

### MINOR WORKS SUB-CONTRACT AGREEMENT (COMPANY)

This Minor Works Sub-Contract is dated [Insert Date DD/MM/YYYY] between;

<p><b>CONTRACTOR</b> [Insert Total Entity] (“Total”) [Insert ABN] 9A George Street, North Strathfield, NSW 2137 02 9746 9555</p>	<p><b>AND</b></p>	<p><b>SUB-CONTRACTOR</b> [Insert Sub-Contractor Name] (ABN [Insert ABN]) (ACN [Insert ACN]) [Insert Sub-Contractor Address] [Insert Phone number] (Sub-Contractor)</p>
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#### RECITALS

The Sub-Contractor is to carry out and complete the works and Total is to pay the Sub-Contractor for the works in accordance with the Terms and Conditions of this Sub-Contract.

Sub-Contract Particulars				
PROJECT NAME	[Insert Project Name]			
SITE ADDRESS	[Insert Site Address]			
TRADE DESCRIPTION	[Insert Trade Description]			
SUB-CONTRACT NUMBER	[Insert SC Agreement Number]			
DATE FOR COMMENCEMENT OF WORK	[Insert Date DD/MM/YYYY]			
DATE FOR COMPLETION	[Insert Date DD/MM/YYYY]			
SUB-CONTRACT SUM	The Sub-Contract sum is the lump sum of [Insert Sub-Contract Sum] excluding GST. Schedule of Rates - [Insert Schedule of Rates or N/A if not applicable].			
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"> <li>a. this Sub-Contract Agreement;</li> <li>b. the Sub-Contract Particulars;</li> <li>c. the Sub-Contract Terms and Conditions;</li> <li>d. the Deed of Warranty;</li> <li>e. the Deed of Release;</li> <li>f. the Sub-Contractor’s Statement; and</li> <li>g. the Trade Package (consisting of Annexures).</li> </ul> <p>The order in which the Sub-Contract documents are listed above is the order of precedence of the Sub-Contract documents.</p>			
SECURITY	[Nil / 5% of Sub-Contract Sum]			
LIQUIDATED DAMAGES	\${500.00] per calendar day			
INSURANCE SCHEDULE	Workers Compensation	Contract Works	Public Liability	Professional Indemnity
Limit of Cover		Value of work under the Sub-Contract	[Limit of Cover - Check head contract for any specific PL insurance requirements on this trade]  (\$20 million if nothing else stated)	[Limit of Cover - Check head contract for any specific PI insurance requirements on this trade]  (\$20 million if nothing else stated)

Total representative/ initial

Sub-Contractor representative/ initial

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Runoff Period	N/A	N/A	N/A	7 years
<b>EPC SYSTEM</b>	<b>PayApps AU</b> <input type="checkbox"/> is adopted <input type="checkbox"/> is not adopted			
<b>DOCUMENT CONTROL SYSTEM</b>	<b>Procure</b> <input type="checkbox"/> is adopted <input type="checkbox"/> is not adopted			
<b>Signed for and on behalf of Total</b> Signature: _____ Print Name: _____ Date: __/__/__ Witness Signature: _____ Print Name: _____ Date: __/__/__		<b>Signed for and on behalf of the Sub-Contractor</b> Signature: _____ Print Name: _____ Date: __/__/__ Witness Signature: _____ Print Name: _____ Date: __/__/__		

Total representative/ initial

Sub-Contractor representative/ initial

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**TERMS AND CONDITIONS**

**1. SUB-CONTRACTOR WARRANTIES**

- a) The Sub-Contractor must carry out and complete the Works:
  - i. With due skill, care and diligence, and in accordance with Best Industry Practice;
  - ii. In accordance with the Sub-contract and Total’s directions;
  - iii. In accordance with all Legislative Requirements, Certificates and Approvals;
  - iv. Using materials that are new, fit for the Intended Purpose and free of defects;
  - v. By the date for Completion
- b) The Sub-Contractor in agreeing to carry out and complete the works warrants that:
  - a. it is suitably qualified, skilled and experienced in the type of work that is subject of the Sub-Contract;
  - b. persons employed by the Sub-Contractor are capable of performing the type of work that is the subject of the Sub-Contract;
  - c. 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;
  - d. 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 all Legislative Requirements;
  - e. it has the necessary resources to complete the Sub-Contract by the date for Completion; and
  - f. it is Financially Sound at the time of entering into this Sub-Contract and continues to be Financially Sound in the performance of the work 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; and any other warranties set out in a Deed of Warranty if requested by Total.
- c) The Sub-Contractor has entered into the Sub-Contract relying on its own examination and investigations of the Site and accepts the Site and any structures on the Site in their present condition. Total makes no representation and gives no warranty with respect to:
  - i. Site conditions (including sub-surface conditions);
  - ii. any structure on the Site;
  - iii. works completed by previous subcontractors; and
  - iv. as to the accuracy, adequacy, suitability or completeness of any Site information document supplied.

The Sub-Contractor assumes the risk 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.
- d) The Sub-Contract Sum is sufficient to cover the discharge of all the Sub-Contractor’s obligations under this Sub-Contract;
- e) If the Sub-Contractor has any design responsibility under the Sub-Contract, it will ensure that:
  - i. Appropriately skilled, experience and qualified persons supervise and co-ordinate design and production of design documents; and
  - ii. The Works, and all required Certificates and Approvals are fit for their Intended Purpose and comply with all Legislative Requirements and requirements of the Sub-Contract.
- f) The Sub-Contractor must (including for temporary works):
  - i. Attend all Site meetings as requested by Total;
  - ii. Co-operate and coordinate with all other workers and contractors on the Site; and
  - iii. Satisfy itself that the Site is suitable
- g) The Sub-Contractor is responsible for:
  - i. Any damage caused by the Sub-Contractor and its agents and employees
  - ii. Keeping the Sub-Contractor’s area clear and safe at all times;

- iii. Carrying out of the Works safely; and
  - iv. Developing, documenting and submitting for approval, a quality management plan to assure the quality of the Sub-Contract Works (conforming to the requirements of ISO:9001 or an equivalent standard);
  - v. At all times during the undertaking of the work under the Sub-Contract, the Sub-Contractor must comply with the requirements of the WHS Legislation and prepare and submit to Total a safe work method statement prior to commencing any work under the Sub-Contract;
  - vi. As far as is practicable, the Sub-Contractor must ensure 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; and
- h) The Sub-Contractor must obtain and provide all guarantees and warranties reasonably available in relation to the supply and installation of materials, goods and other equipment, which extend beyond the Defects Liability Period. These are to be made in the favour of the Principal.
- i) The Sub-Contractor must not enter into any secondary subcontracts or assign any right or benefit of the Sub-Contract without the prior written approval of Total (which may be withheld in Total’s absolute discretion). Any work undertaken on the Project prior to the execution of the Sub-Contract is governed by the terms of this Sub-Contract and forms part of the Sub-Contract Price.

**1A. Supplier Code of Conduct**

- a) The Sub-Contractor acknowledges that:
  - i. 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;
  - ii. it has read the Supplier Code of Conduct; and
  - iii. 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.

**1B. Heavy Vehicle (Chain of Responsibility) Transport**

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:

- a) warrants that it complies with the Heavy Vehicle National Law and the Heavy Vehicle National Regulation and the related chain of responsibility requirements;
- b) 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
- c) is accredited or in the process of gaining accreditation with the necessary Approvals under the relevant Legislative Requirements.

**1C. 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.

**2. DIRECTIONS**

- a) Total may issue a direction to the Sub-Contractor regarding carrying out the Works, and the Sub-Contractor must comply with Total’s directions

Total representative/ initial

Sub-Contractor representative/ initial

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- b) A direction may be given orally, however, where a direction is given orally, the Sub-Contractor must obtain written confirmation from Total of the direction within three (3) Business Days.

**3. VARIATIONS**

- a) The Sub-Contractor must not vary the Works unless in accordance with a written direction from Total
- b) Where the Sub-Contractor considers a direction given by Total to constitute a Variation, 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) Total may at any time direct a Variation to the Sub-Contract Works by the addition, decrease, omission, deletion or removal of items of Sub-Contract Works, including Goods to be provided.
- d) The price of a Variation is to be determined by Total.
- e) The Sub-Contract Sum will be increased or decreased for all directed variations by the reasonable amount which Total will determine. If a Variation omits any part of the Sub-Contract Works, Total may have the Sub-Contract Works carried out by itself or a third party.

**4. INDEMNITY AND INSURANCE**

- a) The Sub-Contractor indemnifies Total against:
  - i. Loss or damage to property; and
  - ii. All claims in respect of personal injury, demands, proceedings, fines, penalties, costs (including legal costs), losses, liabilities and other expenses whatsoever for any personal injury including death and disease or loss of or damage to any property (including Total's personnel and property) arising directly or indirectly out of or as a consequence of, the Sub-Contractor:
    - A. Carrying out or failing to carry out the Works; or
    - B. Breaching this Sub-contract (including any negligent act or omissions of its personnel).
- b) The Sub-Contractor must have and maintain the insurance policies specified in the Sub-Contractor Particulars with an Australian Prudential Regulatory Authority approved insurer and each policy of insurance is to be on terms satisfactory to the Sub-Contractor.
- c) When Total requests, the Sub-Contractor must prove to Total that the policies of insurance are current. The Sub-Contractor must produce a:
  - i. Valid certificate of currency; and
  - ii. The insurance policy wording and any schedules identifying any endorsements, exclusions and limitations.
- d) Each policy of insurance required by this Sub-Contract must:
  - i. 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;
  - ii. 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;
  - iii. 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
  - iv. 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.
- e) 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.

**5. PROGRAMMING AND SUSPENSION**

- a) **General programming obligation** - The Sub-Contractor must program the work under the Sub-Contract: to ensure Completion is achieved by the Date for Completion; and in compliance with and consistent with the Head Contract Works program (as may be updated from time to time).
- b) **Re-sequencing** – Total may direct the Sub-Contractor to re-sequence the work under the Sub-Contract so as to ensure that Completion is achieved by the Date for Completion or to accommodate the work under the Head Contract. Upon receipt of a direction under paragraph (a) the Sub-Contractor must immediately comply with the direction. The Sub-Contractor acknowledges it will have No Claim against Total due to a re-sequencing direction by Total under paragraph (a).

**6. DELAYS**

- 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 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. If the delay is ongoing the Sub-Contractor must update Total by providing further notices weekly.

- b) If the Sub-Contractor is delayed in reaching Completion by the Date for Completion by any of the following causes of delay:
  - i. a breach of the Sub-Contract by Total and any other act or omission of Total (including an act of prevention), the Principal or the Superintendent;
  - ii. a Variation; or
  - iii. 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 has: provided the notice/s required under sub-clauses 6 a) and c) and used all reasonable endeavours to mitigate the effects of the delay, the Sub-Contractor may be entitled to an extension of time for Completion.
- c) The right of the Sub-Contractor to claim an extension of time under this clause 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.
- d) If the Sub-Contractor considers itself entitled to an extension of time for Completion, it must within two (2) Business Days of the occurrence of the delay give to Total a written claim for an extension of time together with a statement of the facts upon which the claim is based.
- e) If the Sub-Contractor is entitled to an extension of time Total will determine a reasonable extension of time following receipt of the Sub-Contractor's claim under paragraph (c).

**7. DEFECTS**

- a) As soon as possible after the Date of Completion, the Sub-Contractor shall rectify all defects existing at the date of Completion.
- b) At any time prior to the expiration of the Defects Liability Period, if Total becomes aware of work done or materials provided which are not in accordance with this Sub-Contract (Defect), Total will provide written notice to the Sub-Contractor of that fact and may give to the Sub-Contractor a written direction to remedy the defects at the Sub-Contractor's own cost.
- c) If the Sub-Contractor fails to rectify any defect in accordance with subclause 7(b) or in accordance with a direction under subclause 7(b), 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.
- d) The Defects Liability Period will commence on the Date of Completion and will expire on the expiry of the last Defect Liability Period under the Head Contract. 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). If the rectification work is not completed by the date notified, Total may have the works carried out by others or itself and the costs incurred by Total will be a debt due from the Sub-Contractor to Total.
- e) Where a direction is given under subclause 7(b), a separate Defects Liability Period in respect of the rectified Works will commence on the date that the rectification is completed.

**8. LIQUIDATED DAMAGES**

- a) If the Works do not reach Completion by the Date for Completion, Total is entitled to Liquidated Damages as specified in the Sub-Contract Particulars as a debt due and payable to Total.
- b) If the Head Contract Works do not reach Practical Completion by the Date for Practical Completion under the Head Contract due to:

Total representative/ initial

Sub-Contractor representative/ initial

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- i. a failure of the Sub-Contractor to reach Completion by the Date for Completion under the Sub-Contract; or
  - ii. 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.
- c) 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 reach Completion by the Date for Completion.
- 9. PAYMENT CLAIM**
- a) The Sub-Contractor is entitled to make a payment claim on the 25th of each month.
  - b) All payment claims, including a final payment claim, must:
    - i. Contain the total amount of all progress payments Total has previously paid to the Sub-Contractor;
    - ii. Contain details of the actual cost of work carried out by the Sub-Contractor up to and including the date of the claim;
    - iii. Provide copies of tax invoices for any outlays claimed.
    - iv. Contain a completed sub-contractor's statement (confirming that all employees, consultants and suppliers have been paid any claims and entitlements that are due and payable) made by a person duly authorised by the Sub-Contractor, in the form set out in Schedule 1.
    - v. Before being entitled to payment, the Sub-Contractor must if requested by Total, execute and return a Deed of Warranty in the form set out in Schedule 2, or alternative form of Deed of Warranty which Total may reasonably require, or if required and directed to do so, the form of Sub-Contractor warranty deed required under the Head Contract.
    - vi. The Sub-Contractor must within ten (10) Business Days after issue of a certificate of Completion as a pre-condition to the payment of any monies due to the Sub-Contractor from Total execute and deliver a Deed of Release in the form set out in Schedule 3.
    - vii. contain all validly obtained Certificates and Approvals.
  - c) On receipt of a payment claim, Total will:
    - i. Within ten (10) Business Days, issue a payment schedule stating the amount Total proposes to pay to the Sub-Contractor or the amount due from the Sub-Contractor to Total pursuant to this Sub-Contract. If the amount payable/due is less than the claimed amount Total will provide reasons for the difference and an assessment of any debt due or other monies owed by the Sub-Contractor to Total; and
    - ii. Pay that amount to the Sub-Contractor within thirty-five (35) Business Days of receipt of payment claim.
  - d) As a precondition to being entitled to make a payment claim in accordance with clause 9 hereto, the Sub-Contractor must provide Total with:
    - i. Certificates of currency for all insurance policies the Sub-Contractor is obliged to take out pursuant to clause 4;
    - ii. if requested by Total, a Deed of Warranty in the form set out in Schedule 2, or alternative form of Deed of Warranty which Total may reasonably require, and a Deed of Release in the form set out in Schedule 3;
    - iii. any drawings, operation & maintenance manuals, warranties, guarantees, Certificates, Approvals, instruction manuals or other operational literature, as built drawings and technical specifications required to be provided under the Sub-Contract or the Head Contract in respect of the Sub-Contract Works (which Total may direct);
    - iv. an estimate of the percentage of the Sub-Contract Works yet to be completed; and
    - v. such other information as requested by Total.
  - e) A payment claim must be submitted to in accordance with and via the EPC System stated in the Sub-Contract Particulars.
  - f) In the event this Sub-Contract is terminated, 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.
  - g) Total and the Sub-Contractor both agree that:
    - i. Total can issue recipient created tax invoices (**RCTIs**) in respect of the Sub-Contract Works;
    - ii. the Sub-Contractor will not issue tax invoices in respect of the Sub-Contract Works;
    - iii. the Sub-Contractor acknowledges that it is registered for GST when it enters into this Sub-Contract and that it will notify Total if it ceases to be registered; and
    - iv. Total acknowledges that it is registered for GST when it enters into this Sub-Contract and that it will notify the Sub-Contractor if it ceases to be registered.
  - h) Total may, in any subsequent progress certificate, amend an earlier progress certificate.
  - i) 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.
- 9A. PAYMENT TERMS**
- a) Subject to there being no dispute regarding the value complete and/or the quality of the works, payments shall be made as provided for in this Sub-Contract in a manner agreed between the parties. All progress payments shall be considered as payments on account only.
  - b) Payments shall include for varied works, provided such variation has been authorised in writing by Total, the agreed value of such variation being added to/taken from the original Sub-Contract Sum.
  - c) As a prerequisite to the final payment for the Works including any variations thereto, the Sub-Contractor shall sign a Deed of Release (in the form set out in Schedule 3) certifying that:
    - i. the Sub-Contractor agrees with the final Sub-Contract Sum certified by Total as being payable to the Sub-Contractor;
    - ii. it releases Total from any and all further claims of any nature whatsoever under this Sub-Contract; and
    - iii. all wages due and owing to both its employees and subcontractors in respect of the Works have been paid.
  - d) In lieu of a Sub-Contractor endorsed Deed of Release being provided to Total, acceptance of the final payment by the Sub-Contractor shall constitute such release.
- 9B. COMPLETION**
- a) The Sub-Contractor must notify Total in writing when the Sub-Contractor considers that Completion of the Sub-Contract Works has been achieved.
  - b) On receiving the Sub-Contractor's notice under Clause 9B(a), Total must:
    - i. With due expedition, inspect the Sub-Contract Works and conduct any further tests required by the Sub-Contract or considered necessary by Total; and
    - ii. Notify the Sub-Contractor of any matters requiring alteration or performance before Completion will be achieved.
  - c) Except for minor defects that do not have a material impact on the completion of works under the Head Contract, when Total reasonably considers that Completion has been achieved, Total must issue a completion certificate to the Sub-Contractor specifying the date Completion was achieved ("**Date of Completion**")
- 9C. SECURITY**
- a) The Sub-Contractor must provide Security in accordance with the amount stated in the Sub-Contract Particulars, which shall not exceed 5% of the Sub-Contract Sum, as adjusted in accordance with this Sub-Contract.
  - b) Total may have recourse to Security when there is any debt due from the Sub-Contractor to Total, for any claim to monies or any other claim that Total may have against the Sub-Contractor or if Total has terminated the Sub-Contract.
  - c) Upon the later of the Date of Completion and 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.
  - d) 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 a Deed of Release in the form set out in Schedule 3; 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, subject to Total's rights under subclause (b) above.

Total representative/ initial

Sub-Contractor representative/ initial

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- e) Except as provided in subclause (d) 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 subclause (d) 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.

**10. GST**

- a) The Sub-Contract Sum and any schedule of rates is exclusive of GST.
- b) Should the Sub-Contractor's ABN not be recorded in this Sub-Contract, or until such time as that ABN is advised to Total in writing then:
  - i. Total shall not be liable to pay the Sub-Contractor GST irrespective of whether the Sub-Contractor has claimed such GST in its claim; and
  - ii. Total shall deduct the legislatively required tax from each payment due to the Sub-Contractor for remission to the Australian Tax Office.
- c) Upon receipt of the Sub-Contractor's ABN, each party acknowledges its and the other's GST registration. Further, each party agrees to:
  - i. Indemnify the other for any loss arising out of it not being registered for GST; and
  - ii. Advise the other in writing should it, during the course of this Sub-Contract, cease to be registered for GST.
- d) All amounts due and payable to the Sub-Contractor under this Sub-Contract shall be identified by a progress claim prepared in accordance with the relevant legislation. Total can issue tax invoices in respect of payment to the Sub-Contractor under this Sub-Contract (an "RCTI" – Recipient Created Tax Invoice).
- e) In the event that the Sub-Contractor incurs a debt to Total, the Sub-Contractor shall, upon receipt of a properly prepared tax invoice from Total, be liable for the GST on the amount payable.

**11. COMPLIANCE WITH STATUTES**

- a) The Sub-Contractor must comply with all Legislative Requirements relating to the Works, including any direction from an Authority or other body having jurisdiction over the carrying out of the Works.
- b) The Sub-Contractor warrants it has, and will hold all relevant licences, Certificates, Approvals and other necessary authorisation when required to carry out the Works.

**12. DEFAULT OR INSOLVENCY**

- a) If the Sub-Contractor commits an Event of Default Total may give the Sub-Contractor a written notice setting out:
  - i. Details of the Event of Default; and
  - ii. The date by which the Event of Default must be cured, ("**Default Notice**").
- b) If the Event of Default is not remedied by the time specified in the Default Notice, Total may do one of the following:
  - i. terminate the Sub-Contract; or
  - ii. take over a part or all of the Sub-Contract Works ("**Step-In**").
- c) If there is an Event of Insolvency Total may terminate the Sub-Contract (without prior notice), or, may Step In (providing notice to the Sub-Contractor of same).
- d) If Total 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.

**12A. TERMINATION**

- a) Total may, at its sole discretion, by written notice to the Sub-Contractor immediately terminate this Sub-Contract:
  - i. Where the Sub-Contractor fails to discharge its obligations under this Sub-Contract or fails to undertake Works in a timely manner; or
  - ii. If there is an Event of Insolvency
- b) In the event of termination under clause 12A(a), Total shall only be liable for those amounts properly due and payable at the time of termination and shall be entitled to set off against any amounts due to the Sub-Contractor, the incurred or likely to be incurred costs and loss or damage resultant from that termination.

**13. 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 subclause 13(a) does not arise as a result of a breach of the Sub-Contract by the Sub-Contractor or the negligent or wilful act or omission of the Sub-Contractor or by its subconsultants or their respective employees, agents or consultants, the Sub-Contractor may claim an extension of time under clause 6 of this Sub-Contract.
- c) If Total issues a notice to suspend any part of the Sub-Contract under this clause 13, Total may direct the Sub-Contractor to re-sequence the Sub-Contract Works so as to ensure that Completion is achieved by the date for Completion. Upon receipt of the notice under subclause 13(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 pursuant to subclause 13(a) except in accordance with this subclause 13(c).
- d) Without limiting any other rights under the Sub-Contract (including under this clause 13) 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 subclause 13(a) was given to the Sub-Contractor, Total may, in its absolute and sole discretion, terminate the Sub-Contract.

**14. DOCUMENTS**

- a) Documents provided by Total to the Sub-Contractor under this Sub-contract remain Total's property and shall be returned to Total on written demand.
- b) The Sub-Contractor must not use, copy or reproduce documents provided by Total for any other purpose other than the Works.
- c) 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. The Sub-Contractor acknowledges it will have No Claim against Total due to a direction from Total under this sub-clause.
- d) The Sub-Contract contains the entire agreement between the parties. Any previous understanding, agreement, representation or warranty relating to its subject matter is replaced by the Sub-Contract and has no future effect. For the avoidance of any doubt, any Sub-Contractor tender or quote is of no effect.
- e) Total may without the prior consent of the Sub-Contractor at any time and in its absolute discretion novate and/or assign its right or interest under the Sub-Contract to a third party.

**14A. 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 the Sub-Contract

Total representative/ initial

Sub-Contractor representative/ initial

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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.

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

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

**15. DISPUTE RESOLUTION**

- a) If a dispute arises out of or in connection with this Sub-Contract, the aggrieved party shall, within two (2) Business Days of this dispute arising, give to the other party a written notice of the dispute stating the details of the dispute.
- b) The parties shall meet within five (5) Business Days of the notice of dispute being received by the other party and make reasonable endeavours to resolve the dispute.
- c) Nothing in this clause prevents a party from seeking urgent injunctive, or declaratory, relief.
- d) It is a condition precedent to the referral of a dispute to litigation that the parties have complied with clauses (a) and (b) above.

**15A. 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 to Total to provide a false or misleading 'modern slavery statement'.

**15B. PRIVACY 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 Sub-Contract, 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;
  - iv. indemnify Total in respect of all loss suffered or incurred by Total arising out of or in connection with:
    - (A) a breach of the obligations of the Sub-Contractor under clause 15A;
    - (B) a breach of a secondary subcontractor's obligations under a secondary subcontract as contemplated by subclause 1(h);
    - (C) 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 secondary subcontractor; or
    - (D) the disclosure 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 secondary subcontractor in breach of an obligation of confidence.
- b) For the purposes of subclause 15A(a)(iv), costs, expenses, losses, damages or liabilities includes any compensation paid to a person by or on behalf of Total to settle a complaint arising out of or in connection with a breach of this clause.
- c) The Sub-Contractor must immediately notify Total in writing if the Sub-Contractor becomes aware of a breach of the obligations under clause 15A by itself or by a secondary subcontractor:
- d) The Sub-Contractor acknowledges that, in addition to the requirements of clause 15A, the Sub-Contractor may also be obliged to comply with other obligations in relation to the handling of Personal Information, including State and Territory legislation.

- e) Nothing in clause 15A limits any of the Sub-Contractor's obligations under the Sub-Contract or otherwise at law or in equity.

**15C. 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.

**15D. 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 subclause 15D of this Sub-Contract.
- c) Any terms and conditions proposed, published or sent by the Consultant 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.

**16. DEFINITIONS**

**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:
  - 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 that 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.

**Certificates** means the documents listed in the definition of or required for compliance with Legislative Requirements;

Total representative/ initial

Sub-Contractor representative/ initial

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**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;

**Completion** means the time when:

- a. the Sub-Contractor has complied with (and the Sub-Contract Works meet) all the requirements for practical completion under the Head Contract that relate to the Works (as certified under the head contract);
- b. the Works are complete in accordance with this Sub-Contract except for minor defects;
- c. any minor defects do not prevent the Works from being reasonably capable of being used for the purpose stated or implied by this Sub-Contract;
- d. the Sub-Contractor has completed a final clean up of the Works and has removed all its rubbish and debris from the site; and
- e. any other condition required to be satisfied under the Sub-Contract for Completion has been satisfied.

**Deed of Warranty** means the warranty deed in favour of Total and the Principal set out at Schedule 2, or an alternative form of the deed of warranty at Schedule 2 which Total may reasonably require;

**Defects Liability Period** means 12 months and commences on the Date of Practical Completion under the Head Contract.

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

**EPC System** means the electronic payment claim system as indicated at Item 16 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 a breach of a warranty in this Sub-Contract;
- b. the Sub-Contractor failing to comply with any requirement of this Sub-Contract, including the supply of items required by this Sub-Contract or observing Legislative Requirements;
- c. if the Sub-Contractor abandons or intends to abandon the Sub-Contract Works; 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 proceed with the Sub-Contract Works in accordance with this Sub-Contract in a prompt, efficient and safe manner and in accordance with Total’s Project Management Plan and the WHS Legislation;
- e. the Sub-Contractor fails to complete the Sub-Contract Works by the Date for Completion;
- f. wrongful suspension of Sub-Contract Work;
- g. in respect of clause 9(b)(iii), providing a statement or record of payment which is false, misleading or deceptive in any respect;
- h. failing to make good any loss or damage for which it is responsible, including defective work, in a prompt and proper manner;
- i. failure to comply promptly with the direction of Total to complete Variations or any other direction issued by Total to the Sub-Contractor; and
- j. any other action, event or omission which Total believes is a breach of the Sub-Contract by the Sub-Contractor.

**Event of Insolvency** means an admission of insolvency; where execution is levied by a creditor; an act of bankruptcy; where a bankruptcy petition is filed against the Sub-Contractor; the appointment of an administrator, controller, receiver or liquidator; a winding up order is made by a court; the entering into any composition or arrangement with creditors; or 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.

**Head Contract** means the contract between the Principal and Total for the execution of the Project.

**Heavy Vehicle National Law** means the Heavy Vehicle (Adoption of National Law) Act 2013 (NSW), as amended from time to time;

**Heavy Vehicle National Law Regulations** means the Heavy Vehicle (Adoption of National Law) Regulation 2013 (NSW), as amended from time to time;

**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).

**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 those rights.

**Item** means an item in the Schedule.

**Legislative Requirements** means:

- a. Acts, Ordinances, regulations, orders, awards and proclamations of the Commonwealth and the relevant State including Australian Standards and the Building Code of Australia any other applicable codes of practice;
- b. local laws, by laws, orders, ordinances and legal requirements of any Authority;
- c. Approvals, compliance requirements and requirements of organisations having jurisdiction in connection with the carrying out of the Sub-Contract Works;
- d. fees and charges payable in connection with the foregoing; and
- e. Acts at subclause (a) including the *Building Products (Safety) Act 2017* (NSW) No 69; the *Home Building Amendment (Cladding) Regulation 2018* (NSW); the *Strata Schemes Management Act 2015* (NSW); and *Access to Neighbouring Land Act 2000* (NSW); and
- f. WHS Legislation.

**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.”

**Personal Information** has the meaning in the Privacy Act;

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

**Project** means the whole of the work to be carried out under the Head Contract.

**Site** means the address of the Project.

**Sub-Contract** means this Sub-Contract.

**Sub-Contract Sum** means the amount payable to the Sub-Contractor by Total, as adjusted under this Sub-contract, as set out in the Schedule.

**Supplier Code of Conduct** means the Supplier Code of Conduct issued by the New South Wales Government for suppliers providing works or services to the New South Wales Government (as amended from time to time).

**Variation** means to vary the Works by changing the Scope of Works as described in the Schedule or otherwise adding to or omitting from the Scope of Works.

**WHS Legislation** means:

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

**Works** means the whole of the work to be carried out by the Sub-Contractor, subject to Variations.

Total representative/ initial

Sub-Contractor representative/ initial

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**SCHEDULE 1 - SUB-CONTRACTOR'S STATEMENT**

SUB-CONTRACTOR **[Insert Sub-Contractor 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 Work Health and Safety Act 2011 (NSW) or the Work Health and Safety Regulation 2017 (NSW);

Total representative/ initial	Sub-Contractor representative/ initial

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

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

ABN: **[Insert ABN]**

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

\_\_\_\_\_  
Signature of the declarant

\_\_\_\_\_  
Signature of the witness

\_\_\_\_\_  
Full Name of the declarant

\_\_\_\_\_  
Full Name of the witness

\_\_\_\_\_  
Position of the declarant

\_\_\_\_\_  
Relevant qualification or occupation of the witness

\_\_\_\_\_  
Date

Total representative/ initial	Sub-Contractor representative/ initial

**SUB-CONTRACTOR’S STATEMENT (FOR NEW SOUTH WALES)**

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

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

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

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

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

Has entered into a contract with **[Insert Total Entity] (Total)**  
 ABN (note 2): **[Insert ABN]**  
 Contract Number (not 3): **[Insert SC Agreement Number]**

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

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

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

- a. The abovementioned Sub-Contractor has either employed or engaged workers or Sub-Contractors during the above period of this contract. Tick [ ] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or Sub-Contractors are involved or you are an exempt employer for workers compensation purposes tick [ ] and only complete (f) and (g) below. You must tick one box. (Note 6)
- b. All workers compensation insurance premiums payable by the Sub-Contractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated \_\_\_\_/\_\_\_\_/\_\_\_\_ (Note 7)

Total representative/ initial	Sub-Contractor representative/ initial

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

\_\_\_\_\_  
 (f) Signature Full Name

\_\_\_\_\_  
 (g) Position/ Title Date

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

Notes

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

Total representative/ initial	Sub-Contractor representative/ initial

7. *In completing the Sub-Contractor’s Statement, a Sub-Contractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.*
8. *In completing the Sub-Contractor’s Statement, a Sub-Contractor declares that all remuneration payable to relevant employees for work under the contract has been paid.*
9. *In completing the Sub-Contractor’s Statement, a Sub-Contractor declares that all payroll tax payable relating to the work undertaken has been paid.*
10. *It is important to note that a business could be both a Sub-Contractor and a principal contractor, if a business ‘in turn’ engages Sub-Contractors to carry out the work. If your business engages a Sub-Contractor you are to also obtain Sub-Contractor’s Statements from your Sub-Contractors.*

**Statement Retention**

*The principal contractor receiving a Sub-Contractor’s Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.*

**Offences in respect of a false Statement**

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

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

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

**Further Information**

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

Total representative/ initial

Sub-Contractor representative/ initial

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**SCHEDULE 2 – DEED OF WARRANTY**

THIS DEED POLL is made on (date) \_\_\_\_\_

By \_\_\_\_\_  
 (Insert full name)  
 Of [Insert Sub-Contractor Address]

**BACKGROUND**

<b>PRINCIPAL</b>	[Principal]
<b>MAIN CONTRACTOR</b>	[Insert Total Entity] (Total)
<b>SUB-CONTRACT NUMBER</b>	[Insert SC Agreement Number]
<b>SUB-CONTRACT WORKS</b>	[Insert Trade Description]

**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;
8. The Sub-Contractor warrants that the design documents and drawings it has prepared for the Project will:

Total representative/ initial	Sub-Contractor representative/ initial

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

Total representative/ initial

Sub-Contractor representative/ initial

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that the Equipment and/or Sub-Contract Works conforms the requirements of any Final Report, Part 2C of the Home Building Act 1989 (NSW).

16. The Sub-Contractor warrants it is Financially Sound at the time of entering into this Deed and continues to be Financially Sound in the performance of the Sub-Contract Works and will comply with any direction of Total for the Sub-Contractor to provide proof that it is Financially Sound.
17. The Sub-Contractor warrants it has complied with all of its obligations under the Privacy Act 1988 (Cth) in regards to information supplied to Total in respect of the Sub-Contractor’s employees;
18. The Sub-Contractor warrants that it will ensure that they minimise any loss, damage or injury to any adjoining landowner and to comply with any agreement, right to access, easement, licence, or any access order, or a ‘neighbouring land access order’ or a ‘utility service access order’ pursuant to the Access to Neighbouring Land Act 2000 (NSW), which has been granted on the Project;
19. Nothing in this Deed will limit or otherwise affect any of its obligations or liability under the Sub-Contract or otherwise (including, without limitation, its obligation to rectify defects).
20. Total may assign the benefits and rights accrued under this Deed.

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

**SCHEDULE**

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

*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

**SCHEDULE 3 – DEED OF RELEASE**

<b>MAIN CONTRACTOR</b>	[Insert Total Entity] (ABN [Insert ABN])
<b>PROJECT</b>	[Insert Project Name]
<b>PRINCIPAL</b>	[Principal]
<b>SUB-CONTRACTOR/CONSULTANT</b>	[Insert Sub-Contractor Name]
<b>SUB-CONTRACT TRADE/WORKS</b>	[Insert Trade Description]
<b>AGREEMENT NO.</b>	[Insert SC Agreement Number]
<b>SUB-CONTRACT DATED</b>	[Insert Date DD/MM/YYYY]

<b>Original Sub-Contract Sum</b>	
<b>Variations to Sub-Contract Sum</b>	
<b>Revised Sub-Contract Sum</b>	
<b>LESS Amounts which the Sub-Contractor acknowledges having received</b>	
<b>LESS Retention (the “Security”)</b>	
<b>Leaving a Balance of (the “Payment at Completion”)</b>	

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
  - 4.2 In respect of the Security amount (if any).

Total representative/ initial

Sub-Contractor representative/ initial

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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

TRADE PACKAGE

<b>HEAD CONTRACT DETAILS</b>	[Insert Project Name]
<b>SUB-CONTRACT WORKS</b>	[Insert Trade Description]

CONTENTS

<b>ANNEXURE 1</b>	<b>DRAWINGS AND SPECIFICATIONS AS PER DOCUMENT REGISTER</b> [Insert Specifications] [Insert revision number and date]
<b>ANNEXURE 2</b>	<b>(GENERAL) SCOPE OF WORKS</b> [Insert Revision Number and Date]
<b>ANNEXURE 3</b>	<b>CONSTRUCTION PROGRAM</b> [Insert revision number and date]
<b>ANNEXURE 4</b>	<b>SIGNED TENDER INTERVIEW</b> [Insert Date of Interview]
<b>ANNEXURE 5</b>	<b>OTHER SUB-CONTRACT DOCUMENTATION</b> [List all documents with revision number and date]
<b>To be considered an ANNEXURE:</b>	<b>TOTAL'S SAFETY AND ENVIRONMENTAL HANDBOOK</b> Download from website: <a href="http://www.totalconstruction.com.au/wp-content/uploads/2018/09/safety_and_environmental_handbook_ver5.0_26062017.pdf">http://www.totalconstruction.com.au/wp-content/uploads/2018/09/safety_and_environmental_handbook_ver5.0_26062017.pdf</a>

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**

**(GENERAL) SCOPE OF WORKS**

Total representative/ initial

Sub-Contractor representative/ initial

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**ANNEXURE 3**

**CONSTRUCTION PROGRAM**

Total representative/ initial

Sub-Contractor representative/ initial

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**ANNEXURE 4**

**SIGNED TENDER INTERVIEW**

Total representative/ initial

Sub-Contractor representative/ initial

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**ANNEXURE 5**

**OTHER SUB-CONTRACT DOCUMENTATION**

Total representative/ initial

Sub-Contractor representative/ initial

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