

SUBCONTRACT FORMAL INSTRUMENT - Queensland



Project No: **(insert Project No.)**

Trade: **(Insert Trade)**

Agreement No. **(insert Agreement No.)** made between:

HARDLINE GROUP HARDLINE GROUP Pty Ltd

Address:

ACN: 604 788 874
ABN: 17 604 788 874

3/7 Waterway Drive, Coomera QLD 4209
PH: 1800 427 354

And

Subcontractor

(Insert Subcontractor)

Address

ACN:

(Insert Address, State and Post Code)

ABN:

Ph: **xx xxxx xxxx** Fax:

EVIDENCE OF AGREEMENT

1. The Subcontractor and HARDLINE GROUP (who will from here-on be referred to as "HARDLINE") agree that the agreement between them comprises the following documents set out in order of precedence: This Subcontract Formal Instrument, Special Conditions, Project Requirements (but only on the basis set out in Item 10), Standard Conditions of Subcontract, Addenda, Specifications, Plans, Scope of Works, Post Tender Interview, BOQ (but only on the basis set out in Item 6(a)), Subcontract Program and the Head Contract (collectively, the "Agreement"). Terms defined in the Standard Conditions of Subcontract have the same meaning in this Subcontract Formal Instrument.

IT IS AGREED:

2. HARDLINE engages the Subcontractor to perform the Works under the Agreement.
3. The Subcontractor agrees to perform the Works under the Agreement subject to and in accordance with the Agreement.
4. The Agreement applies to all of the Works whether performed before or after the date of execution of this Formal Instrument.
5. HARDLINE agrees to pay to the Subcontractor the Subcontract Sum for the performance of the Works subject to and in accordance with the Agreement.

COMMENCEMENT AND JURISDICTION

6. The Agreement comes into effect on the earlier of:
 - (a) the date the Subcontractor executes this Formal Instrument of Agreement (despite that HARDLINE may execute later on); or
 - (b) the date the Subcontractor communicates acceptance to HARDLINE (oral or in writing) or does anything pursuant to the Agreement, and is governed by the laws of the State or Territory where the Site is located and the parties irrevocably submit to that jurisdiction.

ABSENCE OF COLLATERAL AGREEMENTS

7. The Agreement comprises the entire understanding between the Subcontractor and HARDLINE as to the subject matter of the Agreement and all previous negotiations, warranties, understandings or representations, express or implied, in relation to that subject matter are superseded by the Agreement and have no effect, and no party shall be liable to the other party in respect of same. The parties acknowledge and agree that as at the date of this Subcontract Formal Instrument there are no collateral agreements or warranties between themselves in relation to the subject matter of the Agreement other than as contained in the Agreement and that either party may raise this clause as a complete bar to any Claims to the contrary.

RULE OF CONSTRUCTION, WAIVER, SEVERANCE AND SURVIVING OBLIGATIONS

8. In the interpretation of the Agreement, no rule of construction applies to the disadvantage of the party preparing the document on the basis that it prepared the documents forming part of the Agreement or any part of it.
9. None of the terms of the Agreement shall be varied, amended, waived, discharged or released except with the prior written consent of HARDLINE. No action, consent, conduct or representation by HARDLINE, other than prior written consent, shall constitute any amendment, variation, waiver, discharge or release of the Subcontractor's obligations to strictly comply with the Agreement.
10. If a provision in the Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision shall be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down a provision, as required by this clause, that provision is severable without affecting the validity and enforceability of the remaining parts of that or other provisions in the Agreement. All its obligations, all warranties, representations and indemnities given by the Subcontractor and rights of HARDLINE, arising out of or in connection with the Agreement capable of surviving termination or expiration of the Agreement, shall survive the termination or expiration of the Agreement.

Executed as an agreement on **(Insert date)**

<p>Executed by HARDLINE GROUP Pty Ltd (ACN 604 788 874) by the following persons:</p> <p>..... Signed</p> <p>..... Print Name</p> <p>..... Date</p>	<p>Executed by (Insert Subcontractor) by the following persons:</p> <p>..... Signed</p> <p>..... Print Name</p> <p>..... Date</p>
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THE WORKS

(c)

- 1 The Subcontractor must:
 - (a) commence the Works on the Date for Commencement stated in Item 2 or as otherwise notified by HARDLINE;
 - (b) proceed with the Works with due expedition and without delay (including in accordance with the Subcontract Program as amended from time to time);
 - (c) carry out the Works to Practical Completion by the Date for Practical Completion; and
 - (d) otherwise execute and complete the Works in accordance with the Agreement, so that the Works are fit for their intended purpose.
- 2 The Subcontractor provides the Subcontractor Warranties to HARDLINE without limitation to any other warranties provided by the Subcontractor, whether express or implied, whether arising at law or out of, or in connection with, the Agreement. Each Subcontractor Warranty must be given full effect in its own right. The Subcontractor Warranties will not be read down by reason of the existence or absence of any other warranty in the Agreement.
- 3 The Subcontractor shall immediately notify HARDLINE in writing of any event or occurrence (whether actual or threatened) during the term of the Agreement which has or is likely to adversely affect the Subcontractor's ability to perform any of its material obligations under the Agreement, including notification of a breach or potential breach of any of the Subcontractor Warranties or any other warranties given by the Subcontractor in favour of HARDLINE in the Agreement.
- 4 Minor items not expressly mentioned in the Agreement but which are necessary for the due and proper completion and performance of the Works to achieve a standard of work which is fit for purpose and within a level of finish consistent with the Agreement are deemed to be included as a part of the Works and must be supplied and executed by the Subcontractor to the reasonable satisfaction of HARDLINE. The cost of such items is deemed to be included in the Subcontract Sum.
- 5 In carrying out the Works the Subcontractor must adopt and implement environmental and quality standards in accordance with the applicable Australian Standards listed in Item 13 and approved by HARDLINE, or shall adopt HARDLINE's systems. The Subcontractor must indemnify and keep HARDLINE indemnified against all Claims, fines, penalties, costs (including legal costs on an indemnity basis), Loss and liabilities whatsoever arising out of a breach of this clause 5.

SUBCONTRACT SUM

- 6 HARDLINE will pay the Subcontractor the Subcontract Sum in accordance with Item 4, adjusted pursuant to the Agreement, for the performance of the Works subject to and in accordance with the Agreement.
- 7 Unless otherwise specified to the contrary, quantities in a BOQ are estimated quantities only.
- 8 The Subcontractor acknowledges and agrees that, subject only to adjustment specifically provided for in the Agreement, the Contract Sum is not subject to any adjustment or adjustment for rise and fall for any reason.
- 9 If part of the Works involves design work, then the Subcontractor must ensure that all designs provided to HARDLINE by the Subcontractor:
 - (a) are suitable, appropriate and fit for their intended purpose;
 - (b) do not infringe copyright or any other protected right; and
 - (c) are certified at the Subcontractor's cost by an appropriately qualified building practitioner, engineer or designer (as the case may be).

THE HEAD CONTRACT

- 10 The Works form part of the Head Contract Works required of HARDLINE under the Head Contract.
- 11 The Subcontractor acknowledges that it has been given a reasonable opportunity to inspect and familiarise itself with the terms of the Head Contract prior to entering into the Agreement. In addition to its other obligations under the Agreement, the Subcontractor:
 - (a) must observe, perform and comply with all provisions of the Head Contract on the part of HARDLINE to be observed, performed and complied with, insofar as they relate to and apply to the Works, and are not inconsistent with the express provisions of the Agreement, as if those obligations were expressly set out in the Agreement as obligations of the Subcontractor;
 - (b) must do all things reasonably requested by HARDLINE to ensure that HARDLINE complies with (and is able to comply with) its obligations under the Head Contract; and unconditionally and irrevocably indemnifies HARDLINE from and against any Loss that HARDLINE suffers in relation to the Subcontractor failing to satisfy its obligations under the Agreement, including any Loss that HARDLINE suffers as a

DISCREPANCIES, DIMENSIONS AND CONTRACT DOCUMENTS

- 12 The Subcontract Documents are to be taken as mutually explanatory of one another. If either party discovers a Discrepancy between or within any Subcontract Document or between any Subcontract Document or a document prepared for the purposes of executing the Works, that party must notify the other party in writing of the Discrepancy. In the event of a Discrepancy, HARDLINE shall Direct the Subcontractor as to the interpretation to be followed by the Subcontractor in carrying out the work. Where a Discrepancy exists between figures and scaled dimensions, the figured dimensions shall prevail.
- 13 The Subcontractor has no Entitlement and will not make any Claim arising out of or in any way in connection with a Discrepancy or a Direction given by HARDLINE pursuant to the preceding clause.
- 14 If the Subcontractor submits documents to HARDLINE, then:
 - (a) HARDLINE is under no obligation to check the documents for Discrepancies with the requirements of the Agreement; and
 - (b) HARDLINE's receipt, review, acceptance, approval, rejection of, or failure to do any one of these things, in relation to any document provided by the Subcontractor, does not relieve the Subcontractor from responsibility for Discrepancies with the requirements of the Agreement.

SECURITY AND SET OFF

- 15 The Subcontractor must provide security to HARDLINE in the form of either:
 - (a) an unconditional and irrevocable undertaking that does not contain an expiry date, and issued by a financial institution approved by HARDLINE and in a form approved by HARDLINE in the amount stated in Item 5(a) which must be lodged with HARDLINE within 7 days of the Commencement Date ("**Security**"); or
 - (b) cash retention progressively retained by HARDLINE from progress payments in the amount of 10% of moneys otherwise due to the Subcontractor until the amount so withheld from progress payments equals 5% of the Subcontract Sum as may be adjusted from time to time under the Agreement ("**Cash Retention**").
- 16 If the Subcontract Sum has been increased under the Agreement, HARDLINE is entitled to Cash Retention for the difference.
- 17 Security and Cash Retention is for the purpose of ensuring the due and proper performance by the Subcontractor of the Agreement.
- 18 HARDLINE is not obliged to pay interest to the Subcontractor on any Security or Cash Retention. The Subcontractor acknowledges that any Security or Cash Retention held under the Agreement is not held on trust for the Subcontractor.
- 19 HARDLINE may have recourse to the Security or Cash Retention where:
 - (a) HARDLINE has become entitled to exercise a right under the Agreement in respect of the Security or Cash Retention; or
 - (b) HARDLINE remains unpaid after the time for payment has elapsed; or
 - (c) there is a *bona fide* claim that there is an amount payable from the Subcontractor to HARDLINE (including liquidated damages); or
 - (d) there is a debt due from the Subcontractor to HARDLINE (including liquidated damages); or
 - (e) the Subcontractor is in breach of any of its obligations under the Agreement.

HARDLINE must give the Subcontractor written notice of its intention to have recourse to the Security or Cash Retention within 28 days after HARDLINE becomes aware, or ought reasonably to have become aware, of its right to have recourse to the Security or Cash Retention, advising of the proposed use and, if the amount due can be quantified when the notice is given, of the amount, other than in circumstances where:

- (a) the Works have been taken out of the hands of the Subcontractor;
 - (b) the Agreement has been terminated; or
 - (c) HARDLINE has paid any security into court to satisfy any notice of a claim of charge under the Subcontractors' Charges Act 1974 (QLD).
- 20 If HARDLINE has had recourse to the Security or Cash Retention it may by notice in writing to the Subcontractor demand further security in the form of replacement unconditional undertakings in accordance with clause 15 or take further Cash Retention (as the case may be), in an amount equivalent to the amount deducted or had recourse to. If such a notice is given, the Subcontractor must replace the Security or the Cash Retention no later than 10 business days after receiving the notice from HARDLINE. The Subcontractor will not be entitled to claim payment under the Agreement until the Subcontractor complies with the notice

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given to it by HARDLINE and replaces the Security or Cash Retention in accordance with the requirements of that notice.

- 21 Upon HARDLINE issuing a Certificate of Practical Completion (as that term is defined in clause 79) (or if there are any Separable Portions stated in, or determined by HARDLINE under the Agreement, upon the issue of the Certificate of Practical Completion for the last Separable Portion to achieve Practical Completion) HARDLINE's entitlement to the Security or Cash Retention will be reduced to the percentage stated in Item 5(b).
- 22 HARDLINE will, within 30 days of the entitlement being so reduced pursuant to the preceding clause, release the Security or Cash Retention in excess of the entitlement. The reduction of HARDLINE's entitlement to the Security or Cash Retention does not operate so as to waive, prejudice, release or discharge any of the conditions of the Agreement or any of the obligations imposed on the Subcontractor arising out of or in any way connected with the Agreement.
- 23 HARDLINE will release the balance of the Security or Cash Retention (if any) 7 days after the later of:
 - (a) rectification of all Defects to reasonable satisfaction of HARDLINE;
 - (b) the issue of the "Final Certificate" (or like document) by the Principal (or Superintendent) to HARDLINE under the Head Contract;
 - (c) the expiry of the Separate Defects Liability Period under clause 91; and
 - (d) the expiry the Defects Liability Period.
- 24 HARDLINE may, without limiting any other right which it may have under the Agreement or at law, at any time and from time to time, deduct from moneys otherwise due, or which may become due, to the Subcontractor, whether such amounts are included in a Payment Schedule or not:
 - (a) otherwise than under the Agreement, any debt or other moneys due from the Subcontractor to HARDLINE; and
 - (b) under the Agreement, or otherwise at law:
 - (i) any debt due from the Subcontractor to HARDLINE or claim to money that HARDLINE may have against the Subcontractor whether for damages or otherwise;
 - (ii) any amount which HARDLINE (acting reasonably) considers necessary to pay in the interest of completing the Works as a consequence of any act, default or omission of the Subcontractor; or
 - (iii) any claim to moneys which HARDLINE has, or may have, against the Subcontractor whether for damages (including liquidated damages) or otherwise,

and if those moneys are insufficient, then HARDLINE may have recourse to the Security or Cash Retention.

BILLS OF QUANTITIES (BOQ)

- 25 Item 6(a) makes an election between the following alternatives for the application of a BOQ:

Alternative A
- 26 If Alternative A applies, then the BOQ does not form part of the Agreement, is for information purposes only, and will not be priced in accordance with clause 30 (or at all).

Alternative B
- 27 If Alternative B applies, then:
 - (a) the BOQ forms part of the Agreement, will be priced in accordance with clause 30, and is to be used only for the purposes of preparing and valuing payment claims and variations;
 - (b) the Subcontractor:
 - (i) acknowledges that the quantities set out in the BOQ are estimated quantities only, and are not warranted or guaranteed by HARDLINE; and
 - (ii) agrees that it has no Entitlement as a consequence of an error or omission in the BOQ or an actual quantity or item required to be performed under the Agreement being greater or less than the quantity shown in the BOQ.

Alternative C
- 28 If Alternative C applies, then the BOQ forms part of the Agreement and will be priced in accordance with clause 30.
- 29 If Alternative C applies and if the BOQ is in error, in that:
 - (a) it contains an incorrect quantity in relation to any item included therein; or
 - (b) contains an item which should not have been included therein; or
 - (c) omits an item which should have been included therein, then,

- (i) in the case of clause 29(a) where the item is deficient in quantity or in the case of clause 29(c) – upon application in writing to HARDLINE by the Subcontractor; and
- (ii) in the case of clause 29(a) where the item is excessive in quantity or in the case of clause 29(b) – upon notification in writing to the Subcontractor by HARDLINE, the lump sum accepted by HARDLINE for the execution of the whole of the work to which the BOQ relates shall, except when the value of the error is less than \$400, be adjusted by such amounts as is required to correct the error, determined in the manner provided by clause 106 for the valuation of Variations as if the correction were a Variation under clause 95.

For the purposes of this clause, the BOQ shall be deemed to be in error as aforesaid to the extent that the items and quantities included in it differ from those required for the execution of the Works in accordance with the Plans and Specifications, measured in accordance with the method of measurement adopted in the Agreement.

- 30 If a BOQ is to be priced, then:
 - (a) all the items included in the BOQ will be priced and extended by the Subcontractor and the prices as extended will on addition equal the sum accepted by HARDLINE for the carrying out of the work to which the BOQ relates;
 - (b) the Subcontractor must lodge a priced and extended BOQ within 7 days of the Commencement Date;
 - (c) despite any other term of the Agreement, the Subcontractor is not entitled to payment until it has lodged the BOQ so priced and extended; and
 - (d) HARDLINE or the Subcontractor will notify the other party of any errors in extension or addition, or both, or correct or incorrect or inconsistent rates or prices (including the insertion of rates or prices wrongly omitted and the deletion of rates or prices wrongly included) in the priced BOQ and the errors will be corrected in a manner agreed between HARDLINE and the Subcontractor. In the event of failure to agree, the correction will be determined by HARDLINE. After correcting the said error the total of all items in the priced BOQ will equal the sum accepted by HARDLINE for the execution of the whole of the work to which the BOQ relates.

DIRECTIONS

- 31 HARDLINE may give the Subcontractor a Direction which may be oral unless the Agreement otherwise requires. The Subcontractor must comply with all such Directions. Where requested by the Subcontractor, HARDLINE will confirm an oral Direction within 3 business day and the Subcontractor is not required to comply with the Direction until it is given in writing.

COOPERATION, OTHER WORKS & PROTECTION

- 32 The Subcontractor must cooperate with all other persons who supply goods or services for or in connection with the Head Contract Works and the Head Contract and must coordinate and undertake the Works to ensure no delay in the execution of, or damage is caused, to the Works, the Head Contract Works, other property or the supply of goods or services by others.
- 33 The Subcontractor must immediately notify HARDLINE in writing if it considers that the Works or any part of it will or may be affected by defective or otherwise unsuitable work done or materials supplied by any other person ("Other Work"). The Subcontractor must comply with any Direction given by HARDLINE in respect to that Other Work. If the Subcontractor commenced any relevant part of the Works before notifying HARDLINE under this clause, it is deemed to have accepted the Other Work and will have no Entitlement whether under the Agreement or otherwise at law, and will not make a Claim, in connection with that Other Work.
- 34 The Subcontractor is responsible for the care of the Works from and including the Commencement Date to the Date of Practical Completion. The Subcontractor must protect against damage that may be caused by carrying out the Works. The Subcontractor is responsible for the care of unfixed items, things otherwise entrusted to the Subcontractor by HARDLINE (or its subcontractors) for the purpose of carrying out the Works, and things brought onto the Site by subcontractors for that purpose. The Subcontractor must provide the storage and protection necessary to preserve those items.
- 35 The Subcontractor must provide insurance cover for their own materials, plant and equipment that are on site and are not, nor will not, be incorporated into the Works. The Subcontractor will be fully liable for material not yet incorporated into the Works.
- 36 The Subcontractor must use reasonable endeavours to minimise or mitigate the effect of loss or damage to anything while the Subcontractor is responsible for its care. If loss or damage occurs to the Works while the Subcontractor is responsible for the care thereof, the Subcontractor

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must, at its own cost, rectify such loss or damage so that the Works conform with the provisions of the Agreement. If the Subcontractor fails to comply with its obligations under this clause, in addition to any other remedies of HARDLINE, HARDLINE may after giving reasonable notice in writing to the Subcontractor, have the subject work carried out by other persons and the cost incurred by HARDLINE is a debt due from the Subcontractor to HARDLINE.

38 Insofar as this clause applies to property, it applies to property other than the Works under the Agreement. The Subcontractor indemnifies HARDLINE against:

- (a) damage or loss to property, including existing property in or upon which the Works are being carried out arising out of or as a consequence of the carrying out by the Subcontractor; and
- (b) Claims by any person against HARDLINE (including the Principal or any other subcontractor to HARDLINE) in respect of personal injury or death or loss of damage to any property, arising out of or as a consequence of the carrying out by the Subcontractor of the Works.

39 The Subcontractor must clean up and sort all rubbish and waste arising from the Works and place in skips, at ground level, provided by HARDLINE. If the Subcontractor fails to clean up and sort rubbish and waste HARDLINE will do it on the Subcontractor's behalf and the cost incurred by HARDLINE in such circumstances is a debt due and payable from the Subcontractor to HARDLINE.

40 The Subcontractor must provide experienced, appropriately trained, qualified and well behaved supervisors and workers to carry out the Works, both on and off Site, and remove from the Works, or the Site, supervisors or workers if directed by HARDLINE to do so.

LICENCES, LAWS AND CODES

41 Subject to this clause, the Subcontractor must obtain and pay for all permits, fees, licences, royalties and other expenses required for the performance of the Works. The Subcontractor must produce evidence of all current licenses or registration upon HARDLINE's request. HARDLINE will arrange and pay for the building permit.

42 The Subcontractor must, at its own cost, comply with:

- (a) any Directions given by HARDLINE for the purposes of applicable WH&S law;
- (b) all rules and procedures that HARDLINE may publish from time to time and all Legislative Requirements, regulations, codes of practice and industry standards applicable to the Works in relation to occupational health and safety and the environment; and
- (c) its obligations to its employees that apply under any relevant State or federal legislation or industrial instrument or award that is binding on the Subcontractor.

43 The Subcontractor must:

- (a) at its own cost, manage all industrial action and disputes, issues and matters which affect or may affect its employees, officers and agents;
- (b) immediately report in writing to HARDLINE, any threatened or actual industrial action in relation to the Works; and
- (c) comply with the latest Building Code 2013 and the State or Territory Code of Practice in which the Site is located and assist HARDLINE in complying with its own obligations in that regard.

QUALITY, SAMPLES & SHOP DRAWINGS

44 All materials used by the Subcontractor must be new and of the highest quality, unless otherwise Directed by HARDLINE.

45 HARDLINE may at any time during the performance of the Works require the Subcontractor to submit samples, prototypes and mock-ups of any work or materials which the Subcontractor intends to use in the Works, for HARDLINE's review. All work and materials to be used by the Subcontractor must be of at least equal quality to the sample reviewed by HARDLINE, otherwise such work or material is deemed to be a Defect. Acceptance of samples of any goods, work or materials by HARDLINE does not constitute acceptance of the Works or that the Works have been carried out in accordance with the terms of the Agreement.

46 The Subcontractor must provide at its own cost, tests and facilitate inspections required by HARDLINE to demonstrate compliance with the Agreement. The Subcontractor remains responsible for quality of the Works even though HARDLINE may have had work tested or otherwise indicated that work is in accordance with the Agreement or otherwise acceptable.

47 The Subcontractor must prepare and obtain at its own cost, shop drawings of the Works as required by the Subcontract Documents or as Directed by HARDLINE.

ASSIGNMENT AND SUBCONTRACTING

48 The Subcontractor must not assign or subcontract the whole or any part

37 If urgent action is necessary to protect the Works, Other Work, other property or people and the Subcontractor fails to take that action, in addition to any other remedy of HARDLINE, HARDLINE may take the necessary action. If the action was action which the Subcontractor should have taken at the Subcontractor's own cost, the cost incurred by HARDLINE in such circumstances is a debt due and payable from the Subcontractor to HARDLINE.

of the Works or any other obligation, right, interest or benefit under the Agreement without first obtaining written approval from HARDLINE. The Subcontractor's request for approval must include the particulars in writing of the proposed work to be subcontracted and the names and addresses of the proposed subcontractor, together with the proposed subcontract documents.

49 Approval by HARDLINE may be conditional upon HARDLINE requiring the Subcontractor to include in the proposed subcontract, terms:

- (a) that may be reasonably necessary to enable the Subcontractor to fulfil its obligations under the Agreement; and
- (b) that the proposed subcontractor to the Subcontractor obtain its own insurances in the form of the Required Insurance (referred to in clause 125).

50 An approval to assign or subcontract any part of the Works by HARDLINE will not discharge or relieve the Subcontractor from any liability or obligation arising out of or in connection with the Agreement and does not create or impose any obligation or liability on HARDLINE, and the Subcontractor is liable to HARDLINE for the acts and omissions of any of its subcontractors, employees and agents of those subcontractors as if they were acts or omissions of the Subcontractor.

PROVISIONAL SUMS

51 If the Contract Sum makes allowance for any Provisional Sum Work:

- (a) the Subcontractor will not carry out that Provisional Sum Work unless Directed;
- (b) the Subcontractor will comply with any Direction to price the Provisional Sum Work including the provision of any supporting documentation requested, and the price will be assessed pursuant to clause 106 without overhead and profit.
- (c) if the Subcontractor is Directed to carry out Provisional Sum Work and the value of the work, assessed pursuant to clause 106 without overhead and profit, differs from the allowance included for that work in the Subcontract Sum, the Subcontract Sum will be adjusted for the amount of the difference; and
- (d) if the Subcontractor is not directed to carry out Provisional Sum Work:
 - (i) the Provisional Sum Work will be deleted from the Agreement;
 - (ii) the Subcontract Sum will be reduced by the allowance originally included for that work in the Subcontract Sum (plus a reasonable amount for overhead and profit); and
 - (iii) the Subcontractor will have no Entitlement and shall not make any Claim in relation to that work or the deletion of that work.

52 If an adjustment is to be made under clause 51(b), that adjustment will not include any further allowance for profit or overhead.

REPRESENTATIVES

53 HARDLINE may by notice in writing to the Subcontractor appoint a representative to exercise the discretions and powers vested in HARDLINE under the Agreement ("HARDLINE's Representative"). The appointment of a person as HARDLINE's Representative does not prevent the exercise of any discretion or power by HARDLINE. HARDLINE may, by written notice to the Subcontractor, at any time, cancel the appointment and nominate another person as HARDLINE's Representative.

54 The Subcontractor must appoint a representative with the necessary authority to make decisions for the Subcontractor and provide HARDLINE with written notice identifying that person and contact details ("Subcontractor's Representative") for HARDLINE's approval. If the Subcontractor wishes to replace the Subcontractor's Representative, it must obtain HARDLINE's consent (not to be unreasonably withheld) following the nomination of another Subcontractor's Representative.

CONDITIONS OF THE SITE

55 HARDLINE makes no representations and gives no warranty to the Subcontractor in respect of the conditions of the Site or any structures or other things in, above or adjacent to, or under the surface of, the Site.

56 The Subcontractor accepts the Site and any structures or other things on, above or adjacent to, or under the surface of, the Site in their present condition and subject to all defects, including all sub-surface conditions.

57 Upon becoming aware of a Latent Condition and prior to disturbing it, the Subcontractor must notify HARDLINE of the existence of the Latent Condition and must provide any information required by HARDLINE in connection with the Latent Condition.

58 Item 12 makes an election between the following alternatives for allocation

of risk for Latent Conditions.

Alternative A

The Subcontractor is responsible for, and assumes the risk of all cost, Loss, expenses, damages, liability or delay or disruptions it suffers or incurs, arising out of or in any way in connection with the conditions of the Site and any structures or other things on, above or adjacent to, or under the surface of, the Site, including Latent Conditions, and has no Entitlement and will not make any Claim in relation to same.

Alternative B

The Subcontractor is responsible for, and assumes the risk of all cost, Loss, expenses, damages, liability or delay or disruptions it suffers or incurs, arising out of or in any way in connection with the conditions of the Site and any structures or other things on, above or adjacent to, or under the surface of, the Site, and has no Entitlement and will not make any Claim in relation to same unless the Claim relates solely a Latent Condition. The Subcontractor acknowledges that clauses 68 to 75 will still apply to such a Claim.

SUBCONTRACT PROGRAM

- 59 The Subcontract Program is at Attachment 7. The Subcontract Program shows the dates by which or the times within which, the various stages or portions of the Works are to be carried out or completed by the Subcontractor.
- 60 HARDLINE may, at any time, amend or otherwise vary the Subcontract Program. The Subcontractor must comply, and not without reasonable cause depart from, the amended and/or varied Subcontract Program. The Subcontractor has no Claim against HARDLINE in relation to any amendment or variation made to a Subcontract Program, and any such amendment or variation will not cause the date of Practical Completion to be set at large and does not absolve the Subcontractor of its obligations to reach Practical Completion by the Date for Practical Completion in accordance with clauses 61 and 62.

TIME AND PROGRESS

- 61 The Subcontractor must carry out the Works to Practical Completion by the Date for Practical Completion.
- 62 Without limiting the provisions of the preceding clause, the Subcontractor must:
- carry out the Works in accordance with the Subcontract Program and the Directions of HARDLINE; and
 - provide sufficient and adequate resources to complete the Works expeditiously and in accordance with the Subcontract Program.
- 63 If in HARDLINE's opinion there is insufficient labour employed by the Subcontractor then, without prejudice to any other remedy, after giving notice to the Subcontractor, HARDLINE may employ additional labour to assist the Subcontractor to complete the Work by the Date for Practical Completion, and the cost incurred by HARDLINE will be a debt due and payable by the Subcontractor to HARDLINE.
- 64 HARDLINE may at its discretion Direct the Subcontractor in writing to accelerate the Works by written notice entitled "Acceleration Direction". The Subcontractor will be entitled to be paid additional costs it reasonably incurs as a consequence of such Direction, except to the extent that HARDLINE reasonably considers the acceleration to be necessary to mitigate or overcome a delay for which the Subcontractor is not entitled to an extension of time under the Agreement. The Subcontractor has no Entitlement and will not make any Claim in relation to acceleration costs in any other circumstances.
- 65 Except as expressly provided for in clauses 69, the Subcontractor accepts all risks and liability for the carrying out of and completion of the Works notwithstanding that it may encounter any delay or disruption to the carrying out of the Works.
- 66 If the Subcontractor becomes aware of anything which is likely to cause delay to the Works (including any act, default or omission by HARDLINE, its consultants or agents or the Principal), the Subcontractor must promptly (and in any event not later than 3 business days after it first becomes aware, or should reasonably have become aware of the delay or the likely delay) give HARDLINE written notice of that cause and the estimated delay ("**Notice of Likely Delay**") and immediately commence and diligently pursue all actions required to avoid or minimise the delay. Despite such delay or disruption (whatever the cause, including any act or omission of, or act of prevention by HARDLINE, the Principal or any of their officers, employees, contractors or agents), the Subcontractor must continue to comply with its obligations under the Agreement. Without limiting the Subcontractor's obligations elsewhere under the Agreement, the Subcontractor must, and must ensure that its officers, employees, agents and contractors, take all necessary and reasonable steps to mitigate the occurrence, or consequences, of any delay to the Works (the subject of a Notice of Likely Delay, or otherwise).
- 67 The Subcontractor shall not be entitled to an extension of time to the Date for Practical Completion unless it provides written notice to HARDLINE headed "Claim for Extension of Time", stating all of the facts and circumstances in respect of the nature, cause and extent of the delay, the date on which the cause of the delay or disruption first arose, the

estimated duration of the delay and its effect or likely effect on the Date for Practical Completion and the extension of time sought, as soon as practicable and in any event not later than 5 business days after the cause of delay first arose.

- 68 The Subcontractor acknowledges and agrees that strict compliance by it with the notice and timing requirements of clauses 66 (where relevant) and 67 are essential conditions precedent to the Subcontractor's entitlement to an extension of time to the Date for Practical Completion. Failure by the Subcontractor to comply with the requirements of clauses 66 (where relevant) and 67 will be an absolute bar to claim an extension of time to the Date for Practical Completion or any other Entitlement or Claim by reason of any delay or disruption to the progress of the Works.
- 69 The Subcontractor is only entitled to an extension of time to the Date for Practical Completion if:
- the Subcontractor has:
 - taken all proper and reasonable steps to anticipate, minimise, mitigate or prevent the occurrence of the delay and otherwise minimise the effect of the delay;
 - demonstrated that the delay is a delay to a critical path activity as shown on the Subcontract Program most recently issued by HARDLINE; and
 - otherwise complied with its notice obligations under clauses 66 (where relevant) and 67; and
 - the cause of the delay, and the delay itself, was beyond the reasonable control of the Subcontractor and did not arise out of any act or omission of the Subcontractor; and
 - the delay was caused by:
 - any act, default or omission by HARDLINE, its consultants or agents;
 - a Variation, provided that the Subcontractor has otherwise complied with its obligations under the Agreement in respect of Variations; or
 - any other cause which is expressly stated in Item 11; and
 - the delay has or will actually delay the Subcontractor in achieving Practical Completion by the Date for Practical Completion.
- 70 Where more than one event causes concurrent delays and the cause of at least one of the events, but not all of them, is not a cause referred to in clause 69(c), then to the extent that the delays are concurrent, the Subcontractor shall not be entitled to an extension of time to the Date for Practical Completion.
- 71 In determining whether the Subcontractor is or will be delayed in achieving Practical Completion by the Date for Practical Completion, regard shall be had to whether the Subcontractor can reach Practical Completion by the Date for Practical Completion without an extension of time, or whether the Subcontractor can, by committing extra resources, make up the time lost.
- 72 If the Subcontractor is entitled to an extension of time to the Date for Practical Completion, HARDLINE will within 35 days of receiving a claim from the Subcontractor, determine what, if any, extension to the Date for Practical Completion is to be granted to the Subcontractor and if HARDLINE does not grant the full extension of time claimed, HARDLINE will provide the Subcontractor with reasons.
- 73 Whether or not the Subcontractor has claimed, or is entitled to claim, an extension of time to the Date for Practical Completion, HARDLINE may, in its absolute discretion, at any time and from time to time, for any reason, by notice to the Subcontractor, unilaterally extend the Date for Practical Completion by nominating a revised Date for Practical Completion, but has no obligation to act reasonably in the exercise of that discretion or to do so for the benefit of the Subcontractor.
- 74 A delay or failure of HARDLINE to grant a reasonable extension of time or to grant an extension of time within the time stated in clause 72 does not cause the Date for Practical Completion to be set at large.
- 75 The Subcontractor's entitlement to an extension of time contained in the Agreement is the Subcontractor's sole remedy for any delay or disruption in the execution of the Works (whether caused by any act or omission of HARDLINE or breach of the Agreement by HARDLINE or the negligence of HARDLINE or however otherwise caused) and the Subcontractor acknowledges and agrees that it is not entitled to claim any adjustment to the Subcontract Sum or any other Compensation arising out of or in any way in connection with any and all delay or disruption to the performance of the Subcontractor's obligations arising out of the Agreement, including the executing of the Works.

SUSPENSION

- 76 HARDLINE may at its discretion direct the Subcontractor in writing to suspend the Works. The Subcontractor must recommence the Works as soon as reasonably practical following a Direction by HARDLINE.
- 77 If the whole of or part of the Works the Agreement are suspended pursuant to clause 76:
- the suspension will not of itself affect the Date for Practical Completion but the cause of the suspension may be a ground for

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extension of time; and

- (b) the Subcontractor is not entitled to make a claim for any adjustment to the Subcontract Sum or for any other Compensation arising out of or in connection with such suspension or any delays to the Works resulting from such suspension.

PRACTICAL COMPLETION

- 78 The Subcontractor must give HARDLINE at least 7 days written notice of the date upon which the Subcontractor anticipates that Practical Completion of the Works will be reached. The Subcontractor must give HARDLINE written notice as soon as it considers that Practical Completion of the Works has been reached and request in writing that HARDLINE issue a "Certificate of Practical Completion" for the Works. The Subcontractor must accompany that request with written notice to HARDLINE stating that all the Works and other obligations required to be undertaken or fulfilled by the Subcontractor for Practical Completion under the Agreement have been completed in full accordance with the Agreement.
- 79 Subject to the Subcontractor providing the written statement referred to in the preceding clause, within 10 business days after receiving that notice from the Subcontractor, HARDLINE will issue to the Subcontractor in writing:
- (a) a "Certificate of Practical Completion" certifying the Date of Practical Completion ("**Certificate of Practical Completion**"); or
- (b) a notice setting out the reasons for not issuing a "Certificate of Practical Completion" and what remains to be done before Practical Completion will be achieved and any "Certificate of Practical Completion" is to be issued.
- 80 When HARDLINE is of the opinion that Practical Completion of the Works has been reached, HARDLINE may issue a Certificate of Practical Completion for the relevant Separable Portion or the Works, whether or not the Subcontractor has given HARDLINE a written request for its issue.
- 81 Any use or occupation of the Site by the Principal or HARDLINE prior to Practical Completion will not be taken to mean that the Works have reached Practical Completion or otherwise limit the Subcontractor's obligations under the Agreement.
- 82 The issuing of a "Certificate of Practical Completion" by HARDLINE under the Agreement does not constitute approval of any work or other matter or that it has been executed satisfactorily, nor does it prejudice any claim by HARDLINE against the Subcontractor in relation to the Works the subject of that certificate.

LIQUIDATED DAMAGES

- 83 If the Subcontractor fails to reach Practical Completion by the Date for Practical Completion (as may be extended from time to time under the Agreement) the Subcontractor must pay to HARDLINE, and is indebted to HARDLINE, for liquidated damages at the rate set out in Item 7 for every calendar day after the Date for Practical Completion until the earlier of the Date of Practical Completion and the termination of the Agreement.
- 84 The Subcontractor and HARDLINE agree that the rate for liquidated damages stated in Item 7 is a genuine pre-estimate of the loss and damage that HARDLINE will suffer if Practical Completion is not achieved by the Date for Practical Completion.
- 85 Without limiting the general nature of clause 24, HARDLINE may deduct liquidated damages from any money due from HARDLINE to the Subcontractor arising out of the Agreement. If there are no moneys owing or if those moneys are insufficient, HARDLINE may have recourse to the Security or Retention Moneys.
- 86 If in any court or other proceedings the liquidated damages set out in the Agreement are found to be a penalty or found to be void or unenforceable (either whole or in part) by operation of law, then the Subcontractor will not be relieved of liability that it would otherwise have had to pay for liquidated damages in relation to any period prior to the occurrence of any event, act or circumstance which resulted in the voidness or unenforceability and the Subcontractor will be liable to pay general damages at common law for failure or breach for which liquidated damages would have been payable had the relevant liquidated damages clause or obligation not been a penalty or not been voided or unenforceable.

DEFECTS

- 87 Where HARDLINE Directs the Subcontractor to rectify any Defect, the Subcontractor must rectify that Defect within 7 days or such other period directed by HARDLINE.
- 88 Instead of a Direction under the preceding clause, HARDLINE may instead Direct the Subcontractor that it accepts a Defect. In this case, the Defect shall be deemed to be a Variation and any resulting decrease in the value of the Works shall be valued under clause 106.
- 89 If the Subcontractor fails to rectify any Defect to HARDLINE's satisfaction within the required time (whether the Direction is given by HARDLINE before the Works reach Practical Completion or during the Defects

Liability Period), HARDLINE may carry out the rectification work itself or by another contractor and, without prejudice to any other rights that HARDLINE may have against the Subcontractor with respect to such Defect, the cost of doing so shall be a debt due from the Subcontractor to HARDLINE. Rectification of a defect in accordance with this clause will not void any warranty provided by the Subcontractor.

DEFECTS LIABILITY PERIOD

- 90 The Defects Liability Period commences on the Date of Practical Completion and, unless otherwise stated in Item 8, expires on the later to occur of:
- (a) 52 weeks after the Date of Practical Completion (as may be extended from time to time under the Agreement); or
- (b) the issue of the "Final Certificate" (or like document) by the Principal (or the Superintendent) to HARDLINE under the Head Contract.
- 91 At any time during the Defects Liability Period HARDLINE may Direct the Subcontractor to promptly rectify any Defect in the Works for which the Subcontractor is responsible. The Direction shall identify the Defect and state a date by which the Subcontractor shall complete the rectification work and may state a date by which the work shall commence. The Direction may provide that in respect of the rectification work there shall be a separate Defects Liability Period of a stated duration of not exceeding 12 months (the "Separate Defects Liability Period"), to commence on the date the rectification work is completed.
- 92 Subject to HARDLINE's rights at law, the Subcontractor must, during the Defects Liability Period or the Separate Defects Liability Period (as applicable) rectify at its own expense by repair or replacement, all Defects which exist at the commencement of the Defects Liability Period or the Separate Defects Liability Period or are notified or Directed by HARDLINE during that period. In addition to cost for the supply and installation of the items rectified or replaced, the Subcontractor must also bear all consequential costs arising from rectification of the Defects and will furthermore restore the Site to a satisfactory condition at its own cost. If it is necessary for the Subcontractor to carry out work of rectification, the Subcontractor shall do so at times and in the manner which cause as little inconvenience to the occupants or users of the Works as is reasonably possible.
- 93 Clauses 87 to 92 apply whether the Defect is discovered prior to, at the time of or after the Certificate of Practical Completion but before the 28th day after the end of the Defects Liability Period or any Separate Defects Liability Period (as applicable).
- 94 The Subcontractor indemnifies HARDLINE against all Loss and for any Claims which may arise directly or indirectly from the Subcontractor's failure to comply with clauses 87 to 93.

VARIATIONS

- 95 Subject to clause 99, the Subcontractor must not vary the Works except in accordance with a Direction given by HARDLINE to the Subcontractor to vary the Works expressly stating that it is a Direction given in accordance with this clause 95 ("Variation Notification").
- 96 A Variation Notification can be issued by HARDLINE:
- (a) before or after the Date for Practical Completion; or
- (b) before or after the Date of Practical Completion; or
- (c) after the parties entered into the Deed of Release referred to in clause 122,
- and any such Variation Notification will not cause the Date for Practical Completion to be set at large.
- 97 Unless clause 99 applies, within 7 days of issue of a Variation Notification and in any event before commencing work the subject of that notification, the Subcontractor must provide HARDLINE with a detailed written estimate of:
- (a) the cost of the Variation; and
- (b) the time impact (if any) on the Date for Practical Completion of the Variation, or the time impact if the Variation Notification is issued after the Date for Practical Completion or after the parties entered into the Deed of Release.
- 98 Unless clause 99 applies, the Subcontractor must not undertake any work, urgent or otherwise, the subject of the Variation Notification unless it has first received a written Direction from HARDLINE to proceed. To the extent permitted by law, the Subcontractor has no Entitlement arising out of or in connection with the Variation Notification if the Subcontractor proceeds with the works the subject of the Variation Notification in the absence of HARDLINE first giving the Subcontractor that written Direction to proceed, and the Subcontractor is barred from making any Claim.
- 99 HARDLINE may direct the Subcontractor in writing to proceed immediately with the works the subject of the Variation Notification. In this case, the Subcontractor must proceed immediately with the works, and must provide HARDLINE with the written details in accordance with clause 97 as soon as possible after receiving the written Direction to proceed with the works the subject of the Variation Notification. The cost of the Variation will be valued under clause 106.
- 100 Notwithstanding any other provision of the Agreement, if the Subcontractor considers that any Direction of HARDLINE other than a Direction that

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expressly states is a Variation Notification issued by HARDLINE, is a Direction to vary the Work, the Subcontractor must, prior to carrying out any work to which the Direction relates, notify HARDLINE in writing within 3 business days of issue of the Direction that it considers that the Direction is Variation.

- 101 If the Subcontractor fails to give written notice in accordance with the preceding clause, the Subcontractor is not entitled to:
- later assert that the Direction amounted to a Variation; or
 - to any Compensation on the basis that the Direction amounted to Variation; or
 - make any Claim on the basis that the Direction amounted to a Variation,
- and the Subcontractor will otherwise comply with the Direction regardless of whether the question of whether it is a Variation is disputed.
- 102 If the Site is in Victoria, the parties agree that a Variation will only fall under the first class of claimable variations of section 10A(2) of the *Building and Construction Industry Security of Payment Act (Vic) 2002*, if all matters set out in section 10A(2) have been approved in writing by HARDLINE. Provided the Subcontractor has complied with its obligations under clauses 97 to 100, HARDLINE will:
- value the cost impact of the Variation under clause 106 and the Subcontract Sum will be accordingly increased or decreased; and
 - assess the time impact (if any) under clause 72.
- 103 If after the Subcontractor has paid or HARDLINE has deducted liquidated damages, the time for Practical Completion is extended, HARDLINE will repay to the Subcontractor any liquidated damages paid or deducted in respect of the period up to and including the new Date for Practical Completion.
- 104 If HARDLINE directs a Variation omitting any part of the Works, HARDLINE may either carry out that work itself or engage another contractor to carry out such omitted works. The Subcontractor has no Entitlement and will not make any Claim arising out of or in connection with the omission of any part of the Works, whether or not HARDLINE subsequently carries out the work itself or engages another contract to carry out the omitted work.

VALUATION

- 105 Where the Agreement provides for a valuation under this clause, HARDLINE will value the relevant work by reference to:
- prior agreement;
 - rates or prices in any priced BOQ or prices applying to the Head Contract, to the extent that it is reasonable to use them; or
 - reasonable rates or prices as otherwise determined by HARDLINE,
- and any deductions shall include a reasonable amount for profit but not overheads.

That value shall be added to or deducted from the Subcontract Sum.

The Subcontractor must provide any details and measurements to assist in the valuation of a variation upon HARDLINE's request, including copies of quotes and invoices.

PAYMENT CLAIM

- 106 The Subcontractor will not be entitled to claim payment under the Agreement, unless it has provided satisfactory evidence that it has satisfied the Payment Claim Preconditions.
- 107 Subject to the preceding clause, up to the month in which Practical Completion is reached, the Subcontractor may submit to HARDLINE a claim for payment ("**Payment Claim**") at the time stated in Item 9.
- 108 Any Payment Claim must:
- set out or attach sufficient details, calculations, supporting documentation and other information on all amounts claimed by the Subcontractor to enable HARDLINE to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by HARDLINE to the Subcontractor under the Agreement (including such documentation or information which HARDLINE requires, whether in relation to a specific payment claim or all payment claims generally);
 - identify the progress payment claimed by the Subcontractor for that month ("**claimed amount**") and identify the construction work or related goods and services to which the claimed amount relates;
 - identify all amounts that HARDLINE is entitled to retain or deduct from amounts otherwise payable to the Subcontractor (including Security or Retention Moneys and the cost of rectifying Defects or omitted works); and
 - identify the total amount previously authorised for payment to the Subcontractor and the total amount previously paid to the Subcontractor (if the paid amount differs from the authorised amount);

PAYMENT SCHEDULE

- 109 Not used.
- 110 Within 10 business days of the time for making Payment Claims listed in Item 9, HARDLINE will assess the claim and issue a payment schedule ("**Payment Schedule**") which:
- identifies the Payment Claim to which it relates;
 - states the amount (if any) that HARDLINE proposes to pay ("**scheduled amount**");
 - shows any amount that is payable by the Subcontractor to HARDLINE; and
 - if the scheduled amount is less than the claimed amount, states why the scheduled amount is less and if it is less because HARDLINE is withholding payment for any reason, HARDLINE's reasons for withholding payment.
- 111 HARDLINE will pay the scheduled amount under the Payment Schedule within 23 business days after the submission of the Payment Claim.
- 112 If a Payment Schedule shows that an amount is payable by the Subcontractor to HARDLINE, that amount is taken to be a debt due and payable by the Subcontractor to HARDLINE within 5 business days after the date of the Payment Schedule. The inclusion of an amount as a scheduled amount and payment of moneys by HARDLINE shall be on account only and shall not be evidence of the value of work or an admission or liability by HARDLINE or evidence that work has been executed satisfactorily, or that HARDLINE has approved the Works or any part of them.
- 113 The Subcontractor shall only be entitled to claim payment for unfixed plant or materials with HARDLINE's prior written consent, which consent may be conditional.
- 114 To the extent that the consideration to be paid or provided under the Agreement is not expressed to be GST inclusive, a party must also pay the GST payable on a taxable supply made to it. The parties each warrant that they are registered for GST and will notify the other if they cease to be registered. HARDLINE warrants that it is eligible to issue recipient created tax invoices ("**RCTI**"). Unless the Subcontractor notifies HARDLINE that it does not satisfy any Tax Office rulings relating to RCTI, the Subcontractor is deemed to have agreed to the creation of a RCTI. HARDLINE will indemnify the Subcontractor for any liability for GST and for any penalty that may arise from an understatement of the GST payable on any supply for which it issues an RCTI. Terms used in this clause have the meanings given to them in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

SECURITY OF PAYMENT LEGISLATION

- 115 Failure by HARDLINE to set out in a Payment Schedule or otherwise an amount which HARDLINE is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Subcontractor by HARDLINE, will not prejudice:
- HARDLINE's ability or power to set out in a subsequent Payment Schedule an amount which HARDLINE is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Subcontractor by HARDLINE; or
 - HARDLINE's right to subsequently exercise its right to retain, deduct withhold or set-off any amount under the Agreement.
- 116 The Subcontractor agrees that the amount set out in a Payment Schedule is, to the extent permitted by and for the purposes of the relevant Security of Payment Legislation, the amount of the 'progress payment' calculated in accordance with the terms of the Agreement, which the Subcontractor is entitled to in relation to the Agreement.
- 117 Notwithstanding anything else in the Agreement, the Subcontractor must immediately give HARDLINE a copy of any adjudication application or suspension notice the Subcontractor receives from its own subcontractor under the Security of Payment Legislation and if the Subcontractor becomes aware that its subcontractor is entitled to suspend the carrying out of work (which forms part of the Works) under the Security of Payment Legislation, HARDLINE may (at its absolute discretion) pay that subcontractor such money that is or may be owing to the subcontractor by the Subcontractor in respect of work forming part of the Works and any amount paid by HARDLINE under this clause is recoverable from the Subcontractor as a debt due to HARDLINE. The Subcontractor indemnifies HARDLINE against all Loss (including lawyers fees and expenses on a solicitor/client basis) or liability of any nature suffered or incurred by HARDLINE arising out of a suspension by a subcontractor to the Subcontractor under the Security of Payment Legislation.
- 118 Not used.
- 119 If the Site is not in Victoria, the Subcontractor irrevocably chooses, to the extent permitted by and for the purposes of the relevant Security of Payment Legislation, the Institute of Arbitrators and Mediators Australia as the authorised nominated authority.

DEED OF RELEASE

- 120 HARDLINE may provide a Deed of Release to the Subcontractor in the form provided in Part D at any time after HARDLINE considers that the Works have reached Practical Completion, and the Subcontractor must upon agreement with the details in the Deed of Release and prior to any

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final payment, return to HARDLINE a signed copy of the Deed of Release. Subject to the Subcontractor having complied with the requirements of this clause, HARDLINE will pay the amount specified in the Deed of Release within 15 business days of the execution of the Deed of Release.

- 121 All Claims which have not already been barred, will be barred after the execution of the Deed of Release and the Subcontractor otherwise releases HARDLINE from any Claim which it has or might have had where that claim had not been included in the Deed of Release (other than a claim for the release of the remaining Security or Retention Moneys held (if any)).

INTEREST ON OVERDUE MONEYS

- 122 If any moneys due to either party remain unpaid after the date upon which or the expiration of the period within which they should have been paid, then interest is payable on it for the overdue period. The rate of interest is the Reserve Bank Bill Rate or, if the Site is in Queensland, the rate prescribed by in section 67P of the *Queensland Building Services Authority Act 1991*.

INSURANCE AND INDEMNITIES

- 123 Before commencing the Works, the Subcontractor must at its own cost arrange:
- (a) public liability insurance including products liability in respect of bodily injury, death and property damage for at least \$20 million;
 - (b) workers compensation and employer's liability insurance for all of the Subcontractor's employees and anyone else treated as an employee of the Subcontractor under any legislation; and
 - (c) if required by HARDLINE, professional indemnity insurance for at least \$5 million is to be effected and maintained for a period of 10 years from the end of the Defects Liability Period,
- (together, the "Required Insurance").
- 124 Both the insurer and the terms of the Required Insurance must be acceptable to HARDLINE. The Required Insurance must be provided prior to the commencement of the Works and satisfactory evidence of ongoing maintenance and compliance at any other time upon HARDLINE's request. The Subcontractor must maintain the Required Insurance until the end of the Defects Liability Period or Separate Defects Liability Period (if relevant), except for professional indemnity insurance which it must maintain until 10 years after the end of the Defects Liability Period or the Separate Defects Liability Period (if relevant).
- 125 If the Subcontractor fails to provide satisfactory evidence of compliance with its insurance obligations under the Agreement, HARDLINE may effect and maintain the relevant Required Insurance and the cost of doing so shall be a debt due from the Subcontractor to HARDLINE.
- 126 The Subcontractor must bear the cost of any excess payable under or in respect of any insurance policy taken out by the Subcontractor, HARDLINE or the Principal in relation to the Works or the Head Contract Works where the Subcontractor is responsible for the event or omission that results in the excess being payable.
- 127 The Subcontractor indemnifies HARDLINE against and from any and all Loss, claims, damages, costs, expenses (including legal fees and expenses) and liability incurred or suffered by HARDLINE or which HARDLINE may suffer or incur (including any liability that HARDLINE may have to any third party) as a result of or which arises out of or in connection with the Subcontractor's failure to comply with any of its obligations under or arising out of the Agreement, the Subcontractor's negligent act or omission, fraud or wilful misconduct, or is caused or contributed to by a subcontractor, consultant or other party engaged by the Subcontractor in connection with the Works.
- 128 To the extent permitted by law, Civil Liability Legislation is excluded in relation to any rights, obligations and liabilities of the parties arising out of the operation of the Agreement, whether they are sought to be enforced as a breach of contract or a claim in tort otherwise.
- 129 In no circumstances will HARDLINE be liable to the Subcontractor for (and the Subcontractor releases HARDLINE from any Claim in connection with) any Loss including but not limited to Subcontractor's, materials, plant and equipment that are on site and that are not incorporated into the Works.

NOTIFICATION OF CLAIMS

- 130 Where another provision of the Agreement requires the Subcontractor to give notice of a Claim within a prescribed timeframe, that notice must be given within that timeframe and the manner prescribed by the relevant provision of the Agreement. In all other cases, if the Subcontractor wishes to make any Claim in connection with the Agreement, it must give HARDLINE a Notice of Claim as soon as practicable but not later than 7 days of the Subcontractor becoming aware of the circumstances giving rise to the Claim, or 7 days of when the Subcontractor should reasonably have become aware of those circumstances, whichever is earlier.

- 131 To the extent permitted by law, if the Subcontractor fails to comply with the requirements of the preceding clause, or if it fails to communicate a Claim in accordance with the relevant provisions of the Agreement, that failure will bar and invalidate the Subcontractor's claim. Where the Subcontractor has been barred from making a Claim by reason of this clause, the Subcontractor shall not, in any circumstances whatsoever, pursue the making of such a Claim against HARDLINE and HARDLINE shall have no liability whatsoever to the Subcontractor, whether for breach of contract, in tort, under statute or otherwise at law or in equity, in respect of the Claim or the events giving rise to the Claim or any Loss in connection with same.

SEPARABLE PORTIONS

- 132 The Works under the Agreement may be divided into Separable Portions.
- 133 Notwithstanding the existence or non-existence of Separable Portions set out in Part E, HARDLINE may in its absolute discretion divide the individual portions of the Works into Separable Portions at any time before the Date of Practical Completion, identifying for each:
- (a) the area or portion of the Works affected;
 - (b) the Date for Practical Completion; and
 - (c) the respective amounts for Security and liquidated damages.
- 134 The interpretations of:
- (a) Date for Practical Completion;
 - (b) Date of Practical Completion; and
 - (c) Practical Completion,

and clauses 61 to 75 (Time and Progress), clauses 78 to 82 (Practical Completion) and clauses 83 to 86 (Liquidated Damages), clauses 87 to 89 (Defects) and 90 to 94 (Defects Liability Period), together with any other relevant provision of the Agreement, shall apply separately to each Separable Portion and references therein to the Works shall mean so much of the Work as is comprised the relevant Separable Portion.

This means (amongst other things) that the Subcontractor must ensure that each Separable Portion reaches Practical Completion by the Date for Practical Completion for that Separable Portion (failing which liquidated damages shall apply) and that the Works will not have reached Practical Completion until the last Separable Portion has reached Practical Completion. Any extension of time granted to the Date for Practical Completion of any given Separable Portion will not extend the Date for Practical Completion of any subsequent Separable Portion. Furthermore, the defects liability period for each Separable Portion will continue until the expiry of the defects liability period for the last Separable Portion. Security held for a Separable Portion may be applied in relation to any other Separable Portion and will not be released until the expiry of the defects liability period for the last Separable Portion.

If HARDLINE has not made provision for the rate of liquidated damages applicable to a Separable Portion, the rate of liquidated damages will be such proportion of liquidated damages to the whole of the Works as the value of the Separable Portion bears to the value of the whole of the Works.

TERMINATION

- 135 HARDLINE may (without prejudice to any of its other rights or entitlements or powers under the Agreement or at law), for its sole convenience at any time in its absolute discretion, or if the Head Contract is terminated, by notice in writing to the Subcontractor, terminate the Agreement. The Subcontractor acknowledges and agrees that HARDLINE may exercise its power under this clause for any reason whatsoever, including to either carry out the remaining Works itself or employ another person or subcontractor to undertake such remaining work.
- 136 In the case of a termination under clause 137:
- (a) the Subcontractor shall:
 - (i) cease the execution of the Works within the time stipulated by HARDLINE;
 - (ii) de-mobilise and ensure the Site is left in a safe condition and that the Works under the Agreement are properly secured;
 - (iii) hand over to HARDLINE all documentation and information in its possession or control relating to the Works;
 - (iv) otherwise mitigate the cost to the Subcontractor of such termination;
 - (b) the Subcontractor shall be entitled to payment of the following amounts as determined by HARDLINE:
 - (i) the value of any Works performed by the Subcontractor in accordance with the Agreement as at the date of termination (to be determined by HARDLINE in its sole discretion including on a cost to complete basis), less amounts previously paid to the Subcontractor in respect of such work (including an allowance for any set offs that HARDLINE is

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- entitled to under the Agreement);
- (ii) the cost of goods and materials properly ordered for the Works as at the date of termination for which the Subcontractor has paid or which it will be bound to pay and cannot cancel provided that:
- (i) the value of the goods or materials is not included in the amount payable under clause 138(b)(i); and
- (ii) unencumbered title in the goods and materials will vest in HARDLINE upon payment.
- (c) The Subcontractor must take all reasonable steps to mitigate the costs referred to in clause 138 and the amount payable to the Subcontractor will be reduced proportionally to the extent that reasonable steps are not taken.
- 137 The amount to which the Subcontractor is entitled to under clause 138(b) shall be full payment and Compensation for the termination of the Agreement and the Subcontractor shall have no Entitlement and no right to make a Claim in respect of such termination other than in respect of the amount payable under clause 138(b).
- 138 HARDLINE may (without prejudice to its other rights or entitlements or powers under the Agreement or at law) by written notice effective immediately elect to take over the Works or any part of them itself or by another contractor, or terminate this Subcontract, if:
- (a) the Subcontractor:
- (i) wrongfully suspends the Works;
- (ii) fails to lodge the Security;
- (iii) fails to proceed with the Works regularly and diligently and in a competent manner;
- (iv) departs in a substantial way from the Subcontract Program without reasonable cause or without HARDLINE's approval;
- (v) fails to comply with a Direction from HARDLINE;
- (vi) commits any material breach of the Agreement; or
- (b) the Subcontractor is or becomes insolvent or steps are taken by any third party or by the Subcontractor which may result in the Subcontractor becoming insolvent (including the calling of a meeting of creditors) or execution is levied against the Subcontractor or a mortgagee, administrator or controller (as defined in the Corporations Act 2001 (Cth) seeks to exercise any right of possession, management or control over any of the Subcontractor's property or is appointed to the Subcontractor.
- 139 If HARDLINE terminates the Agreement under clause 140, the rights and liabilities of the parties are the same as they would have been if the Subcontractor had repudiated the Agreement and HARDLINE had elected to treat the Agreement as at an end and recover damages.
- 140 Upon HARDLINE taking over the Works or any part of them under clause 140 or following termination of the Agreement under clause 137 or otherwise at law, the Subcontractor must, without any Entitlement or any right to Compensation, promptly:
- (a) assign to HARDLINE the benefit of all agreements in relation to the Works for hire or supply of materials or execution of work; and
- (b) give HARDLINE possession of any plant or other things owned by the Subcontractor that are on or in the vicinity of the Site and any documents, information or other materials produced by the Subcontractor,
- which HARDLINE reasonably requires for completion of the Works.
- 141 If HARDLINE repudiates the Agreement and the Subcontractor subsequently terminates, the Subcontractor is only entitled to claim damages for breach of contract (subject to any limitations on liability under the Agreement) and the Subcontractor is not entitled to claim or be paid on a quantum meruit basis. This clause survives termination of the Agreement.

DISPUTE RESOLUTION

- 142 Unless clause 145 applies, if a dispute arises under the Agreement, either party may within 5 business days give written notice to the other which sets out all the details of the dispute requesting that a settlement meeting take place.
- Senior representatives of each party (who have authority to settle the dispute) must meet within 7 days of the notice and endeavour to resolve the dispute in good faith.
- If the meeting does not resolve the dispute, then within a further 28 days, the parties must mediate the dispute. If the mediation has not resulted in a resolution of the dispute within a further 28 days then the parties are free to pursue their rights at law.
- 143 Not used.
- 144 Despite the existence of a dispute, the Subcontractor must continue to carry out the Works in accordance with the Agreement.

- 145 If the subject matter of the dispute touches on or concerns a dispute under the Head Contract, the Subcontractor must not proceed with the dispute under the Agreement until after the dispute under the Head Contract is resolved. The Subcontractor must provide all reasonable assistance to HARDLINE in relation to the dispute under the Head Contract.

NOTICES

- 146 The addresses for written notices and representatives are specified in Item 1 (as may be amended by notice in writing). Any written notice given in accordance with the Agreement shall be deemed to be given if it is:
- (a) delivered by hand to the address of the relevant party stated in Item 1 and deemed to have been received by the party to whom it is addressed, on the date of actual delivery;
- (b) sent by pre-paid post addressed to the relevant party at the address of that party stated in Item 1 and deemed to have been received by that party, if sent by post (whether by certified mail or ordinary post) 2 business days after the day on which the notice was posted; and
- (c) if transmitted by facsimile to the relevant party's number shown in Item 1, upon confirmation to the sender that the relevant facsimile has been delivered unless delivered after 4:00 pm on a business day when service will be deemed to have occurred on the following business day;
- (d) if sent by the originator via project specific electronic media (email or Aconex), at the time the electronic media comes to the attention of the specific addressee.

ADDITIONAL CLAUSES TO BE USED FOR DESIGN AND CONSTRUCTION

- 147 See Item 10 and Part F (if applicable).

DEFINITIONS:

- 148 Unless defined elsewhere in the Agreement:

"Addenda": means the documents contained in Attachment 3 and forming part of the Agreement as a Subcontract Document.

"Attachment": means the Attachments to and forming part of the Agreement as a Subcontract Document.

"BOQ": means a document entitled as a "bill of quantities" issued on behalf of HARDLINE to tenderers, stating estimated quantities of work (including the provision of materials) to be carried out, the extent which it applies to the Agreement is otherwise contained in Attachment 6 and forms part of the Agreement as a Subcontract Document.

"business day" means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a day that has been gazetted or proclaimed to be wholly or partly a public holiday through the State or Territory in which the Site is located.

"Civil Liability Legislation":

- (a) If the Site is in New South Wales, Part 4 of the *Civil Liability Act 2002* (NSW);
- (b) if the Site is in the Australian Capital Territory, Chapter 7A of the *Civil Law (Wrongs) Act 2002 (ACT)*; and
- (c) if the Site is in Victoria, Part IVAA of the *Wrongs Act 1958* (Vic).

"Claim": means any claim, action, demand, proceeding or suit for:

- (a) an extension of time to the Date for Practical Completion;
- (b) Compensation, including and adjustment to the Contract Sum;
- (c) relief from any of the Subcontractor's obligations arising under the Agreement; or
- (d) any other right or remedy, whether arising under the Agreement or otherwise at law or in equity, including under statute, in tort (including negligence) or for restitution.

"Compensation": includes any costs, losses, expenses or damages (at common law or in equity including quasi-contract), unjust enrichment, tort or quantum meruit, and to the full extent permitted by law, any damages available pursuant to statute, for any Claim.

"Commencement Date": means the date the Formal Instrument of Agreement comes into effect in accordance with clause 6 of the Formal Instrument of Agreement;

"Date for Practical Completion": means either:

- (a) where Item 3 provides a date for Practical Completion, that date; or
- (b) where Item 3 provides for a period of time for Practical Completion to be reached, the last date of the period, but if any extension of time for Practical Completion is granted by HARDLINE or otherwise allowed in litigation, then it means the date resulting from that extension.

"Date of Practical Completion": means:

- (a) the date certified by HARDLINE in a Certificate of Practical Completion issued pursuant to clause 79 to be the date upon which Practical Completion was reached; or

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(b) where another date is determined in any arbitration or litigation as the date upon which Practical Completion was reached, that other date.

“**day**” means calendar day.

“**Deed of Release**”: means the document contain in Part D.

“**Defect**”: means:

- (a) any defect, error or omission in the Works which is not in accordance with the terms of the Agreement;
- (b) any work or materials that is not in accordance with the requirements of the Agreement.

“**Defects Liability Period**”: unless otherwise stated in Item 8, means the period commencing on the Date of Practical Completion and expiring on the on the later of the two events referred to in clause 90.

“**Direction**”: includes instruction, notice, order, approval, authorisation, certificate, decision, demand, agreement, determination, permission or request whether verbal or written (or both).

“**Discrepancy**”: means a discrepancy, error, omission (including insufficient or inadequate details for the purposes of construction), conflict, ambiguity or inconsistency.

“**Entitlement**”: means an entitlement to:

- (a) an extension of time;
- (b) a declaration to the effect that time is at large or that liquidated damages are otherwise unenforceable;
- (c) any adjustment to the Contract Sum or valuation under clause 106; or
- (d) recovery of any loss, cost, damage or expense of any kind arising under the Agreement or out of or in connection with the Works (including a quantum meruit).

“**Head Contract**”: means the written contract between the Principal and HARDLINE under which HARDLINE undertakes to design and/or construct works (including the Works under the Agreement), a copy of which Head Contract the Subcontractor warrants has been made available by HARDLINE (with particulars regarding contract price and finances being masked) for the Subcontractor to inspect upon reasonable notice.

“**Head Contract Works**”: means the work to be performed by HARDLINE under the Head Contract.

“**Item**”: means the reference to the corresponding item number in Part A of the Agreement.

“**Latent Condition**”: are physical conditions on the Site and its near surrounds, including artificial things but excluding weather conditions and the effects of weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent subcontractor at the time of the Subcontractor’s tender, had inspected all information reasonably obtainable by the Subcontractor making reasonable enquiries and inspected the Site, its near surrounds and other foreseeable factors that may give rise to a Latent Condition.

“**Legislative Requirements**”: means all legal requirements in relation to the Works, or the conduct of the Subcontractor in carrying out the Works, including all relevant laws, orders, awards, licences, consents, permits or approvals.

“**Loss**”: means any loss, cost, expense, damage or liability (including fine or penalty) whether direct, indirect or consequential (including revenue loss and pure economic loss), present or future, fixed or unascertained, actual or contingent and whether arising under contract (including any breach of the Agreement or the Head Contract) in equity, under statute, tort or otherwise (including restitution).

“**Building Code 2013**”: means the Building Code 2013 for the Construction Industry and the associated Implementation Guidelines to the Building Code 2013 issued by the Federal Government of Australia (as amended).

“**Notice of Claim**”: means a written notice setting out the general basis of and quantum of a Claim, which must contain sufficient information and be supported by sufficient evidence to enable HARDLINE (acting reasonably) to properly understand and assess the Claim.

“**Part**”: means a document annexed and forming part of these Standard Conditions of Subcontract.

“**Payment Claim Preconditions**”: means the following conditions:

- (a) The Subcontractor must provide HARDLINE with satisfactory evidence that all payments due to employees, subcontractors and suppliers in connection with the Works for the previous months and connected with the relevant month to which the payment claim relates (including, but not limited to, all monies owing in compliance with the Subcontractor’s industrial instruments and any amounts due to the Subcontractor’s own subcontractors) have been paid by executing the declaration in Part C;
- (b) the Subcontractor has provided HARDLINE any additional Security as required; and
- (c) the Subcontractor has provided satisfactory evidence that it has effected and maintained all Required Insurances (evidenced by a copy of the

insurer’s policy document, a certificate of currency and evidence that all premiums have been paid).

“**Post Tender Interview**”: means the document contained in Attachment 2 and forming part of the Agreement as a Subcontract Document.

“**Plans**”: means the documents contained in Attachment 5 and forming part of the Agreement as a Subcontract Document.

“**Practical Completion**”: is that stage in the execution of the work under the Agreement when:

- (a) the Works are complete in accordance with the Agreement, except for minor omissions and minor defects:
 - (i) which do not prevent the Works from being reasonably capable of being used for their purpose;
 - (ii) where HARDLINE determines that the immediate making good by the Subcontractor is not practical;
 - (iii) the existence and making good of which will not prejudice the safe and convenient use of the Works; and
 - (iv) which do not cause any legal impediment to the use or occupation of the Works.
- (b) those tests which are required by the Agreement to be carried out and passed before the Works reach Practical Completion, have been carried out and passed to the satisfaction of HARDLINE;
- (c) all warranties, certificates, approvals, permits, as built drawings, operations and maintenance manuals, and other information required under the Agreement which, in the opinion of HARDLINE, are essential for the use, operation and maintenance of the Works or any part of the Works, have been supplied to and approved by HARDLINE; and
- (d) to the extent applicable, the Works are compliant with all legislative requirements and all required approvals and certificates, including occupancy permits, have been issued and provided by the Subcontractor.

“**Principal**”: means the party to which HARDLINE is contracted to under the Head Contract.

“**Provisional Sum**”: means the amounts stated in Part B of these Standard Condition to cover the cost of Provisional Sum Work.

“**Provisional Sum Work**” means the provisional sum works described in Part B.

“**Scope of Works**”: means the document contained in Attachment 8 and forming part of the Agreement as a Subcontract Document.

“**Security of Payment Legislation**” means:

- (a) If the Site is in New South Wales, the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (b) if the Site is in the Australian Capital Territory, the *Building and Construction Industry (Security of Payment) Act 2009* (ACT);
- (c) if the Site is in Victoria, the *Building and Construction Industry Security of Payment Act 2002* (VIC); and
- (d) if the Site is in Queensland, the *Building and Construction Industry Payments Act 2004* (QLD).

“**Separable Portions**”: means the individual portions of the Works described in these Standard Conditions as a Separable Portion or the individual portions of the Works which HARDLINE has Directed under clause 135 shall be a Separable Portion (as the case may be) or otherwise that part of the Works comprising Separable Portions contained in Part E.

“**Site**”: means the land or other places to be made available by HARDLINE to the Subcontractor for the purposes of the Agreement.

“**Special Conditions**”: means the special conditions set out in Attachment 1 and which form part of the Agreement as a Subcontract Document.

“**Specifications**”: means the document contained in Attachment 4 and forming part of the Agreement as a Subcontract Document.

“**Standard Conditions of Subcontract**”: means these standard conditions (including (where applicable) Parts A to F) and forming part of the Agreement.

“**State and Territory Code of Practice**”: means:

- (a) if the site is in New South Wales, the Code of Practice for Procurement and all associated implementation guidelines issued by the NSW Government (as amended from time to time);
- (b) if the site is in Australian Capital Territory, the Building Code 2013;
- (c) if the site is in Victoria, the Code of Practice for the Building and Construction Industry and the Implementation Guidelines to the Victorian Code issued by the Victorian Government (as amended from time to time); or
- (d) if the site is in Queensland, the Code of Practice for the Building and Construction Industry and the Implementation Guidelines to the Queensland Code issued by the Queensland Government (as amended

STANDARD CONDITIONS OF SUBCONTRACT



from time to time).

“Subcontract Documents”: means those documents and things which constitute the Agreement and documents described as such in clause 1 the Formal Instrument of Agreement;

“Subcontract Program”: means the document contained in Attachment 7 and forming part of the Agreement as a Subcontract Document.

“Subcontract Sum”: means the lump sum stated in Item 4 (which is exclusive of any GST).

“Subcontractor Warranties”: means warranties and representations given by the Subcontractor to HARDLINE that the Subcontractor:

- (a) entered into the Agreement based on its own investigations and assessment of all information made available to or provided to, or obtained by, the Subcontractor;
- (b) has examined the Site and its surrounds and has actual knowledge of the Site but not limited to the surface, subsurface and soil conditions and any existing buildings or other structures on the Site (if relevant);
- (c) has examined and carefully checked the Subcontract Documents for the purposes of performing the Works and satisfied itself:
 - (i) of the requirements of the Head Contract insofar as they relate to the works under the Agreement;
 - (ii) that the Subcontract Documents adequately and appropriately describe the Works to enable the Subcontractor to carry out the Works and that there are no ambiguities or discrepancies in the Subcontract Documents;
 - (iii) that it can bring the Works to Practical Completion by the Date for Practical Completion;
- (d) (including its personnel) at all times will be suitably qualified and experienced, and shall exercise due skill, care and diligence in the supervision, co-ordination, control, execution, carrying out and completion of the Works;
- (e) will control, carry out and complete the Works (and cause others for which it is responsible to carry out and complete the Works) in a proper and workmanlike manner so that the Works when carried out and completed:
 - (i) comply with all the requirements of the Agreement and all applicable Legislative Requirements;
 - (ii) comprise of materials, goods, equipment and articles of goods quality and which satisfy the requirements of the Agreement; and
 - (iii) be fit for its intended purpose in all respects.
- (f) to the extent the Agreement requires the Subcontractor to design any aspect of the Works, the Subcontractor will prepare and complete such design professionally, in accordance with the Agreement and in accordance with good standards of design and practice, so that such design is fit for the purpose for which it was required.

“Variation”: means a change (including increase, decrease or substitution or omission or execution of additional work) in the scope, character or quality of the Works;

“WH&S”: means:

- (a) if the site is in New South Wales, the Work Health and Safety Act 2011 (NSW);
- (b) if the site is in Australian Capital Territory, the Work Health and Safety Act 2011 (ACT);
- (c) if the site is in Victoria, the Occupational Health and Safety Act 2004 (VIC);
- (d) if the site is in Queensland, Work Health and Safety Act 2011 (QLD), and all related regulations and codes of practice.

“Works”: means the whole of the work to be executed in accordance with the Agreement and includes the works and services in described in the Subcontract Documents, including:

- (a) minor items not expressly described in the Subcontract Documents, but which are necessary for, or incidental to, the Works being completed and free of Defects;
- (b) Variations;
- (c) provision of all necessary labour, constructional plant and temporary works; and
- (d) all other things or tasks which are necessary for the Subcontractor to do to comply with its obligations under the Agreement.

PART A – SCHEDULE OF ITEMS TO GENERAL CONDITIONS OF SUBCONTRACT

Item	Description	Details
1	Details for notices (Including addresses and fax numbers if applicable)	<p>HARDLINE Representatives</p> <p>Names: (Insert Representative)</p> <p>Email Address: (Insert Email)</p> <p>Postal Address and Facsimile: 3/7 Waterway Drive, Coomera, QLD 4209 Fax N/A</p> <p>.....</p> <p>Subcontractor Representative</p> <p>Name: (Insert Representative)</p> <p>Email Address: (Insert Email)</p> <p>Postal Address and facsimile: (Insert Full Address) Fax: (Insert Fax)</p>
2	Date for Commencement	(Insert Date of Commencement)
3	Date for Practical Completion	(Insert Date of Practical Completion)
4	Subcontract Sum	The Subcontract Sum is the lump sum of \$xxx,xxx.xx , (Insert Amount in words) (exclusive of GST) including Provisional Sums.
5(a)	Amount of Security	\$x,xxx.xx
5(b)	Amount of Security or Retention Moneys to be reduced	(with the addition of 5% retention from all approved Variations) 10% of amount held (if any)
6(a)	BOQ – Alternative that applies:	Alternative B (if nothing stated, Alternative B applies)
7	Rate for liquidated damages	\$x,xxx.xx (per calendar day)
8	Defects Liability Period	52 Weeks from Practical Completion under the Head Contract
9	Time for making Payment Claims	25th day of each month for Works carried out during that month.
10	Application of Design and Construct Obligations upon Subcontractor	No
11	Causes of delay for which an extension of delay may be claimed	Suspension - clause 77 Latent Condition (Alternative B) – clause 58
12	Latent Conditions – Alternative that applies	Alternative A (if nothing stated, Alternative A applies)
13	Environmental and quality standards and applicable Australian Standards:	ISO 9000 – Quality Management ISO 1400 – Environmental Management

PART B – PROVISIONAL SUM WORK

Description	Scope of Provisional Sum Works	Provisional Sum

PART C - DECLARATION BY SUBCONTRACTOR

SUBCONTRACTOR STATEMENT

Subcontractor: _____ **ABN:** _____ (Subcontractor)

Address: _____

Project Name: _____ (Project)

Subcontract No: _____ (Subcontract)

Payment Claim No: _____ **Payment Claim**

Date: _____

I do hereby confirm and sincerely declare that:

- (a) I am a representative of the Subcontractor, I am authorised to make this declaration, and I have knowledge of the facts to which this declaration pertains.
- (b) all employees and/or workers who are, or at any time have been engaged on the Project by the Subcontractor have been paid in full all amounts which have become due and are owing to them by virtue of their employment on the Project as wages and allowances of every kind required to be paid by or under any statute, ordinance or subordinate legislation, or by any relevant awards, determination, judgment or order of any competent court, board, commission or other industrial tribunal or by a relevant industrial agreement that is in force in the State or Territory of Australia in which the Site is located and to the latest date at which such wages and allowances are payable.
- (c) all subcontractors, consultants, service providers and/or suppliers of material, plant or labour who are or at any time have been engaged, by the Subcontractor on the Project have, subject to any dispute noted below, been paid in full all moneys which have become payable to them, in accordance with the agreed credit terms, in respect of work on the Project (print "NIL" in the table below if there are no disputes).

Subcontractor/Consultant/Supplier	Dispute Description	Value (\$)

- (d) all insurances required under the Subcontract are current and all premiums have been paid.
- (e) the Subcontractor has complied with all provisions and requirements of A New Tax System (Goods and Services Tax) Act 1999 including Business Activity Statement returns and associated obligations.

I / We make this declaration conscientiously believing the same to be accurate and true.

Signed for and on behalf of the **Subcontractor**

Signed _____

Date: _____

Print Name in Full _____

PART D – DEED OF RELEASE

DEED OF RELEASE

Subcontractor: _____ ABN: _____)

Address: _____)

Trade: _____

Project Name: _____

Subcontract No: _____
(Subcontract)

1. The Subcontractor acknowledges that the amount (if any) stated to be payable by HARDLINE to the Subcontractor in this Deed of Release issued under clause 122 of the Standard Conditions of Subcontract, is the final amount payable to the Subcontractor in connection with the Agreement. Any payment pursuant to this deed is in full and final satisfaction of all of the Subcontractor's rights under or in connection with the Agreement.
2. The final amount payable by HARDLINE to the Subcontractor under this deed is set out as follows:

Original Subcontract Sum	\$	
Variations:	\$	
	\$	
Adjusted Subcontract Sum:	\$	
Less Retention:	\$	
Subtotal	\$	
Less Previously Paid	\$	
Amount Payable	\$	(Plus GST)

3. The Subcontractor agrees that it will not make any further Claims under or in connection with the Agreement.
4. The Subcontractor releases HARDLINE from all Claims which the Subcontractor now has or at any time may have, but for the execution of this deed, against the Builder arising out of or in connection with the Agreement. This deed may be pleaded as a full and complete defence by HARDLINE to any and all Claims which are the subject of the releases in this clause.
5. Clauses 1, 3 and 4 of this deed do not in any way limit the Subcontractor's right to claim release of Retention Moneys under the Agreement.
6. The Subcontractor represents and warrants that:
 - (a) all insurance policies under the Agreement are current; and
 - (b) all payments due to employees, subcontractors and suppliers in connection with the Works have been paid (or, to the extent that these have not been so paid, that the Subcontractor has supplied to HARDLINE details of the unpaid claims and amounts due).
7. The Subcontractor indemnifies HARDLINE from and against any claims that may be made against it at any time by any employee, subcontractor, supplier, consultant or other person engaged by the Subcontractor in connection with the Agreement.
8. Unless the context otherwise requires, terms defined in the Standard Conditions of Subcontract have the same meaning in this deed.

Executed as a deed poll for and on behalf of the Subcontractor

Signed: _____ Witnessed: _____ Date: _____

Print Name: _____ Print Name: _____

PART E - SEPARABLE PORTIONS

Separable Portion	Description	Date for Practical Completion	Rate of Liquidated Damages	Security	Reduction
Separable Portion A	Practical completion of the subcontract works	(Insert Date)	(Insert L.D Amount)	(Insert Security Amount)	0%
Separable Portion B	Practical Completion of the Head Contract	(Insert Date)	(Insert L.D Amount)	(Insert Security Amount)	0%

PART F – DESIGN AND CONSTRUCT OBLIGATIONS ON SUBCONTRACTOR

This Part F only applies if Item 10 is “YES”.

- 1 HARDLINE and the Subcontractor acknowledge that these are further conditions of the Agreement for design and construct.
- 2 In clauses 153 to 157, except where the context otherwise requires in relation to the Agreement:
 - (a) "**Design Documents**" means the drawings, specifications and other information, samples, models, patterns and the like required by the Agreement (and including, where the context so requires, those to be created by the Subcontractor) for or in connection with the construction of the Works;
 - (b) "**HARDLINE's Project Requirements**" means HARDLINE's written requirements for the design and construction of the Works described in the documents stated in the Attachment 9 which may include:
 - (i) a stated purpose for which the Works are intended; and
 - (ii) HARDLINE's design, timing and cost objectives for the Works;
 - (iii) where stated in Preliminary Design.
 - (c) "**Preliminary Design**" means any preliminary design of the Works included in the documents stated in Attachment 9 as describing HARDLINE's Project Requirements;
 - (d) "**Subcontractor's Consultant**" means any person engaged by the Subcontractor to perform consultancy services in connection with the Works and includes any consultant of HARDLINE whose prior contract is novated to the Subcontractor;
 - (e) "**Subcontractor's Design Obligations**" means all tasks necessary to design and specify the Works required by the Subcontract, including the preparation of any Design Documents, developing the Preliminary Design, and complying with the Subcontract Program in relation to the submissions, review and approval of Design Documents.

GENERAL DESIGN OBLIGATIONS OF THE SUBCONTRACTOR

- 3 The Subcontract must:
 - (a) prepare and execute or cause the preparation and execution of all detailed design development work as reasonably necessary or desirable in the opinion of HARDLINE for the completion of the Works and the works under the Head Contract in accordance with the Subcontract Program and in accordance with sound engineering and building practice;
 - (b) ensure that the design and construction of the Works conforms in all respects with the terms and conditions and requirements of all authorities having jurisdiction over the Works and the works under the Head Contract;
 - (c) ensure that the Design Documents are prepared with care and skill by people with relevant experience and qualifications. Acceptance or approval by HARDLINE of the Design Documents shall not reduce or in any way lessen the obligations of the Subcontractor under the Agreement and shall not be considered as an acknowledgement by HARDLINE that the same comply with the warranties given in the Agreement;
 - (d) not make, cause or permit to be made any changes or amendments in any relevant Design Documents otherwise than as contemplated by the Agreement in the process of design development or otherwise, without the prior written approval of HARDLINE; and
 - (e) clarify all ambiguities, errors, inadequacies, inaccuracies or discrepancies arising in all documentation at no cost to HARDLINE as deemed reasonably necessary at the sole discretion of HARDLINE.
- 4 The Subcontractor hereby expressly assigns to HARDLINE all of its rights, including copyright, title and interest in and to all Design Documents, other materials and information prepared for the Works.
- 5 The Subcontractor warrants that it has made due allowance for the status of the Preliminary Design and acknowledges that it will have no claim for additional costs due to items not expressly shown in the Preliminary Design or as required by the relevant Australian Standards and HARDLINE's Project Requirements

ADDITIONAL DESIGN WARRANTIES OF THE SUBCONTRACTOR

- 6 Without limiting the generality of the other warranties provided in the Agreement (including, but not limited to, the Subcontractor's Warranties), the Subcontractor further warrants to HARDLINE that the Subcontractor:
 - (a) will engage and retain consultants identified in the Subcontractor's tender and who the Subcontractor warrants are suitably qualified and experienced;
 - (b) has examined and carefully checked any Preliminary Design included in HARDLINE's design and construct Project Requirements and that such Preliminary Design is suitable, appropriate and adequate for the purpose stated in HARDLINE's design and construct Project Requirements;
 - (c) shall execute and complete the Subcontractor's Design Obligations and produce the Design Documents to accord with HARDLINE's Project Requirements, and, if applicable, accept the novation and retain the consultants for any work the subject of a prior contract with HARDLINE;
 - (d) will execute and complete the works under the Subcontract in accordance with the Design Documents so that when complete, the Works will be without Defects, fit for their intended purpose and comply with all the requirements of the Agreement and Legislative Requirements;

- (e) will complete the design documents in a commercially prudent and reasonable manner and in accordance with all suitable methods and practices and reasonable requirements of HARDLINE; and
- (f) that all design, types of materials methods or systems of proceedings or working proposed, used or specified by the Subcontractor are suitable in all respects for their intended purpose and comply with all relevant authorities' requirements.

WARRANTIES AND ACCEPTANCE OF RISK UNAFFECTED

- 7 The Subcontractor acknowledges that the warranties provided in the Agreement shall remain unaffected notwithstanding:
- (a) that design work (including the Preliminary Design) has been carried out by or on behalf of HARDLINE and included in HARDLINE's Project Requirements;
 - (b) that the Subcontractor has or will enter into a novation of any prior contract between HARDLINE and a consultant of HARDLINE and has or will retain that consultant in connection with the Works;
 - (c) any receipt or review of, rejection of, or comment or Direction on, the Design Documents or any other document provided by the Subcontractor by or on behalf of HARDLINE, or any failure by HARDLINE or its representative to do any of the things referred to in this clause 157(b);
 - (d) any Variation; and
 - (e) any warranties obtained from third parties by the Subcontractor.

ATTACHMENT 1 - SPECIAL CONDITIONS

This Attachment forms part of the Agreement as a Subcontract Document and must be interpreted in accordance with the order of precedence set out in clause 1 of the Formal Instrument of Agreement.

EMISSIONS AND ENERGY REPORTING

8 For the purposes of clauses 159 and 160:

“Emissions and Energy Data”: means:

- (a) any data of the type that a registered corporation or any other person may be required by the NGER Legislation to keep or to provide to other parties concerning greenhouse gas emissions, energy production or energy consumption;
- (b) any data of the type that a registered corporation or any other person may be entitled to provide under the NGER Legislation concerning reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project; and
- (c) any other data concerning environmental emissions or energy production, use, consumption or efficiency of the type that any person may be required by law to keep or provide to any statutory authority.

“NGER Legislation”: means the National Greenhouse and Energy Reporting Act 2007 (Cth) and the regulations and any legislative instruments under that Act.

- 9 If HARDLINE notifies the Subcontractor that the Subcontractor is required to provide Emissions and Energy Data, then the Subcontractor must at no extra cost to HARDLINE:
- (a) provide the Subcontractor’s Emissions and Energy Data to HARDLINE in the same manner, form and level of detail, based on the same methods and at the same times required by HARDLINE;
 - (b) keep all of its Emissions and Energy Data as may be required to enable the Subcontractor to discharge its obligations under clause 159(a);
 - (c) retain records of its activities that are the basis of the Subcontractor’s Emission and Energy Data for any financial year, for a period of not less than seven (7) years from the end of the year in which the performance of the Works take place; and
 - (d) permit the Subcontractor’s Emissions and Energy Data to be examined, monitored, measured, copied and audited by any persons appointed or approved for that purpose by HARDLINE, the Principal or any person with statutory authority to do so and cooperate with and provide all reasonable assistance to any such persons, including giving access to premises, plant and equipment, producing and giving access to documents (including any records kept and retained under clause 159(b) and 159(c) and answering questions.
- 10 Without limiting clause 159, the Subcontractor must assist HARDLINE and the Principal to comply with NGER Legislation in relation to any aspect of the Subcontractor’s activities in connection with the Works. The Subcontractor acknowledges and agrees that HARDLINE may provide or otherwise disclose the Subcontractor’s Emissions and Energy Data to the Principal or any government or statutory authority (or both), without notice to the Subcontractor.

ATTACHMENT 2 - POST TENDER INTERVIEW

This Attachment forms part of the Agreement as a Subcontract Document and must be interpreted in accordance with the order of precedence set out in clause 1 of the Formal Instrument of Agreement.