

Subcontract for Minor Works/Services

[insert project number and
name]

Insert Georgiou Entity (Georgiou)

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

Project Document # [insert]

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Details

FORM OF AGREEMENT

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

BETWEEN: [Insert Georgiou Entity] ([Insert ACN OR ABN])
[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 Works.
- B. The Subcontractor has agreed to perform the Works on the terms and conditions to this Subcontract.

Formal Instrument of Agreement

OBLIGATIONS OF THE PARTIES

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

SUBCONTRACT DOCUMENTS

The documents that comprise this Subcontract are:

1. this Formal Instrument of Agreement;
2. Schedule 14 - Special Conditions;
3. Schedule 2 - State and Territory Specific Conditions;
4. the General Conditions;
5. Schedule 1 - Subcontract Particulars;
6. Schedule 3 - Scope of Work;
7. Schedule 5 - Subcontract Sum Breakdown;
8. Schedule 4 - Schedule of Rates (if applicable); and
9. each other Schedule in numerical order.

PRECEDENCE

In the event of any ambiguity, discrepancy or conflict occurring between the documents that comprise 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 Subcontract Documents above, with the documents higher in the list having higher priority.

Signed as an Agreement

Signed for and on behalf of Georgiou:

In the presence of:

Signature ←

Signature of Witness ←

Name

Name of Witness

Signed for and on behalf of the Subcontractor:

In the presence of:

Signature ←

Signature of Witness ←

Name

Name of Witness

General Conditions

1. SUBCONTRACT WORKS

- (a) The Subcontractor must carry out and complete the Subcontract Works and perform its other obligations under this Subcontract in accordance with this Subcontract.
- (b) The Subcontractor represents and warrants that:
 - (i) it is experienced and competent in carrying out works of the same kind as the Subcontract Works;
 - (ii) 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;
 - (iii) it will use materials in the Subcontract Works which (unless expressly stated otherwise) are new, of merchantable quality and fit for the purpose for which they are used;
 - (iv) when complete, the Subcontract Works will comply with the requirements of this Subcontract and any applicable Legislative Requirements;
 - (v) 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;
 - (vi) the Subcontract Works are capable of being built as described in this Subcontract and the Subcontractor accepts responsibility for overcoming any buildability issues relating to methods of work or similar matters which a competent and skilled subcontractor ought reasonably to have anticipated; and
 - (vii) 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.
- (c) The Subcontractor acknowledges and agrees that Georgiou has:
 - (i) made no representations, and given no warranties, with respect to the matters referred to in clause 1(b); and
 - (ii) entered into this Subcontract in reliance on the representations and warranties given by the Subcontractor in clause 1(b).
- (d) The Subcontractor must:
 - (i) construct the Subcontract Works using Good Industry Practice;
 - (ii) ensure that the Subcontract Works will be performed by appropriately qualified, skilled, experienced and trained Personnel;
 - (iii) supply everything necessary for the proper performance of its obligations under this Subcontract, including all Subcontractor's Plant;
 - (iv) ensure all Subcontractor's Plant is properly licensed, suitable and fit for its intended purposes in connection with the Subcontract Works;
 - (v) not remove any item of Subcontractor's Plant from the Site without the written approval of Georgiou;
 - (vi) set out the Subcontract Works in accordance with this Subcontract and indemnify Georgiou against any Claims, loss or damage arising from:
 - (A) any rectification works required by reason of the Subcontract Works being incorrectly set out on the Site; and
 - (B) any encroachments by the Subcontract Works on any adjoining site or property.

- (e) The Subcontractor acknowledges and agrees that it has:
 - (i) carefully reviewed the Subcontract and all other information relating to this Subcontract and has a clear understanding of the Subcontract Works and all things required to achieve Practical Completion by the Date for Practical Completion;
 - (ii) examined all information which is relevant to the risks, contingencies and other circumstances which could affect the performance of the Subcontract Works;
 - (iii) made its own investigations and assessment of the work and risks involved in undertaking the Subcontract Works and has reviewed and satisfied itself about the information relating to the Subcontract Works and this Subcontract;
 - (iv) not relied upon and will not rely upon, any matter disclosed or information provided or representation made to it by Georgiou and that it has made and relied and will make and rely solely upon its own independent assessment, investigation and judgment of the work and risks involved in undertaking the Subcontract Works;
 - (v) examined the Site and all its physical and environmental conditions, including surface, subsurface, water and weather conditions at, on or affecting the Site;
 - (vi) informed itself of the nature of all materials necessary for the Subcontract Works, the means of access to the Site and the transport routes available for deliveries to the Site, and facilities at the Site, including the availability of accommodation; and
 - (vii) satisfied itself that the scope of the Subcontract Work 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 scope of work in Schedule 3.
- (f) The Subcontractor will not at any time claim any lien over any part of the Subcontract Works or offer or agree to lend, pledge, mortgage, let or hire any part of the Subcontract Works.

2. SUBCONTRACT SUM

- (a) In consideration of the proper performance of the Subcontract Works by the Subcontractor, Georgiou will pay the Subcontractor the Subcontract Sum.
- (b) The Subcontract Sum, including any rates or prices in the Schedule of Rates (together with any additions or deductions expressly provided for by the Subcontract):
 - (i) 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's Personnel;
 - (ii) 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 the Subcontract;
 - (iii) include an allowance for interfaces required with, and working adjacent to, other works, activities and operations at the Site;
 - (iv) 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
 - (v) will not be subject to any rise and fall or any other adjustment for any reason, except to the extent expressly provided by this Subcontract.
- (c) 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 2(b).
- (d) If the Schedule of Rates or the breakdown of the Subcontract Sum in Schedule 5 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.

3. GEORGIU'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 direction given by 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.
- (d) Georgiou will notify the Subcontractor of any change in the identity of Georgiou's Representative.

4. DIRECTIONS

- (a) Georgiou and Georgiou's Representative may each 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 later 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 given by Georgiou or Georgiou's Representative within the time nominated, or if no time is nominated, as soon as reasonably possible. Except as provided in this 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 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 or Georgiou's Representative (other than to address any breach of this Subcontract or omission by the Subcontractor) which the Subcontractor considers will adversely affect its ability to comply with this Subcontract, the Subcontractor must notify Georgiou's Representative who shall then either:
 - (i) withdraw, or cause Georgiou to withdraw, the direction; or
 - (ii) amend, or cause Georgiou to amend, the direction to address the Subcontractor's concern, in which case the Subcontractor must comply with the amended direction.

5. SECURITY

- (a) The Subcontractor must, within fourteen (14) days after the execution of this Subcontract (and before starting work on the Site), provide Security in the amount set out in Item 5 of Schedule 1. Security is provided for the purpose of ensuring due and proper performance of this Subcontract by the Subcontractor.
- (b) 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 Subcontract.

- (c) 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; and
 - (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.
- (d) Nothing in this clause affects Georgiou's right after having recourse to the Security to recover from the Subcontractor any debt, money or Claim, or deduct or set off any amount in accordance with this Subcontract or call on any other Security provided or procured by the Subcontractor under this Subcontract.

6. PROGRAMMING

- (a) Within five (5) Business Days after the execution of this Subcontract, the Subcontractor must:
 - (i) prepare a draft program for the performance of the Subcontract Works that is in accordance with any requirements in this Subcontract, any Head Contract program and the requirements of Georgiou; and
 - (ii) provide the draft program to Georgiou for approval.
- (b) Upon Georgiou's approval of the draft program, it will become the Program. The Subcontractor must comply with the Program in undertaking the Subcontract Works.
- (c) Approval of a program by Georgiou will not:
 - (i) relieve the Subcontractor from its liabilities or obligations under this Subcontract;
 - (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) otherwise affect the time for carrying out the Subcontract Works or the Subcontractor's obligations under this Subcontract.
- (d) The Subcontractor must promptly update or revise the draft program (or the Program, once accepted) at its own cost and resubmit it to Georgiou monthly (with its Progress Claims) or if directed by Georgiou because the Program:
 - (i) does not comply with clause 6(a)(i); or
 - (ii) no longer reflects the current status of the Subcontract Works for any reason whatsoever.

7. TIME

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 in accordance with any direction given by Georgiou and Georgiou's Representative;
- (c) comply with the timing and sequencing of the Subcontract Works in any Head Contract program provided to the Subcontractor by Georgiou; and
- (d) complete the Subcontract Works by the Date for Practical Completion.

8. DELAY

- (a) If the Subcontractor believes that anything, including any breach, act or omission of Georgiou, may delay the progress of the Subcontract Works, the Subcontractor must

promptly notify Georgiou in writing with details of the estimated extent and cause of the delay.

- (b) 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 not achieve Practical Completion by the Date for Practical Completion, Georgiou may direct the Subcontractor:
 - (i) to 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) as to the sequence in which the Subcontract Works are to be performed, and the Subcontractor will have no right to claim in connection with the direction.
- (c) If the Subcontractor fails to comply with its obligations in clause 8(b), 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 on demand.

9. EXTENSION OF TIME

- (a) Subject to clause 9(c), the Subcontractor will be entitled to an extension of time to the Date for Practical Completion if:
 - (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 a Delay Event;
 - (iii) within seven (7) days after the commencement of the Delay Event, the Subcontractor gives a written Claim to Georgiou setting out the cause of the delay, the particular activities that are delayed, the portion(s) of the Subcontract Works affected, the extension of time claimed and an updated Program;
 - (iv) in the event that the delay continues beyond the extension of time claimed by the Subcontractor under clause 9(a)(iii), the Subcontractor gives Georgiou an updated Claim every seven (7) days that satisfies the requirements of clause 9(a)(iii) until the Delay Event ends;
 - (v) the Subcontractor has taken all reasonable steps to minimise the effect of the Delay Event on the Subcontract Works; and
 - (vi) Georgiou or Georgiou's Representative has not directed the Subcontractor to accelerate the Subcontract Works to overcome the delay.
- (b) It is a condition precedent to the Subcontractor's entitlement to an extension of time that the Subcontractor has strictly complied with each of the requirements of clauses 9(a)(iii), 9(a)(iv), 9(a)(v) above.
- (c) Subject to clause 9(b) above, Georgiou will determine the period of the delay to the Date for Practical Completion caused by the Delay Event referred to in a Claim given by the Subcontractor under clause 9(a)(iii) or 9(a)(iv) 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.
- (d) 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 at its absolute discretion. 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.
- (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 unless otherwise provided in this Subcontract.

- (f) Except to the extent that this Subcontract otherwise expressly provides, the Subcontractor will not be entitled to any additional payment or to make any claim as a result of the granting of an extension of time.

10. 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 that it is not possible to do so.
- (b) If compliance with a direction under clause 10(a) causes the Subcontractor to incur additional costs to that contemplated at the date of this Subcontract, the Subcontractor will be paid its reasonable 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.

11. LIQUIDATED DAMAGES

- (a) If the Subcontractor fails to achieve Practical Completion of the Subcontract Works by the Date for Practical Completion, the Subcontractor will be indebted to Georgiou for liquidated damages at the rate stated in Item 8 of Schedule 1, if any, for every day after the Date for Practical Completion up to and including the Date of Practical Completion or the date that this Subcontract is terminated pursuant to clause 33, whichever occurs first.
- (b) The parties acknowledge and agree that:
 - (i) the liquidated damages, if any, stated in Item 8 of Schedule 1 are a genuine pre-estimate of the damages that Georgiou will suffer as a result of the Subcontractor's failure to achieve Practical Completion by the Date for Practical Completion;
 - (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 Subcontract Works by the Date for Practical Completion. Such loss or damage may include 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.
- (c) If Item 8 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 for the Subcontractor's failure to achieve Practical Completion of the Subcontract Works by the Date for Practical Completion.
- (d) The exercise by Georgiou of its rights pursuant to this clause 11 does not relieve the Subcontractor from any of its obligations or liabilities under this Subcontract.

12. CERTIFICATE 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.
- (b) When the Subcontractor is of the opinion that Practical Completion has been achieved, it must make a request in writing that Georgiou issue a Certificate of Practical Completion.
- (c) If the requirements for Practical Completion under this Subcontract have been achieved, then within ten (10) Business Days of receiving the request under clause 12(b) Georgiou will give the Subcontractor a Certificate of Practical Completion stating

the Date of Practical Completion and containing a punch list of minor Defects. If Georgiou does not issue a Certificate of Practical Completion, it shall give the Subcontractor written reasons for not doing so, in which case the process in this clause 12 shall reapply.

- (d) The Subcontractor must complete or rectify the punch list items within thirty (30) days of the Date of Practical Completion.

13. APPROVALS AND LEGISLATIVE REQUIREMENTS

- (a) The Subcontractor must:
 - (i) obtain all Approvals except for those listed in Item 4 of Schedule 1; and
 - (ii) comply with all Legislative Requirements.
- (b) Without limiting clause 13(a), the Subcontractor must:
 - (i) ensure it complies with all Environmental Law and all relevant industry standards;
 - (ii) ensure all items of Subcontractor's Plant arriving on the Site:
 - (A) are fit for purpose;
 - (B) have no oil leaks; and
 - (C) are in a condition that will not adversely affect the Environment;
 - (iii) ensure all items of Subcontractor's Plant arriving on the Site have plant weed hygiene certificates and are visually free of organic material;
 - (iv) report all substance spillages to Georgiou's Representative;
 - (v) ensure there will be no negative impact to sensitive receptors in relation to noise, dust or vibration, and in the event of a complaint, a report including corrective actions will be made to Georgiou's Representative; and
 - (vi) provide Georgiou with monthly waste reports (which must include the waste stream type with measurements stated in tonnes).

14. 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 all Subcontractor's Plant. 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 must 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 that Georgiou has an Security Interest (other than Security Interests granted in favour of Georgiou);
 - (ii) sell, lease or dispose of its interest in Personal Property that Georgiou has an Security Interest in;
 - (iii) give possession of the Subcontractor's Personal Property that Georgiou has a Security Interest or Georgiou's Personal Property to another person except where Georgiou expressly authorises it to do so;
 - (iv) permit any of Georgiou's Personal Property to become an Accession to or Commingled with any asset that is not part of the 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; and
 - (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 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 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 clause 15.2(a) are met.

16. WHS SITE REQUIREMENTS

Without limiting the requirements listed in Schedule 2, 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 all Subcontractor Personnel 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 Subcontractor Personnel 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 being performed;
- (f) long sleeve shirts;
- (g) trousers;
- (h) UV protected eyewear; and
- (i) sunscreen lotion.

16.2 Worksite Induction

- (a) The Subcontractor's Personnel 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 Subcontractor's Personnel 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 Personnel who:
 - (i) are suitably competent and qualified to perform their contracted tasks; and
 - (ii) have completed any training required to perform the Subcontract Works in accordance with the requirements of this Subcontract.
- (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's Plant

- (a) All items of Subcontractor's Plant brought to the Worksite must be managed in accordance with work health and safety laws and all relevant Legislative Requirements.
- (b) The Subcontractor must also ensure that each item of the Subcontractor's Plant:
 - (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 Subcontractor's Plant 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 provide to Georgiou, upon request, documented evidence that the above requirements have been met.

16.5 Pre-start Meetings

- (a) The Subcontractor's Personnel must attend all morning pre-start meetings at the designated site start time unless otherwise advised by Georgiou in writing.
- (b) If the Subcontractor's Personnel are unable to attend pre-start meeting at the designated time, they must read the pre-start meeting minutes and sign the attendance sheet as evidence that these have been read and understood.
- (c) In all other instances, the Subcontractor's Personnel must report to Georgiou's site office and contact the Site supervisor.
- (d) Subcontractor Personnel will not be permitted to start work on the Site until they have complied with this clause 16.5.

16.6 Toolbox Meetings

The Subcontractor's Personnel must attend all project toolbox meetings as directed by Georgiou.

16.7 HSEQ Management Meetings

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

16.8 Risk/ Hazard Management

The Subcontractor's Personnel must:

- (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) work involving all 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 Site.

16.10 Emergency Response

The Subcontractor's Personnel must participate in any on site emergency response drills. Georgiou must inform them of any drills to be conducted to ensure no other work is to be carried out at the same time that will put the health and safety of workers or other persons at risk.

16.11 Fitness for Work

- (a) The Subcontractor must ensure its Personnel:
 - (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) do not enter the Worksite under the influence of illegal drugs or substances; and
 - (iv) consent to testing to verify compliance with this clause as directed by Georgiou.
- (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 the 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) The Subcontractor's Personnel must not possess, use, consume, distribute or sell alcohol, illicit or non-prescribed drugs or misuse prescribed medication while performing work for Georgiou.
- (d) If the Subcontractor is or becomes aware of any matter that:
 - (i) may impede any member of its Personnel's ability to perform their work or place themselves or others at risk; or
 - (ii) should reasonably be known in the event of an emergency,the Subcontractor must notify Georgiou in writing immediately.

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 directed by Georgiou. The Subcontractor may be subject to an audit at the direction of Georgiou 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) Without limiting clause 17(b) above, Georgiou may notify the Subcontractor of any reasonable revisions that it requires to the Health and Safety Plan if there are any inconsistencies with Georgiou's or the Principal's work health and safety systems, rules, policies or procedures, 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 the work under this Subcontract.
- (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, and ensure that its Personnel comply, with:
 - (i) the Health and Safety Plan; and
 - (ii) Georgiou's and the Principal's:
 - (A) work health and safety systems, rules, policies and procedures; and
 - (B) WHS Management Plan or Health and Safety Coordination Plan.

18. NATIONAL CODE

This clause 18 applies if stated in Item 17 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 Personnel comply, with all Legislative Requirements 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 purposes.

20. INDUSTRIAL RELATIONS

- (a) The Subcontractor acknowledges and agrees that it is responsible for industrial relations involving its Personnel.
- (b) From the Commencement Date, the Subcontractor must, to the extent permissible under applicable Legislative Requirements, comply with the provisions of any applicable Industrial Instrument to the Subcontract Works. The Subcontractor must take all steps and measures to avoid and to minimise the consequences of industrial disputes affecting the Subcontract Works.
- (c) The Subcontractor must promptly notify Georgiou, and keep Georgiou fully informed, 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 risks to the health and safety of any persons.
- (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 Subcontractor must comply, at its cost, with any reasonable direction by Georgiou relating to industrial disputation at the Site.
- (f) The Subcontractor must, during any industrial or safety dispute or stoppage, maintain on the Site all of the resources which it is required to have on Site if there was no dispute or stoppage.
- (g) The Subcontractor 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.

21. SITE MATTERS

- (a) Provided that the Subcontractor has complied with its obligations under clause 31 and Georgiou has been given access to the Site by the Principal (if applicable), Georgiou will give the Subcontractor sufficient access to the Site to perform the Subcontract Works on 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 acknowledges and agrees that its access to the Site may be limited for any period of time, be non-continuous or be hindered by other works. The Subcontractor is not entitled to make any Claim arising out of or in connection with any restriction, non-continuity or hindrance of access to the Site.
- (d) The Subcontractor must keep that part of the Site to which it has access clean and tidy and must regularly remove from the Site all rubbish and surplus material created by it or its Personnel.
- (e) The Subcontractor will not have exclusive access to the Site or any part of it and must coordinate the Subcontract Works with the activities of Georgiou, Georgiou's Personnel and the Principal's Personnel and any other contractors. The Subcontractor acknowledges that it has allowed for and, except as specifically provided in this Subcontract, it is not entitled to any claim for any additional payment or to make any other Claim arising from the impact of any interference caused to the Subcontractor or the Subcontract Works by any person on the Site.
- (f) The Subcontractor must attend all meetings directed by Georgiou to openly discuss all matters relevant to the Subcontract Works and their progress.
- (g) 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, including public utilities and services on or near to the Site. If any damage is caused by the Subcontractor or its Personnel, the Subcontractor must:
 - (i) at its own cost, remedy 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.
- (h) If the Subcontractor fails to comply with its obligations in clause 21(g), 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.
- (i) The Subcontractor must carry out the Subcontract Works at the Site during the working hours stated in Item 13 of Schedule 1 unless expressly directed otherwise in writing by Georgiou.
- (j) The Subcontractor must remove any of its Personnel from the Site who Georgiou notifies the Subcontractor that it reasonably considers have breached a Legislative Requirement, are incompetent, negligent or conducting themselves in an unsafe manner. Any person removed from the Site may not return to the Site without Georgiou's prior written consent. The Subcontractor is responsible for all costs associated with the removal and replacement of any Personnel notified by Georgiou under this clause 21(j).

22. LATENT CONDITIONS

- (a) If, during the execution of the Subcontract Works, the Subcontractor becomes aware of a Latent Condition, the Subcontractor will, within three (3) Business Days of becoming aware of the Latent Condition, and where possible before the Latent Condition is disturbed, give written notice of the existence and characteristics of the Latent Condition to Georgiou.
- (b) If required by Georgiou, the Subcontractor must also give a statement in writing

specifying:

- (i) the Latent Condition encountered and in what respects it differs materially from that which would have been expected;
 - (ii) the additional work and resources which the Subcontractor estimates to be necessary to deal with the Latent Condition;
 - (iii) the time the Subcontractor anticipates will be required to deal with the Latent Condition and the expected delay (if any) in achieving Practical Completion;
 - (iv) the Subcontractor's estimate of the cost of the measures necessary to deal with the Latent Condition; and
 - (v) other details reasonably required by Georgiou.
- (c) If a Latent Condition causes the Subcontractor to:
- (i) incur extra cost; and
 - (ii) the Subcontractor has given Georgiou notice in accordance with clause 22(a) and 22(b) above,

Georgiou will promptly investigate the Latent Condition and determine whether any Variation is necessary, and if a Variation is necessary, will value the Variation in accordance with clause 27.1.

- (d) Where a valuation is to be made under clause 27.1 pursuant to this clause 22, regard will not be had to the value of more work carried out or more cost incurred earlier than three (3) Business Days before the date on which the Subcontractor gives the written notice required by clause 22(b) above.
- (e) It is a condition precedent to the Subcontractor's entitlement to make a Claim arising out of, or in connection with, a Latent Condition that the Subcontractor has strictly complied with each of the requirements of this clause 22.

23. WARRANTY DEED

If required to do so by Georgiou, the Subcontractor must, on or before the date of this Subcontract, complete and execute a Deed of Warranty in the form set out in Schedule 7 in favour of the Principal and Georgiou.

24. PROTECTION OF PEOPLE AND PROPERTY

- (a) The Subcontractor must comply with this clause in addition to the work health and safety requirements set out in clauses 15 and 16.
- (b) The Subcontractor must provide all things and take all measures necessary to protect people and property on or adjacent to the Site.
- (c) The Subcontractor must ensure that no damage, nuisance or inconvenience (by dust, dirt, water or noise exceeding limits set by AS 2436-2010) is caused to anyone lawfully on or adjacent to the Site.
- (d) The Subcontractor must ensure that its Personnel maintain good standards of behaviour on Site.
- (e) The Subcontractor must ensure that its Personnel do not engage in offensive behaviour or language on the Site. Georgiou may direct the immediate removal of any person who has engaged in offensive behaviour or language while on Site.
- (f) If urgent action is necessary to protect the 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.
- (g) 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 Personnel, 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.
- (h) If the Subcontractor fails to comply with its obligations in clause 24(g), 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. RESPONSIBILITY FOR THE SUBCONTRACT WORKS

- (a) The Subcontractor is responsible for the care and protection of 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 5:00pm on the Date of Practical Completion.
- (b) After achieving Practical Completion, the Subcontractor remains responsible for the care and protection of any outstanding items of work and any temporary works, until such outstanding works are completed or the temporary works are removed from the Site.
- (c) If loss or damage occurs to the Subcontract Works whilst the Subcontractor is responsible for the care of the Subcontract Works, the Subcontractor must, at its cost, rectify the loss or damage, except where such loss or damage was directly caused by a negligent act or omission of Georgiou, Georgiou's Representative or Georgiou's Personnel.

26. DEFECTS

- (a) The Subcontractor must, at its cost, and with as little inconvenience to the occupants or users of the Subcontract Works as reasonably possible, rectify any Defect which appears in the Subcontract Works during the performance of the Subcontract Works or during the Defects Liability Period.
- (b) Without limiting clause 26(a), where Georgiou becomes aware of any Defect in the Subcontract Works during the performance of the Subcontract Works or during the Defects Liability Period, it may direct the Subcontractor to rectify the Defect and nominate a date for doing so.
- (c) If any Defect is not rectified in accordance with the direction given by Georgiou under clause 26(b), 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.
- (d) Notwithstanding anything in this clause 26, 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 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.
- (e) If Georgiou or a third party carries out rectification work under clause 26(c) or 26(d) the Subcontractor shall remain responsible for the Subcontract Works (including the rectification works) in accordance with this Subcontract and the Subcontractor is not entitled to make any Claim in connection with that rectification work.

27. VARIATIONS

27.1 Variations

- (a) The Subcontractor must not vary the Subcontract Works except as directed in writing by Georgiou's Representative under this clause 27.
- (b) Georgiou's Representative may, at any time prior to the expiry 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. If the Variation requires the omission of work, Georgiou may perform the omitted work, or have it done by others, or not, as it sees fit.

- (c) Within seven (7) days of receiving a direction under clause 27.1(b), the Subcontractor must provide to Georgiou's Representative a detailed quotation for the Variation (supported by measurements or other evidence of cost). If Georgiou and the Subcontractor fail to agree upon the value of a Variation, the value of the Variation will be a reasonable amount as determined by Georgiou's Representative, subject to clause 27.1(e).
- (d) 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's Representative within seven (7) days from the date that the alleged Variation was directed. It is a condition precedent to the Subcontractor's entitlement to make any Claim with respect to the instruction or direction that the Subcontractor has strictly complied with this clause 27.1(d).
- (e) 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 subclause 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.
- (f) Except as provided in this clause 27, the Subcontractor has no right to any Claim as a result of any Variation directed by Georgiou's Representative.

27.2 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 of the date that the alleged Variation was directed.
- (b) Within five (5) Business Days of receiving that notice under clause 27.2(a) above, 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 27.1(a)
- (c) It is a condition precedent to the Subcontractor's entitlement to Claim in respect of any instruction or direction referred to in clause 27.2(a) that the Subcontractor has strictly complied with clause 27.2(a).

28. PAYMENT

28.1 Progress Claims

- (a) The Subcontractor must submit to Georgiou's Representative, on the date set out in Item 10 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 claimed have been performed;
 - (iv) a statutory declaration in the form set out in Schedule 10, which states that as at the Payment Claim Date, no wages or other monies are due and owing by the Subcontractor to its Personnel for any work the subject of that Progress Claim and which is not misleading or deceptive in any way; and
 - (v) any other information Georgiou's Representative may reasonably require.
- (c) If the 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 8 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 the relevant 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 in respect of any Payment Claim Date.
- (e) As a condition precedent to the Subcontractor's entitlement to submit a Progress Claim or receive payment of any amount (including any amount stated in a Payment Certificate), the Subcontractor will provide Georgiou with:
- (i) a copy of this Subcontract duly executed by the Subcontractor;
 - (ii) demonstration that it continues to hold the insurances required by the Subcontract; and
 - (iii) the Security required to be given by the Subcontractor under the Subcontract.
- (f) As to a Progress Claim which does not contain the information required by this clause 28.1:
- (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 clause 28.1(b) or 28.1(c) applies; and
 - (ii) Georgiou's Representative is not obliged to undertake any assessment of, and Georgiou 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 clause 28.1(b) or clause 28.1(c) (as the case may be).
- (g) Where Georgiou's Representative returns an incomplete Progress Claim to the Subcontractor, the Subcontractor will submit a Progress Claim that complies with the requirements of the Subcontract within the time notified by Georgiou's Representative, or, where no time is notified, within forty eight (48) hours.
- (h) 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, and the Subcontractor must provide the requested information.

28.2 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 28.6, 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.
- (b) At any time up to the expiry of the Defects Liability Period, Georgiou's Representative may, by the issue of a further Payment Certificate, modify, or correct any error or omission in any earlier Payment Certificate.
 - (c) If the Subcontractor does not make a Progress Claim in accordance with clause 28.1, Georgiou's Representative may nevertheless issue the Payment Certificate with the details of the calculations in clause 28.2(a).
 - (d) If clause 29(d) does not apply as a result of clause 29(d)(vi), 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 28.2 within two (2) Business Days of receipt of that Payment Certificate.

28.3 Payment

- (a) Where an amount is certified as being due to the Subcontractor in a Payment Certificate, Georgiou will pay the amount of the Payment Certificate, or if no Payment Certificate is issued, the amount of the Progress Claim:
 - (i) if the Site is located in New South Wales, within thirty (30) Business Days after a Progress Claim is made;
 - (ii) if the Site is located in Queensland, within twenty five (25) Business Days after a Progress Claim is made;
 - (iii) if the Site is located in Western Australia, within forty two (42) days after a Progress Claim is made; 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 Progress Claim was received.
- (b) Where an amount is certified as being due for payment to Georgiou by the Subcontractor in a Payment Certificate under clause 28.2 (or, if applicable, clause 5 of Schedule 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.

28.4 Unfixed plant and materials

- (a) The Subcontractor will not be entitled to claim payment for materials, plant or equipment which have not been either delivered to the Site or incorporated into the Subcontract Works, unless Georgiou otherwise agrees in writing.
- (b) The Subcontractor must ensure that unencumbered title to unfixed materials, plant and equipment forming part of the Subcontract Works passes to Georgiou upon the earlier of Georgiou's payment for that item and the delivery of the item to the Site (if applicable).

28.5 Final Payment Claim and Certificate

- (a) Within fourteen (14) days after the Date of Practical Completion, the Subcontractor must give to Georgiou's Representative a final Progress 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 28.5(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) where an amount has been certified in the final Payment Certificate as being due to the Subcontractor, 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 6, within two (2) Business Days of receipt of the Final Payment Certificate.
- (d) Subject to clause 28.5(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 a Progress Claim is made;
 - (ii) if the Site is located in Queensland, within twenty five (25) Business Days after a Progress Claim is made;
 - (iii) if the Site is located in Western Australia, within forty two (42) days after a Progress Claim is made; 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 Progress Claim was 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, and the release of any Security pursuant to clause 5(c), that the Contractor sign and return an executed Final Release and Waiver in the form as set out in Schedule 6 to Georgiou's Representative in accordance with clause 28.5(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.

28.6 Set off

Georgiou may at any time (including in the assessment of a Progress Claim) set off against and deduct from any monies due to the Subcontractor, any debt, costs, damages, losses or expenses due to or claimed by Georgiou from the Subcontractor arising from or in connection with this Subcontract or the Subcontract Works. 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).

29. GOODS AND SERVICES TAX

- (a) Except under this clause 29, the consideration for a Supply made under or in connection with this Subcontract does not include GST. If a Supply made under or in connection with this Subcontract is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
- (i) the Recipient must pay the Subcontractor an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this Subcontract for that Supply); and
 - (ii) the Subcontractor must give the Recipient a Tax Invoice for the Supply.
- (b) If either party has the right under this Subcontract to be reimbursed or indemnified by another party for a cost incurred in connection with this Subcontract, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- (c) Capitalised terms in this clause 29 have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (d) Georgiou shall 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 9 and in accordance with the conditions set out by and under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as follows:
- (i) Georgiou can issue tax invoices in respect of the supplies provided by the Subcontractor in accordance with this Subcontract;
 - (ii) the Subcontractor will not issue tax invoices in respect of its supplies in accordance with this Subcontract;
 - (iii) 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;
 - (iv) 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;
 - (v) Georgiou will issue an adjustment note to the Subcontractor for any adjustment events that arise in relation to a supply for which a RCTI has been issued; and
 - (vi) the agreement in this clause 29(d) 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 a RCTI.

30. INDEMNITIES AND LIMIT OF LIABILITY

30.1 Subcontractor indemnity

The Subcontractor indemnifies Georgiou and its Personnel against any claims, actions, proceedings, 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 of the Subcontract Works;
- (c) any loss of or damage to real or personal property caused by the Subcontractor or its Personnel;
- (d) personal injury, disease, illness (including mental illness) or death caused by the Subcontractor or its Personnel;
- (e) any breach of this Subcontract by the Subcontractor; or
- (f) any negligent act or omission by the Subcontractor or its Personnel,

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

30.2 Limit of Georgiou liability

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

31. INSURANCES

- (a) Before the Commencement Date, the Subcontractor must take out and maintain, at its cost, the insurances set out in Item 6 of Schedule 1 with insurers and on terms approved by Georgiou. 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.
- (b) 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.

32. SUSPENSION

- (a) Georgiou may, at any time and for any reason, direct the Subcontractor by notice in writing to suspend all or any part of the Subcontract Works.
- (b) The Subcontractor must comply with any direction issued by Georgiou under clause 32(a) and must immediately recommence the Subcontract Works when directed to do so by Georgiou.
- (c) The Subcontractor has no Claim arising out of a suspension except where the reason for the suspension was caused by an act, omission or default of Georgiou or Georgiou's Representative, in which case the Subcontractor may be entitled to an extension of time pursuant to clause 9 and will be entitled to payment of its reasonable direct costs of the suspension (but not delay costs).
- (d) Unless otherwise permitted under Legislative Requirements, the Subcontractor must not suspend all or any part of the Subcontract Works unless directed by Georgiou to do so.

33. TERMINATION

33.1 Breach or Default

- (a) Georgiou may give the Subcontractor a written notice to show cause if the Subcontractor breaches any provision of this Subcontract, setting out full particulars of the breach and the particular 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).
- (b) If the Subcontractor fails to show reasonable cause (as determined by Georgiou at 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 hands of the Subcontractor.
- (c) If Georgiou exercises its rights under clause 33.1(b), Georgiou may complete all or part of the 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; and
 - (ii) contract with the Subcontractor's Personnel,
as is reasonably required by Georgiou to facilitate completion of the Subcontract Works.
- (d) When the Subcontract Works taken out of the Subcontractor's hands have been

completed, Georgiou's Representative will assess the cost incurred by Georgiou and such costs will be certified as due and payable to Georgiou from the Subcontractor.

33.2 Insolvency

Either party may immediately terminate this Subcontract by notice to the other, upon the occurrence of any of the following events:

- (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 issue against the party or in relation to any assets of the party; or
- (c) a party or its creditors seek relief under any insolvency law, including the *Bankruptcy Act 1966* (Cth) or the *Corporations Act 2001* (Cth).

33.3 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 of not less than fourteen (14) days.
- (b) If Georgiou exercises its rights under clause 33.3(a) Georgiou may engage a third party to complete all or part of the Subcontract Works which have been terminated for convenience.

33.4 Termination of Head Contract

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

33.5 Costs

- (a) If Georgiou exercises its rights under clause 33.1(b) or 33.2, Georgiou will not be liable to make any further payment to the Subcontractor for the Subcontract Works.
- (b) If Georgiou exercises its rights under clause 33.3(a) or 33.4, Georgiou will pay the Subcontractor for work completed up to the date of termination and any materials reasonably ordered and that the Subcontractor is legally required to accept. The Subcontractor will have no other Claim as a consequence of the termination.

33.6 Effect of termination

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

34. DISPUTE RESOLUTION

- (a) If a dispute or difference arises between Georgiou and the Subcontractor in connection with 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).
- (b) Within fourteen (14) days of a party receiving a Dispute Notice, Georgiou's Representative and the Subcontractor and/or their delegates must meet and attempt to resolve the dispute or difference in good faith.
- (c) If the dispute or difference is not resolved under clause 34(b), then no later than twenty eight (28) days after a party receives a Dispute Notice, the senior executives of each party must meet to negotiate in good faith a resolution of the dispute or difference.
- (d) If the dispute or difference is not resolved under clause 34(c), either party may proceed to litigation, but nothing in this clause 34 prevents a party from seeking urgent interlocutory relief or commencing proceedings where there is a statutory right to do so.
- (e) Each party must continue to perform its obligations under this Subcontract despite the

existence of a dispute or difference.

35. 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 35(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) Notices under clause 35(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 by Georgiou; and
 - (iii) details of the quantum of the Claim showing the calculations and their bases.

36. 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) This Subcontract does not transfer to Georgiou any Intellectual Property Rights in the Subcontractor's Pre-existing Intellectual Property. The Subcontractor grants Georgiou a perpetual, irrevocable, fully paid-up, non-exclusive, transferable licence (including to the Principal) to use and reproduce such rights for the purposes of the Subcontract Works.
- (c) If a third party claims that the Subcontractor's Pre-existing Intellectual Property or the Subcontractor's Materials infringe their Intellectual Property Rights, the Subcontractor must indemnify Georgiou against any loss or damage that Georgiou may directly or indirectly sustain or incur because of the claim.

37. 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 where required by law to disclose any Confidential Information.
- (b) 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 37, Georgiou may by written notice to the Subcontractor require the Subcontractor to return all documents and materials containing or based upon the Confidential Information.
- (c) Upon receipt of a notice under clause 37(b), the Subcontractor must immediately return to Georgiou all documents and materials containing or based upon Confidential Information, including the documents or materials provided to third parties.

38. QUALITY ASSURANCE SYSTEM

- (a) The Subcontractor must:
 - (i) maintain a Quality Assurance System, and if Item 14 of Schedule 1 requires, such Quality Assurance System must comply with and be third party accredited to ISO9001, or such other standard notified in writing by Georgiou to the Subcontractor;

- (ii) implement and carry out the Services in accordance with the Quality Assurance System; and
 - (iii) allow Georgiou access to the Subcontractor's Quality Assurance System at all reasonable times for the purposes of quality monitoring and auditing.
- (b) The Subcontractor's implementation of, or compliance with, the Quality Assurance System does not relieve the Subcontractor of its obligations under this Subcontract.

39. GEORGIU SUPPLIED INFORMATION

- (a) The Subcontractor acknowledges and 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 acknowledges and 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, 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.

40. RECORDS AND INSPECTION

- (a) The Subcontractor must keep Georgiou fully informed in respect of all aspects of its performance of this Subcontract.
- (b) 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.
- (c) The Subcontractor must keep all documents, accounts and records relating to the Subcontract Works at the Site.
- (d) At all reasonable times, Georgiou (by itself or by its agents) will have the right to inspect and review the records and information created by the Subcontractor in the performance of its obligations under this Subcontract, 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.

41. ASSIGNMENT AND SUBCONTRACTING

- (a) The Subcontractor must not, without the prior written consent of Georgiou, subcontract, assign, transfer or charge its rights or obligations under this Subcontract. No consent by Georgiou under this clause 41(a) will relieve the Subcontractor of any of its obligations under this Subcontract.
- (b) Georgiou may, upon written notice to the Subcontractor, assign or novate this Subcontract (including to the Principal) or assign its rights and entitlements under this Subcontract. The Subcontractor must execute any document reasonably required by Georgiou to affect its rights under this clause 41(b) without being entitled to compensation.

42. 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 12 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;
 - (C) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice; and
 - (D) 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.

43. SUBCONTRACTOR AS TRUSTEE

- (a) The following provisions apply if the Subcontractor enters into this Subcontract as a trustee of a trust (Trust).
- (b) The Subcontractor enters into this Subcontract both:
 - (i) as a 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 has 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 will 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.

44. MISCELLANEOUS

44.1 Relationship

The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.

44.2 Entire Agreement

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 to the extent reproduced in this Subcontract.

44.3 Amendment

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

44.4 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.

44.5 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.

44.6 Severability

If part or all of any provision 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.

44.7 Indemnities

All obligations to indemnify under this Subcontract survive the expiry or termination of this Subcontract.

44.8 Counterparts

This Subcontract may be executed in any number of counterparts. All counterparts together make one instrument.

44.9 Further assurance

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

44.10 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), the obligations

and liabilities of those persons is joint and several.

44.11 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.

44.12 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.

44.13 Survival

Without limiting the survival of any clause by operation of law, clauses 5, 28.6, 34 and 37 survive the expiry or termination of this Subcontract.

45. SPECIAL CONDITIONS AND STATE AND TERRITORY SPECIFIC CONDITIONS

45.1 Special Conditions

The Special Conditions are part of this Subcontract.

45.2 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.

46. 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 18 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; or
 - (ii) if no such adjudicators consent to act or no adjudicators are listed in Item 18 of Schedule 1, then the authorised nominating authority shall be the entity stated in Item 18 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 to the Date for Practical Completion;
 - (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 33.3 as if the Subcontract had been terminated for convenience pursuant to that clause; and
 - (vi) in addition to the payments referred to in clause 33.5(b), the Subcontractor is entitled to any payment owed under the Security of Payment Act that is not included in a payment under clause 33.5(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) The Subcontractor agrees that the amount set out in a Payment Certificate given by Georgiou under clause 28.2 (or, if applicable, clause 5 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 28.1 (or, if applicable, clause 5 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 28.1 (or, if applicable, clause 5 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 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 the 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 46(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 46(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; or
 - (vi) a failure by the Subcontractor to comply with this clause 46, as applicable under the relevant Security of Payment Act.
- (m) This clause 46 shall survive the expiry or termination of this Subcontract for any reason.

47. PROPORTIONATE LIABILITY LEGISLATION

- (a) For the purposes of this clause 47, "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) 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) Proportionate Liability Legislation shall not apply to the arbitration of any dispute between the parties.

48. DEFINED TERMS AND INTERPRETATION

48.1 Defined terms

In this Subcontract:

Approvals means any necessary approvals, authorisations, consents, permissions, permits, determinations, certificates, notices, licences, accreditations, certificates, registrations or waivers under any Legislative Requirements or by any Authority.

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 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 12.

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 for:

- (a) the payment of money (including damages);

- (b) an adjustment to the Subcontract Sum; or
- (c) 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.

Confidential Information means any information relating to the business or affairs of Georgiou or the Principal whether provided to or obtained by the Subcontractor prior to this Subcontract being formed, including this Subcontract and information about Georgiou's Personnel or the Principal.

Date for Practical Completion means the date stated in Item 2 of Schedule 1, as adjusted in accordance with clause 9.

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

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 any omissions from the Subcontract Works.

Defects Liability Period means the period stated in Item 11 of Schedule 1.

Delay Event means any delay caused by:

- (a) an act, default or omission of Georgiou, Georgiou's Representative, the Principal, or Georgiou's Personnel (who are not employed by Subcontractor);
- (b) any variations directed by Georgiou pursuant to clause 27;
- (c) suspension under clause 32(a) 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 Personnel;
- (d) any Latent Conditions; or
- (e) any other events specifically prescribed to be Delay Events in 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.

Final Payment Certificate means a certificate issued by Georgiou's Representative in accordance with clause 28.5(b).

Final Payment Claim means a Progress Claim issued by the Subcontractor in accordance with clause 28.5(a).

Georgiou's Representative means the person named in Item 7 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.

Good Industry Practice means the exercise of that degree of skill, diligence, prudence and foresight that would reasonably be expected from a reputable and prudent contractor providing works similar to the Subcontractor's obligations and under conditions comparable to those applying to this Subcontract.

Head Contract means the agreement between Georgiou and the Principal for which the Subcontract Works are required.

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.

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.

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 Condition means physical conditions on or in the Site or its surroundings, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by the Subcontractor at the date of this Subcontract if the Subcontractor had complied with the warranties in clause 1(b).

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.

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.

Payment Certificate has the meaning stated in clause 28.2(a) (or, if applicable, clause 5 of Schedule 2).

Personnel means any employees, subcontractors, consultants, agents and representatives involved either directly or indirectly in the carrying out of the Subcontract Works but a reference to Georgiou's Personnel excludes the Subcontractor and its Personnel;

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

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

- (a) the Subcontract Works are complete except for minor omissions or Defects that the Contractor considers do not prevent the Subcontract Works from being safely used for any purpose required under the Head Contract and the rectification of which will not hinder the convenient use of the Subcontract Works;
- (b) the Subcontractor has cleaned the Site and removed all rubbish and surplus material; and
- (c) all documents in Item 9 of Schedule 1, or other information required to be provided under the Subcontract prior to completion, have been supplied to Georgiou.

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 2A of Schedule 1.

Program means the program for the performance of the Subcontract Works as described in clause 6 and as approved by Georgiou's Representative from time to time.

Progress Claim has the meaning stated in clause 28.1(a) (or, if applicable, clause 5 of Schedule 2).

Proportionate Liability Legislation means:

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

each as amended from time to time.

Quality Assurance System means the 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 works and audit and other critical issues relating to quality assurance.

Schedule of Rates means the schedule of either or both lump sum prices and rates set out or referenced in Schedule 4.

Security means at least two unconditional undertakings with no expiry date which must be in a form and given by a reputable Australian financial institution or insurance company

approved by Georgiou.

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

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 2003* (SA),

each as amended from time to time.

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

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 4 (if applicable) and Schedule 5, but including any additions or deductions which may be required to be made under this Subcontract.

Subcontract Works means the works specified in Schedule 3 and any ancillary work necessary for use of the works.

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

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 Regulation 2012* (Tas);
- (e) if the governing law is the Law of 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 Regulation 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.

48.2 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 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 loss, damage, claims, actions, demands, costs or expenses suffered or sustained because of the event indemnified against;
- (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 there is any inconsistency between a clause of this Subcontract and a provision of a Schedule, the clause of this Subcontract will prevail;
- (j) if anything to be done under the Subcontract falls on a day which is not a Business Day, then it must be done on the next Business Day; and
- (k) where examples of a general term are given, the use of the examples is without limitation to the general term and otherwise 'includes' or 'including' means includes or including without limitation.

48.3 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.

48.4 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 the date of this Subcontract)
Item 2: Date for Practical Completion	[Insert]
Item 2A: Principal	[Insert]
Item 3: Site	[Insert]
Item 4: Approvals not required to be obtained by Subcontractor	[Insert]
Item 5: Total amount of security	[Insert]
Item 6: Insurances	E.g. Workers Compensation, Public liability, Motor vehicle, Plant & machinery, Professional indemnity
Item 7: Georgiou's Representative	[Insert]
Item 8: Liquidated Damages	[Insert] (if nothing stated then general damages for delay apply)
Item 9: Documentary deliverables required to achieve Practical Completion	E.g. deed of release, as-builts, MDR, warranty documents, O&M manuals etc
Item 10: Prescribed date for making Progress Claims	25 th day of the month
Item 11: Defects Liability Period	Commencing at 5pm on the Date of Practical Completion and finishing 12 months from that date
Item 12: Address for Notices	[Insert]
Item 13: Working hours	[Insert] (if nothing stated then 8am to 5pm Monday to Friday)
Item 14: Standard of Quality Assurance System	[ISO9001 will / will not apply.] If nothing is stated, ISO9001 will be deemed to apply.
Item 15: WHS Management Plan	[Applicable / not Applicable] (if neither struck through then 'Applicable')
Item 16: Government Building Training Policy	[Applicable / not Applicable] (if neither struck through then 'Applicable')
Item 17: Codes	National Code [Applicable / not Applicable]
	WA Code [Applicable / not Applicable]
	NSW Code [Applicable / not Applicable]

	Qld Code	[Applicable / not Applicable]
	(if neither struck through then 'Applicable')	
Item 18: 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</i> (Qld)"</p>	
Item 19: Project Bank Account required	<p>[Yes / No]</p> <p>(Delete if not applicable. If neither deleted then not applicable).</p>	

Schedule 2 - State and Territory Specific Conditions

1. NEW SOUTH WALES

1.1 Contractors Debts Act 1997 (NSW)

Georgiou may deduct from any payment otherwise due and payable 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.

1.2 NSW Code of Practice and Implementation Guidelines

This clause 1.2 applies if stated in Item 17 of Schedule 1.

(a) 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.

(b) Primary obligation

- (i) 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.
- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) The Subcontractor must ensure that all subcontracts with Sub-subcontractors impose obligations on all Sub-subcontractors equivalent to the obligations under this clause.

(c) Access and information

- (i) The Subcontractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Sub-subcontractors and related entities.
- (ii) The Subcontractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (A) enter and have access to sites and premises controlled by the Subcontractor, including but not limited to the Site;
 - (B) inspect any work, material, machinery, appliance, article or facility;

- (C) access information and documents;
- (D) inspect and copy any record relevant to the project;
- (E) have access to personnel; and
- (F) interview any person,

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

- (iii) 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.

(d) Sanctions

- (i) 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.
- (ii) 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.
- (iii) Where a sanction is imposed:
 - (A) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (B) the State of New South Wales (through its agencies, Ministers and the CCU) is entitled to:
 - (1) record and disclose details of noncompliance with the NSW Code or NSW Guidelines and the sanction; and
 - (2) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Subcontractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

(e) Compliance

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

1.3 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 1.1(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 1.3(a) and 1.1(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.

2. VICTORIA

2.1 Domestic Building Contracts Act Warranties

- (a) This clause 2 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 in the *Domestic Building Contracts Act 1995* (Vic), which forms part of the Subcontract Works will be suitable for occupation.

2.2 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.

3. QUEENSLAND

3.1 QBCC Act

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:

- (a) pursuant to section 67L of the, the full amount of the Security required under this Subcontract are for the financial protection of Georgiou; and
- (b) where section 67N of the QBCC Act applies and to the extent that the Subcontract provides that the total of all security held by Georgiou exceeds 2.5% of the Subcontract Price 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 works under this Subcontract or any breach of this Subcontract by the Subcontractor.

3.2 QLD Code of Practice and Implementation Guidelines

This clause 3.2 applies if stated in Item 17 of Schedule 1.

- (a) General
 - (i) This clause 3.2 applies if stated in Item 17 of Schedule 1
 - (ii) 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>.
- (b) Primary obligation
 - (i) 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.
 - (ii) 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.

- (iii) 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.
 - (iv) 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.
 - (v) 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.
 - (vi) The Subcontractor must ensure that all subcontracts with Sub-subcontractors impose obligations on all Sub-subcontractors equivalent to the obligations under this clause.
- (c) Access and information
- (i) The Subcontractor must maintain adequate records of compliance with the Queensland Code and Queensland Guidelines by it, its Sub-subcontractors and related entities.
 - (ii) The Subcontractor must allow, and take reasonable steps to facilitate, Queensland Government authorised personnel (including personnel of the BCCB) to:
 - (A) enter and have access to sites and premises controlled by the Subcontractor;
 - (B) inspect any work, material, machinery, appliance, article or facility;
 - (C) access information and documents;
 - (D) inspect and copy any record relevant to the project;
 - (E) have access to personnel; and
 - (F) interview any person,as is necessary for the authorised personnel to monitor and investigate compliance with the Queensland Code and Queensland Guidelines, by the Subcontractor, its Sub-subcontractors and related entities.
 - (iii) 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.
- (d) Sanctions
- (i) The Subcontractor warrants that at the time of entering into this Subcontract, neither it, nor any of its related entities, are subject to a sanction in connection with the Queensland Code or Queensland Guidelines that would have precluded it from tendering for work to which the Queensland Code or Queensland Guidelines apply.
 - (ii) If the 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.

- (iii) Where a sanction is imposed:
 - (A) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (B) the State of Queensland (through its agencies, Ministers and the BCCB) is entitled to:
 - (1) record and disclose details of non-compliance with the Queensland Code or Queensland Guidelines and the sanction; and
 - (2) take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Subcontractor, or its related entities, in respect of work to which the Queensland Code and Queensland Guidelines apply.

(e) Compliance

- (i) 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.
- (ii) 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 the 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.
- (iii) Where a change to the 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:
 - (A) the circumstances of the proposed change;
 - (B) the extent to which compliance with the Queensland Code and Queensland Guidelines will, or is likely to be, affected by the change; and
 - (C) what steps the 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 (5) Business Days of receiving notice.

WESTERN AUSTRALIA

If 'Yes' is stated in Item 19 of Schedule 1, then clauses 28.1 to 28.4 of the General Conditions are deleted and replaced with clauses 5 and 6 of these Specific Conditions:

4. WA BUILDING AND CONSTRUCTION INDUSTRY CODE OF CONDUCT

This clause 4 applies if stated in Item 17 of Schedule 1.

4.1 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.

4.2 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.

4.3 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.

5. PAYMENT

5.1 Definitions

In this clause 5, the following terms have the following meanings:

Bank means a bank (operating in Australia).

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

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

Opt-in Sub-subcontractor means:

- (a) any person that is a Sub-subcontractor where the total aggregate value of work, services or supply performed by the Sub-subcontractor in connection with the 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 11, which contains a breakdown of the total amount identified in the payment certificate and sets out:

- (a) the amounts payable to each of the Sub-subcontractors under their relevant subcontracts;
- (b) any allowable Retention Amounts to be retained by the 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 11, 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 11, 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 11, which sets out the amounts payable to each of the Sub-subcontractors under their relevant subcontract and which complies with the requirements of this 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 11.

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

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.

5.2 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, 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 12 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.

5.3 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.

5.4 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.

5.5 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.

5.6 Progress claims

- (a) At the times for progress claims stated in Item 10 of Schedule 1, upon issue of a Certificate of Practical Completion and within the time prescribed by clause 28.5 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 5.6(b) or 5.6(c) of these Specific Conditions:
 - (i) Georgiou's Representative may, at its sole and absolute discretion, complete any missing information or return the incomplete Progress Claim to the Subcontractor and notify the Subcontractor that clauses 5.6(b) or 5.6(c) applies;
 - (ii) Georgiou's Representative is not obliged to undertake any assessment of that purported Progress Claim until a Progress Claim has been served fully in compliance with all matters referred to in clauses 5.6(b) or 5.6(c);
 - (iii) Georgiou's Representative is not obliged to make any payment in respect of that purported Progress Claim until a Progress Claim has been served fully in compliance with all matters referred to in clauses 5.6(b) or 5.6(c); and
 - (iv) where Georgiou's Representative returns an incomplete Progress Claim to the Subcontractor, the Subcontractor shall submit a Progress Claim that complies with clauses 5.6(b) or 5.6(c) within the time notified by Georgiou's Representative or, where no time is notified, within forty eight (48) hours.
- (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.

5.7 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 5.7 of these Specific Conditions or any Final Payment Certificate issued pursuant to clause 28.5 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 or 27 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.

5.8 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 the

Payment Certificate to which the Progress Payment Instruction(s) relate;

- (ii) provide a Payment Report to Georgiou;
- (iii) if requested by Georgiou, provide to Georgiou invoices issued by any Sub-subcontractor in relation to the Progress Claim; and
- (iv) provide the Progress Payment Instruction(s) to the Bank where the Project Bank Account is held.

5.9 Shortfall of monies

To the extent that:

- (a) the total amount due and owing from (or otherwise payable by) the 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.

5.10 Payment

- (a) Following receipt by Georgiou of a properly completed and valid Progress Payment Instruction(s) and Payment Report, and providing Georgiou has received the statutory declarations required in compliance with clause 6 of these Specific Conditions Georgiou must (subject to the other provisions of 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.

5.11 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 6 of these Specific Conditions, or if the statutory declaration supplied pursuant to clause 6 of these Specific Conditions identifies, or Georgiou reasonably believes that:
 - (i) the Progress Payment Instructions are not true and accurate, do not properly allocate amounts payable to Sub-subcontractors pursuant to their 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 Sub-subcontractors and the calculations set out in the Progress Payment Instructions.
- (b) Without limiting its right to withhold payment, Georgiou may (in its sole discretion) direct the 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.

5.12 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 6 of these Specific Conditions does not prejudice the right of either party to dispute under clause 34 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 6 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 28.5 of the General Conditions.

5.13 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 clause 5 of the General Conditions 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 unfixated plant and materials which is not incorporated in the Subcontract Works.

5.14 Retention Release Events

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

5.15 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.

6. PAYMENT OF WORKERS AND SUB-SUBCONTRACTORS

- (a) Before Georgiou makes a payment into the Project Bank Account, Georgiou may, not less than 5 days before a Payment Certificate is due, in writing request the 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 5.8 of these Specific Conditions. Such statutory declaration shall be in the form stated in Schedule 13.

- (c) The statutory declaration referred to in clause 6(b) of these Specific Conditions must not be signed and dated earlier than the date of the relevant Progress Payment Instruction(s).
- (d) If the Subcontractor fails within 5 days after a request by Georgiou under clause 6(a) of these Specific Conditions 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 6(b) of these Specific Conditions and notwithstanding clause 5 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 6(a) or 6(b) of these Specific Conditions 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.

7. TERMINATION

Clause 33.1(a) of the General Conditions is deleted and replaced with the following:

33.1 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.

8. 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>

The Subcontractor's obligation to comply with the Government Building Training Policy is stated in Item 16 of Schedule 1.

Schedule 3 - Scope of Work

[Insert scope of works. Delete this note]

Schedule 4 - Schedule of Rates

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

Schedule 5- Subcontract Sum Breakdown

Subcontract Sum

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

Subcontract Sum Breakdown

[Insert breakdown of Subcontract Sum. Refer to Schedule 4 if rates apply. Delete this note.]

Schedule 6 – 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]) (Subcontractor)

In favour of [Insert Georgiou Entity] (Georgiou)

For the Subcontract Number on the Project described as .

NOW THIS DEED WITNESSES as follows:

- (a) Reconciliation of account:
- (i) Original Subcontract Sum
[Insert]
 - (ii) Variations to the Subcontract
[Insert]
 - (iii) Adjusted Subcontract Sum
[Insert]
 - (iv) Less Security (if any)
[Insert]
 - (v) Less previous payments
[Insert]
 - (vi) Less monies retained for rectification excluding minor omissions and minor Defects
[Insert]
 - (vii) Balance due
[Insert]
- (b) Subject to clauses (c), (d) and (e) below, Georgiou acknowledges that:
- (i) \$[Insert] (the balance due as indicated in (vii) above); and
 - (ii) \$[Insert] (50% of the Security described in (iv)).
- (c) are due to the Subcontractor upon the later of the issue of the Certificate of Practical Completion and the receipt by Georgiou of a signed copy of this Deed by the Subcontractor.
- (d) The Subcontractor agrees that 50% of the Security described in (iv) above is due for release upon expiration of Final Completion subject to all minor omissions and Defects having been rectified to the satisfaction of Georgiou.
- (e) 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 the expiry of the Defects Liability Period, in accordance with the terms of the Subcontract.
- (f) 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 any monies included in clauses (c), (d) and (e) not required to be paid at the date of this Deed.

EXECUTED unconditionally as a deed

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

Signature of director ←

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

Name of director (print)

Name of director/company secretary (print)

Executed by [Insert Georgiou Entity]

Signature of Authorised Person ←

Signature of Authorised Person ←

Name of Authorised Person (print)

Name of Authorised Person (print)

Schedule 7 - Warranty Deed

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

Schedule 8 - Subcontractor Statement (NSW)

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

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

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

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

Subcontractor: ABN:
(Business Name)

of
(Address of subcontractor)

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

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

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

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

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

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

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

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

Notes

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

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

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

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

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

Statement Retention

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

Offences in respect of a false Statement

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

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

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

Further Information

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

Schedule 9 - 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* (Cth)

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 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;
 - (i) The Subcontractor acknowledges and agrees that Georgiou is not obliged to and will not issue an RCTI in respect of a Supply until:
 - (ii) a Payment Certificate has been issued and Georgiou is obligated to pay an amount to the Subcontractor under clause 28.3 (or, if applicable, clause 5 of Schedule 2) of the Subcontract;
 - (iii) the Subcontractor has provided the necessary documentation to allow an RCTI to be raised.
- (f) The Subcontractor's ABN is [Insert]
- (g) Georgiou may at its sole discretion, by written notice to the Subcontractor, terminate this 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.
- (h) 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 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 Supplier:

In the presence of:

Signature ←

Signature of Witness ←

Name

Name of Witness

Schedule 10 - Statutory Declaration

STATUTORY DECLARATION BY SUBCONTRACTOR

Contract Number:

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 [Insert] in respect of their part of the work under the Contract.

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

I, (Name) of (Address)

(Occupation),

do solemnly and sincerely declare as follows:

- (i) That all employees who are, or have been engaged, by the Subcontractor on the Project have been paid their full remuneration for work done in connection with the Subcontract during the Payment Period. Superannuation and redundancy payments (if payable) have also been paid in full to the relevant person, trustee or entity for the Payment Period. All payments have been made in accordance with the applicable award or industrial agreement;
- (ii) The provisions of the *Construction Industry Long service Leave Act 1997* (Vic) as amended, have been fully complied with;
- (iii) All consultants, suppliers and secondary subcontractors who are, or at any time have been, engaged by the Subcontractor on the Project have been paid in full all amounts that have become payable to them under the terms of their agreement with the Subcontractor;
- (iv) All amounts accrued, due and payable, and which have been included in the calculation of previous payments by Georgiou to the Subcontractor, have been duly paid;
- (v) A health and safety plan and safe work method statements have been prepared by the Subcontractor and reviewed to ensure they cover all activities to be carried out during the next payment period in accordance with the *Occupational Health and Safety Act 1985* (Vic);
- (vi) The provisions of the Code have been fully complied with; and
- (vii) I further declare that I am authorized to make this declaration on behalf of the above named Subcontractor.

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.

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

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the **[Insert the relevant legislation listed above for the State in which the Site is located]**

Declared at on
[place] *[date]*

.....
[signature of declarant]

In the presence of an authorised witness:

....., a Justice of the Peace / Legal Practitioner /
[name of authorised witness] Commissioner for Declarations

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

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 Declarations Act 2005* (Cth)

at

..... [] by []

{Signature of person making the declaration}

{date}
in the presence of -

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

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

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

I acknowledge that this declaration is true and correct, and I make it with the understanding and belief that a person who makes a false declaration is liable to the penalties of perjury.

Declared at
this day of.....20

before me:

Signature of authorised witness:.....

Signature of declarant:

Name of authorised witness:

Address of authorised witness:.....

Capacity in which authorised witness
takes the statutory declaration

Schedule 11- PBA Trust Deed Poll Forms

Opt-in Notice

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

and

[the Subcontractor] (the Subcontractor),

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

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

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

Date:

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

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

[Insert name of Project]

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

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

Our bank account details are as follows: Name

[Account Name]

Short form name

[Opt-in Sub-subcontractor]

ABN

[Opt-in Sub-subcontractor ABN]

Bank Details

BSB:

[Opt-in Sub-subcontractor BSB]

Account number:

[Opt-in Sub-subcontractor Account number]

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

This notice is governed by the Laws of Western Australia.

SIGNED by acting through a duly authorised representative:

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

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

PPI – Consolidated Allocation

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

The PPI - Consolidated Allocation must:

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

PPI - Subcontractor Allocation

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

The PPI - Subcontractor Allocation must:

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

PPI - Sub-subcontractor Allocation

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

The PPI - Sub-subcontractor Allocation must:

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

PPI - Retention Allocation

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

The PPI - Retention Allocation must:

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

Subcontractor Deposit Instruction

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

A SDI must:

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

Retention Release Instruction

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

An RRI must:

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

Schedule 12- Form of Release - Deed Poll

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

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

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

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

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

Executed by the Secured Party as a deed poll

[Insert execution clause of Secured Party]

Secured Party Contact Details

Phone Number: [●]

Email address: [●]

Reference Number: [●]

THIS DEED POLL is made on [year]

BY:

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

IN FAVOUR OF:

each First Creditor (as defined below).

RECITALS:

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

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

Creditor means the First Creditor or the Second Creditor.

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

Georgiou means [insert name of Subcontractor]

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

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

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

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

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

PPS Law means:

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

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

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

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

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

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

Security means, in respect of a Creditor:

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

Security Interest means any:

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

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

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

1.2 Interpretation

In this document:

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

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

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

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

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

1.3 Creditor obligations

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

2. PRIORITY ARRANGEMENTS

2.1 Consent

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

2.2 Order of priority

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

2.3 Application of money and proceeds

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

2.4 Contingent liabilities

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

2.5 Priority arrangements paramount

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

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

2.6 Continuation

The priority arrangements in this document will continue until:

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

2.7 Other property

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

3. PPS LAW

3.1 Section 61

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

3.2 Notices under Chapter 4

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

3.3 Amounts under section 127(6)

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

4. DEALINGS BETWEEN CREDITORS

4.1 Distribution

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

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

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

4.2 Dealing with a Security

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

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

4.3 Exercise of Powers and enforcement

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

5. GENERAL PROVISIONS

5.1 Governing law and jurisdiction

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

5.2 Irrevocable

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

5.3 Enforceability

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

Appendix 1 - Securities and Secured Property

First Creditor's Securities

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

Second Creditor's Securities

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

Secured Property

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

EXECUTED as a deed poll.

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

[Insert Second Creditor Execution panel]

Second Creditor

Schedule 13 - Statutory Declaration

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

Statutory Declaration

I, Name of Address

Occupation

Sincerely declare as follows:

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

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

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

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

Location

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

by:

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

.....
[Signature of authorised witness]

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

Schedule 14- Special Conditions

[Insert other special conditions as applicable. Delete this note.]

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