

Agreement for Minor 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		And:	
[Insert Georgiou Entity] (Georgiou)		[Insert full name of other party] (Supplier)	
ABN:	[Insert]	ABN:	[Insert]
Of:	[Insert]	Of:	[Insert]
Phone:	[Insert]	Phone:	[Insert]
Facsimile:	[Insert]	Facsimile:	[Insert]
Email:	[Insert]	Email:	[Insert]
Contact:	[Insert]	Contact:	[Insert]
AGREEMENT DETAILS			
Supply Item:	Refer to Schedule 2		
Supplier Documentation:	Refer to Schedule 2		
Specifications:	Refer to Schedule 3		
Delivery Location:	[Insert delivery location]		
Price:	[Insert]	Payment Terms:	As provided in General Conditions clause 17 (or, if applicable, clause 5 of Schedule 1)
	(Plus GST if applicable)		[Insert]
Contract Program & Date for Delivery:	Refer to Schedule 4		
Defects Liability Period	[Insert]		
Liquidated Damages:	[Insert] per day		
Warranties:	As provided in General Conditions clause 2(b)		
Special Conditions:	Refer to Schedule 10		
Commencement Date:	[Insert]		
INSURANCES	Workers Compensation	Product/Public Liability	Plant and Equipment
Company:	[Insert]	[Insert]	[Insert]
Limit of Cover:	[Insert]	[Insert]	[Insert]
Policy No.:	[Insert]	[Insert]	[Insert]
Expiry Date:	[Insert]	[Insert]	[Insert]
SECURITY OF PAYMENT ACT			
Appointed adjudicator:	First adjudicator: [Insert] Second adjudicator: [Insert] Third adjudicator: [Insert]		
Nominating authority:	The Chair for the time being of the Chapter of the Institute of Arbitrators and Mediators or Resolution Institute in the State or Territory in which the Delivery Location is located		

NOTE: if Qld substitute “The Registrar appointed under the <i>Building and Construction Industry Payment Act 2004 (Qld)</i> ”	
Applicable Codes	National Code [Applicable / not Applicable]
	WA Code [Applicable / not Applicable]
	NSW Code [Applicable / not Applicable]
	Qld Code [Applicable / not Applicable]
(if neither struck through then ‘Applicable’)	
Government Building Training Policy	[Applicable / not Applicable] (if neither struck through then ‘Applicable’)

General Conditions

1. AGREEMENT

- (a) The following documents form the entire agreement between the parties in relation to the supply of the Supply Items (Agreement):
 - (i) the Form of Agreement;
 - (ii) Schedule 1 - State and Territory Specific Conditions;
 - (iii) the Special Conditions;
 - (iv) these General Conditions; and
 - (v) Schedule 2 - Schedule 9.
- (b) 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 of the Supply Items.
- (c) If there is any inconsistency, discrepancy or ambiguity between the documents listed in clause 1(a), Georgiou will direct the Supplier as to the interpretation to be followed and the Supplier will not be entitled to claim as a result of or in connection with Georgiou's direction.

2. PERFORMANCE

- (a) The Supplier must supply and Deliver the Supply Items and Supplier Documentation (if any) to Georgiou and perform its other obligations under this Agreement in accordance with this Agreement, including the Specifications.
- (b) 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 laws, regulations, licences, permits, approvals or Australian Standards applicable to the Supply Items;
 - (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 purpose.
- (c) The warranties in clause 2(b) are in addition to any statutory or manufacturers' warranties applicable to the Supply Items.
- (d) The Supplier must:
 - (i) 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;
 - (ii) perform its obligations under this Agreement:
 - (A) in accordance with all directions of Georgiou; and
 - (B) with due expedition and without delay;
 - (iii) ensure that the supply and delivery of the Supply Items will be performed by appropriately qualified, skilled, experienced and trained subcontractors, consultants or employees or agents;

- (iv) supply at its own expense, all labour, plant, goods, tools, appliances or other property the Supplier requires to fulfil its obligations under this Agreement; and
 - (v) obtain, at its cost, all requisite permits, approvals and licences and comply with all laws and regulations in connection with the supply of the Supply Items.
- (e) The Supplier must provide all installation instructions, maintenance and operating manuals, engineering data, spare parts lists, manufacturers' warranties and other information as reasonably required for the installation, operation and maintenance of the Supply Items at the time of delivery of the Supply Items.

3. DELIVERY

- (a) The Supplier must deliver the Supply Items and the Supplier Documentation (if any) to the Delivery Location by the Date for Delivery. Delivery will have occurred only when the Supplier has:
- (i) delivered the Supply Items and the Supplier Documentation (if any) to the Delivery Location;
 - (ii) unless otherwise specified in this Agreement, unloaded the Supply Items at the part of the Delivery Location designated by Georgiou; and
 - (iii) Georgiou has acknowledged, in writing, its receipt of the Supply Items.
- (b) The Supplier must pack, crate and label the Supply Items to ensure that they are not damaged while they are delivered, unloaded and stored at the Delivery Location. Labour and equipment used to load or unload Supply Items will be the responsibility and expense of the Supplier.
- (c) 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 at no cost to Georgiou, unless the Supplier can demonstrate that it is not possible to do so. If compliance with such a direction causes the Supplier to incur additional costs to that contemplated at the date of this Agreement, the Supplier will be paid its reasonable direct costs of complying with a direction under this clause.
- (d) Entry to the Delivery Location by the Supplier and its subcontractors, consultants or employees or agents engaged to supply 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 the property or for any personal injury or death to persons while the Supply Items are on or delivered to the Delivery Location.
- (e) When accessing the Delivery Location, the Supplier must comply with all policies and procedures relating to the Delivery Location as notified by Georgiou to the Supplier.
- (f) 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.

4. ACCEPTANCE OF ITEM

- (a) Any Supply Item supplied by the Supplier must be accompanied by a notice of acceptance (Delivery Docket) which must be signed by an authorised representative of Georgiou at the Delivery Location.
- (b) Georgiou will not be liable to pay for the Supply Item unless the Delivery Docket is first signed by an authorised representative of Georgiou.
- (c) Upon delivery of the Supply Item to the Delivery Location, Georgiou will inspect the Supply Item and if the Supply Item:
- (i) complies with the Specifications (save for minor defects which in Georgiou's opinion (acting reasonably) do not prevent the Supply Item from being used for its intended purpose) and all statutory or manufacturer's warranties (if any) have been provided, Georgiou must sign an Delivery Docket; or
 - (ii) does not comply with the Specifications, Georgiou must notify the Supplier, giving reasons, that the Supply Item does not comply with the Specifications.

- (d) Notwithstanding that the Supply Item does not comply with the Specifications, Georgiou may:
 - (i) accept the Supply Item, in which case the Price shall be reduced by a sum Georgiou assesses as reasonable to correct any non-compliance; or
 - (ii) accept the Supply Item and reserve its rights to have the non-compliance rectified at a later stage by the Supplier or, at Georgiou's option, a third party, and in either case at the Supplier's cost.
- (e) A signed Delivery Docket is not an admission by Georgiou that the Supply Item complies with this Agreement.

5. TITLE AND RISK

- (a) Risk in the Supply Items passes to Georgiou on delivery of the Supply Items to the Delivery Location in accordance with clause 3(a).
- (b) Title to the Supply Items passes to Georgiou on payment or delivery (whichever occurs first) and the Supplier warrants that it is able to pass good title in the Supply Items to Georgiou.

6. EXTENSION OF TIME

- (a) Subject to clause 6(c), the Supplier will only be entitled to an Extension of Time to the Date for Delivery if the Supplier demonstrates to the reasonable satisfaction of Georgiou that:
 - (i) the supply and delivery of the Supply Items are delayed by any cause which will prevent the Supplier from delivering the Supply Items by the Date for Delivery;
 - (ii) the delay is solely caused by:
 - (A) an act or omission by Georgiou or its subcontractors, consultants or employees or agents (not being employed by the Supplier); or
 - (B) a direction by Georgiou to carry out a variation in accordance with clause 16; and
 - (iii) within seven (7) days after the commencement of the delay, the Supplier gives written notice 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 the measures that the Supplier has adopted (or will adopt) to overcome or minimise the effects of the delay;
- (b) Provided that the requirements of clause 6(a) are satisfied, Georgiou will determine the period of the delay to the Date for Delivery 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.
- (d) The Supplier accepts the risk of any loss, expense 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.
- (e) Except to the extent that this Agreement otherwise expressly provides, the Supplier will not be entitled to any additional payment as a result of the granting of an Extension of Time.

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 for every day after the Date for Delivery until the date upon which the Supply Items are delivered or the date that this Agreement is terminated pursuant to clause 22, whichever occurs first.

- (b) If Form of Agreement does not provide for any Liquidated Damages, or the Liquidated Damages are for any reason found to be unenforceable, Georgiou may seek damages at common law for the Supplier's failure to deliver the Supply Items by the Date for Delivery.
- (c) The exercise by Georgiou of its rights under this clause 7 does not relieve the Supplier from any of its obligations or liabilities under this Agreement.

8. DEFECTS

- (a) Prior to the expiry of the Defects Liability Period, if any Supply Items are unsatisfactory, defective or fail to meet any Specifications or other requirements of this Agreement (Defective Supply Items), the Supplier must do any of the following, at its own cost, as determined by Georgiou in its absolute discretion:
 - (i) re-take possession of the Defective Supply Items and refund the Price for the Defective Supply Items to Georgiou;
 - (ii) deliver replacements of the Defective Supply Items; or
 - (iii) repair the Defective Supply Items.
- (b) Any loss or damage that Georgiou has incurred or suffered as a result of the supply of the Defective Supply Items (including the costs of Georgiou doing any of things referred to in clause 8(a)) that are not performed (within the time nominated by Georgiou) by the Supplier will be a debt due and payable by the Supplier to Georgiou.
- (c) The Defects Liability Period will recommence from the delivery of the replacement Supply Items or repair of the Defective Supply Items.

9. CHAIN OF RESPONSIBILITY

The Supplier must comply, and ensure that its subcontractors comply, with all laws relating to chain of responsibility regulation, including but 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.

10. INDUSTRIAL RELATIONS AND WORK HEALTH AND SAFETY

- (a) Work Health and Safety
 - (i) The Supplier must:
 - (A) comply with all WH&S Laws and all relevant industry standards and Codes;
 - (B) take all steps reasonably practicable to ensure:
 - (1) the health and safety of workers; and
 - (2) that the health and safety of other persons are not put at risk from work carried out;
 - (C) 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;
 - (D) 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;
 - (E) comply with any relevant health, safety, environment and quality management plans of Georgiou and the Principal;
 - (F) 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;
 - (G) 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;

- (H) implement and comply with all necessary security requirements of Georgiou for the Delivery Location;
 - (I) 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;
 - (J) report to Georgiou, within the timeframes described, any of the following arising from or in connection with this Agreement:
 - (1) Notifiable Incidents - initial notice immediately and a detailed report within one Business Day of occurrence;
 - (2) 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;
 - (3) 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
 - (4) property damage to any property - initial notice within one Business Day of occurrence and a detailed report within five Business Days of occurrence; and
 - (K) 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.
- (ii) 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:
 - (1) authorised by Georgiou; and
 - (2) the above requirements in clause 10(a)(ii)(A) have been met.
- (b) Industrial relations
- (i) The Supplier acknowledges and agrees that it is responsible for industrial relations involving its subcontractors, consultants or employees or agents.
 - (ii) 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.

- (iii) 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.
- (iv) The Supplier must comply, at its cost, with any reasonable direction by Georgiou issued with the objective of reducing industrial disputation.
- (v) 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 as if there was no dispute or stoppage.
- (vi) The Supplier must ensure that, at all times each of its employees and those of its subcontractors and suppliers:
 - (A) 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;
 - (B) working in Australia (including at the Site) is correctly classified in accordance with any applicable Industrial Instrument; and
 - (C) is adequately trained and hold appropriate experience, qualifications, training, licences, tickets and certificates of competence.

11. WHS SITE REQUIREMENTS

While working on or in connection with a worksite owned or controlled by Georgiou (including the Site) (Worksite), the Supplier is required to work in accordance with Georgiou's work health and safety systems and processes. 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 Georgiou's work health and safety systems and processes.

11.1 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.

11.2 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.

11.3 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.

11.4 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.

11.5 Pre-starts 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.

11.6 Toolbox Meetings

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

11.7 HSEQ Management Meetings

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

11.8 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.

11.9 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.

11.10 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 precedent 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.

11.11 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.

12. WHS MANAGEMENT PLAN

- (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 12(f).

13. NATIONAL CODE

This clause 13 applies if stated in the Form of Agreement.

- (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 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;
 - (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.

14. ENVIRONMENTAL REQUIREMENTS

The Supplier must:

- (a) ensure it complies with all Environmental Laws 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).

15. PERSONAL PROPERTY 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) change its name, relocate its principal place of business outside Australia or change its place of registration or incorporation without first giving Georgiou 21 days' notice; 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 21 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.

16. VARIATIONS

- (a) Georgiou may, at any time, direct the Supplier to amend, increase, decrease, omit or change the quality, character or extent of any Supply Items (Variation).
- (b) No Variation will invalidate this Agreement, including a Variation which significantly increases or decreases the quantity of Supply Items to be supplied.
- (c) If the Variation requires the omission of work forming part of the supply and Delivery of the Supply Items, Georgiou may perform that omitted work, or have it done by others as it sees fit. Georgiou will not be in breach of this Agreement if it reduces the quantity or scope of the Supply Items to be supplied and thereafter engages a third party or itself to supply those Supply Items.
- (d) If the parties cannot agree on the price for a Variation, Georgiou will determine a reasonable increase or decrease to the Price.
- (e) 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. If the Supplier fails to notify Georgiou in accordance with this clause 16(e), the Supplier will not be entitled to any increase in the Price or additional payment with respect to the instruction or direction.

17. PAYMENT

- (a) Georgiou will, subject to the terms of this Agreement, pay the Supplier the Price. The Price is inclusive of all costs relating to the supply of the Supply Items in accordance with the terms of this Agreement, including insurance, transport and delivery charges and taxes (other than GST).
- (b) Unless otherwise specified in this Agreement, the Supplier may only invoice Georgiou after the Supply Items have been delivered in accordance with clause 3. Invoices must include:
 - (i) a detailed description of the Supply Items delivered;
 - (ii) the Price payable for the Supply Items;
 - (iii) substantiation (including documentary evidence) that the Supply Items have been supplied;
 - (iv) a statutory declaration in the form set out in Schedule 6 which states that as at the date of the invoice, no wages or other monies are due and owing by the Supplier to its subcontractors, suppliers, consultants or employees or agents for any work and which is not misleading or deceptive in any way; and
 - (v) any other information reasonably required by Georgiou.

The Supplier's invoice is to be issued to Georgiou by 25th of the month. Should the Supplier issue its invoice prior to the 25th day, it is deemed for the purposes of the Security of Payment Act to have been issued on the 25th day of the month.

- (c) If the Delivery Location is located in New South Wales, the invoice must be accompanied by a duly signed written statement in the form set out in Schedule 5 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) Georgiou will pay the amount of the invoices issued by the Supplier under clause 17(b) (or, if applicable, clause 5 of Schedule 1):
 - (i) if the Delivery Location is located in New South Wales, within thirty (30) Business Days from the date of the invoice;
 - (ii) if the Delivery Location is located in Queensland, within twenty-five (25) Business Days of the date of the invoice;
 - (iii) if the Delivery Location is located in Western Australia, within forty-two (42) calendar days from the date of the invoice; 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 invoice is issued,except where Georgiou disputes the invoice, in which case:
 - (v) Georgiou will pay the undisputed part of the invoice (if any);
 - (vi) Georgiou will issue to the Supplier with a payment certificate stating the amount of the invoice which in the opinion of Georgiou (having regard to clause 17(b) ((or, if applicable, clause 5 of Schedule 1) and stating the reasons why the amount in the payment certificate is less than that in the invoice), is payable by Georgiou or the Supplier within ten (10) Business Days of receiving the Supplier's invoice; and
 - (vii) if the resolution of the dispute determines that Georgiou is to pay an amount to the Supplier, Georgiou will pay that amount upon resolution of that dispute.

- (e) No interest will be payable by Georgiou in respect of any invoice which is due but unpaid.
- (f) Georgiou may at any time (including in the assessment of an invoice), 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 arising from or in connection with this Agreement or the supply and delivery of the Supply Items.

18. GOODS AND SERVICES TAX

- (a) Except under this clause 18, the consideration for a Supply made under or in connection with this Agreement does not include GST. If a Supply made under or in connection with this Agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
 - (i) the Recipient must pay the Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this Agreement for that Supply); and
 - (ii) the Supplier must give the Recipient a Tax Invoice for the Supply.
- (b) If either party has the right under this Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with this Agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- (c) Capitalised terms in this clause 18 have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

19. INDEMNITIES

The Supplier indemnifies Georgiou and its subcontractors, consultants, employees or agents against any claims, actions, proceedings, costs, expenses, losses and damages incurred in connection with:

- (a) the supply and delivery of the Supply Items;
- (b) any loss of or damage to real or personal property caused by the Supplier or its subcontractors, consultants, employees or agents;
- (c) personal injury, disease, illness (including mental illness) or death caused by the Supplier or its subcontractors, consultants, employees or agents;
- (d) any breach of this Agreement by the Supplier; or
- (e) any negligent act or omission by the Supplier, its subcontractors, consultants, employees or agents,

except to the extent directly caused by the negligence of Georgiou or its subcontractors, consultants, employees or agents.

20. INSURANCE

- (a) Before commencing the performance of any of its obligations under this Agreement, the Supplier must take out and maintain, at its cost, the insurances set out in the Form of Agreement with insurers and on terms approved by Georgiou. Evidence of the currency of the insurances must be given in writing to Georgiou at any time upon request by Georgiou.
- (b) The Supplier must pay all deductibles and any excesses for claims made under any policy of insurance effected by Georgiou or the Supplier, which relate to the Supplier or the supply or delivery of the Supply Items.

21. SUSPENSION

- (a) Georgiou may, at any time and for any reason, direct the Supplier by notice in writing to suspend the performance of the whole or any part of its obligations under this

Agreement.

- (b) The Supplier must comply with any direction issued by Georgiou under clause 21(a) and must immediately recommence the performance its obligations under this Agreement when directed to do so by Georgiou.
- (c) The Supplier has no claim arising out of a suspension other than an Extension of Time pursuant to clause 6 and payment of its reasonable direct costs where the reason for the suspension was caused by Georgiou.

22. TERMINATION

- (a) If:
 - (i) clause 5 of Schedule 1 applies and 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
 - (ii) clause 5 of Schedule 1 applies and there is 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; or
 - (iii) the Supplier otherwise 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:
 - (iv) terminate this Agreement; or
 - (v) 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 22(a):
 - (i) Georgiou will not be liable to make any further payment to the Supplier for the Supply Items; and
 - (ii) Georgiou may, without payment of compensation to the Supplier, use any plant or materials (including Supply Items) owned by the Supplier.
- (c) Either party may immediately terminate this Agreement by notice to the other, upon the occurrence of any of the following events:
 - (i) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with this Agreement;
 - (ii) 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;
 - (iii) a party or its creditors seek relief against any insolvency law, including the *Bankruptcy Act 1966* (Cth) or the *Corporations Act 2001* (Cth).
- (d) If Georgiou exercises its rights under clause 22(c), Georgiou will not be liable to make any further payment to the Supplier for the Supply Items.
- (e) 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. If Georgiou exercises its rights under this clause:
 - (i) Georgiou will pay the Supplier for all Supply Items supplied up to the date of termination; and
 - (ii) Georgiou may engage a third party to supply all or part of the Supply Items that have been terminated for convenience.

23. DISPUTE RESOLUTION

- (a) If a dispute or difference arises between Georgiou and the Supplier in connection with 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).
- (b) Within fourteen (14) days of a party receiving a Dispute Notice, Georgiou and the Supplier and/or their delegates must meet and attempt to resolve the dispute or difference in good faith.
- (c) If the dispute or difference is not resolved under clause 23(b), then no later than twenty-eight (28) days after a party receives a Dispute Notice, the senior executives of each party must meet to negotiate in good faith a resolution of the dispute or difference.
- (d) If the dispute or difference is not resolved under clause 23(c), either party may proceed to litigation, but nothing in this clause 23 prevents a party from seeking urgent interlocutory relief or commencing proceedings where there is a statutory right to do so.
- (e) Each party must continue to perform its obligations under this Agreement despite the existence of a dispute or difference.

24. TIME BAR FOR CLAIMS

- (a) Georgiou will not be liable upon any claim for a Variation, additional costs or any other compensation or remedy unless:
 - (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 24(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 24(a)(ii) must be in writing and include the legal basis for the claim, the facts relied upon in support of the claim and the amount claimed.
- (c) Failure by the Supplier to comply with this clause 24 will be an absolute bar to making the claim.

25. INTELLECTUAL PROPERTY RIGHTS

- (a) The copyright in all plans, designs, drawings, engineering information, data, specifications, reports, accounts and any other material given to the Supplier by Georgiou remains the property of Georgiou and may only be used by the Supplier for the purposes of this Agreement.
- (b) The Supplier grants to Georgiou a perpetual, irrevocable, fully paid-up, non-exclusive, transferable licence (including to the Principal) to use and reproduce any plans, designs, drawings, engineering information, data, specifications, reports, accounts and any other material provided to Georgiou in connection with this Agreement (Supplier's Intellectual Property) 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.
- (c) If a third party claims that the Supplier's Intellectual Property infringes their patent, trademark or copyright in Australia or any other country, the Supplier must indemnify Georgiou against any loss or damage that Georgiou may directly or indirectly sustain or incur because of that claim.

26. CONFIDENTIALITY

The Supplier must keep all aspects of this Agreement and all matters arising from the supply of the Supply Items confidential, and must not disclose these details to any third party except to the extent necessary to perform this Agreement, as required by law or with the prior written consent of Georgiou.

27. RECORDS AND INSPECTION

- (a) The Supplier must keep Georgiou fully informed in respect of all aspects of its performance of this Agreement.
- (b) 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.
- (c) At all reasonable times, Georgiou (by itself or by its agents) will have the right to inspect and review the records and information created by the Supplier in the performance of its obligations under this Agreement, 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.

28. ASSIGNMENT AND SUBCONTRACTING

- (a) The Supplier must not, without the prior written consent of Georgiou, subcontract, assign, transfer or charge its rights or obligations under this Agreement. No consent by Georgiou under this clause 28(a) will relieve the Supplier of any of its obligations under this Agreement.
- (b) Georgiou may, upon written notice to the Supplier, assign or novate this Agreement or assign its rights and entitlements under this Agreement. The Supplier must execute any document reasonably required by Georgiou to affect its rights under this clause 28(b) without being entitled to compensation.

29. 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, facsimile or electronic mail to the recipient's address for Notices set out in the Agreement Details.
- (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 Site is located, on the third 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 Site is located, on the seventh day after the date of posting;
 - (iii) if sent by facsimile transmission, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice; or
 - (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 Notice in writing to the other party.

30. 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 30(a)(i), 30(a)(ii) or 30(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.

31. 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.

32. 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.

33. BREACH OF ANTI-CORRUPTION SPECIFIC CONDITIONS

- (a) If a breach of clauses 30, 31 or 32 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 22 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 30, 31 or 32; or
 - (B) reimburse or indemnify the Supplier for any loss or damage.

34. 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 34(a) above.

35. MISCELLANEOUS

- (a) The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.
- (b) This Agreement constitutes the entire agreement between the parties and supersedes all previous negotiations and communications about its subject matter.
- (c) Any amendment of this Agreement must be in writing and signed by both parties.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) All obligations to indemnify under this Agreement survive the expiry or termination of this Agreement.
- (h) This Agreement may be executed in any number of counterparts. All counterparts together make one instrument.
- (i) Each party must do all things reasonably necessary to give effect to this Agreement and the transactions contemplated by it.
- (j) If the Supplier comprises of two or more persons (whether as a joint venture, consortium, partnership or any other unincorporated grouping of two or more persons), the obligations and liabilities of those persons are joint and several.
- (k) The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers and remedies provided at law, independently of this Agreement, unless otherwise stated.
- (l) The Supplier must at its own cost supply all labour, tools, equipment and materials necessary for the supply of Supply Items.
- (m) If any day on or by which a person must do something under this Agreement is not a Business Day, then the person must do it on or by the next Business Day.
- (n) No provision of this Agreement is not to be constructed against the interests of Georgiou because Georgiou prepared this Agreement.

36. 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.

37. SPECIAL CONDITIONS AND STATE AND TERRITORY SPECIFIC CONDITIONS

- (a) The parties agree that the Special Conditions are part of this Agreement.
- (b) The parties agree that the conditions contained in Schedule 1 are part of this Agreement and are to apply as relevant given the location of the Delivery Location.

38. 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 the Agreement Details, 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 the Agreement Details then the authorised nominating authority shall be the entity stated in the Agreement Details.
- (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 22(e) as if this Agreement had been terminated for convenience pursuant to that clause; and
 - (vi) in addition to the payments referred to in clause 22(e) the Supplier is entitled to any payment owed under the Security of Payment Act that is not included in a payment under clause 22(e).
- (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 17(d)(vi) (or, if applicable, clause 5 of Schedule 1) 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 17(d)(vi) (or, if applicable, clause 5 of Schedule 1) 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 17(d)(vi) (or, if applicable, clause 5 of Schedule 1) 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 38(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 38(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; or
 - (vi) a failure by the Supplier to comply with this clause 38, as applicable under the relevant Security of Payment Act.
- (m) This clause 38 shall survive the expiry or termination of this Agreement for any reason.

39. PROPORTIONATE LIABILITY LEGISLATION

- (a) For the purposes of this clause 39, "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.

40. DEFINED TERMS

In this Agreement:

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 Years' Day.

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 specified in the Agreement Details or otherwise notified by Georgiou to the Supplier.

Date for Delivery means the date or dates stated in the Form of Agreement 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 the Form of Agreement and commences on the date when Georgiou accepts the Supply Items.

Deliver or Delivery has the meaning set out in clause 3.

Delivery Docket has the meaning set out in clause 4(a).

Delivery Location means the place or places specified in the Form of Agreement 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 6.

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.

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.

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; and
 - (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.

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.

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 the Form of Agreement, as adjusted in accordance with this Agreement.

Principal means [insert name of Principal under the Head Contract];

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.

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 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 3.

Special Conditions means the special conditions (if any) contained in Schedule 10.

Supply Item means the goods, materials, services or items described in Schedule 2.

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 Act 2011* (ACT),

each as amended from time to time.

Variation has the meaning given in clause 16.

41. 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.

END OF GENERAL CONDITIONS

Schedule 1 - State and Territory Specific Conditions

1. NEW SOUTH WALES

1.1 Contractors Debts Act 1997 (NSW)

- (a) 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.

1.2 NSW Code of Practice and Implementation Guidelines

This clause 1.2 applies if stated in the Form of Agreement.

(a) 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.

(b) Primary obligation

- (i) 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.
- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) 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.
- (vi) The Supplier must ensure that all subcontracts with its subcontractors and suppliers impose obligations equivalent to the obligations under this clause.

(c) Access and information

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

- (B) inspect any work, material, machinery, appliance, article or facility;
- (C) access information and documents;
- (D) inspect and copy any record relevant to the project;
- (E) have access to personnel; and
- (F) 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.

- (iii) 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.

(d) Sanctions

- (i) 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.
- (ii) 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.
- (iii) Where a sanction is imposed:
 - (A) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (B) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - (1) record and disclose details of noncompliance with the NSW Code or NSW Guidelines and the sanction; and
 - (2) 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.

(e) Compliance

- (i) 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.
- (ii) 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.
- (iii) 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:
 - (A) the circumstances of the proposed change;
 - (B) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change;
 - (C) 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 the Client Agency or Georgiou will direct the Supplier as to the course it must adopt within ten (10) Business Days of receiving notice.

1.3 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 1.3(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 1.3(a) and 1.3(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.

2. VICTORIA

- (a) Wrongs Act
 - (i) To the extent permitted by law, the operation of Part IVAA of the Wrongs Act in relation to any claim arising out of or in connection with this Agreement is excluded.
 - (ii) To the extent that the operation of Part IVAA of the Wrongs Act cannot be excluded as contemplated by clause 2(a)(i), 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:
 - (A) 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
 - (B) assumes an obligation, at the request of Georgiou, to prevent, any

Relevant Person from failing to take reasonable care.

- (iii) To the extent that any Relevant Person fails to take reasonable care:
 - (A) the Relevant Person will be deemed to have acted as the agent of the Supplier; and
 - (B) the Supplier will be directly liable to Georgiou for any such failure to take reasonable care.
- (iv) The Supplier must ensure that any contract entered into with a Relevant Person contains provisions to the following effect:
 - (A) 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
 - (B) the Relevant Person must, at all times, exercise reasonable care in carrying out the supply and Delivery of the Supply Items.
- (b) Despite any other provision of this Agreement, neither Georgiou nor the Supplier or any of their employees, consultants, suppliers or assigns has any liability to each other, nor will they be entitled to make any Claim, in respect of any Consequential Loss sustained as a result of any act or omission of any of them (whether negligent or otherwise) or as a result of a breach of this Agreement by either of them.

3. QUEENSLAND

3.1 QLD Code of Practice and Implementation Guidelines

This clause 3.1 applies if stated in the Form of Agreement.

- (a) General
 - (i) This clause 3 applies if the works under the Head Contract comprise building and construction work funded by the Queensland Government at a value of more than \$2 million.
 - (ii) 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>.
- (b) Primary obligation
 - (i) 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.
 - (ii) 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.
 - (iii) 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.
 - (iv) 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.
 - (v) 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.

- (vi) The Supplier must ensure that all subcontracts with its subcontractors and suppliers impose obligations equivalent to the obligations under this clause.
- (c) Access and information
 - (i) The Supplier must maintain adequate records of compliance with the Queensland Code and Queensland Guidelines by it, its subcontractors, consultants and related entities.
 - (ii) The Supplier must allow, and take reasonable steps to facilitate, Queensland Government authorised personnel (including personnel of the BCCB) to:
 - (A) enter and have access to sites and premises controlled by the Supplier;
 - (B) inspect any work, material, machinery, appliance, article or facility;
 - (C) access information and documents;
 - (D) inspect and copy any record relevant to the project;
 - (E) have access to personnel; and
 - (F) 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.
 - (iii) 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.
- (d) Sanctions
 - (i) 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.
 - (ii) 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.
 - (iii) Where a sanction is imposed:
 - (A) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (B) the State of Queensland (through its agencies, Ministers and the BCCB) is entitled to:
 - (1) record and disclose details of non-compliance with the Queensland Code or Queensland Guidelines and the sanction; and
 - (2) 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.
- (e) Compliance
 - (i) 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.
 - (ii) 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.

- (iii) 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:
 - (A) the circumstances of the proposed change;
 - (B) the extent to which compliance with the Queensland Code and Queensland Guidelines will, or is likely to be, affected by the change; and
 - (C) 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.

WESTERN AUSTRALIA

4. WA CODE

If stated in the Form of Agreement that the WA Code applies, then clauses 17(b) to 17(d) inclusive of the General Conditions are deleted and replaced with clause 5 of these Specific Conditions:

4.1 WA Building and Construction Industry Code of Conduct

This clause 0 applies if stated in the Form of Agreement.

4.2 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.

4.3 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.

4.4 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.

5. PAYMENT

5.1 Definitions

In this clause 6, 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 7.

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 7, 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 7, 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 7, 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 7, 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 7.

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 7.

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.

5.2 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.

5.3 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.

5.4 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.

5.5 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.

5.6 Progress claims

- (a) After the delivery of the Supply Items in accordance with clause 3 of the General Conditions and by the 25th day of the month, the Supplier must deliver to Georgiou a

progress claim (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) a detailed description of the Supply Items delivered; and
 - (ii) the Price for the Supply Items.
- (c) Should the Supplier issue a Progress Claim prior to the 25th day of the month, it is deemed for the purposes of the Security of Payment Act to have been issued on the 25th day of the month.
- (d) 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;
 - (v) a statutory declaration in the form set out in Schedule 6 which states that as at the date of the Progress Claim, no wages or other monies are due and owing by the Supplier to its subcontractors, suppliers, consultants, employees or agents for any work and which is not misleading or deceptive in any way; and
 - (vi) if the Delivery Location is located in New South Wales, a duly signed written statement in the form set out in Schedule 5 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.
- (e) As to a Progress Claim which does not contain the information required under clauses 5.6(b) or 5.6(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 5.6(b) or 5.6(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 5.6(b) or 5.6(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 5.6(b) or 5.6(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 5.6(b) or 5.6(c) within the time notified by Georgiou's Representative or, where no time is notified, within forty eight (48) hours.
- (f) 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.

5.7 Payment certificate

- (a) Within 14 days after receipt of a Progress Claim, Georgiou will 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 5.7 of these Specific 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 6 or 16 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.

5.8 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.

5.9 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.

5.10 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 6 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 and paid by Georgiou into the Project Bank Account.

5.11 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 6 of these Specific Conditions, or if the statutory declaration supplied pursuant to clause 6 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.

5.12 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 6 of these Specific Conditions does not prejudice the right of either party to dispute under clause 23 of the General Conditions whether the amount so paid is the amount properly due and payable and on determination (whether under clause 23 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 6 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.

5.13 Retention Release Events

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

5.14 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.

6. 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 5.8 of these Specific Conditions. Such statutory declaration shall be in the form stated in Schedule 9.

- (c) The statutory declaration referred to in clause 6(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 6(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 6(b) above and notwithstanding clause 5 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 6(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 6(a) or 6(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.

7. 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 the Form of Agreement.

Schedule 2 - Supply Items and Supplier Documentation

[Insert description of the Supply Items and details of all Supplier Documentation. Delete this note]

Schedule 3 - Specifications

[Insert Specification Documents. Delete this note]

Schedule 4 - Contract Program & Date for Delivery(s)

[Insert Contract Program and/or the Date for Delivery(s). Delete this note]

Schedule 5 - Subcontractor Statement (NSW)

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 6 - 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)

[If the Site is located in New South Wales, insert the following. Delete this Note.]

Oaths Act 1900

New South Wales

[If the Site is located in Queensland, insert the following. Delete this Note.]

Oaths Act 1867

Queensland

[If the Site is located in Western Australia, insert the following. Delete this Note.]

Oaths Act 2005

Western Australia

[If the Site is located in Victoria, insert the following. Delete this Note.]

Evidence Act 1958

Victoria

[If the Site is located in New South Wales, Queensland or Western Australia, insert the following:]

I, [Insert Declarants name here] (for the Subcontractor) of [Insert subcontractors name], ACN [Insert]
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. Delete this Note]

I, (Name) of (Address)
(Occupation),

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

at
{place}

.....

{date}

in the presence of -

{Signature of authorised witness}

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

by
{Signature of person making the declaration}

[If the Site is located in Victoria, insert the following. Delete this Note]

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 7- 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 8- 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 9 - 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 10 - Special Conditions

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

Signing Page

EXECUTED BY THE PARTIES AS AN AGREEMENT:

Executed by [Insert Georgiou Entity]
by its duly authorised officer:

←
Signature of Authorised Person

←
Signature of Authorised Person

Name of Authorised Person (print)

Name of Authorised Person

Executed by [Insert Supplier Name]
(Insert ACN or ABN) in accordance with
section 127 of the *Corporations Act 2001*
(Cth) 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)