

PART 1 DEFINITIONS

- 1.1 Unless the subject matter of context requires otherwise, in this Agreement, including the Appendices, the following words and expressions, whether commencing with capital letters or not, have the meanings respectively assigned to them below:
- (1) “this Agreement” includes the terms and conditions of the subcontract, Appendices, Subcontract Documents, any written amendments, modifications or variations to this Agreement which are executed by each of the parties;
 - (2) “the Client” means the person named in Appendix B;
 - (3) “the date of this Agreement” means the date upon which the Reference Schedule is executed by the second party to sign and date the document;
 - (4) “the Head Contract” means the contract entered into between Savcor ART and the Client with regard to the Project;
 - (5) the expressions “information” and “confidential information” mean information and data relating to Savcor ART and its business structure and business activities, including proprietary and confidential data in oral, written or electronic form, trade secrets, gained by the Subcontractor through its dealings with Savcor ART or otherwise, which is confidential or which the Subcontractor should reasonably assume is confidential, and whether or not it has been designated by Savcor ART as being confidential;
 - (6) “the parties” means the parties to this Agreement;
 - (7) “the Project” means the Project described in Appendix B;
 - (8) “the Practical Completion date means the period of time for completion or the date for completion of the works set out in item 7 of Appendix B.
 - (9) “the Project site” and “site” mean the Project site described in Appendix B;
 - (10) “the Subcontractor” means the person named in the Reference Schedule;
 - (11) “the terms and conditions” means the Terms and Conditions of Subcontract herein on Savcor ART’s website;
 - (12) “trade secrets” means technical and non-technical data, formulas, patterns, compilations, programmes, software, systems, devices, methods, techniques, know-how, patents, drawings, charts, maps, processes, financial data, financial plans, product plans, lists of actual or potential customers and clients, licences that derive economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from their disclosure or use, and all notes, reports, documents and materials of whatever nature prepared by Savcor ART to the extent that any such materials include or are derived from such data and information;
 - (13) “the Works” means the works described in Appendix C.

- 1.2 All references in this Agreement to Appendices are to the Appendices numbered B to E contained in the subcontractor's Agreement.

PART 2 INCORPORATION OF THE HEAD CONTRACT

- 2.1 Insofar as the Head Contract relates to the Works, it is hereby incorporated into this Subcontractor's Agreement.
- 2.2 The Subcontractor acknowledges having read the Head Contract and agrees to be bound by its terms and conditions insofar as they relate to the Works.

PART 3 STANDARD OF WORKS

- 3.1 The Subcontractor shall perform the Works in strict compliance with the standards required by this Agreement and the Head Contract, and in accordance with best industry practice.

PART 4 TAXES

- 4.1 Unless otherwise specified in Appendix E, prices for the Works include all applicable federal, state, local and other taxes.

PART 5 ITEMS TO BE SUPPLIED BY SAVCOR ART

- 5.1 Savcor ART shall provide to the Subcontractor Site access and such data and other items as may be specified in Appendix C as items to be provided by Savcor ART.

PART 6 PROGRAMME AND CLAIMS

- 6.1 The Subcontractor shall provide to Savcor ART within 14 days of the date of this Agreement, and thereafter when requested by Savcor ART, a detailed programme in a bar chart format ("the Subcontractor's programme") detailing all milestone dates, activities and the *practical completion* date for the works.
- 6.2 The Subcontractor must perform the Works in accordance with the Subcontractor's programme or as otherwise varied by Savcor ART in writing from time to time.
- 6.3 If the Subcontractor desires to vary the Subcontractor's programme the Subcontractor must submit a written proposal to Savcor ART's project manager for his consideration, and any such variation shall not take effect unless and until Savcor ART's project manager agrees to it in writing.
- 6.4 If the Subcontractor fails to comply with the Subcontractor's programme, such non-compliance shall constitute a breach of this Agreement.
- 6.5 The Subcontractor is not entitled to make any claim for an extension of time for the completion of the Works, or with respect to any delay or disruption costs, unless Savcor ART is entitled to on-claim under the Head Contract; and the Subcontractor shall only become entitled to claim for such an extension of time, or with respect to delay or disruption costs, upon a written direction being given to the Subcontractor by Savcor ART's project manager.
- 6.4 Subject to clause 6.8, the Subcontractor shall not be entitled to be paid for any extension of time, or be compensated for delay or disruption costs, or for damages, losses or

expenses caused by disruption or delay, above an amount which is equivalent to that actually paid to Savcor ART under the Head Contract.

- 6.5 The Subcontractor is not, under any circumstances, entitled to claim an extension of time, or be compensated for delay or disruption costs, or for damages, losses or expenses caused by disruption or delay, where the same has been caused by an event which is within the reasonable control of the Subcontractor.
- 6.6 Any entitlement of the Subcontractor to claim delay or disruption costs or an extension of time, howsoever arising, shall be barred and deemed to have been waived by the Subcontractor absolutely unless the Subcontractor can demonstrate to the reasonable satisfaction of Savcor ART that the Subcontractor has taken proper and reasonable steps to preclude the occurrence of the event giving rise to such entitlement and to avoid or minimise the consequences thereof.
- 6.7 The Subcontractor must give details in writing to Savcor ART as soon as practicable after the commencement of any event giving rise to a potential claim for delay or disruption costs or an extension of time and the Subcontractor must provide further details to Savcor ART progressively, as they become known.
- 6.8 If with regard to a claim made by the Subcontractor any additional amount is agreed or determined under the Head Contract, then the applicable amount agreed or determined under the Head Contract will constitute the maximum amount claimable by the Subcontractor.
- 6.9 If Savcor ART does not make any on-claim under the Head Contract the determination of the applicable amount to be paid must be dealt with as a dispute under Part 39.

PART 7 HEALTH AND SAFETY

- 7.1 The Subcontractor shall be solely responsible for the health, safety and welfare of its employees, contractors, agents and others with regard to the Works, and the Subcontractor must strictly comply with all health and safety rules, including regulations and guidance which may be provided by Savcor ART, and all other applicable rules, regulations and guidance required by Savcor ART, the Client and government agencies.
- 7.2 The Subcontractor acknowledges that Savcor ART's Site Health and Safety Plan constitutes a minimum standard for the protection of the health and safety of Savcor ART's employees entering the site.
- 7.3 The Subcontractor is solely responsible for establishing and enforcing any additional requirements that the Subcontractor deems necessary to protect its employees, Savcor ART's employees, and any other persons entering the site.
- 7.4 Where the Subcontractor's employees are required to enter a site for the purpose of performing Works related to hazardous substances subject to regulation by law or otherwise, the Subcontractor shall also, at a minimum, comply with Savcor ART's requirements.
- 7.5 Except as otherwise expressly set forth in this Agreement, the Subcontractor bears full responsibility for providing all safety equipment and clothing necessary to protect the health and safety of its employees, contractors and agents, including its lower tier subcontractors.

PART 8 MEETINGS AND EVENTS

- 8.1 The Subcontractor shall attend periodic meetings as may be required by Savcor ART, and be prepared to accurately report on the current and projected status of the Works at those meetings.
- 8.2 The Subcontractor shall give a minimum of forty-eight hours advance written notice to Savcor ART of the scheduled starting date and time of any event which Savcor ART or the Client states an interest in discussing, attending or witnessing.
- 8.3 The Subcontractor must permit access to the site to any person who is entitled to access under the Head Contract in accordance with the requirements of the Head Contract.

PART 9 NOTICE OF EXPENDITURE

- 9.1 If this Agreement is a time and materials, cost reimbursable or unit price agreement, the Subcontractor must provide prompt written notice to Savcor ART at the time when expenditure of 75% and 90% of the estimated costs occurs, unless the period of performance for the Works is less than two weeks.

PART 10 LICENCES AND PERMITS

- 10.1 The Subcontractor must, at its sole expense, obtain all licences, certifications, permits, approvals, inspections and other authorisations required to perform the Works.
- 10.2 The Subcontractor's inability or failure to obtain such licences, certifications, permits, approvals, inspections or other authorisations, does not excuse the Subcontractor's failure to strictly comply with the terms of this Agreement.

PART 11 RELATED WORKS

- 11.1 Should the Subcontractor's performance depend in any way on the proper performance of another person, for example, a consultant or another contractor, the Subcontractor must take all reasonable steps to enquire into and discover any defects in such performance and the Subcontractor must promptly provide a written report to Savcor ART relating to any defects it discovers.
- 11.2 The Subcontractor must co-operate fully with other subcontractors and consultants and with Savcor ART's employees, contractors and agents.
- 11.3 The Subcontractor shall incorporate any reasonable changes in scheduling and performance of the Works to accommodate the needs of other subcontractors or consultants and the Subcontractor shall comply with the directions given by Savcor ART's project manager.
- 11.4 Any consequent delay or disruption claims must be dealt with in accordance with Part 6.

PART 12 NO COMMUNICATION WITHOUT SAVCOR ART'S AUTHORITY

- 12.1 The Subcontractor must not communicate with the Client or Savcor ART's other subcontractors regarding the Works except as expressly authorised in writing by Savcor ART or otherwise as required by this Agreement.

PART 13 SITE CONDITIONS

- 13.1 The Subcontractor warrants that it has carefully examined all relevant drawings, specifications and government restrictions, permits and licence requirements, and all other laws and rules applicable to the Works, the site, its surroundings and the local conditions, and has made all investigations essential to a full understanding of the hazards and difficulties which may be encountered.
- 13.2 The Subcontractor warrants that it has the necessary skill and competence for undertaking and completing the Works in accordance with such drawings and specifications and the terms of this Agreement.

PART 14 CHANGED SITE CONDITIONS

- 14.1 The discovery of any hazardous substances, hazardous wastes, pollutants, contaminants or concealed obstruction or utility which could not reasonably have been anticipated by the Subcontractor from information reasonably available to the Subcontractor may constitute a changed site condition.
- 14.2 To the extent that such changed site condition materially increases the health and safety risks associated with the Works, or requires the Subcontractor to perform beyond its capabilities, then the Subcontractor may elect to decline the performance of such affected works.
- 14.3 The Subcontractor must promptly notify Savcor ART in writing of the extent that such changed site conditions materially impact on the cost and/or schedule to perform the Works.
- 14.4 The parties shall attempt to agree upon an equitable adjustment to the cost and/or schedule as though there had been "Changes" as defined in Part 15.
- 14.5 In the event of a dispute arising over the equitable adjustment, the dispute shall be determined in accordance with Part 39.
- 14.6 Pending final resolution of the dispute, the Subcontractor shall continue to diligently perform the Works as directed by Savcor ART.

PART 15 CHANGES

- 15.1 No changes to the Works ("Changes") shall be made without Savcor ART's express written authorisation.
- 15.2 The Subcontractor must make any claims for Changes within five business days of the date that the Subcontractor becomes aware of or ought to have become aware of the basis for a claim.
- 15.3 Any Changes performed by the Subcontractor without Savcor ART's written authorisation shall be at the Subcontractor's sole risk and expense.
- 15.4 Savcor ART may require Changes within the general scope of the Works or as required by the Client under the Head Contract and the Subcontractor must perform the required Changes.

- 15.5 Subject to Savcor ART's review of the Subcontractor's request for an equitable adjustment to the subcontract price and/or schedule arising from required Changes, an equitable adjustment may be made to the Subcontract Price and/or schedule.
- 15.6 No claim for any additional cost, damages, losses or expenses in any way associated with Changes shall be claimable by the Subcontractor except as may be on-claimed by Savcor ART under the Head Contract.
- 15.7 The Subcontractor shall not be entitled to be paid any costs, damages, losses or expenses associated with any Changes above that actually paid to Savcor ART under the Head Contract with respect to the relevant Changes; and if any amount is agreed or determined as payable to Savcor ART under the Head Contract then the applicable amount agreed or determined under the Head Contract will constitute the maximum amount claimable by the Subcontractor.
- 15.8 The Subcontractor shall not under any circumstance be entitled to claim any costs, damages, losses or expenses associated with Changes where the changes result from a request for the convenience of the Subcontractor or where the Changes result from any deficiency or defect in any of the Works caused or contributed to by the Subcontractor or by any breach of this Agreement by the Subcontractor.
- 15.9 Any entitlement of the Subcontractor to claim any costs, damages, losses or expenses associated with any Changes shall be barred and deemed to have been waived absolutely unless the Subcontractor has taken, in Savcor ART's opinion, proper and reasonable steps to preclude the occurrence of the event which gave rise to the need for the Changes and to avoid or minimise the cost and consequences of the Changes; and this bar shall also apply in any instance where the costs or likely costs of the Changes could have been determined or reasonably estimated by the Subcontractor and notified to Savcor ART prior to the Changes being carried out, but the Subcontractor failed to give such notification.
- 15.10 In event of a dispute relating to Changes, the dispute shall be determined in accordance with Part 39; and pending final resolution of the dispute, the Subcontractor must proceed with the Works as directed by Savcor ART.

PART 16 EMPLOYEE PERFORMANCE

- 16.1 The Subcontractor warrants that it will utilise only personnel who are adequately trained and experienced to properly perform the Works in a safe and efficient manner.
- 16.2 The Subcontractor must immediately remove from the site any employee that Savcor ART deems uncooperative or a hindrance to the performance of the Works.
- 16.3 Persons so removed must not be used in the future for the Works without Savcor ART's written authority.
- 16.4 The Subcontractor must not use lower tier subcontractors without Savcor ART's the prior written consent.

PART 17 SUBCONTRACTOR'S WARRANTIES AND REPRESENTATIONS

- 17.1 The Subcontractor warrants and represents to Savcor ART that it has taken, in accordance with best industry practice and in accordance with all applicable government rules, regulations and requirements, reasonable steps necessary to ascertain the nature of the Works, the normally associated hazards, and the general and

local conditions at the site which can reasonably affect the cost or performance of the Works.

PART 18 PROPRIETARY INFORMATION

- 18.1 All information developed or disclosed by either party under this Agreement shall, unless otherwise stated by Savcor ART, be deemed to be proprietary information (“Proprietary Information”).
- 18.2 Oral communications pertaining to the Works shall be deemed to be Proprietary Information unless otherwise indicated by the disclosing party.
- 18.3 Proprietary Information must not be disclosed to any other party except to persons who need access to Proprietary Information to ensure proper performance of the Works, being persons who have agreed to abide by the provisions contained in this Part.
- 18.4 Proprietary Information must not be used for any purpose other than as reasonably necessary for the proper performance of the Works.
- 18.5 Neither party shall be liable for the disclosure or use of Proprietary Information which:
- (1) is generally available to the public without breach of this Agreement;
 - (2) is disclosed with the prior written approval of the other party; or
 - (3) is required to be released by law or court order;
- but in regard to subclauses (2) and (3) the disclosure or use must be consistent with the relevant approval, law or court order.
- 18.6 Drawings and documentation developed under this Agreement (“Deliverables”) shall be the property of Savcor ART, and the Subcontractor must not disclose the Deliverables to a third party without Savcor ART’s prior written authority.
- 18.7 Each party shall return all Proprietary Information relating to this Agreement to the disclosing party upon request of the disclosing party or upon the expiry or sooner termination of this Agreement, whichever occurs first.
- 18.8 Each party has the right to retain a copy of the Proprietary Information for its internal records and subject to the restrictions and obligations set forth in Part 18, which shall survive the expiry or sooner termination of this Agreement.

PART 19 INSPECTIONS AND TESTING

- 19.1 Savcor ART or the Client may inspect and otherwise evaluate the Works at any reasonable time and place, but such review is for Savcor ART’s sole benefit and it does not relieve the Subcontractor from its obligations under this Agreement.
- 19.2 Savcor ART shall be entitled to carry out all necessary inspection and testing of the Works to establish that the Works comply with the requirements of this Agreement and, in the event of any non-compliance, the cost of that inspection and testing may be claimed from the Subcontractor or set off against monies otherwise claimed by or payable to the Subcontractor.

- 19.3 Savcor ART may, in its sole discretion, require the Subcontractor to carry out the necessary inspection and testing to demonstrate compliance with this Agreement and the Subcontractor must do so at its sole cost.
- 19.4 If any of the Works fail to meet the requirements of this Agreement, Savcor ART may give written notice to the Subcontractor stating particulars of the deficiencies.
- 19.5 The Subcontractor must promptly correct the deficiencies at its cost.
- 19.6 If the Subcontractor fails to correct the deficiencies within the time specified by Savcor ART, Savcor ART may have the deficiencies remedied and claim or set-off the cost against monies otherwise due to or claimed by the Subcontractor.
- 19.7 The Subcontractor shall maintain complete and accurate working files, including calculations, interpretations, assumptions, estimates, logs, drawings, equipment calibrations and other records pertaining to the Works.
- 19.8 The Subcontractor shall provide to Savcor ART unrestricted access to such records and dispose of them only as directed by Savcor ART.
- 19.9 The Subcontractor shall strictly comply with all protocols, procedures, specifications and other guidelines or requirements for performing the Works.

PART 20 ACCEPTANCE

- 20.1 Acceptance of any Works is conditioned upon final acceptance by the Client under the Head Contract.
- 20.2 Payments, including final payment, shall not constitute acceptance, nor does any payment or final acceptance release the Subcontractor from any contractual obligation or warranty.

PART 21 WARRANTIES

- 21.1 In addition and without prejudice to all warranties made elsewhere herein or expressed or implied by law, the Subcontractor warrants for a minimum period of 12 months that all Works undertaken by it pursuant to this Agreement will be:
- (1) of good quality and workmanship; and
 - (2) free from defects; and
 - (3) utilise only new and good quality materials;
- 21.2 The Subcontractor's warrants that its assigned technical and management personnel are duly qualified to perform the Works.
- 21.3 The Subcontractor's shall survive inspection, acceptance, payment and completion.

PART 22 INVOICES/PROGRESS CLAIMS

- 22.1 The Subcontractor warrants that to its best knowledge and belief, the invoices presented by the Subcontractor will be a complete and accurate statement of the Works completed by the Subcontractor, that the Subcontractor is properly entitled to

payment, and that all amounts requested are for appropriate purposes in strict accordance with the terms of this Agreement.

- 22.2 All materials provided by Savcor ART shall be accounted for and materials not accounted for will be charged to and paid for by the Subcontractor.
- 22.3 The Subcontractor shall charge only for materials in the quantities actually used in the performance of the Works.
- 22.4 The Subcontractor shall be paid within five days of Savcor ART's receipt of payment for the Subcontractor's Works under the Head Contract.
- 22.5 Each invoice shall contain all data required in the Head Contract as it relates to the Works.
- 22.6 The Subcontractor must submit detailed claims for payment in the time period provided for in Appendix B.

PART 23 SUPPORTING DOCUMENTATION

- 23.1 Upon request by Savcor ART, the Subcontractor must provide legible copies of equipment logs, field notes, research notes, purchase orders, labour logs, lien waivers, proof of payment of approved lower-tier subcontractors, and other applicable supporting documentation with each invoice sufficient to justify the amount claimed in the invoice.

PART 24 RETENTIONS

- 24.1 Retention monies on all progress claims shall be held by Savcor ART in accordance with the percentages specified in Appendix B.
- 24.2 The Subcontractor may provide bank guarantees acceptable to Savcor ART in lieu of cash retentions.

PART 25 RETENTION RELEASE

- 25.1 At practical completion of the Project, retentions held by Savcor ART will be reduced by 50%.
- 25.2 The balance of the retentions held by Savcor ART will be then released at the end of the Defects Liability Period, subject to satisfactory rectification of any defects.
- 25.3 The Defects Liability Period is the period stated in Appendix B.
- 25.4 The Subcontractor shall only be entitled to the release of retentions to the same extent or in the same percentages as Savcor ART obtains the release under the Head Contract.

PART 26 CONTRACT CEILING PRICE

- 26.1 If at any time the Subcontractor has reason to believe that an increase in the ceiling of a time and material, unit price or cost reimbursable contract will be necessary, it shall give to Savcor ART prompt notice to that effect, and provide a written estimate to complete the Works and propose a new limitation figure and give appropriate supporting data so that Savcor ART may, in its sole discretion, increase such limitation by written variation to this Agreement.

- 26.2 The Subcontractor shall not otherwise be entitled to claim any amount which exceeds the ceiling price.
- 26.3 Any claimed change in the ceiling price shall be dealt with as a claim for costs associated with a Change under Part 15.
- 26.4 In the event of a dispute arising in relation to the ceiling price, the dispute shall be resolved in accordance with Part 39, and the Subcontractor must continue to perform the Works pending resolution of the dispute.

PART 27 CURRENCY OF PAYMENT

- 27.1 Unless otherwise provided in this Agreement, all payments shall be in Australian dollars, and if currency exchange rates apply, the rate of exchange between Australian dollars and the other currency shall be the rate of exchange on the date of payment.
- 27.2 The date of each invoice must be clearly marked on each invoice.

PART 28 FINAL PAYMENT AND RELEASE

- 28.1 The Subcontractor's acceptance of final payment hereunder shall constitute a release of all claims whatsoever (contractual or otherwise) which the Subcontractor has or may have against Savcor ART in relation to the Works.
- 28.2 Savcor ART shall be entitled to plead this Part in bar to any claim made against it by the Subcontractor pursuant to this Agreement.

PART 29 CLEANUP

- 29.1 At all times during the performance of Works the Subcontractor shall maintain sites where work is performed in a clean, orderly and safe condition.
- 29.2 Upon completion of the Works, the Subcontractor shall remove all temporary structures, debris and waste incidental to the Works and shall clean all surfaces, fixtures, equipment, and other property affected by the Subcontractor's performance of the Works.
- 29.3 At any time during the performance of the Works, Savcor ART may direct the Subcontractor to clean up the site.
- 29.4 If the Subcontractor fails to clean up the site within one day of receipt of a direction to perform the clean-up, Savcor ART may proceed with the clean-up in any manner it deems expedient and the cost thereof shall be charged to the Subcontractor or deducted from moneys otherwise due to the Subcontractor.

PART 30 LIENS

- 30.1 The Subcontractor hereby waives its right to claim any lien in connection with the Works and shall not enter into any agreement creating such a right exercisable by any other party.

PART 31 SET OFF

- 31.1 Savcor ART may set-off against amounts payable to the Subcontractor under this Agreement any claim (whether or not a claim for liquidated damages, and whether

contingent or otherwise) Savcor ART may have against the Subcontractor whether or not arising under this Agreement.

PART 32 TERMINATION

- 32.1 Savcor ART may in its sole discretion terminate this Agreement in whole or in part and require the Subcontractor to cease performance of the Works without the Subcontractor having committed any breach of this Agreement, and in such event the Subcontractor will be entitled to be paid only for the Works satisfactorily performed by it prior to the termination.
- 32.2 The Subcontractor waives all claims for profits not earned as a result of the termination of this Agreement.
- 32.3 In the event that the Subcontractor:
- (1) fails to make progress so as to endanger the timely completion of the Works and fails within three days after receipt of written notice by Savcor ART to take appropriate corrective action;
 - (2) repeatedly fails to maintain timely progress with the Works;
 - (3) fails to strictly observe or comply with any provision of this Agreement; or
 - (4) in the event of any proceeding by or against the Subcontractor in bankruptcy or insolvency or the appointment of a liquidator or receiver, administrator or trustee or assignment for the benefit of creditors; then

Savcor ART may, in addition to any other right or remedy provided by this Agreement, terminate this Agreement, with respect to all or any part of the Works, by giving written notice to the Subcontractor and take control over the site, equipment and materials thereon, including all related work files and site records.

- 32.4 In the event of termination or partial termination under clause 32.3, the Subcontractor shall not be entitled to receive any further payment until the terminated Works are completed.
- 32.5 If any amount due, including retention, for Works completed by the Subcontractor at the time of termination exceeds the sum of the total cost to Savcor ART, including reasonable administrative costs, such excess amount, including retention, shall be paid to the Subcontractor.
- 32.6 If the sum of the total cost to Savcor ART to complete the terminated Works plus any amount previously paid to the Subcontractor exceeds the contract price for the completed Works, the Subcontractor shall immediately pay such excess to Savcor ART unless Savcor ART sets-off the amount under Part 31.
- 32.7 The Subcontractor shall continue to diligently perform Works that have not been terminated by Savcor ART as though it were a separate portion and in accordance with any programme or completion date directed by Savcor ART or approved after submission to Savcor ART.

PART 33 TERMINATION FOR DEFAULT

- 33.1 Savcor ART may terminate this Agreement in the event that the Subcontractor fails to strictly adhere to the terms and conditions of this Agreement or fails to maintain the progress of the Works so as to jeopardise the successful and timely completion of the Works, and in such event the Subcontractor shall cease work immediately upon Savcor ART's demand.
- 33.2 Savcor ART may, without prejudice to any other rights or remedies, complete the Works either directly or by engaging other persons to do so, and the Subcontractor shall be liable for all related costs reasonably incurred by Savcor ART to complete or correct the Works, and for other costs resulting from the Subcontractor's failure to perform its obligations under this Agreement.

PART 34 STOP-WORK ORDER

- 34.1 Notwithstanding any other provision in this Agreement, Savcor ART may, by giving notice in writing to the Subcontractor ("a stop-work order"), suspend all or any portion of the Works.
- 34.2 The Subcontractor shall stop all such Works immediately upon receipt of Savcor ART's stop-work order and shall promptly resume the Works after receipt of direction from Savcor ART to proceed.
- 34.3 Any consequent claim by the Subcontractor for an extension of time or for any delay or disruption costs shall be governed by Part 5.

PART 35 RISK OF LOSS

- 35.1 The Subcontractor bears the risk of loss for the Works until final acceptance by Savcor ART.

PART 36 INDEMNITY

- 36.1 The Subcontractor shall indemnify and hold Savcor ART, Savcor ART's subsidiaries, affiliates, directors, officers, agents and employees and the Client harmless against any suit, claim or other loss (including expenses and legal fees) arising from or in connection with this Agreement, except to the extent that such loss was caused by the negligence or wilful misconduct of Savcor ART.

PART 37 INSURANCE

In addition to any insurance which the subcontractor is by law obliged to effect, the subcontractor must procure and maintain at its own expense, with an insurer registered by the Australian Prudential Regulation Authority, such policies of insurance which we may reasonably require having regard to the nature of the services being supplied and the location to which they are being supplied, including:

- (1) \$20,000,000 public liability insurance any one occurrence, covering the respective rights and interests, and liabilities to third parties, of the parties, in performing their obligations under this agreement, in respect of loss or damage to property and death or personal injury (including illness), of any person;
- (2) \$20,000,000 product liability insurance any one occurrence and in the annual aggregate, to cover loss or damage in relation to defective products that causes

death or personal injury, property damage or losses including delay and rectification costs in relation to defective Services;

- (3) compulsory third party insurance (motor vehicle), to cover injury to third parties;
- (4) third party property damage insurance (motor vehicle), to cover damage to third party owned property;
- (5) workers compensation insurance, to cover the liabilities detailed in the Workers Compensation Acts of each Australian jurisdiction in which the Services are supplied; and
- (6) professional indemnity insurance policy for the services with a total aggregate cover of not less than \$ 1,000,000.00 or as otherwise specified in Appendix B of this Agreement. The policy shall include provisions for one automatic reinstatement of the sum insured and for loss of documents and information stored by electronic and other means. The policy and level of cover shall be maintained until the end of a period of 6 years commencing on the date at which all the services have been completed. Each policy must:
 - a. include coverage in respect of liability of not less than the amounts specified in Appendix B of this Agreement; and
 - b. be held and maintained for the period specified in Appendix B of this Agreement.

37.2 The subcontractor must ensure that Savcor ART is specifically named as, or falls within the definition of an “insured party”, in respect of any liability arising out of or by reason of the supply of the services, for the insurance policies referred to above.

37.3 The subcontractor must ensure that every sub-contractor it engages holds insurance as required under the part 37.

37.4 The Sub-contractor must, as soon as practicable, inform Savcor ART as to any occurrence that may give rise to a claim under an insurance policy required under clause 37.1 and must keep Savcor ART informed as to subsequent developments concerning the claim.

37.5 The subcontractor must ensure that each insurance policy required under clause 37.1 contains provisions acceptable to Savcor ART which:

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

CURRENCY OF INSURANCE

37.6 The subcontractor must provide evidence of the currency of the insurance policies required in clause 37.1 prior to the Commencement Date and upon each anniversary of

the Commencement Date and otherwise upon request from time to time by Savcor ART's Representative.

- 37.7 If the subcontractor fails to produce any insurance policy, certificate of currency or renewal certificate required under this agreement, Savcor ART may, at its option, withhold payment of any amount due to the subcontractor by Savcor ART until such time as the policies or renewal certificates have been produced or take out the necessary insurance policies, paying any premium and the amount so paid will be a debt due from the subcontractor to Savcor ART.

ACTION BY SUBCONTRACTOR

- 37.8 The subcontractor must:
- (1) not do or omit to do; and
 - (2) ensure that its employees, agents and sub-contractors do not do or omit to do, anything which results in any insurance referred to in this clause being void or voidable, or results in any liability for payment thereunder being reduced.

CROSS LIABILITY

- 37.9 Any insurance required to be effected in joint names must include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term "insured" as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them.

PART 38 INFRINGEMENT

- 38.1 The Subcontractor shall indemnify Savcor ART against any claim or loss related to the infringement of any patent, trademark or copyright by the Subcontractor under this Agreement.

PART 39 CONCILIATION AND ARBITRATION

- 39.1 If there is a dispute between the parties concerning the terms of this Agreement or any other agreement between them, a party may give written notice of the dispute to the other parties ("the notice") which shall state that it is a notice under this Part and shall specify full particulars of the dispute concerned ("the dispute").
- 39.2 If the dispute is not settled by agreement within fourteen days of service of the notice, the dispute shall be referred to conciliation, and if necessary to arbitration, by a single conciliator and (if necessary) an arbitrator appointed by agreement of the parties, or if they fail to agree by the Accord Group, Level 2 The Chambers, 370 Pitt Street, Sydney, acting on the request of a party.
- 39.3 A conciliator or arbitrator shall not be a present or former member, officer, employee or agent of either party.
- 39.4 The arbitration shall be conducted:
- (1) at a location to be determined by the arbitrator (as the circumstances require);
 - (2) in accordance with the rules for the time being prescribed by the Accord Group.

39.5 If arbitration becomes necessary, the parties agree to be bound by the decision of the arbitrator in all matters and things, including the payment of costs.

PART 40 INDEPENDENT CONTRACTOR

40.1 The Subcontractor is an independent contractor and it is not an agent of Savcor ART and it does not have authority to bind Savcor ART to contracts.

40.2 The Subcontractor shall indemnify and hold Savcor ART harmless against all liability and loss resulting from the Subcontractor's failure to pay all taxes, superannuation contributions, fees and other amounts imposed by any government under employment insurance, social security and income tax laws, and with respect to any injury or loss, including death, of any of the Subcontractor's employees.

PART 41 CONFLICTS OF INTEREST

41.1 The Subcontractor warrants that entering into this Agreement and its performance of the Works will not result in a conflict of interest on its part.

41.2 For the purposes of this Part, a conflict of interest includes circumstances under which the Subcontractor may become biased with respect to the Works or gain an unfair competitive advantage.

41.3 The Subcontractor warrants that it will promptly notify Savcor ART in writing of any actual or apparent conflict of interest of which it becomes aware after the execution of this Agreement.

41.4 Failure by the Subcontractor to promptly disclose an actual or potential conflict of interest to Savcor ART shall constitute a material breach of this Agreement.

PART 42 NON SOLICITATION OF EMPLOYEES

42.1 The Subcontractor must not solicit for employment or hire any of Savcor ART's employees during the performance of the Works and for one year from the completion of the Project.

PART 43 ASSIGNMENT/SUBCONTRACTING

43.1 The Subcontractor shall not assign this Agreement nor any rights or obligations specified herein, nor subcontract any of the Works, without Savcor ART's prior written consent.

43.2 The Subcontractor shall remain liable to Savcor ART for all obligations and liabilities set forth in this Agreement without regard to whether the Subcontractor directly performs the Works or, with Savcor ART's prior written consent, it delegates performance to lower tier subcontractors or consultants.

43.3 Lower tier subcontractors are to be engaged upon such terms and conditions as Savcor ART may approve in writing.

PART 44 PUBLICITY AND PUBLICATIONS

44.1 The Subcontractor shall obtain Savcor ART's written approval prior to the release of any publicity, publication or information of any nature in connection with this Agreement.

PART 45 ORDER OF PRECEDENCE

45.1 In the event of a conflict in the terms and conditions of the subcontract documents, the following order of precedence shall apply:

- (1) The Works in Appendix C;
- (2) Special Conditions in Appendix D;
- (3) The Terms and Conditions (Refer to Savcor ART's website);
- (4) Subcontract Documents in Appendix C;
- (5) The Head Contract; and
- (6) Other documents.

PART 46 COURSE OF DEALING

46.1 No course of dealing between the parties nor failure by Savcor ART at any time, or from time to time, to enforce any term or condition of this Agreement or of a work order shall constitute a waiver of such term or condition, nor shall such course of dealing or failure affect such term or condition in any way or the right of Savcor ART at any time to avail itself of such remedies as it may have for any breach of such term or condition.

PART 47 COMPLIANCE WITH LAW

47.1 The Subcontractor shall indemnify Savcor ART for any liability, penalty or other loss incurred or imposed by reason of a violation or asserted violation by the Subcontractor of laws applicable to the Works.

47.2 The Subcontractor's failure to strictly comply with applicable safety or environmental law shall constitute a material breach of Agreement.

47.3 The Subcontractor shall comply with all laws applicable to the Subcontractor, including laws relating to equal employment opportunity, employment of the handicapped and to the environment.

PART 48 NO AGENCY

48.1 Except as specifically set forth otherwise, it is agreed and understood that neither party hereto is, by this Agreement or anything herein contained, constituted or appointed agent or representative of the other for any purpose whatsoever, nor shall anything in this Agreement be deemed or construed as granting either party any right or authority to assume or to create any obligation, warranty or responsibility, express or implied, for or on behalf of the other.

PART 49 ADDITIONAL INSTRUMENTS

49.1 The parties agree to provide to each other all documents required to carry out any and all obligations in connection with this Agreement.

PART 50 OWNERSHIP OF CONFIDENTIAL INFORMATION DISCLOSED BY SAVCOR ART TO THE SUBCONTRACTOR

- 50.1 Savcor ART may, at its discretion, provide such confidential information to the Subcontractor as may be required for the Works.
- 50.2 Nothing in this Agreement obliges Savcor ART to make any particular disclosure of confidential information.
- 50.3 All right, title and interest in and to the information shall remain the exclusive property of Savcor ART and the information shall be held by the Subcontractor in trust for Savcor ART.
- 50.4 No interest, licence or any right attaching to the information, other than expressly set out herein, is granted to the Subcontractor under this Agreement, by implication or otherwise.
- 50.5 The Subcontractor acknowledges that this Agreement extends to all documents, materials and information, whether oral, written or stored electronically, relating to Savcor ART given or disclosed to the Subcontractor by Savcor ART's personnel or representatives or otherwise in the course of, or pursuant to, this Agreement.
- 50.6 The Subcontractor promises not to use the information in any manner except as reasonably required for the Works.

PART 51 THE SUBCONTRACTOR MUST PROTECT CONFIDENTIAL INFORMATION

- 51.1 The Subcontractor shall protect the confidential information and keep it confidential.
- 51.2 The Subcontractor must not directly or indirectly disclose, or allow access to, transmit or transfer the information to a third party without Savcor ART's prior written consent.
- 51.3 For the purposes of this Part, "representatives" includes the Subcontractor's officers, employees, consultants, contractors, advisers, affiliates, partners, joint venturers and other representatives.
- 51.4 The Subcontractor promises to disclose the information only to those of its representatives who have a "need to know".
- 51.5 If it is necessary to disclose the information pursuant to clause 51.4, the Subcontractor promises to issue appropriate instructions in order to satisfy its obligations herein and obtain the representatives' agreement to receive and use the information on a strictly confidential basis on the same conditions as are contained in this Part.
- 51.6 The Subcontractor shall be responsible for any breach of confidentiality by the representatives.
- 51.7 The Subcontractor promises not to copy, reproduce in any form or store in any retrieval system or data base without Savcor ART's prior written consent except for such copies

and storage as may reasonably be required internally by the Subcontractor for the Works.

51.8 Savcor ART acknowledges that this Agreement does not apply to information which is not confidential, such as information readily available to the public (other than by a breach of this Agreement), nor does it apply if the Subcontractor can establish, by documented and competent evidence, that certain information was in its possession prior to the date of disclosure by Savcor ART.

51.9 The Subcontractor may disclose information to the extent that the disclosure is required by applicable laws or regulations, the rules of stock exchanges having jurisdiction over the Subcontractor, or an order from a court or tribunal of competent jurisdiction.

51.10 If the Subcontractor becomes legally compelled by order of a court or tribunal to disclose any of the information, the Subcontractor must promptly notify Savcor ART so that Savcor ART may seek a restraining order or other appropriate remedy to try to prevent or restrict such disclosure.

51.11 The Subcontractor must use its best endeavours to furnish only that portion of the information which it is legally required to furnish.

51.12 The Subcontractor must use its best efforts to co-operate with Savcor ART's legal advisers to enable Savcor ART to obtain an order or other reliable assurance that confidential treatment will be accorded any information so disclosed.

PART 52 NO WARRANTY

52.1 Savcor ART makes no representation or warranty as to the accuracy or completeness of any of the information.

52.2 Savcor ART will not be held liable for any errors or omissions in the information, or the use, or the results of the use, of the information.

PART 53 RETURN OF CONFIDENTIAL INFORMATION

53.1 If requested by Savcor ART, the Subcontractor must immediately return the information and all copies thereof in any form whatsoever under the power or control of the Subcontractor to Savcor ART and delete the information from all retrieval systems and data bases or destroy the same as directed by Savcor ART and, if requested by Savcor ART, furnish to Savcor ART a certificate of an officer of the Subcontractor confirming such deletion or destruction.

53.2 The Subcontractor acknowledges and declares that this Agreement shall continue to operate at all times hereafter notwithstanding that the Subcontractor may subsequently cease to have any connection with Savcor ART or the confidential information.

PART 54 NOTICES

54.1 A notice or other communication required or permitted to be given by a party to another shall be in writing and sent by a party to another by mail or email transmission at the address set out for service of notices in item 16 of Appendix B or as otherwise notified by a party to another from time to time.

- 54.2 A notice or other communication is deemed given:
- (1) upon expiration of two business days after posting;
 - (2) if sent by email, immediately upon the successful competition of the transmission.

PART 55 SEVERABILITY

- 55.1 Each word, phrase, sentence, paragraph and clause (“a provision”) of this Agreement is severable.
- 55.2 If a court determines that a provision is unenforceable, illegal or void, then the court may sever that provision which:
- (1) becomes inoperative; and
 - (2) will not affect the other provisions of this Agreement.

PART 56 GOVERNING LAW

- 56.1 The law of this Agreement is set out in Appendix B. The parties submit themselves to that jurisdiction and the Commonwealth of Australia for all proceedings arising from this Agreement.
- 56.2 In the event of any breach of the provisions of this Agreement by the Subcontractor, Savcor ART shall be entitled to equitable relief, including relief in the form of injunctions and orders for specific performance, in addition to all other remedies available at law or in equity.

PART 57 WAIVER

- 57.1 The variation or waiver of a provision of this Agreement, or a party’s consent to a departure from a provision by another party is ineffective unless in writing, executed by the parties.
- 57.2 Failure of Savcor ART to insist upon strict compliance with the provisions of this Agreement shall not constitute a waiver of any of the provisions of this Agreement.

PART 58 INTERPRETATION

- 58.1 The singular includes the plural and the plural includes the singular.
- 58.2 A reference to a gender includes a reference to each other gender.
- 58.3 A reference to a person includes a reference to a firm, corporation or other corporate body.
- 58.4 A reference to writing includes a reference to printing, typing and other methods of reproducing words in a visible form.

- 58.5 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have corresponding meanings.
- 58.6 Headings have been inserted for ease of reference and do not affect the construction of this Agreement.
- 58.7 This Agreement binds the parties' respective successors, administrators and permitted assigns.
- 58.8 ***Ejusdem Generis rule not to apply:*** Where particular words are followed by general words, the general words are not limited to the same kind as the particular words; and "including" must not be interpreted as a word of limitation.
- 58.9 The **contra proferentum** rule shall not apply to the construction of this Agreement.

PART 59 ENTIRE AGREEMENT

- 59.1 The parties acknowledge that they have read this Agreement, they understand it and agree to be bound by its terms.
- 59.2 This Agreement supersedes all prior agreements, whether written or oral, relating to the subject matter hereof, and contains the entire agreement of the parties.
- 59.3 No modification or variation to this Agreement shall be binding unless such modification is in writing and signed by a duly authorised representative of each party.