

Subcontract for Major Works/Services

[insert project number and name]

Insert Georgiou Entity (Georgiou)

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

Project Document # [Insert]

TABLE OF CONTENTS

FORMAL INSTRUMENT OF AGREEMENT	5
GENERAL CONDITIONS	7
1. SUBCONTRACT WORKS	7
2. SUBCONTRACT SUM	10
3. REPRESENTATIVES AND DIRECTIONS	11
4. SECURITY	12
5. PROGRAMMING	14
6. DESIGN	15
7. CONSTRUCTION	18
8. TIME AND COMPLETION	22
9. EXTENSION OF TIME	22
10. DELAY AND DISRUPTION COSTS	24
11. LIQUIDATED DAMAGES	24
12. ACCELERATION	25
13. PRACTICAL COMPLETION	26
14. APPROVALS AND LEGISLATIVE REQUIREMENTS	27
15. WORK HEALTH AND SAFETY	28
16. WHS SITE REQUIREMENTS.....	29
17. WHS MANAGEMENT PLANS.....	32
18. NATIONAL CODE	33
19. CHAIN OF RESPONSIBILITY.....	34
20. INDUSTRIAL RELATIONS	34
21. ENVIRONMENTAL COMPLIANCE.....	37
22. CONTAMINATION	38
23. AUDIT.....	38
24. PERSONNEL	38
25. SITE MATTERS	39
26. PROTECTION OF PEOPLE AND PROPERTY.....	42
27. SITE CONDITIONS	43
28. RESPONSIBILITY FOR SUBCONTRACT WORKS.....	44
29. DEFECTS	45
30. VARIATIONS.....	46
31. PAYMENT.....	48
32. TAXES	52
33. INDEMNITIES AND LIMIT OF LIABILITY	54
34. FORCE MAJEURE	55
35. INSURANCES	56
36. SUSPENSION	59
37. TERMINATION	60
38. DISPUTE RESOLUTION	63

39.	TIME BAR FOR CLAIMS	64
40.	INTELLECTUAL PROPERTY RIGHTS	64
41.	CONFIDENTIALITY.....	65
42.	QUALITY ASSURANCE	65
43.	GEORGIOU SUPPLIED INFORMATION.....	66
44.	SUBCONTRACTOR SUPPLIED INFORMATION	67
45.	RECORDS AND INSPECTION	67
46.	ASSIGNMENT AND SUBCONTRACTING	68
47.	RELATIONSHIP	68
48.	NOTICES.....	69
49.	SUBCONTRACTOR AS TRUSTEE.....	69
50.	SUBCONTRACTOR NOT TO OFFER ANYTHING OF VALUE.....	70
51.	ACCEPTANCE OF GIFTS AND OTHER ADVANTAGES	70
52.	OWNERSHIP OF THE SUBCONTRACTOR	70
53.	BREACH OF ANTI-CORRUPTION SPECIFIC CONDITIONS.....	71
54.	NO COLLUSIVE ARRANGEMENT	71
55.	MISCELLANEOUS.....	71
56.	SPECIAL CONDITIONS AND STATE AND TERRITORY SPECIFIC CONDITIONS	73
57.	SECURITY OF PAYMENT ACT.....	73
58.	PROPORTIONATE LIABILITY LEGISLATION	75
59.	DEFINED TERMS AND INTERPRETATION	75
	SCHEDULE 1 - SUBCONTRACT PARTICULARS	86
	SCHEDULE 2 - STATE AND TERRITORY SPECIFIC CONDITIONS	89
	SCHEDULE 3 - FORM OF BANK GUARANTEE	106
	SCHEDULE 4 - FORM OF PARENT COMPANY GUARANTEE AND INDEMNITY	107
	SCHEDULE 5 - FORM OF FINAL RELEASE AND WAIVER	112
	SCHEDULE 6 - SCOPE OF WORK.....	114
	SCHEDULE 7 - SUBCONTRACT DRAWINGS	115
	SCHEDULE 8 - SPECIFICATIONS	116
	SCHEDULE 9 - SUBCONTRACTOR WARRANTY DEED POLL	117
	SCHEDULE 10 - SUPPLIER WARRANTY DEED POLL.....	120
	SCHEDULE 11 - SCHEDULE OF RATES	123
	SCHEDULE 12 - SUBCONTRACT SUM BREAKDOWN.....	124
	SCHEDULE 13 - STATUTORY DECLARATION	125
	SCHEDULE 14 - RCTI	128
	SCHEDULE 15 - SUBCONTRACTOR STATEMENT (NSW)	130
	SCHEDULE 16 - PBA TRUST DEED POLL FORMS	133
	SCHEDULE 17 - FORM OF RELEASE - DEED POLL.....	140
	SCHEDULE 18 - STATUTORY DECLARATION	147
	SCHEDULE 19 - SPECIAL CONDITIONS.....	148

Details

FORM OF AGREEMENT

This Subcontract is made the [insert date] day of [Insert month] [Insert year]

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

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

BACKGROUND

- A. Georgiou wishes to engage the Subcontractor to perform the Subcontract Works.
- B. The Subcontractor has agreed to perform the Subcontract Works on the terms and conditions to this Subcontract.

Formal Instrument of Agreement

THE OBLIGATIONS OF THE PARTIES

1. The Subcontractor agrees to carry out and complete Subcontract Works by the Date for Practical Completion in accordance with this Subcontract.
2. Georgiou agrees to pay the Subcontractor the Subcontract Sum in accordance with this Subcontract.

SUBCONTRACT DOCUMENTS

The documents that comprise this Subcontract are:

1. this Form of Agreement;
2. the Special Conditions;
3. Schedule 2 - State and Territory Specific Conditions;
4. the General Conditions;
5. Schedule 1 - Subcontract Particulars;
6. Schedule 8 - Specifications;
7. Schedule 7 - Subcontract Drawings;
8. Schedule 6 - Scope of Work;
9. Schedule 12 - - Subcontract Sum Breakdown;
10. Schedule 11 - - Schedule of Rates;
11. Each other Schedule in numerical order; and
12. Any other documents stated in Item 22 of Schedule 1.

Where this Subcontract refers to all or part of another document not physically included with this Subcontract, the Subcontractor shall be deemed to have obtained a copy of that other document from Georgiou or the relevant source.

PRECEDENCE

In the event of any ambiguity, discrepancy or conflict occurring between the documents comprising this Subcontract:

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

Signed as an Agreement

Signed for and on behalf of Georgiou:

In the presence of:

Signature

Signature of Witness

Name

Name of Witness

Signed for and on behalf of the
Subcontractor:

In the presence of:

Signature ←

Signature of Witness ←

Name

Name of Witness

General Conditions

1. SUBCONTRACT WORKS

1.1 Performance generally

The Subcontractor must carry out and complete the Subcontract Works and perform its other obligations under this Subcontract in accordance with this Subcontract.

1.2 Standard of Subcontract Works

The Subcontractor must carry out and complete the Subcontract Works:

- (a) in accordance with the Scope of Subcontract Works in Schedule 6, the drawings (if any) in Schedule 7, the specifications in Schedule 8 and the relevant Head Contract provisions (which have been and continue to be available for inspection by the Subcontractor), including plans, drawings and specifications relating to the Head Contract Works;
- (b) in an efficient and professional manner in accordance with relevant industry principles and standards (including any Australian Standards);
- (c) except where a higher standard is specified, in a good and proper and workmanlike manner and to the standard of care, skill, judgment and foresight that would be expected of a skilled and experienced contractor regularly engaged in the business of performing works and services of the kind required by this Subcontract;
- (d) using materials which (unless expressly stated otherwise) are new, of merchantable quality and fit for the purpose for which they are used; and
- (e) in accordance with all Legislative Requirements and directions given by Georgiou or Georgiou's Representative.

1.3 Warranties

- (a) The Subcontractor represents and warrants that:
 - (i) it is experienced and competent in carrying out works of the same kind, complexity and scale as the Subcontract Works;
 - (ii) it is financially stable and is not aware of any matter or thing that would give it reason to believe that it may have difficulty in the performance of the Subcontract Works in accordance with this Agreement;
 - (iii) it has disclosed to Georgiou any matter or thing which may affect its ability to deliver the Subcontract Works now or in the future;
 - (iv) it has disclosed to Georgiou its true current financial position;
 - (v) it has disclosed to Georgiou all material disputes that it has or may have with others;
 - (vi) it will carry out the Subcontract Works in a proper and workmanlike manner, using appropriately skilled and qualified labour and in accordance with all Legislative Requirements;
 - (vii) it has all necessary resources available to it, including financial resources and access to labour and materials, to undertake its obligations under this Subcontract;
 - (viii) the carrying out of the Subcontract Works, including all methods of work as contemplated by this Subcontract, is practical and possible;
 - (ix) the Subcontract Works is capable of being built as described in this Subcontract and accepts responsibility for overcoming any buildability issues relating to methods of work or similar matters a competent and skilled subcontractor ought reasonably to have anticipated;

- (x) when complete, the Subcontract Works will be fit for the intended purposes communicated to the Subcontractor, for which these types of Subcontract Works are commonly provided and which could be reasonably anticipated by a competent and skilled subcontractor;
 - (xi) it is and will remain the holder of all licences and registrations required to perform the Subcontract Works and will promptly notify Georgiou of any change to its licensing or registration status;
 - (xii) it accepts the risk of all hazards and difficulties, including those relating to logistics, materials handling, deliveries, traffic, adjacent properties, Site safety and public safety;
 - (xiii) it has carefully reviewed the description of the Subcontract Works in Schedule 6 prior to entering into this Subcontract;
 - (xiv) it has made its own investigation and assessment of the work and risks involved in providing the Subcontract Works and it has reviewed and satisfied itself about the information that Georgiou has made available to it about the Subcontract Works and this Subcontract; and
 - (xv) the scope of the Subcontract Works includes all incidental and related work which may arise from matters referred to, identified in, or to be reasonably inferred from or contemplated by the description of the Subcontract Works.
- (b) The Subcontractor acknowledges and agrees that Georgiou has:
- (i) made no representations, and given no warranties, with respect to the matters referred to in this clause 1.3; and
 - (ii) entered into this Subcontract in reliance on the representations and warranties given in clause 1.3(a).
- (c) The Subcontractor agrees that the warranties it gives remain unaffected, and the Subcontractor will bear all liability and responsibility in accordance with this Subcontract, despite:
- (i) design work having been carried out by or on behalf of Georgiou or the Principal and included in this Subcontract;
 - (ii) the receipt, review, approval or rejection of, or comment or direction on, or permission to use:
 - (iii) any Subcontractor's Plant or Subcontractor's Materials; or
 - (iv) any document,
 - (v) by or on behalf of Georgiou, Georgiou's Representative or Georgiou's subcontractors, consultants or agents;
 - (vi) the making available to, or the provision to, the Subcontractor by or on behalf of Georgiou or Georgiou's Representative, or if applicable, the Principal under the Head Contract, of any information; or
 - (vii) any Variation.

1.4 Subcontract Drawings

- (a) Schedule 7 represents generally the forms, dimensions and descriptions of the Subcontract Works. The Subcontractor must make allowance for slight variations in dimensions shown on drawings which may be caused by unavoidable inequalities in the sizes of materials and any such variations must be agreed upon by the Subcontractor and Georgiou or, failing agreement, as decided by Georgiou.
- (b) The Subcontractor may use any of the Schedule 7 documents for planning and organising the performance of the Subcontract Works but shall only manufacture or construct any work on the basis of drawings marked 'Approved for Construction' or otherwise as specifically instructed or authorised by Georgiou. Where drawings are supplied to the Subcontractor as reference drawings they must only be used by the Subcontractor for the purpose of informing itself in relation to the matters the subject

of the drawings.

1.5 Head Contract

- (a) The Subcontract Works includes anything related to Subcontract Works which is reasonably required by Georgiou to enable it to comply with the provisions of the Head Contract.
- (b) In carrying out Subcontract Works, the Subcontractor must ensure that:
 - (i) Georgiou is able to fully meet its obligations to the Principal under the Head Contract or otherwise at law to the extent that they relate to Subcontract Works; and
 - (ii) no act or omission of the Subcontractor constitutes, causes, contributes or will constitute, cause or contribute to any breach by Georgiou of its obligations to the Principal under the Head Contract or otherwise at law.
- (c) The Subcontractor must, at its cost, cooperate and provide all reasonable assistance to Georgiou to enable Georgiou to pursue any Claim under the Head Contract relating to the Subcontract Works.

1.6 Early works

The parties agree that:

- (a) this Subcontract applies retrospectively to all works and services which have, or should have, been undertaken by the Subcontractor and which constitute part of Subcontract Works, even if the works or services were undertaken prior to the date of this Subcontract; and
- (b) any payments made to the Subcontractor for works or services undertaken by the Subcontractor as part of Subcontract Works prior to the date of this Subcontract form part of the Subcontract Sum.

1.7 Separable Portions

- (a) The Subcontract Works may comprise Separable Portions. If so:
 - (i) Subject to clause 1.7(a)(ii), the Separable Portions shall be described under Item 3B of Schedule 1;
 - (ii) the Subcontractor shall bring each Separable Portion to Practical Completion by the relevant Date for Practical Completion;
 - (iii) all references to 'Subcontract Works' shall be read as a reference to each Separable Portion and shall mean so much of the Subcontract Works as is comprised in relevant Separable Portion; and
 - (iv) the definitions of 'Date for Commencement', 'Date for Practical Completion', 'Date of Practical Completion' and 'Practical Completion' shall apply separately to each Separable Portion.
- (b) Georgiou may direct Separable Portions at any time in its absolute discretion (including where only part, but not the whole, of the Subcontract Works has reached Practical Completion).
- (c) In issuing a direction for a Separable Portion, Georgiou must, acting reasonably, clearly identify the:
 - (i) portion of the Subcontract Works;
 - (ii) value of the Separable Portion;
 - (iii) Date for Practical Completion of the Separable Portion; and
 - (iv) respective amounts for Security, liquidated damages and delay damages for the portion (valued by Georgiou on a pro rata basis by reference to the value of the Separable Portion work and the value of Subcontract Works).

2. SUBCONTRACT SUM

2.1 Payment

In consideration of the proper performance of the Subcontract Works by the Subcontractor in accordance with this Subcontract, Georgiou will pay the Subcontractor the Subcontract Sum.

2.2 Subcontract Sum

The Subcontract Sum, including any rates or prices in a Schedule of Rates (together with any additions or deductions expressly provided for by this Subcontract):

- (a) include all costs, expenses, fees, customs duties and charges that may be incurred by the Subcontractor in performing all its obligations under this Subcontract, including any costs related to the induction of the Subcontractor or its Sub-subcontractors;
- (b) include the provision and security of all materials, equipment, services, utilities, temporary works, consumables items, transport, plant, labour and supervision to carry out the Subcontract Works, even if not specifically mentioned in this Subcontract;
- (c) include an allowance for interfaces required with and working adjacent to other works, activities and operations at the Site;
- (d) include the Subcontractor's profit, attendance, preliminaries, supervision and on site and off site overheads in connection with the performance of all of its obligations under this Subcontract; and
- (e) will not be subject to any rise and fall in costs of materials or labour or otherwise, foreign exchange adjustment or any other adjustment for any reason,

except to the extent expressly provided by this Subcontract.

2.3 Acknowledgement

- (a) The Subcontractor acknowledges and agrees that it has made allowances in the Subcontract Sum for all the risks and other matters for which it is responsible under this Subcontract, including the matters that it has warranted under clause 1.3(a).
- (b) If the Schedule of Rates or the breakdown of the Subcontract Sum in Schedule 12 omits an item which should have been included, the item is deemed to have been included in other items in the Schedule of Rates or the breakdown and the Subcontractor will have no right to claim in connection with the omission.

2.4 Schedule of Rates

- (a) Quantities in a Schedule of Rates are estimated quantities only.
- (b) If the actual quantity of an item to be performed by the Subcontractor is greater or less than the quantity shown in the Schedule of Rates, the Subcontractor is required to do the greater or lesser quantity without any direction from Georgiou.

2.5 Adjustments

- (a) Where, otherwise than due to a Variation being directed by Georgiou's Representative, the actual quantity of an item of the Subcontract Works required to be performed by the Subcontractor is greater or less than the quantity shown in the Schedule of Rates:
 - (i) if Georgiou accepted a lump sum for the item, the difference shall be deemed to be included in that lump sum and the Subcontractor shall not be entitled to make any claim in respect of the difference; or
 - (ii) if Georgiou accepted a rate for the item, the rate shall apply to the actual quantities provided that where the difference in quantity exceeds the limit of accuracy stated in Item 24 of Schedule 1, the rate shall only apply to the greater or lesser quantity within the limit of accuracy and quantities outside the limit shall be a deemed Variation.
- (b) The Subcontractor is not entitled to make any Claim against Georgiou if the items of work or quantities are incorrect, including where there is:

- (i) an incorrect quantity;
 - (ii) an item which should not have been included; or
 - (iii) an item which was omitted but should have been included.
- (c) This clause 2.5 does not apply to the valuation of Variations directed by Georgiou's Representative under clause 30.1(a).

2.6 Provisional Sums

- (a) The Subcontractor must not carry out any work or item to which a Provisional Sum applies unless the Subcontractor is directed in writing to do so by Georgiou.
- (b) The Subcontractor is not entitled to payment for any work or item to which a Provisional Sum applies unless the Subcontractor has been directed, in writing, by Georgiou to carrying out the work or item.
- (c) If Georgiou directs the Subcontractor to carry out any work or item to which a Provisional Sum applies, then the work or item will be valued by Georgiou and the difference will be added to or deducted from the Subcontract Sum.

3. REPRESENTATIVES AND DIRECTIONS

3.1 Georgiou's Representative

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

3.2 Subcontractor's Representative

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

3.3 Representatives' delegates

Either party's representative may by prior notice in writing appoint a delegate to exercise any function for which they are responsible under this Subcontract provided that only one delegate may exercise any function at the same time. Each party must ensure that the notice appointing such delegate specifies in detail the functions which the delegate is to discharge.

3.4 Changes and objections

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

3.5 Directions

- (a) Georgiou and Georgiou's Representative may issue directions to the Subcontractor in respect of anything under this Subcontract, including the programming, execution, quality, character or extent of the Subcontract Works or issues of health, safety or the environment.

- (b) Directions by Georgiou or Georgiou's Representative may be given in writing or given orally and then promptly confirmed in writing. The Subcontractor must not rely on any direction by Georgiou or Georgiou's Representative which is not given or promptly confirmed in writing.
- (c) The Subcontractor must comply with any direction of Georgiou or Georgiou's Representative within the time nominated, or if no time is nominated, as soon as reasonably possible. Except as provided in the Subcontract, the Subcontractor has no Claim arising from or in connection with any direction.
- (d) The Subcontractor must:
 - (i) notify Georgiou's Representative if it intends to rely on any representation made, or which the Subcontractor considers has been made, by Georgiou or Georgiou's Representative; and
 - (ii) not rely on any direction, representation or notice which is not given or promptly confirmed in writing by Georgiou's Representative.
- (e) If the Subcontractor receives a direction from Georgiou's Representative (other than to address any breach of the Subcontract or omission by the Subcontractor) which the Subcontractor considers will adversely affect its ability to comply with the Subcontract, the Subcontractor must notify Georgiou's Representative who shall then either:
 - (i) withdraw the direction; or
 - (ii) amend the direction to address the Subcontractor's concern, in which case the Subcontractor must comply with the amended direction.

4. SECURITY

4.1 Purpose

Security is provided for the purposes of ensuring due and proper performance of this Subcontract by the Subcontractor.

4.2 Provision of Security

- (a) The Subcontractor must, within fourteen (14) days after the execution of this Subcontract (and before starting work on the Site), provide Security:
 - (i) in the amount set out in Item 4 of Schedule 1;
 - (ii) in the form set out in Schedule 3, with no expiry date; and
 - (iii) given by a reputable Australian financial institution or insurance company approved by Georgiou, if it is not retention monies.
- (b) If, as a result of any provision of this Subcontract, there is an increase in the Subcontract Sum, the Subcontractor shall either, at Georgiou's election and if required by Georgiou:
 - (i) within 14 days of Georgiou's request, lodge with Georgiou an additional or replacement security by way of bank guarantee; or
 - (ii) provide additional security to Georgiou in such alternative form as requested by Georgiou, including by way of cash retention,so as to ensure that security is provided for, in aggregate, an amount equal to the percentage of the Contract Sum stated in Item 4 of Schedule 1.
- (c) If the Security is wholly or partly by way of retention monies, the amount of the retention monies is as stated in Item 7 of Schedule 1. Any interest earned on retention monies will be owned by Georgiou.
- (d) If the Security to be provided by the Subcontractor is wholly or partly to be by way of bank guarantee, the Subcontractor must at all times provide at least two (2) unconditional bank guarantees:
 - (i) in the form set out in Schedule 3 or otherwise in the form approved by Georgiou;

- (ii) without an expiry date;
 - (iii) from a bank acceptable to Georgiou; and
 - (iv) each with a value of not less than 5% of the Subcontract Sum.
- (e) Unless otherwise required by law, Georgiou will not hold on trust the Security or any proceeds received from Georgiou's recourse to the Security under clause 4.3.
- (f) All stamp duty and other taxes payable in relation to the Security, and any additional Security, must be paid by the Subcontractor.

4.3 Recourse to Security

- (a) Georgiou may have immediate recourse to the Security without notice, including converting into money any Security that does not consist of money, to satisfy any loss, expense or damages Georgiou may incur or suffer as a consequence of any act or omission of the Subcontractor in connection with this Subcontract or the performance of the Subcontractor's obligations under this Subcontractor.
- (b) The Subcontractor will have no Claim against Georgiou for any loss or damage that it may suffer (including Indirect and Consequential Loss) occasioned by use or recourse to the Security under this clause 4.3.
- (c) The Subcontractor indemnifies Georgiou from all claims, costs, expenses, losses and damages (including legal costs on a full indemnity basis), incurred in connection with defending or responding to any steps taken by the Subcontractor to injunct or otherwise restrain:
- (i) Georgiou from having recourse to the Security;
 - (ii) Georgiou from using any sum or sums received from having recourse to the Security; or
 - (iii) the issuer of the Security from exercising its rights or performing its obligations under the Security.
- (d) Nothing in this clause 4.3 affects Georgiou's right after having recourse to Security to recover from the Subcontractor any debt, money or claim, deduct or set-off or any amount in accordance with the Subcontract or call on any other security provided or procured by the Subcontractor or its parent company under the Subcontract.

4.4 Replenishment of Security

If Georgiou has recourse to the Security, then Georgiou may require the Subcontractor to increase the amount of the Security under clause 4.2, and the Subcontractor must, upon notice from Georgiou, replenish the Security to the level specified in Item 4 of Schedule 1 within five (5) Business Days of such notice.

4.5 Release of Security

- (a) Unless Georgiou has an outstanding Claim against the Subcontractor, Georgiou will:
- (i) within ten (10) Business Days after the Date of Practical Completion, release half of the value of any Security held by Georgiou as at the date of issue of the Certificate of Practical Completion, provided all Defects have been rectified to the satisfaction of Georgiou;
 - (ii) within ten (10) Business Days of expiry of the Defects Liability Period, release the remainder of any Security held by Georgiou as at the date of expiry of the Defects Liability Period, provided the Subcontractor has, in Georgiou's opinion, complied with all of its obligations under this Subcontract.
- (b) If at any time, Georgiou is required to release the Security to the Subcontractor, and Georgiou believes that:
- (i) the Subcontractor owes Georgiou unpaid monies; or
 - (ii) Georgiou has any unsatisfied Claims against the Subcontractor,
 - (iii) Georgiou is only obliged to release the Security to the extent that the value of

the Security exceeds the value of the unpaid monies or unsatisfied Claims.

- (c) If Georgiou has retained part of the Security under clause 4.5(b) and receives:
 - (i) the unpaid monies from the Subcontractor; or
 - (ii) receives confirmation that the Subcontractor has satisfied Georgiou's Claims,
 - (iii) Georgiou must release the balance of the Security held within ten (10) Business Days.

4.6 Parent company guarantee

If the Subcontractor is not the ultimate parent company, the Subcontractor must cause the ultimate parent company to execute a parent company guarantee in favour of Georgiou, in the form attached in Schedule 4.

5. PROGRAMMING

5.1 Program

- (a) Within fourteen (14) days after the execution of this Subcontract, the Subcontractor must:
 - (i) prepare a draft program for the performance of the Services that:
 - (A) complies with any requirements in this Subcontract, any Head Contract program and the requirements of Georgiou;
 - (B) sets out the dates by which, or the times within which, the various stages or parts of the Subcontract Works are to be executed or completed;
 - (C) clearly demonstrate step by step how the Subcontractor will achieve Practical Completion by the Date for Practical Completion; and
 - (D) shows total float and free float times; and
 - (ii) provide the draft program to Georgiou in hard (paper) copy and soft (electronic copy) in the format for approval stated in Item 23 of Schedule 1.
- (b) The Subcontractor must obtain the written approval of Georgiou for the draft program before commencing the Subcontract Works.
- (c) Georgiou may either approve or reject, with reasonable written reasons, the draft program. If Georgiou rejects draft program, the Subcontractor must, at its cost resubmit it (amended in accordance with Georgiou's written reasons for rejection) to Georgiou for approval within three (3) Business Days of receipt of Georgiou rejection notice.
- (d) Upon Georgiou's approval of the draft program, it will become the Program and is deemed to be a Subcontract document.
- (e) The Subcontractor must comply with the Program in undertaking its obligations under this Subcontract.
- (f) The Subcontractor is not entitled to any Claim in relation to any delay to the commencement of the Subcontract Works caused by Georgiou's disagreement with a draft program or of any amended proposed Program prepared by the Subcontractor.
- (g) Review of, comments on or approval of, or any failure to review or comment on, any proposed, 'status', 'recovery' or 'lookahead' program by Georgiou will not:
 - (i) relieve the Subcontractor from, or alter, its liabilities or obligations under this Subcontract, including the obligation to achieve Practical Completion of the Subcontract Works by the Date for Practical Completion;
 - (ii) evidence or constitute the granting of an extension of time or a direction given by Georgiou's Representative to accelerate, disrupt, prolong or vary any of the Subcontract Works; or
 - (iii) affect the time for carrying out the Subcontract Works or any of the Subcontractor's obligations under this Subcontract.

- (h) Without limiting this clause 5.1, the Subcontractor must comply with the timing in any Head Contract program provided to the Subcontractor by Georgiou.

5.2 Georgiou's program

The Subcontractor acknowledges and agrees that:

- (a) it has carefully considered Georgiou's program (or proposed program) under the Head Contract; and
- (b) it is able to and will perform its obligations under this Subcontract in accordance with Georgiou's program for the Head Contract Works.

5.3 Updated Program

- (a) The Subcontractor must promptly update or revise the Program, at its own cost and resubmit it to Georgiou monthly (with its Progress Claims) and if directed by Georgiou because the Program:
 - (i) does not comply with clause 5.1(a) or 5.2; or
 - (ii) no longer reflects the current status of the Subcontract Works due to a delay (however caused), Extension of Time, Variation or a change in the sequence of performance of the Subcontract Works.
- (b) All updated Programs must set out:
 - (i) the percentage completed for each activity compared with the planned level of completion for each activity under the Program;
 - (ii) any delays which have occurred;
 - (iii) proposed strategies for mitigating any delays; and
 - (iv) the Subcontractor's resource levels.
- (c) Upon Georgiou's approval of the updated Program, it will become the Program.

5.4 No relief from Subcontract Obligations

The approval by Georgiou of an updated Program does not relieve the Subcontractor of its obligations to:

- (a) achieved Practical Completion by the Date for Practical Completion; or
- (b) comply with the notice and information requirements for a Claim for an Extension of Time or additional direct costs incurred under this Subcontract.

5.5 Ownership of float

- (a) Float in the Program is not for the exclusive benefit of either Georgiou or the Subcontractor. Float is available for either party's benefit until it is depleted.
- (b) Extensions of Time will only be granted to the extent that the Delay Events exceed the total float available under the Program.

6. DESIGN

This clause applies if and to the extent that the Subcontractor has design obligations as set out in Item 12 of Schedule 1.

6.1 Design Obligation

- (a) The Subcontractor must carry out and complete the design of the Subcontract Works specified in Item 12 of Schedule 1.
- (b) The Subcontractor must carry out its design responsibilities so that the Subcontract Works:
 - (i) are fully and professionally completed without Defects;
 - (ii) complies with the provisions of this Subcontract and any specifications set out herein;

- (iii) are fit for construction;
- (iv) are fit for all purposes for which it might reasonably be used; and
- (v) are fit for any purposes made known to the Subcontractor prior to the date of this Subcontract or reasonably inferred from the information provided.

6.2 Design responsibility

- (a) The Subcontractor acknowledges and agrees that if it is relying on any Georgiou supplied documents for the purpose of designing the Subcontract Works, it does so entirely at its own risk.
- (b) Georgiou has no liability whatsoever in connection with the Subcontractor's use or reliance on Georgiou supplied documents.
- (c) Georgiou is not obliged to review or comment upon any design or to check any design prepared by the Subcontractor for errors, omissions or compliance with this Subcontract.
- (d) Georgiou or Georgiou's Representative's receipt of, or review of or comment upon any design or documents provided by the Subcontractor does not relieve the Subcontractor from responsibility for the Subcontractor's Defects or any non-compliance with the requirements of this Subcontract.
- (e) Where the Subcontractor will be a 'designer' of a 'structure' (as those terms are defined under the applicable Legislative Requirements, the Subcontractor must fulfil its obligations under those laws by ensuring that:
 - (i) consultation has taken place with Georgiou and other relevant parties about how to manage the risks to health and safety arising from the design during the construction work;
 - (ii) it has been provided with relevant information regarding the hazards and risks at the Site and at any other place where the Subcontract Works may be carried out by Georgiou and other relevant parties; and
 - (iii) a written safety report (Safety Report) has been provided to Georgiou that specifies the hazards relating to the design that:
 - (A) create a risk to the health or safety of persons who will carry out construction work; and
 - (B) are associated only with the particular design and not with other designs of the same type of structure.
- (f) The Safety Report must:
 - (i) include the results of any calculations, testing, analysis or examination of which the designer is aware that have been undertaken for the purpose of assessing risks referred to above at subclause 6.2(e)(iii); and
 - (ii) be provided at the end of the schematic design and updated progressively prior to the commencement of construction work.

6.3 Submission of design

- (a) The Subcontractor must submit the design for the Subcontract Works specified in Item 12 of Schedule 1:
 - (i) in accordance with the Program; and
 - (ii) within sufficient time to allow for:
 - (A) Georgiou to comment upon that design;
 - (B) Georgiou to submit that design to the Principal; and
 - (C) the Subcontractor to re-design work or amend design work to be performed if required by the Principal or Georgiou.
- (b) The Subcontractor must obtain the written approval of Georgiou for all design

documents produced by the Subcontractor before those documents are required for the performance of the work shown or described in those documents.

- (c) Georgiou may either approve or reject, with reasonable written reasons, any draft design documents. If Georgiou rejects draft design documents, the Subcontractor must resubmit those documents (amended in accordance with Georgiou's written reasons for rejection) to Georgiou for approval.
- (d) The Subcontractor may not make any Claim in relation to the rejection of any draft design documents which do not comply with the scope of Subcontract Works in Schedule 6 or the requirements of this Subcontract.
- (e) The Subcontractor must perform any re-design work or amended design work without causing any delay to the Subcontract Works.

6.4 Design documents

- (a) The Subcontractor must provide design documents and samples as Georgiou may require and for Georgiou to comply with its design obligations under the Head Contract in respect of the Subcontract Works.
- (b) Design documents to be provided by the Subcontractor may include drawings, specifications, workshop drawings, as-built drawings, operating and maintenance manuals, calculations, test certificates, surveys, reports and schedules.

6.5 Design presentation

- (a) The Subcontractor must make design presentations to the Principal, Georgiou and their representatives at the times or stages required by the Program and at other times required by Georgiou.
- (b) The Subcontractor must ensure that its designer and other relevant personnel attend design presentations as required by Georgiou.
- (c) Design presentations to be made by the Subcontractor includes appropriate representation from relevant consultants and provision of design documents, samples and other relevant information required by Georgiou, Georgiou's Representative or the Principal to properly consider the design.

6.6 Design Intent

- (a) Unless otherwise directed by Georgiou, the Subcontractor must not depart from the Design Intent.
- (b) If the Subcontractor proposes to depart from the Design Intent, the Subcontractor must, as soon as it becomes aware of the need or desirability of such departure, notify Georgiou in writing of the proposed departure and the reasons for the proposed departure.
- (c) The Subcontractor must not implement any work the subject of a proposed departure from the Design Intent without the prior written approval of Georgiou.
- (d) Unless Georgiou directs the Subcontractor to proceed on the basis of the proposed departure from the Design Intent, the Subcontractor must continue to perform the Subcontract Works.
- (e) Georgiou is under no obligation to approve a change to the Design Intent.

6.7 Design Certificate

- (a) The Subcontractor must employ a designer (which may be a consultant) for the Subcontract Works who is appropriately and professionally qualified.
- (b) The Subcontractor must provide to Georgiou prior to any design work commencing and at such other time as Georgiou may require, details of the designer's qualifications.
- (c) As a precondition of the Subcontractor being entitled to payment for each Progress Claim, the Subcontractor must submit with each Progress Claim, a certificate issued by the Subcontractor's designer certifying that the Subcontract Works have been constructed in accordance with the design prepared by the designer and that the design

is in accordance with the requirements of this Subcontract. The certificate must be in a form approved by Georgiou and may include a list of minor Defects.

7. CONSTRUCTION

7.1 Prior Work

- (a) The Subcontractor unconditionally accepts the quality and adequacy of all prior work carried out or to be carried out by others with which the work under the Subcontract is to be integrated or upon the adequacy of which the work under the Subcontract is in any way dependent.
- (b) Subclause (a) above does not apply to defects or faults in prior work if the Subcontractor notifies Georgiou's Representative in writing as soon as practicable and before the commencement by the Subcontractor of any Subcontract Works in the area of the defect or fault.
- (c) Unless notice of the defect or fault is properly given under this clause, the Subcontractor is not entitled to make any Claim arising out of or in connection with any fault or defect in the prior work.
- (d) The Subcontractor must make good faults or defects in prior work or work carried out by others, arising out of or in connection with its failure to notify Georgiou's Representative in accordance with this clause.
- (e) The Subcontractor indemnifies Georgiou against any loss or damage arising out of or in connection with its failure to notify Georgiou's Representative in accordance with this clause.

7.2 Setting out Subcontract Works

- (a) Georgiou will supply the Subcontractor with the information and Survey Marks necessary to enable the Subcontractor to set out the Subcontract Works.
- (b) Upon receipt of the necessary information and Survey Marks, the Subcontractor must set out Subcontract Works in accordance with this Subcontract and must provide all instruments and things necessary for that purpose.
- (c) The Subcontractor must maintain all Survey Marks in their true position as supplied by Georgiou.
- (d) If a Survey Mark is disturbed or destroyed, the Subcontractor must immediately notify Georgiou in writing and must promptly reinstate the Survey Mark at its cost.
- (e) The Subcontractor is responsible for any errors in setting out of, and establishment of levels for, the Subcontract Works.
- (f) If the Subcontractor discovers any error in the position, level, dimensions or alignment of any Subcontract Works, the Subcontractor must immediately notify Georgiou in writing and rectify the error at its cost.
- (g) The Subcontractor is not relieved of any of its responsibility under this clause 7.2 due to any approval, review or examination by Georgiou of the position, level, dimensions or alignment of any Survey Marks or Subcontract Works.
- (h) The Subcontractor must:
 - (i) after setting out and establishing levels for the Subcontract Works, submit to Georgiou a certificate from a licensed surveyor certifying that the setting out and levels are in accordance with this Subcontract and any information furnished by Georgiou under this Subcontract; and
 - (ii) immediately before Practical Completion, submit to Georgiou a certificate signed by a licensed surveyor certifying that the whole of the Subcontract Works are within the boundaries stipulated in this Subcontract.
- (i) The Subcontractor indemnifies Georgiou against any Claims, loss or damage arising from:
 - (i) any rectification works required by reason of the Subcontract Works being

incorrectly set out on the Site; and

- (ii) any encroachments of the Subcontract Works on any adjoining site or property, including adjoining footpaths, roads and public utilities.

7.3 Subcontractor's Materials and Subcontractor's Plant

- (a) Except to the extent that this Subcontract otherwise provides, the Subcontractor must supply everything necessary (including all Subcontractor's Plant and Subcontractor's Materials) to fulfil its obligations under this Subcontract.
- (b) The Subcontractor must ensure that the Subcontractor's Plant:
 - (i) is suitable for use in connection with the Subcontract Works and is fit for its intended purposes as set out or otherwise reasonably inferred from this Subcontract;
 - (ii) complies with the requirements of all Legislative Requirements and is properly licensed;
 - (iii) undergoes a compliance inspection prior to commencement of its use at the Site; and
 - (iv) is maintained at all times in safe, operable and good working condition.
- (c) The Subcontractor must ensure that it has access to replacement Subcontractor's Plant and spare parts so that the performance of the Subcontract Works will not be affected by breakdowns in the Subcontractor's Plant.
- (d) The Subcontractor must not remove any items of Subcontractor's Plant from the Site without the prior written approval of Georgiou.
- (e) Georgiou may direct the Subcontractor to supply particulars in relation to the Subcontractor's Plant and Subcontractor's Materials, including:
 - (i) the mode and place of manufacture;
 - (ii) the source of supply;
 - (iii) performance capabilities; and
 - (iv) maintenance records.
- (f) Georgiou may reject any item of the Subcontractor's Plant or the Subcontractor's Materials which it considers unsuitable for the purposes for which the Subcontractor proposes to use it. Any Subcontractor's Plant or Subcontractor's Materials rejected under this clause must not be used by the Subcontractor, except with the prior written approval of Georgiou. Georgiou may direct any rejected Subcontractor's Plant or Subcontractor's Materials be removed from the Site.
- (g) If the Subcontractor wishes to substitute any item of the Subcontractor's Plant or the Subcontractor's Material with an alternative item (Proposed Alternative), then:
 - (i) the Subcontractor must first submit to Georgiou for approval, copies of its calculations and detailed drawings supporting use of the Proposed Alternative;
 - (ii) the substitution of the Proposed Alternative is at the Subcontractor's cost; and
 - (iii) time spent by Georgiou in considering the substitution is not a ground for an Extension of Time nor a ground for any other Claim by the Subcontractor, whether under this Subcontract or otherwise at law.
- (h) Georgiou may, in its absolute discretion, approve or reject a Proposed Alternative. Georgiou may impose conditions on any such consent.
- (i) The Subcontractor will not be entitled to any Claim arising out of or in connection with the Proposed Alternative and the Subcontractor acknowledges and agrees that Georgiou is entitled to adjust the Subcontract Sum if the Proposed Alternative costs less or is of a lesser value than the Subcontractor's Plant or Subcontractor's Material.
- (j) Despite any approval given by Georgiou of a Proposed Alternative, the Subcontractor indemnifies Georgiou against any loss or damage arising out of or in connection with

the use of the Proposed Alternative.

- (k) If the Subcontractor uses any Proposed Alternative without the prior written approval of Georgiou, the Subcontractor must comply with any direction by Georgiou for the removal and replacement of the Proposed Alternative, without being entitled to any Claim arising out of or in connection with that direction.
- (l) The Subcontractor must indemnify Georgiou for any loss or damage arising out of or in connection with the Subcontractor using a Proposed Alternative without the prior written approval of Georgiou.
- (m) The Subcontractor must, upon request, notify Georgiou of the name and address of the owner or encumbrancer of any of the Subcontractor's Plant used at the Site. Georgiou may, in order to avoid seizure of such Subcontractor's Plant by the owner or encumbrancer, pay to the owner or encumbrancer the amount of any overdue instalment or other sums due and payable by the Subcontractor to the owner or encumbrancer and the amount of such payment shall be a debt due and payable by the Subcontractor to Georgiou.

7.4 Warranty deed polls

- (a) The Subcontractor must, on or before the date of this Subcontract, provide to Georgiou an executed Warranty Deed Poll in the form of Schedule 9.
- (b) The Subcontractor must, within seven (7) days after the Date of Practical Completion, enter into an executed Warranty Deed Poll in the form of Schedule 10 for that part of Subcontract Works where the Subcontractor's Materials are supplied by third party suppliers.
- (c) Provision of the Warranty Deed Polls will be a condition precedent to the Subcontractor being entitled to submit its Final Payment Claim.

7.5 Construction methodology

- (a) The Subcontractor must, if directed by Georgiou prior to the commencement of any part of the Subcontract Works, provide Georgiou with a complete, accurate and competently prepared construction method statement for all or part of the Subcontract Works.
- (b) The Subcontractor must not commence the relevant part of the Subcontract Works until a construction method statement is received and approved by Georgiou.
- (c) The Subcontractor must comply with all construction method statements approved by Georgiou and with any requirements for construction methods set out at Item 13 of Schedule 1.

7.6 Diversion or relocation of existing utilities

Where an existing Utility obstructs the Subcontract Works and requires diversion or relocation, then unless this Subcontract provides otherwise, the Subcontractor must:

- (a) undertake the diversion or relocation, including all inspection and testing necessary to ensure that the Utility is fully operational following the diversion or relocation;
- (b) ensure that any interruption to the operation of the Utility is minimised and approved by Georgiou prior to the commencement of the diversion or relocation;
- (c) submit to Georgiou for approval a written, proposed diversion or relocation and reconnection procedure, not less than 28 days prior to the programmed date for those Subcontract Works;
- (d) give Georgiou not less than 21 days prior notice of any disconnection or interference with the Utility;
- (e) provide any alternative temporary services as are required to carry out the Subcontract Works and ensure that there is no disruption to the operation of the Utility; and
- (f) the Subcontractor is not entitled to make any Claim arising out of or in connection with the relocation or diversion of the Utility.

7.7 Covering up work

The Subcontractor must not cover up any Subcontract Works until Georgiou has been afforded a reasonable opportunity to inspect it.

7.8 Sealed containers

- (a) The Subcontractor must bring all items normally supplied in closed or sealed containers or packages to the point of use in Subcontract Works in the original unbroken container or package.
- (b) Georgiou is entitled to reject any item in respect of which this requirement is not met.

7.9 Storage on Site

- (a) The Subcontractor must not store anything on the Site unless expressly permitted by Georgiou.
- (b) If permitted by Georgiou, the Subcontractor must comply with the directions of Georgiou in respect of that storage and with any applicable Legislative Requirements in respect of the storage of chemicals and/or dangerous goods.

7.10 Traffic and parking

- (a) The Subcontractor must comply with any traffic policy applicable to the Site and with any directions given by Georgiou in relation to traffic and parking.
- (b) The Subcontractor is not entitled to make any Claim in relation to compliance with any applicable traffic policy or any directions given by Georgiou in relation to traffic and parking.

7.11 Workforce Records

The Subcontractor must, on each working day, provide Georgiou with a statement in writing showing the names of each person engaged in the carrying out of the Subcontract Works on that day in each of the following categories:

- (a) non-working supervisor;
- (b) working foreman;
- (c) tradesperson; and
- (d) labourer.

7.12 Reports

The Subcontractor must provide Georgiou with a monthly report containing details of the following:

- (a) Claims;
- (b) Variation status - pending and approved;
- (c) summary of payments;
- (d) evidence of insurance policy renewals as they become due; and
- (e) evidence of compliance with the requirements of clause 20.

7.13 Examination and Testing

- (a) At any time prior to the issue of the Final Payment Certificate, Georgiou may direct that all or part of the Subcontract Works or any Subcontractor's Materials be tested.
- (b) The Subcontractor must give the assistance and samples and make accessible the parts of the Subcontract Works as may be directed by Georgiou.
- (c) Georgiou may direct that any part of the Subcontract Works must not be covered up or made inaccessible without his or her prior written approval.
- (d) Tests may be conducted by Georgiou or a person nominated by Georgiou.
- (e) Before conducting a test, Georgiou or the Subcontractor must give reasonable notice as

to the date, time, and place of the test. The test may proceed regardless of whether or not Georgiou attends the test.

- (f) If either Georgiou or the Subcontractor delays in conducting the test, the other, after having given reasonable written notice, may conduct the test.
- (g) On completion of the tests, the Subcontractor must at its cost (including the cost of re-testing where required) make good the Subcontract Works in accordance with the results of the test so that it fully complies with this Subcontract.
- (h) Results of tests must be promptly made available by each party to the other parties to this Subcontract and to Georgiou's Representative.
- (i) Costs incurred in connection with the tests under this clause 7.13 will be borne by Georgiou except if the test is consequent upon or reveals a failure of the Subcontractor to comply with the requirements of this Subcontract, in which case the Subcontractor will bear the cost of the test as a debt due and payable by the Subcontractor to Georgiou.

7.14 No lien

The Subcontractor shall not at any time:

- (a) claim any lien over any part of the Subcontract Works; or
- (b) offer or agree, or purport to offer or agree, to lend, pledge, mortgage, let or hire any part of the Subcontract Works.

8. TIME AND COMPLETION

The Subcontractor must:

- (a) commence the Subcontract Works on the Commencement Date;
- (b) proceed with the Subcontract Works with due diligence and without delay; and
- (c) achieve Practical Completion by the Date for Practical Completion.

9. EXTENSION OF TIME

9.1 Notice of delay

- (a) If the Subcontractor believes that anything, including any breach, act or omission of Georgiou, may delay the completion of the Subcontract Works by the Date for Practical Completion, the Subcontractor must, within three (3) days after the Subcontractor becomes aware, or ought reasonably to have become aware, of the delay, notify Georgiou in writing.
- (b) A notice under clause 9.1(a) must state:
 - (i) the delay that has occurred;
 - (ii) the reason why the delay has occurred;
 - (iii) the estimated duration of the delay to the Subcontract Works; and
 - (iv) what steps the Subcontractor has taken, or will take, to minimise the delay.

9.2 Extension of Time Claim

- (a) Within seven (7) days after the commencement of the Delay Event, the Subcontractor must give written Claim to Georgiou setting out:
 - (i) the factual basis for the Subcontractor's Claim that a Delay Event will prevent the Subcontractor from achieving Practical Completion by the Date for Practical Completion;
 - (ii) the legal basis for the Subcontractor's Claim for an Extension of Time;
 - (iii) the Extension of Time claimed;
 - (iv) an updated Program:

- (A) evidencing that the Delay Event has affected the critical path of the Subcontract Works and will therefore prevent the Subcontractor from achieving Practical Completion by the Date for Practical Completion; and
- (B) setting out:
 - (1) the percentage completed for each activity compared with the planned level of completion for each activity under the Program;
 - (2) all delays which have occurred to the date of the Claim, including Delay Events; and
 - (3) the Subcontractor's resource levels; and
- (v) the steps taken by the Subcontractor to minimise the effect of the Delay Event on the Subcontract Works.
- (b) If the Delay Event continues beyond the Extension of Time claimed by the Subcontractor under clause 9.2(a), the Subcontract must give Georgiou an updated Claim every seven (7) days that satisfies the requirements of clause 9.2(a) until the Delay Event ends.

9.3 Entitlement and Assessment

- (a) Subject to clause 9.4, it is a condition precedent to the Subcontractor's entitlement to an Extension of Time that the Subcontractor demonstrates to the reasonable satisfaction of Georgiou that:
 - (i) the Subcontract Works are delayed by any Delay Event which will prevent the Subcontractor from achieving Practical Completion by the Date for Practical Completion;
 - (ii) the Subcontract Works are not concurrently delayed by a cause that is not an Delay Event;
 - (iii) the Delay Event has affected the critical path of the Subcontract Works;
 - (iv) the Subcontractor has strictly complied with all of the notice and information requirements set out in this Subcontract, including clause 9.1 and 9.2;
 - (v) the Subcontractor has taken all reasonable steps to minimise the effect of the Delay Event on the Subcontract Works, including by rescheduling, reprogramming, expediting and adjusting its sequence of activities;
 - (vi) the Delay Event has depleted all available float; and
 - (vii) Georgiou's Representative has not directed that the Subcontractor accelerate the Subcontract Works to overcome the delay.
- (b) Subject to clauses 9.3(a) and 9.3(c), Georgiou will determine the period of the delay to the Date for Practical Completion caused by the Delay Event referred to in a notice given by the Subcontractor under this clause 9.2 and extend the Date for Practical Completion by that period. If an Extension of time is granted, Georgiou will notify the Subcontractor of the revised Date for Practical Completion.
- (c) In assessing the Subcontractor's Extension of Time Claim, Georgiou is entitled to:
 - (i) rely upon any program, whether prepared by the Subcontractor or Georgiou, existing before or at the time of the Delay Event and Extension of Time assessment;
 - (ii) reduce the Extension of Time to the extent of concurrent delay caused by events which are not Delay Events; and
 - (iii) reduce the Extension of Time to the extent that the Subcontractor failed to:
 - (A) take any steps as necessary to preclude or prevent the cause of the Delay Event; and
 - (B) avoid or mitigate the consequences of the Delay Event.

- (d) A delay or failure by Georgiou to extend the Date for Practical Completion will not cause that date to be set at large or the principle commonly known as the “prevention principle” to apply.

9.4 Georgiou's unilateral discretion

Georgiou may (without being obliged to do so) at any time and for any reason it thinks fit, extend the Date for Practical Completion. This right is solely for the benefit of Georgiou and may be exercised in its absolute discretion, even if:

- (a) the Subcontractor is not entitled to claim an Extension of Time; or
- (b) the Subcontractor has not claimed an Extension of Time.

10. DELAY AND DISRUPTION COSTS

- (a) The Subcontractor will only be entitled to its additional direct costs incurred as a result of the delay where:
 - (i) the Subcontractor has been granted an Extension of Time under clause 9;
 - (ii) the Extension of Time is as a result of a Compensable Delay Event, provided such delay was not caused by or contributed to by the Subcontractor;
 - (iii) within ten (10) Business Days after the commencement of the Compensable Delay Event, the Subcontractor gives a written Claim to Georgiou setting out:
 - (A) the factual basis for the Subcontractor's Claim that a Compensable Delay Event has occurred;
 - (B) the legal basis for the Subcontractor's Claim for a Compensable Delay Event;
 - (C) the length of delay caused by the Compensable Delay Event;
 - (D) the amount of additional direct costs incurred, or expected to be incurred, by the Subcontractor;
 - (E) the steps taken by the Subcontractor to minimise the effect of the Compensable Delay Event on the Subcontract Works; and
 - (F) if the Compensable Delay Event continues beyond ten (10) Business Days, the Subcontractor gives Georgiou an updated Claim every ten (10) Business Days that satisfies the requirements of clause 10(a) until the Compensable Delay Event ends.
- (b) Strict compliance by the Subcontractor with clause 10(a) is a condition precedent to the Subcontractor's entitlement to make the Claim.
- (c) Subject to clause 10(a), Georgiou will determine, acting reasonably, the amount of additional direct costs payable to the Subcontractor for a Compensable Delay Event (if any) and notify the Subcontractor.
- (d) Any delay costs paid by Georgiou to the Subcontractor will be in full satisfaction of the Subcontractor's entitlement arising from the event of delay and the Subcontractor agrees that the payment of any delay costs by Georgiou will be a full release and discharge of any Claim resulting from such event of delay. Nothing in this clause 10 will oblige Georgiou to pay extra costs for delay or disruption which has already been included in the value of a Variation or any other payment under this Subcontract.
- (e) The Subcontractor accepts the risk of any loss, expense or damage resulting from delay in, or disruption to, the performance of the work under this Subcontract and its other obligations under this Subcontract except as provided for in this Subcontract.
- (f) Apart from this clause 10, the Subcontractor is not entitled to claim any extra costs for delay or disruption under this Subcontract, including concerning delays occurring after the Date of Practical Completion.

11. LIQUIDATED DAMAGES

- (a) If the Subcontractor fails to achieve Practical Completion of:

- (i) the Subcontract Works by the Date for Practical Completion; or
- (ii) the Subcontract Works the subject of a Milestone Date by the relevant Milestone Date,

the Subcontractor will be indebted to Georgiou for liquidated damages at the rate stated in Item 15 of Schedule 1, if any, for every day after the relevant Date for Practical Completion or Milestone Date up to and including:

- (iii) the date of Practical Completion of the relevant Subcontract Works;
 - (iv) the date this Subcontract is terminated under clause 37; or
 - (v) Georgiou taking the relevant Subcontract Works out of the hands of the Subcontractor under clause 37.
- (b) If, after the Subcontractor has paid or Georgiou has deducted liquidated damages, the relevant Date for Practical Completion or Milestone Date is extended, with the effect that the Subcontractor would not have incurred liquidated damages had the Extension of Time been granted earlier, then subject to the terms of this Subcontract, Georgiou will repay to the Subcontractor that much of the liquidated damages in respect of the period up to and including the adjusted Date for Practical Completion or Milestone Date.
- (c) Each party acknowledges and agrees that:
- (i) the liquidated damages, if any, that are stated in Item 15 of Schedule 1 are a genuine and realistic pre-estimate of the damages that Georgiou will suffer as a result of the Subcontractor's failure to achieve Practical Completion of the relevant Subcontract Works by the relevant Date for Practical Completion or Milestone Date;
 - (ii) such damages shall be a debt due and payable by the Subcontractor to Georgiou upon demand;
 - (iii) such damages are cumulative; and
 - (iv) the Subcontractor shall be liable to pay Georgiou all loss and damage, in excess of the aggregate amount of liquidated damages payable by the Subcontractor under this clause 11 which Georgiou may incur as a result of the Subcontractor's failure to achieve Practical Completion of the relevant Subcontract Works by the relevant Date for Practical Completion or Milestone Date. Such loss or damage may include the delay, variation or acceleration costs associated with contracts which are affected by such failure and any damages for delay payable by Georgiou to the Principal under the Head Contract.
- (d) If Item 15 of Schedule 1 does not provide for any liquidated damages, or the liquidated damages are for any reason found to be unenforceable, Georgiou may claim general damages at common law for the Subcontractor's failure to achieve Practical Completion of the relevant Subcontract Works by the relevant Date for Practical Completion.
- (e) The exercise by Georgiou of its rights under this clause 11 does not relieve the Subcontractor from any of its obligations or liabilities under this Subcontract.

12. ACCELERATION

12.1 Acceleration caused by Subcontractor

- (a) If, at any time during the performance of the Subcontract Works, Georgiou considers that the Subcontractor is not progressing the Subcontract Works in a manner that will achieve Practical Completion by the Date for Practical Completion, then:
- (i) the Subcontractor must mobilise additional labour, plant or equipment to improve the progress of the Subcontract Works so that Practical Completion will be achieved by the Date for Practical Completion; and
 - (ii) Georgiou may direct the Subcontractor to:
 - (A) alter the sequence in which the Subcontract Works are to be performed;

and

(B) apply additional resources to the Subcontract Works,

and the Subcontractor has no right to Claim in connection with the direction.

- (b) If the Subcontractor fails to comply with its obligations in clause 12.1(a)(ii), Georgiou may elect to mobilise additional labour, plant or equipment to improve the progress of the Subcontract Works and the cost of doing so will be a debt due and payable by the Subcontractor to Georgiou.

12.2 Earlier completion

- (a) Georgiou may direct the Subcontractor to complete the Subcontract Works on a date earlier than the Date for Practical Completion, or to alter the sequence in which the Subcontract Works are to be performed, and the Subcontractor must comply with that direction, unless the Subcontractor can demonstrate, to the satisfaction of Georgiou, that it is not possible to do so.
- (b) Subject to and conditional upon the Subcontractor achieving the accelerated date(s) stated in the direction under clause 12.2(a) if compliance with such direction causes the Subcontractor to incur additional costs to that contemplated at the date of this Subcontract, the Subcontractor will be paid its reasonable, additional direct costs of complying with a direction under this clause unless the Subcontractor's progress was insufficient to achieve Practical Completion by the Date for Practical Completion.

13. PRACTICAL COMPLETION

13.1 Notice of Practical Completion

- (a) The Subcontractor must give Georgiou at least ten (10) Business Days written notice of the date upon which the Subcontractor anticipates that Practical Completion will be reached; and
- (b) When the Subcontractor is of the opinion that Practical Completion has been achieved, it must request in writing that Georgiou issue a Certificate of Practical Completion.

13.2 Certificate of Practical Completion

- (a) Within ten (10) Business Days after receiving the request under clause 13.1(b), Georgiou will give the Subcontractor a Certificate of Practical Completion stating the Date of Practical Completion or written reasons for not doing so, in which case the process in this clause 13 shall reapply.
- (b) If the requirements for achieving Practical Completion have been satisfied, Georgiou may issue a Certificate of Practical Completion subject to a punch list of the minor issues and Defects.
- (c) The Subcontractor must complete or rectify the punch list items within thirty (30) days after the Date of Practical Completion or such period as reasonably determined by Georgiou and specified in the Certificate of Practical Completion.
- (d) The issue of a Certificate of Practical Completion will not constitute approval of any of the Subcontract Works nor will it prejudice any Claim by Georgiou.

13.3 Possession on Practical Completion

- (a) With effect on and from the Date of Practical Completion, Georgiou will take possession of the Subcontract Works.
- (b) No partial or entire use or occupancy of the Site or the Subcontract Works by Georgiou, Georgiou's Representative or Georgiou's subcontractors, consultants or employees or agents, including carrying out testing and commissioning work prior to the Date of Practical Completion, constitutes acceptance of Subcontract Works or operates to release the Subcontractor from any of its warranties, obligations or liabilities under this Subcontract.

14. APPROVALS AND LEGISLATIVE REQUIREMENTS

14.1 General

- (a) The Subcontractor must:
 - (i) obtain all Approvals except for those listed in Item 6 of Schedule 1; and
 - (ii) comply with all Legislative Requirements relating to the Subcontract Works.
- (b) The Subcontractor must provide copies of all Approvals to Georgiou (or originals if requested).
- (c) If a change is made to a Legislative Requirement relating to the Subcontract Works that could not reasonably have been anticipated by a competent and experienced Subcontractor prior to the date of this Subcontract, the Subcontractor must notify Georgiou in writing specifying the change within two (2) Business Days after the Subcontractor becomes aware, or ought reasonably to have become aware, of the change.
- (d) If Georgiou determines that the change to the Legislative Requirement is one that:
 - (i) could not reasonably have been anticipated by a competent and experienced Subcontractor prior to the date of this Subcontract;
 - (ii) necessitates a change to the Subcontract Works; and
 - (iii) the Subcontractor has incurred greater or lesser cost as a result of the change, Georgiou's Representative may direct a Variation under clause 30.1(a).

14.2 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 Subcontractor must within five (5) days of the date of the Subcontract provide details (including where relevant, serial numbers) in respect of construction plant which will be used in connection with the Subcontract Works. The Subcontractor must update and amend the information and submit revised details to Georgiou within five (5) days if the items change.
- (c) The parties acknowledge that this Subcontract may constitute a Security Interest in favour of Georgiou.
- (d) If Georgiou determines that this Subcontract (or a transaction in connection with it, including any Subcontract Works) is or contains a Security Interest, the Subcontractor 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.
- (e) 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).
- (f) The Subcontractor must notify Georgiou as soon as the Subcontractor 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 Subcontractor parts with possession of Georgiou's Personal Property.
- (g) The Subcontractor must not:
 - (i) create any Security Interest or lien over any Personal Property in which Georgiou has a 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 a Security Interest in;
 - (iii) give possession of the Subcontractor's Personal Property in which Georgiou has a Security Interest or Georgiou's Personal Property to another person except where Georgiou expressly authorises it to do so;
 - (iv) permit any of Georgiou's Personal Property to become an Accession to or Commingled with any asset that is not part of the Subcontract Works or any land not within Georgiou's ownership or control; or
 - (v) change its name, relocate its principal place of business outside Australia or change its place of registration or incorporation without first giving Georgiou fifteen (15) Business Days' notice.
- (h) Everything the Subcontractor is required to do under this clause is at the Subcontractor's expense.
- (i) Neither Georgiou nor the Subcontractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Subcontractor 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.

15. WORK HEALTH AND SAFETY

15.1 General

- (a) The Subcontractor must:
 - (i) comply with all WH&S Laws and all relevant industry standards and Codes;
 - (ii) take all steps reasonably practicable to ensure:
 - (A) the health and safety of workers; and
 - (B) that the health and safety of other persons is not at risk from work being carried out;
- (b) 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 Site pursuant to any Legislative Requirements;
- (c) comply with all lawful directions issued by Georgiou's Representative or any person with control or management of the applicable part of the Site pursuant to any Legislative Requirements relating to workplace health and safety;
- (d) comply with any relevant health, safety, environment and quality management plans of Georgiou and the Principal;
- (e) maintain appropriate safety precautions and programs so as to prevent injury to persons or damage to property on, about or adjacent to the Site or the Subcontract Works, to the standard required by law;
- (f) consult, cooperate and coordinate with and otherwise provide all information required by Georgiou and others who are engaged to perform any of the Subcontract Works to enable them to ensure that they can comply with all Legislative Requirements concerning workplace health and safety;

- (g) implement and comply with all necessary security requirements of Georgiou for the Site;
- (h) ensure that the Subcontract Works are risk assessed and carried out in a manner that ensures the health and safety of persons present on the Site, including:
 - (i) erecting and maintaining, as required by existing conditions in the progress of the Subcontract Works, all safeguards necessary for safety and protection (including barriers, fences and railings); and
 - (ii) posting danger signs and other warnings against hazards and notifying Georgiou's Representative and other users of any dangerous or hazardous conditions arising out of the execution of the Subcontract Works;
- (i) report to Georgiou's Representative, within the times described, any of the following arising from or in connection with the performance of the Subcontract Works:
 - (i) Notifiable Incidents - initial notice immediately and a detailed report within one (1) Business Day of occurrence;
 - (ii) any personal injury which is not a Notifiable Incident - initial notice within one (1) Business Day of occurrence and a detailed report within five (5) Business Days of occurrence;
 - (iii) 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 (2) Business Days of the occurrence; and
 - (iv) property damage to any property - initial notice within one (1) Business Day of occurrence and a detailed report within five (5) Business Days of occurrence,

in the manner required by Georgiou's Representative, but in any event, in sufficient detail for Georgiou's Representative to understand the event and specifying what changes, if any, the Subcontractor has identified to prevent a similar event reoccurring. The Subcontractor must participate in any investigation undertaken by or on behalf of Georgiou in relation to the event.
- (j) If Georgiou's Representative reasonably considers that there is a risk to the health and safety of workers or other persons, or a risk of damage to property arising out of the Subcontract Works, Georgiou's Representative may direct the Subcontractor to change its manner of working at the cost of the Subcontractor and without entitlement of the Subcontractor to make any Claim.

15.2 Hazardous Chemicals

- (a) The Subcontractor 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 Sub-subcontractors may use, handle or store in performing the Subcontract Works.
- (b) The Subcontractor must ensure copies of all SDS and the register are kept on Site and readily accessible to workers and emergency services personnel.
- (c) The Subcontractor must ensure that any Hazardous Chemicals used, handled or stored at the Site are correctly labelled and the risks associated with using, handling or storing the Hazardous Chemicals are managed.
- (d) The Subcontractor must only bring Hazardous Chemicals on Site if they have been:
 - (i) authorised by Georgiou; and
 - (ii) the above requirements in sub-clause (a) have been met.

16. WHS SITE REQUIREMENTS

While working on or in connection with a worksite owned or controlled by Georgiou (including the Site) (Worksite), the Subcontractor is required to work in accordance with Georgiou's work health and safety systems and processes. The Subcontractor is responsible for ensuring any other party engaged to supply or perform work or services on behalf of the Subcontractor in connection with this Subcontract are made aware of and comply with Georgiou's work

health and safety systems and processes.

16.1 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.

16.2 Worksite Induction

- (a) All Sub-subcontractors, workers and agents will, at the Subcontractor'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 any Sub-Subcontractors, 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.

16.3 Training and Competency

- (a) The Subcontractor 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 Subcontractor 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.

16.4 Subcontractor Plant & Equipment Requirements

- (a) All plant and equipment brought to the Worksite by the Subcontractor must be managed in accordance with all relevant industry standards and Codes.
- (b) The Subcontractor must also ensure that the plant and equipment:
 - (i) 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;
 - (ii) undergoes daily maintenance inspections and the Subcontractor maintains records of such inspections;
 - (iii) is serviced as per the manufacturer's specification; and
 - (iv) 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 Subcontractor must be able to provide Georgiou, upon request, documented evidence that the above requirements have been met.

16.5 Pre-start Meetings

- (a) All Sub-subcontractors, workers and 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, any Sub-subcontractors, 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. In all other instances, the Sub-subcontractors will be required to report to Georgiou's site office and contact the site supervisor.

16.6 Toolbox Meetings

All Sub-subcontractors, workers and agents must attend all project toolbox meetings as requested by Georgiou.

16.7 HSEQ Management Meetings

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

16.8 Risk/ Hazard Management

All Sub-subcontractors, workers and 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.

16.9 Permit/Authority to Work

The Subcontractor must obtain a valid Work Permit, as approved by Georgiou, for the following work:

- (a) confined Space Entry;
- (b) work at heights;
- (c) excavation work;
- (d) work in, over or adjacent to water or other liquids where there is a risk of drowning. Georgiou or the Subcontractor will develop a specific permit/s to cover this work. If the specific permit/s is prepared by the Subcontractor, it must be provided to Georgiou for review;
- (e) diving work;
- (f) construction work where there is the risk of contact with electrical overhead power lines. Georgiou or the Subcontractor will develop a specific permit/s to cover this work. If the specific permit/s is prepared by the Subcontractor, it must be provided to Georgiou for review;
- (g) hot work; and
- (h) works conducted after the Date of Practical Completion where there is no longer a Georgiou presence on the Site.

16.10 Emergency Response

All Sub-subcontractors, workers and 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.

16.11 Fitness for Work

- (a) The Subcontractor must ensure all its Sub-subcontractors, workers and 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 Subcontractor's expense. Workers who return a positive test must not be allowed to return to any Georgiou Worksite without Georgiou's prior written consent. Any alcohol or other drug policy as part of a WHS Management Plan (or Health and Safety Coordination Plan) will also apply and take precedence over any other policy, if there are any inconsistencies.
- (c) Sub-subcontractors, workers and agents of the Subcontractor 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 Subcontractor 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.

16.12 Workplace Inspections and Audits

The Subcontractor must participate in scheduled or random WHS workplace inspections and audits to be carried out from time to time as requested by Georgiou. The Subcontractor also agrees that they may be subject to an audit at Georgiou's request to examine the extent and robustness of its system for managing WHS.

17. WHS MANAGEMENT PLANS

- (a) Prior to the Commencement Date, the Subcontractor 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 Subcontractor of any reasonable revisions that it requires to the Health and Safety Plan and the Subcontractor must promptly make those revisions provided that they do not breach any Legislative Requirement.
- (c) Georgiou can notify the Subcontractor 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 Subcontractor commences work.
- (e) The Subcontractor 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 Subcontractor 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 Subcontractor must ensure all Sub-subcontractors, workers and agents engaged in the performance of the Subcontract Works immediately comply with matters at subclause (f)(i) and (f)(ii).

18. NATIONAL CODE

This clause 18 applies if stated in Item 31 of Schedule 1.

- (a) The Subcontractor 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 Subcontractor from responsibility to perform this Subcontract or from liability for any Defect in the Subcontract Works arising from compliance with the National Code.
- (c) Where a change in this Subcontract is proposed and that change would affect compliance with the National Code, the Subcontractor must submit a report to Georgiou and the Commonwealth specifying the extent to which the Subcontractor's compliance with the National Code will be affected.
- (d) The Subcontractor must maintain adequate records of the compliance with the National Code by:
 - (i) the Subcontractor;
 - (ii) its subcontractors;
 - (iii) consultants; and
 - (iv) its related entities (as defined in the National Code).
- (e) If the Subcontractor does not comply with the requirements of the National Code in the performance of this Subcontract such that a sanction is applied by the ABCC, Minister for Employment or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Subcontractor 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 Subcontractor 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 Subcontractor 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 Subcontractor 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 Subcontract Works; and
 - (iii) interview any person,as is necessary to demonstrate its compliance with the National Code.

- (i) The Subcontractor agrees that the Subcontractor 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 Subcontractor must comply with any applicable workplace relations management plan ('WRMP', as defined in the National Code), to the extent applicable to the Subcontractor, and must provide the ABCC with all required access and assistance in relation to the Subcontractor's compliance with the National Code.
- (k) The Subcontractor must ensure that all subcontracts impose obligations on subcontractors and consultants equivalent to the obligations under this clause.

19. CHAIN OF RESPONSIBILITY

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

20. INDUSTRIAL RELATIONS

20.1 Legislative Requirements

- (a) The Subcontractor must comply with all applicable Legislative Requirements concerning industrial relations and employment conditions, and all conditions of any Industrial Instrument applicable to the Head Contract Works and the Subcontract Works.
- (b) The Subcontractor must comply, at its cost, with any Codes.
- (c) The Subcontractor must pay, at its cost, any wage rates and observe terms and conditions of employment as will apply from time to time to all persons employed by the Subcontractor in relation the Subcontract Works by virtue of any applicable Industrial Instrument.
- (d) The Subcontractor must ensure that it complies with the right of entry provisions of applicable Legislative Requirements in the event that any union representative approaches the Subcontractor to gain entry to the Site. The Subcontractor must immediately notify Georgiou's Representative of any such approach.
- (e) The Subcontract must ensure that, at all times, each of its employees 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 Subcontractor must provide to Georgiou immediately upon request any information required by Georgiou in relation to the work visa.
- (f) The Subcontractor agrees that it has made allowance for the cost of complying with all industrial and employment obligations and all applicable Industrial Instruments, in the Subcontract Sum.
- (g) If the Subcontractor fails to comply with its obligations to pay any of its persons employed the relevant wages, allowances or entitlements under any applicable Industrial Instruments, Georgiou may make the payment directly to the person employed or their assigns and Georgiou is entitled to recover the amount paid as a debt due and payable by the Subcontractor to Georgiou.

20.2 Industrial Disputes

- (a) The Subcontractor acknowledges and agrees that it is responsible for industrial relations involving its Sub-subcontractors, workers or agents.
- (b) The Subcontractor must:
 - (i) take all steps and measures to avoid and to minimise the consequences of industrial disputes affecting the Subcontract Works or the Project;
 - (ii) advise Georgiou, and keep Georgiou fully informed, of any dispute that arises, or is likely to arise, among its Sub-subcontractors, workers or agents and the subcontractors, consultants or employees or agents of the Principal or other

contractors;

- (iii) promptly inform Georgiou's Representative of any industrial dispute, potential industrial dispute, or demands made by its workforce, or any representative of its workforce, and of any other matter which could lead to industrial action affecting the continuity of the Subcontract Works or the Project or risks to the health and safety of any persons;
- (iv) comply, at its cost, with any reasonable direction by Georgiou's Representative issued with the objectives of reducing industrial disputation;
- (v) not be entitled to make any Claim arising out of or in connection with any industrial dispute;
- (vi) be liable to Georgiou for the consequences to Georgiou of any industrial disputes contributed to or caused by the Subcontractor; and
- (vii) during any industrial or safety dispute or stoppage, maintain on the Site all of the resources (including the whole of its workforce) which it would have on Site if there were no dispute or stoppage. If the Subcontractor breaches this clause, Georgiou may retain those resources and recover any costs incurred in so doing from the Subcontractor as a debt due and payable by the Subcontractor to Georgiou.

20.3 Employment of Persons

The Subcontractor must ensure, at its cost, that:

- (a) its employees and those of its Sub-subcontractors are correctly classified in accordance with any applicable Industrial Instrument;
- (b) its employees and those of its Sub-subcontractors are adequately trained and hold appropriate experience, qualifications, training, licences, tickets and certificates of competence to operate the Subcontractor's Plant and to otherwise perform the Subcontract Works as required under any Legislative Requirement;
- (c) it and its subcontractors are responsible for any training, skill assessment and/or reclassification of its employees that may be required during the performance of the Subcontract Works;
- (d) if Georgiou issues Site identification/induction cards, all employees of the Subcontractor and its Sub-subcontractors must carry such cards at all times while on Site and produce the cards upon request to any employee of Georgiou;
- (e) it and its Sub-subcontractors do not employ any person who is at the time any employee of another subcontractor, consultant or agent employed at the Site without prior written consent of both Georgiou and the other subcontractor, consultant or agent; and
- (f) it must not do, cause or permit anything to be done where an employee working on Site for another contractor is directly or indirectly induced to change employment on Site from their initial employer.

20.4 Superannuation and Redundancy

- (a) The Subcontractor must comply with its obligations under any applicable Industrial Instrument or Legislative Requirement in relation to employee entitlements, including in respect of any superannuation fund, scheme or arrangement for the benefit of persons employed.
- (b) The Subcontractor must, upon request by Georgiou, produce and allow Georgiou and its employees and agents access to all of its records which show that it has complied, and is complying with, this clause 20.4, including evidence of payments made to third parties and the construction industry accident/income protection schemes as required under any applicable award, agreement or Legislative Requirement.
- (c) The Subcontractor indemnifies Georgiou against any Claim in respect of the Subcontractor's workforce which may be incurred in connection with any non-payment to a superannuation or redundancy scheme or the construction industry

accident/income protection scheme, and against any Claim arising from non-compliance with any applicable award, agreement or Legislative Requirement in relation to employee entitlements.

- (d) Should the Subcontractor fail to comply with the requirements of any relevant superannuation or redundancy scheme or any relevant construction industry accident/income protection scheme or be in arrears in contributions, Georgiou may make payments as are necessary to comply and is entitled to recover the amount paid as a debt due and payable by the Subcontractor to Georgiou.

20.5 Breach

- (a) If the Subcontractor breaches this clause 20, the Subcontractor agrees to indemnify and hold Georgiou, its officers, agents, and employees harmless from and against any and all liabilities, damages, losses, actions, or causes of action, costs, and expenses (including legal fees), whether relating to property of Georgiou or of any third party, or to personal injury or death, arising out of or in any way contributed to by the acts or failure to act of the Subcontractor, its agents, employees or, officers, to the extent possible.
- (b) If the Subcontractor breaches this clause 20 and the breach results either directly or indirectly, in causing or contributing to any industrial action, the Subcontractor will indemnify Georgiou for any costs, losses or damage incurred as a result of the breach.
- (c) Neither Party will be liable to the other Party in any circumstances for any indirect, special or consequential loss or damage, including but not limited to loss of revenue, loss of production, loss of product, loss of contract or loss or profit howsoever arising and whether in an action in contract, tort (including without limitation, negligence), in equity, product liability, under statute or on any other basis.
- (d) Upon the request of Georgiou, the Subcontractor hereby consents to the disclosure of information demonstrating compliance with the clause 20. This consent extends to disclosure by the Commonwealth, its agencies and ministers, and disclosure to others for the purposes of facilitating compliance with this clause and the exercise of Georgiou statutory and portfolio responsibilities.

20.6 Subcontracting

- (a) If approval to subcontract any part of the Subcontract Works is granted, in writing, by Georgiou's Representative, the Subcontractor must ensure that its Sub-subcontractors comply with this clause 20, clause 15 in relation to work health and safety and Schedule 2 in relation to Codes.
- (b) The Subcontractor must not, and must ensure that its subcontractors do not, engage in what is referred to in the building industry as 'pyramid subcontracting' or 'cash-in-hand payments'.

20.7 Record Keeping

- (a) The Subcontractor must make available to Georgiou, upon request, all necessary records required to demonstrate that the Subcontractor and their subcontractors are complying with the provisions of the applicable Industrial Instrument, Codes, employment legislation and any other Legislative Requirements concerning industrial relations and employment conditions.
- (b) Prior to the Commencement Date and at least 48 hours prior to their entry to the Site, the Subcontractor must provide Georgiou with the following information in relation to each member of its labour force and their subcontractors' labour force, including any person new to the Site:
 - (i) full name, address, date of birth and award classification;
 - (ii) evidence of compliance with any applicable award or agreement or otherwise at law in relation to employee entitlements;
 - (iii) evidence of relevant certificates of competency and training and/or licences; and

- (iv) evidence of general safety induction and work activity training details.
- (c) Failure by the Subcontractor to provide any of the information required under clauses 20.7(a) and 20.7(b) may, at Georgiou's absolute discretion, result in the removal of the Subcontractor's labour force and/or the labour force of their subcontractors from the Site without entitlement to make any Claim.
- (d) Without limiting clauses 20.7(a) and 20.7(b), the Subcontractor must provide to Georgiou on a fortnightly basis and in the manner prescribed by Georgiou, a report which details any lost time due to industrial disputes.

20.8 Meetings

- (a) The Subcontractor must comply with any requirements for meetings and reporting set out at Item 11 of Schedule 1.
- (b) Without limiting its obligations under clause 20.8(a), the Subcontractor must, as requested by Georgiou from time to time, attend meetings for the purpose of discussing, amongst other things, industrial matters.
- (c) Georgiou will be advised of and may attend any meetings between the Subcontractor and other parties where the meetings related to the Subcontract Works or the Project.

20.9 Taxation

The Subcontractor must ensure that it and its Sub-subcontractors comply with all other applicable Legislative Requirements with respect to the deduction and payment of tax instalment deductions from salaries and wages paid to employees.

21. ENVIRONMENTAL COMPLIANCE

The Subcontractor must:

- (a) comply with all Environmental Laws and all relevant industry standards and Codes;
- (b) not release any Pollutant on or near the Site other than in accordance with any Environment Law;
- (c) not bring any waste onto the Site;
- (d) remove from the Site any waste arising out of Subcontract Works;
- (e) keep the Site in a good and safe condition (including by performing any necessary remediation work) so that:
 - (i) no Material Environmental Harm is caused to the Site;
 - (ii) the Site does not present a risk of death, illness or injury to any person; and
 - (iii) the Site is suitable for its proposed use;
- (f) perform its obligations under this Subcontract to:
 - (i) ensure the safety of people; and
 - (ii) ensure that no Material Environmental Harm is caused;
- (g) notify Georgiou immediately if, in the performance of the Subcontract Works, an incident occurs which could be a breach of an Environmental Law;
- (h) undertake all remediation work so that the Site meets the standards required by Environmental Law or any Authorities and is suitable for the proposed use;
- (i) within two (2) Business Days of receipt or sending of any environmental notice, or any reports, notices, correspondence, invoices or other documents relating to an environmental notice served on the Subcontractor by any Authority, provide a copy of the notice to Georgiou's Representative;
- (j) ensure all equipment arriving on the Site:
 - (i) is fit for purpose;
 - (ii) has no oil leaks; and

- (iii) is in a condition that will not adversely affect the Environment;
- (k) ensure all plant and equipment arriving on the Site has a plant weed hygiene certificate and is visually free of organic material;
- (l) report all substance spillages to Georgiou's Representative;
- (m) ensure there will be no negative impact to sensitive receptors in relation to noise, dust or vibration, and in the event of a complaint, submit a report including corrective actions to Georgiou's Representative; and
- (n) provide Georgiou with monthly waste reports (which must include the waste stream type with measurements stated in tonnes).

22. CONTAMINATION

- (a) If the Subcontractor discovers any Contamination (or suspected Contamination) in, on or under any part of the Site, the Subcontractor must notify Georgiou within two (2) Business Days after the discovery of the Contamination.
- (b) The Subcontractor must, at its cost, deal with the Contamination in accordance with any Legislative Requirements and any requirements of any relevant Authorities, except to the extent the Contamination:
 - (i) is caused by Georgiou, Georgiou's Representative, the Principal or Georgiou or the Principal's subcontractors, consultants or employees or agents; or
 - (ii) is a Latent Condition for the purposes of clause 27 and is not exacerbated by the Subcontractor.
- (c) Georgiou is not responsible for or liable for the costs of dealing with, Contamination caused by the Subcontractor or other Contamination which the Subcontractor has to deal with in accordance with clause 22(b).

23. AUDIT

The Subcontractor must, at its own cost, provide all assistance and access to its offices, workers and records to enable Georgiou, the Principal and any Authority to conduct audits on the Subcontractor's compliance with clauses 15, 20, 21, 22 and any Legislative Requirements relating to workplace health and safety, industrial relations and the environment. If any non-conformance is detected, the Subcontractor must immediately rectify the non-conformance at its own cost.

24. PERSONNEL

24.1 Key personnel

- (a) The Subcontractor must:
 - (i) not replace or remove any of the persons identified in Item 10 of Schedule 1(Key Personnel) unless directed in writing by Georgiou or with Georgiou's prior written approval;
 - (ii) ensure that each of the Key Personnel is available at the times set out in this Subcontract or as otherwise required in writing by Georgiou; and
 - (iii) ensure that the Key Personnel properly perform their roles and responsibilities in accordance with this Subcontract or as otherwise agreed to in writing by Georgiou.
- (b) Should any of the Key Personnel leave the Subcontractor's employ, the Subcontractor must promptly replace each of such personnel with a person of comparable skill, experience and qualifications.

24.2 Provision of replacement personnel

If any particular Sub-subcontractors, workers or agents of the Subcontractor prove to be unsatisfactory to Georgiou for any reason, Georgiou may direct their removal (including from the Site) in writing and the Subcontractor will immediately remove them from performance or any other role in respect to the Subcontract Works and will provide a replacement, as

approved in accordance with clause 24.1(b), as soon as practicable and unless otherwise agreed in writing, at no extra cost to Georgiou.

24.3 Procure compliance of personnel

The Subcontractor must ensure its Sub-subcontractors, workers and agents comply with the requirements of this Subcontract.

25. SITE MATTERS

25.1 Site access

- (a) Provided that the Subcontractor has complied with its obligations under clause 35, and Georgiou has been given access to the Site by the Principal, Georgiou will give the Subcontractor sufficient access to the Site to perform the Subcontract Works on or before the Commencement Date. The Subcontractor may only use the Site for the purpose of providing the Subcontract Works.
- (b) The Subcontractor must not enter any part of the Site not reasonably necessary for the Subcontractor to perform the Subcontract Works without the prior written consent of Georgiou.
- (c) The Subcontractor agrees its access to any part of the Site may be:
 - (i) limited for any period of time;
 - (ii) non-continuous; or
 - (iii) hindered by other works, including the work of other contractors.
- (d) The Subcontractor agrees that there is sufficient allowance in the Subcontract Sum and Subcontract Program to accommodate the restrictions, non-continuity or hindrances that may occur under this Subcontract and the Subcontractor will not be entitled to make any Claim arising out of or in connection with any a restriction, non-continuity or hindrance of access to the Site.

25.2 Conduct on Site

The Subcontractor must:

- (a) ensure that its Sub-subcontractors, workers and agents maintain good standards of behaviour on Site and that complaints are properly and promptly investigated.
- (b) ensure that its Sub-subcontractors, workers and agents do not engage in offensive behaviour or language on the Site.
- (c) comply with all security arrangements applicable to the Site from time to time set by Georgiou, Georgiou's Representative or the Principal.
- (d) not permit any employee to enter upon the Site unless it has complied with the requirements of this Subcontract and any directions of Georgiou.

25.3 Clean Site

- (a) The Subcontractor must:
 - (i) keep that part of the Site to which it has access, the Subcontract Works and the Subcontractor's Plant and vehicles clean and tidy;
 - (ii) regularly remove from the Site all rubbish created by it or its Sub-subcontractors, including rubbish skips or bins provided by Georgiou;
 - (iii) ensure that all waste material generated is kept to an absolute minimum;
 - (iv) ensure its suppliers supply the Subcontractor's Materials pre-cast or pre-cut to size;
 - (v) minimise packing of the Subcontractor's Materials;
 - (vi) arrange for the return of packaging to the supplier;
 - (vii) without being entitled to make any Claim, comply with any direction from

- Georgiou requiring the Subcontractor's Materials to be recycled or sorted; and
- (viii) comply with any requirements set out at Item 14 of Schedule 1 relating to cleaning the Site.
 - (b) Within ten (10) Business Days after the Date of Practical Completion, the Subcontractor must remove any temporary works and the Subcontractor's Plant from the Site unless directed otherwise in writing by Georgiou.
 - (c) If the Subcontractor fails to provide sufficient labour to keep the Site and Subcontract Works clean and tidy, Georgiou may, without prior notice to the Subcontractor, employ others to clean up and Georgiou's costs incurred will be recoverable as a debt due and payable by the Subcontractor to Georgiou.

25.4 Coordination

- (a) The Subcontractor will not have exclusive access to the Site or any part of it and must coordinate the Subcontract Works with activities of Georgiou, the Principal and subcontractors, consultants or employees or agents and any other contractors. The Subcontractor acknowledges and agrees that it is not entitled to any Claim arising from the impact of any interference caused to the Subcontractor or the Subcontract Works by any person on the Site.
- (b) The Subcontractor must ensure that the Program incorporates and makes all necessary allowance for the work of Georgiou's subcontractors, consultants or employees or agents or others that have been brought to the attention of the Subcontractor.
- (c) The Subcontractor must comply with the directions of Georgiou as to how to proceed where a dispute arises with others on or near the Site.
- (d) The Subcontractor must ensure that all the Subcontract Works or part thereof, the completion of which is necessary to allow any of Georgiou's subcontractors, consultants or employees or agents or others to commence work, have been completed by the date shown in the Program for the completion of such work so as to allow the commencement of the subsequent work by Georgiou's subcontractors, consultants or employees or agents or others.
- (e) If the Subcontract Works are in any way dependent upon the quality or nature of any work or services performed by others, then the Subcontractor must verify that the other works or services are suitable in all respects for the proper performance of the Subcontract Works. If the Subcontractor considers that the other works are not suitable, it must notify Georgiou in writing and seek instructions before commencing the relevant Subcontract Works. If the Subcontractor fails to comply with this clause, the Subcontractor will have no Claim for any additional costs or delays that it later suffers due to the unsuitability of the other work or services.

25.5 Site meetings

- (a) The Subcontractor must ensure that it, and any Sub-subcontractors requested by Georgiou, are represented at any project or site meetings (Site Meetings) to openly discuss all matters relevant to the Subcontract Works and their progress, which may be convened by Georgiou by reasonable notice to the Subcontractor.
- (b) Minutes of each Site Meeting are to be made by Georgiou and issued to the Subcontractor's Representative. If the Subcontractor's Representative does not agree with the accuracy of the minutes, it will notify the Subcontractor of the inaccuracy.
- (c) Despite the recording of the minutes of any Site Meeting, no resolution or communication at any Site Meeting (nor minutes recording any resolution or communication) will waive, release, vary or affect in any way the parties' obligations under this Subcontract nor will it constitute a direction under this Subcontract and the Subcontractor will have no entitlement to Claim in connection with such minutes.

25.6 Public utilities and services

If the Subcontractor or its Sub-subcontractors, damages public utilities and services on or near to the Site, the Subcontractor must promptly make good the damage and pay any compensation which the Subcontractor is required to pay under any applicable Legislative

Requirements, or otherwise in law.

25.7 Re-performance at Subcontractor's cost

- (a) The Subcontractor must take all necessary steps to prevent damage to any property, and to prevent harm or nuisance to any persons, on or near the Site. If any damage is caused by the Subcontractor or its Sub-subcontractors, the Subcontractor must:
 - (i) remedy, at its own cost, the damage as soon as possible to the satisfaction of Georgiou; and
 - (ii) indemnify Georgiou for any damage, loss, cost or expense suffered by Georgiou in connection with the damage to property or harm or nuisance to any persons.
- (b) If the Subcontractor fails to comply with its obligations in clauses 25.6 and 25.7(a), Georgiou may perform those obligations itself or through others and all costs, damages and expenses incurred by Georgiou in performing those obligations will become a debt due and payable by the Subcontractor to Georgiou.

25.8 Working hours

- (a) The Subcontractor may only carry out the Subcontract Works at the Site during the working hours stated in Item 5 of Schedule 1 (Normal Working Hours) unless expressly directed otherwise in writing by Georgiou.
- (b) The Subcontractor:
 - (i) acknowledges that Georgiou has power to permit and direct the Subcontractor to work outside the Normal Working Hours
 - (ii) must ensure that any Subcontract Works carried out on the Site outside the Normal Working Hours is properly supervised; and
 - (iii) is not entitled to make any Claim in connection with any permission or direction given by Georgiou under this clause 25.8.
- (c) Georgiou may rely on the Subcontractor's compliance with this clause in the event a 'Notifiable Incident' occurs.

25.9 Native Title

- (a) In this clause, 'native title holders' includes previous native title holders.
- (b) The Subcontractor agrees that it has not entered into this Subcontract in reliance on any representation, warranty, promise or statement made by Georgiou as to the non-existence or otherwise of any native or aboriginal title in respect of the Site or any part of the Site.
- (c) As between the Subcontractor and Georgiou:
 - (i) the Subcontractor is responsible for dealing with any Native Title Application in respect of the Site or any part of the Site; and
 - (ii) the Subcontractor is responsible for the payment of any compensation or other monies required to be paid to:
 - (A) the native title holders of a Site or any part of a Site;
 - (B) any applicants on a Native Title Application for a determination of such title; or
 - (C) any applicants on a Native Title Application for a determination of entitlement to compensation.
- (d) In dealing with any Native Title Application, the Subcontractor must:
 - (i) consult with Georgiou and agree with all responses to any such application, including management of any negotiation, mediation, settlement or other procedures provided for under the Native Title Act 1993 (Cth); and
 - (ii) not commit to the payment of any settlement or consent to any order, including in respect of compensation to the native title holders or applicants without the

prior written consent of Georgiou.

- (e) Georgiou is not liable to the Subcontractor for any liability which the Subcontractor suffers or incurs as a result of a Native Title Application in respect of any Site or any part of a Site.
- (f) If there is a Native Title Application with respect to any Site or any part of a Site, the Subcontractor must continue to perform its obligations under this Subcontract, except to the extent:
 - (i) directed by Georgiou;
 - (ii) ordered by an Authority; or
 - (iii) required by any Legislative Requirement.
- (g) The Subcontractor indemnifies Georgiou against any Claims, costs, expenses, losses and damages (including any legal costs on a fully indemnity basis) which Georgiou incurred in connection with any Native Title Application, except to the extent caused by an act or omission of Georgiou, Georgiou's Representative or Georgiou's subcontractors, consultants, employees or agents.

25.10 Artefacts and Cultural Heritage

- (a) The Subcontractor agrees that it has not entered into this Subcontract in reliance on any representation, warranty, promise or statement made by Georgiou as to the non-existence or otherwise of any Aboriginal cultural heritage or Artefact in respect of the Site or any part of the Site.
- (b) As between Georgiou and the Subcontractor, the Subcontractor is responsible for dealing with any Aboriginal cultural heritage and Artefacts in respect of any Site or any part of the Site and compliance with any Legislative Requirements.
- (c) The Subcontractor is responsible for and assumes the risks of all loss or delay it suffers or incurs as a result of the discovery of Artefacts or the existence of Aboriginal cultural heritage in or on any part of the Site.
- (d) Georgiou is not be liable to the Subcontractor for any liability which the Subcontractor suffers or incurs as a result of the discovery of Artefacts or the existence of Aboriginal cultural heritage in respect of the Site or any part of the Site.
- (e) All Artefacts discovered on or under the surface of the Site will, as between the Subcontractor and Georgiou, be the absolute property of Georgiou.
- (f) If an Artefact is discovered at the Site, the Subcontractor must:
 - (i) continue to perform its obligations under this Subcontract unless otherwise directed by Georgiou;
 - (ii) immediately upon discovery of the Artefact notify Georgiou of such discovery;
 - (iii) at all times permit and allow Georgiou's Representative or any other person authorised by Georgiou to watch or examine any excavations on the Site;
 - (iv) at its cost, take every reasonable precaution to prevent Artefacts being damaged or removed until appropriate arrangements for dealing with, or removing, the Artefacts have been made; and
 - (v) comply, at its cost, with any direction to suspend or cease undertaking Subcontract Works, imposed upon Georgiou in respect of any Artefact pursuant to any order of a court, tribunal or Legislative Requirement. Georgiou is not entitled to make any Claim in relation to such a direction.

26. PROTECTION OF PEOPLE AND PROPERTY

- (a) The Subcontractor must provide all things and take all measures necessary, to protect people and property on or adjacent to the Site, including the provision of barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, watching, traffic flagging, removal of obstructions and protection of services.
- (b) The Subcontractor must ensure that no damage, nuisance or inconvenience is caused to

anyone lawfully on the Site (including any tenants) and occupiers of adjacent properties or the public by dust, dirt, water or noise and must avoid any unnecessary interference with:

- (i) the passage of people and vehicles; and
 - (ii) other contractors or other contractors' works on the Site.
- (c) If urgent action is necessary to protect Subcontract Works, other property or the safety of people, and the Subcontractor fails to take the necessary action, Georgiou may, in its absolute discretion and without prior notice to the Subcontractor, take the urgent action required and the costs of that action will be a debt due and payable by the Subcontractor to Georgiou.
- (d) The Subcontractor must comply with any direction of Georgiou concerning the reduction in dust, dirt, water or noise.
- (e) The Subcontractor is not entitled to any Claim arising out of or in connection with a direction from Georgiou's Representative under clause 26(f).
- (f) The noise level generated from any source by the Subcontractor must not exceed the limits set by the Environmental Protection Authority or AS 2436-2010 (Guide to Noise Control on Construction, Maintenance and Demolition Sites) if limits are not set by any applicable Legislative Requirement.

27. SITE CONDITIONS

27.1 Investigation by Subcontractor

Without limiting clause 43, the Subcontractor acknowledges and warrants that it has experience and competency in carrying out the Subcontract Works and will be deemed for all purposes to have (and made allowances for having):

- (a) examined this Subcontract and all information made available in writing by Georgiou to the Subcontractor for the purpose of the tendering for the Subcontract Works;
- (b) examined all information which is relevant to the risks, contingencies and other circumstances which could affect its performance of the Subcontract Works and which is obtainable by the making of reasonable enquiries;
- (c) visited the Site prior to execution of this Subcontract and to have made itself fully aware of all matters including but not limited to:
 - (i) Site and local conditions affecting the Subcontract Works both above and below the surface, and the condition of any structures or previous work of any kind on the Site or adjoining the Site; and
 - (ii) the nature and location of the Site and its surroundings;
- (d) undertaken all soil investigations and other investigations of the Site;
- (e) informed itself as far as practicable of the climatic conditions (including cyclonic activity, rainfall, evaporation rates, prevailing winds and temperatures) at or near the Site;
- (f) informed itself as far as practicable of the surface water courses (including those affecting access to the Site), underground water tables and flow rates relevant to the performance of the Subcontract Works;
- (g) informed itself as far as practicable of the nature of the Subcontract Works and the materials necessary for the execution of the Subcontract Works, the means of access to and facilities at the Site, and the transport facilities for deliveries to the Site and to have made allowance for these matters;
- (h) informed itself as to the availability of labour, including transport and accommodation required and all other industrial relations factors;
- (i) satisfied itself as to the correctness and sufficiency of its tender for the Subcontract Works and that the unit rates and charges stated cover the cost of the Subcontractor performing the Subcontract Works;

- (j) ascertained the extent, location and nature of all services, including but not limited to existing services and temporary services necessary to undertake the Subcontract Works and to ensure the continuing operation of any existing use of the Site;
- (k) subject to clause 43, satisfied itself as to the accuracy, adequacy and completeness of Georgiou Supplied Information; and
- (l) ascertained and ensured compliance with any Legislative Requirements.

27.2 Latent Conditions

- (a) If during the performance of the Subcontract Works, the Subcontractor encounters on, at, under, near, or in connection with the Site changed physical conditions which it considers:
 - (i) differ materially from those which would have been ascertainable by the Subcontractor if it had complied with the warranties in clause 1.3(a) and 27.1;
 - (ii) could not reasonably have been anticipated by the Subcontractor if at the date of the Subcontractor's tender it had complied with the warranties in clause 1.3(a) and 27.1; and
 - (iii) will materially affect the performance of the Subcontract Works,(collectively referred to as 'Latent Conditions') then the Subcontractor must, within five (5) days of encountering the Latent Conditions, and before the conditions are disturbed or additional costs incurred, give written notice accompanied by a report in reasonable detail setting out the Subcontractor's concerns to Georgiou including any additional time or costs the Subcontractor anticipates it will incur in dealing with the Latent Condition ('Latent Conditions Notice').
- (b) On receipt of a Latent Conditions Notice, Georgiou's Representative will promptly investigate the Latent Conditions and determine whether any Variation is necessary and if so, will take action in accordance with clause 30.1(a).
- (c) The giving of the Latent Conditions Notice strictly in accordance with the requirements of clause 27.2(a) (including within the specified time) is a condition precedent to any entitlement of the Subcontractor to any Claim in relation to encountering the Latent Conditions.
- (d) Other than the Subcontractor's entitlement to any Claim for an Extension of Time and additional direct costs, the Subcontractor is not entitled to make any further Claim in relation to a Latent Condition, including any Claim for:
 - (i) any loss or damage suffered as a result of the Latent Condition; and
 - (ii) any disruption costs, expenses or losses related to the Latent Condition.
- (e) Nothing in this clause obliges Georgiou to pay additional direct costs to the Subcontractor which has already been included in any other payment under this Subcontract.

28. RESPONSIBILITY FOR SUBCONTRACT WORKS

28.1 Protection of Subcontract Works

- (a) Subject to clause 28.3, the Subcontractor is responsible for the care and protection of:
 - (i) the whole of the Subcontract Works (including any parts of the Subcontract Works that are in transit to the Site or are on the Site but are unfixed) and things belonging to Georgiou or the Principal that are in the possession of the Subcontractor from and including the Commencement Date to 5pm on the Date of Practical Completion, at which time responsibility for care of the Subcontract Works passes to Georgiou (except to the extent provided in clause 28.1(a)(ii));
 - (ii) unfinished work, plant, equipment, tools, appliances or other property and items that the Subcontractor is to remove from the Site after 5pm on the Date of Practical Completion until all outstanding work has been completed or until the Subcontractor has complied with its obligations under this Subcontract in respect

of testing and rectification of Defects.

- (b) In addition to the care of things described in clause 28.1(a), the Subcontractor must do and supply all things necessary to:
 - (i) protect unfixed items on the Site or in transit to the Site, including by packaging any items in transit in a manner to prevent damage to them and in accordance with Legislative Requirements; and
 - (ii) protect any existing work on the Site.

28.2 Subcontractor to make good

If, during the period that the Subcontractor is responsible for the care of things described in clause 28.1, those things suffer loss or damage that is:

- (a) not caused by an event described in clause 28.3, the Subcontractor must, at its cost, promptly rectify any damage or replace any lost item; or
- (b) caused or contributed to by an event described in clause 28.3, Georgiou may direct the Subcontractor to rectify the loss or damage, and such direction will be deemed to be a Variation, provided that any such direction must, in the event the loss or damage is caused by both clause 28.3 events and other events, proportionately reflect only the contribution of the clause 28.3 event, and Georgiou must apportion any Extension of Time and any valuation under clause 30.2 accordingly.

28.3 Excluded risks

Despite clause 28.1, Georgiou will be liable for the loss of or damage to any items caused by:

- (a) the negligence of Georgiou, Georgiou's Representative or Georgiou's subcontractors, consultants, employees or agents;
- (b) war, invasion, hostilities, terrorism, martial law, rebellion, insurrection or confiscation by order of any Authority; or
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Subcontractor or its Sub-subcontractors.

29. DEFECTS

29.1 Rectification of Defects

- (a) The Subcontractor must, at its cost, and with as little inconvenience to the occupants or users of Subcontract Works as reasonably possible, rectify any Defect which appears in Subcontract Works during the performance of the Subcontract Works or during the Defects Liability Period.
- (b) Without limiting clause 29.1(a), where Georgiou becomes aware of any Defect in Subcontract Works during the performance of the Subcontract Works or during the Defects Liability Period, it may do any or all of the following:
 - (i) if clause 29.1(c) applies, engage a third party to rectify the Defect;
 - (ii) direct the Subcontractor to rectify the Defect;
 - (iii) direct the Subcontractor to remove or demolish the work which is Defective; and
 - (iv) accept the work which is Defective, which will constitute a deemed Variation the value of which will take into account the diminution in value of Subcontract Works arising from the Defect and any loss or damage suffered by Georgiou as a result of the Defect.
- (c) If the urgent rectification of a Defect is reasonably necessary to protect the Subcontract Works or to prevent delay to the Head Contract Works, Georgiou may itself or by others rectify the Defect without first giving the Subcontractor an opportunity to do so and the cost of remedying the Defect will become a debt due and payable by the Subcontractor to Georgiou.
- (d) If any Defect is not rectified or Defective work is not removed or demolished in

accordance with the direction by Georgiou under clause 29.1(b)(ii) or 29.1(b)(iii), Georgiou may itself or by others, rectify the Defect and the cost of remedying the Defect will become a debt due and payable by the Subcontractor to Georgiou.

- (e) If Georgiou carries out or has others carry out rectification work under clause 29.1(c), the Subcontractor shall remain responsible for the Subcontract Works (including the rectification works) in accordance with the Subcontract and the Subcontractor is not entitled to make any Claim in connection with that rectification work.

29.2 Separate Defects Liability Period

In a direction under clause 29.1(b)(i), Georgiou may direct whether there will be a separate Defects Liability Period for the rectification work (commencing at 4pm on the date the rectification work is completed and finishing 12 calendar months after the date the rectification work is completed) which shall take effect. The Subcontractor will not be entitled to recover any additional costs incurred by the Subcontractor as a result of the separate Defects Liability Period.

29.3 Subcontractor's obligations not affected

The Subcontractor is not relieved from any of its obligations under this Subcontract as a result of Georgiou exercising its rights under clause 29.1.

30. VARIATIONS

30.1 Variations

- (a) Georgiou's Representative may, at any time prior to the expiration of the Defects Liability Period, direct the Subcontractor to amend, increase, decrease, omit or change the quality, character, timing or sequence of the Subcontract Works or to execute additional work or direct any Variation that may be necessary to give effect to any variation directed under the Head Contract. No Variation directed by Georgiou's Representative will invalidate this Subcontract.
- (b) If the Variation requires the omission of work, Georgiou may in its absolute discretion be entitled to perform the omitted work, or have it performed by others. If Georgiou's Representative directs a Variation omitting any part or all of the Subcontract Works, Georgiou will not be in breach of this Subcontract if it thereafter either employs or engages another person to carry out the omitted Subcontract Works.
- (c) The Subcontractor must not vary the Subcontract Works except as directed in writing by Georgiou's Representative under clause 30.1(a). If the Subcontractor varies the Subcontract Works in the absence of a Variation in writing, then the Subcontractor will not be entitled to make any Claim with respect to the varied Subcontract Works.

30.2 Valuation

- (a) Within seven (7) days of receiving a direction under clause 30.1(a) the Subcontractor must give written notice to Georgiou's Representative as to:
 - (i) the work required to give effect to the Variation;
 - (ii) the costs of carrying out the Variation, supported by measurements or other evidence of cost; and
 - (iii) the effect of the Variation on the Date for Practical Completion.
- (b) Where this Subcontract provides for a valuation to be made under this clause 30, and the parties have not already agreed on the relevant adjustment to the Subcontract Sum, Georgiou will determine the value as follows:
 - (i) to the extent that this Subcontract prescribes specific rates or prices to be applied in determining the value, those rates or prices will be used; and
 - (ii) to the extent that clause 30.2(b)(i) does not apply, reasonable rates or prices will be used in any valuation by Georgiou.
- (c) For the purposes of valuing a Variation, in valuing a decrease in the Subcontract Sum for the decrease or omission of any part of the Subcontract Works, such valuation shall

include a proportionate decrease in preliminaries and no allowance shall be made in respect of loss of profit or loss of recovery of on Site or off Site overheads.

- (d) Notwithstanding any other provision of this Subcontract, where any right of Georgiou as to the making of a Claim or the recovery of any amount in respect of a Variation is restricted or limited by the Head Contract, the Subcontractor's rights are similarly restricted and limited and the Subcontractor shall not be entitled to make any Claim or recover any payment which is greater than that which Georgiou may make or recover under the Head Contract. For the avoidance of doubt, the parties acknowledge and agree that this sub-clause does not operate to:
 - (i) make payment of any amount by Georgiou to the Subcontractor contingent on the payment of an equivalent amount by the Principal to Georgiou;
 - (ii) make the liability of Georgiou to the Subcontractor to pay any amount to the Subcontractor contingent on the liability of the Principal to pay an equivalent amount to Georgiou; or
 - (iii) make the due date for payment of any amount by Georgiou to the Subcontractor dependent on the date of payment of an equivalent amount by the Principal to Georgiou.
- (e) Except as provided in clause 30.2, the Subcontractor will not be entitled to any increase in the Subcontract Sum as a result of any Variation directed by Georgiou's Representative.

30.3 Directions

- (a) If the Subcontractor is of the opinion that any direction or instruction is a Variation even though it was not expressed as such, the Subcontractor must notify Georgiou within seven (7) days from the date that the alleged Variation was directed.
- (b) Within five (5) Business Days of receiving that notice under clause 30.3(a), Georgiou will notify the Subcontractor in writing of whether the instruction or direction constitutes a Variation, and if so, will issue a direction in accordance with clause 30.1(a).
- (c) If the Subcontractor fails to notify Georgiou in accordance with this clause 30.3, the Subcontractor will not be entitled to make any Claim with respect to the instruction or direction.

30.4 No Variation

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

- (a) performance of incidental tasks or tasks that can be reasonably inferred as necessary to safely and effectively complete the Subcontract Works;
- (b) a Defect in the Subcontract Works;
- (c) the Subcontractor being in breach of this Subcontract; or
- (d) any negligence or any default of the Subcontractor or its Sub-subcontractors.

30.5 Daywork

- (a) Excepted as directed by Georgiou in writing, no Daywork is to be undertaken by the Subcontractor.
- (b) Georgiou may direct that a Variation be undertaken as Daywork.
- (c) Within twenty four (24) hours of Georgiou directing the Subcontractor in writing to undertake Daywork, the Subcontractor must provide a Daywork docket for signing by Georgiou's Representative.
- (d) Daywork dockets must contain the following information:
 - (i) the activities and tasks that where being undertaken in full detail;
 - (ii) details of or an attachment of the relevant written direction by Georgiou;

- (iii) details of the specific days, hours and times that the activities and tasks were undertaken;
 - (iv) details of the name(s) of the person(s) performing the Daywork labour; and
 - (v) details of the subcontractor responsible, if the Daywork labour was for the rectification of another subcontractor's defect or damage.
- (e) If the above information is not contained on a Daywork docket, it will not be considered a proper Daywork docket under this Subcontract even if it is signed by Georgiou's Representative.
- (f) Georgiou's Representative's signature of Daywork dockets is for the purposes of verifying hours worked and for "record purposes only". It does not constitute a direction to carry out a Variation or any agreement by Georgiou that the relevant work carried out by the Subcontractor constitutes Daywork or a Variation.
- (g) Georgiou shall determine the value of the Daywork having regard to the following:
- (i) any Daywork rates for labour set out in Schedule 11 for the various classifications of labour and for the number and nature of the hours worked, those rates including all wages, allowances, standby rates and other payments in accordance with any relevant statute or award, and all relevant indirect costs, overheads and profit;
 - (ii) any Daywork rates for Subcontractor's Plant set out in Schedule 11 for the Subcontractor's Plant there listed, those rates including all capital costs and depreciation, maintenance, servicing and repair labour costs, costs of consumables including parts, oils and fuel, all other relevant direct and indirect costs, overheads and profit, and, as stated in Schedule 11, either including or excluding machine operations' labour;
 - (iii) the amount of hire charges in respect of hired Subcontractor's Plant approved by Georgiou in accordance with such hiring rates and conditions as may be agreed upon between Georgiou and the Subcontractor or, in the absence of such an agreement, in accordance with such reasonable rates and conditions as may be determined by Georgiou, plus a mark-up for all relevant indirect costs, overheads and profit at the rate specified in Item 26 of Schedule 1;
 - (iv) the actual amounts paid by the Subcontractor for services, subcontracts, and professional fees, plus a mark-up for all relevant indirect costs, overheads and profit at the rate specified in Item 27 of Schedule 1; and
 - (v) the actual amounts paid by the Subcontractor for materials delivered to the Site for use in Daywork, plus a mark-up for unloading and storing the materials on Site until required for use and for all relevant indirect costs, overheads and profit at the rate specified in Item 28 of Schedule 1.
- (h) The amounts payable for Daywork shall not be subject to adjustment for rise and fall in costs.

31. PAYMENT

31.1 Progress claims

- (a) The Subcontractor must submit to Georgiou's Representative, on the date set out in set out in Item 17 of Schedule 1 (Payment Claim Date), its claims for payment (Progress Claim) for Subcontract Works performed since the last Payment Claim Date.
- (b) Each Progress Claim must be given in writing to Georgiou's Representative and must set out or be accompanied by:
 - (i) the amount claimed;
 - (ii) a description of the Subcontract Works that the Subcontractor has performed since the last Payment Claim Date;
 - (iii) substantiation (including documentary evidence) that the Subcontract Works has been performed;

- (iv) a statutory declaration in the form set out in Schedule 13, which states that as at the Payment Claim Date, no wages or other monies are due and owing by the Subcontractor to its Sub-subcontractors for any work the subject of that Progress Claim; and
 - (v) any other information Georgiou's Representative may reasonably require.
- (c) If the Site is located in New South Wales, each Progress Claim and the Final Payment Claim must be accompanied by a duly signed written statement in the form set out in Schedule 15 and which complies with the Subcontractor's obligations under section 127 of the Industrial Relations Act 1996 (NSW), Schedule 2 of Part 5 of the Payroll Tax Act 2007 (NSW) and section 175B of the Workers Compensation Act 1987 (NSW) to provide a statement to the "principal contractor" as contemplated by those Acts.
- (d) If a Progress Claim is made:
- (i) before the relevant Payment Claim Date, it will be deemed instead to have been submitted on that Payment Claim Date; or
 - (ii) after the relevant Payment Claim date, it will be deemed instead not to have been submitted until the next Payment Claim Date,
- provided that in no circumstance may more than one Progress Claim be submitted for any Payment Claim Date.
- (e) As a condition precedent to the Subcontractor's entitlement to:
- (i) submit a Progress Claim; or
 - (ii) receive payment of any amount (including an amount stated in a Payment Certificate),
- the Subcontractor shall provide Georgiou with:
- (iii) a copy of this Subcontract duly executed by the Subcontractor;
 - (iv) demonstration that it continues to hold the insurances required by this Subcontract; and
 - (v) performance security required to be given by the Subcontractor under this Subcontract.
- (f) As to a Progress Claim which does not contain the information required under clauses 31.1(b) and 31.1(c):
- (i) Georgiou's Representative may, at its sole and absolute discretion, complete any missing information or return the incomplete Progress Claim to the Subcontractor and notify the Subcontractor that clauses 31.1(b) or 31.1(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 31.1(b) or 31.1(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 31.1(b) or 31.1(c); and
 - (iv) where Georgiou's Representative returns an incomplete Progress Claim to the Subcontractor, the Subcontractor shall submit a Progress Claim that complies with clauses 31.1(b) or 31.1(c) within the time notified by Georgiou's Representative or, where no time is notified, within forty eight (48) hours.
- (g) 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 Subcontractor in respect of its then current Progress Claim.

31.2 Payment certificates

- (a) Georgiou's Representative will issue to the Subcontractor a payment certificate stating the amount of the Progress Claim which in the opinion of Georgiou's Representative (having regard to clause 31.7), is payable by Georgiou or the Subcontractor (Payment

Certificate), as the case requires, within ten (10) Business Days of receipt of a Progress Claim. The Payment Certificate must also state:

- (i) the Progress Claim to which the Payment Certificate applies; and
- (ii) if the amount in the Payment Certificate is less than that in the Progress Claim, the reasons why. Reasons why the amount in the Payment Certificate is less than in the Progress Claim may include failure by the Subcontractor to comply with any outstanding obligations under:
 - (A) clause 4 (Security); and
 - (B) clause 35 (Insurances).
- (b) At any time up to the expiry of the Defects Liability Period, Georgiou's Representative may, by the issue of a Payment Certificate, modify or correct an omission or error in an earlier Payment Certificate.
- (c) If the Subcontractor does not make a Progress Claim in accordance with clause 31.1, Georgiou's Representative may nevertheless issue the Payment Certificate with the details of the calculations in clause 31.2(a).
- (d) If clause 32.4 does not apply as a result of clause 32.4(f), the Subcontractor must give Georgiou a tax invoice (as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)) for the amount the subject of a Payment Certificate issued by Georgiou's Representative under this clause 31.2 within two (2) Business Days of receipt of that Payment Certificate.

31.3 Progress payments

- (a) Georgiou will pay the Subcontractor the amount certified as due to the Subcontractor under the Payment Certificate (or if no Payment Certificate is issued by Georgiou's Representative, the amount of the Progress Claim) by the later of:
 - (i) unless the agreement in clause 32.4 terminates as a result of clause 32.4(f), five (5) Business Days after Georgiou issues a RCTI for the amount shown in the relevant Payment Certificate under clause 31.2;
 - (ii) two (2) Business Days after provision to Georgiou of a monthly report in accordance with clause 7.12;
 - (iii) two (2) Business Days after provision of all Security in accordance with clause 4; or
 - (iv) two (2) Business Days after provision to Georgiou of certificates of currency of all insurances referred to in clause 35,
 but in any event:
 - (v) if the Site is located in New South Wales, within thirty (30) Business Days after a Progress Claim is made;
 - (vi) if the Site is located in Queensland, within twenty five (25) Business Days after a Progress Claim is made;
 - (vii) if the Site is located in Western Australia, within forty two (42) days after a Progress Claim is made; or
 - (viii) if the Site is located in Victoria, within forty five (45) days after the date of the end of the month in which the Progress Claim is received.
- (b) Where an amount is certified as being due for payment to Georgiou by the Subcontractor in a Payment Certificate under clause 31.2, the Subcontractor must pay Georgiou the amount certified within twenty (20) Business Days after receipt of that Payment Certificate.
- (c) All payments by Georgiou, other than the payment of the Final Payment Claim, are on account only, and is not evidence of any Subcontract Works having been carried out in accordance with the requirements of this Subcontract.
- (d) Georgiou shall pay interest on any amount due to the Subcontractor but remaining

unpaid after the date upon which it should have been paid, at the rate stated in Item 29 of Schedule 1.

31.4 Unfixed plant and materials

- (a) The Subcontractor will not be entitled to claim payment for materials, plant, equipment or other goods which have not been delivered to the Site and incorporated into the Subcontract Works, unless Georgiou otherwise agrees in writing.
- (b) Georgiou may impose conditions on any agreement to pay for items described in clause 31.4(a), including a requirement that the Subcontractor provide to Georgiou before any such payment is made, additional security to the value of the relevant payment.

31.5 Free from encumbrances and passing of title

Notwithstanding anything to the contrary in any tender, quotation, delivery docket, consignment note, invoice or other document of the Subcontractor, unencumbered property in any item forming part of the Subcontract Works:

- (a) that is delivered to the Site by or for the Subcontractor will pass to Georgiou upon the earlier of Georgiou's payment for the item or the delivery of the item to the Site; and
- (b) otherwise, will pass to Georgiou upon Georgiou's payment for the item.

31.6 Final Payment Claim and Certificate

- (a) Within twenty eight (28) days after the Date of Practical Completion, the Subcontractor must give Georgiou's Representative a final Progress Claim endorsed 'Final Payment Claim', together with all other Claims whatsoever in connection with the subject matter of this Subcontract (Final Payment Claim).
- (b) Georgiou's Representative:
 - (i) must, within ten (10) Business Days after receipt of the Final Payment Claim; or
 - (ii) may, if the Subcontractor does not issue a Final Payment Claim under clause 31.6(a),

issue to both the Subcontractor and Georgiou a final Payment Certificate stating the amount finally due and payable between the Subcontractor and Georgiou on any account whatsoever in connection with this Subcontract (Final Payment Certificate).
- (c) The Subcontractor must give Georgiou:
 - (i) a tax invoice (as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)) for the amount the subject of the Final Payment Certificate; and
 - (ii) an executed Final Release and Waiver in the form as set out in Schedule 5, within two (2) Business Days of receipt of the Final Payment Certificate.
- (d) Subject to clause 31.6(c), if the Final Payment Certificate certifies that monies are due and payable from Georgiou to the Subcontractor, the amount certified as due and payable must be paid by Georgiou to the Subcontractor within ten (10) Business Days after receipt of the executed Final Release and Waiver, but in any event:
 - (i) if the Site is located in New South Wales, within thirty (30) Business Days after issue of the Final Payment Certificate;
 - (ii) if the Site is located in Queensland, within twenty five (25) Business Days after issue of the Final Payment Certificate;
 - (iii) if the Site is located in Western Australia, within forty two (42) days after issue of the Final Payment Certificate; or
 - (iv) if the Site is located in Victoria, within forty five (45) days after the date of the end of the month in which the Final Payment Certificate is received.
- (e) If the Final Payment Certificate certifies that monies are due and payable by the Subcontractor to Georgiou, the amount certified as due and payable must be paid by the Subcontractor to Georgiou within twenty (20) Business Days after issue of the Final Payment Certificate.

- (f) It is a condition precedent to the Subcontractor's entitlement to payment of the amount of the Final Payment Certificate, or the release of any Security pursuant to clause 4.5(a)(i), that the Subcontractor sign and return an executed Final Release and Waiver in the form as set out in Schedule 5 to Georgiou's Representative in accordance with clause 31.6(c).
- (g) After the date for submitting the Final Payment Claim has passed, the Subcontractor releases Georgiou from any Claim irrespective of any act, matter or thing arising out of or in connection with the Subcontract Works or this Subcontract, except where:
 - (i) the Subcontractor has given Georgiou the Final Payment Claim within the time required by this Subcontract; and
 - (ii) the Claim is included in the Final Payment Claim.
- (h) After the expiration of the time for the Subcontractor to make the Final Payment Claim, the Subcontractor is barred from making any Claim against Georgiou in respect of the Subcontract, or the work under this Subcontract, whether in contract, tort or otherwise, which has not been made.

31.7 Set off

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

32. TAXES

32.1 Goods and Services Tax

- (a) In this clause 32, the expressions 'adjustment note', 'consideration', 'GST', 'input tax credit', 'supplier', 'supply', 'tax invoice', 'recipient' and 'taxable supply' have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (b) Unless otherwise expressly stated in this Subcontract, all prices or other sums payable under this Subcontract are exclusive of GST.
- (c) Despite any other provision in this Subcontract, if GST is payable by a supplier under this Subcontract, the recipient must pay to the supplier an amount equal to the GST payable on the supply by the supplier. Subject to and conditional upon receipt of a valid tax invoice, that amount must be paid at the same time that the consideration for the supply is to be provided under this Subcontract and will be provided in addition to the consideration expressed elsewhere in this Subcontract.
- (d) If this Subcontract requires a party to reimburse any other party for any expense, loss or outgoing (reimbursable expense) incurred by another party, the amount required to be reimbursed by the first party will be the sum of:
 - (i) the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense; and
 - (ii) if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply and for the avoidance of doubt, if the supply is a taxable supply, subclause (c) will apply.
- (e) If a GST inclusive price is changed or varied under this Subcontract, the supplier must provide the recipient of the supply a valid tax invoice or adjustment note at or before the time of payment or variation.
- (f) If the amount of GST paid or payable by the supplier on any supply made under this Subcontract differs from the amount of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the

purpose of calculating GST or for any other reason, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient as the case requires.

- (g) Georgiou is authorised to withhold from payments to the Subcontractor, a subcontractor, a supplier or worker, such amounts as are required under the Pay As You Go (PAYG) system.
- (h) The Subcontractor must provide notice to Georgiou of its entitlement (or not) to claim input tax credits in respect of premiums paid for relevant insurances under this Subcontract as soon as practicable after the date of this Subcontract.

32.2 Taxes other than GST and Duties

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

32.3 Georgiou's Right to Withhold Tax

- (a) Notwithstanding any other provision to the contrary, if Georgiou considers it necessary to satisfy its obligations under the Taxation Administration Act 1953 (Cth) (Act) or the Taxation Administration Regulations 1976 (Cth) (Regulations), Georgiou may:
 - (i) withhold an amount from a payment made to the Subcontractor; and
 - (ii) pay the withheld amount directly to the Commissioner of Taxation.
- (b) Without limitation, the withholding taxes that Georgiou may have an obligation to withhold from payments made to the Subcontractor include:
 - (i) 46.5% of any payment for a supply by the Subcontractor made in the course or furtherance of an enterprise carried on in Australia by the Subcontractor, where the Subcontractor does not quote its ABN on the invoice for the supply or on other documentation relating to the supply;
 - (ii) 5% of any payment to a foreign entity if the works fall within the description of certain activities specified in the Regulations; or
 - (iii) from any other payments to Georgiou, or received for the Subcontractor, of a kind set out in the Act or the Regulations from time to time, the rate set out in the Act or the Regulation from time to time.
- (c) Georgiou and the Subcontractor acknowledge that these rates are subject to change and are subject to any relevant Tax Treaty.
- (d) If the amount withheld in accordance with this clause 32.3 is paid by Georgiou to the Commissioner of Taxation, the amount is deemed to have been paid by Georgiou to the Subcontractor.
- (e) The Subcontractor agrees and acknowledges that it has no Claim against Georgiou for any amounts withheld and paid to the Commissioner of Taxation in accordance with this clause 32.3.
- (f) If Georgiou does not withhold an amount under this clause 32.3 which it is required to withhold pursuant to the Act and the Regulations, the Subcontractor agrees to pay that amount to Georgiou within ten (10) Business Days, upon request by Georgiou.
- (g) The Subcontractor agrees that Georgiou will not be required to increase the payment to the Subcontractor by the amount withheld by Georgiou under this clause 32.3.

- (h) If Georgiou fails to withhold an amount as required by the Act or the Regulations, any penalty or interest paid by Georgiou for failing to withhold may be recovered from the Subcontractor if the failure to withhold arose because:
 - (i) of a breach of this Subcontract by the Subcontractor;
 - (ii) the Subcontractor did not provide information or assistance requested by Georgiou; or
 - (iii) the Subcontractor provided incorrect information with respect to a withholding tax matter.
- (i) For the purposes of this clause 32.3:
 - (i) 'ABN' means Australian Business Number, and has the same meaning as in section 41 of A New Tax System (Australian Business Number) Act 1999 (Cth);
 - (ii) 'foreign entity' means an entity covered by subsection 12-315(2) of Schedule 1 to the Taxation Administration Act 1953 (Cth);
 - (iii) 'in the course or furtherance of an enterprise carried on in Australia' has the same meaning as in section 12-190 of Schedule 1 to the Taxation Administration Act 1953 (Cth); and
 - (iv) 'Tax Treaty' means a double tax agreement within the meaning of the International Tax Agreements Act 1953 (Cth) or an international tax sharing treaty within the meaning of subsection 136AA (1) of the Income Tax Assessment Act 1936 (Cth).

32.4 Recipient Created Tax Invoices

The parties agree that Georgiou will issue recipient created tax invoices (RCTIs) in respect of taxable supplies made by the Subcontractor by reference to or in connection with this Subcontract and the parties effect a written agreement in the form set out in Schedule 14 and in accordance with the conditions set out by and under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) as follows:

- (a) Georgiou can issue tax invoices in respect of the supplies provided by the Subcontractor in accordance with this Subcontract;
- (b) the Subcontractor will not issue tax invoices in respect of its supplies in accordance with this Subcontract;
- (c) the Subcontractor acknowledges and agrees that it is registered for GST as at the date of the Subcontract and will notify Georgiou if it ceases to be registered;
- (d) Georgiou acknowledges that it is registered for GST as at the date of the Subcontract and will notify the Subcontractor if it ceases to be registered;
- (e) Georgiou will issue an adjustment note to the Subcontractor for any adjustment events that arise in relation to a supply for which an RCTI has been issued; and
- (f) the agreement in this clause 32.4 will terminate immediately if Georgiou or the Subcontractor cease to satisfy any of the requirements under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) for issuing an RCTI.

32.5 Depreciation Schedule

The Subcontractor must, if and when requested by Georgiou, give reasonable assistance in the preparation of a depreciation schedule in respect of Subcontract Works in accordance with the reasonable requirements of Georgiou or applicable Legislative Requirements, including the Income Tax Assessment Act 1936 (Cth) and Income Tax Assessment Act 1997 (Cth).

33. INDEMNITIES AND LIMIT OF LIABILITY

33.1 Subcontractor Indemnity

The Subcontractor indemnifies Georgiou and its Sub-subcontractors against any Claims, costs, expenses, losses and damages incurred in connection with:

- (a) the performance of the Subcontract Works;
 - (b) claims brought against Georgiou by the Principal arising out the Subcontract Works;
 - (c) any loss of or damage to real or personal property caused by the Subcontractor or its Sub-subcontractors (including to the Subcontract Works);
 - (d) personal injury, disease, illness (including mental illness) or death caused by the Subcontractor or its Sub-subcontractors;
 - (e) any breach of this Subcontract by the Subcontractor; or
 - (f) any negligent act or omission by the Subcontractor or its Sub-subcontractors,
- except proportionally to the extent directly caused by the negligence of Georgiou, Georgiou's Representative or Georgiou's subcontractors, consultants, employees or agents.

33.2 Limit of Georgiou Liability

To the extent permitted by Legislative Requirements, Georgiou's liability to the Subcontractor is limited to the Subcontract Sum.

34. FORCE MAJEURE

34.1 Force Majeure

- (a) Force Majeure event means:
 - (i) acts of terrorism;
 - (ii) riot, war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any government or competent authority;
 - (iii) ionising radiation or contamination, radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component;
 - (iv) strikes at State or national level or industrial disputes at a national level or strikes or industrial disputes by labour not employed by the Subcontractor or its subcontractors and which affect an essential portion of the work under this Subcontract; or
 - (v) earthquakes, cyclones, tsunami, tidal wave, flood, fire or other physical natural disaster or weather conditions which are sudden, catastrophic and outside the normal range of weather conditions for the locality.
- (b) None of the following are a Force Majeure event:
 - (i) any failure by the Subcontractor's subcontractor to perform its obligations except for any failure to perform caused by a Force Majeure event;
 - (ii) inability to procure funds, lack of funds or inability to use funds;
 - (iii) any circumstance or event which could have been reasonably foreseen, prevented or guarded against by the affected party;
 - (iv) any circumstance or event which results from a failure by the affected party to comply with the requirements of this Subcontract or to adopt in accordance with good industry standards;
 - (v) inclement weather;
 - (vi) inability of the Subcontractor to procure the Subcontractor's Materials; or
 - (vii) mechanical breakdown of the Subcontractor's Plant.
- (c) No event or circumstance referred to in subclause 34.1(a) will qualify as a Force Majeure event unless the event or circumstance:
 - (i) is beyond the reasonable control or influence of the party affected by the event or circumstance;

- (ii) delays or prevents the performance by the affected party of its obligations under the Subcontract; and
- (iii) cannot be prevented, overcome or remedied by the exercise by the affected party of the standard of care and diligence in accordance with good industry standards.

34.2 Affected Party not liable

A party affected by a Force Majeure event will not be liable to the other party for any inability to comply with its obligations under the Subcontract to the extent and for such time that the inability results from the Force Majeure event.

34.3 Extension of Time for Force Majeure events

If the Subcontractor is interrupted in or prevented from carrying out the whole or any part of its obligations pursuant to the Subcontract by reason of a Force Majeure event then the Subcontractor may be entitled to an extension of time to perform those of its obligations which are affected by the Force Majeure event in accordance with clause 9 subject to the Subcontractor's compliance with the notice and with requirements set out in the Subcontract.

34.4 Notification

- (a) Upon the occurrence of a Force Majeure event, the affected party must notify the other party of:
 - (i) the occurrence of the Force Majeure event;
 - (ii) details of the circumstances giving rise to the Force Majeure event;
 - (iii) the anticipated effect of the Force Majeure event on the affected party's ability to perform its obligations; and
 - (iv) the steps that the affected party intends to take to overcome or reduce the Force Majeure event and its effects.
- (b) Notification must be given immediately upon the affected party becoming aware or when it ought reasonably to have become aware that a Force Majeure event has occurred or is likely to occur.

34.5 Mitigation

The affected party must take all reasonable steps to overcome or reduce the effects of the Force Majeure event provided that neither party is required by reason of this clause to settle or resolve any strike, lockout or labour dispute on terms that it considers to be unreasonable.

34.6 No change in Subcontract Price

A party affected by a Force Majeure event will not be entitled to any additional payment on account of the Force Majeure event or for any delay affecting the Subcontract Works which results from the Force Majeure event.

35. INSURANCES

35.1 Insurances Required

- (a) From the Commencement Date, the Subcontractor must take out and maintain, at its cost, the insurances set out in Item 8 of Schedule 1 with insurers, and on terms, approved by Georgiou.
- (b) The insurances procured by the Subcontractor must be in accordance with the requirements set out in Item 8 of Schedule 1 concerning:
 - (i) the types of insurance;
 - (ii) the amounts of insurance; and
 - (iii) the periods of insurance.
- (c) Without limiting the clause 35.1(b):
 - (i) the policy of public liability insurance must:

- (A) extend to cover Georgiou for its vicarious liability as principal arising from the Subcontractor's performance of the Subcontract Works;
- (B) contain a waiver of subrogation in favour of Georgiou and its directors, officers and employees;
- (C) include a cross-liability clause in which the insurer accepts the term 'insured' as applying to each party comprising the insured as if a separate policy of insurance were issued to each of them; and
- (D) be primary and not call into contribution any liability policy held by the Principal or Georgiou for any claim under the Subcontractor's policy;
- (ii) the policy of employers' indemnity insurance must, if permitted by law:
 - (A) contain a principal's indemnity extension for both statutory and common law liability in favour of Georgiou and its directors, officers and employees; and
 - (B) contain a waiver of subrogation in respect of both statutory and common law liability in favour of Georgiou and its directors, officers and employees;
- (iii) the policy of non-compulsory motor vehicle insurance must:
 - (A) cover all mechanically propelled vehicles used by the Subcontractor in connection with the Subcontractor's performance of the Subcontract Works;
 - (B) be extended to cover Georgiou for its vicarious liability as principal arising from the Subcontractor's performance of the Subcontract Works;
 - (C) contain a waiver of subrogation in favour of Georgiou and its directors, officers and employees;
 - (D) include a cross-liability clause in which the insurer accepts the term 'insured' as applying to each party comprising the insured as if a separate policy of insurance were issued to each of them; and
 - (E) include "gap" cover for claims in respect of personal injury or death not covered by the Subcontractor's policy of public liability insurance or any applicable compulsory motor vehicle third party liability policy; and
- (iv) the policy of plant and machinery insurance must:
 - (A) cover loss of or damage to the Subcontractor's property used in conjunction with its performance of the Subcontract Works;
 - (B) cover items of property which are hired, leased or otherwise acquired by the Subcontractor regardless of whether the hired property has been hired on a dry or wet basis; and
 - (C) extend to cover Georgiou for its vicarious liability as principal arising from the Subcontractor's performance of the Subcontract Works.

35.2 Professional Indemnity Insurance

- (a) This clause applies if and to the extent that the Subcontractor has design obligations as set out under Item 12 of Schedule 1.
- (b) The professional indemnity insurance policy must extend to cover the Subcontractor's liability for infringement of Intellectual Property Rights.
- (c) The Subcontractor must ensure that every consultant engaged by the Subcontractor (and any consultant engaged by subcontractors), if within a category stated in Item 8 of the Schedule 1, is similarly insured for professional indemnity with a cover not less than the sum stated in Item 8 of Schedule 1.
- (d) The Subcontractor must ensure that each consultant's policy:
 - (i) is maintained for the period as stated in Item 8 of Schedule 1; and

- (ii) includes a novated contracts clause.

35.3 Proof of Insurance

- (a) Evidence of the currency of the insurances must be given in writing to Georgiou prior to the Commencement Date and at any time upon request by Georgiou, including all schedules or certificates of currency, insurance and policy documents, and wording for the insurance policies.
- (b) At any time when any of the Subcontractor's Insurances are to be renewed, the Subcontractor must, no later than five (5) Business Days after effecting the renewal, provide evidence of the currency of the renewed insurances to Georgiou.
- (c) If the Subcontractor fails to obtain or maintain any insurance required under clauses 35.1 and 35.2 or fails to provide satisfactory evidence of insurance under this clause 35.3, Georgiou may obtain the relevant insurance and the costs of doing so will be recoverable from the Subcontractor as a debt due and payable by the Subcontractor to Georgiou.
- (d) The Subcontractor will not be relieved of any liability under this Subcontract as a result of Georgiou obtaining or maintaining insurances pursuant to this clause 34.3 .

35.4 Notifications

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

35.5 Subcontractor Must Not Prejudice Insurance

The Subcontractor must ensure that it:

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

35.6 Claims

The Subcontractor must pay all deductibles and any excesses for claims made under any policy of insurance effected by Georgiou, the Principal or the Subcontractor, which relate to the Subcontractor or the Subcontract Works.

35.7 Insurance by Subcontractors

The Subcontractor must ensure that its Sub-subcontractors, if any, have the same level of workers compensation and employer's liability insurance to those which the Subcontractor is required to have under clauses 35.1 and 35.2.

36. SUSPENSION

36.1 Notice to suspend

- (a) Georgiou may, at any time, direct the Subcontractor by notice in writing to suspend all or any part of the Subcontract Works, for such time as Georgiou reasonably determines, for the following reasons:
 - (i) an act, omission or default of:
 - (A) Georgiou, Georgiou's Representative or Georgiou's subcontractors, consultants, employees or agents (not employed by the Subcontractor);
 - (B) the Subcontractor or its Sub-subcontractors; or
 - (C) the Principal or its subcontractors, consultants or employees or agents;
 - (ii) the occurrence of a Force Majeure event;
 - (iii) the protection or safety of any person or property;
 - (iv) to comply with a court order;
 - (v) the convenience of Georgiou; or
 - (vi) a suspension directed under the Head Contract.
- (b) If the Subcontractor is of the opinion that any direction is a notice to suspend even though it was not expressed as such, the Subcontractor must notify Georgiou within seven (7) days from the date that the alleged suspension was directed.
- (c) Within five (5) Business Days of receiving that notice under clause 36.1(b), Georgiou will notify the Subcontractor in writing of whether the direction constitutes a direction to suspend, and if so, will issue a direction in accordance with clause 36.1(a).
- (d) If the Subcontractor fails to notify Georgiou in accordance with this clause 36.1, the Subcontractor will not be entitled to make any Claim with respect to the direction.
- (e) The Subcontractor must not suspend all or any part of the Subcontract Works unless directed by Georgiou to do so.

36.2 Recommencement of Subcontract Works

Georgiou may at any time direct the Subcontractor to resume the performance of all or part of the Subcontract Works and the Subcontractor must immediately comply with such a direction at its cost.

36.3 Costs of suspension

- (a) Subject to clause 36.3(b), if the suspension is due to a matter referred to in clauses 36.1(a)(i)(A) or 36.1(a)(v), the Subcontractor's costs related to the suspension will be valued under clause 30.2 and added to the Subcontract Sum.
- (b) The Subcontractor will not be entitled to costs or any other Claim if the suspension occurs because of a breach by the Subcontractor or a matter referred to under clauses 36.1(a)(ii), 36.1(a)(iii), 36.1(a)(iv), and 36.1(a)(vi).
- (c) Subject to clause 36.3(b), if a suspension is due to a matter referred to in clauses 36.1(a)(i)(B) or 36.1(a)(i)(C), then the Subcontractor's costs related to the suspension will be valued under clause 30.2 and added to the Subcontract Sum, subject to the following conditions:
 - (i) the suspension must affect the Subcontract Works on the critical path for the performance of the Subcontract Works;
 - (ii) the suspension must be for a minimum continuous duration of 2 days;

- (iii) the suspension must not directly or indirectly arise out of any act or omission or breach of this Subcontract by the Subcontractor or its Sub-subcontractors; and
 - (iv) the maximum amount recoverable from Georgiou must not exceed the amount, if any, recoverable by Georgiou under the Head Contract. For the avoidance of doubt, this may result in the Subcontractor receiving no payment for the suspension.
- (d) The Subcontractor is not entitled to Claim for any loss, cost, expense, in excess of its entitlement under clause 36.3(c) as a result of the suspension.

37. TERMINATION

37.1 Breach or Default

- (a) Georgiou may give the Subcontractor a written notice to show cause if the Subcontractor breaches any provision of this Subcontract, including:
- (i) failing to:
 - (A) proceed with the Subcontract Works with due expedition and without delay;
 - (B) use materials or standards of work required by this Subcontract;
 - (C) perform the Subcontractor's design obligations (if applicable) in accordance with the requirements of this Subcontract;
 - (D) provide Security required under this Subcontract;
 - (E) provide evidence of insurance as required by this Subcontract;
 - (F) safely protect any person or property;
 - (G) comply with its obligations under this Subcontract concerning industrial relations;
 - (H) supply everything necessary (including all Subcontractor's Plant and Subcontractor's Materials) for the proper performance of this Subcontract;
 - (I) comply with any directions of Georgiou's Representative under this Subcontract;
 - (ii) proceeding with the Subcontract Works without a Subcontract Program approved by Georgiou's Representative under this Subcontract;
 - (iii) suspending the Subcontract Works (except insofar as the Subcontractor has a statutory right to suspend which cannot be excluded by this Subcontract);
 - (iv) substantially departing from the Subcontract Program; or
 - (v) knowingly providing documentary evidence containing an untrue statement.
- (b) A notice to show cause by Georgiou to the Subcontractor must state the following:
- (i) it is a notice under clause 37.1;
 - (ii) the legal and factual basis of the alleged breach or non-compliance with this Subcontract by the Subcontractor;
 - (iii) that the Subcontractor is required to show cause in writing the reason Georgiou should not exercise its right to terminate this Subcontract for default pursuant to clause 37.1(c);
 - (iv) the date and time by which the Subcontractor must show cause (which must not be less than seven (7) days after the notice is received by the Subcontractor); and
 - (v) the place at which cause must be shown.
- (c) If the Subcontractor fails to show reasonable cause (as determined by Georgiou in its absolute discretion) by the date and time set out in the show cause notice, Georgiou may by written notice to the Subcontractor:

- (i) terminate this Subcontract; or
- (ii) take any part or all of the Subcontract Works out of the Subcontractor's hands;
- (d) If Georgiou exercises its rights under clause 37.1(c), Georgiou may complete all or part of Subcontract Works taken out of the Subcontractor's hands (by itself or by its agents) and may, without payment of compensation to the Subcontractor:
 - (i) take possession of, and use, such of the Subcontractor's Plant and Subcontractor's Materials and other things on or in the vicinity of the Site that was used, or intended to be used, by the Subcontractor for the Subcontract Works;
 - (ii) contract with the Subcontractor's consultants and their subcontractors; and
 - (iii) take possession of, and use, the Subcontractor's design documents (if any), as are reasonably required by Georgiou to facilitate completion of the Subcontract Works.
- (e) If Georgiou takes possession of the Subcontractor's Plant, the Subcontractor's Materials, design documents or other things, Georgiou must maintain them and, on completion of the Subcontract Works taken out of the hands of the Subcontractor, must return such of them which are surplus.
- (f) Georgiou's Representative must keep records of the cost of completing the Subcontract Works taken out of the hands of the Subcontractor.
- (g) When the Subcontract Works taken out of the Subcontractor's hands has been completed, Georgiou's Representative will assess the cost incurred and such costs will be certified as due and payable by the Subcontractor to Georgiou.
- (h) In making an assessment under clause 37.1(g), Georgiou's Representative will have regard to any monies already paid to the Subcontractor.
- (i) If Georgiou's Representative's assessment under clause 37.1(g) results in a negative balance, then the negative balance is a debt due and payable by the Subcontractor to Georgiou.
- (j) Georgiou may retain the Subcontractor's Plant, any surplus Subcontractor's Materials or other things taken until the debt referred to in clause 37.1(i) is satisfied by the Subcontractor.
- (k) If after reasonable notice, the Subcontractor fails to pay the debt referred to in clause 37.1(i), Georgiou may sell the Subcontractor's Plant, any surplus Subcontractor's Materials or other things taken and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess is payable by Georgiou to the Subcontractor.

37.2 Insolvency

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

37.3 Termination for convenience

- (a) Georgiou may, at its sole and absolute discretion, terminate this Subcontract at any time and for any reason by notice in writing to the Subcontractor in not less than fourteen (14) days.
- (b) If not already done, title to Subcontractor's Materials and partially completed Subcontract Works, the value or costs of which are included in the Subcontract Sum, will pass to Georgiou and the Subcontractor will be advised in writing what disposition shall be made of materials which are not Subcontractor's Materials.
- (c) If Georgiou exercises its rights under clause 37.3(a), Georgiou may engage a third party to complete all or part of Subcontract Works which have been terminated for convenience.

37.4 Head Contract

If the Head Contract is terminated for any reason, then Georgiou may immediately terminate this Subcontract by notice in writing to the Subcontractor.

37.5 Costs

- (a) If Georgiou exercises its rights under clause 37.1(c) or 37.2, Georgiou will not be liable to make any further payment to the Subcontractor for Subcontract Works.
- (b) If Georgiou exercises its rights under clause 37.3(a) or 37.4, Georgiou will pay the Subcontractor for work completed up to the date of termination and any Subcontractor's Plant and Subcontractor's Materials reasonably ordered and that the Subcontractor is legally required to accept (provided they become Georgiou's property upon payment). The Subcontractor will have no other Claim as a consequence of the termination.

37.6 Termination by frustration

If this Subcontract is frustrated:

- (a) Georgiou's Representative will issue a Progress Certificate for Subcontract Works carried out up to the date of the frustration and, if applicable, a negative progress certificate, evidencing the amount payable for the Subcontract Works carried out up to the date of the frustration;
- (b) Georgiou will pay to the Subcontractor:
 - (i) the amount due to the Subcontractor evidenced by the difference between the Progress Certificate and the negative progress certificate;
 - (ii) the cost of the Subcontractor's Plant and Subcontractor's Materials reasonably ordered by the Subcontractor and that the Subcontractor is legally required to accept (provided they become Georgiou's property upon payment); and
 - (iii) the costs reasonably incurred by the Subcontractor in:
 - (A) removing any Subcontractor's Plant and any temporary works; and
 - (B) returning to their place of engagement the Subcontractor, consultants, subcontractors and their respective employees engaged in Subcontract Works at the date of the frustration; and
- (c) each party must promptly release and return all Security provided by the other.

37.7 Subcontractor's obligations on termination

Upon termination of the Subcontract under this clause 37, the Subcontractor must immediately or on such later date specified in the notice of termination:

- (a) cease all further work, except for such work as Georgiou may specify in the notice of termination;
- (b) deliver to Georgiou the parts of the Subcontract Works executed by the Subcontractor up to the date of termination;
- (c) enter into no further contractual commitments and place no further orders on subcontracts for Subcontractor's Materials or Subcontractor's Plant or the Subcontract Works;
- (d) terminate all secondary subcontracts, except those to be assigned or novated to Georgiou pursuant to clause 37.7(e);
- (e) assign or novate to Georgiou all right, title and benefit of the Subcontractor to the Subcontract Works at the date of termination and, as may be required by Georgiou, in any secondary subcontracts concluded by the Subcontractor;
- (f) assist Georgiou as directed in the maintenance, protection and disposition of the work in progress and any remaining Non-Subcontractor Material;
- (g) immediately take all possible action at its cost to ensure the safety of all the Subcontractor's employees, Sub-subcontractors and representatives and protection of all Subcontractor's Materials, Subcontractor's Plant and the Subcontract Works completed up to the date of the termination;
- (h) remove from the Site all plant, equipment, tools, appliances or other property and

items belonging to the Subcontractor and its employees, Sub-subcontractors and representatives, and any rubbish or debris and leave the whole of the Site in a clean and safe condition; and

- (i) take any other action reasonably required by Georgiou in relation to the termination.

37.8 Effect of termination

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

38. DISPUTE RESOLUTION

38.1 Notice of Dispute

If a dispute or difference arises between Georgiou and the Subcontractor in respect of any fact, act, matter or thing in connection with this Subcontract (whether before or after termination of this Subcontract), 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).

38.2 Negotiation

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

38.3 Senior Executive meeting

If the dispute or difference is not resolved under clause 38.2, then no later than twenty eight (28) days after a party receives a Dispute Notice, the senior executives of each party nominated in Item 19 of Schedule 1 must meet to negotiate in good faith a resolution of the dispute or difference.

38.4 Mediation

- (a) If the dispute or difference is not resolved under clause 38.3, then no later than forty two (42) days after a party receives a Dispute Notice, a party may provide a mediation notice to the other proposing mediation and nominating three mediators who would be suitable to mediate the dispute or difference in the capital city of the State or Territory in which the Site is located.
- (b) The mediator must then be selected as follows:
 - (i) by agreement; or
 - (ii) if the parties cannot agree on a mediator within seven (7) days of the mediation notice being issued, then either party may request the Chair of the Chapter of Resolution Institute in the State of Territory in which the Site is located to appoint a mediator. In making that appointment, the Chair need not appoint any of the mediators proposed by the parties.
- (c) Except as modified by this clause 38.4, the mediation will be conducted in accordance with Resolution Institute Mediation Rules, current at the time the dispute or difference is referred to mediation.

38.5 Litigation

If, within fourteen (14) days of a mediation held in accordance with clause 38.5 the dispute or difference is still not resolved, then either party may proceed to litigation but nothing in this clause 38 prevents a party from seeking urgent interlocutory relief or commencing proceedings where there is a statutory right to do so.

38.6 Continued performance required

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

39. TIME BAR FOR CLAIMS

- (a) It is a condition precedent to Georgiou's liability upon any Claim that:
 - (i) where the requirements for notification of the Claim are prescribed elsewhere in this Subcontract, the Subcontractor has strictly complied with those requirements; or
 - (ii) where clause 39(a)(i) does not apply, the Subcontractor 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 39(a)(ii) must be in writing and include:
 - (i) the legal basis for the Claim, whether based on a term of this Subcontract or otherwise, and if based on a term of this Subcontract, clearly identifying the specific term;
 - (ii) the facts relied upon in support of the Claim in sufficient detail to permit verification and assessment; and
 - (iii) details of the quantum of the Claim showing the calculations and their bases.

40. INTELLECTUAL PROPERTY RIGHTS

40.1 Ownership of Intellectual Property Rights

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

40.2 Warranty

Unless otherwise stated, the Subcontractor represents and warrants that it owns the Intellectual Property Rights in all Subcontractor's Materials and other things used by the Subcontractor in connection with the Subcontract Works.

40.3 Licence

The Subcontractor grants Georgiou a perpetual, irrevocable, fully paid-up, non-exclusive, transferable licence (including to the Principal) to use and reproduce, to the extent required, any of the Subcontractor's Pre-existing Intellectual Property Rights associated with the goods or materials supplied under this Subcontract for the installation, use, support, repair, maintenance or alteration of the Subcontract Works by or on behalf of Georgiou and the Principal.

40.4 Moral rights

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

40.5 Warranty for Infringement

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

- (a) the Subcontractor must indemnify Georgiou against any loss or damage that Georgiou may directly or indirectly sustain or incur because of the claim (including legal costs

incurred on a full indemnity basis);

- (b) the Subcontractor must give any assistance required by Georgiou to defend the claim at the Subcontractor's expense; and
- (c) the Subcontractor must allow Georgiou, at its discretion, to take full control over any proceedings and negotiations conducted in relation to the claim, including defending the claim.

41. CONFIDENTIALITY

- (a) The Subcontractor:
 - (i) may use Confidential Information only for the purposes of this Subcontract; and
 - (ii) must keep confidential, all Confidential Information, except:
 - (A) as otherwise provided by this Subcontract; or
 - (B) to the extent, if any, to which the Subcontractor is required by law to disclose any Confidential Information.
- (b) The Subcontractor may disclose Confidential Information to persons who:
 - (i) have a need to know the Confidential Information for the purposes of this Subcontract, but only to the extent that those persons need to know; and
 - (ii) prior to disclosure:
 - (A) in the case of the Subcontractor's employees, have been directed by the Subcontractor to keep confidential all Confidential Information; and
 - (B) in the case of any other persons approved by Georgiou, those persons have agreed in writing with the Subcontractor to comply with the same obligations in respect of Confidential Information as those imposed on the Subcontractor under this Subcontract.
- (c) The Subcontractor must:
 - (i) ensure that each person to whom it discloses Confidential Information complies with its obligations to keep the Confidential Information confidential; and
 - (ii) notify Georgiou of, and take all steps to, prevent or stop a suspected or actual breach of confidentiality by any person to whom the Subcontractor has disclosed Confidential Information.
- (d) If the Subcontractor is required by law to disclose Confidential Information to a third person, the Subcontractor must first:
 - (i) notify Georgiou that the Subcontractor is obliged to disclose the Confidential Information;
 - (ii) give Georgiou a reasonable opportunity to take any steps that it considers necessary to protect the confidentiality of the Confidential Information; and
 - (iii) notify the third party that the information is the Confidential Information of Georgiou.
- (e) If Georgiou considers that the Subcontractor, or any person involved in the performance of the Subcontractor's obligations under this Subcontract, is disclosing, or has disclosed, Confidential Information in breach of this clause 41, Georgiou may, by written notice to the Subcontractor, require the Subcontractor to return all documents and materials containing or based upon the Confidential Information.
- (f) Upon receipt of such a notice under clause 41(e), the Subcontractor must immediately return to Georgiou all documents and materials containing or based upon the Confidential Information, including the documents or materials provided to third parties.

42. QUALITY ASSURANCE

- (a) The Subcontractor must:

- (i) maintain a Quality Assurance System, and if Item 21 of Schedule 1 requires, such Quality Assurance System must comply with and be third party accredited to ISO9001, or such other standard notified in writing to the Subcontractor;
 - (ii) implement and carry out the Subcontract Works in accordance with the Quality Assurance System;
 - (iii) allow Georgiou and the Principal access to the Subcontractor's Quality Assurance System at all reasonable times for the purposes of quality monitoring and auditing; and
 - (iv) allow Georgiou and the Principal access to any Sub-subcontractors quality systems, premises or work areas at all reasonable times for purposes of quality monitoring and auditing.
- (b) If at any time Georgiou forms the opinion that the Subcontractor has not implemented or maintained the Quality Assurance System, Georgiou may direct the Subcontractor to:
- (i) amend, change or rectify its quality system and then establish, implement and maintain that quality system; or
 - (ii) plan, establish, implement and maintain any quality system as directed by Georgiou.
- (c) The Subcontractor is not relieved from complying with any of its obligations under this Subcontract, or any other matter for which it is responsible, as a result of:
- (i) implementation of, or compliance with, the Quality Assurance System;
 - (ii) any direction by Georgiou concerning the Subcontractor's Quality Assurance System or the Subcontractor's compliance or non-compliance with that system; or
 - (iii) any audit or other monitoring by Georgiou of the Subcontractor's compliance with the Quality Assurance System.

43. GEORGIOU SUPPLIED INFORMATION

- (a) The Subcontractor agrees that Georgiou does not:
- (i) assume any responsibility or duty of care in respect of; or
 - (ii) warrant, guarantee or make any representation as to,
- Georgiou Supplied Information (including its accuracy, completeness or adequacy for the purposes of the Subcontract Works nor that all such information held by it has been provided by way of Georgiou Supplied Information or otherwise).
- (b) The Subcontractor must satisfy itself as to the accuracy, completeness and adequacy of Georgiou Supplied Information prior to relying on it for carrying out the Subcontract Works.
- (c) The Subcontractor agrees that any Georgiou Supplied Information:
- (i) is provided only for the Subcontractor's convenience; and
 - (ii) has not been and will not be relied upon by the Subcontractor for any purpose (including entering into this Subcontract or performing its obligations under this Subcontract).
- (d) Except as expressly set out in this Subcontract:
- (i) Georgiou will not be liable to the Subcontractor for any Claim arising from or in connection with Georgiou Supplied Information, the provision of Georgiou Supplied Information or the non-provision of any other information by Georgiou; and
 - (ii) the Subcontractor has no Claim arising out of or related to any Georgiou Supplied Information or any action or inaction taken by it in respect to any Georgiou Supplied Information.
- (e) Georgiou is not obliged to furnish any other information, materials, documents or instructions except as expressly provided by this Subcontract.

44. SUBCONTRACTOR SUPPLIED INFORMATION

- (a) If the Subcontract requires the Subcontractor to provide any Subcontractor-Supplied Information, the Subcontractor will provide the Subcontractor-Supplied Information to Georgiou.
- (b) The Subcontractor warrants and represents that the Subcontractor-Supplied Information is free from errors, omissions, inconsistencies, ambiguities and discrepancies and that the Subcontractor-Supplied Information otherwise complies with this Subcontract.
- (c) The Subcontractor agrees that:
 - (i) Georgiou is not bound to check the Subcontractor-Supplied Information for errors, omissions or compliance with the requirements of this Subcontract;
 - (ii) Georgiou's review, comment upon, approval of or rejection of (or failure to review, comment upon, approve or reject) any Subcontractor-Supplied Information will not relieve the Subcontractor from or alter or affect its responsibility for its errors, omissions or compliance with the requirements of this Subcontract; and
 - (iii) approval of any Subcontractor-Supplied Information shall not constitute a direction or an approval to vary Subcontract Works under clause 30.1(a), unless the approval includes a direction or approval expressed to be given under clause 30.1(a) and describes the nature of the Variation.
- (d) The Subcontractor acknowledges and agrees that Georgiou has relied upon the contents of this clause 44 in entering into this Subcontract.

45. RECORDS AND INSPECTION

45.1 Georgiou to be kept fully informed

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

45.2 Records

- (a) The Subcontractor 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 Subcontract.
- (b) The Subcontractor must keep one complete set of drawings and specifications and all other documents, accounts and records relating to the Subcontract Works at the Site.
- (c) The Subcontractor must establish and maintain any records which Georgiou reasonably requires.

45.3 Inspection and review

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

- (a) the Site;
- (b) the Subcontractor's premises; and
- (c) the premises of any of any Sub-subcontractors or employees or agents of the Subcontractor,

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

45.4 Survival

The obligations in this clause 45 will continue for a period of seven (7) years from the expiry or termination of this Subcontract, whichever occurs last.

46. ASSIGNMENT AND SUBCONTRACTING

46.1 Assignment by Subcontractor

- (a) The Subcontractor must not, without the prior written consent of Georgiou:
 - (i) subcontract, assign, transfer or charge its rights or obligations under this Subcontract; or
 - (ii) materially change the shareholding or beneficial ownership of the Subcontractor.
- (b) No consent by Georgiou under clause 46.1(a) will relieve the Subcontractor of any of its obligations under this Subcontract.

46.2 Assignment by Georgiou

- (a) Georgiou may, upon written notice to the Subcontractor, assign this Subcontract or any right, benefit or interest under this Subcontract (including to the Principal or its nominee).
- (b) Without limiting clause 46.2(a), the Subcontractor agrees and consents to assign the benefit of this Subcontract to the Principal, at the Principal's request, without being entitled to compensation.
- (c) The Subcontractor agrees that any assignment under clause 46.2 will operate to release and discharge Georgiou from any obligation or liability under this Subcontract.
- (d) The Subcontractor must obtain a similar consent from any subcontractors or suppliers under any agreement relating to this Subcontract.

46.3 Novation of Subcontract

- (a) Georgiou may, at any time, require the Subcontractor, at no cost to Georgiou or the New Subcontractor, to execute a deed of novation (Deed of Novation) in a form determined by Georgiou in its absolute discretion, whereby:
 - (i) Georgiou, the Subcontractor and the New Subcontractor are parties to the Deed of Novation;
 - (ii) Georgiou and the Subcontractor terminate this Subcontract upon the execution of the Deed of Novation;
 - (iii) the Subcontractor and the New Subcontractor agree that they will enter into a new subcontract on the same terms and conditions as this Subcontract, except that:
 - (A) the New Subcontractor will be named therein in lieu of Georgiou; and
 - (B) the obligations of the Subcontractor and the New Subcontractor will be as if the New Subcontractor had executed this Subcontract in lieu of Georgiou;
 - (iv) after termination of this Subcontract, Georgiou will have no further obligation to the Subcontractor in connection with this Subcontract; and
 - (v) the Subcontractor will remain liable to Georgiou in respect of the performance of this Subcontract up to the date of termination of this Subcontract.
- (b) In addition to these provisions, the Deed of Novation shall include such provisions as Georgiou may reasonably require. The Subcontractor hereby irrevocably appoints Georgiou as the Subcontractor's attorney for the purpose of executing, on the Subcontractor's part, the Deed of Novation as contemplated by this clause 46.3.

47. RELATIONSHIP

- (a) The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.
- (b) The Subcontractor does not have the right or authority to act on behalf of or bind Georgiou unless the Subcontractor has been expressly authorised by Georgiou in writing to do so.

- (c) Without limiting clause 47(b), the Subcontractor must not engage in any negotiations or discussions with any Authority on behalf of Georgiou, except as authorised in writing by Georgiou.

48. NOTICES

- (a) A notice, demand, consent, approval or communication under this Subcontract (Notice) must be:
 - (i) in writing;
 - (ii) signed by a person duly authorised by the sender; and
 - (iii) hand delivered, sent by prepaid post, by facsimile or electronic mail to the recipient's address for Notices set out in Item 20 of Schedule 1.
- (b) A Notice given under this Subcontract 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 Site is located, on the second Business Day after the date of posting; or
 - (B) to (or from) outside of the metropolitan area of the capital city of the State or Territory in which the Site is located, on the fifth Business Day after the date of posting;
 - (iii) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice; and
 - (iv) if sent by electronic mail, when the sender receives a delivered receipt or a read receipt.
- (c) If the delivery, receipt or transmission of a Notice is not on a Business Day or is after 5pm on a Business Day (local time in the place of receipt), then the Notice is taken to be received at 9am on the next Business Day.
- (d) A party may change its address for service of Notices at any time by giving a Notice to the other party.

49. SUBCONTRACTOR AS TRUSTEE

- (a) The following provisions apply if the Subcontractor enters into this Subcontract as trustee of a trust (Trust).
- (b) The Subcontractor enters into this Subcontract both:
 - (i) as trustee of the Trust; and
 - (ii) in its own right.
- (c) The Subcontractor represents and warrants that:
 - (i) it enters into this Subcontract as trustee of the Trust and in its own right;
 - (ii) it has full power and authority in its own right and as trustee of the Trust to enter into and perform its obligations under this Subcontract;
 - (iii) the execution, delivery and performance by it of this Subcontract does not and will not violate any encumbrance or document which is binding upon it or on any property of the Trust or on any of its assets or the constituent documents of the Trust;
 - (iv) it is not a trustee of any trust or settlement other than the Trust;
 - (v) the entry into and performance by it of its obligations under this Subcontract is in the Trust's commercial interests and is for the benefit of the beneficiaries of the Trust;

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

50. SUBCONTRACTOR NOT TO OFFER ANYTHING OF VALUE

The Subcontractor represents, warrants and agrees that neither the Subcontractor, any of its Related Entities nor the Subcontractor'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 (i), (ii) or (iii) above,

(each, a "Government Official"), in order to influence official action relating to either, or both, Georgiou or this Subcontract;
- (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 Subcontract, 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 Subcontract; or
 - (ii) any person in order to influence or reward such person for acting improperly.

51. ACCEPTANCE OF GIFTS AND OTHER ADVANTAGES

The Subcontractor shall ensure that neither the Subcontractor, 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.

52. OWNERSHIP OF THE SUBCONTRACTOR

The Subcontractor represents and warrants that neither the Subcontractor, any of its Related Entities nor any other entity in which the Subcontractor 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 Subcontractor is, or currently expects to become, such a

Government Official during the term of this Subcontract.

53. BREACH OF ANTI-CORRUPTION SPECIFIC CONDITIONS

- (a) If a breach of clauses 50, 51 or 52 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 Subcontract 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 37 to terminate this Subcontract, in which event Georgiou will not be obliged to:
 - (A) make any payment to the Subcontractor in respect of works, goods, services or other benefits that have been procured through, or are related to, the breach of clauses 50, 51 or 52; or
 - (B) reimburse or indemnify the Subcontractor for any loss or damage.

54. NO COLLUSIVE ARRANGEMENT

- (a) The Subcontractor 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 Subcontract.
- (b) Without limiting any other right or remedy, Georgiou may recover from the Subcontractor 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 54(a) above.

55. MISCELLANEOUS

55.1 Georgiou may act

- (a) Notwithstanding any other provision of this Subcontract, Georgiou may, without prior notice to the Subcontractor, either by itself or by a third party, carry out any obligation under this Subcontract which the Subcontractor was obliged to carry out, but which it failed to carry out within the time required by this Subcontract.
- (b) Any costs incurred by Georgiou under clause 55.1(a) are recoverable as a debt due and payable by the Subcontractor to Georgiou.

55.2 Entire Agreement

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

55.3 Amendment

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

55.4 Discretions, Determinations, Approvals or Assessments

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

55.5 Waiver

- (a) No party to this Subcontract may rely on the words or Conduct of the other party as a

Waiver of any Right unless the Waiver is in writing and signed by the party granting the Waiver.

- (b) The Waiver of a Right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- (c) In this clause 55.5:
 - (i) 'Conduct' includes delay in the exercise of a right or failure to exercise a right under this Subcontract;
 - (ii) 'Right' means any power or right arising under or in connection with this Subcontract and includes the right to rely on this clause 55.5; and
 - (iii) 'Waiver' includes an election between rights and remedies and conduct which might otherwise give rise to an estoppel whether by way of representation or convention.

55.6 Governing Law

This Subcontract is subject to and is to be construed in accordance with the laws of the State or Territory in which the Site 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.

55.7 Severability

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

55.8 Costs of Subcontract

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

55.9 Indemnities

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

55.10 Counterparts

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

55.11 No merger

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

55.12 Further assurance

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

55.13 Joint and several liability

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

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

55.14 Rights and Remedies Not Affected

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

55.15 Vienna Sales Convention

The provisions of the United Nations Convention on Contracts for the International Sale of Goods are expressly excluded from this Subcontract and do not apply to this Subcontract or to any of the Subcontract Work.

55.16 Survival

Without limiting the survival of any clause by operation of law, clauses 4, 31.7, 35, 37, 38, 40 and 41 survive the expiry or termination of this Subcontract.

56. SPECIAL CONDITIONS AND STATE AND TERRITORY SPECIFIC CONDITIONS

56.1 Special Conditions

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

56.2 State and Territory Specific Conditions

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

57. SECURITY OF PAYMENT ACT

- (a) Georgiou and the Subcontractor agree that:
 - (i) the appointed adjudicator for the purposes of any adjudication under the Security of Payment Act is the first adjudicator listed in Item 32 of Schedule 1 unless that person is unavailable, in which case it shall be the second adjudicator listed unless that person is unavailable, in which case it shall be the third adjudicator listed; or
 - (ii) if no such adjudicators consent to act or no adjudicators are listed in Item 32 of Schedule 1, then the authorised nominating authority shall be the entity stated in Item 32 of Schedule 1.
- (b) If the Subcontractor suspends the whole or part of the work under the Subcontract 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 Subcontractor as a result of the suspension;
 - (iii) Georgiou may direct the Subcontractor to omit the whole or part of the work under the Subcontract and thereafter Georgiou may engage others to carry out the work omitted under this clause;
 - (iv) Georgiou may terminate this Subcontract by giving notice to the Subcontractor;
 - (v) if Georgiou terminates this Subcontract under this clause, the Subcontractor will be entitled to be paid pursuant to clause 37.3 as if this Subcontract had been terminated for convenience pursuant to that clause; and
 - (vi) in addition to the payments referred to in clause 37.5(b), the Subcontractor is entitled to any payment owed under the Security of Payment Act that is not

included in a payment under clause 37.5(b).

- (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 Subcontractor by Georgiou shall not prejudice Georgiou's right to subsequently exercise its right to retain, deduct, withhold or set off any amount under this Subcontract.
- (d) As applicable under the relevant Security of Payment Act, the Subcontractor agrees that the amount set out in a Payment Certificate given by Georgiou under clause 31.2 (or, if applicable, clause 9 of Schedule 2) is, for the purposes of the Security of Payment Act, the amount of the "progress payment" calculated in accordance with the terms of this Subcontract to which the Subcontractor is entitled.
- (e) As applicable under the relevant Security of Payment Act, the date under clause 31.1 (or, if applicable, clause 9 of Schedule 2) on which the Subcontractor must claim payment is, for the purposes of the Security of Payment Act, the "reference date". If the Subcontractor does not give Georgiou a Progress Claim strictly in accordance with clause 31.1 (or, if applicable, clause 9 of Schedule 2) there will be no reference date for the relevant month and the next reference date will be the time for the submission of a progress claim in the following month.
- (f) If this Subcontract is terminated for any reason, the Subcontractor shall not accrue a "reference date" on or after the date of termination.
- (g) The Subcontractor must immediately give Georgiou a copy of any written communication of whatever nature in relation to the Security of Payment Act that the Subcontractor receives from any Sub-subcontractor.
- (h) If Georgiou becomes aware that a Sub-subcontractor is entitled to suspend or has suspended work pursuant to the Security of Payment Act, Georgiou may, in its absolute discretion, pay the Sub-subcontractor any money that is or that may be owing to the Sub-subcontractor for work related to this Subcontract, and any amount paid by Georgiou is recoverable from the Subcontractor as a debt due and payable by the Subcontractor to Georgiou on demand.
- (i) As appropriate under the relevant Security of Payment Act and notwithstanding any other provision of this Subcontract, upon receipt of a payment withholding request from a Sub-subcontractor under the Security of Payment Act Georgiou may withhold an amount of money, out of money that is or becomes payable by Georgiou to the Subcontractor under this Subcontract, 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 Subcontractor for any loss, expense or damage of any nature arising out of or in connection with Georgiou's withholding of money under clause 57(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 Subcontractor's favour or for a value different to the amount withheld by Georgiou under clause 57(i).
- (l) The Subcontractor 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 Sub-subcontractor under the Security of Payment Act of work which forms part of the Subcontract Works;

- (ii) a Sub-subcontractor seeking to exercise a statutory lien under the Security of Payment Act over any unfixed plant or materials or both supplied by the Sub-subcontractor for use in performing any part of the Subcontract Works;
 - (iii) any payment withholding request by a Sub-subcontractor under the Security of Payment Act in connection with the Subcontract Works 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 a Sub-subcontractor Georgiou is required to make under the Security of Payment Act;
 - (v) Georgiou's defence of a claim by the Subcontractor for recovery of money required to be retained or paid by Georgiou to a Sub-subcontractor pursuant to the Security of Payment Act; and
 - (vi) a failure by the Subcontractor to comply with this clause 57, as applicable under the relevant Security of Payment Act.
- (m) This clause 57, shall survive the expiry or termination of this Subcontract for any reason.

58. PROPORTIONATE LIABILITY LEGISLATION

- (a) For the purposes of this clause 58 "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 judgment 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 Subcontractor indemnifies Georgiou against any Claim or loss whatsoever arising out of or in connection with this Subcontract which is caused or contributed to by any of the Subcontractor's personnel or Sub-subcontractors and for which the Subcontractor would have been liable to Georgiou but for, or which Georgiou is not able to recover from the Subcontractor 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.

59. DEFINED TERMS AND INTERPRETATION

59.1 Defined terms

In this Subcontract:

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 Subcontractor, Georgiou or this Subcontract, including the US Foreign Corrupt Practices Act 1977 and the UK Bribery Act 2010.

Approval means any necessary approvals, authorisations, consents, permissions, permits, determinations, certificates, notices, licences or waivers under any Legislative Requirements or by any Authority, including any condition attached to the approval, authorisation, consent, permission, permit, determination, certificate, notice, licence or waiver and under any renewal, amendment or variation thereof for the performance of the Subcontract Works.

Artefact means any places, fossils, bones, artefacts, coins, articles of antiquity, buildings, structures, natural features, objects or other remains or things of scientific, geological, historical, cultural, aesthetic, architectural, social, heritage or archaeological nature or

interest or things otherwise of value, including any items of Aboriginal cultural heritage.

Authority means any court or tribunal within the relevant jurisdiction, or any public or statutory or government (whether federal, state or local) body, authority, council, inspectorate, department, ministry, official or agency which in any way governs or affects any aspect of the Subcontract Works, or any private or corporate provider of a Utility.

Business Day means any day except Saturdays, Sundays, public holidays in the State or Territory where the Works are being carried out and days between Christmas Day and New Year's Day.

Certificate of Practical Completion has the meaning given in clause 13.2.

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

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

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

Commencement Date means the date specified in Item 1 of Schedule 1 or otherwise notified by Georgiou to the Subcontractor.

Compensable Delay Event means:

- (a) any fraudulent act, default or omission of Georgiou, Georgiou's Representatives, the Principal, or Georgiou's subcontractors, consultants or employees or agents (who are not employed by the Subcontractor); or
- (b) any breach of this Subcontract by Georgiou;
- (c) any Variations;
- (d) any Latent Conditions; or
- (e) any suspension directed by Georgiou arising out of an event referred to in clauses 36.1(a)(i)(A), 36.1(a)(v), 36.1(a)(i)(C) or 36.1(a)(iv).

Confidential Information means:

- (a) the following information, regardless of its form and whether the Subcontractor becomes aware of it before or after the Commencement Date:
 - (i) all information relating to the Subcontract Works that concerns the technical or commercial know-how or systems, procedures, business, finances, plans, pricing, trade suppliers, construction methodology, construction techniques, construction planning, design, personnel, products, services, quotations, commercial feasibility, time, cost, demand projections, sizing, marketing, finance, income, public relations, client user group information, customer details, legal aspects or leasing arrangements; and
 - (ii) all other information treated by Georgiou as confidential;
- (b) all notes and other records prepared by the Subcontractor based on or incorporating information referred to in subclause (a); and
- (c) all copies of the information, notes and other records referred to in subclauses (a) or (b),

except information:

- (d) the Subcontractor creates (whether alone or jointly with any third person)

independently of Georgiou which is not related in any way to this Subcontract; and

- (e) that is public knowledge (otherwise than as a result of a breach of confidentiality by the Subcontractor or any of its permitted discloses).

Contamination means the presence of Pollutants in, on or under the Site or in the ambient air and emanating from the Site, which is causing or has the potential to cause, Material Environmental Harm.

Date for Practical Completion means the date stated in Item 2 of Schedule 1, as adjusted in accordance with clause 9, but if another date is determined in any litigation, then that other date.

Date of Practical Completion means the date that the Subcontract Works have reached Practical Completion as certified in a Certificate of Practical Completion.

Daywork means any additional Works directed by Georgiou to be conducted pursuant to clause 30.5.

Defect means any part of the Subcontract Works which does not comply strictly with the requirements of this Subcontract or is otherwise unsatisfactory to Georgiou. It includes:

- (a) any omissions from the Subcontract Works;
- (b) any defect, fault, deficiency or omission in design, Subcontractor's Materials, workmanship or otherwise in respect of the Subcontract Works;
- (c) any non-compliance of the Subcontract Works, or part thereof, with this Subcontract; and
- (d) any Subcontract Works which is not executed or performed in accordance with this Subcontract (including Subcontractor's Materials provided or to be provided).

Defects Liability Period means the period stated in Item 18 of Schedule 1 and which commences on the Date of Practical Completion.

Delay Event means any delay caused by:

- (a) an act, default or omission of Georgiou, Georgiou's Representatives, the Principal, or Georgiou's subcontractors, consultants or employees or agents (who are not employed by Subcontractor);
- (b) any Variations;
- (c) any Latent Conditions;
- (d) suspension under clause 36.1 provided that such suspension was not caused by or contributed to by an act, default or omission on the part of the Subcontractor or its Sub-subcontractors; or
- (e) any other events specifically prescribed to be Delay Events in this Subcontract.

Design Intent means the design principles, shapes, forms, outlines, materials, finishes, colours, quality and types of materials and finishes, systems, concepts, and standards and relationships between all and any of these was inferred, shown, evidenced or reasonably contemplated by this Subcontract.

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 Site 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 Site 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 Practical Completion granted by Georgiou in accordance with clause 9.

Final Payment Certificate means a certificate issued by Georgiou's Representative in accordance with clause 31.6(b).

Final Payment Claim means a Progress Claim issued by the Subcontractor in accordance with clause 31.6(a).

Force Majeure event has the meaning stated in clause 34.1.

Georgiou's Representative means the person named in Item 9 of Schedule 1 (or a person appointed to replace that person) who, when responding to the Subcontractor under the Building and Construction Industry Security of Payment Act 1999 (NSW), acts as the agent of Georgiou.

Georgiou Supplied Information means any information (whether written or otherwise) supplied or made available to the Subcontractor by or on behalf of Georgiou before or after the date of this Subcontract, including:

- (a) prior to any request for tender for the Subcontract Works;
- (b) during any tender process for the procurement of the Subcontract Works;
- (c) prior to the Subcontractor commencing the Subcontract Works; and
- (d) during the Subcontractor's performance of the Subcontract Works.

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 Subcontract Works are required.

Head Contract Works means the whole of the work to be executed under the Head Contract.

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

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

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

Insolvency Event means:

- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with this Subcontract;
- (b) a writ of execution, instalment order, garnishee order, mareva injunction or similar order or process is made, levied or issued against the party or in relation to any assets of the party;
- (c) being an individual person or a partnership:
 - (i) judgment is entered against him or her in any court of any jurisdiction;

- (ii) an act of bankruptcy is committed;
 - (iii) a bankruptcy petition is presented against him or her or his or her own petition is presented;
 - (iv) bankruptcy is declared;
 - (v) a proposal for a scheme of arrangement or a composition with creditors is made; or
 - (vi) deed of assignment or deed of arrangement has been made, a composition is accepted, a debtor's petition is required to be presented, or a sequestration order has been made, under Part X of the Bankruptcy Act 1966 (Cth) or like provision under the law governing this Subcontract;
- (d) being a corporation:
- (i) notice given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) a controller, voluntary administrator, deed administrator, receiver, manager, receiver and manager, trustee, provisional liquidator or liquidator is appointed to the corporation or any asset of the corporation;
 - (iii) any receiver, manager or receiver and manager is appointed by a court to the corporation or any asset of the corporation;
 - (iv) as a result of operation of section 459C of the Corporations Act 2001 (Cth), the corporation is presumed to be insolvent;
 - (v) at a meeting of creditors, the creditors resolves for the corporation to be wound up;
 - (vi) at a meeting of creditors, the creditors resolves for the corporation to enter into a deed of company arrangement with its creditors;
 - (vii) an application is made to a court for its winding up;
 - (viii) a winding up order is made in respect of the corporation;
 - (ix) the corporation resolves by special resolution that it be wound up voluntarily;
 - (x) a mortgagee of any of its property takes possession of that property;
 - (xi) an application is made to a court in relation to:
 - (A) any compromise or arrangement between the corporation, its holding corporation, its subsidiaries and the creditors of the corporation, its holding corporation, its subsidiaries; or
 - (B) any scheme for reconstruction or amalgamation of the corporation and its holding corporation or subsidiaries,
 pursuant to Part 5.1 of the Corporations Act 2001 (Cth); and
 - (xii) any act which is done or event which occurs which under the laws from time to time of a country other than Australia has an analogous or similar effect to any of the events set out above.

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

Latent Conditions has the meaning set out in clause 27.2.

Legislative Requirement includes:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory in which the Subcontract Works or the

particular part thereof are being carried out;

- (b) certificates, licences, consents, permits, approvals, standards and requirements of any government, agency or organisation having jurisdiction in connection with the carrying out of the Subcontract Works;
 - (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.

Material Environmental Harm means environmental harm (other than environmental nuisance) that is not trivial or negligible in nature, extent or context and causes actual or potential loss or damage to property.

Milestone Date means a milestone date stated in Item 25 of Schedule 1.

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.

Native Title Application means any Claim or application under any present or future Legislative Requirement affecting the Site relating to native title or aboriginal title, including any application under the Native Title Act 1993 (Cth).

New Subcontractor means a party who will replace Georgiou under a novation in accordance with clause 46.3.

Non-Subcontractor Material means any goods, materials or other items furnished by any person other than the Subcontractor intended for permanent incorporation into the Subcontract Works.

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.

Payment Certificate has the meaning stated in clause 31.2 (or, if applicable, clause 9 of Schedule 2).

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.

Practical Completion is the stage in the carrying out of the Subcontract Works when:

- (a) Subcontract Works are complete except for minor Defects:
 - (i) which do not prevent Subcontract Works from being reasonably capable of being used for their stated purpose;
 - (ii) which Georgiou's Representative determines the Subcontractor has reasonable grounds for rectifying;
 - (iii) the rectification of which will not prejudice the convenient use of Subcontract Works;
- (b) all tests required by this Subcontract, or reasonably required by Georgiou to be passed before Practical Completion, have been carried out and passed and documentary evidence of the passing of such tests has been provided to Georgiou;
- (c) documents and other information required under this Subcontract which in Georgiou's Representative's opinion or direction are essential for the use, operation and maintenance of Subcontract Works have been supplied by the Subcontractor;
- (d) any documents in Item 16 of Schedule 1 have been supplied to Georgiou; and

(e) the Subcontractor has cleaned the Site and removed all rubbish and surplus material.

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

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

Program means the program for the performance of the Subcontract Works as described in clause 5.1, as approved by Georgiou's Representative from time to time.

Progress Certificate means a progress payment certificate issued by Georgiou's Representative under clause 31.2 (or, if applicable, clause 9 of Schedule 2) evidencing his or her assessment of the monies due from Georgiou to the Subcontractor pursuant to a Progress Claim and reasons for any difference.

Progress Claim has the meaning given to in clause 31.1(a) (or, if applicable, clause 9 of Schedule 2).

Project means the project described in Item 3 of Schedule 1.

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.

Provisional Sum means a rate or lump sum amount specified in the Schedule of Rates as a provisional sum item or prime cost item.

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

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

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

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

- (d) it owns either directly or indirectly or is otherwise is in a position to cast, or control the casting of, not less than 50% of the shares entitled to vote at general meetings of that other body corporate; or
 - (e) it controls the composition of a majority of the board of that other body corporate,
- and 'controlled' and 'controlling' will be construed accordingly.

Schedule of Rates means the schedule of either or both lump sum prices and rates set out or referenced in Schedule 11.

Security means retention monies or unconditional undertakings, as stated in Item 4 of Schedule 1.

Security of Payment Act means:

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

each as amended from time to time.

Separable Portion means the portion of the Subcontract Works described in Item 3B of Schedule 1 as a Separable Portion or which Georgiou has directed pursuant to clause 1.7 will be a Separable Portion.

Site means the site stated in Item 3C of Schedule 1 and any other land or places made available to the Subcontractor by Georgiou or the Principal.

Special Conditions means the special conditions (if any) set out in Schedule 19.

Subcontract means this subcontract.

Subcontractor's Materials means any items, parts, components, raw materials, consumables or other tangible or intangible goods, materials or other items furnished by the Subcontractor and intended for incorporation into the Subcontract Works.

Subcontractor's Plant means all appliances, equipment, plant, vehicles, vessels, tools and things that the Subcontractor supplies or is required to supply for the performance of the Subcontract Works, whether owned, leased or hired.

Subcontract Sum means:

- (a) if Georgiou accepted a lump sum price, that amount;
- (b) if Georgiou accepted rates, the sum ascertained by calculating the products of the rates in the Schedule of Rates and the corresponding quantities of Subcontract Works actually performed; or
- (c) if Georgiou accepted both lump sums and rates, the aggregate of the sums referred to in paragraphs (a) and (b),

set out in Schedule 11 (if applicable) and Schedule 12, but including any additions or deductions which may be required to be made under this Subcontract, including Provisional Sums.

The Subcontract Sum is otherwise fixed for the duration of this Subcontract and not subject to rise and fall.

Subcontract Works means all work and materials to be carried out or supplied under this Subcontract and handed over to Georgiou, including the works specified in Schedule 6, any ancillary work necessary for use of the works, Variations and rectification work.

Subcontractor's Representative means the person appointed by the Subcontractor under

clause 3.2 or a person appointed to replace or a delegate of that person.

Subcontractor-Supplied Information means any information (whether written or otherwise) supplied or made available to Georgiou by or on behalf of the Subcontractor before or after the date of this Subcontract.

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

Survey Mark means a survey peg, benchmark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring the Subcontract Works.

Utility means any utility service, including water, electricity, gas, telecommunication and electronic communications (including voice and data), drainage and sewerage, and supply of all supporting structures and media necessary for such services.

Variation has the meaning given in clause 30.1(a).

WH&S Act means:

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

each as amended from time to time.

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

WH&S Regulation means:

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

each as amended from time to time;

59.2 Interpretation

In this Subcontract, unless the context otherwise requires:

- (a) references 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 Subcontract;
 - (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 twenty four (24) hours later;
- (b) interpretation shall not be affected by the fact that one party put forward any part of this Subcontract;
- (c) the singular includes the plural and vice versa;
- (d) headings do not affect the meaning of this Subcontract;
- (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 Subcontract;
- (g) a reference to 'indemnify' means that the person giving the indemnity will indemnify and keep indemnified the person given the indemnity against any claim, costs, expenses, losses and damages 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 Subcontract, or if no time is specified, it is payable on demand;
- (i) if anything to be done under this Subcontract 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.

59.3 Discrepancy or ambiguity

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

- (a) Georgiou's Representative will direct the interpretation to be followed with which the

Subcontractor must comply; and

- (b) the Subcontractor will have no Claim against Georgiou arising from or in connection with the ambiguity, discrepancy or inconsistency, whether under this Subcontract or otherwise.

59.4 No acceptance

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

END OF GENERAL CONDITIONS

Schedule 1 - Subcontract Particulars

Item 1: Commencement Date	[insert] (if nothing stated then within seven (7) days of execution of this Subcontract by Georgiou)
Item 2: Date for Practical Completion Practical Completion required under the Head Contract	[insert] [insert]
Item 3: Project	[insert]
Item 3A: Principal	[insert]
Item 3B: Separable Portions	[insert] (if nothing stated then none)
Item 3C: Site	[insert]
Item 4: Security	Bank guarantees/ retention (Delete which is not applicable. If neither deleted then retention in the amount stated in Item 7)
Item 5: Site Working days and hours	[insert] (If nothing stated then 8am to 4pm Monday to Friday)
Item 6: Approvals - Exempt Approvals	[insert] (If nothing stated then none)
Item 7: Retention Monies	(if nothing stated then none)
Item 8: Insurances required to be taken out and maintained by the Subcontractor	
Public Liability Insurance	Amount: Minimum \$[insert] for any one occurrence; unlimited in the annual aggregate (if nothing stated then \$20,000,000) Period: From the date of this Subcontract to a date [insert in words] (insert) years after the expiry of the Defects Liability Period or termination of this Subcontract whichever is earlier (in nothing stated then two (2) years)
Workers Compensation Insurance	Amount: Minimum \$[insert] (if nothing stated then \$50,000,000) Period: From the date of this Subcontract to the earlier of the expiry of the Defects Liability Period or the date of termination of this Subcontract
Non-compulsory Motor Vehicle Liability Insurance	Amount: Minimum \$[insert] for any one occurrence; unlimited in the annual aggregate (if nothing stated then \$30,000,000) Period: From the date of this Subcontract to the earlier of the expiry of the Defects Liability Period or the date of termination of this Subcontract

Subcontractor's Plant & Machinery Insurance <i>(n.b. where applicable specific equipment liability cover must be obtained e.g. crane hire)</i>	Amount: Minimum market value of property (if nothing stated then \$5,000,000) Period: From the date of this Subcontract to the earlier of the expiry of the Defects Liability Period or the date of termination of this Subcontract
Professional Indemnity Insurance	Amount: Minimum \$ [insert] for any one claim and in the annual aggregate (if nothing stated then \$10,000,000) Period: From the date of this Subcontract to a date not less than seven (7) years after the earlier of the expiry of the Defects Liability Period or the date of termination of this Subcontract
Amount of consultants' professional indemnity insurance and period required	Amount: Minimum \$ [insert] for any one claim and in the annual aggregate (if nothing stated then \$10,000,000) Period: From the date of this Subcontract to a date not less than seven (7) years after the earlier of the expiry of the Defects Liability Period or the date of termination of this Subcontract
Other insurances	The Subcontractor must also take out and maintain all other insurances required by Legislative Requirements (including workers' compensation insurance)
Item 9: Georgiou's Representative	[insert]
Item 10: Subcontractor's key personnel	[insert] (if nothing stated then none)
Item 11: Meeting and reporting requirements	Progress meetings to be held on a monthly basis between Georgiou and the Subcontractor.
Item 12: Subcontractor's design obligations	[insert] (if nothing stated then none)
Item 13: Required construction methods	[insert]
Item 14: Site cleaning requirements	[insert]
Item 15: Liquidated damages	Whole of the Subcontract Works [insert] (if nothing stated then general damages for delay applies) Milestone Dates [insert] (if nothing stated then general damages for delay applies)
Item 16: Documentary deliverables required to achieve Practical Completion	eg: deed of release, As-builts, MDR, warranty documents, Operating and maintenance manuals, etc
Item 17: Prescribed date for making Progress Claims	28th day of each calendar month
Item 18: Defects Liability Period	Commencing at 4.00pm on the Date of Practical Completion and finishing 12 months from the Date the Head Contract Practical Completion is achieved by Georgiou and finishing 12 months from that date.
Item 19: Senior executives	[insert]

Item 20: Address for notices	[insert]								
Item 21: Standard of Quality Assurance System	[ISO9001 will / will not apply.] (Delete if not applicable. If neither deleted then ISO9001 applies)								
Item 22: Other Contract Documents	[insert] (if nothing stated then none)								
Item 23: Program Format	[insert] (if nothing stated then Microsoft Project native format)								
Item 24: Limit of Accuracy	[insert] (if nothing stated then +/- 20%)								
Item 25: Milestone Dates	[insert] (if nothing stated then none)								
Item 26: Daywork - mark up rate for hire charges for Subcontractor's Plant	[insert]% (if nothing stated then 5%)								
Item 27: Daywork - mark up rates for amounts paid for services etc	[insert]% (if nothing stated then 5%)								
Item 28: Daywork - mark up rate for materials	[insert]% (if nothing stated then 5%)								
Item 29: Interest Rate	[insert]% (if nothing stated then 10% per annum)								
Item 30: Government Building Training Policy	[Applicable / not Applicable] (if neither struck through then 'Applicable')								
Item 31: Codes	<table border="1"> <tr> <td>National Code</td> <td>[Applicable / not Applicable]</td> </tr> <tr> <td>WA Code</td> <td>[Applicable / not Applicable]</td> </tr> <tr> <td>NSW Code</td> <td>[Applicable / not Applicable]</td> </tr> <tr> <td>Qld Code</td> <td>[Applicable / not Applicable]</td> </tr> </table> (if neither struck through then 'Applicable')	National Code	[Applicable / not Applicable]	WA Code	[Applicable / not Applicable]	NSW Code	[Applicable / not Applicable]	Qld Code	[Applicable / not Applicable]
National Code	[Applicable / not Applicable]								
WA Code	[Applicable / not Applicable]								
NSW Code	[Applicable / not Applicable]								
Qld Code	[Applicable / not Applicable]								
Item 32: Security of Payment Act	<p>(a) Appointed adjudicator:</p> <ul style="list-style-type: none"> • First adjudicator [insert] • Second adjudicator [insert] • Third adjudicator [insert] <p>(b) Nominating authority: The Chair for the time being of the Chapter of the Institute of Arbitrators and Mediators Australia or Resolution Institute in the State or Territory in which the Site is located.</p> <p>NOTE - if Qld substitute: "The Registrar appointed under the <i>Building and Construction Industry Payment Act 2004 (Qld)</i>"</p>								
Item 33: Project Bank Account required	[Yes / No] (Delete if not applicable. If neither deleted then not applicable).								

Schedule 2 - State and Territory Specific Conditions

NEW SOUTH WALES

1. Contractors Debts Act 1997 (NSW)

Georgiou may deduct from any payment otherwise due to the Subcontractor 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 Sub-subcontractor to the Subcontractor. Any payment which is not recovered by way of deduction is a debt due and payable by the Subcontractor to Georgiou on demand.

2. NSW Code of Practice and Implementation Guidelines

This clause 2 applies if stated in Item 31 of Schedule 1.

2.1 Terminology

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

2.2 Primary obligation

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

2.3 Access and information

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

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

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

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

2.4 Sanctions

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

2.5 Compliance

- (a) The Subcontractor 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 Subcontractor is not entitled to make a Claim for reimbursement or an extension of time from Georgiou, the Client Agency or the State of NSW for such costs.
- (b) Compliance with the NSW Code and NSW Guidelines does not relieve the Subcontractor from responsibility to perform the Subcontract Works and any other obligation under this Subcontract, or from liability for any Defect in the Subcontract Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (c) Where a change in this Subcontract or a variation of the Subcontract Works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Subcontractor must immediately notify Georgiou and the Client Agency (or nominee) of the change, or likely change and specify:
 - (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
 - (iii) what steps the Subcontractor 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 shall direct the Subcontractor as to the course it must adopt within ten (10) Business Days of receiving notice.

3. Compliance with NSW Government requirements

- (a) The Subcontractor 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 Subcontract and Legislative Requirements.
- (c) The Subcontractor must submit and implement the plans referred to in clause 3(a) above by [Insert timing - this should be consistent with the timeframes listed in the Head Contract. Delete this note]. Those plans must comply with all requirements of the relevant NSW Government Guidelines and this Subcontract.
- (d) The Subcontractor must:
 - (i) systematically manage its obligations under this Subcontract and applicable Legislative Requirements according to the systems, plans and procedures required under clauses 3(a) and 3(c) above;
 - (ii) review and update its systems, plans and procedures to ensure ongoing compliance with this Subcontract;
 - (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 Subcontractor's plans and procedures and confirm compliance with this Subcontract.

VICTORIA

4. Domestic Building Contracts Act Warranties

- (a) This clause 4 applies to the extent that the Head Contract Works are domestic building work as defined in the *Domestic Building Contracts Act 1995* (Vic).
- (b) The Subcontractor warrants that any home, as defined by the *Domestic Building Contracts Act 1995* (Vic), which forms part of the Subcontract Works will be suitable for occupation.

5. Wrongs Act

- (a) To the extent that the operation of Part IVAA of the Wrongs Act cannot be excluded, the parties agree that, for the purposes of determining the extent of the Subcontractor's responsibility for loss or damage, in accordance with Section 24AI of the Wrongs Act and the liability of the Subcontractor under Part IVAA of the Wrongs Act, the Subcontractor:
 - (i) is solely responsible for any of the subcontractors, contractors or other people engaged by the Subcontractor to act in connection with the Subcontract Works (whether or not under the Subcontractor's direction, supervision or control) (in this clause, a "Relevant Person") who fail to take reasonable care in connection

- with the Subcontract Works; and
- (ii) assumes an obligation, at the request of Georgiou, to prevent, any Relevant Person from failing to take reasonable care.
- (b) To the extent that any Relevant Person fails to take reasonable care:
- (i) the Relevant Person will be deemed to have acted as the agent of the Subcontractor; and
 - (ii) the Subcontractor will be directly liable to Georgiou for any such failure to take reasonable care.
- (c) The Subcontractor must ensure that any contract entered into with a Relevant Person contains provisions to the following effect:
- (i) the Relevant Person acknowledges that, for the purposes of this Agreement, the Relevant Person, in carrying out the Works, is acting as an agent of the Subcontractor; and
 - (ii) the Relevant Person must, at all times, exercise reasonable care in carrying out the Works.

QUEENSLAND

6. QBCC Act

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

7. QLD Code of Practice and Implementation Guidelines

This clause 7 applies if stated in Item 31 of Schedule 1.

7.1 General

- (a) This clause 7 applies if the Head Contract Works comprise building and construction work funded by the Queensland Government at a value of more than \$2 million.
- (b) In addition to terms defined in this Subcontract, 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>.

7.2 Primary obligation

- (a) The Subcontractor must comply with, and meet any obligations imposed by, the Queensland Government's Code of Practice for the Building and Construction Industry (Queensland Code) and Queensland Guidelines.
- (b) The Subcontractor 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 twenty four (24) hours of becoming aware of the alleged breach.

- (c) Where the Subcontractor is authorised to engage a subcontractor or consultant, and it does so, the Subcontractor must ensure that any secondary contract imposes on the subcontractor or consultant equivalent obligations to those in this clause, including that the subcontractor or consultant must comply with, and meet any obligations imposed by, the Queensland Code and the Queensland Guidelines.
- (d) The Subcontractor must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the Queensland Code or Queensland Guidelines.
- (e) The Subcontractor must comply with any applicable workplace relations management plan ('WRMP', as defined in the Queensland Code), to the extent applicable to the Subcontractor, and must provide the BCCB with all required access and assistance in relation to the Subcontractor's compliance with the Queensland Code.
- (f) The Subcontractor must ensure that all subcontracts with Sub-subcontractors impose obligations on all Sub-subcontractors equivalent to the obligations under this clause.

7.3 Access and information

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

7.4 Sanctions

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

related entities, in respect of work to which the Queensland Code and Queensland Guidelines apply.

7.5 Compliance

- (a) The Subcontractor 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 Subcontractor is not entitled to make a claim for reimbursement or an extension of time from the Client Agency or Georgiou or the State of Queensland for such costs.
- (b) Compliance with the Queensland Code and Queensland Guidelines does not relieve the Subcontractor from responsibility to perform the Subcontract Works and any of its other obligations under this Subcontract, or from liability for any defect in the works or from any other legal liability, whether or not arising from its compliance with the Queensland Code and Queensland Guidelines.
- (c) Where a change to this Subcontract or works is proposed, and that change would, or would be likely to, affect compliance with the Queensland Code and Queensland Guidelines, the Subcontractor must immediately notify the Client Agency (or nominee) and Georgiou of the change, or likely change and specify:
 - (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the Queensland Code and Queensland Guidelines will, or is likely to be, affected by the change; and
 - (iii) what steps the Subcontractor 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 Subcontractor as to the course it must adopt within five Business Days of receiving notice.

WESTERN AUSTRALIA

If 'Yes' is stated in Item 31 of Schedule 1, then clauses 31.1 to 31.4 of the General Conditions are deleted and replaced with clauses 9 and 10 of these Specific Conditions:

8. WA Building and Construction Industry Code of Conduct

This clause 8 applies if stated in Item 31 of Schedule 1.

8.1 Primary Obligation

- (a) This clause only applies to WA government projects to which the WA Building and Construction Industry Code of Conduct 2016 (WA Code) applies.
- (b) The Subcontractor 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 Subcontractor from responsibility to perform this Subcontract or from liability for any Defect in the Subcontract Works arising from compliance with the WA Code.
- (d) Where a change in this Subcontract is proposed and that change would affect compliance with the WA Code, the Subcontractor must submit a report to Georgiou specifying the extent to which the Subcontractor's compliance with the WA Code will be affected.
- (e) The Subcontractor must comply with any applicable workplace relations management plan ('WRMP', as defined in the WA Code), to the extent applicable to the Subcontractor, and must provide the Building and Construction Code Monitoring Unit (BCCMU) with all required access and assistance in relation to the Subcontractor's compliance with the WA Code.
- (f) The Subcontractor must advise the BCCMU in writing if it executes a subcontract with a Sub-subcontractor relating to the Subcontract Works for a value of \$2 million or more.

- (g) The Subcontractor must ensure that all subcontracts with Sub-subcontractors impose obligations on all Sub-subcontractors equivalent to the obligations under this clause.

8.2 Sanctions

- (a) The Subcontractor warrants that at the time of entering into this Subcontract, 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 Subcontractor 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 Subcontractor, or its related entities, in respect of work to which the WA Code applies.

8.3 Compliance

- (a) The Subcontractor 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 Subcontractor 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 Subcontractor from responsibility to perform the Subcontract Works and any of its other obligations under this Subcontract, or from liability for any defect in the works or from any other legal liability, whether or not arising from its compliance with the WA Code.
- (c) Where a change to this Subcontract or works is proposed, and that change would, or would be likely to, affect compliance with the WA Code, the Subcontractor 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 Subcontractor 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 Subcontractor as to the course it must adopt within five Business Days of receiving notice.

9. Payment

9.1 Definitions

In this clause 9, 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 16.

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 Subcontract Works is less than \$20,000 (GST inclusive); or
- (b) any person that is a Supplier in connection with the Subcontract Works, regardless of the total aggregate value of the goods or materials to be supplied by the Supplier,

where the person has expressly stated (to the Subcontractor) 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 Subcontractor under the Subcontract identifying:

- (a) any Sub-subcontractors who have performed work included in the Georgiou's most recent payment certificate, who have already been paid for that work by the Subcontractor;
- (b) any rights of set-off that the Subcontractor 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 Subcontractor and a Sub-subcontractor under the relevant subcontract;
 - (ii) any disagreement between the Subcontractor 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 Subcontractor since the issue of the previous Payment Report, or in the case of the first Payment Report, since the award of the Subcontract.

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 Subcontractor 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 Subcontractor.

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 Subcontractor under this Subcontract are to be paid and held on trust.

PPI - Consolidated Allocation means an irrevocable payment instruction in the form stated in Schedule 16, 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 Subcontractor 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 Subcontractor pursuant to this Subcontract; 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 Subcontract.

PPI - Subcontractor Allocation means an irrevocable payment instruction in the form stated in Schedule 17, which sets out any amount to be paid to the Subcontractor 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 the Subcontract and which complies with the requirements of the Subcontract.

PPI - Retention Allocation means an irrevocable payment instruction in the form stated in Schedule 16, which sets out any allowable Retention Amounts to be retained by the Subcontractor 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 Subcontract.

PPI - Sub-subcontractor Allocation means an irrevocable payment instruction in the form stated in Schedule 16, which sets out the amounts payable to each of the Sub-subcontractors under their relevant subcontract and which complies with the requirements of this Subcontract.

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 Subcontractor 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 Subcontractor.

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 16.

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 Subcontractor, in the form stated in Schedule 16.

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

9.2 PBA trust documents

- (a) Georgiou will provide the Subcontractor with a copy of the PBA Trust Deed Poll and the PBA Agreement upon request by the Subcontractor in writing.
- (b) Within 28 days of the award of the Subcontract, the Subcontractor must deliver to Georgiou:
 - (i) if the Subcontractor 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 17 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 Subcontractor must not make any Claim for payment until such time as (if applicable) such deed or deed poll has been delivered to Georgiou.

9.3 Notice of PBA trust - right to participate

Prior to any person being contracted by the Subcontractor to:

- (a) undertake work or services; or
- (b) undertake work or services and to supply goods or materials, in connection with the Subcontract Works, where the total aggregate value of such work or services or supply of goods or materials in connection with the Subcontract Works 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 Subcontract Works irrespective of value,

the Subcontractor 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.

9.4 PBA trust - contracted value increases

If a person that is contracted by the Subcontractor in relation to part of the Subcontract Works 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 Subcontract; and
- (b) the Subcontractor must, in the following Payment Report, notify Georgiou that such person has become a PBA Sub-subcontractor.

To avoid doubt, the requirement of the Subcontractor 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.

9.5 Opt-in Sub-subcontractor

- (a) The Subcontractor 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 Subcontractor 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 Subcontractor, 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 the Subcontract and shall be paid via the Project Bank Account pursuant to the operation of the PBA Trust Deed Poll.

9.6 Progress claims

- (a) At the times stated in Item 17 or Schedule 1, upon issue of a Certificate of Practical Completion and within the time prescribed by clause 31.6 of the General Conditions, the Subcontractor must deliver to Georgiou claims for payment (Progress Claim) supported by evidence of the amount due to the Subcontractor and any such information as Georgiou may reasonably require.
- (b) Each Progress Claim must include:
 - (i) the value of work carried out by the Subcontractor in the performance of the Subcontract to that time; and
 - (ii) all amounts then due to the Subcontractor arising out of or in connection with the Subcontract or any alleged breach thereof.
- (c) As a condition precedent to the Subcontractor's entitlement to:
 - (i) submit a Progress Claim; or
 - (ii) receive payment of any amount (including an amount stated in a Payment Certificate),the Subcontractor shall provide Georgiou with:
 - (iii) a copy of this Subcontract duly executed by the Subcontractor;
 - (iv) demonstration that it continues to hold the insurances required by this Subcontract; and
 - (v) performance security required to be given by the Subcontractor under this Subcontract.
- (d) As to a Progress Claim which does not contain the information required under clauses 9.6(b) or 9.6(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 Subcontractor and notify the Subcontractor that clauses 9.6(b) or 9.6(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 9.6(b) or 9.6(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 9.6(b) or 9.6(c); and
 - (iv) where Georgiou's Representative returns an incomplete Progress Claim to the Subcontractor, the Subcontractor shall submit a Progress Claim that complies with clauses 9.6(b) or 9.6(c) within the time notified by Georgiou's Representative or, where no time is notified, within forty eight (48) hours.
- (e) Georgiou's Representative may, at any time prior to the time it is required to issue a Payment Certificate, request any additional information from the Subcontractor in respect of its then current Progress Claim.

9.7 Payment certificate

- (a) Within 14 days after receipt of a Progress Claim, Georgiou must issue to the Subcontractor a payment certificate stating the amount of the payment which is to be made by Georgiou to the Subcontractor or the Subcontractor 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 Subcontractor, the reasons for the difference. Georgiou must allow in any Payment Certificate issued pursuant to this clause 9.7 of these Specific Conditions or any Final Payment Certificate issued pursuant to clause 31.6 of the General Conditions amounts paid under the Subcontract and amounts otherwise due from Georgiou to the Subcontractor and / or due from the Subcontractor to Georgiou arising out of or in connection with the Subcontract, including but not limited to any amount due or to be credited under any provision of the Subcontract.

- (b) If no Payment Certificate has been issued by Georgiou within the required time, the Subcontractor's Progress Claim, but excluding:
 - (i) any amounts in such claim in respect of variations not expressly approved in writing by Georgiou;
 - (ii) any amounts (other than those included in a variation expressly approved in writing by Georgiou) for claims under clauses 9, 10 or 30 of the General Conditions; and
 - (iii) any other claim for damages arising under or in connection with the Subcontract 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 the Subcontract, 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 the Subcontract, where a Payment Certificate issued by Georgiou certifies an amount payable from the Subcontractor to Georgiou, the Subcontractor 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.

9.8 Progress Payment Instructions

- (a) Subject to the provisions of the Subcontract and where any Payment Certificate certifies amounts due from Georgiou to the Subcontractor, within 19 days from the date that the Subcontractor's Progress Claim is submitted, the Subcontractor 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 Subcontractor issues the Progress Payment Instruction(s) to Georgiou, the Subcontractor 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 Subcontractor intends to provide in relation to 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.

9.9 Shortfall of monies

To the extent that:

- (a) the total amount due and owing from (or otherwise payable by) the Subcontractor 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 Subcontractor to a Sub-subcontractor and the amounts are not referable to any previously issued Progress Payment Instruction(s),

the Subcontractor 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.

9.10 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 10 of these Specific Conditions Georgiou must (subject to the other provisions of the Subcontract) pay the amount shown in the Payment Certificate into the Project Bank Account. Georgiou must pay the amount within 42 days of receipt of the relevant Progress Claim. In the Subcontract, 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 Subcontractor a Recipient Created Tax Invoice in respect of GST for the total amount of the relevant Payment Certificate or Final Payment Certificate and paid by Georgiou into the Project Bank Account.

9.11 Withholding payment / revoking and reissuing

- (a) Georgiou may (in its sole discretion) withhold payment of monies due to the Subcontractor if no statutory declaration is supplied pursuant to clause 10 of these Specific Conditions, or if the statutory declaration supplied pursuant to clause 10 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 sub-subcontracts, or otherwise do not comply with the Subcontract;
 - (ii) the Payment Report is not true and accurate, does not properly allocate amounts payable to Sub-subcontractors pursuant to their sub-subcontracts, or otherwise does not comply with the Subcontract;
 - (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 the Subcontract, and this information has not been provided to Georgiou;
 - (vi) the Subcontractor is liable for amounts due and owing to PBA Sub-subcontractors or Opt-in Sub-subcontractors or any other Sub-subcontractor or Supplier (regardless of sub-subcontract value) in respect of works carried out and

completed and such amounts:

- (A) relate to works under the Subcontract that have already been the subject of a Payment Certificate under the Subcontract; and
- (B) remain unpaid as at the date of the statutory declaration;
- (vii) there has been a change (after the date of this Subcontract) in the security interests registered over the Subcontractor (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 Subcontractor has breached the requirements of this Subcontract 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 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 Subcontractor 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 the Subcontract.
- (c) If Georgiou has provided comments on the Progress Payment Instructions, the reissued Progress Payment Instruction(s) must properly take into account those comments.

9.12 Effect of payment

- (a) Payments made into the Project Bank Account by Georgiou are deemed to be payments made to the Subcontractor under the Subcontract.
- (b) A payment made into the Project Bank Account pursuant to clause 10 of these Specific Conditions does not prejudice the right of either party to dispute under clause 38 of the General Conditions whether the amount so paid is the amount properly due and payable and on determination (whether under clause 38 of the General Conditions or as otherwise agreed) of the amount so properly due and payable, Georgiou or Subcontractor, 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 10 of these Specific Conditions) be paid into the Project Bank Account by Georgiou upon receipt from the Subcontractor of a properly completed Progress Payment Instruction.
- (c) Payment of monies shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only, except as provided by clause 31.6 of the General Conditions.

9.13 Unfixed plant and materials

- (a) Georgiou will pay for any item of unfixed plant and materials, provided the Subcontractor:
 - (i) establishes to the satisfaction of Georgiou that the Subcontractor has paid for the item, and the item is properly stored, labelled the property of Georgiou and adequately protected; and
 - (ii) provides additional security in one of the forms provided in Item 4 of Schedule 1 in an amount equal to the payment claimed for the item.
- (b) Upon payment into the Project Bank Account of the amount which includes the value of the item, the item shall be the property of Georgiou free of any lien or charge.
- (c) Except as provided in the Subcontract, Georgiou shall not be obliged to pay for any item of unfixed plant and materials which is not incorporated in the Subcontract Works.

9.14 Retention Release Events

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

9.15 Security of Payment Act

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

10. 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 Subcontractor—

- (i) to give Georgiou a statutory declaration by the Subcontractor or, where the Subcontractor is a corporation, by a representative of the Subcontractor who is in a position to know the facts declared, that all workers who have at any time been employed by the Subcontractor on work under the Subcontract 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 the Subcontract; 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 the Subcontract.

(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 Subcontractor must give to Georgiou a statutory declaration by the Subcontractor or, where the Subcontractor is a corporation, by a representative of the Subcontractor who is in a position to know the facts declared, that:

- (i) 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 sub-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 Subcontractor has no outstanding liabilities to Sub-subcontractors (regardless of subcontract value) in connection with the Subcontract Works;
- (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 Subcontract) in the security interests registered over the Subcontractor (as identified under the *Personal Property Securities Register*) or if there has been a change, the Subcontractor 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 9.8 of these Specific Conditions. Such statutory declaration shall be in the form stated in Schedule 18.

(c) The statutory declaration referred to in clause 10(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 Subcontractor fails within 5 days after a request by Georgiou under clause 10(a) to provide a statutory declaration that complies with the requirements of the Subcontract, or the statutory declaration and / or documentary evidence (as the case may be) required pursuant to clause 10(b) above and notwithstanding clause 9 of these Specific Conditions Georgiou may withhold payment of monies due to the Subcontractor until the statutory declaration or documentary evidence (as the case may be) is received by Georgiou.
- (e) If the Subcontractor provides to Georgiou satisfactory proof of the maximum amount due and payable to workers and Sub-subcontractors by the Subcontractor, Georgiou shall not be entitled under sub-clause (d) above to withhold any amount in excess of the maximum amount.
- (f) At the written request of the Subcontractor and out of monies payable to the Subcontractor, Georgiou may on behalf of the Subcontractor make payments directly to any worker, Sub-subcontractor or supplier.
- (g) If any worker of 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 10(a) or 10(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 Subcontractor to Georgiou.

11. Termination

Clause 37.1(a) of the General Conditions is deleted and replaced with the following:

37.1 Breach or Default

- (a) Georgiou may give the Subcontractor a written notice to show cause if the Subcontractor breaches any provision of this Subcontract, including:
 - (i) failing to:
 - (A) proceed with the Subcontract Works with due expedition and without delay;
 - (B) use materials or standards of work required by this Subcontract;
 - (C) perform the Subcontractor's design obligations (if applicable) in accordance with the requirements of this Subcontract;
 - (D) provide Security required under this Subcontract;
 - (E) provide evidence of insurance as required by this Subcontract;
 - (F) safely protect any person or property;
 - (G) comply with its obligations under this Subcontract concerning industrial relations;
 - (H) supply everything necessary (including all Subcontractor's Plant and Subcontractor's Materials) for the proper performance of this Subcontract;
 - (I) comply with any directions of Georgiou's Representative under this Subcontract;
 - (ii) proceeding with the Subcontract Works without a Subcontract Program approved by Georgiou's Representative under this Subcontract;
 - (iii) suspending the Subcontract Works (except insofar as the Subcontractor has a statutory right to suspend which cannot be excluded by this Subcontract);
 - (iv) substantially departing from the Subcontract Program;
 - (v) in respect of claims for payment, knowingly providing documentary evidence

containing an untrue statement;

- (vi) failing, within 28 days of the award of the Subcontract, to deliver to Georgiou a duly executed deed of release or priority deed poll when required to do so under this Subcontract;
- (vii) if there is a change (after the date of this Subcontract) in the security interests registered over the Subcontractor (as identified under the Personal Property Securities Register) failing to provide a duly executed deed of release or priority deed poll (in form and substance acceptable to Georgiou) to Georgiou within 14 days of the change; or
- (viii) any breach of the Subcontractor's obligations under this Subcontract relating to the PBA Trust Deed Poll or the PBA Agreement which (in the opinion of Georgiou) is not minor or inconsequential in nature.

12. 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 Subcontractor's obligation to comply with the Government Building Training Policy is stated in Item 30 of Schedule 1.

Schedule 3- Form of Bank Guarantee

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

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

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

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

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

Schedule 4 - Form of Parent Company Guarantee and Indemnity

Guarantee and indemnity

[Insert] (Guarantor)

[Insert] (Company)

Details

DATE [insert date] day of [Insert Month], [Insert Year].

Name [Insert Parent Company details] (ABN [Insert])

Short form name Guarantor

Notice details [Insert Address]

Facsimile: [Insert]

Attention: [Insert]

Name [Insert Georgiou Entity]

Short form name Company

Notice details

Facsimile: [Insert]

Attention: [Insert]

BACKGROUND

- A. The Company is a party to a Subcontract between the Company and [Insert Contractor details] (Subcontractor) dated/to be dated on or about [insert date] (the Subcontract).
- B. The Company has requested that the Guarantor guarantees the performance by the Subcontractor of the Subcontractor's obligations under the Subcontract on the terms set out in this Deed, and the Guarantor has agreed to this request.
- C. The Company required the Guarantor enters into this Deed prior to the Company entering into the Subcontract with the Subcontractor.
- D. The Guarantor has agreed to enter into this Deed to satisfy the Company's request.

Agreed Terms

1. DEFINED TERMS & INTERPRETATION

1.1 Defined terms

In this deed, unless the context requires otherwise:

Subcontract has the meaning in Recital A.

Deed means this deed as varied or supplemented from time to time.

1.2 Interpretation

- (a) All headings have been included for ease of reference only and no part of this Deed is to be construed or interpreted by reference to them.
- (b) Every covenant or provision expressed or implied in this Deed by which more persons than one covenant and agree shall bind such persons and every two or more of them jointly and each of them severally.
- (c) The singular shall include the plural and vice versa and words importing one gender shall include every gender, and a reference to a person includes a corporation.

2. GUARANTOR'S GUARANTEE

2.1 Guarantee and indemnity

The Guarantor unconditionally and irrevocably:

- (a) guarantees to the Company the due, proper and punctual performance and observance by the Subcontractor of all of the obligations contained in or implied under the Subcontract that must be performed and observed by the Subcontractor (Guaranteed Obligations); and
- (b) indemnifies the Company against all losses, damages, costs and expenses which the Company may now or in the future suffer or incur consequent on or arising directly or indirectly out of any breach or non-observance by the Subcontractor of a Guaranteed Obligation.

2.2 Extent of guarantee and indemnity

This clause applies and the obligations of the Guarantor remain unaffected despite, but not limited to the following:

- (a) an amendment of the Subcontract, whether with or without the Guarantor's knowledge or consent;
- (b) a rule of law or equity to the contrary;
- (c) an insolvency event affecting a person or the death of a person;
- (d) a change in the constitution, membership, or partnership of a person;
- (e) the partial performance of the Guaranteed Obligations;
- (f) the termination of the Subcontract;
- (g) the Guaranteed Obligations not being enforceable at any time (whether by reason of a legal limitation, disability or incapacity on the part of the Subcontractor and whether this Deed is void ab initio or is subsequently avoided) against the Subcontractor;
- (h) the Company granting any time or other indulgence or concession to, compounding or compromising with, or wholly or partially releasing the Subcontractor or the Guarantor of an obligation; or
- (i) another thing happening that might otherwise release, discharge or affect the obligations of the Guarantor under this Deed.

2.3 Continuing guarantee

The obligations of Guarantor hereunder shall continue in full force and effect after expiry or termination of the Subcontract until all of the Subcontractor's obligations and liabilities under the Subcontract have been fully discharged.

2.4 Guarantee not affected by assignment

- (a) This Guarantee and the undertakings herein contained shall be binding upon the successors and assigns of Guarantor and shall extend to and inure for the benefit of the successors or permitted assignees of the Company.
- (b) The Company may assign, charge, or transfer all or any of its right, title and interest in this Deed upon such terms as the Company may think fit to a related corporation (which has the same meaning given to a related body corporate under the Corporations Act 2001 (Cth)) or any agent for and on behalf of any syndicate of banks and financial institutions providing credit and guarantee facilities to the Company in connection with the Agreement. No person other than the Company or such permitted assignees as described above is intended as a beneficiary of this Deed nor shall any such person have any rights hereunder. The Guarantor may not otherwise assign or otherwise transfer any of its rights or obligations under this Deed.

3. MISCELLANEOUS

Any communication required or permitted to be given by or pursuant to this Deed shall be sufficiently given if given in writing, delivered personally or by security post or by facsimile to the relevant address set out in this Deed.

4. CONSIDERATION

The Guarantor gives this guarantee and indemnity in consideration for the Company agreeing to enter into the Subcontract and for other valuable consideration which the Guarantor acknowledges receiving from the Company.

5. COUNTERPARTS

This Deed may be executed in any number of counterparts.

6. COSTS OF THIS DEED

- (a) The Guarantor and the Company will bear their own legal costs in relation to this Deed.
- (b) The Guarantor and the Company will be equally liable for any stamp duty assessed on this Deed.

7. GOVERNING LAW AND JURISDICTION

7.1 Governing law

This Deed is governed by the law applicable in New South Wales.

7.2 Jurisdiction

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

Signing page

EXECUTED unconditionally as a deed

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

Signature of director

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

Name of director (print)

Name of director/company secretary (print)

Executed by **[Insert Georgiou Entity]**

Signature of Authorised Person

Signature of Authorised Person

Name of Authorised Person (print)

Name of Authorised Person (print)

Schedule 5 – Form of Final Release and Waiver

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

By [Insert Contractor Name]([Insert ACN or ABN) ("the Subcontractor")

In favour of [Insert Georgiou Entity] ("Georgiou")

For the Subcontract Number [Insert] on the Project described as [Insert].

NOW THIS DEED WITNESSES as follows:

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

(Note: If none, write "None". Any Claims excepted shall be described and the specific amount claimed shall be set out.)

EXECUTED unconditionally as a deed

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

Signature of director ←

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

Name of director (print)

Name of director/company secretary (print)

Executed by [Insert Georgiou Entity]

Signature of Authorised Person ←

Signature of Authorised Person ←

Name of Authorised Person (print)

Name of Authorised Person (print)

Schedule 6 - Scope of Work

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

Schedule 7 - Subcontract Drawings

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

Schedule 8 - Specifications

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

Schedule 9 – Subcontractor Warranty Deed Poll

DEED POLL made the [insert date] day of [insert Month], [insert Year]

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

RECITALS:

[Delete whichever is not applicable in A]

A. Georgiou has entered into a building Subcontract with the Principal described in Item 1 of the Schedule (Principal) under which Georgiou has agreed to carry out the project described generally in Item 2 of the Schedule (Project).

or

Georgiou has entered into a Subcontract with the Subcontractor described generally in Item 3 of the Schedule (Subcontract) under which the Subcontractor has agreed to perform the works described generally in Item 4 of the Schedule (The Subcontract Work).

B. The Subcontractor wishes to provide this Deed Poll for the benefit of Georgiou [and the Principal] and has agreed to warrant that the work and materials it supplies will satisfy the requirements set out or identified in this Deed.

OPERATIVE:

(a) Nature of deed poll

This Deed Poll may be relied on and enforced by Georgiou [and the Principal] in accordance with its terms even though neither Georgiou [nor the Principal] is a party to it.

(b) Warranty

The Subcontractor warrants that for the period stated in Item 6 of the Schedule (Period of Warranty) that the work and materials supplied by it in connection with the Project will satisfy all of the requirements of the Subcontract specifications described in Item 5 of the Schedule (Specification), without limiting the foregoing, that such work and materials are fit for the purposes for which such work and materials are ordinarily used.

(c) Amendment and Termination

This Deed Poll may be amended or terminated only by another deed approved by Georgiou [and the Principal].

(d) Assignment

The rights and obligations of the Subcontractor under this Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with without the prior written consent of Georgiou [and the Principal].

(e) No Waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Deed Poll will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

(f) No Merger

The rights and obligations of the Subcontractor, Georgiou [and the Principal] will not merge on completion of this Deed Poll or any transaction under or contemplated by this Deed Poll.

(g) Governing Law

This Deed Poll is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

EXECUTED as a deed.

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

Signature of director ←

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

Name of director (print)

Name of director/company secretary (print)

SCHEDULE TO WARRANTY DEED POLL

- Item 1: The Principal is [Insert]

- Item 2: The Project is [Insert]

- Item 3: The Subcontract is [Insert]

- Item 4: The Subcontract Work is [Insert]

- Item 5: The Specification is [Insert]

- Item 6: Period of Warranty [Insert]

Schedule 10 – Supplier Warranty Deed Poll

DEED POLL made the [insert date] day of [insert Month], [insert Year]

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

RECITALS:

[Delete whichever is not applicable in A. Delete this note]

- A. Georgiou has entered into a building Subcontract with the Principal described in Item 1 of the Schedule (Principal) under which Georgiou has agreed to carry out the project described generally in 2 of the Schedule (Project).
- or
- Georgiou has entered into a Subcontract with the Subcontractor described generally in Item 3 of the Schedule under which the Subcontractor has agreed to perform the works (Subcontract).
- B. The Supplier wishes to supply the items or products identified in Item 4 of the Schedule (Items or Products).
- C. The Supplier wishes to provide this Deed Poll for the benefit of Georgiou and [the Principal] and has agreed to warrant that the work and materials it supplies will satisfy the requirements set out or identified in this Deed.

OPERATIVE:

(a) Nature of Deed Poll

This Deed Poll may be relied on and enforced by Georgiou and [the Principal] in accordance with its terms even though neither Georgiou nor [the Principal] is a party to it.

(b) Warranty

The Supplier warrants that for the period stated in Item 6 of the Schedule (Period of Warranty) the items or products supplied by it in connection with the Project will satisfy all of the requirements of the Specification which is referred to in Item 5 of the Schedule (Specification) and, without limiting the foregoing, that those items or products are fit for the purposes for which such items and products are ordinarily used.

(c) Amendment and Termination

This Deed Poll may be amended or terminated only by another deed approved by Georgiou and [the Principal].

(d) Assignment

The rights and obligations of the Subcontractor under this Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with without the prior written consent of Georgiou and [the Principal].

(e) No Waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Deed Poll will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

(f) No Merger

The rights and obligations of the Subcontractor, Georgiou and [the Principal] will not merge on completion of this Deed Poll or any transaction under or contemplated by this Deed Poll.

(g) Governing Law

This Deed Poll is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

EXECUTED as a deed.

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

Signature of director

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

Name of director (print)

Name of director/company secretary (print)

SCHEDULE TO WARRANTY DEED POLL

- Item 1: The Principal is [Insert]

- Item 2: The Project is [Insert]

- Item 3: The Subcontract is [Insert]

- Item 4: The items or products are [Insert]

- Item 5: The Specification is [Insert]

- Item 6: Period of Warranty [Insert]

Schedule 11 - Schedule of Rates

[Insert schedule of rates, including for Daywork. If none apply then write "Not Applicable" Delete this note.]

Schedule 12- Subcontract Sum Breakdown

Subcontract Sum

[Insert Subcontract Sum (ex GST). Delete this note]

Subcontract Sum Breakdown

[Insert breakdown of Subcontract Sum. Refer to Schedule 11 if rates apply. Delete this note.]

Schedule 13 - Statutory Declaration

STATUTORY DECLARATION BY SUBCONTRACTOR

Contract Number: [Insert]

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

In undertaking the following work: [Insert] ("the work")

[As Applicable:]

Oaths Act 1900

New South Wales

[or]

Oaths Act 1867

Queensland

[or]

Oaths Act 2005

Western Australia

[or]

Evidence Act 1958

Victoria

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

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

Of [insert registered address of subcontractor].

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

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

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

(b) All the Subcontractor's workers who at any time have been engaged on work under the Contract by the Subcontractor have been paid in accordance with the relevant award or Industrial Instrument, all monies 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 in respect of their part of the work under the Contract.

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

I, (Name) of (Address)

(Occupation),

..... [] by []

{Signature of person making the declaration}

{date}
in the presence of -

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

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

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

Declared at
this day of 20

before me:

Signature of authorised witness:

Signature of declarant:

Name of authorised witness:

Address of authorised witness:

Capacity in which authorised witness
takes the statutory declaration

Schedule 14 - RCTI

Name of Subcontractor: [Insert]

Address: [Insert]

Definitions

ABN Australian Business Number

Subcontract [Insert]

Georgiou [Insert Georgiou Entity]

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

I/We agree to the following:

- (a) Georgiou will issue RCTI's in respect of all Supplies provided by the Subcontractor;
- (b) the Subcontractor will not issue tax invoices in respect of the Supplies;
- (c) the Subcontractor acknowledges and agrees that it is registered for GST when it enters into the agreement and that it will notify Georgiou if it ceases to be registered or fails to register;
- (d) Georgiou acknowledges that it is registered for GST, and that it will notify the Subcontractor if it ceases to be registered for GST or if it ceases to satisfy any of the requirements for raising RCTI's under taxation legislation or rulings ("RCTI Requirements");
- (e) Georgiou will not issue a document that would otherwise be an RCTI, on or after the date when Georgiou or the Subcontractor has failed to comply with any of the RCTI Requirements;
- (f) The Subcontractor acknowledges and agrees that Georgiou is not obliged to and will not issue an RCTI in respect of a Supply until:
 - (i) a Payment Certificate has been issued and Georgiou is obligated to pay an amount to the Subcontractor under clause 31.3 of this Subcontract (or, if applicable, clause 9 of Schedule 2); and
 - (ii) the Subcontractor has provided the necessary documentation to allow an RCTI to be raised.
- (g) The Subcontractor's ABN is [Insert]
- (h) Georgiou may at its sole discretion, by written notice to the Subcontractor, terminate this RCTI agreement and from the date of the notice of termination the Subcontractor will be responsible for issuing any and all tax invoices in respect of Supplies to Georgiou.
- (i) The Subcontractor shall be liable for and indemnifies Georgiou against any cost, expense, loss or damage that Georgiou and / or the Subcontractor may incur or suffer as a result of or in any way relating to termination of this RCTI agreement.

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

SIGNED as an agreement

Signed for and on behalf of Georgiou:

In the presence of:

Signature ←

Signature of Witness ←

Name

Name of Witness

Signed for and on behalf of the
Subcontractor:

In the presence of:

Signature ←

Signature of Witness ←

Name

Name of Witness

Schedule 15 - Subcontractor Statement (NSW)

SUBCONTRACTOR'S STATEMENT REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note1 - 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 16- 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 17- 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 (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 18 - 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 19- Special Conditions

[insert]

This page has intentionally been left blank