

IM-FOR-0703-014 Term Subcontract

Publish Date	July 2014 - HT
General	<p>This Contract can be used for subcontractors who regularly perform works in any 12 month period and those works are for an individual value of less than \$50,000.</p> <p><u>This Contract does not apply to RTA related project works</u> however its wording may be used as the basis for a subcontract for RTA related projects where the head contract permits.</p> <p>The Contract comprises the following parts:</p> <ul style="list-style-type: none"> A. Subcontract Schedule B. Standard Contract Terms and Conditions C. Purchase Order D. Other documents forming part of the Subcontract E. Relevant Forms
Details / Purchase Order	<p>Details relating to the work should be set out clearly in the Purchase Order including any special conditions.</p> <p>This Contract only contains legal terms for all purchase orders and does not relate to any single project. Details of works, including terms, must be set out in a Purchase Order.</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 D.</p>
Security	<p>This agreement has been prepared to allow the Subcontractor to provide a standing bank guarantee rather than provide security on a job by job basis.</p> <p>You must discuss the appropriate security with the Contracts Manager or Financial Controller prior to offering that arrangement to the Subcontractor.</p> <p>Where the security is not adequate for the works, you can include additional security requirements in a Purchase Order. See the Group Commercial Manager for assistance.</p>
Federally or State Funded Projects	<p>Where a project receives funding from either the Federal or State government, you should indicate so in Part A as it triggers certain requirements at law which will then be enacted in the contract.</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>
Signature Authority	<p>You must, prior to issuing the contract, select the appropriate signature provision based on the subcontractor's structure.</p>
Final	<p>Ensure the signed agreement is processed at Wallsend to the central file system. A copy will be returned to the project.</p>
Purchase Order	<p>FOR INTERNAL USE: All invoices are to be processed as progress claims in the subcontract module of CHEOPS. The subcontract reference will be the order number.</p>

TERM SUBCONTRACT

Date

Parties

Daracon	DARACON CONTRACTORS PTY LIMITED ACN 002 344 667 17 James Street, Wallsend NSW 2287
Subcontractor or You	

Background

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

Part	Contract
A	Subcontract Schedule
B	Standard Subcontract Terms and Conditions
C	Purchase Order
D	Other Documents forming part of the Subcontract
E	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.

DARACON	SUBCONTRACTOR
Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Witness: _____	Witness: _____
Print Name: _____	Print Name: _____
Date: _____	Date: _____

PART A – TERM SUBCONTRACT SCHEDULE

ITEM												
1	Location of works:	See Purchase Order										
2	Description of works:	(insert general description of works)										
3	Subcontract Documents	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%; padding: 2px;">Part A</td> <td style="padding: 2px;">Subcontract Schedule</td> </tr> <tr> <td style="padding: 2px;">Part B</td> <td style="padding: 2px;">Standard Subcontract Terms & Conditions</td> </tr> <tr> <td style="padding: 2px;">Part C</td> <td style="padding: 2px;">Purchase Order</td> </tr> <tr> <td style="padding: 2px;">Part D</td> <td style="padding: 2px;">Other Documents forming part of the Subcontract (attach list)</td> </tr> <tr> <td style="padding: 2px;">Part E</td> <td style="padding: 2px;">Relevant Forms</td> </tr> </table>	Part A	Subcontract Schedule	Part B	Standard Subcontract Terms & Conditions	Part C	Purchase Order	Part D	Other Documents forming part of the Subcontract (attach list)	Part E	Relevant Forms
Part A	Subcontract Schedule											
Part B	Standard Subcontract Terms & Conditions											
Part C	Purchase Order											
Part D	Other Documents forming part of the Subcontract (attach list)											
Part E	Relevant Forms											
4	Term Commencement Date:											
5	Term Expiry Date:	12 months after the Term Commencement Date										
6	Security Required	\$ standing bank guarantee										
7	Time at which Progress Claims to be submitted:	Last Day of Month										
8	Time for payment	45 days from end of month of claim, or such lesser period as required by law										
9	Defects Liability Period:	365 days from Completion of each Works except where indicated otherwise in a Purchase Order										
10	Liquidated Damages:	\$ per day <u>OR</u> the rate specified in the relevant Head Contract										
11	Recipient Created Tax Invoice (RCTI) applies	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>										
12	Significant Equipment (clause 19.3)	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>										
13	Condition Precedent (clause 32)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>										
14	Head Contract compliance required (clause 25)	YES <input type="checkbox"/> NO <input type="checkbox"/>										
15	Insurances Required (state "NIL" if not required)	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #cccccc;"> <th style="width: 30%; text-align: center; padding: 5px;">Insurance Type</th> <th style="text-align: center; padding: 5px;">Minimum Cover</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;"><input checked="" type="checkbox"/> Public Liability</td> <td style="padding: 5px;">\$ _____ (\$20M if not stated)</td> </tr> <tr> <td style="padding: 5px;"><input checked="" type="checkbox"/> Workers Compensation</td> <td style="padding: 5px;">\$ _____</td> </tr> <tr> <td style="padding: 5px;"><input type="checkbox"/> Professional Indemnity</td> <td style="padding: 5px;">\$ _____</td> </tr> <tr> <td style="padding: 5px;"><input checked="" type="checkbox"/> Motor Vehicle / Plant & Equipment</td> <td style="padding: 5px;">\$ _____ (\$20M if not stated)</td> </tr> </tbody> </table>	Insurance Type	Minimum Cover	<input checked="" type="checkbox"/> Public Liability	\$ _____ (\$20M if not stated)	<input checked="" type="checkbox"/> Workers Compensation	\$ _____	<input type="checkbox"/> Professional Indemnity	\$ _____	<input checked="" type="checkbox"/> Motor Vehicle / Plant & Equipment	\$ _____ (\$20M if not stated)
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16	Does the Federal Building Code apply?(clause 28)	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>										
17	Does the State Building Code apply? (clause 29)	YES <input checked="" type="checkbox"/> NO <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.

Completion means that point in time when the Works 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 this Subcontract and all of the documents referred to in Item 3 of Part A.

Contract Sum means the price as noted in the agreed Purchase Order relating to Works.

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 6.1(c).

Defects Liability Period means the period stated in Item 9 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.

Force Majeure has the meaning given to it in clause 23.1.

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 to which a Purchase Order relates.

Insurance Policies means the policies referred to in Item 15 of Part A.

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 10 of Part A.

Payment Period means day set out in Item 8 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 Works completed prior to the Progress Claim Lodgement Date.

Progress Claim Lodgement Date means the date specified in Item 7 of Part A.

Purchase Order means a purchase order issued in accordance with clause 6.2 and generally in the form set out in Part C.

Security means the security provided by You to Daracon as referenced in Item 6 of Part A.

Site means the site identified in Item 1 of Part A.

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

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

Term Commencement Date means the date specified in Item 4 of Part A.

Term Expiry Date means the date or last day of the period of time stated in Item 5 of Part A, or as amended in writing pursuant to this Contract.

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

Works means the works required by Daracon from time to time set out in a Purchase Order and accepted by You under clause 5.1(a).

Works Commencement Date means the date on which the Works must commence as identified in a Purchase Order.

Works Completion Date means the date on which the Works must achieve Completion as identified in a Purchase Order and as otherwise extended in accordance with this Contract.

WHS means work health and safety.

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	3

C	Purchase Order	2
D	Other Documents forming part of Contract	4
E	Relevant Forms	5

3 SCOPE OF CONTRACT

3.1 This Contract commences on the Term Commencement Date and expires on the Term Expiry Date unless extended in writing by mutual agreement of the parties.

3.2 Subject to clause 3.3, this Contract sets out the terms by which all Purchase Orders issued by Daracon and accepted by You will be governed.

3.3 Purchase Orders issued under this Contract may only be for Works with a value of less than \$50,000 and excludes Works carried out on projects involving the Roads and Traffic Authority NSW, irrespective of the value of those Works.

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) where Daracon issues You with a Purchase Order, accept or reject that Purchase Order within a timeframe acceptable to Daracon, which may be done either verbally or in writing;
- (b) perform the Works in a proper and workmanlike manner to Daracon's satisfaction and in accordance with the provisions of this Contract;
- (c) perform the Works 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;
- (d) where requested by Daracon, submit a program for carrying out the Works and comply with that program which must include commencing the Works on the Works Commencement Date and achieving Completion by the Works Completion Date;
- (e) with due expedition and without delay, and in accordance with any program supplied, provide all professional skill and advice required for carrying out the Works;
- (f) comply with all directions provided by Daracon, whether in writing or otherwise;

- (g) remain fully responsible for the Works despite any review or acceptance of those Works by Daracon;
- (h) subject to clause 5.6, appoint Personnel with appropriate qualifications, competencies and experience to carry out the Works;
- (i) promptly give written notice to Daracon if and to the extent the You become aware that any document or other information provided by Daracon is ambiguous or inaccurate or is otherwise insufficient to enable You to carry out the Works;
- (j) make reasonable enquiries to ascertain Daracon's requirements regarding the Works;
- (k) regularly consult with Daracon regarding the carrying out of the Works;
- (l) 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 Works, give written notice to Daracon detailing the matter or circumstance and its anticipated affect on the Works;
- (m) comply with all Laws in carrying out the Works;
- (n) 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 Works or in connection with the Works;
- (o) do all things necessary and necessarily and incidental for the proper performance of Your obligations under the Contract;
- (p) obtain all permits and pay all fees required in connection with the performance of the Works; and
- (q) provide such plant and equipment necessary to complete the Works 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 Works and that they are suitable, appropriate and otherwise adequate for the purpose of performing the Works 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 Works with the method You have suggested.
- 5.4 You must comply with the obligations imposed on You under this Contract and any special conditions set out in a Purchase Order.
- 5.5 On or before the Works Completion Date, 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 Works.
- ## 6 DARACON'S OBLIGATIONS
- 6.1 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 Works;
- (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 Works.
- 6.2 Daracon will issue You with a purchase order (**Purchase Order**) from time to time which will be on the terms set out in this Contract setting out the goods or services (or both) Daracon requires You to provide and any special conditions relating to those goods or services which may, as required on a case by case basis, vary this Contract.
- ## 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 Work 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 E;
- (b) a complete and duly signed Undertaking in accordance with Part E; 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 Works.
- 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 11 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 11 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 Term.
- 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 work 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 Works.
- 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 final payment relating to any Works.
- 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 6 of Part A) to Daracon on or before the Term Commencement Date.
- 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 Works.
- 9.4 Subject to:
- (a) completion of all Defects Liability Periods relating to any Works carried out under this Contract;
 - (b) You providing Daracon with a completed and duly signed final statement in accordance with Part E for all Works;
 - (c) Daracon and You agreeing that no further Works will be commissioned;
 - (d) Daracon not being entitled to exercise the Security at any time (including after Completion of the Works); and
 - (e) where Security is by way of cash retention, You have provided Daracon with notice in a form reasonably acceptable requesting payment of those funds,
- Daracon will return the Security (or that part of it) to You.
- 9.5 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, 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 the Works Completion Date but before expiry of the defects liability period in the Head Contract (irrespective of Item 14 of Part A), 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 in to a standard not less (in Daracon’s opinion) than prescribed in the relevant specifications. 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 defective work, and any consequential effects of that work, 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 Works 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 24, the price to be paid for a variation must be a reasonable price as determined by Daracon.
- 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 works is a variation to the Contract;
 - (b) the works directed are materially different from and out of character to Works 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 Works; and
 - (c) within 5 business days after becoming aware 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 work as a variation. In the event of a dispute, the provisions of clause 24 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 Works Completion Date.
- 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 MINOR WORKS**
- 12.1 If neither the specifications nor the drawings contain any particulars of minor works or parts, the inclusion of which is nevertheless to be inferred and which parts are necessary for the proper completion of the Works, all such works and parts must be supplied and executed at Your expense.
- 12.2 Anything indicated on the drawings and not contained in the specifications, or vice versa, will be equally binding as if it were indicated in each of them and the omission from one of them, whilst indicated in the other, will be deemed to be included in the lump sum for the Works.
- 12.3 Figured dimensions will be used in preference to dimensions indicated by scale.
- 13 DAYWORKS**
- 13.1 You must not perform day works using day labour unless directed in writing by Daracon.
- 13.2 Day work docket is to be signed daily by an authorised representative of Daracon (either a project manager or site foreman) and include a statement from You that the day work docket is a true and accurate record of the works.
- 13.3 No payment will be made unless authorised and signed daily dockets are presented with the claim.
- 13.4 Rates for day works performed will be charged in accordance with:
- (a) the rates set out in Part C, or where Part C is silent;
 - (b) the rates set out elsewhere in the Contract Documents; or where the Contract Documents are silent,
- as agreed by the parties.
- 14 COMPLETION AND DELAYS TO WORKS**
- 14.1 You agree, in the absence of any agreed delays, You must complete the Works by the Works Completion Date.
- 14.2 If You do not complete the Works by the Works Completion Date (inclusive of any extensions of time granted under clause 11.5), You will be charged Liquidated Damages at the rate specified in Item 10 of Part A for the period from the Works Completion Date until Completion of the relevant Works occurs.
- 14.3 You must employ such resources as are necessary to complete the Works expeditiously, in coordination with other trades and in accordance with the construction program, as amended from time to time.
- 14.4 Daracon reserves the right to adjust, by notice in writing to You, the Works Commencement Date and the Works Completion Date to ensure compliance with the Head Contract program.
- 14.5 If, in Daracon's opinion, there are insufficient resources being deployed by You for the Completion of the Works by the Works Completion Date, Daracon may, without prejudice to any further remedy, after giving notice to You and, where the circumstances permit, consulting with You, employ additional resources to complete the Works by the Works Completion Date at Your expense.
- 14.6 Where:
- (a) the Works 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 Works Completion Date.
- 14.7 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.

14.8 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.

15 LATENT CONDITIONS

15.1 You agree that Daracon has made available to the Subcontractor all material and information concerning the site and You have made all reasonable further enquiries it deems necessary in that regard. You warrant that You have fully investigated the Site including all actual and potential Site conditions.

15.2 Daracon does not guarantee the accuracy of any documentation or information provided and makes no representation as to the completeness or accuracy of that information and You must make and rely on Your own enquiries. The use of any Site information provided by Daracon is at Your risk.

15.3 You must, on becoming aware of a Latent Condition while carrying out the Works, immediately give Daracon notice in writing of the existence of the Latent Condition containing details of:

- (a) the condition encountered and the respect in which it differs materially from the conditions disclosed in the Contract Documents;
- (b) the additional work resources, time and cost You estimate will be incurred in dealing with the Latent Condition; and
- (c) any other details reasonably required by Daracon.

15.4 If accepted by Daracon, a Latent Condition will be deemed a variation in accordance with clause 11.

15.5 Where You fail to provide notice in writing to Daracon within 10 days of Your discovery of a Latent Condition, You will be barred from making a Claim for a Latent Condition.

16 SITE ACCESS AND FACILITIES

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

16.2 Unless stated otherwise, Daracon will provide adequate sanitary facilities, temporary power outlet and water outlet.

16.3 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.

16.4 Where Daracon allows You to use any scaffolding, hoisting plant, other facility or storage area belonging to or provided by Daracon (**Daracon Facilities**), such use will be on the express condition that no warranty or other liability on the part of Daracon or its Personnel will be created or implied in regard to the fitness condition, or suitability of the Daracon Facilities.

16.5 You must inspect all Daracon Facilities prior to use and satisfy Yourself of its condition and suitability.

17 WHS&E COMPLIANCE

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

17.2 In addition to its obligations under clause 17.1, 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*.

17.3 Before commencing the Works, You must:

- (a) provide a Safe Work Method Statement (**SWMS**) or Risk Assessment for the Works 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

17.4 During the term of this Contract, You must:

- (a) ensure any operator, Personnel and any other person performing the Works (**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 as released by Daracon from time to time including those set out in Part D (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.
- 17.5 All communication for the purpose of this clause 17 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.
- 17.6 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.
- 17.7 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.
- 17.8 You acknowledge You have read, understand and accept the terms of the Daracon Alcohol and Other Drug Policy and Procedure and agree You and Your 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.
- 17.9 If You are in breach of Your obligations under clause 17.8, 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 20.

18 INSURANCES

- 18.1 Prior to the Term Commencement Date, You must obtain and maintain the Insurance Policies referred to in Item 15 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.
- 18.2 Daracon and the principal must be nominated as interested parties on each public liability and works insurance relevant to the agreement.
- 18.3 You must produce evidence of the currency of each policy to Daracon immediately prior to the Term Commencement Date and within 7 days of any subsequent request by Daracon.
- 18.4 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.

19 EQUIPMENT

- 19.1 Prior to delivery of any equipment to be used in the performance of the Works, and for each day of the Works, You warrant to Daracon that the equipment is:
- (a) fit for purpose;
 - (b) safe and without risk;
 - (c) free of defects and faults; and
 - (d) maintained in accordance with the original equipment manufacturers recommendations.
- 19.2 Daracon may, at its election, conduct an inspection of the equipment, assess the equipment and identify any modifications, repairs or additions to the equipment that may be required prior to or at any time during the Works. Any costs relating to any modifications, repairs or addition will be at Your expense (unless otherwise agreed by Daracon in writing).
- 19.3 Where Item 12 of Part A states "Yes" the following additional conditions apply:
- (a) You must provide full details of all plant and equipment to be used in the Works for registration in a register held by Daracon (**Plant**);
 - (b) You must ensure any of Your Personnel operating the equipment hold a valid license and are competent in operating the Plant in a safe, efficient and skilled manner and provide evidence of that competency prior to commencing the Works;
 - (c) You must ensure the Plant is fully registered with all relevant authorities (including workplace and environmental authorities) for its intended use and properly licensed for the Works to be performed;

- (d) You must do all things necessary to assist Daracon in completing a Subcontractor HSEQ Assessment - Prequalification IM-FOR-0702-001 or a pre-work assessment IM-CHK-0702-001 and such other pre-qualification assessments as required by Daracon from time to time;
- (e) where Daracon so requires, You must do all things necessary to assist Daracon in completing a Plant Hazard Assessment;
- (f) You must ensure that, for the duration of the Works, the Plant is inspected daily noting:
 - (1) compliance with inspection and testing regimes (testing and tagging);
 - (2) compliance with any site specific specifications and requirements;
 - (3) that the Plant is in good working order, free of defect and otherwise in accordance with any standard so prescribed by Daracon from time to time; and
 - (4) any defects requiring rectification,
 and once completed, that inspection report must be submitted to Daracon each day prior to commencement of any Works.

Where any defect is identified, You must not operate that Plant and it must be stood down as "out of service" until such time as repairs have been carried out by a suitably qualified and competent person.

- (g) where Daracon so requires, You must provide Daracon with a schedule of Preventive Maintenance Inspections that are to be carried out regularly on the Plant for the duration of the Works;
- (h) where the Plant has been modified by persons other than the original equipment manufacturer, You must provide Daracon with copies of any structural and design certification together with any other specifications or relevant information pertaining to the safe use and maintenance of the Plant.

20 TERM AND TERMINATION

- 20.1 This Contract is valid for the Term and otherwise applies in accordance with clause 3.
- 20.2 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;
- (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; or
- (g) there is a Force Majeure event, subject to the provisions of clause 23.4.

20.3 Daracon may terminate this Contract for convenience in its absolute discretion at any time. Upon termination under this clause 20.3, You will be entitled to payment for:

- (a) that part of the Work performed as at the time of termination; and
- (b) the cost of materials or goods properly ordered for the Works, which You have paid for or are legally bound to pay, subject to title transferring to Daracon on payment.

21 INDEMNITY AND RISK

- 21.1 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) breach of Your obligations under this Contract;
 - (b) injury, total and permanent disability or death caused by You or Your Personnel;
 - (c) damage to property (whether owned by Daracon or not) caused by You or Your Personnel; and
 - (d) negligent act or omission by You or Your Personnel.
- 21.2 Daracon agrees that where it contributes to any loss or damage being suffered, Your liability under clause 21.1 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.
- 21.3 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.
- 21.4 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.
- 21.5 Despite this clause 21, neither party will be liable to the other or under or arising in connection with

this Contract, whether arising in contract, negligence or otherwise for any loss of use, loss of profit or consequential loss.

no longer than, the continuance of the Force Majeure; and

- (4) the affected party must use all possible diligence to overcome or remove the Force Majeure as quickly as possible but the affected party will not have to settle any labour or other dispute creating the Force Majeure on terms contrary to its wishes.

22 CONFIDENTIALITY

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

22.2 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.

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

23 FORCE MAJEURE

23.1 Force Majeure means an act, event or cause which is beyond the reasonable control of Daracon or You, including:

- (a) acts of God, lightning, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- (c) strikes and labour disputes, to the extent they exceed 14 days.

23.2 If a party (the **affected party**) becomes:

- (a) unable by Force Majeure to carry out an obligation under this Contract strictly in accordance with this Contract; or
- (b) unable by Force Majeure to utilise the Equipment as intended,
 - (1) the affected party must give to the other party prompt written notice and reasonable particulars of the Force Majeure and, so far as is known, the probable extent to which the affected party will be able to perform or be delayed in performing its obligation;
 - (2) the other party may give notice to the affected party of the extent to which the other party's ability to comply with its obligations will be affected by the affected party's inability to comply with its obligations;
 - (3) the relevant obligations of the affected party and the other party, so far as they are affected by the Force Majeure, will be suspended during, but

23.3 In the event of either party giving a Force Majeure notice, the parties must meet promptly and each use their reasonable endeavours to reach a mutually acceptable solution to alleviate any hardship or unfairness caused to either party as a result of the circumstances constituting Force Majeure.

23.4 If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 14 days, the other party may immediately terminate this Contract by notice in writing to the affected party.

23.5 Nothing in this clause 23 prevents Daracon during the continuation of any Force Majeure from taking any reasonable measure, including engaging third parties, to perform Your obligations for the purpose of mitigating any loss that it may incur as a result of any such Force Majeure, the costs of which will be treated as a debt due by You to Daracon.

24 DISPUTE RESOLUTION

24.1 A party may not commence any court or arbitration proceedings relating to a Dispute unless it complies with this clause 24 except where the party seeks urgent interlocutory relief.

24.2 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.

24.3 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.

24.4 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.

24.5 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 24 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 24 for any purpose other than in an attempt to settle the Dispute concerned.
- 24.6 Unless otherwise agreed by the parties, the parties must continue to perform their obligations under this Contract despite the existence of a Dispute.
- 25 HEAD CONTRACT COMPLIANCE**
- 25.1 This clause 25 only applies where Item 14 of Part A states "Yes".
- 25.2 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 Works.
- 25.3 You are responsible for determining whether clause 25.1 applies and You warrant to Daracon that You have fully inspected and understood the requirements of any applicable Head Contract.
- 25.4 Daracon must make the relevant terms of any Head Contract available to You on request.
- 26 ENERGY EMISSION AND DATA**
- 26.1 Where relevant and if requested by Daracon, You must ensure that You establish and maintain all necessary information (to the extent and in a manner required) to enable Daracon (and any of its principals) to comply with:
- (a) the National Greenhouse and Energy Reporting Act 2007 (Cth) (**NGERS**) and all associated regulations and guidelines;
 - (b) the Energy Efficiency Opportunities Act 2006 (Cth) (**EEOS**) and all associated regulations and guidelines;
 - (c) any other requirements of the Government's proposed carbon pollution reduction scheme (**CPRS**) or any similar scheme pursuant to which the emission of greenhouse gases incurs a liability to acquire and surrender permits whatever data, information, records and/or reports of a type that a registered corporation or any other person may be required or entitled to provide under NGERS, EEOS or CPRS (**Greenhouse Data**)
- 26.2 You acknowledge and agree:
- (a) Daracon may provide or otherwise disclose the Greenhouse Data to any of its related entities, the principal and any applicable authority;
 - (b) Your promises and obligations in this clause 26 are:
 - (1) given and assumed by You in favour of Daracon and separately in favour of each of its related entities; and
 - (2) enforceable by Daracon and any of its related entities jointly and severally.
- 26.3 Nothing in this clause 26 is to be taken as meaning that Daracon (or any of its related entities) has agreed to perform on Your behalf, any obligation that You may have under any statutory requirement regarding the provision of Greenhouse Data to any authority.
- 27 INDUSTRIAL REQUIREMENTS**
- 27.1 Prior to commencing Works on any Site, You must make yourself aware of all requirements for the Works 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 Works or the Site.
- 27.2 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 Works.
- 27.3 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.
- 27.4 For the purposes of clause 27.1, **Matters** means all relevant legislation, awards, enterprise agreements, industrial instruments, codes of practice and implementation guidelines and any other standard which could reasonably applied to the matter.
- 28 FEDERAL CODE 2013**
- 28.1 This clause applies where Item 16 in Part A indicates "Yes" or You are otherwise required to comply with the Building Code 2013 (**Code**).
- 28.2 You must comply with the Code and the Guidelines. Copies of the Code are available at www.deewr.gov.au/BuildingCode.
- 28.3 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.
- 28.4 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.
- 28.5 You must maintain adequate records of the compliance with the Code by:
- (a) You;
 - (b) Your Subcontractors;
 - (c) consultants; and
 - (d) its Related Entities.
- 28.6 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.

28.7 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.

28.8 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.

28.9 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.

28.10 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.

28.11 You must ensure that all subcontracts impose obligations on sub contractors equivalent to the obligations under these Contract clauses.

29 NSW STATE CODE

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

29.2 In addition to terms defined in this document, terms used in this clause 29 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.

Primary Obligation

29.3 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.

29.4 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.

29.5 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.

29.6 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

29.7 You must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors, consultants and related entities.

29.8 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.

29.9 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

29.10 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.

29.11 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.

- 29.12 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

- 29.13 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.

30 ASSIGNMENT AND SUBCONTRACTING

- 30.1 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.
- 30.2 Any permission to assign or sublet any part of this Contract will not discharge You from any liability under this Contract.
- 30.3 Daracon may in its absolute discretion assign this Contract or any benefit or right conferred under it.

31 RELATIONSHIP BETWEEN THE PARTIES

- 31.1 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.
- 31.2 A party cannot in any way or for any purpose:
- (a) bind another party; or
 - (b) contract in the name of another party.
- 31.3 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.

32 CONDITION PRECEDENT

- 32.1 If Item 13 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 Works (**Condition Precedent**) prior to commencement of the Works.

- 32.2 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.

33 GENERAL

- 33.1 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.
- 33.2 A provision of this Contract can only be varied by a later written document executed by all parties.
- 33.3 This Contract may be executed in any number of counterparts. All counterparts taken together constitute one instrument.
- 33.4 Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Contract.
- 33.5 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.
- 33.6 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.
- 33.7 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.
- 33.8 The remainder of this Contract has full effect even if clause 33.7 applies.
- 33.9 A right or remedy created by this Contract cannot be waived except in writing signed by the party entitled to that right.
- 33.10 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.
- 33.11 Clauses 4, 17, 18, 21, 22, 24 and any other clause which by its nature is intended to survive termination of this Contract, continue to apply after expiration or termination of this Contract.
- 33.12 The Laws applicable in New South Wales govern this Contract.
- 33.13 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 – PURCHASE ORDER

NOTE:

- This is a draft text template only. Actual form may vary from time to time at Daracon's sole discretion.
 - Where you have been able to negotiate rates for a 12 month period (recommended), you can include fixed pricing in this agreement by setting out those rates in Section 1 – Agreed Rates.
 - Specify whether the project is Federally or State government funded
-

Section 1 – Agreed Rates

Section 2 – Form of Purchase Order

The date of this Purchase Order is:

This Purchase Order is for the works described below and will be governed by the terms and conditions set out in the *[insert agreement name here]*.

The works are *[insert short summary of works]* and are set out in detail in the Scope of Works and the Drawings.

The Scope of Works is attached as *[insert reference]*.

The Drawings are attached as *[insert reference]*.

The Location of Works is:

The Contract Sum for the Works is: [DELETE THIS IF FIXED RATES HAVE BEEN NEGOTIATED IN SECTION 1]

The Works Commencement Date is:

The Works Completion Date is:

Special conditions relating to the Works include:

- MAKE SURE ANY UNUSUAL PROVISIONS CONTAINED IN THE HEAD CONTRACT HAVE BEEN PASSED TO THE SUBCONTRACTOR.
- SITE SERVICES RESPONSIBILITIES – SEE SCHEDULE 2 OF PART D
- ANY OTHER PROVISIONS INCLUDING, IF REQUIRED, ADDITIONAL SECURITY

PART D – OTHER DOCUMENTS FORMING PART OF CONTRACT

Schedule Number	Topic	Applicable
Schedule 1	Site services	Y / N

Schedule 1 – Site Services

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 E – 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)

of _____
(Address)

undertake and warrant to and in favour of **Daracon Contractors Pty Limited (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: _____



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

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 Works; 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 Works; and
- (b) all relevant taxes, duties, statutory fees, charges and other amounts in respect of the Works;

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: _____