

## FORMAL INSTRUMENT OF AGREEMENT

|                |                                |
|----------------|--------------------------------|
| SUBCONTRACT NO | «SL»                           |
| PROJECT        | «ProjectDescription» «Project» |
| SUBCONTRACT    | «SLDescription»                |

### PARTIES

Perkins (WA) Pty Ltd (ABN 600 0884 4862) (Building Registration No: BC8393)

of 1 Hales Street, Bunbury, Western Australia 6230

(“Perkins”)

and

The subcontractor named in Schedule 1

(“Subcontractor”)

### WHEREBY IT IS AGREED AS FOLLOWS:

#### 1 INTERPRETATION

Terms used in this Formal Instrument of Agreement that have been defined in the General Conditions have the same meaning in this document as in those General Conditions.

#### 2. SUBCONTRACT WORKS

- (a) The Subcontractor must perform the Subcontract Works in accordance with the Subcontract.
- (b) The Subcontractor acknowledges that the Subcontract Works are a portion of the works and services to be provided by Perkins to the Principal under the Main Contract.
- (c) The Subcontractor has represented to Perkins that it:
  - (i) is experienced in performing works similar to the size, scope and complexity of the Subcontract Works; and
  - (ii) has the financial capability and the necessary skill, Personnel and equipment to perform the Subcontract Works, and acknowledges that Perkins has relied upon these representations in entering into this Subcontract.

#### 3 SUBCONTRACT SUM

Perkins must pay to the Subcontractor the Subcontract Sum, and any other sums which become payable under the Subcontract, in accordance with the Subcontract.

#### 4. SUBCONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

##### 4.1 Subcontract Documents

The Subcontract consists of the following documents:

- (a) this Formal Instrument of Agreement;
  - (b) the General Conditions; and
  - (c) the Schedules to the General Conditions,
- (together, the **Subcontract Documents**).

- 4.2 The various documents making up this Subcontract are complementary and should be read together as though they are a single document.

## 4.3 Order of Precedence

If there is any ambiguity, inconsistency or conflict in or between the documents making up this Subcontract, the following order of precedence will apply:

- (a) this Formal Instrument of Agreement;
- (b) the Contract Particulars contained in Schedule 1;
- (c) the Special Conditions contained in Schedule 9;
- (d) the General Conditions;
- (e) the Scope of Work contained in Schedule 2;
- (f) the Specifications, Drawings and documents identified in Schedule 4 and as between the Specifications, the Specification that deals most specifically with the subject matter of the conflict or ambiguity, and as between the Drawings, the Drawings with measurements will prevail over scaled dimensions; and
- (g) the remainder of the Schedules.

## 4.4 Counterparts and Electronic Execution

- (a) This Subcontract may be executed in any number of counterparts. All counterparts taken together constitute one instrument. A party may execute this Subcontract by signing any counterpart. A party who has executed a counterpart of this document may exchange it with another party by emailing a pdf (portable document format) copy of the executed counterpart to that other party and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of this document
- (b) This Subcontract may be executed by a party in soft copy by electronic means, including by affixing a signature by an electronic execution platform such as DocuSign. Any electronically executed soft copy, and any print out of such a copy, will constitute an executed original counterpart.

## 5. ENTIRE AGREEMENT

This Subcontract:

- (a) contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Subcontract;
- (b) to the extent permitted by law, supersedes any prior agreement or understanding (including the tender) on anything connected with the subject matter; and
- (c) overrides the Subcontractor's terms and conditions (if any) exchanged between the parties whether or not such documents expressly provide that they override this Subcontract or any part of it.

## 6. OPPORTUNITY TO OBTAIN ADVICE AND NEGOTIATE

The Subcontractor acknowledges that it was given an opportunity to review, take advice about and negotiate the Subcontract with Perkins prior to execution.

# SUBCONTRACT AGREEMENT



**EXECUTED** by the parties.

*Executed for and on behalf of*  
**Perkins (WA) Pty Ltd:**

\_\_\_\_\_  
**Authorised Signatory**

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**Name of Authorised Signatory (Block letters)**

\_\_\_\_\_  
**Name of Witness (Block letters)**

\_\_\_\_\_  
**Date**

*Executed for and on behalf of by*  
**the Subcontractor:**

\_\_\_\_\_  
**Authorised Signatory**

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**Name of Authorised Signatory (Block letters)**

\_\_\_\_\_  
**Name of Witness (Block letters)**

\_\_\_\_\_  
**Position (Block letters)**

\_\_\_\_\_  
**Date**

## GENERAL CONDITIONS

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In the Subcontract unless the context otherwise indicates:

**"Aconex"** means the project management database tool that is enabled on the internet website [www.Aconex.com](http://www.Aconex.com);

**"Authorities"** means any:

- (a) government or government department, agency, authority or body; or
- (b) local government council; or
- (c) statutory authority or body,

that has jurisdiction in connection with the Subcontract Work or any part thereof, or whose certificate, licence, consent, approval or permission is required in connection with the Subcontract Works or any part thereof;

**"Best Industry Practice"** means (subject to any express provisions of the Subcontract which impose higher standards) the practices which are generally engaged in or observed by experienced and competent subcontractors with respect to works similar to the Subcontract Works and which, with respect to any objective, may be expected, in the exercise of its expertise, to accomplish that objective in a manner consistent with recognised standards regarding quality, safety and environmental protection, including:

- (a) using good quality, new, undamaged equipment and materials for the Subcontract Works;
- (b) ensuring that all workmanship is of the highest quality and standards and is in accordance with the requirements of the Subcontract; and
- (c) complying with relevant Australian Standards;

**"Business Day"** means any day other than a Saturday, a Sunday, a day between the 24<sup>th</sup> December of one year and 2<sup>nd</sup> January of the following year and any public holiday in the Jurisdiction;

**"Claim"** means any claim against Perkins for an increase in the Subcontract Sum, for payment of money (including damages) or for an extension to the time for completion of the Subcontract Works:

- (a) under, arising out of or in any way in connection with, any direction of Perkins;
- (b) under, arising out of or in any way in connection with the Subcontract, the Subcontract Works or the conduct of either party before or during the Subcontract; and
- (c) otherwise at law or in equity including by statute; in tort for negligence or otherwise, including negligent misrepresentation, for restitution, unjust enrichment and / or quantum merit; or rectification;

but does not include a payment claim under clause 23;

**"Confidential Information"** means all information in respect of the Project, the Subcontract Works or the Works received or obtained by the Subcontractor from or on behalf of Perkins or the Principal, their employees, agents, consultants or subcontractors and includes, without limitation, the Intellectual Property referred to in clause 5.4;

**"Date for Commencement on Site"** means the date stated in Item 8, or any other date notified to the Subcontractor by Perkins;

**"Date of Form of Release"** has the meaning given to that term in clause 24.3(d);

**"Date of Practical Completion"** means the date of Practical Completion of the Works;

**"Date of Subcontract"** means the date the Subcontract is signed by the last party to do so;

**"Daywork"** means the work referred to in clause 12.2;

**"Defect"** means

- (a) any defect, deficiency, shrinkage fault in, or omission from, and Subcontract Work;
- (b) any aspect of the Subcontract Work or material or workmanship which is not in accordance with this Subcontract;
- (c) any damage to, or loss of, the Subcontract Works or any part thereof that would not have occurred but for any such defect, shrinkage, fault or omission;
- (d) any work which is required to be carried out pursuant to this Subcontract which has not been carried out or completed;
- (e) any material, item or document which is required to be supplied pursuant to this Subcontract which has not been supplied or has been supplied in an incomplete or incorrect form;

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- (f) the substitution of a specified proprietary product with an alternative product without the written approval of Perkins; and
- (j) if the Subcontractor is responsible for design, any component of the Works which is not fit for purpose;

**"Defects Liability Period"** means the period stated in Item 7;

**"Design Documents"** means documents detailing design for the Subcontract Works;

**"Dispute"** means any dispute or difference between the parties in respect of a fact, matter or thing arising out of, or in connection with the Subcontract, the Subcontract Works, or the Works, including:

- (a) a Perkins direction;
- (b) a Claim; and
- (c) breach of contract;

**"Drawings"** means the drawings identified in Schedule 4;

**"Force Majeure Event"** means an event of force majeure under the Main Contract, as set out in Item 18, which:

- (a) occurs after the date of the Subcontract and is beyond the control and without the fault of the affected party and is at or directly in the vicinity of the Site;
- (b) prevents the Subcontractor from carrying out all or a material part of the Subcontract Works; and
- (c) could not have been prevented, avoided, remedied or overcome by the Subcontractor taking those steps which a prudent, experienced and competent contractor would have taken (including the expenditure of reasonable sums of money),

but does not include:

- (d) any event which was caused by the affected party or contributed to by the affected party, to the extent of the contribution;
- (e) lack of funds for any reason; or
- (f) inability to use available funds;

**"Form of Release"** means the document contained in Schedule 7;

**"General Conditions"** means these general conditions;

**"GST"** means a goods and services tax or similar value added tax levied in Australia pursuant to the GST Act or otherwise on a supply;

**"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**"Hazardous Substance"** means those substances and physical conditions that are subject to any environmental legislation in the Jurisdiction;

**"Intellectual Property Right (or "IPR")** means all present and future forms of intellectual property rights (whether in a material form or otherwise) including without limitation:

- (a) copyright, design, patent, trademark, plant breeder rights, electronic layouts and any other intellectual or industrial property rights, including know-how, whether registered or not;
- (b) invention, discovery, secret process, novel design, improvement or modification of any nature; and
- (c) computer program material (including computer software, computer object code, computer source code, tables, charts, flow charts, algorithms, diagrams, plans, techniques, data, structures, logical ideas, concepts and processes);

**"Item"** means an item in Schedule 1;

**"Ipso Facto Stay"** means any limitation on enforcement of rights or self-executing provisions in a contract, agreement or arrangement pursuant to sections 415D, 415F, 434J, 434L, 434LA, 451E, 451G or 451GA of the *Corporations Act 2001* (Cth);

**"Jurisdiction"** means the jurisdiction of the State or Territory stated in Item 17;

**"Key Personnel"** means the person or persons stated as being such in Item 3 authorised to represent the Subcontractor (as replaced under clause 3.2);

**"Legislative Requirement"** includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards, proclamations of the Commonwealth and the State or Territory in with the Subcontract Work or any part thereof is being performed;

(b) certificates, licences, consents, approvals, permits and requirements of Authorities (including any conditions under them); and

(c) fees and charges payable in connection with the foregoing;

**"Main Contract"** means the contract between Perkins and the Principal for the performance of work of which the Works form part;

**"Main Contract Works"** means the work the subject of the Main Contract in respect of the Project;

**"Migration Legislation"** means *Migration Act 1958* (Cth) or *the Migration Regulations 1994* (Cth);

**"Modern Slavery"** means the definition given to that term in the Modern Slavery Legislation;

**"Modern Slavery Legislation"** means the *Modern Slavery Act 2018* (Cth) and other similar legislation in effect from time to time;

**"Moral Rights"** means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, which rights are created by the *Copyright Act 1968* (Cth), and if any work is used in any jurisdiction other than in Australia, and similar right capable of protection under the laws of that jurisdiction;

**"National Construction Code"** means the National Construction Code of Australia published by the Australian Building Codes Board as amended and reissued from time to time;

**"Notice of Dispute"** means the notice given under clause 33.2;

**"Performance Security"** has the meaning given in clause 26.1;

**"Perkins Project Environmental Management Plan"** means a Perkins environmental management plan for the Project which may be provided in accordance with clause 8.13;

**"Perkins Project Manager"** means the person or persons identified as such in Item 3, who may be replaced from time to time;

**"Perkins Quality Assurance Management System"** means the Perkins quality assurance management system which is maintained to ISO 9001;

**"Personnel"** means:

(a) in relation to the Subcontractor any of its employees, sub-subcontractors (including sub-subcontractors' Personnel), agents and representatives involved either directly or indirectly in the performance of the Subcontract Works; and

(b) in relation to Perkins, any of its past or present officers, employees, agents or representatives of Perkins or joint venture of Perkins;

**"PPE"** means personal protective equipment;

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

**"Practical Completion"** means the stage in the performance of the Subcontract Works when:

(a) the Subcontract Works are completed except for minor Defects:

(i) which do not prevent the Subcontract Works or the Main Contract Works from being reasonably capable of being used for their purpose;

(ii) which Perkins determines that the Subcontractor has reasonable grounds for not promptly rectifying; and

(iii) rectification would not prejudice the convenient use of the Subcontract Works or the convenient use of the Main Contract Works;

(b) those tests (including commissioning tests) required by the Subcontract have been performed and passed and a copy of the test results have been delivered to Perkins;

(c) all certificates, licences, consents, approvals and permits which the Subcontractor is required to obtain under the Subcontract have been obtained and copies have been passed to Perkins;

(d) the original warranties required by the Subcontract have been provided to Perkins;

(e) the documents and information required under the Subcontract including those which are essential for use, operation and maintenance of the Subcontract Works have been provided to Perkins;

(f) the Subcontractor has delivered to Perkins all deliverables including but not limited to keys, controllers, access cards as may be required by the Subcontract Works;

- (g) the Subcontractor has properly cleaned the Subcontract Works; and
- (h) the Subcontractor has done everything which the Subcontract requires it do to as a condition precedent to or prior to practical completion.

**"Principal Contractor"** means Perkins, unless Perkins notifies the Subcontractor in writing that it is another person;

**"Project"** means the project in respect of which Perkins is performing the Main Contract and of which the Works under this Subcontract form part;

**"Project Manager"** means the project manager appointed by Perkins in accordance with clause 3.1 of the Subcontract and whom is the person identified as such in Item 3 as at the Date of Subcontract;

**"Provisional Sum"** means the amount payable for work referred to in clause 13 and includes any monetary sum, contingency sum and prime cost item;

**"Principal"** means the principal under the Main Contract and is the entity identified as such in Item 1;

**"Qualifying Cause of Delay"** has the meaning given to that term in clause 21.2(e);

**"RCTI"** means recipient created tax invoice;

**"Scope of Work"** means the scope of work contained in Schedule 2 and includes incidental items not expressly mentioned in the Subcontract, but which are necessary for the satisfactory performance, completion, testing and commissioning of the Subcontract Works;

**"Security of Payment Law"** means the *Building and Construction Industry (Security of Payment) Act 2021* (WA) and the subordinate legislation issued pursuant to that Act, including the *Building and Construction Industry (Security of Payment) Regulations 2022* (WA), as amended from time to time;

**"Sham contracting arrangements"** means where the relationship between the parties is not genuinely an independent contractor relationship but rather is truly an employment relationship;

**"Schedule"** means a schedule to the General Conditions;

**"Scheduled Amount"** has the meaning given in clause 23.3(a)(ii)(E);

**"Site"** means the land (including any structure on the land) upon, over, below or through which the Project is being constructed together with any adjacent or nearby land obtained or used by Perkins for access purposes, temporary works, or other activities relating to the Project as described in Item 6;

**"Site Conditions"** means physical conditions, services, obstructions and other conditions on, above or below the surface of the Site and its surrounds and the available means of access thereto;

**"Special Conditions"** means the special conditions (if any) in Schedule 9;

**"Specification"** means the specification or specifications identified in Schedule 4;

**"Subcontract"** means the subcontract between Perkins and the Subcontractor constituted by the documents described in the Formal Instrument of Agreement;

**"Subcontract Documents"** means the documents described in the Formal Instrument of Agreement;

**"Subcontract Period"** means

- (a) where item 9(a) provides a period of time, the last day of the period; or
- (b) where item 9(b) provides a stated date, the date,

which may be adjusted from time to time in accordance with this Subcontract;

**"Subcontract Sum"** means the amount stated in Item 2, as adjusted from time to time in accordance with this Subcontract;

**"Subcontract Works"** means the whole of the work, services, activities and tasks (whether permanent or temporary) and other things required to be performed under the Subcontract (including the Scope of Work) and includes any incidental works or services and any incidental design or design relating to temporary works or the methodology or the execution of works and includes construction plant and equipment, remedial works and Variations;

**"Survey Mark"** means a survey peg, benchmark, reference mark, level mark or other mark used for the purpose of setting out the works;

**"Illegal worker"** is a person who is an Unlawful Non-Citizen (as defined in Migration Legislation) who is working without a visa or a Non-Citizen (as defined in Migration Legislation) who is performing works in breach of a Visa Work Condition (as defined in Migration Legislation);

**"Variation"** means any one or more of the following, in respect of the Subcontract Works:

- (a) increase, decrease or omission of any part;

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- (b) change in the character, quantity or quality of any material or work;
- (c) change in the levels, lines, positions or dimensions of any part;
- (d) execution of new or additional work;
- (e) demolition or removal of material or work no longer required by Perkins; and
- (f) any change required to the Subcontract Work to give effect to a variation directed under the Main Contract;

**"WH&S Legislation"** means the *Work Health and Safety Act 2020* (WA) ("**WH&S Act**") and the *Work Health and Safety (General) Regulations 2022* (WA) ("**WH&S Regulations**") and any other *legislative requirements* dealing with health, safety or protection of workers on building sites in the Jurisdiction, as amended from time to time; and

**"Works"** means the whole of the Subcontract Works to be completed in accordance with the Subcontract and handed over to Perkins.

## 1.2 Interpretation

In the Subcontract:

- (a) headings are for convenience only and do not affect the interpretation of the Subcontract: and
- (b) no rule of contract interpretation is to be construed against Perkins merely because Perkins was responsible for preparing the Subcontract,

and unless otherwise stated or the context indicates otherwise:

- (c) words in the singular include the plural and vice versa;
- (d) words importing a gender include every gender;
- (e) reference to a person includes a reference to a firm, a body incorporate or an individual and the successors and permitted assigns;
- (f) a reference to the Subcontract, the Main Contract or any other agreement includes the Subcontract, the Main Contract and any other agreement as amended, novated, supplemented varied or replaced from time to time;
- (g) a reference to 'including', 'includes' or 'include' shall be read as if it is followed by "(without limitation)";
- (h) where a party comprises two or more persons, each person will be jointly and severally bound by the party's obligations under the Subcontract;
- (i) any provision of this Subcontract which is wholly or partially unenforceable or void is severed to the extent that it is unenforceable or void, and the enforceability or validity of the remainder of this Subcontract is not affected;
- (j) all obligations to indemnify or warrant under this Subcontract survive termination of the Subcontract;
- (k) any consent or approval required under the Subcontract shall be in writing and may be given conditionally or unconditionally unless otherwise expressly provided;
- (l) an amendment or modification to the Subcontract shall be in writing and signed by the parties;
- (m) unless a contrary intention is specifically expressed, no provision of the Subcontract limits any right of Perkins whether under the Subcontract or under any Legislative Requirement;
- (n) none of the following items limit or otherwise reduce the Subcontractor's obligations under the Subcontract:
  - (i) an approval or consent given by or on behalf of Perkins;
  - (ii) any review, consultation, monitoring or audit undertaken by or on behalf Perkins; or
  - (iii) any comments made by Perkins;

- (o) the fact that Perkins fails to do, or delays in doing, something that Perkins is entitled to do under this Subcontract, does not amount to a waiver of any obligation or breach of obligation by Perkins. A waiver by Perkins is only effective if it is in writing;
- (p) the terms of the Subcontract apply to all of the Subcontract Works even if they were performed prior to the date of the Subcontract, and are included in the Subcontract Sum;
- (q) figured dimensions must be used in preference to dimensions indicated by scale;
- (r) a reference to a statutory Act or Regulation is a reference to that Act or Regulations, as the case may be, as amended or replaced from time to time; and
- (s) nothing constitutes a joint venture, partnership, agency or other fiduciary relationship between the parties.

## 1.3 Communications, Measurements and Currency

Except where otherwise provided, all documents and all communications between the parties must be in the English language; measurements and quantities must be in the metric units prescribed by the laws of the Jurisdiction and references to prices and currency are to Australian currency.

## 1.4 Governing Law and Jurisdiction

The Agreement shall be governed by and construed with reference to the laws in force in the Jurisdiction stated in Item 17. The courts of the Jurisdiction shall have exclusive jurisdiction to determine any proceeding in relation to the Agreement.

## 2. NATURE OF SUBCONTRACT

### 2.1 Nature of Subcontract

- (a) The Subcontractor warrants that the Subcontract Sum is sufficient to compensate the Subcontractor for performing and discharging all of its obligations under the Subcontract.
- (b) The Subcontractor acknowledges and agrees that this Subcontract is a fixed lump sum subcontract and the Subcontract Sum is deemed to be an all-inclusive lump sum price and to include:
  - (i) all things necessary to perform the Subcontract Works in accordance with the Subcontract (even though all of these things may not be separately itemised); and
  - (ii) all on-site and off-site preliminaries, overheads and profit in connection with the Subcontract Works
- (c) The Subcontract Sum is not subject to adjustment for rise or fall in costs for any cause whatsoever, including changes in the cost of labour, plant, tools, equipment, goods, materials, taxation (other than GST), excise, duty, fees and charges.
- (d) Incidental items not expressly mentioned in the Subcontract, but which are necessary for the satisfactory performance, completion, testing and commissioning of the Subcontract Works, must be supplied and performed by the Subcontractor and the Subcontract Sum is deemed to include these items.
- (e) The Subcontractor has:
  - (i) examined all information relevant to the risks, contingencies and other circumstances which might have an adverse or beneficial effect on the Subcontract Works, the Subcontractor's obligations and, in particular, the existing condition of the Site, and ascertained that these matters will not prejudice the Subcontractor's ability to complete the Subcontract Works or the Works; and
  - (ii) except to the extent expressly permitted pursuant to the terms of the Subcontract, the Subcontractor is not entitled to make any claim against Perkins or claim relief for any of its obligations under the Subcontract in respect of such risks, contingencies, circumstances or conditions.
- (f) If there is any bill or schedule of quantities included in the Subcontract:
  - (i) such bill or schedule of quantities indicates only approximate or estimated quantities and general descriptions of the Subcontract Work;

- (ii) Perkins has not warranted nor made any representation nor assumed any duty of care nor guaranteed the completeness, accuracy or adequacy of those quantities or descriptions of work, nor are the quantities measured in accordance with the Australian Standard Method of Measurement (unless otherwise stated);
- (iii) the Subcontractor did not rely on the completeness, accuracy or adequacy of the quantities or descriptions of work in calculating the Subcontract Sum;
- (iv) the bill or schedule of quantities does not in any way limit or reduce the Subcontractor's obligation to perform the Subcontract Work in accordance with the Subcontract nor any other obligation of the Subcontractor under the Subcontract; and
- (v) the Subcontractor is not entitled to an adjustment to the Subcontract Sum in the event the actual quantities exceeds the quantities in the bill or schedule of quantities.

## 2.2 Special Conditions of Contract

To the extent that Special Conditions are stated in Schedule 9, the Special Conditions amend the General Conditions.

## 3. REPRESENTATIVES

### 3.1 Perkins representative

- (a) Perkins will appoint a Project Manager to exercise any functions of Perkins under the Subcontract. Perkins' Project Manager will act as the agent of Perkins in all respects (not as independent certifier, assessor or valuer).
- (b) Perkins shall ensure that in the exercise of the functions of the Project Manager, he or she will act honestly and reasonably, and in accordance with the timing requirements in the Contract.
- (c) Perkins may from time to time appoint individuals to exercise any of the roles or functions of Perkins under this Subcontract. The appointment of such an individual or individuals shall not prevent Perkins from exercising any roles or functions.
- (d) Perkins Personnel will only be available for supervision during the hours stated in Item 10 unless special arrangements are made in advance by the Subcontractor.
- (e) Where, at the request of the Subcontractor, Perkins' supervision is required outside the hours stated in Item 10, the reasonable costs incurred by Perkins for that supervision will be valued under clause 12.1, and Perkins may deduct such amount from the Contract Sum.

### 3.2 Subcontractor's Key Personnel

- (a) The Subcontractor must ensure that it's Key Personnel nominated in Item 3 are directly engaged in the performance of the Subcontract Works in the nominated roles.
- (b) The Subcontractor acknowledges and agrees that the it's Key Personnel are integral to the Project.
- (c) The Key Personnel:
  - (i) must be fluent in written and spoken English and have sufficient command of Australian construction and technical terminology to read, write, understand, converse and represent it under this Subcontract;
  - (ii) must at all times, be fully conversant with the Subcontract Works and the Subcontractor's obligations under this Subcontract, particularly the requirements of the construction programme then current, and the Subcontractor's workplace health and safety obligations; and
  - (iii) are authorised by the Subcontractor to represent it in relation to all matters under this Subcontract.
- (d) All directions given by Perkins under the Subcontract will be given to the Key Personnel.
- (e) Matters within the knowledge of the Key Personnel are deemed to be within the knowledge of the Subcontractor.

### 3.3 Subcontractor's Personnel

The Subcontractor must, within 5 Business Days of being requested to do so by Perkins, give to Perkins a list of all of the Subcontractor's Personnel, sub-subcontractors and consultants that the Subcontractor has or intends to employ or engage to perform the Subcontract Works.

### 3.4 Replacement of the Subcontractor's Personnel

- (a) The Subcontractor must:
- (i) not replace or remove its Key Personnel without Perkins prior written consent. Such consent will not be unreasonably withheld provided Perkins is satisfied that the qualifications, experience and other relevant attributes of the proposed alternative Key Personnel are suitable for the role to be performed; and
  - (ii) replace the Subcontractor's Personnel or any of its Key Personnel who in the opinion of Perkins (acting reasonably) are unsatisfactory or not performing to the expectations of Perkins and the Subcontractor must promptly appoint a replacement.
- (b) The Subcontractor is not entitled to make a Claim in relation to Perkins exercising its discretion under clause 3.4(a) nor the Subcontractor's compliance with a direction given under that clause.

### 3.5 Supervision by the Subcontractor

The Subcontractor shall ensure that there is a suitable person on Site at all times during the performance of the Subcontract Works to supervise the Subcontract Works and ensure that the Subcontractor's obligations are carried out.

### 3.6 Site meetings and workshops

- (a) A representative or representatives of the Subcontractor, who have sufficient and relevant authority, knowledge and competency, must attend and participate in all meetings and workshops called by Perkins.
- (b) The Subcontractor must implement all actions identified and requested at these meetings and workshops to give effect and full force to the written directions given by Perkins.

### 3.7 Subcontractor's financial capability

- (a) The Subcontractor must satisfy Perkins at all times that it has the financial capability to perform all its obligations under this Subcontract.
- (b) The Subcontractor must provide documents and information as and when requested by Perkins, and comply with all reasonable requests of Perkins, to allow Perkins to assess the financial capacity of the Subcontractor to perform the Subcontract.

## 4. DOCUMENTS GENERALLY

### 4.1 The Main Contract

Perkins is not obliged to disclose information from the Main Contract to the Subcontractor which it considers (acting reasonably) to be confidential or commercially sensitive including the contract sum payable to Perkins under the Main Contract.

### 4.2 Documents supplied by Perkins

- (a) Perkins must supply, or make available, to the Subcontractor one copy of each document listed in Schedule 4 relating to the Subcontract Works.
- (b) The following applies to any document given to the Subcontractor by Perkins:
- (i) they remain Perkins' property and must be returned to Perkins or destroyed by the Subcontractor on a written request being made; and

- (ii) they must not be used, copied nor reproduced for any purpose other than the performance of the Subcontractor's obligations under this Subcontract.
- (c) Perkins may elect to supply documents to the Subcontractor by lodging them on Aconex or by sending them electronically. The Subcontractor is responsible for the printing of all documents lodged on Aconex or sent to it electronically and the cost of this responsibility is included in the Subcontract Sum.

#### 4.3 Subcontractor to supply documents

- (a) The Subcontractor must give to Perkins the following documents and the respective number of copies stated in the Subcontract Documents (if not stated, three copies of each) and the following samples or prototypes:
  - (i) shop drawings;
  - (ii) manuals;
  - (iii) as-built drawings;
  - (iv) any other documents mentioned in the Subcontract; and
  - (v) any samples, prototypes or the like mentioned in the Subcontract.
- (b) If Perkins requires the Subcontractor to supply documents by lodging them upon Aconex, Perkins is responsible for the printing of the documents lodged on Aconex by the Subcontractor.
- (c) Perkins is not required to check Subcontractor supplied documents for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the Subcontract.
- (d) Copies of documents supplied by the Subcontractor will be Perkins' property but must not be used or copied otherwise than for the use, repair, maintenance or alteration of the Subcontract Work.

#### 4.4 Shop drawings

Where shop drawings are to be supplied by the Subcontractor:

- (a) the Subcontractor must submit shop drawings to Perkins for review in a format and at the times directed by Perkins to allow Perkins to comply with its obligations under the Main Contract;
- (b) if Perkins, or the design consultants engaged by Perkins or by the Principal, raise comments in respect of the drawings, the Subcontractor must address those comments and, where applicable, promptly resubmit to Perkins for review amended drawings that address those comments; and
- (c) acceptance of the shop drawings or comment by Perkins, or comment by the design consultants engaged by Perkins or by the Principal, will not relieve the Subcontractor from its obligations to comply with this Subcontract.

#### 4.5 Latest Design Documents

The Subcontractor acknowledges and agrees that the Design Documents may be updated from time to time in accordance with the Subcontract, and the Subcontractor must ensure that at all times it performs the Subcontract Works in accordance with the latest issue of all Design Documents, which shall be available for inspection at Perkins' site office during the normal Site working hours stated in Item 10.

#### 4.6 Inconsistency, ambiguity or discrepancy

If the Subcontract discovers an inconsistency, ambiguity or discrepancy in or between any of the Subcontract Documents, then the Subcontractor must promptly give notice to Perkins. Perkins may direct the Subcontractor as to the course the Subcontractor must adopt to resolve the inconsistency, ambiguity or discrepancy and the Subcontractor will comply with that direction. A direction given by Perkins under this clause will not constitute a Variation to the extent that the direction applies clause 4.3 of the Formal Instrument of Agreement or clause 1.2 of the General Conditions.

## 5. DESIGN (if applicable)

This clause 5 applies if so stated in Item 4

### 5.1 Design

- (a) The Subcontractor must perform the Subcontractor's design obligations with all of the professional skill, care and diligence that would be expected of a professional designer experienced in projects or activities of a similar size and complexity to the Subcontract Works.
- (b) The Subcontractor must develop a design for the Subcontract Works or the Subcontractor's temporary works and prepare all Design Documentation in strict accordance with the Scope of Work, the Drawings, the Specifications, the Subcontract and the Main Contract.
- (c) The Subcontractor must ensure that it and its consultants involved in developing the design attend regular coordination, design workshops and meetings and regularly liaise with Perkins to refine and clarify a design so that it complies with the Subcontract Works and the Subcontract requirements. The involvement of Perkins in the workshops and meetings and that liaison process does not limit, in any way, the Subcontractor's obligations under the Subcontract.
- (d) The Subcontractor must actively cooperate with other subcontractors (including design consultants) so that the design of the Subcontractors Works (or Subcontractors temporary works) integrate with other work under the Main Contract and is achieved in an effective and timely manner.
- (e) The Subcontractor must provide all Design Documentation required by Perkins to obtain acceptance from the Principal in accordance with the then current construction programme.
- (f) The Subcontractor acknowledges and confirms that the Design Documentation it prepares will:
  - (i) be prepared in a proper, thorough, careful, skillful and professional manner by appropriately experienced individuals;
  - (ii) comply with all of the Subcontract;
  - (iii) be fit for its intended purpose as stated in, or inferred from the Subcontract and the Main Contract;
  - (iv) comply with all required Legislative Requirements;
  - (v) not infringe any Intellectual Property Right;
  - (vi) be fully coordinated and integrate with other components of the Works, whether temporary or permanent; and
  - (vii) not specify for use in the Works any materials which at the time of the specification or use (as the case may be) are known to be deleterious (either to health and safety or to the durability of the Works).

### 5.2 Acceptance of Design Documents

- (a) The Subcontractor must obtain the written acceptance of Perkins for all Design Documents produced by the Subcontractor before those documents are required for the performance of the work shown or described in those documents.
- (b) The Subcontractor must not proceed with any work shown or described in the Design Documents produced by the Subcontractor until it has obtained written acceptance for those documents from Perkins.
- (c) The Subcontractor must do everything necessary to ensure that Perkins' acceptance is obtained under the following process by a minimum 20 Business Days before the documents are required for construction so that Perkins can obtain acceptance for those documents under the Main Contract:
  - (i) Perkins must either:
    - (A) accept;
    - (B) accept with written comment; or
    - (C) reject, with written reasons,any Design Documents as soon as reasonably practicable;
  - (ii) if Perkins rejects Design Documents, the Subcontractor must re-submit those documents (amended in accordance with Perkins' written reasons for rejection) within 5 Business Days after receiving the rejection.

- (iii) Perkins must give the Subcontractor a written notice:
  - (A) accepting; or
  - (B) rejecting,  
with written reasons, the resubmitted documents as soon as reasonably practicable after receiving them;
- (iv) the Subcontractor must continue to resubmit any Design Documents in accordance with this clause until the Design Document is accepted by Perkins.
- (d) The Subcontractor is not entitled to a Claim in relation to the acceptance, acceptance with written comments or rejection of any Design Documents which do not comply with the scope of the Subcontract Works or the requirements of the Subcontract.
- (e) A direction by Perkins to vary anything in the Design Documents shall be a Variation to the Subcontract Works only to the extent that the Design Documents, before such Variation, complied or would have complied, with the Subcontract.

### 5.3 Acceptance does not relieve Subcontractor from responsibility

Acceptance of or comment by Perkins on any Design Document does not affect, in any way, the Subcontractor's obligations to design and construct the work in accordance with the Subcontract.

### 5.4 Intellectual property rights granted to Perkins

The Alternative as identified in Item 5 applies. If no alternative is identified in Item 5, then Alternative 2 applies.

#### Alternative 1

The Subcontractor grants to Perkins a perpetual, irrevocable, royalty free, non-exclusive and transferable licence (including a right to sublicense) to use the Design Documents for the Subcontract Works, the Works and the Project. Such licence shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to or augmentation of, the Works and/or the Project and the copying of the documents for such purposes.

#### Alternative 2

- (a) Subject to clause 5.4(b), Intellectual Property Rights and property in the Design Documents (and, as between Perkins and the Subcontractor, any part of the preliminary design produced under a prior contract between Perkins and a Perkins consultant novated to the Subcontractor) hereby vest in Perkins, and Perkins grants to the Subcontractor an irrevocable licence to use the Design Documents solely for Subcontract Works. The Subcontractor shall do everything necessary to perfect such vesting.
- (b) Notwithstanding clause 5.4(a), design documents which were in existence prior to the date of the Subcontract and which have not been developed by or on behalf of the Subcontractor for incorporation in the Design Documents or for Subcontract Works ('Pre-existing IP'), shall (as between Perkins and the Subcontractor) remain the property of the Subcontractor. The Subcontractor grants to Perkins a perpetual, irrevocable, royalty free, non-exclusive and transferable licence (including a right to sub-licence) to use the Pre-existing IP for the Subcontract Works, the Works and/or the Project. Such licence shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to or augmentation of, the Works and/or the Project and the copying of the documents for such purposes.

### 5.5 Services must not infringe rights

The Subcontractor warrants that any design, materials, documents and method of working in respect of the Subcontract Works, whether provided for or on behalf of the Subcontractor, shall not infringe any Intellectual Property Right.

## 5.6 Moral rights

- (a) The Subcontractor must use its best endeavours to procure from any individual, including each of its officers, employees, sub-consultants, sub-subcontractors and agents, who is or may claim to be the author of any Design Document (in whole or in part) a completed Moral Rights consent and waiver form required by Perkins. Any such agreement or consent must be genuinely given and not by duress or by the making of any false or misleading statement.
- (b) The Subcontractor acknowledges that Perkins has entered into the Subcontract in reliance upon the grant and waiver given by the Subcontractor under this clause 5.

## 6. RESPONSIBILITIES OF THE SUBCONTRACTOR

### 6.1 Performance

- (a) Except where the Subcontract otherwise provides, the Subcontractor shall supply everything necessary for the proper performance of its obligations and discharge of its liabilities under the Subcontract.
- (b) The Subcontractor must:
  - (i) in respect of the Main Contract:
    - (A) not do anything or omit to do anything which puts Perkins in breach of the Main Contract;
    - (B) assist Perkins to achieve its objectives under the Main Contract; and
    - (C) fully cooperate with Perkins in pursuing Perkins' rights under the Main Contract relating to the Subcontract Works. The cost of that cooperation, if required, is deemed to form part of the Subcontract Sum and the Subcontractor is not entitled to Claim in relation to that cooperation;
  - (ii) in respect of the Subcontract:
    - (A) provide sufficient and suitable resources to perform the Subcontract Works in accordance with the Subcontract (including directions given by Perkins to the Subcontractor) in a proper and workmanlike manner and with due diligence;
    - (B) regularly consult, confer and inform Perkins about all aspects of the Subcontract Works;
    - (C) use Best Industry Practice;
    - (D) ensure that only persons who are careful, skilled, experienced and qualified in their respective trades are employed in connection with the Subcontract Works; and
    - (E) ensure that all Subcontract Work is done under the supervision of suitably qualified and experienced personnel.

### 6.2 Assignment and Novation

- (a) The Subcontractor must not novate the Subcontract or assign (in whole or in part) the Subcontract nor any payment nor any other right, benefit or interest of the Subcontract without the prior written consent of Perkins (which shall not be unreasonably withheld).
- (b) A breach of clause 6.2(a) by the Subcontractor is a breach of the Subcontract and clause 30.2 applies.
- (c) Perkins may assign or novate its rights under the Subcontract by giving written notice to the Subcontractor.
- (d) If required by Perkins (including where the Main Contract has been terminated for any reason) the Subcontractor must:
  - (i) agree to assignment or novation of the Subcontract to the Principal or the Principal's nominee; and
  - (ii) not unreasonably withhold or delay its consent to a novation of the Subcontract to any other third party nominated in writing by Perkins (including executing any document required to effect that novation).

## 6.3 Subcontracting

- (a) The Subcontractor must not subcontract any part of the Subcontract Works without the prior written consent of Perkins, which consent shall not be unreasonably withheld.
- (b) With a request for consent, the Subcontractor shall give Perkins written particulars of the Work to be subcontracted and the name and details of the proposed sub-subcontractor. The Subcontractor shall give Perkins other information which Perkins reasonably requests including the proposed subcontract documents without prices.
- (c) Perkins' consent to the Subcontractor subcontracting any part of the Works may be conditional, including upon the subcontract containing such provisions and conditions as may be directed by Perkins.
- (d) If Perkins provides consent to the Subcontractor to subcontract, the Subcontractor:
  - (i) must ensure that any sub-subcontractor it engages is reputable and relevantly experienced and qualified;
  - (ii) remains liable for all its obligations under the Subcontract, including the work contracted to its sub-subcontractors;
  - (iii) is entirely liable for the conduct, defaults, acts and omissions of its sub-subcontractors, and its personnel as if they were conduct, defaults, acts or omissions of the Subcontractor; and
  - (iv) to the extent permitted by law, protects and indemnifies Perkins against actions, claims, demands, losses, damages, expenses and other liability from the Subcontractor's sub-subcontractors.
- (e) To the extent that clause 5 applies, the Subcontractor must procure that any sub-subcontractor or consultant performing any part of the design, effects and maintains a professional indemnity insurance policy which complies with the requirements of clause 18.

## 6.4 Directions

- (a) Perkins may at any time direct the Subcontractor regarding any aspect of the performance of the Subcontract Works and the Subcontractor must comply with all such directions. Such direction may detail a time frame for compliance with the direction. The Subcontractor must comply with the direction within that time frame, and if no time frame is specified, then the Subcontractor must comply with the direction promptly.
- (b) Perkins may issue directions orally or in writing. If the Subcontractor receives an oral direction, it must promptly obtain a written confirmation of that direction from Perkins.
- (c) A direction given by Perkins does not relieve the Subcontractor of its obligations under the Subcontract. If a direction given by Perkins conflicts with the requirements of the Subcontract, the Subcontractor must, before complying with the direction, notify Perkins in writing, providing particulars of why the direction is contrary to the Subcontract.
- (d) Where the Subcontractor fails to comply with a direction within the time frame in the direction or, where no time frame is given in the direction, within a reasonable time frame, Perkins may, in addition to any other right it may have, engage others to comply with that direction including performing any additional work required by the direction. The cost incurred by Perkins of taking the action under this clause 6.4(d) will be valued under clause 12.1.
- (e) An action taken by Perkins under clause 6.4(d) will not amount to a repudiation of the Subcontract.

## 6.5 Direction only by Perkins

The Subcontractor will not be entitled to a Claim consequent upon any direction given by any person, including the Principal, the Superintendent or any consultant, unless the Subcontractor has, prior to incurring any additional costs, notified Perkins in writing and received a written direction from Perkins under clause 11.1(b).

## 6.6 Cooperation, Coordination and Integration

- (a) The Subcontractor must:
- (i) promptly provide all information that Perkins may request regarding the performance of the Works including the sequencing and interfacing of activities, details of proposed labour, resources, plant, equipment, materials and goods and all other matters relevant to the Subcontract Works;
  - (ii) co-ordinate and integrate the Subcontract Works with the work performed and services provided by Perkins, the Principal and other subcontractors;
  - (iii) promptly determine and inform Perkins of the locations and sizes of all openings through pavements, floors, walls and roofs necessary for the performance of the Subcontract Works, to be formed as the Project proceeds. The Subcontractor must ensure that the information is given to Perkins in sufficient time to enable the resolution of any conflicts and the co-ordination of the work;
  - (iv) except where the Subcontract states the required times, give reasonable advance notice, which shall not be less than 10 Business Days, in writing to Perkins of when the Subcontractor reasonably requires Perkins to provide any information, plant, equipment, materials, goods, items or other things that Perkins is required to provide to the Subcontractor under the Subcontract;
  - (v) comply with Perkins' rules, policies and procedures for the Site and activities on the Site and co-operate with Perkins on a day-by-day basis so that all facets of the work on the Site can progress in a safe, efficient, effective and orderly manner concurrent with the Subcontract Work;
  - (vi) not break, cut or damage work performed by Perkins or other contractors without the prior written consent of Perkins. Any such breaking, cutting or damaging will be made good at the Subcontractor's expense;
  - (vii) comply with all warning and restriction signs and demarcation zones; and
  - (viii) observe and comply with all Authority restrictions imposed on the Site including working and noise restrictions.
- (b) The Subcontractor must verify locations of all outlets and equipment and is responsible for attending the closing in, maintaining the position and adjusting and clearing as necessary, building in afterwards and filling, fire proofing, acoustically treating or otherwise making good the penetration left for the Subcontractor.
- (c) The Subcontract Sum allows for the Subcontractor complying with the obligations set out in this clause 6.6 and the Subcontractor is not entitled to make a Claim in relation to the coordination of the performance of the Subcontract Works with other work being performed on the Site or with the Principal's operations.

## 6.7 Sizes, dimensions & set out

- (a) The Subcontractor must verify all sizes, dimensions and set out details for the Subcontract Works.
- (b) Unless stated otherwise in the Subcontract, Perkins must supply to the Subcontractor the information and Survey Marks necessary to enable the Subcontractor to set out the Works. It is the Subcontractor's responsibility to accurately set out the Subcontract Works from the Survey Marks and information, after verifying their correctness.
- (c) If the Subcontractor discovers an error in the position, level, dimensions or alignment of any Subcontract Work then the must immediately notify Perkins and unless Perkins directs otherwise, the Subcontractor must rectify the error.

## 6.8 Subcontractor acceptance of Prior Work

- (a) The Subcontractor must satisfy itself that all prior work on the Site performed by Perkins or other subcontractors ("**Prior Works**") is appropriate for the performance of its Subcontract Works.
- (b) The Subcontractor must give written notice to Perkins if it considers any Prior Work inappropriate for the Subcontract Works prior to commencing the Subcontract Works.
- (c) Commencement of, or continuation with, work in an

- (d) area will constitute the Subcontractor's acceptance of the general suitability of the Prior Work.
- (e) Only if the Prior Work is inappropriate and only if the Subcontractor has given the notice required by clause 6.8(b), will Perkins be required to take action in relation to the Prior Work. This action may include, but is not limited to, giving the Subcontractor a Variation to make the Prior Work suitable for the Subcontract Works or directing the Subcontractor to postpone work in the subject area while Perkins arranges for another subcontractor to make the Prior Work suitable.
- (f) If the prior work is appropriate or, even if it is not and the Subcontractor has not complied with clause 6.8(b), the Subcontractor is not entitled to make a Claim in relation to dealing with Prior Work in the performance of the Subcontract Works.

## 6.9 Testing

- (a) The Subcontractor must perform all tests required, or recommended, by the Subcontract or as reasonably directed by Perkins.
- (b) The results of all tests must promptly be made available to Perkins.
- (c) Perkins may direct that any part of the Subcontract Works shall not be covered up or made inaccessible without Perkins written direction.
- (d) At any time prior to the issue of the final certificate under the Main Contract, Perkins may direct the Subcontractor to conduct additional tests and the Subcontractor must promptly comply.
- (e) The Subcontractor must give reasonable written notice to Perkins of the date, time and place of any test. If Perkins does not attend the test may nevertheless proceed.
- (f) If the Subcontractor delays in conducting a test, Perkins may, in addition to any other right it may have, after giving reasonable notice to the Subcontractor, conduct the test.
- (g) If the aspect of the Subcontract Works tested does not comply with the requirements of the Subcontract, the Subcontractor must promptly remedy the Works and must undertake an additional test(s). The Subcontractor must pay all costs associated with any additional test(s), including any work to make good any damage caused by the test(s), and is not entitled to make a Claim. The cost incurred by Perkins to facilitate the Subcontractor remedying the Works will be valued under clause 12.1.
- (h) If Perkins directs the Subcontractor to carry out a test which is not otherwise required by the Subcontract and the results of the test show the work is in accordance with the Subcontract, the Subcontractor is entitled to make a Claim and the direct and substantiated reasonable costs will be valued under clause 12.1.

## 6.10 Off-site inspections

The Subcontractor must allow Perkins access at all reasonable times to the Subcontractor's premises and those of its sub-subcontractors for the purpose of inspecting the Subcontract Works in progress, inspecting the materials and components required for the Subcontract Works, to perform tests and to inspect all relevant documentation and certification.

## 6.11 Industrial relations

- (a) The Subcontractor is responsible for all industrial relations with its Personnel on the Site and on any other site at which the Subcontractor performs work.
- (b) The Subcontractor must keep Perkins fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the Subcontract Works.
- (c) The Subcontractor must manage industrial relations with its employees in a way that ensures that no industrial action taken by its employees causes any delay or disruption to the progress of the Subcontract Works or delay or disruption to the Project generally.
- (d) The Subcontractor is not entitled to make a Claim in relation to any industrial relations problem which arises because of any circumstance, whether caused by the Subcontractor or not, on the Site or any other site occupied by the Subcontractor.

6.12 Sham contracting, supplementary labour and employment security

- (a) The parties acknowledge that Sham contracting arrangements have the potential to undermine fair employment practices, erode employee entitlements and affect job security of employees covered by the Subcontract.
- (b) If the Subcontractor wishes to engage supplementary labour to perform any part of the Subcontract Works, the Subcontractor must ensure that all such workers are engaged on lawful terms and conditions.
- (c) The use of Sham contracting arrangements is a breach of the Subcontract (in addition to being contrary to law).

6.13 Engagement of illegal workers prohibited

- (a) The Subcontractor must ensure that each person engaged by the Subcontractor would not, in doing the work for which they are engaged, be an Illegal Worker.
- (b) The Subcontractor must make compliance by any sub-subcontractors with the provisions of this clause 6.13 a condition of any subcontract.
- (c) When requested in writing by Perkins the Subcontractor must, at the Subcontractor's cost, provide evidence within 5 Business Days that it has taken all reasonable steps to ensure that it has complied, and is complying with, its obligations under this clause 6.13.

7. LEGISLATIVE REQUIREMENTS

7.1 Compliance with Legislative Requirements

- (a) The Subcontractor in performing its obligations under this Subcontract shall satisfy and comply with all applicable Legislative Requirements and approvals of Authorities.
- (b) If a Legislative Requirement is at variance with any obligation under or provision of the Subcontract, the Subcontractor shall within 5 Business Days inform Perkins in writing specifying the difference and shall comply with any direction of Perkins to deal with the difference.
- (c) Subject to clause 7.2, the Subcontractor is not entitled to make a Claim arising out of a direction under clause 7.1(b).
- (d) The Subcontractor warrants that the Subcontract Sum is adequate for the Subcontractor to meet the cost of compliance with all applicable Legislative Requirements.

7.2 Changes in Legislative Requirements

The Subcontractor is not entitled to make a Claim in relation to current Legislative Requirements and has allowed for all time and cost implications associated with satisfying and complying with all current Legislative Requirements. If a change in Legislative Requirements occurs after the execution date of the Subcontract and which could not have been reasonably anticipated at the date of the Subcontract, which necessitates a change in the Subcontractors method of working and thereby causes the Subcontractor to incur a cost, then the change will be valued under clause 12.1.

## 7.3 Approvals and Permits

The Subcontractor must:

- (i) obtain (at its sole cost) all necessary certificates, consents, approvals, licenses and authorisations and permits which the Subcontractor is required under the Subcontract to obtain from relevant Authorities prior to commencement of the Subcontract Works and maintain the necessary certificates, consents, approvals, licenses and authorisations and permits for the duration of the Subcontract Works; and
- (ii) give to Authorities, all necessary notices, pay all required fees, duties and taxes and comply with all requirements of Authorities, applicable from time to time in connection with the Subcontract Works.

## 7.4 Work Health and Safety

The Subcontractor:

- (a) must carry out the Subcontract Works in a safe manner so as to avoid injury, illness or death to any person or damage to property;
- (b) must immediately comply with all Legislative Requirements relating to safety of persons, the Subcontract Works and the site, and comply with the directions in relation to safety issued by any relevant Authority;
- (c) must comply with ISO 450001 Occupational Health and Safety Systems in every particular;
- (d) ensure that its sub-subcontractors and Personnel comply with the requirements of clause 7.4(a) - 7.4(c) (inclusive);
- (e) must comply, and ensure its subcontractors and Personnel comply, with the workplace health and safety procedures and protocols of Perkins in respect of the performance of the Subcontract Works and access to the Site, including those set out in Schedule 8;
- (f) warrants that it has fully informed itself of all conditions it may reasonably expect to encounter when performing the Subcontract Works by visiting the Site and or conducting any investigations that an experienced and prudent Subcontractor would necessarily conduct or perform;
- (g) must at all times carry out the obligations imposed on it under the WH&S Legislation, irrespective of the value and nature of the Subcontract Works;
- (h) warrants that it has a work health and safety management system in place and is capable of complying with the WH&S Legislation;
- (i) warrants that it has read and understands the obligations imposed on it under the WH&S Legislation;
- (j) must, prior to commencement of the Subcontract Works, prepare a written workplace health and safety management plan (WH&S Management Plan) for the Subcontract Works. The WH&S Management Plan must include:
  - (i) the names and positions of all persons at the workplace who manage and implement health and safety responsibilities;
  - (ii) the arrangements in place for consultation and cooperation between Perkins and the Subcontractor in relation to compliance with their duties under this clause 7.4;
  - (iii) the arrangements for managing any workplace health and safety incidents that occur;
  - (iv) any site specific health and safety rules;
  - (v) written safe work method statements for all procedures necessary for carrying out the Subcontract Works;
  - (vi) the arrangements for informing sub-subcontractors of the site specific health and safety rules, the safe work method statements and any subsequent changes to these rules and safe work method statements; and
  - (vii) the arrangements for the collection and any assessment, monitoring and review of safe work method statements, and must be kept up to date;
- (k) must ensure all sub-subcontractors are made aware of and understand the WH&S Management Plan;
- (l) must conduct pre-work safety briefings for all sub-subcontractors on site daily, on site visits, at the commencement of each shift and whenever work conditions change. During the pre-work safety briefings,

- the Subcontractor must discuss the WH&S Management Plan. Minutes must be taken of each pre-work safety briefing and copies of such minutes must be provided to Perkins upon request;
- (m) must ensure that all sub-subcontractors understand his or her obligations to not be under the influence of alcohol or any other drug when about to carry out, when carrying out, or when on duty for the purpose of carrying out (whether carrying out or not) the Subcontract Works;
  - (n) acknowledges and agrees that the parties have consulted, co-operated and coordinated with each other about matters relating to the health or safety of sub-subcontractors in discharge of any obligation under the WH&S Legislation;
  - (o) acknowledges and agrees that Perkins may carry out periodic inspections of the Subcontractor's WH&S Management Plan and agrees to provide Perkins with reasonable access to the documentation to enable such inspections to be performed;
  - (p) must notify Perkins of any work related illness, injury, or dangerous event which occurs on the site as soon as possible and in any event not later than 12 hours after the occurrence;
  - (q) must immediately comply with directions on workplace health and safety issued by any relevant Authority or by Perkins in respect of the Site;
  - (r) must, without limiting or otherwise restricting any other provision of this clause 7.4, keep records for a period of three years of each person who has performed work at the site and any work health and safety training provided to each person;
  - (s) must, if requested by Perkins, conduct an audit of work health and safety in the manner and within the time specified by Perkins in its request;
  - (t) where the health and safety of any other persons may be affected by the performance of the work, ensure full communication and coordination occurs on health and safety matters with those persons and Perkins;
  - (u) must communicate any issue of concern that it has regarding workplace health and safety matters, as soon as practicable, to Perkins;
  - (v) inform Perkins of the full details of:
    - (i) any suspected contravention of the WH&S Legislation relating to the services, within 48 hours of becoming aware of any such suspected contravention;
    - (ii) any cessation or direction to cease work relating to the services, due to unsafe work, immediately upon being informed of any such cessation or direction;
    - (iii) any workplace entry by a holder of an IR Entry Authority or an Inspector (as those terms are defined under the WH&S Legislation), to any place where the work is being performed or undertaken, within 24 hours of become aware of any such workplace entry; and
    - (iv) any proceedings against the Subcontractor, or any decision or request by the Regulator (as defined under the WH&S Legislation) given to the Subcontractor, under the WH&S Legislation, within 24 hours of becoming aware of any such proceedings, decision or request;
  - (w) to the extent that the Subcontractor is required by the WH&S Legislation to:
    - (i) prepare, submit, supply or obtain any document, including a WH&S Management Plan, a risk assessment, a safe work method statement, a work method statement, an emergency plan, safety data sheets, a notice to the Regulator, or a register (together, **WH&S Safety Documents**);
    - (ii) obtain or sight any licence, permit, or authorisation (together, **WH&S Licences**); or
    - (iii) display or install any sign or barrier,
  - (x) specific to the Subcontract Work, the Subcontractor must:
    - (i) prepare or obtain any such WH&S Safety Documents or WH&S Licences tailored to the work and in compliance with the WH&S Legislation;
    - (ii) provide Perkins with a copy of any such WH&S Safety Documents or WH&S Licences with sufficient time for Perkins to review the same and consult as Perkins considers appropriate including with the Subcontractor, regarding the same; and
    - (iii) display or install any such sign or barrier, before commencing any, or undertaking further, any work; and
    - (iv) cooperate with any investigation undertaken by Perkins or any relevant government body concerning any Notifiable Incident (as that term is defined under the WH&S Legislation), or breach or alleged breach of the WH&S Legislation, arising out of or in respect of the work;

- (y) ensure that, at any time it is performing work on site, among its employees on site, is a qualified first aid attendant;
- (z) ensure the Subcontractor's site safety representative attends all site safety meetings called by Perkins from time to time;
- (aa) comply with the requirements of the Principal Contractor and any overall work, health and safety plan prepared by the Principal Contractor in respect of the overall Project; and
- (bb) assist Perkins to comply with, and not place Perkins in breach of, its work, health and safety obligations under the Main Contract.

## 7.5 Failure to comply and non-compliance with WH&S Legislation

- (a) If the Subcontractor fails to comply with its obligations under the WH&S Legislation, or any direction of Perkins in relation to a safety non-compliance or breach of any requirement in clause 7.4, Perkins may:
  - (i) immediately terminate the engagement of the Subcontractor, or the engagement of any sub-subcontractor involved in the breach or both and perform or have performed services on the Subcontractor's behalf; or
  - (ii) have the Subcontractor's obligations performed by Perkins or by others; and
  - (iii) recover from the Subcontractor the costs and expenses incurred by Perkins in having those obligations and services performed by others as a debt due from the Subcontractor to Perkins. The engagement by Perkins of a third party to perform the Subcontractor's obligations shall not be a breach or repudiation of the Subcontract.
- (b) If Perkins considers there is a risk of injury to people or damage to property arising from the Subcontract Works:
  - (i) Perkins may direct the Subcontractor to change its manner of working or to cease working; and
  - (ii) the Subcontractor must, at its cost, comply with any direction Perkins under this clause 7.5.

## 7.6 Safety precautions

Statutory workplace occupational health and safety legislation, rules and regulations are to be taken as minimum requirements only. Where Perkins requirements exceed these, Perkins' requirements must be met. Should the Subcontractor require clarification on any health or safety matters, the Subcontractor must discuss them with Perkins as soon as practicable.

## 7.7 Modern Slavery Legislation

### Compliance with modern slavery requirements

- (a) Without limiting any other provision of this Subcontract, the Subcontractor:
  - (i) must comply with Modern Slavery Legislation to the extent that such legislation is applicable to the Subcontractor;
  - (ii) warrants that it does not utilise Modern Slavery and that as far as it is reasonable to do so, it has investigated the labour practices of the entities in its supply chain and that no entity in the Subcontractor's supply chain utilises Modern Slavery in its operations;
  - (iii) must immediately notify Perkins if it becomes aware or suspects that an entity in the Subcontractor's supply chain utilises Modern Slavery;
  - (iv) must provide all reasonable assistance (including the prompt provision of information and access to documents and Subcontractor's Personnel as Perkins may require) to Perkins to enable Perkins to comply with its obligations under the Modern Slavery Legislation;
  - (v) must, at Perkins request, provide Perkins with the details of each entity in the Subcontractor's supply chain and deliver to Perkins a report summarising the operating and labour practices of any particular entity in the Subcontractor's supply chain; and
  - (vi) ensure that such information provided to Perkins under this clause 7.7 is accurate, complete and in such a form as Perkins reasonably requires.

## Termination

- (b) If the Subcontractor or Subcontractor's Personnel:
- (i) are found guilty by a court of, or admit guilt or accept liability in relation to, a contravention of any Modern Slavery Legislation; or
  - (ii) breach clause 7.7,

then (notwithstanding any other clause of this Subcontract and without limitation to any other right or remedy available to Perkins) Perkins may terminate this Subcontract.

## 8. THE SITE

### 8.1 Description

The Site is described in Item 6.

### 8.2 Preconditions to access

- (a) The Subcontractor is not entitled to access the Site to perform Subcontract Work until the Subcontractor has provided Perkins with evidence of its compliance with clause 18 (insurance).
- (b) The Subcontractor is not entitled to make a Claim due to it is not being entitled to access the Site pursuant to clause 8.2(a).

### 8.3 Access

- (a) Subject to clauses 8.2 and 8.4, Perkins must give the Subcontractor access to the Site to the extent sufficient to enable the Subcontractor to commence and carry out the Subcontract Work.
- (b) The Site is available for access at the times referred to in Item 10 or at other times as notified by Perkins from time to time.
- (c) Delay by Perkins in giving access to the Site will not be a breach of the Subcontract but may entitle the Subcontractor to claim an extension of time.

### 8.4 Nature of right of access

- (a) The Subcontractor's right of access to the Site:
  - (i) is not exclusive and the Subcontractor must not prevent access to the Site;
  - (ii) is only for the purpose of performing, and to the extent necessary to perform, the Subcontract Work;
  - (iii) does not diminish the right of Perkins, the Principal, other subcontractors and any other persons authorised by Perkins or the Principal to access the Site; and
  - (iv) does not oblige Perkins to provide Site access greater or different to that which it is entitled under the Main Contract.
- (b) The Subcontractor must allow access at all reasonable times to all places where Subcontract Work is being performed, to Perkins, the Principal and other persons nominated by Perkins or the Principal and must provide all facilities for such access as may be reasonably necessary.

### 8.5 Site procedures

The Subcontractor:

- (a) must at all times comply with the Site specific procedures and restrictions in respect of Site access, the wearing or provision of PPE, site entry and other matters;
- (b) must comply with the conduct on the Site and obey all warning and other notices;
- (c) must comply with the requirement for each of its Personnel to register their attendance on the Site;
- (d) must not park any vehicles or place any materials at the Site without the consent of Perkins. If consent is given the Subcontractor may only park vehicles or place materials where stipulated and at the times permitted by Perkins;

- (e) acknowledges that the Site access location and Site access restrictions may change and the Subcontractor is not entitled to make a Claim in relation to changes to the Site access location, restrictions or procedures; and
- (f) is responsible for all transport costs, parking fees and fines and the Subcontract Sum includes these costs.

## 8.6 Induction training

The Subcontractor:

- (a) must ensure that all its Personnel undergo all induction training and obtain all permits required for the Site in accordance with the requirements of Perkins, the Principal and of other authorised bodies, before they are given access to the Site; and
- (b) acknowledges that it:
  - (i) has made a sufficient allowance in its programme and in the Subcontract Sum for, and assumes the risk of any delays arising out of, or in connection with, the induction training required under clause 8.6(a); and
  - (ii) is not entitled to make a Claim arising out of or in connection with clause 8.6(a).

## 8.7 Entry to Site

- (a) The Subcontractor acknowledges and agrees that:
  - (i) Perkins may require Subcontractor Personnel to submit to random, blanket, or 'for cause' drug or alcohol tests before or whilst working on the Site;
  - (ii) a person who returns a non-negative result for any unauthorised drugs or alcohol or refuse to take a test will no longer be authorised to work at, and will immediately be dismissed from, the Site;
  - (iii) that person will not be permitted to return to the Site or to any other Perkins site until that person provides to Perkins proof of a return of a negative result for drugs or alcohol; and
  - (iv) the Subcontractor is not entitled to make a Claim as a result of this clause 8.7(a).
- (b) Smoking is not permitted on the Site unless an area has been designated and signposted by Perkins.
- (c) Consumption of alcohol is not permitted on or adjacent to the Site.
- (d) The operation of radios, listening devices and earphones are not permitted on the Site without the prior consent of Perkins.

## 8.8 Site Conditions

- (a) The Subcontractor acknowledges and confirms that before submitting its tender or offer for the award of the Subcontract and before entering into the Subcontract, it has done, or it has had the opportunity to do, each of the following:
  - (i) fully and properly satisfy itself as to the Site Conditions;
  - (ii) inspect all geotechnical and other site information provided to it by Perkins or its consultants;
  - (iii) check all available information about the Site and its environs;
  - (iv) conduct all necessary inspections and investigations of the Site and its environs; and
  - (v) familiarise itself with all usual and likely activities which will occur in, on or in the vicinity of the Site which are relevant to the Subcontractor's ability to discharge its obligations in accordance with the Subcontract.
- (b) The Subcontractor acknowledges and confirms that the Site, and the Site Conditions, are suitable for the Subcontract Works and that the Subcontractor will not bring a Claim relating to the suitability of the Site or the Site Conditions.
- (c) The Subcontractor acknowledges and confirms that it has not relied, in any way, on any information about the Site or the Site Conditions that Perkins has given to the Subcontractor. Rather, it has relied on its own investigations and interpretations in relation to any of that information.
- (d) The Subcontractor acknowledges that Perkins gives no warranty, makes no representation (to the extent permitted by law) in relation to nor assumes any duty of care with respect to and is otherwise not responsible for the accuracy, completeness, suitability or adequacy, of any information about the Site or the Site Conditions that Perkins or its consultants has given the Subcontractor.

- (e) The Subcontractor has fully and properly satisfied itself that the Subcontract Sum covers the cost of the Subcontractor complying with its obligations under the Subcontract in respect of the Site Conditions. The Subcontractor accordingly is not entitled to make a Claim on the grounds of a lack of knowledge regarding the Site Conditions, nor shall it be relieved or excused from any obligations and/or liabilities under the Subcontract.

## 8.9 Hazardous Substances

- (a) If the Subcontractor discovers a Hazardous Substance, the Subcontractor must immediately do each of the following:
- (i) stop work at the location of the discovery;
  - (ii) notify Perkins; and
  - (iii) deal with that Hazardous Substance in accordance with Perkins' directions.
- (b) The Subcontractor must verify to Perkins that it has disposed of any Hazardous Substance in accordance with the applicable laws.

## 8.10 Minerals, fossils and relics

- (a) Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found at the Site will be and remain the property of Perkins, or any other person nominated by Perkins.
- (b) Immediately on discovery of any of the things in clause 8.10(a), the Subcontractor must take precautions to prevent their loss, removal or damage and must notify Perkins of the discovery.

## 8.11 Protection of trees and plants

The Subcontractor must take care to protect all trees and other plants not required to be removed from the Site. The Subcontractor shall comply with all Legislative Requirements and all directions of Perkins with respect to the care of those existing trees and plantings and will do all things necessary to enable Perkins to comply with its obligations under those Legislative Requirements including the requirements of any relevant authorities.

## 8.12 Site to be clean and tidy

- (a) The Subcontractor must keep its work areas at the Site and access ways to and from the Site clean and tidy at all times, to the satisfaction of Perkins.
- (b) The Subcontractor must, each day, clean up and remove all its debris, rubbish and waste materials from its work areas at the Site.
- (c) If the Subcontractor fails to remove its debris, rubbish or waste materials within 24 hours of receiving a direction from Perkins to do so, Perkins may, without further notice to the Subcontractor, remove the debris, rubbish or waste materials or engage others to do so and the cost will be valued under clause 12.1.
- (d) The Subcontractor must take all reasonable steps to minimise the amount of debris, rubbish or waste materials generated by the Subcontract Works and recycle rubbish or unwanted materials wherever practicable.
- (e) The Subcontractor is responsible for the disposal of its hazardous waste and must, upon request from Perkins, provide records to verify to Perkins that it has disposed of its hazardous waste in accordance with the applicable laws.

## 8.13 Environmental

- (a) The Subcontractor must:
- (i) not cause any contamination whilst performing the Subcontract Works;
  - (ii) ensure its Subcontract Works and its Personnel comply with the Perkins Project Environmental Management Plan (if one is provided to the Subcontractor) and the environmental requirements for work at a Perkins' site and any other legislation, standards and guidelines for the protection of the environment, whether there is a site-specific environmental management plan for the Project or not;
  - (iii) perform the Subcontract Works in an environmentally responsible manner and take all measures and action to prevent any environmental harm during the course of carrying out the Subcontract Works. The Subcontractor will actively identify and treat any incident caused directly or indirectly by the Subcontractor;
  - (iv) ensure any hazardous substance or industrial waste required for or produced by the Subcontract Works is handled safely to avoid injury or damage to any person or property or the environment generally; and
  - (v) not allow any hazardous substance or industrial waste to be abandoned, or left on, or to be discharged from the Site.
- (b) The cost of compliance with the Perkins Project Environmental Management Plan (if any) or any other environmental legislation or guidelines is included in the Subcontract Sum.
- (c) If required by Perkins and prior to commencing work on the site, the Subcontractor must submit to Perkins a complying environmental management plan which among other things details the Subcontractor's work procedure with respect to the environment.

Nothing in this clause 8.13 will relieve the Subcontractor from its legal responsibility with respect to the protection of the environment under the applicable laws or any other provision of the Subcontract.

## 8.14 Noise control

- (a) At all times the Subcontractor must take all practicable precautions to minimise noise arising out of or resulting from any activity associated with the performance of the Subcontract Works. All construction equipment must be fitted with noise suppressors unless specifically designed for quiet operation.
- (b) The Subcontractor must observe and comply with all Authority restrictions about noise levels and noise control.

## 8.15 Existing services

- (a) It is the responsibility of the Subcontractor, which responsibility has been included in the Subcontract Sum, to ensure that it is fully acquainted with the extent and location of all existing services affected by and in the vicinity of the Subcontract Works and Site.
- (b) The Subcontractor is not entitled to make a Claim in relation to any alterations, making good or terminating existing services affected by the Subcontract Works.

## 9. SERVICES AND FACILITIES

### 9.1 Services, facilities, plant and equipment

- (a) Except for those services, facilities, plant and equipment that Perkins is required to provide as stated in Schedule 3, the Subcontractor must provide, and maintain in good and safe condition, all services, facilities, plant and equipment necessary to perform the Subcontract Works.
- (b) The Subcontractor shall not use any service or facility provided by Perkins other than for the execution of the Subcontract Works.
- (c) Services, facilities, plant and equipment provided by the Subcontractor must be promptly demobilised and removed from the Site when no longer required for the performance of the Subcontract Works.
- (d) From time-to-time Perkins may direct the Subcontractor not to remove any services, facilities, plant and equipment from the Site and the Subcontractor must comply with the direction. Thereafter the Subcontractor

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must obtain Perkins' approval (which shall not be unreasonably withheld) to remove the services, facilities, plant and equipment from the Site.

## 9.2 Storage and office facilities

- (a) The Subcontractor must provide adequate weather-tight storage accommodation above ground level for all plant, equipment, goods and materials required to perform the Subcontract Works which are liable to damage or deterioration by exposure to the weather.
- (b) The Subcontractor must provide its own office facilities, if required.
- (c) If the Subcontractor provides its own office facilities, the Subcontractor is responsible for the cost of connecting power and communication lines. The Subcontractor agrees that Perkins may by itself or by engaging others undertake the connection works and the cost will be valued under clause 12.1.
- (d) The Subcontractor acknowledges and agrees that storage and lay down locations at the Site may change and the Subcontractor is not entitled to make a Claim in respect to the relocation or change of storage or lay down locations.

## 9.3 Signage

Except for statutory and warning signage, the Subcontractor must not erect any signage or advertisement on, or near, the Site without the prior written approval of Perkins.

## 10. MATERIALS AND STANDARD OF WORK

### 10.1 Materials and workmanship

The Subcontractor must:

- (a) use the materials and standards of workmanship required by the Subcontract. In the absence of any requirement to the contrary, the Subcontractor must use new materials of merchantable quality, which are fit for their intended purpose as set out in or reasonably inferred from the Subcontract;
- (b) not substitute any goods or materials specified in the Subcontract by brand name without the prior written approval of Perkins;
- (c) provide Perkins with all material data safety sheets for any hazardous substances to be used by the Subcontractor;
- (d) provide samples of all materials, goods, substances, fixtures and fittings, as requested by Perkins for acceptance by Perkins and/or the Principal at no additional cost. Such samples may not be returned and the Subcontractor is not entitled to make a Claim for complying with this clause;
- (e) ensure that all materials to be supplied by the Subcontractor will be free and will remain free of all liens, charges, encumbrances and that Perkins will receive good and clear title of those materials;
- (f) ensure that if any materials, plant, equipment, goods, item or other thing ("product") to be installed or incorporated into the Works is required to be installed or applied by an installer or applicator approved by the manufacturer or supplier, the Subcontractor:
  - (i) must ensure the product is only installed or applied by the installer or applicator approved by the manufacturer or supplier; and
  - (ii) must provide written confirmation from the manufacturer or supplier 5 Business Days before the proposed commencement of the installation or application of the product into the Works that the Subcontractor or the proposed sub-subcontractor for the installation or application of the product is an approved installer or applicator of the product;
- (g) ensure that all materials will be free from Defects and will comply with all warranties;
- (h) use proper and tradesman like workmanship;
- (i) perform the Subcontract Works in accordance with the law, all relevant Australian Standards and the National Construction Code; and
- (j) use Best Industry Practice.

## 10.2 Quality Assurance

- (a) Where the Subcontractor does not hold or maintain current certification to ISO 9001, the Subcontractor shall be subject to a verification process and will be required to complete a Subcontractor assessment provided by Perkins. Upon successful verification and acceptance of the assessment by Perkins, the Subcontractor must adhere to the requirements of Perkins Quality Assurance Management System.
- (b) The Subcontractor must:
- (i) establish quality assurance procedures satisfactory to Perkins;
  - (ii) thoroughly review all documentation in accordance with those quality assurance procedures before submitting them to Perkins for review;
  - (iii) when requested by Perkins, submit quality documentation throughout the duration of the Project; and
  - (iv) when requested by Perkins participate in Perkins' inspection and sign-off process for staged and final inspections.

## 10.3 Deleterious materials

The Subcontractor warrants it has used all reasonable skill and care, to ensure there shall not be any materials brought to Site nor included in the Works known to be deleterious, including but not limited to:

- (a) asbestos (including crocidolite) or any products containing asbestos fibre additives;
- (b) aggregates in reinforced concrete non-compliant with Australian Standards;
- (c) high alumina cement;
- (d) concrete or Calcium silicate bricks;
- (e) materials which are generally composed of mineral fibres either man made or naturally occurring which have a diameter of 3 microns or less and a length of 200 microns or less which contain any fibres not sealed or otherwise stabilized to ensure that fibre migration is prevented;
- (f) any products or materials containing urea formaldehyde foam or materials which may release formaldehyde in quantities which may be hazardous with reference to the limits set from time to time by any relevant health authorities; and
- (g) any substance which by nature or application contravene any relevant Australian Standards, the National Construction Code or Best Industry Practice applicable at the time of use.

## 10.4 Manufacturer's recommendations and standards

- (a) The Subcontractor must:
- (i) arrange for the attendance on Site of a product manufacturer's technical representative prior to commencement of each different type or phase of work and subsequently during the progress of the Subcontract Work;
  - (ii) obtain full directions and recommendations from the manufacturer or supplier of all materials;
  - (iii) provide and retain on the Site copies of the relevant codes as may be required together with the manufacturer's printed directions for reference as required;
  - (iv) comply with the technical requirements of the manufacturer for each respective product type, system or application, except where the Subcontract Documents specify otherwise; and
  - (v) make available a competent tradesperson at any time it is necessary for the Subcontractor to liaise with the manufacturer's representative during inspections of any relevant installation, to ensure the Subcontract Work is performed properly.
- (b) When required by Perkins, the Subcontractor shall obtain from each relevant supplier or manufacturer documentary evidence to the effect that the products, goods or materials used and the Subcontract Work are in accordance with the manufacturer's recommended procedures and/or specifications.
- (c) Nothing contained in clause 10.4 will relieve the Subcontractor from any obligation or liability elsewhere provided for in the Subcontract.

## 10.5 Warranties and guarantees

- (a) Prior to the date of completion of the Subcontract Works, the Subcontractor must:
  - (i) obtain and provide to Perkins and the Principal the benefit of warranties and guarantees required under the Subcontract from its manufacturers, suppliers and sub-subcontractors; or
  - (ii) if no relevant warranties are specified in the Subcontract, reasonable warranties and guarantees available from its manufacturers, suppliers and sub-subcontractors, in the name of Perkins and the Principal.
- (b) The Subcontractor is not relieved of any obligation or liability by reason of the provision of a warranty, a failure to provide a warranty or the failure of a provider of a warranty to comply with the terms of the warranty.

## 11. VARIATIONS

### 11.1 Variations

- (a) The Subcontract Works shall not be varied except as directed by Perkins under this clause 11.
- (b) Perkins may, at any time up to the end of the Defects Liability Period under the Main Contract, give in writing a Variation to the Subcontractor. The Subcontractor must promptly comply with the Variation.
- (c) A Variation may involve the decrease or omission of any part(s) of the Subcontract works and the Subcontractor agrees that Perkins may engage others to carry out the part(s) of the Subcontract Works so decreased or omitted and any decrease(s) or omission(s) will not constitute a claim that Perkins has repudiated this Subcontract, notwithstanding the extent or timing of the decrease(s) or omission(s).
- (d) No Variation shall invalidate the Subcontract or be regarded as a repudiation of the Subcontract by Perkins even if the Variation:
  - (i) requires additional work outside the general scope of work under the Subcontract;
  - (ii) omits substantial work because the work is no longer required; or
  - (iii) omits substantial work so that the omitted work can be performed by a third party.
- (e) No direction given by Perkins for a Variation or claimed as a Variation by the Subcontractor under clause 11.2 will relieve the Subcontractor from its obligations under this Subcontract.

### 11.2 Notice requirement

- (a) If the Subcontractor considers that any communication from Perkins, including the giving of a direction (whether orally or in writing) or the issuing of a drawing, or the issuing of comments on a drawing by Perkins or its consultants or by a party engaged by the Principal, will give rise to a Claim, but Perkins has not expressly acknowledged it to be a Variation direction, the Subcontractor must notify Perkins in what respect it considers the direction will give rise to a Claim.
- (b) A notice given under clause 11.2(a) must be given in writing and must be given within the period stated in Item 20 after the date on which Perkins gives the direction and in any event before the Subcontractor incurs any additional costs in respect of the direction.
- (c) If the Subcontractor fails to give notice strictly in accordance with clause 11.2(b), the Subcontractor will not be entitled to make a Claim with respect to the direction.

### 11.3 Certain events not Variations

A direction or an act of Perkins that is given or done to ensure the Subcontractor complies with its obligations under the Subcontract, including to correct any Defect or other error, omission or failure, does not constitute a Variation nor otherwise entitle the Subcontractor to a Claim.

### 11.4 Variations for Convenience

- (a) If the Subcontractor requests Perkins to direct a Variation for the convenience of the Subcontractor, Perkins may, in its absolute discretion, direct the Variation.

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- (b) Unless agreed otherwise in writing, and notwithstanding any other provision of the Subcontract, the Subcontractor is not entitled to a Claim in respect of a Variation directed for the convenience of the Subcontractor.
- (c) Perkins is not obliged to direct a Variation for the convenience of the Subcontractor.

## 11.5 Variation Quotations

- (a) If Perkins directs the Subcontractor to submit a quotation for a proposed Variation, the Subcontractor must submit its quotation within the period requested by Perkins, or if no period is requested, promptly. Such quotation must include a detailed break-up of the price proposed by the Subcontractor to perform the proposed Variation, be in writing and must include the effect the proposed Variation will have on:
  - (i) the Subcontract Sum, if any, as valued under clause 12.1, and the cost or effect on any applicable warranty;
  - (ii) the Subcontract Period; and
  - (iii) the function or integrity of any element of the Subcontract Works or the work under the Main Contract of which the Subcontractor should reasonably be aware.
- (b) The Subcontractor must not proceed with a proposed Variation unless and until Perkins directs it to do so under clause 11.1. In giving such direction Perkins is not bound to accept the details provided by the Subcontractor under clause 11.5(a).
- (c) Where Perkins directs a proposed Variations but does not accept the details provided by the Subcontractor under clause 11.5(a) the Variation will be valued under clause 12.1.
- (d) The Subcontractor is not entitled to make a Claim in relation to any works relating to pricing of Variations or proposed Variations under clause 11.

## 12. VALUATION

### 12.1 Valuation Amount

- (a) Where the Subcontract provides that a valuation shall be made under this clause 12.1, the Subcontract Sum will be adjusted (up or down) by an amount agreed between the parties, or failing such agreement, by an amount determined by Perkins (acting reasonably) as follows:
  - (i) in respect of work performed, things supplied or actions taken by Perkins (by itself or by engaging others) instead of by the Subcontractor, the value will be determined by the net costs incurred by Perkins to perform the work, supply the thing or take the action plus ten (10) percent for the cost of administration and off-site overheads;
  - (ii) in respect of a Variation directed under clause 11.1 (other than one directed to be performed on Daywork), an amount valued as follows:
    - (A) if the Subcontract prescribes specific rates or prices to be applied, those rates or prices must be used;
    - (B) to the extent that subclause 12.1(a)(ii)(A) does not apply and the Subcontract includes rates or prices for similar work, such rates and prices must be used to the extent that it is reasonable to use them; or
    - (C) to the extent that neither subclause 12.1(a)(ii)(A) nor 12.1(a)(ii)(B) applies, Perkins will determine reasonable rates and prices to be used which are to include a reasonable amount for off-site overheads and profit (being the percentage stated in Schedule 6); and
  - (iii) in respect of an increase or decrease in a fee or a charge, or the imposition of a new fee or charge, the value shall be the actual net cost of the fee or charge, without the addition of an amount for off-site overheads and profit.
- (b) in respect of any other matter for which the Subcontract provides that a valuation is to be made under this clause (other than Daywork), the Subcontract Sum will be increased or decreased, as the case may be, by an amount agreed by the parties or failing that by an amount determined by Perkins acting reasonably.

- (c) to the extent that a Variation involves the decrease or omission of any part(s) of the Subcontract Works, the Subcontractor shall not be entitled to a payment for off-site overheads or profit in respect of the Subcontract Works so decreased or omitted.
- (d) the Subcontractor has no right to a payment for any off-site overhead or profit for any Variation except as provided for in Schedule 6.
- (e) no disagreement or Dispute in relation to a Variation, including the Work the subject of the Variation or the amount payable or deductible, will in any way relieve the Subcontractor of its obligation to perform the Variation or to continue to perform the Works or satisfy its other obligations under the Subcontract.

## 12.2 Daywork

- (a) Perkins may direct that a Variation to the Subcontract Works be performed and recorded as daywork.
- (b) If Perkins directs the Subcontractor perform a Variation as daywork, the Subcontractor must at the end of each day on which the daywork was performed provide Perkins with:
  - (i) a record detailing the description of nature of the work performed and of the location;
  - (ii) the name of each person who performed any part of the work, and the time at which that person commenced and stopped the performance of that work;
  - (iii) the number of hours for which each person performed the relevant work; and
  - (iv) a detailed description of the materials and plant used in connection with the work.
- (c) The records in clause 12.2(b) must be signed by Perkins at the end of the day on which the relevant works was performed.
- (d) The Subcontractor must give to Perkins the copies of time sheets, wages sheets, invoices, receipts and other documents reasonably requested by Perkins to verify the cost of the Variation performed as daywork.
- (e) The value of Daywork will be determined by Perkins (acting reasonably) as follows:
  - (i) the hourly rates stated in the Subcontract or, if none are stated, such other hourly rates as maybe approved by Perkins. The hourly rate is a fully inclusive rate and is deemed to include all labour costs, on site and off- site overheads and profit, supervision, insurance, consumables, accommodation and facilities, all administration; and transport and all incidental costs;
  - (ii) the amount of hire charges in respect of plant or equipment approved by Perkins for use on the daywork in accordance with such hire rates and conditions as may be agreed between Perkins and the Subcontractor, or in the absence of agreement, in accordance with reasonable rates and conditions as may be determined by Perkins;
  - (iii) the actual cost payable by the Subcontractor for all materials supplied and required for the daywork;
  - (iv) the reasonable amounts paid by the Subcontractor for services, sub-subcontract work and professional fees; and
  - (v) the percentage or percentages stated in Schedule 6 of the sum of the amounts calculated under paragraphs (ii) to (iv) to compensate the Subcontractor for its on-site and off-site overheads and profit.
- (f) Amounts payable for Daywork shall not be subject to adjustment for rise and fall in costs.
- (g) It is a condition precedent to the Subcontractor's entitlement to make a claim for payment for the performance of Daywork that the Subcontractor has strictly complied with the requirements of this clause.

## 13. PROVISIONAL SUMS

- (a) If the Subcontract Sum includes, as part of any lump sum, any provisional sums, those provisional sums are not themselves payable to the Subcontractor unless the work or item to which the provisional sum relates is directed by Perkins to be performed or supplied by the Subcontractor.
- (b) Where Perkins directs the Subcontractor to perform work to which a provisional sum relates, that work will be valued under clause 12.1.
- (c) If the actual reasonably incurred cost of a provisional sum differs from the amount stated in the Subcontract for the corresponding provisional sum item:
  - (i) if the cost exceeds the provisional sum, the Subcontract Sum will be increased by the excess; and
  - (ii) if the cost is less than the provisional sum the Subcontract Sum will be reduced by the difference.

- (d) The Subcontract Sum is deemed to already include the Subcontractors preliminaries and off -site overheads and profit in respect of the provisional sum items so the valuation of the work to which the provisional sum relates must not include any allowance or adjustment for the Subcontractors preliminaries nor off -site overheads and profit.
- (e) Where Perkins does not direct the Subcontractor to perform work to which a provisional sum relates that work will be deemed to have been deleted from the work under the Subcontract and the relevant provisional sum will be deducted from the Subcontract Sum together with a reasonable amount for the Subcontractors off-site overheads and profit in respect of the applicable provisional sum work.
- (f) If Perkins deletes any item of work to which a provisional sum relates, Perkins may engage another contractor to perform that work. The engagement by Perkins of another contractor will not be a breach or repudiation of the Subcontract.
- (g) The Subcontractor is not entitled to a Claim in relation to the deletion of a provisional sum or the engagement of another contractor to perform any provisional work.

## 14. DEFECTS LIABILITY

### 14.1 Defects

- (a) If any Defect is found in the Subcontract Work or any part thereof at any time before Practical Completion or at any time during and up to the 14<sup>th</sup> day after the expiry of the Defects Liability Period, the Subcontractor must remedy such Defect in accordance with this clause 14.
- (b) Prior to the date of practical completion of the Main Contract, the remedying of Defects must be performed by the Subcontractor with due diligence and at and within such times and in such circumstances as Perkins directs so as to cause as little inconvenience to Perkins and other subcontractors as possible. After the date of practical completion of the Main Contract, the remedying of Defects must be performed by the Subcontractor with due diligence and at and within such times and in such circumstances as Perkins or the Principal directs so as to cause as little inconvenience to the Principal, Perkins, other contractors and users of the Project as possible.
- (c) The Subcontractor must remedy any Defect whether it has been given a direction by Perkins or not.
- (d) The Subcontractor must comply with any directions and timeframes given by Perkins regarding the rectification of Defects.
- (e) The Subcontractor must throughout the performance of the Subcontract Works, regularly prepare its own defects lists and submit them to Perkins together with a statement of the status of the rectification work required for each Defect.

### 14.2 Rectification of Defects by Perkins

If the Subcontractor fails to remedy a Defect as required under clause 14.1, within the timeframe notified by Perkins or if no timeframe is notified within a reasonable time, Perkins may have the Defect remedied (by itself or by engaging others) and the cost of doing so will be valued under clause 12.1. The engagement by Perkins of a third party will not be a breach or repudiation of the Subcontract.

### 14.3 Extension of Defects Liability Period

Where Perkins directs the Subcontractor to remedy a Defect during a Defects Liability Period, the Defects Liability Period for the work the subject of the Defect will be extended so that, in respect of the work the subject of that remedied Defect, a separate Defects Liability Period will apply and continue until the expiry of twelve (12) months from the date of completion of the correction of the Defect, provided that no Defects Liability Period shall continue beyond twenty four (24) months from the Date of Practical Completion.

## 14.4 Acceptance of defective work

- (a) Instead of requiring the Subcontractor to remedy any Defect, Perkins may, in its absolute discretion, direct the Subcontractor that it accepts the Subcontract Work with the Defect not remedied or with the Defect partly remedied. Such direction will be deemed to be a Variation and valued under clause 12.1. Amongst other things the valuation will take account of any cost, expense, loss suffered or incurred or likely to be suffered or incurred by Perkins as a result of accepting the Subcontract Work with the Defect or with the Defect only partly remedied.
- (b) Perkins is under no obligation to accept any Defects in the Subcontract Works.

## 14.5 No effect on Subcontractor's liability

- (a) The failure of Perkins to inspect the Work, witness any test, order or carry out any test, discover any Defect or reject the Work or any part of the Work does not relieve the Subcontractor from any liability or obligation to remedy any Defect in its Works.
- (b) Nothing in this clause prejudices any other right which Perkins may have against the Subcontractor arising out of the failure of the Subcontractor to perform the Works in accordance with the Subcontract.

## 15. PROTECTION OF PEOPLE AND PROPERTY

### 15.1 Protection of people and property

Insofar as the Subcontract permits the Subcontractor must:

- (a) perform the Subcontract Work in a way that it does not cause nuisance, disturbance, interference, annoyance, loss or damage to the owners or occupiers of neighbouring properties;
- (b) provide all things and take all measures necessary to protect people and property; and
- (c) provide all things and take all measures necessary to avoid interference with the passage of people and vehicles.

Without limiting the generality of the Subcontractors obligations, they include the provision of warning signage, barricades, fencing, lighting, removal of obstructions and protection of services.

### 15.2 Damage to property

If the Subcontractor or its Personnel damages property, including public utilities and services and neighbouring property the Subcontractor must promptly rectify the damage at its cost and pay any compensation which the law requires the Subcontractor to pay.

If the Subcontractor fails to comply with an obligation under this clause Perkins may, in addition to Perkins other rights and remedies, have the obligation performed by itself or by engaging others. The costs incurred will be valued under clause 12.1.

### 15.3 Damage to other works

- (a) The Subcontractor must do everything reasonably necessary to ensure the Subcontract Works and the works generally are not damaged.
- (b) The Subcontractor must take all reasonable care to not damage any work performed by Perkins or other subcontractors, other than disturbance of other work that is strictly required in order to perform the Subcontract Works.
- (c) Unless the Subcontract provides otherwise, if the Subcontractor is required to penetrate any other work, the penetration must be made good by the Subcontractor, and the making good includes (if required), the installation of flashings and collars to ensure suitable waterproofing, soundproofing or fire proofing.
- (d) Unless the Subcontract provides otherwise, any excavation work undertaken by the Subcontractor must be compacted and placed back in its original condition by the Subcontractor.

- (e) If the Subcontractor fails to comply with an obligation under this clause 15, in addition to any other remedies Perkins may have, Perkins may (by itself or by engaging others) take action to rectify the damage and the cost of doing so will be valued under clause 12.1.

## 16. CARE OF THE WORK AND REINSTATEMENT

### 16.1 Care of the Works

- (a) The Subcontractor is responsible for the care of the Subcontract Work from and including the date of commencement of the Subcontract Work until 4.00pm on the Date of Practical Completion and thereafter for the care of outstanding work and Defects and for any damage caused by the Subcontractor in the course of completing its obligations under the Subcontract.
- (b) The Subcontractor is responsible for the care of its unfixed goods, materials, plant, tools, equipment and things brought to the Site by it or its Personnel.

### 16.2 Reinstatement

- (a) If loss or damage occurs to the Subcontract Work or unfixed goods, materials, plant, tools, equipment and things brought to the Site by the Subcontractor or its Personnel whilst the Subcontractor is responsible for their care, the Subcontractor must promptly make good the loss or damage to:
- (i) minimise the impact to the work of Perkins and other subcontractors;
  - (ii) if any part of the project is operating, minimise the impact to that operation; and
  - (iii) continue to comply with its obligations under the Subcontract.
- (b) If the Subcontractor does not promptly rectify any damage done to the Subcontract Works or replace any lost or stolen unfixed goods, materials, plant, tools, equipment and things brought to the Site by the Subcontractor or its Personnel, as directed by Perkins, Perkins may (by itself or by engaging others) rectify the damage and the cost of doing so will be valued under clause 12.1. The engagement by Perkins of a third party will not be a breach or repudiation of the Subcontract.

## 17. URGENT PROTECTION

### 17.1 Urgent protection

If urgent action is necessary to protect the Subcontract Works, other property or people and the Subcontractor fails to take the action, in addition to any other remedies of Perkins, Perkins may take the necessary action (by itself or by engaging others). If the action taken by Perkins is action which the Subcontractor should have taken at the Subcontractor's expense, the cost incurred by Perkins in taking such action will be valued under clause 12.1.

If time permits, Perkins shall give the Subcontractor prior written notice of the intention to take action under this clause.

## 18. INSURANCE

### 18.1 Insurance by the Subcontractor

Before commencing the Subcontract Works, the Subcontractor must effect and maintain the following policies of insurance during the performance of the Subcontract Works or for any longer period of time which is stated below:

- (a) where clause 5 applies, professional indemnity insurance:
- (i) for an amount not less than the amount stated in Item 16;
  - (ii) covering the liability of the Subcontractor at law for breach of professional duty (including vicarious liability for breach of professional duty by subconsultants), the Australian Consumer Law forming part of the *Competition and Consumer Act 2010* (Cth);
  - (iii) which provides for at least one automatic reinstatement of the sum insured; and
  - (iv) which is to be maintained for six years after the expiry of the Defects Liability Period.
- (b) public liability insurance:
- (i) for an amount not less than the amount stated in Item 16;

- (ii) which must include the Perkins as a named insured (and note the interest of the Principal if requested); and
- (iii) covering liability for:
  - (A) loss of or damage to property; and
  - (B) the death of or injury to any person,
 arising out of or in connection with the performance of the Subcontract Works;
- (c) workers' compensation insurance:
  - (i) in the form and amounts required by the worker's compensation legislation in the laws applicable in the relevant jurisdiction;
  - (ii) which must cover covering liability under statute and at common law for death of or injury to persons employed by, or deemed by law to be employed by, the Contractor; and
  - (iii) where permitted by law, which include blanket Principals Indemnity cover for statutory liability and Common law benefits with a waiver of subrogation; and
- (d) motor vehicle insurance:
  - (i) for an amount not less than the amount stated in Item 16.

## 18.2 Insurance requirements

- (a) Before commencing the Subcontract Works, upon renewal of each policy and whenever reasonably required by Perkins, the Subcontractor must provide evidence of the currency of the insurances required to be effected by the Subcontractor under clause 18.1, and Perkins may withhold payments under this Subcontract until such evidence of compliance is provided to Perkins.
- (b) Each insurance policy to be effected and maintained by the Subcontractor must be in a form and on terms to the reasonable satisfaction of Perkins with a reputable insurer having a financial strength rating equal to or better than a Standard and Poors A minus rating.
- (c) The Subcontractor must pay all premiums, excesses and other costs incurred by the Subcontractor in connection with insurance required to be effected by the Subcontractor under this Subcontract.
- (d) The Subcontractor must require each of its subcontractors to effect and maintain workers' compensation insurance in accordance with clause 18.1(c) for persons employed by, or deemed by law to be employed by, the subcontractor.
- (e) If the Subcontractor is a corporation and is required to take out insurance under the *Workers' Compensation and Injury Management Act (2023)* (WA) as amended, the Subcontractor must ensure that its working directors are covered under its workers' compensation and employers' indemnity insurance.
- (f) In relation to property, the relevant insurance policies must indemnify the insureds against the cost of reinstatement or replacement with new property.
- (g) The insurance policies referred to in this clause 18.1 must be primary and without any right of contribution by Perkins or any insurance effected by Perkins.
- (h) If the Subcontractor or its Personnel make a claim under any policy of insurance taken out by Perkins, or Perkins makes a claim under any policy of insurance taken out by Perkins that was required to be taken out by the Subcontractor under this Subcontract, then the Subcontractor shall be liable to Perkins and shall indemnify Perkins against any excess payable or deductible under the relevant policy in connection with the claim.

## 18.3 Notification of claims

- (a) The Subcontractor must notify Perkins of any claims made in connection with this Subcontract against the public liability and workers' compensation insurances required to be effected by the Subcontractor under this Subcontract within 5 Business Days after it becomes aware or ought reasonably to have become aware of the claim.
- (b) The Subcontractor must provide such further information to Perkins in relation to the claims as Perkins may reasonably require.
- (c) The Subcontractor must notify Perkins should a claim under the professional indemnity insurance policy required to be effected by the Subcontractor under this document cause the aggregate limit of claims under that policy to exceed the aggregate limit specified in Item 16.

## 18.4 Cross liability

The public liability policy required to be effected under this document must include a cross liability clause in which the insurer:

- (a) agrees to waive all rights of subrogation or action against any of the persons constituting the insured; and
- (b) accepts the term "insured" as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them.

## 18.5 Subcontractor's failure to give certificates of currency

- (a) The Subcontractor is not entitled to access the Site or submit a progress claim until any default of its obligations under clause 18.1 has been remedied.
- (b) Without prejudice to any other right or remedy which Perkins may have under this Subcontract or at law, if the Subcontractor fails to comply with clause 18.1 Perkins may, at its sole discretion, take out an insurance policy for which the Subcontractor has not given Perkins a certificate of currency under clause 18.2(a). The cost incurred by Perkins in taking such action will be valued under clause 12.1.

## 18.6 Insurance does not limit liability

- (a) The Subcontractor is not relieved of any liability it may have under this Subcontract or at law by reason of the fact that:
  - (i) the Subcontractor holds insurance against that liability; or
  - (ii) the level of insurance held is insufficient to cover the extent of the Subcontractor's liability.
- (b) In the event that the Subcontractor's liability to Perkins exceeds any amount paid by an insurer, then the Subcontractor must pay the balance.
- (c) The Subcontractor is responsible for any loss or damages not covered by those insurances required to be effected by the Subcontractor under clause 18.1.
- (d) Nothing in this Subcontract restricts the Subcontractor from insuring for sums or risks greater than those required under the Subcontract.

## 18.7 Variation of Insurance

The Subcontractor must not do anything or allow anything to occur which may invalidate or render void or voidable any policies of insurance required to be effected under the Subcontract.

No insurance arranged by the Subcontractor may be varied to the detriment of Perkins.

## 18.8 WorkCover requirements for sub-subcontractors

- (a) In addition to the requirements under clause 18.1 the Subcontractor must ensure that all its sub-subcontractors comply with both of the following in relation to the sub-subcontractor's directors, supervisors, officers and workers:
- (i) each person involved in the Subcontract Works who can be covered by WorkCover or the equivalent relevant government body in the Jurisdiction is covered to the maximum extent possible; and
  - (ii) any person who cannot be covered by WorkCover is covered by income protection insurance to the minimum extent mentioned in Item 16.
- (b) The term "WorkCover", as stated in this clause 18.8, means:
- (i) if the relevant Jurisdiction is Western Australian, the laws applicable in Western Australia, WorkCover WA; or
  - (ii) if the relevant Jurisdiction is not Western Australian, the laws applicable in that Jurisdiction.

## 18.9 Survival

To the extent that this clause 18 relates to professional indemnity insurance it will survive the termination of the Subcontract.

## 19. CIVIL LIABILITY ACT

To the extent permitted by law it is agreed that pursuant to section 4A of the *Civil Liability Act 2002* (WA), Part 1F (Proportionate Liability) of the *Civil Liability Act 2002* (WA) is excluded from operating under or in connection with this Subcontract.

## 20. COMMENCEMENT AND COMPLETION

### 20.1 Site working days and times

The Site will be open for work by the Subcontractor as stated in Item 10.

If the Subcontractor is required to work overtime because of any act or omission of the Subcontractor or any of the Subcontractor's Personnel, the Subcontractor shall be responsible for the reasonable costs incurred by Perkins arising out of or in connection with the Subcontractor's need to work overtime and any such costs will be valued under clause 12.1.

### 20.2 Acknowledgement

The Subcontractor acknowledges and agrees that:

- (a) the completion of the Subcontract Works within the Subcontract Period is critical to Perkins being able to achieve practical completion under the Main Contract;
- (b) Perkins is relying on the skill and expertise of the Subcontractor to perform its obligations under the Subcontract in accordance with the Subcontract within the Subcontract Period;
- (c) completion of the milestones in the construction programme within the time specified in the construction programme is essential to enable other subcontractors to commence and complete their work so as not to delay the Project; and
- (d) damages are payable by Perkins to the Principal under the Main Contract if Perkins does not achieve completion by the contractual completion date(s) stated in the Main Contract.

### 20.3 Time for commencement and completion of the Subcontract Works

- (a) The Subcontractor must:

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- (i) commence any off-Site work promptly;
  - (ii) place orders for and take all measures necessary to ensure the supply of all materials and goods necessary to carry out and complete the Subcontract Works within the Subcontract Period;
  - (iii) commence on Site work on the Date for Commencement on Site as stated in Item 8;
  - (iv) perform the Works regularly, expeditiously and diligently and not interfere with or impede the progress of any works being carried out by the Principal, Perkins, or other subcontractors;
  - (v) perform the Works in accordance with the sequencing (if any) set out in the construction programme and must change its sequencing in accordance with changes in the construction programme; and
  - (vi) plan, programme and carry out the Subcontract Works so as to not delay or cause Perkins to be delayed in achieving practical completion under the Main Contract.
- (b) The Subcontractor must complete the Subcontract Works within the Subcontract Period, as adjusted under this Subcontract and must employ sufficient resources to achieve this requirement.

## 20.4 Subcontractor must comply with the construction programme

- (a) Perkins will prepare a construction programme for the performance of all work required to be practically complete under the Main Contract by the date for practical completion under the Main Contract. The construction programme may show the dates by which, or the times within which, the various stages or portions of the Subcontract Works, including the dates by which milestones in procuring, constructing and commissioning the Subcontract Works are to be performed or completed.
- (b) The construction programme or dates may be changed by Perkins, from time to time and for any reason, and the most recent revision of the construction programme will be available for inspection in Perkins' site office during normal office hours.
- (c) The Subcontractor must comply with the latest construction programme and it must not, without reasonable cause, depart from a programme.
- (d) If so requested by Perkins, within 10 Business Days of the request, the Subcontractor must provide to Perkins in native format a detailed subcontract programme for the performance of the Subcontract Works. The subcontract programme must:
- (i) be in sufficient detail to enable progress of the Subcontract Works to be analysed on a weekly basis;
  - (ii) include a labour histogram showing the estimated number of operatives for each week of the Subcontract Period; and
  - (iii) identify milestone dates for the submission of design drawings, ordering of critical or long lead time procurement items (if any) and off site manufacture and fabrication works (if applicable).
- (e) The Subcontractor acknowledges that Perkins may periodically adjust the construction programme to account for the actual progress of the work required to complete the Project or to maintain critical aspects of the current construction programme, and the Subcontractor when directed by Perkins, and in the time directed by Perkins, will update and reissue its subcontract programme to Perkins to account for the actual progress of the Works.
- (f) Nothing in the construction programme will relieve the Subcontractor from its obligations under clause 20.1.
- (g) The Subcontractor has allowed in the Subcontract Period and the Subcontract Sum for all risks of co-ordinating its work with other subcontractors and shall accommodate and co-operate with other subcontractors in accordance with clause 6.
- (h) The Subcontractor must give Perkins reasonable advance notice having regard to the construction programme of when the Subcontractor needs information, materials, documents or directions from Perkins or the Principal.
- (i) Perkins shall not be obliged to give any information, materials, documents or directions earlier than Perkins should reasonably have anticipated at the date of the Subcontract.
- (j) Perkins may direct in what order and at what time the various stages or portions of the works shall be performed. If the Subcontractor can reasonably comply with the direction, the Subcontractor shall do so. If the Subcontractor cannot reasonably comply with the direction, the Subcontractor shall give Perkins written notice of the reasons why it cannot comply with the direction.

## 20.5 Re-Sequence

- (a) Perkins may at any time up to the Date of Practical Completion direct the Subcontractor to change the sequence or timing of the Subcontract Works.
- (b) No direction by Perkins to re-sequence the performance of the Subcontract Work will entitle the Subcontractor to additional costs, unless the Subcontractor can demonstrate that it has incurred actual direct and necessary costs which are unavoidable and are not too remote, as a result of the re-sequence. Any costs incurred will be valued under clause 12.1 but must not include any off-site overheads, profit, loss of profit or loss of opportunity to earn a profit or any other indirect cost, loss or expense.
- (c) A direction by Perkins to re-sequence the Subcontract Works will not amount to a breach or repudiation of the Subcontract.

## 20.6 Separable Portions

Separable Portions may be directed by Perkins, who shall clearly identify for each, the:

- (a) portion of the Works;
- (b) date or period for practical completion; and
- (c) respective amounts for security and liquidated damages.

## 21. DELAY AND ACCELERATION

### 21.1 Notice of delay

The Subcontractor must within the period stated in Item 20 notify Perkins in writing upon becoming aware of any event or circumstance which is causing or is likely to cause delay or disruption (or both) to the Subcontract Works or the work under the Main Contract setting out brief details of the cause of the delay or likely delay and the expected impact (to the extent known at the material time). The Subcontractor must discuss the matter with Perkins and take all practical steps to avoid, mitigate or minimise any such delay and disruption and any adverse effect which might result from such event or circumstance.

### 21.2 Extension of time

- (a) The Subcontract is entitled to an extension of time to the Subcontract Period for a delay if:
  - (i) the delay is a Qualifying Cause of Delay;
  - (ii) the delay is on the critical path for the Subcontract Works and actually delays the Subcontractor from completing the Subcontract Works within the Subcontract Period;
  - (iii) there is no concurrent delay that is not a Qualifying Cause of Delay. In the event of concurrent delay, no regard shall be had to which delay commenced first; and
  - (iv) the Subcontractor has complied with clauses 21.1, 21.2(c) and 21.2(d) in respect of the delay.
- (b) If the Subcontractor fails to satisfy the conditions precedent in clause 21.2(a) it is barred from making a Claim.
- (c) If the Subcontractor wishes to claim an extension of time for the delay, the Subcontractor must within the period stated in Item 20 after the Subcontractor became aware, or ought to have reasonably become aware, of the cause of the delay, submit to Perkins a claim for an extension of time setting out:
  - (i) reasonable details of the Qualifying Cause of Delay;
  - (ii) the date on which the Qualifying Cause of Delay first arose;
  - (iii) the impact of the Qualifying Cause of Delay on its ability to complete the Subcontract Works within the Subcontract Period (including details showing that the Subcontractor has actually been, or is likely to be delayed in a manner what will extend the Subcontract Period);
  - (iv) subject to 21.2(d), the extension of time claimed specifying the number of days claimed;
  - (v) whether the Qualifying Cause of Delay has ceased (and the date that it ceased) or is ongoing; and

- (vi) the steps taken by the Subcontractor to minimise the delay and the extent to which those steps reduced the delay.
- (d) For an ongoing delay, updates of the extension of time claim must be submitted by the Subcontractor to Perkins at the intervals stated in Item 20 during the period of the delay until the delay ceases. The final update of the extension of time claim must be clearly identified as such by the Subcontractor.
- (e) The Qualifying Causes of Delay are any of the following:
  - (i) a Variation directed under clause 11.1, except to the extent that such variation is necessitated by the Subcontractor's default;
  - (ii) an act, default or omission of Perkins but not an act or omission permitted under the Subcontract;
  - (iii) a suspension under clause 29.9 or 31.1(a); or
  - (iv) an event stated in Item 11 (if any),
 except to the extent that the delay is caused by a failure of the Subcontractor to fulfil its obligations under the Subcontract.
- (f) Except to the extent that Perkins gives a direction under clause 21.4(f), Perkins must give written notice of a reasonable extension of time (if any) which is granted, as determined by Perkins within 30 Business Days of receiving the last of the following:
  - (i) the extension of time claim;
  - (ii) for an ongoing delay, the final update of the extension claim notified by the Subcontractor; or
  - (iii) the further information requested by Perkins in relation to an extension claim or an update of an extension claim.
- (g) The Subcontractor must do everything necessary to overcome and mitigate all delays to which it is not entitled to an extension of time so as to complete the Subcontract Works within the Subcontract Period, including to the extent necessary working overtime (but subject to the normal Site working hours stated in Item 10), using shift work and employing additional resources. If required by Perkins the Subcontractor must meet with Perkins to discuss the measures necessary to achieve this requirement. If the Subcontractor fails to employ sufficient resources to achieve this requirement, Perkins may take action (by itself or by engaging others) instead of the Subcontractor in accordance with clause 6.4(d). The Subcontractor is not entitled to a Claim arising from any actions and mitigation measures taken by the Subcontractor in accordance with this clause 21.2(g).
- (h) Notwithstanding that the Subcontractor is not entitled to an extension of time, Perkins may in its sole and absolute discretion, at any time and from time to time and by notice in writing to the Subcontractor, extend the Subcontract Period for any reason. The Subcontractor shall not be entitled to a Claim in connection with an extension of time directed under this clause 21.2(h).
- (i) No delay, nor a failure by Perkins to grant a reasonable extension of time under clause 21.2(f) or to do so within the time stated in that clause, nor the giving of a direction under clause 21.4(f), will set any time at large or amount to a breach or repudiation of the Subcontract.

## 21.3 Disputing determinations by Perkins

- (a) The Subcontractor acknowledges that the time periods set out in clauses 21.1, **Error! Reference source not found.**, 21.2(c) and 21.2(d) have been agreed on the basis that it provides that Subcontractor with sufficient time to review all the facts, matters and circumstances to determine and notify Perkins of the facts, matters and circumstances on which its claim for an extension of time is made.
- (b) If the Subcontractor disputes the determination of Perkins under clause 21.2(f), the Subcontractor will be limited to disputing the determination based on the facts, matters and circumstances that were notified to Perkins in its claim made in accordance with clause 21.2(c).

## 21.4 Acceleration

- (a) The Subcontractor acknowledges and agrees that without limiting the Subcontractors obligations in clause 20, Perkins will continually review the progress of the Works.
- (b) If Perkins forms the view that:

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- (i) the obligations under clause 20.2 are not being complied with;
  - (ii) practical completion under the Main Contract is unlikely to be achieved as a result of the Subcontractor's performance or lack of performance; or
  - (iii) the subcontract programme does not accurately reflect the actual progress of the Works,

Perkins may give written notice to the Subcontractor of its opinion together with reasons for forming that opinion and direct the Subcontractor to immediately accelerate progress and increase resources to the performance of the Subcontract Works.
- (c) Within 5 Business Days of receipt of Perkins' notice under clause 21.4(b) the Subcontractor must:
  - (i) notify Perkins of any matters in connection with that notice with which it disagrees together with its reasons for doing so; and
  - (ii) to the extent it does not disagree, immediately accelerate progress and increase resources for the performance of the Subcontract Works so that it remedies the default within the time directed by Perkins.
- (d) To the extent it does not disagree with Perkins' opinion, if the Subcontractor fails to comply with a notice or a direction given under clause 21.4(b) in the timeframe specified in the direction, Perkins may do any of the following:
  - (i) employ the resources reasonably required to comply with the direction; take all or any part of the Subcontract Works out of the hands of the Subcontractor; and/or
  - (ii) direct other subcontractors to accelerate.
- (e) Any direction given by Perkins under clause 21.4(b), the Subcontractor's compliance with that direction or Perkins taking action under clause 21.4(d) will not:
  - (i) relieve the Subcontractor from or alter its obligations under the Subcontract;
  - (ii) give rise to a Claim; or
  - (iii) affect the time for performance of the Subcontractor's obligations.
- (f) The cost incurred by Perkins of taking the action under clause 21.4(d), including any reasonable supervision costs incurred by Perkins or acceleration costs payable to other subcontractors, will be valued under clause 12.1.
- (g) Where the Subcontractor is entitled to an extension of time under clause 21.2(f), Perkins may instead of granting an extension of time, direct the Subcontractor to accelerate the performance of the Subcontract Work by giving a written notice entitled "Acceleration Direction", so as to overcome the whole or part of the delay that gives rise to the entitlement to an extension of time and the Subcontractor must comply with that direction. In such event:
  - (i) if Perkins has directed the Subcontractor to accelerate so as to overcome the whole of the delay in question, the Subcontractor will no longer be entitled to an extension of time for that delay;
  - (ii) if Perkins has directed the Subcontractor to accelerate to overcome part of the delay in question, the Subcontractor will no longer be entitled to an extension of time for that part of the delay, but Perkins must grant a reasonable extension of time for the balance of the delay; and
  - (iii) the Subcontractor will be entitled to an amount valued under clause 12.1 for additional direct costs properly and reasonably incurred by the Subcontractor as a result of its compliance with such Acceleration Direction, which the Subcontractor verifies to Perkins reasonable satisfaction.
- (h) Even if the Subcontractor is complying with its obligations under clause 20.1, Perkins may at any time direct the Subcontractor to accelerate the progress of any part of the Subcontract Works by giving an "Acceleration Direction" and the Subcontractor will be entitled to an amount valued under clause 12.1 for additional direct costs properly and reasonably incurred by the Subcontractor as a result of its compliance with such Acceleration Direction, which the Subcontractor verifies to Perkins reasonable satisfaction.
- (i) The Subcontractor must, if requested by Perkins, advise Perkins about possible alternatives for achieving acceleration and their estimated costs.
- (j) No direction by Perkins to accelerate the performance of the Subcontract Work will entitle the Subcontractor to a Claim, unless and to the extent that:
  - (i) Perkins directs the Subcontractor to accelerate in lieu of granting an extension of time or Perkins directs an Acceleration Direction under clause 21.4(f); and

- (ii) the Subcontractor has not fallen behind the construction programme and the request is for the sole benefit of Perkins.
- (k) Perkins and the Subcontractor may, at the request of Perkins, agree the cost of acceleration prior to commencement of the acceleration. If agreement cannot be reached by Perkins and the Subcontractor as to the cost of the acceleration, the cost of acceleration will be dealt with under clause 21.4(f)(iii). If agreement of the cost of acceleration is agreed pursuant to this clause the Subcontractor will be entitled to an adjustment to the Subcontract Sum by the agreed amount.
- (l) No direction by Perkins will be taken as a direction under clauses 21.4(f) or 21.4(g) unless it is in writing and expressly states that it is an Acceleration Direction.
- (m) The Subcontractor must accelerate the performance of the Works at its own cost if the requirement for acceleration results from the Subcontractor being in breach of its obligations under clause 20.

## 21.5 Delay and Disruption Costs

- (a) The Subcontractor must take all reasonable and practical steps to avoid or minimise delay and disruption costs it incurs.
- (b) Delay and disruption costs arising from a Variation are deemed to be included in the value of the Variation valued under clause 12.1 and there is no other basis on which the Subcontractor may claim delay costs or disruption costs arising from a Variation.
- (c) The Subcontractor is not entitled to delay or disruption costs arising from a Force Majeure Event.
- (d) If the Subcontractor is entitled to a Claim arising out of a delay for which Perkins is responsible and for which the Subcontractor has been awarded an extension of time under clause 21.2(f) other than as a result of a Variation, the Subcontractor's entitlement:
  - (i) is limited to the actual direct and necessary costs which are unavoidable and are not too remote, incurred as a result of a delay or the disruption; and
  - (ii) will include an amount or percentage for off-site overhead but not for profit and will not include loss of profit or loss of opportunity to earn a profit or any other indirect cost, loss or expense.
- (e) The Subcontractor is not entitled to a Claim in excess of its entitlement to payment under clause 21.5(d).

## 22. DAMAGES

- (a) If the Subcontractor fails to complete the Subcontract Works within the Subcontract Period, the Subcontractor shall be indebted to Perkins for liquidated damages at the rate stated in Item 12 for every day after the last day of the Subcontract Period to the first of the date on which the Subcontractor completes the Subcontract Works or the date on which the Subcontract is terminated.
- (b) The Parties agree that:
  - (i) the rate of liquidated damages contained in Item 12 are a reasonable and genuine pre-estimate of the losses likely to be suffered by Perkins and do not constitute, nor are intended to be, a penalty; and
  - (ii) if clause 22(a) or any part thereof is found for any reason to be void, invalid or otherwise inoperative so as to disentitle Perkins from recovering liquidated damages, then Perkins will be entitled to recover general damages at law as a result of the Subcontractor's failing to complete the Subcontract Works within the Subcontract Period.
- (c) If an extension of time is directed after the Subcontractor has paid or Perkins has deducted liquidated damages, Perkins shall forthwith repay to the Subcontractor such of those damages as represent the days the subject of the extension of time.
- (d) The Subcontractor must pay Perkins the cost, expense and damages Perkins incurs as a result of any of the following circumstances:
  - (i) the Subcontractor causes delay or disruption to Perkins or to other Subcontractors, by reference to the then current Perkins construction programme;
  - (ii) the Subcontractor fails to complete the Subcontract Works within the Subcontract Period and that causes Perkins to direct other subcontractors to accelerate the progress of their work; and
  - (iii) the Subcontractor suspends the performance of the Subcontract Works without Perkins' approval.

- (e) The payment of cost, expense or damages does not relieve the Subcontractor from its obligations to complete the Subcontract Works or from any other of its obligations and liabilities under the Subcontract.

## 23. PROGRESS CLAIMS AND PAYMENT

### 23.1 Progress claims

- (a) On the day of each month specified in Item 13 (each a "relevant date"), the Subcontractor is entitled to deliver a payment claim to Perkins that complies with this clause 23.
- (b) Each payment claim submitted by the Subcontractor must:
- (i) be given in writing;
  - (ii) include sufficient details and evidence of the value of the Subcontract Works done and any other moneys then due to the Subcontractor pursuant to the Subcontract, including:
    - (A) identify and describe the Subcontract Work to which the progress claim relates with sufficient detail and evidence to enable Perkins to verify the amount claimed;
    - (B) set out the amount of the Subcontract Sum claimed and how that amount was determined;
    - (C) separately identify the value of any Variations completed and any other adjustment to the Subcontract Sum;
    - (D) separately identify any other Claim for payment under the Subcontract; and
    - (E) the total amounts previously certified under clause 23.3;
  - (iii) be submitted to the address given in Item 14;
  - (iv) include a statutory declaration in the form contained in Schedule 5; and
  - (v) include such other details (including supporting documentation) as may be reasonably required by Perkins.
- (c) Perkins may at any stage and in its absolute discretion, elect to determine and certify a payment under clause 23.3 by issue of a payment schedule without receipt of the Subcontractor's payment claim or if the Subcontractor's claim is a defective.

### 23.2 Requirements for Statutory Declaration

Up until Perkins provides a Form of Release to the Subcontractor under clause 24, the Subcontractor must provide Perkins, with each payment claim, a statutory declaration, in the form given in Schedule 5 made by a person in a position to know the relevant facts, that all the Subcontractor's liabilities in relation to the Subcontract Work that are due and payable have been paid.

### 23.3 Determination of amount for payment

- (a) Within 15 Business Days of the relevant date for the receipt of that payment claim, Perkins shall:
- (i) assess the payment claim;
  - (ii) issue to the Subcontractor a payment schedule which must:
    - (A) be in writing;
    - (B) identify the payment claim to which it relates;
    - (C) set out the amounts previously paid to the Subcontractor under the Subcontract;
    - (D) identify any amounts Perkins is entitled to retain, deduct, withhold or set off against moneys otherwise due to the Subcontractor;
    - (E) state the amount if any which Perkins proposes to pay the Subcontractor in respect of the payment claim to which it relates ("**Scheduled Amount**") or the amount Perkins considers the Subcontractor owes to Perkins; and
    - (F) if the Scheduled Amount is less than the amount claimed by the Subcontractor, state the reasons why this is the case and if the Principal is withholding payment because of

deductions under the Subcontract, indicating the amounts deducted and giving particulars of the debts due or monies payable resulting in those deductions.

- (b) If the Subcontractor does not make a payment claim in accordance with clause 23.1, Perkins may nevertheless issue a payment schedule.
- (c) Failure by Perkins to set out in a payment schedule an amount which Perkins is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Subcontractor by Perkins will not prejudice Perkins' right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under the Subcontract.
- (d) Perkins may, in any payment schedule, correct any error in, or otherwise modify, any previous payment schedule.
- (e) In making its determination of the amount due, Perkins may take into account any or all of the following:
  - (i) reference to the cost to complete the Subcontract Works at the time the payment claim is made;
  - (ii) the estimated cost of rectifying any Defect in the Subcontract Works;
  - (iii) the value of work that has been performed but which is not in compliance with this Subcontract;
  - (iv) any amount to be deducted for work performed, things supplied or actions taken by Perkins (by itself or by engaging others) instead of by the Subcontractor; and/or
  - (v) any other amount to be deducted from the Subcontractor pursuant to provisions of the Subcontract.
- (f) Perkins will issue an RCTI to the Subcontractor for amounts due from Perkins to the Subcontractor in respect of payment claims under the Subcontract. If an RCTI is given by Perkins, provided that RCTI includes the details set out in clause 23.3(a)(ii) that RCTI will constitute the payment schedule to be given by Perkins under this clause 23.3.

#### 23.4 Off-site and/or unfixed plant and materials

- (a) Except as provided in clause 23.4(b), Perkins shall not be obliged to pay for any item of off-site and/or unfixed plant and materials which is not correctly incorporated into the Subcontract Works.
- (b) Perkins may in its absolute discretion agree to pay for any item of off-site and unfixed plant and materials.
- (c) If Perkins agrees to make a payment for off-site or unfixed plant and materials under clause 23.4(b), a payment will only be made if;
  - (i) the plant and materials are intended to be incorporated into the Subcontract Works and have not been brought prematurely onto the Site;
  - (ii) no further manufacturing or fabrication work remains to be done to the plant and materials before incorporation into the Subcontract Works;
  - (iii) the plant and materials are clearly labelled and marked and stored separately from all other plant, materials or goods on-site or at the premises at which they are stored (at the Subcontractor's cost);
  - (iv) the Subcontractor has insured the plant and materials to the satisfaction of Perkins and has given Perkins evidence of that insurance;
  - (v) the Subcontractor satisfies Perkins that title in the plant and materials will pass immediately to Perkins on payment for the subject plant and materials free of any lien, charge or encumbrance; and
  - (vi) the Subcontractor has given Perkins an unconditional undertaking from a financial institution acceptable to Perkins for the total payment amount of the subject plant and materials, such unconditional undertaking to be in a form acceptable to Perkins.

#### 23.5 Payment

- (a) In respect of each payment schedule determined by Perkins under clause 23.3:
  - (i) if Perkins determines that an amount is payable to the Subcontractor then Perkins shall within 25 Business Days after the relevant date under clause 23.1, pay the Schedule Amount; or
  - (ii) if Perkins determines that an amount is payable to it by the Subcontractor then Perkins may give written notice of the determination to the Subcontractor. The notice may also include a demand for payment of the amount in question and if the notice includes a demand for payment, the Subcontractor must pay the amount in question to Perkins within 10 Business Days.

- (b) Unless the parties otherwise agree, all payments to the Subcontractor will be made by electronic funds transfer to the Subcontractor's nominated bank account.
- (c) The issue of a payment schedule or a payment to the Subcontractor does not constitute evidence of the satisfactory execution of the Subcontract Work or other matter and will be payment on account only.
- (d) The parties acknowledge and agree that if interest is payable under the Security of Payment Law, the rate shall be that prescribed under the *Civil Judgments Enforcement Act 2004* (WA), section 8(1)(a).

## 23.6 Set Off

- (a) Perkins is entitled to set off or reduce any payments due or owing or which may become due or owing to the Subcontractor under this Subcontract or, subject to compliance with clause 26.3, against any security under this Subcontract by any amount which Perkins claims it is owed to it by the Subcontractor under this Subcontract or any other agreement or Subcontract between the parties.
- (b) Any exercise of rights by Perkins under this clause shall be without prejudice to any other rights or remedies available to Perkins.
- (c) Any failure by Perkins to set off against the amount that would otherwise be payable under clause 23.5(a) will not limit or otherwise affect Perkins right to subsequently set off the amount payable under a subsequent determination of payment.

## 23.7 Conditions Precedent

Perkins is entitled to withhold payment of any money in connection with this Subcontract until the following conditions precedent have been met:

- (a) all information that is required to be submitted in a progress claim is delivered to Perkins including the information in clauses 23.1 and 23.2;
- (b) a formal instrument of agreement has been executed by the Subcontractor and Perkins;
- (c) the Subcontractor has delivered to Perkins the security required under clause 26 (unless it has been agreed to hold cash retention under clause 26.1(a)(ii));
- (d) the Subcontractor has provided evidence of insurances required by clause 18.2;
- (e) the Subcontractor has complied with clause 27.1 (payment of workers and secondary subcontractors); and
- (f) where relevant, the Subcontractor has provided the deed of guarantee required by clause 26.5.

## 23.8 Goods and Services Tax

- (a) All payments to be made by one party ("**Recipient**") to another party ("**Supplier**") under this Subcontract have been calculated without regard to GST. If the whole or any part of any such payment is the consideration for a taxable supply for GST purposes then, when the Recipient makes the payment it must pay to the Supplier an additional amount equal to that payment (or part) multiplied by the appropriate rate of GST.
- (b) Perkins may, at its election, issue a Recipient Created Tax Invoice ("**RCTI**") in respect of any supply made by the Supplier to Perkins. The Subcontractor must not issue a tax invoice in respect of any supply of which Perkins has elected to issue an RCTI.
- (c) The Subcontractor warrants that it is currently registered for GST and agrees to notify Perkins if it ceases to be registered.
- (d) Perkins is registered for GST purposes. If Perkins stops being registered it must immediately notify the Subcontractor

## **24. Practical Completion and Final Payment Claim**

### **24.1 Issue of Practical Completion Claim**

- (a) After the Subcontract Works have achieved Practical Completion, Perkins may instruct the Subcontractor to submit a payment claim titled 'Practical Completion Payment Claim'.
- (b) Within 20 Business Days of Perkins giving the Subcontractor an instruction under clause 24.1(a), or if Perkins does not give an instruction under clause 24.1(a), within 40 Business Days after the Subcontract Works have achieved Practical Completion, the Subcontractor must give Perkins its Practical Completion Payment Claim and such other details (including supporting documentation) as may be required by Perkins. The parties agree the date for submission of the Practical Completion Payment Claim(as calculated in accordance with this clause 24.1(b)) shall be the 'relevant date' for the purposes of calculating time for issuing the payment schedule and for making payment.
- (c) The Practical Completion Payment Claim must:
  - (i) comply with clause 23.1(b); and
  - (ii) include all amounts which the Subcontractor requests from Perkins under the Subcontract or otherwise in respect of any fact, matter or thing arising out of or in connection with the Subcontract.
- (d) After the submission of the Practical Completion Payment Claim or after the date for submitting the Practical Completion Payment Claim under this clause 24 has passed, the Subcontractor releases Perkins from any claim in respect of any fact, matter or thing arising out of, or in any way in connection with the Subcontract or the Subcontract Work, except for any claim included in the Practical Completion Payment Claim which is given to Perkins within the time required by, and in accordance with the terms of this clause 24.
- (e) The Practical Completion Payment Claim is in addition to the other notices which the Subcontractor must give Perkins under the Subcontract to preserve its entitlements under the Subcontract.

### **24.2 Payment schedule for Practical Completion Payment Claim**

- (a) Perkins will assess the Subcontractor's Practical Completion Payment Claim submitted under clause 24.1 and within 15 Business Days of the relevant date, Perkins will issue a payment schedule that complies with the requirements for a payment schedule in clause 23.3(a)(ii) and the terms of clauses 23.3(b) to 23.3(f) (inclusive) apply in respect of the issue of the payment schedule.
- (b) If the payment schedule shows a Scheduled Amount due from Perkins to the Subcontractor, Perkins will make payment in accordance with clause 23.5 provided that Perkins is entitled to withhold the release of the security in accordance with clause 24.3(d).

### **24.3 Form of Release**

- (a) On issue of payment schedule for the Practical Completion Payment Claim, citing the final amount (if any) payable to the Subcontractor, Perkins will deliver to the Subcontractor a Form of Release in the form contained in Schedule 7.
- (b) Upon receipt of the Form of Release the Subcontractor shall:
  - (i) duly execute it and promptly return it to Perkins and the Subcontractor shall be bound to the terms of the Form of Release on execution; or
  - (ii) issue a Notice of Dispute in accordance with clause 33 if the Subcontractor disputes the amount set out in the Form of Release, in which case:
    - (A) the amount agreed by the parties or determined pursuant to the dispute resolution process in clause 33 as the final amount owing to the Subcontractor will be deemed to be the amount set out in the Form of Release; and
    - (B) the Form of Release will be binding on the Subcontractor from that date.
- (c) If within 20 Business Days of Perkins providing the Form of Release to the Subcontractor, the Subcontractor fails to duly execute and return the Form of Release to Perkins or issue a Notice of Dispute in accordance with clause 24.3(b), then Subcontractor acknowledges and agrees that:

- (i) the details contained in the Form of Release shall be binding on the Subcontractor on expiry of that 20 Business Day period; and
- (ii) except as provided for in clause 24.5(a), the Subcontractor shall not be entitled to and waives its rights to any claim against Perkins and Perkins shall be fully discharged and released from all claims which the Subcontractor has or might assert in relation to the Subcontract Work.
- (d) Perkins is not liable to release any of the security to the Subcontractor until the earlier of:
  - (i) the date upon which the Subcontractor has delivered to Perkins the executed Form of Release;
  - (ii) the date upon which the Form of Release has otherwise become binding on the Subcontractor in accordance with clause 24.3(c) or
  - (iii) the date upon which the Form of Release has otherwise become binding on the Subcontractor in accordance with clause 24.3(b)(ii),
 (the "**Date of Form of Release**") following which the security will be release to the Subcontractor in accordance with clause 26.4.

## 24.4 Non-delivery of Practical Completion Payment Claim

If the Subcontractor fails to issue a Practical Completion Payment Claim within the time stated in clause 24.1, Perkins shall, as soon as practicable, issue to the Subcontractor a Practical Completion certificate evidencing the moneys finally due and payable between the Subcontractor and Perkins on any account whatsoever arising out of or in any way in connection with the subject matter of the Subcontract.

## 24.5 Final Payment Claim

- (a) Within 20 Business Days after the end of the last Defects Liability Period, the Subcontractor must provide to Perkins a payment claim titled 'Final Payment Claim' if it wishes to make a claim in respect of any fact, matter or circumstance arising out of or in connection with the Subcontract Works, including Variations directed by Perkins pursuant to clause 11.1(b), which occurred after the Practical Completion Payment Claim and during the Defects Liability Period, and such other details (including supporting documentation) as may be required by Perkins. The parties agree the date for submission of the Final Payment Claim (as calculated in accordance with this clause 24.5(a) shall be the 'relevant date' for the purposes of calculating time for issuing the payment schedule and for making payment.
- (b) The Final Payment Claim must:
  - (i) comply with clause 23.1(b); and
  - (ii) include all amounts which the Subcontractor requests from Perkins under the Subcontract or otherwise in respect of any fact, matter or thing arising out of or in connection with the Subcontract Works which occurred after the Practical Completion Payment Claim and during the Defects Liability Period.
- (c) After the submission of the Final Payment Claim or after the date for submitting the Final Payment Claim under this clause 24 has passed, the Subcontractor releases Perkins from any claim in respect of any fact, matter or thing arising out of, or in any way in connection with the Subcontract or the Subcontract Work, except for any claim included in the Final Payment Claim which is given to Perkins within the time required by, and in accordance with the terms of this clause 24.
- (d) The Final Payment Claim is in addition to the other notices which the Subcontractor must give Perkins under the Subcontract to preserve its entitlements under the Subcontract.
- (e) The barring provisions in clause 24.5(c) constitutes a release of Perkins from liability in respect of any Claims so barred.

## 24.6 Payment schedule for Final Payment Claim

- (a) Perkins will assess the Subcontractor's Final Payment Claim submitted under clause 24.5 and within 15 Business Days of the relevant date, Perkins will issue a payment schedule that complies with the requirements for a payment schedule in clause 23.3(a)(ii) and the terms of clauses 23.3(b) to 23.3(f) (inclusive) apply in respect of the issue of the payment schedule.

- (b) If the payment schedule shows a Scheduled Amount due from Perkins to the Subcontractor, Perkins will make payment in accordance with clause 23.5.

## 24.7 Non-delivery of Final Payment Claim

If the Subcontractor fails to issue a Final Payment Claim within the time stated in clause 24.5(a)24.1, Perkins may, as soon as practicable, but is not obliged to, issue to the Subcontractor a final certificate evidencing the moneys finally due and payable between the Subcontractor and Perkins on any account whatsoever arising out of or in any way in connection with the subject matter of the Subcontract Works.

## 25. PRACTICAL COMPLETION

### 25.1 Practical Completion

- (a) The Subcontractor shall give Perkins at least 10 Business Days' notice of the date upon which the Subcontractor anticipates that Practical Completion will be reached or where there is more than one of each one.
- (b) Perkins will not issue a certificate of Practical Completion certifying the date of Practical Completion.

### 25.2 Effect of Certificates

The issue of a payment schedule by Perkins or a certificate of practical completion under the Main Contract shall not constitute approval of any work or other matter, nor shall it prejudice any claim by Perkins against the Subcontractor.

## 26. PERFORMANCE SECURITY

### 26.1 Security

- (a) The Subcontractor must provide security to Perkins for the purpose of ensuring the due and proper performance of its obligations under this Subcontract, in one of the following forms at the following times:
- (i) before the Subcontractor starts work on site under this Subcontract, two irrevocable, unconditional undertakings that do not contain an expiry date, in a form that is acceptable to Perkins and issued by a financial institution that is acceptable to Perkins. Perkins has an unfettered discretion to approve or disapprove the form of unconditional undertaking and the financial institute giving it. Each undertaking must be for 50% of the amount of security stated in Item 13;
  - (ii) cash retention progressively retained by Perkins from progress payments in the amount of 10% of monies otherwise due to the Subcontractor until the amount so withheld from progress payments equals the amount of security stated in Item 13; or
  - (iii) such other form and amount of Performance Security agreed by Perkins in its sole and unfettered discretion.
- (b) If the security is not in the form of cash retention the Subcontractor is not entitled to make a claim until security to be provided by it has been provided in accordance with the Subcontract.
- (c) If the security is in the form of cash retention and the Subcontract Sum exceeds the prescribed retention money threshold in the Security of Payment Law:
- (i) the cash retention must be held on trust for the Subcontractor until Perkins or the Subcontractor is entitled to receive it; and
  - (ii) Perkins must ensure the cash retention is paid to the trust account set out in Item 19.
- (d) Interest earned on any money held in the trust account under clause 26.1(c)(ii) is payable to Perkins unless it relates to any period after the money is required to be released to the Subcontractor under clause 26.4.
- (e) Otherwise, the Subcontractor acknowledges that cash retention need not be held in any particular definable account and is not held in trust.

## 26.2 Top-Up Security

If the Subcontract Sum increases Perkins will be entitled at any time and from time to time to retain cash retention against this increased amount by deducting 10% of any payment to the Subcontractor until Perkins retains 5% of the total increased Subcontract Sum.

## 26.3 Recourse

- (a) Perkins may at any time, by providing 5 Business Days' written notice to the Subcontractor, have recourse to the retention monies, or convert into money any unconditional undertakings:
  - (i) to make payment of any costs, expenses or damages which Perkins has incurred, or reasonably expects to incur in the future, as a consequence of any act of omission of the Subcontractor, which Perkins asserts constitutes a breach of the Subcontract by the Subcontractor; or
  - (ii) to satisfy any amount which Perkins asserts is payable to Perkins pursuant to this Subcontract or under any agreement or subcontract between Perkins and the Subcontractor.
- (b) Perkins' written notice in subclause 26.3(a) must identify the provision of the Subcontract that Perkins relies on to have recourse to the Security and the circumstances that entitle it to have recourse to the Security.
- (c) Regardless of whether a dispute exists, the Subcontractor must not take any steps whatsoever to injunct or restrain the issuer of the unconditional undertakings or Perkins in respect of dealing with, receiving payment of or using the Performance Security.
- (d) If Perkins makes a demand on the Performance Security and it is later established that Perkins was not entitled to make such a demand, Perkins must promptly return the amount to the Subcontractor.
- (e) Except as provided in subclause 26.3(d) the Subcontractor shall have no other entitlement as a consequence of Perkins making a demand on the Performance Security.

## 26.4 Reduction and Return of Security

- (a) Subject to Perkins right to have recourse to security:
  - (i) upon the Date of Form of Release, Perkins' entitlement to security shall be reduced to half and the reduction shall be released or paid to the Subcontractor within 30 days;
  - (ii) the balance of the security retained by Perkins will be released or paid to the Subcontractor within 30 days of the later of:
    - (A) the expiry of the Defects Liability Period; and
    - (B) the Subcontractor having fulfilled all of its obligations under the Subcontract, including the rectification of any Defects in respect of the Subcontract Works; and
  - (iii) if the Subcontractor has provided additional security for any item of unfixed plant, materials or goods under clause 23.4(b), Perkins shall release the additional security within 30 days of the correct incorporation into the Subcontract Works of the unfixed plant, materials or goods.
- (b) If Perkins terminates the Subcontract under clause 29.3, 29.4 or 29.5, subject to clause 26.4(c), the balance of the security retained by Perkins will be released or paid to the Subcontractor within 30 days of the date of written notice of termination.
- (c) Even if Perkins is otherwise required to release security, Perkins may continue to hold security or retain from the security an amount sufficient to cover any outstanding claim alleged by Perkins against the Subcontractor under or in connection with the Subcontract (whether or not that claim has at that time been liquidated).

## 26.5 Parent Company or Corporate Guarantee

- (a) Where the Subcontractor is a corporation that is related to or is a subsidiary of another corporation, the Subcontractor shall, if requested by Perkins, within ten days of the request, provide a deed of guarantee in the form provided by Perkins (or if no form is provided, in terms acceptable to Perkins) executed by that other corporation for the performance and discharge of the Subcontractors obligations and liabilities under the Subcontract.
- (b) Perkins may withhold any payment of any money that may otherwise be due to the Subcontractor until the Subcontractor complies with Perkins request under clause 26.5(a).

## 27. PAYMENT OF WORKERS AND SECONDARY SUBCONTRACTORS

### 27.1 Workers and sub-subcontractors

The Subcontractor shall ensure that all Personnel employed by the Subcontractor and its sub-subcontractors are paid rates which are not less than those fixed by any Legislative Requirement and employed under the conditions prescribed under any Legislative Requirement.

### 27.2 Direct Payment

- (a) Perkins may, in its absolute discretion, on behalf of the Subcontractor make payments directly to a worker or a sub-subcontractor of the Subcontractor where:
  - (i) permitted by a Legislative Requirement;
  - (ii) the worker or a sub-subcontractor provides Perkins with proof of a court order in favour of the worker or sub-subcontractor and a statutory declaration that it remains unpaid; and
  - (iii) requested in writing by the Subcontractor.
- (b) Such payment made under this clause 27.2(a) shall be deemed to be satisfaction of Perkins obligation to pay the Subcontractor pursuant to clause 23.5 or 24, as the case may be, to the extent of that payment.
- (c) If an amount equal to or greater than the amount paid by Perkins on the Subcontractor's behalf is not or never becomes due by Perkins to the Subcontractor, the amount paid by Perkins will be a debt due from the Subcontractor to Perkins.

## 28. SECURITY OF PAYMENT LAW

- (a) The Subcontractor agrees with Perkins that any payment schedule given under the Subcontract is a payment schedule under the Security of Payment Law.
- (b) Nothing in this Subcontract shall be construed to:
  - (i) make any act or omission of Perkins in contravention of the Security of Payment Law (including a failure to pay an amount becoming due under the Security of Payment Law) a breach of contract (unless Perkins would have been in breach of the Subcontract had the Security of Payment Law had no application); or
  - (ii) give the Subcontractor rights or remedies under the Subcontract which extend or are in addition to the rights and remedies given to the Subcontractor by the Security of Payment Law in respect of any act or omission of Perkins in contravention of the Security of Payment Law.
- (c) The Subcontractor acknowledges and agrees that:
  - (i) it has reviewed the time periods (including any time bars) for performing actions and obligations under the Subcontract;
  - (ii) each time period (including each time bar) is reasonably possible to comply with and not overly onerous having regard to the Subcontractor's ability to perform that act or obligation, the consequence for the Works, the Project or Perkins if such act or obligation is not performed within that time period and Perkins' obligations under the Main Contract; and
  - (iii) Perkins has a legitimate interest in being informed contemporaneously of whether the Subcontractor considers that it is entitled to make any claim/s and that notification may have an impact on the manner in which Perkins addresses the direction, Claim or other aspects of the Subcontract Works.
- (d) The Subcontractor must:
  - (i) promptly give Perkins a copy of any notice the Subcontractor receives from a sub-subcontractor pursuant to the Security of Payment Law; and
  - (ii) ensure that each sub-subcontractor promptly gives Perkins a copy of any notice that the sub-subcontractor receives from another person pursuant to the Security of Payment Law.
- (e) If Perkins becomes aware that a sub-subcontractor is entitled to suspend work pursuant to the Security of Payment Law, Perkins may (in its absolute discretion) pay the sub-subcontractor such money that is, or may be, owing to the sub-subcontractor for work forming part of the Subcontract Works. Perkins may recover from the Subcontractor each amount paid as a debt.

- (f) If the Subcontractor makes a payment claim to Perkins pursuant to the Security of Payment Law, and the Subcontractor applies for adjudication of the payment to be made, then to the extent permitted by the Security of Payment Law the prescribed appointer is the Resolution Institute (WA Chapter).
- (g) For the purposes of this clause 28:
  - (i) “sub-subcontractor” means a person engaged by the Subcontractor, its subcontractors or any other person to do work which forms part of the Subcontract Work; and
  - (ii) “work” means work which the Subcontractor is, or may be, required to perform under the Subcontract and includes equipment, materials, plant, design and other services and temporary works.

## 29. TERMINATION

### 29.1 Preservation of other rights

Any termination of the Subcontract by a party is without prejudice to any rights, remedies or actions either party may have against the other party which may have arisen prior to the date of the termination.

### 29.2 Termination by Perkins for cause

Without prejudice to any rights of Perkins and subject to any Ipso Facto Stay, if:

- (a) actions are instituted by or against the Subcontractor which may result in bankruptcy, insolvency, receivership, administration or winding up of the Subcontractor;
- (b) the Subcontractor's staff who have been nominated by the Subcontractor to perform the Works or the Key Personnel referred to in Item 3 are not available for the performance of the whole or part of the Subcontract, and the proposed substitute staff are not acceptable to Perkins; or
- (c) the Subcontractor is in breach of any of its obligations under the Subcontract and has failed to rectify the breach to Perkins' satisfaction within 5 Business Days of a written notice to do so by Perkins,

Perkins may in its absolute discretion by giving a notice under this clause 29.2:

- (d) take out of the Subcontractor's hands the whole or any part or parts of the Works remaining to be completed: or
- (e) terminate the engagement of the Subcontractor under this Subcontract.

### 29.3 Termination for convenience

Without prejudice to any rights of Perkins, Perkins may at any time terminate this Subcontract by giving the Subcontractor written notice of that termination.

### 29.4 Termination of the Main Contract

- (a) If the Main Contract is terminated, Perkins may immediately terminate this Subcontract by giving the Subcontractor written notice of that termination.
- (b) If Perkins terminates the Subcontract because the termination of the Main Contract is as a result of a breach of the Subcontract by the Subcontractor, then the rights of Perkins will be the same as if the Subcontractor has repudiated the Subcontract.

### 29.5 Termination or suspension for a Force Majeure Event

If Perkins determines that a Force Majeure Event occurs then Perkins may:

- (a) at any time terminate this Subcontract by giving the Subcontractor written notice of that termination; or
- (b) direct the Subcontractor to suspend the performance of the whole or part of the Subcontract Works under clause 31.1(a).

## 29.6 Perkins' rights following termination for Subcontractor's default

- (a) If Perkins terminates the Subcontract under clause 29.2 Perkins may:
- (i) exclude the Subcontractor from Site;
  - (ii) take possession of and use any documents, plant, materials and equipment, goods and items on the Site to complete the Subcontract Works and subject to any such use, Perkins may direct the Subcontractor to remove such things from the Site;
  - (iii) utilise any security provided by the Subcontractor to pay for any costs, expenses or damages which Perkins claims that it has incurred or might in the future incur;
  - (iv) pay any sub-subcontractor or supplier for any work performed in respect of this Subcontract, materials or equipment in respect of which payment has not been made by the Subcontractor; and
  - (v) engage others to complete the Subcontract Works.
- (b) If requested by Perkins the Subcontractor must novate any sub-subcontractors to Perkins upon such terms as Perkins reasonably requires.

## 29.7 Take Out

- (a) If Perkins takes out of the Subcontractor's hand all or part of the Works under clause 29.2, Perkins may:
- (i) take possession of and use plant, materials and equipment, goods and items intended for work under the Subcontract; and
  - (ii) engage with such of the Subcontractor's sub-subcontractors and consultants, as are reasonably required by Perkins to facilitate completion of the Works.
- (b) If Perkins takes possession of construction plant or other things Perkins shall maintain them and, subject to clause 30.4, on completion of the work return them as surplus.
- (c) If Perkins elects to exercise the power to complete the whole or any part of the Works remaining to be completed the Subcontractor shall not be entitled to any further payment in respect of the work taken out of the hands of the Subcontractor (if any) until the Work taken over by Perkins has been completed.
- (d) When work taken out of the Subcontractor's hands has been completed, Perkins shall assess the cost incurred under clause 12.1.

## 29.8 Subcontractor obligations following termination

- (a) Upon termination of this Subcontract the Subcontractor must:
- (i) subject to clause 29.8(a)(ii) immediately cease performing the Works;
  - (ii) comply with directions from Perkins in relation to completing and making safe aspects of the Subcontract Works and the Subcontractor's demobilisation from the site; and
  - (iii) take all steps possible to minimise and mitigate any loss, cost or damage for which Perkins is liable.
- (b) The Subcontractor must deliver to Perkins all documents and other materials prepared by the Subcontractor, or by others at the request of the Subcontractor or Perkins in respect of the Subcontract Works, or relevant to the Subcontract Works up to the time of termination. Perkins is entitled to withhold payment until the Subcontractor complies with this subclause.
- (c) When any notice of termination is in effect, Perkins may take over the whole or any part of the Subcontract Works remaining to be completed.
- (d) If Perkins elects to exercise the power to complete the whole or any part of the Works remaining to be completed Perkins may, for that purpose let a contract or contracts for the Works remaining to be completed or, as the case may be, for any part of those Works or may employ any person or persons other than the Subcontractor to carry out the Works or, as the case may be, the part of the Works.

## 29.9 Default by Perkins

- (a) If:
- (i) the Subcontractor is not paid an amount that is due and payable under the Subcontract and that payment is not made within 10 Business Days of the Subcontractor notifying Perkins in writing stating it to be a notice under this clause 29.9(a)(i); or
  - (ii) for a period of 100 Business Days, without reasonable cause Perkins fails to give to the Subcontractor access to the Site to enable the Subcontractor to perform its Subcontract Works which are then due to be performed,

then the Subcontractor may by written notice to Perkins suspend the whole or any part of Subcontract Works until:

- (iii) in the case of clause 29.9(a)(i), the Subcontractor is paid the amount that is due and payable; or
  - (iv) in the case of clause 29.9(a)(ii), Perkins gives to the Subcontractor access to the Site to enable the Subcontractor to perform its Subcontract Works which are then due to be performed.
- (b) If within 10 Business Days of the date of such suspension Perkins has not:
- (i) in the case of clause 29.9(a)(i), paid the amount that is due and payable; or
  - (ii) in the case of clause 29.9(a)(ii), given to the Subcontractor access to the Site to enable the Subcontractor to perform its Subcontract Works which are then due to be performed,

then Subcontractor may terminate this Subcontract after providing a further 10 Business Days written notice to Perkins of its intention to terminate.

## 30. Payment following termination

### 30.1 Subcontractor's default

Upon giving a notice under clause 29.2, Perkins may withhold any or all money which is then or which may become due or payable to the Subcontractor until the date which is 10 Business Days after the date upon which the Subcontractor rectifies the breach to Perkins' satisfaction.

### 30.2 Payment following termination for subcontractor's default

If Perkins terminates the Subcontract under clause 29.2:

- (a) the Subcontractor is not entitled to any further payment under this Subcontract, or otherwise, (if the Subcontractor has any entitlement at all) until Perkins has completed its valuation in accordance with clause 30.2(d).
- (b) the suspension of further payment includes the suspension of any payment otherwise due under a payment schedule issued under clause 23.3 but not yet paid. In this case, the unpaid payment schedule must be treated by Perkins and the Subcontractor as if it had not been issued.
- (c) the parties rights remedies and liabilities shall be the same as they would be at common law had the defaulting party repudiated the Subcontract and the other party had elected to treat the Subcontract at an end and recover damages.
- (d) a valuation will be made under clause 12.1, for:
  - (i) costs, expenses, losses and damages suffered or incurred by Perkins in completing the Subcontract Works; and
  - (ii) costs, expenses, losses and damages suffered or incurred by Perkins as a result of actions, claims, demands or proceedings, out of or in any way in connection with such take over or termination.

### 30.3 Payment following termination for convenience, of the Main Contract or for a Force Majeure Event

- (a) If the Subcontract is terminated under clause 29.3, 29.4 or 29.5, subject to any rights of set-off that Perkins has against the Subcontractor for breaches of the Subcontract or otherwise, the Subcontractor is entitled to an adjustment to the Subcontract Sum for:
- (i) the total amount due to the Subcontractor for Work performed under the Subcontract at the date of termination,
  - (ii) the amount valued under clause 12.1, for the reasonable substantiated direct costs:
    - (A) of materials that have been validly ordered under the Subcontract and cannot be cancelled, provided the title of the materials passes to Perkins;
    - (B) incurred by the Subcontractor in making safe any work;
    - (C) incurred in anticipation of future works where such costs cannot be cancelled or recovered; and
    - (D) of demobilisation including removing from the site all labour, construction plant and other things.
- (b) The Subcontractor is not entitled to any payment for costs, expenses, losses, damages or compensation in relation to loss of profits, loss of opportunity, redundancy costs suffered by the Subcontractor or its Personnel.

### 30.4 Payment following termination for Perkins' default

If the Subcontractor:

- (a) terminates the Subcontract under clause 29.9(b), the Subcontractor is entitled to an adjustment to the Subcontract Sum for:
- (i) the total amount due to the Subcontractor for Work correctly performed under the Subcontract at the date of termination, and
- the amount valued under clause 12.1, for:
- (ii) the reasonable, substantiated direct costs of materials that have been validly ordered under the Subcontract and cannot be cancelled, provided the title of the materials passes to Perkins; and
  - (iii) the reasonable, substantiated direct costs incurred by the Subcontractor in making safe any work.
- (b) The Subcontractor is not entitled to any payment for costs, expenses, losses, damages or compensation in relation to loss of profits, loss of opportunity, redundancy costs suffered by the Subcontractor or its Personnel caused by the termination of this Subcontract.

### 30.5 Monies paid by Perkins

On termination of the Subcontract all moneys which have been previously paid together with all moneys then payable under clause 30.4(a) and 32.5 will be a limitation of Perkins' liability arising out of, or in connection with, all Claims of the Subcontractor under or in respect of the Subcontract.

### 30.6 Preservation of Agreement and Perkins rights

No action taken by Perkins under clause 30.2, 30.3 or 30.4 shall invalidate the Subcontract or prejudice any of the rights, powers and remedies of Perkins, whether under the provision of the Subcontract or otherwise.

## 31. SUSPENSION

### 31.1 Suspension by Perkins

- (a) Perkins may, at any time, and for any reason give the Subcontractor a written direction to suspend the carrying out of the whole or any part of the Subcontract Works for a period determined by Perkins. The Subcontractor must comply with that notice.

- (b) If the direction given by Perkins to suspend the Work does not arise out of a breach of the Subcontract by the Subcontractor, then the direction given by Perkins under clause 31.1(a) may be a qualifying cause of delay and the Subcontractor may claim an extension of time.
- (c) If the direction given by Perkins to suspend the Work arises out of a breach of the Subcontract by the Subcontractor, then the suspension is not a qualifying cause of delay and the Subcontractor is not entitled to any extension of time in relation to the suspension.
- (d) Perkins may at any time, by giving a direction to the Subcontractor, lift the suspension in whole or in part and direct the Subcontractor to resume progress of the whole or the part of the Works. The Subcontractor must promptly comply with the direction.
- (e) The Subcontractor shall bear the cost of suspension under clause 31.1(c) and the costs incurred by Perkins for that suspension will be valued under clause 12.1.

## 31.2 Suspension by the Subcontractor

- (a) The Subcontractor must not suspend the progress of the whole or any part of the Subcontract Works except where:
  - (i) it is directed by Perkins under clause 31.1(a);
  - (ii) it is permitted under clause 29.9(a); or
  - (iii) it is permitted by the Security of Payment Law.
- (b) If the Subcontractor validly suspends the whole or any part of the Subcontract Works under this clause 31.2 it may be a qualifying cause of delay and the Subcontractor may claim an extension of time.
- (c) Subject to the application of the Security of Payment Law and following a suspension, if Perkins directs the Subcontractor to recommence performance of all or part of the Subcontract Works, the Subcontractor must promptly resume performance of the Subcontract Works in accordance with that direction.

## 32. CLAIMS

### 32.1 Notification of Claims

- (a) If the Subcontractor considers that it is entitled to make a Claim in relation to any matter arising out of or in any way in connection with any breach of the Subcontract by Perkins, any direction, consent or approval by Perkins or Perkins' Personnel or the subject matter of the Subcontract, it must notify Perkins' Project Manager Claim within the period stated in Item 20 of when the Subcontractor was or could reasonably have been aware of the conduct, circumstance, breach, act, omission, direction, consent, approval, event, fact, matter or circumstance upon which the Claim is or will be based
- (b) The Subcontractor acknowledges that to allow Perkins to understand and manage the consequence of Claims it is important for the Subcontractor to notify its Claims in accordance with the terms of the Subcontract. The Subcontractor must not delay giving the notice required under clause 32.1(a) until the claim event or series of claim events is completed or until the value of the claim can be ascertained.

### 32.2 The notice

- (a) The notice given under clause 32.1(a) must be in writing stating that it is a notice under clause 32.1 and containing a brief statement and brief particulars of the following:
  - (i) the conduct, circumstance, breach, act, omission, direction, consent, approval, event, fact, matter or circumstance upon which the Claim is or will be based;
  - (ii) the legal basis or the clause of the Subcontract on which the Claim is based;
  - (iii) the quantum or likely quantum of the Claim; and
  - (iv) any measures taken by the Subcontractor to reduce or otherwise mitigate the impact of the conduct, circumstance, breach, act, omission, direction, consent, approval, event, fact, matter or circumstance on which the Claim is based.

## 32.3 Claims

- (a) If the Subcontract wishes to make a Claim, it must provide the Claim to Perkins within the period stated in Item 20 of giving the notice under clause 32.1(a).
- (b) The Claim must state that it is a Claim under clause 32.3 and must include full and detailed particulars of:
  - (i) the conduct, circumstance, breach, act, omission, direction, consent, approval, event, fact, matter or circumstance upon which the Claim is based;
  - (ii) the legal basis or the clause of the Subcontract on which the Claim is based; and
  - (iii) the quantum of the Claim.
- (c) The Subcontractor must provide copies of all records and documents upon which it seeks to rely in support of the Claim, with the Claim provided under clause 32.3.

## 32.4 Determination

- (a) Perkins will within 40 Business Days of receipt of the Claim received under clause 32.3 assess the Claim and notify the Subcontractor in writing of its determination.
- (b) The amount of the Claim will be valued by Perkins under clause 12.1.

## 32.5 Bar

It is a condition precedent to the Subcontractor's entitlement to a Claim that the Subcontractor submits the notice strictly in accordance with clause 32.1 and 32.2 and makes the Claim strictly in accordance with 32.3. To the extent permitted by law, Perkins will not be liable for any Claim by the Subcontractor which was not notified strictly in accordance with clause 32.1, 32.2 and 32.3.

## 32.6 Exclusions

- (a) This clause 32 does not apply to any claim for:
  - (i) a progress payment under clause 23;
  - (ii) payment of a Variation that has been directed by Perkins under clause 11;
  - (iii) an extension of time under clause 21; or
  - (iv) the Practical Completion Payment Claim or the Final Payment Claim under clause 24.
- (b) Nothing in this clause 32 limits the operation or effect of any other notice provision, time-bar provision, conditions precedent or limitation or exclusion clause in the Subcontract.

## 33. DISPUTE RESOLUTION

### 33.1 Intention

The parties agree that every endeavour will be made to resolve any Dispute on its merits by negotiation.

### 33.2 Notice of Dispute

- (a) If a Dispute between the parties arises out of, or in any way in connection with, the subject matter of the Subcontract then either party may give to the other party written notice stating that it is a notice under this clause 33.2, adequately identifying and providing details of the Dispute including the legal basis for the Claim and the amount claimed, or if the amount is not ascertainable at that time, the best estimate of the likely amount of its Claim.
- (b) Notwithstanding the existence of a Dispute including pursuant to the Security of Payment Law, except where Perkins has terminated the Subcontract the parties must (unless requested in writing by the other party not to do so) continue to perform the Subcontract and comply with its obligations under the Subcontract.

## 33.3 First Settlement Meeting

If a Notice of Dispute is given, within 10 Business Days of the Notice of Dispute, Perkins Project Manager and a senior representative of the Subcontractor (and any other person agreed between the parties) must meet and undertake genuine and good faith negotiations with a bona fide objective of resolving the Dispute by agreement or by agreeing a process to resolve the Dispute.

## 33.4 Second Settlement Meeting

If under clause 33.3 the Dispute has not been resolved or a process for resolution has not been agreed, a maximum of two senior representatives of each party must meet. That second meeting must be held within 15 Business Days after conclusion of the meeting held under clause 33.3 or before any later time agreed by the parties. Any delegate to the second meeting must not be a person who attended the first meeting. The participants must engage in good faith discussions with the bona fide objective of resolving the dispute by agreement or by agreeing on a process to resolve the dispute.

## 33.5 Location of meetings

Unless the parties agree otherwise, the meetings under clauses 33.3 and 33.4 will be held in Perth, Western Australia.

## 33.6 Expert Determination

- (a) If the Dispute is not resolved or the parties have not agreed on a method of resolving the Dispute within 15 Business Days of the date of the Second Settlement Meeting, either Party may, if it wishes to pursue the Dispute, refer the Dispute to expert determination.
- (b) Subject to clause 33.7, the cost of the Expert must be shared equally by the parties irrespective of the expert's determination.
- (c) If the Parties fail to agree as to the Expert, a person nominated by the President at the time of the Resolution Institute (WA Chapter) must choose the expert on the basis of the type of Dispute and the nature of the expertise necessary to consider the relevant issues.
- (d) An Expert must:
  - (i) have suitable and reasonable qualifications as well as commercial and practical experience in the area of the Dispute;
  - (ii) be independent of each Party and not be, or have been, an employee, agent, contractor, advisor or consultant of either Party;
  - (iii) have at least 20 years' post qualification experience in his or her expert field; and
  - (iv) have no interest or duty which conflicts or may conflict with the Expert's function as an expert.
- (e) The Expert will not act as an arbitrator.
- (f) The determination of the Expert will be final and binding on the parties except for fraud or gross negligence.
- (g) Each Party must use its reasonable efforts to provide the Expert with any information reasonably required by the Expert and in any event each Party must provide the Expert with its preferred position in relation to the Dispute based on its understanding of the relevant facts.
- (h) The Dispute is to be resolved:
  - (i) according to the rules of the Resolution Institute (WA Chapter), current as at the date the Expert Determination Notice is given (**Expert Determination Rules**); and
  - (ii) the Parties must abide by the Expert Determination Rules and must procure the Expert's agreement to resolve the Dispute according to those rules.
- (i) The Expert must give reasons for the decision.

## 33.7 Frivolous, vexations or baseless Dispute

Where the Expert determines that the Dispute is without factual or legal basis, or the subject matter of the Dispute is frivolous, vexatious or baseless then the respondent to the dispute is entitled to legal and other costs at an amount to be assessed by the Expert.

## 33.8 Bar to proceedings

Save for the matters contained in clause 33.9 neither party may commence legal proceedings in relation to any Dispute unless the procedure stated in this clause 33 has been strictly followed and only to the extent it is permissible to do so.

## 33.9 Summary Relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the Subcontract or to seek injunctive or urgent interlocutory relief in respect of a matter arising under the Subcontract.

## 33.10 Claims and disputes in respect of the Main Contract

In the event Perkins has a claim or is involved in a dispute under the Main Contract that relates to work the subject of the Subcontract Works, the Subcontractor will provide Perkins with information and assistance reasonably required by Perkins to assist Perkins with that claim or resolve that dispute.

## 34. NOTICES

### 34.1 Notices

Notices under this Subcontract must be served by hand, mail, or Aconex at the address or email address set out in Item 1 or, if notice of a change of address or email address is given, at the last such notified address or email address.

### 34.2 Service of Notice

All notices shall be in writing and signed by or on behalf of the sender (i.e. either Perkins' Representative or the Subcontractor's Representative as the case may be) addressed to the other party at the address as provided for that purpose and once given or made shall be deemed to be duly given or made in the case:

- (a) of a letter, at the expiry of five Business Days after the time of posting by prepaid ordinary post (whether or not received by that time) or at the time of actual receipt by the addressee, whichever occurs first;
- (b) of a certified letter, when delivered;
- (c) of Aconex (if in use on this Project), then the next Business Day after the day shown on Aconex; and
- (d) of personal delivery, when delivered.

A notice sent by Aconex under this clause will be taken to be a notice in writing signed by the person identified as the sender of the notice.

### 34.3 Notices by Aconex

If a notice is delivered through Aconex the notice shall at least identify the parties to the Subcontract and the relevant Project name in the subject heading of the transmission and if the notice is from the Subcontractor, be delivered to:

- (a) the Perkins Project Manager and the Perkins Contract Administrator stated in Item 3; or
- (b) if the notice is from Perkins, the Subcontractor Representative or Subcontractor Contract Administrator stated in Item 3.

For the avoidance of doubt a notice sent by Aconex under the Subcontract will be taken to be a notice in writing signed by the person identified as the sender of the notice.

## 35. ACONEX

- (a) The Subcontractor must:
- (i) register itself on Aconex and comply with the requirements for use of Aconex and comply with Perkins reasonable instructions and protocols regarding its use;
  - (ii) have, and maintain, the minimum required software, hardware and infrastructure recommended or set out by Aconex;
  - (iii) maintain an email address throughout the performance of the Subcontract Works;
  - (iv) notify Perkins of any changes to its email address;
  - (v) use Aconex to receive electronic documents and communication;
  - (vi) use Aconex to provide documents electronically and for the transmission of documents and communication; and
  - (vii) be responsible for providing its Personnel with access to Aconex and sufficient training to ensure its Personnel can use Aconex.
- (b) If Aconex cannot be used by either party due to technical details or failure of Aconex, the parties must use an alternative means of communication.
- (c) Perkins has no liability, nor is the Subcontractor entitled to make a Claim arising out of or in connection with its access to or use of Aconex or any technical difficulties or failure of Aconex.

## 36. MISCELLANEOUS

### 36.1 Warranties, manuals, as-built drawings

- (a) Prior to the Date of Practical Completion of the Subcontract Works, the Subcontractor must provide to Perkins all documents or things stated in and as are required under the Subcontract.
- (b) The Subcontractor must ensure that Perkins obtains the benefit of those documents and that it assigns its rights to Perkins before the Date of Practical Completion of the Subcontract Works.
- (c) If stated in Item 2, the Subcontract Sum includes a discrete payment for the delivery to Perkins of the documents required under this clause. Perkins is entitled to withhold payment until the Subcontractor delivers the required documents that strictly comply with this clause.

### 36.2 Commissioning

Perkins may be required under the Main Contract to commission the whole of the works. If that is so, and to the extent that commissioning involves commissioning of the Subcontract Works, the Subcontractor must do all things and provide all consumables necessary to commission the Subcontract Works to establish that all systems, plant and equipment comply with the performance requirements stated in the Subcontract Documents. The Subcontractor:

- (a) must adjust and balance all elements of the Subcontract Works systems, plant and equipment until they comply with the performance requirements stated in the Specifications;
- (b) must provide all incidental items and parts and equipment necessary or desirable for the installation and proper functioning and operation of the Subcontract Works to conduct commissioning tests and activities and ensure the incidental items and parts and equipment and instruments and appliances have been accurately calibrated;
- (c) must provide to Perkins copies of all commissioning and testing reports, results and other documentation requested by Perkins.
- (d) must comply with Perkins' directions in relation to the commissioning of the Subcontract Works; and
- (e) acknowledges that the Subcontract Sum allows for and includes the costs of commissioning of the Subcontract Works. The Subcontractor is not entitled to make a Claim in relation to Perkins' directions regarding commissioning.

## 36.3 Authority to execute

Each of the persons executing this Subcontract warrant their respective authorities to bind the party on whose behalf they are executing the Subcontract.

## 36.4 Subcontractor as trustee

If the Subcontractor is a trustee, it warrants to Perkins the following:

- (a) It is entitled to be indemnified out of the assets of the trust for any liability that the Subcontractor incurs in relation to this Subcontract; and
- (b) In the event that the Subcontractor incurs liability to Perkins under this Subcontract, the Subcontractor will promptly exercise its rights of indemnity against the assets of the trust to discharge that liability.

## 37. SUBCONTRACTOR'S INDEMNITY

- (a) To the extent permitted by law, the Subcontractor must keep Perkins and its Personnel indemnified against all actions, claims, demands, losses, damages, expenses and other liability, (including legal costs on a full indemnity basis and whether incurred by or awarded against Perkins) arising out of or in connection with:

- (i) loss of use of, or destruction or damage to, Perkins' or property of any third party;
- (ii) any breach or default of the Subcontractor;
- (iii) any claims against any of those indemnified concerning:
  - (A) any illness, personal injury or death of any person;
  - (B) any infringement or alleged infringement of the intellectual property rights or moral rights of any person; or
  - (C) any non-compliance by the Subcontractor or its Personnel with any legislative requirements or in connection with the loss, termination or suspension of any approvals,

arising out of or in connection with or as a consequence of the carrying out of the Works, but the indemnity shall be reduced proportionally to the extent that the act or omission of Perkins or its Personnel may have contributed to the injury, death, loss or damage.

- (b) Each indemnity in this Subcontract is a continuing obligation, separate and independent from the other obligations of the Subcontractor and survives termination, completion or expiration of this Subcontract.
- (c) It is not necessary for a Perkins to incur expense or to make any payment before enforcing a right of indemnity conferred by this Subcontract.

## 38. PERSONAL PROPERTY SECURITIES ACT ("PPSA")

### 38.1 Personal Property Securities Act

- (a) Words and phrases used in this clause 38 that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context otherwise indicates.
- (b) If Perkins determines that this Subcontract (or a transaction in connection with it) is or contains a security interest, Perkins will give notice to the Subcontractor and the Subcontractor agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Perkins asks and considers necessary for the purposes of:
  - (i) Ensuring that the security interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
  - (ii) Enabling Perkins to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by Perkins. This includes registration under the PPSA for whatever collateral class Perkins thinks fit. The Subcontractor consents to any such registration or notification and agrees not to make an amendment demand; and/or
  - (iii) Enabling Perkins to exercise rights in connection with the security interest,and the Subcontractor must comply with the requirements of a notice given by Perkins under this clause 38 within the time stipulated in the notice.

- (c) The Subcontractor will not disclose information of any kind mentioned in section 275(1) of the PPSA that is not publicly available and the Subcontractor will not authorise, and will ensure that none of its Personnel authorises the disclosure of such information.

## 38.2 Exclusion of PPSA Provisions

The parties agree that, despite any other provision in this Subcontract and to the extent permitted by law, in relation to any security interests that arise in Perkins' favour Sections 142 and 143 of the PPSA are excluded and Perkins need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and any other section(s) of the PPSA notified to the Subcontractor by Perkins after the date of this agreement.

## 38.3 Warranty

The Subcontractor:

- (a) warrants to Perkins that when payment is made to the Subcontractor or title otherwise passes to Perkins in respect of goods to be incorporated in the Work those goods will be free and clear of any encumbrances; and
- (b) must, if requested by Perkins, provide Perkins with a statutory declaration or evidence to Perkins' satisfaction that such goods are free and clear of any encumbrance.

## 39. BUSINESS CONDUCT

### 39.1 Anti-Corruption

The Subcontractor represents and warrants to Perkins that in connection with the Subcontract and the Works:

- (a) it is knowledgeable about anti-corruption laws applicable to the performance of the Subcontract and shall comply with all such anti-corruption laws;
- (b) it has not offered, promised, given or agreed to give and shall not during the term of the Subcontract offer, promise, give or agree to give to any person any bribe on behalf of Perkins or otherwise with the object of obtaining a business advantage for Perkins or otherwise;
- (c) it will not engage in any activity or practice which would constitute an offence under any anti-corruption laws; and
- (d) it will report to Perkins as soon as practicable of any breach of any undertakings contained in this clause 39.

Failure to comply with any obligation under this clause 39 will be regarded as due course for Perkins giving notice to suspend performance of any work under the Subcontract or terminate all or any part of the Subcontract.

## 40. FAILURE TO EXERCISE RIGHT/POWER

Unless expressly stated to the contrary, no failure, delay or relaxation on the part of either party in exercising any right or power conferred upon that party pursuant to this Subcontract shall operate as a waiver of that power or right.

Any waiver by Perkins under this Subcontract must be in writing and signed by the Perkins Project Manager to be effective.

## 41. MEDIA

The Subcontractor must not issue for publication any information concerning the Works, the Subcontract or the Project in any media without the prior written consent of Perkins. The Subcontractor must immediately refer any enquiries from any media about the Project to Perkins.

## 42. CONFIDENTIALITY

- (a) The Subcontractor must keep confidential and must not disclose Confidential Information to any person other than:
- (i) it is necessary to perform the Subcontractor's obligations under the Subcontract;
- (ii) authorised in writing by Perkins;

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- (iii) if required by law provided that the Subcontractor gives Perkins prior written notice;
  - (iv) to the extent that it is required by order of a court or tribunal, if the disclosing party makes reasonable efforts to ensure that the other party is given the opportunity to make submissions to the court or tribunal in relation to any proposed order; or
  - (v) made to the Subcontractor's professional advisers.
- (b) The Subcontractor must ensure that its sub-subcontractors and persons providing professional advice relating to the Subcontract Works are bound by a confidentiality clause similar to this clause 42.
- (c) The Subcontractor must immediately notify Perkins on becoming aware of a suspected or actual breach of this clause 42 by any person involved in the performance of the Subcontract Work.

**43. CLAUSES THAT SURVIVE TERMINATION**

Without limiting or impacting upon the continued operation of any clause which as a matter of construction is intended to survive the termination of the Subcontract, the indemnities and clauses 1, 5.5, 5.6, 18, 19, 23, 26, 27, 29, 30, 33, 34, 37, 42 and this clause 43 survive the termination of the Subcontract.

## SCHEDULE 1 – CONTRACT PARTICULARS

### Item 1 – Details of parties (clause 1)

#### Perkins

|                                                       |                                  |
|-------------------------------------------------------|----------------------------------|
| Name                                                  | Perkins (WA) Pty Ltd             |
| Perkins (WA) Pty Ltd<br>Builder's registration number | BC8393                           |
| ABN                                                   | 60 008 844 862                   |
| Address                                               | 1 Hales Street, Bunbury, WA 6230 |
| Telephone Number                                      | [insert]                         |
| Email                                                 | [insert]                         |

#### Subcontractor

|                                                       |                                                           |
|-------------------------------------------------------|-----------------------------------------------------------|
| Name                                                  | «FirmName»                                                |
| Builder's registration number                         | If applicable, [insert]                                   |
| Subcontractor's ACN / ABN                             | ABN «AusBusNbr»                                           |
| Subcontractor's address                               | «FirmAddress»,<br>«FirmCity»,<br>«FirmState»<br>«FirmZip» |
| Subcontractor's operating<br>address                  | [insert]                                                  |
| Subcontractors contact<br>details<br>Phone:<br>Email: | [insert]<br>[insert]                                      |

#### The Principal

|           |          |
|-----------|----------|
| Name      | [insert] |
| ACN / ABN | [insert] |
| Project   | [insert] |



|  |  |
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# SUBCONTRACT AGREEMENT



## Item 2 Subcontract Sum

|                                                                                                                              |                               |
|------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| Subcontract Sum (excluding GST):<br>(clause 1)                                                                               | (as words)                    |
|                                                                                                                              | \$ «TotalSubcontract»         |
| The amount <b>included</b> in the Subcontract Sum for warranties, manuals and as-built drawings etc.<br>(clause 10.5 & 36.1) | \$ <b>insert</b><br>(figures) |
| The total amount <b>included</b> in the Subcontract Sum for provisional work (clause 13)                                     | \$ <b>insert</b><br>(figures) |

**All sums stated are exclusive of GST**

## Item 3 Representatives

### Perkins

| Position               | Name | Telephone | email |
|------------------------|------|-----------|-------|
| Project Manager        |      |           |       |
| Contract Administrator |      |           |       |

### Subcontractor's Key Personnel (clause 3.2)

| Position                             | Name | Telephone | email |
|--------------------------------------|------|-----------|-------|
| Subcontractor Representative         |      |           |       |
| Subcontractor Contract Administrator |      |           |       |
| Site Manager / Foreman               |      |           |       |
| Design Manager (if applicable)       |      |           |       |

## Item 4 Design (clause 5)

|                                                                                                          |                                                            |
|----------------------------------------------------------------------------------------------------------|------------------------------------------------------------|
| The Subcontractor is required to perform design work as part of the Subcontract Works (clause 5 applies) | <input type="checkbox"/> Yes / <input type="checkbox"/> No |
|----------------------------------------------------------------------------------------------------------|------------------------------------------------------------|

## Item 5 Intellectual Property (clause 5.4)

|                                                                                                                |                                                                                            |
|----------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| Intellectual property rights granted to Perkins the Alternative applying<br>(only applicable if Item 4 is Yes) | Alternative 1 applies<br>Alternative 2 applies<br>If nothing stated, Alternative 1 applies |
|----------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|

## Item 6 the Site (clause 8.1)

|         |  |
|---------|--|
| Address |  |
|---------|--|

## Item 7 Defects Liability Period (clause 14)

|                                                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Means:</b></p> <p>(a) <b>#[insert period]#</b> from the Date of Practical Completion under the Subcontract in respect of the Works; and</p> <p>(b) in respect of any Defect remedied pursuant to clause 14.3, such longer period as is calculated in accordance with that clause 14.3.</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## Item 8 Date for Commencement on Site (clause 20.3)

|                                                                                                   |
|---------------------------------------------------------------------------------------------------|
| <b>#[Insert date]# – NOTE it is not acceptable to insert “as the program” or such terminology</b> |
|---------------------------------------------------------------------------------------------------|

## Item 9 Subcontract Period (clause 20.2)

|                                                                                                                     |                                                                                                                                                 |
|---------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) The period within which the Work must be completed (subject to adjustment in accordance with this Subcontract)  | <b>#[Insert period]# (i.e. the number of days or weeks) – DRAFTING NOTE it is not acceptable to insert “as the program” or such terminology</b> |
| <b>OR</b>                                                                                                           |                                                                                                                                                 |
| (b) The <b>date</b> by which the Work must be completed (subject to adjustment in accordance with this Subcontract) | <b>#[Insert date]# of PC for the Subcontract Work – DRAFTING NOTE it is not acceptable to insert “as the program” or such terminology</b>       |

## Item 10 Normal working hours (clause 20.4)

|                                                                                                                                                       |                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| Site working days                                                                                                                                     | <b>Monday to Saturday (inclusive)</b>                                                                         |
| Site open – weekdays                                                                                                                                  | <b>7.00am – 5.00pm</b>                                                                                        |
| <b>All Site inductions, Monday to Friday (inclusive) during the allocated time of 7am – 8am, unless otherwise agreed prior with the Site Manager.</b> |                                                                                                               |
| Other than normal working hours.                                                                                                                      | <b>At the specific request of the subcontractor to the site manager and agreed prior between the parties.</b> |

## Item 11 Other events which entitle the Subcontractor to an extension of time (clause 21.2(e))

|  |
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|  |

# SUBCONTRACT AGREEMENT



## Item 12 Liquidated Damages (clause 22(b))

\$insert amount per day / week

## Item 13 Time for Progress Claims (clause 23.1)

|                                                                                  |                        |
|----------------------------------------------------------------------------------|------------------------|
| The Subcontractor must deliver its progress claim to Perkins by (relevant date): | 25th day of each month |
|----------------------------------------------------------------------------------|------------------------|

## Item 14 Address for the submission of progress claims (clause 23.1(c)(iii))

|                                           |                                 |
|-------------------------------------------|---------------------------------|
| Address for submission of progress claims | accounts@perkinsbuilders.com.au |
|-------------------------------------------|---------------------------------|

## Item 15 Security (clause 25.1)

|                                                                                                                            |                                                                                                              |
|----------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| Amount of Security                                                                                                         | 5% of the Subcontract Sum <b>OR</b> amount                                                                   |
| Form of Security                                                                                                           | 2 irrevocable unconditional undertakings of 2.5% of the Subcontract Sum each <b>OR</b> retention moneys      |
| If retention moneys, retention shall be deducted progressively from moneys otherwise due to the Subcontractor, as follows: | 10% of monies otherwise due to the Subcontractor until the amount withheld reaches 5% of the Subcontract Sum |

## Item 16 Insurances (clause 18.1)

### Contracts Works insurance

|                               |                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Minimum amount per occurrence | Not provided by the subcontractor. Any claim made by the subcontractor against the Perkins' contract works insurance policy will be subject to the excesses and restrictions applicable under the Perkins's contract works insurance policy. Subcontractors Tools and uninstalled materials are not covered by Perkins's contract works insurance. |
| Insured/s                     |                                                                                                                                                                                                                                                                                                                                                    |

### Public Liability insurance

|                               |                                                                                                                     |
|-------------------------------|---------------------------------------------------------------------------------------------------------------------|
| Minimum amount per occurrence | \$20,000,000                                                                                                        |
| Insured/s                     | Principal, the Principal's consultants, employees and agents, the Principal's financier(s), Subcontractor & Perkins |

### Professional Indemnity Insurance (if applicable)

|                                           |                                                            |
|-------------------------------------------|------------------------------------------------------------|
| Minimum amount per occurrence             | \$ insert amount                                           |
| Insured/s                                 | The Subcontractor and it's consultants                     |
| Period for which cover must be maintained | six years after the expiry of the Defects Liability Period |

### Motor vehicle & Plant third party bodily injury and property damage liability insurance

|                               |              |
|-------------------------------|--------------|
| Minimum amount per occurrence | \$30,000,000 |
|                               |              |

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SUBCONTRACT AGREEMENT



|           |               |
|-----------|---------------|
| Insured/s | Subcontractor |
|-----------|---------------|

# SUBCONTRACT AGREEMENT



**Workers compensation insurance** for 'Workers' as defined in the applicable workers' compensation legislation

|                        |                                                            |
|------------------------|------------------------------------------------------------|
| Minimum limit of cover | In accordance with Legislative Requirements and common law |
| Insured/s              | Subcontractor                                              |

**Accident & income protection** insurance for any person engaged in the performance of the subcontract works not covered by the applicable workers' compensation legislation (clause 18.3)

|                               |                                     |
|-------------------------------|-------------------------------------|
| Minimum amount per occurrence | To be provided by the Subcontractor |
| Insured/s                     | Subcontractor                       |

## Item 17 Jurisdiction (clause 1.4)

Western Australia

## Item 18 Force Majeure Events under the Main Contract

#[Insert]#

#[Insert]#

#[Insert]#

## Item 19 Retention money trust account (clause 26.1(c))

Bank: Westpac  
Account name: PWA Retention Trust Account  
BSB: 036 122  
Account Number: 756716

## Item 20 Notification Periods (Clauses 11.2, 21.1, 21.2(c), 21.2(d), 32.1 & 32.3)

|                                                                |                                                                            |
|----------------------------------------------------------------|----------------------------------------------------------------------------|
| <b>Notice of Variation</b><br>Clause 11.2                      | #[Insert]# Business Days<br><br><i>If nothing stated, 5 Business Days</i>  |
| <b>Notice of Delay</b><br>Clause 21.1                          | #[Insert]# Business Days<br><br><i>If nothing stated, 5 Business Days</i>  |
| <b>Delay Claim</b><br>Clause 21.2(c)                           | #[Insert]# Business Days<br><br><i>If nothing stated, 10 Business Days</i> |
| <b>Continuing Notices for Ongoing Delays</b><br>Clause 21.2(d) | #[Insert interval]#<br><br><i>If nothing stated, fortnightly</i>           |
| <b>Notice of other Claims</b><br>Clause 32.1 / 32.3            | #[Insert]# Business Days<br><br><i>If nothing stated, 15 Business Days</i> |

## SCHEDULE 2 – SUBCONTRACT WORKS

### SCOPE OF WORK

The works to be performed under this Subcontract includes the provision of all supervision, labour, plant, tools, equipment, goods, materials and consumables necessary to carry out and complete the works all in accordance with the specifications, drawings, contract conditions, authorities and all relevant standards and to the satisfaction of Perkins, the consultants, statutory authorities and Worksafe.

The following generally describes the work to be performed under this Subcontract and draws attention to certain associated items that are to be completed. It is not intended to limit or exclude items required by the Subcontract Documents.

#### General

1. The Subcontractor shall ensure that it and all of its Personnel have completed a recognised industry based safety induction course (e.g. White Card - Safety Induction Course). In addition, they will be required to undergo all site specific induction(s) in accordance with the procedures for the site and before any work is done. The date and time for induction can be arranged with the Perkins site manager.
2. Commencement on site will not be permitted without the following:
  - Site specific Job Safety Analysis (**JSA**).
  - Site specific safe work method statement (**SWMS**).
  - Personal protective equipment (**PPE**) which includes as a minimum; safety boots, safety helmet, high visible vest, and any other task specific PPE.
  - Evidence of insurance cover is provided to Perkins.
3. All work is to be performed in accordance with Worksafe requirements and relevant Australian Standards.
4. Scaff Tags systems must be used on all scaffolding including mobile scaffolds.
5. The Subcontractor has allowed the following in the Subcontract Sum:
  - Co-ordination of the Works with the works of Perkins and of other subcontractors at all times.
  - All staged commencement, progress and completion of the works in accordance with Perkins construction programme, as amended from time to time, and acknowledge that continuity of work is not guaranteed.
  - Multiple visits as required by the general progress of the works.
  - All dust and noise control as called for by the Subcontract documents, including fitting of noise suppressors to construction equipment.
  - Providing shop drawings prior to fabrication or manufacture of goods.
  - Providing mock-ups, prototypes, spares, samples, testing etc. as required by the Subcontract documents.
  - Transportation of all equipment and materials to the Site including any necessary traffic management, permits, escorts, road closures and the like. Providing adequate stillages for materials including certified and tested lifting points and weight limits.
  - Providing labour for receiving, off-loading, storing and subsequent handling and hoisting of materials and equipment to their final place.
  - Horizontal and vertical movement of materials and equipment to and around the Site.
  - All setting out of works from datum lines provided by Perkins.
  - Access equipment required to undertake the Work (unless stated elsewhere).
  - Providing and maintaining demarcation barriers, barricades and warning signage.
  - Protection of all Works and adjacent existing finishes / services including removal of the protection when directed by Perkins.
  - Providing warranties for materials and workmanship as required by the Subcontract documents.
6. The Subcontractor is responsible for making good any damage to the temporary or permanent works caused by the action of the Subcontractor or it's Personnel. The Subcontractor is responsible for protecting all aspects of the Work from damage by installing suitable protective material around the items or areas, to the satisfaction of Perkins. Any item or area damaged, at any stage of the work prior to Practical Completion is the responsibility of the Subcontractor and shall be repaired or replaced by the Subcontractor without delay or additional cost, as directed by Perkins. The Subcontractor shall remove and dispose of the protection when and as directed by Perkins.
7. The Subcontractor must maintain a clean and clear work area. All cleaning and the removal of rubbish, waste and debris is to be carried out by the Subcontractor on a daily basis. Rubbish, waste and debris (with the exception of hazardous waste) is to be placed in the site bins provided by Perkins. If segregated bins are provided by Perkins, the Subcontractor must separate its rubbish, waste and debris into the appropriate bins. Disposal of rubbish, waste and debris in site drainage outlets is not be allowed. The Subcontractor is responsible, for the temporary and permanent reinstatement of all working areas on completion of the Subcontract Works.
8. In conducting the Work the Subcontractor has included in the Subcontract Sum for the supply and ongoing maintenance of all necessary PPE, safety equipment, harnesses, inertia reels, barricades, warning signs and other items necessary to undertake the works in a safe manner in accordance with Worksafe legalisation, authority requirements, Australian Standards, industry standards or at the discretion of Perkins at any time, the most stringent requirements take precedence at all times.

- 9. The Subcontractor is responsible for the location and identification of all existing services, utilities and the like and shall either remove or accurately set out and protect the same in the event of any conflict with the Works.
- 10. All materials, goods and equipment are to be installed as the manufacturers' recommendations.
- 11. The Subcontractor is responsible for parking costs for Personnel.
- 12. The supply and the cost of fuel required to operate the Subcontractor's plant and machinery is the responsibility of the Subcontractor.
- 13. All plant and machinery used to undertake the Works is to be serviced and maintained on a regular basis. The Subcontractor must provide service records or certification kept confirming this requirement if requested by Perkins.
- 14. The Subcontractor has allowed for miscellaneous items not specifically detailed in the Subcontract, specifications and drawings but which are required for carrying out and completing the Works in its entirety.
- 15. The Subcontractor is responsible for and has made allowance in the Subcontract Sum for the supply of all consumables necessary during the testing and commissioning of the Works.
- 16. The Subcontractor shall be solely responsible at all times for the security of its works, materials, plant and equipment.

Trade Specific Work

(Insert trade specific scope of work)

## SCHEDULE 3 – SERVICES AND FACILITIES

| Facility                                        | Responsibility |               | Comment                                                                                                                           |
|-------------------------------------------------|----------------|---------------|-----------------------------------------------------------------------------------------------------------------------------------|
|                                                 | Perkins        | Subcontractor |                                                                                                                                   |
| <b>A. Project Accommodation</b>                 |                |               |                                                                                                                                   |
| (i) Lunchroom                                   |                |               |                                                                                                                                   |
| (ii) Toilets                                    |                |               |                                                                                                                                   |
| (iii) Storeroom or Sheds                        |                |               |                                                                                                                                   |
| (iv) Changing Room                              |                |               |                                                                                                                                   |
| (v) Office                                      |                |               |                                                                                                                                   |
| <b>B. Temporary Services</b>                    |                |               |                                                                                                                                   |
| <b>Electricity</b>                              |                |               |                                                                                                                                   |
| (i) Power for testing & commissioning           |                |               | If provided by Perkins, for one commission only. If recommissioning is required costs incurred will be borne by the Subcontractor |
| (ii) 240 Volt                                   |                |               |                                                                                                                                   |
| (iii) 3 Phase / 440 Volt                        |                |               |                                                                                                                                   |
| (iv) Distribution sub-boards                    |                |               |                                                                                                                                   |
| (v) Power consumption costs                     |                |               |                                                                                                                                   |
| (vi) Leads and stands                           |                |               |                                                                                                                                   |
| <b>Lighting</b>                                 |                |               |                                                                                                                                   |
| (i) General safety lighting                     |                |               |                                                                                                                                   |
| (ii) Task lighting                              |                |               |                                                                                                                                   |
| <b>Water</b>                                    |                |               |                                                                                                                                   |
| (i) Water for the works                         |                |               |                                                                                                                                   |
| (ii) Hoses                                      |                |               |                                                                                                                                   |
| <b>C. Plant &amp; Equipment</b>                 |                |               |                                                                                                                                   |
| <b>Scaffolding* - refer to conditions below</b> |                |               |                                                                                                                                   |
| (i) Internal scaffold                           |                |               |                                                                                                                                   |
| (ii) External scaffold                          |                |               |                                                                                                                                   |
| (iii) Edge Protection                           |                |               |                                                                                                                                   |
| <b>Cranage*- refer to conditions below</b>      |                |               |                                                                                                                                   |
| (i) Cranage & driver                            |                |               |                                                                                                                                   |
| (ii) Dogman / slinging loads                    |                |               |                                                                                                                                   |
| (iii) Dogman / receiving loads                  |                |               |                                                                                                                                   |
| <b>Access</b>                                   |                |               |                                                                                                                                   |
| (i) Hoist                                       |                |               | Subject to availability, capacity and by arrangement only                                                                         |
| (ii) Access Equipment                           |                |               | Describe what is provided                                                                                                         |
| (iii) Loading platforms                         |                |               |                                                                                                                                   |
| <b>Setting Out</b>                              |                |               |                                                                                                                                   |
| (i) Grid lines and Datum                        |                |               |                                                                                                                                   |
| (ii) All other                                  |                |               |                                                                                                                                   |
| <b>Other</b>                                    |                |               |                                                                                                                                   |
| Cleaning of Works                               |                |               |                                                                                                                                   |
| General Rubbish bins                            |                |               |                                                                                                                                   |
| Wheelie bins                                    |                |               |                                                                                                                                   |
| Removal of hazardous waste                      |                |               |                                                                                                                                   |
| Unloading materials                             |                |               |                                                                                                                                   |
| Protection of the Works                         |                |               |                                                                                                                                   |
| Demarcation barriers and warning signage        |                |               |                                                                                                                                   |
| <b>E. Other</b>                                 |                |               |                                                                                                                                   |
| <b>List</b>                                     |                |               |                                                                                                                                   |
|                                                 |                |               |                                                                                                                                   |
|                                                 |                |               |                                                                                                                                   |

## \*Conditions if scaffold and/or craneage is provided by Perkins

### Scaffold

Where scaffold is provided by Perkins, all of the following apply:

- (i) Perkins gives no warranty regarding the suitability of general scaffolding provided for the performance of the Subcontract Works;
- (ii) the Subcontractor is not entitled to make a Claim for providing its own scaffolding where the scaffolding provided by Perkins is unsuitable for the performance of any aspect of the Subcontract Works; and
- (iii) the Subcontractor must not alter, amend, adapt or dismantle any scaffolding provided by Perkins.

### Cranes and hoisting

Where crane and/or hoisting services are provided by Perkins, the following will apply:

- (i) cranes and hoisting equipment will be available only for the period that those cranes and hoisting equipment are programmed by Perkins to be on Site;
- (ii) all cranes and hoists are provided on a non-exclusive basis;
- (iii) the Subcontractor must give Perkins site manager a minimum of 24 hours' notice of its requirements for the lifting services;
- (iv) all crane and hoisting times will be at the absolute discretion of Perkins;
- (v) the Subcontractor must ensure that all items to be lifted or hoisted are within the capacity of the relevant on-site plant;
- (vi) all items lifted or hoisted are at the risk of the Subcontractor;
- (vii) the Subcontractor must provide all necessary labour and other plant and equipment to bring items to the lifting or hoisting point directed by Perkins and to load, unload and distribute those items to the locations the Subcontractor requires them;
- (viii) the Subcontractor must supply all special lifting and hoisting gear other than normal chains, hooks, slings, kibbles or brick cages. Specialist equipment includes, but is not limited to, nylon slings, "A" frames, platforms and cages other than brick cages;
- (ix) the Subcontractor must provide all hoisting equipment if the crane and hoisting equipment provided by Perkins is unsuitable for lifting any item required to be lifted by the Subcontractor;
- (x) the Subcontractor must supply a suitably qualified dogman for each crane or hoisting operation;
- (xi) the Subcontractor is not entitled to make a Claim in relation to any crane or hoisting equipment provided by Perkins being unsuitable or not available to the Subcontractor at the times required by the Subcontractor; and
- (xii) the Subcontractor is not entitled to make a Claim due to the unavailability of crane and/or hoisting equipment;

if any crane or hoist provided by Perkins is unavailable for any reason, wherever possible the Subcontractor must use manual means and lifting, in accordance with any applicable standard or safety guidelines.

SCHEDULE 4 – SUBCONTRACT DOCUMENTS

Drawings

| Drawing                            | Revision | Date |
|------------------------------------|----------|------|
|                                    |          |      |
| Insert additional rows as required |          |      |
|                                    |          |      |
|                                    |          |      |
|                                    |          |      |
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|                                    |          |      |
|                                    |          |      |

Specifications

| Specification                      | Revision | Date |
|------------------------------------|----------|------|
|                                    |          |      |
| Insert additional rows as required |          |      |
|                                    |          |      |
|                                    |          |      |
|                                    |          |      |
|                                    |          |      |
|                                    |          |      |

Other Documents

| Document                           | Revision | Date |
|------------------------------------|----------|------|
|                                    |          |      |
| Insert additional rows as required |          |      |
|                                    |          |      |
|                                    |          |      |
|                                    |          |      |
|                                    |          |      |
|                                    |          |      |
|                                    |          |      |

## SCHEDULE 5 – STATUTORY DECLARATION

|               |  |
|---------------|--|
| PROJECT       |  |
| SUBCONTRACTOR |  |

I, \_\_\_\_\_ being the  
(name)

\_\_\_\_\_  
(occupation)

do solemnly and sincerely declare that:

In respect of the Project, as at: \_\_\_\_\_ (date):

- a) I am duly authorised by the Subcontractor to make this declaration on its behalf;
- b) I have carried out due investigations and am aware of all of the facts and circumstances set out herein regarding payment to employees and contractors of the Subcontractor;
- c) All wages and other entitlements, including building industry superannuation and long service leave levies, due and payable at the date of this declaration have been paid by the Subcontractor in accordance with the relevant award, industrial instrument or agreement and/or employment agreement to, or on behalf of, all employees of the Subcontractor who are, or at any time have been, engaged on the Project;
- d) The Subcontractor has met all its obligations at law and under statute in respect of payment of payroll tax;
- e) All consultants, suppliers and sub-subcontractors who are, or at any time have been, engaged by the Subcontractor on the Project have been paid in full all amounts that have become payable to them under the terms of their agreement with the Subcontractor;
- f) All insurances required to be maintained by the Subcontractor under the Subcontract are in force; and
- g) All employees of the Subcontractor are legally entitled to reside in and work within the Commonwealth of Australia;

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths, Affidavits and Statutory Declarations Act 2005 (WA)*.

\_\_\_\_\_  
signed

\_\_\_\_\_  
date

In the presence of:

\_\_\_\_\_  
(signature of authorised witness)

\_\_\_\_\_  
(name and occupation of authorised witness)

## SCHEDULE 6 – RATES AND PRICES

### 1 Schedule of pricing

| Item | Description                                  | Total (excluding GST) |
|------|----------------------------------------------|-----------------------|
| 1.1  |                                              |                       |
| 1.2  | <i>Insert additional rows as required</i>    |                       |
| 1.3  |                                              |                       |
| 1.4  |                                              |                       |
| 1.5  |                                              |                       |
| 1.6  |                                              |                       |
| 1.7  |                                              |                       |
| 1.8  |                                              |                       |
| 1.9  |                                              |                       |
| 1.10 |                                              |                       |
|      | <b>Total fixed lump sum (excluding GST):</b> | \$                    |

### 2 Schedule of labour and mark-up rates (for variations)

| Item | Description                                                                     | Rate (excluding GST) | Unit  |
|------|---------------------------------------------------------------------------------|----------------------|-------|
| 2.1  | Site labour rate - skilled                                                      | \$                   | /hour |
|      | Site labour rate - unskilled                                                    | \$                   | /hour |
|      | <i>Insert additional rows as required</i>                                       |                      |       |
|      |                                                                                 |                      |       |
| 2.2  | Percentage mark-up on variations for on-site and off-site overheads and profit: |                      |       |
|      | plant                                                                           | 5                    | %     |
|      | materials                                                                       | 5                    | %     |
|      | sub-subcontractors                                                              | 5                    | %     |

Site labour rates are to include for all costs, overheads and profit in connection therewith.

The plant, materials and sub-subcontract costs are net invoiced prices (incorporating savings due to discounts and rebates), subject to the percentage mark-up stated in Item 2.2 of Schedule 6 above.

3 Schedule of rates

| Item | Description                                  | Rate (excluding GST) | Unit |
|------|----------------------------------------------|----------------------|------|
| 3.1  |                                              |                      |      |
| 3.2  | Or attach a schedule of rates as an annexure |                      |      |
| 3.3  |                                              |                      |      |
| 3.4  |                                              |                      |      |
| 3.5  |                                              |                      |      |
| 3.6  |                                              |                      |      |
| 3.7  |                                              |                      |      |
| 3.8  |                                              |                      |      |
| 3.9  |                                              |                      |      |
| 3.10 |                                              |                      |      |

**NOTE:** The schedule of rates include for all labour, plant, materials, equipment, supervision, over-heads and profit and all other costs and allowances, including preliminaries.

## SCHEDULE 7 – FORM OF RELEASE

### FORM OF RELEASE (Clause 24.3))

|                     |  |
|---------------------|--|
| Project             |  |
| Subcontractor       |  |
| Subcontract         |  |
| Date of Subcontract |  |

The Subcontractor hereby agrees that the total amount payable by Perkins to the Subcontractor under or in way arising out of the Subcontract or the Project is as follows:

| Account Details                  | Amount (excl GST) |
|----------------------------------|-------------------|
| Original Subcontract Sum         | \$                |
| Variations and other adjustments | \$                |
| Final Subcontract Sum            | \$                |

### Acknowledgment and Release

1. This is the Form of Release referred to in the General Conditions. The Final Subcontract Sum was assessed by Perkins under those conditions.
2. The interpretation provisions in clause 1 of the General Conditions apply to this Form of Release.
3. The Subcontractor:
  - (a) acknowledges and agrees that, except as expressly provided for in clause 24.5(a), the Final Subcontract Sum is the total amount payable by Perkins to the Subcontractor under or in way arising out of the Subcontract or the Project and that any entitlement not claimed by the Subcontractor is hereby waived and not recoverable;
  - (b) except as expressly provided for in clause 24.5(a), releases Perkins and its Personnel and consultants from all past, present and future Claims whether known or unknown;
  - (c) indemnifies Perkins and its Personnel and consultants against:
    - (i) any encumbrances (whether by way of lien, charge, retention of title, attachment or otherwise) over or in respect of the Main Contract works or any part thereof, including any plant, equipment, materials, goods, items and other things supplied under the Subcontract; and
    - (ii) Claims arising from or in any way connected with the Subcontract (whether known or unknown) and the Subcontractor indemnifies and holds harmless Perkins from and against any Claim or liability (including any losses, damages, outgoing, costs and expenses of whatever description, whether known or unknown) arising from or in any way connected with the Subcontract provided always that the Subcontractor will not be liable for any such losses, damages, outgoing, costs and expenses to the extent that they are caused or contributed to by the negligent act or omission, or breach of contract of Perkins;
  - (d) certifies that all employees, workmen, sub-subcontractors and suppliers who at any time have performed work or supplied goods under the Subcontract have been paid in full all monies due and payable to them; and
  - (e) agrees to complete all outstanding work under the above Subcontract including all making good and rectification of defective work to the entire satisfaction of Perkins.
4. This Form of Release does not affect any of the Subcontractors obligations or liabilities under the Subcontract or otherwise at law.
5. The Subcontractor further acknowledges that it has not entered into this Form of Release as a result of any representation or inducement made to it by Perkins, its Personnel, nor under any duress.



## SCHEDULE 8 – HEALTH, SAFETY AND ENVIRONMENTAL COMPLIANCE

### Perkins Occupational Health and Safety Policy

Perkins is totally committed to the elimination of work-related injury and disease and the provision of a safe and healthy working environment for workers, subcontractors, visitors and the public. Safety excellence is recognised as good business and the safety of workers is a value which is not to be compromised.

### Subcontractors

Perkins is committed to working with subcontractors who share our philosophy and objectives to achieve zero harm. Perkins recognise the value of workers that demonstrate a commitment to working safely.

The Subcontractor must be familiar with the requirements of all current industrial safety and health legislation and provide all protective clothing and equipment required under current legislation.

The Subcontractor must inform all of its supervisors and all other workers who will carry out any work or activity on a Perkins site of these requirements.

Subcontractors shall supervise the works and ensure its workers comply with WH&S Legislation, Codes of Practice and Australian Standards in accordance with the Jurisdiction requirements, Perkins minimum Occupational Safety & Health standards and the requirements of this schedule. Statutory workplace/occupational health and safety legislation, rules and regulations are to be taken as minimum requirements only. Where Perkins requirements exceed these, Perkins requirements must be met.

The Subcontractor must submit safe work method statements ("SWMS") for all of its activities at least 7 days prior to commencement of work on any Perkins site. Documents are to be submitted to the Perkins Project Manager. The Subcontractor will not be permitted to commence any work on the Site until the required documentation is presented in a format acceptable to Perkins.

The Subcontractor must provide to Perkins a legible and current (last 5 years) Material Safety Data Sheets and MSDS register for hazardous substances or dangerous goods used on site.

### Conditions of entry to the Site

The Subcontractor must comply with the requirements of the WH&S Legislation; must abide by the Principal's and the Perkins' environmental policies and procedures, site safety rules, safety policies and safety procedures and any other requirements regarding, building, construction safety and/ or other regulations as they may apply, and as directed by the Perkins site manager or Perkins representative.

The Subcontractor must train its workers in every facet of the work it is expected to perform on a site and provide evidence of each worker's competency. All workers will be required to provide evidence of completing a recognised industry based safety induction course (e.g. National Construction Safety Awareness Training, White Card - Safety Induction Course) before commencing work on a Perkins site.

In addition, the Subcontractor's workers will be required to undergo Perkins (and, if applicable, the Principal's) site specific induction(s) in accordance with the procedures for the site prior to the commencement of works. Inductions are conducted on each site daily at 7am or such other time advised by the Perkins site manager.

Subcontractor's workers must sign in and sign out of the Perkins register each time they enter or leave the Site.

The Subcontractor shall ensure that no persons, unrelated to the Subcontract, enter the Site without the express permission of Perkins.

### Incidents / Accidents / Near Miss

All hazards, near misses, incidents or accidents MUST be reported to Perkins immediately.

Any person including the Subcontractor, its subcontractors and its suppliers may receive first aid treatment for an injury from a Perkins HSE officer and/or appointed first aid officer.

The Subcontractor must report and ensure that its workers report all near misses, actual personal injury or disease and equipment or property damage immediately to the Perkins site manager.

If the Subcontractor's worker requires medical treatment, the Subcontractor must advise or ensure that the Subcontractor's worker advises Perkins site manager prior to departure from the workplace. If the incident is of a type that requires notification to any statutory authority, the Subcontractor must provide notice in accordance with the relevant statutory regulations.

Any injured person requiring medical treatment shall be accompanied by the Subcontractor supervisor or Perkins representative with the ability and aptitude to liaise with medical personnel regarding the injury management/return to work plan of the injured worker.

If the Subcontractor or any of its workers are involved in, or are witness to, any incident on the Site, the Subcontractor must cooperate and ensure that any of its workers cooperate with Perkins or any other authorities' investigation of the incident.

The Subcontractor must ensure that the site or area in which the incident occurs (including any tools, equipment and materials within the incident area) is not removed or disturbed until the incident has been investigated by Perkins and subsequent approval has been given by Perkins to clear the incident site or area.

## Vehicles

The Subcontractor shall be responsible for all vehicles and equipment accessing the Site and pay particular attention to pedestrian access and safety at the entrances.

All vehicles within the site must adhere to the established speed limit and enter and leave in accordance with the Site HSE management plan. Where no speed limit is advertised, vehicles within the site must not travel at speed exceeding 15 Km per hour.

Vehicles may only be operated by a licenced operator.

Parking (if permitted on site) will only be permitted in designated parking areas. Perkins accepts no liability for any loss or damage whatsoever to vehicles or their contents whilst parked in the site.

## Personal Protective Equipment

The Subcontractor must provide its workers with adequate PPE for the works and all issued PPE must meet the relevant Australian Standard and be worn correctly.

The following PPE is a minimum requirement for work on a Perkins construction site.

- Safety footwear (AS/NZS 2210);
- Safety helmet (AS/NZS 1800 and AS/NZS 1801);
- High visibility clothing (AS 4602);
- Safety glasses (AS/NZS 1336, AS 1337 and AS/NZS 1338) - Note: safety goggles or full-face shields must be worn as identified by the risk assessment for the activity being performed;
- Hearing protection (AS/NZS 1269.3 and AS/NZS 1270) must be provided for and worn by workers working in or entering into designated excessive noise exposure areas or as identified by the risk assessment for the activity being performed; and
- Appropriate PPE for the activity being performed.

Failure of any person to wear the appropriate PPE will result in that person being dismissed from the site.

## Emergency Procedures

Subcontractors and their workers must participate in trial emergency procedures evacuations as they occur on the site. A statement of the emergency procedures and a site plan for the evacuation areas will be communicated to the Subcontractor's workers at their induction. In an emergency situation, all workers should leave the area immediately, using the approved exit path, and proceed to the evacuation assembly area.

Continuous access for emergency services must be maintained at all times.

## Smoking, Drugs and Alcohol

On all Perkins sites, smoking is only permitted in areas designated by Perkins. Smoking is not permitted in any site office, welfare facility, shed, toilet, or building under construction. On sites where the building site is contained within or adjacent to a school ground or educational facility, smoking is not permitted anywhere on the site at any times. Offenders will be dismissed from the site.

Under no circumstances will any person be permitted to possess or consume alcoholic beverages, nor possess or consume non-prescription drugs, during working hours. Reporting for work whilst under the influence of alcohol and / or drugs is prohibited and persons violating this will not be permitted entry to the site.

Perkins may require any person to submit to random, blanket, or 'for cause' drug or alcohol tests before or whilst working on a Perkins site. A person who returns a non-negative result for any unauthorised drugs or alcohol or refuse to take a test will no longer be authorised to work at, and will immediately be dismissed from, the site.

## Environment

Perkins is committed to its environmental policy and programme and compliance with legal requirements and industry codes of practice. Perkins complies with the requirements of AS/NZS ISO 14001:2015 Environmental Management Systems and requires all Subcontractors to comply.

The Subcontractor, when working on any Perkins project, must be aware of its environmental responsibilities, be competent and take the appropriate action to prevent pollution and minimise environmental harm. The Subcontractor must provide method statements or similar describing environmental hazards and control measures to be implemented for its works.

The following are some environmental issues that are common on most construction sites and need to be monitored and controlled by the Subcontractor:

- 1 Air Pollution
  - Reduce dust generated by vehicle movement.
  - Reduce dust generated by the cutting of concrete, bricks, ties etc. by using wet cutting where applicable, vacuum or dust bags.
  - Contain fibrous material generated during construction or demolition in accordance with all applicable occupational/workplace health and safety legislation, rules and regulations, Australian Standards and WorkCover standards.
  - Contain emissions produced from fixed or mobile plant, e.g. exhaust fumes in accordance with the relevant code.
  - Minimise odours generated as the result of any processes on site to reduce offensiveness to other site workers and surrounding tenants.
  - Monitor and control ventilation, lighting and temperature in confined spaces to ensure the safety of workers.
- 2 Noise Pollution
  - Minimise noise and comply with the Authority requirements and any specific Principal requirements -
  - Monitor noise in the workplace and provide workers with PPE as required.
  - Equipment that causes excessive vibration shall be selected to minimise any structural damage to the project or surrounding buildings.
  - Ensure workers are not exposed to excessive vibration.
- 3 Visual Impact
  - Ensure that the site is maintained in a clean and tidy state to minimise the occurrence of environmental incidents, e.g. remove your rubbish to the bins provided and store plant and material in a safe and orderly manner.
  - Give consideration to visual impact of all tasks performed.
- 4 Minimise the Use of Resources (Electricity and Water)
  - Ensure all electrical equipment is turned off when not in use.
  - Ensure all water supplies are turned off and are not leaking when not in use.
  - Ensure self-propelled equipment is turned off when not in use.
  - Ensure all materials are used in the most economical manner.
- 5 Recycling of Waste Materials
  - Ensure that, where identified recycling waste bins are provided, all workers place the appropriate waste in the appropriate bin.
- 6 Prevent Pollution
  - Report all environmental incidents to Perkins site manager.
  - Ensure chemicals are stored and used responsibly and all chemical wastes disposed of as per Best Industry Practice.
  - Ensure waterways (sewers, storm-water drains) and soil are not contaminated by the discharge of any waste, e.g. the washing down of plant and equipment and concrete trucks.
  - Ensure all solid wastes are placed in the bins provided.
- 7 Erosion and Sediment Control
  - Where the Subcontractor damages silt fencing whilst undertaking works on site, the Subcontractor must immediately reinstate the silt fencing to the original condition and locations. Temporary silt fencing must be erected and maintained around all temporary spoil heaps and mounds created by the Subcontractor on site for the duration of work under the subcontract. The fencing must be removed upon completion.
- 8 Asbestos
  - If the Subcontractor is carrying out any work with asbestos, must be licensed and certified in accordance with the National Code of Practice for the Safe Removal of Asbestos, 2<sup>nd</sup> Edition [NOHSC:2002(2005)].

## Non-Compliance

The Subcontractor must comply with any “non-compliance” notice issued by Perkins in respect of any breaches of the requirements of this schedule and must carry out corrective action within the time frame stipulated in the notice. The issue of a “non-compliance” notice does not limit any other right or action available to Perkins as a result of a breach of the Subcontract.

SCHEDULE 9 – SPECIAL CONDITIONS OF CONTRACT

Precedence of special conditions

These special conditions amend the General Conditions to the extent stated in the special conditions. To the extent there is any inconsistency between the General Conditions and these special conditions, these special conditions prevail.

Special Conditions

|      |                                    |
|------|------------------------------------|
| SC 1 |                                    |
| SC 2 |                                    |
| SC 3 |                                    |
| SC 4 |                                    |
| SC 5 |                                    |
|      | Insert additional rows as required |
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