

Subcontract for Major Supply

[insert project number and
name]

Insert Georgiou Entity (Georgiou)

[Insert name of Supplier] (Insert ACN or ABN) (Supplier)

Project Document # [Insert Project Document Number]

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Details

FORM OF AGREEMENT

This Agreement is made the [insert date] day of [insert Month] [insert Year]

BETWEEN: [Insert Georgiou Entity] (ABN [Insert ABN])
[Insert Georgiou Address]
(Georgiou)

AND: [Insert name of Subcontractor] (ABN [Insert ABN])
[Insert Supplier Address]
(Supplier)

BACKGROUND

- A. The Supplier represents and warrants that it can supply the Supply Items to Georgiou.
- B. The Supplier has agreed to supply the Supply Items on the terms and conditions to this Agreement.

Formal Instrument of Agreement

THE OBLIGATIONS OF THE PARTIES

1. The Supplier agrees to supply and Deliver the Supply Items by the Date for Delivery in accordance with this Agreement.
2. Georgiou agrees to pay the Supplier the Price in accordance with this Agreement.

AGREEMENT DOCUMENTS

The documents that comprise this Agreement are:

1. this Formal Instrument of Agreement;
2. Schedule 14 - Special Conditions;
3. the General Conditions;
4. Schedule 2 - State and Territory Specific Conditions;
5. Schedule 1 - Agreement Particulars;
6. Schedule 4 - Supply Items and Specifications
7. Schedule 5 - Delivery Schedule; and
8. each other Schedule in numerical order.

PRECEDENCE

In the event of any ambiguity, discrepancy or conflict occurring between or within any document comprising this Agreement:

1. the provision that imposes the most onerous requirement on the Supplier shall prevail; and
2. otherwise, it is to be resolved according to the same order of precedence as set out in the clause above, with the documents higher in the list having higher priority.

Signed as an Agreement

Signed for and on behalf of Georgiou:

In the presence of:

Signature ←

Signature of Witness ←

Name

Name of Witness

Signed for and on behalf of the Supplier:

In the presence of:

Signature ←

Signature of Witness ←

Name

Name of Witness

General Conditions

1. PERFORMANCE

1.1 Obligation to supply

The Supplier must supply and Deliver the Supply Items to Georgiou and perform its other obligations under this Agreement in accordance with this Agreement, including the Specifications.

1.2 Acceptance of terms

By signing this Agreement or commencing the supply of the Supply Items, the Supplier irrevocably accepts that this Agreement will apply to the supply of the Supply Items. No terms or conditions proposed by the Supplier will apply to the supply and Delivery of the Supply Items.

1.3 Standard of the Supply Items

- (a) The Supplier warrants that, upon Delivery, the Supply Items will:
 - (i) match the description of the Supply Items in this Agreement (including the Specifications);
 - (ii) correspond with any sample which the Supplier provided to, or showed, Georgiou prior to this Agreement;
 - (iii) comply with all relevant Legislative Requirements;
 - (iv) be new and of merchantable quality (unless otherwise stated in this Agreement);
 - (v) be free from Defects in composition, materials and workmanship;
 - (vi) be of clear title and free from all liens, charges and encumbrances of any kind; and
 - (vii) be fit for the intended purposes communicated to the Supplier, for which these types of Supply Items are commonly provided and which could be reasonably anticipated by a competent and skilled supplier.
- (b) The warranties in clause 1.3(a) are in addition to any statutory or manufacturers' warranties applicable to the Supply Items.

1.4 Additional warranties

- (a) The Supplier represents and warrants that:
 - (i) it has carefully reviewed the description of the Supply Items prior to entering into this Agreement;
 - (ii) it is skilled in carrying out the supply and delivery of goods of the kind described in this Agreement;
 - (iii) it has made its own investigations and assessment of the work and risks involved in providing the Supply Items and has satisfied itself as far as can reasonably be done as to all circumstances affecting this Agreement and to have examined this Agreement before executing this Agreement;
 - (iv) it has informed itself of the nature of all materials necessary for the Supply Items, the means of access to the Delivery Location and the transport routes available for deliveries to the Delivery Location, and facilities at the Delivery Location and the availability of accommodation; and
 - (v) the supply of the Supply Items includes all incidental and related work that may arise from matters referred to, identified in, or to be reasonably inferred from or contemplated by, the description of the Supply Items and the requirements of this Agreement.

- (b) The Supplier acknowledges and agrees that Georgiou has:
 - (i) made no representations and given no warranties, with respect to the matters referred to in this clause 1.4; and
 - (ii) entered into this Agreement in reliance on the representations and warranties given in clause 1.4(a).

1.5 Supplier's general obligations

The Supplier must:

- (a) provide the Supply Items with a degree of skill, care and diligence and the standard expected of a competent supplier providing a supply of a similar kind;
- (b) perform its obligations under this Agreement:
 - (i) in accordance with all directions of Georgiou and Georgiou's Representative;
 - (ii) with due expedition and without delay and at all times in accordance with the Program; and
 - (iii) so as to achieve Delivery by the Date for Delivery,
- (c) ensure that the supply and Delivery of the Supply Items will be performed by appropriately qualified, skilled, experienced and trained Personnel;
- (d) supply at its own expense, all labour, plant, goods, tools, appliances or other property the Supplier requires to fulfil its obligations under this Agreement;
- (e) notify Georgiou no less than ten (10) Business Days prior to sourcing the supply of overseas goods and materials (including the Supply Items) of the country of manufacture;
- (f) supply to Georgiou any drawings in relation to the Supply Items required by Georgiou;
- (g) provide or obtain from manufacturers, subcontractors and suppliers, for the benefit of Georgiou, all warranties, guarantees or other contractual obligations for materials, equipment or goods used for or in connection with the supply and Delivery of the Supply Items which are described in this Agreement or, if nothing to this effect is described in this Agreement, as are given by manufacturers, suppliers and their contractors in the ordinary course of business; and
- (h) deliver the warranties, guarantees and other contractual obligations required under 1.5(g) to Georgiou as a condition precedent to receiving final payment under this Agreement.

2. PRICE

2.1 Payment

In consideration of the proper performance of the Supplier's obligations under this Agreement, Georgiou will pay the Supplier the Price.

2.2 Price

The Price and any rates or prices (together with any additions or deductions expressly provided for by this Agreement) and any rates or prices in this Agreement:

- (a) includes all costs, expenses, fees, customs duties and charges that may be incurred by the Supplier in performing all its obligations under this Agreement;
- (b) includes the provision and security of all materials, equipment, services, utilities, temporary works, consumables items, transport, plant, labour and supervision required to supply the Supply Items, even if not specifically mentioned in this Agreement;
- (c) includes the Supplier's profit, attendance, preliminaries, supervision and on site and off site overheads in connection with the performance of all of its obligations under this Agreement; and
- (d) will not be subject to any rise and fall in costs of materials or labour or otherwise, foreign exchange adjustment or any other adjustment for any reason,

except to the extent expressly provided by this Agreement.

2.3 Supplier acknowledgement

The Supplier acknowledges and agrees that it has made allowances in the Price and any rates or prices in this Agreement for all the risks and other matters for which it is responsible under this Agreement, including the matters that it has warranted under clause 2.2.

3. REPRESENTATIVES

3.1 Georgiou's Representative

- (a) Unless otherwise notified by Georgiou to the Supplier, Georgiou's Representative has the authority to act on behalf of Georgiou in discharging Georgiou's functions under this Agreement. This includes acting as the assessor, valuer or certifier in respect of any matter under this Agreement which requires an assessment, valuation or certification by Georgiou. Georgiou's Representative carries out all of its functions as an agent of Georgiou and not as an independent assessor, valuer or certifier.
- (b) The Supplier must comply with any directions of Georgiou or Georgiou's Representative.
- (c) Any notice that the Supplier is required to give to Georgiou under this Agreement may be given to Georgiou's Representative.

3.2 Supplier's Representative

- (a) The Supplier must ensure that at all times there is a Supplier's Representative. The Supplier's Representative is responsible for all daily communication to Georgiou from the Supplier.
- (b) The Supplier's Representative must be a competent and experienced person, authorised to negotiate and to bind the Supplier in all matters in relation to this Agreement. Matters within the knowledge of the Supplier's Representative are deemed to be within the Supplier's knowledge.

3.3 Changes and objections

Each party must notify the other in writing of any change in the identity of their representative. If Georgiou makes a reasonable objection to the appointment or continuation of the appointment of the Supplier's Representative, the Supplier must terminate the relevant appointment and nominate another Supplier's Representative.

3.4 Directions

- (a) Georgiou and Georgiou's Representative may issue directions to the Supplier in respect of anything under this Agreement.
- (b) Directions by Georgiou or Georgiou's Representative may be given in writing or given orally and then promptly confirmed in writing. The Supplier must not rely on any direction by Georgiou or Georgiou's Representative which is not given or promptly confirmed in writing.
- (c) The Supplier must comply with any direction of Georgiou or Georgiou's Representative within the time nominated, or if no time is nominated, as soon as reasonably possible. Except as provided in this Agreement, the Supplier has no Claim arising from or in connection with any direction.
- (d) The Supplier must:
 - (i) notify Georgiou's Representative if it intends to rely on any representation made, or which the Supplier considers has been made, by Georgiou or Georgiou's Representative; and
 - (ii) not rely on any direction, representation or notice which is not given or promptly confirmed in writing by Georgiou's Representative.
- (e) If the Supplier receives a direction from Georgiou's Representative (other than to address any breach of this Agreement or omission by the Supplier, which the Supplier

considers will adversely affect its ability to comply with this Agreement, it must notify Georgiou's Representative who shall then either:

- (i) withdraw the direction; or
- (ii) amend the direction to address the Supplier's concern, in which case the Supplier must comply with the amended direction.

4. SECURITY

This clause applies if an amount or percentage is stated in Item 13 of Schedule 1.

4.1 Security

- (a) Security is provided for the purposes of ensuring due and proper performance of this Agreement by the Supplier.
- (b) The Supplier must, within fourteen (14) days after the execution of this Agreement, provide Security:
 - (i) in the amount set out in Item 13 of Schedule 1;
 - (ii) in the form set out in Schedule 3, with no expiry date; and
 - (iii) given by a reputable Australian financial institution or insurance company approved by Georgiou.
- (c) Unless otherwise required by law, Georgiou will not hold on trust the Security or any proceeds received from Georgiou's recourse to the Security under this clause 4.1.
- (d) All stamp duty and other taxes payable in relation to the Security, and any additional Security, must be paid by the Supplier.

4.2 Recourse to Security

- (a) Georgiou may have immediate recourse to the Security without notice, including converting into money any Security that does not consist of money, to satisfy any loss, expense or damages Georgiou may incur or suffer as a consequence of any act or omission of the Supplier in connection with this Agreement or the performance of the Supplier's obligations under this Agreement.
- (b) The Supplier will have no Claim against Georgiou for any loss or damage that it may suffer (including Indirect or Consequential Loss) occasioned by use or recourse to the Security under this clause 4.2.
- (c) The Supplier indemnifies Georgiou from all claims, costs, expenses, losses and damages (including legal costs on a full indemnity basis), incurred in connection with defending or responding to any steps taken by the Supplier to injunct or otherwise restrain:
 - (i) Georgiou from having recourse to the Security;
 - (ii) Georgiou from using any sum or sums received from having recourse to the Security; or
 - (iii) the issuer of the Security from exercising its rights or performing its obligations under the Security.
- (d) Nothing in this clause 4.2 affects Georgiou's right after having recourse to Security to recover from the Supplier any debt, money or claim or to deduct or set-off any amount in accordance with this Agreement or call on any other security provided or procured by the Supplier or its parent company under this Agreement.

4.3 Replenishment of Security

If Georgiou has recourse to the Security, then Georgiou may require the Supplier to increase the amount of the Security under this clause 4.3, and the Supplier must, upon notice from Georgiou, replenish the Security to the level specified in Item 13 of Schedule 1 within five (5) Business Days of such notice.

4.4 Release of Security

Unless Georgiou has an outstanding Claim against the Supplier, Georgiou will:

- (a) within ten (10) Business Days after the Delivery and Acceptance of the last Supply Item, release half of the value of any Security held by Georgiou as at the date of Acceptance; and
- (b) within ten (10) Business Days of the expiry of the Defects Liability Period, release the remainder of any Security held by Georgiou as at the date of expiry of the Defects Liability Period.

5. PACKAGING AND TRANSPORTATION

5.1 Packaging and labelling

The Supplier must suitably pack, crate and label and transport the Supply Items:

- (a) to ensure that they are not damaged during Delivery, transit, loading, unloading and storage at the Delivery Location; and
- (b) in accordance with this Agreement, any directions of Georgiou or Georgiou's Representative and otherwise in accordance with all applicable Legislative Requirements.

Labour and equipment required for the loading or unloading Supply Items will be the responsibility and expense of the Supplier.

5.2 Transportation

- (a) Subject to clause 5.2(b), the Supplier is responsible, at its cost, for transportation of the Supply Items to the Delivery Location using the mode of delivery stated in Item 4 of Schedule 1 and the unloading of the Supply Items at the Delivery Location.
- (b) Georgiou will give the Supplier sufficient access to the Delivery Location to enable the Supplier to Deliver the Supply Items.

5.3 Compliance with traffic management plan

The Supplier must comply with any traffic management plan and directions given by any person with authority for traffic management, relating to the Delivery Location, and ensure that its Personnel also comply.

6. OFF-SITE STORAGE

- (a) Georgiou may, at any time before the Delivery of the Supply Items to the Delivery Location, direct the Supplier to temporarily store Supply Items in an Off-Site Storage Facility (Off-Site Item) and the Supplier must immediately comply.
- (b) The Supplier must:
 - (i) pack, crate and label the Off-Site Items to ensure they are not damaged during transit and prior to Delivery to Georgiou; and
 - (ii) ensure Off-Site Items are labelled in the names of Georgiou and the Supplier for the period of time that the Supply Items are Off-Site Items.
- (c) If compliance with a direction under clause 6(a) causes the Supplier to incur additional costs to that contemplated at the date of this Agreement, the Supplier will be paid its reasonable additional direct costs of complying with that direction, provided that the Supplier has provided evidence, to the reasonable satisfaction of Georgiou, that:
 - (i) title to the Off-Site Items will vest in Georgiou upon payment; and
 - (ii) the Off-Site Items are:
 - (A) clearly marked as the property of Georgiou; and
 - (B) securely stored in the Off-Site Storage Facility.
- (d) The Supplier must not remove any Off-Site Item from the Off-Site Storage Facility, except for the purpose of effecting Delivery.

7. DELIVERY AND ACCEPTANCE OF SUPPLY ITEMS

7.1 Time for Delivery

The Supplier must Deliver the Supply Items to the Delivery Location by the Date for Delivery.

7.2 Prior notice of Delivery

- (a) The Supplier must give Georgiou at least five (5) Business Days' notice of the time and date when the Supply Items will be Delivered to the Delivery Location. Georgiou may inspect, examine and witness the Delivery.
- (b) If the Supplier fails to give notice under clause 7.2(a), and the Supplier is unable to Deliver the Supply Items upon arriving at the Delivery Location, Georgiou will not be in breach of this Agreement and the Supplier will not be entitled to an Extension of Time or any other Claim.

7.3 When Delivery occurs

- (a) Delivery of the Supply Items will occur when:
 - (i) the Supplier has safely removed the Supply Items off its transporters and deposited the Supply Items at the part of the Delivery Location designated by Georgiou; and
 - (ii) Georgiou has acknowledged, in writing, its receipt of the Supply Items in accordance with clause 7.4.
- (b) The Supplier must ensure that when the Supply Items consist of machinery for which a licence to operate is required, the Supply Items are loaded and unloaded by a licenced operator.

7.4 Delivery dockets

- (a) All Supply Items Delivered by the Supplier to the Delivery Location must be accompanied by a delivery docket (Delivery Docket).
- (b) The Supplier must ensure that an authorised representative of Georgiou signs the Delivery Docket at the Delivery Location. Georgiou will not be liable to pay for the Supply Items unless the Delivery Docket is signed in accordance with this clause 7.4(b).
- (c) A signed Delivery Docket is not an admission that the Supply Items comply with this Agreement. For the avoidance of doubt, signing a Delivery Docket does not constitute Acceptance.
- (d) Any terms or conditions included in a Delivery Docket signed by or on behalf of Georgiou at the Delivery Location will have no application to either this Agreement or Georgiou.

7.5 Acceptance

- (a) Georgiou will be deemed to have accepted the Supply Items only on the earlier of:
 - (i) the date Georgiou gives written notice to the Supplier that the Supply Items have been accepted; or
 - (ii) ten (10) Business Days after the date the Supply Items are Delivered, provided that during that ten (10) Business Day period Georgiou did not notify the Supplier that any of the Supply Items were Defective.
- (b) Acceptance will not affect, relieve or reduce Georgiou's rights under clause 19.

8. WARRANTY DEED

If required to do so by Georgiou, the Supplier must, on or before the date of this Agreement, complete and execute a Deed of Warranty in the form set out in Schedule 6 in favour of the Principal and Georgiou.

9. PROGRAMMING AND TIME

9.1 Programming

- (a) Without limiting this clause 9.1, the Supplier must comply with the timing in any Head Contract program provided to the Supplier by Georgiou.
- (b) Within five (5) Business Days after the execution of this Agreement, the Supplier must:
 - (i) prepare a draft program for the performance of the supply and Delivery of the Supply Items that complies with any requirements in this Agreement, any Head Contract program and the requirements of Georgiou; and
 - (ii) provide the draft program to Georgiou in hard (paper) copy and soft (electronic copy) for approval.
- (c) Georgiou may either approve or reject the draft program. If Georgiou rejects the draft program, the Supplier must, at its cost, resubmit it (amended in accordance with Georgiou's reasons for rejection) to Georgiou for approval within three (3) Business Days of receipt of Georgiou's rejection notice.
- (d) Notwithstanding any other provision of this Agreement, the Supplier is not entitled to any Claim in relation to any delay to the Delivery of the Supply Items caused by Georgiou's disagreement with a draft Program or of any amended proposed Program prepared by the Supplier.
- (e) Upon Georgiou's approval of the draft program, it will become the Program. The Supplier must comply with the Program in undertaking its obligations under this Agreement.
- (f) The Supplier must promptly update or revise the draft program or, once accepted by Georgiou, the Program, at its own cost and resubmit it to Georgiou monthly (with its Progress Claims) and if directed by Georgiou because the Program:
 - (i) does not comply with clause 9.1(b)(i); or
 - (ii) no longer reflects the current status of the supply and Delivery of the Supply Items due to a delay (however caused), Extension of Time, Variation or a change in the sequence of performance of the supply and Delivery of the Supply Items.

9.2 Notice of delay

If the Supplier believes that anything, including any breach, act or omission of Georgiou, may delay the Delivery of the Supply Items by the Date for Delivery, the Supplier must promptly but in any event, within three (3) days after the Supplier becomes aware or ought reasonably have become aware of the delay, notify Georgiou in writing with details of the estimated extent of the delay and the cause.

9.3 Extension of Time Claim

- (a) Within seven (7) days after the commencement of the Delay Event, the Supplier must give a written Claim to Georgiou setting out the cause of the delay, the particular activities that are delayed, the Supply Item(s) which was affected, the Extension of Time that is claimed and an updated Program.
- (b) If the delay continues beyond the Extension of Time claimed by the Supplier under clause 9.3(a), the Supplier must give Georgiou an updated Claim every seven (7) days that satisfies the requirements of clause 9.3(a) until the Delay Event ends.

9.4 Entitlement and Assessment

- (a) Subject to clause 9.3, it is a condition precedent to the Supplier's entitlement to an Extension of Time that the Supplier demonstrates to the reasonable satisfaction of Georgiou that:
 - (i) the supply and Delivery of the Supply Items is delayed by any Delay Event which will prevent the Supplier from Delivering the Supply Items by the Date for Delivery;

- (ii) the supply and Delivery of Supply Items is not concurrently delayed by a cause that is not a Delay Event;
 - (iii) the Supplier has strictly complied with all of the notice and information requirements set out in this Agreement, including clause 9.3; and
 - (iv) the Supplier has taken all reasonable steps to minimise the effect of the Delay Event on the supply and Delivery of the Supply Items.
- (b) Subject to clause 9.3 above, Georgiou will determine the period of the delay to the Date for Delivery caused by the Delay Event the subject of the Supplier's Claim and extend the Date for Delivery by that period. If an extension of time is granted, Georgiou will notify the Supplier of the revised Date for Delivery.
 - (c) Georgiou may (without being obliged to do so) at any time and for any reason it thinks fit, extend the Date for Delivery. This right is solely for the benefit of Georgiou and may to be exercised in its absolute discretion, even if the Supplier is not entitled to an Extension of Time or has not claimed an Extension of Time.
 - (d) A delay or failure by Georgiou to extend the Date for Delivery will not cause that date to be set at large or the principle commonly known as the "prevention principle" to apply.

9.5 Delay costs

- (a) The Supplier accepts the risk of any and all loss, expense and or damage resulting from delay in, or disruption to, the supply and the Delivery of the Supply Items, and the performance of its other obligations under this Agreement except as provided for in this Agreement.
- (b) Except to the extent that this Agreement otherwise expressly provides, the Supplier will not be entitled to any additional payment or to any Claim as a result of the granting of an Extension of Time.

9.6 Earlier Delivery

- (a) Georgiou may direct the Supplier to Deliver the Supply Items on a date earlier than the Date for Delivery, and the Supplier must comply with that direction, unless the Supplier can demonstrate that it is not possible to Deliver the Supply Items earlier than the Date for Delivery.
- (b) If compliance with a direction under clause 9.6(a) causes the Supplier to incur additional costs to those contemplated at the date of this Agreement, the Supplier will be paid its reasonable, additional direct costs of complying with a direction under this clause unless at the time of the direction under clause 9.5(a), the Supplier's progress was insufficient to Deliver the Supply Items by the Date for Delivery.

9.7 Liquidated damages

- (a) If the Supplier fails to Deliver the Supply Items by the Date for Delivery, the Supplier will be indebted to Georgiou for liquidated damages at the rate stated in Item 6 of Schedule 1, if any, for every day after the Date for Delivery up to and including the date upon which the Supply Items are Delivered or the date that this Agreement is terminated pursuant to clause 26, whichever occurs first.
- (b) If, after the Supplier has paid or Georgiou has deducted liquidated damages, the Date for Delivery is extended, with the effect that the Supplier would not have incurred liquidated damages had the Extension of Time been granted earlier, then subject to the terms of this Agreement, Georgiou will repay to the Supplier that much of the liquidated damages in respect of the period up to and including the new Date for Delivery.
- (c) Each party acknowledges that:
 - (i) the liquidated damages, if any, that are stated in Item 6 of Schedule 1 are a genuine and realistic pre-estimate of the damages that Georgiou will suffer as a result of the Supplier's failure to Deliver the Supply Items by the Date for Delivery;

- (ii) such damages shall be a debt due and payable by the Supplier to Georgiou upon demand;
 - (iii) such damages are cumulative; and
 - (iv) the Supplier shall be liable to pay Georgiou all loss and damage, in excess of the aggregate amount of liquidated damages payable by the Supplier under this clause 9.7, which Georgiou may incur as a result of the Supplier's failure to deliver the Supply Items by the Delivery Date. Such loss and damage may include the delay, variation and acceleration costs associated with contracts that are affected by such failure and any damages for delay payable by Georgiou to the Principal under the Head Contract.
- (d) If Item 6 of Schedule 1 does not provide for any liquidated damages, or the liquidated damages are for any reason found to be unenforceable, Georgiou may claim general damages at common law for the Supplier's failure to Deliver the Supply Items by the Date for Delivery.
- (e) The exercise by Georgiou of its rights pursuant to clause 9.7 does not relieve the Supplier from any of its obligations or liabilities under this Agreement.

10. INSPECTION AND TESTING

10.1 Contractor's entitlement to test before Acceptance

Georgiou may at any time, whether at the Supplier's premises, the Delivery Location or any other place where the Supply Items are being manufactured or stored, test the Supply Items to ensure they comply with this Agreement.

10.2 Access for testing

- (a) The Supplier must:
- (i) ensure that Georgiou and its nominees have access to any premises and that all facilities are made available for Georgiou to inspect, test and examine any Supply Items; and
 - (ii) do all things necessary to assist Georgiou and its nominees inspect, test and examine any Supply Items.
- (b) Georgiou must give the Supplier reasonable notice of the time and date any testing will occur so that the Supplier or Supplier's Representative can be present. If the Supplier or its Representative doesn't attend, testing may still proceed.

10.3 Failure on tests or inspection

On completion of the inspections, tests or examinations, the Supplier will promptly rectify any Defects in the Supply Items identified in the inspections, tests or examinations.

10.4 Costs

Costs in connection with testing pursuant to clause 10 will be paid by Georgiou except where this Agreement otherwise provides or the test is required because of, or reveals a failure of, the Supplier to comply with this Agreement (including this clause), in which case the costs of testing (including any re-testing where required) will be paid by the Supplier.

11. TITLE AND RISK

11.1 Risk and title passes

- (a) Risk in the Supply Items passes to Georgiou upon Acceptance.
- (b) The Supplier indemnifies Georgiou against any loss of or damage to the Supply Items until the Supply Items are Accepted by Georgiou.
- (c) Title in a Supply Items passes to Georgiou on the earlier of:
- (i) Acceptance of a Supply Item; and
 - (ii) payment for a Supply Item.

11.2 Assistance with obtaining approvals

The Supplier must (at its cost), if necessary or if requested by Georgiou, provide all assistance and documentation required by Georgiou for Georgiou to obtain approval to use the Supply Items, including for any Legislative Requirements.

11.3 Supplier's warranty

The Supplier warrants that upon passing of title in the Supply Items pursuant to clause 11.1(c), Georgiou will:

- (a) receive title to the Supply Items free of any liens, charges and encumbrances; and
- (b) be entitled to complete and quiet possession of the Supply Items.

12. LEGISLATIVE REQUIREMENTS

12.1 Compliance

The Supplier must comply with all Legislative Requirements.

12.2 Audit

The Supplier must provide all assistance and access to its offices, workers and records to enable Georgiou, the Principal and any government agency to conduct audits on the Supplier's compliance with clause 12 and any Legislative Requirements relating to safety or the environment. If any non-conformance is detected, the Supplier must immediately rectify the non-conformance at its own cost.

12.3 Industrial relations

- (a) The Supplier acknowledges and agrees that it is responsible for industrial relations involving its subcontractors, consultants or employees or agents.
- (b) From the Commencement Date, the Supplier agrees, to the extent permissible under applicable Legislative Requirements, to comply with and be bound by the provisions of any applicable Industrial Instrument, Code and other Legislative Requirements. The Supplier must take all steps and measures to avoid and to minimise the consequences of industrial disputes affecting the supply or Delivery of the Supply Items.
- (c) The Supplier must keep Georgiou fully informed of any disputes, potential industrial disputes, or demands by its subcontractors, consultants or employees or agents or their representatives and any other circumstances which could lead to industrial action affecting the continuity of the supply or Delivery of the Supply Items or risks to the health and safety of any persons.
- (d) The Supplier must comply, at its cost, with any reasonable direction by Georgiou issued with the objectives of reducing industrial disputation.
- (e) The Supplier must, during any industrial or safety dispute or stoppage, maintain all of the resources which it is required to supply or Deliver the Supply Items if there was no dispute or stoppage.
- (f) The Supplier must ensure that, at all times each of its employees and those of its subcontractors and suppliers:
 - (i) working in Australia (including at the Site) has the right to work in Australia, including in accordance with the provisions of a relevant work visa. Where an employee is working under a work visa, the Supplier must provide to Georgiou immediately upon request any information required by Georgiou in relation to the work visa;
 - (ii) working in Australia (including at the Site) is correctly classified in accordance with any applicable Industrial Instrument; and
 - (iii) is adequately trained and hold appropriate experience, qualifications, training, licences, tickets and certificates of competence.

12.4 Re-performance at Supplier's cost

If the Supplier fails to comply with an obligation under this clause 12, Georgiou may:

- (a) require the Supplier to suspend the performance of any aspect of its obligations under this Agreement, at its own cost, until the relevant non-compliance has been rectified; and
- (b) perform or have performed the obligation on the Supplier's behalf and all expenses incurred by Georgiou are recoverable from the Supplier as a debt due and payable to Georgiou.

12.5 Environmental Requirements

The Supplier must:

- (a) ensure it complies with all Environmental Law and all relevant industry standards;
- (b) ensure all equipment arriving on the Delivery Location:
 - (i) must be fit for purpose;
 - (ii) have no oil leaks; and
 - (iii) must be in a condition that will not adversely affect the Environment;
- (c) ensure all plant and equipment arriving on the Delivery Location have a plant weed hygiene certificate and be visually free of organic material;
- (d) report all substance spillages to Georgiou's Representative;
- (e) ensure there will be no negative impact to sensitive receptors in relation to noise, dust or vibration, and in the event of a complaint, a report including corrective actions will be made to Georgiou's Representative; and
- (f) provide Georgiou with monthly waste reports (which must include the waste stream type with measurements stated in tonnes).

12.6 Personal Property and Securities Act 2009 (Cth)

- (a) The words 'Accession', 'Commingled', 'Financing Statement', 'Personal Property', 'Security Interest' and 'Verification Statement' have the meanings given to them in the *Personal Property Securities Act 2009* (Cth) (PPSA).
- (b) The parties acknowledge that this Agreement may constitute a Security Interest in favour of Georgiou.
- (c) If Georgiou determines that this Agreement (or a transaction in connection with it, including any Supply Items) is or contains a Security Interest, the Supplier agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Georgiou asks and considers necessary for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
 - (ii) enabling Georgiou to apply for any registration, complete any Financing Statement or give any notification, in connection with the Security Interest; or
 - (iii) enabling Georgiou to exercise rights in connection with the Security Interest.
- (d) Georgiou is not required to give any notice under the PPSA (including notice of a Verification Statement) unless the notice is required by the PPSA to be given (even though the parties have waived the right to receive notice).
- (e) The Supplier must notify Georgiou as soon as the Supplier becomes aware of any of the following:
 - (i) if any Personal Property which does not form part of Georgiou's Personal Property becomes an Accession to Georgiou's Personal Property and is subject to a Security Interest in favour of a third party;
 - (ii) if any of Georgiou's Personal Property is located or situated outside Australia or,

upon request by Georgiou, of the present location or situation of any of Georgiou's Personal Property; or

- (iii) if the Supplier parts with possession of Georgiou's Personal Property.
- (f) The Supplier must not:
 - (i) create any Security Interest or lien over any Personal Property that Georgiou has an Security Interest (other than Security Interests granted in favour of Georgiou);
 - (ii) sell, lease or dispose of its interest in Personal Property that Georgiou has an Security Interest in;
 - (iii) give possession of the Supplier's Personal Property that Georgiou has a Security Interest or Georgiou's Personal Property to another person except where Georgiou expressly authorises it to do so;
 - (iv) permit any of Georgiou's Personal Property to become an Accession to or Commingled with any asset that is not part of the Supply Items or any land not within Georgiou's ownership or control; or
 - (v) change its name, relocate its principal place of business outside Australia or change its place of registration or incorporation without first giving Georgiou 15 Business Days' notice.
- (g) Everything the Supplier is required to do under this clause is at the Supplier's expense.
- (h) Neither Georgiou nor the Supplier will disclose information of the kind mentioned in section 275(1) of the PPSA and the Supplier will not authorise, and will ensure that no other party authorises, the disclosure of such information. This clause does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) (b), (d) and (e) of the PPSA.

13. WORK HEALTH AND SAFETY

13.1 General

- (a) The Supplier must:
 - (i) comply with all WH&S Laws and all relevant industry standards and Codes;
 - (ii) take all steps reasonably practicable to ensure:
 - (A) the health and safety of workers; and
 - (B) that the health and safety of other persons is not put at risk from work carried out;
 - (iii) attend any inductions or such other safety meetings required by Georgiou, the Principal or any other person with control or management of the applicable part of the Delivery Location pursuant to any Legislative Requirements;
 - (iv) comply with all lawful directions issued by Georgiou's Representative or any person with control or management of the applicable part of the Delivery Location pursuant to any Legislative Requirements relating to workplace health and safety;
 - (v) comply with any relevant health, safety, environment and quality management plans of Georgiou and the Principal;
 - (vi) maintain appropriate safety precautions and programs so as to prevent injury to all persons or damage to property on, about or adjacent to the Delivery Location to the standard required by law;
 - (vii) consult, cooperate and coordinate with and otherwise provide all information required by Georgiou and others who are on or adjacent to the Delivery Location to enable them to ensure that they can comply with all Legislative Requirements concerning workplace health and safety;
 - (viii) implement and comply with all necessary security requirements of Georgiou for the Delivery Location;

- (ix) ensure that all work arising from or in connection with this Agreement is risk assessed and executed in a manner that ensures the health and safety of persons present on or adjacent to the Delivery Location;
 - (x) report to Georgiou, within the timeframes described, any of the following arising from or in connection with this Agreement:
 - (A) Notifiable Incidents - initial notice immediately and a detailed report within one Business Day of occurrence;
 - (B) any personal injury which is not a Notifiable Incident - initial notice within one Business Day of occurrence and a detailed report within five Business Days of occurrence;
 - (C) any accident or incident which is not a Notifiable Incident which involves, or could have involved, exposure of persons to risk to their health and safety - notice within two Business Days of the occurrence; and
 - (D) property damage to any property - initial notice within one Business Day of occurrence and a detailed report within five Business Days of occurrence; and
 - (xi) in the manner required by Georgiou, but in any event, in sufficient detail for Georgiou to understand the event and specifying what changes, if any, the Supplier has identified to prevent a similar event reoccurring. The Supplier must participate in any investigation undertaken by or on behalf of Georgiou in relation to the event.
- (b) If Georgiou's Representative reasonably considers that there is a risk to health and safety of workers or other persons, or damage to property arising from or in connection with this Agreement, Georgiou's Representative may direct the Supplier to change its manner of working at the cost of Supplier and without entitlement to any Claim.

13.2 Hazardous Chemicals

- (a) The Supplier must provide to Georgiou any Safety Data Sheets (SDS) and register concerning any Hazardous Chemicals, which are required under WH&S Regulation, as well as the quantity, it or its agents or subcontractors may use, handle or store arising from or in connection with this Agreement.
- (b) The Supplier must ensure copies of all SDS and the register are kept at the Delivery Location and readily accessible to workers and emergency services personnel.
- (c) The Supplier must ensure that any Hazardous Chemicals used, handed or stored at the Delivery Location are correctly labelled and the risks associated with using, handling or storing the Hazardous Chemicals are managed.
- (d) The Supplier must only bring Hazardous Chemicals to the Delivery Location if they have been:
 - (i) authorised by Georgiou; and
 - (ii) the above requirements in sub-clause (a) have been met.

14. WHS SITE REQUIREMENTS

While working on or in connection with a worksite owned or controlled by Georgiou (including the Delivery Location) (Worksite), the Supplier is required to work in accordance with all applicable work health and safety systems, rules, policies and procedures of Georgiou or the Principal. The Supplier is responsible for ensuring any other party engaged to supply or perform work or services on behalf of the Supplier in connection with this Agreement are made aware of and comply with such systems, rules, policies and procedures.

14.1 Personal Protective Equipment (PPE)

The minimum personal protective equipment on a Worksite for all workers will be:

- (a) hard hat;
- (b) safety boots with non-slip soles and steel-cap toe protection (and for those workers

working on uneven and soft surfaces (e.g. civil construction sites), lace-up safety boots);

- (c) high visibility vest (if shirt/jacket is not high visibility);
- (d) safety glasses;
- (e) suitable protective gloves for the work they are performing;
- (f) long sleeve shirts;
- (g) trousers;
- (h) UV protected eyewear; and
- (i) sunscreen lotion.

14.2 Worksite Induction

- (a) The Supplier's subcontractors, consultants, workers or agents will, at the Supplier's cost, be required to register and complete Georgiou's General HSEQ Online Induction and undertake project or business unit site specific HSEQ induction (Worksite Induction) prior to accessing the Worksite.
- (b) If Georgiou confirms in writing that the Supplier's subcontractors, consultants, workers or agents are not required to attend a Worksite Induction, then such persons must be accompanied on the Worksite at all times by an authorised representative of Georgiou.
- (c) It is recommended that persons requiring a Worksite Induction contact the Worksite prior to attending the Worksite.

Note: Further direction can be found in the Subcontractor HSEQ Requirements.

14.3 Training and Competency

- (a) The Supplier is responsible for providing workers who:
 - (i) are suitably competent and qualified to perform their contracted tasks; and
 - (ii) have completed any legislatively required training related to building and construction works.
- (b) If the Supplier has attended the Worksite Induction and will access the Worksite unsupervised, its personnel must hold a Construction Safety Awareness card and carry it on them at all times.

14.4 Supplier Plant & Equipment Requirements

- (a) All plant and equipment brought to the Worksite by the Supplier must be managed in accordance with work health and safety laws and all relevant industry standards and Codes.
- (b) The Supplier must also ensure that the plant and equipment:
 - (i) is fit for purpose;
 - (ii) undergoes a compliance inspection prior to commencement;
 - (iii) has an operator's manual relevant to the item of plant which is:
 - (A) to be kept with the plant at all times; and
 - (B) readily accessible to workers who will use the plant;
 - (iv) undergoes daily maintenance inspections and maintains records of same;
 - (v) is serviced as per the manufacturer's specification; and
 - (vi) has any defects identified promptly repaired. Non-compliant plant/equipment that poses a risk to health or safety will be tagged with an 'Out of Service' tag or removed from the Worksite.
- (c) The Supplier must be able to provide Georgiou, upon request, documented evidence that the above requirements have been met.

14.5 Pre-start Meetings

- (a) The Supplier's subcontractors, consultants, workers or agents must attend all morning pre-start meetings at the designated site start time unless otherwise advised by Georgiou in writing.
- (b) If unable to attend at the designated time, the Supplier's subcontractors, consultants, workers or agents are to read the pre-start meeting minutes and sign the attendance sheet as evidence that these have been read and understood.
- (c) In all other instances, the Supplier's subcontractors, consultants, workers or agents will be required to report to Georgiou's site office and contact the site supervisor.

14.6 Toolbox Meetings

The Supplier's subcontractors, consultants, workers or agents must attend all project toolbox meetings as requested by Georgiou.

14.7 HSEQ Management Meetings

The Supplier must provide a representative to attend all project/facility monthly HSEQ management meeting as requested by Georgiou.

14.8 Risk/ Hazard Management

The Supplier's subcontractors, consultants, workers or agents must be required to:

- (a) complete a risk assessment (i.e. a 'Take 5') as and when directed by Georgiou; and
- (b) report hazards as and when identified.

14.9 Emergency Response

The Supplier's subcontractors, consultants, workers or agents will be required to participate in any on site emergency response drills. Georgiou must inform them of any drills to be conducted to ensure no work to be carried out at the same time will put the health and safety of workers or other persons at risk.

14.10 Fitness for Work

- (a) The Supplier must ensure its subcontractors, consultants, workers or agents:
 - (i) present themselves fit for work at all times for the work they are required to perform;
 - (ii) abide by Georgiou's 0% breath alcohol limit when on the Worksite;
 - (iii) not enter the Worksite under the influence of illegal drugs or substances; and
 - (iv) consent to testing to verify compliance as required.
- (b) Persons recording a positive result to testing will be treated in accordance with the Worksite's alcohol and other drug policy. Georgiou will require those testing positive to be removed from the Worksite at the Supplier's expense. Workers who return a positive test must not be allowed to return to the Worksite without Georgiou's prior written consent. Any alcohol or other drug policy as part of its WHS Management Plan (or Health and Safety Coordination Plan) will also apply and take precedence over any other policy, if there are any inconsistencies.
- (c) The Supplier's subcontractors, consultants, workers or agents must not possess, use, consume, distribute or sell alcohol, illicit or non-prescribed drugs or misuse prescribed medication while performing work for Georgiou.
- (d) The Supplier must provide any medical information to Georgiou in regards to workers entering the Worksite that may impede their ability to perform their work, or place themselves or others at risk, or should be known in the event of an emergency.

14.11 Workplace Inspections and Audits

The Supplier must participate in scheduled or random WHS workplace inspections and audits to be carried out from time to time as requested by Georgiou. The Supplier also agrees that

they may be subject to an audit at the request of Georgiou to examine the extent and robustness of its system for managing WHS.

15. WHS MANAGEMENT PLAN

This clause applies if stated in Item 6A of Schedule 1.

- (a) Prior to the Commencement Date, the Supplier must:
 - (i) prepare an occupational safety and health system plan (Health and Safety Plan); and
 - (ii) provide the Health and Safety Plan to Georgiou for approval.
- (b) Georgiou will notify the Supplier of any reasonable revisions that it requires to the Health and Safety Plan and the Supplier must promptly make those revisions provided that they do not breach any Legislative Requirement.
- (c) Georgiou can notify the Supplier of any reasonable revisions that it requires to the Health and Safety Plan if there are any inconsistencies with Georgiou's work health and safety systems and processes, the WHS Management Plan or Health and Safety Coordination Plan.
- (d) The Health and Safety Plan must be approved in writing by Georgiou before the Supplier commences work.
- (e) The Supplier must ensure that safe work method statements for any High Risk Construction Work are provided to Georgiou before that High Risk Construction Work commences.
- (f) The Supplier must implement, accommodate and immediately comply with:
 - (i) the Health and Safety Plan; and
 - (ii) Georgiou's:
 - (A) work health and safety systems and processes; and
 - (B) WHS Management Plan or Health and Safety Coordination Plan.
- (g) The Supplier must ensure its subcontractors, consultants, workers or agents engaged in the performance of this Agreement immediately comply with matters at clause 15(f).

16. NATIONAL CODE

This clause 16 applies if stated in Item 6C of Schedule 1.

- (a) The Supplier must comply with the National Code. A copy of the National Code is available from the Australian Building and Construction Commission (ABCC).
- (b) Compliance with the National Code shall not relieve the Supplier from responsibility to perform this Agreement or from liability for any Defect in the Supply Items arising from compliance with the National Code.
- (c) Where a change in this Agreement is proposed and that change would affect compliance with the National Code, the Supplier must submit a report to Georgiou and the Commonwealth specifying the extent to which the Supplier's compliance with the National Code will be affected.
- (d) The Supplier must maintain adequate records of the compliance with the National Code by:
 - (i) the Supplier;
 - (ii) its subcontractors;
 - (iii) consultants; and
 - (iv) its related entities (as defined in the National Code).
- (e) If the Supplier does not comply with the requirements of the National Code in the performance of this Agreement such that a sanction is applied by the ABCC, Minister for Employment or the Commonwealth, without prejudice to any rights that would

otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Supplier or a related entity (as defined in the National Code) in respect of work funded by the Commonwealth or its agencies.

- (f) While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, the Supplier may give preference to subcontractors and consultants that have a demonstrated commitment to:
 - (i) adding and/or retaining trainees and apprentices;
 - (ii) increasing the participation of women in all aspects of the industry; or
 - (iii) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
- (g) The Supplier must not appoint a subcontractor or consultant in relation to the project where:
 - (i) the appointment would breach a sanction imposed by the Minister for Employment; or
 - (ii) the subcontractor or consultant has had an adverse Court or Tribunal decision (not including decisions under appeal) for a breach of the National Code, workplace relations law, work health and safety law, or workers' compensation law and the tenderer has not fully complied, or is not fully complying, with the order.
- (h) The Supplier agrees to require that it and its subcontractors or consultants and its related entities (as defined in the National Code), provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the ABCC, with access to:
 - (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to the project and Supply Items subject of this Agreement; and
 - (iii) interview any person,as is necessary to demonstrate its compliance with the National Code.
- (i) The Supplier agrees that the Supplier and its related entities (as defined in the National Code) will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the ABCC, to produce specified information within a specified period.
- (j) The Supplier must comply with any applicable workplace relations management plan ('WRMP', as defined in the National Code), to the extent applicable to the Supplier, and must provide the ABCC with all required access and assistance in relation to the Supplier's compliance with the National Code.
- (k) The Supplier must ensure that all subcontracts impose obligations on subcontractors and consultants equivalent to the obligations under this clause.

17. CHAIN OF RESPONSIBILITY

The Supplier must comply, and ensure that its subcontractors comply, with all laws relating to chain of responsibility regulation, including but not limited to Heavy Vehicle National Laws, to the extent applicable and cooperate with Georgiou and any other duty holders at the Delivery Location and elsewhere for compliance.

18. DELIVERY LOCATION MATTERS

18.1 Supplier's access

- (a) Provided that Georgiou is given access to the Delivery Location by the Principal (if applicable), Georgiou will give the Supplier sufficient access to the Delivery Location as is necessary to enable the Supplier to Deliver the Supply Items. The Supplier may only use the Delivery Location for the supply and Delivery of the Supply Items.

- (b) Entry to the Delivery Location by the Supplier and its subcontractors, consultants or employees or agents engaged to Deliver the Supply Items is at their own risk. To the extent permitted by law, Georgiou will not be responsible for any loss of or damage to property or for any personal injury or death to persons while on the Delivery Location.

18.2 Delays at Delivery Location

- (a) Any delay or disruption to the Supplier's performance of its obligations under this Agreement caused by Georgiou or others at the Delivery Location will not constitute a breach of this Agreement by Georgiou.
- (b) The Supplier's sole and exclusive remedy in respect of a delay or disruption caused by Georgiou or others at the Delivery Location, whether under this Agreement or at law, is the right to Claim an Extension of Time.
- (c) The Supplier will not be entitled to Claim if the means or route of access to the Delivery Location is altered by Georgiou or is temporarily unavailable.

18.3 Coordination

The Supplier will not have exclusive access to the Delivery Location or any part of it and must coordinate Deliveries of the Supply Items with the activities of Georgiou and the Principal's the subcontractors, consultants or employees or agents. The Supplier acknowledges and agrees that it has allowed in the Price and is not entitled to any Claim arising from the impact of any interference caused to the Supplier or the supply and Delivery of Supply Items by any person on the Delivery Location.

18.4 Meetings

The Supplier must attend all meetings requested by Georgiou to openly discuss all matters relevant to the supply and Delivery of the Supply Items and their progress.

18.5 Re-performance at Supplier's cost

- (a) The Supplier must take all necessary steps to prevent damage to any property, and to prevent harm or nuisance to any persons, on or near the Delivery Location. If any damage is caused by the Supplier or its subcontractors, consultants or employees or agents, the Supplier must:
 - (i) remedy, at its own cost, the damage as soon as possible to the satisfaction of Georgiou; and
 - (ii) indemnify Georgiou for any damage, loss, cost or expense suffered by Georgiou in connection with the damage to property or harm or nuisance to any persons.
- (b) If the Supplier fails to comply with its obligations in clause 18.5(a), Georgiou may perform those obligations itself or through others and all costs, damages and expenses incurred by Georgiou in performing those obligations will become a debt due and payable to Georgiou from the Supplier.

18.6 Removal of employee

The Supplier must remove any of its subcontractors, consultants or employees or agents from the Delivery Location who Georgiou notifies the Supplier that it reasonably considers have breached a Legislative Requirement, are incompetent, negligent or conducting themselves in an unsafe manner. Any person removed from the Delivery Location may not return to the Delivery Location without Georgiou's prior written consent. The Supplier is responsible for all costs associated with the removal and replacement of any subcontractors, consultants or employees or agents notified by Georgiou under this clause 18.6.

19. DEFECTS

19.1 Rectification of non-compliant Supply Items

Subject to clause 19.2, if at any time before Acceptance or during the Defects Liability Period, Georgiou considers the Supply Items to be Defective, Georgiou may, at its option (which may be exercised in its absolute discretion):

- (a) notify the Supplier that Georgiou rejects the Defective Supply Items, in which case the

Supplier must at its cost collect the Defective Supply Items and Georgiou may recover from the Supplier the price paid plus any further expenses incurred by Georgiou arising from the Delivery of the Defective Supply Items as a debt due and payable from the Supplier to Georgiou; or

- (b) notify the Supplier to rectify or replace the Defective Supply Items at the Supplier's own cost and within the timeframe nominated by Georgiou. If the Supplier fails to rectify or replace the Defective Supply Items within the required timeframe, Georgiou may itself or by another and without further notice, rectify or replace the Defective Supply Items and all expenses incurred by Georgiou arising from the Delivery and rectification of the Defective Supply Items will be a debt due and payable from the Supplier to Georgiou.

19.2 Alternative remedy

If Georgiou considers, acting reasonably, that neither of the remedies under clause 19.1 are feasible, for example because the Supply Items have become fixtures to any property, then Georgiou may recover from the Supplier as a debt due and payable, any loss or damage suffered by Georgiou arising out of the Defect, including the costs of repairing or replacing the Supply Items and performing work to any property that is necessary in connection with the repair or replacement of the Supply Items.

19.3 Repairs or replacement

Any repairs or replacement Supply Items provided by the Supplier will be subject to the same warranties as the original Supply Items, from the date of repair or replacement and the Defects Liability Period will recommence from the date of Acceptance by Georgiou of the repair or replacement Supply Items.

19.4 Supplier's obligations not effected

The Supplier is not relieved from any of its obligations under this Agreement as a result of Georgiou exercising its rights under clauses 19.1 and 19.2.

20. VARIATIONS

20.1 Variations

- (a) Georgiou's Representative may, at any time, direct the Supplier to amend, increase, decrease, omit or change the quality, character or extent of any Supply Items or direct any variation that may be necessary to give effect to any variation directed under the Head Contract (Variation). No Variation directed by Georgiou's Representative will invalidate this Agreement.
- (b) If the Variation requires the omission of work forming part of the supply or Delivery of the Supply Items, Georgiou may perform the omitted work, or have it done by others, or not, as it sees fit. If Georgiou's Representative directs a Variation omitting any part or all of the Supply Items, Georgiou will not be in breach of this Agreement if it thereafter either employs or engages another person to supply and Deliver the omitted Supply Items.
- (c) The Supplier must not vary the Supply Items except as directed in writing by Georgiou's Representative under clause 20.1(a). If the Supplier varies the Supply Items in the absence of a Variation, then the Supplier will not be entitled to make any Claim with respect to the varied Supply Items.

20.2 Valuation

- (a) Within seven (7) days of receiving a direction under clause 20.1(a), the Supplier must provide to Georgiou's Representative a detailed quotation for the Variation (supported by measurements or other evidence of cost) and indicate the effect on the Date for Delivery
- (b) Subject to clause 20.2(c), where this Agreement provides for a valuation to be made under this clause 20, and the parties have not already agreed on the relevant adjustment to the Price, Georgiou will determine the value as follows:

- (i) to the extent that this Agreement prescribes specific rates or prices to be applied in determining the value, those rates or prices will be used; and
 - (ii) to the extent that clause 20.2(b)(i) does not apply, reasonable rates or prices will be used in any valuation by Georgiou's Representative.
- (c) Notwithstanding any other provisions of this Agreement, where any right of Georgiou as to the making of a Claim or the recovery of any amount in respect of a Variation is restricted or limited by the Head Contract, the Supplier's rights are similarly restricted and limited and the Supplier shall not be entitled to make any Claim or recover any payment which is greater than that which Georgiou may make or recover under the Head Contract. For the avoidance of doubt, the parties acknowledge and agree that this clause 20.2(c) does not operate to:
- (i) make payment of any amount by Georgiou to the Supplier contingent on the payment of an equivalent amount by the Principal to Georgiou;
 - (ii) make the liability of Georgiou to pay any amount to the Supplier contingent on the liability of the Principal to pay an equivalent amount to Georgiou; or
 - (iii) make the due date for payment of any amount by Georgiou to the Supplier dependant on the date of payment of an equivalent amount by the Principal to Georgiou.
- (d) Except as provided in this clause 20.2, the Supplier will not be entitled to any increase in the Price as a result of any Variation directed by Georgiou.

20.3 Directions

- (a) If the Supplier is of the opinion that any direction or instruction is a Variation even though it was not expressed as such, the Supplier must notify Georgiou within seven (7) days from the date that the alleged variation was directed.
- (b) Within five (5) Business Days of receiving that notice under clause 20.3(a), Georgiou will notify the Supplier in writing of whether the instruction or direction constitutes a Variation, and if so, will issue a direction in accordance with clause 20.1(a).
- (c) If the Supplier fails to notify Georgiou in accordance with this clause 20.3, the Supplier will not be entitled to make any Claim with respect to the instruction or direction.

20.4 No Variation

Despite any other provision of this Agreement, the Supplier will not be entitled to any Claim if a Variation results from:

- (a) performance of incidental tasks or tasks that can be reasonably inferred as necessary to safely and effectively Deliver the Supply Items;
- (b) a Defect in the Supply Items;
- (c) the Supplier being in breach of this Agreement; or
- (d) any negligence or any default of the Supplier or its subcontractors, consultants or employees or agents.

21. PAYMENT

21.1 Progress claims

- (a) The Supplier must submit to Georgiou's Representative, on the date set out in set out in Item 5 of Schedule 1 (Payment Claim Date), its claims for payment (Progress Claim) for the Supply Items Delivery since the last Payment Claim Date.
- (b) Each Progress Claim must be given in writing to Georgiou's Representative and must set out or be accompanied by:
 - (i) the amount claimed;
 - (ii) a description of the Supply Items that the Supplier has supplied since the last Payment Claim Date;

- (iii) substantiation (including documentary evidence) that the Supply Items have been supplied;
 - (iv) a statutory declaration in the form set out in Schedule 10 which states that as at the Payment Claim Date, no wages or other monies are due and owing by the Supplier to its Personnel for any work the subject of that Progress Claim and which is not misleading or deceptive in any way; and
 - (v) any other information Georgiou's Representative may reasonably require.
- (c) If the Delivery Location is located in New South Wales, each Progress Claim and the Final Progress Claim must be accompanied by a duly signed written statement in the form set out in Schedule 8 and which complies with the Supplier's obligations under section 127 of the *Industrial Relations Act 1996* (NSW), Schedule 2 of Part 5 of the *Payroll Tax Act 2007* (NSW) and section 175B of the *Workers Compensation Act 1987* (NSW) to provide a statement to the "principal contractor" as contemplated by those Acts.
- (d) If a Progress Claim is made:
- (i) before the relevant Payment Claim Date, it will be deemed instead to have been submitted on that Payment Claim Date; or
 - (ii) after the relevant Payment Claim Date, it will be deemed instead not to have been submitted until the next Payment Claim Date,
- provided that in no circumstance may more than one Progress Claim be submitted for any Payment Claim Date.
- (e) In submitting a Progress Claim, the Supplier represents and warrants to Georgiou that, in relation to the Supply Items described in the Progress Claim:
- (i) it has Delivered those Supply Item to the Delivery Location;
 - (ii) there are no Defects in the Delivered Supply Items; and
 - (iii) the Supply Items are free and clear of all liens (other than any liens extinguished upon receipt of payment in respect of such Progress Claim).
- (f) As a condition precedent to the Supplier's entitlement to:
- (i) submit a Progress Claim; or
 - (ii) receive payment of any amount under this Agreement (including any amount certified in a Payment Certificate);
 - (iii) the Supplier must provide Georgiou with:
 - (A) a copy of this Agreement duly executed by the Supplier;
 - (B) demonstration that it continues to hold the insurances required by this Agreement; and
 - (C) Security required to be given by the Supplier under this Agreement (if any).

21.2 Payment certificates

- (a) Georgiou's Representative will issue to the Supplier a payment certificate stating the amount of the Progress Claim which in the opinion of Georgiou's Representative (having regard to clause 21.5, is payable by Georgiou or the Supplier (Payment Certificate), as the case requires, within ten (10) Business Days of receipt of a Progress Claim. The Payment Certificate must also state:
 - (i) the Progress Claim to which the Payment Certificate applies; and
 - (ii) if the amount in the Payment Certificate is less than that in the Progress Claim, the reasons why. Reasons why the amount in the Payment Certificate is less than that in the Progress Claim (which may include failure by the Supplier to comply with any outstanding obligations under this Agreement).
- (b) At any time up to the expiry of the Defects Liability Period, Georgiou's Representative

may, by the issue of a Payment Certificate, modify, or correct an omission or error in, an earlier Payment Certificate.

- (c) If the Supplier does not make a Progress Claim in accordance with clause 21.1, Georgiou's Representative may nevertheless issue the Payment Certificate with the details of the calculations in clause 21.2(a).
- (d) If clause 22.3 does not apply as a result of clause 22.3(f), the Supplier must give Georgiou a tax invoice (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) for the amount the subject of a Payment Certificate issued by Georgiou's Representative under this clause 21.2 within two (2) Business Days of receipt of that Payment Certificate.

21.3 Payment

- (a) Subject to clause 21.1(f), Georgiou will pay the Supplier the amount certified as due to the Supplier under the Payment Certificate (or if no Payment Certificate is issued by Georgiou's Representative, the amount of the Progress Claim):
 - (i) if the Delivery Location is located in New South Wales, within thirty (30) Business Days of receipt of the Progress Claim;
 - (ii) if the Delivery Location is located in Queensland, within twenty-five (25) Business Days of receipt of the Progress Claim;
 - (iii) if the Delivery Location is located in Western Australia, within forty two (42) calendar days of receipt of the Progress Claim; or
 - (iv) if the Delivery Location is located in Victoria, within forty-five (45) days after the date of the end of the month in which the Progress Claim is submitted.
- (b) Where an amount is certified as being due for payment to Georgiou by the Supplier in a Payment Certificate under clause 21.2, the Supplier must pay Georgiou the amount certified within twenty (20) Business Days after receipt of that Payment Certificate.
- (c) All payments by Georgiou are on account only and are not evidence of the value of the Supply Items or that the Supply Items comply with the requirements of this Agreement.

21.4 Final Payment Claim and Certificate

- (a) Within twenty-eight (28) days after the last Date of Delivery, the Supplier must give Georgiou's Representative its final Progress Claim endorsed 'Final Progress Claim', together with all other Claims whatsoever in connection with the subject matter of this Agreement (Final Progress Claim).
- (b) Georgiou's Representative:
 - (i) must, within ten (10) Business Days after receipt of the Final Progress Claim; or
 - (ii) may, if the Supplier does not issue a Final Progress Claim under clause 21.4(a) (or, if applicable, clause 8 of Schedule 2),
 issue to both the Supplier and Georgiou a Final Payment Certificate stating the amount finally due and payable between the Supplier and Georgiou on any account whatsoever in connection with this Agreement (Final Payment Certificate).
- (c) The Supplier must give Georgiou:
 - (i) a tax invoice (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) for the amount the subject of the Final Payment Certificate issued by Georgiou's Representative under this clause 21.4 (or, if applicable, clause 8 of Schedule 2); and
 - (ii) an executed Final Release and Waiver in the form as set out in Schedule 7, within two (2) Business Days of receipt of the Final Payment Certificate.
- (d) Subject to clause 20.4(c), if the Final Payment Certificate certifies that money are due and payable from Georgiou to the Supplier:
 - (i) if the Delivery Location is located in New South Wales, then within thirty (30)

Business Days of receipt of the Final Progress Claim;

- (ii) if the Delivery Location is located in Queensland, then within twenty-five (25) Business Days of receipt of the Final Progress Claim;
- (iii) if the Delivery Location is located in Western Australia then, within forty two (42) calendar days of receipt of the Final Progress Claim; or
- (iv) if the Delivery Location is located in Victoria, then within forty-five (45) days after the date of the end of the month in which the Final Progress Claim is submitted,

Georgiou will pay to the Supplier the amount certified as being due for payment to the Supplier by Georgiou in the Final Payment Certificate under this clause 21.4 (or if no Final Payment Certificate is issued by Georgiou's Representative, the amount of the Final Progress Claim).

- (e) Where an amount is certified as being due for payment to Georgiou by the Supplier in a Final Payment Certificate under this clause 21.4, the Supplier must pay Georgiou the amount certified within twenty (20) Business Days after receipt of the Final Payment Certificate.
- (f) It is a condition precedent to the Supplier's entitlement to payment of the amount in a Final Payment Certificate or any reduction of any Security pursuant to clause 4.4, that the Supplier return an executed Final Release and Waiver in the form set out in Schedule 7 to Georgiou's Representative in accordance with clause 21.4(c).
- (g) After the expiration of the time for the Supplier to make its Final Progress Claim has passed, the Supplier releases Georgiou from any Claim irrespective of any act, matter, or thing arising out of or in connection with this Agreement, except where:
 - (i) the Supplier has given Georgiou the Final Progress Claim within the time required by this Agreement; and
 - (ii) the Claim is included in the Final Progress Claim.
- (h) After receipt of the Final Progress Claim, the Supplier is barred from making any Claim against Georgiou in respect of this Agreement, or the work under this Agreement, whether in contract, tort or otherwise, which has not been made.

21.5 Set off

Georgiou may at any time (including in the assessment of a Progress Claim or the Final Progress Claim) set off against and deduct any monies due to the Supplier, any debt costs, damages, losses or expenses due to or claimed by Georgiou from the Supplier whether or not the debt, costs, damages, losses or expense arises by way of contract, tort, damages, debt, restitution or otherwise and whether or not the factual basis giving rise thereto arises out of this Agreement, any other contract or is independent of any contract. If no monies are due to the Supplier, or if the monies due to the Supplier are insufficient to discharge the debt, costs, damages, losses, expenses, Georgiou may have recourse to the Security (if any).

22. TAXES

22.1 Goods and Services Tax

- (a) In this clause 22.1, the expressions 'adjustment note', 'consideration', 'GST', 'input tax credit', 'supplier', 'supply', 'tax invoice', 'recipient' and 'taxable supply' have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Unless otherwise expressly stated in this Agreement, all prices or other sums payable under this Agreement are exclusive of GST.
- (c) Despite any other provision in this Agreement, if GST is payable by a supplier under this Agreement, the recipient must pay to the supplier an amount equal to the GST payable on the supply by the supplier. Subject to the receipt of a valid tax invoice, that amount must be paid at the same time that the consideration for the supply is to be provided under this Agreement and will be provided in addition to the consideration expressed

elsewhere in this Agreement.

- (d) If this Agreement requires a party to reimburse any other party for any expense, loss or outgoing (reimbursable expense) incurred by another party, the amount required to be reimbursed by the first party will be the sum of:
 - (i) the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense; and
 - (ii) if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply.
- (e) If a GST inclusive price is changed or varied under this Agreement, the supplier must provide the recipient of the supply a valid tax invoice or adjustment note at or before the time of payment or variation.
- (f) If the amount of GST paid or payable by the supplier on any supply made under this Agreement differs from the amount of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST or for any other reason, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient as the case requires.
- (g) Georgiou is authorised to withhold from payments to the Supplier, a subcontractor or worker, such amounts as are required under the Pay As You Go (PAYG) system.
- (h) The Supplier must provide notice to Georgiou of its entitlement to claim input tax credits in respect of premiums paid for relevant insurances under this Agreement as soon as practicable after the date of this Agreement.

22.2 Taxes Other Than GST and Duties

- (a) Unless otherwise expressly provided in this Agreement, the Supplier must pay all taxes due in connection with the Supplier's performance of its obligations under this Agreement.
- (b) The Supplier acknowledges and agrees that it will be liable for:
 - (i) all taxes other than GST;
 - (ii) all duties, including, without limitation, stamp duty, customs duty and import duty; and
 - (iii) all costs relating to the imposition of any new taxes, duties or the like, or a change in any of them.

22.3 Recipient Created Tax Invoices

The parties agree that Georgiou will issue recipient created tax invoices (RCTIs) in respect of taxable supplies made by the Supplier, by reference to or in connection with this Agreement, and the parties effect a written agreement in the form set out in Schedule 9 and in accordance with the conditions set out by and under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as follows:

- (a) Georgiou can issue tax invoices in respect of the supplies provided by the Supplier in accordance with this Agreement;
- (b) the Supplier will not issue tax invoices in respect of its supplies in accordance with this Agreement;
- (c) the Supplier acknowledges that it is registered for GST as at the date of this Agreement and will notify Georgiou if it ceases to be registered;
- (d) Georgiou acknowledges that it is registered for GST as at the date of this Agreement and will notify the Supplier if it ceases to be registered;
- (e) Georgiou will issue an adjustment note to the Supplier for any adjustment events that arise in relation to a supply for which a RCTI has been issued; and
- (f) the agreement in this clause 22.3 will terminate immediately if Georgiou or the Supplier cease to satisfy any of the requirements under the *A New Tax System (Goods*

and Services Tax) Act 1999 (Cth) for issuing a RCTI.

23. INDEMNITIES AND LIMIT OF LIABILITY

23.1 Supplier Indemnity

The Supplier indemnifies Georgiou and its Personnel against any Claim, actions, proceedings, costs, expenses, losses and damages incurred in connection with:

- (a) the supply and Delivery of the Supply Items;
- (b) claims brought against Georgiou by the Principal arising out the supply and Delivery of the Supply Items;
- (c) death, disease or illness (including mental illness) of, or personal injury to, any persons;
- (d) personal injury, disease, illness (including mental illness) or death caused by the Supplier or its Personnel; or
- (e) any loss of or damage to real or personal property caused by the Supplier or its Personnel; or
- (f) any breach of this Agreement by the Supplier; or
- (g) any negligent act or omission by the Supplier, its Personnel,

except to the extent directly caused by the negligence of Georgiou, Georgiou's Representative or Georgiou's Personnel.

23.2 Limit of Georgiou Liability

To the extent permitted by Legislative Requirements, Georgiou's liability to the Supplier is Limited to the Price.

24. INSURANCE

24.1 Required insurances

- (a) Before the Commencement Date, the Supplier must take out and maintain, at its cost, the following insurances (where applicable):
 - (i) insurance for loss and damage of the Supply Items, including loss and damage in transit;
 - (ii) public liability insurance; and
 - (iii) [insert any other insurances required by Georgiou],(the Supplier's Insurances).
- (b) The Supplier's Insurances must be taken out with insurers, and on terms, approved to Georgiou.
- (c) The Supplier's Insurances must be in the names of both the Supplier and Georgiou.

24.2 Proof of insurance

- (a) Evidence of the currency of the insurances must be given in writing to Georgiou prior to the Commencement Date and at any time upon request by Georgiou, including all schedules or certificates of currency, insurance and policy documents, and wording for the insurance policies.
- (b) At any time when any of the Supplier's Insurances are to be renewed, the Supplier must, no later than five (5) Business Days after effecting the renewal, provide evidence of the currency of the renewed insurances to Georgiou.
- (c) If the Supplier fails to obtain or maintain any of the Supplier's Insurances or fails to provide satisfactory evidence of insurance under this clause 24.2, Georgiou may obtain the relevant insurance and the costs of doing so will be recoverable from the Supplier as a debt due and payable to Georgiou.

- (d) The Supplier will not be relieved of any liability under this Agreement as a result of Georgiou obtaining or maintaining insurances pursuant to clause 24.2(c).

24.3 Notification

- (a) As soon as practicable, the Supplier must inform Georgiou in writing of any occurrence that may, or that the Supplier ought to reasonably expect may, give rise to an insurance claim under any policy of insurance required this Agreement. The Supplier must also ensure that Georgiou is kept fully informed of subsequent action and developments concerning the claim.
- (b) The Supplier must give all information and assistance reasonably practicable as requested by Georgiou in respect of any such occurrence.
- (c) The Supplier must:
 - (i) notify Georgiou in writing prior to giving notice of cancellation of a policy of insurance required by this Agreement to an insurer; and
 - (ii) notify Georgiou immediately in writing if it receives any notice of cancellation resulting from the Supplier's failure to renew a policy or to pay a premium or any other notice materially affecting any policy of insurance required by this Agreement.

24.4 Supplier must not prejudice insurance

The Supplier must ensure that it:

- (a) does not do anything which prejudices any insurance required by this Agreement;
- (b) if necessary, rectifies anything which might prejudice any insurance required by this Agreement;
- (c) reinstates a policy of insurance required by this Agreement if it lapses;
- (d) does not cancel, vary or allow to lapse any insurance required by this Agreement;
- (e) immediately notifies Georgiou of any event which may result in any insurance required by this Agreement lapsing, being cancelled or being rendered ineffective; and
- (f) gives full and true information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

24.5 Claims

The Supplier must pay all deductibles and any excesses for claims made under any policy of insurance effected by Georgiou, the Principal or the Supplier, which relate to the Supplier or the supply and Delivery of the Supply Items.

25. SUSPENSION

25.1 Notice to suspend

- (a) Georgiou may, at any time, direct the Supplier by notice in writing to suspend the performance of the whole or any part of its obligations under this Agreement, for such time as Georgiou reasonably determines, for the following reasons:
 - (i) an act, omission or default of:
 - (A) Georgiou, Georgiou's Representative or Georgiou's Personnel;
 - (B) the Supplier or its Personnel;
 - (C) the Principal or its Personnel;
 - (ii) the protection or safety of any person or property;
 - (iii) to comply with a court order;
 - (iv) the convenience of Georgiou; or
 - (v) a suspension directed under the Head Contract.

- (b) If the Supplier is of the opinion that any direction is a notice to suspend even though it was not expressed as such, the Supplier must notify Georgiou within seven (7) days from the date that the alleged suspension was directed.
- (c) Within five (5) Business Days of receiving that notice under clause 25.1(b), Georgiou will notify the Supplier in writing of whether the direction constitutes a direction to suspend and, and if so, will issue a direction in accordance with clause 25.1(a).
- (d) If the Supplier fails to notify Georgiou in accordance with this clause 25.1, the Supplier will not be entitled to make any Claim with respect to the direction.
- (e) Subject to Legislative Requirements, the Supplier must not suspend the supply or Delivery of the Supply Items unless directed by Georgiou to do so.

25.2 Resumption of supply

Georgiou may at any time direct the Supplier to resume all or any part of its obligations under this Agreement and the Supplier must promptly comply with such a direction at its cost.

25.3 Costs of suspension

- (a) Subject to clause 24.4(b), if the suspension is due to a matter referred to in clauses 25.1(a)(i)(A) or 25.1(a)(iv), the Supplier's costs related to the suspension will be valued under clause 20.2 and added to the Price.
- (b) The Supplier will not be entitled to costs or any other Claim if the suspension occurs because of a breach of the Supplier of this Agreement or a matter referred to under clauses 25.1(a)(ii), 25.1(a)(iii) or 25.1(a)(v).
- (c) Subject to clause 25.3(b), if a suspension is due to a matter referred to in clauses 25.1(a)(i)(B) or 25.1(a)(i)(C) then the Supplier's costs related to the suspension will be valued under clause 20.2 and added to the Price, subject to the following conditions:
 - (i) the maximum increase in the Price must not exceed the amount, if any, recoverable by Georgiou under the Head Contract. For the avoidance of doubt, this may result in the Supplier receiving no reimbursement;
 - (ii) the suspension must be for a minimum continuous duration of two (2) days; and
 - (iii) the suspension must not directly or indirectly arise out of any act, omission or breach of this Agreement by the Supplier or its Personnel.
- (d) The Supplier is not entitled to make any Claim for money, in excess of its entitlement under this clause 25.3, as a result of the suspension.

26. TERMINATION

26.1 Breach or Default

- (a) If the Supplier breaches any provision of this Agreement and fails to remedy that breach within seven (7) days of being directed in writing to do so by Georgiou, then, without limiting its rights at law, Georgiou may immediately by notice to the Supplier:
 - (i) terminate this Agreement; or
 - (ii) take any part or all of the Supply Items out of the hands of the Supplier and engage another party to complete the same and all costs and damages arising from or in connection with such engagement will be a debt due and payable by the Supplier to Georgiou.
- (b) If Georgiou exercises its rights under clause 26.1(a), Georgiou may, without payment of compensation to the Supplier, use any plant or materials (including Supply Items) owned by the Supplier.

26.2 Insolvency

Either party may immediately terminate this Agreement by notice to the other, upon the occurrence of an Insolvency Event.

26.3 Termination for convenience

- (a) Georgiou may, at its sole and absolute discretion, terminate this Agreement at any time and for any reason by notice in writing to the Supplier of not less than fourteen (14) days.
- (b) If Georgiou exercises its rights under clause 26.3(a), Georgiou may engage a third party to supply all or part of the Supply Items that have been terminated for convenience.

26.4 Termination of Head Contract

If the Head Contract is terminated for any reason, then Georgiou may immediately terminate this Agreement by notice to the Supplier.

26.5 Costs

- (a) If Georgiou exercises its rights under clause 26.1(a) or 26.2, Georgiou will not be liable to make any further payment to the Supplier for the Supply Items.
- (b) If Georgiou exercises its rights under clause 26.3 or 26.4, Georgiou will pay the Supplier for all Supply Items Delivered and Accepted before the date of termination and any materials reasonably ordered and that the Supplier is legally required to accept (provided they become Georgiou's property upon payment). The Supplier will have no other Claim as a consequence of the termination. The Supplier will have no other Claim as a consequence of the termination.

26.6 Supplier's obligations on termination

Upon termination of this Agreement under this clause 26, the Supplier must immediately or on such later date specified in the notice of termination cease the Delivery of the Supply Items and Deliver to Georgiou the Supply Items or parts of the Supply Items for which Georgiou has paid up to the date of termination.

26.7 Effect of termination

Termination of this Agreement will not affect or prejudice any rights or liabilities of the parties that accrued prior to termination.

27. DISPUTE RESOLUTION

27.1 Notice of Dispute

If a dispute or difference arises between Georgiou and the Supplier in respect of any fact, act, matter or thing in connection with this Agreement (whether before or after termination of this Agreement), then the party claiming that a dispute or difference has arisen must give the other party a written notice of dispute identifying the dispute or difference (Dispute Notice).

27.2 Negotiation

Within fourteen (14) days after a party receives a Dispute Notice, Georgiou's Representative and the Supplier's Representative and/or their delegates must meet and attempt to resolve the dispute or difference in good faith.

27.3 Senior executive meeting

If the dispute or difference is not resolved under clause 27.2, then no later than twenty-eight (28) days after a party receives a Dispute Notice, the senior executives of each party nominated in Item 7 of Schedule 1 must meet to negotiate in good faith a resolution of the dispute or difference.

27.4 Mediation

- (a) If the dispute or difference is not resolved under clause 27.3, then no later than forty-two (42) days after a party receives a Dispute Notice, a party may provide a mediation notice to the other proposing mediation and nominating three mediators who would be suitable to mediate the dispute or difference in the capital city of the state or territory in which the Delivery Location is located.

- (b) A mediator must then be selected as follows:
 - (i) by agreement; or
 - (ii) if the parties cannot agree on a mediator within seven (7) days of the mediation notice being issued, then either party may request the Chair of the Chapter of the Resolution Institute in the State or Territory where the Delivery Location is situated, to appoint a mediator. In making that appointment, the Chair need not appoint any of the mediators proposed by the parties.
- (c) Except as modified by this clause 27.4, the mediation will be conducted in accordance with the Resolution Institute Mediation Rules, current at the time the dispute or difference is referred to mediation.

27.5 Litigation

If, within fourteen (14) days of a mediation held in accordance with clause 27.4, the dispute or difference is still not resolved, then either party may proceed to litigation, but nothing in this clause 27 prevents a party from seeking urgent interlocutory relief or commencing proceedings where there is a statutory right to do so.

27.6 Continued performance required

Each party must continue to perform its obligations under this Agreement despite the existence of a dispute or difference.

28. TIME BAR FOR CLAIMS

- (a) It is a condition precedent to Georgiou's liability upon any Claim that:
 - (i) where the requirements for notification of the Claim are prescribed elsewhere in this Agreement, the Supplier has strictly complied with those requirements; or
 - (ii) where clause 28(a)(i) does not apply, the Supplier has given Georgiou written notice of the Claim within seven (7) days from the date of the first occurrence of the events or circumstances on which the Claim is based.
- (b) Notice under clause 28(a)(ii) must be in writing and include:
 - (i) the legal basis for the Claim, whether based on a term of this Agreement or otherwise, and if based on a term of this Agreement, clearly identifying the specific term;
 - (ii) the facts relied upon in support of the Claim in sufficient detail to permit verification and assessment; and
 - (iii) details of the quantum of the Claim showing the calculations and their bases.

29. INTELLECTUAL PROPERTY RIGHTS

29.1 Ownership of Intellectual Property Rights

- (a) The Supplier assigns to Georgiou all of its Intellectual Property Rights associated with the supply of the Supply Items under this Agreement, including those currently in existence or to be created.
- (b) The Supplier must, at its cost, do all things and execute all documents necessary to assign those Intellectual Property Rights, if required, to Georgiou without being entitled to compensation.
- (c) This Agreement does not transfer to Georgiou any Intellectual Property Rights in the Supplier's Pre-existing Intellectual Property.

29.2 Warranty

Unless otherwise stated, the Supplier represents and warrants that it owns the Intellectual Property Rights in all used by the Supplier in connection with the supply of the Supply Items under this Agreement.

29.3 Licence

The Supplier grants Georgiou a perpetual, irrevocable, fully paid-up, non-exclusive, transferable licence (including to the Principal) to use and reproduce, to the extent required, any of the Supplier's Pre-existing Intellectual Property Rights for the use and enjoyment of the Supply Items, including any installation, use, support, repair, maintenance or alteration of the Supply Items by or on behalf of Georgiou and the Principal.

29.4 Moral rights

The Supplier consents to, and must obtain consents from each of its personnel, to Georgiou infringing any Moral Rights that the Supplier or any of its personnel may have or become entitled to in any Work created which forms part of the supply and Delivery of the Supply Items. For the purpose of this consent, 'Work' has the meaning given to that term in the *Copyright Amendment (Moral Rights) Act 2000* (Cth) and 'Moral Rights' refers to any right arising under the provisions of that legislation.

29.5 Warranty for Infringement

If a third party claims that the Supplier's Pre-existing Intellectual Property Rights infringe their Intellectual Property Rights:

- (a) the Supplier must indemnify Georgiou against all loss or damage that Georgiou may directly or indirectly sustain or incur because of the claim (including legal costs incurred on a full indemnity basis);
- (b) the Supplier must give any assistance required by Georgiou to defend the claim at the Supplier's cost; and
- (c) the Supplier must allow Georgiou, at its discretion, to take full control over any proceedings and negotiations conducted in relation to the claim, including defending the claim.

30. CONFIDENTIALITY

- (a) The Supplier:
 - (i) may use Confidential Information only for the purposes of this Agreement; and
 - (ii) must keep confidential, all Confidential Information, except:
 - (A) as otherwise provided by this Agreement; or
 - (B) to the extent, if any, to which the Supplier is required by law to disclose any Confidential Information.
- (b) The Supplier may disclose Confidential Information to persons who:
 - (i) have a need to know the Confidential Information for the purposes of this Agreement, but only to the extent that those persons need to know; and
 - (ii) prior to disclosure:
 - (A) in the case of the Supplier's employees, have been directed by the Supplier to keep confidential all Confidential Information; and
 - (B) in the case of any other persons approved by Georgiou, those persons have agreed in writing with the Supplier to comply with the same obligations in respect of Confidential Information as those imposed on the Supplier under this Agreement.
- (c) The Supplier must:
 - (i) ensure that each person to whom it discloses Confidential Information complies with its obligations to keep the Confidential Information confidential; and
 - (ii) notify Georgiou of, and take all steps to prevent or to stop, a suspected or actual breach of confidentiality by any person to whom the Supplier has disclosed Confidential Information.
- (d) If the Supplier is required by law to disclose Confidential Information to a third party,

the Supplier must first:

- (i) notify Georgiou that the Supplier is obliged to disclose the Confidential Information;
 - (ii) give Georgiou a reasonable opportunity to take any steps that it considers necessary to protect the confidentiality of the Confidential Information; and
 - (iii) notify the third party that the information is the Confidential Information of Georgiou.
- (e) If Georgiou considers that the Supplier, or any person involved in the performance of the Supplier's obligations under this Agreement, is disclosing, or has disclosed, Confidential Information in breach of this clause 30, Georgiou may, by written notice to the Supplier, require the Supplier to return all documents and materials containing or based upon the Confidential Information.
- (f) Upon receipt of a notice under clause 30(e), the Supplier must immediately return to Georgiou, all such documents and materials containing or based upon Confidential Information, including the documents or materials provided to third parties.

31. QUALITY ASSURANCE SYSTEM

- (a) The Supplier must:
- (i) maintain a Quality Assurance System, and if Item 14 of Schedule 1 requires, such Quality Assurance System must comply with and be third party accredited to ISO9001, or such other standard notified in writing by Georgiou to the Supplier;
 - (ii) supply and Deliver the Supply Items in accordance with the Quality Assurance System; and
 - (iii) allow Georgiou access to the Supplier's Quality Assurance System at all reasonable times for purposes of quality monitoring and auditing.
- (b) The Supplier's implementation of, or compliance with, the Quality Assurance System does not relieve the Supplier of its obligations under this Agreement.

32. RECORDS AND INSPECTION

32.1 Georgiou to be kept fully informed

The Supplier must keep Georgiou fully informed in respect to all aspects of its performance of this Agreement.

32.2 Records

The Supplier must keep and maintain accurate accounts, records (including information stored by or accessible by computer or other electronic means or technology) of its performance of this Agreement.

32.3 Inspection and review

At all reasonable times, Georgiou (by itself or by its agents) will have the right to inspect and review performance of this Agreement and the records and information created by the Supplier in the performance of this Agreement, including those referred to in this Agreement at:

- (a) the Delivery Location;
- (b) the Supplier's premises; and
- (c) the premises of any of the Supplier's subcontractors, consultants or employees or agents,

and on request by Georgiou, Georgiou may itself (or may require the Supplier to) take or arrange for copies of any such records and information to be taken for its use.

32.4 Survival

The obligations in this clause 32 will continue for a period of seven years from the expiry or

termination of this Agreement, whichever occurs last.

33. ASSIGNMENT AND SUBCONTRACTING

33.1 Assignment by Supplier

- (a) The Supplier must not, without the prior written consent of Georgiou:
 - (i) subcontract, assign, transfer or charge its rights or obligations under this Agreement; or
 - (ii) materially change its shareholding or beneficial ownership of the Supplier.
- (b) No consent by Georgiou under clause 33.1(a) will relieve the Supplier of any of its obligations under this Agreement.

33.2 Assignment by Georgiou

- (a) Georgiou may, upon written notice to the Supplier, assign this Agreement or any right, benefit or interest under this Agreement (including to the Principal or its nominee).
- (b) Without limiting clause 33.1(a), the Supplier agrees and consents to assign the benefit of this Agreement to the Principal, at the Principal's request, without being entitled to compensation.
- (c) The Supplier agrees that any assignment under this clause 33.2 will operate to release and discharge Georgiou from any obligation or liability under this Agreement.
- (d) The Supplier must obtain a similar consent from any subcontractors or suppliers under any agreement relating to this Agreement.

33.3 Novation of Agreement

Georgiou may, at any time, require the Supplier, at no cost to Georgiou or the New Contractor, to execute a deed of novation (Deed of Novation) in a form determined by Georgiou in its absolute discretion, whereby:

- (a) Georgiou, the Supplier and the New Contractor are parties to the Deed of Novation;
- (b) Georgiou and the Supplier terminate this Agreement upon the execution of the Deed of Novation;
- (c) the Supplier and the New Contractor agree that they will enter into a new supply agreement on the same terms and conditions as this Agreement, except that:
 - (i) the New Contractor will be named in lieu of Georgiou; and
 - (ii) the obligations of the Supplier and the New Contractor will be as if the New Contractor had executed this Agreement instead of Georgiou;
- (d) after termination of this Agreement, Georgiou will have no further obligation to the Supplier in connection with this Agreement; and
- (e) the Supplier will remain liable to Georgiou in respect of the performance of this Agreement up to the date of termination of this Agreement.

In addition to these provisions, the Deed of Novation must include such provisions as Georgiou may reasonably require. The Supplier hereby irrevocably appoints Georgiou as the Supplier's attorney for the purpose of executing, on the Supplier's part, the Deed of Novation as contemplated by this clause 33.3.

34. RELATIONSHIP

- (a) The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.
- (b) The Supplier does not have the right or authority to act on behalf of or bind Georgiou unless the Supplier has been expressly authorised by Georgiou in writing to do so.
- (c) Without limiting clause 34(b), the Supplier must not engage in any negotiations or discussions with any Authority on behalf of Georgiou, except as authorised in writing by Georgiou.

35. NOTICES

- (a) A notice, demand, consent, approval or communication under this Agreement (Notice) must be:
 - (i) in writing;
 - (ii) signed by a person duly authorised by the sender; and
 - (iii) hand delivered, sent by prepaid post, by facsimile or electronic mail to the recipient's address for Notices set out in Item 8 of Schedule 1.
- (b) A Notice given under this Agreement will take effect when it is received (or at any later time specified in the Notice). A Notice is taken to be received:
 - (i) if hand delivered, upon delivery;
 - (ii) if sent by prepaid post:
 - (A) within the metropolitan area of the capital city of the state or territory in which the Delivery Location is located, on the second Business Day after the date of posting; or
 - (B) to (or from) outside of the metropolitan area of the capital city of the state or territory in which the Delivery Location is located, on the fifth Business Day after the date of posting;
 - (iii) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice; and
 - (iv) if sent by electronic mail, when the sender receives a delivered receipt or a read receipt.
- (c) If the delivery, receipt or transmission of a Notice is not on a Business Day or is after 5.00pm on a Business Day (local time in the place of receipt), then the Notice is taken to be received at 9.00am on the next Business Day.
- (d) A party may change its address for service of Notices at any time by giving a Notice to the other party.

36. SUPPLIER AS TRUSTEE

- (a) The following provisions apply if the Supplier enters into this Agreement as trustee of a trust (Trust).
- (b) The Supplier enters into this Agreement both:
 - (i) as a trustee of the Trust; and
 - (ii) in its own right.
- (c) The Supplier represents and warrants that:
 - (i) it enters into this Agreement as trustee of the Trust and in its own right;
 - (ii) it has full power and authority in its own right and as trustee of the Trust to enter into and perform its obligations under this Agreement;
 - (iii) the execution, delivery and performance by it of this Agreement does not and will not violate any encumbrance or document which is binding upon it or on any property of the Trust or on any of its assets or the constituent documents of the Trust;
 - (iv) it is not a trustee of any trust or settlement other than the Trust;
 - (v) the entry into and performance by it of its obligations under this Agreement is in the Trust's commercial interests and is for the benefit of the beneficiaries of the Trust;
 - (vi) it is not in default under the constituent documents of the Trust;
 - (vii) no beneficiary under the Trust is presently entitled to the distribution of any capital of the Trust;

- (viii) no resolution has been passed or directed has been given by the beneficiaries for the winding up or termination of the Trust or the distribution of the property of the Trust; and
 - (ix) no resolution has been passed or direction or notice has been given removing the Supplier as trustee of the Trust.
- (d) The Supplier must not, without the prior written consent of Georgiou:
- (i) resign as trustee of the Trust or cause or permit any other person to become an additional trustee; or
 - (ii) do, or fail to do, anything in breach of the terms of the constituent documents of the Trust.

37. SUBCONTRACTOR NOT TO OFFER ANYTHING OF VALUE

The Supplier represents, warrants and agrees that neither the Supplier, any of its Related Entities nor the Supplier's directors, officers or employees authorised, offered, promised or gave or will authorise, offer, promise or give anything of value to:

- (a) any:
 - (i) individual who is employed by or acting on behalf of an Authority, government, government-controlled entity or public international organisation;
 - (ii) political party, party official or candidate;
 - (iii) individual who holds or performs the duties of an appointment, office or position created by custom or convention; or
 - (iv) individual who holds himself out to be the authorised intermediary of any person specified in sub-clauses 37(a)(i), 37(a)(ii) or 37(a)(iii) above,(each, a "Government Official"), in order to influence official action relating to either, or both, Georgiou or this Agreement;
- (b) any person (whether or not a Government Official) to influence that person to act in breach of a duty of good faith, impartiality or trust ("acting improperly") in relation to either, or both, Georgiou or this Agreement, to reward the person for acting improperly or in circumstances where the recipient would be acting improperly by receiving the thing of value; or
- (c) any other person while knowing, or while he or she ought reasonably to have known, that all or any portion of the money or other thing of value that was authorised, offered, promised or given or will be offered, promised or given to:
 - (i) a Government Official in order to influence or reward official action relating to either, or both, Georgiou or this Agreement; or
 - (ii) any person in order to influence or reward such person for acting improperly.

38. ACCEPTANCE OF GIFTS AND OTHER ADVANTAGES

The Supplier shall ensure that neither the Supplier, any of its Related Entities nor their Personnel will receive or agree to accept any payment, gift or other advantage which violates any Applicable Anti-corruption Laws.

39. OWNERSHIP OF THE SUPPLIER

The Supplier represents and warrants that neither the Supplier, any of its Related Entities nor any other entity in which the Supplier has an ownership interest is directly or indirectly owned or controlled, in whole or in part, by any Government Official in a position to take or influence official action for or against Georgiou and no officer, director, employee or shareholder of the Supplier is, or currently expects to become, such a Government Official during the term of this Agreement.

40. BREACH OF ANTI-CORRUPTION SPECIFIC CONDITIONS

- (a) If a breach of clauses 37, 38 or 39 occurs or Georgiou knows or believes, acting

reasonably, that such a breach is imminent, then Georgiou may (without prejudice to any other rights that it might have):

- (i) suspend this Agreement until such time as it has received confirmation to its satisfaction that no breach has occurred or is likely to occur; or
- (ii) exercise its right under clause 26 to terminate this Agreement, in which event Georgiou will not be obliged to:
 - (A) make any payment to the Supplier in respect of works, goods, services or other benefits that have been procured through, or are related to, the breach of clauses 37, 38 or 39; or
 - (B) reimburse or indemnify the Supplier for any loss or damage.

41. NO COLLUSIVE ARRANGEMENT

- (a) The Supplier warrants that it has not engaged in any collusive or Anti-competitive Behaviour or arrangement or understanding in connection with its tender for, or entry into, this Agreement.
- (b) Without limiting any other right or remedy, Georgiou may recover from the Supplier the value of any payment or other benefit made directly or indirectly to an unsuccessful tenderer or trade or industry association in breach of the warranty in clause 41(a) above.

42. MISCELLANEOUS

42.1 Georgiou may act

- (a) Notwithstanding any other provision of this Agreement, Georgiou may, without prior notice to the Supplier, either by itself or by a third party, carry out any obligation under this Agreement which the Supplier was obliged to carry out, but which it failed to carry out within the time required by this Agreement.
- (b) Any costs incurred by Georgiou under clause 42.1(a) are recoverable as a debt due from the Supplier.

42.2 Entire Agreement

- (a) This Agreement constitutes the entire agreement between the parties and supersedes all previous negotiations and communications about its subject matter and documents between the parties except to the extent reproduced in this Agreement.
- (b) To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion has no effect except to the extent expressly set out or incorporated by reference in this Agreement.
- (c) Each party acknowledges and agrees that it does not rely on any prior conduct or representation by the other party in entering into this Agreement.

42.3 Amendment

An amendment of this Agreement must be in writing and signed by the parties.

42.4 Discretions, Determinations, Approvals or Assessments

If this Agreement allows Georgiou or Georgiou's Representative a discretion as to whether to do or not do any act, matter or thing of any kind, or confers on Georgiou or Georgiou's Representative a power of determination or right of opinion, approval or the like, that discretion, power or right is absolute unless this Agreement states otherwise.

42.5 Waiver

- (a) No party to this Agreement may rely on the words or Conduct of the other party as a Waiver of any Right unless the Waiver is in writing and signed by the party granting the Waiver.
- (b) The Waiver of a Right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it was given.

- (c) In this clause 42.5:
 - (i) 'Conduct' includes delay in the exercise of a right or failure to exercise a right under this Agreement;
 - (ii) 'Right' means any right arising under or in connection with this Agreement and includes the right to rely on this clause 42.5; and
 - (iii) 'Waiver' includes an election between rights and remedies and conduct which might otherwise give rise to an estoppel whether by way of representation or convention.

42.6 Governing Law

This Agreement is subject to and is to be construed in accordance with the laws of the state or territory in which the Delivery Location is located, and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of that state or territory and courts competent to hear appeals from those courts.

42.7 Severability

The parties agree that if part or all of any provision of this Agreement is illegal or unenforceable it may be severed from this Agreement and the remaining provisions of this Agreement will continue in force.

42.8 Costs of Contract

Each party must bear its own costs in relation to the preparation, negotiation and execution of this Agreement.

42.9 Indemnities

- (a) All obligations to indemnify under this Agreement survive the expiry or termination of this Agreement.
- (b) No indemnity in this Agreement limits the effect or operation of any other indemnity in this Agreement.
- (c) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties.
- (d) If applicable, a party may recover a payment under an indemnity in this Agreement before it makes the payment in respect of which the indemnity is given.

42.10 Counterparts

- (a) This Agreement may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Agreement by signing any counterpart.

42.11 No merger

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

42.12 Further assurances

Each party must do all things reasonably necessary to give effect to this Agreement and the transactions contemplated by it.

42.13 Joint and several liability

If the Supplier comprises two or more persons (whether as a joint venture, consortium, partnership or any other unincorporated grouping of two or more persons):

- (a) the obligations and liabilities of those persons are joint and several; and
- (b) the Supplier must not alter its legal status without the prior written consent of Georgiou.

42.14 Rights and Remedies Not Affected

The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers and remedies provided by law, independently of this Agreement, unless otherwise stated.

42.15 Vienna Convention on the Sale of Goods

The provisions of the United Nations Convention for the International Sale of Goods are expressly excluded from this Agreement and do not apply to this Agreement or to any of the Supply Items.

42.16 Survival

Without limiting the survival of any clause by operation of law, clauses 4, 21.5, 24, 26, 27, 29 and 30 survive the expiry or termination of this Agreement.

43. SPECIAL CONDITIONS AND STATE AND TERRITORY SPECIFIC CONDITIONS

43.1 Special Conditions

The parties agree that the Special Conditions are part of this Agreement.

43.2 State and Territory Specific Conditions

The parties agree that the conditions contained in Schedule 2 are part of this Agreement and are to apply as relevant given the location of the Delivery Location.

44. SECURITY OF PAYMENT ACT

- (a) Georgiou and the Supplier agree that:
 - (i) the appointed adjudicator for the purposes of any adjudication under the Security of Payment Act is the first adjudicator listed in Item 15 of Schedule 1, unless that person is unavailable, in which case it shall be the second adjudicator listed unless that person is unavailable, in which case it shall be the third adjudicator listed; or
 - (ii) if no such adjudicators consent to act or no adjudicators are listed in Item 15 of Schedule 1, then the authorised nominating authority shall be the entity stated in Item 15 of Schedule 1.
- (b) If the Supplier suspends the whole or part of the supply and/or Delivery of the Supply Items pursuant to the Security of Payment Act:
 - (i) the suspension may be a ground for an Extension of Time;
 - (ii) subject to any payment owed under the Security of Payment Act, Georgiou will not be liable for any costs, expenses, damages, losses or other liability or Claim whatsoever suffered or incurred by the Supplier as a result of the suspension;
 - (iii) Georgiou may direct the Supplier to omit the whole or part of the supply and/or Delivery of the Supply Items and thereafter Georgiou may engage others to supply and/or Deliver the Supply Items omitted under this clause;
 - (iv) Georgiou may terminate this Agreement by giving notice to the Supplier;
 - (v) if Georgiou terminates this Agreement under this clause, the Supplier will be entitled to be paid pursuant to clause 26.3 as if this Agreement had been terminated for convenience pursuant to that clause; and
 - (vi) in addition to the payments referred to in clause 26.3 the Supplier is entitled to any payment owed under the Security of Payment Act that is not included in a payment under clause 26.3.
- (c) Failure by Georgiou to set out in a payment certificate or statement an amount which Georgiou is entitled to retain, deduct, withhold or set off from the amount which would otherwise be payable to the Supplier by Georgiou shall not prejudice Georgiou's

right to subsequently exercise its right to retain, deduct, withhold or set off any amount under this Agreement.

- (d) As applicable under the relevant Security of Payment Act, the Supplier agrees that the amount set out in a Payment Certificate given by Georgiou under clause 21.2 (or, if applicable, clause 8 of Schedule 2) is, for the purposes of the Security of Payment Act, the amount of the “progress payment” calculated in accordance with the terms of this Agreement to which the Supplier is entitled.
- (e) As applicable under the relevant Security of Payment Act, the date under clause 21.2(a) (or, if applicable, clause 8 of Schedule 2) on which the Supplier must claim payment is, for the purposes of the Security of Payment Act, the “reference date”. If the Supplier does not give Georgiou a Progress Claim strictly in accordance with clause 21.1(a) (or, if applicable, clause 8 of Schedule 2) there will be no reference date for the relevant month and the next reference date will be the time for submission of a Progress Claim in the following month.
- (f) If this Agreement is terminated for any reason, the Supplier shall not accrue a “reference date” on or after the date of termination.
- (g) The Supplier must immediately give Georgiou a copy of any written communication of whatever nature in relation to the Security of Payment Act that the Supplier receives from any of its subcontractors or consultants.
- (h) If Georgiou becomes aware that a subcontractor or consultant of the Supplier is entitled to suspend or has suspended work pursuant to the Security of Payment Act, Georgiou may, in its absolute discretion, pay the subcontractor or consultant any money that is or that may be owing to the subcontractor or consultant for work related to this Agreement, and any amount paid by Georgiou is recoverable from the Supplier as a debt due and payable by the Supplier to Georgiou on demand.
- (i) As appropriate under the relevant Security of Payment Act and, notwithstanding any other provision of this Agreement, upon receipt of a payment withholding request from a subcontractor or consultant of the Supplier under the Security of Payment Act, Georgiou may withhold an amount of money, out of money that is or become payable by Georgiou to the Supplier under this Agreement, sufficient to cover the amount identified in the payment withholding request as the value of the associated payment claim.
- (j) Georgiou is not obliged to enquire as to whether or not the amount identified in a payment withholding request as to the value of the associated payment claim is a correct representation of the actual value of the associated payment claim.
- (k) Georgiou is not liable to the Supplier for any loss, expense or damage of any nature arising out of or in connection with Georgiou’s withholding of money under clause 44(i) whether or not:
 - (i) the amount identified in the payment withholding request as the value of the associated payment claim is a correct representation of the actual value of the associated payment claim;
 - (ii) the payment withholding request is later deemed to be invalid by a court of competent jurisdiction; or
 - (iii) the associated adjudication application is determined in the Supplier’s favour or for a value different to the amount withheld by Georgiou under clause 44(i).
- (l) The Supplier indemnifies Georgiou against any Claim, loss, damage, cost or expense of any nature, including financial loss and legal costs and expenses on an indemnity basis, suffered or incurred by Georgiou arising out of or in connection with:
 - (i) a suspension by a subcontractor or consultant of the Supplier under the Security of Payment Act of work which forms part of the supply and/or Delivery of the Supply Items;
 - (ii) a subcontractor or consultant of the Supplier seeking to exercise a statutory lien under the Security of Payment Act over any unfixed plant or materials or both supplied by the subcontractor or consultant in connection with the supply and/or

Delivery of the Supply Items;

- (iii) any payment withholding request by a subcontractor or consultant of the Supplier under the Security of Payment Act in connection with the supply and/or Delivery of the Supply Items or the creation of any liability of Georgiou for a failure to comply with that payment withholding request under the Security of Payment Act;
 - (iv) any payments to subcontractors or consultants of the Supplier that Georgiou is requested to make under the Security of Payment Act;
 - (v) Georgiou's defence of a claim by the Supplier for recovery of money required to be retained or paid by Georgiou to a subcontractor or consultant of the Supplier pursuant to the Security of Payment Act; and
 - (vi) a failure by the Supplier to comply with this clause 44, as applicable under the relevant Security of Payment Act.
- (m) This clause 44 shall survive the expiry or termination of this Agreement for any reason.

45. PROPORTIONATE LIABILITY LEGISLATION

- (a) For the purposes of this clause 45, "apportionment" includes an apportionment of liability for damages, a limit on the amount of damages that may be awarded against a party or a determination of or judgement for the proportion of any damages, which should be borne by a party.
- (b) The parties agree that, to the extent not prohibited by law:
 - (i) the Proportionate Liability Legislation is expressly excluded;
 - (ii) the Supplier indemnifies Georgiou against any Claim or loss whatsoever arising out of or in connection with this Agreement which is caused or contributed to by any of the Supplier's personnel, subcontractors or consultants and for which the Supplier would have been liable to Georgiou but for, or which Georgiou is not able to recover from the Supplier because of, any apportionment under any Proportionate Liability Legislation; and
 - (iii) the Proportionate Liability Legislation shall not apply to the arbitration of any dispute between the parties.

46. DEFINED TERMS AND INTERPRETATION

46.1 Defined terms

In this Agreement:

Acceptance has the meaning given in clause 7.5.

Agreement means this agreement.

Anti-competitive Behaviour means any communication (by any means, whether electronic, written, verbal or otherwise), agreement (by any means, whether formal, informal, contractual, non-contractual, written or verbal) or other form of coordination or cooperation with any other competitor (whether past, present or potential) that is unlawful or otherwise restricted or prohibited under applicable competition Legislative Requirements.

Applicable Anti-Corruption Laws means any anti-corruption Legislative Requirements that are applicable to the Supplier, Georgiou or this Agreement, including the US Foreign Corrupt Practices Act 1977 and the UK Bribery Act 2010.

Business Day means any day except Saturdays, Sundays, public holidays in the State where the Delivery Location is situated and days between Christmas Day and New Year's Day.

Claim means any claim, notice, demand, debt, account, lien, liability, action, proceedings or suit under, arising out of, or in any way in connection with this Agreement, the supply and delivery of the Supply Items or either party's conduct under this Agreement or before it came into force, whether at law (including breach of contract) or in equity (including restitution), by statute, in tort (including negligence) or for restitution, including any claim, notice,

demand, debt, account, lien, liability, action, proceeding or suit:

- (a) for the payment of money (including damages);
- (b) for an adjustment to the Price; or
- (c) for delay, disruption, acceleration or other time based claim.

Code means any code of practice or conduct, and any related guidelines, of any government, agency or authority (as amended, updated or introduced from time to time) that applies to the Supply Items;

Commencement Date means the date stated in Item 9 of Schedule 1 or otherwise notified by Georgiou to the Supplier.

Confidential Information means any information relating to the business or affairs of Georgiou or the Principal whether provided to or obtained by the Supplier prior to this Agreement being formed, including this Agreement and information about Georgiou's clients, subcontractors, consultants or employees or agents or the Principal.

Date for Delivery means the date or dates stated in the Schedule 5 for Delivery of the Supply Items by the Supplier.

Defect or Defective means any part or aspect of the Supply Items that do not strictly comply with the requirements of this Agreement.

Defects Liability Period means the period stated in Item 11 of Schedule 1 and commences on the date when Georgiou Accepts the Supply Items.

Delay Event means any delay caused by:

- (a) an act, default or omission of Georgiou, Georgiou's Representatives, the Principal, or Georgiou's subcontractors, consultants or employees or agents (who are not employed by Supplier);
- (b) any Variations;
- (c) suspension under clause 25.1 provided that such suspension was not caused by or contributed to by an act, default or omission on the part of the Supplier or its subcontractors, consultants or employees or agents; or
- (d) any other events specifically prescribed to be Delay Events in this Agreement.

Deliver or Delivery has the meaning set out in clause 7.3.

Delivery Location means the place or places specified in Item 12 of Schedule 1 and any other land or places made available to the Supplier by Georgiou or the Principal.

Environment has the meaning given to that term at common law or in any legislation in force in the state or territory in which the Delivery Location is located and includes all components of the earth including the following:

- (a) land, air, water;
- (b) any layer of the atmosphere;
- (c) flora and fauna;
- (d) any organic or inorganic matter and any living organism, including humans;
- (e) human made or modified structures and areas;
- (f) the aesthetics characteristics of the components of the earth, including appearance, sound, odour, taste and texture; and
- (g) ecosystems with any combinations of the above.

Environmental Law means any Legislative Requirement applying in the state or territory in which the Delivery Location is located regarding Pollutants or otherwise relating to the Environment, including matters relating to protection of the Environment, health or safety.

Extension of Time means an extension to the Date for Delivery granted by Georgiou in accordance with clause 9.3.

Georgiou's Representative means the person named in Item 1 of Schedule 1 (or a person appointed to replace that person) who, when responding to the Supplier under the *Building and Construction Industry Security of Payment Act 1999* (NSW), acts as the agent of Georgiou.

Hazardous Chemicals:

- (a) has the meaning given to that term in the applicable WH&S Laws; or
- (b) where that term is not defined in the applicable WH&S Laws, has the meaning given to the term 'Hazardous Substances' in the applicable WH&S Laws.

Head Contract means the agreement between Georgiou and the Principal for which the Supply Items are required.

High Risk Construction Work has the meaning given to that term in the applicable WH&S Laws.

Indirect or Consequential Loss means any consequential, indirect, exemplary or punitive damage, special damage, loss of profit (including failure to realise anticipated payments), economic loss, loss of opportunity (including loss of bargain) arising from or in connection with a breach of contract, breach of warranty, tort (including negligence), product liability, contribution, strict liability, indemnity or Legislative Requirement.

Industrial Instrument means any instrument that has legal application with respect to minimum entitlement to those employees covered by the scope of the instrument, including but not limited to a modern award, enterprise agreement or any instrument made under any previous applicable workplace relations system.

Insolvency Event means:

- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with this Agreement;
- (b) a writ of execution, instalment order, garnishee order, mareva injunction or similar order or process is made, levied or issued against the party or in relation to any assets of the party;
- (c) being an individual person or a partnership:
 - (i) judgment is entered against him or her in any court of any jurisdiction;
 - (ii) an act of bankruptcy is committed;
 - (iii) a bankruptcy petition is presented against him or her or his or her own petition is presented;
 - (iv) bankruptcy is declared;
 - (v) a proposal for a scheme of arrangement or a composition with creditors is made; or
 - (vi) deed of assignment or deed of arrangement has been made, a composition is accepted, a debtor's petition is required to be presented, or a sequestration order has been made, under Part X of the *Bankruptcy Act 1966* (Cth) or like provision under the law governing this Agreement;
- (d) being a corporation:
 - (i) notice given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) a controller, voluntary administrator, deed administrator, receiver, manager, receiver and manager, trustee, provisional liquidator or liquidator is appointed to the corporation or any asset of the corporation;
 - (iii) any receiver, manager or receiver and manager is appointed by a court to the corporation or any asset of the corporation;
 - (iv) as a result of operation of section 459C of the *Corporations Act 2001* (Cth), the corporation is presumed to be insolvent;
 - (v) at a meeting of creditors, the creditors resolves for the corporation to be wound

- up;
- (vi) at a meeting of creditors, the creditors resolves for the corporation to enter into a deed of company arrangement with its creditors;
 - (vii) an application is made to a court for its winding up;
 - (viii) a winding up order is made in respect of the corporation;
 - (ix) the corporation resolves by special resolution that it be wound up voluntarily;
 - (x) a mortgagee of any of its property takes possession of that property;
 - (xi) an application is made to a court in relation to:
 - (A) any compromise or arrangement between the corporation, its holding corporation, its subsidiaries and the creditors of the corporation, its holding corporation, its subsidiaries; or
 - (B) any scheme for reconstruction or amalgamation of the corporation and its holding corporation or subsidiaries,
 pursuant to Part 5.1 of the *Corporations Act 2001* (Cth); and
 - (xii) any act that is done or event that occurs, which under the laws from time to time of a country other than Australia, has an analogous or similar effect to any of the events set out above.

Intellectual Property Rights means all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both present and future, including rights in respect of or in connection with any Confidential Information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trademarks, service marks and designs (whether or not now existing and whether or not registered or registrable) and includes any right to apply for the registration of such rights and all renewals and extensions.

Legislative Requirement includes:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory in which the work performed under this Agreement (or any part thereof) is being carried out;
 - (b) certificates, licences, consents, permits, approvals, standards and requirements of any government, agency or organisation having jurisdiction in connection with the supply and Delivery of the Supply Items;
 - (c) Codes (including the National Code and any applicable State or Territory Codes), Australian Standards and any other relevant standards; and
 - (d) fees and charges payable in connection with the foregoing,
- as amended, updated, enacted or introduced from time to time.

National Code means the Code for the Tendering and Performance of Building Work 2016, as issued by the Commonwealth Minister for Employment and as amended or updated from time to time.

New Contractor means a party who will replace Georgiou under a novation in accordance with clause 32.3.

Notifiable Incident:

- (a) has the meaning given to that term in the applicable WH&S Laws;
- (b) where that term is not defined in the applicable WH&S Laws, has the meaning given to the term 'Incident' in the applicable WH&S Laws; or
- (c) where neither of the above terms is defined in the applicable WH&S Laws, means an incident resulting in death, injury or disease.

Off-Site Storage Facility means a storage facility that is:

- (a) not located at the Delivery Location; and

(b) is approved by Georgiou.

Payment Certificate has the meaning given in clause 21.2(a) (or, if applicable, clause 8 of Schedule 2).

Personnel means any employees, subcontractors, consultants, agents and representatives involved either directly or indirectly in the performance of this Agreement but a reference to Georgiou's Personnel excludes the Supplier and its Personnel.

Pollutant means any pollutant, contaminant, dangerous, toxic or hazardous substance, petroleum or petroleum product, chemical, solid, special liquid, gas, industrial or other waste regulated under Environmental Law.

Price means the price stated in Item 10 of Schedule 1, as adjusted in accordance with this Agreement.

Pre-existing Intellectual Property means any Intellectual Property Rights of that existed prior to the date of this Agreement.

Principal means the person named as principal of the Head Contract in Item 3 of Schedule 1.

Program means the program for the supply and Delivery of the Supply Items as described in clause 9.1, as approved by Georgiou from time to time.

Progress Claim has the meaning given in clause 21.1(a) (or, if applicable, clause 8 of Schedule 2).

Proportionate Liability Legislation means:

- (a) if the governing law is the law of Western Australia, then Part 1F of the *Civil Liability Act 2002* (WA);
- (b) if the governing law is the law of New South Wales, then Part 4 of the *Civil Liability Act 2002* (NSW);
- (c) if the governing law is the law of Queensland, then Chapter 2 Part 2 of the *Civil Liability Act 2003* (Qld);
- (d) if the governing law is the law of Tasmania, then Part 9A of the *Civil Liability Act 2002* (Tas);
- (e) if the governing law is the law of the Northern Territory, then the *Proportionate Liability Act 2005* (NT);
- (f) if the governing law is the law of Victoria, then Part IVAA of the *Wrongs Act 1958* (Vic)(Wrongs Act); or
- (g) if the governing law is the Law of South Australia, then Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA),

each as amended from time to time.

Quality Assurance System means the Supplier's system which establishes the qualities and performance of the supply and Delivery of the Supply Items including, all quality manuals, plans, management structures and responsibility statements, techniques for identification and management of non-conforming or disputed work and audit and other critical issues relating to quality assurance.

Related Entity means, in relation to a party or other entity, a body corporate which is:

- (a) a controlling company;
- (b) a controlled company; or
- (c) a controlled company of a controlling company,

of that party or other entity. For the purposes of this definition, one body corporate controls another when at the relevant time:

- (d) it owns either directly or indirectly or is otherwise is in a position to cast, or control the casting of, not less than 50% of the shares entitled to vote at general meetings of that other body corporate; or

- (e) it controls the composition of a majority of the board of that other body corporate, and ‘controlled’ and ‘controlling’ will be construed accordingly.

Security means one or more unconditional undertakings in the form set out in Schedule 3 with no expiry date, which must be given by a reputable Australian financial institution or insurance company approved by Georgiou.

Security of Payment Act means:

- (a) if the Delivery Location is located in Western Australia, then the *Construction Contracts Act 2004* (WA);
- (b) if the Delivery Location is located in New South Wales, then the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (c) if the Delivery Location is located in Queensland, then the *Building and Construction Industry Payments Act 2004* (Qld);
- (d) if the Delivery Location is located in Tasmania, then the *Building and Construction Industry Security of Payment Act 2009* (Tas);
- (e) if the Delivery Location is located in the Northern Territory, then the *Construction Subcontracts (Security of Payments) Act 2004* (NT);
- (f) if the Delivery Location is located in Victoria, then the *Building and Construction Industry Security of Payment Act 2002* (Vic); or
- (g) if the Delivery Location is located in South Australia, then the *Building and Construction Industry Security of Payment Act 2009* (SA),

each as amended from time to time.

Specifications means in respect of each Supply Item, the specifications set out in Schedule 4.

Special Conditions means the special conditions (if any) contained in Schedule 14.

Supplier’s Representative means the person named in Item 2 of Schedule 1 or a person appointed to replace that person.

Supply Item means the goods, materials, services or items described in Schedule 4.

Variation has the meaning given in clause 20.1(a).

WH&S Act means:

- (a) if the Site is located in Western Australia, then the *Occupation Safety and Health Act 1984* (WA);
- (b) if the Site is located in New South Wales, then the *Work Health and Safety Act 2011* (NSW);
- (c) if the Site is located in Queensland, then the *Work Health and Safety Act 2011* (Qld);
- (d) if the Site is located in Tasmania, then the *Work Health and Safety Act 2012* (Tas);
- (e) if the Site is located in the Northern Territory, then the *Work Health and Safety (National Uniform Legislation) Act* (NT);
- (f) if the Site is located in Victoria, then the *Work Occupation Health and Safety Act 2004* (Vic);
- (g) if the Site is located in South Australia, then the *Work Health and Safety Act 2011* (SA); or
- (h) if the Site is located in the Australian Capital Territory, then the *Work Health and Safety Act 2011* (ACT),

each as amended from time to time.

WH&S Laws means the applicable WH&S Act and WH&S Regulation.

WH&S Regulation means:

- (a) if the governing law is the Law of Western Australia, then the *Occupational Health and Safety Regulations 1996* (WA);
- (b) if the governing law is the Law of New South Wales, then the *Work Health and Safety Regulation 2011* (NSW);
- (c) if the governing law is the Law of Queensland, then the *Work Health and Safety Regulation 2011* (Qld);
- (d) if the governing law is the Law of Tasmania, then the *Work Health and Safety Regulations 2012* (Tas);
- (e) if the governing law is the Law of the Northern Territory, then the *Work Health and Safety (National Uniform Legislation) Regulations* (NT);
- (f) if the governing law is the Law of Victoria, then the *Occupational Health and Safety Regulations 2007* (Vic);
- (g) if the governing law is the Law of South Australia, then the *Work Health and Safety Regulations 2012* (SA); or
- (h) if the Site is located in the Australian Capital Territory, then the *Work Health and Safety Regulations 2011* (ACT),

each as amended from time to time.

46.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to:
 - (i) a party includes the party's successors, permitted substitutes and permitted assigns;
 - (ii) anything includes part of that thing;
 - (iii) persons include companies, associations, firms, authorities and bodies corporate;
 - (iv) gender includes all other genders;
 - (v) a document includes the document as changed or replaced from time to time;
 - (vi) currencies mean Australian currencies;
 - (vii) a clause or schedule or recital refers to a clause or schedule or recital in this Agreement;
 - (viii) statute, regulation, code or standard includes a reference to it as amended, re-enacted or replaced, and includes any subordinate legislation issued under it from time to time; and
 - (ix) a day refers to the period commencing at midnight and ending 24 hours later;
- (b) interpretation shall not be affected by the fact that one party put forward any part of this Agreement;
- (c) the singular includes the plural and vice versa;
- (d) headings do not affect the meaning of this Agreement;
- (e) if a word or phrase is defined, any variation of that word or phrase has the same meaning to the extent possible;
- (f) a reference to 'a party' or 'parties' is a reference to a party or the parties to this Agreement;
- (g) a reference to 'indemnify' means that the person giving the indemnity will indemnify and keep indemnified the person given the indemnity against any loss, damage, claims, actions, demands, costs or expenses suffered or sustained because of the event indemnified against. This means that if the person indemnified suffers any loss or must pay any money (whether or not it is actually paid) because of an indemnified event the party giving that indemnity must pay the amount of loss or the amount of liability to

the indemnified party. If it does not, the indemnified party can recover the amount as a debt due;

- (h) a debt due becomes due and payable at the time specified in this Agreement, or if no time is specified, it is payable on demand;
- (i) if anything to be done under this Agreement falls on a day which is not a Business Day, then it must be done on the next Business Day;
- (j) where examples of a general term are given (whether or not using words such as 'includes' or 'including'), the use of the examples is without limitation to the general term and otherwise 'includes' or 'including' means includes or including without limitation; and
- (k) where a plan or drawing is a reference to the plan or drawing in its proper scale.

46.3 Discrepancy or ambiguity

If the order of precedence in the Formal Instrument of Agreement cannot resolve the ambiguity, discrepancy or inconsistency between or within any document comprising this Agreement, then:

- (a) Georgiou's Representative will direct the interpretation to be followed with which the Supplier must comply; and
- (b) the Supplier will have no Claim against Georgiou arising from or in connection with the ambiguity, discrepancy or inconsistency, whether under this Agreement or otherwise.

46.4 No acceptance

The review, perusal, comment or return by Georgiou or Georgiou's Representative of any document or information submitted by the Supplier does not relieve the Supplier of any of its obligations or liabilities, including responsibility for the correctness of information submitted by the Supplier.

END OF GENERAL CONDITIONS

Schedule 1 - Agreement Particulars

Item 1: Georgiou's Representative	[insert]								
Item 2: Supplier's Representative	[insert]								
Item 3: Principal	[insert]								
Item 4: Mode of Delivery	[insert]								
Item 5: Prescribed date for Progress Claims	<p>Progress Claims are to be submitted:</p> <p>(a) On 28th day of the month*; or</p> <p>(b) at the following stages of supply:</p> <p style="padding-left: 40px;">(i) fabrication;</p> <p style="padding-left: 40px;">(ii) acceptance testing; and</p> <p style="padding-left: 40px;">(iii) delivery*</p> <p><i>*Delete whichever is not applicable.</i></p> <p>(if neither deleted then (a) applies)</p>								
Item 6: Liquidated damages	[insert]								
Item 6A: WHS Management Plan	[Applicable / not Applicable] (if neither struck through then 'Applicable')								
Item 6B: Government Building Training Policy	[Applicable / not Applicable] (if neither struck through then 'Applicable')								
Item 6C: Codes	<table border="1"> <tr> <td>National Code</td> <td>[Applicable / not Applicable]</td> </tr> <tr> <td>WA Code</td> <td>[Applicable / not Applicable]</td> </tr> <tr> <td>NSW Code</td> <td>[Applicable / not Applicable]</td> </tr> <tr> <td>Qld Code</td> <td>[Applicable / not Applicable]</td> </tr> </table> <p>(if neither struck through then 'Applicable')</p>	National Code	[Applicable / not Applicable]	WA Code	[Applicable / not Applicable]	NSW Code	[Applicable / not Applicable]	Qld Code	[Applicable / not Applicable]
National Code	[Applicable / not Applicable]								
WA Code	[Applicable / not Applicable]								
NSW Code	[Applicable / not Applicable]								
Qld Code	[Applicable / not Applicable]								
Item 7: Senior executives	[insert]								
Item 8: Notices	[insert]								
Item 9: Commencement Date	[insert]								
Item 10: Price	<p>\$(Insert total sum payable by Georgiou to the Supplier) exclusive of GST, calculated as set out in Schedule 4 (which schedule shall be used for the purposes of valuing Progress Claims and Variations).</p>								
Item 11: Defects Liability Period	[insert] months (if nothing stated then 12 months)								
Item 12: Delivery Location	[insert]								
Item 13: Security	[insert]								
Item 14: Standard of Quality Assurance System	[ISO9001 will / will not apply.] (If nothing stated then ISO9001 will be deemed to apply.)								

Item 15: Security of Payment Act	<p>(a) Appointed adjudicator:</p> <ul style="list-style-type: none"> • First adjudicator: [insert] • Second adjudicator: [insert] • Third adjudicator: [insert] <p>(b) Nominating authority: The Chair for the time being of the Chapter of the Institute of Arbitrators and Mediators Australia or Resolution Institute in the State or Territory in which the Delivery Location is situated.</p> <p>NOTE - if Qld substitute: "The Registrar appointed under the <i>Building and Construction Industry Payment Act 2004 (Qld)</i>"</p>
Item 16: Project Bank Account Required	<p>[Yes / No] (Delete if not applicable. If neither struck through then 'No')</p>

Schedule 2 - State and Territory Specific Conditions

NEW SOUTH WALES

1. Contractors Debts Act 1997 (NSW)

Georgiou may deduct from any payment otherwise due to the Supplier any payment which Georgiou makes in accordance with the *Contractors Debts Act 1997* (NSW) to or in respect of a notice of claim made under that Act by a subcontractor or consultant of the Supplier to the Supplier. Any payment that is not recovered by way of deduction is a debt due and payable by the Supplier to Georgiou on demand.

2. NSW Code of Practice and Implementation Guidelines

This clause 2 applies if stated in Item 6C of Schedule 1.

2.1 Terminology

In addition to terms defined in this Agreement, terms used in this clause have the same meaning as is attributed to them in the NSW Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (NSW Guidelines) (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

2.2 Primary obligation

- (a) The Supplier must comply with and meet any obligations imposed by the NSW Government Code of Practice for Procurement: Building and Construction (NSW Code) and the NSW Guidelines.
- (b) The Supplier must notify the Construction Compliance Unit (CCU), Georgiou and the Client Agency of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Supplier engages a subcontractor or consultant, the Supplier must ensure that that subcontract imposes on the subcontractor or consultant equivalent obligations to those in this clause, including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (d) The Supplier must not appoint or engage another party in relation to the subcontract where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.
- (e) The Supplier must comply with any applicable workplace relations management plan ('WRMP', as defined in the NSW Code), to the extent applicable to the Supplier, and must provide the CCU with all required access and assistance in relation to the Supplier's compliance with the NSW Code.
- (f) The Supplier must ensure that all subcontracts with its subcontractors and suppliers impose obligations equivalent to the obligations under this clause.

2.3 Access and information

- (a) The Supplier must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors, consultants and related entities.
- (b) The Supplier must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises controlled by the Supplier, including but not limited to the Delivery Location;

- (ii) inspect any work, material, machinery, appliance, article or facility;
- (iii) access information and documents;
- (iv) inspect and copy any record relevant to the project;
- (v) have access to personnel; and
- (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Supplier, its subcontractors, consultants and related entities.

- (c) The Supplier and its related entities must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

2.4 Sanctions

- (a) The Supplier warrants that at the time of entering into this Agreement, neither it, nor any of its related entities, is subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (b) If the Supplier does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (c) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - (A) record and disclose details of noncompliance with the NSW Code or NSW Guidelines and the sanction; and
 - (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Supplier, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

2.5 Compliance

- (a) The Supplier bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Supplier is not entitled to make a Claim for reimbursement or an extension of time from Georgiou, the Client Agency or the State of NSW for such costs.
- (b) Compliance with the NSW Code and NSW Guidelines does not relieve the Supplier from responsibility to supply and Deliver the Supply Items and any other obligation under this Agreement, or from liability for any Defect in the Supply Items or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (c) Where a change in this Agreement or to supply and Deliver the Supply Items is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Supplier must immediately notify Georgiou and the Client Agency (or nominee) of the change, or likely change and specify:
 - (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change;
 - (iii) what steps the Supplier proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a workplace relations management plan or work health and safety management plan); and

- (iv) the Client Agency or Georgiou will direct the Supplier as to the course it must adopt within ten (10) Business Days of receiving notice.

3. Compliance with NSW Government requirements

- (a) The Supplier must implement and maintain the systems, strategies and plans required to comply with the following NSW Government Guidelines:
 - (i) the Work Health and Safety Management Systems and Auditing Guidelines;
 - (ii) the Quality Management Systems Guidelines for Construction;
 - (iii) the Environmental Management Systems Guidelines;
 - (iv) the Training Management Guidelines; and
 - (v) the Aboriginal Participation in Construction Guidelines.

[Delete any of the above guidelines that are not listed in the Head Contract. Delete this note]
- (b) The requirements of relevant NSW Government Guidelines are additional to any other requirements of this Agreement and Legislative Requirements.
- (c) The Supplier must submit and implement the plans referred to in clause 3(a) above by [Insert timing - this should be consistent with the timeframes listed in the Head Contract. Delete this note]. Those plans must comply with all requirements of the relevant NSW Government Guidelines and this Agreement.
- (d) The Supplier must:
 - (i) systematically manage its obligations under this Agreement and applicable Legislative Requirements according to the systems, plans and procedures required under clauses 3(a) and 3(c) above;
 - (ii) review and update its systems, plans and procedures to ensure ongoing compliance with this Agreement;
 - (iii) control non-conformances and undertake corrective and preventive action as and when necessary; and
 - (iv) provide sufficient access to the workplace, and to information, records and other relevant documentation, resources (including personnel) and all other things necessary to allow Georgiou to carry out reviews and audits of the Supplier's plans and procedures and confirm compliance with this Agreement.

VICTORIA

4. Wrongs Act

- (a) To the extent that the operation of Part IVAA of the Wrongs Act cannot be excluded as contemplated by clause 45(b), the parties agree that, for the purposes of determining the extent of the Supplier's responsibility for loss or damage, in accordance with Section 24AI of the Wrongs Act and the liability of the Supplier under Part IVAA of the Wrongs Act, the Supplier:
 - (i) is solely responsible for any of the subcontractors, contractors or other people engaged by the Supplier to act in connection with the supply and Delivery of the Supply Items (whether or not under the Supplier's direction, supervision or control) (in this clause, a "Relevant Person") who fail to take reasonable care in connection with the supply and Delivery of the Supply Items under this Agreement; and
 - (ii) assumes an obligation, at the request of Georgiou, to prevent, any Relevant Person from failing to take reasonable care.
- (b) To the extent that any Relevant Person fails to take reasonable care:
 - (i) the Relevant Person will be deemed to have acted as the agent of the Supplier; and

- (ii) the Supplier will be directly liable to Georgiou for any such failure to take reasonable care.
- (c) The Supplier must ensure that any contract entered into with a Relevant Person contains provisions to the following effect:
 - (i) the Relevant Person acknowledges that, for the purposes of this Agreement, the Relevant Person, in carrying out supply and Delivery of the Supply Items, is acting as an agent of the Supplier; and
 - (ii) the Relevant Person must, at all times, exercise reasonable care in carrying out the supply and Delivery of the Supply Items.

QUEENSLAND

5. QBCC Act

- (a) If the work which forms part of the supply and Delivery of the Supply Items is carried out in Queensland and the *Queensland Building Construction Commission Act 1991* (Qld) (QBCC Act) applies to this Agreement, the parties acknowledge and agree that:
 - (i) pursuant to section 67L of the QBCC Act, the full amount of the Security required under this Agreement are for the financial protection of Georgiou; and
 - (ii) where section 67N of the QBCC Act applies and to the extent that this Agreement provides that the total of all security held by Georgiou exceeds 2.5% of the Price after Delivery, the amount of the excess does not relate to the need to correct Defects identified in the Defects Liability Period, but instead to the recovery by Georgiou of any costs, damages, liabilities or other amounts which may become payable to Georgiou by the Supplier under or in connection with this Agreement, the Supplier's performance of the supply and Delivery of the Supply Items or any breach of this Agreement by the Supplier.

6. QLD Code of Practice and Implementation Guidelines

This clause 6 applies if stated in Item 6C of Schedule 1

6.1 General

- (a) This clause 6 applies if the Head Contract Works comprise building and construction work funded by the Queensland Government at a value of more than \$2 million.
- (b) In addition to terms defined in this Agreement, terms used in this clause have the same meaning as is attributed to them in the Queensland Government's Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry (Queensland Guidelines) (as published by the Department of Justice and Attorney-General). The Queensland Code and Queensland Guidelines are available at <http://www.justice.qld.gov.au/building-and-construction-industry-guidelines>.

6.2 Primary obligation

- (a) The Supplier must comply with, and meet any obligations imposed by, the Queensland Government's Code of Practice for the Building and Construction Industry (Queensland Code) and Queensland Guidelines.
- (b) The Supplier must notify the Building Construction Compliance Branch (Qld) (BCCB) (or nominee), the Client Agency and Georgiou of any alleged breaches of the Queensland Code and Queensland Guidelines and of voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach.
- (c) Where the Supplier is authorised to engage a subcontractor or consultant, and it does so, the Supplier must ensure that any secondary contract imposes on the subcontractor or consultant equivalent obligations to those in this clause, including that the subcontractor or consultant must comply with, and meet any obligations imposed by, the Queensland Code and the Queensland Guidelines.
- (d) The Supplier must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party

in relation to the Queensland Code or Queensland Guidelines.

- (e) The Supplier must comply with any applicable workplace relations management plan ('WRMP', as defined in the Queensland Code), to the extent applicable to the Supplier, and must provide the BCCB with all required access and assistance in relation to the Supplier's compliance with the Queensland Code.
- (f) The Supplier must ensure that all subcontracts with its subcontractors and suppliers impose obligations equivalent to the obligations under this clause.

6.3 Access and information

- (a) The Supplier must maintain adequate records of compliance with the Queensland Code and Queensland Guidelines by it, its subcontractors, consultants and related entities.
- (b) The Supplier must allow, and take reasonable steps to facilitate, Queensland Government authorised personnel (including personnel of the BCCB) to:
 - (i) enter and have access to sites and premises controlled by the Supplier;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the project;
 - (v) have access to personnel; and
 - (vi) interview any person,as is necessary for the authorised personnel to monitor and investigate compliance with the Queensland Code and Queensland Guidelines, by the Supplier, its subcontractors, consultants, and related entities.
- (c) The Supplier, and its related entities, must agree to, and comply with, a request from Queensland Government authorised personnel (including personnel of the BCCB) for the production of specified documents by a certain date, whether in person, by post or electronic means.

6.4 Sanctions

- (a) The Supplier warrants that at the time of entering into this Agreement, neither it, nor any of its related entities, are subject to a sanction in connection with the Queensland Code or Queensland Guidelines that would have precluded it from tendering for work to which the Queensland Code or Queensland Guidelines apply.
- (b) If the Supplier does not comply with, or fails to meet any obligation imposed by, the Queensland Code or Queensland Guidelines, a sanction may be imposed against it in connection with the Queensland Code or Queensland Guidelines.
- (c) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of Queensland (through its agencies, Ministers and the BCCB) is entitled to:
 - (A) record and disclose details of non-compliance with the Queensland Code or Queensland Guidelines and the sanction; and
 - (B) take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Supplier, or its related entities, in respect of work to which the Queensland Code and Queensland Guidelines apply.

6.5 Compliance

- (a) The Supplier bears the cost of ensuring its compliance with the Queensland Code and Queensland Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the Queensland Guidelines. The Supplier is not entitled to make a claim for reimbursement or an extension of time from the Client Agency,

Georgiou or the State of Queensland for such costs.

- (b) Compliance with the Queensland Code and Queensland Guidelines does not relieve the Supplier from responsibility to perform this Agreement and any of its other obligations under this Agreement, or from liability for any defect in the works or from any other legal liability, whether or not arising from its compliance with the Queensland Code and Queensland Guidelines.
- (c) Where a change to this Agreement or works is proposed, and that change would, or would be likely to, affect compliance with the Queensland Code and Queensland Guidelines, the Supplier must immediately notify the Client Agency (or nominee) and Georgiou of the change, or likely change and specify:
 - (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the Queensland Code and Queensland Guidelines will, or is likely to be, affected by the change; and
 - (iii) what steps the Supplier proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan);
- (d) and the Client Agency or Georgiou will direct the Supplier as to the course it must adopt within five Business Days of receiving notice.

WESTERN AUSTRALIA

If 'Yes' is stated in Item 16 of Schedule 1, then clauses 21.1 to 21.3 inclusive of the General Conditions are deleted and replaced with clauses 8 and 9 of these Specific Conditions:

7. WA Building and Construction Industry Code of Conduct

This clause 7 applies if stated in Item 6C of Schedule 1.

7.1 Primary Obligation

- (a) This clause only applies to WA government projects to which the WA Building and Construction Industry Code of Conduct 2016 (WA Code) applies.
- (b) The Supplier must comply with the WA Code and any 'Relevant Orders' (as defined in the WA Code).
- (c) Compliance with the WA Code or any 'Relevant Orders' shall not relieve the Supplier from responsibility to perform this Agreement or from liability for any Defect in the Supply Items arising from compliance with the WA Code.
- (d) Where a change in this Agreement is proposed and that change would affect compliance with the WA Code, the Supplier must submit a report to Georgiou specifying the extent to which the Supplier's compliance with the WA Code will be affected.
- (e) The Supplier must comply with any applicable workplace relations management plan ('WRMP', as defined in the WA Code), to the extent applicable to the Supplier, and must provide the Building and Construction Code Monitoring Unit (BCCMU) with all required access and assistance in relation to the Supplier's compliance with the WA Code.
- (f) The Supplier must advise the BCCMU in writing if it executes a subcontract with a subcontractor, supplier or consultant relating to the Supply Items for a value of \$2 million or more.
- (g) The Supplier must ensure that all subcontracts with subcontractors, suppliers or consultants impose obligations on them equivalent to the obligations under this clause.

7.2 Sanctions

- (a) The Supplier warrants that at the time of entering into this Agreement, neither it, nor any of its related entities, is subject to a sanction in connection with the WA Code that would have precluded it from tendering for work to which the WA Code applies.
- (b) If the Supplier does not comply with, or fails to meet any obligation imposed by, the

WA Code, a sanction may be imposed against it in connection with the WA Code.

- (c) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of Western Australia (through its agencies, Ministers and the BCCMU) is entitled to:
 - (A) record and disclose details of non-compliance with the WA Code and the sanction; and
 - (B) take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Supplier, or its related entities, in respect of work to which the WA Code applies.

7.3 Compliance

- (a) The Supplier bears the cost of ensuring its compliance with the WA Code, including in respect of any positive steps it is obliged to take to meet its obligations under the WA Code. The Supplier is not entitled to make a claim for reimbursement or an extension of time from Georgiou, the Client Agency or the State of Western Australia for such costs.
- (b) Compliance with the WA Code does not relieve the Supplier from responsibility to supply the Supply Items and any of its other obligations under this Agreement, or from liability for any defect in the Supply Items or from any other legal liability, whether or not arising from its compliance with the WA Code.
- (c) Where a change to this Agreement or works is proposed, and that change would, or would be likely to, affect compliance with the WA Code, the Supplier must immediately notify the Client Agency (or nominee) and Georgiou of the change, or likely change and specify:
 - (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the WA Code will, or is likely to be, affected by the change; and
 - (iii) what steps the Supplier proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan);

and the Client Agency or Georgiou will direct the Supplier as to the course it must adopt within five Business Days of receiving notice.

8. Payment

8.1 Definitions

In this clause 8, the following terms have the following meanings:

Bank means a bank (operating in Australia).

contracted means entered into a legal, valid and binding agreement (whether in writing or not).

Opt-in Notice means a notice executed by an Opt-in Sub-subcontractor in the form set out in Schedule 11.

Opt-in Sub-subcontractor means:

- (a) any person that is a Sub-subcontractor where the total aggregate value of work, services or supply performed by the Sub-subcontractor in connection with the Supply Items is less than \$20,000 (GST inclusive); or
- (b) any person that is a Supplier Sub-subcontractor in connection with the Supply Items, regardless of the total aggregate value of the goods or materials to be supplied by the Supplier Sub-subcontractor,

where the person has expressly stated (to the Supplier) that they wish to participate in the trust created by the PBA Trust Deed Poll.

Payment Report means a report in relation to the period since the last payment made by Georgiou to the Supplier under this Agreement identifying:

- (a) any Sub-subcontractors who have performed work included in Georgiou's most recent payment certificate, who have already been paid for that work by the Supplier;
- (b) any rights of set-off that the Supplier is able to exercise (or intends to exercise) in relation to monies that might otherwise be payable to any Sub-subcontractor identified in Progress Payment Instruction(s) for the current month (including reasonable details of the amounts that may be set-off and to the extent it is lawfully able to do so, reasons for the exercise of the set-off right);
- (c) any Sub-subcontractor who has failed to make a payment claim under a subcontract (but which was entitled to do so), where work undertaken by the Sub-subcontractor has been included in Georgiou's most recent payment certificate;
- (d) any amount claimed by a Sub-subcontractor that is included in Georgiou's most recent payment certificate, and is in dispute, including, but not limited to:
 - (i) any formal dispute between the Supplier and a Sub-subcontractor under the relevant subcontract;
 - (ii) any disagreement between the Supplier and a Sub-subcontractor in relation to the amount claimed by the Sub-subcontractor; or
 - (iii) any claim made by a Sub-subcontractor under the Security of Payment Act;
- (e) any difference between the amount allocated to a Sub-subcontractor (or to works, services or supply performed by a Sub-subcontractor) in the payment claim and the amount allocated to that Sub-subcontractor in the Progress Payment Instruction(s), and the reasons for the difference; and
- (f) copies of any Opt-In Notices that have been received by the Supplier since the issue of the previous Payment Report, or in the case of the first Payment Report, since the award of this Agreement.

PBA Agreement means the agreement entered into between Georgiou, the Principal and the Bank which establishes the Project Bank Account.

PBA Sub-Subcontractor means:

- (a) any Sub-subcontractor who has been contracted by the Supplier to:
 - (i) undertake works or services; or
 - (ii) undertake work or services and to supply goods or materials,
 where in either case the total aggregate value of such work, services or supply is equal to or greater than \$20,000 (GST inclusive); and
- (b) any Opt-in Sub-subcontractor who has signed an Opt-In Notice and given a copy of that notice to the Supplier.

PBA Trust Deed Poll means the document of that name executed by Georgiou and the Principal, pursuant to which a Project Bank Account is to be established and monies due to the Supplier under this Agreement are to be paid and held on trust.

PPI - Consolidated Allocation means an irrevocable payment instruction in the form stated in Schedule 11, which contains a breakdown of the total amount identified in the payment certificate and sets out:

- (a) the amounts payable to each of the Sub-subcontractors under their relevant subcontracts;
- (b) any allowable Retention Amounts to be retained by the Supplier pursuant to any relevant subcontract with a Sub-subcontractor (which amounts are to be held in the Project Bank Account and released in accordance with the PBA Trust Deed Poll);
- (c) any amount that is to be paid to the Supplier pursuant to this Agreement; and

- (d) a total to be paid (that is the aggregate of the amounts identified pursuant to sub-clauses (a), (b) and (c) above which, for the avoidance of doubt, must be equal to the amount identified in the payment certificate to which the Progress Payment Instruction relates,

and which complies with the requirements of this Agreement.

PPI - Subcontractor Allocation means an irrevocable payment instruction in the form stated in Schedule 11, which sets out any amount to be paid to the Supplier out of the Project Bank Account, being the amount of money that remains after the aggregate of the amounts in each:

- (a) PPI Sub-subcontractor Allocation; and
(b) PPI Retention Allocation,

are subtracted from the amount certified by Georgiou for the month pursuant to this Agreement and which complies with the requirements of this Agreement.

PPI - Retention Allocation means an irrevocable payment instruction in the form stated in Schedule 11, which sets out any allowable Retention Amounts to be retained by the Supplier pursuant to any relevant subcontract with a Sub-subcontractor (which amounts are to be held in the Project Bank Account and released in accordance with the PBA Trust Deed Poll) and which complies with the requirements of this Agreement.

PPI - Sub-subcontractor Allocation means an irrevocable payment instruction in the form stated in Schedule 11, which sets out the amounts payable to each of the Sub-subcontractors under their relevant subcontract and which complies with the requirements of this Agreement.

Progress Payment Instruction means a PPI - Consolidated Allocation or any one or more of a:

- (a) PPI - Subcontractor Allocation;
(b) PPI - Sub-subcontractor Allocation; or
(c) PPI - Retention Allocation,

the purpose of which is to originate a payment by Georgiou into the Project Bank Account.

Project Bank Account means the bank account opened as a trust account with a single Bank as more particularly defined in the PBA Trust Deed Poll.

Retention Amount means any monies which the Supplier is entitled to retain from amounts due to Sub-subcontractors pursuant to any express provision of a subcontract permitting either a specified percentage amount or a specified amount to be retained from payments to be made under a subcontract.

Retention Release Event is the agreement or determination or occurrence of an event under a subcontract with a Sub-subcontractor consequent upon which retention monies or any part thereof (retained pursuant to an express provision of that subcontract) are to (as relevant) be released to the Sub-subcontractor or paid to the Supplier.

Retention Release Instruction means an irrevocable payment instruction in relation to the operation of the Project Bank Account which instructs the payment of Retention Amounts that are payable and which is in the form stated in Schedule 11.

Subcontractor Deposit Instruction means an irrevocable payment instruction in relation to the operation of the Project Bank Account, the purpose of which is to initiate deposits or transfers by the Supplier, in the form stated in Schedule 11.

Sub-Subcontractor means a subcontractor, supplier or consultant of the Supplier.

Supplier Sub-Subcontractor means a Sub-subcontractor who has been contracted to supply goods or materials to the Supplier in connection with the Supply Items but who undertakes no design, fabrication, construction work or service of any kind in connection with the Supply Items.

8.2 PBA trust documents

- (a) Georgiou will provide the Supplier with a copy of the PBA Trust Deed Poll and the PBA

Agreement upon request by the Supplier in writing.

- (b) Within 28 days of the award of this Agreement, the Supplier must deliver to Georgiou:
 - (i) if the Supplier is subject to a registered security interest over all or substantially all of its assets (as identified under the "Personal Property Securities Register" maintained pursuant to the *Personal Property Securities Act 2009* (Cth)), a duly executed deed of release or priority deed poll in the form of Schedule 18 pursuant to which the trust arrangements effected pursuant to the PBA Trust Deed Poll and the PBA Agreement are to be released from, or take priority over, any such security.
- (c) The Supplier must not make any claim for payment until such time as (if applicable) such deed or deed poll has been delivered to Georgiou.

8.3 Notice of PBA trust - right to participate

Prior to any person being contracted by the Supplier to:

- (a) undertake work or services; or
- (b) undertake work or services and to supply goods or materials, in connection with the Supply Items, where the total aggregate value of such work or services or supply of goods or materials in connection with the Supply Items is less than \$20,000 (GST inclusive); or
- (c) supply goods or materials without undertaking any design, fabrication, construction work or service of any kind in connection with the Supply Items irrespective of value,

the Supplier must provide reasonable written notice of the trust created and contemplated by the PBA Trust Deed Poll and PBA Agreement and of the rights that person has to participate in the same.

8.4 PBA trust - contracted value increases

If a person that is contracted by the Supplier in relation to part of the Supply Items is not a PBA Sub-subcontractor because the agreed total aggregate value of the work or services or supply of goods or materials by that person is less than \$20,000 (GST inclusive), then on and from the point in time that value threshold is equalled or exceeded:

- (a) such person will be a PBA Sub-subcontractor for the purposes of this Agreement; and
- (b) the Supplier must, in the following Payment Report, notify Georgiou that such person has become a PBA Sub-subcontractor.

To avoid doubt, the requirement of the Supplier to allocate and pay retentions into the Project Bank Account is not retrospective, and will only apply once that person becomes a PBA Sub-subcontractor and from the time that value threshold is equalled or exceeded.

8.5 Opt-in Sub-subcontractor

- (a) The Supplier must ensure that:
 - (i) any Opt-in Sub-subcontractor is promptly provided with the form of an Opt-In Notice (which must be within 7 days of the Opt-In Sub-subcontractor expressly stating to the Supplier that they wish to participate in the trust created by the PBA Trust Deed Poll); and
 - (ii) copies of all duly signed Opt-in Notices received by it are forthwith supplied to Georgiou.
- (b) Upon the supply of a duly signed Opt-in Notice to the Supplier, the Opt-in Sub-subcontractor that has signed that notice will be deemed to be a Sub-subcontractor (on and from that point) for all purposes of this Agreement and shall be paid via the Project Bank Account pursuant to the operation of the PBA Trust Deed Poll.

8.6 Progress claims

- (a) At the times stated in Item 5 of Schedule 1, upon issue of a Certificate of Practical Completion and within the time prescribed by clause 21.4 of the General Conditions,

the Supplier must deliver to Georgiou claims for payment (Progress Claim) supported by evidence of the amount due to the Supplier and any such information as Georgiou may reasonably require.

- (b) Each Progress Claim must include:
 - (i) the value of work carried out by the Supplier in the performance of this Agreement to that time; and
 - (ii) all amounts then due to the Supplier arising out of or in connection with this Agreement or any alleged breach thereof.
- (c) As a condition precedent to the Supplier's entitlement to:
 - (i) submit a Progress Claim; or
 - (ii) receive payment of any amount (including an amount stated in a Payment Certificate),the Supplier shall provide Georgiou with:
 - (iii) a copy of this Agreement duly executed by the Supplier;
 - (iv) demonstration that it continues to hold the insurances required by this Agreement; and
 - (v) performance security required to be given by the Supplier under this Agreement.
- (d) As to a Progress Claim which does not contain the information required under clauses 8.6(b) or 8.6(c) of these Specific Conditions:
 - (i) Georgiou's Representative may, at its sole and absolute discretion, complete any missing information or return the incomplete Progress Claim to the Supplier and notify the Supplier that clauses 8.6(b) or 8.6(c) applies;
 - (ii) Georgiou's Representative is not obliged to undertake any assessment of that purported Progress Claim until a Progress Claim has been served fully in compliance with all matters referred to in clauses 8.6(b) or 8.6(c);
 - (iii) Georgiou's Representative is not obliged to make any payment in respect of that purported Progress Claim until a Progress Claim has been served fully in compliance with all matters referred to in clauses 8.6(b) or 8.6(c); and
 - (iv) where Georgiou's Representative returns an incomplete Progress Claim to the Supplier, the Supplier shall submit a Progress Claim that complies with clauses 8.6(b) or 8.6(c) within the time notified by Georgiou's Representative or, where no time is notified, within forty eight (48) hours.
- (e) Georgiou's Representative may, at any time prior to the time it is required to issue a Payment Certificate, request any additional information from the Supplier in respect of its then current Progress Claim.

8.7 Payment certificate

- (a) Within 14 days after receipt of a Progress Claim, Georgiou must issue to the Supplier a payment certificate stating the amount of the payment which is to be made by Georgiou to the Supplier or the Supplier to Georgiou (Payment Certificate). Georgiou must set out in the Payment Certificate the calculations employed to arrive at that amount and, if the amount is more or less than the amount claimed by the Supplier, the reasons for the difference. Georgiou must allow in any Payment Certificate issued pursuant to this clause 8.7 of these Specific Conditions or any Final Payment Certificate issued pursuant to clause 21.4 of the General Conditions amounts paid under this Agreement and amounts otherwise due from Georgiou to the Supplier and / or due from the Supplier to Georgiou arising out of or in connection with this Agreement, including but not limited to any amount due or to be credited under any provision of this Agreement.
- (b) If no Payment Certificate has been issued by Georgiou within the required time, the Supplier's Progress Claim, but excluding:

- (i) any amounts in such claim in respect of variations not expressly approved in writing by Georgiou;
- (ii) any amounts (other than those included in a variation expressly approved in writing by Georgiou) for claims under clauses 9 or 20 of the General Conditions; and
- (iii) any other claim for damages arising under or in connection with this Agreement or breach thereof,

will, notwithstanding the absence of a Payment Certificate, be deemed to be the amount due as if it were set out in a Payment Certificate and as if such Payment Certificate were to have been issued on the 14th day after receipt of the Progress Claim. In this Agreement, a reference to an amount identified in a Payment Certificate must include any amount deemed to be set out in a Payment Certificate.

- (c) Subject to the provisions of this Agreement, where a Payment Certificate issued by Georgiou certifies an amount payable from the Supplier to Georgiou, the Supplier must, within 14 days of the issue of the Payment Certificate, pay to Georgiou an amount not less than the amount shown on the Payment Certificate.

8.8 Progress Payment Instructions

- (a) Subject to the provisions of this Agreement and where any Payment Certificate certifies amounts due from Georgiou to the Supplier, within 19 days from the date that the Supplier's Progress Claim is submitted, the Supplier must issue to Georgiou the completed Progress Payment Instruction(s), consisting of either:
 - (i) a single PPI - Consolidated Allocation; or
 - (ii) any one or more of:
 - (A) a PPI - Subcontractor Allocation;
 - (B) a PPI - Sub-subcontractor Allocation; or
 - (C) a PPI - Retention Allocation.

The aggregate total amounts of the Progress Payment Instruction(s) provided to Georgiou must be equal to the amount set out in the Payment Certificate to which the Progress Payment Instruction(s) relate.

- (b) At the same time as the Supplier issues the Progress Payment Instruction(s) to Georgiou, the Supplier must:
 - (i) if the Progress Payment Instruction is not a PPI - Consolidated Allocation, inform Georgiou of the total number of Progress Payment Instructions that the Supplier intends to provide in relation the Payment Certificate to which the Progress Payment Instruction(s) relate;
 - (ii) provide a Payment Report to Georgiou;
 - (iii) if requested by Georgiou, provide to Georgiou invoices issued by any Sub-subcontractor in relation to the Progress Claim; and
 - (iv) provide the Progress Payment Instruction(s) to the Bank where the Project Bank Account is held.

8.9 Shortfall of monies

To the extent that:

- (a) the total amount due and owing from (or otherwise payable by) the Supplier to a Sub-subcontractor is greater than the amount identified in the relevant Progress Payment Instruction(s) for that Sub-subcontractor; and/or
- (b) amounts are due and owing from the Supplier to a Sub-subcontractor and the amounts are not referable to any previously issued Progress Payment Instruction(s),

the Supplier must pay into the Project Bank Account any amount required to make payment of the total amount due to the Sub-subcontractor. Any such payment into the Project Bank

Account must:

- (c) be accompanied by a Subcontractor Deposit Instruction; and
- (d) be made in sufficient time so as to allow the Bank to apply the relevant funds to that Sub-subcontractor at the same time as acting on the relevant Progress Payment Instructions and in any event, no less than two days prior to the scheduled date of payment for such Progress Payment Instruction(s),
and the monies deposited by such payment into the Project Bank Account will be held on trust for the benefit of the relevant Sub-subcontractor.

8.10 Payment

- (a) Following receipt by Georgiou of a properly completed and valid Progress Payment Instruction(s) and Payment Report, and providing Georgiou has received the statutory declarations required in compliance with clause 9 of these Specific Conditions Georgiou must (subject to the other provisions of this Agreement) pay the amount shown in the Payment Certificate into the Project Bank Account. Georgiou must pay the amount within 28 days of receipt of the relevant Progress Claim. In this Agreement, where a date for payment is not a day upon which the banks in Perth are open, the obligation to pay shall be on the next day upon which the banks in Perth are open.
- (b) Within 5 days of the date of its payment into the Project Bank Account, Georgiou must issue to the Supplier a Recipient Created Tax Invoice in respect of GST for the total amount of the relevant Payment Certificate or Final Payment Certificate and paid by Georgiou into the Project Bank Account.

8.11 Withholding payment / revoking and reissuing

- (a) Georgiou may (in its sole discretion) withhold payment of monies due to the Supplier if no statutory declaration is supplied pursuant to clause 9 of these Specific Conditions, or if the statutory declaration supplied pursuant to clause 9 of these Specific Conditions identifies, or Georgiou reasonably believes that:
 - (i) the Progress Payment Instructions are not true and accurate, do not properly allocate amounts payable to Sub-subcontractors pursuant to their subcontracts, or otherwise do not comply with this Agreement;
 - (ii) the Payment Report is not true and accurate, does not properly allocate amounts payable to Sub-subcontractors pursuant to their subcontracts, or otherwise does not comply with this Agreement;
 - (iii) there are errors (including arithmetic errors) in any of the Progress Payment Instructions or in the Payment Report;
 - (iv) there are Opt-in Sub-subcontractors who wish to become a PBA Sub-subcontractor but have not yet been provided with an Opt-in Notice;
 - (v) there are persons that that should have been deemed to be a PBA Sub-subcontractor pursuant to this Agreement, and this information has not been provided to Georgiou;
 - (vi) the Supplier is liable for amounts due and owing to PBA Sub-subcontractors or Opt-in Sub-subcontractors or any other Sub-subcontractor or Supplier Sub-subcontractor (regardless of sub-subcontract value) in respect of works carried out and completed and such amounts:
 - (A) relate to works under this Agreement that have already been the subject of a Payment Certificate under this Agreement; and
 - (B) remain unpaid as at the date of the statutory declaration;
 - (vii) there has been a change (after the date of this Agreement) in the security interests registered over the Supplier (as identified under the Personal Property Securities Register) and a duly executed deed of release or priority deed poll in relation to that security interest (in form and substance acceptable to Georgiou) has not been supplied to Georgiou;

- (viii) the Supplier has breached the requirements of this Agreement relating to the PBA Trust Deed Poll or the PBA Agreement and that breach has not been remedied to the reasonable satisfaction of Georgiou; and/or
- (ix) there is any inconsistency or ambiguity between the invoices issued by the Sub-subcontractors and the calculations set out in the Progress Payment Instructions.
- (b) Without limiting its right to withhold payment, Georgiou may (in its sole discretion) direct the Supplier to revoke and reissue any Progress Payment Instruction to both Georgiou and the Bank where the Project Bank Account is held if:
 - (i) there are manifest errors (including arithmetic errors) in any of the Progress Payment Instructions or in the Payment Report; or
 - (ii) that Progress Payment Instruction does not comply with the requirements of this Agreement.
- (c) If Georgiou has provided comments on the Progress Payment Instructions, the reissued Progress Payment Instruction(s) must properly take into account those comments.

8.12 Effect of payment

- (a) Payments made into the Project Bank Account by Georgiou are deemed to be payments made to the Supplier under this Agreement.
- (b) A payment made into the Project Bank Account pursuant to clause 9 of these Specific Conditions does not prejudice the right of either party to dispute under clause 27 of the General Conditions whether the amount so paid is the amount properly due and payable and on determination (whether under clause 27 of the General Conditions or as otherwise agreed) of the amount so properly due and payable, Georgiou or Supplier, as the case may be, is liable to pay the difference between the amount of such payment and the amount so properly due and payable. If Georgiou is liable to pay the difference, it must (subject to the rights of Georgiou pursuant to clause 9 of these Specific Conditions) be paid into the Project Bank Account by Georgiou upon receipt from the Supplier of a properly completed Progress Payment Instruction.
- (c) Payment of monies shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only, except as provided by clause 21.4 of the General Conditions.

8.13 Unfixed plant and materials

- (a) Georgiou will pay for any item of unfixed plant and materials, provided the Supplier:
 - (i) establishes to the satisfaction of Georgiou that the Supplier has paid for the item, and the item is properly stored, labelled the property of Georgiou and adequately protected; and
 - (ii) provides additional security in one of the forms provided in Item 13 of Schedule 1 in an amount equal to the payment claimed for the item.
- (b) Upon payment into the Project Bank Account of the amount which includes the value of the item, the item shall be the property of Georgiou free of any lien or charge.
- (c) Except as provided in this Agreement, Georgiou shall not be obliged to pay for any item of unfixed plant and materials which is not incorporated in the Supply Items.

8.14 Retention Release Events

The Supplier acknowledges the provisions of the PBA Trust Deed Poll, including in relation to the occurrence of Retention Release Events.

8.15 Security of Payment Act

The Supplier acknowledges the provisions of the Security of Payment Act and (in particular) section 9 of the Security of Payment Act. The Supplier hereby confirms that nothing in this Agreement, the PBA Trust Deed Poll or the PBA Agreement shall be construed as permitting or otherwise allowing the Supplier to implement an arrangement with its Sub-subcontractors that would result in provisions of its subcontracts having no effect by virtue of the application

of section 9 or any other provision of the Security of Payment Act.

9. Payment of workers and Sub-Subcontractors

- (a) Before Georgiou makes a payment into the Project Bank Account, Georgiou may, not less than 5 days before a Payment Certificate is due, in writing request the Supplier—
- (i) to give Georgiou a statutory declaration by the Supplier or, where the Supplier is a corporation, by a representative of the Supplier who is in a position to know the facts declared, that all workers who have at any time been employed by the Supplier on work under this Agreement have at the date of the request been paid all monies due and payable to them in respect of their employment on the work under this Agreement; and
 - (ii) to provide documentary evidence to Georgiou that at the date of the request all workers who have been employed by a Sub-subcontractor have been paid all monies due and payable to them in respect of their employment on the work under this Agreement.
- (b) At the same time as (and no earlier than) any Progress Payment Instruction(s) is issued to Georgiou and the Bank where the Project Bank Account is held, and before Georgiou makes payment into the Project Bank Account, the Supplier must give to Georgiou a statutory declaration by the Supplier or, where the Supplier is a corporation, by a representative of the Supplier who is in a position to know the facts declared, that:
- (i) the Progress Payment Instruction(s) are true and accurate and comply with this Agreement (and for the avoidance of doubt and without limitation, properly allocate amounts payable to Sub-subcontractors pursuant to their subcontracts);
 - (ii) all Opt-in Sub-subcontractors who wish to become a PBA Sub-subcontractor have been provided with an Opt-in Notice;
 - (iii) to the extent that any previously issued Progress Payment Instruction was not correct or for any other reason, the Supplier has no outstanding liabilities to Sub-subcontractors (regardless of subcontract value) in connection with the Supply Items;
 - (iv) the Payment Report issued with the Progress Payment Instruction(s) is true and accurate; and
 - (v) there has been no change (after the date of this Agreement) in the security interests registered over the Supplier (as identified under the *Personal Property Securities Register*) or if there has been a change, the Supplier has provided a duly executed deed of release or priority deed poll (in form and substance acceptable to Georgiou) to Georgiou, or will provide such deed of release or priority deed poll within 1 day of the change,
- in each case as at (and no earlier than) the date of the Progress Payment Instruction(s) issued under clause 8.8 of these Specific Conditions. Such statutory declaration shall be in the form stated in Schedule 13.
- (c) The statutory declaration referred to in clause 9(b) of these Specific Conditions must not be signed and dated earlier than the date of the relevant Progress Payment Instruction(s).
- (d) If the Supplier fails within 5 days after a request by Georgiou under clause 9(a) to provide a statutory declaration that complies with the requirements of this Agreement, or the statutory declaration and / or documentary evidence (as the case may be) required pursuant to clause 9(b) above and notwithstanding clause 8 of these Specific Conditions Georgiou may withhold payment of monies due to the Supplier until the statutory declaration or documentary evidence (as the case may be) is received by Georgiou.
- (e) If the Supplier provides to Georgiou satisfactory proof of the maximum amount due and payable to workers and Sub-subcontractors by the Supplier, Georgiou shall not be entitled under sub-clause (d) above to withhold any amount in excess of the maximum amount.

- (f) At the written request of the Supplier and out of monies payable to the Supplier, Georgiou may on behalf of the Supplier make payments directly to any worker, Sub-subcontractor or supplier.
- (g) If any worker of a Sub-subcontractor obtains a court order or determination, pursuant to s 31(2)(b) of the Security of Payment Act in respect of monies referred to in clause 9(a) or 9(b) above and produces to Georgiou the court order or determination and a statutory declaration that it remains unpaid, Georgiou may pay the amount of the order or determination, and costs included in the order or determination, to the worker or Sub-subcontractor and the amount paid shall be a debt due from the Supplier to Georgiou.

10. Termination

Clause 26.1(a) of the General Conditions is deleted and replaced with the following:

26.1 Breach or Default

- (a) Georgiou may give the Supplier a written notice to show cause if the Supplier breaches any provision of this Agreement, including:
 - (i) failing to:
 - (A) proceed with the supply of the Supply Items with due expedition and without delay;
 - (B) use materials or standards of work required by this Agreement;
 - (C) perform the Supplier's design obligations (if applicable) in accordance with the requirements of this Agreement;
 - (D) provide Security required under this Agreement;
 - (E) provide evidence of insurance as required by this Agreement;
 - (F) safely protect any person or property;
 - (G) comply with its obligations under this Agreement concerning industrial relations;
 - (H) supply everything necessary (including all Supplier's plant and materials) for the proper performance of this Agreement;
 - (I) comply with any directions of Georgiou's Representative under this Agreement;
 - (ii) proceeding with the supply of the Supply Items without a program approved by Georgiou's Representative under this Agreement;
 - (iii) suspending the supply of the Supply Items (except insofar as the Supplier has a statutory right to suspend which cannot be excluded by this Agreement);
 - (iv) substantially departing from the Program;
 - (v) in respect of claims for payment, knowingly providing documentary evidence containing an untrue statement;
 - (vi) failing, within 28 days of the award of this Agreement, to deliver to Georgiou a duly executed deed of release or priority deed poll when required to do so under this Agreement;
 - (vii) if there is a change (after the date of this Agreement) in the security interests registered over the Supplier (as identified under the Personal Property Securities Register) failing to provide a duly executed deed of release or priority deed poll (in form and substance acceptable to Georgiou) to Georgiou within 14 days of the change; or
 - (viii) any breach of the Supplier's obligations under this Agreement relating to the PBA Trust Deed Poll or the PBA Agreement which (in the opinion of Georgiou) is not minor or inconsequential in nature.

11. Government building training policy

- (a) Georgiou's objective is to ensure that all subcontractors working on a Georgiou awarded State Funded Contract, within the parameters of The Government Building Training Policy, are compliant with the reporting obligations of the policy and meet the total training rate as per the policy. Therefore subcontractors are required to complete and submit the relevant Training Rate Compliance Forms within the specified time period. Subcontractors are also required to ensure that employee information provided on Training Rate Compliance Forms is recorded and maintained for auditing purposes.
- (b) Information relating to the Government Building Training Policy can be found : <http://www.dtwd.wa.gov.au/dtwcorporateinfo/policiesandguidelines/gov-bldg-training-policy/Documents/Government%20Building%20Training%20Policy%20Version%201%201.pdf>
- (c) The Supplier's obligation to comply with the Government Building Training Policy is stated in Item 6B of Schedule 1.

Schedule 3 - Security

At the request of [Insert name of Supplier] (ABN [Insert]) (Supplier) and in consideration of [Insert Georgiou Entity] (ABN [Insert]) (Georgiou) accepting this undertaking in respect of the contract for [Insert], [Insert name of Financial Institution] (Financial Institution) unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by Georgiou to a maximum aggregate sum of \$[Insert amount in figures and works].

The undertaking is to continue until notification has been received from Georgiou that the sum is no longer required by Georgiou or until this undertaking is returned to the Financial Institution or until payment to Georgiou by the Financial Institution of the whole of the sum or such part as Georgiou may require.

Should the Financial Institution be notified in writing, purporting to be signed by an authorised officer of Georgiou that Georgiou desires payment is to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Financial Institution will make the payment or payments to Georgiou forthwith without reference to the Supplier and notwithstanding any notice given by the Supplier not to pay same.

Provided always that the Financial Institution may at any time without being required so to do pay to Georgiou the sum of [Insert amount in figures and words] less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by Georgiou and thereupon the liability of the Financial Institution hereunder must immediately cease.

Dated this [insert date] day of [insert Month], [insert Year].

Schedule 4 - Supply Items and Specifications

[Insert description of the Supply Items (including relevant drawings & Specifications). Delete this note]

Schedule 5 - Delivery Schedule

[Insert delivery schedule. Delete this note]

Schedule 6 - Warranty Deed

[Insert form required by Head Contract or write 'Not applicable'. Delete this note]

Schedule 7 - Final Release and Waiver

[Insert Schedule or write in this space "NOT USED" Delete this note]

THIS DEED OF RELEASE is made the [insert date] day of [insert Month], [insert Year]

By [Insert Contractor Name] ([Insert ACN or ABN]) (Supplier)

In favour of [Insert Georgiou Entity] (Georgiou)

For the Subcontract Number on the Project described as .

NOW THIS DEED WITNESSES as follows:

- (a) Reconciliation of Account:
- (i) Original Subcontract Sum
 - (ii) Variations to the Subcontract
 - (iii) Adjusted Subcontract Sum
 - (iv) Less cash security (if any) (including retention monies but excluding unconditional undertakings (e.g. bank guarantees))
 - (v) Less previous payments
 - (vi) Less monies retained for rectification excluding minor Defects
 - (vii) Balance due
- (b) Subject to clauses (c), (d) and (e) below, Georgiou acknowledges that:
- (i) \$ (the balance Due as indicated in (vii) above);
 - (ii) \$ (50% of the cash security described in (iv); and
 - (iii) 50% of any other security held by Georgiou pursuant to the terms of the Subcontract (e.g. bank guarantees),
- are due to the Supplier upon the later of the issue of the Certificate of Practical Completion and the receipt by the Georgiou of a signed copy of this Deed by the Supplier.
- (c) The Supplier agrees that \$ representing 50% of the remaining cash security described in (iv) above is due for release upon expiration of Final Completion subject to all minor Defects having been rectified to the satisfaction of Georgiou.
- (d) The Supplier agrees that \$ representing monies retained for rectification of existing minor Defects as described in (vi) above is due for release as and when such rectification work is completed to the satisfaction of Georgiou.
- (e) The Supplier agrees that any remaining security held by Georgiou pursuant to the terms of the Subcontract (e.g. bank guarantees) is due for release upon Final Completion, in accordance with the terms of the Subcontract.
- (f) The Supplier acknowledges and agrees that in consideration of the payment indicated in clause (b) of this Deed by Georgiou, the Supplier to the extent permitted by law, releases and indemnifies Georgiou, its employees and agents from all Claims (as defined under the Subcontract) except for any monies included in clauses (c), (d) and (e) not required to be paid at the date of this Deed.

EXECUTED unconditionally as a deed

Executed by **[Insert Contractor Name]** (**Insert ACN or ABN**) in accordance with section 127 of the Corporations Act by authority of its directors

Signature of director ←

Signature of director/company secretary
(Please delete as applicable) ←

Name of director (print)

Name of director/company secretary (print)

Executed by **[Insert Georgiou Entity]**

Signature of Authorised Person ←

Signature of Authorised Person ←

Name of Authorised Person (print)

Name of Authorised Person (print)

Schedule 8 - Subcontractor Statement

SUBCONTRACTOR'S STATEMENT REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note 1 - see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ABN:
(Business Name)

of
(Address of subcontractor)

has entered into a contract with ABN:
(Business name of principal contractor) (Note 2)

Contract number/identifier..... (Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive, (Note 4)

subject of the payment claim dated:/...../..... (Note 5)

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. (Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... (Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)

- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)
- (f) Signature
- Full name.....
- (g) Position/Title
- Date/...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relation Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called *the subcontractor*) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration '*as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.*'

Section 127(11) of the *Industrial Relations Act 1996* states '*to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.*'

5. Provide the date of the most recent payment claim.

6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Worker Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Schedule 9 - RCTI

Name of Supplier: [insert]

Address: [insert]

Definitions

ABN Australian Business Number

Agreement [insert]

Georgiou [Insert Georgiou Entity]

Supplies (Supply) Has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

I/We agree to the following:

- (a) Georgiou will issue RCTI's in respect of all Supplies provided by the Supplier;
- (b) the Supplier will not issue tax invoices in respect of the Supplies;
- (c) the Supplier acknowledges that it is registered for GST when it enters into the agreement and that it will notify Georgiou if it ceases to be registered or fails to register;
- (d) Georgiou acknowledges that it is registered for GST, and that it will notify the Supplier if it ceases to be registered for GST or if it ceases to satisfy any of the requirements for raising RCTI's under taxation legislation or rulings (RCTI Requirements);
- (e) Georgiou will not issue a document that would otherwise be an RCTI, on or after the date when Georgiou or the Supplier has failed to comply with any of the RCTI Requirements;
- (f) The Supplier acknowledges that Georgiou is not obliged to and will not issue an RCTI in respect of a Supply until:
 - (i) a Payment Certificate has been issued and Georgiou is obligated to pay an amount to the Supplier under clause 21.2 of the Agreement (or, if applicable, clause 8 of Schedule 2);
 - (ii) the Supplier has provided the necessary documentation to allow an RCTI to be raised.
- (g) The Supplier's ABN is [insert]
- (h) Georgiou may at its sole discretion, by written notice to the Supplier, terminate this agreement and from the date of the notice of termination the Supplier will be responsible for issuing any and all tax invoices in respect of Supplies to Georgiou.
- (i) The Supplier shall be liable for and indemnifies Georgiou against any cost, expense, loss or damage that Georgiou and / or the Supplier may incur or suffer as a result of or in any way relating to termination of this agreement.

Note: Under this RCTI system the Supplier must NOT submit tax invoices or they will be rejected without payment. Suppliers must only submit progress claims in the format specified. All tax invoices will be returned UNPAID.

SIGNED as an agreement

Signed for and on behalf of Georgiou:

In the presence of:

Signature ←

Signature of Witness ←

Name

Name of Witness

Signed for and on behalf of the Supplier:

In the presence of:

Signature ←

Signature of Witness ←

Name

Name of Witness

Schedule 10 - Statutory Declaration

STATUTORY DECLARATION BY SUBCONTRACTOR

Contract Number: [insert]

In regard to Payment Claim Number [insert] (the payment claim) Dated: [insert]

In undertaking the following work: [insert] (the work)

[As Applicable:]

Oaths Act 1900

New South Wales

[or]

Oaths Act 1867

Queensland

[or]

Oaths Act 2005

Western Australia

[or]

Evidence Act 1958

Victoria

[If the Site is located in NSW, Queensland or WA, insert the following:]

I, [Insert Declarants name here] (for the Subcontractor) of [insert subcontractors name], ACN

Of [insert registered address of subcontractor].

In the State of [insert State / Territory in which the Site is located];

(a) I hold the position of [insert].

I am in a position to know the facts contained herein and to bind the Subcontractor by the terms of this declaration, and I am duly authorised by the Subcontractor to make this declaration on its/their behalf.

(b) All the Subcontractor's workers who at any time have been engaged on work under the Contract by the Subcontractor have been paid in accordance with the relevant award or Industrial Instrument, all moneys due and payable to them up to the date of submission by the Contractor of Payment Claim No [insert].

(c) All subcontractors of the Subcontractor have been paid all that is due and payable to them up to the date of submission by the Subcontractor of Payment Claim No [insert] in respect of their part of the work under the Contract.

[If the Site is located in Victoria, insert the following:]

I, (Name) of (Address)

(Occupation)

..... [] by []

{Signature of person making the declaration}

{date}
in the presence of -

..... []
{Signature of authorised witness}

..... []

{Name of authorised witness and qualification as such a witness}

[If the Site is located in Victoria, insert the following:] I acknowledge that this declaration is true and correct, and I make it with the understanding and belief that a person who makes a false declaration is liable to the penalties of perjury.

Declared at
this day of..... 20

before me:

Signature of authorised witness:.....

Signature of declarant:

Name of authorised witness:

Address of authorised witness:.....

Capacity in which authorised witness
takes the statutory declaration

Schedule 11- PBA Trust Deed Poll Forms

Opt-In Notice

To: Minister for Works being the body corporate created pursuant to section 5 of the *Public Works Act 1902* (WA).

and

[the Subcontractor] (the Subcontractor),

[Insert full legal name and ACN or ABN of the Subcontractor]

From: **[Opt-in Sub-subcontractor]** (the Opt-in Sub-subcontractor)

[Insert full legal name and ACN or ABN of the Opt-in Sub-subcontractor]

Date:

[Insert the date that the Opt-In Sub-subcontractor signs the notice.]

PBA Trust Deed Poll in relation to **[Subcontract]** (PBA Trust Deed Poll)

[Insert name of Project]

We refer to the PBA Trust Deed Poll. Terms used in this notice have the same meaning given in the PBA Trust Deed Poll. This is an Opt-in Notice.

The Opt-in Sub-subcontractor has been contracted by the Subcontractor in relation to the Project. On and from the date of this notice, the Opt-in Sub-subcontractor agrees to be a Sub-subcontractor under (and for the purposes of) the PBA Trust Deed Poll and to be bound by (and benefit from) all of the terms of the PBA Trust Deed Poll as a Beneficiary (as that term is defined in the PBA Trust Deed Poll).

Our bank account details are as follows: Name

[Account Name]

Short form name

[Opt-in Sub-subcontractor]

ABN

[Opt-in Sub-subcontractor ABN]

Bank Details

BSB:

[Opt-in Sub-subcontractor BSB]

Account number:

[Opt-in Sub-subcontractor Account number]

[Insert the details of the Opt-in Sub-subcontractor's bank account]

This notice is governed by the Laws of Western Australia.

SIGNED by acting through a duly authorised representative:

Signature of duly authorised representative of the Opt-in Sub-subcontractor

Name of duly authorised representative of the Opt-in Sub-subcontractor

PPI – Consolidated Allocation

For the purposes of the PBA Agreement, this document establishes the minimum requirements of a 'PPI - Consolidated Allocation' that are required to be given effect through an instruction in ABA File Format, or in an electronic format from an online banking system, and is to be read and construed subject to clause 1.4 of the PBA Trust Deed Poll.

The PPI - Consolidated Allocation must:

1. Contain a reference or unique identifier which links it to the "PBA Agreement" to which this document relates.
2. Be issued as an irrevocable and unconditional direction to the Bank to disburse an amount of money that totals (in aggregate) the amount to be paid by Georgiou into the General PBA within 9 days of the issue of the PPI - Consolidated Allocation.
3. Identify the disbursements in paragraph 2 as follows:
 - a. amounts to be disbursed from the General PBA to a Subcontractor; the amount to be disbursed to the Subcontractor; and the Subcontractor's account details;
 - b. amounts to be disbursed from the General PBA to each Sub-subcontractor; the amount to be deposited to the Sub-subcontractor; and the Sub-subcontractor's account details; and
 - c. amounts to be disbursed from the General PBA to the Retention PBA (using a unique identifier for the name of the Sub-subcontractor to which the Retention Amount relates); and the amount to be transferred in relation to that Sub-subcontractor.
4. Specify the date for actioning the PPI - Consolidated Allocation.
5. Be in a form acceptable to the Bank and Georgiou.

PPI - Subcontractor Allocation

For the purposes of the PBA Agreement, this document establishes the minimum requirements of a 'PPI - Subcontractor Allocation' that are required to be given effect through an instruction in ABA File Format, or in an electronic format from an online banking system, and is to be read and construed subject to clause 1.4 of the PBA Trust Deed Poll.

The PPI - Subcontractor Allocation must:

1. Contain a reference or unique identifier which links it to the "PBA Agreement" to which this document relates.
2. Be issued as an irrevocable and unconditional direction to the Bank to disburse an amount of money that totals (in aggregate) the amount to be paid by Georgiou into the General PBA within 9 days of the issue of the PPI - Subcontractor Allocation.
3. Identify the disbursements in paragraph 2 as follows:
 - a. amounts to be disbursed from the General PBA to the Subcontractor; the amount to be disbursed to the Subcontractor; and the Subcontractor's account details.
4. Specify the date for actioning the PPI - Subcontractor Allocation.
5. Be in a form acceptable to the Bank and Georgiou.

PPI - Sub-subcontractor Allocation

For the purposes of the PBA Agreement, this document establishes the minimum requirements of a 'PPI - Sub-subcontractor Allocation' that are required to be given effect through an instruction in ABA File Format, or in an electronic format from an online banking system, and is to be read and construed subject to clause 1.4 of the PBA Trust Deed Poll.

The PPI - Sub-subcontractor Allocation must:

1. Contain a reference or unique identifier which links it to the "PBA Agreement" to which this document relates.
2. Be issued as an irrevocable and unconditional direction to the Bank to disburse an amount of money that totals (in aggregate) the amount to be paid by Georgiou into the General PBA within 9 days of the issue of the PPI - Sub-subcontractor Allocation.
3. Identify the disbursements in paragraph 2 as follows:
 - a. amounts to be disbursed from the General PBA to each Sub-subcontractor; the amount to be deposited to the Sub-subcontractor; and the Sub-subcontractor's account details.
4. Specify the date for actioning the PPI - Sub-subcontractor Allocation.
5. Be in a form acceptable to the Bank and Georgiou.

PPI - Retention Allocation

For the purposes of the PBA Agreement, this document establishes the minimum requirements of a 'PPI - Retention Allocation' that are required to be given effect through an instruction in ABA File Format, or in an electronic format from an online banking system, and is to be read and construed subject to clause 1.4 of the PBA Trust Deed Poll.

The PPI - Retention Allocation must:

1. Contain a reference or unique identifier which links it to the "PBA Agreement" to which this Appendix relates.
2. Be issued as an irrevocable and unconditional direction to the Bank to transfer to the Retention PBA the Retention Amount(s) identified in the PPI - Retention Allocation which is / are to be held on trust pending receipt of a Retention Release Instruction (RRI) within 9 days of the issue of the PPI - Retention Allocation.
3. Identify the transfer in paragraph 2 as follows:
 - a. amounts to be disbursed from the General PBA to the Retention PBA (using a unique identifier for the name of the Sub-subcontractor to which the Retention Amount relates); and
 - b. the amount to be transferred in relation to that Sub-subcontractor.
4. Specify the date for actioning the PPI - Retention Allocation.
5. Be in a form acceptable to the Bank and Georgiou.

Subcontractor Deposit Instruction

For the purposes of the PBA Agreement, this document establishes the minimum requirements of a 'Subcontractor Deposit Instruction' (SDI) that are required to be given effect through an instruction in ABA File Format, or in an electronic format from an online banking system, and is to be read and construed subject to clause 1.4 of the PBA Trust Deed Poll.

A SDI must:

1. Contain a reference or unique identifier which links it to the "PBA Agreement" to which this Appendix relates.
2. Be issued as an irrevocable and unconditional direction to the Bank to disburse an amount of money that totals (in aggregate) the amount to be paid by the Subcontractor into the General PBA within 3 days of the issue of the SDI.
3. Identify the disbursements in paragraph 2 as follows:
 - a. amounts to be disbursed from the General PBA to each Sub-subcontractor; the amount to be deposited to the Sub-subcontractor; and the Sub-subcontractor's account details; and
 - b. amounts to be disbursed from the General PBA to the Retention PBA (using a unique identifier for the name of the Sub-subcontractor to which the Retention Amount relates); and the amount to be transferred in relation to that Sub-subcontractor.
4. Specify the date for actioning the SDI.
5. Be in a form acceptable to the Bank and Georgiou.

Retention Release Instruction

For the purposes of the PBA Agreement, this document establishes the minimum requirements of a 'Retention Release Instruction' (RRI) that are required to be given effect through an instruction in ABA File Format, or in an electronic format from an online banking system, and is to be read and construed subject to clause 1.4 of the PBA Trust Deed Poll.

An RRI must:

1. Contain a reference or unique identifier which links it to the "PBA Agreement" to which this Appendix relates.
2. Be issued as an irrevocable and unconditional direction to the Bank to disburse Retention Amounts from the Retention PBA, to the account(s) specified.
3. Identify the disbursements in paragraph 2 as follows:
 - a. amounts to be disbursed from the Retention PBA to each Sub-subcontractor (using a unique identifier for the name of the Sub-subcontractor to which the Retention Amount relates); the amount to be transferred in relation to that Sub-subcontractor; and the Sub-subcontractor's account details;
 - b. amounts to be disbursed from the Retention PBA to the Subcontractor (using a unique identifier for the name of the Subcontractor); the amount to be transferred in relation to the Subcontractor; and the Subcontractor's account details; and
 - c. the balance of Retention Amounts in the Retention PBA.
4. Specify the date for actioning the RRI.
5. Be in a form acceptable to the Bank and Georgiou.

Schedule 12- Form of Release - Deed Poll

RELEASE AND (FOR PPSA REGISTERED SECURITY INTERESTS) UNDERTAKING TO AMEND REGISTRATION

- Secured Party: [Insert name of Subcontractor's finance provider who holds security] (we or us).
- Grantor: [Insert name of Subcontractor's finance provider who holds security] in connection with the [● insert] Project and the PBA Trust Deed Poll which has been executed by Georgiou and which is also executed by the Minister for Works (being the body corporate created pursuant to section 5 of the *Public Works Act 1902* (WA)) (you).
- Security Interest: Any security interest (including a 'security interest' as defined under the *Personal Property Securities Act 2009* (Cth)) held by the Secured Party in respect of the Released Property.
- Date: [date of release]
- Released Property: Means:
- (i) the bank account (established as a trust account) pursuant to the PBA Trust Deed Poll;
 - (ii) all monies standing to the credit of that bank account from time-to-time;
 - (iii) rights vested in the beneficiaries pursuant to the PBA Trust Deed Poll and the "PBA Agreement" being an agreement between Georgiou, the Minister for Works and the bank that holds the above mentioned bank account.

The Released Property is released from the Security Interest on the date of this deed poll.

The Secured Party undertakes to amend the registration of the Security Interest in accordance with the requirements of the *Personal Property Securities Act 2009* (Cth) if an amendment is necessary in order to give effect to the release contemplated by this deed poll.

Nothing in this deed poll releases, terminates or otherwise affects any debts or liabilities of the Grantor or any other person secured by the Security Interest to the extent such debts or liabilities remain outstanding at the date of this deed poll or arise after the date of this deed poll.

Executed by the Secured Party as a deed poll

[Insert execution clause of Secured Party]

Secured Party Contact Details

Phone Number: [●]

Email address: [●]

Reference Number: [●]

THIS DEED POLL is made on [year]

BY:

[Full name of finance provider with security interest or Security Trustee if syndicated/club financing] Alt[ABN/ACN/ARBN] [number] Opt[whose registered office is at [address]] (the Second Creditor),

IN FAVOUR OF:

each First Creditor (as defined below).

RECITALS:

- (A) The Subcontractor has or will enter into a contract with Minister for Works being the body corporate created pursuant to section 5 of the *Public Works Act 1902* (WA) for the carrying out and completion of works.
- (B) It is a requirement of the contract that the Subcontractor and its Sub-subcontractors participate in arrangements required by the Minister for Works to effect 'project bank accounts' pursuant to a PBA Trust Deed Poll and a PBA Agreement.
- (C) The Second Creditor has agreed to enter into this deed poll to acknowledge that the Securities will have the priority set out in this document.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

Creditor means the First Creditor or the Second Creditor.

First Creditor means each 'Beneficiary' as defined under the PBA Trust Deed Poll.

Georgiou means [insert name of Subcontractor]

Government Agency means any government or governmental, semi-governmental, administrative, public, regulatory or judicial entity, body, department, commission, agency or authority.

PBA Trust Deed Poll means the document of that name duly executed by Georgiou and which is also executed by the Minister for Works, in respect of the Project.

Personal Property means all Secured Property which is 'personal property' (as defined in the PPSA).

Project means the carrying out and completion of construction of [●].

Power means, in respect of a Creditor, any right, power, discretion or remedy of that Creditor under any of its Security or applicable law.

PPS Law means:

- (a) the PPSA and any regulation made at any time under the PPSA, including the PPS Regulations (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).

PPS Regulations means the *Personal Property Securities Regulations 2010* (Cth).

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

Receiver means any person or persons appointed as a receiver or receiver and manager pursuant to a Security.

Secured Amounts means, in respect of a Security at any time, all monetary liabilities and obligations and amounts which are secured by that Security at that time.

Secured Property means all property and assets the subject of both a Security of the First Creditor and a Security of the Second Creditor, as described in Appendix 1.

Security means, in respect of a Creditor:

- (a) each Security Interest of that Creditor described in Appendix 1; and
- (b) any other present or future Security Interest of that Creditor to the extent that it affects the Secured Property.

Security Interest means any:

- (a) 'security interest' as defined in the PPS Law;
- (b) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements);
- (c) thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset,

and any agreement to create any of them or allow them to exist.

Subcontractor means **[insert name of Subcontractor]**

1.2 Interpretation

In this document:

- (a) headings are for reference only and do not affect interpretation;
- (b) subject to clause 1.3, any undertaking, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (c) the singular includes the plural and vice versa, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
- (d) unless stated otherwise, anything (other than making a payment) required to be done on or by a day which is not a Business Day, must be done on or by the next Business Day;
- (e) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for its drafting; and
- (f) examples and use of the word including and similar expressions do not limit what else may be included.

Unless the context requires otherwise, a reference in this document to:

- (g) a party to any document includes that person's successors and permitted substitutes and assigns;
- (h) an agreement includes any legally enforceable arrangement, understanding, undertaking or representation whether or not in writing;
- (i) a document or agreement includes that document or agreement as novated, altered, supplemented or replaced from time to time;
- (j) any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
- (k) clauses, schedules and annexures are to those in this document, and a reference to this document includes any schedule and annexure;
- (l) a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (m) time is to Perth, Western Australia time unless otherwise stated;
- (n) legislation or other law or a provision of them includes regulations and other

instruments under them, and any consolidation, amendment, re-enactment or replacement;

- (o) property or an asset includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset; and
- (p) amendment demand, attachment, financing change statement, financing statement and perfection have the meaning given in the PPSA.

1.3 Creditor obligations

A Creditor's obligations under this document are several, and no Creditor is responsible for the obligations of another Creditor. A Creditor's failure to perform an obligation does not relieve another Creditor or the Security Provider of its obligations.

2. PRIORITY ARRANGEMENTS

2.1 Consent

Each Creditor consents to the other Creditor's Security and agrees that the creation and existence of the other Creditor's Security is not a breach of, or default under, its Security or this document.

2.2 Order of priority

In respect of all Secured Property, the First Creditor's Security has priority over, and ranks ahead of, the Second Creditor's Security for all Secured Amounts under the First Creditor's Security.

2.3 Application of money and proceeds

All money and proceeds received or recovered from the disposal of, or other dealing with, the Secured Property (including any insurance or compensation proceeds for loss or damage to the Secured Property payable to a Creditor) must be applied in accordance with the priority set out in clause 2.2, whether or not arising from the enforcement of any Security.

2.4 Contingent liabilities

If a Security secures a contingent liability owed to a Creditor, until that Creditor is satisfied that the contingent liability has been extinguished, that Creditor may retain from the proceeds of the exercise of any Power an amount consistent with the priority established under clause 2.2 which it reasonably estimates to be the amount of the contingent liability.

2.5 Priority arrangements paramount

This document and the priority arrangements in it apply despite anything which might otherwise affect them, including:

- (a) anything contained in any Security;
- (b) the order of creation, execution, attachment, perfection, filing for registration or registration of any Security;
- (c) the order in which any Secured Amounts secured by any Security was made available or came into existence;
- (d) an increase or decrease in the amount secured by any Security for any reason;
- (e) the order in which any Powers are exercised (including the appointment of a Receiver), whether under a Security or any other document relating to any Secured Amounts secured by any Security;
- (f) any partial discharge or release of any Security or Secured Property;
- (g) any notice received by a Creditor pursuant to a Security, or of a Security Interest; or
- (h) any law, rule of equity or order or decision of any Government Agency to the contrary.

2.6 Continuation

The priority arrangements in this document will continue until:

- (a) there is no longer any Secured Property; or
- (b) agreed otherwise by the Creditors in writing.

2.7 Other property

Nothing in this document affects the operation of a Security to the extent it secures property or assets other than the Secured Property.

3. PPS LAW

3.1 Section 61

In respect of the Personal Property, this document is an agreement to subordinate security interests for the purposes of section 61 of the PPSA.

3.2 Notices under Chapter 4

The Creditors contract out of the Second Creditor's right to receive any notice from the First Creditor under Chapter 4 of the PPSA.

3.3 Amounts under section 127(6)

The Creditors contract out of the Second Creditor's right to receive any amount from the First Creditor under section 127(6) of the PPSA.

4. DEALINGS BETWEEN CREDITORS

4.1 Distribution

If a Creditor (Recipient) receives or recovers an amount pursuant to its Security which the other Creditor (Claimant) has a right to receive pursuant to this document, the Recipient must:

- (a) promptly notify the Claimant of the amount received or recovered; and
- (b) promptly pay an equivalent amount (net of its reasonable enforcement and costs incurred in obtaining the amount) to, or as directed by, the Claimant.

On the Claimant's receipt of the Recipient's payment under paragraph 4.1(b), the Security Provider acknowledges that the Recipient will be taken to not have received the relevant amount, and the Security Provider's liability to the Recipient will not be reduced or discharged by that amount.

4.2 Dealing with a Security

The Second Creditor must not transfer, assign or otherwise deal with any of its Security except:

- (a) for the purpose of enforcement of the Security in accordance with this document;
- (b) where any person taking a transfer or assignment of that Security first enters into a deed with the other parties to this document on the same terms as this document; or
- (c) where the First Creditor first agrees in writing.

4.3 Exercise of Powers and enforcement

- (a) The Second Creditor must obtain the consent of the First Creditor before:
 - (i) taking steps to exercise any Power in connection with enforcement of its Security in relation to the Secured Property; or
 - (ii) making, or permitting a Receiver to make, any application under section 420B of the *Corporations Act 2001* (Cth) in relation to any Secured Property.

5. GENERAL PROVISIONS

5.1 Governing law and jurisdiction

This document is governed by the laws of Western Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place (and any court of appeal) and waives any right to object to an action being brought in those courts, including on the basis of an inconvenient forum or those courts not having jurisdiction.

5.2 Irrevocable

This deed poll cannot be revoked or otherwise modified without the prior written consent of each of the First Creditors.

5.3 Enforceability

This document operates as a deed poll and is enforceable against the Second Creditor in accordance with its terms by the First Creditor, despite the First Creditors not being parties to this deed poll.

Appendix 1 - Securities and Secured Property

First Creditor's Securities

1. Each Security Interest granted in favour of or vesting in a First Creditor in respect of the property described under the heading 'Secured Property' below pursuant to the PBA Trust Deed Poll and the PBA Agreement.

Second Creditor's Securities

2. [Fully describe, e.g. Deed titled 'Fixed and Floating Charge/General security deed' by [] in favour of the Second Creditor dated on or about the date of this document].

Secured Property

3. The bank account (being a trust account) in the name of the Subcontractor effected pursuant to the PBA Trust Deed Poll and the PBA Agreement (PBA Account).
4. Each First Creditor's legal and beneficial interest in and to the trust monies standing to the credit of the PBA Account from time-to-time.

EXECUTED as a deed poll.

Each attorney signing this document under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of the revocation of the power of attorney.

[Insert Second Creditor Execution panel]

Second Creditor

Schedule 13 - Statutory Declaration

[Note: This statutory declaration must be issued at the same time as (and no earlier than) the Progress Payment Instruction(s) is issued]

Statutory Declaration

I, Name of Address

Occupation

Sincerely declare as follows:

1. I hold the position of [position title] and am duly authorised by the Subcontractor to make this declaration in accordance with the provisions of the Subcontract.
2. In respect of [Name of the Subcontract] and Progress Payment Instruction(s) [PPI Nos] of [Date the PPIs were authorised]:
 - (a) the Progress Payment Instruction(s) are true and accurate and comply with the Subcontract (and for the avoidance of doubt and without limitation, properly allocate amounts payable to Sub-subcontractors pursuant to their subcontracts);
 - (b) all Opt-in Sub-subcontractors have supplied an Opt-in Notice to the Subcontractor;
 - (c) to the extent that any previously issued Progress Payment Instruction was not correct or for any other reason, the Subcontractor has no outstanding liabilities to Sub-subcontractors or any other subcontractor (regardless of subcontract value) in connection with the Works;
 - (d) the Payment Report issued with the Progress Payment Instruction(s) is true and accurate; and
 - (e) there has been no change (since the date of the PBA Trust Deed) in the identity of the party with any registered security interests over the Subcontractor (as identified under the "Personal Properties Securities Register" maintained pursuant to the *Personal Properties Securities Act 2009* (Cth)) or if there has been, a duly executed deed of priority or deed of subordination (in form and substance acceptable to Georgiou) has been executed;

in each case as at the date of the Progress Payment Instructions issued pursuant to the Subcontract, where terms defined in the Subcontract have the same meaning in this statutory declaration.

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the *Oaths, Affidavits and Statutory Declaration Act 2005* (Cth) at:

Location

On Date the declaration is being made *[which MUST NOT be made before the date the PPIs were authorised]*

by:

.....
[Signature of person making the declaration] In the presence of

.....
[Signature of authorised witness]

.....
[Name of authorised witness and qualification as such a witness]

Schedule 14 - Special Conditions

[Insert other Special Conditions as applicable. Delete this note.]