

## OTIS SITE-SUBCONTRACT AGREEMENT (NEW ZEALAND)

### SCHEDULE OF INFORMATION

#### ***SUBCONTRACTOR***

Name  
ABN  
Address  
  
Contact::  
Telephone:  
Fax:  
Email:

#### ***OTIS***

OTIS ELEVATOR COMPANY LIMITED  
NZCN 103000  
Address  
  
Contact::  
Telephone:  
Fax:  
Email:

**Subcontract Works:** means the work set out in the Statement of Works and Materials (Attachment B) and/or the materials set out in the Statement of Works and Materials (Attachment B).

**Subcontract Price:** The amount specified in the Payment Schedule (Attachment D) exclusive of GST that is paid in accordance with the schedule set out in Payment Schedule (Attachment D).

**Practical Completion:** means that Otis has certified that the Subcontract Works have been completed in accordance with the Statement of Works and Materials (Attachment B).

**Variation:** means any change to the Subcontract Works, including additions, increases, omissions to or from those set out in the Statement of Work and Materials (Attachment B).

**Otis** means Otis Elevator Company Pty Ltd, or any of its related bodies corporate, including but not limited to, Electra Lift Co Pty Ltd.

This ***Subcontract Agreement*** comprises this Schedule of Information, the General terms and Conditions at attachment A, plus:

1. Statement of Works and Materials, at attachment B;;
2. Program Schedule, at attachment C;
3. Payment Schedule, at attachment D;
4. Environmental Health & Safety Conditions at attachment E.

The parties agree to carry out their respective obligations in accordance with the terms of this *Subcontract Agreement*.

DATED this        day of        20        ("Effective Date")

EXECUTED for and on behalf of  
**Name of Subcontractor**

EXECUTED for and on behalf of  
**Otis Elevator Company Limited**

\_\_\_\_\_  
Signature of duly authorised representative

\_\_\_\_\_  
Signature of duly authorised representative

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Title/Position (print)

\_\_\_\_\_  
Title/Position (print)

**ATTACHMENT A – GENERAL TERMS AND CONDITIONS****1. SUBCONTRACT WORKS**

- 1.1 The Subcontractor shall perform the Subcontract Works in accordance with the Statement of Works and Materials (Attachment B).
- 1.2 The Subcontractor must ensure that any design, program or plan prepared by the Subcontractor will:
  - (i) be fit for its intended purpose;
  - (ii) meet any statutory requirements and the requirements of this Subcontract Agreement; and
  - (iii) not infringe any industrial or intellectual property rights of a third party.
- 1.3 If at any time the Subcontract Works, or any materials or goods used by the Subcontractor in connection with the Subcontract Works are not in accordance with this Subcontract Agreement, Otis may direct the Subcontractor to replace, correct, remove or vary it at no cost to Otis.
- 1.4 The Subcontractor must properly and diligently execute the Subcontract Works with the degree of skill, care and competence expected of a skilled tradesman, technical or professional person experienced in performing the same or similar work.
- 1.5 The Subcontractor must ensure that the Program Schedule (Attachment C) is adhered to at all times and immediately notify Otis, in writing, in the event of the Program Schedule is not being met or has reasonable belief that the Program Schedule will not be met.
- 1.6 All Subcontract Work must be conducted with no or minimal disruption to Otis, its employees, agents and customers.
- 1.7 The Subcontractor must comply with all applicable Environmental, Occupational Health and Safety Legislation, and with all reasonable requirements of Otis' health and safety policies and procedures, whilst performing the Subcontract Works. In performing the Subcontract Works, the Subcontractor shall comply with the Environmental Health and Safety Conditions specified in Attachment E.
- 1.8 During the Subcontract Works, or any rectification work, the Subcontractor must keep the direct and surrounding location of the Subcontract Works clean, safe, and remove all rubbish from the location on a daily basis. The cost of cleaning and rubbish removal shall be borne by the Subcontractor, unless otherwise specified in this Subcontract Agreement.
- 1.9 The Subcontractor shall only, at the sole discretion of Otis, be entitled to a reasonable extension of time for carrying out the Subcontract Works if:
  - (a) The reason for any cause of delay is beyond the reasonable control of the Subcontractor, and this cause will delay the execution or completion of the Subcontract Works.
  - (b) The Subcontractor gives Otis written notice within five (5) days of the Subcontractor becoming aware of an event that will cause delay. Such notice must provide full details of the reason for the delay, the expected duration of the delay, and any actions proposed to be taken by the Subcontractor at its own cost to mitigate the duration of the delay.
- 1.10 Otis shall determine when Practical Completion of the Subcontract Works has been achieved. This determination will be made in accordance with the criteria and provisions set out in the Statement of Works and Materials (Attachment B) and clauses 1.2, 1.3 and 1.4. Otis shall notify the Subcontractor in writing when it has determined that Practical Completion has been achieved.
- 1.11 The parties agree that the determination made by Otis pursuant to the provisions of clause 1.10 shall be final and binding and not subject to review.

- 1.12 The Subcontractor shall not sublet or assign any works or part of the works described in this Subcontract Agreement without prior written approval from the authorised Otis contract coordinator. Approval shall only be given subject to ensuring compliance with all applicable Subcontractor environmental health and safety (EH&S) obligations set out under this Subcontract Agreement and at law.
- 1.13 The parties agree that the Subcontractor shall be an independent contractor to Otis and that nothing contained herein shall be construed as creating any other relationship and that no change shall be construed as creating a joint venture or agency between Otis and the Subcontractor. Further, the Subcontractor shall be exclusively responsible for the control and direction of all those it engages to perform the Work. The Subcontractor shall assume full responsibility for the acts and omissions of such persons. The Subcontractor and its employees shall not at any time represent themselves as being employees of Otis.
- 1.14 Otis shall have the right to instruct the removal from the Works of any of the Subcontractors employees, servants or agents who in the reasonable opinion of Otis do not meet any Environmental Health & Safety Conditions set out in Attachment E, misconduct themselves or whose actions shall breach the terms of this Subcontract Agreement or the Statement of Work.
- 1.15 The Subcontractor acknowledges and agrees that it has been engaged by Otis pursuant to Otis' obligations to perform certain works under contract to Otis' customer ("Head Contract"). The Subcontractor has been given the opportunity to view the Head Contract, is aware of the Head Contract price ("Contract Price") and acknowledges and agrees that Otis may suffer loss or damage under the Head Contract should the Subcontractor fail to comply with its obligations under the Subcontract Agreement.
- 1.16 Otis may issue individual Purchase Orders for specified works pursuant to this Subcontract. The Statement of Work, Program Schedule and Payment Schedule in any Purchase Order shall be taken to be that term specified in the Subcontract.

## **2. PAYMENTS**

- 2.1 Otis shall pay the Subcontractor in arrears, unless otherwise provided for in this Agreement, and in accordance with the payment terms set out in the Schedule of Payments (Attachment D).
- 2.2 The Subcontractor shall only be entitled to issue an invoice upon the dates or the events set out in the Schedule of Payments (Attachment D). The invoice shall be on terms no less than sixty (60) days payment terms after receipt of correctly rendered invoice.
- 2.3 The Subcontractor must only issue invoices that comply with the *Goods and Services Tax Act 1985* ("Act"). To avoid doubt, Otis shall be under no obligation to make payment of any invoice that is not issued in accordance with the Act.
- 2.4 In the event of a dispute with an invoice provided by the Subcontractor, clause 2.2 shall not apply until the disputed invoice is resolved.
- 2.5 The Subcontractor shall not be entitled to interest on any invoice that is the subject of a dispute under the terms of clause 2.5.
- 2.6 **Rebates:** Where the Subcontractor performs PC Sum works, the Subcontractor shall provide Otis with a quarterly rebate equal to 10% of the value of PC Sum works performed by the Subcontractor.
- 2.7 Otis shall provide notice to the Subcontractor within 14 days of the end of each quarter (March, June, September and December) of the amount of rebate due under clause 2.6. The Subcontractor shall pay the calculated rebate to Otis within 30 days of receipt of this notice under clause 2.7.

### **3. ACCEPTANCE OF THE SUBCONTRACT**

- 3.1 This Subcontract Agreement created a binding legal relationship when signed by both parties.

### **4. VARIATIONS**

- 4.1 The Subcontractor may propose a variation to the Subcontract Works ("Variation"), or Otis may direct a Variation to the Subcontract Works.
- 4.2 The Subcontractor shall not commence any Variation nor be entitled to payment for any Variation until the Variation has been approved in writing by Otis.
- 4.3 Any Variation proposed by the Subcontractor pursuant to clause 4.1 shall include, but not be limited to, the following information:
- (i) description of the variation works;
  - (ii) costs to complete the variation works; and
  - (iii) time to complete the variations works.

### **5. INSURANCES**

- 5.1 The Subcontractor shall effect and maintain during the performance of the Subcontract Works with a reputable insurer the following policies of insurance:
- (a) public and products liability insurance for not less than \$AUD20 million for any single event;
  - (b) (where the Subcontract Works includes the provision of design services): professional indemnity insurance for not less than \$AUD5 million in respect of any single occurrence;
  - (c) workers' compensation and employer's liability insurance in accordance with applicable awards or legislation.
- 5.2 The Subcontractor must upon request by Otis provide Otis with certificates of currency for polices described in clause 5.1.

### **6. LIQUIDATED DAMAGES**

- 6.1 If the Subcontractor fails to bring the Subcontract Works to Practical Completion by the date set out in the Program Schedule (Attachment C), the Subcontractor shall be liable to pay Otis liquidated damages of 1% of the Contract Price for each week or part thereof that the Subcontractor fails to bring the Subcontract Works to Practical Completion after the Date for Practical Completion. The parties acknowledge and agree that liquidated damages payable under this clause 6.1 is a genuine pre-estimate of the loss and damage that Otis will suffer in the event that the Subcontractor fails to bring the Subcontract Works to Practical Completion by the Date for Practical Completion, as set out or otherwise described in the Program Schedule at Attachment C.

### **7. DEFECTS LIABILITY**

- 7.1 The Subcontractor warrants that the Subcontract Works against defects arising from defective design (where the Subcontract Works includes the provision of design services), defective material (except where the material is supplied to the Subcontractor by Otis) or workmanship for a period of twelve (12) months ("Defects Liability Period") from the date of Practical Completion as determined by clause 1.10.
- 7.2 Where parts are replaced, the replacement parts will be covered under the Defects Liability Period and replaced without cost to Otis except those parts that require replacement due to negligence, intentional conduct or mis-use by Otis or its employees.

**8. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY**

- 8.1 The Subcontractor must treat all information or documents provided by Otis under this Subcontract Agreement as confidential where designated by Otis as confidential or where the Subcontractor knows or ought to know that the information is confidential. The Subcontractor may use such information solely for the purpose of performing its obligations under this Subcontract Agreement, and may only disclose such information to persons who are aware and agree that such information must be kept confidential. The Subcontractor's obligations of confidentiality under this Subcontract Agreement do not extend to information that is, or after the date of this Subcontract Agreement becomes, public knowledge (otherwise than as a result of a breach of this Subcontract Agreement), or is required by law to be disclosed.
- 8.2 All intellectual property rights in any material brought into being by the Subcontractor for the purpose of performing the Subcontract Works shall vest on their creation with Otis. Otis grants to the Subcontractor a royalty free, non-exclusive, non-transferable license (with no right to sub license) to use such intellectual property for the purposes of the Subcontractor complying with its obligations under this Subcontract.
- 8.3 The Subcontractor shall, if requested in writing by Otis, procure from any owner of Moral Rights (as that term is defined in Part 4 of the *Copyright Act 1994*) in any material brought into being by the Subcontractor for the purpose of complying with its obligations under the Subcontract, an undertaking that that person will not seek to enforce their Moral Rights against Otis or any other third party.

**9. INDEMNITY BY THE SUBCONTRACTOR**

- 9.1 The Subcontractor shall indemnify Otis, its servants and agents and keep them indemnified against all damage, expense, loss or liability of whatsoever nature suffered or incurred by Otis or any third party claim which arises out of, or in connection with a breach by the Subcontractor of its obligations under this Subcontract Agreement or act or omission of the Subcontractor, except to the extent that such damage, expense, loss or liability or third party claim arises from any act or omission, or a breach of this Subcontract Agreement by Otis, its servants and agents.
- 9.2 The parties agree that the indemnity provided in clause 9.1 is a continuing obligation and shall survive the expiration or termination of this Subcontract Agreement.

**10. TERMINATION**

- 10.1 The Subcontract shall terminate three (3) years after the Effective Date, unless terminated earlier in accordance with this clause 10; or extended in writing by Otis.
- 10.2 If the Subcontractor is in breach of any of its obligations under this Subcontract Agreement, then Otis may give notice to the Subcontractor specifying the nature of the breach and giving the Subcontractor no less than five (5) working days to remedy the breach.
- 10.3 If the Subcontractor fails to comply with the terms of the Breach Notice, Otis may immediately terminate this Subcontract Agreement by serving a notice to that effect.
- 10.4 If the Subcontractor breaches a material obligation under the Subcontract, including but not limited to, (i) a breach of clause 13.4 (ii) entering any of the forms of external administration set out in Parts 15A or 16 of the *Companies Act 1993*, or (iii) becoming a person whom Otis, being a wholly owned subsidiary of a corporation registered in the United States of America, is prohibited from dealings with under the laws of the United States of America; Otis may:

- a. Terminate the Subcontract and any Purchase Orders issued pursuant to the Subcontract with immediate effect;
  - b. Be relieved of any obligation to make further payments to the Subcontractor; and
  - c. Be entitled to recover damages arising from the breach.
- 10.5 Otis may, at any time, terminate this Subcontract Agreement at its own convenience by giving the Subcontractor no less than thirty (30) calendar days written notice.
- 10.6 The Subcontractor must immediately cease the Subcontract Works upon the receipt of the notice referred to in clause 10.3 or 10.4 or 10.5.
- 10.7 If Otis exercises its rights under clause 10.3, 10.4 or 10.5, subject to other provisions of this Subcontract Agreement, Otis shall pay the Subcontractor a pro-rata amount of the Subcontract Price that represents those parts of the Subcontract Works performed by the Subcontractor up to and including the Subcontractor's receipt of the Termination for Convenience Notice, and the costs of all materials reasonably ordered by the Subcontractor for the performance of the Subcontract Works that were incurred by the Subcontractor prior to the Subcontractor's receipt of the notice referred to in clause 10.3, 10.4 or 10.5.
- 10.8 The Subcontractor shall upon receipt of the money referred to in clause 10.7 deliver to Otis the Subcontract Works performed and the material paid for pursuant to clause 10.7.

## **11. NOTICE**

- 11.1 Unless the contrary intention appears, any notice or communication under this Subcontract Agreement shall be effective if it is in writing, signed and delivered by the parties or their duly appointed representatives (as the case may be), at the addresses or facsimile numbers set out in the Schedule of Information, shown on cover page of this Subcontract Agreement, unless changed in accordance with clause 11.3.
- 11.2 A notice or communication shall be deemed to have been delivered:
- (i) by prepaid post, in 3 Working Days if sent within Australia and in eight (8) working days if sent by air mail from one country to another; or
  - (ii) by facsimile, at the time recorded by the transmitting machine, unless within 1 working day the sender is informed that the transmission was received in incomplete or garbled form; in which case a re-transmitted notice or other communication shall be received when it is effectively delivered.
- 11.3 The parties may change their address details as set out in Schedule of Information by delivering a notice of change of address to the other party in accordance with clause 11.1.

## **12. LAW OF SUBCONTRACT**

- 12.1 The law governing this Subcontract Agreement are the laws of New Zealand.
- 12.2 The parties submit to the exclusive jurisdiction of the state referred to in clause 12.1 above to hear and determine any dispute arising from this Subcontract Agreement.

## **13. NOT USED**

## **14. PRIVACY**

- 14.1 The parties agree that, where either party processes personal information (as that term is defined in the *Privacy Act 2020*, the party shall comply with its obligations under that Act in respect of the personal information.

**15. GENERAL**

- 15.1 Without limiting any other right or remedy Otis has under this Subcontract Agreement, any money owing to Otis in connection with any contractual arrangement with the Subcontractor may be deducted from moneys otherwise payable to the Subcontractor under this Subcontract Agreement.
- 15.2 The Subcontractor shall not assign any of its rights or obligations under this Subcontract Agreement, or subcontract or assign the Subcontract Works or any part of the Subcontract Works, without prior written approval of Otis. In the event that all or part of the Subcontract Works are subcontracted or assigned, the Subcontractor shall remain fully responsible in respect of the Subcontract Works carried out by party that the Subcontractor subcontracted or assigned the Subcontract Works to.
- 15.3 This Subcontract Agreement is the entire agreement between the parties and supersedes all previous agreements, proposals, representations, correspondence and discussions in connection with the Subcontract Works.
- 15.4 The Subcontractor acknowledges and agrees that it has been provided with a copy of the Otis Supplier Code of Conduct. The Subcontractor agrees to comply with the requirements of the Otis Supplier Code of Conduct, including:
- i) Complying at all times with applicable law, including laws prohibiting collusion, conflicts of interests, corruption, and unfair competition;
  - ii) Refraining (directly or indirectly) at all times from offering, promising, attempting to provide, or providing:
    - (a) any Corrupt Payment; or
    - (b) any Otis employee or Government Official, any ownership or financial interest in Vendor;
  - iii) Promptly and accurately recording in its Books and Records all transactions and expenses related to its work for Otis
- 15.5 To the full extent permitted by law and other than expressly set out in this Contract, the parties hereby exclude all implied terms.
- 15.6 Failure by either party to enforce a provision of the Contract shall not be construed as in any way affecting the enforceability of that provision or the Contract as a whole.
- 15.7 If any part of the Contract is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of the Contract shall not be affected and shall be read as if that part had been severed.
- 15.8 Otis or its nominee may, on reasonable notice to the Subcontractor, conduct an independent audit of, or investigation into, the Subcontractor's operations to verify the Subcontractor's compliance with these terms and conditions, the OTIS Supplier Code of Conduct, statutory requirements and its accounting and business practices in connection with the Subcontract Works.
- 15.8 The Subcontractor shall retain all records related to the Subcontract Works, and shall allow Otis access to its premises for the purpose of auditing such records, for a period of five (5) years from the Date of Practical Completion.

**ATTACHMENT B – Statement of Works and Materials**

*[Insert the WORKS AND MATERIALS DETAILS].*



**ATTACHMENT C – Program Schedule**

*[Insert the PROGRAM SCHEDULE]*

**ATTACHMENT D– Payment Schedule**

*[Insert the payment terms]*

*[Comments may include a description of the timing of when invoices should be raised to coincide with the provision of goods and services. For example, what percentage of progress claims may be made during the course of the service verses the percentage of the balance to be paid upon completion of the service].*

## **ATTACHMENT E – Environmental Health & Safety Conditions**

### **1. Subcontractor EH&S Obligations**

The Subcontractor shall work in a safe and environmentally responsible manner at all times.

- 1.1 Carry out any work only within the scope of the works described.
- 1.2 Provide experienced qualified and duly licensed personnel and adequate supervision to perform that work.
- 1.3 Ensure that no employee is permitted to work on any Otis site without safety induction training including training in Otis Employee and Subcontractor Safety Handbook, applicable aspects of the Otis World Wide Job Safety Standard (WWJSSS), Job Hazard Analysis and use of fall protection and any special site requirements.
- 1.4 The Subcontractor must ensure that all Subcontractor's employees and contractors are made aware of Otis' Onsite Safety System and its scope (comprising Code and safety training services provided by Otis' provider, currently Pegasus Safety & Training Pty Ltd utilising Onsite Track Easy Pty Ltd), and the use and operation of the Site Access Card (a site access swipe card carrying personal identification data linked with and used by the Onsite Safety System). Subcontractor will ensure all its employees and contractors carry their Site Access Card at all times when performing Subcontract Works on any site or premises, and acknowledge and agree that failure to immediately produce their current legible Site Access Card is grounds for immediate removal of such person from that site or premises, at Subcontractor's cost.
- 1.5 Respect and comply with Otis Employee and Subcontractor Safety Handbook, and applicable aspects of the Otis WWJSSS as updated from time to time, which shall be incorporated into the Statement of Work
- 1.6 Comply with all applicable safety laws, regulations and rules. This shall include labour laws and environmental laws, which shall include providing adequate notices relating to the Work to proper authorities and securing and paying for all necessary licenses or permits needed in connection with the Work.
- 1.7 It is the responsibility of the subcontractor to ensure that the personal protective equipment (PPE) initially provided by Otis is maintained in good condition and any replacement PPE is replenished like for like. All other equipment provided by Otis to the subcontractor remains the property of Otis and must be maintained in good condition. Any damaged or defective equipment is to be notified to Otis by the subcontractor and not used until it is replaced. Operators shall be trained and competent to use the personal protective equipment in accordance with manufacturer specifications, and the Otis Employee and Subcontractor Safety Handbook.
- 1.8 All lifting equipment, slings and tackles used on site must be adequate and regularly inspected and maintained by a competent person. Inspections should be recorded in an appropriate register in accordance with applicable Regulations and the Otis Employee and Subcontractor Safety Handbook. All lifting appliances must clearly display their maximum safe working load.
- 1.9 Ensure that all risks to employees, Otis personnel, customers and environment are identified and effectively controlled. If unsafe / environmentally unsound conditions are identified, immediate action is taken to address them.
- 1.10 Carry out regular audits and inspections to verify compliance of employees with Otis safe working practices and that suitable site conditions are provided.
- 1.11 Permit inspection / audit by Otis personnel or authorised representative at any time in respect of criteria advised by Otis. Agree that site can be shut down immediately if unsafe / environmentally unsound conditions are identified.
- 1.12 The Subcontractor shall report to Otis in writing immediately, but in no event any longer than 24 hours, any injury or dangerous occurrence to the Subcontractor's employees that occurs in connection with the performance of the Work. Further, the Subcontractor

will cooperate with Otis in investigating accidents / incidents, according to criteria that will be provided by Otis.

Provide adequate First Aid facilities and equipment in accordance with the Regulations for employees.

- 1.13 Any material or substance brought onto site which has health, fire or explosion risks must be used and stored in accordance with regulations and current recommendations, and that information in the form of a Material Safety Data Sheet (MSDS) must be provided to any other person who may be affected on site.
- 1.14 Ensure that workplaces are kept tidy and all debris, waste materials etc, and are cleared as work proceeds.
- 1.15 Waste shall be disposed of in appropriate containers, in compliance with any applicable MSDS, and otherwise in an environmentally sound manner.
- 1.16 Maintain specified levels of Public Liability and Workers Compensation Insurances, or other insurance as specified in contract, in respect of works subcontracted
- 1.17 Maintain records including: HS&E procedures; training records & certifications for employees working on sites; history of accidents, incidents, citations, prosecutions, records testing and inspection of safety gear, lifting equipment, electrical tools etc.