



TERMS AND CONDITIONS OF SUBCONTRACT

1. SUBCONTRACT FORMATION / ENTIRE AGREEMENT

- 1.1. This is Buyer's offer to purchase from Seller the items (collectively, the "Work") set forth on the face of the Purchase Order which references these Terms and Conditions of Subcontract (the "Purchase Order"). Acceptance is strictly limited to the terms and conditions included in this document. Seller's execution of this Subcontract or commencement of performance with respect to any Work shall constitute Seller's acceptance of this Subcontract and all its terms and conditions. Buyer objects to, and is not bound by, any term or condition that differs from or adds to this offer, unless specifically agreed to in writing by Buyer's Authorised Representative (whose name and contact information is listed on the face of the Purchase Order). Seller acknowledges that, as part of its proposal effort, it had an opportunity to review relevant documentation provided by Buyer. Seller warrants that it did such a review, that it notified Buyer in writing of any missing documentation, deficiencies, or concerns that Seller identified in any such documents, and that the issues raised by Seller were adequately addressed in this Subcontract at the time of acceptance.
- 1.2. This Subcontract represents the Parties' entire agreement in relation to the subject matter thereof, and supersedes all tendered offers and prior representations, communications, agreements, statements, and understandings concerning the same, whether oral or in writing.
- 1.3. Cubic shall be solely responsible for all liaison and coordination with the Customer on any and all matters relating to or arising from the Prime Contract and this Subcontract. Seller shall not communicate with the Customer in connection with this Subcontract except as expressly permitted by Cubic.
- 1.4. Both Parties acknowledge and accept that any signatory may sign by electronic signature, and any signature executed in this format constitutes a proper, lawful and binding execution of the documentation, creates a binding contract and agreement and is in accordance with the Contract and Commercial Law Act 2017 ("CCLA"). If either Party signs by electronic signature it must, if requested, provide written confirmation that that signature was legitimately applied with the relevant authority, that the signatory has full knowledge of the contents of this agreement and the electronic signature complied with section 228 of the CCLA if applicable. If this Subcontract or any notice issued hereunder is transmitted electronically, a Party shall not contest the validity of the Subcontract or any such notice on the basis that the Subcontract or notice contains an electronic signature of the Authorised Representative of both Parties.
- 1.5. For the avoidance of any doubt, a Party may from time to time replace or change any of the Party's Authorised Representative, but any replacement or change of the Party's Authorised Representative must be notified in writing to the other Party and shall only be effective upon such notification.



- 1.6. The recitals set forth above and the Appendices mentioned in and appended to this Subcontract form an integral part of this Subcontract.

2. DEFINITIONS AND SUBCONTRACT INTERPRETATION

- 2.1. In this Subcontract, unless expressly stated otherwise or indicated by context, any reference to any of the words and expressions defined in this Subcontract shall, where the context allows, be deemed to also include a reference to every and any part or unit of the objects or matters represented by such words and expressions.
- 2.2. As used in this Subcontract:
- a) "Authorised Representative" shall mean, in respect of each Party, each of the appointed representative of the Party whose names are identified and set out in the first page of this Subcontract.
 - b) "Background IP" shall mean IP which is created prior to or independently of this Subcontract.
 - c) "Base Period" shall have the meaning ascribed to it in Clause 3.2.
 - d) "Cubic's Program Manager" shall mean person appointed by Cubic and notified in writing to Seller who is responsible for all programmatic and technical issues arising under the Subcontract.
 - e) "Commercial-in-Confidence/Proprietary Information and Materials" shall mean any and all information (in any form or medium), documents, materials, software, programme relating to any aspect of the Work carried out and performed by Seller under this Subcontract and shall include but is not limited to:
 - i. the existence of this Subcontract and all particulars contained herein;
 - ii. details of any purchases made in connection with this Subcontract and the provisions of any related subcontract or supply agreement;
 - iii. any data or information issued or furnished to Seller in connection with this Subcontract with the marking "*Commercial-in-Confidence*" or "*Proprietary*", and any information or data derived or developed directly or indirectly from such data or information; and
 - iv. any other data or information issued or furnished to Seller by or on behalf of Cubic or the Customer and any information or data derived or developed directly or indirectly from such other data or information.
 - f) "day" shall mean a calendar day, including Holiday and Working Day.
 - g) "Deliverables" shall mean all hardware, firmware, software, data, and other items that Seller shall deliver to Cubic under this Subcontract.
 - h) "Effective Date" shall mean the date of this Subcontract or any other date as may be agreed in writing by the Parties.

- i) “Goods and Services Tax” shall mean the applicable goods and services in accordance with the Goods and Services Tax Act 1985 of New Zealand.
- j) “Foreground IP” shall mean IP which results from or is generated pursuant to or for the purpose of this Subcontract.
- k) “Furnished Equipment” shall mean any equipment, tooling, or machinery which belongs to Cubic and/or the Customer (as the case may be).
- l) “Furnished Information” shall mean all documents, designs, materials, specifications, data, user input, know-how, workflow information, methodologies, business models, maps, technical drawings which belong to Cubic and/or the Customer (as the case may be).
- m) “Furnished Property” shall mean the Furnished Equipment and Furnished Information, collectively.
- n) “Holiday” shall mean any public holidays as defined in the Holidays Act 2003 of New Zealand.
- o) “IP” shall mean all copyright, registered or unregistered designs, unregistered design rights, trade marks (whether or not registered), logos, get-ups, rights protecting goodwill and reputation, service marks, rights or protections equivalent or similar to copyright, topography rights, patents, petty patents, utility models, database rights, geographical indications, domain names, layout design rights, trade or business names, rights protecting trade secrets and confidential information, rights protecting reputation designations and rights under any international convention for the protection of any of the foregoing, whether registered or not, anywhere in the world, all other similar or corresponding proprietary rights, and all applications for the same and all benefits, privileges, rights to sue, recover damages and obtain relief anywhere in the world from any past, current or future infringements, misappropriation or violation of any of the foregoing rights.
- p) “Option Period” shall have the meaning ascribed to it in Clause 4.1.
- q) “Party” shall mean either Cubic or Seller and “Parties” shall mean both Cubic and Seller.
- r) “Quality Clauses” shall mean the specific provisions referenced on the face of the Purchase Order that outline the standards and requirements for the quality of the Work that is to be performed, delivered and/or provided by Seller under this Subcontract.
- s) “Seller’s Representative” shall mean each of Seller’s directors, officers, employees, servants, agents, lower-tier subcontractors and suppliers, regardless of their location.
- t) “Services” shall mean all items (other than Deliverables) that Seller shall perform for Cubic under this Subcontract.
- u) “Statutory Board” shall mean a body corporate or unincorporate established or constituted by or under any written law to perform or discharge specific public functions.
- v) “Subcontract Price” shall have the meaning ascribed to it in Clause 9.1.

- w) “Term” shall mean the Base Period and, where Cubic exercised its right pursuant to Clause 4, the Option Period, unless earlier terminated in accordance with the provisions of this Subcontract.
 - x) “Work” shall mean the Deliverables that Seller will be required to deliver and/or the Services that Seller will be required to perform (as the case may be) under this Subcontract.
 - y) “Working Day” shall mean any day except for Saturday, Sunday and Holidays.
- 2.3. Where the Subcontract provides for a benefit of two or more persons, the benefit binds or benefits each party jointly and severally.
 - 2.4. A reference to a person includes any natural person, company, judicial entity, association, statutory body, partnership, limited liability company, joint venture, trust, estate, unincorporated organisation or government, state, or any political subdivision, instrumentality, agency or authority.
 - 2.5. A reference to a Party includes that Party’s administrators, successors, and permitted assigns.
 - 2.6. Each Party will from time to time do all things, including executing all documents, necessary, or desirable to give full effect to this Subcontract.
 - 2.7. Where the last day of any period prescribed for the doing of an action falls on a Holiday, the action shall be done no later than the first Working Day immediately after the Holiday. For clarity, the doing of an action refers to the day where performance of an obligation under the Subcontract is due to be performed, including but not limited to date of delivery, date for due payment of liquidated damages, date of return of Deliverables repaired under warranty claim.
 - 2.8. Unless otherwise provided, a reference to any statute shall include a reference to that statute, subsidiary legislation, rule, regulation or statutory instruments made thereunder, as amended, modified or replaced from time to time.
 - 2.9. Words importing the singular shall include the plural and vice versa.
 - 2.10. The headings in this Subcontract are for reference only and shall not be taken into consideration in the interpretation or construction of this Subcontract.
 - 2.11. A reference to a clause includes a reference to a sub-clause of that clause.
 - 2.12. Measurements of physical quantity shall be in New Zealand legal units as prescribed under the Weights and Measures Act 1987 and the Weights and Measures Regulations 1999 of New Zealand.
 - 2.13. All information delivered under the Subcontract shall be written in English. Where such documentation is a translation into the English language, such translation shall be accurate and faithful to the original. All oral communications shall be in English.



- 2.14. Any ambiguity, conflict, and inconsistency between or within the documents comprising this Subcontract as well as any conflict or inconsistency between or within the provisions of those documents shall be resolved:
- a) by construing this Subcontract as a whole, and treating the documents and provisions as mutually explanatory; and
 - b) if the ambiguity, conflict, or inconsistency cannot be resolved by applying paragraph (a) alone, then when applying paragraph (a) those provisions which have a more specific scope of application shall be given precedence over those provisions within the same document which have a more general scope of application, and the documents comprising this Subcontract shall be given the following descending order of precedence:
 - i. Appendix I (Third Party Code of Conduct)
 - ii. These Terms and Conditions of Subcontract
 - iii. The face of the Purchase Order
 - iv. Appendix II (Specification)
 - v. Other Attachments
 - vi. Any other document incorporated by reference or otherwise referenced as part of the Subcontract.

3. EFFECTIVE DATE AND TERM

- 3.1. The Subcontract is legally binding and effective once it is executed by duly authorised representatives of both Parties (the “Effective Date”).
- 3.2. If applicable, the Subcontract shall remain in force for the firm period set forth on the face of the Purchase Order (the “Base Period”) unless terminated earlier in accordance with Clause 25 (SUSPENSION OR TERMINATION) or Clause 27 (TERMINATION FOR DEFAULT) below or extended in accordance with Clause 4 (OPTION TO EXTEND) below [if applicable].

4. OPTION TO EXTEND [if applicable]

- 4.1. If applicable, Seller grants Cubic the option to extend the Term of the Subcontract, at Cubic’s sole discretion, for the additional period(s) set forth on the face of the Purchase Order (the “Option Period”).
- 4.2. Unless otherwise specifically agreed between the Parties, all Work performed during the Option Period shall be subject to the same terms and conditions, mutatis mutandis, as the Work performed during the Base Period, and such additional Work shall form part of the Work defined in this Subcontract once Cubic has exercised the Option to Extend.



5. GENERAL OBLIGATIONS OF SELLER

- 5.1. Seller shall carry out and complete the timely delivery and performance of all Work in accordance with and as provided within this Subcontract (including, but not limited to Appendix II), and fulfil all other obligations required of Seller as specified herein. All Work shall be supplied and performed on time and comply with the requirements of this Subcontract.
- 5.2. Seller shall comply with all Quality clauses specified on the face of the Purchase Order and maintain a quality assurance system that allows Seller to achieve the same throughout the duration of this Subcontract. Seller shall permit Buyer and/or the Customer to review procedures, practices, processes, and related documents to determine such acceptability. Records of all quality control inspection work by Seller shall be kept complete and available to Buyer and the Customer. Seller shall promptly notify Buyer in writing of any noted discrepancies in Seller's processes, including any violation of or deviation from Seller's approved inspection/quality control systems.
- 5.3. Seller shall be solely responsible for the method and assurance of shipment for all Deliverables CIP to the destination point listed on the face of the Purchase Order. Seller shall pack, package, and mark all Deliverables in accordance with instructions or specifications referred to or incorporated by reference into this Subcontract and otherwise in accordance with best commercial practices. The Purchase Order number appearing on the face of the Purchase Order must appear on all packages, boxes, bills of lading, invoices, correspondence, and other documents pertaining to this Subcontract.
- 5.4. Seller warrants that: (a) all Work provided to Cubic under this Subcontract shall conform to all specifications and requirements of the Subcontract (including, but not limited to, those specified in Appendix II) and shall be free from defects in materials, design, and workmanship and conform to all generally recognised commercial practices and standards in the industry for a period of twelve (12) months from acceptance by Cubic or the Customer (whichever is later), are merchantable, and are fit for Cubic's / the Customer's intended purposes; (b) the materials (including, but not limited to, raw materials, parts, items, components, supplies, and end products) delivered to Cubic and/or used in the Deliverables provided to Cubic are new (i.e., previously unused and composed of previously unused materials); (c) the Work does not infringe any patent, copyright, trade mark, or other proprietary right of any third party or misappropriate any trade secret of any third party; (d) the Deliverables are new (not used or reconditioned) and not of such age or so deteriorated as to impair their usefulness or safety; (e) all Work is free from any liens or encumbrances; (f) the Deliverables do not contain any viruses, malicious code, trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (i) damage, destroy or alter any software or hardware; (ii) reveal, damage, destroy, or alter any data; (iii) disable any computer program automatically; or (iv) permit unauthorised access to any software or hardware; and (g) the Deliverables do not contain any third-party software



(including software that may be considered free software or open source software) that: (i) may require any software to be published, accessed or otherwise made available without the consent of Cubic; or (ii) may require distribution, copying or modification of any software free of charge. In the event of any breach of the foregoing warranties, Seller shall, at its own expense, repair or replace the non-conforming Deliverables and correct or re-perform the non-conforming Services to conform to this standard to Cubic's satisfaction and in accordance with Cubic's instructions. Deliverables requiring repair or replacement and Services requiring correction or re-performance shall be subject to the requirements of this Subcontract in the same manner and to the same extent as the originally delivered Deliverables and performed Services. If Seller refuses to repair or replace any non-conforming Deliverables or correct or re-perform any non-conforming Services, or Cubic reasonably determines that Seller cannot do so within the time required by Cubic and/or the Customer, Cubic may replace the non-conforming Work and hold Seller liable for all resulting costs incurred by Cubic. Even if the Parties disagree about the existence of a breach of the above warranties, Seller shall promptly comply with Cubic's direction to repair, replace, correct, or re-perform the Work in question. If the Parties later determine that Seller did not breach this warranty, Cubic shall equitably adjust the Subcontract Price (for FFP Orders) or Ceiling Price (for T&M Orders) accordingly.

- 5.5. Seller, at its sole expense, shall obtain and maintain all licences, certificates, and authorisations (including, but not limited to, export licences), permits, and other governmental authorisations or certifications required, without any restrictions or qualifications, needed for Seller to fulfil all its obligations under the Subcontract.
- 5.6. Seller shall engage, deploy, and retain only personnel, suppliers, and lower-tier subcontractors and suppliers who are skilled and competent in their trades and callings, and who hold all current and required licences and qualifications necessary for their trade and callings for the performance of this Subcontract. Cubic, in its sole discretion, may require Seller to remove from performance under this Subcontract any Seller personnel and lower-tier subcontractors and suppliers who are unskilled and incompetent, or whose continued engagement and deployment is inconsistent with the interest of military security.
- 5.7. Seller agrees that, as between Seller and Cubic, Seller shall be solely responsible for ensuring that the Work conforms in all respects to the requirements of the Subcontract in full (including, but not limited to, those set forth in Appendix II).
- 5.8. Seller shall take every reasonable step to ensure that only new and authentic materials are used in all Deliverables provided to Cubic. Seller may only purchase parts directly from Original Component Manufacturers (OCMs) and OCM Franchised Distributors. The use of any part that was not provided by these sources is not permitted without Cubic's express, prior, and written consent. Cubic and/or the Customer shall impound any suspect/counterfeit parts are furnished by Seller and notify Seller of this action. Seller shall promptly replace such suspect/counterfeit parts with parts acceptable to Cubic and the Customer, and Seller shall be liable for all costs



relating to the removal and replacement of those parts (including, without limitation, Cubic's external and internal costs of removing such counterfeit parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of Seller's Deliverables after counterfeit parts have been exchanged). At Cubic's request, Seller shall return any removed counterfeit parts to Cubic in order that Cubic may turn such parts over to the Customer for further investigation.

6. INDEPENDENT CONTRACTOR

- 6.1. Seller acknowledges and agrees that it is to perform all Work as an independent contractor and confirms that it is acting on its own behalf and not for the benefit of any other person. Personnel supplied or used by Seller hereunder are employees of Seller only and shall not, for any purposes, be considered employees or agents of Cubic. Seller assumes full responsibility for the actions and supervision of such personnel while performing work under this Subcontract. Cubic assumes no liability for Seller personnel.
- 6.2. Nothing in this Subcontract is intended to, or shall be deemed to, establish any agency, partnership, joint venture, or employment relationship between Cubic and Seller, or authorise Seller to act for, bind, or commit Cubic in any way. Seller shall bear sole responsibility for operating its business, including the payment of all taxes and other governmental payments required for anyone to operate its business.
- 6.3. Seller shall pay all labour compensation and benefits due its employees relating to this Subcontract and shall be responsible for all obligations respecting such employees relating to all applicable taxes, withholdings, benefits, ACC, pension, and New Zealand superannuation, and other similar responsibilities.
- 6.4. Seller shall indemnify and hold Cubic harmless from any and all liabilities, damages, expenses, costs, charges, or other losses of any kind arising out of any claims by any employee, consultant, agent, or workman of Seller unless the same is solely, directly, and proximately caused by Cubic's gross negligence or wilful default.

7. NOTICES

- 7.1. Unless the contrary intention appears, any notice or other communication sent or issued in connection with this Subcontract shall be deemed to be properly sent and effective and received in the ordinary course of the mode of transmission described herein, if such notice or other communication is delivered by hand to the Authorised Representative of the Party, or by post to the registered address of the Authorised Representative of the Party or by email to the Authorised Representative of the Party.
- 7.2. A notice or communication shall be deemed to have been delivered if:
 - a. sent by pre-paid post, in three (3) Working Days when sent domestically in-country and in eight (8) Working Days when sent by air mail from one country to another;



- b. hand delivered, when received at the address by the Authorised Representative or by the addressee if sooner; or
- c. sent as an email, when the email enters the addressee's information system and is available for download, unless the sender's information system receives a message within one Working Day that the email has not been delivered to the addressee, but,

if the receipt, transmission or entry into the information system is not on a Working Day or is after 5:00pm (recipient's local time) on a Working Day, the notice is taken to be received at 9:00am (recipient's local time) on the next Working Day.

- 7.3. A Party's address/es for service may be altered by notice given by that Party to the other Party pursuant to this Clause 7 (which will be effective if notice of the altered address is provided to the other Party in accordance with Clause 7.2) or by any other means (which will be effective only upon actual receipt).

8. ACCEPTANCE

- 8.1. At no additional cost to Cubic, all Work shall be subject to inspection and acceptance by Cubic and the Customer, notwithstanding payment or other prior inspections.
- 8.2. Cubic shall accept the Work or otherwise advise Seller in writing that the Work has been rejected, notwithstanding any payment or prior test or inspection.
- 8.3. If, in Cubic's or the Customer's opinion, Seller delivers non-conforming Work, Cubic may reject the non-conforming Work and require Seller to promptly correct or replace any non-conforming Deliverables and/or correct or re-perform any non-conforming Services at Seller's sole expense. Seller shall disclose in writing all corrective action taken. If Seller refuses to repair, replace, correct, or re-perform (as the case may be) any non-conforming Work, or Cubic reasonably determines that Seller cannot do so within the time required by Cubic and the Customer, Cubic may replace the non-conforming Work and hold Seller liable for all resulting costs incurred by Cubic. Seller shall complete all repair, replacement, re-performance, and other corrective action within the original delivery / performance schedule or such later time as Cubic reasonably may direct. Any action required of Seller in relation to the rejected Work shall not entitle Seller to any claim for postponement or price increase.
- 8.4. No payment, inspection, test, delay, or failure to inspect / test, or failure to discover any defect or other non-conformance shall relieve Seller of any of Seller's obligations under this Subcontract or impair any rights or remedies of Cubic.

9. PRICES AND PAYMENT

PRICING

- 9.1. If Seller is performing the Work on a firm, fixed-price (FFP) basis, as full and complete compensation for satisfactorily accomplishing the Work, Seller shall be paid the firm, fixed price set forth on the face of the Purchase Order (the "Subcontract Price").
- 9.2. If Seller is performing the Work on a time-and-material (T&M) basis, as full and complete compensation for satisfactorily accomplishing the Work, Seller shall be paid in accordance with the provisions specified in this Clause 9.2. Each invoice submitted to Cubic for payment of Work shall separately identify the hours, dollars, materials, travel, and other expenses expended by Seller in conjunction with the performance of that Work.

Time. For the services of Seller's employees performing the Work, Seller shall be paid the firm, fully burdened rates set forth on the face of the Purchase Order for all direct labour worked under the Subcontract. Fractional parts of an hour shall be paid on a prorated basis. These rates include all reimbursable wages, overhead, general and administrative (G&A) expenses, facilities capital cost of money, and profit.

Travel. Seller's personnel are authorised to travel hereunder only if and to the extent specifically directed in writing by Cubic's Program Manager. Travel invoices shall be supported by actual receipts. No profit shall be added to such costs.

Ceiling Price. The Not-To-Exceed Ceiling Price (the "Ceiling Price") of this Subcontract is set forth on the face of the Purchase Order. The Ceiling Price constitutes the maximum allowable cost (hourly rate payments and material costs) to be incurred by Seller in the performance of Work. Seller shall perform all Work for no more than the Ceiling Price, and Cubic shall not be obligated to pay Seller any amount above the Ceiling Price. Only Cubic's Authorised Representative has the authority to adjust the Ceiling Price through the issuance of a written modification to the Subcontract.

Back-Up Documentation. Seller shall maintain copies of all Seller-paid invoices, receipts, travel vouchers (including receipts for common carrier tickets, hotels and any individual items over \$25). Seller shall make such records available to Cubic and/or the Customer upon request. For reimbursable charges such as equipment, travel, per diem, and other unique costs, invoices shall reflect Seller's actual expense for the item.

- 9.3. The Subcontract Price set forth above in Clause 9.1 (if Seller will be paid on an FFP basis) and the hourly rates set forth above in Clause 9.2 (if Seller will be paid on a T&M basis) are firm, fixed, and inclusive of all: (a) GST and all taxes, duties, and government charges imposed or levied in New Zealand or overseas; (b) remuneration to Seller's officers, employees, agents, and lower-tier subcontractors or suppliers, including salaries, wages, fees, superannuation, ACC levies, holiday pay, annual leave, sick leave, long services leave, and all other benefits to which any of

them may be entitled under any subcontract with Seller or under any award, statute, or at common law; (c) costs in respect of procuring and maintaining the insurances required in connection with this Subcontract; (d) packaging and freight costs; and (e) costs of compliance with all other statutory, award or other legal or contractual requirements with respect to Seller's officers, employees, agents, and lower-tier subcontractors and suppliers.

INVOICING

9.4. A valid invoice must:

- a) describe the specific Work to which the invoice relates;
- b) be issued only after the final inspection of the Work to which the invoice relates, and Cubic's and the Customer's (as the case may be) acceptance of such Work;
- c) include the amount of the claim, correctly calculated in accordance with the requirements set forth herein;
- d) include the Purchase Order number appearing on the face of the Purchase Order;
- e) include any taxation payable (including GST) and method of calculation; and
- f) be a valid tax invoice.

PAYMENT

- 9.5. Cubic shall pay Seller within sixty (60) days of receipt of a valid invoice that is issued in accordance with Clause 9.4. Cubic may pay Seller by electronic funds transfer (EFT). Seller shall provide Cubic with Seller's electronic fund transfer information. Payment is made on the day Cubic gives instructions to execute payment. Cubic shall have a right of setoff against payments due or at issue under this Subcontract. Each payment made shall be subject to reduction to the extent of amounts which are found by the Customer or Cubic not to have been properly payable to Seller and shall also be subject to reduction for overpayments to Seller. Seller shall promptly notify Cubic of any such overpayments found by Seller.
- 9.6. If payment is to be made by telegraphic transfer, all bank charges associated with the telegraphic transfer outside New Zealand shall be borne by Seller. For such payment, Seller is required to provide Seller's Bank Account Number and bank address. If payment is to be made in a currency other than the currency of Seller's address, Seller shall provide the name and address of the corresponding bank of the country of that currency.
- 9.7. The payments under this Clause shall not prejudice or constitute a waiver of Cubic's right under the Subcontract or at law (including, but not limited to, Cubic's right to deduct any amount due or recover any liquidated damages, or reject any of the Work performed), and shall not waive or vary Seller's obligations under the Subcontract (including, but not limited to, Seller's responsibility to correct or re-perform any defective or deficient Work).



10. DELAY BY SELLER

- 10.1. Seller's timely performance is a critical element of this Subcontract. Seller shall strictly adhere to the performance schedule and delivery dates specified on the face of the Purchase Order. Seller's failure to do so shall constitute a material breach of this Subcontract.
- 10.2. The Parties acknowledge that, if Seller fails to perform the Work by the dates specified in this Subcontract:
- a. Cubic will suffer loss and damage (including, but not limited to, loss of availability or use/standby, increased costs and expenses); and
 - b. all such loss and damage will be impossible, complex, or expensive to quantify accurately in financial terms and the loss and damage arising from such delay may not be able to be precisely calculated or proved.

The Parties therefore agree that the amount of liquidated damages referred to in this Clause 10 is a genuine pre-estimate of the damage which Cubic would suffer in such event.

- 10.3. Seller shall: (a) promptly notify Cubic in writing of the reasons for the delay and the actions being taken to overcome or minimise the delay; and (b) provide Cubic with a written recovery schedule for Cubic's review and approval. This notification shall not change any performance schedule and shall not be construed as a waiver by Cubic of any performance schedule or date, or of any rights or remedies available to Cubic. Seller shall insert the substance of this Clause, including this sentence, into all relevant lower-tier subcontracts.
- 10.4. Seller must promptly notify Buyer if Seller or any of its officers, employees, agents, or lower-tier subcontractors or suppliers become aware that they will be unable to provide all or part of the Work in accordance with the performance schedule and delivery dates specified on the face of the Purchase Order.
- 10.5. If the performance of any Work is delayed for more than thirty (30) days, Cubic may, at its discretion, terminate the Term in accordance with Clause 27 (TERMINATION FOR DEFAULT). Seller's liability for liquidated damages under this Clause 10 in respect of the delayed Work shall be calculated until the date of notice of termination.
- 10.6. Subject to Clause 26 (FORCE MAJEURE) below, if Seller fails to perform the Work by the applicable dates specified in this Subcontract or by any extension thereof granted pursuant to an express provision of this Subcontract, Cubic may, in addition and without prejudice to all other rights available under this Subcontract or at law:
- a. cancel all or any such Work without being liable to Seller therefore in damages or compensation, and purchase from other sources, contractors, or suppliers for any Work which has been cancelled or similar Work, and all costs reasonably incurred by Cubic

resulting from such cancellation may be recovered from Seller (including, but not limited to, deduction or set off pursuant to Clause 11); or

- b. require Seller to pay to Cubic within thirty (30) calendar days of demand, compensation in the form of liquidated damages (and not as a penalty) at a rate of three tenths of a percent (0.3%) of the Subcontract Price or Ceiling Price (as applicable) for each day that the Work in question is delinquent, up to a maximum of the Subcontract Price or Ceiling Price (as applicable). Seller agrees that liquidated damages in the foregoing amounts are reasonable considering the anticipated harm caused by (i) the late delivery; (ii) the difficulties of the proof of loss; and (iii) the inconvenience, expense, or non-feasibility of otherwise determining and obtaining an adequate remedy,

provided always that Cubic shall have the right, in its sole discretion, to elect to claim general damages in common law from Seller, instead of imposing liquidated damages under this Clause 10.

- 10.7. In the event of a final judicial or arbitral determination that Cubic is not entitled in law to recover liquidated damages, Cubic shall remain entitled to recover such losses, expenses, costs, or damages as Cubic would have been entitled under general law as if the provisions in this Clause relating to the payment of liquidated damages had not formed part of the Subcontract. Seller's liability to pay Cubic such losses, expenses, costs, or damages shall not be limited in any way whatsoever by the amount of liquidated damages for which Seller might otherwise have been liable.

11. DEDUCTIONS FROM PAYMENTS DUE

- 11.1. Without limiting Cubic's rights under this Subcontract, the amount of any damages, levies, payments, liquidated damages, or debts owed by Seller to Cubic under the Subcontract (including insurance premiums in accordance with Clause 15) or imposed by law upon Cubic which are ordinarily required to be paid by Seller as a result of Seller conducting Work in connection to this Subcontract, may be deducted by Cubic from any monies payable by Cubic to Seller pursuant to this Subcontract.

12. TAXES, FEES, AND DUTIES

- 12.1. Seller shall be responsible for all corporate and personal income taxes, customs fees, duties, fines, levies, assessments, and other taxes payable under the laws of New Zealand, by Seller or its employees, including Seller's resident engineers and inspectors (if applicable), in carrying out its obligation under the Subcontract.
- 12.2. If Cubic receives a request from the Inland Revenue Department to pay on behalf of Seller and/or Seller's employees, or to withhold payments from Seller in order that Cubic subsequently may so pay, any of the above-mentioned taxes, fees, duties, fines, levies, and assessments, Seller hereby authorises Cubic to comply with the terms of such request.



- 12.3. Cubic shall pay to Seller a sum equal to the New Zealand Goods and Services Tax chargeable on the supply to Cubic of any services by Seller in accordance with the Subcontract.
- 12.4. Any invoice or other request for payment of monies due to Seller under the Subcontract shall, if Seller is a taxable person for the purpose of the New Zealand Goods and Services Tax, be in the same form and contain the same information as if it were a valid tax invoice for the purposes of the Regulations made under the Goods and Services Tax Act 1985 of New Zealand.

13. SUBCONTRACTING

- 13.1. Seller shall not subcontract the whole or any part of the Work without Cubic's express, prior, and written consent.
- 13.2. Seller shall submit a written list of its proposed lower-tier subcontractors and suppliers to Cubic for approval prior to engaging any such lower-tier subcontractor or supplier for performance of any Work in support of this Subcontract.
- 13.3. For the avoidance of doubt, Cubic will not approve any proposed lower-tier subcontractor or supplier that has been suspended, proposed for debarment, or debarred by the United States, New Zealand, or any other Government, or is otherwise ineligible to perform work in support of the Prime Contract in Cubic's sole and absolute determination.
- 13.4. Neither Cubic's approval for the award of any lower-tier subcontract nor the award of any such lower-tier subcontract for any part of the work under this Subcontract shall relieve Seller of any of Seller's liabilities or obligations under the Subcontract, and Seller shall be fully responsible and liable to Cubic for the performance, acts, and omissions of all lower-tier subcontractors and suppliers performing work for Seller in relation to this Subcontract.
- 13.5. Upon request by Cubic, Seller shall provide a copy of any contract, purchase order, or other agreement with any lower-tier subcontractor or supplier performing work for Seller in relation to this Subcontract.

14. EXPORT CONTROL

- 14.1. Seller shall comply with all applicable export control laws and regulations including, but not limited to, the U.S. International Traffic in Arms Regulation (ITAR) and the U.S. Export Administration Regulations (EAR).
- 14.2. Without limiting the foregoing, Seller agrees that it will not transfer any export-controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.
- 14.3. Seller agrees to notify Buyer if any Deliverables or Services are restricted by export control laws or regulations.

- 14.4. Seller shall immediately notify Buyer's Authorised Representative if Seller is, or becomes, listed in any Denied Parties List, UN and other sanctions list, or if Seller's export privileges are otherwise denied, suspended, or revoked in whole or in part by the New Zealand Government or any foreign government entity or agency.

15. INSURANCE

- 15.1. Seller, at its own cost and expense, shall procure and maintain throughout the Term of this Subcontract, insurance coverage sufficient for performance of all Work. Such insurance shall include, at a minimum, the following coverages:
- Public Liability Insurance: [\$10 million] per occurrence but unlimited in aggregate with a reputable insurer. Such insurance shall waive subrogation rights in favour of Cubic and shall provide that the referenced insurance may not be cancelled by the carrier for non-payment of premiums, change in coverage or otherwise, without thirty (30) days' prior written notice of cancellation to Cubic.
 - Professional liability and indemnity insurance: \$5 million in respect of any claim or event but unlimited in aggregate with a reputable insurer. Such insurance shall waive subrogation rights in favour of Cubic and shall provide that the referenced insurance may not be cancelled by the carrier for non-payment of premiums, change in coverage or otherwise, without thirty (30) days' prior written notice of cancellation to Cubic.
- 15.2. All policies of insurance shall be maintained on a world-wide basis, with reputable insurance companies rated A- (VII) by A.M. Best or other rating agency equivalent.
- 15.3. Cubic, in its sole discretion, may require Seller to produce the original insurance policy or policies (including details of any exclusions), and/or certificate(s) of liability insurance for verification by Cubic, and certified copies thereof upon written request by Cubic, before the commencement of any performance of Seller's obligations under this Subcontract.
- 15.4. Seller shall indemnify, defend, and hold Cubic, Cubic's parent company, affiliates, their officers, directors, employees and agents (collectively the "Cubic Indemnified Parties") harmless from any liability, claims, or loss, arising at any time and from any cause concerning, arising under, or related to Seller's performance of the Work and this Subcontract, other than solely by reason of the gross negligence or wilful act of Cubic, Cubic's employees, or Cubic's agents.
- 15.5. If Seller does not comply with this Clause or is unable or unwilling to produce evidence showing the same pursuant to Clause 15.3, Cubic may effect and keep in force insurance policies contemplated by this Clause 15 and pay such premiums as may be necessary for this purpose and from time to time deduct the amount(s) in accordance with Clause 11 (DEDUCTIONS FROM PAYMENTS DUE).



16. GIFTS, INDUCEMENTS AND REWARDS

- 16.1. Cubic's employees, Seller, and all Seller's lower-tier subcontractors and suppliers are expected to observe the highest standards of business ethics and comply with all applicable anti-corruption laws, regulations, and other associated requirements (collectively, the "Anti-Corruption Requirements").
- 16.2. These Anti-Corruption Requirements include, but are not limited to, the U.S. Foreign Corrupt Practices Act, New Zealand's Crimes Act 1961, and Cubic's Third Party Code of Conduct (which is appended hereto as Appendix I and may be updated by Buyer from time to time) – all of which are equally applicable to Seller and Seller's personnel performing work under this Subcontract.
- 16.3. Cubic may terminate this Subcontract if Seller or any person employed by Seller or acting on Seller's behalf (whether with or without Seller's knowledge) has done any act or omission which contravenes any Anti-Corruption Requirements. Seller shall be liable for any costs, expenses, or damages incurred by Cubic resulting from the aforesaid actions and/or termination of the Subcontract under this Clause except to the extent any such costs, expenses, or damages result from any unlawful or negligent act or omission on the part of Cubic.

17. CHANGE OF CONTROL

- 17.1. Where there is a change in control of Seller, Seller shall be required to notify Cubic as soon as reasonably practicable and, in any event, no later than ten (10) Working Days after the change has been approved. For the purposes of this clause, "control" means with respect to a company, the right to exercise directly or indirectly, more than 50% of the voting rights attributable to the shares of Seller and, with respect to any person other than a company, the possession, directly or indirectly, or the power to direct or cause the direction of the management or policies of such person. If there is a change in control of Seller, Cubic shall have the right to terminate the Term immediately by a notice in writing to Seller.
- 17.2. In such an event, Seller shall, in addition to the provisions in Clause 27 (TERMINATION FOR DEFAULT) provided for under the Subcontract:
 - a) promptly transfer to Cubic all Foreground IP (including, but not limited to, data, reports, records, and materials in Seller's possession or control which relate to the Subcontract);
 - b) return to Cubic all relevant Background IP (including, but not limited to, data, reports, records, and assets and any other materials belonging to Cubic and/or the Customer, in Seller's possession); and
 - c) provide all reasonable assistance in the handing over to a third party (if any) taking over the Subcontract.



18. FURNISHED PROPERTY

- 18.1. Cubic, in its sole discretion, may provide Furnished Property to assist Seller in performing the Work.
- 18.2. The Parties acknowledge and agree that neither Cubic nor the Customer provide any warranties or representations regarding the accuracy, merchantability, suitability, or fitness of any such Furnished Property, and that all such Furnished Property is provided on an “as is” basis.
- 18.3. At all times, Cubic or the Customer, as the case may be, shall retain title to all Furnished Property.
- 18.4. Seller shall ensure that the Furnished Property shall be used solely for performing Seller’s obligations under this Subcontract and used in accordance with any manuals or other operating instructions provided by Cubic.
- 18.5. At all times Seller shall use suitable precautions to prevent damage and corruption to the Furnished Property in accordance with good commercial practice. Seller shall, within three (3) Working Days of becoming aware that any Furnished Property is lost, destroyed, damaged, defective or deficient, notify Cubic of the event in writing.
- 18.6. Seller shall indemnify Cubic and the Customer, to the extent permitted at law, for all liability, losses, damages, and costs arising from or in connection to the loss or destruction of, damage to, or defects or deficiencies in, the Furnished Property, except to the extent that the loss, destructions, damage, defects, or deficiencies result from any unlawful or negligent act or omission on the part of Cubic or the Customer.
- 18.7. At no time shall Seller, or any of Seller’s lower-tier subcontractors or suppliers: (a) reverse engineer, modify, disassemble, or decompile, or allow others to reverse engineer, modify, disassemble, or decompile the Furnished Property; (b) incorporate any unauthorised software or code; (c) use the Furnished Property for any purpose other than for purposes expressly authorised; (d) relocate or transfer possession or control of the Furnished Property without Cubic’s prior, written permission; or (e) create or allow to be created any lien, charge, mortgage, or encumbrance over the Furnished Property.
- 18.8. Cubic also may require Seller to access facilities under the control or responsibility of the Customer, referred to as “Furnished Facilities”, for performance of the Work. If Seller and any of Seller’s lower-tier subcontractors or suppliers, employees, and/or agents attend or access Furnished Facilities, all personnel shall comply with any reasonable, lawful instruction and all security requirements notified to them by Cubic or an on-site Customer representative from time to time. Seller also shall ensure that the personnel on-site at Furnished Facilities comply with all on-site policies, do not bring weapons of any kind onto the site, are not under the influence of any controlled or uncontrolled substance or alcoholic beverage, do not conduct any business activities not related to this Subcontract, do not possess any hazardous materials of any kind, and remain in authorised areas only.



19. CONFIDENTIALITY AND SECURITY

- 19.1. Except with the express prior written consent of Cubic, Seller shall not disclose any Commercial-in-Confidence/Proprietary Information and Materials to any person other than a person employed or engaged by Seller who is or shall be carrying out the Work directly relating to this Subcontract where there is an established genuine need to know, or Seller's lower-tier subcontractors, lower-tier suppliers, or agents on a genuine need to know basis, where each entity has entered into contractual arrangements with Seller which contain obligations functionally equivalent to this entire Clause 19.
- 19.2. Seller shall be liable to Cubic for any breach of such obligation by any such lower-tier subcontractor or supplier, employee, director, or agent.
- 19.3. Seller recognises and agrees that the Commercial-in-Confidence/Proprietary Information and Materials is of a special, unique, and extraordinary character that gives such information and materials a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages, and that a breach of this Clause 19 will cause irreparable damage and injury to Cubic. Seller, therefore, expressly agrees that Cubic shall be entitled to, at its reasonable discretion, injunctive, and/or other equitable relief to prevent a breach of this Clause 19, or any other part thereof, in addition to any other remedies available to the Cubic.
- 19.4. Seller shall ensure that all information furnished to Seller or developed directly or indirectly in connection with this Subcontract shall be protected from unauthorised use and disclosure using the same standard of care that Seller uses to protect Seller's own confidential information and, in any event, no less than a reasonable standard of care.
- 19.5. In addition to the foregoing, Seller shall not make use of any information obtained directly or indirectly from Cubic or the Customer or compiled or generated by Seller during performance of this Subcontract which pertains to or is derived from such information, other than use for the purposes of this Subcontract, without the prior written consent of Cubic.
- 19.6. Seller shall maintain a register of all information furnished to Seller or derived from information or materials furnished to Seller in connection with this Subcontract. Seller shall, upon the completion, termination, or cancellation of this Subcontract, or upon Cubic's request at any time, return all information furnished to Seller or derived from information or materials furnished to Seller unless specifically directed otherwise in writing by Cubic.
- 19.7. Seller shall not publish or release, nor shall Seller allow or suffer the publication or release of, any news item, article, publication, advertisement, prepared speech or any other information or material pertaining to any part of the obligations to be performed under the Subcontract in any media without the prior written consent of Cubic. Further, Seller acknowledges that any consent provided by Cubic is contingent upon Cubic also obtaining the Customer's consent to any publication or release relating to this Subcontract.

20. EXCLUSION OF THIRD PARTY RIGHTS

- 20.1. A person who is not a party to this Subcontract shall have no right to enforce any of its terms for the purposes of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

21. DATA PROTECTION AND SECURITY OF NEW ZEALAND ORIGINATED DATA

Data Protection

- 21.1. Seller shall (and shall ensure that Seller's Representatives shall comply at Seller's or Seller's Representatives' own costs (as the case may be) with all Seller's and Seller's Representatives obligations under the New Zealand Privacy Act 2020 (and the regulations and codes of practice issued under this Act) which arise in connection with the Subcontract. For the avoidance of doubt, Clauses 21.2 – 21.15 shall not negate or modify the Seller's obligations under this Clause.
- 21.2. Seller shall not, and shall ensure that each of Seller's Representatives shall not, access, modify, monitor, use, or process Personal Information obtained or held in connection with the Subcontract, except as reasonably necessary to perform Seller's obligations under the Subcontract.
- 21.3. Seller shall not, and shall ensure that each of Seller's Representative shall not, disclose any Personal Information obtained or held in connection with the Subcontract to any third parties without the prior written consent of Cubic. Any request for Cubic's consent under this Clause 21.3 must include an explanation of why the proposed disclosure is necessary for the purposes of fulfilling Seller's obligations under the Subcontract. Seller shall immediately notify Cubic when Seller becomes aware that a disclosure of Personal Information may be required by law and cooperate at Seller's own costs with Cubic's requests and directions. The Parties acknowledge that Cubic's consent in accordance with this provision may be contingent upon Cubic first obtaining consent from the Customer for the disclosure.
- 21.4. Seller shall not: (a) cause or permit Personal Information obtained or held in connection with the Subcontract to be processed, stored, accessed, or otherwise transferred outside New Zealand; or (b) allow parties outside New Zealand to have access to such Personal Information, unless (in each case) with the prior written consent of Cubic, which shall not unreasonably be withheld, and subject to such conditions as Cubic may reasonably impose. Any request for Cubic's consent under this Clause 21.4 shall include an explanation of why the proposed transfer is necessary for the purposes of fulfilling Seller's obligations under the Subcontract. If consent is granted, Seller shall provide a written undertaking that the Personal Information which is transferred outside New Zealand will be protected to a comparable standard as such Personal Information is protected under the New Zealand Privacy Act 2020. The Parties acknowledge that Cubic's consent in accordance with this provision may be contingent upon Cubic first obtaining authorisation from the Customer for the disclosure.

- 21.5. Where Seller discloses Personal Information to any of Seller's Representatives in accordance with this Clause 21, Seller shall keep up-to-date documentation of the purposes for which the Personal Information is disclosed.
- 21.6. Seller shall ensure that all Personal Information obtained or held in connection with the Subcontract and any copies thereof, regardless of the medium of storage, and which is no longer necessary for the purposes of Seller's performance of the Subcontract is to be securely destroyed within seven (7) calendar days. Any Personal Information that is retained by Seller or any of Seller's Representatives after such Personal Information is no longer necessary for the purposes of Seller's performance of the Subcontract, or without the written authorisation of Cubic, is a material breach of the Subcontract. No later than seven (7) calendar days from the termination or expiry of the Subcontract, Seller shall provide a written confirmation that Seller or any of Seller's Representatives is no longer in possession of any Personal Information obtained or held in connection with the Subcontract or copies thereof, regardless of the medium of storage.
- 21.7. Seller shall ensure that each of Seller's Representatives who are or may be involved in performing Seller's obligations under the Subcontract:
- a. observe the provisions of this Clause 21;
 - b. are aware that failure to comply with this Clause 21 may be a criminal offence and may also lead to disciplinary or other action being taken;
 - c. make an undertaking in writing not to access, use, disclose or retain Personal Information obtained and/or held in connection with this Subcontract except for the purpose of performing their duties of employment in connection with this Subcontract; and
 - d. shall immediately notify Cubic as soon as they become aware that a disclosure of Personal Information may be required by law and to cooperate at that Seller's Representative own costs with Cubic's reasonable requests and directions.
- 21.8. Seller shall collate and submit to Cubic the completed undertaking from each of Seller's Representative within two (2) weeks from date of Subcontract, and thereafter within two (2) weeks from the date any new Seller's Representative commences involvement in performing Seller's obligations under this Subcontract.
- 21.9. Seller shall notify Cubic in writing and comply with all reasonable directions of Cubic before seeking the consent of any individual or communicating with any person for any purpose under Part 3 of the New Zealand Privacy Act 2020 in relation with Personal Information to be collected by or held by Seller in connection with this Subcontract.
- 21.10. Seller shall notify Cubic in writing and comply with all reasonable directions of Cubic before responding to any request from any individual pursuant to New Zealand Privacy Act 2020 in relation with Personal Information held by Seller in connection with this Subcontract.
- 21.11. Seller shall immediately notify Cubic when Seller becomes aware of a breach of any of the Clause 21.1 through to Clause 21.10 (inclusive) by Seller or any of Seller's Representatives.



21.12. Seller shall be responsible for the acts, defaults, neglects, or omissions of any of Seller's Representatives under this Clause 21.

Security

21.13. Seller shall take all reasonable measures to ensure that data held in connection with the Subcontract is protected against loss or damage (whether accidental or otherwise), and against unauthorised access, use, modification, disclosure, or other misuse and that only authorised personnel shall have access to the data.

21.14. Seller shall ensure that where data is disclosed to any of Seller's Representatives in accordance with this Clause 21, Seller's Representatives shall have in place suitable security safeguards to protect the data disclosed against unauthorised access, modification, use, disclosure, disposal or similar risks, whether accidental or intentional.

21.15. Seller shall comply with Cubic's reasonable requests, directions or guidelines in relation to the Personal Information held by Seller in connection with this Subcontract. Such requests, directions, and guidelines may relate (but are not limited) to Seller's possession, collection, use, processing, disclosure, storage, and destruction of Personal Information.

Termination

21.16. Seller shall immediately notify Cubic when Seller becomes aware of a breach of this Clause 21 by Seller or any of Seller's Representatives. Notwithstanding any other provisions in this Subcontract, if Seller breaches any provision of this Clause 21, Cubic shall be entitled to terminate this Subcontract with immediate effect by written notice without being liable to Seller for any damages or compensation. Seller shall hold Cubic harmless and indemnified against all actions, claims, and/or demands against Cubic arising from any act, omission, or negligence on the part of Seller and/or any of Seller's Representatives in relation to the handling of Personal Information obtained and/or held in connection with this Subcontract (including, but not limited to, all related costs and expenses).

21.17. This Clause 21 shall survive the termination or expiry of the Subcontract.

Definitions

21.18. For the purposes of this Clause 21, "**Personal Information**" means all information which identifies or which relates to an individual, whether living or deceased, whether true or not, in any form including all information which is defined to be "personal information" under the New Zealand Privacy Act 2020.

21.19. A reference to Personal Information held by Seller in connection with this Subcontract shall include Personal Information provided to, obtained by, held by or otherwise under the control of Seller in connection with this Subcontract.

22. WORKPLACE SAFETY & HEALTH

- 22.1. Seller and Seller's lower-tier subcontractors and suppliers shall comply with and satisfy all requirements under all laws and regulations relevant or applicable to performance of the Work and shall indemnify Cubic in respect of all costs and expenses and any liabilities whatsoever which may be incurred under or in connection with such laws and regulations. Without prejudice to the generality of the foregoing, Seller shall comply with all applicable regulations and by-laws of the following authority: (a) Ministry of Business, Innovation and Employment; (b) WorkSafe New Zealand; and (c) any other authorities having jurisdiction over the Work.
- 22.2. Furthermore, without limiting the foregoing, Seller and Seller's lower-tier subcontractors and suppliers shall ensure adequate familiarity, training, and compliance with the provisions of the New Zealand Health and Safety at Work Act 2015 and the regulations and codes of practice issued (collectively, "H&S laws") as a term of this Subcontract, and any other workplace safety and health regulations, laws and codes of practice (including under the Hazardous Substances and New Organisms Act 1996) as applicable to performance of the Work.
- 22.3. Seller shall be responsible to take all safety precautions to eliminate danger to Seller's workmen, users, visitors, the general public, and property of others during performance of the Work and shall fully comply with all instructions by Cubic to improve workplace safety.
- 22.4. By at least two (2) weeks before commencing performance of any Work, Seller shall submit a Risk Assessment of safety and health risks and a Health & Safety Program to eliminate or mitigate those risks for Cubic's approval. Seller shall ensure that the approved Health & Safety Program is strictly followed during performance of all Work and that all Seller's employees and lower-tier subcontractors and suppliers are properly supervised. Each month, Cubic and Seller shall review Seller's compliance with the Health & Safety Program, and Seller shall submit formal, written reports to Cubic after each such review.
- 22.5. Seller shall maintain all risk assessment, safety, and health records as required under the H&S laws and any other applicable laws throughout the duration of the Subcontract and make them available upon request to Cubic, the Customer, and (if required) to the relevant health and safety regulator (including WorkSafe New Zealand, Maritime New Zealand, Civil Aviation Authority or any other government agency designated to carry out health and safety regulatory functions).

23. INTELLECTUAL PROPERTY

- 23.1. Except as otherwise expressly provided in this Subcontract, Seller warrants that Seller has obtained or will in due time obtain all rights, relating to the use of any IP, which may be required for the purposes of this Subcontract without requiring any assistance from Cubic or the Customer. Cubic and the Customer shall not be obliged to enter into any further agreement or



licence arrangement with Seller or any third party in respect of the use of such IP delivered or required to be delivered in connection with this Subcontract.

- 23.2. All amounts payable for use of the IP (whether by Cubic, the Customer, or Seller) pertaining to or in connection with this Subcontract shall be deemed to be included in the Subcontract Price and hourly rates set forth on the face of the Purchase Order.
- 23.3. Nothing in this Subcontract shall affect any person's right to own or license Background IP.
- 23.4. All rights or title to, or interest in, all Foreground IP shall be the sole or exclusive property of the Cubic, vested in Cubic upon creation.
- 23.5. Seller hereby grants to Cubic a royalty free, fully paid, irrevocable, worldwide, perpetual, non-exclusive licence (including a right to sub-licence) to use, modify, and reproduce all Background IP which is or becomes vested in Seller and used in connection with this Subcontract so as to enable Cubic, the Customer, or another person on behalf of Cubic and/or the Customer to obtain the full benefit of the Work.
- 23.6. For the avoidance of doubt: (a) no title shall vest in Seller in any IP contained in any results, report, data, or information generated or produced by Cubic or another person on behalf of Cubic as a result of this Subcontract. Cubic shall own the title to all IP in any such results, report, data, or information generated or produced by the Cubic or another person on behalf of Cubic under or as a result of this Subcontract.
- 23.7. Prior to any lower-tier subcontractor or supplier commencing work, Seller shall make contractual arrangements so that Cubic and the Customer, as relevant, acquires:
 - (a) ownership of all Foreground IP produced by that lower-tier subcontractor or supplier unless otherwise agreed in advance in writing between Cubic and Seller; and
 - (b) a license to use all Background IP on terms no less extensive and no less favourable than those outlined within Clause 23.6.
- 23.8. If Seller or Seller's lower-tier subcontractor or supplier intends to sell or transfer their Background IP, Seller shall ensure that the purchaser of the Background IP and every successor in title to the interest in the Background IP has prior written notice of the licence that Seller or Seller's lower-tier subcontractor or supplier has granted to Cubic and the Customer.
- 23.9. If any licence granted or obtained in connection with this Clause 23 is registrable under any IP registration system in New Zealand, Seller shall:
 - (a) register the licence under the relevant IP registration system; and
 - (b) deliver copies of documentary proof of such licence registration to Cubic as soon as possible.



24. AUDIT AND INSPECTION

- 24.1. Cubic reserves the right to conduct inspections and audits, at its sole discretion, to ensure Seller's compliance with all terms and conditions of this Subcontract, including but not limited to Seller's management of confidential, classified and official data, information and materials provided by Cubic, compliance with the quality management or health and safety provisions outlined within this Subcontract, validate any claims for payment, or generally validating that Seller's performance under this Subcontract.
- 24.2. Where Cubic exercises Cubic's right to conduct inspections and audits, Seller shall grant, at Seller's own expense:
- a. full and free access to Seller's works, books, accounts, and records as and when required by Cubic for that purpose;
 - b. full and free access to all facilities, including but not limited to Seller's lower-tier subcontractor's facilities, as may be required by Cubic; and
 - c. such other assistance as Cubic may require.

25. SUSPENSION OR TERMINATION FOR CONVENIENCE

- 25.1. After giving seven (7) days' written notice to Seller, Cubic shall have the right to suspend or terminate this Subcontract, in whole or in part, at Cubic's convenience. Neither Party shall be liable to the other by reason of such suspension or termination save that Cubic shall pay Seller the price of the Work performed and accepted by Cubic. Seller shall refund the balance of any payments or deposits made with respect to the terminated work after deducting any outstanding sums owing by Cubic to Seller for such terminated work by reason of this Clause 25.

26. FORCE MAJEURE

- 26.1. A Party shall not be liable for any delay or failure to comply with the Party's obligations under the Subcontract if such delay or failure results directly from an event which is beyond the Party's control against which the Party would be unable to take precautions and which the Party cannot avoid even by using the Party's best efforts ("Force Majeure").
- 26.2. Force Majeure shall include the following:
- a. acts of civil or military authority, acts of foreign enemies, acts of terrorism or war; or
 - b. acts of God; or
 - c. any executive or legislative prohibition or restriction of export or import in any jurisdiction or territory, partially or otherwise.



- 26.3. For the avoidance of doubt, any failure or delay on the part of Seller to perform Seller's obligations under the Subcontract, resulting from the following circumstance(s) or event(s) shall not constitute Force Majeure:
- a. any governmental approvals, licences, authorisations, and permits including any failure or inability of Seller (including Seller's agent, lower-tier subcontractor or supplier, or carrier) to obtain or renew such approvals, licences, authorisations, and permits for the timely performance of the Subcontract; or
 - b. the failure or delay in proper performance of any lower-tier subcontractor or supplier or common carrier, including such party's bankruptcy or insolvency or compliance with any governmental laws and regulations.
- 26.4. If Seller is prevented from or delayed in performing Seller's obligations under the Subcontract as a result of the Force Majeure event, Cubic shall grant a reasonable extension of time, provided that Seller shall notify Cubic in writing of the Force Majeure event within ten (10) days of the commencement of such Force Majeure event or as soon as practicable upon Seller having actual or constructive knowledge that the Force Majeure event is likely to occur, whichever is earlier.
- 26.5. Without prejudice to the foregoing, Seller shall not be entitled to any extension of time in respect of any failure by Seller's agents, carriers, lower-tier subcontractors or suppliers to perform their obligations unless such agent, carrier, lower-tier subcontractor, or supplier would qualify for an extension of time if the provisions of this Clause were applied to them.
- 26.6. Upon the occurrence of any of the events mentioned in Clause 26.2, Seller shall, for the duration of such event, be relieved from Seller's obligation(s) under this Subcontract to the extent that Seller is prevented from performing those obligation(s) by a Force Majeure event, and provided that:
- a. the provisions of the Subcontract shall remain in force with respect to all other obligations under the Subcontract which are not affected by the Force Majeure event; and
 - b. upon cessation of the Force Majeure event, Seller shall resume Seller's performance of Seller's suspended obligations under the Subcontract.

27. TERMINATION FOR DEFAULT

- 27.1. If Seller defaults in the performance of any of his obligations under the Subcontract, Cubic may issue a notice of default to Seller informing Seller of Seller's default.
- 27.2. Seller shall, within twenty-one (21) days of the date of the notice of default, remedy the default or propose a solution acceptable to Cubic. If Seller fails to do so or if the default cannot, in the reasonable opinion of Cubic, be remedied by Seller, Seller shall be taken to have breached the Subcontract, and Cubic shall have the right to terminate the Subcontract, or cancel any part

thereof, by way of a notice of termination without being liable therefore in damages or compensation. Such termination shall take effect from the date of the notice of termination.

- 27.3. In the event of termination under Clause 27.2 above, Cubic shall have the right to purchase from other sources all the Work which remain unperformed at the time of termination or similar Work, and Seller shall be liable for and promptly pay to Cubic all costs that Cubic reasonably incurs in purchasing such replacement Work.

28. DISPUTE RESOLUTION

- 28.1. Prior to commencing court proceedings relating to a dispute (except proceedings for interlocutory relief), the Parties shall first attempt to resolve the dispute in a non-adversarial manner by referring the matter to senior managers within their respective organisations who have the authority to negotiate in good faith and direct some form of resolution.
- 28.2. In the event that the Parties are unable to resolve a dispute in accordance with Clause 28.1, If negotiations are unsuccessful, either Party may initiate proceedings in the courts of New Zealand, and each Party irrevocably submits to the exclusive jurisdiction of the New Zealand courts. Alternatively, if both Parties agree, the dispute shall be referred to and finally resolved by arbitration in Auckland, New Zealand by a sole arbitrator in accordance with the Arbitration Act 1996. The arbitration shall be conducted in the English language.
- 28.3. The commencement of any arbitration proceedings under this Clause 28 shall in no way affect the continual performance of the obligations of Seller under this Subcontract.

29. ASSIGNMENT / CHANGE OF OWNERSHIP OR PLACE OF PERFORMANCE

- 29.1. Seller shall not assign in whole or in part, Seller's rights or obligations under the Subcontract without Cubic's express, prior, and written consent.
- 29.2. If Seller intends to change the place of performance of work under this Subcontract from the place(s) identified in Seller's proposal, Seller shall provide prior written notice to Cubic.

30. VARIATIONS

- 30.1. No variation whether oral or otherwise in the terms of this Subcontract shall apply thereto unless such variation shall have first been expressly accepted in writing by Seller's and Cubic's Authorised Representative.
- 30.2. Cubic's Authorised Representative is the only person authorised to make any changes to the terms and conditions of this Subcontract. Any changes made by any Cubic personnel other than Cubic's Authorised Representative shall be void and without effect and shall not provide the basis for any equitable adjustment to the price outlined herein, performance requirements, or schedule. Seller shall immediately notify Cubic's Authorised Representative in writing whenever a change request has been received from a representative of Cubic other than Cubic's Authorised Representative, which would affect the terms and conditions, price, performance requirements,



schedule, or any other provision of this Subcontract. Pending direction from Cubic's Authorised Representative, Seller shall take no action to implement any such change.

- 30.3. Cubic's Program Manager or his/her duly authorised designee is authorised to issue technical direction to Seller. Such direction may include instructions which provide details regarding, or otherwise clarifying, the Work. This direction shall not constitute new assignments of work, or changes, modifications, or amendments, which justify any change to the Subcontract terms, conditions, or price. For the avoidance of any doubt, Cubic may from time to time replace or change Cubic's Program Manager, but any replacement or change of Cubic's Program Manager must be notified in writing to Seller and shall only be effective upon such notification.
- 30.4. In no event shall Cubic be liable to Seller either in contract, tort or otherwise, or for any form of damages for any act or omission on the part of Cubic concerning any variation or proposals for variations which do not comply with Clause 30.1 or for any Work performed by Seller pursuant to any variation which does not comply with Clause 30.1.

31. GOVERNING LAW

- 31.1. This Subcontract and all its subsequent variations shall be deemed to be made in New Zealand and shall be subject to, governed by, and interpreted in accordance with the laws of New Zealand for every purpose.
- 31.2. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Subcontract.

32. WAIVERS

- 32.1. Unless otherwise specifically and expressly provided for in this Subcontract:
- (a) no waiver, election, renunciation, or affirmation by either Party shall be effective unless it is expressly so stated in writing and signed by that Party's Authorised Representative; and
 - (b) Cubic's rights under or arising from this Subcontract or otherwise are cumulative.

33. SEVERABILITY

- 33.1. If any part of the terms, conditions, or provisions, contained in the Subcontract is determined to be invalid, unlawful, or unenforceable to any extent, such terms, conditions, or provisions shall be severed from the remaining terms, conditions, and provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.



34. COUNTERPARTS

- 34.1. This Subcontract may be executed in one or more counterparts and by electronic signature. Each counterpart will be an original, but all such counterparts will constitute a single instrument.

35. SURVIVAL

- 35.1. Any provision of this Subcontract which is expressly or impliedly intended to survive the termination or expiration of this Subcontract and any rights or obligations arising on such termination or expiration are deemed to survive, including provisions relating to Commercial-in-Confidence/Proprietary Information and Materials, intellectual property, governing law, dispute resolution, export control, privacy, security, audits, publicity, and any warranties, licences, indemnities, and insurance given under this Subcontract.