

Bwanolar Pty Ltd

(ABN 53 008 990 636)

8 Artello Bay Road
Midvale WA 6056

GFR Group General Conditions for Construction

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1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these General Conditions and the Contract the following terms have the meanings set out below:

Alternative Works is defined in Clause 18.1.

Business Day means a day on which banks are open for business in the place in respect of which an obligation is to be performed or, in respect of Clause 43, the place to which a Notice is sent.

Bwanolar Pty Ltd means Bwanolar Pty Ltd (ABN 53 008 990 636) having its registered office at 8 Artello Bay Road, Midvale, Western Australia 6056. Trading as GFR Group and/or GFR Industries.

Cancellation Date is defined in Clause 40.2(b)(iii).

Claim means any action, suit, proceeding or demand of any kind (including by or against any or all of the Contractor, End User or their respective Personnel by Personnel of the Supplier or any third party).

Commencement Date is defined in the Key Terms.

Commissioning includes checking the operational availability of each item, checking all manual and automatic contacts and interlocks, no-load commissioning, full-load commissioning, testing to demonstrate performance in accordance with the Specifications and any other actions which are described in the Special Conditions, or otherwise agreed by the Parties, as being part of Commissioning.

Contractor is defined in the Key Terms.

Contractor Competencies is defined in Clause 31.5(b).

Contractor Default is defined in Clause 41.1.

Contractor Default Notice is defined in Clause 41.2

Contractor Induction Courses is defined in Clause 31.5(a)

Contractor Representative is, initially, as defined in the Key Terms, and includes:

- (a) such other person as the Contractor may, in writing, substitute for that representative; or
- (b) any person authorised by that representative to perform any of that representative's powers, duties, discretions or authorities.

Contractor's Personal Information means the Personal Information that the Contractor transfers to the Sub-Contractor from time to time in connection with the Contract.

Confidential Information means the Contract, and any information (in whatever form) or Documentation of a confidential nature (or which the Sub-Contractor or its Personnel ought reasonably to know to be confidential) which relates to the business, affairs or activities of the Contractor, or an End User (including in relation to the Works) and which:

- (a) is disclosed to the Sub-Contractor or its Personnel by or on behalf of the Contractor;
- (b) is generated by the Sub-Contractor or its Personnel in performing the Works; or
- (c) otherwise comes to the knowledge of the Sub-Contractor or its Personnel.

Contract is defined in Clause 2.1.

Contract Value means the monetary value of the relative part of the Works performed, which is calculated by reference to the Contract Price Breakdown.

Contract IP means all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the provision of the Works or the Contract (including all Intellectual Property Rights in anything developed by the Sub-Contractor in providing the Works and any Intellectual Property Rights in the Documentation provided by the Contractor to the Sub-Contractor).

Contract Price is defined in Clause 13.1.

Contract Price Breakdown means the breakdown of the Contract Price set out in Schedule D (Contract Price Breakdown).

Sub-Contractor is defined in the Key Terms.

Sub-Contractor Default Notice is defined in Clause 40.1.

Sub-Contractor Insurances is defined in Clause 37.1.

Sub-Contractor IP means the Sub-Contractor's Intellectual Property Rights which:

- (a) are in existence at the date of the Contract; or
- (b) come into existence after the date of the Contract otherwise than in connection with the Contract.

Sub-Contractor Representative is defined in the Key Terms.

Corporations Act means the *Corporations Act 2001* (Cth).

Customs Duties means a government tax on imports or exports of goods or services relating to the Works and include any applicable customs, import / export duties, fees, tariffs or similar analogous taxes.

Deducted Amount is defined in Clause 17.2(a).

Defects Liability Period is defined in the Key Terms.

Design Work includes the completion of the design, specification and documentation of the Works (including any Variation at any time) to enable the completion of the Works in accordance with the Contract.

Dispute is defined in Clause 42.1.

Dispute Notice is defined in Clause 42.1.

Dispute Representative is defined in Clause 42.2(a).

Documentation includes plans, designs, drawings, calculations, engineering information, data, specifications, sketches, notes, samples, reports, maps, accounts, operating manuals, training materials and any other material specified in the Contract (and whether embodied in tangible or electronic form).

End User means an entity identified in the Contract (or notified to the Sub-Contractor by the Contractor) to whom the Contractor provides goods and/or services comprising or derived from, in whole or in part, the Works.

Environment means components of the earth including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism;
- (d) any human-made or modified structures and areas;
- (e) the aesthetic or amenity values of an area; and
- (f) humans.

Environmental Event means any event or series of events arising out of the performance of the Contract 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 any law (whether statute or common law), consent, licence or other Government Agency requirement.

Facilities means any accommodation, sustenance, transportation, medical or toilet facilities.

Final Completion Certificate is defined in Clause 27.6.

Force Majeure means an event or cause which is beyond the control of the Party claiming force majeure, not able to be overcome by the exercise of reasonable care, proper precautions and the consideration of reasonable alternatives with the intention of avoiding the effects of the force majeure by that Party, and which could not have been reasonably foreseen, and includes (subject to satisfying the requirements of the foregoing):

- (a) an act of God (other than adverse weather);
- (b) cyclones, fire, flood; or
- (c) acts of war, acts of public enemies, terrorist acts, riots or civil commotions.

GFR Group means Bwanolar Pty Ltd (ABN 53 008 990 636) Trading as GFR Group with its registered office at 8 Artello Bay Road, Midvale, Western Australia 6056.

GFR Group IP means the Intellectual Property Rights of the Contractor which:

- (a) are in existence at the date of the Contract; or
- (b) come into existence after the date of the Contract otherwise than in connection with the Contract.

Goods means the goods, materials, supplies, equipment or other items identified in the Contract as being required for the Works.

Government Agency means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

HSE Policies and Standards is defined in Clause 31.3(a).

HSE Management Plan(s) is defined in Clause 31.4(a).

Indemnified Parties is defined in Clause 38.2.

Intellectual Property Rights means (in the context of a Party) all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and 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 registerable), rights in relation to registered

or unregistered trade marks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar no-assignable personal rights of authors and producers.

Illegal Information Brokering means the practice by which certain parties approach Sub-Contractors, vendors and other suppliers, and offer confidential information or illicit influence in order to obtain business through corruption of competitive bidding processes.

Indirect Transaction Taxes means any relevant value added tax (**VAT**), goods and services tax (**GST**), sales, use or consumption or similar tax or impost imposed, levied or assessed by any Government Agency or otherwise payable, but does not include any related penalty, fine or interest thereon.

Indirect Transaction Taxes Invoice or **Invoice** means an invoice in a form acceptable by applicable laws in the jurisdiction where the Works take place which clearly identifies the amount of Indirect Transaction Taxes payable and any applicable registration or collector numbers of the Sub-Contractor for purposes of Indirect Transaction Taxes, and which would enable the Contractor or end user to claim a credit or reimbursement for Indirect Transaction Taxes payable under the invoice under applicable law.

Joint Venture means an unincorporated joint venture, if any, on behalf of which the Contractor is a party to the contract as agent.

Joint Venturers means, in respect of a Joint Venture, the participants in that Joint Venture.

Key Terms means the document named “Key Terms” forming part of the Contract, but not including the Schedules to that document.

Liabilities means damages, Claims, losses, liabilities, costs and expenses of any kind.

Materials is defined in Clause 46.5(a).

Minor Defects and Omissions means minor defects and omissions in any part of the Works which in the opinion of the Contractor Representative do not affect the use of the Works or compliance with Clause 35.

Official includes:

- (a) any officer or employee of any Government Agency, or any person acting in an official capacity on behalf of any such Government Agency;
- (b) any officer, employee or official of a political party;
- (c) any candidate for political office; or
- (d) any officer or employee of a public international organisation (for example, the United Nations, IMF or World Bank).

Payment Claim Times are defined in the Key Terms.

Party means a party to the Contract.

Personal Information has the meaning given in the Privacy Act.

Personnel means:

- (a) in relation to the Sub-Contractor, any of its employees, Sub-Contractors (including Sub-Contractors Personnel), agents and representatives involved either directly or indirectly in the performance of the Works;
- (b) in relation to the Contractor, or End User, any of its past or present officers, employees, agents (including, for the purposes of Clause 38, the entity entering into the Contract for and on behalf of Joint Venturers (if

applicable) and that entity's past or present officers, employees, agents or representatives) or representatives; and

- (c) in relation to a Sub-Contractor, any of its employees, agents or representatives involved either directly or indirectly in the performance of the Works.

Practical Completion of the Works is achieved when:

- a) the Works are completed in accordance with the Contract other than Minor Defects and Omissions which the Contractor Representative reasonably considers need not be rectified prior to Practical Completion and the Works are fit for use;
- b) all tests and inspections required by the Contract or by the Contractor for the purposes of confirming the Works comply with the Contract have been satisfactorily completed;
- c) the Sub-Contractor has delivered to the Contractor Representative all Practical Completion documents and all other Works Documents which the Contractor Representative considers are reasonably required to allow the use, operation or maintenance of the Works; and
- d) all conditions expressed by the Contract to be preconditions to Practical Completion have been satisfied.

Practical Completion Certificate means a certificate issued by the Contractor Representative stating that Practical Completion has been achieved.

Practical Completion Date is defined in the Key Terms.

Practical Completion Documents means those documents described as such in the Key Terms.

Prior Design Work is defined in Clause 25.3.

Privacy Act means the Privacy Act 1988 (Cth).

Processing means collecting, holding, using, transferring, destroying and any other dealing.

Progress Claim is defined in Clause 16.2.

Provisional Sum means any estimated amount in relation to the cost of an item of work and identified as such in Schedule B (Prices).

Purchase Order means individual purchase orders as may be issued by the Contractor to the Sub-Contractor in respect of the performance of the Works which shall be subject to the terms of the Contract.

Related Body Corporate has the meaning given in the Corporations Act.

Release Date is defined in Clause 21.5.

Security means the Contractor's premises identified in the Key Terms.

Separable Portion means a part of the Works (if any) described in Schedule A (Works) as being a Separable Portion or a part of the Works which in the reasonable opinion of the Contractor Representative is capable of being put to its intended use by the Contractor.

Site means the Company's premises identified in the Key Terms.

Special Conditions means the special conditions set out in Schedule F (Special Conditions).

Specifications means the specifications for the Works and any modifications of those specifications as directed by the Contractor Representative in accordance with the Contract.

Sub-Contractor means any person engaged by the Contractor in accordance with Clause 55 to perform all or any part of the Works on behalf of the Sub-Contractor.

Supply Chain means all steps and processes involved in the provision of the Works to the Contractor, commencing with the sourcing of the Works and finishing with the use of the Works by the Contractor/Company.

Taxes means any and all taxes, including, without limitation, Indirect Transaction Taxes, excise, stamp, documentary, customs, import/export, payroll, personal, property, real property, interest equalisation, business, occupation, turnover, income, corporation, capital, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever (other than taxes on the Company's net income), together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any Government Agency or otherwise payable, on or in respect of the Works hereunder.

Tender means the Sub-Contractor's offer or counter-offer in writing to perform the Works whether described as a "tender" or "proposal" or otherwise.

Termination Notice is defined in Clause 39.1.

Variation is defined in Clause 7.1(a).

Variation Date is defined in Clause 7.1(a).

Works means the physical works or improvements which the Sub-Contractor is required to perform, complete and hand over to the Contractor under the Contract and includes the supply, hire or provision of any Goods as required for the performance of those physical works or improvements.

Works Documents means:

- (a) approvals, consents or permits required by law;
- (b) consultants' (including engineers') reports or certificates required under the Contract (in favour of the Contractor);
- (c) suppliers' or manufacturers' warranties or operation or maintenance manuals required under the Contract (in favour of the Contractor); and
- (d) 'as built' drawings,

relating to the Works.

Works Timetable means the schedule set out in Schedule C (Works Timetable for the effective monitoring of the progress of the Works which:

- (a) (unless otherwise agreed between the Parties) is in a time-based format in which critical items and activities relating to the performance of the Works are clearly identified and detailed; and
- (b) Indicate the dates or times for commencement and completion of the various stages or parts of the Works,

and includes any amendments to such Works Timetable in accordance with Clause 10.2.

1.2 Interpretation

The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) The meaning of general words is not limited by specific examples introduced by **including** or **for example**.
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (f) A reference to a person or a Party includes a reference to that person's or Party's executors, administrators, successors, substitutes (including persons taking by way of novation), assigns (in the case of a person) and permitted assigns (in the case of a Party).
- (g) A reference to a Clause or Appendix is a reference to a clause of, or appendix to, these General Conditions.
- (h) A reference to a Schedule is a reference to a schedule to the Contract.
- (i) A reference to an Act or legislation, or to a provision of an Act or legislation, includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (k) Where it is provided that the Sub-Contractor will perform any act or provide any thing at its cost, this means the Sub-Contractor will not be entitled to any additional compensation for such act or thing and the cost will be deemed to be included in the Contract Price.

1.3 Joint Venture

If the Contract specifies that the Contractor enters into, and is party to, the Contract for and on behalf of Joint Venturers under a Joint Venture, then the following paragraphs apply:

- (a) The Contractor is a party to the Contract as agent severally for each of the Joint Venturers in their respective percentage interests in the Joint Venture.
- (b) The Parties acknowledge and agree that:
 - (i) the obligations and liabilities of the Joint Venturers to the Supplier are several only (and will not be, nor be construed to be, either joint or joint and several), in accordance with the Joint Venturer's respective percentage interest from time to time in the Joint Venture;
 - (ii) the percentage interest of the Joint Venturers, and the identity and number of Joint Venturers, may change from time to time and the Contractor may at any time without the consent of the Supplier assign its rights and obligations under the Contract to an incoming agent or manager on behalf of the Joint Venturers;

- (iii) the rights and remedies in and under the Contract may be exercised by the Contractor for and on behalf of the Joint Venturers;
- (iv) the benefit of the respective duties and obligations of the Supplier under the Contract are deemed to enure to each of the Joint Venturers, and the Contractor is severally authorised to enforce those duties and obligations on the Joint Venturers' behalf;
- (v) all Notices to be give or made pursuant to the Contract relating to the Joint Venture may be given or made (as the case requires) by the Contractor on behalf of the Joint Venturers or any one or more of them;
- (vi) in dealing with the joint Venturers, for all purposes under or in connection with the Contract (including, for the avoidance of doubt, any Purchase Order), the Supplier must deal only with the Contractor; and
- (vii) the Contractor will not be liable for the failure of the Joint Venturers (or any one or more of them) to perform its or their obligations under the Contract.

2 HEAD CONTRACT

The Sub-Contractor assumes all of the Contractor's obligations and responsibilities in the Head Contract between the Contractor and the Company/Principal of the Works. In interpretation of the Head Contract, reference to the owner (or principal or proprietor) means the principal and reference to the Contractor means the Sub-Contractor.

3 EVIDENCE OF CONTRACT AND PRECEDENCE OF DOCUMENTS

3.1 Contract

The **Contract** consists of the following documents:

- (a) Key Terms;
- (b) Schedule F (Special Conditions) (if any);
- (c) Schedule E (Site Specific Terms) (if any);
- (d) these General Conditions;
- (e) Schedule A (Works);
- (f) Schedule B (Prices);
- (g) Schedule C (Works Timetable);
- (h) Schedule D (Contract Price Breakdown); and
- (i) any other Schedules,

but the Tender (if any) does not, except to the extent that it, or any part of it, is reproduced in the Contract itself, form part of the Contract unless the Contractor expressly so agrees in writing.

3.2 Precedence of Contract Documents

- (a) If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in Clause 3.1.
- (b) If there is a conflict or inconsistency between a Purchase Order and the Contract, the Contract will prevail to the extent of that conflict or inconsistency.

3.3 Entire Agreement

- (a) The Contract contains the entire agreement between the Contractor and the Sub-Contractor with respect to its subject matter and supersedes all prior communications and negotiations between the Contractor and the Sub-Contractor in this regard, unless those communications expressly form part of the Contract.
- (b) If at any time in relation to the Works, the Sub-Contractor provides, refers to, submits or otherwise uses terms and conditions other than those included in the Contract (including as part of the submission of an Invoice) such terms and conditions will not form part of, or be incorporated into, the Contract. Where the Works supplied under the Contract are accompanied by the Sub-Contractor's documentation, acceptance of the Works (or other items) or documentation by the Contractor is limited to an acknowledgement of receipt and not of the Sub-Contractor's documentation.
- (c) If during the Term the Contractor issues a Purchase Order which attaches a separate set of terms and conditions other than those incorporated in the Contract, those terms and conditions will not form part of, or be incorporated into, that Purchase Order or the Contract.

3.4 Amendment to be in Writing

No amendment or variation of the Contract is valid or binding on a Party unless made in writing and signed by the Sub-Contractor and the Contractor.

4 SUB-CONTRACTOR'S REPRESENTATIONS

The Sub-Contractor represents to the Contractor that, as at the date of the Contract:

- (a) it has the corporate power to enter into, and to perform all of its obligations under, the Contract;
- (b) it is qualified and has the necessary experience, skill and resources to perform the Works;
- (c) it is properly licensed, equipped, organised and financed to perform all its obligations under the Contract and that there are no contracts in existence that would affect the Sub-Contractor's ability to perform its obligations under the Contract in a timely and satisfactory manner;

- (d) the Contract has been validly executed by the Sub-Contractor and constitutes valid and binding obligations of the Sub-Contractor enforceable according to its terms; and
- (e) the execution of the Contract and the performance of the Works do not and will not result in the breach of:
 - (i) the terms of, or constitute a default under, any agreement or undertaking (whether verbal or written) or any instrument to which the Contractor may be affected or bound; or
 - (ii) any order, writ, rule, regulation, injunction or decree of any court or Government Agency or any legislation applicable to the Sub-Contractor by which the Sub-Contractor may be bound.

5 CONTRATOR'S INVESTIGATIONS

5.1 Investigations Regarding Contract

The Sub-Contractor acknowledges that, prior to the submission of its Tender or, where no Tender is submitted, prior to accepting the Contractor's offer in relation to the provision of the Works:

- (a) the Contractor provided it with every opportunity for inspecting and testing the Site and gave it every assistance in relation to the investigation of all local and other conditions affecting the performance of the Contract, and the provision of the Works, including in relation to meteorological, geological, labour, accommodation, fuel, power, water, telecommunications and transport conditions; and
- (b) that it is deemed to have:
 - (i) inspected and tested the Site;
 - (ii) (without limiting Clause 5.2) carefully and fully examined all documents which have been provided by the Contractor as part of any tender process; and
 - (iii) to have fully informed itself in relation to each of the matters referred to in this Clause 5.1.

5.2 No Representation by Contractor

The Contractor has endeavoured and will continue to endeavour (without being obliged to do so) to ensure the accuracy of any information provided to, or obtained by, the Sub-Contractor or its Personnel through a conducted Site visit, a pre-bid conference or otherwise obtained by the Sub-Contractor or its Personnel from the Contractor. However, the Contractor does not warrant or guarantee the accuracy, sufficiency or otherwise of such information and disclaims all responsibility for it. The Parties acknowledge that any information so provided is for the convenience of the Sub-Contractor only and does not form part of the Contract unless otherwise expressly agreed by the Parties in writing, and that any Tender submitted by the Sub-Contractor and its subsequent execution and performance of the contract is deemed to have been based on the Sub-Contractor's own investigations and determinations.

5.3 Sub-Contractor Satisfied with Accuracy

The Sub-Contractor agrees that it has satisfied itself as to the accuracy of any information given to it at any time prior to the execution of the Contract and accepts full responsibility for any use by it of such information including, without limitation, responsibility for any conclusions drawn by it from such information.

5.4 No Relief

Failure by the Sub-Contractor to do all or any of the things it is deemed to have done under this clause 4 will not relieve the Sub-Contractor from any of its obligations under the Contract.

5.5 Contractor not Liable

The Contractor is not liable for any Liabilities incurred or suffered by the Sub-Contractor as a result of its reliance in any way upon any information given to it by the Contractor.

6 PERFORMANCE BY SUB-CONTRACTOR

6.1 Performance of Works

The Sub-Contractor must perform the Works in accordance with the terms of the Contract and in consideration of the payment of the Contract Price by the Contractor.

6.2 Ordering

Without limiting Clause 10, the Contractor may complete and forward a Purchase Order to the Sub-Contractor in respect of all or any part of the Works.

7 VARIATIONS

7.1 Variations

- (a) During the Term, the Contractor Representative may by notice direct the Sub-Contractor to vary any aspect of the Works (**Variation**) on and from the date specified in the notice (**Variation Date**).
- (b) To the extent that the Variation is reasonable, the Sub-Contractor must comply with the notice and any Variation will be binding on the Parties as if it was included in the Contract.

7.2 Cost of Variations

- (a) The difference in the cost (excluding Indirect Transaction Taxes), if any, including a reasonable allowance in respect of Works already performed

but not required, caused by Variations directed by the Contractor Representative will be added to or deducted from the Contract Price as applicable.

- (b) To the extent that the rates for Variations are specified in a Schedule, they may be used by the Sub-Contractor to calculate the cost of a Variation, but otherwise the cost of a Variation will be estimated by the Sub-Contractor at the lowest reasonable cost consistent with sound industry practices.

7.3 Variation Procedure

- (a) Within 10 days after a Variation Date, the Sub-Contractor must submit to the Contractor Representative a statement advising whether, in its opinion, a difference in the Contract Price will arise as a result of the Variation and, if so, the approximate value of the cost difference.
- (b) Within 30 days of a Variation Date, the Sub-Contractor must provide a detailed statement to the Contractor Representative of either the cost of the Variation or a detailed statement as to why the Sub-Contractor has been unable to state the cost of the Variation within the 30 day period. In the latter case, the Sub-Contractor must, without prejudice to the rights and remedies of the Contractor in those circumstances, provide the detailed statement of cost as soon as possible.
- (c) If either of the statements referred to in Clauses 7.3(a) or (b) are submitted later than the relevant time limits specified in those Clauses the claims contained in those statements may, at the sole discretion of the Contractor Representative, be time barred.
- (d) The Contractor Representative must use all reasonable endeavours to make a decision in relation to Variation claims as soon as is practicable after the claim is made.
- (e) As soon as practicable after the Contractor Representative makes a decision in regard to the Sub-Contractor's claim, the Contractor Representative must prepare a document to be signed by the Contractor Representative and the Sub-Contractor Representative setting out the details of the variation to the Works directed by the Contractor Representative and any consequent Variation in the Contract Price.
- (f) If the Contractor Representative does not approve the claim and the Sub-Contractor and the Contractor Representative are unable to agree upon the amount of the difference in cost then the Dispute must be resolved in accordance with Clause 42.

8 SUB-CONTRACTOR'S WARRANTIES

In addition to the warranties contained in Clauses 46.1 and 48.1 and the warranty contained in Clause 9.1, the Sub-Contractor warrants that:

- (a) all of the Works will be provided in an efficient manner in accordance with all applicable legislation and laws or regulations;
- (b) all of the Works will:
 - (i) be of the highest standards and in accordance with the Contractor's specifications (where those specifications are made known to the Sub-Contractor) or in the absence of such

specifications, in accordance with any applicable standards set by the Standards Association of Australia; and

- (ii) be fit for their purpose;
- (c) in relation to the performance of the Works:
 - (i) the Sub-Contractor and its Personnel will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work; and
 - (ii) any equipment used on-Site by the Sub-Contractor will be in safe working condition, will comply with all legislation which is applicable to such equipment and will be operated by suitably qualified and competent Personnel, to the satisfaction of the Contractor.
- (d) all information and materials forming part of the Tender (if any) are true and correct in every respect and are not misleading or deceptive and the Sub-Contractor has not withheld from the Contractor any information concerning the Sub-Contractor, its experience or expertise which might reasonably be supposed to be material to the Contractor in determining whether or not to engage the Sub-Contractor to perform the Works or the price at which or the terms on which the Contractor would be prepared to engage the Sub-Contractor to perform the Works.

9 DEFECTS LIABILITY

9.1 Warranty

The Sub-Contractor warrants the Works against any defect which arises during the Defects Liability Period.

9.2 Commencement of Defects Liability Period

- (a) The Defects Liability Period will commence on and from the date of issue by the Contractor of the Practical Completion Certificate.
- (b) The Defects Liability Period for any Separable Portion reaching Practical Completion earlier than the last Separable Portion to reach Practical Completion will expire on the date of expiry of the Defects Liability Period applying to the last Separable Portion to reach Practical Completion.

9.3 Rectification of Defects

Upon receipt of a notice from the Contractor Representative of any defect in the Works during the Defects Liability Period due to:

- (a) defective design, materials, workmanship, unmerchantable quality or unfitness for intended purpose; or
- (b) not being in accordance with the standard provided for in the Contract,

the affected items or parts must be redesigned, repaired or replaced as appropriate by the Sub-Contractor at not cost to the Contractor prior to the

expiration of the time specified in the notice. If the Sub-Contractor fails to make the necessary redesign, repair or replacement at the Sub-Contractor's risk and cost and any costs and expenses incurred by the Contractor will be recoverable from the Sub-Contractor as a debt due and payable.

9.4 Redesigned, Repaired or Replaced Works

The warranty in Clause 9.1 applies to any part of the Works which are redesigned, repaired or replaced in accordance with Clause 9.3, and Clause 9.3 applies to any defect in any such redesigned, repaired or replaced part of the Works, until the later of:

- (a) the expiry of the Defects Liability Period; or
- (b) one year from the date of redesign, repair or replacement.

10 WORKS TIMETABLE

10.1 Adherence to Works Timetable

- (a) Time is of the essence in the performance of the Sub-Contractor's obligations under the Contract.
- (b) The Sub-Contractor must perform the Works in accordance with the Works Timetable. The Sub-Contractor acknowledges that the Contractor Representative will rely upon the Works Timetable in co-ordinating other work at the Site and elsewhere.
- (c) If the Contractor Representative is of the opinion that the Sub-Contractor will not be able to complete the Works or any part of the Works in accordance with the Works Timetable, then the Contractor Representative (without prejudice to the Contractor's other rights under the Contract) may instruct the Sub-Contractor to work overtime (including night shifts, Saturdays, Sundays and public holidays) and to provide all necessary additional labour, supervision and plant to achieve and maintain adherence to the Works Timetable at no additional cost to the Contractor, until such time as the performance of the Works are in accordance with this Clause 10.1(c).
- (d) Works timetable to be updated and submitted to Contractor Representative on a weekly basis.

10.2 Amendments to Works Timetable

- (a) If the Sub-Contractor at any time is of the opinion that despite all reasonable steps having been taken, it will not be able to adhere to all or any part of the Works Timetable due to:
 - (i) a breach of any provision of the Contract by the Contractor;
 - (ii) Force Majeure;
 - (iii) a direction of the Contractor Representative under Clause 27.3;
 - (iv) a delay or suspension in access to the Site as outlined in Clause 32.5;

- (v) a delay caused by another on-Site supplier or its personnel as outlined in Clause 35.3; or
- (vi) the Contractor directing a Variation,

the Sub-Contractor must within 7 days of such event give notice to the Contractor applying for an amendment to the Works Timetable setting out in detail the reasons for the application and clearly establishing the delay in question.

- (b) The Contractor must, if it considers an application made by the Sub-Contractor in accordance with Clause 10.2(a) to be reasonable, by notice amend the Works Timetable in such manner as it considers appropriate and such amendment will be the Sub-Contractor's sole remedy for any delay and the Sub-Contractor will not be entitled to any increase in the Contract Price or any damages, costs or expenses in connection with such extension provided that the Contractor may (in its discretion) reimburse the Sub-Contractor for additional costs if it considers that such reimbursement would be fair and equitable in the circumstances.
- (c) Unless the Sub-Contractor has applied for an amendment to the Works Timetable in accordance with this Clause 10.2 and unless and until the Contractor has granted an amendment, the Sub-Contractor will not by reason of any delay arising from any cause be relieved in any way or to any extent from its obligations to proceed with and complete the Works in accordance with the Works Timetable. In the event of an amendment to the Works Timetable, the Sub-Contractor will only be so relieved to the extent that it will have until the expiry of the relevant dates (as amended), in which to perform and complete the Works.

11 TERM

The Contract will commence on the Commencement Date and will remain in force, unless terminated earlier in accordance with the Contract, for the Term.

12 REPRESENTATIVES

12.1 Performance

The Works must be performed by the Sub-Contractor in accordance with the Contract and in accordance with any directions of the Contractor Representative pursuant to the provisions of the Contract.

12.2 Contractor Representative

- (a) The Contractor Representative is responsible for giving directions for and on behalf of the Contractor as provided in the Contract.
- (b) Directions given to the Sub-Contractor by any person other than the Contractor Representative will not bind the Contractor unless ratified by the Contractor Representative.

12.3 Sub-Contractor Representative

- (a) The Sub-Contractor Representative is responsible for liaising with the Contractor Representative in relation to any of the matters referred to in Clause 12.2, and the Sub-Contractor Representative will have full power to legally bind the Sub-Contractor in respect of all matters arising out of the Contract.
- (b) Any direction which the Contractor Representative gives to a Sub-Contractor Representative is deemed to have been given to the Sub-Contractor for and on behalf of the Contractor and the Sub-Contractor must comply with that direction accordingly. Any communication given, or document signed, by a Sub-Contractor Representative is deemed to have been given or signed by the Sub-Contractor and will bind the Sub-Contractor. Matters within the knowledge of a Sub-Contractor Representative are deemed to be within the knowledge of the Sub-Contractor.
- (c) Either Party may from time to time revoke the appointment of its representative and appoint another person as its representative and that Party must give notice of such revocation and appointment to the other Party.

13 RISK IN, AND PROTECTION OF, WORKS

13.1 Risk in Works

Risk in the Works will remain with the Sub-Contractor until the receipt by the Sub-Contractor of a Final Completion Certificate from the Contractor Representative.

13.2 Protection of Works

Until receipt by the Sub-Contractor of a Final Completion Certificate from the Contractor Representative, the Sub-Contractor must protect the Works (and any other work which is required to be performed on the Site in order to enable the Works to be undertaken) by providing the following, at its cost and to the extent expedient or necessary:

- (a) adequate covering;
- (b) proper fencing;
- (c) adequate lighting;
- (d) security;
- (e) temporary roadways, footpaths, guards and fences; and
- (f) notices and signs.

14 CONTRACT PRICE

14.1 Contract Price

The **Contract Price** means the aggregate amount payable (excluding Indirect Transaction Taxes payable in accordance with Clause 15) by the Contractor to the Sub-Contractor in relation to the Works.

14.2 Contract Price to be Inclusive

- (a) All expenses incurred by the Sub-Contractor in relation to the provision of the Works, including, without limitation, travel expenses and subsistence expenses, will be deemed to be included in the Contract Price and the Contract Price includes any applicable Taxes.
- (b) The Sub-Contractor must separately disclose to the Contractor details of any Customs Duties included in the Contract Price.
- (c) Section 152(1)(a) of the *Customs Act 1901* (Cth) does not apply to the Contract.

15 TAXES (INCLUDING GST)

15.1 Taxes (including Indirect Transaction Taxes)

The Contract Price and all other amounts payable under the Contract are inclusive of all Taxes, except for any eligible Indirect Transaction Taxes, except where otherwise agreed between the Parties in writing.

15.2 Indirect Transaction Taxes

- (a) The Contract Price and all other amounts payable under the Contract are exclusive of any Indirect Transaction Taxes.
- (b) Subject to Clauses 15.2(c) and 15.2(d), if Indirect Transaction Taxes are payable under the Contract, and if the Sub-Contractor is required by any applicable laws to collect and remit Indirect Transaction Taxes to the appropriate Government Agency, the Contractor shall pay to the Sub-Contractor applicable Indirect Transaction Taxes at the percentage rate required by any applicable laws in the jurisdiction where the Works take place.
- (c) If, in respect of a Tax audit or a levied Tax assessment, the appropriate Government Agency seeks payment of Indirect Transaction Taxes from the Sub-Contractor for which the Sub-Contractor seeks reimbursement from the Contractor, then, unless the Sub-Contractor notifies the Contractor in writing of the Indirect Transaction Taxes payable at least 30 days prior to the expiration date of the right to appeal the imposition thereof, any reimbursement by the Contractor will be at its sole discretion.
- (d) If the Contractor deems that any Indirect Transaction Taxes paid to the Sub-Contractor under Clause 15.2(b) have been inappropriately levied or that an exemption applies, the Contractor may, by written notice to the

Sub-Contractor, require the Sub-Contractor to contest such Indirect Transaction Taxes at the Contractor's sole expense and subject to its direction and control.

- (e) The Sub-Contractor shall ensure that each invoice it presents to the Contractor in respect of any Indirect Transaction Taxes is a valid Indirect Transaction Taxes Invoice required by applicable laws in the jurisdiction where the Works take place. If the Sub-Contractor fails to provide the Contractor with a valid Indirect Transaction Taxes Invoice within the time period required by applicable laws in the jurisdiction where the Works take place, the Contractor may withhold payment of the entire invoice value until such time as a valid Indirect Transaction Taxes Invoice is received.
- (f) The Sub-Contractor shall do all things necessary to ensure that the Contractor remains eligible for any exemption, credit, set-off, deduction or similar amount to which the Contractor is entitled as a purchaser or recipient of the Works under any applicable laws, whether the Indirect Transaction Taxes are paid by the Sub-Contractor or directly by the Contractor. If an exemption to payment of Indirect Transaction Taxes applies, the Contractor shall provide the Sub-Contractor with a valid tax exemption certificate or equivalent documentation required by any applicable laws in the jurisdiction where the Works take place.
- (g) Each Party will take all reasonable steps to cooperate with and provide all necessary assistance to the other Party to ensure so far as possible that the Indirect Transaction Taxes treatment is accepted by the relevant Government Agency, including the provision of invoices, proof of payment, proof of source and/or origination and other documentation for this purpose.

15.3 Withholding Taxes

Where the Sub-Contractor is a foreign corporation or Contractor or a non-resident alien individual, unless the Sub-Contractor provides the Contractor with valid documentation (received prior to payment for the Works) showing that an exemption applies in the jurisdiction where the Works take place, the Contractor shall withhold payment of the amount of any Taxes required to satisfy any withholding obligations required by any applicable laws on account of the Sub-Contractor's operations pursuant to the Contract. In such event, the Contractor shall use its best endeavours to furnish the Sub-Contractor all receipts, proof of payment and other relevant documentation for all withholding Taxes so paid.

15.4 Customs Duties

- (a) Where the Contractor elects to acquire any of the Works on a Duty Delivered Paid or similar (Incoterms 2000) shipping term basis, the Sub-Contractor will:
 - (i) be responsible for, and remit payment of all Customs Duties assessed by or payable to any Government Agency as well as any other foreign shipping charges; and
 - (ii) where applicable, ensure that any relevant part of the Works may be imported free of Customs Duties through the use of applicable bilateral free trade agreements (or the equivalent).

- (b) Regardless of the shipping or freight terms used, the Sub-Contractor will, at the Contractor's request, provide the Contractor with all information and documentation necessary for the Contractor to comply with any applicable laws in relation to applications or certifications for Customs Duties concessions or bilateral free trade agreements (or the equivalent), in each case in form and substance satisfactory to the Contractor. Where the Contractor succeeds in such applications, the Sub-Contractor will obtain Custom Duties refunds and pass on any Customs Duties savings to the Contractor.

16 PAYMENTS TO SUB-CONTRACTOR

16.1 Method of Payment

- (a) Unless otherwise provided in the Contract, all payments required to be made to the Sub-Contractor by the Contractor pursuant to the Contract in relation to the performance of the Works must be made in the currency specified in Schedule B (Prices) by electronic funds transfer into the Sub-Contractor's nominated bank account.
- (b) If the Contract provides that any of the amounts referred to in Clause 15.1(a) are to be paid to the Sub-Contractor:
 - (i) outside Australia;
 - (ii) other than in Australian currency; or
 - (iii) in a manner subject to control by any Government Agency,

payment is conditional upon the Contractor obtaining the necessary authorities and consents to the making of that payment.

16.2 Sub-Contractor to Prepare Progress Claim

Unless otherwise provided in the Contract, at each of the Payment Claim Times, the Sub-Contractor must prepare in reasonable detail and in a form approved by the Contractor Representative, and submit for approval, a Progress Claim (**Progress Claim**) showing the Contract Value of the parts of the Works performed by the Sub-Contractor since the preceding Progress Claim, or, in the case of the first Progress Claim, since the Commencement Date.

16.3 Additional Reporting

In addition to and accompanying each Progress Claim, the Sub-Contractor must furnish a report on the progress of the Works compared with the Works Timetable which report must give full details of any action proposed to overcome any failure by the Sub-Contractor to adhere to the Works Timetable.

16.4 Provisional Sums

- (a) The Contract Price includes Provisional Sums.

- (b) The Sub-Contractor must obtain the written consent of the Contractor Representative prior to performing the work to which a Provision Sum relates.
- (c) The Contact Price will be adjusted by the difference between a Provisional Sum and the cost to the Sub-Contractor of carrying out the item to which the Provisional Sum applies (excluding profit and overhead).
- (d) If the Sub-Contractor does not for any reason perform the work to which a Provisional Sum applies, the Provisional Sum will be deducted from the Contact Price.

16.5 Invoices

- (a) Together with the submission of a Progress Claim, the Sub-Contractor must, unless otherwise agreed with the Contractor, render an Invoice to the Contractor in relation to the provision of the Works to which the particular Progress Claim and calculated by reference to the prices, fees or other amounts specified in Schedule B (Prices).
- (b) Invoices must be in a form acceptable to the Contractor and must contain the following information:
 - (i) a brief description of the Works provided in the period covered by the Invoice;
 - (ii) any further verification or documentation in relation to the Invoice as is reasonably required by the Contractor;
 - (iii) if payment is required in any currency other than Australian dollars, the equivalent of the Indirect Transaction Taxes amount; and
 - (iv) any further information stipulated in any applicable laws (including any information necessary to make the invoice a Tax Invoice), or by the Contractor.

16.6 Payment of Invoices

Subject to Clauses 16.7, 17, 21.4, 37.10(e) and 40.2(b), the Contractor must pay to the Sub-Contractor the amount shown on the Invoice within 60 days from the end of the month stated on the invoice.

16.7 Disputed Invoices

If the Contractor disputes any amount shown on an Invoice, it must notify the Sub-Contractor within 21 days of receipt of the Invoice and must pay any amounts not in dispute in accordance with Clause 16.6, provided that they payment by the Contractor of any amount the subject of a disputed Invoice is not to be considered as an acceptance of the amount in dispute or of the Contractor's liability to make that payment.

16.8 Errors or Exceptions in Invoicing

Without limiting Clause 16.5, if the Sub-Contractor discovers or is advised of any errors or exceptions relating to its invoicing for the Works, the Sub-Contractor and

the Contractor will jointly review the nature of the errors or exceptions, and the Sub-Contractor must, if appropriate, take prompt corrective action and adjust the relevant invoice or refund overpayments.

17 DEDUCTION FROM PAYMENTS

17.1 Deductions

The Contractor may:

- (a) deduct from any moneys due or becoming due to the Sub-Contractor pursuant to Clause 16.5 the following amounts (plus any Indirect Transaction Taxes in respect of such deductions payable in accordance with Clause 15):
 - (i) all debts and moneys due from the Sub-Contractor or its Personnel to the Contractor;
 - (ii) all Liabilities which the Contractor may have paid, suffered or incurred and which or for which the Sub-Contractor or its Personnel is or are liable to bear, pay or reimburse to the Contractor (including pursuant to any indemnity contained in the Contract); and
 - (iii) the cost of remedying any defective or damaged Works; or
- (b) without prejudice to the Contractor's rights pursuant to any other provision of the Contract, if the Sub-Contractor fails to perform any of its obligations under the contract, without notice withhold payment of all or part of any amount payable to the Sub-Contractor under the Contract, until the matter has been remedied.

17.2 Deductions and Withholdings Required by Law

- (a) If the Contractor is required by law to withhold or deduct any amount (**Deducted Amount**) from an amount payable under the Contract, the Deducted Amount will be treated as having been paid to the Sub-Contractor when it is withheld or deducted and the Contractor will not be liable to pay any amount on account of the Deducted Amount to the Sub-Contractor.
- (b) If the Contractor fails to withhold or deduct a Deducted Amount, the Contractor may:
 - (i) give notice to the Sub-Contractor demanding payment of an amount equal to the Deducted Amount and the Sub-Contractor will pay that amount to the Contractor within 30 days of receiving the notice;
 - (ii) deduct an amount equal to the Deducted Amount from any amounts payable by the Contractor to the Sub-Contractor and the amount so deducted will be treated as having been paid to the Sub-Contractor when it is deducted and the Contractor will not be liable to pay any amount on account of the Deducted Amount to the Sub-Contractor; or

- (iii) recover an amount equal to the Deducted Amount by a combination of a demand under Clause 17.2(b)(i) and deducting an amount under Clause 17.2(b)(ii).

And in each case where the failure to withhold or deduct the Deducted Amount arising as a result of any act, omission or oversight of the Sub-Contractor, the Deducted Amount will include any fines, penalties or interest payable by the Contractor in respect of the Deducted Amount.

17.3 Notification of Withholding or Deductions

The Contractor must notify the Sub-Contractor of the details of any amounts withheld or deducted pursuant to Clauses 17.1 or 17.2.

18 ALTERNATIVE WORKS

18.1 Alternative Works

To the extent that the Sub-Contractor is unable to perform all or any part of the Works in accordance with the Contract for any reason (including Force Majeure), the Contractor may, in its sole discretion, source such part of the Works from any third party (**Alternative Works**).

18.2 Sub-Contractor Responsible for Incremental Costs

- (a) If the Contractor exercises its rights under Clause 18.1 to source Alternative Works, the Sub-Contractor is responsible for all incremental costs to the Contractor associated with sourcing the Alternative Works, including Supply Chain differentials, except where the reason for the inability to perform all or part of the Works was:
 - (i) due to the Sub-Contractor being subject to Force Majeure; or
 - (ii) as a direct result of an act or omission of the Contractor.
- (b) The Contractor must use reasonable endeavours in exercising its rights under Clause 18.1 to source the Alternative Works at the minimum cost reasonably available.

19 SUB-CONTRACTOR'S INFORMATION, ACCOUNTS AND RECORDS

19.1 Provision of Information

The Sub-Contractor must provide the Contractor with any information requested by the Contractor in relation to the provision of the Works.

19.2 Sub-Contractor to Maintain Accounts and Records

The Sub-Contractor must:

- (a) maintain a complete set of accounts and records in accordance with prudent and accepted accounting principles; and
- (b) retain, and ensure that all of its Personnel retain, any of the items referred to in Clause 19.2(a) for a minimum period of 2 years after the expiry of the Term or earlier termination of the Contract.

19.3 Sub-Contractor to Provide Access

- (a) In addition to the rights set out in Clause 19.1, the Sub-Contractor and its Personnel must permit the Contractor to have access to any of their accounts, books, records, correspondence, receipts, vouchers and other relevant documents (including documents stored in electronic form) for the purposes of substantiating:
 - (i) the Contract Price, including any amendment to the Contract Price;
 - (ii) the existence (or otherwise) of any Indirect Transaction Taxes; or
 - (iii) any other amount payable to, or claimed by, the Sub-Contractor pursuant to the Contract.
- (b) The Contractor may make and retain copies of any of the items referred to in Clause 19.3(a).

20 RIGHT TO AUDIT BY CONTRACTOR

20.1 Right of Audit of Sub-Contractor Performance

In addition to the rights set out in Clause 19, the Sub-Contractor and its Personnel must permit the Contractor to have access to the Sub-Contractors premises, any of their documentation and data (including documents stored in electronic form) and to interview the Sub-Contractor's Personnel in connection with the Works, as necessary for Contractor Personnel to verify, monitor and audit the Sub-Contractor's compliance with:

- (a) the HSE Management Plan(s) and the health, safety and environmental conditions set out in Clause 31; and
- (b) the Contractor policies identified in Clause 33.

20.2 Action by Sub-Contractor

Without limiting any other rights or remedies available to the Contractor as a result of the Sub-Contractor's non-compliance with any of the conditions, policies and standards referred to in Clause 20.1, if deficiencies are identified by an audit undertaken under Clause 20.1, the Sub-Contractor must take prompt corrective action and notify the Contractor of such action.

21 PERFORMANCE SECURITY

21.1 Security

The Sub-Contractor must, within 30 days of a request by the Contractor in writing, lodge with the Contractor an unconditional irrevocable guarantee payable on demand:

- (a) from a bank acceptable to the Contractor in its absolute discretion;
- (b) in the form set out in Appendix A, or such other form as the Contractor may accept; and
- (c) for an amount equal to 10% of:
 - (i) the Contract Price; or
 - (ii) where the Contract Price cannot be determined conclusively as at the date of a request by the Contractor under this Clause 21.1, the Contractor's estimate of the aggregate amount payable by the Contractor to the Sub-Contractor in respect of the Works,

(**Security**).

21.2 Additional Security

If, as a result of a Variation there is an increase in the Contract Price (as evidenced by a document signed in accordance with Clause 7.3(e)), the Sub-Contractor must within 30 days of a request by the Contractor in writing, lodge with the Contractor an additional or replacement Security so as to ensure that Securities are provided for, in aggregate, an amount equal to 10% of the revised Contract Price.

21.3 Stamp Duty and Other Taxes

All stamp duty and other Taxes payable in relation to the Security and any additional Security must be paid by the Sub-Contractor prior to lodging the Security with the Contractor.

21.4 No payment prior to lodgement of Security

Notwithstanding any other provision of the Contract, the Contractor is not obliged to pay any amount to the Sub-Contractor until the Sub-Contractor has lodged a Security, or additional Security, with the Contractor in compliance with a request from the Contractor under Clauses 21.1 or 21.2, as the case may be.

21.5 Release Date

The Security will be held by the Contractor for the proper performance of the Contract until the later of:

- (a) the date on which all the obligations and contingent obligations of the Sub-Contractor pursuant to the Contract (including in respect of any Defects Liability Period) have been fulfilled; or

- (b) the date on which all moneys payable to the Contractor by the Sub-Contractor pursuant to the Contract have been paid,
(Release Date).

21.6 Recourse to Security

- (a) The Contractor may have recourse to the Security if the Contractor believes (acting reasonably) that the Sub-Contractor has not performed its obligations in accordance with the Contract or otherwise has a claim against the Sub-Contractor (whether in relation to the Contract or otherwise).
- (b) Notwithstanding any other provision of the Contract, the Contractor will not be liable for any Liabilities incurred or suffered by the Sub-Contractor in relation to the use of the Security by the Contractor.
- (c) The Sub-Contractor 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:
 - (i) the Contractor from using any sum or sums received from the conversion of the Security;
 - (ii) the Contractor from exercising its rights under the Security; or
 - (iii) the issuer of the Security from exercising its rights or performing its obligations under the Security.

21.7 Return of Security

- (a) Subject to Clause 21.7(b), within 30 days after the Release Date, the Contractor must return the Security to the Sub-Contractor.
- (b) As a condition precedent to the return of any Security to the Sub-Contractor, the Sub-Contractor must execute and deliver a release in the form set out in Appendix B.

22 PRESERVATION OF EXISTING THIRD PARTY SUPPLY ARRANGEMENTS

The Sub-Contractor acknowledges that:

- (a) supply arrangements exist between the Contractor and third party suppliers as at the Commencement Date; and
- (b) the Contractor has no obligation to the Sub-Contractor to seek to alter, modify or terminate any of the supply arrangements referred to in Clause 22(a).

23 NO MINIMUM PURCHASE OR EXCLUSIVITY

23.1 No Minimum Purchase

Nothing in the Contract obliges the Contractor to request or acquire any minimum level of Works from the Sub-Contractor.

23.2 No Exclusivity

The Contract is not evidence of, nor does it create, an exclusive relationship between the Contractor and the Sub-Contractor in respect of the Works (or any aspect of it).

24 SUB-CONTRACTOR PERSONNEL, FACILITIES AND EQUIPMENT

24.1 Sub-Contractor Personnel

The Sub-Contractor is required to supply all Personnel necessary for the proper performance of the Works. Such Personnel must be appropriately qualified, competent and skilled to perform the relevant part of the Works in respect of which they are engaged.

24.2 Engagement of Personnel

The Sub-Contractor must ensure that all Personnel of the Sub-Contractor engaged to provide any part of the Works comply with Clauses 43, 44, 45, 46, 50 and 51 with respect to Intellectual Property Rights, Confidential Information and business standards.

24.3 Sub-Contractor Personnel Information

- (a) Promptly following the date of the Contract, the Sub-Contractor must provide the Contractor Representative with a detailed organisational chart containing details of the positions and reporting relationships within the Sub-Contractor's organisation in relation to supervisory Personnel associated with the provision of the Works.
- (b) During the Term, the Sub-Contractor must promptly notify the Contractor Representative of any changes to the positions and reporting relationships outlined in the organisational chart provided in accordance with Clause 24.3(a).
- (c) The Sub-Contractor must at all times keep an updated list of its Personnel undertaking work on the Site.

24.4 Contractor May Object to Personnel

The Contractor Representative may object to any of the Sub-Contractor's Personnel who, in the opinion of the Contractor Representative, is lacking in appropriate skills or qualifications, engages in misconduct or is incompetent or negligent. The Sub-Contractor must remove such Personnel upon receipt from the Contractor Representative of notice requiring it to do so and must not re-employ that person in connection with the Works without the prior written consent of the Contractor Representative. In addition, the Sub-Contractor must at its cost replace such removed Personnel with suitably qualified, competent, skilled and approved Personnel.

24.5 Sub-Contractor Responsibilities

The Sub-Contractor is responsible for:

- (a) the transportation of its Personnel to and from the Site and will provide for the movement of its Personnel on the Site at all times and all vehicles and drivers used for this purpose must be properly licensed and all vehicles must comply with the requirements of any applicable road safety and traffic laws, legislation and regulations;
- (b) the supply of all labour, supervision, tools, equipment, materials, power, water, safety equipment and other requirements necessary for the Sub-Contractor to provide the Works in accordance with the Contract;
- (c) packing and transporting to the Site any Works or Goods manufactured off-Site provided that the Sub-Contractor must not pack or dispatch any part of such off-Site materials to Site without the prior written approval of the Contractor Representative; and
- (d) the health and safety of its Personnel.

24.6 Contractor Facilities

- (a) Subject to Clauses 24.5 and 24.6(b), to the extent that the Contractor has relevant Facilities in place which are available, those Facilities will be available for use by the Sub-Contractor or any of its Personnel in relation to the provision of the Works. The Sub-Contractor is responsible for the provision of any Facilities which are required for the provision of the Works to the extent that they are not already in existence and available (as determined by the Contractor).
- (b) The Sub-Contractor is required to inform the Contractor Representative at least 7 days in advance of its requirements in relation to the use of the Contractor's Facilities. The terms of use of any of the Contractor's Facilities will be at the Contractor's discretion.
- (c) The Sub-Contractor must ensure that at all times that any Facilities used are left in a clean, orderly and safe condition and fit for immediate use.

24.7 Improper or Defective Items

- (a) The Contractor Representative may object to and have removed from the Site any improper or defective materials, plant, machinery or implements and may also request the addition of such items as in the opinion of the

Contractor Representative are necessary for the due completion and fulfilment of the Contract.

- (b) If the Sub-Contractor fails to comply with any such objection or request made by the Contractor Representative within 7 days of receiving notice of that objection or request, then the Contractor may add to or remove such materials, plant, machinery or implements as it sees fit at the cost of the Sub-Contractor.

25 DESIGN WORK

25.1 Application of Clause

This Clause 25 applies where Schedule A (Works) specifies that the Sub-Contractor is required to carry out Design Work.

25.2 Design Work Obligations

The Sub-Contractor agrees:

- (a) the description of the Works set out in the Contract is adequate for the Sub-Contractor to complete the Design Work; and
- (b) the Sub-Contractor will complete the Design Work so that the construction of the Works may be commenced within the time specified in the Works Timetable and so as to enable Practical Completion to be reached by the Practical Completion Date.

25.3 Prior Design Work

If the Contractor has had the Design Work partially completed by others (**Prior Design Work**) the Sub-Contractor agrees that:

- (a) the Sub-Contractor will be fully responsible for the whole of the Design Work in accordance with the Contract despite any errors, inconsistencies, omissions or inadequacy in the Prior Design Work;
- (b) Design Work will be taken to include the Sub-Contractor carrying out the development, correction and completion of the Prior Design Work (as the case requires); and
- (c) The Prior Design Work will not affect the obligations of the Sub-Contractor under the Contract.

25.4 Contractor Representative's Prior Consent to Use Design Documents

The Sub-Contractor must not commence the construction of any part of the Works until:

- (a) the Design Work in relation to that part of the Works has been completed in accordance with the Contract; and

- (b) the documents set out in the Contract prepared in connection with the Design Work have been submitted to the Contractor Representative and the Contractor Representative has consented to their use for the purposes of the Works.

25.5 Purpose and Effect of Contractor's Involvement

The requirement for the Sub-Contractor to obtain the Contractor Representative's consent to the use of design, specification or other documents is not to be taken to impose on the Contractor or the Contractor Representative any obligation in respect of the design of the Works and none of:

- (a) the Contractor Representative's or the Contractor's consent to the use of any such documents'
- (b) the Contractor Representative's or Contractor's comment or failure to comment upon, review or non-review of or rejection or non-rejection of any documents; or
- (c) any direction by the Contractor Representative or the Contractor (including any Variation),
- (d) will relieve the Sub-Contractor from any of its obligations, warranties or liabilities in respect of the Design Work.

26 TESTING, COMMISSIONING AND INSPECTION

26.1 Testing and Commissioning

The Sub-Contractor must undertake any testing or commissioning of the Works required in accordance with the Contract.

26.2 Inspection

The Contractor Representative has the right to inspect or test the Works at any time to determine whether the Works are in accordance with the Contract and are to the standard provided for in the Contract.

26.3 Access

The Sub-Contractor must ensure that the Contractor has access to the Works at all times and the Sub-Contractor must provide all facilities necessary for the supervision and inspection of all Works at the Site.

26.4 Dismantling or Opening up Works

- (a) Subject to Clause 26.2(b), if upon inspection after a direction by the Contractor Representative to dismantle or open up any part of a Works, the Works so inspected is in accordance with the Contract, the whole of the expense incurred as a result of the dismantling or opening up and reassembly will be borne by the Contractor. If the Works are found not to

be in accordance with the Contract the whole of the expense so incurred, including without limitation, any costs associated with putting those Works into a condition which is in accordance with the Contract, will be borne by the Sub-Contractor.

- (b) If the Contractor Representative gives the Sub-Contractor reasonable notice that the Contractor Representative wants to inspect any portion of the Works before it is assembled, and the Contractor assembles those Works without first giving the Contractor Representative a reasonable opportunity to inspect, any expense incurred as a result of dismantling or opening up and reassembling those Works will be borne by the Sub-Contractor.

27 TIME AND COMPLETION

27.1 Sub-Contractor's Obligations

Without limiting Clause 10.2, the Sub-Contractor must:

- (a) commence work on the Site on the Commencement Date;
- (b) Perform the Works regularly, diligently and as expeditiously as possible; and
- (c) Achieve Practical Completion by the Practical Completion Date.

27.2 Prior Notice of Practical Completion

The Sub-Contractor must give the Contractor Representative 7 days' notice of the date upon which the Contractor anticipates reaching Practical Completion.

27.3 Changes to Progress of Works

The Contractor Representative may at any time direct the Sub-Contractor to:

- (a) accelerate or delay the progress of the Works;
- (b) suspend the Works for any period;
- (c) change the order or sequence in which the Works are to be carried out; or
- (d) change the days or hours during which the Works are to be carried out, in which case
- (e) the Sub-Contractor must comply with the Contractor Representative's direction to the extent that the Sub-Contractor can do so or notify the Contractor Representative within 2 days after the Contractor Representative's direction that it cannot do so and the reasons why not; and
- (f) the Sub-Contractor will have no Claim arising from the Contractor Representative's direction except that:
 - (i) the Sub-Contractor may claim an amendment to the Works Timetable in accordance with Clause 10.2 in respect of the Contractor Representative's direction; and

- (ii) if the Sub-Contractor incurs extra costs as a direct result of such direction despite the Sub-Contractor using best endeavours to avoid or minimise such costs, the Sub-Contractor may claim an adjustment to the Contract Price to reflect those costs which claim will be considered and determined by the Contractor Representative;

Unless

- (iii) the Contractor Representative's direction has been requested by the Sub-Contractor;
- (iv) the Contractor Representative's direction is required because of a breach of the Contract by the Sub-Contractor; or
- (v) the direction involves or constitutes a Variation for which the Sub-Contractor already has a claim for:
 - (A) adjustment to the Contract Price in accordance with Clause 7; or
 - (B) an amendment to the Works Schedule in accordance with Clause 10.2.

27.4 Issue of Practical Completion Certificate

The Contractor Representative must within 14 days after receiving the Sub-Contractor's request for a Practical Completion Certificate:

- (a) issue a Practical Completion Certificate; or
- (b) notify the Contractor of the reasons why the Contractor Representative considers Practical Completion has not been achieved.

27.5 Issue of Certificate Without Request

The Contractor Representative may issue a Practical Completion Certificate at any time after the Contractor Representative considers Practical Completion has been reached (even if the Sub-Contractor has not requested it to do so).

27.6 Final Completion

Subject to Clause 30, upon the expiry of the Defects Liability Period and when satisfied that all of the Works have been completed in accordance with the Contract, and that all of the Sub-Contractor's obligations under the Contract have been fulfilled, the Contractor Representative must certify that this is the case by providing the Sub-Contractor with a certificate to this effect (***Final Completion Certificate***).

28 GOODS INCORPORATED IN WORKS

28.1 Substitution of Temporary Goods

The Contractor Representative may, without prejudice to the Contractor's rights under the Contract or otherwise in relation to the Goods, require that any Goods

required to be altered or replaced in accordance with Clauses 8.3 or 46.4 be incorporated in the Works on a temporary basis with a view to substituting acceptable Goods when available. No payment will be made by the Contractor to the Sub-Contractor in respect of any Goods used on a temporary basis in accordance with this Clause 28.

28.2 Delay

- (a) Without limiting the Sub-Contractor's responsibility to supply all the Goods and to complete the Works in accordance with the Works Timetable, if in the reasonable opinion of the Contractor Representative, the performance of the Works is or may be delayed due to the delay in arrival of any Goods to be provided by the Sub-Contractor, the Sub-Contractor must provide the Contractor with the following on request by the Contractor Representative:
- (i) sufficient description by way of name and item number of the Goods;
 - (ii) copies of orders for the purchase of manufacture of the Goods;
 - (iii) notification of the date of commencement of manufacture (if applicable); and
 - (iv) a programme for shipment and delivery of the relevant Goods to the Site,
- and the Contractor may then, without creating any existing or future obligations in that regard:
- (v) supply the required Goods at the Sub-Contractor's cost; or
 - (vi) expedite the procurement and/or the manufacture of all or any of the Goods, and the delivery of those Goods.
- (b) Where the Contractor has agreed to supply any item or to assist the Sub-Contractor in the performance of the Contract pursuant to Clause 28.2(a) then:
- (i) if the Goods are stored by the Contractor they must be removed from the Contractor's store or storage area without delay by the Sub-Contractor when required by it or when directed in writing by the Contractor Representative (whichever is the sooner) and those items must be included in the Sub-Contractor's materials procurement schedules;
 - (ii) the Sub-Contractor is responsible for, and must keep in good order and condition, all those items supplied by the Contractor pursuant to Clause 28.2(a) from the date of delivery by the Contractor including any returnable packing or containers;
 - (iii) the Sub-Contractor must account to the Contractor for all items supplied by the Contractor pursuant to Clause 28.2(a) which it has used and must return to the Contractor in good order and condition any of those items which remain unused on the date of issue of the Final Completion Certificate (or earlier if directed by the Contractor), and the Sub-Contractor will be responsible for the cost of replacement or repair of any items lost or damaged while it is responsible for those items; and

- (iv) in the event of any loss of, or damage to, any items supplied by the Contractor pursuant to Clause 28.2(a) at any time after receipt, the Supplier must notify the Contractor Representative as soon as possible of the extent and circumstances of the damage or loss.

28.3 Substitution of Goods

The Sub-Contractor must obtain the Contractor Representative's approval before substituting any other goods, materials, supplies, equipment or other items for those specified in the Contract and any substitution will not affect the Contract Price or the Works Timetable and will be at the Sub-Contractor's cost unless specific written notice to the contrary is given by the Contractor Representative prior to such substitution.

28.4 Importation

Without limiting Clause 15, where Goods are to be imported by the Sub-Contractor into Australia, the Sub-Contractor must comply with any applicable customs laws and regulations, and provide the Contractor with evidence of such compliance on request and the Contractor may also request any additional information in relation to the Goods to be imported. If the cost to the Sub-Contractor of the relevant item is less than that shown opposite the item in Schedule B (Prices) or Schedule D (Contract Price Breakdown) (or elsewhere in the Contract), then the Contract Price will be reduced by the amount of the difference.

29 SEPARABLE PORTIONS

29.1 Interpretation

The interpretations of "Practical Completion Date" and "Practical Completion" will apply separately to each Separable Portion and references to the "Works" will mean the Works comprised in the relevant Separable Portion.

29.2 Creating Separable Portions

If:

- (a) a part of the Works has reached a stage of Practical Completion; and
- (b) another part of the Works has not reached a stage of Practical Completion; and
- (c) the Parties do not agree on the creation of Separable Portions.

the Contractor Representative may determine the respective parts as Separable Portions.

29.3 Use of Separable Portions

In using a Separable Portion that has reached Practical Completion, the Contractor will not unreasonably hinder the Sub-Contractor in the performance of the other parts of the Works.

30 EFFECT OF CERTIFICATES

30.1 Issue of Certificates

The issue of any practical Completion Certificate or Final Completion Certificate will not:

- (a) constitute a release of the Sub-Contractor from the warranties given, or performance of any of its obligations, under the Contract;
- (b) be taken as an admission of the due performance of the Contract or any part of it or of the accuracy of any Claim made by the Sub-Contractor or of altered, amended, omitted, additional or otherwise varied Works having been directed or permitted by the Contractor Representative; or
- (c) negate or prejudice any of the rights, powers and remedies of the Contractor or the Contractor Representative.

30.2 Certificate Not Evidence of Performance

Without limiting Clause 30.1, the issue of a Final Completion Certificate will not constitute evidence that all of the Works under the Contract have been finally and satisfactorily performed by the Sub-Contractor in circumstances of:

- (a) fraud, dishonesty or negligent or deliberate concealment on the part of the Sub-Contractor or any of its Personnel;
- (b) any matter, omission or defect in respect of the Works or any part of the Works which reasonable inspection at the time of the issue of the relevant Final Completion Certificate would not have disclosed; or
- (C) the incorrect inclusion or exclusion (whether accidental, negligent or deliberate) of any materials, Works or figure in any computation, or any arithmetical error in any computation.

31 HEALTH, SAFETY AND ENVIRONMENT

31.1 Application of Clause

This Clause 31 applies to the extent the Sub-Contractor or any of its Personnel are required to be on, or near the vicinity of, the Site for the purposes of the Works.

31.2 Sub-Contractor Acknowledgement

The Sub-Contractor acknowledges that there is a direct relationship between the Sub-Contractor's health, safety and environmental performance and the success of the Contractor's business.

31.3 Compliance with Health, Safety and Environmental Laws, Policies and Standards

The Sub-Contractor agrees to comply, and to ensure that its Personnel comply, with:

- (a) without limiting Clause 33, the Contractor's health, safety and environmental policies and associated standards applicable from time to time (a copy of which has been provided to the Sub-Contractor) (**HSE Policies and Standards**);
- (b) without limiting Clause 34, all relevant health, safety and environmental legislation and laws in force from time to time; and
- (c) the health, safety and environmental conditions contained in this Clause 31.

31.4 Health, Safety and Environmental Management Plan

- (a) If it has not already been finalised as part of the Sub-Contractor's submission of the Sub-Contractor's Tender (if any), the Sub-Contractor must, within 30 days after the date of the Contract, submit proposed health, safety and environmental management plan(s) (**HSE Management Plan(s)**) in accordance with the HSE Policies and Standards, for review by the Contractor Representative.
- (b) The Contractor Representative will review the proposed HSE Management Plan(s) and provide the Sub-Contractor with any request for amendments.
- (c) The Contractor and its Personnel may not commence work on-Site unless and until the HSE Management Plan(s) and any requested amendments to it have been approved by the Contractor Representative.
- (d) The Contractor Representative may at any time direct the Sub-Contractor to amend the approved HSE Management Plan(s) to adequately reflect any amendments to the HSE Policies and Standards.
- (e) The Sub-Contractor must keep a copy of the approved HSE Management Plan(s) at its on-Site office or work area at all times during the Term.

31.5 Induction Courses

- (a) Each of the Sub-Contractor's Personnel must attend all appropriate and relevant induction courses required by the Contractor (**Contractor Induction Courses**).
- (b) Where, pursuant to the operating rules for specific areas of the Contractor, any of the Sub-Contractor's Personnel are required to have specific skills for the performance of the Works (**Contractor Competencies**), the

induction and training requirements in relation to those Contractor Competencies must:

- (i) be included in the HSE Management Plan(s);
 - (ii) to the extent they are not set out in the Specifications, be confirmed with the Contractor Representative; and
 - (iii) be undertaken by the relevant Personnel prior to the commencement of any work on, or near the vicinity of, the Site.
- (c) Unless otherwise agreed:
- (i) the Contractor will arrange and pay for the Contractor Induction Courses and will be responsible for the costs of Sub-Contractor Personnel attending the Contractor Induction Courses; and
 - (ii) the Sub-Contractor will arrange and pay for all training courses in respect of Contractor Competencies and will be responsible for the costs of Contractor Personnel attending such training courses.
- (d) Any person visiting the Sub-Contractor on Site to meet Personnel working on the Site, and who is not performing any type of manual work, will also be required to attend the relevant Contractor Induction Courses. However, this requirement will not apply if the visitor is accompanied at all times whilst on Site by a person who has attended all relevant Contractor Induction Courses, and has Contractor Competencies in relation to access to the Site.

31.6 Sub-Contractor to Remain Liable

Nothing in this Clause 31 (including the approval of the HSE Management Plan(s)) limits or removes any obligation or duty imposed on the Sub-Contractor or any of its Personnel (whether under the Contract or otherwise) to secure or have regard to the health and safety of any of its Personnel.

31.7 Removal from Site

Notwithstanding any other term of the Contract, in the event of any breach of this Clause 31, the Contractor may:

- (a) require the Sub-Contractor, Sub-Contractor's Personnel and/or any other person to leave the Site immediately; and
- (b) require the Sub-Contractor and/or any of its Personnel to remove any material or substance from the Site at the Contractor's cost,

And the Sub-Contractor must, at its own cost, ensure such request is immediately complied with and take all possible action to ensure the protection and safety of all works, personnel and the environment.

32 ACCESS TO SITE

32.1 Access

Without limiting Clause 37.10(e) or this Clause 32, the Contractor will grant to the Sub-Contractor access to the Site on and from the date of the Contract and the

Sub-Contractor must give the Contractor Representative at last 7 days' notice before commencing the Works on the Site.

32.2 Sub-Contractor Obligations

- (a) Prior to commencement of the Works on the Site, the Sub-Contractor must notify the Contractor Representative of its normal times and periods of work and must give the Contractor Representative at least 24 hours' notice of any alteration in its working hours or periods of work.
- (b) The Sub-Contractor must at all times consult with the Contractor Representative and obtain 14 days' prior written approval for any action likely to interfere with the Contractor's operations. The Contractor Representative must reply to any such request within 7 days of receipt of such request.

32.3 Setting Out

- (a) Unless the Contract provides otherwise, the Sub-Contractor will be responsible for correctly setting out the Works, and must provide the necessary equipment for that task.
- (b) Any error which arises in the setting out must be remedied by the Sub-Contractor at its own expense.

32.4 Cleaning of the Site

The Sub-Contractor must ensure that the Site is left in a clean, orderly and safe condition and fit for immediate use and must carry out all drainage and pumping required to keep the works dry.

32.5 Delayed or Suspended Access

If there is any delay in giving the Contractor access to the Site, or if access is suspended or inadequate, the contractor may apply for an amendment to the Works Timetable in accordance with Clause 10.2.

32.6 Right to Deny Access

If the Sub-Contractor or its Personnel fail to comply with any of the requirements of Clause 31 or this Clause 32, then the Contractor Representative may in its discretion deny that person or those persons access to the Site or permit such access subject to terms and conditions the Contractor Representative thinks appropriate.

32.7 No Exclusive Possession

The Sub-Contractor acknowledges that nothing in the Contract confers on it exclusive possession of the Site and that it will only be granted access to the Site

to the extent deemed necessary by the Contractor Representative for the performance of the Works.

33 COMPLIANCE WITH CONTRACTOR POLICIES

During the Term, the Sub-Contractor must, and must ensure that its Personnel, comply with each of the rules and policies of the Contractor, as notified by the Contractor from time to time by notice to the Sub-Contractor in writing.

34 LAWS

34.1 Compliance with Laws

During the Term, the Contactor must:

- (a) comply with all applicable legislation, laws and Government Agency requirements relating to its obligations under the Contract and ensure that each of its Personnel does the same; and
- (b) in relation to the provision of the Works, at its cost:
 - (i) obtain all necessary notices;
 - (ii) give all necessary notices;
 - (iii) pay all necessary fees, deposits and Taxes,

and, if requested by the Contractor, must provide evidence of the matters referred to in this Clause 34.1(b).

34.2 Consequences of Breach

Notwithstanding any other Clause of these General Conditions or term of the Contract, in the event of any breach of Clause 33 or this Clause 34, the Contractor may:

- (a) require the Sub-Contractor, the Sub-Contractor's Personnel, and/or any other person to leave the Site immediately; and
- (b) require the Contactor and/or any of its Personnel to remove any material or substance from the Site at the Contactor's cost,

And the Sub-Contractor must, at its cost, ensure such request is immediately complied with and take all possible action to ensure the safety of all Personnel.

35 CO-OPERATION WITH THIRD PARTIES

35.1 No Interference

The Sub-Contractor must not impede or interfere with the work of any other suppliers or their personnel (whether employed or engaged by the Contractor or not) on-Site during the Term.

35.2 No Compensation

The Sub-Contractor is not entitled to any increase in the Contract Price, damages, costs or any other financial or other compensation as a result of any interference on-Site from other suppliers, Sub-Contractors or personnel.

35.3 Amendment to Works Timetable

If, through no fault of its own, the Sub-Contractor suffers delay through interference by other suppliers, Sub-Contractors or their personnel on the Site, the Sub-Contractor may apply for an amendment to the Works Timetable in accordance with Clause 10.2.

36 FORCE MAJEURE

36.1 Notice of Force Majeure

A Party will not be liable for any delay or failure to perform any of its obligations under the Contract (other than an obligation to pay money) if as soon as possible after the beginning of the Force Majeure affecting the ability of the Party to perform any of its obligations under the Contract, it gives a notice to the other party that complies with Clause 36.2.

36.2 Force Majeure Notice

A notice given under Clause 36.1 must:

- (a) specify the obligations the Party cannot perform;
- (b) fully describe the Force Majeure;
- (c) estimate the time during which the Force Majeure will continue; and
- (d) specify the measures proposed to be adopted to remedy or abate the Force Majeure.

36.3 Obligation to Remedy and Mitigate

The Party that is prevented from carrying out its obligations under the Contract as a result of Force Majeure must:

- (a) remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible; and
- (b) take all action reasonably practicable to mitigate any Liabilities suffered by the other Party as a result of its failure to carry out its obligations under the Contract.

36.4 No Compensation

Any amendment to the Works Timetable in accordance with Clause 10.2 is the Sub-Contractor's sole remedy for any delays resulting from Force Majeure where

the Sub-Contractor is the affected Party and the Sub-Contractor is not entitled to any increase in the Contract Price or any damages, costs or expenses in connection with the Force Majeure.

37 INSURANCES

37.1 Sub-Contractor Insurances

The Sub-Contractor is required, at its cost, to effect and maintain throughout the Term and any additional period specified in the Contract, each of the insurances described in Clauses 37.2, 37.3, 37.4, 37.5, 37.6, 37.7, 37.8 and 37.9 (**Sub-Contractor Insurances**) in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract.

37.2 General and Product Liability Insurance

- (a) Insurance covering all Liabilities in respect of any injury to, or death of, any person not being a person who at the time of the occurrence is engaged in or upon the service of the insured under a contract of service or apprenticeship, or any loss, damage or destruction to property not belonging to nor in the care, custody or control of the insured, however caused. Such insurance must provide cover to an amount of not less than A\$10,000,000 for each and every claim.
- (b) The insurance outlined in Clause 37.2(a) must unless prohibited by law, be endorsed to:
 - (i) insure the Contractor and its Personnel for their respective rights and interests arising out of the performance of the Contract;
 - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applied as if a separate policy has been issued to each such party;
 - (iii) waive all express or implied rights of subrogation against the Contractor and its Personnel arising out of the performance of the Contract;
 - (iv) cover "goods in the physical and legal control of the Sub-Contractor: for an amount not less than the value of the "goods" held off the Site; and
 - (v) 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.

37.3 Workers' Compensation and Employer's Liability Insurances

- (a) Workers' compensation and employers' liability insurances covering all Liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, any employee of the Sub-Contractor or any person deemed to be an employee of the Sub-Contractor.

- (b) The insurance outlined in Clause 37.3(a) must, unless prohibited by law, be endorsed to:
 - (i) indemnify the Contractor against any liability which it may incur to the Contractor's employees, arising by virtue of the applicable workers' compensation statute or regulations or at common law;
 - (ii) extend to include employees underground if any of the work under the Contract is to be performed underground; and
 - (iii) provide cover in respect of each and every claim for an amount not less than the minimum statutory requirements.
- (c) The insurance outlined in Clause 37.3(a) must, unless prohibited by law, waive all express or implied rights of subrogation against the Contractor and its Personnel.

37.4 Sub-Contractor's Plant and Equipment

If the performance of the Contract requires the Contractor to use or provide for use plant and equipment that will be used at the Site in connection with the Contract, the Contractor must maintain or require the owner of such plant and equipment (except where the owner of such plant or equipment is the Contractor) to maintain insurance covering all loss and damage to the supplier's plant and equipment, for its replacement value. The insurance must, unless prohibited by law, waive all express or implied rights of subrogation against the Contractor and its directors, officers and employees.

37.5 Goods in Transit

If the performance of the Contract requires the Sub-Contractor to transport Goods to or from the Site, unless otherwise advised by the Contractor in writing, the Contractor will maintain insurance covering loss of or damage to the Goods during transit, regardless of whether the Contractor has paid for those Goods. Such insurance must not the Contractor as a party insured under the policy.

37.6 Motor Vehicle/Automobile Third Party Liability Insurance

- (a) If the performance of the Contract requires the Sub-Contractor or its Personnel to use or provide for use motor vehicles, the Sub-Contractor must maintain or require the owners of such motor vehicles to maintain third party liability insurance covering all Liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property arising from the use of such motor vehicles.
- (b) The insurance outlined in Clause 37.6(a) must, unless prohibited by law, be endorsed to:
 - (i) insure the Contractor and its Personnel for their respective rights and interests arising out of the performance of the Contract.
 - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;

- (iii) waive all express or implied rights of subrogation against the Contractor and its Personnel arising out of the performance of the Contract; and
- (iv) include a clause that provides 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.

37.7 Professional Indemnity Insurance

If the performance of the Contract includes or is related to the provision of professional advice or services, the Contactor must effect and maintain throughout the Term and for a period of not less than 3 years after termination of the Contract or completion of the Sub-Contractor's obligations under the Contract, professional indemnity insurance in respect of any negligent acts, errors or omissions in the advice or services provided by the Sub-Contractor under the Contract. Such insurance must provide cover to an amount of not less than A\$5,000,000 in respect of each and every claim.

37.8 Marine Insurance

- (a) If the performance of the Contract requires or involves the use of watercraft, the Contactor must maintain or require the owners of such watercraft to maintain:
 - (i) 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
 - (ii) protection and indemnity insurance including coverage for injuries or death of masters, mates and crews. Such insurance must provide cover to an amount of not less than A\$10,000,000 for each and every claim.
- (b) The insurance outlined in Clause 37.8(a) must, unless prohibited by law, be endorsed to:
 - (i) insure the Contractor and its Personnel for their respective rights and interests arising out of the performance of the Contract;
 - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
 - (iii) waive all express or implied rights of subrogation against the Contractor and its Personnel arising out of the performance of the Contract; and
 - (iv) 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.

37.9 Aviation Insurance

- (a) If the performance of the Contract requires or involves the use of aircraft (including helicopters), the Sub-Contractor must maintain or require the owners of such aircraft to maintain:
 - (i) aircraft hull insurance, on all aircraft so used, with a limit of cover not less than the market value of the aircraft; and
 - (ii) liability insurance including coverage for injuries or death of crew, passengers and any other person, and in respect of loss of or damage to cargo. Such insurance must provide cover to an amount of not less than A\$10,000,000 for each and every claim.
- (b) The insurance outlined in Clause 37.9(a) must, unless prohibited by law, be endorsed to:
 - (i) insure the Contractor and its Personnel for their respective rights and interests arising out of the performance of the Contract;
 - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
 - (iii) waive all express or implied rights of subrogation against the Contractor and its Personnel arising out of the performance of the Contract; and
 - (iv) 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.

37.10 Insurance Terms

- (a) If the Sub-Contractor Insurances are subject to the application of any self-insured retention, excess or deductible, the amount of the self-insured retention, excess or deductible must be declared to the Contractor. The Contractor reserves the right to require the Sub-Contractor to reduce the amount of any self-insured retention, excess or deductible where such amount is considered by the Contractor as being unreasonable in the circumstances of the Contract.
- (b) The Sub-Contractor Insurances must be underwritten by a reputable insurer with a security rating from A.M. Best of not less than "A" and on terms and conditions consistent with prudent risk management practice.
- (c) No provision contained in this Clause 37 will limit the Sub-Contractor's liability in relation to the indemnities in the Contract.
- (d) Before performing any of the Works, and each time the policies are renewed or varied, the Sub-Contractor must provide the Contractor with any insurance certificate of currency such other evidence as the Contractor may reasonably require that the Sub-Contractor and its Sub-Sub-Contractors are insured in accordance with the Contract.
- (e) In the event that the Sub-Contractor fails to, or fails to ensure that its Sub-Sub-Contractors, effect or keep in fore any of the insurances required pursuant to the Contract, the Contractor may do one or more of the following:

- (i) effect and maintain such insurances and deduct the costs of such insurances from any moneys due to the Sub-Contractor;
 - (ii) refuse the Sub-Contractor and its Personnel access to all or any part of the Site; and/or
 - (iii) treat the failure to insure as a default under the Contract.
- (f) All Sub-Contractor Insurances must not be varied to the detriment of the Contractor or its Personnel, cancelled or allowed to lapse unless the Sub-Contractor has received a written consent from the Contractor.

37.11 Notification Under Sub-Contractor's Policy

If the Sub-Contractor becomes aware of an event which may give rise to a claim involving the Contractor under any policy of insurance effected by the Sub-Contractor as required by this Clause 37, the Sub-Contractor must notify the Contractor and must ensure that the Contractor is kept fully informed of subsequent action or developments concerning the claim.

37.12 Sub-Contractors Insurance

The Sub-Contractor must ensure that its Sub-Contractors have the benefit of or effect and maintain insurances similar to the Sub-Contractor Insurances required to be effected by the Sub-Contractor.

37.13 Insurance Claims and Payment of Insurance Excess

- (a) The Sub-Contractor will be responsible for the payment of any excess or deductible relating to the insurances effected by the Sub-Contractor and the Sub-Contractor will not be entitled to recover from the Contractor any excess or deductible so paid by the Sub-Contractor.
- (b) The Contractor will be responsible for the payment of any excess or deductible relating to the insurances effected by the Sub-Contractor where the Contractor makes a claim under such policy, to the extent that the Contractor determines that the Sub-Contractor or any of its Personnel were responsible for the loss or damage.

37.14 Survival of Clause

This Clause 37 will survive the expiry or earlier termination of the Contract.

38 INDEMNITIES

38.1 Acknowledgement

The Sub-Contractor acknowledges that if it enters on to the Site, it does so at the Sub-Contractor's own risk. The Sub-Contractor must ensure that its Personnel are also aware that they enter onto the Site at their own risk.

38.2 Indemnity

- (a) Subject to Clause 38.3, the Sub-Contractor will indemnify (and will keep indemnified) the Contractor, each End User and their respective Personnel (**Indemnified Parties**) from and against all Liabilities that any Indemnified Party suffers, sustains or incurs, arising from any one or more of the following:
- (i) the performance, non-performance or breach by the Contractor or its Personnel of any of the Sub-Contractor's obligations (including any warranty) under the Sub-Contractor and/or any Purchase Order;
 - (ii) any act or omission by the Contractor or its Personnel arising out of the performance of the Contract and/or any Purchase Order;
 - (iii) the entry onto and the activities undertaken on, and in, the Site by the Sub-Contractor and its Personnel;
 - (iv) the acceptance and use of the Works by any Indemnified Party;
 - (v) the illness, injury or death of any of the Sub-Contractor's Personnel arising out of or in any way related to the Contract and/or any Purchase Order;
 - (vi) any Environmental Event which occurs after the date of the Contract which is caused by the Sub-Contractor or its Personnel, in connection with the Sub-Contractor's performance or non-performance of the Contract, or the activities conducted by the Sub-Contractor or its Personnel at the Site;
 - (vii) any claim made against the Contractor by any of the Sub-Contractor's Personnel in respect of relevant legislation concerning income tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal; or
 - (viii) any penalty imposed for breach of any applicable law in connection with the performance of the Works.
- (b) The Contractor is entitled to recover from the Sub-Contractor an amount due to an End User and/or its Personnel under the indemnity in Clause 38.2(a) on behalf of that End User and/or its Personnel and will hold any amount recovered, and the benefit of the indemnity in Clause 38.2(a) to which an End User and/or its Personnel is entitled, as trustee for and on behalf of that End User and/or its Personnel.

38.3 Exclusions

The Sub-Contractor will not be liable under clause 38.2 to the extent that the Liability was solely caused by (as the case requires) the Contractor's or an End User's negligent acts or omissions or wilful misconduct.

38.4 Indemnity Held for Benefit of Contractor, End User and GFR Personnel

Every exemption, limitation, defence, immunity, indemnity or other benefit contained in the Contract or otherwise to which the Contractor or an End User is

entitled will be held by the Contractor as trustee for the benefit of, and will extend to protect each of the Contractor's and each End User's Personnel.

38.5 Indemnity Continuing

Each indemnity in the Contract is a continuing obligation separate and independent from the Sub-Contractor's other obligations and survives termination of the Contract.

38.6 No Requirement for Expense Before Enforcing Indemnity Right

It is not necessary for the Contractor or its respective Personnel to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

39 NO FAULT TERMINATION

39.1 Termination Notice

The Contractor may terminate the Contract or any part of it by giving the Sub-Contractor not less than 30 days' notice of its intention to do so (**Termination Notice**).

39.2 Obligations Upon Receipt of Termination Notice

Upon receipt of a Termination Notice, the Sub-Contractor must:

- (a) immediately cease performance of the Works in accordance with, but only to the extent specified in, the Termination Notice;
- (b) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of the Works;
- (c) immediately take all possible action to mitigate any liabilities incurred by it as a result of such termination; and
- (d) take any other action reasonably required by the Contractor in relation to the termination.

39.3 Obligations Upon Termination

On the date of termination specified in the Termination Notice, the Sub-Contractor must:

- (a) provide the Contractor with a detailed report in such form as the Contractor may require in relation to the Works performed up to and including the date of receipt of the Termination Notice;
- (b) return to the Contractor any items issued to the Sub-Contractor by the Contractor during the Term;
- (c) offer the Contractor first right of refusal to purchase any of the Contractor's equipment used for the purposes of the Contract to be purchased by the

Contractor at its depreciated value or such other value as agreed by the Parties; and

- (d) take any other action relating to the termination of the Contract as the Contractor may reasonably require.

39.4 Sub-Contractor Compensation

- (a) Following termination of the Contract by the Contractor pursuant to this Clause 39, the Contractor is entitled to recover from the Contractor out-of-pocket expenses which it has incurred or will incur solely as a result of the Contract and which it is unable to otherwise recover or mitigate, including as a result of (if applicable):
 - (i) removing the Sub-Contractor's plant and equipment from the Site;and
 - (ii) transporting Sub-Contractor Personnel back to their place of engagement.
- (b) The amounts outlined in Clause 39.4(a) represent the only amounts or Liabilities recoverable from the Contractor by the Sub-Contractor following a termination of the Contract by the Contractor in accordance with this Clause 39.

40 SUB-CONTRACTOR DEFAULT AND INSOLVENCY

40.1 Sub-Contractor Default Notice

If the Sub-Contractor breaches any term of the Contract, the Contractor may serve a notice of default (**Sub-Contractor Default Notice**) on the Sub-Contractor containing the information specified in Clause 40.2.

40.2 Sub-Contractor Default Notice Requirements

A Sub-Contractor Default Notice must:

- (a) either require that the breach be remedied within a specified period of not less than 30 days after service of the Sub-Contractor Default Notice on the Sub-Contractor or state that the breach is incapable of remedy; and
- (b) state that if the breach is not remedied within the period specified in the Sub-Contractor Default Notice or is incapable of remedy, then the Contractor may by further notice to the Sub-Contractor do one or more of the following:
 - (i) elect wholly or partly to suspend payment under the contract until the breach has been remedied by the Sub-Contractor;
 - (ii) take such action as the Contractor deems necessary to cure the breach (the cost of such action so taken by the Contractor being recoverable from the Sub-Contractor as a debt due to the Contractor by the Sub-Contractor); or
 - (iii) terminate the Contract or any part of it with effect from a specified date (**Cancellation Date**).

40.3 Obligations Upon Termination

If the Contractor gives notice pursuant to Clause 40.2(b)(iii), the Contract is terminated from the Cancellation Date and the Sub-Contractor must:

- (a) cease performance of the Works in accordance with, but only to the extent specified in, the Sub-Contractor Default Notice;
- (b) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of the Works;
- (c) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination;
- (d) offer the Contractor first right of refusal to purchase any of the Sub-Contractor's equipment used for the purposes of the Contract to be purchased by the Contractor at its depreciated value or such other value as agreed by the Parties; and
- (e) take any other action reasonably required by the Contractor in relation to the termination.

40.4 No Prejudice

Notwithstanding the terms of any Sub-Contractor Default Notice or Termination Notice, no action taken by the Contractor under this Clause 40 will prejudice the existence of any of its rights and remedies under the Contract which the Contractor may have as a result of the relevant breach.

40.5 Sub-Contractor Insolvency or Bankruptcy

If the Sub-Contractor:

- (a) being a Contractor:
 - (i) stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
 - (ii) is insolvent within the meaning of section 95A of the Corporations Act;
 - (iii) must be presumed by a court to be insolvent by reason of section 459C(2) of the Corporations Act;
 - (iv) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
 - (v) has an administrator appointed over all or any of its assets or undertaking, or any step preliminary to the appointment of an administrator is taken;
 - (vi) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertaking; or
 - (vii) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up or dissolution or for it to enter into an arrangement, compromise or composition with

or assignment for the benefit of its creditors, or class of them or any of them; or

- (b) being an individual, commits an act of bankruptcy or makes a compromise or composition with or assignment of his property in favour of creditors,

the Contractor may either:

- (i) terminate the Contract by notice to the Sub-Contractor or any other person in whom the Contract has been vested; or
- (ii) give the person in whom the Contract has been vested, the option to perform the Works in accordance with the Contract, subject to that person providing a guarantee satisfactory to the Contractor up to the value (as certified by the Contractor Representative) of the Works remaining to be performed pursuant to the Contract.

41 DEFAULT BY CONTRACTOR

41.1 Contractor Default

If the Contractor:

- (a) neglects or refuses to issue a Practical Completion Certificate or a Final Completion Certificate to which the Sub-Contractor is entitled under the Contract; or
- (b) fails to make a payment of any amount due to the Contractor under the Contract in accordance with Clause 16 where the Contractor is not entitled to exercise any of its rights under Clauses 16.7, 17, 37.10(e) or 40.2(b),

(**Contractor Default**), then this Clause 42 will apply.

41.2 Contractor Default Notice

If a Contractor Default is not remedied within 30 days of the Contractor Default arising the Sub-Contractor may serve a notice of default on the Contractor (**Contractor Default Notice**).

41.3 Contractor Default Notice Requirements

A Contractor Default Notice must either:

- (a) require the Contractor to issue a Practical Completion Certificate or a Final Completion Certificate; or
- (b) require the Contractor to pay to the Sub-Contractor the amount owing the subject of the Contractor Default,

Within a specified period of not less than 30 days' after service of the Contractor Default Notice on the Contractor,

- (c) and in both cases state that if the Contractor Default is not remedied within the period specified in the Contractor Default Notice, then the Sub-Contractor may either:
 - (i) cease performance of all or any part of the Works until such time as the Contractor Default is remedied; or

- (ii) terminate the Contract by notice to the Contractor.

41.4 Costs Recoverable by Sub-Contractor

- (a) Following termination of the Contract by the Sub-Contractor pursuant to Clause 41.3(c)(ii), the Sub-Contractor is entitled to recover from the Contractor:
 - (i) the amount owing the subject of the Contractor Default;
 - (ii) out-of-pocket expenses which the Sub-Contractor has incurred or will incur solely as a result of the Contract and which it is unable to otherwise recover or mitigate, including as a result of (if applicable):
 - (A) removing the Sub-Contractor's plant and equipment from the Site; and
 - (B) transporting Sub-Contractor Personnel back to their place of engagement.
- (b) The amounts outlined in Clause 41.4(a) represent the only amounts or Liabilities recoverable from the Contractor by the Sub-Contractor following a termination of the Contract by the Sub-Contractor in accordance with Clause 41.3(b)(ii).

41.5 Contractor Access to Sub-Contractor Records

For the purposes of Clause 41.4(a), the Sub-Contractor must provide the Contractor with such access to its records, books and (subject to confidentiality restrictions) contracts as the Contractor may require in order to verify the amounts claimed by the Sub-Contractor.

42 DISPUTE RESOLUTION

42.1 Dispute

In the event of any dispute, question or difference of opinion between the Contractor and the Sub-Contractor arising out of or under the contract (**Dispute**), a Party may give to the other Party a notice (**Dispute Notice**) specifying the Dispute and requiring its resolution under this Clause 42.

42.2 Dispute Representatives to Seek Resolution

- (a) If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party must nominate one representative from its senior management to resolve the Dispute (each, a **Dispute Representative**).
- (b) if the Dispute is not resolved within 30 days of the Dispute being referred to the respective Dispute Representatives, then either Party may commence legal proceedings in an appropriate court to resolve the matter.

42.3 Performance of Obligations During Dispute

During the existence of any Dispute, the Parties must continue to perform all of their obligations under the Contract without prejudice to their position in respect of such Dispute, unless the Parties otherwise agree.

42.4 Urgent Interlocutory Relief

Except in relation to Clause 21.6(c), nothing in this Clause 42 prevents a Party from seeking any urgent interlocutory relief which may be required in relation to the Contract.

43 CONFIDENTIALITY

43.1 Obligation of Confidentiality

The Contactor undertakes and agrees:

- (a) to hold in strict confidence all Confidential Information and not to disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its Personnel who require the Confidential Information for the purposes of providing the Works; and
- (b) not to make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except and solely to the extent necessary for the performance of the Works,

Unless the Sub-Contractor has obtained the prior written consent of the Contractor to do so (which consent may be withheld by the Contractor in its discretion or given on such terms as it sees fit).

43.2 Exceptions

Clause 43.1 does not apply to:

- (a) information after it becomes generally available to the public other than as a result of the breach of this Clause 43 or any other obligations of confidence imposed on the Sub-Contractor; or
- (b) the disclosure of information in order to comply with any applicable law or legally binding order of any court, Government Agency or recognised stock exchange, provided that prior to such disclosure the Contactor gives notice to the Contractor with full particulars of the proposed disclosure.

43.3 Breach of Consent

The breach of any of the conditions contained in a consent granted pursuant to Clause 43.1 will be deemed to be a breach of the Contract.

43.4 Sub-Contractor Acknowledgment

The Sub-Contractor acknowledges that this Clause 43 is for the benefit of not only the Contractor but also an End User that has any interest in any Confidential Information.

43.5 Indemnity

- (a) Without limiting Clause 38, the Sub-Contractor indemnifies the Contractor and each End User and must keep them indemnified, in respect of any Liabilities incurred or sustained by them resulting from a breach of this Clause 43 by the Sub-Contractor or its Personnel.
- (b) The Contractor is entitled to recover from the Sub-Contractor an amount due to an End User and/or a GFR Group member under the indemnity in Clause 43.5(a) on behalf of that entity and will hold any amount recovered, and the benefit of the indemnity in Clause 43.5(a) to which the entity is entitled, as trustee for and on behalf of that entity.

43.6 Additional Obligations

The obligations in this Clause 43 are in addition to and do not diminish the obligations of the Sub-Contractor in respect of secret and confidential information at common law or under any statute or trade or professional custom or use.

43.7 Return of Confidential Information

If requested by the Contractor, whether prior to or after the expiry or earlier termination of the Contract, the Sub-Contractor must promptly deliver to the Contractor all Confidential Information in the custody, possession or control of the Sub-Contractor or any of its Personnel.

43.8 Survival of Clause

This Clause 43 will survive the termination of the Contract.

44 PUBLIC ANNOUNCEMENTS

Except as required by any applicable law or regulatory requirement or as otherwise permitted by the Contract, the Sub-Contractor may not make any public announcements or disclosures as to the Contract, or otherwise in relation to the subject matter of the Contract, without the prior written consent of the Contractor. In this regard, no media release or public announcement will be made in relation to the existence of the Contract without the Contractor's written approval and should such approval be given, then the wording of such release and the manner of publication must first be approved in writing by the Contractor.

45 INTELLECTUAL PROPERTY RIGHTS IN WORKS

45.1 Sub-Contractor IP

- (a) The Contractor acknowledges that the Sub-Contractor remains the owner of all Sub-Contractor IP and that nothing in the Contract prevents, limits or restricts the Sub-Contractor's subsequent use or exploitation of Sub-Contractor IP.
- (b) The Sub-Contractor grants to the Contractor a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use all Sub-Contractor IP for the purposes of or in connection with the Contractor's business.

45.2 Contract IP

- (a) The Sub-Contractor agrees that all Contract IP will be vested in the Contractor and will be the Contractor's property as and when created and the Sub-Contractor assigns and must ensure that all of its Personnel assign all their respective right, title and interest in and to the Contract IP (whether created before, on or after the Commencement Date) to the Contractor.
- (b) On the Contractor's request, the Sub-Contractor must execute any formal assignment or other document required to give effect to this Clause 45.2.

45.3 Sub-Licence of Sub-Contractor IP

The Contractor may sub-licence the Contractor's rights to the Sub-Contractor IP to any person where that person has been granted use of the Contract IP by the Contractor

45.4 GFR Group IP

- (a) The Sub-Contractor acknowledges and agrees that the Contractor remains the owner of all GFR Group IP and that nothing in the Contract prevents, limits or restricts the Contractor's subsequent use or exploitation of GFR Group IP.
- (b) The Contractor grants to the Sub-Contractor, the Contractor will procure the grant to the Sub-Contractor of a non-exclusive, non-transferable, revocable licence to use the GFR Group IP and the Contract IP for the sole purpose of providing the Works.
- (c) The Sub-Contractor must not reproduce, communicate, use, register or attempt to register any interest in or otherwise deal with the GFR Group IP and the Contract IP, or allow any other person to do the same, for any purpose other than to provide the Works.

45.5 Sub-Contractor Warranty

The Sub-Contractor warrants that:

- (a) the Sub-Contractor has the right to grant to the Contractor the licence under Clause 45.1(b); and
- (b) the Sub-Contractor has the right to assign all Contract IP to the Contractor in accordance with Clause 45.2.

45.6 General Sub-Contractor Obligations

The Sub-Contractor agrees to:

- (a) disclose to the Contractor all Contract IP as and when it is created;
- (b) ensure that any sub-contract the Sub-Contractor enters into in relation to the Contract contains an assignment by the Sub-Sub-Contractor to the Contractor of all Intellectual Property Rights in any Contract IP Created by the Sub-Sub-Contractor for the purposes of the Contract;
- (c) notify the Contractor as soon as the Sub-Contractor becomes aware of any suspected, threatened or actual infringement or unauthorised use of any Intellectual Property Rights in the Contract IP and to provide all reasonable assistance in relation to that infringement; and
- (d) provide all reasonable assistance the Contractor may request to protect, perfect, enforce, defend or assert its interest in and right to use and exploit the Contract IP (including assisting the Contractor to take action against persons infringing the Contract IP). The Sub-Contractor must also ensure that its employees provide all reasonable assistance to the Contractor as set out in Clause 45.2(b).

45.7 Survival of Clause

This Clause 45 will survive the termination of the Contract.

46 THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

46.1 Third Party Intellectual Property Rights

The Contractor warrants that to the extent that it uses or proposes to use the Intellectual Property Rights of any third party in the performance of the Works, or to the extent the Contractor will use or might propose to use the Intellectual Property Rights of any third party in the use and enjoyment of the Works:

- (a) it has obtained, or will obtain at no further cost to the Contractor from the relevant third party all necessary licences and consents to use, or assignments of, such Intellectual Property Rights; and
- (b) that it will not breach any of the licences or assignment referred to in Clause 46.1(a).

46.2 Indemnity

- (a) Without limiting Clause 34, the Sub-Contractor Indemnifies the Contractor and must keep the Contractor indemnified in respect of any Liabilities Incurred or sustained by the Contractor resulting from any actual or

alleged infringement of any Intellectual Property Rights of any third party arising out of or caused by:

- (i) the performance of the Works by the Sub-Contractor;
 - (ii) the performance or operations of any other plant, machinery, tools, equipment, process, work, material, matter, thing or method used or supplied by the Sub-Contractor; or
 - (iii) the use and enjoyment of the Works by the Contractor
- (b) The Sub-Contractor must notify the Contractor immediately the Sub-Contractor becomes aware of a Claim being threatened or made against the Contractor in relation to any of the matters covered by the indemnity in Clause 42.2(a).
- (c) The Contractor may require the Sub-Contractor to conduct any litigation that may arise from a Claim referred to in Clause 42.2(b) and all negotiations for settlement of that Claim. However, the Sub-Contractor must not make any settlement or consent to any judgment, order or verdict against the Contractor without the Contractor's prior written consent.

46.3 Procurement of Intellectual Property Rights

If the Contractor is prevented from using the Works or any part of the Works as a result of any Claim in relation to an infringement of Intellectual Property Rights, the Sub-Contractor must (at its cost) take all reasonable steps to procure for the Contractor the right to (as the case requires) operate or use the Works or the relevant part of the Works for the purpose for which it was intended.

46.4 Procedure Where Intellectual Property Rights Cannot be Procured

If the Sub-Contractor cannot procure the rights referred to in Clause 42.3 within a reasonable time (but not exceeding 60 days unless the Contractor Representative otherwise agrees), it must notify the Contractor Representative accordingly and the Contractor Representative may direct the Sub-Contractor to immediately (at the Contractor's cost):

- (a) alter the Works or the relevant part of the Works to avoid infringement or violation of the Intellectual Property Rights or any of them;
- (b) replace the Works affected or the relevant part of the Works with works which do not infringe or violate the Intellectual Property Rights; or
- (c) remove the Works and reimburse the Contractor any compensation and other moneys already paid to the Contractor and pay to the Contractor any costs or other expenses that may have been paid or incurred by the Contractor in connection with the removed Works.

46.5 Moral Rights

- (a) The Sub-Contractor must (at its cost) procure from each of the Sub-Contractor's Personnel or any third parties engaged in the performance of the Works an irrevocable and unconditional consent, in favour of the Sub-Contractor (for the benefit of the Sub-Contractor and its customers,

including the Contractor), which is legally enforceable by the Contractor, for the Contractor to:

- (i) reproduce, transmit, communicate, adapt or publish any materials in relation to the Works to the Contractor (together the **Materials**) or any adaptation of them (for any part of the Materials or any such adaptation) anywhere in the work, in whatever form the Contractor thinks fit (including the making of any distortions, any adaptation thereof (or any part of the Materials or any such adaptation) as so reproduced, transmitted, communicated, adapted or published;
 - (ii) reproduce, transmit, communicate, adapt or publish the Materials or any adaptation of them (or any part of the Materials or any such adaptation) anywhere in the world without making any identification of the employee/Sub-Contractor/third party in relation to such reproduction, transmission, communication, adaptation or publication; and
 - (iii) do anything in relation to the Materials that (but for these consents) would otherwise infringe any moral rights of the employee/Sub-Contractor/third party anywhere in the world.
- (b) Where the Contractor reasonably believes that the Contractor has not complied with its obligations set out in this Clause 46.5, the Sub-Contractor must procure that each of the Personnel of the Sub-Contractor or any third parties engaged in the performance of the Works do all such other things and execute all such documents as reasonably requested by the Contractor in order to confirm or give effect to any of the matters stated in this Clause 46.5.

47 NOTICES

47.1 Form of Notices

Unless otherwise specified in the Contract, any notice, demand, consent or other communication (**Notice**) given or made pursuant to the Contract must:

- (a) be in writing;
- (b) be marked to the attention on “the Contractor Representative” for the Party to whom the Notice is addressed;
- (c) where given by the Contractor, be signed or authorised by either the Contractor Representative, a director or Contractor secretary of the Contractor, or a duly authorised representative of the Contractor;
- (d) where given by the Sub-Contractor, be signed or authorised by either the Sub-Contractor Representative, a director or Contractor secretary of the Sub-Contractor, or a duly authorised representative of the Sub-Contractor; and
- (e) be delivered by prepaid post, by hand or by facsimile to the Party to whom the Notice is addressed at its address shown in the Contract or such other address as that Party may have notified to the other Party.

47.2 Notices Deemed Given

A Notice will be taken to be duly given:

- (a) in the case of delivered by hand, when delivered;
- (b) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); or
- (c) in the case of facsimile, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of the recipient and indicating that the transmission has been made without error,

But if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day.

48 CONFLICT OF INTEREST

48.1 Warranty

The Sub-Contractor warrants that as at the date of the Contract it has not carried on business, entered into any financial arrangements or undertaken any obligation which would in any way interfere or conflict with the performance of the Works by the Sub-Contractor and its Personnel under the Contract.

48.2 Conflicts of Interest

The Sub-Contractor must ensure that neither it nor any of its Personnel carry on business, enter into any financial arrangements or undertake any obligation which would in any way interfere or conflict with the performance of the Works by the Sub-Contractor and its Personnel under the Contract without the prior written consent of the Contractor.

48.3 Indemnity

Without limiting Clause 38, the Contactor indemnifies the Contractor and must keep the Contractor indemnified in respect of any Liabilities incurred or sustained by the Contractor as a result of any breach by the Contactor of the warranties contained in Clause 48.1 or the undertaking contained in Clause 48.2.

49 BUSINESS STANDARDS

49.1 Establishment of Procedures

The Sub-Contractor must establish and maintain procedures, policies and precautions to prevent its Personnel from making, receiving, providing or offering substantial gifts, entertainment, payments, loans or other consideration to Personnel of the Contractor for the purpose of influencing such Personnel to act

contrary to the best interests of the Contractor. This obligation will apply to the activities of Sub-Contractor Personnel in their relations with Contractor Personnel arising from the Contract.

49.2 Improper Advantage or Benefit to Official

- (a) The Sub-Contractor represents and warrants that it has not offered, paid, promised to pay, authorised the payment of or transferred money or anything of value to an Official to secure any improper advantage or benefit in relation to the matters contemplated by the Contract, either directly or indirectly through a third party.
- (b) The Sub-Contractor must not, directly or indirectly, in connection with the Contract, offer, pay promise to pay or authorise the giving of money or anything of value to an Official, or to any other person, while knowing or being aware of a high thing of value may be offered, given or promised, directly or indirectly to an Official, for the purpose of influencing the act, decision or omission of such Official to obtain or retain business related to the Contract, to direct business related to the Sub-Contractor to any person, or to obtain any improper advantage or benefit.
- (c) The Sub-Contractor represents that no Official or close relative of an Official has any direct or indirect ownership or other legal or beneficial interest in it or any of its Related Bodies Corporate, or in the contractual relationship established by the Contract, and that no such Official serves as an officer, director, employee, or agent of the Sub-Contractor.
- (d) The representations and obligations under this Clause 49.2 will continue throughout the Term.

49.3 Notification Regarding Change of Interests

The Sub-Contractor agrees to promptly notify the Contractor in writing of any changes in the director or indirect ownership in the Sub-Contractor or its Related Bodies Corporate that would make it or them an Official. The Sub-Contractor covenants that should the Contractor notify it of any concerns that there has been a breach of the provisions of Clauses 49.2 or this Clause 49.3, it must cooperate in good faith with the Contractor in determining whether such a breach has occurred. If the Contractor determines in its sole discretion that there has been such a breach or that the Sub-Contractor has taken any action that would create a material risk of liability for the Contractor under any applicable law, it may treat the breach as an event of default and to exercise any rights it may have under the Contract upon the occurrence of an event of default, but without regard to any waiting periods or cure periods specified in the Contract.

49.4 Clause to Apply to Sub-Contractors

The Sub-Contractor must require its Sub-Contractors to agree to and comply with contractual provisions substantially identical to those contained in Clauses 49.2 and 49.3.

49.5 Notification of Failure to Comply with Clause

The Sub-Contractor agrees to notify the Contractor promptly upon discovery of any instance where the Contractor or any of its Personnel fail to comply with this Clause 49.

50 ILLEGAL INFORMATION BROKERING

50.1 Prohibition

The Sub-Contractor recognises that the practice of Illegal Information Brokering or any other corruption of the Contract award process is not permitted by the Contractor and the Sub-Contractor represents and warrants that it has not and will not utilise Illegal Information Brokering in connection with the Contract.

50.2 Notification

(a) The Sub-Contractor must immediately notify the Contractor Representative if any person approaches the Sub-Contractor for the purpose of Illegal Information Brokering concerning the Contract or any other related business interest of the Contractor.

(b) After receiving a notice under Clause 50.2(a):

- (i) such notice and any related information provided by the Sub-Contractor will be treated by the Contractor with the utmost discretion; and
- (ii) the Contractor will handle the Contract with extra security measures, as appropriate, in order to prevent any Sub-Contractor, or other supplier from gaining any unfair advantage subsequent to such notice.

51 GFR GROUP BUSINESS PRACTICES AND STANDARDS

The GFR Group has a Corporate Policy. The Supplier acknowledges that it has received a copy of the GFR Group Corporate Policy which can also be found at www.gfr.com.au.

The Supplier is expected to read, understand and adhere to the GFR Group Corporate Policy and the Contractor reserves the right to monitor and/or audit the Supplier's adherence to the GFR Group Corporate Policy.

52 INDIGENOUS/COMMUNITY RELATIONS

The Sub-Contractor recognises that GFR Group has an Equity and Diversity and a Recruitment and Selection Policy and in the performance of the Contract, the Sub-Contractor undertakes to endeavour to identify and encourage opportunities which benefit indigenous people and local communities wherever possible.

53 COSTS

53.1 Each Party to Bear its Own Costs

Each Party must bear its own costs arising out of:

- (a) the negotiation, preparation and execution of the Contract; and
- (b) except as expressly provided otherwise in the Contract, any transaction contemplated by the Contract.

53.2 Stamp Duty

All stamp duty which may be payable in any relevant jurisdiction on or in connection with the Contract, any Purchase Order or other document related to the Contract (including any Security) will be borne by the Sub-Contractor.

54 STATUS OF SUB-CONTRACTOR

54.1 Independent Sub-Contractor

At all times during the Term, and in the provision of the Works, the Sub-Contractor is an independent Sub-Contractor and will not act as, or be regarded as, an agent or employee of the Contractor, and the Contractor and its Personnel will not be entitled to any benefits which would ordinarily accrue to any employee of the Contractor by virtue of their status as an employee.

54.2 Partnership and Joint Venture Suppliers

Where the Sub-Contractor comprises more than one person they will be bound jointly and severally and by executing the Contract accept joint and several liability for any loss or damage that may be suffered or occasioned and any sum that may be or may become payable to the Contractor under the Contract.

55 ASSIGNMENT AND SUB-CONTRACTING

55.1 Consent Required

The Sub-Contractor is not permitted to assign or sub-contract all or any part of the Contract without the prior written consent of the Contractor, such permission being at the Contractor's discretion and on whatever terms and conditions the Contractor may think appropriate, including requiring the proposed assignee or Sub-Contractor to be bound by any or all of the provisions of the Contract.

55.2 Obligations Survive Assignment or Sub-Contract

The Sub-Contractor acknowledges that no permitted assignment or sub-contract in any way relieves the Contractor from the performance of any of its obligations under the Contract.

55.3 Status of Sub-Contractor

As between the Sub-Contractor and the Contractor, the Sub-Contractor will be considered the agent and employee of the Sub-Contractor. For the purposes of the Contract, the acts and omissions of each Sub-Contractor and its Personnel will be deemed to be the acts and omissions of the Sub-Contractor.

56 PRIVACY AND DATA PROTECTION

56.1 Personal Information

Each Party agrees to comply with their obligations under the Privacy Act in respect of Personal Information obtained by or disclosed to them pursuant to the Contract.

56.2 Warranty

Each Party warrants to the other Party that it has complied with the Privacy Act in obtaining any Personal Information disclosed by it pursuant to the Contract.

56.3 Data Protection

In addition to its obligations under the Privacy Act, the Sub-Contractor agrees to:

- (a) only Process the Contractor's Personal Information for the purposes of the Contract;
- (b) not disclose the Contractor's Personal Information to any other person without the Contractor's prior written consent, unless the disclosure is required by law;
- (c) immediately notify the Contractor that the disclosure of the Contractor's Personal Information may be required by law;
- (d) put into place and maintain appropriate technical and organisational measures against unauthorised and/or unlawful Processing of the Contractor's Personal Information;
- (e) put into place and maintain appropriate technical and organisational measures against unauthorised access, loss, destruction, misuse, modification, disclosure or damage to the Contractor's Personal Information; and
- (f) take all necessary steps to ensure that its Processing of the Contractor's Personal Information will be fair and lawful and, for this purpose, the Sub-Contractor may reasonably enquire of the Contractor as to the manner in which the Contractor obtained the Contractor's Personal Information.

56.4 Individual Complaints

- (a) If an individual complains to the Contractor that the Sub-Contractor (or any of its Personnel) has, in the performance of the Contract, handled his or her Personal Information inappropriately, the Contractor must promptly give the Sub-Contractor sufficient details about the complaint to minimise any further misuse.
- (b) If an individual complains to the Sub-Contractor that the Sub-Contractor (or any of its Personnel) has, in the performance of the Contract, handled his or her Personal Information inappropriately, the Contractor must:
 - (i) promptly inform the Contractor of the complaint; and
 - (ii) provided the individual has consented, provide the Contractor with the Personal Information that is the subject of the complaint.

56.5 Sub-Contractor Indemnity

Without limiting Clause 38, the Sub-Contractor indemnifies the Contractor and must keep the Contractor indemnified in respect of all Liabilities incurred by or awarded against the Contractor relating to any breach by the Sub-Contractor of its obligations under the Privacy Act or this Clause 56.

56.6 Survival of Clause

This Clause 55 will survive the termination of the Contract.

57 WAIVER

A failure to exercise, or any delay in exercising any right, power or remedy by a Party does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

58 FURTHER ASSURANCES

Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the Contract and the transactions contemplated by it.

59 SEVERABILITY

59.1 Severability

Any provision of the Contract which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of the Contract nor does it affect the validity or enforceability of that provision in any other jurisdiction.

59.2 Negotiation in Good Faith

Where a provision is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the Contract.

60 GOVERNING LAW

The Contract is governed by the laws of the Australian State or Territory identified in the address for the Contractor as shown in the Contract or if no address is shown, the laws of Western Australia. Each Party submits to the non-exclusive jurisdiction of the Courts exercising jurisdiction there in connection with matters concerning the Contract.