



Subcontract Agreement

Gorilla Constrution Wa PTY LTD

ABN:65 679 051 499

Head Subcontractor

ABN

Subcontractor

Formal Instrument of Agreement

Date

Parties

Gorilla Construction Wa PTY LTD of 13 Davidson Road, Attadale, Wa 6156 Australia
(*Head Subcontractor*)

(*Subcontractor*)

Recitals

- A The *Head Subcontractor* wishes to engage the *Subcontractor* to carry out the *Subcontractor Works* in accordance with the *Subcontract*.
- B The *Head Subcontractor* has agreed to carry out the *Subcontractor Works* in accordance with the *Subcontract*.

Agreement

1. Performance

The parties acknowledge and agree that they must perform the obligations imposed on them by the *Subcontract*.

Without limiting the above:

- (a) the *Subcontractor* must carry out the *WUS* in accordance with the *Subcontract*; and
- (b) the *Head Subcontractor* must pay to the *Subcontractor* the *subcontract sum* being a lump sum amount specified in *Item 5* including *provisional sums* but excluding any additions or deductions which may be required to be made under the *Subcontract*.

2. Contract Documents

The *Subcontract* comprises the following documents:

Document description	Where found
This Formal Instrument of Agreement	This document
The amended AS4901-1998 General Conditions of Contract (including the Annexures) (" General Conditions ")	Attached to this document

3. Order of Precedence

Without limiting any part of the General Conditions, the following order of precedence applies if there is any ambiguity, conflict, discrepancy or inconsistency

between the documents comprising the *Subcontract* or between different parts of any documents comprising the *Subcontract*:

- (a) this *Formal Instrument of Agreement*;
- (b) the General Conditions; and
- (c) the Annexures.

4. Definitions

Unless the context otherwise requires, the capitalised terms included in this *Formal Instrument of Agreement* will have the meaning given to them in the General Conditions.

5. Early Works

- (a) The terms of the *Subcontract* apply to all *WUS* carried out by the *Subcontractor* whether before or after the *date of Subcontract*.
- (b) Any payment made to the *Subcontractor* by the *Head Subcontractor* in connection with the *WUS* carried out before the *date of Subcontract* will be treated as a payment under the *Subcontract* and will be in part discharge of the *Head Subcontractor's* obligation to pay the *subcontract sum*.

Executed as an agreement.

Executed by Joshua Vassallo in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Joshua Vassallo

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Executed by _____ in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

STANDARDS AUSTRALIA

Australian Standard

Subcontract Conditions

1 Interpretation and construction of Subcontract

In the *Subcontract*, except where the context otherwise requires:

<i>Item</i>	means an <i>Item</i> in Annexure Part A;
<i>Business Day</i>	has the same meaning as defined in section 4 of the <i>Building and Construction Industry (Security of Payment) Act 2021</i> (WA);
<i>certificate of practical completion</i>	has the meaning in subclause 34.6;
<i>compensable cause</i>	means a breach of the <i>Subcontract</i> by the <i>Head Subcontractor</i> .
<i>construction plant</i>	means appliances and things used in the carrying out of <i>WUS</i> but not forming part of the <i>Subcontract Works</i> ;
<i>construction program</i>	has the meaning in clause 32;
<i>date for practical completion</i>	means: (a) where <i>Item</i> 11(a) provides a <i>date for practical completion</i>, the date; (b) where <i>Item</i> 11(b) provides a period of time for <i>practical completion</i>, the last day of the period, but if any <i>EOT</i> for <i>practical completion</i> is directed by the <i>Head Subcontractor</i> or allowed in any arbitration or litigation, it means the date resulting therefrom;
<i>date of Subcontract</i>	means the date of execution of this <i>Subcontract</i> ;
<i>date of practical completion</i>	means: (a) the date evidenced in a <i>certificate of practical completion</i> as the date upon which <i>practical completion</i> was reached; or (b) where another date is determined in any arbitration or litigation as the date upon which <i>practical completion</i> was reached, that other date;
<i>deed of guarantee, undertaking and substitution</i>	has the meaning in subclause 5.6;
<i>defects</i>	has the meaning in clause 35 and includes omissions;
<i>defects liability period</i>	has the meaning in clause 35;
<i>direction</i>	includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation,

	instruction, notice, order, permission, rejection, request or requirement;
<i>dispute</i>	has the meaning in clause 42;
<i>EOT (from 'extension of time')</i>	has the meaning in subclause 34.3;
<i>excepted risk</i>	has the meaning in subclause 14.3;
<i>final certificate</i>	has the meaning in subclause 37.4;
<i>final payment</i>	has the meaning in clause 37;
<i>final payment claim</i>	means the <i>final payment</i> claim referred to in subclause 37.4;
<i>Formal Instrument of Agreement</i>	means the formal instrument of agreement to which three general terms and conditions are attached;
<i>Head Subcontractor</i>	means the <i>Head Subcontractor</i> stated in <i>Item 1</i> ;
<i>Head Subcontractor's Representative</i>	means an individual appointed in writing by the <i>Head Subcontractor</i> under clause 21;
<i>intellectual property right</i>	means any patent, registered design, trademark or name, copyright or other protected right;
<i>latent condition</i>	has the meaning in subclause 25.1;
<i>legislative requirement</i>	includes: (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where <i>WUS</i> or the particular part thereof is being carried out; (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of <i>WUS</i>; and (c) fees and charges payable in connection with the foregoing;
<i>main contract</i>	means the agreement described in <i>Item 6</i> ;
<i>main contract dispute</i>	means a claim or <i>dispute</i> in respect of the <i>main contract</i> ;
<i>Main Contractor</i>	means the <i>Main Contractor</i> to the <i>main contract</i> stated in <i>Item 7</i> ;
<i>main contract works</i>	means the whole of the <i>work</i> to be carried out and completed in accordance with the <i>main contract</i> , including <i>variations</i> provided for by the <i>main contract</i> , which by the <i>main contract</i> is to be handed over to the <i>Main Contractor</i> ;
<i>PPS Act</i>	means the <i>Personal Property Securities Act 2009</i> (Cth) and regulations made under that Act
<i>practical completion</i>	is that stage in the carrying out and completion of <i>WUS</i> when the <i>Head Subcontractor</i> determines that: (a) <i>the Subcontract Works</i> are complete except for minor defects: (i) which do not prevent <i>the Subcontract Works</i> from being reasonably capable of being used for their stated purpose; (ii) which the <i>Head Subcontractor</i> determines the <i>Subcontractor</i> has reasonable grounds for not

promptly rectifying; and

- (iii) the rectification of which will not prejudice the convenient use of *the Subcontract Works*;
- (b) those *tests* which are required by the *Subcontract* to be carried out and passed before *the Subcontract Works* reach *practical completion* have been carried out and passed;
- (c) the *Subcontract Works* and *WUS* has been completed in accordance with all *legislative requirements*;
- (d) the *Subcontractor* has provided to the *Main Contractor* and *Head Subcontractor*:
 - (i) all of the necessary certificates and approvals by all authorities required for the lawful occupation and use of the *Subcontract Works*; and
 - (ii) all warranties in respect of the *Subcontract Works* as required by the *Head Subcontractor*, this *Subcontract* or any *legislative requirements*; and
- (e) documents and other information required under the *Subcontract* which, in the *Head Subcontractor's* opinion, are essential for the use, operation and maintenance of *the Subcontract Works* have been supplied;

<i>prescribed notice</i>	has the meaning in subclause 41.1;
<i>progress certificate</i>	has the meaning in subclause 37.2;
<i>provisional sum</i>	means the relevant provisional sum for each provisional sum item as set out in <i>Item 11A</i> ;
<i>public liability policy</i>	has the meaning in clause 17;
<i>qualifying cause of delay</i>	means: (a) any act, default or omission of the <i>Head Subcontractor</i>; (b) a <i>variation</i>; and (c) any other cause of delay expressly set out in this <i>Subcontract</i> as entitling the <i>Subcontractor</i> to an <i>EOT</i>;
<i>schedule of rates</i>	means any schedule included in the <i>Subcontract</i> which, in respect of any section or item of <i>work</i> to be carried out, shows the rate or respective rates of payment for the execution of that <i>work</i> and which may also include lump sums, <i>provisional sums</i> , other sums, quantities and prices;
<i>secondary subcontract</i>	means a subcontract between the <i>Subcontractor</i> and a <i>secondary subcontractor</i> (including a <i>selected secondary subcontractor</i>);
<i>secondary subcontractor</i>	means a subcontractor to the <i>Subcontractor</i> (and includes a <i>selected secondary subcontractor</i>);
<i>security</i>	means: (a) cash (b) retention moneys; (c) bonds or inscribed stock or their equivalent issued by a

	national, state or territory government;
	(d) interest bearing deposit in a bank carrying on business at the place stated in <i>Item 13(c)</i> ;
	(e) an approved unconditional undertaking (the form in Annexure Part C is approved) or an approved performance undertaking given by an approved financial institution or insurance company; or
	(f) other form approved by the party having the benefit of the <i>security</i> ;
<i>selected secondary subcontract work</i>	means the selected secondary subcontract work set out in <i>Item 21A</i> ;
<i>selected secondary subcontractor</i>	means the selected secondary subcontractor set out in <i>Item 21A</i> ;
<i>separable portion</i>	means a portion of <i>the Subcontract Works</i> identified as such in the <i>Subcontract</i> or by the <i>Head Subcontractor</i> pursuant to clause 4;
<i>site</i>	means the lands and other places to be made available and any other lands and places made available to the <i>Subcontractor</i> by the <i>Head Subcontractor</i> for the purpose of the <i>Subcontract</i> ;
<i>Subcontract</i>	has the meaning in clause Error! Reference source not found. ;
<i>subcontract sum</i>	means the lump sum set out in the <i>Formal Instrument of Agreement</i> including <i>provisional sums</i> but excluding any additions or deductions which may be required to be made under the <i>Subcontract</i> ;
<i>Subcontractor</i>	means the person bound to carry out and complete <i>WUS</i> ;
<i>survey mark</i>	in clause 26 means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring <i>WUS</i> ;
<i>temporary works</i>	means <i>work</i> used in carrying out and completing <i>WUS</i> , but not forming part of <i>the Subcontract Works</i> ;
<i>test</i>	has the meaning in subclause 30.1 and includes examine and measure;
<i>the Subcontract Works</i>	means the whole of the <i>work</i> to be carried out and completed in accordance with the <i>Subcontract</i> (including the work described in Annexure Part B and all incidental work), including <i>variations</i> provided for by the <i>Subcontract</i> , which by the <i>Subcontract</i> is to be handed over to the <i>Head Subcontractor</i> ;
<i>variation</i>	has the meaning in clause 36;
<i>work</i>	includes the <i>WUS</i> and the provision of materials;
<i>WUS (from 'work under the Subcontract')</i>	means the <i>work</i> which the <i>Subcontractor</i> is or may be required to carry out and complete under the <i>Subcontract</i> (including the work described in Annexure Part B and all incidental work) and includes <i>variations</i> , remedial <i>work</i> , <i>construction plant</i> and <i>temporary works</i> , and like words have a corresponding meaning.

In the *Subcontract*:

- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) time for doing any act or thing under the *Subcontract* shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday;
- (c) clause headings and subclause headings in these Subcontract Conditions shall not form part of these Conditions and shall not be used in the interpretation of the *Subcontract*;
- (d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
- (e) communications between the *Head Subcontractor* and the *Subcontractor* shall be in the English language;
- (f) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in *Item 12*;
- (g) unless otherwise provided, prices are in the currency in *Item 13(a)* and payments shall be made in that currency at the place in *Item 13(b)*;
- (h) the law governing the *Subcontract*, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in *Item 12*; and
- (i) the words 'include' and 'including' (or any derivative of these words) are not words of limitation.

2 Nature of Subcontract

2.1 Performance and payment

The *Subcontractor* shall carry out and complete *WUS* in accordance with the *Subcontract* and *directions* of the *Head Subcontractor*.

The *Head Subcontractor* shall pay the *Subcontractor*:

- (a) for *work* for which the *Head Subcontractor* accepted a lump sum, the lump sum; and
- (b) for *work* for which the *Head Subcontractor* accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of *work* actually carried out under the *Subcontract* by the rate accepted by the *Head Subcontractor* for the section or item,

adjusted by any additions or deductions made pursuant to the *Subcontract*.

2.2 Not used

3 Provisional Sums

A *provisional sum* included in the *Subcontract* shall not itself be payable by the *Head Subcontractor* but where pursuant to a *direction* the *work* or item to which the *provisional sum* relates is carried out or supplied by the *Subcontractor*, the *work* or item shall be priced by the *Head Subcontractor* (without regard for any profit, margin, overheads, supervision or

attendance), and the difference between the *provisional sum* and the valuation of the *Head Subcontractor* shall be added to or deducted from the *subcontract sum* (as applicable).

4 Separable portions

Separable portions may be directed by the *Head Subcontractor*, who shall clearly identify for each, the:

- (a) portion of the *Subcontract Works*;
- (b) *date for practical completion*;
- (c) respective amounts for *security*, bonus, liquidated damages and delay damages (all calculated pro rata according to the ratio of the *Head Subcontractor's* valuation of the *separable portion* to the *subcontract sum*); and
- (d) any other changes to the *Subcontract* required on account of the *separable portions*.

5 Security

5.1 Provision

Security shall be provided in accordance with *Item 17* or *18*.

5.2 Recourse

The *Head Subcontractor* may have recourse to *security* and may convert into money *security* that does not consist of money at any time, including:

- (a) where the *Subcontractor* is or may be, or the *Main Contractor* considers on reasonable grounds that the *Subcontractor* is or may be, in breach of any of its obligations under the *Subcontract* or the *Head Subcontractor* has become entitled to exercise a right under the *Subcontract* in respect of the *security*; or
- (b) in respect of any debt or other moneys (including liquidated damages) due from the *Subcontractor* to the *Head Subcontractor* under or in relation to this *Subcontract* or otherwise.

5.3 Change of security

At any time a party providing retention moneys or cash *security* may substitute another form of *security*. To the extent that another form of *security* is provided, the other party shall not deduct, and shall promptly release and return, retention moneys and cash *security*.

5.4 Reduction and release

Upon the issue of the *certificate of practical completion* a party's entitlement to *security* (other than in *Item 17(e)*) shall be reduced by the percentage or amount in *Item 17(f)* or *18(d)* as applicable, and the reduction shall be released and returned within 14 days to the other party.

The *Head Subcontractor's* entitlement to *security* in *Item 17(e)* shall cease 14 days after incorporation into the *Subcontract Works* of the plant and materials for which that *security* was provided.

A party's entitlement otherwise to *security* shall cease 14 days after *final certificate*.

Upon a party's entitlement to *security* ceasing, that party shall release and return forthwith the *security* to the other party.

5.5 Trusts and interest

A party holding cash *security*, retention moneys or both shall deposit the moneys into its nominated bank account and shall own any interest earned on the cash *security*.

5.6 Deed of guarantee, undertaking and substitution

Where:

- (a) a party is a related or subsidiary corporation (as defined in the applicable corporations law of the jurisdiction); and
- (b) requested by the *Head Subcontractor*,

that party shall, within 14 days after receiving a written request from the *Head Subcontractor*, provide such *deed of guarantee, undertaking and substitution* (in a form approved by the *Head Subcontractor*) duly executed and enforceable.

6 PPS security interests

The *Subcontractor* acknowledges and agrees that:

- (a) if and to the extent that the *Head Subcontractor* at any time forms a belief on reasonable grounds that the *Head Subcontractor* is, or will become, a secured party arising out of or in connection with this *Subcontract*, the *Head Subcontractor* may at the *Subcontractor's* expense take all steps that the *Head Subcontractor* considers advisable to:
 - (i) perfect, protect, record, register, amend or remove the registration of, the *Head Subcontractor's* security interest in any relevant personal property that is the subject of this security interest (**relevant personal property**); and
 - (ii) better secure the *Head Subcontractor's* position in respect of *relevant personal property* under the *PPS Act*;
- (b) it will do all things reasonably necessary to assist the *Head Subcontractor* to take the steps described in paragraph (a);
- (c) it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any security interests of the *Head Subcontractor* in *relevant personal property*;
- (d) if, and only if, the *Head Subcontractor* is or becomes a secured party in relation to *relevant personal property*, and to the extent only that Chapter 4 of the *PPS Act* would otherwise apply to an enforcement of a security interest in *relevant personal property*, the *Subcontractor* and the *Head Subcontractor* agree that, pursuant to section 115 of the *PPS Act*, the following provisions of the *PPS Act* do not apply in relation to those security interests to the extent, if any, mentioned in section 115: section 117, section 118, section 120, subsection 121(4), section 125, section 129, section 130, subsection 132(3)(d), subsection 132(4), section 142, and section 143;
- (e) subject to section 275(7) of the *PPS Act*, it will not disclose the contents of this *Subcontract*, the amount or performance obligation secured by the *Head Subcontractor's* security interest in *relevant personal property* and the other information mentioned in section 275(1) of the *PPS Act* pursuant to section 275(4) of the *PPS Act*;
- (f) it must immediately notify the *Head Subcontractor* if it becomes aware of any person other than the *Head Subcontractor* taking steps to register, or registering, a financing statement in relation to *relevant personal property*; and
- (g) it must arrange for the removal or cessation of any registration of any security interest that affects the priority of the *Head Subcontractor's* interest in *relevant personal property*.

For the purposes of this clause 6, "financing change statement", "financing statement", "personal property", "registration", "secured party", "verification statement", and each have the meaning given to those terms in the *PPS Act*.

7 Service of notices

All notices, demands, consents, approvals or communications in connection with the *Subcontract* must be in writing, in English and signed by a person duly authorised by the sender.

All notices authorised or required to be given by or pursuant to this *Subcontract* will be either sent by prepaid post or sent by electronic mail to the addresses set out in Annexure Part A.

Notices will be deemed to have been given and received:

- (a) if sent by prepaid post, on the date of actual receipt or the date that is 3 days after posting (whichever occurs first); and
- (b) if sent by electronic mail, when successfully transmitted during business hours or, if not during business hours, the next .

Any party may change its address for receipt of notices at any time by giving 5 days' written notice to the other party. Any notice given under this *Subcontract* may be signed on behalf of any party by the duly authorised representative of that party and will be sent to all other parties to this *Subcontract*.

8 Subcontract documents

8.1 Discrepancies

If there is any inconsistency, ambiguity or discrepancy:

- (a) figured shall prevail over scaled dimensions; and
- (b) the higher or greater requirement, level, standard or quality shall prevail.

Otherwise, if either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out *WUS*, that party shall give the *Head Subcontractor* written notice of it. The *Head Subcontractor*, thereupon, and upon otherwise becoming aware, shall direct the *Subcontractor* as to the interpretation and construction to be followed. The *Subcontractor* shall have no entitlement arising out of, or in connection with, any direction by the *Head Subcontractor* under this clause or the *Subcontractor's* compliance with any such direction.

8.2 Head Subcontractor-supplied documents

The *Head Subcontractor* shall supply to the *Subcontractor* the documents and number of copies thereof, both stated in *Item 19*.

They shall:

- (a) remain the *Head Subcontractor's* property and be returned to the *Head Subcontractor* on written demand; and
- (b) not be used, copied nor reproduced for any purpose other than *WUS*.

8.3 Subcontractor-supplied documents

The *Subcontractor* shall supply to the *Head Subcontractor* the documents and number of copies thereof, both stated elsewhere in the *Subcontract*.

If the *Subcontractor* submits documents to the *Head Subcontractor*:

- (a) the *Head Subcontractor* shall not be required to check such documents for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Subcontract*;
- (b) notwithstanding subclause 2.1, any *Head Subcontractor's* acknowledgment or approval shall not prejudice the *Subcontractor's* obligations or relieve the *Subcontractor* from any liabilities; and

- (c) if the *Subcontract* requires the *Subcontractor* to obtain the *Head Subcontractor's direction* about such documents, the *Head Subcontractor* shall give, within a reasonable time, the appropriate *direction*, including reasons if the documents are not suitable.

Copies of documents supplied by the *Subcontractor* shall be the *Head Subcontractor's* property but shall not be used or copied otherwise than for the use, repair, maintenance or alteration of the *Subcontract Works*.

8.4 Availability

The *Subcontractor* shall keep available to the *Head Subcontractor*:

- (a) on *site*, one complete set of documents affecting *WUS* and supplied by a party or the *Head Subcontractor*; and
- (b) at the place of manufacture or assembly of any significant part of *WUS* off *site*, a set of the documents affecting that part.

8.5 Confidential information

The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential.

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else other than the *Main Contractor* and their identified consultants any confidential matter even after *final certificate* or earlier termination of the *Subcontract*.

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8.6 Media

The *Subcontractor* shall not disclose any information concerning the project for distribution through any communications media without the *Head Subcontractor's* prior written approval (which shall not be unreasonably withheld). The *Subcontractor* shall refer to the *Head Subcontractor* any enquiries from any media concerning the project.

9 Assignment and secondary subcontracting

9.1 Assignment

The *Subcontractor* shall not, without the *Head Subcontractor's* prior written approval (including terms) assign the *Subcontract* or any payment or any other right, benefit or interest thereunder.

9.2 Secondary subcontracting generally

The *Subcontractor* shall not without the *Head Subcontractor's* prior written approval (which shall not be unreasonably withheld):

- (a) subcontract or allow a *secondary subcontractor* to subcontract any *work* described in *Item 21*; or
- (b) allow a *secondary subcontractor* to assign a *secondary subcontract* or any payment or any other right, benefit or interest thereunder.

With a request for approval, the *Subcontractor* shall give the *Head Subcontractor* written particulars of the *work* to be subcontracted and the name and address of the proposed *secondary subcontractor*. The *Subcontractor* shall give the *Head Subcontractor* other information which the *Head Subcontractor* reasonably requests, including the proposed *secondary subcontract* documents without prices.

Within 21 days of the *Subcontractor's* request for approval, the *Head Subcontractor* shall give the *Subcontractor* written notice of approval or of the reasons why approval is not given.

Approval may be conditional upon the *secondary subcontract* including:

* See Preface

- (c) provision that the *secondary subcontractor* shall not assign nor subcontract without the *Subcontractor's* written consent; and
- (d) provisions which may be reasonably necessary to enable the *Subcontractor* to fulfil the *Subcontractor's* obligations to the *Head Subcontractor*.

9.3 Selected secondary subcontract work

If Item 21A includes *selected secondary subcontract works*, the *Subcontractor* shall subcontract the relevant *selected secondary subcontract works* to the *selected secondary subcontractor* on terms acceptable to the *Head Subcontractor*.

9.4 Novation

When directed by the *Head Subcontractor*, the *Subcontractor*, without being entitled to compensation, shall promptly execute a deed of novation in the form directed by the *Head Subcontractor*, such deed being between:

- (a) the *Head Subcontractor*, the *Subcontractor* and the *secondary subcontractor* or *selected secondary subcontractor*; or
- (b) the *Main Contractor*, the *Head Subcontractor* and the *Subcontractor*.

9.5 Subcontractor's responsibility

Except where the *Subcontract* otherwise provides, the *Subcontractor* shall be liable to the *Head Subcontractor* for the acts, defaults and omissions of *secondary subcontractors* (including *selected secondary subcontractors*) and employees and agents of *secondary subcontractors* as if they were those of the *Subcontractor*.

Approval to subcontract shall not relieve the *Subcontractor* from any liability or obligation under the *Subcontract*.

9.6 Third parties and main contract

The *Subcontractor* acknowledges that there shall be other third-party subcontractors and tradespersons engaged by the *Main Contractor* or the *Head Subcontractor* working on the *site* from time to time (*Third Party Subcontractors*).

Notwithstanding anything else, the *Subcontractor* shall:

- (a) fully co-operate with the *Third Party Subcontractors* in accordance with any *directions* of the *Head Subcontractor*;
- (b) carefully co-ordinate and interface the *WUS* with the works to be carried out by any *Third Party Subcontractors*;
- (c) comply with any *directions* of the *Head Subcontractor* arising out of, or in connection with, any requirements of any *Third Party Subcontractors*;
- (d) shall not do anything, or omit to do anything, which may cause the *Head Subcontractor* to be in breach of any other subcontract that it has entered into with *Third Party Subcontractors*; and
- (e) shall not do anything, or omit to do anything, that causes, or may cause, loss or damage to the work or the property of any *Third Party Subcontractors*.

The *Subcontractor* warrants that it has been provided with a copy of the *main contract* prior to the *date of Subcontract* and has carefully reviewed and considered the requirements set out therein.

Notwithstanding anything else, the *Subcontractor* shall:

- (f) comply with the requirements of the *main contract* to the extent it applies to the *WUS*;
- (g) carefully co-ordinate and interface the *WUS* with the *main contract works* and any requirements under the *main contract*;

- (h) comply with any directions of the *Head Subcontractor* in relation to the *main contract* or any requirements of the *Main Contractor*;
- (i) provide reasonable assistance to the *Head Subcontractor* as required by the *Head Subcontractor* to comply with the *main contract*;
- (j) not do anything, or omit to do anything, to delay the *main contract works*;
- (k) not do anything, or omit to do anything, which would cause the *Head Subcontractor* to be in breach of the *main contract*; and
- (l) shall not do anything, or omit to do anything, that causes, or may cause, loss or damage to the work or the property of the *Main Contractor* or the *Head Subcontractor*.

10 Intellectual property rights

All intellectual property rights, copyright and property created pursuant to the carrying out of *WUS* or in connection with this *Subcontract* shall vest in the *Head Subcontractor* upon creation. The *Subcontractor* shall do everything necessary to perfect such vesting.

The *Subcontractor* warrants that any other design, materials, documents and methods of working, each provided by the *Subcontractor*, shall not infringe any *intellectual property right*.

The *Subcontractor* shall indemnify the *Head Subcontractor* against such respective infringements.

11 Legislative requirements

11.1 Compliance

The *Subcontractor* shall satisfy all *legislative requirements* except those in *Items 23(a)* and *(b)* or directed by the *Head Subcontractor* to be satisfied by or on behalf of the *Head Subcontractor*.

The *Subcontractor*, upon finding that a *legislative requirement* is at variance with the *Subcontract*, shall promptly give the *Head Subcontractor* written notice thereof.

11.2 Changes

If a *legislative requirement*:

- (a) necessitates a change:
 - (i) to the *Subcontract Works*;
 - (ii) to so much of *WUS* as is identified in *Item 23(c)*;
 - (iii) being the provision of services by a municipal, public or other statutory authority in connection with *WUS*; or
 - (iv) in a fee or charge or payment of a new fee or charge;
- (b) comes into effect after the *date of Subcontract* and could not reasonably then have been anticipated by a prudent, experienced and competent subcontractor similar to the *Subcontractor*;
- (c) is not in relation to or in connection with COVID19; and
- (d) causes the *Subcontractor* to incur more or less cost than otherwise would have been incurred,

the difference shall be assessed by the *Head Subcontractor* and added to or deducted from the *subcontract sum*.

12 Protection of people and property

Insofar as compliance with the *Subcontract* permits, the *Subcontractor* shall:

- (a) take measures necessary to protect people and property;

- (b) avoid interference with the passage of people and vehicles; and
- (c) prevent nuisance and unreasonable noise and disturbance.

If the *Subcontractor* damages property, the *Subcontractor* shall promptly rectify the damage and pay any compensation as determined by the *Head Subcontractor*.

If the *Subcontractor* fails to comply with an obligation under this clause, the *Head Subcontractor*, after the *Head Subcontractor* has given reasonable written notice to the *Subcontractor* and in addition to the *Head Subcontractor's* other rights and remedies, may have the obligation performed by others. The cost thereby incurred shall be certified by the *Head Subcontractor* as moneys due from the *Subcontractor* to the *Head Subcontractor*.

13 Urgent protection

If urgent action is necessary to protect *WUS*, other property or people and the *Subcontractor* fails to take the action, in addition to any other remedies of the *Head Subcontractor*, the *Head Subcontractor* may take the necessary action. If the action was action which the *Subcontractor* should have taken at the *Subcontractor's* cost, the *Head Subcontractor* shall certify the cost incurred as moneys due from the *Subcontractor* to the *Head Subcontractor*.

If time permits, the *Head Subcontractor* shall give the *Subcontractor* prior written notice of the intention to take action pursuant to this clause.

14 Care of the work and reinstatement of damage

14.1 Care of WUS

Except as provided in subclause 14.3, the *Subcontractor* shall be responsible for care of:

- (a) the whole of *WUS* from and including the date of commencement of *WUS* to 4.00 pm on the *date of practical completion*, at which time responsibility for the care of the *Subcontract Works* (except to the extent provided in paragraph (b)) shall pass to the *Head Subcontractor*; and
- (b) outstanding *work* and items to be removed from the *site* by the *Subcontractor* after 4.00 pm on the *date of practical completion* until completion of outstanding *work* or compliance with clauses 29, 30 and 35.

Without limiting the generality of paragraph (a), the *Subcontractor* shall be responsible for the care of unfixed items accounted for in a *progress certificate* and the care and preservation of things entrusted to the *Subcontractor* by the *Head Subcontractor* or brought onto the *site* by *secondary subcontractors* for carrying out *WUS*.

14.2 Reinstatement

If loss or damage, other than that caused by an *excepted risk*, occurs to *WUS* during the period of the *Subcontractor's* care, the *Subcontractor* shall, at its cost, rectify such loss or damage.

In the event of loss or damage being caused by any of the *excepted risks* (whether or not in combination with other risks), the *Subcontractor* shall to the extent directed by the *Head Subcontractor*, rectify the loss or damage and such rectification shall be a deemed *variation*. If loss or damage is caused by a combination of *excepted risks* and other risks, the *Head Subcontractor* in pricing the *variation* shall assess the proportional responsibility of the parties.

14.3 Excepted risks

The *excepted risks* causing loss or damage, for which the *Head Subcontractor* is liable, are:

- (a) any negligent act or omission of the *Head Subcontractor*; and
- (b) any risk specifically excepted elsewhere in the *Subcontract*.

15 Damage to persons and property other than WUS

15.1 Indemnity by Subcontractor

Insofar as this subclause applies to property, it applies to property other than *WUS*.

The *Subcontractor* shall indemnify the *Head Subcontractor* against:

- (a) loss of or damage to the *Main Contractor's* or the *Head Subcontractor's* property including existing property in or upon which *WUS* is being carried out; and
- (b) claims in respect of personal injury or death or loss of, or damage to, any other property, arising out of or as a consequence of the carrying out of *WUS*, but the indemnity shall be reduced proportionally to the extent that a negligent act or omission of the *Head Subcontractor* contributed to the injury, death, loss or damage.

The *Subcontractor* shall indemnify the *Head Subcontractor* against any breach of this *Subcontract* or any legislative requirement.

15.2 Not used

16 Insurance of the Subcontract Works

Before the *Subcontractor* commences *WUS*, the *Subcontractor* shall effect an insurance policy covering all the things referred to in clause 14.1 against loss or damage resulting from any cause whatsoever until the *Subcontractor* ceases to be responsible for their care. The policy shall be on terms approved by the *Head Subcontractor* and be in the joint names of the *Main Contractor*, the *Head Subcontractor* and the *Subcontractor*.

17 Public liability insurance

The Alternative in *Item 24(a)* applies.

Alternative 1: Head Subcontractor to insure

Before the *date of Subcontract*, the *Head Subcontractor* shall ensure that there is in force in relation to *WUS*, a *public liability policy* in the terms of the policy approved by the *Head Subcontractor*. The policy or proposed policy shall nominate or state the name of the insurer. The *Head Subcontractor* shall ensure that the policy is maintained while ever the *Subcontractor* has an interest in *WUS* and that all premiums are paid thereon.

Alternative 2: Subcontractor to insure

Before commencing *WUS*, the *Subcontractor* shall effect and maintain for the duration of the *Subcontract*, a *public liability policy*.

The policy shall:

- (a) be in the joint names of the *Main Contractor*, the *Head Subcontractor* and the *Subcontractor*;
- (b) cover the:
 - (i) respective rights and interests; and
 - (ii) liabilities to third parties;
 - (iii) of the parties, the *Main Contractor*, the *Head Subcontractor* and *secondary subcontractors* from time to time, whenever engaged in *WUS*;
- (c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 16) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);
- (d) be endorsed to cover the use of any *construction plant* not covered under a comprehensive or third party motor vehicle insurance policy;

- (e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in *Item 24(b)*; and
- (f) be with an insurer and otherwise in terms both approved in writing by the *Head Subcontractor* (which approvals shall not be unreasonably withheld).

18 Insurance of employees

Before commencing *WUS*, the *Subcontractor* shall insure against liability for death of or injury to persons employed by the *Subcontractor*, including liability by statute and at common law. The insurance cover shall be maintained until completion of all *WUS*.

Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the *Head Subcontractor's* statutory liability to the *Subcontractor's* employees.

The *Subcontractor* shall ensure that all *secondary subcontractors* have similarly insured their employees.

19 Inspection and provisions of insurance policies

19.1 Proof of insurance

Before the *Subcontractor* commences *WUS* and whenever requested in writing by the other party or the *Head Subcontractor*, a party liable to insure shall provide satisfactory evidence of such insurance effected and maintained.

Insurance shall not limit liabilities or obligations under other provisions of the *Subcontract*.

19.2 Failure to produce proof of insurance

If after being so requested, a party fails promptly to provide satisfactory evidence of compliance with clause 16, 17 or 18, then without prejudice to other rights or remedies, the other party may insure and the cost thereof shall be certified by the *Head Subcontractor* as moneys due and payable from the party in default to the other party. Where the defaulting party is the *Subcontractor*, the *Head Subcontractor* may refuse payment until such evidence is produced by the *Subcontractor*.

In relation to any policy of insurance which the *Subcontractor* is required to give effect under this *Subcontract*, the *Subcontractor* shall ensure that premiums are paid on time and that the conditions of such policy are complied with. The *Subcontractor* shall be liable to pay the excess and deductibles under such policy.

19.3 Notices from or to insurer

The *Subcontractor* insuring under Alternative 2 of clause 17 shall ensure that the *public liability policy* contains provisions acceptable to the *Head Subcontractor* which:

- (a) requires the insurer to inform both parties, whenever the insurer gives a party or a *secondary subcontractor* a notice in connection with the policy;
- (b) provides that a notice of claim given to the insurer by either party, the *Head Subcontractor* or a *secondary subcontractor* shall be accepted by the insurer as a notice of claim given by both parties, the *Head Subcontractor* and the *secondary subcontractor*; and
- (c) requires the insurer, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

19.4 Notices of potential claims

A party shall, as soon as practicable, inform the other party in writing of any occurrence affecting or arising out of *WUS* that may give rise to a claim under an insurance policy required by clause 16 or 17 and shall keep the other party informed of subsequent developments concerning the claim. The *Subcontractor* shall ensure that *secondary subcontractors* in respect of their operations similarly inform the parties.

19.5 Settlement of claims

Upon settlement of a claim under the insurance required by clause 16:

- (a) insurance moneys received shall, if requested by the *Head Subcontractor*, be paid into a bank account nominated by the *Head Subcontractor*. As the *Subcontractor* reinstates the loss or damage, the *Head Subcontractor* shall certify against the joint account for the cost of reinstatement; and
- (b) not used.

19.6 Cross liability

Any insurance required to be effected in joint names in accordance with the *Subcontract* shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

20 Work health and safety

- (a) To the extent applicable, in accordance with Regulation 293 of the *WHS Legislation*, the *Head Subcontractor* engages the *Subcontractor* as the principal contractor and authorises the *Subcontractor* to have management or control of the workplace and in carrying out the *WUS* for the purpose of discharging the duties imposed on a principal contractor for the project and the *Subcontract*, pursuant to the *WHS Legislation*. To the extent applicable, the *Subcontractor* accepts the engagement and authorisation as principal contractor and will fulfil the obligations of principal contractor for the project and the *Subcontract*, unless relieved of that engagement and authorisation by notice in writing given by the *Head Subcontractor*.
- (b) For the purposes of this clause, *WHS Legislation* means any of the following:
 - (i) *Work Health and Safety Act 2011* (Cth) and *Work Health and Safety Regulations 2011* (Cth); and
 - (ii) any corresponding WHS law as defined in section 4 of the *Work Health and Safety Act 2011* (Cth).

21 Head Subcontractor's Representative

The *Head Subcontractor* may from time to time appoint individuals to exercise delegated *Head Subcontractor's* functions, provided that:

- (a) no aspect of any function shall at any one time be the subject of delegation to more than one *Head Subcontractor's Representative*;
- (b) delegation shall not prevent the *Head Subcontractor* exercising any function;
- (c) the *Head Subcontractor* forthwith gives the *Subcontractor* written notice of respectively:
 - (i) the appointment, including the *Head Subcontractor's Representative's* name and delegated functions; and
 - (ii) the termination of each appointment; and
- (d) if the *Subcontractor* makes a reasonable objection to the appointment of a *Head Subcontractor's Representative*, the *Head Subcontractor* shall terminate the appointment.

22 Subcontractor's representative

The *Subcontractor* shall superintend *WUS* personally or by a competent representative. Matters within a *Subcontractor's* representative's knowledge (including *directions* received) shall be deemed to be within the *Subcontractor's* knowledge.

The *Subcontractor* shall forthwith give the *Head Subcontractor* written notice of the representative's name and any subsequent changes.

If the *Head Subcontractor* makes a reasonable objection to the appointment of a representative, the *Subcontractor* shall terminate the appointment and appoint another representative.

23 Subcontractor's employees and secondary subcontractors

The *Head Subcontractor* may direct the *Subcontractor* to have removed, within a stated time, from the *site* or from any activity of *WUS*, any person employed on *WUS* who, in the *Head Subcontractor's* opinion, is incompetent, negligent or guilty of misconduct.

24 Site

24.1 Non-exclusive access

Provided the *Subcontractor* has complied with subclause 19.1 and any other conditions precedent to access as set out in this *Subcontract*, the *Head Subcontractor* shall before the expiry of the time in *Item 25*, give the *Subcontractor* non-exclusive access to the *site* for commencement of *WUS* on *site*. If the *Head Subcontractor* has not given the *Subcontractor* non-exclusive access to the *site* to enable the *Subcontractor* to carry out all of *WUS*, the *Head Subcontractor* shall give the *Subcontractor* non-exclusive access to such further portions of the *site* as may, from time to time, be necessary for carrying out *WUS*. Delay by the *Head Subcontractor* in giving non-exclusive access under this clause shall not be a breach of the *Subcontract* but may entitle the *Subcontractor* to an *EOT* under clause 34.

Non-exclusive access to the *site* shall confer on the *Subcontractor* a right to only such use and control as is necessary to enable the *Subcontractor* to carry out *WUS* and shall exclude camping, residential purposes and any purpose not connected with *WUS*, unless approved by the *Head Subcontractor*.

24.2 Access for Head Subcontractor and others

The *Main Contractor*, the *Head Subcontractor* and the *Head Subcontractor's* employees, consultants and agents may at any reasonable time have access to any part of the *site* for any purpose. The *Subcontractor* shall permit persons engaged by the *Main Contractor* or by the *Head Subcontractor* to carry out *work* on the *site* other than *WUS* and shall co-operate with them.

The *Subcontractor* shall at all reasonable times give the *Head Subcontractor* and the *Main Contractor* access to *WUS*.

24.3 Minerals, fossils and relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the *site* shall as between the parties be and remain the property of the *Head Subcontractor*. Immediately upon the discovery of these things the *Subcontractor* shall:

- (a) take precautions to prevent their loss, removal or damage; and
- (b) give the *Head Subcontractor* written notice of the discovery.

25 Latent conditions

25.1 Scope

Latent conditions are physical conditions existing on the *site* and its near surrounds prior to the *date of Subcontract*, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a prudent, experienced and competent subcontractor similar to the *Subcontractor* at the *date of Subcontract* if the *Subcontractor* had inspected:

- (a) all written information made available by the *Head Subcontractor* to the *Subcontractor* prior to the *date of Subcontract*;

- (b) all information influencing the risk allocation in the *Subcontractor's* tender and reasonably obtainable by the making of reasonable enquiries; and
- (c) the *site* and its near surrounds.

25.2 Notification

The *Subcontractor*, upon becoming aware of a *latent condition* while carrying out *WUS*, shall as soon as possible (and, in any case, within 5 days of the first occurrence of the *latent condition*), and where possible before the *latent condition* is disturbed, give the *Head Subcontractor* written notice of the general nature thereof.

If required by the *Head Subcontractor* promptly after receiving that notice, the *Subcontractor* shall, as soon as practicable, give the *Head Subcontractor* a written statement of:

- (a) the *latent condition* encountered and the respects in which it differs materially;
- (b) the additional *work*, resources, time and cost which the *Subcontractor* estimates to be necessary to deal with the *latent condition*; and
- (c) other details reasonably required by the *Head Subcontractor*.

25.3 No entitlement

The *Subcontractor* shall have no entitlement (including for an *extension of time* or *variation*) arising out of, or in connection with, a *latent condition*.

26 Setting out the Subcontract Works

26.1 Setting out

The *Head Subcontractor* shall give the *Subcontractor* the data, *survey marks* and like information necessary for the *Subcontractor* to set out *the Subcontract Works*, together with those *survey marks* specified in the *Subcontract*. Thereupon the *Subcontractor* shall set out *the Subcontract Works* in accordance with the *Subcontract*.

26.2 Errors in setting out

The *Subcontractor* shall rectify every error in the position, level, dimensions or alignment of any *WUS* after promptly notifying the *Head Subcontractor* and unless the *Head Subcontractor* within 3 days directs otherwise.

26.3 Care of survey marks

The *Subcontractor* shall keep in their true positions all *survey marks* supplied by the *Head Subcontractor*.

The *Subcontractor* shall reinstate any *survey mark* disturbed, after promptly notifying the *Head Subcontractor* and unless the *Head Subcontractor* within 3 days directs otherwise.

27 Cleaning up

The *Subcontractor* shall keep the *site* and *WUS* clean and tidy and regularly remove rubbish and surplus material.

Within 14 days after the *date of practical completion*, the *Subcontractor* shall remove *temporary works* and *construction plant*. The *Head Subcontractor* may extend the time to enable the *Subcontractor* to perform remaining obligations.

If the *Subcontractor* fails to comply with the preceding obligations in this clause, the *Head Subcontractor* may direct the *Subcontractor* to rectify the non-compliance and the time for rectification.

If:

- (a) the *Subcontractor* fails to comply with such a *direction*; and

- (b) that failure has not been made good within 3 days after the *Subcontractor* receives written notice from the *Head Subcontractor* that the *Head Subcontractor* intends to have the subject *work* carried out by others,

the *Head Subcontractor* may have that *work* so carried out and the *Head Subcontractor* shall certify the cost incurred as moneys due from the *Subcontractor* to the *Head Subcontractor*. The rights given by this paragraph are additional to any other rights and remedies.

28 Materials, labour and construction plant

Except where the *Subcontract* otherwise provides, the *Subcontractor* shall supply everything necessary for the proper performance of the *Subcontractor's* obligations and discharge of the *Subcontractor's* liabilities.

In respect of any materials, machinery or equipment to be supplied by the *Subcontractor* in connection with the *Subcontract*, the *Head Subcontractor* may direct the *Subcontractor* to:

- (a) supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and
- (b) arrange reasonable inspection at such place or sources by the *Head Subcontractor* and persons authorized by the *Head Subcontractor*.

The *Head Subcontractor* may give the *Subcontractor* a written *direction* not to remove materials or *construction plant* from the *site*. Thereafter the *Subcontractor* shall not remove them without the *Head Subcontractor's* prior written approval (which shall not be unreasonably withheld).

29 Quality

29.1 Quality of material and work

Unless otherwise provided the *Subcontractor* shall use suitable new materials and proper and tradesmanlike workmanship.

*** 29.2 Quality assurance**

If the *Subcontract* elsewhere requires further quality assurance, the *Subcontractor* shall:

- (a) plan, establish and maintain a conforming quality system; and
- (b) ensure that the *Head Subcontractor* and the *Main Contractor* have access to the quality system of the *Subcontractor* and *secondary subcontractors* so as to enable monitoring and quality auditing.

Any such quality system shall be used only as an aid to achieving compliance with the *Subcontract* and to document such compliance. Such system shall not discharge the *Subcontractor's* other obligations under the *Subcontract*.

29.3 Defective work

If the *Head Subcontractor* becomes aware of *work* done (including material provided) by the *Subcontractor* which does not comply with the *Subcontract*, the *Head Subcontractor* shall as soon as practicable give the *Subcontractor* written details thereof. If the subject *work* has not been rectified in accordance with the *directions* of the *Head Subcontractor*, the *Head Subcontractor* may direct the *Subcontractor* to do any one or more of the following (including times for commencement and completion):

- (a) remove the material from the *site*;
- (b) demolish the *work*;
- (c) reconstruct, replace or correct the *work*; and
- (d) not deliver it to the *site*.

If:

- (a) the *Subcontractor* fails to comply with such a *direction*; and
- (e) that failure has not been made good within 5 days after the *Subcontractor* receives written notice from the *Head Subcontractor* that the *Head Subcontractor* intends to have the subject *work* rectified by others,

the *Head Subcontractor* may have that *work* so rectified and the *Head Subcontractor* shall certify the cost incurred as moneys due from the *Subcontractor* to the *Head Subcontractor*.

29.4 Acceptance of defective work

Instead of a *direction* pursuant to subclause 29.3, the *Head Subcontractor* may direct the *Subcontractor* that the *Head Subcontractor* elects to accept the subject *work*, whereupon there shall be a deemed *variation*.

29.5 Timing

The *Head Subcontractor* may give a *direction* pursuant to this clause at any time before the expiry of the last *defects liability period*.

29.6 Certificates and warranties

Prior to, and as a condition precedent of, *practical completion*, the *Subcontractor* must procure and provide to the *Main Contractor* and *Head Subcontractor* copies of:

- (a) all necessary certificates and approvals by all relevant authorities required for the lawful occupation and use of the *Subcontract Works*; and
- (b) performance warranties (in favour of the *Main Contractor* and the *Head Subcontractor*) in respect of the *Subcontract Works* identified in *Item 26* and in the form acceptable to the *Head Subcontractor*. Each such warranty must be for the period corresponding to the relevant work designated in *Item 26*.

30 Examination and testing

30.1 Tests

At any time before the expiry of the last *defects liability period*, the *Head Subcontractor* may direct that any *WUS* be tested. The *Subcontractor* shall give such assistance and samples and make accessible such parts of *WUS* as may be directed by the *Head Subcontractor*.

30.2 Covering up

The *Head Subcontractor* may direct that any part of *WUS* shall not be covered up or made inaccessible without the *Head Subcontractor's* prior written *direction*.

30.3 Who conducts

Tests shall be conducted as provided elsewhere in the *Subcontract* or by the *Head Subcontractor* or a person (which may include the *Subcontractor*) nominated by the *Head Subcontractor*.

30.4 Notice

The *Head Subcontractor* or the *Subcontractor* (whichever is to conduct the *test*) shall give reasonable written notice to the other of the date, time and place of the *test*. If the other does not attend, the *test* may nevertheless proceed.

30.5 Delay

Without prejudice to any other right, if the *Subcontractor* or the *Head Subcontractor* delays in conducting a *test*, the other, after giving reasonable written notice of intention to do so, may conduct the *test*.

30.6 Completion and results

On completion of the *tests*, the *Subcontractor* shall make good *WUS* so that it fully complies with the Subcontract.

Results of *tests* shall be promptly made available by each party to the other.

30.7 Costs

Costs in connection with testing pursuant to this clause shall be borne by the *Subcontractor*.

31 Working hours

If the working hours and working days on the *site* are not stated elsewhere in the *Subcontract*, they shall be as notified by the *Subcontractor* to the *Head Subcontractor* from time to time. They shall not be varied without the *Head Subcontractor's* prior written approval, except when, in the interests of safety of persons or property, the *Subcontractor* finds it necessary to carry out *WUS* otherwise, whereupon the *Subcontractor* shall give the *Head Subcontractor* written notice of those circumstances as early as possible.

32 Programming

The *Subcontractor* shall give the *Head Subcontractor* reasonable advance notice of when the *Subcontractor* needs information, materials, documents or instructions from the *Head Subcontractor*.

The *Head Subcontractor* shall not be obliged to give any information, materials, documents or instructions earlier than the *Head Subcontractor* should reasonably have anticipated at the *date of Subcontract*.

The *Subcontractor* shall co-operate with the *Head Subcontractor's* other subcontractors and with others engaged by the *Head Subcontractor* or the *Main Contractor* (and shall comply with any *directions* of the *Head Subcontractor* in this regard) and subject to the *Head Subcontractor* being responsible for the overall co-ordination of *WUS* into the *work* under the *main contract*, the *Head Subcontractor* and the *Subcontractor* shall co-ordinate *WUS* with the *work* under the *main contract*.

The *Head Subcontractor* may direct in what order and at what time the various stages or portions of *WUS* shall be carried out. The *Subcontractor* shall comply with such *directions*.

A *construction program* is a written statement showing the dates by which, or the times within which, the various stages or portions of *WUS* are to be carried out or completed.

The *Head Subcontractor* may direct the *Subcontractor* to give the *Head Subcontractor* a program within the time and in the form directed. The *Subcontractor* shall submit a program (in accordance with the *directions* of the *Head Subcontractor*) to the *Head Subcontractor* for approval. The *Head Subcontractor* may approve the program in writing or reject the program by providing written reasons of such rejection to the *Subcontractor*. The *Subcontractor* shall, within 5 days of the date of such rejection, provide an updated program to the *Head Subcontractor* incorporating any changes requested by the *Head Subcontractor*. This paragraph shall re-apply until the program is approved in writing by the *Head Subcontractor* (in which case, that approved program shall be deemed the *construction program*).

The *Subcontractor* shall not, without reasonable cause, depart from a *construction program* that has been approved by the *Head Subcontractor* in writing.

33 Suspension

33.1 Head Subcontractor's suspension

The *Head Subcontractor* may direct the *Subcontractor* to suspend the carrying out of the whole or part of *WUS* for such time as the *Head Subcontractor* thinks fit, if the *Head Subcontractor* is of the opinion that it is necessary:

- (a) because of an act, default or omission of:

- (i) the *Head Subcontractor* or its employees, consultants, agents or other contractors (not being employed by the *Subcontractor*); or
- (ii) the *Subcontractor*, a *secondary subcontractor* or either's employees or agents;
- (b) for the protection or safety of any person or property;
- (c) to comply with a court order;
- (d) because of a *main contract dispute*; or
- (e) because suspension of *work* under the *main contract*, in the *Head Subcontractor's* opinion, prevents *WUS*.

33.2 Subcontractor's suspension

If the *Subcontractor* wishes to suspend the carrying out of the whole or part of *WUS*, otherwise than pursuant to subclause 39.9, the *Subcontractor* shall obtain the *Head Subcontractor's* prior written approval. The *Head Subcontractor* may approve the suspension and may impose conditions of approval.

33.3 Recommencement

As soon as the *Head Subcontractor* becomes aware that the reason for any suspension no longer exists, the *Head Subcontractor* shall direct the *Subcontractor* to recommence suspended *WUS* as soon as reasonably practicable.

The *Subcontractor* may recommence *WUS* suspended pursuant to subclause 33.2 or 39.9 at any time after reasonable notice to the *Head Subcontractor*.

33.4 Cost

The *Subcontractor* shall bear the cost of suspension unless the reason for the suspension is the result of a breach of this *Subcontract* by the *Head Subcontractor* in which case, if the *Subcontractor* otherwise incurs more or less cost than otherwise would have been incurred, the difference shall be assessed by the *Head Subcontractor* and added to or deducted from the *subcontract sum*.

34 Time and progress

34.1 Progress

The *Subcontractor* shall ensure that *WUS* reaches *practical completion* by the *date for practical completion*.

The *Subcontractor* shall carry out *WUS* diligently, expeditiously and without delay.

34.2 Notice of delay

A party becoming aware of anything which will probably cause delay to *WUS* shall promptly give the *Head Subcontractor* and the other party written notice of that cause and the estimated delay.

34.3 Claim

The *Subcontractor* shall be entitled to such extension of time for carrying out *WUS* (including reaching *practical completion*) as the *Head Subcontractor* assesses ('EOT'), if:

- (a) the *Subcontractor* has actually been delayed:
 - (i) prior to the *date for practical completion*, by a *qualifying cause of delay* in a manner which will prevent it from achieving *practical completion* by the *date for practical completion*;
 - (ii) after the *date for practical completion*, by a *qualifying cause of delay* in a manner which will delay it from achieving *practical completion*;
- (b) the delay was beyond the reasonable control of the *Subcontractor*;

- (c) the *Subcontractor* and others for whom the *Subcontractor* is responsible did not contribute to the delay;
- (d) the *Subcontractor* has taken all reasonable steps to mitigate the effects of the delay;
- (e) the *Subcontractor* gives the *Head Subcontractor*, within 7 days of the commencement of the delay, a written claim for an *EOT* evidencing the facts of causation and of the delay to *WUS* (including extent); and
- (f) if further delay results from a *qualifying cause of delay* evidenced in a claim under paragraph (e) of this subclause, the *Subcontractor* shall claim an *EOT* for such delay by promptly (and in any case, within 7 days of the commencement of the further delay) giving the *Head Subcontractor* a written claim evidencing the facts of that delay.

34.4 Assessment

When both non-qualifying and qualifying causes of delay overlap, the *Head Subcontractor* shall apportion the resulting delay to *WUS* according to the respective causes' contribution.

In assessing each *EOT* the *Head Subcontractor* may have regard to what prevention and mitigation of the delay has not been effected by the *Subcontractor*.

34.5 Extension of time

Within 35 days after receiving the *Subcontractor's* claim for an *EOT*, the *Head Subcontractor* shall give to the *Subcontractor* a written *direction* evidencing the *EOT* so assessed. If the *Head Subcontractor* does not do so, there shall be a deemed assessment and *direction* for an *EOT* as claimed.

Notwithstanding that the *Subcontractor* is not entitled to or has not claimed an *EOT*, the *Head Subcontractor* may at any time and from time to time before issuing the *final certificate* direct an *EOT*.

34.6 Practical completion

The *Subcontractor* shall give the *Head Subcontractor* at least 14 days written notice of the date upon which the *Subcontractor* anticipates that *practical completion* will be reached.

When the *Subcontractor* is of the opinion that *practical completion* has been reached, the *Subcontractor* shall in writing request the *Head Subcontractor* to issue a *certificate of practical completion*. Within 14 days after receiving the request, the *Head Subcontractor* shall give the *Subcontractor* either a *certificate of practical completion* evidencing the *date of practical completion* or written reasons for not doing so.

If the *Head Subcontractor* is of the opinion that *practical completion* has been reached, the *Head Subcontractor* may issue a *certificate of practical completion* even though no request has been made.

34.7 Liquidated damages

If *WUS* does not reach *practical completion* by the *date for practical completion*, the *Head Subcontractor* shall certify, as due and payable to the *Head Subcontractor*, liquidated damages in *Item 27(a)* for every day after the *date for practical completion* to and including the earliest of the *date of practical completion* or termination of the *Subcontract* or the *Head Subcontractor* taking *WUS* out of the hands of the *Subcontractor*.

If an *EOT* is directed after the *Subcontractor* has paid or the *Head Subcontractor* has set off liquidated damages, the *Head Subcontractor* shall forthwith repay to the *Subcontractor* such of those liquidated damages as represent the days the subject of the *EOT*.

* The parties agree that the liquidated damages provided for in this clause are a fair, reasonable and genuine pre-estimate of the loss and damage which the *Head Subcontractor* is likely to suffer and incur as a result of the breach referred to in this clause and do not constitute a penalty.

The *Subcontractor* agrees that if the liquidated damages is found for any reason to be void, invalid or otherwise inoperative for whatever reason, the *Subcontractor* must indemnify the *Head Subcontractor* against any costs, losses, expenses or damages (whether liquidated or unliquidated) arising out of, or in connection with, the *Subcontractor's* failure to achieve *practical completion* by the *date for practical completion*, but the *Subcontractor's* liability for such damages will not be any greater than the liability which it would have had had the liquidated damages not been void, invalid or otherwise inoperative.

The *Head Subcontractor* may recover liquidated damages progressively following the *date for practical completion*:

- (a) on demand from the *Subcontractor*; or
- (b) by deducting such amount from any *security* held under the *Subcontract*, notwithstanding that *practical completion* has not occurred.

34.7A Indemnity

The *Subcontractor* shall not do anything, or omit to do anything, to cause any delay to practical completion of the *main contract works*.

If the *main contract works* do not reach practical completion by the date for practical completion under the *main contract* and this delay is caused or contributed to by a delay of the *Subcontractor* in completing *WUS*, the *Subcontractor* shall indemnify the *Head Subcontractor* against:

- (a) liquidated damages under the *main contract* as certified by the *Main Contractor* or the superintendent under the *main contract* (if any); and
- (b) damages, other than liquidated damages, which have become due and payable by the *Head Subcontractor* to the *Main Contractor*.

If the *Subcontractor's* delay is not the sole cause of the *Head Subcontractor's* liability for damages, the *Subcontractor* shall indemnify the *Head Subcontractor* only in proportion to the *Subcontractor's* delay, which shall be certified by the *Head Subcontractor*, as moneys due to the *Head Subcontractor* by the *Subcontractor*.

If an *EOT* is directed after the *Subcontractor* has paid or the *Head Subcontractor* has set off liquidated damages, the *Head Subcontractor* shall forthwith repay to the *Subcontractor* such of those liquidated damages as represent the days the subject of the *EOT*.

The parties agree that the *Subcontractor's* indebtedness under this subclause is not included in, and is in addition to, the liquidated damages applicable to subclause 34.7.

34.8 Not used

34.9 Delay damages

Subject to the last paragraph of this clause, for every day the subject of an *EOT* for a *compensable cause* and for which the *Subcontractor* gives the *Head Subcontractor* a claim for delay damages pursuant to subclause 41.1, damages certified by the *Head Subcontractor* under subclause 41.3 shall be due and payable to the *Subcontractor*.

* See Preface

Nothing in this clause shall oblige the *Head Subcontractor* to pay extra costs for delay or disruption which have already been included in the value of a *variation* or any other payment under the *Subcontract*.

The *Subcontractor* shall use its best endeavours to minimise the damages referred to in this clause.

The amount set out in *Item 29A* will be the maximum amount which will be payable by the *Head Subcontractor* under this clause and will be a limitation upon the *Head Subcontractor's* liability to the *Subcontractor* in respect of any loss, damage, liability or claim arising out of, or in any way in connection with, any delay or disruption which the *Subcontractor* suffers or encounters as a result of a breach of *Subcontract* by the *Head Subcontractor*.

35 Defects liability

The *defects liability period* stated in *Item 30* shall commence on the *date of practical completion* at 4:00 pm.

The *Subcontractor* shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the *Subcontract Works* as is reasonably possible and in accordance with any *directions* of the *Head Subcontractor*.

As soon as possible after the *date of practical completion*, the *Subcontractor* shall rectify all *defects* existing at the *date of practical completion*.

During the *defects liability period*, the *Head Subcontractor* may give the *Subcontractor* a *direction* to rectify a defect which:

- (a) shall identify the defect and the date for completion of its rectification and any other requirements in relation to the rectification work; and
- (b) may state a date for commencement of the rectification and whether there shall be a separate *defects liability period* therefor (not exceeding 12 months, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

The *Subcontractor* shall comply with any *directions* of the *Head Subcontractor* under this clause. If the rectification is not commenced or completed by the stated dates or carried out in accordance with the *directions* of the *Head Subcontractor* may have the rectification carried out by others but without prejudice to any other rights and remedies the *Head Subcontractor* may have. The cost thereby incurred shall be certified by the *Head Subcontractor* as moneys due and payable to the *Head Subcontractor*.

36 Variations

36.1 Directing variations

Notwithstanding anything else, the *Subcontractor* shall not vary *WUS* except as directed in writing by the *Head Subcontractor*.

The *Head Subcontractor*, before the *date of practical completion*, may direct the *Subcontractor* to vary *WUS* by any one or more of the following which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the *Subcontract*:

- (a) increase, decrease or omit any part;
- (b) change the character or quality;
- (c) change the levels, lines, positions or dimensions;
- (d) carry out additional *work*;
- (e) demolish or remove material or *work* no longer required by the *Head Subcontractor*.

The power to direct a *variation* shall include the power to decrease or omit any part of the *WUS* and for the *Head Subcontractor* to carry out the decreased or omitted work either itself or by engaging another person to do so.

Notwithstanding anything else, the *Subcontractor* shall have no claim nor entitlement arising out of, or in connection with, a *variation*:

- (f) unless the *Subcontractor* has issued the *Head Subcontractor* with a claim in relation to the *variation* (along with all evidence of the time and cost implications arising from the *variation* and all other information requested by the *Head Subcontractor*) within 5 days of becoming aware of the fact, matter or thing giving rise to the *variation*;
- (g) unless the *Head Subcontractor* has provided written approval (which states that it is an approval given under this clause 36.1) in relation to the *variation* prior to the *variation* work being carried out; and
- (h) if the *variation* was a result of any act, default or omission of the *Subcontractor* or any employee or agent of the *Subcontractor*.

36.2 Proposed variations

The *Head Subcontractor* may give the *Subcontractor* written notice of a proposed *variation*.

The *Subcontractor* shall as soon as practicable after receiving such notice, notify the *Head Subcontractor* whether the proposed *variation* can be effected, together with, if it can be effected, the *Subcontractor's* estimate of the:

- (a) effect on the *construction program* (including the *date for practical completion*); and
- (b) cost (including all time-related costs, if any) of the proposed *variation*.

The *Head Subcontractor* may direct the *Subcontractor* to give a detailed quotation for the proposed *variation* supported by measurements or other evidence of cost.

36.3 Variations for convenience of Subcontractor

If the *Subcontractor* requests the *Head Subcontractor* to direct a *variation* for the convenience of the *Subcontractor*, the *Head Subcontractor* may do so. The *direction* shall be written and may be conditional. Unless the *direction* provides otherwise, the *Subcontractor* shall be entitled to neither extra time nor extra money.

36.4 Pricing

The *Head Subcontractor* shall, as soon as possible, price each *variation* using the following order of precedence:

- (a) prior agreement;
- (b) applicable rates or prices in the *Subcontract*;
- (c) rates or prices in a *schedule of rates* or schedule of prices, even though not *Subcontract* documents, to the extent that it is reasonable to use them; and
- (d) reasonable rates or prices, which shall include a reasonable amount for profit and overheads.

For the purposes of a valuation to be made in accordance with this clause, any increase or decrease to the *subcontract sum* shall include a margin which shall be calculated by the *Head Subcontractor* using the rate set out in *Item 30A* (which is deemed to be all inclusive and includes all amounts for profit, supervision, onsite and offsite overheads, preliminaries and attendance).

That price shall be added to or deducted from the *subcontract sum*.

The *Subcontractor* must proceed with the performance of any variation that is directed or approved in writing by the *Head Subcontractor* under this clause notwithstanding that the price or valuation of the variation has not been finally agreed or determined.

37 Payment

37.1 Progress claims

Subject to clause 37.7, the *Subcontractor* shall claim payment progressively in accordance with *Item 31*.

An early progress claim shall be deemed to have been made on the date for making that claim.

Each progress claim shall be given in writing to the *Head Subcontractor* and shall include details of the value of *WUS* done and any other details required by the *Head Subcontractor* and may include details of other moneys then due to the *Subcontractor* pursuant to provisions of the *Subcontract*.

37.2 Certificates

The *Head Subcontractor* shall, within 10 *Business Days* after receiving such a progress claim, issue to the *Head Subcontractor* and the *Subcontractor*:

- (a) a *progress certificate* evidencing the *Head Subcontractor's* opinion of the moneys due from the *Head Subcontractor* to the *Subcontractor* pursuant to the progress claim and reasons for any difference and any other relevant information determined by the *Head Subcontractor* ('*progress certificate*'); and
- (b) not used.

If the *Subcontractor* does not make a progress claim in accordance with *Item 31*, the *Head Subcontractor* may nevertheless issue a *progress certificate* with details of the calculations.

The *Head Subcontractor* shall within 10 *Business Days* after receiving a *progress certificate*, pay to the *Subcontractor* the balance of the *progress certificate* after deducting retention moneys and setting off any other amount due and payable by the *Subcontractor* to the *Head Subcontractor* as the *Head Subcontractor* elects to set off. If that setting off produces a negative balance, the *Subcontractor* shall pay that balance to the *Head Subcontractor* within 7 days of receiving written notice thereof.

Neither a *progress certificate* nor a payment of moneys shall be evidence that the subject *WUS* has been carried out satisfactorily. Payment other than *final payment* shall be payment on account only.

At any time and from time to time, the *Head Subcontractor* may by further certificate modify or correct any error in any previous certificate.

37.3 Unfixed plant and materials

The *Head Subcontractor* shall not be liable to pay for unfixed plant and materials unless they are listed in *Item 32* and the *Subcontractor*:

- (a) provides the additional *security* in *Item 17(e)*; and
- (b) satisfies the *Head Subcontractor* that the subject plant and materials have been paid for, properly stored and protected, and labelled the property of the *Head Subcontractor*.

Upon payment to the *Subcontractor* and the release of any additional *security* in paragraph (a), the subject plant and materials shall be the unencumbered property of the *Head Subcontractor*.

37.4 Final payment claim and certificate

Within 21 days after the expiry of the last *defects liability period*, subject to clause 37.7, the *Subcontractor* shall give the *Head Subcontractor* a written *final payment* claim endorsed 'Final payment claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the *Subcontract*.

Within 10 *Business Days* of the receipt of the Final payment claim, the *Head Subcontractor* shall issue to the *Subcontractor* a *final certificate* evidencing the moneys finally due and

payable between the *Subcontractor* and the *Head Subcontractor* on any account whatsoever in connection with the subject matter of the *Subcontract*.

Those moneys certified as due and payable shall be paid by the *Head Subcontractor* or the *Subcontractor*, as the case may be, within 7 days after the debtor receives the *final certificate*.

The *final certificate* shall be conclusive evidence of accord and satisfaction, and in discharge of each party's obligations in connection with the subject matter of the *Subcontract* except for:

- (a) fraud or dishonesty relating to *WUS* or any part thereof or to any matter dealt with in the *final certificate*;
- (b) any defect or omission in the *Subcontract Works* or any part thereof which was not apparent at the end of the last *defects liability period*, or which would not have been disclosed upon reasonable inspection at the time of the issue of the *final certificate*;
- (c) any accidental or erroneous inclusion or exclusion of any *work* or figures in any computation or an arithmetical error in any computation; and
- (d) unresolved issues the subject of any notice of *dispute* pursuant to clause 42, served before the 7th day after the issue of the *final certificate*.

37.5 Interest

Interest in *Item 33* shall be due and payable after the date of default in payment.

37.6 Other moneys due

The *Head Subcontractor* may elect that moneys due and owing otherwise than in connection with the subject matter of the *Subcontract* also be due to the *Head Subcontractor* pursuant to the *Subcontract*.

The *Head Subcontractor* may deduct from moneys due to the *Subcontractor* any money due, or may become due, from the *Subcontractor* to the *Head Subcontractor* under the *Subcontract* or otherwise.

Where, within the time provided by the *Subcontract*, the *Subcontractor* fails to pay the *Head Subcontractor* an amount due and payable under the *Subcontract* or, where no time is specified, the *Subcontractor* fails to pay the *Head Subcontractor* any amount due and payable under the *Subcontract* immediately upon demand, the *Head Subcontractor* may have recourse to *security* under the *Subcontract* and any deficiency remaining may be recovered by the *Head Subcontractor* as a debt due and payable.

37.7 Conditions precedent

The following are conditions precedent to the *Subcontractor's* right to make a progress claim (including the Final payment claim) under clause 37.1 and 37.4, the *Subcontractor*:

- (a) has provided the *Head Subcontractor* with *security* as required under clause 5;
- (b) has effected the requisite insurances under this *Subcontract*;
- (c) has complied with clause 38.1; and
- (d) is not in breach of the *Subcontract*.

38 Payment of workers and secondary subcontractors

38.1 Workers and secondary subcontractors

The *Subcontractor* shall give in respect of a progress claim, documentary evidence of the payment of moneys due and payable to:

- (a) workers of the *Subcontractor* and of the *secondary subcontractors*; and
- (b) *secondary subcontractors*,

in respect of *WUS* the subject of that claim.

If the *Subcontractor* is unable to give such documentary evidence, the *Subcontractor* shall give other documentary evidence (satisfactory to the *Head Subcontractor*) of the moneys so due and payable to workers and *secondary subcontractors*.

Documentary evidence, except where the *Subcontract* otherwise provides, shall be to the *Head Subcontractor's* satisfaction.

38.2 Withholding payment

Subject to the next paragraph, the *Head Subcontractor* may withhold moneys certified due and payable in respect of the progress claim until the *Subcontractor* complies with subclause 38.1.

The *Head Subcontractor* shall not withhold payment of such moneys in excess of the moneys evidenced pursuant to subclause 38.1 as due and payable to workers and *secondary subcontractors*.

38.3 Direct payment

Before *final payment*, the *Head Subcontractor*, if not aware of a relevant relation-back day (as defined in the Corporations Law) may pay unpaid moneys the subject of subclause 38.1 directly to a worker or a *secondary subcontractor* where:

- (a) permitted by law;
- (b) given a court order in favour of the worker or *secondary subcontractor*; or
- (c) requested in writing by the *Subcontractor*.

Such payment and a payment made to a worker or *secondary subcontractor* in compliance with a *legislative requirement* shall be deemed to be part-satisfaction of the *Head Subcontractor's* obligation to pay pursuant to subclause 37.2 or 37.4, as the case may be.

39 Default or insolvency

39.1 Preservation of other rights

If a party breaches (including repudiates) the *Subcontract*, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

39.2 Subcontractor's default

If the *Subcontractor* commits a breach of the *Subcontract*, the *Head Subcontractor* may, by hand or by registered post, give the *Subcontractor* a written notice to rectify the breach.

Substantial breaches include, but are not limited to:

- (a) failing to:
 - (i) provide *security*;
 - (ii) provide evidence of insurance;
 - (iii) comply with a *direction* of the *Head Subcontractor* pursuant to subclause 29.3; or
 - (iv) use the materials or standards of *work* required by the *Subcontract*;
- (b) wrongful suspension of *work*;
- (c) substantial departure from a *construction program* without reasonable cause or the *Head Subcontractor's* approval;
- (d) where there is no *construction program*, failing to proceed with due expedition and without delay; and
- (e) in respect of clause 38, knowingly providing documentary evidence containing an untrue statement.

39.3 Head Subcontractor's notice to rectify breach

A notice under subclause 39.2 shall state:

- (a) that it is a notice under clause 39 of these Subcontract Conditions;
- (b) the alleged substantial breach;
- (c) that the *Subcontractor* is required to rectify the breach; and
- (d) the date and time by which the *Subcontractor* must rectify the breach (which shall not be less than 7 clear days after the notice is received by the *Subcontractor*).

39.4 Head Subcontractor's rights

If the *Subcontractor* fails to rectify the breach by the stated date and time, the *Head Subcontractor* may by written notice to the *Subcontractor*:

- (a) take out of the *Subcontractor's* hands the whole or part of the *work* remaining to be completed and suspend payment until it becomes due and payable pursuant to subclause 39.6; or
- (b) terminate the *Subcontract*.

39.5 Take out

The *Head Subcontractor* shall complete *work* taken out of the *Subcontractor's* hands and may:

- (a) use materials, equipment and other things intended for *WUS*; and
- (b) without payment of compensation to the *Subcontractor*:
 - (i) take possession of, and use such of the *construction plant* and other things on or in the vicinity of the *site* as were used by the *Subcontractor*; and
 - (ii) contract with such of the *Subcontractor's secondary subcontractors* and consultants,

as are reasonably required by the *Head Subcontractor* to facilitate completion of *WUS*.

If the *Head Subcontractor* takes possession of *construction plant* or other things, the *Head Subcontractor* shall maintain them and, subject to subclause 39.6, on completion of the *work*, shall return such of them as are surplus.

The *Head Subcontractor* shall keep records of the cost of completing the *work*.

39.6 Adjustment on completion of work taken out

When *work* taken out of the *Subcontractor's* hands has been completed, the *Head Subcontractor* shall assess the cost thereby incurred and shall certify as moneys due and payable accordingly the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the *Subcontractor* if the *work* had been completed by the *Subcontractor*.

If the *Subcontractor* is indebted to the *Head Subcontractor*, the *Head Subcontractor* may retain *construction plant* or other things taken under subclause 39.5 until the debt is satisfied. If after reasonable notice, the *Subcontractor* fails to pay the debt, the *Head Subcontractor* may sell the *construction plant* or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the *Subcontractor*.

39.7 Head Subcontractor's default

If the *Head Subcontractor* commits a substantial breach of the *Subcontract*, the *Subcontractor* may, by hand or by registered post, give the *Head Subcontractor* a written notice to rectify the breach.

Substantial breaches are limited to:

- (a) failing to:
 - (i) provide *security*;
 - (ii) produce evidence of insurance;

- (iii) rectify inadequate *Subcontractor's* non-exclusive possession of the *site* if that failure continues for longer than the time stated in *Item 34*; or
- (iv) make a payment due and payable pursuant to the *Subcontract*; and
- (b) the *Head Subcontractor* not giving a *certificate of practical completion* or reasons as referred to in subclause 34.6.

39.8 Subcontractor's notice to rectify breach

A notice given under subclause 39.7 shall state:

- (a) that it is a notice under clause 39 of these Subcontract Conditions;
- (b) the alleged substantial breach;
- (c) that the *Head Subcontractor* is required to rectify the breach; and
- (d) the date and time by which the *Head Subcontractor* must rectify the breach (which shall not be less than 7 clear days after the notice is received by the *Head Subcontractor*).

39.9 Subcontractor's rights

If the *Head Subcontractor* fails to rectify the breach by the stated date and time, the *Subcontractor* may, by written notice to the *Head Subcontractor*, suspend the whole or any part of *WUS*.

The *Subcontractor* shall remove the suspension if the *Head Subcontractor* remedies the breach.

The *Subcontractor* may, by written notice to the *Head Subcontractor*, terminate the *Subcontract*, if within 28 days of the date of suspension under this subclause, the *Head Subcontractor* fails:

- (a) to remedy the breach; or
- (b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the *Subcontractor*.

Damages suffered by the *Subcontractor* by reason of the suspension shall be assessed by the *Head Subcontractor*, who shall certify them as moneys due and payable to the *Subcontractor*.

39.10 Termination

If the *Subcontract* is terminated pursuant to subclause 39.4(b) or 39.9, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the *Subcontract* had the defaulting party repudiated the *Subcontract* and the other party elected to treat the *Subcontract* as at an end and recover damages.

39.11 Insolvency

If:

- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Subcontract*;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if that person:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or

- (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cth) or like provision under the law governing the *Subcontract*; or
- (d) in relation to a party being a corporation:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) it enters a deed of company arrangement with creditors;
 - (iii) a controller or administrator is appointed;
 - (iv) an application is made to a court for its winding up and not stayed within 14 days;
 - (v) a winding up order is made in respect of it;
 - (vi) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
 - (vii) a mortgagee of any of its property takes possession of that property,

then, where the other party is:

- (A) the *Head Subcontractor*, the *Head Subcontractor* may, without giving a notice to rectify the breach, exercise the right under subclause 39.4(a) or 39.4(b); or
- (B) the *Subcontractor*, the *Subcontractor* may, without giving a notice to rectify the breach, exercise the right under subclause 39.9.

The rights and remedies given by this subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of the *Subcontract*.

40 Termination for convenience

The *Head Subcontractor* may terminate this *Subcontract* for convenience at any time by providing written notice to the *Subcontractor*. If the *Subcontract* is terminated under this clause, the *Head Subcontractor* shall be liable to pay the *Subcontractor* that part of the *subcontract sum* which remains unpaid for any *WUS* properly and reasonably carried out by the *Subcontractor* prior to the date of termination as certified by the *Head Subcontractor*.

41 Notification of claims

41.1 Communication of claims

The *prescribed notice* is a written notice of the general basis and quantum of the claim which shall include:

- (a) detailed particulars concerning the direction, event, fact, matter or thing upon which the claim is based;
- (b) the legal basis for the claim, whether based on a term of the *Subcontract* or otherwise, and if based on a term of the *Subcontract*, clearly identifying the specific term;
- (c) the facts relied upon in support of the claim in sufficient detail to permit verification; and
- (d) details of the amount claimed and how it has been calculated.

Within 7 days of the occurrence of any direction, event, fact, matter or thing upon which any claim in connection with the subject matter of the *Subcontract* is based, the *Subcontractor* shall give to the *Head Subcontractor* the *prescribed notice*.

This subclause and subclause 41.3 shall not apply to any claim, including a claim for payment (except for claims which would, other than for this subclause, have been included in the *final payment claim*), the communication of which is required by another provision of the *Subcontract*.

41.2 Liability for failure to communicate

If the *Subcontract* fails to comply with clause 41.1:

- (a) the *Head Subcontractor* will not be obliged to make any *direction* under any relevant provisions of the *Subcontract*;
- (b) the *Head Subcontractor* will not be liable upon any claim by the *Subcontractor*; and
- (c) the *Subcontractor* will be absolutely barred from making any claim against the *Head Subcontractor*,

arising out of, or in any way in connection with, the relevant direction, event, fact, matter or thing (as the case may be) to which clause 41.1 applies.

41.3 Head Subcontractor's decision

Within 63 days of receipt of the *prescribed notice* the *Head Subcontractor* shall assess the claim and notify the *Subcontractor* in writing of the decision. Unless a party within a further 21 days of such notification gives a notice of *dispute* under subclause 42.1 which includes such decision, the *Head Subcontractor* shall certify the amount of that assessment to be moneys then due and payable.

42 Dispute resolution**42.1 Notice of dispute**

If a difference or *dispute* (together called a '*dispute*') between the parties arises in connection with the subject matter of the *Subcontract*, including a *dispute* concerning:

- (a) a *Head Subcontractor's direction*; or
- (b) a claim:
 - (i) in tort;
 - (ii) under statute;
 - (iii) for restitution based on unjust enrichment or other quantum meruit; or
 - (iv) for rectification or frustration,

or like claim available under the law governing the *Subcontract*,

then either party shall, by hand or by registered post, give the other a written notice of *dispute* adequately identifying and providing details of the *dispute*.

Notwithstanding the existence of a *dispute*, the parties shall, subject to clauses 39 and 40 and subclause 42.3, continue to perform the *Subcontract*.

42.2 Conference

Within 14 days after receiving a notice of *dispute*, the parties shall confer at least once to resolve the *dispute* or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

If the *dispute* has not been resolved within 28 days of service of the notice of *dispute*, that *dispute* shall be and is hereby referred to litigation.

42.3 Summary relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the *Subcontract* or to seek injunctive or urgent declaratory relief.

43 Waiver of conditions

Except as provided at law or in equity or elsewhere in the *Subcontract*, none of the provisions of the *Subcontract* shall be varied, waived, discharged or released, except with the prior written consent of the parties.

44 Services and facilities

44.1 Provision of services and facilities

The *Subcontractor* shall provide all services and facilities necessary for the execution and completion of *WUS*.

The *Subcontractor* shall only use services or facilities provided by the *Head Subcontractor* (if any) for the carrying out of *WUS*.

44.2 Compliance

All services and facilities provided by the *Head Subcontractor* and the *Subcontractor* shall comply with all *legislative requirements* applicable from time to time to *WUS*.

44.3 Additional services or facilities

If pursuant to a request of the *Subcontractor*, the *Head Subcontractor* agrees to provide services or facilities additional to those provided by the *Head Subcontractor* in **Item Error! Reference source not found.**, the *Subcontractor* shall pay a reasonable charge (which shall not be less than the cost to the *Head Subcontractor*) for the provision of such additional services or facilities (as determined by the *Head Subcontractor*). The rates of hire and the conditions relating to their provision shall be agreed in writing prior to the provision of such additional services or facilities.

45 Goods and Services Tax

45.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause have the meanings ascribed to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for *GST* purposes (including attributing *GST* payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- (c) Unless stated otherwise, all consideration to be provided under or in connection with this *Subcontract* other than under this clause is exclusive of *GST*. Any consideration that is specified to be inclusive of *GST* must not be taken into account in calculating the *GST* payable in relation to a supply for the purpose of this clause.

45.2 Reimbursements and similar payments

If a party is required under this *Subcontract* to reimburse or pay another party an amount calculated by reference to a cost, expense, or amount paid or incurred by that other party, the reimbursement or payment will be limited to the total cost, expense or amount less the amount of any input tax credit entitlement arising in respect of any acquisition to which that cost, expense or amount relates.

45.3 GST payable

If *GST* is payable in relation to a supply made under or in connection with this *Subcontract*, then the party ("*Recipient*") providing consideration to another party ("*Supplier*") for that supply must pay an additional amount to the *Supplier* equal to the *GST* payable in relation to that supply at the same time as any other consideration is to be first provided for that supply subject to the issue of a tax invoice by the *Supplier* to the *Recipient*.

45.4 Variation

If the *GST* payable in relation to a supply made under or in connection with this *Subcontract* varies from the additional amount paid by the *Recipient* under clause 45.3, then the *Supplier* will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the *Recipient*. Any payment, credit or refund under this clause 45.4 is deemed to be a payment, credit or refund of the additional amount payable under clause 45.3. Where there is an adjustment event, the *Supplier* must issue an adjustment note to the *Recipient* as soon as the *Supplier* becomes aware of the adjustment event.

46 General matters

46.1 No bias against drafting party

No term or provision of this *Subcontract* will be construed against a party on the basis that the *Subcontract* or the term in question was put forward or drafted by or on behalf of the *Head Subcontractor*.

46.2 Provisions limiting or excluding liability

Any provision of the *Subcontract* which seeks to limit or exclude a liability of a party, is to be construed as doing so only to the extent permitted by applicable law.

46.3 Permissive provisions

Subject to any express provision in the *Subcontract* to the contrary, a provision of the *Subcontract* which says that:

- (a) the *Head Subcontractor* "may" do or not do something is not to be construed as imposing an obligation on the *Head Subcontractor* to do or not do that thing; and
- (b) the *Subcontractor* "shall" do or not do something is to be construed as imposing an obligation on the *Subcontractor* to do or not do that thing.

46.4 Joint and several liability

If the *Subcontractor* comprises 2 or more persons (whether a joint venture, consortium, partnership or any other unincorporated grouping of 2 or more persons):

- (a) the obligations and liabilities of the *Subcontractor* under this *Subcontract* bind those persons jointly and severally;
- (b) the *Subcontractor* must not alter its composition or legal status without the prior written consent of the *Head Subcontractor*;
- (c) the rights of the *Subcontractor* to payment under the *Subcontract* jointly benefit each person constituting the *Subcontractor* (and not severally or jointly and severally);
- (d) any payment under the *Subcontract* by the *Head Subcontractor* to any one or more persons constituting the *Subcontractor* will be deemed to be payment to all persons constituting the *Subcontractor*; and
- (e) the *Subcontractor* may not exercise any right under the *Subcontract* unless that right is exercised concurrently by all persons constituting the *Subcontractor*.

46.5 Counterparts

The *Subcontract* may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

46.6 Set off

The *Head Subcontractor* may deduct from moneys due to the *Subcontractor* any money due or payable, or may become due or payable, from the *Subcontractor* to the *Head Subcontractor* under the *Subcontract* or otherwise.

46.7 Independent contractor

The *Subcontractor* is an independent contractor with respect to *WUS* and neither the *Subcontractor* nor any subcontractors, nor any agents or employees of any of them, are to be taken to be the employees, agents or representatives of the *Head Subcontractor*.

46.8 No representation or reliance

- (a) Each party acknowledges and confirms that no party (nor any person acting on the *Head Subcontractor's* behalf) has made any representation or other inducement to it to enter into this *Subcontract*, except for representations or inducements expressly set out in this *Subcontract*.
- (b) Each party acknowledges and confirms that it does not enter into this *Subcontract* in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this *Subcontract*.

46.9 Restraint on trade

The *Subcontractor* shall not, for the *Restraint Period* and in the *Restraint Area*, attempt to directly or indirectly for itself or on behalf of another person:

- (a) divert away work from the *Head Subcontractor*;
- (b) approach, solicit or canvass any client, employee, contractor or supplier of the *Head Contractor* who was introduced to the *Subcontractor* by the *Head Contractor* or with whom the *Subcontractor* was introduced to, or had dealings with, at the *site* or in the course of carrying out *WUS*;
- (c) accept work or deal with any client, employee, contractor or supplier of the *Head Subcontractor* who was introduced to the *Subcontractor* by the *Head Contractor* or with whom the *Subcontractor* was introduced to, or had dealings with, at the *site* or in the course of carrying out *WUS*; and / or
- (d) approach, solicit, induce or persuade any client, employee, contractor or supplier of the *Head Subcontractor* to cease their engagement with the *Head Subcontractor*.

In this clause:

- (e) “**Restraint Period**” means a period of 18 months or, if that period is unenforceable, 12 months, after the *date of Subcontract*; and
- (f) “**Restraint Area**” means Australia or, if that area is unenforceable, Western Australia.

46.10 Entire agreement

To the extent permitted by law, the parties agree that in relation to its subject matter, this *Subcontract*:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

46.11 Proportional liability

To the extent permitted by law, the expert or the arbitrator (as the case may be) will have no power to apply or to have regard to the provisions of the proportionate liability legislation of any Australian jurisdiction which might, in the absence of this provision, have applied to any dispute referred to arbitration or expert determination.

Further, all of the provisions comprising Part 1F of the *Civil Liability Act 2002* (WA) are hereby expressly excluded from application to the *Subcontract*.

46.12 Severability

If any provision of this *Subcontract* is or becomes illegal, invalid, unenforceable or void in any relevant jurisdiction, the legality, validity, enforceability and validity of the remainder of the

Subcontract will not be affected (unless incapable of being operable in the absence of such provision) and this *Subcontract* will be read as if the part had been deleted in that jurisdiction only.

46.13 Indemnities

- (a) Each indemnity given by the *Subcontractor* under this *Subcontract* is a continuing obligation, separate and independent from the other obligations of the parties (including any obligation to pay liquidated damages) and survives the termination, rescission or expiration of this *Subcontract*.
- (b) It is not necessary for the *Head Subcontractor* to incur an expense before enforcing a right of indemnity conferred by this *Subcontract*.
- (c) The *Subcontractor* shall pay on demand any amount it is obliged to pay to the *Head Subcontractor* under an indemnity in this *Subcontract*.

46.14 Rights cumulative

Subject to any express provision in the *Subcontract* to the contrary, the rights of the *Head Subcontractor* under this *Subcontract* are cumulative and are in addition to any other rights of the *Head Subcontractor* at law.

Annexure Part A**ANNEXURE to the Australian
Standard Subcontract Conditions****Part A**

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Subcontract*, is to be attached to the Subcontract Conditions and shall be read as part of the *Subcontract*.

Item		
1	<i>Head Subcontractor</i> (clause 1)	Gorilla Construction Wa Pty Ltd
2	<i>Head Subcontractor's</i> address and email address	Address: 13 Davidson Road Attadale , Wa 6156 Email: joshua@gorillaconstruction.info
3	<i>Subcontractor</i> (clause 1)	
4	<i>Subcontractor's</i> address and email address	Address: Email:
5	<i>subcontract sum</i>	\$ (exclusive of GST)
6	<i>main contract</i>	
7	<i>Main Contractor</i> (clause 1)	
8	<i>Main Contractor's</i> address	
9	Not used	
10	Not used	
11†	(a) <i>Date for practical completion</i> (clause 1) OR	
	(b) <i>Period of time for practical completion</i> (clause 1)	
11A	Provisional sum items	Provisional sum item
		Provisional sum
		\$
12	Governing law (clause 1(h))	Western Australia
13	(a) Currency (clause 1(g))	Australian Dollars
	(b) Place for payments (clause 1(g))	Melbourne
	(c) Place of business of bank (clause 1(d))	Melbourne

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

* Delete one

14	Not applicable	
15	Not applicable	
16	Not applicable	
17 [†]	<i>Subcontractor's security</i>	
	(a) Form (clause 5)	2 x unconditional bank guarantees (each for an amount equal to 2.5% of the <i>subcontract sum</i>) for a total amount equal to 5% of the <i>subcontract sum</i> with no expiry dates
	(b) Amount or maximum percentage of <i>subcontract sum</i> (clause 5)	5% of the <i>subcontract sum</i>
	(c) If retention moneys, percentage of each <i>progress certificate</i> (clause 5 and subclause 37.2)	Not applicable
	(d) Time for provision (except for retention moneys) (clause 5)	Date of <i>Subcontract</i>
	(e) Additional <i>security</i> for unfixed plant and materials (subclauses 5.4 and 37.3)	100% of the value of the unfixed plant and materials as certified by the <i>Head Subcontractor</i>
	(f) <i>Subcontractor's security</i> upon <i>certificate of practical completion</i> is reduced by (subclause 5.4)	50% of amount held
18 [†]	<i>Head Subcontractor's security</i>	
	(a) Form (clause 5)	Not used
	(b) Amount or maximum percentage of <i>subcontract sum</i> (clause 5)	Not used
	(c) Time for provision (clause 5)	Not used
	(d) <i>Head Subcontractor's security</i> upon <i>certificate of practical completion</i> is reduced by (subclause 5.4)	Not used
19	<i>Head Subcontractor</i> -supplied documents (subclause 8.2)	Not applicable
20	Time for <i>Head Subcontractor's direction</i> about documents (subclause 8.3)	21 days

[†] If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

21	Secondary subcontract work requiring approval (subclause 9.2)	All Subcontract Works and WUS	
21A	Selected secondary subcontract works	Selected secondary subcontractor	Selected secondary subcontract works
22	Not used		
23	Legislative requirements		
	(a) Those already excepted under the <i>main contract</i> (subclause 11.1)	None	
	(b) Those excepted under the <i>Subcontract</i> (subclause 11.1)	None	
	(c) Identified WUS (subclause 11.2(a)(ii))	All WUS	
24	Public liability insurance (clause 17)		
	(a) Alternative applying	Alternative 2	
	(b) Amount per occurrence shall be not less than	\$20 million	
25	Time for giving non-exclusive possession (subclause 24.1)	Within days of <i>date of Subcontract</i>	
26	Warranties	Part of the <i>Subcontract Works</i>	Period of warranty
27†	(a) <i>Subcontract</i> liquidated damages (subclause 34.7)	\$ (exclusive of GST) per day	
	(b) not used		
28†	Not used		
29	Not used		
29A	Limitation on delay damages (clause 34.9)	\$ (exclusive of GST) per day	
30	<i>Defects liability</i> period (clause 35)	Whichever of the following periods with the later expiry date: 1. the period ending 12 months; or 2. the period ending on the date of expiry of the last defects liability period under the <i>main contract</i> .	
30A	Margin on <i>variations</i>	%	

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

31	Progress claims (subclause 37.1)	
	(a) Times for progress claims OR	Last day of each month for WUS done to the last day of that month
	(b) Stages of <i>WUS</i> for progress claims	Not applicable
32	Unfixed plant and materials for which payment claims may be made (subclause 37.3)	
33	Interest rate on overdue payments (subclause 37.5)	%
34	Time for <i>Head Subcontractor</i> to rectify inadequate possession (subclause 39.7)	30 days

Part A

Separable Portions

- This section should be completed only if the *Subcontract* provides for *separable portions*.
- Complete a separate page for each *separable portion* which should be numbered appropriately. Any balance of the *Subcontract Works* should also be a *separable portion*.

	<i>Separable portion</i> (clause 1)	No.
	Description of <i>separable portion</i> (clause 1)	
<i>Item</i>		
11	(a) <i>Date for practical completion</i> (clause 1)	
	OR	
	(b) <i>Period of time for practical completion</i> (clause 1)	
17	<i>Subcontractor's security</i>	
	(a) <i>Form</i> (clause 5)	
	(b) <i>Amount or maximum percentage value of this separable portion</i> (clause 5)	
	(c) <i>If retention moneys, percentage of each progress certificate</i> (clause 5 and subclause 37.2)	
	(d) <i>Time for provision (except for retention moneys)</i> (clause 5)	
	(e) <i>Additional security for unfixed plant and materials</i> (subclauses 5.4 and 37.3)	
	(f) <i>Subcontractor's security upon certificate of practical completion is reduced by</i> (subclause 5.4)	
18	<i>Head Subcontractor's security</i>	
	(a) <i>Form</i> (clause 5)	Not applicable
	(b) <i>Amount or maximum percentage of value of this separable portion</i> (clause 5)	Not applicable
	(c) <i>Time for provision</i> (clause 5)	Not applicable

	(d) <i>Head Subcontractor's security</i> upon <i>certificate of practical completion</i> is reduced by (subclause 5.4)	Not applicable
27	(a) <i>Subcontract</i> liquidated damages (subclause 34.7)	\$ (exclusive of GST) per day
	Not used	

Annexure Part B
Annexure to the Australian Standard
Subcontract Conditions

Part B

The scope of *WUS*

Annexure Part C
Annexure to the Australian Standard
Subcontract Conditions

Part C

This form may also be used where the *Head Subcontractor* is required to provide an unconditional undertaking, by substituting *Head Subcontractor* for *Subcontractor* and vice versa, wherever occurring

Approved form of unconditional undertaking

(clause 1 - *security*)

At the request of ('the *Subcontractor*') and in consideration of ('the *Head Subcontractor*') accepting this undertaking in respect of the *Subcontract* for
 ('the *financial institution*') unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the *Head Subcontractor* to a maximum aggregate sum of (\$).

The undertaking is to continue until notification has been received from the *Head Subcontractor* that the sum is no longer required by the *Head Subcontractor* or until this undertaking is returned to the *financial institution* or until payment to the *Head Subcontractor* by the *financial institution* of the whole of the sum or such part as the *Head Subcontractor* may require.

Should the *financial institution* be notified in writing, purporting to be signed by for and on behalf of the *Head Subcontractor* that the *Head Subcontractor* desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the *financial institution* will make the payment or payments to the *Head Subcontractor* forthwith without reference to the *Subcontractor* and notwithstanding any notice given by the *Subcontractor* not to pay same.

Provided always that the *financial institution* may at any time without being required so to do pay to the *Head Subcontractor* the sum of (\$)

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the *Head Subcontractor* and thereupon the liability of the *financial institution* hereunder shall immediately cease.

Dated at this day of 20.....