

## ANNEXURE B – GENERAL CONDITIONS OF SUBCONTRACT

# 1 Definitions and interpretation of Agreement

1.1 Definitions - Unless the context otherwise requires, the following terms, where they appear in capitalised form in the Agreement, shall have the meaning stated below:

Term	Meaning
<i>Agreement</i>	is comprised of these General Conditions of Subcontract together with the other documents described in the Signed Instrument of Agreement.
<i>Approval</i>	means any licence, permit, consent, approval, determination, certificate or permission from any Authority or under any Law, or any requirements made under or issued in accordance with any Law, which must be obtained or satisfied (as the case may be) to perform the Subcontract Works or occupy and use the Subcontract Work.
<i>Authority</i>	means any governmental or semi-governmental or local governmental authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality; and any utility company (including electricity, telecommunications, water and gas) or other legal entity having statutory rights in respect of Approvals.
<i>Business Day</i>	means a day that is not a Saturday, Sunday or public holiday in the State, territory or country specified in the Agreement Details.
<i>Constructional Plant</i>	means all goods, appliance, apparatus, machines, plant, equipment, vessels and things on the Site (including scaffolding, formwork and the like) required for the Subcontract Works, excluding Material
<i>Customer</i>	means the company, person or business named in the Agreement Details
<i>Insolvent</i>	means where either of EPSA or the Subcontractor: (i) commits an act of bankruptcy or an act of insolvency; (ii) becomes bankrupt; (iii) goes into administration, liquidation, or receivership; (iv) assigns assets for the benefit of creditors generally; or (v) makes a composition or other arrangement with creditors;

*Interfacing and Excluded Works* Means those tasks and items set out in Annexure D which EPSA or others are responsible for providing.

*Main Contract* means the contract between EPSA and the Customer described in the Signed Instrument of Agreement and / or the Agreement Details.

*Material* means any raw, manufactured or fabricated material, goods, appliance, apparatus, vessel, machine, equipment, plant, computer hardware or software, software interfaces, help files and procedures, executable code, online help procedures, data files and other support documentation supplied with software, manuals, drawings, diagrams or instructions, documents or thing forming or intended to form a part of the Subcontract Work.

*On-Site Works* means any task forming part of the Subcontract Works which is required to be performed by the Subcontractor at, near or adjacent to the Project Site.

*Project Works* means works to be performed by EPSA under the Main Contract.

*Reference Date* means the time stated in the Agreement Details.

*Substantial Breach* means a (a) wrongful suspension of the Subcontract Works by You; (b) failure by You to proceed with the Subcontract Work with reasonable diligence or in a competent manner; (c) failure by You to comply with a reasonable direction from EPSA requiring You to alter the sequence or timing of any of the Subcontract Works or to remove and replace work or materials; (d) any other breach of this Agreement by You which is either incapable of remedy or is capable of remedy but is not remedied within the time period stipulated by EPSA in a notice to show cause issued under clause 19.

1.2 Interpretation - In this Agreement, except where the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) if a word or phrase is defined, similar words and phrases have a corresponding meaning;

- (c) a reference to: (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority; (ii) a body includes its successor; (iii) a person includes its legal personal representatives, successors and assigns; and (iv) provisions or terms of this Agreement or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms; and
- (d) headings are for reference only and do not affect the interpretation of the Subcontract.

If any provision or term of the Agreement is prohibited or banned, or rendered or found to be invalid or unenforceable, such prohibition or banning, invalidity or unenforceability will not affect the validity or enforceability of any other provision or term of the Agreement unless incapable of being operable in the absence of such provision or term.

- 1.3 Ambiguities in Subcontract Documents - If You discover any ambiguity, discrepancy, error or inconsistency in the Subcontract Documents, it may request information or clarification from EPSA detailing the ambiguity, error, discrepancy, or inconsistency. Within 10 Business Days after EPSA's receipt of any written notice provided by You, EPSA must give You a written direction as to the resolution of the ambiguity, error, discrepancy, or inconsistency. In resolving any ambiguity, discrepancy, error, or inconsistency between the Subcontract Documents, the order of precedence set out in the Agreement Details is to be applied. In resolving any ambiguity, discrepancy, error or inconsistency between Subcontract Documents of the same precedence: (a) detailed drawings are to be relied on over any conflicting information contained in general plans, elevations and sections; (b) figured dimensions are to be relied on over scaled dimensions; (c) drawings made to larger scales or those showing particular parts of the Subcontract Works are to take precedence over drawings made to smaller scales or those made for more general purposes.

## 2 Subcontractor Obligations

- 2.1 Standard for Subcontract Works - You shall carry out and complete the Subcontract Works in accordance with the Subcontract Documents, with due diligence and in a good and workmanlike manner. You shall provide goods and material to the standard stated in the Subcontract Documents or, where no standard is so stated, materials used must be new and of a satisfactory quality.
- 2.2 Superintendence of the Subcontract Works - If You are required to perform On-Site Works during the Working Hours as set out in the Agreement Details. If You find it necessary to work outside of the approved Working Hours, you must immediately give notice to EPSA of the circumstances prior to engaging in work outside of the approved Working Hours, You are responsible for the superintendence of the Subcontract Works. You must provide at all times during which Subcontract Work is being performed on Site, a

competent person acceptable to EPSA, to superintend the Subcontract Works (**Your Representative**). Your Representative must be duly authorised by You to receive on Your behalf all directions and notices given by EPSA and shall be authorised to act on Your behalf. You must remove from the Subcontract Works any person employed by You who in the opinion of EPSA is incompetent or fails to conduct themselves in a proper and safe manner.

- 2.3 Competence of Your workers - You shall take all reasonable steps to ensure Your employees and agents and any of their subcontractors employed in the execution of the Subcontract Works are competent and qualified by reference to nationally recognised competency standards and qualifications applicable to the tasks undertaken. You shall provide verification of such competency to EPSA where requested to do so or in accordance with directives stipulated in the Subcontract Documents applicable to the Site.
- 2.4 Inclusions - You shall provide everything required to carry out and complete the Subcontract Works including all things, matters and tasks necessary and incidental to completing the Subcontract Works except for those matters set out in Annexure D which EPSA has agreed to be responsible for providing (**Interfacing and Excluded Works**).
- 2.5 Assignment / Subcontracting - You shall not make any assignment of the benefit of this Agreement nor Subcontract any of the Subcontract Works, without EPSA's written prior consent.
- 2.6 Design obligations - If part of the Subcontract Works involve You designing or fabricating works or materials (**Design Work**), then You must carry out the Design Work to a high standard of skill and care using suitably qualified persons so that Your Design Work complies with all Legislative Requirements and fully integrates with the balance of the Project Works being carried out by EPSA or Other Contractors engaged by EPSA so as to be suitable, appropriate and fit for their intended purpose as expressly stated or implied in the Subcontract Documents. The Design Works must not infringe copyright or any other protected right. You must provide EPSA with all calculations, certificates and any other information relating to Design Work carried out by You upon request and within the time(s) specified by EPSA so as to enable EPSA to efficiently and effectively co-ordinate completion of the Project Works having regard to the Interfacing and Excluded Works which EPSA needs to co-ordinate in parallel with the Subcontract Works.
- 2.7 Team working - You must at all times, co-operate, co-ordinate and consult with EPSA, Other Contractors engaged by EPSA, other subcontractors and other persons on the Site so as not to interfere or otherwise impede others in progressing works on Site. You must acquaint yourself with and comply with the requirements set out in any applicable Workplace Health Safety Management Plan or other site co-ordination management plan applicable to the Site and/or the Subcontract Works. You acknowledge that You recognise the importance of completing the Subcontract Works on time and on budget and to that end You

undertakes to work with EPSA and with other project team members as instructed by EPSA in a co-operative and collaborative manner, in good faith and in a spirit of trust and respect so as to ensure that EPSA is promptly warned in writing of any matter or concern of which the Subcontractor becomes aware which in Your reasonable opinion is likely to impact on the costs, quality or the timing of the Subcontract Works or the costs, quality or timing of the Project Works. Without limiting Your obligations under this sub-clause You must provide regular reports to EPSA in the form and covering the matters as specified in the Agreement Details.

- 2.8 **Confidentiality** – You must not without EPSA's prior written consent divulge or communicate to any person, any document or information in respect of the contents of this Agreement or the Main Contract; or as to the existence, facilities, operation or performance of the Agreement or the Main Contract including the overall Project and You must refer any enquiries from any media concerning facilities, the Project, this Agreement or the Main Contract or any matter arising under any of them to EPSA. Your restrictions on disclosing confidential information under this clause do not apply in respect of disclosure of information or documents already in the public domain; or which is required by law to be communicated; or is required to be disclosed (on a need to know basis) to another person engaged by You in support of delivering the Subcontract Works provided that person undertakes to keep such information or document confidential also.

### 3 Notices

Any notices contemplated by this Agreement must be in writing and may be delivered by hand or sent by prepaid post or facsimile to the address or number set out in the Agreement Details (or any changed address which may be notified in writing to the other party) or by a web-based project documentation management or collaboration workspace as instructed by EPSA. A notice will be deemed to have been given and received:

- (a) if delivered by hand, on receipt;
- (b) if posted, within 2 Business Days after posting;
- (c) if sent by facsimile, on the day shown on the transmission slip showing the correct transmission of the facsimile; and
- (d) if sent by a web based project documentation management and collaboration workspace, on confirmation that the notice has been registered as sent.

Any notice received after 5.00 pm or on a day not a Business Day will be deemed to have been received at 8.00am on the next Business Day. A notice sent by electronic mail (email) will not be a valid service for the purposes of this Agreement.

### 4 Main Contract

- 4.1 You must acquaint yourself with the provisions of and technical requirements set out in the Main Contract insofar as they apply to the Subcontract Works. EPSA shall provide to You, if You so request, a copy of the Main Contract (omitting details of EPSA's pricing or any other commercially sensitive information as EPSA deems appropriate to omit).
- 4.2 You must carry out and complete the Subcontract Works so that no act or omission of the Subcontract shall result in any breach of contract by EPSA.
- 4.3 You acknowledge and agree that You must perform the obligations and assume the liabilities of EPSA under the Main Contract to the extent that such obligations and liabilities relate to the Subcontract Works and are not otherwise inconsistent with Your obligations and liabilities expressly stated in this Agreement.

### 5 Commencement and Completion

- 5.1 **Commencement** - Where You are performing On-Site Works You must commence the On-Site Works within the time specified in the Agreement Details (or if no time is specified then within 5 business days following receipt of EPSA's written direction to commence the Subcontract Works). Prior to commencing On-Site Works, You must attend a pre-start meeting to be held at an address and time mutually agreed. The meeting will address: (a) Site specific issues; (b) lines of communication; (c) possession of the Site; (d) frequency and venue of subsequent Site meetings; (e) progress payments; (f) working hours; (g) safety requirements; (h) insurance; (i) general workplace health and safety; (j) scope of Subcontract Works; (k) environmental issues; (l) program; and (m) resources. If any matters remain outstanding, the parties may by agreement, change the date for giving possession of the Site. A change of date for giving possession under this clause may result in an extension of the Date for Substantial Completion of an equal number of days to the delay to the extent that the change in date was not caused by a failure by You to attend or input as required to the pre-start meeting.

- 5.2 **Completion** - You must proceed with the Subcontract Works regularly, diligently and with due expedition without delay and without substantially departing from the approved program and always in accordance with the planned progress of the Main Contract Works. You must bring the Subcontract Works to Substantial Completion by the Date for Substantial Completion as set out in the Agreement Details, of if none is specified as notified to You by EPSA. You acknowledge and agree that the Period for Completion for the Subcontract Works is shorter than the period for completion of the Project Works. Not less than 7 Business Days before You anticipate Substantial Completion, You must give EPSA written notice advising when the Subcontract Works will reach Substantial Completion. Within 10 Business Days after EPSA's receipt of Your notice, EPSA must give You a written notice stating that:

- (a) if EPSA disputes that the Subcontract Works have been brought to Substantial Completion, the details of

further work to be carried out or further information to be provided as preconditions to Substantial Completion; or

- (b) if EPSA does not dispute that the Subcontract Works have been brought to Substantial Completion, the date on which the Subcontract Works were brought to Substantial Completion and any minor Defects in the Subcontract Works requiring remedy.

EPSA may issue a written notice under paragraph (b) even if no notice was provided by You. If EPSA give You a written notice You must first carry out such further work or provide such further information as is outlined in the notice. You must then give EPSA a further notice upon completion of the specified further work or provision of the further information.

- 5.3 Liquidated damages - If the Subcontract Works do not reach Substantial Completion by the Date for Substantial Completion and liquidated damages are specified in the Agreement Details, EPSA will be entitled to liquidated damages for every day after the Date for Substantial Completion up to and including the date of Substantial Completion.

- 5.4 Extension of time - Within 2 Business Days after You become aware that the Subcontract Works are being, or will be, delayed for any reason, You must complete and give to EPSA a notice stating:

- (a) the cause of delay;
- (b) the length of the delay; and
- (c) the extension, in Business Days, of the Date for Substantial Completion being claimed by You as a result of the delay.

Subject to Your compliance with this clause, You will be entitled to an extension of the Date for Substantial Completion for any Eligible Delay Event as set out in the Agreement Details to the extent that You can demonstrate, through critical path logic, that the Eligible Delay Event actually caused a critical delay to the progress of the Subcontract Works and the Date for Substantial Completion. Within 10 Business Days after receipt of a notice in accordance with this clause EPSA must issue to You a written notice, either:

- (a) granting the extension of the Date for Substantial Completion requested by You; or
- (b) stating the amount of time that EPSA is granting as an extension of time to the Date for Substantial Completion together with the reasons why EPSA is not granting the full extent of the extension claimed by You.

You acknowledge and agree, that where a delay is the consequence of a direction given to EPSA under the Main Contract, You will not be entitled to an extension of time to the Date for Substantial Completion, unless EPSA has been granted an extension of time under the Main Contract, Your entitlement to an extension of time must not

exceed the extent of the extension of time granted to EPSA under the Main Contract.

- 5.5 If Your progress of the Works is delayed as a direct result of an Compensable Delay Event as described in the Agreement Details and You claim and You are granted an extension of the Date for Substantial Completion, in accordance with this clause You are entitled to give to EPSA a written claim, calculated on a daily basis, for any extra costs You incurred as a result of the delay during the period of the extension as part of Your next progress claim after the extension is granted. You must support any such claim with documentary evidence of the extra costs You have incurred. Your maximum entitlement to delay costs shall be an amount equal to or less than the daily amount for delay costs set out in the Agreement Details up to the Maximum Aggregate Amount set out in the Agreement Details. EPSA must pay to You as part of Your next progress payment, those extensions claimed which are reasonably evidenced by Your documentary evidence.

- 5.6 Notwithstanding this clause:

- (a) at any time prior to Substantial Completion, EPSA may for its own benefit, at its sole discretion and for any reason grant an extension of the Date for Substantial Completion regardless of whether You have made any claim in accordance with this clause; or
- (b) instead of granting You an extension of the Date for Substantial Completion, EPSA may direct You to accelerate the Subcontract Works, in which case You will be entitled, if the delay event is an Eligible Delay Event to, claim for reimbursement of Your direct and reasonable costs incurred in respect of implementing the acceleration.

- 5.7 Acceleration or take-out – If in EPSA's reasonable opinion, You are not utilising adequate resources or You are incapable of complying with this Agreement then EPSA may from time to time without prejudice to its other rights, instruct You to increase Your resources or take such other measures as specified by EPSA to comply with Your obligations under this Agreement; and / or vary this Agreement by deleting any part of the Subcontract Works; and/or employ otherwise to undertake the deleted parts of the Subcontract Works or undertake such work itself; and/or deduct the additional costs incurred as a result of performance of the deleted parts of the work under the Agreement by others or itself from the security or retention or any other sum otherwise due to You from time to time to the extent such moneys are insufficient, recover the balances as a debt due and owing to EPSA by You.

## 6 Payment

- 6.1 EPSA must pay You the Subcontract Price progressively in accordance with this Agreement. From each Reference Date, You may give to EPSA a written progress claim. Each progress claim must be given in writing to EPSA and must include details of the value of work done up to and

including the Reference Date and may include details of other monies then due to You pursuant to the Subcontract. If EPSA disputes the amount claimed by You in a progress claim, EPSA must give You a written progress certificate within 10 Business Days after EPSA's receipt of the progress claim, that:

- (a) Identified the progress claim to which it relates;
- (b) States the amount of the payment, if any, that EPSA proposes to make to You;
- (c) States EPSA's reasons for the amount of its proposed progress payment being less than the amount claimed by You; and
- (d) states the amount of retention monies and monies due from You to EPSA under this Agreement

6.2 By no later than the last day of the Payment Period set out in the Agreement Details, EPSA must pay to You:

- (a) if EPSA gives You a written progress certificate, the amount of the progress payment, if any, that EPSA proposes to make to You in that progress certificate; or
- (b) If EPSA fails to give You a written payment schedule in accordance with this clause, the amount claimed by You in the progress claim.

EPSA shall only be obliged to pay You interest on any overdue payment, up to, and including, that day of payment, where the Agreement Details so specifies that interest is payable and the rate of such interest. If no interest rate is specified in the Agreement Details then no interest on overdue payments is payable by EPSA.

6.3 Payment by EPSA of a progress claim

## 7 Retention

7.1 If retention is specified in the Agreement Details, then EPSA may retain from any payment due to You, the percentage of retention specified until the maximum retention held by EPSA is 5% of the Subcontract Price. Any retention is to secure the performance of Your obligations under the Agreement. At any time prior to the release of all of the retention, You may give to EPSA security to take the place of all or any part of the retention. All security must be in a form acceptable to EPSA. On EPSA's receipt of the security EPSA must release to You retention equal to the value of the security.

7.2 On the Subcontract Works being brought to Substantial Completion EPSA must release to You any amount of retention, or security, in excess of 2.5% of the Subcontract Price. On the expiry of the Defects Liability Period, EPSA must release to You any remaining amount of retention or security.

7.3 If EPSA intends to use the whole or any part of any retention or security to obtain any amount due by You to EPSA under the Agreement, EPSA must give to You written notice of the intended use, and of the amount due,

within 28 days after EPSA becomes aware, or ought reasonably to have become aware, of its right to obtain the amount due.

7.4 If:

- (a) all or part of the Works have been taken out of the hands of the Subcontractor;
- (b) the Subcontract has been terminated; or
- (c) EPSA intends to use the retention or security to make a payment into court to satisfy a notice of claim of charge under the Subcontractors' Charges Act 1974 (Qld), Worker's Liens Act 1893 (SA), Contractor's Debts Act 1997 (NSW) or any similar legislation in any other State,

then EPSA can use the security on giving You 5 Business Days prior written notice.

## 8 Variations

8.1 At any time prior to Substantial Completion, EPSA may give to You a written direction to carry out a Variation. If EPSA proposes a Variation, it may give to You a written request for advice on:

- (a) the feasibility of the proposed Variation;
- (b) if the proposed Variation would increase any part of, or add to, the Works, the scope of work necessary to carry out and complete the proposed Variation;
- (c) the effect of the proposed Variation on the Date for Substantial Completion, if any; and
- (d) the price, exclusive of the GST, for which You are prepared to carry out and complete the proposed Variation.

8.2 Within 3 Business Days after Your receipt of EPSA's written request, You must give to EPSA a written notice advising EPSA of the matters requested.

8.3 Where the Subcontract Price is derived from a schedule of rates as set out in the Agreement Details (and Annexure E) ("Schedule of Rates"), then You must promptly notify EPSA in writing if the actual quantities of any item, section or activity is likely to be greater or lesser than the estimated quantity set out in the Schedule of Rates by an amount more than the nominated limits of accuracy. In Your notice You must include details about the change in quantities, any impact the change in quantity may have on the time or method for completing the Subcontract Works, and Your proposed alternative price for completion of the changed Quantities other than as Schedule of Rates items. You acknowledge and agree that actual quantities falling outside of the nominated limits of accuracy set out in the Schedule of Rates shall be a deemed variation and shall be valued by EPSA as an adjustment to the Subcontract Price under clause 8.4.

8.4 On completion of a Variation by You, the Subcontract Price is adjusted by:

- (a) if EPSA and You have agreed a price for the Variation, that price; or
- (b) if EPSA and You have not agreed a price for the Variation, the reasonable value of the additional works performed by You, including a reasonable allowance for profit, overheads and administrative costs as determined by EPSA which may be calculated by reference to previously agreed and applicable rates provided by You or otherwise.

8.5 You are not required to carry out a Variation (except in respect of deemed variations under clause 8.3) unless a written direction to carry out the Variation is provided to You by EPSA. Your entitlement to claim payment for, and to be paid for, a Variation is subject to EPSA first issuing You a written direction to carry out the Variation. If You incur additional cost or expense as a result of a verbal direction, and You do not request written confirmation of the direction before carrying out the work the subject of the direction or You fail to give the notice set out in clause 8.2 then to the extent permitted by law, You will not be entitled to any extension of time nor will EPSA be liable in respect of any claim made by you arising out of or in connection with the direction, EPSA may in its discretion, reject Your claim with respect to that direction.

## 9 Suspension of the Subcontract Works

- 9.1 EPSA may direct You to suspend carrying out the whole or part of the Subcontract Works:
- (a) because of Your act, default or omission or Your agents or employees;
  - (b) for the protection of safety of any person or property;
  - (c) to comply with a court order; or
  - (d) because of suspension of work under the Head Contract.
- 9.2 You must take necessary steps to ensure a safe conclusion of the suspended Subcontract Works and You shall be paid for those Subcontract Works properly undertaken in accordance with this Agreement up to the date of the suspension.
- 9.3 You must resume the performance of any suspended Subcontract Works in accordance with EPSA's directions.
- 9.4 If a suspension lasts more than six months EPSA may terminate Your employment under this Agreement immediately.
- 9.5 EPSA will have no liability to You for any: loss of profits; or damage to reputation; or loss of anticipated revenues or savings; or loss of business opportunities; or loss of contracts; or loss of goodwill; or loss or corruption of any data; or claim, action or demand made against You by any third party; or indirect loss, damage, cost, expense, claim or other liability whatsoever; which arises out of or in

connection with suspension and/or termination under this Clause 9.

## 10 Defects Warranty

- 10.1 You warrant that Your workmanship, the Material and Subcontract Work and other work performed by You under this Agreement will be free from Defects for the Defects Liability Period and will otherwise comply in all respects with the Agreement.
- 10.2 If any part of the Subcontract Work is not in accordance with the Agreement, EPSA may during the term of the Agreement, including during the applicable Defects Liability Period (including further Defect Liability Periods), at its sole discretion) direct You to do any one or more of the following: remove the Material or work (or any part thereof) from the Site; and/or demolish the Subcontract Work (or any part thereof) or other work under this Agreement; and/or not deliver the Material or Subcontract Work (or any part thereof) to the Site or undertake work under the Agreement on the Site. If you fail to comply with a direction within the time or times specified or if the work is of an urgent nature then EPSA may have the work carried out by itself or another person without further notice to You. Any cost incurred will be a debt due and owing from You to EPSA. EPSA may elect to accept Material, Subcontract Work (or any part thereof) or other work under this Agreement that is not in accordance with the Agreement. The resulting increase or decrease in the value of the Subcontract Work and any loss suffered by EPSA will be valued under clause 8 (Variations) and the Subcontract Price adjusted accordingly.
- 10.3 Any minor Defects of the kind referred to in the definition of Substantial Completion which exist at the start of the Defects Liability Period must be rectified by You as soon as possible.
- 10.4 Any Defects referred to in clause 10.3 that are not rectified by You and any other defects which become apparent during a Defects Liability Period under normal use of the Subcontract Work and which are due to any cause, including design, workmanship or Material for which You are responsible (but excluding fair wear and tear) must be rectified by You when directed to do so by EPSA. The direction will specify in what respect the work is defective and the date by which rectification must be completed. No direction may be given by EPSA later than 30 Business Days after the expiration of the last Defects Liability Period applicable to the work or Defect in question. If rectification of a Defect is not commenced or completed by the relevant date stated in a direction given by EPSA then EPSA may rectify the Defect at Your expense but without prejudice to any other rights that EPSA may have against You in respect of that Defect. The cost incurred by EPSA in so rectifying the Defect is recoverable as a debt due and owing to EPSA by You.
- 10.5 If a Defect is rectified during the original or any subsequent Defects Liability Period, a further Defects Liability Period of 12 months or such other period as stated in the Agreement

Details will apply to the rectified work, from the date of rectification.

- 10.6 You acknowledge and agree that the costs incurred by You in rectifying Defects are Yours and that Your carrying out of rectification works is at Your own risk and cost, Your rights of entry to the Site to carry out rectification works will be subject to Your complying with reasonable instructions and access conditions which may be imposed by the Customer or other user of the Subcontract Works from time to time.

## 11 Damage, Site, Cleaning and Reinstatement

- 11.1 You must ensure that at any given time the part of the Site in or on which it is carrying out work is kept clean and tidy. If You fail to keep its part of the Site reasonably clean and tidy, EPSA may give to You a written direction to clean and tidy Your part of the Site within a reasonable period.
- 11.2 If You fail to comply with a written direction given to You, EPSA may have Your part of the Site cleaned and tidied by others, and will be entitled to the costs it incurred in having Your part of the Site cleaned and tidied.

## 12 Insurance

- 12.1 By the Start Date, You must, at Your own cost, effect and maintain for the duration of the Agreement (including the Defects Liability Period) the following insurance policies:
- all insurance policies required for You to comply with Workers Compensation Legislation; and
  - a public liability insurance policy covering against any liability for personal injury or death to a person, or damage to property, arising out of, or otherwise in connection with, the Subcontract Works for at least the amount specified in the Agreement Details in respect of any one event and in aggregate and which includes a cross-liability provision or term where the insurer waives all rights of subrogation or action that the insurer may have against any of the persons named or covered in the policy as the insured.
- 12.2 If EPSA gives to You a written request for documentary evidence that You have effected and maintained the insurance policies required in accordance with this clause, You must within 5 Business Days give to EPSA such documentary evidence.

## 13 Compliance with Statutes

- 13.1 You warrant You and each of Your subcontractors and employees holds and will retain all licences required under applicable legislation to carry out the Subcontract Works.
- 13.2 You must comply with all applicable Law and give all notices and pay all fees and other amounts which You are required to pay in respect of the performance of Your obligations under this Agreement. You must obtain all

necessary Approvals or authorisations required for the performance of the Subcontract Works and You must upon request by EPSA give copies of all documents pertaining to such Approvals that are issued by Authorities.

- 13.3 Without limiting Your obligations under clause 13.2, You must comply with all industrial, employment, health and safety and rehabilitation, taxation, superannuation, and anti-discrimination and equal employment laws and all applicable industrial instruments, awards, contracts of employments and other enterprise / workplace agreement.
- 13.4 Where there is a change in applicable legislation during the carriage of the Subcontract Works, You must comply with the change in legislation and, unless the Agreement Details provide otherwise, You are not entitled to any additional payment in respect of a change in applicable legislation.

## 14 Risk and Indemnities

- 14.1 Risk in and to Constructional Plant, Material and temporary works on Site is Your risk. You must take all reasonable precaution to protect the Constructional Plant, Material and temporary works against loss, damage or deterioration. Un less otherwise provided in the Agreement, title and property in Material pass to EPSA at the earlier of payment for that Material being made in accordance with the Agreement or delivery of that Material to any part of the Site and You warrant that such title is unencumbered. Unless otherwise expressly provided in the Agreement, You must pay at Your own expense, when due and payable all rentals, royalties, fees, charges, taxes, imposts, rates, tariffs, duties of whatever nature required to be paid in connection with the Subcontract Work.
- 14.2 You agree at all times to indemnify EPSA against all liabilities, losses, damages, costs and expenses that EPSA may sustain or incur as a result, directly or indirectly, of:
- the provision of, or omission or failure to provide, or error or defect in, the Subcontract Works;
  - any breach of the warranties given by You under this Agreement or any other breach of this Agreement;
  - any wilful, unlawful, dishonest or negligent act or omission You or Your contractors, employees or agents;
  - any loss of or damage to any property or injury to or death of any person caused or contributed to by You; and
  - any claim that the use of the Subcontract Work infringes the intellectual property rights of any person.
- 14.3 Each indemnity described in this clause is a continuing obligation separate and independent from Your other obligations and survives termination of the Agreement but the indemnity shall be reduced proportionally to the extent that the act or omission of EPSA, its consultants, agents or other contractors engaged by EPSA (not being employed

by You) may have contributed to the liability, losses, damages, costs and expenses.

- 14.4 EPSA shall not be liable to You for any consequential, indirect or incidental loss, loss of profits, lost production, loss of anticipated savings and loss of opportunity arising from or in connection with the performance or non-performance of EPSA's obligations under the Agreement howsoever arising.
- 14.5 You must notify EPSA of any claim arising under or in connection with this Agreement prior to 6 months following Substantial Completion. If You fail to give notice as required by this clause, You release EPSA from all liability in connection with the claim and the basis for it.

## 15 Set-Off

EPSA is entitled to set-off against any amount due to You in accordance with the Agreement, any amount due to EPSA from You in respect of the Subcontract Works under the Agreement.

## 16 Dispute Resolution

- 16.1 Nothing in this clause prejudices a party's rights to enforce payment due under this Agreement, or to seek injunctive or urgent declaratory relief.
- 16.2 If a dispute arises out of, or otherwise in connection with, the Agreement either party may give to the other party a written notice of dispute stating the details of the dispute.
- 16.3 Within 7 Business Days after receiving a notice of dispute, the parties must confer at least once to attempt to resolve the dispute or to agree on methods of doing so.
- 16.4 If the dispute has not been resolved, or the parties have not agreed on methods to resolve the dispute, within 14 Business Days after receiving a notice of dispute, either party may start proceedings in a court of competent jurisdiction as stated in the Agreement Details.
- 16.5 Notwithstanding the commencement of proceedings, the parties must continue to comply with their obligations in accordance with the Agreement.

## 17 Termination under the Head Contract

- 17.1 If the Head Contract is terminated for any reason, EPSA may give to You a written notice terminating the Agreement. If the Agreement is terminated under this clause, You are entitled to give to EPSA a progress claim for, and EPSA must pay to You, the unpaid value of the Subcontract Works carried out by You up to, and including, the date on which it received EPSA's written notice of termination.
- 17.2 Payments received by You in accordance with this clause as a consequence of termination of the Head Contract are Your sole and exclusive entitlement in respect of

termination of the Head Contract, howsoever the termination of the Head Contract was caused.

## 18 Workplace Health and Safety

- 18.1 Unless specified otherwise in the Agreement Details, EPSA is the "principal contractor" for the Site within the meaning of the Workplace Health and Safety Laws.
- 18.2 You must comply with all relevant work health and safety, environmental and workers compensation legislation including all acts, regulations, codes of practice and Australian standards. Without limiting Your obligations under relevant legislation, to the extent relevant to Your undertaking You must:
- (a) ensure, that any plant and equipment used by it is appropriate for the task and is adequately maintained and safe for use;
  - (b) ensure that Your workers are competent and qualified to undertake work on Your behalf under this Agreement and have been provided with adequate information, instruction and training (including induction training);
  - (c) conduct risk assessments by appropriately qualified and competent persons and in consultation with relevant workers;
  - (d) develop and maintain systems of work and procedures necessary to ensure that any work undertaken by or on Your behalf is conducted to the highest industry standard, in an efficient and workmanlike manner and without risk to health and safety of any persons. Any procedures prepared by You must be prepared by appropriately qualified and competent persons, in consultation with relevant workers, and reflect relevant risk assessments. All relevant workers and persons must be trained in those procedures;
  - (e) identify and control all hazards and risks associated with Your undertaking including ensure adequate documentation regarding the implementation and maintenance of controls of such hazards and risks is maintained;
  - (f) notify EPSA of any subcontractors it may wish to engage and seek EPSA consent under this Agreement;
  - (g) immediately verbally notify EPSA of any safety incident or "near-miss" safety incident (whether a person is injured or not);
  - (h) immediately verbally notify EPSA if it is issued with any statutory notices by a regulator and provide a copy of any statutory notice to EPSA;
  - (i) comply will all work health and safety, environment and workers compensation/ rehabilitation rules, requirements and directions of EPSA relating to the Subcontract Works and any ancillary matters as

notified to You by EPSA or any person authorised by any law to give directions to You;

- (j) provide and maintain in a safe condition all necessary and appropriate safety equipment for Your Workers (and, where applicable, the workers of EPSA and other persons) including personal protective equipment;
- (k) consult, co-operate and co-ordinate its activities with any other person or company who has a work health and safety duty in relation to the Subcontract Work;
- (l) cease work if there are any changes to risks, tasks, scope of work, the working environment or personnel, and review, and amend if necessary, any relevant risk assessment(s) and work procedures. You must conduct any refresher training required as a result of those changes and retain documented evidence to demonstrate that this has occurred. You must not recommence work until this has occurred and the amended risk assessment(s) and work procedures have been submitted to EPSA upon request;
- (m) (ensure adequate supervision is provided at all times by appropriately qualified personnel and inform EPSA of any changes to supervisory personnel during provision of the Subcontract Work; and
- (n) ensure the health and safety of EPSA's Workers where relevant, and any other persons that may be affected by its undertaking.

18.3 You must, upon request by EPSA, provide documented evidence of Your and Your authorised subcontractor's compliance with any of the matters in this clause.

## 19 Default and Termination

- 20.1 If either party becomes Insolvent, the other party may give to the Insolvent party a written notice terminating the Agreement for insolvency.
- 20.2 If You are in Substantial Breach of this Agreement, EPSA may give You a written notice to show cause, stating that it is a notice to show cause given in accordance with this clause; the substantial breach or breaches; and that You are required to remedy the substantial breach or breaches, or otherwise show reasonable cause in writing to EPSA why this Agreement should not be terminated within the period stated in the notice, which must not be less than 10 Business Days after the date on which the notice is given.
- 20.3 If You fail to show reasonable cause by the stated date and time in the notice given by EPSA may by further written notice to You terminate the Agreement.
- 20.4 If EPSA fails pay the whole or any part of an amount due to be paid to You under this Agreement in accordance with this Agreement, You may serve a written notice on EPSA requiring EPSA to show reasonable cause as to the non-payment. If EPSA does not show reasonable cause by the stated date and time in the notice given by You:

- (a) You may, by further written notice to EPSA, suspend the whole or any part of the Subcontract Works;
- (b) You must remove the suspension if EPSA remedies the breach;
- (c) You may, if in exercising Your right to suspend the Subcontract Works, You incur any loss or expenses as a result of the suspension You may make a claim for payment by EPSA of Your losses or expenses which are reasonably evidenced by You documentary evidence and directly caused by the suspension..

20.5 The right of a party to terminate this Agreement in accordance with this clause is in addition to any other power, right, or remedy that the party may have at law or in equity.

20.6 On termination of the Agreement (on any basis whether under this Agreement, or at law or in equity), a Reference Date is deemed to arise at the date of termination.

20.7 You acknowledge and agree that if the Main Contract is terminated or the Customer takes work under the Main Contract out of EPSA's hands, then You must, upon request and without any entitlement to compensation, execute a deed of novation in favour of the Customer or an incoming main contractor in the form that EPSA is required under the Main Contract to have You execute or such other form as EPSA reasonably determines.

## 20 Governing Law and Jurisdiction

21.1 This Agreement and all questions arising in connection with it are governed by and will be construed according to the laws from time to time in force in the State, territory or country specified in the Agreement Details. The parties irrevocably submit to the authority of the courts having jurisdiction in that State, territory or country.

## 21 Waiver and Other Matters

22.1 No provision or term of the Agreement may be waived, varied, discharged, or released by a party unless such waiver, variation, discharge, or release is evidenced in writing.

22.2 This Agreement embodies the entire agreement entered into between the parties and supersedes all previous agreements between them relating to the subject matter of the Agreement. If any provision in this Agreement is voidable or unenforceable that provision will be severed and the rest of the Agreement will remain in full force and effect.

22.3 If there is a material change in the Subcontractor's shareholding or beneficial ownership which EPSA, in its reasonable opinion, considers may detrimentally affect the control or management of the Subcontractor or the performance of the Subcontract Works, EPSA may by written notice to You, terminate the Agreement and clause 19.7 will apply.

**ANNEXURE C – SPECIAL CONDITIONS**

**ANNEXURE D – TECHNICAL SPECIFICATION AND SCOPE OF WORKS**

[CONTRACT NOTE – EPSA to consider what site facilities and other attendances it will provide to the Subcontractor and set these out in the scope of work / technical specification].



**Notes to Pricing Information:**

(Unless otherwise stated the respective unit rates set forth in Annexure E are GST exclusive)

- (1) If the basis for payment is Lump Sum (refer to Agreement Details):
- Any rates in Annexure E may be used for the purpose of progress claim assessment and as a basis for negotiations for variations under this Agreement.
  - The Subcontractor will be responsible for the completion of all contract activities and Annexure E will not restrict completion.
  - Line items against which no amounts are stated, whether quantities or rates are given or not, shall be regarded as covered by other line items in Annexure E.
- (2) If the basis for payment is Schedule of Rates the following will apply:
- Payment to the Subcontractor will be calculated using the unit rates contained in Annexure E and the measured quantities of work actually executed in accordance with this Agreement. The Price will be adjusted to accord with the final quantities of work executed and adjusted by any additions or deductions made pursuant to this Agreement or that EPSA is otherwise entitled to make.
  - Quantities in Annexure E do not form part of this Agreement. They are estimated only and are inserted in Annexure E for the sole purpose of establishing the approximate value of the Goods/Services to be executed under this Contract.
  - Any deletion, decrease or increase in any quantity of work listed in Annexure E must not be construed to represent a variation or as giving the Subcontractor a right under this Agreement to any change in the unit rate, or to any monetary compensation.
  - Where otherwise than by reason of a direction by EPSA to vary the work under this Agreement, the actual quantity of an item required to perform this Agreement is greater or less than the quantity in Annexure E:
    - where EPSA accepted a lump sum for the item, the cost of the change in quantity will be deemed to be included in the lump sum; or
    - where the EPSA accepted a rate for the item, the rate will apply to greater or lesser quantities, unless otherwise directed by EPSA in which case a new rate will be valued by EPSA under the variation provisions of this Agreement.
  - Where an item does not appear in Annexure E the cost is deemed to be included in the rate or price for the item associated with that item but where there is not an item associated the cost thereof is deemed to be included in the rates or prices generally. Where any item in Annexure E is unpriced by the Subcontractor all costs applicable to that section or item are deemed to be included elsewhere in Annexure E.
  - The Subcontractor will be required to carry out the work under this Agreement despite the actual quantity of an item being greater than or less than the quantity shown in Annexure E for that item.