



Purchase Order

Purchase Order No 20885588
Purchase Order Date 27/02/2019
Branch Plant/Project 20041076
Page 1 of 1

DOWNER EDI WORKS PTY LTD
 ABN 66 008 709 608
 L2 Trinita 3, Trinita Business Campus
 39 Delhi Road
 North Ryde NSW 2113

Supplier 1050777
 DALSKI STONE GALLERY PTY LTD
 745 THE HORSLEY DRIVE
 SMITHFIELD NSW 2164
martin@dalskistone.com

Ship To
 Glenbrook Railway Station
 Glenbrook Railway Station
 Glenbrook NSW 2773

Transport Provider
 Please deliver by
 Attention Carrier Contact

Delivery Term

Reference	Buyer	Buyer Phone	Buyer Email
Amarasingham, Sylvia	Amarasingham, Sylvia		Sylvia.Amarasingham@Downergroup.com

Line	Qty	UOM	Part No / Item	Description	Tax	Delivery Date	Unit Cost	Line Total
1.000	1.0000	EA	1214	Fabian S,Maciej S,Richard D Michal B,Ute With Tools,Genera	Y	27/02/2019	4,795.0000	4,795.00

Important

Total Net	4,795.00
Total GST	479.50
AUD Total Order	5,274.50

- Please supply the above mentioned goods and charge to our account as per our terms and conditions of purchase
- This Purchase Order is subject to terms and conditions, or where no terms are stated, the terms and conditions referenced at <http://www.downergroup.com/Content/cms/Documents/supplier-requirements/DG-LG-LP013-Purchase-Order-Terms-and-Conditions.pdf> and are incorporated to it by this reference
- Please notify the buyer immediately of any discrepancy in the information contained in this Purchase Order
- All invoices, delivery dockets, consignment notes and packages must quote the Order Number

Send Invoice To supplier.invoiceonly@downergroup.com
 PO Box 1823
 North Ryde NSW 2113

Subcontract – Long Form

Ref No: *D-BIR-BLD Building Works*

between

Downer EDI Works Pty Ltd

ABN 66 008 709 608

AND

Dalski Pty Ltd

ABN 11 107 119 442

for

Station Building Works at Birrong Station

Subcontract – Long Form

Subcontract

Instrument of Agreement

Parties

Downer EDI Works Pty Ltd (ABN 66 008 709 608) of Trinita Business Campus, 39 Delhi Road, North Ryde NSW 2113 (**Downer**)

AND

Dalski Pty Ltd (ABN 11 107 119 442) of 743-745 The Horsley Drive, Smithfield NSW 2164 (**Subcontractor**)

Background

- A. Downer has been engaged by the Principal to carry out certain work under a Head Contract in connection with the Project.
- B. For the purposes of satisfying its obligations under the Head Contract, Downer wishes to engage the Subcontractor to carry out the Work.
- C. The Subcontractor has represented to Downer that it has the financial capacity, skill, experience, personnel, material and capability to carry out the Work in accordance with this Subcontract.
- D. The parties have agreed that the Work will be carried out by the Subcontractor in accordance with the terms and conditions of this Subcontract.

Agreement

1. This agreement is comprised of:
 - (a) this Instrument of Agreement;
 - (b) the attached General conditions of Subcontract including all Schedules; and
 - (c) the documents and information identified in Item 16 of the Subcontract Details, (**Subcontract Documents**).
2. The Subcontractor shall perform the Work in accordance with the Subcontract.
3. In consideration of the Subcontractor performing the Work in accordance with the Subcontract and complying with its obligations under the Subcontract, Downer agrees to pay the Subcontract Sum to the Subcontractor in accordance with the terms of the Subcontract.



Subcontract – Long Form

Executed for and on behalf of Downer by its duly authorised representative:

[Redacted Signature]

Signature

Andrew Bennett / Project Director

Print Name/position

[Redacted Witness Signature]

Witness

Gloria Ng / Project admin

Print Name

28 Jan 2021

Date

Executed for and on behalf the Subcontractor, pursuant to s127 of the Corporations Act 2001 (Cth)

[Redacted Signature]

Director/Secretary

Martin Szkudlarek

Director

20/12/2020

Date

Subcontract – Long Form

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General Conditions of Subcontract

1 Definitions and Interpretation

1.1 Definitions

In this Subcontract:

Approval means any authorisation, assessment, accreditation, determination, registration, clearance, permit, licence, consent, certificate or other approval obtained or required or applying in connection with anything required or permitted to be done by the Subcontractor under this Subcontract;

Australian Standards means any Australian Standard (including as may be amended or replaced from time to time) issued by Standards Australia applying directly or indirectly to the Work;

Bank Guarantee means an unconditional undertaking without expiry in a form and from a financial institution approved by Downer;

Business Day means a day which is not a Saturday, Sunday or public holiday in the State or Territory in which the Work is carried out;

Claim means any claim, entitlement, action, suit, cause of action, cost, expense, demand, liability, whether by way of indemnity, under contract, in equity, under statute, in tort or otherwise and any other liability of any nature including a claim for an adjustment to the Subcontract Sum and a claim for an Extension of Time;

Collateral has the meaning given in the PPSA;

Compensable Cause means a breach by Downer of this Subcontract;

Confidential Information includes anything or document which Downer provides to the Subcontractor and any matter concerned with, or arising out of, this Subcontract, the Project or Downer which is disclosed to or learnt by the Subcontractor;

Consequential Loss means loss of use, opportunity, profit, anticipated profit, revenue, business or business opportunities and damage to goodwill, reputation or share price;

Convention on Contracts for the International Sale of Goods means the *United Nations Conventions on Contracts for the International Sale of Goods*, signed 11 April 1980, 1489 UNTS 3 (entered into force 1 January 1988);

Date for Practical Completion means the date stated in Item 2 of the Subcontract Details, as adjusted in accordance with this Subcontract but where an Extension of Time is allowed in any arbitration, litigation or expert determination binding on the Parties, it means the date resulting therefrom;

Date of Practical Completion is the date evidenced in a certificate of Practical Completion issued pursuant to clause 23.2 as being the date on which the Work reached Practical Completion or where another date is determined in any arbitration, litigation or expert determination binding on the Parties as the date on which Practical Completion was reached, that other date;

Defect means any:

- (a) error, deficiency, omission, non-conformity, fault, failure malfunction, irregularity or defect (including shrinkage, expansion, fading or settlement) in the Work or any Deliverable; and
- (b) aspect of the Work or any Deliverable that is not in accordance with the requirements of this Subcontract;

Defects Liability Period means, subject to clause 19.2, the period specified in Item 30;

Delay Costs means the costs described in clause 21.6(a);

Deliverable means documents, designs, drawings, specifications, reports and other information produced or provided (or required to be produced or provided) by or on behalf of the Subcontractor in the performance of the Work and, where clause 5 applies, includes the Design Documents;

Design Documents means the drawings, specifications and other information, samples, models, patterns and the like required by the Subcontract and created or to be created by the Subcontractor pursuant to clause 5 and includes any preliminary design and specifications prepared by or on behalf of the Principal or Downer which are to be reviewed, developed, warranted, amended and/or completed by the Subcontractor pursuant to clause 5;

Design Life means, if the Work includes an item or asset identified in this Subcontract with a design life specified, that period commencing from the Date of Practical Completion;

Direction includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;

Downer's Representative means the person identified as such in Item 1 of the Subcontract Details as may be replaced from time to time by Downer;

Extension of Time means an extension of the Date for Practical Completion;

Final Certificate means the certificate issued under clause 22.4(b);

Final Payment Claim means the Final Payment Claim referred to in clause 22.4(a);

Financing Change Statement has the meaning given to it in the PPSA;

Financing Statement has the meaning given to it in the PPSA;

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

Subcontract – Long Form

Head Contract means the contract between Downer and the Principal as identified in Item 3, under which Downer has agreed to carry out certain work in relation to the Work;

Head Contract Requirements means:

- (a) any requirements imposed on Downer under or in connection with the Head Contract; and
- (b) Downer's obligations under or in connection with the Head Contract,

which are communicated by Downer to the Subcontractor from time to time (whether before or after the execution of this Subcontract) or which can be reasonably inferred from this Subcontract and the Project Information;

Head Contract Program means a program for the performance of the work the subject of the Head Contract as may be provided by Downer pursuant to clause 20;

Head Contract Works means the works to be performed pursuant to the Head Contract;

Insolvency Event means any one or more of the following circumstances:

- (a) the Subcontractor informs Downer in writing or creditors generally that it is or may become insolvent, unable to pay its debts when due and payable or financially unable to proceed with this Subcontract;
- (b) execution is levied against the Subcontractor by a creditor which is not satisfied, set aside or withdrawn within 14 days after execution is so levied;
- (c) the Subcontractor suspends payment of its debts;
- (d) the Subcontractor, being an individual person or a partnership including an individual person: commits an act of bankruptcy; has a bankruptcy petition presented against him or her or presents his or her own petition; is made bankrupt; makes a proposal for a scheme of arrangement or a composition; has a deed of assignment or deed of arrangement made or accepts a composition; is required to present a debtor's petition; or has a sequestration order made under Part X of the *Bankruptcy Act 1966* (Cth);
- (e) the Subcontractor, being a corporation: enters into a deed of company arrangement, scheme of arrangement or composition with creditors; has (voluntarily or otherwise) a receiver, receiver and manager, controller or administrator, liquidator or provisional liquidator appointed to it; has a winding up order made against it or an application for a winding up order against it made to the court and not stayed within 14 days; resolves by special resolution that it be wound up voluntarily or placed under official management; or has any of its property taken possession of by a mortgagee; or
- (f) something having a substantially similar effect to any of (a) or (e) happens under the law of any jurisdiction in relation to the Subcontractor which Downer reasonably believes may prejudice the Subcontractor's ability to carry out and complete the Work or to pass title in Work to Downer;

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, patents, inventions and other results of intellectual activity in any field whether or not registrable, registered or patentable;

Intended Purpose means the purpose or purposes for which the Work is intended, including any purpose(s) which is described in, or may be reasonably inferred from, this Subcontract or the Project Information and any purpose notified by Downer to the Subcontractor (whether before or after the execution of this Subcontract);

Item means an Item in the Subcontract Details;

Legal Requirements means any Australian legislation, statute, ordinance, rules, regulation, subordinate legislation or by-law, Australian Standards, and includes any licenses, permits and consents necessary for the Subcontractor to carry out and complete the Work, those principles of common law and equity established by decisions of courts and all fees and charges payable in connection with the foregoing;

OHS Rules has the meaning as set out in the State and Territory Specific Schedules;

Moral Right means the rights conferred on authors of works by Part IX of the *Copyright Act 1968* (Cth) and all present and future rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, rights to alter or delete all or part of the work, rights to use work or an adaptation of the work and rights of a similar nature conferred by statute anywhere in the world;

Party means a party to this Subcontract;

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

PPS Register means the Personal Property Securities Register established under the PPSA;

Practical Completion is the stage in the carrying out and completion of the Work when:

- (a) the Work is complete except for minor Defects:
 - (i) which do not prevent the Work from being reasonably capable of being used for the Intended Purpose;
 - (ii) which Downer determines the Subcontractor has reasonable grounds for not promptly rectifying; and
 - (iii) the rectification of which will not prejudice the convenient use of the Work;
- (b) those tests which are required by this Subcontract to be carried out and passed before the Work reaches Practical Completion have been carried out and passed;
- (c) the Subcontractor has made good the Site and its surrounds and rectified any damage caused by it or those for whom it is responsible to the satisfaction of Downer;

Subcontract – Long Form

- (d) documents and other information required under this Subcontract which, in Downer's opinion, are essential for the use, operation and maintenance of the Work, have been supplied;
- (e) the Subcontractor has provided to Downer all warranties from Secondary Subcontractors required by the Subcontract; and
- (f) any other matter which this Subcontract states to be a requirement for Practical Completion is satisfied by the Subcontractor to Downer's reasonable satisfaction;

Principal means the person or persons that have engaged Downer under the Head Contract specified in Item 5 of the Subcontract Details and includes the Superintendent;

Probity Event means any event or thing which occurs before or after the date of this Subcontract which:

- (a) has a material adverse effect on, or on the perception of, the character, integrity or honesty of a Relevant Person;
- (b) relates to a Relevant Person and has or may have a material adverse effect on the public interest, or public confidence, in the Work; or
- (c) involves a material failure of a Relevant Person or Secondary Subcontractor to achieve or maintain:
 - (i) reasonable standards of ethical behaviour;
 - (ii) the avoidance of conflicts of interest which will have a material adverse effect on the ability of the Relevant Person or Secondary Subcontractor (as applicable) to carry out and observe its obligations in connection with the Work; or
 - (iii) other standards of conduct that would otherwise be expected of a party involved in a project of the same nature and type as the Work;

Project means the Project to which the Head Contract relates;

Project Information means any and all documents, information or materials provided by or on behalf of Downer to the Subcontractor either before or after the execution of this Subcontract;

Project Objectives means the outcomes, objectives, purposes and requirements in relation to the Project communicated by Downer to the Subcontractor or any outcomes, objectives, purposes or requirements that may be reasonably inferred from this Subcontract or the Project Information;

Qualifying Cause of Delay means:

- (a) a breach of this Subcontract by Downer;
- (b) an act or omission of Downer other than an act or omission that is expressly or impliedly permitted under this Subcontract;
- (c) subject to clause 14, the issue of a Variation Notice by Downer in accordance with clause 14.1(a); or
- (d) subject to clause 20.4(d), suspension directed by Downer pursuant to clause 20.4(a),

except to the extent caused or contributed to by any act or omission of the Subcontractor (including any Relevant Person);

Related Company means a 'related body corporate' within the meaning given to that term in section 50 of the *Corporations Act 2001* (Cth);

Relevant Person means any officer, employee, consultant, Secondary Subcontractor or agent of the Subcontractor;

Secondary Subcontractor means any of the Subcontractor's consultants, contractors, suppliers, service providers and any other person engaged by or on behalf of the Subcontractor in connection with the Work;

Security Agreement has the meaning given to it in the PPSA;

Security Interest has the meaning given to it in the PPSA;

Security of Payment Act means the relevant state or territory specific security of payment legislation and regulations applicable to the state or territory where the Work is being performed including as set out in the State and Territory Specific Schedules;

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

Special Conditions means the special conditions set out in **Part C** of the Subcontract Details;

Standards means any codes, specifications, policies, requirements and standards (as amended or replaced), or any other policy, guideline, procedure, standard or requirement with which the Subcontractor must comply by virtue of a Legal Requirement or as directed by Downer in connection with the Work or which are otherwise applicable to the Work;

Site means the lands and other places to be made available to the Subcontractor for the purposes of this Subcontract, including as described in Item 4, and includes any improvements and structures (including the Works) located on those lands and other places;

State and Territory Specific Schedules means the Schedules to this Subcontract setting out provisions that apply with respect to specific States and Territories;

Subcontract means this agreement between Downer and the Subcontractor constituted by the Subcontract Documents;

Subcontract Details means the document described as such which is attached to these General Conditions of Subcontract;

Subcontract – Long Form

Subcontract Documents has the meaning identified in the Instrument of Agreement which forms part of this Subcontract;

Subcontract Sum means:

- (a) where there is a lump sum specified in Item 7, that lump sum including any provisional sums but excluding any additions or deductions which may be required to be made under the Subcontract; or
- (b) where there are applicable rates included in this Subcontract, the sum ascertained by multiplying those rates by the quantity of Work properly performed in accordance with this Subcontract; or
- (c) where there are both applicable rates and a lump sum(s), the aggregate of the sums referred to in subclauses (a) and (b),

as adjusted under this Subcontract;

Subcontractor's Design Obligations means each of the obligations of the Subcontractor pursuant to clause 5;

Subcontractor's Representative means the person identified as such in Item 8 of the Subcontract Details or a nominated replacement whose appointment has been approved by Downer;

Superintendent means the person stated in Item 6 and is the Superintendent or the Principal's representative or other person from time to time appointed in writing by the Principal to be the Superintendent or the Principal's Representative under the Head Contract and notified as such in writing to the Subcontractor by Downer and, so far as concerns the functions exercisable under the Head Contract by a Superintendent's representative or the Principal's representative delegate, includes each of those persons;

Tax means any present or future tax, royalty, levy, impost, deduction, assessment, charge, excise, fee, withholding or duty of any nature imposed, assessed, charged, levied or collected by any government agency or other body authorised by Legal Requirements;

Tax Invoice has the meaning given to that expression under the GST Act;

Variation means:

- (a) additional work;
- (b) a change in the character or quality of the Work;
- (c) an increase or decrease in the scope of the Work (including the omission of any part of the Work); or
- (d) a change to the levels, lines, positions or dimensions of any part of the Work;

Variation Notice has the meaning in clause 14.1(a);

Verification Statement has the same meaning as in the PPSA; and

Work means the work described generally in the Subcontract and more particularly identified in Item 9 and all work and activities that are necessary or incidental to that work including, where applicable, the performance of the Subcontractor's Design Obligations.

1.2 Interpretation

- (a) Reference to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a person includes a body corporate;
 - (iv) a Party includes the Party's executors, administrators, successors and permitted assigns;
 - (v) a thing includes the whole and each part of it separately;
 - (vi) a statute, regulation, code or other law or a provision of any of them includes:
 - (A) any amendment or replacement of it; and
 - (B) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
 - (vii) dollars means Australian dollars unless otherwise stated.
- (b) Words such as "includes", "including" and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) Headings and any table of contents or index are for convenience only and do not form part of this Subcontract or affect its interpretation.
- (e) A provision of this Subcontract must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the Subcontract or the inclusion of the provision in this Subcontract.
- (f) Any terms referred to in this Subcontract that are also defined terms in the Head Contract, have the same meaning in this Subcontract as the meaning given to them in the Head Contract, unless the context otherwise requires.
- (g) Unless this Subcontract expressly provides otherwise, the Subcontractor must perform all of its obligations under this Subcontract at its own cost and expense.

Subcontract – Long Form

(h) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

(i) Unless otherwise provided, prices are in the currency in Item 13 and payments shall be made at the place in Item 14.

1.3 Parties

(a) If a Party consists of more than 1 person, this Subcontract binds each of them separately and any 2 or more of them jointly.

(b) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.

1.4 State and Territory Specific Conditions

(a) To the extent that any Work is performed in New South Wales, the conditions set out in Schedule 5 apply.

1.5 Commonwealth Building Code

If Item 44 states that Schedule 13 applies, the Subcontractor must at all times comply with the provisions set out in Schedule 13 (otherwise, Schedule 13 will not apply to this Subcontract).

2 The Work

2.1 Performance of the Work

(a) The Subcontractor must carry out and complete the Work in a good, proper and workmanlike manner to the satisfaction of Downer and in accordance with the highest standards of the respective trades using industry best practices and otherwise in accordance with the requirements of this Subcontract.

(b) Downer may, at any time, and without prejudice to any other right available to Downer, reject any work or materials which do not comply with this Subcontract. The Subcontractor must rectify or replace any rejected work or materials at its own cost in accordance with the Directions of Downer (including any time period directed by Downer), failing which Downer may rectify or replace such work or materials or have such work or materials rectified or replaced by others, the costs of which will be a debt due from the Subcontractor to Downer.

(c) The Subcontractor must comply with:

(i) all Directions of Downer;

(ii) Downer's requirements in relation to occupational health, safety and the environment as set out in the Subcontract and as directed by Downer from time to time; and

(iii) all Legal Requirements applicable to the Subcontract or the Work.

2.2 The Head Contract

(a) The Subcontractor must do all things necessary to enable performance by Downer of the Head Contract Requirements and so as to ensure that Downer is not, by act or omission, in breach of any Head Contract Requirements.

(b) The Subcontractor acknowledges and agrees that:

(i) it obtains no rights or benefits under the Head Contract; and

(ii) the Work to be performed by the Subcontractor for the Subcontract Sum includes anything reasonably required of the Subcontractor by Downer to enable Downer to comply with the Head Contract Requirements.

(c) Without limiting the Subcontractor's obligations under clauses 2.2(a) and 2.2(b), the Subcontractor must co-operate and co-ordinate performance of the Work with Downer and others carrying out work on or about the Site so as to enable Downer to complete its work under the Head Contract in accordance with the Head Contract Requirements.

(d) The Subcontractor acknowledges and agrees that the Subcontract Sum includes an allowance to fully compensate the Subcontractor for all obligations, risks and contingencies which are associated with the Subcontractor's compliance with this clause 2.2 and the requirements pursuant to this clause 2.2 shall not constitute a Qualifying Cause of Delay (or an act, default or omission by Downer or Downer's Representative) for the purposes of clause 21.1.

2.3 Quantities

Quantities in a Schedule of Rates are estimated quantities and are not guaranteed by Downer. No limits of accuracy shall apply. The Subcontractor shall have no Claim by reason of the actual quantity of an item or section required to carry out the Work being greater or less than the quantity shown in the Schedule of Rates.

2.4 Legal Requirements

In the performance of the Work, the Subcontractor must:

(a) comply with its obligations and reasonably foreseeable potential obligations under the OHS Rules and Downer's occupational health and safety policies and procedures as amended from time to time;

(b) do all that is required to ensure the health and safety of workers and others;

(c) conform with, and ensure that the Work conforms with, all applicable industry requirements, best practices and Standards;

(d) ensure all Work, materials, tools, equipment and personal protective equipment is compliant with the relevant Australian Standards;

Subcontract – Long Form

- (e) ensure it does not breach the *Fair Work Act 2009* (Cth) or other relevant industrial legislation, awards or enterprise agreements;
- (f) obtain and keep in full force and effect all Approvals necessary for the lawful performance, supply and use of the Work; and
- (g) provide to Downer, upon request, any data and information that is or may be required by Downer, the Principal or any third party to comply with the *National Greenhouse and Energy Reporting Act 2007* (Cth) to the extent that such data and information relates to the Work or this Subcontract.

3 Commencement

3.1 Access to Site

- (a) Subject to clause 3.2, not later than the date stated in Item 10, Downer must give the Subcontractor reasonable access to the Site to enable the Subcontractor to commence carrying out the Work. Any delay in giving the Subcontractor access to the Site is not a breach of Subcontract but may entitle the Subcontractor to claim an Extension of Time under and subject to clause 21.
- (b) Unless Downer's Representative directs otherwise, the Subcontractor must only access the Site during the hours and on the days provided for in accordance with Item 15.
- (c) Notwithstanding this clause 3, if the Subcontractor has not complied with clauses 3.1(e)(i), 8, 9.2 and 9.3, the Subcontractor has no entitlement to (and Downer may refuse to give the Subcontractor) access to the Site until the Subcontractor complies with the requirements of those clauses.
- (d) Except to the extent otherwise expressly stated in this Subcontract, the Subcontractor acknowledges and agrees that it is solely responsible for and has made sufficient provision for any constraints on access to and from the Site and all craning, scaffolding, haulage and handling that may be required for the performance of the Work.
- (e) The Subcontractor must:
 - (i) provide to Downer, evidence of its safety management system that will be implemented to manage the Work pursuant to this Subcontract;
 - (ii) ensure that its workers (and all of its Secondary Subcontractors' workers) are inducted to the Site prior to the workers commencing work at the Site; and
 - (iii) ensure that its workers (and all of its Secondary Subcontractors' workers) possess the appropriate licence, qualification and competency for the work being undertaken.

3.2 Other works on the Site

- (a) The Subcontractor acknowledges and agrees that it is not entitled to exclusive possession of the Site and that Downer and others will be carrying out work on or about the Site at the same time as the Subcontractor is carrying out the Work.
- (b) The Subcontractor must co-ordinate its Work with the work and activities being carried out by others on the Site and has no entitlement to make any Claim against Downer in any way relating to the carrying out of work by others.
- (c) Downer is not obliged to give the Subcontractor access to the Site under this clause 3 which is greater than Downer's rights under the Head Contract.

4 Subcontractor Warranties and Acknowledgements

4.1 General Warranties

The Subcontractor represents and warrants, in addition to and without limiting any other warranty given by the Subcontractor under this Subcontract:

- (a) that it has thoroughly examined all the Subcontract Documents, the Project Information and all other information or documentation made available to it by Downer before entering into this Subcontract, and obtained all other information necessary to carry out and complete the Work;
- (b) that it has examined all information obtainable by the making of reasonable enquiries in relation to the Work;
- (c) that it is and will at all times be suitably qualified and experienced;
- (d) that it has entered into this Subcontract without relying on any representation by Downer, the Principal or any person purporting to represent Downer or the Principal except to the extent that such representation forms part of and is expressly stated in this Subcontract;
- (e) that it has thoroughly inspected the Site and its adjacent surroundings, including any prior work, existing structures or materials and physical conditions (whether naturally occurring or in consequence of human activity) on, in, over or under the Site and its surroundings;
- (f) that it will carry out and complete the Work so that, when complete, it is free from Defects and is fit for the Intended Purpose and is capable of remaining fit for the Intended Purpose (if maintained in accordance with good industry practice);
- (g) that all materials supplied by it will be suitable for the purpose for which they are used and that, unless otherwise stated in this Subcontract, those materials will be new;
- (h) that the Work will be completed within the time stipulated in this Subcontract;

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- (i) that the Work will comply with all the requirements of or to be inferred from, this Subcontract including, the Legal Requirements, Australian Standards and the requirements of all authorities having jurisdiction over the Work and will meet or exceed the Project Objectives;
- (j) that it has determined the nature and extent of the Work and assessed the amount of temporary works, materials, labour, plant and equipment necessary to complete the Work in accordance with its obligations under this Subcontract and made all necessary allowances in the Subcontract Sum, including allowance for the supply of all items not expressly mentioned in this Subcontract but which are necessary for the satisfactory completion of the Work;
- (k) that it has considered its obligations under this Subcontract and that both the Subcontract Sum and Date for Practical Completion are reasonable and each contain all necessary allowances taking into account the risk, responsibilities and costs allocated to the Subcontractor, whether expressly or otherwise;
- (l) that it has made proper allowance for all matters which might impact on its ability to complete the Work or to complete the Work within any particular time, cost or quality constraints subject to the express provisions of this Subcontract;
- (m) that it has obtained, or will be able to obtain, all necessary consents, permits or authorisations (other than those which Downer is required to obtain in accordance with this Subcontract) necessary for it to carry out the Work in accordance with the requirements of this Subcontract;
- (n) that all registrations, permits, licences, qualifications and other requirements of its trade are in full force and effect at all times;
- (o) that it is a GST registered entity;
- (p) that it shall comply with all Legal Requirements applicable to the Work and the performance of the Work; and
- (q) that it will carry out and complete the Work so that, when complete, each asset or item to which a Design Life applies will be free from Defects and fit for the purposes for which it is intended (without any major maintenance or refurbishment works) for its Design Life.

The Subcontractor's warranties remain unaffected notwithstanding:

- (r) that design work (including preliminary design) has been carried out by or on behalf of Downer and included in Downer's Project Objectives;
- (s) that the Subcontractor has entered into an assignment of any prior contract between Downer and a consultant of Downer;
- (t) any receipt or review of, or comment or Direction on, the Design Documents or any aspect of the Work by Downer; or
- (u) any Variation.

4.2 Deeds of Warranty

- (a) Upon written direction from Downer, and as a precondition to Practical Completion, the Subcontractor must provide executed deeds of warranty for the direct benefit of Downer and the Principal:
 - (i) in the form required by any express provision of this Subcontract (including any Schedule to this Subcontract); or
 - (ii) if there is no such express provision, in a form reasonably required by Downer and the Principal.
- (b) The Subcontractor shall, and shall ensure that it is able to, assign to Downer and/ or the Principal (as required by Downer), the benefit of all other warranties obtained by the Subcontractor from any of its subcontractors or suppliers.

4.3 Deliverables

The Subcontractor must (and warrants that it will) ensure that all Deliverables:

- (a) comply in all respects with this Subcontract;
- (b) are fit for the purposes for which they are intended (or any purpose which may be reasonably inferred from the Subcontract or the Project Information);
- (c) comply with all applicable Legal Requirements and Australian Standards;
- (d) do not infringe any Intellectual Property Rights of any person;
- (e) comply in all respects with the Head Contract Requirements; and
- (f) satisfy or exceed the Project Objectives.

4.4 Taxes and Employees Benefits

- (a) The Subcontractor acknowledges that it has sole liability in relation to:
 - (i) wages, salaries, allowances, incentive payments, bonuses, sick leave, long service leave, annual leave, personal leave, termination or redundancy payments and any other employment related liabilities; and
 - (ii) all group tax, payroll tax, PAYE, superannuation, workers compensation and other taxes, levies, deductions, charges, penalties, duties or withholdings,
 in respect of the Subcontractor's personnel.
- (b) The Subcontractor further acknowledges that neither the Subcontractor nor any of the Subcontractor's personnel have, pursuant to this Subcontract or otherwise, any entitlement from Downer in relation to any form of employment benefit. The Subcontractor will not communicate or otherwise represent to its personnel that any of the Subcontractor's personnel have any entitlement from Downer in relation to any form of employment related benefit.

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- (c) The Subcontractor indemnifies Downer from and against any liability for the Indemnified Taxes, together with any other amount determined by Downer to be reasonably necessary to compensate Downer for an income tax liability, or reduction in income tax losses available to be carried forward or available income tax credits or rebates, to ensure that the after tax position of Downer is the same (or substantially the same) as it would have been had Downer never been liable for any Indemnified Taxes.
- (d) If Downer is, becomes or reasonably forms the view that it may be or become, liable for the payment of any Indemnified Taxes, or Downer is required under a Legal Requirement in respect of Tax to withhold or deduct any amount from any payment due to the Subcontractor (**Withholding Amount**), Downer may deduct or withhold the amount of its liability or prospective liability for the Indemnified Taxes or Withholding Amount from any amount due by Downer to the Subcontractor, whether under this Subcontract or otherwise.
- (e) In this clause, **Indemnified Taxes** means any taxes, excluding GST, arising out of or in relation to this Subcontract or the performance of or payment for the Work or any other transaction contemplated by this Subcontract including Pay As You Go, withholding tax, superannuation guarantee charge, fringe benefits tax, workers' compensation insurance premiums and payroll tax, together with all costs, interest or penalties payable by reference to those taxes.

5 Design

Except to the extent that Item 17 excludes the responsibility of the Subcontractor for design and without limiting any other obligation of the Subcontractor under this Subcontract, the Parties acknowledge and agree that:

- (a) the Subcontractor must prepare the Design Documents including by correcting and completing any incorrect or incomplete Design Documents existing as at the date of this Subcontract and otherwise carry out and complete the design of the Work in compliance with this Subcontract;
- (b) the Subcontractor must submit its proposed Design Documents to Downer for review and comment at the times specified in the Subcontract or, if no time is specified, then by the earlier of:
 - (i) the date that enables Downer to comply with, any design review process contained in the Head Contract Requirements; or
 - (ii) 21 days prior to the Subcontractor's proposed commencement of construction (including procurement, manufacture and fabrication of any part of the Work the subject of the Design Documents);
- (c) Downer may (but is not obliged to):
 - (i) review any Design Documents prepared and submitted by the Subcontractor; and
 - (ii) consult with and take into account any views or requirements of the Principal in connection with the Design Documents; and
- (d) within the period prescribed by this Subcontract (or if no period is specified, within 21 days of their receipt), Downer may reject or require amendments to the Design Documents if, in its opinion, the Design Documents do not comply with the requirements of this Subcontract or the Principal;
- (e) if Downer issues any Direction in connection with Design Documents pursuant to clause 5(d), the Subcontractor must submit amended Design Documents to Downer in which case, the process in clauses 5(b), 5(c) and 5(d) shall apply to the amended Design Documents;
- (f) the Subcontractor must not commence construction of the part of the Work to which any Design Documents which it has submitted to Downer applies, unless Downer has had the period prescribed by clause 5(b) to review the Design Documents and has not rejected or required amendments to the Design Documents;
- (g) no preliminary design issued by or on behalf of Downer and no review of, comments upon, rejection of, failure to review or comment upon or reject, any Design Documents prepared by the Subcontractor or any other Direction by Downer shall:
 - (i) cause Downer to assume or owe any duty of care to the Subcontractor in respect of errors or omissions in the Design Documents or the Subcontractor's compliance with this Subcontract;
 - (ii) relieve the Subcontractor from, or alter or affect, the Subcontractor's warranties, liabilities or responsibilities whether under the Subcontract or otherwise according to law; or
 - (iii) prejudice Downer's rights against the Subcontractor whether under the Subcontract or otherwise according to law;
- (h) without limiting any other warranty of the Subcontractor under the Subcontract, the Subcontractor warrants to Downer that the Subcontractor:
 - (i) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the carrying out and completion of the Subcontractor's design responsibilities under this Subcontract;
 - (ii) has examined the Subcontract and any preliminary design therein is suitable, appropriate and adequate for the Intended Purpose;
 - (iii) understands that any preliminary design may be incomplete and may require further work before it can be used by a competent contractor to carry out the Work to a stage of Practical Completion and wholly accepts liability for the adequacy of all Design Documents whether prepared by or on behalf of the Principal, Downer or the Subcontractor;

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- (iv) understands that the process referred to in this clause 5 will require the iterative submission and review of Design Documents and the carrying out of design development by the Subcontractor, in respect of which process the Subcontractor has allowed a sufficient amount in the Subcontract Sum and sufficient period of time in calculating the Date for Practical Completion;
- (v) in carrying out the Subcontractor's design obligations, shall ensure that all the Design Documents:
 - (A) have been subjected to coordination, resolution of any error, omission, ambiguity, conflict, lack of clarity or deficiency in the design;
 - (B) do not depart from the layout, purposes, design intent, Standards, style, appearance and dimensions shown in or reasonably inferred from this Subcontract without the express written Approval of Downer;
 - (C) comply with the Legal Requirements and the requirements of this Subcontract; and
 - (D) are consistent with and meet the requirements of the Project Objectives; and
- (i) shall carry out and complete the Work in accordance with the Design Documents prepared by the Subcontractor in accordance with this clause 5 so that the Work, when completed, shall:
 - (i) be fit for the Intended Purpose;
 - (ii) be free from design errors and Defects;
 - (iii) be compliant with the Head Contract Requirements;
 - (iv) meet or exceed the Project Objectives; and
 - (v) be compliant with any further purposes or requirements set out in Schedule 2.

6 Subcontract Documents

6.1 Discrepancies

- (a) The several documents forming this Subcontract shall be taken as mutually explanatory of one another. Should the Subcontractor encounter any discrepancies, contradictions, omissions, ambiguity, errors, faults or inconsistencies in or between the Subcontract Documents the Subcontractor must promptly notify Downer's Representative in writing.
- (b) The Subcontractor must comply with any Direction of Downer's Representative as to the interpretation to be adopted in resolving the discrepancy, contradiction, omission, ambiguity, error, fault or inconsistency and shall have no Claim in connection therewith.
- (c) To the extent that any discrepancies, contradictions, omissions, ambiguity, errors, faults or inconsistencies exist in or between the Subcontract Documents, the Subcontractor shall comply with the highest quality or standard specified or perform the more onerous obligation

6.2 Evidence of Subcontract

The Subcontractor is not entitled to payment under or in connection with this Subcontract and Downer is not obliged to make any payment to the Subcontractor until this Subcontract is executed by the Subcontractor and an original executed copy returned to Downer.

6.3 Supply of documents by the Subcontractor

The Subcontractor must, at least 14 Business Days before and as a precondition to Practical Completion, give Downer all warranties, guarantees, operating manuals, maintenance manuals and "as built" drawings applicable to the Work in accordance with this Subcontract or the Head Contract Requirements.

6.4 Supply of documents by Downer

- (a) Unless this Subcontract expressly provides otherwise, Project Information of any nature provided by or on behalf of Downer to the Subcontractor at any time (other than the Subcontract Documents) is furnished to the Subcontractor solely for its convenience only and are not guaranteed to be complete, accurate, consistent or fit for any purpose (including the Intended Purpose). Downer has no liability whatsoever to the Subcontractor, whether in tort (including negligence), contract, statute or otherwise (except to the extent that such liability cannot be excluded) concerning or in any way connected with any interpretations, deductions, inferences drawn or conclusions made by the Subcontractor in relation to such information or documents or any errors, omissions, representations or misrepresentations contained in the same.
- (b) The Subcontractor warrants that it has:
 - (i) examined carefully and acquired actual knowledge of the content of the Project Information and the Subcontract Documents and any other information made available by or on behalf of Downer to the Subcontractor;
 - (ii) examined all information obtainable by the making of reasonable enquiries in relation to the Work;
 - (iii) satisfied itself that the Subcontract Sum covers the cost of complying with all of its obligations under this Subcontract; and
 - (iv) checked and considered the Design Documents and any document from which the drawings are derived and satisfied itself that they are suitable for the Intended Purpose.

7 Administration and Personnel

7.1 Downer's Representative

Downer's Representative:

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- (a) has authority to exercise and discharge any of Downer's powers and duties under this Subcontract unless and until Downer notifies otherwise; and
- (b) may from time to time and at any time by notice in writing to the Subcontractor appoint delegates to exercise any functions of Downer's Representative.

7.2 Compliance with Directions

- (a) The Subcontractor must:
 - (i) comply with any Direction given by Downer or Downer's Representative (or any authorised delegates); and
 - (ii) communicate with Downer's Representative in relation to any matters within Downer's Representative's authority.
- (b) If the Subcontractor is dissatisfied with or disputes any Direction of Downer or Downer's Representative (or any authorised delegates), without limiting any other obligation of the Subcontractor under this Subcontract including with respect to the giving of notices, the Subcontractor shall within five Business Days after the Direction is given, notify Downer in writing identifying the Direction and giving particulars of the Subcontractor's dissatisfaction or dispute. If the Subcontractor fails to do so, the Subcontractor shall have no Claim arising out of or in connection with the Direction.

7.3 Subcontractor's Representative

The Subcontractor must ensure that:

- (a) the Subcontractor's Representative is present on Site whenever Work is being undertaken and in any event during normal working hours;
- (b) the Subcontractor's Representative has the full authority of the Subcontractor to receive instructions from and notices given by Downer's Representative in respect of all matters relating to this Subcontract or the Work;
- (c) the Subcontractor's Representative attends all Site meetings as requested by Downer's Representative;
- (d) subject to events beyond the Subcontractor's control, the key personnel specified in Item 28 are engaged in the execution of the Work and, if it becomes necessary for the Subcontractor to change any of the key personnel, the Subcontractor shall provide to Downer with detailed curricula vitae of at least two persons with training, qualifications, expertise and experience which is at least comparable to that of the personnel proposed to be replaced as proposed replacements for Approval by Downer. The Subcontractor shall not change the key personnel without the written consent of Downer; and
- (e) the Subcontractor's Representative is replaced by an alternative Subcontractor's Representative upon receipt by the Subcontractor of a written notice by Downer's Representative requesting the replacement under clause 15.3 of this Subcontract.

7.4 Subcontractor's Responsibilities

- (a) Downer, Downer's Representative and any delegates do not owe or assume any duty in Subcontract or otherwise:
 - (i) to advise the Subcontractor, to supervise or control the Subcontractor's operations, methods of working or temporary works, to detect, prevent or remedy the Subcontractor's defaults or to ensure the proper performance of any of the Subcontractor's obligations or to exercise any authority or discretion for the benefit of the Subcontractor; and
 - (ii) in relation to any Approval, monitoring, inspection, review or attendance carried out or in relation to any information, permission, comment or recommendation to the Subcontractor.
- (b) Any Approval, monitoring, inspection, review, or any attendance at any test or the giving of any information or permission or the making of any comment or recommendation by Downer or Downer's Representatives shall not constitute waiver of any breach or acceptance of any work, materials or goods, or in any way affect the Subcontractor's obligations and sole responsibility to ensure that the Work is in accordance with this Subcontract.

7.5 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 remove, or cause to be removed, any Illegal Worker from any involvement in carrying out the Work.
- (c) For the avoidance of doubt, compliance with the Subcontractor's obligations under this clause will not form the basis of, and will not give rise to any entitlement for the Subcontractor to make, any Claim.
- (d) When requested in writing, the Subcontractor will provide evidence within 14 days that it has taken all reasonable steps to ensure that it has complied with, and is complying with, its obligations under this clause.
- (e) In this clause:
 - (i) **Illegal Worker** means a person who is not a lawful citizen of the country in which the Work is being substantially performed and is not lawfully entitled, under a visa or otherwise, to perform the Work they are performing, including an Unlawful Non-Citizen who is working without a visa or a Non-Citizen who is performing work in breach of a Visa Work Condition;
 - (ii) **Non-Citizen** has the same meaning as under the *Migration Act 1958*;
 - (iii) **Unlawful Non-Citizen** has the same meaning as under the *Migration Act 1958*; and

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- (iv) **Visa Work Condition** means a condition (as set out in Schedule 8 of the *Migration Regulations 1994*) attached to a visa restricting the work that the Non-Citizen may do in Australia.

8 Security

8.1 Bank Guarantees

- (a) within seven days after the date of this Subcontract, the Subcontractor must provide to Downer two Bank Guarantees each for the amount stated in Item 19 as security for the performance of the Subcontractor's obligations under the Subcontract; and
- (b) the Subcontractor has no entitlement to payment under or in connection with this Subcontract and Downer is not obliged to make any payment to the Subcontractor until the Bank Guarantees are so provided.

8.2 Retention Monies

- (a) If Item 18 provides that retention monies are to be deducted in lieu of the provision of Bank Guarantees then Downer is entitled to retain 10% of each progress payment until the amount retained equals the percentage of the Subcontract Sum set out in Item 20 and such retention monies shall be security for the performance of the Subcontractor's obligations under this Subcontract.
- (b) Downer does not hold retention monies on trust for the Subcontractor and is not required to act in a fiduciary capacity with respect to retention monies held.
- (c) The right to any interest accruing on retention monies vests in Downer.

8.3 Recourse to security

- (a) Downer may have recourse to security and may convert into money any security that does not consist of money where Downer reasonably considers that monies are or will become due and payable from the Subcontractor to Downer, where Downer has a right of set off under this Subcontract or otherwise where Downer has an express right under this Subcontract.
- (b) Where, with the prior written consent of Downer, the Subcontractor:
- (i) has provided security by way of an approved unconditional undertaking;
 - (ii) the unconditional undertaking contains an expiry date; and
 - (iii) on the date which is three calendar months before the expiry date the Subcontractor is not yet entitled to the release of the security,
- the Subcontractor shall provide a replacement undertaking with an identical undertaking except that the date of expiry shall be one year later than the expiry date of the previous undertaking.
- (c) The replacement undertaking must be received by Downer not less than two calendar months before the expiry date of the original undertaking. If a replacement undertaking is not received by Downer by the time specified, Downer shall be entitled without notice to the Subcontractor to have recourse to the undertaking and convert it to money and the Subcontractor undertakes that it will not take any steps whether by itself or through any other person, to prevent Downer in any way from so converting the security.

8.4 Reduction of security

Subject to Downer's rights under this Subcontract (including clauses 8.7 and 22.8), provided that the Subcontractor has given Downer an executed Deed of Release in the form set out in Schedule 3, and subject to the exercise of any right of recourse that Downer may have to security, Downer must reduce by the percentage stated in Item 21 of the amount then held by Downer as a Bank Guarantee or as retention monies on the later of 42 days after the Date of Practical Completion for the whole of the Work and the date on which all Defects identified at Practical Completion have been rectified.

8.5 Release of security

Subject to clause 8.7 and Downer's right to exercise a right of recourse that Downer may have to security, Downer will release the balance of the amount then held as a Bank Guarantee or as retention monies under clause 8.2 on the later of 42 days after:

- (a) the date on which the Subcontractor gives Downer an executed Deed of Final Release in the form set out in Schedule 3A;
- (b) the issue of the Final Certificate under clause 22.4; and
- (c) the date on which all Defects identified during the Defects Liability Period have been rectified.

8.6 Parent company guarantee

- (a) In this clause 8.6, the terms "corporation" and "subsidiary" have the meanings defined in the *Corporations Act 2001* (Cth).
- (b) If the Subcontractor is a corporation that is related to or is a subsidiary of another corporation as defined in the *Corporations Act 2001* (Cth), the Subcontractor must, if requested by Downer, give Downer within 14 days of that request, a deed of guarantee and indemnity in a form acceptable to Downer and duly executed by the Subcontractor and the other corporation for the performance of the obligations and the discharge of the liabilities of the Subcontractor under this Subcontract.
- (c) If a deed of guarantee and indemnity is requested by Downer, the provision of such deed by the Subcontractor is a precondition to any entitlement to payment in connection with this Subcontract.

8.7 Effect of claims

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- (a) Despite any other provision of this Subcontract, where, at the time for the return of any security to the Subcontractor by Downer, Downer has claims against the Subcontractor that have not been finally resolved, Downer may retain such portion of the security held as Downer considers reasonably appropriate up to the limit of the value of those claims.
- (b) Promptly upon the final and binding resolution of claims referred to in clause 8.7(a) and satisfaction of any entitlement to payment resulting therefrom, and subject to the other terms of this Subcontract, Downer shall return to the Subcontractor the balance of any security then held.

9 Indemnity, Liability and Insurance

9.1 Indemnity

- (a) The Subcontractor is liable for and indemnifies and shall keep indemnified Downer (to the maximum extent permitted by law) against:
 - (i) all cost, loss, damage and expense (including legal fees on an indemnity basis) suffered by Downer and any of its employees or agents;
 - (ii) loss of or damage to Downer's or the Principal's property including existing property in or upon which the Work is being carried out;
 - (iii) claims in respect of personal injury or death or loss of, or damage to, any other property, arising out of or as a consequence of the carrying out of the Work;
 - (iv) any breach by the Subcontractor of the OHS Rules or any penalty or enforceable undertaking imposed for breach of any Legal Requirements; and
 - (v) all liabilities incurred by Downer as a consequence of any liability Downer has or may have to the Principal or another third party in relation to, arising out of or in connection with the Head Contract, the work under the Head Contract or work under a separate subcontract,

arising directly or indirectly as a result of or in connection with the performance of the Subcontractor's obligations under this Subcontract, any breach of this Subcontract by or any negligence of the Subcontractor, its employees, Secondary Subcontractors or agents. However, the Subcontractor's liability to indemnify Downer, its employees or agents is reduced proportionally to the extent that the act or omission of Downer, its employees or agents caused or contributed to the cost, loss, damage, expense or liability.

- (b) The Subcontractor's liability under clause 9.1(a) is in addition to its liability under clause 23.3 to the extent that payments made under clause 23.3 are not sufficient to or do not compensate Downer for its actual cost, loss, damage and expense suffered and liabilities incurred under clause 9.1(a).

9.2 Insurance required by Subcontractor

- (a) The Subcontractor must, as a precondition to any entitlement to payment in connection with this Subcontract, provide to Downer certificates of currency in respect of and have in place the insurance policies stated in Item 22, Item 23, Item 24, Item 25 and Item 26 in the amounts and for the periods stated in those items and upon terms and with an insurer approved by Downer.
- (b) The Subcontractor must ensure that its Secondary Subcontractors are similarly insured or covered by the insurance required under this clause 9.2 for the relevant work to be performed by those Secondary Subcontractors.
- (c) Without limiting the rest of this clause 9.2, all policies must require the insurer to notify Downer in writing at the same time it gives a notice of cancellation or any other notice concerning the policy to the Subcontractor.
- (d) If the Subcontractor is required to have in place a public liability insurance policy under clause 9.2(a), such policy must:
 - (i) note the interest of Downer;
 - (ii) provide that Downer is protected by a "Principals" indemnity extension covering Downer's vicarious liability for the acts or omissions of other "Named Insureds" under such policy; and
 - (iii) include a cross liability clause in which the insurer agrees that the policy applies as if a separate policy was issued to Downer and each "Named Insured" (with the exception of limits of liability).
- (e) If the Subcontractor is required to have in place a contract works insurance policy under clause 9.2(a), such policy must:
 - (i) identify Downer as a named insured;
 - (ii) provide that Downer is protected by a "Principals" indemnity extension covering Downer's vicarious liability for the acts or omissions of other "Named Insureds" under such policy; and
 - (iii) include a cross liability clause in which the insurer agrees that the policy applies as if a separate policy was issued to Downer and each "Named Insured" (with the exception of limits of liability).
- (f) Before commencing any work and whenever requested by Downer's Representative, the Subcontractor must promptly provide to Downer's Representative copies of insurance policies required by this clause 9.2 together with certificates of currency.
- (g) If the Subcontractor is required to have in place a professional indemnity policy of insurance pursuant to clause 9.2(a), it must ensure that such policy extends coverage to contractual liabilities assumed by the Subcontractor.

9.3 Insurance of the Subcontractor's Plant and Equipment

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- (a) Before commencing work the Subcontractor shall effect and maintain for the duration of the Subcontract an insurance policy covering loss or damage to:
- (i) any construction plant, for their full replacement value at the time loss or damage occurs; and
 - (ii) valuable documents (including drawings, drafts, reports, calculations and data) relating to or prepared for the purposes of the Work.

- (b) The insurance shall name Downer as an additional insured and shall include a cross liability clause which contains a waiver of subrogation rights against Downer.

9.4 Insurance required by Downer

- (a) Downer will be responsible for causing the insurances set out in Item 27 to be taken out.
- (b) Downer must promptly when requested by the Subcontractor provide to the Subcontractor copies of certificates of currency in respect of insurance policies required by this clause 9.3.
- (c) The Subcontractor must satisfy itself that the insurance to be taken out by Downer under this clause 9.3 is satisfactory for its stated purpose and effect any other or additional insurance which a reasonable and competent subcontractor would effect.
- (d) The Subcontractor must comply with the terms of the insurance policies to be taken out by Downer under this clause 9.3 and is responsible for all excesses payable on any insurance claim under such insurance unless the relevant claim does not relate in any way to the Work.

9.5 Failure to provide evidence of insurance

If the Subcontractor fails to provide to Downer copies of insurance policies together with certificates of currency in accordance with the requirements of this Subcontract, Downer may (without being obliged to do so) effect and maintain such insurance and the cost incurred is a debt due by the Subcontractor to Downer.

9.6 Notice of claims or likely claims

The Subcontractor must as soon as practicable inform Downer's Representative in writing of any occurrence which it ought reasonably expect may give rise to a claim under an insurance policy required by this Subcontract. The Subcontractor must give all information and assistance requested by Downer's Representative in respect of any such claim or possible claim.

9.7 Effect of insurances

The effecting or failure to effect insurance by either the Subcontractor or Downer does not in any way limit or reduce any of the Subcontractor's obligations or liabilities under this Subcontract or at law.

9.8 Limitation of Liability

- (a) Subject to clause 9.8(b), and except to the extent that liability cannot be limited or excluded, the total aggregate liability of the Subcontractor to Downer under this Subcontract is limited to the amount set out in Item 45 of the Subcontract Details.
- (b) Clause 9.8(a) does not apply to:
- (i) the Subcontractor's obligation and liability to carry out and complete the Work in accordance with the Subcontract;
 - (ii) the Subcontractor's liability as a consequence of, or to rectify, a Defect;
 - (iii) reduce or otherwise affect the Subcontractor's liability to pay liquidated damages under this Subcontract or any other damages for delay;
 - (iv) the Subcontractor's liability to indemnify Downer pursuant to clauses 4.4, 9.1(a)(i), 9.1(a)(ii), 9.1(a)(iii), 9.1(a)(iv), 15.2(c) and 16;
 - (v) the Subcontractor's liability in relation to any Claim made by a third party (including the Principal) against Downer or the Subcontractor;
 - (vi) the Subcontractor's liability for breach of clauses 32.3, 34 or 35;
 - (vii) the Subcontractor's liability in respect of fraud, criminal conduct, or any intentional or reckless act or omission of the Subcontractor having had regard to, or with conscious or reckless indifference to, the foreseeable harmful consequences arising from that act or omission;
 - (viii) the Subcontractor abandoning all or a substantial part of its obligations under this Subcontract;
 - (ix) any event or Claim for which the Subcontractor is required to have insurance in accordance with this Subcontract; or
 - (x) any liability in respect of which the Subcontractor is indemnified under a policy of insurance required to be effected pursuant to the requirements of this Subcontract or in respect of which the Subcontractor would have been indemnified by a policy of insurance required to be effected pursuant to the requirements of this Subcontract if the Subcontractor had:
 - (A) diligently pursued a claim under that policy of insurance;
 - (B) complied with the terms and conditions of that policy of insurance; or
 - (C) complied with its insurance obligations under this Subcontract.

9.9 Consequential Loss

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- (a) Subject to clause 9.9(b), neither Party will be liable to the other Party for any Consequential Loss arising out of or in connection with this Subcontract.
- (b) Clause 9.9(a) does not apply to the Subcontractor's liability in respect of:
 - (i) liquidated damages under this Subcontract or any other damages for delay;
 - (ii) the Subcontractor's liability as a consequence of, or to rectify, a Defect;
 - (iii) the Subcontractor's liability to indemnify Downer pursuant to clauses 4.4, 9.1(a)(i), 9.1(a)(ii), 9.1(a)(iii), 9.1(a)(iv), 15.2(c) and 16;
 - (iv) the Subcontractor's liability for breach of clauses 32.3, 34 or 35;
 - (v) the Subcontractor's liability in respect of fraud, criminal conduct, or any intentional or reckless act or omission of the Subcontractor having had regard to, or with conscious or reckless indifference to, the foreseeable harmful consequences arising from that act or omission;
 - (vi) the Subcontractor abandoning all or a substantial part of its obligations under this Subcontract;
 - (vii) any event or Claim for which the Subcontractor is required to have insurance in accordance with this Subcontract; or
 - (viii) any liability in respect of which the Subcontractor is indemnified under a policy of insurance required to be effected pursuant to the requirements of this Subcontract or in respect of which the Subcontractor would have been indemnified by a policy of insurance required to be effected pursuant to the requirements of this Subcontract if the Subcontractor had:
 - (A) diligently pursued a claim under that policy of insurance;
 - (B) complied with the terms and conditions of that policy of insurance; or
 - (C) complied with its insurance obligations under this Subcontract.

10 Assignment and Subcontracting

10.1 Assignment

- (a) The Subcontractor must not assign this Subcontract or any right, benefit or interest under this Subcontract without the prior written consent of Downer. If such consent is given, it may be given in whole, in part or subject to whatever conditions Downer requires.
- (b) Downer may assign or novate this Subcontract or any right, benefit or interest under this Subcontract and the Subcontractor must promptly, upon request by Downer, execute a Deed of Novation in the form of Schedule 14 such deed being between Downer, the Subcontractor and Downer's nominee.

10.2 Subcontracting

- (a) The Subcontractor shall not without Downer's prior written Approval (which shall not be unreasonably withheld):
 - (i) subcontract or allow a Secondary Subcontractor to subcontract any Work described in Item 39; or
 - (ii) allow a Secondary Subcontractor to assign a secondary subcontract or any payment or any other right, benefit or interest thereunder.
- (b) Downer may impose any conditions it considers appropriate when giving its Approval under clause 10.2(a).
- (c) The Subcontractor must ensure that Secondary Subcontractors are paid in accordance with the terms of their subcontracts. If a Secondary Subcontractor has become entitled to suspend work under a subcontract (whether under this Subcontract, applicable law (including statute) or otherwise) because of a failure by the Subcontractor to pay moneys to the Secondary Subcontractor, the Subcontractor irrevocably agrees that Downer or the Principal may pay to the Secondary Subcontractor the amount owing to or claimed by the Secondary Subcontractor in connection with that work, and any amount so paid by Downer or the Principal will be a debt due and immediately payable by the Subcontractor to Downer.
- (d) The Subcontractor must ensure that its Secondary Subcontractors comply with all relevant requirements of this Subcontract.
- (e) The Subcontractor is fully responsible for performing the Work and for ensuring compliance with the requirements of this Subcontract and will not be relieved of that responsibility because of any:
 - (i) involvement by Downer in the performance of the Subcontractor's obligations under this Subcontract; or
 - (ii) subcontracting of the whole or part of its obligations under this Subcontract.
- (f) The Subcontractor must give to Downer and the Principal access to (or copies of, upon request) any proposed or executed subcontract (regardless of whether the Subcontractor or the Principal is a party to that subcontract) and all plans, specifications and drawings relating to that subcontract.
- (g) The Subcontractor must:
 - (i) as a condition precedent to the achievement of Practical Completion provide to Downer warranties in favour of Downer and the Principal in a form reasonably required by Downer; and

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- (ii) ensure that Downer and the Principal have the benefit of all warranties given by all Secondary Subcontractors in relation to Work performed by them and any materials provided by them which are used in the provision of or form part of the Work.
- (h) Without limiting the foregoing, the Subcontractor must include in each subcontract with a Secondary Subcontractor:
 - (i) details of the Subcontractor's obligations in connection with the Subcontract which are to be carried out by the Secondary Subcontractor;
 - (ii) consent to a novation to Downer or its nominee at the Direction of Downer and in this regard:
 - (A) the Subcontractor must, at the Direction of Downer, execute such documents as Downer may reasonably require to give effect to such novation and procure that the Secondary Subcontractor do likewise; and
 - (B) Downer may at any time make payments and may deduct, withhold or set-off any amounts to be paid under such novated contracts from amounts otherwise payable to the Subcontractor; and
 - (iii) when possible, a right of termination for convenience.
- (i) Downer may require at any time that it, its nominee or the Principal may conduct probity or criminal investigations to report on the character, integrity or honesty of the Subcontractor, its officers and employees or any other Relevant Person. The Subcontractor must do all things necessary to enable the investigation to be conducted. The Subcontractor must give Downer notice immediately upon becoming aware that a Probity Event has occurred.

10.3 Intention to suspend

- (a) The Subcontractor must promptly give to Downer's Representative a copy of any notice of intention to suspend work that the Subcontractor receives from any of its Secondary Subcontractors under the Security of Payment Act or otherwise if that work forms part of the Work.
- (b) If Downer receives a copy of a notice of intention to suspend work or a Secondary Subcontractor otherwise suspends or threatens to suspend work, Downer may, in its absolute discretion, pay the Secondary Subcontractor the whole or any part of the money that it states that it is owed by the Subcontractor for its work and the amount of the payment made by Downer is a debt due from the Subcontractor to Downer.
- (c) Payment by Downer of any amount under clause 10.3(b) does not relieve the Subcontractor of any of its obligations or liabilities under this Subcontract.
- (d) The Subcontractor indemnifies Downer against any liability, damage, loss, cost or expense (including legal costs on a full indemnity basis) incurred by Downer arising from:
 - (i) a suspension by any of its Secondary Subcontractors under the Security of Payment Act or pursuant to a right under the relevant subcontract, if the relevant work forms part of the Work; and
 - (ii) any failure of the Subcontractor to notify Downer under clause 10.3(a);
- (e) The Subcontractor's liability under clause 10.3 is in addition to the Subcontractor's liability under clause 23.3 to the extent that payment made under that clause is not sufficient to or does not compensate Downer for the damage, loss, cost and expense referred to in clause 10.3.

11 Legal Requirements

11.1 Compliance

- (a) The Subcontractor shall satisfy all Legal Requirements except those in Item 40 or directed by Downer to be satisfied by or on behalf of Downer.
- (b) The Subcontractor, upon finding that a Legal Requirement is at variance with the Subcontract or the Project Objectives, shall promptly give Downer written notice thereof.

11.2 Change in Legal Requirements

Subject to clause 22.9, if a Legal Requirement:

- (a) necessitates a change:
 - (i) to the Work; or
 - (ii) in a fee or charge or payment of a new fee or charge;
- (b) comes into effect after the date of execution of the Subcontract but could not reasonably then have been anticipated by a competent and diligent subcontractor performing work similar to that of the Subcontractor; and
- (c) causes the Subcontractor to incur more or less cost than otherwise would have been incurred,

the difference shall be assessed by Downer and added or deducted from the Subcontract Sum which shall constitute the Subcontractor's sole remedy in respect of a change in Legal Requirements.

12 Site Conditions

12.1 Notification and risk

- (a) No information and data made available or provided by or on behalf of Downer to the Subcontractor in relation to the Site, or its surrounds, shall form part of the Subcontract. Downer does not warrant, guarantee or make any representation with respect to the completeness, accuracy or adequacy of such information or data. Such information and data is furnished only for the convenience of the Subcontractor and the Subcontractor warrants that it has made

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and shall rely upon its own enquiries, investigations and assessments. The use of or reliance on any of the information and data is solely at the Subcontractor's own risk. Downer shall not be liable to the Subcontractor whether in contract or otherwise in connection with any fact, matter or thing arising out of or in any way connected with the information or data made available or provided to the Subcontractor as to the Site or subsurface conditions.

- (b) If the Subcontractor becomes aware of any physical condition on, over or under the Site or its adjacent surroundings that may result in the Subcontractor being delayed in completing the Work, the Subcontractor must immediately notify Downer's Representative in writing.
- (c) After it receives a written notification under clause 12.1(b) Downer's Representative may, in its absolute discretion, issue a Direction pertaining to the condition and the Subcontractor must comply with the Direction.
- (d) The Subcontractor wholly assumes the risk associated with, and has no entitlement to make a Claim in relation to, the Site and its surroundings, including:
 - (i) any delay to or prolongation of the performance of the Work; and
 - (ii) any cost, loss or expense caused by or arising out of any conditions on, in, over or under the Site or its surroundings (whether naturally occurring or in consequence of human activity), including any structures, materials, physical conditions or any contamination.
- (e) The Subcontractor warrants that it has taken into account in agreeing the Subcontract Sum and the Date for Practical Completion all risks associated with the Site as set out in this clause 12.1. The Subcontractor has no entitlement to make any Claim against Downer in any way relating to the risks associated with the Site or its surroundings, including the risks identified in this clause 12.1.

12.2 Archaeological or other finds

Any things of value or archaeological or special interest found on or under the Site are, as between the parties, the property of Downer. If such an item is found, the Subcontractor must immediately notify Downer's Representative in writing and must comply with all Directions of Downer's Representative pertaining to the item.

13 Construction

13.1 Subcontractor's obligations

- (a) The Subcontractor must diligently and continuously perform its obligations under this Subcontract and carry out the construction of the Work in accordance with this Subcontract.
- (b) In addition to any other rights of Downer under this Subcontract or at law, Downer may perform or have others perform any obligation of the Subcontractor under this Subcontract which the Subcontractor has failed to perform despite notice in writing from Downer requiring such performance. Downer may recover the costs and expenses of it or others performing the obligation as a debt due and immediately payable to Downer by the Subcontractor.

13.2 Setting out

The Subcontractor must set out the Work in accordance with this Subcontract. The Subcontractor must, if it considers information is necessary to enable it to set out the Work, promptly notify Downer's Representative in writing. If the Subcontractor discovers an error in the position, level, dimensions or alignment in any part of the Work, the Subcontractor must immediately notify Downer's Representative in writing and unless otherwise directed by Downer's Representative, the Subcontractor must rectify the error at its own risk, including cost and time risk and has no Claim in connection therewith.

13.3 Construction method

- (a) The Subcontractor must, within 10 Business Days of the date of this Subcontract, provide a complete and competently prepared construction method statement for the Work including particulars of the mode and place of manufacture, the source of supply, performance capabilities and any other information in respect of any materials, plant or equipment to be supplied by the Subcontractor or used in connection with the Work.
- (b) The Subcontractor must not bring onto the Site any plant or equipment to which it does not have title unless the supply or hire agreement for the plant or equipment contains a provision that:
 - (i) requires the supplier or hirer (as the case may be), to immediately notify Downer of any failure of the Subcontractor to pay any monies in accordance with the supply or hire agreement; and
 - (ii) gives Downer the option (but does not require it) to remedy that default within a period of an additional seven days.
- (c) If requested by Downer, the Subcontractor must provide Downer's Representative with copies of all supply or hire agreements for all plant or equipment that it brings onto the Site.

13.4 Quality

- (a) The Subcontractor warrants to Downer that it will use:
 - (i) materials which are new, suitable, undamaged, free from Defects and which strictly comply with the Australian Standards and the requirements of this Subcontract; and
 - (ii) all due care and skill and proper workmanship expected of an expert contractor carrying out work and services similar to the Work.

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- (b) The Subcontractor must do all things necessary to comply with any quality assurance system notified by Downer's Representative or must, if requested by Downer's Representative, implement its own quality assurance system approved by Downer's Representative.
- (c) The Subcontractor acknowledges and agrees that any quality assurance system implemented by it may require performance of the following:
 - (i) inspection and checklisting of work on completion;
 - (ii) identification and rectification of Defects;
 - (iii) provision of records on request;
 - (iv) reporting of non-conformance;
 - (v) provision of samples and prototypes; and
 - (vi) provision of access to the Subcontractor's systems and records by Downer's Representative and any persons authorised by Downer's Representative for the purpose of inspection and audit.

13.5 Protection of work and materials

- (a) The Subcontractor is, until Practical Completion, responsible for and must protect from damage or loss the Work and other things and materials brought on to the Site by or for the Subcontractor. If any damage or loss occurs, the Subcontractor must at its own cost promptly make good the damage or loss and fully and sufficiently reinstate and replace the things, damages or loss.
- (b) If the Subcontractor fails to make good the damage or loss after Downer's Representative has given the Subcontractor notice that it intends to have that work carried out by others if the Subcontractor does not carry out the work within the period specified by Downer's Representative, on expiry of that period Downer's Representative may have that work carried out by others and any cost incurred is a debt due and immediately payable from the Subcontractor to Downer.
- (c) Despite any other provision of this Subcontract, the Subcontractor accepts as full payment for any reinstatement or replacement of the Work that is the subject of an insurance claim, the amount of insurance proceeds recovered by Downer or the Subcontractor in respect of that reinstatement or replacement.
- (d) In respect of any materials supplied by Downer to the Subcontractor for incorporation in the Work, the Subcontractor shall examine and satisfy itself and be deemed to have examined and satisfied itself that each item is free from Defects and fit for the Intended Purpose, at the time that each is made available to the Subcontractor.
- (e) Risk in any Downer-issued items shall pass to the Subcontractor upon them being made available to the Subcontractor. The Subcontractor shall keep safe and maintain all such items in good order and condition. All Downer-issued items shall remain the property of Downer and any surplus shall be returned to Downer, disposed of, or otherwise dealt with as directed by Downer. Waste of Downer-issued items as a result of bad workmanship, negligence or any other default of the Subcontractor shall be made good at the Subcontractor's cost.

13.6 Urgent protection

If urgent action is necessary to protect the Work, other property or people and the Subcontractor fails to take the action, Downer may take necessary action to protect the Work. If the action taken by Downer was, in the opinion of Downer's Representative, action which the Subcontractor should have taken at the Subcontractor's cost, the cost incurred by Downer is a debt due and immediately payable from the Subcontractor to Downer.

13.7 Testing

- (a) At any time before the issue of the Final Certificate, Downer's Representative may direct that any part of the work or materials comprising the Work be tested. If the Direction requires the Subcontractor to perform the testing, Downer's Representative may observe and must be promptly provided with the results of any test performed.
- (b) The reasonable and actual costs of and incidental to testing are to be added to the Subcontract Sum unless such testing:
 - (i) reveals work or materials not in accordance with this Subcontract;
 - (ii) is consequent upon a failure of the Subcontractor to comply with this Subcontract; or
 - (iii) was required to be performed by the Subcontractor or has otherwise been included in the Subcontract Sum as part of the work to be undertaken by the Subcontractor under any other provision of this Subcontract.
- (c) Costs in respect of this clause 13.7 that are not to be borne by Downer shall be borne by the Subcontractor and, in the case of costs incurred by Downer or incidental to such testing, certified by Downer as moneys due and immediately payable from the Subcontractor to Downer.

13.8 Defects

- (a) If Downer discovers any Defect, Downer may direct the Subcontractor to do any one or more of the following (including times for commencement and completion):
 - (i) remove material from the Site;
 - (ii) demolish the Work; or
 - (iii) reconstruct, replace or correct the Work.
- (b) The Subcontractor must comply with the Direction at its own cost. If the Subcontractor fails to comply with Downer's Direction, Downer may perform the relevant work or arrange for a third party to perform the relevant work, the cost of

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which will be a debt due and immediately payable from the Subcontractor to Downer (or the reasonably estimated cost of such work where the cost has not been incurred).

- (c) Instead of a Direction under clause 13.8(a), Downer or the Principal may elect to accept the Defect and reduce the Subcontract Sum by an amount equal to the decrease in value to the Work (including increased future operation and maintenance costs, loss of income, loss of value or reduction in asset life) as a result of the Defect.
- (d) Downer may give a Direction under this clause at any time prior to the expiry of the Defects Liability Period.

14 Variations

14.1 Variations

- (a) Downer's Representative may direct the performance of a Variation by notice in writing to the Subcontractor, such notice being expressly identified as a 'variation notice' (**Variation Notice**). The Subcontractor must execute any Variation directed by Downer's Representative in a Variation Notice.

- (b) If:

- (i) Downer's Representative issues a Direction which is not a Variation Notice, but requires or may cause the Subcontractor to carry out work that is a Variation; or
- (ii) the Subcontractor is otherwise required to carry out any Work that constitutes a Variation (without having received a Variation Notice),

the Subcontractor must, before it commences carrying out such Work and in any event no later than five days after receipt of the relevant Direction or upon becoming aware of the requirement to carry out Work that constitutes a Variation (as applicable), provide to Downer a written claim identifying the Variation and setting out an estimate of the cost, delay and any other impact of the Variation, including any proposed adjustment to the Subcontract Sum.

- (c) To the extent permitted by law, the Subcontractor will have no Claim in respect of any Work that constitutes a Variation unless:
 - (i) it has received a Variation Notice from Downer which complies with clause 14.1(a) in respect of that Work; and
 - (ii) to the extent clause 14.1(b) applies, the Subcontractor has complied strictly with clause 14.1(b) in respect of that Work.
- (d) A Direction under clause 14.1(a) may involve the omission of any part or parts of the Work and the Subcontractor acknowledges and agrees that Downer may itself, or engage others to, carry out that part or parts so omitted at any time. The Subcontractor further acknowledges that any one or more omissions will not constitute a basis to allege that Downer has repudiated the Subcontract notwithstanding the extent or timing of the omission.
- (e) Where Downer omits Work, the Subcontractor will not be entitled to any compensation in respect of that Work (including for loss of profit or any costs incurred by reason of the omission). Downer has right to deduct the amount for profit and overhead by applying % as per item 35 to the value of omitted Work.

14.2 Quotation for Variations

- (a) If Downer's Representative requests the Subcontractor to provide a quotation for a proposed Variation the Subcontractor must provide a detailed quotation for the work, supported by measurements and other evidence of cost, accompanied by details of any Extension of Time the Subcontractor seeks, within five days of the request by Downer's Representative.
- (b) In response to any quotation provided by the Subcontractor to Downer's Representative under clause 14.2(a) Downer's Representative may:
 - (i) require the Subcontractor to execute the Variation as quoted under the terms and condition of the Subcontract;
 - (ii) decline to proceed with the Variation; or
 - (iii) reject the quotation and require the Subcontractor to carry out the Variation, in which case the Variation must be valued by Downer's Representative in accordance with clause 14.3 and any Extension of Time must be assessed by Downer's Representative in accordance with clause 21.

14.3 Valuation of Variations

- (a) Subject to this clause 14.3 and the terms of this Subcontract, Downer shall ensure that the value of any Variation is added to or deducted from the Subcontract Sum (as applicable). If the Parties do not agree the value of a Variation, Downer's Representative will determine a reasonable value for the Variation and in doing so may have regard to:
 - (i) applicable rates and prices included in this Subcontract; and
 - (ii) any increase or decrease in the costs that have been or will be incurred by the Subcontractor as a direct result of the Variation.
- (b) Despite clause 14.3(a), if a Direction to carry out a Variation under this Subcontract is the result of a Direction to Downer under the Head Contract, without limiting any other provision of the Subcontract and to the extent permitted by law, the Subcontractor is not entitled to be paid for that Variation any amount which is greater than the amount to which Downer is entitled to be paid for that Variation under the Head Contract.
- (c) Where a Variation relates to a variation under the Head Contract and the Variation has been valued under the Head Contract otherwise than by agreement between Downer and the Principal, the Subcontractor shall not be allowed any greater value for the Variation than the relevant value which has been determined or assessed under the Head Contract.

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- (d) The Subcontractor shall not be entitled to any payment for a Variation unless it has performed the work the subject of the Variation and until a specific price for the Variation has been finally determined by agreement in writing between the Parties, pursuant to the terms of this Subcontract or pursuant to a dispute resolution process prescribed by this Subcontract.

15 Conduct On and in the Vicinity of the Site

15.1 Protection of people and property

- (a) In the performance of the Work the Subcontractor must take all measures and provide all things reasonably necessary to protect the environment, people and property.
- (b) Without limiting the generality of the foregoing, the Subcontractor must:
- (i) take all necessary action, to the satisfaction of Downer, to minimise vibration, shock and noise arising from construction activities for the Work;
 - (ii) ensure that all construction facilities erected on the Site by the Subcontractor are designed and operated to minimise any nuisance arising from dust caused by construction activities;
 - (iii) take all proper precautions to minimise the impact of discharge of water into waterways on and in the vicinity of the Work and the Site;
 - (iv) take all precautions necessary to prevent the discharge into waterways of any oils or similar materials or of any foaming or non-biodegradable detergents and the Subcontractor acknowledges and agrees that all plant and equipment maintenance shall be carried out on a paved area, the drainage from which shall be provided with approved soil separation traps before discharge into any waterway. The Subcontractor shall be solely responsible for regular removal of deleterious matter from such traps and its disposal by approved methods; and
 - (v) ensure that the whole of the Subcontract Works and all operations related to them are carried out in a manner which will minimise inconvenience and nuisance to occupants of adjacent buildings, the public, Downer and to other subcontractors and workers.

15.2 Access to other Properties

- (a) The Subcontractor acknowledges that it has been made aware of, and will comply with, any agreement made between the Principal and/or Downer and the owners of the land adjacent to and proximate to the Site and all matters included therein (including but not limited to restrictions on hours of work).
- (b) Except for permissions and arrangements that Downer informs the Subcontractor have already been obtained or made, the Subcontractor must, at its own cost, and expense:
- (i) obtain any necessary or appropriate permission to work upon, up to, in, over, under or make use of any adjoining or neighbouring site or property; and
 - (ii) make all arrangements for any access to work upon, up to, in, over, under or to make use of any adjoining or neighbouring site or property,
- which the nature of the Work requires or which it may otherwise require for any purpose of the Subcontract or the Work.
- (c) The Subcontractor accepts liability for and agrees to indemnify and keep indemnified and hold harmless Downer and the Principal in respect of any cost, expense, loss or damage arising out of or in connection with the Work being carried out upon, up to, in, over, under or by making use of any adjoining, adjacent or surrounding sites or properties or contrary to the terms of any agreement referred to in clause 15.2(a).

15.3 Removal of persons from Site

Downer's Representative may direct the Subcontractor to remove from the Site any person whom Downer's Representative considers to be disruptive, incompetent, negligent or guilty of misconduct. The written Approval of Downer's Representative must be obtained by the Subcontractor before the Subcontractor subsequently employs the person on Site or has the person involved in activities in any way connected with the Work.

16 Intellectual Property Rights

16.1 No Infringement of Intellectual Property Rights

The Subcontractor warrants that it has all Intellectual Property Rights necessary to carry out and complete the Work in accordance with this Subcontract and indemnifies Downer against any Claim as a consequence of any claim by a third party that it has a right to any Intellectual Property Right in the Work or any Deliverables.

16.2 Intellectual Property Rights granted to Downer

- (a) Any Intellectual Property Rights that are created in the course of the performance of the Work, including all Deliverables and any Design Documents created by or on behalf of the Subcontractor, shall vest in Downer immediately upon creation.
- (b) In relation to any Intellectual Property Rights held by the Subcontractor that do not vest in Downer pursuant to clause 16.2(a) (but which relate in any way to the Work or the Deliverables), the Subcontractor grants to Downer a perpetual, irrevocable, transferable, worldwide, royalty-free licence of all such Intellectual Property Rights for Downer to use, consume and otherwise enjoy the full benefit of the Work and the Deliverables, comply with all of its obligations under the Head Contract (including the right to sub-licence and to transfer relevant Intellectual Property Rights to the Principal or other third parties) and achieve the Project Objectives.

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- (c) Downer grants to the Subcontractor a royalty-free, non-transferable licence to use the Intellectual Property Rights that vest in Downer pursuant to clause 16.2(a) solely for the purpose of allowing the Subcontractor to comply with its obligations under this Subcontract.

16.3 Moral Rights

The Subcontractor must ensure that, and warrants that, it has obtained from all authors and holders of the Moral Rights in the Deliverables and the Work, consent to the following specific acts or omissions by Downer and the Principal and their successors, assignees and sub-licensees:

- (a) reproducing, publishing, adapting or communicating the Deliverables and the Subcontractor's other documents to the public without attributing their authorship or otherwise identifying the author of the relevant Deliverables and other documents; and
- (b) subjecting the Deliverables and the Subcontractor's other documents to derogatory treatment, including material distortion, mutilation or material alteration or the doing of anything else to the Deliverables and Subcontractor's other documents, including adapting, reproducing, publishing, communicating to the public, adding, deleting, editing or modifying the text, format or structure of the Deliverables and the Subcontractor's other documents, in such a way as may prejudice the honour and reputation of the author.

17 Reports and Approvals

17.1 Reports and Records

Downer's Representative may at any time direct the Subcontractor to submit a report or provide records to Downer's Representative containing such information as is reasonably requested by Downer's Representative for the purpose of monitoring the Subcontractor's compliance with this Subcontract or auditing the state of the Subcontractor's finances but nothing in this clause shall oblige the Subcontractor to provide any document that is the subject of legal professional privilege. The Direction may specify that compliance with the Direction is a precondition to the entitlement of the Subcontractor to issue a progress claim or further progress claim pursuant to clause 22. If the Direction provides that compliance with the Direction is a precondition to the issuing of a progress claim or further progress claim, then it is hereby agreed to constitute such a precondition.

17.2 Approvals

Except for those Approvals listed in Item 29, the Subcontractor must obtain (and pay all charges and costs associated with those Approvals) and comply with all Approvals required for the performance and completion of the Work, and must ensure that all such Approvals remain in full force and effect at all times. The Subcontractor must promptly provide to Downer's Representative copies of all Approvals obtained by the Subcontractor.

18 Cleaning Up

- (a) The Subcontractor must keep the Site and the Work clean and tidy and must regularly remove rubbish from the Site and at the times directed to do so by Downer's Representative.
- (b) Prior to Practical Completion (and as a precondition to Practical Completion), the Subcontractor must remove any temporary works, plant and equipment unless directed otherwise by Downer's Representative.

19 Defects Liability Period

19.1 Rectification

- (a) Without limiting any other obligations of the Subcontractor under this Subcontract or at law, the Subcontractor must promptly rectify any Defect that is found to exist in the Work at the Date of Practical Completion or at any time during the Defects Liability Period.
- (b) The Subcontractor must, when directed by Downer's Representative to do so, rectify any Defect in the Work at its sole risk and expense. The Direction may, without limitation, require the Subcontractor to remove material from the Site, demolish work, reconstruct, replace or correct the material or Work. Downer's Representative may direct the times within which the Subcontractor must commence and complete rectification of a Defect. The Subcontractor must notify Downer's Representative when rectification of a Defect has been completed.

19.2 Further Defects Liability Period

Where a Direction is given under clause 19.1, a separate Defects Liability Period in respect of the rectified Work will commence on the date that the rectification is completed.

19.3 Defects Rectified by Others

If the Subcontractor fails to rectify any Defect in accordance with clause 19.1 or in accordance with a Direction given under clause 19.1, Downer may rectify the Defect itself or have the Defect rectified by others (including the Principal), and Downer may:

- (a) certify and recover all actual or anticipated costs of so doing as a debt due and immediately payable from the Subcontractor to Downer provided that Downer accounts to the Subcontractor for any amount by which the anticipated costs exceed the actual costs; or
- (b) accept the Defect and recover its assessment of any consequent reduction in value of the Work or claim upon Downer by the Principal as a debt due from the Subcontractor to Downer.

20 Time

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20.1 Practical Completion

The Subcontractor must carry out the Work with due expedition and without delay and so as to achieve Practical Completion by the Date for Practical Completion.

20.2 Subcontractor's program

- (a) The Subcontractor must supply to Downer's Representative at least seven days before the commencement of any work, a program for the performance of the Work compliant with clause 20.3 and Downer may, from time to time, direct the Subcontractor to give to Downer an updated program within the time and in the form directed by Downer, which program must:
- (i) conform with the programming requirements of Downer including those in clause 20.3;
 - (ii) be consistent with any Head Contract Program, as provided from time to time by Downer to the Subcontractor; and
 - (iii) be approved by Downer.
- (b) The Subcontractor shall not, without reasonable cause, depart from a program approved by Downer.
- (c) An approved program may be used by Downer in its absolute discretion to monitor the progress of the Work by the Subcontractor and assess claims for Extensions of Time but no program, approved program or Head Contract Program shall form part of the Subcontract and any departure from or amendment of a program, approved program or Head Contract Program shall not entitle the Subcontractor to any Claim, including a Claim for an Extension of Time. The Subcontractor's entitlement to an Extension of Time shall only arise in accordance with clause 21.
- (d) Without limiting any other obligation of the Subcontractor under this Subcontract, the Subcontractor must:
- (i) not, without reasonable cause, depart from the current Head Contract Program insofar as it identifies or is dependent upon the Work; and
 - (ii) immediately notify Downer in writing if its performance of the Work will depart from that identified in the Head Contract Program or delay the performance of activities identified in the Head Contract Program current at the time of departure, which are dependent upon performance of the Work.
- (e) The Subcontractor shall not be entitled to any Claim arising from its obligations pursuant to this clause 20.2

20.3 Contents of the program

Each program provided by the Subcontractor under clause 20.2 must include:

- (a) the date of commencement and the Date for Practical Completion;
- (b) the sequence and timing of each component of the Work, including a critical path network analysis in the form of a time scaled bar chart;
- (c) the dates when the Subcontractor is required to provide any information or materials in connection with the Work; and
- (d) all other information reasonably required by Downer's Representative,

and must be provided to Downer in its native format with all logic links exposed and capable of being interrogated.

20.4 Suspension

- (a) Downer's Representative may at any time and for any reason suspend the whole or any part of the Work by written notice to the Subcontractor. If Downer's Representative does so, the Subcontractor must not recommence work on the whole or on the relevant part of the Work until Downer's Representative directs the Subcontractor to do so in writing.
- (b) If Downer Directs the Subcontractor to suspend the Work or any part of the Work, then at the time of issuing such Direction or at any subsequent time, Downer may also instruct the Subcontractor to:
- (i) reduce the resources, including staff, allocated to the performance of the Work; and/or
 - (ii) demobilise all resources from the performance of the Work,
- within the time nominated by Downer (provided that such time is not less than two days after the Direction is issued).
- (c) The Subcontractor must resume the performance of the suspended Work as soon as practicable after being Directed by Downer and in any event not later than five days after receiving a written instruction to do so from Downer.
- (d) The Subcontract Sum will be adjusted by Downer to include the reasonable costs actually incurred by the Subcontractor directly as a result of the suspension, except where the suspension is occasioned by an act or omission of the Subcontractor, in which case the Subcontractor will not be entitled to any adjustment of the Subcontract Sum or any Extension of Time to the Date for Practical Completion in connection with the suspension. The adjustment of the Subcontract Sum pursuant to this clause 20.4(d) and any Extension of Time to which the Subcontractor is entitled pursuant to clause 21 shall be the Subcontractor's sole remedy in connection with any suspension of the Work pursuant to this clause 20.4.

20.5 Milestones

If any milestone and corresponding milestone date are referred to in this Subcontract or any program approved by Downer pursuant to clause 20.2, the Subcontractor must bring that portion of the Work which comprises the milestone to the stage of completion by the relevant milestone date specified.

20.6 Corrective action

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- (a) Without limiting any other right of Downer or obligation of the Subcontractor under this Subcontract, the Subcontractor agrees that:
- (i) if at any time the progress of Work has fallen behind that shown in a program approved by Downer or is otherwise not in accordance with this Subcontract, the Subcontractor shall at its own cost take the necessary corrective action to ensure that progress is maintained in accordance with this Subcontract. Subject to permissible working hours, such corrective action may include the working of overtime and additional shifts, the application of more resources to carry out Work and the adjustment and rescheduling of activities. Downer may from time to time direct the Subcontractor to provide details of the corrective action it plans to take under this clause 20.6 and the Subcontractor must provide such details in writing within five Business Days of the Direction; and
 - (ii) if the Subcontractor fails to take corrective action in accordance with clause 20.6, Downer may direct the Subcontractor as to the corrective action it is to take and the Subcontractor shall comply with such Direction at its own cost and risk.
- (b) The Subcontractor shall have no Claim in connection with, or as a consequence of, complying with its obligations under this clause 20.6.

20.7 Proposal to accelerate

Downer may at any time prior to the Date for Practical Completion by written notice request the Subcontractor to provide a proposal to accelerate the performance of the Work so as to expedite the achievement of Practical Completion. Within three days of such a request, the Subcontractor shall provide a written proposal to Downer which contains the following details:

- (a) the measures which the Subcontractor considers necessary to accelerate the performance of the Work so as to expedite the achievement of Practical Completion; and
- (b) the additional payment required by the Subcontractor to achieve the acceleration of the performance of the Work so as to expedite the achievement of Practical Completion.

Notwithstanding that, if Downer finds the Subcontractor's acceleration proposal to be unacceptable, whether in terms of the measures proposed or the additional payment required or otherwise, Downer may nevertheless give the Subcontractor a Direction to accelerate which expressly states that it is an acceleration Direction given under this clause and which contains the following:

- (i) the general measures which Downer requires the Subcontractor to take to accelerate the performance of the Work so as to expedite the achievement of Practical Completion;
 - (ii) the time by which the Subcontractor shall commence to implement the acceleration Direction; and
 - (iii) the reasonable revised (earlier) Date for Practical Completion.
- (c) The Subcontractor shall comply with the acceleration Direction and Downer shall assess and certify the additional costs payable to the Subcontractor reasonably and necessarily arising from compliance with the acceleration Direction as an amount payable by Downer to the Subcontractor, which amount shall constitute the Subcontractor's sole entitlement to payment in connection with the acceleration Direction and which amount shall not be payable unless the acceleration Direction is implemented by the Subcontractor to the reasonable satisfaction of Downer.
- (d) For the avoidance of doubt, a Direction by Downer to the Subcontractor to accelerate or take any corrective action or other measures to catch up on progressing the Work as a result of any delay in the Work for which the Subcontractor is not entitled to an Extension of Time for any reason, does not constitute an acceleration Direction pursuant to this clause 20.7.

21 Delay

21.1 Notice

- (a) If the Subcontractor:
- (i) is or will be delayed in reaching Practical Completion by the Date for Practical Completion by a Qualifying Cause of Delay;
 - (ii) takes all reasonable steps to prevent, overcome and mitigate the effects of the delay (including by reconfiguring the critical path of the Work to accommodate, minimise or overcome the delay);
 - (iii) gives Downer within five days of the date of the earliest to occur of:
 - (A) the commencement of the cause of the delay;
 - (B) the Subcontractor becoming aware that the Subcontractor is or will be delayed; or
 - (C) the date that the Subcontractor should reasonably have been aware that the Subcontractor is or will be delayed,

(Notice Trigger Date)

written notice that it intends to make a claim for an Extension of Time to the Date for Practical Completion pursuant to clause 21.1(a)(iv), setting out a brief description of the facts upon which the claim may be based and the current estimate of the delay or potential delay based on the information reasonably available to the Subcontractor at that stage;

- (iv) gives Downer within 10 days of the Notice Trigger Date, a detailed written claim for an Extension of Time which:

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- (A) evidences the cause, effect and extent of the delay and the number of days extension claimed together with the basis of such claim;
- (B) identifies with a program analysis the critical activities delayed on the Subcontractor's program;
- (C) demonstrates the Subcontractor's compliance with clause 21.1(a)(ii); and
- (D) is warranted as being true and correct to the best of the Subcontractor's knowledge and belief; and
- (v) in the case of an ongoing delay that continues beyond the date on which the claim is submitted pursuant to clause 21.1(a)(iv), an updated written claim for an Extension of Time every five days after the submission of the claim pursuant to clause 21.1(a)(iv) until the delay has ceased,

then, subject to clauses 21.1(b) and 21.2, the Subcontractor is entitled to such Extension of Time to the Date for Practical Completion as Downer (acting reasonably) determines but only to the extent that:

- (vi) the Qualifying Cause of Delay has caused delays to the critical path of the Work; and
 - (vii) the Qualifying Cause of Delay is not caused or contributed to by, or connected with, any act or omission of the Subcontractor, a Secondary Subcontractor or their respective agents, personnel and representatives.
- (b) If more than one event causes a delay and the cause of at least one of those events is not a Qualifying Cause of Delay, then to the extent that the events of delay or the effects of those events of delay are concurrent, the Subcontractor is not entitled to an Extension of Time.
 - (c) If at the time the Subcontractor is required to give a notice under clause 21.1(a), the duration or impact of the delay is not ascertainable then the Subcontractor must in the notice state what details are not yet known and must give a further notice or notices advising those details promptly once they are known.

21.2 Failure to give notice

Strict compliance by the Subcontractor with clause 21.1 is a pre-condition to any entitlement to an Extension of Time. The Subcontractor is not entitled to make or maintain any Claim for an Extension of Time in connection with a delay (and irrevocably waives any entitlement to make or maintain any such Claim) if the Subcontractor has not complied strictly with clause 21.1 in connection with the delay.

21.3 Response by Downer's Representative

- (a) If the Subcontractor is entitled to an Extension of Time pursuant to clause 21.1, Downer must, within 28 days (if the Qualifying Cause of Delay is not the subject, in whole or in part, of an extension of time claim by Downer under the Head Contract) or 45 days (if the Qualifying Cause of Delay is the subject, in whole or in part, of an extension of time claim by Downer under the Head Contract) after receiving a claim by the Subcontractor made in accordance with clause 21.1 (or where the delay is ongoing, after the Subcontractor has issued the final updated claim pursuant to clause 21.1(a)(v)), issue in writing to the Subcontractor its assessment of any Extension of Time to which Downer considers the Subcontractor is entitled.
- (b) A delay by Downer or the failure of Downer to grant a reasonable Extension of Time or to grant an Extension of Time within the relevant period referred to in this clause 21.3 shall not cause the Date for Practical Completion to be set at large but nothing in this clause shall prejudice any right of the Subcontractor to damages.

21.4 Extension of Time claim and accelerations

- (a) If the Subcontractor gives a claim under clause 21.1, irrespective of whether the Subcontractor is entitled to any Extension of Time, Downer may direct the Subcontractor to accelerate the Work by taking those measures which are **necessary reasonable** to overcome or minimise the extent and effects of some or all of the delay, including if required, to reach Practical Completion by the Date for Practical Completion. If Downer gives an acceleration Direction that only applies to part of the delay for which the Subcontractor is entitled to an Extension of Time, the Subcontractor's entitlement to any Extension of Time shall be reduced to the like extent.
- (b) If Downer gives the Subcontractor an acceleration Direction the Subcontractor shall accelerate the Work to overcome or minimise the extent and effect of the delay, including if required, to reach Practical Completion by the Date for Practical Completion. If the Subcontractor would, but for the Direction, have been entitled to an Extension of Time, the Subcontractor shall be entitled to be paid the extra costs reasonably and necessarily incurred by it and directly attributable to accelerating the Work as assessed and certified by Downer's Representative.

21.5 Downer may extend

At any time, Downer may, under this clause, grant an Extension of Time to the Subcontractor for the benefit of Downer regardless of whether or not the Subcontractor has made a claim for Extension of Time. Downer is not obliged to exercise the right under this clause 21.5 for the benefit of the Subcontractor and the exercise of the right under this clause 21.5 shall not entitle the Subcontractor to make any Claim.

21.6 Delay Costs

- (a) For every day the subject of an Extension of Time for a Compensable Cause and for which the Subcontractor gives Downer a claim for Delay Costs strictly in accordance with clause 29, the Subcontractor shall be entitled to recover such additional costs in respect of the Subcontractor's personnel, Secondary Subcontractors and construction plant directly engaged either on-Site or off-Site in the performance of the Work (excluding profit, mark-up or off-Site overheads) which are reasonably, necessarily and actually incurred directly as a result of the delay and which are substantiated to Downer in writing, provided that the Subcontractor will not be entitled to any amount exceeding the amount stated in Item 31.

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- (b) The amount of Delay Costs payable pursuant to this clause is the agreed damages which will be payable by Downer in these circumstances and will be a limit upon Downer's liability to the Subcontractor for any delay, disruption or prolongation which arises out of or in connection with this Subcontract, howsoever caused, except in respect of a suspension Direction issued by Downer pursuant to clause 20.4 or arising pursuant to a right under clause 27.9(a), in which case the Subcontractor's sole entitlement shall be its entitlement pursuant to clause 20.4(d) or 27.9(b), as the case may be.
- (c) The Subcontractor must take all reasonable steps to reduce, and where possible eliminate, the costs referred to in this clause 21.6
- (d) Compliance by the Subcontractor with this clause 21.6 and clause 29 is a pre-condition to the Subcontractor's entitlement to the payment of any amount in connection with any delay. If the Subcontractor fails to comply with this clause 21.6 in respect of any delay, the Subcontractor shall have no Claim in connection with the delay.

22 Payment

22.1 Progress Claims

- (a) The Subcontractor must submit progress claims to Downer at the times stated in Item 32, which date shall be a 'reference date' for the purposes of the Security of Payment Act.
- (b) The Subcontractor shall have no entitlement to, and will not, submit a payment claim, except in accordance with this clause 22 and at the times set out in Item 32.
- (c) An early progress claim will be deemed to have been made on the date for making that claim stated in Item 32.
- (d) A progress claim for payment must, as a condition precedent to its validity:
 - (i) identify all Work carried out by the Subcontractor in the performance of the Subcontract up to the date of the progress claim, with all corresponding amounts then claimed in respect of the Subcontract Sum;
 - (ii) include the Subcontractor's valuation of Work executed (including, where there are separable portions, the Work performed within each such separable portion);
 - (iii) include the amount and particulars of any adjustments to the Subcontract Sum;
 - (iv) include the total amount previously certified pursuant to subclause 22.2;
 - (v) include the total amount previously paid or deemed to have been paid to the Subcontractor;
 - (vi) include the amount then claimed by the Subcontractor;
 - (vii) include the Subcontractor's estimated cost to complete the Works;
 - (viii) be accompanied by a warranty in the form attached as Schedule 15 duly executed by the Subcontractor;
 - (ix) be accompanied by certificates of currency in respect of each policy of insurance required to be held by the Subcontractor pursuant to this Subcontract; and
 - (x) be accompanied by any other documents requested by the Subcontract or reasonably required by Downer.

22.2 Certificates

- (a) Downer must, within 10 Business Days after receiving a progress claim made in accordance with clause 22.1, assess the claim and issue to the Subcontractor a progress certificate evidencing Downer's opinion, subject always to clause 22.8, of the moneys due from Downer to the Subcontractor pursuant to the progress claim (if any) or from the Subcontractor to Downer (as the case may be) and reasons for any difference (Progress Certificate).
- (b) If the Subcontractor does not make a Progress Claim in accordance with clause 21.1, Downer may nevertheless issue a progress certificate.
- (c) Upon issue of a Progress Certificate the Subcontractor must within, two Business Days, issue a corresponding Tax Invoice to Downer for the value identified in the Progress Certificate.
- (d) Downer must, within the time stated in Item 41, pay the Subcontractor the amount due under the Progress Certificate less any set off Downer is entitled to make.
- (e) If the Progress Certificate shows an amount due from the Subcontractor to Downer or Downer's setting off results in an amount due from the Subcontractor to Downer, the Subcontractor must pay such amount within five Business Days after receiving the Progress Certificate.
- (f) Downer may, in any subsequent Progress Certificate, amend an earlier Progress Certificate.

22.3 Unfixed plant and materials

- (a) Downer will not be liable to pay for unfixed plant and materials unless they are listed in Item 33 and the Subcontractor:
 - (i) provides the additional security in Item 42;
 - (ii) satisfies Downer that the subject plant and materials have been paid for, properly stored and protected, and labelled the property of Downer; and
 - (iii) satisfied Downer that the subject plant and materials have been insured and such insurance notes Downer's interests.
- (b) Upon payment to the Subcontractor and the release of any additional security in clause 22.3(a)(i), the subject plant and materials will be the unencumbered property of Downer.

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22.4 Final Payment Claim and certificate

- (a) Within 20 Business Days of the last to occur of the expiry of all Defects Liability Periods or the rectification by the Subcontractor of all Defects in accordance with clause 19.1, the Subcontractor must give Downer a written final payment claim endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the Subcontract to the extent not already barred (Final Payment Claim).
- (b) Within the earlier of 10 Business Days after the receipt of the Final Payment Claim or, where no Final Payment Claim is made by the Subcontractor, 10 Business Days after the last date for submitting the Final Payment Claim pursuant to clause 22.4(a), Downer must issue to the Subcontractor a Final Certificate evidencing the moneys finally due and payable between the Subcontractor and Downer on any account whatsoever in connection with the subject matter of the Subcontract.
- (c) The Subcontractor must, as a condition precedent to the release of the balance of security pursuant to clause 8.5 and receiving any amount certified as being payable in accordance with clause 22.4(d), provide to Downer an executed Deed of Final Release in the form set out at Schedule 3A setting out the moneys finally due and payable between the Subcontractor and Downer, as certified in the Final Certificate.
- (d) Those moneys certified by Downer as due and payable must be paid:
 - (i) by the Subcontractor (if the Final Certificate shows an amount payable by the Subcontractor) within 10 Business Days after the Final Certificate is issued; or
 - (ii) by Downer (if the Final Certificate shows an amount payable by Downer) by the later of:
 - (A) 10 Business Days after the Final Certificate is issued; and
 - (B) five Business Days after the Subcontractor provides to Downer the executed Deed of Final Release strictly in accordance with this Subcontract.

22.5 Interest

The Subcontractor is liable to pay to Downer interest at the rate stated in Item 34 on any amounts that the Subcontractor fails to pay to Downer by the date on which such amount becomes due and payable under this Subcontract.

22.6 Effect of payment

Any payment made by Downer to the Subcontractor is on account only and is not evidence of the value of the Work or that the Work has been satisfactorily completed.

22.7 Provisional sums

- (a) The Subcontract Sum includes the provisional sums (**Provisional Sum Allowance**), if any, stated in Part B of the Subcontract Details.
- (b) No part of the Provisional Sum Allowance is itself payable by Downer but where at the Direction of Downer the work or item to which the Provisional Sum Allowance relates is performed or supplied by the Subcontractor, the provisions of clause 22.7(c) to (f) shall apply.
- (c) Unless otherwise specified in this Subcontract, the Provisional Sum Allowance includes the costs associated with the supply, delivery, storage and installation of goods and materials, together with any on or off site work. The Provisional Sum Allowance includes all taxes (but excluding GST) as applicable and includes the Subcontractor's allowances for attendance and profit for the work covered by or associated with the scope of the work to which the Provisional Sum Allowance relates.
- (d) It is the Subcontractor's responsibility to advise Downer in sufficient time of the date when any items to which a Provisional Sum Allowance applies are required on Site to ensure that the requisite design documentation, tendering, order, manufacture and delivery times will comply with the approved program and not cause a delay to the performance of the Work.
- (e) Downer's Representative shall adjust the Provisional Sum Allowance as follows:
 - (i) where a part or the whole of the work or item to which the Provisional Sum Allowance relates is performed or supplied by or on behalf of the Subcontractor at the Direction of Downer, the actual value of the work or item shall be valued by Downer's Representative and, subject to clause 22.7(f) the difference added to or deducted from the Subcontract Sum; or
 - (ii) if Downer does not issue a Direction to the Subcontractor to perform work the subject of a Provisional Sum Allowance, the Subcontract Sum shall be reduced by an amount equal to that Provisional Sum Allowance.
- (f) If a percentage amount is stated in Item 35, then the adjustment to the Subcontract Sum pursuant to clause 22.7(e)(i) must include an increase at the percentage stated calculated upon any amount by which the actual value of the item or work the subject of a Provisional Sum Allowance as valued by Downer's Representative exceeds the amount of a relevant Provisional Sum Allowance.

22.8 Set off

Without prejudice to any other right available to Downer under this Subcontract or at law, Downer may, at any time, deduct or set-off from either or both of any money payable or to become payable by Downer to the Subcontractor under this Subcontract and/or any security provided by the Subcontractor under this Subcontract:

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- (a) any money due, or reasonably claimed to be due or to become due, from the Subcontractor to Downer whether in connection with this Subcontract or otherwise, including:
- (b) any amount payable or allowable in favour of Downer by way of liquidated damages;
- (c) any amount which the Subcontractor owes to Downer (whether or not the amount is expressed to be a debt due from the Subcontractor to Downer or is an amount in respect of which the Subcontractor indemnifies Downer); and
- (d) any other loss, cost, expense or damage incurred by Downer in respect of which the Subcontractor is or may be liable to Downer (including under this Subcontract, any other agreement or on any other basis whatsoever).

22.9 Subcontract Sum

The Subcontract Sum, including any rates set out in this Subcontract (including the Schedule of Rates), will not be subject to adjustment for rise and fall, exchange rate variations or any changes to general or market specific economic conditions.

22.10 Direct payments

The Subcontractor must ensure that its subcontractors are paid in accordance with the terms of their subcontracts. If Downer reasonably forms the view that a subcontractor engaged by the Subcontractor:

- (a) has not been paid an amount due to it under its subcontract; and/ or
- (b) has become entitled to suspend work under a subcontract (whether under statute, contract or otherwise) because of a failure by the Subcontractor to pay moneys to the subcontractor,

Downer or the Principal may pay directly to the subcontractor the amount claimed by the subcontractor, and any amount so paid by Downer or the Principal will be a debt due and payable by the Subcontractor to Downer.

23 Practical Completion

23.1 Notice

- (a) The Subcontractor must notify Downer's Representative in writing when it considers it has achieved Practical Completion.
- (b) The achievement of Practical Completion requires, in addition to any other requirement of this Subcontract, compliance with the following:
 - (i) that the Work (including equipment, plant services and installation) has been demonstrated and tested to the satisfaction of Downer's Representative:
 - (A) to perform as required by this Subcontract both under normal conditions and under emergency conditions; and
 - (B) to have been tested, commissioned and be in a continually usable condition; and
 - (ii) the Subcontractor has provided to Downer's Representative:
 - (A) an executed Deed of Release in the form set out in Schedule 3; and
 - (B) all warranties, guarantees, manuals and drawings required under this Subcontract or reasonably requested by Downer's Representative, in a format acceptable to Downer's Representative, and any other warranties which are available from suppliers and manufacturers for the equipment, plant or materials used in or provided for the Work; and
 - (iii) the Subcontractor has:
 - (A) handed over all necessary information required by Downer's Representative for the operation and maintenance of the Work;
 - (B) removed all rubbish, plant and surplus material from the Site, other than plant and equipment required for the carrying out of the Subcontractor's obligations in the Defects Liability Period; and
 - (C) procured all certificates and Approvals from all necessary authorities to the extent the Subcontractor is required by this Subcontract to procure them.

23.2 Practical Completion

When Downer's Representative is of the opinion that the Work has achieved Practical Completion and that the Subcontractor has complied with all other relevant obligations, Downer's Representative must certify Practical Completion by issuing a certificate to that effect to the Subcontractor, identifying the date on which Practical Completion was achieved, which date may be a date other than that on which the certificate of Practical Completion is issued.

23.3 Liquidated damages

- (a) If Practical Completion is not achieved by the Date for Practical Completion, the amount of liquidated damages at the rate set out in Item 36 shall accrue as a debt due and immediately payable by the Subcontractor to Downer for every day after the Date for Practical Completion until and including the earlier of:
 - (i) the Date of Practical Completion; or
 - (ii) the date that this Subcontract is terminated or the Work is taken out of the Subcontractor's hands.
- (b) The liability of the Subcontractor under this clause 23.3 is not and is not deemed to be, inclusive of nor does it in any way limit or reduce, any amount for which the Subcontractor is liable under any indemnity under this Subcontract.

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- (c) If liquidated damages are found to be void, voidable or unenforceable on any basis so that Downer is not entitled to claim liquidated damages for the Subcontractor's failure to reach Practical Completion by the Date for Practical Completion, Downer is entitled to claim general law damages if the Subcontractor fails to reach Practical Completion by the Date for Practical Completion.
- (d) If an Extension of Time is directed after the Subcontractor has paid or Downer has set-off liquidated damages, Downer shall forthwith repay or allow to the Subcontractor an amount equal to such of those liquidated damages as represent the days the subject of the Extension of Time.
- (e) The Parties acknowledge and agree that the amount(s) for liquidated damages payable under this Subcontract are a genuine pre-estimate of Downer's damages if the Work does not reach Practical Completion by the Date for Practical Completion.
- (f) A failure by Downer at any time to demand payment or to deduct, withhold or set-off the liquidated damages does not amount to a waiver of, or otherwise affect, Downer's rights and entitlements.

23.4 Separable portions

- (a) At any time and from time to time, separable portions may be directed by Downer's Representative, including if any part of the Work has reached a stage equivalent to Practical Completion but others have not.
- (b) The definitions of Practical Completion, Defects Liability Period, Date for Practical Completion and Date of Practical Completion and clauses 8, 19, 20 and 21 apply separately to each separable portion.
- (c) Thereafter, references to the Work mean so much of the Work as is comprised in the relevant separable portion.
- (d) The amount of the liquidated damages applicable to a separable portion are such proportion of the amount applicable to the whole of the Work as the value of the separable portion bears to the Subcontract Sum.
- (e) Where separable portions have been directed and without limiting any other provision of this Subcontract with respect to Downer's rights in respect of security, security provided by the Subcontractor shall not be released until the circumstances for the release prescribed by this Subcontract have been satisfied in respect of the Work the subject of the last separable portion to reach Practical Completion.

24 Industrial relations

24.1 Compliance

- (a) The Subcontractor must comply, and must ensure that all of its workforce, Secondary Subcontractors and agents comply, with all Legal Requirements in respect of industrial and workplace matters, including:
 - (i) all state and federal legislation and legally enforceable codes of practice which apply to the Work or the Site; and
 - (ii) all applicable legally enforceable agreements, awards and workplace agreements.
- (b) The Subcontractor must make available upon reasonable notice whatever documents and records Downer's Representative requests to see concerning compliance with this clause.

24.2 Industrial disputes

- (a) The Subcontractor must do everything possible to avoid and minimise the consequences of industrial disputes of any kind.
- (b) The Subcontractor is responsible for and assumes all risks of and incidental to all industrial actions, actions, bans, limitations and disputes (whether lawful or unlawful) in relation to industrial relations or employment issues both on and off Site with its workforce and those of its Secondary Subcontractors and agents.

25 Work Health and Safety

Without limiting any other obligation of the Subcontractor under this Subcontract, the Subcontractor must comply with the OHS Rules.

26 Environment

26.1 Compliance

The Subcontractor must comply with all Legal Requirements in respect of environmental matters and the protection or preservation of the environment including all state and federal legislation and codes of practice which apply to the Work or the Site.

26.2 Hazardous substances and materials

If the Subcontractor intends to bring onto the Site any material or substance which may be hazardous to health and safety, the Subcontractor must, before doing so, give information to Downer's Representative in respect of such material or substance. The information must include plans for the safe handling, storage and use of the material or substance and precautions to be taken.

26.3 Preventative measures and contamination

The Subcontractor must do everything possible to protect and preserve the environment from harm or damage arising from or in connection with the carrying out of the Work and is responsible for all such harm or damage, including any contamination, to the extent caused or contributed to by the Subcontractor or the Work.

26.4 Environmental Reporting

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The Subcontractor must provide to Downer, upon request, any data and information that is or may be required by Downer, the Principal or any third party to comply with the *National Greenhouse and Energy Reporting Act 2007* (Cth) to the extent that such data and information relates to the Work or this Subcontract.

27 Default and Termination

27.1 Notice of Subcontractor Default

If in the opinion of Downer, the Subcontractor commits a breach of this Subcontract then, without limiting any other right it may have, Downer may by notice in writing serve upon the Subcontractor a notice entitled "Notice of Subcontractor Default". Upon giving a Notice of Subcontractor Default, Downer may suspend payments to the Subcontractor until the breach is remedied.

27.2 Contents of Notice of Subcontractor Default

A Notice of Subcontractor Default given under clause 27.1 must:

- (a) state that it is given under clause 27.1;
- (b) identify and particularise the breach complained of; and
- (c) specify a time which is at least seven days from the date the Notice of Subcontractor Default is given, within which the Subcontractor must either remedy the breach or show cause to Downer's satisfaction why Downer ought not exercise a right under clause 27.3.

27.3 Failure by Subcontractor to remedy or show cause

- (a) If the Subcontractor fails either to remedy the breach or to show cause to Downer's satisfaction why Downer ought not exercise its rights under this clause 27.3, Downer may by notice in writing with immediate effect:
 - (i) take out of the hands of the Subcontractor the whole or any part of the Work remaining to be completed, engage others to, or itself, carry out any part or the whole of the remaining Work and suspend payment until an amount (if any) becomes due and payable to the Subcontractor pursuant to clause 27.6(b); or
 - (ii) terminate this Subcontract.
- (b) The exercise of a right under clause 27.3(a) will be effective immediately and will not affect any other rights available to Downer.

27.4 Breaches

For the purposes of clause 27.1, a breach by the Subcontractor includes:

- (a) suspension of the Work;
- (b) failure to proceed with due expedition and without delay (regardless of whether or not the Date for Practical Completion has passed);
- (c) failure to use the materials or standards of workmanship required by this Subcontract;
- (d) failure to provide evidence of insurances required by this Subcontract;
- (e) failure to comply with any Direction of Downer's Representative issued under a provision of this Subcontract;
- (f) failure to properly protect any person or property;
- (g) failure to maintain any licence or Approval required of the Subcontractor for the performance of the Work;
- (h) failure to immediately confirm, upon request for confirmation by Downer's Representative, that the Subcontractor is able and willing to complete performance of this Subcontract in accordance with its obligations;
- (i) failure to complete any milestone by any relevant milestone date as required by clause 20.5;
- (j) any act or omission by the Subcontractor that results or may result in Downer being in breach of the Head Contract Requirements; and
- (k) failure to rectify a Defect, error, omission or deficiency in the Work in accordance with this Subcontract.

27.5 Subcontractor unable or unwilling to complete

If the Subcontractor advises Downer that the Subcontractor is unable or unwilling to complete performance of this Subcontract, Downer may immediately (and without serving upon the Subcontractor a Notice of Subcontractor Default) exercise a right under clause 27.3.

27.6 Procedure upon termination or taking work out of hands

- (a) Despite any other provision of this Subcontract, if Downer terminates this Subcontract or takes any Work out of the Subcontractor's hands and engages others to carry out or itself carries out any part or the whole of the remaining Work (including by way of Variation), Downer may without payment of compensation to the Subcontractor:
 - (i) take possession of all documents (including Design Documents), information and the like in the Subcontractor's possession which is connected with the Work and reasonably required by Downer to facilitate completion of the Work and the Subcontractor must immediately deliver up all such documents, information and the like to Downer;
 - (ii) take an assignment of the Subcontractor's rights and benefits under any Secondary Subcontracts including any warranties and guarantees. The Subcontractor must do all things necessary to effect such an assignment; and
 - (iii) take possession of such plant, equipment and other things on or about the Site as are owned by the Subcontractor and are reasonably required by Downer to facilitate completion of the Work. Downer must return any plant,

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equipment and other things which are surplus to the Subcontractor on completion of the relevant Work, subject to the Subcontractor satisfying the debt to Downer as determined under clause 27.6(c).

- (b) When that part of the Work taken out has been completed, Downer shall assess the cost thereby incurred and shall certify as moneys due and payable accordingly the difference between the cost (showing the calculations therefor) and the amount which would otherwise have been paid to the Subcontractor if the work had been completed by the Subcontractor.
- (c) If the Subcontractor is indebted to Downer, Downer may retain any Subcontractor's plant or other things taken under clause 27.6 until the debt is satisfied. If after reasonable notice the Subcontractor fails to pay the debt, Downer may sell the Subcontractor's plant or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the Subcontractor.

27.7 Termination by Subcontractor

- (a) If Downer fails to pay an undisputed amount that is due and payable to the Subcontractor under this Subcontract and such failure continues for a period of more than 28 days after the Subcontractor provides Downer with written notice thereof and identifying its rights under this clause 27.7, the Subcontractor may suspend performance of Work.
- (b) The Subcontractor must promptly recommence performance of Work upon remedy of the breach by Downer.
- (c) The Subcontractor may, by written notice to Downer terminate this Subcontract if, within 28 days of the date of commencement of suspension pursuant to clause 27.7(a), Downer has failed to remedy the breach.
- (d) Damages reasonably and necessarily incurred by the Subcontractor by reason of a suspension pursuant to clause 27.7(a) shall be assessed by Downer who shall certify the amount due and payable to the Subcontractor. This amount shall be the limit of the Subcontractor's entitlement arising from the suspension of the Work.
- (e) The Subcontractor acknowledges and agrees that this clause 27.7 constitutes the Subcontractor's sole right to terminate this Subcontract as a consequence of Downer's breach (howsoever occurring).

27.8 Insolvency

- (a) Without prejudice to any other right either Party may have, Downer or the Subcontractor may terminate this Subcontract by notice in writing upon the date stated in the notice if the other Party is subject to an Insolvency Event.
- (b) Despite any other provision of this Subcontract, from the date Downer is entitled to terminate this Subcontract under clause 27.10(a):
 - (i) Downer is deemed to have become entitled to recourse to all retention monies and Bank Guarantees still held by Downer; and
 - (ii) the Subcontractor has no entitlement to (or to make any Claim in respect of) and Downer has no obligation to return to the Subcontractor any retention monies or Bank Guarantees still held by Downer.

27.9 Immediate Termination

Without prejudice to any other right Downer may have, Downer may terminate this Subcontract by notice in writing upon the date stated in the notice if:

- (a) there is any change in the legal or equitable ownership of the Subcontractor without Downer's prior written consent (which Downer may withhold in its absolute discretion);
- (b) the Subcontractor is in breach of clauses 34 or 35, or a Suspected Slavery occurs; or
- (c) the Subcontractor knowingly provides documents containing an untrue or misleading statement or information; or
- (d) the amount of liquidated damages paid or payable by the Subcontractor under this Subcontract reaches the limit on liquidated damages set out in this Agreement (or would exceed the limit on liquidated damages set out in this Subcontract in the absence of such limit).

27.10 Termination for convenience

- (a) Downer may at any time and for any reason (or for no reason and without any requirement to provide any reason), including for its convenience, terminate this Subcontract by issuing a notice of termination to the Subcontractor. When the Subcontractor receives a notice of termination from Downer under this clause, the Subcontractor must
 - (i) stop all Work to the extent required by the notice of termination;
 - (ii) take such action as necessary or as Downer directs for the transfer, protection and preservation of Downer property;
 - (iii) use its best endeavours to minimise the cost of termination of this Subcontract (as applicable) to Downer; and
 - (iv) provide to Downer a written claim for the amounts set out in clause 27.10(b), in compliance with clause 22.1, within 15 Business Days of the effective date of termination.
- (b) Where Downer terminates this Subcontract pursuant to clause 27.10(a), Downer must pay to the Subcontractor:
 - (i) the amount due for the Work that has been completed by the Subcontractor in accordance with this Subcontract prior to the date of termination;
 - (ii) the cost of materials reasonably ordered by the Subcontractor for the Work, which the Subcontractor is liable to accept, but only if the materials become the property of Downer upon payment;
 - (iii) the reasonable cost of removal of plant and equipment; and

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(iv) all Bank Guarantees or retention monies to which Downer is not otherwise entitled.

Such payment will constitute the full and final compensation payable by Downer to the Subcontractor under or in connection with this Subcontract, the Subcontractor will have no Claim against Downer in relation to or in connection with such termination, and Downer will not be liable to the Subcontractor for any amounts in addition to those set out in this clause 27.10(b).

27.11 Termination of the Head Contract

- (a) Without limiting any other right available to Downer under this Subcontract or at law, if the Head Contract is terminated at any time for any reason, Downer may terminate this Subcontract by notice in writing to the Subcontractor.
- (b) If the Subcontractor terminates this Subcontract under clause 27.12(a), the Subcontractor's entitlements are limited to those set out in clause 27.9(d).

27.12 Effect of Termination by Downer

If the Subcontract is terminated by Downer pursuant to clause 27.3, 27.8, 27.9 or 27.11:

- (a) Downer is not required to make any further payment to the Subcontractor, and without limiting any other right of Downer conferred by this Subcontract, the rights and liabilities of the parties shall be the same as they would be at common law if the Subcontractor had wrongfully repudiated this Subcontract and Downer had elected to treat this Subcontract as at an end and recover damages;
- (b) Downer may at any time and from time to time estimate the damages to which it is entitled as a consequence of the (deemed) wrongful repudiation of this Subcontract by the Subcontractor and advise the Subcontractor of the amount of the estimated damages. Until the damages to which Downer is entitled are finally ascertained, that estimate shall be a debt due and immediately payable by the Subcontractor to Downer, and Downer is entitled to withhold, set-off or otherwise deduct the amount of that estimate; and
- (c) the Subcontractor must cease the performance of the Work and make the Site safe for employees and others and report any hazards or risks to Downer.

28 Dispute Resolution

28.1 Notice

- (a) If a dispute or difference arises between Downer and the Subcontractor out of or in connection with the Work or this Subcontract, either Party may give the other a written notice specifying the dispute or difference. The notice must specify in reasonable detail the nature of the dispute or difference and the notice must specify in reasonable detail the legal basis of any Claim made by the Party serving the notice.
- (b) Subject to clause 28.5, neither Party may commence proceedings (other than to recover an amount due and payable by the Subcontractor under this Subcontract, or for injunctive or other urgent relief) in respect of any dispute or difference unless a notice under clause 28.1(a) has been served and the procedure in clauses 28.2, 28.3 and 28.4 have been complied with.

28.2 Meeting

- (a) If a dispute or difference notified under clause 28.1(a) has not been settled within 14 days of the date of that notice, either Party may, by written notice to the other, require that a person holding a position of senior management of each of Downer and the Subcontractor meet and undertake genuine and good faith negotiations on a without prejudice basis with a view to resolving the dispute or difference.
- (b) If a meeting is required under this clause by either Party, then each Party must ensure attendance on its behalf by a person holding a position of senior management. Each Party must use its best endeavours to ensure that a meeting required under this clause takes place within 14 days of the receipt of a valid written notice requiring the meeting.
- (c) If the dispute or difference involves or may involve the Principal, at the option of Downer, the Principal may participate in any meeting held under this clause 28.2 (and the Subcontractor hereby irrevocably consents to such participation).

28.3 Mediation

- (a) If the dispute or difference is not resolved within 28 days of the giving of notice under clause 28.1, the Parties must refer the dispute or difference to mediation in accordance with clause 28.3(b).
- (b) If a dispute or difference is referred to mediation as referred to under clause 28.3(a), the Parties agree that:
 - (i) a mediator is to be appointed by agreement between the parties or failing such agreement within 14 days of the referral to mediation, is to be appointed by the Chairman of the relevant Chapter of the Resolution Institute in the State or Territory stated in Item 11 or the Chairman's nominee;
 - (ii) each Party must bear its own costs of the mediation save that the Parties must share equally the mediator's fees, fees for mediation rooms and costs of shared equipment, facilities and services of the mediation;
 - (iii) the Parties must agree the venue for the mediation and if they cannot agree, the mediator appointed must nominate the venue;
 - (iv) each Party may be legally represented in the mediation if they so wish;
 - (v) complete confidentiality must be preserved in respect of the mediation and any documents and information used at or in relation to the mediation; and

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- (vi) mediation proceedings including any documents and information used at or in relation to the mediation must not be used as evidence in any legal proceedings and the Parties agree not to compel the mediator to give evidence as to any matter in relation to the mediation in any legal proceedings.

28.4 Resolution not involving Head Contract

- (a) Subject to clauses 28.5 and 28.6, if the dispute has not been resolved within 14 days after the Parties have attended mediation in accordance with clause 28.3, (or such other period as agreed by the parties), either Party may refer the dispute to the dispute resolution forum identified in Item 43.
- (b) Subject to clause 28.4(c), neither Downer nor the Subcontractor may refer the dispute to the forum identified in Item 43 unless they have first complied with clauses 28.1 to 28.3 in relation to the dispute or difference.
- (c) Clause 28.4(b) does not prevent either Party from instituting proceedings to seek injunctive or other urgent relief in respect of a Dispute or difference arising under this Subcontract.
- (d) In the event that the forum for resolution of the dispute identified in the Subcontract Details is arbitration, the arbitrator's decision or majority decision of arbitrators (as applicable) shall be final and binding on the Parties.

28.5 Consistent Resolution

- (a) Where a dispute arises between Downer and the Principal under the Head Contract (including by way of arbitration or expert determination) which Downer considers concerns matters which are relevant to the Subcontractor's rights and obligations under this Subcontract, Downer may at any time prior to the final resolution of that dispute, elect to have Downer's and the Subcontractor's rights and obligations determined in that dispute simultaneously, and if so:
- (i) the Subcontractor must, at the expense of the Subcontractor give Downer all necessary assistance and co-operation with respect to the dispute; and
 - (ii) Downer must ensure that any claims of the Subcontractor in respect of the Principal are put to the dispute resolution procedures referred to in the Head Contract.
- (b) The Subcontractor agrees that, in respect of a dispute to which this clause 28.5 applies, clauses 28.3 and 28.4 shall cease to apply to the subject matter of that dispute and it will be bound by any determination in the dispute resolution procedures under the Head Contract that affects the Subcontractor's rights and obligations as though that determination had been made under the dispute resolution procedures in this Subcontract.

28.6 Consolidation

If Downer and the Principal are parties to litigation, arbitration or an expert determination in connection with the Head Contract (**Head Contract Dispute Process**), Downer may direct that:

- (a) any dispute that arises between Downer and the Subcontractor (whether such dispute arises before or after the commencement of the Head Contract Dispute Process) be referred to litigation, arbitration or expert determination (as applicable); and
- (b) such litigation, arbitration or expert determination (as applicable) between Downer and the Subcontractor will be consolidated with the Head Contract Dispute Process,

in which case, clauses 28.3 and 28.4 shall cease to apply to the subject matter of that dispute and the Subcontractor irrevocably agrees to the referral of the relevant dispute to litigation, arbitration or expert determination (as applicable) and agrees (and irrevocably waives any entitlement to object) to such consolidation of litigation, arbitral proceedings or expert determination processes (as applicable).

29 Claims

29.1 Making of Claims

Except for Claims for an Extension of Time under clause 21.1 or payment under clause 22, or a Claim which another provision of this Subcontract expressly sets out the time, method and process whereby the Subcontractor may submit the Claim, the Subcontractor must give Downer the notices required by clause 29.2 if it wishes to make a Claim against Downer in respect of any Direction, act, omission or any other fact, matter or thing (including a breach of this Subcontract by Downer) under, arising out of or in any way in connection with the Work or this Subcontract.

29.2 Prescribed Notice

The notices referred to in clause 29.1 are:

- (a) a notice within 10 Business Days after the commencement of the first occurrence of the Direction, act, omission or any other fact, matter or thing upon which the Claim is based, expressly specifying that the Subcontractor proposes to make a Claim and the Direction, act, omission or any other fact, matter or thing upon which the Claim is based; and
- (b) a written Claim within 10 Business Days after the date on which the notice was required to be given to Downer pursuant to clause 29.2(a), which must include:
 - (i) detailed particulars concerning the Direction, act, omission or other fact, matter or thing upon which the Claim is based;
 - (ii) the legal basis for the Claim, including the terms of this Subcontract upon which the Claim is based;
 - (iii) the facts and evidence relied upon in support of the Claim in sufficient detail to permit verification; and
 - (iv) details of the amount claimed and how it has been calculated.

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29.3 Continuing Events

If the Direction, act, omission or other fact, matter or thing upon which the Claim under clause 29.2 is based or the consequences of the Direction, act, omission or other fact, matter or thing are continuing, the Subcontractor must continue to give the information required by clause 29.2(b) every 20 Business Days after the written Claim under clause 29.2(b) was required to be given to Downer, until after the Direction, act, omission or any other fact, matter or thing upon which the Claim is based, has, or the consequences thereof have, ceased.

29.4 Condition Precedent

It is a condition precedent to the Subcontractor's entitlement to make a Claim that the Subcontractor has fully complied with the requirements of clauses 29.1, 29.2 and 29.3.

If the Subcontractor fails to comply with clause 29.1, 29.2 or 29.3, Downer will not be liable upon any Claim by the Subcontractor and the Subcontractor will be absolutely barred from making any Claim against Downer, arising out of, or in any way in connection with, the relevant Direction, act, omission or other fact, matter or thing (as the case may be) to which clause 29.1 applies.

30 Goods and Services Tax

30.1 Exclusive of GST

Unless otherwise expressly stated, prices or other sums payable or consideration to be provided under or in accordance with this Subcontract are exclusive of GST.

30.2 Payment of GST

If a Party makes a taxable supply under or in connection with this Subcontract, the other Party must pay to the supplier at the same time, and in addition to the GST-exclusive consideration, an amount equal to the GST payable on that supply.

30.3 Tax Invoice

The supplier must, as a precondition to the payment of GST, give the other Party a tax invoice by the end of the month in which the supply is made.

30.4 Adjustments

If an adjustment event arises in connection with a supply made under this Subcontract, the supplier must give the other Party an adjustment note in accordance with the GST law.

30.5 Reimbursements

If this Subcontract requires one Party to pay for, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the other Party, the amount required to be paid, reimbursed or contributed by the first Party will be reduced by the amount on input tax credits (if any) to which the other Party is entitled in respect of the reimbursable expense.

30.6 Defined terms

In this clause 30:

- (a) words and expressions which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) have the same meaning as in the GST Act; or
- (b) if that GST Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

31 Security of Payment

31.1 Application

The provisions set out in the State and Territory Specific Provisions with respect to the Security of Payment Act shall apply in accordance with clause 1.4 of this Subcontract.

31.2 Downer's Representative's role

Without limiting Downer's right to issue a payment schedule under the Security of Payment Act, the Subcontractor acknowledges and agrees that in issuing payment schedules under the Security of Payment Act, Downer's Representative does so (and is authorised by Downer to do so) as agent of Downer.

31.3 Adjudication

If the Subcontractor applies for adjudication under the Security of Payment Act, the authorised nominating authority in respect of such an adjudication application is one of the bodies stated in Item 37.

32 General

32.1 Notices

- (a) A notice or other communication connected with this Subcontract (Notice) has no legal effect unless it is in writing.
- (b) Subject to clause 32.1(c), in addition to any other method of service provided by law, the Notice must be:
 - (i) sent by prepaid post to the address for service of the addressee set out in the Subcontract Details or subsequently notified;
 - (ii) delivered at the address for service of the addressee set out in the Subcontract Details or subsequently notified; or
 - (iii) sent by email to the email address of the addressee set out in the Subcontract Details.

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- (c) A Notice given by the Subcontractor under clause 9 or clause 21 or under the Security of Payment Act must not be sent by email. A Notice given by the Subcontractor under clause 27 or clause 28 must be sent by registered mail or delivered (not by email) to Downer's address set out in Item 38.
- (d) A notice is taken as given by the sender and received by the intended recipient:
 - (i) if sent by post, three Business Days after posting;
 - (ii) if sent by email:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the delivery failed,
 whichever happens first; or
 - (iii) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

- (e) The Subcontractor, Downer and Downer's Representative must each notify the others in writing of any change of contact details set out in Item 38.

32.2 Governing law and jurisdiction

- (a) This Subcontract is governed by the law of the State or Territory set out in Item 11. Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of that State or Territory and any courts hearing appeals from them.
- (b) A Party must not object to the jurisdiction of a court merely because the forum is inconvenient.
- (c) Where the Subcontractor is not incorporated within the jurisdiction of any of the States or Territories of the Commonwealth of Australia, the Subcontractor:
 - (i) submits to the non-exclusive jurisdiction of the courts of the Commonwealth of Australia and the State or Territory stated in Item 11 and any courts which have jurisdiction to hear appeals from any courts of that State or Territory;
 - (ii) waives any objections on the ground of venue or forum non-convenience or any similar grounds;
 - (iii) consents to service of process (which term includes any communication, notices, including any notices under this Subcontract, demand, summons, writ, statement of claim, pleading, judgment, order, decree or document) by mail or in any other manner permitted by the relevant law; and
 - (iv) the Subcontractor must at all times maintain an agent for service of process in the State or Territory stated in Item 11. Any process shall be sufficiently served on the Subcontractor if delivered to the agent for service at that agent's address for the time being.
- (d) The Subcontractor hereby appoints the person named in Item 12 as its agent for service for the purpose of this clause 32.2. The Subcontractor shall not revoke the authority of any agent for service and if for any reason, the agent no longer serves as agent for the Subcontractor to receive service of process, the Subcontractor shall promptly advise Downer and appoint another such agent approved by Downer in writing. If the Subcontractor does not immediately appoint another such agent, Downer may thereafter

32.3 Confidentiality

- (a) The Subcontractor must keep all aspects of this Subcontract and all matters arising from the Work confidential and must not disclose these details to any third party without the written Approval of Downer except to the extent required by law and to enable performance of this Subcontract.
- (b) Subject to clause 32.3(c), the Subcontractor must not, and must ensure that its officers, advisers, agents, consultants, sub-subcontractors and employees do not, without the prior written Approval of Downer, at any time, including after the termination or expiry of this Subcontract:
 - (i) disclose or give to any person any Confidential Information; or
 - (ii) without limitation to the above, disclose or give to any person any information of the kind described in section 275(1) of the PPSA.
- (c) Clause 32.3(b) does not apply to the extent that the Confidential Information is:
 - (i) lawfully in the public domain at the time that the Confidential Information was disclosed or given; or
 - (ii) required to be disclosed or given to comply with any applicable law, the rules of any securities or stock exchange or an order of a court or tribunal and Downer is given prior notice of the disclosure.
- (d) Where the Subcontractor discloses any Confidential Information pursuant to this clause 32.3, it:
 - (i) must ensure that the party to whom the Confidential Information is provided or disclosed to complies with the terms of this clause 32.3; and
 - (ii) will be responsible and liable for any breach of the terms of this clause 32.3 by such third party as if the Subcontractor committed the breach.

32.4 Entire agreement

- (a) This Subcontract:

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- (i) contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Subcontract; and
 - (ii) supersedes any prior agreement or understanding on anything connected with that subject matter.
- (b) No other terms or conditions will be incorporated into this Subcontract unless strictly in accordance with clause 32.9.
- (c) Any terms and conditions proposed, published or sent by the Subcontractor to Downer or otherwise referred to in any document or material provided by the Subcontractor to Downer (including any terms and conditions published on any website or contained in any online ordering process, whether or not acknowledged by Downer):
- (i) do not form part of (and are expressly excluded from) this Subcontract;
 - (ii) do not apply to or bind Downer; and
 - (iii) are, as between Downer and the Subcontractor, void and unenforceable,
- irrespective of whether such terms and conditions were proposed, published or sent (or referred to in any document or material provided) by the Subcontractor before, during or after execution of this Subcontract.

32.5 Waiver

- (a) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (b) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- (c) A waiver is not effective unless it is in writing.
- (d) Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

32.6 Severability

If a provision or part of a provision in this Subcontract is wholly or partly invalid or unenforceable, the provision or part must, to that extent, be treated as deleted from this Subcontract. This does not affect the validity or enforceability of the remaining provisions.

32.7 Attorneys

Each attorney who executes this Subcontract states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

32.8 Retrospectivity

- (a) This Subcontract applies to all Work performed by the Subcontractor for Downer and any preliminary works in relation to the subject matter of this Subcontract performed by the Subcontractor, including any preliminary work performed by the Subcontractor before the date of this Subcontract.
- (b) The Parties acknowledge and agree that all payments made by Downer to the Subcontractor before the date of this Subcontract have been paid on account of the liability of Downer to pay to the Subcontractor the Subcontract Sum.

32.9 Variation of Agreement

Any variation or amendment of this Subcontract must be in writing and signed by both Parties or by persons authorised to sign for them.

32.10 Counterparts

This Subcontract may be executed in a number of counterparts. It comprises all the counterparts, taken together.

32.11 Costs and outlays

- (a) Each Party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Subcontract.
- (b) The Subcontractor must pay all stamp duty and other government imposts payable in connection with this Subcontract and all other documents and matters referred to in this Subcontract when due or earlier if requested in writing by Downer.

32.12 UN Convention on Contracts for the International Sale of Goods

The parties agree that the Convention on Contracts for the International Sale of Goods does not apply to this Subcontract.

32.13 Liability of Downer

This Subcontract codifies the Subcontractor's entitlement to payment or reimbursement of any cost, loss, expense or damage and the Subcontractor shall have no entitlement to payment or reimbursement of any cost, loss, expense or damage unless expressly so provided in this Subcontract.

To the fullest extent permitted by law, Downer and its directors, employees, consultants, other subcontractors and agents shall not be liable to the Subcontractor:

- (a) under or in connection with this Subcontract (including in respect of any breach of this Subcontract);
- (b) in tort for negligence or otherwise;
- (c) otherwise at law (including by statute, to the extent that it is possible to so exclude liability) and in equity, including for restitution for unjust enrichment; or
- (d) on any other basis whatsoever,

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for any cost, loss, expense or damage which is not expressly provided for in this Subcontract and the Subcontractor irrevocably waives any entitlement to make (and irrevocably releases Downer from) a Claim for any such cost, loss, expense or damage.

32.14 Non-performance of obligations

If the Subcontractor fails to perform or comply with any of its obligations or agreements contained in this Subcontract, Downer or the Principal may perform or comply with (or procure performance of or compliance with) those obligations or agreements. Any costs incurred by Downer in connection with the rights referred to in this clause 32.14 will be a debt due and payable by the Subcontractor to Downer on demand.

32.15 Customs Duties

The Subcontract Sum includes all customs duties. The Subcontractor shall be responsible for payment of customs duties, provided that Downer shall provide such assistance and documentation as the Subcontractor may require to expeditiously pay such customs duties. In the event the customs duties are reduced then the Subcontractor shall reduce the Subcontract Sum by the same amount as any reduction in customs duties.

32.16 Inspection

The Subcontractor shall at all times permit Downer and the Principal, their respective employees, agents and consultants during working hours, to have access to any place where Work or any related or ancillary activities are being done in connection with the Work for the purpose of inspecting the same. Any such inspection will not relieve or affect the Subcontractor's obligation to execute Work which complies with this Subcontract.

32.17 Facilities for Downer's Inspector

If requested by Downer, the Subcontractor shall provide office facilities including desk and telephone, at the Subcontractor's or the Secondary Subcontractor's manufacturing plants for use by Downer and the Principal's representatives.

32.18 Media

The Subcontractor shall not disclose any information concerning the Project for distribution through any communications media without Downer's prior written Approval (which may be withheld in Downer's absolute discretion). The Subcontractor shall refer to Downer any enquiries from the media concerning the Work.

32.19 Trust

If the Subcontractor enters into this Subcontract as trustee of a trust (**Trust**), it warrants that:

- (a) it has power to enter into and perform its obligations under this Subcontract in its capacity as trustee of the Trust;
- (a) the Trust has been validly created and is in existence at the date of this Subcontract;
- (b) the Subcontractor has been validly appointed as trustee of the Trust and is the sole trustee of the Trust;
- (c) the Subcontractor has valid rights of indemnity against the assets of the Trust, which rights are available for satisfaction of all liabilities and other obligations incurred by it under this Subcontract; and
- (d) the rights of the beneficiaries of the Trust relating to, and their interests in, the property of the Trust are subject to the prior rights and interests of the Subcontractor in the property of the Trust pursuant to its right of indemnity.

33 Personal Property Securities Act

The Subcontractor:

- (a) acknowledges and agrees that:
 - (i) this Subcontract constitutes a Security Agreement; and
 - (ii) this Subcontract creates a Security Interest of Downer in:
 - (A) all materials, equipment and other things intended for Work which are located onsite or offsite;
 - (B) all construction plant, temporary works and other things on-site or off-site as are used by the Subcontractor or any Secondary Subcontractors; and
 - (C) all Work documents,
- (b) consents to Downer registering Downer's Security Interest in the Collateral;
- (c) must not purport to dispose of, grant any interest in, give any form of security over, or create a Security Interest or allow a Security Interest to subsist over, the Collateral;
- (d) must not register any Security Interest in respect of the Work or Collateral on the PPS Register;
- (e) must at its cost procure the removal from the PPS Register each Security Interest it has registered in respect of the Work or Collateral upon the expiry or termination of this Subcontract, and must provide Downer with certification of the removal of the Security Interests pursuant to section 157 of the PPSA;
- (f) undertakes to:
 - (i) promptly sign any further documents and provide any further information (such information to be complete, accurate and up-to date in all respects) which Downer may reasonably require to:
 - (A) register a Financing Statement or Financing Change Statement on the PPS Register in relation to a Security Interest in the Collateral;

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- (B) register any other document on the PPS Register which is necessary to perfect Downer's Security Interest in the Collateral; or
- (C) correct any error in any such document;
- (ii) not register, or permit to be registered by any third party, a Financing Statement or a Financing Change Statement in respect of the Collateral without the prior consent of Downer;
- (iii) keep full and complete records of the Collateral; and
- (iv) do anything which Downer reasonably requires for the purpose of ensuring that the Security Interest is enforceable and perfected and to enable Downer to exercise its rights in connection with the Security Interest;
- (g) agrees that, to the extent permitted by law, the following provisions of the PPSA do not apply to this Subcontract: (i) section 95; (ii) section 121(4); (iii) section 125; (iv) section 129; (v) section 130; (vi) section 132(3)(d); (vii) section 132(4); (viii) section 135; (ix) section 142; and (x) section 143;
- (h) unless otherwise agreed to by Downer in writing, the Subcontractor waives its right to receive a Verification Statement in accordance with section 157 of the PPSA; and
- (i) must give Downer written notice of any change to the Subcontractor's name, address or other details set out in this Subcontract within five Business Days after the date of such change.

34 Compliance with Anti-Bribery Laws

- (a) The Subcontractor will at all times comply with:
 - (i) all Legal Requirements relating to anti-bribery, anti-corruption and anti-money laundering including the *Criminal Code Act 1995* (Cth), the *Foreign Corrupt Practices Act* of the United States of America, and the *Bribery Act 2010* of the United Kingdom (and must not do anything, or omit to do anything, to cause Downer to be in breach of any such Legal Requirements); and
 - (ii) Downer's 'Standards of Business Conduct' and 'Anti Bribery and Corruption Policy' as published from time to time.
- (b) The Subcontractor warrants that neither it, nor any Relevant Person, has been convicted of any offence, and has not been the subject of any investigation or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence, under any applicable laws, rules and regulation relating to anti-bribery, anti-corruption and anti-money laundering.
- (c) At any time before the expiry of three years from the completion or termination of this Subcontract, the Subcontractor must permit Downer, its nominee, or the Principal (in this clause 34, each the Auditor) to conduct an audit and investigation:
 - (i) to verify the Subcontractor's compliance with this clause 34 (irrespective of whether there has been a breach or suspected breach); and/or
 - (ii) in relation to a Probity Event (or suspected Probity Event).
- (d) As part of an audit or investigation under this clause 34, the Subcontractor must:
 - (i) make available to the Auditor (and allow the Auditor to make and retain copies of) any documents, records and other information in the power, possession or control of the Subcontractor; and
 - (ii) meet with the Auditor and make available the Subcontractor's personnel to meet with the Auditor and answer reasonable questions in relation to the subject matter of the audit.
- (e) The Subcontractor must give Downer notice immediately upon becoming aware of a Probity Event or any breach (or suspected breach) of this clause 34.

35 Modern Slavery

- (a) The Subcontractor must take (and must ensure that each of its Relevant Persons take) all reasonable steps to ensure that no modern slavery, human trafficking, servitude, forced labour, bonded labour, child labour, slavery, forced marriage or deceptive recruiting for labour or services (**Modern Slavery**) is present in the Subcontractor's, or its Relevant Persons', supply chains, or in any part of their businesses.
- (b) The Subcontractor warrants that neither it nor any of its Relevant Persons:
 - (i) has been convicted of any offence involving Modern Slavery or Modern Slavery-like practices; and
 - (ii) having made reasonable enquiries, has been or is, to the best of its knowledge, the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence of alleged offence of or in connection to any form of Modern Slavery.
- (c) The Subcontractor must implement due diligence procedures for its Relevant Persons to minimise the risk of Modern Slavery in its supply chains.
- (d) The Subcontractor must implement a system (to a standard that is consistent with good industry practices) for monitoring and evaluating the effectiveness of the Subcontractor's actions taken under clauses 35(a) and 35(c).
- (e) The Subcontractor must promptly notify Downer:
 - (i) as soon as it becomes aware of any actual or suspected Modern Slavery in its or any of its Relevant Persons' supply chain which is connected to this Subcontract (**Suspected Slavery**); and

Subcontract – Long Form

- (ii) its approach to address and remediate the Suspected Slavery.
- (f) The Subcontractor must, on request from Downer (from time to time), provide all assistance and information reasonably necessary for Downer to prepare a modern slavery statement and otherwise comply with its obligations at law and Legal Requirements.
- (g) The Subcontractor must maintain a complete set of records to trace the supply chain of all goods and services provided to Downer in connection with this Subcontract, including:
 - (i) the steps taken by the Subcontractor under clauses 35(a); and
 - (ii) the due diligence processes taken under clauses 35(c) and 35(d).
- (h) Downer will at any time have the right to inspect and to copy the whole or part of any record referred to in clause 35(g).
- (i) Upon receiving a request in writing from Downer for a copy of any record referred to in clause 35(g), the Subcontractor must promptly provide a copy of that record to Downer.
- (j) The Subcontractor must train all of its officers and employees on the risks of Modern Slavery and on Downer's policies and procedures in relation to Modern Slavery, including the principles set out in Downer's 'Standards of Business Conduct'
- (k) The Subcontractor must keep a record of all training completed by its officers and employees and shall make a copy of the training record available to Downer on request.

36 Proportionate Liability

- (a) For the purposes of this clause 36, a reference to the Proportionate Liability Act means:
 - (i) the *Civil Law (Wrongs) Act 2002* (ACT) and the *Building Act 2004* (ACT);
 - (ii) the *Civil Liability Act 2002* (NSW);
 - (iii) the *Proportionate Liability Act 2005* (NT) and the *Building Act 1996* (NT);
 - (iv) the *Civil Liability Act 2003* (Qld);
 - (v) the *Law Reform (Contributory Negligence and Apportionment of Liability (Proportionate Liability)) Amendment Act 2005* (SA);
 - (vi) the *Civil Liability Act 2002* amended by the *Civil Liability Amendment (Proportionate Liability) Act 2005* (Tas) and the *Building Act 2000* (Tas);
 - (vii) the *Wrongs Act 1958* (Vic); and
 - (viii) the *Civil Liability Act 2002* (WA).
- (b) To the maximum extent permitted by law, the operation of the Proportionate Liability Act is excluded in relation to all and any rights, obligations and liabilities under this Subcontract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law.
- (c) The Subcontractor further agrees that:
 - (i) in each contract with each Relevant Person into which it enters for the carrying out and completion of the whole or any part of the Subcontractor's obligations under this Subcontract, it will include provisions that, to the extent permitted by law, effectively exclude the operations of the Proportionate Liability Act in relation to all rights, obligations or liabilities under such contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or in tort (including negligence), in equity, under statute or otherwise at law; and
 - (ii) it will require and ensure that each Relevant Person will include in any further contract that it enters into with others for the carrying out and completion of the whole or any part of the Subcontractor's obligations under this Subcontract, provisions that, to the maximum extent permitted by law, each such further contract will include provisions that effectively exclude the operation of the Proportionate Liability Act in relation to all rights, obligations or liabilities under such further contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract, in tort (including negligence), in equity, under statute or otherwise at law.
- (d) The Subcontractor indemnifies Downer against any Loss or Claim which Downer suffers or incurs in respect of a breach by the Supplier of clause 36(c).
- (e) This clause 36 will survive the expiry or termination of this Subcontract or part thereof

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Subcontract Details

Part A

Item 1	Downer's Representative	Clause 1.1	Jason Briscoe
Item 2	Date for Practical Completion	Clause 1.1	18 March 2021
Item 3	Head Contract	Clause 1.1	Transport Access Program (TAP) 3 Tranche 3 – Easy Access Station Upgrades Managing Contractor Framework Agreement: ISD-15-4742-12 – Birrong Station
Item 4	Site	Clause 1.1	Birrong Stations as per Exhibit E Contract Specific Requirements
Item 5	Principal	Clause 1.1	Transport for New South Wales
Item 6	Superintendent	Clause 1.1	James Hill
Item 7	Subcontract Sum	Clause 1.1	\$251,760.12 (Refer to the Schedule 1 - Pricing Schedule)
Item 8	Subcontractor's Representative	Clause 1.1	MACIEJ SZKUDLAREK
Item 9	Work	Clause 1.1	The construction and completion of building work and associated works as more particularly described or reasonably to be inferred from Schedule 1 – Scope of Works, Drawings and Specifications.
Item 10	Date for commencement	Clause 3	14/12/2020
Item 11	Governing law	Clause 1.1(a) Clause 32.2(a)	New South Wales
Item 12	Subcontractor's process agent (where Subcontractor not incorporated in Australia)	Clause 32.2(d)	
Item 13	Currency	Clause 1.2(i)	Australia Dollar
Item 14	Place for Payments	Clause 1.2(i)	(If nothing stated, then Downer's address.)
Item 15	Hours and days for access to the Site	Clause 3.1(b)	As per Exhibit E Contract Specific Requirements
Item 16	Subcontract Documents	Clause 1.1, clause 6	<ol style="list-style-type: none"> 1. Formal Instrument of Agreement; 2. Special Conditions of Subcontract, if any, as listed in Part C of the Subcontract Details; 3. General Conditions of Subcontract (including Schedules); and 4. Drawings and Specifications as listed in the Scope of Works.
Item 17	What obligations of the Subcontractor with respect to design of the Work are excluded	Clause 5	All design excluded other than temporary works design by an AEO accredited Designer / Consultant
Item 18	Are retention monies to be deducted in lieu of provision of Bank Guarantees	Clause 8.2	Yes
Item 19	Bank Guarantees	Clause 8.1	5% of Subcontract Sum (in 2 x 2.5% each of the Subcontract Sum)
Item 20	Retention moneys to be deducted	Clause 8.2	5%
Item 21	Percentage by which security reduced	Clause 8.4	50%

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Item 22	Public liability and products liability insurance to be taken out by Subcontractor	Clause 9.2	Written on an occurrence basis with a limit of indemnity not less than \$20,000,000 for each and every occurrence, and in the case of product liability, no less than \$20,000,000 in the aggregate during any 12 month period of insurance, which covers the liability of the Subcontractor for bodily injury to any third party, third party property damage, and advertising liability. The insurance must be in force prior to the date of this Subcontract and be maintained until the expiry of the Defects Liability Period.
Item 23	Contract works insurance	Clause 9.2	For an amount not less than the total Subcontract Sum plus 20% covering all things referred to in clause 13.5 against loss or damage resulting from any cause until the Subcontractor ceases to be responsible for their care, including the Subcontractor's liability under clause 13.5 and things in storage off Site and in transit to the Site. The insurance must be in force prior to the date of this Subcontract and be maintained until the expiry of the Defects Liability Period.
Item 24	Motor vehicle insurance	Clause 9.2	Covering all mechanically propelled vehicles that are registered, or capable of being registered, for road use and are at any time used in connection with this Subcontract including, as a minimum: (i) insurance that is compulsory under applicable laws governing the use of motor vehicles and liability for personal injury or death; and (ii) liability insurance for third party property damage with a sum insured of not less than \$20,000,000 per occurrence. The insurance must be in force prior to the date of this Subcontract and be maintained until the expiry of the Defects Liability Period.
Item 25	Workers compensation insurance to be taken out by Subcontractor	Clause 9.2	As required by law in the State or Territory in which the Work is being carried out.
Item 26	Professional indemnity Insurance to be taken out by Subcontractor	Clause 9.2	Not less than \$10,000,000 covering the Subcontractor's professional responsibilities to Downer. The insurance must be in force prior to the date of this Subcontract and be maintained for 6 years after expiry of the Defects Liability Period.
Item 27	Work insurance to be taken out by Downer	Clause 9.4(a)	As required by Head Contract
Item 28	Key Personnel	Clause 7.3(d)	Project Manager – Mathew McCrohon Site Manager (Heritage) - Francois Crespel Contracts Administrator – Agnes Osinka (off-site) Site Engineer – Sheyne Cox WH&S Manager – Geoff Rowland
Item 29	Approvals not being obtained by the Subcontractor	Clause 17.2	
Item 30	Defects Liability Period	Clause 19	Commencing at 4:00pm on the Date of Practical Completion and continuing until the later of: (i) the date which is 12 months after the date on which Downer notifies the Subcontractor that the Head Contract Works have achieved completion in accordance with the Head Contract.
Item 31	Delay Costs maximum amount per day	Clause 21.6(a)	\$0

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Item 32	Date for submission of progress claims	Clause 22.1	<p><i>Only as follows:</i></p> <p>(i) <i>from the commencement of the Work until the earlier of:</i></p> <p style="padding-left: 20px;">(i) <i>the date on which Downer gives the certificate of Practical Completion pursuant to clause 23.2;</i></p> <p style="padding-left: 20px;">(ii) <i>the date on which the Subcontract is terminated; and</i></p> <p style="padding-left: 20px;">(iii) <i>the date on which Work is taken out of the Subcontractor's hands in accordance with clause 27.3,</i></p> <p><i>once per month, claimable on the 20th day of each month for Work performed and submit with the following:</i></p> <p style="padding-left: 20px;">(i) <i>Subcontractor's Statement;</i></p> <p style="padding-left: 20px;">(ii) <i>Contractor's Certificate of Construction Compliance;</i></p> <p style="padding-left: 20px;">(iii) <i>COC for Insurances;</i></p> <p style="padding-left: 20px;">(iv) <i>Aboriginal Participation Plan, Apprentice reporting and all other required report as per the Subcontractor Management Pack for Social Procurement and Sustainability ISCA;</i></p> <p style="padding-left: 20px;">(v) <i>QA documents; and</i></p> <p style="padding-left: 20px;">(vi) <i>Any other documents required under the Subcontract;</i></p> <p>(ii) <i>after the date on which Downer gives the certificate of Practical Completion in accordance with clause 23.2:</i></p> <p style="padding-left: 20px;">(i) <i>once on and from the date of the certificate of Practical Completion; and</i></p> <p style="padding-left: 20px;">(ii) <i>once in accordance with clause 22.4(a);</i></p> <p>(iii) <i>A separate Progress Claim and a separate Invoice is to be submitted for each Project separately;</i></p> <p>(iv) <i>Invoice must be addressed to Downer EDI Works Pty Ltd with Downer's Purchase Order number; and</i></p> <p>(v) <i>Invoice must be submitted to supplier.invoiceonly@downergroup.com, note that Downer accepts only one attachment per email at this email address so if needed then timesheet / dockets / substantiation etc to be attached with the invoice.</i></p>
Item 33	Unfixed plant and materials for which progress claims may be made	Clause 22.3(a)	
Item 34	Interest rate on overdue payments	Clause 22.5	<p>The rate of interest will be the rate from time to time prescribed for judgement debts under the Uniform Civil Procedure Rules 2005 (NSW). Interest will be compounded at six monthly intervals.</p> <p>This will be the party's sole entitlement to interest, including damages for loss of use of, or the cost of borrowing, money.</p>
Item 35	Percentage amount for profit and overheads	Clause 14.3(a)(ii) Clause 22.7	5%
Item 36	Liquidated damages rate	Clause 23.3	\$3,000.00 per calendar day capped at 10% of Subcontract Sum
Item 37	Authorised nominating authorities	Clause 31.3	Resolution Institute (formerly known as LEADR & IAMA)
Item 38	Address and email for service of notices	Clause 32.1	<p>Downer's details</p> <p>Address: Trinita Business Campus, 39 Delhi Road, North Ryde NSW 2113</p> <p>Email: Jason. Briscoe @downergroup.com</p>

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			Subcontractor's details	
			Address: 743-745 The Horsley Dr, Smithfield NSW 2164	
			Email: contact@dalski.com.au	
Item 39	Secondary Subcontracting	Clause 10.2	Work by Subcontractor's consultants	Work by others
Item 40	Legal Requirements (i) Those already accepted under the Head Contract Clause 11.1	Clause 11		
	Those excepted under the Subcontract	Clause 11.1		
Item 41	Time for payment	Clause 22.2(d)	20 Business Days after receiving a progress claim made in accordance with clause 22.1	
Item 42	Subcontractor's security for unfixed plant and materials	Clause 22.3(a)		
Item 43	Dispute resolution method	Clause 28.4	<p>The dispute resolution method is: Arbitration</p> <hr/> <p>Where the dispute resolution method is arbitration: The arbitration will be finally resolved under the Resolution Institute Arbitration Rules. There will be one arbitrator, appointed in accordance with the Resolution Institute Arbitration Rules. The arbitrator must give written reasons for their award. The seat of the arbitration will be Sydney, NSW and the arbitration proceedings (including all hearings) will take place in Sydney, NSW. The arbitration will be conducted in English.</p>	
Item 44	Commonwealth Building Code	Schedule 13 and clause 1.5	<p>Does Schedule 13 apply? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	
Item 45	Limitation of Liability	Clause 9.8	100% of the Subcontract Sum (as adjusted in accordance with this Subcontract).	



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Part B

Provisional Sums

Clause 22.7

Not Applicable



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Part C

Special Conditions

SC1

The Subcontractor and its employees are required to utilise the Downer near miss process and hotline for any near misses.

SC2

The Subcontractor understands that Downer is bound by a Framework Agreement for Transport Access Program – Easy Access Station upgrades Managing Contractor Contract (collectively the “Head Contracts”) with Transport for New South Wales and that the Head Contracts contain provisions which require the Subcontractor to adhere to. The Subcontractor agrees that where the Head Contracts place an obligation on Downer’s Subcontractor/s or for Downer to ensure that its Subcontractors comply with or do something or sign a schedule from the Head Contracts, then where such obligation exists, the Subcontractor must adhere to that obligation within the time period required by the Head Contracts. Where a time period is not stated, the Subcontractor must adhere to such obligation promptly and without delay. A copy of the Head Contracts is available for the review of the Subcontractor upon the Subcontractor’s request in writing. Such obligations include (but are not limited to) the below conditions:

SC3

Any Subcontractor who has made an admission to the Independent Commission Against Corruption that it has engaged in; or in respect of whom the Independent Commission Against Corruption has made a finding that it has engaged in, corrupt conduct as defined in the Independent Commission Against Corruption Act 1988 (NSW); or any Subcontractor employing an employee in respect of whom paragraph above apply is a Prohibited Subcontractor and is not permitted to perform the work. Any Subcontractor who becomes a Prohibited Subcontractor may be terminated and in such circumstances will not be entitled to any claim against Downer or the Principal as a result of such termination.

SC4

Not Used

SC5

The Subcontractor must comply with Downer’s Management Plan as listed below but not limited to require under the Works brief and TSR

Document Name
Project Contract Management Plan
Work Health and Safety Management Plan
Construction Environmental Management Plan (CEMP)
Construction and Site Management Plan
Quality Management Plan
Risk Management Plan
Community Liaison Management Plan
Heritage Management Plan
Design Management Plan
Value for Money Management Plan

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Emergency Management Plan
Testing and Commissioning Management Plan
Subcontractor Management Pack

SC6

The Subcontractor must cooperate and coordinate as directed by Downer with Other Contractor and Interface Contractors. Other Contractor means any contractor, consultant, artist, tradesperson or other person engaged by the Principal or others to do work, other than Downer. Interface Contractors means an Other Contractor Sydney Trains/NSW Trains/NSW Trains subcontractors and as detailed in the Works Brief or otherwise identified by the Principal's Representative as an Interface Contractor that is carrying out, or that will carry out, Interface Work.

SC7

Head Contract Clause 2.2 - Compliance with Law

(g) Without limiting the Subcontractor's obligations under any other clause of this Subcontract, insofar as the Subcontractor, in carrying out the Subcontractor's Activities, is:

- (i) a person conducting a business or undertaking that designs plant, substances or structures to whom section 22 of the Work Health and Safety Act 2011 (NSW) applies;
- (ii) a person conducting a business or undertaking that manufactures plant, substances or structures to whom section 23 of the Work Health and Safety Act 2011 (NSW) applies;
- (iii) a person conducting a business or undertaking that imports plant, substances or structures to whom section 24 of the Work Health and Safety Act 2011 (NSW) applies;
- (iv) a person conducting a business or undertaking that supplies
- (v) plant, substances or structures to whom section 25 of the Work Health and Safety Act 2011 (NSW) applies; or
- (vi) a person conducting a business or undertaking that installs, constructs or commissions plant or structures to whom section 26 of the Work Health and Safety Act 2011 (NSW) applies, the Subcontractor must comply with the applicable obligations under the WHS Legislation.

(h) Without limiting the Subcontractor's obligations under any other clause of this Subcontract, the Subcontractor must:

- (i) ensure that, if any Law, including in the State or Territory in which the Works are situated or the Works are carried out (as the case may be), require that:
 - A. a person:
 - 1) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or
 - 2) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed

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qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or

B. a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;

(ii) not direct or allow a person to carry out or use plant or substance at a workplace unless the requirements of clause 2.2(h)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and

(iii) if requested by the Downer's Representative, the Principal's Representative or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal's Representative before the Subcontractor (as the case may be) commences such work.

(j) The parties acknowledge and agree that (i) the Authority Approvals which are in existence as at the date of this Contract include those specified in Exhibit K.

SC8

Head Contract clause 2.4 – Services

Not Used

SC9

Site and Site Access

Refer to Exhibit E - Contract Specific Requirements for information on Site and Site Access. Where the Principal puts an obligation on Downer the same obligation applies to the Subcontractor

SC10

Head Contract Clause 14.5 - Principal's Common Rights After Take-Out or Termination

If:

- (a) the Principal:
 - (i) exercises its rights under clause 14.3(a)(i) of the Head Contract; or
 - (ii) terminates the Contract under clauses 14.3(b), 14.4 or 14.9 of the Head Contract;
- (b) Downer repudiates the Contract and the Principal otherwise terminates this Contract; or
- (c) the Contract is frustrated under the Law,

then Downer will novate to the Principal or the Principal's nominee those Subcontracts between Downer and its Subcontractors that the Principal directs. The Subcontractor must participate in any novation required by the Principal.

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SC11

The Subcontractor must supervise its workers and any subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and the TfNSW Standard Requirements in relation to the WHS management on the Site and Extra Land.

SC12

Head Contract Clause 4.7 - ASA Compliance

- (a) Without limiting or otherwise restricting clauses 4.7(c) and 4.7(d), if a Project Limited Authorisation has been granted, the Subcontractor must:
 - (i) ensure that the Project Limited Authorisation is held and maintained for so long as the Subcontractor's Activities are carried out;
 - (ii) provide to the ASA any document, information or other things reasonably required by the ASA under, out of or in connection with the Project Limited Authorisation within any time period required by the ASA (acting reasonably); and
 - (iii) comply (and must ensure that its subcontractors and all personnel for which the Subcontractor is responsible comply) with the conditions of the applicable Project Limited Authorisation.

- (b) Without limiting or otherwise restricting clauses 4.7(c) and 4.7(d), if the Subcontractor or its subcontractors have ASA Authorisation to carry out the Asset Lifecycle Services or obtain that ASA Authorisation prior to Completion, the Subcontractor must:
 - (i) ensure that ASA Authorisation to carry out the Asset Lifecycle Services is held and maintained for so long as the Subcontractor's Activities are carried out; and
 - (ii) on and from the date that ASA Authorisation was granted, comply (and must ensure that its subcontractors and all personnel for which the Subcontractor is responsible comply) with the conditions of the applicable ASA Authorisation.

- (c) The Contract must (and must ensure that its subcontractors and all personnel for which the Subcontractor is responsible):
 - (i) implement and comply with any ASA Requirements applicable to the Asset Lifecycle Services;
 - (ii) immediately notify the Principal's Representative in writing of any non-compliance with clauses 4.6 and 4.7;
 - (iii) cooperate fully with the ASA in the performance of the ASA's functions;
 - (iv) provide access to premises and resources as reasonably required by the ASA, including so that the ASA can effectively carry out its review, surveillance and audit functions;
 - (v) comply with the directions, instructions and requirements issued by the ASA;

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- (vi) notify the ASA of any matter that could reasonably be expected to affect the exercise of the ASA's functions;
 - (vii) provide the ASA with any information relating to its activities or any documents or other things reasonably required by the ASA in the exercise of its functions; and
 - (viii) provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to cooperate fully with the ASA and to implement and comply with ASA Requirements.
- (d) The Subcontractor acknowledges and agrees that it is not entitled to make (and neither the Principal nor the ASA will be liable upon) any Claim arising out of or in connection with the requirements to obtain, or any delays or failure by the ASA in granting the Subcontractor or its subcontractors, Project Limited Authorisation or ASA Authorisation or the obligation to comply with ASA Requirements with respect to Project Limited Authorisation or ASA Authorisation.

SC13

Head Contract Clause 5.7 - Ownership of Contract Documentation and Methods of Working

Where required by the Principal;

- (i) title to and Intellectual Property in or in relation to the Contract Documentation prepared by the Subcontractor will vest upon its creation for the purposes of this Contract in the Principal;
- (ii) to the fullest extent permitted by Law, the Subcontractor hereby assigns to the Principal all of its rights, titles, and interests in, and to, all Intellectual Property in or in relation to the Contract Documentation prepared by the Subcontractor, whenever created; and
- (iii) upon request by the Principal, the Subcontractor must do all things necessary to vest that title or that Intellectual Property in the Principal.

SC14

Head Contract Clause 5.8 - Delivery Up of Contract Documentation

If this Contract is frustrated or terminated the Subcontractor must:

- (a) immediately deliver the original and all sets and copies of all Contract Documentation (whether complete or not), including fully detailed electronic versions in unlocked native format (with all logic links intact and nothing hidden or protected), then in existence to Downer; and
- (b) provide such details, memoranda, explanations, documentation and other assistance as Downer requires in relation to the Contract Documentation.

SC15

If required by the Principal, Downer is required to provide the Principal's Representative with a copy of the executed subcontract agreement including the Works Brief or Design Documentation relevant to this agreement, in signing this Contract the Subcontractor agrees to this.

SC16

The Subcontractor must:

- (i) execute and submit to Downer within 3 days of this Subcontract a Confidentiality Undertaking in the form in Appendix 1;

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- (ii) ensure that all employees of the Subcontractor that have access to the information described in the Confidentiality Undertaking are aware of their obligations under the terms of the Confidentiality Undertaking; and
- (iii) ensure that each Subcontractor, including suppliers and Consultants, to the Subcontractor execute and submit a Confidentiality Undertaking to Downer.

SC17

Where a Subcontractor is to carry out design work or other professional services, unless not required by the Principal's Representative, the Subcontractor is required to execute a Deed in the form of Appendix 2 and provide this to Downer within 2 days of the signing of this Subcontract. For avoidance of doubt in Appendix 2 the Consultant means the Consultant or the Subcontractor whoever has executed this agreement.

SC18

Head Contract Clause 7.9 - Subcontractor Warranties

The Consultant agrees and acknowledges that Downer and its Subcontractor has an obligation to provide the warranty as described in this special condition and therefore the Consultant shall prepare Design and Design Documentation that comply with the requirements of this clause.

- (a) As a condition precedent to Completion of the Works or a Portion, the Subcontractor must procure and provide the Principal with the warranties described in Exhibit G or elsewhere in this Subcontract or the Contract:
 - (i) from the relevant Subcontractor undertaking or supplying the work or item the subject of the warranty;
 - (ii) in favour of, and directly enforceable by, the Principal and any other entity nominated by the Principal's Representative from time to time against the relevant Subcontractor; and
 - (iii) in a form set out in Appendix 3
- (b) No warranty from a Subcontractor will be construed in any way to modify or limit any of the rights, powers or remedies of the Principal or Downer against the subcontractor whether under the subcontract or otherwise.
- (c) If the Subcontractor is unable to or fails for any reason to provide any warranty from its Subcontractor required by this subcontract:
 - (i) the Subcontractor is deemed to have provided the Subcontractor warranty itself on like terms;
 - (ii) Downer will be entitled to elect to take an assignment of all the right, title and interest in the Subcontractor's rights against the Subcontractor's Subcontractor in relation to the Subcontractor's Activities; and
 - (iii) for the purpose of clause (c)(ii) of this Special Condition, the Subcontractor irrevocably appoints Downer as its lawful attorney to execute any instrument necessary to give effect to the assignment.

No assignment under this clause will be construed in any way to modify or limit any of the rights, powers or remedies against the Subcontractor whether under the subcontract or otherwise

SC19

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Head Contract Clause 7.20 - Cleaning Up

In carrying out the work, the Subcontractor must:

- (a) keep the Site, Extra Land and the Works clean and tidy and free of refuse;
- (b) regularly remove rubbish, litter, graffiti and surplus material from the Site and Extra Land; and
- (c) as a condition precedent to Completion of the Works or a Portion, remove all rubbish, surplus materials, Construction Plant and Temporary Works from the Site and Extra Land or the part of the Site or Extra Land relevant to the Works or the Portion.

SC20

Head Contract Clause 7.21 - Safety

- a) The Subcontractor must ensure that the Subcontractor's Activities are carried out:
 - (i) safely and in a manner that does not put the health and safety of persons at risk; and
 - (ii) in a manner that protects property.
- b) If Downer's Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the Subcontractor's Activities, Downer's Representative may direct the Subcontractor to change its manner of working or to cease working.
- c) The Subcontractor must:
 - (i) ensure that in carrying out the Subcontractor's Activities:
 - A. it complies with all Law, including the WHS Law, and other requirements of this Contract for work health, safety and rehabilitation management;
 - B. all Subcontractors comply with the requirements referred to in this special condition and their respective obligations under the WHS Legislation; and
 - C. it complies with its obligations under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
 - (ii) notify Downer's Representative immediately (and in the event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Subcontractor's Activities, unless otherwise directed by Downer;
 - (iii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein;

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- (iv) provide Downer's Representative with the written assurances obtained pursuant to clause (c)(iii) of this special condition, together with written assurance(s) from the Subcontractor about the Subcontractor's ongoing compliance with the WHS Legislation;
 - (v) provide Downer's Representative with a written report at each meeting as directed, on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, this special condition, or any other relevant matters as Downer's Representative may require from time to time, including a summary of the Subcontractor's compliance with the WHS Legislation;
 - (vi) consult, cooperate and coordinate with all Other Contractors, Principal and Downer to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
 - (vii) exercise a duty of the utmost good faith to Downer in carrying out the Works to enable Downer to discharge Downer's duties under the WHS Legislation;
 - (viii) ensure that it does not do anything or fail to do anything that would cause Downer to be in breach of the WHS Legislation; and
 - (ix) ensure its subcontracts include provisions equivalent to the obligations of this special condition.
- d) Without limiting clause 17.14 of the Head Contract Downer may take any action necessary to protect or to prevent or minimise risks to, the Works, the Environment, other property or the health or safety of people.
- e) If the action taken by Downer is action which the Subcontractor was required to take under this Contract but did not take, the amount of any penalty, fine, damage, expense, cost (including any reasonable legal fees), loss or liability that Downer suffers or incurs arising out of or in any way in connection with:
- (i) taking the action contemplated in the clause (d) of this special condition; or
 - (ii) the Subcontractor's failure to take that action, will, except to the extent prohibited by Law, be a debt due from the Subcontractor to Downer.

SC21

Except for the purpose of achieving Completion, the Subcontractor must not remove from the Site any:

- (a) significant materials or major items of Construction Plant; or
- (b) materials or Construction Plant specified in any written notice issued by Downer, without the prior written approval of Downer, which approval will not be unreasonably withheld.

SC22

Head Contract clause 7.24 Rail Safety

- (a) In carrying out any part of the Subcontractor's Activities which require Accreditation as a Rail Infrastructure Manager, the Subcontractor:

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- (i) must comply with all conditions of the Principal's Accreditation as a Rail Infrastructure Manager and the Principal's Safety Management System;
 - (ii) must not do anything that may cause the Principal to breach its obligations under the Rail Safety National Law; and
 - (iii) must ensure that the Subcontractor's Subcontractors engaged in or in connection with the Subcontractor's Activities, comply with clauses (a)(i) and (a)(ii) of this special condition.
- (b) In carrying out any part of the Subcontractor's Activities which require Accreditation as a Rolling Stock Operator, the Subcontractor must:
- (i) ensure that the Subcontractor, or one of the Subcontractor's Subcontractors, holds the necessary Accreditation for that part of the Subcontractor's Activities; and
 - (ii) comply with the conditions of that Accreditation.
- (c) Without limiting or otherwise affecting any other provision under this Subcontract, the Subcontractor must, and must ensure that the Subcontractor's Subcontractors, comply with all obligations under the Rail Safety National Law including entering into interface agreements required by Part 3 of the Rail Safety National Law in respect of any part of the Subcontractor's Activities which require Accreditation as a Rolling Stock Operator.
- (d) To the extent not prohibited by Law, the Subcontractor must indemnify the Principal and Downer against any damage, expense, loss or liability suffered or incurred by the Principal or Downer arising out of or in any way in connection with the Subcontractor's failure to comply with this special condition.

SC23

Head Contract Clause 9.7 Industrial Relations

- (a) The Subcontractor must in carrying out the Subcontractor's Activities:
- (i) assume sole responsibility for and manage all aspects of industrial relations for the Subcontractor's Activities;
 - (ii) ensure all Subcontractors manage all aspects of the industrial relations with their employees appropriately;
 - (iii) ensure that the rates of pay and conditions of employment specified in all relevant industrial, enterprise and project based agreements and awards, and any relevant Law, for all employees engaged in any capacity by any person in connection with the Subcontractor's Activities, are always observed in full;
 - (iv) keep the Downer's Representative fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the Subcontractor's Activities and Other Subcontractors' activities;
 - (v) comply with all the requirements of the NSW Code and

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- the NSW Guidelines;
- (vi) conduct its industrial relations affairs in accordance with the Workplace Relations Management Plan developed and submitted by the Subcontractor as part of the Contract Management Plan, in accordance with the TfNSW Standard Requirements;
 - (vii) prepare, document and implement a project Workplace Relations Management Plan which must be based on the draft outline Industrial Relations Management Plan (if any) submitted with the Subcontractor's Tender;
 - (viii) not commence any work on the Site or Extra Land until the Workplace Relations Management Plan has been submitted to the Downer's Representative and Downer's Representative has not rejected it;
 - (ix) submit to the Downer's Representative, before beginning work on the Site or Extra Land, a statement detailing:
 - A. the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;
 - B. the names of each award or enterprise agreement that is likely to cover the Subcontractor and its Subcontractors involved in the Subcontractor's Activities; and
 - C. the names of those responsible for coordinating industrial relations for the Subcontractor's Activities;
 - (x) not do, or omit to do, anything that is, or is likely to be, prejudicial to the performance of the Subcontractor's Activities;
 - (xi) before beginning work on the Site or Extra Land, submit a statement on the Subcontractor's letterhead and signed by an authorised person, attesting to the Subcontractor's compliance, in the preceding twelve months, with all employment and legal obligations, including:
 - A. payment of remuneration to employees;
 - B. annual leave provisions;
 - C. Long Service Leave Payment Scheme registration;
 - D. obligations to register workers under the Building and Construction Industry Long Service Payments Act 1986 (NSW);
 - E. workers' compensation insurance, including self- insurance arrangements;
 - F. superannuation fund membership and contributions; and
 - G. over-award payments such as redundancy fund contributions; and
 - (xii) continue to provide during the Subcontractor's Activities

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appropriate information to verify compliance with the awards, enterprise and workplace agreements and all other legal obligations relating to the employment of people for the Subcontractor's Activities.

- (b) If the Subcontractor engages an independent industry or employer association or other specialist organisation to audit and verify compliance with employment and legal obligations, a statement or declaration from that organisation may be submitted instead of the statement by the Subcontractor under the clause (a)(ix) of this special condition.
- (c) The industrial relations requirements contained in this Contract, the NSW Code and the NSW Guidelines:
 - (i) are in addition to, but are not in substitution for, any requirements of Law; and
 - (ii) do not limit the powers of the Principal or the liabilities and responsibilities of the Subcontractor.

SC24

Head Contract clause 9.11 Financial Assessment

the Subcontractor acknowledges and agrees that:

- (a) the Principal may, during the term of the Contract, either itself, or through the engagement of private sector service providers, undertake ongoing financial assessments (Financial Assessment) of the Subcontractors;
- (b) the Financial Assessment may be undertaken at three monthly (or longer) intervals from the date of commencement of the Works; and

it must, if requested by the Principal's Representative or Downer's Representative, within 10 Business Days of receiving such request, provide any documents, information and evidence as is reasonably required by the Principal's Representative under, out of, or in connection with the Financial Assessment.

SC25

The Subcontractor cannot assign, transfer or novate any of its rights or liabilities under this Subcontract without the prior written consent of Downer and except on such terms and conditions as are determined in writing by Downer

SC26

Head Contract Clause 9.16 TfNSW's Statement of Business Ethics

- (a) The Subcontractor must at all times comply with TfNSW's Statement of Business Ethics, a copy of which is available at www.transport.nsw.gov.au.
- (b) The Subcontractor in signing this subcontract acknowledges that it has received, read, understood and will comply with TfNSW's Statement of Business Ethics.
- (c) Prior to the engagement of any subcontractor by the Subcontractor, the Subcontractor must obtain a written acknowledgement from such

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subcontractor that it has received, read, understood and will comply with TfNSW's Statement of Business Ethics.

SC27

Head Contract Clause 9.17 NSW Code of Practice

NSW Code and NSW Guidelines

In addition to terms defined in this document, terms used in this special condition have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (**NSW Guidelines**) (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

1. Primary Obligation

- (a) The Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for Procurement (**NSW Code**) and NSW Guidelines.
- (b) The Subcontractor must notify Downer of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Subcontractor engages a Subcontractor, the Subcontractor must ensure that the Subcontract imposes on the Subcontractor equivalent obligations to those in this special condition, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (d) The Subcontractor must not appoint or engage another party in relation to the Works where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

2. Access and information

- (a) The Subcontractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors and related entities.
- (b) The Subcontractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises controlled by the Subcontractor, including but not limited to the Site;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the Works;
 - (v) have access to personnel; and
 - (vi) interview any person, as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Subcontractor, its Subcontractors and related entities.

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- (c) The Subcontractor, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

3. Sanctions

- (a) The Subcontractor warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (b) If the Subcontractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (c) Where a sanction is imposed:
- (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - A. record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
 - B. take them into account in the evaluation of future procurement processes and responses that may be submitted by the Subcontractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

4. Compliance

- (a) The Subcontractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Subcontractor is not entitled to make a claim for reimbursement or an extension of time from Downer, the Principal or the State of NSW for such costs.
- (b) Compliance with the NSW Code and NSW Guidelines does not relieve the Subcontractor from responsibility to perform the Subcontractor's Activities and any other obligation under the Subcontract or from liability for any Defect in the Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (c) Where a change in the Contract or the Works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Subcontractor must immediately notify Downer of the change, or likely change and specify:
- (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the NSW Code and NSW

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Guidelines will be, or is likely to be, affected by the change; and

- (iii) what steps the Subcontractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Project Work Health and Safety Management Plan),

and Downer will direct the Subcontractor as to the course it must adopt within 15 Business Days of receiving notice

SC28

Head Contract clause 13.6 (f) and 13.6(c) Insurance Obligations

When the Subcontractor performs any professional services (including Design Work) forming part of the Contractor's Activities it must:

- A. maintains professional indemnity insurance which:
- 1) covers the subcontractor's liability in respect of breaches of professional duty (whether owed in contract or otherwise) by the subcontractor or its subcontractors in carrying out the work under the relevant Subcontract;
 - 2) covers the subcontractor for liability to the Principal or Downer for the relevant minimum amount listed below;
- as detailed in Schedule 1 of the Head Contract
- 3) unless the subcontractor using its best endeavours is unable reasonably to procure such a term in the policy, includes at least one automatic reinstatement of the total limit of liability per annum after claims have been paid; and
 - 4) remains in place at least until the expiration of a 7 year period from completion of the relevant Subcontract works or professional services; and
- B. be obliged under the relevant Subcontract to comply with below in relation to the insurance referred to ensure the professional indemnity insurance: covers claims for breach of professional duty (whether owed in contract or otherwise) by the Subcontractor or its subcontractors in carrying out the Subcontractor's Activities;
- A. does not do anything which prejudices any insurance;
 - B. where required, rectifies anything which might prejudice any insurance;
 - C. reinstates an insurance policy if it lapses;
 - D. does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal's Representative;
 - E. immediately notifies the Downer's Representative of any event that may result in an insurance policy lapsing or being cancelled, and replaces that insurance policy prior to it lapsing or being cancelled; and
 - F. gives full, true and particular information to the insurer

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of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

SC29

Head Contract clause 13.9 - Notice of Potential Claim

The Subcontractor must

- (a) as soon as possible inform Downer in writing of any occurrence that may give rise to a claim under an insurance policy required by this Subcontract (except for the professional indemnity insurance policy);
- (b) keep the Downer informed of subsequent developments concerning the claim; and

ensure that its Subcontractors similarly inform their Subcontractor and Downer in respect of occurrences that may give rise to a claim

SC30

Head Contract clause 17.22 - Proportionate Liability

To the extent permitted by law, the Contract and this Subcontract excludes the Subcontractor from the application of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each Subcontract whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and

The Subcontractor must include, in any further contract that it enters into with a third party for the carrying out of the work under this Subcontract, a term that (to the extent permitted by law) excludes the application of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

SC31

The Subcontractor must sign the Subcontractors Statement in the form of Appendix 4 along with any Payment Claim and when requested by Downer.

SC32

The Subcontractor and the Consultant must sign and provide to Downer the Form of Subcontractor Deed in the form of Appendix 5 upon execution of this Subcontract or Consultancy Agreement. For avoidance of doubt in Appendix 5 the Subcontractor means the Consultant or the Subcontractor whoever has executed this agreement.

SC33

The Subcontractor must sign and provide to Downer the Contractor's Certificate of Construction Compliance in the form of Appendix 6 monthly with the Subcontractor's Progress Claim, and when otherwise requested by Downer

SC34

The Subcontractor must sign and provide to Downer the Contractor's Certificate of Completion in the form of Appendix 7 upon Completion of the Works / Portion.

SC35

The Subcontractor must comply with Downer's Subcontractor Management Pack– refer to Attachment of the RFT.

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SC36

The Subcontractor warrants that it has checked and conformed to the Design Documents, any changes required in Design Documents due to Subcontractor's negligence or error or any other reason will need to be approved by the Consultant/Designer engaged by Downer under the Head Contract. Downer will recover any costs incurred by the Consultant/Designer for changing Design Documents from the Subcontractor by using the rates provided in Appendix 8. The Subcontractor acknowledges and agrees that it will not make any claim against Downer and Downer is not liable to pay the Subcontractor such costs. For the clearance of doubt the changes in design includes as-built.

Design Documents means all design documentation including design standards, concrete mix designs, design reports, durability reports, construction descriptions, the drawings, shop drawings, digital records, business rules, system processes, computer software, specifications and other information, samples, models, prototypes, calculations, patterns, all other relevant data in electronic, computer readable and written or physical forms and the like required by the Subcontract and created (and including, where the context so requires, those to be created by the Subcontractor) for the construction of the Work and includes the Principal Design

SC37

The Subcontractor must execute Subcontractor Deed Poll in form of Appendix 9 and submit to Downer within 7 days of the date of the Subcontract.

SC38

The Subcontractor must comply with TfNSW Standard Requirement – refer to Attachment of the RFT.

SC39

The Subcontractor is responsible for Temporary Works and Temporary Works design. Temporary Works means any temporary works required to be carried out or provided by the Subcontractor for the purpose of the execution of the Subcontractor's Activities but not forming part of the Works.

SC40

The Subcontractor must comply with Sustainability Guideline Shortlist – refer to Attachment of the RFT

SC41

If required by Downer then employees and staff of the Subcontractor must undertake safety profiling by Downer's nominated supplier (Davidsons). The profiling is for psychometric assessment for the purpose of health and safety and will be required at Downer's discretion. Downer will arrange and pay for such assessments.

SC42

Clause 9.12 of the Head Contract - Employment of Aboriginal and Torres Strait Islander People

The Subcontractor must:

- (a) comply with the requirements of the NSW Government Policy on Aboriginal Participation in Construction (May 2015) Category 2;
- (b) within 35 days of the execution of this Contract, provide to the Principal an Aboriginal Participation Plan in accordance with the NSW Government Policy on Aboriginal Participation in Construction (May 2015) Category 2; and
- (c) provide, to the Principal, an Aboriginal Participation Report every 3 months in accordance with the format detailed in the NSW Government Policy on Aboriginal Participation in Construction (May 2015).

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SC43

Clause 9.15 of the Head Contract - Training Management

- (a) Subject to the express provisions of the Head Contract, the Subcontractor must comply with the NSW Procurement Board direction PBD-2016-02 Construction Apprenticeships (PB-2016-02).
- (b) Training management requirements specified in the Head Contract and compliance with PBD-2016-02 may be in addition to, but are not in substitution for, any training obligations of the Subcontractor under statute, industrial award, enterprise or workplace agreement, or other workplace arrangements approved under Federal or NSW law.
- (c) at least 10 days before starting work on the Site, the Subcontractor must document and submit a Project Training Management Plan which complies with the PBD-2016-02.
- (d) The Subcontractor must systematically manage its training management processes in accordance with the systems plans, standards and codes specified in the Head Contract.
- (e) The Subcontractor must demonstrate to the Downer's Representative, wherever requested, that it has met and is meeting at all times its obligations under the clause 9.14 of Head Contract
- (f) The Subcontractor:
- (i) Acknowledges that the target for the engagement of apprentices and trainees engaged by the Subcontractor to perform the Subcontractor's Activities is 20% (Training Target);
 - (ii) Must make reasonable endeavours to achieve the Training Target;
 - (iii) Provide written reports to the Downer's Representative quarterly, in a format set out below, and at such other times as may be requested by Downer's Representative, detailing the number of apprentices and trainees engaged by the Subcontractor in the Subcontractor's Activities against the Training Target; and
 - (iv) Provide Downer's Representative with all other assistance and information it requires in relation to the Subcontractor's performance against the Training Target in order for the Downer to comply with its reporting obligations at Law, including promptly making all relevant records available to the Downer's Representative after any written request by the Downer's Representative.

Report on training of apprentices and trainees

Requirement	Minimum targets (in terms of time worked)	Quantity achieved by Subcontractor for reporting period
Apprentice hours as a percentage of hours worked by qualified trades	20% of hours worked	<i>[insert]%</i>
Trainee hours as a percentage of hours worked by occupations with recognised traineeships:	20% of hours worked	<i>[insert]%</i>

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SC44

Clause 9.15 of the Head Contract - National Greenhouse and Energy Reporting Act 2007 (Cth)

The Subcontractor acknowledges and agrees that:

- (a) if any of the Subcontractor's Activities, or the activities of any of the Subcontractor's personnel, in connection with the Subcontractor's Activities (the "**Relevant Matters**") constitute a "facility" within the meaning of the NGER Legislation, then, for the purposes of the NGER Legislation, the Subcontractor has operational control of that facility and will comply with any obligations arising in respect of the Downer's activities under the NGER Legislation;
- (b) if, despite the operation of clause (a) of this special condition, the Downer or Principal incurs, or (but for this clause) would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with any of the Relevant Matters, and the NGER Legislation provides that such liability can be transferred by Downer, the Principal or the NSW Government or any of its agencies to the Subcontractor, the Subcontractor must, on the written request of Downer, do all things reasonably necessary to ensure the liability is transferred to the Subcontractor;
- (c) if Downer requests it, the Subcontractor must provide Greenhouse Data to Downer:
 - (i) to the extent that, in a manner and form that, and at times that, will enable Downer to comply with the NGER Legislation irrespective of whether the Principal or the Subcontractor or any other person has an obligation to comply with the NGER Legislation in connection with any Relevant Matters; and
 - (ii) otherwise as requested by Downer from time to time;
- (d) the Subcontractor must also provide to Downer all Greenhouse Data and other information which the Subcontractor provides to any other person under the NGER Legislation in connection with any Relevant Matters, at the same time as the Subcontractor provides that Greenhouse Data or other information to that other person;
- (e) the Subcontractor must:
 - (i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the Subcontractor to discharge its obligations under this special condition, and keep that Greenhouse Data for at least 7 years after the end of the year in which the Relevant Matters occur; and
 - (ii) permit any persons appointed or authorised by the Principal to examine, monitor, measure, copy, audit and/or verify the Greenhouse Data and co-operate with and provide all reasonable assistance to any such persons (including by doing such things as giving access to premises, plant and equipment, producing and giving access to documents and answering any relevant questions);
- (f) Downer may provide or otherwise disclose the Greenhouse Data and any other information which the Principal obtains under this special condition to any other person, and may otherwise use the Greenhouse Data and other information for any purpose as the Principal sees fit; and

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- (g) nothing in this special condition is to be taken as meaning that the Principal or Downer has agreed to perform any statutory obligation that the Subcontractor may have regarding the provision of Greenhouse Data to any Authority.

SC45

If no time or other information provided regarding submission of program/schedule then the Subcontractor must submit program including all its Subcontract's Activities as directed by Downer's Representative.

SC46

Teambinder is the authorized document management system for the Project. The Subcontractor will be given user access (for a small number of nominated personnel) to the Project on Downer Teambinder system for sending and receipt of contract correspondence and documentation. Notices, contract correspondence and documentation will not be acknowledged if sent via Microsoft Outlook or other electronic mail based system

SC47

For avoidance of the doubt the Contractor means Downer where it refers to the Contractor in this Special Conditions.

SC48

Design and Design Documentation – Head Contract clause 5

Not Used

SC49

If the Subcontractor's activities / Works include any work involving asbestos or asbestos decontamination, including stripping, encapsulation or removal, the Subcontractor or its specialist asbestos removal Subcontractor must before the Subcontractor commences, effect and have in place the asbestos liability insurance for \$20,000,000 for any one occurrence and in the aggregate, with insurers of the Required Rating and on terms satisfactory to Downer.



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Appendix 1 – Form of Confidentiality Undertaking

(Clauses 1.1 and 17.11(c)(i) of Head Contract)

To: Downer EDI Works Pty Ltd

We Dalski Pty Ltd the engaged Subcontractor body, undertake to treat as confidential all information received/generated from Transport for NSW (ABN 18 804 239 602) (Principal) in respect of work performed by the Principal.

The Consultant/Supplier/Contractor/Subcontractor hereby undertakes:

- (a) To disclose information to its employees only on a need-to-know basis;
- (b) Not to disclose information to any other person without first obtaining the written consent of the Principal;
- (c) To ensure that its employees to whom information is disclosed will comply with (a) and (b) above.

This undertaking will not apply to information about the Principal which is in the public domain (except where the availability of the information in the public domain is due to any unauthorised disclosure by the Consultant/Supplier/Contractor/Subcontractor, its employees or agents) or which was already known to the Consultant/Supplier/Contractor/Subcontractor.

Any breach of this undertaking by the Consultant/Supplier/Contractor/Subcontractor's employee or agent will constitute a breach of this undertaking by the Consultant/Supplier/Contractor/Subcontractor and at the direction of the Principal the Consultant/Supplier/Contractor/Subcontractor must institute proceedings or do whatever the Principal regards as reasonable to prevent or contain the breach.

The Consultant/Supplier/Contractor/Subcontractor undertakes that on request from the Principal it will forthwith return to the Principal all originals and copies of the confidential information, however embodied, supplied by the Principal and destroy all documents containing or prepared using any confidential information however embodied.

The Consultant/Supplier/Contractor/Subcontractor also undertakes to declare to the Principal any conflict of interests that exists or arises during the course of its engagement which may impinge on the objectivity or probity of the work performed. Such declarations are to be made as soon as the conflict of interests issues arises.

This undertaking will remain in force until each part of the confidential information is released by the Principal into the public domain.

Dated: 20/12/2020

SIGNED for and on behalf of:

Dalski Pty Ltd
(Print Company Name)

By: Martin Szkudlarek [Redacted Signature]
(Print Name) (Signature)

in the presence of: Dregory Drazkiewicz [Redacted Signature]
(Print Name) (Signature)

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Appendix 2 – Consultant Deed of Covenant

(Clause 7.7(a)(iv) of Head Contract)

This deed poll is made the _____ day of _____ 20____

To: **Transport for NSW (ABN 18 804 239 602)** of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 (the "**Principal**")

By: [_____] ("**Consultant**")

Recitals

- A. The Principal has engaged [_____] ("**Contractor**") to carry out certain works for the Principal by a contract dated [_____] ("**Contract**").
- B. The Contractor has engaged the Consultant by agreement dated [_____] ("**Subcontract**") to carry out the professional services to be performed under the Subcontract ("**Professional Services**") for the purposes of the performance of the Contractor's obligations under the Contract as they relate those design services.
- C. Under the Contract, the Contractor is required to procure the Consultant to execute this deed poll in favour of the Principal.

Operative

1. Duty of Care

- (a) The Consultant:
- (i) warrants to the Principal that:
- A. in performing the Professional Services, it will exercise the standard of skill, care and diligence that would be expected of a consultant experienced in and expert in the provision of the type of professional services required by the Principal;
- B. the Professional Services will be fit for the intended purposes disclosed in or reasonably able to be inferred from the Works Brief, which is an annexure to the Contract; and
- C. the Professional Services do not and will not infringe any patent, registered design, trademark or name, copyright or other protected right;
- (ii) acknowledges that:
- A. in performing the Professional Services it will owe a duty of care to the Principal; and
- B. it is aware that the Principal will be relying upon the skill and judgment of the Consultant in performing the Professional Services and the warranties given by the Consultant in this deed poll; and
- (iii) must act in good faith and in the best interests of the Principal and promptly advise the Principal about any matter in which the Consultant has been instructed by the Contractor to provide the Professional Services in a manner which is, or may result in an outcome which is, not in accordance with the requirements of the Contract, including without limitation:

Subcontract – Long Form

- A. where the Contractor's instructions in relation to design are not consistent with the Contract or may result in the Works not being fit for their intended purpose; or
 - B. where the Contractor's instructions require the Consultant to issue a certificate where the conditions for the issue of that certificate under the Contract have not been satisfied.
- (b) The Consultant must:
- (i) fully cooperate with each other consultant and contractor engaged by the Principal ("Other Contractor");
 - (ii) carefully coordinate and integrate the Professional Services with the services and work carried out by each Other Contractor;
 - (iii) carry out the Professional Services so as to minimise any interfering with, disrupting or delaying, the services and work carried out by each Other Contractor;
 - (iv) without limitation, provide whatever advice, support and cooperation is reasonable to facilitate the due carrying out of the services and work being provided by each Other Contractor;
 - (v) ensure title to and intellectual property (including any patent, registered design, trademark or name, copyright or other protected right) in or in relation to the Professional Services will vest upon its creation for the purposes of the Contract in the Principal;
 - (vi) obtain an assignment to the Principal from any third party who owns any intellectual property right in the Professional Services;
 - (vii) if any intellectual property rights in or in relation to documents, designs and computer programs created for the purposes of the Contract is not capable of being vested in the Principal because the Consultant itself does not own, and is unable at a reasonable cost to obtain ownership of, those rights, provide to the Principal an irrevocable licence to use that Intellectual Property, by sub-licence from the Consultant or direct licence from a third party; and
 - (viii) ensure that the intellectual property created for the purposes of the Contract is not used, adapted or reproduced other than for the purposes of the Contract without the prior written approval of the Principal (which will not be unreasonably withheld, but may be given subject to terms and conditions).
- (c) The Consultant must indemnify the Principal from and against:
- (i) any liability to or claim by any other person; and
 - (ii) all claims against, and costs, expenses, losses and damages, suffered or incurred by the Principal arising out of, or in any way in connection with:
 - (iii) the Consultant's breach of a term of, or warranty under, this deed poll; or
 - (iv) any actual or alleged infringement of any patent, registered design, trademark or name, copyright or other protected right.

2. Notices

- (a) Any notices contemplated by, or arising out of or in any way in connection with, this deed poll must be in writing and delivered to the relevant address or sent to the facsimile number shown below (or to a party's new address or facsimile number which

Subcontract – Long Form

that party notifies to the others):

- (i) to the Principal: c/o Level 5, Tower A
Zenith Centre
821 Pacific Highway
CHATSWOOD NSW 2067
Fax: (02) 9200 0290
- (ii) to the Consultant: **[Insert details]**
- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) A notice sent by facsimile will be taken to have been received on the next day after the day shown on the transmission slip showing the facsimile number of the party to whom it is addressed in accordance with clause 2.1, which is not a Saturday, Sunday or public holiday in New South Wales.
- (d) If the Consultant is a foreign company (as defined in the *Corporations Act*), the Consultant must within 14 days of the date of this deed poll:
 - (i) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this deed poll; and
 - (ii) obtain the process agent's consent to the appointment.
The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent.

3. Miscellaneous

- (a) This deed poll will be construed in accordance with the law of the State of New South Wales and the Consultant irrevocably submits to the jurisdiction of the Courts of that State.
- (b) This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal.



Subcontract – Long Form

Schedule

[INSERT DESCRIPTION OF PROFESSIONAL SERVICES] as more particularly described in the Subcontract.

Executed as a deed poll.

Signed Sealed and Delivered)
by the Consultant) [] by or in
the presence of:) (Signature)

.....
(Signature of Witness)

.....
(Name of Witness in Full)

Subcontract – Long Form

Appendix 3 – Form of Warranty

(Clause 7.9 of the Head Contract)

This Deed Poll is made the _____ day of _____ 20____

To: **Transport Construction for NSW (ABN 18 804 239 602)** of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 ("**Principal**")

[Add other beneficiaries as nominated by TfNSW] ("**Beneficiary**").

By: That person described in Item 1 of the Schedule ("**Warrantor**") which expression will include its successors and assigns)

Recitals

- A. The Warrantor has supplied the items described in Item 2 of the Schedule ("**Equipment**") to the person described in **Item 3** of the Schedule ("**Contractor**") or the person described in Item 4 of the Schedule, a subcontractor of the Contractor ("**Subcontractor**"), for the works ("**Works**") being carried out by the Contractor under the contract described in Item 5 of the Schedule ("**Contract**") with the Principal.
- B. It is a requirement of the Contract that the Contractor procure the Warrantor to give the following warranties in favour of the Principal and the Beneficiary with respect to the Equipment.

Operative

1. Quality

The Warrantor:

- (a) warrants to the Principal and the Beneficiary that the Equipment will be to the quality and standard stipulated by the Contract and will be of merchantable quality and fit for the purpose for which it is required; and
- (b) gives the warranty more particularly set out in Item 6 of the Schedule with respect to the Equipment.

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Equipment.

2. Replacement

The Warrantor warrants to the Principal and the Beneficiary that it will replace so much of the Equipment as within the period described in Item 7 of the Schedule:

- (a) is found to be of a lower quality or standard than that referred to in clause 1; or
- (b) shows deterioration of such extent that in the opinion of the Principal or the Beneficiary the Equipment ought to be made good or replaced in order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise.

3. Warrantor to bear cost

The Warrantor covenants to the Principal and the Beneficiary that it will bear the cost of any work necessary to any part of the Works to enable the requirements of clause 2 to be carried out or to make good the Works afterwards.



Subcontract – Long Form

4. Principal not liable

The Warrantor acknowledges to the Principal and the Beneficiary that nothing contained in this deed poll is intended to nor will render either the Principal or the Beneficiary in any way liable to the Warrantor in relation to any matters arising out of the Contract or otherwise.

5. This deed poll may not be revoked

This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal and the Beneficiary.

6. Governing Law

This deed poll is governed by the laws of the State of New South Wales.

7. Jurisdiction

The Warrantor irrevocably submits to the non-exclusive jurisdiction of the Courts of New South Wales.

8. Enforcement of this deed poll

For the avoidance of doubt this deed poll is enforceable by any of the Principal or the Beneficiary.

Subcontract – Long Form

Schedule

Item 1: Dalski Pty Ltd

743-745 The Horsley Drive, Smithfield. NSW.

2164

Item 2: Building Works At Birrong Station
(Recital A)

Item 3: Downer EDI Works Pty Ltd
(Recital A)

Item 4: Dalski Pty Ltd
(Recital A)

Item 5: Building Works at Birrong Station
(Recital A)

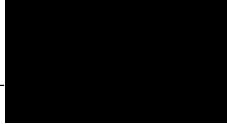
Item 6: Detailed Warranty of Warrantor
Clause 1(b))

Item 7: Period of Years
(Clause 2)

[As per Exhibit G] years from the expiry of the last "Defects Rectification Period" as defined in the General Conditions (including any extension under clause 8.6 of the General Conditions).

Executed as a deed poll.

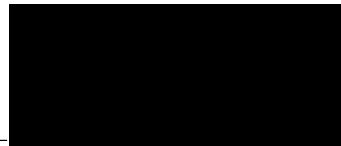
Executed by Dalski Pty Ltd (ABN 11 107 119 442) by or in the presence of:



Signature of Director

Gregory Drazkiewicz

Name of Director in full



Signature of Secretary/other Director

Martin Szkudlarek

Name of Secretary/other Director in full



Subcontract – Long Form

Appendix 4 – Subcontractor’s Statement

REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION (Note 1 - see back of form)

For the purposes of this Statement a “subcontractor” is a person (or other legal entity) that has entered into a contract with a “principal contractor” to carry out work.

This Statement must be signed by a “subcontractor” (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the “subcontractor” has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR’S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ABN:.....
(Business name)

of
(Address of subcontractor)

has entered into a contract with ABN:.....
(Business name of principal contractor)

(Note 2)

Contract number/identifier (Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive, (Note 4) subject of the payment claim dated:/...../..... (Note 5)

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor’s Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. (Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../.....(Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor’s Statement. (Note 9)
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor’s Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)



Subcontract – Long Form

(f) Signature..... Full Name.....

(g) Position/Title Date...../...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relation Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor. A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor’s business.
2. For the purpose of this Subcontractor’s Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.
 Section 127(6) of the *Industrial Relations Act 1996* defines remuneration ‘as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.’
 Section 127(11) of the *Industrial Relations Act 1996* states ‘to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.’
5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor’s Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor’s Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor’s Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business ‘in turn’ engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor’s Statements from your subcontractors.

Subcontract – Long Form

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Subcontract – Long Form

Appendix 5 – Form of Subcontractor Deed

(Clause 7.7(a)(v) of the Head Contract)

THIS DEED POLL is made on 11/11/2020 by Dalski Pty Ltd ACN. 107 119 442 of 743-745 The Horsley Drive, Smithfield NSW 2164 (the "**Subcontractor**").

RECITALS:

- A. **Transport for NSW (ABN 18 804 239 602)** of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 (the "**Principal**") has entered into a contract with [] ("**Contractor**") for the construction of [] ("**Works**").
- B. The Subcontractor has an agreement (the "**Subcontract**") with the Contractor for the execution and completion of the [] (the "**Subcontract Works**") for the Works.
- C. It is a condition of the Subcontract that the Subcontractor executes this Deed Poll.

THIS DEED WITNESSES THAT THE SUBCONTRACTOR HEREBY COVENANTS, **WARRANTS AND AGREES** with and for the benefit of the persons named in the Schedule as follows:

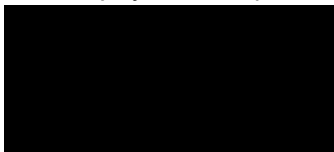
- 1. It will comply with its obligations under the Subcontract and upon completion of the Works, the Subcontract Works will satisfy the requirements of the Subcontract.
- 2. The persons named in the Schedule may assign or charge the benefits and rights accrued under this Deed Poll.
- 3. The Subcontractor:
 - (a) must if required by a written notice by the Principal to sign a deed in the form of the attached Deed of Novation (Attachment 1) with such substitute contractor as the Principal may nominate; and
 - (b) for this purpose irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars in and sign the attached Deed of Novation.
- 4. This Deed Poll is governed by the laws of the State of New South Wales.
- 5. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal.
- 6. The Subcontractor's liability in respect of a breach of a particular obligation under this Deed Poll will be reduced to the extent to which the Subcontractor has already paid money to or performed work for the Contractor in respect of that breach.

PERSONS NAMED IN THE SCHEDULE TO THE DEED POLL

Transport for NSW (ABN 18 804 239 602)

EXECUTED AS A DEED POLL.

Executed by Dalski Pty Ltd (**ACN 107 119 442**) by or in the presence of:



Signature of Director

Gregory Drazkiewicz

Name of Director in full



Signature or

Martin Szkudlarek

Name of Secretary/other Director in full

Subcontract – Long Form

Attachment 1 (to Appendix 5)

THIS DEED OF NOVATION is made on [] 20[] between the following parties:

1. [] ("**Substitute Contractor**")
2. [] ("**Original Contractor**")
3. [] ("**Subcontractor**").

RECITALS:

- A. By deed dated [] (the "**Deed**") between:
 - (i) **Transport for NSW (ABN 18 804 239 602)** of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 (the "**Principal**"); and
 - (ii) Original Contractor, the Principal engaged the Original Contractor to undertake the Works (as defined in the Deed).
- B. The Original Contractor has entered into an agreement ("**Subcontract**") with the Subcontractor for the execution and completion of the [] ("**Subcontract Works**") as part of the Works.
- C. The Principal has terminated the Deed and has engaged Substitute Contractor to complete the Works.
- D. The Principal and Substitute Contractor wish to effect a novation of the Subcontract. **THIS DEED WITNESSES** that in consideration, among other things, of the mutual promises contained in this deed, the parties agree:
 1. Substitute Contractor must perform all of the obligations of the Original Contractor under the Subcontract which are not performed at the date of this deed. Substitute Contractor is bound by the Subcontract as if it had originally been named in the Subcontract in place of Original Contractor.
 2. The Subcontractor must perform its obligations under, and be bound by, the Subcontract as if Substitute Contractor was originally named in the Subcontract in place of Original Contractor.
 3. This deed is governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of that state.

EXECUTED by the parties as a deed:
[Insert appropriate execution clauses]



Subcontract – Long Form

Appendix 6 – Contractor's Certificate of Construction Compliance

(Clauses 7.16(c) and 11.6(c)(ii) of the Head Contract)

CONTRACTOR'S CERTIFICATE OF CONSTRUCTION COMPLIANCE	
CONTRACTOR: Downer EDI Works Pty Ltd	
<u>WORK PACKAGE</u>	<u>DESCRIPTION</u>
<i>(Attach schedule of work packages if insufficient space)</i>	
<p>I certify that the procurement/construction of the work packages or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the Contract between the Principal and Downer EDI Works Pty Ltd, and comply with the requirements of the Contract, subject to the register of outstanding minor construction non conformance and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the work packages.</p>	
<p>NAME: _____ SIGNATURE: _____ DATE: / /</p> <p style="text-align: center;"><i>(Contractor's Representative)</i></p>	
<p>THIS SECTION MUST BE COMPLETED BY THE RELEVANT CONTRACTOR'S SUBCONTRACTOR/DESIGNER</p> <p>I certify that the procurement/construction of the work packages (one certificate per work package) or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the Contract between the Principal and Downer EDI Works Pty Ltd, and comply with the requirements of the Contract, subject to the register of outstanding minor construction non-conformances and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the work packages.</p>	
<p>NAME: _____</p>	
<p>SIGNATURE: _____ DATE: _____</p> <p style="text-align: center;"><i>(Contractor's Subcontractor/Designer) Dalski Pty Ltd</i></p>	



Subcontract – Long Form

Appendix 7 – Contractor's Certificate of Completion

(Definition of "Completion" in Clause 1.1 and Clause 12.3(c) of the Head Contract)

CONTRACTOR'S CERTIFICATE OF COMPLETION	
CONTRACTOR: Downer EDI Works Pty Ltd	
Description of Portion or Works: _____	
<p>I certify that the Completion of the above Portion/the Works has/have been achieved in accordance with the requirements of the Contract between the Principal and Downer EDI Works Pty Ltd, complies with the requirements of the Contract, subject to the register of unresolved issues attached.</p> <p>I further certify that:</p> <ul style="list-style-type: none"> (a) All Variation Orders (including concessions) are listed in the attached compliance register. (b) All identified Defects (including any non-conformities but excluding Defects accepted as minor by the Principal) have been satisfactorily rectified and their documentation closed out. (c) All required documentation has been submitted. (d) All notices regarding system deficiencies have been satisfactorily closed out. <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the Portion/the Works.</p>	
SIGNATURE: _____	SIGNATURE: _____
<i>(Contractor's Representative)(Contractor's Subcontractor/Designer) Dalski</i>	
DATE: _____	DATE: _____



Subcontract – Long Form

Appendix 8 – Schedule of Rates for Design Fee

If rates are not inserted here then Downer to provide

Subcontract – Long Form

Appendix 9 – Form of Subcontractor Deed Poll

(Clause 1.5 of Head Contract)

This deed poll ("**Deed Poll**") made the 11 day of September 2020

By: Dalski Pty Ltd ACN. 107 119 442 of 743-745 The Horsley Drive, Smithfield NSW 2164 ("**Subcontractor**"),

in favour of: Downer EDI Works Pty Ltd (ABN 66 008 709 608) of Trinita Business Campus, 39 Delhi Road, North Ryde. NSW. 2113 ("**Contractor**").

RECITALS

- A. Transport for NSW ("**TfNSW**") of Level 5, Tower A Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067, is responsible for developing [Insert] ("**Program**").
- B. As part of the Program TfNSW is responsible for procuring the execution and completion of certain works for the [insert details of project] (the "**Works**") on behalf of the Owner and the New South Wales Government, and has entered into a contract ("**Main Contract**") with the Contractor to achieve this.
- C. TfNSW is relying on Contractor to procure the Subcontractor to execute and complete the Works in accordance with the Main Contract.
- D. The TfNSW will suffer loss if the Contractor does not procure the Subcontractor to execute and complete the Works in accordance with the Main Contract.
- E. It is a condition of the Main Contract and this Subcontract that the Subcontractor executes this Deed Poll.

THIS DEED POLL WITNESSES THAT THE SUBCONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES with and for the benefit of the Contractor and TfNSW as follows:

1. It will comply with its obligations under the Subcontract, including with respect to achieving Completion of each Portion and the Works by the relevant Date for Completion.
2. Upon Completion of the Works, the Works will satisfy the requirements of the Main Contract.
3. In consideration of the Contractor making available to the Subcontractor Track Possessions the Subcontractor agrees that it must indemnify the Contractor against all costs, expenses, losses or damages suffered or incurred by the Contractor in respect of any delay to rail services or late return of Track Possessions arising out of or in connection with the Subcontractor's Activities.

The maximum liability which the Subcontractor will have to the Contractor pursuant to this clause for each event resulting in delay to rail services or for late return of a Track Possession will be determined on the basis of the maximum period by which any train was delayed by the event or late return of a Track Possession calculated by applying the following rates:

Period in which delay occurs	Rate per hour or part thereof
During peak hours	\$30,000
During all other hours	\$15,000


4. The aggregate of the Subcontractor's liability to the Contractor under this Deed Poll
 - (a) will not exceed the liability which the Subcontractor would have had under the Subcontract; and
 - (b) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Main Contract.

Subcontract – Long Form

5. Any provision of this Deed Poll which seeks to limit or exclude a liability of the Subcontractor is to be construed as doing so only to the extent permitted by law.
6. The Contractor may assign or charge the benefits and rights accrued under this Deed Poll.
7. This Deed Poll is governed by the laws of the State of New South Wales.
8. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Contractor.
9. Where terms used in this Deed Poll are defined in the Main Contract, those terms have the meaning given to them in the Main Contract.

Executed as a deed poll.

Executed by Dalski Pty Ltd **ABN 11 107 119 442**
by or in the presence of:



Signature of Director

Gregory Drazkiewicz

Name of Director in full



Signature of Secretary/other Director

Martin Szkudlarek

Name of Secretary/other Director in full



Subcontract – Long Form

Appendix 10 – Final Subcontractor Handover Checklist

Project: Precincts and Infrastructure - TAP3-MC1-T3&4				
Sub-Contractor: Dalski Pty Ltd				
Station: Birrong Station				
Date:				
THIS FORM IS TO BE COMPLETED BY THE SUB-CONTRACTOR AND VERIFIED BY THE DOWNER STATION PROJECT MANAGER PRIOR TO DEED OF RELEASE				
DOCUMENT	CHECKED BY	Comments		
Appendix A - WAE Drawing Register – By Downer				
Appendix B - WAE Drawings – By Downer				
Appendix C - Shop Drawings				
Appendix D - Asset Register				
Appendix E - Compliance Certificates				
Appendix F - Subcontractor O&M Manuals				
Appendix G - Cleaning Procedures				
Appendix H - Product Data Sheets				
Appendix I - Warranty Certificates (Warranties Schedule – Exhibit G)				
Appendix J - Red Line Mark-up				
Schedule 19 - Contractor's Certificate of Construction Compliance (Clauses 7.16(c) and 11.6(c)(ii))				
Schedule 21 - Contractor's Certificate of Completion (Definition of "Completion" in Clause 1.1 and Clause 12.3(c))				
Schedule 22 - Contractor's Certificate of Final Completion (Clause 12.8(d))				
DSS Submitted and closed out				
All relevant NCRs are Closed out				
Defects Identified (Attach Latest Defect Register)				
Quality Lots are closed out				
Products NATA Test Results provided				
ITPs & ITRs are closed out				
Survey Data Provided				
Calibration record Provided				
COMPLETED & VERIFIED BY				
Name	Company	Position	Signature	Date
	Dalski Pty Ltd	Project Manager		
	Downer EDI Works Pty Ltd	Project Manager		

Subcontract – Long Form

Exhibit G – LIST OF WARRANTIES REQUIRED FROM SUBCONTRACTORS

EXHIBIT G of the Head Contract

List of Warranties Required From Subcontractors

Item	Warranty Period	Scope of Warranty
Structural works		
Structural concrete columns, floors, concrete shafts, walls and similar structural concrete items	25 years	Structural Integrity
Roof Structural Elements	25 years	Structural Integrity
Structural Steel - all elements	25 years	Structural Integrity
Masonry - load and non load bearing columns, walls, shafts and similar masonry elements	25 years	Structural Integrity
Architectural and Building works		
Ceilings/soffit linings including support structure - all types	Manufacturer's standard warranty period	General integrity including against corrosion, perforation and delamination of finish
Membranes / Tanking / Waterproofing	Liquid membranes 10 years Sheet membranes 15 years Torch on membranes 15 years	Performance of waterproofing function
Architectural grade steelwork including screens, framing systems, custom balustrades, handrails, and fabricated metalwork such as access walkways	10 years	General integrity including against corrosion, perforation and delamination of finish
Profiled metal roofing including flashings, gutters and downpipes	25 years	General integrity including against corrosion, perforation of the base material and delamination of finish
External louvres	20 years	General integrity including against corrosion, perforation and delamination of finish
Glazed roof	10 years	Structural integrity, transparency and water tightness
Dry wall/plasterboard and fibre cement linings	Manufacturer's standard warranty period	Manufacturer's standard warranties apply
Resilient materials (including vinyl finishes other than flooring)	Manufacturer's standard warranty period	Manufacturer's standard warranties apply
Non-fire rated doors and hardware	5 years	Structural integrity
Fire rated doors, frames and hardware	5 years	Structural integrity
Door seals	2 years	General integrity
Joinery and carpentry	2 years	Structural integrity
Custom wall systems, cladding and panelling	Manufacturer's standard warranty period minimum 2 years	Structural integrity and colour fastness
Floor and wall tiling including grouting and fixing materials	Manufacturer's standard warranty period	Manufacturer's standard warranties apply
Timber flooring	2 years	Structural integrity
Aluminium window frames	10 years	General integrity including against corrosion, perforation and delamination of finish

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Item	Warranty Period	Scope of Warranty
Timber window frames	10 years	General integrity
Window glazing	10 years	Structural integrity and transparency
Curtain walls - including framing system, glazed and metal panels, louvers excluding seals and sealants forming the wall	15 years	Structural and general integrity including against corrosion, perforation and delamination of finish.
- seals and sealants	10 years	Structural integrity
Anti throw screens, sun screens and canopies	15 years	Structural and general integrity including against corrosion, perforation and delamination of finish
Carpet and vinyl flooring	7 years	Bonding, colour fastness, wear resistance
Civil works		
Paving, concrete and clay pavers	Manufacturer's standard warranty period	Manufacturer's standard warranties apply
External tiling to walkways including grouting and fixing materials	Manufacturer's standard warranty period	Manufacturer's standard warranties apply
Mechanical		
Mechanical ventilation plant and equipment	5 years	Against failure of non consumable elements
Air conditioning plant and equipment	5 years	Against failure of non consumable elements
Electrical		
Uninterrupted power supply including batteries	10 years subject to manufacturer's conditions	Manufacturer's standard warranties apply
Electrical equipment and fittings including light fittings	10 years subject to manufacturer's conditions	Manufacturer's standard warranties apply
Electrical and data cables	10 years subject to manufacturer's conditions	Manufacturer's standard warranties apply
Hydraulic		
Sanitary fittings	5 years subject to manufacturer's conditions	Manufacturer's standard warranties apply
Tapware	5 years subject to manufacturer's conditions	Manufacturer's standard warranties apply
Hot water unit	5 years subject to manufacturer's conditions	Manufacturer's standard warranties apply
Fire protection		
Fire extinguishers	5 years	Against corrosion
Smoke and heat detectors	5 years subject to manufacturer's conditions	Manufacturer's standard warranties apply
Services and systems		
Building systems and services	Manufacturer's standard warranty period	Manufacturer's standard warranties apply
Fall arrest system	20 years	Against corrosion
Surface Finishes		
Interior paint finish	10 years	Adhesion, film integrity and colour retention
Exterior paint finishes including painting to structural steel and clear sealer/anti-graffiti coating	10 years	Adhesion, film integrity and colour retention

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Item	Warranty Period	Scope of Warranty
Steel coatings other than paintwork including powder coating	10 years subject to manufacturer's conditions	Manufacturer's standard warranties apply
Hot dip galvanising	20 years	Structural integrity

Schedule 1– Scope of Works, Drawings, Specifications and Pricing Schedule

A Scope of Work, Drawings and Specifications

- Attachment 1 – Scope of Works (See Annexure A)
- Attachment 2 – Program & Delivery Schedule / Stage Diagram (Refer to Arcus Tender Document)
- Attachment 3 – Specifications / Drawings (Refer to Arcus Tender Document)
- Attachment 5 – Subcontractor Management Pack (Refer to Arcus Tender Document)
- Attachment 6 – Geotechnical Factual Report (Refer to Arcus Tender Document)
- Attachment 7 – Hazardous Materials Register Report (Refer to Arcus Tender Document)
- Attachment 8 – Waste Classification Report (Refer to Arcus Tender Document)
- Attachment 9 – Contamination Report (Refer to Arcus Tender Document)
- Attachment 10 – DSS (Refer to Arcus Tender Document)
- Attachment 12 – Exhibit B – TfNSW Works Brief (Refer to Arcus Tender Document)
- Attachment 13 – Exhibit E – TfNSW Contract Specific Requirements (Refer to Arcus Tender Document)
- Attachment 14 – TfNSW Stations Specific Requirements (Refer to Arcus Tender Document)
- Attachment 15 – TfNSW Standard Requirements (Works Contracts) (Refer to Arcus Tender Document)
- Attachment 16 – TfNSW Standard Requirements (QMS) (Refer to Arcus Tender Document)
- Attachment 17 – TfNSW PMO Procurement Standard Requirement (Refer to Arcus Tender Document)



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B Pricing Schedule and Schedule of Rates

Item No.	ITEM DESCRIPTION	UNIT (A)	UNIT RATE (\$) (B)	QTY (C)	Amount (\$) (D) = (B) x (C)
3.11.5.2	FAT & Ambulant WC				
3.11.5.2.1	Demolition				
3.11.5.2.1.1	Strip out doors, walls, finishes, fixtures, etc., remove walls, doors, form openings as required	Item	\$33,098.00	1	\$ 33,098.00
3.11.5.2.1.2	Remove existing floor of FAT (no access was available at site inspection, unsure if concrete or framed floors, reduce floor height so new slab (msd. elsewhere) is level threshold with platform				Included above
3.11.5.2.1.3	Hydraulic Services : cap off & temporary disconnect for demolition works	Item	\$ 1,801.96	1	\$ 1,801.96
3.11.5.2.1.4	Electrical Services : cap off & temporary disconnect for demolition works	Item	\$ 1,801.96	1	\$ 1,801.96
3.11.5.2.2	Concrete Slab				
3.11.5.2.2.1	Concrete				
3.11.5.2.2.1.1	Prepare subgrade, trim or sand fill to RL, WPM	m2	\$ 215.14	13	\$ 2,796.80
3.11.5.2.2.1.2	32MPa concrete in slab on ground to internal rooms	m3	\$ 2,282.47	4	\$ 9,129.88
3.11.5.2.2.1.3	Isolation joint			1	\$ 1,200.00
3.11.5.2.2.1.4	Dowel joint	Item	\$ 2,637.96	1	\$ 2,637.96
3.11.5.2.2.1.5	Surface finish				
3.11.5.2.2.2	Formwork				\$ -
3.11.5.2.2.2.1	Formwork slab edge				Not required
3.11.5.2.2.3	Reinforcement				
3.11.5.2.2.3.1	Reinforcement to slab, SL82 mesh	m2	\$ 61.74	13	\$ 802.56
3.11.5.2.3	Existing Walls				
3.11.5.2.3.1	Work to existing external walls of buildings - no works				No required
3.11.5.2.3.2	Make good existing (assumed brickwork) external walls where platform level is changed, to match existing walls above	m	\$ 247.00	46	\$ 11,362.00

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3.11.5.2.3.3	Make good existing internal walls where FFL is changed, to match existing walls above	m	\$ 247.00	21	\$ 5,187.00
3.11.5.2.3.4	Adjust threshold to door at change in floor level	leaf	\$ 988.00	1	\$ 988.00
3.11.5.2.3.5	Adjust head height at door where threshold is lowered	leaf	\$ 988.00	1	\$ 988.00
3.11.5.2.4	Masonry				
3.11.5.2.4.1	Infill existing doorway in cavity brickwork, allow to tooth into existing	m2	\$ 874.00	3	\$ 2,622.00
3.11.5.2.5	Stud Frames				
3.11.5.2.5.1	Stud frame internal walls	m2	\$ 197.60	5	\$ 988.00
3.11.5.2.5.2	Stud frame internal riser walls				Included
3.11.5.2.5.3	Stud frame internal false wall	m2	\$ 197.60	10	\$ 1,976.00
3.11.5.2.6	Insulations				
3.11.5.2.6.1	Wall insulation	m2	\$ 29.64	15	\$ 444.60
3.11.5.2.7	Plasterboard & Fibre Cement				
3.11.5.2.7.1	Walls	Note			
3.11.5.2.7.1.1	Fibre cement wall linings to framed walls	m2	\$ 197.60	20	\$ 3,952.00
3.11.5.2.7.1.2	Reline existing internal walls for new finish - allow fibre cement with batten frame or cement render	m2	\$ 197.60	48	\$ 9,484.80
3.11.5.2.7.2	Ceilings	Note			
3.11.5.2.7.2.1	Suspended plasterboard ceiling with cornice/trims	m2	\$ 395.20	12	\$ 4,742.40
3.11.5.2.7.2.2	Ceiling manhole (assume proprietary)	No.	\$ 444.60	1	\$ 444.60
3.11.5.2.8	Doors				
3.11.5.2.8.1	New single leaf external grade doorset complete with hardware	No.	\$ 1,679.60	2	\$ 3,359.20
3.11.5.2.8.2	Remove door, lower door opening to suit new FFL, enlarge opening to provide 850mm clear door leaf opening, new single leaf external grade doorset complete with hardware	No.	\$ 3,423.80	1	\$ 3,423.80

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3.11.5.2.8.3	Assume existing metal gate is wide enough and can be re-used - allow to re-fix gate in new location	No.	\$ 414.96	2	\$ 829.92
3.11.5.2.9	Windows				
3.11.5.2.9.1	Privacy film to existing windows				Not required
3.11.5.2.10	Waterproofing				
3.11.5.2.10.1	Waterproofing to wet area floors, upturn 1500mm above floor	m2	\$ 68.47	43	\$ 2,944.24
3.11.5.2.11	Tiling				
3.11.5.2.11.1	Wall tiling to wet areas - Glennon Tiles W310 300 x 100mm with epoxy grout	m2	\$ 250.16	62	\$ 15,510.08
3.11.5.2.11.2	Floor tiling to wet areas - Glennon Tiles GN13140 600 x 300mm with epoxy grout	m2	\$ 397.54	12	\$ 4,770.52
3.11.5.2.11.3	Coved skirting tiling to wet areas - Glennon Tiles to match floor tiles with epoxy grout	m	\$ 159.02	21	\$ 3,339.44
3.11.5.2.11.4	Threshold tile	m	\$ 395.20	2	\$ 790.40
3.11.5.2.12	Fixtures & Fittings				
3.11.5.2.12.1	Ambulant WC				
3.11.5.2.12.1.1	Hand dryer – As per Architectural Schedule of Finishes	No.	\$ 1,477.44	1	\$ 1,477.44
3.11.5.2.12.1.2	Toilet Roll Holder - As per Architectural Schedule of Finishes	No.	\$ 234.84	1	\$ 234.84
3.11.5.2.12.1.3	SS grabrails to staff ambulant WC- As per Architectural Schedule of Finishes	No.	\$ 642.20	1	\$ 642.20
3.11.5.2.12.1.4	Soap Dispenser - As per Architectural Schedule of Finishes	No.	\$ 116.28	1	\$ 116.28
3.11.5.2.12.1.5	Coat hook - As per Architectural Schedule of Finishes	No.	\$ 60.04	1	\$ 60.04
3.11.5.2.12.1.6	Aluminium framed SS mirror, secured to concealed wall hanger with theft resistant mounting equal to Bobrick - 1000H x 600W- As per Architectural Schedule of Finishes	No.	\$ 741.00	1	\$ 741.00
3.11.5.2.12.2	FAT				

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3.11.5.2.12.2.1	Hand dryer - As per Architectural Schedule of Finishes	No.	\$ 1,477.44	1	\$ 1,477.44
3.11.5.2.12.2.2	Toilet Roll Holder - As per Architectural Schedule of Finishes	No.	\$ 234.84	1	\$ 234.84
3.11.5.2.12.2.3	SS grabrails to FAT WC- As per Architectural Schedule of Finishes	No.	\$ 790.40	1	\$ 790.40
3.11.5.2.12.2.4	Soap Dispenser - As per Architectural Schedule of Finishes	No.	\$ 116.28	1	\$ 116.28
3.11.5.2.12.2.5	Baby Change Table - As per Architectural Schedule of Finishes	No.	\$ 938.60	1	\$ 938.60
3.11.5.2.12.2.6	Coat hook - As per Architectural Schedule of Finishes	No.	\$ 60.04	1	\$ 60.04
3.11.5.2.12.2.7	Aluminium framed SS mirror, secured to concealed wall hanger with theft resistant mounting equal to Bobrick - 1000H x 600W- As per Architectural Schedule of Finishes	No.	\$ 741.00	1	\$ 741.00
3.11.5.2.12.2.8	Sanitary bin - Canon Hygeine SS Modesty tray	No	\$ 500.00	1	\$ 500.00
3.11.5.2.12.2.9	Nappy disposal bin - Canon Hygeine nappy disposal bin	No	\$ 500.00	1	\$ 500.00
3.11.5.2.12.2.10	Sharps bin (installed at existing toilets at other stations - not scheduled - no allowance)				Included
3.11.5.2.12.3	Existing Access Ramp Cupboard				
3.11.5.2.12.3.1	Relocate existing access ramp cupboard	No.	\$ 335.92	2	\$ 671.84
3.11.5.2.13	Painting				
3.11.5.2.13.1	Allow painting to new works only				
3.11.5.2.13.1	Apply paint system to :-				
3.11.5.2.13.1.1	Internal walls linings	m2	\$ 27.67	17	\$ 470.44
3.11.5.2.13.1.2	Internal ceiling linings	m2	\$ 33.57	12	\$ 402.80
3.11.5.2.13.1.3	External brickwork at infills & doorway modifications	m2	\$ 33.59	47	\$ 1,578.52
3.11.5.2.13.1.4	Single leaf external grade doorset	No.	\$ 237.12	2	\$ 474.24
3.11.5.2.13.1.5	Internal windows				Not required

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3.11.5.2.13.2	Apply anti graffiti coating equal to Sure Seal Graffiti Shield to (apply to internal public accessible room only)				
3.11.5.2.13.2.1	Wall tiling to wet areas	m2	\$ 35.57	62	\$ 2,205.52
3.11.5.2.13.2.2	Door leaf	No.	\$ 234.84	2	\$ 469.68
3.11.5.2.14	Signage				
3.11.5.2.14.1	Door signage as required (per door)	No.	\$ 197.60	2	\$ 395.20
3.11.5.2.15	Building Services				
3.11.5.2.15.1	Building Services - refer to respective services trades				Not required
3.11.5.3	Fire rated ISMSB enclosure within existing room				
3.11.5.3.1	Remove roller shutter & threshold, internal shelving, remove section of floor & ceilings for new enclosure	Item	\$ 3,309.80	1	\$ 3,309.80
3.11.5.3.2	Infill existing opening (formerly roller shutter) in cavity brickwork, allow to tooth into existing	m2	\$ 873.91	8	\$ 6,991.24
3.11.5.3.3	Form services penetration for underground services entry point into ISMSB	Item	Not required done by others		
3.11.5.3.3	Fire rated wall to form enclosure	Item	\$ 3,197.32	1	\$ 3,197.32
3.11.5.3.4	Fire rated ceiling to form enclosure	m2	\$ 543.40	2	\$ 1,086.80
3.11.5.3.5	Double leaf fire rated doorset	No.	\$ 2,470.00	3	\$ 7,410.00
3.11.5.3.6	Signage	No.	\$ 158.08	1	\$ 158.08
3.11.5.3.7	Vinyl floor (incl. floor prep)	m2	\$ 197.60	2	\$ 395.20
3.11.5.3.8	Vinyl covered skirting	m	\$ 79.04	7	\$ 553.28
3.11.5.3.9	Threshold	m	\$ 79.04	2	\$ 158.08
3.11.5.3.10	Make good adjacent floor, wall & ceiling surfaces incl. repaint as required	Item	\$ 770.64	1	\$ 770.64
3.11.5.3.11	Door signages as required (per door)	No.	\$ 197.60	2	\$ 395.20



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3.11.5.3.12	Building Services - refer to respective services trades				Not required
3.11.5.4	Make good existing ceilings to remain after replacement of light fittings & repaint				
3.11.5.4.1	Make good existing ceilings to remain after replacement of light fittings, fire, life & safety, repaint	Item	\$ 1,517.72	1	\$ 1,517.72
3.11.6	Hydraulic Services - Building Works				
3.11.6.3	Platform Building Alterations - assume part of Building Works package				
3.11.6.3.1	Sewer - allowance to modify existing in ground sewer to suit new layout	Item	\$15,017.60	1	\$ 15,017.60
3.11.6.3.2	Water - allowance to modify existing water to suit new layout				Included above in 3.11.6.3.1
3.11.6.3.1	FAT				
3.11.6.3.1.1	Add hot water to FAT/ambulant WC - hydraulics (HWU, HW pipework & taps, tundish)	Item	\$ 5,829.20	1	\$ 5,829.20
3.11.6.3.1.2	WC – As per Architectural Schedule of Finishes	No.	\$ 5,928.00	1	\$ 5,928.00
3.11.6.3.1.3	Basin – As per Architectural Schedule of Finishes	No.	\$ 4,446.00	1	\$ 4,446.00
3.11.6.3.1.4	Floor waste – As per Architectural Schedule of Finishes	No.	\$ 790.40	1	\$ 790.40
3.11.6.3.1.5	Tap – As per Architectural Schedule of Finishes	No.	\$ 543.40	1	\$ 543.40
3.11.6.3.2	AMB WC				
3.11.6.3.2.1	WC – As per Architectural Schedule of Finishes	Item	\$ 3,952.00	1	\$ 3,952.00
3.11.6.3.2.2	Basin – As per Architectural Schedule of Finishes	No.	\$ 4,446.00	1	\$ 4,446.00
3.11.6.3.2.3	Floor waste – As per Architectural Schedule of Finishes	No.	\$ 790.40	1	\$ 790.40
3.11.6.3.2.4	Tap – As per Architectural Schedule of Finishes	No.	\$ 543.40	1	\$ 543.40
3.11.6.3.5	Water Fountain				



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3.11.6.3.5.1	Replace existing water fountain with DDA compliant	No.	\$ 5,928.00	1	\$ 5,928.00
3.11.6.3.6	Air Conditioner Condenser Tundish				\$ -
3.11.6.3.6.1	Air Conditioner condenser tundish Subtotal				Included
3.11.9	Mechanical Services - Building Works				
3.11.9.2	Platform Building Alterations - assume part of Building Works package				
3.11.9.2.2	Mechanical exhaust to FAT	Item	\$10,296.00	1	\$10,296.00
3.11.9.2.3	Mechanical exhaust to ambulant WC	Item	\$10,296.00	1	\$10,296.00
3.11.9.2.8	Ventilation to new fire rated ISMSB enclosure within existing store/waiting room Subtotal	Item	\$10,296.00	1	\$10,296.00
	Total Subcontract Sum				\$251,760.12

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Schedule of Rates

Item No.	SCHEDULE OF RATES (for works outside the Contract's scope)	UNIT	UNIT RATE (\$)			
			Normal Time	Time and Half	Double Time	Double & 1/2
LABOUR						
1	General Labourer	Hr	\$40.50	\$52.25	\$67.23	\$82.22
2	Skilled Labourer	Hr	\$52.00	\$67.08	\$86.32	\$105.56
3	Concretor	Hr	\$73.00	\$82.00	\$101.00	\$117.00
4	Carpenter	Hr	\$58.00	\$74.82	\$96.28	\$117.74
5	Steel Fixer	Hr	\$70.00	\$95.00	\$110.00	\$110.00
6	Formworker	Hr	\$70.00	\$95.00	\$110.00	\$110.00
7	Glazier	Hr	\$52.00	\$67.08	\$86.32	\$105.56
8	Machine Operators	Hr	\$52.00	\$67.08	\$86.32	\$105.56
9	Leading Hand	Hr	\$100.00	\$115.00	\$145.00	\$170.00
<i>Please insert, if required</i>						
10	Project Manager	Hr	\$125.00	\$150.00	\$195.00	\$235.00
11	Project Engineer	Hr	\$100.00	\$115.00	\$145.00	\$170.00
12	Site Supervisor	Hr	\$100.00	\$115.00	\$145.00	\$170.00
PLANT						
(wet hire including, but not limited to, required operator/dogman/offsider, fuel, maintenance and all running cost of the plants)						
1	Bobcat	Hr	\$105.00	\$131.25	\$164.06	\$205.08
2	Bobcat + Broom	Hr	\$105.00	\$131.25	\$164.06	\$205.08
3	Mobilisation and Demobilisation	No	\$500.00	\$500.00	\$500.00	\$500.00
Excavators						
7	3.5 t Bucket	Hr	\$95.00	\$118.75	\$148.44	\$185.55
8	3.5 t Hammer	Hr	\$95.00	\$118.75	\$148.44	\$185.55
9	3.5 t Auger	Hr	\$95.00	\$118.75	\$148.44	\$185.55
10	3.5 t Saw	Hr	\$95.00	\$118.75	\$148.44	\$185.55
11	Mobilisation and Demobilisation	No	\$500.00	\$500.00	\$500.00	\$500.00
12	6 t Bucket	Hr	\$95.00	\$118.75	\$148.44	\$185.55
13	6 t Hammer	Hr	\$95.00	\$118.75	\$148.44	\$185.55
14	6 t Auger	Hr	\$95.00	\$118.75	\$148.44	\$185.55
15	6 t Saw	Hr	\$95.00	\$118.75	\$148.44	\$185.55
16	Mobilisation and Demobilisation	No	\$500.00	\$500.00	\$500.00	\$500.00
17	14 t Bucket	Hr	\$107.50	\$134.38	\$167.97	\$209.96
18	14 t Hammer	Hr	\$107.50	\$134.38	\$167.97	\$209.96
19	14 t Auger	Hr	\$107.50	\$134.38	\$167.97	\$209.96
20	14 t Saw	Hr	\$107.50	\$134.38	\$167.97	\$209.96
21	Mobilisation and Demobilisation	No	\$500.00	\$500.00	\$500.00	\$500.00
Trucks						
32	2t tipper	Hr	\$75.00	\$93.75	\$117.19	\$146.48
33	6t tipper	Hr	\$75.00	\$93.75	\$117.19	\$146.48
34	Bogie tipper 10t	Hr	\$95.00	\$118.75	\$148.44	\$185.55

The price above is subject to the following conditions:

- Monday to Friday: First 8 hours Normal Time, next 2 hours Time and Half, Double Time thereafter;
Saturday: First 2 hours Time and Half, Double Time thereafter; Sunday: Double Time. Public Holiday:

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Double Time and Half. Night Shift: 18:00 to 06:00 (Time and Half). Hours should be nett off all meal times.

- The prices above are fixed for the term of this Agreement.
- All overhead costs, profit / margin and allowances are included in the prices and rates above.
- Lunch break will be deducted from the time sheets & invoices, if not deducted.
- The prices above are exclusive of GST.
- The prices and rates above are inclusive of all costs, allowances, consumables, meals, meal breaks, LAFH, required testing, fully equipped vehicles and running cost of vehicles, and small tools required to complete the works.
- The quantities provided in above schedules are Indicative only.
- Travel time is included in the prices above (It is expected that locally available resources will be used),
- Workplace Health and Safety requirements including attendance at inductions, pre-start meetings, and toolbox talks are inclusive in above prices and rates.
- The rates / prices and time of above rates shall be in accordance with relevant EBA / award.
- The Subcontractor shall take signature from Downer's representative on timesheet on daily basis (after the work performed) and then submit this approved timesheets / dayworks with claim/invoices. Downer will pay the Subcontractor by applying the appropriate rates to the hours worked as per the approved timesheet authorised by Downer's representative.
- Monday to Friday: First 8 hours Normal Time, next 2 hours Time and Half, Double Time thereafter.
- Saturday: First 2 hours' Time and Half, Double Time thereafter. Sunday: Double Time. Public Holiday: Double Time and Half.
- Night Shift: 18:00 to 06:00 (Time and Half).
- Hours should be nett off all meal times.



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Schedule 2 – Further Purposes or Requirements

Not Applicable

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Schedule 3 – Deed of Release (Clause 8.4)

To **Downer EDI Works Pty Ltd** (ABN 66 008 709 608)
of Trinit Business Campus, 39 Delhi Road, North Ryde NSW 2113 (**Downer**)

Project The construction of building works as further described in the Subcontract (the **Work**)

Subcontractor **Dalski Pty Ltd** (ACN 107 119 442)
of Unit 5, 743-745 The Horsley Drive, SMITHFIELD NSW 2164 (the **Subcontractor**)

Subcontract Agreement made between Downer and the Subcontractor on (the **Subcontract**)

- 1 The Subcontractor agrees that, to the extent permitted by law, except for the amounts specified in clause 2 below, the total monies payable or that may in the future become payable under or in any way arising out of or connected with the Subcontract or the Work or any other work (**Other Work**) executed by the Subcontractor, its Secondary Subcontractors and/or suppliers on or about the Site of the Work is \$..... (including the retention amount) (the **Practical Completion Payment**).
- 2 The Practical Completion Payment does not include the amount for retention of \$ but in circumstances where Downer is entitled to terminate the Subcontract under clause 27.8 of the Subcontract the Subcontractor acknowledges and agrees that Downer is entitled to the proceeds of all then held retention and the Subcontractor has no entitlement to have that retention returned.
- 3 The Subcontractor acknowledges and agrees that to the extent permitted by law, payment by Downer to the Subcontractor of the Practical Completion Payment is acceptance by the Subcontractor of full and final payment to the Subcontractor of all amounts due and payable at Practical Completion of the whole of the Work and any Other Work, except for amounts described in clause 2 above (if any).
- 4 To the extent permitted by law, the Subcontractor waives, releases and forever discharges Downer from all or any liabilities, claims, actions, demands, suits, proceedings, damages, expenses, costs and the like (whether direct, indirect or consequential, past, present or future, certain or contingent, ascertained or not ascertained) howsoever arising under or in connection with the Subcontract or in any way connected with execution of the Work and any Other Work. The Subcontractor indemnifies and keeps indemnified Downer from all such liabilities, claims, entitlements, actions, demands, suits, proceedings, damages, expenses, costs and the like, which but for this provision, the Subcontractor may have had or may arise at any time.
- 5 Clause 4 does not apply in respect of the amounts described in clause 2 above (if any).
- 6 The Subcontractor certifies that at Practical Completion of the Work:
 - (a) all wages and allowances, including in respect of overtime and loadings, which become due and payable to all persons who have at any time been employed by the Subcontractor on the Work have been paid in full;
 - (b) all entitlements which have or should have accrued in respect of all persons who have at any time been employed by the Subcontractor on the Work, including in relation to annual leave, personal leave and RDOs, have been properly accounted for in accordance with any applicable legislation and legally binding agreement, award, workplace agreement or workplace policy;
 - (c) all Secondary Subcontractors engaged by the Subcontractor on the Work and all suppliers to the Subcontractor of plant, equipment and material for the Work have been paid in full; and
 - (d) all contributions and payments to any scheme for superannuation, long service leave, redundancy and severance pay or the like as required by legislation and any applicable and legally binding award or workplace agreement have been paid in full.

Executed as a DEED on the _____ day of _____ 20____

Executed by Dalski Pty Ltd ACN 107 119 442 in accordance with section 127 of the *Corporations Act 2001*:

.....
Director/Company Secretary

.....
Director

.....
Name of Director/ Company Secretary
(BLOCK LETTERS)

.....
Name of Director
(BLOCK LETTERS)



Subcontract – Long Form

Schedule 3A – Deed of Final Release (Clause 8.5, 22.4)

To Downer EDI Works Pty Ltd (ABN 66 008 709 608)
Of Trinita Business Campus, 39 Delhi Road, North Ryde NSW 2113 (**Downer**)

Project The construction of Building Works at BirrongBirrong Station as further described in the Subcontract (the **Work**)

Subcontractor Dalski Pty Ltd (ACN 107 119 442)
of Unit 5, 743-745 The Horsley Drive, SMITHFIELD NSW 2164 (the **Subcontractor**)

Subcontract Agreement made between Downer and the Subcontractor on (the **Subcontract**)

- 1 The Subcontractor agrees that the total monies payable or that may in the future become payable under or in any way arising out of or connected with the Subcontract or the Work or any other work executed by the Subcontractor, its Secondary Subcontractors and/or suppliers on or about the Site of the Work is \$..... (including the retention of \$.....) of which the Subcontractor acknowledges having received the sum of \$.....leaving a balance of \$.....(the **Final Payment**).
- 2 The Subcontractor acknowledges and agrees that payment by Downer to the Subcontractor of the Final Payment is acceptance by the Subcontractor of full and final payment to the Subcontractor of all amounts due and payable now or in the future in connection with the Subcontract and the Work or any other work executed by the Subcontractor, its Secondary Subcontractors and/or suppliers on or about the site of the Work.
- 3 The Subcontractor waives, releases and forever discharges Downer from all or any liabilities, claims, actions, demands, suits, proceedings, damages, expenses, costs and the like (whether direct, indirect or consequential, past, present or future, certain or contingent, ascertained or not ascertained) howsoever arising under or in connection with the Subcontract or in any way connected with execution of the Work or work executed or materials supplied on or about the site of the Work. The Subcontractor indemnifies and keeps indemnified Downer from all such liabilities, claims, entitlements, actions, demands, suits, proceedings, damages, expenses, costs and the like, which but for this provision, the Subcontractor may have had or may arise at any time.
- 4 The Subcontractor certifies that:
 - (a) all wages and allowances which become due and payable to all persons who have at any time been employed by Subcontractor on the Work have been paid in full;
 - (b) all entitlements which have or should have accrued in respect of all persons who have at any time been employed by the Subcontractor on the Work, including in relation to annual leave, personal leave and RDOs, have been properly accounted for in accordance with any applicable legislation and legally binding agreement, award, workplace agreement or workplace policy;
 - (c) all Secondary Subcontractors engaged by the Subcontractor on the Work and suppliers to the Subcontractor of plant, equipment and material for the Work have been paid in full; and
 - (d) all contributions and payments to any scheme for superannuation, long service leave, redundancy and severance pay or the like as required by legislation and any award requirements have been paid in full.

Executed as a deed and delivered on the date shown on the first page.

Executed by Dalski Pty Ltd ACN 107 119 442 in accordance with section 127 of the *Corporations Act 2001*:

.....
Director/Company Secretary

.....
Director

.....
Name of Director/ Company Secretary
(BLOCK LETTERS)

.....
Name of Director
(BLOCK LETTERS)

Schedule 4– Moral Rights Consent

Deed poll dated

Made by [insert full name of Author]
of [insert address]
(Author)

in favour of Downer EDI Works Pty Ltd (ABN 66 008 709 608)
of Trinita Business Campus, 39 Delhi Road, North Ryde NSW 2113
(Contractor)

Introduction

- A. Downer and [insert name and ACN of Subcontractor] entered into a building contract dated [insert date of building contract] (the **Agreement**) to perform or create certain building works (the **Work**).
- B. The Author has created or will create copyright material as described in this deed which may be used in connection with, or as part of, the Work.

The [Author] declares

1 Definitions

In this Deed:

- (a) **Authorised Persons** means Downer and any assignee or sub-licensee of Downer in relation to the Copyright Material or any subcontractor of Downer in relation to the Work; and
- (b) **Copyright Material** means:
- (i) [describe the copyright works which the author has or will create as precisely as possible]; and
 - (ii) any other material in which copyright subsists for the purposes of the *Copyright Act 1968* (Cth) (as amended) which the Author creates or has created for the purpose of the Agreement or the Work.

2 Consent

2.1 The Author consents to the Authorised Persons:

- (a) not attributing to the Author authorship of the Copyright Material;
- (b) falsely attributing authorship of the Copyright Material;
- (c) modifying, varying or amending the Copyright Material;
- (d) using the Copyright Material other than for the purpose for which it was intended when created; and
- (e) changing, relocating, demolishing or destroying any three dimensional reproduction of the Copyright Material without prior notification to the Author.

2.2 The Author acknowledges that the consent given in this deed is genuinely given and is not provided under duress and is given in full knowledge that the Author is giving up rights granted under Part IX of the *Copyright Act 1968* (Cth)



Subcontract – Long Form

3 Further actions

The Author agrees to do all things and execute all documents as Downer reasonably requests in order to give full effect to the consent provided in this deed.

4 Warranty

The Author warrants that the Author will not sue, enforce any claim, bring any action or exercise any remedy in respect of a breach of its moral rights in respect of the any Copyright Material by the Authorised Persons.

Executed as a deed poll and delivered on the date shown on the first page.

Signed, sealed and delivered by [insert name of author]
in the presence of:

.....
Signature of witness

.....
Name of witness (BLOCK LETTERS)

.....
Address of witness

Schedule 5 – New South Wales

1 OHS Rules (NSW)

1.1 The Subcontractor:

- (a) shall comply with and ensure that its Secondary Subcontractors comply with the OHS Rules and shall do all things necessary and in a manner which ensures that Downer satisfies its obligations under the OHS Rules;
- (b) acknowledges that Downer (or another party as advised by Downer) is engaged as the 'principal contractor' under the OHS Rules for the Site;
- (c) shall comply with and ensure that its Secondary Subcontractors comply with any Direction of the principal contractor;
- (d) shall, before commencing any Work, prepare and submit details of its work health, safety and rehabilitation management system and a Site specific safety plan incorporating safe work method statements; and
- (e) shall, to the extent the Subcontractor designs any structure (or part of a structure) which is to be constructed, provide to Downer a written report that specifies the hazards relating to the design of that structure which, so far as the Subcontractor is reasonably aware, creates a risk to the health or safety of persons who are carrying out any construction work on the structure or part.

1.2 For the purpose of this clause:

- (a) "OHS Rules" means:
 - (i) the WH&S Act and WH&S Regulation as updated from time to time; and
 - (ii) all relevant associated legislation, regulations, rules, Standards, Australian Standards, codes of practice and compliance guidelines applicable to the Work, workplace health and safety, environmental protection, dangerous goods and electrical safety together with any Directions on safety or notices issued by any relevant authority including, to the extent applicable to the Work the following:
 - (A) *Dangerous Goods (Road and Rail Transport) Act 2008* (NSW);
 - (B) *Explosives Act 2003* (NSW);
 - (C) *Explosives Regulation 2013* (NSW);
 - (D) *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (NSW);
 - (E) *Work Health and Safety (Mines and Petroleum Sites) Regulation 2014* (NSW);
 - (F) codes of practice relating to the *NSW Work Health and Safety (Mines and Petroleum Sites) Regulation 2014* (NSW);
 - (G) *Rail Safety National Law* (NSW);
 - (H) *Rail Safety (Adoption of National Law) Act 2012* (NSW);
 - (I) *Rail Safety National Law National Regulations 2012* (NSW);
 - (J) *Rural Workers Accommodation Act 1969* (NSW);
 - (K) *Heavy Vehicle National Law* (NSW);
 - (L) *Heavy Vehicle (Adoption of National Law Regulations 2013* (NSW);
 - (M) all *Heavy Vehicle Regulations*;
 - (N) national compliance and enforcement policies;
 - (O) model codes of practice; and
 - (P) NSW codes of practice;
- (b) "WH&S Act" means the *Work Health and Safety Act 2011* (NSW); and
- (c) "WH&S Regulation" means the *Work Health and Safety Regulation 2017* (NSW).

2 Subcontractor's Statement

Each progress claim shall be accompanied by a duly signed written statement in a form approved by Downer and which complies with the Subcontractor's obligations under section 127 of the *Industrial Relations Act 1996* (NSW), Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW) and section 175B of the *Workers Compensation Act 1987* (NSW) to provide a statement to the "principal contractor" as contemplated by those acts.

3 NSW Code of Practice for Construction Work

- (a) In this clause:

Subcontract – Long Form

- (i) **“Construction Compliance Unit”** means any unit established to monitor compliance with and receive reports of alleged breaches of the NSW Code; and
- (ii) **“NSW Code”** means the New South Wales Code of Practice for Procurement, as varied or replaced from time to time, and:
 - (A) prior to 1 July 2013, includes the Implementation Guidelines for the NSW Code of Practice and Code of Tendering
 - (B) from 1 July 2013, includes the Implementation Guidelines to the New South Wales Code of Practice for Procurement, as varied or replaced from time to time.

(The NSW Code is currently available at www.procurepoint.nsw.gov.au)
- (b) The Subcontractor must comply, and must ensure that its employees, agents, Secondary Subcontractors and Related Companies comply, with the NSW Code.
- (c) Compliance with the NSW Code does not relieve the Subcontractor from responsibility to perform the Subcontract, or from liability for any Defects arising from compliance with the NSW Code.
- (d) If the National Code applies, the National Code should be read conjointly with the NSW Code to the maximum extent lawfully possible.
- (e) The Subcontractor acknowledges and accepts that the NSW Government and Downer, and those authorised by the NSW Government or Downer, may:
 - (i) request full access to any Work to:
 - (A) inspect any work, material, machinery, appliance, article or facility;
 - (B) inspect and copy any record; and
 - (C) interview any person,

and on such request the Subcontractor must provide such access as is necessary to allow validation of compliance with the NSW Code by the Subcontractor and its employees, agents, Secondary Subcontractors and Related Companies;
 - (ii) request specified documentation to be produced within a specified period, in person, by fax or by post and on such request the Subcontractor must provide such documentation; and
 - (iii) publish or otherwise disclose information in relation to compliance with the NSW Code.
- (f) Where a change in the provision of the Work is proposed under the Subcontract and that change would affect compliance with the NSW Code, the Subcontractor must prepare a report to Downer, for provision to the NSW Government, specifying the extent to which compliance with the NSW Code by the Subcontractor or its employees, agents, Secondary Subcontractors or Related Companies will be affected (as applicable). Downer will, after consultation with the New South Wales Government and consideration of the legislation and relevant OHS Rules, direct the Subcontractor as to the course it must adopt once the report is received. The Subcontractor shall have no Claim in connection with any such Direction or compliance with any such Direction.
- (g) The Subcontractor must maintain, and must ensure that its Secondary Subcontractors and Related Companies maintain, adequate records of compliance with the NSW Code.
- (h) From 1 July 2013, the Subcontractor must notify Downer of any alleged breaches of the NSW Code (and voluntary remedial action proposed) within 24 hours of becoming aware, or when a competent contractor exercising good industry practice should have become aware, of the alleged breach.
- (i) If the Subcontractor, or any of its employees, agents, Secondary Subcontractors or any Related Company, does not comply with the requirements of the NSW Code, in the provision of the Work, such that a sanction is applied as a consequence, without prejudice to any rights that would otherwise accrue, the NSW Government will be entitled to record that non-compliance and take it into account in the evaluation of any future tenders that may be lodged by the Subcontractor, or any of its employees, agents, Secondary Subcontractors or Related Companies, in respect of work for any part of the State of New South Wales or its agencies.
- (j) The Subcontractor must:
 - (i) not engage any Secondary Subcontractor where the engagement would breach a sanction imposed by the Construction Compliance Unit;
 - (ii) ensure that each Secondary Subcontractor maintains and provides access for any person or entity authorised by the New South Wales Government to the same extent as required from the Subcontractor under this clause; and
 - (iii) ensure that all contracts with Secondary Subcontractors contain requirements equivalent to the requirements set out in this clause.

Schedule 13 - National Code

1 National Code of Practice for the Construction Industry (National Code)

1.1 In this Schedule 13:

ABCC means the body referred to in subsection 29(2) of the Act.

ABC Commissioner means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the Act.

Act means the *Building and Construction Industry (Improving Productivity) Act 2016*.

Building Code means the *Code for the Tendering and Performance of Building Work 2016*, which is available at <https://www.legislation.gov.au/Details/F2017C00668>.

Building Contractor has the same meaning as in the Act.

Building Industry Participant has the same meaning as in the Act.

Building Work has the same meaning as in subsection 3(4) of the Building Code.

Commonwealth Funded Building Work means Building Work in items 1–8 of Schedule 1 of the Building Code.

Enterprise Agreement has the same meaning as in the *Fair Work Act 2009* (Cth).

Exclusion Sanction has the same meaning as in subsection 3(3) of the Building Code.

Related Entity has the same meaning as in subsection 3(2) of the Building Code.

Sub-subcontractor means a Building Contractor or Building Industry Participant who the Subcontractor has entered, or proposes to enter, into a sub-subcontract with to undertake any of the Works.

Works means Commonwealth Funded Building Work that is the subject of this Subcontract.

1.2 The Subcontractor declares as at the date of commencement of this Subcontract in relation to the Works, that it:

- (a) is not subject to an Exclusion Sanction;
- (b) unless approved otherwise by the ABC Commissioner, is not excluded from performing Building Work funded by a state or territory government; and
- (c) is not covered by, and does not have Related Entities covered by, an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code.

1.3 The Subcontractor:

- (a) declares as at the date of commencement of this Subcontract in relation to the Works; and
- (b) must ensure that during the term of this Subcontract in relation to the Works, that it and its Sub-subcontractors:
 - (c) comply with the Building Code;
 - (d) will only use products in relation to the Works that comply with the relevant Australian Standards published by, or on behalf of, Standards Australia;
 - (e) comply with the Workplace Relations Management Plan approved by the ABCC in accordance with Part 6 of the Building Code that applies to the Work.

1.4 Without limiting and notwithstanding the other provisions of this Schedule 14, the Subcontractor will ensure that remedial action is taken to rectify any behaviour on the part of it and its Sub-subcontractors that is non-compliant with the Building Code.

1.5 The Subcontractor must every six months during the term of this Subcontract advise Downer whether:

- (a) it has in the preceding six months or since it last advised Downer, whichever is the earliest, had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or *the Migration Act 1958* (Cth);
- (b) it has in the preceding six months or since it last advised Downer, whichever is the earliest:
 - (i) been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) to a Building Contractor or Building Industry Participant; or
 - (ii) owed any unsatisfied judgement debts to a Building Contractor or Building Industry Participant.

1.6 Compliance with the Building Code does not relieve the Subcontractor from responsibility to perform this Subcontract, or from liability for any Defect in the Works arising from compliance with the Building Code.

1.7 The Subcontractor must notify the ABCC of any breach or suspected breach of the Building Code as soon as practicable but no later than two working days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.

Subcontract – Long Form

- 1.8 The Subcontractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the Act and the Building Code and will ensure that it and its Sub-subcontractors comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the Act, requests to interview any person under section 74 of the Act, requests to produce records or documents under sections 74 and 77 of the Act and requests for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- 1.9 The Subcontractor must only enter into a sub-subcontract for any of the Work where:
- (a) the Sub-subcontractor has submitted a declaration of compliance, including the further information outlined in Attachment A to the declaration of compliance, in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code (located in Part 4 in the document entitled Model Clauses Type B, available on the ABCC website (www.abcc.gov.au)); and
 - (b) the sub-subcontract with the Sub-subcontractor contains clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the Building Code.
- 1.10 The Subcontractor must ensure that it and its Sub-subcontractors comply with clauses contained in the sub-subcontract referred to in this Schedule.

Schedule 14– Deed of Novation

THIS DEED is made the _____ day of _____ 20....

Parties:

- 1 **[Relevant Downer Entity]** (ACN) of [insert address] (**Downer**)
- 2 **[Insert]** (ACN) of [insert address] (**Subcontractor**)
- 3 **[Insert]** (ACN) of [insert address] (**Novatee**)

Background

- A Downer has engaged the Subcontractor pursuant to the Subcontract.
- B The parties have agreed to novate the Subcontract on the terms and conditions of this Deed.

1 Definitions and Interpretation

1.1 Definitions

In this Deed:

Deed means this document;

Effective Date means the date of this Deed; and

Subcontract means the contract between Downer and the Subcontractor dated [insert].

Interpretation

Unless expressed to the contrary, in this Deed:

- (a) headings are for convenience only and do not affect the interpretation of this Deed;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a contract includes all amendments or supplements to that contract;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Deed;

Subcontract – Long Form

- (vi) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a rule of an applicable financial market and is a reference to that law as amended, consolidated or replaced;
- (vii) an agreement other than this Deed includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing; and
- (viii) a monetary amount is in Australian dollars;
- (a) an agreement on the part of two or more persons binds them jointly and severally;
- (b) when the day on which something must be done is not a business day, that thing must be done on the following business day;
- (c) in determining the time of day where relevant to the Deed, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) for any other purpose under this Deed, the time of day in the place where the party required to perform an obligation is located; and
- (d) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed or any part of it.

2 Novation

2.1 Novation

With effect on and from the Effective Date, the parties novate the Subcontract so that:

- (a) the Novatee replaces Downer under the Subcontract as if it were an original party to the Subcontract; and
- (b) all references in the Subcontract to Downer must be read as references to the Novatee.

2.2 Assumptions of rights and obligations

Subject to clause 3, on and from the Effective Date:

- (a) the Novatee:
 - (i) must comply with the Subcontract as if the Novatee had been originally named as a party to the Subcontract in place of Downer; and
 - (ii) obtains all rights and assumes all obligations of Downer under the Subcontract; and
- (b) the Subcontractor must comply with the Subcontract on the basis that the Novatee has replaced Downer under it in accordance with this Deed.

3 Release

3.1 Release by the Subcontractor and the Novatee

The Subcontractor and the Novatee release Downer from all obligations and liabilities of Downer arising out of or in connection with the Subcontract including:

- (a) any claims for payment made or to be made in relation to work or services provided or matters arising prior to the Effective Date; or
- (b) any claims made on any other basis whatsoever in relation to matters occurring prior to and after the Effective Date.

Subcontract – Long Form

3.2 Warranty

The Subcontractor warrants to the Novatee that:

- (a) it has performed the Work under the Subcontract in accordance with the Subcontract;
- (b) it must perform the remaining Work under the Subcontract in accordance with the Subcontract; and
- (c) it is aware that the Novatee is relying on it to fulfil its obligations under the Subcontract.

4 Assignment

This Deed is personal between the parties and no party may assign any right under this Deed except with, and in strict compliance with any conditions of, the prior written consent of each of the other parties.

5 Governing law and jurisdiction

This Deed will be construed in accordance with the laws [insert relevant State or Territory] and the parties irrevocably submit to the jurisdiction of the Courts of that State.

6 Miscellaneous

6.1 Variation

No variation of this Deed is effective unless made in writing and signed by each party.

6.2 Waiver

- (a) No waiver of a right or remedy under this Deed is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.
- (b) A single or partial exercise of a right or remedy under this Deed does not prevent a further exercise of that or of any other right or remedy.
- (c) Failure to exercise or delay in exercising a right or remedy under this Deed does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

6.3 Further assurances

Each party agrees, at its own expense, on the request of any one of the other parties, to do everything reasonably necessary to cause this Deed and the transactions contemplated by it to be completed and become and remain effective.

6.4 Counterparts

This Deed may be executed in any number of counterparts, each of which, when executed, is an original. Those counterparts together make one instrument.

6.5 Cumulative rights

Except as expressly provided in this Deed, the rights of a party under this Deed are in addition to and do not exclude or limit any other rights or remedies provided by law.

6.6 Entire agreement

- (a) This Deed is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.
- (b) Each party represents and warrants that it has not relied on any representations or warranties about the subject matter of this Deed except as expressly provided in this Deed.



Subcontract – Long Form

6.7 Relationship of the parties

Except as expressly provided in this Deed:

- (a) nothing in this Deed is intended to constitute a fiduciary relationship or an agency, partnership or trust; and
- (b) no party has authority to bind any other party.

6.8 Survival and merger

- (a) No term of this Deed merges on completion of any transaction contemplated by this Deed.
- (b) Clauses 1, 3, 5 and 6 survive termination or expiry of this Deed together with any other term which by its nature is intended to do so.

6.9 Capacity

Except as expressly provided in this Deed each person who executes this Deed does so solely in its own legal capacity and not as agent or trustee for or a partner of any other person.

Execution page

Executed as a deed

Signed and delivered by **[Downer entity]** in accordance with section 127 of the *Corporations Act 2001* (Cth) and by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Signed and delivered by **[Subcontract]** in accordance with section 127 of the *Corporations Act 2001* (Cth) and by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Signed and delivered by **[Novatee]** in accordance with section 127 of the *Corporations Act 2001* (Cth) and by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)



Subcontract – Long Form

Schedule 15 – Subcontractor’s Warranty

Form of Warranty

Subcontractor’s Warranty – Refer to Appendix 3

Schedule 16 - Security of Payment

1 New South Wales

- 1.1 This clause applies to the extent that this Subcontract is for construction work carried out in New South Wales, or is for the supply of related goods and services for construction work carried out in New South Wales.
- 1.2 In this clause, 'construction work' and 'related goods and services' have the meaning given to those terms in the *Building and Construction Industry Security of Payment Act 1999* (NSW).
- 1.3 The Subcontractor shall:
- (a) promptly give Downer a copy of any notice the Subcontractor:
 - (i) receives from a subcontractor under sections 15, 16 or 24 of the Security of Payment Act; or
 - (ii) has been required to supply to a subcontractor under section 15(1) of the Contractors Debts Act setting out Downer's name;
 - (b) ensure that each subcontractor promptly gives Downer a copy of any notice that the subcontractor receives from another person under sections 15, 16 or 24 of the Security of Payment Act; and
 - (c) promptly notify Downer if it becomes aware that a subcontractor intends to exercise a statutory lien, under section 11(3) of the Security of Payment Act, over unfixed plant and materials supplied by the subcontractor for use in carrying out the Work.
- 1.4 If Downer becomes aware that a subcontractor is entitled to suspend work under section 27 of the Security of Payment Act, Downer may pay the subcontractor such money that is, or may be, owing to the subcontractor for work forming part of the Work and Downer may recover any amount paid as a debt.
- 1.5 The Subcontractor shall indemnify Downer against any loss, expense or damage of any nature, including financial loss and legal costs on an indemnity basis, suffered or incurred by Downer arising out of or in connection with:
- (a) a suspension by a subcontractor of work, which forms part of the Work, under section 27 of the Security of Payment Act;
 - (b) a notice of claim being served on Downer under Part 2 of the Contractors Debts Act;
 - (c) a subcontractor exercising a statutory lien, under section 11(3) of the Security of Payment Act, over unfixed plant or materials supplied by the subcontractor for use in carrying out work forming part of the Work; or
 - (d) a failure by the Subcontractor to comply with this clause.
- 1.6 If Downer is served with a payment withholding request under section 26A of the Security of Payment Act by a subcontractor or any other party in connection with any work carried out or material supplied by the Subcontractor to Downer forming part of the Work and Downer consequently retains money that is or becomes payable by Downer to the Subcontractor under this Subcontract:
- (a) Downer is not in breach of its payment obligations under this Subcontract as a result only of the retention of such money in such circumstances; and
 - (b) the Subcontractor waives its rights and releases Downer from liability in respect of all losses or expenses of any nature suffered or incurred by the Subcontractor, and may not terminate, rescind or treat as repudiated the Subcontract arising out of or in connection with Downer retaining such money in such circumstances.
- 1.7 For the purposes of this clause:
- (a) "**Contractors Debts Act**" means the *Contractors Debts Act 1997* (NSW).
 - (b) "**Security of Payment Act**" means the *Building and Construction Industry Security of Payment Act 1999* (NSW);
 - (c) "**subcontractor**" means any person engaged by the Subcontractor, its Secondary Subcontractors or any other person to do work, which forms part of the Work; and
 - (d) "**work**" refers to work which the Subcontractor is, or may be, required to do under this Subcontract and includes equipment, materials, plant, design and other services and temporary works.



Subcontract – Long Form

Annexure – A – Scope of Works



Scope of Works

Transport Access Program (TAP) 3 Tranche 3
Easy Access Station Upgrades Managing Contractor Contract (IS-15-4742-12)

TfNSW: Transport Access Program

Easy Access Station Upgrades

Birrong Station

Package Ref: Building Works

Project Document Version	Date
001	18.09.2020

Scope of Works

Transport Access Program (TAP) 3 Tranche 3
Easy Access Station Upgrades Managing Contractor Contract (IS-15-4742-12)

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1 DOCUMENT SCOPE

1.1 General

This document defines the scope of work for the **Building Works** for the Transport Access Program (TAP) – Easy Access Station Upgrades project. This Scope of Works document applies only to **Birrong Station**.

Downer has been awarded with the Managing Contractor Contract by TfNSW under Transport Access Program (TAP) to carry out station upgrade works. TAP is an initiative to provide a better experience for public transport customers by delivering accessible, modern, secure and integrated transport infrastructure.

1.2 Station Details

The Birrong Station Precinct is located on the T3 Bankstown Line, approximately 22 km South West of Central Station in the local government area of Canterbury-Bankstown Council. The station is bound by Avalon Street to the north, Teresa St to the east and Rodd Street to the west. The station has an island platform with access to the station via stairs from the Avalon Street overbridge.

The work area is shown in Figure 1. The actual work area may vary following development of the detail design by Downer.

The Site consists of the areas or worksites shown indicatively in Figure 4. The actual Site may vary following development of the detail design by the Contractor.



Figure 1 Birrong Station worksite

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1.2.1 Station Upgrade Overview

The Birrong Station upgrade as part of the Transport Access Program is aimed at improving accessibility and amenity for customers. The overall scope is as follows;

- Removal of redundant seating, lighting, and storage at Sydney Trains yard at Chullora
- Provision of temporary customer access bridge, lighting, and earthing and bonding, from adjacent to Hudson Parade to platform
- Demolition of access stairs, support structure and footings from Avalon Street bridge to platform, existing wall, fencing and traffic island on Avalon Street Bridge, and making safe. Make good bridge parapet gap brickwork to match existing
- Demolition of footpath, kerb and gutter on Teresa Street and make good
- Demolition and strip out of existing toilets (2 no), wall and floor, and roller shutter in existing station building
- Decommissioning and removal of existing LV services
- Removal and relocation of existing pay phone on platform
- Removal and relocation of existing FLRs (3no)
- Relocation of sections of 11KV feeder 588/2 and 33KV aerial feeder 709 to allow new footbridge installation
- Removal and replacement of mechanical ventilation and control system for existing station building
- Kerb and gutter, road pavement, footpath, line marking, signage and landscaping works at Teresa St
- Stormwater drainage lines to platform (1no) and in Teresa Street (1no)
- Fire services
- Sanitary drainage services and connection to new and existing connection points in existing station building
- Potable water connection to existing service in existing station building
- Rain water drainage services and connection to new stormwater drainage in existing station building and platform
- Fire-rated LV services, including in platform and surface mounted on Avalon Street Bridge
- DSAPT compliant lighting upgrades in platform and to new lift and stair structure
- Sydney Trains standard isolation Padmount substation assembly (EL0480479 and EL0494646), mounting slab and earth connection, connection to elevator feed, station feed, Ausgrid supply and Sydney Trains 11kV back up supply
- Earthing, bonding and electrolysis protection to all existing or new conductive structures (e.g fencing, light poles, mechanical services, structural steel work, lifts, signage, shelters, bike racks and water supplies)
- CCTV and PA
- Communications services, including in existing building, in platform and surface mounted on Avalon Street Bridge, clocks and controllers, and protection, relocation and installation of new AFILS loops
- Rock anchors
- Footings to steelwork lift bridge-level platform and awning structure and access stairs, and footing slabs to lift shaft and BAZ shelters (2no)
- Concrete lift shaft base structure
- Steelwork, roofing and drainage lift bridge-level platform and awning structure, and access stairs
- Anti-throw screens and protective/safety screens
- Steelwork, roofing and drainage BAZ shelters (2no)
- Two stop 17 persons square lift with appropriate lift lobbies, canopies and protection/ safety screens
- Family Accessible Toilet (FAT) in building on the island platform to make compliant including investigating floor level. Provide new canopy over entrance extending across to existing canopies on platforms
- Unisex ambulant toilet to replace existing unisex toilet in station building including modifications to walls as required
- Landscaping to Teresa Street
- Tactile ground surface indicators (TGSi), directional tactiles, handrails, line marking
- Platform regrade and resurface
- Boarding assistance zones and markings
- Relocate/protect any identified services and utilities that may be impacted by the Subcontractor's Activities

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2 DEFINITIONS AND ABBREVIATIONS

The following definitions and abbreviations are used in this document.

TERM	DEFINITION
ACM	Asbestos Containing Materials
ASA	Asset Standards Authority
BCA	Building Code of Australia
DDA	Disability Discrimination Act 1992
DSAPT	Disability Standards for Accessible Public Transport
EP&A Act	Environmental Planning and Assessment Act (1979) NSW
EP&A Regulation	Environmental Planning and Assessment Regulation 2000 NSW
FAT	Family Accessible Toilet
ITP	Inspection & Test Plan
ITR	Inspection & Test Record
JSEA	Job Safety and Environmental Analysis
NSW	New South Wales
OH&S	Occupational Health & Safety
RISI	Rail Industry Safety Induction
RMS	Roads and Maritime Services
SPR	Scope and Performance Requirements
ST	Sydney Trains
SWMS	Safe Working Method Statement
TAP	Transport Access Program
TCP	Traffic Control Plan
TfNSW	Transport for New South Wales
TSR	TfNSW Standard Requirements

3 CODES AND STANDARDS

3.1 General

All Subcontractor's activities involving works must be in accordance with all relevant Laws, Codes and Standards and the Planning Approval as required by the Contract, the Works Brief, Drawings, Technical Specification and the TfNSW Standard Requirements (TSR).

The Works and the Project Activities must comply with the requirements of Prescribed Standards, unless specified otherwise. The hierarchy of Prescribed Standards will be in the following order:

- Any Standard, code, guidelines or policy specified or referred to in an Appendix of the SPR, Design Drawings, Design Report, or where otherwise required by Law;
- The applicable publications of the relevant asset owner;
- The relevant standards, codes and guides of Standards Australia and Standards New Zealand (or, where an Australian Standard or New Zealand Standard does not exist, the relevant British Standard or International Standard); and
- All other publications, codes, references, guidelines, manuals and other technical documents which are relevant to the performance of the Project Activities, including where necessary to comply with best industry practice.

Where an item, approach or option is referred to in a Prescribed Standard and it is expressed in terms such as 'should', 'may be', 'recommended', 'suggested', 'desirable', 'advisable', the item, approach or option referred to is deemed to be a requirement and must not be varied unless otherwise agreed by Downer.

The Works and all supplied equipment and materials must be designed, manufactured and/or installed, and tested accordance with the latest revisions of the applicable Australian Standards.

Alternative standards and codes that are recognised in Australia may be accepted by Downer at its discretion provided full compliance with all statutory and specified requirements can be achieved and appropriate approval is obtained for the regulatory agencies.

The Subcontractor must submit to Downer for review a statement of all conflicts with Australian Standards where International Standards may be utilised.

If International Standards are used in lieu of equivalent Australian Standards and as such conflicts with any applicable laws, then accreditation of any design element which may arise must be sought by the Subcontractor from and accredited Australian Engineer and proof of this provided to Downer prior to commencement of Works for review and approval.

Costs associated with demonstrating compliance with alternative standards and codes, and demonstrating the suitability of alternative standards and codes must be borne by the Subcontractor.

Relief from any Code or Standard, such as an ASA or Sydney Trains Code or Standard, is the responsibility of the Subcontractor.

4 SUBCONTRACTOR SCOPE OF WORK

4.1 Preamble

The Subcontractors Scope of Work includes (and tender price submission include) the Works detailed below. The Subcontractor will be required to work in conjunction with Downer to ensure all certification and compliance documents are met within the allowable time frames set out in the table of key program dates,

The Subcontractor is deemed to have inspected the site and made allowance for any works not detailed on the drawings or tender documentation that is necessary for the successful completion of the Works.

The Scope of Works relates to the following areas, all as detailed in drawings listed in Annex A and related documents listed in throughout this document.

4.2 General Scope Objectives

- (a) The Subcontractor must provide all materials, labour, supervision, equipment, plant required to wholly complete the Works as described under the Scope of Work;
- (b) The Subcontractor shall mobilise required plant and labour to perform Works as described in Scope of Works. All Staff of Subcontractor must attend and bear the cost of all Site and project inductions before commencement of any activity of Works.
- (c) The Subcontractor must complete all Works in accordance with Downers Project Management Plans, Procedures and Policies.
- (d) All Staff of the Subcontractor must possess relevant competencies inclusive of all necessary inductions and courses required to perform Work for the Project. All plant, equipment and tools must meet the required Standards.
- (e) The Subcontractor is responsible for (in conjunction with Downer), attending and providing representation at all pre-possession and pre-work planning meetings, including all co-ordination meetings with any interface stakeholders.
- (f) The Subcontractor is responsible for co-ordinating and completing all Works including possession works in conjunction with other activities occurring and other Subcontractors/Contractors carrying out Works onsite at the same time.

4.3 Scope of Work Deliverables

- (a) This document pertains to Birrong Railway Station Upgrade “Building Works” package only;
- (b) The Subcontractor must comply with design and Standards applied to this scope;
- (c) The Subcontractor’s scope of work includes, but is not limited to, all materials, labour, supervision, equipment, plant, erection, scaffolding, loading & unloading material, tools, PPE’s, Permits, Inductions and all other items required to wholly complete the Works contained within but not limited to Architectural drawing set, 150313-BIR-RB-DRG-0001 to 07001, Hydraulic services 150313-BIR-HYDRG-1201 to 1210 and Mechanical drawings 150313-BIR-ME-DRG-1401 to 1450 as specified below:
 - a. Building Works (Demolition) – Supply and install temporary propping of remaining external walls, demolish walls and make good on completion. Strip out and dispose doors, walls, finishes, mechanical fixtures etc, remove walls, roller shutter door, form openings and make good as required and as shown in DWG 150313-BIR-AR-DRG-01051;
 - b. Cap off and / or reconnect hydraulic services as required;
 - c. Terminate existing electrical services and temporarily disconnect where required. Provide temporary connections as required to ensure continuous service to station

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- users;
- d. Demolish the concrete floor slab to require level as shown on AFC drawings, remove and dispose concrete, spoil and redundant in-ground services where required;
 - e. Remove, store and relocate existing platform seating;
 - f. Supply and install concrete slab in station building as per AFC drawings;
 - g. Supply and install Fixtures & Fittings (FAT & Ambulant Toilets) as per AFC drawings & schedule of finishes – Supply and install but not limited to wash basins, taps, hand dryer, toilet roll holder, grabrails, soap dispenser, baby change table, coat hook, mirror, bins etc;
 - h. Allow to remove, store and relocate existing access ramp cupboard;
 - i. Supply, install, test and commission mechanical ventilation to toilets and air conditioning to station building as per AFC drawings including Weatherproof Local Isolators Tamperproof;
 - j. Allow to supply and install Masonry infill surfaces and studs;
 - k. Supply, install and modify where required walls, ceiling and their associated linings and insulation as per AFC drawings;
 - l. Supply and Install doors, door frames and all associated features as per AFC drawings and schedule of finishes;
 - m. Supply and Install Privacy film, Anti-graffiti to existing windows;
 - n. Supply and install all waterproofing and tiling requirements;
 - o. Supply and install all painting requirements including but not limited to Internal walls, ceiling, external brickwork, doorway and external grade door set;
 - p. Supply, Install and modify where required internal shelving, section of floor and ceiling for new enclosure;
 - q. Allow to infill existing opening in cavity brickworks, to tie into existing;
 - r. Supply and install fire rated wall, ceiling and double leaf fire rated door sets (including frames & hardware's) to form fire enclosure in station building;
 - s. Supply and install vinyl flooring and skirting as per AFC drawings and schedule of finishes;
 - t. Allow to modify existing in ground sewer and potable water feed to suit new layout;
 - u. Supply, install, test and commission HWU and hot water supply to FA/ambulant toilets.
 - v. Supply, Install, test and commission; fire hydrant, mechanical services, air-conditioning, mechanical ventilation to FAT, ambulant. cleaners' room, SSER room.
 - w. Supply, Install and modify where required A/C condensate drain pump, outdoor air supply to SSER room and ventilation to new rated ISMSB enclosure within existing store/waiting room;
 - x. Supply, install, test and commission new bubbler and potable water connection;
 - y. Signage – Supply and install door signage as per AFC drawings;
 - z. Hydraulic Works (Platform 1 Air Conditioner Condenser Tundish) – Supply and install Air Conditioner Condenser Tundish;

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- aa. Joints – Supply and Installation of all sealants, form strips and the like;
- bb. Curing – Supply and apply curing agents;
- cc. Provide slip resistance testing of surfaces in accordance with DDA/BCA specifications and standards;
- dd. Supply concrete compressive Strength & Slump test reports.
- ee. Sustainability – Develop Environmental Management System. Maintain ISCA compliance and perform all sustainability reporting requirements.
- ff. Allow for survey as-builts and/or WAE drawings to be submitted at the completion of the Works; General
 - i. Attend all coordination meetings with Sydney trains for possession and others where required.
 - ii. Allowance for trade & final cleaning to areas on completion of works;
 - iii. Provide certificates of compliance and warranties;
 - iv. Protection of work area in the event
 - v. of inclement weather
 - vi. Protection of work area from station commuters.
- (d) Make good the works area upon completion of the project including remediation of the site upon completion of the works, including levelling and removal of spoil and any excess material to return the site to its original condition;
- (e) Mobilisation and de-mobilisation;
- (f) Take delivery of and horizontal handling of all permanent materials supplied by others;
- (g) Supply of all craneage including but not limited to for unloading of materials / elements from trucks;
- (h) Supply of all concrete, concrete pump and concrete testing including any design approvals where required
- (i) Supply and Installation of all grouting, dry pack mortar and the alike (supply by others);
- (j) Supply of plant, equipment, materials and labour for all temporary construction works as required;
- (k) Certification for the formwork, false work, temporary works installation design by a certified Engineer (where required);
- (l) Edge protection and fall prevention systems as required;
- (m) The works specified above will require possessions due to the movement of materials, adjacency of the works to the public, interruptions to services and proximity to the rail. The Subcontractor is required to program and manage works, making allowances in program and methodologies to align works within the planned possessions. The Possession Calendar for Birrong Railway Station, shown in Annex B, indicates the current possession calendar as provided by TfNSW;
- (n) The subcontractor must provide all necessary temporary way finding and information signage during the construction of the works to ensure passengers, pedestrians have clear directions to all transport facilities and are appropriately advised of all construction works;
- (o) All temporary way finding and information signage, emergency signage and statutory signage, required to support normal station operations, special events, site management. Staging and other construction activities must comply with the same standards that apply for the permanent works;
- (p) The Subcontractor must demonstrate that the refurbishment works as part of the project maintain the existing level of the safety, engage a qualified safety engineer;
- (q) The Subcontractor must provide safe access for geotechnical, structural or any other inspections required;
- (r) Access for all concrete repair works, including general patching works.
- (s) Allow for Building Code Australia (BCA) and Disability access (DDA) certification.

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4.3.1 Works by others

- a) Isolation and resource requests to Sydney Trains (by Downer)

4.4 Minor Civil

The Subcontractor must complete the works as specified in order to complete construction of elements including but not limited to:

- (a) Supply and install buried route, pits and cabling;
- (b) Any and all earthworks associated with delivering the scope;
- (c) Temporary removal and reinstatement of existing surfaces
- (d) Managing all fill and excavated material, stockpiles and materials to be removed from Site, in accordance with the requirements of the contract, including sampling, validating, and classifying all excavated materials for offsite disposal, and disposing of excavated material in accordance with relevant waste classifications
- (e) Make good the works area upon completion of the project including remediation of the Site upon completion of the works, levelling and removal of excess fill and quarry materials to return the site to its original condition

Exclusions for civil works:

- Geotechnical works design

4.5 Works Excluded

Other than Defect rectification by the Subcontractor, below Works excluded from scope of Works.

- (a) ACM (Asbestos Containing Materials), management, and disposal, unless already noted on the relevant hazardous material reports or contamination/HAZMAT registers;
- (b) Survey Support / set-out of Gridlines and Benchmarks (Verification to be done by Subcontractor);
- (c) Installation of hoardings or temporary Wayfinding signage, except where modified by the Subcontractor for their proposed modification(s) to be approved by Downer;
- (d) Provision for utilities relocation is excluded from the works;
- (e) Permanent works design;
- (f) Obtain approvals from adjacent sites and any other relevant parties for permission to carry out the contract works;
- (g) Private certification/occupation fees;
- (h) Geotechnical Design (verification and Certification of such works is still required by the Subcontractor);
- (i) Traffic Management (On-site) for all movements in and out of the site entry points to the date of Subcontractor's Practical Completion;
- (j) All site amenities as required including toilets, crib rooms, power and water supply to site sheds to the level nominated by Downer only. The Subcontractor will be required to provide any requirements in excess of that nominated;
- (k) Worksite Protection Officer and/or Safeworking for all works up to the date for the Subcontractor's Practical Completion;

4.6 Subcontractor Responsibilities

4.6.1 Key Subcontractor Responsibilities

The requirements of the Structural Steel package are as follows:

- (a) Refer Section 4.1-4.5 for the Scope of Works;
- (b) The requirements stipulated in the Subcontractors responsibilities will apply to this Subcontract Agreement in so far as they relate to the Subcontractors Scope of Work;
- (c) The Subcontractor acknowledges that noise restrictions apply during all times that work is permitted and must submit to Downer a method statement describing how it intends to keep noise emissions within the permitted levels. The Subcontractor is liable for all damages and fines imposed due to noise levels being exceeded by any person performing the Subcontract Works;
- (d) The Subcontractor must ensure that all plant, trucks etc. working on the Project are in compliance with Downers pre-plant checklist and are fitted with non-tonal reversing alarms, spill kits, fire extinguishers, two-way radios and rotary amber lights;
- (e) The Subcontractor has allowed to comply with all statutory requirements regarding testing of electrical leads, power tools etc.;
- (f) The Subcontractor acknowledges that there is minimal parking onsite;
- (g) The Subcontractor must provide Downer with a minimum of 14 days written notice of intention to move plant or equipment or deliver materials outside of the normal Project working hours. The Subcontractor must obtain Downer written approval prior to moving any plant or equipment or delivering materials outside of normal Project working hours. The Subcontractor is liable for all damages and fines imposed as a result of the Subcontractor's failure to comply with this clause;
- (h) The Subcontractor must nominate in the submission, reasonable allowances which cannot be exceeded for shared site resources including Traffic Control (on-site), Survey and Safeworking;
- (i) It is the Subcontractors responsibility to request offsets and protect all survey marks provided by Downer. Costs associated with re-survey for surrounding works and/or request by the Subcontractor to re-survey as a result of lack of site protection/spotters shall be passed on to the Subcontractor;
- (j) It is the Subcontractors responsibility to advise Downer of items on drawings not containing set-out from gridlines that are required so that no unnecessary return visits are required by the surveyor;
- (k) The Subcontractor is responsible for any Traffic Control, permits, transportation requirements and approvals, etc. as required for transportation of plant and materials to Site;
- (l) The Subcontractor is responsible for providing spotters for the guidance of traffic and machinery in the Works area for access and egress to/from Site;
- (m) The requirements stipulated in the subcontractor's responsibilities will apply to this Subcontract Agreement in so far as they relate to the Subcontractor's scope of work;
- (n) The Subcontractor has allowed to store all equipment off site until required on site for installation. All costs for storage are the responsibility of the Subcontractor;
- (o) The Subcontractor has included for supplying its own bins as well as collecting and emptying them into the main bins provided by Downer. Recyclable materials will be placed in appropriate recyclable main bins as required by the site waste management system or removed from Site by the Subcontractor as directed by Downer;
- (p) Non-recyclable waste is to be deposited in the main rubbish bins provided by Downer. If any non-recyclable waste is deposited by the Subcontractor into the recyclable main bins then the Subcontractor will be charged with the full cost of removal of that bin;

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- (q) The Subcontractor must submit to Downer prior to commencing on site an OH&S plan which complies with current legislation, codes and standards including SWMS;
- (r) The Subcontractor acknowledges that it has allowed to pay all fees and allow its' employees to attend and undergo a Work cover OH&S General Induction for Construction Work in NSW and for each employee to be issued with a OH&S Construction Induction Training Certificate prior to starting on site;
- (s) The Subcontractor acknowledges that it has allowed to provide all personal protective equipment and clothing required to undertake the Subcontract Works including but not limited to hard hats, hi-vis long sleeve shirts (rail appropriate), long trousers, lace up safety boots, safety glasses and hearing protection;
- (t) The Subcontractor must ensure that during the execution of the Subcontract Works the public way is not obstructed by materials or vehicles, or in any way whatsoever;
- (u) The Subcontractor acknowledges that it has allowed to provide an employee with a first aid certificate as part of its workforce at all times;
- (v) The Subcontractor shall allow for an adequate number of work crews to complete all works as set out in this scope, to be delivered by the key milestone dates detailed;
- (w) The Subcontractor shall ensure that sufficient spare equipment is available assure continuity and quality of the works (this shall account for mechanical breakdown);
- (x) If an employee of the Subcontractor is elected to the Site Safety Committee, the Subcontractor must ensure that the employee is suitably qualified and must pay all costs relating to the employee's involvement with the Site Safety Committee;
- (y) The Subcontractor is responsible for cleaning their own sheds to the satisfaction of Downer on a daily basis. On completion of the Subcontract Works the Subcontractor must remove it's sheds, clear it's storage areas and be responsible for disconnection of all services to its sheds;
- (z) The Subcontractor must clean roads and footpaths and wash down vehicles and the like before exiting the Site in accordance with Downer's and authority requirements;
- (aa) Immediately following a period of wet weather the Subcontractor must remove all casual water remaining from its work areas and access ways with all labour and equipment necessary to enable work to continue with minimum delay;
- (bb) The Subcontractor must submit details of size of delivery trucks, and methods of unloading and moving of materials into position on Site;
- (cc) The Subcontractor must be deemed to have included in its price for working in close cooperation with other trades. The Subcontractor is not entitled to claim any additional costs or expenses in relation thereto and for returning to complete these portions of work at a later date;
- (dd) The Subcontractor has allowed for all out of sequence work;
- (ee) The Subcontractor acknowledges that it has allowed for all costs including overtime within the Subcontract Sum required to meet the Date for Practical Completion;
- (ff) It is the responsibility of the Subcontractor to ensure that they are working off the current drawings and specifications, and to ensure that they highlight any discrepancies or missing information that may exist. No delay claim for additional costs or extension of time will be considered as a result of the Subcontractor's failure to comply with this clause;
- (gg) In the event that the scope of work or any other section of this Subcontract conflicts with any items and/or conditions noted in the specifications, drawings and/or other Subcontract documents, it must be deemed that the Subcontractor has allowed for the higher specification, higher costs and more onerous conditions/requirements in the Subcontract Sum;
- (hh) The Subcontract Sum must not be subject to any fluctuation and/or escalation as a consequence of any increase in the cost of wages, materials or plant or any other alteration whatsoever and includes all wages, costs of wages, levies and allowances whatsoever for the duration of the

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construction of the Subcontract Works and thereafter for the satisfaction of the Subcontractor's obligations during the Defects Liability Period;

- (ii) The Subcontractor must record timesheets and daily diaries for issue to Downer as requested, separately for each station;
- (jj) The Subcontractor must submit timesheets, daily diaries, progress claims and invoices separately for each station; and
- (kk) Complete any tie-ins to existing structures including demolition and make good connections as required by the design and including provision for and completion of conditions of heritage approvals as they apply to the scope of works.

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4.6.2 Responsibility Matrix

Description	Supplied By/ Responsibility	
A – Site Accommodation		
Site Facilities as Nominated By Downer	<input checked="" type="checkbox"/> Downer	<input type="checkbox"/> Subcontractor
Minimal Storage Areas and Parking as Nominated By Downer	<input checked="" type="checkbox"/> Downer	<input type="checkbox"/> Subcontractor
Off-site Storage for Materials and Pre-Assembly Works	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
B – Temporary Services		
Power, Water, Sewer (At the Site Compound)	<input checked="" type="checkbox"/> Downer	<input type="checkbox"/> Subcontractor
All Temporary Services as required for the Works	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
All Other Temporary Services not Nominated by Downer	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
Site Recycling Bins	<input checked="" type="checkbox"/> Downer	<input type="checkbox"/> Subcontractor
Site General Waste Bins	<input checked="" type="checkbox"/> Downer	<input type="checkbox"/> Subcontractor
Site Construction Waste Bins	<input checked="" type="checkbox"/> Downer	<input type="checkbox"/> Subcontractor
C – Plant		
All Plant as Required for Completion of the Scope	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
D – General		
All Materials as Required for Completion of the Scope	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
Temporary Works Design and Certification	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
Supply, Installation and Removal of Temporary Shoring, Propping, Fall/Edge Protection.	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
Supply, Installation and Removal of Temporary Traffic Barriers, Hoarding, and Fencing	<input checked="" type="checkbox"/> Downer	<input type="checkbox"/> Subcontractor
Waste Classification	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
Waste Disposal	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
General Worksite Lighting	<input checked="" type="checkbox"/> Downer	<input type="checkbox"/> Subcontractor
Task Specific Lighting	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
Geotechnical Sampling & Analysis	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
All Consumables including Fuels and Oils	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
Quality Assurance Documentation (ITPs, ITR, COC, Warranties Etc.)	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
Traffic Management (onsite)	<input checked="" type="checkbox"/> Downer	<input type="checkbox"/> Subcontractor
Traffic Management (offsite)	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
Survey (set-out of Gridlines and Benchmarks)	<input checked="" type="checkbox"/> Downer	<input type="checkbox"/> Subcontractor
Levelling and Survey Validation	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
Safeworking (Protection Officer)	<input checked="" type="checkbox"/> Downer	<input type="checkbox"/> Subcontractor
Service and Utility Relocations (verification to be done by the Subcontractor, including permit to excavate process)	<input checked="" type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor

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Description	Supplied By/ Responsibility	
Installation, Inspection and maintenance of environmental controls in accordance with Blue Book requirements.	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
E – Other		
ACM Materials	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
Permits (Dig, Working in Confined Space, Working at Heights, LV/HV, Etc.)	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
PPE as required to complete the Work wholly	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
Inductions & training as required to complete the Work wholly	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
Statutory requirements regarding testing of electrical leads, power tools etc.	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
Defect Rectification	<input type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
Review of all Safe Working documentation	<input checked="" type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor
Site Specific Inductions	<input checked="" type="checkbox"/> Downer	<input checked="" type="checkbox"/> Subcontractor

Responsibility Matrix Notes:

- All Attendencies provided by Downer will be made available for the Subcontractors Scope of Works up until the date for Practical Completion. All Defect rectification works completed beyond the date for Practical Completion must be borne by the Subcontractor.
- All Site-Specific inductions will be undertaken by a Downer Representative at no cost to Subcontractor. All Downer corporate and online induction to be completed by the Subcontractor at its own cost.
- Non-recyclable (non-construction) waste is to be deposited in the main rubbish bins provided by Downer. If any non-recyclable waste is deposited by the Subcontractor into the recyclable main bins then the Subcontractor will be charged with the full cost of removal of that bin.
- Cross-contamination of waste deposited by the Subcontractor into the main bins provided by Downer will be charged back to the Subcontractor with the full cost of removal of that bin.

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4.7 Other Requirements

4.7.1 Operational Requirements

The Birrong Station and the surrounding transport facilities including bus stops, pick-up and set down facilities and taxi services must continue to operate throughout the duration of the works. The Subcontractor must obtain permission from Council and pay any fees/bonds associated with tree removals, road or drainage works, parking for construction purpose, council inspections and footpath hoarding.

4.7.2 Safety Requirements

- (a) The Subcontractor is to ensure that secure separation is maintained between the Site and Rail Corridor for the duration of the works;
- (b) The Subcontractor must provide unimpeded access 24 hours a day, 7 days a week for: existing pedestrian access, adjoining and nearby property owners, occupiers and users to areas adjacent, Sydney Trains and Council and any of their contractors requiring access to the rail corridor and for all emergency services. The Subcontractor must clean and protect the Works and temporary works to be carried out as well as the site;
- (c) The Subcontractor is required to undertake a Downer online induction and site specific induction. A total 3 hours should be allowed for personnel to undertake the online induction and 1 hour to complete the site-specific induction;
- (d) The Subcontractor should be required to allow for equipment authorisations, drug and alcohol tests and VOC's are to be conducted offsite prior to commencement of works;
- (e) The Subcontractor has allowed for all personnel working within the rail corridor to be possess the correct qualifications (i.e. RIW Card) and access onto Metro Trains Australia (MTA) Portal for the duration of the Contracted Works.
- (f) The Subcontractor's personnel shall attend daily pre-start briefings and tools box talks as required;
- (g) The Subcontractor has allowed for the preparation, submission and regular updates of site specific:
 - i. Safe Work Method Statements (SWMS).
 - ii. Work packs.
 - iii. Construction Programme.
 - iv. Any other document specified within the Subcontractor Management Pack.

These plans are to outline the methods and procedures to be implemented during the Works. All costs for the preparation of these plans shall be borne by the Subcontractor and all documentation shall be submitted to Downer for review, in advance of planned commencement of the activity.

4.7.3 Sustainability Requirements

These conditions are project wide targets and requirements. For subcontractors; the level of compliance and costs to ensure continued compliance against the below are required as part of the tender return. The performance against the below targets shall form part of the sub-contractor evaluation prior to final recommendation of preferred sub-contractor

4.7.3.1 Sub-Contractor's Environmental Management System

- The Sub-Contractor requires an Environmental Management Policy.
- If the Sub - Contractor's Environmental Management System is accredited under ISO 14001:2015, The sub-contractor must provide evidence of certification

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4.7.3.2 Social Procurement:

- The subcontractor must demonstrate compliance with the projects social procurement requirements as detailed in the PMO Procurement TfNSW Standard Requirements (TSR) - Works Contracts, Annexure A.

4.7.3.3 Materials

4.7.3.3.1 Concrete:

- All concrete unless specified in approved designs or quality / contractual specification must have as minimum, 40% of Portland cement to substituted with supplementary cementitious materials such as a fly ash, ground granulated blast furnace slag or alkali activated cements or low carbon concretes are selected for example: Emesh, Geopolymer or Envisa concrete. Details of the product to be selected must be provided to Downer at tender return phase and prior to product delivery to Site.

4.7.3.3.2 Steel:

- All Steel: to be sourced from a steelmaker that is a current member of the Worldsteel Climate Action Programme.
- All Steel: to be sourced from a steelmaker with an ISO 14001 certified EMS
- All steel fabricators to have an ISO certified environmental management system (14001:2015)
- Reinforcing Steel: at least 60% of all reinforcing steel is produced using energy reducing processes in its manufacture (measured by average mass by steelmaker annually).
- Reinforcing Steel: where feasible based on design and scope of works, all reinforcing steel to be steel holding an ISCA accredited 'Environmental Product Declaration' (EPD).
- All steel where feasible to be domestically sourced and manufactured

4.7.3.3.3 Timber:

- All timber products are either re-used timber, post-consumer recycled timber or Forest Stewardship Council (FSC) or Programme for the Endorsement of Forest Certification (PEFC) certified timber. – all product declaration evidence and timber supplier certificates and chain of custody information must be provided to Downer prior to purchase of timbers for assurance purposes.

4.7.3.3.4 Aggregate:

- All aggregates unless specified in approved designs or quality / contractual specification must be from non-virgin sources and documentation of compliance submitted to Downer at tender return phase and prior to delivery to Site.

4.7.3.3.5 Asphalt:

- All asphalt products unless stated in a design specific / Sydney Trains specific condition must be from a 'low-carbon asphalt' or 'low emission asphalt' (LEA) product range. Details of the product to be selected must be provided to Downer at tender return phase and prior to product delivery to Site.

4.7.3.4 Waste

- All waste produced or managed by the sub-contractor must be managed in accordance with the NSW EPA *Waste Classification Guidelines* (EPA, 2014) and the Contractors / Downer's Waste Management Plan.
- The following waste targets shall apply to all sub-contractors:
- 100% of clean spoil beneficially reused onsite or locally
- >95% of inert and non-hazardous waste generated during construction diverted from landfill

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- Prior to conducting waste removal: All waste classification reports, EPA issued licenses for both transportation and disposal of wastes at a licensed waste facility and details of any waste tracking documentation and transport certificates (if required) must be provided to and be approved by Downer prior to any waste leaving Site
- Following the completion of waste removal activity: All waste documentation such as: completed waste tracking compliance (for all trackable waste streams), waste delivery and disposal dockets, weighbridge tickets, asbestos / hazardous waste clearance certificates must be provided to Downer following completion of waste disposal.

4.7.3.5 Reporting

- To meet the Downer's NGER and TfNSW contractual requirements the subcontractor must provide evidence on a monthly basis to Downer in accordance with reporting requirements as stated in PMO Procurement TfNSW Standard Requirements (TSR) - Works Contracts, Annexure A, Annexure G Item X (d).
- A monthly data capturing compliance form will be issued to the subcontractor upon contract award. The data capturing compliance form must be completed and returned to Downer by the 10th day of the month for the previous months works.

4.7.4 Quality Requirements

The Subcontractor must comply with TfNSW, ASA and Sydney Trains Standard Requirements. As and when required by Downer the Subcontractor shall provide quality records in accordance with Downers Quality Management Plan.

Within two (2) weeks of the Commencement Date of the Contract, the Subcontractor must develop and submit all the Inspection and Test Plans (ITP's) and records (ITR's) for Downer's review and approval.

The Subcontractor will be required to produce quality records as follows:

- Quality documentation (Inspection and Test Plans and Records) to be submitted to Downer for review which detail the proposed methodology including plant (i.e cranes, grinders, etc.);
- Quality Control and Certificates of Compliance (COC) for all materials;
- Shop Drawings to be provided by the Subcontractor prior to manufacture to be reviewed/approved by the Downer appointed design representative. The Shop Drawing process will involve checking steel member sizing only in accordance with the design and not accuracy of the shop drawings;
- Red-pen mark-up of the drawing signed off by the Subcontractor's Engineer confirming Works-As-Executed;
- Completed Quality Assurance Documentation including Completed ITP's and Records;
- Quality Control and Assurance certificates and warranties for all materials and installed components as specified, including design approvals; and
- Provide all operations and maintenance manuals of all installed materials/equipment.

4.7.5 Environmental Requirements

The Subcontractor is to comply with all Project Environmental requirements.

- The Subcontractor has allowed to complete the Works in accordance with all the requirements contained in the Downer Construction Environmental Management Plan (CEMP)
- The Subcontractor has allowed for dust suppression
- The Subcontractor shall not contaminate spoil from the excavation works. In the event that the Subcontractors activities cause contamination of spoil during bulk out activities, the

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Subcontractor will be back charged the extra/over costs associated with disposing of the newly classed material.

- (d) Install and maintain environmental and sediment controls for the duration of the works, including management of road debris for all project works including the use of street sweepers where required.
- (e) Sustainability – All steel to be sourced from subcontractors that are;
 1. current members of the Worldsteel Climate Action Programme;
 2. with an ISO 14001 certified EMS;
 3. at least 60% of fabricated structural steelwork is supplied by a steel fabricator / steel contractor accredited to the ASI Environmental Sustainability Charter (ESC) or equivalent scheme to be approved by TfNSW.

4.7.6 Working Hours Requirements

Works must be undertaken during standard (NSW) Environment Protection Authority (EPA) construction hours, which are as follows:

Days	Permitted Working Hours
Monday to Friday	7.00 am to 6.00 pm
Saturdays	8.00 am to 1.00 pm
Sundays or public holidays.	Not permitted (without approval)

Certain works may need to occur outside standard hours and would include night works and works during routine rail possessions which are scheduled closures that would occur regardless of the Proposal when part of the rail network is temporarily closed and trains are not operating.

Out of Hours Work (OOHW) are required in some cases to minimise disruptions to customers, pedestrians, motorists and nearby sensitive receivers; and to ensure the safety of railway workers and operational assets. It is estimated that approximately four rail possessions would be required to facilitate the following:

OOHW may also be scheduled outside rail possession periods. Approval from TfNSW would be required for any out of hours work and the affected community would be notified as outlined in the TfNSW Construction Noise and Vibration Strategy (TfNSW, 2018b).

4.7.7 Schedule Requirements

- (a) The Subcontractor shall submit to Downer a 'status' three week look-a-head programme each week for review, including the provision of any mitigation measures in the event of delay;
- (b) The Subcontractor has allowed to coordinate with and work positively with Downer to ensure target programme is achieved;
- (c) The Works are planned to take place during a number of weekend possessions. Downer has applied for the necessary permits and possessions for work to occur in accordance with Annex B.

4.7.8 Notification Requirements

Where Downer resources are required to complete the Works, the Subcontractor is required to provide written notification to allow Downer to make the following arrangements:

Notice Type	Min. Required Notice
Out of Hours Work (OOHW)	30 Days
Safe Working	10 Days
Survey	10 Days
Waste Classification	14 Days
Geotechnical Analysis	14 Days
Traffic Control	7 Days

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Downer Supervision	4 Days
Inspections and Hold Points	4 Days
Review of SWMS	4 Days

Note:

- No claim for additional costs or extension of time will be considered as a result of the Subcontractor's failure to comply with the above.

4.8 Other than Possession Works

The Subcontractor must carry out Works in accordance with their program provided. The Subcontractors program must reflect the Downer program provided to the extent that any disparities have no effect on the overall program, any completion or commissioning dates, other Downer or Subcontractor Works, or interface Contractor Works.

The Subcontractors program will be managed within the overall project program in Primavera P6 format, the Subcontractor will be required to provide regular updates at an agreed frequency and format for input into the master P6 program.

The Subcontractor shall commence the work tentatively from 02nd November 2020 and complete all works by 12th February 2021.

4.9 Provisional Works

This section is not applicable, there are no provisional items under this package of Work.

4.10 Remedial/Defect Works

Any remedial work shall be the responsibility of the Subcontractor who shall remediate work that is not installed to the drawings in a timely manner, as directed, without disruption to the construction programme. This may include the provision of additional resources without claim for an Extension of Time or cost Variation;

In the event that remedial work is to be carried out, the Subcontractor shall allow for the following:

- Submission of method statement for proposed remedial Works;
- Submit all proposed materials for remedial works approval by Downer prior to any remedial works are carried out; and
- Submission of previous examples of where the proposed remedial method has been used successfully.

4.11 Free Issue Items

This section is not applicable, there are no free issued items under this package of Work.

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ANNEX A – RELATED DOCUMENTS AND DRAWINGS

The documents in the following table set out the requirements that the subcontract works must comply with. Only Approved for Construction (AFC) and/or (IFC) drawings must be used for construction/manufacture.

Item	Document No	Rev	Sts	Title
1	150313-BIR-AR-DRG-00001	A0	IFC	Birrong Cover Sheet
2	150313-BIR-AR-DRG-00501	A0	IFC	Birrong Site Plan
3	150313-BIR-AR-DRG-01051	A0	IFC	Birrong Demolition Plan - Platform Level
4	150313-BIR-AR-DRG-01052	A0	IFC	Birrong Demolition Plan - Footbridge Level
5	150313-BIR-AR-DRG-01101	A0	IFC	Birrong General Arrangement Plan - Platform Level - Part 1
6	150313-BIR-AR-DRG-01102	A0	IFC	Birrong General Arrangement Plan - Platform Level - Part 2
7	150313-BIR-AR-DRG-01104	A0	IFC	Birrong General Arrangement Plan - Platform Level - Part 3
8	150313-BIR-AR-DRG-01201	A0	IFC	Birrong General Arrangement Plan - Footbridge Level
9	150313-BIR-AR-DRG-01501	A0	IFC	Birrong Details - Lift 1
10	150313-BIR-AR-DRG-01502	A0	IFC	Birrong Detail Elevations - Lift 1
11	150313-BIR-AR-DRG-01503	A0	IFC	Birrong Detail Lift Canopy RCP
12	150313-BIR-AR-DRG-01504	A0	IFC	Birrong Detail Lift Roof
13	150313-BIR-AR-DRG-01511	A0	IFC	Birrong Details - Platform Building
14	150313-BIR-AR-DRG-01512	A0	IFC	Birrong Detail Elevations - Platform Building
15	150313-BIR-AR-DRG-01531	A0	IFC	Birrong Detail - Baz Shelter
16	150313-BIR-AR-DRG-01532	A0	IFC	Birrong Detail - Baz Shelter
17	150313-BIR-AR-DRG-01533	A0	IFC	Birrong Detail - Stairs
18	150313-BIR-AR-DRG-02001	A0	IFC	Birrong Lift Shaft Setout Plan
19	150313-BIR-AR-DRG-03001	A0	IFC	Birrong External Elevations 1
20	150313-BIR-AR-DRG-03002	A0	IFC	Birrong External Elevations 2
21	150313-BIR-AR-DRG-04001	A0	IFC	Birrong Sections
22	150313-BIR-AR-DRG-05001	A0	IFC	Birrong Screen & Window Schedules
23	150313-BIR-AR-DRG-05002	A0	IFC	Birrong Screen & Window Schedules
24	150313-BIR-AR-DRG-05501	A0	IFC	Birrong Detail
25	150313-BIR-AR-DRG-05502	A0	IFC	Birrong Detail
26	150313-BIR-AR-DRG-05503	A0	IFC	Birrong Detail
27	150313-BIR-AR-DRG-06021	A0	IFC	Birrong Details - Screen - Sheet 1
28	150313-BIR-AR-DRG-06022	A0	IFC	Birrong Details - Screen - Sheet 2
29	150313-BIR-AR-DRG-07001	A0	IFC	Wet Area Details
30	150313-BIR-AR-DRG-09000	A0	IFC	Birrong Early Works - Cover Sheet
31	150313-BIR-AR-DRG-09001	A0	IFC	Birrong Early Works - Temp Bridge Plan
32	150313-BIR-AR-DRG-09002	A0	IFC	Birrong Early Works - Demolition Plan
33	150313-BIR-AR-DRG-09003	A0	IFC	Birrong Early Works - Detail Plan
34	150313-BIR-AR-M3D-00001	A0	IFC	Birrong Architecture Design Model

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35	150313-BIR-AR-RPT-00001	AO	IFC	Birrong AFC Stage Architectural Design Report
36	150313-BIR-BC-RPT-00001	AO	IFC	Birrong AFC Stage Value Management Report
37	150313-BIR-BC-RPT-00002	AO	IFC	Birrong AFC Stage Value Management Report Appendix
38	150313-BIR-CI-DRG-00501	AO	IFC	Birrong Cover Sheet & Drawing List
39	150313-BIR-CI-DRG-00502	AO	IFC	Birrong General Notes - Sheet 1 of 2
40	150313-BIR-CI-DRG-00503	AO	IFC	Birrong General Notes - Sheet 2 of 2
41	150313-BIR-CI-DRG-00511	AO	IFC	Birrong General Arrangement
42	150313-BIR-CI-DRG-00516	AO	IFC	Birrong Detail Plan - Sheet 1 of 2
43	150313-BIR-CI-DRG-00517	AO	IFC	Birrong Detail Plan - Sheet 2 of 2
44	150313-BIR-CI-DRG-00521	AO	IFC	Birrong Typical Sections Sheet 1 of 3
45	150313-BIR-CI-DRG-00522	AO	IFC	Birrong Typical Sections Sheet 2 of 3
46	150313-BIR-CI-DRG-00523	AO	IFC	Birrong Typical Sections Sheet 3 of 3
47	150313-BIR-CI-DRG-00531	AO	IFC	Birrong Platform Cross Sections - Sheet 1 of 2
48	150313-BIR-CI-DRG-00532	AO	IFC	Birrong Platform Cross Sections - Sheet 2 of 2
49	150313-BIR-CI-DRG-00536	AO	IFC	Birrong MC01 Cross Sections - Sheet 1 of 2
50	150313-BIR-CI-DRG-00537	AO	IFC	Birrong MC01 Cross Sections - Sheet 2 of 2
51	150313-BIR-CI-DRG-00541	AO	IFC	Birrong Setout Plan - Sheet 1 of 2
52	150313-BIR-CI-DRG-00542	AO	IFC	Birrong Setout Plan - Sheet 2 of 2
53	150313-BIR-CI-DRG-00551	AO	IFC	Birrong Schedules
54	150313-BIR-CI-DRG-00561	AO	IFC	Birrong Details - Sheet 1 of 2
55	150313-BIR-CI-DRG-00562	AO	IFC	Birrong Details - Sheet 2 of 2
56	150313-BIR-CI-DRG-01001	AO	IFC	COVER SHEET AND DRAWING LIST
57	150313-BIR-CI-DRG-01002	AO	IFC	GENERAL NOTES - SHEET 1
58	150313-BIR-CI-DRG-01003	AO	IFC	GENERAL NOTES - SHEET 2
59	150313-BIR-CI-DRG-01011	AO	IFC	GENERAL ARRANGEMENT
60	150313-BIR-CI-DRG-01031	AO	IFC	COMBINED SERVICES ROUTE - PLAN
61	150313-BIR-CI-DRG-01032	AO	IFC	COMBINED SERVICES ROUTE - CROSS SECTIONS
62	150313-BIR-CI-DRG-01033	AO	IFC	COMBINED SERVICES ROUTE - PIT DETAILS
63	150313-BIR-CI-DRG-01051	AO	IFC	STRUCTURAL FOOTINGS - SETOUT PLAN
64	150313-BIR-CI-DRG-01052	AO	IFC	STRUCTURAL FOOTINGS - SETOUT TABLE
65	150313-BIR-CI-M3D-00001	AO	IFC	Birrong Platform Triangulation
66	150313-BIR-CI-M3D-00002	AO	IFC	Birrong External Works Triangulation
67	150313-BIR-CI-M3D-00003	AO	IFC	Birrong External Works 3D Strings
68	150313-BIR-CI-M3D-00004	AO	IFC	Birrong External Works Alignments
69	150313-BIR-CI-M3D-00005	AO	IFC	Birrong Platform Alignments
70	150313-BIR-CI-M3D-00012	AO	IFC	Birrong External Works Solids
71	150313-BIR-CI-RPT-00001	AO	IFC	Birrong Birrong AFC Stage Civil Design Report
72	150313-BIR-DR-DRG-00511	AO	IFC	Birrong Plan
73	150313-BIR-DR-DRG-00521	AO	IFC	Birrong Drainage Longitudinal Section
74	150313-BIR-DR-DRG-01011	AO	IFC	DRAINAGE PLAN

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75	150313-BIR-DR-DRG-01012	AO	IFC	DRAINAGE LONG SECTIONS
76	150313-BIR-DR-DRG-01013	AO	IFC	Birrong Early Works - Drainage - Typical Cross Sections
77	150313-BIR-DR-DRG-01014	AO	IFC	Birrong Early Works - Drainage - Typical Cross Sections and Details
78	150313-BIR-DR-DRG-01015	AO	IFC	Birrong Early Works - Drainage - Pit and Pipe Schedules
79	150313-BIR-DR-M3D-00001	AO	IFC	Birrong Civil Drainage Design Model
80	150313-BIR-DR-M3D-00002	AO	IFC	Birrong Civil Drainage Model
81	150313-BIR-DU-DRG-00001	AO	IFC	Birrong Cover Sheet and Drawing List
82	150313-BIR-DU-DRG-00002	AO	IFC	Birrong Site Plan
83	150313-BIR-DU-DRG-00003	AO	IFC	Birrong Landscape Plan 01
84	150313-BIR-DU-DRG-00004	AO	IFC	Birrong Landscape Plan 02
85	150313-BIR-DU-DRG-00005	AO	IFC	Birrong Detail Sheet
86	150313-BIR-DU-DRG-00006	AO	IFC	Birrong Artist Impression (Digital 3D Render) 01
87	150313-BIR-DU-DRG-00007	AO	IFC	Birrong Artist Impression (Digital 3D Render) 02
88	150313-BIR-DU-DRG-00008	AO	IFC	Birrong Artist Impression (Digital 3D Render) 03
89	150313-BIR-DU-RPT-00001	AO	IFC	Birrong AFC Stage Urban Design and Public Domain Design Report
90	150313-BIR-EB-DRG-00001	AO	IFC	Earthing and Bonding – Cover Sheet and Drawing List
91	150313-BIR-EB-DRG-00002	AO	IFC	Earthing and Bonding – Station Earthing, Bonding and Isolation Layout
92	150313-BIR-EB-DRG-00010	AO	IFC	Earthing and Bonding – Bridge Bonding Details (Avalon Street OLB)
93	150313-BIR-EB-DRG-00020	AO	IFC	Earthing and Bonding – Lift Shaft Plan & Elevation
94	150313-BIR-EB-DRG-00025	AO	IFC	Earthing and Bonding – Earthing and Bonding Schematic
95	150313-BIR-EB-RPT-00001	AO	IFC	Birrong AFC Stage Earthing and Bonding Design Report
96	150313-BIR-EL-DRG-00801	AO	IFC	Birrong Cover Sheet
97	150313-BIR-EL-DRG-00802	AO	IFC	Birrong Drawing Legend and General Notes
98	150313-BIR-EL-DRG-00810	AO	IFC	Birrong Site Plan - Low Voltage Distribution
99	150313-BIR-EL-DRG-00811	AO	IFC	Birrong Power & Lighting Layout Platform Level Sheet 1 of 3
100	150313-BIR-EL-DRG-00812	AO	IFC	Birrong Power & Lighting Layout Platform Level Sheet 2 of 3
101	150313-BIR-EL-DRG-00813	AO	IFC	Birrong Power & Lighting Layout Platform Level Sheet 3 of 3
102	150313-BIR-EL-DRG-00815	AO	IFC	Birrong Power & Lighting Layout Bridge Level Sheet 2 of 2
103	150313-BIR-EL-DRG-00820	AO	IFC	Birrong Station Building - Power & Lighting Layout
104	150313-BIR-EL-DRG-00870	AO	IFC	Birrong IMSB Single Line Diagram
105	150313-BIR-EL-DRG-00871	AO	IFC	Birrong Platform DBs Single Line Diagram
106	150313-BIR-EL-DRG-00881	AO	IFC	Birrong Lighting Calculation Bridge Level
107	150313-BIR-EL-DRG-00882	AO	IFC	Birrong Lighting Calculation Platform Level
108	150313-BIR-EL-DRG-00910	AO	IFC	Birrong Cover Sheet
109	150313-BIR-EL-DRG-00911	AO	IFC	Birrong General Notes
110	150313-BIR-EL-DRG-00912	AO	IFC	Birrong Isolation Transformer Site Plan
111	150313-BIR-EL-DRG-00913	AO	IFC	Birrong Isolation Transformer Schematic Diagram
112	150313-BIR-EL-DRG-00914	AO	IFC	Birrong Isolation Transformer Earthing Details
113	150313-BIR-EL-DRG-00915	AO	IFC	Birrong Isolation Transformer LV Schedules
114	150313-BIR-EL-DRG-00916	AO	IFC	Birrong Isolation Transformer Civil Requirements

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115	150313-BIR-EL-RPT-00001	AO	IFC	Birrong AFC Electrical Power Supply Report
116	150313-BIR-FA-ASS-00001	AO	IFC	Birrong AFC Stage Condition Assessment Report
117	150313-BIR-FE-DRG-01101	AO	IFC	Birrong Cover Sheet
118	150313-BIR-FE-DRG-01102	AO	IFC	Birrong Drawing Legend and General Notes
119	150313-BIR-FE-DRG-01110	AO	IFC	Birrong Site Plan
120	150313-BIR-FE-RPT-01101	AO	IFC	Birrong AFC Stage Fire Services Design Report
121	150313-BIR-FR-RPT-01101	AO	IFC	Birrong AFC Stage Fire and Life Safety Report
122	150313-BIR-HY-DRG-01201	AO	IFC	Birrong Cover Sheet
123	150313-BIR-HY-DRG-01202	AO	IFC	Birrong Drawing Legend and General Notes
124	150313-BIR-HY-DRG-01210	AO	IFC	Birrong Site Plan
125	150313-BIR-HY-RPT-00001	AO	IFC	Birrong AFC Stage Hydraulic Services Design Report
126	150313-BIR-LV-DRG-05001	AO	IFC	EARLY WORKS - COVER SHEET
127	150313-BIR-LV-DRG-05002	AO	IFC	EARLY WORKS - DRAWING LEGEND & GENERAL NOTES
128	150313-BIR-LV-DRG-05010	AO	IFC	SITE PLAN - LOW VOLTAGE DISTRIBUTION
129	150313-BIR-LV-RPT-00001	AO	IFC	Birrong AFC Stage Low Voltage Design Report
130	150313-BIR-ME-DRG-01401	AO	IFC	Birrong Cover Sheet
131	150313-BIR-ME-DRG-01402	AO	IFC	Birrong Drawing Legend and General Notes
132	150313-BIR-ME-DRG-01410	AO	IFC	Birrong Site Layout
133	150313-BIR-ME-DRG-01411	AO	IFC	Birrong Platform Level - Mechanical Layout
134	150313-BIR-ME-DRG-01415	AO	IFC	Birrong Lift Details
135	150313-BIR-ME-DRG-01420	AO	IFC	Birrong Details and Sections
136	150313-BIR-ME-DRG-01450	AO	IFC	Birrong Demolition Layout
137	150313-BIR-ME-RPT-00001	AO	IFC	Birrong AFC Stage Mechanical Design Report
138	150313-BIR-MO-M3D-00001	AO	IFC	Birrong Combined Building Services Model
139	150313-BIR-MS-DRG-00001	AO	IFC	Birrong Cover Sheet
140	150313-BIR-MS-DRG-00002	AO	IFC	Birrong General Notes Sheet 1
141	150313-BIR-MS-DRG-00003	AO	IFC	Birrong General Notes Sheet 2
142	150313-BIR-MS-DRG-00005	AO	IFC	Birrong 3D View
143	150313-BIR-MS-DRG-00010	AO	IFC	Birrong General Arrangement Plan
144	150313-BIR-MS-DRG-00011	AO	IFC	Birrong Lift Base Details
145	150313-BIR-MS-DRG-00012	AO	IFC	Birrong Platform Level Concrete Plans & Details
146	150313-BIR-MS-DRG-00013	AO	IFC	Birrong Footing Reinforcement Details
147	150313-BIR-MS-DRG-00014	AO	IFC	Typical Precast Bracket Details
148	150313-BIR-MS-DRG-00020	AO	IFC	Birrong Concrete Lift Plans and Elevations
149	150313-BIR-MS-DRG-00021	AO	IFC	Birrong Concrete Lift Sections and 3D View
150	150313-BIR-MS-DRG-00022	AO	IFC	Birrong Concrete Lift Reinforcement Walls Elevations
151	150313-BIR-MS-DRG-00023	AO	IFC	Birrong Concrete Lift Anchor Setout Plan and Details
152	150313-BIR-MS-DRG-00030	AO	IFC	Birrong Concrete Lift Steel Canopy Marking Plans
153	150313-BIR-MS-DRG-00031	AO	IFC	Birrong Canopy and Screen Steelwork Marking Marking Sections
154	150313-BIR-MS-DRG-00035	AO	IFC	Birrong Lift Steelwork Details Sheet 1
155	150313-BIR-MS-DRG-00036	AO	IFC	Birrong Canopy and Screen Details

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156	150313-BIR-MS-DRG-00037	A0	IFC	Birrong Concourse Awning Details and Sections
157	150313-BIR-MS-DRG-00040	A0	IFC	Birrong Lift Steelwork Platform Plan
158	150313-BIR-MS-DRG-00042	A0	IFC	Birrong Lift Steelwork Platform Sections
159	150313-BIR-MS-DRG-00045	A0	IFC	Birrong Lift Steelwork Platform Details Sheet 1
160	150313-BIR-MS-DRG-00046	A0	IFC	Birrong Lift Steelwork Platform Details Sheet 2
161	150313-BIR-MS-DRG-00070	A0	IFC	Birrong Steel Stair Marking Plan, Sections and 3D View
162	150313-BIR-MS-DRG-00071	A0	IFC	Birrong Steel Stair Details Sheet 1
163	150313-BIR-MS-DRG-00080	A0	IFC	Birrong BAZ Shelter Steelwork Marking Plan and Details
164	150313-BIR-MS-DRG-00081	A0	IFC	Birrong Typical Steel Screening Detail
165	150313-BIR-MS-DRG-00082	A0	IFC	Birrong Lift Steel Rail Bracket Fixing Setout Elevations Sheet 1
166	150313-BIR-MS-DRG-00084	A0	IFC	Birrong BAZ Shelter Steelwork Details
167	150313-BIR-MS-M3D-00001	A0	IFC	Miscellaneous Structures Model
168	150313-BIR-MS-RPT-00001	A0	IFC	Birrong AFC Stage Structural Design Report
169	150313-BIR-QM-CER-00005	A0	IFC	Certificate of No Objection To Construction
170	150313-BIR-RS-RPT-00001	A0	IFC	Birrong AFC Stage Road Safety Audit Report
171	150313-BIR-SC-ASS-00001	A0	IFC	Birrong AFC Stage Security Risk Assessment Report
172	150313-BIR-SC-DRG-01801	A0	IFC	Birrong Cover Sheet
173	150313-BIR-SC-DRG-01802	A0	IFC	Birrong Drawing Legend and General Notes
174	150313-BIR-SC-DRG-01810	A0	IFC	Birrong Site Plan
175	150313-BIR-SC-DRG-01811	A0	IFC	Birrong Security Layout Sheet 1 of 4
176	150313-BIR-SC-DRG-01812	A0	IFC	Birrong Security Layout Sheet 2 of 4
177	150313-BIR-SC-DRG-01813	A0	IFC	Birrong Security Layout Sheet 3 of 4
178	150313-BIR-SC-DRG-01814	A0	IFC	Birrong Security Layout Sheet 4 of 4
179	150313-BIR-SC-DRG-01870	A0	IFC	Birrong Single Line Drawing
180	150313-BIR-SC-RPT-00001	A0	IFC	Birrong AFC Stage Security Design Report
181	150313-BIR-SF-REG-00001	A0	IFC	Birrong Station Project Safety Risk Register (PSRR) and ADC Log
182	150313-BIR-SF-REG-00002	A0	IFC	Birrong AFC Stage HAZMAT Register
183	150313-BIR-SF-RPT-00001	A0	IFC	Birrong AFC Safety Risk Summary Report
184	150313-BIR-SN-REG-00001	A0	IFC	Birrong RAATM Site Specific Systems Requirements Specification (SS- SRS)
185	150313-BIR-SN-REG-00002	A0	IFC	Birrong RAATM Site Specific Contract Deliverable Requirements List (SS-CDRL)
186	150313-BIR-TE-DRG-00601	A0	IFC	Birrong Cover Sheet
187	150313-BIR-TE-DRG-00602	A0	IFC	Birrong Drawing Legend and General Notes
188	150313-BIR-TE-DRG-00611	A0	IFC	Birrong Communications Layout Sheet 1 of 2
189	150313-BIR-TE-DRG-00612	A0	IFC	Birrong Communications Layout Sheet 2 of 2
190	150313-BIR-TE-DRG-00651	A0	IFC	Birrong Demolition Plans - Platform level Sheet 1 of 2

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191	150313-BIR-TE-DRG-00652	A0	IFC	Birrong Demolition Plans - Platform level Sheet 2 of 2
192	150313-BIR-TE-DRG-00670	A0	IFC	Birrong Comms Single Line Diagram
193	150313-BIR-TE-DRG-05101	A0	IFC	Birrong Early Works - Cover Sheet
194	150313-BIR-TE-DRG-05102	A0	IFC	Birrong Early Works - Drawing Legend & General Notes
195	150313-BIR-TE-DRG-05111	A0	IFC	COMMS PLATFORM LAYOUT PART 1
196	150313-BIR-TE-DRG-05112	A0	IFC	COMMS PLATFORM LAYOUT PART 2
197	150313-BIR-TE-DRG-05170	A0	IFC	COMMS SINGLE LINE DIAGRAM
198	150313-BIR-TE-RPT-00001	A0	IFC	Birrong AFC Stage Telecommunications Design Report
199	150313-BIR-TP-RPT-00001	A0	IFC	Birrong AFC Stage Traffic Transport & Access Report

Note: The drawings are currently at Detailed Design Review Checkprints (DDR Checkprints) stage however, for intents and purposes these drawings are being fast-tracked for an approval with Sydney Trains / TfNSW and expect to be working off Approved for Construction (AFC) and/or (IFC) drawings. Downer does not anticipate any significant changes from the DDR to the AFC design package.

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ANNEX B – POSSESSION CALENDAR

The following table outlines the Birrong Station specific possessions. Note that this is not specific only to the Subcontractors Scope and includes all other Works planned and is meant to be used as a guide for the Subcontractor to gain an understanding of the quantum and timing of Works.

Year	Station	Config	Deliverable/Event	Notes	Planned Start Date	Planned Finish Date
FY19-20	Birrong	Bankstown Line	WE 44		2/05/2020	3/05/2020
FY20-21	Birrong	Bankstown Line	WE 6	Excludes Sefton to Lidcombe	8/08/2020	9/08/2020
FY20-21	Birrong	Bankstown Line	WE 17		24/10/2020	25/10/2020
FY20-21	Birrong	Bankstown Line	WE 28	Excludes Sefton to Lidcombe	9/01/2021	10/01/2021
FY20-21	Birrong	Bankstown Line	WE 38		20/03/2021	21/03/2021
FY21-22	Birrong	Bankstown Line	WE 6	Bussing Closedown, Flying Jcn to Meeks Road (Ill Locals), Sydenham to Sefton (Bankstown Lines)	7/08/2021	8/08/2021

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ANNEX C – RELATED STANDARDS

Downer have provided the below key requirements that the Subcontractor must comply with for guidance however, this does not limit and/or omit the Subcontractor from all other requirements mentioned within this document and/or the executed Contract. The latest versions of these standards can be accessed on the [ASA website](#) or [Railsafe](#).

Item	Document No.	Document Name
1.	AS3600	Concrete Structures
2.	AS5100	Bridge Design
3.	AS4100	Steel Structures
4.	AS1170.2	Structural Design Actions – Wind Actions
5.	AS2870	Residential Slabs and Footings Construction Requirements
6.	AS3610	Formwork for Concrete
7.	AS1379	Specification and Supply of Concrete
8.	AS1478	Chemical Admixtures for Concrete
9.	AS3582	Packing, Preformed – O-Ring Seal
10.	AS5100	Bridge Design Loads
11.	AS3972	General Purpose and Blended Cement
12.	AS/NZS4671	Steel Reinforcing Materials
13.	AS3850	Tilt-Up Concrete Construction
14.	AS2159	Piling – Design & Installation
15.	AS4600	Cold Form Structures
16.	AS/NZS1554	Structural Steel Welding Set
17.	AS2312.2	Guide to Protection of Structural Steel
18.	AS1163	Structural Steel Hollow Sections
19.	AS/NZS3678	Structural Steel – Hot Rolled Plate
20.	AS/NZS3679	Structural Steel – Hot Rolled Bars
21.	AS1397	Continuous Hot-Dip Metallic Coated Steel Sheet
22.	AS1275	Metric Screw Threads for Fasteners
23.	AS1111	Metric Hexagon Commercial Bolts and Screws
24.	AS/NZS1252	High Strength Steel Bolts with Associated Nuts
25.	AS/NZS4291.2	Mechanical Properties of Fasteners
26.	AS1237	Flat Metal Washers for General Engineering Purposes
27.	AS1214	Hot-Dip Galvanised Coatings on Threaded Fasteners
28.	AS/NZS4680	Hot-Dip Galvanized (Zinc) Coatings on Fabricated Ferrous Articles
29.	AS1657	Fixed Platforms, Walkways, Stairways and Ladders - Design, Construction and Installation.

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Item	Document No.	Document Name
30.	SPC 301	Structures Construction
31.	T HR CI 12110 ST	Earthworks and Formation
32.	T HR CI12030 ST	Overbridges and Footbridges
33.	RMSR63	Steelwork and Bridges
34.	RMS B201	Steelwork and Bridges
35.	RMS B80	Concrete Work for Bridges
36.	RMS B58	Permanently Cased Cast-In-Place Reinforced Concrete Piles
37.	RMS B59	Bored Cast-In-Place Reinforced Concrete Piles (Without Permanent Casing)
38.	RMS B115	Precast Concrete Members (Not Pre-Tensioned)
39.	ISO 14001:2015	Environmental Management System

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ANNEX D – CONSTRUCTION STAGING

The below program outlines the Birrong Station optimised staging. Note that this is not specific only to the Subcontractors Scope and includes all other Works planned and is meant to be used as a guide for the Subcontractor to gain an understanding of the quantum and timing of Works.

Refer to Attachment Questionaries in Arcus.



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ANNEX I – ENVIRONMENT AND SUSTAINABILITY MONTHLY TRACKER

Environment & Sustainability Environment and Sustainability Monthly Tracker that needs to be completed by all subcontractors as part of their monthly progress claim - including delivery/disposal/supplier dockets and other relevant evidence .

Refer to Attachment Questionnaires in Arcus for the spread sheet.

Confidential Matter

From: Tom Watson <tom.watson@downergroup.com>
To: [REDACTED]
Date: Wed, 16 Feb 2022 16:02:49 +1100
Attachments: Tap3 Hazelbrook FRP Comparison.xlsx (555.06 kB); 01 Subcontract Agreement - Dalski - FRP - HB Signed.pdf (3.35 MB); Signed page FRP contract Dalski.pdf (641.11 kB); 1. BD1078.001 Evaluation - JL.xlsx (2.9 MB)

Hi [REDACTED]

Apologies again, it has proved to be difficult getting access and then finding the relevant files. I had to get IT help to gain access in some cases.

I have reviewed the first five Dalski transactions on the list. See attached and my comments below. I have highlighted the points that I think may have some relevance.

I will get through the others on the list over the next few hours.

Kind regards,
Tom

Breakdown of Total Paid to Dalski Pty Ltd		
Row Labels	Sum of Amount Received	Tom Watson Comments / Insights
Glenbrook Railway Station	4,795.00	Downer Project Manager - Andrew Gayed. No involvement of Vlad Stanculescu PM seems to have engaged Dalski for labour supply (\$5k) to assist with temporary hoarding and fencing works during a railway possession. Works were completed under a Purchase Order to expedite transaction (should have been procured under a labour hire agreement and PM has not followed correct engagement process presumably to save time).
Hazelbrook Railway Station	1,744,783.36 (amount seems incorrect was actually \$776k)	Downer Project Manager – Sina Bigdeli. No involvement of Vlad Stanculescu Note amount of \$1.7m seems to be incorrect – project records show \$776k was paid. Downer placed two subcontract orders with Dalski: (1) Formwork, Reinforcement, Pour (FRP) and (2) Building Package. FRP package was let for \$185k (see Hazelbrook FRP Comparison spreadsheet). It seems that FRP install only pricing was very close to competitor British Concrete (i.e. within a few dollars). Excavation works was added to Dalski scope hence the increased subcontract price. Building Package was let to Dalski for \$257k and the evaluation suggests that they were fairly competitive in their pricing (see BD1078.001 Evaluation). Additional works were added to their original building scope through variations (hoarding \$55k and tactiles \$43k). These amounts do not seem out of place or scale for this project. (Subcontract copy file too large to send – can send it via sharepoint if required)
Heathcote Road Intersection	5,398.76	No records – seems to have been a purchase order. Small value. Roads project - no involvement of Vlad Stanculescu
Kingswood Railway Station	54,982.76	Downer Project Manager – Vlad Stanculescu Scope was to carry out temporary hoarding and fencing (supply, install, paint etc - \$55k). Works were carried out during the possession at very short notice. Dalski engaged under a purchase order instead of a subcontract (incorrect process). No evidence of value for money testing (our process requires 3 quotes).
Mona Vale Road and Forest Way	29,190.11	Roads project - no involvement of Vlad Stanculescu

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