

Design and Construction of: **"ENTER PROJECT NAME"**

Project No. **"ENTER PROJECT NUMBER"**

At: **"ENTER PROJECT ADDRESS"**

Main Contractor: **EVANS BUILT PTY LTD**

Subcontractor: **SUBCONTRACTOR**
D "D NUMBER"

Australian Standard™

Subcontract conditions for design and construct (QLD)

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This Australian Standard was prepared by Committee OB-003, General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 7 September 1999. This Standard was published on 27 December 2000.

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This Standard was issued in draft form for comment as DR 98019.

Australian Standard™

Subcontract conditions for design and construct (QLD)

Originated as AS 4303—1995.
Revised and redesignated AS 4903—2000.
Reissued incorporating Amendment No. 1 (March 2005).

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Published by Standards Australia, GPO Box 5420, Sydney, NSW 2001, Australia

ISBN 0 7337 3186 4

FORMAL INSTRUMENT OF AGREEMENT FOR SUBCONTRACT AS4903 - 2000

AGREEMENT made the _____ Day of _____ 2019

PARTIES
of (address) **Evans Built Pty Ltd**
La Balsa, Suite 301
45 Brisbane Road Mooloolaba Qld 4557
ABN: 61 120 743 099
(the “*Main Contractor*”)

AND
of (address) **"ENTER SUBCONTRACTOR NAME"**
"ENTER SUBCONTRACTOR ADDRESS"

ABN: "ENTER ABN"
QBCC License Number: "ENTER QBCC"
(the “*Subcontractor*”)

RECITALS:

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

OPERATIVE PROVISIONS:

1 Definitions:

In this formal instrument of agreement defined terms have the same meaning as in the Subcontract conditions for design and construct.

2 Completion of work

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

3 Payment to Subcontractor

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

4 The Subcontract Sum

The *subcontract sum* is: **"ENTER AMOUNT EXC GST"** (excluding GST)

"ENTER AMOUNT EXC GST IN WORDS" (excluding GST)

(figures and words)

5 Subcontract documents and order of precedence

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

- (a) This Formal Instrument of Agreement;
- (b) Annexure Part A;
- (c) Annexure Part F - Main Contractor's Project Requirements;
- (d) Subcontract conditions for design and construct (as amended);
- (e) Annexure Part B – Approved form of unconditional undertaking;
- (f) Annexure Part C – Deed of Novation;
- (g) Annexure Part D – Deed of Novation;
- (h) Annexure Part E – Deletions, amendments and additions;
- (i) Annexure Part G – Drawing Register;
- (j) Annexure Part H – Safety Requirements;
- (k) Annexure Part I – Declaration by Subcontractor;
- (l) Annexure Part J – Deed of Release – Practical Completion;
- (m) Annexure Part K – Deed of Release - Final;
- (n) Annexure Part L – Trade Breakdown;
- (o) Annexure Part M – Agreement to Issue RCTIs; and
- (p) Annexure Part N – Progress Claim Proforma.

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

6 Counterparts

This *Subcontract* may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

Executed as an agreement

EXECUTED by **Evans Built Pty Ltd**)
(**ABN: 61 120 743 099**) in accordance with)
section 127 of the Corporations Act:)

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

.....
Name of Director/Secretary

EXECUTED by **SUBCONTRACTOR**)
(**ABN "ENTER ABN"**))
in accordance with section 127 of the)
Corporations Act:)

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

.....
Name of Director/Secretary

PREFACE

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

This Standard incorporates Amendment No. 1 (March 2005). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure or part thereof affected.

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

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

This Standard covers the following types of project procurement methods:

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

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

- (a) **design and construct**—the Main Contractor would provide the Main Contractor's project requirements, would not normally provide a detailed preliminary design and would not require novation;
- (b) **design development and construct**—the Main Contractor would provide the Main Contractor's project requirements, would always provide a preliminary design and accordingly would complete Annexure Part A Items 14 and 15;
- (c) **design, novate and construct**—the Main Contractor would provide the Main Contractor's project requirements, would always provide a preliminary design, would complete Annexure Part A Items 14 and 15 and would complete Annexure Part A Item 25 stating which secondary subcontract (including consultant's agreement) or selected secondary subcontract is to be novated to the Subcontractor.

Subclauses 8.6, 29.2 and 34.7A, prefixed by *, are optional, and may be omitted in the Contract, where necessary, without making consequential amendments but such omission should be clearly shown on the face of the document by striking out these subclauses or indicating clearly in clause 1 of Annexure Part E or elsewhere that they are *not to apply*. See paragraph (i) of clause 1 for the effect of stating deletions in Annexure Part E.

WARNINGS

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

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

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

- 3) **In relation to insurances, the parties should have regard to clause 16A regarding the availability during the tender period of a copy of the insurance policy in relation to**

WUS, and subclause regarding proof of evidence of insurances generally, before WUS commences under the Subcontract.

- 4) Main Contractors should ensure that their specific requirements are fully and completely incorporated in the Main Contractor's project requirements obtaining specialist advice if necessary. Where a Subcontractor provides a proposed design as part of its tender the parties should consider whether that design should form part of the Main Contractor's project requirements.
- 5) The risk allocation, drafting, interpretation and construction of this Standard are interrelated. Users who alter the Standard do so at their own risk and should obtain specialist advice as to whether it is suitable for a particular project.
- 6) Subcontractors should ensure that they satisfy the requirements of payment for unfixed plant and materials.
- 7) Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

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STANDARDS AUSTRALIA

Australian Standard

Subcontract conditions for design and construct

1 Interpretation and construction of Subcontract

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

- approvals** means any approval, statutory or otherwise, required by Federal, State or Local Government directly or through an entity or person authorised by the Federal, State or Local Government to require the approval;
- BCIPA** means the *Building and Construction Industry Payments Act 2004* (Qld);
- BIF Act** means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) and the regulations made under or in respect of that Act;
- bill of quantities** means a document named therein as a bill of quantities issued to tenderers by or on behalf of the *Main Contractor*, stating estimated quantities of *work* to be carried out;
- business day** means a day that is not:
- (a) a Saturday or Sunday; or
 - (b) a public holiday, special holiday or bank holiday in the place in which the *site* is located,
- except in clause 37 of this *Contract* where the definition shall have the same meaning as under the *Payments Act*;
- certificate of practical completion** has the meaning in subclause 34.6;
- claim** means any claim (including for any *EOT*, *variation* or delay costs under the *Subcontract*), right of action or demand (or similar legal entitlement), in any jurisdiction, including but not limited to at law, in tort (including negligence), under statute, in equity including quantum meruit or restitution based on unjust enrichment, for rectification, frustration or for any other legal or equitable remedy;
- Claim Documentation** means:
- (a) the trade breakdown contained in Annexure Part L, updated to include a breakdown of the percentage complete of each trade or part and the amount to be claimed in respect of each trade or part for the particular period;
 - (b) the duly executed declaration in Annexure Part I; and
 - (c) those listed at *Item 37A*.
- compensable cause** means:
- (a) any act, default or omission of the *Subcontract Superintendent*, the *Main Contractor* or its consultants, agents or other contractors (not being employed by the *Subcontractor*); or

- (b) any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Subcontractor*);
- construction plant** means appliances and things used in the carrying out of *WUS* but not forming part of *the Subcontract Works*;
- construction program** has the meaning in clause 32;
- date for practical completion** means:
- (a) where *Item 11(a)* provides a date for *practical completion*, the date;
- (b) where *Item 11(b)* provides a period of time for *practical completion*, the last day of the period,
- but if any *EOT* for *practical completion* is directed by the *Subcontract Superintendent* or allowed in any expert determination or litigation, it means the date resulting therefrom;
- date of Subcontract** means the date on which both the *Main Contractor* and the *Subcontractor* have executed this *Subcontract*;
- date of practical completion** means:
- (a) the date evidenced in a *certificate of practical completion* as the date upon which *practical completion* was reached; or
- (b) where another date is determined in any expert determination or litigation as the date upon which *practical completion* was reached, that other date;
- deed of guarantee, undertaking and substitution** has the meaning in subclause 5.6;
- Deed of Release – Practical Completion** means the deed contained in Annexure Part J;
- Deed of Release – Final** means the deed contained in Annexure Part K;
- defects** has the meaning in clause 35 and includes omissions;
- defects liability period** has the meaning in clause 35;
- design documents** means the drawings, specifications and other information, samples, models, patterns and the like required by the *Subcontract* and created (and including, where the context so requires, those to be created by the *Subcontractor*) for the construction of *the Subcontract Works*;
- direction** includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
- dispute** has the meaning in clause 42;
- EOT (from ‘extension of time’)** has the meaning in subclause 34.3;
- excepted risk** has the meaning in subclause 14.3;

- email point*** Means the central email address for the service of any *claim* under the *Subcontract* or the *Payments Act* (clause 7) stated in *Item 10A*;
- final certificate*** has the meaning in subclause 37.4;
- final payment*** has the meaning in clause 37;
- final payment claim*** means the final payment claim referred to in subclause 37.4;
- GST*** means any form of goods and services tax payable under the *GST Act*;
- GST Act*** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- intellectual property right*** means any patent, registered design, trademark or name, copyright or other protected right;
- Item*** means an *Item* in Annexure Part A;
- latent condition*** has the meaning in subclause 25.1;
- legislative requirement*** includes:
- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where *WUS* or the particular part thereof is being carried out;
 - (b) certificates, licences, consents, permits, approvals and requirements of persons having jurisdiction in connection with the carrying out of *WUS*; and
 - (c) fees and charges payable in connection with the foregoing;
- main contract*** means the agreement between the *Principal* and the *Main Contractor*;
- main contract expert*** has the meaning in subclause 42.4;
- main contract dispute*** has the meaning in clause 42;
- main contract works*** means the whole of the *work* to be carried out and completed in accordance with the *main contract*, including *variations* provided for by the *main contract*, which by the *main contract* is to be handed over to the *Principal*;
- Main Contractor*** means the Main Contractor stated in *Item 1*;
- Main Contractor's project requirements*** means the *Main Contractor's* written requirements for the *Subcontract Works* described in the documents stated in *Item 14* which:
- (a) shall include the stated purpose for which the *Subcontract Works* are intended;

- (b) may include the *Main Contractor's* design, timing and cost objectives for the *works*; and
 - (c) where stated in *Item 14*, shall include a *preliminary design*;
- notice of proposed acceleration*** has the meaning in clause 32A;
- notice of proposed variation*** has the meaning in subclause 36.2;
- other contractors*** means contractors engaged by the *Main Contractor* or the *Principal* or its subcontractors to carry out *works* on or adjacent to the *site*;
- Payments Act*** means:
- (a) prior to the commencement of the *BIF Act* (other than the provisions specified in section 2 of the *BIF Act*), the *BCIPA*; and
 - (b) after commencement of the *BIF Act* (other than the provisions specified in section 2 of the *BIF Act*), the *BIF Act*;
- PPSA*** means *Personal Property Securities Act 2009* (Cth);
- PPSA register*** means the register established under the *PPSA*;
- practical completion*** is that stage in the carrying out and completion of *WUS* when:
- (a) *the Subcontract Works* are complete except for minor *defects*:
 - (i) which do not prevent *the Subcontract Works* from being reasonably capable of being used for their stated purpose;
 - (ii) which the *Subcontract Superintendent* determines the *Subcontractor* has reasonable grounds for not promptly rectifying; and
 - (iii) the rectification of which will not prejudice the convenient use of *the Subcontract Works*;
 - (b) those *tests* which are required by the *Subcontract* to be carried out and passed before *the Subcontract Works* reach *practical completion* have been carried out and passed; and
 - (c) documents and other information required under the *Subcontract* which, in the *Subcontract Superintendent's* opinion, are essential for the use, operation and maintenance of *the Subcontract Works* have been supplied;
 - (d) all permits, approvals, certificates and other authorisations required under relevant *legislative requirements* to be issued by any authority before *the Subcontract Works* can be used for its intended purpose (whether stated or inferred) have been supplied to the *Subcontract Superintendent*;
 - (e) the *Subcontractor* has duly executed the completed copy of the *Deed of Release – Practical Completion* issued to the *Subcontractor* by the *Subcontract Superintendent* and returned the same to the *Subcontract Superintendent* and the *Main Contractor*;
 - (f) all of the *Subcontractor's* material and equipment, including but not limited to cranes, scaffolding, signage, hoardings,

builder's sheds and building debris have been removed from the *site*; and

- (g) all "as-built/as-installed" drawings and other documents required under the *Subcontract* have been provided to the *Main Contractor*;

preliminary design means the documents stated in *Item 15*;

prescribed notice has the meaning in subclause 41.1;

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

progress certificate has the meaning in subclause 37.2;

provisional sum has the meaning in clause 3 and includes monetary sum, contingency sum and prime cost item;

public and product liability policy has the meaning in clause 17;

QBCC Act means the *Queensland Building and Construction Commission Act 1991* (Qld);

qualifying cause of delay means:

- (a) any act, default or omission of the *Subcontract Superintendent*, the *Main Contractor* or its consultants, agents or other contractors (not being employed by the *Subcontractor*);
- (b) any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Subcontractor*); or
- (c) stated in *Item 32*,

which causes a delay to the critical path of the *construction program*;

RCTI means a recipient created tax invoice created in accordance with the *GST Act* and the requirements contained in Tax Ruling GST R2000/10 (as amended from time to time);

schedule of rates means any schedule included in the *Subcontract* which, in respect of any section or item of *work* to be carried out, shows the rate or respective rates of payment for the execution of that *work* and which may also include lump sums, *provisional sums*, other sums, quantities and prices;

secondary subcontract means a subcontract between the *Subcontractor* and a *secondary subcontractor*;

secondary subcontractor means a subcontractor or supplier to the *Subcontractor* and includes a *Subcontractor's consultant*;

security means:

- (a) cash;
- (b) retention moneys;
- (c) bonds or inscribed stock or their equivalent issued by a national, state or territory government;
- (d) interest bearing deposit in a bank carrying on business at the place stated in *Item 13(c)*;

- (e) an approved unconditional undertaking or an approved performance undertaking given by an approved financial institution or an approved insurance company and in a form approved by the *Main Contractor*; or
 - (f) other form approved by the party having the benefit of the security;
- security interest*** has the same meaning as under the *PPSA*;
- selected secondary subcontract work*** has the meaning in subclause 9.3;
- selected secondary subcontractor*** has the meaning in subclause 9.3;
- separable portion*** means a portion of *the Subcontract Works* identified as such in the *Subcontract* or by the *Subcontract Superintendent* pursuant to clause 4;
- site*** means the lands and other places to be made available and any other lands and places made available to the *Subcontractor* by the *Main Contractor* for the purpose of the *Subcontract*;
- Subcontract*** has the meaning in clause 6;
- subcontract sum*** means:
- (a) where the *Main Contractor* accepted a lump sum, the lump sum;
 - (b) where the *Main Contractor* accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the priced *bill of quantities* or *schedule of rates*; or
 - (c) where the *Main Contractor* accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),
- including *provisional sums* but excluding any additions or deductions which may be required to be made under the *Subcontract*;
- Subcontract Superintendent*** means the person stated in *Item 5* as the Subcontract Superintendent or other person from time to time appointed in writing by the *Main Contractor* to be the Subcontract Superintendent and notified as such in writing to the *Subcontractor* by the *Main Contractor* and, so far as concerns the functions exercisable by a *Subcontract Superintendent's Representative*, includes a *Subcontract Superintendent's Representative*;
- Subcontract Superintendent's Representative*** means an individual appointed in writing by the *Subcontract Superintendent* under clause 21;
- Subcontractor*** means the person bound to carry out and complete *WUS*;
- Subcontractor's consultant*** means any person engaged by the *Subcontractor* to perform consultancy services in connection with *WUS* and includes any *Main Contractor's* consultant whose prior contract is novated to the *Subcontractor* under subclause 9.4;

- Subcontractor's design obligations*** means all tasks necessary to design and specify *the Subcontract Works* required by the *Subcontract*, including preparation of the *design documents* and, if the documents stated in *Item 14* as describing the *Main Contractor's project requirements* include a *preliminary design*, developing the *preliminary design*;
- Superintendent*** means the person stated in *Item 9* as the Superintendent or other person from time to time appointed in writing by the *Principal* to be the Superintendent under the *main contract* and notified as such in writing to the *Subcontractor* by the *Main Contractor* and, so far as concerns the functions exercisable under the *main contract* by a Superintendent's Representative, includes a Superintendent's Representative;
- survey mark*** in clause 26 means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring *WUS*;
- temporary works*** means *work* used in carrying out and completing *WUS*, but not forming part of *the Subcontract Works*;
- test*** has the meaning in subclause 30.1 and includes examine and measure;
- the Subcontract Works*** means the whole of the *work* to be carried out and completed in accordance with the *Subcontract*, including *variations* provided for by the *Subcontract*, which by the *Subcontract* is to be handed over to the *Main Contractor*;
- variation*** has the meaning in clause 36;
- work*** includes the provision of materials;
- WUS (from 'work under the Subcontract')*** means the *work* which the *Subcontractor* is or may be required to carry out and complete under the *Subcontract* and includes *variations*, remedial *work*, *construction plant* and *temporary works*, and like words have a corresponding meaning.

In the *Subcontract*:

- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) time for doing any act or thing under the *Subcontract* shall, if it ends on a day which is not a *business day*, be deemed to end on the next *business day*;
- (c) clause headings, subclause headings and the table of contents shall not form part of, nor be used in the interpretation of, the *Subcontract*;
- (d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
- (e) communications between the *Main Contractor*, the *Subcontract Superintendent* and the *Subcontractor* shall be in the English language;
- (f) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in *Item 12*;

- (g) unless otherwise provided, prices are in the currency in *Item 13(a)* and payments shall be made in that currency at the place in *Item 13(b)*;
- (h) the law governing the *Subcontract*, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in *Item 12*; and
- (i) if pursuant to Annexure Part E to these Subcontract Conditions, clauses or their parts in these Conditions are deleted, the *Subcontract* shall be read and construed as though the clause or its part has been deleted, whether or not that particular clause or its part has been struck from these Conditions;

2 Nature of Subcontract

2.1 Performance and payment

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

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

- (a) for *work* for which the *Main Contractor* accepted a lump sum, the lump sum; and
- (b) for *work* for which the *Main Contractor* accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of *work* actually carried out under the *Subcontract* by the rate accepted by the *Main Contractor* for the section or item,

adjusted by any additions or deductions made pursuant to the *Subcontract*.

2.2 Subcontractor's warranties

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

- (a) the *Subcontractor*:
 - (i) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the carrying out and completion of *WUS*;
 - (ii) has examined any *preliminary design* included in the *Main Contractor's project requirements* and that such *preliminary design* is suitable, appropriate and adequate for the purpose stated in the *Main Contractor's project requirements*;
 - (iii) shall carry out and complete the *Subcontractor's design obligations* to accord with the *Main Contractor's project requirements* and, if subclause 9.4 applies, accept the novation and retain the *Main Contractor's* consultants for any *work* the subject of a prior contract with the *Main Contractor*;
 - (iv) shall carry out and complete *WUS* in accordance with the *design documents* so that *the Subcontract Works*, when completed, shall:
 - (A) be fit for their stated purpose; and
 - (B) comply with all the requirements of the *Subcontract* (including the *Main Contractor's* project requirements ;
- (b) subject to clause 9, the *Subcontractor's consultants* identified in the *Subcontractor's* tender are suitably qualified and experienced.

2.3 Warranties unaffected

The warranties remain unaffected notwithstanding:

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

2.4 Bill of quantities

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

Alternative 1

A *bill of quantities* forms part of the *Subcontract* and shall be priced in accordance with subclause 2.5.

Alternative 2

A *bill of quantities* does not form part of the *Subcontract* and shall not be priced in accordance with subclause 2.5 unless so stated in *Item 16(b)*.

2.5 Priced bill of quantities

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

- (a) all items included in the *bill of quantities* shall be priced and extended by the *Subcontractor* and the prices as extended shall on addition equal the sum accepted by the *Main Contractor* for carrying out the whole of the *work* to which the *bill of quantities* relates;
- (b) the *Subcontractor* shall lodge the *bill of quantities* so priced and extended with the *Subcontract Superintendent* before the expiration of the time for lodgement stated in *Item 16(c)* or such further time as may be directed by the *Subcontract Superintendent* from time to time;
- (c) notwithstanding any other provision of the *Subcontract*, the *Subcontractor* shall not be entitled to payment until the *Subcontractor* has lodged the *bill of quantities* so priced and extended.

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

2.6 Quantities

Quantities in a *bill of quantities* or *schedule of rates* are estimated quantities only.

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

2.7 Adjustment for actual quantities

Where, otherwise than by reason of a *direction* to vary *WUS*, the actual quantity of an item required to perform the *Subcontract* is greater or less than the quantity shown in a *bill of quantities* which forms part of the *Subcontract* or *schedule of rates*:

- (a) the *Main Contractor* accepted a lump sum for the item, the difference shall be assessed as if it was a *variation*;
- (b) the *Main Contractor* accepted a rate for the item, the rate shall apply to the greater or lesser *quantities* provided that where limits of accuracy for a quantity in a *schedule of rates* are stated in *Item 17*, the rate shall apply to the greater or lesser quantities within the limits, and quantities outside the limits shall be assessed as if it was a *variation*.

If such a *bill of quantities* or *schedule of rates* omits an item which should have been included, the *Subcontract Superintendent* shall give a *direction* as to the item *variation*.

Notwithstanding the preceding provisions of this subclause in respect of a *bill of quantities*, a *variation* shall not occur for actual quantities of an item pursuant to paragraph (a), or for an omitted item or any adjustment made for actual quantities of an item pursuant to paragraph(b), if the difference, the value of the omitted item or the adjustment respectively is less than \$400.

2.8 Non-Reliance

The *Subcontractor* warrants that:

- (a) it did not in any way rely upon:
 - (i) any information, data, representation, statement or document made or provided to the *Subcontractor* by the *Main Contractor* or anyone on behalf of the *Main Contractor*; or
 - (ii) the accuracy or adequacy of any such information, data, representations, statement or document,
 - prior to or at the time of entering into the *Subcontract*, except to the extent that any such information, data, representation, statement or document (including quantities in a schedule of rates) forms part of the *Subcontract*;
- (b) it enters into the *Subcontract* based on its own investigations, interpretations, deductions, information and determinations; and
- (c) it has and, for the purposes of properly and adequately carrying out *the Subcontract Works* prior to entering into the *Subcontract*, investigated and satisfied itself in all respects as to the *site* and its surroundings (including without limitation all *site* conditions (aboveground or underground), access, facilities and services).

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

2.9 Main Contract Obligations

The *Subcontractor* warrants that it has informed itself as to all documents, obligations, liabilities and terms contained in the *main contract*.

The *Subcontractor* acknowledges that the *main contract* was, and is, available for inspection and review at the head office of the *Main Contractor*.

In connection with the *Subcontract Works* the *Subcontractor*:

- (a) assumes to the *Main Contractor* the same obligations as the *Main Contractor* has assumed to the *Principal* under the *main contract*; and

- (b) shall perform and discharge each of the *Main Contractor's* obligations under or associated with the *main contract* as part of the *Subcontract*; and
- (c) warrants that it will not cause the *Main Contractor* to be in breach of its obligations under the *main contract* at any time.

Where the *main contract* imposes an obligation that is inconsistent with an obligation under the *Subcontract*, the obligation under the *main contract* prevails to the extent of the inconsistency.

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

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

All the powers of the Principal or the Superintendent as against the Main Contractor or under the main contract extend to the Subcontract and may be exercised by the Main Contractor as against the Subcontractor under the Subcontract.

2.10 Subcontractor's design

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

2.11 Obligations unaffected

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

- (a) that design of *the Subcontract Works* or any part of *the Subcontract Works* (except for any design carried out by or on behalf of the *Subcontractor* as part of *WUS*) has been carried out by or on behalf of the *Main Contractor*;
- (b) the involvement of *secondary subcontractors* in the carrying out of *WUS*; and
- (c) the *Main Contractor* giving to the *Subcontractor* any information, data or documents obtained by the *Main Contractor* for the purposes of *the Subcontract Works* before the date of *Subcontract*.

3 Provisional sums

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

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

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

plus an amount for profit and attendance calculated by using the percentage thereon stated in *Item 18* or elsewhere in the *Subcontract*, or, if not so stated, as assessed by the *Subcontract Superintendent*.

4 Separable portions

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

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

5 Security

5.1 Provision

Security shall be provided in accordance with *Item 19*, in a form satisfactory to the *Main Contractor*.

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

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

5.2 Recourse

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

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

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

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

5.3 Change of security

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

5.4 Reduction and release

Upon the later of the:

- (a) issue of the *certificate of practical completion*;
- (b) date upon which the *Subcontractor* has returned to the *Subcontractor Superintendent* and *Main Contractor* a duly executed copy of the *Deed of Release – Practical Completion*; or
- (c) date upon which all permits, *approvals*, certificates and other authorisations required for use of the *main contract works* have been issued by all authorities having jurisdiction over the *main contract works*,

The *Main Contractor's* entitlement to *security* (other than in *Item 19(e)*) shall be reduced by the percentage or amount in *Item 19(f)*, and the reduction shall be released and returned within 14 days to the *Subcontractor*.

The *Main Contractor's* entitlement to *security* in *Item 19(e)* shall cease 14 days after incorporation into the *Subcontract Works* of the plant and materials for which that *security* was provided.

The *Main Contractor's* entitlement otherwise to *security* shall cease 14 days after the later of:

- (d) The date of issue of the *final certificate*; or
- (e) the date upon which the *Subcontractor* has returned to the *Subcontract Superintendent* and *Main Contractor* a duly executed copy of the *Deed of Release - Final*.

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

5.5 Trusts and interest

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

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

5.6 Deed of guarantee, undertaking and substitution

Where:

- (a) a party is a related or subsidiary corporation (as defined in the applicable corporations law of the jurisdiction); and
- (b) a form of *deed of guarantee, undertaking and substitution* was included in the tender documents,

that party shall, within 14 days after receiving a written request from the other party, provide such *deed of guarantee, undertaking and substitution* duly executed and enforceable.

6 Evidence of Subcontract

Until a formal instrument of agreement is executed by the parties, documents evidencing the parties' consensus shall constitute the *Subcontract*. If such *Subcontract* requires a formal instrument of agreement, the *Main Contractor* shall, within 28 days of the *date of Subcontract*, send it in duplicate for execution by the *Subcontractor*. Within 14 days after receiving them, the *Subcontractor* shall (if they are correct) properly execute both copies and return them.

Within 14 days after receiving them, the *Main Contractor* shall execute both copies, have them stamped as necessary and send one copy to the *Subcontractor*.

The *Subcontract Superintendent* may extend the time under this clause by written notice to the parties.

7 Service of notices

A notice (and other documents) shall be deemed to have been given and received:

- (a) if addressed or delivered to the relevant address in the *Subcontract* or last communicated in writing to the person giving the notice; and
- (b) on the earliest date of:
 - (i) actual receipt;
 - (ii) confirmation of correct transmission of fax;
 - (iii) 3 days after posting; or
 - (iv) confirmation of transmission by email.

The *Main Contractor*, the *Subcontractor* and the *Subcontract Superintendent* shall each promptly notify the other in writing of any change of notice details.

All *claims*, notices, or demands for payment of whatsoever nature under the *Subcontract* or the *Payments Act* must be sent to the email address stated in *Item 10A*.

8 Subcontract documents

8.1 Discrepancies

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

The *Subcontractor* shall bear the cost of compliance with a *direction* under this subclause to the extent that any inconsistency, ambiguity or discrepancy in the *design documents* or between the *design documents* and the *Main Contractor's project requirements* necessitates the *direction*.

If compliance with any other *direction* under this subclause causes the *Subcontractor* to incur more or less cost than otherwise would have been incurred had the *direction* not been given, the difference shall be assessed by the *Subcontract Superintendent* and added to or deducted from the *subcontract sum*.

8.2 Main Contractor-supplied documents

The *Main Contractor* shall supply to the *Subcontractor* the documents and number of copies thereof, both stated in *Item 21*.

They shall:

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

8.3 Subcontractor-supplied documents

The *Subcontractor* shall supply to the *Subcontract Superintendent* the documents and number of copies at the times or stages stated in *Item 22*.

Other documents and information required by the *Subcontract*, unless elsewhere stated in the *Subcontract*, shall be supplied not less than 14 days before the *work* described in the documents is commenced and shall be in a form satisfactory to the *Subcontract Superintendent*.

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

- (a) the *Subcontract Superintendent* shall not be required to check that document for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Subcontract*;
- (b) notwithstanding subclause 2.1, any *Subcontract Superintendent's* acknowledgment or approval shall not prejudice the *Subcontractor's* obligations; and
- (c) if the *Subcontract* requires the *Subcontractor* to obtain the *Subcontract Superintendent's direction* about that document, the *Subcontract Superintendent* shall give, within the time stated in *Item 23*, the appropriate *direction*, including reasons if the document is not suitable.

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

Except as otherwise provided in the *Subcontract*, copies of documents supplied by the *Subcontractor* shall be the *Main Contractor's* property but shall not be used nor copied otherwise than for the use, repair, maintenance or alteration of *the Subcontract Works*.

8.4 Availability

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

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

8.5 Confidential information

The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential.

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else other than the *Principal*, the *Superintendent* and their identified consultants, any confidential matter even after *final certificate* or earlier termination of the *Subcontract*. If so required by the *Subcontractor*, the *Main Contractor* shall ensure that the *Subcontract Superintendent*, the *Principal* and the *Superintendent* also enter into such an agreement.

* 8.6 Media

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

9 Assignment and secondary subcontracting

9.1 Assignment

The *Subcontractor* shall not, without the *Main Contractor's* prior written approval (including terms) assign the *Subcontract* or any payment or other right, benefit, or interest thereunder.

9.2 Secondary subcontracting generally

The *Subcontractor* shall engage and retain the consultants identified in the *Subcontractor's* tender.

The *Subcontractor* shall not without the *Subcontract Superintendent's* prior written approval (which shall not be unreasonably withheld):

- (a) subcontract or allow a *secondary subcontractor* to subcontract any *work* described in *Item 24*; or
- (b) allow a *secondary subcontractor* to assign a *secondary subcontract* or any payment or any other right, benefit or interest thereunder.

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

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

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

- (a) provision that the *secondary subcontractor* shall not assign nor subcontract without the *Subcontractor's* written consent;
- (b) provisions which may be reasonably necessary to enable the *Subcontractor* to fulfil the *Subcontractor's* obligations to the *Main Contractor*;

* See Preface

- (c) provision that if the *Subcontract* is terminated and upon the *secondary subcontractor* being paid the sum certified by the *Subcontract Superintendent* as owing to the *secondary subcontractor*, the *Subcontractor* and the *secondary subcontractor* shall, after the *Main Contractor* has done so, promptly execute a deed of novation in the form of Annexure Part C.

For the purpose of effecting such novation only, the *Subcontractor* hereby irrevocably appoints the *Superintendent* under the *main contract* to be the *Subcontractor's* attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the *Subcontractor* accordingly; and

- (d) where the *secondary subcontractor* is a *Subcontractor's consultant*, provision that the *secondary subcontractor* shall effect and maintain professional indemnity insurance on the same terms as are required under *Items 28(c)* and *28(d)*.

9.3 Selected secondary subcontract work

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

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

9.4 Novation

This subclause applies only where the *Main Contractor's project requirements* include a *preliminary design* or the *Subcontract* includes *selected secondary subcontract work*.

When directed by the *Main Contractor*, the *Subcontractor*, without being entitled to compensation, shall promptly execute a deed of novation in the form of Annexure Part D, such deed being between the *Main Contractor*, the *Subcontractor* and the *secondary subcontractor* or *selected secondary subcontractor* stated in *Item 25* for the particular part of the *WUS*.

9.5 Subcontractor's responsibility

Except where the *Subcontract* otherwise provides, the *Subcontractor* shall be liable to the *Main Contractor* for the acts, defaults and omissions of *secondary subcontractors* (including *selected secondary subcontractors*) and employees and agents of *secondary subcontractors* as if they were those of the *Subcontractor*.

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

10 Intellectual property rights

10.1 Warranties and indemnities

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

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

Each party shall indemnify the other against such respective infringements.

10.2 Intellectual property rights granted to Main Contractor and Principal

The Alternative in *Item 26* applies.

Alternative 1

The *Subcontractor* grants to the *Main Contractor* and to the *Principal* irrevocable licences to use the *design documents* for *WUS*. Such licences shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, *the Subcontract Works* and the copying of the documents for such purposes.

Alternative 2

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

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

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

11 Legislative requirements

11.1 Compliance

The *Subcontractor* shall satisfy all *legislative requirements* and obtain all *approvals* except those in *Item 27(a)* and (b) or directed by the *Subcontract Superintendent* to be satisfied by or on behalf of the *Main Contractor*.

The *Subcontractor*, upon finding that a *legislative requirement* is at variance with the *Subcontract* or the *Main Contractor's project requirements*, shall promptly give the *Subcontract Superintendent* written notice thereof.

The *Subcontractor* shall give the *Main Contractor* copies of:

- (a) documents it gives to persons having jurisdiction at the time it submits such documents including notices; and
- (b) all documents (including *approvals* and other notices) that persons having jurisdiction issue to it within 2 *business days* of receiving such documents;

11.2 Changes

If a *legislative requirement*:

- (a) necessitates a change:
 - (i) to the *Main Contractor's project requirements*;
 - (ii) to *the Subcontract Works*;
 - (iii) to so much of *WUS* as is identified in *Item 27(c)*;
 - (iv) being the provision of services by a municipal, public or other statutory authority in connection with *WUS*; or
 - (v) in a fee or charge or payment of a new fee or charge;
- (b) comes into effect after the date of *Subcontract* but could not reasonably then have been anticipated by a competent subcontractor; and

- (c) causes the *Subcontractor* to incur more or less cost than otherwise would have been incurred,

the difference shall be assessed by the *Subcontract Superintendent* and added to or deducted from the *subcontract sum*.

12 Protection of people and property

12.1 General

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

- (a) take measures necessary to protect people and property;
- (b) avoid unnecessary interference with the passage of people and vehicles; and
- (c) prevent nuisance and unreasonable noise and disturbance.

If the *Subcontractor* damages property, the *Subcontractor* shall promptly rectify the damage and pay any compensation which the law requires the *Subcontractor* to pay.

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

12.2 Work Health and Safety

In performing *WUS*, the *Subcontractor* shall be responsible for ensuring that the *Subcontractor* and its employees, agents, *secondary subcontractors* or *consultants* carry out and complete the *Subcontract Works* safely and in accordance with all *legislative requirements* including those pursuant to the *Work Health and Safety Act 2011* (Qld) and those requirements listed in Annexure Part H.

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

13 Urgent protection

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

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

14 Care of the work and reinstatement of damage

14.1 Care of WUS

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

- (a) the whole of *WUS* from and including the date of commencement of *WUS* until the *site* is handed over to the *Main Contractor* or a person designated by the *Main Contractor* in writing after the *date of practical completion*, at which time responsibility for the care of the *Subcontract Works* (except to the extent provided in paragraph (b)) shall pass to the *Main Contractor*; and

- (b) outstanding *work* and items to be removed from the *site* by the *Subcontractor* after 4:00 pm on the *date of practical completion* until completion of outstanding *work* or compliance with clauses 29, 30 and 35.

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

14.2 Reinstatement

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

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

14.3 Excepted risks

The *excepted risks* causing loss or damage, for which the *Main Contractor* is liable, are:

- (a) any negligent act or omission of the *Superintendent*, the *Principal*, the *Subcontract Superintendent*, the *Main Contractor* or the consultants, agents, employees or other contractors (not being employed by the *Subcontractor*) of the *Principal* or the *Main Contractor*;
- (b) any risk specifically excepted elsewhere in the *Subcontract*;
- (c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the *Subcontractor* or its *secondary subcontractors* or either's employees or agents;
- (e) use or occupation of any part of *WUS* by the *Principal*, the *Main Contractor* or the consultants, agents or other contractors (not being employed by the *Subcontractor*) of either of them; and
- (f) defects in the design of *WUS*, including the *preliminary design* provided by the *Main Contractor*, as is not warranted under clause 2,

provided that the loss or damage was not caused or contributed to by the *Subcontractor*.

15 Damage to persons and property other than WUS

15.1 Indemnity by Subcontractor

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

The *Subcontractor* shall indemnify the *Main Contractor* against and compensate the *Main Contractor* for:

- (a) loss of or damage to the *Principal's* or the *Main Contractor's* property including existing property in or upon the *site* or those places which *WUS* is being carried out; and
- (b) *claims* in respect of personal injury or death or loss of, or damage to, any other property.

arising out of or as a consequence of the carrying out of *WUS*, but the indemnity shall be reduced proportionally to the extent that the act or omission of the *Superintendent*, the *Principal*, the *Subcontract Superintendent*, the *Main Contractor* or the consultants, agents or other contractors (not being employed by the *Subcontractor*) of the *Principal* or the *Main Contractor* may have contributed to the injury, death, loss or damage.

This subclause shall not apply to:

- (a) the extent that the *Subcontractor's* liability is limited by another provision of the *Subcontract*;
- (b) exclude any other right of the *Principal* or the *Main Contractor* to be indemnified by the *Subcontractor*;
- (c) things for the care of which the *Subcontractor* is responsible under subclause 14.1;
- (d) damage which is the unavoidable result of the construction of *the Subcontract Works* in accordance with the *Subcontract*; and
- (e) claims in respect of the *Main Contractor's* right to have *WUS* carried out.

15A Subcontractor's general insurance obligations

All insurances held by the *Subcontractor* shall cover the *Subcontractor's* obligations and indemnities in connection with the *Subcontract*.

All insurance policies obtained by the *Subcontractor* under or in connection with the *Subcontract* shall be obtained from reputable, Australian-based insurers holding authorisation from the Australian Prudential Regulation Authority. All such insurance policies are subject to approval by the *Main Contractor*, whose approval shall not be unreasonably withheld.

The *Subcontractor* shall before making a claim under the insurance of any other party, pursue a claim under the *Subcontractor's* insurance effected pursuant to this clause and clauses 16A, 16B, 17 or 18 for the full extent of the *Subcontractor's* liability.

The *Subcontractor* shall bear the cost of any deductible payable under a relevant insurance policy in proportion to its responsibility for the cause of that loss or damage the subject of the claim.

The *Subcontractor* shall, before commencing *WUS*, effect and maintain until the *final certificate* the additional insurance policies in *Item 27A(b)* in addition to the insurance policies required by clauses 16A, 16B, 17 and 18.

16A Insurance of the Subcontract Works

Before the date of *Subcontract*, the *Main Contractor* shall ensure that there is in force a policy of insurance in relation to loss or damage to *WUS* in terms of the policy or proposed policy included in the documents on which the *Subcontractor* tendered or, if not so included, a copy of which was provided to the *Subcontractor* following receipt by the *Main Contractor* of a written request by the *Subcontractor* for a copy of the policy. The policy or proposed policy shall nominate or state the name of the insurer. The *Main Contractor* shall ensure that the policy is maintained while ever the *Subcontractor* has an interest in *WUS* and that all premiums are paid thereon.

The *Subcontractor* shall be responsible for:

- (i) all "excesses" under the policy of insurance held by the *Main Contractor* as stated in *Item 27A(a)* in respect of any claim made by the *Subcontractor* or his *Secondary Subcontractors*;
- (ii) all items or matters excluded from the policy of insurance for which the *Subcontractor* or his *Secondary Subcontractors* are otherwise liable under the provision of the *Subcontract*; and

- (iii) Complying with and ensuring that his *Secondary Subcontractors* comply with the terms of the policy and *Subcontract* in respect of claims.

The *Main Contractor* shall not be responsible for any claim by reason that the *Subcontractor* or any of his *Secondary Subcontractors* have:

- (a) failed to fully inform himself of the terms and conditions of the policy held by the *Main Contractor*; and
- (b) failed to comply in any respect with the claim procedures set down in the policy or under the terms of the *Subcontract* for claims administration.

The *Subcontractor* has the option, at his own cost, of effecting or maintaining insurance to cover any risks or portions of the risks for which they feel the insurance provided by the *Main Contractor* does not provide adequate cover/indemnity.

16B Professional indemnity insurance

Before commencing *WUS*, the *Subcontractor* shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 28(a)*.

The insurance shall be maintained until the *final certificate* is issued and thereafter for the period stated in *Item 28(b)*.

The *Subcontractor* shall ensure that every *Subcontractor's consultant*, if within a category stated in *Item 28(c)*, shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 28(c)* applicable to that category.

Each such *Subcontractor's consultant's* professional indemnity insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 28(d)*.

17 Public and product liability insurance

The Alternative in *Item 29(a)* applies.

Alternative 1: Main Contractor to insure

Before the date of *Subcontract*, the *Main Contractor* shall ensure that there is in force in relation to *WUS*, a public liability policy in the terms of the policy or proposed policy included in the documents on which the *Subcontractor* tendered or, if not so included, a copy of which was provided to the *Subcontractor* following receipt by the *Main Contractor* of a written request from the *Subcontractor* for a copy of the policy. The policy or proposed policy shall nominate or state the name of the insurer. The *Main Contractor* shall ensure that the policy is maintained while ever the *Subcontractor* has an interest in *WUS* and that all premiums are paid thereon.

Alternative 2: Subcontractor to insure

Before commencing *WUS*, the *Subcontractor* shall effect and maintain for the duration of the *Subcontract*, a *public and product liability policy*.

The policy shall:

- (a) be in the joint names of the *Principal*, the *Main Contractor* and the *Subcontractor*;
- (b) cover the:
 - (i) respective rights and interests; and
 - (ii) liabilities to third parties;

of the parties, the *Principal*, *Superintendent*, *Subcontract Superintendent*, *Subcontractor's consultants* and *secondary subcontractors* from time to time, whenever engaged in *WUS*;

- (c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 16A) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);
- (d) be endorsed to cover the use of any *construction plant* not covered under a comprehensive or third party motor vehicle insurance policy;
- (e) provide insurance cover for an amount in respect of public and product liability as stated in *Item 29(b)*;
- (f) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in *Item 29(c)*; and
- (g) be with an insurer and otherwise in terms both approved in writing by the *Main Contractor* (which approvals shall not be unreasonably withheld).

18 Insurance of employees

Before commencing *WUS*, the *Subcontractor* shall insure against statutory and common law liability for death of or injury to persons employed by the *Subcontractor*. The insurance cover shall be maintained until completion of all *WUS* and for the duration of the *defects liability period*.

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

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

19 Inspection and provisions of insurance policies

19.1 Proof of insurance

Before the *Subcontractor* commences *WUS* and whenever requested in writing by the other party, a party liable to insure shall provide satisfactory evidence of such insurance effected and maintained.

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

19.2 Failure to produce proof of insurance

If after being so requested, a party liable to insure fails promptly to provide evidence of satisfactory compliance, then without prejudice to other rights or remedies, the other party may insure and the cost thereof shall be certified by the *Subcontract Superintendent* as moneys due and payable from the party in default to the other party. Where the defaulting party is the *Subcontractor*, *Main Contractor* may refuse payment until such evidence is produced by the *Subcontractor*.

19.3 Notices from or to insurer

The *Subcontractor* insuring under Alternative 2 of clause 17 shall ensure that the insurance policy contains provisions acceptable to the *Main Contractor* which:

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

- (c) requires the insurer, whenever the *Subcontractor* fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

19.4 Notices of potential claims

A party shall, as soon as practicable, inform the other party in writing of any occurrence affecting or arising out of *WUS* that may give rise to a claim under an insurance policy required by clause 16A or 17 and shall keep the other party informed of subsequent developments concerning the claim. The *Subcontractor* shall ensure that *Subcontractor's consultants* and *secondary subcontractors* in respect of their operations similarly inform the parties.

19.5 Settlement of claims

Upon settlement of a claim under the insurance required by clause 16A:

- (a) to the extent that reinstatement has been the subject of a payment or allowance by the *Main Contractor* to the *Subcontractor*, if the *Subcontractor* has not completed such reinstatement, insurance moneys received shall, if requested by either party, be paid into an agreed bank account in the joint names of the parties. As the *Subcontractor* reinstates the loss or damage, the *Subcontract Superintendent* shall certify against the joint account for the cost of reinstatement; and
- (b) to the extent that reinstatement has not been the subject of a payment or allowance by the *Main Contractor* to the *Subcontractor*, the *Subcontractor* shall be entitled immediately to receive from insurance moneys received, the amount of such moneys so paid in relation to any loss suffered by the *Subcontractor*.

19.6 Cross liability

Any insurance required to be effected in joint names in accordance with the *Subcontract* shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

20 Subcontract Superintendent

The *Main Contractor* shall ensure that at all times there is a *Subcontract Superintendent*, and that the *Subcontract Superintendent* fulfils all aspects of the role and functions reasonably and in good faith.

Except where the *Subcontract* otherwise provides, the *Subcontract Superintendent* may give a *direction* orally but shall as soon as practicable confirm it in writing. If the *Subcontractor* in writing requests the *Subcontract Superintendent* to confirm an oral *direction*, the *Subcontractor* shall not be bound to comply with the *direction* until the *Subcontract Superintendent* does so.

21 Subcontract Superintendent's Representative

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

- (a) no aspect of any function shall at any one time be the subject of delegation to more than one *Subcontract Superintendent's Representative*;
- (b) delegation shall not prevent the *Subcontract Superintendent* exercising any function;
- (c) the *Subcontract Superintendent* forthwith gives the *Subcontractor* written notice of respectively:

- (i) the appointment, including the *Subcontract Superintendent's Representative's* name and delegated functions; and
 - (ii) the termination of each appointment; and
- (d) if the *Subcontractor* makes a reasonable objection to the appointment of a *Subcontract Superintendent's Representative*, the *Subcontract Superintendent* shall terminate the appointment.

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

22 Subcontractor's representative

The *Subcontractor* shall superintend *WUS* personally or by a competent representative. Matters within a *Subcontractor's* representative's knowledge (including *directions* received) shall be deemed to be within the *Subcontractor's* knowledge.

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

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

23 Subcontractor's employees and secondary subcontractors

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

24 Site

24.1 Access and non-exclusive possession

Before the expiry of the time stated in *Item 30(a)*, the *Main Contractor* shall give the *Subcontractor* access to the *site* sufficient to enable the *Subcontractor* to commence and carry out the *Subcontractor's design obligations*.

Provided the *Subcontractor* has complied with subclause 19.1, the *Main Contractor* shall before the expiry of the time in *Item 30(b)*, give the *Subcontractor* non-exclusive possession of sufficient of the *site* for commencement of *WUS* on *site*. If the *Main Contractor* has not given the *Subcontractor* non-exclusive possession of the *site* to enable the *Subcontractor* to carry out all of *WUS*, the *Main Contractor* shall give the *Subcontractor* non-exclusive possession of such further portions of the *site* as may, from time to time, be necessary for carrying out *WUS*. Subject to subclause 39.7, delay by the *Main Contractor* in giving possession shall not be a breach of the *Subcontract*.

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

24.2 Access for Main Contractor and others

The *Main Contractor* and the *Main Contractor's* employees, consultants and agents and other persons authorised by the *Main Contractor* (including other subcontractors) may at any reasonable time have access to any part of the *site* for any purpose. The *Subcontractor* shall permit persons engaged by the *Main Contractor* to carry out *work* on the *site* other than *WUS* and shall cooperate with them.

The *Subcontractor* shall at all reasonable times give the *Subcontract Superintendent* and the *Superintendent* access to *WUS*.

The *Main Contractor* shall ensure that none of the persons referred to in this subclause impedes the *Subcontractor*.

24.3 Minerals, fossils and relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the *site* shall as between the parties be and remain the property of the *Main Contractor*. Immediately upon the discovery of these things the *Subcontractor* shall:

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

All costs so incurred by the *Subcontractor* shall be assessed by the *Subcontract Superintendent* and added to the *subcontract sum*.

24.4 Adjoining Property

Where *WUS* requires the *Subcontractor* to carry out *WUS* on, in or over any property adjoining or in the vicinity of the *site*, the *Subcontractor* shall be responsible for all matters relating to the carrying out of *WUS* outside the boundaries of the *site* including coordinating any access with adjoining property owners and any cost, expense, loss, damage or other liability to the extent it arises from the carrying out of *WUS* outside the boundaries of the *site*.

The *Subcontractor* shall indemnify the *Main Contractor* against and compensate the *Main Contractor* for any cost, expense, loss, damage or other liability suffered or incurred by the *Main Contractor* in connection with *WUS* carried on outside the boundaries of the *site*.

The *Subcontractor* shall not be entitled to any *claim* or to any *variation* in connection with such access or *WUS*.

24A Other contractors

The *Main Contractor* will arrange for *other contractors* to carry out *works* at or near the *site* concurrently with the carrying out by the *Subcontractor* of *WUS*.

The *Subcontractor* shall cooperate with the *other contractors* to ensure:

- (a) that the carrying out of *WUS* is coordinated with the *work* of the *other contractors*; and
- (b) the *work* of the *Subcontractor* does not interfere with the *work* of the *other contractors*.

The *Subcontractor* shall use its best endeavours to facilitate the *work* of the *other contractors* including, without limitation, coordinating all deliveries and pick-ups of equipment and materials and the carrying out of activities in connection with *WUS*.

25 Latent conditions

25.1 Scope

Latent conditions are physical conditions on the *site* and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent subcontractor at the time of the *Subcontractor's* tender if the *Subcontractor* had inspected:

- (a) all written information made available by the *Main Contractor* to the *Subcontractor* for the purpose of tendering;
- (b) all information influencing the risk allocation in the *Subcontractor's* tender and reasonably obtainable by the making of reasonable enquiries; and
- (c) the *site* and its near surrounds.

25.2 Notification

Within 10 *business days* after becoming aware of a *latent condition* while carrying out *WUS*, and where possible before the *latent condition* is disturbed, the *Subcontractor* shall give the *Subcontract Superintendent* and the *Main Contractor* a written statement of:

- (a) the *latent condition* encountered and the respects in which it differs materially; and
- (b) the additional *work*, resources, time and cost which the *Subcontractor* estimates to be necessary to deal with the *latent condition*.

If the *Subcontractor* fails to notify the *Subcontract Superintendent* and the *Main Contractor* in accordance with this subclause 25.2, the *Subcontractor* shall not be entitled to any *claim* in connection with the *latent condition*.

25.3 Variation

Subject to the *Subcontractor's* compliance with subclause 25.2, the effect of the *latent condition* shall be that the *Subcontractor* is entitled to give the *Subcontract Superintendent* a completed written *notice of proposed variation*.

26 Setting out the Subcontract Works

26.1 Setting out

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

26.2 Errors in setting out

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

If the error was caused by incorrect data, *survey marks* or information given by the *Subcontract Superintendent*, the cost incurred by the *Subcontractor* in rectifying the error shall be assessed by the *Subcontract Superintendent* and added to the *subcontract sum*.

26.3 Care of survey marks

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

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

If the disturbance was caused a person referred to in subclause 24.2 other than the *Subcontractor*, the cost incurred by the *Subcontractor* in reinstating the *survey mark* shall be assessed by the *Subcontract Superintendent* and added to the *subcontract sum*.

27 Cleaning up

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

Within 14 days after the *date of practical completion*, the *Subcontractor* shall remove *temporary works* and *construction plant*. The *Subcontract Superintendent* may extend the time to enable the *Subcontractor* to perform remaining obligations.

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

If:

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

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

28 Materials, labour and construction plant

Except where the *Subcontract* otherwise provides, the *Subcontractor* shall supply everything necessary for the proper performance of the *Subcontractor's* obligations and discharge of the *Subcontractor's* liabilities.

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

- (a) supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and
- (b) arrange reasonable inspection at such place or sources by the *Subcontract Superintendent*, the *Main Contractor* and persons authorised by the *Main Contractor*.

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

29 Quality

29.1 Quality of material and work

Unless otherwise provided the *Subcontractor* shall use suitable new materials and proper and tradesmanlike workmanship.

* 29.2 Quality assurance

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

- (a) plan, establish and maintain a conforming quality system; and

* See Preface

- (b) ensure that the *Superintendent* and the *Subcontract Superintendent* have access to the quality system of the *Subcontractor* and *secondary subcontractors* so as to enable monitoring and quality auditing.

Any such quality system shall be used only as an aid to achieving compliance with the *Subcontract* and to document such compliance. Such system shall not discharge the *Subcontractor's* other obligations under the *Subcontract*.

29.3 Defective work

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

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

If:

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

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

29.4 Acceptance of defective work

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

29.5 Timing

The *Subcontract Superintendent* may give a *direction* pursuant to this clause at any time before the expiry of the last *defects liability period*.

29A Non-Conforming Building Products

29A.1 Definitions

In this clause 29A, unless the context clearly indicates otherwise, words that are capitalised have the same meaning as in the *Building and Construction Legislation (Non-Conforming Building Products – Chain of Responsibility and Other Matters) Amendment Act 2017 (Qld) (NCBP Act)*.

29A.2 Building Products

The *Subcontractor* warrants to the *Main Contractor* that:

- (a) any *Building Product* to be used or supplied will not be a *Non-Conforming Building Product*;

- (b) if the *Subcontractor* designs, manufactures or installs any *Building Product* to be used or supplied it will provide all *Required Information* for the *Building Product* upon the *Main Contractor's* request;
- (c) if the *Subcontractor* becomes aware, or reasonably suspects that a *Building Product* is a *Non-Conforming Building Product*, the *Subcontractor* will immediately notify the *Main Contractor*; and
- (d) the *Subcontractor* will at all times comply with the requirements of *NCBP Act* in connection with the *WUS*.

29A.3 Indemnity

The *Subcontractor* shall indemnify the *Main Contractor* against and compensate the *Main Contractor* for any direct, indirect or consequential loss, cost, expense or damages of any nature whatsoever suffered or incurred by the *Main Contractor* arising directly or indirectly out of any breach of the warranties set out in subclause 29A.2.

30 Examination and testing

30.1 Tests

At any time before the expiry of the last *defects liability period*, the *Subcontract Superintendent* may direct that any *WUS* be tested. The *Subcontractor* shall give such assistance and samples and make accessible such parts of *WUS* as may be directed by the *Subcontract Superintendent*.

30.2 Covering up

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

30.3 Who conducts

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

30.4 Notice

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

30.5 Delay

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

30.6 Completion and results

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

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

30.7 Costs

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

31 Working hours

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

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

32 Programming

The *Subcontract Superintendent* shall give to the *Subcontractor* the information, materials, documents and instructions by the times or within the periods both stated in *Item 31*.

The *Subcontractor* shall give the *Subcontract Superintendent* reasonable advance notice of when the *Subcontractor* needs other information, materials, documents or instructions from the *Subcontract Superintendent* or the *Main Contractor*.

The *Main Contractor* and the *Subcontract Superintendent* shall not be obliged to give any information, materials, documents or instructions earlier than the *Main Contractor* or the *Subcontract Superintendent*, as the case may be, should reasonably have anticipated at the *date of Subcontract*.

The *Subcontractor* shall co-operate with the *Main Contractor's* other *contractors* and with others engaged by the *Main Contractor* or the *Principal* and subject to the *Main Contractor* being responsible for the overall co-ordination of *WUS* into the work under the *main contract*, the *Main Contractor* and the *Subcontractor* shall co-ordinate *WUS* with the work under the *main contract*.

The *Subcontract Superintendent* may direct in what order and at what time the various stages or portions of *WUS* shall be carried out. If the *Subcontractor* can reasonably comply with the *direction*, the *Subcontractor* shall do so. If the *Subcontractor* cannot reasonably comply, the *Subcontractor* shall give the *Subcontract Superintendent* written notice of the reasons.

A *construction program* is a written statement showing the dates by which, or the times within which, the various stages or portions of *WUS* are to be carried out or completed. A *construction program* shall only be deemed a *Subcontract* document if approved by the *Subcontract Superintendent* or *Main Contractor*.

The *Subcontract Superintendent* may direct the *Subcontractor* to give the *Subcontract Superintendent* a *construction program* within the time and in the form directed.

The *Subcontractor* shall not, without reasonable cause, depart from a *construction program*.

If compliance with any such *directions* under this clause, pertaining to what orders and at what time the various stages or portions of *WUS* shall be carried out, except those pursuant to the *Subcontractor's* default, causes the *Subcontractor* to incur more or less cost than otherwise would have been incurred had the *Subcontractor* not been given the *direction*, the difference shall be assessed by the *Subcontract Superintendent* and added to or deducted from the *subcontract sum*.

32A Acceleration

- (a) The *Subcontract Superintendent* may at any time give the *Subcontractor* written *notice of proposed acceleration* for the *Subcontractor* to accelerate the carrying out of *WUS*.
- (b) The *Subcontractor* shall, within 5 days (or such further period agreed with the *Subcontract Superintendent*) of receiving a *notice of proposed acceleration*, notify the *Subcontract Superintendent* whether the *Subcontractor* can comply with the *notice of proposed acceleration*, together with details of:
 - (i) whether and to what extent the acceleration is achievable;
 - (ii) the effect on the *construction program* (including the *date for practical completion*);
 - (iii) all costs (including time related costs, if any) of complying with the *notice of proposed acceleration* and how that cost has been determined, including any quotations or supporting documentation;
 - (iv) any changes in labour, plant, activities, or hours of work required to comply with the *notice of proposed acceleration*; and
 - (v) any other issues requested by the *Subcontract Superintendent*.
- (c) The *Subcontract Superintendent* shall, as soon as practicable after receiving the *Subcontractor's* notice of proposed acceleration, assess the information provided by the *Subcontractor* and may give a written direction to the *Subcontractor* to accelerate the carrying out of *WUS*. A direction given under this paragraph (c) shall be taken to be a direction under clause 32.
- (d) If the acceleration is necessary as a result of a *qualifying cause of delay* then:
 - (i) an instruction to accelerate under this clause will entitle the *Subcontractor* to be paid by the *Main Contractor* the net costs unavoidably incurred by it as a result of the acceleration, and such costs shall be valued in accordance with clause 36.4; and
 - (ii) the *Subcontractor* shall take all steps possible to mitigate the actual net direct extra costs reasonably incurred as a result of the acceleration.
- (e) The *Subcontractor* is not entitled to any *variation*, costs or *claim* except in so far as set out in clause 32A(d).
- (f) The *Main Contractor's* right to liquidated damages in accordance with subclause 34.7 shall not be prejudiced by any *direction* given, or complied with, in accordance with this clause.

33 Suspension

33.1 Subcontract Superintendent's suspension

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

- (a) because of an act, default or omission of:
 - (i) the *Subcontract Superintendent*, the *Main Contractor* or its employees, consultants, agents or other contractors (not being employed by the *Subcontractor*); or
 - (ii) the *Subcontractor*, a *Subcontractor's consultant*, a *secondary subcontractor* or the employees or agents of any of them;
- (b) for the protection or safety of any person or property;

- (c) to comply with a court order;
- (d) because of a *main contract dispute*;
- (e) because suspension of work under the *main contract*, in the *Subcontract Superintendent's* opinion, prevents *WUS*;
- (f) due to suspension under the *main contract*; or
- (g) due to any other reason given by the *Main Contractor*.

33.2 Subcontractor's suspension

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

33.3 Recommencement

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

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

33.4 Cost

The *Subcontractor* shall bear the cost of suspension pursuant to paragraph (a)(ii) of subclause 33.1 and subclause 33.2. If the *Subcontractor* made the protection, safety, court order or suspension of work necessary, the *Subcontractor* shall bear the cost of suspension pursuant to paragraph (b) or (c) of subclause 33.1. If the *Subcontractor* otherwise incurs more or less cost than otherwise would have been incurred, the difference shall be assessed by the *Subcontract Superintendent* and added to or deducted from the *subcontract sum*.

34 Time and progress

34.1 Progress

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

34.2 Notice of delay

A party becoming aware of anything which will probably cause delay to *WUS* shall promptly give the *Subcontract Superintendent* and the other party written notice of that cause and the estimated delay.

34.3 Claim

The *Subcontractor* shall be entitled to such extension of time for carrying out *WUS* (including reaching *practical completion*) as the *Subcontract Superintendent* assesses ('*EOT*'), if:

- (a) the *Subcontractor* is or will be delayed in reaching *practical completion* by the *date for practical completion* due to a *qualifying cause of delay*; and
- (b) the *Subcontractor* gives the *Subcontract Superintendent*, within 10 *business days* of when the *Subcontractor* should reasonably have become aware of that causation occurring, a written claim for an *EOT* evidencing the facts of causation and of the delay to *WUS* (including extent).

If further delay results from a *qualifying cause of delay* evidenced in a claim under paragraph (b) of this subclause, the *Subcontractor* shall claim an *EOT* for such delay by giving the *Subcontract Superintendent* a written claim evidencing the facts of that delay within 5 *business days* of when the *Subcontractor* should reasonably have become aware of the further delay.

If the *Subcontractor* does not strictly comply with the requirements set out in this subclause:

- (c) it shall not be entitled to an *EOT*;
- (d) it shall ensure that WUS reaches practical completion by the date for practical completion; and
- (e) any principle of law or equity (including the ‘prevention principle’) which might otherwise render the *date for practical completion* unenforceable and render any liquidated damages penal, shall not apply.

34.4 Assessment

In assessing each *EOT* the *Subcontract Superintendent* shall have regard to whether:

- (a) the *Subcontractor* contributed to the delay by any act or omission;
- (b) the cause of the delay was within the reasonable control of the *Subcontractor*;
- (c) whether the *Subcontractor* has taken all reasonable steps to mitigate the effect of the delay; and
- (d) any practical options or courses of action which the *Subcontractor* acting reasonable considers are, or may be desirable and available to the *Main Contractor* to avoid or minimise the delay, including ones which may involve the expenditure of moneys by the *Main Contractor*.

The *Subcontract Superintendent* may request that the *Subcontractor* provide further information in connection with a claim for an *EOT* within 7 days of receiving the *claim*.

The *Subcontractor* shall have made due allowance for the delays and interruption to *work* or *WUS* which a competent subcontractor, experienced in projects similar to the *Subcontract Works*, could reasonably have anticipate given all information which the *Subcontractor* was made aware of or should have been made aware of prior to the date of *Subcontract*.

When more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a *qualifying cause of delay*, then to the extent that the delays are concurrent, the *Subcontractor* shall not be entitled to an *EOT* for *practical completion*.

34.5 Extension of time

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

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

Notwithstanding that the *Subcontractor* is not entitled to or has not claimed an *EOT*, the *Subcontract Superintendent*, for the *Main Contractor’s* benefit only, and in its sole and absolute discretion and without being under any obligation to do so, may at any time and from time to time before issuing the *final certificate* direct an *EOT*.

Any delay or failure by the *Subcontract Superintendent* to grant an extension of time under this subclause shall not cause the date for practical completion to be set at large.

34.6 Practical completion

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

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

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

34.6A Use of part of the Subcontract Works

Use by the *Principal* or *Main Contractor* of any other part of the *Subcontract Works* shall not constitute *practical completion* for that part of the *Subcontract Works*.

34.7 Liquidated damages

If *WUS* does not reach *practical completion* by the *date for practical completion*, the *Subcontract Superintendent* shall certify, as due and payable to the *Main Contractor*, liquidated damages in *Item 33(a)* for every day after the *date for practical completion* to and including the earliest of the *date of practical completion* or termination of the *Subcontract* or the *Main Contractor* taking *WUS* out of the hands of the *Subcontractor*.

At any time after the *date for practical completion*, the *Subcontract Superintendent* may issue a written notice to the *Main Contractor* and the *Subcontractor* certifying the amount of liquidated damages accrued in accordance with this subclause 34.7 as at that date. The *Main Contractor* shall be entitled to recover the amount certified from the *Subcontractor* as a debt due and payable from the *Subcontractor* to the *Main Contractor*.

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

* 34.7A Indemnity

If:

- (a) the *main contract works* do not reach practical completion by their date for practical completion; and
- (b) the reason therefore is caused by the *Subcontractor's* delay in completing *WUS*,

the *Subcontractor* shall indemnify the *Main Contractor* against and compensate the *Main Contractor* for:

- (c) liquidated damages under the *main contract* stated in *Item 33(b)* certified by the *Superintendent*; and
- (d) damages, other than liquidated damages, which have become due and payable by the *Main Contractor* to the *Principal*.

* See Preface

If the *Subcontractor's* delay is not the sole cause of the *Main Contractor's* liability for damages, the *Subcontractor* shall indemnify the *Main Contractor* and compensate the *Main Contractor* only in proportion to the *Subcontractor's* delay, which shall be certified by the *Subcontract Superintendent* as moneys due to the *Main Contractor* by the *Subcontractor*.

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

The *Subcontractor's* indebtedness under this subclause is not included in the liquidated damages applicable to subclause 34.7.

34.8 Not Used

34.9 Delay costs

Where:

- (a) the *Subcontractor* has been granted an *EOT* for a *compensable cause*; and
- (b) the *Subcontractor* gives the *Subcontract Superintendent* a claim for delay costs pursuant to subclause 41.1,

then the *subcontract sum* shall be adjusted by the *Subcontract Superintendent's* assessment of the direct costs which the *Subcontractor* can demonstrate to the *Subcontract Superintendent* by written evidence that it has necessarily and unavoidably suffered as a consequence of that delay for the period of the *EOT*. The *Subcontractor* is not entitled to make a *claim* in connection with such delay other than under this subclause.

The amount payable by the *Main Contractor* to the *Subcontractor* under this subclause 34.9 is in full satisfaction of all claims, demands, actions, proceedings or suits for damages which the *Subcontractor* may make or bring against the *Main Contractor* arising in connection with all and any delay or disruption however caused or encountered by the *Subcontractor* in the execution of *WUS*.

35 Defects liability

The *defects liability period* stated in *Item 36* shall commence on the *date of practical completion* at 4:00 pm.

If the date of expiry of the *defects liability period* is the same as the date of expiry of the defects liability period under the *main contract*, the *Subcontract Superintendent* shall, within 14 days of becoming aware of the date of expiry of the defects liability period under the *main contract*, inform the *Subcontractor* in writing of that date.

The *Subcontractor* shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the *Subcontract Works* as is reasonably possible.

As soon as possible after the *date of practical completion*, the *Subcontractor* shall rectify all *defects* existing at the *date of practical completion*.

During the *defects liability period*, the *Subcontract Superintendent* may give the *Subcontractor* a *direction* to rectify a *defect* which:

- (a) shall identify the *defect* and the date for completion of its rectification; and
- (b) may state a date for commencement of the rectification and whether there shall be a separate *defects liability period* therefore (not exceeding 12 months, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

If the rectification is not commenced or completed by the stated dates, the *Main Contractor* may have the rectification carried out by others but without prejudice to any other rights and

remedies the *Main Contractor* may have. The cost thereby incurred shall be certified by the *Subcontract Superintendent* as moneys due and payable to the *Main Contractor*.

36 Variations

36.1 Directing variations

The *Subcontractor* shall not vary *WUS* except as directed in writing.

The *Subcontract Superintendent*, before the *date of practical completion*, may direct the *Subcontractor* to vary *WUS* by any one or more of the following which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the *Subcontract* (including being within the warranties in subclause 2.2):

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

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

36.2 Variations requested by the Subcontract Superintendent

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

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

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

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

36.3 Variations for convenience of Subcontractor

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

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

If the *Subcontractor* requests the *Subcontract Superintendent* to direct a *variation* for the convenience of the *Subcontractor*, the *Subcontract Superintendent* may do so. Unless the

direction provides otherwise, the *Subcontractor* shall be entitled to neither extra time nor extra money.

36.4 Pricing

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

- (a) prior written agreement;
- (b) applicable rates or prices in the *Subcontract*;
- (c) rates or prices in a priced *bill of quantities*, *schedule of rates* or schedule of prices, even though not *Subcontract* documents, to the extent that it is reasonable to use them; and
- (d) reasonable rates or prices, which shall include the margin profit and overheads in *Item 36A*,

and any deductions shall include for the margin profit but not overheads in *Item 36A*.

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

The *Subcontractor* acknowledges that if it does not comply strictly with the requirements of clause 36, the *Subcontract Superintendent* shall not be required to assess or approve the *variation*.

36.5 Notification of variations

Despite any other provision of the *Subcontract*:

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

before the *Subcontractor* gives effect to the *direction*, but not later than 5 *business days* after receipt by the *Subcontractor* of the *direction*.
- (b) if the *Subcontractor* fails to notify the *Subcontract Superintendent* in accordance with this subclause 36.5, the *Subcontractor* shall not be entitled to any *claim* (including for any payment or an *EOT*) in connection with the *Subcontract Superintendent's direction*.

37 Payment

37.1 Progress claims

The *Subcontractor* shall submit the *Claim Documentation* and claim payment progressively in accordance with *Item 37* while *WUS* is being carried out prior to *practical completion*, at *practical completion* and at the *final payment claim* under subclause 37.4.

The date prescribed in this subclause 37.1 as the time for a *progress claim* is the 'reference date' for the purposes of the *Payments Act*.

The parties agree that a reference date shall only arise when the *Subcontractor* submits with the *progress claim*, the *Claim Documentation*.

Each *progress claim* shall be given in writing to the *Subcontract Superintendent* and shall include details of the value of *WUS* done and may include details of other moneys then due to the *Subcontractor* pursuant to provisions of the *Subcontract*.

The *Subcontract Superintendent* in receiving a *progress claim* does so as agent of the *Main Contractor* for the purposes of the *Payments Act*.

37.2 Certificates

The *Subcontract Superintendent* shall, within 15 *business days* after receiving such a *progress claim*, issue to the *Main Contractor* and the *Subcontractor* a *progress certificate* which:

- (a) identifies the *progress claim* to which it relates;
- (b) states the amount of the payment, if any, that the *Main Contractor* proposes to make (*certified amount*);
- (c) if the *certified amount* is less than the claimed amount, state why the *certified amount* is less, and if it less because the *Main Contractor* is withholding payment for any reason, the *Main Contractor's* reason for withholding payment; and
- (d) states the amount of retention moneys and moneys due from the *Subcontractor* to the *Main Contractor* pursuant to the *Subcontract*.

If the *Subcontractor* does not make a *progress claim* in accordance with *Item 37*, the *Subcontract Superintendent* may issue the *progress certificate* with details of the calculations and shall issue the certificate dealing with the matters in paragraph (d).

The *Subcontract Superintendent* in issuing a *progress certificate* does so as agent of the *Main Contractor* for the purposes of the *Payments Act*. The parties agree that any *progress certificate* issued by the *Subcontract Superintendent* under this clause 37.2 is a payment schedule for the purposes of the *Payments Act*.

The *Main Contractor* shall within 25 *business days* after the *Subcontract Superintendent* receives the *progress claim*, pay to the *Subcontractor* the balance of the *progress certificate* after deducting retention moneys and setting off such moneys or amounts as the *Main Contractor* elects to set off. If that setting off produces a negative balance, that negative balance shall become a debt due and payable by the *Subcontractor* to the *Main Contractor*.

Neither a *progress certificate* nor a payment of moneys shall be evidence that the subject *WUS* has been carried out satisfactorily nor shall they prejudice any *claim* by or defence by the *Main Contractor*. Payment other than *final payment* shall be payment on account only.

At any time and from time to time, the *Subcontract Superintendent* may by a further *progress certificate* correct any error which has been discovered in any previous *payment schedule*.

37.3 Unfixed plant and materials

The *Main Contractor* shall not be liable to pay for unfixed plant and materials unless they are listed in *Item 38* and the *Subcontractor*:

- (a) provides the additional *security* in *Item 19(e)*; and
- (b) satisfies the *Subcontract Superintendent* that the subject plant and materials have been paid for, properly stored and protected, and labelled the property of the *Main Contractor*.

Upon payment to the *Subcontractor* and the release of any additional *security* in paragraph (a), the subject plant and materials shall be the unencumbered property of the *Main Contractor*.

37.4 Final payment claim and certificate

Within 5 *business days* after the expiry of the last *defects liability period*, the *Subcontractor* shall give the *Subcontract Superintendent* a written *final payment claim* endorsed 'Final Payment Claim' being a *progress claim* together with all other claims whatsoever in connection with the subject matter of the *Subcontract*.

The *Subcontractor* releases the *Main Contractor* from, and shall indemnify the *Main Contractor* against and compensate the *Main Contractor* for any *claim* not included in the *final payment claim*.

Within 49 days after the expiry of the last *defects liability period* or within 15 *business days* of receipt of the *final payment claim*, whichever is the earlier, the *Subcontract Superintendent* shall issue to both the *Subcontractor* and the *Main Contractor*:

- (a) a final certificate evidencing the moneys finally due and payable between the *Subcontractor* and the *Main Contractor* on any account whatsoever in connection with the subject matter of the *Subcontract*, and
- (b) A completed copy of the *Deed of Release – Final* for the *Subcontractor's* execution.

The execution and delivery to the *Subcontract Superintendent* and the *Main Contractor* of the *Deed of Release - Final* by the *Subcontractor* shall be a precondition to payment of the *final payment claim* by the *Main Contractor*.

Those moneys certified as due and payable shall, provided that the *Subcontractor* has completed, executed and delivered the *Deed of Release - Final*, be paid by the *Main Contractor* or the *Subcontractor*, within the earlier of 25 *business days* after the *Subcontract Superintendent* receives the *final payment claim*, or within 10 *business days* after the *Main Contractor* receives the *final certificate*.

The *final certificate* shall be conclusive evidence of accord and satisfaction, and in discharge of each party's obligations in connection with the subject matter of the *Subcontract* except for:

- (a) fraud or dishonesty relating to *WUS* or any part thereof or to any matter dealt with in the *final certificate*;
- (b) any *defect* or omission in *the Subcontract Works* or any part thereof which was not apparent at the end of the last *defects liability period*; and
- (c) any accidental or erroneous inclusion or exclusion of any *work* or figures in any computation or an arithmetical error in any computation.

37.5 Interest

Interest in *Item 39* shall be due and payable after the date of default in payment.

37.6 Other moneys due

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

37.7 Set off

Without limiting any other rights of the *Main Contractor*, in relation to any loss, cost, damage or other amount (liquidated or otherwise) which:

- (a) the *Subcontractor* is liable to pay to the *Main Contractor* under the *Subcontract*; or
- (b) the *Main Contract* claims it has suffered or is likely to suffer as a result of an act or omission by the *Subcontractor* arising out of or in connection with the *Subcontract* or any other agreement (whether in relation to the *Subcontract Works*, *WUS* or otherwise),

the *Main Contractor* may at any time after giving written notice to the *Subcontractor*:

- (c) deduct from or set off such losses, costs, damages or other amount against any amounts due to the *Subcontractor* under the *Subcontract* or otherwise at law in respect of *the Subcontract Works* or under any other agreement (whether in relation to this *Project* or otherwise);

- (d) have recourse to any security provided by the *Subcontractor* under the *Subcontract* or provided by the *Subcontractor* under any other agreement (whether in relation to this *Project* or otherwise).

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

37A Project Bank Accounts

37A.1 Application of clause

This clause applies if a project bank account is required for this *Subcontract* by operation of the *BIF Act*.

Terms defined by the *BIF Act* as relevant to the operation of Chapter 2 of the *BIF Act* and used (without separate definition) in this clause 24A, shall have the meaning given to them by the *BIF Act*.

Item 37B states whether a project bank account is to be established for this *Subcontract*, provided the other matters that determine when a project bank account is required under the *BIF Act* are satisfied.

If *Item 37B* states that a project bank account is to be established for the *Subcontract*, the *Subcontractor* warrants that:

- (a) it is not a *Related Entity* of the *Main Contractor*; and
- (b) it has provided the *Subcontractor's Information* to the *Main Contractor*.

37A.2 Definitions

In this clause 37A.2:

Business Day has the meaning given in the *BIF Act*;

Related Entity has the meaning given in the *BIF Act*;

Subcontractor's Information means the following details:

- (a) the *Subcontractor's* registered business name and/or trading name;
- (b) the name of the *Subcontractor's* financial institution;
- (c) the *Subcontractor's* Bank/State/Branch (BSB) number and account number; and
- (d) any other information the *Main Contractor* requires to comply with the *BIF Act*.

37A.3 Subcontractor's warranties

The *Subcontractor* acknowledges that:

- (a) within 5 *Business Days* of entering this *Subcontract*, the *Main Contractor* must provide the *Principal* with the *Subcontractor's Information*; and
- (b) within 5 *Business Days* of becoming aware of any change to the *Subcontractor's Information* the *Main Contractor* must notify the *Principal* in writing of any such changes.

The *Subcontractor* warrants the accuracy of the *Subcontractor's Information* and shall immediately notify the *Main Contractor* in writing upon becoming aware of any discrepancy or change in the *Subcontractor's Information*.

37A.4 Payment Instruction

The *Subcontractor* agrees that upon receipt of a payment instruction by the *Main Contractor*, the *Subcontractor* shall have 2 *Business Days* to review the payment instruction and notify the *Main Contractor* in writing of any errors or omissions in the payment instruction.

If the *Subcontractor* does not give the *Main Contractor* written notice in accordance with this subclause 37A.4 the accuracy of the payment instruction will be deemed to have been accepted by the *Subcontractor*.

37A.5 General Obligations

The *Subcontractor* must ensure that it does not do anything or fail to do anything that would cause the *Main Contractor* to be in breach of the *main contract* or the *BIF Act*.

The *Subcontractor* indemnifies the *Main Contractor* against any cost, expense, loss, damage or other liability suffered or incurred by the *Main Contractor* arising out of or in connection with any breach by the *Subcontractor* of this clause 37A.

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

38.1 Workers, Subcontractor's consultants and secondary subcontractors

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

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

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

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

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

38.2 Withholding payment

Subject to the next paragraph, and without limiting the *Main Contractor's rights under the Subcontract*, the *Main Contractor* may withhold moneys certified due and payable in respect of the *progress claim* until the *Subcontractor* complies with subclause 38.1.

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

38.3 Direct payment

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

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

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

39 Default or insolvency

39.1 Preservation of other rights

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

39.2 Subcontractor's default

If the *Subcontractor* commits a substantial breach of the *Subcontract*, the *Main Contractor* may give the *Subcontractor* a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
 - (i) perform properly the *Subcontractor's design obligations*;
 - (ii) provide *security*;
 - (iii) provide evidence of insurance;
 - (iv) comply with a *direction* of the *Subcontract Superintendent* pursuant to subclause 29.3; or
 - (v) use the materials or standards of *work* required by the *Subcontract*;
- (b) wrongful suspension of *work*;
- (c) substantial departure from a *construction program* without reasonable cause or the *Subcontract Superintendent's* approval;
- (d) where there is no *construction program*, failing to proceed with due expedition and without delay; and
- (e) in respect of clause 38, knowingly providing documentary evidence containing an untrue statement;

39.3 Main Contractor's notice to show cause

A notice under subclause 39.2 shall state:

- (a) that it is a notice under clause 39 of these Subcontract Conditions;
- (b) the alleged substantial breach;
- (c) that the *Subcontractor* is required to show cause in writing why the *Main Contractor* should not exercise a right referred to in subclause 39.4;
- (d) the date and time by which the *Subcontractor* must show cause (which shall not be less than 7 *business days* after the notice is received by the *Subcontractor*); and
- (e) the place at which cause must be shown.

39.4 Main Contractor's rights

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

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

39.5 Take out

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

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

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

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

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

39.6 Adjustment on completion of work taken out

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

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

39.7 Main Contractor's default

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

Substantial breaches include, but are not limited to:

- (a) failing to:
 - (i) provide *security*;
 - (ii) produce evidence of insurance;
 - (iii) rectify inadequate *Subcontractor's* access to the *site* if that failure continues for longer than the time stated in *Item 40(a)*;
 - (iv) rectify inadequate *Subcontractor's* non-exclusive possession of the *site* if that failure continues for longer than the time stated in *Item 40(b)*; or
 - (v) make a payment due and payable pursuant to the *Subcontract*; and
- (b) the *Subcontract Superintendent* not giving a *certificate of practical completion* or reasons as referred to in subclause 34.6.

39.8 Subcontractor's notice to show cause

A notice given under subclause 39.7 shall state:

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

39.9 Subcontractor's rights

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

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

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

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

Damages suffered by the *Subcontractor* by reason of the suspension shall be assessed by the *Subcontract Superintendent* within 10 *business days* of receipt of a *claim* from the *Subcontractor*, who shall certify them as moneys due and payable to the *Subcontractor*.

39.10 Termination

If the *Subcontract* is terminated pursuant to subclause 39.4(b) or 39.9, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the *Subcontract* had the defaulting party repudiated the *Subcontract* and the other party elected to treat the *Subcontract* as at an end and recover damages.

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

39.11 Insolvency

If:

- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Subcontract*;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if that person:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or
 - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under

Part X of the *Bankruptcy Act 1966* (Cth) or like provision under the law governing the *Subcontract*; or

- (d) in relation to a party being a corporation:
- (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) it enters a deed of company arrangement with creditors;
 - (iii) a controller or administrator is appointed;
 - (iv) an application is made to a court for its winding up and not stayed within 14 days;
 - (v) a winding up order is made in respect of it;
 - (vi) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
 - (vii) a mortgagee of any of its property takes possession of that property,
- then, where the other party is:
- (A) the *Main Contractor*, the *Main Contractor* may, without giving a notice to show cause, exercise any right under subclause 39.4; or
 - (B) the *Subcontractor*, the *Subcontractor* may, without giving a notice to show cause, exercise the right under subclause 39.9.

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

40 Termination by frustration

If the *Subcontract* is frustrated:

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

For the avoidance of doubt, if the *Subcontract* is frustrated, the *Subcontractor's* entitlement is limited to the amount payable as determined under this clause 40 which shall not exceed the *subcontract sum*.

40A Main contract ended

If the *main contract* is ended for any reason the *Main Contractor* may terminate the *Subcontract* on the giving of written notice of termination.

If the *Subcontract* is terminated under this clause the *Main Contractor* shall pay to the *Subcontractor*:

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

The *Subcontractor* is not entitled to any other *claim*, including any claim for loss of profits, costs, losses, damages or expenses suffered or incurred, other than those amounts payable under this clause 40A.

40B Termination for convenience

The *Main Contractor* may terminate the *Subcontract* for any reason by giving the *Subcontractor* written notice, after which the *Subcontract* is ended and the *Main Contractor* shall pay to the *Subcontractor*:

- (a) the amount due to the *Subcontractor* evidenced by all unpaid certificates;
- (b) the cost of materials and equipment reasonably ordered by the *Subcontractor* for *WUS* and which the *Subcontractor* is liable to accept, but only if they will become the *Main Contractor's* property upon payment; and
- (c) the costs reasonably incurred:
 - (i) removing *temporary works* and *construction plant*;
 - (ii) returning to their place of engagement the *Subcontractor* and its employees engaged in *WUS* at the date of frustration; and
 - (iii) by the *Subcontractor* in expectation of completing *WUS* and not included in any other payment;

The *Subcontractor* is not entitled to any other *claim*, including any *claim* for loss of profits, costs, losses, damages or expenses suffered or incurred, other than those amounts payable under this clause 40B.

The *Subcontractor* shall:

- (d) on the day of termination cease carrying out *WUS*;
- (e) if directed by the *Main Contractor* to do so:
 - (i) assign or novate in favour of the *Main Contractor* any sub-subcontracts (including without limitation for the provision of any materials) or rights under any sub-subcontracts entered into or obtained by the *Subcontractor* in connection with *WUS* or *the Subcontract Works*; and
 - (ii) terminate any other sub-subcontracts and recover from the *secondary subcontractor* any property, documentation, material or information of the *Main Contractor* or the *Subcontract Superintendent*,
 in each case, with effect on and from the date of termination;

- (f) on or before the date of termination, deliver to the *Main Contractor* all documents, calculations, notes, data sheets, computer data, specifications, drawings, plans, sketches, procedures and the like prepared and issued by the *Subcontractor* and its sub-subcontractors or *consultants* in accordance with the *Subcontract* and which are necessary for the proper and complete performance of *WUS*;
- (g) on or before the date of termination deliver to the *Main Contractor* all property, documentation or information of the *Main Contractor* or the *Subcontract Superintendent* provided to the *Subcontractor* in connection with *WUS* or the *Subcontract Works*; and
- (h) on or before the date of termination, deliver to the *Main Contractor* any of the materials or *WUS* which under the *Subcontract* has become the property of the *Main Contractor*.

Clause 40B survives termination or expiration of this *Subcontract*.

41 Notification of claims

41.1 Communication of claims

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

- (a) a notice of claim, together with full particulars thereof is lodged in writing with the *Main Contractor* and the *Subcontract Superintendent* not later than the time specified in this *Subcontract*, or if no time is stated, 10 *business days* after the date the *Subcontractor* becomes aware or should have become aware of the occurrence of the events or circumstances on which the *claim* is based; and
- (b) the notice outlines the legal basis of the *claim* and full details of the likely quantum.

41.2 Liability for failure to communicate

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

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

41.3 Subcontract Superintendent's decision

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

42 Dispute resolution

42.1 Notice of dispute

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

- (a) a *Subcontract Superintendent's direction*; or
- (b) a claim:

- (i) in tort;
- (ii) under statute;
- (iii) for restitution based on unjust enrichment or other quantum meruit; or
- (iv) for rectification or frustration,

or like claim available under the law governing the *Subcontract*,

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

Notwithstanding the existence of a *dispute*, the parties shall, subject to clauses 39 and 40 and subclause 42.6, continue to perform the *Subcontract*.

42.2 Conference

Within 14 days after receiving a notice of *dispute*, the parties shall confer at least once to resolve the *dispute*. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

If the *dispute* has not been resolved within 28 days of service of the notice of *dispute*, that *dispute* shall be resolved pursuant to subclause 42.3.

42.3 Expert determination or litigation

If this subclause 42.3 applies and a *dispute* remains unresolved, the *dispute* will be resolved by expert determination or litigation, as determined by the *Main Contractor* in its absolute discretion.

The *Main Contractor* shall give written notice to the *Subcontractor* as to whether the *dispute* is to be resolved by expert determination or litigation within 40 *business days* of the date of service of the notice of *dispute*.

If the *Main Contractor* determines that the *dispute* is to be resolved by expert determination, the *dispute* will thereby be referred to expert determination in accordance with the provisions of subclause 42.4.

42.4 Expert determination

- (a) If the parties cannot agree on an expert within 10 *business days*, the expert will be appointed by an authorised officer of the Royal Institution of Chartered Surveyors (Queensland).
- (b) In making a determination, the expert shall:
 - (i) give due weight to any written submissions or representations made by a disputing party within any reasonable time limit prescribed by the expert;
 - (ii) give written reasons for his decisions;
 - (iii) act as an expert and not as an arbitrator;
 - (iv) in the absence of any manifest error, the decision of the expert on *disputes* up to a maximum value of \$100,000 will be final and binding upon the parties and not subject to review; and
 - (v) for *disputes* in excess of \$100,000 and in the absence of any manifest error, the decision of the expert will be final and binding on the parties and not subject to review, if neither of the parties has taken any steps to enforce a right or remedy by instituting proceedings relating to the *dispute* within 28 days of the written decision of the expert.

- (c) The expert determination shall be conducted in accordance with the rules in *Item 41A*.
- (d) The cost and expense of the conference and expert determination will be borne equally by the parties.

42.5 Main contract expert

If a notice is given under subclause 42.1, the subject matter of which touches or concerns any *main contract dispute*, then the expert to be appointed pursuant to subclause 42.3 shall be the *main contract expert* unless:

- (a) no *main contract expert* is nominated within 42 days of giving the notice under subclause 42.1; or
- (b) the *main contract expert* is unable or unwilling to act,

in which case the *main contract expert* shall be nominated under subclause 42.4.

42.6 Main contract dispute affecting the Subcontract

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

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

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

42.7 Summary relief

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

43 Waiver of conditions

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

44 Services and facilities

44.1 Provision of services and facilities

The *Main Contractor* and the *Subcontractor* shall provide, in good order and working condition, the services and facilities stated in *Item 42* as being provided by that party.

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

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

44.2 Compliance

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

44.3 Additional services or facilities

If pursuant to a request of the *Subcontractor*, the *Main Contractor* agrees to provide services or facilities additional to those provided by the *Main Contractor* in *Item 42*, the *Subcontractor* shall pay a reasonable charge (which shall not be less than the cost to the *Main Contractor*) for the provision of such additional services or facilities. The rates of hire and the conditions relating to their provision shall be agreed in writing prior to the provision of such additional services or facilities.

45 GST

45.1 Consideration is GST-exclusive

Unless otherwise specified, all amounts payable under this *Subcontract* are exclusive of *GST* and shall be calculated without regard to *GST*.

45.2 RCTIs

- (a) The *Main Contractor* and the *Subcontractor*:
- (i) agree that, during the term of this *Subcontract*, every tax invoice relating to a taxable supply(s) is to be issued by the *Main Contractor* as an *RCTI*; and
 - (ii) shall, within 7 days of the date of the *Subcontract*, enter into the agreement authorising the *Main Contractor* to issue *RCTIs* in the form contained in Annexure Part M.
- (b) If the parties do not enter into an agreement authorising the *Main Contractor* to issue *RCTIs*, the *Subcontractor* shall submit to the *Main Contractor* a compliant tax invoice with each claim for payment to enable the *Main Contractor* to claim, where applicable, input tax credits. If the *Subcontractor* fails to submit a compliant tax invoice, the invoice will not be processed.

45.3 Interpretation

In this clause 45 terms that are not defined have the same meaning given to them under the *GST Act*.

46 PPSA

46.1 The Main Contractors Personal Property

For the purposes of this clause:

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

46.2 Further assurance

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

- (a) ensuring that the *security interest* is enforceable, perfected and otherwise effective; and/or

- (b) enabling the *Main Contractor* to apply for any registration, complete any financing statement or give any notification, in connection with the *security interest*; and/or
- (c) enabling the *Main Contractor* to exercise rights in connection with the *security interest*,

46.3 Registration

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

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

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

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

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

46.4 Notices to be given to the Main Contractor

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

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

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

Part A

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Subcontract*, is to be attached to the Subcontract Conditions and shall be read as part of the *Subcontract*.

Item

- | | | |
|---|---|---|
| 1 | <i>Main Contractor</i>
(clause 1) | Evans Built Pty Ltd.....
ABN 61 120 743 099 |
| 2 | <i>Main Contractor's address</i> | La Balsa, Suite 301, 45 Brisbane Road, Mooloolaba QLD 4557
PO Box 1755, Buderim, QLD 4556
Phone 07 5353 5050Fax 07 5302 6689
Email admin@evansbuilt.com.au |
| 3 | <i>Subcontractor</i>
(clause 1) | "SC NAME"
.....
ACN "ENTER ACN" ABN "ENTER ABN" |
| 4 | <i>Subcontractor's address</i> | "SC ADDRESS"
.....
Phone "ENTER PHONE" Fax "ENTER FAX"
Email ... "ENTER EMAIL" |
| 5 | <i>Subcontract Superintendent</i>
(clause 1) | Evans Built Pty Ltd.....
ABN 61 120 743 099 |
| 6 | <i>Subcontract Superintendent's</i>
address | La Balsa, Suite 301, 45 Brisbane Road, Mooloolaba QLD 4557
PO Box 1755, Buderim, QLD 4556
Phone 07 5353 5050Fax 07 5302 6689
Email |

7	<i>Principal</i> (clause 1)	<p>[At beginning of project, ask Project Manager for details and set up template. Then remove highlighting]</p> <p>.....</p> <p>ACN ABN</p>
8	<i>Principal's address</i>	<p>[At beginning of project, ask Project Manager for details and set up template. Then remove highlighting]</p> <p>.....</p> <p>Phone Fax</p>
9	<i>Superintendent</i> (clause 1)	<p>.....</p> <p>.....</p> <p>ACN ABN</p>
10	<i>Superintendent's address</i>	<p>.....</p> <p>.....</p> <p>Phone Fax</p>
10A	The email address for service of any <i>claim</i> under the <i>Subcontract</i> or the <i>Payments Act</i> (clause 7)	accounts@evansbuilt.com.au
† 11	(a) <i>Date for practical completion</i> (clause 1)	"ENTER PC DATE"
	OR	
	(b) <i>Period of time for practical completion</i> (clause 1)	.....
12	Governing law (clause 1(h))	Queensland
		If nothing stated, that of the jurisdiction where the <i>site</i> is located
13	(a) <i>Currency</i> (clause 1(g))	Australian Dollars.....
		If nothing stated, that of the jurisdiction where the <i>site</i> is located
	(b) <i>Place for payments</i> (clause 1(g))	.....
		If nothing stated, the <i>Main Contractor's</i> address
	(c) <i>Place of business of bank</i> (clause 1(d))	Maroochydore Qld 4558
		If nothing stated, the place nearest to where the <i>site</i> is located

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

- | | | |
|----|---|---|
| 14 | The <i>Main Contractor's project requirements</i> are described in the following documents (clause 1) | 1 <i>Preliminary design</i> (if included in <i>Item 15</i>)
2 Refer to Annexure Part F
3
4
5 |
| 15 | <i>Preliminary design</i> (clause 1) | (a) A <i>preliminary design</i>
* is included
* is not included
in the <i>Main Contractor's project requirements</i> .
If neither deleted, a <i>preliminary design</i> is not included

(b) The <i>preliminary design</i> documents are detailed in the <i>Main Contractor's project requirements</i> at Annexure Part F:

1
2
3
4
5 |
| 16 | <i>Bill of quantities</i> (subclause 2.4) | |
| | (a) Alternative applying (subclause 2.4) | Alternative 2
If nothing stated, Alternative 1 applies |
| | (b) If Alternative 2 applies, is the <i>bill of quantities</i> to be priced? (subclause 2.4) | *No / *Yes
If neither deleted, the <i>bill of quantities</i> shall be priced |
| | (c) Lodgement time (subclause 2.5(b)) | days after the <i>date of Subcontract</i>
If nothing stated, 21 days |
| 17 | Quantities in <i>schedule of rates</i> , limits of accuracy (subclause 2.7(b)) | Upper Limit.....
Lower Limit..... |
| 18 | <i>Provisional sum</i> , percentage for profit and attendance (clause 3) | % |

* Delete one

- † 19 *Subcontractor's security*
 - (a) Form
(clause 5)
 - (b) Amount or maximum percentage of *subcontract sum* 5% of the total subcontract sum plus any additions required to be made under the Subcontract.....
(clause 5) If nothing stated, 5% of the *subcontract sum*
 - (c) If retention moneys, percentage of each *progress certificate* %, until the limit in *Item 19(b)*
(clause 5 and subclause 37.2) If nothing stated, 10%, until the limit in *Item 19(b)*
 - (d) Time for provision (except for retention moneys) within days after the *date of Subcontract*
(clause 5) If nothing stated, 28 days
 - (e) Additional *security* for unfixed plant and materials
(subclauses 5.4 and 37.3) \$.....
 - (f) *Subcontractor's security upon certificate of practical completion* is reduced by 50% of amount held
(subclause 5.4) If nothing stated, 50% of amount held

† 20 *Not Used*

21	<i>Main Contractor-supplied documents</i> (subclause 8.2)	Document	No. of copies
		1 <i>Main contractor's project requirements</i> .....	.....
		2 .....	.....
		3 .....	.....
		4 .....	.....
		5 .....	.....
			If nothing stated, 3 copies

22 Documents, numbers of copies, and the times or stages at which they are to be supplied by the *Subcontractor* (subclause 8.3)

	Document	No. of copies	Time/stage
1
2
3
4
5

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

23	Time for <i>Subcontract Superintendent's direction</i> about documents (subclause 8.3)	..... days If nothing stated, 21 days	
24	Secondary subcontracting (subclause 9.2)	<i>Work by Subcontractor's consultants</i>	<i>Work by others</i>
	
	
	
	
	
25	Novation (subclause 9.4)	<i>Secondary subcontractor or selected secondary subcontractor,</i> as the case may be	Particular part of the <i>preliminary design</i> or <i>selected subcontract work,</i> as the case may be
	
	
	
	
	
26	<i>Intellectual property rights</i> granted to the <i>Main Contractor,</i> the Alternative applying (subclause 10.2)	..... If nothing stated, Alternative 1 applies	
27	<i>Legislative requirements</i>		
	(a) Those already excepted under the <i>main contract</i> (subclause 11.1)	.....	.....
	
	
	(b) Those excepted under the <i>Subcontract</i> (subclause 11.1)	.....	.....
	
	
	(c) Identified <i>WUS</i> (subclause 11.2(a)(iii))	.....	.....
	
	

27A Subcontractor's Insurance
(Clause 15.1, 15A and 16A)

(a) Subcontractor's Insurance for WUS Excess per claim: \$2,500 Minor Peril
\$10,000 Major Peril

(b) Other insurance to be held by the Subcontractor Type of insurance.....to the value of.....
Type of insurance.....to the value of
Type of insurance.....to the value of

28 Professional indemnity insurance
(clause 16B and subclause 9.2(d))

(a) Levels of cover of Subcontractor's professional indemnity insurance shall be not less than
..... \$
If nothing stated, \$5 000 000

(b) Period for which Subcontractor's professional indemnity insurance shall be maintained after issue of the final certificate
If nothing stated, 6 years

(c) Categories of Subcontractor's consultants and levels of cover of Subcontractor's consultants' professional indemnity insurance

Category	Levels of cover
.....	\$
.....	\$
.....	\$
.....	\$
	If nothing stated, \$1 000 000

(d) Period for which each Subcontractor's consultant's professional indemnity insurance shall be maintained after issue of the final certificate
If nothing stated, 6 years

- 29 Public and product liability insurance (clause 17)
 - (a) Alternative applying ALTERNATIVE 2.....
If nothing stated, Alternative 2 applies
 - If alternative 2 applies
 - (b) Level of *Subcontractor's* insurance for public and product liability Twenty Million Dollars (\$20,000,000)
If nothing stated, \$20,000,000
 - (c) Amount per occurrence shall be not less than Twenty Million Dollars (\$20,000,000)
If nothing stated, \$10 000 000

- 30 (a) Time for giving access (subclause 24.1) within days of *date of Subcontract*
If nothing stated, 14 days
- (b) Time for giving non-exclusive possession (subclause 24.1) within days of *date of Subcontract*
If nothing stated, 14 days

- 31 The information, materials, documents or instructions and the times by, or periods within which they are to be given to the *Subcontractor* (clause 32)

	Documents or instructions	Times/Periods
1
2
3
4
5

- 32 *Qualifying causes of delay*, causes of delay for which *EOTs* will be granted (paragraph (c) of clause 1 and subclause 34.3)
.....
.....
.....

- † 33 (a) *Subcontract* liquidated damages, rate (subclause 34.7)
..... per day \$ per day
- ‡ (b) *Main contract* liquidated damages, rate (subclause 34.7A)
..... per day \$ per day

- † 34 Not Used

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

‡ Delete if optional subclause 34.7A is deleted

† 35 Not Used

36 *Defects liability period* **52 WEEKS**

(clause 35)

.....

.....

If nothing stated, the period ending on the date of expiry of the last defects liability period under the *main contract*

36A Margin on *variations* (subclause 36.4) **[insert]**%

Profit **[insert]**%

Overheads **[insert]**%

37 Progress claims
(subclause 37.1)

- (a) Times for progress claims (a) 28th day of each month for *WUS* done to the 28th day of that month until the *date of practical completion*;
- (b) on the *date of practical completion*; and
- (c) on the date for issuing a *final payment claim*.

For sake of clarity, the parties agree that there are no reference dates between the *date of practical completion* and the date of issuance of the *final payment claim*.

OR

(b) States of *WUS* for progress claims

.....

.....

.....

.....

37A *Additional Claim Documentation* **[insert]**

(subclause 37.1)

If no information is inserted then the *Subcontractor* shall provide all documentation as reasonably requested by the *Main Contractor*

37B Project Bank Accounts **Yes / No * (delete one)**

(clause 37A)

38 Unfixed plant and materials

for which payment claims may

be made

(subclause 37.3)

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

- 39 Interest rate on overdue payments (subclauses 37.5) Per section 67P of the *QBCC Act*

- 40 (a) Time for *Main Contractor* to rectify inadequate access (subclause 39.7(a)(iii)) days
If nothing stated, 14 days
- (b) Time for *Main Contractor* to rectify inadequate non-exclusive possession (subclause 39.7(a)(iv)) days
If nothing stated, 14 days

- 41 Not Used

- 41A Rules for expert determination (subclause 42.4) The Resolution Institute Expert Determination Rules

- 42 Services and facilities (clause 44)
 - (a) Electricity
 - (i) Installation of 240 volts: Supply shall be provided by the *Main Contractor* at the following points
.....
.....
.....
 - Installation of 240 volts: Supply shall be provided by the *Subcontractor* at the following points
.....
.....
.....
 - (ii) Installation of 415 volts: Supply shall be provided by the *Main Contractor* at the following points
.....
.....
.....
 - Installation of 415 volts: Supply shall be provided by the *Subcontractor* at the following points
.....
.....
.....
 - (iii) Cost of Electricity provided to the *Subcontractor* shall be borne by the
 - * *Main Contractor*
 - * ~~*Subcontractor*~~

* Delete one

(iv) Cost of connection to the power supply shall be borne by the

* *Main Contractor*
* *Subcontractor*

NOTE: The *Subcontractor* shall provide leads for the *Subcontractor's* own use.

(b) Adequate artificial lighting shall be provided by the

* *Main Contractor*
* *Subcontractor*

(c) Scaffolding

(i) Initial supply and erection and final removal of scaffolding at the following locations

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

shall be provided by and at the cost of the

* *Main Contractor*
* *Subcontractor*

(ii) Adjustment and moving of scaffolding or planks or both shall be carried out by and at the cost of the

* *Main Contractor*
* *Subcontractor*

(iii) Cost of the provision or hire of scaffolding or planks shall be borne by the

* *Main Contractor*
* *Subcontractor*

(d) Cranage and hoisting

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

* *Main Contractor*
* *Subcontractor*

(ii) Description of cranage facilities if provided by *Main Contractor*

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

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

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

* Delete one

(iv) Hoisting facilities shall be provided by the

* *Main Contractor*
* *Subcontractor*

(v) Description of hoisting facilities if provided by *Main Contractor*

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

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

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

(vii) Labour to handle materials to be lifted by crane shall be provided by the

* *Main Contractor*
* *Subcontractor*

(viii) Labour to handle materials to be lifted by hoist shall be provided by the

* *Main Contractor*
* *Subcontractor*

(ix) If materials are to be lifted by crane provided by the *Main Contractor*, lifting shall be between the following times of each day

from..... *am / *pm
to..... * am / *pm

(x) If materials are to be hoisted by the *Main Contractor*, hoisting shall be between the following times of each day

from..... *am / *pm
to..... *am / *pm

(xi) Charge for crane facilities provided by the *Main Contractor* shall be at the following rate

\$..... per hour

(xii) Charge for hoisting facilities provided by the *Main Contractor* shall be at the following rate

\$..... per hour

(e) Other plant or equipment

(i) Other items of plant or equipment to be provided or made available by the *Main Contractor* for the use of the *Subcontractor* shall be as follows

* Delete one

(v) Other services and facilities
(specify) by the *Main Contractor / *Subcontractor
.....
..... by the *Main Contractor / *Subcontractor
.....
..... by the *Main Contractor / *Subcontractor
.....
..... by the *Main Contractor / *Subcontractor

* Delete one

Part A

Separable Portions

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

Separable portion (clause 1) No.

Description of *separable portion* (clause 1)

SEPARABLE PORTIONS NOT APPLICABLE

Item

11 (a) *Date for practical completion* (clause 1)

OR

(b) *Period of time for practical completion* (clause 1)

19 *Subcontractor's security*
(a) *Form* (clause 5)

(b) *Amount or maximum percentage value of this separable portion* (clause 5) 5% of the total subcontract sum plus any additions required to be made under the Subcontract.....
If nothing stated, 5% of value of this *separable portion*

(c) *If retention moneys, percentage of each progress certificate applicable to this separable portion* (clause 5 and subclause 37.2) %, until the limit in *Item 19(b)*
If nothing stated, 10%, until the limit in *Item 19(b)*

(d) *Time for provision (except for retention moneys)* (clause 5) within days after the *date of Subcontract*
If nothing stated, 28 days

(e) *Additional security for unfixed plant and materials* (subclauses 5.4 and 37.3) \$.....

(f) *Contractor's security upon certificate of practical completion is reduced by* (subclause 5.4) % of amount held
If nothing stated, 50% of amount held

20 Main Contractor's security

- (a) Form
(clause 5)
- (b) Amount or maximum percentage of value of this *separable portion*
(clause 5) If nothing stated, nil
- (c) Time for provision within days after the *date of Subcontract*
(clause 5) If nothing stated, 28 days
- (d) *Main Contractor's security* upon % of amount held
certificate of practical completion is reduced by If nothing stated, 50% of amount held
(subclause 5.4)

- 33 (a) *Subcontract* liquidated damages, rate
(subclause 34.7) per day \$.....per day
- ‡ (b) *Main contract* liquidated damages, rate
(subclause 34.7A) per day \$.....per day

34 Bonus for early *practical completion* (subclause 34.8)

- (a) Rate
..... per day \$.....per day
- (b) Limit
..... \$.....

OR

..... % of value of this *separable portion*
If nothing stated, there is no waiver

35 Not Used

‡ Delete if optional subclause 34.7A is deleted

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

Part B

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

Approved form of unconditional undertaking

(clause 1 – security)

At the request of
 ACN..... ABN (the *Subcontractor*) and in consideration of
 ACN..... ABN (the *Main Contractor*) accepting this
 undertaking in respect of the *Subcontract* for
 (the Project)
 ACN..... ABN (the *Financial Institution*) unconditionally
 undertakes to pay on demand any sum or sums which may from time to time be demanded by the *Main Contractor*
 to a maximum aggregate sum of
 (\$)

The undertaking is to continue until notification has been received from the *Main Contractor* that the sum is no longer required by the *Main Contractor* or until this undertaking is returned to the *Financial Institution* or until payment to the *Main Contractor* by the *Financial Institution* of the whole of the sum or such part as the *Main Contractor* may require.

Should the *Financial Institution* be notified in writing, purporting to be signed by for and on behalf of the *Main Contractor* that the *Main Contractor* desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the *Financial Institution* will make the payment or payments to the *Main Contractor* forthwith without reference to the *Subcontractor* and notwithstanding any notice given by the *Subcontractor* not to pay same.

Provided always that the *Financial Institution* may at any time without being required so to do pay to the *Main Contractor* the sum of (\$) less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the *Main Contractor* and thereupon the liability of the *Financial Institution* hereunder shall immediately cease.

Dated at this day of 20.....

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

Part C

Deed of novation

(subclause 9.2(c))

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

- 1 Upon receipt by the *secondary subcontractor* of the sum certified by the *Subcontract Superintendent* as owing under the prior contract described in the Schedule hereto:
 - (a) the prior contract shall be discharged;
 - (b) the *secondary subcontractor* shall release the *Subcontractor* from the further performance of the prior contract and from all claims and demands in connection with the prior contract;
 - (c) the *Incoming Subcontractor* shall punctually perform the obligations of the *Subcontractor* under the prior contract as far as they are not performed. The *Incoming Subcontractor* acknowledges itself bound by the provisions of the prior contract as if the *Incoming Subcontractor* had been named in the prior contract; and
 - (d) the *secondary subcontractor* shall punctually perform like obligations and be bound to the *Incoming Subcontractor* as if the provisions of the prior *subcontract* were incorporated herein.
- 2 The *Main Subcontractor* and *secondary subcontractor* each warrant to the *Incoming Subcontractor* that:
 - (a) subcontract work carried out to the date hereof is in accordance with the provisions of the prior contract; and
 - (b) all claims and demands in connection with the prior contract have been made to the *Subcontractor*.
- 3 The *Main Subcontractor* and *secondary subcontractor* each indemnifies the *Incoming Subcontractor* from all claims and demands of the *Subcontractor*, *Main Contractor* and *secondary subcontractor* in connection with the prior contract.
- 4 A dispute between:
 - (a) the *Main Contractor* and the *secondary subcontractor* in connection with the *Subcontract Superintendent's* certification of the sum owing under the prior contract; or
 - (b) the *Incoming Subcontractor* and the *secondary subcontractor* in connection with clause 1(c) or 1(d), shall be resolved pursuant to the provisions of AS 4903—2000 General conditions of subcontract for design and construct which for the purposes of this clause 4 are incorporated herein.
- 5 This Deed shall be governed by the laws of the jurisdiction stated in *Item 12* of the *Subcontract* between the *Main Contractor* and *Subcontractor*.

Schedule

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Part D

In the Deed where applicable

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

Deed of novation

(subclause 9.4)

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

- 1 Upon receipt by the *continuing party* of all moneys owing under the prior contract:
 - (a) the *incoming party* shall punctually perform the obligations of the *outgoing party* under the prior contract prescribed in the Schedule hereto as far as they are not performed. The *incoming party* acknowledges itself bound by the provisions of the prior contract as if the *incoming party* had been named as the *outgoing party* in the prior contract;
 - (b) the *continuing party* punctually perform like obligations and be bound to the *incoming party* as if the provisions of the prior contract were incorporated herein; and
 - (c) the *outgoing party* and *continuing party* shall each release and forever discharge the other from the further performance of the prior contract and from all claims and demands in connection with the prior contract.
- 2 The *outgoing party* and *continuing party* each warrant to the *incoming party* that *preliminary design* or *selected subcontract work*, as the case may be, carried out to the date hereof, is in accordance with the provisions of the prior contract.
- 3 This Deed shall be governed by the governing law of the prior contract between the *outgoing party* and *continuing party*.

Schedule

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

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

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

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

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

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

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

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

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

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

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

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

Part E

Deletions, amendments and additions

1 The following clauses have been deleted from AS 4903—2000

As per the marked up copy of this AS4903

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

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

As per the marked up copy of this AS4903

.....

.....

.....

.....

.....

.....

.....

.....

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

As per the marked up copy of this AS4903

.....

.....

.....

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

Part F

Main Contractor's Project Requirements

Refer to attached Notice of Acceptance: including

- **Schedule A – Extent of Work and**
- **Schedule B – Scope of Work**

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

Part G

Drawing Register

Refer to the attached Notice of Acceptance:

- Schedule A – Extent of Work: **Drawings.**

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

Part H

Safety Requirements

The *Subcontractor* shall:

- (a) carry out works pursuant to the requirements of, and to comply with, the Work Health and Safety Act 2011 (Qld) and Work Health and Safety Regulations 2011 (Qld), relevant advisory standards and codes of practice;
- (b) before the *Subcontractor's* employees commence work on the *site*, give to the *Main Contractor's* representative a site specific safety plan including work method statements for high risk construction work and other hazardous works;
- (c) induct all employees into the *Subcontractor's* site specific safety plan and any work health and safety management plan provided by the *Main Contractor* and keep and maintain a training register of trainees inducted;
- (d) ensure that all employees have attended and hold a QLD General Industry Induction Card (formerly known as a "blue card") or other relevant general industry induction card accepted by WH&S QLD;
- (e) on request by the *Main Contractor's* representative, give evidence that all employees have been trained in the *Subcontractor's* work method statements involving high risk construction work or other hazardous work, and certification that they are deemed competent in the same;
- (f) instruct its employees to report to the site foreman before starting work, to attend the *Main Contractor's* site specific induction session and obtain site registration.
- (g) ensure employees who are required to work in a Prescribed Occupation have their certificate (license) on their person for viewing and shall ensure those employees are competent;
- (h) ensure all hazardous substances used by an employee has a material safety data sheet (MSDS) supplied for that substance and a risk assessment for safe use at the *site*. The MSDS and risk assessment are to be attached to the *Subcontractor's* site specific safety plan. The employee shall be trained in the safe use of the hazardous substance;
- (i) ensure any plant supplied by the *Subcontractor* meets the requirements of the Work Health and Safety Act 2011 (Qld), Work Health and Safety Regulations 2011 (Qld) and relevant codes of practice;
- (j) ensure suppliers of material engaged by the *Subcontractor* comply with the requirements of the Work Health and Safety Act 2011 (Qld) and Work Health and Safety Regulations 2011 (Qld), when entering the *site*;
- (k) ensure that all common plant, housekeeping, inductions, hazardous substances, work at height, falling objects and other regulatory requirements are identified in order that they may be managed to prevent or minimise exposure to the risk of injury or illness;
- (l) ensure that any agents, sub-subcontractors or consultants and their employees who are carrying out work for the *Subcontractor* on the *site* or in relation to the *site*, provide adequate information, instruction, training and supervision to prevent or minimise exposure to the risk of fatality, injury or illness;
- (m) ensure compliance with the *Main Contractor's* construction safety plan and / or work health and safety management plan prior to commencing work on the *site*;

- (n) ensure that all employees, agents, sub-subcontractors and consultants comply with the *Main Contractor's* construction safety plan or where there is high risk construction work, the relevant work method statement; and
- (o) report all injuries, illnesses and dangerous events to the *Main Contractor* as soon as it becomes aware of the injury , illness or dangerous event.

The *Subcontractor* certifies that:

- (p) all of the *Subcontractor's* employees, agents, sub-subcontractors and consultants are competent to carry out *WUS*;
- (q) the *Subcontractor* and its employees, agents, sub-subcontractors and consultants shall immediately comply with all instructions from the *Main Contractor*;
- (r) the *Subcontractor* has work method statements for all high risk construction work and other hazardous works;
- (s) all *WUS* carried out by the *Subcontractor* complies with all relevant codes, laws and standards; and
- (t) it has obtained, read, understands and will comply with the *Main Contractor's* work health safety policies, Site Specific Safety Rules and Construction Safety Management Plan. If these documents, or any other similarly named documents are not provided with this *Subcontract* then the *Subcontractor* must obtain them from the *Main Contractor* and ensure the *Subcontractor's* full compliance with all such documentation.

SIGNED BY THE SUBCONTRACTOR

DATE

FAILURE TO COMPLY

If the *Subcontractor* fails to comply with the above requirements:

- (a) the *Main Contractor* shall be entitled to withhold any money payable to the *Subcontractor* (including a progress payment) until the *Subcontractor* complies;
- (b) the *Main Contractor* may remove from the *site* any of the *Subcontractor's* employees who do not comply with the *Main Contractor's* directions or instructions until the worker complies;
- (c) the *Subcontractor* shall indemnify the *Main Contractor* against and compensate the *Main Contractor* for any fines, penalties or other monetary amounts directly incurred by the *Main Contractor* from Workplace Health and Safety Queensland and any other loss or damages suffered by the *Main Contractor* due to the *Subcontractor's* non-compliance shall be an amount due from the *Subcontractor* to the *Main Contractor* and may be back charged to the *Subcontractor*, or set-off or as otherwise allowed under this *Contract* or as damages;
- (d) the *Subcontractor* shall indemnify the *Main Contractor* against and compensate the *Main Contractor* for all loss, cost, damage or expense in connection with disruptions and/or work stoppages, including all consequential ramifications of such stoppages in commensurate proportion to the contribution by the *Subcontractor*;
- (e) the *Subcontractor* shall indemnify the *Main Contractor* against and compensate the *Main Contractor* for all claims made against, or loss incurred (including all legal costs of proceedings or prosecutions on a solicitor and own client basis) by the *Main Contractor* arising out of or in connection with a breach of the *Subcontractors* obligations under this Annexure Part H.

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

Part I

Declaration by Subcontractor

PROJECT NAME

To the Finance Director of EVANS BUILT PTY LTD

I,.....(Print name)

of.....(Address) in the State of Queensland,

so solemnly and sincerely declare that, in relation to the Agreement between **EVANS BUILT PTY LTD** (The *Main Contractor*)

And.....(The *Subcontractor*)

(Registered Business/Entity Name)

Subcontract for.....“the *Subcontract*”)

1. I hold the position of

I am in a position to know the facts contained herein and to bind the Subcontractor by the terms of this declaration, and I am duly authorised by the Subcontractor to make this declaration on its/their behalf.

2. All EMPLOYEES, WORKERS, SUB-SUBCONTRACTORS AND SUPPLIERS who at any time have carried out work under the *Subcontract* have been paid in full all monies due and payable to them inclusive of any amounts owing under any industrial instrument and all mandatory statutory obligations, payments, charges or taxes (including but not limited to Goods and Services Taxes and Superannuation where applicable) up to the date of submission by the *Subcontractor* of Payment Claim No

3. All sub-subcontractors performing work under the *Subcontract* have been informed of the existence of the *Building and Construction Industry Payments Act 2004* and the *Subcontractors’ Charges Act 1974* and the *Building Industry Fairness (Security of Payment) Act 2017* [BIF Act].

I make this solemn declaration conscientiously believing the information contained herein to be true and correct.

.....
Signature of the Declarant

.....
Name of Declarant

.....
Date

A signed original copy of this declaration must accompany each progress claim submitted for payment

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

Part J

Deed of Release – Practical Completion

Project:
Subcontract:
Description:
Subcontract Date:
Subcontractor:

Release and Indemnity

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

Original Subcontract Sum		\$
	\$	
Adjustment – Additions	\$	
Adjustment – Deductions		
Subcontract Sum at Practical Completion		\$
Less Previous Net Payments		\$
Final Balance Owing (including Retention)		\$
Less Retention Terms (< >% of \$< >)		\$
Balance owing at Practical Completion (excluding Retention)		\$

1.2 The Subcontractor, upon receipt of the sum of \$..... being the final balance owing for all works performed up to the date of this Deed (exclusive of Retention) in the terms of the Subcontract No. agrees to:-

- 1.2.1 Release and discharge the Main Contractor and the Main Contractor’s Representative from all claims, demands, debts, accounts, costs, liens, actions and proceedings whether known or unknown which the Subcontractor has or might have against the Main Contractor or the Main Contractor’s Representative howsoever arising under the Subcontract or out of its performance.
- 1.2.2 Indemnify and keep indemnified the Main Contractor and the Main Contractor’s Representative and their officers, servants and agents, from and against all claims, demands, debts, accounts, expenses, costs, liens, actions and proceedings, whether known or unknown, by any person, corporation or firm howsoever arising under the Subcontract or out of its performance.

Execution of Release and Indemnity

IN WITNESS WHEREOF the Subcontractor has hereunder set its hand on the day and the year hereinafter written.

Dated this Day of 2019
Subcontractor::

Signature of Director

Name of Director

Signature of Witness

Name of Witness

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

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

Part K

Deed of Release - Final

Project:
Subcontract:
Description:
Subcontract Date:
Subcontractor:

Release and Indemnity

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

Original Subcontract Sum		\$
Adjustment – Additions	\$	
Adjustment – Deductions	\$	
Final Subcontract Sum		\$
Less Previous Net Payments		\$
Final Balance Owing (including Retention)		\$
Less Retention Terms (< >% of \$< >)		\$
Final Balance Owing (excluding Retention)		\$

- 1.2 The Subcontractor, upon receipt of the sum of \$.....being the final balance owing (exclusive of Retention) in the terms of the Subcontract No. agrees to:-
- 1.2.1 Release and discharge the Main Contractor and the Main Contractor’s Representative from all claims, demands, debts, accounts, costs, liens, actions and proceedings whether known or unknown which the Subcontractor has or might have against the Main Contractor or the Main Contractor’s Representative howsoever arising under the Subcontract or out of its performance.
- 1.2.2 Indemnify and keep indemnified the Main Contractor and the Main Contractor’s Representative and their officers, servants and agents, from and against all claims, demands, debts, accounts, expenses, costs, liens, actions and proceedings, whether known or unknown, by any person, corporation or firm howsoever arising under the Subcontract or out of its performance.

Execution of Release and Indemnity

IN WITNESS WHEREOF the Subcontractor has hereunder set its hand on the day and the year hereinafter written.

Dated this Day of 2019
Subcontractor:

Signature of Director

Name of Director

Signature of Witness

Name of Witness

This Deed of Release form is to be signed by incorporated Subcontractors and returned to the Main Contractor, as a condition of reaching Final Completion.

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

Part L

Trade Breakdown

The Trade Breakdown is for the purpose of valuing progress claims submitted under clause 37.1 and does not constitute a *schedule of rates*.

The Trade Breakdown may be relied upon to value *variation* claims pursuant to clause 36.4(a) but only to the extent it is reasonable to do so.

[INSERT]

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

Part M

Agreement to Issue RCTIs

THIS AGREEMENT is made on the **INSERT** day of **INSERT** 2019

BETWEEN

Evans Built Pty Ltd (ACN 120 743 099)
of La Balsa, Suite 30, 45 Brisbane Road, Mooloolaba, Queensland, 4557
(the **Main Contractor**)

And

"ENTER SUNCONTRACTOR" (ACN "ENTER ACN")
of **"SC ADDRESS"**
(the **Subcontractor**)

Subcontract: **INSERT** between the *Main Contractor* and the *Subcontractor* dated **INSERT**

1. Definitions

Agreement means this agreement for the issuing of *RCTIs*.

Words and expressions used in this Annexure which are not defined in the *Subcontract* but which are defined in the *GST Act* have the same meaning as in the *GST Act*.

2. Issue of RCTIs

- (a) The *Main Contractor* will issue an *RCTI* in respect of all supplies supplied by the *Subcontractor* under the *Subcontract*.
- (b) The *Subcontractor* will not issue tax invoices in respect of supplies supplied to the *Main Contractor* under the *Subcontract*, except as otherwise provided under the *Subcontract*.
- (c) The *Subcontractor* acknowledges that it is registered for *GST* when it enters into the *Subcontract* and that it will notify the *Main Contractor* if it ceases to be registered or fails to register.
- (d) The *Main Contractor* acknowledges that it is registered for *GST* when it enters into the *Subcontract*, and that it will notify the *Subcontractor* if it ceases to be registered for *GST* or if it ceases to satisfy any of the requirements for *RCTIs* under the *GST Act* or taxation rulings.
- (e) The *Main Contractor* will not issue a document that would otherwise be an *RCTI*, on or after the date when the *Main Contractor* or the *Subcontractor* has failed to comply with any of the *RCTI* requirements.
- (f) The *Subcontractor* acknowledges that the *Main Contractor* is not obliged to and will not issue a *RCTI* in respect of a supply until:
 - (i) the progress claim received from the *Subcontractor* has been certified in accordance with the *Subcontract*; and
 - (ii) the *Subcontractor* has provided the necessary documentation to allow a *RCTI* to be issued.

3. Termination

The *Main Contractor* may, at its sole discretion, by written notice to the *Subcontractor*, terminate this *Agreement* and from the date of the notice of termination the *Subcontractor* will be responsible for issuing any and all tax invoices in respect of supplies to the *Main Contractor* under the *Subcontract*.

4. Main Contractor’s indemnity

The *Main Contractor* shall indemnify the *Subcontractor* against any liability, cost, expense, loss or damage that the *Subcontractor* that may arise from an understatement of the *GST* payable on any of the specified supplies received on an *RCTI* the *Main Contractor* issues to the *Subcontractor*.

5. Subcontractor’s indemnity

The *Subcontractor* shall be liable for, and indemnifies the *Main Contractor* against, any cost, expense, loss or damage that the *Main Contractor* and/or the *Subcontractor* may incur or suffer as a result of or in any way relating to the termination of this *Agreement*.

EXECUTED by **Evans Built Pty Ltd**)
(**ACN 120 743 099**))
by its duly authorised representative:)

.....
Name of authorised representative

.....
Signature of authorised representative

EXECUTED by **"SC NAME"**)
(**ACN "ENTER ACN"**))
by its duly authorised representative:

.....
Name of authorised representative

.....
Signature of authorised representative

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

Part N

PROGRESS CLAIM PROFORMA

The following format is to be used when submitting progress claims:

SUBCONTRACTOR:	
PROJECT:	
	Excluding GST
1 Accepted Net Contract Value:	\$
2 Approved Variations to Contract: (attach details)	\$
3 Adjusted Net Contract Value:	\$
4 Total Value of Contract Work completed to date: (attach detailed breakup)	\$
5 Variations Claimed to Date: (attach details)	\$
6 Less Previously Claimed :	\$
7 This Claim No. for works completed to/...../..... (4+5-6)	\$
Plus 10% GST (if applicable):	\$
Total Claim Including GST:	\$

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AMENDMENT CONTROL SHEET

AS 4903—2000

Amendment No. 1 (2005)

SUMMARY: This Amendment applies to Clause 41 (a) and (c) of Annexure Part A.

Published on 30 March 2005.

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