

## Supplier Subcontract Agreement

Service Order Number: \_\_\_\_\_.

between

\_\_\_\_\_ (Company).

\_\_\_\_\_ (ABN or Reg#).

and

\_\_\_\_\_ (Company).

\_\_\_\_\_ (ABN or Reg#).

Service Order Audit Trail			
Date	Revision	Owner	Comments

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## Contents

<b>1</b>	<b>FORM OF AGREEMENT .....</b>	<b>3</b>
1.1	Contract .....	3
1.2	Order of Precedence .....	4
1.3	Basic Arrangement .....	4
1.4	Effective Date .....	4
1.5	Representatives.....	4
1.6	Notices Particulars and Payment of Invoices.....	4
<b>2</b>	<b>TERMS &amp; CONDITIONS .....</b>	<b>7</b>
2.1	Definitions & Interpretation .....	7
2.2	Obligation of Subcontractor .....	8
2.3	Statutory & Safety Requirements.....	10
2.4	Suspension .....	10
2.5	Termination.....	11
2.6	Force Majeure.....	11
2.7	Indemnities .....	12
2.8	Insurance.....	13
2.9	Compensation .....	13
2.10	Liability for Delay.....	14
2.11	Invoicing and Period of Hire.....	14
2.12	Payment .....	14
2.13	Variations .....	15
2.14	Taxes, Charges & Duties .....	15
2.15	Records & Audits .....	15
2.16	Liens .....	15
2.17	Intellectual Property Ownership & Confidentiality.....	16
2.18	Resolution & Disputes .....	16
2.19	Governing Law .....	17
2.20	Notices & Contact Information.....	17
2.21	Duration .....	17
2.22	Miscellaneous .....	17
<b>3</b>	<b>SPECIAL TERMS &amp; CONDITIONS .....</b>	<b>19</b>
<b>4</b>	<b>SERVICE ORDER .....</b>	<b>20</b>
4.1	Scope of Services .....	20
4.2	Schedule of Rates & Prices.....	20
<b>5</b>	<b>CERTIFICATE OF SERVICE COMPLETION – SAMPLE ONLY .....</b>	<b>22</b>

## 1 FORM OF AGREEMENT

**THIS AGREEMENT** is made the \_\_\_\_\_ (date).  
between

Company \_\_\_\_\_

Address \_\_\_\_\_

(with its successors and assigns called "**Contractor**");

and

Company \_\_\_\_\_

Address \_\_\_\_\_

(with its successors and assigns called "**Subcontractor**").

### RECITALS

- A. Subcontractor agrees to perform the Services required by the Contractor as set out in the relevant Service Order (refer Section 4 of this Services Agreement).
- B. The Contractor has accepted the Subcontractor's tender/submission for the Provision of Services.
- C. The Parties now wish to evidence their agreement.

### OPERATIVE PROVISIONS

It is agreed as follows:

#### 1.1 Contract

The contract is constituted by the following documents:

Section 1	Form of Agreement
Section 2	Terms & Conditions
Section 3	Special Terms & Conditions
Section 4 - Service Order	Part 4.1 Scope of Services Part 4.2 Schedule of Rates & Prices
Section 5	Certificate of Service Completion

## 1.2 Order of Precedence

If there is any ambiguity, inconsistency or conflict between anything contained in this Agreement and the other documents forming part of the Agreement or between any documents forming part of this Agreement then, unless otherwise stated, the documents shall take precedence in the order of Section 1, 4, 3, 2 and 5.

## 1.3 Basic Arrangement

In consideration of the payments to be made by The Contractor to Subcontractor, the Subcontractor covenants with The Contractor to carry out the Services under the Subcontract.

Subcontractor agrees that subject to their satisfactory performance of all its obligations contained or referred to in this Subcontract, The Contractor shall pay to Subcontractor the specified rates as set out in Section 4 for all approved Services.

## 1.4 Effective Date

The Effective Date is \_\_\_\_\_.

## 1.5 Representatives

The Contractor's representative and address is:

### Contractor

Address: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

and

### Subcontractor

Address: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

## 1.6 Notices Particulars and Payment of Invoices

### (a) Service of Notices

The Contractor's address for services of notices as required pursuant to the Service Order is:

Address \_\_\_\_\_

Attention: \_\_\_\_\_

Contact \_\_\_\_\_

Subcontractor's address for service of notices and responsible person for payment of invoices, as required pursuant to the Service Order is:

Address \_\_\_\_\_.

Attention:

Contact \_\_\_\_\_.

**(b) Payment of Invoices**

Subcontractor's account detail for payment of invoices is:

Account name: \_\_\_\_\_.

Bank: \_\_\_\_\_.

Bank Address: \_\_\_\_\_.

BSB: \_\_\_\_\_.

Account number: \_\_\_\_\_.

SWIFT: \_\_\_\_\_.

**SIGNED by the Parties:**

**IN WITNESS** whereof the Parties have signed this Agreement.

**For and on behalf of The Contractor**

By its duly authorised representative:

NAME: \_\_\_\_\_

POSITION: \_\_\_\_\_

Signature: \_\_\_\_\_

**For and on behalf of Subcontractor**

By its duly authorised representative:

NAME: \_\_\_\_\_

POSITION: \_\_\_\_\_

Signature: \_\_\_\_\_

## 2

## TERMS & CONDITIONS

### 2.1 Definitions & Interpretation

#### 2.1.1 Definitions

For the purposes of this Agreement the following terms shall have the meanings hereby assigned to them:

<b>Agreement</b>	Is the contract to put in place between the Contractor and Subcontractor for a project and shall comprise this Agreement and a completed Service Order (hereinafter referred to as the “ <b>Service Order</b> ”). The Service Order shall address the particular issues for the project. Where there is any conflict between the Agreement and the Service Order, the Service Order will take precedence. Thereafter the order of precedence shall be as listed in the Form of Agreement.
<b>Area of Operations</b>	The area where the Services will be performed in accordance with the Service Order.
<b>Background Intellectual Property</b>	Means any pre-existing Intellectual Property that is owned by a Party which is in existence before the commencement of the Service Order and which that Party is free to disclose to the other Party without being in breach of any obligations to a Third Party.
<b>Commencement Date</b>	The date of commencement of the Services as set out in the Service Order.
<b>Completion Date</b>	The date the Services are completed in accordance with the Service Order.
<b>Consequential Loss</b>	Means any indirect or consequential loss, damage, cost or liability of any kind (including negligence) which arises from or in relation to the performance or non-performance of this Agreement, including economic loss, loss of revenue, profit or anticipated profit, loss of contract, loss of production, loss of product, loss of use of property or business interruption.
<b>Defect</b>	Means any failure, deficiency, error or omission in respect to the Services or the results of the Services, which causes the Services or the subcontractor's performance of the Services not to comply with the Agreement.
<b>Dispute</b>	Means any dispute, difference or Claim between any of the parties as to the construction or interpretation of the Agreement and/or Service Order; or the rights or obligations of a Party under the Agreement and/or Service Order; or any other matter arising out of, under or in connection with this contract including any question regarding the existence, validity or termination of the Service Order.
<b>The Contractor</b>	Means The Contractor Pty Ltd, its subsidiaries, affiliates, joint venture owners and their affiliates, and their respective agents, representatives, officers and employees.
<b>The Contractor's Group</b>	Means The Contractor as identified in the Form of Agreement and its Client, affiliates, joint venture owners and their affiliates, and their respective agents, representatives, officers and employees.
<b>Equipment and/or Personnel</b>	Means any personnel, tools, instruments, machinery, plant, equipment, vessels or other items that are provided by the Subcontractor for use in the performance of the Services, and any spare parts or consumable items used in connection with any such item.
<b>Intellectual Property</b>	Includes any invention, patent or application for a patent, design (registered or unregistered), trademark (registered or unregistered), name, copyright, circuit layout, trade secret, know-how, proprietary information or other right in respect of any information, process, work, material or method.
<b>Mobilisation Date</b>	Means the date that the Equipment is to be delivered to The Contractor in accordance with the Service Order and as may be amended in writing by The Contractor.
<b>Normal Wear and Tear</b>	Means wear and tear deemed to result from the use of the Equipment for its intended purpose under normal working conditions.
<b>Party</b>	Means each of The Contractor and the Subcontractor
<b>Representative</b>	The Party's representative identified in the specific Service Order.

<b>Service Order Price</b>	Means where the Service Order is a lump sum contract, the amount set out in the Schedule of Rates & Prices or where the Service Order is based on a day rate, the total amount payable under the Schedule of Rates & Prices for the Services performed.
<b>Services</b>	The services as described in the Service Order, including the provision of the personnel and/or equipment, and the operations or work to be performed by the Subcontractor and any other responsibilities and obligations imposed on Subcontractor under the Service Order.
<b>Site</b>	Means each place at which the Services in accordance with the Service Order are to be carried out.
<b>Special Terms &amp; Conditions</b>	Means specific terms and conditions that The Contractor has agreed to in a Head Contract with a Client, which applies to this Agreement as the case may be.
<b>Subcontractor</b>	Means any company or person that is engaged by The Contractor for the performance of any part of the Services.
<b>Subcontractor Group or Third Party</b>	Means the Subcontractor and includes its subcontractors of any tier. Means any person other than The Contractor or the Subcontractor

### **2.1.2 Interpretation**

- A. Words importing the singular shall also include the plural and vice versa where the content requires.
- B. Headings shall not be deemed to form part of the Agreement or be taken into consideration in the interpretation or construction thereof.

## **2.2 Obligation of Subcontractor**

### **2.2.1 Standard & Performance of Services**

- A. The Subcontractor shall comply with all instructions with regard to the Services that The Contractor in its absolute discretion may from time to time issue. The Subcontractor shall perform the Services in accordance with the requirements of the Agreement, in accordance with the best industry standards, in compliance with all relevant laws and regulations, and in such a manner as will always safeguard and protect The Contractor's interests.
- B. The Subcontractor is not required to supply any equipment for this task. All equipment will be supplied by The Contractor.
- C. If, in the opinion of The Contractor the number of Personnel and/or Equipment is inadequate, then the Subcontractor shall provide the necessary additional Personnel and/or Equipment to The Contractor to ensure timely completion of the Services.
- D. The Subcontractor shall if The Contractor so request submit to The Contractor for approval a resume of the qualifications and job experience of the Personnel. If The Contractor does not approve of any member of Personnel then the Subcontractor shall provide a suitable alternative acceptable to The Contractor.
- E. The Subcontractor shall make available to The Contractor additional Personnel reasonably required by The Contractor in connection with performance of the Services and shall do so as soon as possible after receipt of a written request from The Contractor. Such Personnel shall be charged at the relevant Service Order rates or, if no such rate exists, at mutually agreed rates prior to commencement of Services.
- F. The Contractor may reduce the number of Personnel and/or Equipment required by giving one (14) days' notice period to the Subcontractor.

- G. The Subcontractor shall make available to The Contractor additional resources as soon as possible after receipt of a written request from The Contractor to do so. Such resources shall be charged at the relevant Service Order rates or if no such rate exists, at mutually agreed rates.

#### **2.2.2 Time for Commencement & Completion**

- A. Commencement and completion of any hire of Services shall be carried out in accordance with the specific Service Order.

#### **2.2.3 Personnel of the Subcontractor**

- A. The Subcontractor warrants that it has and shall throughout the Agreement have the experience and capability including sufficient and competent Personnel to efficiently and expeditiously perform the Services. If in the opinion of The Contractor there is any inadequacy in the number or competence of persons engaged in performing the Services, then the Subcontractor shall on request, provide additional or alternative competent persons.
- B. All Personnel shall be able to read, write and communicate in English.
- C. The Subcontractor shall at its own cost forthwith replace any of its Personnel if the aforesaid person failed to comply with The Contractor's safety or other rules or regulations.
- D. The Subcontractor shall ensure that all Personnel engaged shall comply with all relevant labour and immigration laws, rules and regulations, are in possession of a valid work permit and appropriate vaccination certificates for the duration of the Agreement.
- E. The Subcontractor shall ensure that all its Personnel have successfully completed an appropriate medical examination (as required by The Contractor) before they shall be employed under the Agreement.
- F. The Contractor shall have the right to require the Subcontractor to remove any Personnel of the Subcontractor from any site where Services are being performed with The Contractor supplying a reason for the request to the Subcontractor representative. This right will not be exercised frivolously or vexatiously.

#### **2.2.4 Independence of the Subcontractor**

- A. Subcontractor for this service contract is acting as an agent of The Contractor, and as such shall not exercise independent control, management and supervision in the performance of the Services The Contractor being concerned only with the results of the Services performed. Subcontractor is not the Contractor's agent in any way.

#### **2.2.5 Responsibilities for the Services**

- A. The Subcontractor shall perform the Services with all proper skill and care and shall ensure that the work, services, Equipment/Documentation or processes used to produce or incorporated into the Services shall be fit for their intended purpose and of good quality and workmanship.
- B. In the event of a breach of sub-clause (a) herein, The Contractor shall notify the Subcontractor of the breach. Upon receipt of such notification the Subcontractor shall immediately carry out the Subcontractor's obligations and rectify the breach immediately and supply acceptable documentary evidence of the rectification. A Non-conformance and Defect rectification process report will be produced and recorded in the project documentation.

#### **2.2.6 Acceptance of Services**

- A. When the Subcontractor has completed the Services in accordance with the Service Order, the Subcontractor shall complete and sign a certificate ("Certificate of Service Completion" supplied by either The Contractor or Subcontractor form) stating that the Subcontractor believes the Services are complete and identifying the completion date.
- B. The Subcontractor shall provide a copy of the Certificate of Service Completion to The Contractor. On receipt of the Certificate of Service Completion, The Contractor shall within seven (7) days accept or reject the Certificate of Service Completion.
- C. The acceptance of the Certificate of Service Completion by The Contractor will release the Subcontractor from further activity at the Site. However, acceptance of the completion of the Services by the Client under clause 2.2.6 b) shall in no way be construed as a waiver of any other rights conferred upon the Client under the Contract or at law.
- D. The Contractor may reject the Certificate of Service Completion, by notifying the Subcontractor in writing within seven (7) days of any Defect or incomplete Services.
- E. The Subcontractor shall take all necessary actions to remedy the Defect or complete the Services and re-submit a Certificate of Service Completion for The Contractor's approval in accordance with sub-clauses 2.2.6.

### **2.3 Statutory & Safety Requirements**

#### **2.3.1 Statutory Obligations**

- A. The Contractor's safety standards shall apply to all Personnel and/or Equipment provided in relation to the Services.
- B. Subcontractor must comply with all relevant statutes, laws, regulations and by-laws affecting the Services in the Area of Operation.

#### **2.3.2 Safety**

- A. The Parties shall ensure that their respective personnel abide by, and that all equipment conforms to, all necessary safety measures. Such safety measures shall comply with all applicable policies, procedures, and regulations applying to the Services and all personnel shall be advised of the safety procedures which apply to the place of the Services.

### **2.4 Suspension**

#### **2.4.1 Suspension of Services**

- A. The Contractor may suspend performance of the whole or any portion of the Services by providing written notice to the Subcontractor.
- B. Subcontractor shall do all things possible to reduce any cost or expense consequent on the suspension. The suspension shall not vitiate the Service Order.
- C. Following a notice from The Contractor under subclause 2.4.1 a), The Contractor will continue to pay Subcontractor in accordance with the applicable rate stipulated in the Service Order - Schedule of Rates & Prices for the duration of the suspension of the Services, except to the extent that the suspension is due directly to some fault on the part of Subcontractor.
- D. Subcontractor shall, during suspension, properly protect and secure any materials or equipment used in performance of the Services where such Services involve the use of Subcontractor's personnel.

#### **2.4.2 Return to Services**

- A. The Contractor's Representative shall, when the reason for any suspension no longer exists, direct Subcontractor to recommence the Services or the relevant part of the Services and Subcontractor shall comply with the direction promptly.

## **2.5 Termination**

#### **2.5.1 Termination by Notice**

- A. The Contractor may terminate a Service Order at any time for its convenience and for any reason before the Services have been completed under the associated Service by written notice to the Subcontractor, giving a 14 day notification period, stipulating a date of notification and date of termination of services.

#### **2.5.2 Effect of Termination on Price**

- A. Termination of the Service Order pursuant to the provisions of subclause 2.5.1 a) will be with penalty of 28 days, at the applicable Service Order rate, to The Contractor. On termination, The Contractor will pay Subcontractor all amounts due and payable in accordance with the Schedule of Rates for the Services actually performed up to the date of termination.
- B. Neither party will by the termination of the Service Order be relieved of its respective obligations and liabilities accruing or arising from the Services provided pursuant to the Service Order prior to the effective date of the termination.

#### **2.5.3 Rights and Obligations on Termination**

- A. Upon early termination of the Service Order for any reason then Subcontractor will vacate the site and remove any equipment, materials or other property within (3) days.

## **2.6 Force Majeure**

#### **2.6.1 Meaning of Force Majeure Event**

- A. Subject to paragraphs (b) and (c), each of the following may be a Force Majeure Event:
  - (i) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), epidemics, piracy, civil disturbance, rebellion, revolution, insurrection of military or usurped power, terrorism;
  - (ii) changes to any federal or state statute or other law or any regulation or by-law of any governmental or duly constituted regulatory authority having or asserting jurisdiction in the area of operations, or the introduction of any such statute law, regulation or by-law;
  - (iii) earthquakes, flood, fire, explosion and/or other natural physical disaster, but excluding any cyclone or other inclement weather conditions; and
  - (iv) Industrial Action which affects a substantial portion of the Services.
- B. No event or circumstances referred to in (a) above will qualify as a Force Majeure Event unless the event or circumstances:
  - (i) is beyond reasonable control of the Party affected;
  - (ii) is without the fault or negligence of the Party affected;
  - (iii) could not have been foreseen, prevented or overcome by that Party when exercising reasonable diligence; and
  - (iv) causes or contributes to the failure of either Party to fulfil any of its obligations pursuant to this agreement.
- C. Without limiting the requirements of paragraphs (a) or (b), the Parties confirm that the

following events or circumstances do not qualify as a Force Majeure Event:

- (i) Industrial Action affecting a substantial portion of the Services which is restricted solely to labour employed by the affected Party;
- (ii) breakdown of any equipment, machinery, appliance or thing of whatever nature unless caused by Force Majeure;
- (iii) any financial distress on the part of Party, its Subcontractors or any of its or their suppliers.

**2.6.2 Affected Party Not Liable**

- A. Neither Party is responsible to the other for any loss, damages or delay or failure to comply with its obligations pursuant to the Service Order (including the obligation to pay money) as a result of Force Majeure, other than the obligation to make payments properly due and payable for the Services performed up to the commencement of Force Majeure.

**2.6.3 Notification**

- A. Upon the happening of Force Majeure the party so affected must, as soon as practicable, notify the other Party setting out the details of such happening, including the time of its commencement and its expected duration. As soon as practicable after the event has ended, the Party so affected must notify the other Party accordingly.

**2.6.4 Mitigation**

- A. Each Party must diligently do all things reasonably required to remove the cause of Force Majeure and to resume operations as soon as possible.

**2.6.5 Release during Force Majeure**

- A. If by reason of Force Majeure, Subcontractor is prevented from performing its obligations under the Agreement, the Services will be suspended for the duration of the Force Majeure.

## **2.7 Indemnities**

**2.7.1 The Contractor's Property & Personnel**

- A. The Contractor shall be responsible for and shall save, indemnify, defend and hold harmless the Subcontractor Group from and against all claims, demands, proceedings, damages, costs (including legal costs) losses, liabilities and expenses in connection with any:

- (i) liability for injury to, or death of The Contractor Group's personnel;
- (ii) loss of, or damage to The Contractor Group's property;
- (iii) pollution (including clean-up costs) emanating from The Contractor Group's property and equipment whether owned, leased or hired;

arising out of or in connection with the performance of the Service Order irrespective of the negligence or breach of duty (whether statutory or otherwise) of the Subcontractor Group.

**2.7.2 Subcontractor's Property & Personnel**

- A. Subcontractor shall be responsible for and shall save, indemnify, defend and hold harmless the Contractor Group from and against all claims, demands, proceedings, damages, costs (including legal costs) losses, liabilities and expenses in connection with any:

- (i) liability for injury to, or death of the Subcontractor Group's personnel;
- (ii) loss of, or damage to the Subcontractor Group's property;
- (iii) pollution (including clean-up costs) emanating from the Subcontractor

Group's property and equipment whether owned, leased or hired arising out of or in connection with the performance of the Service Order irrespective of the negligence or breach of duty (whether statutory or otherwise) of the Contractor Group.

**2.7.3 Third Party Liability**

- A. Each Party shall assume its own legal liability towards third parties and indemnify the other Party accordingly.

**2.7.4 Consequential Loss**

- A. Neither Party is liable to the other Party under the Agreement, law of tort, including negligence, statute, in equity or otherwise, for Consequential Loss, irrespective of cause including default, negligence or breach of duty (statutory or otherwise).

## **2.8 Insurance**

**2.8.1 Required Insurances**

- A. Subcontractor agrees to carry and maintain, at its own expense, during the term of the Agreement, insurance coverage of the types set out in clause 2.9.1 b).
- B. The minimum insurance cover held:
- (i) Employer's liability / workmen's compensation insurance as appropriate to comply fully with all applicable laws and any other insurance as required by law in Australia.
  - (ii) General liability insurance having a limit of not less than one million Australian dollars (AUD 1,000,000) combined single limit of any one occurrence covering all operations of the insured.

**2.8.2 Insurance to Cover Risks**

- A. In addition to the insurances specified in clause 2.8.1 b), the Parties shall carry insurances of the type and amounts necessary to cover any and all risks inherent in the Service Order.

**2.8.3 Effect of Insurances**

- A. Notwithstanding anything to the contrary in the Agreement, either Party's indemnification obligations under the Agreement are not limited in amount or in scope to coverage provided by insurance.

## **2.9 Compensation**

- a) When The Contractor requires Services from Subcontractor, The Contractor shall provide a Service Order to Subcontractor. A completed Service Order when combined with this Agreement shall constitute the Service Order and shall be binding on both Parties. All rates and prices contained within the Service Order shall be taken as firm unless noted provisional within the Service Order.
- b) As consideration for satisfactory performance of the Services, Subcontractor shall receive payment from The Contractor in accordance with the rates and/or prices in Service Order - Schedule of Rates & Prices.
- c) Subject to clause 2.9a), Subcontractor warrants that the rates and/or prices as set out in Service Order - Schedule of Rates & Prices are correct and sufficient to support the performance of all its obligations either express or implied in this Agreement or otherwise appropriate for the proper and timely performance of the Services, based on applicable rates.

## **2.10 Liability for Delay**

- a) In the event that The Contractor fails to meet the Project Start Date; the Subcontractor will be paid liquidated damages, for resources retained for the project.
- b) Liquidated damages shall be paid by The Contractor to Subcontractor in the amount calculated at 45% of the value of the Service Order agreed day rate, for each day of delay.
- c) The liquidated damages stated in this clause 2.10 is deemed to be the loss of equivalent project invoicing which Subcontractor will suffer in the event that The Contractor fails to meet the Project start Date. The Contractor by entering into this Subcontract and subsequent Service Order(s) agrees to pay Subcontractor the said amount(s) if the same becomes due without the need for Subcontractor to prove actual damage or loss.
- d) The Parties acknowledge and agree that any sums payable under this clause 2.10 are in the nature of liquidated damages and not a penalty against The Contractor.

## **2.11 Invoicing and Period of Hire**

### **2.11.1 Period of Hire**

- A. The Service Order shall specifically nominate:
  - i) mobilisation point for the Equipment and/or Personal
  - ii) demobilisation point for the Equipment and/or Personnel;
  - iii) period of hire; and
  - iv) rates of hire to apply to the specific Service Order.

### **2.11.2 Operating Hours**

- A. The operating hours for Personnel for are 12 (twelve) hours operation and Personnel may be required to work 14 (fourteen) hour shifts. For correct fatigue management, the subcontractor personnel shall work no more than 14 hours per 24 hour period. Fatigue management is the responsibility of the Subcontractor.

### **2.11.3 Invoices**

- A. Services performed will be invoiced on a progress basis at the end of each month, unless otherwise agreed to in the Service Order.

## **2.12 Payment**

### **2.12.1 Terms of Payment**

- A. Terms are net within thirty (30) calendar days from date of invoice.

### **2.12.2 Currency of Payment**

- A. All prices are in Australian Dollars (AUD) and are exclusive of GST.

### **2.12.3 Disputed Invoices**

- A. Should part of the invoice be in dispute, The Contractor shall pay the undisputed part and defer payment of the balance until such time as the dispute is settled. Notification of any disputed items will be provided within seven (7) days of receipt of invoice. Any undisputed amounts shall be paid within fourteen (14) days of receipt of invoice.
- B. The Contractor shall provide the Subcontractor prior notice of seven (7) days of its intention to deduct or set off any sums and shall furnish Subcontractor with reasons and due evidence necessary to support the deduction or set off.

## **2.13 Variations**

### **2.13.1 *The Contractor may order Subcontractor to carry out a Variation***

- A. Subcontractor shall perform any variations to the Services required by The Contractor which may include additions to, or reductions to the scope or quantity of Services. If a variation is contemplated, the Subcontractor shall give notice to The Contractor advising of the variation's reasonable effect on the Service Order Price.
- B. Except in an emergency situation, Subcontractor shall not proceed with any variation unless such variation has been authorised in writing by The Contractor.

### **2.13.2 *Variations to Money Payable***

- A. If the variation causes a change in the compensation or program both parties shall mutually endeavour to agree the effect of the variation.
- B. Any adjustment to the Service Order Price resulting from the variation shall be valued at the appropriate rates and prices set out in the Service Order - Schedule of Rates & Prices or, in the absence of any appropriate rates and prices, a fair valuation shall be agreed between the Parties.

## **2.14 Taxes, Charges & Duties**

- a) Each Party shall pay taxes due on its own profit, income and personnel in its country of origin.
- b) Subcontractor's rates are exclusive of GST, VAT, withholding taxes and /or other indirect taxes.
- c) In the event that the Service provided by the Subcontractor and the Service Order price is subject to withholding tax in the governing law of the Area of Operation, then The Contractor is obliged to deduct any withholding tax from the net Service Order price.

## **2.15 Records & Audits**

- a) Subcontractor shall keep full and correct logs and records with respect to the Services performed and all related transactions.
- b) Any representative authorised by the Client may, upon written prior notice from The Contractor, audit the records of the subcontractor relating to all transactions related to Third Party and Subcontractor costs for the purpose of determining whether there has been compliance with this Agreement, and in particular for verifying any charges for the Services (other than the composition of a lump sum).
- c) The right of audit in respect of an invoice issued by the Subcontractor under the Service Order extends for a period of 12 (twelve) months after payment of that invoice by The Contractor.

## **2.16 Liens**

- a) Each party hereby irrevocably and unconditionally waives and releases:-
  - (i) all liens, possessory rights or other security rights or interests whatever as against the Services and each part thereof; and
  - (ii) all rights in rem under the admiralty jurisdiction of any country (including each State, Territory or province) as against all or part of the Services.
- b) Each Party indemnifies the other Party against any liens and other encumbrances upon or against any property of such a Party.

## **2.17 Intellectual Property Ownership & Confidentiality**

- a) All rights, interest in and title to Background Intellectual Property vest in the owner of the Background Intellectual Property.
- b) To the extent that it is possible, each of the parties grants to the other a royalty-free, non-exclusive, non-transferrable right to use Background Intellectual Property.
- c) Subcontractor shall hold the Background Intellectual Property techniques and all other information relating to the Contractor's business, and The Contractor shall hold the Background Intellectual Property, techniques and all other information relating to Subcontractor's business confidential, with the exception of that which falls into the public domain or as directed by a Court of Law. Such techniques and information shall remain confidential and the absolute exclusive property of the respective Party both during and after completion of the Services.
- d) All Intellectual Property and related proprietary information created under or arising out of the Services ("New Intellectual Property") will vest in Subcontractor as soon as the preparation, production or creation thereof commences.

## **2.18 Resolution & Disputes**

### **2.18.1 Notice of Disputes**

- A. If a dispute, controversy or claim arises between the Parties concerning any matter arising under this Agreement ("Dispute") then either party may deliver by hand or send by certified/registered mail to the other Party's Representative a notice of Dispute in writing identifying and providing details of the Dispute, as soon as practicable after the event giving rise to the Dispute.
- B. Written notice of any Dispute must be given to the other Party. That notice must:
  - (i) set out the facts on which the claim is based;
  - (ii) annex copies of correspondence and any relevant background material; and
  - (iii) contain detailed particulars of the quantification of the claim.

### **2.18.2 Dispute Procedure**

- A. Any Party claiming that a Dispute in connection with the Contract has arisen ("Claimant") will give notice to the other Party identifying such Dispute and designating its representative in negotiations being a senior officer of the Party with authority to settle the matter and the other Party will promptly give notice designating its representative in negotiation with similar authority ("Notified Party").
- B. The Parties agree that the resolution of any disagreement will escalate up the management chain in a timely manner and in the event that the issue is not resolved within fourteen (14) days and, in good faith, it will be referred to senior officers for determination.
- C. The senior officers of each Party will meet to seek to resolve the matter in good faith, within thirty (30) days of the receipt of the Notified Party of the notice described above.
- D. If the Dispute is not resolved in writing by the senior officers within such thirty (30) day period, any party may commence legal proceedings.
- E. Good faith means that the Parties will act in good faith towards each other and in a spirit of mutual trust and cooperation in the performance of their contractual obligations.

#### **2.18.3 Condition Precedent Litigation**

- A. Service of the notices under, and compliance with the process outlined in this clause 2.18.2 are conditions precedent to the commencement of any litigation in respect of a Dispute.

#### **2.18.4 Dispute Not to Delay Performance of Services**

- A. Notwithstanding the existence of the Dispute, each Party must continue to perform its obligations under the Agreement. The existence of a Dispute will not prejudice either Party's right to terminate this Agreement for any reason.

### **2.19 Governing Law**

- a) This Agreement and associated Service Order and the rights and obligations of the parties hereto shall be construed in accordance with and governed by the laws of Australia.

### **2.20 Notices & Contact Information**

#### **2.20.1 Notices**

- A. Unless otherwise stated in the Agreement all notices to be given under the Agreement must be in writing, and sent by personal delivery, airmail post, special courier or facsimile to the address of the relevant party as set out in the Form of Agreement and / or specific Service Order.
- B. Notices are effective when received by the recipient during the recipient's regular business hours.
- C. Notices which do not comply with the requirements of this Agreement are ineffective, and do not impart actual or any other kind of notice.

#### **Representatives and Contact Information**

- a) The representatives and contact information for each Party are set out in the Form of Agreement and / or specific Service Order.
- b) Each Party may change its representative or contact information by giving notice to the other Party.
- c) If a notice is given under clause 2.20.2(b), the replacement representative or contact information which is set out in the notice replaces the representative or contact information as set out the specific Form of Agreement and / or specific Service Order.

### **2.21 Duration**

- a) The Term of this Agreement shall commence on the date of this agreement and shall, unless otherwise agreed by the Parties, continue for a period of two (2) years.

### **2.22 Miscellaneous**

#### **2.22.1 Entire Agreement**

- A. The Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

#### **2.22.2 Waiver and Variation**

- A. A provision of or a right created under the Agreement may not be waived or varied except in writing signed by the Party or parties to be bound.
- B. No waiver of breach of any provision of the Agreement constitutes a waiver of any breach of any other provision of the Contract.

**2.22.3 Amendment**

- A. No amendment of this Agreement is effective unless made in writing and signed by authorised representatives of each Party.

**2.22.4 Severability**

- A. If any provision in the Agreement is void, voidable or unenforceable that provision will be severed and the rest of the agreement will remain in full force and effect.

**2.22.5 Survival of Indemnities**

- A. Each indemnity in the Agreement constitutes a continuing obligation, separate and independent from the other obligations of the Parties and survives expiry or termination of the Agreement.

**2.22.6 Enforcement of Indemnities**

- A. It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by the Agreement.

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### **3**

#### **SPECIAL TERMS & CONDITIONS**

All applicable terms and conditions of the The Contractor contract held with its Client (hereinafter referred to as the “Head Contract”) shall apply to the Subcontractor as identified in the specific Service Order at clause 4.1.2(b).

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## 4 SERVICE ORDER

Project Name:  
Service Order Number:  
Place of Project:  
Subcontractor:  
Commencement Date:  
Mobilisation Point:  
De-mobilisation Point:  
Period of Services:

### 4.1 Scope of Services

This Service Order confirms the agreement of the Parties for Subcontractor to perform the following Services in accordance with the Agreement, as follows :

### 4.2 Schedule of Rates & Prices

In consideration of the performance of the Services in accordance with the Agreement, DOF Subsea shall pay the Subcontractor in accordance with the following rates & charges

Table 1 – Personnel Rates			
Description	Unit	Qty	
<b>DOMESTIC – inside Australia</b>			
Services	Day		
Transit/standby	Day		
<b>INTERNATIONAL – outside Australia</b>			
Services	Day		
Transit/standby	Day		

Table 2 – Approved Third Party Costs		
Description	Unit	
Third Party Costs		

**Pricing Notes:**

- (a) Equipment – the following rates shall apply:
  - i) **Transit rate** – a reduced rate to the working rate which shall apply during transit of personnel from Mobilisation Point to the Site and from Site to the Demobilisation Point.
  - ii) **Standby rate** – a rate that shall apply when personnel are on standby and not in operation at the worksite.
  - iii) **Working rate** – a rate that shall apply when personnel are in operation at the worksite.
- (b) All invoices must reference Service Order number: \_\_\_\_\_.
- (c) Failure to do so, may result in a delay in payment.

**Signatures**

**The Parties agree to the Scope fo Services and Schedule of Rates & Prices outlined herein.**

Signed on behalf of the Subcontractor:



Signed on behalf of The Contractor:



Subcontractor's representative:      Date

The Contractor Representative:      Date

Print name

Print name

## 5 CERTIFICATE OF SERVICE COMPLETION – **SAMPLE ONLY**

**Project No.:**

**Date:**

**Service Order No.:**

**Subcontractor:**

**Address:**

1. In accordance with Clause 2.2.6 of the Agreement this is to certify that:
  - a) The Services have been finally and satisfactorily performed in accordance with the Service Order;  
and
  - b) Subcontractor has fulfilled all of its obligations under the Agreement.
2. Payment of \$..... held by The Contractor being processed and will be paid within 30 days.
3. There are no other outstanding matters\*\*.
4. The following matters remain outstanding\*\*
5. The Contractor confirms that the Services at the Site were completed on :
6. The Contractor agrees that Subcontractor is released from further activity relating to the Site and/or Area of Operation on \_\_\_\_\_.

**\*\* delete whichever is not applicable.**

DATED: \_\_\_\_\_

ISSUED BY: \_\_\_\_\_  
Subcontractor's Representative

AGREED BY: \_\_\_\_\_  
The Contractor's Representative