



[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 [Insert Total Entity]. When signing, please ensure you initial all pages of the agreement and contract documents. Please return to the following address:

[Insert Total Entity]

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 SUB-CONTRACT PARTICULARS HAS BEEN ADOPTED THAT WILL REQUIRE PAYMENT CLAIMS TO BE LODGED VIA PAYAPPS AU.

Our staff involved in this project will be:

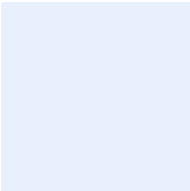
Project Manager: [Insert Total Rep/ Project Manager] Telephone: [Insert phone number]

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]

[Insert Total Entity]

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>[Insert Total Entity] (ABN [Insert ABN]) (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> <ul 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; e. Deed of Warranty; f. Deed of Release; g. Sub-Contractor's Statement; h. Deed of Guarantee; and i. the Trade Package (consisting of Annexures), ("the Sub-contract Documents"). <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

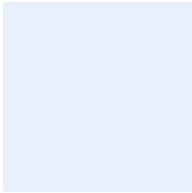
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Executed as an agreement:

Total:

Signed for and on behalf of **[Insert Total Entity]**
(ABN **[Insert ABN]**) 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] [Insert Total Entity] 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 Date (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 the 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 4.1(a))	<input type="checkbox"/> Yes <input type="checkbox"/> No			
9.	Liquidated damages (sub-clause 9.2(b))	[Insert Liquidated Damages/ \$X,XXX.XX per calendar day]			
10.	Not used	Not used			
11.	Sub-Contractor Overhead and Profit (sub-clauses 11.3 and 10.7)	[Insert % mark-up / 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 (sub-clause 12)	PayApps AU <input type="checkbox"/> is adopted <input type="checkbox"/> is not adopted
14.	Document Control System (sub-clause 18)	Procore <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.

Special Conditions means clauses SC1 – SC6 of this document and includes any additional documents referred to in SC1 – SC6 of this document.

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:

DEFINED TERM	MEANING
[Insert Defined Term or N/A if not applicable]	[Insert Meaning or N/A if not applicable]
[Insert Defined Term or N/A if not applicable]	[Insert Meaning or N/A if not applicable]
[Insert Defined Term or N/A if not applicable]	[Insert Meaning or N/A if not applicable]

SC3. SPECIAL CONDITIONS

SPECIAL CONDITION SUB-CLAUSE #	SPECIAL CONDITION
[Insert # or N/A if not applicable]	[Special Condition or N/A if not applicable]
[Insert # or N/A if not applicable]	[Special Condition or N/A if not applicable]
[Insert # or N/A if not applicable]	[Special Condition or N/A if not applicable]
[Insert # or N/A if not applicable]	[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.

SC4. NATIONAL CODE OF PRACTICE

- 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>.
- 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.
- 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.

Total representative/ initial

Sub-Contractor representative/ initial

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- d. The Sub-Contractor must maintain adequate records of compliance with the Code by:
 - i. the Sub-Contractor;
 - 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, SC4.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.

The Sub-Contractor must ensure that each sub-subcontract entered into by the Sub-Contractor imposes obligations on secondary subcontractors and suppliers equivalent to the obligations under this clause SC4.

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, the directions of Total and all applicable Legislative Requirements.
- b. In completing the Work under the Sub-Contract pursuant to sub-clause 1.1(a), the Sub-Contractor will complete the work:
 - i. with the professional degree of skill, care, diligence and prudence expected from a Sub-Contractor who is highly experienced and qualified in providing services for comparable work; and
 - ii. to meet and achieve 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 but not before the date stated in the Sub-Contract Particulars or, if no time is stated, when directed by Total. The Sub-Contractor must, from the Commencement Date, diligently, without delay and with due expedition, carry out the Work under the Sub-Contract.

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. The Sub-Contractor will have No Claim against Total arising under this sub-clause.

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 Sum.

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

The Sub-Contractor must cooperate and coordinate 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.

1.6A Minor Works

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, shall be supplied and carried out by the Sub-Contractor without adjustment to the Sub-Contract Sum.

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, in any event within one (1) Business Day of becoming aware of the discrepancy, and sub-clause 1.7(b) will apply.
- b. If notified under sub-clause 1.7(a) 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.
- c. The Sub-Contractor acknowledges and agrees that any Sub-Contract Works which is not expressly mentioned or shown in the Sub-Contract Documents but which:

Total representative/ initial

Sub-Contractor representative/ initial

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- i. Is necessary to ensure that the Sub-Contract Works are:
 - 1. completed to a standard normally achieved or reasonably expected on projects/developments of a similar size, quality and type; and
 - 2. otherwise fit and suitable for their Intended Purpose; and
- ii. should reasonably have been inferred or assumed from a proper review and examination in the Sub-Contract Documents by a competent subcontractor having regard to the nature and purpose of the Sub-Contract Works, including (but not limited to) for the purposes of ensuring the proper and satisfactory completion and performance of the Sub-Contract Works:
 - i. is deemed to be included within the Sub-Contract Sum and the time for reaching Completion; and
 - ii. must be supplied, performed and executed by the Sub-Contractor at its own risk and cost. 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

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

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 sub-clause 1.11(c) the Sub-Contractor may only submit a Payment Claim to the email address set out at sub-clause 12.2(b) [Content of Payment Claims].

1.12 Shop drawings

If the Sub-Contractor is required to complete design, including any temporary works, 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

Total representative/ initial

Sub-Contractor representative/ initial

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- d. the Intended Purpose.

1.13 Submission of Sub-Contractor documents

- a. The Sub-Contractor must supply documents at the times specified in the Trade Package, or the Head Contract Works 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, skilled and experienced in the type of work that is the subject of the Sub-Contract;
 - ii. It will employ suitably qualified, skilled and experienced employees, agents and subcontractors who will discharge the Sub-Contractors obligations strictly in a safe and environmentally responsible manner in accordance with this Sub-Contract and the Environmental Legislation;
 - 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, and has validly obtained all necessary certificates and/or Approvals, 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, and all certificates and Approvals have been validly obtained;
 - 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. in establishing the Sub-Contract Sum, the Sub-Contractor warrants it has made proper and adequate allowance for all risks and matters which might impact on the Sub-Contractor's ability to complete the Work under the Sub-Contract by the Date for Completion and satisfied itself as to the correctness and sufficiency of the Sub-Contract Sum;
 - vii. it has the necessary resources to complete the Sub-Contract Works by the Date for Completion;
 - viii. it shall exercise due skill, care and diligence in the carrying out and completion of the Sub-Contract Works;
 - ix. it will achieve and meet Best Industry Practice;
 - x. 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;
 - xi. 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, including to provide to Total (when directed by Total) all financial records of its financial position to be provided a financial expert to allow that financial expert to form an opinion of the Sub-Contractor's financial position to perform its obligations under this Sub-Contract;
 - xii. it is aware of the requirements of the *Building Act 1993* (VIC) and acknowledges that in the performance of its Work under the Sub-Contract it will not use, refer to or identify any product defined as a 'Prescribed Combustible Product' within the meaning of the *Minister's Guideline MG-14: Issue of building permits where building work involves the use of certain cladding products* as part of an External Wall (including as an attachment) unless the Prescribed Combustible Product has been approved by the relevant building surveyor acting in their capacity under the Act ;
 - xiii. it is aware of the requirements of the Protection of Adjoining Property Legislation and will not cause Total to be in breach of any provisions with respect to the 'protection works' under the Act and Regulation, and will comply with any direction reasonably necessary for Total to carry out 'protection works';

Total representative/ initial

Sub-Contractor representative/ initial

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- xiv. 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 which has been granted on the Project;
- xv. 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;
- xvi. 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 Sub-Contract Works, and all required certificates and Approvals are fit for their Intended Purpose and complies with all Legislative Requirements and requirements of the Sub-Contract.
- xvii. it will comply with, and is registered or licensed in accordance with, any Legislative Requirements.
- xviii. 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;
 - d. where selected or designed by the Sub-Contractor; is fit for its intended purpose as specified in, or ascertainable from the Sub-Contract;
- xix. 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.
- b. 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.
- c. The Sub-Contractor indemnifies Total of all costs, expenses, damages, liability and loss incurred by Total as a result of any breach of the Sub-Contractor's obligation under this Sub-Contract including any of the warranties stated in this sub-clause 1.14 and otherwise in this Sub-Contract.

1.14A Supplier Code of Conduct

The Sub-Contractor acknowledges that:

- a. The Supplier Code of Conduct is an important part of Total's approach to procurement and describes Total's minimum expectations regarding the conduct of its suppliers;
- b. it has read the Supplier Code of Conduct; and
- c. the expectations set out in the Supplier Code of Conduct are not intended to reduce, alter or supersede any other obligations which may be imposed on the Sub-Contractor, whether under the Sub-Contract or at law.

2. SECURITY

2.1 Security

- a. 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.
- b. 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.

2.2 Recourse

Total may have recourse to Security and is entitled to deduct money from payments due to the Sub-Contractor any debt or other monies due or an amount which Total believes the Sub-Contractor is, or may in the future be, liable from the Sub-Contractor to

Total representative/ initial

Sub-Contractor representative/ initial

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Total, if (in Total's opinion) 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, whether under the Sub-Contract or otherwise.

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 including an executed Deed of Release in the form of that at Schedule 3 of this 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.

- b. 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;
 - iii. delivery of an executed Deed of Release in the form of that at Schedule 3 of this Sub-Contract; and
 - iv. 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.

- c. Except as provided in sub-clause 2.3(b) above, the Sub-Contractor shall have no entitlement (including any recovery of loss, damage or expense arising under the Sub-Contract) as a consequence of the conversion of security into money. The Sub-Contractor acknowledges that:
 - i. Total has a right to convert security which does not consist of money into money at any time;
 - ii. In the event of such conversion, the amounts payable by Total under sub-clause 2.3(b) above are an adequate remedy for the Sub-Contractor; and
 - iii. The Sub-Contractor has no entitlement to obtain an injunction preventing Total from converting security which does not consist of money into money.

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 guarantors 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 is solely liable for and indemnifies Total, the Principal and their respective employees against all loss, liability, expense (including legal costs) or damage, in respect of or in connection with:

- a. any injury, illness, personal injury to, or death of, any person involved in the performance of the Sub-Contract Works caused or contributed to by the Sub-Contractor or any officer, employee, agent or sub-contractor of the Sub-Contractor;;
- b. damage to any property, real or personal (including without limitation, the Sub-contract Works, temporary works or any unfixed goods and materials (whether on or off-site) intended for incorporation in the Sub-Contract Works but not yet incorporated) caused or contributed to by the Sub-Contractor or any officer, employee, agent or sub-contractor of the Sub-Contractor including (without limitation) any damage arising from defect rectification;

Total representative/ initial

Sub-Contractor representative/ initial

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- c. claims by any person against Total, including in respect of contamination, nuisance, pollution, unreasonable noise or disturbance;
- d. damage to the Sub-Contractor's constructional plant or vehicles that is not solely caused by Total; and
- e. a breach of the warranties at sub-clause 1.14 or any other breach of the Sub-Contract Documents, including any act or omission of the Sub-Contractor or any of its officers, employees, agents, subcontractors or invitees (including but not limited to a breach in respect of which Total exercises a right to terminate this Sub-Contract or which causes or contributes to a breach of the Head Contract);

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).

Each indemnity in this Sub-Contract is a continuing obligation separate and independent from the Sub-Contractor's other obligations and survives termination of this Sub-Contract, including and in addition to the indemnity at sub-clause 1.14(c)

3.2 Works insurance

- a. The Sub-Contractor is required to effect and maintain (and pay all premiums for) a contract works insurance policy with an Australian Prudential Regulatory Authority approved insurer, 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.

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 with an Australian Prudential Regulatory Authority approved insurer 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 sub-clause 3.3(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 Legislation and WHS Legislation 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 policy with an Australian Prudential Regulatory Authority approved insurer 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.

Total representative/ initial

Sub-Contractor representative/ initial

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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

At the time of entering into the Sub-Contract, and thereafter whenever requested to do so by Total the Sub-Contractor must demonstrate that it maintains the insurance policies required to be effected under this sub-clause 3.8 by production of:

- a. a valid certificate of currency; and
- b. the insurance policy wording and any schedules identifying any endorsements, exclusions and limitations.

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. Total may also withhold payment in accordance with this Sub-Contract until such evidence is produced by the Sub-Contractor.

3.10 Policy of insurance

Each policy of insurance required by this Sub-Contract must:

- a. contain (without limitation) a provision that the insurer does not assert any right of subrogation to the rights of any insured against any of the other insured party;
- b. not include any terms that would adversely affect the likelihood of that policy responding to cover circumstances, losses or damages that may arise in connection with the Sub-Contract;
- c. not include any terms which operate to avoid or limit the cover available because an insured is entitled to cover under another policy of insurance; and
- d. not apply to a higher level of excess than the excess which would be payable for the same claim if made by the Sub-Contractor.

3.11 Property Insurance

Any policy providing cover in relation to property must indemnify the insured's against the cost of reinstatement or replacement with new property.

3.12 Excess in Claims

The Sub-Contractor must pay all excess in respect of claims by any party under the policies of insurance effected in accordance with the Sub-Contract which relate to the Sub-Contract Works.

3.13 Consequential Loss

- a. Subject to sub-clause 3.13(b), neither party will be liable to the other party for any Consequential Loss arising out of or in connection with this Sub-Contract.
- b. Sub-clause 3.13(a) does not apply to Total's or the Sub-Contractor's liability in respect of:
 - i. liquidated damages under the Sub-Contract or any other damages for delay;
 - ii. the Sub-Contractor's liability in respect of fraud, criminal conduct, or any intentional or reckless act or omission of the Sub-Contract having had regard to, or with conscious or reckless indifference to, the foreseeable harmful consequences arising from that act or omission;
 - iii. any event or Claim for which the Sub-Contractor is required to have insurance in accordance with this Sub-Contract; or
 - iv. any liability in respect of which the Sub-Contractor is indemnified under a policy of insurance required to be effected pursuant to the requirements of this Sub-Contract or in respect of which the Sub-Contractor would have been indemnified by a policy of insurance required to be effected pursuant to the requirements of this Sub-Contract if the Sub-Contractor has:

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Sub-Contractor representative/ initial

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- A. diligently pursued a claim under that policy insurance;
- B. complied with the terms and conditions of that policy of insurance; or
- C. complied with its insurance obligations under this Sub-Contract.

4. DESIGN RESPONSIBILITY

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

4.1 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 (including temporary works):
 - 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 Intended Purposes identified for the Project;
 - D. satisfy all Legislative Requirements. Including all certificates and Approvals;
 - E. be at a standard and level of detail suitable for the purposes of the Project; and
 - F. be fit for their stated Intended 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 which the Sub-Contractor is required to comply.
- 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.

Total representative/ initial

Sub-Contractor representative/ initial

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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 sub-clause 4.3 [Professional indemnity] above.
- 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 the Intended Purpose.

4.7 Not used

4.8 Proprietary Brands

- a. All proprietary brands of materials or equipment must be fixed strictly in accordance with the manufacturer's instructions, directions or specifications;
- b. Where any ambiguity exists between the Sub-Contract Documents and the manufacturer's instructions or specifications, the matter must be referred to Total for clarification, prior to implementation; and
- c. Where a trade name appears in the specifications or is shown on the drawings, equal or better materials bearing other trade names may, unless otherwise specified, be used in the Sub-Contract Works, provided they have been first approved in writing by Total.

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.

Total representative/ initial

Sub-Contractor representative/ initial

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5.3 Proportionate Liability Legislation

The operation of the Proportionate Liability Legislation 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 Proportionate Liability Legislation 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.
- 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 Work 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;

Total representative/ initial

Sub-Contractor representative/ initial

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- 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 sub-clause 6.4(a) and 6.4(b) that:
 - 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 sub-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 sub-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.

6.4A Heavy Vehicle (Chain of Responsibility) Transport

- (a) To the extent the Sub-Contractor is responsible for transporting materials to Site, or the premises of at which Work under the Sub-Contract will be undertaken, as part of, or for, the Sub-Contract Works, and the gross vehicle mass of the transport vehicle(s) is over 4.5 tonnes, the Sub-Contractor:

Total representative/ initial

Sub-Contractor representative/ initial

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- (i) warrants that it complies with the Heavy Vehicle National Law and the Heavy Vehicle National Regulation and the related chain of responsibility requirements;
- (ii) can provide evidence that it has a system(s) to verify (accurately) that heavy vehicle loads are the correct mass, restrained appropriately and within dimension limits as prescribed by Part 1A of the Heavy Vehicle National Laws; and
- (iii) is accredited or in the process of gaining accreditation with the necessary Approvals under the relevant Legislative Requirements.

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 material that is fit for the Intended Purpose material and carry out Work under the Sub-Contract:

- a. in accordance with Best Industry Practice;
- b. in a good, proper and workman-like manner; and
- c. such that when completed the Sub-Contract Works will be fit for the Intended Purpose.

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 (using applicable ISO standards as a guide).
- 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).
- 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.

Total representative/ initial

Sub-Contractor representative/ initial

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- b. On completion of testing the Sub-Contractor must make good (where applicable) the 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 (or hours as specifically set out in the Trade Package) ("**Working Hours**").
- 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.
- c. The Sub-Contractor will have No Claim against Total (whatsoever) by reason of the Sub-Contractor carrying out the Work under the Sub-Contract outside the Sub-Contract Working Hours

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 sub-clauses 7.10(a) and 7.10(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.
- 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:

Total representative/ initial

Sub-Contractor representative/ initial

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- 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 sub-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 sub-clause; 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 sub-clause 7.16(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;
- b. in breach of a management plan; or
- c. engaged in unlawful, riotous or disorderly conduct.

7.18 Separable Portions

- a. Total may nominate a part of the Sub-Contract Works as a Separable Portion and direct that it be undertaken separately.

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Sub-Contractor representative/ initial

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- b. Should Total nominate a Separable Portion under sub-clause 7.18(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 sub-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;
 - ii. in compliance with and consistent with the Head Contract Works program (as may be updated from time to time); and
 - iii. to make optimal use of the available working days and Working Hours, to the extent directed by Total and in compliance with sub-clause 7.6.
- 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:
 - i. direct in what order and at what times Sub-Contract activities must be carried out; and
 - ii. (if applicable) re-sequence the Head Contract Works Program.

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 sub-clause 8.2(a) the Sub-Contractor must immediately comply with the direction.
- c. The Sub-Contractor acknowledges it will have No Claim against Total due to a re-sequencing direction by Total under sub-clause 8.2(a).

8.3 Suspension

- a. Total may at any time and for any reason in Total's absolute and sole discretion provide notice in writing to the Sub-Contractor, directing the Sub-Contractor to suspend the carrying out of the whole or any part of the Sub-Contract Works. The Sub-Contractor must comply with this notice and take all reasonable steps to protect and secure the materials and equipment and mitigate costs and delays resulting from the suspension.
- b. If Total's notice to suspend the Sub-Contract Works pursuant to sub-clause 8.3(a) does not arise out of a breach of the Sub-Contract by the Sub-Contractor or the negligent or willful act or omission of the Sub-Contractor or by its subconsultants or their respective employees, agents or consultants, or is the result of a Force Majeure Event, the Sub-Contractor may claim an extension of time under clause 10 of this Sub-Contract
- c. If Total issues a notice to suspend any part of the Sub-Contract under this sub-clause 8.3, Total may thereafter direct the Sub-Contractor to re-sequence the Sub-Contract Works so as to ensure that Completion is achieved by the Date for Completion. Any notice issued to the Sub-Contractor under this clause, may direct the Sub-Contractor to re-sequence the Sub-Contract Works so as to ensure that Practical Completion is achieved by the Date for Practical Completion. Upon receipt of the notice under sub-clause 8.3(a), the Sub-Contractor must immediately comply with the notice. The Sub-Contractor acknowledges it will have No Claim against Total due to the notice by Total due to the notice by Total pursuant to sub-clause 8.3(c) except in accordance with this sub-clause 8.3(b).
- d. Without limiting any other rights under the Sub-Contract (including under this sub-clause 8.3 if the suspension effects the whole of the Sub-Contract Works for a period which exceeds three calendar months from the date that the notice in sub-clause 8.3(a) was given to the Sub-Contractor, Total may, in its absolute and sole discretion, terminate the Sub-Contract.

8.4 Subcontractor's Program

- a. The Sub-Contractor must program the Sub-Contract Works:

Total representative/ initial

Sub-Contractor representative/ initial

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- i. to ensure Completion is achieved by the Date for Completion;
 - ii. to regularly and accurately progress the Sub-Contract Works;
 - iii. taking all reasonable steps to avoid delay and its effects including employing all resources necessary;
 - iv. in compliance with and consistent with the Head Contract Works program (as may be updated from time to time).
- b. Total has no obligation to approve the Sub-Contractor's Program, however, if Total directs the Sub-Contractor to submit a draft Sub-Contractor's Program for approval by Total, the Sub-Contractor must do so in accordance with this sub-clause.
- c. If the draft Sub-contractor's Program is not approved by Total under sub-clause 8.4(c), the Sub-Contractor must re-submit the Sub-Contractor's Program with the amendments identified by sub-clause 8.4(c) by the date specified and the provisions of sub-clause 8.4.b. will apply.
- d. Notwithstanding Total's approval of the Sub-Contractor's Program, Total will not be required to do anything or supply any item other than as was contemplated at the date of execution of the Sub-Contract.
- e. If Total's construction program is updated, amended or replaced the Sub-Contractor must amend any Sub-Contractor's Program as necessary to ensure its obligations are performed consistently with Total's updated construction program. The Sub-Contractor acknowledges it will have No Claim against Total due to a requirement to amend or re-sequence the Sub-Contractor's Program or the Sub-Contract Works due to a change to Total's construction program.

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 sub-clause 9.1(b). above or if Total independently forms the opinion that Completion has been achieved, Total will give to the Sub-Contractor:
 - i. a notice certifying Completion has been achieved and the Date of Completion; or
 - ii. a notice setting out reasons for rejecting the Sub-Contractor's request for a certificate of Completion (and the provisions of sub-clause 9.1(b). will reapply).
- d. In the event that Total gives the Sub-Contractor written reasons for not giving a certificate of Completion, the Sub-Contractor must, as soon as practicable, rectify those things stated in the reasons and, when such certificate has been completed, the Sub-Contractor shall give Total at least 10 Business Days written notice of the date upon which the Sub-Contractor anticipates that Completion will be reached.
- e. Prior to the Sub-Contract Works being regarded as reaching Completion (or otherwise as agreed) the Sub-Contractor must provide to Total, as a condition precedent to any further payment:
 - i. any written warranties in favour of Total and the Principal;
 - ii. one copy of all as-built drawings;
 - iii. any approvals or certificates from relevant authorities applicable to the Sub-Contract Works;
 - iv. a Deed of Release and Warranty in the form provided in Schedule 3 the Sub-Contract;
 - v. all certifications for essential services; and
 - vi. any other requirements stipulated within the Trade Package.

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

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Sub-Contractor representative/ initial

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- 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.
- d. If it is determined that the Sub-Contractor's liability to pay the liquidated damages is deemed to be, or becomes, void, invalid or unenforceable for any reason (including because such liquidated damages are a penalty), Total may claim general damages for the Sub-Contractor's failure to achieve Practical Completion by the Date for Practical Completion.

9.3 Defective Work

- a. If at any time prior to the expiration of the Defects Liability Period Total becomes aware of incomplete works, or 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:
 - i. to remove the material from the Site;
 - ii. to demolish the work;
 - iii. to redesign, reconnect, replace or correct the material or work;
 - iv. not to deliver the material or work to Site; or
 - v. to complete the incomplete work;
 and specify the time in which the rectification works are to be completed.
- b. If the Sub-Contractor fails to rectify any defect in accordance with sub-clause 9.3(a) or in accordance with a direction under sub-clause 9.3(a), Total may rectify the defect itself or have the defect rectified by other (including the Principal), and Total may:
 - i. certify and recover all actual or anticipated costs of so doing as a debt due and immediately payable from the Sub-Contractor to Total provided Total accounts to the Sub-Contractor for any amount which the anticipated costs exceeds the actual costs; or
 - ii. accept the defect and recover its assessment of any consequent reduction in value of the Sub-Contract Works or claim upon Total by the Sub-Contractor as a debt due from the Sub-Contractor to Total.

9.4 Variation for defective work

- a. Total may, instead of instructing the Sub-Contractor to rectify defects under sub-clause 9.3 [Defective Work], direct a Variation under sub-clause 11 [Variations] to overcome the defective work, and the time by which it is to be carried out.
- b. Where a Variation has been instructed and carried out under sub-clause 9.4(a), Total will:
 - i. price the Variation in accordance with sub-clause 11.3 [Valuation of Variations]; and
 - ii. determine the cost of correcting the defective work if the Variation has not been directed.
- c. If:
 - i. The value of sub-clause 9.4(b)(i) above is greater than the value of sub-clause 9.4(b)(ii). above the Sub-Contract Sum will be increased by that difference; and
 - ii. If the value of sub-clause 9.4(b)(ii) above is greater than the value of sub-clause 9.4(b)(i) above the Sub-Contract Sum will be decreased by that difference.
- d. Notwithstanding sub-clause 13.2 [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.

Total representative/ initial

Sub-Contractor representative/ initial

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9.5 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 sub-clause 9.5(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 sub-clause 9.3 will not give rise to a reference date.

9.6 Further Defects Liability

Where a direction is given under sub-clause 9.5.b., a separate Defects Liability Period in respect of the rectified Sub-Contract Work will commence on the date that the rectification is completed.

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 sub-clause 10.1(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 exceeds five (5) Business Days the Sub-Contractor must update Total by providing further notices weekly (including the details required under sub-clause 10.1(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 (or other act of prevention not expressly authorised or permitted by the Sub-Contract); or
- b. a Variation; or
- c. an act or omission of Separate Contractors, the Principal, the Principal's employees, agents or contractors, or the Superintendent; or
- d. 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:
 - i. has provided the notice/s required under sub-clause 10.1 [Notice of delay];
 - ii. used all reasonable endeavours to mitigate the effects of the delay (inclusive of re-sequencing the Work under the Sub-Contract); and
 - iii. submitted a claim pursuant to sub-clause 10.3 [EOT Claim],

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

10.2A Concurrency

When a delay is attributable to more than one cause and at least one of those is not a cause of delay, listed in sub-clause 10.2(c) to 10.2(d), then to the extent that there is concurrency, the Sub-Contractor will not 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:

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- i. 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 has complied strictly with sub-clauses 10.1 and 10.2, 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 sub-clause 10.3(a).

10.4 Delay and disruption costs

The right of the Sub-Contractor to claim an extension of time under this clause 10 is the Sub-Contractor's sole remedy in respect of any exclusion, suspension, delay or disruption arising out of or in connection with the Sub-Contract, including delay or disruption arising from a breach of the Sub-Contract by Total. The Sub-Contractor is not entitled to any increase or adjustment to the Sub-Contract Sum, or any other compensation or damages, as a result of any exclusion, suspension, delay or disruption arising out of or in connection with the Sub-Contract.

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 is not required to exercise its discretion under this sub-clause for the benefit of the Sub-Contractor, and 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.

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 sub-clause 10.7(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 Overhead and Profit listed in item 11 of 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 sub-clause 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 sub-clause 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 sub-clause 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:

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Sub-Contractor representative/ initial

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- i. the estimated cost of the proposed Variation; and
- ii. (if applicable) its likely effect on the Sub-Contractor's activities and 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 Agreed Variation Price, or by the following order of precedence:

- a. prior agreement; or
- b. by an amount determined by Total using any rates or prices set out in a Schedule of Rates; or
- c. 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 Day works

- a. Total may direct the Sub-Contractor to carry out a Variation (or part thereof) as day works.
- 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 sub-clause 11.1 that the day works are a Variation to the Sub-Contract, the signing of day work dockets are for record purposes only and entitlement to a variation will be assessed in accordance with the Sub-Contract.

11.5 Non Compliance

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

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 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 sub-clause 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 may be used by Total for valuing Payment Claims. Refer to Sub-Contract Sum Breakdown (as listed in Annexure 6). The Sub-Contract Sum Breakdown is not representative of the full scope of the Sub-Contract Works to be performed and shall not in any way restrict Total from assessing Payment Claims in accordance with its valuation of complete and incomplete Work under the Sub-Contract.
- 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).

Total representative/ initial

Sub-Contractor representative/ initial

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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 sub-clause 3.8 of 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 sub-clause 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;
 - xiii. such other information as requested by Total;
 - xiv. has remedied any breach of the Sub-Contract;
 - xv. if requested by Total, a Deed of Warranty in the form of that at Schedule 4 and duly executed by the Sub-Contractor or alternative form of Deed of Warranty which Total may reasonably require; and
 - xvi. all validly obtained certificates and Approvals.
- b. Payment Claims must be submitted to the following email address: claims@totalconstruction.com.au, or if Item 13 of the Sub-Contract Particulars states that the EPC System is adopted, via the EPC System, 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.
- 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.
- d. Total may, in any subsequent progress certificate, amend an earlier progress certificate.
- e. An early progress claim will be deemed to have been made on the date for making that claim on the last day of the month.

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 ten (10) Business Days from the Date of Completion; or
 - iii. (if applicable), within twenty (20) 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 sub-clause 12.3(a) above; or

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Sub-Contractor representative/ initial

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- 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 sub-clause 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 sub-clause 12.2(a).

12.4 Payment Schedule and tax invoice

- a. Within ten (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. The issue of a Payment Schedule or the payment of any moneys under sub-clause 12.4.a. is not evidence of the value of work or that the work has been satisfactorily carried out in accordance with this Sub-Contract or an admission of liability or approval by Total of the Sub-Contractors performance or that the performance is in compliance with this Sub-Contract, but is only to be taken as a payment on account of the Sub-Contract Sum
- 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;
 - 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; and
 - v. The parties acknowledge the above is an RCTI agreement which shall apply for the term of this Sub-Contract.

12.5 Date of Payment

- a. Within thirty-five (35) Business Days following the day on 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.
- 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 eleven (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 sub-clause 14.1 or a Notice of Dispute pursuant to sub-clause 15.1 within five (5) Business Days of receipt of the Certificate of Completion;
 - ii. fraud or dishonesty relating to the Work under the Sub-Contract or any part thereof or to any matter dealt with in the Final Certificate;

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Sub-Contractor representative/ initial

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- 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

- a. 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.
- b. 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.

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.

Total representative/ initial

Sub-Contractor representative/ initial

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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. supplement or 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 supplements or 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.
- 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. a reasonable amount for Constructional Plant left on site at Total's direction.

Total representative/ initial

Sub-Contractor representative/ initial

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- 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 sub-clause 13.3(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 sub-clause 13.3(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.

13.4 Payment Upon Termination

In the event this Sub-Contract is terminated in accordance with clause 13, the Sub-Contractor may issue a Payment Claim, but is only entitled to do so within five (5) Business Days on and from the date the Sub-Contract was terminated.

13.5 Quantum meruit

If Total repudiates the Sub-Contract and the Sub-Contractor terminates, the Sub-Contractor is only entitled to claim damages for breach of contract and not entitled to a quantum meruit. This clause survives termination of the Sub-Contract.

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,
 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 sub-clause 14.1(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.

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.

Total representative/ initial

Sub-Contractor representative/ initial

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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 after receiving a Notice of Dispute, the parties shall confer at least once to resolve the dispute or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

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 Resolution Institute.

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:
 - i. a suspension by a secondary sub-contractor, or
 - ii. a failure by the Sub-Contractor to comply with this clause.

16.3 Method of resolving 2nd class Variations

Total and the Sub-Contractor agree that clause 15 [Dispute resolution] is a method for resolving disputes about the second class of claimable variations for the purposes of section 10A (3) (d) of the Security of Payment Act.

Total representative/ initial

Sub-Contractor representative/ initial

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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.
- 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

- a. No failure, delay, relaxation or indulgence on the part of a party in exercising any right, power, privilege or remedy in connection with this Sub-Contract, operates as a waiver of that right, power, privilege or remedy nor does any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise of that or any other right, power, privilege or remedy.
- b. Any waiver of a party's rights, powers or remedies under this Sub-Contract must be in writing and must be dated and signed by an authorised representative of Total or by Total granting that waiver and must specify the right that is being waived and to what extent.

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.
- 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.

Total representative/ initial

Sub-Contractor representative/ initial

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17.8 Entire agreement

- a. This Sub-Contract:
 - i. contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Sub-Contract; and
 - ii. supersedes any prior agreement or understanding on anything connected with that subject matter
- b. No other terms and conditions will be incorporated into this Sub-Contract unless strictly in accordance with sub-clause 17.9 of this Sub-Contract.
- c. Any terms and conditions proposed, published or sent by the Sub-Contractor to Total or otherwise referred to in any document or material provided by the Sub-Contractor to Total (including any terms and conditions published on any website or contained in any online ordering process, whether or not acknowledged by Total):
 - i. do not form part of (and are expressly excluded from) this Sub-contract;
 - ii. do not apply to or bind Total; and
 - iii. are, as between Total and the Sub-Contractor, void and unenforceable,

Irrespective of whether such terms and conditions were proposed, published or sent (or referred to in any document or material provided) by the Sub-Contractor before, during, or after execution of this 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 sub-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 sub-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.

Total representative/ initial

Sub-Contractor representative/ initial

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17.14GST

- 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.

17.15PRIVACY ACT

- a. The Sub-Contractor must:
 - i. comply with its obligations under the Privacy Act;
 - ii. comply with the Australian Privacy Principles when doing any act or engaging in any practice for the purposes of the Subcontract, as if it were an agency as defined in the Privacy Act;
 - iii. use Personal Information received, created or held by the Sub-Contractor under, for the purposes of arising out of or in connection with the Sub-Contract only for the purposes of fulfilling its obligations under the Sub-Contract; and
 - iv. indemnify Total in respect of all loss suffered or incurred by Total arising out of or in connection with the misuse of Personal Information held under, for the purposes of, arising out of or in connection with the Sub-Contract by the Sub-Contractor or a sub-subcontractor.

17.16EXECUTION

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 sub-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 System;
- 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. MODERN SLAVERY ACT

The Sub-Contractor warrants it is aware of the *Modern Slavery Act 2018* (Cth) and will not act (whether by its employees, contractors or agents) in any way that would negatively impact or cause Total to provide a false or misleading 'modern slavery statement'.

19. DEFINITIONS AND INTERPRETATION

19.1 Definitions

In this Sub-Contract:

Approvals means any certificate, licence, consent, permit, approval or requirement required by:

- (a) any Legislative Requirement arising out of or in any way connected with the Sub-Contract Works; or
- (b) any:

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Sub-Contractor representative/ initial

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- (i) organisation; or
- (ii) Authority,

having jurisdiction in connection with the carrying out of the Sub-Contract Works;

Australian Privacy Principles has the meaning given in the Privacy Act;

Authority means any Federal State, Territory or local government, semi-government or other body, authority or person, statutory, instrumentality, utility or other legal entity, body or other or organisation including where applicable the principal certifying authority, court or tribunal, having jurisdiction over the Site or Sub-Contract Works or the performance by the Sub-Contractor of its obligations under the Sub-Contract or with whose utility, services or telecommunications provider, the Sub-Contract Works are or will be connected to;

Best Industry Practice means the most stringent of the practices which are generally engaged in or observed by the Australian construction industry with respect to work similar to the Sub-Contract Works and which, with respect to any objective, may be expected, in the exercise of reasonable judgment, to accomplish that objective in a manner consistent with Legislative Requirements, Approvals, reliability, safety, Environmental Legislation, environmental protection, economy and expediency;

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;
- 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.

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

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 or an alternative form of the deed of warranty at Schedule 4 which Total may reasonably require;

Defects Liability Period has the meaning given in sub-clause 9.5(a) [Defects Liability Period];

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

Environmental Legislation means:

- (i) *Environment Protection Amendment Act 2018* (Vic);
- (ii) *Environment Protection Act 2017* (Vic);
- (iii) *Environment Protection and Biodiversity Conservation Act 1999* (Cth);
- (iv) any other legislation similar to the Acts identified in this definition in effect in the state or territory in which the Site is located.

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

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;

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Sub-Contractor representative/ initial

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- 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 sub-clause 2.5.
- i. in respect of sub-clause 12.2(a)(i), providing a statement or record of payment which is false, misleading or deceptive in any respect;
- j. failure to comply promptly with the direction of Total to complete Variations or any other direction issued by Total to the Sub-Contractor; and
- k. any other action, event or omission which Total believes is a breach of the WHS Legislation by the Sub-Contractor.

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;
- 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.

Force Majeure Event means each of the following events:

- a. earthquake, cyclone, natural disaster, landslide, mudslide, fire and explosion;
- b. a flood which might be expected to occur once or less in every 50 years;
- c. a "terrorist act" (as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth));
- d. war, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, martial law or confiscation by order of any authority;
- e. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; and
- f. the direction by any court or competent authority (including a health authority) that work on the Site cease except to the extent that those events are caused or contributed to by deliberate or negligent act, omission or default of the Subcontractor or any of its employees, officers, agents or subcontractors,

which is beyond the reasonable control of the affected party and prevents or delays the affected party from performing any of its obligations under the Sub-Contract where that cause or the consequence of the cause:

- g. has not resulted from the affected party breaching a term of the Sub-Contract; and
- h. if the affected party is the Sub-Contractor, could not have been prevented, avoided, remedied or overcome by the Sub-Contractor taking those steps which a prudent, experienced and competent contractor would have taken.

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);

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Sub-Contractor representative/ initial

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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);

Head Contract Works Program means the construction program contained in Annexure 4 of this Sub-Contract and/or the dates stipulated elsewhere in the Trade Package relating to the Sub-Contract Works as amended by Total in accordance with clause 8.

Heavy Vehicle National Law means the *Heavy Vehicle National Law Application Act 2013* (Vic), as amended from time to time;

Heavy Vehicle National Law Regulations means the *Heavy Vehicle National Law Application (Infringements) Regulations 2013* (Vic) as amended from time to time;

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);

Intended Purpose means the purpose for which the Sub-Contract Work is intended, including to satisfy the whole of life and the asset management principles and any purpose which is described in, or may be reasonably inferred from, this Sub-Contract or the Trade Package and any purpose notified by the Total to the Sub-Contractor (whether before or after the execution of this Sub-Contract);

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 and/or directions of any Authority;
- c. Approvals, compliance requirements and requirements of organisations having jurisdiction in connection with carrying out of the Work under the Sub-Contract and the Sub-Contract Works;
- d. fees and charges payable in connection with the foregoing;
- e. WHS Legislation;

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);
- b. a claim for any breach of Sub-Contract, including to an indemnity, “set off” or demand;
- c. a claim for any monies or for any adjustment to the Sub-Contract Sum or for any extension of time to the Date for Completion or for costs, expense, loss or damage on any basis whatsoever including, without limitation, no claim:
 - i. pursuant to the Sub-Contract;
 - ii. in tort (including negligence);
 - iii. in quantum merit;
 - iv. pursuant to quasi-contract;
 - v. for unjust enrichment;
 - vi. (without limitation) pursuant to any other principle of law or equity.

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];

Personal Information has the meaning in the Privacy Act;

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);

Total representative/ initial

Sub-Contractor representative/ initial

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

Project means the project listed in the Formal Instrument of Agreement;

Proportionate Liability Legislation means the *Wrongs Act 1958* (VIC);

Protection of Adjoining Property Legislation means Part 7 of the *Building Act 1993* (VIC) and Part 7 of the *Building Regulations 2018* (Vic);

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 guarantees accepted by Total, pursuant to sub-clause 2.1 [Security];

Security of Payment Act means the *Building and Construction Industry Security of Payment Act 2002* (VIC);

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 7.18 [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;

State means the state or territory in which the Site is located;

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 19 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's Program means the Sub-Contractor's program for completing the Sub-Contract Works approved in accordance with sub-clause 8.4;

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;

Supplier Code of Conduct means:

- a. the supplier code of conduct issued by the Victorian Government for suppliers providing works or services to the Victorian Government (as amended from time to time);
- b. if the project relates to a private retailer, any supplier code of conduct issued by the private retailer to Total for suppliers providing works or services to the Victorian Government (as amended from time to time);

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;

Total representative/ initial

Sub-Contractor representative/ initial

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WHS Legislation means:

- a. the *Work Health and Safety Act 2011* (Cth); and
- b. the *Occupational Health and Safety Act 2004* (VIC) and the *Occupational Health and Safety Regulation 2017* (VIC), as amended from time to time including section 27 of the *Occupational Health and Safety Act 2004* (Vic) and section 76 of the *Occupational Health and Safety Regulations 2017* (Vic).

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 the *Workers' Compensation Act 1958* (VIC); *Accident Compensation Act 1985* (VIC).

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;
 - 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 2001* (Cth).
- 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 STATEMENTSUB-CONTRACTOR **[Insert Sub-Contractor Company Name]**PROJECT: **[Insert Project Name]**Date of Sub-Contract with Total: **[Insert Date DD/MM/YYYY]**ABN (Total): **[Insert ABN]**

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 WHS Legislation; and

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.

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* (Cth).

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

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SCHEDULE 2 - DEED OF GUARANTEE

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

[Insert Total Entity] (Total):

ABN: [Insert ABN]

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

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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	[Insert Total Entity] (ABN [Insert ABN])
PROJECT	[Insert Project Name]
PRINCIPAL	[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:
 - 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

Total representative/ initial

Sub-Contractor representative/ initial

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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 Sub-Contractor or 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	[Insert Total Entity] ((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 Intended 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; and
 - d. where selected or designed by the *Sub-Contractor*; is fit for its Intended Purpose as specified in, or ascertainable from the *Sub-Contract*.
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 Act 1993* (VIC) and acknowledges that in the performance of its Work under the Sub-Contract it will not use, refer to or identify any product defined as a 'Prescribed Combustible Product' within the meaning of the *Minister's Guideline MG-14: Issue of building permits where building work involves the use of certain cladding products* as part of an External Wall (including as an attachment) unless the Prescribed Combustible Product has been approved by the relevant building surveyor acting in their capacity under the Act.
14. The *Sub-Contractor* further warrants it is aware of the requirements of the *Protection of Adjoining Property Legislation* and will not cause Total to be in breach of any provisions with respect to the 'protection works' under the Act and Regulation, and will comply with any direction reasonably necessary for Total to carry out 'protection works'
15. 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 Sub-Contract Works and will comply with any direction of Total for the Consultant to provide proof that it is Financially Sound.

Total representative/ initial

Sub-Contractor representative/ initial

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16. 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;
17. 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, which has been granted on the Project;
18. 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).
19. 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]

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

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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