

# IM-FOR-0703-009 Professional Services Agreement

Publish Date	July 2014 - HT
General	<p>This Contract is to be used where Daracon subcontracts professional services to another party.</p> <p><b><u>Where the works include any aspect of physical works or plant and equipment, use the general subcontract.</u></b></p> <p>Check with the Contract Manager if any doubt exists as other subcontract agreements exists where the goods or services being provided are not exclusively professional services.</p> <p>The Contract comprises the following parts:</p> <ul style="list-style-type: none"> <li>A. Subcontract Schedule</li> <li>B. Standard Contract Terms and Conditions</li> <li>C. Pricing and Payment</li> <li>D. Project Special Conditions</li> <li>E. Scope of Services</li> <li>F. Other documents forming part of the Subcontract</li> <li>G. Relevant Forms</li> </ul>
Details	<p>Details relating to the appointment of the subcontractor should be set out clearly in Part A.</p> <p>If additional details are required, include them in Part C, D or E as required.</p>
Standard Terms	<p>The standard terms and conditions are not to be varied in any way.</p> <p>Where the Subcontractor has a quote or other document they want included, it should be clearly described in Part F.</p>
Payment Terms	<p><b>PAYMENT TERMS MUST BE 45 DAYS. ANY CHANGE TO PAYMENT TERMS REQUIRES THE APPROVAL OF THE FINANCIAL CONTROLLER</b></p>
Industrial Relations	<p>The industrial relations schedule (at the end of the document) reflects the current legal requirements and provides for circumstances where the project is Federally funded (which require prescriptive IR obligations).</p> <p>If the Subcontractor has any questions in relation to this schedule, please direct them to the Contracts Manager.</p>
Security	<p>Please ensure the appropriate time for release of security is selected in Part A.</p> <p><i>“Option 1”, Daracon will release 50% of the Security within 14 days from the date of completion of the works under the Head Contract and the remaining 50% within 14 days of expiry of the defects liability period noted in the Head Contract;</i></p> <p><i>“Option 2”, Daracon will release 50% of the Security within 14 days of Completion of the Services and the remaining 50% on expiry of the Defects Liability Period under this Contract;</i></p> <p><i>“Option 3”, Daracon will release all the Security on Completion of the Services.</i></p> <p>If unsure, contact the Contracts Manager.</p>
Undertaking as to payments	<p>The former “Statutory Declaration” has been removed as a requirement to lodgement of progress claims.</p> <p>You must, prior to issuing the contract to the subcontractor, review the Undertaking and finalise the appropriate Daracon entity.</p>
Term Contract	<p>Where this contract is used as a term contract (that is where works are instructed under purchase order, not set out in the scope of works, you must ensure:</p> <ul style="list-style-type: none"> <li>(a) the purchase order clearly describes the services to be provided including (if required) a summary of the services to be provided and reference to any applicable standards or drawings; and</li> <li>(b) the security taken is sufficient for the total value of the services.</li> </ul>
Signature Authority	<p>You must, prior to issuing the contract, select the appropriate signature provision based on the subcontractor’s structure.</p>

Final	Ensure the signed agreement is processed at Wallsend to the central file system. A copy will be returned to the project.
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*Name*  
*Company*  
*Address*  
*Address*

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***Professional Services Agreement***

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Dear *Name*

As we discussed recently, I would like to formalise our business arrangements with Daracon's standard Professional Services Agreement (two copies attached).

Please read the details then:

- sign and date the front page of the agreement; and
- initial all other pages, schedules and appendices.

Once signed, please return both copies to me for execution by Daracon and I will send one fully signed document back to you for your records. If Daracon requests you to commence the works referred to in the Agreement and you commence works before returning the fully signed document to us, we will treat your agreement to commence works as acceptance of the Agreement.

If you need any matters explained with respect to the Agreement, you can telephone myself or Hugh Thomson on 4903 7000.

Looking forward to a successful business relationship.

Contracts Manager  
Daracon Group  
*Date*

# PROFESSIONAL SERVICES AGREEMENT

**Date**

**Parties**

<b>Daracon</b>	Daracon Contractors Pty Limited ACN 002 344 667 17 James Street, Wallsend NSW 2287
<b>Subcontractor or You</b>	

## Background

- A. Daracon wishes to engage You to provide the services in accordance with the terms of this Contract.
- B. You agree to provide the services on the terms of this Contract.

## Agreed terms

### 1. Entire Contract

- (a) The Contract Documents constitute the entire agreement between the parties in respect of the Services and the Contract supersedes all previous agreements, undertakings and communications, whether written or oral, relating to the subject matter of the Contract.
- (b) The Contract may be varied only by written instrument executed by both parties.
- (c) The Contract Documents are:

<b>Part</b>	<b>Contract</b>
A	Subcontract Schedule
B	Standard Subcontract Terms and Conditions
C	Pricing and Payment
D	Project Special Conditions
E	Scope of Services
F	Other Documents forming part of the Subcontract
G	Relevant Forms

### 2. Warranties

Each party represents and warrants to the other party that:

- (a) it has full power and authority to enter the Contract and to perform its obligations;
- (b) the Contract has been duly executed by it; and
- (c) the obligations set out in the Contract are enforceable against it.

<b>DARACON</b>	<b>SUBCONTRACTOR</b>
Signature: _____	Signature of Director: _____
Print Name: _____	Print Name: _____
Witness: _____	Witness: _____
Print Name: _____	Print Name: _____
Date: _____	Date: _____



## PART A – SUBCONTRACT SCHEDULE

ITEM		
1 Location of services:		
2 Description of services:	(see Part E and any Purchase Order for details)	
3 Subcontract Documents	Part A	Subcontract Schedule
	Part B	Standard Subcontract Terms & Conditions
	Part C	Pricing and Payment
	Part D	Project Special Conditions
	Part E	Scope of Services
	Part F	Other Documents forming part of the Subcontract (attach list)
	Part G	Relevant Forms
4 Basis of Price:	<input type="checkbox"/> Lump Sum <input type="checkbox"/> Schedule of Rates <span style="float: right;">(see Part C)</span>	
5 Commencement Date:		
6 Completion Date:	OR <input type="checkbox"/> 12 month term	
7 Security Required (5% of the Contract Sum)	<input type="checkbox"/> Cash Security <input type="checkbox"/> Undertaking(s) acceptable to the Contractor <input type="checkbox"/> None	
8 Time at which Progress Claims to be submitted:	Last Day of Month	
9 Time for payment	<b>45 days from end of month of claim</b>	
10 Defects Liability Period:	365 days <span style="float: right;">(from practical completion of the Head Contract)</span>	
11 Liquidated Damages:	\$ <span style="float: right;">(as per Head Contract)</span>	
12 Recipient Created Tax Invoice (RCTI) applies	<b>YES</b> <input type="checkbox"/> <b>NO</b> <input checked="" type="checkbox"/>	
13 Release of Security <span style="float: right;">(clause 9.5)</span>	<b>OPTION 1</b> <input type="checkbox"/> <b>OPTION 2</b> <input checked="" type="checkbox"/> <b>OPTION 3</b> <input type="checkbox"/>	
14 Condition Precedent <span style="float: right;">(clause 27)</span>	<b>YES</b> <input type="checkbox"/> <b>NO</b> <input checked="" type="checkbox"/>	
15 Head Contract compliance required <span style="float: right;">(clause 21)</span>	<b>YES</b> <input checked="" type="checkbox"/> <b>NO</b> <input type="checkbox"/>	
16 Insurances Required (state "NIL" if not required)	<b>Insurance Type</b>	<b>Minimum Cover</b>
	<input checked="" type="checkbox"/> Public Liability	\$ _____ (\$20M if not stated)
	<input checked="" type="checkbox"/> Professional Indemnity	\$ _____ (\$5M if not stated)
	<input checked="" type="checkbox"/> Workers Compensation	As required by Law
	<input type="checkbox"/> Motor Vehicle / Plant & Equipment	\$ _____ (\$20M if not stated)
	<input type="checkbox"/> Other (specify)	\$ _____
17 Does the Federal Building Code apply?(clause 23)	<b>YES</b> <input checked="" type="checkbox"/> <b>NO</b> <input type="checkbox"/>	
18 Does the State Building Code apply? (clause 24)	<b>YES</b> <input checked="" type="checkbox"/> <b>NO</b> <input type="checkbox"/>	



## PART B – STANDARD TERMS AND CONDITIONS

### 1 DEFINITIONS

In these terms, except where the context otherwise requires:

**Alcohol and Other Drug Policy and Procedure** means the alcohol and other drug policy released by Daracon from time to time.

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether direct or indirect, consequential, present or future, fixed or ascertained, actual or contingent and whether at law, in equity, under statute or otherwise.

**Commencement Date** means the date specified in Item 5 of Part A as the date to commence Services.

**Completion** means that point in time when the Services have been completed by You as determined by Daracon.

**Confidential Information** means all confidential information, non-public or proprietary information exchanged between the parties or known to a party before, on or after the date of this Contract relating to Daracon or its client or principal but excludes information:

- (a) which is in or becomes part of the public domain other than through breach of this agreement or an obligation of confidence owed to the disclosing party; or
- (b) which is acquired from a third party entitled to disclose it.

**Contract** means the Subcontractor Agreement and all of the documents referred to in Item 3 of Part A.

**Contract Sum** means the price as noted in Item 4 of Part A and detailed in Part C of the Contract.

**Daracon** means Daracon Contractors Pty Ltd (ACN 002 344 667) and all of its Subsidiaries, related entities or assigns.

**Daracon Representative** means the representative appointed by Daracon under clause 6(c).

**Date for Completion** means the date or last day of the period of time stated in Item 6 of Part A, or:

- (a) as amended in writing pursuant to this Contract; or
- (b) where this Contract is a term arrangement, as set out in a Purchase Order.

**Defects Liability Period** means the period stated in Item 10 of Part A.

**Dispute** means a dispute arising out of or relating to this Contract including a dispute as to breach or termination of this Contract or as to any claim in tort, in equity or pursuant to any statute.

**GST** means a tax imposed under the GST Law.

**GST Law** has the meaning given to it in section 195-1 of the *A New Tax System (Goods and Services Tax) Act (Cth) 1999*.

**Head Contract** means the contract between Daracon and the principal instructing the works (including the Services) to which this Contract relates.

**Insurance Policies** means the policies referred to in Item 16 of Part A.

**Intellectual Property Rights** means all rights in trademarks, trade names, domain names, logos, set-up, patents, inventions, design rights, copyrights, circuit layout rights, and all similar rights in any part of the world (including know-how) including, where those rights are obtained or enhanced by registration, any registration of those rights and applications and rights to apply for those registrations.

**Invoice Amount** means the amount stated in the invoice issued in accordance with clause 7.6 or clause 7.8 (as the case may be).

**Latent Conditions** means physical conditions on the Site or its surrounds (excluding weather conditions) which differ materially from the conditions which could reasonably have been anticipated by a competent subcontractor at the time of entering into the Contract if the subcontractor had inspected and consider all information available or reasonably obtainable by it.

**Law** means all acts, ordinances, regulations, bylaws, orders, industry standards, codes of practice, awards and proclamations, whether by the Commonwealth or any State or Territory and further includes any publication from a recognised industry body.

**Liquidated Damages** means the daily rate set out in Item 11 of Part A.

**Payment Period** means day set out in Item 9 of Part A.

**Personnel** includes any personnel, employee, consultant, supplier, subcontractor or any other person appointed by that party.

**Progress Claim** means a claim submitted by You in a form acceptable to Daracon for Services completed prior to the Progress Claim Lodgement Date.

**Progress Claim Lodgement Date** means the date specified in Item 8 of Part A.

**Purchase Order** means a purchase order issued by Daracon to You setting out Services Daracon requires You to provide from time to time.

**Security** means the security provided by You to Daracon as referenced in Item 7 of Part A.

**Services** means the works described in Item 2 of Part A and otherwise in accordance with:

- (a) the scope of works set out in Part E of this Contract; and
- (b) any Purchase Order.

**Site** means the site identified in Item 1 of Part A and such other sites as set out in a Purchase Order.

**Subsidiary** has the same meaning given to it in the *Corporations Act (Cth) 2001*.

**Term** means the period starting on the Commencement Date and continuing to Completion.

**Undertaking** means the Undertaking as to payment obligations set out in Part G.



**WHS** means work health and safety.

## 2 INTERPRETATION

In these terms, unless the context indicates a contrary intention:

**(documents)** a reference to these terms or another document includes any document which varies, supplements, replaces, assigns or novates these terms or that other document.

**(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of these terms.

**(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity.

**(corporation)** a reference to a corporation includes its successors and permitted assigns.

**(including) including** and **includes** are not words of limitation.

**(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning.

**(singular)** the singular includes the plural and vice-versa.

**(rules of construction)** neither these terms nor any part of them is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

**(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.

**(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Newcastle, Australia even if the obligation is to be performed elsewhere.

**(writing)** a reference to a notice, consent, request, approval or other communication under these terms or an agreement between the parties means a written notice, request, consent, approval or agreement.

**(replacement bodies)** a reference to a body (including an institute, association or government authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.

**(Australian currency)** a reference to **dollars** or **\$** is to Australian currency.

**(day)** any reference to the word days is a reference to calendar days and is not limited to working days.

**(month)** a reference to a month is a reference to a calendar month.

**(year)** a reference to a year is a reference to twelve consecutive calendar months.

**(priority)** in the event any Contract Document is inconsistent with another Contract Document, the Contract Document ranking highest in priority (with (1) being the highest and (5) being the lowest), prevails to the extent of that inconsistency:

Part	Contract Document	Priority Ranking
A	Subcontract Schedule	1

B	Standard Subcontract Terms & Conditions	5
C	Pricing and Payment	2
D	Project Special Conditions	3
E	Scope of Services	4
F	Other Documents forming part of Contract	6
G	Relevant Forms	7

## 3 SCOPE OF CONTRACT

3.1 This Contract commences on the Commencement Date and, subject to this clause 3 and clause 17 expires on the Completion Date unless extended in writing by mutual agreement of the parties.

3.2 This Contract sets out the terms by which all Services to be provided by You, including services set out in a Purchase Order issued by Daracon and accepted by You, will be governed.

3.3 Where a Purchase Order is issued on or before the Completion Date, but the Services prescribed in that Purchase Order continue after the Completion Date, then this Contract continues to apply until such time as those Services achieve Completion.

## 4 WARRANTIES

You warrant to Daracon:

- (a) You have read these terms (and the Contract generally) and fully understand and comprehend the Contract;
- (b) You have had opportunity to obtain independent legal advice on these terms (and the Contract generally); and
- (c) You have full power and authority to enter into this Contract.

## 5 SUBCONTRACTOR OBLIGATIONS

5.1 You must:

- (a) perform the Services in a proper and workmanlike manner to Daracon's satisfaction and in accordance with the provisions of this Contract;
- (b) perform the Services with a standard of care and skill to be expected of a diligent and prudent subcontractor and who possesses the knowledge, skill and expertise of a subcontractor qualified and experienced to act in that capacity;
- (c) where requested by Daracon, submit a program for carrying out the Services and comply with that program which must include commencing the Services on the Commencement Date and achieving Completion by the Date for Completion;
- (d) with due expedition and without delay, and in accordance with any program supplied, provide all professional skill and advice required for carrying out the Services;
- (e) comply with all directions provided by Daracon, whether in writing or otherwise;
- (f) remain fully responsible for the Services despite any review or acceptance of those Services by Daracon;

- (g) subject to clause 5.6, appoint Personnel with appropriate qualifications, competencies and experience to carry out the Services;
  - (h) promptly give written notice to Daracon if and to the extent that You become aware that any document or other information provided by You is ambiguous or inaccurate or is otherwise insufficient to enable You to carry out the Services;
  - (i) make reasonable enquiries to ascertain Daracon's requirements regarding the Services;
  - (j) regularly consult with Daracon regarding the carrying out of the Services;
  - (k) as soon as practicable after becoming aware of any matter or circumstance which may adversely affect or has adversely affected the scope, timing or carrying out of the Services, give written notice to Daracon detailing the matter or circumstance and its anticipated affect on the Services;
  - (l) comply with all Laws in carrying out the Services;
  - (m) after reasonable prior written notice by Daracon, permit Daracon to inspect and discuss the work, relevant records, documents and material produced by You in carrying out the Services or in connection with the Services;
  - (n) do all things necessary and necessarily and incidental for the proper performance of Your obligations under the Contract;
  - (o) obtain all permits and pay all fees required in connection with the performance of the Services; and
  - (p) provide such plant and equipment necessary to complete the Services in a safe and efficient manner, otherwise ensuring the plant and equipment is acceptable to Daracon. You are solely responsible for maintaining all plant and equipment bought onto the Site by You or Your Personnel in safe and proper working condition.
- 5.2 You also agree and warrant to Daracon that You have examined all documentation relating to the Services and that they are suitable, appropriate and otherwise adequate for the purpose of performing the Services required to be carried out in accordance with this Contract.
- 5.3 You agree and warrant You rely on Your own investigations as to the suitability of the Site for performing the Services.
- 5.4 You must comply with the obligations imposed on You under this Contract.
- 5.5 On or before Completion, You must, at Your cost, collect and remove all waste, debris, plant and machinery brought onto the Site by You or Your Personnel.
- 5.6 You must not, without the prior written approval of Daracon, appoint any subcontractor to perform any part of the Services.

## 6 DARACON'S OBLIGATIONS

Daracon will:

- (a) provide to You all drawings, data and information (made available to it by the principal) which are reasonably required to complete the Services;
- (b) notify You of any known or suspected hazards which it is aware of on the Site;
- (c) nominate a representative with authority to give directions to You regarding the Services.

## 7 INVOICING AND PAYMENT

7.1 Unless otherwise agreed by Daracon in writing, the Contract Sum is firm and not subject to adjustment for rise and fall in costs or for any other cause whatsoever except by Variation of the Services in accordance with clause 11.

7.2 Prior to any payment being made and prior to the Progress Claim Lodgement Date, You must ensure You have lodged:

- (a) a complete and duly signed subcontractor's statement in accordance with Part G;
- (b) a complete and duly signed Undertaking in accordance with Part G; and
- (c) Your Progress Claim.

7.3 You acknowledge that if You fail to comply with Your obligations under this Contract, Daracon is under no obligation to make any payment to You for the affected Services.

7.4 Where Daracon accepts all or part of a Progress Claim made by You, Daracon will certify that Progress Claim (or the agreed portion of it) and, subject to the applicability of clause 7.6 or clause 7.8, the responsible party (as determined by clause 7.6 or clause 7.8) must issue an invoice.

7.5 Where Daracon does not accept all or part of a Progress Claim, Daracon will notify You that it does not accept all or part of the Progress Claim, provide summary reasons for its determination and require You to submit an amended Progress Claim.

7.6 Where Item 12 of Part A indicates "Yes" and subject to clause 7.4, the parties agree:

- (a) within 10 days of certification of the Progress Claim by Daracon, Daracon will issue a Recipient Created Tax Invoice (**RCTI**) and adjustment notes in respect of all supplies under or in connection with the Contract;
- (b) You warrant that You are registered for GST when it enters into this Contract and that it will continue to be registered for the duration of the Term; and
- (c) Daracon will indemnify You for any liability for GST and subsequent penalties which may arise from an understatement of the GST payable in an RCTI.

7.7 On issuing an RCTI, Daracon agrees that it will pay the Invoice Amount:

- (a) within the Payment Period; and
- (b) by way of cash, cheque or electronic funds transfer to an account nominated

- by You, or such other method as agreed by the parties from time to time.
- 7.8 Where Item 12 of Part A indicates “No” and subject to clause 7.4, the parties agree:
- (a) You must issue a GST compliant invoice (and adjustment notes in respect of all supplies under or in connection with the Contract set out in a duly approved Work Docket) to Daracon; and
  - (b) You warrant that You are registered for GST when You enter into this Contract and that it will continue to be registered for the duration of the Hire Period.
- 7.9 On receipt of an invoice issued under clause 7.8, Daracon agrees that it will pay the Invoice Amount:
- (a) within the Payment Period; and
  - (b) by way of cash, cheque or electronic funds transfer to an account nominated by You, or such other method as agreed by the parties from time to time.
- 7.10 Progress payments made to You will not be evidence of the value of services carried out or an admission of liability or evidence that the work has been executed satisfactorily but will be on account pending final reconciliation by Daracon of money payable to You for the Services.
- 7.11 If the Contract contains provisional sums in Part C, the Contract Sum will be adjusted in accordance with the actual quantities at the rates specified, save that any increased actual quantities will be capped at 10% to the estimated quantity.
- 7.12 Daracon may set off any amount which You owe to Daracon under this Contract as a debt due against any progress payment or the final payment.
- 8 TAXES**
- All prices quoted are exclusive of GST and any other Government charges and taxes that may be levied now or in the future unless specifically stated otherwise. Any such charges or taxes will be at Your expense.
- 9 SECURITY**
- 9.1 You must provide the Security (as set out in Item 7 of Part A) to Daracon before the Commencement Date or before accessing the Site, whichever occurs first.
- 9.2 Where the Security required is an undertaking, it must be unconditional and otherwise in a form acceptable to Daracon and duly executed. The undertaking may be a bank guarantee, accredited security bond or other form acceptable to Daracon.
- 9.3 Daracon may have recourse to the Security by giving You not less than 5 days notice in writing that there has been:
- (a) a breach by You of this Contract;
  - (b) a failure by You to adequately discharge Your duties; or
  - (c) a defect in all or part of the Services provided.
- 9.4 Subject to:
- (a) You providing Daracon with a completed and duly signed final statement in accordance with Part G; and

- (b) Daracon not being entitled to exercise the Security at any time (including after Completion of the Services),
- Daracon will release the Security in accordance with clause 9.5.
- 9.5 Where Item 13 of Part A indicates;
- (a) “Option 1”, Daracon will release 50% of the Security within 14 days from the date of completion of the works under the Head Contract and the remaining 50% within 14 days of expiry of the defects liability period noted in the Head Contract;
  - (b) “Option 2”, Daracon will release 50% of the Security within 14 days of Completion of the Services and the remaining 50% within 14 days of expiry of the Defects Liability Period under this Contract;
  - (c) “Option 3”, Daracon will release all the Security on Completion of the Services.
- 9.6 Daracon may deduct any amounts which You owe to Daracon from any Security held by it.

## **10 LIABILITY FOR DEFECTS AND DAMAGE**

- 10.1 Should any defect arise as a result of any act, default or omission by You or Your Personnel which may result in loss or damage (or likely loss or damage) being suffered by the principal, Daracon or other person, You must, within 14 days of receipt of notice in writing from Daracon, remedy that defect (and any consequential effect of that defect) at Your own cost and expense. If You fail or neglect to make good such damage within 14 days from receipt of a notice from Daracon or if Daracon believes that You are not capable of rectifying the defects, then Daracon may make good such damage at Your expense and as a debt due by You to Daracon.
- 10.2 At any time after Completion but before expiry of the defects liability period in the Head Contract, should any defect arise as a result of any act, default or omission by You or Your Personnel which results in loss or damage (or likely loss or damage) being suffered by the principal or Daracon, You must, within 14 days of receipt of notice in writing from Daracon, remedy that defect (and any consequential effect of that defect) at Your own cost and expense to Daracon’s satisfaction. If You do not comply with You obligations under this clause, You will be in breach and, in addition to any other remedy available to Daracon, Daracon may arrange for the defects, and any consequential effects of the defects, to be remedied by a third party at Your expense and as a debt due by You to Daracon.

## **11 VARIATIONS**

- 11.1 You must vary the Services as directed by Daracon from time to time.
- 11.2 The price for any variation will be added to, or deducted from, the Contract Sum as applicable.
- 11.3 The price for a variation will, wherever possible, be agreed in writing prior to the commencement of the Variation having regard in the first instance to any agreed rates or sums. In the absence of such agreement and subject to the provisions of

clause 20, the price to be paid for a variation must be a reasonable price as determined by Daracon, provided that any variation directed by the Principal or its representative not be valued in excess of the amount determined for the Variation pursuant to the Head Contract.

11.4 You will be entitled to an adjustment of the Contract Sum for a variation when:

- (a) Daracon has advised that the additional or varied services are a variation to the Contract;
- (b) the services directed are materially different from and out of character to Services and, notwithstanding an error or omission in the subcontract documents, could not have been reasonably anticipated by an experienced and prudent subcontractor having regard to the nature of the Services; and
- (c) within 5 business days after the commencement of the proposed variation, You give notice in writing to Daracon that the direction provided by Daracon is a variation and requesting acknowledgement of acceptance by Daracon of that variation notice;

Daracon must act reasonably in accepting or rejecting the variation notice provided under clause 11.4(c). Any failure to determine the request does not imply that Daracon accepts the services as a variation. In the event of a dispute, the provisions of clause 20 will apply.

11.5 If a variation is approved by Daracon, Daracon may determine a reasonable extension of time which it will grant to You which will be an extension of the Date for Completion.

11.6 Despite any other clause in this Contract, if You discover any matter or circumstance which may give rise to a variation and You do not notify Daracon of that matter or circumstance (and the details of the variation request) in writing within 5 days of the matter or circumstance arising, Daracon is under no obligation to approve the variation or adjust the Contract Sum.

## 12 COMPLETION AND DELAYS TO SERVICES

12.1 You agree, in the absence of any agreed delays, You must complete the Services by the Date for Completion.

12.2 If You do not complete the Services by the Date for Completion, You will be charged Liquidated Damages at the rate specified in Item 11 of Part A for the period from the Date for Completion until Completion occurs.

12.3 You must employ such resources as are necessary to complete the Services expeditiously, in coordination with other trades and in accordance with the construction program, as amended from time to time.

12.4 Daracon reserves the right to adjust, by notice in writing to You, the Commencement Date and the Date for Completion to ensure compliance with the Head Contract program.

12.5 If, in Daracon's opinion, there are insufficient resources being deployed by You for the completion of the Services by the Date for Completion, Daracon may, without prejudice to any further remedy, after giving notice to You,

employ additional resources to complete the Services by the Date for Completion at Your expense.

12.6 Where:

- (a) the Services are delayed by a cause outside of Your control or by a cause which could not have been anticipated by a skilled and experienced subcontractor and that delay gives rise to the granting of an extension of time under the Head Contract; and
- (b) You give notice in writing to Daracon within 5 days of becoming aware of the cause of delay setting out the cause and extent of the delay,

then Daracon may grant You an extension of the Date for Completion.

12.7 Where provided for in this Contract, You may apply and Daracon may grant (at its discretion), an allowance for any costs arising from the delay.

12.8 You agree, while You may be entitled to submit a request for an extension of time due to wet weather, despite any other clause in this Contract, in no circumstances will Daracon be liable to You for any costs, fees or charges which You may incur as a result of that wet weather.

## 13 INTELLECTUAL PROPERTY

13.1 Except as may be otherwise expressly notified in writing by You to Daracon, You warrant to and in favour of Daracon:

- (a) You own exclusively all Intellectual Property Rights in or in relation to the Services;
- (b) no Claim has been made or threatened against You alleging a breach of any third party's Intellectual Property Rights; and
- (c) any acts done by You as contemplated under this Contract will not infringe any third parties' Intellectual Property Rights.

13.2 You agree all title to and in the Intellectual Property Rights in or in relation to Services, whether existing before the date of this Contract or created thereafter, vests with Daracon.

## 14 SITE ACCESS AND FACILITIES

14.1 Daracon will give You sufficient possession of the Site at times to enable You to execute the Services in accordance with this Contract.

14.2 Unless otherwise stated, You are entirely responsible for the supply delivery and hoisting of all Your own materials and for the supply erection and dismantling of scaffolding and temporary sheds.

14.3 Where Daracon provides any facilities for Your use, You must inspect those facilities prior to use and satisfy Yourself of their condition and suitability.

## 15 WHS&E COMPLIANCE

15.1 You and all Your Personnel must comply with all relevant Laws including obtaining any necessary certificates, licenses, consent, permits and approvals of any organisation having jurisdiction required for performance of the Services.

- 15.2 In addition to Your obligations under clause 15.1, You must comply with the obligations set out in the *Work Health and Safety Act 2011 (and any of its regulations)* and *The Protection of the Environment Operations Act (NSW) 1997*.
- 15.3 Before commencing the Services, You must:
- (a) provide a Safe Work Method Statement (SWMS) or Risk Assessment for the Services on industry acceptable terms and otherwise in a form reasonably acceptable to Daracon and implement and train all Your Personnel in the execution of that SWMS;
  - (b) provide evidence of:
    - (1) each of Your Personnel and any of Your subcontractor's Personnel having completed the WorkCover Accredited General Induction for Construction Work; and
    - (2) a Work Activity Induction (as per the WorkCover Code of Practice for WHS Induction Training in the Construction Industry) prior to completing a Daracon site specific induction; and
- 15.4 During the term of this Contract, You must:
- (a) ensure any operator, Personnel and any other person performing the Services (**Support Personnel**) are competent and suitably skilled and trained for the assigned task and have been properly inducted for working on the Site;
  - (b) ensure Support Personnel carry in their possession any relevant licence, ticket, training records and any other document required by Daracon from time to time (including Certificates of Competency where required) and present those documents to Daracon on request;
  - (c) ensure You and Your Support Personnel immediately report to Daracon any changes to the work conditions, the work method, condition of equipment that impact upon risk (including current SWMS);
  - (d) identify, control and monitor the environmental aspects of its work including erosion and sedimentation, waste, dust, noise, habitat and heritage issues and where requested to do so by Daracon, present control measures to Daracon and ensure the compatibility of those control measures with other facilities planned for the Site;
  - (e) report all incidents, including damage, near misses, injuries, illnesses, plant and equipment failure and defects to Daracon and the project manager immediately during the term of this Contract. All documentation created as a result of the incident, near miss, injury, illness, equipment failure or defects are to be provided to Daracon as soon as reasonably practicable following its creation;
- (f) at all times, comply with Daracon's WHS policies, procedures, rules, guides, standards or other type of instruction as released by Daracon from time to time including those set out in Part F (if any) (copies of which Daracon must make available to You on request);
  - (g) comply with any direction provided by Daracon or any of its superintendents, customers or principals;
  - (h) if working on or about a mine site, comply with all requirements of the *Coal Mine Health and Safety Act (NSW) 2002* and related regulations;
  - (i) report any ambiguities or inconsistencies contained in any Daracon policy relating to the Services;
  - (j) You must maintain and provide to Daracon details of any and all hazardous substances and classified dangerous goods to be brought onto the Site. A hazardous substances register relating to the substances must be maintained by You setting out the full name of the substance, chemical name, estimated quantities held, purpose etc.  
 A risk assessment and SWMS must be completed on the safe use of the substances, together with training of personnel in a current safety data sheet (SDS) (less than 5 years from publication). SDS's must conform in format and detail to the National Code of Practice for the Preparation of SDS (NOHSC 2011:2003).  
 All substances must be stored safely and securely and in accordance with the relevant Australian Standards.  
 No substance declared as established, probable or suspected carcinogen is permitted to be used on Site.
- 15.5 All communication for the purpose of this clause 15 must be:
- (a) immediately communicated verbally by the You to Daracon; and
  - (b) confirmed in writing by You to Daracon within 12 hours of the occurrence of the event giving rise to the notice obligation.
- 15.6 You must, on request by Daracon, conduct a weekly toolbox talk and provide opportunity for Your Personnel to raise any WHS issues and allow Your Personnel to raise and resolve WHS related matters. You may, as agreed, seek to combine WHS consultation processes by holding joint toolbox talks with Daracon.  
 You must participate in Daracon's WHS consultation arrangements when required to do so by Daracon. You are required to demonstrate daily communication (on the work and any safety directions) with work teams (referred to by Daracon as Daily Pre-start Meetings) to ensure that communication and consultation takes place regularly.
- 15.7 You agree Daracon may (at Daracon's cost) monitor and inspect Your compliance with WHS and environmental Laws from time to time which may include carrying out an audit on Your relevant work practices. You must use Your reasonable

- endeavours to comply with any request for information by an auditor.
- 15.8 You acknowledge You have read, understand and accept the terms of the Daracon Alcohol and Other Drug Policy and Procedure and agrees You and Your Support Personnel must:
- (a) comply with the terms of that policy, including the right for Daracon to conduct random and “show cause” testing from time to time; and
  - (b) be “fit for work” at all times when performing the Services.
- 15.9 If You are in breach of Your obligations under clause 15.8, Daracon may require You to take such remedial or corrective action as it considers reasonably necessary and You must do so at Your expense. Failure by You to comply with Your obligations under this clause will entitle Daracon to terminate this Contract in accordance with clause 17.
- 16 INSURANCES**
- 16.1 Prior to commencing the Services, You must obtain and maintain the Insurance Policies referred to in Item 16 of Part A:
- (a) where the policy is on a claims incurred basis, for duration of the Term; and
  - (b) where the policy is on a claims made basis, for the duration of the Term and for an additional period of 5 years after Completion.
- 16.2 Daracon and the principal must be nominated as interested parties in each policy of insurance relevant to the agreement (excluding Workers Compensation and CTP insurance).
- 16.3 You must produce evidence of the currency of each policy to Daracon immediately prior to the Commencement Date and within 7 days of any subsequent request by Daracon.
- 16.4 If You do not comply with Your obligations under this clause, You agree Daracon may obtain the Insurance Policies on Your behalf and treat any costs associated with such Insurance Policies as a debt due by You to Daracon and exercise its rights of set off.
- 17 TERM AND TERMINATION**
- 17.1 This Contract commences on the Commencement Date and will, subject to this clause 17 and clause 3, expire on Completion.
- 17.2 A party may immediately terminate this Contract if:
- (a) the other party defaults in the performance of a term of this Contract and that default is capable of remedy and the default is not remedied within 14 days after written notice specifying the default and the acts required to rectify the default has been given to the other party;
  - (b) the other party defaults in the performance of a term of this Contract and that default is not capable of remedy;
  - (c) an order is made or a resolution passed for the winding up of the other party other than for the purpose of solvent reconstruction;
  - (d) the other party ceases or threatens to cease to carry on its business;
  - (e) the other party is unable to pay its debts as and when they fall due; or
  - (f) the other party has a receiver and/or manager or official manager or provisional liquidator appointed or a secured creditor takes possession of the whole or a substantial part of its assets or undertaking; or convenes a meeting for the purpose of, or enters or proposes to enter into, any arrangement or composition with its creditors.
- 17.3 Daracon may terminate this Contract for convenience in its absolute discretion at any time. Upon termination under this clause 17.3, You will be entitled to payment for:
- (a) that part of the Services performed as at the time of termination; and
  - (b) the cost of materials or goods properly ordered for the Services, which You have paid for or are legally bound to pay, subject to title transferring to Daracon on payment.
- 17.4 If for any reason a purported termination under this Contract or at general law by Daracon is held to be ineffective, the purported termination is not a breach or repudiation of this Contract and must be treated as having been effected under clause 17.3.
- 18 INDEMNITY AND RISK**
- 18.1 You acknowledge that Daracon relies on Your professional expertise in providing the Services.
- 18.2 You indemnify Daracon and the principal to the fullest extent permitted by Law from and against all Claims suffered or incurred by Daracon or the principal (including third party claims) arising directly or indirectly from any damage, injury or loss caused by or resulting from any:
- (a) incorrect advice, reports or other assessments;
  - (b) breach of Your obligations under this Contract;
  - (c) injury, total and permanent disability or death caused by You or Your Personnel;
  - (d) damage to property (whether owned by Daracon or not) caused by You or Your Personnel; and
  - (e) negligent act or omission by You or Your Personnel.
- 18.3 Daracon agrees that where it contributes to any loss or damage being suffered, Your liability under clause 18.1 may be reduced proportionately to the extent that the act or omission of Daracon or its Personnel (excluding You and Your Personnel), have contributed to the loss or damage.
- 18.4 With respect to You only, the operation of Part 4 of the *Civil Liability Act (NSW) 2002 (the Act)* is excluded in relation to all and any rights, obligations and liabilities under this Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at Law.
- 18.5 You specifically agree and undertake that in the event of any proceedings to which the Act are

applicable, You will not seek to rely on the provisions of the Act, other than as directly against any such concurrent wrongdoer in its own capacity.

18.6 You agree, under no circumstances will Daracon be liable for consequential losses including loss of profit, or any other indirect loss.

## 19 CONFIDENTIALITY

19.1 You acknowledge that You and Your Personnel may be given access to Confidential Information in the course of performing the Services.

19.2 Except as otherwise required by Law, You must, and You must ensure Your Personnel:

- (a) keep strictly secret and confidential the Confidential Information; and
- (b) not copy, publish, divulge or disclose in any manner whatsoever the Confidential Information to any person other than to those of its employees, contractors and agents directly involved in the performance of this Contract and only to the extent that such disclosure is required for the performance of this Contract.

19.3 On demand by Daracon, You must immediately return to Daracon all Confidential Information and other information obtained during the course of providing the Services to Daracon.

## 20 DISPUTE RESOLUTION

20.1 A party may not commence any court or arbitration proceedings relating to a Dispute unless it complies with this clause 20 except where the party seeks urgent interlocutory relief.

20.2 A party claiming that a Dispute has arisen under or in relation to this agreement must give written notice to the other party to this contract specifying the nature of the Dispute within 5 days of the cause of the dispute arising.

20.3 On receipt of that notice by that other party, the parties must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or other techniques agreed by them.

20.4 If the parties do not agree within 7 days of receipt of the notice (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; and
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales. The parties must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

20.5 The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 20 is to attempt to settle the Dispute concerned. No party may use any information or documents obtained through any dispute resolution

process undertaken pursuant to this clause 20 for any purpose other than in an attempt to settle the Dispute concerned.

20.6 Unless otherwise agreed by the parties, the parties must continue to perform their obligations under this Contract despite the existence of a Dispute.

## 21 HEAD CONTRACT COMPLIANCE

21.1 This clause 21 only applies where Item 15 of Part A states "Yes".

21.2 You agree it is an essential term of this Contract that You must comply with all the conditions of the Head Contract to which Daracon is subject, as if You were a party to the Head Contract to the extent that it relates to the Services.

21.3 You are responsible for determining whether clause 21.1 applies and You warrant to Daracon that You have fully inspected and understood the requirements of any applicable Head Contract.

21.4 Daracon must make the relevant terms of any Head Contract available to You on request.

## 22 INDUSTRIAL REQUIREMENTS

22.1 Prior to commencing any work on the Site, You must make yourself aware of all requirements for the Services and the Site relating to:

- (a) working hours;
- (b) industrial Matters;
- (c) occupational health and safety Matters; and
- (d) environmental Matters,

which may apply to the Services or the Site.

22.2 You must ensure that You and any of Your Personnel comply with all Laws relating to industrial matters (including all relevant legislation, awards, enterprise agreements, industrial instruments, codes of practice and implementation guidelines) during the execution of the Services.

22.3 You must comply with Schedule 1 of Part F unless otherwise agreed in writing with Daracon.

22.4 You agree this clause is a material term of this Contract and any failure by You to comply with Your obligations under this clause is a material breach of this Contract.

22.5 For the purposes of clause 22.1, **Matters** means all relevant legislation, awards, enterprise agreements, industrial instruments, codes of practice and implementation guidelines and any other standard which could reasonably be applied to the matter.

## 23 FEDERAL CODE 2013

23.1 This clause applies where Item 17 in Part A indicates "Yes" or You are otherwise required to comply with the Building Code 2013 (**Code**).

23.2 You must comply with the Code and the Guidelines. Copies of the Code are available at [www.deewr.gov.au/BuildingCode](http://www.deewr.gov.au/BuildingCode).

23.3 Compliance with the Code shall not relieve You from responsibility to perform the Contract, or from liability for any defect in the works arising from compliance with the Code.

23.4 Where a change in the Contract is proposed and that change would affect compliance with the Code, You must submit a report to the Commonwealth

- specifying the extent to which the Contractor's compliance with the Code will be affected.
- 23.5 You must maintain adequate records of the compliance with the Code by:
- (a) You;
  - (b) Your Subcontractors;
  - (c) consultants; and
  - (d) its Related Entities.
- 23.6 If You do not comply with the requirements of the Code in the performance of this 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 You or a related entity in respect of work funded by the Commonwealth or its agencies.
- 23.7 While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, You may give preference to subcontractors and consultants that have a demonstrated commitment to:
- (a) adding and/or retaining trainees and apprentices;
  - (b) increasing the participation of women in all aspects of the industry; or
  - (c) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
- 23.8 You must not appoint a subcontractor or consultant in relation to the Project where:
- (a) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
  - (b) the subcontractor or consultant has had an adverse Court or Tribunal decision (not including decisions under appeal) for a breach of workplace relations law, work health and safety law, or workers' compensation law and the tenderer has not fully complied, or is not fully complying, with the order.
- 23.9 You agree to require that You and Your subcontractors 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 Commissioner, with access to:
- (a) inspect any work, material, machinery, appliance, article or facility;
  - (b) inspect and copy any record relevant to the Project the subject of this Contract; and
  - (c) interview any person  
as is necessary to demonstrate its compliance with the Code.
- 23.10 Additionally, You agrees that You and Your related entities will agree to 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 Commissioner, to produce a specified document within a specified period, in person, by fax or by post.
- 23.11 You must ensure that all subcontracts impose obligations on sub contractors equivalent to the obligations under these Contract clauses.
- ## 24 NSW STATE CODE
- 24.1 This clause applies where Item 18 in Part A indicates "Yes" or You are otherwise required to comply with the Building Code 2013 (**Code**).
- 24.2 In addition to terms defined in this document, terms used in this clause 24 have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (NSW Guidelines) (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).
- ### *Primary Obligation*
- 24.3 You must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for the Building and Construction Industry (NSW Code) and NSW Guidelines.
- 24.4 You must notify the CCU and the Client Agency of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- 24.5 Where You engage a subcontractor or consultant, You must ensure that that contract imposes on the subcontractor or consultant equivalent obligations to those in this section 2 (under the heading NSW Code and NSW Guidelines), including that You must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- 24.6 You must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.
- ### *Access and information*
- 24.7 You must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors, consultants and related entities.
- 24.8 You must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
- (a) enter and have access to sites and premises controlled by the contractor, including but not limited to the project site;
  - (b) inspect any work, material, machinery, appliance, article or facility;
  - (c) access information and documents;
  - (d) inspect and copy any record relevant to the project;
  - (e) have access to personnel; and
  - (f) interview any person;  
as is necessary for the authorised personnel to monitor and investigate compliance with the NSW



- Code and NSW Guidelines, by You and Your subcontractors, consultants, and related entities.
- 24.9 You, and your related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

**Sanctions**

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

**Compliance**

- 24.13 You bear the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. You are not entitled to make a claim for reimbursement or an extension of time from the Client Agency or the State of NSW for such costs.

**25 ASSIGNMENT AND SUBCONTRACTING**

- 25.1 You must not assign or sublet the whole or any part of this Contract without first obtaining written approval from Daracon. Such consent may be withheld in Daracon’s absolute discretion.
- 25.2 Any permission to assign or sublet any part of this Contract will not discharge You from any liability under this Contract.
- 25.3 Daracon may in its absolute discretion assign this Contract or any benefit or right conferred under it.

**26 RELATIONSHIP BETWEEN THE PARTIES**

- 26.1 Nothing in this Contract:
- (a) constitutes a partnership between the parties; or

- (b) except as expressly provided, makes a party an agent of another party for any purpose.

- 26.2 A party cannot in any way or for any purpose:
- (a) bind another party; or
  - (b) contract in the name of another party.
- 26.3 If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

**27 CONDITION PRECEDENT**

- 27.1 If Item 14 of Part A is indicated in the affirmative, then this Contract is subject to the granting of development approval by any relevant council and any other regulatory or governmental consents to the Services (**Condition Precedent**) prior to commencement of the Services.
- 27.2 Where the Condition Precedent applies, none of the provisions of this Contract will take effect and Daracon will not be bound until such time as the Condition Precedent has been satisfied.

**28 BRIBERY, KICKBACKS & CONFLICT**

- 28.1 You acknowledge and accept that Daracon prohibits the offering and receiving of bribery or kickbacks.
- 28.2 You must ensure none of your directors, employees, agents or other personnel:
- (a) give or receive any commission, fee, rebate, gift or entertainment of significant value from; or
  - (b) enters into any business agreement with, any of Daracon’s employees, contractors, consultants or other personnel other than in the ordinary and proper course of business.
- 28.3 You must not undertake any activity that may constitute a breach of any legislation, convention or best practice principles relating to bribery, kickbacks, corruption or related matters.
- 28.4 You represent that, at the date of this agreement or the date on which You first perform the Works (whichever is earlier), Your obligations under this Contract do not give rise to a conflict of interest.
- 28.5 You must immediately notify Daracon upon becoming aware that You have a conflict of interest or that such a conflict may arise. You must take reasonable steps to avoid or overcome any conflict of interest without in any way adversely affecting Your continued performance of the Work.

**29 GENERAL**

- 29.1 Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Contract.
- 29.2 A provision of this Contract can only be varied by a later written document executed by all parties.
- 29.3 This Contract may be executed in any number of counterparts. All counterparts taken together constitute one instrument.
- 29.4 Each party must pay its own legal costs and disbursements in connection with the negotiation,

preparation, execution and carrying into effect of this Contract.

- 29.5 The contents of this Contract constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this Contract, whether orally or in writing.
- 29.6 A word or provision must be read down if:
- (a) this Contract is void, voidable, or unenforceable if it is not read down;
  - (b) this Contract will not be void, voidable or unenforceable if it is read down; and
  - (c) the provision is capable of being read down.
- 29.7 A word or provision must be severed if:
- (a) the provision is void, voidable or unenforceable if it is not severed; and
  - (b) the contract will be void, voidable or unenforceable if it is not severed.
- 29.8 The remainder of this Contract has full effect even if clause 29.7(a) or 29.7(b) applies.
- 29.9 A right or remedy created by this Contract cannot be waived except in writing signed by the party entitled to that right.
- 29.10 Neither party may solicit the other party's Personnel for employment at any time after the date of this Contract until the expiry of one year after Completion.
- 29.11 Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- 29.12 Clauses 3, 15, 16, 18, 19, 20 and any clause which by its nature is intended to survive termination of this Contract, continue to apply after expiration or termination of this Contract.
- 29.13 The Laws applicable in New South Wales govern this Contract.
- 29.14 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

**PART C – PRICING AND PAYMENT**

Contract basis (complete as applicable or as attached):

a) Lump Sum: \$ (exclusive of GST)

b) Schedule of Rates:

<b>Classification</b>	<b>Unit</b>	<b>Rate</b>

**PART D – PROJECT SPECIAL CONDITIONS**

Number of pages: \_\_\_\_\_

**PART E – SCOPE OF WORKS**

Number of pages: \_\_\_\_\_

<b>PART F – OTHER DOCUMENTS FORMING PART OF CONTRACT</b>
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<b>Schedule Number</b>	<b>Topic</b>	<b>Applicable</b>
Schedule 1	Site services	Y / N

## Schedule 1 – Site Services

*[Delete once considered: This schedule should not be used as a description of works, only site services, amenities, utilities etc available to the contractor should be stated.]*

**Daracon will provide and be responsible for:**

**Daracon will not provide or be responsible for:**

**You will provide and be responsible for:**

**Services which are yet to be allocated or are not relevant:**

- 240 V power
- 415V power
- Cost of electricity
- Leads
- Site shed
- Site fencing
- Amenities and washing facilities
- Office space
- Telephone / Data
- Water
- Scaffolding
- Mobilisation and demobilisation of scaffolding

## PART G– RELEVANT FORMS

1. Undertaking as to Payment Obligations
2. Subcontractor's Statement regarding Workers Compensation, Pay-Roll Tax and Remuneration
3. Form of Final Claim



## DECLARATION OF SUBCONTRACTOR

I, \_\_\_\_\_  
(Please Print Name – Note: where the subcontractor is a company, the signing person must be a director)

of \_\_\_\_\_  
(Address)

undertake and warrant to and in favour of **Daracon Engineering / Mining / Contractors Pty Limited** (*delete incorrect entities*) (**Daracon**) that:

1. I am the \_\_\_\_\_ (*insert position*) of \_\_\_\_\_ (*insert subcontractor name*) (**Subcontractor**) and that I am duly authorised and nominated to make this undertaking on behalf of the Subcontractor.
2. This undertaking relates to works performed under subcontract to Daracon for \_\_\_\_\_ (*insert name of project*).
3. The Subcontractor has:
  - a. \* paid all money due and payable to workers who have at been engaged by the Subcontractor under the following award or agreement in respect of their employment:  
\_\_\_\_\_ (*name of award / agreement*)
  - b. \* paid all money due and payable to suppliers of materials to the Subcontractor; and
  - c. \* paid all subcontractors appointed by the Subcontractor with the exception of \_\_\_\_\_ (*insert details if any*),  
  
\* *delete whichever is not applicable by ruling a line through that subparagraph*
4. I am aware the statements made in this undertaking are being relied upon by Daracon and that if this undertaking contains any error, Daracon may suffer loss for which the Subcontractor will be liable.
5. Where the project is federally funded, the Subcontractor declares it is compliant with its obligations set out in the Building Code.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Witness: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_



New South Wales

# SUBCONTRACTOR'S STATEMENT REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note1 – see back of form)

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

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

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

Subcontractor: \_\_\_\_\_ ABN: \_\_\_\_\_  
*(Business name)*

of \_\_\_\_\_  
*(Address of subcontractor)*

has entered into a contract with \_\_\_\_\_ ABN: \_\_\_\_\_  
*(Business name of principal contractor)* **(Note 2)**

Contract number/identifier \_\_\_\_\_ **(Note 3)**

This Statement applies for work between: \_\_\_ / \_\_\_ / \_\_\_ And \_\_\_ / \_\_\_ / \_\_\_ inclusive **(Note 4)**

subject of the payment claim dated: \_\_\_ / \_\_\_ / \_\_\_ **(Note 5)**

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

**(a)** The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [ ] if true and comply with **(b)** to **(g)** below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [ ] and only complete **(f)** and **(g)** below. You must tick one box. **(Note 6)**

**(b)** All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated \_\_\_/\_\_\_/\_\_\_ **(Note 7)**

**(c)** All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**

**(d)** Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**

**(e)** Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**

**(f)** Signature \_\_\_\_\_ Full name \_\_\_\_\_

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

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

## Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relation Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration '*as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.*'

Section 127(11) of the *Industrial Relations Act 1996* states '*to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.*'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

### Statement Retention

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

### Offences in respect of a false Statement

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

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

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

### Further Information

For more information, visit the WorkCover website [www.workcover.nsw.gov.au](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).

## FORM OF FINAL CLAIM

**To be printed on Subcontractor letterhead and forwarded with the Subcontractor's Final Claim for payment**

###/##:##  
Date

Daracon Contractors Pty Limited  
Attention: The Chief Financial Officer  
PO Box 299  
Wallsend NSW 2287

Dear Sir

**RE: Final Statement**  
**<Subcontract Description>**  
**Project No.: <insert number> Project Name: <name>**

I, <insert name>, as the authorised representative for <insert company name> of <company address> in respect of the above subcontract declare as follows:

The following has been agreed to our mutual satisfaction and allowed for in the final Subcontract Sum amount of \$###,###.00 EXCL GST.

- (a) all adjustments to the Subcontract Sum;
- (b) all claims under the Subcontract;
- (c) all extensions of time to the Date for Substantial Completion;
- (d) all other entitlements or claims arising out of or in connection with the Subcontract Services; and
- (e) the Date of Practical Completion being <insert date of practical completion>.

Additionally, I declare that:

- (a) all remuneration and other entitlements payable to or on behalf of our employees and all amounts to our subcontractors and suppliers in respect of the Services; and
- (b) all relevant taxes, duties, statutory fees, charges and other amounts in respect of the Services;

which are due and owing by <Subcontractor company name> have been paid.

I acknowledge that representations made in this statement are being relied upon by Daracon and that if this statement contains any error, Daracon may suffer loss for which I will be liable.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Witness: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_