



[Insert Date DD/MM/YYYY]

[Insert Sub-Contractor Company Name]

[Insert Sub-Contractor Address]

F.A.O: [Sub-Contractor Contact Name]

[Insert Project Name]/ [Insert Sub-Contract TRADE]

Dear [Sub-Contractor's First Name],

Enclosed are two (2) signed copies of the Sub-Contract agreement and contract documents in relation to the above referenced project.

Please sign and return one (1) copy to us and retain the other copy. Do not make any alterations to these documents without the prior approval of Total. When signing, please ensure you initial all pages of the agreement and contract documents. Please return to **Total Construction Pty. Limited - [Insert relevant Total office mailing address]**.

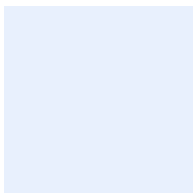
ALL PAYMENT CLAIMS TOGETHER WITH ALL SUPPORTING DOCUMENTATION MUST BE SENT VIA EMAIL TO CLAIMS@TOTALCONSTRUCTION.COM.AU UNLESS THE OPTION UNDER ITEM 13 OF THE SUBCONTRACT PARTICULARS HAS BEEN ADOPTED THAT WILL REQUIRE PAYMENT CLAIMS TO BE LODGED VIA PAYAPPS AU.

Our staff involved in this project will be:

- Project Manager: [Insert Total Rep/ Project Manager] Telephone: [Insert phone number]
- Contracts Administrator: [Insert Contract Administrator] Telephone: [Insert phone number]
- Site Manager: [Insert Site Manager] Telephone: [Insert mobile number]

We look forward to a mutually successful association and contract.

Yours faithfully,



[Insert Total Rep/ Project Manager]

Total Construction Pty. Limited

Total representative/ initial

Sub-Contractor representative/ initial

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[Job Code_Cost Code] [Insert Sub-Contractor Company Name]

FORMAL INSTRUMENT OF AGREEMENT- COMPANY

PROJECT NAME	[Insert Project Name]
TRADE DESCRIPTION	[Insert Sub-Contract TRADE]
SUB-CONTRACT NUMBER	[Insert SC Agreement Number]
DATE OF SUB-CONTRACT EXECUTION	[Insert Date DD/MM/YYYY]
PARTIES	<p>Total Construction Pty Ltd (ABN 32 067 732 941) (Total) of 9A George Street, North Strathfield, NSW 2137 and [Insert Sub-Contractor Company Name] (ABN [Insert ABN]) (ACN [Insert ACN]) [Insert Sub-Contractor Address] (Sub-Contractor)</p>
SUB-CONTRACT DOCUMENTS	<p>Total and the Sub-Contractor agree the following documents comprise the Sub-Contract between them:</p> <ol style="list-style-type: none"> a. this Formal Instrument of Agreement; b. the Special Conditions (if any); c. the Sub-Contract Particulars; d. the Sub-Contract General Conditions and e. Deed of Warranty f. Deed of Release g. Sub-Contractor's Statement h. Deed of Guarantee i. the Trade Package (consisting of Annexures). <p>The order in which the Sub-Contract Documents are listed above is the order of precedence of the Sub-Contract Documents.</p>
SUB-CONTRACT SUM	<p>The Sub-Contract sum is the lump sum of [Insert Sub-Contract Sum] excluding GST.</p> <p>Schedule of Rates - [Insert Schedule of Rates otherwise N/A if not applicable].</p>

Total representative/ initial

Sub-Contractor representative/ initial

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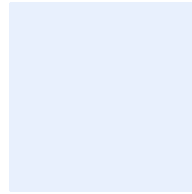
Executed as an agreement:

Total:

Signed for and on behalf of Total Construction Pty Ltd

ACN: 067 732 941

by its duly authorised representative:



Authorised Signatory

Full Name: **Full Name [Insert Name of Authorised Signatory - Note this is as per delegated limits of financial authority]**

Capacity: **[Insert Role/ Capacity]**

Sub-Contractor:

Executed by **[Insert Sub-Contractor Company Name]**

ACN: **[Insert ACN]**

In accordance with Section 127 of the Corporations Act 2001 (Cth):

Signature of Director

Signature of Director/ Secretary

Full Name of Director

Full Name of Director/ Secretary

Date

Director¹ (Personally):

Executed by **[Insert Sub-Contractor Company Name]**

Signature of Director

Signature of Witness

[1] Execution of this Sub-Contract by the Director (personally) is taken to be an agreement to provide an executed Deed of Guarantee at Schedule 2 by that Director.

Total representative/ initial

Sub-Contractor representative/ initial

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SUB-CONTRACT PARTICULARS

ITEM	DESCRIPTION	DETAIL			
1.	Total's representative and address for notices	[Insert Total Rep/ Project Manager] Total Construction Pty. Limited 9A George Street, North Strathfield, NSW 2137 Email address: [Insert Total rep's email address]			
2.	Sub-Contractor details	[Sub-Contractor Contact Name] [Insert Sub-Contractor Company Name] [Insert Sub-Contractor Address] Email address: [Insert Sub-Contractor email address]			
3.	Site (sub-clause 18.1)	[Insert Site Address]			
4.	Commencement (sub-clause 1.2)	[Insert Date - DD/MM/YYYY]			
5.	Date for Completion (sub-clause 1.1 and 19.1)	[Insert date - DD/MM/YYYY]			
6.	Retention (sub-clause 2.1)	10% may be retained from payments due to the Sub-Contractor up to 5% of the Sub-Contract Sum (as adjusted).			
7.	Insurance Schedule	Workers Compensation (sub-clause 3.4)	Contract Works (sub-clause 3.2)	Public Liability (sub-clause 3.3)	Professional Indemnity (sub-clause 4.3)
	Limit of Cover		Value of work under the Sub-Contract	[Limit of Cover - Check head contract for any specific PL insurance requirements on this trade] (\$20 million if nothing else stated)	[Limit of Cover - Check head contract for any specific PI insurance requirements on this trade] (\$20 million if nothing else stated)
	Runoff Period	N/A	N/A	N/A	7 years
8.	Full Design Responsibility (sub-clause 4.1a)	<input type="checkbox"/> Yes <input type="checkbox"/> No			
9.	Liquidated Damages (sub-clause 9.2b)	[Insert Liquidated Damages/ \$X,XXX.XX per day] per business day.			
10.	Limit of Delay Costs (sub-clause 10.4)	\$100.00 per business day			
11.	Sub-Contractor Profit and Overhead (sub-clauses 11.3 and 10.7)	5%			

Total representative/ initial

Sub-Contractor representative/ initial

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12.	Provisional Sums (sub-clause 12.9)	[Insert Provisional Sums]
13.	EPC System (Clause 12)	PayApps AU <input type="checkbox"/> Is Adopted <input type="checkbox"/> Is Not Adopted
14.	Document Control System (Clause 18)	TeamBinder <input type="checkbox"/> Is Adopted <input type="checkbox"/> Is Not Adopted
15.	Electronic Signature System (Clause 18A)	[TeamBinder/ Aconex/ Other] (If applicable) <input type="checkbox"/> Is Adopted <input type="checkbox"/> Is Not Adopted

Total representative/ initial

Sub-Contractor representative/ initial

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SPECIAL CONDITIONS

SC1. GENERAL

These Special Conditions delete, amend or add to the Sub-Contract General Conditions. In the event of an inconsistency these Special Conditions will take precedence over the Sub-Contract General Conditions to the extent of that inconsistency.

SC2. DEFINITIONS

In addition to the following, defined terms in these Special Conditions have the meaning given to those terms in the Sub-Contract General Conditions:

DEFINITIONS:

DEFINITION	MEANING
[Insert Definition or N/A if not applicable]	[Insert Meaning or N/A if not applicable]
[Insert Definition or N/A if not applicable]	[Insert Meaning or N/A if not applicable]
[Insert Definition or N/A if not applicable]	[Insert Meaning or N/A if not applicable]

SC3. SPECIAL CONDITIONS

SPECIAL CONDITION #	DEFINITION
[Insert # or N/A if not applicable]	[Definition of Special Condition or N/A if not applicable]
[Insert # or N/A if not applicable]	[Definition of Special Condition or N/A if not applicable]
[Insert # or N/A if not applicable]	[Definition of Special Condition or N/A if not applicable]
[Insert # or N/A if not applicable]	[Definition of Special Condition or N/A if not applicable]

**** User Note - delete for issue **** Amend tables above to reflect Definitions and/ or Special Conditions or note as 'N/A'. If further Definitions and/ or Special Conditions are required, they can be accommodated for by creating an additional annexure.

Special Conditions means Clauses [Insert SC1. - SC3. or above if applicable] of this document.

SC4. NATIONAL CODE OF PRACTICE

- a. The Sub-Contractor must comply with the Code for the Tendering and Performance of Building Work 2016 (Code), copies of which are available at <https://www.legislation.gov.au/Details/F2017C00668>.
- b. Compliance with the Code shall not relieve the Sub-Contractor from responsibility to perform this Sub-Contract, or from liability for any defects in the Sub-Contract Works arising from compliance with the Code.
- c. Where a change in this Sub-Contract or a variation is proposed and that change or variation would affect compliance with the Code, the Sub-Contractor must submit a report to Total specifying the extent to which the Sub-Contractor's compliance with the Code will be affected.
- d. The Sub-Contractor must maintain adequate records of compliance with the Code by:
 - i. the Sub-Contractor;

Total representative/ initial

Sub-Contractor representative/ initial

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- ii. the secondary subcontractors or suppliers; and
 - iii. the Sub-Contractor's Related Entities (as defined in the Code), and
- provide satisfactory evidence to Total that it is doing so upon request from time to time by Total.
- e. If the Sub-Contractor does not comply with the requirements of the Code in the performance of this Sub-Contract such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Sub-Contractor or a Related Entity in respect of work funded by the Commonwealth or its agencies.
 - f. The Sub-Contractor must not appoint or engage a secondary subcontractor or supplier in relation to the Sub-Contract Works where:
 - i. the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
 - ii. the secondary subcontractor or supplier has had a judicial decision against them relating to employee entitlements, not including decisions under appeal, and has not paid the claim.
 - g. The Sub-Contractor must provide, and the Sub-Contractor agrees to require that its contractors, suppliers or consultants and its Related Entities provide, the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commission, with access to:
 - i. inspect any work, material, machinery, appliance, article or facility;
 - ii. inspect and copy any record relevant to the project or the Sub-Contract Works; and
 - iii. interview any person,
 as is necessary to demonstrate compliance with the Code.
 - h. The Sub-Contractor must comply, and the Sub-Contractor agrees to require that its secondary subcontractors and suppliers and its Related Entities, comply with a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commission, to produce a specified document within a specified period, in person, by fax or by post.
 - i. For the avoidance of doubt, paragraph (h) and (i) applies in relation to any of the Sub-Contractor's new privately funded construction work after the date of this Sub-Contract.
 - ii. The Sub-Contractor must ensure that each sub-contract entered into by the Sub-Contractor imposes obligations on secondary subcontractors and suppliers equivalent to the obligations under this clause SC3.

SC5. NSW CODE AND NSW GUIDELINES

Where the Site is in New South Wales, this Special Condition 4 applies.

- (a) In addition to terms defined in this document, terms used in this clause SC4 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 the Building and Construction Industry (NSW Guidelines) (as published by the NSW Treasury July 2013). The NSW Government's Code of Practice for the Building and Construction Industry (NSW Code) and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

Total representative/ initial

Sub-Contractor representative/ initial

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- (b) The Sub-Contractor must at all times comply with, and meet any obligations imposed by, the NSW Code and NSW Guidelines.
- (c) The Sub-Contractor must notify the construction compliance unit of NSW (CCU) and Total 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.
- (d) Where the Sub-Contractor engages a secondary subcontractor or consultant, the Sub-Contractor must ensure that that contract imposes on the secondary subcontractor or consultant equivalent obligations to those in this clause SC4 (under the heading NSW Code and NSW Guidelines), including that the secondary subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (e) The Sub-Contractor must not appoint or engage another party in relation to the project or the WUS where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.
- (f) The Sub-Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its secondary subcontractors, consultants and related entities.
- (g) The Sub-Contractor 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 contractor, 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 project or the Sub-Contract 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 Sub-Contractor, its secondary subcontractors, consultants, and related entities.
- (h) The Sub-Contractor, 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.
- (i) The Sub-Contractor warrants that at the time of entering into this Sub-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.
- (j) If the Sub-Contractor 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.
- (k) 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 noncompliance with the NSW Code or NSW Guidelines and the sanction; and

Total representative/ initial

Sub-Contractor representative/ initial

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- (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Sub-Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.
- (l) The Sub-Contractor 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 Sub-Contractor is not entitled to make a claim for reimbursement or an extension of time from Total for such costs.
- (m) Compliance with the NSW Code and NSW Guidelines does not relieve the Sub-Contractor from responsibility to perform the Sub-Contract Works and any other obligation under the Sub-Contract, or from liability for any defect in the Sub-Contract Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (n) Where a change in the Sub-Contract or the Sub-Contract Works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Sub-Contractor must immediately notify Total 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 Guidelines will be, or is likely to be, affected by the change; and
 - (iii) what steps the Sub-Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a workplace relations management plan or work health and safety management plan); and

Total will direct the contractor as to the course it must adopt within 10 Business Days of receiving notice.

SC6. RETENTION ACCOUNT INTEREST

The following references to the “Head Contract” are to the Head Contract for which the Sub-Contract comprises part of the Project. If the Head Contract sum is initially of a value of at least \$20,000,000 or alternatively where the Head Contract has a value together with variations of at least \$20,000,000 before the execution of this Sub-Contract, clause 2.1 of these Terms and Conditions is amended such that all retention money will be held, pursuant to section 12A of the *Building and Construction Industry Security of Payment Act 1999* (NSW) and section 6 of the *Building and Construction Industry Security of Payment Regulation 2008* (NSW). Any interest earned on the retention monies held pursuant to subclause 2.1 of the Sub-Contract and the Security of Payments Act and Building and Construction Industry Security of Payment Regulation 2008 (NSW) are the entitlement of and the property of Total.

Total representative/ initial

Sub-Contractor representative/ initial

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Total representative/ initial

Sub-Contractor representative/ initial

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1. COMMENCEMENT AND CARRYING OUT

1.1 Main obligation

- a. The Sub-Contractor must complete the work under the Sub-Contract by the Date for Completion, in accordance with the Sub-Contract, directions of Total and all applicable Legislative Requirements.
- b. In completing the work under the Sub-Contract pursuant to clause 1.1(a), the Sub-Contractor will complete the work:
 - i. with the professional degree of skill, care, diligence and prudence, and Best Industry Practice expected from a Sub-Contractor who is highly experienced and qualified in providing services for similar work; and
 - ii. to meet Best Industry Practice.
- c. Total will pay the Sub-Contractor the Sub-Contract Sum as set out in the Formal Instrument of Agreement, adjusted by any additions or deductions made pursuant to the Sub-Contract.

1.2 Commencement

The Sub-Contractor must commence work under the Sub-Contract on the date stated in the Sub-Contract Particulars or, if no time is stated, when directed by Total.

1.3 Access

At the time the Sub-Contractor is to commence work under the Sub-Contract Total will give the Sub-Contractor sufficient access to, so much of the Site as is necessary for the Sub-Contractor to commence carrying out the work under the Sub-Contract and will thereafter give the Sub-Contractor sufficient access to the Site as is necessary to enable the work under the Sub-Contract to be carried out. Any delay in providing Site access will not constitute a breach of the Sub-Contract by Total but the Sub-Contractor will be entitled to claim an extension of time.

1.4 Prior work

The Sub-Contractor acknowledges that the Sub-Contract applies to any works carried out prior to the date of execution of the Sub-Contract ("**Early Works**"). Any work undertaken on the Project prior to the execution of the Sub-Contract is governed by the terms of this Sub-Contract and forms part of the Sub-Contract Price.

1.5 Sub-Contractor's representative

The Sub-Contractor must ensure at all times a representative is appointed and given all authority necessary to act on the Sub-Contractor's behalf under the Sub-Contract. If Total's representative objects to an appointment the Sub-Contractor must replace that person. Matters within a representative's knowledge (including directions received) are deemed to be within the Sub-Contractor's knowledge.

1.6 Cooperation with others

- a. The Sub-Contractor must cooperate with Separate Contractors on Site and must at its own cost, at all times, plan, program and carry out the Sub-Contract Works so as to minimise any interference with, disruption or hindrance of, or delay to the performance of works on the Site being performed by Separate Contractors. The Sub-Contractor will have No Claim against Total arising out of compliance with its obligation under this sub-clause.

1.7 Discrepancy in documents

- a. If the Sub-Contractor becomes aware of an inconsistency, ambiguity, discrepancy, or omission in or between Sub-Contract Documents, the Sub-Contractor must notify Total immediately and paragraph (b) will apply.
- b. If notified under paragraph (a), or upon Total becoming aware of an inconsistency, ambiguity, discrepancy, or omission in or between the Sub-Contract Documents, subject to sub-clause 1.8 [Order of precedence] below, Total will inform the Sub-Contractor of the interpretation to be followed. The Sub-Contractor acknowledges it will have No Claim against Total due to a direction of Total under this sub-clause.

1.8 Order of precedence

- a. The parties acknowledge and agree the order of precedence of the Sub-Contract Documents as listed in the Formal Instrument of Agreement applies in the event of an inconsistency, ambiguity or discrepancy between the various documents constituting the Sub-Contract.

To the extent that any part of the various documents comprising the Sub-Contract imposes a greater or higher requirement, standard, quality or level of service or scope than any other part of the documents, except and subject to

Total representative/ initial

Sub-Contractor representative/ initial

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where the context expressly requires, that greater or higher requirement, standard or quality, level of service or scope prevails.

- b. The Sub-Contractor acknowledges it will have No Claim against Total due to a direction from Total under this clause.

1.9 Total supplied documents

Any document Total supplies to the Sub-Contractor remains Total’s property to be returned to Total on demand and is not to be copied or reproduced for any purpose unrelated to the Sub-Contract.

1.10 RFIs

- a. Subject to sub-clause 1.7 [Discrepancy in documents] above, if the Sub-Contractor wishes to clarify an issue arising from the Sub-Contract Documents or the work under the Sub-Contract, the Sub-Contractor may submit a written notice requesting information (“RFI”) to Total. An RFI must state a time by which the Sub-Contractor requires a response to that RFI (which must be not less than five (5) Business Days).
- b. The Sub-Contractor acknowledges and agrees an RFI does not constitute a Variation notice under sub-clause 11.1(b) and it will have No Claim against Total if the subject matter of an RFI has not been acknowledged as a Variation.

1.11 Notices

Any document or notice which is or may be issued or served on either party to the Sub-Contract may be issued or served by:

- a. delivering it by hand to the other party, in which case it is deemed to be served or issued on the day that it is delivered;
- b. sending it by registered post, to the other party in which case it is deemed to be served or issued two (2) Business Days after the day on which it is posted;
- c. electronically, in which case it:
 - i. may be served to the email address set out at Item 1 of the Sub-Contract Particulars; and
 - ii. it is deemed to be served or issued, when the communication enters the information system on which the mailbox of the recipient’s email address resides.
- d. Notwithstanding paragraph (c) the Sub-Contractor may only submit a Payment Claim to the email address set out at clause 12.2(b) [*Content of Payment Claims*].

1.12 Shop drawings

If the Sub-Contractor is required to complete design of the Sub-Contract Works through shop drawings (or has Full Design Responsibility for the Sub-Contract Works pursuant to clause 4), the Sub-Contractor must carry out all necessary design to, and so produce documents which, meet the requirements of all of:

- a. the Sub-Contract;
- b. Total’s directions; and
- c. Legislative Requirements and the Building Code of Australia and relevant Australian Standards.

1.13 Submission of Sub-Contractor documents

- a. The Sub-Contractor must supply documents at the times specified in the Trade Package, or the Sub-Contractor’s Program, or at times agreed with Total. In respect of any design document or shop drawing, if no time is specified or agreed, the Sub-Contractor must submit those documents in sufficient time to allow for Total (and if required) the Principal to review (and so to permit re-work if required).
- b. Total will not be required to check Sub-Contractor supplied documents for errors, omissions, inconsistencies, ambiguities or discrepancies and any Total approval will not relieve the Sub-Contractor of any of its obligations under the Sub-Contract.

1.14 Sub-Contractor warranties

- a. The Sub-Contractor warrants that:
 - i. it is suitably qualified and experienced in the type of work that is the subject of the Sub-Contract;
 - ii. Persons employed by the Sub-Contractor are capable of performing the type of work that is the subject of the Sub-Contract;

Total representative/ initial	Sub-Contractor representative/ initial

- iii. it will ensure that if any Legislative Requirement requires that a person be authorised or licensed to carry out any work in relation to the Sub-Contract Works, that person is so authorised or licensed and has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience or 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;
- iv. it has informed itself as to the means of access to and egress from the Site, transport facilities, accommodation, services and storage facilities and any constraints therein available on Site;
- v. it has allowed in the Sub-Contract Sum for incidental items not expressly stated in the Sub-Contract, but which are clearly necessary for the completion and performance of the work under the Sub-Contract to be supplied and carried out, including any and all relevant Legislative Requirements;
- vi. it has the necessary resources to complete the Sub-Contract Works by the Date for Completion;
- vii. it shall exercise due skill, care and diligence, and Best Industry Practice in the carrying out and completion of the Sub-Contract Works;
- viii. it has conducted a thorough examination and investigation of the Site and the nature and extent of both the main contract works and the Sub-Contract Works and has made sufficient allowances in the Sub-Contract Sum and any construction program to carry out and complete the Sub-Contract Works by the Date for Completion;
- ix. it is Financially Sound at the time of entering into this Sub-Contract and continues to be Financially Sound in carrying out works under the Sub-Contract and will comply with any direction of Total for the Sub-Contractor to provide proof that it is Financially Sound.
- x. it is aware of the requirements of the Building Products Legislation, it acknowledges that the use of a Prohibited Product is strictly prohibited, and it agrees it will not use, refer to or identify a Prohibited Product in the performance of the Sub-Contract Works;
- xi. it is aware of the requirements of the Building Regulations and acknowledges that in the performance of its work under the Sub-Contract it will not use, refer to or identify any product which will cause or is likely to cause a threat to the safety of any occupants of the building as a breach of the Building Regulations;
- xii. the Sub-Contractor will ensure that they minimise any loss, damage or injury to any adjoining landowner and to comply with any agreement, right to access, easement, licence, or any access order and any 'neighbouring land access order' or a 'utility service access order' pursuant to the *Access to Neighbouring Land Act 2000* (NSW), which has been granted on the Project;
- xiii. it has complied with all of its obligations under the *Privacy Act 1988* (Cth) in regards to information supplied to Total in respect of the Sub-Contractor's employees;
- xiv. if it has any design responsibility under the Sub-Contract; it will ensure that:
 - a. appropriately skilled, experienced and qualified persons supervise and co-ordinate design and production of design documents; and
 - b. the Works under the Sub-Contract are fit for their stated purpose and complies with all requirements of the Sub-Contract.
- xv. The Sub-Contractor must, prior to commencing work under the Sub-Contract (and as a precondition to payment of any amount under the Sub-Contract), execute and return the Deed of Warranty set out at Schedule 4, or if required and directed to do so, the form of Sub-Contractor warranty deed required under the Head Contract.

2. SECURITY

2.1 Security

The amount of retention to be retained by Total is stated in the Sub-Contract Particulars. If accepted by Total the Sub-Contractor may provide security in the form of two (2) unconditional bank guarantees each for an amount equal to 50% of the amount stated as the limit for retained amounts in the Sub-Contract Particulars in lieu of retention and Total will release the amount of retention then held.

If due to one or more Variations the Sub-Contract Sum increases, Total may retain additional amounts so that the total amount of Security equates to the percentage of the Sub-Contract Sum (as adjusted) stated as the limit for retained amounts in the Sub-Contract Particulars.

Total representative/ initial

Sub-Contractor representative/ initial

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2.2 Recourse

Total may have recourse to Security when Total claims the Sub-Contractor is indebted to Total, when Total claims or might in the future have a claim that other moneys are due to it from the Sub-Contractor, if the Sub-Contractor is in breach of any of its obligations under the Sub-Contract or if Total is entitled to terminate the Sub-Contract.

2.3 Reduction and release

- a. Upon the later of:
 - i. Practical Completion of the Head Contract Works;
 - ii. the Sub-Contractor has provided any document required by the Sub-Contract; and
 - iii. receipt of a written request from the Sub-Contractor for release of 50% of Security.

Total will release 50% of Security held and return to the Sub-Contractor.

- a. After the latest to occur of:
 - i. the Sub-Contractor’s obligations under the Sub-Contract being fully performed;
 - ii. expiry of the last Defects Liability Period; and
 - iii. receipt of a written request from the Sub-Contractor for release of remaining Security,

Total will release and return any remaining Security held by Total.

2.4 No reduction if litigation

If at the time Security is to be reduced or released, a party has commenced legal proceedings against the other party in relation to a dispute referred to in clause 15 [Dispute resolution], Total’s obligation to reduce or release Security will be postponed until 20 Business Days after the final determination of those proceedings.

2.5 Guarantee

Where the Sub-Contractor is:

- a. is a related or subsidiary corporation within the meaning of the Corporations Act 2001 (Cth);
- b. a private company; or
- c. a partnership,

if directed by Total to do so (and as a precondition to payment of any amount under the Sub-Contract), the Sub-Contractor must procure from guarantor/s acceptable to Total, the execution of the Deed of Guarantee set out at Schedule 2.

3. INDEMNITY AND INSURANCE

3.1 Indemnity

The Sub-Contractor indemnifies Total against all loss, liability, expense (including legal costs) or damage, in respect of or in connection with:

- a. any illness, personal injury to, or death of, any person;
- b. damage to any real or personal property; and
- c. claims by any person against Total, including in respect of contamination, nuisance, pollution, unreasonable noise or disturbance, arising out of, or in any way in connection with, the Sub-Contract, or any negligent acts or omissions of the Sub-Contractor (or negligent acts or omissions of any secondary Sub-Contractor engaged in the execution of the work under the Sub-Contract).

3.2 Works insurance

- a. The Sub-Contractor is required to effect and maintain (and pay all premiums for) a contract works insurance policy, which covers the whole of the Sub-Contract Works against loss or damage resulting from any cause whatsoever, until the Sub-Contractor ceases to be responsible for their care.
- b. The Sub-Contractor must pay Total’s Works Insurance Excess on any claim made under the Head Contract Works contract works insurance policy where the damage or loss to which the claim relates is caused either directly or indirectly by the Sub-Contractor.

Total representative/ initial

Sub-Contractor representative/ initial

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3.3 Public liability

- a. Prior to commencing work on Site, the Sub-Contractor must effect and maintain and pay all premiums for a public and product liability insurance policy in the joint names of Total and the Sub-Contractor which covers Total, the Sub-Contractor and all secondary Sub-Contractors employed from time to time in relation to the work under the Sub-Contract for their respective rights and interests and covers their liabilities to third parties. The policy shall also cover the Sub-Contractor's liability to Total and Total's liability to the Sub-Contractor for loss of or damage to property (other than the Sub-Contract Works) and the death of or injury to any person.
- b. Any policy of insurance effected under paragraph (a) must:
 - i. have a limit of indemnity for each and every occurrence not less than the sum stated in the Sub-Contract Particulars;
 - ii. be effected with a reputable insurer and in terms approved by Total (which approval may be withheld in Total's absolute discretion); and
 - iii. be maintained until expiry of the last Defects Liability Period.

3.4 Workers compensation

Prior to commencing work on Site, the Sub-Contractor must have in place and have paid all premiums for workers compensation and related liability insurance in accordance with the requirements of the *Workers Compensation Act 1987 (NSW)* and where possible extended to indemnify Total against statutory liability to persons employed by the Sub-Contractor. A policy of insurance effected under this clause must be maintained by the Sub-Contractor until the expiry of the last Defects Liability Period.

3.5 Insurance of motor vehicles and construction equipment

The Sub-Contractor must ensure it has in place:

- a. third party property damage insurance for all motor vehicles owned, leased or hired by the Sub-Contractor, used in connection with the carrying out of the work under the Sub-Contract; and
- b. material loss or damage insurance covering and for replacement of all Constructional Plant and temporary works, against physical loss, damage or destruction.

3.6 Asbestos

Where the work under the Sub-Contract involves or may involve the disturbance, removal or disposal of any asbestos, the Sub-Contractor is required to ensure a policy of insurance in respect of liability for occurrences arising as a result of exposure of any person to any asbestos or any compounds related to asbestos is affected.

3.7 Cross liability

Whenever under the Sub-Contract an insurance policy is required to be effected by the Sub-Contractor in joint names the policy must include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them.

3.8 Certificate of currency

Whenever requested to do so by Total the Sub-Contractor must demonstrate it has maintained the insurance policies required to be effected under this clause by production of a certificate of currency.

3.9 Failure to insure and claims

If the Sub-Contractor fails to provide satisfactory evidence of insurance under sub-clause 3.8 [Certificate of currency], Total may effect and maintain that insurance and pay the necessary premiums. The cost of the premiums will be a debt due from the Sub-Contractor to Total. The Sub-Contractor must inform Total of any occurrence that may give rise to a claim under a policy of insurance referred to in this clause.

4. DESIGN RESPONSIBILITY

THIS CLAUSE 4 ONLY APPLIES IF THE SUB-CONTRACTOR HAS 'DESIGN AND CONSTRUCT' RESPONSIBILITY

Total representative/ initial

Sub-Contractor representative/ initial

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4.1 Full Design Responsibility

- a. If Item 8 of the Sub-Contract Particulars indicates that the Sub-Contractor has Full Design Responsibility, without limiting sub-clause 1.12 [Shop drawings], the Sub-Contractor must:
 - i. produce design documents which will:
 - A. comply with the requirements of the Sub-Contract;
 - B. be suitable, appropriate and adequate to satisfy Total’s design requirements for the Project;
 - C. be fit for the purposes identified for the Project;
 - D. satisfy all Legislative Requirements;
 - E. be at a standard and level of detail suitable for the purposes of the Project; and
 - F. be fit for their stated purpose and comply with all requirements of the Sub-Contract,
 - ii. if the Sub-Contract Documents include design carried out by Total (or the Principal) before the commencement of the Sub-Contract (“**Preliminary Design**”), before submitting design documents the Sub-Contractor (at its own cost) must check and notify Total of any errors or faults in the Preliminary Design;
 - iii. (if necessary), amend the Preliminary Design so that the Sub-Contract Works will be fit for the purposes required by the Sub-Contract; and
 - iv. accept and adopt the Preliminary Design and Preliminary Design documents as if they were prepared by the Sub-Contractor (amended by the Sub-Contractor if necessary) so that they become part of the Sub-Contractor’s design documents;
 - v. undertake all activities and tasks necessary to ensure the design documents are coordinated, consistent and interfaced with each other
- b. The Sub-Contractor acknowledges that the Preliminary Design is incomplete and may contain errors or faults or conflict with legislative requirements or the Building Code of Australia or other codes or standards which the Sub-Contractor is required to comply with.
- c. Total makes no representation concerning the Preliminary Design and the Sub-Contractor is not entitled to rely on the completeness or accuracy of the Preliminary Design. Total relies on the Sub-Contractor to identify and remedy errors and faults in the Preliminary Design.
- d. Further, if the Preliminary Design adopted by the Sub-Contractor contains an error or fault not notified to Total the Sub-Contractor will not be entitled to an extension of time and will be responsible for the cost of any aborted work arising out of the error or fault and the cost to rectify and the value of any Variation Total may direct (in its absolute discretion) as a result of the error or fault will not include the cost of aborted work.
- e. Unless expressly permitted by the Sub-Contract the Sub-Contractor must not depart from the design intent as inferred, shown, evidenced or contemplated by the Sub-Contract.

4.2 Intellectual Property Rights

- a. The Sub-Contractor warrants that the Sub-Contractor’s documents and any related design, materials, documents and methods of working will not infringe any Intellectual Property Rights and indemnifies Total against any costs, losses, expenses or damages arising out of any infringement.
- b. Ownership of Intellectual Property Rights in all design documents vests in Total on creation and the Sub-Contractor will have a license to the Intellectual Property Rights in the design documents for any purpose associated with the Sub-Contract Works.

4.3 Professional indemnity

If the Sub-Contractor has Full Design Responsibility it must effect and maintain (and ensure any consultant engaged by the Sub-Contractor in the design of the Sub-Contract Works effects and maintains), professional indemnity insurance with levels of cover and a run-off period not less than that stated in the Sub-Contract Particulars.

4.4 Consultants

- a. Any design consultant engaged by the Sub-Contractor must be suitably qualified and experienced and hold professional indemnity insurance in accordance with clause 4.3 [Professional indemnity] above.

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- b. If directed by Total to do so, the Sub-Contractor must accept the novation of and retain Total's Preliminary Design consultants.

4.5 Design review

- a. If requested by Total the Sub-Contractor must undertake design review and consider the design with Total's personnel or personnel of the Principal or with the Superintendent. The Sub-Contractor must further develop the design and Sub-Contractor's design documents using the outcomes of this review prior to the Sub-Contractor submitting its design documents in accordance with sub-clause 1.13 [Submission of Sub-Contractor documents].
- b. Notwithstanding any design review and consideration by others the Sub-Contractor remains fully responsible for all design documents and nothing Total does or omits to do in connection with this clause makes Total liable for the Sub-Contractor's design documents.

4.6 Design check

If the Sub-Contractor has Full Design Responsibility, when requested by Total (at any time and from time to time), the Sub-Contractor must provide to Total a design certificate, in a form acceptable to Total, certifying that the Sub-Contractor's design complies with the Sub-Contract and is fit for purpose.

5. SUB-CONTRACTING

5.1 Secondary Sub-Contracting

- a. The Sub-Contractor must not, without the prior written approval of Total (which may be withheld in Total's absolute discretion and for any reason), enter into any secondary Sub-Contract with a value exceeding 15% of the Sub-Contract Sum.
- b. If requested to do so by Total, the Sub-Contractor must supply a copy of the proposed secondary Sub-Contract without prices.
- c. Approval to enter into a secondary Sub-Contract may be conditional on the secondary Sub-Contract including provisions to enable the Sub-Contractor to fulfil its obligations to Total.

5.2 Responsibility for secondary Sub-Contractors

The Sub-Contractor is liable to Total for the acts and omissions of secondary Sub-Contractors and employees and agents of secondary Sub-Contractors as if they were acts or omissions of the Sub-Contractor and anything in a secondary Sub-Contractor's control is taken to be in the Sub-Contractor's control.

5.3 Civil Liability Act

The operation of the *Civil Liability Act 2002* (NSW) is excluded, to the extent permitted by law, in relation to all rights, obligations and liabilities of the parties with respect to any matter to which the *Civil Liability Act 2002* (NSW) would apply but for this provision.

6. SITE

6.1 Site condition risk

- a. The Sub-Contractor has entered into the Sub-Contract relying on its own investigations of the Site and accepts the Site and any structures on the Site in their present condition.
- b. Total makes no representation and gives no warranty with respect to:
 - i. Site conditions (including sub-surface and geo-technical conditions);
 - ii. any structure on the Site;
 - iii. works completed by previous Sub-Contractors; and
 - iv. as to the accuracy, adequacy, suitability or completeness of any Site information document supplied to the Sub-Contractor.
- c. The Sub-Contractor assumes the risk of and acknowledges it will have No Claim against Total arising out of or in connection with the physical conditions and characteristics of the Site and its surrounds.

6.2 Prior works

- a. If the Sub-Contract Works are dependent on a previous Sub-Contractor's work the Sub-Contractor must examine that work prior to commencing its works and notify Total of any defect in that work.

Total representative/ initial

Sub-Contractor representative/ initial

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- b. Should the Sub-Contractor fail to notify Total and it builds over or incorporates into its work any defective work by other Sub-Contractors then the Sub-Contractor shall be liable for the costs of rectification of that defective work and shall have No Claim against Total in respect of prior defective work.

6.3 WHS

- a. At all times during the undertaking of the work under the Sub-Contract the Sub-Contractor must identify and exercise all necessary precautions and take all practicable steps to ensure the health and safety of persons on the Site who may be affected by the work under the Sub-Contract, and comply with the requirements of the WHS Legislation, including but not limited to the following:
 - i. undertake an assessment of WHS risks associated with the performance of the work under the Sub-Contract and take all reasonably practicable steps to implement Best Industry Practice risk control measures to eliminate and minimise all such WHS risk;
 - ii. prepare and submit to Total a **“Safe Work Method Statement”** prior to commencing any work under the Sub-Contract;
 - iii. consult, cooperate and coordinate activities with other persons who have a work health and safety duty in relation to the same matter, including to inform Total as to all matters arising of a WHS nature concerning the Works under the Sub-Contract;
 - iv. immediately notify of any lost time incident or injury; and
 - v. ensure that if any Legislative Requirement requires that a person be authorised or licensed to carry out any work in relation to the Sub-Contract Works, that person is so authorised or licensed and has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience or 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.
- b. The Sub-Contractor acknowledges Total has control of the manner in which the Head Contract Works are performed and Total is “principal contractor” for the purposes of the WHS Legislation for the Head Contract Works. The Sub-Contractor must:
 - i. promptly comply with any direction of Total in relation to work health and safety requirements under WHS Legislation;
 - ii. comply with any WHS management plan implemented by Total for the Head Contract Works (a copy of which the Sub-Contractor acknowledges has been provided to it and is available on request) and ensure all persons for whom it is responsible or over whom it is capable of exercising control complies with any applicable WHS management plan; and
 - iii. (if and when requested), provide written assurances of its ongoing compliance with WHS Legislation.
- c. The Sub-Contractor must ensure that all Constructional Plant is maintained in a safe working order. If Total considers that any Constructional Plant is unsafe, Total may direct the Sub-Contractor to stop using the Constructional Plant, until it has been brought into a safe working order, or replace the Constructional Plant with Constructional Plant which is in a safe working order.
- d. The Sub-Contractor must ensure so far as is practicable that it does not by its acts or omissions cause or contribute to any breach by Total of its statutory obligations. The Sub-Contractor must indemnify Total in respect of any liability, costs, losses or expenses whatsoever arising in connection with any breach of WHS Legislation by Total to which the Sub-Contractor has contributed by a breach of this clause.
- e. The Sub-Contractor agrees and acknowledges that its obligation to comply with the requirements of the WHS Legislation with respect to the Site as required by this Sub-Contract will apply during the occupation and/or use of the Site by the Principal after Completion.

6.4 Environmental

- a. The Sub-Contractor must comply with any Site-specific environmental management plan or system set out in the Trade Package (including with respect to dust and run-off from the Site) and applicable environmental Legislative Requirements including Environmental Legislation.
- b. The Sub-Contractor must ensure, in connection with the carrying out of the work under the Sub-Contract, Total does not become liable in connection with any environmental pollution and the Sub-Contractor shall indemnify Total in respect of any such liability and associated costs, losses or expenses (including authority fines).
- c. The Sub-Contractor must ensure that in complying with the requirements of clause 6.4(a) and (b) that:

Total representative/ initial

Sub-Contractor representative/ initial

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- i. the Sub-Contractor must take all measures and action to prevent causing or contributing to any actual or threatened environmental harm or pollution during the course of carrying out Sub-Contract Works under the Sub-Contract;
- ii. The Sub-Contractor must actively identify and remedy any environmental incident caused or contributed to directly or indirectly by the Sub-Contractor;
- iii. the Sub-Contractor must take all reasonable steps to minimise any actual or threatened environmental harm or pollution occurring at or near the Site;
- iv. any and all costs incurred by the Sub-Contractor associated with compliance with any Site-specific environmental management plan or system set out in the Trade Package and any other Environmental Legislation is agreed by the Sub-Contractor to be included in the Sub-Contract Sum;
- v. the Sub-Contractor indemnifies Total against all claims, penalties, fines, rectification and clean up costs and any liability, loss and damages arising as a result of the Sub-Contractor's failure to comply with this clause 6.4 Environmental;
- vi. the Sub-Contractor must:
 - 1. immediately notify Total of any environmental or pollution incidents involving or caused by the Sub-Contractor, its employees, contractors or agents, including incidents required to be notified to a government authority and promptly provide Total with details of the event; and
 - 2. prior to dispatch, provide Total with copies of any statutory notices and correspondence of any nature that relates to the Sub-Contract Works and concerns Environmental Legislation;
- vii. nothing in this clause 6.4 will relieve the Sub-Contractor from its responsibilities with respect to the protection of the environment under the law or any other provision of the Sub-Contract.

6.5 Archaeological finds

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological (including indigenous) interest and articles of value found on the Site shall as between the parties be and remain the property of Total. Immediately upon the discovery of these things the Sub-Contractor must:

- a. take precautions to prevent their loss, removal or damage;
- b. give Total immediate notice of the discovery;
- c. comply with any directions of the Superintendent or relevant authority; and
- d. (to the extent possible), continue to perform its obligations under the Sub-Contract.

7. CONSTRUCTION

7.1 Quality of materials and workmanship

The Sub-Contractor must use new and fit for purpose material and carry out work under the Sub-Contract in accordance with Best Industry Practice.

7.2 Quality Management

- a. The Sub-Contractor must develop, document and submit for approval, a quality management plan to assure the quality of the Sub-Contract Works (conforming to the requirements of ISO: 9001 or equivalent standard).
- b. The Sub-Contractor's QM Plan must include an inspection and test plan ("ITP") acceptable to Total.
- c. The Sub-Contractor's QM Plan is to be used as an aid to achieving compliance with the Sub-Contract and to document such compliance but does not relieve the Sub-Contractor of the responsibility to comply with the Sub-Contract.
- d. The treatment of non-conformances is to be approved by Total before being covered up or incorporated into the work under the Sub-Contract.

7.3 Inspections

The Sub-Contractor must comply with an inspection direction issued by Total, the Principal or the Superintendent.

7.4 Setting out

- a. (If applicable), Total will give the Sub-Contractor the data and like information necessary for the Sub-Contractor to set out the Sub-Contract Works, together with those survey marks specified in the Trade Package (if any).

Total representative/ initial

Sub-Contractor representative/ initial

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- b. The Sub-Contractor will keep in their true positions all survey marks supplied by Total for the Sub-Contract Works (or in place for the Head Contract Works) and promptly notify Total if a survey mark is disturbed. If a disturbance to a survey mark is caused by the Sub-Contractor, or any of its employees, agents or secondary Sub-Contractors, the costs incurred by Total in reinstating the survey mark will be a debt due from the Sub-Contractor to Total.

7.5 Testing

- a. The Sub-Contractor must:
 - i. carry out tests as required by the Sub-Contract; and
 - ii. if directed to do so, provide assistance to the Superintendent in relation to tests under the Head Contract.
- b. On completion of testing the Sub-Contractor must make good (where applicable) work under the Sub-Contract. All costs in connection with testing pursuant to this sub-clause will be borne by the Sub-Contractor.

7.6 Working hours

- a. Unless Total directs otherwise, local authority determined working hours will apply.
- b. If in the interests of safety of the work under the Sub-Contract, or to protect life or property, the Sub-Contractor finds it necessary to execute work outside customary working hours, the Sub-Contractor must immediately notify Total in writing of the circumstances. If inspection or attendance of Total, the Principal or the Superintendent is required, the costs of that inspection or attendance will be borne by the Sub-Contractor.

7.7 Site meetings

The Sub-Contractor must, from the date of commencement of work on Site, until the Date of Completion, ensure its representative attends Site meetings and if directed by Total to do so, attend project meetings under the Head Contract.

7.8 Signs

The Sub-Contractor must not, without the prior written approval of Total, affix, display or exhibit on the Site any sign or advertisement.

7.9 Nuisance and access ways

- a. The Sub-Contractor must ensure that no damage, nuisance or inconvenience is caused to anyone lawfully on the Site and occupiers of adjacent properties or the public by anything including dust, dirt, water or noise.
- b. The Sub-Contractor must keep Site access ways clear and unobstructed.

7.10 Industrial relations

- a. The Sub-Contractor must comply with:
 - i. all applicable, State and Federal, industrial relations Legislative Requirements;
 - ii. the terms and conditions of relevant awards; and
 - iii. (if applicable) any industry or Site-specific agreement relating to the work under the Sub-Contract.
- b. With respect to industrial disputes the Sub-Contractor must:
 - i. take all reasonable steps to avoid any industrial disputes with any employees, secondary Sub-Contractors or agents of the Sub-Contractor;
 - ii. minimise the consequences of any industrial dispute, concerning or arising out of the work under the Sub-Contract; and
 - iii. comply with directions of Total issued with the objective of reducing industrial disputes.
- c. The Sub-Contractor acknowledges and agrees that all costs and expenses associated with complying with its obligations under paragraphs (a) and (b) shall be (and are deemed to be) allowed for in the Sub-Contract Sum.

7.11 Protection of people and property

- a. Insofar as compliance with the Sub-Contract permits, the Sub-Contractor must take measures necessary to protect people and property.
- b. If the Sub-Contractor damages property, the Sub-Contractor must immediately rectify the damage and pay any compensation which a Legislative Requirement requires the Sub-Contractor to pay.

Total representative/ initial	Sub-Contractor representative/ initial

- c. If the Sub-Contractor fails to comply with an obligation under this sub-clause, Total, in addition to any other rights and remedies, may have the obligation performed by others and the costs incurred by Total will be a debt due from the Sub-Contractor to Total.

7.12 Care of the works and reinstatement

- a. The Sub-Contractor is responsible for care of:
 - i. the whole of the work under the Sub-Contract from and including the date of commencement of the work under the Sub-Contract until 4pm on the Date of Completion; and
 - ii. any work being made good or being repaired during the Defects Liability Period and items to be removed from the Site by the Sub-Contractor after Completion.
- b. The Sub-Contractor is responsible for the care of and preservation of things entrusted to the Sub-Contractor by Total or brought onto the Site by any secondary Sub-Contractors for executing the work under the Sub-Contract.
- c. If loss or damage, other than that caused by Total (its employees or agents), occurs to the Sub-Contract Works during the period of the Sub-Contractor’s care, the Sub-Contractor must, at its cost, rectify such loss or damage.

7.13 Emergency works

If urgent action is necessary to protect the work under the Sub-Contract, other property or people and the Sub-Contractor fails to take action, in addition to any other rights or remedies of Total, Total may take the necessary action without prior notice to the Sub-Contractor. If the action was action which the Sub-Contractor should have taken at the Sub-Contractor’s cost, the costs incurred by Total will be a debt due from the Sub-Contractor to Total.

7.14 Services

- a. If an existing service obstructs the work and is required to be relocated or diverted, unless expressly permitted by the Sub-Contract, the Sub-Contractor will have No Claim against Total in connection with such relocation or diversion.
- b. The Sub-Contractor must make good, and fully indemnifies Total against, any damage caused to an existing service in the course of carrying out the work under the Sub-Contract.

7.15 Working Hours/Adjoining and Neighbouring Areas

- a. Where the nature of the work under the Sub-Contract requires the Sub-Contractor to carry out work on, or over, an adjoining property the Sub-Contractor must:
 - i. comply with the terms and conditions of any access agreement obtained by Total or the Principal in connection with access to an adjoining property; and
 - ii. make good any loss or damage caused by the Sub-Contractor to an adjoining property to the satisfaction of the property owner, Total and the Principal.
- b. Where the nature of the work under the Sub-Contract requires the Sub-Contractor to obtain access to or from or work on or near property adjoining or in the vicinity of the Site and in undertaking the Sub-Contract Works in such a location as required by clause 7.15 of this Sub-Contract it will:
 - i. minimise inconvenience or interruptions to businesses that work on or near the property and will have No Claim in complying with this subclause; and
 - ii. to minimise inconvenience or interruptions, the Sub-Contractor may be required to interrupt or discontinue its Sub-Contract Work and will have No Claim by needing to avoid inconvenience or having the Sub-Contract Works interrupted.

7.16 Cleaning up

- a. The Sub-Contractor must keep those parts of the Site used for work under the Sub-Contract clean and tidy, remove rubbish and surplus material regularly (and as and when directed by Total) and at Completion, promptly remove any temporary works and Constructional Plant from the Site.
- b. If the Sub-Contractor fails to comply with its obligations under paragraph (a), Total may have the obligation performed by others and any costs incurred by Total will be a debt due from the Sub-Contractor to Total.

7.17 Control of personnel

Total may direct the Sub-Contractor to remove from Site any personnel who, in Total’s opinion, is:

- a. negligent or incompetent;

Total representative/ initial	Sub-Contractor representative/ initial

- b. in breach of a management plan; or
- c. engaged in unlawful, riotous or disorderly conduct.

7.18 Defective work

- a. If at any time prior to the expiration of the Defects Liability Period Total becomes aware of work done (or material provided) which is not in accordance with the Sub-Contract, Total will provide notice to the Sub-Contractor of that fact and may direct the Sub-Contractor: to remove the material from the Site; to demolish the work; to redesign, reconstruct, replace or correct the material or work; or not to deliver the material or work to Site, and specify the time in which the rectification works are to be completed.
- b. If the Sub-Contractor fails to comply with a notice under paragraph (a) Total may have the rectification works carried out by others. The costs and expenses incurred by Total as certified by Total are monies due and payable by the Sub-Contractor to Total.

7.19 Variation for defective work

- a. Total may, instead of instructing the Sub-Contractor to rectify defective work under sub-clause 7.18 [Defective work], direct a Variation under clause 11 [Variations] to overcome the defective work and the time by which it is to be carried out. If a Variation has been instructed and carried out Total will:
 - i. price the Variation in accordance with clause 11.3 [Valuation of Variations]; and
 - ii. determine the cost of correcting the defective work if the Variation had not been directed.
- b. If the value of paragraph (a) (i) above, is greater than the value of paragraph (a) (ii) above, the Sub-Contract Sum will be increased by that difference. If the value of paragraph (a) (ii) above, is greater than the value of paragraph (a) (i) above, the Sub-Contract Sum will be decreased by that difference.
- c. Notwithstanding sub-clause 10.2 [EOT entitlement], the Sub-Contractor acknowledges it will not be entitled to claim an extension of time if a Variation is directed under this sub-clause.

7.20 Separable Portions

- a. Total may nominate a part of the Sub-Contract Works as a Separable Portion and direct that it be undertaken separately.
- b. Should Total nominate a Separable Portion under paragraph (a) above, Total will also identify the Date for Completion and liquidated damages for that Separable Portion.
- c. The interpretations of Completion, Date of Completion and clauses such as 7.16 [Cleaning up] and 10 [Delays], and any other relevant clauses shall apply separately to each Separable Portion and references therein to the Sub-Contract Works and work under the Sub-Contract shall mean so much of the Sub-Contract Works and the work under the Sub-Contract as is comprised in the Separable Portion.

8. PROGRAMMING AND SUSPENSION

8.1 General programming obligation

- a. The Sub-Contractor must program the work under the Sub-Contract:
 - i. to ensure Completion is achieved by the Date for Completion; and
 - ii. in compliance with and consistent with the Head Contract Works program (as may be updated from time to time).
- b. The Sub-Contractor acknowledges that the provision of an updated Head Contract Works program by Total is not a direction by Total and does not relieve the Sub-Contractor of its obligation to ensure Completion is achieved by the Date for Completion. The purpose of the Head Contract Works program is to facilitate the day to day coordination and integration of the work under the Sub-Contract.

8.2 Re-sequencing

- a. Total may direct the Sub-Contractor to re-sequence or coordinate the work under the Sub-Contract so as to ensure that Completion is achieved by the Date for Completion or to accommodate the work under the Head Contract.
- b. Upon receipt of a direction under paragraph (a) the Sub-Contractor must immediately comply with the direction. The Sub-Contractor acknowledges it will have No Claim against Total due to a re-sequencing or coordination direction by Total under paragraph (a).

Total representative/ initial

Sub-Contractor representative/ initial

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8.3 Suspension

- a. Total may at any time and for any reason direct the Sub-Contractor to suspend the whole or any part of the work under the Sub-Contract. Total may notify the cause of the suspension.
- b. Following a suspension direction Total will direct the Sub-Contractor to recommence work on the whole or relevant part of the work under the Sub-Contract.
- c. Subject to paragraph (d), if the Sub-Contractor suffers a delay to the Date for Completion as a result of a suspension direction under paragraph (a) by Total, it will be entitled to claim an extension of time under clause 10 [Delays].
- d. If Total’s direction to suspend the whole or any part of the work under the Sub-Contract is a result of the Sub-Contractor’s fault or breach of the Sub-Contract, that suspension is at the cost and risk of the Sub-Contractor and the Sub-Contractor acknowledges it will have No Claim against Total.

9. COMPLETION AND DEFECTS LIABILITY PERIOD

9.1 Certificate of completion

- a. The Sub-Contractor must give Total written notice five (5) Business Days before it anticipates achieving Completion.
- b. When the Sub-Contractor is of the opinion that Completion has been achieved, the Sub-Contractor must make a written request to Total to issue a certificate of Completion.
- c. Upon receipt of a request under paragraph (b) above or if Total independently forms the opinion that Completion has been achieved, Total will give to the Sub-Contractor a notice certifying Completion has been achieved and the Date of Completion, or a notice setting out reasons for rejecting the Sub-Contractor’s request for a certificate of Completion (and the provisions of paragraph (b) will reapply).

9.2 Damages for late completion

- a. If the Sub-Contractor fails to achieve Completion by the Date for Completion, the Sub-Contractor must pay to Total:
 - i. the liquidated damages stated at Item 9 of the Subcontract Particulars for every day after the Date for Completion until the Date of Completion or termination (whichever occurs first); or
 - ii. the costs of Total’s on and off site overheads and any other loss or expense suffered by Total as a result of the Sub-Contractor’s failure to achieve Completion by the Date for Completion
- b. The parties agree the amount for liquidated damages stated in the Sub-Contract Particulars is an agreed genuine pre-estimate of Total’s loss and damages in the event Completion occurs after the Date for Completion.
- c. If the Head Contract Works do not reach Practical Completion by the date for Practical Completion under the Head Contract due to:
 - i. a failure of the Sub-Contractor to reach Completion by the Date for Completion under the Sub-Contract, or
 - ii. due to a breach of any other obligation under the Sub-Contract by the Sub-Contractor,
 the Sub-Contractor shall indemnify Total against any liquidated damages under the Head Contract or any other damages that Total becomes liable to pay under the Head Contract.

9.3 Defects Liability Period

- a. The defects liability period will commence on the Date of Completion and will expire on expiry of the last defects liability period under the Head Contract.
- b. During the Defects Liability Period Total may give the Sub-Contractor a direction to rectify a defect and notify a time for commencement and completion of the rectification works (“Rectification Period”).
- c. If the rectification work is not completed by the date notified in a notice given under paragraph (b), Total may have the rectification works carried out by others (or itself) and the costs incurred by Total will be a debt due from the Sub-Contractor to Total.
- d. Any defects rectification works carried out by the Sub-Contractor in accordance with this clause 9.3 will not give rise to a reference date.

Total representative/ initial	Sub-Contractor representative/ initial

10. DELAYS

10.1 Notice of delay

- a. Within two (2) Business Days of when the Sub-Contractor first became aware, or should reasonably have first become aware, of an event which has caused or will or is likely to cause any delay and / or disruption to any part of the work under the Sub-Contract, the Sub-Contractor must give Total notice of the event, the estimated delay and details of the event and how the critical path to achieving Completion and the Date for Completion are likely to be affected (if at all). The Sub-Contractor must discuss the matter with Total and must take all practical steps to avoid or minimise any delay and / or disruption that might result from such event.
- b. A notice under paragraph (a) must be in writing and is a condition precedent to the Sub-Contractor’s entitlement to an extension of time.
- c. If the delay is ongoing the Sub-Contractor must update Total by providing further notices weekly (including the details required under paragraph (a)).

10.2 EOT entitlement

If the Sub-Contractor is delayed in reaching Completion by the Date for Completion by any of the following causes of delay:

- a. a breach of the Sub-Contract by Total and any other act or omission of Total (including an act of prevention), the Principal or the Superintendent;
- b. a Variation; or
- c. a cause of delay giving the Sub-Contractor an entitlement to claim an extension of time under another clause of the Sub-Contract,

and the Sub-Contractor:

- a. has provided the notice/s required under sub-clause 10.1 [Notice of delay]; and
- b. used all reasonable endeavours to mitigate the effects of the delay (inclusive of re-sequencing the work under the Sub-Contract),

the Sub-Contractor may be entitled to an extension of time for Completion.

10.3 EOT Claim

- a. If the Sub-Contractor considers itself entitled to an extension of time for Completion, it must within two (2) Business Days of the occurrence of the delay, give to Total a written claim for an extension of time together with a statement of the facts upon which the claim is based (including a critical path analysis)
- b. If the Sub-Contractor is entitled to an extension of time, and there are no concurrent delays caused by event(s) or circumstance(s) which do not entitle the Sub-Contractor to an extension of time, Total will determine a reasonable extension of time following receipt of the Sub-Contractor’s claim under paragraph (a).

10.4 Delay and disruption costs

If the Sub-Contractor has been granted an extension of time for a delay caused by a breach of the Sub-Contract by Total, Total will pay the direct costs reasonably and necessarily incurred by the Sub-Contractor up to the maximum amount stated in the Sub-Contract Particulars. The Sub-Contractor agrees this is the only compensation it may recover from Total for any exclusion, suspension, delay or disruption, including delay or disruption arising from a breach of the Sub-Contract by Total. The Sub-Contractor agrees that payment of the direct costs reasonably and necessarily incurred is the Sub-Contractor’s sole remedy in respect of any claim for a breach of the Sub-Contract by Total.

10.5 Unilateral right to extend

Notwithstanding that the Sub-Contractor is not entitled to, or has not claimed, an extension of time, Total may at any time and from time to time, award an extension of time for any reason. Total must only exercise this discretion for the benefit of Total.

10.6 Bar

The Sub-Contractor acknowledges that its failure to comply with the requirement of clause 10 in particular as to the stated time for making a notice of delay and/or a notice of a claim will be a bar to an extension of time claim made by the Sub-Contractor and the Sub-Contractor agrees it will have No Claim in respect to the extension of time.

Total representative/ initial

Sub-Contractor representative/ initial

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10.7 Acceleration

- a. Total may instruct the Sub-Contractor to overcome the effects of a delay (including where the Sub-Contractor is entitled to claim an extension of time for the delay) by accelerating the work under the Sub-Contract (or part thereof).
- b. If instructed to accelerate under paragraph (a), the Sub-Contractor must accelerate the work under the Sub-Contract (or part thereof) by taking those measures necessary to overcome or minimise the extent and effects of the delay (including, if required, in order to achieve Completion by the Date for Completion).
- c. If the Sub-Contractor would have been entitled to an extension of time if the instruction had not been given, the Sub-Contractor will be entitled to its reasonable costs incurred in accelerating the work under the Sub-Contract (or part thereof) plus the amount for Sub-Contractor Profit and Overhead stated in the Sub-Contract Particulars.

11. VARIATIONS

11.1 Variation instruction

- a. Total may at any time direct the Sub-Contractor to carry out a Variation. A variation includes any alteration, amendment, omission, addition, deduction or other variation to the Sub-Contract Works. The Sub-Contractor must not vary the Sub-Contract Works or work under the Sub-Contract unless it has received a written Variation direction from Total (and must immediately carry out the Variation when directed). For the sake of clarity, a 'site instruction' does not constitute a Variation direction.
- b. Where the Sub-Contractor considers a direction given by Total to constitute a Variation in accordance with subclause 11.1(a), if it wishes to make a claim against Total, the Sub-Contractor must notify Total within five (5) Business Days of receiving that direction.
- c. If a Variation in accordance with clause subclause 11.1(a) omits any part of the Sub-Contract Works Total may have that work carried out by a third party or carry that work out itself.
- d. The Sub-Contractor may for its convenience request Total direct a Variation. Total may reject the Sub-Contractor's request (in Total's absolute discretion and for any reason) or approve the request unconditionally or with conditions.
- e. The Sub-Contractor acknowledges it will have No Claim against Total arising out of a Variation that was not directed under subclause 11.1(a).

11.2 Proposed Variations

- a. Total may request the Sub-Contractor to price a proposed Variation ("**Variation Proposal**").
- b. Within five (5) Business Days of receipt of a Variation Proposal the Sub-Contractor must provide the estimated cost of the proposed Variation and its likely effect on the Date for Completion.
- c. If Total accepts the Sub-Contractor's estimate the Sub-Contractor's estimate will become the agreed price of the Variation ("**Agreed Variation Price**").

11.3 Valuation of Variations

The Sub-Contract Sum will be increased or decreased for all directed Variations by the following order of precedence:

- a. by an amount determined by Total using any rates or prices set out in a Schedule of Rates; or
- b. should there be no Schedule of Rates, or if the rates or prices set out in the Schedule of Rates are not applicable, Total will determine:
 - i. if the Variation involves additional or increased work, a reasonable amount to which will be added the amount for Sub-Contractor Profit and Overhead stated in the Sub-Contract Particulars; or
 - ii. if the Variation involves decreased or omitted work, a reasonable amount (including an amount for off-Site overhead and profit).

11.4 Bar

The Sub-Contractor acknowledges that its failure to comply with the requirement of this clause 11 in particular as to the stated time for notice or claim or details will be a bar to a Variation claim made by the Sub-Contractor and the Sub-Contractor agrees that it will have No Claim in respect to the Variation.

11.5 Day works

- a. Total may direct the Sub-Contractor to carry out a Variation (or part thereof) as day works.

Total representative/ initial

Sub-Contractor representative/ initial

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- b. The Sub-Contractor must record for each day it has worked on the Variation all resources and present that record to Total for signing the next day (as a precondition to payment).
- c. Unless the subject of a direction pursuant to clause 11.1 that the Day Works are a Variation to the Sub-Contract, the signing of Day Work docket are for record purposes only and entitlement to a variation will be assessed in accordance with the Sub-Contract.

12. PAYMENT

12A Method of Making Payment Claims

The Sub-Contractor agrees and acknowledges that:

- a. Total intends to implement the EPC System identified at item 13 of the Sub-Contract Particulars;
- b. the Sub-Contractor will accept and sign up to the standard terms of service for use of the EPC System;
- c. the Sub-Contractor will pay any charges for the subscription to the EPC System as directed by Total;
- d. the Sub-Contractor will have No Claim against Total in relation to the use of or the retainer of the EPC System;
- e. if directed by Total, the Sub-Contractor will do all acts and tasks that are reasonably required to ensure the EPC System is used in accordance with the requirements of the Major Works Sub-Contract.
- f. The Sub-Contractor is required to use the EPC System to submit Payment Claims to Total. Any document or notice in respect to a Payment Claim which has been submitted to an EPC System pursuant to this subclause is taken to be served when the EPC System approves the submission.

12.1 General

- a. Prior to commencement the Sub-Contractor must submit to Total, in a form acceptable to Total, a Sub-Contract Sum Breakdown which will be used by Total for valuing Payment Claims. Refer to Sub-Contract Sum Breakdown (Annexure 6).
- b. The Sub-Contract Sum will not be subject to adjustment for rise and fall for any cause whatsoever, including changes in the cost of materials, plant, equipment, labour or taxation (excluding GST).

12.2 Content of Payment Claims/Submissions by the Sub-Contractor

- a. A claim for payment must set out the details and value of work completed in performance of the Sub-Contract up to that time, in accordance with the Sub-Contract Sum Breakdown, together with any other amounts due to the Sub-Contractor under the Sub-Contract and must include:
 - i. a completed Sub-Contractor’s Statement in the form set out at Schedule 1;
 - ii. any requirements set out in the Trade Package (inclusive of certificates, reports, ITPs and / or ‘as-builts’);
 - iii. evidence of currency of all insurance policies required by the Sub-Contract;
 - iv. the amount currently claimed by the Sub-Contractor in respect of the performance of this Sub-Contract and since the last Payment Claim;
 - v. the total of all amounts certified in progress certificates issued to the date of the Payment Claim;
 - vi. any other claim in respect of the Sub-Contract Sum or in connection with the Sub-Contract Works or the Sub-Contract;
 - vii. a breakdown of costs into each trade or service covered by the Payment Claim, identifying the items in the Schedule of Rates and the percentage completed of each trade or service covered by the Payment Claim;
 - viii. an estimate of the percentage of the Sub-Contract Works yet to be completed;
 - ix. a statement by the Sub-Contractor in the form of Schedule 1 together with any other information Total may require;
 - x. in addition to the material at subclause 12.2(a)(ix) above, satisfactory evidence which in Total’s opinion is sufficient that the Sub-Contractor has paid every person, contractor, employee, consultant, supplier employed or engaged in anyway by the Sub-Contractor on the Sub-Contract Works all amounts that the Sub-Contractor is legally required to pay in respect of these persons, contractors, employees, consultants and/or suppliers;
 - xi. amounts previously deducted for retention monies (if any) pursuant to the Sub-Contract;
 - xii. in respect of unfixed plant and materials the amount claimed (if any) being the amount which the Sub-Contractor may be entitled to claim at that time pursuant to this Sub-Contract;

Total representative/ initial

Sub-Contractor representative/ initial

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- xiii. such other information as requested by Total;
 - xiv. has remedied any breach of the Sub-Contract; and
 - xv. if requested by Total, a Deed of Warranty in the form of that at Schedule 4 and duly executed by the Sub-Contractor;
- b. Payment Claims must be submitted to the following email address: claims@totalconstruction.com.au at the times for making Payment Claims under sub-clause 12.3 [Time for making Payment Claims] below. The Total Project Team must be copied in on the email of the claim that is being submitted, unless the option under item 13 of the sub-contract particulars has been adopted that will require payment claims to be lodged via PAYAPPS AU.
- c. (If required to do so) the Sub-Contractor acknowledges, in addition to the notification and claim requirements of the Sub-Contract, it will have No Claim against Total arising out of any Variation or extension of time claim that is not recorded in a Variation or extension of time register provided with a Payment Claim.

12.3 Time for making Payment Claims

- a. The Sub-Contractor may submit a Payment Claim:
- i. on the 25th day of each month up to the Date of Completion;
 - ii. on or after 10 Business Days from the Date of Completion; and
 - iii. (if applicable), within 10 Business Days of expiry of the last Defects Liability Period.
- b. The Sub-Contractor acknowledges and agrees that it will be deemed to have elected not to submit a Payment Claim if:
- i. it does not submit a Payment Claim on or before the relevant date pursuant to paragraph (a) above; or
 - ii. it is not in compliance with the requirements of sub-clause 12.2 [Content of Payment Claims] (inclusive of being valued in accordance with the Sub-Contract Sum Breakdown).
- c. For the purpose of determining when a time for submitting a Payment Claim arises under this Sub-Contract the entitlements of subclause 12.3(a) will not arise unless the Sub-Contractor submits to Total a claim for the Sub-Contract Works carried out the previous month and in accordance with clause 12.

12.4 Payment Schedule and tax invoice

- a. Within 10 Business Days of receipt of a Payment Claim Total will issue a payment schedule:
- i. identifying the Payment Claim to which it relates;
 - ii. stating the amount Total proposes to pay to the Sub-Contractor or the amount due from the Sub-Contractor to Total pursuant to the Sub-Contract ("**Scheduled Amount**"); and
 - iii. if the Scheduled Amount is less than the claimed amount, reasons for the difference.
- b. If the Sub-Contractor fails to submit a Payment Claim under this clause Total may nonetheless issue a Payment Schedule and Total or the Sub-Contractor, as the case may be, must pay the Scheduled Amount.
- c. No reference date will arise under the Security of Payment Act following termination of this Sub-Contract.
- d. Total and the Sub-Contractor both agree that:
- i. Total can issue recipient created tax invoices (**RCTIs**) in respect of the Sub-Contract Works;
 - ii. the Sub-Contractor will not issue tax invoices in respect of the Sub-Contract Works;
 - iii. the Sub-Contractor acknowledges that it is registered for GST when it enters into this Sub-Contract and that it will notify Total if it ceases to be registered; and
 - iv. Total acknowledges that it is registered for GST when it enters into this Sub-Contract and that it will notify the Sub-Contractor if it ceases to be registered.

12.5 Date of Payment

- a. Within 20 Business Days following the last day of the month in which the Payment Claim is submitted, should an amount be payable to the Sub-Contractor, Total will pay the Sub-Contractor the Scheduled Amount. Payment by Total is not an admission that work has been executed satisfactorily but is payment on account only.

12.6 Deed of Release

- a. Within five (5) Business Days of receipt of a Payment Schedule issued in response to a Payment Claim submitted pursuant to sub-clause 12.3 (a) (ii) following Completion, as a precondition to payment, the Sub-Contractor must execute and deliver to Total a Deed of Release in the form set out at Schedule 3.

Total representative/ initial

Sub-Contractor representative/ initial

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- b. Within five (5) Business Days of receipt of a Payment Schedule issued in response to a Payment Claim submitted pursuant to sub-clause 12.3(a) (iii) following expiry of the Defects Liability Period, as a precondition to payment, the Sub-Contractor must execute and deliver to Total a further Deed of Release in the form set out at Schedule 3.

12.7 Final Payment Claim

- a. After 11 business days following the expiry of the Defects Liability Period, Total may at any time issue a final Payment Schedule endorsed 'Final Certificate' which states the amount certified as due and payable, from Total to the Sub-Contractor or from the Sub-Contractor to Total arising out of the Sub-Contract or any alleged breach of the Sub-Contract except for:
 - i. any claim for which the Sub-Contractor has lodged a notice of claim pursuant to clause 14.1 or a Notice of Dispute pursuant to clause 15.1 within 5 days of receipt of the Certificate of Completion;
 - ii. fraud or dishonesty relating to work under the Sub-Contract or any part thereof or to any matter dealt with in the Final Certificate;
 - iii. any defect or omission in the Sub-Contract Works or any part thereof which was not apparent at the end of the last Defects Liability Period or which would not have been disclosed upon reasonable inspection at the time of issue of the Final Certificate.
- b. The Final Certificate shall be evidence in any proceedings that the Sub-Contractor has irrevocably released and discharged Total from all claims whether under the Sub-Contract or tort, under statute or otherwise at law or in equity except for any amounts or claims stated in the Final Certificate.

12.8 Release

After expiration of the period for submitting a final Payment Claim the Sub-Contractor releases Total from any claim in respect of any fact matter or thing arising out of or in connection with the Sub-Contract except for any claim included in a Payment Claim made in accordance with sub-clause 12.7 [Final Payment Claim].

12.9 Provisional Sums

- a. If a Provisional Sum is set out at Item 12 of the Sub-Contract Particulars the Sub-Contractor must comply with a direction by Total to carry out the work or supply the item to which the Provisional Sum relates.
- b. A Provisional Sum included in the Sub-Contract will not itself be payable by Total but where pursuant to a direction, any part or the whole of the work or item to which the Provisional Sum relates is carried out or supplied by the Sub-Contractor, the work or item will be priced by Total, and the difference will be added to or deducted from the Sub-Contract Sum.
- c. The Sub-Contractor acknowledges the Sub-Contract Sum includes an amount for profit and overheads in relation to the Provisional Sums and unless otherwise stated, with respect to the supply of Provisional Sum items, includes the costs of supply, delivery and installation.

12.10 Payment for unincorporated materials

The Sub-Contractor is not entitled to claim payment for unfixed materials or goods unless Total agrees to pay for such materials or goods prior to their being incorporated into the Sub-Contract Works and (if directed) the Sub-Contractor provides an unconditional bank guarantee to Total for 100% of the value of the unfixed materials or goods.

12.11 Right to set-off

Without limiting any other right under the Sub-Contract or otherwise at law, any debt due or other monies due from the Sub-Contractor to Total, or any other claim to money Total may have or might in the future have against the Sub-Contractor including if the Sub-Contractor is in breach of any of its obligations under the Sub-Contract, if Total is entitled to terminate the Sub-Contract or if there is a debt due under another contract between the Sub-Contractor and Total, may be deducted from any monies otherwise payable to the Sub-Contractor or satisfied by Total calling on any Security provided by the Sub-Contractor.

12.12 Direct payment

Where Total is entitled to or is required to make payment to a worker or secondary Sub-Contractor, Total may make that payment directly to the worker or secondary Sub-Contractor and the amount paid will be a debt due from the Sub-Contractor to Total. If any worker or secondary Sub-Contractor obtains a court order in respect of monies owed to it by the Sub-Contractor, Total may pay the amount of the order to the worker or secondary Sub-Contractor and the amount paid will be a debt due from the Sub-Contractor to Total.

Total representative/ initial	Sub-Contractor representative/ initial

12.13 Pre-condition to payment

Notwithstanding any provision of this clause 12, Total is not obliged to make any payment to the Sub-Contractor unless the Sub-Contractor has:

- a. executed the Sub-Contract;
- b. executed and returned the Deed of Warranty pursuant to sub-clause 1.14(b) [Warranties];
- c. (if directed by Total) provided a guarantee pursuant to sub-clause 2.5 [Guarantee];
- d. (if directed by Total) provided evidence of insurance pursuant to sub-clause 3.8 [Certificate of currency];
- e. (if directed by Total) provided as-builts in accordance with sub-clause 12.2(a)(ii) [Content of Payment Claims - draft as-builts];
- f. (if directed by Total) an executed Deed of Release pursuant to sub-clause 12.6 [Deed of Release]; and
- g. has remedied any breach of the Sub-Contract.

13. TERMINATION

13.1 Default or insolvency

- a. If the Sub-Contractor commits an Event of Default Total may give the Sub-Contractor a written notice setting out:
 - i. details of the Event of Default; and
 - ii. the date by which the Event of Default must be cured,

("Default Notice")
- b. If the Event of Default is not remedied by the time specified in the Default Notice Total may do one of the following:
 - i. terminate the Sub-Contract; or
 - ii. take over a part or all of the Sub-Contract Works ("**Step-In**").
- c. If there is an Event of Insolvency Total may terminate the Sub-Contract (without prior notice), or, may Step In (providing notice to the Sub-Contractor of same).
- d. If Total terminates the Sub-Contract under this sub-clause:
 - i. Total may:
 - a. in its absolute discretion engage another Sub-Contractor to complete the work under the Sub-Contract (or it may complete itself);
 - b. have recourse to Security; and
 - c. without payment of compensation to the Sub-Contractor, take possession of the Sub-Contractor's Constructional Plant and other equipment and materials as necessary to complete the Sub-Contract Works (to be returned on Completion);
 - ii. the Sub-Contractor must assign or novate all contracts (including secondary Sub-Contracts) concerning the Sub-Contract Works to Total and do everything and sign all documents necessary to give effect to this sub-clause; and
 - iii. if the costs to complete the work under the Sub-Contract exceed that which Total would have paid the Sub-Contractor, those costs will be a debt due from the Sub-Contractor to Total.
- e. If Total takes over a part or all of the Sub-Contract Works under this sub-clause (exercising its Step-In right):
 - i. the Sub-Contractor's obligations under the Sub-Contract are suspended for the period the Sub-Contractor is prevented from performing the Sub-Contract by Total exercising its Step-In right;
 - ii. the Sub-Contractor must assist Total to ensure Total is able to exercise its Step-In right effectively and expeditiously; and
 - iii. any cost incurred by Total arising out of or in connection with the exercise of its Step-In right will be a debt due from the Sub-Contractor to Total.

13.2 Termination for convenience

- a. Total may, in its absolute discretion (and for any reason), terminate the Sub-Contract, effective from the time stated in Total's notice, or if no time and date is stated, at the time the notice is given to the Sub-Contractor.

Total representative/ initial	Sub-Contractor representative/ initial

- b. Upon receipt of such notice the Sub-Contractor must comply with directions of Total, not place any further orders in relation to the Sub-Contract Works and, if requested, make arrangements for the transfer of Constructional Plant and the assignment or novation of all contracts concerning the Sub-Contract Works to Total.
- c. If Total terminates the Sub-Contract under this sub-clause Total may in its absolute discretion engage another Sub-Contractor to complete the Sub-Contract Works (or it may complete itself) and will pay to the Sub-Contractor:
 - i. the amount due to the Sub-Contractor for the Sub-Contract Works performed in the relevant period up to the date of termination (as well as any amount for works directed after the date of termination);
 - ii. the cost of materials (necessarily and reasonably) ordered prior to the date of termination and which Total is legally bound to pay;
 - iii. the Sub-Contractor's reasonable costs of demobilisation;
 - iv. two percent (2%) of the unpaid balance of the Sub-Contract Sum to cover indirect costs and opportunity cost; and
 - v. a reasonable amount for Constructional Plant left on site at Total's direction.
- d. Except for the amounts to which the Sub-Contractor is entitled under this sub-clause the Sub-Contractor is not entitled to any other amounts, including for consequential costs (including lost profit), losses or damage under or in connection with the Sub-Contract.

13.3 Termination of head contract and novation

- a. If Total gives the Sub-Contractor notice requiring that there be a novation of the Sub-Contract, for any reason, within five (5) Business Days of such notice the Sub-Contractor must execute a deed of novation in a form acceptable to Total.
- b. Where the novation required under paragraph (a) is due to the Principal terminating the Head Contract due to Total having breached the Head Contract, arising out of or in connection with a breach of the Sub-Contract by the Sub-Contractor, without limiting any other provision of the Sub-Contract, the Sub-Contractor must indemnify Total against any damage, loss, expense or liability suffered or incurred by Total, arising out of or in connection with the termination of the Head Contract.
- c. For the purposes of effecting a novation directed under paragraph (a) above only, the Sub-Contractor irrevocably appoints Total to be the Sub-Contractor's attorney with authority to execute documents on its behalf to give effect to the novation.

14. CLAIMS

14.1 Notice of intent to claim

- a. Except for a claim under a provision of the Sub-Contract that contains its own notice procedure (such as for an extension of time), if the Sub-Contractor considers itself to be entitled to any claim:
 - i. arising out of or in connection with a breach of the Sub-Contract by Total;
 - ii. arising out of or in connection with the subject matter of the Sub-Contract Works;
 - iii. arising out of or in connection with a direction or approval of Total;
 - iv. or otherwise in connection with the Sub-Contract,
 - v. the Sub-Contractor must give to Total within five (5) Business Days after the Sub-Contractor became aware, or should have reasonably become aware, of the event or circumstance giving rise to the claim, a notice of intent to make a claim.
- b. A notice under paragraph (a) must be in writing and must include details of the event or circumstance giving rise to the claim (including details of Total's direction (if applicable)).

14.2 Detailed claim

Within five (5) Business Days after giving a written notice in accordance with sub-clause 14.1 [Notice of intent to claim], the Sub-Contractor must submit a written claim which must include:

- a. detailed particulars concerning the matter or thing, or direction, on which the claim is based;
- b. the legal basis of the claim;
- c. the facts relied on to support the claim; and
- d. details of the amount claimed and how it has been calculated.

Total representative/ initial	Sub-Contractor representative/ initial

14.3 Bar

If the Sub-Contractor submits a notice or a claim in respect of a matter later than the time for submission of such notice or claim stated in the Sub-Contract, such matter will be time barred and the Sub-Contractor deemed to have waived its entitlement (if any) in respect of such matter.

15. DISPUTE RESOLUTION

15.1 Notice

If a dispute between the Sub-Contractor and Total arises out of or in connection with the Sub-Contract either party may issue to the other party a notice of dispute outlining the details of the dispute (**“Notice of Dispute”**).

15.2 Conference

Within five (5) Business Days (or such other time as agreed in writing between the parties) after the date of receipt of a Notice of Dispute, a senior executive of the Sub-Contractor (with authority to bind the Sub-Contractor) and a representative of Total must meet and attempt (in good faith) to resolve the dispute.

15.3 Litigation

If a dispute has not been resolved within 15 Business Days after the date of receipt of the Notice of Dispute (or such other time as agreed in writing between the parties) either party may refer the dispute to litigation.

15.4 Precondition

It is a condition precedent to the referral of a dispute to litigation that the parties confer in accordance with sub-clause 15.2 [Conference].

15.5 Continue to perform

Notwithstanding the existence of a dispute the Sub-Contractor must continue to perform the Sub-Contract.

15.6 Urgent relief

The Sub-Contract dispute resolution process does not prevent a party from seeking an urgent declaration or injunction from a court.

15.7 Head Contract disputes

Notwithstanding the provisions of this clause, if a dispute arises under the Head Contract which concerns work, material or the performance of work under the Sub-Contract, Total may give notice to the Sub-Contractor requiring that the Sub-Contractor be joined to the Head Contract dispute process.

16. SECURITY OF PAYMENT ACT

16.1 Authorised Nominating Authority

For the purposes of the Security of Payment Act the authorised nominating authority to which an adjudication application may be made is the relevant State chapter of the Institute of Arbitrators and Mediators Australia.

16.2 Sub-Contractor Suspension

- a. When the Sub-Contractor becomes aware that a secondary Sub-Contractor is entitled to suspend work pursuant to the Security of Payment Act, the Sub-Contractor must promptly and without delay give Total a copy of any written communication of whatever nature in relation to the Security of Payment Act which the Sub-Contractor receives from a secondary Sub-Contractor.
- b. Without limiting the general nature of any provision of the Sub-Contract, if Total becomes aware that a secondary Sub-Contractor is entitled to suspend work pursuant to the Security of Payment Act, Total may (in its absolute discretion) pay the secondary Sub-Contractor such money that is or may be owing to the secondary Sub-Contractor in respect of that work and any amount paid by Total will be a debt due from the Sub-Contractor to Total.
- c. The Sub-Contractor shall indemnify, keep indemnified and hold harmless Total against all damage, expense (including legal costs), loss or liability of any nature suffered or incurred by Total arising out of a suspension by a secondary Sub-Contractor, or a failure by the Sub-Contractor to comply with this clause.

16.3 Principal Contractor retaining money

In relation to section 26A of the Security of Payment Act the Sub-Contractor:

Total representative/ initial	Sub-Contractor representative/ initial

- a. must immediately provide a copy of any “payment withholding request” issued to the Principal; and
- b. indemnifies Total against any cost, loss or expense (including legal fees) incurred as a result of, or arising out of, an overstatement of an amount due to the Sub-Contractor under a “payment withholding request”.

17. GENERAL

17.1 Passing of title

Title to all materials, equipment and other goods delivered to the Site for incorporation in the Sub-Contract Works shall pass to Total upon delivery, or if payment has been made by Total to the Sub-Contractor prior to delivery, upon such payment being made. Provided however that risk in the goods (including without limitation, risk for theft and damage to goods) shall remain with the Sub-Contractor.

17.2 Warranties

If the Sub-Contract requires the Sub-Contractor to provide any warranty that warranty (unless otherwise advised by Total) must:

- a. be for the benefit of Total and the Principal and in a form acceptable to the Principal;
- b. be for the period required by the Sub-Contract; and
- c. comply with any applicable Legislative Requirements.

17.3 Confidentiality and media releases

- a. The Sub-Contractor must not disclose or publicise details of the Sub-Contract without Total’s prior written consent (which may be withheld in Total’s absolute discretion).
- b. The Sub-Contractor must deliver immediately to Total, if directed or upon termination under the Sub-Contract, all the confidential information of Total’s which it holds.

17.4 Laws

- a. The Sub-Contractor must comply with all Legislative Requirements, except if only Total can comply with such Legislative Requirement, and applicable Australian Standard and Building Code provisions.
- b. A change in a Legislative Requirement having effect after the execution of the Sub-Contract, that necessitates a change to the Sub-Contract Works or an increase or decrease in a fee payable or payment of a new fee, is at the Sub-Contractor’s risk. The Sub-Contractor acknowledges it will have No Claim against Total due to a change in a Legislative Requirement.
- c. The Sub-Contract is governed by and must be construed according to the laws of the relevant State. The parties submit to the non-exclusive jurisdiction of the courts of the relevant State.

17.5 Assignment

The Sub-Contractor must not assign a right or interest under the Sub-Contract without Total’s prior written consent, which may be withheld in Total’s absolute discretion. Total may, without the prior consent of the Sub-Contractor, assign a right or interest under the Sub-Contract.

17.6 Waiver

Waiver, partly or wholly, of any term of the Sub-Contract will:

- a. be effective only if in writing and signed by Total; and
- b. apply only to a particular occasion (unless otherwise noted).
- c. The non-exercise of or a delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or future exercise of it or the exercise of any other power or right. Any waiver or consent given by a party will only be effective if given or confirmed in writing.

17.7 Counterparts

- a. If this Sub-Contract is signed in counterparts then:
 - i. each counterpart is an original; and
 - ii. together they constitute one document.
- b. a scanned and emailed executed copy of this Sub-Contract may be exchanged.

Total representative/ initial	Sub-Contractor representative/ initial

- c. Where a scanned executed copy of this Sub-Contract is exchanged, this Sub-Contract is binding upon exchange of the scanned executed copy.
- d. If this Sub-Contract is undated and there is no contrary intention stated, the date of this Sub-Contract is the date of last exchange by a Party.

17.8 Entire agreement

The Sub-Contract contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to the subject matter is replaced by the Sub-Contract and has no further effect. For the sake of clarity any terms that may have been embodied in the Sub-Contractor’s tender or offer are deemed to have been withdrawn in favour of the terms of the Sub-Contract.

17.9 Amendment

The Sub-Contract can only be amended by written agreement between the parties.

17.10 Survival of conditions

- a. The parties agree that a construction of the Sub-Contract that results in all provisions being enforceable is to be preferred to a construction that does not so result.
- b. If, despite the application of this sub-clause, a provision of the Sub-Contract is illegal or unenforceable, if the provision would not be illegal or unenforceable if a word or words were omitted, that word or the whole provision is severed, and the remainder of the Sub-Contract continues in force.

17.11 Reliance by Total

The Sub-Contractor acknowledges and agrees that in entering into the Sub-Contract, Total has relied on the representations and warranties given by the Sub-Contractor in the Sub-Contract, and that Total would not have entered into the Sub-Contract but for the Sub-Contractor providing those representations and warranties.

17.12 Indemnities

- a. Without limiting this clause 17.12 all indemnities survive the termination or expiry of the Sub-Contract.
- b. Each indemnity in the Sub-Contract is a continuing obligation separate and independent from the other obligations of the party issuing the indemnity.

17.13 PPSA

For the purposes of this clause: *‘Financing Statement’*; *‘Security Interest’*; and *‘Verification Statement’*, have the meaning given to those terms under the PPSA.

- a. The Sub-Contractor acknowledges and agrees clause 13.1(d) creates a Security Interest of Total in: all Constructional Plant, materials, equipment and other things intended for the work under the Sub-Contract which are located on-site or off-site (**“Collateral”**).
- b. The Sub-Contractor consents to:
 - i. Total registering Total’s Security Interest over the Collateral (at any time and in its absolute discretion); and
 - ii. undertakes to promptly sign any documents required under the PPSA which Total may require to register a Financing Statement.
- c. The Sub-Contractor waives its right to receive a Verification Statement under section 157 and any subsequent notification prescribed under sections: 95; 121; 125; 129; 130; 132; 135; 142; and 143 of the PPSA.
- d. The Sub-Contractor must not permit any third party to register a Financing Statement in respect of the Collateral without the prior written consent of Total.

17.14 GST

- a. The Sub-Contractor must be registered for GST and remain registered for GST at all times.
- b. If any supply made under this Sub-Contract is or becomes subject to GST, the party to whom the supply is made (**“the Recipient”**) will pay to the party making the supply (**“the Supplier”**), as consideration in addition to any consideration payable or to be provided elsewhere in this Sub-Contract an additional amount calculated by multiplying the consideration by the applicable rate of GST.

Total representative/ initial

Sub-Contractor representative/ initial

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17.15 PRIVACY ACT

In relation to any Personal Information (as defined in the *Privacy Act*) provided or to be provided by the Sub-Contractor in connection with Works under the Sub-Contract, the Sub-Contractor warrants to Total:

- a. the Sub-Contractor has obtained and will obtain the consent of each individual about whom any Sensitive Information (as defined in the *Privacy Act*) is provided;
- b. the Sub-Contractor has or will within the time required by the *Privacy Act* ensure that each individual about whom any Personal Information is provided has received or will receive a written statement setting out all of the matters required by Schedule 1 of the *Privacy Act - Australian Privacy Principles*; and
- c. the Sub-Contractor will comply with the provisions of the *Privacy Act* in relation to any Personal Information provided to the Sub-Contractor by Total and any contractor of Total.

17.16 EXECUTION

Execution of this Sub-Contract by a director individually executing this document [or executing on behalf of a company] is taken to be an agreement to provide an individually executed Deed of Guarantee to Total as set out at Schedule 2 of this Sub-Contract.

18. DOCUMENT CONTROL SYSTEM

All documents and/or notices arising out of or in connection with this Sub-Contract must be made by the Document Control System if stated at Item 14 of the Sub-Contract Particulars or as otherwise directed by Total, in which case it is deemed to be served or issued when it enters the electronic server of the recipient. For clarity, if any document/and or notice is issued or served in accordance with clause 1.11 of this Sub-Contract, it must also be issued or served by the Document Control System.

If a Document Control System is stated at item 14 of the Sub-Contract Particulars, the Sub-Contractor agrees and acknowledges that:

- a. Total intends to implement the Document Control System identified in the Sub-Contract Particulars;
- b. the Sub-Contractor will accept and sign up to the standard terms of service for use of the Document Control Systems;
- c. the Sub-Contractor will pay any charges for the subscription to the Document Control System as directed by Total;
- d. the Sub-Contractor will have No Claim against Total in relation to the use of or the retainer of the Document Control System; and
- e. if directed by Total, the Sub-Contractor will do all acts and tasks that are reasonably required to be used in accordance with the requirements of the Sub-Contract.

18A. ELECTRONIC SIGNATURE SYSTEM

Total and the Sub-Contractor both agree that:

- a. if an Electronic Signature System is specified at Item 15 of the Sub-Contract Particulars, all signatures required to sign or execute an ESS Executed Document will be in the form of an electronic signature, whether digital or encrypted, and will be signed or executed in accordance with the Electronic Signature System;
- b. any ESS Executed Document will have the same force and effect as a document which would be signed or executed by hand.
- c. an ESS Executed Document will be issued in an electronic portable document format (.pdf), or any other format as directed by Total to be used.
- d. service of an ESS Executed Document in accordance with clause 18 and 18A will have the same effect as service of the same document if it was bearing a hand signature.

19. DEFINITIONS AND INTERPRETATION

19.1 Definitions

In this Sub-Contract:

Best Industry Practice means the practices, methods and acts engaged in by subcontractors highly experienced in delivering works comparable to the Work under the Sub-Contract.

Business Day means a day which is not:

- a. a Saturday, Sunday or public holiday in the State or Territory in which the Site is located;

Total representative/ initial

Sub-Contractor representative/ initial

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- b. 27, 28, 29, 30 or 31 December; or
- c. a building and construction industry fixed rostered day off in the State or Territory in which the Site is located.

Building Products Legislation means the *Building Products (Safety) Act 2017* (NSW) No 69 and any relevant Regulations which may be published and/or updated from time to time;

Building Regulations means the *Home Building Amendment (Cladding) Regulation 2018* (NSW) section 69A (1) which amends the *Home Building Regulation 2014*;

Constructional Plant means equipment and things (such as scaffolding and formwork) used in the execution of the work under the Sub-Contract but not forming part of the Sub-Contract Works;

Completion means that stage in the execution of the work under the Sub-Contract when in Total’s opinion, the Sub-Contract Works are complete except for minor omissions and minor defects, and all requirements for completion set out in the Trade Package have been met (inclusive of delivery to Total’s satisfaction of all as-builts (if required)) and the Sub-Contractor has delivered to Total any warranties required by the Sub-Contract);

Date for Completion means the date (or period of time) stated in the Sub-Contract Particulars for Completion (if period of time the last day of that period);

Date of Completion means the date certified by Total in a certificate of Completion pursuant to sub-clause 9.1 [Certificate of Completion] to be the date on which Completion was reached;

Deed of Guarantee means the deed of guarantee in the form set out at Schedule 2;

Deed of Release means the deed of release in the form set out at Schedule 3;

Deed of Warranty means the warranty deed in favour of Total and the Principal set out at Schedule 4;

Defects Liability Period has the meaning given in sub-clause 9.3(a) [Defects Liability Period];

Document Control System means the document control system as indicated at Item 14 of the Sub-Contract Particulars;

Electronic Signature System means the electronic signature system as indicated at Item 15 of the Sub-Contract Particulars;

Environmental Legislation means the *Protection of the Environment Operations Act 1997* (NSW);

EPC System means the electronic payment claim system as indicated at Item 13 of the Sub-Contract Particulars;

ESS Executed Document means the Sub-Contract or any document required to be executed in accordance with the Sub-Contract, which has been executed in accordance with clause 18A.

Event of Default means any of the following breaches, including and not limited to:

- a. any breach or default of the Sub-Contractor’s obligations under the Sub-Contract including any breach of a warranty in this Sub-Contract;
- b. if the Sub-Contractor abandons or intends to abandon the Sub-Contract Works;
- c. the Sub-Contractor failing to pursue the Sub-Contract Works diligently for a continuous period of five (5) Business Days;
- d. the Sub-Contractor failing to adhere to quality standards; a breach of WHS Legislation or Environmental Legislation;
- e. or a failure by the Sub-Contractor to achieve Completion by the Date for Completion;
- f. wrongful suspension of Sub-Contract Work;
- g. failing to observe and comply with a Legislative Requirement relevant to the Sub-Contract Works;
- h. failing to lodge a Deed of Guarantee in breach of clause 2.5.
- i. in respect of clause 12.2(a)(i), providing a statement or record of payment which is false, misleading or deceptive in any respect

Event of Insolvency means:

- a. an admission of insolvency;
- b. where execution is levied by a creditor;
- c. an act of bankruptcy;
- d. where a bankruptcy petition is filed against the Sub-Contractor;
- e. the appointment of an administrator, controller, receiver or liquidator;

Total representative/ initial

Sub-Contractor representative/ initial

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- f. a winding up order is made by a court;
- g. the entering into any composition or arrangement with creditors; or
- h. if Total is of the opinion the Sub-Contractor lacks the financial capacity to complete the Sub-Contract Works;

Financially Sound means the Sub-Contractor is a going concern and that the Sub-Contractor has reasonable grounds to believe that it is able to pay its debts as and when they become due and payable.

Formal Instrument of Agreement means the document titled 'Formal Instrument of Agreement' to which these Sub-Contract General Conditions are attached;

Full Design Responsibility means complete responsibility for the design of the Sub-Contract Works as indicated in the Trade Package documents;

GST has the meaning set out in *A New tax System (Goods and Services Tax) Act 1999* (Cth);

Head Contract means the contract between Total and the Principal as amended at the date of execution of the Sub-Contract;

Head Contract Works means the whole of the work to be executed and completed in accordance with the Head Contract (including variations);

Intellectual Property Right means all intellectual property rights, including but not limited to, the following rights:

- a. patents, copyright, rights in circuit layouts, registered and unregistered designs, Moral Rights, registered and unregistered trademarks, service marks, trade names and any right to have confidential information kept confidential; and
- b. any application or right to apply for registration of any of the rights referred to in paragraph (a);

Legislative Requirements means:

- a. Acts, Ordinances, regulations, orders, awards and proclamations of the Commonwealth and the relevant State including Australian Standards and the Building Code of Australia any other applicable codes of practice;
- b. local laws, by laws, orders, ordinances and legal requirements of any relevant authority, including local government;
- c. approvals, compliance requirements and requirements of organisations having jurisdiction in connection with the carrying out of the work under the Sub-Contract; and
- d. fees and charges payable in connection with the foregoing;

Moral Right means the 'moral right of an author' as defined and conferred under the *Copyright Act 1968* (Cth), and if any work is used in any jurisdiction other than in Australia, any similar right capable of protection under the laws of that jurisdiction;

No Claim means no entitlement to enforce any right or remedy whatsoever:

- a. under or in connection with the Sub-Contract including but not limited to an extension of time or payment (including damages); or
- b. at law or at equity (including for unjust enrichment);

Payment Claim has the meaning given in sub-clause 12.2 [Content of Payment Claims];

Payment Schedule has the meaning given in sub-clause 12.4(a) [Payment Schedule];

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

Practical Completion means practical completion of the Head Contract Works (as certified by the Principal or the Superintendent as the case may be);

Principal means the principal, owner or client of Total under the Head Contract (as the case may be);

Privacy Act means the *Privacy Act 1988* (Cth);

Prohibited Product means a building product (within the meaning of section 5 of the *Building Products Legislation*) which poses a safety risk (within the meaning of section 4 of the *Building Products Legislation*) or which causes a building to be unsafe (within the meaning of section 4 of the *Building Products Legislation*).

Provisional Sum has the meaning in sub-clause 12.9 [Provisional Sums] and includes monetary sum, contingency sum and prime cost item;

QM Plan means a documented quality assurance system prepared in accordance with the QM requirements of the Trade Package, and approved in accordance with sub-clause 7.2 [Quality Management];

Security means the amounts retained by Total, or bank guarantee/s accepted by Total, pursuant to sub-clause 2.1 [Security];

Total representative/ initial	Sub-Contractor representative/ initial



Security of Payment Act means the *Building and Construction Industry Security of Payment Act 1999* (NSW);

Separable Portion means a portion of the Sub-Contract Works identified as such in the Sub-Contract or directed by Total pursuant to sub-clause 7.20 [Separable Portions];

Separate Contractors means consultants, agents and other contractors of Total and the Principal;

Schedule of Rates means the schedule of rates and prices set out in the Trade Package (if any);

Site means the place or places described in the Sub-Contract Particulars, together with such other places as may be made available to the Sub-Contractor, from time to time, for the purposes of the Sub-Contract;

Sub-Contract means the agreement between Total and the Sub-Contractor comprising the documents referred to in the Formal Instrument of Agreement;

Sub-Contract General Conditions means clauses 1 to b of this document (including its schedules);

Sub-Contract Particulars means the table of Sub-Contract particulars annexed to the Formal Instrument of Agreement;

Sub-Contract Sum means the lump sum amount set out in the Formal Instrument of Agreement, including Provisional Sums, but excluding any additions or deductions which may be required to be made under the Sub-Contract;

Sub-Contract Sum Breakdown means a document that delineates the Sub-Contract Sum into deliverables to be performed by the Sub-Contractor, including amounts for each deliverable, the sum of which must equal the Sub-Contract Sum;

Sub-Contractor means the Sub-Contractor set out in the Formal Instrument of Agreement;

Sub-Contractor Overhead and Profit means the amount stated for Sub-Contractor overhead and profit in the Sub-Contract Particulars;

Sub-Contractor’s Statement means the form of Sub-Contractor’s statement set out at Schedule 1;

Sub-Contract Works means the whole of the work to be executed in accordance with the Sub-Contract, as described or contemplated in the Trade Package including Variations provided for by the Sub-Contract, to be handed over to Total;

Superintendent means the superintendent under the Head Contract;

Trade Package means the document(s) titled ‘Trade Package’ referred to in the Formal Instrument of Agreement;

Total means the Total entity set out in the Formal Instrument of Agreement;

Total’s Works Insurance Excess means the amount of \$10,000;

Variation means any change to the Sub-Contract Works or the work under the Sub-Contract including any addition, decrease, omission, deletion, or removal to or from the Sub-Contract Works; and

WHS Legislation means:

- a. the *Work Health and Safety Act 2011* (Cth); and
- b. the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW), as amended from time to time;

Work under the Sub-Contract means the work which the Sub-Contractor is or may be required to execute under the Sub-Contract and includes Variations, remedial work, Constructional Plant and temporary works;

Workers Compensation Legislation means as applicable the *Workers Compensation Act 1987 No 70* (NSW); *Workplace Injury Management and Workers Compensation Act 1998 No 86* (NSW).

19.2 Interpretation

- a. Headings are for convenience only and do not affect interpretation.
- b. Except where the context makes it clear that a rule is not intended to apply a reference to:
 - i. a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - ii. a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - iii. a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - iv. a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;

Total representative/ initial

Sub-Contractor representative/ initial

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- v. anything (including a right, obligation or concept) includes each part of it;
 - vi. a singular word includes the plural, and vice versa;
 - vii. if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning; and
 - viii. the words subsidiary, and related body corporate have the same meanings as in the Corporations Act.
- c. This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision of it or because that party relies on a provision of this document to protect itself.

Total representative/ initial

Sub-Contractor representative/ initial

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SCHEDULE 1 - SUB-CONTRACTOR'S STATEMENT

SUB-CONTRACTOR **[Insert Sub-Contractor Company Name]**

PROJECT: **[Insert Project Name]**

Date of Sub-Contract with Total: **[Insert Date DD/MM/YYYY]**

ACN (Total): **067 732 941**

Payment Claim Date:

Payment Claim Number:

Payment period covered by payment claim
(Payment Period):

Work between ____/____/____ and
____/____/____ inclusive

I,

Address

Do solemnly and sincerely declare as follows:

1. That all employees who are, or have been engaged, by the Sub-Contractor on the project have been paid their full remuneration for work done in connection with the Sub-Contract during the Payment Period. Superannuation payments have also been paid in full to the relevant person, trustee or entity for the Payment Period. All payments have been made in accordance with the applicable award or industrial agreement;
2. All consultants, suppliers and secondary Sub-Contractors who are, or at any time have been, engaged by the Sub-Contractor on the Project have been paid in full all amounts that have become payable to them under the terms of their agreement with the Sub-Contractor;
3. All amounts accrued, due and payable, and which have been included in the calculation of previous payments by Total to the Sub-Contractor, have been duly paid;
4. I acknowledge and agree on behalf of the Sub-Contractor that by submitting each Progress Claim the Sub-Contractor thereby releases Total from any claim (whether for time or money or otherwise and whether pursuant to the Sub-Contract or otherwise) not notified in accordance with the Sub-Contract;
5. The Sub-Contractor is registered for GST;
6. The Sub-Contractor is not in breach of any requirement of the Work Health and Safety Act 2011 (NSW) or the Work Health and Safety Regulation 2017 (NSW);

Total representative/ initial

Sub-Contractor representative/ initial

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7. All insurance policies required under the Sub-Contract are current as at the date of this statutory declaration and I know of no material amendment to the terms of such policies that have not been advised to Total; and
8. Attached to, and forming part of, this declaration is a “Sub-Contractor’s Statement” given by the Sub-Contractor in its capacity as a “Sub-Contractor” (as that term is defined in the Workers Compensation Act 1987 (NSW), Pay-roll Tax Act 2007 (NSW) and the Industrial Relations Act 1996 (NSW) (in this declaration the “Relevant Legislation”)) which is a written statement covering the Payment Period and made:
 - i. under section 175B of the Workers Compensation Act 1987 (NSW), in a form and providing the information required or permitted by that legislation;
 - ii. under Schedule 2 Part 5 of the Pay-roll Tax Act 2007 (NSW), in a form and providing the information required or permitted by that legislation; and
 - iii. under section 127 of the Industrial Relations Act 1996 (NSW), in a form and providing the information required or permitted by that legislation;
9. To the extent that the Sub-Contractor has engaged a consultant, supplier or secondary Sub-Contractor in its capacity as a “principal contractor” (as that term is defined in the Relevant Legislation) under a contract to which any of the relevant provisions of any of the Relevant Legislation applies, the Sub-Contractor has received from each such consultant, supplier and secondary Sub-Contractor, a properly completed written statement in the form of the attached “Sub-Contractor’s Statement” which covers the Payment Period.

Signed for and on behalf of **[Insert Sub-Contractor Company Name]**

ACN: **[Insert ACN]**

By its duly authorised declarant in the presence of a qualified witness under the Statutory Declarations Regulations 2018.

Signature of the declarant

Signature of the witness

Full Name of the declarant

Full Name of the witness

Position of the declarant

Relevant qualification or occupation of the witness

Date

Total representative/ initial	Sub-Contractor representative/ initial



SUB-CONTRACTOR'S STATEMENT (FOR NEW SOUTH WALES)

REGARDING WORKER'S COMPENSATION, PAYROLL TAX REMUNERATION (Refer to Note)

For the purposes of this Statement a "Sub-Contractor" 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 "Sub-Contractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the Sub-Contractor) 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 "Sub-Contractor" has employed or engaged workers or Sub-Contractors 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.

SUB-CONTRACTOR'S STATEMENT (Refer following page for Notes, period of Statement retention and Offences under various Acts.)

Sub-Contractor: **[Insert Sub-Contractor Company Name]**
 ABN: **[Insert ABN]**
 Address: **[Insert Sub-Contractor Address]**

Has entered into a contract with Total Construction Pty. Limited (Total)
 ABN (note 2): 32 067 732 941
 Contract Number (not 3): **[Insert SC Agreement Number]**

This statement applies for work between DD/MM/YYYY and DD/MM/YYYY inclusive (note 4) Work between ____/____/____ and ____/____/____ inclusive

Subject of the payment claim dated DD/MM/YYYY (note 5) ____/____/____

I, _____ a Director or a person authorised by the Sub-Contractor 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 Sub-Contractor's Statement and declare the following to the best of my knowledge and belief:

- a. The abovementioned Sub-Contractor has either employed or engaged workers or Sub-Contractors 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 Sub-Contractors 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 Sub-Contractor 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)

Total representative/ initial

Sub-Contractor representative/ initial

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- c. All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- d. Where the Sub-Contractor is required to be registered as an employer under the Payroll Tax Act 2007, the Sub-Contractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Sub-Contractor's Statement. (Note 9)
- e. Where the Sub-Contractor is also a principal contractor in connection with the work, the Sub-Contractor has in its capacity of principal contractor been given a written Sub-Contractor's Statement by its Sub-Contractor(s) in connection with that work for the period stated above. (Note 10).

(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 Sub-Contractor. 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 Sub-Contractor) and where employees of the Sub-Contractor are engaged in carrying out the work which is in connection with the principal contractor's business.*
2. *For the purpose of this Sub-Contractor'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 Sub-Contractor and employees/workers of that Sub-Contractor 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.*

Total representative/ initial

Sub-Contractor representative/ initial

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7. *In completing the Sub-Contractor's Statement, a Sub-Contractor 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 Sub-Contractor's Statement, a Sub-Contractor declares that all remuneration payable to relevant employees for work under the contract has been paid.*
9. *In completing the Sub-Contractor's Statement, a Sub-Contractor 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 Sub-Contractor and a principal contractor, if a business 'in turn' engages Sub-Contractors to carry out the work. If your business engages a Sub-Contractor you are to also obtain Sub-Contractor's Statements from your Sub-Contractors.*

Statement Retention

The principal contractor receiving a Sub-Contractor'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 Sub-Contractor;*
- b. *the person is authorised by the Sub-Contractor to give the statement on behalf of the Sub-Contractor; or*
- c. *the person holds out or represents that the person is authorised by the Sub-Contractor to give the statement on behalf of the Sub-Contractor.*

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.

Total representative/ initial

Sub-Contractor representative/ initial

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SCHEDULE 2 - DEED OF GUARANTEE

THIS DEED POLL is made on _____ (date) between:

Total Construction Pty. Limited (Total): ABN: 32 067 732 941
Address: 9A George Street, North Strathfield, NSW 2137
and
Directors Name _____

of _____
(Residential address of Guarantor) _____

and _____
Directors Name _____

of _____
(Residential address of Guarantor) _____

(Together "the Parties")

RECITALS:

- a. Total has entered into a subcontract with **[Insert Sub-Contractor Company Name]** as listed at item 1 of the Schedule attached to this Deed (the Schedule). The Sub-Contractor's details are listed at item 2 of the Schedule. The Sub-Contract is the completion of the works identified at item 3 of the Schedule.
- b. The Guarantor is a company director of the Sub-Contractor.
- c. The Guarantor will guarantee the performance of the Sub-Contractor's obligations under the Sub-Contract, and give certain other undertakings in relation to the Sub-Contractor in accordance with the terms of this Deed.

Continued on next page:

Total representative/ initial	Sub-Contractor representative/ initial

IT IS AGREED:

1. The Parties have agreed that the Guarantor hereby unconditionally guarantees the due and prompt performance by the Sub-Contractor of its obligations pursuant to the Sub-Contract.
2. As a separate undertaking, the Guarantor unconditionally and irrevocably agrees to indemnify and keep indemnified, Total against any losses, liabilities, actions, proceedings, claims, interest, damage, costs (including legal costs) and expenses in relation to, or arising out of, any breach by the Sub-Contractor of its obligation under the Sub-Contract.
3. On default or failure by the Sub-Contractor to observe or perform any or all of its obligations under the Sub-Contract, the Guarantor, on demand by Total, will observe or perform all of the Sub-Contractor's obligations or liabilities pursuant to the Sub-Contract or cause those obligations or liabilities to be observed or performed. A demand may be made at any time and from time to time.
4. The Guarantor represents and warrants that:
 - 4.1. it is able to meet the Sub-Contractor's obligations at all reasonable times upon reasonable notice as requested by Total;
 - 4.2. the Guarantor is solvent and there are reasonable grounds to expect that, on execution of each document to which it is a party, it will continue to be able to pay all its debts as and when they become due and payable;
5. The Guarantor is not an agent, employee, or Sub-Contractor of Total and must not hold himself out as being such an agent, employee, Sub-Contractor or authorised representative.
6. This Deed shall continue and shall remain in full force until fulfilment by the Sub-Contractor of all its obligations under the terms of the Sub-Contract.
7. For the purpose of effecting this Deed only, the Sub-Contractor hereby irrevocably and jointly and severally appoints Total to be the Sub-Contractor's attorney with authority to execute such documents as are necessary to give effect to this Deed to bind the Sub-Contractor accordingly.
8. Each representation and warranty contained in this Deed is repeated with effect from the date of this Deed during the Sub-Contract until its completion or is otherwise terminated.
9. The Parties shall pay their own legal costs of and incidental to the preparation and execution of this Deed.
10. This Deed and all questions arising in connection with it are governed by, and will be construed according to the laws from time to time in force in the [Insert state of contract execution] and the Parties irrevocably submit to the non-exclusive authority of the Courts having jurisdiction in that State.

Total representative/ initial

Sub-Contractor representative/ initial

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SCHEDULE

ITEM 1 = Sub-Contract Number **[Insert SC Agreement Number]**, dated **[Insert Date DD/MM/YYYY]**

ITEM 2 = The Sub-Contractor - **[Insert Sub-Contractor Company Name]**, ABN **[Insert ABN]**

ITEM 3 = Trade Description - **[Insert Sub-Contract TRADE]**

Signed, sealed and delivered by:

In the presence of:

Signature of Witness

Signature of Guarantor

Full Name of Witness

Full Name of Guarantor

Capacity

Capacity

Date

Total representative/ initial

Sub-Contractor representative/ initial

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SCHEDULE 3 - DEED OF RELEASE

MAIN CONTRACTOR	TOTAL CONSTRUCTION PTY LTD (ABN 32 067 732 941)
PROJECT	[Insert Project Name]
PRINCIPAL	
SUB-CONTRACTOR/CONSULTANT	[Insert Sub-Contractor Company Name]
SUB-CONTRACT TRADE/WORKS	[Insert Sub-Contract TRADE]
AGREEMENT NO.	[Insert SC Agreement Number]
SUB-CONTRACT DATED	[Insert Date DD/MM/YYYY]

Original Sub-Contract Sum	
Variations to Sub-Contract Sum	
Revised Sub-Contract Sum	
LESS Amounts which the Sub-Contractor acknowledges having received	
LESS Retention (the "Security")	
Leaving a Balance of (the "Payment at Completion")	

1. The Sub-Contractor agrees that, to the extent permitted by law, except for the Security, the total of the monies now due or that may in the future become due arising out of or in any way connected with the Sub-Contract or the Works or any other works executed by the Sub-Contractor and/or its sub-contractors, consultants and suppliers (whether selected or otherwise) on or about the Site of the Works is the Payment at Completion.
2. The Sub-Contractor acknowledges that, to the extent permitted by law, payment by the Sub-Contractor of the Payment at Completion is acceptance by the Sub-Contractor of full and final payment to the Sub-Contractor of all amounts due and payable at Completion of the Works except for the Security.
3. In consideration of the promises contained in this Deed of Release and the payment by Total of the Payment at Completion, to the extent permitted by law, the Sub-Contractor waives, releases and forever discharges Total from all or any claims, actions, suits, proceedings, demands, costs and expenses and the like which the Sub-Contractor has now or might have against Total in the future, whether arising under or in connection with the Sub-Contract or in any way connected with the execution of the Works or for the work performed or materials supplied at the Site (except for Contract made on or before the date which is 28 days before the date of completion as stated in a Certificate of completion, and those described in Clause 4 below) and further acknowledges that, subject to Clause 4 below, this Deed of Release may be pleaded as a complete and unconditional bar to any proceedings of whatever nature sought to be instituted, filed or maintained against Total by the Sub-Contractor after the date of this Deed of Release.
4. Clause 3 does not apply to any claim, action, suit, proceeding or demand:

Total representative/ initial

Sub-Contractor representative/ initial

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- 4.1 Which may arise as a result of action of Total or an instruction of the Project Manager or Total during the Defects Liability Period; or
- 4.2 In respect of the Security amount (if any).

5. The execution by the Sub-Contractor of this Deed of Release does not limit or in any way affect the Sub-Contractor's obligations and liabilities under the Sub-Contract.

Definitions –

'Sub-Contractor' means Sub-Contractor or Consultant, whichever is applicable.

'Sub-Contract' means the Sub-Contract or Agreement between the Main Contractor and the Consultant, whichever is applicable.

'Works' means the Works under the Sub-Contract, or Services undertaken under the Agreement, whichever is applicable.

Signed for and on behalf of:

Sub-Contractor business name

Sub-Contractor ABN

Full name

Signature

Date

In the presence of (witness):

Full name

Signature

Date

Total representative/ initial

Sub-Contractor representative/ initial

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SCHEDULE 4 - DEED OF WARRANTY

THIS DEED POLL is made on (date) _____

By

(Insert full name)

Of

[Insert Sub-Contractor Address]

BACKGROUND

PRINCIPAL	[Principal]
MAIN CONTRACTOR	Total Construction Pty. Limited (Total)
SUB-CONTRACT NUMBER	[Insert SC Agreement Number]
SUB-CONTRACT WORKS	[Insert Sub-Contract TRADE]

THE SUB-CONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES with and for the benefit of Total and the Principal as follows:

1. The *Sub-Contractor* is fully conversant with the Principal’s requirements for the design documents and drawings for the Project. The *Sub-Contractor* in preparing the design documents and drawings used the degree of skill, care, diligence, prudence and foresight which would be expected from a *Sub-Contractor* who is competent, experienced and qualified in performing work and services similar to the preparation of the design documents and drawings to achieve the requirements of the Principal’s brief as expressed in the design documents and drawings.
2. Total has relied upon the above representation in entering this Deed.
3. The *Sub-Contractor* warrants that it will comply with, and is registered or licensed in accordance with, any Legislative Requirements.
4. The *Sub-Contractor* warrants that it has examined the Sub-Contract Documents and:
 - a. fully understands Total’s requirements and the purposes for which the works are required;
 - b. agrees that the Work under the Sub-Contract will be suitable, appropriate and adequate for that purpose;
 - c. so as to develop, comply or amend the Design Documents to ensure that Total can properly complete the Project; and
 - d. to the identification of the “standard” of the Services
5. The *Sub-Contractor* warrants it has thoroughly examined any documents provided by Total and relies on any such document entirely at its own risk
6. The *Sub-Contractor* warrants that it will comply with the terms of this Deed.
7. The *Sub-Contractor* warrants it is Financially Sound to undertake and complete the Sub-Contract Works and will have the resources to remain Financially Sound;

Total representative/ initial

Sub-Contractor representative/ initial

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8. The *Sub-Contractor* warrants that the design documents and drawings it has prepared for the Project will:
 - a. comply with the requirements of this Deed;
 - b. be suitable, appropriate and adequate to satisfy Total’s design requirements for the Project;
 - c. be fit for the purposes identified for the Project;
 - d. satisfy all Legislative Requirements;
 - e. be at a standard and level of detail suitable for the purposes of the Project; and
 - f. be fit for their stated purpose and comply with all requirements of the *Sub-Contract*.
9. The *Sub-Contractor* hereby indemnifies Total and the Principal against any cost, expense, loss or damage or claim that Total pays, suffers or incurs arising out of or in respect to a breach of this Deed by the *Sub-Contractor*.
10. The *Sub-Contractor* will provide to Total each month, during the progress of the *WUS* and at *completion*, a certification that the design prepared have been satisfied (‘Certification’). In relation to each Certification, the *Sub-Contractor* warrants that the design prepared have been satisfied.
11. The *Sub-Contractor* warrants that each of the goods, product, plant, materials and equipment (“Equipment”) used by the *Sub-Contractor*:
 - a. conforms with the *Sub-Contract* and is of good and merchantable quality;
 - b. is free from defects or faults in composition and manufacture;
 - c. conforms with all Legislative Requirements and the requirements of all relevant Australian Standards and the Building Code of Australia;
 - d. where selected or designed by the *Sub-Contractor*; is fit for its intended purpose as specified in, or ascertainable from the *Sub-Contract*;
 - e. would not constitute an item of Defective Building Work in an Interim Report or Final Report provided pursuant to sections 199 and 201 of the Strata Schemes Management Act 2015 (NSW) and cause Total to be liable in accordance with section 206 of the *Strata Schemes Management Act*;
 - f. would not constitute an item which is a Prohibited Product under the Building Products Legislation; and
 - g. would not constitute a product which will cause or is likely to cause a threat to the safety of any occupants of the building if a fire occurs in the building which is a breach of the Building Regulations.
12. If, at any time prior to the expiry of the *Defects Liability Period*, the Equipment or other *Sub-Contract Works* do not conform with the terms of this Deed, the *Sub-Contractor* will, at its own cost and at such times and in such a manner as Total may require, reinstate, replace, repair or rectify the Equipment or *Sub-Contract Works* so that the Equipment and/or *Sub-Contract Works* conforms with this Deed.
13. The *Sub-Contractor* further warrants it is aware of the requirements of the Building Products Legislation, it acknowledges that the use of a Prohibited Product is strictly prohibited on the Project and it agrees it will not use, refer to or identify a Prohibited Product in its performance of the Works under the *Sub-Contract*.

Total representative/ initial

Sub-Contractor representative/ initial

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14. The *Sub-Contractor* further warrants it is aware of the requirements of the Building Regulations and acknowledges in the performance of its Work under the Sub-Contract it will not use, refer to or identify any product which will cause or is likely to cause a threat to the safety of any occupants of the building if a fire occurs in the building which is a breach of the Building Regulations.
15. The *Sub-Contractor* further warrants that if at any time any of the *Equipment* or other *Sub-Contract Works* is an item of Defective Building Works in an Interim Report or Final Report provided pursuant to sections 199 and 201 of the *Strata Schemes Management Act 2015* (NSW), the *Sub-Contractor* will, at its own cost and at such times and in such a manner as Total may require, reinstate, replace, repair or rectify the *Equipment* or *Sub-Contract Works* so that the *Equipment* and/or *Sub-Contract Works* conforms the requirements of any Final Report, Part 2C of the *Home*
16. The *Sub-Contractor* warrants it is Financially Sound at the time of entering into this Deed and continues to be Financially Sound in the performance of the works under the Sub-Contract and will comply with any direction of Total for the Consultant to provide proof that it is Financially Sound.
17. The *Sub-Contractor* warrants it has complied with all of its obligations under the *Privacy Act 1988* (Cth) in regards to information supplied to Total in respect of the *Sub-Contractor's* employees;
18. The *Sub-Contractor* warrants that it will ensure that they minimise any loss, damage or injury to any adjoining landowner and to comply with any agreement, right to access, easement, licence, or any access order, or a 'neighbouring land access order' or a 'utility service access order' pursuant to the *Access to Neighbouring Land Act 2000* (NSW), which has been granted on the Project;
19. Nothing in this Deed will limit or otherwise affect any of its obligations or liability under the *Sub-Contract* or otherwise (including, without limitation, its obligation to rectify defects).
20. Total may assign the benefits and rights accrued under this Deed.

Terms not defined in this Deed have the meaning given to those terms under the *Sub-Contract*.

SCHEDULE

Insert information

EQUIPMENT AND OTHER SUB-CONTRACT WORKS	PERIOD OF WARRANTY
[Insert Equipment and Other Sub-Contract Works]	[Insert Period of Warranty]
[Insert Equipment and Other Sub-Contract Works]	[Insert Period of Warranty]
[Insert Equipment and Other Sub-Contract Works]	[Insert Period of Warranty]
[Insert Equipment and Other Sub-Contract Works]	[Insert Period of Warranty]
[Insert Equipment and Other Sub-Contract Works]	[Insert Period of Warranty]
[Insert Equipment and Other Sub-Contract Works]	[Insert Period of Warranty]
[Insert Equipment and Other Sub-Contract Works]	[Insert Period of Warranty]
[Insert Equipment and Other Sub-Contract Works]	[Insert Period of Warranty]
[Insert Equipment and Other Sub-Contract Works]	[Insert Period of Warranty]
[Insert Equipment and Other Sub-Contract Works]	[Insert Period of Warranty]
[Insert Equipment and Other Sub-Contract Works]	[Insert Period of Warranty]
[Insert Equipment and Other Sub-Contract Works]	[Insert Period of Warranty]

Total representative/ initial

Sub-Contractor representative/ initial

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Amend tables above to reflect Warranty Items and Period of Warranty or note as 'N/A'. If further Warranty Items and Periods of Warranty are required, they can be accommodated for by creating an additional annexure.

Period of Warranty: commencing on the date of Practical Completion under the Head Contract:

All other Sub-Contract Works in **[Insert Number of Years/ X Years]** from the date of Practical Completion under the Head Contract.

Total representative/ initial

Sub-Contractor representative/ initial

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EXECUTED as a deed poll:

Executed by:

[Insert Sub-Contractor Company Name]

ACN:

[Insert ACN]

Signature of Director

Signature of Director/ Secretary

Full Name of Director

Full Name of Director/ Secretary

Date

Total representative/ initial

Sub-Contractor representative/ initial

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TRADE PACKAGE

HEAD CONTRACT DETAILS	[Insert Project Name]
SUB-CONTRACT NUMBER	[Insert SC Agreement Number]
SUB-CONTRACT WORKS	[Insert Sub-Contract TRADE]

CONTENTS

ANNEXURE 1	DRAWINGS AND SPECIFICATIONS AS PER DOCUMENT REGISTER [Insert Specifications] [Insert Revision Number and Date]
ANNEXURE 2	SCOPE OF WORKS/ [Insert Sub-Contract TRADE] [Insert Revision Number and Date]
ANNEXURE 3	SUB-CONTRACT DELIVERABLES [Insert Revision Number and Date]
ANNEXURE 4	CONSTRUCTION PROGRAM [Insert Revision Number and Date]
ANNEXURE 5	SIGNED TENDER INTERVIEW [Insert Date of Interview]
ANNEXURE 6	SUB-CONTRACT SUM BREAKDOWN [Insert Sub-Contract Sum Breakdown]
ANNEXURE 7	SEPARABLE PORTIONS
ANNEXURE 8	OTHER SUB-CONTRACT DOCUMENTATION [List all Documents with Revision Number and Date]
TO BE CONSIDERED AN ANNEXURE	TOTAL CONSTRUCTION'S SAFETY AND ENVIRONMENTAL HANDBOOK Download from website: http://www.totalconstruction.com.au/wp-content/uploads/2018/09/safety_and_environmental_handbook_ver5.0_26062017.pdf

Total representative/ initial

Sub-Contractor representative/ initial

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ANNEXURE 1

DRAWINGS AND SPECIFICATIONS AS PER DOCUMENT REGISTER

Total representative/ initial

Sub-Contractor representative/ initial

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ANNEXURE 2

SCOPE OF WORKS

Total representative/ initial

Sub-Contractor representative/ initial

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ANNEXURE 3

SUB-CONTRACT DELIVERABLES

ITEM #	DESCRIPTION	WHEN REQUIRED		COMMENT
		Draft	Final	
1	Shop Drawings	[DD/MM/YYYY]	[DD/MM/YYYY]	[Insert Comment]
2	As-Built Drawings	[DD/MM/YYYY]	[DD/MM/YYYY]	[Insert Comment]
3	Certificate of Manufacturer's Warranty ([XX Years])	[DD/MM/YYYY]	[DD/MM/YYYY]	[Insert Comment]
4	Certificate of Installers Warranty ([XX Years])	[DD/MM/YYYY]	[DD/MM/YYYY]	[Insert Comment]
5	Certificate of Compliance ([Specify type])	[DD/MM/YYYY]	[DD/MM/YYYY]	[Insert Comment]
6	Operating and Maintenance Manuals	[DD/MM/YYYY]	[DD/MM/YYYY]	[Insert Comment]
7	Inspection Test Plans	[DD/MM/YYYY]	[DD/MM/YYYY]	[Insert Comment]
8	Waste Recycling and Purchase Report	[DD/MM/YYYY]	[DD/MM/YYYY]	[Insert Comment]
9	[Additional Deliverables as Required or N/A if not applicable]	[DD/MM/YYYY]	[DD/MM/YYYY]	[Insert Comment]
10	[Additional Deliverables as Required or N/A if not applicable]	[DD/MM/YYYY]	[DD/MM/YYYY]	[Insert Comment]
11	[Additional Deliverables as Required or N/A if not applicable]	[DD/MM/YYYY]	[DD/MM/YYYY]	[Insert Comment]
12	[Additional Deliverables as Required or N/A if not applicable]	[DD/MM/YYYY]	[DD/MM/YYYY]	[Insert Comment]

Total representative/ initial

Sub-Contractor representative/ initial

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ANNEXURE 4

CONSTRUCTION PROGRAM

Total representative/ initial

Sub-Contractor representative/ initial

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ANNEXURE 5

SIGNED TENDER INTERVIEW

Total representative/ initial

Sub-Contractor representative/ initial

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ANNEXURE 6

SUB-CONTRACT SUM BREAKDOWN

Total representative/ initial

Sub-Contractor representative/ initial

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ANNEXURE 7

SEPARABLE PORTIONS (If any)

(Please enter N/A if not applicable)

SEPERABLE PORTION # AND DETAILS	COMPLETION DATE	LIQUIDATED DAMAMGES
# [Insert Separable Portion # and Details]	[Insert Completion Date DD/MM/YYYY]	[Insert Liquidated Damages/ \$X,XXX.XX]
# [Insert Separable Portion # and Details]	[Insert Completion Date DD/MM/YYYY]	[Insert Liquidated Damages/ \$X,XXX.XX]
# [Insert Separable Portion # and Details]	[Insert Completion Date DD/MM/YYYY]	[Insert Liquidated Damages/ \$X,XXX.XX]
# [Insert Separable Portion # and Details]	[Insert Completion Date DD/MM/YYYY]	[Insert Liquidated Damages/ \$X,XXX.XX]

Amend table above to reflect Separable Portions. If further Separable Portions are required, they can be accommodated for by creating an additional annexure.

Total representative/ initial

Sub-Contractor representative/ initial

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ANNEXURE 8

OTHER SUB-CONTRACT DOCUMENTATION

Total representative/ initial

Sub-Contractor representative/ initial

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