Major Services Subcontract

BETWEEN

Decmil Australia Pty Ltd
ABN 58 116 776 991
(Principal)

AND

[Insert Name of Subcontractor]
ABN
[insert]
(Subcontractor)

IN RELATION TO

Mine Infrastructure Area – Amrun Project
(Project)

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SECTION A - INSTRUMENT OF AGREEMENT

DATE: This Subcontract is made on the _____ day of _____ 20 __

PARTIES: Decmil Australia Pty Ltd (ABN 58 116 776 991) of 20 Parkland Road, Osborne Park WA 6017
(**Principal**)

AND [insert name of Subcontractor](ABN [insert ABN]) of [insert address]
(**Subcontractor**)

RECITALS

A. The Subcontractor has represented that it has the ability to perform the Services in accordance with the terms of the Subcontract.

B. The Principal wishes to engage the Subcontractor to perform the Services in accordance with the terms of the Subcontract.

C. The Subcontractor has agreed to accept the engagement on the terms of the Subcontract.

OPERATIVE PROVISIONS

Subcontract Documents

1. The following documents comprise the Subcontract:

Section A	Instrument of Agreement
Section D	Special Conditions
Section B	General Conditions
Section C	Annexure F - Specifications
	Annexure F - Drawings
	Annexure C - Scope of Services
	Each other Annexure in the order in which it is annexed to the Subcontract,

collectively referred to as "**the Subcontract**".

2. If there is any Ambiguity in or between any of the provisions of any of the documents comprising the Subcontract then:

   (a) the provision that imposes the most onerous requirement on the Subcontractor shall prevail; and

   (b) otherwise, the documents take precedence in the above order.

3. In the case any one or more of the terms of the Subcontract are found to be unenforceable in any respect, the enforceability of the remaining terms of the Subcontract shall not be affected.

4. Except as provided for in clause 1 above, the documents and other information which constitute the Subcontract shall be taken as mutually explanatory and anything contained in one but not in another shall be equally binding as if contained in all.

Entire Agreement

5. The Subcontract contains the entire agreement between the Parties and supersedes any prior communications, negotiations, understandings, representations and documents between the Parties except to the extent reproduced in the Subcontract. The Subcontractor acknowledges and agrees that it does not rely on any document or other information other than expressly included or referred to in the Subcontract.

6. If at any time in relation to the Services or the Subcontract, the Subcontractor provides or refers to any terms or conditions not included in the Subcontract those terms and conditions shall not form part of or be incorporated into the Subcontract.

7. Any terms or conditions that may have been attached or embodied in the Subcontractor's tender or offer or other document or correspondence are deemed to have been withdrawn in favour of the terms stated in the Subcontract.

8. Where Associated Goods are accompanied by the Subcontractor's documentation, the signing by the Principal of such documentation shall constitute an acknowledgement of receipt and delivery only and not an acceptance of the terms of such documentation.

General

9. The Subcontractor shall:

   (a) commence the Services by the Date for Commencement;

   (b) perform the Services:

      (i) in accordance with the Program set out in *Annexure L – Program*, as updated and approved by the Principal from time to time;

      (ii) otherwise in a diligent and orderly manner;

      (iii) in accordance with the Subcontract; and

      (iv) so as to bring the Services to Practical Completion by the Date for Practical Completion.

10. In consideration of the Subcontractor performing the Services, the Principal agrees to pay the Subcontractor the Subcontract Sum.

11. If the Subcontractor performed any services in respect of the Project prior to the date of the Subcontract, then those services shall be incorporated into the Services and shall comply with the requirements of the Subcontract.

EXECUTED as an agreement on the date stated above.

EXECUTED for and on behalf of the Principal pursuant to section 127 of the *Corporations Act 2001* (Cth):

(Director/secretary signature)		(Director/Secretary signature)	
(Name)		(Name)	

EXECUTED for and on behalf of the Subcontractor pursuant to section 127 of the *Corporations Act 2001* (Cth):

(Director/Secretary signature)		(Director/Secretary signature)	
(Name)		(Name)	

Major Services Subcontract

SECTION B – GENERAL CONDITIONS

1. INTERPRETATION

1.1 In the Subcontract, unless a contrary intention appears:

Acceleration Direction has the meaning stated in Clause 20.24;

Associated Goods means the goods (if any) stated in *Annexure C – Scope of Services*;

Authority means any government department, local government council, government or statutory authority, court, tribunal or other body or instrumentality, which has a right to impose a Legislative Requirement or whose approval is required with respect to or in connection with the;

Affected Party means the party which is prevented from performing its obligations by a Force Majeure Event;

Ambiguity means omission, ambiguity, discrepancy, error or inconsistency;

Business Day means any day except Saturdays, Sundays, public holidays in the State where the Services are being performed and days between Christmas Day and New Year's Day;

Claim means any claim, demand, cause of action, action, suit or proceeding of any kind (including under any written or unwritten law or in equity) arising under, out of or in connection with the Subcontract which either Party may make or bring against the other or its Personnel including for the payment of money, a Variation, extension of time or Loss;

Client means the person stated in *Annexure A - Subcontract Particulars* and includes its successors, substitutes (including persons taking by way of novation), assigns and permitted assignees and, if relevant, the Client's Representative(s) stated in *Annexure A - Subcontract Particulars*;

Client IP means the Client's Intellectual Property Rights in existence at the date of the Head Contract or which come into existence after the date of the Head Contract otherwise than in connection with the Head Contract;

Client's Purposes means the purposes set out *Annexure C – Scope of Services*;

Client's Transport Contractor means each contractor notified to the Subcontractor in writing by the Principal, retained by the Client to transport goods, plant and equipment and other items or things required for the Project between the Transfer Depot and the Site, between different locations at the Site and between vessels in the Port of Weipa and the Site.

Commissioning includes checking the operational availability of each item, checking all manual and automatic contacts and interlocks, testing to demonstrate performance in accordance with the requirements of the Subcontract and any other actions which are described in the Subcontract, or otherwise agreed by the Parties, as being part of Commissioning;

Completion means that stage in the performance of the Services when:

(a) a certificate of Practical Completion has been previously issued;

(b) in the opinion of the Principal:

(i) to the extent not already provided:

A the Subcontractor has delivered all operation and maintenance manuals, instructions and other engineering data, spare parts lists and "as-built" drawings; and

B all requisite tests have been passed and test results have been submitted in accordance with the Subcontract;

(c) all matters, omissions and defects specified in any Certificate of Practical Completion have been completed or made good in accordance with the Subcontract;

(d) all trade warranties have been provided in accordance with the Subcontract and accompanies by a list of the same; and

(e) for Completion of the whole of the Services only, the Subcontractor has provided an executed release to the Principal in a form acceptable to the Principal from all Claims arising under or by virtue of the Subcontract or its performance;

Consequential Loss means loss of revenue, loss of profit or anticipated profit, loss of production, loss of use of any plant or facility (other than demurrage), business interruption of any nature, loss of business opportunity, loss of business reputation, loss of contract, value of shares, wasted overheads, payment of liquidated sums, penalties or damages under any agreement (other than the Subcontract or as expressly permitted by the Subcontract) or any other indirect, remote, consequential, punitive, exemplary or special loss or damage, but does not include:

(a) Loss arising from Claims by Third Parties or the Client's or the Principal's Personnel in respect of property damage, personal injury, nervous shock or death; or

(b) Loss which may be recoverable by the Principal under Clause 12, 20.19, 26 or 32.1;

Date for Commencement means date stated in *Annexure A – Subcontract Particulars*;

Date for Practical Completion means the last day of the period stated in *Annexure A - Subcontract Particulars* by which the Subcontractor shall bring the Services to Practical Completion but, if an extension of time for Practical Completion is granted by the Principal or the Principal determines a reduction of time for Practical Completion, it means the date resulting from the extension or reduction of time;

Date of Practical Completion means the date upon which the Services reach Practical Completion;

Date of the Subcontract means the date stated in the Instrument of Agreement or, if no date is stated, the earlier of the date the Principal accepts in writing the Subcontractor's final offer or the date the last of the Parties duly executes the Subcontract;

day means a calendar day;

Deed of Final Release means the document at *Annexure D2 – Deed of Final Release*;

Deed of Release means the document at *Annexure D1 – Deed of Release*;

Defect means any aspect of the Services or any other aspect of the Services or the Services not in accordance with the Subcontract, or any damage, deficiency, fault or inadequacy in design, performance, workmanship, quality or makeup of the Services and Defective shall have an equivalent meaning;

Defects Liability Period means the period stated in *Annexure A – Subcontract Particulars*;

Delay Compensation Event means any of the events stated in *Annexure A - Subcontract Particulars*;

Delivery Point means the place for delivery of the relevant Associated Goods stated in *Annexure C – Scope of Services* or, if no Delivery Point is stated, the Site or the Transfer Depot (as applicable);

direction means a direction or instruction given in writing and "directed" has an equivalent meaning;

Dispute means a dispute or controversy between the Parties arising out of or in connection with the Subcontract;

Dispute Notice means a written notice stating that it is issued under Clause 34.1 and that outlines the nature of the Dispute;

document includes software (including source code and object code versions), design (including structural, mechanical, electrical and instrumentation design), diagram, drawing (including "as built" drawing), graph, chart, projection, specification, estimate, record, concept, account, plan, formulae, calculation, schedule, manual, programme, description, method, technique, process, supplier list, price list, customer list, market research information, correspondence, letter, paper or other document in any medium (including 2 and 3 dimensional computer assisted designs) and including all copies and extracts from them arising out of or in connection with the Subcontract;

Environmental Event means any event or series of events arising out of the performance of the Subcontract which has resulted, or results, in any actual or potential harm to the environment including any event or series of events not authorised by or in breach of an Legislative Requirement or approval or other government agency requirement;

Environmental Management Plan means the document referred to in Clause 16.3(b);

Excusable Delay means a delay resulting from the occurrence of one or more of the causes stated in *Annexure A - Subcontract Particulars*, except where the occurrence is caused or contributed to by an act, default, breach or omission by the Subcontractor or any of the Subcontractor's Personnel;

Existing Infrastructure means existing plant, services or improvements, if any, located within or in the vicinity of the Site, including:

(a) any part of the Services comprising a Separable Portion from the time it is handed over to the Principal under the Subcontract; and

(b) any buildings and infrastructure providing any power, water and other necessary consumables for the Services, to which the Services will be interconnected;

Force Majeure Event means the occurrence after the Date of the Subcontract of:

(a) war, civil war, armed conflict or terrorism;

(b) nuclear, chemical or biological contamination unless the source or the cause of the contamination is the result of the conduct of the Affected Party or its Personnel;

(c) riot, commotion, disorder, strike or lockout by persons other than the Affected Party or its Personnel; or

(d) natural catastrophes such as earthquake, hurricane, typhoon, cyclone, tornado or volcanic activity,

that is unavoidable, insurmountable and not within the reasonable control (whether directly or indirectly) of the Affected Party and that directly causes the Affected Party to be unable to comply with all or a material part of its obligations under the Subcontract;

GST has the meaning given in the GST Act;

GST Act means *A New Tax System (Goods and Services) Act* 1999 (Cth);

Head Contract means the contract between the Principal and the Client in respect of the Project;

Insolvency Event means any of the following events in relation to a Party:

(a) the Party informs the other Party in writing or creditors generally or passes a resolution to the effect that the Subcontractor is insolvent or is likely to become insolvent or the Party is deemed to be insolvent under any legislation;

(b) the Party commits an act of bankruptcy, has a bankruptcy petition presented against it or is made or declared bankrupt;

(c) the Party enters, or attempts or proposes to enter a scheme of arrangement or any other form of court sanctioned reconstruction (other than if the Party can demonstrate to the satisfaction of the other Party that it is to perform a reconstruction or amalgamation while solvent);

(d) the Party enters or attempts to enter or proposes to enter a compromise or other arrangement with creditors or any class of its creditors;

(e) the Party has a liquidator, provisional liquidator, administrator, insolvency officer or any other similar official appointed to it or has a receiver, receiver and manager or other controller or similar official appointed over its property or part of its property;

(f) the Party takes any steps to obtain protection or is granted protection from creditors under any Legislative Requirement;

(g) any charge, mortgage, encumbrance or security interest is enforced or exercised against any asset of the Party;

(h) the Party is taken to have failed to comply with a statutory demand or has an application made to the court for its winding up and such application is not withdrawn or dismissed within

10 Business Days;

(i) the Party has a winding up order made against it, is deregistered, dissolved or has any steps taken against it to enforce a judgement of a court or an arbitral award; or

(j) the Party has something having substantially similar effect to any of the events specified above occur in any jurisdiction under or in respect of any existing or future Legislative Requirement;

Intellectual Property Right means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and other similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trademarks, circuit layout designs and rights in relation to circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields:

(a) including all rights in all applications to register these rights and all renewals and extensions of these rights; and

(b) excluding non-assignable moral rights and similar non-assignable personal rights of authors and producers;

Latent Conditions means geological conditions on the Site or its surroundings, including artificial things, but excluding weather conditions and the consequences of weather conditions, which differ materially from those geological conditions which could reasonably have been anticipated by a competent and experienced contractor before the Date of the Subcontract if such contractor had:

(a) examined all information made available or other information relevant to the risks and contingencies involved in undertaking the Subcontract and obtainable by the making of reasonable enquiries; and

(b) inspected the Site and its surroundings and the physical and geological conditions of the Site and its surroundings (including weather, atmospheric and sub-surface conditions);

Legislative Requirements include statutes, regulations, by-laws, orders, awards, industrial agreements, registered workplace agreements, proclamations of the Commonwealth, Authority requirements, guidelines, certificates, licences, consents, permits, approvals (including conditions in respect of those consents, certificates, licences, permits and approvals) and requirements or orders of organisations and Authorities having jurisdiction in connection with the performance of the Services, including any modification or re-enactment of a Legislative Requirement from time to time;

Loss means losses, damages, liabilities, liquidated sums, charges, costs and expenses of any kind;

Milestone Date means a milestone date stated in *Annexure A – Subcontract Particulars*;

month means calendar month;

NGER Legislation means the *National Greenhouse Energy Reporting Act 2007* (Cth) and any related regulations or determinations under that Act;

OH&S Legislative Requirement means any applicable health and safety related Legislative Requirement, including a Legislative Requirement related to occupational health and safety,

dangerous goods, chain of responsibility, mining, electrical health and safety, and any other industry specific Legislative Requirement, and any related codes of practice, standards, notices and directions issued by any Authority;

Party means the Principal or the Subcontractor, and **Parties** means both of them;

Personnel means any employees, subcontractors (including subcontractor's employees, agents and representatives), agents and representatives involved either directly or indirectly in the performance of the Services but a reference to the Principal's Personnel excludes the Subcontractor and its Personnel;

Plant means all machinery, plant, equipment, vehicles, tools, consumables, temporary buildings, huts, sheds, appliances and the like of whatsoever nature used for or in relation to but not forming part of the Services;

Practical Completion means that stage of the Services when in the opinion of the Principal:

(a) the relevant Services are complete except for minor omissions and minor Defects:

(i) which do not prevent the Services from being used for their intended purpose;

(ii) which in the Subcontractor has reasonable grounds for not immediately rectifying; and

(iii) rectification of which will not prejudice the safe, convenient and lawful use of the Services;

(b) all inspections, controls and tests imposed by any government agency (other than those expressly excluded from the Subcontractor's responsibility to ensure compliance with the Subcontract) and any tests provided for under the Subcontract which are required before the Services achieve Practical Completion or can be used for their intended purpose have been carried out and passed;

(c) the Subcontractor has provided the Principal with copies of all documents evidencing the Subcontractor's compliance with all permits, licences, registrations and approvals given under any Legislative Requirement or by any government agency for the performance of the Subcontract;

(d) the Subcontractor has obtained any approvals or certifications necessary to lawfully occupy and use the Services, save for any approvals or certifications that are expressly designated as the responsibility of the Principal in the Subcontract;

(e) the Services comply with any applicable Legislative Requirements;

(f) the Subcontractor has provided to the Principal any operating manuals, Sub-subcontractors' warranties, manufacturer's data records, other records, marked up red line "as built" drawings, keys and security or locking devices which in the reasonable opinion of the Principal are required for the use, operation or maintenance of the Services;

(g) the Subcontractor has returned all equipment and surplus materials supplied to the Subcontractor by the Principal;

(h) the Subcontractor has cleared away all rubbish and debris from the Site;

(i) the Subcontractor has complied with any requirements under Clause 26; and

(j) the Subcontractor has performed and completed the additional requirements of Practical Completion, if any, stated in *Annexure A – Subcontract Particulars*;

Principal Contractor means:

(a) "principal contractor" or a similar term such as "main contractor", as defined in an OH&S Legislative Requirement; or

(b) where "principal contractor" or a similar term is not defined in an OH&S Legislative Requirement, the entity that performs a role similar to the role of "principal contractor" within the meaning of the *Work Health and Safety Regulation 2011* (NSW) or any similar or equivalent legislation in the applicable jurisdiction;

Professional Subcontractor means a contractor with skill and experience in, and the expertise and resources necessary to complete, services of a similar nature to the Services;

Program means:

(a) any program agreed by the Parties and included in *Annexure L – Program*; or

(b) the program approved by the Principal from time to time under Clause 19;

Project means the Project stated in *Annexure A – Subcontract Particulars*;

Project Execution Plan means the document referred to in Clause 16.3(c);

Provisional Sum means an estimated allowance included in the Subcontract Sum referred to in Clause 23.31 for items of Services set out in *Annexure B – Pricing*;

Quality System means the system referred to in Clause 17.1;

RCTI means a "Recipient Created Tax Invoice" and has the same meaning as that term has in the GST Act;

Related Entity means, in relation to a Party or other entity, a body corporate that is:

(a) a controlling company;

(b) a controlled company; or

(c) a controlled company of a controlling company,

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

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

corporate; or

(e) it controls the composition of a majority of the board of that other body corporate,

and "controlled" and "controlling" will be construed accordingly;

Safety and Health Plan means the document referred to in Clause 16.3(a);

Schedule of Rates means any schedule of rates included in *Annexure B – Pricing* which, in respect of any item of the Services, shows the rate or respective rates of payment for the performance of such Services;

Security of Payment Act means:

(a) if the Site is located in Western Australia, then the *Construction Contracts Act 2004* (WA);

(b) if the Site is located in New South Wales, then the *Building and Construction Industry Security of Payment Act* 1999 (NSW);

(c) if the Site is located in Queensland, then the *Building and Construction Industry Payments Act 2004* (Qld);

(d) if the Site is located in Tasmania, then the *Building and Construction Industry Security of Payment Act 2009* (Tas);

(e) if the Site is located in the Northern Territory, then the *Construction Subcontracts (Security of Payments) Act 2004* (NT);

(f) if the Site is located in Victoria, then the *Building and Construction Industry Security of Payment Act* 2002 (Vic); or

(g) if the Site is located in South Australia, then the *Building and Construction Industry Security of Payment Act 2009* (SA),

each as amended from time to time;

Separable Portion means a portion of the Services referred to in Clause 20.64;

Separate Contractors means all contractors, consultants and other persons engaged to perform any works or services of whatever nature related to the Project (other than the Subcontractor and its Sub-subcontractors);

Services means the whole of the services to be performed in accordance with the Subcontract, including Variations, all Associated Goods that are to be supplied by the Subcontractor, and all ancillary services and associated goods not expressly specified but which are necessary for the satisfactory completion of the obligations of the Subcontractor under the Subcontract;

Site means the land and other places to be made available to the Subcontractor by the Principal for the purposes of the Subcontract;

Subcontract means this subcontract comprising the Section A - Instrument of Agreement, Section

B - General Conditions, Section C - Annexures, Section D - Special Conditions (if any) and all other documents annexed or attached to this subcontract that are intended to form part of the contract between the Parties, but the Tender (if any) does not, except to the extent that it, or any part of it, is reproduced in the Subcontract itself, form part of the Subcontract;

Subcontract IP means all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, or for the purpose of, or in connection with the performance of the Services or the Subcontract (including all Intellectual Property Rights in anything developed by the Subcontractor in performing the Services);

Subcontractor IP means the Subcontractor's Intellectual Property Rights in existence at the date of the Subcontract or which come into existence after the date of the Subcontract otherwise than in connection with the Subcontract;

Subcontractor's Transfer Items means those Associated Goods, Plant, temporary works or other items or things to be supplied by the Subcontractor in connection with the Services other than any other things the Principal approves in writing to be delivered directly to the Site by the Subcontractor;

Subcontract Sum means:

(a) where the Principal has accepted a lump sum, the lump sum;

(b) where the Principal has accepted rates, the sum of the products ascertained by multiplying:

  (i) the total number of hours reasonable and properly spent performing the Services by the corresponding rate stated in the Schedule of Rates; or

  (ii) the measure quantity of each item of the Services actually performed by the corresponding rate stated in the Schedule of Rates; or

(c) where the Principal has accepted a lump sum and rates, the aggregate of the sums referred to in above,

as set out in *Annexure B – Pricing*, as amended from time to time in accordance with the Subcontract;

Sub-subcontract means a contract between the Subcontractor and a Sub-subcontractor;

Sub-subcontractors means the Subcontractor's contractors, suppliers or subcontractors;

Suspension Direction has the meaning stated in Clause 20.40;

Tender means the Subcontractor's offer or counter-offer in writing to perform the Services whether described as a "tender" or "proposal" or "quotation" or otherwise;

Third Party means a person not being the Client, the Principal, the Subcontractor or Personnel of the Client, the Principal or the Subcontractor; and

Transfer Depot means the location (if any) specified in *Annexure A – Subcontract Particulars* or any substitute or other location specified of substituted from time to time by the Principal by notice in writing;

Variation means a variation to the Services directed in writing by the Principal under Clause 22.1.

1.2 In interpreting the Subcontract, unless stated otherwise or unless the context otherwise requires:

(a) reference to a Clause, Section, Annexure, Attachment or Appendix is a reference to a clause, section, annexure, attachment or appendix to the Subcontract;

(b) clause headings are for convenience only and shall not be used in the interpretation of the Subcontract;

(c) words in the singular include the plural and vice versa, as the context requires;

(d) where a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;

(e) monetary amounts or rates stated in the Subcontract and all payments due under the Subcontract shall be in Australian currency;

(f) all lump sums and rates and prices stated in the Subcontract shall be deemed to include GST, unless stated otherwise;

(g) reference to a person or party includes a body corporate, trust, partnership, joint venture, unincorporated association and vice versa;

(h) reference to a Party includes the Party's Personnel, executors, administrators, successors, substitutes (including persons taking by way of novation), assigns and permitted assignees;

(i) where the Subcontractor comprises two or more Parties, the Parties shall be bound under the Subcontract jointly and severally and shall act only jointly in relation to the exercise by that Party of its rights under the Subcontract;

(j) "including" is not a word of limitation;

(k) reference to "approved" or "approval means "approved in writing" or "approval in writing";

(l) a provision of the Subcontract shall not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the Subcontract or the inclusion of the provision in the Subcontract;

(m) no provision of the Subcontract constitutes a stipulation for the benefit of a Third Party, save to the extent expressly provided in the Subcontract;

(n) where the Subcontractor is required under the Subcontract to perform an obligation, matter or thing, or discharge a liability, the Subcontractor shall do so at its own cost, unless expressly provided otherwise; and

(o) where a period of time is specified and runs from the day of a specified event, the period is to be calculated exclusive of that day;

(p) "promptly" means as soon as practicable in the relevant circumstances;

(q) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in which the Site is located;

(r) a reference to a day or months means calendar day or calendar month; and

(s) reference to any Legislative Requirement includes any statutory instrument issued under it and any amendment, consolidation, re-enactment or replacement to or of it.

2. NATURE OF THE SUBCONTRACT

2.1 The Subcontractor shall perform and complete the Services in accordance with the Subcontract.

ALL WORK IS INCLUDED

2.2 Other than as stated in the Subcontract, the Subcontractor has no entitlement to payment in respect of the Services other than payment of the Subcontract Sum. The Subcontractor is deemed to have allowed for the provision of all labour including overtime, plant, equipment and other items necessary for the completion of the Services, regardless of whether expressly stated in *Annexure C – Scope of Services* or elsewhere in the Subcontract.

3. SUBCONTRACT DOCUMENTS AND OTHER INFORMATION

3.1 The Subcontractor agrees that it does not rely on any document or other information other than as expressly included or referred to in the Subcontract.

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

3.3 Except as provided for in the Instrument of Agreement, the documents and other information that constitute the Subcontract shall be taken as mutually explanatory and anything contained in one but not in another shall be equally binding as if contained in all. If two or more documents contain, or a Party contends that the documents contain, different standards or requirements, then the higher standard or more onerous requirement will apply.

AMBIGUITIES

3.4 The Subcontractor shall promptly upon discovery, refer to the Principal for resolution any Ambiguity in the documents and other information that constitutes the Subcontract. The Subcontractor shall not proceed with the affected portion of the Services until the Principal has given a direction resolving the Ambiguity. Any additional Loss incurred by the Subcontractor due to its failure to comply with this Clause or it proceeding with the affected portion of the Services prior to the resolution of the Ambiguity shall be at the Subcontractor's sole cost.

3.5 Subject to Clause 3.4, the Subcontractor is not entitled to make, and the Principal is not liable for, any Claim arising out of or in connection with any direction by the Principal to resolve an Ambiguity, unless:

(a) a Professional Subcontractor, having done the things the Subcontractor warrants it has done in Clause **Error! Reference source not found.**, would not have detected the Ambiguity prior to executing the Subcontract; and

(b) compliance with the direction causes the Subcontractor to incur more cost than the Subcontractor could reasonably have anticipated,

in which case the services involved in complying with the direction will be a deemed Variation.

DRAWINGS

3.6 *Annexure F – Drawings and Specifications* represent generally the forms, dimensions and descriptions of the Services. The Subcontractor shall make allowance for slight variations in dimensions shown on drawings that may be caused by unavoidable inequalities in the sizes of materials and any such variations shall be as agreed upon between the Subcontractor and the Principal or, failing such agreement, as decided by the Principal.

3.7 The Subcontractor may use any of the Drawings provided by the Principal as part of the Subcontract for planning and organising the performance of its obligations but shall provide Services only on the basis of Drawings (by whomsoever prepared) marked "Approved for Construction" or otherwise as specifically instructed or authorised by the Principal. Where Drawings are supplied as reference drawings, they shall only be used by the Subcontractor for the purpose of informing itself in relation to the matters the subject of such Drawings.

REPORTING

3.8 The Subcontractor shall:

(a) give the Principal or the Client, on request and within a reasonable time any information the Subcontractor has in its possession in connection with the performance of the Services, a report on any specific issue in connection with the performance of the Services and any other periodic report (including project cost reports, and Sub-subcontractor reports), which the Principal reasonably requires, other than any information or report that is subject to legal professional privilege;

(b) report all incidents and accidents to the Principal's site safety representative using forms approved by the Principal;

(c) establish and maintain a complete set of accounts and records in accordance with prudent and accepted accounting principles and as the Principal otherwise reasonably requires;

(d) on receipt of reasonable notice from the Principal, give the Principal, the Client and any person authorised by the Principal access to the Subcontractor's and each Sub-subcontractor's quality systems to enable monitoring, inspecting and quality auditing of such systems; and

(e) attend all meetings as directed by the Principal and ensure any Subcontractor's Personnel attend any meetings as directed by the Principal.

4. DOCUMENTS

4.1 The Subcontractor shall:

(a) prepare all documents required to perform the Services;

(b) ensure that all documents prepared by it are suitable for their purpose;

(c) update all documents prepared by it as necessary to give effect to Clauses 4.1(a) and (b);

(d) immediately give notice to the Principal upon discovering any Ambiguity or Defect in the documents prepared by the Subcontractor or other Subcontractors; and

(e) not make any amendments to approved documents without obtaining the Principal's prior written agreement.

4.2 Any approval of documents by the Principal, the Client or Authorities shall not necessarily constitute finalisation of the documents and further work, amendments or alternatives may be required to satisfy the Subcontractor's obligations under the Subcontract.

4.3 The Subcontractor shall allow:

(a) a reasonable time, being not less than the number of days stated in *Annexure A – Subcontract Particulars* for review and approval of a document by the Principal and where relevant the Client; and

(b) where relevant, a reasonable time for review and approval of documents by Authorities,

so as to allow the Principal a reasonable time to complete that review and enable the Principal to comply with its obligations under the Head Contract.

4.4 Where documents are required for the purpose of tendering a construction work package or for construction of the Project the Subcontractor shall provide a master of each document, on paper and in an electronic form as required by the Principal, suitable for reproduction including each version prepared and all amendments performed.

4.5 If amendments are necessary or desirable to documents prepared by the Subcontractor:

(a) as a result of any Ambiguity or Defect in such documents;

(b) to obtain Authority approval, consent or certificate of any Authority; or

(c) as a result of any failure by the Subcontractor to properly perform the Services,

then the Subcontractor shall immediately perform such amendments. If the Subcontractor does not perform the amendments immediately and in a satisfactory manner, the Principal

may perform the amendments itself or arrange for them to be performed by others at risk of the Subcontractor and the cost of doing so shall be valued under Clause 22.11 and shall be a debt due and payable by the Subcontractor to the Principal upon demand.

4.6 Nothing in this Clause 4 shall affect the Subcontractor's obligations and liability in respect of the documents prepared by the Subcontractor in performing the Services.

5. SITECONDITIONS

SITE REQUIREMENTS

5.1 The Subcontractor shall provide all:

(a) storage at the Site for all plant, equipment and materials; and

(b) scaffolding, cranage and hoisting, except to the extent stated otherwise in the Subcontract,

necessary for performing the Services.

PHYSICAL CONDITIONS

5.2 All fossils, coins, articles, minerals of commercial value, and objects of antiquity and structures and other remains and things of geological and archaeological interest discovered on the Site shall be dealt with in accordance with any applicable Legislative Requirements but as between the Principal and the Subcontractor, shall be deemed to be the property of the Principal. The Subcontractor shall take all reasonable precautions to prevent its Personnel from removing and damaging any such article or thing and shall immediately upon discovery thereof and before removal or any further disturbance of the area concerned, inform the Principal of such discovery. The Subcontractor shall carry out at the expense of the Principal the Principal's orders as to the disposal of the same. The Subcontractor shall not resume work in the area concerned until permitted by the Principal. Time lost shall be treated as a suspension of work under the Subcontract.

5.3 The Subcontractor shall not cut down any trees without the prior approval of the Principal.

CLIENT'S OPERATIONS

5.4 The Subcontractor acknowledges and agrees that the Client's operations take precedence over the performance of the Services. The Subcontractor shall at all times consult with the Principal and obtain 14 Business Days' prior approval for any action likely to interfere with the Client's operations. The Principal will reply to any such request as soon as it receives a reply from the Client in relation to the Subcontractor's request. All shut down time or isolated plant outages shall be at times convenient to and nominated by the Principal.

NOTICE OF LATENT CONDITIONS

5.5 If during the performance of the Services the Subcontractor encounters a Latent Condition, the Subcontractor shall immediately, and before such condition is disturbed, give the Principal written notice of:

(a) the existence of the Latent Condition; and

(b) whether the Subcontractor considers a Variation is required to deal with the Latent Condition, in which case the Subcontractor shall submit a statement advising the Subcontractor's estimated price of performing such a Variation and the Subcontractor's estimated impact that such a Variation may have on the Date for Practical Completion (if any).

5.6 Within 7 Business Days of receiving the Subcontractor's notice under Clause 5.5 above, the Principal shall notify the Subcontractor if any further details are required by the Principal in respect of the Subcontractor's Claim.

EFFECT OF LATENT CONDITION

5.7 Within 12 Business Days of the later of receipt of:

(a) the Subcontractor's notice under Clause 5.5; or

(b) any further information required by the Principal under Clause 5.6,

the Principal shall notify the Subcontractor whether, in his or her opinion, a Latent Condition has been encountered, and if so, whether a Variation to the Services is directed as a result of the Latent Condition, in which case:

(c) the Subcontractor shall:

(i) submit the documentation required by Clause 22 within 7 Business Days after the date the Principal give the Variation direction; and

(ii) submit any claim for an extension of time in accordance with Clause 20 (with the Excusable Delay being the date the Variation is directed by the Principal); and

(d) the parties shall otherwise comply with:

(i) the procedure set out in Clause 22 in relation to the Variation, except that in valuing the Variation the Principal need not have regard to any costs or delays resulting from a Latent Condition and incurred more than 5 Working Days before the date of the Subcontractor's notice under Clause 5.5; and

(ii) the procedure set out in Clause 20 in relation to any claim by the Subcontractor for an extension of time or delay costs in relation to the Latent Condition.

5.8 The Subcontractor will have no entitlement to any Claim in relation to any Latent Condition unless it strictly complies with the requirements of Clauses 5.5 to 5.7 above.

6. PRIOR WORK OR SERVICES

6.1 The Subcontractor shall notify the Principal if the Subcontractor considers that any prior

work or services completed by a Separate Contractor or the Principal at the Site, which affects the Services, is Defective or unsuitable for the performance of any part of the Services by the earlier of:

(a) if the Subcontractor knew or ought to have known of the Defect or unsuitability prior to the commencement of the relevant Services, before the commencement of such Services; or

(b) if the Subcontractor knew or ought to have known of the Defect or unsuitability after the commencement of the relevant Services, immediately upon becoming aware of the Defect or unsuitability,

failing which the Subcontractor shall be deemed to have accepted the suitability of, and risk in the prior work or services and shall not be entitled to make any Claim in respect of such prior work or services.

7. SUBCONTRACTOR AS TRUSTEE

7.1 The following provisions apply if the Subcontractor enters into the Subcontractor as trustee of a trust (Trust).

7.2 The Subcontractor enters into the Subcontract both:

(a) as trustee of the Trust; and

(b) in its own right.

7.3 The Subcontractor represents and warrants that:

(a) it enters into the Subcontract as trustee of the Trust and in its own right;

(b) it has full power and authority in its own right and as trustee of the Trust to enter into and perform its obligations under the Subcontract;

(c) the performance of the Services 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;

(d) it is not a trustee of any trust or settlement other than the Trust;

(e) the entry into and performance by it of its obligations under the Subcontract is in the Trust's commercial interests and is for the benefit of the beneficiaries of the Trust;

(f) it is not in default under the constituent documents of the Trust;

(g) no beneficiary under the Trust is presently entitled to the distribution of any of the capital of the Trust;

(h) no resolution has been passed or direction been given by the beneficiaries for the winding up or termination of the Trust or distribution of the property of the Trust;

and

(i) no resolution has been passed or direction or notice been given removing the Subcontractor as trustee of the Trust.

7.4 The Subcontractor shall not, without the prior written consent of the Principal:

(a) resign as trustee of the Trust or cause or permit any other person to become an additional trustee; or

(b) do, or fail to do, anything in breach of the terms of the constituent documents of the Trust.

8. CODE REQUIREMENTS

8.1 The Subcontractor acknowledges that the Principal is required to comply with and the Subcontractor warrants that it (and its Personnel) will also comply with:

(a) the National Construction Code as published by the Australian Government from time to time in accordance with the *Fair Work (Building Industry) Act 2012* (Cth)*;* and

(b) the Building Code of Australia and the Building Code Supporting Guidelines for Commonwealth Funded Entities (included as amended from time to time).

8.2 Compliance by the Subcontractor with such code and guidelines shall not change or relieve the Subcontractor's obligation to perform the Services in accordance with the requirements of the Subcontract.

8.3 The Subcontractor shall ensure that it and its Personnel:

(a) maintain proper records of compliance with such codes and guidelines; and

(b) allow officers from any Authority to take all necessary steps to audit the Subcontractor or any of its Personnel to monitor compliance with such codes and guidelines.

9. PERFORMANCE OF THE SERVICES

SITE ACCESS

9.1 On or before the date set out in *Annexure A – Subcontract Particulars*, but subject to the Subcontractor demonstrating that it continues to hold the insurances required by the Subcontract and providing the security required under the Subcontract (including a parent company guarantee if required under Clause 24.8), the Principal will give the Subcontractor non-exclusive access to the Site sufficient to enable the Subcontractor to perform its obligations under the Subcontract provided however that the Subcontractor shall not be entitled to access to a part of the Site until such time as the Principal is entitled to access to that part of the Site and then only to the extent that the Principal is able to procure access for the Principal.

9.2 The Subcontractor acknowledges that:

(a) Separate Contractors may be present on the Site during the performance of the Services; and

(b) nothing in the Subcontract confers on it exclusive possession of the Site.

9.3 The Subcontractor shall ensure that all Subcontractor Personnel when accessing the Site:

(a) comply with the procedures outlined at any Site induction;

(b) have completed the appropriate training any competency assessments in order to work on the Site;

(c) have met and complied with the Client's Site access requirements;

(d) wear appropriate personal protective equipment, including footwear and hard hats;

(e) wear or carry at all times whilst on or entering the Site badges or passes issued by the Principal or by the Client for the purpose of identification;

(f) do not give advice or directions to any person, other than authorised Principal Personnel;

(g) comply with any directions that the Principal may give; and

(h) behave in a responsible and appropriate manner.

DIRECTIONS

9.4 If the Subcontractor receives a direction from the Principal (other than to address any breach of the Subcontract or omission of the Subcontractor) which the Subcontractor considers will adversely affect its ability to comply with its obligations under the Subcontract or any Legislative Requirement, the Subcontractor shall notify the Principal who shall then either:

(a) withdraw the direction; or

(b) amend the direction to address the Subcontractor's concern, in which case the Subcontractor shall comply with the amended direction.

CO-OPERATION AND INTERFACING

9.5 The Subcontractor shall:

(a) co-operate with all Separate Contractors;

(b) co-ordinate and integrate the Services with the Separate Contractors' work to eliminate or, if it is not possible to eliminate, minimise any delays to the Services, including due to any direction given by the Principal under this Clause 9.5;

(c) not obstruct, delay or interfere with or damage Separate Contractors' work or property;

(d) subject to Clause 9.4, comply with all directions given by the Principal regarding the Services and Separate Contractors and their work;

(e) allow any Separate Contractors to use the amenities, facilities and services that are made available by the Client or by the Principal for use on the Site; and

(f) use reasonable endeavours to prevent or, if it is not possible to prevent, minimise delays to the Services.

9.6 The Subcontractor is not entitled to make, and the Principal is not liable for, any Claim:

(a) arising out of any delay or disruption of the Services by any Separate Contractor; or

(b) as a result of the Subcontractor complying with its obligations under Clause 9.5.

9.7 The Subcontractor shall, at its cost:

(a) provide the Principal and the Client, and any person authorised by the Principal or the Client, at all reasonable times, with access to all places at the Site; and

(b) provide the Principal and the Client and any person authorised by the Principal or the Client, at all reasonable times, with access to all places where Services are being prepared, Associated Goods are located or being manufactured, or from where materials, manufactured articles or machinery are being obtained, for use in the performance of the Services,

for the purpose of allowing the Principal or the Client to monitor, inspect, audit and, if necessary in the reasonable opinion of the Principal, expedite the Services being conducted or Associated Goods being manufactured or dispatched, at such workshop or place.

KEEP CLEAN, TIDY AND DRY

9.8 As it proceeds with the Services, the Subcontractor shall keep the relevant part(s) of the Site clean and tidy, including by removal of all its rubbish. The Subcontractor shall, at its own cost, dispose of all water, excavated materials and other waste at disposal areas as directed by the Principal.

SERVICES AND FACILITIES

9.9 Except where the Subcontract states otherwise, the Subcontractor shall provide all services and facilities which are necessary to comply with its obligations for the performance of the Services and keep these serviced and in excellent condition.

9.10 Except as otherwise specified, the Subcontractor is responsible for the supply of all power, water, safety equipment and other requirements necessary for the Subcontractor to perform the Services in accordance with the Subcontract.

9.11 The Subcontractor acknowledges that:

(a) no warranty or other liability on the part of the Principal shall be created or implied with regard to the suitability or performance of any services or facilities provided by the Principal; and

(b) the Subcontractor is not entitled to make, and the Principal is not liable for, any Claim in respect of such matters.

9.12 The Client or the Principal may make facilities available for use by the Subcontractor. The Subcontractor shall inform the Principal at least 21 days in advance of its requirements in relation to the use of such facilities. The Subcontractor shall ensure that at all times any Client or the Principal provided facilities used by the Subcontractor's Personnel are kept in a clean, orderly and safe manner and fit for immediate use.

WORKING HOURS

9.13 Unless stipulated otherwise by a court order, statutory authority, relevant award, an industrial agreement for the Site or a written direction by the Principal, the Subcontractor shall perform the Services at the Site during the working hours and working days for the Site stated in *Annexure A – Subcontract Particulars*. Unless stated otherwise, working days do not include public holidays, award holidays and days between Christmas and New Year's Day.

9.14 Notwithstanding Clause 9.13 above, the Principal shall be entitled at any time to give directions to the Subcontractor as to the days on which the Subcontractor shall perform the Services, and provided that the Subcontractor and its Personnel have not caused or contributed to need or reason for any such direction then to the extent that the performance of the Services as directed is different from the Program's planned working days and causes the Subcontractor to incur additional costs or delay, the Subcontractor may claim under Clause 20 or 22, as the case may be.

9.15 If, at the request of the Subcontractor, approval to work days or hours varying from those referred to in *Annexure A – Subcontract Particulars* is given by the Principal, all additional costs arising from such variation in working hours, including additions to wage rates payable to the Subcontractor's employees, together with any additional expenses incurred by the Principal by reason of altered catering, transport or other arrangements, worksite lighting and equipment hire shall be borne by the Subcontractor.

SUBCONTRACTOR'S PLANT (INCLUDING TEMPORARY SERVICES)

QUALITY

9.16 The Subcontractor acknowledges and agrees that in respect of all Plant that it brings to the Site for performing the Services or otherwise:

(a) it is responsible for the care of the Plant (including the maintenance of any necessary compliance certificates);

(b) it shall ensure that the Plant is in accordance with the manufacturer's specification, in good repair, fit for purpose and where relevant are registered and licensed for operation;

(c) it shall ensure that the Plant is at all times operated by experienced, competent and licensed Personnel; and

(d) it shall ensure that the Plant is clearly labelled or marked with the Subcontractor's name or identifying mark.

DELIVERY AND REMOVAL

9.17 The Principal may reject any Plant it considers unsuitable for the purpose for which the Subcontractor proposes to use it. Any item so rejected shall not be used for the purpose proposed, and, if the Principal directs, shall be removed from the Site at the Subcontractor's cost and the Subcontractor will not be entitled to any extension of the Date for Practical Completion.

9.18 The Subcontractor shall not remove any Plant from the Site without the prior written approval of the Principal, which approval shall not be unreasonably withheld where it is no longer required for the purposes of Practical Completion.

9.19 The Subcontractor shall not deliver any materials or Plant to the Site before the date of which it is entitled to access in accordance with the Subcontract without the prior written approval of the Principal, which approval shall not be unreasonably withheld.

OWNER OR ENCUMBRANCER

9.20 The Subcontractor shall, upon request by the Principal, notify the Principal in writing of the name and address of the owner or encumbrancer of any Plant used at the Site.

9.21 The Principal may, in order to avoid seizure of such Plant by the owner or encumbrancer, pay to the owner or encumbrancer the amount of any overdue instalment or other sums payable and the amount of such payment shall be a debt due and payable by the Subcontractor to the Principal upon demand.

TEMPORARY WORKS

9.22 Where it is necessary for the Subcontractor to provide temporary works, sheds, huts or similar buildings for the performance of the Services, they shall be:

(a) of a type or design in accordance with the design criteria for structures listed in *Annexure F - Drawings and Specifications*;

(b) able to withstand cyclone force winds pursuant to the relevant code; and

(c) erected only at the places designated in the *Annexure F – Drawings and Specifications* and if no such place is designated, at a place designated by the Principal.

9.23 The Principal, the Client and Separate Contractors shall have the right to use temporary works without charge and without material interference to the performance of the Services.

9.24 The Principal, the Client and their respective Personnel shall have the right to use, without charge and without material interference to the performance of the Services, temporary

works provided by the Subcontractor.

IDENTIFICATION

9.25 All Plant of the Subcontractor shall be clearly labelled or marked with the Subcontractor's name or identifying mark.

EXCLUSIVE USE

9.26 The Subcontractor shall ensure that all Plant, facilities, materials and all other things whatsoever supplied by the Principal to the Subcontractor are:

(a) inspected by the Subcontractor by the earlier of their use or within 5 Business Days of receipt and, if any part of them is defective, the Subcontractor shall notify the Principal immediately; and

(b) used exclusively by the Subcontractor in the proper performance of the Services unless the Principal shall first have otherwise approved.

9.27 Strict compliance by the Subcontractor with its obligations under Clause 9.26(a) is a condition precedent to the Subcontractor's entitlement to make any Claim arising out of any Defect in such Plant, facilities, materials or other things.

TESTING

9.28 At any time(s) prior to expiration of the Defects Liability Period the Principal or the Client may direct that any part of the Services (including the Associated Goods) be tested (including examined or measured).

9.29 With respect to any such testing:

(a) before the testing is conducted, the Subcontractor or the Principal, as the case may be, shall give reasonable (and in the case of the Subcontractor, not less than 10 days) notice in writing to the other of the time, date and place of the test. If the other does not then attend, the test may nevertheless proceed;

(b) the Subcontractor shall provide such assistance as may be required by the Principal;

(c) the Principal may direct that any part of the Services not be covered up or made inaccessible without the Principal's prior approval;

(d) the testing shall be conducted as provided in the Subcontract, or by the Principal or a person (which may include the Subcontractor) nominated by the Principal or the Client;

(e) the Subcontractor shall prepare and submit to the Principal test results as soon as possible after completion of the testing;

(f) in the case of any Associated Goods that are manufactured off Site, the Subcontractor shall provide to the Principal the results of any testing undertaken

by or on behalf of the Subcontractor before the Associated Goods are dispatched from the place of manufacture; and

(g) on completion of the testing, the Subcontractor shall make good the Services so that it fully complies with the Subcontract.

9.30 Costs of such directed testing shall be borne by the Principal and any delay in such testing shall constitute an Excusable Delay unless:

(a) such testing is requisite in accordance with relevant Australian Standards, codes or in accordance with generally accepted practices;

(b) the Subcontract provides that the Subcontractor shall bear the costs; or

(c) the test shows that the Services or Associated Goods are not in accordance with the Subcontract,

in which case the costs of the test shall be borne by the Subcontractor.

9.31 Any test shall be repeated if so required by either Party. If the repeat test confirms the previous test all costs in relation to the repeat test shall be paid by the Party requiring it but otherwise shall be paid by the Party obliged to make or who required the original test.

9.32 If a test reveals that any part of the Services is not in accordance with the Subcontract, the Subcontractor, at its cost, shall:

(a) immediately re-perform that part of the Services and any other parts affected as a result; and

(b) complete such re-performance prior to the time at which the Subcontractor proceeds with any other services that will be affected by the part of the Services that are to be re-performed.

9.33 On completion of the re-performance, that part of the Services shall again be tested at the Subcontractor's cost.

9.34 Notwithstanding Clause 9.30, if the Subcontractor fails to perform within the time directed by the Principal any testing which is required to be performed by it the Principal may perform the testing, the costs of which shall be valued under Clause 22.11 and shall be a debt due and payable by the Subcontractor to the Principal upon demand.

9.35 The Subcontractor shall not be entitled to rely upon any inspections, or testing performed for its own purposes by the Principal, the Client or the Client's Superintendent, and those inspections or tests will not affect the Subcontractor's responsibility for the Services.

PERSONNEL

9.36 The Subcontractor shall:

(a) provide experienced and skilled Personnel to perform the Services in accordance with its obligations under the Subcontract;

(b) ensure that the Services are performed under the supervision of appropriately qualified and experienced Personnel;

(c) ensure that its Personnel have completed the appropriate training and competency assessments in order to work on the Site and have met and complied with all Site access requirements; and

(d) ensure that its Personnel comply at all times with all Legislative Requirements.

9.37 The Principal may direct the Subcontractor to remove from the Site or from any activity connected with the performance of the Services, any person employed by the Subcontractor or a Sub-subcontractor in connection with the Services who:

(a) in the reasonable opinion of the Principal, has acted carelessly or recklessly in the course of their employment, poses a threat to health and safety, is or has been guilty of misconduct, is incompetent or negligent;

(b) has previously been removed from the Site or from any of the Principal's or the Client's sites;

(c) fails to comply with the any of the Principal or the Client's transport regulations; or

(d) whose continued involvement in the Services are not in the best interests of the Project.

9.38 The Subcontractor shall comply with a direction made under Clause 9.37 within the time specified by the Principal, immediately replace that person and, at the same time return to the Principal any access card and other property issued to that person.

10. DELIVERY, INSPECTION AND QUALITY

GENERAL

10.1 The Subcontractor shall perform, and ensure that its Personnel perform, the Services:

(a) in accordance with the requirements of the Subcontract and all Legislative Requirements;

(b) with the professional skill, care and diligence expected of a Professional Subcontractor; and

(c) if reference is made in the Subcontract to a particular brand or supplier of materials, using the specified brand or supplier or equivalent, and, unless otherwise stated, at its cost.

DELIVERY TO SITE

10.2 The Subcontractor shall:

(a) not, without the Principal's prior approval, deliver any Associated Goods or

materials to the Site before the date on which the Subcontractor is entitled to access to the Site in accordance with the Subcontract;

(b) liaise with the Principal not less than 5 Business Days prior to the date for delivery to Site of any Associated Goods or materials which by their nature are likely to cause disruption to activities at the Site in their delivery, to make arrangements for their delivery to the Delivery Point;

(c) label the Associated Goods or materials for identification by the Subcontractor or as otherwise directed by the Principal;

(d) supply all necessary resources for handling, loading and transporting the Associated Goods or materials to the Subcontractor's lay-down facility;

(e) unless stated otherwise, pack, mark and transport the Associated Goods or materials on pallets or in crates or packaged as reasonably required by the Principal to facilitate subsequent rehandling and use of the Associated Goods and materials;

(f) unless stated otherwise, unload, stack, safely store and distribute all Associated Goods and materials; and

(g) supply all Material Safety Data Sheets (**MSDS**) or other information as required by the Principal's or the Client's Site access requirements for approval prior to delivering any Associated Goods or materials to the Site.

10.3 The Principal may give a direction to the Subcontractor to change the Delivery Point.

10.4 At the time of delivery, the Subcontractor shall provide the Principal with a delivery docket in duplicate setting out the details of the Associated Goods delivered and accepted by the Principal, in a form acceptable by the Principal, for signature by the Principal and the Subcontractor shall retain one copy so signed.

10.5 Delivery and receipt of Associated Goods by the Principal does not constitute an acceptance of the Associated Goods by the Principal.

INSPECTION OF ASSOCIATED GOODS

10.6 If the Principal requests the opportunity to inspect any Associated Goods or materials before they are shipped from their place of manufacture, the Subcontractor shall notify the Principal when such Associated Goods or materials are ready for inspection.

10.7 The Subcontractor at its own cost shall properly and carefully pack and protect all Associated Goods for despatch to the Delivery Point in accordance with the best practices having regard to their method of carriage, handling and the climatic conditions through which they will pass whilst being transported to the Delivery Point. The Subcontractor shall provide and fit all lifting and handling devices required for lifting and handling the Associated Goods and materials in transit.

DELIVERY ADVICE

10.8 If the Principal requests delivery advice, the Subcontractor shall promptly notify the

Principal of the date of despatch of the Associated Goods manufactured off the Site and its estimated date of arrival at the Delivery Point.

IMPORTED GOODS AND MATERIALS

10.9 Where Associated Goods or materials are to be imported by the Subcontractor into Australia, the Subcontractor shall submit to the Principal the terms of each proposed application for permit or clearance, together with all supporting documents for the Principal's review. The Principal shall be at liberty to request additional information and to alter and amend the said application. Unless otherwise instructed by the Principal, all applications in respect of the Associated Goods or materials shall be made by the Subcontractor.

DELAY

10.10 If in the reasonable opinion of the Principal, the performance of the Services is or may be delayed due to delay in arrival of Plant, Associated Goods or materials to be supplied by the Subcontractor, then the Principal may, without creating any existing or future obligations in that or like regard, supply the required Plant, Associated Goods or materials at the Subcontractor's cost.

ALTERNATIVE ITEMS

10.11 Where the Subcontractor desires to substitute alternative goods, materials or Plant for those specified, it shall:

(a) submit copies of its calculations and detail drawings supporting the proposed substitution to the Principal for the Principal's approval;

(b) obtain the Principal's written approval of the proposed substitution and supporting documentation before the substitution is made.

10.12 The Principal's approval of alternative Associated Goods or materials shall not constitute a waiver of the Subcontractor's obligations to fully perform its obligations under the Subcontract and the Subcontractor is not entitled to make, and the Principal is not liable for, any Claim arising out of a substitution or proposed substitution.

EXPEDITION OF MANUFACTURE AND DELIVERY OF ASSOCIATED GOODS

10.13 Without limiting the Subcontractor's responsibility to achieve Practical Completion of the whole of the Services by the Date for Practical Completion, the Principal may direct the Subcontractor to expedite the procurement and/or manufacture and/or delivery of all or any of the Associated Goods. When requested by the Principal, the Subcontractor shall submit in writing the following information:

(a) sufficient description by way of name and item number of the Associated Goods involved;

(b) priced or unpriced copies of orders for purchase and/or manufacture of the Associated Goods involved;

(c) notification of the date of commencement of manufacture; and

(d) a program for shipment and delivery of the Associated Goods involved to the Delivery Point;

10.14 As set out in Clause 20, a direction under this clause will not give rise to a Variation if the direction is necessary to overcome delay by the Subcontractor or to bring the timing for the performance of the Services back to the Program.

QUALITY

10.15 All Associated Goods and materials supplied by the Subcontractor for incorporation into the Services (including any material used for packing and shipping the Associated Goods and materials) shall, unless otherwise specified in the Subcontract, be:

(a) of the highest grade and current manufacture;

(b) new and unused;

(c) capable of safe, efficient and reliable operation;

(d) free from all Defects in design, materials and workmanship;

(e) free from asbestos and any materials containing asbestos or any other substance prohibit by any Legislative Requirement;

(f) in accordance with all applicable Legislative Requirements; and

(g) suitable for their respective purposes and in accordance with *Annexure F – Drawings and Specifications* (including, if a particular brand or supplier is specified, of that brand or from that supplier).

NO LIEN

10.16 The Subcontractor shall not at any time:

(a) claim any lien over any part of the Services; or

(b) offer or agree, or purport to offer or agree, to lend, pledge, mortgage, let or hire any part of the Services.

11. DESIGN OBLIGATIONS

11.1 This Clause 11 applies where specified in *Annexure A - Subcontract Particulars* and, if so, to the extent the Subcontractor is responsible for design of Services.

SUBCONTRACTOR'S DESIGN OBLIGATIONS

11.2 The Subcontractor shall develop and complete the design of the Services to ensure that the Services:

(a) can be performed in accordance with the Subcontract;

(b) are fit for the purposes set out in, or which a Professional Subcontractor would reasonably infer from, the Subcontract and operate and function in accordance with the requirements of the Subcontract, including any performance criteria set out in the Subcontract;

(c) will be performed to the highest standard of care, skill and diligence that would normally be expected of a Professional Subcontractor providing services similar to the Services;

(d) will be undertaken in an efficient, professional, timely, environmentally responsible and cost effective manner;

(e) will have a life expectancy and whole life maintenance and operating cost commensurate with that which would be expected of similar Services;

(f) comply with all Legislative Requirements; and

(g) comply with the Client's Purposes.

11.3 The Subcontractor acknowledges that the Principal has not given any warranty or guarantee or made any representation about the adequacy or suitability or the level of completeness of the design of the Services.

11.4 Notwithstanding that the Subcontractor may be required to adopt the design which is incorporated into the Subcontract, the Subcontractor shall bear (and continue to bear) full liability and responsibility for the design and performance of the Services in accordance with the Subcontract (including the risk of any Defects which may arise as a result of or in any way in connection with any design work incorporated into the Subcontract).

SUBCONTRACTOR'S DESIGN WARRANTIES

11.5 The Subcontractor warrants that:

(a) the Subcontractor's design documents comply and will comply with all applicable Legislative Requirements and will be proper, adequate and suitable for the completion of the Services;

(b) it has checked and carefully considered the design work performed in preparing the Subcontract and that the design work is proper, adequate and suitable for the purposes set out in, or which a Professional Subcontractor would reasonably infer from, the Subcontract; and

(c) upon Practical Completion, the Services will be fit for the purposes set out in, or which a Professional Subcontractor would reasonably infer from, the Subcontract and operate and function in accordance with the requirements of the Subcontract, including any performance criteria set out in the Subcontract.

11.6 The warranties given in the Subcontract (including those in Clause 11.5) remain unaffected notwithstanding that the Subcontractor is required to adopt the design which is incorporated into the Subcontract.

PREPARATION OF DOCUMENTS

11.7 The Subcontractor shall ensure that the design drawings and specifications are prepared by Personnel with appropriate professional qualifications and membership of appropriate professional associations.

11.8 The Subcontractor shall:

(a) give the Principal for review:

(i) successive drafts of all required design documentation in accordance with the Program, and at the time the Subcontractor considers the design is at the following stage:

(A) 50% developed;

(B) 75% developed;

(C) completion of "for construction" drawings; and

(D) completion of shop drawings; and

(ii) the number of copies directed by the Principal of all required documentation (including amended versions) and in the format and timeframe directed by the Principal, including but not limited to drawings, calculation sheets, spare parts lists, computer program listings, warrant lists and engineering data;

(b) give the Principal operations manuals, instructions, and other engineering data within sufficient time to enable Commissioning and placing into operation of plant, machinery or equipment immediately after its erection or installation has been performed, in the timeframe directed by the Principal and in no case later than 5 Business Days after Practical Completion of the relevant Services;

(c) give the Principal documentation (including drawings) in the format required by the Principal, including as to numbering and drawing sheet format;

(d) not take any further steps in relation to any documentation which it has submitted to the Principal for review, including issue of documentation to Subcontractors or commencing the part of the Services to which the documentation applies, unless and until the Principal has approved the documentation; and

(e) if any documentation is rejected by the Principal, submit amended documentation to the Principal for review, in which case this Clause 11.8 shall reapply.

11.9 The Principal does not undertake any responsibility or duty of care to the Subcontractor to review, or in reviewing, the documentation for Ambiguities or compliance with the Subcontract.

11.10 No review of, comments upon, approval or rejection of, or failure to review or comment upon or approve or reject, any documentation prepared by the Subcontractor, or any other direction given by the Principal about the documentation shall:

(a) relieve the Subcontractor from, or alter or affect, the Subcontractor's liabilities or responsibilities whether arising out of or in connection with the Subcontract or otherwise according to law; or

(b) prejudice the Principal's rights against the Subcontractor whether arising out of or in connection with the Subcontract or otherwise according to law.

12. SUBCONTRACTOR'S RESOURCES

12.1 For the purposes of this Clause 12:

(a) "Key Duties" means duties, responsibilities and roles to be performed by the Key Persons as set out in *Annexure E – Subcontractor's Key Persons*; and

(b) "Key Persons" means the Subcontractor's and any of its Sub-subcontractor's Key Persons as set out in *Annexure E – Subcontractor's Key Persons*.

12.2 The Subcontractor's Key Persons and their Key Duties are stated in *Annexure E – Subcontractor's Key Persons*.

12.3 The Subcontractor acknowledges that the Principal has entered into the Subcontract in reliance on:

(a) the Key Persons' qualifications, skills, experience and expertise;

(b) the Key Persons performing their Key Duties for the duration of the Subcontract (unless otherwise directed by the Principal); and

(c) the Subcontractor not removing the Key Persons from the Services without the prior written approval of the Principal, which approval the Principal may refuse in its absolute discretion.

12.4 If a Key Person is not able to perform their Key Duties, the Subcontractor shall immediately:

(a) notify the Principal accordingly; and

(b) propose to the Principal (for the Principal's approval) a replacement for the Key Person.

12.5 Subject to Clause 12.8, for each Key Person who does not remain in their position as nominated in *Annexure E – Subcontractor's Key Persons* until completion of that Key Person's work activities in accordance with *Annexure E – Subcontractor's Key Persons*, the Subcontractor shall be liable for and shall pay as liquidated damages in the amount stated in *Annexure A – Subcontract Particulars*.

12.6 The amount payable by the Subcontractor pursuant to Clause 12.5 has been agreed by the Parties as representing the likely Loss as a result of a person identified as a Key Person not remaining in their position until completion of that Key Person's work activities.

12.7 The Principal may, without prejudice to any other method of recovery, deduct the amount

of such liquidated damages from any payment due to or which may become due to the Subcontractor. The deduction by the Principal or the payment by the Subcontractor of any amount of liquidated damages shall not relieve the Subcontractor from its obligations and liabilities under the Subcontract other than the obligation to keep the person identified as a Key Person and to which the liquidated damages payment relates in their position.

12.8 The Subcontractor shall not be liable for and shall not be required to pay the amount specified in Clause 12.5 where a person identified as a Key Person does not remain in their position as nominated in *Annexure E – Subcontractor's Key Persons* until completion of that Key Person's work activities by reason of:

(a) that person's employment (or contracting arrangements) with the Subcontractor terminating prior to completion of that Key Person's work activities; or

(b) that person being unable to continue in their position as nominated in *Annexure E – Subcontractor's Key Persons* until completion of that Key Person's work activities as a direct result of the person's death, serious injury or illness, family or personal reasons beyond the reasonable control of the Subcontractor.

12.9 The Parties acknowledge and agree that because of the nature of the Project and the need for continuity in relation to Key Persons, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred as a result of a person identified as a Key Person not remaining in their position as nominated in *Annexure E – Subcontractor's Key Persons* until completion of that Key Person's work activities. It is understood and agreed by the Parties that:

(a) failure by a person identified as a Key Person to remain in their position as nominated in *Annexure E – Subcontractor's Key Persons* until completion of that person's work activities will cause damage;

(b) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom;

(c) any sums which would be payable under this Clause 12 are in the nature of liquidated damages, and are not a penalty, and are fair and reasonable and are a genuine pre-estimate of the damage; and

(d) such payment represents a reasonable estimate of fair compensation for the Loss that may reasonably be anticipated from such failure.

12.10 If the Principal's entitlement to, and the Subcontractor's liability for, liquidated damages becomes void, voidable or unenforceable for any reason, then the Principal is entitled to recover from the Subcontractor and the Subcontractor shall indemnify the Principal for the Loss suffered by the Principal arising out of or in connection with the Subcontractor's failure to provide Key Persons in accordance with the Subcontract.

13. REPRESENTATIVES

13.1 The Subcontractor shall appoint and at all times have available a Subcontractor Representative acceptable to the Principal during the performance of the Services:

(a) to supervise the Services; and

(b) duly authorised to receive and perform the Principal's directions.

13.2 The Principal shall appoint and at all times have available a Principal's Representative duly authorised to give directions on behalf of the Principal. The Principal's Representative may appoint a delegate at any time to exercise or perform any of the Principal's Representative's rights or duties.

13.3 The Subcontractor shall comply with all directions and notices given in writing by the Principal's Representative. The Subcontractor shall not rely on any direction, representation or notice which is not given or confirmed in writing by the Principal's Representative.

13.4 The Subcontractor shall notify the Principal's Representative if it intends to rely upon any representation made, or that the Subcontractor considers has been made, by the Principal. The Subcontractor shall not rely on any such representation unless it has been confirmed in writing by the Principal's Representative.

13.5 The Subcontractor's Representative and the Principal's Representative shall be the persons named *Annexure A – Subcontract Particulars* or such other person as notified in writing from time to time.

14. SUBCONTRACTING AND APPROVAL OF INSTALLERS

14.1 The Subcontractor shall be liable to the Principal for all acts, defaults and omissions of its Sub-subcontractors and their Personnel as if they were those of the Subcontractor. Subcontracting by the Subcontractor shall not relieve the Subcontractor of any of its obligations under or arising out of the Subcontract.

14.2 The Subcontractor shall:

(a) not subcontract the whole or any part of the Services without the Principal's approval, which the Principal may withhold in its sole and absolute discretion; and

(b) ensure that the terms of each Sub-subcontract oblige the Sub-subcontractor to:

(i) consent to or allow the assignment or novation of the Sub-subcontract to the Principal and/or to the Client, without any increase in the amount payable to the Sub-subcontractor for the Services the subject of the Sub-subcontract; and

(ii) comply with provisions substantially similar to those in Clause 8.

14.3 If requested by the Principal, the Subcontractor shall promptly provide the Principal with:

(a) a copy of any proposed or executed Sub-subcontracts; and

(b) any other information which the Principal reasonably requests including details of any criminal convictions of any director, officer, owner or key management personnel of the proposed Sub-subcontractor. The Subcontractor need not make disclosure of any conviction which is a "spent conviction" within the meaning of

the *Spent Convictions Act 1988* (WA), or any similar or equivalent legislation in the applicable jurisdiction.

14.4 Without limiting the Principal's powers under this Clause 14, the Subcontractor acknowledges that the Principal may, as deemed appropriate at the Principal's sole and absolute discretion, decline approval on the basis of the information disclosed of criminal convictions.

14.5 The Subcontractor shall obtain all usual and customary trade warranties from its Sub-subcontractors, manufacturers and suppliers and shall ensure that the Principal and the Client will have the benefit of the warranties. The Subcontractor shall ensure that the warranties oblige the respective Sub-subcontractors, manufacturers and suppliers to replace or repair Defects in a manner consistent with the terms and conditions contained in the Subcontract.

14.6 In the event that the warranties for the repair or replacement of Services that are obtained from the Sub-subcontractors, manufacturers and suppliers of the Subcontractor continue for a period longer than the Defects Liability Period or in the normal course of the Sub-subcontractor's, manufacturer's or supplier's business, the Subcontractor shall, at the Principal's request and cost, assign to the Principal the benefit of each such obligation for the period thereof unexpired at the end of the Defects Liability Period.

14.7 The Subcontractor shall inform all Sub-subcontractors that the contractual relationship between the Subcontractor and the Sub-subcontractor does not include or imply any obligation on the Principal to the Sub-subcontractor.

14.8 The Subcontractor shall notify the Principal's Representative in writing of any dispute with, or Claim by, any Sub-subcontractor within 5 Business Days of the dispute arising or the Claim being made against the Subcontractor. Strict compliance by the Subcontractor with this clause is a condition precedent to any entitlement of the Subcontractor to make a Claim arising out of such dispute or Sub-subcontractor Claim.

15. ASSIGNMENT AND NOVATION

15.1 The Subcontractor shall neither assign nor novate the whole or any part of the Subcontract or any payment, or any other right, benefit or interest thereunder without the prior written approval of the Principal, which the Principal may withhold in its absolute discretion.

15.2 The Subcontractor acknowledges that no permitted assignment or novation in any way relieves the Subcontractor from the performance of any of its obligations under the Subcontract, except to the extent provided for in terms of assignment or novation.

15.3 The Principal may assign the Subcontract or any part of it or any right or interest under the Subcontract, by notice to the Subcontractor.

15.4 If required by the Principal, the Subcontractor shall when directed by the Principal and without being entitled to compensation, promptly execute a deed of novation in a form acceptable to the Principal for the novation of:

(a) the Subcontract to the Client or the Client's nominee; or

(b) any Sub-subcontract for the performance of any part of the Services to the Principal or the Principal's nominee.

16. SAFETY, HEALTH, ENVIRONMENTAL AND PROJECT MANAGEMENT

GENERAL REQUIREMENTS

16.1 The Subcontractor shall ensure that in performing the Services, it and its Personnel:

(a) comply with all Legislative Requirements, including but not limited to all OH&S Legislative Requirements and the requirements of AS/NZS 4801:2001 and AS/NZS ISO 14001;

(b) take all necessary and reasonable precautions in order to ensure the safety and health of all Subcontractor's Personnel performing the Services;

(c) comply immediately with all written rules, policies, plans, procedures, directions, instructions and notices given by the Client or by the Principal, including in respect of health, safety and the environment;

(d) do all things necessary to assist the Principal, the Client, and their respective Personnel discharge their obligations under any OH&S Legislative Requirement; and

(e) do all things necessary to protect people and property on or adjacent to the Site.

16.2 The Subcontractor shall immediately report to the Principal any incident that causes, or that could have caused, injury or death to any Subcontractor Personnel or any environmental damage. The Subcontractor shall permit and procure such further permissions as may be necessary for the Principal, the Client or any person nominated by the Principal or the Client to make inspections, conduct interviews and take statements from the Subcontractor's Personnel to determine the cause and effect of such incident.

16.3 Where specified in *Annexure A – Subcontract Particulars* the Subcontractor shall plan, establish, implement and maintain:

(a) a Safety and Health Plan;

(b) an Environmental Management Plan; and

(c) a Project Execution Plan,

setting out how the Subcontractor intends to manage safety, health, environmental and Services performance issues on the Project.

16.4 The Subcontractor's Safety and Health Plan, Environmental Management Plan and Project Execution plan shall be provided to the Principal immediately upon request and shall:

(a) document how the Subcontractor intends to identify and control safety, health, environmental and Services performance risks and hazards inherent in the Services, and the work methods and processes used by the Subcontractor and its

Personnel;

(b) with respect to activities to be conducted by the Subcontractor's Personnel:

(i) detail how the Subcontractor shall control, monitor and audit such matters in accordance with the requirements of the Subcontract;

(ii) detail how the Subcontractor shall comply with all Legislative Requirements; and

(iii) explain how the Subcontractor shall report to the Principal on the status of such matters;

(c) detail how the Subcontractor intends to comply with the Principal's requirements in respect of safety, health, environmental and Project execution risks (as the case may be) to the extent that they relate to the Services;

(d) identify any safety, health and environmental permits or approvals required by the Principal or authorities, how such permits and approvals shall be obtained and how the Subcontractor shall comply with the requirements of such permits and approvals;

(e) detail procedures and processes on how the Subcontractor shall monitor, audit and report on safety, health, environmental and Project execution issues relevant to the Services.

16.5 The Subcontractor shall co-operate with and provide access to the Principal and the Client at any place where the Services is being or will be performed, in order for the Principal or the Client to assess the Subcontractor's compliance with this Clause 16.

16.6 The Principal may, in its absolute discretion:

(a) direct that the Services shall not commence, or be suspended from being performed (as the case may be); or

(b) prevent the Subcontractor's access to the Site,

until the Subcontractor provides compliant plans (as contemplated in Clause 16.3) in accordance with the Subcontract.

16.7 Any delays caused to the Services arising from the plans listed in Clause 16.3 will be the responsibility of the Subcontractor.

16.8 The Principal may at any time request the Subcontractor to amend the plans listed in Clause 16.3 and the Subcontractor shall make the requested amendments.

REPORTING

16.9 If so required by the Principal, the Subcontractor shall provide the Principal with written monthly reports in respect of safety, health, Project execution or environmental issues.

ENVIRONMENTAL OBLIGATIONS

16.10 The Subcontractor shall perform the Services in a manner that does not cause or threaten to cause pollution, contamination or environmental harm of, or, under or outside the Site, including but not limited to ensuring that:

(a) environmental impacts caused by the Services at the Site are within the guidelines or conditions set out in any relevant Authority approvals;

(b) it takes precautions to minimise noise, dust, vibration and other nuisances emanating from the Services;

(c) it has sufficient equipment and trained personnel to contain any spill or leakage of any substance likely to pollute or damage the environment if not contained, until appropriate help can be provided;

(d) it monitors all discharges of water made by the Subcontractor to ensure compliance with the Client's consents; and

(e) it takes such measures as are necessary to avoid damage and disturbance to flora and fauna on or in the vicinity of the Site.

16.11 The Subcontractor is responsible for, and shall make good at its own cost, all pollution, contamination and environmental harm arising from the performance of the Services (including any pollution, contamination and environmental harm of, on, under or outside the Site).

16.12 The Subcontractor shall clean up all pollution, contamination and environmental harm arising from the performance of the Services.

16.13 The Subcontractor shall notify the Principal immediately if there is any spill or leakage of any substance likely to pollute or damage the environment or any incident or occurrence breaching or likely to breach the Client's consents, or where the Subcontractor is approached by any statutory inspectors requesting entry to Site.

COMPLIANCE

16.14 In the event that any of the Subcontractor's Personnel:

(a) fail to comply with any safety, health, environmental or Project execution obligation under the Subcontract or any Legislative Requirement;

(b) acts carelessly or recklessly or is incompetent or negligent or has been guilty of misconduct; or

(c) should not, in the best interests of the Project, be further involved in the Services,

then the Principal may, without prejudice to any other remedy it may have under the Subcontract:

(d) direct the Subcontractor to provide appropriate training or counselling in a

manner acceptable to the Principal, to the Personnel who caused or contributed to the failure (at the Subcontractor's cost);

(e) direct the Subcontractor to remove from their involvement in the Services, any Personnel who caused or contributed to the failure, and to return any access card and other property issued to that person by the Principal or the Client;

(f) direct the Subcontractor to improve its work practices or procedures in a manner acceptable to the Principal with the aim of overcoming any repeat of the failure (at Subcontractor's cost); and

(g) take action under Clause 30.

16.15 If any of the Subcontractor's Personnel causes damage to property:

(a) the Subcontractor shall promptly, at the Principal's absolute discretion, either make good, or reimburse the Principal for the cost of making good, the damage and pay any compensation that any Legislative Requirement requires the Subcontractor to pay; and

(b) if the Subcontractor fails to comply with an obligation under this Clause 16, the Principal may, in addition to any other remedies, perform or have others perform the obligation on the Subcontractor's behalf, and the cost incurred in doing so will be a debt due from the Subcontractor to the Principal.

PRINCIPAL CONTRACTOR

16.16 The Subcontractor acknowledges the appointment of the Principal as the Principal Subcontractor for the purposes of any OH&S Legislative Requirement or the Subcontract or both.

16.17 The Subcontractor will not interfere with, disturb, impede or obstruct the performing by the Principal of its obligations regarding health and safety under the Head Contract.

16.18 The Subcontractor will not be entitled to make, and the Principal is not liable for, any Claim arising out of or in any way in connection with this Clause 16 or any direction or requirement by the Principal or the Client under any relevant OH&S Legislative Requirement, or otherwise with any requirement of any other person authorised or permitted under any relevant OH&S Legislative Requirement to give a direction or impose a requirement.

17. QUALITY SYSTEM

17.1 The Subcontractor shall maintain a Quality System in accordance with the standard stated in *Annexure A – Subcontract Particulars* and *Annexure G – Project Quality Management Plan* to provide assurance to the Principal that the Services complies with the requirements of the Subcontract.

17.2 The Subcontractor shall submit quality system documents and records to the Principal for review and acceptance as directed by the Principal.

17.3 The Principal may undertake audits or surveillance of the Quality System (including documents and records) as and when required to ensure conformance to specified requirements. On receipt of reasonable notice from the Principal, the Subcontractor shall give the Principal, the Client and any person authorised by the Principal access to the Subcontractor's and each Sub-subcontractor's quality systems to enable monitoring, inspecting and quality auditing of such systems.

18. COMPLIANCE, APPROVALS, PERMITS AND FEES

18.1 The Subcontractor shall comply with and shall ensure that the Services complies with:

(a) all Legislative Requirements; and

(b) relevant technical standards and codes (including where relevant, Australian Standards and the National Construction Code and Building Code of Australia current at the date of the Subcontract).

18.2 Unless stated otherwise, the Subcontractor shall:

(a) obtain from Authorities, all necessary approvals and permits;

(b) provide all necessary notices to Authorities;

(c) pay to Authorities, all required fees, duties and taxes; and

(d) comply with all Authorities' requirements, applicable from time to time in connection with the Services.

18.3 The Subcontractor shall give the Principal copies of documents issued to the Subcontractor by any Authority in respect of the Services.

18.4 Except as may be specifically provided in *Annexure B – Pricing*, the Subcontractor is not entitled to make, and the Principal is not liable for, any Claim arising out of the Subcontractor's compliance with Clause 18.1 or for complying with any changes to any Legislative Requirements after the date of the Subcontract.

19. PROGRAM

19.1 The original program for the Services is the program or schedule of dates set out in *Annexure L – Program* showing the dates by which or the times within which the various stages or parts of the Services are to be commenced, performed or completed.

19.2 The Subcontractor shall, within 5 Business Days of the date of the Subcontract or such other period as the Principal may permit, but in any event prior to the Date for Commencement, submit to the Principal for approval a Program including a detailed breakdown of the original program for the Services and incorporating the dates set out in *Annexure L – Program* in the format directed by the Principal.

19.3 Each Program shall identify:

(a) the Date for Commencement;

(b) the Date for Practical Completion;

(c) the anticipated Date of Practical Completion;

(d) the progress of the Services, including compared, at a minimum, with key activities and durations;

(e) the critical path and key dates for the Services;

(f) the sequence of the Services;

(g) contingency and float allowances not yet utilised;

(h) resources required, being both equipment and labour (including manpower and shifts); and

(i) anything else required by the Principal,

and be marked as a new revision or proposed revision of the Program and contain sufficient details to satisfy the Principal that it is accurate and up to date.

19.4 The Principal shall within 10 Business Days after receipt of the Program submitted by the Subcontractor notify the Subcontractor that the Program is approved or that the Program is rejected, and set out the reasons why or what further information is required to enable the Principal to assess the Program.

19.5 If the Principal rejects a Program or requests further information, the Subcontractor shall submit a corrected and revised Program or further information (as the case may be) within 2 Business Days after being notified that the Program is rejected or that further information is required.

19.6 The Subcontractor shall:

(a) update the Program weekly to show progress achieved, and (where appropriate) changes to the sequence and duration of activities required to meet the Date for Practical Completion together with any corresponding changes to proposed manpower and shifts to be worked and resources to be utilised; and

(b) ensure a copy of each update Program is promptly provided to the Principal.

19.7 Review of, comments on or approval of, or any failure to review or comment on, any Program by the Principal will not:

(a) relieve the Subcontractor from, or alter, its liabilities or obligations under the Subcontract, including the obligation to achieve Practical Completion of the Services by the Date for Practical Completion;

(b) evidence or constitute the granting of an extension of time or a direction given by the Principal to accelerate, disrupt, prolong or vary any of the Services; or

(c) affect the time for performing the Services or any of the Subcontractor's

obligations under the Subcontract.

19.8 The Principal may direct a deviation from a Program. Any such deviation will not give rise to a Variation.

19.9 The Subcontractor shall provide an updated or revised Program if directed to do so by the Principal.

19.10 The acceptance or approval by the Principal of a Program or revision thereof, which provides for Practical Completion after the Date for Practical Completion, shall not relieve the Subcontractor of its obligation to Complete the Services and each Separable Portion on or prior to the relevant Date for Practical Completion and will not give rise to a Variation.

19.11 If the Subcontractor departs from the Program without reasonable cause the Principal may direct the Subcontractor to accelerate or employ additional resources reasonably required to remedy such departure. If the Subcontractor fails to comply with such direction within the time required by the Principal, the Principal may employ the resources reasonably required or instruct Separate Contractors to accelerate to remedy such departure, and all Loss incurred by the Principal as a result shall be a debt due and payable by the Subcontractor to the Principal upon demand.

20. DELAY, SUSPENSION AND ACCELERATION

DELAY AND EXTENSION OF TIME

20.1 The Subcontractor shall:

(a) commence the Services on the date specified in *Annexure A – Subcontract Particulars*;

(b) diligently perform the Services in an orderly manner;

(c) deliver the Associated Goods to the Delivery Point in accordance with the Program;

(d) not otherwise depart from the Program without reasonable cause;

(e) not suspend the performance of all or any part of the Services except where the suspension is allowed under the Subcontract; and

(f) bring the Services to Practical Completion by the Date for Practical Completion.

20.2 While the Subcontractor may achieve Practical Completion before the Date for Practical Completion, the Principal has no responsibility or duty of care to do, or refrain from doing, anything to enable the Subcontractor to achieve that result.

20.3 The Subcontractor shall, within the period stated in *Annexure A – Subcontract Particulars*, submit a written notice to the Principal upon the occurrence of any event or circumstance that is causing or is likely to cause delay to the Services. The Subcontractor shall take all practical steps to avoid or mitigate any such delay.

20.4 Within 4 Business Days (or such other period as the Principal may direct) after giving a notice of delay referred to in Clause 20.3, the Subcontractor shall convene and attend a meeting with the Principal to assist the Principal to determine the measures required to reduce the effects of the delay on the progress of the Services.

20.5 The Subcontractor acknowledges that the Principal has relied on compliance by the Subcontractor with Clause 20.3 in programming the activities that the Principal may perform in relation to the Project.

20.6 The Subcontractor shall only be entitled to an extension of time for a delay in circumstances where:

(a) the delay is an Excusable Delay;

(b) the duration of the Excusable Delay exceeds 4 hours on any one day;

(c) the delay is on the critical path so the Subcontractor actually is or will be delayed in achieving Practical Completion by the Date for Practical Completion;

(d) the Subcontractor has taken all reasonable steps to preclude the occurrence or minimise the extent and consequences of the delay, including rescheduling, reprogramming, expediting and adjusting the sequence of activities; and

(e) the Principal has not given a direction to accelerate the Services.

20.7 In the event of concurrent delays caused by event(s) or circumstance(s) that do not entitle the Subcontractor to an extension of time, the Subcontractor shall only be entitled to an extension of time for the portion of the delay the Principal reasonably considers is attributable to the Excusable Delay.

20.8 The Subcontractor acknowledges that the Subcontract period may include an allowance of 3 weeks for stand down for the Christmas/New Year period. The Subcontractor shall not be entitled to an extension of time for delay to the extent that the duration of the Excusable Delay concerns the period 25th December to 4th January.

20.9 If the Subcontractor considers that it is entitled to an extension of time for an Excusable Delay, the Subcontractor shall:

(a) within the period stated in *Annexure A – Subcontract Particulars* notify the Principal that an event qualifying as an Excusable Delay has occurred, the cause of the delay, the length of the delay or the anticipated length of the delay and the steps taken by the Subcontractor to keep the delay as minimal as possible;

(b) in the case of an ongoing delay, within the period stated in *Annexure A – Subcontract Particulars* give the Principal notice which provides details of the status of the delay and an update on the details required by Clause 20.9(a);

(c) within the period stated in *Annexure A – Subcontract Particulars* make a Claim for an extension of time to the Principal, setting out:

(i) reasonable details of the Excusable Delay;

(ii) the impact of the Excusable Delay on its ability to achieve Practical Completion by the Date for Practical Completion, by demonstrating that impact in a Program showing:

(A) the status of the progress of the Services at the time the Excusable Delay occurred;

(B) the contingency and float allowances utilised by the Subcontractor to mitigate the delay caused by the Excusable Delay;

(C) the change to the critical path(s) of the Services; and

(D) the change to the Date for Practical Completion;

(iii) the period of extension claimed; and

(iv) whether the Excusable Delay has ceased (including the date that it ceased) or is ongoing.

20.10 Strict compliance by the Subcontractor with its obligations under Clause 20.9 is a condition precedent to the Subcontractor's entitlement to make any Claim arising out of the event that allegedly caused the Excusable Delay.

20.11 Within 10 Business Days after the receipt of all the information that is reasonably necessary to determine the Claim for an extension of time, the Principal shall notify the Subcontractor if any extension is granted or not to the Date for Practical Completion.

20.12 In determining whether the Subcontractor will be delayed in achieving Practical Completion by the Date for Practical Completion by inclement weather regard shall be had to the net effect overall of any beneficial weather conditions and any beneficial effect on the Services of such conditions with respect to any saving in time.

20.13 The Subcontractor shall do everything necessary at its own cost, including but not limited to working overtime, to overcome all delays for which it is not entitled to an extension of time to be able to achieve Practical Completion by the Date for Practical Completion. Should the Subcontractor fail to demonstrate to the Principal its ability to achieve this requirement then the Principal may take action in accordance with Clause 30.2.

20.14 The Principal is entitled at any time, at its sole discretion and without being under any obligation to do so, to grant an extension of time to the Date for Practical Completion for any reason (including to account for any delay caused by an act of prevention of the Principal), regardless of whether or not the Subcontractor is entitled to the extension of time. The Principal's discretion under this Clause 20.14 is solely for the benefit of the Principal.

20.15 A delay by the Principal or the failure of the Principal to grant a reasonable extension of time shall not cause the Date for Practical Completion to be set at large or the principle commonly known as the "prevention principle" to apply, but nothing in this Clause 20.15 shall prejudice any right of the Subcontractor to damages for such delay or failure to grant a reasonable extension of time.

TIME IS OF THE ESSENCE

20.16 Time is of the essence for the Subcontract, and should the Principal grant the Subcontractor an extension of time for Practical Completion then time shall be of the essence of the revised Date for Practical Completion or Milestone Date(s).

DELAY COSTS

20.17 The Subcontractor's sole remedies in respect of any delay arising from an Excusable Delay are:

(a) an extension of time, subject to the Subcontractor's compliance with Clause 20; and

(b) if an extension of time is granted and the relevant Excusable Delay is also a Delay Compensation Event:

(i) the Subcontractor's reasonable additional on-site overheads (if any) actually incurred as a direct result of the extension of time granted to the Date for Practical Completion, with such amount to be claimed under this Clause 20.17; and

(ii) if the Delay Compensation Event is a breach of the Subcontract by the Principal, any additional amount the Subcontractor is entitled to recover in accordance with Clause 31.

20.18 [Not used].

DAMAGES FOR DELAY

20.19 If the Subcontractor fails to achieve Practical Completion of:

(a) the whole of the Services by the Date for Practical Completion; or

(b) the Services the subject of a Milestone Date by the relevant Milestone Date,

then the Subcontractor shall:

(c) where *Annexure A – Subcontract Particulars* states that liquidated damages are to apply, be liable to pay the Principal liquidated damages at the applicable rate for every day after the Date for Practical Completion up to and including the Date of Practical Completion or the date of earlier termination of the Subcontract; and

(d) where *Annexure A – Subcontract Particulars* states that liquidated damages are to apply to Milestone Dates, be liable pay the Principal liquidated damages at the applicable rate for every day after the relevant Milestone Date up to and including the Date of Practical Completion of the relevant Services or the date of earlier termination of the Subcontract; or

(e) otherwise, be liable to pay the Principal for all Loss, in excess of the aggregate amount of the liquidated damages payable under Clauses 20.19(a) and (b), which

the Principal may incur as a result of such failure. Such damages may include the demurrage and standby cost, variation cost or acceleration cost associated with contracts that are delayed or affected by such failure, and any damages for delay payable by the Principal to the Client under the Head Contract.

20.20 The Parties acknowledge and agree that if liquidated damages are payable by the Subcontractor under the Subcontract:

(a) such damages shall be a debt due and payable by the Subcontractor to the Principal upon demand;

(b) such damages have been calculated as a reasonable and good faith assessment of the anticipated or actual Loss that the Principal will suffer as a result of the Subcontractor's failure to achieve Practical Completion by the Date for Practical Completion or complete the Services the subject of a Milestone Date by the relevant Milestone Date;

(c) such damages shall not limit the Subcontractor's obligations to perform, and remedy Defects in, the Services in accordance with the Subcontract;

(d) such damages shall be cumulative;

(e) as to such damages relating to Practical Completion of the whole of the Services, such damages shall be applicable to each Separable Portion on the basis of the proportion that the value of the Separable Portion bears to the value of the whole of the Services; and

(f) if liquidated damages are found not to be payable or if one of the provisions of the Subcontract relating to liquidated damages is found to be invalid or unenforceable for any reason, the Subcontractor shall remain liable to the Principal for any Loss suffered by the Principal;

20.21 The Principal may deduct damages for delay for which the Subcontractor is liable under the Subcontract from any monies that may then be due or become due and payable to the Subcontractor including from any progress payments, security and retention monies. If those monies are insufficient for this purpose then any deficiency remaining may be recovered by the Principal as a debt due and payable to the Principal by the Subcontractor upon demand.

REDUCTION IN TIME

20.22 Where a Variation is likely to result in a reduction of the time required to achieve Practical Completion, the Principal may:

(a) request the Subcontractor to agree to bring forward the Date for Practical Completion; or

(b) failing agreement within 5 Business Days (or any other period agreed in writing by the Parties) after the Principal's request, the Principal may determine a reasonable date to which the Date for Practical Completion is to be brought forward.

20.23 The Principal's right to compensation for failure by the Subcontractor to achieve Practical Completion by the Date for Practical Completion is not affected.

ACCELERATION

20.24 If:

(a) there is a likelihood that the Services will not be completed by the Date for Practical Completion; or

(b) the Subcontractor makes a Claim for an extension of time,

the Principal may direct the Subcontractor in writing to accelerate any one or more of the activities comprising the Services such that those activities shall be completed by or in advance of the dates for completion of those activities shown in the Program, including to bring the Services to Practical Completion by or prior to the Date for Practical Completion.

20.25 An Acceleration Direction may include a requirement that the Subcontractor work night shifts, Saturdays, Sundays and holidays or furnish additional labour, supervision, plant and equipment.

20.26 The Principal may at any time give an Acceleration Direction that the Subcontractor accelerate completion of all or part of the Services to an earlier date than the Date for Practical Completion.

20.27 A direction given by the Principal:

(a) that the Subcontractor comply with the Program; or

(b) to remedy the direct or indirect effect of any breach of the Subcontract by the Subcontractor or any act or omission by the Subcontractor or any of the Subcontractor's Personnel,

is not an Acceleration Direction, and the Subcontractor is not entitled to make, and the Principal is not liable for, any Claim arising out of such direction.

20.28 The Subcontractor may only object to an Acceleration Direction on the basis that it would not be physically possible for the Subcontractor to comply with the direction or that the direction cannot be performed safely, regardless of the resources applied by the Subcontractor. The Subcontractor shall otherwise comply with any Acceleration Direction.

20.29 The Subcontractor is entitled to be paid for:

(a) all additional direct costs properly and reasonably incurred by the Subcontractor (which shall be valued under Clause 22.11) as a result of complying with an Acceleration Direction; and

(b) if the Principal gives the Acceleration Direction in response to an Excusable Delay, the direct costs incurred by the Subcontractor as a result of the delay to the Services (if any) in the period from the date on which the Excusable Delay commences until the date on which the Principal gives the Acceleration Direction,

subject to the Subcontractor achieving the accelerated date(s) stated in the Acceleration Direction (failing which the Subcontractor is not entitled to make, and the Principal is not liable for, any Claim arising out of the Acceleration Direction).

20.30 The Subcontractor's liability to the Principal for failure by the Subcontractor to achieve Practical Completion by the Date for Practical Completion is not affected by the Principal giving an Acceleration Direction.

20.31 Subject to Clause 20.32, the Subcontractor is not entitled to make, and the Principal is not liable for, any Claim against the Principal arising out of or in connection with an Acceleration Direction, other than for the amount that is payable by the Principal under Clause 20.29.

20.32 If the Principal gives the Subcontractor an Acceleration Direction in the circumstances stated in Clause 20.24(b) and:

(a) the Acceleration Direction applies to the whole of the delay in question, the Subcontractor is not entitled to an extension of time for the delay; or

(b) the Acceleration Direction only applies to part of the delay, the Subcontractor's entitlement to an extension of time shall be reduced to the extent to which the Acceleration Direction requires the Subcontractor to accelerate to overcome the delay.

RECOVERY PLAN

20.33 If the Subcontractor becomes aware of a non-conformance with the current Program that could result in the Subcontractor failing to achieve Practical Completion by the Date for Practical Completion the Subcontractor shall notify the Principal within 12 hours of becoming aware of the non-conformance.

20.34 If the Principal:

(a) receives a notice from the Subcontractor under Clause 20.33; or

(b) otherwise becomes aware of any non-conformance with the current Program that could result in the Subcontractor failing to achieve Practical Completion by the Date for Practical Completion,

the Principal may instruct the Subcontractor to prepare a recovery plan to demonstrate how the Subcontractor will recover the non-conformance so that the Subcontractor achieves Practical Completion by the Date for Practical Completion (**Recovery Plan**).

20.35 Within 2 Working Days of receipt of instructions under Clause 20.34, the Subcontractor shall submit the Recovery Plan to the Principal.

20.36 Within 14 Working Days of receipt of a Recovery Plan, the Principal shall notify the Subcontractor whether the Recovery Plan is accepted or rejected. The Principal shall accept the Recovery Plan if it is reasonably satisfied that the Subcontractor has sufficiently demonstrated that the Recovery plan is realistic and will enable the Subcontractor to achieve Practical Completion by the Date for Practical Completion.

20.37 If the Subcontractor receives a notice that the Recovery Plan is rejected, then within 2

Business Days of that notice the Subcontractor shall revise and resubmit the Recovery Plan for review and approval in accordance with Clause 20.36.

20.38 A Recovery Plan will not:

(a) relieve the Subcontractor of its obligation to achieve Practical Completion by the Date for Practical Completion and will not give rise to a Variation;

(b) constitute a revision or amendment to the Program unless and until it has been accepted by the Principal, in which case the Principal shall promptly issue a revised Program incorporating the Recovery Plan; or

(c) even if accepted by the Principal, relieve the Subcontractor of its obligations to execute and complete the Services in accordance with the Subcontract.

20.39 The Principal may issue an Acceleration Direction if:

(a) any one or more of the following apply:

(i) the Subcontractor is required to, but fails to submit, a Recovery Plan in accordance with Clause 20.35 or 20.37;

(ii) two or more of the Recovery Plans submitted by the Subcontractor for the same non-conformance are rejected by the Principal; or

(iii) the Subcontractor fails to comply with a Recovery Plan; and

(b) the non-conformance with the Program was caused or contributed to by the Subcontractor or its Sub-subcontractors.

SUSPENSION

20.40 The Subcontractor shall suspend the whole or any part of the Services on receipt of a notice in writing from the Principal to do so (which notice shall specify that it is given pursuant to this Clause 20.40). The Subcontractor shall not suspend all or any part of the Services unless pursuant to a Suspension Direction.

20.41 If the Subcontractor considers that it has received a direction that comprises a Suspension Direction (notwithstanding that the direction does not expressly refer to Clause 20.40 or to it being a Suspension Direction) and the Subcontractor wishes to make a Claim arising out of such direction or suspension it shall:

(a) within 12 hours of the commencement of the alleged suspension, notify the Principal in writing that it considers that the Services have been suspended;

(b) within 1 day of the commencement of the alleged suspension, provide the Principal with its written opinion regarding whether the suspension will affect the Subcontract Sum and, if so, the approximate value of the cost difference;

(c) within 5 days of the end of the alleged suspension, lodge a documented Claim with the Principal for the Subcontractor's costs of the alleged suspension; and

(d) place any Personnel or plant rendered idle thereby at the disposal of the Principal for the performance of such suitable work as the Principal may allocate in order to minimise the cost to the Subcontractor.

20.42 Strict compliance by the Subcontractor with its obligations under Clause 20.41 is a condition precedent to the Subcontractor's entitlement to make any Claim arising out of a suspension.

20.43 The Subcontractor shall not be entitled to make any Claim arising out of any alleged suspension of the whole or any part of the Services by the Principal unless such suspension:

(a) affects Services on the critical path for the performance of the Services;

(b) is of a minimum continuous duration of 24 hours; and

(c) does not directly or indirectly arise out of any act or omission or breach of the Subcontract by the Subcontractor or any of the Subcontractor's Personnel.

20.44 The Subcontractor shall do all things reasonably possible to reduce any Loss consequent upon the suspension. A suspension shall not invalidate the Subcontract.

20.45 Subject to the provisions of Clauses 20.40 - 20.44, the Principal shall pay to the Subcontractor all reasonable costs arising from the suspension of the Services pursuant to a Suspension Notice as if the Suspension Notice was a Variation direction.

20.46 The Principal shall, when the reason for any suspension no longer exists, direct the Subcontractor to recommence the relevant part of the Services and the Subcontractor shall immediately comply with the direction.

PRACTICAL COMPLETION

20.47 The Subcontractor shall give the Principal at least 35 days' prior written notice of the date upon which the Subcontractor anticipates that Practical Completion will be achieved.

20.48 When the Subcontractor considers that the Services have achieved Practical Completion, the Subcontractor shall notify the Principal in writing.

20.49 Following notification by the Subcontractor, the Principal and the Subcontractor shall jointly inspect the Services at a mutually convenient time.

20.50 If the joint inspection reveals that Practical Completion has been achieved, the Principal shall complete and give the Subcontractor a certificate of Practical Completion within 5 Business Days after the completion of the joint inspection.

20.51 If the joint inspection reveals that Practical Completion has not been achieved, the Principal shall within 5 Business Days after the completion of the joint inspection:

(a) prepare and give to the Subcontractor a list of items which require attention by the Subcontractor in order for Practical Completion to be achieved; or

(b) advise the Subcontractor that the Services are so far from the stage of Practical

Completion that it is inappropriate to provide a list as described in Clause 20.44(a) in which case the Subcontractor shall continue to perform the Services and the process in this Clause 20 applies again.

20.52 The Subcontractor shall attend to and complete the items in the Principal's list described in Clause 20.51(a) as soon as practicable and in any event by the time nominated by the Principal (in the list or subsequent to the issue of the list).

20.53 The Subcontractor shall give notice to the Principal when it considers that the items in the Principal's list described in Clause 20.51(a) have been completed.

20.54 The process in this Clause 20 will continue to apply until the Principal issues a certificate of Practical Completion.

20.55 If the Principal is of the reasonable opinion that Practical Completion has been achieved, the Principal may issue a certificate of Practical Completion under Clause 20.50 even if the Subcontractor has not given a notice required under Clause 20.47 or Clause 20.53.

COMPLETION

20.56 When the Subcontractor considers that the Services have achieved Completion, the Subcontractor shall notify the Principal in writing.

20.57 Following notification by the Subcontractor, the Principal and the Subcontractor shall jointly inspect the Services at a mutually convenient time.

20.58 If the joint inspection reveals that Completion has been achieved, the Principal shall complete and give the Subcontractor a certificate of Completion within 5 Business Days after the completion of the joint inspection.

20.59 If the joint inspection reveals that Completion has not been achieved, the Principal shall within 5 Business Days after the completion of the joint inspection:

(a) prepare and give to the Subcontractor a list of items which require attention by the Subcontractor in order for Completion to be achieved; or

(b) advise the Subcontractor that the Services are so far from the stage of Completion that it is inappropriate to provide a list as described in Clause 20.59(a) in which case the Subcontractor shall continue to perform the Services and the process in this Clause 20 applies again.

20.60 The Subcontractor shall attend to and complete the items in the Principal's list described in Clause 20.59(a) as soon as practicable and in any event by the time nominated by the Principal (in the list or subsequent to the issue of the list).

20.61 The Subcontractor shall give notice to the Principal when it considers that the items in the Principal's list described in Clause 20.59(a) have been completed.

20.62 The process in this Clause 20 will continue to apply until the Principal issues a certificate of Completion.

20.63 If the Principal is of the reasonable opinion that Completion has been achieved, the Principal may issue a certificate of Completion under Clause 20.58 even if the Subcontractor has not given a notice required under Clause 20.56 or Clause 20.61

SEPARABLE PORTIONS

20.64 The Services may comprise Separable Portions. If so, the Separable Portions shall be described in *Annexure A – Subcontract Particulars*. In such event:

(a) the Subcontractor shall bring each Separable Portion to Practical Completion by the relevant Date for Practical Completion;

(b) all references to "Services" shall be read as a reference to each Separable Portion and shall mean so much of the Services as is comprised in the relevant Separable Portion; and

(c) the definitions of "Date for Commencement", "Date for Practical Completion", "Date of Practical Completion" and "Practical Completion" shall apply separately to each Separable Portion.

20.65 The Principal may determine at any time (including where only part, but not the whole, of the Services has achieved Practical Completion) that any part of the Services or any part of a Separable Portion is a Separable Portion and at the time of creating a Separable Portion, acting reasonably, determine the respective Dates for Practical Completion for, and the value of, any new or resultant Separable Portion.

20.66 If not specified in the Subcontract, the amount of security and liquidated damages applicable to a Separable Portion will be such proportion of the security and liquidated damages applicable to the whole of the Services as the value of the Separable Portion bears to the value of the whole of the Services.

NO RELIEF FROM OBLIGATIONS

20.67 Unless the Subcontractor has applied for an extension of time strictly in accordance with its obligations under Clause 20 and unless and until the Principal has extended the Date for Practical Completion, the Subcontractor shall not by reason of any delay be relieved in any way or to any extent from its obligations to proceed with and complete the Services (or any Separable Portion of the Services) within the relevant time specified in the Subcontract and, even in the event of an extension of the Date for Practical Completion, the Subcontractor shall only be so relieved to the extent that it shall have until the revised Date for Practical Completion within which to complete the Services.

21. FORCE MAJEURE

FORCE MAJEURE NOTICE

21.1 An Affected Party will not be liable for any delay or failure to perform any of its obligations under the Subcontract to the extent that it is prevented from carrying out obligations by a Force Majeure Event provided it gives written notice of such Force Majeure Event to the other Party as soon as possible after (and, in any event, no later than 3 Business Days after) the beginning of the Force Majeure Event and complies with Clause 21.2.

21.2 Within 7 Business Days after giving the notice referred to in Clause 21.1, the Affected Party shall give a further notice that shall:

(a) specify the obligations the Affected Party cannot perform;

(b) fully describe the Force Majeure Event;

(c) estimate the time during which the Force Majeure Event will continue; and

(d) specify the measures proposed to be adopted to mitigate, remedy or abate the Force Majeure Event.

OBLIGATION TO REMEDY AND MITIGATE

21.3 The Affected Party shall:

(a) remedy or abate the Force Majeure Event to the extent reasonably practicable;

(b) resume performance of its affected obligations as soon as reasonably possible; and

(c) take all action reasonably practicable to mitigate any liabilities that may be suffered by the other Party as a result of its inability to carry out its obligations under the Subcontract.

TERMINATION FOR FORCE MAJEURE

21.4 If:

(a) an Affected Party cannot, because of a Force Majeure Event notified by it under this Clause 21, perform its affected obligations under the Subcontract for a period of 6 consecutive months despite its reasonable endeavours to do so; and

(b) the Parties have consulted with each other during the period, but are unable to agree as to what reasonable steps should be taken,

then, at the expiration of the 6 month period, either Party may terminate the Subcontract on giving written notice to the other Party.

22. VARIATIONS AND VALUATIONS

VARIATIONS

22.1 The Principal may at any time prior to the expiry of the last Defects Liability Period direct the Subcontractor to vary the Services. The Subcontractor shall not unreasonably refuse to perform a Variation directed after the Date of Practical Completion.

22.2 The Subcontractor shall only vary the Services if so directed in writing by the Principal to do so. The Principal may in writing direct the Subcontractor to alter, amend, omit, reduce, add to or otherwise vary any character, quantity or quality of any of the Services or alter the sequence of activities comprised in the Services from that shown on the initial program

(if no Program has been approved) or the Program.

22.3 The Subcontractor shall comply with any Variation direction and shall be bound by the same conditions as though the contents of any Variation thereby made were included in the Subcontract.

22.4 If a Variation requires the omission of services, the Principal may have the omitted services performed by others or not as it sees fit.

22.5 The fact that a direction is identified by the Principal as a direction of a 'variation' is not, in and of itself, conclusive evidence that it is the direction of a Variation. A direction will only be the direction of a Variation if it actually requires the Subcontractor to change the Services.

VARIATION PROCEDURE

22.6 If the Principal directs a Variation, or the Subcontractor considers that any direction given by the Principal involves a Variation (but such direction does not expressly refer to this Clause 22 or to it being a Variation direction) the Subcontractor shall:

(a) within the period stated in *Annexure A – Subcontract Particulars*, submit to the Principal a statement advising the details of the relevant direction, the Subcontractor's estimated price for performing the Variation, the Subcontractor's estimated impact that the Variation may have on the Date for Practical Completion (if any) and the Subcontractor's estimated impact that the Variation may have on the Subcontractor's accommodation requirements (if any); and

(b) within the period stated in *Annexure A – Subcontract Particulars*, submit to the Principal:

(i) a fully detailed quotation supported by measurements and other evidence of cost for performing the Variation;

(ii) the Subcontractor's estimated impact that the Variation will have on the Date for Practical Completion (if any) supported by detailed evidence; and

(iii) the Subcontractor's estimated impact that the Variation will have on the Subcontractor's accommodation requirements (if any) supported by detailed evidence.

22.7 Strict compliance by the Subcontractor with each of its obligations under Clause 22.6 is a condition precedent to the Subcontractor's entitlement to make any Claim arising out of a Variation direction or a direction that the Subcontractor considers involves a Variation, but is not expressly given by the Principal under this Clause 22 as a Variation direction.

22.8 If the Principal approves the Subcontractor's quotation submitted under Clause 22.6(b) the Principal will prepare a Variation Notice. The Variation Notice shall accord with the Subcontractor's statement as approved by the Principal and shall be binding on the parties.

22.9 If the Principal does not approve the Subcontractor's quotation submitted under Clause 22.6(b), and the Principal and the Subcontractor are unable to agree upon the price of the

Variation within 15 Business Days then the price of the Variation will be valued under Clause 22.11.

VALUATIONS

22.10 Unless stated otherwise a valuation shall be made under Clause 22.11 in respect of the following matters:

(a) a Variation;

(b) work performed, things supplied or action taken by the Principal instead of the Subcontractor at the request of the Subcontractor or in circumstances envisaged by the Subcontract; and

(c) other matters for which the Subcontract provides that a valuation shall be made under Clause 22.11.

22.11 Where a valuation is to be made under this Clause 22.11, the Subcontract Sum shall be increased or decreased, as the case may require, by an amount agreed between the Parties or, failing such agreement, as determined by the Principal in accordance with:

(a) if the Subcontract prescribes specific rates or prices to be applied in determining the value, those rates or prices;

(b) to the extent that Clause 22.11(a) does not apply then any rates or prices priced in any applicable Schedule of Rates, to the extent it is reasonable to use them;

(c) to the extent that Clauses 22.11(a) and (b) do not apply then (at the Principal's sole discretion):

(i) the Loss actually incurred by the Subcontractor; or

(ii) reasonable rates or prices; or

(d) if the valuation relates to additional costs incurred by the Subcontractor for delay as a consequence of a Variation, the valuation may include a reasonable amount in respect of the design of the Services, but shall not include any other off-Site overheads, profit or loss of profit.

22.12 For the purposes of a valuation made under Clause 22.11, in valuing a decrease in the Subcontract Sum for a decrease or omission of any part of the Services, such valuation shall include a proportionate decrease in preliminaries and no allowance shall be made in respect of loss of profit or loss of recovery of on-Site and off-Site overheads.

22.13 Notwithstanding any other provision of the Subcontract (including the other provisions of this Clause 22), where any right of the Principal as to the making of a Claim or the recovery of any Loss in respect of a Variation is restricted or limited by the Head Contract, the Subcontractor's rights shall be similarly restricted and limited and the Subcontractor shall not be entitled to make any Claim or recover any Loss which is greater than that which the Principal may make or recover under the Head Contract. For the avoidance of doubt, this clause does not operate to:

(a) make payment of any amount by the Principal to the Subcontractor contingent on the payment of an equivalent amount by the Client to the Principal;

(b) make the liability of the Principal to pay any amount to the Subcontractor contingent on the liability of the Client to pay an equivalent amount to the Principal; or

(c) make the due date for payment of any amount by the Principal to the Subcontractor dependent on the date of an equivalent amount by the Client to the Principal.

22.14 No direction given by the Principal to vary the Services or to alter the Program invalidates the Subcontract.

22.15 A Variation directed at any time prior to the Date of Practical Completion will not have the effect of setting time or the Date for at large or otherwise relieve the Subcontractor of its obligation to achieve Practical Completion by the Date for Practical Completion or of any liability for delay in achieving Practical Completion, but the direction may entitle the Subcontractor to an extension of the Date for Practical Completion.

22.16 Strict compliance by the Subcontractor with its obligations under this Clause 22 is a condition precedent to the Subcontractor's entitlement to make any Claim arising out of the Variation directed. The Subcontractor shall have no Claim against the Principal if it fails to comply with the requirements of this Clause 22.

23. PROGRESS CLAIMS AND PAYMENTS

GENERAL

23.1 The Subcontract Sum is subject to rise and fall due to any change in applicable wages or allowances under any Industrial Relations Instrument if nominated in accordance with *Schedule B - Pricing*. Otherwise, the Subcontract Sum shall not be subject to adjustment for rise and fall in costs for any cause whatsoever, including changes in the cost of labour, plant, equipment, materials, taxation, excise, duty, fees or charges (including customs or excise duties).

23.2 The Subcontractor is solely responsible for all Loss associated with the performance of an obligation of the Subcontractor under the Subcontract except to the extent (if any) expressly otherwise provided in the Subcontract.

23.3 Unless otherwise agreed with the Principal, prior to submitting each progress claim, the Subcontractor shall contact the Principal so that the Principal may inspect the Services with the Subcontractor and measure and assess the quantity or percentage of the Services completed or Associated Goods supplied, to date for each item code or activity on the progress claim.

PROGRESS CLAIMS

23.4 Subject to the terms of this Subcontract, the Subcontractor is entitled to submit a progress claim:

(a) monthly at the time for submission of progress claims stated in *Annexure A – Subcontract Particulars* for Services performed since the date of submission of the Subcontractor's previous progress claim; and

(b) upon (and by no later than 10 Business Days after) issue of the certificate of Practical Completion under Clause 20 or, if the certificate is issued during a calendar month in which a progress claim has already been submitted, at the time for submission of progress claims stated in *Annexure A – Subcontract Particulars* in the following calendar month.

23.5 It is a condition precedent to the Subcontractor's entitlement to:

(a) submit a progress claim for payment; or

(b) receive payment of any amount,

in respect of an item of work under the Subcontract, that:

(c) the item of work under the Subcontract has been carried out in the relevant period covered by the progress claim and, in the case of the second and subsequent progress claims, since the date of submission of the Subcontractor's previous progress claim; and

(d) a Claim for payment for the item of work under the Subcontract (whether for the same amount or a different amount) has not been claimed in a previous progress claim.

23.6 Each progress claim submitted by the Subcontractor shall be in the form required by the Principal, and shall contain or be supported by the following information:

(a) the number of the Subcontract;

(b) a detailed breakdown of the costs claimed in the progress claim;

(c) amounts paid previously under the Subcontract;

(d) the relevant period covered by the progress claim;

(e) a detailed description of the Services performed in the period covered by the progress claim;

(f) a report on the progress of the Services compared with the Program, including full details of any action proposed to overcome any failure by the Subcontractor to comply with the Program;

(g) documentary evidence (including by way of a sworn statutory declaration or Subcontractor's Statement as required by the Subcontractor) that at the date of the progress claim:

(i) all of the Subcontractor's Personnel engaged in the performance of the Services have been paid all moneys due and payable to them in connection with their employment in connection with the Services;

(ii) all payroll tax in respect of such moneys has been paid;

(iii) all workers compensation premiums in respect of such Personnel have been paid; and

(iv) all Claims or demands against the Subcontractor which might remain or become a lien or charge against any part of the Services have been paid or satisfied;

(h) any information or content prescribed by the Security of Payment Act (if any); and

(i) such other supporting information regarding the progress claim as the Principal may require.

23.7 Notwithstanding any other provision of the Subcontract, the Principal may direct that provision of the documentary evidence referred to in Clause 23.6(g) is a pre-requisite to payment of any amounts due or owing to the Subcontractor under the Subcontract.

23.8 If the Subcontractor submits a progress claim:

(a) earlier than the time for submission set out in Clause 23.4, the progress claim shall not be taken to have been submitted until that time; or

(b) later than the time for submission set out in Clause 23.4, the progress claim shall not be taken to have been submitted until the time for submission of progress claims in the following month.

23.9 The Principal may prior to the time it is required to issue a progress certificate under Clause 23.17(a), request any additional information from the Subcontractor in respect of its progress claim.

REQUIREMENTS PRIOR TO MAKING A PROGRESS CLAIM

23.10 Before becoming entitled to:

(a) submit a progress claim; or

(b) receive payment of any amount (including an amount stated in a progress certificate),

the Subcontractor shall provide the Principal with:

(c) a copy of the Subcontract duly executed by the Subcontractor;

(d) demonstration that it continues to hold the insurances required by the Subcontract; and

(e) performance security required to be given by the Subcontractor under the Subcontract.

23.11 As to a progress claim that does not contain the information required under Clause 23.5:

(a) the Principal 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 23.5 applies; and

(b) the Principal is not obliged to undertake any assessment or 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 Clause 23.5.

23.12 Where the Principal returns an incomplete progress claim to the Subcontractor, the Subcontractor shall submit a progress claim that complies with Clause 23.5 within the time notified by the Principal or, where no time is notified, within 48 hours.

SUBCONTRACTOR WARRANTIES

23.13 In making a progress claim (whether under the Subcontract or under the Security of Payment Act, if applicable), the Subcontractor warrants to the Principal that:

(a) it has completed that part of the Services that are described in the progress claim;

(b) there are no defects in the Services described in the progress claim that are known to the Subcontractor and have not otherwise been reported to the Principal;

(c) the figures appearing in the progress claim are accurate;

(d) it has complied with all of the obligations imposed on it by the Subcontract where those obligations have to be complied with at or before the time of the making of the progress claim, including the obligation to comply with the Anti-Corruption Laws;

(e) it is not aware of any claim by the Subcontractor against the Principal or its Personnel that is not identified in the progress claim, an earlier progress claim or a notice previously given to the Principal in accordance with the Subcontract;

(f) the Services are progressing in accordance with the Program;

(g) all Sub-subcontractors and employees of the Subcontractor have been paid all moneys due and payable to them in respect of the part of the Services described in the progress claim;

(h) all assessments or contributions required to be paid pursuant to any applicable health, safety or workers compensation laws or this Subcontract have been paid by the Subcontractor;

(i) it is entitled to payment of the amount claimed; and

(j) the part of the Services and any Associated Goods (or any part of them) described in the progress claim and all previous progress claims are free and clear of liens (other than any liens extinguished upon receipt of payment in respect of that progress claim).

REQUIREMENTS PRIOR TO PAYMENT

23.14 Within the time specified in *Annexure A – Subcontract Particulars* as the time for determining the Subcontractor's progress claim made under Clause 23.4(b), the Principal shall provide the Subcontractor with a Deed of Release completed by the Principal with the appropriate details.

23.15 The Subcontractor shall duly execute the Deed of Release and deliver it to the Principal within 5 Business Days. Receipt by the Principal of the duly executed Deed of Release shall be a condition precedent to the Subcontractor's entitlement to be paid any amount in relation to the Subcontractor's progress claim made under Clause 23.4(b).

PROGRESS CERTIFICATES AND PAYMENTS

23.16 Subject to Clauses 23.5, 23.10, 23.15 and 23.38 the Principal shall pay to the Subcontractor the amount claimed in a progress claim within the time stated *in Annexure A – Subcontract Particulars*.

23.17 If the Principal disputes any amount claimed in a progress claim, the Principal shall:

(a) make a determination of the amount disputed and the amount payable in respect of the progress claim and provide a progress certificate to the Subcontractor:

(i) identifying the progress claim to which the certificate relates;

(ii) stating that determination, including, for each item of the progress claim:

(A) the amount that is not disputed and therefore payable; and

(B) if applicable, the amount that is disputed and the reason(s) it is disputed,

within the time specified in *Annexure A – Subcontract Particulars*; and

(b) pay any amounts not in dispute in accordance with Clause 23.16.

23.18 If the Subcontract provides that any amount is payable:

(a) other than in Australian dollars;

(b) outside Australia; or

(c) in a manner subject to control by any Authority,

the Subcontractor's entitlement to payment is conditional upon the Principal obtaining the

necessary authority or consent to the making of the payment.

23.19 Without limiting Clause 23.17, the Principal may issue a revised progress certificate at any time correcting any omission or error discovered in any previous progress certificate or modifying any previous progress certificate issued by it, including as a result of the provision of information under Clause 23.5.

23.20 If the Subcontractor fails to make a progress claim in accordance with the Subcontract, the Principal may nevertheless issue a progress certificate under Clause 23.17.

PAYMENT ON ACCOUNT

23.21 Payment to the Subcontractor is on account only and does not constitute approval of the Services or any other matter or thing in respect of which payment is made.

TITLE AND RISK

23.22 Title in the Services shall pass to the Principal upon the earlier of:

(a) payment for the Services (and, if part payment, only to the extent of the value of the part payment);

(b) the issue of a certificate of Practical Completion in relation to those Services;

(c) in respect of Associated Goods, at the time the Associated Goods enter the Site; or

(d) incorporation of the Services with any works or other property already owned by the Principal or the Client.

23.23 Notwithstanding Clause 23.22, the risk in any Services (including Associated Goods), supplied by the Subcontractor, regardless of ownership, will remain with the Subcontractor until the issue of the certificate of Practical Completion in relation to those Services.

23.24 Risk includes responsibility for any loss, destruction or damage and the repair and/or reinstatement thereof including, subject to any specific provision of the Subcontract to the contrary, responsibility and liability for all costs, charges, insurance excesses and expenses in relation to the repair and/or reinstatement thereof.

23.25 Except for any express entitlement (if any) the Subcontractor has under this Subcontract for an extension of time to the Date for Practical Completion or for delay compensation pursuant to Clause 20, the risk in the Subcontractor's Transfer Items remains solely with the Subcontractor and the Subcontractor shall have no Claim against the Principal and hereby releases the Principal from any Claim with respect to any loss, damage or destruction to the Subcontractor's Transfer Items whether during transit to Site, when located at the Transfer Depot or otherwise, including where caused in any way by the Client's Transport Contractor.

23.26 The Subcontractor warrants that it has good and marketable title in all Associated Goods and the Principal will receive title to such Associated Goods free of any charge or encumbrance in accordance with Clause 23.22.

23.27 Where payment is made in respect of unfixed plant, Associated Goods or materials the Subcontractor shall comply with all directions of the Principal relating to their labelling, care and storage.

SET OFF

23.28 Without prejudice to any other rights, the Principal may set off or deduct from any monies that may be, or become, payable to the Subcontractor:

(a) any debt or other monies which are due from the Subcontractor to the Principal;

(b) the amount of any Loss that the Principal has incurred or reasonably considers it might in the future incur and which are due or the Principal reasonable considers may become due from the Subcontractor to the Principal as a consequence of any act or omission of the Subcontractor or any of its Personnel; or

(c) the amount of any Claim whether for damages (including liquidated damages and the Principal's estimate of its entitlement to damages for breach of contract) or otherwise which is due or the Principal reasonably considers may become due from the Subcontractor to the Principal as a consequence of any act or omission of the Subcontractor or any of its Personnel.

23.29 Nothing in Clause 23.28 will affect the right of the Principal to recover from the Subcontractor the whole or any amount of any Loss or Claim after the deductions or set off or call on the security or any guarantee provided or procured by the Subcontractor under the Subcontract.

23.30 Clauses 23.28 and 23.29 shall survive the expiry or termination of the Subcontract for any reason.

PROVISIONAL SUMS

23.31 The Subcontractor shall, in consultation with and subject to the direction of the Principal, promptly prepare or obtain prices for Provisional Sum items and submit those prices to the Principal. Any price submitted by the Subcontractor for a Provisional Sum item shall only be, and show, the cost to be incurred by the Subcontractor in performing that Provisional Sum item multiplied by the rate payable on Provisional Sum items, which rate is set out in *Annexure B – Pricing*.

23.32 The amount of any Provisional Sum included in the Subcontract Sum shall not itself be payable to the Subcontractor. Where the Principal directs the Subcontractor to perform Services to which a Provisional Sum relates, such Services shall be valued in accordance with the provisions of Clause 22.11 as if the Services were a Variation, provided however that the Subcontractor shall only be paid for the net cost to it, excluding profit and overhead but including an allowance for administration at the percentage stated in *Annexure A – Subcontract Particulars*.

23.33 The Subcontract Sum shall be adjusted by the difference between the amount of the valuation under Clause 23.32 and the relevant allowance in *Annexure B – Pricing*.

23.34 The Subcontractor shall submit for inspection by the Principal all invoices, accounts and receipts for payment in respect of the Provisional Sum items.

23.35 If the Principal does not approve any Services associated with a Provisional Sum, then the Principal may have the Services associated with the Provisional Sum executed by a Third Party and the Subcontractor is not entitled to make, and the Principal is not liable for, any Claim against the Principal arising out of or in connection with that Provisional Sum item.

GOODS AND SERVICES TAX

23.36 The Subcontractor shall be registered for the purposes of the GST Act.

23.37 After agreement as to, or determination of, the amount payable to the Subcontractor under the Subcontract and not before payment is due the Principal shall issue an RCTI for Services performed by the Subcontractor. The Subcontractor shall not issue a Tax Invoice (as defined in the GST Act) for such Services performed.

23.38 If Clause 23.37 is specified in *Annexure A – Subcontract Particulars* to be not applicable then Clause 23.37 is of no effect and the Subcontractor shall provide the Principal with a valid Tax Invoice prior to receiving any payment under the Subcontract and provision of a Tax Invoice will be a precondition to payment.

23.39 To the extent that the Principal is to issue RCTI's under Clause 23.37:

(a) the Principal will notify the Subcontractor if it ceases to be registered under the GST Act or if it ceases to satisfy any of the relevant requirements for issuing RCTI's as set out in the GST Act or as determined by the Commissioner of Taxation from time to time;

(b) the Principal shall not issue a document that would otherwise be an RCTI, on or after the date when the Principal or the Subcontractor has failed to comply with any of the requirements for issuing RCTI's as set out in the GST Act or as determined by the Commissioner of Taxation from time to time; and

(c) The Parties agree that Clauses 23.37 and 23.39 are based on GST Ruling GSTR 2000/10 and the Principal may by notice to the Subcontractor amend the Subcontract to continue to allow the Principal to issue RCTI's if the requirements for issuing RCTI's, as set out in the GST Act or as determined by the Commissioner of Taxation from time to time, are varied. If the law is changed so that despite this Clause 23.39(c) the Principal cannot issue RCTI's then Clause 23.37 will be of no effect and Clause 23.38 will apply to the Subcontract.

23.40 If an amount payable under the Subcontract by the Principal is calculated by reference to or otherwise relates to a Loss incurred by the Subcontractor, then the Loss shall be reduced by the amount of any input tax credit in respect of that Loss. The Subcontractor will be assumed to be entitled to claim a full input tax credit unless it demonstrates that its entitlement is otherwise prior to the date on which the payment shall be made.

FINAL PROGRESS CLAIM

23.41 The Subcontractor shall:

(a) within 15 Business Days after the expiry of the last Defects Liability Period and the completion of everything required to be done by the Subcontractor under the Subcontract; or

(b) if Clause 23.41(a) is not relevant because no Defects Liability Period applies, as its claim under Clause 23.4(b),

deliver to the Principal a final progress claim titled 'Final Progress Claim'.

23.42 The Subcontractor shall include in the Final Progress Claim:

(a) a complete statement of accounts, including any Variations;

(b) all money that the Subcontractor considers to be due from the Principal arising out of or in connection with the Services, the Subcontract or any alleged breach of contract;

(c) confirmation that all drawings and other documents required by the Subcontract have been lodged with the Principal;

(d) a certificate stating that all wages and other charges have been paid and that no monies are due or owing by the Subcontractor to any Subcontractor's Personnel disclosed in the certificate;

(e) any information or content prescribed by the Security of Payment Act (if any); and

(f) such other information as the Principal requires.

23.43 The Subcontractor shall provide the Principal with details of how the amount claimed in the Final Progress Claim (**Amount Claimed**) is calculated, including:

(a) separate identification of each Claim and the amount of each Claim which is part of the Amount Claimed;

(b) which clause, if any, of the Subcontract the Subcontractor relies upon to support an entitlement to each Claim;

(c) if based on breach of the Subcontract, what obligation, if any, the Principal has breached (or which has been breached by some other party for which the Principal is responsible) and which the Subcontractor relies upon to support an entitlement to each Claim; and

(d) a description of the other acts, defaults and omissions that the Subcontractor relies upon to support any entitlement to a Claim.

23.44 The Final Progress Claim shall constitute a final progress claim for the purposes of Clauses 23.16 to 23.19 and the Principal shall certify (if relevant) and pay the Final Progress Claim in accordance with those provisions.

FINAL RELEASE

23.45 After the expiration of the time for the Subcontractor to make its Final Progress Claim under Clause 23.41, to the extent permitted by Legislative Requirements, any Claim arising out of or in connection with the Services which the Subcontractor could have made against

the Principal (save for release of security) but which has not been made is barred and the Principal shall be fully released and discharged from such Claim.

23.46 Without affecting Clause 23.45, within a reasonable period after the time for the Subcontractor to make its Final Progress Claim under Clause 23.41, the Principal shall provide the Subcontractor with a Deed of Final Release completed by the Principal with the appropriate details.

23.47 The Subcontractor shall duly execute the same and deliver it to the Principal within 5 Business Days of receipt.

23.48 If, within 5 Business Days of the Principal providing the Deed of Final Release to the Subcontractor, the Subcontractor fails to duly execute and return the Deed of Final Release to the Principal then, apart from any mathematical error or exceptions listed in the Deed of Final Release:

(a) the details contained in the Deed of Final Release shall be final and binding on the Principal and the Subcontractor; and

(b) to the extent permitted by Legislative Requirements, the Subcontractor shall be barred from making any further Claims against the Principal arising out of or in connection with the Services and the Principal shall be fully released and discharged from such Claims.

INTEREST

23.49 No interest shall be payable on any amount due to the Subcontractor but remaining unpaid after the date upon which it should have been paid.

24. PERFORMANCE SECURITY

24.1 To secure the proper performance by the Subcontractor of its obligations under the Subcontract, the Subcontractor shall provide security to the Principal in the form and amount stated in *Annexure A – Subcontract Particulars*.

24.2 If security is to be provided by way of bank guarantee, the Subcontractor shall lodge the security with the Principal within 14 days of the date of the Subcontract or prior to the commencement of the Services (whichever is earlier). Such security shall be:

(a) unconditional, irrevocable and without an expiry date;

(b) from a bank acceptable to the Principal in its absolute discretion; and

(c) in the form set out in *Annexure K – Performance Guarantee* or such other form as the Principal may accept.

24.3 If security is to be in the form of retention moneys, the Principal may retain 10% of each progress payment the Principal pays to the Subcontractor under Clause 23, until the Principal has retained the amount or percentage referred to in *Annexure A – Subcontract Particulars*.

24.4 If, as a result of performance of the Services, there is an increase in the Subcontract Sum, the Subcontractor shall either, at the Principal's election and if required by the Principal:

(a) within 10 Business Days of a request by the Principal, lodge with the Principal an additional or replacement security by way of bank guarantee; or

(b) provide additional security to the Principal in such alternative form as requested by the Principal, including by way of cash retention,

so as to ensure that security is provided for, in aggregate, an amount equal to the percentage of the Subcontract Sum stated in *Annexure A – Subcontract Particulars*.

24.5 The Principal is entitled to convert security into cash at any time.

24.6 Subject to Clause 24.7, the release of any security shall be dealt with as follows:

(a) half of the security shall be released to the Subcontractor upon receipt by the Principal of the Subcontractor's executed Deed of Release; and

(b) subject to and condition upon the Subcontractor having complied with all of its obligations under the Subcontract, including submission to the Principal of the Subcontractor's duly executed Deed of Final Release, within 10 Business Days of the Principal's receipt of the Deed of Final Release.

24.7 The Principal may continue to hold security until the resolution of any bona fide Claim by the Principal (whether liquidated or otherwise) despite any clause in this Subcontract which might otherwise require the security to be released.

24.8 If requested in writing by the Principal, where the Subcontractor is a subsidiary of another company, the Subcontractor shall procure and lodge with the Principal within 10 Business Days of the request, a deed of guarantee by the parent company or other form of security in the form of *Annexure J – Parent Company Guarantee* guaranteeing the Subcontractor's obligations under the Subcontract.

24.9 The Principal may have recourse to the security if the Principal reasonably believes that either the Subcontractor has not performed its obligations in accordance with the Subcontract, or the Principal otherwise has a Claim against the Subcontractor.

24.10 Notwithstanding any other provision of the Subcontract, the Principal will not be liable for any Loss incurred or suffered by the Subcontractor in relation to the conversion of security by the Principal.

24.11 The Subcontractor agrees that it will not in any proceedings whatsoever exercise any rights it may otherwise have, nor take any steps to injunct or otherwise restrain:

(a) the Principal from using any sum or sums received from the conversion of security;

(b) the Principal from exercising its rights in connection with security; or

(c) the issuer of security from exercising its rights or performing its obligations in

connection with the security.

24.12 Nothing in this Clause 24 affects the right of the Principal to recover from the Subcontractor the whole of any debt, money or Claim (or any balance that remains thereof) after the recourse to the security, deduct or set off any amount in accordance with the Subcontract or call on any guarantee provided or procured by the Subcontractor under the Subcontract.

24.13 The Principal does not, unless prescribed by any applicable Legislative Requirements, hold security on trust and the Principal does not owe any obligations to the Subcontractor in relation to security other than those stated in the Subcontract. The Principal is not liable to pay the Subcontractor interest on any security or the proceeds of any security converted into cash and held by the Principal.

24.14 This Clause 24 shall survive the expiry or termination of the Subcontract for any reason.

25. INDUSTRIAL RELATIONS

25.1 The Subcontractor shall be responsible for all employee and industrial relations matters relevant to its Personnel engaged in the performance of the Services.

25.2 The Subcontractor shall:

(a) ensure that all persons engaged in the performance of the Services are paid all amounts, receive such benefits and allowances and are employed subject to such conditions to which they may be or become entitled by virtue of any statute, award, registered agreement (enterprise, project or other), determination, judgement, or order of any competent court, board, commission or other industrial tribunal in force from time to time (**Industrial Relations Instrument**);

(b) make available to the Principal upon request all wage sheets and other information relating to wages, allowances, leave entitlements and industrial practices as the Principal may require;

(c) advise the Principal prior to, and comply with the Principal's direction when any person engaged on Site in the performance of the Services is to be terminated;

(d) ensure that it and its Personnel comply with the right of entry provisions of relevant Legislative Requirements, in the event that any union representative approaches the Subcontractor or any of its Personnel to gain entry to the Site. The Subcontractor shall immediately notify the Principal of any such approach;

(e) notify the Principal of any industrial relations matters which may affect the performance of the Services and of the measures which the Subcontractor proposes to take to ensure that performance; and

(f) immediately report to the Principal any industrial dispute which has arisen or which may, in the opinion of the Subcontractor, arise;

(g) observe the requirements statement in *Annexure I – Project HR/IR Requirements*; observe the provisions of any industrial relations directive the Principal may give

from time to time; and

(h) not employ at the Site in relation to the Services any employee or former employee of the Principal, the Client or any Separate Contractor without the prior written agreement of such employer or former employer.

25.3 The Subcontractor shall, as requested by the Principal from time to time, attend such meetings that are required for the purpose of discussing industrial relations matters.

25.4 The Subcontractor shall keep the Principal fully informed of the progress of any industrial relations dispute with its employees, with any union, or of any demand for terms of employment in excess of or outside the scope of any Industrial Relations Instrument. The Subcontractor shall keep the Principal fully informed of any demarcation problem or of any dispute that arises amongst its employees or between the Subcontractor's employees and the employees of the Principal or any Third Party that is employment related or may have industrial relations implications.

25.5 The Subcontractor shall not without prior written approval of the Principal enter into any form of agreement or consent to or not oppose any award, industrial relations agreement or order (or the variation of any award, agreement or order) in connection with the performance of the Subcontract.

25.6 Throughout the course of the Subcontract the Subcontractor shall ensure that it complies with all Legislative Requirements governing employee and industrial relations and, in particular:

(a) make all superannuation contributions required for the Subcontractor's employees; and

(b) ensure that the requirements of the *Construction Industry Portable Paid Long Service Leave Act 1985* (WA), or any similar or equivalent legislation in the applicable jurisdiction, are met and in particular comply with the requirements to lodge returns and make payments in respect of the Subcontractor's employees.

25.7 The Subcontractor shall, on the request of the Principal, provide a statutory declaration confirming that these requirements have been complied with and upon failure to comply with the request within a reasonable time, the Subcontractor authorises the Principal to undertake any enquiries that are appropriate in the circumstances.

25.8 For the purpose of keeping the Principal advised of the Subcontractor's activities in respect of employee and industrial relations the Subcontractor shall, in respect of the Subcontractor's Personnel, submit the following information in writing to the Principal upon request:

(a) names of all Subcontractor's and Sub-subcontractor's employees engaged in respect of the Services;

(b) hours worked;

(c) hourly rate paid for each classification employed;

(d) number of employees by classification; and

(e) lost time through any industrial relations dispute.

25.9 The Subcontractor shall provide such information in the form required by the Principal.

25.10 The Subcontractor shall, on the request of the Principal, provide a statutory declaration confirming that all wages, allowances and conditions of employment provided under the terms of employment and any Industrial Relations Instrument have been or are being met with respect to each of the Subcontractor's employees engaged in connection with the performance of the Subcontract. The Subcontractor shall permit the Principal, at any reasonable time, to inspect and take copies of the Subcontractor's time and wages records.

25.11 The Subcontractor shall ensure that the terms and conditions contained in this Clause 25 are included in the terms and conditions of any Sub-subcontract for the performance of any part of the Services.

25.12 The Subcontractor shall ensure that each of its employees is familiar with and accepts the conditions of his or her employment and signs a copy of those conditions in evidence thereof in a form approved by the Principal.

26. INTELLECTUAL PROPERTY

SUBCONTRACTOR IP

26.1 The Principal acknowledges that the Subcontractor remains the owner of all Subcontractor IP. The Subcontractor grants to the Principal and to the Client a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use all Subcontractor IP for the purposes of or in connection with the business of the Principal or the Client.

26.2 The Subcontractor warrants that:

(a) use by the Principal or the Client of the Subcontractor IP, or by another person at the direction or with the permission of the Principal or the Client in accordance with the Subcontract, will not infringe the Intellectual Property Rights of any Third Party or breach any law;

(b) neither the Principal nor the Client, nor any other person acting at the direction or with the permission of the Client or the Principal, is liable to pay to any Third Party any licence or other fee in respect of the use of the Subcontractor IP; and

(c) the Subcontractor has obtained from any Third Party involved in the creation of, or whose Intellectual Property Rights are held in relation to Subcontractor IP, all necessary consents to ensure that the Principal, the Client and any person claiming an interest in the Subcontractor IP through the Principal or the Client does not infringe any Intellectual Property Rights.

26.3 The Subcontractor indemnifies the Principal for all Loss incurred as a result of a breach of any of the warranties in Clause 26.2.

26.4 The Principal or the Client may sub-licence their respective rights under Clause 26.1 to any person where that person has been granted use of the Subcontract IP.

CLIENT IP

26.5 The Subcontractor acknowledges and agrees that the Client or any of its Related Entities or joint ventures remain the owner of the Client IP and that nothing in the Subcontract prevents, limits or restricts their subsequent use of the Client IP.

SUBCONTRACT IP

26.6 The Subcontractor warrants that:

(a) any design, equipment, methods of working and documentation including but not limited to specifications, drawings, reports and publications used by the Subcontractor in connection with the Services shall not infringe any patent, registered design, trademark or name, copyright or other protected right; and

(b) it has the right to assign all Subcontractor IP.

26.7 On the Principal's request, the Subcontractor shall execute any formal assignment or other document required to give effect to Clause 26.6.

26.8 The Subcontractor indemnifies the Principal for all Loss incurred as a result of a breach of any of the warranties in Clause 25.6.

26.9 The ownership of all Subcontract IP shall vest in the Principal or its nominee (including the Client) as and when created.

26.10 The Subcontractor shall notify the Principal as soon as it becomes aware of any suspected, threatened or actual infringement or unauthorised use of any Subcontract IP and provide all reasonable assistance in relation to that infringement.

MORAL RIGHTS

26.11 The Subcontractor shall at its cost procure from each of its Personnel or any Third Parties an irrevocable and unconditional consent in the form required by the Principal, in favour of the Subcontractor (and for the benefit of the Principal and the Client) to reproduce, communicate, adapt or publish any materials in relation to the Services, without making any identification of any person in relation to such reproduction, communication, adaptation or publication.

26.12 Where the Principal reasonably believes that the Subcontractor has not complied with its obligations under Clause 26.11 the Subcontractor shall procure that each of the Personnel of the Subcontractor or any Third Parties engaged in the performance of the Services do all things necessary to give effect to Clause 26.11.

26.13 The Subcontractor shall comply with any direction issued by the Principal in relation to any suspected, threatened or actual infringement or unauthorised use of Intellectual Property Rights on or relating to the Project, and shall provide all reasonable assistance that the Principal may request to protect Intellectual Property Rights relating to the Project.

SURVIVAL

26.14 This Clause 26 shall survive the expiry or termination of the Subcontract for any reason.

27. EXISTING PROPERTY AND INFRASTRUCTURE

27.1 If the Subcontractor or any Subcontractor's Personnel damage property of any Third Party or of the Principal, the Client or their respective Personnel, the Subcontractor shall immediately, at the Principal's sole and absolute discretion:

(a) make good such damage at its own expense; or

(b) reimburse the Principal for the cost of making good such damage (which shall be a debt due and payable by the Subcontractor to the Principal upon demand); and

(c) pay any compensation that any Legislative Requirement requires the Subcontractor to pay.

EXISTING INFRASTRUCTURE

27.2 If there is any Existing Infrastructure, the Subcontractor shall:

(a) perform the Services so that the Existing Infrastructure can continue to operate while the Subcontractor is performing the Services;

(b) ensure that any interruption to the operation of the Existing Infrastructure or the Principal's or the Client's activities on or adjacent to the Site, caused by the interconnection of the Services to the Existing Infrastructure is minimised and is approved by the Principal before the commencement of the interconnection;

(c) not later than 20 Business Days prior to the programmed date(s) for interconnection of the Services to Existing Infrastructure, submit to the Principal for approval written copies of proposed interconnection procedures;

(d) give the Principal not less than 15 Business Days prior notice of any disconnection or other interference with services to the Existing Infrastructure;

(e) provide any alternative temporary services as are required to perform the Services and ensure that there is no disruption to the operations of the Existing Infrastructure;

(f) in the Principal's absolute discretion, either repair and make good, or reimburse to the Principal the cost of repairing and making good, any damage to the Existing Infrastructure arising from or in connection with the Services to at least the standard of the Existing Infrastructure prior to the commencement of the Services;

(g) ensure that the Existing Infrastructure and its continued performance and operation is not adversely affected by the performance of the Services;

(h) except to the extent expressly permitted by the Subcontract or approved by the Principal:

(i) not disrupt or interfere in any way with the daily operations of the Existing Infrastructure;

(ii) not cause, and use all reasonable measures to mitigate, any unreasonable nuisance, inconvenience, disturbance or annoyance to users or occupiers of the Existing Infrastructure, or the Principal's or the Client's operations on or adjacent to the Site; and

(iii) program, co-ordinate and integrate all Services so as to minimise the effect that the performance of the Services has on the Existing Infrastructure and Personnel on or adjacent to the Site; and

(i) ensure that the Services fully, effectively and efficiently interface with the Existing Infrastructure.

28. INSURANCE

28.1 The Subcontractor shall take out and maintain the following insurance for the duration of the Subcontract and any extension of it.

28.2 Clauses 28.3 to 28.11 inclusive shall apply if stated in *Annexure A – Subcontract Particulars*.

INSURANCE OF EMPLOYEES

28.3 The Subcontractor shall effect and maintain:

(a) workers compensation, employers' liability and any other insurance required by any Legislative Requirement with a limit of liability of not less than the amount stated in *Annexure A – Subcontract Particulars,* per occurrence and in the annual aggregate, in respect of any person employed or engaged by the Subcontractor or deemed to be so employed; and

(b) industrial disease insurance in accordance with the *Workers' Compensation and Injury Management Act 1981* (WA) under the *Mines Safety and Inspection Regulations 1995* (WA), or any similar or equivalent legislation in the applicable jurisdiction.

28.4 Where permitted by law, such insurance shall be endorsed so as to provide that the Principal, the Client, and their respective Personnel are indemnified as principal against any liability which they may incur to such persons, for both statutory liability and at common law including any liability incurred as their deemed employer.

PUBLIC LIABILITY INSURANCE

28.5 The Subcontractor shall effect and maintain public liability (and, where relevant, product liability) insurance to cover its liability and its Sub-subcontractors' liability to Third Parties for loss of or damage to property (including loss of use thereof) and the death of or injury to any person.

28.6 The insurance shall:

(a) be for an amount not less than the amount stated in *Annexure A – Subcontract Particulars* per occurrence and unlimited in the annual aggregate;

(b) name the Principal and the Client as an additional insured party;

(c) where permitted by law, be extended to cover the Principal and the Client for their respective rights and interests, including any vicarious liability of the Principal arising from the Subcontractor performing the Services; and

(d) extend to cover underground operations (if applicable), the use of unregistered motor vehicles or mobile plant and equipment used in connection with the Subcontract, registered vehicles used as a tool of trade in the performance of the Services and the property of the Client or the Principal in the case, custody or control of the Subcontractor.

MOTOR VEHICLE INSURANCE

28.7 If the performance of the Subcontract requires the Subcontractor or its Personnel to use or provide for use of any vehicle owned, leased, hired or used by the Subcontractor, the Subcontractor shall effect and maintain, or require the owners of such motor vehicles to effect and maintain Third Party liability insurance covering all Loss in respect of any injury to, or death, disease or illness of, any person or any loss, damage or destruction to any property arising from the use of such vehicles, in accordance with Legislative Requirements.

28.8 The insurance shall:

(a) have a limit of liability of not less than the amount stated in *Annexure A – Subcontract Particulars* per occurrence and in the annual aggregate;

(b) include cover for hazardous goods liability; and

(c) contain a principal's indemnity extension for both statutory liability and common law liability in favour of the Principal, the Client and their respective Personnel.

PROFESSIONAL INDEMNITY INSURANCE

28.9 Where the Services include the provision of professional services, the Subcontractor shall effect and maintain a professional indemnity policy of insurance that covers liability of the Subcontractor for any Claim or any Loss in respect of a breach of a duty owed by the Subcontractor in the course of the performance of the Subcontractor's business or profession, and a breach of the Subcontractor arising out of or in connection with any act or omission of the Subcontractor or its Personnel.

28.10 The insurance shall:

(a) have an indemnity limit of not less than the amount stated in *Annexure A – Subcontract Particulars* per occurrence and in the annual aggregate; and

(b) be maintained (or a replacement policy in similar terms shall be maintained) for a period of 7 years after the Date of Practical Completion.

PLANT INSURANCE

28.11 The Subcontractor shall ensure that any registered and unregistered mobile Plant which it owns, hires, leases or otherwise controls and which is brought to Site is insured:

(a) against loss or damage for its replacement value; and

(b) for not less than the amount stated in *Annexure A – Subcontract Particulars* per occurrence and unlimited in the annual aggregate for loss or damage to property and death, disease, illness or injury to or of any person caused by or in connection with the use of the Plant.

TRANSIT INSURANCE

28.12 Where the Services include a requirement for transport, before commencing the Services, the Subcontractor shall, unless otherwise directed by the Principal, effect and maintain an "all risks" transit insurance policy on terms acceptable to the Principal, which shall:

(a) as a minimum be based on, include or provide cover equivalent to that provided by the Institute clauses listed below, or their equivalents that are relevant to the method of transport to be used:

(i) Institute Cargo Clause (A) 1/1/82;

(ii) Institute Strikes Clause (Cargo) 1/1/82;

(iii) Institute War Clause (Cargo) 1/1/82;

(iv) Institute Replacement Clause 1/1/34; and

(v) Institute Classification Clause 01/01/01;

(b) cover the Associated Goods and materials for their full replacement cost at the point of delivery to the Delivery Point;

(c) provide cover for 90 days delayed unpacking of the Associated Goods or materials; and

(d) cover removal of debris and disposal costs.

MARINE INSURANCE

28.13 If the performance of the Subcontract requires or involves the use of watercraft, the Subcontractor shall at all times maintain or require the owners of such watercraft to maintain:

(a) marine hull & machinery insurance, including collision liability, on all watercraft so used, with a limit of cover not less than the market value of the watercraft; and

(b) protection and indemnity insurance including coverage for injuries or death to any person including masters, mates and crews. The limit of liability shall be for an amount of not less than AUD$20,000,000 for each and every Claim.

AVIATION INSURANCE

28.14 If the performance of the Subcontract requires or involves the use of aircraft (including helicopters), the Subcontractor shall maintain or require owners of such aircraft to maintain:

(a) aircraft hull insurance, on all aircraft so used, with a limit of cover not less than the market value of the aircraft; and

(b) liability insurance including coverage for injuries or death of crew, passengers and any other person, and in respect of loss or damage to cargo and third party property. The limit of liability shall be for an amount of not less than AUD$20,000,000 for each and every Claim.

ASSOCIATED GOODS INSURANCE

28.15 The Subcontractor shall effect and maintain insurance against loss, damage of destruction of Associated Goods and all component parts while under manufacture and up until Practical Completion.

GENERAL SUBCONTRACTOR INSURANCE REQUIREMENTS

28.16 Each of the insurance policies required to be effected by the Subcontractor shall:

(a) except where the Subcontract provides otherwise, be effected with a reputable insurer having a Standard & Poor's, Moodys, AM Best or equivalent ratings agency's long-term issue credit rating of A minus or better or otherwise approved by the Principal (acting reasonably)

(b) be effected prior to the commencement of the Services;

(c) contain a waiver of all express or implied rights of subrogation against the Principal and the Client and their Personnel;

(d) except for the insurance required under Clauses 28.3, 28.9 or 28.12 be endorsed to:

(i) include a cross liability clause noting that each of the parties comprising the insured shall be considered as a separate entity, and the insurance applies as if a separate policy had been issued to each insured;

(ii) where permitted by law, be extended to cover the Principal for its vicarious liability arising from the Subcontractor's performance of the Services; and

(iii) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to

another insured under the policy; and

(e) if the Subcontractor comprises two or more persons, be effected jointly by those persons and name each person comprising the Subcontractor as an insured.

28.17 The Subcontractor shall give written notice to the Principal promptly upon the occurrence of any event or circumstance which is, or may be, notifiable under any of the insurances which the Subcontractor is required to effect and maintain, and shall keep the Principal informed of subsequent developments concerning the Claim.

28.18 Before commencing the Services, and at any other time required by the Principal, the Subcontractor shall provide the Principal with demonstration that it holds the insurances required by the Subcontract, including by providing (at the Principal's request) certified copies of all cover notes, policies, certificates or currency, renewal certificates and endorsement slips.

28.19 In the event that the Subcontractor fails to, or fails to ensure that its Sub-subcontractors, effect or maintain any of the insurances required under the Subcontract, the Principal may at its sole option and without being under any duty or obligation to do so, do one or more of the following:

(a) effect and maintain such insurances and the costs of such insurances shall be a debt due and payable by the Subcontractor to the Principal upon demand;

(b) refuse the Subcontractor and its Personnel access to all or any part of the Site; or

(c) treat the failure to insure as a default under the Subcontract.

28.20 In respect of any of the insurances required under the Subcontract, the Subcontractor shall:

(a) ensure that the Subcontractor's insurances are not varied to the detriment of the Principal or the Client, cancelled or allowed to lapse; and

(b) give the Principal a copy of any notice of cancellation, non-renewal or material alteration given by the insurer to the Subcontractor in respect of any of the insurances required under the Subcontract within 24 hours of its receipt.

28.21 The Subcontractor shall ensure that its Sub-subcontractors have the benefit of or effect and maintain insurances equivalent to the insurances required to be effected by the Subcontractor under the Subcontract.

28.22 If any insurance effected under this Clause 28 is subject to the application of any deductible or excess, the Subcontractor shall pay the deductible or excess.

28.23 The effecting and maintenance of insurance in accordance with the terms of the Subcontract shall not in any way limit the liabilities and obligations of the Subcontractor under the Subcontract.

28.24 The insurance policies under the Subcontract are primary, and not secondary, to the indemnities referred to in the Subcontract. It is the intention of the Parties that the insurer

cannot require any Party to exhaust a claim under an indemnity referred to in the Subcontract before the insurer considers or pays the relevant claim.

28.25 Nothing in this Clause 28 limits the obligations, liabilities or responsibilities of the Subcontractor, whether under the Subcontract or otherwise.

MITIGATION AND REINSTATEMENT

28.26 If any of the Services, temporary works, the Plant or other property the subject of Services for which the Subcontractor is responsible is damaged or destroyed:

(a) at any time on or before the Date of Practical Completion, the Subcontractor shall take the following steps to:

(i) make secure the Services, temporary works, the Plant or other property at the Site;

(ii) notify:

(A) appropriate authorities, emergency services and the like; and

(B) all relevant insurers,

of the occurrence and comply with their reasonable instructions; and

(iii) subject to Clause 28.26(a)(ii), clear any debris and begin work to repair or replace the Services, temporary works, the Plant or other property;

(b) in the circumstances described in Clause 28.26(a), the Subcontractor shall, in addition to its obligations set out in Clause 28.26(a), also promptly consult with the Principal to procure its approval for steps to ensure:

(i) the prompt repair or replacement of the Services, temporary works, the Plant or other property:

(A) to ensure that the Services or temporary works comply with the standards and specifications required by the Subcontract; and

(B) any disruption to the free flow of traffic in the areas surrounding the property being repaired or replaced is minimised;

(ii) that, to the greatest extent possible, the Subcontractor continues to comply with its obligations under the Subcontract.

APPLICATION OF INSURANCE PROCEEDS

28.27 Unless the Principal otherwise directs, if the Services or temporary works or any property of the Principal or the Client is damaged or destroyed:

(a) all insurance proceeds in respect of that damage or destruction shall be applied to repair or reinstate such Services, temporary works or property; and

(b) if the Client or the Principal has repaired such Services, temporary works or property then all insurance proceeds in respect of that damage or destruction shall be paid to the Client or to the Principal (as applicable).

SURVIVAL

28.28 This Clause 28 shall survive the expiry or termination of the Subcontract for any reason.

29. DEFECTS

29.1 The Defects Liability Period shall commence on the Date of Completion.

29.2 Subject to Clause 29.3 and 29.7, should any part of the Services be found to be Defective at any time prior to the expiration of the Defects Liability Period, the Principal may:

(a) direct the Subcontractor to remedy such Defect at its own expense, as quickly as possible (and in any event not later than 7 Business Days after being instructed by the Principal to do so), at times and in a manner which causes as little inconvenience to Third Parties as is reasonably possible and in accordance with the Principal's instructions; or

(b) give notice that it will accept the defective services, or any part of them, despite the Defect, in which case the Principal will assess an amount that represents the cost of correcting the accepted defective services and that amount will be a debt and payable by the Subcontractor to the Principal upon demand.

29.3 Should an Associated Good be found to be Defective at any time prior to the expiration of the Defects Liability Period, the Subcontractor shall redesign, repair or replace the Associated Good at its cost by the time stated in the Principal's direction.

29.4 Should the Subcontractor fail to remedy a Defect in accordance with the Principal's instructions, or if the Principal determines (in its absolute discretion) that urgent rectification of the Defect is necessary, the Principal may arrange for the Defect to be remedied by the Principal or by others instead of the Subcontractor and the cost of doing so shall be valued under Clause 22.11 and shall be a debt due and payable by the Subcontractor to the Principal upon demand.

29.5 If the Principal carries out or has others perform the rectification work pursuant to Clause 29.3, the Subcontractor remains responsible for the Services (including the rectification work) in accordance with the Subcontract and the Subcontractor is not entitled to make, and the Principal is not liable for, any Claim in relation to that rectification work.

29.6 Where the Subcontractor has remedied any Services under this Clause 29, the remedied Services will be subject to the same Defects Liability Period as the original Services, from the date the Subcontractor made good the Defect.

29.7 To the extent the Subcontractor is not responsible for a Defect (or the relevant part) but remedies the Defect, the work involved in rectifying the Defect shall be treated as a

Variation and valued under Clause 22.11.

29.8 Nothing in this Clause 29 shall operate to limit or exclude the Subcontractor's liability at law for Defective Services, which may continue beyond the end of the Defects Liability Period.

30. DEFAULT

BY SUBCONTRACTOR

30.1 Nothing in this Clause 30 shall prejudice the Principal's rights to recover damages or to exercise any other right.

30.2 In the event that:

(a) the Subcontractor commits any default, omission or breach of the Subcontract; or

(b) without reasonable cause, wholly or partly suspends the performance of the Services,

and the relevant act, default, omission or breach is not remedied within 5 Business Days of the Subcontractor being notified by the Principal that it is required to do, or:

(c) an Insolvency Event occurs in respect of the Subcontractor;

(d) as a result of an audit performed under Clause 36.7 the Principal reasonably considers that there is a significant risk that the Subcontractor may be unable to complete the Services;

(e) the Subcontractor fails to complete the Services within 90 days after the Date for Practical Completion; or

(f) the Subcontractor is in breach of any of its obligations under the Subcontract with respect to health, safety or the environment,

then the Principal may in its sole and absolute discretion and by notice or further notice to the Subcontractor:

(g) to the extent allowable at law, withhold any or all monies which are then or which may become due and payable to the Subcontractor until the act, default, omission or breach has been remedied;

(h) take out of the hands of the Subcontractor the whole or any part of the Services remaining to be completed;

(i) provide labour, materials, plant or equipment to the Subcontractor for use in performing the Services; or

(j) terminate the Subcontract.

30.3 If the Principal takes action under Clauses 30.2(g), (h) or (i) then:

(a) the Principal may use or engage others to use the Subcontractor's equipment (including Plant) and materials to complete the Services;

(b) the Principal may obtain and use materials to complete the Services which are off-Site and which were intended for use in the performance of the Services;

(c) if requested by the Principal, the Subcontractor shall assign or novate its rights under any Sub-subcontracts to the Principal or the Principal's nominee;

(d) the Principal may directly pay any Sub-subcontractor for any services performed by the Sub-subcontractor relating to the Services and in respect of which the Sub-subcontractor has not already been paid; and

(e) a valuation shall be made under Clause 22.11 in respect of any Loss that the Principal suffers or incurs.

30.4 If the Principal takes action under Clause 30.2(j) then in addition to the Principal's entitlement to exercise each of the rights under Clause 30.3 the Subcontractor shall:

(a) immediately cease the Services;

(b) not place any further orders nor enter into any further Sub-subcontracts;

(c) immediately take all reasonable steps to protect property in the possession of the Subcontractor in which the Principal has or may acquire an interest;

(d) within 3 Business Days after the termination notice, provide the Principal with a detailed report in such form as the Principal may require in relation to the Services performed up to and including the date of the termination notice;

(e) offer the Principal first right of refusal to purchase any of the Subcontractor's Plant used for the purposes of the Subcontract at its depreciated value;

(f) unless directed otherwise under Clause 30.3(a) and subject to Clause 30.4(e), demobilise all Plant (including the removal of all temporary works);

(g) enable the Principal to take possession of all Associated Goods, materials, temporary works and all things incorporated in the Services or on the Site or purchased by or on behalf of the Subcontractor to perform the Services;

(h) clear away any rubbish and debris;

(i) return to the Principal any property, documentation or information issued to the Subcontractor by the Principal;

(j) deliver to the Principal within 7 Business Days after the date of termination, one hard copy and one electronic copy of all documents, reports and other information in the possession or control of the Subcontractor which relate to the Subcontract;

(k) if required by the Principal, within 7 Business Days after the date of termination, assign or novate to the Principal or its nominees, to the extent required by the Principal, all rights and benefits of the Subcontractor under existing commitments of Third Parties (including under a Sub-subcontract); and

(l) if directed by the Principal to do so:

(i) terminate any Sub-subcontract and recover from the Sub-subcontractor any items issued to the Sub-subcontractor or paid for by the Principal or the Subcontractor; and

(ii) take any other action relating to the termination of the Subcontract that the Principal may reasonably require.

30.5 If the Principal repudiates the Subcontract and the Subcontractor terminates the Subcontract, the Subcontractor shall be entitled to claim contract damages and shall not be entitled to claim compensation assessed on a quantum meruit basis.

30.6 This Clause 30 shall survive the expiry or termination of the Subcontract for any reason.

31. NOTICES AND CLAIMS

NOTICES

31.1 Any notice or claim required by the Subcontract to be submitted by a Party to the other, including a notice or claim under Clauses 20.3, 20.9, 22.6, 23.4, 25 and 28.17 shall be:

(a) in writing, given by personal delivery, pre-paid mail, facsimile or as an attachment to an email;

(b) clearly identified as a notice or claim; and

(c) delivered to the applicable address as stated in *Annexure A – Subcontract Particulars* or last communicated in writing to the Party giving the notice.

31.2 A notice or claim given under the Subcontract will be deemed to have been given:

(a) if delivered personally, upon delivery;

(b) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;

(c) if transmitted by a facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day;

(d) if sent by pre-paid mail:

(i) to an address in the city of dispatch, on the third Business Day after posting;

(ii) from elsewhere within Australia, on the fifth Business Day after posting; or

(iii) if mailed from overseas, on the tenth Business Day after posting; or

(e) if sent by email to a person's address on the first to occur of:

(i) receipt by the sender of an email acknowledgment from the recipient's information system showing that the Notice has been delivered to the email address of the recipient set out in *Annexure A – Subcontract Particulars*;

(ii) the time that the notice or claim enters an information system which is under the control of the recipient; and

(iii) the time that the notice or claim is first opened or read by an employee of the recipient, but if the result is that a notice or claim would be taken to be given or made on a day that is not a Business Day, it will be taken to have been duly given or made on the next Business Day.

(f) For the purpose of this Clause 31, the address of a person is the address nominated in *Annexure A – Subcontract Particulars* or, if no address nominated, its registered office (or, if a person, its principal place of business).

(g) A Party may from time to time substitute a new address or facsimile number by notice to the other Party.

CLAIMS

31.3 Except for Claims of which notice is required to be given under any other provision of the Subcontract, including for:

(a) an extension of time under Clause 20; or

(b) payment of the Subcontract Sum under Clause 23,

the Subcontractor shall give the Principal the notices required by this Clause 31 if it wishes to make a Claim against the Principal in respect of any Variation, direction given by the Principal or any other fact, matter or thing (including a breach of the Subcontract by the Principal) arising out of or in connection with the Services or the Subcontract.

31.4 This Clause 31 does not affect the Subcontractor's obligation to comply with the notice requirements in other provisions of the Subcontract, including in relation to delay suspension acceleration and Force Majeure and regardless of whether such Claims are made as part of a progress claim or a final claim under Clause 23.

31.5 The notices referred to in Clause 31.3 are:

(a) a notice within 10 Business Days after the first occurrence of the direction or other fact, matter or thing upon which the Claim is based, expressly specifying that the Subcontractor proposes to make a Claim and the direction or other fact,

matter or thing upon which the Claim will be based; and

(b) a written Claim within 5 Business Days after giving the notice under Clause 31.5(a), which shall include:

(i) detailed particulars concerning the direction or other fact, matter or thing upon which the Claim is based;

(ii) the legal basis for the Claim, whether based on a term of the Subcontract or otherwise, and if based on a term of the Subcontract, clearly identifying the specific term;

(iii) the facts and evidence relied upon in support of the Claim in sufficient detail to permit verification; and

(iv) details of the amount claimed and how it has been calculated.

31.6 If the direction or fact, matter or thing upon which the Claim is based or the consequences of the direction or fact, matter or thing are continuing, the Subcontractor shall continue to give the information required by Clause 31.5(b) every 5 Business Days after the written Claim under Clause 31.5(b) (as the case may be) was required to be given to the Principal, until after the direction or fact, matter or thing upon which the Claim is based, has, or the consequences thereof have, ceased.

31.7 It is a condition precedent to the Subcontractor's entitlement to make a Claim that the Subcontractor has strictly complied with each of the requirements of this Clause 31. Unless stated otherwise, if the Subcontractor submits a notice or a Claim in respect of a matter later than the time for submission of such notice or Claim stated in the Subcontract, the Subcontractor shall have no Claim against the Principal in respect of such matter.

31.8 Within a reasonable time of receipt of the Subcontractor’s written Claim, the Principal shall assess the claim and promptly notify the Subcontractor in writing of its determination.

HEAD CONTRACT CLAIMS

31.9 The Subcontractor shall, at its cost, cooperate with and provide all reasonable assistance to the Principal to enable the Principal to pursue any Claim against the Client relating to the Services.

32. INDEMNITY AND LIABILITY

32.1 The Subcontractor shall be liable for, and agrees to indemnify and keep indemnified the Principal and the Client against:

(a) loss or damage to property of the Principal or the Client;

(b) claims by any person against the Principal or the Client in respect of:

(i) loss of or damage to any property;

(ii) personal injury, illness or death; or

(iii) the infringement of any patent, registered design, trademark or name, copyright or other protected right;

(iv) any Environmental Event which is caused or contributed to by the Subcontractor or its Personnel in connection with the Subcontractor's performance or non-performance or breach of the Subcontract, or any other act or omission of the Subcontractor or its Personnel;

(v) any Claim made against the Principal or the Client by any of the Subcontractor's Personnel in respect of any relevant Legislative Requirement concerning income tax, payroll tax, workers' compensation, annual leave, long service leave, superannuation or any application award, determination or agreement of a competent industrial tribunal; or

(vi) any penalty imposed arising from or due to any breach by the Subcontractor or its Personnel of any applicable Legislative Requirement;

(c) any Loss or Claim arising out of, or in connection with any failure by the Subcontractor to carry out its obligations under the Subcontract in such manner and within such a time so as to permit the Principal to comply with the Principal's obligations under the Head Contract;

(d) any Loss or Claim arising out of, or in connection with the Subcontractor acting in such a manner that results in the Principal being in breach of the Principal's obligations under the Head Contract; and

(e) any other Loss or Claim arising out of, or in connection with, the Subcontractor performing or not performing the Services or any other act or omission of the Subcontractor including by reason of any breach of contract, breach of Legislative Requirement, breach of any written or unwritten law, breach of equitable duty or any negligent, wilful or unlawful act or omission by the Subcontractor or its Personnel

32.2 The indemnity in Clause 32.1 will be reduced proportionally to the extent that any negligence, breach of contract, breach of duty, breach of any warranties or representations or breach of a Legislative Requirement by the Principal or the Client contributed to such Loss.

32.3 The Principal need not incur any cost or make any payment before enforcing any right of indemnity under Clause 32.1.

32.4 If a Claim from a Third Party is made against the Principal or the Client or the Principal's or the Client's Personnel in the circumstances described in Clause 32.1 the Principal shall notify the Subcontractor in writing of the Claim and provide it with such details as are available to the Principal about the Claim.

32.5 The Subcontractor shall not bring any Claim arising out of or connected with the Subcontract or its subject matter against any of the Principal's or the Client's Personnel as separate from the Principal or the Client.

32.6 Nothing in Clause 32.4 requires the Principal to provide to Subcontractor legal advice received by the Principal or by the Client.

32.7 If the Subcontractor acknowledges in writing that it is liable to indemnify the Principal or the Principal's Personnel, or the Client or the Client's Personnel, against the Claim from the Third Party under Clause 32.1, the Principal or the Client may either:

(a) conduct the defence of the Claim itself; or

(b) at any time require by written notice to the Subcontractor that the Subcontractor take over the defence of the Claim.

32.8 The Party conducting the defence of the Claim shall keep the other Party informed of all material matters relating to the conduct of any defence or response in respect of the Claim.

32.9 The Subcontractor, if conducting the defence of a Claim in accordance with Clause 32.7, shall have regard to the Principal's and to the Client's expressed views if those views are confirmed in writing and are reasonable having regard to the legitimate interests of both Parties.

32.10 Subject to Clause 32.11 and to the extent permitted by Legislative Requirements, the Subcontractor's liability to the Principal will be:

(a) limited to the amount stated in *Annexure A – Subcontract Particulars*; or

(b) where no amount is stated, limited to an amount equal to the value of the Subcontract Sum.

32.11 Clause 32.10 does not apply to Loss:

(a) arising from loss of or damage to property or injury to, illness or death of any person;

(b) for which a policy of insurance required to be effected under the Subcontract responds or would have responded but for any act or omission of the Subcontractor;

(c) in respect of liquidated or general damages for delay;

(d) for a deliberate breach of the Subcontract or any wilfully wrongful, fraudulent or criminal act or omission of the Subcontractor;

(e) arising out of any infringement of confidentiality or Intellectual Property Rights;

(f) arising out of rectification of any Defect;

(g) arising out of the abandonment by the Subcontractor of its obligations under the Subcontract; or

(h) comprising a fine or penalty payable under any Legislative Requirement.

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

32.13 Notwithstanding any other provision of the Subcontract, neither Party shall be liable to the other for Consequential Loss.

32.14 Clause 32.13 does not exclude liability of a Party for Consequential Loss if the Party is covered in respect of such Consequential Loss under a policy of insurance the Party is required to procure and maintain pursuant to the Subcontract.

32.15 This Clause 32 shall survive the expiry or termination of the Subcontract for any reason.

33. TERMINATION FOR CONVENIENCE

33.1 The Principal may at any time for any reason, at the Principal's sole and absolute discretion, terminate the Subcontract or any part thereof for its convenience, by giving no less than 5 days' prior written notice to the Subcontractor.

33.2 Without prejudice to the Principal's rights under the Subcontract or otherwise, upon such termination the Subcontractor shall:

(a) take the steps required under Clause 30.4;

(b) subject to Clause 30.4, be paid for Services performed prior to the date of termination, the reasonable cost of goods that the Subcontractor is legally liable to accept and could not reasonably avoid or mitigate, and costs reasonably incurred by the Subcontractor in demobilisation; and

(c) shall not be entitled to recover any loss of profits arising as a result of termination or make any other Claim arising out of the termination.

33.3 If for any reason a purported termination by the Principal under Clause 30 is ineffective, the purported termination is not a breach or repudiation of the Subcontract and is deemed to have been effected under Clause 33.1.

34. DISPUTE RESOLUTION

DISPUTE NOTICE

34.1 If a Dispute arises then either Party may serve the other Party with a Dispute Notice.

CONFERRAL

34.2 Within 5 Business Days of receipt of a Dispute Notice, representatives of the Parties having authority to bind the Parties shall confer in an attempt to resolve the Dispute, which conferral shall be confidential and without prejudice.

34.3 If a resolution or method of resolution has not been agreed within 15 Business Days of the service of the Dispute Notice, the General Manager (or their equivalent) of the Parties shall confer for the same purpose as the Parties' representatives, which conferral shall be confidential and without prejudice.

ARBITRATION

34.4 If the Dispute is not resolved within 35 days of the service of the Dispute Notice, then either Party may submit the Dispute to arbitration by giving written notice to the other Party (**Arbitration Notice**).

34.5 Each Party and each proposed arbitrator shall disclose to the other Party any business, personal or other relationship or affiliation that may exist between such Party and proposed arbitrator within 10 Business Days following delivery of the Arbitration Notice, and either Party may disapprove of such proposed arbitrator on the basis of such relationship or affiliation.

34.6 If the Parties have not agreed upon an arbitrator within 5 Business Days of the service of the Arbitration Notice, the arbitrator shall be the person appointed by the then current Chair of the Institute of Arbitrators and Mediators Australia (**IAMA**) (WA Chapter) or Resolution Institute (WA Chapter). The arbitrator shall be listed in the IAMA or Resolution Institute (as applicable) register of practising arbitrators and graded as Grade 1 or Grade 2.

34.7 The arbitration shall be conducted:

(a) by a single arbitrator;

(b) in Perth, Western Australia; and

(c) in accordance with the then current IAMA Rules for the Conduct of Commercial Arbitrations or Resolution Institute Arbitration Rules (as applicable).

34.8 The arbitrator shall deliver detailed, written reasons for the decision. The arbitrator's decision shall be final, non-appealable and binding upon the Parties and may be enforced in any court of competent jurisdiction.

34.9 Unless a Party is required to enforce the award of the arbitrator in a court of competent jurisdiction or otherwise required by legal authorities with competent jurisdiction, all materials, information, testimony and evidence produced or introduced during the arbitration proceedings, including all rulings and decisions rendered by the arbitrator, shall be kept confidential and shall not be disclosed without the prior written consent of the other Party.

34.10 Notwithstanding the existence of a dispute, the Subcontractor shall continue to perform the Services.

34.11 Neither Party may commence legal proceedings (except for urgent interlocutory relief) in relation to any Dispute unless the procedure referred to in this Clause 34 has been strictly complied with.

SECURITY OF PAYMENT ACT

34.12 The Principal and the Subcontractor agree that:

(a) the appointed adjudicator for the purposes of any adjudication under the Security of Payment Act is the first adjudicator listed in *Annexure A – Subcontract*

Particulars, unless that person is unavailable, in which case it will be the second adjudicator listed unless that person is unavailable, in which case it will be the third adjudicator; or

(b) if no such adjudicators consent to act or no adjudicators are listed in *Annexure A – Subcontract Particulars*, then the authorised nominating authority shall be the entity stated in *Annexure A – Subcontract Particulars*.

34.13 If the Subcontractor suspends the whole or part of the Services pursuant to the Security of Payment Act:

(a) the suspension does not of itself affect the Date for Practical Completion but may be a ground for an extension of time under Clause 20.6;

(b) to the extent permitted by the Security of Payment Act, the Principal is not liable for any Loss including delay costs whatsoever suffered or incurred by the Subcontractor as a result of the suspension;

(c) the Principal may direct the Subcontractor to omit the whole or part of the Services and thereafter the Principal may engage others to perform the Services omitted under this clause;

(d) the Principal may terminate the Subcontract by giving notice to the Subcontractor;

(e) if the Principal terminates the Subcontract under this Clause 34.13 the Subcontractor will be entitled to be paid pursuant to Clause 33 as if the Subcontract had been terminated for convenience pursuant to that Clause; and

(f) in addition to the payments referred to in Clause 33, the Subcontractor is entitled to any payment owed under the Security of Payment Act that is not included in a payment under Clause 33.

34.14 Failure by the Principal to set out in a payment certificate or statement an amount which the Principal is entitled to retain, deduct, withhold or set off from the amount which would otherwise be payable to the Subcontractor by the Principal shall not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set off any amount under the Subcontract.

34.15 The Subcontractor agrees that the amount set out in a payment certificate or statement given by the Principal under Clause 23.17 is, for the purposes of the Security of Payment Act, the amount of the "progress payment" calculated in accordance with the terms of the Subcontract to which the Subcontractor is entitled.

34.16 As appropriate under the relevant Security of Payment Act, the date under Clause 23.4 on which the Subcontractor shall claim payment is, for the purposes of the Security of Payment Act, the "reference date". If the Subcontractor does not give the Principal a progress claim strictly in accordance with Clause 23 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.

34.17 If the Subcontract is terminated for any reason, the Subcontractor shall not accrue a

"reference date" on or following the date of termination.

34.18 The Subcontractor shall immediately give the Principal, the Client and the Client's Representative:

(a) a copy of any written communication of whatever nature in relation to the Security of Payment Act that the Subcontractor receives from any person;

(b) notice if the Subcontractor has been required to supply information to a Sub-subcontractor under the *Subcontractors' Charges Act 1974* (Qld) together with a copy of the information provided; and

(c) immediate notice if it becomes aware that a Sub-subcontractor intends to exercise a statutory charge under the *Subcontractors' Charges Act 1974* (Qld) in respect of work done by the Subcontractor forming part of the work under the Subcontract.

34.19 The Subcontractor indemnifies the Principal and its Personnel against any Claims against the Principal arising out of or in any way in connection with:

(a) a suspension by the Subcontractor of the carrying out of the work under the Subcontract pursuant to the Security of Payment Act;

(b) a notice of claim of charge being served on the Principal under the *Subcontractors' Charges Act 1974* (Qld); and

(c) a failure by the Subcontractor to comply with its obligations under clause 34.18.

34.20 If the Principal becomes aware that a Sub-subcontractor is entitled to suspend or has suspended its services pursuant to the Security of Payment Act, the Principal may in its absolute discretion pay the Sub-subcontractor such amount that may be due and payable to the Sub-subcontractor and any amount paid by the Principal will be a debt due and payable by the Subcontractor to the Principal upon demand.

34.21 This Clause 34 shall survive the expiry or termination of the Subcontract for any reason.

35. APPLICATION OF THE PPSA

35.1 In this Clause 35, "PPSA" means the *Personal Property Securities Act 2009* (Cth). If a term used in this Clause 35 has a particular meaning in the PPSA, it has the same meaning in this clause.

RIGHTS OF THE PRINCIPAL

35.2 This Clause 35 applies to the extent that any right of the Principal under the Subcontract (**Right**) is a security interest for the purposes of the PPSA.

35.3 The Subcontractor acknowledges and agrees that the Principal may apply to register a security interest in any Right at any time before or after the Right is triggered by the Subcontractor default or insolvency. The Subcontractor waives its right under section 157 of the PPSA to receive notice of any verification of the registration.

35.4 If the Subcontractor defaults in the performance of any obligation owed to the Principal under the Subcontract or any other agreement for the Subcontractor to perform the Services or if an Insolvency Event occurs, the Principal may enforce its security interest in any Right by exercising all or any of its rights under the Subcontract or the PPSA. To the maximum extent permitted by law, the Principal and the Subcontractor agree that the following provisions of the PPSA do not apply to the enforcement by the Principal of its security interest in the Rights: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.

35.5 The Principal and the Subcontractor agree not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA. The Subcontractor waives any right it may have, or but for this Clause 35 may have had, under section 275(7) (c) of the PPSA to authorise the disclosure of such information.

35.6 The Subcontractor shall promptly do anything required by the Principal to ensure that the Principal's security interest is a perfected security interest and has priority over all other security interests in the Right.

OBLIGATIONS OF THE SUBCONTRACTOR

35.7 Unless expressly permitted by the Subcontract the Subcontractor shall not, without the written consent of the Principal:

(a) create any security interest over any of the Principal's personal property which has priority over security interests granted in favour of the Principal;

(b) sell or dispose of the Principal's personal property; or

(c) give possession of the Principal's personal property to another person (including under any Sub-subcontract) for:

(i) an indefinite or unspecified period;

(ii) more than 89 days, in the case of motor vehicles, aircraft or watercraft; or

(iii) more than 365 days, in the case of personal property (other than motor vehicles, aircraft or watercraft).

35.8 If, in connection with the Subcontract, the personal property of one Party (**Bailor**) is in the possession of the other Party (**Bailee**), the resulting bailment or lease of that personal property (**Bailment**) shall be for a definite term as follows:

(a) where the Bailor registers its security interest in respect of the Bailment under the PPSA, the period commencing on the date the Bailee takes possession of the personal property and ending on the date on which the Bailee becomes the owner of the personal property pursuant to the Subcontract (if applicable) or would be obliged to deliver up possession of the personal property in order to fulfil its obligations under the Subcontract; and

(b) if Clause 35.8(a) does not apply or the term of the Bailment cannot otherwise be

expressly determined under the Subcontract, then the term of the Bailment is deemed to commence on the date the Bailee takes possession of the personal property and ends on the earlier of the Bailee becoming the owner of the personal property pursuant to the Subcontract (if applicable) or

(i) after 89 days, in the case of motor vehicles, aircraft or watercraft; and

(ii) in all other cases after 365 days.

35.9 If Clause 35.8(b)(i) or (ii) applies, and the Bailee requires possession of the personal property for a period longer than the relevant period in order to perform its obligations under the Subcontract, then the Bailee shall, at least 20 Business Days prior to the expiry of the period specified in Clause 35.8(b)(i) or (ii), give notice to the Bailor to that effect, including reasons.

35.10 Unless the Parties agree to extend the Bailment beyond relevant period, the Bailee shall return the personal property to the Bailor before the end of the relevant period.

35.11 Return of Personal Property pursuant to Clause 35.8(b) shall not affect any of the Bailor's other obligations under the Subcontract in respect of that Personal Property nor give rise to any entitlement to additional time or cost for the performance of those obligations.

GENERAL

35.12 Nothing in this Clause 35 is limited by any other provision of the Subcontract or any other agreement between the Parties.

36. GENERAL

STATUS OF SUBCONTRACTOR

36.1 At all times in the performance of the Services, the Subcontractor is an independent contractor and shall not act as, or be regarded as, an agent or employee of the Principal.

CONFIDENTIALITY

36.2 The Subcontractor shall keep confidential all matters relating to the Subcontract. This obligation:

(a) shall stay in effect and be enforceable for a period of 5 years from the date of completion or termination of the Subcontract; and

(b) shall apply except to the extent:

(i) the Principal consents to the disclosure;

(ii) information is already in the public domain;

(iii) disclosure of information is necessary for the Subcontractor to perform its obligations under the Subcontract; or

(iv) disclosure is required by any Legislative Requirement or the rules of any stock exchange.

36.3 The Subcontractor shall not issue for publication any information concerning the Project in any media without the written approval of the Principal. The Subcontractor shall refer to the Principal any enquires concerning the Project from any media or Third Party.

36.4 The Subcontractor shall not place advertisements in newspapers, magazines or other forms of public written or visual media seeking prices or other information in relation to the Services, or otherwise advise in the public domain that the Subcontractor is undertaking or has undertaken a contract in relation to the Services without the express prior written permission of the Principal.

36.5 Clauses 36.2 to 36.4 shall survive the expiry or termination of the Subcontract for any reason.

36.6 Except as required by law, the Subcontractor shall not affix or exhibit, or permit any Third Party to affix or exhibit, any sign, light, embellishment, advertisement, name or notice on or to any land or structure on the Site without the prior written consent of the Principal.

INDEPENDENT AUDIT

36.7 The Principal is entitled at any time to inspect and audit, or arrange for an independent auditor to inspect and audit:

(a) the Subcontractor's Project related records to verify the information or evidence provided by the Subcontractor, including in relation to a progress claim; or

(b) the financial statements, bank records and other financial information of the Subcontractor to assess the financial capacity of the Subcontractor to complete the Services,

and the Subcontractor shall fully comply with such inspection or audit.

36.8 The cost of such an audit shall be borne by the Principal unless the audit shows that the Subcontractor's information or evidence contains material errors in which case the cost of the audit shall be borne by the Subcontractor.

36.9 If an audit shows that information or evidence provided by the Subcontractor is incorrect, the Principal is entitled but is under no obligation to take action instead of the Subcontractor at the Subcontractor's risk to do those things the audit shows have not been fulfilled and the cost of doing so shall be valued under Clause 22 shall be a debt due and payable by the Subcontractor to the Principal upon demand. Such action may include the direct payment of Sub-subcontractors.

PROPER LAW

36.10 The Subcontract shall be governed by and construed with reference to the laws for the time being in force in the State or Territory specified in *Annexure A – Subcontract Particulars*.

36.11 The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State

or Territory specified in *Annexure A – Subcontract Particulars*.

36.12 The Parties agree that the United Nations Convention on *Contracts for the International Sale of Goods* (adopted at Vienna on 10 April 1980) does not apply in any respect to the Subcontract.

WAIVER

36.13 A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

36.14 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

36.15 A waiver by the Principal is not effective unless it is in writing, signed by the Principal.

36.16 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

AMENDMENT

36.17 No amendment or variation of the Subcontract is valid or binding on the Principal unless made in writing and signed by the Principal and the Subcontractor.

SEVERANCE

36.18 If any Clause or part of any Clause is prohibited or unenforceable or invalid in any jurisdiction, that clause or part is to be treated as severed as to that jurisdiction to the extent of the prohibition, unenforceability or invalidity unless such severance may result in the unenforceability of the remaining provisions of the Subcontract .

36.19 The severance of a clause or part of any clause in one jurisdiction does not invalidate the remaining provisions of the Subcontract nor does it affect the validity or enforceability of that provision in any other jurisdiction. Where a provision is prohibited or unenforceable, the Principal and the Subcontractor shall negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable law and which shall be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the Subcontract.

PROPORTIONATE LIABILITY LEGISLATION

36.20 For the purposes of Clause 36.21:

(a) "Proportionate Liability Legislation" means:

(i) if the governing law is the Law of Western Australia, then Part 1F of the *Civil Liability Act 2002* (WA);

(ii) if the governing law is the Law of New South Wales, then Part 4 of the *Civil Liability Act 2002* (NSW);

(iii) if the governing law is the Law of Queensland, then Chapter 2 Part 2 of the *Civil Liability Act 2003* (Qld);

(iv) if the governing law is the Law of Tasmania, then Part 9A of the *Civil Liability Act 2002* (Tas);

(v) if the governing law is the Law of the Northern Territory, then the *Proportionate Liability Act 2005* (NT);

(vi) if the governing law is the Law of Victoria, then Part IVAA of the *Wrongs Act 1958* (Vic); or

(vii) 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); and

(b) "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.

36.21 The Parties agree that, to the extent not prohibited by law:

(a) Proportionate Liability Legislation is expressly excluded;

(b) the Subcontractor indemnifies the Principal against any Claim or Loss whatsoever arising out of or in connection with the Subcontract which are caused or contributed to by any of the Subcontractor's Personnel and for which the Subcontractor would have been liable to the Principal but for, or which the Principal is not able to recover from the Subcontractor because of, any apportionment under any Proportionate Liability Legislation; and

(c) Proportionate Liability Legislation shall not apply to the arbitration of any dispute between the Parties.

NGER

36.22 For the purposes of the NGER Legislation:

(a) the Principal may have operational control over the activities undertaken by the Subcontractor at the Site; and

(b) the Principal may be responsible for obligations in relation to the reporting of greenhouse gas emissions, energy production and energy consumption by the Subcontractor at the Site, both under NGER Legislation or the Head Contract.

36.23 If directed by the Principal to do so, the Subcontractor shall the following information to the Principal within the time stated in the direction:

(a) a description of the activities undertaken by the Subcontractor which result in greenhouse gas emissions, energy production or energy consumption;

(b) the amount of such emissions, production or consumption; and

(c) any other information required by the Principal to enable the Principal to comply with its obligations under the NGER Legislation or the Head Contract.

36.24 The Principal is entitled at any time on reasonable prior written notice to the Subcontractor to inspect and audit the Subcontractor's Project related records to enable the Principal to comply with its obligations under NGER Legislation or the Head Contract and the Subcontractor shall fully comply with such inspection or audit.

36.25 All Loss incurred by the Subcontractor in complying with its obligations under Clauses 36.22 to 36.24 are deemed to have been included in the Subcontract Sum and the Subcontractor has no entitlement to make any Claim in that regard.

COSTS

36.26 Each Party shall bear its own costs arising out of the negotiation, preparation and execution of the Subcontract.

36.27 The Subcontractor shall bear any duty which may be payable in connection with the Subcontract.

FURTHER ASSURANCE

36.28 Each Party shall promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to the Subcontract.

EXECUTION BY COUNTERPARTS

36.29 The Subcontract may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.

SECTION C – ANNEXURES

ANNEXURE A – SUBCONTRACT PARTICULARS

Client (Clause 1.1)	RTA Weipa Pty Ltd (ABN 54 137 266 285)
Client's Representative (Clause 1.1)	Grant Linder
Practical Completion - additional requirements (Clause 1.1)	[insert]
Date for Commencement (Clause 1.1)	[insert]
Date for Practical Completion (Clause 1.1)	[insert]
Defects Liability Period (Clause 1.1)	12 months (if nothing stated then 12 months)
Delay Compensation Event (Clause 1.1)	Provided that the event is not caused or contributed to by the Subcontractor or its Personnel: 1. Breach of the Subcontract by the Principal. 2. Variation. 3. The Principal's delay in approving the release of the Subcontractor's Transfer Items from the Transfer Depot to the extent it results in the Subcontractor's Transfer Items not being delivered to the destination at the Site within the period which is 14 days (or such other period agreed in writing between the parties) from when the Subcontractor's Transfer Items were delivered to the Transfer Depot by the Subcontractor (excluding any delay caused by acts, errors or omissions by the Client's Transport Contractor, the effects of sea state or weather, any other events outside the Principal's control or delay permitted or contemplated by any Legislative Requirement or by this Subcontract). 4. A failure by the Principal or the Client's Transport Contractor to complete a scheduled delivery within the windows agreed for that schedule delivery under the Subcontract (except where the failure is caused by the effects of sea state or weather or any events outside of the Principal's control or a delay permitted or

	contemplated by any Legislative Requirement or by this Subcontract).
Excusable Delays (Clause 1.1)	1. Breach of the Subcontract by the Principal or any other act or omission of its Personnel, other than an act or omission permitted or contemplated by Legislative Requirements or by this Subcontract. 2. Variation. 3. The Principal's delay in approving the release of the Subcontractor's Transfer Items from the Transfer Depot to the extent it results in the Subcontractor's Transfer Items not being delivered to the destination at the Site within the period which is 14 days (or such other period agreed in writing between the parties) from when the Subcontractor's Transfer Items were delivered to the Transfer Depot by the Subcontractor (excluding any delay caused by acts, errors or omissions by the Client's Transport Contractor, the effects of sea state or weather, any other events outside the Principal's control or delay permitted or contemplated by any Legislative Requirement or by this Subcontract). 4. A failure by the Principal or the Client's Transport Contractor to complete a scheduled delivery within the windows agreed for that schedule delivery under the Subcontract (except where the failure is caused by the effects of sea state or weather or any events outside of the Principal's control or a delay permitted or contemplated by any Legislative Requirement or by this Subcontract). 5. Suspension of the Services (or any part thereof), except where the reason for the suspension was caused or contributed to by the Subcontractor or by a Force Majeure Event. 6. A Force Majeure Event if the Subcontractor has complied with Clause 21.
Milestone Dates (Clause 1.1)	Milestone: [insert] — Date: [insert]
Delivery Point (Clause 1.1)	[insert]
Project (Clause 1.1)	Amrun Project
Transfer Depot (Clause 1.1)	[insert]
Time for review of documents	[insert]

(Clause 4.3)	(if nothing stated then 15 Business Days)
Accommodation and amenities -provided by the Subcontractor (Clause 5.1)	[insert] (if nothing stated then all)
Time for giving Site access (Clause 9.1)	[insert] (if nothing stated then within 10 Business Days of the date of the Subcontract)
Working hours/days (Clause 9.13)	[insert] (if nothing stated then 8:00am to 5:00pm, Monday to Saturday)
Design obligations (Clause 11.1)	*Applicable / *Not Applicable (if nothing stated then Applicable)
Damages for unavailability of Key Persons (Clause 12.5)	[insert]
Subcontractor's Representative (Clause 13.5)	[insert]
Principal's Representative (Clause 13.5)	[insert]
Safety & Health Plan (Clause 16.3)	Applicable
Environmental Management Plan (Clause 16.3)	Applicable
Project Execution Plan (Clause 16.3)	Applicable
Quality Systems (Clause 17.1)	[insert]
Date for commencing the Services (Clause 20.1)	[insert] (if nothing stated then within 10 Business Days of the date of the Subcontract)
Time for giving a delay notice (Clause 20.3)	Within 2 Business Days of the occurrence of the event of delay
Time for making an EOT Claim (Clause 20.9)	Sub-clause (a): within 2 Business Days of the occurrence of the event of Excusable Delay

<table>
<tr><td></td><td>Sub-clause (b): every 7 days after the notice is given under sub-clause (a), until the cessation of the delay caused by the event of Excusable Delay

Sub-clause (c): within 7 Business Days of the occurrence of the event of Excusable Delay</td></tr>
<tr><td>Damages for delay (Clause 20.19)</td><td><u>Whole of the Services</u>
• Liquidated damages at the following rates per day:
[insert]% of the Subcontract Sum (In addition to General Law Damages)
[OR]
[insert]% per day (In addition to General Law Damages)
[OR]
• General law damages
(if nothing stated then general law damages will apply)

<u>Milestone Dates</u>
• Liquidated damages at the following rates per day:
<table>
<tr><td>Milestone</td><td>Date</td><td>Rate (In addition to General Law Damages)</td></tr>
<tr><td>[insert]</td><td>[insert]</td><td>[insert]% of the Subcontract Sum
[OR]
$[insert] per day (In addition to General Law Damages)</td></tr>
</table>
[OR]
• General law damages
(if nothing stated then general law damages will apply)</td></tr>
<tr><td>Separable Portions (Clause 20.64)</td><td>[insert]</td></tr>
<tr><td>Time for giving notice (Clause 22.6)</td><td>(a) Statement: 2 Business Days after direction
(b) Quotation etc: 5 Business Days after direction
(if nothing stated then 5 Business Days)</td></tr>
<tr><td>Time for monthly progress claims (Clause 23.4)</td><td>On the [insert] day of each calendar month
(if nothing stated then on the 26th day of each calendar</td></tr>
</table>

	month)
Time for making payment (Clause 23.16)	Within _____ days of the end of the month to which the progress claim relates (if nothing stated then within 37 days of the end of the month) Note – if NSW, payments shall be made within 30 Business Days
Time for determining progress claims (Clause 23.17)	If the progress claim is a Standard Payment Claim (as defined in the *Building and Construction Industry Payment Act 2004* (Qld)(**BCIPA**) [less than $750,000]): within 10 business days (as defined in the BCIPA) of the progress claim being submitted (or taken to have been submitted) under Clause 23.4 If the progress claim is a Complex Payment Claim (as defined in the BCIPA [more than $750,000]) that was submitted within 90 days after the reference date (as calculated under the BCIPA): 15 business days (as defined in the BCIPA) of the progress claim being submitted (or taken to have been submitted) under Clause 23.4 If the progress claim is a Complex Payment Claim (as defined in the BCIPA [more than $750,000]) that was submitted more than 90 days after the reference date (as calculated under the BCIPA): 30 business days (as defined in the BCIPA) of the progress claim being submitted (or taken to have been submitted) under Clause 23.4.
Provisional Sum services – mark up rate for administration (Clause 23.32)	[insert]% (if nothing stated then 5%)
Principal is required to issue RCTI's (Clause 23.37)	* Applicable / * Not Applicable (if nothing stated then Applicable)
Form of security (Clause 24.1)	• Retention: *Applicable / *Not Applicable (if nothing stated then Not Applicable) • Bank Guarantee: *Applicable / *Not Applicable (if nothing stated then Applicable) Two unconditional undertakings, each for the value of 5% of the Subcontract Sum.

Amount of security (Clause 24.3)	[insert]% of the Subcontract Sum (if nothing stated then 10% of the Subcontract Sum) **Sections 67K, 67N and 67J of the *Queensland Building and Construction Commission Act 1991* (Qld)** *Section 67K* The Subcontractor acknowledges that section 67K(2) of the *Queensland Building and Construction Commission Act 1991* (Qld) (**QBCC Act**) provides that a commercial building contract is subject to a provision that before Practical Completion of the Services is reached, the total value of all security and retention moneys for a contract is to be not more than 5% of the contract price. The Parties agree that by initialling in the space provided below, it is expressly agreed that section 67K of the QBCC Act does not apply to the Subcontract. Initialled by the Subcontractor: _____ Initialled by the Principal: _____ *Section 67N* The Parties agree that to the extent that section 67N of the QBCC Act applies and securities are held in excess of the limit of security which is allowed to be held under that section, the amount of that excess does not relate to the need to correct defects in the Services but instead to the recovery by the Principal of other liabilities or amounts which may become payable to the Principal by the Subcontractor under or in connection with the Subcontract. *Section 67J* The Subcontractor agrees that any direction, notice or certificate issued by the Principal's Representative or the Principal under or in connection with the Subcontract which refers to an amount that the Principal is owed by the Subcontractor under the Subcontract constitutes a notice for the purposes of section 67J of the QBCC Act that the Principal may use any security under the Subcontract, in whole or in part, to obtain the amount owed.
Insurance of employees (Clause 28.3)	$[insert] (if nothing stated then $20,000,000)
Public liability insurance (Clause 28.6)	$20,000,000 (if nothing stated then $20,000,000)

Motor vehicle insurance (Clause 28.7)	$[insert] (if nothing stated then $30,000,000)
Professional indemnity insurance (Clause 28.9)	$[insert] (if nothing stated then $10,000,000)
Plant insurance (Clause 28.11)	$[insert] (if nothing stated then $10,000,000)
Address for notices (Clause 31)	**For the Principal:** • Business address: [insert] • Postal address: [insert] • Facsimile no.: [insert] • Email address: [insert] **For the Subcontractor:** • Business address: [insert] • Postal address: [insert] • Facsimile no.: [insert] • Email address: [insert]
Limit of liability (Clause 32.10)	$[insert] (if nothing stated then an amount equal to the value of the Subcontract Sum, as adjusted under the terms of the Subcontract)
Security of Payment Act (Clause 34.12)	(a) Appointed adjudicator: • First adjudicator [insert] • Second adjudicator [insert] • Third adjudicator [insert] (b) Nominating authority: The Registrar appointed under the *Building and Construction Industry Payment Act 2004* (Qld)
Governing law (Clause 36.10)	Queensland
Courts having jurisdiction (Clause 36.11)	Queensland

Facilities **(Clause 44)**	[insert]

ANNEXURE B – PRICING

Schedule of Rates

[insert]

Separable Portions

[insert]

Provisional Sum Items

[insert]

Rates for Variations

[insert rates for variations]

Rates for Standby

[insert rates for standby]

ANNEXURE C – SCOPE OF SERVICES

[insert]

Associated Goods

[insert]

Separable Portions

[Include table of Separable Portions if applicable, consistent with the description of Separable Portions in *Annexure A - Subcontract Particulars*]

Major Services Subcontract

ANNEXURE D1 - DEED OF RELEASE

With reference to Subcontract No.

dated _____

as amended, between the undersigned Subcontractor,

[Insert Subcontractor's name] (**Undersigned**)

and

[insert Decmil Entity name] (**Principal**)

for [insert description of services to be provided] to the Principal and [insert Client's name] (**Client**) at [Project Name].

The Undersigned hereby certifies and represents that it has made full payment of all costs, charges and expenses incurred by it or on its behalf for work, labour, materials and equipment used in connection with the Services performed to the Date of Practical Completion.

The Undersigned further certifies that to its best knowledge and belief, each of its subcontractors has made full payment of all costs, charges and expenses incurred by them or on their behalf for work, labour, materials and equipment used by them in connection with the Services completed to the Date of Practical Completion and has obtained releases to that effect.

In consideration of $ _____ in payment of its progress claim made under the Subcontract Clause 23.4(b)

and dated _____, the Undersigned hereby unconditionally releases and forever discharges the Principal from all claims, liens and obligations of every nature arising out of or in connection with the performance of the Subcontract and the Services performed to the Date of Practical Completion except as set forth below:

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

As additional consideration for this payment, the Subcontractor agrees to the fullest extent of the law to indemnify and hold harmless the Principal and the Client from and against all costs, losses, damages, claims, causes of action, judgments and expenses, arising out of or in connection with claims against the Principal and the Client which claims arise out of the performance of the Services performed to the Date of Practical Completion and which may be asserted by the Subcontractor or any of its suppliers, contractors of any tier or any of their representatives, officers, agents or employees except for those claims listed above, and except for claims arising out of the sole negligence or wilful misconduct of the party indemnified or held harmless.

The foregoing shall not relieve the Undersigned of its obligations under the provisions of the Subcontract, as amended, which by their nature survive completion of the Services including, without limitation, warranties, guarantees and indemnities.

Executed this _____ day of _____ 20 ____

Major Services Subcontract

Executed by the Subcontractor in accordance with s127 of the Corporations Act:

Director Signature	Director/Secretary Signature
Print Name	Print Name

Major Services Subcontract

ANNEXURE D2 - DEED OF FINAL RELEASE

With reference to Subcontract No.

dated _____

as amended, between the undersigned Subcontractor,

[Insert Subcontractor's name] (**Undersigned**)

and

[insert Decmil Entity name] (**Principal**)

for [insert description of services to be provided] to the Principal and [insert Client's name] (**Client**) at [Project Name]

The Undersigned hereby certifies and represents that it has made full payment of all costs, charges and expenses incurred by it or on its behalf for work, labour, materials and equipment used in connection with the Services.

The Undersigned further certifies that to its best knowledge and belief, each of its subcontractors has made full payment of all costs, charges and expenses incurred by them or on their behalf for work, labour, materials and equipment used by them in connection with the Services and has obtained releases to that effect.

In consideration of $ _____ as final payment under the Subcontract, the Undersigned hereby unconditionally releases and forever discharges the Principal from all claims, liens and obligations of every nature arising out of or in connection with the performance of the Subcontract and the Services except as set forth below:

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

As additional consideration for this payment, the Subcontractor agrees to the fullest extent of the law to, indemnify and hold harmless the Principal and the Client from and against all costs, losses, damages, claims, causes of action, judgments and expenses, arising out of or in connection with claims against the Principal and the Client which claims arise out of the performance of the Services and which may be asserted by the Subcontractor or any of its suppliers, contractors of any tier or any of their representatives, officers, agents or employees except for those claims listed above, and except for claims arising out of the sole negligence or wilful misconduct of the party indemnified or held harmless.

The foregoing shall not relieve the Undersigned of its obligations under the provisions of the Subcontract, as amended, which by their nature survive completion of the Services including, without limitation, warranties, guarantees and indemnities.

Executed this _____ day of _____ 20 ____

Executed by the Subcontractor in accordance with s127 of the Corporations Act:

Director Signature	Director/Secretary Signature
Print Name	Print Name

ANNEXURE E – SUBCONTRACTOR'S KEY PERSONS

Details of the Subcontractor's Key Persons and an organisational chart comprising the Key Persons and its Sub-subcontractor's Key Persons are set out below.

[insert]

ANNEXURE F – DRAWINGS AND SPECIFICATIONS

[insert]

ANNEXURE G – PROJECT QUALITY MANAGEMENT PLAN

[insert]

ANNEXURE H – PROJECT HEALTH AND SAFETY REQUIREMENTS

[insert]

ANNEXURE I – PROJECT HR/IR REQUIREMENTS

[insert]

Major Services Subcontract

ANNEXURE J – PARENT COMPANY GUARANTEE

THIS DEED is made [Insert Date]

BY: [Insert Name and ACN of Parent Company] of [Insert Address of Parent Company] (**Guarantor**)

IN FAVOUR OF: [Insert Decmil Entity Name and ACN] of [Insert Decmil Entity Address] (**Principal**, which term includes all of its related bodies corporate)

RECITALS:

A. The Principal has contracted with or is about to contract with [Insert Subcontractor's Name] (**Subcontractor**) for the performance of the services, the supply of goods and other things referred to in contract no [Insert contract number], a copy of which is attached to this guarantee (**Contract**).

B. The Guarantor agrees to provide this guarantee in consideration of the Principal entering into the Contract.

THIS DEED WITNESSES:

1. The Guarantor absolutely, irrevocably and unconditionally:

   (a) guarantees to the Principal the full and punctual performance and observance of all the Subcontractor's obligations expressed or implied in or under the Contract; and

   (b) as an independent principal obligation, indemnifies the Principal against any and all liability, loss, damage, cost or expense suffered or incurred by the Principal and all proceedings or claims made against the Principal as a result of:

      (i) a default by the Subcontractor under the Contract;

      (ii) any express or implied obligation of the Subcontractor under the Contract being unenforceable; or

      (iii) the Subcontractor going into liquidation (except for the purpose of amalgamation or reconstruction) or making any arrangements or compromise with its creditors.

2. If in the Principal's opinion, the Subcontractor is in breach, defaults or fails to observe and perform any of its obligations under the Contract, the Guarantor shall, without the Principal first proving or substantiating such breach, failure or default, immediately upon receipt of a notice from the Principal requiring it to do so:

   (a) perform and observe all those obligations;

   (b) pay any amount or debt which in the Principal's opinion is due or to become due by the Subcontractor to the Principal; and

   (c) thereafter continue to observe and perform all the Subcontractor's obligations under the Contract until its termination by the effluxion of time or otherwise in accordance

with its terms.

3. The liability of the Guarantor under this deed will not be released or discharged (in whole or in part) by:

   (a) any time, concession, waiver or other indulgence being given by the Principal to the Subcontractor (or any surety) for or in relation to the observance of performance of the Subcontractor's obligations under the Contract;

   (b) any arrangement made between the Principal and the Subcontractor with or without the knowledge or consent of the Guarantor;

   (c) any variation being made to the terms of the Contract or its subsequent termination;

   (d) any other security or contractual obligations to secure the performance of the Subcontractor's obligations under the Contract being or not being taken, held, renewed, varied or enforced by the Principal or that security being void, defective, informal or unenforceable;

   (e) any of the Subcontractor's obligations under the Contract being discharged otherwise than by due performance or by the Contract being terminated by the Subcontractor in accordance with its express terms;

   (f) the liquidation, bankruptcy or insolvency of the Subcontractor or Guarantor;

   (g) the sale or other disposal of some or all of the shares in the Subcontractor which are owned by the Guarantor or the Guarantor ceasing to be a director of the Subcontractor; or

   (h) by anything done or omitted to be done by the Principal or anything else that, under the law relating to sureties might, but for this deed, operate to wholly or partially release or discharge the Guarantor from that liability.

4. The guarantee and indemnity given under this deed is a continuing guarantee and indemnity and remains in full force and effect until all the Subcontractor's obligations under the Contract have been duly performed and satisfied in full.

5. The Principal may enforce the guarantee and indemnity given under this deed without first making any demand or taking any action or proceedings to enforce its rights or remedies against the Subcontractor or without first having to substantiate any claim it has or may have against the Subcontractor.

6. Any notice under this deed may be given by personal delivery, pre-paid mail or facsimile addressed to a party at the address set out on page 1 of this guarantee or another address notified in writing to the other party. A notice given in accordance with this clause is treated as having been given and received:

   (a) if delivered to the Guarantor's address, on the day of delivery if a business day, otherwise on the next business day;

   (b) if sent by pre-paid mail, on the third business day after posting; or

(c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a business day, otherwise on the next business day.

7. This deed is governed by the laws in force in the State of Western Australia. The Guarantor submits to the exclusive jurisdiction of the courts of that State and any courts that may hear appeals from those courts in respect of any proceedings in connection with this deed, subject to a right to enforce any judgment obtained in any of those courts in any other jurisdiction.

Executed as a deed in accordance with s127 of the *Corporations Act 2001* (Cth) by [Insert Name and ACN of Parent Company]:

Director Signature	Director/Secretary Signature
Print Name	Print Name

ANNEXURE K – PERFORMANCE GUARANTEE

THIS DEED is made [Insert Date]

BY: [Insert Name and ACN of Bank]of [Insert Address of Bank] (**Guarantor**)

IN FAVOUR OF: [Insert Name and ACN of Decmil Entity] of [Insert Address of Decmil Entity] (**Principal**, which term includes all of its related bodies corporate)

RECITALS:

A. The Principal has contracted or is about to contract with [Insert Subcontractor's Name] of [Insert Subcontractor's Address] (**Subcontractor**) for the performance of the Services referred to in Contract no [Insert Contract Number](**Contract**).

B. The Guarantor has agreed to provide this guarantee to secure the performance by the Subcontractor of its obligations under the Contract.

THIS DEED WITNESSES:

1. The Guarantor shall immediately upon receipt of notice from the Principal requiring it to do so, unconditionally pay to the Principal a sum which, when aggregated with all other payments demanded by the Principal and made by the Guarantor under this deed, does not exceed [Insert $ amount], notwithstanding any communication to the Guarantor from the Subcontractor.

2. The liability of the Guarantor under this deed will not be released or discharged (in whole or in part) by:

   (a) any time, concession, waiver or other indulgence being given by the Principal to the Subcontractor (or any surety) for or in relation to the observance of performance of the Subcontractor's obligations under the Contract;

   (b) any arrangement made between the Principal and the Subcontractor with or without the knowledge or consent of the Guarantor;

   (c) any variation being made to the terms of the Contract of or its subsequent termination;

   (d) any other security or contractual obligations to secure the performance of the Subcontractor's obligations under the Contract being or not being taken, held, renewed, varied or enforced by the Principal or that security being void, defective, informal or unenforceable;

   (e) any of the Subcontractor's obligations under the Contract being discharged;

   (f) the liquidation, bankruptcy or insolvency of the Subcontractor or Guarantor; or

   (g) anything done or omitted to be done by the Principal or anything else which, under the law relating to sureties might, but for this deed, operate to wholly or partially release or discharge the Guarantor from that liability.

3. The guarantee and indemnity given under this deed is a continuing guarantee and indemnity and remains in force until:

   (a) the obligations of the Subcontractor under the Contract have been duly performed and satisfied in full; or

   (b) the Principal releases the Guarantor by an express release in writing; or

   (c) the Guarantor has paid the Principal in aggregate [Insert $ amount] plus GST if any.

4. The Principal may enforce this deed without first making any demand or taking any action or proceedings to enforce its rights or remedies against the Subcontractor.

5. This Deed is governed by the laws in force in the State or Territory of Australia where the Contract is to be performed. The Guarantor submits to the non-exclusive jurisdiction of the courts of the State or Territory and any courts that may hear appeals from those courts in respect of any proceedings in connection with this guarantee.

6. The Guarantor shall pay any stamp duty on this deed.

EXECUTED as a deed.

Executed by [Insert Name and ACN of Bank] in accordance with section 127 of the *Corporations Act 2001* (Cth)*:*

Secretary Name (printed):	Director Name (printed):

ANNEXURE L – CONSTRUCTION PROGRAM

[insert program if agreed or, if not, table of key dates including Date for Commencement on Site and Date for Practical Practical Completion]

Milestone Dates

[insert any applicable Milestone Dates - ensure that consistent with *Annexure A - Subcontract Particulars*]

ANNEXURE M – ACCOMMODATION FORECAST

[insert Subcontractor's forecast accommodation requirements for the project]

SECTION D – SPECIAL CONDITIONS OF SUBCONTRACT

Insert new clauses as follows:

"**28A CLIENT INSURANCES**

28A.1 In this Clause 28A, "Client's Insurance Policies" means insurance against loss, damage or destruction of the physical works on Site, and, while on or adjacent to the Site, materials and goods to be incorporated into the works under the Head Contract. Such insurance will name the Client, the Principal and the Subcontractor as insured persons for their respective rights and interests in relation to the physical works on Site.

28A.2 Subject to Clause 28A.3, the parties acknowledge that under the Head Contract the Client shall effect and maintain during the term the Client's Insurance Policies.

28A.3 The parties acknowledge that the Client's Insurance Policies will be subject to such terms, conditions, exclusions, deductibles and sub-limits as are agreed by the Client (or its agents) with its insurer(s). The Principal makes no representation to the Subcontractor as to the nature and extent of the Client's Insurance Policies and the Subcontractor is required to make its own enquiries in that regard.

28A.4 If any of the Client's Insurance Policies are subject to the application of any deductible or excess, where the Subcontractor is responsible for the loss, the Subcontractor shall pay the deductible or excess up to $250,000.

28A.5 If the Subcontractor becomes aware of an event which may give rise to a Claim involving any indemnified party under the Client's Insurance Policies, the Subcontractor shall notify the Principal and the Client immediately and shall ensure that the Principal and the Client are kept fully informed of subsequent action or developments concerning the Claim and shall provide all assistance and cooperation the Principal and/or the Client may reasonably request.

37. AVOIDING CONFLICTS OF INTEREST AND CORRUPTION

Subcontractor's acknowledgement

37.1 For the purposes of this Clause 37:

"**Anti-Corruption Laws**" means:

(a) Chapter 4 of Division 70 of the *Australian Criminal Code Act 1995* (Cth) or any equivalent state law;

(b) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 (**OECD Convention**);

(c) the United Nations Convention against Corruption 2003;

(d) the *Foreign Corrupt Practices Act of 1977* of the United States of America (**FCPA**);

(e) the *Bribery Act 2010* of the United Kingdom (**UK Bribery Act**); and

(f) any other Legislative Requirement which:

(i) prohibits the offering of any gift, payment or other benefit to any person of any officer, employee, agent or adviser or such person; or

(ii) is broadly equivalent to the FCPA or the UK Bribery Act, is intended to enact the provisions of the OECD Convention or has as its objective the prevention of corruption,

and is applicable in the jurisdiction in which the Client, the Principal or the Subcontractor are registered or conduct business or in which activities relevant to the Services are to be performed;

"**Government Official**" means any appointed, elected or honorary official or any employee of:

(a) any government agency;

(b) any company or other entity owned or controlled by any government agency or

(c) any embassy, public international organisation, or political party (including any party official or political candidate),

whether or not such person purports to act in a private capacity or serves with or without compensation.

37.2 The Subcontractor acknowledges that:

(a) it is of utmost importance to the parties that the Subcontractor avoids circumstances which may:

(i) give rise to conflicts of interest relating to the performance of the Services by the Subcontractor and the Subcontractor's Personnel under the Subcontract;

(ii) give rise to allegations of corruption against the Subcontractor, the Subcontractor's Personnel, the Principal, the Principal's Personnel, the Client, the Client's Personnel or any Rio Tinto entity; or

(iii) bring the Subcontractor, the Subcontractor's Personnel, the Principal, the Principal's Personnel, the Client, the Client's Personnel or any Rio Tinto entity into disrepute; and

(b) it has been provided with (and has reviewed) copies of the Client's business integrity policies.

Subcontractor Shall Avoid Conflicts of Interest

37.3 During the term of the Subcontract, the Subcontractor shall ensure that neither it nor any of its Personnel:

(a) carry on business;

(b) enter into any formal or informal arrangements; or

(c) undertake any obligation,

which would in any way interfere or conflict with, or appear to a third party to interfere or conflict with, the performance of the Services by the Subcontractor and its Personnel under the Subcontract.

Subcontractor's Representations and Warranties

37.4 The Subcontractor represents and warrants that, as at the Date of the Subcontract, neither it nor any of its Personnel have:

(a) carried on business;

(b) entered into any formal or informal arrangements; or

(c) undertaken any obligation,

which would in any way interfere or conflict with, or appear to a third party to interfere or conflict with, the performance of the Services by the Subcontractor and its Personnel under the Subcontract.

37.5 The Subcontractor represents and warrants that, as at the Date of the Subcontract, it and its Personnel have not (either directly or indirectly through a third party) offered, paid or promised to pay, authorised the payment of or transferred money or anything of value to a Government Official (or any person) to secure an improper advantage or benefit in relation to the matters contemplated by the Subcontract or in connection with the Project.

37.6 The Subcontractor represents and warrants that:

(a) as at the Date of the Subcontract, no Government Official or relative of a Government Official has any direct or indirect ownership or other legal or beneficial interest in the Subcontractor or its Related Entity;

(b) as at the Date of the Subcontract, no Government Official serves as an officer, director, employee or agent of the Subcontractor, or its Related Entity;

(c) until the Deed of Final Release is executed by the Subcontract, and subject to Clause 37.12 no Government Official or relative of a Government Official will have any direct or indirect ownership or other legal or beneficial interest in the Subcontractor or its Related Entity; and

(d) during the term of the Subcontract, no Government Official will serve as an officer, director, employee or agent of the Subcontractor, or its Related Entity.

Prohibition on Giving or Receiving Improper Advantage or Benefit

37.7 In performing its obligations in connection with the Subcontract, the Subcontractor and its

Personnel shall not (either directly or indirectly through a third party):

(a) (offer, pay, promise to pay, or authorise the giving of money or anything of value to a Government Official (or any person), while knowing or being aware of a probability that all or part of the money or the thing of value may be offered, given or promised (directly or indirectly) to a Government Official (or any person) for the purpose of influencing the act, omission or decision of such Government Official to obtain or retain business related to the Subcontract, to direct business under the Subcontract to any Person, or to obtain any improper advantage or benefit;

(b) receive money or anything of value in exchange for any improper advantage or benefit in relation to the Client's or the Rio Tinto group's business; or

(c) offer or make unofficial payments or offer anything of value to any Government Official (or any other person) to secure or expedite a routine action or service where that payment is not expressly required by a Legislative Requirement.

37.8 In performing its obligations in connection with the Subcontract, the Subcontractor shall ensure that it and its Personnel do not engage in any conduct or omission which may contravene any of the Anti-Corruption Laws.

Agents and Sub-subcontractors

37.9 The Subcontractor shall perform due diligence in accordance with the procedures and policies in the Client's business integrity policies before retaining or engaging any agents or Sub-subcontractors in connection with the performance of the Subcontract.

37.10 The Subcontractor shall ensure that:

(a) any agents or Sub-subcontractors engaged by the Subcontractor to provide goods or services in connection with the Subcontract shall be obliged to enter into binding contractual commitments which are substantively identical to those in this Clause 37; and

(b) the terms of the contractual commitments entered into with any such agents or Sub-subcontractor permit termination of such relationships where the Subcontractor has reasonable grounds to believe that there has been, or is likely to be, a breach of any applicable Anti-Corruption Laws or actions that are inconsistent with the Client's business integrity policies.

Notification Regarding Change of Interests

37.11 The Subcontractor shall promptly notify the Principal and the Client in writing of any circumstances that would cause a Government Official or his/her relative to have a direct or indirect ownership, or other legal or beneficial interest of the kind described in Clause 37.12.

37.12 For the purposes of this Clause 37, merely holding shares in the Subcontractor or its Related Entity that is publicly listed on a stock exchange does not of itself constitute ownership or other legal or beneficial interest in the Subcontractor or its Related Entity, unless the quantity of shares so held amounts to a shareholding of 5% or more.

Notification of Breaches and Consequences

37.13 The Subcontractor shall promptly notify the Principal and the Client if it becomes aware of a possible, potential, suspected or actual breach of:

(a) this Clause 37;

(b) the Client's business integrity policies; or

(c) any Anti-Corruption Laws.

37.14 The Parties shall meet to discuss the appropriate next steps as soon as reasonably practicable after such notification.

37.15 The Subcontractor shall cooperate in good faith with the Principal and the Client in investigating the circumstances relevant to any possible, potential, suspected or actual breach (whether or not there has been notification under Clause 37.13).

37.16 If the Principal determines in its absolute discretion that:

(a) there has been a breach of this Clause 37; or

(b) the Subcontractor or the Subcontractor’s Personnel have been involved in any conduct that may create a material risk of liability under any Anti-Corruption Law,

the Principal may treat the breach or conduct as a default and may exercise any rights it may have under the Subcontract upon the occurrence of a default, but without regard to any waiting periods specified in the Subcontract.

Investigation

37.17 If the Principal has reasonable grounds to suspect a past, present or potential breach by the Subcontractor or its Personnel of:

(a) any applicable Anti-Corruption Laws;

(b) the Client's business integrity policies; or

(c) the Subcontractor's procedures and policies contemplated in Clause 46,

in connection with the Subcontract, the Principal may give notice to the Subcontractor requiring an explanation, copies of documents, and access (for the purposes of interview by internal or external lawyers) to the Subcontractor's Personnel.

37.18 The Subcontractor shall give such assistance and access to the documents and the Subcontractor's Personnel as the Principal may reasonably require.

Obligation to Indemnify

37.19 The Subcontractor shall indemnify the Principal and its Personnel in respect of any liability incurred as a result of the Subcontractor's breach of this Clause 37.

37.20 The Subcontractor's obligation to indemnify under Clause 37.19 above is not limited by any contractual limit on liability.

Establishment of Policies and Processes

37.21 The Subcontractor shall establish and maintain policies and procedures to:

(a) ensure that the Subcontractor and the Subcontractor's Personnel comply with the obligations set out in this Clause 37; and

(b) keep records of the giving or receiving of gifts, entertainment, payments, loans or other benefits to or from the Principal's Personnel, the Client's Personnel, any Government Official, or any of the Principal's, the Client's or any Rio Tinto entity's other contractors or potential contractors.

37.22 The Subcontractor shall ensure that its policies and procedures as contemplated in Clause 37.21 contain requirements that training will be provided to its Personnel in relation to the matters addressed by the policies and procedures, and the Subcontractor shall ensure that its Personnel performing the Services shall undertake such training, and that records of each individual's attendance is retained.

Reporting and Audit

37.23 The Subcontractor shall ensure that its Personnel have access to a reporting protocol (such as a telephone hotline or web-based reporting) to report actual or suspected violations of:

(a) any applicable Anti-Corruption Laws;

(b) the Client's business integrity policies; or

(c) the Subcontractor's procedures and policies contemplated in Clause 46.

37.24 The reporting tool shall, subject to applicable legal restrictions, allow for anonymous reporting.

37.25 When requested by the Principal (but no more frequently than once every 3 months), the Subcontractor shall provide a detailed report on its compliance with the requirements of this Clause 37.

37.26 The report contemplated in Clause 37.25 shall contain any additional information the Principal may reasonably require from time to time.

37.27 When requested by the Principal (but no more frequently than once every 12 months), the Subcontractor shall allow its records relating to its compliance with the requirements of this Clause 37 to be inspected by the Principal and/or the Client.

38. QUEENSLAND BUILDING CONSTRUCTION COMMISSION ACT 1991 (QLD)

38.1 If the *Queensland Building Construction Commission Act 1991* (Qld) (**QBCC Act**) applies to the Subcontract, the parties acknowledge and agree that:

(a) pursuant to section 67L of the QBCC Act, the full amount of the Security required under the Subcontract are for the financial protection of the Principal; 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 the Principal exceeds 2.5% of the Subcontract Sum after Practical Completion, the amount of the excess does not relate to the need to correct Defects identified in the Defects Liability Period, but instead to the recovery by the Principal of any Loss or other amounts which may become payable to the Principal by the Subcontractor under or in connection with the Subcontract, the performance of the Services or any breach of the Subcontract by the Subcontractor.

39. QLD CODE OF PRACTICE AND IMPLEMENTATION GUIDELINES

39.1 This special conditions clause 39 applies if the work under the Head Contract comprises building and construction work funded by the Queensland Government at a value of more than $2 million.

Terminology

39.2 In addition to terms defined in the Subcontract, terms used in this clause have the meaning defined 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).

39.3 Subcontractor's Obligations

(a) The Subcontractor shall comply with each of the obligations imposed by the Queensland Government's Code of Practice for the Building and Construction Industry (**Queensland Code**) and the Queensland Guidelines.

(b) The Subcontractor shall notify the Building Construction Compliance Branch (**BCCB**), the Principal and the Client Agency of any possible non-compliance with the Queensland Code and Queensland Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.

(c) Where the Subcontractor engages a subcontractor or consultant, the Subcontractor shall ensure that the subcontract imposes on the Subcontractor or consultant obligations equivalent to those in this clause.

(d) The Subcontractor shall not engage a subcontractor or consultant where that engagement would breach a sanction imposed on the other party in relation to the Queensland Code or the Queensland Guidelines.

(e) The Subcontractor shall comply with any workplace relations management plan applicable to the Services.

39.4 Access and information

(a) The Subcontractor shall maintain adequate records of compliance with the Queensland Code and Queensland Guidelines by it and the Subcontractor's Personnel.

(b) The Subcontractor shall allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the BCCB) to:

(i) enter and have access to sites and premises controlled by the Subcontractor;

(ii) inspect any work, material, machinery, appliance, article or facility;

(iii) access, inspect and copy any information or document relevant to the Services or the Project; and

(iv) have access to and interview any of the Subcontractor's Personnel,

as is necessary for the authorised personnel to monitor and investigate compliance with the Queensland Code and the Queensland Guidelines by the Subcontractor and the Subcontractor's Personnel.

(c) The Subcontractor shall comply with any request by authorised personnel (including BCCB personnel) for the production of specified documents by a certain date.

39.5 Sanctions

(a) The Subcontractor warrants that at the time of entering into the Subcontract, neither it, nor any of its related entities, is subject to a sanction in connection with the Queensland Code or the Queensland Guidelines that would have precluded it from responding to a procurement process for work to which the Queensland Code and the Queensland Guidelines apply.

(b) The Subcontractor acknowledges that:

(i) if it does not comply with any obligation imposed by the Queensland Code or the Queensland Guidelines, a sanction may be imposed against it in connection with the Queensland Code or the Queensland Guidelines; and

(ii) the State of Queensland is entitled to:

A record and disclose details of noncompliance with the Queensland Code or the Queensland Guidelines and the sanction; and

B take them into account in the evaluation of future procurement processes and responses that may be submitted by the Subcontractor, or its related entities, in respect of work to which the Queensland Code and the Queensland Guidelines apply.

39.6 Compliance

(a) The Subcontractor shall, at its cost, comply with the Queensland Code and the Queensland Guidelines and is not entitled to make a Claim to the Principal, the Client Agency or the State of Queensland for such costs.

(b) Compliance with the Queensland Code and the Queensland Guidelines does not relieve the Subcontractor from responsibility to perform any of its obligations, or any liability, under the Subcontract.

(c) Where a variation of the terms of the Subcontract or of the Services is proposed and such variation may affect compliance with the Queensland Code or the Queensland Guidelines, the Subcontractor shall immediately notify the Principal and the Client Agency (or its nominee) of the variation and specify:

(i) the circumstances of the proposed variation;

(ii) the extent to which compliance with the Queensland Code and the Queensland Guidelines may be affected by the variation; and

(iii) what steps the Subcontractor proposes to take to mitigate any adverse impact of the variation,

and the Client Agency or the Principal shall direct the Subcontractor accordingly within 10 Business Days of receiving such notice.

40. LOCAL SUPPLIERS AND LOCAL INDUSTRY PARTICIPATION

40.1 For the purposes of this Clause 40, the following definitions apply:

(a) "**Act**" means the *Australian Jobs Act 2013* (Cth).

(b) "**Authority**" means the Australian Industry Participation Authority.

(c) "**AIP Plan**" means an 'Australian Industry Participation plan' (as that term is used in the Act).

(d) "**Indigenous and local personnel, suppliers and manufacturers**" means those Persons based in the following areas (giving preference to those Persons in the order they appear below):

(i) Western Cape York;

(ii) Far North Queensland;

(iii) the State of Queensland; and

(iv) Australia.

(e) "**Local and Indigenous Participation Strategy**" means the local and Indigenous participation strategy prepared by the Client and referred to in Clause 40.2.

(f) "**Local Participation Plan**" means the plan prepared by the Subcontractor in accordance with Clause 40.

(g) "**Amrun Project Social Impact Management Plan Action Plans**" means the Client's plan so named.

(h) "**Rio Tinto's Reconciliation Action Plan**" means the Client's plan so named.

40.2 The Subcontractor acknowledges that:

(a) the Act applies to the Project and that an AIP Plan for the Project has been approved by the Authority;

(b) the Client has developed a Local and Indigenous Participation Strategy in recognition of the Client's commitment to:

(i) the Client's existing agreements with traditional owners of the Western Cape York area;

(ii) the Amrun Project Social Impact Management Plan Action Plans;

(iii) Rio Tinto's Reconciliation Action Plan; and

(iv) the principles set out in the *Queensland Resources and Energy Sector Code of Practice for Local Content (2013)*;

(c) it has been provided with a copy of the Local and Indigenous Participation Strategy.

40.3 The Subcontractor shall in the performance of the Subcontract:

(a) ensure that Indigenous and local personnel, suppliers and manufacturers are provided with a full, fair and reasonable opportunity to bid for the supply of key goods and services for the Project;

(b) use Indigenous and local personnel, suppliers and manufacturers, except in those cases where the Subcontractor can demonstrate to the Principal that it is not possible to do so (taking into account price, quality, delivery and service) or not consistent with relevant Standards; and

(c) implement any other measures raised in the Local and Indigenous Participation Strategy (unless the Principal notifies the Subcontractor otherwise).

40.4 If requested by the Principal, the Subcontractor shall liaise with the "Industry Capability Network" in Queensland to identify suitable Indigenous and local personnel, suppliers and manufacturers capable of supplying the goods and services referred to in Clause 40.3.

40.5 Within 7 Business Days of the Date of the Subcontract, the Subcontractor shall submit to the Principal for approval the Local Participation Plan in the form required by the Principal.

40.6 The Local Participation Plan:

(a) shall identify in detail how the Subcontractor plans to address those matters referred to in clause 40.3; and

(b) will, upon approval by the Principal, form part of the Subcontract.

40.7 The Subcontractor shall nominate a representative responsible for implementation of the Local Participation Plan and advise the Principal of the person appointed.

40.8 If requested by the Principal, the Subcontractor shall within three months of the Date of the Subcontract and at three monthly intervals thereafter (or such other times as nominated by the Principal) submit to the Principal in the form required by the Principal a report outlining the Subcontractor's implementation of its obligations under this Clause 40.

40.9 Except as otherwise agreed in writing by the Principal the Subcontractor shall include in any Sub-subcontract the same obligations as are referred to in Clause 40.3 and shall include the Sub-subcontractor's implementation of those conditions in the report referred to in Clause 40.8.

40.10 If directed by the Principal to do so, the Subcontractor shall:

(a) develop an "Industry Capability Network Gateway" webpage listing work package opportunities to provide key goods or services (including labour) for the Project and allowing Indigenous and local personnel, suppliers and manufacturers to register their interest in the Project;

(b) participate in any Indigenous and local personnel, supplier and manufacturer briefings, engagement events or capacity building initiatives in respect of the Project; and

(c) provide any other information requested by the Principal, the Client or any government agency to demonstrate the Subcontractor's and any Sub-subcontractor's compliance with this Clause 40 (or the equivalent clause under any Sub-subcontract, as the case may be).

41. COMMISSIONING

41.1 This Clause 41 applies to the extent that the Subcontractor's obligations under the Subcontract include commissioning of the Services.

Reasonable Notice of Commissioning

41.2 The Subcontractor shall give at least 3 months' notice (or such shorter period agreed in writing by the Principal) to the Principal of the intended time of commissioning of any part of the Services and shall be responsible for engaging experienced personnel of the manufacturers of any part of the Services to perform the initial commissioning and to instruct the selected operator in safe use of that part of the Services.

Responsibility for Commissioning

41.3 The Subcontractor shall be responsible, unless otherwise provided in the Subcontract, for the commissioning of the Services in accordance with the Subcontract and will perform its obligations with due care and skill and in a professional manner to the satisfaction of the

Principal.

Commissioning Requirements

41.4 The Subcontractor shall ensure commissioning includes checking the operational availability of each item, checking all manual and automatic contacts and interlocks within the Services, no load commissioning, full-load commissioning and testing to demonstrate performance of the Services in accordance with the Subcontract.

Supply of Commissioning Spares

41.5 The Subcontractor shall supply for approval by the Principal a commissioning spares list at least 3 months (or such shorter period agreed in writing by the Principal) before commissioning of the Services commences.

Commissioning Program

41.6 At least 3 months (or such shorter period agreed in writing by the Principal) before the commissioning of the Services commences, the Subcontractor shall provide the Principal with its proposed commissioning program for the Services or part of the Services and shall be responsible for engaging experienced personnel or the manufacturers of the Services or part of the Services to perform the initial commissioning and to instruct the selected operator in safe use of the Services or parts thereof.

Maintenance Operations

41.7 As part of the obligation under Clause 41.2, the Subcontractor shall instruct selected operators, maintenance staff and the Principal's management in the use of the Services and train operators and maintenance staff. The Subcontractor shall ensure the training is comprehensive and includes classroom and on the job training and explanation as to the damage which may result if the Services are incorrectly operated and or maintained. The information used for training shall form part of the operation manuals provided under the Subcontract.

Operators and Raw Materials

41.8 Unless otherwise provided in the Subcontract, the Principal shall provide or arrange for operators and raw materials reasonably required for commissioning at no cost to the Subcontractor, but the Subcontractor shall ensure that no materials are wasted unnecessarily during the commissioning.

Diary and Report

41.9 The Subcontractor shall:

(a) maintain a diary of all events during commissioning and record all test results; and

(b) on the completion of commissioning, prepare a report advising the performance of the Services.

41.10 The Subcontractor shall ensure the test results and other testing data are written in the English language and conform with any requirements of the Principal as to format and like matters.

Subcontractor's Responsibility

41.11 The Subcontractor is fully responsible for the commissioning of the Services and the involvement of the Principal's operators or the Principal shall in no way relieve the Subcontractor from full responsibility for the Services and the performance under clause 41.2.

42. MQSH ACT

42.1 This Clause 42 only applies if the Site is a 'mine' or 'quarry' to which the *Mining and Quarrying Safety and Health Act 1999* (Qld) (**MQSH Act**) applies. In this clause 73, the terms Operator, Holder, mine, quarry, site senior executive and safety and health management system have the same meanings given to those terms under the MQSH Act.

42.2 The Subcontractor acknowledges and agrees that:

(a) the MQSH Act will apply to the Services (including the construction work), as the Services are an activity carried on in connection with winning, or winning and treating, minerals within the boundaries of land the subject of a mining tenure, or on land that is adjoining, adjacent to or contiguous with such land, for the purposes of sections 9 and 10 of the MQSH Act;

(b) the Site where the Services are to be carried on will include a separate Mine for the purposes of the MQSH Act (**Construction Mine**);

(c) the Client is the Holder of ML7024 and ML6024 for the purposes of the MQSH Act;

(d) the person specified in the Instrument of Agreement (or if no person is specified, any Person notified in writing by the Principal from time to time) (**Relevant Party**) is to be appointed by the Client as the Operator for the Construction Mine under section 48 of the MQSH Act; and

(e) the Relevant Party will have effective and sustained control of the Construction Mine.

42.3 The Subcontractor:

(a) shall do all things reasonably necessary to ensure that the Relevant Party meets its obligations as Operator under the MQSH Act and shall not do anything which would result in the Relevant Party being in breach of its obligations as Operator under the MQSH Act; and

(b) agrees to strictly comply, and to ensure that its Personnel comply, with all lawful directions relating to health and safety given by the Relevant Party and if it believes that it is unable to do so, to notify and provide details to the Principal immediately.

42.4 The parties acknowledge that the Client as the Holder in respect of the Construction Mine

under the MQSH Act include has the following obligations:

(a) giving an inspector for the region in which the Construction Mine is located the notice required under section 46(1) of the MQSH Act;

(b) informing the Operator, in accordance with section 37(2) of the MQSH Act, of all relevant information available to the Company that may help the Operator to ensure that its site senior executive develops and implements a safety and health management system for the Construction Mine; and

(c) giving an inspector the notice required under section 46(3) of the MQSH Act in circumstances where the identity of the Operator for the Construction Mine is to be changed.

43. EXPLOSIVES

Without limiting the general obligations set out in the Subcontract, the Subcontractor shall not bring, handle, store or use any explosives on the Site without in each case first receiving the permission of the Principal. Such permission shall not relieve the Subcontractor from any obligations or duties relating to the handling, storage or use of explosives whether under any of the provisions of the Subcontract or otherwise.

44. FACILITIES

44.1 The Principal will provide those facilities set out in *Annexure A – Subcontract Particulars* (if any).

44.2 The Subcontractor shall ensure that at all times any facilities provided by the Principal and used by the Subcontractor are left in a clean, orderly and safe condition and fit for immediate use.

45. ACCOMMODATION AND TRANSPORT

45.1 During the term of the Subcontract and for the purposes of performing the Services, the Subcontractor shall, except where otherwise agreed in writing by the Principal, utilise the accommodation and messing facilities for its Personnel as provided by the Principal.

45.2 The following provisions will apply in relation to accommodation and messing facilities provided by the Principal:

(a) the Principal will arrange single accommodation, messing facilities, laundry facilities, ablution and toilet facilities in the Principal's accommodation, subject to availability;

(b) subject to Clause 45.2(g) the Principal shall provide the accommodation within the Principal's accommodation, where available, to the Subcontractor at no cost to the Subcontractor;

(c) Subcontractor's Personnel who are accommodated in the Principal's accommodation shall be registered into the accommodation in the name of the Subcontractor. For this purpose, all such Subcontractor Personnel shall be considered as remaining a resident in the Principal's accommodation until such time as they are booked out by the Subcontractor and they have satisfied all the Principal's requirements for booking out;

(d) the administration and operation of the Principal's accommodation will be covered by a set of rules and regulations that are available from the Principal, and the Subcontractor shall ensure that all persons for whom it is responsible shall obey the rules and regulations of the Principal's accommodation. Any of the Subcontractor's Personnel breaching the Principal's accommodation rules and regulations will be removed from the Principal's accommodation and the Subcontractor will be liable for procuring alternative accommodation for them at its own cost;

(e) rooms will be allocated on the basis of the Subcontractor's accommodation requirements notified to and approved in advance by the Principal;

(f) rooms will be allocated only to the extent that they are actually occupied by the Subcontractor's Personnel. Beds shall be vacated and re-allocated when a Subcontractor's Personnel is absent from the Site for more than 4 days;

(g) the Subcontractor shall be liable for all costs incurred in the repair of damage and replacement of losses caused by Subcontractor's Personnel, fair wear and tear excepted;

(h) accommodation and messing for numbers of personnel in excess of the Subcontractor's accommodation requirements referred to in Clause 45.2(e) shall be subject to availability as determined by the Principal. Any failure by the Principal to supply accommodation and messing for numbers in excess of those notified to and approved in advance by the Principal in clause 45.2(e) shall not form the basis of any Claim against the Principal or Principal's Personnel;

(i) subject to Clause 45.3 the Principal will reimburse the Subcontractor the direct costs (excluding profit, margin or overhead) the Subcontractor incurs in providing accommodation to the Subcontractor's Personnel in alternative locations where the Principal is unable to provide accommodation within its accommodation facilities where it was obligated to do so under this Clause; and

(j) in the event of the Principal directing a Variation to the Services which results in a request for additional messing and accommodation the Subcontractor shall within 7 days of the direction submit a revised schedule of accommodation requirements to the Principal for approval.

45.3 The Subcontractor agrees:

(a) that it has provided the Principal with a forecast of its requirements for accommodation of its Personnel and that forecast is detailed in *Annexure M;*

(b) the Principal relies upon the Subcontractor's forecast and has no obligation whatsoever (other than as a result of a Principal initiated Variation) to provide accommodation in excess of that forecast by the Subcontractor;

(c) the Subcontractor shall progressively submit updates to its forecast accommodation usage for approval (or partial approval) by the Principal;

(d) whilst the Principal will endeavour to accommodate changes to the accommodation forecast from time to time, the Principal is under no obligation to accept any revision in full or to act reasonably in doing so and the Principal is under no obligation to provide accommodation to meet modified accommodation forecasts, except and only to the extent that the Subcontractor's accommodation requirements change as a consequence of a Variation directed by the Principal; and

(e) it shall not charge its employees for any accommodation provided for its Personnel under the Subcontract.

Transportation

45.4 Unless otherwise agreed in writing the Subcontractor shall be responsible for the transportation of its employees on the Site at all times. Vehicles and drivers used for this purpose shall be properly licensed and safe and suitable for the purpose.

45.5 Travel will be permitted only on those roads and parking only in those areas designated by the Principal. The Principal may issue passes for the Subcontractor's working vehicles and other vehicles as it deems necessary. All Site traffic rules shall be obeyed. When entering or leaving the Site, all vehicles shall stop to be recognised.

45.6 The Principal reserves the right to conduct personnel and vehicle inspection while on the Site.

45.7 The Site speed limit for all types of vehicles shall be adhered to.

46. ETHICS

46.1 Within 7 Business Days of the Date of the Subcontract, the Subcontractor shall submit to the Principal:

(a) written confirmation that the Subcontractor has appropriate policies and procedures in place to ensure that the requirements of Clause 37 will be met (**Ethics Policies and Procedures)** and that all of the Subcontractor's Personnel engaged on the Subcontract have received training to ensure that they are aware of and will comply with the Ethics Policies and Procedures (**Ethics Training**); or

(b) a written proposal to implement the Ethics Policies and Procedures (**Ethics Proposal**). The Ethics Proposal shall include a program for delivery of Ethics Training to all of the Subcontractor's Personnel engaged on the Subcontract within 3 months following the Date of the Subcontract, with details of the dates for and contents of the Ethics Training.

46.2 If the Principal is not satisfied that the Ethics Policies and Procedures notified by the

Subcontractor under Clause 46.1(a) are adequate, it shall notify the Subcontractor of its further requirements and direct the Subcontractor to submit an Ethics Proposal to address those further requirements and the Subcontractor shall do so within 7 Business Days of such direction.

46.3 The Principal may direct the Subcontractor to make any amendments to its Ethics Proposal it may reasonably require to address the requirements of Clause 46. The Subcontractor shall make such amendments as are directed by the Principal and resubmit the Ethics Proposal within 3 Business Days of receiving the Principal's comments.

46.4 The Ethics Policies and Procedures or the Ethics Proposal shall, in either case once approved by the Principal, be known as the Ethics Plan.

46.5 The Subcontractor shall comply with the Ethics Plan.

46.6 The Subcontractor shall give the Principal 12 Business Days' prior written notice of any Ethics Training it carries out and shall give the Principal the opportunity to attend and participate in the Ethics Training.

46.7 The Subcontractor shall:

(a) record every Sub-subcontract in writing; and

(b) include as a condition of every Sub-subcontract that the Sub-subcontractor shall comply with obligations equivalent to those in Clause 37 and this Clause 46.

47. CERTIFICATES

No certificate issued under the Subcontract shall be evidence that the Services, including any design performed or any materials or Associated Goods provided, are in accordance with the Subcontract or of the accuracy of any claim made by the Subcontractor, nor will any such certificate negate or limit any of the rights, powers and remedies of the Principal or prejudice any Claim by the Principal.

48. TRANSPORT OF ITEMS BY CLIENT

48.1 The Subcontractor shall:

(a) deliver the Subcontractor’s Transfer Items to the Transfer Depot for transfer to the Site; and

(b) upon delivery of the Subcontractor’s Transfer Items to the Transfer Depot and to the Site, allow the Principal to inspect, photograph, record and document the Subcontractor’s Transfer Items before they are unloaded.

48.2 Unless specified or agreed otherwise in writing, the Subcontractor’s Transfer Items will be transferred to the Site by the Client’s Transport Contractor.

48.3 The Client’s Transport Contractor’s costs of delivering the Subcontractor’s Transfer Items will be met by the Client.