

## **CDI GROUP PTY LTD**

ABN 92 056 787 734

## **CDI (WA) PTY LTD**

ABN 14 132 387 038

## **CDI PROPERTY SERVICES PTY LTD**

ABN 35 605 645 476

## **BALLARDONG CDI CONTRACTING PTY LTD**

ABN 18 661 913 622

# General Conditions of Subcontract for Works

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## General Conditions of Subcontract

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this Subcontract unless the context otherwise requires:

'**Acceleration Direction**' is defined in clause 8.6(b).

'**Approved Subcontractor**' means the subcontractors approved by CDI as specified in the Schedule of Subcontract Information.

'**Australian Standard**' means any applicable standard published by Standards Australia and any other standard or specification which applies by Law.

'**Authority**' is any body which has a right to impose a requirement or whose consent is required with respect to the Project, the Head Contract Works or the Works.

'**Award Date**' means the date set out in the Schedule of Subcontract Information or, if not set out in the Schedule of Subcontract Information, the date the Subcontract is signed by CDI.

'**Bank**' means a bank of good repute and financial standing, that is approved by CDI, which approval shall not be unreasonably withheld or delayed and which has a credit rating of A under the Standard & Poor's Long-Term Issuer Credit Ratings.

'**Buildability Problem**' means any ambiguities, inadequacies, inconsistencies, incompleteness or lack of co-ordination or integration of, between or in any documents which make up the Scope of Work, the Specification and the Drawings which:

- (a) cause a problem, difficulty or complexity relating to:
  - (i) the means, methods or techniques by which Work under the Subcontract is to be performed; or
  - (ii) the co-ordination or integration of the Work under the Subcontract; or
- (b) without limiting paragraph (a), a prudent, competent and experienced contractor, having done what the Subcontractor warrants that it did in preparing its tender for the Work under the Subcontract, would reasonably have foreseen as involving additional work to ensure that the part of the Works to which the ambiguities, inadequacies, inconsistencies, incompleteness or lack of co-ordination or integration relates, would be suitable for its intended purpose.

'**Business Day**' means a day on which trading banks are open for business in Perth, Western Australia.

'**Certificate of Substantial Completion**' is a certificate issued to the Head Contractor under clause 8.7 in the form set out in Schedule 7.

'**CDI**' means CDI related Entity as defined in the Formal Instrument of Agreement.

**'CDI's Drug and Alcohol Policy'** means CDI's drug and alcohol policy as referred to in Schedule 3 or as published on CDI's website from time to time or otherwise communicated to the Subcontractor.

**'CDI Material'** means any Material provided by CDI to the Subcontractor for the purposes of this Subcontract, or which is copied or derived from Material so provided.

**'CDI's Representative'** is the person named as such in the Schedule of Subcontract Information.

**'CDI's Requirements'** means the set of CDI's (and where applicable, the Principal's) requirements, standards, specifications, policies and procedures contained in Exhibit 1 (all as amended from time to time).

**'Claim'** includes any claim for payment of money (including damages) or for an extension of time at Law or in equity including in contract, in tort (including for negligence), under statute or in restitution whether by the Subcontractor against the Indemnified Parties or by CDI against the Subcontractor.

**'Construction Work'** includes any work on or in the vicinity of a construction site carried out in connection with the construction, alteration, conversion, fitting out, commissioning, renovation, repair, maintenance, de-commissioning, demolition or dismantling of any structure. (National Standard for Construction Work [NOHSC:1016 (2005)]).

**'Date for Practical Completion'** is the date by which the Head Contractor must achieve Practical Completion, being the date stated in the Schedule of Subcontract Information, as adjusted (if applicable) under the Head Contract.

**'Date of Practical Completion'** is the date certified in a Certificate of Practical Completion issued by the Principal's Representative.

**'Date for Substantial Completion'** is the date by which the Subcontractor must achieve Substantial Completion, being the date stated in the Schedule of Subcontract Information, as adjusted (if applicable) under this Subcontract.

**'Date of Substantial Completion'** is the date certified in a Certificate of Substantial Completion issued under clause 8.7.

**'Defect'** means any material or workmanship not in accordance with this Subcontract, any defect in or arising from the Works or any other aspect of the Works not in accordance with this Subcontract including any failure to meet any performance warranty or guarantee.

**'Defects Correction Period'** means the period stated in the Schedule of Subcontract Information.

**'Design Material'** means where clause 4 applies, all documents, information, Drawings and plans necessary for the Works to be completed in accordance with the Specification.

**'Design Review Date'** means where clause 4 applies, the date stipulated in the Schedule of Subcontract Information..

**'Documentation'** includes software (including source code and object code versions) manuals, drawings, diagrams, graphs, charts, projections, specifications (including the Specification), estimates, records, concepts, documents, accounts, plans, formulae, designs, methods, techniques, processes, supplier lists, price lists, customer lists, market research information, correspondence, letters and papers of every description including all copies of and extracts from the same.

**'Drawings'** means the drawings contained in Annexure 3.

**'ERS System'** means the evaluated receipt settlement system by which CDI automatically creates a Recipient Created Tax Invoice at the time that a Payment Schedule is issued by CDI in respect of a Progress Claim using the Subcontractor's Progress Claim Number as the invoice number and then making payment to the Subcontractor against the ERS System invoice based on the payment terms.

**'Existing Plant'** is the existing plant, if any, located at the Site as at the Award Date, including the plant referred to in the Schedule of Subcontract Information.

**'Force Majeure Event'** is any event or circumstance (or combination of events and circumstances) which occurs in Australia and:

- (a) is beyond the control of the party affected by that event or circumstance or both;
- (b) causes delay in, or prevention of, the performance by the affected party of any of its obligations under this Subcontract; and
- (c) cannot be prevented, overcome or remedied by the exercise by the affected party of a standard of care and diligence consistent with that of a prudent and competent construction contractor,

which:

- (d) affects the execution of the Work under the Subcontract at the Site; and
- (e) lasts for more than seven consecutive days,

but does not include:

- (f) other industrial-related disputes including strikes, lockouts, industrial difficulties, labour difficulties, work bans, blockades or picketing; or
- (g) wet or otherwise inclement weather.

**'Formal Instrument of Agreement'** means the formal instrument of agreement, which forms part of the Subcontract and which is executed by CDI and the Subcontractor in relation to the Works.

**'General Conditions of Subcontract'** means these general conditions of subcontract.

**'Goods'** means any materials, supplies, machinery, equipment, fuel and other things used by the Subcontractor in performing the Work under the Subcontract and which are to be incorporated in the Works, or are to be consumed in executing the Work under the Subcontract.

**'GST'** means the tax payable on taxable supplies under the GST Legislation.

**'GST Legislation'** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax, and includes any subordinated legislation in respect of those Acts.

**'Head Contract'** means the contract between CDI and the Principal specified in the Schedule of Subcontract Information.

**'High-Risk Construction Work'** includes any work defined as high risk in the 19 categories stated in the National Standard for Construction Work [NOHSC:1016 (2005)]. Any work that exposes employees to any potential hazard and or risk that may cause serious incident, notifiable event, damage or harm and is required to be controlled through safe working methods. This includes any works that by legislation requires licenses, permits, qualifications and or certification. :

**'Head Contract Works'** means the works to be carried out by CDI pursuant to the Head Contract.

**'HSEQ Plan'** means CDI's Health, Safety, Environment and Quality Plan as set out in Schedule 3 or as published on CDI's website from time to time or otherwise communicated to the Subcontractor.

**'Indemnified Parties'** are the Principal, CDI and their directors, officers, employees, contractors (other than the Subcontractor) and agents and related entities (as defined in section 9 of the *Corporations Act 2001* (Cth)).

**'Intellectual Property'** means property over which Intellectual Property Rights exist.

**'Intellectual Property Rights'** means all copyright and analogous rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets), know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields.

**JSEA** means the Subcontractor's Job Safety Environmental Analysis, as approved by CDI.

**'Latent Conditions'** means any ground conditions at the Site, excluding ground conditions resulting from inclement weather wherever occurring and excluding services and sub-surface services, which differ materially from those which should have been anticipated by a prudent, competent and experienced contractor if it had done those things which the Subcontractor is deemed to have done under clause 5.7.

**'Law'** is:

- (a) Commonwealth, any State and local government legislation including regulations and by-laws;
- (b) common law;
- (c) Authority requirements and consents (including conditions in respect of those consents); and
- (d) guidelines of Authorities with which the Subcontractor is legally required to comply.

**'Material'** includes Documentation, equipment, models, software, goods, information, design concepts, audio, video, printed matter and data stored by any means.

**'Practical Completion'** is the date certified in a Certificate of Practical Completion issued by the Principal's Representative to the Head Contractor (CDI).



**'Principal'** means the principal to the Head Contract specified in the Schedule of Subcontract Information.

**'Privacy Laws'** means all laws relating to the privacy, confidentiality or use of any information about individuals, including the *Privacy Act 1988* (Cth).

**'Project'** is the project identified in the Schedule of Subcontract Information.

**'Provisional Sum Items'** are the items of work forming part of the Work under the Subcontract which are set out in the Schedule of Provisional Sum Items.

**'Schedule'** means a schedule to the Formal Instrument of Agreement.

**'Schedule of Amenities, Facilities and Services'** is Schedule 5.

**'Schedule of CDI Supplied Materials and Equipment'** is Schedule 6.

**'Schedule of Subcontract Information'** is Schedule 1.

**'Schedule of Insurance Information'** is Schedule 4.

**'Schedule of Plan Requirements'** is Schedule 3.

**'Schedule of Prices'** is Schedule 3.

**'Schedule of Provisional Sum Items'** is Schedule 9.

**'Schedule of Special Conditions'** is Schedule 2.

**'Scope of Work'** is Annexure 1.

**'Site'** is the land, water and other places on, under, in or through which the Works are to be constructed, and any other lands and places provided by CDI for working space or any other purpose as may be specifically designated in this Subcontract as forming part of the Site, as identified in the Schedule of Subcontract Information.

**'SOPA'** means the *Building and Construction Industry (Security of Payment) Act 2021* (WA) as amended and includes all regulations to the SOPA.

**'Special Condition'** is a special condition contained in the Schedule of Special Conditions (if any).

**'Specification'** is Annexure 2 to the Formal Instrument of Agreement.

**'Subcontract'** means the contractual relationship between the parties constituted by:

- (a) the Formal Instrument of Agreement;
- (b) these General Conditions of Subcontract;
- (c) the Schedule of Subcontract Information;
- (d) the Scope of Work;
- (e) the Specification;

- (f) Drawings;
- (g) the Schedule of Special Conditions;
- (h) the other schedules, exhibits and annexures; and
- (i) the other documents (if any) referred to in the Schedule of Subcontract Information.

**'Subcontract Material'** means all Material which is:

- (a) prepared, or required to be prepared, by or on behalf of the Subcontractor under this Subcontract;
- (b) delivered, or required to be delivered, by or on behalf of the Subcontractor to CDI under this Subcontract;
- (c) incorporated into Material described in paragraph (a) or (b); and
- (d) where clause 4 applies, the Design Material.

**'Subcontract Personnel'** means any and all personnel engaged by the Subcontractor, including its directors, officers, employees, agents, consultants, invitees, subcontractors and any director, officer, employee, agent, consultant or invitee of any subcontractor, in performing the Subcontractor's obligations under this Subcontract.

**'Subcontract Price'** is:

- (a) the amount stated in the Schedule of Subcontract Information;
- (b) inclusive of all Taxes (excluding any applicable GST); and
- (c) adjusted (if applicable) in accordance with this Subcontract.

**'Subcontractor's Representative'** is the person named as such in the Schedule of Subcontract Information.

**'SWMS'** means the Subcontractor's Safe Work Method Statement, as approved by CDI.

**'Substantial Completion'** is the stage in the execution of the Work under the Subcontract when:

- (a) the Works are complete except for minor omissions and minor Defects:
  - (i) which do not prevent the Works from being reasonably capable of being used for the intended purpose of the Works;
  - (ii) in relation to which CDI's Representative determines that the Subcontractor has reasonable grounds for not promptly rectifying them; and
  - (iii) rectification of which will not prejudice the safe and convenient use of the Works;
- (b) all commissioning and testing required by this Subcontract or CDI's Representative to be carried out and passed has been carried out and passed;
- (c) all information required under this Subcontract including approvals of all Authorities

- which are required for the use, operation and maintenance of the Works have been obtained and supplied to CDI's Representative;
- (d) the Works comply with all applicable Laws; and
  - (e) the Subcontractor has done everything which this Subcontract requires it to do as a condition precedent to Substantial Completion, including those things described in the Schedule of Subcontract Information and the Scope of Work.

**'Tax Invoice'** has the meaning given to it in the GST Legislation.

**'Taxes':**

- (a) includes all taxes, fees, levies, duties and charges imposed or assessed in respect of the Subcontract or the Work under the Subcontract by all local, state or national government authorities including income tax (including withholding for prescribed payments or group tax), payroll tax, statutory superannuation contributions and workers' compensation payments and contributions, sales tax, customs duty, excise tax, and stamp duty;  
  
but
- (b) does not include GST.

**'Unconditional Banker's Undertaking'** means an unconditional banker's undertaking in the form specified in Schedule 1.

**'Work under the Subcontract'** means the whole of the work which the Subcontractor is required by the Subcontract to execute to comply with all of its contractual obligations, including temporary works, variations provided for by the Subcontract and remedial or rectification work and the provision of materials.

**'Works'** means the works as described in the Schedule of Subcontract Information, Scope of Work, Specification, Drawings and elsewhere in the Subcontract to be carried out and completed by the Subcontractor in accordance with the Subcontract, including variations provided for by the Subcontract, which is to be handed over to CDI.

## **1.2 Ambiguous and inconsistent terms**

- (a) Subject to the order of precedence of documents set out in the Formal Instrument of Agreement, if CDI's Representative reasonably considers, or the Subcontractor notifies CDI's Representative in writing, that there is a conflict, ambiguity, inconsistency or discrepancy in or between any of the terms of this Subcontract, CDI's Representative must direct the interpretation which the parties must follow.
- (b) CDI's Representative, in giving a direction in accordance with clause 1.2(a), is not required to determine whether or not there is an ambiguity or inconsistency.
- (c) The Subcontractor will not be entitled to make any Claim (insofar as is permitted by Law) arising out of or in connection with any conflict, ambiguity, discrepancy or inconsistency referred to in, or a direction of CDI's Representative under, this clause 1.2.

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## **2. Personnel and Subcontract administration**

### **2.1 CDI's Representative**

CDI's Representative:

- (a) will give directions and carry out all of the other functions of CDI's Representative under the Subcontract as the agent of CDI (and not as an independent certifier, assessor or valuer); and
- (b) is under no obligation to give consideration or reasonable consideration to the exercise of any right, power, discretion or other function under this Subcontract, unless expressly stated to the contrary.

### **2.2 Compliance with directions**

If the Subcontractor fails or refuses to comply with a valid direction by CDI's Representative, then CDI may:

- (a) hold the Subcontractor in breach of the Subcontract until the Subcontractor complies with the direction or the work the subject of the direction is carried out under clause 2.2(b); and
- (b) carry out, or have a third party carry out, the work the subject of the direction, in which case the cost incurred by CDI will be a debt due and payable from the Subcontractor to CDI.

### **2.3 Early warning**

- (a) The Subcontractor must give prior written notice to CDI's Representative if a failure by CDI's Representative to exercise any function under the Subcontract by a particular time could cause delay to the Work under the Subcontract.
- (b) Any notice to be issued under clause 2.3(a) must be given within a reasonable period before the function is required to be exercised.

### **2.4 Subcontractor's Representative**

The Subcontractor warrants that the Subcontractor's Representative at all times has or will have authority to act on behalf of the Subcontractor in respect of this Subcontract.

### **2.5 Subcontract Personnel**

- (a) The Subcontractor must:
  - (i) provide experienced and skilled Subcontract Personnel to execute the Work under the Subcontract in accordance with its obligations under this Subcontract;
  - (ii) ensure that the Subcontract Personnel are accredited and/or licensed to carry out the Work under the Subcontract in accordance with any relevant Laws or requirements; and

- (iii) ensure that the Work under the Subcontract is executed under the supervision of appropriately qualified and experienced personnel.
- (b) CDI may, in its absolute discretion, direct the Subcontractor to remove from the Site, or from any activity connected with the Work under the Subcontract, any Subcontract Personnel, without the necessity of giving the Subcontractor any reason.

## **2.6 Comments, review, representation or approval by CDI or CDI's Representative**

- (a) CDI's Representative does not owe any duty to the Subcontractor in discharging any of the functions of CDI's Representative under the Subcontract.
- (b) No comment, review, representation or approval by CDI or CDI's Representative in respect of the Subcontractor's obligations under this Subcontract (including comments on, or review or approval of, any Material), or any other direction of CDI's Representative, will lessen or otherwise affect the Subcontractor's obligations under this Subcontract.

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## **3. Subcontractor's fundamental obligations**

### **3.1 General**

The Subcontractor must:

- (a) execute the Work under the Subcontract in accordance with the requirements of this Subcontract and, unless otherwise stated, at its cost;
- (b) execute the Work under the Subcontract so as to permit CDI to comply with its obligations under the Head Contract (as set out in the Schedule of Special Conditions);
- (c) at all times comply with CDI's Requirements, if any; and
- (d) ensure that the Works, if they form part of the Head Contract Works, comply with the requirements of the Head Contract (as set out in the Schedule of Special Conditions).

### **3.2 Safety requirements**

The Subcontractor must:

- (a) within seven days of the Award Date and in any event prior to attendance on Site, prepare and submit to CDI's Representative a JSEA and SWMS for approval by CDI;
- (b) ensure that all persons (including the Subcontract Personnel), for whom it is responsible or over whom it is capable of exercising control while upon the Site, at all times comply with:
  - (i) CDI's HSEQ Plan;
  - (ii) CDI's Drug and Alcohol Policy;

- (iii) CDI's Requirements (if any);
  - (iv) the approved JSEA and SWMS; and
  - (v) any direction (whether written or oral) of CDI's Representative given in connection with this clause 3.2; and
- (c) submit the JSEA to CDI's Representative for review as and when required by CDI's Representative; and
  - (d) maintain appropriate safety precautions and programs so as to prevent injury to persons or damage to property on, about or adjacent to the Site.

### **3.3 Protection of people and property**

- (a) The Subcontractor must take all measures necessary to protect people and property on or adjacent to the Site.
- (b) Without limiting clause 12 (Indemnities), if any Subcontract Personnel damage property, the Subcontractor must promptly make good the damage and pay any compensation which the Law requires the Subcontractor to pay.
- (c) If the Subcontractor fails to comply with an obligation under clause 3.2 or 3.3, CDI may perform or have performed the obligation on the Subcontractor's behalf and the cost incurred will be a debt due from the Subcontractor to CDI.

### **3.4 Incident Reporting**

The Subcontractor shall immediately report to CDI's Representative any accident or any incident which had or has the potential to give rise to any:

- (a) property damage;
- (b) incidents or accidents on any of the Principal's property or the Site which involves:
  - (i) death;
  - (ii) loss of work for more than one day;
  - (iii) medical attention including normal first aid; or
  - (iv) near misses,arising from Work under the Subcontract being carried out.

### **3.5 Environmental obligations**

- (a) The Subcontractor must:
  - (i) execute the Work under the Subcontract in a manner so as to avoid pollution or contamination of or outside the Site; and
  - (ii) ensure that each of the Subcontract Personnel also complies with the requirements under clause 3.5(a)(i).

- (b) The Subcontractor is responsible for, and must make good, any environmental harm, pollution or contamination caused by the execution of the Work under the Subcontract (including any pollution or contamination of or outside the Site), including by Subcontract Personnel.
- (c) The Subcontractor must:
  - (i) clean up any pollution or contamination caused during the execution of the Work under the Subcontract; and
  - (ii) comply with all directions of CDI's Representative and any Authority regarding cleaning up pollution or contamination.
- (d) The Subcontractor must indemnify CDI against:
  - (i) any liability to or claim by a third party; and
  - (ii) all costs, losses and damages suffered or incurred by CDI,  
  
arising out of or in connection with any failure by the Subcontractor or Subcontract Personnel to comply with the requirements of this clause 3.5 or environmental harm caused by the execution of the Work under the Subcontract by the Subcontractor or Subcontract Personnel.

### **3.6 Privacy**

The Subcontractor must, in relation to all things relating to or arising out of the Head Contract, the Subcontract or the Project, provide all reasonable assistance to enable CDI to comply with applicable Privacy Laws.

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## **4. Design**

### **4.1 Application of Clause**

The provisions of this clause 4 apply if and to the extent the Work under the Subcontract includes design of some or all of the Works. The extent of the Subcontractors design liabilities are noted in Schedule of Subcontract Information.

### **4.2 Subcontractor's Design Obligations**

- (a) By executing the Subcontract the Subcontractor acknowledges that it has reviewed the Specification and the Design Risk Review, in conjunction with the CDI HSEQ Management Plan.
- (b) The Subcontractor must:
  - (i) develop and complete the design of the Works in accordance with the Specification, including preparing all necessary documents, information, Drawings and plans sufficient for the completion of the Works; and
  - (ii) ensure that the Design Material:
    - A. meets the Specification;

- B. is accurate and complete in all respects; and
  - C. is otherwise suitable in all respects for the intended purposes of the Works as set out in the Specification so that, when completed in accordance with the Design Material, the Works will be fit for their intended purpose as set out in the Specification.
- (iii) complete the design of the Works in accordance with the Specification, Design Risk Review, CDI HSEQ Management Plan, JSEA and any formal Safe Work Method Statement (SWMS) for High-Risk Construction Work to ensure all necessary controls are in place and complied with to prevent any unforeseen incident and or design failure that has the potential to cause harm, render the design unsafe or unacceptable and or does not comply to the design specifications and or building code used. All High-Risk Construction Work shall be completed against a formal Safe Work Method Statement (SWMS), approved and authorised by the CDI Construction Site Representative prior to works beginning and included in the CDI Project Specific HSEQ Management Plan within the specific project stages as a further control which shall be managed by the Sub-contracting group.
- (c) The Subcontractor:
- (i) acknowledges that CDI has not given any warranty or guarantee or made any representation about the adequacy or suitability of the Specification or the level of completeness of the design of the Works in the Specification;
  - (ii) acknowledges that it will have no Claim (insofar as is permitted by Law) against the Indemnified Parties arising out of or in connection with the adequacy or suitability of the Specification or the level of completeness of the design of the Works in the Specification;
  - (iii) warrants that it will use its reasonable endeavours to become aware of any inaccuracy, incompleteness, error, ambiguity or inconsistency and carefully consider the design work performed in preparing the Specification and that it will use its reasonable endeavours to check that the design work is proper, adequate and suitable for the purposes for which the Works are intended as set out in the Specification and will amend the same to the extent that it is defective; and
  - (iv) agrees that:
    - A. the warranties given in the Subcontract (including those in this clause 4.2(c)) will remain unaffected;
    - B. it will comply with its obligations under the Subcontract; and
    - C. it will bear and continue to bear full liability and responsibility for the design and completion of the Works in accordance with the Subcontract (including the risk of any defects which may arise (whether directly or indirectly) as a result of or in any way in connection with any design work incorporated into the Specification), and that this will not affect its obligation to complete the Works in accordance with clause 7.1 or thereafter its obligations during the Defects Correction Period,



notwithstanding that it is required to adopt the design which was incorporated into the Specification.

- (d) The Subcontractor warrants that:
  - (i) the Subcontract Material (including the design of the Works) will be fit for its intended purpose; and
  - (ii) upon completion of the Works, the Works will be fit for their intended purpose.

### **4.3 Review of Design Material**

- (a) Without limiting clause 4.2(c):
  - (i) the Subcontractor must develop and complete to the best industry standards all Design Material required for the completion of the Works; and
  - (ii) the Design Material must be prepared by Subcontract Personnel with appropriate professional qualifications and membership of appropriate professional associations.
- (b) The Subcontractor must:
  - (i) give CDI's Representative for review two copies (or such other number of copies as directed by CDI's Representative) of all Design Material (including amended versions) as soon as it is prepared and in any event no later than the Design Review Date;
  - (ii) not take any further steps in relation to any Design Material which it has submitted to CDI's Representative, including issue of the Design Material to subcontractors or suppliers or commencing the Works or any part of the Works, unless CDI's Representative has had no fewer than seven days to review the Design Material and has not rejected the Design Material; and
  - (iii) if any Design Material is rejected, submit amended Design Material to CDI's Representative for review, in which case this clause 4.3(b) will reapply.
- (c) Neither CDI nor CDI's Representative undertakes any responsibility or duty of care to the Subcontractor to review, or in reviewing, the Design Material for errors, omissions or compliance with the Subcontract.
- (d) No review of, comments upon, rejection of, or failure to review or comment upon or reject, any Design Material prepared by the Subcontractor or any other direction by CDI's Representative about the Design Material will:
  - (i) relieve the Subcontractor from, or alter or affect, the Subcontractor's liabilities or responsibilities whether arising out of or in connection with the Subcontract or otherwise according to Law; or
  - (ii) prejudice CDI's rights against the Subcontractor whether arising out of or in connection with the Subcontract or otherwise according to Law.

## 4.4 Design Risk

As per section 22, WHS Act 2022, the Subcontractor will submit a "Risk assessment for the design and review of the risks in design" to ascertain if any further controls are required.

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## 5. Site

### 5.1 Access

Subject to clauses 5.2 and 5.5, CDI must, on or before the expiry of the seven days' notice given by the Subcontractor in accordance with clause 5.2(a), give the Subcontractor non-exclusive access to the Site sufficient to enable it to carry out its obligations under the Subcontract.

### 5.2 Subcontractor's Site obligations

The Subcontractor must:

- (a) within the period set out in the Schedule of Subcontract Information, give notice in writing to CDI that it requires access to the Site;
- (b) satisfy CDI that all insurances which the Subcontractor must effect under clause 13 have been effected; and
- (c) submit to CDI's Representative any plans or JSEA required pursuant to clause 3 for approval by CDI,

before the Subcontractor will be entitled to obtain access to the Site in accordance with clause 5.1.

### 5.3 Induction training

The Subcontractor:

- (a) must ensure that all Subcontract Personnel undergo induction training required for the Project and the Site, before entering the Site, which induction training must be requested by the Subcontractor and shall be arranged by CDI at a time convenient to CDI;
- (b) and any Subcontract Personnel shall bring with them to Site at the time of any induction training a current white card, the JSEA, the SWMS and any Materials and Documentation relevant to the individual's role in the project or the Works; and
- (c) acknowledges that it:
  - (i) has made a sufficient allowance in its Subcontract Price for, and assumes the risk of any delays arising out of or in connection with, the induction training required under clause 5.3(a); and
  - (ii) will not be entitled to make any Claim (insofar as is permitted by Law) arising out of or in connection with that induction training.

## 5.4 Control of access to Site and Site condition

The Subcontractor must:

- (a) if directed by CDI, arrange for proper security for the Site;
- (b) if CDI provides the Subcontractor with secure access to the Site, ensure that it and all Subcontract Personnel maintain such secure access;
- (c) keep the Site and any Goods and Subcontract Materials delivered to and/or installed on Site in a clean and tidy condition at all times;
- (d) ensure that a booking is made with CDI's Representative regarding any Goods or Subcontract Material to be delivered to or installed on the Site and that such Goods and Subcontract Material are delivered strictly in accordance with such booking; and
- (e) ensure that any Goods and Subcontract materials delivered to or installed on the Site are checked by CDI's Representative and noted on CDI's Quality Inspection Checklist.

## 5.5 Other contractors

The Subcontractor must:

- (a) co-operate with any other contractors engaged by CDI to perform other works on or in the vicinity of the Site or the Works;
- (b) co-ordinate the Subcontractor's activities in carrying out the Work under the Subcontract with the work of those other contractors;
- (c) use its best endeavours to facilitate the execution of the work of those other contractors; and
- (d) acknowledge that the subcontractor will not be entitled to make any Claim arising out of or in connection with co-operation and coordinating with other subcontractors.

## 5.6 Access for CDI and others

- (a) The Subcontractor shall ensure that at all times CDI and CDI's employees, consultants and agents have access to any part of the Site for any purpose;
- (b) CDI may engage other contractors (**Related Works Contractors**) to perform other works on or in the vicinity of the Site or the Works (**Related Works**) and the Subcontractor must:
  - (i) permit Related Works Contractors to carry out Related Works;
  - (ii) consult, liaise and fully co-operate with Related Works Contractors;
  - (iii) co-ordinate Work under the Subcontract with the work carried out or to be carried out by Related Works Contractors so that the Works are fully integrated in accordance with its stated Subcontract requirements with the Related Works;
  - (iv) plan, program and perform the execution of Work under the Subcontract

so as to minimise any interference with, disruption, hindrance or delay to, performance of the Related Works;

- (v) at all times refrain from carrying out any operation on-Site in a manner which is likely to cause damage or inconvenience to the execution of the Related Works; and
  - (vi) provide CDI's Representative and Related Works Contractors with all information in regard to the Work under the Subcontract as is reasonably necessary to ensure compliance with its obligations under this clause 5.6.
- (c) Except as provided in this clause 5.6(c), the Subcontractor will not be entitled to any addition to the Subcontract Price or an extension of time under clause 8.3 for complying with its obligations under clause 5.6(a). To the extent that any Related Works or Related Works Contractors cause any delay to the Subcontractor that could not reasonably have been foreseen, then the Subcontractor shall be entitled to claim in accordance with the terms of the Subcontract for additional costs incurred and an extension of time to the Date for Practical Completion.
- (d) In the event of any dispute or conflict between CDI and the Subcontractor with respect to right of way or priority of access in or around the Site, CDI will at all times have priority but it shall use its best endeavours to ensure that the Subcontractor is not impeded in the performance of Work under the Subcontract.
- (e) The Subcontractor shall perform Work under the Subcontract in such a manner as to ensure that no blockage or closure without CDI's consent or direction is caused upon any track, road, or path either by the Subcontractor's vehicles or equipment or by any excavation work and shall organise all transport required by Work under the Subcontract in such a manner as to ensure that as little inconvenience as reasonably possible is caused to CDI, its consultants or Related Works Contractors, their respective employees or the public.
- (f) CDI's Representative may from time to time direct a designated area of the Site as a prohibited area. The Subcontractor, its Subcontractor Personnel, consultants and agents shall not enter the prohibited area.
- (g) The Subcontractor shall coordinate all interface works associated with Work under the Subcontract with relevant Authorities and instrumentalities where necessary.

## **5.7 Subcontractor's investigation**

The Subcontractor warrants that it has, and will be deemed to have, done everything that would be expected of a prudent, competent and experienced contractor, including:

- (a) assessing the risks which it is assuming under the Subcontract; and
- (b) ensuring that the Subcontract Price contains allowances to protect it against any of the risks eventuating.

## **5.8 CDI information**

Without limiting clause 5.7, to the extent that CDI has made available to the Subcontractor, before the Award Date, certain information, data and Documentation which were obtained by CDI for the purposes of the Works or the Work under the Subcontract from investigations carried out as to the conditions on, in, under or in the vicinity of the Site:

- (a) CDI does not warrant, guarantee or make any representation about the accuracy or adequacy of any such information, data and documents made available to the Subcontractor;
- (b) the Subcontractor acknowledges that, unless otherwise specified in the Subcontract, such information, data and documents do not form part of the Subcontract and that clause 5.9 applies to the information, data and documents; and
- (c) to the extent permitted by Law, CDI will not be liable upon any Claim by the Subcontractor arising out of, or in any way in connection with, the information, data and documents.

## **5.9 Subcontractor's warranty**

The Subcontractor:

- (a) warrants that, except as otherwise expressly provided in the Subcontract, it did not in any way rely upon:
  - (i) any information, data, representation, statement or Documentation made or provided to the Subcontractor by CDI or anyone on behalf of CDI; or
  - (ii) the accuracy or adequacy of any such information, data, representation, statement or document,for the purposes of entering into the Subcontract, except to the extent that any such information, data, representation, statement or Documentation forms part of the Subcontract;
- (b) warrants that, except as otherwise expressly provided in the Subcontract, it enters into the Subcontract based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that CDI has entered into the Subcontract relying upon the warranties in clauses 5.7 and 5.9(a) and (b).

## **5.10 Physical conditions**

Subject to clause 8.3, the Subcontractor:

- (a) is responsible for, and assumes the risk of, all delays, all increased costs and any losses and damages arising out of or in connection with the physical conditions and characteristics of the Site; and
- (b) will not be entitled to make any Claim against the Indemnified Parties in respect thereof.

## **5.11 Operation of Existing Plant**

The Subcontractor shall ensure:

- (a) that any interruption to the operation of the Existing Plant caused by the interconnection of the Works to the Existing Plant is minimised;
- (b) that (other than as contemplated in clause 5.11(a)) the Existing Plant and its continued operation are not affected in any way by the execution of the Work under the Subcontract; and

- (c) without limiting clause 5.11(a) and 5.11(b), that the Works will fully, effectively and efficiently interface with the Existing Plant.

## **5.12 CDI's provided amenities, facilities and services**

- (a) Subject to clause 5.12(b), CDI must provide the amenities, facilities and services described in the Schedule of Amenities, Facilities and Services for use by the Subcontractor in executing the Work under the Subcontract.
- (b) Where the Schedule of Amenities, Facilities and Services states that the Subcontractor must pay for the use of specific amenities, facilities and services, the Subcontractor must do so.
- (c) The Subcontractor must comply with CDI's Representative's directions when using the amenities, facilities and services referred to in clause 5.12(a).
- (d) The Subcontractor has no entitlement to make any Claim (insofar as is permitted by Law) arising out of or in connection with CDI's failure to provide, or any delay or disruption in providing, the amenities, facilities and services referred to in clause 5.12(a), except to the extent (if any) that it has an entitlement to delay or disruption costs under clause 8.2(b) or an extension of time under clause 8.3.

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## **6. Documentation**

### **6.1 Overcoming Buildability Problems**

- (a) CDI's Representative may give the Subcontractor a direction as to how to overcome a Buildability Problem, including relevant design details showing any changes to the Scope of Work, the Specification and the Drawings or materials to be used to complete the Works.
- (b) Where such a change referred to in clause 6.3(a) is of a nature consistent with the intent generally found in the Scope of Work, the Specification and the Drawings or is otherwise consistent with that which a prudent, competent and experienced contractor acting reasonably would expect to find in work of a similar nature to the Works, the Subcontractor will, to the extent permitted by Law, have no Claim against CDI arising out of or in any way in connection with:
  - (i) the Buildability Problem;
  - (ii) CDI's Representative's direction; or
  - (iii) any work arising out of or in any way in connection with CDI's Representative's direction.

### **6.2 Ownership of, and Intellectual Property Rights in, Subcontract Material**

- (a) The Subcontractor hereby assigns to CDI all Intellectual Property Rights (including future copyright) in all Subcontract Material upon the creation of that Subcontract Material or, to the extent that any Intellectual Property Rights are not created at the time of the creation of the Subcontract Material, upon the later creation of the Intellectual Property Rights in that Subcontract Material.

- (b) The Subcontractor must, if required by CDI, do all further things necessary to assign Intellectual Property Rights in the Subcontract Material to CDI.
- (c) CDI hereby grants to the Subcontractor a revocable, non-exclusive licence to use Subcontract Material and CDI Material to the extent required to design and construct the Works.
- (d) The Subcontractor hereby grants to CDI an irrevocable non-exclusive license to utilise Intellectual Property in relation to which the Subcontractor has Intellectual Property Rights for the purpose of constructing, maintaining or expanding the Works. This irrevocable licence will survive the termination of the Subcontract.
- (e) The Subcontractor warrants that:
  - (i) the Subcontractor is able to assign the Intellectual Property Rights in Subcontract Material as described in clause 6.4(a) and (b);
  - (ii) use by CDI, or by another person at the direction or with the permission of CDI, of Subcontract Material in accordance with the Subcontract will not infringe the Intellectual Property Rights of any third party or breach any Laws; and
  - (iii) neither CDI, nor any other person acting at the direction or with the permission of CDI, is liable to pay any third party any licence or other fee in respect of the use of Subcontract Material.
- (f) The Subcontractor must indemnify CDI against all costs, losses, damages or liability incurred or suffered by CDI, arising out of or in any way in connection with, any actual or alleged infringement of any Intellectual Property Rights in or in relation to Subcontract Material.

### **6.3 Security of Material**

The Subcontractor must protect, keep safe and secure all documents, notes, reports, memoranda, materials, software, disks and all other media, articles and things provided by CDI to the Subcontractor, including all Subcontract Material and CDI Material.

### **6.4 Limited Reproduction of Material**

The Subcontractor must ensure that:

- (a) CDI Material;
- (b) Subcontract Material; and
- (c) anything else recording, containing, setting out, or making reference to the Subcontract, the Works or the Work under the Subcontract,

is used, copied, supplied or reproduced only to the extent necessary for the purposes of executing the Work under the Subcontract, unless the Subcontractor has obtained the prior written approval of CDI to use it for any other purpose.

### **6.5 Return of Material**

- (a) Subject to clause 6.7(b), the Subcontractor must, within seven days after the Date of Practical Completion (or such other period directed by CDI's Representative),

provide or return (as the context permits) to CDI:

- (i) all CDI Material;
- (ii) all Subcontract Material; and
- (iii) anything recording, containing, setting out, or making reference to the Works, the Project or the Work under the Subcontract,

except as otherwise specified in a direction of CDI's Representative.

- (b) The Subcontractor may keep one set of the Material referred to in clause 6.7(a) for its records.

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## **7. Construction obligations**

### **7.1 Workmanship**

The Subcontractor must:

- (a) use good quality, new and undamaged materials for the Works which are of merchantable quality and fit for their intended purpose; and
- (b) use workmanship:
  - (i) expected from a competent contractor experienced in work of a similar size character and complexity to the Work under the Subcontract; and
  - (ii) which is fit for purpose; and
- (c) subject to the express provisions of the Subcontract, comply with relevant Australian Standards when executing the Work under the Subcontract.

The Subcontractor acknowledges that for the purpose of this clause, the purpose means the purpose of CDI as contained in the Subcontract and the purpose of the Principal as contained in the Head Contract, whether expressly or by reasonable implication in each case.

### **7.2 Qualitative non-performance**

If, at any time during the carrying out of the Work under the Subcontract or (other than in the case of clause 7.2(b)) prior to the expiration of the Defects Correction Period, CDI's Representative considers there to be a Defect, CDI's Representative may direct the Subcontractor:

- (a) to rectify the Defect, and specify the time within which this must occur, and any such rectification shall be at the Subcontractor's own cost;
- (b) to carry out a variation to the Work under the Subcontract to overcome the Defect, or any part of it, and specifying the time within which this must be carried out; or
- (c) that CDI accepts the work or any part of it, despite the Defect.

If CDI accepts defective work under clause 7.2(c) CDI's Representative shall assess the cost of rectifying the defective work so accepted and the cost of rectifying the defective work as so assessed by CDI's Representative will be deducted from the Subcontract Price.



### **7.3 Rectification of Defects**

If a direction is given under clause 7.2(a) or (b), the Subcontractor must rectify the Defect:

- (a) within the time specified in the direction; and
- (b) if after Practical Completion, at times and in a manner which cause as little inconvenience to the occupants of the Works as is reasonably possible.

### **7.4 Rectification by others**

- (a) CDI may have the rectification work referred to in clause 7.2(a) carried out by others at the Subcontractor's cost if:
  - (i) CDI's Representative has directed the Subcontractor to rectify a part of the Work under the Subcontract in accordance with clause 7.2(a); and
  - (ii) the Subcontractor has failed to rectify that work within the time specified in the direction.
- (b) All costs and expenses suffered or incurred by CDI under this clause 7.4 will be a debt due and immediately payable by the Subcontractor to CDI.

### **7.5 Cost**

Where a direction is given under:

- (a) clause 7.2(b), CDI's Representative will determine:
  - (i) the value of the variation to the Work under the Subcontract in accordance with clause 9.2; and
  - (ii) the cost of rectifying the Defect (or the relevant part);and the Subcontract Price will be adjusted by the difference between the valuations under clause 7.5(a) as follows:
  - (iii) if the value under clause 7.5(a)(i) is greater than the cost under clause 7.5(a)(ii), the Subcontract Price will be increased; or
  - (iv) if the cost under clause 7.5(a)(ii) is greater than the value under clause 7.5(a)(i), the Subcontract Price will be decreased;
- (b) clause 7.2(c) prior to the expiration of the Defects Correction Period, the amount determined by CDI's Representative which represents the cost of correcting the Defect (or the relevant part) will be a debt due and immediately payable by the Subcontractor to CDI.

### **7.6 Preservation of rights**

Neither CDI's rights, nor the Subcontractor's liability, whether under the Subcontract or otherwise according to Law in respect of Defects, whether before or after the expiration of the Defects Correction Period, will be affected or limited by:

- (a) the rights conferred upon CDI or CDI's Representative by clauses 7.1 to 7.5 or any other provision of the Subcontract;

- (b) the failure by CDI or CDI's Representative to exercise any such rights; or
- (c) any direction of CDI's Representative under clause 7.2.

## **7.7 Obligations after Practical Completion**

Without limiting clauses 7.1 to 7.6, after Practical Completion, the Subcontractor must promptly complete all outstanding items of work required to be completed to comply with this Subcontract.

## **7.8 Subcontracting**

- (a) Apart from any Approved Subcontractors, the Subcontractor may not enter into subcontracts for the vicarious performance of any part of its obligations under the Subcontract without first obtaining the prior written approval of CDI's Representative.
- (b) The Subcontractor's obligations under the Subcontract are not lessened or otherwise affected by subcontracting the performance of those obligations to Approved Subcontractors or otherwise.

## **7.9 CDI's supplied materials and equipment**

- (a) CDI must supply the materials and equipment listed in the Schedule of CDI's Supplied Materials and Equipment for use by the Subcontractor in the execution of the Work under the Subcontract.
- (b) The Subcontractor:
  - (i) must take possession of, and the risk in, the materials and equipment referred to in clause 7.9(a) in accordance with the procedures:
    - A. directed by CDI's Representative; and
    - B. to the extent (if any) set out in the Schedule of CDI's Supplied Materials and Equipment; and
  - (ii) will be responsible for any loss of or damage to the materials and equipment referred to in clause 7.9(a) and must indemnify CDI against any cost, loss, damages or liability incurred or suffered by CDI arising out of or in connection with such loss or damage.
- (c) The Subcontractor must immediately return to CDI any of the materials and equipment referred to in clause 7.9(a) which it no longer requires for execution of the Work under the Subcontract.

## **7.10 Provisional Sum Items**

- (a) The allowances shown in the Schedule of Provisional Sum Items, and which have been included in the Subcontract Price, are for Provisional Sum Items the scope of which is not fully defined at the Award Date.
- (b) CDI's Representative may, in its absolute discretion, direct the Subcontractor whether or not to carry out the Provisional Sum Items as part of the Work under the Subcontract.
- (c) If CDI's Representative gives the direction in clause 7.10(b) CDI must provide the Subcontractor with the scope of work for a Provisional Sum Item by the relevant date

indicated in the Schedule of Provisional Sum Items.

- (d) The Subcontractor must, in consultation with and subject to the directions of CDI's Representative, promptly prepare and deliver to CDI a quote for that Provisional Sum Item by the relevant date in the Schedule of Provisional Sum Items.
- (e) If CDI's Representative accepts the Subcontractor's quote for a Provisional Sum Item referred to in clause 7.10(d) by notice in writing, then:
  - (i) the Subcontractor must execute that Provisional Sum Item as part of the Work under the Subcontract; and
  - (ii) the Subcontract Price will be adjusted by the difference between the quote approved by CDI's Representative and the relevant allowance in the Schedule of Provisional Sum Items.
- (f) If CDI's Representative does not approve a quote for a Provisional Sum Item, then:
  - (i) CDI may have the Provisional Sum Item executed by a third party;
  - (ii) the Subcontract Price will be reduced by the relevant allowance in the Schedule of Provisional Sum Items; and
  - (iii) the Subcontractor will have no Claim against CDI arising out of or in connection with the Provisional Sum Item.

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## **8. Time**

### **8.1 Completion of the Works**

The Subcontractor must:

- (a) diligently execute and progress the Work under the Subcontract in an orderly manner; and
- (b) bring the Works to Substantial Completion by the Date for Substantial Completion; and
- (c) comply with CDI's Construction Programme.

### **8.2 Risk of delay and disruption and resultant increased costs**

- (a) The Subcontractor accepts the risk of all increased costs resulting from delay or disruption in the execution of the Work under the Subcontract and the performance of its other obligations under the Subcontract, and accepts that it will have no entitlement to make any Claim for any costs, losses, damages or liability incurred or suffered by the Subcontractor arising out of or in any way in connection with such delay or disruption (including for damages for breach of contract), with the exception of a Claim under clause 8.2(b).
- (b) The Subcontractor is entitled to the actual, direct and unavoidable on-Site costs it can establish to the satisfaction of CDI's Representative it has reasonably incurred as a result of a delay caused by:
  - (i) a breach by CDI of the Subcontract;

- (ii) a variation to the Work under the Subcontract directed under clause 9.1;
- (iii) the suspension of the execution of the Work under the Subcontract pursuant to a written direction given under clause 8.9(a), unless that direction was given as a result of a breach by the Subcontractor of its obligations under the Subcontract; or
- (iv) a Latent Condition;

for which the Subcontractor has been granted an extension of time to the Date for Substantial Completion under the Subcontract.

### **8.3 Extensions of time**

If the Subcontractor considers that it may be entitled to an extension of time:

- (a) the Subcontractor:
  - (i) must give written notice to CDI's Representative, as soon as practicable and in any event within three days of becoming aware of the fact of or likelihood of delay to the Date for Substantial Completion; and
  - (ii) provide with that notice details of the cause of the delay and how Substantial Completion is likely to be delayed;
- (b) the Subcontractor must give CDI's Representative, within 14 days after the cessation of the cause of the delay:
  - (i) a written claim for extension of time specifying the number of days claimed;
  - (ii) details of why the cause of the delay actually caused the delay, including a statement of the facts and the provisions of the Subcontract on which the claim is based;
  - (iii) detailed evidence in satisfaction of the requirements of clause 8.3(c); and
  - (iv) all other information reasonably required by CDI's Representative.

If the Subcontractor reasonably satisfies CDI's Representative in its claim under clause 8.3(b) that:

- (i) Substantial Completion has been or will actually be delayed:
  - A. prior to the Date for Substantial Completion, in a manner which will prevent the Subcontractor from achieving Substantial Completion by the Date for Substantial Completion, unless the Date for Substantial Completion is extended; or
  - B. after the Date for Substantial Completion, in a manner which will delay the Subcontractor in achieving Substantial Completion;
- (ii) the Subcontractor has taken all reasonable steps to preclude the

occurrence or minimise the extent and consequences of the delay;

- (iii) the cause of the delay is one of the following:
  - A. breach by CDI of the Subcontract or any other act or omission of CDI or CDI's Representative, other than an act or omission authorised by the Subcontract (other than a variation to the Work under the Subcontract referred to in clause 8.3(c)(iii)B or a suspension referred to in clause 8.3(c)(iii)D);
  - B. a variation to the Work under the Subcontract directed under clause 9.1 or 7.2(b);
  - C. a Force Majeure Event;
  - D. the suspension of the execution of the Work under the Subcontract pursuant to a written direction given under clause 8.9(a), unless that direction was given as a result of a breach by the Subcontractor of its obligations under the Subcontract;
  - E. a Latent Condition; or
  - F. a suspension of the Works pursuant to section 62 of the SOPA; and
- (iv) the cause of the delay does not arise out of or is not in any way connected with:
  - A. an act or omission of the Subcontractor or the Subcontractor Personnel; or
  - B. any other event, fact, matter or circumstance not referred to in clause 8.3(c)(iv), and
  - C. CDI's Representative has not given an Acceleration Direction under clause 8.6(b)(i)

then the Subcontractor will be entitled to an extension of time to the Date for Substantial Completion.

If the Subcontractor fails to issue CDI with a notice in accordance with clause 8.3(a) or a written claim for an extension of time in accordance with clause 8.3(b), CDI may hold the Subcontractor in breach of the Subcontract.

#### **8.4 Determination of extension of time Claims**

- (a) CDI's Representative:
  - (i) must, within a reasonable period of receiving a Claim under clause 8.3(b), give the Subcontractor written notice of the extension of time which is granted and the new Date for Substantial Completion; or
  - (ii) if within 28 days of the Subcontractor making a claim for an extension of

time to the Date for Substantial Completion no written notice pursuant to clause 8.4(a)(i) is provided by CDI's Representative, the Subcontractor's Claim will be deemed to be rejected.

- (b) CDI's Representative may, in CDI's Representative's absolute discretion, extend the Date for Substantial Completion at any time by giving notice to the Subcontractor nominating a new Date for Substantial Completion regardless of whether:
  - (i) the Subcontractor has claimed or is entitled to an extension of time under the Subcontract; or
  - (ii) CDI's Representative has previously rejected or is deemed to have rejected any Claim.
- (c) Without limiting clause 8.4(b), CDI's Representative may, pursuant to that clause, extend the Date for Substantial Completion to account for any delay caused by an act of prevention of CDI, so as to ensure that CDI's rights under clause 8.5 for late Substantial Completion are not affected.
- (d) CDI's Representative's power to extend the date for Substantial Completion under clause 8.4(b) is totally discretionary and CDI's Representative is under no obligation to exercise the discretion in favour of the Subcontractor and CDI does not waive any of its rights under this Subcontract in any exercise of its discretion under clause 8.4(b).

## **8.5 Late Substantial Completion**

If due to the fault of the Subcontractor the Subcontractor fails to bring the Works to Substantial Completion by the Date for Substantial Completion:

- (a) the Subcontractor is indebted to CDI for; and
- (b) CDI may deduct from payments due to the Subcontractor,

liquidated damages at the rate specified in the Schedule of Subcontract Information, for every day after the Date for Substantial Completion, up to and also counting the Date of Substantial Completion or the date of earlier termination of the Subcontract. If no liquidated damages are specified in the Schedule of Subcontract Information, CDI will be entitled to its actual damages.

## **8.6 Acceleration of the Works**

- (a) CDI's Representative may direct the Subcontractor to:
  - (i) accelerate the progress of any one or more activities comprising the Work under the Subcontract, or the Work under the Subcontract as a whole, so as to bring the Works to Practical Completion by the Date for Substantial Completion or a brought forward Date for Substantial Completion (which is before the then current Date for Substantial Completion); or
  - (ii) if the Subcontractor gives CDI's Representative a Claim under clause 8.3(b) to accelerate the Work under the Subcontract by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay including, if required, in order to achieve Substantial Completion by the relevant Date for Substantial Completion.

- (b) A direction given under clause 8.6(a) may be effected:
- (i) only by a written form expressly identified as an '**Acceleration Direction**' signed by CDI's Representative and forwarded to the Subcontractor;
  - (ii) in the case of a direction under clause 8.6(a)(i) requiring the Date for Substantial Completion to be brought forward, only if:
    - A. CDI's Representative has first given the Subcontractor 14 days written notice of the proposed acceleration; and
    - B. the Subcontractor has not objected in writing to the acceleration within that period of 14 days, which objection may only be made on the basis that it would not be physically possible for the Subcontractor to comply with the proposed acceleration, regardless of the resources applied by the Subcontractor; and
  - (iii) in the case of clause 8.6(a)(ii) regardless of whether or not the cause of delay for which the Subcontractor has given its Claim under clause 8.3(b) otherwise entitles the Subcontractor to an extension of time.
- (c) The Subcontractor must execute the Work under the Subcontract in accordance with all CDI's Representative's directions given in accordance with clauses 8.6(a) and 8.6(b).
- (d) If:
- (i) CDI's Representative gives an Acceleration Direction; and
  - (ii) the Subcontractor complies with the Acceleration Direction,
- then:
- subject to clauses 8.6(d)(iv) and 8.6(e), the Subcontractor will only be entitled to payment of the additional direct costs incurred as a result of complying with the Acceleration Direction if the Subcontractor's Claim for the additional direct costs clearly demonstrates:
- A. the costs that were incurred were reasonable; and
  - B. the costs which would otherwise have been incurred are substantiated by reference to the Subcontractor's estimates for the work included in its tendered price or rates; and
- (iv) subject to clause 8.6(g), the Subcontractor will not be entitled to make any Claim against CDI, arising out of, or in any way in connection with, the cause of delay (in the case of an Acceleration Direction under clause 8.6(a)(ii)) and the Acceleration Direction other than for the amount which is payable by CDI under this clause 8.6(d).
- (e) CDI's Representative and the Subcontractor's Representative must attempt to agree on a fixed amount to which the Subcontractor will be entitled on account of additional direct costs under clause 8.6(d)(iii) as a result of complying with the Acceleration Direction. If CDI's Representative and the Subcontractor's Representative fail to reach agreement as to the amount to which the Subcontractor is

entitled under clause 8.6(d)(iii) then such dispute will be resolved under clause 15 of the Subcontract.

- (f) CDI's right to compensation (whether by way of liquidated damages or otherwise) under clause 8.5 for failure by the Subcontractor to achieve Substantial Completion by the Date for Substantial Completion will be measured from the adjusted Date for Practical Completion if CDI's Representative gives the Subcontractor an Acceleration Direction in accordance with clauses 8.6(a) and 8.6(b).
- (g) If CDI's Representative gives the Subcontractor an Acceleration Direction under clause 8.6(a)(ii) and it only applies to part of the delay, the Subcontractor's entitlement to any extension of time which it otherwise would have had will only be reduced to the extent to which the Acceleration Direction requires the Subcontractor to accelerate to overcome the delay.

## **8.7 Substantial Completion**

- (a) When the Subcontractor is of the opinion that Substantial Completion has been reached, the Subcontractor shall request in writing that the CDI Representative inspect and Certify the Works.
- (b) Within seven (7) days after receiving the written request, CDI will either:
  - (i) Certify that Substantial Completion of the Works has been achieved, or
  - (ii) Give notice to the Subcontractor identifying which part of the Works remains outstanding or unsatisfactory.

The Subcontractor must remedy the items stated in CDI's notice under clause 8.7(b)(ii) within the time and in the manner prescribed. Once complete, the Subcontractor shall issue a new written request to CDI under subclause 8.7(a).

## **8.8 Force Majeure**

- (a) If a Force Majeure Event occurs and the Subcontractor is affected so that it is unable wholly or in part to carry out its obligations under the Subcontract (other than an obligation to pay money), the Subcontractor must give to CDI prompt written notice (including full particulars) of that event.
- (b) The obligations of the Subcontractor shall be suspended to the extent that they are affected by the Force Majeure Event, but only for so long as the Force Majeure Event continues.
- (c) If the Subcontractor is affected by a Force Majeure Event it must:
  - (i) use reasonable endeavours to mitigate the effect of the Force Majeure Event as quickly as practicable; and
  - (ii) inform CDI in writing (on a weekly basis) of the steps taken by it to mitigate the effect of that Force Majeure Event and the impacts of those steps.

## **8.9 Suspension**

- (a) CDI may at any time give a written direction to the Subcontractor to suspend the execution of all or any part of the Work under the Subcontract and the Subcontractor must, upon receipt of that direction, immediately suspend the execution of that part of the Work under the Subcontract.



- (b) Subject to clause 8.9(d), CDI may pay the Subcontractor compensation for the suspension of all or any part of the Work under the Subcontract subject to a direction given under clause 8.9(a), which compensation shall be limited to the Subcontractor's direct on site stand down costs and direct demobilisation costs as determined by the CDI Representative..
- (c) CDI may at any time give a written direction to the Subcontractor to resume the execution of the Work under the Subcontract which has been suspended and:
  - (i) the Subcontractor must immediately resume execution of the Work under the Subcontract which has been suspended; and
  - (ii) CDI must extend the Date for Substantial Completion by a period equal to the period of suspension.
- (d) If CDI gives a direction under clause 8.9(a) as a result of a breach by the Subcontractor of its obligations under the Subcontract, the Subcontractor is not entitled to:
  - (i) any compensation under clause 8.9(b);
  - (ii) an extension of the Date for Substantial Completion under clause 8.9(c); or
  - (iii) make any other Claim.

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## **9. Variations to the Work under the Subcontract**

### **9.1 Variations**

- (a) The Subcontractor acknowledges and agrees that:
  - (i) CDI's Representative may at any time direct the Subcontractor to vary the Work under the Subcontract;
  - (ii) the variation may include increases in or additions to, reductions in or omissions from, or variations in the character or the quality of the Work under the Subcontract; and
  - (iii) if the variation requires the omission of work, CDI may have the omitted work carried out by
  - (iv) others or not as it sees fit.
- (b) If the Subcontractor receives a direction under clause 9.1(a), it must perform its obligations under the Subcontract in accordance with the varied Work under the Subcontract.

### **9.2 Valuation**

If the parties are unable to agree to an adjustment of the Subcontract Price within seven days of the date of a direction given under clause 9.1(a) or clause 7.2(b), CDI's Representative must:

- (a) determine such adjustment on the cost of the work and materials to be added, reduced or omitted as a result of the variation to the Work under the Subcontract; and
- (b) value the cost of the work and materials referred to in clause 9.2(a) on the basis of:
  - (i) if the Schedule of Prices prescribes rates and prices to be applied in determining the value, those rates and prices; or
  - (ii) if clause 9.2(b)(i) does not apply, reasonable rates and prices.

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## **10. Payment**

### **10.1 CDI's payment obligations**

Subject to clause 10.12 and any other right to set off which CDI may have, CDI must pay the Subcontractor the Subcontract Price in accordance with the Subcontract.

### **10.2 Form of Payment**

CDI will make payment to the Subcontractor by EFT to the Subcontractor's nominated account as specified in the Schedule of Subcontract Information.

### **10.3 Progress Claims**

If CDI is to pay the Subcontractor:

- (a) one amount (**contract sum**) for the performance by the Subcontractor of all of its Work under the Subcontract, the Subcontractor may claim the proportion of the contract sum that is equal to the proportion that the work performed (since the previous progress claim) bears to the total Work under the Subcontract to be performed by the Subcontractor; and
- (b) in accordance with rates or amounts specified in the Subcontract, the Subcontractor may claim the value of the Work under the Subcontract performed, calculated by reference to those rates or amounts.

### **10.4 Time for and format of Progress Claims**

Unless otherwise agreed and subject to clause 10.9, the Subcontractor must give CDI's Representative monthly claims for payment on account of the Subcontract Price and any other amounts payable by CDI to the Subcontractor under the Subcontract ("**Progress Claim**"):

- (a) on the day of each month specified in the Schedule of Subcontract Information and the time required by clause 10.10 where relevant; and
- (b) in the format approved in writing by CDI's Representative, which must as a minimum:
  - (i) set out the amount of the Subcontract Price and the other amounts that the Subcontractor asserts are payable to the Subcontractor in accordance with the Subcontract;
  - (ii) detail the relevant period of the Work under the Subcontract for the Progress Claim;

- (iii) describe in detail the part of the Work under the Subcontract performed during the relevant period for the Progress Claim;
- (iv) set out amounts paid previously under the Subcontract;
- (v) refer to the Subcontract number in the Schedule of Subcontract Information;
- (vi) provide an individual Progress Claim Number for CDI to quote with remittance of payment; and
- (vii) include any other information directed by CDI's Representative.

Notwithstanding anything in this clause, the Subcontractor must not, and is not entitled to, submit a Progress Claim more than 6 months after the Work to which the Progress Claim relates was last carried out.

## **10.5 Subcontractor warranty**

By making a Progress Claim, the Subcontractor warrants to CDI that:

- (a) the Subcontractor has completed the work which is the subject of the Progress Claim;
- (b) there are no Defects in the work which is the subject of the Progress Claim;
- (c) any remuneration and other amounts payable by the Subcontractor to any of its Subcontract Personnel by Law or under an industrial instrument in respect of the Work under the Subcontract have been paid;
- (d) the Approved Subcontractors have been paid all amounts due and payable to them for work performed or material supplied by them in respect of the work which was the subject of the Progress Claim; and
- (e) the Subcontractor has complied with all of the obligations imposed on the Subcontractor by any subcontract in relation to the Work under the Subcontract.

## **10.6 Incomplete Progress Claims**

- (a) If any Progress Claim (including any Progress Claim submitted under clause 10.6(b)) does not contain the information required under clause 10.4(b), CDI's Representative may:
  - (i) complete the missing details and assess the Progress Claim in accordance with clause 10.7; or
  - (ii) return the incomplete Progress Claim to the Subcontractor and notify the Subcontractor that clause 10.6(b) applies.
- (b) Where CDI's Representative returns an incomplete Progress Claim to the Subcontractor, the Subcontractor must submit a Progress Claim that complies with clause 10.4(b) within the time notified by CDI's Representative or, where no time is notified, within 48 hours.

## 10.7 Response to Progress Claim

- (a) Within 15 Business Days after the date of a Progress Claim made under clause 10.4, CDI's Representative shall give the Subcontractor on behalf of CDI a written payment schedule ("**Payment Schedule**") which states the amount payable to the Subcontractor by CDI, taking into account any amounts that CDI is entitled to retain, deduct, withhold or set-off, or by the Subcontractor to CDI.
- (b) CDI's Representative may when issuing a further Payment Schedule correct any error discovered in any previous Payment Schedule or modify any previous Payment Schedule issued by it.
- (c) If the Subcontractor fails to make a Progress Claim in accordance with the Subcontract, CDI's Representative may nevertheless issue a Payment Schedule under clause 10.7(a).
- (d) The Payment Schedule shall also include any reasons (including under this Subcontract or otherwise) for any part of an amount claimed by the Subcontractor in a Progress Claim that CDI has determined to not be payable.
- (e) If within the time prescribed in clause 10.7(a) a Payment Schedule is not given, then the Progress Claim will be deemed to be rejected.
- (f) Failure by CDI's Representative to set out in a Payment Schedule an amount which CDI is entitled to retain, deduct, withhold or set off from the amount which would otherwise be payable to the Subcontractor by CDI will not prejudice CDI's right to exercise its right to retain, deduct, withhold or set off any amount under the Subcontract.
- (g) The parties agree that in accordance with its ERS System CDI shall issue a recipient created tax invoice ("Recipient Created Tax Invoice"), as that term is used in the GST Legislation, on behalf of the Subcontractor in relation to the Works together with each Payment Schedule and that the Subcontractor will not issue a Tax Invoice in relation to the Works.

## 10.8 Payment

- (a) Subject to clauses 10.9, 10.13, 11.2 and 11.4, within 25 Business Days after the date of a Progress Claim is issued, whether or not the Payment Schedule is issued within the time prescribed in clause 10.7, CDI must pay to the Subcontractor or the Subcontractor must pay to CDI, as the case may be, the amount shown in the Payment Schedule as due to the Subcontractor or to CDI as the case may be.
- (b) A payment made pursuant to the Subcontract:
  - (i) is on account only and will not prejudice the right of either party to dispute whether the paid amount is the amount properly due and payable;
  - (ii) will not be evidence of the value of the Work under the Subcontract;

- (iii) will not be evidence that the Work under the Subcontract has been executed satisfactorily; and
  - (iv) will not be an admission of liability on the part of CDI.
- (c) If CDI's Representative fails to issue a Payment Schedule within the time required under clause 10.7(a) then the full amount of the Progress Claim will be deemed to be disputed and no payment will therefore be required to be made by CDI.

## 10.9 Entitlement to payment

If, at the time that the Subcontractor submits a Progress Claim under clause 10.3, the Subcontractor has not:

- (a) effected the insurance required by clause 13 and not (if requested) provided evidence of this to CDI's Representative;
- (b) finalised and received approval for any plans, JSEA or SWMS required pursuant to clause 3;
- (c) where clause 10.14 applies, complied with the requirements of clause 10.14 in respect of unfixured goods or materials; and
- (d) complied with all directions given or purportedly given by CDI's Representative under a provision of the Subcontract,

then:

- (e) the Subcontractor will be in breach of the Subcontract, which may affect its entitlement to payment; and
- (f) CDI's Representative may be entitled to adjust a future Payment Schedule in respect of any such breach.

## 10.10 Final Progress Claim

- (a) Within 28 days after the expiry of the last Defects Correction Period, the Subcontractor must deliver to CDI's Representative a final progress claim under clause 10.3 titled '**Final Progress Claim**'.
- (b) The Subcontractor must include in the Final Progress Claim:
  - (i) a complete statement of accounts, including any variations to the Subcontract or the Work under the Subcontract;
  - (ii) all money that the Subcontractor considers to be due from CDI arising out of or in connection with the Work under the Subcontract, the Subcontract or any alleged breach of Subcontract;
  - (iii) confirmation that all Drawings, Documentation, approvals of all Authorities and deliverables as required by the Subcontract have been lodged with CDI's Representative; and

- (iv) a certificate stating that all wages and other charges have been paid and that no monies are due or owing by the Subcontractor to any Subcontract Personnel other than any Subcontract Personnel disclosed in the certificate.
- (c) The Subcontractor must provide with the Final Progress Claim details of how the amount claimed ('**Amount Claimed**') is calculated including:
  - (i) separate identification of each Claim and the amount of each Claim which is part of the Amount Claimed;
  - (ii) which clause, if any, of the Subcontract the Subcontractor relies upon to support an entitlement to each Claim;
  - (iii) if based on breach of Subcontract, what obligation, if any, CDI has breached and which the Subcontractor relies upon to support an entitlement to each Claim; and
  - (iv) a description of the other acts, defaults and omissions that the Subcontractor relies upon to support any entitlement to a Claim.

After expiration of the 28 day period in clause 10.10(a), any Claim is barred which the Subcontractor could have made against CDI but which has not been made.

### **10.11 Interest on overdue payments**

- (a) If any money due to either party remains unpaid after the date on which the money should have been paid, then the party responsible for the payment must, following a written request by the other party for payment of interest, pay to the other party simple interest on the unpaid amount at the rate of 6% per annum from the date on which the amount is due until payment.
- (b) This will be the Subcontractor's sole entitlement to interest including damages for loss or use of, or the cost of borrowing, money.

### **10.12 Set off**

CDI may set off or deduct from any payments due to the Subcontractor any debt or other moneys due from the Subcontractor to CDI (including any related CDI entity) or any Claim to money which CDI makes against the Subcontractor, whether for damages (including liquidated damages) or otherwise, whether under the Subcontract or on any other account whatsoever.

### **10.13 CDI's payment of subcontractors**

- (a) If the Subcontractor owes any subcontractor of the Subcontractor money in connection with the Work under the Subcontract, and
  - (i) that money has been outstanding under the relevant subcontract for more than 14 days; and

- (ii) the Subcontractor cannot satisfy CDI's Representative that there is a valid reason for that outstanding money not having been paid,

CDI may pay the subcontractor the outstanding amount, and the outstanding amount so paid will be a debt due and immediately payable from the Subcontractor to CDI.

- (b) No debt by CDI will be taken to have accrued in favour of the Subcontractor in respect of any payment by CDI of an outstanding amount in accordance with clause 10.13(a).
- (c) CDI is entitled to withhold from any payment which would otherwise be due to the Subcontractor under the Subcontract any amount owing to a subcontractor by the Subcontractor under clause 10.13(a).

## **10.14 Unfixed goods and materials**

- (a) Notwithstanding any other provision of the Subcontract, the Subcontractor must not include any amount on account of unfixed goods or materials in a Progress Claim or any other Claim unless a Special Condition expressly provides an entitlement to this and:
  - (i) CDI's Representative is satisfied the unfixed goods and materials have not been prematurely ordered and were necessary to enable the Subcontractor to comply with its obligations under the Subcontract at the time that the Subcontractor took delivery of the unfixed goods or materials;
  - (ii) the Subcontractor gives CDI's Representative with its Progress Claim:
    - A. an additional unconditional undertaking equal to the payment claimed for the unfixed goods and materials; and
    - B. any evidence as may be required by CDI's Representative that title to the unfixed goods and materials will vest in CDI upon payment;
  - (iii) the unfixed goods and materials are clearly marked as the property of CDI and are on the Site or available for immediate delivery to the Site; and
  - (iv) the unfixed goods and materials are properly stored in a place approved in writing by CDI's Representative.
- (b) Upon payment to the Subcontractor of a Payment Statement that includes unfixed goods and materials, title in the unfixed goods and materials will immediately vest in CDI.
- (c) If the Subcontractor has given an additional unconditional undertaking for payment for unfixed goods and materials, CDI must release it to the Subcontractor once those goods and materials are incorporated into the Works.

## **10.15 GST**

- (a) Each party acknowledges that it is registered for GST and agrees that it will immediately notify the other party if it ceases to be so registered.
- (b) As soon as a party receives notice or becomes aware the other party is not registered for GST or has otherwise failed to satisfy the requirements of any applicable tax

ruling on Recipient Created Tax Invoices, the GST registered party may withhold any payment due to the other party under the Subcontract until the other party becomes GST registered or complies with the requirements of any applicable tax ruling on Recipient Created Tax Invoices (as the case may be).

- (c) Subject to clause 10.15(d), where any supply occurs under or in connection with the Subcontract or the Works the consideration for which is not expressed to be GST-inclusive, the party making the supply ('**Supplier**') will be entitled to increase the amount payable for the supply by the amount of any applicable GST.
- (d) If, under the Subcontract, the amount of a payment to, or reimbursement of, the Subcontractor by CDI is calculated by reference to the Subcontractor's costs, and the Subcontractor (or the representative member of any GST group of which the Subcontractor is a member) is entitled to claim an input tax credit in respect of some or all of those costs, the amount is to be calculated by reference to the costs reduced by the amount of that entitlement. If the recovery from CDI is consideration for a taxable supply (as defined in the GST Legislation), CDI will pay, in addition to that consideration, any GST arising in respect of that consideration.
- (e) As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a Tax Invoice to the recipient in respect of that supply.
- (f) If the amount paid by the recipient to the Supplier in respect of GST (whether because of an Adjustment or otherwise):
  - (i) is more than the GST on the taxable supply, then the Supplier shall refund the excess to the Recipient; or
  - (ii) is less than the GST on the taxable supply, then the recipient shall pay the deficiency to the Supplier.
- (g) For the purposes of this clause, '**GST group**', '**input tax credits**', '**recipient**', '**representative member**', '**supply**' and '**taxable supply**' have the meanings given to them in the GST Legislation.

## 10.16 Taxes

- (a) The Subcontractor is and remains liable for payment of any Taxes. If any Tax is imposed, the Subcontractor must pay the full amount to the relevant authority and indemnifies CDI against any failure to do so. If any exemptions, reductions, allowances, rebates or other privileges in relation to Taxes may be available to the Subcontractor or CDI, the Subcontractor shall adjust any payments due to reflect any such savings or refunds (including interest awarded) to the maximum allowable extent.
- (b) It is agreed that the Subcontract Price is based on the Taxes prevailing at the date of the Subcontract. Excluding Taxes imposed on the income of the Subcontractor, if any rate of Tax is increased or decreased or a new Tax is introduced or an existing Tax is abolished or any change in interpretation or application of any Tax occurs in the course of performance of the Subcontract, an adjustment will be made to the Subcontract Price to reflect any such change regardless of whether this results in the Subcontract Price increasing or decreasing.



- (c) CDI may deduct from the whole or part of payments due to the Subcontractor any Taxes which CDI is required to withhold or deduct by any Taxing Authority.

## **10.17 Rise and Fall**

- (a) The Subcontractor acknowledges and agrees that the Contract Sum (as varied in accordance with this Agreement) is the Subcontractor's sole entitlement to payment in respect of the Works, and is not subject to adjustment for rise and fall of costs, including any changes in the costs of labour, plant, equipment, materials, taxation, excises, duties, fees or charges.
- (b) The Subcontractor acknowledges and agrees that:
  - i. the Contract Sum is not conditional upon the Subcontractor having exclusive possession or control of the site, or that portion of the site on which the Works will be performed;
  - ii. the Contractor and its employees, agents and other subcontractors will be entitled at all times to use and occupy any part of the site during performance by the Subcontractor of the Works; and
  - iii. the Subcontractor is required to use its best endeavours to ensure that it does not cause any damage to, or interference with, the property or work of those parties.
- (c) The Subcontractor warrants that it has made due allowance in the Contract Sum for all costs necessary to:
  - i. progress and complete the Works:
    - A. in accordance with the times and by the latest date(s) prescribed by the Contractor in the construction programme and fortnightly work schedules (commonly known as "*Look Aheads*"), as updated from time to time; or
    - B. otherwise at the times and by the latest date(s) expressly and reasonably directed to the Subcontractor by the Contractor;
  - ii. carry out the Works in accordance with each of the drawings, specifications and other documents made available to the Subcontractor prior to entering into this Agreement; and
  - iii. liaise with and co-ordinate the performance of the Works with such other parties as will be on site at the same time as the Subcontractor.

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## **11. Security**

### **11.1 Delivery of Unconditional Banker's Undertakings**

If the Schedule of Subcontract Information specifies that the Subcontractor is to provide security in respect of the performance of its obligations under the Subcontract by way of Unconditional Banker's Undertakings, then the Subcontractor must, within 7 days of the Award Date, provide two Unconditional Banker's Undertakings in the form of the Unconditional Banker's Undertaking in Schedule 1 in the amounts specified in the Schedule of Contract Information.

### **11.2 Retention Moneys**

If the Schedule of Contract Information specifies that the Subcontractor is to provide security by way of retention moneys, then:

- (a) CDI will be entitled to deduct from the amount payable to the Subcontractor pursuant to any Payment Statement a portion of that amount equal to the percentage specified in the Schedule of Contract Information by way of retention moneys until the limit (being an amount or maximum percentage of the Subcontract Price as specified in the Schedule of Contract Information) is reached.
- (b) CDI shall pay any retention moneys received into a trust account with a Bank, which must be established by CDI within 10 Business Days of the Award Date. The trust account shall be a deposit or transaction account of the Bank and the name and description of the account shall include the words 'trust account' and CDI's records shall reflect the same.
- (c) CDI is entitled to use a previously established trust account for the purposes of complying with this clause.
- (d) As soon as practicable after the trust account has been established or nominated, CDI shall inform the Subcontractor in writing of the following particulars of the trust account (and notify the Subcontractor in writing if any of these particulars change):
  - (i) the name of the Bank with which the trust account has been established;
  - (ii) the name of the trust account; and
  - (iii) the BSB and account number for the trust account.
- (e) Any retention moneys provided by the Subcontractor shall be held on trust by CDI until it is used, disbursed, or returned in accordance with clause 11.4.
- (f) CDI may close the trust account:
  - (i) after the retention moneys are no longer retained under this Subcontract; or
  - (ii) the retention moneys are transferred to another trust account established for the same purposes.

CDI shall give the Subcontract written notice of any closure of the trust account as soon as practicable after the closure.

### **11.3 Recourse to Security**

- (a) CDI agrees to provide the Subcontractor with not less than 5 Business Day's prior written notice before CDI makes a demand on any security (whether it be retention moneys or an Unconditional Banker's Undertaking) under this Subcontract, which notice must:
  - (i) be given in writing;
  - (ii) identify the Subcontract and the provisions of the Subcontract that CDI relies on to have recourse to the security; and
  - (iii) describe the circumstances that entitle CDI to have recourse to the security.

### **11.4 Return of Security**

- (a) Subject to clauses 11.4(b) and 11.4(c), CDI must return 50% of the Unconditional Banker's Undertakings or the retention moneys, as the case may be, to the Subcontractor within thirty (30) days of the issue of the Certificate of Practical Completion to the Head Contractor, and the balance of the Unconditional Banker's Undertaking or retention moneys within thirty (30) days of the expiration of the last of the Defects Correction Periods.
- (b) If at the time for the return of the Unconditional Banker's Undertaking or retention moneys under clause 11.4(a) CDI has a bona fide Claim against the Subcontractor, CDI may retain the Unconditional Banker's Undertaking or retention moneys as the case may be.
- (c) If the Subcontract is terminated by CDI for any reason, CDI will be entitled to retain the Unconditional Banker's Undertakings or retention moneys until all matters in dispute between CDI and the Subcontractor are resolved by agreement or binding determination, decision or award. This clause 11.4 shall survive the termination of the Subcontract.
- (d) The proceeds of the exercise or presentation of security by CDI in respect of the Subcontractor's performance of its obligations under the Subcontract shall not be held in trust and may be used or disbursed by CDI at its discretion.

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## **12. Indemnities**

### **12.1 Indemnity by Subcontractor**

Insofar as this clause applies to property, it applies to property other than Work under the Subcontract.

The Subcontractor shall indemnify the Indemnified Parties against:

- (a) loss of or damage to any property of the Indemnified Parties;

- (b) claims in respect of personal injury or death, or loss of, or damage to, any other property,

arising out of or as a consequence of the carrying out of Work under the Subcontract, but the indemnity shall be reduced proportionally to the extent that the act or omission of one or more of the Indemnified Parties has contributed to the injury, death, loss or damage.

The Subcontractor will indemnify and keep indemnified the Indemnified Parties against all liabilities arising from any breach of the Subcontract by the Subcontractor which may result in CDI committing a breach of, and/or being liable under the Head Contract and/or any other contracts to which CDI is a party in relation to these Works.

This clause shall not apply to:

- (a) the extent that the Subcontractor's liability is limited by another provision of the Subcontract;
- (b) exclude any right of the Indemnified Parties to be indemnified by the Subcontractor;
- (c) things for the care of which the Subcontractor is responsible under clause 13.1; and
- (d) claims in respect of the right of CDI to have Work under the Subcontract carried out.

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## **13. Risk of loss or damage and insurance**

### **13.1 Care of Work under the Subcontract**

Except as provided in clause 13.3, the Subcontractor shall be responsible for the care of:

- (a) the whole of Work under the Subcontract from and including the date of commencement of Work under the Subcontract to 4:00pm on the Date of Practical Completion, at which time the responsibility for the care of the Works (except to the extent provided in clause 13.1(b)) shall pass to CDI; and
- (b) outstanding work and items to be removed from the Site by the Subcontractor after 4:00pm on the Date of Practical Completion until completion of any outstanding work including remedying any Defects.

### **13.2 Reinstatement**

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

### **13.3 Not Used**

### **13.4 Insurance policies**

The Subcontractor must at its own expense procure and maintain the following insurances with reputable insurers and on policy forms reasonably acceptable to CDI:

- (a) workers' compensation (including occupational disease where required by Law) and employer's indemnity insurance which complies with the relevant Laws covering all claims and liabilities under any statute and at common law (where applicable) for the death of or injury to:
  - (i) any person employed by the Subcontractor or any of its subcontractors in connection with the Subcontract; and
  - (ii) any person who is a worker of the Subcontractor or any of its subcontractors in connection with the Subcontract and who may be deemed under statute to be a worker of CDI;
- (b) motor vehicle insurance covering all mechanically propelled vehicles that are registered, or capable of being registered, for road use and are at any time used in connection with the Subcontract, including:
  - (i) insurance that is compulsory under applicable laws governing the use of motor vehicles and liability for personal injury or death; and
  - (ii) liability insurance for third party property damage with a sum insured of as much as would be required by a prudent risk manager in connection with the activities of the Subcontractor pursuant to the Subcontract, but in all events not less than the sums stipulated in the Schedule of Insurance Information in respect of a single occurrence and in the aggregate for all occurrences during the period of insurance;
- (c) general public and products liability insurance covering liability to any person for death, bodily injury, loss of or damage to property and consequential loss with a sum insured of as much as would be required by a prudent risk manager in connection with the activities of the Subcontractor pursuant to the Subcontract, but all in all events not less than the sums stipulated in the Schedule of Insurance Information in respect of a single occurrence and in the aggregate for all occurrences during the period of insurance;
- (d) where the Subcontractor is performing design or design and supervision obligations under the Subcontract, professional indemnity insurance covering those obligations, with a sum insured of as much as would be required by a prudent risk manager in connection with the activities of the Subcontractor pursuant to the Subcontract, but in all events not less than the sums stipulated in the Schedule of Insurance Information in respect of a single occurrence and in the aggregate for all occurrences during the period of insurance; and
- (e) construction risks insurance covering (for full replacement value) all Works and any part thereof (including Goods supplied by CDI) to the extent it involves the fabrication, manufacture, construction, erection, alteration or repairing of any plant or equipment that will subsequently be permanently incorporated into the Works. This insurance must allow for demolition, removal of debris, professional fees and extra cost of working/reinstatement.

## 13.5 Endorsements

The Subcontractor must ensure that, except for any contract of professional indemnity

insurance, where prohibited by Law or to the extent that the Indemnified Parties do not have a relevant insurable interest, each contract of insurance referred to in clause 13.4 is endorsed:

- (a) to name the Indemnified Parties, other than contractors who are not related entities (as defined in section 9 of the *Corporations Act 2001* (Cth)) of CDI, as persons to whom the benefit of the contract of insurance extends, only to the extent of their respective interests and liabilities arising out of or in connection with the Subcontract;
- (b) where reasonably possible, with a waiver of subrogation clause in which the insurer agrees not to be subrogated to the rights of any insured or person to whom the benefit of the contract of insurance extends, against any other party so named;
- (c) with a cross-liabilities clause in which the insurer agrees that the policy applies as if a separate policy was issued to each named insured (with the exception of limits of liability); and
- (d) where reasonably possible, with a severability and non-imputation stipulation, so that a breach of any term of the policy or of the duty of disclosure by one insured will not disentitle other named insureds or noted interest beneficiaries to coverage.

### **13.6 CDI's insurance to be excess**

The Subcontractor must do all things reasonable and necessary to enable CDI to ensure that its own insurances operate in excess of any insurance taken out by the Subcontractor, in accordance with clause 13.4, and are not called into contribution with it.

### **13.7 Subcontractors**

The Subcontractor must ensure that its subcontractors procure and maintain the contracts of insurance mentioned in clause 13.4 and that those contracts of insurance are endorsed in accordance with clause 13.5.

### **13.8 Insurances and liability**

To avoid any doubt, no provision in this clause 13 shall limit the Subcontractor's liability under clause 12.

### **13.9 Currency of insurance**

- (a) The Subcontractor shall, at the commencement of the Subcontract and otherwise when requested by CDI to do so from time to time, promptly satisfy CDI that each contract of insurance it is required to procure under this clause 13 is current.
- (b) Notwithstanding anything to the contrary in the Subcontract, CDI:
  - (i) has the right to refuse the Subcontractor (and any Subcontract Personnel) entry to CDI's premises; and
  - (ii) is not obliged to pay, and may withhold payment of (without any interest accruing), any amount owed by it to the Subcontractor

under the Subcontract,

unless and until the Subcontractor has at the Award Date (or promptly thereafter) satisfied CDI pursuant to this clause that the required insurance is in place and current.

### **13.10 Failure to procure or maintain insurance**

If the Subcontractor fails to procure and maintain insurance policies in accordance with the Subcontract CDI may, but is not obliged to:

- (a) procure and maintain any such insurance and deduct the cost of doing so from any payments to be made to the Subcontractor by CDI (under the Subcontract or any other contract); or
- (b) refuse to make any further payments due from time to time to the Subcontractor (under the Subcontract or any other contract) until the insurance policies and receipt for the payment of premiums are made available for inspection by CDI.

### **13.11 General obligations in relation to insurance**

- (a) Whenever a claim is made under any of the policies of insurance referred to in clause 13.4, the Subcontractor is liable for any excess or deductible payable as a consequence.
- (b) Whenever a claim is made under any construction risks insurance policy maintained by CDI, the Subcontractor is liable for any excess or deductible payable as a consequence to the extent that the Subcontractor is responsible for the act or failure to act which gave rise to that claim.
- (c) The Subcontractor must inform CDI's Representative in writing immediately it becomes aware of any actual, threatened or likely claims under any of the insurances referred to in clause 13.4.
- (d) The Subcontractor must not do or omit to do, or permit or suffer to be done any act or omission whereby any of the insurances referred to in clause 13.4 may be vitiated, rendered void or voidable, or whereby the rate of premium of any of the insurances is liable to be increased.
- (e) The parties expressly agree and acknowledge that the requirements of this clause 13 are fundamental requirements of the Subcontract.

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## **14. Default and termination**

### **14.1 CDI's remedy notice**

- (a) If CDI considers that the Subcontractor is in breach of any term or warranty under the Subcontract, CDI may give the Subcontractor a notice:
  - (i) specifying the alleged breach; and
  - (ii) specifying the time and date by which the Subcontractor must rectify the breach.

- (b) The Subcontractor must comply with the notice issued under clause 14.1(a).

## **14.2 Termination following breach**

If the Subcontractor fails to comply with a notice given under clause 14.1(a), CDI may terminate the Subcontract, with immediate effect, by written notice to the Subcontractor.

## **14.3 Termination for insolvency**

- (a) If the Subcontractor informs CDI, creditors of the Subcontractor generally, or CDI otherwise becomes aware, that the Subcontractor has appointed External Administrators or unable to pay its debts as and when they fall due;  
or
- (b) If the Subcontractor has execution levied against it,

CDI may terminate the Subcontract, with immediate effect, by written notice to the Subcontractor.

## **14.4 Termination for convenience**

- (a) Notwithstanding any other provision of the Subcontract:
  - (i) CDI may at its sole discretion and for any reason terminate the Subcontract immediately upon giving written notice to the Subcontractor or at a future date specified in the notice; and
  - (ii) the Subcontractor must cease the execution of the Work under the Subcontract immediately upon receiving that notice or upon any later date specified in that notice.
- (b) The Subcontractor is not entitled to make any Claim in relation to the period after the date specified in the notice issued under clause 14.4(a).

## **14.5 Consequences of Termination**

In the event of termination of the Subcontract by CDI for any reason:

- (a) CDI is not liable to pay any damages, compensation or reimbursement for any work performed or expense incurred by the Subcontractor after notice of termination is given pursuant to clauses 14.2, 14.3 and 14.4 nor any cost, charge or expense, or loss of profit or other economic loss of any kind arising from or consequential upon such termination; and
- (b) the Subcontractor will waive any claim for loss or damages including loss of anticipated profits on account of termination.

## **14.6 Preservation of other rights**

If the Subcontractor is in breach of a term or warranty of the Subcontract nothing in this clause 14 shall prejudice the right of CDI to recover damages or exercise any other right it may have under the Subcontract or at Law or in equity.



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## **15. Dispute resolution**

### **15.1 Negotiation**

- (a) The Subcontractor acknowledges and agrees that all of the time bars in this Agreement are essential provisions of this Agreement, and necessary to ensure that the Contractor does not incur liability or loss under the Head Contract.
- (b) If any difference, dispute or question (a “dispute”) arises between the Contractor and the Subcontractor in respect of or in connection with this Agreement, then a party shall give notice to the other party in writing (“Notice”) adequately identifying and providing details of the dispute.
- (c) The Contractor and the Subcontractor will then meet within fourteen (14) days, or such other time as may be mutually agreed by the parties, after receipt of the Notice with a view to resolving the dispute. At any such meeting, each party shall be represented by a person having authority to agree to a resolution of the dispute.
- (d) If that meeting does not result in a resolution of the dispute, the Contractor and the Subcontractor shall within a further fourteen (14) days appoint an independent mediator to attend another meeting of the parties to facilitate a resolution to the dispute. If the parties cannot agree upon a mediator within fourteen (14) days, either party may request the President, for the time being of the Master Builders Association of Western Australia, to nominate a suitable person to act as mediator at the meeting. Save for any claim of conflict, the parties agree to be bound by the President’s nomination. In either case, the costs of the mediator shall be borne and paid equally by the parties.
- (e) If mediation under the previous clause does not result in a resolution of the dispute, either party shall then be able to commence legal proceedings in any Court of appropriate jurisdiction. It shall be a condition precedent to the commencement of legal proceedings that the steps in clauses 15.1(b) to 15.1(d) are strictly adhered to by the party seeking to litigate a matter.
- (f) Nothing in this clause operates to prevent either party to a dispute seeking urgent injunctive or declaratory relief in a court of competent jurisdiction.
- (g) For the avoidance of doubt, the existence or prospect of a dispute (whether under this clause 15 or otherwise) over any matter in respect of, or in connection with, this Agreement, does not relieve the Subcontractor of its obligation to perform the Works, including as varied.

### **15.2 Dispute resolution not to delay performance**

Notwithstanding the existence of a dispute between the parties and subject to section 62 of the SOPA:

- (a) the Subcontractor must proceed without delay to continue to execute the Work

under the Subcontract; and

- (b) both parties must perform their other obligations under the Subcontract.

### **15.3 Impact of Security of Payments Act**

- (a) An application under Part 3 of the SOPA will not be considered a notice of dispute under clause 15.1(b);
- (b) If a notice of dispute is given under clause 15.1(b) and the dispute is, or subsequently becomes the subject of an application under Part 3 of the SOPA, the operation of this clause 15 will be stayed in relation to that dispute until such time as the application is dismissed or determined under the SOPA; and
- (c) If a determination is made pursuant to Part 3 of the SOPA, or the application is dismissed, this clause 15 will have no application in relation to the dispute the subject of that determination or dismissal and either party may commence litigation relating to the dispute.

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## **16. Confidentiality**

- (a) The Subcontractor must not, and must ensure that the Subcontract Personnel do not, without the prior written approval of CDI:
  - (i) use confidential information obtained from, or on behalf of, or in relation to CDI, other than as necessary for the performance of the Work under the Subcontract; or
  - (ii) disclose such confidential information.
- (b) The Subcontractor must, within seven days of a written direction by CDI's Representative to do so, return or destroy all confidential information in the Subcontractor's possession, custody or control.

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## **17. Notification of Claims**

### **17.1 Notices of Claims**

If the Subcontractor wishes to make a Claim against CDI, other than a Claim for an extension of time under clause 8.3 or a Progress Claim under clause 10.3, in respect of any fact, matter or thing arising out of or in connection with the Work under the Subcontract or the Subcontract, it must give CDI's Representative the following two notices:

- (a) within seven days of the occurrence of the events on which the Claim is based, written notice:
  - (i) that it proposed to make the Claim; and
  - (ii) of the events upon which the Claim will be based; and
- (b) within 28 days of giving the notice under paragraph (a), written notice setting out:

- (i) detailed particulars of the events on which the Claim is based;
- (ii) the legal basis for the Claim;
- (iii) the facts relied upon in support of the Claim; and
- (iv) details of the quantification of the amount claimed.

## **17.2 Continuing events**

If the events upon which the Claim under clause 17.1 is based or the consequences of the events are continuing, the Subcontractor must, until the events or the consequences of those events have ceased, continue to give the detailed particulars required under clause 17.1(b) every 28 days after the first detailed particulars are required.

## **17.3 Failure to comply with Notice provisions**

To the extent permissible at law, CDI will not be liable upon any Claim by the Subcontractor in respect of any fact, matter or thing arising out of or in connection with the Work under the Subcontract, whether under the Subcontract or (insofar as is permitted by Law) any other principle of Law, unless the Subcontractor has complied with clauses 17.1 and 17.2 and shall, in any event, be entitled to claim any damages arising from the Subcontractor as a result of their failure to comply with this clause 17.

## **17.4 Other provisions unaffected**

Nothing in clauses 17.1 to 17.3 will limit the operation or effect of any other provision of the Subcontract which requires the Subcontractor to give notice to CDI's Representative in order to preserve an entitlement to make a Claim against CDI.

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## **18. Dayworks**

- (a) If the Contractor directs the Subcontractor in writing to perform dayworks by notice in writing prior to commencement of the dayworks, and which notice must specifically identify this clause 18, the Subcontractor shall be entitled to claim for the approved dayworks at the rate(s) per hour specified in the Schedule.
- (b) For the avoidance of doubt, the Subcontractor shall only be entitled to payment for dayworks directed and performed in accordance with the preceding subclause 18(a).

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## **19. Trustee Provisions**

- (a) If the Subcontractor is named in this Agreement as a trustee, it represents and warrants in favour of the Contractor that:
  - (i) it has power under the relevant trust deed to enter into and perform its obligations under this Agreement;
  - (ii) the trust was validly created and is in existence;
  - (iii) the Subcontractor is validly appointed as the sole trustee of the trust;
  - (iv) it has unrestricted right of indemnity out of the trust's assets;
  - (v) no part of the trust's assets have been re-settled or set aside;

- (vi) there has been no capital distribution from, and no beneficiary has been allowed to use or occupy, the trust's assets;
  - (vii) it has not blended or mixed the trust's assets; and
  - (viii) it is not in default of any provision of the relevant trust deed.
- (b) The Subcontractor must not do any of the following:
- (i) default under the relevant trust deed;
  - (ii) allow its right of indemnity or subrogation to be restricted and must on demand from the Contractor exercise its rights of indemnity and subrogation against the trust's assets.
  - (iii) otherwise than in the ordinary course of business:
    - A. allow the compromise of any Claim relating to the trust's assets;
    - B. part with possession of any of the trust's assets;
  - (iv) allow any capital distribution under the trust, exercise any power of determination, revocation, appropriation or advancement, or permit any settlement, setting aside, abandonment or transfer to other trusts of funds of the trust except the distribution of trust income in terms of the relevant trust deed or so as not to infringe the law against perpetuities or relating to accumulation;
  - (v) retire as trustee of the trust, permit the appointment of another trustee or allow the trust deed to be varied;
  - (vi) blend or mix the trust's assets.
- (c) The Subcontractor acknowledges and agrees that this Agreement will bind it both personally and in its capacity as trustee.

## **20. General**

### **20.1 Law of the Subcontract**

- (a) The Law of the Subcontract is the Law in force in the State nominated in the Schedule of Subcontract Information.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of the State nominated in the Schedule of Subcontract Information and all courts authorised to hear appeals from those courts.

### **20.2 Nature of the relationship**

- (a) Nothing in the Subcontract constitutes a joint venture, agency, partnership or other fiduciary relationship between CDI and the Subcontractor.
- (b) At all times when performing its obligations under the Subcontract, the Subcontractor is deemed to be an independent contractor and not an employee or agent of CDI.

### **20.3 Variation and waivers in writing**

- (a) The Subcontract may only be varied, or its provisions waived, in writing by CDI and the Subcontractor.

- (b) CDI's failure to take advantage of any default or breach of the terms and conditions to be observed by the Subcontractor under the Subcontract shall not be construed as a waiver of that term or condition.
- (c) No consent or waiver expressed or implied by CDI or on behalf of CDI to or in respect of any particular breach of any of the terms and conditions to be observed by the Subcontractor under the Subcontract shall be construed as a consent or waiver to or of any other breach of the same or any other of the terms and conditions to be observed by the Subcontractor under the Subcontract.

## **20.4 Compliance with Law**

The Subcontractor must, and it is its sole responsibility to:

- (a) comply with Law in performing its obligations under the Subcontract (including for the protection of the environment and making good any damage to the environment caused by its Work under the Subcontract);
- (b) obtain all required approvals from all Authorities and give CDI copies of all relevant documents issued by Authorities; and
- (c) obtain any other information which it may need in order for it to comply with any Law.

## **20.5 Severability**

Any provision in the Subcontract which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of the Subcontract or the validity or unenforceability of that provision in any other jurisdiction.

## **20.6 Separable Portions**

- (a) If the Works are identified as containing separable portions:
  - (i) the Subcontractor must complete the Works within the completion dates, and in accordance with the construction programmes and fortnightly work schedules, which apply to each separable portion; and
  - (ii) the interpretations of clauses in this Agreement in relation to time (including but not limited to extensions of time and delay damages) shall apply separately to each separable portion.

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# **21. Personal Property Securities Act**

## **21.1 Definitions**

For the purposes of this clause:

**PPS Act** means the Personal Property Securities Act 2009 (Cth);

**PPS Law** means the PPS Act and any regulations made at any time under the PPS Act, as amended from time to time;

**PPS Property** means all property over which, under the PPS Law, the Subcontractor is legally capable of granting a Security Interest;

**PPSA Register** has the meaning in the PPS Act;

**Security Interest** has the meaning given to it in the PPS Law;

**security interest** means a mortgage, charge, lien, pledge, security interest, title retention, preferential right, trust arrangement, encumbrance, contractual right of set off, any security arrangement in favour of any person or security arrangement which is deemed to be a security interest for the purposes of the PPS Act.

## **21.2 Enforcement of liquid assets**

Sections 120 and 121(4) of the PPS Act do not apply to this Subcontract or the transactions contemplated under this Subcontract.

## **21.3 Requests for information**

- (a) Neither party may disclose information of the kind referred to section 275(1) of the PPS Act and this clause constitutes a confidentiality agreement within the meaning of the PPS Law.
- (b) The Subcontractor waives any right it may have, or but for this clause 19.3 may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of information of the kind referred to in section 275(1) of the PPS Act.

## **21.4 Application of PPS Law**

- (a) If:
  - (i) a PPS Law applies, or will at a future date apply, to this Subcontract or any of the documents listed in the Formal Instrument of Agreement or any of the transactions contemplated by them; or
  - (ii) the Superintendent determines that a PPS Law applies, or will at a future date apply, to this Subcontract or any of the documents referred to in the Formal Instrument of Agreement or any of the transactions contemplated by them; and
  - (iii) in the opinion of the Superintendent, the PPS Law:
    - A. adversely affects or would adversely affect CDI's security position or the rights or obligations of CDI under or in connection with this Subcontract or any of the documents referred to in the Formal Instrument of Agreement or any of the transactions contemplated by them; or
    - B. enables or would enable CDI's security position to be improved without adversely affecting the Subcontractor in a material respect,

CDI's Representative may give notice to the Subcontractor requiring the Subcontractor to do anything (including amending the Formal Instrument of Agreement or any document referred to in the Formal Instrument of

Agreement or executing a new Formal Instrument of Agreement or any of the documents referred to in the Formal Instrument of Agreement) that in CDI's Representative's opinion is necessary to ensure that, to the maximum possible extent, CDI's security position, and its rights and obligations, are not adversely affected as contemplated by clause 19.4(a)(iii)A (or that any such adverse effect is overcome), or that the CDI's security position is improved as contemplated by clause 19.4(a)(iii)B.

- (b) The Subcontractor must comply with the requirements of a notice given by CDI's Representative under clause 19.4(a) within the time stipulated in the notice.
  - (c) The Subcontractor is permitted to grant a Security Interest over its PPS Property except to the extent expressly prohibited by, or only in accordance with, the Formal Instrument of Agreement or documents referred to in the Formal Instrument of Agreement.
-