

Subcontract for minor works/services (WA)

[Insert project number and name]

Select Georgiou Entity(Georgiou)

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

Project Document #

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Details

Form of Agreement

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

BETWEEN: **Select Georgiou Entity**
68 Hasler Rd, Osborne Park, Western Australia 6017
(Georgiou)

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

Background

A *Alternative 1*

Georgiou has been engaged to do works under the Head Contract relating to the Project and wishes to engage the Subcontractor to perform the work under the Subcontract.

Alternative 2

Georgiou wishes to engage the Subcontractor to perform the work under the Subcontract.

B The Subcontractor agrees to enter into this Subcontract to perform the work under the Subcontract.

Agreement

The Obligations of the Parties

- 1) The Subcontractor agrees to perform the work under the Head Contract in accordance with this Subcontract for the Subcontract Price of \$.
- 2) Georgiou agrees to pay the Subcontractor the Subcontract Price in accordance with the Subcontract.

The Subcontract Documents

The documents that comprise the Subcontract are:

- 1) This Form of Agreement;
- 2) Special Conditions;
- 3) The General Conditions
- 4) Schedules 1-10, excluding any Special Conditions
- 5) [Insert other documents e.g. the Preliminaries, Specifications, Drawings; and Other documents].

Precedence

In the event of any ambiguity, discrepancy or conflict occurring between the documents that comprise the Subcontract, the order of precedence is as set out above, from highest to lowest.

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. PERFORMANCE OF WORK

1.1 Performance

- 1) The Subcontractor must complete the work under the Subcontract.
- 2) Georgiou must pay the Subcontractor:
 - I. for work which the parties have agreed a lump sum, the lump sum;
 - II. for work which the parties have agreed rates under the Schedule of Rates, the sum ascertained by multiplying the measured quantity of each item of work carried out by the agreed rate in the Schedule of Rates for that item,
- 3) Adjusted by any additions or deductions made under the Subcontract.

1.2 Schedule of Rates

- 1) Quantities in a Schedule of Rates are estimated quantities only.
- 2) If the actual quantity of an item to be performed by the Subcontractor is greater or less than the quantity shown in the Schedule of Rates, the Subcontractor is required to do the greater or lesser quantity without any direction from Georgiou's Representative and the Schedule of Rates applies to valuation of such work.
- 3) The Subcontractor is not entitled to make any Claim against Georgiou if the items of work or quantities are incorrect, including where there is:
 - I. an incorrect quantity;
 - II. an item which should not have been included; or
 - III. an item which was omitted but should have been included.

1.3 Time for commencement

- 1) The Subcontractor must commence the work under the Subcontract on the Commencement Date.
- 2) The Subcontractor must complete the Works by the Date for Practical Completion.

2. WARRANTIES

The Subcontractor represents and warrants that:

- 1) it and its employees and subcontractors will at all times be suitably qualified, certified, licensed, skilled and experienced and exercise due care, skill, timeliness and diligence in undertaking the Works;
- 2) the work under the Subcontract will be performed in a proper and workmanlike manner;
- 3) it has all necessary resources available to it to undertake its obligations under the Subcontract;
- 4) the work under the Subcontract is capable of being built as described in the Subcontract and accepts responsibility for overcoming any issues relating to methods of work or similar matters an experienced and competent Subcontractor ought reasonably to have anticipated;
- 5) the work under the Subcontract will be done with due diligence and expedition and within the times stated in the Subcontract;
- 6) it has satisfied itself as to the correctness and sufficiency of the Subcontract Price in relation to all of its obligations under the Subcontract;
- 7) prior to entering into the Subcontract, it has conducted a careful and complete inspection and assessment of the Site and its surroundings and accepts the state and condition of the Site and all risks associated with conducting the work under the Subcontract on, under or adjacent to the Site;
- 8) the Works will in every respect be fit for the purposes made known to the Subcontractor and which could be reasonably inferred; and
- 9) it is and will remain the holder of all licences and registrations required to perform the Works and will promptly notify Georgiou of any change to its licensing or registration status.

The Subcontractor acknowledges that Georgiou has entered into this Subcontract in reliance on the representations and warranties given in this clause.

3. ACCESS AND COOPERATION

- 1) Georgiou will allow the Subcontractor access to those parts of the Site sufficient for the Subcontractor to comply with its obligations under the Subcontract.

- 2) The Subcontractor is not entitled to enter any part of the Site without the prior written consent of Georgiou's Representative.
- 3) The Subcontractor agrees it will not have sole or exclusive possession of any part of the Site and its access may be non-continuous or hindered by other works.
- 4) 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.
- 5) Other than an extension of time or additional direct costs under clauses 17 and 19 of the Subcontract, the Subcontractor is not entitled to any other Claim against Georgiou in respect of any delay in provision of access to the Site.

4. APPROVALS AND LEGISLATIVE REQUIREMENTS

The Subcontractor must, without being entitled to make any Claim:

- 1) obtain all Approvals except for those Approvals listed in item 4 of Schedule 1 - Subcontract Particulars; and
- 2) comply with all Legislative Requirements relating to the work under the Subcontract.

5. CODE COMPLIANCE

- 1) The Subcontractor must comply with the *Building Code 2013* and Guidelines (Building Code and Guidelines). Copies of the Building Code are available at www.deewr.gov.au/BuildingCode.
- 2) Compliance with the Code shall not relieve the Subcontractor from responsibility to perform the Subcontract, or from liability for any defect in the works arising from compliance with the Code.
- 3) Where a change in the Subcontract is proposed and that change would affect compliance with the Code, the Subcontractor must submit a report to the Commonwealth specifying the extent to which the Subcontractor's compliance with the Code will be affected.
- 4) The Subcontractor must maintain adequate records of the compliance with the Code by:

- I. the Subcontractor;
 - II. its Subcontractors;
 - III. its consultants; and
 - IV. its Related Entities (refer Section 8 of the Building Code)
- 5) If the Subcontractor does not comply with the requirements of the Code in the performance of this Subcontract such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group 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 in respect of work funded by the Commonwealth or its agencies.
 - 6) 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.
 - 7) 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 and Workplace Relations; or
 - II. the Subcontractor or consultant has had an adverse Court or Tribunal decision (not including decisions under appeal) for a breach of 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.

8) The Subcontractor agrees to require that it and its Subcontractors or consultants and its related entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, with access to:

- I. inspect and work, material, machinery, appliance, article or facility;
- II. inspect and copy any record relevant to the Project the subject of this Subcontract; and
- III. interview any person as is necessary to demonstrate its compliance with the Code.

9) Additionally, the Subcontractor agrees that the Subcontractor and its related entities will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the fair Work Building Industry Inspectorate, to produce a specified document within a specified period, in person, by fax or by post.

10) The Subcontractor must ensure that all subcontracts impose obligations on sub subcontractors equivalent to the obligations under these Subcontract Clauses.

11) The Subcontractor shall, when raising purchase orders or minor contracts of \$25,000 or less, include the following clause within any purchase orders:

"The Building Code 2013 and Guidelines (or if a later version applies, then refer to the later version) (the Guidelines), apply to this project. By agreeing to undertake the works, you will be taken to have read and to agree to comply with the Building Code 2013 and Guidelines."

12) The Subcontractor must, and must ensure that its subcontractors, consultants and employees undertaking work on the Project, notify the Code Monitoring Group Secretariat of any alleged breaches, voluntary remedial action taken or other Code related matters within 21 days of becoming aware of the alleged breach.

6. DOCUMENTS AND INFORMATION

6.1 Documents

The Subcontractor agrees that it will keep all documents relating to the work under the Subcontract at the Site and will make them available to Georgiou, Georgiou's Representative or any person Georgiou nominates.

6.2 Georgiou-Supplied Information

The Subcontractor and Georgiou agree:

- 1) that Georgiou-Supplied Information:
 - I. has been or will be provided only for the Subcontractor's convenience; and
 - II. has not been and will not be relied upon by the Subcontractor for any purpose.
- 2) The Subcontractor must satisfy itself as to the accuracy, completeness and adequacy of the Georgiou-Supplied Information.
- 3) The Subcontractor has no Claim arising out of or related to any Georgiou-Supplied Information.

6.3 Discrepancies

- 1) If an inconsistency, ambiguity or discrepancy between the documents forming the Subcontract exists, the Subcontractor must immediately notify Georgiou's Representative of such ambiguity, inconsistency or discrepancy.
- 2) Georgiou's Representative may direct the interpretation to be adopted by the Subcontractor. The Subcontractor is not entitled to make any Claim in connection with the direction.

7. SECURITY

- 1) Security must be in the form of retention monies or an unconditional undertaking

- from an institution approved by Georgiou with a value of 5% of the Subcontract Price. Security is provided for the purposes of ensuring due and proper performance of the Subcontract by the Subcontractor.
- 2) If the security is in the form of an unconditional undertaking, the Subcontractor must, as a precondition to being entitled to progress payments under the Subcontract, provide the Security within 14 days of the Commencement Date by way of 2 unconditional bank guarantees in a form acceptable to Georgiou each with a value of 2.5% of the Subcontract Price.
 - 3) The Subcontractor must pay all stamp duty and other taxes payable in relation to the Security.
 - 4) Georgiou may have recourse to the Security if it believes (acting reasonably) that:
 - I. the Subcontractor has breached or failed to comply with any of its obligations under the Subcontract;
 - II. Georgiou is entitled to claim payment of monies from the Subcontractor in relation to the work under the Subcontract; or
 - III. Georgiou is entitled to reimbursement of any monies paid to or to be paid to others under or in connection with the Subcontract.
 - 5) The Subcontractor will have no Claim against Georgiou for any loss or damage suffered by recourse to the Security under this clause.
 - 6) The Subcontractor indemnifies Georgiou in relation to any costs, losses or damages incurred as a result of defending or responding to any steps taken to injunct or otherwise restrain Georgiou from having recourse to the Security.
 - 7) If the Security is in the form of unconditional undertakings, within 30 days after the Date of Practical Completion, Georgiou must release 50% of any retention or security held under clause 7, 1) provided all defects have been completed to the satisfaction of the Georgiou Representative.
 - 8) Georgiou will then release the balance of the retention of the security held under clause 7, 1) when the Subcontractor has, in Georgiou's opinion complied with all its obligations under the Subcontract, and the defects liability period under the Head

Contract has expired whichever is the latter.

- 9) Georgiou will not hold on trust the Security or any proceeds received from Georgiou's recourse to the Security under this clause.

8. RESPONSIBILITY FOR THE WORKS

- 1) The Subcontractor is responsible for the care and protection of the whole of the work under the Subcontract from the Commencement Date to 5pm on the Date of Practical Completion.
- 2) After achieving Practical Completion, the Subcontractor remains responsible 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.
- 3) If loss or damage occurs to the Works, the Subcontractor must at its own cost rectify the loss or damage except where such loss or damage was directly caused by a negligent act or omission of Georgiou.

9. PROTECTION OF PEOPLE AND PROPERTY

- 1) The Subcontractor will provide all things and take all measures necessary to protect people and property on or adjacent to the Site.
- 2) The Subcontractor must ensure that no damage, nuisance or inconvenience (by dust, dirt, water or noise exceeding limits set by AS2436-2010) is caused to anyone lawfully on or adjacent to the Site.
- 3) The Subcontractor must ensure that its employees maintain good standards of behaviour on Site.
- 4) The Subcontractor must ensure that its employees do not engage in offensive behaviour or language on the Site. Georgiou's Representative may direct the immediate removal of any person who has engaged in offensive behaviour or language while on Site. The Subcontractor is not entitled to make any Claim in relation to such a direction.
- 5) If urgent action is necessary to protect the Works, other property or the safety of people and the Subcontractor fails to take the necessary action, Georgiou may, exercising an absolute discretion and without prior notice, take the urgent

action required and the costs of that action will be a debt due from the Subcontractor to Georgiou.

10. INDEMNITIES

The Subcontractor indemnifies Georgiou against any Claim or loss or damage which Georgiou is liable for in respect of:

- 1) death, disease or illness of, or personal injury to, persons;
- 2) loss of, or damage to, any real or personal property;
- 3) any breach of the Subcontract by the Subcontractor,

to the extent that the Claim or loss or damage arises in any way in connection with the Subcontractor's performance or non-performance of the work under the Subcontract except to the extent such loss or damage was directly caused by an act or omission of Georgiou.

11. INSURANCES

From the Commencement Date, the Subcontractor must take out and maintain during the Subcontract the insurances set out in Item 6 of Schedule 1 - Subcontract Particulars for the prescribed periods with insurers approved by Georgiou. Prior to the Commencement Date the Subcontractor must provide evidence to Georgiou of its compliance with this clause.

Any public liability insurance policies must extend to cover Georgiou for its vicarious liability as principal arising from the Subcontractor's performance of the work under the Subcontract and must:

- 1) include a cross-liability clause
- 2) include a waiver of subrogation in favour of Georgiou and its directors, officers and employees ; and
- 3) Despite anything to the contrary elsewhere in the policy, not call into contribution any public liability policy held by the Principal or Georgiou, for any claim under the Subcontractor's public liability policy.

Any employers' indemnity insurance must, if permitted by law:

- 1) contain a principal's indemnity extension for both statutory and common law liability in favour of Georgiou and its directors, officers and employees; and
- 2) contain a waiver of subrogation in respect of both statutory and common law liability

in favour of Georgiou and its directors, officers and employees.

As soon as practicable, the Subcontractor must inform Georgiou's Representative in writing of any occurrence that may, or which the Subcontractor ought reasonably expect may, give rise to an insurance claim under any policy of insurance.

The Subcontractor must ensure that it:

- I. does not do anything which prejudices any insurance;
- II. if necessary, rectifies anything which might prejudice any insurance;
- III. reinstates a policy if it lapses;
- IV. does not cancel, vary or allow to lapse an insurance policy;
- V. immediately notifies Georgiou's Representative of any event which may result in an insurance policy lapsing or being cancelled or being rendered ineffective; and
- VI. discloses full and true information to the insurer of all matters and things relevant to the insurance.

12. REPRESENTATIVES AND DIRECTIONS

- 1) Georgiou's Representative is the person named in item 7 of Schedule 1 - Subcontract Particulars or the delegate of that person so notified by Georgiou's Representative to the Subcontractor.
- 2) Georgiou's Representative has full authority to act on behalf of Georgiou in connection with the Subcontract.
- 3) The Subcontractor must comply with any direction given by Georgiou's Representative.

13. INDUSTRIAL RELATIONS

- 1) The Subcontractor must comply with all applicable Legislative Requirements concerning industrial relations and employment conditions including the Code.
- 2) From the Commencement Date, the Subcontractor agrees, to the extent permissible under applicable Legislative Requirements, to comply with and be bound by the provisions of any award, enterprise/certified/workplace agreement, project agreement applicable to the Head Contract Works and the work under the Subcontract.

- 3) The Subcontractor must take all steps and measures to avoid and to minimise the consequences of industrial disputes affecting the work under the Subcontract.
- 4) The Subcontractor must promptly notify Georgiou's Representative of any industrial dispute that arises or is likely to arise among its employees or between its employees and the employees of other Subcontractors or the Principal's employees.
- 5) The Subcontractor must, during any industrial 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.
- 6) The Subcontractor is not entitled to make any Claim in relation to any costs, loss or damage incurred in complying with this clause.
- 7) If the Subcontractor breaches this clause and the breach results either directly or indirectly, in causing or contributing to any industrial action, the Subcontractor will indemnify Georgiou for any costs, losses or damage incurred as a result of the breach.

14. OCCUPATIONAL HEALTH, SAFETY AND ENVIRONMENT

The Subcontractor must:

- 1) comply, and ensure that all persons for whom it is responsible, comply with all Legislative Requirements concerning Workplace Health and Safety and all Environmental Laws;
- 2) at its own costs, comply with all reasonable directions of Georgiou's Representative in relation to any potential or perceived breach of any Legislative Requirements concerning workplace health and safety and any Environmental Laws;
- 3) maintain appropriate safety precautions and programs so as to prevent injury to persons or damage to property on or adjacent to the Site and the Works;
- 4) ensure that all work under the Subcontract is executed in a manner that ensures the health and safety of persons present on or adjacent to the Site;
- 5) consult with and otherwise provide all information required by Georgiou and

others who are on or adjacent to the Site and the Works to enable them to ensure that they can comply with all Legislative Requirements concerning workplace health and safety and all Environmental Laws; and

- 6) Comply at all times with Georgiou's HSEQ Requirements as described, but not limited to, those in the Special Conditions.

15. CONSTRUCTION

The Subcontractor must:

- 1) construct the Works using Good Industry Practice;
- 2) use materials:
 - I. as described in the Subcontract; or
 - II. if not so described, of the best quality available which are fit for their intended purpose.
- 3) ensure that the Works comply with all of the requirements of:
 - I. the Subcontract;
 - II. directions from Georgiou's Representative;
 - III. all Legislative Requirements; and
- 4) the Building Code of Australia and all standards and codes published by Standards Australia;
- 5) carry out the work under the Subcontract in accordance with the requirements of this Subcontract;
- 6) supply everything necessary for the proper performance of its obligations under the Subcontract;
- 7) supply all properly licensed Subcontractor's Plant which is suitable and fit for its intended purposes in connection with the work under the Subcontract;
- 8) not remove any items of Subcontractor's Plant from the Site without the written approval of Georgiou's Representative;
- 9) set out the Works in accordance with the Subcontract. The Subcontractor indemnifies Georgiou against any Claims, loss or damage arising from:
 - I. any rectification works required by reason of the work under the Subcontract being incorrectly set out on the Site; and
 - II. any encroachments by the Works on any adjoining site or property;

- 10) If the Subcontractor damages public utilities and services on or adjacent to the Site, promptly make good the damage and pay any required compensation. If the Subcontractor fails to do so, Georgiou may in its absolute discretion and without prior notice, make good the damage or pay any compensation and recover any costs, losses or damages incurred as a debt due from the Subcontractor;
- 11) Indemnify Georgiou against any loss, damage or Claim arising out of or in connection with the damage to public utilities and services on or adjacent to the Site.

16. SUBCONTRACT PROGRAM

- 1) Within 14 days before commencement of the work under the Subcontract, the Subcontractor must provide a proposed Construction Program setting out the dates by which the various stages of the work under the Subcontract are to be completed for Georgiou's Representative's approval.
- 2) If Georgiou's Representative disagrees with the proposed Construction Program, the Subcontractor must submit an amended Construction Program at its own cost for Georgiou's Representative's approval within 3 Business Days.
- 3) Upon approval in writing by Georgiou's Representative, the proposed Construction Program becomes the Subcontract Program and is deemed to be a Subcontract document. The Subcontractor must comply with the Subcontract Program in undertaking the work under the Subcontract.
- 4) Float is available for either party's benefit until it is depleted.

17. EXTENSION OF TIME

- 1) The Subcontractor is only entitled to an extension of time to the Date for Practical Completion if the Subcontractor demonstrates to the reasonable satisfaction of Georgiou's Representative that:
 - I. the Subcontractor is or will be delayed in reaching Practical Completion by the Date for Practical Completion by a Delay Event;
 - II. the Subcontractor has complied with all of the notice and information requirements set out in subclause (2) of this clause; and

III. The Subcontractor has taken all reasonable steps to minimise the effect of the Delay Event on the work under the Subcontract.

- 2) The Subcontractor must comply with the following notice and information requirements in relation to a Delay Event:
 - I. Within 5 days after the Subcontractor becomes aware or ought reasonably to have become aware of a Delay Event, the Subcontractor must give a written notice to Georgiou's Representative setting out full particulars of the Delay Event and its estimated duration.
 - II. With 28 days of a Delay Event occurring, the Subcontractor must give a written claim for an extension of time to Georgiou's Representative setting out the factual and legal basis of the extension of time claim and an updated construction Program.
- 3) If the Delay Event continues for longer than 1 calendar month, the Subcontractor must provide Georgiou's Representative with an updated claim on a monthly basis until the Delay Event has finished.
- 4) Time is not set at large by reason of the Subcontractor's failure to comply with the notice and information requirements of the Subcontract.
- 5) If the effects of Non-Delay Events and Delay Events overlap, Georgiou's Representative may, in assessing an extension of time claim, apportion the resulting delay to the work under the Subcontract.
- 6) Even though the Subcontractor is not entitled to or has not claimed an extension of time, Georgiou's Representative may, in his or her absolute discretion (but is not obliged to), at any time and before issuing the Final Certificate grant an extension of time to the Subcontractor.

18. LIQUIDATED DAMAGES

If the Subcontractor does not reach Practical Completion by the Date for Practical Completion, the Subcontractor shall be indebted to Georgiou for liquidated damages at the rate specified in Item 8 of Schedule 1 - Subcontract Particulars for every day after the Date for Practical Completion to and including the earliest of the Date of Practical Completion or termination of the Subcontract.

19. DELAY AND DISRUPTION COSTS

- 1) Subject to the Subcontractor's compliance with subclause (2) below, for every day the subject of an extension of time granted under clause 17 for a Compensable Delay Event, the Subcontractor will be entitled to (as its sole remedy for the Compensable Delay Event) recover any additional direct costs necessarily incurred as a result of the Compensable Delay Event from Georgiou.
- 2) In addition to the requirements set out in subclause(1) above, within 28 days of the Compensable Delay Event occurring, the Subcontractor must also give a written claim for additional direct costs to Georgiou's Representative setting out full particulars in relation to the additional direct costs incurred or expected to be incurred.
- 3) The Subcontractor has no entitlement to claim any disruption costs in relation to any Delay Event unless it is also a Compensable Delay Event.

20. ACCELERATION

- 1) Georgiou's Representative may direct the Subcontractor to accelerate the work (by applying additional resources or working longer hours) under the Subcontract.
- 2) If the direction results from a Non-Delay Event or a Force Majeure Event, then the Subcontractor will at its sole cost comply with the direction of Georgiou's Representative.
- 3) If the direction results from a Compensable Delay Event, then Georgiou will pay to the Subcontractor any additional direct costs necessarily incurred by the Subcontractor resulting from compliance with the direction.

21. LATENT CONDITIONS

- 1) Within 5 days after the Subcontractor becomes aware or should reasonably have become aware of a Latent Condition while carrying out the work under the Subcontract, the Subcontractor must give Georgiou's Representative a written notice setting out full particulars concerning the Latent Condition and any delays to the work under the Subcontract.
- 2) Subject to compliance with the requirements set out in clause 17 and 19 of the Subcontract, the Subcontractor may be

entitled to an extension of time and additional direct costs incurred as a result of delays caused by a Latent Condition.

- 3) Other than the Subcontractor's entitlement to claim an extension of time and additional direct costs, the Subcontractor is not entitled to make any further Claim in relation to a Latent Condition.

22. VARIATIONS

- 1) The Subcontractor must not vary the work under the Subcontract except as directed by Georgiou's Representative.
- 2) Georgiou's Representative may direct the Subcontractor to carry out a Variation. A direction is only valid if given in writing.
- 3) Upon receipt of a direction under subclause (2) above, the Subcontractor must give a notice to Georgiou's Representative within 7 days setting out full particulars concerning the Subcontractor's reasons that the direction is a Variation and the Subcontractor's estimate of any adjustment to the Subcontract Price.
- 4) The amount payable or deductible in relation to Variations will be added or deducted from the Subcontract Price.
- 5) The parties agree that a Variation must be valued as follows:
 - I. An agreed amount, if the parties have agreed to the value of the Variation;
 - II. If paragraph (I) does not apply and the Subcontract includes a Schedule of Rates or other provisions that specify rates for valuing work performed under the Subcontract, then those rates or provisions will apply; or
 - III. If subclauses (I) to (II) do not apply, an amount that is reasonable in all the circumstances having regard to the cost and the risk associated with the Variation.

23. DAYWORK

- 1) No Daywork will be undertaken without a written direction from Georgiou's Representative.
- 2) Within 24 hours of a written direction from Georgiou's Representative to conduct Daywork, the Subcontractor must provide a Daywork docket for signature by Georgiou's Representative containing the full particulars relating to the day work conducted.

- 3) Georgiou's Representative's signature of Daywork dockets is for verifying hours worked and "record purposes only". The signature does not constitute a direction to carry out Variations under the Subcontract or any agreement by Georgiou's Representative that the relevant work carried out by the Subcontractor constitutes Daywork or a Variation.

24. FORCE MAJEURE

- 1) A party affected by a Force Majeure event will not be liable to the other party for any inability to comply with its obligations under the Subcontract to the extent that such inability results from the Force Majeure event.
- 2) Upon the occurrence of a Force Majeure event, the affected party must immediately notify the other party with full particulars of the Force Majeure event.
- 3) Other than an Extension of Time, the Subcontractor is not entitled to make any further Claim in relation to a Force Majeure event.
- 4) If a Force Majeure event continues for longer than 90 days, the Subcontract will terminate without the need for either party to give notice. If the Subcontract so terminates, the rights of the parties will be the same as if the Subcontract had terminated for frustration.

25. TIME BAR FOR LATE NOTIFICATION

- 1) If the Subcontractor fails to strictly comply with the requirements applicable to the making of a claim for extension of time, a Variation, additional direct costs or any other compensation or remedy set out in the Subcontract, then:
 - I. the Subcontractor's entitlement to make the claim is extinguished;
 - II. Georgiou is not liable to the Subcontractor for the claim; and
 - III. the Subcontractor is barred from making the claim or any related Claim against Georgiou.
- 2) Georgiou will not be regarded as having waived or amended this requirement unless the waiver or amendment is in accordance with clauses 35.4 and 35.5 of the Subcontract.

26. PRACTICAL COMPLETION

- 1) The Subcontractor must:
 - I. give Georgiou's Representative at least 30 days prior notice of the date when the Subcontractor anticipates that Practical Completion will be reached; and
 - II. when the Subcontractor believes that Practical Completion has been reached, immediately notify Georgiou's Representative in writing.
- 2) If Georgiou's Representative is satisfied that the Works have reached Practical Completion, Georgiou's Representative will issue a Certificate of Practical Completion subject to a punch list of minor issues and defects
- 3) Additional documentary deliverables required to achieve practical completion may be required under the Subcontract. These are listed in Item 9 of Schedule 1 - Subcontract Particulars
- 4) If Georgiou's Representative is not satisfied that the Works have reached Practical Completion, then Georgiou's Representative must give the Subcontractor reasons in writing.
- 5) The Subcontractor must complete or rectify the punch list items within 30 days after the Date of Practical Completion.
- 6) The issue of a Certificate of Practical Completion will not constitute approval of any of the work under the Subcontract nor will it prejudice any Claim by Georgiou.
- 7) With effect on and from the Date of Practical Completion, Georgiou will take possession of the work under the Subcontract.
- 8) Within 14 days after the issue of a Certificate for Practical Completion, the Subcontractor must give to Georgiou's representative the Final Payment Claim which must include a release in the form set out in Schedule 9 of the Subcontract.

27. PAYMENT

27.1 Progress Claims

- 1) The Subcontractor must claim payment on a monthly basis progressively in accordance with the requirements set out in Item 10 of Schedule 1 - Subcontract Particulars.

- 2) Each Progress Claim must be given in writing to Georgiou's Representative and must set out:
 - I. a description of the obligations under the Subcontract that the Subcontractor has performed; and
 - II. substantiation (including documentary evidence) that the obligations under the Subcontract have been performed.
- 3) Georgiou's Representative may reject a Progress Claim issued by the Subcontractor on the basis that it is not made in accordance with this clause.

27.2 Progress Certificates

- 1) Georgiou's Representative must, within 15 days after receiving a valid Progress Claim, value the work performed by the Subcontractor (unless the Subcontract provides otherwise) and issue to Georgiou and the Subcontractor:
 - I. a Progress Certificate evidencing the assessment of the moneys due from Georgiou to the Subcontractor and reasons for any difference; and
 - II. A Negative Certificate evidencing the assessment of moneys due from the Subcontractor to Georgiou pursuant to the Subcontract.
- 2) If Georgiou's Representative does not issue a Progress Certificate within 15 days of receiving a valid Progress Claim, that Progress Claim will be deemed to be rejected by Georgiou's Representative.
- 3) Within 15 days after receiving a Progress Certificate and (if applicable) a Negative Certificate, Georgiou must pay to the Subcontractor the balance of the Progress Certificate after setting off amounts owing to Georgiou under the Subcontract as set out in any Negative Certificate.
- 4) If that setting off produces a negative balance, the Subcontractor must pay to Georgiou the negative balance within 15 days of receiving written notice from Georgiou demanding payment.
- 5) Payment of the Progress Certificate will be made within 30 days from the end of the month in which the Progress Claim was submitted.
- 6) Payment of a Progress Claim will not constitute evidence that the work under the Subcontract has been carried out satisfactorily.

- 7) Payment other than Final Payment will be payment on account only.

27.3 Interest

Interest at the rate set out in Item 11 of Schedule 1 - Subcontract Particulars is due and payable for every day after the date of default in payment until actual payment is made.

27.4 Set off

Georgiou may at any time (including in the assessment of a Progress Claim by Georgiou's Representative) set off against any monies owing to the Subcontractor, any costs, losses or damages incurred as a result of any act or omission of the Subcontractor or any moneys due and owing by the Subcontractor to Georgiou in connection with the subject matter of the Subcontract. Should there be insufficient monies owing to Georgiou against which such deduction may be made; Georgiou may have recourse to the Security.

28. SUSPENSION

- 1) Georgiou may, at any time, direct the Subcontractor by notice in writing to suspend all or any part of the work under the Subcontract.
- 2) If the suspension was caused by a Force Majeure event or an act or omission of the Subcontractor, the Subcontractor is not entitled to any Claim in relation to the suspension.
- 3) Upon being directed by Georgiou's Representative to recommence all or part of the work under the Subcontract, the Subcontractor must immediately recommence the work under the Subcontract.

29. DEFECTS

- 1) The Defects Liability Period stated in Item 12 of Schedule 1 - Subcontract Particulars commences on the Date of Practical Completion and finishes on the date stated in Item 9 of Schedule 1 - Subcontract Particulars.
- 2) During the Defects Liability Period, Georgiou's Representative may give the Subcontractor a direction to rectify a Defect.
- 3) The Subcontractor must carry out the rectification works in a manner causing as little inconvenience to the occupants or users of the Works as is reasonably possible.

- 4) If the Subcontractor fails to rectify the defective works within 8 days after the Subcontractor receives a direction from Georgiou's Representative, then:
 - I. Georgiou's Representative may, in its absolute discretion, have the rectification works carried out by another Subcontractor; and
 - II. the cost of such rectification works will be a debt due to Georgiou from the Subcontractor.

30. TERMINATION

30.1 Breach or Default

- 1) Georgiou may give the Subcontractor a written notice to show cause if the Subcontractor breaches any provision of the Subcontract setting out full particulars of the breach and the particular time by which the Subcontractor must show cause (which must not be less than 7 days after the notice).
- 2) If the Subcontractor fails to show reasonable cause by the time set out in the notice, Georgiou may by written notice to the Subcontractor terminate all or part of the Subcontract and suspend any further payment to the Subcontractor.
- 3) If the Subcontract is terminated, Georgiou may complete all or part of the Works taken out of the Subcontractor's hands 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 work under the Subcontract;
 - II. subcontract with the Subcontractor's consultants and subcontractors; and
 - III. take possession of, and use, the Subcontractor's design documents, as are reasonably required by Georgiou to facilitate completion of the work under the Subcontract taken out.
- 4) When the work under the Subcontractor taken out of the Subcontractor's hands has been completed, Georgiou's Representative will assess the cost thereby incurred and such costs will be certified as due and payable to Georgiou from the Subcontractor.

30.2 Insolvency

- 1) Either party may immediately terminate the Subcontract by notice to the other, upon the occurrence of any of the following events:
 - I. A party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the Subcontract;
 - II. 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;
 - III. A party or its creditors seek relief against any insolvency law including the Bankruptcy Act 1966 (Cth) or the Corporations Act 2001 (Cth).

30.3 Termination for convenience

- 1) Georgiou may, at its sole and absolute discretion, terminate the work under the Subcontract for its convenience in whole or in part, at any time by providing a Notice to the Subcontractor.
- 2) As its sole right and remedy, the Subcontractor is entitled to be paid the following upon a termination of all or part of the Works for convenience:
 - I. all amounts due and not previously paid to the Subcontractor for the work under the Subcontract completed prior to the Notice of termination, and for Works thereafter completed as specified in the Notice;
 - II. all amounts which Georgiou is legally required to pay to the Subcontractor under or in connection with the Subcontract; and
 - III. the cost of goods, materials and equipment reasonably ordered by the Subcontractor.
- 3) If this clause applies, Georgiou may engage third party Subcontractors to conduct all or part of the Works.

31. DISPUTE RESOLUTION AND CONSTRUCTION CONTRACTS ACT 2004 (WA)

- 1) If a dispute or difference arises between Georgiou and the Subcontractor in connection with the Subcontract, then either party may give the other party a written notice of dispute identifying the dispute or difference.

- 2) Within 14 days, Georgiou's Representative and the Subcontractor's Representative and/or their delegates must meet and attempt to resolve the dispute in good faith
- 3) If the dispute is not resolved at the meeting convened in subclause (2) above a, either party may proceed to litigation.
- 4) For the purposes of section 26(1)(c)(ii) of the Construction Contracts Act 2004 (WA) (CCA) the parties appoint as prescribed appointer the Institute of Arbitrators and Mediators Australia (WA Chapter).

32. CONFIDENTIALITY

- 1) 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.
- 2) If Georgiou considers that the Subcontractor is disclosing, or has disclosed, Confidential Information in breach of this clause, Georgiou may, by written notice to the Subcontractor, require the Subcontractor to return all documents and materials containing or based upon the Confidential Information.
- 3) Upon receipt of such a notice, the Subcontractor must immediately return to Georgiou, all such documents and materials, including the documents or materials provided to third parties.

33. INTELLECTUAL PROPERTY RIGHTS

- 1) The Subcontractor hereby assigns to Georgiou all of its intellectual Property Rights (other than third party Intellectual Property Rights) associated with the work under the Subcontract.
- 2) This Subcontract does not transfer to Georgiou any Intellectual Property Rights in the Subcontractor's pre-existing Intellectual Property. The Subcontractor grants Georgiou a non-exclusive licence to use and reproduce such rights for the purposes of the work under the Subcontract.
- 3) If a third party claims that the Subcontractor's pre-existing Intellectual Property Rights 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.

34. NOTICES

- 1) A notice, demand, consent, approval or communication under this Subcontract (Notice) must be:
 - I. in writing; and
 - II. Hand delivered, sent by prepaid post, by facsimile or email to the recipient's address for Notices set in Item 14 of Schedule 1 - Subcontract Particulars.
- 2) If sent by facsimile transmission, the Notice is deemed to be received when the sender's facsimile system generates a message confirming successful transmission of the entire Notice;
- 3) If sent by electronic mail, the Notice is deemed to be received when the sender receives a read receipt.

35. MISCELLANEOUS

35.1 Civil Liability Act

Part 1F (Proportionate Liability) of the *Civil Liability Act 2002* (WA) is excluded from operation under or in connection with this Subcontract.

35.2 Liability for Indirect or Consequential Losses

Despite any other provision of this Subcontract, neither Georgiou nor the Subcontractor has any liability to each other, nor will they be entitled to make any Claim, in respect of any Indirect or Consequential Loss sustained as a result of any act or omission of any of them (whether negligent or otherwise) or as a result of a breach of the Subcontract by any of them.

35.3 Entire Agreement

This Subcontract constitutes the entire agreement between the parties and supersedes all previous negotiations and communications.

35.4 Amendment

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

35.5 Waiver

No party to this Subcontract may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

35.6 Governing Law

This Subcontract is subject to and is to be construed in accordance with the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the Courts of that State.

35.7 Assignment

The Subcontractor shall not without the written consent of Georgiou's Representative:

- 1) assign this Subcontract or any interest in the Subcontract; or
- 2) materially change the shareholding or beneficial ownership of the Subcontractor.

35.8 Severability

The parties agree that 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.

35.9 Indemnities

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

35.10 Goods and Services Tax

- 1) In this clause, the expressions 'adjustment note', 'consideration', 'GST', 'input tax credit', 'supply', 'tax invoice', 'recipient' and 'taxable supply' have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 2) Unless otherwise expressly stated in the Subcontract, all prices or other sums payable under this Subcontract are exclusive of GST.
- 3) Despite any other provision in this Subcontract, if GST is payable by a supplier under this Subcontract, the recipient must pay to the supplier an amount equal to the GST payable on the supply by the supplier. Subject to receipt of a valid tax invoice, that amount must be paid at the same time that the consideration for the supply is to be provided under this Subcontract and will be provided in addition to the consideration expressed elsewhere in this Subcontract.
- 4) If this Subcontract requires a party to reimburse any other party for any expense, loss or outgoing (reimbursable expense) incurred by another party, the

amount required to be reimbursed by the first party will be the sum of:

- I. the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense; and
 - II. if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply and for the avoidance of doubt, if the supply is a taxable supply, sub clause 35.10 will apply.
- 5) If a GST inclusive price is changed or varied under this Subcontract, the supplier must provide the recipient of the supply a valid tax invoice or adjustment note at or before the time of payment or Variation.
 - 6) If the amount of GST paid or payable by the supplier on any supply made under this Subcontract differs from the amount of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST or for any other reason, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient as the case requires.
 - 7) The Subcontractor must provide notice to Georgiou of its entitlement (or not) to claim input tax credits in respect of premiums paid for relevant insurances under this Subcontract as soon as practicable after the date of this Subcontract.
 - 8) If the parties have entered into the Recipient Created Tax Invoice (RCTI) Agreement as set out in Schedule 10:
 - I. Georgiou will issue the RCTI in respect of the liability to pay in respect of such Taxable Supply;
 - II. the RCTI will be issued by the Recipient on the date of determination of the value of the payment due under this Subcontract in connection with a Taxable Supply;
 - III. the RCTI will not be payable before the due date for payment for the Taxable Supply under the Subcontract; and
 - IV. where the determination of the amount payable in respect of a Taxable Supply has been made in accordance with this Contract and Georgiou has not issued a RCTI within 28 days of that

determination, the provisions of subclause 35.10 3) will apply to payment of that amount for that Taxable Supply, but not otherwise and will not constitute a breach of the RCTI Agreement.

35.11 Carbon Tax

- 1) In this clause, "Carbon Scheme" means the Australian Governments carbon price mechanism established by the Clean Energy Act 2011 (Cth) and associated Acts.
- 2) The Subcontract Price is deemed to include all costs incurred (or to be incurred) by the Subcontractor in the performance of the Work under Subcontract pursuant to the Carbon Scheme.
- 3) The Subcontractor must not make any claim (pursuant to any clause in the Subcontract or on any other basis whatsoever) for any amount additional to the Subcontract Price that is incurred (or is to be incurred) by the Subcontractor in the performance of the Work under Subcontract pursuant to the Carbon Scheme.

36. INTERPRETATION

36.1 Dictionary

In this document and this Subcontract, unless the context otherwise requires:

Approvals means any necessary approvals, permits, determinations, certificates, notices, licences or waivers under any Legislative Requirements or by any Authority.

Building Code of Australia means the most recent code by that name produced and maintained by the Australian Building Codes Board.

Certificate of Practical Completion means the certificate issued by Georgiou's Representative under clause 26.

Claim means any claim, liability, loss, demand, damages, lien, cause of action of any kind, obligation, costs, royalty, fees, assessments, penalties, fines, judgment, interest and award (including legal costs) whether arising under Subcontract, equity, statute, tort (including negligence), quantum meruit, unjust enrichment or restitution or otherwise at law.

Code has the meaning in Clause 5. **Commencement Date** means the date specified in Item 1 of Schedule 1 - Subcontract Particulars or if no date is specified in Schedule

1 - Subcontract Particulars, the first date set out in the Subcontract Program.

Compensable Delay Event means:

- 1) any act or omission by Georgiou's Representative, Georgiou or its consultants, agents or other Subcontractors; or
- 2) any Variations directed by Georgiou's Representative; or
- 3) Latent Conditions.

Confidential Information means all information relating to the work under the Subcontract that concerns the technical or commercial know-how or systems, procedures, business, finances, plans, pricing, trade suppliers, construction methodology, construction techniques, construction planning, design, personnel, products, services, quotations, commercial feasibility, time, cost, demand projections, sizing, marketing, finance, income, public relations, client user group information, customer details, legal aspects or leasing arrangements.

Subcontract Price means for work which the parties have agreed a lump sum, the lump sum;

- 1) for work which the parties have agreed rates under the Schedule of Rates, the sum ascertained by multiplying the measured quantity of each section or item of work actually carried out in accordance with the terms of the Subcontract by the relevant agreed rate set out in the Schedule of Rates for that section or item,
- 2) for work to which both a lump sum and rates apply, the sum of (1) and (2),

adjusted for Provisional Sums and additions or deductions made under this Subcontract.

The Subcontract Price is fixed for the duration of the Subcontract and not subject to rise and fall.

Date for Practical Completion means the date specified in Schedule 1 - Subcontract Particulars as the date by which the Subcontractor is required to reach Practical Completion in relation to the work under the Subcontract.

Daywork means any additional Works directed by Georgiou's Representative to be conducted pursuant to clause 23 of the Subcontract.

Default means a breach by a Party of any of its obligations under the Subcontract.

Defect means any work which does not comply with the requirements of the Subcontractor is otherwise defective or faulty.

Defects Liability Period means the period commencing on the Date of Practical Completion and expiring 12 months after Practical Completion.

Delay Event means:

- 1) any act or omission by Georgiou's Representative, Georgiou or its consultants, agents or other Subcontractors.
- 2) any Variations directed by Georgiou's Representative pursuant to clause 22 of the Subcontract;
- 3) any Force Majeure Event; or
- 4) any Latent Conditions.

Environmental Laws means the Environmental Protection Act 1970 (Vic) and any regulations made there under, including any law applying in the state of Victoria regarding pollutants or otherwise relating to the environment, including matters relating to protection of the environment, health or safety

Final Payment Claim means a payment claim issued by the Subcontractor in accordance with clause 27.2, 7) of this Subcontract.

Final Release means a deed of release by which the Subcontractor releases Georgiou from all liability in connection with the Subcontract except for the return of any remaining Security and payment of any monies certified by Georgiou's Representative in the Final Certificate as payable by Georgiou to the Subcontractor.

Force Majeure includes war, civil disturbance, riot, lightning, cyclone, earthquake, fire, storm, flood, explosion, governmental actions, labour dispute, lockout, strike and any other cause, event or circumstance which is not reasonably within the control of a party to the Subcontract and which cannot be prevented, overcome or remedied by the exercise by the affected party of the standard of care and diligence consistent with Good Industry Practice.

Form of Agreement means the form of agreement form which contains the signatures of the Georgiou and the Subcontractor.

Georgiou means the specific legal entity expressly identified as "Georgiou" in the Form of Agreement and its successors and assigns.

Georgiou's Representative means the person appointed by Georgiou to be its representative.

Georgiou-Supplied Information means any information (whether written or otherwise) supplied or made available to the Subcontractor:

- 1) by or on behalf of Georgiou; or
- 2) by or on behalf of Georgiou's Representative.

before or after the Commencement Date of the Subcontract in connection with the work under the Subcontract, than the Subcontract Documents.

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 Subcontractor providing the works similar to the Subcontractor's obligations and under conditions comparable to those applying to the Subcontract.

HSEQ Requirements means the health, safety, environmental and quality requirements set out in Special Conditions of this Subcontract.

Indirect and Consequential Loss means any loss in the nature of loss of profit, loss of revenue, loss of equity, loss of use, loss of business, business interruption or any indirect or consequential loss (being loss or damage which is not directly or naturally occurring according to the usual course of things from a breach of the Subcontract).

Intellectual Property Right means any patent, design, trademark or name, copyright or moral rights whether registered or not registered;

Latent Conditions means the conditions on and under the Site and its near surrounds which differ materially from the conditions which should reasonably have been anticipated by a competent Subcontractor at the time of the Subcontractor's tender.

Legislative Requirement includes:

- 1) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the work under the Subcontract or the particular part thereof are being carried out;
- 2) certificates, licences, consents, permits, approvals and requirements of organisations or Subcontractors having jurisdiction in connection with the carrying out of the work under the Subcontract;
- 3) fees and charges payable in connection with the foregoing;

Negative Certificate means a certificate issued by Georgiou's Representative under clause 27.2.

Notice has the meaning set out in clause 34.

Party or parties means Georgiou and/or the Subcontractor.

Practical Completion means that stage in the carrying out and completion of the work under the Subcontract when the Works are complete except for minor defects or omissions that do not prevent the Works from being reasonably capable of being used for their intended purpose and not prevent the convenient use of the Works.

Progress Certificate means a progress certificate issued by Georgiou's Representative under clause 27.2.

Progress Claim means a progress claim issued by the Subcontractor under clause 27.1 of the Subcontract.

Project means the project described in item 3 of Schedule 1 - Subcontract Particulars

Recipient Created Tax Invoice (RCTI) means an agreement made between Georgiou and the Subcontractor that the Subcontractor will be paid in accordance with clause 35.10, 8).

Schedule means the Addenda to the General Conditions.

Schedule of Rates means Schedule <insert number> > of the Subcontract.

Security means approved unconditional undertaking(s) required to be provided by the Subcontractor under clause 7.

Site means the land and other places to be made available to the Subcontractor by Georgiou for the purpose of the Subcontract.

Subcontract means the Subcontract between Georgiou and the Subcontractor of which these general conditions form part. The documents comprising the Subcontract are set out in the Formal Instrument of Agreement.

Subcontract Documents means the following documents:

- 1) Formal Instrument of Agreement;
- 2) Special Conditions;
- 3) General Conditions;
- 4) Schedules 1-10
- 5) [Insert other documents eg the Preliminaries, Specifications, Drawings; and Other documents]

Subcontract Price means:

- 1) the lump sum applicable to work for which the parties accepted a lump sum;
- 2) the amount calculated by multiplying each item of work actually carried out in accordance with the Subcontract by the rate for that item where the parties accepted a rate, adjusted by additions or deductions made under this Subcontract.

Subcontract Program means the Program approved by Georgiou's Representative pursuant to clause 16

Subcontractor means the person bound to carry out and complete the work under the Subcontract specified in the Formal Instrument of Agreement and includes its successors and assigns as permitted under the 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 work under the Subcontract.

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 work under the Subcontract, whether owned, leased or hired.

Suspension means a suspension of the Works by Georgiou under clause 28 of the Subcontract.

Variation means any:

- 1) increase, decrease or omission of any part of the work under the Subcontract;
- 2) change to the character of quality of any material or work;
- 3) change in the levels, lines, position or dimensions of any part of the work under the Subcontract;
- 4) execution of additional work; and/or
- 5) demolition or removal of material or work no longer required by Georgiou,

as directed by Georgiou's Representative pursuant to clause 22.

Works means the whole of the work which the Subcontractor is or may be required to carry out and complete under the Subcontract.

Work under the Subcontract means all of the work under this Subcontract including the performance of the Works.

36.2 Interpretation

In this Subcontract, unless the context otherwise requires:

- 1) References to:
 - I. a party includes the party's successors and 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 party, where the party is more than one person, means all of them together and each of them separately;
 - VIII. a clause or schedule or recital refers to a clause or schedule or recital in this Subcontract;
 - IX. statute, regulation, code or standard includes a reference to it as amended from time to time; and
 - X. a day refers to the period commencing at midnight and ending 24 hours later;
- 2) Interpretation shall not be affected by the fact that one party put forward any part of the Subcontract;
- 3) The singular includes the plural and the other way around;
- 4) Headings do not affect the meaning of this Subcontract;
- 5) If a word or phrase is defined, any variation of that word or phrase has the same meaning to the extent possible;
- 6) 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;
- 7) A debt due becomes due and payable at the time specified in the Subcontract, or if no time is specified, it is payable on demand;
- 8) If there is any inconsistency between a clause of this Subcontract and a provision of a Schedule, the clause of this Subcontract will prevail;
- 9) If anything to be done under the Subcontract falls on a day which is not a working day, then it must be done on the next working day;
- 10) 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.

END OF GENERAL CONDITIONS

Schedule 1- Subcontract Particulars

Item 1: Commencement Date (Clause 1.3, 1))	
Item 2: Date for Practical Completion (Clause 1.3, 2))	
Item 3: Project	
Item 4: Approvals not required to be obtained by Subcontractor (Clause 4, 1))	
Item 5: Form of security (Clause 7)	Bank guarantees/ retention (delete which is not applicable)
Item 6: Insurances required to be taken out and maintained by the Subcontractor (Clause 11)	
Item 7: Georgiou's Representative (Clause 12)	
Item 8: Liquidated Damages (Clause 18)	
Item 9: Documentary deliverables required to achieve Practical Completion (Clause 26, 3))	eg: deed of release, as-builts, MDR, warranty documents
Item 10: Prescribed date for making Progress Claims (Clause 27.1)	30th day of the month
Item 11: Rate of Interest (Clause 27.3)	
Item 12: Defects Liability Period (Clause 29)	
Item 13: End date for Defects Liability Period (Clause 29)	
Item 14: Address for Notices (Clause 34)	

Schedule 2 - Special Conditions

1. CODE COMPLIANCE

The Building Code 2013 Does / Does not **(delete which is not applicable and this note)** apply to this contract.

The provisions of the Code apply to work that is funded by the Commonwealth and where that contribution;

- 11) is greater than \$5,000,000 and represents at least 50% of the total construction value, or
- 12) where that contribution to the building work is at least \$10,000,000 regardless of the proportion of total Construction project value.

2. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

- 1) The words 'Accession', 'Commingled', 'Financing Statement', 'Grantor', 'Personal Property', 'Proceeds', 'Security Interest' and 'Verification Statement' have the meanings given to them in the Personal Property Securities Act 2009 (Cth) (PPSA).
- 2) The parties acknowledge that this Subcontract may constitute a Security Interest in favour of Georgiou.
- 3) If Georgiou determines that this Subcontract (or a transaction in connection with it) is or contains a Security Interest, the Subcontractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Georgiou asks and considers necessary for the purposes of:
 - I. ensuring that the Security Interest is enforceable, perfected and otherwise effective;
 - II. enabling Georgiou to apply for any registration, complete any Financing Statement or give any notification, in connection with the Security Interest; or
 - III. enabling Georgiou to exercise rights in connection with the Security Interest.
- 4) 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).
- 5) 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.
- 6) The Subcontractor must not:
 - I. create any Security Interest or lien over any Personal Property that Georgiou has an interest in (other than Security Interests granted in favour of Georgiou);
 - II. sell, lease or dispose of its interest in Personal Property that Georgiou has a Security Interest in;
 - III. give possession of the Subcontractor's Personal Property 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 Works or the Site; or
 - V. change its name without first giving Georgiou 15 Business Days notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.
- 7) Everything the Subcontractor is required to do under this clause is at the Subcontractor's expense.
 - 8) 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.'

3. HSEQ REQUIREMENTS

While working on or in connection with a Georgiou worksite the Subcontractor is required to work in accordance with Georgiou systems and processes. The subcontractor is responsible for ensuring any other party engaged to supply or perform works on behalf of the Subcontractor in connection with this Subcontract are made aware of and work in accordance with the Georgiou systems and processes.

1) Personal Protective Equipment (PPE)

The minimum personal protective equipment on a Georgiou construction site shall be:

- Hard hat
- Safety boots with non slip soles and toe protection; persons working on uneven and soft surfaces, e.g. civil construction sites, shall be required to wear lace-up safety boots
- High visibility vest (if shirt /jacket is not high visibility)
- Safety glasses
- Site personnel shall be expected to carry in their possession, at all times, suitable protective gloves for the job they are performing
- Long sleeve shirts
- Trousers
- UV protected eyewear
- Sunscreen lotion

2) Induction

The Subcontractor personnel shall be required to undertake the project or business unit site specific HSEQ induction prior to commencing work at their cost. It is recommended that persons requiring induction contact the site to make arrangement prior to attending site.

3) Training and Competency

The Subcontractor is responsible for providing suitably qualified and competent persons to perform their contracted tasks. The subcontractor shall provide evidence of competency certification of personnel to Georgiou prior to commencement of works, including their Construction Safety Awareness card.

Subcontractor personnel on site must carry on their person their General Construction Induction card and any legally required license to operate plant and machinery at all times.

Job Hazard Analysis's provided by the Subcontractor shall refer to required competencies and certification to perform the tasks contained therein.

4) Subcontractor Plant & Equipment Requirements

All plant and equipment brought to site by the Subcontractor shall:

- Be fit for purpose
- Undergo a compliance inspection prior to commencement. Georgiou's GC-HSE-FRM016 Site Plant/Equipment Compliance Checklist may be completed and submitted as evidence of this requirement
- Be appropriately insured and evidence of current insurances including and not limited to motor vehicle, workers compensation and public liability insurance be made available on request
- Have an operator's manual relevant to the item of plant and which is to be kept with the plant
- Undergo and record daily maintenance inspections
- Be serviced as per the manufacturer's specification. Georgiou's GC-HSE-FRM057 Subcontractor Service Report may be completed and submitted as evidence of this requirement
- Have any defects identified promptly repaired. Non compliant Plant/Equipment that poses a risk to Health or Safety will be tagged with an Out of Service tag or removed from site
- In regard to electrical equipment, be tagged by a licensed person using the National colour coding system
- In regard to lifting equipment, be tagged with a current Safe Working Load

The Subcontractor shall be able to provide Georgiou upon request documented evidence that the above requirements have been met.

5) Pre-starts Meetings

Where work is of a continuous nature then the Subcontractors must attend the morning pre-start at the designated site start time. If unable to attend at the designated time the Subcontractor Representative is to read the pre-start meeting minutes and sign on to the attendance sheet as evidence that these have been read and understood.

In all other instances the Subcontractor will be required to report to the Georgiou site office prior to commencement of work and contact the site supervisor.

6) Toolbox Meetings

The Subcontractor shall attend toolbox meetings held for the Project/Facility when on site. Subcontractors shall attend toolbox meetings when not on site as requested by Georgiou.

7) HSEQ Management Meetings

The Subcontractor shall provide a representative to attend the Project's/Facility monthly HSEQ Management Meeting as requested by Georgiou.

8) Risk/ Hazard Management

The Subcontractor shall be required to complete Take 5 as directed by site management in accordance with GC-HSE-ST016 Risk and Operational Control Standard and report hazards when identified.

The Subcontractor shall work under a Job Hazard Analysis for any high risk construction work or as otherwise determined by Georgiou. In circumstances where the work is outside of Georgiou's scope of expertise then the subcontractor will be required to submit their own JHA. Subcontractors may only use their own JHA if it has been submitted to and approved by Georgiou.

The JHA shall be assessed by the site's management representative prior to authorising the subcontractor to commence work. The subcontractor's JHA shall address the following criteria:

- Applicable legal requirements for the activity
- Assesses and evaluates the hazards/ risks associated with the activity

- Provides a methodology to treat those hazards/ risk and evaluate the residual risk
- Identify any competency & training requirements for the activity
- Identify any hazardous chemicals and associated Material Safety Data Sheet (MSDS) for the activity

9) Permit/Authority to Work

- The Subcontractor shall require a valid Work Permit, as approved by Georgiou, for the following work activities:
- Confined Space Entry
- Work at heights where a person is exposed to a risk of falling or where there is a risk that the fall may result in an injury
- Work involving all excavations
- Work in, over or adjacent to water or other liquids where there is a risk of drowning. Georgiou or the contractor will develop a specific permit/s to cover this work.
- Work involving diving, the dive contractor will supply a permit covering the work to be undertaken
- Construction work where there is the risk of contact with electrical overhead power lines, Georgiou or the contractor will develop a specific permit/s to cover this work
- Hot Work permit (will be required for hot work conducted outside of designated workshop areas)
- Works conducted after practical completion where there is no longer a Georgiou presence on site

10) Incident Reporting & Investigation Procedures

The subcontractor/supplier shall report all incidents and injuries immediately to Georgiou Management and shall be required to participate in incident investigations where that incident occurs in their area of work.

11) Hazardous and Dangerous Substances

All Subcontractor hazardous and dangerous substances shall be registered on site. Subcontractors shall only bring hazardous or dangerous substances onto site if they have:

- Been authorised by the site's management to do so
- Provided the Georgiou site a copy of a Material Safety Data Sheet (MSDS) for the substance
- Provided the Georgiou site with the volume/ quantity of the substance
- An appropriate storage facility available for the storage of the substance
- Completed a risk assessment on the use of the substance, which may be done as part of the JHA

12) Emergency Response

Subcontractors will be required to participate, on the day, in any on site emergency response drills. The site management shall inform them of any drills to be conducted and their required participation.

13) Fitness for Work

- The Subcontractor shall ensure their personnel present themselves in a fit and healthy state at all times for the duties they are required to perform
- The Subcontractor shall provide any medical information to Georgiou in regard to their personnel working on site that may impede their ability to perform their work, or place themselves or others at risk or should be known in the event of an emergency
- The Subcontractor's personnel shall abide by Georgiou's 0 Breath Alcohol limit when on site and shall consent to testing to verify compliance as required. Personnel recording a positive result to testing shall be removed from site at the Subcontractors expense. Personnel who return a positive test shall not be allowed to return to site without the Project Manager's consent.
- The Subcontractor's personnel shall not report to work under the influence of illegal drugs or substances and shall consent to testing to verify compliance as required. Personnel recording a

positive result to testing shall be removed from site at the Subcontractors expense. Personnel who return a positive test shall not be allowed to return to site without the Project Manager's consent.

- No Subcontractor personnel shall possess, use, consume, distribute or sell alcohol, illicit or non-prescribed drugs or misuse prescribed medication while performing work for Georgiou.

14) Workplace Inspections and Audits

The Subcontractor shall be required to participate in workplace inspections and audits. Where the Subcontractor is solely in control of a work area they shall inspect that work area and document the findings at least weekly. The Subcontractor also agrees that they may be subject to a Georgiou Audit conducted on their business as requested by Georgiou.

4. OTHER SPECIAL CONDITIONS

Insert other Special Conditions

Schedule 3- Scope of Work

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

Schedule 4 - Contract Drawings

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

Schedule 5 - Specifications

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

Schedule 6 - Schedule of Rates

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

Schedule 7 - Subcontract Price Breakdown

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

Schedule 8 - Contract Program

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

Schedule 9- Form of Final Release and Waiver

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

By [Insert Subcontractor Name](ABN) ("the Subcontractor")

In favour of Select Georgiou Entity ("Georgiou")

For the Subcontract Number on the Project described as .

NOW THIS DEED WITNESSES as follows:

1) Reconciliation of Account:

(a) Original Subcontract Sum

(b) Variations to the Subcontract

(c) Adjusted Subcontract Sum

(d) Less cash security (if any) (including retention monies but excluding unconditional undertakings (e.g. bank guarantees))

(e) Less previous payments

(f) Less monies retained for rectification excluding minor omissions and minor defects

(g) Balance due

2) Subject to clauses (3), (4) and (5) below, Georgiou acknowledges that:

(h) \$ (the balance Due as indicated in 1(g)above);

(i) \$ (50% of the cash security described in 1(d)); and

(j) 50% of any other security held by Georgiou pursuant to the terms of the Subcontract (e.g. bank guarantees)

are due to the Subcontractor upon the later of the issue of the Certificate of Practical Completion and the receipt by the Georgiou of a signed copy of this Deed by the Subcontractor.

- 3) The Subcontractor agrees that \$ _____ representing 50% of the remaining cash security described in 1(d) 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.
- 4) The Subcontractor agrees that \$ _____ representing monies retained for rectification of existing minor omissions and minor defects (as described in 1(f) above) is due for release as and when such rectification work is completed to the satisfaction of Georgiou.
- 5) The Subcontractor agrees that any remaining security held by Georgiou pursuant to the terms of the Subcontract (e.g. bank guarantees) is due for release upon Final Completion, in accordance with the terms of the Subcontract.
- 6) The Subcontractor acknowledges that in consideration of the payment indicated in clause (2) 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 (3), (4) and (5) not required to be paid at the date of this Deed.

Schedule 10 - RCTI Agreement

Name of Subcontractor:

Address:

Definitions

ABN	Australian Business Number
Subcontract	
Georgiou	Select Georgiou Entity
Supplies (Supply)	Has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999

I/We agree to the following:

- 1) Georgiou will issue RCTI’s in respect of all Supplies provided by the Subcontractor;
- 2) the Subcontractor will not issue tax invoices in respect of the Supplies;
- 3) 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;
- 4) 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”);
- 5) 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 that Georgiou is not obliged to and will not issue an RCTI in respect of a Supply until:
 - II. a Payment Schedule has been issued and Georgiou is obligated to pay an amount to the Subcontractor under clause 27.2 of the Subcontract;
 - III. the Subcontractor has provided the necessary documentation to allow an RCTI to be raised.
- 6) The Subcontractor’s ABN is
- 7) 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.
- 8) 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.

Subcontract for minor works/services (WA)



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

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