Subcontract Standard Terms and Conditions

Background

A. The Subcontractor agrees to Supply and deliver the works as specified in the Scope of Works in accordance with the terms and conditions of the subcontract **(Subcontract Documents)**.

B. All offers made by the Contractor to purchase the Works as described in the Schedule that are manufactured, sold, Supplied or provided by the Subcontractor shall be subject to these Standard Subcontractor Conditions unless otherwise agreed in writing.

Agreed Terms

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions**

In this Subcontract, except where the context otherwise requires:

Best Industry Practice means that high degree of skill, care, prudence and foresight which would reasonably and ordinarily be expected of a skilled and experienced subcontractor are engaged in the same type of project or supply as the Subcontractor under the same or similar circumstances.

BuildPass App means the BuildPass web and/or mobile application which operates to streamline processes such as site inductions, communications, document management, site attendance and project progress.

Business Day means any day that is not:

(a) a Saturday or Sunday;

(b) a day that is wholly or partly observed as a public holiday throughout Victoria; or

(c) a day during the period commencing on 22 December in any year and ending on 10 January in the following year.

Certificate of Compliance means the certificate to be provided to the Contractor by the Subcontractor in a form approved by the Contractor which certifies that the Works provided by the Subcontractor have met the requirements set out in this Subcontract.

Claim means any action, suit, claim, proceeding, demand or loss whatsoever including without limiting the generality of the foregoing any claim howsoever arising out of, relating to or connected with the Subcontract including:

(a) present, unascertained, immediate, future or contingent; or

(b) in contract or in tort including negligence or under statute or for breach of fiduciary duty or statutory duty, by reason of any other principle whether legal, equitable or statutory; or

(c) asserted by action, claim, suit, proceeding, deduction, set-off or counterclaim or otherwise; or

(d) for breach of any provision, warranty, representation, obligation, indemnity or express or implied undertaking; or

(e) for costs whether ordered or not or assessed or taxed in relation to any proceedings or otherwise.

Commencement Date means the commencement date as specified in the Schedule.

Completion Date means the completion date specified in the Schedule.

Confidential Information means all confidential information (however recorded or preserved) of a party or its Related Entities that is obtained (whether in writing, orally or by any other means and whether directly or indirectly) by another party or its Related Entities before, on or after the date of this agreement, including:

(a) the existence and terms of this agreement;

(b) any information that would be regarded as confidential by a reasonable person relating to the business, affairs, customers, clients, suppliers, proposals, market opportunities, technologies, products, business and product development plans, financial information, services, pricing, capabilities, capacities, operations, processes, product information or Intellectual Property of the first-mentioned party or its Related Entities; and

(c) any information developed by the parties and/or their Related Entities in the course of carrying out this Subcontract (including the results of any tests or investigations conducted in respect of the Business and any reports, summaries, data, analysis and other documentation or information developed by any of them in respect thereof),

(d) and includes any compilation of otherwise public information in a form not publicly known.

Construction Program means the program by which the Subcontractor must perform the Works under this Subcontract, which may include, without limitation, dates, times and the method for performance of the Works, as set out in the Schedule and amended from time to time in accordance with clause 5.

Contractor means the Contractor specified in the Schedule.

Corporations Act means the Corporations Act 2001 (Cth).

Date for Submission of Payment Claims means the last Business Day of each calendar month.

Defect Liability Period means the defect liability period specified in the Schedule, and if no period is specified, 10 years from Practical Completion.

Deliveries means all goods delivered or deliverable to the Contractor's Delivery Address under this Subcontract.

Delivery Address means the Delivery Address specified in Schedule.

Delivery, Delivered, Supply or Supplied means the time at which the Works have been completed and/or delivered to the Contractor's Delivery Address and are capable of being used for their stated or intended purpose and have been accepted by the Contractor in accordance with this Subcontract.

Goods means all goods, equipment, materials, articles, or any other property or parts to be provided to the Contractor by the Subcontractor under this Subcontract and includes, without limitation, design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing and Delivery as specified or required hereunder.

GST has the meaning given to it in the GST Law.

GST Law means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any updated or replacement legislation.

Head Contract means the contract between the Contractor and the owner, controller or similar of the Site for the performance of construction works (or similar) of which the Works form a part.

Instrument of Agreement means the document titled "Instrument of Agreement".

Intellectual Property means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any confidential information, copyright, trademarks, service marks, designs, patents, circuit layouts, plant varieties, business names, domain names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields whether or not registered or registrable and includes any rights to protect or apply for the registration, renewal or extension of such rights.

Liquidated Damages means an amount payable by the Subcontractor under clause 5 at the rate set out in the Schedule.

Non-Conformance Report means a report issued by Contractor in respect of the Subcontractor pertaining to non-conformance of the Subcontractor in respect of the Project.

PPSA means the Personal Property Securities Act 2009 (Cth). Words and expressions which are not defined in this document but which have a defined meaning the PPSA or regulations made under the PPSA have that same meaning.

Practical Completion is the stage of the carrying out of the Works when:

(a) the Works are complete except for minor defects:

(i) which do not prevent the Works from being reasonably capable of being used for their stated purpose;

(ii) which the Contractor determines the Subcontractor has reasonable grounds for not promptly rectifying; and

(iii) the rectification of which will not prejudice the convenient use of the Works or the performance of any other works by the Contractor or its other subcontractors;

(b) those tests which are required by the Subcontract have been carried out and passed;

(c) all documents and other information required under the Subcontract, which in the Contractor's opinion, are essential for the use, operation and maintenance of the Works have been supplied; and

(d) any certificates of compliance required by any Authority have been supplied to the Contractor.

Premises means the Address of the Contractor specified as the Contractor's Address in the Schedule.

Principal means the Principal under the Head Contract.

Project Coordinator means the Project Coordinator specified in the Schedule or as otherwise notified to the Subcontractor from time-to-time by the Contractor. The Contractor may nominate more than one person to be the Project Coordinator under this Subcontract and only those persons who are specifically notified to the Subcontractor as being a Project

Coordinator in respect of the Works shall be a Project Coordinator.

Qualifying Cause means in respect of the Works any, act, default or omission of the Contractor or any of the Contractor's other subcontractors, consultants, agents or employees (other than the Subcontractor or any person for whom the Subcontractor is responsible) however, a direction by the Contractor under clause 5.2 or 5.3 shall not constitute a Qualifying Cause.

Related Entity means:

(a) in respect of a natural person:

(i) a Relative of that person; and

(ii) a body corporate that is under the Control of:

A. that person; or

B. a Relative of that person; and

(b) in respect of a body corporate:

(i) a Related Body Corporate of that body corporate; and

(ii) if the body corporate is under the Control of a natural person, that natural person and a Relative of that natural person.

Relative has the meaning given to the term "relative" in the Corporations Act.

Request for Information or RFI means a request for information lodged by the Subcontractor to clarify the scope, quality or other requirement under the Subcontract.

Schedule means the Conly Subcontractor Agreement encompassing the formal instrument of agreement and details applicable to the Works entered into between the Contractor and the Subcontractor.

Schedule of Rates means the rate or respective rates of payment for the execution of any section or item of work to be carried out, which may also include lump sums, provisional sums, other sums and quantities and prices as set out in the Scope of Works.

Scope of Works means the scope of works specified in the Schedule.

Security means security in the form specified in the Schedule.

Security Interest means a security interest as defined in the PPSA.

Services means the services to be provided to the Contractor by the Subcontractor under this Subcontract.

Site means the site at which the Works are to take place, as set out in the Schedule.

Site Foreman means the Site Foreman specified in the Schedule or as otherwise notified to the Subcontractor from time-to-time by the Contractor.

Site Hours means 7 am to 5:00 pm on Business Days excluding any Business Day between 5:00 pm on the Friday immediately preceding Christmas and 7:00 am on the Monday immediately following New Year's Day.

SOPA means the Building and Construction Industry Security of Payment Act 2002 (Vic).

Statutory Warranty means a warranty that is implied by law, regardless of whether or not the parties so this Subcontract provide an express warranty under this Subcontract.

Subcontractor means the Subcontractor detailed in the Schedule.

Subcontract Documents means those documents which form the Subcontract which incorporate these terms and conditions and the Schedule and any documents incorporated by reference.

Subcontract Sum means the amount payable in respect of the Works as set out in the Schedule.

Tax Invoice has the meaning given to it in the GST Law.

Warranties means the warranties contained in clause 17 of this Subcontract.

Works means any and all works, Goods or Services described in the Subcontract and Subcontract Documents, including all incidental or usual works which although not themselves described in the Subcontract or the Subcontract Documents, are to be carried out and completed in accordance with the Subcontract, including variations, remedial work, construction plant and temporary works, or in connection with to the Subcontract and the Subcontractor's obligations under this Subcontract.

Works in Progress means any Works which have been commenced but have not yet been completed at a given time during the course of this Subcontract.

1.2 **Interpretation**

In this Subcontract, unless a contrary intention appears, the following applies:

(a) a reference to the Schedule is a reference to the annexures contained in the formal instrument of agreement constituting the Subcontract;

(b) headings are for ease of reference only and do not affect the meaning of this Subcontract;

(c) the singular includes the plural and vice versa;

(d) 'including' and similar are not words of limitation;

(e) words of any gender or referring to any gender (including the neuter gender) shall include all other genders;

(f) other grammatical forms of defined words or expressions have corresponding meanings;

(g) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Subcontract and a reference to this Subcontract includes any schedules and annexures;

(h) a reference to a document, agreement or deed, including this Subcontract, includes a reference to that document, agreement or deed as novated, altered or replaced from time to time;

(i) a reference to 'A$', '$A', 'dollar' or '$' is a reference to Australian currency;

(j) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;

(k) a reference to a "day" is a reference to a calendar day;

(l) unless otherwise provided in this Subcontract, if an act is to be done on a day which is not a Business Day it shall be done on the next Business Day;

(m) a reference to a party includes its executors, administrators, successors and permitted assigns;

(n) a party that is a trustee is bound both personally and in its capacity as a trustee;

(o) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies

(p) a reference to any legislation or statutory instrument or regulation is construed in accordance with the Acts Interpretation Act 1901 (Cth) or the equivalent State legislation, as applicable;

(q) if an obligation is imposed on two or more parties, each party is liable for the obligation individually and together with each other person;

(r) words and expression defined in the Corporations Act 2001 (Cth) as at the date of this agreement have the meanings given to them in the Corporations Act 2001 at that date; and

(s) a reference to writing includes typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form.

2. WORKS

2.1 The Subcontractor shall:

(a) carry out the Works in accordance with the requirements under this Subcontract;

(b) carry out the Works in accordance with any design, instructions or other documentation or directions (including any variations) received from the Contractor;

(c) perform the Works in a manner expected of a competent and diligent tradesman to Best Industry Practice;

(d) commence and perform the Works by the Completion Date of the Works and with due expedition and without delay having regard for the Contractor's Construction Program;

(e) be present for all Deliveries under the Subcontract and must comply with the instructions it receives from the Project Coordinator including in respect of the location and manner of stacking of the Goods delivered; and

(f) attend meetings with the Contractor or its representatives (including the Project Coordinator) when required by the Contractor.

2.2 In the performance of the Works, the Contractor may require the Subcontractor to use certain applications or software for the performance of the Works including the BuildPass App. The Subcontractor will use such applications or software where required and the Subcontractor acknowledges and agrees that it shall have no further entitlement in respect of such requirements.

2.3 The Subcontractor shall promptly (and in any event within two Business Days) notify the Contractor in writing of the occurrence of any event (whether actual or threatened) has or will likely adversely affect the Subcontractor's ability to perform the Works by or before the Completion Date including notification of any breach of the Warranties provided by the Subcontractor under this Subcontract.

2.4 Any instructions, variations, directions or similar must be provided to the Subcontractor by the Project Coordinator and the Subcontractor acknowledges and agrees that it shall have no Claim in respect of any instruction, variation or direction if it has not been provided to the Subcontractor by the Project Coordinator.

2.5 Minor items not expressly mentioned in this Subcontract but which are necessary for the due and proper performance and completion of the Works to achieve a standard of work which is fit for purpose and within a level of finish consistent with the Subcontract are deemed to be included as part of the Works and must be Supplied and executed by the Subcontractor to the Contractor's reasonable satisfaction. The cost of such items are deemed to be included in the Subcontract Sum.

2.6 The Subcontract Documents are mutually explanatory and figured dimensions shall prevail over scaled dimensions in a discrepancy and where inconsistent levels of quality are required, the higher level of quality shall apply.

2.7 If either party identifies any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out the Works and the identifying party is the:

(a) Subcontractor, the Subcontractor shall notify the Project Coordinator in writing prior to undertaking the Works the subject of the inconsistency, ambiguity or discrepancy and the Project Coordinator shall provide a direction to the Subcontractor as to how those Works are to be undertaken as soon as reasonably practicable following receipt of notice; or

(b) Contractor, the Contractor shall notify the Subcontractor through the Project Coordinator of the inconsistency, ambiguity or discrepancy and as soon as reasonably practicable following notice to the Subcontractor, provide the Subcontractor with a direction as to how those Works are to be undertaken.

2.8 To the extent permitted by law, the Subcontractor will not make or bring any Claim in relation to any failure to coordinate the design or for any errors, omissions, discrepancies in or between the documents.

2.9 The Subcontractor acknowledges and agrees that the Contractor is relying upon the Subcontractor complying with the Subcontract in order for the Contractor to comply with its obligations under the Head Contract and that the failure by the Subcontractor to comply with this Subcontract may result in the Contractor incurring loss and damage under the Head Contract and such loss and damage is reasonably foreseeable.

2.10 The Subcontractor acknowledges and agrees that the Site Foreman is not authorised to give any direction, instruction, approval or similar under this Subcontract and this includes in respect of any variations, Claims, extensions of time, the Works or the Subcontract Sum. The Subcontractor acknowledges and agrees that it shall have no Claim in respect of a direction, instruction, approval or similar under this Subcontract which has been provided to the Subcontractor by the Site Foreman or any person other than the Project Coordinator.

3. BUILDPASS APP

3.1 Prior to commencement of the Works, an invitation email may be sent to the Subcontractor to create a BuildPass App profile (if not already a user).

3.2 The Contractor uses the BuildPass App for the purposes of:

(a) Site management;

(b) Site inductions;

(c) provision, receipt or management of "Safe Work Method Statements";

(d) Scope of Work management and retention of documentation;

(e) receipt and management of RFIs; and

(f) other aspects of the Works as the BuildPass App provides.

3.3 The Subcontractor agrees to use and procure its employees, agents, subcontractors and consultants to use the BuildPass App in the performance of the Works which requires the use of a smart phone or similar and a 4G telephone connection to operate.

3.4 The Subcontractor acknowledges and agrees that:

(a) any RFI must be submitted through the BuildPass App;

(b) the Contractor may respond to an RFI submitted through BuildPass;

(c) if the Subcontractor ought reasonably have submitted an RFI through the BuildPass App and failed to do so, or failed to do so in the time a Subcontractor performing the Works in accordance with Best Industry Practice would have done, the Subcontractor shall have no entitlement under this Subcontract for any extension of time or an adjustment to the Construction Program under clause 5;

(d) each of its personnel shall sign into the Site daily using the BuildPass App in the manner required by the Contractor; and

(e) the Contractor will supply all documents through the BuildPass App including the Scope of Works.

4. PRICES

All such prices shown in the Subcontract are fixed from the date of the Subcontract and include all necessary and ancillary items including but not limited to freight, cartage, insurance, inductions, Site meetings, plant and equipment, vertical and horizontal lifting equipment, project management, printing and use or supply of pallets and containers unless otherwise shown in the Subcontract. No increase in prices for the Works that are the subject of this Subcontract shall be allowed unless prior approval in writing is obtained from the Contractor.

5. CONSTRUCTION PROGRAM

5.1 The Subcontractor must comply with the Construction Program at all times to achieve Practical Completion of the Works by the relevant Completion Date for those Works.

5.2 The Subcontractor acknowledges and agrees that the Contractor may, in its discretion, rearrange or reorganise the Works or the order of the Works in order for it to best comply with its obligations under the Head Contract and Subcontractor shall have no Claim in respect of such rearranging or reorganising.

5.3 If a reorganisation or rearrangement of the Works results in the Subcontractor not being required to perform the Works at the Site for a nominated period, the Subcontractor shall remain ready and able to perform the Works upon the provision of two Business Days' notice to the Subcontractor in writing.

5.4 If progress of the Works is (or is likely to be) delayed by any event, including a Qualifying Cause, the Subcontractor must:

(a) as soon as reasonably practicable upon becoming aware of the actual or likely delay in the progress of the Works and, in any event, within two Business Days of when a competent Subcontractor ought to have been aware of the actual or likely delay, provide to the Project Coordinator a written notice **(Notice of Delay)**, including details of the nature, cause, date of commencement and likely extent of the relevant delay; and

(b) where the Subcontractor wishes to make a Claim for an extension of time (EOT), within five Business Days of the commencement of the delay, provide a written claim to the Project Coordinator for an EOT setting out:

(i) the detailed particulars of the cause of the delay and the occurrence of the event causing the delay;

(ii) the extent (or likely extent) of the delay and the number of days extension of time claimed, together with the basis of calculating that period, including evidence that it will be delayed in achieving Practical Completion;

(iii) the effect (or likely effect) of the delay on the Completion Date; and

(iv) the steps the Subcontractor proposes to undertake to overcome or mitigate the delay.

(c) Where the effects of the delay continue beyond the period of five Business Days after the commencement of the occurrence causing the delay, and the Subcontractor wishes to claim an EOT in respect of the further delay, submit a further written claim for an EOT to the Project Coordinator:

(i) every five Business Days after the first written claim for an EOT until five Business Days after the end of the effects of the delay; and

(ii) containing the information in clause 5.2(b).

5.5 It is a condition precedent to the Subcontractor's entitlement to an EOT that:

(a) the Subcontractor shall have given the Notice of Delay under clause 5.2 and the written claim required by clause 5.2(b);

(b) the cause of the delay was beyond the reasonable control of the Subcontractor;

(c) the cause of the delay affects the critical path of the Construction Program; and

(d) the cause of the delay is a Qualifying Cause.

5.6 If the Subcontractor has strictly complied with the requirements of clause 5.2, and the cause of the delay is a Qualifying Cause, the Contractor shall:

(a) determine the reasonable duration of any EOT to the Completion of Date; and

(b) notify the Subcontractor of its determination within a reasonable time.

5.7 Where there is more than one cause of delay, and at least one of those causes is not a Qualifying Cause, then to the extent that those delays are concurrent, the Subcontractor shall not be entitled to any EOT to the Completion Date.

5.8 The right of the Subcontractor to make a Claim for an EOT pursuant to this clause is the Subcontractor's sole remedy in respect of any delay. Unless expressly provided in this Subcontract, the Subcontractor is not entitled to any increase or adjustment to the Subcontract Sum or any other monetary compensation or damages.

5.9 A delay or failure by the Contractor to grant a reasonable, or any, EOT under this clause 5 shall not cause the Completion Date to be set at large.

5.10 Whether or not the Subcontractor has made, or is entitled to make, a claim for an EOT under clause 5.2(b), the Contractor may (in its sole discretion) at any time before Completion unilaterally extend the Completion Date for any reason (or no reason at all). The parties acknowledge and agree that the Contractor is not required to exercise its discretion, or to exercise it for the benefit of the Subcontractor.

5.11 The Subcontractor acknowledges and agrees that the Construction Program provides for adequate time for the Subcontractor to perform the Works within the Site Hours and if the Subcontractor is required to perform the Works outside of these hours, the Subcontractor shall bear the costs of the Contractor opening the Site during those times.

5.12 The Construction Program may specify the means by which the Subcontractor must perform the Works and may provide for discontinuous Works and/or out-of-sequence Works throughout the duration of the Subcontract, which must be accommodated by the Subcontractor within the prices specified in the Subcontract.

5.13 The Contractor, in its absolute discretion, may at any time make

amendments to the Construction Program by providing no less than two Business Days' notice to the Subcontractor.

5.14 The Subcontractor acknowledges and agrees that amendments to the Construction Program made by the Contractor in accordance with clause 5.11 will not constitute a variation to this Subcontract.

5.15 The Subcontractor must provide all necessary resources to comply with the Construction Program (including any amendments) within the prices specified in the Subcontract.

5.16 Should the Subcontractor anticipate that it may be unable to comply with the Construction Program at any time, it must immediately inform the Contractor with a written explanation describing the particular issues it anticipates may arise, and how these issues will affect the Subcontractor's compliance with the Construction Program.

5.17 If the Contractor determines, in its sole discretion, that the Subcontractor is unlikely or unable to achieve Practical Completion of the Works in accordance with the Construction Program, the Contractor may direct the Subcontractor to take such actions as the Contractor determines being reasonably necessary or desirable to attempt to achieve Practical Completion of the Works in accordance with the Construction Program and if such direction results in the Contractor bearing any additional costs (including through the Contractor having to open and supervise the Site outside of Site Hours), such amount shall be deductable from the Subcontract Sum.

6. LIQUIDATED DAMAGES

6.1 If the Subcontractor fails to achieve Practical Completion of the Works in accordance with the then current Construction Program, the Subcontractor is indebted to the Contractor for, and must pay or allow to be deducted from the Subcontractor Liquidated Damages at the rate set out in the Subcontract.

6.2 The Subcontractor acknowledges and agrees that the Contractor may deduct Liquidated Damages progressively from payments which may otherwise have been due and payable to the Subcontractor if the Contractor has determined on reasonable grounds that the Subcontractor is not achieving the Construction Program such that it is reasonably unlikely that the Subcontractor can achieve Practical Completion of the Works in accordance with the Construction Program or the Subcontractor, by its delays in performing the Works, is affecting other subcontractors or the Contractor from achieving their respective contractual obligations.

6.3 The Contractor may monitor the performance of the Subcontractor on the Site including in respect of its ability to meet or comply with the Construction Program through the use of technology, including electronic site diaries and requirements for the Subcontractor (and its personnel) to sign into the Site using technology.

6.4 The Subcontractor and the Contractor agree that the rate for Liquidated Damages as stated in the particulars of this Subcontract is a genuine pre-estimate of the loss and damage the Contractor will suffer if Practical Completion of the Works is not achieved by the Completion Date.

6.5 The Subcontractor's aggregate liability for Liquidated Damages is not limited. If, in any court or other proceedings, the Liquidated Damages are found to be a penalty or are otherwise void or unenforceable (either in whole or in part), then the Subcontractor will be liable to pay general damages at common law for failure or breach for which liquidated damages would have otherwise been payable.

6.6 For the avoidance of doubt, the Contractor is entitled to apply Liquidated Damages at any time after the Subcontractor has failed to achieve Practical Completion of the Works by the Completion Date. The Subcontractor acknowledges and accepts that a delay in the Contractor applying Liquidated Damages against the Subcontractor shall not in any way be interpreted or inferred to be a waiver of the rights under this clause.

6.7 Where the amount of Liquidated Damages (or general damages under clause 6.4 as applicable) due and payable by the Subcontractor to the Contractor does not adequately cover the full extent of the loss, expense, damage or cost suffered or incurred by the Contractor as a result of the Subcontractor's breach of this Subcontract, then, in addition to making payment of the Liquidated Damages amount, the Subcontractor shall be liable to compensate the Contractor for the difference between the amount of Liquidated Damages due and payable and the full extent of the loss, expense, damage or cost suffered or incurred by the Contractor including all legal and debt collection costs on an indemnity basis.

6.8 The Subcontractor acknowledges and agrees that, in the event it does not comply with its obligations under the Construction Program, the Contractor may, in its discretion and to the extent permitted by law, seek such orders of a court of competent jurisdiction as are required to ensure the compliance of the Subcontractor of its obligations under the Construction Program and recover any legal costs from the Subcontractor on a full indemnity basis.

7. INSPECTION AND ACCEPTANCE OF WORKS

7.1 All Works shall be fit for the purpose for which they are required. The Subcontractor must use new and undamaged materials, unless otherwise specified in the Subcontract and the workmanship of the Works must be of the highest quality and standard. The Works shall be carried out, manufactured, sold, Supplied and provided by the Subcontractor in accordance with all applicable Australian Standards and/or other relevant codes, the requirements of all relevant statutory authorities and the law.

7.2 Should the Subcontractor wish to discuss the Works with the Contractor at the Site, the Subcontractor must provide the Contractor with two Business Days' written notice, and the Contractor will make the Site Foreman available for a reasonable period of time between 2:00 pm – 3:30 pm on a Business Day. The Site Foreman will not address or respond to requests for information from the Subcontractor. The process for addressing requests for information is dealt with in the Scope of Works or may be addressed by the Project Coordinator.

7.3 The Subcontractor is solely responsible for controlling the quality of the Works and shall only supply to the Contractor those Works which conform to requirements of this Subcontract and are fit for purpose. The Subcontractor shall complete inspections and tests on the Works as required by the Contractor and make the completed inspection and test records available to the Contractor upon request.

7.4 The Subcontractor must provide an endorsed Certificate of Compliance upon request by the Contractor from time-to-time, including with any Payment Claim (including the Final Payment Claim) submitted by the Subcontractor, where requested or otherwise required by Law.

7.5 The Subcontractor acknowledges and agrees that the Scope of Works may specify certain inspection or witness points and the Subcontractor shall provide at least two Business Days' notice to the Contractor of completing or covering up any Works which are the subject of inspection or witness requirements and if the Subcontractor fails to comply with this clause 7.5, the Subcontractor shall bear any additional costs associated with uncovering, demolishing or otherwise achieving the inspection or witness points.

7.6 The Subcontractor acknowledges and agrees that during and on Practical Completion and on sign-off of the Works, the Subcontractor must undertake mandatory checklist walks with the Project Coordinator.

7.7 The Subcontractor acknowledges and agrees that the Works delivered to the Contractor are accepted subject to the Contractor's inspection **(Delivery Inspection)** which shall occur within five Business Days of Delivery. The provision of a Delivery receipt for any part, any or all Works signed by the Contractor or payment in full or in part shall not constitute acceptance of the Works by the Contractor.

7.8 Notwithstanding payment in full or in part, or provision of a Delivery receipt of Works signed by the Contractor, if the Contractor discovers during the Delivery Inspection that any Works Delivered do not comply with the requirements of the Subcontract (including the specified requirements, standard or quality determined by any consultants, documentation or the Contractor's management), they may be rejected by the Contractor in its sole discretion **(Rejected Works)** and the Contractor may direct (in its sole discretion):

(a) the Subcontractor to rectify, replace or otherwise re-perform the Works by the date specified by the Contractor to ensure that the Works conform with the obligations on the Subcontractor under this Subcontract and the time by which such Rejected Works are to be rectified, replaced or re-performed;

(b) that the Works are taken out of the hands of the Subcontractor and the Contractor may engage a third-party to perform those Works or otherwise perform those Works itself and any cost incurred by the Contractor in reperforming Works shall be assessed and deducted from the Subcontract Sum;

(c) assess those Rejected Works as incomplete and therefore no payment or a reduced payment may be payable for the Rejected Works; and/or

(d) any other or further directions as the Contractor considers necessary for the expeditious performance of the Works.

7.9 The Subcontractor acknowledges and agrees that it shall have no Claim to an extension of time or any form of variation to this Subcontract as a result of a direction made by the Contractor under this clause in respect of any Rejected Works.

7.10 To the extent that the Contractor provides a direction under clause 7.8, the Contractor may make further directions to the Subcontractor in respect of the Rejected Works of the nature specified in clause 7.8 or other such direction as the Contractor deems necessary or desirable to achieve the rectification, remediation or replacement of the Rejected Works as soon as practicable and such directions shall not constitute a variation, waiver or extension of time of the Subcontractor's obligations under this Subcontract.

7.11 Any Rejected Works returned to the Subcontractor as defective or otherwise outside the requirements of the Subcontract for repair, replacement or credit are returned at the risk of the Subcontractor and all handling, insurance and transportation costs, including the Contractor's costs of inspection, from the initial Delivery of the Works and the subsequent return of Rejected Works shall be borne by the Subcontractor and the Subcontractor shall pay to the Contractor any such costs and refund any payment or part-payment made by the Contractor in respect of the Rejected Work.

7.12 The Subcontractor shall ensure that delivery receipts required to be completed by the Contractor shall be completed and signed by the Contractor and the Subcontractor.

7.13 Any Works provided under or in connection with this Subcontract shall

be provided using the highest standard of care and skill and with proper and tradesman-like workmanship, and in accordance with Best Industry Practice.

7.14 Except where included in this Subcontract or where the Contractor otherwise notifies the Subcontractor in writing, the Subcontractor shall, at its own expense, Supply everything necessary or which may be reasonably inferred or expected from this Subcontract for the proper performance of the Works under or in connection with this Subcontract.

8. DEFECTS

8.1 The Subcontractor shall, at its own expense, make good any defect which appears in the Works or is notified to the Subcontractor by the Contractor within the Defects Liability Period to the satisfaction of the Contractor within two Business Days of notice from the Contractor unless the Contractor directs a longer period.

8.2 If the Contractor notifies the Subcontractor of a defect in the Works, the Subcontractor shall be liable for the costs of the Contractor attending to the rectification of the identified defect which may include additional labour costs of the Contractor, attendance at site by employees, agents or other consultants of the Contractor (including experts) and any costs associated with opening the Site outside of standard hours for the Site to enable the Subcontractor to attend to rectification of the defects.

8.3 The Contractor may provide that in respect of the rectification work there shall be a further Defects Liability Period of a stated duration not exceeding the original Defects Liability Period, to commence on the date the rectification work is completed.

8.4 If any such defects are not made good within two Business Days of a request by the Contractor (or such other period having regard to the nature of the defect or such extended period as may be agreed) the Contractor may, itself or by others, remedy the defect and the cost of doing so shall be a debt due and payable by the Subcontractor to the Contractor.

9. PAYMENT

9.1 Payment Claims

(a) Subject to the due and punctual performance by the Subcontractor of all of the Subcontractor's obligations under this Subcontract, and the rights of the Contractor to set off under this Subcontract, the Contractor will pay the Subcontractor the Subcontract Sum in accordance with this Subcontract. The parties acknowledge and agree that the Contractor is not obligated to pay any deposits in connection with this Subcontract.

(b) The Subcontractor must submit payment claims under this Subcontract on the Date for Submission of Payment Claims, but must only submit one payment claim per calendar month (Payment Claims). The Payment Claim must be sent to the Contractor via email to:

(i) in respect of projects in Melbourne, accounts@conly.com.au; and

(ii) in respect of projects on the Mornington Peninsula, accounts@conlyp.com.au,

and each Payment Claim shall:

(iii) be in the form of a Tax Invoice;

(iv) be supported by evidence of the amount due to the Subcontractor and such information as the Contractor may reasonably require;

(v) set out the work and the value of work carried out by the Subcontractor in the performance of the (original) Works to the date of the claim;

(vi) set out the work and the value of work of any variations to the Works under clause 11;

(vii) set out the amounts (otherwise due from the Contractor to the Subcontractor and the Subcontractor to the Contractor);

(viii) set out the amounts previously paid by the Contractor to the Subcontractor in respect of the Works;

(ix) set out the amounts previously claimed under this Subcontract;

(x) set out the retention moneys to be deducted pursuant to this Subcontract;

(xi) set out the amount which the Subcontractor asserts is payable to the Subcontractor in accordance with this Subcontract;

(xii) if required by the Contractor, be accompanied by a statutory declaration prepared by an officer of the Subcontractor approved by the Contractor stating that:

A. all moneys included in previous progress payments in respect of work carried out or materials supplied by subcontractors or suppliers to the Subcontractor or employees of the Subcontractor have been paid by the Subcontractor to those subcontractors, suppliers and employees; and

B. any other monies which are payable by the Subcontractor to its employees or subcontractors which have become payable as at the date of the statutory declaration have been paid where those monies relate to time spent on the Works by employees of the Subcontractor; and

(xiii) be accompanied by any Certificates of Compliance required to be issued in respect of the Works the subject of the Payment Claim;

(xiv) be accompanied by any evidence the Contractor requires (in its reasonable discretion) and in the form required by the Contractor to evidence the conduct of any tests required under this Subcontract; and

(xv) be accompanied by all relevant documentation evidencing (to the satisfaction of the Contractor) the Subcontractor's full compliance with any industrial requirements or agreements.

9.2 **Payment Schedules**

(a) Within 10 Business Days of a Payment Claim, the Contractor will issue to the Subcontractor a payment schedule (with reasons) certifying the amount which the Contractor assesses to be payable to the Subcontractor or payable by the Subcontractor to the Contractor **(Payment Schedule)** taking account of:

(i) the value of work carried out by the Subcontractor to the date of the claim as assessed by the Contractor, including any variations approved in writing;

(ii) an amount determined by the Contractor to be deducted to cover the cost estimated by the Contractor to rectify any defective work or any cleaning up;

(iii) the value of any Rejected Works for which the Subcontractor has claimed and is not entitled to payment for;

(iv) amounts to be deducted to cover retention moneys in accordance with clause 20;

(v) if the Subcontractor has failed to complete the Works by the Completion Date, an amount to be deducted for Liquidated Damages; or

(vi) amounts the Contractor may otherwise deduct under this Subcontract.

(b) The Contractor will pay the amount set out in the Payment Schedule in accordance with clause 9.12. Any payment made by the Contractor is a payment on account only and will not be regarded as evidence or admission that:

(i) the Contractor has accepted the Works; or

(ii) the Works have been executed in accordance with this Subcontract; or

(iii) the Subcontractor has satisfactorily completed the Works.

(c) If a Payment Schedule sets out an amount owing by the Subcontractor to the Contractor, the Subcontractor shall pay such amount within 14 days of the date of the Payment Schedule. The Subcontractor indemnifies the Contractor in respect of any costs it incurs in recovering such payment including its debt collection and legal costs on a full indemnity basis.

9.3 **Conditions precedent to payment**

(a) The Subcontractor may not make a Payment Claim under clause 9.1(b) or the final Payment Claim under clause 9.7 and the Contractor is not obliged to make a payment unless the Subcontractor has served on the Contractor:

(i) evidence satisfactory to the Contractor that it has fully complied with the requirements of clause 19;

(ii) a statutory declaration that the Subcontractor has made payment to all of its employees and its subcontractors engaged in the performance of the Works in respect of invoices rendered up until and forming part of the payment claim; and

(iii) letters or Certificates of Compliance as required by the Contractor or the Building Surveyor from time to time for the purpose of issuing a Certificate of Occupancy in respect of the Works.

(b) The Contractor is not obliged to make any payments to the Subcontractor during any period in which any Non-Conformance Reports pertaining to the Subcontractor's Works at the Site remain open.

9.4 **Unfixed plant and material**

The Contractor may, in its absolute discretion, pay for any item of unfixed plant and materials which have not been delivered to the Site or incorporated into the Works, and on such terms and conditions as in the Contractor's reasonable discretion the Contractor deems appropriate.

9.5 **Certificate of Completion**

(a) The Subcontractor must give the Contractor at least 14 days' notice of the date when the Subcontractor anticipates that Practical Completion of the Works will be achieved.

(b) When the Subcontractor is of the opinion that it has achieved Practical Completion, the Subcontractor must in writing request the Contractor to issue a certificate of Practical Completion **(Certificate of Practical Completion)**. Within 14 days of the receipt of the request, the Contractor may give to the Subcontractor a Certificate of Practical Completion certifying the date the Works were completed or the reasons for not issuing the Certificate of Practical Completion.

(c) When the Contractor is of the opinion that the Works have reached Practical Completion, the Contractor may issue the Certificate of Practical Completion, whether or not the Subcontractor has requested it.

(d) Any use or occupation of the Site by a Principal or the Contractor prior to Practical Completion of the Works or the issue of a Certificate of Practical Completion will not be taken to mean that the Works have been completed or limit the Subcontractor's obligations under this Subcontract.

9.6 **Effect of certificates**

The issue of a Certificate of Practical Completion does not constitute approval of any work or other matter nor does it prejudice any claim by the

Contractor or the Subcontractor.

9.7 **Final Payment Claim**

(a) Within 28 days after the expiry of the last Defects Liability Period the Subcontractor must serve on the Contractor a final Payment Claim of all of the Subcontractor's Claims against the Contractor under or in connection with the Subcontract **(Final Payment Claim)**.

(b) The Subcontractor releases the Contractor against any Claim by the Subcontractor in connection with the Works or the Subcontract which is not included in the final payment claim, other than a claim for release of retention.

9.8 **Final Certificate**

(a) Not later than 10 Business Days after the Final Payment Claim is served, the Contractor must provide to the Subcontractor a final payment schedule which:

(i) is endorsed 'Final Certificate';

(ii) identifies the Final Payment Claim to which it relates;

(iii) states the amount, if any, that the Contractor proposes to pay **(Final Scheduled Amount)**;

(iv) shows any amount that is payable by the Subcontractor to the Contractor; and

(v) if the Final Scheduled Amount is less than the Final Payment Claim, states why the Final Scheduled Amount is less, and if it is less because the Contractor is withholding payment for any reason, the Contractor's reasons for withholding payment **(Final Certificate)**.

(b) If the Subcontractor fails to serve a final payment claim, the Contractor may provide notice to the Subcontractor of its assessment of the value of the Works carried out under the Subcontract and make the final payment to the Subcontractor, and no Claim may then be made by the Subcontractor against the Contractor, other than a claim for release of retention, and the Contractor has no liability whatever to the Subcontractor in connection with the Works or in connection with the Subcontract.

(c) Within 14 days after the issue of a Final Certificate, the Subcontractor must provide to the Contractor a signed Deed of Release in the form approved by the Contractor.

(d) Subject to the Subcontractor having complied with the requirements of this clause 9.8, the Contractor must pay to the Subcontractor the final scheduled amount within the equivalent periods stated in clause 9.12.

(e) The Subcontractor must within 14 days after the issue of the Final Certificate, pay to the Contractor any amount under clause 9.8(a)(v).

9.9 **Set-off and Indemnities**

(a) The Contractor may deduct from any moneys due and payable to the Subcontractor, any moneys due and payable, or claimed by the Contractor to be due and payable, from the Subcontractor to the Contractor pursuant to this Subcontract or any other agreement between the Contractor and the Subcontractor, including but not limited to for breach of any warranty, under any indemnity (whether or not the Contractor has made any payment or incurred any liability) given by the Subcontractor in favour of the Contractor, all costs and expenses including legal costs under any adjudication application under SOPA or otherwise at law, and if those moneys are insufficient then the Contractor will be entitled to deduct from the retention moneys or the security.

(b) Where the Contractor applies sub-clause 9.9(a), the Contractor is entitled to apply, at its sole election and discretion, an additional 20% of the costs and expenses incurred in order to recover a portion of the Contractor's internal costs expended in the administration, supervision and management as the case may be of the works the subject of this subclause.

(c) The Subcontractor indemnifies the Contractor against and holds the Contractor harmless from, any loss, liability, cost, expense, claim or damage **(Loss)** made against, suffered or incurred by the Contractor arising directly or indirectly from any breach by the Subcontractor of this Subcontract or any act or omission (including any negligence, unlawful conduct or wilful misconduct) by the Subcontractor under, relating to or in connection with this Subcontract.

(d) If, as a result of the act, omission or negligence of the Subcontractor, the Contractor suffers any loss or damage (including under or in respect of the Contractor's obligations under the Head Contract), the Subcontractor indemnifies and shall keep indemnified the Contractor against any liability, loss or damage the Contractor suffers including in respect of legal costs on an indemnity basis. does not achieve Practical Completion of the Works by the Completion Date, the Subcontractor indemnifies the Contractor against any liability or loss suffered or incurred by the Contractor:

(e) It is not necessary for the Contractor to incur expense or make a payment before enforcing any indemnity conferred by this Subcontract.

(f) Each indemnity in this Subcontract is a continuing obligation, separate and independent from the other obligations of the Subcontractor and survives the termination or expiration of this Subcontract.

9.10 **Security of Payment Legislation**

For the purposes of section 42 of SOPA, in the event that the Subcontractor makes an adjudication application under SOPA, the Subcontractor must make such application to one of the following Authorised Nominating Authorities (as that term is defined under SOPA): Resolution Institute, RICS or Rialto Adjudications.

9.11 **Date for Submission of Christmas Payment Claim**

For the purposes of Payment claims under the Subcontract and SOPA are to be made:

(a) on 22 December in each year for work undertaken from 1 December to 21 December in the same year; and

(b) on or from 31 January for work undertaken from 22 December to 31 December in the previous year.

9.12 **GST and Invoicing**

(a) The Subcontract Sum is exclusive of GST which will be payable in respect of a taxable supply made under the GST Law.

(b) Upon receipt of a payment schedule or the Final Certificate (as the case may be) which is for an amount less than or greater than the amount specified on a Payment Claim, the Subcontractor shall issue within two Business Days a Tax Invoice in compliance with the GST Law for the amount approved in the relevant payment schedule or Final Certificate. The provision of the Tax Invoice is a condition precedent to the Subcontractor's entitlement to payment under this Subcontract.

(c) The Contractor will pay the amount in the Tax Invoice within the time specified for payment in the Schedule.

9.13 **Reporting to credit agencies**

The Subcontractor acknowledges and agrees that it shall have no entitlement to report the Contractor to a credit reporting agency or similar group which maintains a database of creditors (such as Creditor Watch) without first having obtained an order in a Court in respect of the debt alleged to be due and that if the Subcontractor breaches this clause 9.13, the Contractor shall, without prejudice to any other rights it may have, have the right to do any or all of the following:

(a) seek the removal of any submission by seeking an order in a Court of competent jurisdiction and the Subcontractor shall be barred from raising a defence in respect of such application to the Court;

(b) commencing proceedings against the Subcontractor for the lodgement and the Subcontractor shall be barred from raising a defence in respect of such application to the Court.

9.14 **Financial Certificates**

Within two Business Days of the provision of a request from the Contractor, the Subcontractor shall provide a letter confirming the current solvency of the Subcontractor from its accountant who shall be a Certified Public Accountant.

9.15 **Parent Company Deed of Guarantee**

If directed by the Contractor, the Subcontractor shall, within 7 days after receiving a written request from the Contractor, and as a condition precedent to payment, provide a deed of guarantee in a form required by the Contractor from the Subcontractor's ultimate holding company guaranteeing the Subcontractor's performance of its obligations under this Subcontract.

10. PERSONAL PROPERTY SECURITIES ACT

10.1 Where the Contractor has made progress payments to the Subcontractor for Works completed and/or procured by the Subcontractor to fulfil this Subcontract, ownership in and title to all Works in Progress regardless of the level of completion of the Works or processing shall pass to the Contractor, and the Subcontractor must clearly identify such Work in Progress as the property of the Contractor, however any risk remains with the Subcontractor until such Works are Delivered and the Contractor has signed the Delivery receipt.

10.2 Where terms are not otherwise defined in this Subcontract, terms used in this clause have the meaning given to them in the PPSA.

10.3 The Subcontractor agrees that the terms of this Subcontract may constitute one or more Security Interests for the purpose of the (PPSA) and that:

(a) to perfect any such Security Interest the Contractor may register a financing statement(s) on the Personal Property Securities Register;

(b) the Subcontractor shall have no rights under sections 95, 118, 121(4), 125, 130, 132, 135, 142 and 143 of the PPSA;

(c) the application of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) of the PPSA is contracted out of if that Part would apply by virtue of section 116(2) of the PPSA; and

(d) the Subcontractor waives its right to receive notice of a verification statement under section 157 of the PPSA.

10.4 The Subcontractor must promptly on request by the Contractor provide any such information and execute and deliver any such documents as the Contractor may reasonably require to protect the Security Interests granted to the Contractor by the Subcontractor under or in relation to this Subcontract.

11. VARIATIONS

11.1 The Contractor through the Project Coordinator may at any time direct

the Subcontractor to amend, increase, decrease or change the quality, character or extent of the Works or to otherwise perform additional Works **(Variation Order)**.

11.2 Within five Business Days of receiving a Variation Order the Subcontractor must deliver to the Contractor a detailed quotation setting out any difference in the cost associated with the Subcontractor's performance of the variation and any effect the variation will have on the Construction Program including evidence as reasonably required by the Contractor.

11.3 The Subcontractor must not undertake any Works, urgent or otherwise, the subject of a Variation Order unless it has first received a written direction to proceed from the Contractor.

11.4 The Contractor shall, as soon as reasonably practicable, price each Variation using the following order of precedence:

(a) prior agreement;

(b) rates or prices in the Subcontract including the Schedule of Rates (if any);

(c) the reasonable determination by the Contractor,

and any deductions shall include a reasonable amount for profit and overheads excluding non-time related on-Site overheads. That price shall be added to or deducted from the Subcontract.

12. TERMINATION

12.1 The Contractor may at any time and at its absolute discretion terminate this Subcontract without prejudice to any of its other rights or entitlements or powers under the Subcontract or at law, for its sole convenience on 7 days' written notice

12.2 If this Subcontract is terminated under clause 12.1, the Subcontractor will be paid the value of all Works Delivered and all Works Supplied or carried out to the date of termination and the cost of materials reasonably ordered by the Subcontractor for the Works (provided title passes to the Contractor), and the Subcontractor shall take all reasonable steps to mitigate the loss to the Contractor.

12.3 Upon the occurrence of any of the following events, or the Subcontractor committing any other substantial breach of the Subcontract:

(a) default by the Subcontractor in the performance or observance of any of the provisions of this Subcontract, or if any other secured party seizes or becomes entitled to seize the Works (whether under the PPSA or otherwise); or

(b) the Subcontractor fails to deliver the Works within the time specified or otherwise in accordance with the Subcontract or any delivery schedule as agreed upon by the parties;

(c) the Subcontractor fails to attend the Site and perform the Works in accordance with the Construction Program;

(d) the Subcontractor, if an individual, has a bankruptcy petition presented against him, or commits an act of bankruptcy, or makes a proposal for a scheme of arrangement or a composition, or has a deed of assignment or deed of arrangement made, or accepts a composition, or is required to present a debtor's petition, or has a sequestration order made under Part X of the Bankruptcy Act 1966 (Cth), or enters into a personal insolvency agreement, or calls a meeting for the consideration of a personal insolvency agreement as defined by the Bankruptcy Act 1966 (Cth) or dies; or

(e) the Subcontractor, if a corporation, has a controller or administrator or liquidator appointed or enters into a deed of company arrangement with its creditors or has a receiver or receiver and manager appointed to any of its property or has a mortgagee take possession of any of its property or has a winding up order made against it, the Contractor may, by hand or email, give the Subcontractor written notice to rectify the breach (if capable of rectification) **(Notice to Rectify)**.

12.4 If the Subcontractor fails to rectify the breach within five Business Days of the Notice to Rectify, the Contractor may to the full extent permitted by law, without prejudice to its other rights or entitlements or powers under the Subcontract or at law), elect to take over the Subcontract Works or any part of them itself or by another subcontractor or terminate this Subcontract.

12.5 Upon termination or takeover under this clause:

(a) the Subcontractor shall not be permitted to make a Payment Claim until the Subcontract Works have been completed;

(b) the Contractor shall be entitled to be paid as if the Subcontractor had repudiated the Subcontract and the Contractor had accepted that repudiation; and

(c) without limiting (b), the Contractor shall be entitled to be paid for any loss or damage it incurs under the Head Contract by reason of the Subcontractor's breach and/or the termination of the Subcontract.

12.6 The Subcontractor shall not be entitled to claim any compensation in respect of or arising from a termination under clause 12.4.

12.7 The Subcontractor will refund in full any deposit paid, or any money paid in advance to the Subcontractor, if this Subcontract is terminated under clause 12.4.

13. WORKING AT THE SITE, THE DELIVERY ADDRESS OR THE CONTRACTOR'S PREMISES

13.1 If any work necessary for fulfilling the Subcontract is to be performed on or at the Contractor's Premises, Delivery Address or at a place under the Contractor's control, then the Subcontractor shall, seven (7) days prior to starting work, provide evidence of adequate and current Public Liability and Workers Compensation Insurance cover, and any and all other Insurances as reasonably required by the Contractor, including those as required by clause 19 of this Subcontract. The Subcontractor is responsible for the protection and cleaning of all surfaces and fixtures near, adjacent or interfacing with the Works and the Subcontractor hereby indemnifies the Contractor against any cost, loss, damage, expense, Claim or suit directly, indirectly, or consequentially caused by the Subcontractor's breach of this clause.

13.2 The Subcontractor shall otherwise keep the Site and the Works clean, tidy and regularly remove rubbish and surplus materials.

13.3 If the Subcontractor fails to comply with clause 13.1 or 13.2, the Contractor may, itself or by otherwise, undertake such protection and cleaning measures reasonably determined by the Contractor to be required and the Subcontractor at the Subcontractor's cost.

13.4 If the Contractor undertakes the works referred to in clause 13.3, the Subcontractor has engaged the Contractor to perform those works and acknowledges that:

(a) the minimum cost of this will be a labourer for four hours at the then current rate charged by the Contractor's labourers; and

(b) any administrative costs of the Contractor of managing those works,

and the Subcontractor agrees to make payment to the Contractor of such amounts upon demand without set-off or deduction.

14. SUPPLY OF PARTS BY THE CONTRACTOR

If the Contractor provides to the Subcontractor any parts or components to be incorporated by the Subcontractor in the Works, the parts or components Supplied shall be at the risk of the Subcontractor, who shall pay the actual cost incurred by the Contractor in replacement or repair of the Supplied parts or components, where such loss or damage arose while the parts or components were in possession of the Subcontractor, until those Works incorporating those parts or components are accepted by the Contractor.

15. QUALITY MANAGEMENT SYSTEM

The Subcontractor shall at all material times operate and maintain an effective quality management system appropriate to the type of Works offered and/or in accordance with the specifications within the Subcontract, and if requested the Subcontractor must provide to the Contractor upon Delivery of the Works or performance of the Works, a copy of the quality assurance documentation relating to those Works.

16. OH&S AND ENVIRONMENTAL REQUIREMENTS

16.1 The Works Supplied must comply with all applicable health and safety legislation, whether State or Commonwealth, and meet or exceed the appropriate Australian and/or International Standard (OHS Law). The Subcontractor shall operate and maintain at all material times an effective Occupational Health and Safety (OHS) management system appropriate to the type of Works offered and / or in accordance with the specifications within the Subcontract.

16.2 The Subcontractor shall be responsible for supplying all Personal Protective Equipment (PPE) to the Subcontractor's employees that is necessary and appropriate to the Works to be carried out.

16.3 The Subcontractor acknowledges and agrees by its acceptance of this Subcontract that it has satisfied itself as to the safety of the Work to be carried out under this Subcontract.

16.4 Where a Safe Work Method Statement (SWMS) is required by an OHS policy, OHS Law, Occupational Health and Safety Act 2004 (Vic), or as directed by the Contractor, the Subcontractor shall provide a Site and task specific SWMS to the Contractor seven (7) days prior to the commencement of any Works relevant to the same.

16.5 All Subcontractor employees must be signed into any SWMS prior to being permitted to start Works at the Site. All inductions and SWMS are to be uploaded to the BuildPass App.

16.6 At all relevant times, the Subcontractor and the Subcontractor's employees must comply with the SWMS.

16.7 Where the Subcontractor provides its own SWMS, the Subcontractor acknowledges and agrees that the Contractor is relying on the Subcontractor's skill, expertise and judgement in the appropriateness of, and compliance with, the Subcontractor's SWMS.

16.8 The Works Delivered must comply with all applicable environmental legislation, whether State or Commonwealth, and meet or exceed the appropriate Australian and/or International Standard.

16.9 All the Subcontractor's plant and equipment shall comply with relevant OHS Law and will only be operated by suitably licensed and experienced personnel. All electrical plant, equipment, tools, leads etc. will be regularly maintained by the Subcontractor, with current-testing tags attached at all times.

17. WARRANTIES

17.1 The Subcontractor acknowledges and agrees by its acceptance of the Subcontract that it is aware that the Contractor is relying on the

Subcontractor's skill, expertise and judgement in the Delivery of the Works.

17.2 At the request of the Contractor, the Subcontractor must assign the benefit of any warranty or guarantee that the Subcontractor has received from its subcontractors whether under contract or by implication or operation of law. This warranty shall endure for the benefit of the Contractor, its successors and its assignees.

17.3 Notwithstanding any other clause or relevant law ,the Subcontractor, by its acceptance of this Subcontract, warrants that the Works Supplied are of acceptable quality and free from defects in material and workmanship, conform with the specifications provided by the Contractor, and are fit for the purpose for which the Contractor or the Contractor's customers intend to use the Works, or for the purpose for which the Works would normally be used, including all such purposes made known to the Subcontractor expressly or by implication for the period of ten years from the date of Delivery to the Contractor subject to fair wear and tear.

17.4 Notwithstanding any other clause or relevant law, the Subcontractor warrants to the Contractor that the Works have been constructed in accordance with this Subcontract and all Statutory Warranties and so as to be fit for their purpose for the period of ten (10) years from the date of Delivery to the Contractor. The Subcontractor shall obtain and deliver to the Contractor copies of all necessary test results or compliance certificates with each Claim for payment as a precondition to payment.

17.5 At the request of the Contractor, the Subcontractor shall enter into any deed of novation or warranty deed in favour of a principal under a Head Contract as the Contractor may require from time-to-time.

17.6 The Subcontractor is responsible for the structural integrity of the Works and all safety and construction methodology and will make sure all steps are taken to ensure safety, environmental and quality risks in respect of the Works are avoided.

18. INTELLECTUAL PROPERTY

18.1 All drawings, blueprints, sketches, specifications, tooling and copies of any kind whatsoever Supplied by the Contractor to the Subcontractor remain the property of the Contractor and shall not be copied or used by the Subcontractor for any purpose other than for fulfilling its obligations under this Subcontract. Unless otherwise agreed, all such drawings, blueprints, sketches, specifications, tooling and copies thereof must be returned to the Contractor with the Delivery of the Works.

18.2 All patent, design rights, trade marks, copyright, original works and any other Intellectual Property in any design, specification, process, method of working or other information relating to the Works provided by the Subcontractor to the Contractor associated with the Supply of the Works, shall remain the property of the Contractor.

18.3 The Subcontractor agrees that it will not now or at any time in the future reproduce for or sell to any person or corporation other than the Contractor, whether for profit or otherwise, Works or any part of the Works in progress manufactured by the Subcontractor to design and specifications provided by the Contractor or its Related entities. The Subcontractor shall not divulge to any other person or corporation any information, specifications, drawings or other Intellectual Property received from or provided by the Contractor or its Related entities without the prior written consent of the Contractor.

19. INSURANCE AND INDEMNITY

19.1 The Subcontractor shall take out seven (7) days prior to the Commencement Date and maintain for the duration of the Works workers compensation insurance, public liability insurance, product liability insurance and any other insurances specified in the Schedule for the amounts set out in the Schedule. Evidence of currency of insurances shall be provided to the Contractor on request and the Contractor may delay or suspend payment of any amounts under this Subcontract until such time as evidence of adequate insurance coverage is supplied to the Contractor by the Subcontractor.

19.2 If the Subcontractor is entitled to make a Claim under any insurance policy effected by the Contractor or the Contractor's customer, the Subcontractor shall be liable for any excesses in connection with the Claim.

19.3 By its acceptance of the Subcontract, the Subcontractor releases, holds harmless, indemnifies and keeps indemnified the Contractor, its successors, administrators and assignees, from and against all Claims (whether direct, indirect or consequential):

(a) for loss or damage to persons or property, or for death or injury caused by or arising out of or in connection with any act, matter, or thing done, omitted or permitted to be done by the Subcontractor; or

(b) for loss of profit, opportunity, use and any and all other economic or consequential loss, including and without limitation, any loss by reason of a breach of a term or condition of the Subcontract, or the negligence or any other act, matter or thing done, omitted or permitted to be done by the Subcontractor.

(c) for costs including legal fees and any debt collection costs on a full indemnity basis, loss, damages, liability, demands, suits at law or in equity incurred by the Contractor in the enforcement of its rights under this Subcontract.

20. SECURITY

20.1 **Giving Security**

(a) Unless in the form of retention monies, security must be provided to the Contractor by the Subcontractor prior to the Commencement Date.

(b) Security must be in the form and for the amounts set out in the Schedule. If the Contractor has recourse to the security or retention monies at any time, it may require that the Subcontractor provide more security to maintain the required level of security or retention monies.

(c) Interest which accrues on Security or retention monies will belong to the party holding that security or retention monies.

20.2 **Recourse for unpaid monies**

(a) At any time and without notice to the Subcontractor, the Contractor may have recourse to security where:

(i) the Contractor has become entitled to exercise a right under the Subcontract in respect of the security;

(ii) the Contractor remains unpaid after the time for payment has elapsed;

(iii) there is a debt due from the Subcontractor to the Contractor under the Subcontract or otherwise than under the Subcontract;

(iv) the Subcontractor is in breach of any of its obligations under the Subcontract; or

(v) the Subcontract is terminated by the Contractor, and if those moneys are insufficient, any deficiency remaining may be recovered by the Contractor as a debt due and payable.

(b) The Subcontractor must not take any steps to injunct or otherwise restrain the Contractor using the money received under the retention.

20.3 **Release of Security**

The Security held by the Contractor under this Subcontract will be released to the Subcontractor at the expiry on the latter of:

(a) the expiry of the last Defect Liability Period; or

(b) 10 Business Days after the rectification of every Defect identified in the Works.

21. DISPUTE RESOLUTION

21.1 Notwithstanding the existence of a dispute, the Subcontractor shall continue to perform its obligations under the Subcontract and comply with all directions of the Contractor.

21.2 A party claiming that a dispute has arisen under this Subcontract shall give written notice to the other party providing particulars of the dispute and nominating a person with authority to settle the dispute and the other party shall within five (5) Business Days give written notice to the first party of its representative with authority to settle the dispute.

21.3 The authorised persons shall within five (5) Business Days of giving the notice of the dispute meet at least once, in good faith and without prejudice, and seek to resolve the dispute.

21.4 If the dispute is not resolved within ten (10) Business Days of giving the notice of dispute, a party may refer the dispute to litigation.

21.5 If any arbitration award is in favour of the Contractor, the Client shall pay the Contractor's costs in respect of the arbitration on a solicitor/own client basis including any out of pocket expenses. The arbitrator shall tax costs at the conclusion of the arbitration.

21.6 Nothing herein shall prejudice the right of either party to seek injunctive or urgent declaratory relief in respect of any matter arising under the Subcontract.

22. TIME BAR FOR CLAIMS

22.1 Unless this Subcontract expressly states otherwise, the Contractor shall not be liable for any Claim by the Subcontractor arising out of or associated with the Subcontract, unless the Subcontractor has given notice to the Contractor in writing including to the maximum extent practicable particulars of the event or circumstances on which the Claim is or will be based, the provision of the Subcontract or other basis for the Claim or proposed Claim, and the quantum or likely quantum of the Claim within seven (7) days of the Claim arising.

22.2 Nothing in clause 22.1 limits the operation or effects of any other provision for notice, time-bar, condition precedent or limitation or exclusion clause in the Subcontract.

22.3 Any notice or advice in relation to the Subcontract to a party shall be sufficiently served by handing the same to the other party, its employee or agent or by posting if by pre-paid mail to or leaving it at the party's address shown herein or by email to the email address shown herein and shall be deemed to have been received by the other party on the date the notice was handed to it, two (2) Business Days after posting, on the date left at the address or on the date of transmission by email (according to the method of service).

22.4 The parties agree that this Subcontract and any agreement in relation to this Subcontract may be agreed and accepted by email however noting that any payment Claim, statement or invoice shall only be received by the Contractor at accounts@conly.com.au.

23. PRIOR WORK & SET OUT

23.1 In the event that the Subcontractor is completing a prior, terminated contractor's work, the Subcontractor accepts the prior work and acknowledges that it is liable for all rectification and certification of the prior work.

23.2 The Subcontractor shall not proceed with the Works over prior work if in the Subcontractor's opinion the previous works is unsatisfactory or unsuitable unless the Contractor has issued a written instruction expressly overriding such objection and accepting responsibility for such prior work.

23.3 Commencement of the Works shall be evidence that the Subcontractor accepts the prior work and requires no additional payment and that the Subcontractor shall be liable for any resultant defects.

23.4 Contractor to provide temporary benchmarks, two (2) intersecting gridlines & boundary. Subcontractor to undertake all of their works from these points.

23.5 All items of Works not complying with the set out of the Subcontract shall be removed and replaced by the Subcontractor at the Subcontractor's expense and to the satisfaction of the Contractor.

24. INSPECTION

24.1 Any unfinished Subcontract Work or return inspections and/or visits to ensure the full completion of the Works shall be charged to the Subcontractor as a debt due and payable by the Subcontractor to the Contractor, at a rate as determined by the Contractor.

24.2 The Subcontractor will allow an inspector or engineer to inspect the Works as may be necessary to ensure complete certification by the engineer of the Works. The Subcontractor will allow the Contractor to inspect the Works at any time, even in the event that the Works are to be or have been inspected by an inspector or engineer.

25. DISCREPANCIES

25.1 The Subcontractor must notify the Contractor of any discrepancies between any of the Subcontract Documents prior to undertaking the Works by submission of an RFI through the BuildPass App.

25.2 If the Subcontractor finds any ambiguity, discrepancy or inconsistency between any Subcontract Documents, it must immediately give written notice thereof to the Contractor.

25.3 The Contractor shall notify the Subcontractor of the interpretation to be followed and any necessary correction will not vitiate the Subcontract.

25.4 The Subcontractor shall notify the contractor in reasonable time to resolve any discrepancies.

26. RIGHT TO DELEGATE

26.1 The Subcontractor shall not subcontract any of the Works or assign the Subcontract or any right, benefit or interest thereunder without the prior written approval of the Contractor. No approval by the Contractor under this clause shall relieve the Subcontractor of any of its obligations or liabilities under the Subcontractor and the Subcontractor shall be liable for the acts, defaults and omissions of any of its subcontractors as if they were the acts, defaults or omissions of the Subcontractor.

26.2 The Contractor reserves the right to approve all labour employed by the Subcontractor in connection with the Works and the right to require the removal from Site, including the immediate removal, of any persons who the Contractor believes is not performing in a diligent, competent, safe and/or tradesman-like manner.

27. BINDING ON SUCCESSORS

27.1 The Contractor may, in its discretion, novate or assign this Subcontract to any party the Contractor deems necessary or expedient from time-to-time including all supplier and/or manufacturer warranties and guarantees.

27.2 This Subcontract shall be for the benefit of and binding upon the Parties and their heirs, executors, successors and permitted assigns.

28. CONFIDENTIALITY

28.1 Each party to this Subcontract must not disclose any Confidential Information to any third party, and must take all necessary steps to ensure that the confidentiality and security of all Confidential Information is protected, except that a party may disclose Confidential Information:

(a) after obtaining the written consent of all other parties (such consent not to be unreasonably withheld or delayed);

(b) as required by an applicable law after first notifying the other parties about the form and content of the disclosure;

(c) on a confidential basis to its professional advisors; or

(d) where the information is already in the public domain otherwise than through a breach of this agreement or any other obligation of confidentiality.

28.2 If a party discloses any Confidential Information pursuant to any of the exceptions in clauses 28.1(a)-(d), it must use all reasonable endeavours to ensure that all persons receiving such Confidential Information keep it confidential and do not disclose it except in accordance with those exceptions.

28.3 Survival

The obligations of the parties under this clause 28 will survive the termination of this agreement.

29. INDEMNITY

29.1 The Subcontractor warrants that it will not accept or action any direction or instruction in respect of the Subcontract and the Subcontract Work, except directions or instructions given by the Contractor or the Contractor's authorised representative. The Subcontractor hereby indemnifies the Contractor for any loss, expense, damage, cost, Claim, action or suit caused directly, indirectly, or consequentially due to the Subcontractor's breach of this clause. The Subcontractor will promptly, or as soon as practicable comply with all the directions or instructions of the Contractor or the Contractor's authorised representative.

30. MISCELLANEOUS

30.1 **Acknowledgements**

The Subcontractor represents and warrants that they have obtained legal, financial and accounting advice in respect of this Subcontract, have been provided with reasonable opportunity to obtain legal, financial and accounting advice or waive their rights in respect of obtaining such advice and that they have been provided with every opportunity to negotiate each clause of this Subcontract.

30.2 **Assurances**

Each party shall take all steps, execute all documents and do everything reasonably required by the other party to give effect to any of the transactions contemplated by this Subcontract.

30.3 **Severance**

(a) Any provision of this Subcontract which is prohibited or unenforceable in the jurisdiction specified in clause 30.11 below will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Subcontract nor affect the validity or enforceability of that provision in any other jurisdiction.

(b) If the Subcontractor finds any ambiguity, discrepancy or inconsistency between this Subcontract and other documents forming part of the Subcontract, it will give immediate written notice thereof to the Contractor through the BuildPass App. The Contractor shall direct the interpretation to be followed and any necessary correction will not vitiate this Subcontract.

30.4 **Amendment**

This Subcontract may be amended only by another agreement executed by all parties.

30.5 **Costs**

Each party shall bear its own costs.

30.6 **Set-off and deductions**

(a) Without prejudice to any other rights whether under this Subcontract or at law, the Contractor may set-off or deduct from any amounts due to the Subcontractor under this Subcontract (including any amounts certified for payment by the Contractor to the Subcontractor) or any security or retention monies, any amount due or which the Contractor reasonably asserts is or will be due from the Subcontractor to the Contractor in connection with the Works, without prejudice to the right of the Contractor to recover the whole of any debt or any Claim or any balance that remains owing.

(b) Without prejudice to any other rights whether under this Subcontract or at law, the Contractor may on a monthly basis back charge any amounts incurred by Subcontractor arising in connection with an act or omission by the Subcontractor in breach of this Subcontract (including cost arising in accordance with clause 7.10, without prejudice to the Contractor's right to recover any such amount that remains owing as a debt.

30.7 **Giving effect to this Subcontract**

Each party must do everything reasonably practicable to comply with and give effect to the terms of this Subcontract.

30.8 **Variation**

No variation, modification or waiver of any provision in this Subcontract, nor consent to any departure by any party from any such provision, will be of any effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it. Any such variation, modification, waiver or consent will be effective only to the extent to or for which it may be made or given.

30.9 **Contra Proferentem**

The contra proferentem rule and other rules of construction will not apply to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.

30.10 **Waivers**

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

30.11 **Governing Law**

This Subcontract is governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

30.12 **Counterparts**

(a) This Subcontract may be executed in any number of counterparts. All counterparts taken together shall be taken to constitute one agreement.

(b) The parties agree that both facsimile or email copy of a counterpart received from a party shall be regarded as, and deemed to be, an original copy of that counterpart received from that party.

30.13 **Survival**

Any indemnity or any obligation of confidence under this Subcontract is independent and survives termination of this Subcontract. Any other term by its nature intended to survive termination of this Subcontract survives termination of this Subcontract.

30.14 **No merger**

The rights and obligations of the parties under this Subcontract do not merge on completion of any transaction contemplated by this Subcontract.

30.15 **Relationship**

Except where this Subcontract expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

30.16 **Entire Agreement**

(a) The Subcontract constitutes the entire agreement between the parties with regard to the Works and supersedes all prior or contemporaneous, oral or written contracts, agreements or understandings of the parties relating to the Works.

(b) The Subcontractor acknowledges that in entering into the Subcontract, it has not relied upon any representation or undertaking given by or on behalf of the Contractor which is not expressly set out in the Subcontract.

30.17 **Email Form**

The parties acknowledge that the original of this Subcontract may be in digital or email form and agree to accept the facsimile or email as an original which is binding on the parties.

30.18 **Notices**

(a) **Method of giving notices**

A notice, consent, approval or other communication (each a '**notice**') under this Subcontract must be signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

(i) delivered to that person's address;

(ii) sent by pre-paid mail to that person's address; or

(iii) transmitted by email to that person's address.

(b) **Time of receipt**

A notice given to a person in accordance with this clause is treated as having been given and received:

(i) if delivered to a person's address, on the day of delivery if a business day, otherwise on the next business day;

(ii) if sent by pre-paid mail, on the seventh business day after posting; or

(iii) if transmitted by email to a person's address and a correct and complete transmission report is received, on the day of transmission if a business day, otherwise on the next business day, unless a failed delivery receipt is received.

(c) **Address of Parties**

For the purposes of this clause 30.18 the address of a party, is the address referred to above in the title of the Subcontract.