



# Works Contract

[\*Project name\*]

Date [\*Date\*]

## Parties

HL Landscapes Pty Ltd (ABN 92 119 886 734) (HLL)

PO Box 130 Northgate QLD 4551

[\*Party 2 full name\*] (Subcontractor)

[\*Address\*]

## Background

- A. HLL has engaged the Subcontractor to undertake the WUS as required from time to time in accordance with the Subcontract.
- B. The Subcontractor has agreed to carry out the WUS as required from time to time in accordance with the Subcontract.

## Execution

Executed as an Agreement.

[\*Add appropriate execution blocks for each party.\*]

Executed by [\*Company name and ACN\*] in accordance with section 127(1) of the *Corporations Act 2001* (Cth)

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Full name of director

Signed by [\*Full name\*] in the presence of

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Witness full name

\_\_\_\_\_  
Witness address

\_\_\_\_\_  
Signature of director / company secretary

\_\_\_\_\_  
Full name of director / company secretary

\_\_\_\_\_  
Signature

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## Operative provisions

### 1. Definitions and interpretation

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#### 1.1 Definitions

In this document, unless the context requires otherwise:

**Approval** includes any necessary consent, licence, permit and confirmation from any local, state or federal government body or any instrumental or representative body in order to lawfully carry out the WUS.

**Business Day** means every day, excluding Saturdays, Sundays or Public Holidays in Queensland, or days between 22 to 24 December, 27 to 31 December and 2 to 10 January.

**Claim** includes any claim, action, demand or proceeding for payment of money (including damages or an increase in the Subcontract Sum) or for an extension of time under, arising out of, or in any way in connection with, this Subcontract; arising out of, or in any way in connection with, any task, fact, matter, thing or relationship connected with the Subcontract, the WUS, the Main Contract, or any party's conduct prior to the date of this Subcontract; or otherwise at law including for breach of any statute, in tort for negligence or otherwise, including negligent misrepresentation, or for restitution including restitution based on unjust enrichment.

**Collect, Collected, Collection** means where HLL collects the goods from a location agreed with the Subcontractor and HLL takes responsibility for transportation of the Goods after collection.

**Completion** is that stage in the carrying out and completion of WUS when:

- (a) the WUS are complete except for minor defects, which do not prevent the WUS from being reasonably capable of being used for their intended purpose and do not cause any impediment to the use or occupation of the WUS and which HLL determines the Subcontractor has reasonable grounds for not promptly rectifying; and rectification of which, individually or collectively, will not prejudice the work of other contractors;
- (b) the Site has been left clean, tidy, level and secure with suitable or approved erosion and sediment control and all rubbish and excess material has been removed,
- (c) the Subcontractor has provided any relevant forms or certificates as required by HLL; and
- (d) the Subcontractor has complied with any Main Contract requirements for completion as notified by HLL..

**Date for Commencement** means the date in Item 3 of Schedule 1.

**Date for Completion** means the date in Item 4 of Schedule 1.

**Defect** or **Defective** includes, in relation to the Goods, any omission, error, fault, non-compliance, breach of Law, deficiency, flaw, irregularity, material imperfection, or similar condition and if installation is required, any defect in installation.

**Defects Liability Period** means the period defined in clause 17

**Delay Event** means the events listed in Item 6 of Schedule 1.

**Deliver, Delivery** or **Delivered** means leaving the Goods in the possession of HLL in accordance with the Subcontract at the Site.

**Delivery Date** means the date and time stated in the applicable Purchase Order or as otherwise directed by HLL by which the Goods are to be delivered by or on.

**Design Documents** means the drawings, specifications and other information including samples, models, and patterns required by the Subcontract and created (including, those required to be created by the Subcontractor) for the construction of the WUS.

**Direction** means an instruction in writing from HLL or a disclosed agent of HLL given as soon as practical which includes an agreement, certificate, decision, demand, determination, explanation, instruction, notice, order or requirement. The instruction may be given by email in the interests of expediency.

**Environmental Requirements** means all Legislative Requirements relating to the environment and the environmental policies and procedures of HLL and including but not limited to any site or environmental management plan applicable to the Site.

**Extension of Time (EOT)** means a time extension in relation to the performance of the WUS (including in relation to Completion) granted or directed by HLL in accordance with clause 11.

**Force Majeure Event** includes any hurricane, cyclone, earthquake, natural disaster, tsunami or mudslide effecting the Site; act of a public enemy, war (declared or not), riot, insurrection, civil rebellion, revolution, military usurped power or other like hostilities, terrorism or act of sabotage; fire, explosion or flood at or preventing access onto, the Site; ionising radiation,

contamination by radioactivity, nuclear or biological contamination; or a Site shutdown, including where directed by the Principal, which directly causes a party to be unable to perform all or a material part of its obligations at the Site (other than an obligation to pay money) under the Subcontract where the event or its consequences could not have been prevented by the exercise of a standard of care and diligence consistent with that of a prudent person undertaking the obligations under the Subcontract and where the event or its consequences were not otherwise caused or contributed by that party's failure to comply with its obligations under the Subcontract.

**Goods** means the items and materials to be Delivered by the Subcontractor under the WUS.

**GST** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and all associated regulations made pursuant to that Act (**GST Law**).

whether issued or made available on, before or after the date of execution of the Main Contract;

**Insolvency Event** means:

- (a) the party is insolvent or is financially unable to proceed with its obligations under the Subcontract;
- (b) execution is levied against the party by a creditor;
- (c) the party is a natural person or a partnership and commits an act of bankruptcy; is made bankrupt; has a bankruptcy petition presented against him or her or presents his or her own petition; makes a proposal for a scheme of arrangement or a composition; or is required to present a debtor's petition or has a sequestration order made under Part X of the Bankruptcy Act 1966 (Cth);
- (d) the party is a corporation and notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement; it enters a deed of company arrangement with creditors; a controller, administrator or liquidator is appointed; an application is made to a court for its winding up and not stayed within 14 days; a winding up order is made in respect of the corporation; or it resolves by special resolution that it be wound up voluntarily.

**Intellectual Property Right** means any patent, registered or unregistered design, trademark or name, copyright, trade secrets and know-how and other similar proprietary rights and all other intellectual property rights conferred under statute or common law.

**Item** means an Item set out in Schedule 1.

**Law** means any Act, Bill, Regulation, Ordinance, Proclamation, Permit, Approval, Permission, By-law, Statutory Instrument or similar legislative instrument.

**Legislative Requirements** includes Laws; certificates, licences, consents, permits, approvals, clearances, requirements or other precondition required by Law or any government or statutory authority having jurisdiction at the Site; and fees and charges payable in connection with the foregoing.

**Main Contract** means the contract between the Main Contractor and HLL for the performance of work.

**Main Contractor** means the party set out in Item 17 in Schedule 1. **Parties** means the Subcontractor and HLL together.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Principal** means the party set out in Item 18 in Schedule 1.

**Provisional Sum** has the meaning in clause 3.3.

**Purchase Order** means a document provided by HLL to the Subcontractor for the supply of Goods on the terms of the Subcontract.

**Registration** has the meaning set out in the PPSA.

**Scope of Works** means the written requirements for the WUS described in Schedule 2 or as otherwise detailed in a relevant Purchase Order.

**Secondary Subcontractors** means any contractors, employees, workers or other personnel on Site that are engaged by the Subcontractor, other than the Subcontractor or its employees or agents, to carry out works, provide services or supply other items to the Site.

**Security Interest** has the meaning set out in the PPSA.

**Separate Subcontractors** means any contractors, employees, workers or other personnel on Site that are engaged by HLL, other than the Subcontractor or its employees or agents, to carry out works, provide services or supply other items to the Site that are not included in the WUS.

**Site** means the site identified in Item 1 of Schedule 1 or in a Purchase Order, as the case may be.

**Site Conditions** means any physical conditions and characteristics of, upon, above, below or over the surface, or in the vicinity of, the Site any land or surroundings including artefacts and any other natural and artificial conditions; physical and structural conditions such as old footings, underground structures, buildings, improvements, partially completed structures and in-ground works; all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the Principal or others; surface water, ground water, ground water hydrology and the effects of any dewatering; any contamination, hazardous substance or other spoil or waste; topography of the Site, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Site; geological, geotechnical and subsurface conditions or characteristics; any underground strata; all utility services, systems and facilities,

above or below ground level and all facilities with which such utility services and systems are connected; and the water and weather or climatic conditions, or the effects of the water and weather or climatic conditions, including rain, surface water runoff and drainage, floods, water seepage, wind blown dust and sand, seasons and physical conditions that are a consequence of weather or climatic conditions.

**Subcontract** means the executed agreement HLL and the Subcontractor and comprises the documents described in clause 3.

**Subcontract Price** means the lump sum or rates (or as may be relevant the Bill of Quantities if included and noted as binding) as set out in Schedule 1 Item 2, Schedule 2 or under a Purchase Order as applicable.

**Subcontractor's Margin** means the margin in Item 9 of Schedule 1 for profit, offsite overheads and offsite administration.

**Substantial Breach** includes, but is not limited to:

- (a) the Subcontractor failing to provide evidence of insurance, comply with a reasonable direction of HLL, comply with Legislative Requirements, WHS Requirements or Environmental Requirements, proceed with due expedition and without delay, use the materials or standards of work required by the Subcontract, deliver the Goods by the Delivery Date, or make the Goods available for Collection;
- (b) wrongful suspension of work; or
- (c) an Insolvency Event of the Subcontractor.

**WHS Requirements** means all Legislative Requirements relating to workplace health and safety and the workplace health and safety policies and procedures of HLL, the Main Contractor or the Principal.

**WUS** means the work which the Subcontractor is or may be required to carry out and complete under the Subcontract or under a Purchase Order as relevant and includes variations, remedial work, design, plant and temporary works, services or Delivery of Goods.

## 1.2 Interpretation

In the subcontract:

- (a) headings are for reference only and do not affect the meaning of this document;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) 'person' includes a firm, a body corporate, an unincorporated association or an authority;
- (e) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally, and on the part of two or more persons binds them jointly and severally;
- (f) a reference to:
  - (i) a person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
  - (ii) a document includes any variation or replacement of it and all schedules, annexures and exhibits to the document;
  - (iii) a Law includes regulations and other instruments under it and amendments or replacements of any of them;
  - (iv) a group of persons includes all of them collectively, any two or more of them collectively and each of them individually;
  - (v) '\$' or 'dollars' is a reference to Australian currency unless otherwise specified;
  - (vi) a specific time means the time in the jurisdiction set out in Item 11 of Schedule 1;
- (g) derivative words (words formed from another by derivation) have a similar or the same meaning as the word defined, unless another meaning is expressly provided by the Subcontract;
- (h) 'including' when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (i) no part of the Subcontract may be interpreted against the interests of the party responsible for the drafting or the inclusion of that provision or part in the Subcontract;
- (j) where the time for doing anything falls on a day that is not a Business Day, it will be deemed to fall due on the next Business Day;
- (k) should any part of the Subcontract be determined to be void or otherwise excluded from the Subcontract, the Subcontract will be read as if that part was excluded.

## 1.3 Reliability of Documents

HLL does not warrant, guarantee or assume any duty of care or other responsibility for or makes any representation about the accuracy, adequacy, suitability, currency, fitness for purpose, reasonableness, reliability or completeness of any document other than the Subcontract and its attachments, schedules and annexures [other than Reliance Documents specified in Annexure 1, which will form part of the Subcontract]

Insofar as is permitted by Law, neither HLL, the Main Contractor nor the Principal will be liable upon any Claim by the Subcontractor or any Secondary Subcontractor arising out of or in any way in connection with any document other than the Subcontract.

To the maximum extent permitted by Law, but subject to the Subcontractor's express rights under this Subcontract, the Subcontractor unconditionally and irrevocably releases, discharges and indemnifies HLL the Principal or the Main Contractor from and against any Claim against the Principal or the Main Contractor or HLL by, or liability of the Principal or the Main Contractor or HLL to, any person arising, now or in the future, in any way out of or in any way in connection with reliance on any document other than the Subcontract.

## **2. Engagement and Performance**

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### **2.1 Engagement and performance**

HLL engages the Subcontractor to perform the WUS. The Subcontractor agrees to carry out and complete the WUS in accordance with the Subcontract, directions authorised by HLL, and all of its obligations at Law including any relevant Legislative Requirement (including those specified as relevant under the Main Contract). Subject to compliance with this clause 2.1, HLL will pay the Subcontractor for performance of the WUS.

Unless otherwise agreed, the Subcontractor will commence the WUS on the Date for Commencement. Unless otherwise agreed, the Subcontractor will commence works under any Purchase Order on the dates as set out in the relevant Purchase Order.

### **2.2 Relationship between the Parties**

The Subcontractor is engaged as an independent contractor to HLL in carrying out and completing the WUS and neither the Subcontractor nor its employees or agents are employees or agents of HLL.

The Subcontractor is responsible for its employees, including their wages or salaries, paid public holidays, annual leave, sick leave, superannuation, PAYE and other taxes, workers' compensation and other insurances and all other obligations arising out of or in connection with the activities of the Subcontractor.

## **3. Subcontract**

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### **3.1 Subcontract Documents**

- (a) The Subcontract is comprised of the documents set out in Item 5 Schedule 1.
- (b) Without limitation, HLL is not bound by any terms and conditions set out on any document provided by the Subcontractor, including delivery documents or Purchase Orders (regardless of whether any such document is signed by or for HLL).
- (c) Figured will prevail over scaled dimensions in a discrepancy. Otherwise, if the Subcontractor discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out the WUS, the Subcontractor will give HLL written notice of it. HLL will, thereupon or upon otherwise becoming aware, direct the Subcontractor as to the interpretation and construction to be followed.
- (d) The Subcontractor shall bear the cost of compliance with a direction under this clause 3.1 to the extent that any inconsistency, ambiguity or discrepancy in any document prepared by the Subcontractor for the purpose of carrying out the WUS.
- (e) Unless otherwise specified under a Purchase Order, [HLL] is obliged to and is responsible for obtaining all Approvals necessary for the WUS.

### **3.2 Subcontract Price**

- (a) HLL agrees, subject to the Subcontract, to pay the Subcontractor the Subcontract Price as adjusted by any additions or deductions made pursuant to the Subcontract. The Subcontractor acknowledges that the Subcontract Price includes all preliminaries, supervision, overheads (off Site and on Site), profits, costs, expenses, fees and charges incurred by the Subcontractor in performing all obligations of and incidental to carrying out the WUS, unless otherwise specifically excluded from the Subcontract Price.
- (b) The Subcontract Price is not subject to adjustment for rise and fall, including in respect of any Site allowance, or by reason of fluctuations in exchange rates or changes in the cost of labour and materials, or for any other adjustment for any reason.

### **3.3 Provisional Sums**

Where a Provisional Sum is included in the Subcontract Price, the Provisional Sum will not be paid unless and until the work the subject of the Provisional Sum is carried out. Provisional Sums will be valued in accordance with Schedule 2.

### **3.4 Free-Issue Items**

- (a) All items listed in Item 13 of Schedule 1 will be free-issued by HLL to the Subcontractor (Free Issued Items).
- (b) HLL will be responsible for ordering, payment and transportation to the site for all Free-Issued Items. The cost of ordering, insuring and transporting Free-Issued Items will not be the responsibility of the Subcontractor and is not included in the Subcontract Price. All free issued items will be at HLL's risk until they are delivered to Site. HLL

must ensure that the Free-Issued Items are suitably wrapped or otherwise protected at the time of delivery to ensure that they are protected from damage expected on a building site.

- (c) Once delivered to site the [\*HLL/ Subcontractor\*] will be responsible for the safe storage of the Free-Issued Items.
- (d) The Subcontractor will be responsible for the installation of the Free-Issued Items as part of the WUS and the costs of installation must be included in the Subcontract Price.
- (e) Contractor will not be liable for rectifying or replacing defective Free-Issued Items and will only be responsible for defects in the installation of Free-Issued Items.
- (f) HLL must provide a program or estimated date for delivery of the Free-Issued Items and to the extent that there is any delay in delivery of the Free-Issued Item to Site it will be a Delay Event and the Subcontractor is entitled to an Extension of Time, equivalent to the delay in delivery to Site.

### **3.5 Documents and Main Contract terms incorporated into the Subcontract**

- (a) The Subcontractor acknowledges that HLL has entered into the Main Contract under which HLL and the Main Contractor shall do all things necessary to enable performance by HLL of its obligations and enjoyment by the Main Contractor of the benefits under the Main Contract and so as to ensure no breach or loss under the Main Contract by the Main Contractor. The terms, if any, specified in Annexure 4, taken from the Main Contract, apply to this Subcontract

### **3.6 Governing Law**

The Subcontract is governed by the law of the State or Territory specified in Item 11 in Schedule 1.

### **3.7 Discrepancies**

If the Subcontractor prepares any Design Documents, it must provide a copy of those Design Documents for approval 10 Business Days prior to commencing the WUS to which the Design Documents relate. HLL will provide comment and either reject or approve those Design Documents prior to the Subcontractor commencing the Works relating to the Design Documents.

If HLL rejects the Design Documents in whole or part, the Subcontractor must amend and resubmit the Design Documents, and HLL will review the resubmitted documents as soon as reasonably practicable and confirm whether they are rejected or approved.

If HLL fails to provide comment or approval within 10 Business Days of receiving the Design Documents from the Subcontractor, the Subcontractor is entitled to proceed at its risk. HLL reserves the right to make further comment.

## **4. Purchase Orders**

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Where the Scope of Works is not fixed or where the parties have agreed a variation under clause 12 HLL may at any time during the term of the Subcontract, issue a Purchase Order to the Subcontractor under the Subcontract. Should HLL issue a Purchase Order to the Subcontractor under the Contract, the Subcontractor must Deliver Goods to HLL in accordance with the Purchase Order, unless the Subcontractor can show that it is unable to provide the supply in accordance with a requirement of the Purchase Order, be it the time, type or quantity of Goods required. Each Purchase Order is issued subject to and governed by the terms of this Subcontract.

Purchase Orders must include a purchase order number issued by HLL, identify the Goods, the quantity of the Goods and the Price of the Goods being ordered, and specify Site and the Delivery Date when the Goods must be delivered to the Site or the location where the Goods will be Collected.

The Subcontractor agrees that HLL is under no obligation to purchase Goods during the term of the Subcontract and is not restricted from dealing with any third parties.

If the Subcontract expires or is terminated and HLL continues to issue Purchase Orders to the Subcontractor and the Subcontractor accepts a Purchase Order, the terms of the Subcontract will continue to apply to such supply of Goods until the Parties enter into a new contract for the supply of Goods or the Parties agree in writing that the terms of the Subcontract no longer apply.

## **5. Contractor's warranties**

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### **5.1 WUS**

With respect to the WUS, and without limiting the Subcontractor's obligations under this Contract, the Subcontractor represents and warrants to HLL as follows:

- (a) At all times the Subcontractor will be suitably qualified and experienced and will exercise due care skill and diligence in carrying out the completion of the WUS.
- (b) The Subcontractor will employ sufficient labour, plant and materials to complete the WUS expeditiously and by the Date for Completion or by such date as required under a Purchase Order.
- (c) The Subcontractor will carry out and complete the WUS in accordance with the Subcontract.
- (d) The Subcontractor has obtained, or will be able to obtain, all of the necessary authorisations and consents, permits and approvals from the relevant authorities, the owners and occupiers of adjoining properties, suppliers of

any Services and any persons whose interests may be affected by the WUS, in order for the Subcontractor to carry out the WUS in accordance with this Subcontract and the Law.

- (e) The terms of this Subcontract apply to all of the WUS, including works performed prior to the date of execution of this Subcontract.
- (f) The obligations and liabilities of the Subcontractor and warranties given by the Subcontractor under this Subcontract not will be affected by any information made available by or on behalf of HLL or any other person in relation to the WUS, including but not limited to in relation to the Site, or any error or deficiency in any information provided to the Subcontractor or made available to the Subcontractor in relation to the WUS.
- (g) The Subcontractor will take all reasonable steps to assign any manufacturer's warranties in the Goods (where the Goods are manufactured or supplied by a third party) to HLL at no additional costs to HLL.
- (h) Goods supplied to HLL are complete, undamaged and free of defects, free of liens, charges, claims and other encumbrances in accordance with plans, drawings, specifications, directions and instructions given by or for HLL, in accordance with the Contract, Law and all applicable Australian Standards or Codes, and fit for the purpose set out in or that may reasonably be inferred from, this Subcontract or the applicable Purchase Order.
- (i) The prices or rates set out in Schedule 2 are fixed for the term of the Subcontract and will not be subject to variation, adjustment or rise or fall for any reason except where agreed by the Parties in writing.
- (j) Unencumbered title to the Goods passes to HLL at the time of the earlier of any partial or full payment by HLL for the Goods, Collection, or Delivery. Where goods are being Delivered, the Subcontractor bears all risk of loss of or damage to the Goods, including in relation to transit, until the Goods have been Delivered.
- (k) If the Subcontractor notifies HLL that it is not able to Deliver or make Goods available for Collection as agreed in a Purchase Order or fails to deliver the Goods on the Delivery Date required in a particular Purchase Order, HLL may, without prejudice to any other remedies against the Subcontractor, cancel the Purchase Order in writing and obtain the Goods from a third party – (in those circumstances, HLL is entitled to recover from the Subcontractor as a debt due and payable the additional costs incurred in obtaining the Goods from a third party.
- (l) Alternatively where a Purchase Order specifies liquidated damages for delay, HLL may, elect to enforce the Purchase Order and in its absolute discretion apply those liquidated damages for the period of delay. The liquidated damages will be a debt due and payable to HLL.
- (m) The Subcontractor will take all reasonable steps to ensure that it does not place HLL in breach of HLL's obligations under the Main Contract

## 5.2 Site Conditions

The Subcontractor represents and warrants that it has fully and properly satisfied itself as to the requirements of this Subcontract and has assumed the risk of any Site Conditions. The Subcontractor agrees and acknowledges that HLL does not warrant or make any representation or assume any duty of care with respect to the completeness, accuracy, suitability, adequacy or content of any information regarding Site Conditions provided to the Subcontractor on behalf of HLL, the Main Contractor or the Principal. The Subcontractor will have no claim with respect of any Site Conditions.

## 6. Site

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### 6.1 Site

- (a) HLL will give the Subcontractor non-exclusive access to sufficient areas of the Site for commencement of WUS on Site. Access may be given in stages or portion as deemed necessary by HLL. The Subcontractor must not access any part of the Site unless HLL has notified the Subcontractor that the Subcontractor may access that area and must not use the Site for any purpose other than carrying out the WUS. The Subcontractor indemnifies HLL against any loss or damage suffered by HLL as a consequence of a breach by the Subcontractor of this clause.
- (b) The failure of HLL to provide sufficient access to the Site by the Date for Commencement will entitle the Subcontractor to claim for an extension of time under clause 11 but will not entitle the Subcontractor to terminate the Subcontract or claim for any delay damages.
- (c) The Subcontractor must comply with the Main Contractor's and HLL's obligations under any access agreements with neighbouring properties notified to the Subcontractor in writing by HLL and must not do or omit to do anything under the Subcontract which may cause a breach of any obligation under those access agreements.
- (d) The Main Contractor, HLL and the Main Contractor's and HLL's employees, consultants, suppliers or other contractors and agents may at any reasonable time have access to any part of the Site for any purpose. The Subcontractor will permit persons engaged by the Main Contractor or by HLL to carry out work on the Site other than WUS and shall cooperate with them. HLL will use reasonable endeavours to ensure that none of the persons referred to in this subclause impedes the Subcontractor while exercising a right of access to the Site.
- (e) 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 owner



of the Site. Immediately upon the discovery of any of these things the Subcontractor must notify HLL and take all reasonable steps to secure and prevent harm or destruction to them.

## **7. Assignment and Subcontracting generally**

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- (a) HLL may engage Separate Subcontractors to carry out works, provide services or supply other items not included in the WUS.
- (b) The Subcontractor shall not without HLL's prior written approval (at the discretion of the HLL) subcontract any of the WUS.
- (c) Approval to subcontract will not relieve the Subcontractor from any liability or obligation under the Subcontract, and the Subcontractor will be liable to HLL for the acts, defaults and omissions of Secondary Subcontractors it engages and employees and agents of Secondary Subcontractors as if they were those of the Subcontractor, irrespective of whether HLL has or has not approved a Secondary Subcontractor.
- (d) If the Subcontract is terminated under clauses 19.1, 19.3 or 19.5, the Subcontractor must assign or novate any Secondary Subcontractors to HLL upon such terms as HLL reasonably requires.
- (e) If the Subcontract is terminated under clause 19.4, the Subcontractor must assign or novate any Secondary Subcontractors to either the Main Contractor or the Principal as applicable and upon such terms as either the Main Contractor or the Principal reasonably requires.

## **8. Health and Safety and the environment**

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### **8.1 WHS Requirements**

The Subcontractor must:

- (a) carry out and complete its obligations under the Subcontract and comply with all lawful WHS Requirements and instructions of HLL (which may include working hours on Site and requirements under the Main Contract) and in accordance with all Legislative Requirements;
- (b) ensure the health and safety of all its employees, agents or supplier while on the Site;
- (c) ensure that other persons are not exposed to risk of injury or illness arising out of the Subcontractor's activities on Site and all of its employees, agents and supplier comply with all directions, plans, statements, inductions, policies and procedures of HLL, or by any statutory authority concerning workplace health and safety on the Site;

### **8.2 Interference, Obstruction and Nuisance**

In undertaking the WUS, the Subcontractor must avoid unnecessary interference with the passage of people and vehicles, or obstruction to any property, and prevent nuisance including any nuisance caused by unreasonable noise, dust, emission, vibration or disturbance and ensure that its employees, agents, representatives and subcontractors comply with the requirements of this clause 8.2.

### **8.3 Copies of documents**

The Subcontractor must provide to HLL copies of any notices, correspondence or directions issued by any government or statutory authority relating to workplace health and safety or the environment within 24 hours of the Subcontractor's receipt of the notice, correspondence or direction.

### **8.4 Reporting of incidents**

The Subcontractor must immediately report any incident relating to workplace health and safety or the environment reportable under the WHS Requirements or the Environmental Requirements to HLL and provide HLL with reasonable assistance in investigating any such incident.

## **9. Insurance**

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### **9.1 Obligation**

Before commencing the WUS, the Subcontractor must hold the policies of insurance identified below in clauses 9.2 and 9.3 and 9.4[\*Option:\*

### **9.2 Public Liability Insurance**

The public liability insurance must:

- (a) note the interests of HLL and the Subcontractor and must cover HLL and the Subcontractor (**Insured Parties**) for their respective rights and interests, liability to each other for loss, loss of use, or damage to property and the death of or injury to any person, and liability to third parties and include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured. The public liability insurance must also be for an amount in respect of any one occurrence not less than the sum stated in Item 8 of Schedule 1.
- (b) be maintained until the end of the Defects Liability Period and completion of all WUS on the Site; and.

### 9.3 Worker's Compensation Insurance

The workers' compensation policy must cover statutory and common law liability for death or injury to persons employed by the Subcontractor in connection with the performance of the WUS and must be maintained until the end of the Defects Liability Period and completion of all WUS. To the extent permitted by law the policy shall extend to include a Principals Indemnity.

### 9.4 Professional Indemnity Insurance

**\*Optional: where design obligations are included in scope of works\*** If specified in Schedule 1 as required, before commencing the WUS the Subcontractor shall effect and maintain professional indemnity insurance with levels of cover not less than that stated in Item 8 of Schedule 1.

### 9.5 General insurance requirements

The Subcontractor must, prior to the commencement of the WUS and whenever subsequently asked by HLL, furnish to HLL evidence in the form of certificates of currency that the insurance policies identified in this clause 9 remain current. If the Subcontractor fails to provide the certificates of currency HLL may effect the policies and recover the costs of doing so from the Subcontractor as a debt due and payable. The Subcontractor is liable for and must pay all deductibles or excesses payable under a policy of insurance required to be effected or maintained by the Subcontractor under the Subcontract

## 10. Intellectual property rights and confidentiality

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### 10.1 Intellectual Property

- (a) The Subcontractor must not use any Intellectual Property Right owned or used by HLL for any purpose whatsoever except for the performance of its obligations under the Subcontract.
- (b) Intellectual Property Rights and any material created by the Subcontractor with respect to the WUS will be the property of HLL but HLL grants to the Subcontractor a license to use those Intellectual Property Rights and in any Intellectual Property Rights created prior to the execution of the Subcontract of HLL, to carry out the WUS.
- (c) The Subcontractor grants to HLL an irrevocable, royalty free, fully transferrable licence to use any Intellectual Property Right of the Subcontractor created prior to the execution of the Subcontract necessary for the purposes of testing, commissioning, repairing, maintaining, renovating, or upgrading of the WUS. The Subcontractor acknowledges and agrees that HLL may, if required to do so, transfer this licence to a third party under, or in accordance with the Main Contract, for the same purposes.

### 10.2 Confidentiality

- (a) Subject to the exceptions set out in this clause 10.2(a), the Subcontractor must keep confidential and must not divulge or disclose the details of the Subcontract and any of the information provided to it by HLL or any documents created by the Subcontractor in relation to the WUS. This confidentiality obligation does not apply where any such information is already lawfully in the public domain, is required to be disclosed by a Legislative Requirement is or disclosed to the Subcontractor's solicitor, accountant or other professional advisors, or to Secondary Subcontractors or suppliers for the purpose of carrying out the WUS or to the extent that the prior written consent of HLL is given.
- (b) The Subcontractor must not erect signage or any other material advertising its presence, at or adjacent to the Site, without the prior written consent of HLL. If the Subcontractor is in breach of this clause, any cost incurred by HLL to remove the signage or other materials, will be a debt due and payable by the Subcontractor to HLL.
- (c) The Subcontractor shall not disclose any information concerning the project for distribution through any communications media without HLL's prior written approval. The Subcontractor shall refer to HLL any enquiries from any media concerning the project.

## 11. Delay and extensions of time

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### 11.1 Completion

Time is of the essence in this Subcontract.

The Subcontractor must achieve Completion by the Date for Completion. The Subcontractor is only entitled to claim an EOT if the Subcontractor has been, or is likely to be, delayed by a Delay Event in a manner which will prevent it from achieving Completion by Date for Completion, provided the Delay Event has not been caused or contributed to by act or omission of the Subcontractor or any party under the control of the Subcontractor.

### 11.2 Claim

- (a) Where an entitlement to an EOT arises under clause this clause 11, the Subcontractor must submit a written claim to HLL for an extension to the relevant Date for Completion within **[5 Business Days]** of becoming aware of the Delay Event. The written claim must give particulars of the delay and the Delay Event causing the delay, and state the number of days claimed together with the basis of calculating that period, including evidence that the Subcontractor will be delayed in achieving Completion or any other reasonable details requested by HLL.

- (b) For ongoing delays, updates must be submitted by the Subcontractor every [8 Business Days] during the period of the delay until [8 Business Days] after the delay has ceased.
- (c) HLL acting reasonably will, within [35 Business Days] of receipt, review the written claim for an EOT and provide an assessment of the allowed EOT.
- (d) If the Subcontractor does not strictly comply with the requirements set out in this subclause, it will not be entitled to an EOT or any other Claim with respect to the Delay.
- (e) Notwithstanding that the Subcontractor is not entitled to or has not claimed an EOT, the Head Contractor may, in its sole and absolute discretion, at any time and from time to time direct an EOT. The discretion under this clause need not be exercised reasonably and is not exercised for the benefit of the Subcontractor. Notwithstanding this subclause, the Subcontractor shall not be entitled to delay costs or to make any claim in connection with an EOT directed under this subclause.

### 11.3 Liquidated Damages

- (a) If the WUS does not reach Completion by the Date for Completion, liquidated damages, if specified, in Item 19 will be a debt due and payable to HLL by the Subcontractor for every day after the Date for Completion to and including the earliest of Completion or termination of the Subcontract or HLL taking WUS out of the hands of the Subcontractor. If liquidated damages are not applicable in Item 19 of Schedule 1 or liquidated damages are for any reason unenforceable, then general damages will apply for failing to reach Practical Completion by the Date for Practical Completion.
- (b) If an EOT is directed after the Subcontractor has paid or HLL has set off liquidated damages under the Subcontract, HLL will repay to the Subcontractor the liquidated damages that represent the days the subject of the EOT

## 12. Variations

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- (a) The Subcontractor will not vary the WUS except as directed in writing by HLL.
- (b) HLL may, at its discretion, amend, vary (including by increasing, decreasing or omitting any part of the WUS or changing a Delivery Date or Site) at any time (each amendment being a Variation).
- (c) Where HLL requires a Variation, it will give the Subcontractor a written notice of proposed Variation. If the Subcontractor believes that a direction by HLL amounts to a variation but is not specifically instructed as such, the Subcontractor must notify HLL and request a written notice of proposed variation from HLL. If the Subcontractor fails to notify HLL that the direction amounts to a variation and undertakes relevant works, the Subcontractor will be taken to have waived any entitlement to claim any additional cost or extension of time in relation to same
- (d) The Subcontractor will, within 5 Business Days (or such further period as agreed with HLL) of receiving the notice of proposed variation, provide a written variation estimate to HLL which sets out:
  - (i) a description of the work to be undertaken to carry out the variation;
  - (ii) any necessary extension of time to carry out the variation; and
  - (iii) the detailed breakdown of the cost of carrying out the variation supported by quotes from suppliers or Secondary Subcontractors where appropriate (excluding margin for profit or overheads for the Subcontractor).
- (e) HLL will, as soon as possible after receiving the estimate of the Variation from the Subcontractor, review the Variation estimate and provide an instruction to the Subcontractor whether or not to proceed with the Variation in whole or in part and provide a Purchase Order for same.

## 13. Suspension

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### 13.1 HLL's Suspension

- (a) HLL may, at its discretion, direct the Subcontractor to suspend the whole or part of WUS for such time as HLL thinks fit. The Subcontractor will bear the cost of suspension and will not be entitled to an EOT or any other Claim, where the suspension is because of an act, default or omission of the Subcontractor, or its employees, Secondary Subcontractors or agents, or where the Subcontractor otherwise made the suspension necessary.
- (b) If the suspension is due to an act or omission of the HLL and the suspension causes the Subcontractor to incur more or less cost than would otherwise have been incurred, including the costs of demobilising and remobilising to Site, the actual and documented direct costs incurred will be assessed by HLL and added to or deducted from the Subcontract Price and the Subcontractor will be entitled to claim an EOT for the delay in achieving Completion by the Date for Completion caused by the suspension.
- (c) As soon as HLL becomes aware that the reason for any suspension no longer exists, HLL will direct the Subcontractor to recommence suspended WUS as soon as reasonably practicable.

### **13.2 Subcontractor's Suspension**

If the Subcontractor wishes to suspend the carrying out of the whole or part of WUS, the Subcontractor must obtain HLL's prior written approval. HLL may approve the suspension and may impose conditions of approval subject to any rights to suspend the WUS which the Subcontractor may have under any Legislative Requirements.

## **14. Payment**

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### **14.1 Payment Claims**

- (a) The Subcontractor will submit payment claims, monthly in accordance with Item 10 of Schedule 1 up until Completion, upon Completion, and upon the expiry of the Defects Liability Period (Final Payment Claim) to HLL for:
  - (i) the value of the WUS carried out up to the date of the payment claim,
  - (ii) the value of unfixed materials and goods intended for the WUS that are the property of the Subcontractor, have been delivered on to or adjacent to the Site, have not been delivered prematurely, have been properly stored and adequately protected, and any other moneys due to the Subcontractor in connection with the WUS.
- (b) The Subcontractor must provide any information or documentation in support of its payment claims reasonably sought by HLL, and each payment claim in the form of, or have attached to it, a tax invoice.

### **14.2 Payment Schedules**

HLL will issue a payment schedule to the Subcontractor setting out the payment due to the Subcontractor within 10 Business Days of receipt of the payment claim. If there are any amounts being withheld, the payment schedule must also state the amount and the reason that the amount is being withheld.

### **14.3 Payment**

The amount identified in the payment schedule will be paid directly to the Subcontractor within 25 Business Days from the receipt by HLL of the payment claim. Payment is on account only.

### **14.4 Final claim**

Within 20 Business Days of the expiration of the Defects Liability Period the Subcontractor will deliver a final claim to HLL which will set out the final amount of any claims for payment, for work instructed by HLL after the Date of Completion.

### **14.5 Set-off**

Without prejudice to any other rights whether under the Subcontract or at Law, HLL may set-off or deduct from any amounts due to the Subcontractor under the Subcontract or any other contract between HLL and the Subcontractor, any amount due or which HLL reasonably asserts is or will be due from the Subcontractor to HLL in connection with the Subcontract. A set-off under this clause 14.5 will not prejudice to the right of HLL to recover the whole of any debt or any claim or any balance that remains owing.

## **15. Indemnity**

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- (a) The Subcontractor indemnifies HLL against all Claims and liabilities for or in relation to loss of or damage to the property of HLL, loss of or damage to the Site or property of the Principal or other contractors on Site; for any breach of the Subcontractor's obligations and warranties under the Subcontract; claims by the agents or Secondary Subcontractors or suppliers of the Subcontractor and in respect of personal injury, death or loss of or damage to any other property arising out of or as a consequence of the carrying out of the WUS or any act or omission of the Subcontractor or any person for whom the Subcontractor is responsible.
- (b) Any loss, cost, damage or expense which is or may be incurred by HLL to which the indemnity under this subclause applies shall be an amount due and payable from the Subcontractor to HLL. Each indemnity given by the Subcontractor under the Subcontract is a continuing obligation separate and independent from the obligations of the Subcontractor and survives termination of the Subcontract

## **16. Completion**

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### **16.1 Completion**

- (a) The Subcontractor must notify HLL when it is of the view that Completion has been achieved. Within 10 Business Days of receipt of the Subcontractor's notice, HLL will either:
  - (i) issue a certificate of completion; or
  - (ii) notify the Subcontractor in writing of its reasons for not issuing a certificate of completion.
- (b) The issue of any certificate of completion under this clause 16 does not constitute approval or acceptance of any of the WUS. It will not prejudice any claim either party has against the other party.

## **16.2 Liability for late completion of Main Contract**

In addition to the Subcontractor's liability for liquidated damages in clause 11.3, if HLL becomes liable to pay the Main Contractor liquidated damages or any other damages for delay under the Main Contract, then to the extent that the delay giving rise to the liquidated damages under the Main Contract was caused or contributed to by a delay under the Subcontract for which the Subcontractor was not entitled to an EOT, the Subcontractor will be liable for liquidated damages or other damages payable by HLL under the Main Contract as a debt due and payable to the Main Contractor. If the Subcontractor's delay is not the sole cause of the Main Contractor's liability for damages under the Main Contract, the Subcontractor's liability under this subclause will be reduced proportionately having regard to the other causes of delay.

## **17. Defects and Defects Liability Period**

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- (a) If loss or damage is caused by the Subcontractor to or any defect is discovered in the WUS during the carrying out of the WUS, the Subcontractor, will at its cost rectify such loss, damage or defect.
- (b) The Defects Liability Period with respect to the WUS means the later of the period ending on the expiry of the defects correction period under the Main Contract, as may be extended in accordance with the Main Contract (if there is more than one defects correction period under the Main Contract, the expiry of the relevant defects correction period under the Main Contract which corresponds with the WUS), or 12 calendar months from Delivery or Collection as applicable.
- (c) During the Defects Liability Period, the Subcontractor must carry out rectification of defects at times and in a manner causing as little inconvenience to the occupants or users of the WUS, and in accordance with all reasonable directions from HLL. Any cost, loss, damage, expense or liability suffered by HLL relating to matters to which this clause 17 applies, will be a debt due and payable by the Subcontractor to HLL.

## **18. Retention Monies and Bank Guarantee**

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- (a) The Subcontractor will where specified in item 14 of Schedule 1, provide security for its performance of the WUS in the form prescribed in Item 14 of Schedule 1, which will be either:
  - (i) allowing HLL to withhold retention in accordance with clause 18(c); or
  - (ii) providing two unconditional bank guarantees each equal to 2.5 percent of the Subcontract Price excluding GST. The Subcontractor must ensure that the bank guarantees remain valid and enforceable until the date of its return in accordance with the Subcontract..
- (b) Upon the issue of a notice of Practical Completion, HLL shall return to the Subcontractor one of the unconditional bank guarantees or 50% of retention as applicable. The other unconditional bank guarantee or remaining retention will be returned to the Subcontractor within seven days of the end of the relevant Defects Liability Period subject to HLL's rights to call upon it under this Subcontract.
- (c) If the security is by way of cash retention, HLL will make deductions of up to 10% (excluding GST) from each of the Subcontractor's progress payments until the total amount retained is equal to 5% of the Subcontract Price (excluding GST). Upon the issue of a notice of Completion, HLL will reduce the amount of monies retained by one half. The monies reduced shall be released to the Subcontractor within 10 Business Days. The balance of the retention monies will be payable to the Subcontractor within 10 Business days of the end of the Defects Liability Period

## **19. Termination**

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### **19.1 Termination for Substantial Breach or Default**

- (a) If a party commits a Substantial Breach of the Contract, the other party may give the party in breach a written notice to show cause, requiring the defaulting party to show cause within 10 Business Days why the other party should not exercise its right to terminate the Subcontract under this clause 19.1.
- (b) If the defaulting party is the Subcontractor and the Subcontractor does not show reasonable cause by the date and time required, HLL may, by written notice to the Subcontractor, exercise any of its rights under this Subcontract including to rescind or terminate the Contract, take out of the Subcontractor's hands the whole or part of the work remaining to be completed or suspend that part of the works the subject of the show cause notice. If HLL rescinds the Contract, terminates the Contract, or takes out of the Subcontractor's hands the whole or part of the work, HLL shall pay the Subcontractor, for the works completed to that point in time, pursuant to this Subcontract.
- (c) If the defaulting party is HLL and HLL does not show reasonable cause by the date and time required pursuant to clause 19.1(a) the Subcontractor may, by written notice to HLL, suspend the carrying out of all or part of the Works.
- (d) The Subcontractor may, by written notice to HLL, terminate the contract, if within 10 Business Days of the date of suspension, HLL fails to remedy the breach, or if the breach is not capable of remedy, make other arrangements to the satisfaction of the Subcontractor.

## 19.2 Take out

- (a) HLL may complete the WUS taken out of the Subcontractor's hands and may use materials, equipment and other things intended for the WUS, and without payment or compensation to the Subcontractor take possession of, and use such of the construction plant and equipment (on payment of reasonable rental for such plant and equipment if they are owned by a third party) and other things on or in the vicinity of the site as were used by the Subcontractor, and Subcontract with the Secondary Subcontractors and consultants, as are reasonably required by the Main Contractor to facilitate completion of the WUS.
- (b) If HLL takes out of the Subcontractor's hands the whole or part of the WUS remaining to be completed under this clause 19.2 and the costs incurred by HLL in having the WUS taken out of the Subcontractors hands completed by another Subcontractor are greater than the amount that would have otherwise been payable to the Subcontractor under the Subcontract, the difference will be a debt due and payable from the Subcontractor to HLL. HLL may also (at its sole discretion) elect to apply clause 19.6(b) with respect to materials or goods ordered prior to the take out

## 19.3 Termination for Insolvency Event

If an Insolvency Event occurs to a party, the other party may, without giving a notice to show cause, terminate the Subcontract upon giving written notice, notwithstanding that there has been no breach of contract.

## 19.4 Termination under the Main Contract

If the Main Contract between HLL and the Main Contractor, is terminated for any reason whatsoever, HLL may terminate the Subcontract by written notice to the Subcontractor or the Subcontractor agrees that it will novate or assign the Subcontract as required by the Main Contractor or Principal.

## 19.5 Termination for Convenience of HLL

HLL may terminate the Subcontract for its sole convenience by giving five (5) Business Days written notice to the Subcontractor to terminate the Subcontract.

## 19.6 Entitlements Following Termination

Without prejudice to HLL's rights under the Subcontract or otherwise, upon termination of the Contract:

- (a) the Subcontractor will be entitled to be paid for WUS completed prior to the date of termination, and
- (b) where the termination is due to an Insolvency Event of HLL or HLL terminates for convenience under clause 19.5, the Subcontractor will be entitled to be paid for WUS completed prior to the date of termination, had the Subcontractor made a payment claim on the date of termination, and the reasonable cost of materials and goods reasonably ordered by the Subcontractor for the WUS, which the Subcontractor is legally bound to accept.

As a precondition to any entitlement under this clause the Subcontractor must first:

- (c) deliver to HLL all materials, goods, property, documentation or information which have become the property of HLL or were provided by HLL under the Subcontract; and
- (d) if directed by HLL, assign or novate in favour of HLL any Secondary Subcontracts or rights under contracts entered into or obtained by the Subcontractor in connection with the WUS.

## 19.7 Termination Generally

If a party breaches, including repudiates, the Subcontract, nothing in this clause 19 will prejudice the right of the parties to recover damages or exercise any other right or remedy.

## 20. Force Majeure

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- (a) If a party is prevented from, or delayed in performing any of its obligations under the agreement by a Force Majeure Event (**Affected Party**), then it must notify the other party in writing of the occurrence of the Force Majeure and the circumstance resulting or arising from it within a reasonable time after the occurrence of the Force Majeure Event.
- (b) HLL may (acting reasonably) elect to suspend the Subcontract for the effect of a Force Majeure Event
- (c) The Parties shall use their reasonable endeavours to remove or relieve any Force Majeure Event and to minimise the delay in the performance of the Affected Party's obligations under the Subcontract caused by a Force Majeure.
- (d) The Affected Party must keep the other party informed (not less than weekly) of the steps being taken to mitigate the effects of the Force Majeure Event upon the performance of the Affected Party's obligations under this agreement and of estimate of the duration of any delays.
- (e) If the Subcontract is suspended, then when the period for which the Affected Party's obligations are affected by a Force Majeure Event ceases, the Affected Party must recommence performance of all its obligations under the contract as soon as practicable.

- (f) The obligations of a party under this Contract, other than the obligation to pay money and, to the extent if possible, to maintain any safety or environmental obligations, shall be suspended during the time and to the extent that the party is prevented from complying with such obligations during the period of suspension due to Force Majeure Events.
- (g) If the Main Contracted is terminated for a Force Majeure Event or if the Force Majeure Event continues for a period of **insert time**, HLL may elect to terminate the Subcontract, in which case the termination under this clause 20(g) will be treated as a termination for convenience under clause 19.5.

## **21. Dispute resolution**

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All disputes between the parties in connection with the Subcontract must be resolved as follows:

- (a) if a party considers that a dispute exists in connection with the Contract, that party may give the other party a written notice detailing the nature of the dispute (Notice of Dispute);
- (b) upon receipt of a Notice of Dispute, each party must meet at least once within 10 Business Days and otherwise use its best efforts to resolve the dispute;
- (c) if the parties have not resolved the dispute or agreed an alternate means of resolving the dispute within the 10 Business Days after the Notice of Dispute is served, then either party may commence mediation by giving notice to the other party and referring the matter to Resolution Institute (formerly the Institute of Arbitrators and Mediators Australia). The Mediation and Conciliation Rules of the Resolution Institute will apply to any mediation under the Subcontract and the parties must comply with those rules;
- (d) if the parties do not refer the dispute to mediation under clause 21(c) or have not resolved the dispute within 10 Business Days after conclusion of the mediation conference, then either party may, at its discretion, refer the dispute to litigation;
- (e) notwithstanding the existence of a dispute, the parties must continue to perform the Subcontract in all aspects;
- (f) nothing in this clause shall prejudice the right of a party to institute proceedings to seek urgent injunctive or declaratory relief in respect of a dispute arising under the Subcontract.
- (g) If there is a dispute under the Main Contract which relates to the WUS, the Subcontractor will provide all necessary assistance to HLL to resolve that dispute.

## **22. Notices**

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### **22.1 Notices generally**

A communication may be given in the following forms and shall be deemed duly given or made in the case of:

- (a) delivery in person, when delivered;
- (b) delivery by post:
  - (i) in Australia to an Australian address the 2<sup>nd</sup> Business Day after posting; or
  - (ii) in any other case on the 10<sup>th</sup> Business Day after posting; or
- (c) by email, at the time the email becomes capable of being retrieved by the addressee at an electronic address designated by the addressee (not the automatic delivery confirmation report generated by the sender's email system), except where the sender receives notice that the email was undelivered or unsuccessful, or receives an out of office notice from the receiver, in which case, the email will not be delivered under the Contract,

but if the delivery or receipt is on a day which is not a Business Day or is after 5:00pm (addressee's time), it is deemed to have been received at 9:00am on the next Business Day.

### **22.2 Notice of claims**

HLL will not be liable upon any Claim (other than a payment claim under clause 14.1) by the Subcontractor in respect of any matter arising out of or in connection with the Subcontract, the subject matter of the Subcontract or otherwise, including but not limited to, any Claim for any form of loss or damages unless a notice of claim setting out full particulars of the Claim, including the contractual or other legal basis for the Claim and the value of the Claim is lodged in writing with the Main Contractor not later than the time specified for the relevant claim in the 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.

## **23. Goods and services tax (GST)**

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- (a) In the Contract, a word or expression defined in the GST Law has the meaning given to it in the GST Law.
- (b) Any consideration to be paid or provided for a supply made under or in connection with the Subcontract does not include GST unless specifically stated to do so.
- (c) Despite any other provision in the Contract, if GST is imposed on a supply under or in connection with the Contract, then:

- (i) the party who makes the payment or provides the other consideration for the supply which does not already include or make allowance for GST must pay the supplier an additional amount equal to the amount of the payment or value of the consideration multiplied by the rate of GST; and
  - (ii) the additional amount must be paid at the same time as the GST exclusive consideration is payable or to be provided.
- (d) A party is not obliged to pay any amount required to be paid under the Subcontract where that payment is wholly or in part for a taxable supply until that party is given a valid tax invoice for the supply.
- (e) If a payment to a party is calculated on the basis of a loss, cost or expense incurred by that party, then the amount payable must be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

## **24. PPSA**

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- (a) Notwithstanding any other provision of this Subcontract, HLL must not:
  - (i) create any security interest or lien over any of the Subcontractor's personal property (other than security interests granted in favour of the Subcontractor);
  - (ii) allow the Subcontractor's personal property to become commingled with any other property;
  - (iii) allow the Subcontractor's personal property to become an accession to any other property;
  - (iv) allow any other property to become an accession to the Subcontractor's personal property;
  - (v) sell, lease or dispose of any interest in the Subcontractor's personal property; or
  - (vi) give possession of the Subcontractor's personal property to another person except where the Subcontractor expressly authorises HLL to do so in writing.
- (b) HLL must immediately notify the Subcontractor if any other person attempts to enforce a security interest in the Subcontractor's personal property.
- (c) This clause 24 will survive termination of the Subcontract.

## **25. Other matters**

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### **25.1 Provisions can be severed**

If a provision of the Subcontract is illegal or unenforceable then that provision must be severed from this document and the remaining provisions of this document continue in force. If only part of a provision is illegal or unenforceable then this clause 25.1 applies to that part only.

### **25.2 Applicable law**

The Subcontract will be interpreted in accordance with and the parties submit to the non-exclusive jurisdiction of the courts of, the jurisdiction identified in Item 11 of Schedule 1;

### **25.3 Waiver and variation**

Except as provided at Law, or elsewhere in the Subcontract, none of the terms of the Subcontract will be varied, waived, discharged or released except as agreed by the parties in writing.

### **25.4 Further Assurances**

Each party agrees, at its own expense, on request of the other party, to do everything reasonably necessary to give effect to the Subcontract and the transactions contemplated by it, including the execution of documents.

### **25.5 Counterparts**

The Subcontract may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument. The parties consent to the exchange of counterparts by facsimile or by attachment to email.

### **25.6 Entire Agreement**

Except where expressly provided otherwise in the Subcontract, the Subcontract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous submissions, tenders, letters, agreements or understandings between the parties in connection with its subject matter. No invoice, docket, receipt or other document provided by the Subcontractor after execution of this Subcontract will amend these terms and conditions or have binding effect on HLL unless expressly agreed by both parties in writing.

### **25.7 Survival of Contract**

The warranties, indemnities and covenants in the Subcontract are continuing, separate and independent obligations and will survive termination or the end of the Subcontract.



**25.8 Retrospectivity**

The Subcontract will apply to the Subcontractor and HLL with respect to the performance, by either party, of any obligation in connection with the subject matter of the Subcontract prior to the execution of the Subcontract.

**25.9 Reliance**

Each party acknowledges and agrees that:

- (a) it has not entered into the Subcontract in reliance on, or as a result of any statement or conduct of any kind (including without limitation, any representation, warranty, advice or undertaking); and
- (b) the Subcontract may only be amended by agreement of the Parties in writing;

## Schedule 1 Contract Details

Item	Description	Details
1.	Site	[*details*]
2.	Contract Price	As set out in Schedule 2.
3.	Date for Commencement	[*details*]
4.	Date for Completion	[*details*]
5.	Subcontract Documents	1. [applicable Purchase Orders, including attachments]; 2. These terms and conditions including Schedule 1; 3. [Schedule 4 Main Contract Terms] 4. Schedule 2 – Subcontract Price, if applicable; 5. Schedule 3 – Scope of Works and Specification, if applicable. [insert any other attachments]
6.	Events which constitute Delay Events	(a) a variation; (b) a breach of the Subcontract by HLL; (c) a suspension under clause 13 where the suspension is not caused or contributed by the Subcontractor;
7.	Approvals to be obtained by Subcontractor (clause 3.1)	[*details*]
8.	Public liability insurance (clause 9.2) Professional indemnity insurance (clause 9.4)	[\$[*amount*]] [\$\$5,000,000 for any one claim and in the aggregate] [\$[*amount*]]
9.	Subcontractor's Margin (clauses 3.3 and 12)	[*details, e.g. 5%*]
10.	Day from which payment claims may be submitted (clause 14.1)	[*details, e.g. last Business Day of each calendar month*]
11.	Governing Law	[*Queensland*]
12.	Provisions Sums (clause 3.3)	As set out in Schedule 3
13.	Free-Issue Items (clause 3.4)	[*details*]
14.	Security (clause 18)	[*Form of security / not applicable*]
15.	HLL email (for service of notices)	[*details*]
16.	Subcontractor email (for service of notices)	[*details*]
17.	Main Contractor	[*details*]
18.	Principal	[*details*]
19.	Amount of Liquidated Damages payable (clause 11.3)	[*details*]
20.	Reliance Documents (clause 1.3)	[specify if relevant or if none, delete this item]

## Schedule 2 Subcontract Price

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1. The Subcontract Price is a lump sum of \$[\*amount\*] inclusive of and subject to adjustment for the Provisional Sums set out below.

### Provisional Sums

2. Provisional Sums are made up of anticipated Costs of carrying out the work plus the Subcontractors Margin.
3. In this clause a reference to Costs means the actual cost of carrying out the relevant works exclusive of Subcontractor's Margin and includes:
  - (a) the cost of designing the works the subject of the Provisional Sum;
  - (b) the cost incurred for consultants, subcontractors, selected subcontractors, supervisors, employees, labour contractors and other personnel required for the completion of the works on Site;
  - (c) all amounts paid for Approvals and the cost of fees and charges to third parties;
  - (d) the cost of construction plant, equipment and machinery;
  - (e) the cost of temporary works and measures, transport, materials handling, demurrage and storage; and
  - (f) any other direct costs of carrying out the reasonably and necessarily outlaid.
4. Where there are rates for labour or other items agreed between the parties, those rates will be applied unless otherwise agreed in writing before the works the subject of a Provisional Sum are carried out.
5. The parties agree that each Provisional Sum includes a genuine pre-estimate of the anticipated Costs made at the time of entering into the Subcontract.

Item	Works the subject of the Provisional Sum	Provisional Sum (inclusive of Subcontractor's Margin)
21.	[*details*]	\$[*amount*]
22.		
23.		
24.		
25.		

### Payment for Provisional Sums

6. For each Provisional Sum the Subcontractor will use reasonable endeavours to ensure that the actual Costs do not exceed the anticipated Costs of carrying out the work. To ensure transparency of this process, the Subcontractor will provide HLL with a full breakdown of actual Costs incurred in carrying out the works the subject of a Provisional Sum supported by relevant documentary evidence, including log books, labour logs and invoices.
7. The works the subject of a Provisional Sums will be paid as actual Costs incurred Plus Subcontractor's Margin.

**Bill of Quantities**

**Is/Is not included**

**Is binding/Is not binding and is included for reference purposes only**

**Schedule 3      Scope of Works and Specification**

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[\*details\*]

## Schedule 4 Main Contract Terms

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### 25.10 Personal Property Securities Act 2009 (Cth)

- (a) The Subcontractor acknowledges and agrees that:
- (i) if and to the extent that the Main Contractor or HLL at any time form a belief on reasonable grounds that the Main Contractor is, or will become, a secured party arising out of or in connection with this Subcontract or any transaction contemplated by this Subcontract, the Main Contractor or HLL may at the Subcontractor's expense take all steps that the Main Contractor or HLL considers advisable to:
    - (A) perfect, protect, record, register, amend or remove the registration of the Main Contractor's Security Interest in any relevant personal property that is the subject of this Security Interest (relevant personal property); and
    - (B) better secure the Main Contractor's position in respect of the relevant personal property under the PPSA;
  - (ii) it will do all things reasonably necessary to assist the Main Contractor or HLL to take the steps described in clause 25.10(a)(i);
  - (iii) it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the Main Contractor in the relevant personal property;
  - (iv) if, and only if, the Main Contractor is or becomes a secured party in relation to relevant personal property, and to the extent only that Chapter 4 of the PPSA would otherwise apply to an enforcement of a Security Interest in relevant personal property, the Subcontractor, HLL and the Main Contractor agree that, pursuant to section 115 of the PPSA, the following provisions of the PPSA do not apply in relation to those Security Interests to the extent, if any, mentioned in section 115, section 117, section 118, section 120, subsection 121(4), section 125, section 129, section 130, subsection 132(3)(d), subsection 132(4), section 142, and section 143;
  - (v) subject to section 275(7) of the PPSA, it will not disclose the contents of this Subcontract, the amount or performance obligation secured by the Main Contractor's Security Interest in relevant personal property and the other information mentioned in section 275(1) of the PPSA pursuant to section 275(4) of the PPSA;
  - (vi) it must immediately notify the HLL or the Main Contractor if the Subcontractor becomes aware of any person other than the Main Contractor taking steps to register, or registering, a financing statement in relation to relevant personal property; and
  - (vii) it must arrange for the removal or cessation of any registration of any Security Interest that affects the priority of the Main Contractor's interest in relevant personal property.

For the purposes of this clause 25.10, registration, secured party, verification statement, financing statement, personal property and financing change statement each have the meaning given to those terms in the PPSA

### 25.11 Professional Standards Legislation

To the extent permitted by law, the Subcontractor:

- (a) declares that at the date of executing this Subcontract, it is not a person to whom a limitation of liability scheme applies under any Professional Standards Legislation; and
- (b) undertakes that for the period of its potential liability at law under or in respect of this Subcontract, it will not, without the prior written consent of HLL, become a person to whom such a scheme applies if such a scheme will have the effect of limiting or excluding the Subcontractor's liability under or in respect of this Subcontract.

In this clause, **Professional Standards Legislation** means legislation providing for the limitation of occupational liability by reference to schemes for limiting that liability that are formulated and published in accordance with that legislation (and such legislation includes the Professional Standards Act 1994 (NSW), the Professional Standards Act 2003 (Vic), the Professional Standards Act 2004 (Qld), the Professional Standards Act 1997 (WA), the Professional Standards Act 2004 (SA), the Professional Standards Act 2005 (Tas), the Civil Law (Wrongs) Proportionate Liability and Professional Standards Amendment Act 2004 (ACT), the Professional Standards Act 2004 (NT) and the Treasury Legislation Amendment (Professional Standards) Act 2004 (Cth)).

### 25.12 Information Documents

- (a) Information Document means any information, data, document or material (in any format or medium including any electronic form and whether oral or written) which is:
  - (i) referred to in Exhibit G of the Main Contract;
  - (ii) issued or made available by, or on behalf of, the Principal, the NSW Government, the Main Contractor or HLL to the Subcontractor in connection with the WUS or any works under the Main

- Contract (including anything issued or made available through the Principal's website), regardless of whether it was expressly classified or stated to be an "Information Document"; or
- (iii) referred to, or incorporated by reference, in an Information Document unless such information, data, document or material is otherwise expressly stated to form part of this Contract,
- (b) Without limiting or otherwise affecting clause 25.12(a):
- (i) HLL, the Main Contractor and the Principal do not warrant, guarantee or assume any duty of care or other responsibility for or makes any representation about the accuracy, adequacy, suitability, currency, fitness for purpose, reasonableness, reliability or completeness of the Information Documents;
  - (ii) whether or not an Information Document or any part thereof forms an annexure (or schedule, appendix, exhibit or other attachment) to this Subcontract, the Subcontractor acknowledges that:
    - (A) the Information Document or part thereof does not form part of this Subcontract; and
    - (B) where an Information Document or any part thereof forms an annexure (or schedule, appendix, exhibit or other attachment) to this Subcontract, it does so only for the purposes of identification of that document or part thereof;
  - (iii) insofar as is permitted by law, HLL, the Main Contractor and the Principal will not be liable upon any Claim by the Subcontractor or any Secondary Subcontractor arising out of or in any way in connection with:
    - (A) the provision of, or the purported reliance upon, or use of the Information Documents to or by the Subcontractor, Secondary Subcontractors or any other person to whom the Information Documents are disclosed; or
    - (B) a failure by HLL to provide any information to the Subcontractor.
- (c) The Subcontractor:
- (i) warrants that it did not in any way rely upon:
    - (A) any information, data, representation, statement or document made by, or provided to the Subcontractor by the Principal or the Main Contractor or HLL or anyone on behalf of the Principal or the Main Contractor or HLL or any other information, data, representation, statement or document for which the Principal or the Main Contractor is responsible or may be responsible whether or not obtained from the Principal or the Main Contractor or HLL or anyone on behalf of the Principal or the Main Contractor or HLL; or
    - (B) the accuracy, adequacy, suitability, currency, fitness for purpose, reasonableness, reliability or completeness of such information, data, representation, statement or document, for the purposes of entering into this Subcontract or carrying out the WUS but nothing in this clause 25.12 will limit or otherwise affect the Subcontractor's obligations under this Subcontract;
  - (ii) warrants that it or anyone it provides the Information Documents to, has sufficient expertise to understand the risks involved with any decision to enter into or perform any of the Subcontractor's obligations under this Subcontract and enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and
  - (iii) acknowledges that:
    - (A) the Information Documents do not form the basis for the Subcontractor's decision to enter into this Subcontract;
    - (B) the Information Documents do not purport to contain, or be, all of the information that an interested party may require in order to make any decision to enter into this contract or perform any of the Subcontractor's obligations under this Subcontract; and
    - (C) it is aware that HLL has entered into this Subcontract relying upon the warranties, acknowledgements and agreements in this clause 25.12.
- (d) To the maximum extent permitted by Law, but subject to the Subcontractor's express rights under this Subcontract, the Subcontractor:
- (i) unconditionally and irrevocably releases, discharges and indemnifies HLL and the Main Contractor from and against:
    - (A) any Claim against the Principal or the Main Contractor or HLL by, or liability of the Principal or the Main Contractor or HLL to, any person; or
    - (B) (without being limited by clause 25.12(c)(i)(A)) any loss suffered or incurred by the Main Contractor or HLL,
 arising, now or in the future, in any way out of or in any way in connection with:

- (C) the provision of, or the purported reliance upon, or use of, the Information Documents to or by the Subcontractor or any other person to whom the Information Documents are disclosed by the Subcontractor or a failure by the Principal, the Main Contractor or HLL or any other party to provide any information to the Subcontractor; or
  - (D) the Information Documents being relied upon or otherwise used by the Subcontractor in the preparation of any information or document, including any Information Document which is "misleading or deceptive" or "false and misleading" (within the meaning of those terms in sections 18 and 29 (respectively) of the Australian Consumer Law in Schedule 2 to the Competition and Consumer Act 2010 (Cth) or any equivalent provision of State or Territory legislation); and
- (ii) unconditionally and irrevocably agrees that no Claim can be made by the Subcontractor against the Principal or the Main Contractor or HLL arising in any way from, or relating in any way whatsoever to, the Information Documents, including:
- (A) the accuracy, adequacy, currency, suitability, fitness for purpose, reasonableness, completeness or reliability of any of the Information Documents;
  - (B) the financial, taxation, accounting, environmental, legal or other implications of any reliance upon the Information Documents or anything whatsoever derived from them;
  - (C) the reasonableness, or possibility of achievement of, any forecasts which may be included in, or which may be or are capable of being derived in any way from, any of the Information Documents; and
  - (D) the reliability of any of the Information Documents for use in any way whatsoever in connection with the decision to enter into this Subcontract or perform the Subcontractor's obligations under this Subcontract.

### 25.13 Resources

- (a) The Subcontractor must:
- (i) provide sufficient and suitable resources (including materials, plant, equipment, supervision and labour) to perform the WUS in a proper and workmanlike manner with due diligence and expedition and in accordance with this Subcontract.
  - (ii) ensure that only persons who are careful, skilled, experienced and qualified in their respective trades and callings are employed in connection with the WUS and that they hold all certificates and licences required by law in order for them to perform the relevant WUS.
- (b) If there is reasonable evidence the Subcontractor is not complying with its obligations under this clause 25.13 and the Subcontractor fails to rectify or satisfy HLL evidence it will be rectified, HLL may give the Subcontractor a notice it intends to proceed under this clause 25.13. 24 hours after giving notice under clause 29.15, HLL may:
- (i) take out of the hands of the Subcontractor, the whole or any part of the WUS the Contract that remains to be completed;
  - (ii) complete any or all of that work itself or by other means;
  - (iii) retake possession of the whole or any part of the WUS and any other property of HLL or the Main Contractor or the Principal that is in the care, possession or control of the Subcontractor; and
  - (iv) take possession of any or all unfixed work, plant, equipment, materials, goods, items or other things, whether or not such work, plant, equipment, materials, goods, items or other things have been delivered to the Site,  
and a valuation will be made, and the Subcontract Sum adjusted, under clause 12 in respect of any work and other things done by HLL (by itself or by other means) instead of by the Subcontractor.
- (c) HLL may direct the Subcontractor to remove or have removed from the Site or from any activity, any person employed in connection with the WUS.
- (d) The Subcontractor must maintain records of all personnel, plant and other resources used on the Site and must make such records available to HLL for inspection as required by HLL from time to time.
- (e) The Subcontractor acknowledges that the Main Contractor encourages the employment of Indigenous persons on its projects and, without limiting any of the Subcontractor's obligations under this, the Subcontractor agrees that in performing the WUS it will consider:
- (i) the employment, training and mentoring of Indigenous persons; and
  - (ii) subcontracting the performance of work and the supply of goods and services to Indigenous companies.



#### 25.14 Code of Conduct

- (a) The Subcontractor acknowledges that the John Holland Group has developed a Code of Business Conduct (Code) (which can be obtained from <http://www.johnholland.com.au/who-we-are/governance/>) that sets out guidelines on how the Main Contractor and its business partners (including the Subcontractor and any Secondary Subcontractors) should behave in doing business. The Subcontractor agrees that:
  - (i) it has or will, obtain a copy of the Code from the Main Contractor for its information;
  - (ii) it will ensure that its Secondary Subcontractors obtain a copy of the Code for their information;
  - (iii) it will conduct its business and ensure that its Secondary Subcontractors conduct their business in a proper manner, including full compliance with accepted business practices, applicable codes of conduct and generally accepted business ethics (including those acceptable business ethics and applicable standards of conduct outlined in the Code); and
- (b) the values, principles and behaviours outlined in the Code do not replace or change any of the Subcontractor's obligations under this Subcontract.

#### 25.15 Testing

- (a) In this clause 25.15, **test** includes examine and measure.
- (b) At any time before the expiry of the Defects Liability Period, HLL may direct that any material or work be tested.
- (c) With respect to any such tests:
  - (i) the Subcontractor must provide such assistance and samples and make accessible such parts of the WUS as may be required by HLL;
  - (ii) HLL may direct that any part of the WUS is not to be covered up or made inaccessible without HLL's prior consent;
  - (iii) the test must be conducted as provided in this Subcontract or by HLL or a person (which may include the Subcontractor) nominated by HLL; and
  - (iv) on completion of the test, the Subcontractor must make good the WUS so that it fully complies with this Subcontract.
- (d) Before a test is conducted, the Subcontractor or HLL, as the case may be, must give reasonable notice in writing to the other party of the time, date and place of the test. If the other party does not then attend, the test may nevertheless proceed.
- (e) Without prejudice to any other right, if the Subcontractor or HLL delays in conducting a test, the other, after giving reasonable notice in writing of its intention to do so, may conduct the test.
- (f) Results of all tests must be promptly made available by a party to the other party.
- (g) The costs of and incidental to testing will be borne by HLL or will be valued as a Variation unless:
  - (i) this Subcontract provides that the Subcontractor must bear the costs or the test is one which the Subcontractor is required to conduct other than pursuant to a direction under this clause 25.15;
  - (ii) the test shows that the material or work is not in accordance with this Subcontract;
  - (iii) the test is in respect of WUS covered up or made inaccessible without HLL's prior consent where that was required; or
  - (iv) the test is consequent upon a failure of the Subcontractor to comply with a requirement of this Subcontract.
- (h) Where such costs are not to be borne by HLL, they will be borne by the Subcontractor or will be deemed to be work performed by HLL instead of the Subcontractor for which the costs will be valued, and the Subcontract Sum adjusted, by specific rates or prices under the Subcontract, and to the extent that no specific rates apply under the Subcontract, on the basis of the costs incurred by HLL to perform the work, supply the thing or take the action plus a reasonable amount for off-site overheads and profit.

#### 25.16 Building Code

- (a) This clause 25.16 only applies if there are Commonwealth Works, being works set out in Items 1 to 8 of Schedule 1 of the *Code for the Tendering and Performance of Building Work 2016* (Cth) (**Building Code**) issued under s 34 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) (**BCIIP Act**).
- (b) The Subcontractor declares as at the date of this Subcontract and must ensure during the term of this Subcontract that, to the extent relevant to the WUS, in relation to the Commonwealth Works, it (and must procure that its Separate Subcontractors):
  - (i) complies with the Building Code;
  - (ii) is not covered by an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code;

- (iii) is not subject to an Exclusion Sanction as defined in section 3(1) of the Building Code;
  - (iv) has not had an adverse decision, direction or order made by a court or tribunal for a breach of the BCIP Act, a designated building law, work health and safety law or competition and consumer law and failed to comply with the decision, direction or order;
  - (v) only uses products in relation to the Commonwealth Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;
  - (vi) unless approved otherwise by the ABC Commissioner, is not excluded from performing Building Work (as defined in s 3(3) of the Building Code) funded by a state or territory government; and
  - (vii) complies with the Main Contractor's Workplace Relations Management Plan approved by the ABCC in accordance with Part 6 of the Building Code that applies to the Commonwealth Works.
- (c) Without limiting and notwithstanding this clause 25.16, the Subcontractor will ensure that remedial action is taken to rectify any behaviour on the part of it and its Secondary Subcontractors that is non-compliant with the Building Code.
- (d) The Subcontractor acknowledges and agrees that compliance with the Building Code does not relieve the Contractor from any responsibility or obligation under this Subcontract, or from liability for any Defect in Commonwealth Works arising from compliance with the Building Code.
- (e) The Subcontractor must notify the ABCC of any breach or suspected breach of the Building Code as soon as practicable but no later than 2 Business Days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
- (f) The Subcontractor acknowledges the powers and functions of the ABC Commissioner and Secondary ABCC under the BCIP Act and the Building Code and must ensure that it (and must procure that its Secondary Subcontractors) complies with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests:
- (i) for entry under section 72 of the BCIP Act;
  - (ii) to interview any person under section 74 of the BCIP Act;
  - (iii) to produce records or documents under sections 74 and 77 of the of the BCIP Act; and
  - (iv) (j) for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (g) The Subcontractor must not enter into a Secondary Subcontract for any aspect of the Commonwealth Works unless:
- (i) the Secondary Subcontractor has submitted a **Declaration of Compliance**, including the further information outlined in Attachment A to the Declaration of Compliance, which the Subcontractor agrees is substantially in the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and
  - (ii) the Secondary Subcontract with the Secondary Subcontractor includes an equivalent clause to this clause 25.16.
- (h) Prior to entering into a subcontract for any aspect of the Commonwealth Works, and for every six months during the term of the subcontract, the Subcontractor must ensure that the subcontractor it has engaged advises HLL whether:
- (i) it has in the preceding 6 months or since it last advised HLL, whichever is the earliest, had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or the Migration Act 1958; or
  - (ii) it or its related entities have in the preceding 6 months or since it last advised HLL, whichever is the earliest:
    - (A) been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) to a Building Contractor or Building Industry Participant as those terms are defined in the BCIP Act; or
    - (B) owed any unsatisfied judgement debts to a Building Contractor or Building Industry Participant.
- (i) The Subcontractor must provide the Commonwealth with any Secondary Subcontractors' Declaration of Compliance promptly upon request.
- (j) The Subcontractor must maintain adequate records of the compliance with the Building Code by:
- (i) the Subcontractor;
  - (ii) its Secondary Subcontractors;
  - (iii) its consultants; and

- (iv) any related entity of the Subcontractor (as that term is defined in subsection 3(2) the Building Code).

#### **25.17 Media Events**

- (a) The Subcontractor acknowledges the Principal and NSW Government may hold media events on the Site and that the Subcontractor must comply with reasonable site access requirements and co-operate or otherwise facilitate the Principal and the NSW Government to hold such media events.
- (b) Where a media event is held in relation to either the Main Tunnel Date of Opening Completion and the Date of Opening Completion, the Subcontractor agrees that it will not be entitled to make and HLL, the Main Contractor and the Principal will not be liable for, any Claim arising out of or in connection with such media events.
- (c) Where a media event is held at such other times as may be reasonably requested by the Principal, the Subcontractor will be entitled to claim reasonable additional costs that it incurs in connection with the media event, but will otherwise not be entitled to make and HLL, the Main Contractor and the Principal will not be liable for, any Claim arising out of or in connection with such media events.

#### **25.18 Intellectual Property**

The Subcontractor provides a royalty free, irrevocable licence to HLL, the Main Contractor and the Principal to use, possess, modify, vary or amend (and to sublicense to other to use, possess, modify, vary or amend) all intellectual property rights for the purposes of completing construction, commissioning and testing, using, operating, further development, any other purpose associated with the WUS, maintenance, upkeep, and repair of the works under the Main Contract.

The Subcontractor:

- (a) warrants that the WUS will not infringe any author's moral rights under the Copyright Act 1968 (Cth) or similar legislation in any jurisdiction;
- (b) must indemnify HLL and the Main Contractor to the extent any Claims, or costs, expenses, losses or damages are suffered or incurred by HLL, the Main Contractor, the Principal, another entity or a third party contractor engaged by the Principal or Main Contractor, arising out of, or in any way in connection with, any actual or alleged infringement of any author's moral rights under the Copyright Act 1968 (Cth) or similar legislation in any jurisdiction in connection with the WUS.

The Subcontractor must not use any intellectual property right owned or used by HLL or the Main Contractor for any purpose whatsoever except for the performance of its obligations under the Subcontractor.

#### **25.19 Confidentiality**

Subject to the exceptions set out in this clause 25.19, each party must keep confidential and must not divulge or disclose any of the information provided to it by the other party or any documents created in relation to the WUS. This includes the contents of the Subcontract, any information relating to negotiations and any information regarding the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the Main Contractor. This confidentiality obligation does not apply where any such information is already lawfully in the public domain, is required to be disclosed by a legislative requirement or is disclosed to the parties solicitor, accountant or other professional advisors, or to the Secondary Subcontractors or suppliers for the purpose of carrying out the WUS.

#### **25.20 Suspension**

- (a) HLL may at any time by written notice, direct the Subcontractor to suspend the progress of the whole or any part of the WUS for such period as HLL determines.
- (b) Without the Subcontractor's concurrence, HLL cannot order a suspension the duration of which, when added to earlier periods of suspension already directed under this clause 25.20 and complied with by the Subcontractor, exceeds 2 years.
- (c) At any time HLL may, by notice in writing to the Subcontractor, lift the suspension in whole or in part and direct the Subcontractor to resume progress of the whole or any part of the WUS. The Subcontractor must comply with the notice as soon as reasonably practicable after receiving it.
- (d) Further to this clause 25.20:
  - (i) the Subcontractor must ensure that any subcontractor it engages and each lower tier subcontractors are obliged under their subcontracts to immediately copy direct to HLL, the Subcontractor and (where relevant) the subcontractor it engages, any notice they receive from a subcontractor of any intention to suspend work pursuant to the Security of Payment Legislation;
  - (ii) upon the receipt of any such notice, HLL (and the Main Contractor and Principal where relevant) will be entitled if it so elects (but is under no obligation to do so), to make a payment instead of the Subcontractor direct to the subcontractor that gave the notice of intention to suspend work. In such circumstances, a valuation will be made, and the Subcontract Price adjusted, under clause 14.5) to reflect the amount of such direct payment plus a reasonable charge for HLL's (or where relevant, the Main Contractor's or Principal's) administrative costs; and

- (iii) the Subcontractor indemnifies HLL for any cost, expense, Loss and damages suffered or incurred by it arising from any breach of this clause **Error! Reference source not found.** by the Subcontractor.

### **25.21 Programs**

The Subcontractor's obligation to achieve Completion by the Date for Completion is paramount and this clause 25.21 is to be construed so as not to derogate from this obligation.

HLL may prepare and provide programs during the course of the WUS and the Subcontractor must provide all information to HLL to assist in this regard.

The purpose of these programs is to facilitate the coordination of the WUS and the work of other contractors. The programs are not statements or contractual obligations and are not to be construed as directions of HLL.