

STANDARD TERMS AND CONDITIONS

SERVICES

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General Conditions of Contract

1. DEFINITIONS

- 1.1 In the Contract, unless inconsistent with the context or subject matter:
- (a) **Affected Party** has the meaning given in clause 28.1;
 - (b) **Approvals** means certificates, licences, accreditations, clearances, authorisations, consents, permits, approvals, determinations and permissions from any Authority and any related fees and charges;
 - (c) **Authority** means a local government, the State of Queensland, the Commonwealth or other any Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality (including a stock exchange) having jurisdiction over the Contract or the obligations to be performed under the Contract;
 - (d) **Background IP** of a Party means all Intellectual Property Rights which are:
 - (i) made available by a Party for the purpose of the provision of the Services; and
 - (ii) in existence at the date of the Contract or brought into existence after the date of the Contract other than in connection with the Contract;
 - (e) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made in connection with the Contract;
 - (f) **Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including under the Contract, at law (including a breach of the Contract), under statute, in equity, in tort (including for negligence), in quasi-contract, for unjust enrichment and to the extent permitted by law pursuant to any other principle of law (including without limitation, any claim by the Subconsultant for an extension of time, Variation or other adjustment to the Price);
 - (g) **Completion** means that stage in the performance of the Subconsultant's obligations under the Contract at which:
 - (i) where the Contract requires the Subconsultant to carry out Services, each and every part of the Services has been carried out and completed in accordance with the Contract, except for minor omissions which do not reasonably affect the benefit to GBA of the Services or prevent GBA from using the Subconsultant Documents for the purpose or purposes stated in or to be reasonably inferred from the Contract;
 - (ii) all Subconsultant Documents have been updated and provided to GBA in accordance with the Contract;
 - (iii) other obligations of the Subconsultant which are stated in the Contract to be a requirement of Completion, or which are otherwise required to be undertaken prior to Completion have been completed;
 - (h) **Confidential Information** means the Contract and all documents and information provided or made available by one Party (**Discloser**) to the other (**Disclosee**), or which comes to the knowledge of a Party in connection with the Contract which are of their nature confidential or which the Discloser has identified to the Disclosee as being confidential, but does not include documents and information which are in the public domain other than through a breach of clause 24;

- (i) **Conflict of Interest** means any actual, potential or perceived conflict between the interests of the Subconsultant and the Subconsultant's obligations under the Contract;
- (j) **Contract** means the contract between GBA and the Subconsultant comprising the documents described in clause 2.1;
- (k) **Discloser and Disclosee** have the meanings given in clause 1.1(h);
- (l) **Exceptional Circumstances** means disclosure:
 - (i) for the purpose of complying with the Disclosee's obligations or exercising the Disclosee's rights in connection with the Contract;
 - (ii) with the Discloser's prior consent;
 - (iii) to a professional adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential and to whom it is necessary to disclose the information;
 - (iv) to the extent necessary to comply with the Disclosee's reasonable corporate governance or insurance requirements;
 - (v) to any of its Personnel who are bound to keep the information confidential and to whom it is necessary to disclose the information;
 - (vi) to comply with the law or a requirement of an Authority;
 - (vii) to the extent necessary to enforce its rights or defend a Claim in connection with the Contract; and
 - (viii) to the extent otherwise expressly permitted by the Contract;
- (m) **Force Majeure** means:
 - (i) an act of God, earthquake, lightning, cyclone, tsunami, flooding, fire emanating from outside the Site, explosion, landslide, drought or meteor, but excluding any other weather conditions regardless of severity;
 - (ii) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
 - (iii) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
 - (iv) embargo;
 - (v) illness declared by the World Health Organisation to be a pandemic;
 - (vi) State-wide or nationwide industrial action that is not limited to or primarily directed at the Subconsultant or otherwise caused by or contributed to by the Subconsultant and which affects an essential portion of the Subconsultant's obligations under the Contract;

which:

- A. is beyond the immediate or reasonable control of the Affected Party;
- B. is not directly or indirectly caused or contributed to by the Affected Party or the Affected Party's Personnel; and
- C. cannot reasonably be avoided, remedied or overcome by the Affected Party by a standard of care and diligence expected of a prudent and

competent consultant or subconsultant (as the case may be) or the expenditure of a reasonable sum of money;

- (n) **GBA** means CULLIVAN FAMILY TRUST & DONALD FAMILY TRUST & GS & A BOURNE FAMILY TRUST & THE RICHARDSON FAMILY TRUST & THE RICKS FAMILY TRUST & ROLFE FAMILY TRUST (ABN 60 084 451 536) trading as GBA Consulting Engineers;
- (o) **GBA's Client** means the person or entity that has engaged GBA to provide services of which the Services form part, as notified by GBA to the Subconsultant from time to time;
- (p) **GBA's Representative** means the person identified as such in the Work Order or otherwise notified to the Subconsultant pursuant to clause 7.1 and includes, except where the context requires otherwise, a person authorised as a delegate of GBA's Representative pursuant to clause 7.3;
- (q) **Good Industry Practice** means:
 - (i) the standard of skill, care and diligence; and
 - (ii) practices, methods, techniques and acts, of a skilled and competent subconsultant engaged in the business of providing services or work similar to the Services;
- (r) **GST** means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST;
- (s) **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and/or associated Commonwealth legislation, regulations and publicly available rulings;
- (t) **Head Contract** means the contract between GBA and its GBA's Client as provided to the Subconsultant;
- (u) **Improper Conduct** means:
 - (i) engaging in misleading or deceptive conduct in relation to the Contract or the Head Contract;
 - (ii) failing to disclose a Conflict of Interest in breach of clause 6.3;
 - (iii) attempting to improperly influence any Personnel of GBA or Personnel of GBA's Clients or violate any applicable law regarding the offering of inducements in connection with the Contract or Head Contract;
 - (iv) accepting or inviting improper assistance of employees or former employees of GBA in preparing any Claim against GBA in connection with the Contract;
 - (v) using any information improperly obtained, or obtained in breach of any obligation of confidentiality in connection with the Contract; or
 - (vi) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence;
- (v) **Insolvency Event** in respect of a Party, means the Party:
 - (i) becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation; or

- (ii) enters into a debt agreement, a deed of assignment or a deed of arrangement under the *Bankruptcy Act 1966* (Cth), or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or
 - (iii) has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets;
- (w) **Intellectual Property Rights** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, drawings, circuit layouts and all other rights resulting from intellectual activity in the construction, project management, industrial, scientific, literary or artistic fields, whether foreign or domestic and includes Moral Rights;
- (x) **Key Personnel** means the Personnel (if any) nominated as key personnel in the Work Order;
- (y) **Liability Limit** means:
- (i) in respect of GBA, the sum of:
 - A. the amount stated in the Work Order or if no such amount is stated, an amount equal to the Price paid to the Subconsultant under the Contract in the 12 months preceding the relevant Claim; and
 - B. the amount of any excess payable under a policy of insurance required to be effected and maintained by GBA under the Contract;
 - (ii) in respect of the Subconsultant, the sum of:
 - A. the amount stated in the Work Order, or if no amount is stated in the Work Order, an amount equal to the Price paid to the Subconsultant under the Contract in the 12 months preceding the relevant Claim; and
 - B. the amount of any excess payable under a policy of insurance required to be effected and maintained by the Subconsultant under the Contract;
- (z) **Modern Slavery** has the meaning given in the *Modern Slavery Act 2018* (Cth);
- (aa) **Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth);
- (bb) **Notifiable Incident** has the meaning given in the WHS Act and the WHS Regulation;
- (cc) **Party or Parties** means one or both of GBA and the Subconsultant as the context requires;
- (dd) **Payment Period** means:
- (i) if the Contract is a 'building contract' as that term is defined in the *Queensland Building and Construction Commission Act 1991* (Qld), the period ending 15 Business Days after receipt by GBA of the claim;
 - (ii) otherwise, the period ending 25 Business Days after receipt by GBA of the claim;
- (ee) **Personal Information** has the meaning given in the *Information Privacy Act 2009* (Qld);

- (ff) **Personnel** includes the officers, employees, agents, representatives, consultants, subconsultants, suppliers, contractors and subcontractors of a Party and any other person or entity for whom that Party is vicariously liable but in respect of GBA, does not include the Subconsultant;
- (gg) **Price** means the amount payable for the provision of Services as determined in accordance with the Contract;
- (hh) **Project IP** means the Intellectual Property Rights in the Subconsultant Documents and all other materials, documents or data created in the performance of the Subconsultant's obligations under the Contract;
- (ii) **Qualifying Cause of Delay** means:
 - (i) an act or omission of GBA or GBA's Personnel;
 - (ii) Force Majeure; or
 - (iii) any other cause of delay identified elsewhere in the Contract as entitling the Subconsultant to an extension of the Time for Completion;
- (jj) **Regulator** has the meaning given in the WHS Act and WHS Regulation;
- (kk) **Scope** means the documents describing GBA's requirements for the Services which are provided with or as part of, or are identified in, the Work Order;
- (ll) **Services** means the services to be provided or the work to be carried out by the Subconsultant as described in the Work Order, including:
 - (i) the provision of Subconsultant Documents, in connection with the performance of such services or work; and
 - (ii) any services or work not specifically mentioned in the Work Order but that are obviously and indispensably necessary for the performance of the services or work that are mentioned;
- (mm) **Site** means the site or sites made available by GBA to the Subconsultant for the purpose of the Subconsultant carrying out its obligations under the Contract;
- (nn) **Standard Terms and Conditions** means these standard terms and conditions;
- (oo) **Substantial Breach** includes:
 - (i) in respect of the Subconsultant:
 - A. a material breach of the Contract including:
 - I a material breach of clause 9.1;
 - II the Subconsultant or any of the Subconsultant's Personnel engaging in:
 - (1) any Improper Conduct in connection with the Contract; or
 - (2) otherwise engaging in any Improper Conduct (whether or not in connection with the Contract) in a manner which does, or is likely to, cause harm to GBA's reputation;

- III failing to make a payment to GBA within 20 Business Days after the due date for the making of the payment in clause 16.6;
 - IV failing to effect and maintain the insurance policies required under clause 22;
 - V failing to comply with a direction given or purportedly given under clause 26;
 - VI a warranty given or representation made in or pursuant to this Contract is found to be incorrect, false or misleading in any material respect;
 - VII a material breach of a law in connection with the Contract;
 - B. the consistent or repeated breach of the Contract by the Subconsultant, even though those breaches would not otherwise constitute a substantial breach of the Contract and even though those breaches may be promptly remedied by the defaulting Party;
 - C. anything else which the Contract elsewhere provides is a substantial breach of the Contract;
 - (ii) in respect of GBA:
 - A. failing to make payment to the Subconsultant within 20 Business Days after the due date for the making of the payment in clause 16.6 or 16.8 as the case may be; or
 - B. otherwise committing a material breach of the Contract; and
 - C. anything else which the Contract elsewhere provides is a substantial breach of the Contract;
- (pp) **Subconsultant** means the person or entity to whom the Work Order is issued;
- (qq) **Subconsultant Documents** means those records, reports, designs, specifications, certificates, plans and other documents, whether electronic documents or hard copy format, required by the Contract to be handed over to GBA by the Subconsultant (including any WHS documentation and management plans required by the Contract) and all information advice, procedures, undertakings designs, calculations and recommendations in those documents;
- (rr) **Subconsultant's Representative** means the person identified as the Subconsultant's representative in the Work Order or as otherwise approved by GBA pursuant to clause 8.2;
- (ss) **Time for Commencement** means the time stated in the Work Order by which the Subconsultant is required to commence performing its obligations under the Contract (or where no time is stated, as reasonably directed by GBA) as extended (if at all) by agreement between the Parties;
- (tt) **Time for Completion** means the time (if any) stated in a Work Order by which the Subconsultant is required to achieve Completion (or where no time is stated, as reasonably directed by GBA) as extended (if at all) pursuant to the Contract;
- (uu) **Variation** means any material increase, decrease or change to the Services described in a Work Order or the Subconsultant's obligations under the Contract;
- (vv) **WHS** means work, health and safety;

- (ww) **WHS Act** means *Work Health and Safety Act 2011* (Qld) as amended or replaced from time to time;
- (xx) **WHS Regulation** means the *Work Health and Safety Regulation 2011* (Qld) as amended or replaced from time to time;
- (yy) **Wilful Misconduct** means an intentional act or omission by or on behalf of a Party committed with reckless disregard for its foreseeable and potentially harmful consequences in circumstances where the breaching Party knows or ought to know that those consequences would likely result from the act or omission but which is not due to an honest mistake oversight, error of judgement, accident or negligence;
- (zz) **Work Order** means, unless the Parties expressly agree otherwise:
- (i) where a written request or order for Services is issued by GBA, the written document(s) issued by GBA to the Subconsultant which:
- A. detail GBA's requirements for the provision of Services by the Subconsultant; and
- B. either request the Subconsultant to provide, or accept the Subconsultant's offer to provide, those Services to GBA,
- including all documents attached to or incorporated by reference into those written documents and which may include a request for quotation, quotation, scope, specifications, drawings, product description, price list or other documents; and
- (ii) where an oral request or order for Services is made by GBA, means the information provided by GBA orally, and the information contained in any documents to which the Subconsultant's attention is directed by GBA; and
- (aaa) **Workplace** has the meaning given in the WHS Act and the WHS Regulation.

2. CONTRACT

- 2.1 **(Documents comprising Contract)** The Contract comprises:
- (a) the Work Order; and
- (b) these Standard Terms and Conditions.
- 2.2 **(Final agreement)** The Contract constitutes the entire, final and concluded agreement between the Parties as to its subject matter. It supersedes all prior representations, agreements, statements and understandings between the Subconsultant and GBA (whether oral or in writing).
- 2.3 **(Order of precedence)** If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 2.1, then the documents will take precedence in the order set out in clause 2.1 with the document described in clause 2.1(a) being the highest in the order.
- 2.4 **(Early Services)** Where any obligation described in the Contract has been carried out by GBA or the Subconsultant prior to the date on which the Contract is executed, that obligation shall be taken to have been carried out pursuant to, and the carrying out of that obligation shall be governed by, the Contract as if the obligation had been carried out after the Contract was executed.

3. PERFORMANCE AND PAYMENT

- 3.1 **(Performance)** The Subconsultant must, at the Subconsultant's expense:

- (a) provide the Services described in the Work Order; and
 - (b) perform the Subconsultant's other obligations under the Contract,
- in accordance with the Contract and all directions of GBA issued pursuant to it.

3.2 **(Payment)** Subject to the Contract, GBA must pay the Subconsultant the Price for Services provided in accordance with the Contract.

4. HEAD CONTRACT

4.1 The Subconsultant must carry out the Services consistently with GBA's obligations under the Head Contract.

5. NO EXCLUSIVITY

5.1 The Subconsultant is not the exclusive supplier of the Services, or of services of the same or a similar type to the Services. GBA may engage other suppliers to provide services of the same or a similar type to the Services.

6. RELATIONSHIP OF THE PARTIES

6.1 **(Relationship)** The Subconsultant is an independent contractor of GBA. The Contract does not create any partnership, joint venture or employment relationship. The Subconsultant is solely responsible for payments required to be made to its Personnel for the performance of services in connection with the Contract and solely responsible for determining the manner in which it complies with its obligations under the Contract. The Subconsultant must provide such materials, equipment, knowledge and Personnel as the Subconsultant deems necessary to comply with its obligations and under the Contract.

6.2 **(Representations)** The Subconsultant must not represent itself or allow anyone else to represent that the Subconsultant is a partner, joint venturer, officer or employee of GBA. Except to the extent expressly contemplated in the Contract, the Subconsultant must not represent itself or allow anyone else to represent that the Subconsultant is an agent of GBA.

6.3 **(Conflict of Interest)** The Subconsultant warrants and represents that as at the date of the Contract, the Subconsultant is not aware of any Conflict of Interest. The Subconsultant must not, and must ensure that its Personnel do not, engage in any activity or obtain any interest which does, or is likely to, result in a Conflict of Interest during the Contract and must immediately notify GBA in the event that a Conflict of Interest that has not previously been disclosed arises or is likely to arise.

7. GBA'S REPRESENTATIVE

7.1 **(GBA's Representative)** GBA's Representative is appointed as GBA's agent to exercise any of GBA's rights or functions under the Contract. GBA's Representative is not an independent certifier or valuer.

7.2 **(Rights and powers of GBA's Representative)** GBA's Representative may exercise any rights and powers granted to GBA under this Contract. GBA's Representative may give a direction in respect of any matter relating to this Contract, including the protection of people, property and the environment and the Subconsultant's performance of its obligations under the Contract.

7.3 **(Authorised delegates)** GBA's Representative may, by giving written notice to the Subconsultant setting out the rights and powers which may be exercised, authorise another person to exercise all or some of the rights and powers under clause 7.2. Subject to clause 7.5, no other person is permitted to exercise any right or function of GBA. The Subconsultant must notify GBA immediately if it receives a purported direction in connection with the Contract from any other person. GBA shall not be liable upon any Claim relating to a direction given to the Subconsultant by any other person.

7.4 **(Compliance)** The Subconsultant must, and must ensure that its Personnel, comply with all reasonable directions given by GBA's Representative, within the time reasonably specified in the direction, or where no time is stated, as soon as is reasonably practicable.

7.5 **(Change)** GBA may notify the Subconsultant of a change in GBA's Representative at any time.

8. SUBCONSULTANT'S REPRESENTATIVE

8.1 **(Subconsultant's Representative)** The Subconsultant's Representative is appointed by the Subconsultant to manage the Subconsultant's performance of the Contract. Matters which are in the knowledge of the Subconsultant's Representative are deemed to be within the knowledge of the Subconsultant.

8.2 **(Change)** The Subconsultant may seek the approval of GBA to change the Subconsultant's Representative. The Subconsultant must provide any information reasonably required by GBA in connection with such a request. GBA may refuse to approve a replacement person if GBA reasonably believes that the person is inappropriate to take the role of Subconsultant's Representative or is of lesser skill, experience and competency to the person being replaced. If GBA reasonably objects to the nominated representative, the Subconsultant shall promptly nominate another representative.

9. PRIMARY OBLIGATIONS, WARRANTIES AND REPRESENTATIONS

9.1 **(Obligations, Warranties and Representations)** The Subconsultant:

(a) **(ability)** must ensure, and warrants and represents that the Subconsultant and, to the extent applicable to them, its Personnel:

- (i) have the experience, skills, expertise, resources and judgement; and
- (ii) hold all necessary competencies, licences, accreditations, qualifications, permits, clearances or other authorisations,

which are required for the Subconsultant to comply with its obligations under the Contract and will maintain such competencies, licences, accreditations, qualifications, permits, clearances or other authorisations at all times until the Subconsultant's obligations under the Contract are at an end;

(b) **(standard of Services)** must, and to the extent applicable to them must ensure that its Personnel, provide the Services and carry out the Subconsultant's other obligations in connection with the Contract in accordance with Good Industry Practice and so that the Services are fit for the purpose or purposes stated in the Contract;

(c) **(Subconsultant Documents)** must ensure that where the Subconsultant provides Subconsultant Documents under the Contract:

- (i) those Subconsultant Documents:
 - A. comply with the requirements of the Contract and applicable law;
 - B. are of a standard and quality reasonably expected of a skilled and competent subconsultant using Good Industry Practice; and
 - C. are fit for the purpose for which they are provided;

(d) **(intellectual property)** must ensure that, except to the extent that Subconsultant Documents are prepared strictly in accordance with technical plans or drawings provided to the Subconsultant by GBA:

- (i) the Subconsultant Documents; and

- (ii) GBA's use of the Subconsultant Documents for a purpose stated in or to be reasonably inferred from the Contract,

will not infringe Intellectual Property Rights;

- (e) **(investigations)** warrants and represents that the Subconsultant has carefully reviewed the Contract (including the Scope and all other information contained or referenced in the Work Order) prior to acceptance of it to satisfy itself that the Scope and other information is appropriate and adequate to enable the Subconsultant to comply with its obligations under the Contract;
- (f) **(legal capacity)** must ensure, and warrants and represents that the Subconsultant has the full power, authority and capacity to enter into the Contract and that the Subconsultant's obligations under the Contract are valid and binding on it, and enforceable against it;
- (g) **(Price)** warrants and represents that the rates and prices in the Contract include the supply, delivery, insurance and compliance with all of the Subconsultant's other obligations under the Contract except, and then only to the extent, that the Contract provides otherwise.

9.2 **(Improper Conduct)** The Subconsultant must not engage in any Improper Conduct in connection with the Contract.

9.3 **(Notice of breach)** The Subconsultant must notify GBA immediately if it becomes aware of or reasonably suspects in the course of carrying out its obligations under the Contract, that the Subconsultant has breached a warranty given, representation made or obligation provided for, in clause 9.1 or 9.2.

9.4 **(Obligations, warranties and representations not affected)** The obligations, warranties and representations in clause 9.1 remain unaffected notwithstanding:

- (a) that the Scope was prepared by GBA or GBA's Personnel;
- (b) any inspection, test, receipt, review, permission, approval or comment on, of or in relation to the Services by GBA or GBA's Personnel;
- (c) any Variation or other direction by GBA or GBA's Personnel; or
- (d) the adoption or incorporation into the Subconsultant Documents by the Subconsultant of any industry standard or work carried out by others (including work carried out by or on behalf of GBA),

except that clauses 9.4(c) and 9.4(d) do not apply to the extent that the Subconsultant has, prior to acting or omitting to act in reliance on the direction or the affected Subconsultant Documents, given GBA written notice expressly stating that the Variation, direction, adoption, or incorporation would affect a warranty or obligation and the warranty or obligation was affected in the manner so notified.

10. SUBCONSULTANT'S PERSONNEL

10.1 **(General)** The Subconsultant must ensure that its Personnel involved in the performance of the Subconsultant's obligations under the Contract:

- (a) act professionally and courteously in all dealings with GBA, GBA's Personnel and the general public in connection with the Contract;
- (b) do not engage in any Improper Conduct;
- (c) do not directly or indirectly cause any unreasonable nuisance or interference to the owners, tenants or occupiers of properties on or adjacent to the places where the

Subconsultant's obligations under the Contract are to be carried out, or to the public generally;

- (d) are familiar with and properly trained for their allocated role;
 - (e) perform their allocated role competently, safely and in accordance with Good Industry Practice and where the role involves the operation of plant or equipment, in accordance with all manufacturer's recommendations; and
 - (f) are not affected by alcohol or drugs whilst performing any part of the Subconsultant's obligations under the Contract (other than prescription medication which does not affect the ability of the person to perform the relevant obligations under the Contract).
- 10.2 **(Key Personnel)** The Subconsultant must ensure that only Key Personnel perform the roles identified in the Work Order and that the nominated Key Personnel perform those roles until Completion or such other time as may be stated in the Work Order. The Subconsultant may seek the approval of GBA to change the identity or role of any Key Personnel or to engage additional persons as Key Personnel. The Subconsultant must provide any information reasonably required by GBA in connection with such a request. GBA cannot unreasonably refuse to approve a replacement or additional key person that is of equal or greater skill, experience and competency to the person nominated in the Contract as the key person for that role.
- 10.3 **(Industrial relations)** The Subconsultant remains solely responsible for the management of industrial relations relating to its Personnel. The Subconsultant must promptly inform, and keep informed, GBA in relation to any potential or actual industrial relations issues which could affect the ability of the Subconsultant to comply with its obligations under the Contract.
- 10.4 **(Modern Slavery)** The Subconsultant:
- (a) must not engage in Modern Slavery and warrants and represents that it has not engaged in any Modern Slavery;
 - (b) must take, and warrants and represents that it has taken, all reasonable steps to identify and eliminate Modern Slavery in the business and operations of its subcontractors, suppliers and consultants;
 - (c) immediately notify GBA in writing if it becomes aware of any Modern Slavery in the Subconsultant's business or operations or the business or operations of its subcontractors, suppliers or consultants.
- 10.5 **(Labour Hire)** The Subconsultant must not provide any or utilise any labour hire services in connection with the Contract, unless the provider of that labour hire is registered under the *Labour Hire Licensing Act 2017* (Qld)
- 10.6 **(Removal)** GBA may at any time direct the Subconsultant to remove any of the Subconsultant's Personnel from the performance of the whole or part of the Subconsultant's obligations under the Contract if the Subconsultant is in breach of any clauses 9.1(a), 9.2, 10.1, 10.4 or 10.5 or that the person is otherwise responsible for a Substantial Breach of the Contract by the Subconsultant.

11. SUBCONTRACTING, ASSIGNMENT AND NOVATION

- 11.1 **(Consent required)** Neither party can subcontract, assign or novate the whole or any part of its rights and/or obligations under the Contract unless it has first obtained the written consent of the other Party.
- 11.2 **(Effect of subcontracting)** Subcontracting of the obligations of a party shall not relieve the that Party from any liability or obligation under the Contract. As between GBA and the Subconsultant:

- (a) the Subconsultant shall be responsible, and liable to GBA, for the acts and omissions of the Subconsultant's Personnel in connection with the Contract as if they were the acts or omissions of the Subconsultant; and
 - (b) GBA shall be responsible, and liable to the Subconsultant, for the acts and omissions of GBA's Personnel in connection with the Contract as if they were the acts or omissions of GBA.
- 11.3 **(Third party warranties)** The Subconsultant shall obtain and provide to GBA, the warranties required by the Contract. Unless otherwise directed by GBA, the Subconsultant shall also obtain a warranty from each subcontractor, supplier, retailer or manufacturer on terms commonly provided by those subcontractors, suppliers, retailers or manufacturers for their parts of the Services, in the name of both GBA and the Subconsultant.
- 11.4 **(Subcontracts)** The Subconsultant must ensure that any subcontracts into which it enters place the same obligations, responsibilities and liabilities on the subcontractor that this Contract places on the Subconsultant to the extent that they are relevant to the services provided by the subcontractor.

12. SITE

- 12.1 **(Access for Subconsultant)** GBA will give the Subconsultant sufficient, but non-exclusive, access to the Site to carry out the Subconsultant's obligations under the Contract. GBA may refuse to give such access until:
- (a) GBA has been given such access itself by the person in control of the Site (if that person is not GBA); and
 - (b) the Subconsultant has given GBA:
 - (i) evidence of insurance required by clause 22.3;
 - (ii) copies of all competencies, licences, accreditations, qualifications, permits, clearances or other authorisations which are required for the Subconsultant to comply with its obligations under the Contract;
 - (iii) any other documents or information which the Contract requires to be given to GBA before access to the Site shall be given, including those identified in the Work Order or elsewhere in the Contract; and
 - (iv) evidence that the Subconsultant has done all other things which the Contract requires to be done before access to the Site shall be given, including those identified in the Work Order or elsewhere in the Contract.
- 12.2 **(Access for GBA)** GBA and its Personnel shall be entitled to access the Site and any other place where any obligation of the Subconsultant under the Contract is or is to be carried out on the giving of reasonable written notice, including to conduct tests, inspections or audit of the Subconsultant's compliance with the Contract or to carry out other services or work at the Site. The Subconsultant must cooperate, communicate and co-ordinate with GBA and GBA's Personnel in relation to the access by GBA and GBA's Personnel. GBA must use reasonable endeavours to ensure none of GBA's Personnel impedes the Subconsultant in the performance of the Services.
- 12.3 **(Site specific requirements)** The Subconsultant must comply with:
- (a) the reasonable requirements of GBA; and
 - (b) the requirements of any other person in control of the Site which are notified to the Subconsultant by GBA or that person,
- in relation to the Subconsultant's access to or conduct on the Site.

13. MEETINGS

- 13.1 The Subconsultant must, at the times required by the Contract and when otherwise reasonably required by GBA, meet and discuss the performance of the Subconsultant and/or any other matter concerning GBA in connection with the Contract.

14. TIMING

- 14.1 **(Timing)** Subject to clause 14.2 the Subconsultant must commence performing its obligations under the Contract by the Time for Commencement and must perform those obligations:

- (a) with due expedition and without delay;
- (b) in accordance with any requirements of the Contract and any reasonable directions of GBA as to the order and timing of the performance of those obligations (including any program or schedule included in the Work Order or agreed between the Parties); and
- (c) where obligations are carried out at a Site, within any working hours stated in the Work Order or where no working hours are stated in the Work Order, the working hours reasonably directed by GBA;
- (d) so that the Subconsultant reaches Completion by the applicable Time for Completion.

- 14.2 **(Delay or interruption)** The Subconsultant must promptly notify GBA's Representative if it suspects, or becomes aware, that the performance of the whole or any part of the Subconsultant's obligations under the Contract will be interrupted or delayed and must provide any further information reasonably requested by GBA's Representative in relation to the delay or interruption.

- 14.3 **(Extension of time)** If the Subconsultant:

- (a) is delayed in reaching Completion by the Time for Completion because of a Qualifying Cause of Delay; and
- (b) the Subconsultant gives GBA a written claim for an extension of the Time for Completion within 10 Business Days of the delay first occurring,

then GBA shall grant a reasonable extension of the Time for Completion. GBA may grant an extension of the Time for Completion for delay caused by any other cause of delay. The Subconsultant must provide GBA with all information reasonably directed by GBA's Representative in connection with the delay.

- 14.4 **(Monetary compensation)** If the Subconsultant:

- (a) is entitled to an extension of the Time for Completion under clause 14.3 because of a delay caused by GBA or GBA's Personnel; and
- (b) submits a written claim for delay costs within 10 Business Days of the cessation of the delay,

then GBA shall be liable for the direct costs which the Subconsultant has reasonably, necessarily and not prematurely incurred by reason of that delay and which it cannot reasonably mitigate. The Subconsultant shall not otherwise be entitled to any monetary compensation in connection with any delay or disruption to or prolongation of the Subconsultant's obligations under the Contract however caused.

15. VARIATIONS

- 15.1 **(Direction for Variation)** GBA may at any time prior to the Time for Completion and for any reason, direct a Variation by giving written notice to the Subconsultant. GBA cannot direct a

Variation which is outside the general scope of the Contract. The Subconsultant cannot carry out a Variation without a written direction to do so from GBA.

- 15.2 **(Variation proposal)** GBA may direct the Subconsultant to provide an estimate or quotation for a Variation and/or a statement as to the impact of a Variation on the Subconsultant's obligations under the Contract (including the cost and timing of the Services). GBA may direct the Subconsultant to support the estimate, quotation or statement with documentary evidence and may direct the time within which the estimate, quotation or statement is to be provided. The Subconsultant shall be entitled to be paid the costs reasonably and necessarily incurred by the Subconsultant in complying with such a direction.
- 15.3 **(Adjustment of Price)** Subject to clause 15.4, the effect of a Variation on the Subconsultant's entitlement to payment shall be determined using the following order of priority:
- (a) agreement between the Parties;
 - (b) applicable fees, rates or prices (if any) stated in the Contract; or
 - (c) reasonable rates or prices.
- 15.4 **(No entitlement)** GBA shall not be liable upon any Claim in connection with a direction for a Variation, unless:
- (a) GBA's Representative has, expressly stated in writing that the direction is a direction for a Variation; or
 - (b) within 10 Business Days of being given the direction, and where possible before the Subconsultant complies (in whole or part) with the direction the Subconsultant has notified GBA in writing that it considers that the direction constitutes a Variation.
- 15.5 **(Variations requested by the Subconsultant)** GBA may approve a request for a Variation by the Subconsultant. Unless GBA agrees otherwise in writing, a Variation approved under this clause 15.5 shall have no effect on the Subconsultant's entitlement to payment, timing of the Subconsultant's obligations or any other obligation of the Subconsultant under the Contract.
- 15.6 **(Omissions)** Where GBA directs a Variation omitting or reducing any part of the Services, then GBA may subsequently provide the omitted or reduced Services itself or engage others to do so on its behalf. Except to the extent provided in clause 15.3, the Subconsultant shall not be entitled to any monetary compensation in connection with an omission or reduction and such omission or reduction shall not invalidate or constitute repudiation of the Contract.

16. INVOICES AND PAYMENT

- 16.1 **(Timing of invoices)** The Subconsultant may submit invoices to GBA for Services provided in accordance with the Contract at the times stated in the Work Order or where no such time is stated in the Work Order, on the 21st day of each month for Services provided up to the 21st of that month. Unless otherwise directed, final invoices should be submitted promptly and, in any event, no later than 5 Business Days after Completion.
- 16.2 **(Requirements of invoices)** Each invoice must comply with the GST Law and all other requirements:
- (a) stated in the Contract; or
 - (b) which GBA reasonably directs prior to the time for submission of the invoice.
- 16.3 **(Further supporting documentation)** GBA may, acting reasonably, direct the Subconsultant to provide documentary evidence supporting the Subconsultant's entitlement to payment of the whole or part of the amount claimed. Until such evidence is provided GBA may assess the claim on the basis that the supporting documentation does not exist.

- 16.4 **(Entitlement to payment)** The Subconsultant shall only be entitled to payment for Services which are provided in accordance with the requirements of the Contract (including the warranties given and representations made in the Contract).
- 16.5 **(Amount due)** GBA may deduct from any amount claimed by the Subconsultant under or in connection with the Contract (including for a breach of the Contract):
- (a) any amount which the Contract entitles GBA to deduct; and
 - (b) any other amount due and owing by the Subconsultant to GBA
- The balance remaining after such deductions shall be due by GBA to the Subconsultant or by the Subconsultant to GBA as the case may be and shall be certified as such by GBA within 15 Business Days after the invoice is received.
- 16.6 **(Due date for payment)** Subject to the Contract, GBA shall pay the amount due to the Subconsultant (if any) including any applicable GST before the end of the Payment Period. If an amount is due from the Subconsultant to GBA, the Subconsultant must pay that amount including any applicable GST within 25 Business Days of receiving written notification to this effect from GBA.
- 16.7 **(Interest)** Interest shall be payable on any amount that has not been paid by the time required by clause 16.6 at the standard default interest rate published by the Queensland Law Society from time to time.
- 16.8 **(Disputed Invoice)** If GBA disputes an invoice issued by the Subconsultant:
- (a) GBA will pay the undisputed portion of the relevant invoice (if any) less any deductions provided for under clause 16.5 and dispute the balance; and
 - (b) if the resolution of the dispute determines that GBA must pay an amount to the Subconsultant, GBA will pay that amount upon resolution of that dispute.
- 16.9 **(No admission)** Payments made by GBA to the Subconsultant are made on account only and do not constitute an admission that the Subconsultant is entitled to the payment made or that the Services and/or the Subconsultant Documents the subject of the payment have been provided, or any other obligation has been carried out, in accordance with the Contract.
- 16.10 **(Sole entitlement)** Except to the extent expressly provided otherwise in the Contract payment of the Price shall be the Subconsultant's only entitlement to monetary compensation for the provision of the Services and compliance with the Subconsultant's other obligations under the Contract.
- 16.11 **(Liability for GST)** If GST is imposed on any supply made pursuant to the Contract, the amount payable for the supply is to be increased by the amount of that GST. Each Party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other Party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable pursuant to any supply made under or in connection with this Contract.

17. LAW AND POLICIES

- 17.1 **(Compliance)** The Subconsultant must, and must ensure that its Personnel involved in the performance of the Services, comply with:
- (a) all law, standards and codes of practice applicable to the Subconsultant, the Subconsultant's business or the Subconsultant's obligations under the Contract; and
 - (b) any applicable policies, guidelines, procedures and codes of GBA which are identified in the Contract or which are publicly available or otherwise made known to the Subconsultant from time to time.

17.2 **(Change in law)** If:

- (a) a law:
 - (i) necessitates a change to the Services or a change in a fee or charge or payment of a new fee or charge;
 - (ii) comes into effect after the date of the Work Order and could not reasonably then have been anticipated by a competent contractor; and
 - (iii) causes the Subconsultant to incur more or less cost than otherwise would have been incurred; and
 - (iv) the Subconsultant notifies GBA in writing of the law and the effect of it on the Subconsultant before giving effect to the change in law,

then, subject to the Contract, the difference in cost to the Subconsultant shall be added to or deducted from the Price.

18. WORK HEALTH AND SAFETY

18.1 **(Relationship of obligations)** The obligations in this clause 18 are in addition to, and not in substitution for, any other obligation of the Subconsultant:

- (a) under the WHS Act and WHS Regulation; or
- (b) elsewhere in this Contract or at law relating to WHS.

Nothing in this clause 18 is intended to reduce or limit such other obligations and none of those other obligations shall be taken to reduce or limit the Subconsultant's obligations under this clause 18.

18.2 **(Primary obligations of Subconsultant and Personnel)** The Subconsultant must itself, and must ensure that its Personnel engaged in performing the Subconsultant's obligations under the Contract:

- (a) comply with all law (including the WHS Act and the WHS Regulation) and codes of practice relating to WHS that are in any way applicable to this Contract;
- (b) discharge the duties and comply with all relevant duties, obligations, standards and requirements under the WHS Act and WHS Regulation which are or may become applicable in connection with the Contract including any direction relating to WHS issued by the Regulator or any other Authority;
- (c) at all times identify and take all reasonably practicable steps to ensure health and safety of all persons who may be affected by the performance of the Subconsultant's obligations under the Contract;
- (d) consult with and co-operate with GBA in relation to matters of WHS that GBA (acting reasonably) considers the Subconsultant cannot resolve to the standard imposed by the WHS Act and the WHS Regulation and to cooperate and coordinate with GBA to ensure any issues are resolved to that standard;
- (e) comply with:
 - (i) the requirements of GBA's Client which are notified to the Subconsultant by GBA;
 - (ii) the requirements of any other person in control of the Site which are notified to the Subconsultant by GBA or that person; and

- (iii) if required by GBA, the WHS policies and procedures and other WHS requirements reasonably directed by GBA,

which are in any way applicable to this Contract for that Site.

18.3 (Incident notification) The Subconsultant must:

- (a) report any Notifiable Incidents to the Regulator within the specified time frame as per the WHS Act and WHS Regulation;
- (b) if any of the Subconsultant's Personnel are involved in an accident or other health and safety incident or otherwise suffer an injury in connection with the performance of the Subconsultant's obligations under the Contract:
 - (i) immediately notify GBA of the accident, incident or injury; and
 - (ii) within 3 Business Days of the accident, incident or injury (or such longer period as GBA may agree) provide a report giving complete details of the incident, including results of the investigations into the causes, and any recommendations or strategies identified for the preventions in the future; and
- (c) cooperate and assist (and procure its Personnel to cooperate and assist) GBA with any investigation by GBA, GBA's Client and/or any Authority into any accident, injury or other health and safety incident in connection with the Contract.

18.4 (Subconsultant's WHS systems) The Subconsultant:

- (a) warrants and represents that it has adequate WHS systems in place having regard to the nature of its obligations under the Contract and any hazards specific to any Workplace at which an obligation under the Contract is to be carried out;
- (b) must inform GBA of all its WHS policies, procedures or measures implemented for the performance of its obligations under this Contract;
- (c) must prepare and adopt WHS documentation which:
 - (i) addresses all the specific WHS hazards and issues relevant to the Subconsultant's obligations under the Contract which can be reasonably anticipated or ascertained at that time;
 - (ii) documents the system and control methods to be implemented for the performance of its obligations under the Contract,and must update such documentation as required from time to time to ensure that it complies with clause 18.4(c);
- (d) must, where directed to do so by GBA:
 - (i) prior to commencing the Subconsultant's other obligations under the Contract, submit the Subconsultant's WHS documentation (including the documentation required elsewhere under the Contract) to GBA for review; and
 - (ii) within the time directed by GBA submit to GBA for review any other WHS documentation that GBA directs it to prepare,

and if GBA notifies the Subconsultant that all or part of the WHS documentation is not suitable, at its cost amend and resubmit the relevant WHS documentation;

- (e) must, if GBA at any time during the performance of the Subconsultant's obligations under the Contract requests the Subconsultant to review any of the WHS

documentation, promptly and within the time required by GBA, review any or all of the WHS documentation in accordance with GBA's request and either:

- (i) submit revised documentation to GBA; or
 - (ii) provide written confirmation that the WHS documentation is appropriate to manage the risks associated with the Subconsultant's obligations under the Contract;
- (f) is not entitled to make any Claim (whether for additional costs or expense) in connection with its obligations under this clause.

18.5 **(Site specific induction)** Unless otherwise directed by GBA, the Subconsultant must ensure that each of its Personnel working at the Site receives a site-specific induction and that each person visiting the Subconsultant or its Personnel at that Site receives a site-specific induction or is accompanied by someone who has received such an induction.

19. PROTECTION OF PROPERTY AND THE ENVIRONMENT

19.1 **(General)** The Subconsultant must and must ensure that to the extent applicable to them, its Personnel:

- (a) perform the Subconsultant's obligations under the Contract safely and in a manner that will prevent pollution, contamination or damage to property or the environment; and
- (b) take all measures necessary to protect property and the environment in the performance of its obligations under the Contract.

19.2 **(Rectification of damage)** The Subconsultant must promptly rectify:

- (a) any damage to any property which is caused by the Subconsultant or the Subconsultant's Personnel in connection with the performance of its obligations under the Contract;
- (b) any damage to any property, which occurs whilst the Subconsultant is responsible for its care (whether or not due to any act or omission of the Subconsultant).

The Subconsultant shall be entitled to claim the cost which it reasonably and necessarily incurs in making good any such damage to the extent that the negligent act or omission or Wilful Misconduct of GBA or GBA's Personnel caused or contributed to the damage and/or GBA failed to act reasonably to mitigate the damage.

20. INDEMNITY

20.1 **(Indemnity)** To the extent permitted by law, the Subconsultant shall indemnify and keep indemnified GBA and GBA's officers, employees and related bodies corporate against:

- (a) any of the following:
 - (i) loss of or damage to property of GBA (including Subconsultant Documents);
 - (ii) Claims by any person against GBA in respect of personal injury or death, or loss of or damage to property of any party; and
 - (iii) Claims by any person against GBA and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by GBA,

to the extent caused or contributed to by the negligence or Wilful Misconduct of the Subconsultant or its Personnel in connection with the Contract and/or the breach of Contract by the Subconsultant; and

- (b) Claims by any person against GBA and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by GBA resulting from an infringement or alleged infringement of Intellectual Property Rights in connection with the Services by the Subconsultant or its Personnel,

but the indemnity will be reduced to the extent that the act or omission of GBA or GBA's Personnel caused or contributed to the cost, expense, fine, penalty, loss, damage, injury or death and/or GBA failed to act reasonably to mitigate the cost, expense, fine, penalty, loss or damage.

- 20.2 **(Acceptance of benefit)** GBA has informed its officers, employees and related bodies corporate and communicates acceptance on their behalf, of the Subconsultant's undertaking to indemnify under clause 20.1.

21. LIMITATION OF LIABILITY

- 21.1 **(Limit of liability)** To the extent permitted by law:

- (a) the aggregate liability of each Party to the other in respect of any Claim will not exceed that Party's Liability Limit; and
- (b) neither Party shall be liable to the other for any loss of profits, loss of opportunity, loss of agreement or loss of business unless, and then only to the extent, that the Contract expressly provides for that liability.

- 21.2 **(Exceptions)** Clause 21.1 does not apply to:

- (a) liability of GBA to pay the Price;
- (b) liability of either Party in connection with personal injury, or death or damage to property;
- (c) liability of a Party arising as a result of:
 - (i) an infringement of confidentiality or Intellectual Property Rights;
 - (ii) a deliberate breach or abandonment of the Contract;
 - (iii) Wilful Misconduct;
 - (iv) a breach of any law; or
 - (v) fraud or other criminal conduct,by that Party; or
- (d) liability of the Subconsultant which the Subconsultant:
 - (i) is entitled to recover under any insurance policy required to be effected under the Contract (up to the monetary limits for that insurance stated in the Contract) unless and then only to the extent that the Subconsultant uses all reasonable endeavours to, but does not actually, recover that liability; or
 - (ii) would have been entitled to recover under any insurance policy required to be effected under the Contract (up to the monetary limits for that insurance stated in the Contract) but for any act or omission of the Subconsultant or the existence of this clause 21,

and amounts referred to in subclauses (a), (b), (c) and (d) shall not be included in calculating whether the relevant Party's Liability Limit in clause 21.1(a) has been reached.

22. INSURANCE

- 22.1 **(Insurances to be effected and maintained)** The Subconsultant must effect the insurances stated in the Work Order and any other insurance which the Subconsultant considers is necessary to protect its interests or which is required by law. Where the Work Order does not provide for the insurances to be effected then the Subconsultant must effect the following insurance policies on terms and with an insurer reasonably acceptable to GBA:
- (a) public and product liability insurance in the amount of at least \$20,000,000 in respect of any one occurrence and for an unlimited number of claims;
 - (b) professional indemnity insurance in the amount of at least \$5,000,000 in respect of any one occurrence and for an unlimited number of claims;
 - (c) third party and comprehensive motor vehicle insurance for each vehicle used by the Subconsultant in performing its obligations under the Contract;
 - (d) plant and equipment insurance for each item of plant for the full replacement value of the plant; and
 - (e) workers' compensation insurance in respect of the Subconsultant's Personnel as required by law.
- 22.2 **(Period of insurance)** The insurance policies required under clause 22.2 must be maintained at all times from the date on which the Subconsultant commences the performance of its obligations under the Contract:
- (a) until 5pm on the later of:
 - (i) the date on which Completion is achieved; and
 - (ii) the date on which the Subconsultant's obligations under the Contract are complete; and
 - (b) in respect of professional indemnity insurance only, for a period of 7 years after the date in clause 22.2(a).
- 22.3 **(Subcontractors)** The Subconsultant must ensure that any subcontractor, supplier or consultant of the Subconsultant has equivalent insurances to the extent that they are applicable to the part of the Subconsultant's obligations under the Contract to be carried out, by the subcontractor, supplier or consultant.
- 22.4 **(Evidence of insurance)** If requested by GBA, the Subconsultant must provide GBA with a copy of the relevant certificate of currency and other evidence reasonably required by GBA of the Subconsultant's compliance with this clause 22. GBA may suspend the Contract or any Work Order issued pursuant to it until such evidence is provided.
- 22.5 **(No implied limitation)** Nothing in this clause, nor the Subconsultant's compliance or non-compliance with it, shall be taken to limit or reduce the Subconsultant's liability under the Contract or at law.
- 22.6 **(Notification)** The Subconsultant must:
- (a) if any insurance policy required under the Contract is cancelled or GBA's interest in respect of any of those policies is adversely affected, immediately notify GBA's Representative of this;
 - (b) if any event occurs which may give rise to a claim involving GBA under any policy of insurance to be effected by the Subconsultant under this clause 22:
 - (i) notify GBA within 10 Business Days of that event; and

- (ii) ensure GBA is kept fully informed of any subsequent actions and developments concerning the relevant claim.

23. INSPECTIONS AND TESTS

- 23.1 **(Right to inspect and test)** GBA may inspect and test, or engage a third party to inspect and test, any or all Services and Subconsultant Documents provided to ensure that the Services and the Subconsultant Documents comply with the Contract, including all warranties given and representations made by the Subconsultant in the Contract. Inspections or tests carried out by or on behalf of GBA shall not relieve the Subconsultant of any obligation or liability under the Contract nor limit or waive any right of GBA.
- 23.2 **(Cost)** If an inspection or test undertaken by or on behalf of GBA reveals a failure by the Subconsultant to comply with the Contract, then the costs reasonably incurred by GBA in undertaking the inspection or test shall be a debt due and payable by the Subconsultant to GBA.

24. HANDLING OF INFORMATION

- 24.1 **(Obligation of confidence)** A Party must not use the other Party's Confidential Information for any purpose other than complying with its obligations or exercising its rights in connection with the Contract ("Permitted Purpose"). A Party may not disclose the other Party's Confidential Information to a third party other than in the Exceptional Circumstances. The Parties must take reasonable steps to prevent the unauthorised disclosure to or use by any other person, firm or company of the Confidential Information.
- 24.2 **(Breach of Confidence)** If a Party becomes aware of a suspected or actual breach of clause 24.1, that Party must immediately notify the other Party and take reasonable steps required to prevent, stop or mitigate the extent of the breach. The Parties acknowledge that damages will not be an adequate remedy for such a breach.
- 24.3 **(Return of Confidential Information)** Subject to this clause 24, the Disclosee of Confidential Information must return or destroy (at the Discloser's discretion) all Confidential Information and material containing Confidential Information when it is no longer required by the Disclosee for the Permitted Purpose or when otherwise directed by the Discloser. The Disclosee may, subject to its continuing obligation to comply with this clause 24, keep such copies as are required to comply with any law or to comply with its reasonable corporate governance requirements for so long as is necessary to satisfy those requirements.
- 24.4 **(Personnel)** The Parties must make every reasonable effort to ensure that only its Personnel that have a need to know any Confidential Information for the Permitted Purpose are permitted to access and use the other Party's Confidential Information and its Personnel are aware of and comply with the obligations of confidentiality in this clause 24.
- 24.5 **(Collection of information by the Subconsultant)** If the Subconsultant collects or has access to Personal Information as that term is defined in the *Information Privacy Act 2009* (Qld) in order to carry out its obligations under the Contract, the Subconsultant must comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under this Contract as if the Subconsultant was a 'bound contracted service provider' as that term is defined in the *Information Privacy Act 2009* (Qld) .
- 24.6 **(Collection of information by GBA)** GBA collects Personal Information and other information in connection with the Contract so that it can properly administer the Contract. The information will be accessible by Personnel of GBA engaged to assist GBA in connection with the Contract. Information may also be disclosed as otherwise permitted under the Contract or at law.

24.7 **(Right to Information)** The Subconsultant acknowledges that:

- (a) the *Right to Information Act 2009* (Qld) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including GBA's Client);
- (b) the Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to public interest; and
- (c) information provided by the Subconsultant in connection with the Contract is potentially subject to disclosure to third parties, including information marked as confidential.

GBA, in consultation with GBA's Client, will assess any application for disclosure in accordance with the terms of the Act.

24.8 **(Media)** The Subconsultant must not, either on its own account or in conjunction with other parties, issue any publication, advertisement, document, article or information whether oral or written, in connection with the Contract in any media without the prior approval of GBA.

25. INTELLECTUAL PROPERTY

25.1 **(Background IP)** Background IP of a Party shall remain the exclusive property of that Party. GBA grants the Subconsultant a revocable, royalty free, non-exclusive, non-transferable licence to use GBA's Background IP strictly for the purpose of complying with the Subconsultant's obligations under the Contract and for no other purpose. The Subconsultant grants GBA an irrevocable, royalty free, non-exclusive, non-transferable licence to use, copy reproduce, modify and adapt the Subconsultant's Background IP for any purpose for which the Services are provided and for the purpose of complying with GBA's obligations and exercising GBA's rights in connection with the Contract. Each Party warrants and represents to the other that the use of the Party's Background IP will not infringe any Intellectual Property Rights of a third party.

25.2 **(Project IP - Alternative 1)** If the Work Order provides that Project IP vests in GBA, or if the Work Order does not deal with the matter, then:

- (a) Project IP vests on creation in and is the exclusive property of GBA;
- (b) to the extent (if any) that clause 25.2(a) does not vest Project IP in GBA, the Subconsultant assigns all right, title and interest in the Project IP to GBA; and
- (c) GBA grants the Subconsultant a revocable, royalty free, non-exclusive, non-transferable licence to use the Project IP to the extent necessary to enable the Subconsultant to comply with the Subconsultant's obligations under the Contract and for no other purpose.

25.3 **(Project IP - Alternative 2)** If the Work Order provides that Project IP vests in the Subconsultant, Project IP vests in the Subconsultant on creation and the Subconsultant grants GBA an irrevocable, royalty free, non-exclusive, non-transferable licence to use, copy, reproduce, modify and adapt the Project IP for any purpose for which the Services are provided and for the purpose of complying with GBA's obligations and exercising GBA's rights in connection with the Contract.

25.4 **(Moral Rights consent)** If the Work Order provides that a Moral Rights consent is required then:

- (a) GBA may do anything which would, but for this clause, constitute an infringement of the Moral Rights of the Subconsultant or any of its Personnel in the Background IP or the Project IP; and

- (b) the Subconsultant must procure, and on request by GBA provide to GBA a copy of, a written consent to this effect from each of its Personnel that is the author of any Subconsultant Documents.

25.5 **(Warranty and representation by Subconsultant)** The Subconsultant warrants and represents that:

- (a) it has the necessary rights to exercise any Intellectual Property Rights that it uses to perform its obligations under the Contract, or to assign or license the Subconsultant's Background IP and Project IP in accordance with this clause 25;
- (b) it has not infringed and will not infringe any Intellectual Property Rights of a third party in connection with the performance of its obligations under the Contract; and
- (c) except to the extent that the infringement is caused by the Subconsultant's incorporation of GBA's Background IP, the Project IP and GBA's use of the Project IP for a purpose stated in or to be reasonably inferred from the Contract will not infringe the Intellectual Property Rights of a third party.

26. NON-CONFORMANCE

26.1 **(Non-conformance)** Where any of part of the Services provided by the Subconsultant does not conform strictly to the requirements of the Contract or the Subconsultant fails to comply with any other obligation of the Subconsultant under the Contract, GBA may, in addition to or as an alternative to exercising its rights under clause 29, exercise the rights provided in clause 26.2.

26.2 **(GBA's rights)** Where permitted by clause 26.1, GBA may:

- (a) direct the Subconsultant to provide a detailed proposal as to how the Subconsultant proposes to rectify the non-conformance and the time within which such a proposal is to be provided;
- (b) whether or not GBA has given a direction under clause 26.2(a), direct the Subconsultant to:
 - (i) rectify the non-conformance or failure, including by:
 - A. performing or reperforming any non-conforming Services;
 - B. replacing non-conforming Subconsultant Documents; and
 - (ii) make good any damage to any property to the extent caused by the non-conformance or the rectification,

at the Subconsultant's expense and within the timeframes reasonably directed by GBA.

26.3 **(Step-in rights)** Where the Subconsultant fails to comply with a direction under clause 26.2(a) or 26.2(b), GBA may:

- (a) after giving at least 5 Business Days written notice to the Subconsultant (except in the case of emergency, in which case no notice is required), take any of the steps contemplated by clause 26.2 itself or engage a third party to do so; or
- (b) accept the non-conformance or failure in which case the Price shall be adjusted as if GBA had directed a Variation for the non-conformance or failure.

26.4 **(Costs)** The cost reasonably incurred by GBA in connection with any action taken pursuant to clause 26.2 or 26.3 shall be a debt due and owing by the Subconsultant to GBA.

- 26.5 **(Timing)** The rights given to GBA under clauses 26.2 or 26.3 may be exercised at any time up to 12 months after Completion.
- 26.6 **(Application of clause)** For clarity, this clause 26 shall apply to all Services and Subconsultant Documents provided or to be provided, under the Contract, including Services and Subconsultant Documents provided in compliance with a direction under clause 26.2(b).

27. SUSPENSION

- 27.1 **(Right to suspend)** GBA may direct the Subconsultant to suspend the performance of the whole or part of the Subconsultant's obligations under the Contract at any time and for any reason and may direct the Subconsultant to recommence performing those obligations by giving written notice to the Subconsultant. The Subconsultant must not suspend the performance of its obligations under the Contract without the prior written consent of GBA.
- 27.2 **(Costs of suspension)** To the extent that the substantive reason for the suspension is:
- (a) a request by the Subconsultant for a suspension for its convenience;
 - (b) the negligence or Wilful Misconduct of the Subconsultant or its Personnel; and/or
 - (c) the breach of Contract by the Subconsultant,
- the Subconsultant shall bear the costs of the suspension. Otherwise, GBA shall be liable for the direct costs which the Subconsultant demonstrates it has reasonably, necessarily and not prematurely incurred by reason of the suspension and which the Subconsultant demonstrates it cannot reasonably mitigate.
- 27.3 **(Termination)** If a suspension extends for a period of greater than 45 consecutive Business Days then unless otherwise agreed between the Parties, either Party may terminate the Contract immediately by giving written notice to the other Party, in which case clause 29.5 shall apply.

28. FORCE MAJEURE

- 28.1 **(Notification of Force Majeure)** If either Party is rendered unable wholly or in part by Force Majeure to carry out any of its obligations under the Contract (other than an obligation to make a payment of monies), that Party ('the Affected Party'), shall give to the other Party prompt written notice of such Force Majeure detailing the particulars of the Force Majeure and to the extent that it is ascertainable at the time of giving the notice, the extent to which it will be unable to perform or be delayed in performing its obligations.
- 28.2 **(Suspension)** On the giving of a notice under clause 28.1, the obligations of the Affected Party detailed in the notice shall be suspended for the duration of the Force Majeure.
- 28.3 **(Mitigation)** The Affected Party shall use all reasonable diligence to mitigate the effect of the Force Majeure on its obligations as quickly as possible. The Affected Party must notify the other Party as soon as it is no longer affected by such Force Majeure.
- 28.4 **(Industrial relations)** Clause 28.3 does not require the settlement of strikes, lockouts or other labour difficulties by the Affected Party on terms contrary to its wishes. The manner in which all such difficulties shall be handled shall be entirely within the discretion of the Affected Party.
- 28.5 **(GBA's rights)** Where the Subconsultant gives a notice under clause 28.1, GBA may at its election:
- (a) itself perform, or engage others to perform the obligations which the Subconsultant is unable to perform and may continue to perform such obligations until the later of the time that GBA is reasonably satisfied that the Subconsultant is able to resume performance of those obligations and the time at which any interim arrangements put in place by GBA are able to be reasonably brought to an end;

- (b) take such other action as GBA, acting reasonably, considers appropriate.

The cost incurred by GBA in exercising these rights shall be borne by GBA.

- 28.6 **(Termination)** If Force Majeure extends for a period of greater than 45 consecutive Business Days then either Party may terminate the Contract immediately by giving written notice to the other Party, in which case clause 29.5 shall apply.

29. TERMINATION, DEFAULT AND INSOLVENCY

- 29.1 **(Termination for convenience)** GBA may at any time and for any reason in its absolute discretion terminate the Contract by giving 25 Business Days written notice to the Subconsultant.

- 29.2 **(Notice to show cause)** If a Party (“the defaulting Party”) commits a Substantial Breach of the Contract, then the other Party may give the defaulting Party a notice to show cause. The notice to show cause must state:

- (a) that it is a notice to show cause under clause 29.2;
- (b) the alleged Substantial Breach;
- (c) that the defaulting Party is required to show cause in writing why the other Party should not exercise a right referred to in clause 29.3 or clause 29.4 (as the case may be);
- (d) the date and time by which the defaulting Party must show cause (which must be a reasonable period taking into account the nature of the breach); and
- (e) where applicable, the place at which cause must be shown.

- 29.3 **(GBA’s rights)** If:

- (a) the Subconsultant is subject to an Insolvency Event;
- (b) the Subconsultant commits a Substantial Breach which is incapable of remedy; or
- (c) by the time specified in the notice to show cause given by GBA to the Subconsultant under clause 29.2, the Subconsultant fails to show reasonable cause why GBA should not exercise a right under this clause 29.3,

then GBA may by giving written notice to the Subconsultant:

- (i) to the extent permitted by law, immediately terminate this Contract; or
- (ii) permanently or temporarily take the whole or any part of the obligations of the Subconsultant remaining to be completed pursuant to the Contract (including the obligation to remedy the default) out of the hands of the Subconsultant and may itself perform those obligations or engage a third party to do so on GBA’s behalf, in which case:
 - A. the Subconsultant shall not be entitled to any further payment in respect of the obligations taken out of Subconsultant’s hands;
 - B. the Subconsultant must continue to perform any obligations under the Contract that were not taken out of the Subconsultant’s hands;
 - C. GBA or the third party so engaged may enter the Site and any relevant premises of the Subconsultant and use all of the Subconsultant’s plant, equipment and materials as may be necessary to perform the obligation;

- D. GBA may, on the giving of reasonable notice, require the Subconsultant to resume the performance of the obligations of the Subconsultant under the Contract which were taken out of the hands of the Subconsultant if the Subconsultant ceases to be subject to an Insolvency Event or GBA is otherwise of the view that the Subconsultant is capable of continuing to perform its obligations under the Contract in accordance with the Contract; and
- E. if the costs incurred by GBA in performing the obligations or engaging a third party to do so are greater than the costs which would have been incurred had the Subconsultant performed the obligation then the difference shall be a debt due and owing by the Subconsultant to GBA and may be deducted from payments otherwise owing to the Subconsultant. Until such costs are incurred, GBA may deduct the estimated costs from payments to the Subconsultant.

29.4 **(Subconsultant's rights)** If:

- (a) GBA commits a Substantial Breach which is incapable of remedy; or
- (b) by the time specified in a notice to show cause given by the Subconsultant to GBA under clause 29.2, GBA fails to show reasonable cause why the Subconsultant should not exercise a right under this clause 29.4,

the Subconsultant may at its election:

- (i) suspend the whole or part of the Subconsultant's obligations under the Contract; or
- (ii) if the breach is not capable of remedy, terminate the Contract by giving written notice to GBA.

If the Subconsultant suspends the whole or part of the Subconsultant's obligations under this clause 29.4, the Subconsultant shall lift the suspension if GBA remedies the breach but if, within 45 Business Days after the suspension, the breach is not remedied and GBA fails to make other arrangements to the reasonable satisfaction of the Subconsultant, then the Subconsultant may terminate the Contract by giving written notice to GBA.

29.5 **(Consequences of termination)** If the Contract is terminated by either Party for any reason, then:

- (a) unless otherwise directed by GBA, the Subconsultant must secure the Site in a safe and proper manner and remove all of its Personnel, plant and equipment from the Site within 5 Business Days of the date of termination;
- (b) GBA may carry out any obligation of the Subconsultant which has not been carried out and completed as at the date of termination itself or engage others to do so on GBA's behalf; and
- (c) GBA shall, subject to the Contract, pay the Subconsultant:
 - (i) the amount which the Subconsultant is entitled to be paid under the Contract for Services provided by the Subconsultant in accordance with the Contract up to and including the date of termination; and
 - (ii) if the termination is solely due to the act or omission of GBA, without any fault on behalf of the Subconsultant, the amount of any other direct costs which the Subconsultant demonstrates it cannot reasonably mitigate and which the Subconsultant has reasonably, necessarily and not prematurely incurred:

- A. prior to the termination in the expectation of completing its obligations under the Contract; or
- B. as a direct consequence of the termination,

except that the total amount payable to the Subconsultant under the Contract shall not under any circumstances exceed the amount to which the Subconsultant would have become entitled to be paid had the Contract not been terminated and the Subconsultant had completed those obligations itself. For the avoidance of doubt, clause 29.5(c)(ii) shall not apply to a termination by either Party pursuant to clause 27.3 in respect of a suspension requested by the Subconsultant for the Subconsultant's convenience.

29.6 **(Effect on other rights)** To the extent permitted by law, the Subconsultant shall not be entitled to any monetary compensation in respect of:

- (a) the termination of the Contract by either Party; or
- (b) GBA taking obligations out of the hands of the Subconsultant,

other than as expressly provided in this clause 29. Nothing in this clause 29 shall prejudice GBA's right to claim and recover damages for breach of contract by the Subconsultant.

30. DISPUTE RESOLUTION

30.1 **(Mandatory process)** Unless otherwise stated in this Contract, any dispute between the Parties must be resolved in accordance with this clause 30.

30.2 **(Notice of dispute)** If a Party considers that a dispute has arisen between the Parties in connection with this Contract, then the Party must give written notice to the other, setting out the particulars of the dispute and stating that the notice is given under this clause 30. Unless the Parties otherwise agree in writing, the notice shall be delivered by hand or registered post.

30.3 **(Initial conference)** If a Party gives written notice to the other of a dispute under the Contract, representatives of the Parties shall promptly confer to attempt to resolve the dispute.

30.4 **(Mediation)** If the dispute is not resolved within 10 Business Days after the giving of the notice (or such longer period as may be agreed by the Parties) a Party may by written notice to the other Party refer the dispute for mediation in accordance with the Mediation Rules of the Resolution Institute. The mediation must be conducted by a mediator to be appointed by agreement of the Parties or in default of agreement to be appointed by the President of the Queensland Law Society or the President's nominee at the request of a Party.

30.5 **(Legal proceedings)** If the dispute is not resolved within 20 Business Days after the appointment of the mediator any Party may take legal proceedings to resolve the dispute.

30.6 **(Urgent relief)** This clause 30 does not prevent any Party from taking any steps under any law out of which the Parties cannot contract or obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

30.7 **(Obligation to continue)** Notwithstanding the existence of a dispute, the parties shall, subject to clauses 27, 28, and 29 continue to perform the Contract.

31. CLAIMS

31.1 **(Claims pursuant to the Contract)** GBA shall not be liable upon any Claim by the Subconsultant for an extension of time, an adjustment to the Price (including due to a Variation) or other monetary compensation pursuant to the Contract unless the Subconsultant has complied with the requirements in the Contract for notifying GBA of and making such a claim.

32. INTERPRETATION

- 32.1 **(Headings)** Headings are for reference purposes only and must not be used in interpretation;
- 32.2 **(No limitation)** The words 'include', 'includes' and 'including' are not words of limitation. Where the Contract provides that a Party 'may' do something that Party is not obliged to do that thing and is not prevented from doing any other thing;
- 32.3 **(Grammatical forms)** Where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning. Words importing the singular number include the plural number and words importing the plural number include the singular number.
- 32.4 **(Law)** A reference to 'law' includes all:
- (a) legislation (including subordinate legislation), local laws, by-laws, orders, ordinances, awards, requirements and proclamations of an Authority having jurisdiction and any related fees and charges; and
 - (b) certificates, licences, accreditations, clearances, authorisations, Approvals, consents, and permits and any related fees and charges,
- which are applicable to either Party or the Contract or which are otherwise in force at any place where an obligation under the Contract is carried out, as introduced, amended or replaced from time to time.
- 32.5 **(Other references)** A reference to:
- (a) a person includes any other legal entity and a reference to a legal entity includes a person;
 - (b) a clause is to a clause in the Contract unless expressly stated otherwise;
 - (c) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes email and facsimile;
 - (d) a monetary amount is a reference to an Australian currency amount.
- 32.6 **(Time)** References to time are to local time in Queensland. Where time is to be reckoned from a day or event, the day or the day of the event must be excluded. If any time period specified in the Contract expires on a day which is not a Business Day, the period shall expire at the end of the next Business Day. A reference to a day, week or month means a calendar day, week or month.
- 32.7 **(Indemnities)** Each indemnity provided in the Contract is a continuing indemnity which survives the expiration or termination of the Contract. A Party need not incur any expense or make any payment in order to rely on an indemnity.
- 32.8 **(Contra proferentem)** The contra proferentem rule and other rules of construction will not apply to disadvantage a Party whether that Party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.
- 32.9 **(Severance)** If a provision of the Contract is void or unenforceable it must be severed from the Contract and the provisions that are not void or unenforceable are unaffected by the severance.

33. GENERAL PROVISIONS

- 33.1 **(Costs)** Each Party must pay its own costs and expenses incurred in negotiating, executing, stamping, registering and performance of the Contract.

- 33.2 **(Joint and several obligations)** To the extent permitted by law, if either Party consists of two or more persons the Contract binds such persons and their respective executors, administrators, successors and permitted assigns jointly and severally, and any obligation incurred in favour of that Party may be enforceable by each person comprising that Party severally;
- 33.3 **(Governing law)** The Contract is governed by the law of Queensland and the law of the Commonwealth of Australia in force in Queensland. The Parties submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.
- 33.4 **(Binding on successor)** The Contract shall be for the benefit of and binding upon the Parties and their heirs, executors, successors and permitted assigns.
- 33.5 **(Further assurance)** The Parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under the Contract.
- 33.6 **(Service of notices)** A notice or other communication shall be deemed to have been given and received upon the earlier of actual receipt, or delivery to a Party's representative at the address or email address stated in the Work Order or as last notified in writing by the receiving Party, but a notice or communication sent only by email shall not be deemed to have been given and received if:
- (a) the sender receives a notification from the email system of the sender or the intended recipient which indicates that the email cannot be read by the intended recipient; or
 - (b) the intended recipient demonstrates that the notice or communication could not be legibly displayed by the intended recipient's email system at that time.
- 33.7 **(Waiver)** No waiver by a Party of a provision of the Contract is binding unless made in writing. Any waiver is limited to the particular instance and does not affect the subsequent enforceability of the provision.
- 33.8 **(Consent)** Any consent of a Party under the Contract must not be unreasonably delayed or withheld but may be given subject to reasonable conditions.
- 33.9 **(Consideration)** In consideration for the Subconsultant entering into this Contract, GBA agrees to pay the Subconsultant the sum of \$10 on demand. In consideration for GBA entering into this Contract, the Subconsultant agrees to pay GBA the sum of \$10 on demand.
- 33.10 **(Discrepancy or inconsistency)** Where there is a discrepancy or inconsistency between any obligation of the Subconsultant under the Contract, the Subconsultant must notify GBA in writing of the discrepancy or inconsistency. If the discrepancy or issue cannot be resolved using the order of precedence under clause 2.3 then unless otherwise directed by GBA, the Subconsultant must comply with the highest or most onerous requirement.
- 33.11 **(Cumulative rights and obligations)** The rights and remedies of a Party provided in the Contract are in addition to the rights or remedies conferred on the Party elsewhere in the Contract, at law or in equity. Compliance with a clause of the Contract will not relieve the Subconsultant of any other obligation under the Contract, at law or in equity. The exercise by GBA of a right provided in the Contract shall not invalidate or constitute a repudiation of the Contract.
- 33.12 **(Electronic execution)** The Contract may be executed in any number of counterparts and when executed communication of the fact of execution to the other Party may be made by sending evidence of execution by email. For clarity, the Parties consent to the Contract being executed electronically using DocuSign or an equivalent electronic method to identify the Parties.

- 33.13 **(Current versions)** Except to the extent otherwise provided in the Contract, where the Contract includes or incorporates by reference any standard, plan, requirement, code, guideline, policy, standard drawing or standard specification then the Subconsultant must comply with the version of that standard, plan, requirement, code, guideline, policy, standard drawing or standard specification which is current as at the date of the Contract, and the sums, rates or prices in the Contract shall be deemed to have allowed for compliance with that version.
- 33.14 **(Clauses to survive termination)** In addition to any other clauses which may be found to survive termination, clauses 20, 21, 22.2(b), 24, 25 and 31 survive the expiration or earlier termination of the Contract.