

GENERAL TERMS AND CONDITIONS
1 DEFINITIONS AND INTERPRETATION
1.1 Definitions

Agreement is defined in the Instrument of Agreement;

Approved Program means a program that has been approved by Envar in accordance with clause 9.2;

Approval means any authorisation, assessment, accreditation, determination, registration, clearance, permit, licence, consent, certificate or other approval obtained or required or applying in connection with anything required or permitted to be done by the Subcontractor under this Agreement;

Australian Standards means any Australian Standard (as amended or replaced) issued by Standards Australia applying directly or indirectly to the Work;

Building Code means the *Code for the Tendering and Performance of Building Work 2016* (Cth) in force pursuant to the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth), as varied or replaced from time to time (including to the extent applicable the *Building and Construction Industry (Fair and Lawful Building Sites) Code 2014* (Cth)), and includes the *Building Code 2013 - Supporting Guidelines*, as varied or replaced from time to time (and **National Code** has a corresponding meaning);

Business Day means a day which is not a Saturday, Sunday or public holiday in the State or Territory in which the Work is carried out;

Claim means any claim, entitlement, action, suit, cause of action, cost, expense, demand or liability, whether by way of indemnity, under contract, in equity, under statute, in tort or otherwise and any other liability of any nature (and includes any entitlement to an increase in the Subcontract Sum);

Collateral has the meaning given in the PPSA;

Confidential Information includes any thing or document which Envar provides to the Subcontractor and any matter concerned with, or arising out of, this Agreement the Project or Envar which is disclosed to or learnt by the Subcontractor;

Consequential Loss means loss of use, opportunity, profit, anticipated profit, revenue, business or business opportunities and damage to goodwill, reputation or share price;

Convention on Contracts for the International Sale of Goods means the *United Nations Conventions on Contracts for the International Sale of Goods*, signed 11 April 1980, 1489 UNTS 3 (entered into force 1 January 1988);

Date for Practical Completion means the date specified in the Subcontract Details as adjusted strictly in accordance with this Agreement but where an extension of time for Practical Completion is allowed in any arbitration, litigation or expert determination binding on the Parties, it means the date resulting therefrom;

Date of Practical Completion is the date that the work is certified by Envar to have reached Practical Completion or where another date is determined in any arbitration, litigation or expert determination binding on the Parties as the date on which Practical Completion was reached, that other date;

Defect means any:

- (a) error, deficiency, omission, non-conformity, fault, failure malfunction, irregularity or defect (including shrinkage, expansion, fading or settlement) in the Work or any Deliverable; or
- (b) aspect of the Work or any Deliverable that is not in accordance with the requirements of this Agreement;

Deliverables means documents, designs, drawings, specifications, reports and other information produced or provided (or required to be produced or provided) by or on behalf of the Subcontractor in the performance of the Work and, where clause 3.9 applies, includes the Design Documents;

Design Documents means drawings, specifications and other information created or to be created by the Subcontractor pursuant to clause 3.9 and includes any Drawings or other

preliminary design and specifications prepared by or on behalf of the Principal or Envar which are to be reviewed, developed, warranted, amended and/or completed by the Subcontractor pursuant to clause 3.9;

Design Life means, if the Work includes an item or asset identified in the Scope of Work with a design life specified, that period commencing from the Date of Practical Completion;

Drawings means the drawings specified in the Scope of Work and any further drawings issued by Envar to the Subcontractor (whether before or after the execution of this Agreement);

Excepted Risk means:

- (a) any breach of this Agreement by Envar;
- (b) war, act of public enemies, civil war, rebellion, revolution, military insurrection or military usurped power or military commotion; or
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Subcontractor (or those for whom it is responsible);

Final Certificate means the certificate issued under clause 13.5;

Financing Statement has the meaning given to it in the PPSA;

Financing Change Statement has the meaning given to it in the PPSA;

Head Contract means the contract between Envar and the Principal under which Envar has agreed to carry out certain work to which the Work relates, as described in the Subcontract Details;

Head Contract Program means a program for the performance of the work the subject of the Head Contract as may be provided pursuant to clause 9;

Head Contract Works means the works to be performed pursuant to the Head Contract;

Insolvency Event means any one or more of the following circumstances:

- (a) the Subcontractor informs Envar in writing or creditors generally that it is or may become insolvent, unable to pay its debts when due and payable or financially unable to proceed with this Agreement;
- (b) execution is levied against the Subcontractor by a creditor which is not satisfied, set aside or withdrawn within 14 days after execution is so levied;
- (c) the Subcontractor suspends payment of its debts;
- (d) the Subcontractor, being an individual person or a partnership including an individual person: commits an act of bankruptcy; has a bankruptcy petition presented against him or her or presents his or her own petition; is made bankrupt; makes a proposal for a scheme of arrangement or a composition; has a deed of assignment or deed of arrangement made, or accepts a composition; is required to present a debtor's petition; or has a sequestration order made under Part X of the *Bankruptcy Act 1966* (Cth);
- (e) the Subcontractor, being a corporation: enters into a deed of company arrangement, scheme of arrangement or composition with creditors; has (voluntarily or otherwise) a receiver, receiver and manager, controller or administrator, liquidator or provisional liquidator appointed to it; has a winding up order made against it or an application for a winding up order against it made to the court and not stayed within 14 days; resolves by special resolution that it be wound up voluntarily or placed under official management; or has any of its property taken possession of by a mortgagee; or
- (f) something having a substantially similar effect to any of (a) to (e) happens under the law of any jurisdiction in relation to the Subcontractor which Envar reasonably believes may prejudice the Subcontractor's ability to carry out and complete the Work or to pass title in Work to Envar;

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to

copyright, trademarks, designs, patents, inventions and other results of intellectual activity in any field whether or not registrable, registered or patentable;

Intended Purpose means the purpose or purposes for which the Work is intended, including any purpose(s) which is described in, or may be reasonably inferred from, this Agreement or the Project Information and any purpose notified by Envar to the Subcontractor (whether before or after the execution of this Agreement);

Latent Condition is defined in clause 5.3(a) of this Agreement;

Legal Requirements means any legislation, statute, ordinance, rules, regulations, subordinate legislation or by-law and Australian Standards, and includes any licenses, permits and consents necessary for the Subcontractor to carry out and complete the Work, those principles of common law and equity established by decisions of courts and all fees and charges payable in connection with the foregoing;

Liquidated Damages means any liquidated amounts payable by the Subcontractor to Envar in accordance with clause 9.4 of this Agreement;

Moral Right means the rights conferred on authors of works by Part IX of the *Copyright Act 1968* (Cth) and all present and future rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, rights to alter or delete all of part of the Work, rights to use Work or an adaptation of the Work and rights of a similar nature conferred by statute anywhere in the world;

OHS Rules has the meaning as set out in the State and Territory Specific Provisions;

Party means a party to this Agreement;

PPSA means the *Personal Property Securities Act 2009* (Cth);

PPS Register means the Personal Property Securities Register established under the PPSA;

Practical Completion is that stage in the execution of the Work where:

- (a) the Work is complete and capable of use for its Intended Purpose and free from any Defects (except for minor Defects which do not prevent the Work from being capable of being used for its Intended Purpose);
- (b) the Subcontractor has obtained, complied with and fulfilled all conditions and requirements of all Approvals required in respect of the Work;
- (c) the Subcontractor has made good the Site and its surrounds;
- (d) the Subcontractor has provided to Envar all Deliverables and other information required to be provided prior to Practical Completion (including as set out in the Subcontract Details); and
- (e) any other matter which this Agreement states to be a requirement for Practical Completion is performed by the Subcontractor to Envar's reasonable satisfaction;

Principal means the person or persons that have engaged Envar under the Head Contract;

Probity Event means any event or thing which occurs before or after the date of this Agreement which:

- (a) has a material adverse effect on, or on the perception of, the character, integrity or honesty of a Relevant Person;
- (b) relates to a Relevant Person and has or may have a material adverse effect on the public interest, or public confidence, in the Project; or
- (c) involves a material failure of a Relevant Person or sub-subcontractor to achieve or maintain:
 - (i) reasonable standards of ethical behaviour;
 - (ii) the avoidance of conflicts of interest which will have a material adverse effect on the ability of the Relevant Person or sub-subcontractor (as applicable) to carry out and observe its obligations in connection with the Project; or

- (iii) other standards of conduct that would otherwise be expected of a Party involved in a project of the same nature or type as the Project;

Project means the project specified in the Subcontract Details;

Project Information means any and all documents, information or materials provided by or on behalf of Envar to the Subcontractor either before or after the execution of this Agreement;

Project Objectives means the outcomes, objectives, purposes and requirements in relation to the Project communicated by Envar to the Subcontractor or any outcomes, objectives, purposes or requirements that may be reasonably inferred from this Agreement or the Project Information;

Qualifying Cause of Delay means any:

- (a) breach of this Agreement by Envar;
- (b) an act or omission of Envar other than an act or omission that is expressly or impliedly permitted under this Agreement;
- (c) subject to the Subcontractor's compliance with clause 6.2, the issue of a Variation Notice by Envar in accordance with clause 6.1;
- (d) subject to clause 8(d), suspension directed by Envar pursuant to clause 8(a); or
- (e) suspension by the Subcontractor in accordance with clause 20.8,

except to the extent caused or contributed to by any act or omission of the Subcontractor (including any Relevant Person);

Related Company means a 'related body corporate' within the meaning given to that term in section 50 of the *Corporations Act 2001* (Cth);

Relevant Collateral means Collateral which is the subject of a Security Interest granted under this Agreement;

Relevant Person means any officer, employee, consultant, representative, subcontractor, sub-subcontractor or agent of the Subcontractor;

Retention Monies means retention monies referred to in the Subcontract Details;

Scope of Work means the scope described in Schedule 1 and any other document or information referred to in Schedule 1 or otherwise provided by Envar to the Subcontractor (whether before or after the execution of this Agreement) which describes or identifies the scope, requirements or specifications of the Work;

Security means security referred to in the Subcontract Details;

Security Agreement has the meaning given to it in the PPSA;

Security Interest has the meaning given to it in the PPSA;

Site means the lands and other places to be made available to the Subcontractor for the purposes of this Agreement and includes any improvements and structures (including the Works) located on, in, under or above those lands and other places;

Special Conditions mean the special conditions set out in Schedule 3;

Standards means any codes, specifications, policies, requirements and standards (as amended or replaced) set out in or referred to in the Scope of Work, or any other policy, guideline, procedure, standard or requirement with which the Subcontractor must comply by virtue of a Legal Requirement or as directed by Envar in connection with the Work or which are otherwise applicable to the Work;

Start Date means the date or period of time (as the case may be) for access and commencement of the Work identified in the Subcontract Details;

State and Territory Specific Provisions means the provisions set out in Schedule 4;

Subcontract Sum means:

- (a) where there is a lump sum specified in the Subcontract Details, that lump sum;
- (b) where there are applicable rates included in this Agreement, the sum ascertained by multiplying those

rates by the quantity of work properly performed in accordance with this Agreement; or

- (c) where there are both applicable rates and a lump sum(s), the aggregate of the sums referred to in paragraph (a) and (b),

as adjusted under this Agreement;

Variation means:

- (a) additional work;
- (b) a change in the character or quality of the Work;
- (c) an increase or decrease in the scope of the Work (including the omission of any part of the Work); or
- (d) a change to the levels, lines, positions or dimensions of any part of the Work;

Variation Notice means a written notice from Envar outlining a Variation issued in accordance with clause 6;

Verification Statement has the same meaning as in the PPSA; and

Work means the work described generally in the Subcontract Details and more particularly identified in the Scope of Work and all work and activities that are necessary or incidental to that work.

1.2 Interpretation

In this Agreement:

- (a) any capitalised term in the Subcontract Details has the meaning as set out in the Subcontract Details;
- (b) headings are for convenience only and do not affect the interpretation of this Agreement;
- (c) words such as "includes", "including" and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation";
- (d) a reference to a gender includes any gender;
- (e) a reference to "\$" is to be construed as a reference to Australian currency;
- (f) a reference to a Party to this Agreement includes that Party's successors and permitted assigns;
- (g) a reference to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it;
- (h) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it;
- (i) when Envar 'may' do something, it has an unfettered discretion and owes no duty to the Subcontractor;
- (j) where Envar must act reasonably, it will be reasonable for it to require compliance with a requirement or direction in relation to the Work which has been validly imposed on Envar under the Head Contract;
- (k) unless this Agreement expressly states otherwise, the Subcontractor must bear all risks, costs and delays in connection with the performance of the Work and its obligations (including compliance with any direction given by Envar) under this Agreement;
- (l) the time for doing any act or thing under this Agreement (other than the performance of Work) shall, if it ends on a day which is not a Business Day, be deemed to end on the next day following which is a Business Day; and
- (m) Envar's rights under this Agreement are cumulative and in addition to those at law.

1.3 State and Territory Specific Provisions

Where Work is carried out in an Australian State or Territory, the provisions set out in Schedule 4 that relate to the State or Territory in which the Work is carried out shall apply.

2 PAYMENT AND SECURITY

2.1 The Work

The Subcontractor will carry out and complete the Work to the satisfaction of Envar and strictly in accordance with this Agreement.

2.2 Payment of Subcontract Sum

Subject to the Subcontractor's compliance with the terms of this Agreement, Envar will pay the Subcontractor the Subcontract Sum in accordance with clause 13.

2.3 Security

- (a) If the Subcontract Details specify that the Subcontractor is to provide Security, the Subcontractor must provide the Security to Envar in the form and amounts specified no later than 10 Business Days before the Start Date (and in any event as a pre-condition to receiving any payment under or in connection with this Agreement). The purpose of the Security is to secure the due and punctual performance by the Subcontractor of all of its obligations under this Agreement
- (b) If the Subcontract Details specify that the Subcontractor is to provide Retention Monies, Envar will be entitled to withhold from any progress payments, the Retention Monies in the amount and at the rate specified.
- (c) Envar may have recourse to the Security or the Retention Monies at any time where Envar reasonably considers that monies are or will become due and payable from the Subcontractor to Envar, or when Envar has a right of set off under this Agreement.
- (d) Envar's entitlement to the Security or Retention Monies will, subject to clauses 2.3(c):
 - (i) reduce by 50% of the amount then held on the Date of Practical Completion; and
 - (ii) cease on the later to occur of:
 - (A) 28 days after the issue of the Final Certificate; or
 - (B) the final and binding resolution of any Claims or disputes between the Parties, upon which Envar will return the unused balance of Security or Retention Monies to the Subcontractor.

3 PERFORMANCE OF THE WORK

3.1 Warranties

The Subcontractor must (and warrants that it will) carry out and complete the Work:

- (a) in a manner safe to all people and the environment;
- (b) with due care and skill and a standard of diligence that would reasonably be expected from a prudent, experienced, skilled and qualified subcontractor carrying out such work;
- (c) using appropriately qualified and trained personnel;
- (d) in accordance with Envar's directions and to the reasonable satisfaction of Envar;
- (e) using fixtures, fittings, equipment, tools, finishes and materials which are:
 - (i) high quality;
 - (ii) new;
 - (iii) free from Defects; and
 - (iv) appropriate for the environment in which they are intended to be used;
- (f) so that, when complete, it is free of any Defects and is fit for its Intended Purpose and capable of remaining fit for its Intended Purpose thereafter (if maintained in accordance with good industry practice);
- (g) so that each asset or item to which a Design Life applies will be free from Defects and fit for the purposes for which it is intended (without any major maintenance or refurbishment works) for its Design Life;
- (h) in compliance with:
 - (i) this Agreement;
 - (ii) the requirements of any quality management systems notified by Envar;

- (iii) all Legal Requirements and Standards applicable to the Work; and
- (iv) all policies, procedures and directions of Envar or the controller of the Site on which the Work is being provided;
- (i) so as to enable Envar to comply with any obligations under the Head Contract which have been communicated by Envar to the Subcontractor (whether before or after the execution of this Agreement) or which can be reasonably inferred from this Agreement and the Project Information; and
- (j) so as to meet or exceed the Project Objectives.

3.2 Legal Requirements

In the performance of the Work under this Agreement, the Subcontractor must:

- (a) comply with its obligations and reasonably foreseeable potential obligations under the OHS Rules and the Principal's occupational health and safety policies and procedures as amended from time to time;
- (b) do all that is required to ensure the health and safety of workers and others;
- (c) conform with, and ensure that the Work conforms with, all applicable industry requirements, codes, best practices and standards;
- (d) ensure all Work, materials, tools, equipment and personal protective equipment is compliant with the relevant Australian Standards;
- (e) ensure it does not breach the *Fair Work Act 2009* (Cth) or other relevant industrial legislation, awards or enterprise agreements.
- (f) obtain and keep in full force and effect all Approvals necessary for the lawful performance, supply and use of the Work; and
- (g) provide to Envar, upon request, any data and information that is or may be required by Envar, the Principal or any third party to comply with the *National Greenhouse and Energy Reporting Act 2007* (Cth) to the extent that such data and information relates to the Work or this Agreement.

3.3 Deliverables

The Subcontractor must (and warrants that it will) ensure that all Deliverables:

- (a) comply in all respects with this Agreement;
- (b) are fit for the purposes for which they are intended (or any purpose which may be reasonably inferred from this Agreement or the Project Information);
- (c) comply with all applicable Legal Requirements and Australian Standards;
- (d) do not infringe any Intellectual Property Rights of any person;
- (e) comply with the requirements of the Head Contract (to the extent that such requirements have been communicated to the Subcontractor, whether before or after execution of this Agreement); and
- (f) satisfy or exceed the Project Objectives.

3.4 Subcontractor to inform itself

The Subcontractor warrants that it has informed itself of and examined carefully and acquired actual knowledge of:

- (a) all Project Information;
- (b) the Site and all facilities and places to be used in the performance of the Work;
- (c) the obligations to be performed under this Agreement, including the labour and material and other resources necessary, suitable and desirable to perform the obligations under this Agreement;
- (d) any Legal Requirements that relate or apply to the Work; and

- (e) all other information relevant to the risks, contingencies and other circumstances having an effect on this Agreement or the Work which are obtainable by the making of reasonable enquiries.

3.5 Subcontract Sum

The Subcontractor warrants that it has based the Subcontract Sum on its own investigations, determinations and assessments of all risks involved in carrying out and completing the Work and any deficiency in, or failure by the Subcontractor to carry out, any investigation, determination or assessment will not relieve the Subcontractor of its obligations or any liability under this Agreement.

3.6 Skills and competency

The Subcontractor warrants that it:

- (a) has the requisite skills, experience and expertise to carry out and complete the Work in accordance with this Agreement;
- (b) will fully co-operate with Envar and any other party nominated by Envar including any other subcontractor or consultant to complete the Work in a manner consistent with the Project Objectives and this Agreement; and
- (c) will co-ordinate the performance of the Work with any work or services being performed by other subcontractors and consultants.

3.7 Warranties unaffected

Any approval, consent, review, direction, instruction or comment from Envar (or any failure by Envar to provide any approval, review, direction, instruction or comment) will not in any way:

- (a) diminish, extinguish or in any way affect any of the responsibilities, obligations or liabilities of the Subcontractor;
- (b) affect any warranty given or required to be given by the Subcontractor; or
- (c) amount to a waiver by Envar of any right of Envar under or in connection with this Agreement.

3.8 Form of written warranties

Upon written direction from Envar, and as a precondition to Practical Completion, the Subcontractor must provide executed deeds of warranty for the direct benefit of Envar and the Principal:

- (a) in the form required by any express provision of this Agreement (including any Schedules to this Agreement); or
- (b) if there is no such express provision, in a form reasonably required by Envar and the Principal.

The Subcontractor shall, and shall ensure that it is able to, assign to Envar and/or the Principal (as required by Envar), the benefit of all other warranties obtained by the Subcontractor from any of its subcontractors or suppliers.

3.9 Design responsibility of the Subcontractor

To the extent that this Agreement includes responsibility for design (as identified in the Subcontract Details) then, without limiting any other obligation of the Subcontractor under this Agreement, the Parties acknowledge and agree that:

- (a) the Subcontractor must prepare the Design Documents including by correcting and completing any incorrect or incomplete Design Documents existing as at the date of this Agreement and otherwise carry out and complete the design for the Works in compliance with this Agreement;
- (b) the Subcontractor must submit its proposed Design Documents to Envar for review and comment at the times specified in this Agreement or, if no time is specified, then not later than 28 days prior to the Subcontractor's proposed commencement of construction (including procurement, manufacture and fabrication of any part of the Work the subject of the Design Documents);

- (c) Envar may (but is not obliged to):
- (i) review any Design Documents prepared and submitted by the Subcontractor;
 - (ii) consult with and take into account any views or requirements of the Principal in connection with the Design Documents; and
 - (iii) within the period prescribed by this Agreement (or if no period is specified, within 14 days of their receipt), reject or require amendments to the Design Documents if, in its opinion, the Design Documents do not comply with the requirements of this Agreement or the Principal;
- (d) if Envar issues any direction in connection with Design Documents pursuant to clause 3.9(c), the Subcontractor must submit amended Design Documents to Envar in which case, the process in clauses 3.9(b) and 3.9(c) shall apply to the amended Design Documents;
- (e) the Subcontractor must not commence construction of the part of the Work to which any Design Documents which it has submitted to Envar applies, unless Envar has had the period prescribed by clause 3.9(b) to review the Design Documents and has not rejected the Design Documents; and
- (f) no preliminary design issued by or on behalf of Envar and no review of, comments upon, rejection of, failure to review or comment upon or reject, any Design Documents prepared by the Subcontractor or any other direction by Envar shall:
- (i) cause Envar to assume or owe any duty of care to the Subcontractor in respect of errors, omissions or compliance with this Agreement;
 - (ii) relieve the Subcontractor from, or alter or affect, the Subcontractor's warranties, liabilities or responsibilities whether under this Agreement or otherwise according to law; or
 - (iii) prejudice Envar's rights against the Subcontractor whether under this Agreement or otherwise according to law.

Without limiting any other warranty of the Subcontractor under this Agreement, the Subcontractor warrants to Envar that the Subcontractor:

- (g) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the carrying out and completion of the Subcontractor's design responsibilities under this Agreement;
- (h) has examined this Agreement and any preliminary design therein is suitable, appropriate and adequate for the Intended Purpose;
- (i) understands that any preliminary design may be incomplete and may require further work before it can be used by a competent contractor to carry out the Work to a stage of Practical Completion and wholly accepts liability for the adequacy of all Design Documents whether prepared by or on behalf of the Principal, Envar or the Subcontractor;
- (j) understands that the process referred to in this clause 3.9 will require the iterative submission and review of Design Documents and the carrying out of design development by the Subcontractor, in respect of which process the Subcontractor has allowed a sufficient amount in the Subcontract Sum and sufficient period of time in calculating the Date for Practical Completion;
- (k) in carrying out the Subcontractor's design obligations, shall ensure that all the Design Documents:
 - (i) have been subjected to coordination, resolution of any error, omission, ambiguity, conflict, lack of clarity or deficiency in the design;
 - (ii) do not depart from the layout, purposes, design intent, standards, style, appearance and dimensions shown in or reasonably inferred from this Agreement without the express written approval of Envar: and

- (iii) comply with the Legal Requirements and the requirements of this Agreement; and
- (l) shall prepare and complete the Design Documents, and carry out and complete the Work in accordance with the Design Documents prepared by the Subcontractor in accordance with this clause 3.9, so that the Work, when completed, shall:
 - (i) be fit for the Intended Purpose;
 - (ii) comply with the Legal Requirements and this Agreement.

3.10 Engagement of Illegal Workers prohibited

- (a) The Subcontractor warrants that each person engaged by the Subcontractor would not, in doing the work for which they are engaged, be an Illegal Worker.
- (b) The Subcontractor must remove, or cause to be removed, any Illegal Worker from any involvement in carrying out the Work.
- (c) For the avoidance of doubt, compliance with the Subcontractor's obligations under this clause 3.10 will not form the basis of, and will not give rise to any entitlement for the Subcontractor to make, any Claim.
- (d) When requested in writing, the Subcontractor will provide evidence within 14 days that it has taken all reasonable steps to ensure that it has complied with, and is complying with, its obligations under this clause 3.10.
- (e) In this clause 3.10:
 - (i) **Illegal Worker** means a person who is an Unlawful Non-Citizen who is working without a visa or a Non-Citizen who is performing work in breach of a Visa Work Condition;
 - (ii) **Non-Citizen** has the same meaning as under the *Migration Act 1958* (Cth);
 - (iii) **Unlawful Non-Citizen** has the same meaning as under the *Migration Act 1958* (Cth); and
 - (iv) **Visa Work Condition** means a condition (as set out in Schedule 8 of the *Migration Regulations 1994* (Cth)) attached to a visa restricting the work that the Non-Citizen may do in Australia.

4 SITE

4.1 Access to the Site

- (a) Subject to clause 4.1(c), Envar must give the Subcontractor reasonable access to the Site from the Start Date so that the Subcontractor may perform the Work.
- (b) The Subcontractor must:
 - (i) comply with its obligations under clauses 2.3 and 17;
 - (ii) give Envar such evidence of the Subcontractor's compliance as required by Envar;
 - (iii) provide to Envar, evidence of its safety management system that will be implemented to manage the Work pursuant to this Agreement;
 - (iv) ensure the subcontractor's workers are inducted to the Site prior to the workers commencing work at the Site; and
 - (v) ensure all the subcontractor's workers possess the appropriate licence, qualification and competency for the work being undertaken.
- (c) Envar is not obliged to give the Subcontractor access to the Site under this clause 4.1 until the Subcontractor has complied with its obligations under clause 4.1(b).

4.2 Interface with others

- (a) The Subcontractor acknowledges that it will not have exclusive access to or possession of the Site.
- (b) The Subcontractor will fully cooperate with, and coordinate and interface the Work with the work of the Principal, other contractors and Envar so as not to cause

any nuisance, disruption, delay, hindrance, damage or interference with any activities at the Site.

- (c) The Subcontractor must comply with any reasonable direction of Envar to stop or change the manner of undertaking the Work if Envar is of the opinion that the Subcontractor is not complying with this clause 4.2. The Subcontractor will have no Claim in connection with a direction given by Envar pursuant to this clause 4.2.

5 LATENT CONDITIONS

5.1 Site information

Envar makes no representations or warranties in relation to the conditions of the Site (or its surrounds) or of the accuracy of any Project Information and the Subcontractor releases Envar and its officers, agents, advisers, consultants, subcontractors and employees from any Claim, arising in connection with such information.

5.2 Conditions of the Site

The Subcontractor represents and warrants that:

- (a) it has inspected the Site and familiarised itself with the conditions at and around the Site;
- (b) it has examined and obtained actual knowledge of all information ascertainable by the making of reasonable enquiries and made available to it by or on behalf of Envar (including all Project Information);
- (c) the Subcontract Sum includes all costs of overcoming all conditions on or within the Site (including underground) which could have been contemplated by a competent Subcontractor having done the things described in paragraphs 5.2(a) and 5.2(b); and
- (d) it will not pollute the Site, bring any hazardous materials on to the Site (without the prior consent of Envar) or unreasonably disrupt or interfere with any utility infrastructure or the supply of utilities.

5.3 Notification

- (a) If the Subcontractor becomes aware of any physical conditions on or within the Site (including underground conditions) which could not have been contemplated in accordance with clause 5.2 and which differ materially from the conditions that could have been contemplated in accordance with clause 5.2 (**Latent Condition**), it must within 2 Business Days of becoming aware, and before disturbing the Latent Condition, give written notification to Envar together with a detailed claim setting out:

- (i) the cost that the Subcontractor will incur in overcoming the physical condition (if any); and
- (ii) the effect (including extent) that the physical condition will have on the Subcontractor's ability to reach Practical Completion by the Date for Practical Completion (if any).

- (b) Following receipt of the Subcontractor's notice, Envar may give a direction for a Variation under clause 6, which shall constitute the sole remedy of the Subcontractor in connection with encountering a Latent Condition. The Subcontractor will have no Claim in relation to any Latent Condition if it fails to comply strictly with this clause 5.3.

6 VARIATIONS

6.1 Notice of Variation

Envar may, at any time, issue a notice of Variation directing the Subcontractor to perform a Variation, such notice being expressly identified as a 'variation notice' (**Variation Notice**).

6.2 Subcontractor's obligations

- (a) The Subcontractor must perform the Variation identified in a Variation Notice within the time specified in the Variation Notice.
- (b) If requested by Envar, the Subcontractor must, with 4 Business Days of receipt of the request, provide a written estimate of the cost, delay or impact of a proposed

Variation, including any proposed adjustment to the Subcontract Sum.

- (c) If:
- (i) Envar issues a direction or request (which is not a Variation Notice) for the Subcontractor to carry out Work that is a Variation; or
- (ii) the Subcontractor is otherwise required to carry out any Work that constitutes a Variation (without having received a Variation Notice),

the Subcontractor must, before it commences carrying out such Work, provide to Envar a written Claim identifying the Variation and setting out an estimate of the cost, delay or impact of the Variation and a proposed adjustment to the Subcontract Sum.

6.3 Price adjustments for Variations

Subject to clause 6.4, where Envar has issued a Variation Notice, the Subcontract Sum will be adjusted by an amount determined as follows:

- (a) to the extent that the Parties have agreed the amount in writing, then the amount agreed; or
- (b) by Envar:
- (i) using applicable rates and prices included in this Agreement; and
- (ii) arriving at a reasonable amount having regard to any increase or decrease in the costs that have been or will be incurred by the Subcontractor as a direct result of the Variation.

6.4 No entitlement

- (a) The Subcontractor will have no Claim in relation to any Variation unless:
- (i) it has received a Variation Notice from Envar which complies with clause 6.1; and
- (ii) it has complied strictly with clause 6.2.
- (b) Where Envar omits Work, Envar may in its absolute discretion carry out such omitted Work or engage a third party to carry out such omitted Work at any time and the Subcontractor will not be entitled to (and irrevocably waives any entitlement to) any compensation or payment on any basis in respect of that Work (including for loss of profit or any costs incurred by reason of the omission).

7 DEFECTS

- (a) If Envar discovers any Defect, Envar may direct the Subcontractor to do any one or more of the following (including times for commencement and completion):

- (i) remove material from the Site;
- (ii) demolish the Work; or
- (iii) reconstruct, replace or correct the Work.

- (b) The Subcontractor must comply with the direction at its own cost, including commencing and completing with work by the dates identified in Envar's direction. If the Subcontractor fails to comply with Envar's direction, Envar may perform the relevant work or arrange for a third party to perform the relevant work, the cost of which will be a debt due from the Subcontractor to Envar.

- (c) Instead of a direction under clause 7(a), Envar may elect to accept the Defect and reduce the Subcontract Sum by an amount equal to the decrease in value to the Work (including increased future operation and maintenance costs, loss of income or reduction in asset life) as a result of the Defect.

- (d) Envar may give a direction under this clause 7 at any time prior to the expiry of the Defects Liability Period.

- (e) Where the Subcontractor is required to rectify work pursuant to this clause 7 during the Defects Liability Period, the Defects Liability Period shall be extended in accordance with clause 11(d).

8 SUSPENSION

- (a) Envar may direct the Subcontractor to suspend the Work or any part of the Work for such duration as determined by Envar.
- (b) If Envar directs the Subcontractor to suspend the Work or any part of the Work, then at the time of issuing such direction or at any subsequent time, Envar may also instruct the Subcontractor to:
- (i) reduce the resources, including staff, allocated to the performance of the Work; and/or
 - (ii) demobilise all resources from the performance of the Work,
- within the time nominated by Envar (provided that such time is not less than two days after the direction is issued).
- (c) The Subcontractor must resume the performance of the suspended Work as soon as practicable after being directed by Envar and in any event not later than five days after receiving a written instruction to do so from Envar.
- (d) The Subcontract Sum will be adjusted by Envar to include the costs actually incurred by the Subcontractor directly as a result of the suspension, except where the suspension is occasioned by an act or omission of the Subcontractor, in which case the Subcontractor will not be entitled to any adjustment of the Subcontract Sum or any extension of time to the Date for Practical Completion in connection with the suspension. The adjustment of the Subcontract Sum pursuant to this clause and any extension of time to which the Subcontractor is entitled pursuant to clause 10 will be the Subcontractor's sole remedy in connection with any suspension of the Work.

9 TIME
9.1 Progress of the Work

The Subcontractor must proceed with the Work expeditiously, diligently and without delay and in accordance with any Approved Program.

9.2 Program

- (a) Envar may, from time to time, direct the Subcontractor to give to Envar a program or an updated program within the time and in the form directed by Envar, which program must:
- (i) conform with the programming requirements of Envar;
 - (ii) be consistent with any Head Contract Program, as provided from time to time by Envar to the Subcontractor; and
 - (iii) be approved by Envar.
- (b) Envar, in its absolute discretion, may (but is not obliged to) approve or reject a program provided by the Subcontractor.
- (c) The Subcontractor shall not, without reasonable cause, depart from an Approved Program.
- (d) An Approved Program may be used by Envar in its absolute discretion to monitor the progress of the Work by the Subcontractor and assess claims for extensions of time but no program, Approved Program or Head Contract Program shall form part of this Agreement and any departure from or amendment of a program, Approved Program or Head Contract Program shall not entitle the Subcontractor to any Claim including a Claim for an extension of time. The Subcontractor's entitlement to an extension of time shall only arise in accordance with clause 10.
- (e) Without limiting any other obligation of the Subcontractor under this Agreement, the Subcontractor must:
- (i) not, without approval of Envar, depart from the current Head Contract Program insofar as it identifies or is dependent upon the Work; and

- (ii) immediately notify Envar in writing if its performance of the Work will depart from that identified in the Head Contract Program or delay the performance of activities identified in the Head Contract Program current at the time of departure, which are dependent upon performance of the Work.

- (f) The Subcontractor shall not be entitled to any Claim arising from its obligations pursuant to this clause 9.

9.3 Practical Completion

- (a) The Subcontractor must ensure that the Work reaches Practical Completion by the Date for Practical Completion.
- (b) The Subcontractor must give written notice to Envar at least 10 Business Days before the date it considers that it will achieve Practical Completion.
- (c) When Envar considers that the Work has reached Practical Completion, Envar shall issue a certificate of Practical Completion specifying the Date of Practical Completion.

9.4 Liquidated Damages

- (a) If the Work does not reach Practical Completion by the Date for Practical Completion, Liquidated Damages shall be a debt due and immediately payable by the Subcontractor to Envar for every day after the Date for Practical Completion to the earliest of the Date of Practical Completion or termination of this Agreement or Envar taking the Work out of the Subcontractor's hands pursuant to clause 20.3(b)(ii).
- (b) If an extension of time to the Date for Practical Completion is directed after the Subcontractor has paid or Envar has set-off Liquidated Damages, Envar shall forthwith repay or allow to the Subcontractor an amount equal to such of those Liquidated Damages as represent the days the subject of the extension of time.
- (c) The Parties acknowledge and agree that the amount(s) for Liquidated Damages payable under this Agreement are a genuine pre-estimate of Envar's damages if the Work does not reach Practical Completion by the Date for Practical Completion.
- (d) A failure by Envar at any time to demand payment or to deduct, withhold or set-off the Liquidated Damages does not amount to a waiver of, or otherwise affect, Envar's rights and entitlements.

9.5 Discretionary extension of time

Envar may at any time, in its sole discretion extend the Date for Practical Completion, however, Envar will not be obliged to exercise this discretion reasonably or for the benefit of the Subcontractor.

10 EXTENSIONS OF TIME
10.1 Conditions

If the Subcontractor:

- (a) is or will be delayed in reaching Practical Completion by the Date for Practical Completion by a Qualifying Cause of Delay;
- (b) takes all reasonable steps to prevent, overcome and mitigate the effects of the delay (including by reconfiguring the critical path of the Work to accommodate, minimise or overcome the delay);
- (c) gives Envar within five days of the date of the earliest to occur of:
- (i) the commencement of the cause of the delay;
 - (ii) the Subcontractor becoming aware that the Subcontractor is or will be delayed; or
 - (iii) the date that the Subcontractor should reasonably have been aware that the Subcontractor is or will be delayed;

(**Notice Trigger Date**), written notice that it intends to make a claim for an extension of time to the Date for

Practical Completion pursuant to clause 10.1(d), setting out a brief description of the facts upon which the claim may be based and the current estimate of the delay or potential delay based on the information reasonably available to the Subcontractor at that stage;

- (d) gives Envar within 10 days of the Notice Trigger Date, a detailed written claim for an extension of time which:
- (i) evidences the cause, effect and extent of the delay and the number of days extension claimed together with the basis of such claim, including a programming analysis that demonstrates the effect the delay has on the critical path of the Work;
 - (ii) demonstrates the Subcontractor's compliance with clause 10.1(b); and
 - (iii) is warranted as being true and correct to the best of the Subcontractor's knowledge and belief; and
- (e) in the case of an ongoing delay that continues beyond the date on which a claim under clause 10.1(d) is submitted, an updated written claim for an extension of time every five days after the submission of the claim pursuant to clause 10.1(d),

then, subject to clauses 10.2 and 10.3, the Subcontractor will be entitled to such extension of time to the Date for Practical Completion as Envar, acting reasonably, determines, but only to the extent that:

- (a) the Qualifying Cause of Delay has caused delays to the critical path of the Work; and
- (b) the Qualifying Cause of Delay is not caused or contributed to by, or connected with, any act or omission of the Subcontractor, its subcontractor or their respective agents, personnel and representatives.

10.2 Compliance with notification requirements

Compliance by the Subcontractor with clause 10.1 is a precondition to any entitlement to an extension of time. If the Subcontractor fails to strictly comply with this clause 10.1 in relation to any delay then the Subcontractor shall not be entitled to (and irrevocably waives any entitlement to) any extension of time to the Date for Practical Completion or any other Claim arising out of or in connection with that delay.

10.3 Concurrency

If more than one event causes a delay and the cause of at least one of those events is not a Qualifying Cause of Delay, then to the extent that the events of delay or the effects of those events of delay are concurrent, the Subcontractor is not entitled to an extension of time.

10.4 Written determination

Within 28 days (if the Qualifying Cause of Delay event is not the subject of an extension of time claim by Envar under the Head Contract) or 45 days (if the Qualifying Cause of Delay event is the subject of an extension of time claim by Envar under the Head Contract) after receiving a claim for an extension of time in accordance with clause 10.1, Envar will give a written notice to the Subcontractor evidencing the extension of time assessed and the revised Date for Practical Completion (if any).

A delay by Envar or the failure of Envar to grant a reasonable extension of time or to grant an extension of time within the relevant period referred to in this clause 10.4 shall not cause the Date for Practical Completion to be set at large but nothing in this paragraph shall prejudice any right of the Subcontractor to damages.

11 DEFECTS LIABILITY PERIOD

- (a) The Defects Liability Period shall commence at the time specified in the Subcontract Details.
- (b) At any time during the Defects Liability Period Envar may direct the Subcontractor to rectify any Defect. The Subcontractor must comply with that direction by the time(s) identified in the direction or if no time is stated, within a reasonable time.

- (c) If the Subcontractor fails to comply with Envar's direction, Envar may perform the relevant work or arrange for a third party to perform the relevant work, the cost of which will be a debt due from the Subcontractor to Envar.
- (d) The Defects Liability Period in connection with any work rectified pursuant to this clause 11 shall be extended for a period of 12 months from the date on which the rectification of that work is completed.

12 INTELLECTUAL PROPERTY RIGHTS

12.1 Warranty

The Subcontractor warrants that it has all Intellectual Property Rights necessary to carry out and complete the Work in accordance with this Agreement and indemnifies Envar against any Claim as a consequence of any claim by a third party that it has a right to any Intellectual Property Right in the Work.

12.2 Ownership and licence of intellectual property

- (a) Any Intellectual Property Rights that are created in the course of the performance of the Work, including all Deliverables and any Design Documents created by or on behalf of the Subcontractor, shall vest in Envar immediately upon creation.
- (b) In relation to any Intellectual Property Rights held by the Subcontractor that do not vest in Envar pursuant to paragraph (a) (but which relate to the Work or the Deliverables), the Subcontractor grants to Envar a perpetual, irrevocable, transferable, worldwide, royalty-free licence of all such Intellectual Property Rights for Envar to use and consume the Work and the Deliverables, comply with all of its obligations under the Head Contract (including the right to sub-licence and to transfer relevant Intellectual Property Rights to the Principal or other third parties) and achieve the Project Objectives.
- (c) Envar grants to the Subcontractor a royalty-free, non-transferable licence to use the Intellectual Property Rights that vest in Envar pursuant to clause 12.2(a), solely for the purpose of allowing the Subcontractor to comply with its obligations under this Agreement.

12.3 Moral Rights

The Subcontractor must ensure that, and warrants that, it has obtained from all authors and holders of the Moral Rights in the Deliverables and the Work, consent to the following specific acts or omissions by Envar and the Principal and their successors, assigns and sub-licensees:

- (a) reproducing, publishing, adapting or communicating the Deliverables and the Subcontractor's other documents to the public without attributing their authorship or otherwise identifying the author of the relevant Deliverables and other documents; and
- (b) subjecting the Subcontractor's Deliverables and other documents to derogatory treatment, including material distortion, mutilation or material alteration or the doing of anything else to the Subcontractor's Deliverables and documents, including adapting, reproducing, publishing, communicating to the public, adding, deleting, editing or modifying the text, format or structure of the Subcontractor's Deliverables and documents, in such a way as may prejudice the honour and reputation of the author.

13 PRICE AND PAYMENT

13.1 Payment claims

The Subcontractor must submit payment claims to Envar for the Work at the times set out in the Subcontract Details.

The Subcontractor shall have no entitlement to, and will not, submit a payment claim, except in accordance with and at the times set out in the Subcontract Details.

The payment claim must, as a condition precedent to its validity:

- (a) clearly identify the Work that the Subcontractor has completed prior to the submission of the payment claim;

- (b) clearly identify the calculation of the amount of the Subcontract Sum claimed for that completed Work; and
- (c) be accompanied by the documents and information identified in the Subcontract Details.

13.2 Calculation of payment

The amount payable by Envar in relation to the payment claim will be determined by Envar subject always to clause 13.6 and will be ascertained by:

- (a) having regard to any written agreement between the Parties;
- (b) applying relevant lump sums or portions thereof set out or provided for in this Agreement;
- (c) applying relevant rates set out or provided for in this Agreement; and
- (d) Envar determining a reasonable amount to the extent that paragraphs 13.2(a) to 13.2(c) do not apply.

Within 10 Business Days after receiving a payment claim, Envar will issue a notice in writing to the Subcontractor setting out the amount payable by Envar to the Subcontractor or by the Subcontractor to Envar (as applicable).

If the payment claim issued by the Subcontractor does not comply with clause 13.1 (including where the payment claim is not accompanied by the documents and information identified in the Subcontract Details):

- (a) Envar will have no obligation to pay any amounts claimed in the relevant payment claim (and the Subcontractor's entitled to payment the subject of the purported payment claim will be valued at \$nil); and
- (b) Envar may rely upon the Subcontractor's failure to comply with 13.1 as a reason for withholding payment of the whole or any part of the amount claimed by the Subcontractor.

13.3 Time for payment

Subject to clause 13.6, Envar will pay to the Subcontractor the amount determined by Envar in accordance with clause 13.2 within the time set out in the Subcontract Details.

If a notice by Envar under clause 13.2 or a Final Certificate issued by Envar under clause 13.5(b) shows an amount payable by the Subcontractor to Envar, the Subcontractor must pay that amount within 5 Business Days of receipt of such notice or certificate (as applicable).

13.4 Payment on account

Payment is not evidence of the value of the Work or an admission of liability or that the Work is satisfactory but will be payment on account only.

13.5 Final payment and release

- (a) Within 14 days after the expiry of the last Defects Liability Period, the Subcontractor must issue to Envar a final payment claim which includes all Claims from the Subcontractor in connection with this Agreement to the extent not already barred. Any unbarred Claims not included in the final payment claim or, where the Subcontractor does not issue a final payment claim, not made by the last date for issuing a final payment claim, are absolutely and forever barred.
- (b) Within the earlier of 10 Business Days after receiving the final payment claim or, where no final payment claim is made by the Subcontractor, 10 Business Days after the last date for submitting the final payment claim pursuant to clause 13.5(a), Envar will issue a Final Certificate to the Subcontractor setting out the amount payable by Envar to the Subcontractor or by the Subcontractor to Envar (as applicable).
- (c) Where the final payment is required to be made by Envar to the Subcontractor:
 - (i) such payment constitutes all the moneys finally due and payable from Envar to the Subcontractor on any account; and

- (ii) the Subcontractor releases and discharges Envar from all liability of whatever kind upon receipt of the final payment.

13.6 Right to set off

Envar may deduct from any amount due or to become due to the Subcontractor (including in respect of a payment claim) the amount of any claim that Envar may have against the Subcontractor and any sum which Envar asserts is or may become payable by the Subcontractor to Envar, whether or not Envar's right to payment arises by way of damages (whether liquidated or unliquidated), debt, restitution or otherwise.

13.7 No adjustment

The Subcontract Sum and any rates or prices included in this Agreement are fixed and will not be subject to adjustment for rise and fall, exchange rate variations or any changes to general or market specific economic conditions.

14 GST

14.1 Exclusive of GST

Unless otherwise expressly stated, prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

14.2 Payment of GST

If a Party makes a taxable supply under or in connection with this Agreement, the other Party must pay to the supplier at the same time, and in addition to the GST-exclusive consideration, an amount equal to the GST payable on that supply.

14.3 Tax Invoice

The supplier must, as a precondition to the payment of GST, give the other Party a tax invoice by the end of the month in which the supply is made.

14.4 Adjustments

If an adjustment event arises in connection with a supply made under this Agreement, the supplier must give the other Party an adjustment note in accordance with the GST law.

14.5 Reimbursements

If this Agreement requires one Party to pay for, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the other Party, the amount required to be paid, reimbursed or contributed by the first Party will be reduced by the amount on input tax credits (if any) to which the other Party is entitled in respect of the reimbursable expense.

14.6 Defined terms

In this clause 14:

- (a) words and expressions which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act)* have the same meaning as in the GST Act; or
- (b) if that GST Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

15 SUBCONTRACTING

15.1 Consent required

The Subcontractor must not subcontract the whole or any part of its obligations under this Agreement to a third party (including a Related Company of the Subcontractor) without the prior written consent of Envar (which Envar may withhold in its absolute discretion).

15.2 Conditions

Envar may impose any conditions it considers appropriate when giving its approval under clause 15.1.

15.3 Payment of subcontractors

The Subcontractor must ensure that its subcontractors are paid in accordance with the terms of their subcontracts. If Envar reasonably forms the view that a subcontractor engaged by the Subcontractor:

- (a) has not been paid an amount due to it under its subcontract; and/or
- (b) has become entitled to suspend work under a subcontract (whether under statute, contract or otherwise) because of a failure by the Subcontractor to pay moneys to the subcontractor,

Envar or the Principal may pay directly to the subcontractor the amount claimed by the subcontractor, and any amount so paid by Envar or the Principal will be a debt due and payable by the Subcontractor to Envar.

15.4 Extension of provisions to sub-subcontractors

The Subcontractor must ensure that its subcontractors and suppliers comply with all relevant requirements of this Agreement.

15.5 Responsibility of Subcontractor

- (a) The Subcontractor is fully responsible for performing the Work and for ensuring compliance with the requirements of this Agreement and will not be relieved of that responsibility because of any:
 - (i) involvement by Envar in the performance of the Subcontractor's obligations under this Agreement; or
 - (ii) subcontracting of the whole or part of its obligations under this Agreement.

- (b) The Subcontractor must give to Envar and the Principal access to (or copies of, upon request) any proposed or executed subcontract (regardless of whether the Subcontractor or the Principal is a party to that subcontract) and all plans, specifications and drawings relating to that subcontract.

15.6 Sub-subcontractor and Subcontractor warranties

The Subcontractor must ensure that Envar and the Principal will have the benefit of all warranties given by all sub-subcontractors and suppliers in relation to Work performed by them and any materials provided by them which are used in the provision of the Work.

16 DAMAGE TO THE WORK

16.1 Care of the Work

The Subcontractor will be responsible for the care of:

- (a) the whole of the Work from the Start Date to 4:00pm on the Date of Practical Completion; and
- (b) outstanding Work and items to be removed from the Site by the Subcontractor after 4:00pm on the Date of Practical Completion until the later of completion of the outstanding Work or completion of its obligations during the Defects Liability Period.

16.2 Reinstatement

If loss or damage, other than to the extent caused by an Excepted Risk, occurs to the Work or the Site during the period of the Subcontractor's care pursuant to clause 16.1, the Subcontractor must rectify any such loss or damage at its cost and reasonably compensate the affected person for that interference, obstruction, damage or destruction.

17 INSURANCE

17.1 Insurance

Unless Envar expressly agrees in writing otherwise, the Subcontractor must provide the following insurances:

- (a) contract works insurance for an amount not less than the total Subcontract Sum plus 20% covering all things referred to in clause 16.1 against loss or damage resulting from any cause until the Subcontractor ceases to be responsible for their care, including the Subcontractor's liability under clause 16.2 and things in storage off Site and in transit to the Site;
- (b) public and products liability insurance written on an occurrence basis with a limit of indemnity of not less than \$20,000,000 for each and every occurrence and, in the case of product liability, no less than \$20,000,000 in the

aggregate during any 12 month period of insurance which covers the liability of the Subcontractor in respect of:

- (i) bodily injury to any third party;
 - (ii) third party property damage; and
 - (iii) advertising liability;
- (c) motor vehicle insurance, covering all mechanically propelled vehicles that are registered, or capable of being registered, for road use and are at any time used in connection with this Agreement including, as a minimum:
 - (i) insurance that is compulsory under applicable laws governing the use of motor vehicles and liability for personal injury or death; and
 - (ii) liability insurance for third party property damage with a sum insured of not less than \$20,000,000 per occurrence;
 - (d) professional indemnity insurance providing coverage for the Subcontractor's professional responsibilities to Envar (including where the Subcontractor has design obligations as identified in the Subcontract Details) with a sum insured of not less than \$10,000,000 and which extends coverage to contractual liabilities assumed by the Subcontractor; and
 - (e) workers compensation insurance as required by law in the State or Territory in which the Work is being carried out.

17.2 Additional Requirements

- (a) The Subcontractor must ensure that the public and products liability insurance policy:
 - (i) notes the interest of Envar;
 - (ii) provides that Envar is protected by a "Principals" indemnity extension covering Envar's vicarious liability for the acts or omissions of other "Named Insureds" under such policy; and
 - (iii) includes a cross liability clause in which the insurer agrees that the policy applies as if a separate policy was issued to Envar and each "Named Insured" (with the exception of limits of liability).
- (b) The Subcontractor must ensure that the contract works insurance policy:
 - (i) identifies Envar as a named insured;
 - (ii) provides that Envar is protected by a "Principals" indemnity extension covering Envar's vicarious liability for the acts or omissions of other "Named Insureds" under such policy; and
 - (iii) includes a cross liability clause in which the insurer agrees that the policy applies as if a separate policy was issued to Envar and each "Named Insured" (with the exception of limits of liability).

17.3 Duration of insurances

The Subcontractor must ensure that each policy referred to in clause 17.1 is in force prior to the date of this Agreement and maintained until the expiry of the Defects Liability Period, except for professional indemnity insurance, which shall be maintained for 6 years after the expiry of the Defects Liability Period.

17.4 Insurers and terms and conditions

Unless otherwise expressly stated, the Subcontractor must ensure that any insurance required to be taken out under clause 17.1 (other than statutory insurances) is:

- (a) effected with insurers with a financial security rating of (A-) or better by Standard & Poors or the equivalent rating with another recognised agency; and
- (b) on terms and conditions usual to that class of insurance.

17.5 Certificates of currency

The Subcontractor must, on or prior to commencement of the Work and otherwise when requested by Envar, promptly satisfy

Envar that each contract of insurance it is required to procure under this clause 17 is current by providing to Envar certificates of currency or other evidence reasonably required by Envar.

17.6 Failure to procure and maintain insurance

If the Subcontractor fails to procure and maintain insurance policies in accordance with this Agreement, Envar may, but is not obliged to:

- (a) procure and maintain any such insurance and deduct the cost of doing so (which will be a debt due and immediately payable from the Subcontractor to Envar) from any payments to be made to the Subcontractor by Envar (under this Agreement or any other contract); or
- (b) withhold any payments due from time to time to the Subcontractor (under this Agreement or any other contract) until the insurance policies and receipt for the payment of premiums are made available for inspection by Envar.

17.7 Sub-subcontractor insurance

The Subcontractor must ensure that its sub-subcontractors are similarly insured.

18 LIABILITY AND INDEMNITIES

18.1 Indemnity

- (a) The Subcontractor indemnifies Envar from and against any liability in respect of:
 - (i) loss, destruction or damage to or of any real or personal property, including Envar's property, the Principal's property, the Site and the Work;
 - (ii) claims in respect of personal injury, illness, sickness or death;
 - (iii) any negligence or wilful act or omission by the Subcontractor;
 - (iv) any claim made against Envar by or on behalf of any of the Subcontractor's personnel, or by any government or regulatory authorities, in respect of any relevant legislation concerning pay-roll tax, remuneration, income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or Agreement of a competent industrial tribunal;
 - (v) any third party claims or actions (including by the Principal) brought against Envar; and
 - (vi) any breach by the Subcontractor of the OHS Rules or any penalty or enforceable undertaking imposed for breach of any Legal Requirements, in connection with, arising out of or as a consequence of the performance or non-performance of this Agreement by the Subcontractor or its agents, personnel, suppliers, consultants or subcontractors.
- (b) The Subcontractor's liability to indemnify Envar in this clause 18.1 will be reduced proportionately to the extent that Envar's fraud or malicious, unlawful or negligent act or omission caused or contributed to the liability.

18.2 Limitation of liability

- (a) Subject to clause 18.1(b) and except to the extent that liability cannot be limited or excluded, the total aggregate liability of the Subcontractor to Envar under this Agreement is limited to the amount equal to 200% of the Subcontract Sum (as adjusted in accordance with this Agreement).
- (b) Paragraph (a) does not apply to:
 - (i) the Subcontractor's obligation and liability to carry out and complete the Work in accordance with this Agreement;
 - (ii) the Subcontractor's liability as a consequence of, or to rectify, a Defect (including any liability under clause 7 of this Agreement);

- (iii) reduce or otherwise affect the Subcontractor's liability to pay Liquidated Damages under this Agreement;
- (iv) the Subcontractor's liability to indemnify Envar pursuant to clause 18.1(a) of this Agreement;
- (v) the Subcontractor's liability in relation to any Claim made by a third party (including the Principal) against Envar or the Subcontractor (including a claim for contribution by Envar against the Subcontractor in relation to such third party Claim);
- (vi) any event or Claim for which the Subcontractor is required to have insurance in accordance with this Agreement; and
- (vii) any liability in respect of which the Subcontractor is indemnified under a policy of insurance required to be effected pursuant to the requirements of this Agreement or in respect of which the Subcontractor would have been indemnified by a policy of insurance required to be effected pursuant to the requirements of this Agreement if the Subcontractor had:
 - (A) diligently pursued a claim under that policy of insurance;
 - (B) complied with the terms and conditions of that policy of insurance; or
 - (C) complied with its insurance obligations under this Agreement.

18.3 Consequential Loss

- (a) Subject to paragraph 18.3(b) neither Party will be liable to the other Party for any Consequential Loss arising out of or in connection with this Agreement.
- (b) Paragraph 18.3(a) does not apply to the Subcontractor's liability in respect of:
 - (i) the Subcontractor's obligation and liability to carry out and complete the Work in accordance with this Agreement;
 - (ii) the Subcontractor's liability as a consequence of, or failure to rectify, a Defect (including any liability under clause 7 of this Agreement);
 - (iii) Liquidated Damages under this Agreement;
 - (iv) the Subcontractor's liability to indemnify Envar pursuant to clause 18.1(a) of this Agreement;
 - (v) the Subcontractor's liability in relation to any Claim made by a third party (including the Principal) against Envar or the Subcontractor (including a claim for contribution by Envar against the Subcontractor in relation to such third party Claim);
 - (vi) any event or Claim for which the Subcontractor is required to have insurance in accordance with this Agreement; or
 - (vii) which the Subcontractor is indemnified under a policy of insurance required to be effected pursuant to the requirements of this Agreement or in respect of which the Subcontractor would have been indemnified by a policy of insurance required to be effected pursuant to the requirements of this Agreement if the Subcontractor had:
 - (A) diligently pursued a claim under that policy of insurance;
 - (B) complied with the terms and conditions of that policy of insurance; or
 - (C) complied with its insurance obligations under this Agreement.

18.4 Enforcing a right of indemnity

It is not necessary for Envar to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

18.5 Taxes and employee benefits

- (a) The Subcontractor acknowledges that it has sole liability in relation to:
- (i) wages, salaries, allowances, incentive payments, bonuses, sick leave, long service leave, annual leave, personal leave, termination or redundancy payments and any other employment related liabilities; and
 - (ii) all group tax, payroll tax, PAYE, superannuation, workers compensation and other taxes, levies, deductions, charges, penalties, duties or withholdings,

in respect of the Subcontractor's personnel.

- (b) The Subcontractor further acknowledges that it or any of its personnel do not have, pursuant to this Agreement or otherwise, any entitlement from Envar in relation to any form of employment benefit. The Subcontractor will not communicate or otherwise represent to its personnel that any of the Subcontractor's personnel have any entitlement from Envar in relation to any form of employment related benefit.
- (c) The Subcontractor indemnifies Envar from and against any liability for any Indemnified Taxes, together with any other amount determined by Envar to be reasonably necessary to compensate Envar for an income tax liability, or reduction in income tax losses available to be carried forward or available income tax credits or rebates, to ensure that the after tax position of Envar is the same (or substantially the same) as it would have been had Envar never been liable for any Indemnified Taxes.
- (d) If Envar is, becomes or reasonably forms the view that it may be or become, liable for the payment of any Indemnified Taxes, Envar may deduct the amount of its liability or prospective liability for the Indemnified Taxes from any amount due by Envar to the Subcontractor, whether under this Agreement or otherwise.
- (e) In this clause 18.5, **Indemnified Taxes** means any taxes, excluding GST, arising out of or in relation to this Agreement or the performance of or payment for the Work or any other transaction contemplated by this Agreement including Pay As You Go, withholding tax, superannuation guarantee charge, fringe benefits tax, workers' compensation insurance premiums and payroll tax, together with all costs, interest or penalties payable by reference to those taxes.

19 CONFIDENTIALITY, CONFLICTS AND ETHICS
19.1 No disclosure

Subject to clause 19.2, the Subcontractor must not, and must ensure that its officers, advisers, agents, consultants, sub-subcontractors and employees do not, without the prior written approval of Envar, at any time, including after the termination or expiry of this Agreement:

- (a) disclose or give to any person any Confidential Information;
- (b) use any Confidential Information for any purpose other than performing this Agreement; or
- (c) without limitation to the above, disclose or give to any person any information of the kind described in section 275(1) of the PPSA.

19.2 Permitted disclosure

Clause 19.1 does not apply to the extent that the Confidential Information is:

- (a) lawfully in the public domain at the time that the Confidential Information was disclosed or given; or

- (b) required to be disclosed or given to comply with any applicable law, the rules of any securities or stock exchange or an order of a court or tribunal and Envar is given prior notice of the disclosure.

Where the Subcontractor discloses any Confidential Information pursuant to this clause 19.2, it:

- (a) must ensure that the party to whom the Confidential Information is provided or disclosed to complies with the terms of this clause 19; and
- (b) will be responsible and liable for any breach of the terms of this clause 19 by such third party as if the Subcontractor committed the breach.

19.3 No actual or potential conflicts

The Subcontractor warrants that to the best of its knowledge on signing this Agreement no actual or potential conflict of interest exists in relation to the performance of its obligations under this Agreement.

19.4 Subcontractor to give notice of future conflicts

The Subcontractor must inform Envar in writing immediately upon becoming aware of an actual or potential conflict of interest arising in relation to the performance of its obligations under this Agreement.

19.5 Compliance with Anti-Bribery laws

- (a) The Subcontractor will at all times comply with:
- (i) all Legal Requirements relating to anti-bribery, anti-corruption and anti-money laundering (and must not do anything, or omit to do anything, to cause Envar to be in breach of any such Legal Requirements); and
 - (ii) Envar's 'Standards of Business Conduct and Anti Bribery and Corruption Policy', as published from time to time.
- (b) The Subcontractor warrants that neither it, nor any Relevant Person, has been convicted of any offence, and has not been the subject of any investigation or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence, under any applicable laws, rules and regulation relating to anti-bribery, anti-corruption and anti-money laundering.
- (c) At any time before the expiry of 3 years from the completion or termination of this Agreement, the Subcontractor must permit Envar, its nominee, or the Principal (in this clause 19.5, each the **Auditor**) to conduct an audit and investigation:
- (i) to verify the Subcontractor's compliance with this clause 19.5 (irrespective of whether there has been a breach or suspected breach); and/or
 - (ii) in relation to a Probity Event (or suspected Probity Event).
- (d) As part of an audit or investigation under this clause 19.5, the Subcontractor must:
- (i) make available to the Auditor (and allow the Auditor to make and retain copies of) any documents, records and other information in the power, possession or control of the Subcontractor; and
 - (ii) meet with the Auditor and make available the Subcontractor's personnel to meet with the Auditor and answer reasonable questions in relation to the subject matter of the audit.
- (e) The Subcontractor must give Envar notice immediately upon becoming aware of a Probity Event or any breach (or suspected breach) of this clause 19.5.

20 TERMINATION
20.1 Termination of this Agreement without cause

Envar may terminate at any time and for any reason (and without any requirement to provide any reason) this Agreement by issuing a notice of termination to the Subcontractor upon 5

Business Days' notice. When the Subcontractor receives a notice of termination from Envar under this clause 20.1, the Subcontractor must:

- (a) stop all Work to the extent required by the notice of termination;
- (b) take such action as necessary or as Envar directs for the transfer, protection and preservation of Envar property;
- (c) use its best endeavours to minimise the cost of termination of this Agreement (as applicable) to Envar; and
- (d) provide to Envar a written claim for the amount in compliance with clause 20.2 within 30 Business Days of the effective date of termination in relation to the Subcontract Sum payable for the Work properly performed prior to the date of termination.

20.2 Compensation for termination without cause

- (a) Where Envar terminates this Agreement pursuant to clause 20.1, Envar must pay the Subcontractor the amount due for the Work that has been completed by the Subcontractor in accordance with this Agreement prior to the date of termination.
- (b) Such payment will constitute the full and final compensation payable by Envar to Subcontractor under or in connection with this Agreement and the Subcontractor will have no Claim against Envar in relation to such termination and Envar will not be liable to the Subcontractor for any amounts in addition to those set out in clause 20.2(a).

20.3 Envar's rights for breach

- (a) Envar may exercise a right pursuant to clause 20.3(b) of this Agreement immediately by giving notice to the Subcontractor if the Subcontractor commits a breach of this Agreement which is:
 - (i) capable of rectification but which is not rectified within 14 days of receipt of a notice from Envar specifying such breach and stating that it is a notice under this clause 20.3(a), or such longer period as Envar may allow in its absolute discretion; or
 - (ii) not capable of rectification.
- (b) Envar may:
 - (i) terminate this Agreement; or
 - (ii) take out of the hands of the Subcontractor the whole or any part of the Work remaining to be completed, and carry out and complete (or engage a third party to carry out and complete) that Work and suspend payment until an amount (if any) becomes due and payable to the Subcontractor pursuant to clause 20.6.
- (c) The exercise of a right under this clause 20.3 will be effective immediately and will not affect any other rights available to Envar.

20.4 Termination for change of ownership or Insolvency Event

- (a) Envar may terminate this Agreement immediately by giving notice to the Subcontractor if:
 - (i) there is any change in the legal or equitable ownership of the Subcontractor without Envar's prior written consent (which Envar may withhold in its absolute discretion);
 - (ii) the Subcontractor is subject to an Insolvency Event; or
 - (iii) a Probity Event occurs to the Subcontractor.
- (b) Termination under this clause 20.4 will be effective immediately and will not affect any other rights available to Envar.

20.5 Subcontractor's obligations upon termination or taking work out of Subcontractor's hands

On receipt of a notice of termination or taking work out of the Subcontractor's hands from Envar, the Subcontractor must immediately:

- (a) cease the performance of the Work and make the Site safe for employees and others and report any hazards or risks to Envar;
- (b) comply with all reasonable directions given by Envar including any direction to:
 - (i) assign to Envar or its nominee all rights and benefits under contracts with third parties relating to the Work and the Site;
 - (ii) cooperate with Envar and any other person nominated by Envar to enable Envar (or the nominee) to complete the Work; and
 - (iii) allow Envar to take possession of such plant and equipment of the Subcontractor as may be on or in the vicinity of the Site as may reasonably be required by Envar to facilitate completion of the Work taken out of the Subcontractor's hands; and
- (c) without limiting subclause 20.5(b)(ii), deliver up to Envar all Deliverables and all Design Documents in their state of completion as at that date.

20.6 Adjustment for work taken out of Subcontractor's hands

- (a) When that part of the Work taken out has been completed, Envar shall assess the cost thereby incurred and shall certify as moneys due and payable accordingly the difference between the cost (showing the calculations therefor) and the amount which would otherwise have been paid to the Subcontractor if the work had been completed by the Subcontractor.
- (b) If the Subcontractor is indebted to Envar, Envar may retain any Subcontractor's plant or other things taken under clause 20.5 until the debt is satisfied. If after reasonable notice the Subcontractor fails to pay the debt, Envar may sell the Subcontractor's plant or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the Subcontractor.

20.7 Effect of termination

If this Agreement is terminated pursuant to clause 20.3(b)(ii) or 20.4:

- (a) Envar is not required to make any further payment to the Subcontractor, and the rights and liabilities of the parties shall be the same as they would be at common law if the Subcontractor had wrongfully repudiated this Agreement and Envar had elected to treat this Agreement as at an end and recover damages; and
- (b) Envar may at any time and from time to time estimate the damages to which it is entitled as a consequence of the (deemed) wrongful repudiation of this Agreement by the Subcontractor and advise the Subcontractor of the amount of the estimated damages. Until the damages to which Envar is entitled are finally ascertained, that estimate shall be a debt due and immediately payable by the Subcontractor to Envar, and Envar is entitled to withhold, set-off or otherwise deduct the amount of that estimate.

20.8 Termination by Subcontractor

- (a) If Envar fails to pay an undisputed amount that is due and payable and has been determined by Envar to be payable to the Subcontractor in accordance with clause 13.2, and such failure continues for a period of more than 28 days after the Subcontractor provides Envar with written notice thereof and identifying its rights under this clause 20.8, the Subcontractor may suspend performance of Work.

- (b) The Subcontractor must promptly recommence performance of Work upon remedy of the breach by Envar.
- (c) The Subcontractor may, by written notice to Envar terminate this Agreement if, within 28 days of the date of commencement of suspension pursuant to clause 20.8(a), Envar has failed to remedy the breach.
- (d) Damages reasonably and necessarily incurred by the Subcontractor by reason of a suspension pursuant to clause 20.8(a) shall be assessed by Envar who shall certify the amount due and payable to the Subcontractor. This amount shall be the limit of the Subcontractor's entitlement arising from the suspension of the Work.
- (e) The Subcontractor acknowledges and agrees that this clause 20.8 constitutes the Subcontractor's sole right to terminate this Agreement as a consequence of Envar's breach (howsoever occurring).

21 DISPUTE RESOLUTION

21.1 Notice of dispute

If a difference or dispute between the Parties arises in connection with the subject matter of this Agreement then either Party shall give the other Party a notice of dispute adequately identifying and providing details of the dispute.

21.2 Continue to perform

Notwithstanding the existence of a dispute the Parties shall continue to perform this Agreement.

21.3 Conference

Within 10 days after receiving a notice of dispute the Parties shall confer at least once to attempt to resolve the dispute or to agree on methods of doing so. At every such conference each Party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

21.4 Resolution not involving Head Contract

Subject to clause 21.6 and 21.7, in the event that the Parties are unable to resolve the dispute or reach agreement on a method to do so within 28 days (or such longer period as agreed by the Parties) after the notice of dispute is served, then the dispute shall be and is hereby submitted to the forum for the resolution of disputes identified in the Subcontract Details.

21.5 Final and binding decision

In the event that the forum for resolution of the dispute identified in the Subcontract Details is arbitration, the arbitrator's decision or majority decision of the arbitrators (as applicable) shall be final and binding on the Parties.

21.6 Consistent resolution

Where a dispute arises between Envar and the Principal under the Head Contract that is the subject of an arbitration or expert determination process, which Envar considers concerns matters which are relevant to the Subcontractor's rights and obligations under this Agreement, Envar may at any time prior to the final resolution of that dispute, elect to have Envar's and the Subcontractor's rights and obligations determined in that dispute simultaneously, and if so:

- (a) the Subcontractor must, at the expense of the Subcontractor give Envar all necessary assistance and co-operation with respect to the dispute; and
- (b) Envar must ensure that any claims of the Subcontractor in respect of the Principal are put to the dispute resolution procedures referred to in the Head Contract.

The Subcontractor agrees that, in respect of a dispute to which this clause 21.6 applies, clause 21.4 shall cease to apply to the subject matter of that dispute and it will be bound by any determination in the dispute resolution procedures under the Head Contract that affects the Subcontractor's rights and obligations as though that determination had been made under the dispute resolution procedures in this Agreement.

21.7 Consolidation

If Envar and the Principal are parties to litigation, arbitration or an expert determination in connection with the Head Contract (**Head Contract Dispute Process**), Envar may direct that:

- (a) any dispute that arises between Envar and the Subcontractor (whether such dispute arises before or after the commencement of the Head Contract Dispute Process) be referred to litigation, arbitration or expert determination (as applicable); and
- (b) such litigation, arbitration or expert determination (as applicable) between Envar and the Subcontractor will be consolidated with the Head Contract Dispute Process,

in which case, clause 21.4 shall cease to apply to the subject matter of that dispute and the Subcontractor irrevocably agrees to the referral of the relevant dispute to litigation, arbitration or expert determination (as applicable) and agrees (and irrevocably waives any entitlement to object) to such consolidation of litigation, arbitration or expert determination processes (as applicable).

21.8 Parties not to commence legal action

Except to enforce this clause 21.8, to recover an amount due and payable by the Subcontractor under this Agreement, or to seek an urgent interim determination, a Party must not commence or maintain an action by way of legal proceedings until it has been dealt with in accordance with this clause 21.

22 BUILDING CODE

- (a) This clause applies only if indicated in the Subcontract Details. In this clause:
 - (i) **ABCC** means the body referred to in subsection 29(2) of the Act.
 - (ii) **ABC Commissioner** means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the Act.
 - (iii) **Act** means the *Building and Construction Industry (Improving Productivity) Act 2016*.
 - (iv) **Building Code** means the *Code for the Tendering and Performance of Building Work 2016*, which is available at <https://www.legislation.gov.au/Details/F2016L01859>.
 - (v) **Building Contractor** has the same meaning as in the Act.
 - (vi) **Building Industry Participant** has the same meaning as in the Act.
 - (vii) **Building Work** has the same meaning as in subsection 3(4) of the Building Code.
 - (viii) **Commonwealth Funded Building Work** means Building Work in items 1-8 of Schedule 1 of the Building Code.
 - (ix) **Enterprise Agreement** has the same meaning as in the *Fair Work Act 2009* (Cth).
 - (x) **Exclusion Sanction** has the same meaning as in subsection 3(3) of the Building Code.
 - (xi) **Related Entity** has the same meaning as in subsection 3(2) of the Building Code.
 - (xii) **Sub-subcontractor** means a Building Contractor or Building Industry Participant who the Subcontractor has entered, or proposes to enter, into a sub-subcontract with to undertake any of the Works.
 - (xiii) **Works** means Commonwealth Funded Building Work that is the subject of this Agreement.
- (b) The Subcontractor declares as at the date of commencement of this Agreement in relation to the Works, that it:
 - (i) is not subject to an Exclusion Sanction;
 - (ii) unless approved otherwise by the ABC Commissioner, is not excluded from performing

- Building Work funded by a state or territory government; and
- (iii) is not covered by, and does not have Related Entities covered by, an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code.
- (c) The Subcontractor:
- (i) declares as at the date of commencement of this Agreement in relation to the Works; and
- (ii) must ensure that during the term of this Agreement in relation to the Works, that it and its Sub-subcontractors:
- (iii) comply with the Building Code;
- (iv) will only use products in relation to the Works that comply with the relevant Australian Standards published by, or on behalf of, Standards Australia;
- (v) comply with the Workplace Relations Management Plan approved by the ABCC in accordance with Part 6 of the Building Code that applies to the Work.
- (d) Without limiting and notwithstanding the other provisions of this clause 22, the Subcontractor will ensure that remedial action is taken to rectify any behaviour on the part of it and its Sub-subcontractors that is non-compliant with the Building Code.
- (e) The Subcontractor must every six months during the term of this Agreement advise Envar whether:
- (i) it has in the preceding six months or since it last advised Envar, whichever is the earliest, had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or *the Migration Act 1958* (Cth);
- (ii) it has in the preceding six months or since it last advised Envar, whichever is the earliest:
- (A) been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) to a Building Contractor or Building Industry Participant; or
- (B) owed any unsatisfied judgement debts to a Building Contractor or Building Industry Participant.
- (f) Compliance with the Building Code does not relieve the Subcontractor from responsibility to perform this Agreement, or from liability for any Defect in the Works arising from compliance with the Building Code.
- (g) The Subcontractor must notify the ABCC of any breach or suspected breach of the Building Code as soon as practicable but no later than two working days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
- (h) The Subcontractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the Act and the Building Code and will ensure that it and its Sub-subcontractors comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the Act, requests to interview any person under section 74 of the Act, requests to produce records or documents under sections 74 and 77 of the Act and requests for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (i) The Subcontractor must only enter into a sub-subcontract for any of the Work where:
- (i) the Sub-subcontractor has submitted a declaration of compliance, including the further

information outlined in Attachment A to the declaration of compliance, in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code (located in Part 4 in the document entitled Model Clauses Type B, available on the ABCC website (www.abcc.gov.au)); and

- (ii) the sub-subcontract with the Sub-subcontractor contains clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the Building Code.

- (j) The Subcontractor must ensure that it and its Sub-subcontractors comply with clauses contained in the sub-subcontract referred to in this clause.

23 CLAIMS

23.1 Notices of Claims

Except for Claims for an extension of time under clause 10 or payment under clause 13.1, the Subcontractor must give Envar the notices required by clause 23.2 if it wishes to make a Claim against Envar in respect of any direction, act, omission, fact, matter, circumstance or thing (including a breach of this Agreement by Envar) under, arising out of or in any way in connection with the Work or this Agreement.

23.2 Prescribed notice

The notices referred to in clause 23.1 are:

- (a) a notice within 10 Business Days after the commencement of the first occurrence of the direction, act, omission, fact, matter, circumstance or thing upon which the Claim is based, expressly specifying that the Subcontractor proposes to make a Claim and the direction, act, omission, fact, matter, circumstance or thing upon which the Claim is based; and
- (b) a written Claim within 10 Business Days after the date on which the notice was required to be given to Envar pursuant to clause 23.2(a), which must include:
- (i) detailed particulars concerning the direction, act, omission, fact, matter, circumstance or thing upon which the Claim is based;
- (ii) the legal basis for the Claim, whether based on a term in this Agreement or otherwise;
- (iii) the facts and evidence relied upon in support of the Claim in sufficient detail to permit verification; and
- (iv) details of the amount claimed and how it has been calculated.

23.3 Continuing events

If the direction, act, omission, fact, matter, circumstance or thing upon which the Claim under clause 23.2 is based or the consequences thereof are continuing, the Subcontractor must continue to give the information required by clause 23.2(b) every 20 Business Days after the written Claim under clause 23.2(b) was required to be given to Envar, until after the direction, act, omission, fact, matter, circumstance or thing upon which the Claim is based, has, or the consequences thereof have, ceased.

23.4 Condition precedent to Claims

It is a condition precedent to the Subcontractor's entitlement to make a Claim that the Subcontractor has fully complied with the requirements of clauses 23.1, 23.2 and 23.3.

If the Subcontractor fails to comply with clause 23.1, 23.2 or 23.3, Envar will not be liable upon any Claim by the Subcontractor and the Subcontractor will be absolutely barred from making any Claim against Envar, arising out of, or in any way in connection with, the relevant direction, act, omission, fact, matter, circumstance or thing (as the case may be).

24 NOTICES

24.1 How notices may be given

A notice under this Agreement:

- (a) must be in writing;
- (b) must be addressed to the Envar Representative or the Subcontractor Representative (as applicable);
- (c) must be signed for the Party giving it by the Party's authorised officer, attorney or solicitor; and
- (d) must be:
 - (i) delivered personally to Envar or the Subcontractor (as applicable), or left at or sent by prepaid post to that person's address as set out in the Subcontract Details; or
 - (ii) emailed to Envar or the Subcontractor (as applicable) to the relevant email address set out in the Subcontract Details or as otherwise notified by the relevant Party.

24.2 When notice taken as given

A notice is taken as given by the sender and received by the intended recipient:

- (a) if delivered personally, on the date of delivery;
 - (b) if posted, three Business Days after posting;
 - (c) if emailed:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the delivery failed,
- whichever happens first.

24.3 Change of address

A Party may change the address or email address of its contact by notice to the other Party.

25 GENERAL

25.1 Governing law and jurisdiction

- (a) This Agreement is governed by the law of the State or Territory set out in the Subcontract Details.
- (b) Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of the jurisdiction applicable in the Subcontract Details and courts hearing appeals from them.
- (c) A Party must not object to the jurisdiction of a court merely because the forum is inconvenient.

25.2 Unenforceable provision

If a provision or part of a provision in this Agreement is wholly or partly invalid or unenforceable, the provision or part must, to that extent, be treated as deleted from this Agreement. This does not affect the validity or enforceability of the remaining provisions.

25.3 Attorneys

Each attorney who executes this Agreement states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

25.4 Costs and expenses

Each Party must pay its own legal costs and expenses for the negotiation, preparation, completion and stamping of this Agreement.

25.5 Retrospectivity

- (a) This Agreement applies to all Work performed by the Subcontractor for Envar and any preliminary works in relation to the subject matter of this Agreement performed by the Subcontractor, including any preliminary work performed by the Subcontractor before the date of this Agreement.
- (b) The Parties acknowledge and agree that all payments made by Envar to the Subcontractor before the date of this Agreement have been paid on account of the liability

of Envar to pay to the Subcontractor the Subcontract Sum.

25.6 Entire Agreement and other terms excluded

This Agreement supersedes all previous agreements in respect of its subject matter and this Agreement embodies the entire agreement between the Parties.

Any terms and conditions proposed, published or sent by the Subcontractor to Envar or otherwise referred to in any document or material provided by the Subcontractor to Envar (including any terms and conditions published on any website or contained in any online ordering process, whether or not acknowledged by Envar):

- (a) do not form part of (and are expressly excluded from) this Agreement;
- (b) do not apply to or bind Envar; and
- (c) are, as between Envar and the Subcontractor, void and unenforceable,

irrespective of whether such terms and conditions were proposed, published or sent (or referred to in any document or material provided) by the Subcontractor before, during or after execution of this Agreement.

25.7 Variation of Agreement

Any variation or amendment of this Agreement must be in writing and signed by both Parties or by persons authorised to sign for them.

25.8 Waiver

A Party may only waive a right under this Agreement in writing.

25.9 Assignment and novation

- (a) The Subcontractor must not assign the whole or part of its obligations under this Agreement to a third party without the prior written consent of Envar, which Envar may withhold in its absolute discretion.
- (b) Envar may at any time transfer, assign or novate or otherwise deal with the whole or any part of this Agreement. The Subcontractor agrees to do all things necessary or desirable to give effect to novation.

25.10 Counterparts

This Agreement may be executed in a number of counterparts. It comprises all the counterparts, taken together.

25.11 Error, omission, ambiguity or discrepancy

The several documents forming this Agreement shall be taken as mutually explanatory of one another. The Subcontractor shall notify Envar of any error, omission, ambiguity or discrepancy discovered and Envar shall direct the Subcontractor as to the interpretation to be followed by the Subcontractor in carrying out the Work. The Subcontractor will have no Claim as a consequence of any such direction.

25.12 United Nations Convention

The Parties agree that the Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

25.13 Non-reliance

The Subcontractor represents and warrants that:

- (a) it has relied upon its own expertise and enquiries in entering into this Agreement; and
- (b) for the purpose of the Subcontractor performing its obligations under this Agreement, it has not relied on any information provided to it by Envar which does not form part of this Agreement.

25.14 Documents and inspections

The Subcontractor must provide to Envar any documents or information it reasonably requires in connection with the Work to enable Envar to comply with the Head Contract.

Envar (or its nominee) may inspect, audit or test (or permit the Principal to do so) the Work or anything produced in connection with the Work and the Subcontractor must comply with any direction of Envar in connection such inspection, audit or test. If the Work is revealed not to comply with this Agreement, the cost

or liability incurred by Envar will be certified by Envar as a debt due and immediately payable by the Subcontractor to Envar.

25.15 Non-performance of obligations

If the Subcontractor fails to perform or comply with any of its obligations or agreements contained in this Agreement, Envar or the Principal may perform or comply with (or procure performance of or compliance with) those obligations or agreements. Any costs incurred by Envar in connection with the rights referred to in this clause 25.15 will be a debt due and payable by the Subcontractor to Envar on demand.

25.16 Liability to the Subcontractor

This Agreement codifies the Subcontractor's entitlement to payment or reimbursement of any cost, loss, expense or damage and the Subcontractor shall have no entitlement to payment or reimbursement of any cost, loss, expense or damage unless expressly so provided in this Agreement.

To the fullest extent permitted by law, Envar and its directors, employees, consultants, other subcontractors and agents shall not be liable to the Subcontractor:

- (a) under or in connection with this Agreement (including in respect of any breach of this Agreement);
- (b) in tort for negligence or otherwise;
- (c) otherwise at law (including by statute, to the extent that it is possible to so exclude liability) and in equity, including for restitution for unjust enrichment; or
- (d) on any other basis whatsoever,

for any cost, loss, expense or damage which is not expressly provided for in this Agreement and the Subcontractor irrevocably waives any entitlement to make (and irrevocably releases Envar from) a Claim for any such cost, loss, expense or damage.

25.17 PPSA

The Subcontractor:

- (a) acknowledges and agrees that:
 - (i) this Agreement constitutes a Security Agreement; and
 - (ii) this Agreement creates a Security Interest of Envar in:
 - (A) all materials, equipment and other things intended for Work which are located on site or off site;
 - (B) all construction plant, temporary works and other things on site or off site as are used by the Subcontractor or its subcontractors; and
 - (C) all Work documents,

(Collateral);
- (b) consents to Envar registering Envar's Security Interest in the Collateral;
- (c) must not purport to dispose of, or grant any interest in, or give any form of security over the Collateral;
- (d) undertakes to:
 - (i) promptly sign any further documents and provide any further information (such information to be complete, accurate and up-to date in all respects) which Envar may reasonably require to:

- (A) register a Financing Statement or Financing Change Statement on the PPS Register in relation to a Security Interest in the Collateral;
- (B) register any other document on the PPS Register which is necessary to perfect Envar's Security Interest in the Collateral; or
- (C) correct any error in any such document;
- (ii) not register, or permit to be registered by any third party, a Financing Statement or a Financing Change Statement in respect of the Collateral without the prior consent of Envar;
- (iii) keep full and complete records of the Collateral; and
- (iv) do anything which Envar reasonably requires for the purpose of ensuring that the Security Interest is enforceable and perfected and to enable Envar to exercise its rights in connection with the Security Interest;
- (e) agrees that, to the extent permitted by law, the following provisions of the PPSA do not apply to this Agreement: (i) section 95; (ii) section 121(4); (iii) section 125; (iv) section 129; (v) section 130; (vi) section 132(3)(d); (vii) section 132(4); (viii) section 135; (ix) section 142; and (x) section 143;
- (f) unless otherwise agreed to by Envar in writing, the Subcontractor waives its right to receive a Verification Statement in accordance with section 157 of the PPSA; and
- (g) must give Envar written notice of any change to the Subcontractor's name, address or other details set out in this Agreement within 5 Business Days after the date of such change.

25.18 Trust

If the Subcontractor enters into this Agreement as trustee of a trust (**Trust**), it warrants that:

- (a) it has power to enter into and perform its obligations under this Agreement in its capacity as trustee of the Trust;
- (b) the Trust has been validly created and is in existence at the date of this Agreement;
- (c) the Subcontractor has been validly appointed as trustee of the Trust and is the sole trustee of the Trust;
- (d) the Subcontractor has valid rights of indemnity against the assets of the Trust, which rights are available for satisfaction of all liabilities and other obligations incurred by it under this Agreement; and
- (e) the rights of the beneficiaries of the Trust relating to, and their interests in, the property of the Trust are subject to the prior rights and interests of the Subcontractor in the property of the Trust pursuant to its right of indemnity.

SCHEDULE 1 SCOPE OF WORK

SCHEDULE 2**RATES AND PRICES**

[insert all relevant pricing details – e.g. rates, lump sums, fixed quantities]

SCHEDULE 3 - SPECIAL CONDITIONS

SCHEDULE 4
STATE SPECIFIC LEGISLATION
1 NEW SOUTH WALES
1.1 Civil Liability Act 2002 (NSW)

All rights, obligations and liabilities under or in connection with this Agreement are to apply, even where the relevant circumstances involve a failure to take reasonable care and the existence of concurrent wrongdoers (as that term is defined in section 34(2) of the *Civil Liability Act 2002* (NSW)), unlimited and otherwise unaffected by anything that, but for this clause, may by virtue of the provisions of the *Civil Liability Act 2002* (NSW) have limited or otherwise affected those rights, obligations and liabilities.

1.2 OHS Rules (NSW)

(a) The Subcontractor:

- (i) shall comply with and ensure that its Secondary Subcontractors comply with the OHS Rules and shall do all things necessary and in a manner which ensures that Envar satisfies its obligations under the OHS Rules;
- (ii) acknowledges that Envar (or another party as advised by Envar) is engaged as the 'principal contractor' under the OHS Rules for the Site;
- (iii) shall comply with and ensure that its Secondary Subcontractors comply with any direction of the principal contractor;
- (iv) shall, before commencing any Work, prepare and submit details of its work health, safety and rehabilitation management system and a Site specific safety plan incorporating safe work method statements; and
- (v) shall, to the extent the Subcontractor designs any structure (or part of a structure) which is to be constructed, provide to Envar a written report that specifies the hazards relating to the design of that structure which, so far as the Subcontractor is reasonably aware, creates a risk to the health or safety of persons who are carrying out any construction work on the structure or part.

(b) For the purpose of this clause:

- (i) "OHS Rules" means:
 - (A) the WH&S Act and WH&S Regulation as updated from time to time; and
 - (B) all relevant associated legislation, regulations, rules, Standards, Australian Standards, codes of practice and compliance guidelines applicable to the Work, workplace health and safety, environmental protection, dangerous goods and electrical safety together with any directions on safety or notices issued by any relevant authority including, to the extent applicable to the Work the following:

- (1) *Dangerous Goods (Road and Rail Transport) Act 2008* (NSW);
 - (2) *Explosives Act 2003* (NSW);
 - (3) *Explosives Regulation 2013* (NSW);
 - (4) *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (NSW);
 - (5) *Work Health and Safety (Mines and Petroleum Sites) Regulation 2014* (NSW);
 - (6) codes of practice relating to the NSW *Work Health and Safety (Mines and Petroleum Sites) Regulation 2014* (NSW);
 - (7) *Rail Safety National Law* (NSW);
 - (8) *Rail Safety (Adoption of National Law) Act 2012* (NSW);
 - (9) *Rail Safety National Law National Regulations 2012* (NSW);
 - (10) *Rural Workers Accommodation Act 1969* (NSW);
 - (11) *Heavy Vehicle National Law* (NSW);
 - (12) *Heavy Vehicle (Adoption of National Law Regulations 2013* (NSW);
 - (13) all *Heavy Vehicle Regulations*;
 - (14) national compliance and enforcement policies;
 - (15) model codes of Practice; and
 - (16) NSW codes of practice;
- (ii) "Secondary Subcontractor" means any of the Subcontractor's consultants, contractors, subcontractors, suppliers, service providers and any other person engaged by or on behalf of the Subcontractor in connection with this Agreement;
 - (iii) "WH&S Act" means the *Work Health and Safety Act 2011* (NSW); and
 - (iv) "WH&S Regulation" means the *Work Health and Safety Regulation 2017* (NSW).

1.3 Building and Construction Industry Security of Payment Act 1999 (NSW)

- (a) The Subcontractor shall:
- (i) promptly give Envar a copy of any notice the Subcontractor:
 - (A) receives from a subcontractor under sections 15, 16 or 24 of the Security of Payment Act; or
 - (B) has been required to supply to a subcontractor under section 15(1) of the Contractors Debts Act setting out Envar's name;
 - (ii) ensure that each subcontractor promptly gives Envar a copy of any notice that the subcontractor receives from another person under sections 15, 16 or 24 of the Security of Payment Act; and
 - (iii) promptly notify Envar if it becomes aware that a subcontractor intends to exercise a statutory lien, under section 11(3) of the Security of Payment Act, over unfixed plant and materials supplied by the subcontractor for use in carrying out the Work.
- (b) If Envar becomes aware that a subcontractor is entitled to suspend work under section 27 of the Security of Payment Act, Envar may pay the subcontractor such money that is, or may be, owing to the subcontractor for work forming part of the Work and Envar may recover any amount paid as a debt.
- (c) The Subcontractor shall indemnify Envar against any loss, expense or damage of any nature, including financial loss and legal costs on an indemnity basis, suffered or incurred by Envar arising out of or in connection with:
- (i) a suspension by a subcontractor of work, which forms part of the Work, under section 27 of the Security of Payment Act;
 - (ii) a notice of claim being served on Envar under Part 2 of the Contractors Debts Act;
 - (iii) a subcontractor exercising a statutory lien, under section 11(3) of the Security of Payment Act, over unfixed plant or materials supplied by the subcontractor for use in carrying out work forming part of the Work; or
 - (iv) a failure by the Subcontractor to comply with this clause.
- (d) If Envar is served with a payment withholding request under section 26A of the Security of Payment Act by a subcontractor or any other party in connection with any work carried out or material supplied by the Subcontractor to Envar forming part of the Work and Envar consequently retains money that is or becomes payable by Envar to the Subcontractor under this Agreement:
- (i) Envar is not in breach of its payment obligations under this Agreement as a result only of the retention of such money in such circumstances; and

- (ii) the Subcontractor waives its rights and releases Envar from liability in respect of all losses or expenses of any nature suffered or incurred by the Subcontractor, and may not terminate, rescind or treat as repudiated the Subcontract arising out of or in connection with Envar retaining such money in such circumstances.

- (e) For the purposes of this clause:
- (i) **“Contractors Debts Act”** means the Contractors Debts Act 1997 (NSW).
 - (ii) **“Security of Payment Act”** means the Building and Construction Industry Security of Payment Act 1999 (NSW);
 - (iii) **“subcontractor”** means any person engaged by the Subcontractor or any other person to do work, which forms part of the Work; and
 - (iv) **“work”** refers to work which the Subcontractor is, or may be, required to do under this Agreement and includes equipment, materials, plant, design and other services and temporary works.

1.4 Subcontractor's Statement

Each progress claim shall be accompanied by a duly signed written statement in a form approved by Envar and which complies with the Subcontractor's obligations under section 127 of the *Industrial Relations Act 1996* (NSW), Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW) and section 175B of the *Workers Compensation Act 1987* (NSW) to provide a statement to the “principal contractor” as contemplated by those acts.

1.5 NSW Code of Practice for Construction Work

- (a) In this clause:
- (i) **“Construction Compliance Unit”** means any unit established to monitor compliance with and receive reports of alleged breaches of the NSW Code;
 - (ii) **“Secondary Subcontractor”** means any of the Subcontractor's consultants, contractors, subcontractors, suppliers, service providers and any other person engaged by or on behalf of the Subcontractor in connection with this Agreement;
 - (iii) **“NSW Code”** means the New South Wales Code of Practice for Procurement, as varied or replaced from time to time, and:
 - (A) prior to 1 July 2013, includes the Implementation Guidelines for the NSW Code of Practice and Code of Tendering
 - (B) from 1 July 2013, includes the Implementation Guidelines to the New South Wales Code of Practice for Procurement, as varied or replaced from time to time.

(The NSW Code is currently available at www.procurepoint.nsw.gov.au)

- (b) The Subcontractor must comply, and must ensure that its employees, agents, Secondary

- Subcontractors and Related Companies comply, with the NSW Code.
- (c) Compliance with the NSW Code does not relieve the Subcontractor from responsibility to perform the Subcontract, or from liability for any Defects arising from compliance with the NSW Code.
- (d) If the National Code applies, the National Code should be read conjointly with the NSW Code to the maximum extent lawfully possible.
- (e) The Subcontractor acknowledges and accepts that the NSW Government and Envar, and those authorised by the NSW Government or Envar, may:
- (i) request full access to any Work to:
- (A) inspect any work, material, machinery, appliance, article or facility;
- (B) inspect and copy any record; and
- (C) interview any person,
- and on such request the Subcontractor must provide such access as is necessary to allow validation of compliance with the NSW Code by the Subcontractor and its employees, agents, Secondary Subcontractors and Related Companies;
- (ii) request specified documentation to be produced within a specified period, in person, by fax or by post and on such request the Subcontractor must provide such documentation; and
- (iii) publish or otherwise disclose information in relation to compliance with the NSW Code.
- (f) Where a change in the provision of the Work is proposed under the Subcontract and that change would affect compliance with the NSW Code, the Subcontractor must prepare a report to Envar, for provision to the NSW Government, specifying the extent to which compliance with the NSW Code by the Subcontractor or its employees, agents, Secondary Subcontractors or Related Companies will be affected (as applicable). Envar will, after consultation with the New South Wales Government and consideration of the legislation and relevant OHS Rules, direct the Subcontractor as to the course it must adopt once the report is received. The Subcontractor shall have no Claim in connection with any such direction or compliance with any such direction.
- (g) The Subcontractor must maintain, and must ensure that its Secondary Subcontractors and Related Companies maintain, adequate records of compliance with the NSW Code.
- (h) From 1 July 2013, the Subcontractor must notify Envar of any alleged breaches of the NSW Code (and voluntary remedial action proposed) within 24 hours of becoming aware, or when a competent contractor exercising good industry practice should have become aware, of the alleged breach.
- (i) If the Subcontractor, or any of its employees, agents, Secondary Subcontractors or any

Related Company, does not comply with the requirements of the NSW Code, in the provision of the Work, such that a sanction is applied as a consequence, without prejudice to any rights that would otherwise accrue, the NSW Government will be entitled to record that non-compliance and take it into account in the evaluation of any future tenders that may be lodged by the Subcontractor, or any of its employees, agents, Secondary Subcontractors or Related Companies, in respect of work for any part of the State of New South Wales or its agencies.

- (j) The Subcontractor must:
- (i) not engage any Secondary Subcontractor where the engagement would breach a sanction imposed by the Construction Compliance Unit;
- (ii) ensure that each Secondary Subcontractor maintains and provides access for any person or entity authorised by the New South Wales Government to the same extent as required from the Subcontractor under this clause; and
- (iii) ensure that all contracts with Secondary Subcontractors contain requirements equivalent to the requirements set out in this clause.

2 VICTORIA

2.1 OHS Rules

- (a) The Subcontractor:
- (i) shall comply with and ensure that its Secondary Subcontractors comply with the OHS Rules and shall do all things necessary and in a manner which ensures that Envar satisfies its obligations under the OHS Rules;
- (ii) acknowledges that Envar (or another party as advised by Envar) is appointed as the 'principal contractor' under the OHS Rules for the Site;
- (iii) shall comply with and ensure that its Secondary Subcontractors comply with any direction of the principal contractor; and
- (iv) shall, before commencing any Work, prepare and submit details of its work health, safety and rehabilitation management system and a Site specific safety plan incorporating safe work method statements.
- (b) For the purpose of this clause:
- (i) "OHS Rules" means
- (A) the OH&S Act and OH&S Regulation; and
- (B) all relevant associated legislation, regulations, rules, Standards, Australian Standards, codes of practice and compliance guidelines applicable to the Work, workplace health and safety, environmental protection, dangerous goods and electrical safety together with any

directions on safety or notices issued by any relevant authority including, to the extent applicable to the Work, the following (without limitation):

- (1) *Rail Safety National Law Application Act 2013 No 22;*
- (2) *Rail Safety (Local Operations) Act 2006 (Vic);*
- (3) *Rail Safety National Law (Limited Accreditation Exemptions) Regulations 2014 (Vic);*
- (4) *Transport (Safety Schemes Compliance and Enforcement) Act 2014 (Vic);*
- (5) *Dangerous Goods Act 1985 (Vic);*
- (6) *Dangerous Goods (Transport by Road or Rail) Regulation 2008 (Vic);*
- (7) *Dangerous Goods (Storage and Handling) Regulations 2000 (Vic);*
- (8) *Dangerous Goods (Explosives) Regulations 2011 (Vic);*
- (9) *Occupational Health and Safety (Major Hazard Facilities) Regulations 2000 (Vic);*
- (10) *Occupational Health and Safety (Mines) Regulations 2002 (Vic);*
- (11) *Equipment (Public Safety) Act 1994 (Vic);*
- (12) *Equipment (Public Safety) Regulations 2017 (Vic);*
- (13) *Heavy Vehicle National Law Application Act 2013 (Vic);*
- (14) *Heavy Vehicle National Law Application (Infringements) Regulations 2013 (Vic);*
- (15) national compliance and enforcement policies;
- (16) Victorian compliance codes; and
- (17) Victorian codes of practice;

- (ii) **“Secondary Subcontractor”** means any of the Subcontractor’s consultants, contractors, subcontractors, suppliers, service providers and any other person engaged by or on behalf of the

Subcontractor in connection with this Agreement;

- (iii) **“OH&S Act”** means the Occupational Health and Safety Act 2004 (Vic); and
- (iv) **“OH&S Regulation”** means the Occupational Health and Safety Regulations 2017 (Vic).

2.2 Building and Construction Industry Security of Payment Act 2002 (Vic)

- (a) The Subcontractor shall:
- (i) promptly give Envar a copy of any notice the Subcontractor:
 - (A) receives from a subcontractor under any of sections 16, 17 or 28 of the Security of Payment Act; or
 - (B) has been required to supply to a subcontractor under section 41(1) of the Security of Payment Act setting out Envar’s name;
 - (ii) ensure that each subcontractor promptly gives Envar a copy of any notice that the subcontractor receives from another person under any of sections 16, 17 or 28O of the Security of Payment Act; and
 - (iii) promptly notify Envar if it becomes aware that a subcontractor intends to exercise a statutory lien, under section 12A(1) of the Security of Payment Act, over unfixed plant or materials or both supplied by the subcontractor for use in performing any part of the Work.
- (b) If Envar becomes aware that a subcontractor is entitled to suspend work under section 29 of the Security of Payment Act, Envar may pay the subcontractor the money that is, or may be, owing to the subcontractor for work forming part of the Work. Envar may recover from the Subcontractor each amount paid as a debt.
- (c) The Subcontractor shall indemnify Envar against any loss, expense or damage of any nature, including financial loss and legal costs on an indemnity basis, suffered or incurred by Envar arising out of or in connection with:
- (i) a suspension by a subcontractor of work, which forms part of the Work, under section 29 of the Security of Payment Act;
 - (ii) a notice of claim being served on Envar under Part 3 - Division 4 of the Security of Payment Act;
 - (iii) a subcontractor exercising a statutory lien, under section 12A(1) of the Security of Payment Act, over unfixed plant or materials supplied by the subcontractor for use in performing any part of the Work; and
 - (iv) a failure by the Subcontractor to comply with this clause.
- (d) For the purposes of this clause:
- (i) **“Security of Payment Act”** means the Building and Construction Industry Security of Payment Act 2002 (Vic);

- (ii) “**subcontractor**” means a person engaged by the Subcontractor or any other person to carry out work which forms part of the Work; and
- (iii) “**work**” means work which the Subcontractor is, or may be, required to do under this Agreement.

3 QUEENSLAND

3.1 OHS Rules

(a) The Subcontractor:

- (i) shall comply with and ensure that its Secondary Subcontractors comply with the OHS Rules and shall do all things necessary and in a manner which ensures that Envar satisfies its obligations under the OHS Rules;
- (ii) acknowledges that Envar (or another party as advised by Envar) is engaged as the ‘principal contractor’ under the OHS Rules for the Site;
- (iii) shall comply with and ensure that its Secondary Subcontractors comply with any direction of the principal contractor;
- (iv) shall, before commencing any Work, prepare and submit details of its work health, safety and rehabilitation management system and a Site specific safety plan incorporating safe work method statements; and
- (v) shall, to the extent the Subcontractor designs any structure (or part of a structure) which is to be constructed, provide to Envar a written report that specifies the hazards relating to the design of that structure which, so far as the Subcontractor is reasonably aware, creates a risk to the health or safety of persons who are carrying out any construction work on the structure or part.

(b) For the purpose of this clause:

- (i) “**OHS Rules**” means
 - (A) the WH&S Act and WH&S Regulation; and
 - (B) all relevant associated legislation, regulations, rules, Standards, Australian Standards, codes of practice and compliance guidelines applicable to the Work, workplace health and safety, environmental protection, dangerous goods and electrical safety together with any directions on safety or notices issued by any relevant authority including, to the extent applicable to the Work, the following (without limitation):
 - (1) *Rail Safety National Law (Queensland) Act 2017 (Qld)*;
 - (2) *Rail Safety National Law (Queensland) (Qld)*;

- (3) *Rail Safety National Law (Queensland) Regulation 2017 (Qld)*;
- (4) *Electrical Safety Act 2002 (Qld)*;
- (5) *Electrical Safety Regulation 2013 (Qld)*;
- (6) *electrical safety codes of practice (including the codes of practice referred to in the Electrical Safety (Code of Practice) Notice 2013 (Qld)*;
- (7) *Mining and Quarrying Safety and Health Act 1999 (Qld)*;
- (8) *Mining and Quarrying Safety and Health Regulation 2017 (Qld)*;
- (9) *Coal Mining Safety and Health Act 1999 (Qld)*;
- (10) *Coal Mining Safety and Health Regulation 2017 (Qld)*;
- (11) *Recognised standards (coal mines) issued under the Coal Mining Safety and Health Act 1999 (Qld)*;
- (12) *Guidelines (metalliferous mines and quarries) and guidance notes issued under the Mining and Quarry’s Safety and Health Act 1999 (Qld)*;
- (13) *Petroleum and Gas (Production and Safety) Act 2004 (Qld)*;
- (14) *Petroleum and Gas (Production and Safety) Regulation 2004 (Qld)*;
- (15) *Heavy Vehicle National Law (Queensland)*;
- (16) *Heavy Vehicle National Law Act 2012 (Qld)*;
- (17) *Heavy Vehicle National Regulations*;
- (18) *Explosives Act 1999 (Qld)*;
- (19) *Radiation Safety Act 1999 (Qld)*;
- (20) *DNRM Annual compliance plans for Queensland mineral and energy resources*;
- (21) *guidance notes*;
- (22) *general directives and letters*;
- (23) *national compliance and enforcement policies*;

- (24) *model codes of practice*
- (25) *explanatory memorandum of associated or relevant Acts; and*
- (26) *Queensland codes of practice;*

- (ii) **“Secondary Subcontractor”** means any of the Subcontractor’s consultants, contractors, subcontractors, suppliers, service providers and any other person engaged by or on behalf of the Subcontractor in connection with this Agreement;
- (iii) **“WH&S Act”** means the *Work Health and Safety Act 2011* (Qld); and
- (iv) **“WH&S Regulation”** means the *Work Health and Safety Regulation 2011* (Qld).

3.2 Building and Construction Industry Payments Act 2004 (Qld)

- (a) The Subcontractor shall:
 - (i) promptly give Envar a copy of any notice the Subcontractor:
 - (A) receives from a subcontractor under sections 19, 20 or 30 of the Security of Payment Act; or
 - (B) has been required to supply to a subcontractor under section 9A of the Subcontractors’ Charges Act setting out Envar’s name; and
 - (ii) ensure that each subcontractor promptly gives Envar a copy of any notice that the subcontractor receives from another person under sections 19, 20 or 30 of the Security of Payment Act.
- (b) If Envar becomes aware that a subcontractor is entitled to suspend work under section 33 of the Security of Payment Act, Envar may pay the subcontractor such money that is, or may be, owing to the subcontractor for work forming part of the Work. Envar may recover from the Subcontractor each amount paid as a debt.
- (c) The Subcontractor shall indemnify Envar against any loss, expense or damage of any nature, including financial loss and legal costs on an indemnity basis, suffered or incurred by Envar arising out of or in connection with:
 - (i) a suspension by a subcontractor of work, which forms part of the Work, under section 33 of the Security of Payment Act;
 - (ii) a notice of claim being served on the Principal under section 10 of the Subcontractors’ Charges Act; and
 - (iii) a failure by the Subcontractor to comply with this clause.
- (d) For the purposes of this clause:
 - (i) **“Security of Payment Act”** means the Building and Construction Industry Payments Act 2004 (Qld);

- (ii) **“subcontractor”** means a person engaged by the Subcontractor or any other person to carry out work which forms part of the Work;
- (iii) **“Subcontractors’ Charges Act** means the Subcontractors’ Charges Act 1974 (Qld); and
- (iv) **“work”** means work which the Subcontractor is, or may be, required to do under this Agreement.

3.3 Queensland Code of Practice for Construction Work

- (a) In this clause:
 - (i) **“Building and Construction Code Branch”** or **“BCCB”** means any branch established within the Department of Justice and Attorney General which will have operational responsibility for administering the Queensland Code, investigating suspected breaches and reporting non-compliance;
 - (ii) **“Secondary Subcontractor”** means any of the Subcontractor’s consultants, contractors, subcontractors, suppliers, service providers and any other person engaged by or on behalf of the Subcontractor in connection with this Agreement
 - (iii) **“Queensland Code”** means the Queensland Code of Practice for the Building and Construction Industry, as varied or replaced from time to time, and:
 - prior to 1 July 2013, includes any Implementation Guidelines which expand on key aspects and objectives of the Queensland Code of Practice for the Building and Construction Industry; and
 - from 1 July 2013, includes the Implementation Guidelines for the Queensland Building and Construction Industry Code of Practice, as varied or replaced from time to time.
- (The Queensland Code is currently available at www.justice.qld.gov.au)
- (b) The Subcontractor must comply, and must ensure that its employees, agents, Secondary Subcontractors and Related Companies comply, with the Queensland Code.
 - (c) Compliance with the Queensland Code does not relieve the Subcontractor from responsibility to perform this Agreement, or from liability for any Defects arising from compliance with the Queensland Code.
 - (d) If the National Code applies, the National Code should be read conjointly with the Queensland Code to the maximum extent lawfully possible.
 - (e) The Subcontractor acknowledges and accepts that the Queensland Government and Envar, and those authorised by the Queensland Government or Envar, may:
 - (i) request full access to the Site and any Work to:

- (A) inspect any work, material, machinery, appliance, article or facility;
 - (B) inspect and copy any record; and
 - (C) interview any person,
- and on such request the Subcontractor must provide such access as is necessary to allow validation of compliance with the Queensland Code by the Subcontractor and its employees, agents, Secondary Subcontractors and Related Companies;
- (ii) request specified documentation to be produced within a specified period, in person, by fax or by post and on such request the Subcontractor must provide such documentation; and
 - (iii) publish or otherwise disclose information in relation to compliance with the Queensland Code.
- (f) Where a change in the provision of the Work is proposed under the Subcontract and that change would affect compliance with the Queensland Code, the Subcontractor must prepare a report to Envar, for provision to the Queensland Government, specifying the extent to which compliance with the Queensland Code by the Subcontractor or its employees, agents, Secondary Subcontractors or Related Companies will be affected (as applicable). Envar will, after consultation with the Queensland Government and consideration of the legislation and relevant OHS Rules, direct the Subcontractor as to the course it must adopt once the report is received. The Subcontractor shall have no Claim in connection with any such direction or compliance with any such direction.
- (g) The Subcontractor must maintain, and must ensure that its Secondary Subcontractors and Related Companies maintain, adequate records of compliance with the Queensland Code.
- (h) From 1 July 2013, the Subcontractor must notify Envar of any alleged breaches of the Queensland Code (and voluntary remedial action proposed) within 24 hours of becoming aware, or when a competent contractor exercising good industry practice should have become aware, of the alleged breach.
- (i) If the Subcontractor, or any of its employees, agents, Secondary Subcontractors or any Related Company, does not comply with the requirements of the Queensland Code, in the provision of the Work, such that a sanction is applied as a consequence, without prejudice to any rights that would otherwise accrue, the Queensland Government will be entitled to record that non-compliance and take it into account in the evaluation of any future tenders that may be lodged by the Subcontractor, or any of its employees, agents, Secondary Subcontractors or Related Companies, in respect of work for any part of the State of Queensland or its agencies.
- (j) The Subcontractor must:
- (i) not engage any Secondary Subcontractor where the engagement would breach a sanction imposed by the BCCB;
 - (ii) ensure that each Secondary Subcontractor maintains and provides access for any person or entity authorised by the Queensland Government to the same extent as required from the Subcontractor under this clause; and
 - (iii) ensure that all contracts with Secondary Subcontractors contain requirements equivalent to the requirements set out in this clause.
- 4 WESTERN AUSTRALIA**
- 4.1 Civil Liability Act 2002 (WA)**
- The provisions of Part 1F of the *Civil Liability Act 2002 (WA)* are excluded from applying to this Agreement and the Subcontractor's performance of the Work.
- 4.2 OHS Rules**
- (a) The Subcontractor:
- (i) shall comply with and ensure that its Secondary Subcontractors comply with the OHS Rules and shall do all things necessary and in a manner which ensures that Envar satisfies its obligations under the OHS Rules;
 - (ii) acknowledges that Envar (or another party as advised by Envar) is engaged as the 'main contractor' under the OHS Rules for the Site;
 - (iii) shall comply with and ensure that its Secondary Subcontractors comply with any direction of Envar; and
 - (iv) shall, before commencing any Work, prepare and submit details of its work health, safety and rehabilitation management system and a Site specific safety plan incorporating safe work method statements.
- (b) For the purpose of this clause:
- (i) "OHS Rules" means
 - (A) the OH&S Act and OH&S Regulation; and
 - (B) all relevant associated legislation, regulations, rules, Standards, Australian Standards, codes of practice and compliance guidelines applicable to the Work, workplace health and safety, environmental protection, dangerous goods and electrical safety together with any directions on safety or notices issued by any relevant authority including, to the extent applicable to the Work, the following:
 - (1) *Mines Safety and Inspection Act 1994 (WA)*;

- (2) *Mines Safety and Inspection Regulations 1995 (WA);*
 - (3) *Dangerous Goods Safety Act 2004 (WA);*
 - (4) *Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulation 2007 (WA);*
 - (5) *Dangerous Goods Safety (General) Regulation 2007 (WA);*
 - (6) *Dangerous Goods Safety (Major Hazard Facilities) Regulations 2007 (WA);*
 - (7) *Dangerous Goods Safety (Road and Rail Transport of Non-explosives) Regulation 2007 (WA);*
 - (8) *Dangerous Goods Safety (Explosives) Regulation 2007 (WA);*
 - (9) *Rail Safety National Law (WA) Act 2015 (WA);*
 - (10) *Rail Safety National Law Regulations 2015 (WA);*
 - (11) national compliance and enforcement policies;
 - (12) explanatory memorandum of associated or relevant Acts; and
 - (13) Western Australia codes of practice;
- (ii) **“Secondary Subcontractor”** means any of the Subcontractor’s consultants, contractors, subcontractors, suppliers, service providers and any other person engaged by or on behalf of the Subcontractor in connection with this Agreement;
 - (iii) **“OH&S Act”** means the *Occupational Safety and Health Act 1984 (WA)*; and
 - (iv) **“OH&S Regulation”** means the *Occupational Safety and Health Regulations 1996 (WA)*.

4.3 Construction Contracts Act 2004 (WA)

- (a) The Subcontractor shall:
 - (i) promptly give Envar a copy of any notice the Subcontractor receives from a subcontractor under section 42 of the Security of Payment Act; and
 - (ii) ensure that each subcontractor promptly gives Envar a copy of any notice that the subcontractor receives from another person under section 42 of the Security of Payment Act.

- (b) If Envar becomes aware that a subcontractor is entitled to suspend work under section 42 of the Security of Payment Act, Envar may pay the subcontractor such money that is, or may be, owing to the subcontractor for work forming part of the Work. Envar may recover from the Subcontractor each amount paid as a debt.
- (c) The Subcontractor shall indemnify Envar against any loss, expense or damage of any nature, including financial loss and legal costs on an indemnity basis, suffered or incurred by Envar arising out of or in connection with:
 - (i) a suspension by a subcontractor of work which forms part of the Work under section 42 of the Security of Payment Act; and
 - (ii) a failure by the Subcontractor to comply with this clause.
- (d) If the Subcontractor makes a payment claim to Envar under the Security of Payment Act, and the Subcontractor applies for adjudication of the payment to be made, the prescribed appointer for the purposes of section 26(1)(c)(ii) of the Security of Payment Act is the Resolution Institute, Australia (formerly known as the Institute of Arbitrators and Mediators Australia).
- (e) For the purposes of this clause:
 - (i) **“Security of Payment Act”** means the *Construction Contracts Act 2004 (WA)*;
 - (ii) **“subcontractor”** means a person engaged by the Subcontractor or any other person to do work which forms part of the Work under this Agreement; and
 - (iii) **“work”** means work which the Subcontractor is, or may be, required to do under this Agreement.

4.4 Building Code

- (a) In this clause, **“WA Code”** means the Western Australia Building and Construction Industry Code of Conduct 2016, as varied or replaced from time to time; and **“Secondary Subcontractor”** means any of the Subcontractor’s consultants, contractors, subcontractors, suppliers, service providers and any other person engaged by or on behalf of the Subcontractor in connection with this Agreement.
- (b) The Subcontractor must comply, and must ensure that its employees, agents, Secondary Subcontractors and Related Companies comply, with the WA Code.
- (c) Compliance with the WA Code does not relieve the Subcontractor from responsibility to perform the Subcontract, or from liability for any Defects arising from compliance with the WA Code.
- (d) If the National Code applies, the National Code should be read conjointly with the WA Code to the maximum extent lawfully possible.
- (e) The Subcontractor acknowledges and accepts that the WA Government and Envar, and those authorised by the WA Government or Envar, may:
 - (i) request full access to any Work to:

- (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) inspect and copy any record; and
 - (iv) interview any person,
and on such request the Subcontractor must provide such access as is necessary to allow validation of compliance with the WA Code by the Subcontractor and its employees, agents, Secondary Subcontractors and Related Companies;
 - (v) request specified documentation to be produced within a specified period, in person, by fax or by post and on such request the Subcontractor must provide such documentation; and
 - (vi) publish or otherwise disclose information in relation to compliance with the WA Code.
- (f) Where a change in the provision of the Work is proposed under the Subcontract and that change would affect compliance with the WA Code, the Subcontractor must prepare a report to Envar, for provision to the WA Government, specifying the extent to which compliance with the WA Code by the Subcontractor or its employees, agents, Secondary Subcontractors or Related Companies will be affected (as applicable). Envar will, after consultation with the WA Government and consideration of the legislation and relevant OHS Rules, direct the Subcontractor as to the course it must adopt once the report is received. The Subcontractor shall have no Claim in connection with any such direction or compliance with any such direction.
- (g) The Subcontractor must maintain, and must ensure that its Secondary Subcontractors and Related Companies maintain, adequate records of compliance with the WA Code.
- (h) The Subcontractor must notify Envar of any alleged breaches of the WA Code (and voluntary remedial action proposed) within 24 hours of becoming aware, or when a competent contractor exercising good industry practice should have become aware, of the alleged breach.
- (i) If the Subcontractor, or any of its employees, agents, Secondary Subcontractors or any Related Company, does not comply with the requirements of the WA Code, in the provision of the Work, such that a sanction is applied as a consequence, without prejudice to any rights that would otherwise accrue, the WA Government will be entitled to record that non-compliance and take it into account in the evaluation of any future tenders that may be lodged by the Subcontractor, or any of its employees, agents, Secondary Subcontractors or Related Companies, in respect of work for any part of the State of Western Australia or its agencies.
- (j) The Subcontractor must:
- (i) not engage any Secondary Subcontractor where the engagement would breach a sanction imposed by the relevant Western Australian Government compliance unit;

- (ii) ensure that each Secondary Subcontractor maintains and provides access for any person or entity authorised by the Western Australian Government to the same extent as required from the Subcontractor under this clause; and
- (iii) ensure that all contracts with Secondary Subcontractors contain requirements equivalent to the requirements set out in this clause.

5 NORTHERN TERRITORY

5.1 OHS Rules (NT)

- (a) The Subcontractor:
- (i) shall comply with and ensure that its Secondary Subcontractors comply with the OHS Rules and shall do all things necessary and in a manner which ensures that Envar satisfies its obligations under the OHS Rules;
 - (ii) acknowledges that Envar (or another party as advised by Envar is engaged as the 'principal contractor' under the OHS Rules for the Site;
 - (iii) shall comply with and ensure that its Secondary Subcontractors comply with any direction of the principal contractor;
 - (iv) shall, before commencing any Work, prepare and submit details of its work health, safety and rehabilitation management system and a Site specific safety plan incorporating safe work method statements; and
 - (v) shall, to the extent the Subcontractor designs any structure (or part of a structure) which is to be constructed, provide to Envar a written report that specifies the hazards relating to the design of that structure which, so far as the Subcontractor is reasonably aware, creates a risk to the health or safety of persons who are carrying out any construction work on the structure or part.
- (b) For the purpose of this clause:
- (i) "OHS Rules" means
 - (A) the WH&S Act and WH&S Regulation; and
 - (B) all legislation applicable to work health and safety, environment protection, dangerous goods and electrical safety and regulations together with any directions on safety or notices issued by any relevant authority or under any code of practice or compliance code appropriate to or relevant to the Work including, to the extent applicable to the Work, the following (without limitation):
 - (1) *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act* (NT);

- (2) *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Regulations (NT);*
 - (3) *Dangerous Goods Act (NT);*
 - (4) *Dangerous Goods Regulations (NT);*
 - (5) *Electricity Reform Act (NT);*
 - (6) *Electricity Reform (Safety and Technical) Regulations (NT);*
 - (7) *Electricity Reform (Administration) Regulations (NT);*
 - (8) *Rail Safety (National Uniform Legislation) Act (NT);*
 - (9) *Radioactive Ores and Concentrates (Packaging and Transport) Act (NT);*
 - (10) national compliance and enforcement policies;
 - (11) model codes of practice;
 - (12) explanatory memorandum of associated or relevant Acts;
 - (13) Northern Territory codes of practice;
 - (14) Australian Standards; and
 - (15) best practice guidelines;
- (ii) **“Secondary Subcontractor”** means any of the Subcontractor’s consultants, contractors, subcontractors, suppliers, service providers and any other person engaged by or on behalf of the Subcontractor in connection with this Agreement;
 - (iii) **“WH&S Act”** means the Work Health & Safety (National Uniform Legislation) Act (NT); and
 - (iv) **“WH&S Regulation”** means the Work Health & Safety (National Uniform Legislation) Regulations (NT).

5.2 Construction Contracts (Security of Payments) Act (NT)

- (a) The Subcontractor shall:
 - (i) promptly give Envar a copy of any notice the Subcontractor receives from a subcontractor under section 44 of the Security of Payment Act; and
 - (ii) ensure that each subcontractor promptly gives Envar a copy of any notice that the subcontractor receives

- from another person under section 44 of the Security of Payment Act.
- (b) If Envar becomes aware that a subcontractor is entitled to suspend work under section 44 of the Security of Payment Act, Envar may pay the subcontractor such money that is, or may be, owing to the subcontractor for work forming part of the Work. Envar may recover from the Subcontractor each amount paid as a debt.
- (c) The Subcontractor shall indemnify Envar against any loss, expense or damage of any nature, including financial loss and legal costs on an indemnity basis, suffered or incurred by Envar arising out of or in connection with:
 - (i) a suspension by a subcontractor of work which forms part of the Work under section 44 of the Security of Payment Act; and
 - (ii) a failure by the Subcontractor to comply with this clause.
- (d) If the Subcontractor makes a payment claim to Envar under the Security of Payment Act, and the Subcontractor applies for adjudication of the payment to be made, the prescribed appointer for the purposes of section 28(1)(c)(ii) of the Security of Payment Act is the Resolution Institute, Australia (formerly known as Institute of Arbitration and Mediation Australia).
- (e) For the purposes of this clause:
 - (i) **“Security of Payment Act”** means the *Construction Contracts (Security of Payments) Act (NT)*;
 - (ii) **“subcontractor”** means a person engaged by the Subcontractor or any other person to do work which forms part of the Work; and
 - (iii) **“work”** means work which the Subcontractor is, or may be, required to do under this Agreement.

6 TASMANIA

6.1 Civil Liability Act 2002 (Tas)

All rights, obligations and liabilities under or in connection with this Agreement are to apply, even where the relevant circumstances involve a failure to take reasonable care and the existence of concurrent wrongdoers (as that term is defined in section 43A of the *Civil Liability Act 2002 (Tas)*), unlimited and otherwise unaffected by anything that, but for this clause, may by virtue of the provisions of the *Civil Liability Act 2002 (Tas)* have limited or otherwise affected those rights, obligations and liabilities.

6.2 OHS Rules

- (a) The Subcontractor:
 - (i) shall comply with and ensure that its Secondary Subcontractors comply with the OHS Rules and shall do all things necessary and in a manner which ensures that Envar satisfies its obligations under the OHS Rules;
 - (ii) acknowledges that Envar (or another party as advised by Envar) is or may in the future be engaged as the ‘principal contractor’ under the OHS Rules for the Site;

- (iii) shall comply with and ensure that its Secondary Subcontractors comply with any direction of the principal contractor;
 - (iv) shall, before commencing any Work, prepare and submit details of its work health, safety and rehabilitation management system and a Site specific safety plan incorporating safe work method statements; and
 - (v) shall, to the extent the Subcontractor designs any structure (or part of a structure) which is to be constructed, provide to Envar a written report that specifies the hazards relating to the design of that structure which, so far as the Subcontractor is reasonably aware, creates a risk to the health or safety of persons who are carrying out any construction work on the structure or part.
- (b) For the purpose of this clause:
- (i) **“OHS Rules”** means
 - (A) the WH&S Act and WH&S Regulation; and
 - (B) all legislation applicable to work health and safety, environment protection, dangerous goods and electrical safety and regulations together with any directions on safety or notices issued by any relevant authority or under any code of practice or compliance code appropriate to or relevant to the Work including, to the extent applicable to the Work, the following (without limitation):
 - (1) *Gas Act 2000* (Tas);
 - (2) *Gas (Safety) Regulations 2014* (Tas);
 - (3) *Gas Pipelines Act 2000* (Tas);
 - (4) *Gas Pipelines Regulations 2014* (Tas);
 - (5) *Dangerous Goods (Road and Rail Transport) Act 2010* (Tas);
 - (6) *Dangerous Goods (Road and Rail Transport) Regulations 2010* (Tas);
 - (7) *Rail Safety National Law (Tasmania)*;
 - (8) *Rail Safety National Law (Tasmania) Act 2012* (Tas);
 - (9) *Electrical Industry Safety and Administration Act 1997* (Tas);
 - (ii) **“Secondary Subcontractor”** means any of the Subcontractor’s consultants, contractors, subcontractors, suppliers, service providers and any other person engaged by or on behalf of the Subcontractor in connection with this Agreement;
 - (iii) **“WH&S Act”** means the *Work Health and Safety Act 2012* (Tas); and
 - (iv) **“WH&S Regulation”** means the *Work Health and Safety Regulations 2012* (Tas).

- (10) *Electrical Supply Industry Act 1995* (Tas);
- (11) *Occupational Licensing Act 2005* (Tas);
- (12) *Mines Work Health and Safety (Supplementary Requirements) Act 2012* (Tas);
- (13) *Heavy Vehicle National Law (Tasmania)* (Tas);
- (14) *Heavy Vehicle National Law (Tasmania) Act 2013* (Tas);
- (15) *Heavy Vehicle National Law (Tasmania) Regulations 2014* (Tas);
- (16) national compliance and enforcement policies; and
- (17) model codes of practice;

6.3 Building and Construction Industry Security of Payment Act 2009 (Tas)

- (a) The Subcontractor shall:
 - (i) promptly give Envar a copy of any notice the Subcontractor receives from a subcontractor under sections 19, 20 or 26 of the Security of Payment Act; or
 - (ii) ensure that each subcontractor promptly gives Envar a copy of any notice that the subcontractor receives from another person under sections 19, 20 or 26 of the Security of Payment Act; and
 - (iii) promptly notify Envar if it becomes aware that a subcontractor intends to exercise a statutory lien, under section 14(1) of the Security of Payment Act, over unfixed plant and materials supplied by the subcontractor for use in carrying out the Work.
- (b) If Envar becomes aware that a subcontractor is entitled to suspend work under section 29 of the Security of Payment Act, Envar may pay the subcontractor such money that is, or may be, owing to the subcontractor for work forming part of the Work and Envar may recover any amount paid as a debt.
- (c) The Subcontractor shall indemnify Envar against any loss, expense or damage of any nature, including financial loss and legal costs

on an indemnity basis, suffered or incurred by Envar arising out of or in connection with:

- (i) a suspension by a subcontractor of work, which forms part of the Work, under section 29 of the Security of Payment Act;
 - (ii) a notice of claim being served on Envar under Part 5 of the Security of Payment Act;
 - (iii) a subcontractor exercising a statutory lien, under section 14(1) of the Security of Payment Act, over unfixed plant or materials supplied by the subcontractor for use in carrying out work forming part of the Work; and
 - (iv) a failure by the Subcontractor to comply with this clause.
- (d) For the purposes of this clause:
- (i) **“Security of Payment Act”** means the Building and Construction Industry Security of Payment Act 2009 (Tas);
 - (ii) **“subcontractor”** means any person engaged by the Subcontractor or any other person to do work, which forms part of the Work; and
 - (iii) **“work”** refers to work which the Subcontractor is, or may be, required to do under this Agreement and includes equipment, materials, plant, design and other services and temporary works.

6.4 Tasmanian Annexure to the National Code of Practice for the Construction Industry

Pursuant to the Tasmanian Annexure to the National Code, the Subcontractor acknowledges and agrees that the obligations imposed on the Subcontractor in respect of the National Code in clause 22 of this Agreement, will also be adopted and imposed on the Subcontractor in respect of the Tasmanian Annexure (making only those changes to clause 22 of this Agreement, as are necessary to give effect to the Tasmanian Annexure) where this Agreement requires the Subcontractor to do work on a Tasmanian Government construction project.

7 SOUTH AUSTRALIA

7.1 OHS Rules

- (a) The Subcontractor:
 - (i) shall comply with and ensure that its Secondary Subcontractors comply with the OHS Rules and shall do all things necessary and in a manner which ensures that Envar satisfies its obligations under the OHS Rules;
 - (ii) acknowledges that Envar (or another party as advised by Envar) is, or may in the future be, engaged as the ‘principal contractor’ under the OHS Rules for the Site;
 - (iii) shall comply with and ensure that its Secondary Subcontractors comply with any direction of the principal contractor;
 - (iv) shall, before commencing any Work, prepare and submit details of its work health, safety and rehabilitation management system and a Site

specific safety plan incorporating safe work method statements; and

- (v) shall, to the extent the Subcontractor designs any structure (or part of a structure) which is to be constructed, provide to Envar a written report that specifies the hazards relating to the design of that structure which, so far as the Subcontractor is reasonably aware, creates a risk to the health or safety of persons who are carrying out any construction work on the structure or part.
- (b) For the purpose of this clause:
- (i) **“OHS Rules”** means
 - (A) the WH&S Act and WH&S Regulation; and
 - (B) all legislation applicable to work health and safety, environment protection, dangerous goods and electrical safety and regulations together with any directions on safety or notices issued by any relevant authority or under any code of practice or compliance code appropriate to or relevant to the Work including, to the extent applicable to the Work, the following (without limitation):
 - (1) *Dangerous Substances Act 1979 (SA)*;
 - (2) *Dangerous Substances (General) Regulations 2017 (SA)*;
 - (3) *Dangerous Substances (Dangerous Goods Transport) Regulations 2008 (SA)*;
 - (4) *Explosives Act 1936 (SA)*;
 - (5) *Explosives Regulations 2011 (SA)*;
 - (6) *Electricity Act 1996 (SA)*;
 - (7) *Rail Safety National Law (South Australia) Act 2012 (SA)*;
 - (8) *Rail Safety National Law National Regulations 2012 (SA)*;
 - (9) *Mines and Works and Inspection Act 1920 (SA)*;
 - (10) *Mines and Works Inspection Regulations 2013 (SA)*;
 - (11) *Heavy Vehicle National Law (South Australia) Act 2013 (SA)*;
 - (12) *all Heavy Vehicle National Regulations*;

- (13) *Radiation Protection and Control Act 1982 (SA);*
 - (14) all Radiation Protection and Control Regulations;
 - (15) national compliance and enforcement policies;
 - (16) model codes of practice;
 - (17) explanatory memorandum of associated or relevant Acts; and
 - (18) South Australia codes of practice;
- (ii) **“Secondary Subcontractor”** means any of the Subcontractor’s consultants, contractors, subcontractors, suppliers, service providers and any other person engaged by or on behalf of the Subcontractor in connection with this Agreement;
 - (iii) **“WH&S Act”** means the *Work Health and Safety Act 2012 (SA)*; and
 - (iv) **“WH&S Regulation”** means the *Work Health and Safety Regulations 2012 (SA)*.
- be, owing to the subcontractor for work forming part of the Work and Envar may recover any amount paid as a debt.
- (c) The Subcontractor shall indemnify Envar against any loss, expense or damage of any nature, including financial loss and legal costs on an indemnity basis, suffered or incurred by Envar arising out of or in connection with:
 - (i) a suspension by a subcontractor of work, which forms part of the Work, under section 28 of the Security of Payment Act;
 - (ii) a notice of claim being served on Envar under the Security of Payment Act; and
 - (iii) a failure by the Subcontractor to comply with this clause.
 - (d) For the purposes of this clause:
 - (i) **“Security of Payment Act”** means the *Building and Construction Industry Security of Payment Act 2009 (SA)*;
 - (ii) **“subcontractor”** means any person engaged by the Subcontractor or any other person to do work, which forms part of the Work; and
 - (iii) **“work”** refers to work which the Subcontractor is, or may be, required to do under this Agreement and includes equipment, materials, plant, design and other services and temporary works.

7.2 Building and Construction Industry Security of Payment Act 2009 (SA)

- (a) The Subcontractor shall:
 - (i) promptly give Envar a copy of any notice the Subcontractor receives from a subcontractor under sections 15, 16 or 24 of the Security of Payment Act; or
 - (ii) ensure that each subcontractor promptly gives Envar a copy of any notice that the subcontractor receives from another person under sections 19, 20 or 26 of the Security of Payment Act;
 - (iii) ensure that a copy of any written communication it delivers or arranges to deliver to a subcontractor regarding a payment dispute or adjudication under the Security of Payment Act is provided to Envar at the same time;
 - (iv) promptly and without delay give Envar a copy of any written communication regarding a payment dispute or adjudication under the Security of Payment Act, which the Subcontractor receives from a subcontractor; and
 - (v) require each subcontractor promptly and without delay, to give Envar a copy of any written communication regarding a payment dispute or adjudication under the Security of Payment Act, which the subcontractor receives from another party.
- (b) If Envar becomes aware that a subcontractor is entitled to suspend work under section 28 of the Security of Payment Act, Envar may pay the subcontractor such money that is, or may

8 AUSTRALIAN CAPITAL TERRITORY
8.1 OHS Rules

- (a) The Subcontractor:
 - (i) shall comply with and ensure that its Secondary Subcontractors comply with the OHS Rules and shall do all things necessary and in a manner which ensures that Envar satisfies its obligations under the OHS Rules;
 - (ii) acknowledges that Envar (or another party as advised by Envar) is engaged as the ‘principal contractor’ under the OHS Rules for the Site;
 - (iii) shall comply with and ensure that its Secondary Subcontractors comply with any direction of the principal contractor;
 - (iv) shall, before commencing any Work, prepare and submit details of its work health, safety and rehabilitation management system and a Site specific safety plan incorporating safe work method statements; and
 - (v) shall, to the extent the Subcontractor designs any structure (or part of a structure) which is to be constructed, provide to Envar a written report that specifies the hazards relating to the design of that structure which, so far as the Subcontractor is reasonably aware, creates a risk to the health or safety of persons who are carrying out any construction work on the structure or part.
- (b) For the purpose of this clause:
 - (i) **“OHS Rules”** means

- (A) the WH&S Act and WH&S Regulation; and
- (B) all legislation applicable to work health and safety, environment protection, dangerous goods and electrical safety and regulations together with any directions on safety or notices issued by any relevant authority or under any code of practice or compliance code appropriate to or relevant to the Work including, to the extent applicable to the Work, the following (without limitation):
- (A) *Dangerous Substances Act 2004 (ACT)*;
- (B) *Dangerous Goods (Road Transport) Act 2009 (ACT)*;
- (C) *Machinery Act 1949 (ACT)*;
- (D) *Fuels Control Act 1979 (ACT)*;
- (E) *Scaffolding and Lifts Act 1912 (ACT)*;
- (F) *Gas Safety Act 2000 (ACT)*;
- (G) *Heavy Vehicle National Law (ACT)*;
- (H) *Heavy Vehicle National Law (ACT) Act 2013 (ACT)*;
- (I) *Heavy Vehicle National (Transitional Provisions) Regulation 2014 (ACT)*;
- (J) national compliance and enforcement policies;
- (K) model codes of practice;
- (L) explanatory memorandum of associated or relevant Acts;
- (M) ACT codes of practice;
- (N) Australian Standards; and
- (O) Best practice guidelines;
- (ii) **“Secondary Subcontractor”** means any of the Subcontractor’s consultants, contractors, subcontractors, suppliers, service providers and any other person engaged by or on behalf of the Subcontractor in connection with this Agreement;
- (iii) **“WH&S Act”** means the *Work Health and Safety Act 2011 (ACT)*; and
- (iv) **“WH&S Regulation”** means the *Work Health and Safety Regulation 2011 (ACT)*.
- 8.2 Building and Construction Industry (Security of Payment) Act 2009 (ACT)**
- (a) The Subcontractor shall:
- (i) promptly give Envar a copy of any notice the Subcontractor:
- (C) receives from a subcontractor under section 17, 18 or 26 of the Security of Payment Act; or
- (D) has been required to supply to a subcontractor under section 40 of the Security of Payment Act setting out Envar’s name;
- (ii) ensure that each subcontractor promptly gives Envar a copy of any notice that the subcontractor receives from another person under section 17, 18 or 26 of the Security of Payment Act; and
- (iii) promptly notify Envar if it becomes aware that a subcontractor intends to exercise a statutory lien, under section 13(3) of the Security of Payment Act, over unfixed plant and materials supplied by the subcontractor for use in carrying out the Work.
- (b) If Envar becomes aware that a subcontractor is entitled to suspend work under section 29 of the Security of Payment Act, Envar may pay the subcontractor such money that is, or may be, owing to the subcontractor for work forming part of the Work and Envar may recover any amount paid as a debt.
- (c) The Subcontractor shall indemnify Envar against any loss, expense or damage of any nature, including financial loss and legal costs on an indemnity basis, suffered or incurred by Envar arising out of or in connection with:
- (i) a suspension by a subcontractor of work, which forms part of the Work, under section 29 of the Security of Payment Act;
- (iv) a notice of claim being served on the Principal under Part 4 – Division 4.2 of the Security of Payment Act;
- (v) a subcontractor exercising a statutory lien, under section 13(3) of the Security of Payment Act, over unfixed plant or materials supplied by the subcontractor for use in carrying out work forming part of the Work; and
- (vi) a failure by the Subcontractor to comply with this clause.
- (d) For the purposes of this clause:
- (i) **“Security of Payment Act”** means the *Building and Construction Industry (Security of Payment) Act 2009 (ACT)*;
- (vii) **“subcontractor”** means any person engaged by the Subcontractor or any other person to do work, which forms part of the Work; and
- (viii) **“work”** refers to work which the Subcontractor is, or may be, required to do under this Agreement and includes equipment, materials, plant, design and other services and temporary works.

