Subcontract allows for payment by regular (usually monthly) *Progress Payments*, or on the *Completion* of *Subcontract Milestones*. The two can be used together.

1. Unless otherwise specified in the Subcontract, the Subcontractor must make *Payment Claims* for the *Claimed Amount* based on the *Valued Completed* and as specified in clause

62. Subject to clause 62.2, *Payment Claims* must be made monthly on the date in each month specified in *Subcontract Information* item 49A, starting no earlier than the 14th day after the Date of Subcontract and ending with the *Final Payment Claim* referred to in clause 65. *Payment Claims* made monthly are to include amounts for work carried out to the end of the previous month.

1. If *Subcontract Information* item 49B specifies payment by *Subcontract Milestone Payment*, then the Subcontractor may only make a *Payment Claim* for the value of a *Subcontract Milestone* on its *Completion*. If *Subcontract Information* item 49B specifies payment by *Subcontract Milestone Payment* and monthly *Progress Payment*, then the Subcontractor must make a *Payment Claim* in accordance with this clause 62.2 for *Subcontract Milestone Payments* and clause 62.1 otherwise.
2. The Subcontractor must submit *Payment Claims* in the form of Schedule 3 (Payment Claim Worksheet), or in such other form to which the Contractor agrees.
3. A *Payment Claim* must:
   1. identify the work and *Materials* to which the *Payment Claim* relates;
   2. indicate the amount of the *Progress Payment* that the Subcontractor claims to be due for the work done to which the payment relates, in accordance with clause 62.1, after allowing for the retention of the *Completion Amount* under clause 64 and for payments already made, as the *Value Completed*; and
   3. be a tax invoice containing the information as set out in this Subcontract.
4. *Payment Claims* must show all *Subcontractor’s Claims*:
5. for amounts the Contractor has agreed to or is required to pay in connection with a *Subcontractor’s Claim* under clause 72 or another provision of the Subcontract; and
6. for interest (if any) due to the Subcontractor under clause 66.
7. *Payment Claims* must be accompanied by:
8. all relevant calculations;
9. a completed and true statutory declaration executed on the date of the *Payment Claim*, in the form of Schedule 7 (Statutory Declaration) relating to payment of

employees, Subcontractors, Suppliers and Consultants, workers compensation insurance premiums, payroll tax payments and to all Subcontract monies held in trust by the Contractor;

1. *Conformance Records* showing conformance with particular requirements of the Subcontract, as provided in the Subcontract, and the certificates in the form of Schedule 4 (Certificate of Compliance), signed by the Subcontractor and also by any Consultants involved in the work, verifying that all work that has been done including *Design* and construction with *Materials* that have been supplied are in accordance with the Subcontract; and
2. any other information specified in the Subcontract.
3. *Payment Claims*, the *Claimed Amount* and the *Value Completed* must not include amounts for:
4. subject to the provisions of clause 62.8, work or *Materials* not yet incorporated into the Subcontract Works; or
5. *Subcontractor’s Claims* (including *Subcontractor’s Claims* for *Variations* not agreed to by the Contractor, nor determined by the *Valuer*, nor determined under clause 52.4.2 or otherwise) not agreed to by the Contractor or *Subcontractor’s Claims* not yet determined, as referred to in clauses 72 to 75.
6. Subject to all of the following conditions, the Subcontractor may include an amount in a *Payment Claim* for *Materials* intended for incorporation in the Subcontract Works but not yet incorporated, if:
7. prior to the Subcontractor giving the *Payment Claim*, the Contractor agrees in writing to pay the Subcontractor for *Materials* not yet incorporated into the Subcontract Works;
8. the Subcontractor provides a detailed schedule of the specified *Materials* and evidence that the *Materials* are marked in the name of the Principal and are insured for their full value, no later than 14 days before submitting the *Payment Claim*;
9. prior to submitting the *Payment Claim* the Subcontractor provides an *Undertaking* to the Principal equal to the amount to be included in the *Payment Claim* for the specified *Materials* not yet incorporated into the Subcontract Works;
10. the only unfixed *Materials* included in the valuation are those that have become or, on payment for *Materials* still unfixed, will become the property of the Contractor free of any *Encumbrance*;
11. the Subcontractor provides to the Contractor evidence of the Subcontractor’s ownership; and
12. for any such *Materials* imported or to be imported into Australia the Subcontractor has given the Contractor a clean on board bill of lading for the *Materials*, drawn or endorsed to the order of the Principal, appropriate insurance certificates and a Customs invoice for the *Materials*.
13. The Subcontractor warrants for itself and for and on behalf of Sub-subcontractors and Suppliers that no *Encumbrance* exists over any *Materials* incorporated into the Subcontract Works by the Subcontractor. If the Subcontract or the Subcontractor’s employment under the Subcontract is terminated by the Contractor, the Subcontractor must ensure that the Contractor, in respect of any unfixed *Materials* for which payment has been made or which have been appropriated to the Subcontract, may enter upon any premises where the *Materials* are stored and take possession of these *Materials*.
14. For work carried out and allowed in each *Payment Claim*, the following applies in calculating the *Claimed Amount* and the *Value Completed*:
15. For work covered by a lump sum:
    1. The Subcontractor may claim a lump sum by instalments with each *Payment Claim* calculated as follows. The total of the lump sum instalments must never exceed the total of the lump sum.
    2. For each activity or element of the Works listed in Schedule 3 (Payment Claim Worksheet) under “activity” (column 1), record the percentage completed under “activity completed %” (column 4). The value of work claimed for that activity is the percentage of the “value of activity” or lump

sum (column 3) and is recorded under ”*Value Completed* $” (column 5). The subtotal of ”*Value Completed* $” amounts for all activities is recorded in column 5.

1. For work covered by a *Schedule of Rates*:
   1. For each item carried out listed in Schedule 3 (Payment Claim Worksheet) under “activity” (column 1), calculate the product of the “quantity completed” (column 4) actually carried out (measured in accordance with the Subcontract) and its rate (column 3) in the *Schedule of Rates* as the “*Value Completed* $” and record it in column 5.
   2. The subtotal of “*Value Completed* $” of work for all *Schedule of Rates* items is recorded in the *Payment Claim* Worksheet under “*Value Completed* $” (column 5).
2. The *Value Completed* at the time of the *Payment Claim* is the sum of the values of work completed (and subtotal “*Value Completed* $” amounts) calculated under clauses 62.10.1 and 62.10.2.

###### Payments

1. When given a *Payment Claim* by the Subcontractor, the Contractor must within 10

*Business Days*:

* 1. if it agrees with the *Payment Claim*, adopt it as its assessment; or
  2. if it disagrees with the *Payment Claim*, prepare its own assessment, in consultation with the Subcontractor if appropriate, and

give to the Subcontractor a *Subcontract Payment Schedule*.

1. The Contractor’s assessment in the *Subcontract Payment Schedule* must:
2. identify the *Payment Claim* to which it relates:
3. indicate the amount of the payment (if any) that the Contractor proposes to make as the *Scheduled Amount*; and
4. if the *Scheduled Amount* is less than the *Claimed Amount* (excluding payments already made) indicate why it is less and (if it is less because the Contractor is withholding payment for any reason), the Contractor’s reasons for withholding payment.
5. If the *Scheduled Amount* which the Contractor proposes to pay is less than the *Claimed Amount* (excluding payments already made), the Subcontractor may give notice of an *Issue* under clause 73, and if the *Payment Claim* is made under the *Building and Construction Industry (Security of Payment Act) 2009* (ACT), the Subcontractor may apply for adjudication for the difference.
6. Reasons why the *Scheduled Amount* may be less than the *Claimed Amount* (excluding payments already made) or for withholding payment include:
   1. disagreement with the *Claimed Amount*;
   2. progressive retention of the *Completion Amount* under clause 64;
   3. the costs and estimated costs associated with remedying *Defects*;
   4. amounts the Contractor is otherwise entitled to withhold, set-off or otherwise deduct;
   5. *Prepayment* deductions in accordance with clause 61; and/or
   6. exclusion of amounts the Contractor has not agreed, or is not required, to pay in connection with a *Subcontractor's Claim* under clause 72 or another provision of the Subcontract.
7. The Contractor must pay to the Subcontractor as a *Progress Payment* the *Scheduled Amount* by the later of:
8. the number of *Business Days* specified in *Subcontract Information* item 49C (or if no period is specified than 10 *Business Days*) after expiry of the 10 Business Day period in clause 63.1; and
9. the period specified in the Subcontract, after the Subcontractor takes any other actions and complies with any other obligations required which are stated in the Subcontract to be pre-conditions to payment before any payment is payable.
10. If the Contractor does not give the Subcontractor a *Subcontract Payment Schedule* within

10 *Business Days* after receiving a *Payment Claim* made under the *Building and Construction Industry (Security of Payment) Act 2009* (ACT), the Subcontractor may proceed to exercise its rights under the Act.

1. Unless the parties agree on another method, all payments to the Subcontractor must be made by electronic funds transfer to the Subcontractor’s account specified in the relevant *Payment Claim* Worksheet provided by the Subcontractor.
2. Payment by the Contractor is not evidence that the Contractor accepts the value, quantity or quality of work or that the Subcontractor has complied with the Subcontract or that the Subcontractor has any particular entitlement, and is payment on account only. Payments made by the Contractor do not affect or prejudice any of the Contractor’s rights, powers, remedies or defences and are subject to review pursuant to the provisions of clauses 73 to 75 or otherwise as permitted by the Subcontract (including by litigation).

###### Completion Amount

The *Completion Amount* provides an incentive; the earlier the Subcontractor achieves defect-free *Completion* of the whole of the Subcontract Works, the earlier the payment occurs.

1. The *Completion Amount*, if one is specified in *Contract Information* item 45, becomes an entitlement of the Subcontractor on *Completion* of the whole of the Subcontract Works. The Subcontractor may then claim it in the next *Subcontract Payment Claim*, subject to the Contractor’s right to set-off under clause 67.
2. The Contractor will retain the *Completion Amount* from *Subcontract Payment Claims*

when the *Value Completed* exceeds fifty percent (50%) of the *Subcontract Price*.

1. The Contractor will own any interest earned on the monies retained for the *Completion Amount*.

###### Final payment

This clause contains provisions which apply to the Subcontractor’s *Final Payment Claim* and the Contractor’s *Final Subcontract Payment Schedule* in addition to those in clauses 62 and 63.

1. The Subcontractor must submit a *Final Payment Claim* within 12 weeks after achieving *Completion* of the whole of the Subcontract Works. The *Final Payment Claim* must include any *Subcontractor’s Claim* not previously claimed in a *Payment Claim*, and which is then permitted under clauses 62 and 63 of the Subcontract, being a *Subcontractor’s Claim* agreed to by the Contractor or if not agreed, having been determined in accordance with the Subcontract.
2. Within 10 *Business Days* of receiving the *Final Payment Claim* (or, if the Subcontractor has not submitted a *Final Payment Claim*, within 13 weeks after achieving *Completion* of the whole of the Subcontract Works), the Contractor must give the Subcontractor a *Final Subcontract Payment Schedule* stating the amount payable by one party to the other and where the Subcontractor has submitted a *Final Payment Claim*, complying with the relevant provisions of clause 63.
3. Any payments by the Subcontractor to the Contractor in accordance with the *Final Subcontract Payment Schedule* must be made within a further 28 days after it is issued.

*Refer to clause 63 for provisions covering payments by the Contractor to the Subcontractor.*

1. Any other *Subcontractor’s Claim* not previously brought which the Subcontractor is then entitled under the Subcontract to bring must be made (separate from the *Final Payment Claim*) within 12 weeks after achieving *Completion* of the whole of the Subcontract Works. Otherwise it is barred. If the Contractor agrees to a *Subcontractor’s Claim* involving money under this clause 65.4, the Contractor will make payment within 28 days of such agreement or of it being determined in accordance with the Contract.
2. The issue of the *Final Subcontract Payment Schedule* is conclusive evidence that all necessary increases to the *Subcontract Price* or to any other entitlement of the Subcontractor have been made, except for those required by:
   1. arithmetical error; or
   2. valuation of *Variations* under clause 52 relating to a Subcontractor’s Claim made in accordance with clause 65.4; and
   3. resolution under clauses 72 to 75 (as applicable) of:
      1. any *Subcontractor’s Claim* (other than *Variations* valued under clause 52) made in accordance with clause 65.4; or
      2. any other *Issue* raised which may properly be raised in accordance with the Subcontract during a period of 28 days following the issue of the *Final Subcontract Payment Schedule*.
3. The *Subcontractor’s* liability under the Subcontract or otherwise is not affected by the issue of the *Final Subcontract Payment Schedule*. The Subcontractor’s liability continues until any limitation period under statute expires.

###### Interest on late payments

.1 A party which fails to make a payment by the time or by the last day of the period prescribed by the Subcontract must pay interest to the other party, at the rate in *Subcontract Information* item 50, for the period the payment is late.

###### Set-off

1. If the Contractor claims a sum under or arising out of the Subcontract, either in circumstances when *Subcontractor’s Insolvency* applies, or in relation to a matter for which the Principal has claimed a sum under the Contract, then it may:
   1. withhold, deduct or set-off the claimed sum against any sum to which the Subcontractor is otherwise entitled under or arising out of the Subcontract; and
   2. make a demand against the *Undertakings*, cash security or retention money provided under clause 37 for any amount of the claimed sum in excess of the sum to which the Subcontractor is then entitled.

### Completion

###### Early use

1. Before the Subcontractor achieves *Completion*, the Principal (and anyone authorised by the Principal) may use or occupy (but is not obligated to) any part of the Subcontract Works which is sufficiently complete, or the whole of the Subcontract Works and then:
   1. the Subcontractor’s responsibilities are not affected, except if they are reduced under clause 29.4 or if the Principal or the Contractor (or anyone authorised by the Principal or the Contractor to use or occupy any part of the Subcontract Works) causes the Subcontractor’s work to be hindered; and
   2. the Principal or the Contractor (as applicable) becomes responsible for any additional insurance required.
2. If the Principal or the Contractor requires to use or occupy any part or the whole of the Subcontract Works before the Subcontractor achieves *Completion*, as provided in clause 68.1, the Contractor must give not less than 21 days notice in writing to the Subcontractor that the Principal will be using or occupying a part or parts, or the whole of the Subcontract Works and must specify those parts, or that the whole of the Subcontract Works is, to be so used or occupied.
3. The Subcontractor must do everything necessary to provide to the Contractor promptly, but in any event no later than 14 days after receipt of the notice in clause 68.2, all documents and other things relevant to the parts to be used or occupied as are listed in the second paragraph of the definition of *Completion*, and to otherwise provide full assistance and cooperation to the Principal or the Contractor (as applicable) (and anyone authorised by the Principal or the Contractor (as applicable)) in the use and occupation of the Subcontract Works.

###### Completion

The Subcontract requires defect-free *Completion*. There is no concept of “practical completion” applying to the Subcontract. *Completion* applies to any *Subcontract Milestones* as well as to the whole of the Subcontract Works.

1. The Subcontractor must achieve *Completion* by the *Contractual Completion Date*.
2. When the parties agree that *Completion* has been achieved, each party acting reasonably, the Contractor must give the Subcontractor a notice stating the *Actual Completion Date*.

###### Close-out workshop

The close-out workshop is an opportunity to review the management of the Subcontract. It is also used to collect and provide feedback to the parties to enable them to improve the overall communication and management process for any possible future contracts. The purpose of the workshop is to provide a realistic assessment of the performance by the workshop participants.

1. If required by the Contractor, the Subcontractor must attend a close-out workshop convened by the Principal within 21 days after achieving *Completion* of the whole of the Works. The structure and processes that apply to evaluation and monitoring meetings under clause 6 apply to the close-out workshop.
2. Each party and any others who participate in the workshop must meet their own costs for attendance at the close-out workshop, and the parties to the Contract will share equally the other costs.

###### After Completion

1. At any time after *Completion*:
   1. the Contractor may instruct the Subcontractor to make good *Defects* within the time specified in a *Defect Notice*
   2. if the Subcontractor fails to make good the *Defects* in the time specified in the

*Defect Notice*, the provisions of clauses 50.3 and 50.4 will apply; and

* 1. the Contractor may instruct a *Variation* in connection with any *Defect* instead of requiring the *Defect* to be made good under clause 71.1.1.

1. This clause 71 does not reduce the Subcontractor’s liability, whether arising under the Contract or otherwise. The Subcontractor’s liability continues until any limitation period under statute expires.
2. This clause 71 does not affect the Contractor’s rights under clause 51.

# Claim and Issue resolution

This section provides a step-by-step procedure for handling *Subcontractor’s Claims* and *Issues*. Generally, the aim of the Subcontract is for the parties to resolve matters through discussions as soon as possible and within the times specified. Further steps are only needed if the parties have been unable to resolve matters between themselves.

### Claim resolution

###### Subcontractor’s Claims

1. Any *Subcontractor’s Claim* not made, assessed and determined under another provision of the Subcontract must be made, assessed and determined under this clause 72 (unless determination of the *Subcontractor’s Claim* is regulated by a separate procedure under any applicable legislation).

*These clauses deal with Subcontractor’s Claims made, assessed and determined under another provision of the Subcontract:*

1. *Site Conditions*
2. *Ambiguities (in part)*

*44 Adopting Contractor’s Documents*

*49 Testing*

*51 Acceptance with Defects not made good*

*53 Changes in Statutory Requirements*

*52 Variations (in part)*

1. *Extensions of time*
2. *Delay costs*
3. *Prepayment*
4. *Payment Claims*
5. *Completion Amount*
6. *Final payment (in part).*
7. Where the Subcontractor is entitled to make a *Subcontractor’s Claim* under a provision of the Subcontract including under clause 65.4, which does not specify a time for making the *Subcontractor’s Claim* or otherwise in relation to the Subcontract or the Subcontract Works, then the *Subcontractor’s Claim* must be made within 21 days from:
   1. the start of the event giving rise to it; or
   2. the time the event should have become known to the Subcontractor, with reasonable diligence on its part.
   3. If the Subcontractor fails to make a *Subcontractor’s Claim* within the specified time, the Subcontractor is not entitled to interest on any amount involved in the *Subcontractor’s Claim* for the period before the Subcontractor made the *Subcontractor’s Claim*. However, any *Subcontractor’s Claim* not made within the times specified in clause 65 is barred.
   4. Each *Subcontractor’s Claim* must include information sufficient for the Contractor to assess the *Subcontractor’s Claim*, without the need for further information. This includes the factual and legal basis, detailed quantification and responses by the Subcontractor to the questions set out in paragraphs 1.1 and 1.2 of the Schedule 6 (Expert Determination Procedure).
   5. The Contractor must assess a *Subcontractor’s Claim* and reach agreement about it with the Subcontractor or reject it, within 21 days after receiving the *Subcontractor’s Claim* with all information required by clause 72.4.
   6. If the Contractor agrees to a *Subcontractor’s Claim* involving money, the Subcontractor may claim the agreed amount only by including it in a *Payment Claim* under clause 62.9 or 65.1 (excluding a *Subcontractor’s Claim* made under clause 65.4, for which the Contractor will make payment within 28 days of such agreement or of it being determined in accordance with the Subcontract).
   7. If a *Subcontractor’s Claim* is rejected or not agreed it will be an *Unresolved Subcontractor’s Claim*, and then the Subcontractor may notify the Contractor that it disputes the rejection or failure to agree as an *Issue*, within 7 days after the end of the 21 day period referred to in clause 72.5.
   8. The provisions of clauses 72.2 to 72.7 (where no alternative provision applies or these provisions are not consistent with the context) apply generally to all *Subcontractor’s Claims* whether made under clause 72 or under another provision of the Subcontract.

### Issue resolution

###### Notification of Issue

1. The Subcontractor may dispute an assessment, determination or instruction of the Contractor, or an *Unresolved Subcontractor’s Claim*, by giving notice to the Contractor (copied to the Contractor’s senior executive named in *Subcontract Information* item 7A) of an *Issue* within 21 days after the assessment, determination or instruction, or within 7 days as provided in clause 72.7 for an *Unresolved Claim*.
2. Either party may give notice to the other (copied to that party’s senior executive) of an *Issue* (excluding an *Issue* referred to in clause 73.1, but including a claim by the Contractor) about the meaning or effect of the Subcontract, or about any matter arising under, out of or in any way connected with the Subcontract, within 21 days after becoming aware of the *Issue*.
3. The parties must follow the *Issue* resolution procedure in clauses 73, 74 and 75 before either commences proceedings or takes similar action
4. Subject to clauses 65 and 72, if the Contractor or the Subcontractor (as applicable) gives notice of an *Issue* but not within the time provided by clauses 73.1 and 73.2, (in the case of the Subcontractor) or within the time provided by the clause 73.2 (in the case of the Contractor) and it is resolved in favour of the party giving notice of the *Issue*, that party will not be entitled to interest on any amount involved in the *Issue* for the period before notice of the *Issue* was given.
5. The Contractor is not liable to pay damages (whether in contract, for negligence or otherwise) for making an incorrect assessment, determination or instruction.

*However, the Subcontractor will be entitled to the amount determined by an expert or the court, with simple interest as referred to in clause 66, from the date the expert or the court decides that the amount should have been paid.*

1. The Contractor’s assessments, determinations or instructions may, subject to this Contract, be reviewed and revised in any *Expert Determination* or court proceedings which might follow this *Issue* resolution procedure.
2. This *Issue* resolution procedure does not prevent a party from seeking an urgent declaration or injunction from a court.

###### Resolution by senior executives

1. If a party gives notice of an *Issue* under clause 73, the senior executives named in

*Subcontract Information* items 7A and 10 must promptly confer to try to resolve the *Issue*.

1. A party is not entitled to refer an *Issue* to *Expert Determination* until 14 days after giving notice of an *Issue* under clause 73.
2. A party may only refer an *Issue* to *Expert Determination* by giving notice to the other party (specifying the *Issue* to be decided and copied to that party’s senior executive) within the number of days specified in *Subcontract Information* item 53 or if no such period is specified, then within 21 days of becoming entitled to under clause 74.2.
3. An *Issue* for which notice has not been given within the time limited by and in the form prescribed by clause 74.3 is barred from *Expert Determination* or any other action or proceedings (including court proceedings).

###### Expert Determination

1. If issues have been referred to *Expert Determination* under the Contract which involve *Issues* referred to *Expert Determination* under the Subcontract, then unless the Principal objects:
   1. the Subcontractor is to be added as a party to the *Expert Determination* under the Contract; and
   2. the *Expert Determination* under the Subcontract is not to proceed.
2. If an *Issue* is to be referred to *Expert Determination* under clause 74, and clause 75.1.2 does not apply, the parties must endeavour to agree on the *Expert* to be engaged. If they cannot agree within 14 days of the receipt of a notice under clause 74.3, the *Expert* will be nominated (on the application of either party) by the person named in *Subcontract Information* item 55. That person must not nominate:
3. an employee of the Contractor or the Subcontractor;
4. a person who has been connected with the Subcontract Works or the Subcontract; or
5. a person who the Contractor and the Subcontractor have not been able to agree on.
6. When the person to be the *Expert* has been agreed or nominated, the Contractor, on behalf of both parties, must engage the *Expert* by letter of engagement (copied to the Subcontractor) setting out:
   1. the *Issues* referred to the *Expert* for determination;
   2. the *Expert’s* fees;
   3. the procedure for *Expert Determination* in Schedule 6 (Expert Determination Procedure); and
   4. any other matters which are relevant to the engagement.
7. The Contractor and the Subcontractor must share equally the fees and out-of-pocket expenses of the *Expert* for the determination, and bear their own costs.
8. The procedure for *Expert Determination* is set out in Schedule 6 (Expert Determination Procedure).
9. In answer to any *Issue* referred to the *Expert* by a party, the other party may raise any defence, set-off or cross-claim.
10. If the *Expert* determines that one party must pay the other an aggregated amount exceeding the amount in *Subcontract Information* item 56 (calculating the amount without including interest on it, and after allowing for set-offs), or if the *Expert’s* determination involves a finding which does not involve paying a sum of money, then either party may commence litigation in respect of the amount referred to above (which amount exceeds the amount in *Subcontract Information* Item 56) or the finding which does not involve paying a sum of money, as applicable, but only within 42 days after receiving the determination.
11. Unless a party has a right to commence litigation under clause 75.6:
12. the parties must treat each determination of the *Expert* as final and binding and give effect to it; and
13. if the *Expert* determines that one party owes the other money, that party must pay the money within 21 days.
14. The representative of the Contractor for all of the purposes of this clause 75 is the person specified in *Subcontract Information* item 54. This person (and his/her address) may differ from the person (and his/her address) for the giving of notices to the Contractor, as specified in clause 30.1.

###### Parties to perform the Subcontract

.1 During *Subcontractor’s Claim* and *Issue* resolution procedures under clauses 72 to 75, the parties must continue to perform their obligations under the Subcontract.

# Termination

### Termination

###### Termination for Subcontractor’s Default or Insolvency

1. The Contractor may terminate the Subcontractor’s employment under the Subcontract for *Subcontractor’s Default* or *Subcontractor’s Insolvency* by giving notice, as set out in this clause 77.
2. In the case of *Subcontractor’s Default*, the Contractor must first give notice to the Subcontractor that it has 4 days after the notice is given to the Subcontractor to remedy the *Subcontractor’s Default*.
3. If the Subcontractor fails to give the Contractor a notice containing clear evidence that it has remedied a *Subcontractor’s Default*, or fails to propose steps reasonably acceptable to the Contractor to remedy the *Subcontractor’s Default*, the Contractor may give the Subcontractor a notice terminating its employment under the Contract.
4. Nothing in this clause 77 affects or negates the Contractor’s common law rights to terminate or for damages.

*If a right to terminate exists at common law, a notice to terminate at common law may be given without first giving notice to remedy a default.*

1. In the case of *Subcontractor’s Insolvency*, the Contractor may give the Subcontractor a notice terminating its employment under the Subcontract.
2. If the Contractor terminates the Subcontractor’s employment under this clause 77, it may at its sole discretion, employ others to complete the Subcontract Works and all the following will then apply:
   1. The Subcontractor must leave the Site as soon as reasonably practicable and remove all *Temporary Work* it has brought onto the Site, but must leave any *Temporary Work* required by the Contractor to have the Subcontract Works completed.
   2. The Subcontractor must assign to the Contractor the Subcontractor’s rights and benefits in all its contracts concerning the Subcontract Works, warranties and unconditional undertakings, cash security, bank guarantees, insurance bonds, other security of a similar nature or purpose and retention money held by the Subcontractor, with effect from the date of termination of its employment under the Subcontract.
   3. The Subcontractor must consent to a novation to the Contractor or its nominee of all Sub-subcontracts and its other contracts concerning the Subcontract Works, as required by the Contractor and must procure at the time of entering into each Sub- subcontract and other contracts, the consent in writing of all of its Sub- subcontractors, Suppliers and Consultants to the novation. The Contractor may at any time make payments and may deduct, withhold or set-off any amounts to be paid under the novated contracts from amounts otherwise payable to the Subcontractor or from any *Undertakings* given on the Contractor’s behalf.
   4. The Subcontractor must do everything and sign all documents necessary to give effect to this clause 77, and it irrevocably appoints the Contractor as its attorney to do this in its name if it fails to do so.
   5. If, on *Completion*, the cost to the Contractor of completing the Subcontract Works exceeds the amount that would have been paid to the Subcontractor to complete them, taking into account any *Prepayments*, then the difference will be a debt due by the Subcontractor to the Contractor.
   6. The Contractor may make provisional assessments of the amounts payable to the Contractor under clause 77.6.5 and may demand them under the *Undertakings*.

###### Termination for Contractor’s convenience

1. The Contractor may terminate the Subcontract, by giving notice with effect from the date stated in the notice, for its convenience and without the need to give reasons.
2. The Subcontractor must comply with any instructions of the Contractor to wind down and stop work.
3. The Subcontractor must leave the Site by the date stated in the termination notice and remove all *Temporary Work* it has brought onto the Site for constructing the Subcontract Works, except for those items identified in the termination notice as to be retained on the Site.
4. After termination under clause 78.1, subject to its rights under the Subcontract, including clause 67, the Contractor must pay the Subcontractor:
   1. the *Value Completed* for all work carried out (as determined under clauses 62 and

63) to the date the termination notice takes effect, after taking into account previous payments and any *Prepayments*, and any deductions, retentions or set- offs under clauses 63, 64 or 67;

* 1. the cost of *Materials* reasonably ordered by the Subcontractor for the Subcontract Works which it is legally liable to accept, but only if on payment these unfixed *Materials* become the property of the Contractor, free of any *Encumbrance*;
  2. the reasonable, direct costs of removal of Temporary Work and other things from the Site incurred by the Subcontractor, but only if the Subcontractor complies with a strict duty to mitigate costs;
  3. an amount of 2% of the unpaid portion (after taking into account the amount payable under clause 78.4.1) of the *Subcontract Price*; and
  4. costs reasonably incurred by the Subcontractor in the expectation of completing the Subcontract Works and not included in any other payment by the Contractor.

1. The Contractor must return the *Undertakings*, cash security or retention money, subject to its rights under the Subcontract.
2. The payments referred to in clause 78.4 are full compensation for termination under this clause 78, and the Subcontractor has no *Subcontractor’s Claim* for damages or other entitlement whether under the Subcontract or otherwise.
3. The Subcontractor must, wherever possible, include in all Sub-subcontracts and other contracts an equivalent provision to this clause 78.

###### Termination for Contractor’s default

1. If the Contractor fails to pay the Subcontractor any amount in accordance with the Subcontract which is not in dispute, or commits any fundamental breach of the Subcontract, then the Subcontractor may give notice requiring the Contractor to remedy the default within 21 days after receiving the notice.
2. If the Contractor fails to remedy the default, or fails to propose steps reasonably acceptable to the Subcontractor to do so, the Subcontractor may issue a notice terminating the Subcontract and clauses 78.3 to 78.6 will then apply and the Contractor must pay the Subcontractor the applicable amounts referred to in clause 78.4 as its sole remedy and in full compensation for the Contractor’s breach.
3. In the case of *Contractor’s Insolvency*, the Subcontractor may terminate the Subcontract by giving notice to the Contractor, and clauses 78.4 to 78.6 apply.
4. If the Subcontractor terminates the Subcontract, it must leave the Site as soon as reasonably practicable and remove all *Temporary Work* it has brought onto the Site for constructing the Subcontract Works.
5. The Subcontractor has no other right to terminate the Subcontract, under the common law or otherwise.

###### Termination of Contract

1. If the Contract is terminated, then the Subcontract is deemed to have been terminated, with effect on the date of termination of the Contract.
2. If the Contractor’s employment under the Contract is terminated, then the Subcontractor’s employment under the Subcontract is deemed to have been terminated, with effect on the date of termination of the Contractor’s employment under the Contract.
3. In either case, the Contractor must promptly give the Subcontractor a copy of the relevant notice of termination given under the Contract.
4. If this action is taken for reason of *Contractor’s Default* or *Contractor’s Insolvency* under the Contract, then:
   1. the Subcontractor must accept a novation of this Subcontract to the Principal, if required by the Principal; and
   2. clauses 78.4 to 78.6 apply.

###### Termination notices

.1 Notices under clauses 77, 78 and 79 must be in writing and be delivered by hand, registered post or equivalent, or facsimile.

# Meanings

### Meanings

###### Interpretation

1. Words in the singular must be interpreted to include the plural, and vice versa.
2. No legal interpretation applies to the disadvantage of any party on the basis that the party provided the *Contract Documents*, or any part of them.

###### Definitions

Some words and phrases have special meanings in the Contract. In some cases, the defined meaning is different from the meaning that the word or phrase might have in ordinary usage, or it might include conditions that don’t normally apply. In order to understand the Contract, you need to take these special meanings into account.

All defined words and phrases have initial capitals (except for ‘*day*’) and are in italics in the GC21 Subcontract unless they are one of the following 12 basic terms, which appear too often for italics to be used:

|  |  |
| --- | --- |
| * Consultant | * Site |
| * Contract | * Subcontract |
| * Contractor | * Subcontractor |
| * Date of Subcontract | * Subcontract Works |
| * day | * Sub-subcontractor |
| * Principal | * Supplier |

1. Wherever the following words and phrases are used in this Subcontract with initial capitals (except for ‘day’), they have the special meanings set out opposite them in this clause 83 unless the context requires otherwise.
2. There are a number of other words or phrases used in the Contract with initial capitals and italicised, which have the special meanings set out opposite the first reference to that word or those phrases and those meanings apply in this Subcontract, unless the context otherwise requires.

### Meanings of words and phrases

###### Acceleration Notice

A written instruction under clause 56.1 by the Contractor to the Subcontractor to accelerate progress of the Subcontract Works, titled ”*Acceleration Notice”*.

###### Actual Completion Date

The date on which *Completion* of the Subcontract Works or of a Subcontract *Milestone*

(as applicable) is achieved by the Subcontractor.

###### Australian Standard (AS)

means a standard published by Standards Australia Limited.

###### Business Day

Any day other than a Saturday, Sunday, public holiday in the Australian Capital Territory, or 27, 28, 29, 30 or 31 December.

###### Certificates of Compliance

Certificates in the form of Schedule 4, as referred to in clause 63.5.2.

###### Claimed Amount

The amount claimed by the Subcontractor in a *Payment Claim*.

###### Codes

Those codes specified in *Contract Information* item 14.

###### Commonwealth

The Commonwealth of Australia.

###### Completion

The state of the Subcontract Works or a *Subcontract Milestone* (as applicable) being complete, except for *Defects* not known.

This includes, without limitation:

1. the supply to the Contractor of all Schedule 1 Subcontractor’s Warranties, operating and maintenance manuals, licences, access codes, as-built drawings or work-as- executed drawings;
2. certificates, authorisations, approvals and consents from statutory authorities and service providers;
3. those certificates required for the occupation, use and maintenance of the Subcontract Works; and
4. all other documents, *Testing*, training and other requirements specified in the Subcontract.

###### Completion Amount

An amount stated in *Subcontract Information* item 45 and included in the *Subcontract Price*, which under clause 64 may be claimed by the Subcontractor after the *Actual Completion Date* of the whole of the Subcontract Works.

###### Completion Undertaking

The *Undertaking* required under clause 37.1, for the percentage of the *Subcontract Price*

(at the Date of Subcontract) specified in *Subcontract Information* item 33.

###### Conformance Records

Records which show conformance by the Subcontractor with particular requirements of the Subcontract, as provided in the Contract and as referred to in clause 63.

###### Consultant

A consultant engaged by the Subcontractor to design parts of the Subcontract Works or to provide other professional services. It includes a consultant whose Subcontract with the Contractor is novated to one with the Subcontractor.

###### Contract

The agreement between the Contractor and the Principal, as specified in *Subcontract Information* item 3B.

###### Contractor

The party named as such in *Subcontract Information* item 4, and including its successors and permitted assigns.

###### Contractor’s Authorised Person

The person appointed to act for the Contractor in terms of clause 2, as named in

*Subcontract Information* item 5.

###### Contractor’s Documents

The design and other documents prepared by the Contractor for the Subcontract and provided to the Subcontractor at the Date of Subcontract and included in the *Subcontract Documents*, and any modified or further such documents later provided by the Contractor to the Subcontractor for the Subcontract.

###### Contractor’s Margin

An amount or proportion added for profit and additional overhead costs (including administration, supervision, establishment and attendance costs) incurred solely as a result of a *Variation*, but not including any overhead costs relating to delay, disruption or interference caused by the *Variation*.

###### Contractual Completion Date

The date (or the last day of the period) specified in *Subcontract Information* item 13 on, or by which, the Subcontractor must achieve *Completion* of the Subcontract Works or of a *Subcontract Milestone* (as applicable), as may be adjusted under clauses 41, 52 and 54.

###### Data

Drawings, sketches, specifications, digital records and computer software and all other data and information relating to the Subcontract.

###### Date of Subcontract

The date of the *Letter of Award* or if no *Letter of Award* is issued by the Contractor to the Contractor, the date the *Subcontract Agreement* is signed by the Contractor after the Subcontractor has signed it.

###### day

A calendar day, including all *Business Days* and non-Business Days.

###### Defect

Includes an error, omission, shrinkage, blemish in appearance or other fault in the Works or which affects the Works, which results from a failure of the Subcontractor to comply with the Subcontract.

###### Defect Notice

A notice issued by the Contractor under clause 50.2 or 71.1 instructing that specified

*Defects* be made good within a given period.

###### Design

*Design* of the Subcontract Works to be carried out by the Subcontractor, including the completion of any of the Contractor’s design work which is described in the *Contractor’s Documents*, to the extent specified in *Subcontract Information* item 37; *Designed*, the *Design*, and other derivatives of *Design* have a corresponding meaning.

###### Encumbrance

Any mortgage, charge, lien, title retention, trust, power or other encumbrance.

###### End Users

Persons to be involved in using or occupying any part of the Subcontract Works, as referred to in clause 45.2.

###### Excepted Risks

Any of the following:

|  |  |
| --- | --- |
| .1 | any negligent act or omission of the Contractor, the *Contractor’s Authorised Person*  or the employees, consultants or agents of the Contractor; |
| .2 | any risk specifically excepted in the Subcontract; |
| .3 | war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), act of terrorism, civil war, rebellion, revolution. Contractor is maintaining complete records to account for the cash. The records are available to the relevant Subcontractors and the Principal on request., insurrection or military or usurped |

|  |  |
| --- | --- |
|  | power, martial law or confiscation by order of any Government or public authority; or |
| .4 | ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Subcontractor or the Subcontractor’s employees or agents. |

###### Expert

A person engaged to determine *Issues* under clause 75.

###### Expert Determination

The process of determination of an *Issue* by an *Expert*, under clause 75 and the procedure in Schedule 6 (Expert Determination Procedure).

###### Fault

Ambiguity, inconsistency, discrepancy, omission, error or other fault.

###### Final Payment Claim

A *Payment Claim* given by the Subcontractor to the Contractor under clause 65.1.

###### Final Subcontract Payment Schedule

A *Payment Schedule* given by the Contractor to the Subcontractor under clause 65.2.

###### Further Site Information

Site information obtained after the Date of Subcontract by the Subcontractor.

###### Intellectual Property Rights

Includes copyright, patent right, registered design, trade mark or name and other protected rights.

###### ISO

International Standardization Organisation

###### Issue

Any issue, dispute or difference raised by either party under clause 73.

###### Letter of Award

A letter from the Contractor to the Subcontractor awarding the Subcontract to the Subcontractor as referred to in clause 7.

###### Materials

Includes materials, plant, equipment and other goods.

###### Milestone Payment

A payment to the Subcontractor on *Completion* of a *Subcontract Milestone*.

###### Payment Claim

A *Subcontractor’s Claim* for payment made by the Subcontractor to the Contractor under clauses 62 or 65.

###### Personal Information

Information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent or can reasonably be ascertained from the information or opinion.

###### Policy

The policy of insurance for material damage to the Works and liability to third parties arising from the Works, taken out by the Principal, the details of which are set out in the Contract.

###### Post-Completion Undertaking

The *Undertaking* required under clause 37.1, for the percentage of the *Subcontract Price*

(at the Date of Subcontract) specified in *Subcontract Information* item 34.

###### Prepayment

The amount to be advanced to the Subcontractor in accordance with clause 61 and

*Subcontract Information* item 44.

###### Principal

The entity named as such in *Subcontract Information* item 3C.

###### Progress Payment

A payment by the Contractor in response to a *Payment Claim*, on account of the

*Subcontract Price*.

###### Provisional Sum

A sum included in the *Subcontract Price* and identified as a provisional, monetary, prime cost, contingency or other such sum or allowance for the work specified in the Subcontract against that sum or allowance.

###### Provisional Quantity

The quantity of an item of work which is specified in the Subcontract, but the quantity of which or whether that item of work will actually be required is not known definitively at the Date of Subcontract.

###### Reference Subcontract Documents

The documents expressly referred to as such in *Subcontract Information* item 17 and forming part of the Contract.

###### Schedule of Rates

Any schedule in the Subcontract stated to be a *Schedule of Rates*, and which shows rates payable for carrying out items of work described in the schedule.

###### Scheduled Amount

The amount of payment (if any) stated in a *Payment Schedule*, that the Contractor proposes to make in relation to a *Payment Claim* as referred to in clause 63.2.2.

###### Scheduled Progress

The rate of progress to be achieved by the Subcontractor in *Designing* and constructing the Subcontract Works, such that the Subcontractor is proceeding with due expedition and without undue delay (other than a delay for which the *Contractual Completion Date* is adjusted under the Subcontract), so that it will (or is likely to) complete the Subcontract Works and all *Subcontract Milestones* by their respective *Contractual Completion Dates*.

###### Site

The lands and other places to be made available by the Contractor to the Subcontractor for the purpose of executing the Subcontract Works, and including any existing buildings, services or other improvements, as specified in *Subcontract Information* item 2.

###### Site Conditions

Any physical conditions of the Site (including sub-surface conditions, but excluding weather conditions or physical conditions which are a consequence of weather conditions) encountered in the execution of the Subcontract Works.

###### Statutory Requirements

The laws relating to the Subcontract Works, the Site, or the environment or the lawful requirements of any authority or provider of services having jurisdiction over the Subcontract Works, the Site, or anyone or anything connected with the Subcontract Works, the Site or otherwise relating to the Subcontract.

###### Subcontract

An agreement constituted by the *Subcontract Documents.*

###### Subcontract Agreement

An agreement in the form annexed to the Subcontract.

###### Subcontract Documents

All the documents listed or referred to in clause 7.1.

###### Subcontract Information

The document described as such in the *Subcontract Documents*, which sets out information for the purposes of the Subcontract.

###### Subcontract Milestone

A part of the Subcontract Works specified as such in *Subcontract Information* item 13.

###### Subcontract Payment Schedule

A payment schedule containing the Contractor’s assessment of a *Payment Claim* and stating the amount the Contractor proposes to pay as the *Scheduled Amount*, as referred to in clause 63.

###### Subcontract Price

The amount stated as such in *Subcontract Information* item 43, subject to adjustment in accordance with the Subcontract.

###### Subcontract Program

The program described in clause 25.

###### Subcontract Works

The works to be *Designed* and constructed by the Subcontractor, as referred to in clause 10, including all works and items of the type referred to in clause 10.1 and *Variations*, but excluding *Temporary Work*; it applies to the Subcontract Works as a whole and also to any part of the Subcontract Works unless stated otherwise or the context requires otherwise.

###### Subcontractor

An entity engaged by the Contractor to carry out part of the Subcontract Works or the *Temporary Work*, or both, and named as that party in *Subcontract Information* item 8. It includes its successors and permitted assigns

###### Subcontractor’s Authorised Person

The person appointed to act for the Subcontractor under clause 2, including as named in

*Subcontract Information* item 9.

###### Subcontractor’s Claim

A claimed entitlement of the Subcontractor under or arising out of or connected with the Subcontract, in tort, in equity, under any statute, or otherwise. It includes a claimed entitlement to an extension of time or for breach of Subcontract by the Contractor.

###### Subcontractor’s Default

1. substantial breach of the Subcontract by the Subcontractor, including, without limitation, any of the following:

|  |  |
| --- | --- |
| .1 | abandoning the carrying out of the Subcontract Works; |
| .2 | suspending progress of the carrying out of the Subcontract Works in whole or part without the written agreement of the Contractor, except for suspension under clause 58; |
| .3 | significantly failing to achieve *Scheduled Progress*; |
| .4 | failing to comply with an instruction in writing or confirmed in writing by the Contractor; |
| .5 | failing to carry out the Subcontract Works with professional skill, care and competence; |
| .6 | failing to maintain any registration or licence required by law to carry on activities required under the Subcontract; |
| .7 | failing to provide security as required under clause 37 of the Subcontract; or |
| .8 | failing to effect and maintain insurance policies as required under the Subcontract. |

###### Subcontractor’s Documents

Both:

|  |  |
| --- | --- |
| .1 | drawings, specifications, calculations and other documents and information, meeting the requirements of clause 43, which the Subcontractor must produce to *Design* and construct the Subcontract Works in accordance with the Subcontract; and |
| .2 | documents which become *Subcontractor’s Documents* under the Subcontract, including *Contractor’s Documents* checked, accepted and adopted under clause 44. |

###### Subcontractor’s Insolvency

Any of the following applying to the Subcontractor:

|  |  |
| --- | --- |
| .1 | insolvency; |
| .2 | the Subcontractor indicates it does not have the resources to perform the Subcontract; |
| .3 | an application for winding up is made which is not stayed within 14 days; |
| .4 | a winding-up order is made; |
| .5 | a controller, administrator, receiver, receiver and manager, provisional liquidator, or liquidator is appointed; |
| .6 | a mortgagee enters into possession of any property of the Subcontractor; |
| .7 | notice is given of a meeting of creditors for the purposes of a deed of arrangement; or |
| .8 | any actions having a similar effect are taken. |

###### Sub-subcontract

An agreement between the Subcontractor and its Sub-subcontractor or a Supplier.

###### Sub-subcontractor

An entity engaged by the Subcontractor to carry out part of the Subcontract Works Works or *Temporary Work*, or both.

###### Supplier

An entity engaged by the Subcontractor to supply part of the Subcontract Works or

*Temporary Work*, or both.

###### Temporary Work

Temporary structures, amenities, physical services and other work, including *Materials*, plant and equipment used in or in relation to the carrying out of the Subcontract Works but not forming part of the Subcontract Works.

###### Territory

Means:

1. when used in a geographical sense, the Australian Capital Territory;
2. when used in any other sense, the body politic established by section 7 of the

*Australian Capital Territory (Self-Government) Act 1988* (Cwlth).

###### Territory Information

The kind of information that:

1. is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Principal which are by their nature confidential;
2. is notified (whether in writing or not) by the Principal to the Contractor as being confidential,

but does not include information which:

1. is or becomes public knowledge other than by breach of this Subcontract;
2. has been independently developed or acquired by the Subcontractor; or
3. has been notified in writing by the Principal to the Contractor as being not confidential.

###### Test

Examine, inspect, measure, prove and trial, including opening up of any part covered up, if necessary; *Testing* and other derivatives of *Test* have a corresponding meaning.

###### Undertaking

An unconditional undertaking to pay on demand, in the relevant form of Schedule 2 (Undertaking), provided as security by the Subcontractor.

###### Unresolved Subcontractor’s Claim

A *Subcontractor’s Claim* rejected or not agreed under clause 72.7.

###### Value Completed

The value of work (including *Design*) carried out by the Subcontractor and incorporated into the Subcontract Works, as referred to in clause 62.

###### Valuer

The entity engaged to determine time and cost matters under the Contract.

###### Variation

Any change to the Subcontract Works including additions, increases, omissions and reductions to and from the Subcontract Works, but not including such changes or otherwise in respect of the development by the Subcontractor of *Design* (including without limitation development of shop drawings and other *Subcontractor’s Documents*) in accordance with the requirements of the Subcontract, and not including omissions of the type referred to in clause 10.1.3.

###### WHS Codes of Practice

Any code of practice approved in accordance with *WHS Legislation.*

###### WHS Legislation

The *Work Health and Safety Act 2011* (ACT) and the associated regulations and the WHS Codes of Practice together with all other legislation applicable in the Territory dealing with work, health and safety matters from time to time.

# Subcontract Agreement

Refer to clause 7 of the GC21 Subcontract

###### Definition

|  |  |
| --- | --- |
|  | **This Subcontract** |
| *Subcontract title:* | » |
| *Subcontract number:* | » |
| *Dated:* | » …………………….…………………………………………. |
|  | **is made between** |
| *The Contractor:* | » ……………………………………………………………….. |
|  | »ABN………………….………………………………………. |
|  | **and** |
| *The Subcontractor:* | » …………………….………….……………………………… |
|  | ABN » ……………………………………………………….… |

**Agreement**

**The parties agree:**

1. The Subcontractor must:
   1. *Design* and construct the Subcontract Works to *Completion* in accordance with the Subcontract; and
   2. perform and observe all its other obligations under the Subcontract.
2. The Contractor must:
3. pay the Subcontractor the *Subcontract Price* (on the basis of a lump sum, schedule of rates or a combination of these as specified in the Subcontract) for its performance, in accordance with and subject to the Subcontract; and
4. perform and observe all its other obligations under the Subcontract.
5. The Subcontract is defined in the attached GC21 Subcontract.
6. The attached *Subcontract Information* forms part of the Subcontract.
7. Words in this *Subcontract Agreement* have the meanings given in the GC21 Subcontract.

###### Executed as an agreement on the date stated above

Executed for and on behalf of the subcontractor by its duly authorised officers:

|  |  |
| --- | --- |
| ………………………………………….. | ………………………………………….. |
| *Signature of Director/Secretary* | *Signature of Director* |
| ………………………………………….. |  |
| Executed for and on behalf of the Contractor by its duly authorised officers |  |
|  | ………………………………………….. Signature of director |
| ………………………………………….. |  |

GC21 SUBCONTRACT DEED OF SUBCONTRACT AGREEMENT

*Signature of director/secretary*

###### item

**Subcontract Information**

The *Subcontract Information* is part of the Subcontract. Words and phrases are defined in clause 83.

**Project, Subcontract & Contract**

###### Project and Subcontract name

|  |  |
| --- | --- |
| The project name is: | » |

|  |  |
| --- | --- |
| The Subcontract name is: | » |

###### Site

|  |  |
| --- | --- |
| The Site is: | » |

1. **Description of the Subcontract Works** **A – The Subcontract Works**

|  |  |
| --- | --- |
| Description of the Subcontract Works: | » |

**B – The Contract**

*Mentioned in clauses 40 & 83*

*Mentioned in clauses 10 & 83*

|  |  |
| --- | --- |
| The Contract is: | The agreement dated »  between the Principal and the Contractor.  »  Contract No: » |

###### C – The Principal

|  |  |
| --- | --- |
| The Principal is: | » |

**Contractor’s details**

###### Contractor

|  |  |
| --- | --- |
| The Contractor is: | »  ABN » |

##### Contractor’s Authorised Person

|  |  |
| --- | --- |
| The *Contractor’s Authorised Person* is: | » |

###### Notices to the Contractor

*Mentioned in clause 2*

*Mentioned in clause 30*

Notices must go to the *Contractor’s Authorised Person* listed above, at the address or number shown here.

|  |  |
| --- | --- |
| Office address: | » |
| (for delivery by hand) | » |
|  | » |
|  | » |
| Postal address: | » |
| (for delivery by registered post) | » |
|  | » |
|  | » |
| Facsimile number: | » |
| e-mail address | » |

###### Senior executive

**A - Contractor’s senior executive**

*Mentioned in clauses 73 & 74*

|  |  |
| --- | --- |
| The Contractor’s senior executive is: | » |

###### B - Documents copied to the Contractor’s senior executive

*Mentioned in clause 73* When documents must be copied to the Contractor’s senior executive the address is as follows:

|  |  |
| --- | --- |
| Office address: | » |
| (for delivery by hand) | » |
|  | » |
|  | » |
| Postal address: | » |
| (for delivery by registered post) | » |
|  | » |
|  | » |
| Facsimile number: | » |
| e-mail address | » |

### Subcontractor’s details

###### Contractor

The following information in the *Subcontract Information* Items 8 to 11 is to be provided by the tenderer in the Tender Schedule (Schedule of *Subcontract Information*).

Details must then be inserted by the Contractor at the Subcontract award.

|  |  |
| --- | --- |
| The Subcontractor is: | ..……………………………………………  ..…………………………………………… ABN ..……………………………………... |

##### Subcontractor’s Authorised Person

*Mentioned in clause 2*

|  |  |
| --- | --- |
| The *Subcontractor’s Authorised Person*  is: | ..…………………………………………… |

###### Senior executive

*Mentioned in clause 74*

|  |  |
| --- | --- |
| The Subcontractor’s senior executive is: | ..…………………………………………… |

###### Notices to Subcontractor

*Mentioned in clause 30*

Notices must go to the personnel listed above, at the address or number shown here.

|  |  |
| --- | --- |
| Office address: | ..…………………………….……………… |
| (for delivery by hand) | ..……………………………….…………… |
|  | ..……………………………….…………… |
|  | ..………………………….………………… |
| Postal address: | ..…………………………….……………… |
| (for delivery by registered post) | ..……………………………….…………… |
|  | ..……………………………….…………… |
|  | ..………………………….………………… |
| Facsimile number: | ..…………….……………………………… |
| e-mail address | ..………………………….………………… |

### Dates and times

###### Date of Subcontract

*Mentioned in clause 83*

Date to be inserted by the Contractor at Subcontract Award. This is the date the Contractor signs the *Subcontract Agreement* after the Subcontractor has signed, or the date of the Contractor’s *Letter of Award* to the Contractor (as applicable).

|  |  |
| --- | --- |
| Date of Contract is: | ..…………………………………………….  (“The date of the Letter of Award” applies if not filled in). |

###### Contractual Completion Date and times

*Mentioned in clause 83*

*The time periods for Completion include the 14 days or other time periods referred to in Clause 38.*

###### Whole of the Subcontract Works

|  |  |
| --- | --- |
| Time period for access to the Site is | 14 days from *Date of*  *Subcontract*. |

|  |  |
| --- | --- |
| Time period for *Completion* is: | » weeks from *Date of Subcontract* |

**Whole of the Subcontract Works and Subcontract Milestones**

*Insert number of weeks for the milestones (eg ‘52 weeks’).*

*Add time periods for possession of the whole of the site or parts of the site if Milestones are required, describe them and add times to suit each.*

*Ensure the whole of the Subcontract Works is covered by the Subcontract Milestones.*

###### Subcontract Milestone 1

|  |  |
| --- | --- |
| Description of *Subcontract Milestone*: | » |
| Time period for possession of the Site is: | » |
| Time period for *Completion* is: | » weeks from » |

**Subcontract Milestone 2**

|  |  |
| --- | --- |
| Description of *Subcontract Milestone*: | » |
| Time period for possession of the Site is: | » |
| Time period for *Completion* is: | » weeks from » |

**Subcontract Milestone 3**

|  |  |
| --- | --- |
| Description of *Subcontract Milestone*: | » |
| Time period for possession of the Site is: | » |
| Time period for *Completion* is: | » weeks from » |

###### Codes

*When additional Milestones are required copy and paste the format above to ensure the whole of the works is covered by the Milestones.*

### ACT Government requirements

*Mentioned in clause 13*

The *Codes* that apply are:

###### Principal contractor

**Not Used**

###### Construction requirements

**Work Health and Safety Management**

*Mentioned in clause 15.2 and 15.3.*

|  |  |
| --- | --- |
| Is the Subcontractor required to submit a Work Health and Safety Management Plan? (Yes/No) | »  (“Yes” applies if not filled in). |
| Is the Subcontractor required to submit Safe Work Method Statements? (Yes/No) | »  (“Yes” applies if not filled in). |

## Reference Subcontract Documents

##### Reference Subcontract Documents

*Mentioned in clause 7.1.5*

|  |  |
| --- | --- |
| The *Reference Subcontract Documents* are: (*Subcontract Agreement* / *Letter of Award*). | »  *(Letter of Award* applies if not filled in); and  » |

## Contractor’s Documents

1. **Copies of *Contractor’s Documents***

*Mentioned in clause 7.4*

|  |  |
| --- | --- |
| The number of copies of the *Contractor’s Documents* to be provided to the Subcontractor is: | 5  (“5” applies if not filled in). |

## Subcontractor’s Documents

1. **Copies of *Subcontractor’s Documents***

*Mentioned in clause 45.1*

|  |  |
| --- | --- |
| The number of copies of the *Subcontractor’s Documents* to be provided to the Contractor is: | 5  (“5” applies if not filled in). |

### Sub-subcontract work

###### Use of GC21 Subcontract Not Used

###### Use of equivalent clauses

*Mentioned in clauses 31.3 & 31.4*

|  |  |
| --- | --- |
| Sub-subcontract value requiring use of equivalent clauses is: | $25,000.00 (must be the same as the value in  the *Contract Information* item 21 of the Contract) |

###### Payment for minor Sub-subcontract

*Mentioned in clause 31.3*

|  |  |
| --- | --- |
| Maximum period before payment for minor Sub-subcontract: | 15 business days (must be the same as the value in the *Contract Information* item 22 of  the Contract) |

##### Preferred Subcontractors

###### Not used

##### Prequalified Contractors

**Not used**

###### Subcontractor’s warranty

*Mentioned in clause 33.1*

|  |  |
| --- | --- |
| Trades or areas of work requiring a Subcontractor’s warranty are: | »  (“Not required” applies if not filled in). |

### Insurance by the Contractor (or Principal)

*Mentioned in clause 36.1A*

###### Works Insurance

|  |  |
| --- | --- |
| Minimum cover: | See *Policy* for details |
| Insurer: | As per Contract |
| Policy number: | As per Contract |
| Period of cover: | Until issue of *Final Subcontract Payment Schedule*. |

###### Public liability

|  |  |
| --- | --- |
| Minimum cover: | » |
| Insurer: | » |
| Policy number: | » |
| Period of cover: | Until issue of *Final Subcontract Payment Schedule*. |

###### Professional indemnity

|  |  |
| --- | --- |
| Is a professional indemnity policy to be held by the Subcontractor? | »  (“Yes” applies if not filled in). |
| Minimum cover: | $.…………………………………………………….. |
| Insurer: | ………………………………….…………………… |
| Policy number: | ………………………………….…………………… |
| Period of cover: | ………………………………….…………………… |

###### Asbestos liability

|  |  |
| --- | --- |
| Minimum cover: | Asbestos related insurance only as required by law. |

###### Marine liability

|  |  |
| --- | --- |
| Minimum cover: | $.…………………………………………………….. |

**Insurance by the Subcontractor**

###### Workers compensation

*Mentioned in clause 36.3*

*Details to be provided by preferred tenderer and inserted by the Contractor.*

|  |  |
| --- | --- |
| Minimum cover: | As required by law. |
| Insurer: | ………………………………….…………………… |
| Policy number: | ………………………………….…………………… |
| Period of cover: | Until issue of *Final Subcontract Payment Schedule.* |

###### Not used

**Security**

##### Completion Undertaking

|  |  |
| --- | --- |
| Percentage of the *Subcontract Price* at  the Date of Subcontract is: | » |

##### Post-Completion Undertaking

|  |  |
| --- | --- |
| Percentage of the *Subcontract Price* at  the Date of Subcontract is: | » |

1. **Return of *Post-Completion Undertaking***

*Mentioned in clause 37.1*

*Mentioned in clause 37.1*

*Mentioned in clause 37.2.2*

|  |  |
| --- | --- |
| Period for return of *Post-Completion Undertaking* is: | » months (12 months if not filled in). |

### Site information

###### Site information

*Mentioned in clause 40*

*Information contained in the documents listed in Items 36A and 36B does not form part of the Contract:*

###### A - Documents not guaranteed for completeness

|  |  |
| --- | --- |
| Documents not guaranteed for  completeness are: | » |

1. **- Documents not guaranteed for accuracy, quality or completeness**

|  |  |
| --- | --- |
| Documents not guaranteed for accuracy,  quality or completeness are: | » |

**Scope of activities**

1. **Scope of *Design* activities**

###### A - Extent of *Design* by the Subcontractor

*Mentioned in clauses 1.1.1 & 43.1*

|  |  |
| --- | --- |
| Extent of *Design* by the Subcontractor  is: | » |

###### B - Building Code of Australia

*Mentioned in clauses 43.1 & 48*

|  |  |
| --- | --- |
| Is the Building Code of Australia to apply to the *Design* in the *Subcontractor’s Documents* (clause 43.4) and to the *Materials* used in the construction of the Subcontract Works  (clause 48)? (Yes/No) | »  (“Yes” applies if not filled in). |

1. **Responsibility for *Design***

*Mentioned in clause 44*

|  |  |
| --- | --- |
| Is the Subcontractor to assume responsibility for design carried out by the Contractor before the Date of Subcontract and does clause 44 apply?  (Yes/No) | »  (“No” applies if not filled in). |

###### Working days and hours of work

*Mentioned in clause 26*

|  |  |
| --- | --- |
| Working days and hours of work: | »  (“Comply with *Statutory Requirements*” applies if not filled in). |

###### Rise or fall adjustments

*Mentioned in clause 59.1*

|  |  |
| --- | --- |
| Are rise or fall adjustments applicable to the Subcontract? (Yes/No) | No  (“No” applies if not filled in). |

##### Site Conditions

*Mentioned in clause 41.8*

|  |  |
| --- | --- |
| Is the Subcontractor to bear the full risk, including cost and time implications, of encountering and dealing with materially adverse *Site Conditions*? (Yes/No) | No  “No” applies if not filled in) |

### Innovation

###### Innovation

*Mentioned in clause 46.8*

|  |  |
| --- | --- |
| Do the parties agree to share the savings in the cost to the Subcontractor of the Subcontract Works resulting from changes accepted by the Contractor and  Principal? (Yes/No) | »  (“No” applies if not filled in). |

If “No”, the Subcontractor keeps the direct saving in the cost to the Subcontractor of the Subcontract Works, as provided in clause 46.5.

|  |  |
| --- | --- |
| Percentage of saving to be allocated to  the Subcontractor is: | »  (100% applies if not filled in). |

|  |  |
| --- | --- |
| Percentage of saving to be allocated to the Contractor is: | »  (0% applies if not filled in). |

### Payments

1. ***Subcontract Price* at the Date of Subcontract**

*Mentioned in clause 59*

*The Subcontract Price and basis of payment must be inserted by the Contractor at the Subcontract Award.*

|  |  |
| --- | --- |
| *Subcontract Price* at the Date of  Subcontract is: | $……………………………………………. |

###### Basis of payment:

|  |  |
| --- | --- |
| Basis of payment is:  (Lump sum / *Schedule of Rates* /  *Schedule of Rates* and lump sums) | » |

1. **Amount of *Prepayment***

|  |  |
| --- | --- |
| Amount of *Prepayment* is: | » $ |

##### Completion Amount

*Mentioned in clause 61.1.1*

*Mentioned in clauses 62.4.2 & 64*

|  |  |
| --- | --- |
| The *Completion Amount* is: | $ »  (must be no more than the value in the  *Contract Information* item 45 of the Contract) |

##### Provisional Sums

*Mentioned in clause 59 Option 1 applies when* Provisional Sums *are to be used.*

*If Option 1 is used delete Option 2*

|  |  |
| --- | --- |
| *Provisional Sums* items referred to in  clause 59: | A list is provided in clause » |

*Option 2*

|  |  |
| --- | --- |
| *Provisional Sums* items referred to in  clause 59: | Not applicable. |

1. ***Provisional Sum* margin**

*Mentioned in clause 59.6.2*

|  |  |
| --- | --- |
| The *Provisional Sum* margin percentage  is: | »  (10% if not filled in). |

##### Variations

###### A - Subcontractor’s Margin on Variations

*Mentioned in clauses 52 & 83*

|  |  |
| --- | --- |
| The percentage for *Subcontractor’s*  *Margin* on *Variations* is: | »  (10% if not filled in). |

###### B - Subcontractor’s hourly labour rate

*Mentioned in clause 52.5.4*

*The tendered Subcontractor’s hourly labour rate or rates must be inserted by the Contractor at the Subcontract Award.*

|  |  |
| --- | --- |
| The Subcontractor’s hourly labour  rate(s): | » |

###### Payment date and method

**A - Date for *Payment Claims***

*Mentioned in clause 62.1*

|  |  |
| --- | --- |
| Date in month for making *Payment Claims* is: | »  (3 *Business Days* before the date for a *Payment Claim* under the Contract applies if not filled in). |

###### B - Type of payment

*Mentioned in clause 62.2*

|  |  |
| --- | --- |
| The method of payment will be by:  (*Progress Payment* / Subcontract  *Milestone Payment*) | »  (Monthly *Progress Payments* apply if not filled in). |

###### C - Time for payment

*Mentioned in clause 63.5*

|  |  |
| --- | --- |
| Time that a payment becomes payable subject to clause 63.5 is: | »  (10 *Business Days* applies if not filled in). |

###### Interest on late payments

*Mentioned in clause 66*

|  |  |
| --- | --- |
| Rate of interest per annum is: | »  (must be the same as the value in the *Contract Information* item 50 of the Contract) |

### Delay costs

###### Delay costs

**A - Delay costs**

*Mentioned in clauses 55.1 to 55.3*

|  |  |
| --- | --- |
| Rate per day is: | $» |

**B - Delay to *Completion* and liquidated damages**

*Mentioned in clauses 55.4 to 55.9*

|  |  |
| --- | --- |
| Clause 55.4 applies to this Subcontract? (Yes/No) | No  (“No” applies if not filled in).  If “No” applies, the Contractor reserves its rights to claim general damages if the Subcontractor fails to achieve *Completion*  by the *Contractual Completion Date*). |

The Contractor reserves its rights to claim general damages if the Subcontractor fails to achieve *Completion* by the *Contractual Completion Date*, as applicable.

|  |  |
| --- | --- |
| The rate per day for liquidated damages for the whole of the Subcontract Works\*  is: | $» |

|  |  |
| --- | --- |
| The rates per day for liquidated damages  for *Subcontract Milestones\** are: | $» |

*\* The rates for each are separate and distinct from each other.*

### Engagement of Valuer

###### Engagement of Valuer

**The Valuer is not engaged under the Subcontract**

## Expert Determination

1. **Time to refer *Issue* to *Expert Determination***

*Mentioned in clause 74.3*

|  |  |
| --- | --- |
| Maximum number of days for either party to refer an *Issue* to *Expert*  *Determination* is: | Within 21 days of becoming entitled to refer an *Issue* to *Expert Determination* under  clause 74.2. |

1. ***Expert Determination* representative**

*Mentioned in clause 75*

|  |  |
| --- | --- |
| The name of the representative of the Contractor for all of the purposes in clause 75, to whom all documents must be copied under Schedule 6 (Expert  Determination Procedure) is: | » |

*Insert the office street and postal addresses (including postcodes), Facsimile Number and e-Mail address for the person in Item 54 above.*

|  |  |
| --- | --- |
| Office address: | » |
| (for delivery by hand) | » |
|  | » |
|  | » |
| Postal address: | » |
| (for delivery by registered post) | » |
|  | » |
|  | » |
| Facsimile number: | » |
| e-mail address | » |

1. **Person to nominate *Expert***

|  |  |
| --- | --- |
| Person to nominate *Expert* is: | » |
|  | Telephone » Facsimile » |

###### Threshold amount for litigation

*Mentioned in clause 75.1*

*Mentioned in clause 75.6*

|  |  |
| --- | --- |
| Threshold amount for litigation  following a determination is: | » |

# Schedules

|  |  |
| --- | --- |
| **Schedule 1** | **Subcontractor’s Warranty** |
| **Schedule 2A** | **Undertaking to the Principal (on behalf of the**  **Subcontractor or Consultant)** |
| **Schedule 2B** | **Undertaking to the Contractor (on behalf of**  **Subcontractor, Supplier or Consultant)** |
| **Schedule 3** | **Payment Claim Worksheet** |
| **Schedule 4** | **Certificate of Compliance** |
| **Schedule 5** | **Agreement with Valuer (Not used)** |
| **Schedule 6** | **Expert Determination Procedure** |
| **Schedule 7** | **Statutory Declaration** |
| **Schedule 8** | **Cost Adjustment Formula (Not used)** |
| **Schedule 9** | **Principles for Valuing Daywork Variation (Not**  **used)** |

###### Schedule 1

**Subcontractor’s Warranty**

Refer to clause 33.1 of the GC21 General Conditions of Contract.

###### Definitions

|  |  |
| --- | --- |
| *Deed dated:* | ..……………………….……………………………. |
|  | **between** |
| *Subcontractor or Supplier:* | ..…………………….………….……………………  ..……………………….………………….………… ABN ...………………………………………….…… |
|  | **and** |
| *The Principal:* | » |
|  | **concerning** |
| *The Contract:* | The contract between the Principal and the Contractor |
| *Contract title:* | » |
| *Contract number:* | » |
| *Works:* | The works to be *Designed* and constructed by the Contractor, as described in the Contract. |
| *The Contractor:* | ..……………………….………………….…………  ABN ...………………………………………….…… |
| *Subcontract Work or Products:* | ..……………………….……………………………. |
| *Warranty Period:* | » years from the *Actual Completion Date* of the whole of the Works. |

Other words and phrases in this Deed have the meanings given in the GC21 Subcontract. In this Deed, the term Subcontractor includes Supplier. The terms Subcontractor, Contractor and Principal include their successors and permitted assigns.

**Terms of Deed**

###### Warranty

* 1. The Subcontractor warrants that all work performed and all *Materials* supplied by the Subcontractor as part of the Subcontract Work or Products will:
     1. comply in all respects with the requirements of the Contract;
     2. comply with the applicable industry standards, including (without limitation) 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 the Contract; and
     3. be fit for the purposes for which they are required.
  2. The Subcontractor warrants that it will use reasonable skill and care in performing all work associated with the Subcontract Work or Products.

###### Replacement or making good

1. The Subcontractor promises to replace or make good, to the reasonable satisfaction of the Principal, any of the Subcontract Work or Products which, within the Warranty Period, are found to:
   1. be of a lower standard or quality than referred to in clause 1 of this Deed; or
   2. have deteriorated to such an extent that they are no longer fit for the purposes for which they were required.
2. Nothing in this clause 2 affects the Subcontractor’s liability until any limitation period under statute expires.
3. The liability of the Subcontractor under this clause is reduced to the extent that deterioration is caused by:
4. mishandling, damage before installation, or incorrect installation, in each case caused by others;
5. normal wear and tear;
6. incorrect operational procedures or maintenance, in each case not attributable to the Subcontractor; or
7. any other cause beyond the control of the Subcontractor.

###### Costs

1. The Subcontractor promises to undertake and meet the reasonable cost of any work necessary:
   1. to carry out any part of the Works to enable the requirements of clause 2 of this Deed to be carried out; or
   2. restore or make good the Works after carrying out those requirements, whichever the Principal requires.

###### Indemnity

.1 The Subcontractor indemnifies the Principal against *Claims*, actions and loss or damage arising out of breach by the Subcontractor of clauses 1 or 2 of this Deed.

###### Notice of Defects

.1 The Principal may notify the Subcontractor in writing if it considers there has been any breach of any provision of this Deed.

###### Time to remedy

.1 The Subcontractor must do everything to remedy the breaches notified to it under clause 5 of this Deed within a reasonable time after the Principal’s notice.

###### Failure to remedy

1. If the Subcontractor fails to carry out and complete the work specified in the Principal’s notice under clause 5 of this Deed within a period determined by the Principal to be reasonable in the circumstances, the Principal may give written notice to the Subcontractor that the Principal intends to have that work carried out by others. This notice must allow a reasonable period for the Subcontractor to respond.
2. If the Subcontractor fails to complete the work by the date specified in clause 7.1, or another date agreed by the parties, the Principal may have the work carried out by others, and the Subcontractor indemnifies the Principal for the reasonable costs and expenses of doing so.

###### Urgent action by Principal

1. The Principal may take any urgent action necessary to protect the Works, other property or people as a result of a breach of clause 1 of this Deed.
2. The Subcontractor agrees that the Principal taking such action does not affect any obligation of the Subcontractor under this Deed.
3. The Subcontractor indemnifies the Principal for the reasonable costs and expenses paid or payable in taking that action.

###### Assignment

.1 The Principal 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.

###### Operation of Deed

This Deed comes into effect when executed by the Subcontractor, and is effective whether or not executed by the Principal.

###### Executed as a deed

The common seal of the Subcontractor was affixed in accordance with its Articles of Association in the presence of:

|  |  |
| --- | --- |
| *Signature of Director/Secretary* | ...……………………….……………………………. |
| *Name of Director/Secretary* | ...……………………….……………………………. |
| *Signature of Director* | ...……………………….……………………………. |
| *Name of Director)* | ...……………………….……………………………. |

or (if the Subcontractor is not a corporation)

Signed, sealed and delivered on behalf of the Subcontractor by:

|  |  |
| --- | --- |
| *Signature of Authorised Person* | ...……………………….……………………………. |
| *Name of Authorised Person* | ...……………………….……………………………. |
|  | **and witnessed by:** |
| *Signature of witness* | ...……………………….……………………………. |
| *Name of witness (in full)* | ...……………………….……………………………. |

Signed, sealed and delivered on behalf of the Principal by:

|  |  |
| --- | --- |
| *Signature of Authorised Person* | ...……………………….……………………………. |
| *Name of Authorised Person* | ...……………………….……………………………. |
|  | **and witnessed by:** |
| *Signature of witness:* | ...……………………….……………………………. |
| *Name:* | ...……………………….……………………………. |
| *Place:* | ...……………………….……………………………. |

# Undertaking to the Principal

Refer to clause 61 of the GC21 Subcontract.

### On behalf of the Subcontractor or Consultant

|  |  |
| --- | --- |
| *Name of Financial Institution:* | ………………………….……………………………. |
| *The Principal:* | » |
| *The Contractor:* | ………………………….………………….…………  ABN ...………………………………………….…… |
| *The Subcontractor:* | ………………………….………………….…………  ABN ...………………………………………….…… |
| *Security Amount* | $ ……………………………………………….…...... |
| *The Contract:* | The contract between the Principal and the Contractor |
| *Contract Title:* | ». |
| *Contract Number:* | » |

Other words and phrases in this *Undertaking* have the meanings given in the GC21 Subcontract.

###### Undertaking

1. At the request of the Subcontractor or Consultant (as applicable) and the Financial Institution, and in consideration of the Principal accepting this undertaking from the Financial Institution in connection with the Contract and the agreement between the Contractor and the Subcontractor or Consultant (as applicable), the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Principal to the maximum aggregate sum of the Security Amount.
2. The Financial Institution unconditionally agrees that, if notified in writing by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Subcontractor or Consultant (as applicable) and despite any notice from the Subcontractor or Consultant (as applicable) not to pay.
3. The Principal must not assign this Undertaking without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
4. This undertaking continues until one of the following occurs:
   1. the Principal notifies the Financial Institution in writing that the Security Amount is no longer required; or
   2. this undertaking is returned to the Financial Institution; or
   3. the Financial Institution pays the Principal the whole of the Security Amount, or as much as the Principal may require overall.
5. At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this undertaking (or a lesser sum specified by the Principal) and the liability of the Financial Institution will then immediately end.

|  |  |
| --- | --- |
| *Dated* »*…………………………* | *at* » ……………….…………………….…………... |

###### Execution by the Financial Institution:

**Undertaking to the Contractor**

Refer to clause 37 of the GC21 Subcontract.

### On behalf of the Subcontractor, Supplier or Consultant

|  |  |
| --- | --- |
| *Name of Financial Institution:* | …..……………………….……………………………. |
| *The Contractor:* | …..……………………….………………….…………  ABN ….………………………………………….…… |
| *Subcontractor, Supplier or Consultant:* | …..……………………….………………….…………  ABN ….………………………………………….…… |
| *Security Amount* | $ …..…………………………………………….…...... |

###### Undertaking

Other words and phrases in this *Undertaking* have the meanings given in the GC21 Subcontract.

###### Undertaking

1. At the request of the Subcontractor, Supplier or Consultant (as applicable) and the Financial Institution, and in consideration of the Contractor accepting this undertaking from the Financial Institution in connection with the agreement between the Contractor and the Subcontractor, Supplier or Consultant (as applicable), the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Contractor to the maximum aggregate sum of the Security Amount.
2. The Financial Institution unconditionally agrees that, if notified in writing by the Contractor (or someone authorised by the Contractor) that it requires all or some of the Security Amount, the Financial Institution will pay the Contractor at once, without reference to the Subcontractor, Supplier or Consultant (as applicable) and despite any notice from the Subcontractor, Supplier or Consultant (as applicable) not to pay.
3. The Contractor must not assign this Undertaking without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
4. This undertaking continues until one of the following occurs:
   1. the Contractor notifies the Financial Institution in writing that the Security Amount is no longer required; or
   2. this undertaking is returned to the Financial Institution; or
   3. the Financial Institution pays the Contractor the whole of the Security Amount, or as much as the Contractor may require overall.
5. At any time, without being required to, the Financial Institution may pay the Contractor the Security Amount less any amounts previously paid under this undertaking (or a lesser sum specified by the Contractor) and the liability of the Financial Institution will then immediately end.

|  |  |
| --- | --- |
| *Dated* »*…………………………* | *at* » ……………….…………………….…………... |

###### Execution by the Financial Institution:

**Payment Claim Worksheet**

Refer to clause 62 of the GC21 Subcontract.

Details for electronic funds transfer to the *Subcontractor’s* account are set out in the Payment Claim Worksheet.

|  |  |
| --- | --- |
| *The Subcontractor:* | …..……………………….………………….…………  ABN ….………………………………………….…… |
| *The Subcontract:* | The contract between the Contractor and the Subcontractor |
| *Subcontract Title:* | » |
| *Subcontract Number:* | » |
| *Name of Financial Institution:* | …..……………………….……………………………. |
| *Account Name:* | …..……………………….……………………………. |
| *Account Number* | …..……………………….……………………………. |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |
| Activity (& *Milestone*) to suit schedule of prices and/or activities for work covered by a lump sum | *Milestone* & activity number | Value of activity (& *Milestone*) $ | Activity completed % | *Value Completed*  $ |
| Amount brought forward from previous sheet |  | $ |  | $ |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| Amount carried forward to next sheet |  | $ |  | $ |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |
| Item or activity to suit *Schedule of Rates* | Item or  activity number | Price rate or price for item or activity $ | Quantity completed | *Value*  *Completed* $ (col 3 X col 4) |
| Amount brought forward from previous sheet |  |  |  | $ |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| Amount carried forward to next sheet |  |  |  | $ |
| Complete this section on the last sheet only | | | | |
| Subtotal for any *Schedule of Rates* items | | | | $ |
|  |  | $ |  | $ |
|  |  | $ |  | $ |
| ***Value Completed*** | | | | $ |
| Less payments already made | | | | $ |
| Less retention for the Completion Amount under clause 64, if applicable | | | | $ |
| ***Claimed Amount*** | | | | **$** |

# Certificate of Compliance

Refer to clause 62.6.3 of the GC21 Subcontract.

###### Contract

|  |  |
| --- | --- |
| *The Contract:* | The contract between the Contractor and the Subcontractor |
| *Subcontract Title:* | » |
| *Subcontract Number:* | » |
| *Dated:* | ……………………………….……………………………. |

**Certificate**

|  |  |
| --- | --- |
|  | **To:** |
| *The Contractor:* | » |
|  | **From:** |
| *The Subcontractor:* | ...……………………….………………….…………  ABN ...………………………………………….…… |
| *Consultant:* | ...……………………….………………….…………  ABN ...………………………………………….…… |
| *Consultant (2)* | ...……………………….………………….…………  ABN ...………………………………………….…… |

In accordance with clause 62.6.3 of the Subcontract, we certify that all design work done (and all construction work\* relating to the *Design* to the date of this *Certificate of Compliance*) is in accordance with the Subcontract.

|  |  |
| --- | --- |
| *Consultant:* | **Signed by the Consultant(s):** |
| *Signature of Authorised Person* | ...……………………….……………………………. |
| *Name of Authorised Person* | ...……………………….……………………………. |
| *Date:* | ...……………………….……………………………. |
| *Consultant (2):* |  |
| *Signature of Authorised Person* | ...……………………….……………………………. |
| *Name of Authorised Person* | ...……………………….……………………………. |
| *Date:* | ...……………………….……………………………. |

\* delete if not applicable

In accordance with clause 62.6.3 of the Subcontract, we certify that all work done (including *Design* and construction work done and *Materials* supplied) to the date of this *Certificate of Compliance* is in accordance with the Subcontract.

|  |  |
| --- | --- |
|  | **Signed by the Subcontractor:** |
| *Signature of Authorised Person* | ...……………………….……………………………. |
| *Name of Authorised Person* | ...……………………….……………………………. |
| *Date:* | ...……………………….……………………………. |

# Agreement with Valuer

Refer to clauses 39, 51 and 52 of the GC21 General Conditions of Contract.

###### Not used

**Expert Determination Procedure**

Refer to clause 75 of the GC21 Subcontract

###### Questions to be determined by the Expert

* 1. The *Expert* must determine for each *Issue* the following questions (to the extent that they are applicable to the *Issue*):
     1. Is there an event, act or omission which gives the claimant a right to compensation, or otherwise assists in resolving the *Issue* if no compensation is claimed:
        1. under the Subcontract
        2. for damages for breach of the Subcontract, or
        3. otherwise in law?
     2. If so:
        1. what is the event, act or omission?
        2. on what date did the event, act or omission occur?
        3. what is the legal right which gives rise to the liability to compensation or resolution otherwise of the *Issue*?
        4. is that right extinguished, barred or reduced by any provision of the Subcontract, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
     3. In the light of the answers to clauses 1.1.1 and 1.1.2 of this Expert Determination Procedure:
        1. what compensation, if any, is due from one party to the other and when did it fall due?
        2. applying the rate of interest specified in the Subcontract, what interest, if any, is due when the *Expert* determines that compensation?
        3. if compensation is not claimed, what otherwise is the resolution of the

*Issue*?

* 1. The *Expert* must determine for each *Issue* any other questions identified or required by the parties, having regard to the nature of the *Issue*.

###### Submissions

1. The procedure for submissions to the *Expert* is as follows:
   1. The party to the Subcontract which has referred the *Issue* to *Expert Determination* must make a submission in respect of the *Issue*, within 15 *Business Days* after the date of the letter of engagement of the *Expert* referred to in clause 75.2 of the GC21 Subcontract.
   2. The other party must respond within 15 *Business Days* after receiving a copy of that submission or such longer period as the other party may reasonably require, having regard to the nature and complexity of the *Issue* and the volume of the submission. If the parties do not agree on that longer period, the *Expert* will promptly determine any extra time permitted, following a submission on the point by a party desiring to make a submission, within the time specified by the *Expert*. The response to the submission in clause 2.1.1 may include cross-claims.
   3. The party referred to in clause 2.1.1 may reply to the response of the other party, but must do so within 10 *Business Days* or such longer period as that party may reasonably require (in the same terms as in clause 2.1.2) after receiving the response, and must not raise new matters

GC21 SUBCONTRACT SCHEDULES

* 1. The other party may comment on the reply, but must do so within 10 *Business Days* or such longer period as that party may reasonably require (in the same terms as in clause 2.1.2) after receiving the reply, and must not raise new matters.

1. The *Expert* must ignore any submission, response, reply, or comment not made within the time given in clause 2.1 of this Expert Determination Procedure, unless the Contractor and the Subcontractor agree otherwise.
2. The *Expert* may request further information from either party. The request must be in writing, with a time limit for the response. The *Expert* must send a copy of the request and the response to the other party, and give the other party a reasonable opportunity to comment on the response.
3. All submissions, responses, replies, requests and comments must be in writing. If a party to the Subcontract gives information to the *Expert*, it must at the same time give a copy to the other party. All documents to be copied to the Contractor under this Expert Determination Procedure must be sent to the relevant person at the relevant postal or other address specified in *Subcontract Information* item 54. This address may be different to the address for the giving of notices to the Contractor under clause 30.1.

###### Conference

1. The *Expert* may request a conference with both parties to the Subcontract. The request must be in writing, setting out the matters to be discussed.
2. The parties agree that such a conference is not to be a hearing which would give anything under this Expert Determination Procedure the character of an arbitration.

###### Role of Expert

1. The *Expert*:
   1. acts as an *Expert* and not as an arbitrator;
   2. must make its determination on the basis of the submissions of the parties, including documents and witness statements, and the Expert’s own expertise; and
   3. must issue a certificate in a form the *Expert* considers appropriate, stating the Expert’s determination and giving reasons, within 16 weeks, or as otherwise agreed by the parties, after the date of the letter of engagement of the *Expert* referred to in clause 75.2 of the GC21 Subcontract.
2. If a certificate issued by the *Expert* contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the *Expert* must correct the certificate.

###### Schedule 7

**Statutory Declaration**

Refer to clause 62.6.2 of the GC21 Subcontract

###### STATUTORY DECLARATION

Statutory Declarations Act 1959 (Cth)

I, **[Name, address and occupation of person making declaration]** make the following declaration under the Statutory Declarations Act 1959 (Cth),

1. In this declaration a reference to:
   1. “**Contract**” means an agreement which has or will shortly be entered into between the Australian Capital Territory and the Contractor for the provision of works in respect of the Project.
   2. “**Subcontract**” means an agreement which has or will shortly be entered into between the Contractor and the Subcontractor for the provision of works in respect of the Project.

###### “Subcontractor” means [insert full legal name of Subcontractor including the ACN/ABN as per that identified on the Subcontract];

* 1. “**Project**” means Project No **[insert ACT Government Project no]** for **[insert sufficient details to identify nature of project, e.g. for the construction of school at Block 11 Section 66 Kambah];** and
  2. all capitalised words or terms have the same meaning as defined in the Contract and those meanings apply in this Schedule unless the context otherwise requires.

1. I am authorised on behalf of the Subcontractor to make this declaration.
2. All Employees of the Subcontractor who have at any time been employed by the Subcontractor in respect of the Project have, at the date of this statutory declaration, been paid all moneys due and payable to them in respect of their employment on the work under the Subcontract.
3. The Subcontractor has made provision for all other benefits (as required by Prescribed Legislation) accrued in respect of its Employees as at the date of this statutory declaration.
4. All Sub-subcontractors, Suppliers and Consultants have been paid all amounts payable to each of them by the Subcontractor as at the date of this statutory declaration with respect to engagement by each of them for the performance of Work or the supply of materials for or in connection with the Subcontract.
5. All workers compensation insurance premiums payable by the Subcontractor to the date of this statutory declaration in respect of the Work done in connection with the Subcontract have been paid.
6. All payroll tax payable by the Subcontractor in respect of wages paid or payable to the relevant Employees of the Subcontractor for Work done in connection with the Subcontract to the date of this statutory declaration has been paid.
7. The provisions of clause “Sub-subcontractor relationships”, if included in the Subcontract, have been complied with by the Subcontractor.
8. All Sub-subcontract security held in the form of cash and all cash retentions from Sub-subcontractor payments are held in trust by the Subcontractor. The cash security and retentions are held in trust for whatever party is entitled to them, until payment is made to that party.
9. The Subcontractor is maintaining complete records to account for the cash. The records are available to the relevant Sub-subcontractors and the Principal on request.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

[Signature of person making the declaration]**]**

[Print name of person making the declaration] Declared at [place] on [day] of [month] [year] Before me:

[Signature of person before whom the declaration is made]

[Full name, qualification and address of person before whom the declaration is made (in printed letters)]

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years – see section 11 of the *Statutory Declarations Act 1959*.

Note 2 Chapter 2 of the Criminal Code applies to all offences against the *Statutory Declarations Act 1959* – see section 5A of the *Statutory Declarations Act 1959*.

**A statutory declaration under the Statutory Declarations Act 1959 may be made before–**

1. A person who is currently licensed or registered under a law to practise in one of the following occupations: Chiropractor Dentist Legal practitioner

Medical practitioner Nurse Optometrist

Patent attorney Pharmacist Physiotherapist

Psychologist Trade marks attorney Veterinary surgeon

1. A person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
2. A person who is in the following list:

Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public

Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the Consular Fees Act 1955)

Bailiff

Bank officer with 5 or more continuous years of service

Building society officer with 5 or more years of continuous service Chief executive officer of a Commonwealth court

Clerk of a court Commissioner for Affidavits

Commissioner for Declarations

Credit union officer with 5 or more years of continuous service Employee of the Australian Trade Commission who is:

* 1. in a country or place outside Australia; and
  2. authorised under paragraph 3 (d) of the Consular Fees Act 1955; and
  3. exercising his or her function in that place Employee of the Commonwealth who is:

1. in a country or place outside Australia; and
2. authorised under paragraph 3 (c) of the Consular Fees Act 1955; and
3. exercising his or her function in that place Fellow of the National Tax Accountants’ Association

Finance company officer with 5 or more years of continuous service Holder of a statutory office not specified in another item in this list Judge of a court

Justice of the Peace Magistrate

Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the Marriage Act 1961 Master of a court

Member of Chartered Secretaries Australia

Member of Engineers Australia, other than at the grade of student Member of the Association of Taxation and Management Accountants Member of the Australasian Institute of Mining and Metallurgy Member of the Australian Defence Force who is:

1. an officer; or
2. a non-commissioned officer within the meaning of the Defence Force Discipline Act 1982 with 5 or more years of continuous service; or
3. a warrant officer within the meaning of that Act

Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants

Member of:

1. the Parliament of the Commonwealth; or
2. the Parliament of a State; or
3. a Territory legislature; or
4. a local government authority of a State or Territory

Minister of religion registered under Subdivision A of Division 1 of Part IV of the Marriage Act 1961 Notary public

Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public

Permanent employee of:

1. the Commonwealth or a Commonwealth authority; or
2. a State or Territory or a State or Territory authority; or
3. a local government authority;

with 5 or more years of continuous service who is not specified in another item in this list

Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made

Police officer

Registrar, or Deputy Registrar, of a court Senior Executive Service employee of:

1. the Commonwealth or a Commonwealth authority; or
2. a State or Territory or a State or Territory authority

Sheriff Sheriff’s officer

Teacher employed on a full-time basis at a school or tertiary education institution

# Costs Adjustment Formula

###### Not used

**Principles for Valuing Daywork Variation**

**Not used**

**Work health & safety**

Refer to clause 15 of the GC21 General Conditions of Subcontract.

###### General

* 1. Obligations set out in this Subcontract, do not derogate from the Subcontractor’s obligations under *WHS Legislation*. Where there is any inconsistency between this Subcontract and the *WHS Legislation*, the *WHS Legislation* will prevail to the extent of any inconsistency.
  2. The Subcontractor must comply with the *WHS Legislation* and ensure all Subcontract Works is carried out safely and in a manner that does not put the health and safety of persons at risk.
  3. The Subcontractor must institute and maintain systems to obtain regular written assurances from all Sub-subcontractors and other entities engaged to perform work on the Site about their ongoing compliance with the *WHS Legislation* including the due diligence obligation contained in the *WHS Legislation*.
  4. The Subcontractor must provide the written assurances obtained under paragraph .3, together with written assurances from the Subcontractor about the Subcontractor’s ongoing compliance with *WHS Legislation*, to the *Contractor’s Authorised Person*.
  5. The Subcontractor must provide the *Contractor’s Authorised Person* at each meeting with a written report on all work health and safety matters, or any other relevant matters including a summary of the Subcontractor’s compliance with *WHS Legislation*.
  6. The Subcontractor must exercise a duty of utmost good faith to the Contractor in carrying out the Works to enable the Contractor to discharge the Contractor’s duties under the *WHS Legislation*.
  7. The Subcontractor must ensure its Sub-subcontracts include provisions imposing on the sub-subcontractor’s obligations equivalent to the obligations of the Subcontractor in this Schedule.
  8. .The Subcontractor must ensure that if any *Statutory Requirement* requires that a person:
     1. be authorised or licensed (in accordance with *WHS Legislation*) to carry out any work at a workplace, the person is so authorised or licensed and complies with any conditions of such authorisation or licence; or
     2. has prescribed qualifications or experience, or if not, is supervised by a person who has prescribed qualifications or experience (as defined in the *WHS Legislation*), that person has the required qualifications or experience or is so supervised.
  9. The Subcontractor must ensure that if any *Statutory Requirement* requires that a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance is so authorised or licensed.
  10. The Subcontractor must not direct or allow a person to carry out work, or use plant or a substance at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any *Statutory Requirement* and paragraph .9 are met.
  11. If requested by the *Contractor’s Authorised Person* or required by *WHS Legislation*, the Subcontractor must produce evidence of any approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to the work health and safety (as the case may be) to the satisfaction of the *Contractor’s Authorised Person* before the Subcontractor or any sub-subcontractor commences such work.
  12. The Subcontractor must comply with its duty under the *WHS Legislation* to consult, cooperate and coordinate activities with all persons who have a work health and safety duty in relation to the same matter.
  13. Not used.
  14. .If the *Contractor’s Authorised Person* reasonably considers that a risk of injury to people or damage to property is arising or likely to arise from the activities of the Subcontractor (or any of its Sub-subcontractors) the *Contractor’s Authorised Person* may direct the Subcontractor (or the relevant Sub-subcontractor) to change its manner of working or cease working and the Subcontractor and any Sub-subcontractor (if applicable) must comply.
  15. The Contractor may take any action necessary to protect the Works and other property or to prevent or minimise risk to health and safety of persons, which the Subcontractor must take but does not and the Contractor may recover any costs associated with such action from the Subcontractor.
  16. The Subcontractor must systematically manage its work health and management processes in accordance with the systems, plans, standards and codes specified in the Contract and the *WHS Legislation*.
  17. The Subcontractor must demonstrate to the *Contractor’s Authorised Person*, whenever requested, that the Subcontractor has met and is meeting at all times, its obligations under this Schedule but such demonstration does not relieve the Subcontractor of its primary obligation to perform work safely.
  18. The Subcontractor must take all reasonable actions and comply with all reasonable requests of the Principal or Contractor or the *Contractor’s Authorised Person*, or their respective authorised persons regarding any safety audits in respect of the Site.
  19. Without limiting paragraph 1.18 the Subcontractor must, at all reasonable times, allow the Principal or any person authorised by the Principal:

1. to enter upon the Site to conduct a safety audit;
2. to enter upon the Site or any premises occupied by the Subcontractor to inspect and copy any records relevant to a safety audit; and
3. to enter upon the Site or any premises occupied by the Subcontractor to interview any person as part of a safety audit.
   1. In this clause “improvement notice”, “infringement notice”, non-disturbance notice”, “notice of entry”, “prohibition notice” and “provisional improvement notice” all have the same meanings as in the *Work Health and Safety Act 2011 (ACT).*
   2. The Subcontractor must immediately notify the *Contractor’s Authorised Person* and the Contractor upon becoming aware of the issue of any improvement notice, infringement notice, non-disturbance notice, notice of entry or prohibition notice referable to the Site or the Subcontract Works and provide the *Contractor’s Authorised Person* and the Contractor with a copy of the relevant notice if the Subcontractor has the same.
   3. The Subcontractor must promptly notify the *Contractor’s Authorised Person* and the Contractor upon becoming aware of the issue of any provisional improvement notice referable to the Site or the Subcontract Works and provide the *Contractor’s Authorised Person* and the Contractor with a copy of the notice if the Subcontractor has the same
   4. The Subcontractor must provide reports on work health and safety matters to the Contractor and the *Contractor’s Authorised Person* in such form and at such times as reasonably required by the Contractor and advised to the Subcontractor.

###### Not used

###### WHS Management Plan

.1 The Subcontractor must comply at all times with the *WHS Management Plan* and ensure it Sub-subcontractors comply.

###### Incident Reporting

1. In this clause, “regulator” and “notifiable incident” have the same meaning as in the *Work Health and Safety Act 2011* (ACT).
2. In addition to any obligations under *WHS Legislation*, the Subcontractor must:
   1. notify the Contractor and the *Contractor’s Authorised Person* of any notifiable incident immediately after it notifies the regulator;
   2. provide the Contractor and the *Contractors’s Authorised Person* with copies of all written notifications and/or details of any verbal notifications given to the regulator (as applicable) immediately after providing the same to the regulator.
   3. In addition to the obligations under paragraph 4.2, the Subcontractor must promptly notify the occurrence and furnish a written report to the Contractor and the *Contractor’s Authorised Person* of:
      1. incidents resulting in damage to property;
      2. incidents resulting in significant delays to the *Subcontract Works*;
      3. incidents resulting in injury or illness other than a notifiable incident; and
      4. incidents that may have resulted in or may result in any incident set out in paragraphs 4.3.1, 4.3.2 or 4.3.3 above or a notifiable incident.

###### Smoke Free Workplace

1. The Subcontractor:
   1. acknowledges that parts of the Site as notified by time to time by the Contractor are smoke free; and
   2. is responsible for ensuring that all employees and sub-subcontractors comply with this condition.

###### Schedule 11

**Industrial relations requirements**

Refer to clause 16 of the GC21 General Conditions of Contract.

###### Item 1. Secure Local Jobs

* 1. **Definitions**
     1. In this **Item 1**:
        1. *Adverse Ruling* means a ruling by any court, tribunal, board, commission or other entity (including but not limited to the Fair Work Commission) with jurisdiction to determine the matter, that the Subcontractor or one of its Associated Entities has contravened an Industrial Law;
        2. *Approved Auditor* has the meaning as set out in the Procurement Act;
        3. *Associated Entity* has the meaning given by section 50AAA of the *Corporations Act 2001* (Cth);
        4. *Code* means the Secure Local Jobs Code;
        5. *Full Details* means:
           1. the nature of the Adverse Ruling;
           2. any conviction recorded or adverse finding made in respect of the Adverse Ruling;
           3. any penalty or orders imposed by a court, tribunal, board, commission or other entity in respect of the Adverse Ruling and the maximum penalty that could have been imposed under the relevant Industrial Law;
           4. the name of the court, tribunal, board, commission or other entity, the jurisdiction in which the proceeding or prosecution was brought, the date on which the proceeding or prosecution commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, board, commission or other entity;
           5. the name of the entity against which the Adverse Ruling was made; and
           6. any other relevant information that the Subcontractor may rely on as grounds for not terminating this Subcontract as a result of the Adverse Ruling;
        6. *Industrial Law* means any Commonwealth, State or Territory legislation that deals with matters relating to industrial relations and includes employment and workplace safety obligations;
        7. *Labour Relations, Training and Workplace Equity Plan* has the meaning as set out in the Procurement Act;
        8. *Procurement Act* means the *Government Procurement Act 2001* (ACT)
        9. *Registrar* has the meaning as set out in the Procurement Act;
        10. *Secure Local Jobs Code* has the meaning as set out in the Procurement Act;
        11. *Territory Entity* has the meaning as set out in the Procurement Act; and
        12. *Territory-Funded Work* has the meaning as set out in the Procurement Act.
     2. For the purposes of Item 1.1.4 and Item 1.1.11 the form set out in Attachment 4 is approved unless otherwise advised by the Contractor.

###### Subcontractors performing Territory-Funded Work

* + 1. The Subcontractor must, in relation to any sub-subcontractors engaged to perform

*Territory-Funded Work*:

1. ensure terms are included in the agreement with the sub-subcontractor:
   1. requiring the sub-subcontractor to comply with the *Code*; and
   2. imposing obligations on the sub-subcontractor in the same form as those set out in Item 1 and imposed on the Subcontractor (subject to any necessary variation to reflect the different parties);
2. ensure:
3. the sub-subcontractor holds a *Secure Local Jobs Code Certificate*; and
4. maintains a *Secure Local Jobs Code Certificate* during the term of their agreement; and
5. the obligations in Item 1.3.2.1 and Item 1.3.2.2 are included in the relevant agreement with the sub-subcontractor.
6. The Contractor may by written notice request the Subcontractor obtain a statutory declaration from a sub-subcontractor engaged to perform *Territory-Funded Work* regarding its compliance with the *Code* and provide it to the Contractor within 15 *Business Days* of the date of the written notice. The Subcontractor must use its reasonable endeavours to ensure the sub-subcontractor supplies the declaration to enable the Subcontractor to comply with this Item 1.1.4*.*
7. The Contractor (or nominated representative), the Principal and Approved Auditors may, at the Contractor’s cost, access records kept by sub-subcontractors engaged to perform *Territory-Funded Work* and conduct audits and other reviews and checks, to monitor compliance with this clause and the *Code*, except in circumstances where a nomination would result in a conflict with Commonwealth laws.

###### Contractor’s Secure Local Jobs responsibilities

1. Item 1.1.7 to Item 1.1.17 applies to the extent that this Subcontract provides for the performance of *Territory-Funded Work* by the Subcontractor.
2. The Subcontractor must comply with all of its obligations under the *Code*.
3. The Subcontractor must maintain a valid *Secure Local Jobs Code Certificate* during the term of the Subcontract.
4. Failure of the Subcontractor to maintain a valid *Secure Local Jobs Certificate* will constitute a breach of an essential term of this Subcontract entitling the Contractor to terminate the Subcontract on written notice to the Subcontractor.
5. If at any time during the term of the Subcontract an *Adverse Ruling* is made, the Subcontractor must, within 7 *Business Days* of the making of the *Adverse Ruling*, provide a statutory declaration by an authorised representative of the Subcontractor setting out the *Full Details* of the *Adverse Ruling* and (if applicable) any existing or planned remedial measures taken or to be taken to prevent a contravention, breach or offence similar to the contravention, breach or offence on which the *Adverse Ruling* is based from recurring.
6. The Subcontractor must provide the Contractor with a statutory declaration in a form approved by the Territory regarding its compliance with the *Code*:
   1. within 5 working days of a written request from the Contractor; and
   2. if requested in writing by the Territory, at the time the Subcontractor provides a

*Payment Claim*.

1. Failure of the Subcontractor to provide a statutory declaration in accordance with Item

1.1.11 or the making of a false statement in a statutory declaration by the Subcontractor or its representative will constitute a breach of this Subcontract.

1. If the Subcontractor fails to provide a statutory declaration in accordance with Item

1.1.11.2 the Contractor may withhold payment of monies otherwise due to the Subcontractor in respect of the relevant *Payment Claim* until the statutory declaration is received.

1. The Contractor may require that Subcontractor conduct face-to-face induction sessions with employees at the commencement of *Territory-Funded Work* or commencement of employment in relation to *Territory-Funded Work*.
2. The Contractor may require a union workplace delegate or employee representative to attend staff induction sessions held by the Subcontractor except in circumstances where attendance would result in a conflict with Commonwealth laws.
3. The Subcontractor must, at all reasonable times, allow the Contractor, Principal, Registrar or person nominated by the Contractor, Principal or Registrar to enter the Subcontractor’s worksite where the *Territory-Funded Work* is being performed in order to undertake education and awareness raising activities in relation to the *Code*. A person may not be nominated by the Contractor, Principal or Registrar under this Item 1.1.16 in circumstances where entry would result in a conflict with Commonwealth laws.
4. The Contractor (or nominated representative), Principal and Approved Auditors may, at the Contractor’s cost, access records kept by the Subcontractor and conduct audits and other reviews and checks, to monitor compliance with this Schedule and the *Code*, except in circumstances where a nomination would result in a conflict with Commonwealth laws.

# Attachments

###### Attachment 1 GC21 Start-up Workshop Attachment 2 Performance Evaluation Attachment 3 Performance Evaluation Record Attachment 4 Ethical Suppliers Declaration

**The GC21 Start-up Workshop**

Refer to clause 35 of the GC21 Subcontract.

The start-up workshop is held to encourage the parties and others concerned with the Contract and the Works to work co-operatively to achieve a successful project. This Attachment 1 is intended as a simple guide for the participants.

The workshop takes place within 28 days of the Date of Contract. The workshop should take half a day, although large or complex projects may require longer.

**Participants**

The workshop includes representatives of the Principal and Contractor together with others concerned with the Works. This might include representatives of authorities, eventual users of the Works, the local community, Consultants, Subcontractors and Suppliers.

The sample agenda, which is a guideline for a Start-up workshop, includes:

* welcome by the facilitator;
* introduction of participants;
* workshop purpose, agenda review, workshop guidelines;
* project overview;
* co-operative contracting - overview;
* monitoring and evaluation;
* co-operative contracting applied to the Contract;
* develop communications framework and directory;
* identify key concerns and solutions;
* opportunities for Innovation;
* prioritisation and review;
* closing comments and feedback; and
* close of workshop.

A copy of Procurement Practice Guide *GC21 meetings and workshops* and the related forms, handouts and team exercises may be obtained from the NSW Government *Procurement System for Construction* at:

[*http://www.nswprocurement.com.au/Procurement-System-for-Construction/Contract-*](http://www.nswprocurement.com.au/Procurement-System-for-Construction/Contract-management/GC21-meetings-and-workshops.aspx)[*management/GC21-meetings-and-workshops.aspx*](http://www.nswprocurement.com.au/Procurement-System-for-Construction/Contract-management/GC21-meetings-and-workshops.aspx)

# Performance Evaluation

Refer to clause 6 of the GC21 Subcontract. (This form is provided for guidance only).

*Contract title:* » *Contract number:* » *Date:* »

**Rating system**

1. excellent
2. above expectation
3. meeting expectation
4. below expectation
5. unsatisfactory

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Topic** | **Contract Clause** | **Objectives** | **Your rating (this period)** | **Group rating (this period)** |
| Communication | 3  4  5  6 | * co-operation between parties * duty not to hinder performance * early warning * evaluation and monitoring |  |  |
| Time | 25  54  69 | * time management * extensions of time * *Completion* by *Contractual Completion Dates* |  |  |
| Cost | 52  61  63, 65 | * *Variations* * Prepayment * payments, final payment |  |  |
| Quality | 17  42 - 45  43 ,44, 48  46  50  69  71 | * quality standards * *Design* requirements * fitness for purpose * innovation * *Faults*, *Defects* rectification * defect-free *Completion* * after *Completion* |  |  |
| Safety | 15 | * Occupational health and safety management |  |  |
| Claims and Issue Resolution | Sched 5  72  73, 74,  75,  Sched 6 | * Valuer * *Claim* resolution * *Issue* resolution * *Expert Determinations* |  |  |
| Environment | 18  29 | * energy & water conservation, waste management, resource conservation, pollution reduction, protection of environment, healthy work environment |  |  |
| Contract Relations | 13 - 20  16  31 - 34 | * compliance with the NSW Government   *Code of Practice for Procurement*   * industrial relations management * Subcontractor, Supplier and Consultant performance |  |  |

*The participants should decide on an action plan during the meeting, after discussing project and contract objectives, comments, observations and suggestions for improvement.*

# Performance Evaluation Record

The participants ratings for each topic are recorded here so that the overall performance can be assessed.

|  |  |  |
| --- | --- | --- |
| *Contract title: Contract number: Date:* | »  »  » | **Rating system**   1. excellent 2. above expectation 3. meeting expectation 4. below expectation 5. unsatisfactory |

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Meeting** | Number | **1** | **2** | **3** | **4** | **5** | **6** | **7** | **8** | **9** | **10** | **11** | **12** |
|  | Month |  |  |  |  |  |  |  |  |  |  |  |  |
|  | Year |  |  |  |  |  |  |  |  |  |  |  |  |

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Communication** | 1 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 2 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 3 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 4 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 5 |  |  |  |  |  |  |  |  |  |  |  |  |
| **Time** | 1 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 2 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 3 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 4 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 5 |  |  |  |  |  |  |  |  |  |  |  |  |
| **Cost** | 1 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 2 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 3 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 4 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 5 |  |  |  |  |  |  |  |  |  |  |  |  |
| **Quality** | 1 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 2 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 3 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 4 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 5 |  |  |  |  |  |  |  |  |  |  |  |  |
| **Safety** | 1 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 2 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 3 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 4 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 5 |  |  |  |  |  |  |  |  |  |  |  |  |
| **Claim and Issue** | 1 |  |  |  |  |  |  |  |  |  |  |  |  |
| **Resolution** | 2 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 3 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 4 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 5 |  |  |  |  |  |  |  |  |  |  |  |  |
| **Environment** | 1 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 2 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 3 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 4 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 5 |  |  |  |  |  |  |  |  |  |  |  |  |
| **Contract Relations** | 1 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 2 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 3 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 4 |  |  |  |  |  |  |  |  |  |  |  |  |
|  | 5 |  |  |  |  |  |  |  |  |  |  |  |  |

###### Attachment 4

**Ethical Suppliers Declaration**

Refer to Schedule 11 of the GC21 Subcontract.

**Statutory Declarations Act 1959 (Cth)**

I, **[Name, address and occupation of person making declaration]** make the following declaration under the Statutory Declarations Act 1959 (Cth),

#### In this declaration a reference to:

“**Adverse Ruling**” means a ruling, order, notice (including without limitation any improvement notice or prohibition notice), conviction or finding made or issued by any Authorised Entity.

“**Authorised Entity**” means any court, tribunal, board, commission, regulatory agency (including without limitation the director-general, commissioner, regulator or any inspector referred to in the Prescribed Legislation) or other entity with jurisdiction to determine employee and industrial relations matters or work health and safety matters to the effect that the Subcontractor has contravened the Prescribed Legislation.

**“Consultant”** means a consultant engaged by the Subcontractor to provide professional services. It includes a consultant whose contract with the Principal or the Contractor is novated to one with the Subcontractor.

“**Contractor**” has the same meaning as under the Subcontract.

“**Employee**” means a natural person who is employed under a contract of service (excluding professional or information technology services) to provide the Subcontractor or a sub-subcontractor with his or her labour.

“**Industrial Instruments**” means an award or agreement, however designated, that:

#### is made under or recognised by an industrial law; or

* + 1. concerns the relationship of an employer and the employer’s employees.

“**Prescribed Legislation**” means all applicable Acts and subordinate instruments of the Commonwealth and the Australian Capital Territory, which deal with matters relating to industrial relations, employment and/or workplace safety obligations that apply to an entity including (as amended or replaced from time to time) but not limited to:

1. *Fair Work Act 2009* (Cth);
2. *Fair Work (Building Industry) Act 2012* (Cth);
3. *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth);
4. *Income Tax Assessment Act 1997* (Cth);
5. *Independent Contractors Act 2006* (Cth);
6. *Industry Research and Development Act 1986* (Cth);
7. *Long Service Leave Act 1976* (ACT);
8. *Long Service Leave (Portable Schemes) Act 2009* (ACT);
9. *Migration Act 1958* (Cth);
10. *Paid Parental Leave Act 2010* (Cth);
11. *Payroll Tax Act 2011* (ACT);
12. *Safety, Rehabilitation and Compensation Act 1988* (Cth);
13. *Superannuation Guarantee (Administration) Act 1992* (Cth);
14. *Superannuation Guarantee Charge Act 1992* (Cth);
15. *Work Health and Safety Act 2011* (ACT);
16. *Workers’ Compensation Act 1951* (ACT);
17. *Workplace Gender Equality Act 2012* (Cth).

“**Project**” means Project No **[insert Project no]** for **[insert sufficient details to identify nature of project];**

“**Prescribed Works or Services**” means works or services that require the exertion of labour by Employees;

“**Secure Local Jobs Code Certificate**” has the meaning given by the

*Government Procurement Act 2001* (ACT)*;*

“**Subcontract**” means an agreement which has or will shortly be entered into between the Contractor and the Subcontractor for the provision of works in respect of the Project.

“**Subcontractor**” means **[insert full legal name of Subcontractor including the ACN/ABN as per that identified on the Subcontract]**; and

“**Supplier**” means an entity engaged by the Subcontractor to supply part of the Project.

all other capitalised words or terms have the same meaning as defined in the Subcontract.

* 1. I am authorised on behalf of the Subcontractor to make this declaration.
  2. All Employees of the Subcontractor who have at any time been employed by the Subcontractor in respect of the Project have, at the date of this statutory declaration, been paid all moneys due and payable to them in respect of their employment on the work under the Subcontract.
  3. The Subcontractor has made provision for all other benefits (as required by Prescribed Legislation and any Industrial Instruments) accrued in respect of its Employees as at the date of this statutory declaration.
  4. All Subcontractors, subcontractors, Suppliers and Consultants have been paid all amounts payable to each of them by the Subcontractor as at the date of this statutory declaration with respect to

engagement by each of them for the performance of work or the supply of materials for or in connection with the Subcontract.

* 1. All workers compensation insurance premiums payable by the Subcontractor to the date of this statutory declaration in respect of the work done in connection with the Subcontract have been paid.
  2. All payroll tax payable by the Subcontractor in respect of wages paid or payable to the relevant Employees of the Subcontractor for work done in connection with the Subcontract to the date of this statutory declaration has been paid.
  3. The Subcontractor holds a current Secure Local Jobs Code Certificate.
  4. The Subcontractor has in the preceding 24 months of the date of this declaration complied with all applicable Industrial Instruments.

True (delete 9A and initial) Not true (answer 9A)

9A. The Subcontractor has not complied with the following Industrial Instruments in the following respects.

**[Insert full details of failure to comply with Industrial Instruments]**

* 1. The Subcontractor has in the preceding 24 months of the date of this declaration complied with all Prescribed Legislation

True (delete 10A and initial) Not true (answer 10A)

10A. The Subcontractor has not complied with the following Prescribed Legislation.

**[Insert Full Details of the failure to comply with Prescribed Legislation]**

* 1. The Subcontractor has in the preceding 24 months of the date of this declaration recognised the rights of its Employees to union membership and representation.

True (delete 11A and initial) Not true (answer 11A)

11A. The Subcontractor has not recognised the rights of Employees to union membership and representation in the following respects.

**[Insert Full Details of how the Contractor has not recognised the rights of Employees to union membership and representation]**

* 1. The Subcontractor has in the preceding 24 months of the date of this declaration complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency.

True (delete 12A and initial) Not true (answer 12A)

12A. The Subcontractor has not complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency in the following respects:

**[Insert Full Details of how the Contractor has failed to comply with all amendments to wages and conditions of employment]**

* 1. In the preceding 24 months of the date of this declaration there have been no findings against the Subcontractor by any Authorised Entity, including a finding of a breach in a non-confidential consent order.

True (delete 13A and initial) Not true (answer 13A)

13A. There have been the following findings (Full Details of which are provided) against the Subcontractor by an Authorised Entity:

**[Set out Full Details of findings]**

* 1. In the preceding 24 months of the date of this declaration there have been no Adverse Rulings under the Prescribed Legislation against the Subcontractor.

True (delete 14A and initial) Not true (answer 14A)

14A. There have been the following Adverse Rulings under the Prescribed Legislation against the Subcontractor:

**[Set out Full Details of convictions]**

* 1. There are currently no proceedings or prosecutions against the Subcontractor in respect of a breach of any Prescribed Legislation.

True (delete 15A and initial) Not true (answer 15A)

15A. There are currently the following proceedings or prosecutions against the Subcontractor in respect of a breach of Prescribed Legislation.

**[Set out Full Details of proceedings or prosecutions]**

* 1. The Subcontractor has not been required to implement any remedial measures to ensure future compliance with the Prescribed Legislation.

True (delete 16A and initial) Not true (answer 16A)

16A. The Subcontractor has been required to implement the following remedial measures to ensure future compliance with the Prescribed Legislation:

**[Set out Full Details of the remedial measures implemented]**

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

[Signature of person making the declaration]**]**

[Print name of person making the declaration] Declared at [place] on [day] of [month] [year] Before me:

[Signature of person before whom the declaration is made]

[Full name, qualification and address of person before whom the declaration is made (in printed letters)]

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years – see section 11 of the Statutory Declarations Act 1959.

Note 2 Chapter 2 of the Criminal Code applies to all offences against the Statutory Declarations Act 1959 – see section 5A of the Statutory Declarations Act 1959.

**A statutory declaration under the Statutory Declarations Act 1959 may be made before–**

1. A person who is currently licensed or registered under a law to practise in one of the following occupations:

|  |  |  |
| --- | --- | --- |
| Chiropractor | Dentist | Legal practitioner |
| Medical practitioner | Nurse | Optometrist |
| Patent attorney | Pharmacist | Physiotherapist |
| Psychologist | Trade marks attorney | Veterinary surgeon |

1. A person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
2. A person who is in the following list:

Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public

Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the Consular Fees Act 1955)

Bailiff

Bank officer with 5 or more continuous years of service

Building society officer with 5 or more years of continuous service Chief executive officer of a Commonwealth court

Clerk of a court Commissioner for Affidavits

Commissioner for Declarations

Credit union officer with 5 or more years of continuous service Employee of the Australian Trade Commission who is:

* 1. in a country or place outside Australia; and
  2. authorised under paragraph 3 (d) of the Consular Fees Act 1955; and
  3. exercising his or her function in that place Employee of the Commonwealth who is:

1. in a country or place outside Australia; and
2. authorised under paragraph 3 (c) of the Consular Fees Act 1955; and
3. exercising his or her function in that place Fellow of the National Tax Accountants’ Association

Finance company officer with 5 or more years of continuous service Holder of a statutory office not specified in another item in this list Judge of a court

Justice of the Peace Magistrate

Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the Marriage Act 1961 Master of a court

Member of Chartered Secretaries Australia

Member of Engineers Australia, other than at the grade of student Member of the Association of Taxation and Management Accountants Member of the Australasian Institute of Mining and Metallurgy Member of the Australian Defence Force who is:

1. an officer; or
2. a non-commissioned officer within the meaning of the Defence Force Discipline Act 1982 with 5 or more years of continuous service; or
3. a warrant officer within the meaning of that Act

Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants

Member of:

1. the Parliament of the Commonwealth; or
2. the Parliament of a State; or
3. a Territory legislature; or
4. a local government authority of a State or Territory

Minister of religion registered under Subdivision A of Division 1 of Part IV of the Marriage Act 1961 Notary public

Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public

Permanent employee of:

1. the Commonwealth or a Commonwealth authority; or
2. a State or Territory or a State or Territory authority; or
3. a local government authority;

with 5 or more years of continuous service who is not specified in another item in this list

Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made

Police officer

Registrar, or Deputy Registrar, of a court Senior Executive Service employee of:

Sheriff

1. the Commonwealth or a Commonwealth authority; or
2. a State or Territory or a State or Territory authority

Sheriff’s officer

Teacher employed on a full-time basis at a school or tertiary education institution