



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

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

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

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

Sub-Contract Particulars				
PROJECT NAME	[Insert Project Name]			
SITE ADDRESS	[Insert Site Address]			
TRADE DESCRIPTION	[Insert Trade Description]			
SUB-CONTRACT NUMBER	[Insert SC Agreement Number]			
DATE FOR COMMENCEMENT OF WORK	[Insert Date DD/MM/YYYY]			
DATE FOR COMPLETION	[Insert Date DD/MM/YYYY]			
SUB-CONTRACT SUM	The Sub-Contract sum is the lump sum of [Insert Sub-Contract Sum] excluding GST. Schedule of Rates - [Insert Schedule of Rates or N/A if not applicable].			
SUB-CONTRACT DOCUMENTS	<p>The Contractor and the Sub-Contractor agree the following documents comprise the Sub-Contract between them:</p> <ul style="list-style-type: none"> <li>a. this Sub-Contract Agreement;</li> <li>b. the Sub-Contract Particulars;</li> <li>c. the Sub-Contract Terms and Conditions;</li> <li>d. the Deed of Warranty;</li> <li>e. the Deed of Release;</li> <li>f. the Sub-Contractor's Statement; and</li> <li>g. the Trade Package (consisting of Annexures).</li> </ul> <p>The order in which the Sub-Contract documents are listed above is the order of precedence of the Sub-Contract documents.</p>			
SECURITY	[Nil / 5% of Sub-Contract Sum]			
LIQUIDATED DAMAGES	[\$500.00](Per Business Day)			
INSURANCE SCHEDULE	Workers Compensation	Contract Works	Public Liability	Professional Indemnity
Limit of Cover		Value of work under the Sub-Contract	[Limit of Cover - Check head contract for any specific PL insurance requirements on this trade]  (\$20 million if nothing else stated)	[Limit of Cover - Check head contract for any specific PI insurance requirements on this trade]  (\$20 million if nothing else stated)

Contractor representative/ initial

Sub-Contractor representative/ initial

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

Contractor representative/ initial

Sub-Contractor representative/ initial

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**TERMS AND CONDITIONS**

**1. SUB-CONTRACTOR WARRANTIES**

- a) The Sub-Contractor must carry out and complete the Works:
  - i. With due skill, care and diligence, and in accordance with Best Industry Practice;
  - ii. In accordance with the Sub-contract and the Contractor’s directions;
  - iii. In accordance with all Legislative Requirements;
  - iv. Using materials that are new, fit for purpose and free of defects;
  - v. By the date for Completion
- b) The Sub-Contractor in agreeing to carry out and complete the works warrants that:
  - a. it is suitably qualified, skilled and experienced in the type of work that is subject of the Sub-Contract;
  - b. persons employed by the Sub-Contractor are capable of performing the type of work that is the subject of the Sub-Contract;
  - c. it has informed itself as to the means of access to and egress from the Site, transport facilities, accommodation, services and storage facilities and any constraints therein available on Site;
  - d. it has allowed in the Sub-Contract Sum for incidental items not expressly stated in the Sub-Contract, but which are clearly necessary for the completion and performance of the work under the Sub-Contract to be supplied and carried out including all Legislative Requirements;
  - e. it has the necessary resources to complete the Sub-Contract by the date for Completion; and
  - f. it is Financially Sound at the time of entering into this Sub-Contract and continues to be Financially Sound in the performance of the work under the Sub-Contract and will comply with any direction of the Contractor for the Sub-Contractor to provide proof that it is Financially Sound, including to provide to the Contractor (when directed by the Contractor) all financial records of its financial position to be provided a financial expert to allow that financial expert to form an opinion of the Sub-Contractor’s financial position to perform its obligations under this Sub-Contract; and
  - g. any other warranties set out in a Deed of Warranty if requested by the Contractor.
- c) The Sub-Contractor has entered into the Sub-Contract relying on its own examination and investigations of the Site and accepts the Site and any structures on the Site in their present condition. The Contractor makes no representation and gives no warranty with respect to:
  - i. Site conditions (including sub-surface conditions);
  - ii. any structure on the Site;
  - iii. works completed by previous subcontractors; and
  - iv. as to the accuracy, adequacy, suitability or completeness of any Site information document supplied.

The Sub-Contractor assumes the risk and acknowledges it will have No Claim against the Contractor arising out of or in connection with the physical conditions and characteristics of the Site and its surrounds.
- d) The Sub-Contract Sum is sufficient to cover the discharge of all the Sub-Contractor’s obligations under this Sub-Contract;
- e) If the Sub-Contractor has any design responsibility under the Sub-Contract, it will ensure that:
  - i. Appropriately skilled, experience and qualified persons supervise and co-ordinate design and production of design documents; and
  - ii. The works under the Sub-Contract are fit for their stated purpose and complies with all requirements of the Sub-Contract.
- f) The Sub-Contractor must:
  - i. Attend all Site meetings as requested by the Contractor;
  - ii. Co-operate and coordinate with all other workers and contractors on the Site; and
  - iii. Satisfy itself that the Site is suitable
- g) The Sub-Contractor is responsible for:
  - i. Any damage caused by the Sub-Contractor and its agents and employees
  - ii. Keeping the Sub-Contractor’s area clear and safe at all times;
  - iii. Carrying out of the Works safely; and
  - iv. Developing, documenting and submitting for approval, a quality management plan to assure the quality of the Sub-Contract Works

(conforming to the requirements of ISO:9001 or an equivalent standard);

- v. At all times during the undertaking of the work under the Sub-Contract, the Sub-Contractor must comply with the requirements of the WHS Legislation and prepare and submit to the Contractor a safe work method statement prior to commencing any work under the Sub-Contract;
- vi. As far as is practicable, the Sub-Contractor must ensure that it does not by its acts or omissions cause or contribute to any breach by the Contractor of its statutory obligations. The Sub-Contractor must indemnify the Contractor in respect of any liability, costs, losses or expenses whatsoever arising in connection with any breach of WHS Legislation by the Contractor to which the Sub-Contractor has contributed by a breach of this clause; and
- h) The Sub-Contractor must obtain and provide all guarantees and warranties reasonably available in relation to the supply and installation of materials, goods and other equipment, which extend beyond the Defects Liability Period. These are to be made in the favour of the Principal.
- i) The Sub-Contractor must not enter into any secondary subcontracts or assign any right or benefit of the Sub-Contract without the prior written approval of the Contractor (which may be withheld in the Contractor’s absolute discretion).
- j) Any work undertaken on the Project prior to the execution of the Sub-Contract is governed by the terms of this Sub-Contract and forms part of the Sub-Contract Price.

**2. DIRECTIONS**

- a) The Contractor may issue a direction to the Sub-Contractor regarding carrying out the Works, and the Sub-Contractor must comply with the Contractor’s directions
- b) A direction may be given orally, however, where a direction is given orally, the Sub-Contractor must obtain written confirmation from the Contractor of the direction within three (3) Business Days.

**3. VARIATIONS**

- a) The Sub-Contractor must not vary the Works unless in accordance with a written direction from the Contractor
- b) Where the Sub-Contractor considers a direction given by the Contractor to constitute a Variation, if it wishes to make a claim against the Contractor, the Sub-Contractor must notify the Contractor within five (5) Business Days of receiving that direction.
- c) Total may at any time direct a Variation to the Sub-Contract Works by the addition, decrease, omission, deletion or removal of items of Sub-Contract Works, including Goods to be provided.
- d) The price of a Variation is to be determined by the Contractor.
- e) The Sub-Contract Sum will be increased or decreased for all directed variations by the reasonable amount which the Contractor will determine. If a Variation omits any part of the Sub-Contract Works, the Contractor may have the Sub-Contract Works carried out by itself or a third party.

**4. INDEMNITY AND INSURANCE**

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

Contractor representative/ initial

Sub-Contractor representative/ initial

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- ii. The insurance policy wording and any schedules identifying any endorsements, exclusions and limitations.
- d) Each policy of insurance required by this Sub-Contract must:
  - i. contain (without limitation) a provision that the insurer does not assert any right of subrogation to the rights of any insured against any of the other insured party;
  - ii. not include any terms that would adversely affect the likelihood of that policy responding to cover circumstances, losses or damages that may arise in connection with the Sub-Contract;
  - iii. not include any terms which operate to avoid or limit the cover available because an insured is entitled to cover under another policy of insurance; and
  - iv. not apply to a higher level of excess than the excess which would be payable for the same claim if made by the Sub-Contractor.
- e) The Sub-Contractor must pay all excess in respect of claims by any party under the policies of insurance effected in accordance with the Sub-Contract which relate to the Sub-Contract Works.

**5. PROGRAMMING AND SUSPENSION**

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

**6. DELAYS**

- a) Within two (2) Business Days of when the Sub-Contractor first became aware, or should reasonably have first become aware, of an event which has caused or will or is likely to cause any delay to any part of the work under the Sub-Contract, the Sub-Contractor must give the Contractor notice of the event, the estimated delay and details of the event. If the delay is ongoing the Sub-Contractor must update the Contractor by providing further notices weekly.
- b) If the Sub-Contractor is delayed in reaching Completion by the Date for Completion by any of the following causes of delay:
  - i. a breach of the Sub-Contract by the Contractor and any other act or omission of the Contractor (including an act of prevention), the Principal or the Superintendent;
  - ii. a Variation; or
  - iii. a cause of delay giving the Sub-Contractor an entitlement to claim an extension of time under another clause of the Sub-Contract, and the Sub-Contractor has: provided the notice/s required under sub-clauses 6 a) and c) and used all reasonable endeavours to mitigate the effects of the delay, the Sub-Contractor may be entitled to an extension of time for Completion.
- c) The right of the Sub-Contractor to claim an extension of time under this clause is the Sub-Contractor’s sole remedy in respect of any exclusion, suspension, delay or disruption arising out of or in connection with the Sub-Contract, including delay or disruption arising from a breach of the Sub-Contract by the Contractor. The Sub-Contractor is not entitled to any increase or adjustment to the Sub-Contract Sum, or any other compensation or damages, as a result of any exclusion, suspension, delay or disruption arising out of or in connection with the Sub-Contract.
- d) If the Sub-Contractor considers itself entitled to an extension of time for Completion, it must within two (2) Business Days of the occurrence of the delay give to the Contractor a written claim for an extension of time together with a statement of the facts upon which the claim is based.
- e) If the Sub-Contractor is entitled to an extension of time the Contractor will determine a reasonable extension of time following receipt of the Sub-Contractor’s claim under paragraph (c).

**7. DEFECTS**

- a) As soon as possible after the Date of Completion, the Sub-Contractor shall rectify all defects existing at the date of Completion.

- b) At any time prior to the expiration of the Defects Liability Period, if the Contractor becomes aware of work done or materials provided which are not in accordance with this Sub-Contract (Defect), the Contractor will provide written notice to the Sub-Contractor of that fact and may give to the Sub-Contractor a written direction to remedy the defects at the Sub-Contractor’s own cost.
- c) If the Sub-Contractor fails to comply with the written direction, the Contractor may have the defects remedied by others. The costs and expenses incurred by the Contractor as certified by the Contractor are monies due and payable by the Sub-Contractor to the Contractor.
- d) The Defects Liability Period will commence on the Date of Completion and will expire on the expiry of the last Defect Liability Period under the Head Contract. During the Defects Liability Period, the Contractor may give the Sub-Contractor a direction to rectify a defect and notify a time for commencement and completion of the rectification works (Rectification Period). If the rectification work is not completed by the date notified, the Contractor may have the works carried out by others or itself and the costs incurred by the Contractor will be a debt due from the Sub-Contractor to the Contractor.

**8. LIQUIDATED DAMAGES**

- a) If the Works do not reach Completion by the Date for Completion, the Contractor is entitled to Liquidated Damages as specified in the Sub-Contract Particulars as a debt due and payable to the Contractor.
- b) If the Head Contract Works do not reach Practical Completion by the Date for Practical Completion under the Head Contract due to:
  - i. a failure of the Sub-Contractor to reach Completion by the Date for Completion under the Sub-Contract; or
  - ii. a breach of any other obligation under the Sub-Contract by the Sub-Contractor, the Sub-Contractor shall indemnify the Contractor against any liquidated damages under the Head Contract or any other damages that the Contractor becomes liable to pay under the Head Contract.
- c) If it is determined that the Sub-Contractor’s liability to pay the Liquidated Damages is deemed to be, or becomes, void, invalid or unenforceable for any reason (including because such Liquidated Damages are a penalty), the Contractor may claim general damages for the Sub-Contractor’s failure to reach Completion by the Date for Completion.

**9. PAYMENT CLAIM**

- a) The Sub-Contractor is entitled to make a payment claim on the 25th of each month.
- b) All payment claims, including a final payment claim, must:
  - i. Contain the total amount of all progress payments the Contractor has previously paid to the Sub-Contractor;
  - ii. Contain details of the actual cost of work carried out by the Sub-Contractor up to and including the date of the claim;
  - iii. Provide copies of tax invoices for any outlays claimed.
  - iv. Contain a completed sub-contractor’s statement (confirming that all employees, consultants and suppliers have been paid any claims and entitlements that are due and payable) made by a person duly authorised by the Sub-Contractor, in the form set out in Schedule 1.
  - v. Before being entitled to payment, the Sub-Contractor must if requested by the Contractor, execute and return a Deed of Warranty in the form set out in Schedule 2, or if required and directed to do so, the form of Sub-Contractor warranty deed required under the Head Contract.
  - vi. The Sub-Contractor must within ten (10) Business Days after issue of a certificate of Completion as a pre-condition to the payment of any monies due to the Sub-Contractor from the Contractor execute and deliver a Deed of Release in the form set out in Schedule 3.
- c) On receipt of a payment claim, the Contractor will:
  - i. Within ten (10) Business Days, issue a payment schedule stating the amount the Contractor proposes to pay to the Sub-Contractor or the amount due from the Sub-Contractor to the Contractor pursuant to this Sub-Contract. If the amount payable/due is less than the claimed amount the Contractor will provide reasons for the difference and an assessment of any debt due or other monies owed by the Sub-Contractor to the Contractor; and
  - ii. Pay that amount to the Sub-Contractor within thirty-five (35) Business Days of receipt of payment claim.

Contractor representative/ initial

Sub-Contractor representative/ initial

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- d) As a precondition to being entitled to make a payment claim in accordance with clause 9 hereto, the Sub-Contractor must provide the Contractor with:
  - i. Certificates of currency for all insurance policies the Sub-Contractor is obliged to take out pursuant to clause 4;
  - ii. if requested by the Contractor, a Deed of Warranty in the form set out in Schedule 2 and a Deed of Release in the form set out in Schedule 3;
  - iii. any drawings, operation & maintenance manuals, warranties, guarantees, certificates, instruction manuals or other operational literature, as built drawings and technical specifications required to be provided under the Sub-Contract or the Head Contract in respect of the Sub-Contract Works (which the Contractor may direct);
  - iv. an estimate of the percentage of the Sub-Contract Works yet to be completed; and
  - v. such other information as requested by the Contractor.
- e) A payment claim must be submitted to in accordance with and via the EPC System stated in the Sub-Contract Particulars.
- f) In the event this Sub-Contract is terminated, the Sub-Contractor may issue a payment claim, but is only entitled to do so within five (5) Business Days on and from the date the Sub-Contract was terminated.
- g) The Contractor and the Sub-Contractor both agree that:
  - i. the Contractor can issue recipient created tax invoices (RCTIs) in respect of the Sub-Contract Works;
  - ii. the Sub-Contractor will not issue tax invoices in respect of the Sub-Contract Works;
  - iii. the Sub-Contractor acknowledges that it is registered for GST when it enters into this Sub-Contract and that it will notify the Contractor if it ceases to be registered; and
  - iv. the Contractor acknowledges that it is registered for GST when it enters into this Sub-Contract and that it will notify the Sub-Contractor if it ceases to be registered.

**9A. PAYMENT TERMS**

- a) Subject to there being no dispute regarding the value complete and/or the quality of the works, payments shall be made as provided for in this Sub-Contract in a manner agreed between the parties. All progress payments shall be considered as payments on account only.
- b) Payments shall include for varied works, provided such variation has been authorised in writing by the Contractor, the agreed value of such variation being added to/taken from the original Sub-Contract Sum.
- c) As a prerequisite to the final payment for the Works including any variations thereto, the Sub-Contractor shall sign a Deed of Release (in the form set out in Schedule 3) certifying that:
  - i. the Sub-Contractor agrees with the final Sub-Contract Sum certified by the Contractor as being payable to the Sub-Contractor;
  - ii. it releases the Contractor from any and all further claims of any nature whatsoever under this Sub-Contract; and
  - iii. all wages due and owing to both its employees and subcontractors in respect of the Works have been paid.
- d) In lieu of a Sub-Contractor endorsed Deed of Release being provided to the Contractor, acceptance of the final payment by the Sub-Contractor shall constitute such release.

**9B. COMPLETION**

- a) The Sub-Contractor must notify the Contractor in writing when the Sub-Contractor considers that Completion of the Sub-Contract Works has been achieved.
- b) On receiving the Sub-Contractor's notice under Clause 9B(a), the Contractor must:
  - i. With due expedition, inspect the Sub-Contract Works and conduct any further tests required by the Sub-Contract or considered necessary by the Contractor; and
  - ii. Notify the Sub-Contractor of any matters requiring alteration or performance before Completion will be achieved.
- c) Except for minor defects that do not have a material impact on the completion of works under the Head Contract, when the Contractor reasonably considers that Completion has been achieved, the Contractor must issue a completion certificate to the Sub-Contractor specifying the date Completion was achieved ("**Date of Completion**")

**9C. SECURITY**

- a) The Sub-Contractor must provide Security in accordance with the amount stated in the Sub-Contract Particulars, which shall not exceed 5% of the Sub-Contract Sum, as adjusted in accordance with this Sub-Contract.
- b) The Contractor may have recourse to Security when there is any debt due from the Sub-Contractor to the Contractor, for any claim to monies or any other claim that the Contractor may have against the Sub-Contractor or if the Contractor has terminated the Sub-Contract.
- c) Upon the later of the Date of Completion and receipt of a written request from the Sub-Contractor for release of 50% of Security, the Contractor will release 50% of Security held and return to the Sub-Contractor.
- d) After the latest to occur of:
  - i. the Sub-Contractor's obligations under the Sub-Contract being fully performed;
  - ii. expiry of the last Defects Liability Period;
  - iii. delivery of a Deed of Release in the form set out in Schedule 3; and
  - iv. receipt of a written request from the Sub-Contractor for release of remaining Security,
 the Contractor will release and return any remaining Security held by the Contractor, subject to the Contractor's rights under subclause (b) above.
- e) Except as provided in subclause (d) above, the Sub-Contractor shall have no entitlement (including any recovery of loss, damage or expense arising under the Sub-Contract) as a consequence of the conversion of Security into money. The Sub-Contractor acknowledges that:
  - i. The Contractor has a right to convert Security which does not consist of money into money at any time;
  - ii. In the event of such conversion, the amounts payable by the Contractor under subclause (d) above are an adequate remedy for the Sub-Contractor; and
  - iii. The Sub-Contractor has no entitlement to obtain an injunction preventing the Contractor from converting Security which does not consist of money into money.

**10. GST**

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

**11. COMPLIANCE WITH STATUTES**

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

**12. DEFAULT OR INSOLVENCY**

- a) If the Sub-Contractor commits an Event of Default the Contractor may give the Sub-Contractor a written notice setting out:
  - i. Details of the Event of Default; and

Contractor representative/ initial

Sub-Contractor representative/ initial

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- ii. The date by which the Event of Default must be cured, (**"Default Notice"**).
- b) If the Event of Default is not remedied by the time specified in the Default Notice, the Contractor may do one of the following:
  - i. Terminate the Sub-Contract; or
  - ii. Take over a part or all of the Sub-Contract Works (**"Step-In"**).
- c) If there is an Event of Insolvency the Contractor may terminate the Sub-Contract (without prior notice), or, may Step In (providing notice to the Sub-Contractor of same).
- d) If the Contractor takes over a part or all of the Sub-Contract Works under this sub-clause (exercising its Step-In right):
  - i. The Sub-Contractor's obligations under the Sub-Contract are suspended for the period the Sub-Contractor is Prevented from performing the Sub-Contract by the Contractor exercising its Step-In right;
  - ii. The Sub-Contractor must assist the Contractor to ensure the Contractor is able to exercise its Step-In right effectively and expeditiously; and
  - iii. Any cost incurred by the Contractor arising out of or in connection with the exercise of its Step-In right will be a debt due from the Sub-Contractor to the Contractor.

**12A TERMINATION**

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

**13. SUSPENSION**

- a) If work under the Head Contract has been suspended, the Contractor may suspend the Works.
- b) If the Contractor fails to make a payment by the due date, the Sub-Contractor may suspend the Works on giving three (3) Business Days prior notice.

**14. DOCUMENTS**

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

**14A. DOCUMENT CONTROL SYSTEM**

All documents and/or notices arising out of or in connection with this Sub-Contract must be made by the Document Control System if stated at the Sub-Contract

Particulars or as otherwise directed by the Contractor, in which case it is deemed to be served or issued when it enters the electronic server of the recipient.

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

**15. DISPUTE RESOLUTION**

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

**15A. MODERN SLAVERY ACT**

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

**16. DEFINITIONS**

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

**Business Day** means a day that is not:

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

**Completion** means the time when:

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

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

**Environmental Legislation** means the *Environmental Protection Act 1970* (VIC);

**EPC System** means the electronic payment claim system as indicated at Item 16 of the Sub-Contract Particulars;

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

- a. any breach or default of the Sub-Contractor's obligations under the Sub-Contract including a breach of a warranty in this Sub-Contract;

Contractor representative/ initial

Sub-Contractor representative/ initial

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- b. the Sub-Contractor failing to comply with any requirement of this Sub-Contract, including the supply of items required by this Sub-Contract or observing Legislative Requirements;
- c. if the Sub-Contractor abandons or intends to abandon the Sub-Contract Works; the Sub-Contractor failing to pursue the Sub-Contract Works diligently for a continuous period of five (5) Business Days;
- d. the Sub-Contractor failing to proceed with the Sub-Contract Works in accordance with this Sub-Contract in a prompt, efficient and safe manner and in accordance with the Contractor’s Project Management Plan and the WHS Legislation;
- e. the Sub-Contractor fails to complete the Sub-Contract Works by the Date for Completion;
- f. wrongful suspension of Sub-Contract Work;
- g. in respect of clause 9(b)(iii), providing a statement or record of payment which is false, misleading or deceptive in any respect;
- h. failing to make good any loss or damage for which it is responsible, including defective work, in a prompt and proper manner.

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

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

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

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

**Legislative Requirements** means:

- a. Acts, Ordinances, regulations, orders, awards and proclamations of the Commonwealth and the relevant State including Australian Standards and the Building Code of Australia any other applicable codes of practice;
- b. local laws, by laws, orders, ordinances and legal requirements of any relevant authority, including local government;
- c. approvals, compliance requirements and requirements of organisations having jurisdiction in connection with the carrying out of the work under the Sub-Contract;
- d. fees and charges payable in connection with the foregoing; and
- e. Acts at subclause (a) including the *Building Act 1993* (VIC) and the *Building Regulations 2018* (VIC) and the *Minister’s Guideline MG-14: Issue of building permits where building work involves the use of certain cladding products*

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

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

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

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

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

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

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

**WHS Legislation** means:

- a. the *Work Health and Safety Act 2011* (Cth); and
- b. the *Occupational Health and Safety Act 2004* (VIC) and the *Occupational Health and Safety Regulations 2017* (VIC), as amended from time to time;

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

Contractor representative/ initial

Sub-Contractor representative/ initial

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SCHEDULE 1 - SUB-CONTRACTOR'S STATEMENT

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

PROJECT: **[Insert Project Name]**

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

ABN (Total): **[Insert ABN]**

Payment Claim Date:

Payment Claim Number: \_\_\_\_\_

Payment period covered by payment claim  
**(Payment Period):** \_\_\_\_\_

Work between \_\_\_\_/\_\_\_\_/\_\_\_\_ and  
\_\_\_\_/\_\_\_\_/\_\_\_\_ inclusive

I, \_\_\_\_\_

Address  
\_\_\_\_\_  
\_\_\_\_\_

Do solemnly and sincerely declare as follows:

1. That all employees who are, or have been engaged, by the Sub-Contractor on the project have been paid their full remuneration for work done in connection with the Sub-Contract during the Payment Period. Superannuation payments have also been paid in full to the relevant person, trustee or entity for the Payment Period. All payments have been made in accordance with the applicable award or industrial agreement;
2. All consultants, suppliers and secondary Sub-Contractors who are, or at any time have been, engaged by the Sub-Contractor on the Project have been paid in full all amounts that have become payable to them under the terms of their agreement with the Sub-Contractor;
3. All amounts accrued, due and payable, and which have been included in the calculation of previous payments by Total to the Sub-Contractor, have been duly paid;
4. I acknowledge and agree on behalf of the Sub-Contractor that by submitting each Progress Claim the Sub-Contractor thereby releases Total from any claim (whether for time or money or otherwise and whether pursuant to the Sub-Contract or otherwise) not notified in accordance with the Sub-Contract;
5. The Sub-Contractor is registered for GST;
6. The Sub-Contractor is not in breach of any requirement of the Occupational Health and Safety Act 2004 (VIC) or the Occupational Health and Safety Regulation 2007 (VIC);

Contractor representative/ initial

Sub-Contractor representative/ initial

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7. All insurance policies required under the Sub-Contract are current as at the date of this statutory declaration and I know of no material amendment to the terms of such policies that have not been advised to Total.

8.

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

ABN: **[Insert ABN]**

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

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

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

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

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

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

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

\_\_\_\_\_  
Date

Contractor representative/ initial

Sub-Contractor representative/ initial

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Contractor representative/ initial

Sub-Contractor representative/ initial

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SCHEDULE 2 – DEED OF WARRANTY

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

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

BACKGROUND

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

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

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

Contractor representative/ initial	Sub-Contractor representative/ initial



- a. comply with the requirements of this Deed;
  - b. be suitable, appropriate and adequate to satisfy Total’s design requirements for the Project;
  - c. be fit for the purposes identified for the Project;
  - d. satisfy all Legislative Requirements;
  - e. be at a standard and level of detail suitable for the purposes of the Project; and
  - f. be fit for their stated purpose and comply with all requirements of the Sub-Contract.
9. The Sub-Contractor hereby indemnifies Total and the Principal against any cost, expense, loss or damage or claim that Total pays, suffers or incurs arising out of or in respect to a breach of this Deed by the Sub-Contractor.
10. The Sub-Contractor will provide to Total each month, during the progress of the WUS and at completion, a certification that the design prepared have been satisfied (‘Certification’). In relation to each Certification, the Sub-Contractor warrants that the design prepared have been satisfied.
11. The Sub-Contractor warrants that each of the goods, product, plant, materials and equipment (‘Equipment’) used by the Sub-Contractor:
- a. conforms with the Sub-Contract and is of good and merchantable quality;
  - b. is free from defects or faults in composition and manufacture;
  - c. conforms with all Legislative Requirements and the requirements of all relevant Australian Standards and the Building Code of Australia; and
  - d. where selected or designed by the Sub-Contractor; is fit for its intended purpose as specified in, or ascertainable from the Sub-Contract.
- e.
12. If, at any time prior to the expiry of the Defects Liability Period, the Equipment or other Sub-Contract Works do not conform with the terms of this Deed, the Sub-Contractor will, at its own cost and at such times and in such a manner as Total may require, reinstate, replace, repair or rectify the Equipment or Sub-Contract Works so that the Equipment and/or Sub-Contract Works conforms with this Deed.
13. The Sub-Contractor further warrants it is aware of the requirements of the Building Act 1993 (VIC) and acknowledges that in the performance of its work under the Sub-Contract it will not use, refer to or identify any product defined as a ‘Prescribed Combustible Product’ within the meaning of the Minister’s Guideline MG-14: Issue of building permits where building work involves the use of certain cladding products as part of an External Wall (including as an attachment) unless the Prescribed Combustible Product has been approved by the relevant building surveyor acting in their capacity under the Act.
14. The Sub-Contractor further warrants it is aware of the requirements of the Protection of Adjoining Property Legislation and will not cause Total to be in breach of any provisions with respect to the ‘protection works’ under the Act and Regulation, and will comply with any direction reasonably necessary for Total to carry out ‘protection works’.
15. The Sub-Contractor warrants it is Financially Sound at the time of entering into this Deed and continues to be Financially Sound in the performance of the Sub-Contract and Works will comply with any direction of Total for the Sub-Contractor to provide proof that it is Financially Sound.
16. The Sub-Contractor warrants it has complied with all of its obligations under the Privacy Act 1988 (Cth) in regards to information supplied to Total in respect of the Sub-Contractor’s employees;

Contractor representative/ initial

Sub-Contractor representative/ initial

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- 17. The Sub-Contractor warrants that it will ensure that they minimise any loss, damage or injury to any adjoining landowner and to comply with any agreement, right to access, easement, licence, or any access order which has been granted on the Project;
- 18. Nothing in this Deed will limit or otherwise affect any of its obligations or liability under the Sub-Contract or otherwise (including, without limitation, its obligation to rectify defects).
- 19. Total may assign the benefits and rights accrued under this Deed.

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

**SCHEDULE**

**Insert information**

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

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

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

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

Contractor representative/ initial	Sub-Contractor representative/ initial



SCHEDULE 3 – DEED OF RELEASE

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

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

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

Contractor representative/ initial

Sub-Contractor representative/ initial

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

**Definitions –**

**‘Sub-Contractor’** means Sub-Contractor or Consultant, whichever is applicable.

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

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

Signed for and on behalf of:

\_\_\_\_\_  
Sub-Contractor business name

\_\_\_\_\_  
Sub-Contractor ABN

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

In the presence of (witness):

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Contractor representative/ initial

Sub-Contractor representative/ initial

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TRADE PACKAGE

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

CONTENTS

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

Contractor representative/ initial

Sub-Contractor representative/ initial

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**ANNEXURE 1**

**DRAWINGS AND SPECIFICATIONS AS PER DOCUMENT REGISTER**

Contractor representative/ initial

Sub-Contractor representative/ initial

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**ANNEXURE 2**

**(GENERAL) SCOPE OF WORKS**

Contractor representative/ initial

Sub-Contractor representative/ initial

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**ANNEXURE 3**

**CONSTRUCTION PROGRAM**

Contractor representative/ initial

Sub-Contractor representative/ initial

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**ANNEXURE 4**

**SIGNED TENDER INTERVIEW**

Contractor representative/ initial

Sub-Contractor representative/ initial

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**ANNEXURE 5**

**OTHER SUB-CONTRACT DOCUMENTATION**

Contractor representative/ initial

Sub-Contractor representative/ initial

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