

Subcontract Agreement

[Subcontract Name]

Subcontract No: SIM-PXXX-SCAXX

[PROJECT NAME]

[Contract Name]



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General Conditions

1 BACKGROUND

- 1.1 SIMPEC has entered into a Main Contract with the Owner (Owner) for the performance of certain work in relation to the Project of which these subcontract Works form part of.
- 1.2 The Owner, and its permitted successors and assigns, is developing the Project as described in **Item 3** of the Schedule of Subcontract Particulars which these subcontracted Works are associated with.
- 1.3 The Subcontractor has represented to SIMPEC that it has the requisite skills, knowledge, experience, expertise and resources to execute and complete the Works subject to the conditions set out in these Contract Documents, including this Subcontract Agreement.

2 DEFINITIONS

In this Subcontract Agreement:

ABCC means the Office of the Australian Building and Construction Commissioner.

Authorisation means any approval, licence, permit, registration, consent, certification, accreditation, declaration, exemption, notarisation or waiver; however, it is described which is required at Law to be obtained from a government agency in relation to the Project or the Works;

Code means the National Code of Practice for the **Construction Industry** as published by the Australian Government from time to time in accordance with the provisions of the relevant Law and directions of the relevant authorities (i.e. ABCC and its successor including the Fair Work Building Industry Inspectorate);

Commencement Date is the date the Subcontractor is due to commence the Works on Site as identified in **Item 5** of the Schedule of Subcontract Particulars;

Constructional Plant means appliances and things used on or in the vicinity of the Site in the execution of the Works under the Subcontract Agreement but not forming part of the Works;

Contract Documents means this Subcontract Agreement comprising;

- General Conditions
 - Schedule of Subcontract Particulars;
 - Schedule 1: Special Conditions
 - Schedule 2: Scope of Work
 - Schedule 3: Specifications and Drawings
 - Schedule 4: Payment Schedule
 - Schedule 5: Construction Program
 - Schedule 6: HSE Management Requirements
 - Schedule 7: Industrial Relations Management Requirements
 - Schedule 8: Quality Assurance Requirements
 - Schedule 9: Site Specific Requirements
- and other attachments, schedules and annexures referred therein.

In the event of conflict between these documents, the order of precedence shall be: (1) Schedule of Subcontract Particulars; (2) Schedule 1 - Special Conditions, (3) General Conditions, then the remaining Schedules, attachments and annexures in the order they appear.

Each of the Contract Documents are intended to be correlative and mutually explanatory and any Works referred to in one document and not mentioned in another are deemed to be included as part of the Works, at no additional cost or expense for SIMPEC, regardless of the order of priority of the respective Contract Documents.

Should any inconsistency or ambiguity be found by Subcontractor within any of the Contract Documents, then Subcontractor shall promptly communicate such inconsistency and/or ambiguity to SIMPEC, for final determination by SIMPEC.

Contract Sum means:

- (a) where SIMPEC has accepted a fixed lump sum, the lump sum specified in **Item 6** of the Schedule of Subcontract Particulars.
- (b) where SIMPEC has accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in Schedule 4 – Payment Schedule; or
- (c) where SIMPEC has accepted a Budget Estimate, the aggregate of the sums referred to in paragraphs (a) and (b);
- (d) but excluding any additions or deductions which may be required to be made under the Subcontract Agreement.

Date for Completion means the date or period specified in **Item 7** of the Schedule of Subcontract Particulars, but if an extension of time for completion is granted by SIMPEC, it means the date resulting from the extension of time;

Date of Completion means the date that is the later of: (1) the Date of Practical Completion of the Main Contract; or (2) the date that SIMPEC Representative decides the Works under the Subcontract Agreement are complete, except for minor omissions and minor defects.

Day means calendar day.

Defects Liability Period means the period specified in **Item 8** of the Schedule of Subcontract Particulars commencing on the Date of Completion;

Drawings means the drawings referred to in this Subcontract Agreement and any modification of such Drawings notified to the Subcontractor by SIMPEC.

Environmental Approval means the approval document issued by the Department of Environment in the relevant State or Territory of Australia, which comprises conditions, commitments, services approval and a licence, in respect of the Project (a copy of which is available upon request), and any amendments, revisions and supplements thereto, and includes any documents attached thereto or referred to therein.

Employee(s) means any employee(s) of the Subcontractor providing services to the Subcontractor for the Project in respect of the Works.

Guidelines mean the Australian Government Implementation Guidelines for the Code published from time to time by ABCC and the Commonwealth Department of Employment and Workplace Relations (or its successor).

Key Personnel (if any) means the Subcontractor's employees nominated as such in **Item 9** of the Schedule of Subcontract Particulars and such other persons employed and identified by the Subcontractor as Key Personnel with the approval of SIMPEC.

Law means applicable Commonwealth and State legislation, regulations, by-laws and other subordinate legislation and common law and equity, in respect of the performance of the Works under this Subcontract Agreement pursuant to **Item 14** of the Schedule of Subcontract Particulars.

Liquidated Damages shall be at the rate specified in **Item 13** of the Schedule of Subcontract Particulars.

Main Contract means the contract that SIMPEC has entered into with the Owner for the performance of certain work in relation to the Project of which the Works are part.

Month means calendar month.

Other Instrument means an enterprise agreement or other Commonwealth or State industrial instrument applicable to any Employee in respect of the performance of the Works.

Owners means the person so named in **Item 2** of the Schedule of Subcontract Particulars, and includes their respective agents, employees, permitted successors and permitted assigns.

Project means the project so named in **Item 3** of the Schedule of Subcontract Particulars.

Safety Management Plan means the plan provided to or by the Subcontractor as specified in Schedule 6: HSE Management Requirements.

Site means the site stated in **Item 10** of the Schedule of Subcontract Particulars and includes any area where the Works are to be undertaken, excluding any area under the ownership or exclusive control of the Subcontractor.

Specification means any specification for the Works included in Schedule 3: Specifications and Drawings and any modification of such Specification notified to the Subcontractor by SIMPEC.

State means the State having jurisdiction over the Works as stated in **Item 14** of the Schedule of Subcontract Particulars.

Subcontract Agreement means this contractual relationship between SIMPEC and the Subcontractor.

Subcontractor's Representative means the person nominated in **Item 4** of the Schedule of Subcontract Particulars as amended and approved by SIMPEC in writing from time to time to be its representative for the purpose of this Subcontract Agreement;

Term means the term as specified in this Subcontract Agreement.

SIMPEC Representative means the person nominated by SIMPEC in **Item 1** of the Schedule of Subcontract Particulars as amended in writing from time to time to be its representative for the purpose of this Subcontract Agreement;

Works means the whole of the work (including the supply of all necessary goods and materials) which the Subcontractor is required to perform under and in accordance with this Subcontract Agreement as generally described herein and includes, but not limited to, Works stated in any attachment, annexure, variations, remedial work and all other work reasonably necessary for the performance of the Subcontract Agreement.

Workplace Agreement means a transitional instrument, or an enterprise agreement, or such other State or Federal industrial instrument enforceable, certified, registered or otherwise approved under the Fair Work Act 2009 (Cth) or other relevant industrial relations Law, applicable to an Employee in relation to the performance of the Works.

3 PERFORMANCE AND PAYMENT

- 3.1 The Subcontractor acknowledges and agrees that time is of the essence in respect of the Subcontractors obligations to complete the Works in accordance with this Subcontract Agreement.
- 3.2 The Subcontractor shall execute and complete the Works in a workmanlike manner using materials required by this Subcontract Agreement. In the absence of any other requirement, the materials will comprise new materials of merchantable quality suitable for SIMPEC's purpose. The Works will conform, in all respects, with all requirements of relevant Australian Standards® and be fit for its intended purpose.
- 3.3 SIMPEC will pay the Subcontractor the Contract Sum adjusted by any additions or deductions pursuant to this Subcontract Agreement.

4 EMPLOYEE RELATIONS

4.1 Terms and conditions of employment

- (a) **(Disclosure)** The Subcontractor agrees to disclose to SIMPEC each Workplace Agreement and industrial instrument which falls within the definition of Other Instrument.
- (b) **(Independent advice)** The Subcontractor agrees, where reasonably requested by SIMPEC, to obtain independent legal or industrial advice in connection with any industrial matter which may affect the Subcontractor's ability to perform its obligations under the Subcontract Agreement, and immediately engage the SIMPEC designated legal firm and be fully responsible for all legal and other costs associated with obtaining independent legal or industrial advice.

4.2 No disadvantage

Clause 4.1 does not operate to prevent the Subcontractor complying with any obligation imposed upon it as a consequence of any contract of employment between it and any Employee which contract was entered into prior to the date of execution/making of this Subcontract Agreement.

4.3 Employment and statutory compliance

The Subcontractor undertakes to comply with:

- (a) all applicable employment and employment-related Law including (but not limited to) workers compensation, industrial relations, superannuation, occupational health and safety, anti-discrimination, privacy, taxation, and relevant building and construction Law (ER Legislation);
- (b) subject to clause 4.2, the terms and conditions of employment set out in each Workplace Agreement which applies to the performance of the Works; and
- (c) subject to clause 4.3(a), the Code, the Guidelines and any applicable Other Instrument as amended from time to time and shall have an appropriate Workplace Agreement or such Other Instrument covering the terms and conditions of employment for its employees. Without limiting the aforementioned provision, the Subcontractor agrees that it will:
 - (i) require all of its subcontractors, secondary subcontractors and material suppliers to comply with the Code and Guidelines;
 - (ii) allow a person occupying a position in the ABCC (or its successor) to have access to any sites, documents and personnel in the control of the Subcontractor for the purposes of monitoring compliance with the Code and Guidelines;
 - (iii) establish appropriate processes to support freedom of association and ensure that union right of entry to premises in the Subcontractor's control is in accordance with the Law;
 - (iv) report all threatened or actual industrial actions on the Site or in relation to the Works to SIMPEC;
 - (v) responds (with SIMPEC's knowledge) to requests for information concerning Code-related matters made on behalf of the ABCC (or its successor) or the Code Monitoring Group.
 - (vi) ensure that it and its subcontractors initiate voluntary remedial action aimed at rectifying non-compliant behaviour (if any) when it is drawn to their attention;
 - (vii) ensure that the Code Monitoring Group is notified of any alleged breaches, remedial action taken or any other Code-related matters within 21 days of becoming aware of an alleged breach of the Code; and
 - (viii) ensure that sanctions applied under the Code are enforced including the exclusion of identified parties from work opportunities in accordance with the decisions advised by the Code Monitoring Group.

4.4 No 'cash-in-hand' payments

The Subcontractor must not make any undeclared cash payments to any Employee.

If an Employee receives a cash payment, the amount paid must be declared in the Subcontractor's time and wages records. Further, income tax must be withheld from the payment, and payroll tax paid taking into account the payment, in accordance with applicable tax Law.

The Subcontractor must not make any payments to Employees in relation to periods of industrial action in contravention of any relevant ER Legislation.

4.5 Inspection of time and wages records

The Subcontractor will:

- (a) maintain and arrange for a regular independent audit of time and wages records for each Employee in accordance with the relevant ER Legislation applicable to the Project.
- (b) permit SIMPEC to inspect the Subcontractor's time and wages records and audit reports referred to in (a) above.
- (c) make time and wages records and any independent audits available to SIMPEC at a location reasonably specified by SIMPEC within 24 hours of SIMPEC's written request.

4.6 Engagement of employer association

Where required by SIMPEC, the Subcontractor will engage the SIMPEC designated employer association to provide independent advice on industrial relations issues which may affect the Subcontractor as a result of this Subcontract Agreement.

The Subcontractor will permit SIMPEC to inspect the independent advice produced by the employer association and will make the independent advice available to SIMPEC at a location reasonably specified by SIMPEC within 24 hours of SIMPEC's written request.

The Subcontractor must not deviate from the employer association's advice without SIMPEC's written approval.

4.7 Implementation of ERMP Guidelines

Prior to the Commencement Date, the Subcontractor must provide SIMPEC (for SIMPEC's approval) the Subcontractor's Employee Relations/ Human Resources Management Plan for managing the performance of the Works (Subcontractor ERMP Guidelines"), which must comply with the requirements of the relevant ER Legislation and the Code.

If SIMPEC does not approve the Subcontractor's ERMP Guidelines, then the Subcontractor agrees that SIMPEC' Employee Relations Management Plan for Contractors (SIMPEC ERMP Guidelines) will stand in place of the Subcontractor's ERMP Guidelines for the purpose of this clause.

The Subcontractor undertakes to comply with and not vary or amend the Subcontractor ERMP Guidelines or SIMPEC ERMP Guidelines (whichever apply), without the consent of SIMPEC.

The Subcontractor will permit SIMPEC to audit the Subcontractor's compliance with the Subcontractor's ERMP Guidelines or SIMPEC ERMP Guidelines, whichever apply. For this purpose, the Subcontractor will make available, explain and demonstrate any documents or information reasonably requested of it by SIMPEC at a location reasonably specified by SIMPEC within 24 hours of SIMPEC's written request.

4.8 Privacy

The Subcontractor will:

obtain the consent of each of its Employees (and ensure its subcontractors obtain the consent of each of their employees) to the collection, use and disclosure of any personal information and health information about the Employee (including, but not limited to, information forming part of the employee's employee record) by the Subcontractor and SIMPEC for business purposes; and ensure that appropriate disclosures are made to each Employee about SIMPEC's access to the records of any Employee, and ensure that those disclosures are sufficient for the purposes of the Subcontractor's and SIMPEC's compliance with the Privacy Act 1988 (Cth).

5 PERFORMANCE SECURITY

5.1 The Subcontractor must provide SIMPEC with performance security in the manner and amount described in **Item 9** of the Schedule of Subcontract Particulars.

5.2 Security must be lodged with SIMPEC within ten (10) days of this Subcontract Agreement. Notwithstanding any other provision of this Subcontract Agreement, SIMPEC is not obliged to pay any amounts to the Subcontractor until the Subcontractor has lodged a Security with SIMPEC in compliance with this clause 5.

5.3 SIMPEC will be free to convert the security into money upon breach by the Subcontractor of any of its obligations under this Subcontract Agreement or otherwise in case of a claim, whether in relation to this Subcontract Agreement or otherwise. SIMPEC will not be liable for any loss caused by the conversion.

5.4 SIMPEC will release 5% of the Security within 30 days after the Date of Completion taking into account approved Extension of Time and the remaining 5% within 30 days after expiration of the Defects Liability Period, provided that the Subcontractor has executed and returned to SIMPEC a signed Deed of Release in the form specified in Attachment 2.

6 ASSIGNMENT AND SUBCONTRACTING

The Subcontractor shall not, without the prior written approval of SIMPEC, assign this Subcontract Agreement or any payment hereunder or enter into any secondary subcontract or supply agreement in relation to the Works. SIMPEC may, without the consent of the Subcontractor, assign this Subcontract Agreement or any right hereunder to the Owner.

7 STATUTORY REQUIREMENTS

7.1 The Subcontractor must comply with the requirements of all Law and the requirements of all persons exercising statutory authority affecting the Works, and shall give all notices, make all applications, obtain all Authorisations and pay all fees necessary to comply with these requirements.

7.2 To the extent permissible by Law, and except to the extent otherwise provided under this Subcontract Agreement, the Subcontractor is solely responsible for the planning, control, supervision and management of the Works.

8 SAFETY AND PROTECTION

8.1 In this clause:

direction includes a request, direction, instruction, investigation notice, prohibition notice, or improvement notice;

Authority means an Authority in a State or Territory who has responsibility for the administration of Laws relating to occupational safety and health or for environmental protection.

8.2 The safety of the Subcontractor and subcontractors, and their representatives, agents, Employees, and invitees, while on the Site, or of any other person who enters upon the Site with the consent of the Subcontractor, subcontractors or the representatives, agents, employees or invitees of any of them or for reasons relating to this Subcontract Agreement, shall be the responsibility of the Subcontractor.

8.3 The Subcontractor shall at all times maintain good order among its employees and shall not employ, for purposes of this Subcontract Agreement, any person unfit or not skilled in the work assigned. The Subcontractor shall confine:

(a) all tools, vehicles, containers, and equipment;

(b) all persons who come onto the Site for reasons relating to this Subcontract Agreement, and

- (c) all other persons who come onto the Site with the consent of the Subcontractor, subcontractors or their representatives, agents, employees or invitees,
to that portion of the Site where the work is being performed, to roads leading to and from such areas, and to any other area which SIMPEC may, in writing, permit the Subcontractor to use.
- 8.4 The Subcontractor must comply with all occupational safety and health Laws which applies in the jurisdiction in which the Works are to be performed, all Occupational Safety and Health policies and procedures issued by SIMPEC from time to time (OSH Policies), SIMPEC's Fitness for Work Policy (enclosed as Attachment 3) and any directions given by an Authority.
- 8.5 The Subcontractor acknowledges that it has read and understood SIMPEC' OSH Policies, and that it has completed and returned to SIMPEC any forms attached to that document requiring completion. The Subcontractor indemnifies SIMPEC, its employees and agents from any death, injury, damage, expense, loss or liability arising from the Subcontractor's non-observance of any occupational safety and health Law and OSH Policies.
- 8.6 The Subcontractor warrants that while performing the Works it will, at its cost, do all things necessary to ensure the health, safety and welfare of its employees and any other persons to whom it has a legal occupational safety and health responsibility including (but not limited to):
- (a) providing and maintaining a safe working environment and safe systems of work and ensuring all plant, equipment and substances are maintained in a safe condition, are appropriate for the task for which they are intended and comply with all applicable regulations, Australian Standards® and Law;
 - (b) complying with SIMPEC' directions to correct, repair or make good any occupational safety and health deficiencies;
 - (c) immediately informing SIMPEC (and providing such information as is requested by SIMPEC) of any accident or incident arising out of the performance of the Works, regardless of the magnitude and whether the accident or incident is required to be notified to an Authority;
 - (d) providing investigation reports to SIMPEC of all injuries, incidents, illnesses and property damage arising out of the performance of the Works, giving complete details of the incident, including the results of investigations into its cause and any recommendations or strategies for prevention in the future;
 - (e) providing and maintaining all necessary safety clothing and personal protective equipment for its employees, and its subcontractors and their employees, where applicable;
 - (f) providing induction safety and health training prior to any person commencing performance of any aspect of the Works and providing regular ongoing training including where there is a transfer to other duties or a change in the duties performed by any person involved in any aspect of the Works.
- 8.7 The Subcontractor must establish and maintain an ongoing risk management approach to identifying, assessing, eliminating and controlling hazards and risks.
- 8.8 The Subcontractor agrees that at any stage during the Subcontract Agreement the SIMPEC Representative has the right to conduct an occupational safety and health audit of the Subcontractor's performance of the Works for the purpose of ensuring that SIMPEC' safety standards and requirements are met by the Subcontractor (and if applicable, its subcontractors) in the course of performing the Works. If the SIMPEC Representative considers that the Works are not being carried out in accordance with the occupational safety and health requirements and obligations, the SIMPEC Representative may direct that the Works cease immediately until the matter is rectified or may notify the relevant Authority.
- 8.9 If SIMPEC Representative considers that any Subcontractor's plant and equipment is unsafe for use in performing the Works, SIMPEC' Representative may direct the Subcontractor, at the Subcontractor's cost, to:
- (a) immediately cease using the unsafe Subcontractor's plant and equipment until it has been brought into a safe working order; or
 - (b) replace the unsafe Subcontractor's plant and equipment with plant and equipment which is in a safe working order.
- 8.10 If the Subcontractor fails to comply with a direction to cease using unsafe plant and equipment, SIMPEC may perform or have performed the obligation on the Subcontractor's behalf and the costs and expenses incurred by SIMPEC are recoverable from the Subcontractor as a debt due to SIMPEC.
- 8.11 The Subcontractor shall cooperate with, provide all assistance to and promptly make available to SIMPEC' Representative all relevant information, records and personnel that are within the Subcontractor's power or control and that are requested by SIMPEC' Representative in order for SIMPEC to assess the Subcontractor's compliance with the safety and health Laws and the Safety Management Plan.
- 8.12 The Subcontractor must provide a Safety Management Plan to SIMPEC' Representative by no later than the Commencement Date. The Subcontractor must maintain, administer and comply with the Safety Management Plan.
- 8.13 The Subcontractor must comply with any reasonable direction of SIMPEC' Representative following breaches or a perceived breach of the Safety Management Plan.
- 8.14 Where the Subcontractor has been served with a prohibition or improvement notice under the Law or with a summons or is convicted of any offence in relation to occupational safety and health or is otherwise required to notify the Authority on any matter, the Subcontractor shall immediately supply a copy of that notice or summons to SIMPEC' Representative.
- 8.15 The Subcontractor must employ on Site a person with at least St John's Ambulance Australia "Senior First Aid" qualifications or equivalent accredited course, and must provide, equip and maintain a St John's Ambulance Australia Industrial First Aid kit, or similar, in an approved location at the Site office. The Subcontractor must render first aid to the Subcontractor's employees,

any subcontractors and their employees, SIMPEC' employees, agents, contractors and subcontractors, and any other person on Site if needed.

- 8.16 In performing the Works, the Subcontractor must not interfere with the passage of people and vehicles and cause or contribute to causing nuisance, noise, disturbance or other damage to the environment.
- 8.17 If the Subcontractor damages public utilities and/or any property on or adjacent to the Site of the Works, the Subcontractor will promptly make good the damage and pay any necessary compensation.

9 RESPONSIBILITY FOR THE WORKS AND INDEMNITY

- 9.1 The Subcontractor shall be responsible for and shall make good any loss or damage to the Works occurring prior to the Date of Completion.
- 9.2 The Subcontractor shall indemnify SIMPEC against loss of or damage to property of SIMPEC including materials and equipment and against any claims by any person against SIMPEC in respect of personal injury or death or loss of or damage to property, arising out of or as a consequence of the carrying out by the Subcontractor of the Works.
- 9.3 The Subcontractor shall indemnify SIMPEC against any liability or costs incurred by SIMPEC as a consequence of the Subcontractor (or any of the Subcontractor's Employees) being deemed an employee of SIMPEC.
- 9.4 The indemnity under this Clause 9 shall not exclude any other right of SIMPEC to be indemnified by the Subcontractor and shall survive termination of this Subcontract Agreement for any reason.

10 INSURANCE

- 10.1 The Subcontractor must maintain the insurances as required by **Item 12** of the Schedule of Subcontract Particulars with an insurance company acceptable to SIMPEC including liability for:
- (a) public liability insurance for the Term in the joint names of the Subcontractor and SIMPEC (including its Related Bodies Corporate) for an amount of not less than \$20,000,000 any one occurrence and unlimited in the annual aggregate;
 - (b) professional indemnity insurance for the Term and for a period continuing 7 years after termination or expiration of the Term, for an amount of not less than \$10,000,000 any one claim and \$20,000,000 in the annual aggregate;
 - (c) workers' compensation and employer's liability insurance for the Term which insures against any injury, damage, expense, loss or liability suffered or incurred by any person engaged in work under this Subcontract Agreement (or their dependants):
 - (i) giving rise to a claim under any statute relating to workers' or accident compensation, or where common law claims are not covered by a statutory scheme, for employer's liability at common law for not less than the amount required by law in each State or Territory in which the services are to be provided; and
 - (ii) in every State or Territory where the Works under this Agreement will be carried out as well as in each State or Territory where the Contractor's employees normally reside or where their contract of employment was made;
 - (d) product liability insurance for the Term in the joint names of the Contractor and SIMPEC for an amount of not less than \$20,000,000 any one occurrence and unlimited in the annual aggregate;
 - (e) motor vehicle third party property damage insurance (including where applicable, bodily injury gap coverage) in respect of all motor vehicles including those required to be licensed or otherwise registered by Law which are in the ownership or control of the Subcontractor for use in connection with performance of the Works for an amount of not less than \$20,000,000 in respect of each and every occurrence and unlimited as to the number of occurrences happening during the period of insurance;
 - (f) statutory motor vehicle liability insurance in respect of all motor vehicles including those required to be licensed or otherwise registered by Law which are in the ownership or control of the Subcontractor for use in connection with the performance of the Works;
 - (g) construction plant and equipment insurance in respect of all plant, equipment and other property owned, operated or controlled by the Subcontractor for which the Subcontractor is responsible and brings to or uses on Site including transit risk or at other places where the Work is performed for not less than the market value of the plant and equipment; and
 - (h) any other insurance policies as required by Law, SIMPEC, the Owner or their Related Bodies Corporate from time to time.
- 10.2 The Subcontractor must in, respect of each insurance referred to in clause 10.1:
- (a) before commencing the Works and otherwise promptly on request by SIMPEC or its Related Bodies Corporate, provide to SIMPEC or its Related Bodies Corporate a certificate of currency;
 - (b) except in relation to statutory workers' compensation and professional indemnity, take out insurance policies that are primary and without any right of contribution from an insurance effected by SIMPEC or its Related Bodies Corporate;
 - (c) in relation to workers' compensation insurance, ensure that where permitted by Law, the policy is endorsed to insure SIMPEC and its Related Bodies Corporate as principal, for principal's liability in respect of statutory and common law liability and shall further include a waiver of subrogation in favour of SIMPEC and its Related Bodies Corporate;
 - (d) in relation to professional indemnity insurance, ensure that the policies include an automatic right of reinstatement and that the policies include cover for breaches of trade practices legislation and Intellectual Property rights and third-party property damage & bodily injury; and
 - (e) in relation to public liability insurance and product liability insurance, ensure that the policies contain the following clauses:

- (i) clause enabling one insured person to claim against the insurer where another insured person would have been entitled to claim against the insurer but is precluded from doing so for any reason, including, but not limited to, a breach of the policy by that other insured person; and
 - (ii) cross liability clause enabling one insured person to claim against the insurer even if the party making the claim against that insured person is also insured under the policy.
- 10.3 SIMPEC and its Related Bodies Corporate may review and adjust the amounts of insurance cover required pursuant to this clause 10 annually.
- 10.4 The parties acknowledge and agree that:
- (a) the Subcontractor is and remains liable for the payment of any premiums associated with insurances required by this Subcontract Agreement and will obtain and maintain the insurances required under clauses 10.1(a) to 10.1(h) at no cost to SIMPEC or its Related Bodies Corporate; and
 - (b) to the extent that the Contractor is required to maintain additional insurances under clause 10.1(h) or the amount of any insurance cover required under this Subcontract Agreement is reviewed and adjusted in accordance with clause 10.3 and such change materially affects the Contractor's costs of providing the Works, the parties will negotiate appropriate adjustments to the Contract Sum in good faith.
- 10.5 If the Subcontractor fails to obtain or maintain insurances required by this Subcontract Agreement, SIMPEC or its Related Bodies Corporate may themselves effect the insurances and deduct the premiums paid in respect thereof from any moneys that may be or that may become payable to the Subcontractor or may recover as a debt due from the Subcontractor the amount so paid, until the policies of insurance or evidence of renewal are produced to it as required.
- 10.6 The Subcontractor must ensure that any of its subcontractors maintain valid and enforceable insurance policies of the types and for the coverage specified in this clause 10. The Subcontractor acknowledges and agrees that any deficiency in the cover or policy limits of subcontractors is the sole responsibility of the Subcontractor.
- 10.7 The Subcontractor is and remains liable for the payment of any insurance policy excess.
- 10.8 The effecting of the insurances required by this clause 10 will not in any way limit the liabilities or obligations of the Subcontractor under this Subcontract Agreement or at Law.

11 SIMPEC' DIRECTIONS

- 11.1 The Subcontractor shall comply with all directions given by SIMPEC either orally or in writing, except where this Subcontract Agreement provides otherwise.
- 11.2 Without limiting clause 11.1 above, the Subcontractor acknowledges and agrees that it must provide SIMPEC with the following information upon request full details of the relevant experience and qualifications of the Subcontractor and of any of the Subcontractors employees, agents or secondary subcontractors who will be carrying out the Works, the type and extent of insurance coverage for the Works and other information required by SIMPEC from time to time.

12 REMOVAL OF PERSONNEL AND RIGHT TO EXCLUDE

- 12.1 The Subcontractor must not permit to enter upon the Site any persons other than the officers, employees, approved secondary subcontractors or representatives of the Owner and SIMPEC, except with the prior written consent of SIMPEC.
- 12.2 The Subcontractor acknowledges and agrees that SIMPEC and the Owner reserve the right to refuse entry to the Site or may direct the removal from the Site, at the Subcontractor's cost, of any person employed in connection with the Works including the Subcontractor's or any secondary subcontractor's employees if SIMPEC or the Owner considers that to permit entry by that person may be prejudicial or detrimental to the interests of SIMPEC or the Owner, or if that person is, in the opinion of SIMPEC, incompetent, negligent or does not comply with the relevant OHS Policies or Laws.

13 QUALITY

- 13.1 The Subcontractor must establish and maintain a quality system which conforms to the Subcontract Agreement requirements and must provide SIMPEC with access to the Subcontractor's and its secondary subcontractors' premises and quality system to permit verification activities and quality auditing.
- 13.2 If this Subcontract Agreement requires the Subcontractor to work to SIMPEC' quality system, the Subcontractor shall prepare, as directed by SIMPEC, and submit to SIMPEC for approval an inspection its test plan and must co-operate with and assist SIMPEC in the preparation of documents required under SIMPEC' quality system insofar as the system relates to the Works.
- An inspection and test plan for the purpose of this provision is a plan describing how, when and where during the execution of the Works, parts of the Works will be inspected, tested or measured to provide objective evidence that design and other contractual and regulatory requirements have been satisfied.
- 13.3 Compliance with such system shall not relieve the Subcontractor of responsibility for complying with the Subcontract Agreement.
- 13.4 Failure by the Subcontractor to take remedial action in accordance with the requirements of a non-conformance notice served on the Subcontractor, within a reasonable time after such service, may result in the withholding of payments otherwise due to the Subcontractor under clause 25 until such action is taken.

14 DEFECTIVE MATERIALS OR WORKS

- 14.1 If SIMPEC discovers any material or work which is not in accordance with this Subcontract Agreement, SIMPEC may direct the Subcontractor, at the Subcontractor's cost, to remove the material from the Works, demolish the work or reconstruct, replace or correct the material or work.
- 14.2 SIMPEC may direct the times within which the Subcontractor must commence and complete the removal, demolition, reconstruction, replacement or correction. If the Subcontractor fails to comply, SIMPEC may have such work carried out by others at the Subcontractor's cost.
- 14.3 Should the Subcontractor or his employees or any secondary subcontractor be permitted to use any scaffolding or other plant belonging to SIMPEC, then such use shall be on the condition that no warranty or other liability on the part of SIMPEC will be created or implied as to the condition or suitability of the scaffolding or plant which shall be returned by the Subcontractor after use, in good order and condition.

15 EXAMINATION AND TESTING

- 15.1 SIMPEC may at any time direct that any materials or work forming part of the Works be examined or tested by a person nominated by SIMPEC. The Subcontractor shall provide such assistance and samples and make accessible such parts of the Works as may be required. On completion of the tests the Subcontractor shall make good the Works so that it fully complies with the Subcontract Agreement.
- 15.2 Costs of and incidental to testing shall be paid by the Subcontractor to SIMPEC unless the test shows that the material or work is in accordance with the Subcontract Agreement.

16 WORKING HOURS

- 16.1 No part of the Works executed on the Site shall be executed outside ordinary working hours or on other than ordinary working days without SIMPEC's prior written consent.
- 16.2 All costs attributable to supervision by SIMPEC of work performed by the Subcontractor, during times the subject of a consent referred to in the previous paragraph, shall be paid by the Subcontractor to SIMPEC on demand.

17 PROGRESS AND PROGRAMMING OF WORKS

- 17.1 The Subcontractor shall proceed with the Works with due expedition and without delay and must comply with SIMPEC's direction as to the order and time at which various parts of the Works are to be performed.
- 17.2 SIMPEC may direct the Subcontractor to furnish to SIMPEC a maintenance/construction program within the time and in the form directed by SIMPEC. The Subcontractor will not depart from the approved program without the express approval of SIMPEC.
- 17.3 The Subcontractor acknowledges and agrees that it has taken in account in its price the requirement to comply with the Project/Site Specific Conditions and all Site related information referred to herein.

18 TIMING OF WORKS

- 18.1 The Subcontractor shall complete the Works by the Date for Completion. At the Date of Completion, the Subcontractor shall give possession of the Works to SIMPEC. SIMPEC shall, however, have the right to use the Works or any part thereof prior to being given possession thereof.
- 18.2 If the Subcontractor is or will be delayed in reaching completion by any circumstance beyond the control of the Subcontractor (excluding delays caused by inclement weather or industrial conditions and within 7 days of the delay gives SIMPEC a written claim for an extension of time for completion setting out the facts on which the claim is based and the numbers of days claimed, the Subcontractor shall, subject to and to the extent obtained by SIMPEC under the Main Contract, be entitled to an extension of time for completion.
- 18.3 SIMPEC may at any time of its own volition by notice in writing to the Subcontractor, extend the time for completion for any reason.
- 18.4 No delay or failure by SIMPEC to grant a reasonable extension of time shall set time at large.
- 18.5 The Subcontractor's failure to perform any of its obligations under the Subcontract Agreement on or before the time specified in the Subcontract Agreement gives SIMPEC the right, in addition to any other right, to cause the Subcontractor to do whatever is necessary to expedite the Works at the Subcontractor's expense.

19 DAMAGES FOR DELAY

If the Subcontractor fails to complete the Works by the Date for Completion, the Subcontractor shall pay or allow to SIMPEC damages (whether liquidated or otherwise) which SIMPEC thereby becomes liable to pay the Owner or sustains otherwise, as outlined in **Item 13** of the Schedule of Subcontract Particulars.

20 DEFAULT OR INSOLVENCY OF SUBCONTRACTOR

- 20.1 If the Subcontractor fails to fulfil, or is in breach of, any of its obligations under this Subcontract Agreement, and does not rectify the omission or breach within 10 days of its occurrence or SIMPEC's written notice (whichever is earlier), SIMPEC may either immediately terminate the Subcontract Agreement (on written notice to the Subcontractor) or take over the Works, or part thereof remaining to be completed, and upon such completion the Subcontractor shall be liable to SIMPEC for all costs incurred by SIMPEC in completing the Works, or part thereof, as the case may be.

- 20.2 If the Subcontract Agreement is terminated under this clause 20 the rights and liabilities of SIMPEC shall be the same as they would have been at common law had the Subcontractor repudiated the Subcontract Agreement and SIMPEC elected to treat the Subcontract Agreement as at an end and recover damages.

21 DEFECTS LIABILITY

- 21.1 At any time prior to expiration of the Defects Liability Period, SIMPEC may direct the Subcontractor to rectify any omission or defect in the Works. If the work of rectification is not promptly affected, SIMPEC may, after first giving the Subcontractor reasonable notice of its intention to do so and without prejudice to any other rights of SIMPEC, have the work of rectification carried out by others, and the actual cost of the work of rectification incurred by SIMPEC may be recovered from the Subcontractor as a debt due and payable.
- 21.2 In respect of all rectification work performed by the Subcontractor under this clause 21, a separate defects liability period in respect of that rectification work commences of the date that rectification work is completed to the satisfaction of SIMPEC and expires 12 months after the rectification work is completed.

22 CLEANING UP

The Subcontractor shall keep the Site clean and tidy at all times, and on the Date of Completion, the Subcontractor must remove all the Subcontractor's plant and equipment and leave the Site clean, tidy and ready for immediate use.

23 VARIATIONS

- 23.1 The Subcontractor must not vary the Works, except as directed in writing by SIMPEC.
- 23.2 SIMPEC may vary or omit the Works or any part of the Works at any time without being required to give reasons for the omission or variation. When the Subcontractor receives a variation direction pursuant to this clause it must vary this Subcontract Agreement in accordance with SIMPEC's direction and must send SIMPEC a written claim for any adjustment to the Contract Sum within 10 days of the variation direction.
- 23.3 The Subcontractor's claim must set out a detailed breakdown of the proposed cost increase or cost saving that result from the variation, but must not include any amount for anticipated profit, unperformed work, and consequential loss or other indirect costs, loss or damage. In determining the deduction to be made for work which is omitted from the Subcontract Agreement, the deduction shall include a reasonable amount for profit and overheads.
- 23.4 Any increase or decrease in the Contract Sum as a result of a variation direction must, if this Subcontract Agreement prescribes specific rates or prices, be based on those rates or prices, or the parties' agreement. If no specific rates or prices are so prescribed and in the absence of the agreement, the price for the variation will be determined by SIMPEC.
- 23.5 SIMPEC has the right to audit the Subcontractor's written claim at any time. If SIMPEC determines that any part of the costs claimed, or the adjusted price does not comply with the requirements of this clause 23 or is not verified or has been incurred as a result of a variation of this Subcontract Agreement as directed by SIMPEC, then SIMPEC has no obligation to pay for those costs to the Subcontractor.
- 23.6 The Subcontractor will not be entitled to claim payment for any variation not directed in writing by SIMPEC or for any omitted Work or part of the Works.
- 23.7 The Subcontractor acknowledges and agrees that the remedy set out in this clause 23 is its sole and exclusive remedy in respect of a variation.

24 GST

24.1 Interpretation

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

24.2 Reimbursements and similar payments

Any payment or reimbursement required to be made under the Contract for a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

24.3 GST payable

If GST is payable in relation to a supply made by a party (Supplier) under or in connection with the Contract then the party required to provide consideration for that supply (Recipient) must pay an additional amount to the Supplier equal to the amount of that GST at the time the other consideration is to be provided for that supply, subject to the Supplier providing a valid tax invoice to the Recipient.

25 PAYMENTS

- 25.1 At monthly intervals, the Subcontractor shall deliver to SIMPEC claims for payment supported by evidence of the amount claimed by the Subcontractor.
- 25.2 Within 14 days of receipt of a claim for payment SIMPEC shall assess the claim and shall issue to the Subcontractor a payment certificate stating the amount of the payment which is to be made by SIMPEC to the Subcontractor and the calculations used to arrive at that amount.
- 25.3 The amount due to the Subcontractor will be the value of Works carried out to the date of the claim less amounts already paid and other amounts due from the Subcontractor to SIMPEC which SIMPEC is entitled to deduct or set off.
- 25.4 Subject to clause 24, within 35 days after the month following the date of the Subcontractor's claim for payment, SIMPEC will pay the Subcontractor the amount due.
- 25.5 Before becoming entitled to any payment the Subcontractor shall, if requested by SIMPEC, deliver to SIMPEC a statutory declaration that all the Subcontractor's employees and employees of secondary subcontractors engaged on the Works have been paid all moneys payable to them. If the Subcontractor fails to provide such statutory declaration within 5 days, SIMPEC may withhold payment of any amount due to the Subcontractor until the statutory declaration is received.

26 TERMINATION

- 26.1 SIMPEC may terminate this Subcontract Agreement immediately on written notice to the Subcontractor:
- (a) if the Subcontractor become insolvent or subject to one of the forms of external administration referred to in Chapter 5 of the Corporations Act 200, or an order has been made for the purpose of placing the Subcontractor under external administration or being an individual, becomes bankrupt, or enters into a scheme of arrangement with creditors;
 - (b) if the Main Contract is terminated by the Owner for any reason;
 - (c) if the acts or omissions of the Subcontractor in relation to its occupational safety and health obligations under this Subcontract Agreement expose SIMPEC to liability for breach of statutory duty or negligence; or
 - (d) for SIMPEC' sole convenience.
- 26.2 Upon termination of this Subcontract Agreement, SIMPEC will release any security held by SIMPEC and pay the Subcontractor for the Works performed by the Subcontractor as at the date of termination taking into account any adjustments and deductions for loss or damage suffered, or reasonably likely to be suffered by SIMPEC but shall be under no liability to pay to the Subcontractor any amount in respect of loss of profit on that part of the Works not executed at the date of termination of this Subcontract Agreement.
- 26.3 In the case of termination under paragraph 26.1(b) or (d) above, SIMPEC will also pay the Subcontractor the cost of materials reasonably ordered by the Subcontractor for the Works under this Subcontract Agreement, which the Subcontractor is liable to accept, but only if the materials become the property of SIMPEC upon payment.
- 26.4 Termination of this Subcontract Agreement under any provision of the Subcontract Agreement is without prejudice to any accrued rights or remedies of the parties.
- 26.5 The Subcontractor acknowledges and agrees that upon the termination of the Subcontract Agreement or repudiation or abandonment of the Subcontract Agreement by the Subcontractor, the Subcontractor shall:
- (a) provide to SIMPEC (or as the circumstances require, the Owner) or its representatives all documents, materials and other things intended for the work under the Subcontract Agreement, or for incorporation in the Works;
 - (b) do all things necessary for an assignment of its contract to SIMPEC (or as the circumstances require, the Owner); and
 - (c) enter into with SIMPEC (or as the circumstances require, the Owner) a novation of its contract.

27 LIABILITIES AND INDEMNITIES

- 27.1 The Subcontractor shall be liable for, and will indemnify SIMPEC and the Owner and will keep SIMPEC and the Owner indemnified from and against any liability and/ or any loss or damage of any kind whatsoever, arising directly or indirectly from:
- (a) Any breach of any warranty or any of the terms or conditions of this Subcontract Agreement by the Subcontractor or its secondary subcontractors;
 - (b) The illness, injury or death of any of the Subcontractor's Employees, agents or secondary subcontractors arising out of or in connection with this Subcontract Agreement;
 - (c) Damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by the performance of the Works by the Subcontractor and/ or the entry onto, and the activities undertaken on and in the Site by the Subcontractor, its Employees, agents or secondary subcontractors;
 - (d) Any act or omission, negligence or wilful misconduct of the Subcontractor and any of its Employees, agents and secondary subcontractors in connection with this Subcontract Agreement;
 - (e) Any claims made against SIMPEC or the Owner by any of the Subcontractor's Employees, agents, contractors or secondary subcontractors in respect of any relevant Law concerning income tax, worker's compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;
 - (f) Any penalty imposed for breach of Law in connection with the performance of the Works by the Subcontractor;
 - (g) Any loss of damage to any plant, equipment, tools, appliances or other property owned, rented or hired by the Subcontractor and used in relation to the Subcontract Agreement;

- (h) Any claims that the Works or the result of the Works, or anything the Subcontractor does in delivering the Works, infringes or allegedly infringes the intellectual property rights of any person.
- 27.2 Every exemption, limitation, defence, immunity or other benefit contained in this Subcontract Agreement to which SIMPEC and the Owner are entitled will also be held by SIMPEC to the benefit of, and will extend to protect, each of its Employees, agents, contractors and subcontractors (excluding the Subcontractor, its Employees, agents and its secondary subcontractors).
- 27.3 If SIMPEC enters this Subcontract Agreement as agent for and on behalf of joint venture partners, the liability of each of those joint venture partners under this Subcontract Agreement is several and not joint, nor several.
- 27.4 It is not necessary for SIMPEC to incur expense or make payment before enforcing a right of indemnity conferred by this Subcontract Agreement.
- 27.5 Each obligation under this clause 27 and any other indemnity in this Subcontract Agreement is a continuing obligation, separate and independent from the Subcontractor's other obligations and survives expiry termination or termination of this Subcontract Agreement for any reason.

28 NOTIFICATION OF CLAIM

- 28.1 SIMPEC shall not be liable for any claim by the Subcontractor whether arising under or out of or in the course of the Subcontract Agreement or for breach, or in tort, quasi-contract or for breach of a statutory duty or for statutory liability, unless the claim, together with full particulars thereof, is lodged in writing with SIMPEC not later than fourteen (14) days after the date of the occurrence of the events or circumstances on which the claim is based.
- 28.2 This clause shall not however apply to claims for extensions of time for completion or to claims for payment to the Subcontractor of an amount or amounts forming part of the Contract Sum.

29 CONFIDENTIALITY AND PUBLICITY

- 29.1 Documents (including but not limited to Contract Documents) and other information supplied by SIMPEC or the Owner to the Subcontractor in relation to the Project or the Works, and information which the Subcontractor became possessed of as a result of this Subcontract Agreement, the Works, the Project or in the course of negotiations, are confidential and the Subcontractor must ensure that these are kept confidential and must return or destroy the same within three days following written request by SIMPEC, and certify in writing that all such information has been returned or destroyed. For the avoidance of doubt, this shall include all electronic files and data that includes or references the confidential information.
- 29.2 The Subcontractor indemnifies SIMPEC against any and all damages suffered or incurred by SIMPEC or the Owner, or any of their personnel, arising from or in any way related to the Subcontractor's breach of this clause 29.
- 29.3 The provisions of this clause 29 shall survive termination of this Subcontract Agreement for any reason.
- 29.4 The Subcontractor must not make any statements to the media or issue any document, information, photograph, publication or video concerning the Subcontract Agreement, the Project or any associated Works to any media source without prior written approval by SIMPEC. The Subcontractor must refer to SIMPEC any media enquiries concerning the Works or the Project.

30 ENVIRONMENTAL COMPLIANCE

- 30.1 The Subcontractor shall promptly comply, and shall at all times during the performance of this Subcontract Agreement, take all measures and precautions necessary to ensure that all subcontractors, their representatives, agents, employees and invitees of the Subcontractor or of any secondary subcontractor shall promptly comply, with:
- (a) any and all applicable regulations, policies, procedures of any federal, state or local authority regarding protection of human health and the environment and the prevention or control of pollution or toxic or hazardous wastes or substances. These shall include, without limitation, requests made by any governmental authority to initiate corrective actions for any deficiencies.
 - (b) any and all applicable regulations, policies, procedures of the Owner (and SIMPEC's, where applicable) regarding the protection of human health and the environment and the prevention or control of pollution or toxic or hazardous wastes or substances. These shall include, without limitation, any of the Owner's Site regulations with respect to the Owner's premises as well as requests made by the Owner to initiate corrective actions for any deficiencies.
- 30.2 The Subcontractor shall not, without the prior written consent of SIMPEC or the Owner, cause the transportation of toxic or hazardous substances to or from the Site by any other transporter or using any other method of transportation than that specified in the Subcontract Agreement. The Subcontractor may not, without the prior written consent of SIMPEC or the Owner, cause the treatment, storage or disposal of any toxic or hazardous substances at any facility other than that specified in the Subcontract Agreement (or approved by SIMPEC in writing, if none specified).
- 30.3 In the event of any spill, discharge, release or threatened release of a toxic or hazardous substance in, under or upon the Site caused by the action or inaction of the Subcontractor or any of its subcontractors or any of their representatives, agents employees or invitees, or in the event of any spill, discharge, release, or threatened release of toxic or hazardous substances in, under or upon any location except for an Owner approved treatment, storage or disposal facility, the Subcontractor shall immediately notify SIMPEC and shall, at the Subcontractor's sole expense properly notify federal, state and local authorities in accordance with applicable Law, and take timely action to control and clean-up the release or threatened release so that any hazard or potential hazard to human health, life or the environment will be expeditiously controlled and eliminated.
- The Subcontractor acknowledges and agrees that the Owner reserves the right to approve both the method and means of clean-up for any spill, discharge, release or threatened release covered under this section.

- 30.4 The Subcontractor shall promptly comply, and shall at all times during the performance of this Subcontract Agreement, take all measures and precautions necessary to ensure that subcontractors and the representatives, agents, employees and invitees of the Subcontractor or of any subcontractor shall not introduce onto the site any toxic or hazardous substance without SIMPEC' or the Owner's prior written consent, including without limitation asbestos, ceramic fibre, fibreglass or polychlorinated biphenyls (PCBs) or chlorinated fluorocarbons (CFCs).
- 30.5 Prior to bringing onto the Site any toxic or hazardous substances, including those that will emit noise, dust, vibration, radiation or gas, have a high surface temperature or otherwise affect the environment or pose occupational health risks, the Subcontractor shall provide to SIMPEC material safety data sheets in such detail as SIMPEC requests regarding each such substance and the associated emission, effects or risks.

31 COOPERATION WITH OTHER ON-SITE ACTIVITIES

The Subcontractor acknowledges and agrees that Works not covered by this Subcontract Agreement may be performed by the Owner, SIMPEC or others in the same area that may be occupied by the Subcontractor. In such event, the Subcontractor shall fully cooperate with all such others in scheduling its work and must not interfere with the production and the work of others.

32 TITLE AND RISK OF LOSS

- 32.1 The Subcontractor must assume the risk of, and indemnify SIMPEC and the Owner for, all loss in respect of the Works, including all material and equipment, delivered to the Site or utilised on the Site, whether or not installed, fixed or utilised, until the Date of Completion. Full unencumbered title to the Works, including all material and equipment will pass to SIMPEC upon the earlier of:
- (a) SIMPEC making payment to the Subcontractor for that good, part, material or equipment; or
 - (b) The goods, parts, materials or equipment are delivered to the Site, inspected in accordance with this Subcontract Agreement and accepted by the SIMPEC Representative, or installed in accordance with the Subcontract Agreement.
- 32.2 The Subcontractor shall at all times have the title and the risk of loss or damage to the Subcontractor's property used in the performance of the Works, provided that such Subcontractor's property was not intended to become part of the Works.
- 32.3 The provisions of this clause 32 shall apply notwithstanding either SIMPEC or the Owner becoming insolvent within the meaning of the Corporations Act 2001 during the term of this Subcontract Agreement.

33 Not used

34 REPRESENTATION AND MEETINGS

- 34.1 **(SIMPEC Representative)** SIMPEC appoints SIMPEC Representative as its agent to monitor the performance of the Subcontractor's obligations under this Subcontract Agreement. SIMPEC Representative may, by notice to the Subcontractor's Representative, delegate all or any of his or her functions under this Subcontract Agreement.
- 34.2 **(Subcontractor Representative)** The Subcontractor agrees to appoint a Subcontractor's Representative. The Subcontractor Representative is the person described in **Item 4** of the Schedule of Subcontract Particulars. This person cannot be replaced without the SIMPEC's prior written consent.
- The Subcontractors Representative, line managers and supervisors are accountable for implementation of the Subcontractor's environment, occupational safety and health obligations under this Subcontract Agreement and must be experienced in the management of occupational safety and health compliance, be familiar with the performance of the Works and be generally in attendance on Site.
- 34.3 **(Meetings)** SIMPEC' Representative and the Subcontractor's Representative shall meet on a regular basis (and no less than monthly for meetings for the purpose of discussing the performance of the Works on the Site, and in particular the Subcontractor's performance in meeting its safety obligations under the Subcontract Agreement.

35 NATURE OF THE RELATIONSHIP

- 35.1 Nothing in this Subcontract Agreement constitutes a joint venture, agency, partnership or any other fiduciary relationship between SIMPEC and the Subcontractor.
- 35.2 At all times during the performance of the Subcontractor's obligations under this Subcontract Agreement, the Subcontractor is an independent contractor and not an employee or agent of SIMPEC.
- 35.3 For the avoidance of doubt, the employees of the Subcontractor remain at all times, the employees of the Subcontractor even where for example, the Subcontractor's employees attend safety training sessions run by SIMPEC, or where SIMPEC provides certain facilities or equipment for use by the Subcontractor's employees.

36 WARRANTIES AND ACKNOWLEDGMENTS

- 36.1 Each party warrants that it has the power to execute, deliver and perform its obligations under this Subcontract Agreement and all necessary corporate and other action has been taken to authorise that execution, delivery and performance.
- 36.2 The Subcontractor warrants that it has the necessary expertise, experience and capability including sufficient and competent managers, supervisors, tradespersons and other personnel to complete the Works efficiently and expeditiously.
- 36.3 The Subcontractor warrants that its employees, agents and secondary subcontractors and their respective employees have all necessary qualifications in relation to the Works required to be done and are safe, careful, skilled, experienced and competent in their respective disciplines and in the roles they are to perform.

- 36.4 The Subcontractor warrants and agrees that it shall complete the Works in accordance with the Law, and in a competent, proper and workmanlike manner, exercising a reasonable standard of skill, diligence and care.
- 36.5 The Subcontractor warrants that the Works must be fit for its intended purpose, the purpose for which these types of works are usually delivered and for any other purpose requested by SIMPEC and as stated in Specifications.
- 36.6 Any items which the Subcontractor uses or supplies in conjunction with or as part of the Works must be of merchantable quality, comply with any applicable Standards Australia[®], and any other standards specified in this Subcontract Agreement and be fit for their usual purpose and any purpose described in this Subcontract Agreement.
- 36.7 The Subcontractor acknowledges and agrees that it must procure that its employees or its secondary subcontractors' employees hold the necessary Authorisations required by all Law of any State or Territory in which any work under the Subcontract Agreement is carried out and complying with all Law relating to the operation of Constructional Plant; and warranty that any instructions given by the Owner concerning such compliances are (and will be) promptly carried out.
- 36.8 The Subcontractor acknowledges and agrees that any warranty or indemnity provided by the Subcontractor under this Subcontract Agreement is provided for the benefit of both SIMPEC and the Owner.

37 SET OFFS

Without prejudice to any other rights, SIMPEC may deduct from any monies which may be, or become, payable to the Subcontractor any money due from the Subcontractor to SIMPEC. Nothing in this clause shall affect the right of SIMPEC to recover from the Subcontractor the whole of the debt or any balance that remains owing after deduction. If it is subsequently found that SIMPEC was not entitled to deduct any monies, then it must immediately repay those monies to the Subcontractor.

38 FURTHER ASSURANCE

Each party will do, sign, execute and deliver, and will procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from the other party to effectively carry out and give full effect to this Subcontract Agreement and the rights and obligations of the parties under it.

39 DISPUTE RESOLUTION

- 39.1 If a difference or dispute between the parties arises in connection with the subject matter or interpretation of the Subcontract Agreement, including a dispute concerning a claim in tort, under statute, or on any other basis in Law or equity available under the Law governing the Subcontract Agreement ("Dispute"), either party may by hand or registered post give the other party written notice of dispute identifying and providing details of the Dispute and entitled Dispute Notice ("Dispute Notice").
- 39.2 Within seven (7) days of receipt of a Dispute Notice, the parties' representatives, having authority to bind the parties, shall confer to seek to resolve the Dispute or agree on a method of doing so. If a resolution or method of resolution has not been agreed within twenty-one (21) days of the service of Dispute Notice, the Chief Executive Officers of the parties shall confer for the same purpose as the parties' representatives. All aspects of such conference(s) shall be privileged.
- 39.3 If a dispute has not been resolved within 35 days after the relevant Notice of Dispute was given, or a longer period if the parties agree, either party may choose to refer the dispute by written notice to arbitration. If the dispute is submitted to arbitration and the parties do not, within 7 Business Days after the dispute is submitted to arbitration, agree on a number of arbitrators and their compensation and the procedure for arbitration, including rules, the arbitration will be conducted:
- (a) in Perth, Western Australia;
 - (b) in English language;
 - (c) by one (1) arbitrator appointed by either the President or the Chapter Chairman of the Chapter where the dispute arises; and
 - (d) in accordance The Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Arbitrations.
- 39.4 The parties acknowledge and agree that the arbitral award rendered under this clause will be final and binding.
- 39.5 Nothing in this clause 39 prevents or prejudices the rights of a party to institute court proceedings to enforce payment due in respect of the Subcontract Agreement or to seek injunctive or urgent declaratory relief in respect of any matter under the Subcontract Agreement.
- 39.6 Despite the existence of a Dispute, the parties must continue to perform their obligations under the Subcontract Agreement.

40 GOVERNING LAW

This Subcontract Agreement is governed by the Laws of the State as named in **Item 14** of the Schedule of Subcontract Particulars. Subject to clause 39, the Subcontractor and SIMPEC agree to submit to the non-exclusive jurisdiction of the courts of the State and the courts of appeal from them.

41 INTERPRETATIONS

In this Subcontract Agreement:

- 41.1 Headings and bold type are for convenience only and do not affect the interpretation of this Subcontract Agreement.
- 41.2 The singular includes the plural and the plural includes the singular.
- 41.3 Words of any gender include all genders.
- 41.4 Other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning.

- 41.5 An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- 41.6 A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this Subcontract Agreement and a reference to this Subcontract Agreement includes any schedule, attachment and exhibit.
- 41.7 A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- 41.8 A reference to a document includes all amendments or supplements to, or replacements or novation's of, that document.
- 41.9 A reference to a party to a document includes that party's successors and permitted assignees.
- 41.10 A promise on the part of two or more persons binds them jointly and severally.
- 41.11 No provision of this Subcontract Agreement will be construed adversely to a party because that party was responsible for the preparation of this Subcontract Agreement or that provision.
- 41.12 A reference to a body, other than a party to this Subcontract Agreement (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it, or which substantially succeeds to its powers or functions.

Schedule of Subcontract Particulars			
Subcontract Agreement number: SIM-P004-SCA03			
1	SIMPEC (clause 1.1) and (clause 34.1):	SIMPEC Pty Ltd	(ABN: 44 619 238 505)
		Address:	Suite 2, Level 1 92 Walters Drive OSBORNE PARK WA 6017
		Representative:	Mark Dimasi
		Telephone:	0400 496 944
		Email:	mark.dimasi@simpec.com.au
2	Owner (clause 1.1):	MSP Engineering	(ABN 64 009 449 950)
		Address:	Level 4 1100 Hay Street WEST PERTH WA 6008
3	Project (clause 1.2):	Chemical Grade Lithium Plant Expansion (CGP2) Project in Greenbushes Western Australia, approximately 90km from Bunbury.	
4	Subcontractor (clause 1.3) and (clause 34.2):	Subcontractor Name	(ABN: _____)
		Address:	
		Representative:	
		Telephone:	
		Email:	
5	Commencement Date (clause 2):	DD-MMM-YYYY	
6	Contract Sum (clause 2): (a) Lump Sum (b) Schedule of Rates (Subject to remeasure) (c) Budget Estimate (Subject to remeasure)	Not Applicable	
		Not Applicable	
		\$XXXXXX (as detailed in Schedule 4 – Payment Schedule)	
7	Date for Completion (clause 2) and (clause 18):	DD-MMM-YYYY	
8	Defects Liability Period (clause 2) and (clause 21):	12 months	
9	Key Personnel (clause 2):	Name	
10	Site (clause 2):	Address of site	
11	Performance Security (Clause 5): (a) Bank Guarantee (b) Cash Retention	2 x Bank Guarantees each in the amount of 5% of the Contract Sum (in the form shown at Attachment 1)	
		In the amount of 10% of each progress payment claim value up to a maximum of 10% of the Contract Sum.	
12	Insurance (Clause 10):	<input checked="" type="checkbox"/> Public Liability <input type="checkbox"/> Professional Indemnity <input checked="" type="checkbox"/> Workers Compensation <input checked="" type="checkbox"/> Products Liability <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Statutory Motor Vehicle Liability <input type="checkbox"/> Plant and Equipment and third-party property	
13	Liquidated Damages (clause 19):	[Specific details]	

14	Jurisdiction (clause 40):	Western Australia
15	Payment (Clause 25):	(A) Subcontractor shall issue its invoice for the value of works completed no later than 25th of each month. (B) Subcontractor payment claims shall be submitted in on the dates specified in Schedule 4 - Payment Schedule

The parties agree to the supply and receipt of the Works on the terms and conditions set out in the Contract Documents.

ORIGINAL EXECUTED as an agreement on the _____ day of _____ 20____.

EXECUTED on behalf of _____)
SIMPEC PTY LTD _____)
By its Authorised Officer _____)
_____)

Authorised Officer (Signature)

Witness (Signature)

Name: Mark Dimasi

Name:

EXECUTED on behalf of _____)
THE SUBCONTRACTOR _____)
By its Authorised Officer _____)
_____)

Authorised Officer (Signature)

Witness (Signature)

Name:

Name:

Schedule 1: Special Conditions

[Attach or incorporate as necessary additional Special Conditions of the Subcontract Agreement to address the Owner's requirements stated in the Main Contract and other Project/ Works and Site-specific conditions and requirements]

Schedule 1A: Jurisdiction Specific Conditions

[Insert the appropriate State specific conditions or mark as "Not Used"]

Schedule 2: Scope of Works

Refer attached Scope of Works document number xxxxxxx OR insert the Scope of Work text herein.

Schedule 3: Specifications and Drawings

Refer attached document listing number xxxxxxx OR insert the list of documents herein.

Schedule 4: Payment

Schedule 5: Construction Program

To be provided by SIMPEC/Subcontractor prior to mobilisation.

Schedule 6: HSE Management Requirements

To be provided by SIMPEC/Subcontractor prior to mobilisation.

Schedule 7: Industrial Relations Management Requirements

To be provided by SIMPEC/Subcontractor prior to mobilisation.

Schedule 8: Quality Assurance Requirements

To be provided by SIMPEC/Subcontractor prior to mobilisation.

Schedule 9: Project/Site Specific Requirements

To be provided by SIMPEC/Subcontractor prior to mobilisation.

Attachment 1: Bankers undertaking

TO: **SIMPEC PTY LTD (ABN 44 619 238 505)**
of Suite 2, Level 1
92 Walters Drive, OSBORNE PARK WA 6017

IN CONSIDERATION of SIMPEC Pty Ltd of 92 Walters Drive, OSBORNE PARK in Western Australia 6017 (hereinafter referred to as "SIMPEC ") at the request of the **(Name and address of Bank)** (hereinafter called the "Bank") (which request is testified hereby) accepting this Undertaking in lieu of requiring **(Name of the Subcontractor)** whose registered offices are situated at **(address of Subcontractor)**, a Subcontractor with SIMPEC (hereinafter called the "Subcontractor") to provide SIMPEC with a security deposit in another form in relation to a contract which has been made between SIMPEC and the Subcontractor in respect of **(short description of contract works)** being Contract No. **enter the Contract Number**, the Bank hereby undertakes that on demand made in writing by SIMPEC from time to time and at any time after the date hereof (until such time as SIMPEC by notice in writing to the Bank under the hand of its Manager, advises the Bank that it is released from its obligations hereunder), the Bank shall pay to SIMPEC a sum or sums not exceeding **(amount of undertaking in words)** Dollars (\$) in the aggregate. Payment will be made by the Bank without any reference by the Bank to the Subcontractor and irrespective of any notice to the Bank by the Subcontractor not to pay any moneys hereunder to SIMPEC and irrespective of the performance or non-performance by either the Subcontractor or SIMPEC of the Contract or of any variation thereof or of any contract substituted therefor provided always the Bank may at any time terminate this Undertaking by payment to SIMPEC of the sum of **(amount of undertaking in words)** Dollars (\$) in the aggregate.

IN WITNESS WHEREOF **(Name of Bank)** has executed these presents this

_____ day of _____ 20__.

Attachment 2: Deed of Release (Final Payment and Security)

THIS DEED is made on _____ 20____.

BETWEEN:

SIMPEC Pty Ltd (ABN 44619238505) of 92 Walters Drive, Osborne Park WA 6017 (“SIMPEC”)

AND

[Subcontractor Name] (ABN _____) of **[Subcontractor Address]** (“the Subcontractor”)

RECITALS:

- A. By Subcontract Agreement No. **Enter Contract Number** (“the Subcontract Agreement”) the Subcontractor agreed to carry out **[INSERT DESCRIPTION OF THE WORKS]**.
- B. Pursuant to clause 5.4 of the Subcontract Agreement, the Subcontractor agreed to execute and provide a release to SIMPEC Resources as a condition precedent to the release of Security held by SIMPEC Resources pursuant to clause 5.

THIS DEED WITNESSES:

In consideration of the release of Security and as required by clause 5 of the Subcontract Agreement, the Subcontractor **HEREBY WAIVES, RELEASES AND FOREVER DISCHARGES** SIMPEC, SIMPEC, the Owners and the Owner’s Representatives from all actions, suits, proceedings, disputes, differences, accounts, claims, demands, costs, expenses and damages whatever whether arising at law or in equity and whether pursuant to contract or tort or by statute (so far as the law permits), which, but for the execution of this release, the Subcontractor now has or had at any time previously or might have in the future arising out of or in any connection whatever with the Subcontract Agreement or its performance, the Works or otherwise **AND** this release may be pleaded in bar to any claim, demand, suit, action or proceedings which may be brought against SIMPEC, SIMPEC Representative the Owners or their respective directors, employees, agents, consultants or contractors.

EXECUTED AS A DEED

Executed by **[Subcontractor]** in accordance with section 127 of the Corporations Act 2001 (Cth):


Director (Name)

Signature

Director/Secretary (Name)

Signature

Attachment 3: Fitness for Work Policy



FITNESS FOR WORK POLICY

SIMPEC is committed to:

Providing and promoting an environment where all individuals are fit to perform work competently and in a manner which does not compromise their safety and health or the safety and health of others. SIMPEC will identify, assess and manage fitness for work risks, and maintain a fitness for work program which includes:

Pre-Employment Medical Assessment

SIMPEC implements a pre-employment medical program to ensure that employees are fit to undertake the tasks required of them in their prospective role.

Drug and Alcohol Management

Recognizing that drugs or alcohol can affect health, safety and wellbeing, it is SIMPEC's policy that all work locations are required to be drug and alcohol free. In support of this commitment, SIMPEC will implement a drug and alcohol management program comprising;

- Informing and supporting employees to manage issues they may have with drugs or alcohol
- Random testing of all workers in accordance with the applicable legislative requirements
- Testing of workers involved in significant incidents
- Testing of workers where there is reasonable cause to suggest that they are affected by drugs or alcohol

The objective of the drug and alcohol management program is to create and maintain a culture where all of our workers choose to present for work free from the effects of drugs and alcohol.

Mental Health and Wellbeing

SIMPEC aims to promote positive mental health and wellbeing through strategies including;

- Providing, implementing and maintaining programs such as fatigue management, drug and alcohol management and employee assistance
- Developing strategic partnerships with external agencies to promote mental health and wellbeing initiatives
- Promoting awareness and reducing discrimination to encourage workers to participate in positive health and wellbeing programs

Leadership Responsibilities


- Facilitate implementation of this fitness for work policy and associated procedures through the induction program for all workers
- Support workers returning to work on a return to work program, from illness or injury
- Monitor fitness for work of workers and intervene as necessary
- Facilitate assistance to employees who may be experiencing difficulties outside the work environment that is affecting their performance
- Ensure employees who are deemed unfit for work are dealt with in a just and fair manner

All workers are required to


- Take care to ensure personal safety and comply with requirements of this policy and the fitness for work program
- Inform their respective supervisor of any changes in their personal circumstance that may affect their fitness for work
- Ensure that they are in a fit state to carry out their duties without risk to themselves or others
- Notify their supervisor of any potential impairment of their fitness for work, including possible effects from prescription or pharmaceutical medication that may impact on their safety or performance at work

Fitness for Work Information and Training

SIMPEC will provide education and training to employees on fitness for work issues and fitness for work requirements through initial induction and ongoing information and awareness sessions.



MARK DIMASI
DIRECTOR
1st Jan 2018



DAVID DIMASI
DIRECTOR
1st Jan 2018

SIMPEC-QA-PO-003