



Department for Infrastructure and Transport
Infrastructure Delivery Division
Building Projects

AS4300-1995 SPECIAL CONDITIONS OF CONTRACT – ECI TEMPLATE (including ECI and TFP)

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CONTRACT

FOR

[CONTRACT NAME]

GENERAL BUILDING CONTRACTOR

[CONTRACT NO.]

BETWEEN

**MINISTER FOR INFRASTRUCTURE
AND TRANSPORT**

ABN 92 366 288 135

(PRINCIPAL)

AND

[CONTRACTOR]

ACN [INSERT]

(CONTRACTOR)

AS4300-1995 (ECI/TFP)

SCHEDULE OF CONTRACT DOCUMENTS

This Contract comprises of the following attachments:

- (1) Formal Instrument of Agreement
- (2) Special Conditions of Contract including the Annexure and Attachments
- (3) AS4300-1995 General Conditions of Contract (not included in this document) as amended by the Special Conditions *
- (4) [Revised] Tender Form
- (5) [Agreed Post Tender Amendments]
- (6) [Addendums]
- (7) Principal's Project Requirements
- (8) Concept Design
- (9) Specification
- (10) Drawings
- (11) Government Building Energy Strategy 2013-2020 *
- (12) Building Projects WHS Requirements (BPWHSR) (G199) available at bpims.sa.gov.au*

* Not included in this Volume. Reference Only

FORMAL INSTRUMENT OF AGREEMENT

AGREEMENT made the date it is executed by the last party.

BETWEEN

the **MINISTER FOR INFRASTRUCTURE AND TRANSPORT** a body corporate established pursuant to the *Administrative Arrangements Act 1994* (SA) of Level 14, 83 Pirie Street, Adelaide, South Australia 5000 ("Principal")

AND

[CONTRACTOR] (ACN **[Insert ACN No.]**) of **[Insert Address]** ("Contractor")

IT IS AGREED that the Special Conditions of Contract to AS4300-1995 including all annexures, attachments and schedules, the General Conditions of Contract (AS4300-1995) as amended by the Special Conditions, the Principal Project Requirements, Specification, Drawings, Tender Form and other documents to which reference may properly be made in relation to **[Insert Contract Name]**, **Contract No: [Insert Contract No.]** shall together comprise the contract between the parties **AND** if the Contractor or the Principal is two or more persons then they shall be bound jointly and severally.

SIGNED by a duly authorised officer for and on behalf of **THE PRINCIPAL** in the presence of:

.....
Witness signature Authorised officer signature

.....
Witness name Authorised officer name

.....
Date Date

SIGNED by **THE CONTRACTOR** in accordance with section 127 of the *Corporations Act 2001* (Cth) by two directors or by one director and the company secretary:

.....
Director signature Director/Company Secretary signature

.....
Director name Director/Company Secretary officer name

.....
Date Date

RECITAL

The Minister for Infrastructure and Transport enters into this Agreement as the party with whom the contractual rights and obligations lie.

For the internal purposes of the State the Minister will deliver the project for the benefit of the State and in particular for the benefit of the Minister [Insert Minister's Portfolio].

However, nothing in this Agreement imposes any legal obligations on or vests any legal rights in the Minister for [Insert Minister's Portfolio].

PREAMBLE

The Department for Infrastructure and Transport (the Department) provides asset, risk and project advice and management to the South Australian Government and its agencies and facilitates the interface between Government and the building and construction industry.

In partnership with the building industry the Department strives for excellence in the delivery of its projects to the South Australian community.

The Contractor contracts to design and construct the works and to manage the sub-contractors while liaising with the Principal, Principal's professional service contractors and all other relevant stakeholders in return for a Contract Price.

This project is being delivered for the [Insert Department Name]. The lead agency wishes to work as a team with the Department, the Contractor and the appointed professional service contractors to achieve project objectives particularly completion to specified quality, program and budget.

SPECIAL CONDITIONS OF CONTRACT
INCLUDING THE ANNEXURE
AND ATTACHMENTS

AS4300-1995

To be read in conjunction with Australian Standard General Conditions of Contract AS4300 - 1995

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CONDITIONS OF CONTRACT**1 GENERAL**

The Conditions of Contract shall be the Australian Standard General conditions of contract for design and construct (AS4300—1995) as amended by the Special Conditions of Contract

2 INTERPRETATION

In the event of conflict or inconsistency between the provisions of the Australian Standard General conditions of contract for design and construct (AS 4300—1995) and the Special Conditions of Contract, the Special Conditions of Contract shall take precedence.

References to "Annexures" in AS 4300—1995 shall be read as references the Special Conditions of Contract, Annexure and Attachments as follows:

AS Contract Reference	Special Conditions and Annexure Reference
Annexure Part A	Annexure
Annexure Part B	Special Conditions of Contract
Annexure Part C	Attachment 1 – Approved form of Unconditional Undertaking
Annexure Part D	Attachment 3 – Deed of Novation (clause 9.2 (C))
Annexure Part E	Attachment 4 – Deed of Novation (clause 10)

References to "attached to these Conditions" shall be read as reference to attachments to the Special Conditions of Contract.

SPECIAL CONDITIONS OF CONTRACT**1 CONSTRUCTION OF CONTRACT**

No amendment.

2 INTERPRETATION

Insert the following definitions, where appropriate, in alphabetical order:

“Approval” means any permit, licence, consent, grant, certificate, authorisation, sealing or other approval obtained or required to be obtained under any Legislative Requirement in relation to the work under the Contract;

“Approved Design Documents” are Design Documents which are approved or for which approval is deemed to have occurred under clause 8.4;

“Authority” means any Federal, State or local government, semi-government, or other body, authority or person, statutory or otherwise, including any court or tribunal, having jurisdiction over the Site or the work under the Contract or the performance by the Contractor of its obligations under the Contract or with whose utility services the Works are or will be connected;

“Authorities” means where the context requires the Authorities referred to in clause 35.5;

“Background IP” means IP owned by the Contractor which was in existence before the Date of the Contract or subsequently brought into existence other than in connection with the Contract but which relates to the Works or is embodied in, or attaches to, or is necessary or desirable for the effective use of the Works and the Design Documents;

“Building Legislation” means all laws governing the design and construction of the Works and includes without limitation the National Construction Code, and any regulations, orders, declarations or any subordinate legislation or instruments in force under them and all applicable Australian Standards;

“Building Projects WHS Requirements” means the document entitled “Building Projects WHS Requirements” (BPWHSR) (G199) available at bpims.sa.gov.au.

“Business Day” means any day other than a Saturday, Sunday, public holiday in South Australia or 27, 28, 29, 30 or 31 December.

“Change of Control” means a change in legal and/or beneficial ownership of the Contractor from that prevailing on the Date of the Contract as set out in Attachment 9;

“Claim” means any claim, demand, action, proceeding or suit which either party may make or bring against the other (or any of its employees) relating to the interpretation of the Contract or as to any fact, matter or thing arising out of, or in connection with, the Contract or the work under the Contract including (without limitation) any claim, demand, action, proceeding or suit seeking the payment of money, an adjustment to the Contract Sum, an extension of time to the Date for Practical Completion or any costs, expenses, loss or damages on any ground arising out of, or in connection with, the Contract or the work under the Contract, whether in contract, tort (including negligence and misrepresentation), statute, equity (including restitution and rectification) or otherwise;

“Contract Documents” means the documents listed in the Formal Instrument of Agreement;

“Contractor’s Margin” means an amount or proportion, as indicated in Annexure Part A, added for profit and additional offsite overhead costs (including administration, supervision, establishment and attendance costs) applied solely in calculating the TFP Offer or Early Works Fees pursuant to clause 3.7;

“Construction Program” means a statement in writing showing the dates by which, or the time within which, the various stages or parts of the work under the Contract are to be executed or completed;

“Consultant’s Certificate” means a certificate in the form set out in Attachment 11 issued pursuant to clause 30.1, 30.2(d)(v) or 42.1;

“Current Program” has the meaning in clause 33.4;

“Date of the Contract” means the date the Formal Instrument of Agreement is executed;

“Defect” means:

- (a) any error, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or other defect in the Works and includes any shrinkage, expansion or cracking (excluding any normal shrinkage or expansion of materials unless that shrinkage or expansion would have been accommodated in accordance with Good Construction Practice); or
- (b) any aspect of the Works which is not in accordance with the requirements of this Contract; or
- (c) the Works are not Fit For Purpose.

“Deed of Novation” means the deed of novation in the form set out in Attachment 4;

“Department Prequalification System” means the Building and Construction Project Prequalification System, being a register of Contractors maintained by the Principal assessed as suitable to contract with the South Australian Government;

“Direct Loss” means any cost or expense that a party reasonably incurs as a direct result of, and flowing naturally from the other party’s breach of Contract, act, omission or negligence, including any liquidated damages or any other payment of loss or damages expressly provided for under this Contract;

“Early Works” means early work under the Contract which is the subject of a direction by the Principal’s Representative pursuant to clause 3.6;

“Early Works Date for Completion” means the date specified in the Principal’s direction pursuant to clause 3.6 that the Contractor must complete the Early Works by.

“Early Works Fees” means the fees payable to the Contractor for performance of the Early Works;

“Early Works Subcontracts” means the subcontracts entered into by the Contractor for Early Works;

“EOT” (from extension of time) has the meaning in clause 35.5(a);

“Entitlement” means an entitlement to:

- (a) an extension of time;
- (b) a declaration to the effect that time is at large;
- (c) any adjustment to the Contract Sum or valuation under Clause 40.5; or
- (d) recover any loss, cost, damage or expense of any kind arising:
 - (i) under the Contract; or
 - (ii) out of or in connection with the work under the Contract or the performance of the work under the Contract (including a quantum meruit);

“Fit For Purpose” means the Works are:

- (a) fit for their intended purposes, objectives, functions, uses and requirements as specified in, or reasonably inferred from the Principal’s Project Requirements;
- (b) free from Defects;
- (c) designed and constructed so that it allows the Works to be used and maintained without impacting, impairing or adversely affecting their intended use in a safe, efficient and effective manner; and
- (d) will continue to be, in accordance with all applicable laws and standards (whether mandatory or not);

“Foreground IP” means IP which is created by or on behalf of the Contractor under or in connection with the Contract and includes the design documents;

“Good Construction Practice” means design and construction of the work under the Contract and practices which are carried out:

- (a) in a sound and workmanlike manner with due care and skill applying nationally accepted best practice in engineering, construction and management procedures for assets in the nature of the Works;
- (b) with due expedition and without unreasonable or unnecessary delay;
- (c) in a manner which facilitates best building practice and efficient operation;

- (d) in accordance with all applicable legislative requirements and all relevant codes, licences and/or permits;
- (e) in a manner that is safe to workers, the general public and the environment;
- (f) in a manner that minimises the repair and maintenance costs of the Works; and
- (g) with good workmanship and use of new and high quality fixtures, fittings, finishes and materials of merchantable quality and free from defects which will ensure that the Works will be Fit For Purpose;

“IP” means all copyright (including moral rights) and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs (including any application or right to apply for registration of these rights), confidential information (including trade secrets, secret processes and know how, methods, systems, calculations, algorithms, inventions, discoveries, data and software), and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world and “Intellectual Property” has a corresponding meaning;

‘Model Claimant’ is one who:

- (a) complies with its insurance obligations under the Contract;
- (b) complies with the terms and conditions of any relevant policy of insurance;
- (c) pays all premiums when due; and
- (d) diligently pursues a claim under any relevant policy of insurance.

“National Construction Code” means the National Construction Code that applies in South Australia, as amended from time to time, produced and maintained by the Australian Building Codes Board;

“Lead Agency” means the [insert Department Name];

“Novated Consultant” means the persons so named in Annexure Item 24;

“PCG” means the Project Control Group established under Clause 2B;

“Performance Management System” means a documented process which the Principal may, pursuant to clause 3.8, require the Contractor to comply with in Stage Two, that measures the Contractor’s performance to ensure that all activities and outputs associated with carrying out the Works meets the Principal’s goals in an effective and efficient manner;

“Pre-Construction Services” means activities and services required of the Contractor under the Contract that can be carried out without commencing actual construction of the Works, and including:

- (a) design work;
- (b) collaboration in design and documentation with the Principal and the Lead Agency;
- (c) survey work;
- (d) development of a Construction Program and planning work for Stage Two;
- (e) preparation and provision of the Contractor’s incremental cost plan for Stage Two Works;
- (f) development of project documentation;
- (g) development of subcontract and trade package documentation and conduct of tendering processes for subcontracts,
- (h) site investigations,

but excluding any activity service or materials specifically excluded from this definition in this Contract;

“Prescribed Heads of Liability” means any liability for:

- (a) personal injury including sickness and death;
- (b) loss of or damage to tangible property;
- (c) infringement of intellectual property rights;
- (d) any liability to a third party arising from:
 - (i) a negligent or wrongful act or omission by the Contractor, its employees, agents or subcontractors; or
 - (ii) any breach of the Contractor’s contractual obligation to the Principal;

- (e) an intentional tort;
- (f) a breach of trust;
- (g) wilful default;
- (h) breach of confidentiality; and
- (i) fraud or dishonesty,

and none of the Prescribed Heads of Liability limits any of the others;

"Principal Contractor" has the meaning given to it in the WHS Regulations;

"Principal's Construction Cost Estimate" means the Principal's total estimated costs and expenses for the completion of the Works, as specified in Annexure Part A;

"Project" means the project known as the [Insert Contract Name];

"PPSA" means the *Personal Property Securities Act 2009* (Cth);

"Principal's Project Requirements Brief" means the document to be provided by the Contractor with its TFP Offer which clearly describes the performance and quality requirements of all remaining undocumented design details for the Works.

"Site Condition" means all conditions and characteristics of the Site and its surrounds including below ground conditions, all natural and artificial things, asbestos, contamination, and other environmentally hazardous substances, concrete cracking and spalling, facilities, utilities and services on and within the surface and, if the Site includes a building, on and within the building (including those things obscured behind walls, ceilings and beneath the floor);

"Site Condition Reports" means the reports provided by the Principal to the Contractor which relate to the Site Conditions, as listed in Attachment 10;

"Specifications" means the specifications referred to in the Contract and any modification of such specifications thereafter by the Superintendent pursuant to powers contained in the Contract;

"Stage One" means the stage commencing on the Date of Acceptance of Tender and ending on the Stage One End Date and during which the Contractor will undertake the Stage One Works;

"Stage One End Date" means the day before the Stage Two Start Date;

"Stage One Site Condition Investigation Fees" means the amount(s) agreed between the Superintendent and the Contractor for the actual additional reasonable costs (evidenced by invoices) to the Contractor of subcontractor or Consultant work involved in carrying out investigations directed pursuant to clause 3.8(f)(iii) or agreed or directed by the Principal to be undertaken during Stage One Works. For the avoidance of doubt the Contractor is not entitled to an amount for Contractor's Margin in addition to the actual costs incurred to carry out the investigation(s).

"Stage One Fixed Fee" means the amount stated in Annexure Part A;

"Stage One Works" means:

- (a) performance of the Pre-Construction Services;
- (b) producing a TFP Offer pursuant to clause 3.8; and
- (c) performance of the Early Works (if directed),

in accordance with the Contract.

"Stage Two" means the stage commencing on the Stage Two Start Date, during which:

- (a) the Works;
- (b) all remaining Pre-Construction Services;
- (c) any other design or other work under the Contract not completed during Stage One; and
- (d) any additional design and other obligations arising as a result of the Principal's acceptance of the Contractor's TFP Offer under clause 3.9 (if applicable),

are to be performed by the Contractor;

"Stage Two (TFP)" means Stage Two, where the Principal has accepted the Contractor's TFP Offer under clause 3.9, and a Total Fixed Price applies;

"Stage Two Start Date" means the commencement date for Stage Two as specified in the Principal's acceptance of TFP Offer pursuant to clause 3.8(g) or if not specified, one Business Day after the Principal's acceptance of TFP Offer;

“Status Program” has the meaning set out in clause 33.8;

“Subcontractor Warranties” means the warranties to be provided by subcontractors as set out in Attachment 8;

“Subcontractor Warranty Deed” means the subcontractor warranty deed in the form of Attachment 8;

“TFP Offer” means the Total Fixed Price offer submitted by the Contractor during Stage One under clause 3.8, for the completion of Stage Two;

“TFP Subcontractor List” means the list of possible subcontractors provided by the Contractor to the Principal under clause 3.8;

“Total Fixed Price” or “TFP” means the lump sum price for the completion of all of the Works in Stage Two by the Contractor, which is a fixed amount subject only to adjustment in accordance with the Contract;

“WGE Act” means the *Workplace Gender Equality Act 2012* (Cth).

“WHS Law” means the *Work Health and Safety Act 2012* (SA) and the WHS Regulations;

“WHS Regulations” means the Work Health and Safety Regulations 2012;

“Working with Children Check” has the meaning given in the *Child Safety (Prohibited Persons) Act 2016* (SA).

Delete the definition of “Latent Condition” and substitute with the following:

““Latent Conditions” means physical conditions on the Site or its surroundings in respect of which the Superintendent has determined that Clauses 12.1 applies.”

Delete the definition of “Practical Completion” and substitute with the following:

““Practical Completion” is that stage in the execution of the work under the Contract when —

- (a) the Works are complete except for minor omissions and minor defects which the Superintendent;
 - (i) believes do not prevent the Works from being reasonably capable of being used for the Purpose; and
 - (ii) determines that the Contractor has reasonable grounds for not promptly rectifying; and
 - (iii) believes the rectification of which will not prejudice the convenient use of the Works; and
 - (iv) believes that there will be no undue inconvenience caused to the Principal resulting from the rectification; and
- (b) those tests which are required by the Contract to be carried out and passed before the Works reach Practical Completion have been carried out and passed; and
- (c) the Subcontractor Warranty Deeds from the relevant subcontractors set out in Attachment 8 and all warranties, certificates, documents and other information required under the Contract, which, in the opinion of the Superintendent, are essential for the use, operation and maintenance of the Works, have been supplied to the Superintendent; and
- (d) all necessary authorities, certificates and approvals including occupancy certificates for each relevant part of the building required for the lawful occupation and use of the Works or required by the terms of the Contract have been issued by the relevant Authorities and the Contractor has provided the Superintendent with 2 copies of each of those authorities, certificates and approvals; and
- (e) all debris, rubbish, building materials, Constructional Plant and equipment has been removed from the Site and the Site and the Works have been professionally cleaned; and
- (f) the Contractor has demonstrated to the satisfaction of the Superintendent (including by testing required by the Superintendent) that all services and installations including services which existed prior to the commencement of the Works and which interface with or interact with the Works, perform as required by the Contract under the maximum operating conditions (including emergency operating conditions) for the Works provided for in the Contract or, if none are expressed, which could reasonably have been anticipated by a competent and experienced contractor; and

- (g) all requirements of any Authority in relation to access to the Site have been completed to the satisfaction of the applicable Authority; and
- (h) the Contractor has provided to the Superintendent a certificate from a licensed surveyor certifying that the Works are located within the boundaries (including vertical boundaries) of the Site in the place and position required by the terms of the Contract; and
- (i) the Contractor has provided to the Superintendent —
 - (i) all shop drawings and as built drawings as required by the Contract have been provided on CD ROM, USB and if applicable lodged on the project document management system;
 - (ii) the originals of all operating and maintenance manuals for all plant and equipment forming part of the Works;
 - (iii) all original warranties;
 - (iv) all notices, permits, approvals and certificates required to be obtained from relevant authorities; and
 - (v) all keys, properly labelled, for the Works; and
- (j) the Contractor has provided comprehensive training to the end user and those other people nominated by the Principal on the operation and maintenance of all plant and equipment forming part of the Works;
- (k) the Contractor has satisfied its obligations to make good any damage or repairs, and pay compensation, in accordance with Clause 15; and
- (l) any other conditions which the Contract requires to be satisfied prior to Practical Completion have been satisfied; and
- (m) all directions given by the Superintendent pursuant to this Contract have been complied with by the Contractor or if not all directions have been complied with, the remainder to be complied with will not prejudice the convenient use of the Works as determined by the Superintendent acting reasonably; and
- (n) an independent consultant has provided a certificate that the fire services function under normal and simulated emergency operating conditions; and
- (o) the Contractor has provided the Principal with a certificate in the form in Attachment 11 from the Contractor's consultant/s who are responsible for the design of the Works which includes certifying that the Works have been designed in accordance with all relevant Legislative Requirements and the Principal's Project Requirements;"

Insert at the end of Clause 2, the following new paragraphs:

"A reference to any legislation or to any provision of any legislation includes all legislation, regulations, proclamations, ordinances, by-laws and instruments issued under that legislation or provision and any modification, consolidation, amendment, re-enactment, replacement or substitution of that legislation or provision.

A reference to weeks means calendar weeks.

A reference to weblinks or URLs includes successor weblinks, in the case where weblinks or URLs have been updated or moved by the Principal."

2A PROJECT CONTROL GROUP

Insert the following clause:

"2A PROJECT CONTROL GROUP

2A.1 Establishment of PCG

- (a) No later than 30 days after the Date of the Contract, the Superintendent must ensure that a PCG is established for the duration of the work under the Contract.
- (b) The PCG is consultative and advisory only and decisions of the PCG do not affect the rights and obligations of the parties.

- (c) The parties must cooperate with the Superintendent to enable the Superintendent to convene the PCG meetings in accordance with this clause 2A.

2A.2 Co-ordinate PCG

During the execution of the work under the Contract by the Contractor, the Superintendent shall co-ordinate regular meetings of the PCG and in any event no later than 5 Business Days after the submission of a progress claim by the Contractor and, in doing so, the Superintendent shall:

- (a) convene PCG meetings;
- (b) notify attendees;
- (c) prepare agendas; and
- (d) prepare and distribute minutes.

2A.3 Timing of PCG Meetings

Unless otherwise notified in writing by the Superintendent from time to time, the PCG must meet once every 2 weeks during the execution of the work under the Contract by the Contractor.

2A.4 PCG Attendees

- (a) Unless a party has a reasonable excuse not to attend, the PCG meetings shall be attended by:
 - (i) the Superintendent, who shall chair the meetings;
 - (ii) the Contractor, and the Contractor must procure the architect engaged with respect to the Works to attend;
 - (iii) the Principal or its nominees; and
 - (iv) subject to Clause 2A.4(b), nominees of the Contractor.
- (b) If the Contractor wishes to propose a nominee to attend the PCG meeting on its behalf, at least 2 days before the PCG meeting the Contractor must notify the Superintendent of the identity and details of the knowledge, experience and employer of the nominee. The nominee shall not be permitted to attend a PCG meeting unless that nominee's attendance has been approved in writing by the Superintendent.
- (c) The Contractor shall ensure that anyone attending a PCG meeting on the part of the Contractor will have the appropriate knowledge and authority to effectively participate in the PCG meeting.

2A.5 PCG Agenda

The PCG shall be a forum for discussion of:

- (a) any needs of the Principal;
- (b) the performance and progress of the work under the Contract by the Contractor;
- (c) any issue arising out of the Contract;
- (d) identifying problems and outstanding issues and allocating responsibility and tasks to resolve those issues; and
- (e) any other items required by the Superintendent or the Principal.

2A.6 Contractor Reports

The Contractor must at least one Business Day prior to each PCG meeting deliver to the Superintendent:

- (a) a current status program showing the current status of works completed under the Contract; and
- (b) cash flow reports,

for discussion at the PCG meeting.

2A.7 Minutes of PCG Meetings

- (a) The Superintendent shall keep detailed and accurate minutes of meetings and distribute those minutes to the attendees of the meeting within 3 Business Days after the meeting.
- (b) The parties acknowledge that the minutes of meeting prepared under this Clause 2A.7 or matters stated or discussed at any PCG meeting will not constitute instructions or directions to the Contractor for the purposes of the Contract.

2A.8 Costs of PCG

The parties must each meet all costs of their respective personnel and involvement in the PCG.”

2B PROJECT STEERING GROUP

Insert the following clause:

“2B PROJECT STEERING GROUP MEETING

In addition to attending and participating in the meetings described in clause 2A, the Contractor must also:

- (a) attend and participate in meetings of the Project Steering Group, as and when required by the Principal; and
- (b) procure that the architect engaged with respect to the Works attends and participates in meetings of the Project Steering Group, if required by the Principal

Attendance of the Contractor and the architect at meetings of the Project Steering Group is by invitation only.

The parties must each meet all costs of their respective personnel and involvement in meetings of the Project Steering Group.”

2C STAGE ONE REPORTING

Insert the following clause:

“2C STAGE ONE REPORTING

As part of the Stage One Works, the Contractor shall submit to the Superintendent every two weeks from the Date of Acceptance of Tender a summary report detailing the status of the Stage One Works and including:

- (a) a copy of the draft Construction Program; and
- (b) a copy of the Contractor’s incremental cost plan for Stage Two Works.”

3 NATURE OF CONTRACT**3.1 Performance and Payment**

Delete Clause 3.1 and substitute the following:

“The Contractor shall execute and complete the work under the Contract in accordance with the requirements of the Contract.

If the Principal accepts the TFP Offer then, in executing and completing the work under the Contract, the Contractor must bring the Works to the stage of Practical Completion by the Date for Practical Completion.

The Principal shall pay the Contractor the Contract Sum adjusted by any additions or deductions made pursuant to the Contract.”

3.2 Quantities

No amendment.

3.3 Adjustment for Actual Quantities – Schedule of Rates

Delete Clause 3.3 and substitute the following:

“3.3 Rise and Fall

The Contractor acknowledges and agrees that:

- (a) the Contract and the Contract Sum are not subject to any cost adjustment or rise and fall for any reason including, without limitation:
 - (i) any site allowances, height allowances or industrial agreements;
 - (ii) fluctuations in exchange rates; or
 - (iii) changes in the cost of labour and materials; and

- (b) the Contractor is not entitled to make any Claim against the Principal and the Principal is not obliged to pay the Contractor any reimbursement for payments which the Contractor may be obliged to make on behalf of its employees in respect of any superannuation fund, scheme or arrangement for the benefit of workers or any other similar employee fund.”

3.4 Acknowledgements

Insert the following new Clause 3.4:

“3.4 Acknowledgments

For the avoidance of doubt, the Contractor acknowledges and agrees that the Contract Sum:

- (a) is a guaranteed maximum price which is not subject to rise and fall and will not be adjusted other than strictly in accordance with the provisions of the Contract;
- (b) is adequate for the provision of the work under the Contract and is the sole consideration payable to the Contractor for the completion of the Works and the discharge of the Contractor's obligations under the Contract including, but not limited to;
- (i) payments in respect of the Contractor's employees, including but not limited to long service leave, redundancy, severance, worker's compensation or superannuation;
 - (ii) industrial matters;
 - (iii) taxes including but not limited to customs, duties and sales taxes applicable to any goods or material to be used in the performance of the Works but not including any GST;
 - (iv) management and supervisory costs;
 - (v) liaising with third parties and stakeholders affected by the Works and to ensure that plans and systems required to address Legislative Requirements and environmental issues are implemented and complied with;
 - (vi) constructional plant and temporary works;
 - (vii) stores, workshops, lunch rooms, change rooms, hard stands, consumables and the like required by the Contractor to complete the Works;
 - (viii) all services required for the Works, including but not limited to electrical, compressed air, communication and water;
 - (ix) transport, haulage and cartage;
 - (x) developing, implementing and providing first aid, health, safety and welfare services and facilities;
 - (xi) the cost of obtaining and compliance with, all Legislative Requirements;
 - (xii) insurances, overheads, administrative charges and profit; and
 - (xiii) costs arising from Site access including but not limited to crane costs.
- (c) has been agreed after the Contractor has made due and proper allowance for, and the Contract Sum fully compensates the Contractor for:
- (i) compliance with all duties and obligations under the Contract;
 - (ii) the assumption of all risks imposed on the Contractor under the Contract; and
 - (iii) compliance with the Principal's Project Requirements.”

3.5 Stage One And Stage Two

Insert the following new Clause 3.5:

“3.5 Stage One and Stage Two

- (a) The scope of the Contract encompasses:
- (i) Stage One, in which the Contractor's obligations will be limited to undertaking the Stage One Works; and

- (ii) subject to the Principal accepting the Contractor's TFP Offer under clause 3.8, Stage Two, which will involve the completion of the Works.
- (b) The Contract Sum for the work comprising Stage One shall be limited to the Stage One Fixed Fee, which shall be payable as a fixed lump sum in accordance with clause 42.1. During Stage One any reference to the Contract Sum must be taken to be a reference to the Stage One Fixed Fee.
- (c) Notwithstanding any other provision of the Contract, the Contractor must not commence Stage Two before the Stage Two Start Date which shall apply where the Principal has accepted the Contractor's TFP Offer under clause 3.8, and not otherwise.
- (d) If the Principal deletes Stage Two from the scope of the Contract under clause 3.10, then all of the following apply:
 - i. the Principal will not be obliged to pay any part of the Contract Sum attributable to Stage Two;
 - ii. the Contractor will have no further entitlement or remedy, other than for payment of any outstanding amount by the Principal for the work under the Contract in respect of Stage One including payment of any amounts in respect of any Early Works carried out and any Stage One Site Condition Investigation Fees incurred;
 - iii. the Principal will be at liberty to have Stage Two or any part of it undertaken by a third party using the Contractor's Documents and any other Design, working drawings, shop drawings and data developed by the Contractor, at the risk of the Principal and third party;
 - iv. the Contractor must leave the Site as soon as reasonably practicable and remove all Temporary Work and materials it has brought onto the Site, but must, subject to clause 3.5(e), leave any Temporary Work and materials required by the Principal to have the Works completed;
 - v. the Principal may direct the Contractor to do one or more of the following:
 - 1. continue to carry out and complete some or all Early Works pursuant to the terms of the Contract;
 - 2. terminate all or some of the Early Works Subcontracts; or
 - 3. assign or novate (at no cost to the Principal) all or some of the Early Works Subcontracts (together with all rights and benefits in all warranties, unconditional undertakings, bank guarantees, insurance bonds, other security of a similar nature or purpose and retention held by the Contractor in respect of those subcontracts) to the Principal or its nominee on the terms set out in Attachment 3;
 - i. if directed by the Principal, execute a Deed of Novation, novating each Novated Consultant back to the Principal.
- (e) If the Principal requires the Contractor to leave any Temporary Works on the Site under clause 3.1.6, the Principal must bear the cost of the Temporary Works from the day immediately following the Stage One End Date.
- (f) The Contractor must do everything and sign all documents necessary to give effect to clause 3.5(d), and it irrevocably appoints the Principal as its attorney to do this in its name if it fails to do so.
- (g) The parties acknowledge that deletion of Stage Two under clause 3.8 is not a termination for convenience under clause 45A.

3.6 Early Works

Insert the following new Clause 3.6:

3.6 Early Works

- (a) The Principal's Representative may direct the Contractor to commence to carry out part of the Works as Early Works prior to the Stage One End Date. If the Contractor has

provided to the Principal a fixed price for a package or part of the Early Works, then the Principal may elect to accept that fixed price in respect of that package or part of Early Works.

- (b) The parties acknowledge that a direction under clause 3.6(a) is not a direction to accelerate under clause 35.9.
- (c) The Contractor's only entitlement to payment for Early Works shall be the approved Early Works Fees in accordance with clause 3.7.
- (d) If the Principal has not given the Contractor possession of the Site, the Principal must give the Contractor access to the Site sufficient to enable the Contractor to commence and carry out the work for which commencement has been authorised.
- (e) The Contractor must not let an Early Works Subcontract without the prior written approval of the Principal. In all other respects, the Contractor must fully comply with the provisions of clause 9 in respect of all Early Works Subcontracts.
- (f) Without limiting clause 9, Early Works Subcontracts must include:
 - (i) a right to terminate for convenience; and
 - (ii) consent for the subcontract to be novated to the Principal or its nominee on the terms set out in Attachment 3, if required by the Principal.
- (g) the Contractor must complete the Early Works by the Early Works Date for Completion.

3.7 Payment For Early Works

Insert the following new Clause 3.7:

"3.7 Payment for Early Works

If the Principal issues a direction pursuant to clause 3.6(a), the Early Works Fees payable by the Principal to the Contractor shall be the amount calculated as the sum of the following:

- (a) the additional reasonable direct cost to the Contractor including labour, materials and plant (not including the Contractor's Margin) to complete the Early Works;
- (b) the additional reasonable costs to the Contractor of subcontractor and Contractor's Consultant work involved in completing the Early Works (not including the Contractor's Margin); and
- (c) an additional amount for the Contractor's Margin, calculated as the percentage stated in Annexure Part A of the total of the costs under clauses 3.7(a) and (b),

provided as a fixed price for the Principal's approval prior to those applicable works commencing.

3.8 Total Fixed Price Offer And Performance Management System

Insert the following new Clause 3.8:

"3.8 Total Fixed Price Offer And Performance Management System

Performance Management System

- (a) Not less than 20 Business Days prior to the Stage One End Date, the Principal may submit a Performance Management System to the Contractor.

TFP Offer

- (b) Within the time specified in Annexure Part A, the Contractor must offer to the Principal a Total Fixed Price as the fixed price to be payable by the Principal for the completion of all of the Contractor's obligations under Stage Two.

- (c) The TFP Offer must be prepared in accordance with this clause 3.8 and any other requirements to be notified to the Contractor by the Principal provided that such requirements are consistent with the pricing and assumption of risk applicable to a fixed price lump sum design and construct project delivery model.
- (d) The TFP Offer must be calculated as the sum of:
- i. any Stage One Site Condition Investigation Fees;
 - ii. any Early Works Fees;
 - iii. the additional reasonable direct cost to the Contractor including labour, materials and plant (not including the Contractor's Margin) to complete all of the Contractor's obligations under the Contract;
 - iv. the additional reasonable costs to the Contractor of subcontractor and Contractor's Consultant work involved in completing all of the Contractor's obligations under the Contract (not including the Contractor's Margin); and
 - v. an additional amount for the Contractor's Margin, calculated as the percentage stated in Annexure Part A of the total of the costs under clauses 3.8(d)(iii) and (iv),
- and must not exceed the Principal's Construction Cost Estimate.
- (e) The Contractor's TFP Offer must also include:
- i. copies of all primary source pricing documentation, provided on an open book basis, used to calculate the TFP Offer;
 - ii. a proposed cashflow;
 - iii. copies of the Design Documents (including (but not limited to) a Principal's Project Requirements Brief and a specification (as per Item 11 of the Annexure) with completed preliminaries and general requirements sections including the completion documents list and provisional trade sections for all disciplines if the Design Documents are not 100% complete) upon which the TFP Offer is based;
 - iv. a detailed Construction Program for the Stage Two (TFP) activities, identifying critical path activities and milestones, which meets the requirements of clause 33.2, including (without limitation) the requirement that the work under the Contract achieve Practical Completion by the Date for Practical Completion;
 - v. a Industry Participation Plan in accordance with clause 58;
 - vi. a list of possible subcontractors the Contractor may engage for the performance of the Works;
 - vii. copies of or a status report on (if not yet obtained) all relevant Approvals; and
 - viii. a report evidencing all inspections carried out and enquiries made by the Contractor to make itself aware of the Site Conditions as required pursuant to clause 12.
- (f) At any time before acceptance or rejection of the TFP Offer, the Principal may:
- i. negotiate agreed adjustments to the Construction Program with the Contractor;
 - ii. object to any one or more of the possible subcontractors in the list provided under clause 3.8(e)(vi). If the Principal does so object, the Contractor must remove the possible subcontractor(s) from the list and if requested by the Principal, propose one or more other possible subcontractor(s);
 - iii. request that the Contractor perform further inspections and make further enquiries, and request that further information be included in an updated report which the Contractor must submit for the purposes of clause 3.8(e)(viii).
- (g) Within twenty eight (28) days after receipt of the Contractor's TFP Offer (or such longer period agreed by the parties), the Principal must by written notice inform the Contractor of the Principal's acceptance or rejection of the TFP Offer.

- (h) The Contractor's TFP Offer must remain open for acceptance until the Principal notifies the Contractor in writing of the Principal's acceptance or rejection of the offer within the period referred to in clause 3.8(g).
- (i) The Principal has sole option and discretion to accept or reject the TFP Offer.
- (j) The Contractor shall not be entitled to any payment for the preparation of the TFP Offer."

3.9 Acceptance of TFP Offer

Insert the following new Clause 3.9:

"3.9 Acceptance of TFP Offer

- (a) If the Principal accepts the TFP Offer pursuant to clause 3.8(g), Stage Two (TFP) will commence on the Stage Two Start Date.
- (b) If the Principal accepts the TFP Offer, the sum accepted will be the Total Fixed Price and notwithstanding any other provision of this Contract, with effect on and from the Stage Two Start Date:
 - i. the Total Fixed Price becomes the fixed lump sum price for the performance of all of the Contractor's obligations under Stage Two subject to adjustment in accordance with the Contract, and any reference to the Contract Sum must be taken to be a reference to the Total Fixed Price;
 - ii. payments by the Principal under the Contract to the Stage Two Start Date will be made on account in respect of the Total Fixed Price;
 - iii. the Contractor will comply with the Construction Program submitted with the TFP Offer, subject to agreed adjustments;
 - iv. the Total Fixed Price will be deemed to include allowance for (and the Contractor will have no additional entitlement in respect of) any Claim (whether or not the Claim has been notified to the Principal) where:
 - 1. the start of the event giving rise to the Claim occurred before the submission of the Contractor's TFP Offer;
 - 2. the event giving rise to the Claim should have become known to the Contractor, with reasonable diligence on its part, before the submission of the Contractor's TFP Offer;
 - 3. and notwithstanding any other provision of this Contract, if any event giving rise to a Claim occurs after the submission of the Contractor's TFP Offer but before the Stage Two Start Date, the Claim must be assessed under the Contract as if the event giving rise to it occurred after the Stage Two Start Date. For the avoidance of doubt, if the Contractor would have no entitlement to the Claim if the event arose after the Stage Two Start Date, the Claim must be assessed as nil;
 - v. the Contractor assumes full responsibility for the design of all elements of the Works (including any design carried out by the Principal before the Stage Two Start Date and before the Date of Acceptance of Tender) (including all time and cost implications); and
 - vi. the Contractor will have no Claim (including where a variation is instructed or agreed) arising out of or in connection with a fault in or any other issues with the Preliminary Design or Principal's Project Requirements, whether the event giving rise to the Claim occurs before or after the Stage Two Start Date.
- (c) Within 7 days of receiving the Principal's written notice accepting the TFP Offer, the Contractor must provide to the Principal the security for Stage Two as specified in the Annexure Part A.
- (d) Where the Principal has accepted a TFP Offer, the Contractor must:

- i. ensure that the Principal's Novated Consultant completes the design of the Works; and
 - ii. allow communication to occur between the Principal's Novated Consultant and the Principal and end users during Stage Two (such communication must be in the presence of a representative of the Contractor, if required by the Contractor).
- (e) If the Principal has submitted a Performance Management System pursuant to clause 3,8(b) and the Principal accepts the TFP Offer, the Contractor must comply with the Performance Management System during Stage Two."

3.10 Rejection of TFP Offer

Insert the following new Clause 3.10:

"3.10 Rejection of TFP Offer

If the TFP Offer is rejected, or if the Contractor fails to submit a TFP Offer in accordance with clause 3.8(b), Stage Two will be deleted from the scope of the Contract, and the Contract will terminate on the Stage One End Date."

4 WARRANTIES

Delete Clause 4 and substitute the following:

"4.1 Contractor's Warranties

Without limiting the generality of Clause 3.1, the Contractor represents and warrants to the Principal that the Contractor:

- (a) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the execution and completion of the work under the Contract;
- (b) has examined and carefully checked any Preliminary Design included in the Principal's Project Requirements and that such Preliminary Design is suitable, appropriate and adequate for the purpose stated in the Principal's Project Requirements;
- (c) shall execute and complete the Contractor's Design Obligations and produce the Design Documents to accord with the Principal's Project Requirements and accept the novation and retain the Consultants for any work the subject of a prior contract with the Principal;
- (d) shall execute and complete the work under the Contract in accordance with the Design Documents so that the Works, when completed, shall:
 - (i) be Fit For Purpose;
 - (ii) comply with all the requirements of the Contract and all Legislative Requirements; and
 - (iii) accord with and satisfy the Principal's Project Requirements.
- (e) has taken into account all of the risks in relation to the Works and has made full allowance for those risks in the Contract Sum;
- (f) has made proper allowance for all matters contained in or capable of inference from the Contract Documents;
- (g) has made proper allowance for all matters which might impact upon the Contractor's ability to complete the Works or to complete the Works within any particular time, cost or quality constraints save for matters for which the Contract expressly permits the Contractor an Entitlement;
- (h) has examined the Site and its surroundings;
- (i) has made proper allowance for any delay, disruption or inconvenience that may result from the Principal's obligations with respect to the Site or the Works save for matters for which the Contract expressly permits the Contractor an Entitlement;
- (j) has informed itself of the nature of the work and materials and Constructional Plant and equipment necessary for the execution of the Works including the facilities at the Site, the times permitted by the relevant authorities for the construction of the Works, the means of access to and egress from the Site and transport facilities for deliveries to the Site and the

constraints thereon applying or to apply from time to time, the availability of car parking and parking for other vehicles both on and off the Site and the restrictions thereon;

- (k) has, or will be able to, obtain all the necessary consents, permits or authorities necessary in order for the Contractor to carry out the work under the Contract;
- (l) is not insolvent within the meaning of section 95A of the *Corporations Act 2001* (Cth) or otherwise and there is no unfulfilled or unsatisfied judgment or court order outstanding against the Contractor;
- (m) is a registered building work contractor (within whatever category as is necessary so as to permit the Contractor to enter into this Contract), pursuant to any Legislative Requirement, and its registration has not been suspended;
- (n) carries the insurance required under any Legislative Requirement for the purposes of performing the work under the Contract and complies with the provisions of any Legislative Requirement in relation to insurance;
- (o) has not relied on any information provided by or on behalf of the Principal, other than any that is part of the Contract Documents; and
- (p) the ownership structure set out in Attachment 9 is correct and not misleading or deceptive.

The warranties set out in this Clause 4.1 together with any warranties that would ordinarily be implied by law, shall continue to operate and be given full effect to notwithstanding any warranty which is required of the Contractor in the Specifications.

4.1A Reliance on Warranties

The Contractor acknowledges that the Principal is relying on:

- (a) the Contractor's advice, skill and judgement in the execution of the work under the Contract; and
- (b) the representations described in Clause 4.1.

4.2 Warranties Unaffected

The Contractor acknowledges that the warranties in Clause 4.1 and the Contractor's Design Obligations shall remain unaffected notwithstanding:

- (a) that design work (including the Preliminary Design) has been carried out by or on behalf of the Principal and included in the Principal's Project Requirements;
- (b) that the Contractor has entered into a novation of any prior contract between the Principal and a consultant of the Principal under Clause 10 and thereafter has retained that consultant in connection with the work under the Contract;
- (c) any receipt or review of, or comment or direction on, the Design Documents by the Superintendent;
- (d) any variation under Clause 40;
- (e) any receipt or review of or comment, agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement by the Principal, the Superintendent, or any contractor, Consultant, agent or employee of the Principal (but not including the Contractor);
- (f) any change made to the Design Documents as a consequence of, or in accordance with a direction of the Superintendent, the Principal or any contractor, Consultant, agent or employee of the Principal (but not including the Contractor); or
- (h) the approval of the Superintendent to commence construction of the Works in accordance with the Design Documents under Clause 8.4.

4.3 Third Party Warranties

Without limiting Clause 9.7, the Contractor shall obtain/procure all usual and customary guarantees, trade warranties and undertakings from subcontractors, suppliers and consultants and take all reasonable steps to ensure that the Principal is named as a beneficiary in all guarantees, trade warranties and undertakings.

If the Principal is not named as a beneficiary in any guarantees, trade warranties and undertakings, the Contractor shall procure to the Principal the benefit of all rights granted by those guarantees, trade

warranties and undertakings (subject to the Contractor retaining a right to make a claim under any such guarantees, trade warranties and undertakings), as follows:

- (a) if any such rights are capable of assignment without further action being required, they are hereby assigned; and
- (b) to the extent that any rights cannot be assigned without further action being required, or are incapable of assignment, then the Contractor holds those rights on trust for the Principal or its nominee. Where any right is held on trust by the Contractor for the benefit of the Principal or its nominee, the Contractor:
 - (i) shall assist the Principal to enforce the right;
 - (ii) hereby irrevocably appoints the Principal as the Contractor's attorney for the purpose of enforcing the right, with full power to act in the name of the Contractor for this purpose; and
 - (iii) shall co-operate fully with the Principal in relation to the enforcement of any such right."

5 SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS

5.1 Purpose

No amendment.

5.2 Provision of Security

No amendment

5.3 Form of Security

Delete the first paragraph and substitute the following:

"The security must be in the form of:

- (a) an unconditional undertaking to pay on demand in a form approved by the Principal and given by a bank licensed under the provisions of the *Banking Act 1959* (Cth) (as amended) to be approved by the Principal; or
- (b) an insurance bond given by an insurance company approved by the Principal; and
- (c) must be redeemable at a location in Adelaide Central Business District."

5.4 Time for Provision of Security

Delete Clause 5.4 and substitute the following:

"Security must be provided to the Principal as follows:

- (a) within 14 days from Date of Acceptance of Tender, the Contractor must provide security for Stage One as specified in Item 13 of Annexure Part A;
- (b) within 7 days after a direction to commence Early Works pursuant to clause 3.6, the Contractor must provide security for the Early Works as specified in Item 13 of Annexure Part A; and
- (c) within 7 days after a TFP Offer is accepted by the Principal pursuant to clause 3.9, the Contractor must provide security for Stage Two as specified in Item 13 of Annexure Part A.

The Principal is not required to give possession of the Site to the Contractor until the required security has been lodged and the Contractor will not be entitled to any extension of time as a result."

5.5 Retention Moneys

No amendment.

5.6 Conversion of Security and Recourse to Retention Moneys

Delete Clause 5.6 and substitute the following:

"5.6 Access to Security

The Principal may have recourse to security and may convert into money security that does not consist of money where:

- (a) the Contractor is in breach of any of its obligations under the Contract; or

- (b) the Principal has or acting reasonably asserts that it is entitled to exercise a right under the Contract in respect of the security, retention moneys or both; or
- (c) an event described in clause 44.11 has occurred in relation to the Contractor; or
- (d) otherwise as permitted under the Contract.”

5.7 Substitution of Security for Retention Moneys

No amendment.

5.8 Reduction of Security and Retention Moneys

Delete clause 5.8 and substitute the following:

“5.8 Reduction of Security

Upon the later of:

- (a) the rectification of defects and omissions in the work under the Contract notified to the Contractor at or prior to the date of the Certificate of Practical Completion has been completed as required by the Superintendent (acting reasonably), and
- (b) the date on which the Contractor has given to the Superintendent all operating manuals, warranties and guarantees for the Works;

the Principal’s entitlement to security and retention monies will be reduced to 2.5% of the Contract Sum.

If at any time after Practical Completion the Superintendent is of the opinion that it is reasonable to further reduce the Principal’s entitlement to security, that entitlement shall be reduced to the amount which the Superintendent determines to be reasonable.

The Principal will release security in excess of the entitlement within 14 days of the entitlement being so reduced.”

5.9 Release of Security and Retention Moneys

Delete the first sentence of clause 5.9 and substitute the following:

“Upon receipt of the security for Stage Two, the Principal will release the security provided for Stage One and the Early Works. The security for Stage Two will be released when required by clause 42.6.”

5.10 Holding of and Interest on Cash Security and Retention Moneys

No amendment.

5.11 Deed of Guarantee, Undertaking and Substitution

No amendment.

6 EVIDENCE OF CONTRACT

6.1 Contract in Absence of Formal Instrument of Agreement

No amendment.

6.2 Formal Instrument of Agreement

Delete clause 6.2 and substitute the following:

“6.2 Formal Instrument of Agreement

The Principal shall prepare in duplicate a Formal Instrument of Agreement and shall, within 28 days of the Date of Acceptance of Tender, forward it to the Contractor with a request that it be executed in the manner directed in writing by the Principal.

Within 7 days after being so requested in writing by the Principal, the Contractor shall execute both copies of the Formal Instrument of Agreement and return them to the Principal.

Within 14 days of receipt from the Contractor of the two copies of the Formal Instrument of Agreement duly executed by the Contractor, the Principal shall execute both copies, have them stamped (unless they are exempt from duty) and forward one copy to the Contractor.

The Superintendent may extend the periods under this Clause 6.2 by notice in writing to the parties.

The Principal shall bear the cost of any stamp duty payable on the Contract.

After clause 6.2 insert the following new clause:

“6.3 Return of Formal Instrument of Agreement by Contractor

If the Contractor does not return two executed copies of the formal instrument of agreement within the timeframe specified in clause 6.2, then, unless advised otherwise in writing by the Principal, the Principal's Acceptance of Tender will be deemed withdrawn, and the Contract terminated, with no compensation payable by the Principal to the Contractor, including for any work under the Contract performed by the Contractor prior to the withdrawal.”

7 SERVICE OF NOTICES

Delete Clause 7 and substitute the following:

7.1 Proper notice is condition precedent for Entitlements

- (a) Notices referred to in the Contract shall be given within the time provided for in the Contract. If the Contractor fails to give a notice in that time, the Contractor shall have no Entitlement in relation to the matters which were or should have been the subject of the notice, including where the Contractor has been delayed by the Principal in the execution of the work under the Contract.
- (b) A notice shall be given in writing and shall include all of the details required under the Contract. For the purposes of Clause 7.1(a), a notice shall be deemed to have not been given in time if it does not contain all of the information required by the Contract.
- (c) The requirement to give a notice including all of the detail required under the Contract cannot be waived by the Superintendent and can only be waived by the Principal by a notice in writing.
- (d) The Contractor acknowledges that:
 - (i) notices are required to be delivered by the Contractor in the forms and within the times provided for under the Contract so that the Superintendent and the Principal have an opportunity to assess the matters the subject of the notice in sufficient time—
 - (A) for the Principal and the Superintendent to consider (in their absolute discretion) taking action to minimise the Principal's exposure to a claim; and
 - (B) for the details surrounding the claim to be assessed by the Superintendent at the time that the claim arises; and
 - (ii) if the notice is not given within the time or does not contain all of the information required under the Contract, an action for damages shall not be satisfactory for the Principal.

7.2 General

A notice, demand, certification, process or other communication relating to the Contract must be in writing in English and may be given by an agent of the sender.

A party may specify another address or email address for the purposes of this clause 7, by notice to the other party.

7.3 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current address for notices;
- (c) sent to the party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (d) sent by email to the email address specified in Items 6A or 8A of the Annexures; or
- (e) send via a proprietary document management system approved by the Principal in writing.

7.4 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially set out in Annexure Items 4, 6 and 8.

- (b) Each party may change its particulars for delivery of notices by notice to each other party.

7.5 Communications by post

Subject to Clause 7.7, a communication is given if posted:

- (a) within Australia to an Australian address, 3 Business Days after posting; or
(b) in any other case, 10 Business Days after posting.

7.6 Communications by email

Subject to Clause 7.7, a communication is given if sent by email on a Business Day, on dispatch of the transmission, unless the sender's server indicates a malfunction or error in transmission, or the recipient immediately notifies the sender of an incomplete transmission.

7.7 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
(b) on a day which is not a Business Day,

it is taken as having been given at 9.00 am on the next Business Day.

8 CONTRACT DOCUMENTS

Delete Clause 8 and substitute the following:

"8.1 Rules of Construction

When construing the Contract Documents the following rules of construction apply:

- (a) in the event of any inconsistency between the Contract Documents, the Formal Instrument of Agreement and these General Conditions of Contract have precedence;
- (b) notwithstanding Clause 8.1(a):
- (i) where inconsistent levels of quality are required, the higher level of quality shall apply;
 - (ii) figured dimensions shall take precedence over scaled dimensions; and
 - (iii) drawings made to larger scales shall take precedence over drawings made to smaller scales;
- (c) where the requirements of quality or any aspect of the work under the Contract is not expressly specified or depicted, the quality shall be consistent with the intended purpose of the Works; and
- (d) drawings showing particular parts of the work under the Contract shall take precedence over drawings for more general purposes,

and in all cases, the interpretation to be followed by the Contractor will be as reasonably determined by the Superintendent.

Where the Contractor considers that there is any ambiguity or discrepancy between the Contract Documents, it shall promptly advise the Superintendent in writing, who shall give the Contractor a direction as to the interpretation to be followed.

Where the Principal or the Superintendent considers that there is any ambiguity or discrepancy between the Contract Documents, the Superintendent shall give the Contractor a direction as to the interpretation to be followed.

The Contractor shall have no Entitlement as a consequence of a direction given by the Superintendent under this Clause 8.1 which is consistent with the rules of construction in this Clause 8.1.

8.2 Errors in Design Documents

Where there is any error, omission, ambiguity, inadequacy or deficiency ("Error") in the Design Documents (including where the Design Documents fail to satisfy the Principal's Project Requirements), then the Contractor shall:

- (a) rectify the Design Documents and the work under the Contract at no cost to the Principal;

- (b) have no Entitlement as a consequence of such Error; and
- (c) indemnify the Principal for any costs, losses and expenses which are incurred by the Principal as a consequence of the Error.

8.3 Supply of Documents by Principal

The Contractor must give notice in writing to the Superintendent of any instruction, document, drawing, detail or other matter which it properly requires from the Principal or the Superintendent for the performance of the Works. Any such notice must be given separately in respect of each such instruction, document, drawing, detail or other matter required by the Contractor, and must not be given prematurely or be required to be addressed by the Superintendent earlier than a reasonable time in advance of the time by which such instruction, document, drawing, detail or other matter is reasonably required for the proper performance of the Works.

Where the Contractor fails to give notice in the manner required by this Clause 8.3, any delay to the Works arising from any failure by the Principal or by the Superintendent to provide any such instruction, document, drawing, detail or other matter to the Contractor is not a ground for extension of time for Practical Completion or for adjustment of the Contract Sum.

8.4 Supply of Documents by Contractor

(a) Preparation and Submission of Design Documents

The Contractor must in undertaking and completing the Contractor's Design Obligations and the design for the Works prepare such Design Documents as are necessary or desirable to carry out the Works. The Contractor must provide 5 copies, or such other number as the Superintendent may specify, of the Design Documents to the Superintendent as soon as reasonably practicable after their preparation and in any event 40 days prior to the intended date or time when construction of that part of the Works is to be commenced.

If the Contractor elects to continue with the Works the subject of the Design Documents prior to:

- (i) the Superintendent approving those documents; or
- (ii) deemed approval under Clause 8.4(c),

and the Superintendent subsequently rejects the Design Documents within 28 days of the Superintendent's receipt of the Design Documents, the Contractor must take all necessary steps to ensure the Works comply with the approved Design Documents (including demolishing any Works which have not been approved) at the Contractor's sole risk and cost.

(b) Design Documents to comply with Contract

The Contractor must ensure that Design Documents submitted to the Superintendent are accompanied by certification in the form in Attachment 11 from the relevant Consultant or the relevant sub-consultant of the Consultant that the design meets the requirements of the Principal's Project Requirements and Legislative Requirements.

(c) Rejection of Design Documents

If the Superintendent notifies the Contractor of its rejection of any Design Documents within 28 days of the Superintendent's receipt of the Design Documents, the Contractor must revise the Design Documents and submit revised Design Documents to the Superintendent.

If the Superintendent does not notify the Contractor of any rejection of Design Documents within 28 days of the Superintendent's receipt of the Design Documents, those Design Documents will be deemed to have been approved.

(d) Issue of Design Documents for Construction

The Contractor must not issue Design Documents for construction if rejected by the Superintendent under this Clause 8.4. Once approval of Design Documents is given or deemed to have occurred the Contractor must not vary that part of the Works without the prior approval of the Superintendent, which will not be unreasonably withheld.

(e) No Contract Sum adjustment due to Disapprovals

The Contractor is not entitled to:

- (i) an adjustment to the Contract Sum; or
- (ii) any adjustment to the Date for Practical Completion,

for any change or revision due to any rejection by the Superintendent under Clause 8.4(c) if the Superintendent is of the reasonable opinion that such change or revision was necessary as a result of any error or failure of the Design Documents to comply with the requirements of the Contract or any reasonable requirements of the Principal previously notified in writing to the Contractor.

(f) Effect of Approval

The Principal and the Superintendent are not bound to review or comment upon the Design Documents or to check the Design Documents for errors, omissions or compliance with the requirements of the Contract.

The Principal's or the Superintendent's receipt of, or review of, or comment on, the Design Documents and any other documents provided by the Contractor, will not relieve the Contractor from responsibility for the Contractor's errors or omissions or departure from the Contractor's Design Obligations or other requirements of the Contract or give rise to any Entitlement on the part of the Contractor.

An approval of Design Documents or an authorisation to proceed with construction under this clause or any other provision of the Contract by the Superintendent does not amount to an acceptance that the Design Documents comply with the Contract and will be construed as an authorisation to proceed.

8.5 Contractor's Design Obligations

Design Obligations

The Contractor:

- (a) acknowledges that the design contained within the Preliminary Design is not intended to be a fully resolved design for the Works;
- (b) acknowledges that the Principal is relying upon the advice, skill and judgment of the Contractor to review and develop the Preliminary Design, and to undertake and arrange the proper co-ordination and finalisation of the design of the Works in accordance with the Contractor's Design Obligations, to meet the Principal's Project Requirements and to enable the proper and efficient construction of the Works;
- (c) agrees that any Consultants engaged by the Contractor must hold the appropriate professional qualifications and membership of the appropriate professional associations;
- (d) must review and correct all errors, omissions and deficiencies in the Preliminary Design to ensure compliance with the Principal's Project Requirements;
- (e) must prepare the Design Documents using Good Construction Practices, in accordance with accepted practices and standards in the Australian engineering and construction industry;
- (f) must ensure the Design Documents are consistent, compatible and properly coordinated;
- (g) must accept the novation of the engagement of, and obtain at its cost all necessary Approvals (including building permits) required for the Works under the Building Legislation;
- (h) must provide to the Superintendent copies of all Approvals and other documents provided by or received by the Contractor to any other Authority.

Collaboration in Design, Planning And Cost Control

The Contractor must manage and lead the design process during Stage One to ensure that it is able to submit a TFP Offer for the completion of the Works that does not exceed the Principal's Construction Cost Estimate.

During Stage One:

- (i) the Contractor must proactively provide advice on all matters concerning planning, plant, structural methods, constructability, servicing systems, programming and progressive cost control.
- (ii) the Contractor must propose any alternative construction methods (with the relevant documentation) that may achieve an economic solution that satisfies the aesthetic and functional design requirements of the brief for the Principal's consideration.

- (iii) the Contractor must develop a plan for the pro-active investigation and management of potential site and building conditions with the objective of minimising the impact on budget and program through comprehensive documentation of the requirements.
- (iv) the Contractor must manage the process of contract documentation with the objective of achieving comprehensive and complete documents.
- (v) the Contractor must develop staging plans and construction programs incorporating the maximum possible flexibility and in the development of these plans must consult fully with the Principal and with nominated representatives of the Principal including consultation when there are any proposed amendments to the plans and programs.
- (vi) the Contractor and its Consultant must attend meetings with the Principal on matters of design, construction, budget and program as required. The Contractor must provide to the Principal information on a monthly basis (in a project summary report) on the status on time, cost and specification issues, identifying any risks which require attention and making proposals for risk management of those issues.
- (vii) the Contractor must contribute advice to the Principal to handle sensitive political and media issues that may arise during the course of the project and liaise with surrounding and adjacent building owners and users.
- (viii) The Contractor must:
 - 1. advise on design and constructability;
 - 2. provide costing advice to the Principal during the preparation of progressive estimates of cost;
 - 3. assist in the costing of acceptable alternatives to enable budgets to be achieved and participate in value management exercises and savings strategies as required;
 - 4. propose innovations; and
 - 5. collaborate and consult with the Principal and the Lead Agency in the development of the design and documentation
- (a) Where the Principal accepts a TFP Offer under clause 3.9, the Contractor assumes responsibility for all design carried out by or on behalf of the Principal (including any design carried out before the Stage Two Start Date and before the Date of Acceptance of Tender) and before submitting Contractor's Documents to the Principal in accordance with clause 8.4 the Contractor (at its own cost) must:
 - (i) check, and notify the Principal of details (together with appropriate supporting documents) of any fault in the Preliminary Design;
 - (ii) amend the documents to correct faults so that, on Practical Completion, the Works and every part will be fit for the purposes stated in, incorporated into or reasonably inferred from the Principal's Project Requirements; and
 - (iii) accept and adopt the Design Documents as if the Contractor prepared them.

8.6 Design amendments

From the Stage Two Start Date, the Contractor must not make a design amendment to the existing design unless:

- (a) the Contractor notifies the Superintendent and the Principal of the design amendment in writing in accordance with this Clause 8.6;
- (b) the design amendment is necessary to comply with the requirements of the Contract where the requirements of the Contract impose a greater or higher requirement, standard, level of service or scope than that existing in the existing design; and
- (c) the Contractor:
 - (i) demonstrates to the satisfaction of the Superintendent and the Principal (acting reasonably) that the design amendment is minor, otherwise complies with the requirements of the Contract, is consistent with the design intent in the existing design and does not

result in a lessening of any standard, level of service, scope or requirement for any work set out in the existing design, including any reduction in:

- (A) capacity;
- (B) durability;
- (C) maintainability;
- (D) aesthetics of visible features;
- (E) whole of life performance;
- (F) functional performance;
- (G) environmental protection;
- (H) safety;
- (I) security;
- (J) community amenity;
- (K) community benefits; or
- (L) user benefits,

of any part of the Works, and the Superintendent notifies the Contractor in writing that both the Superintendent and the Principal are satisfied, acting reasonably, that the change meets the requirements of this Clause 8.6 and that they have no objection to the proposed design amendment; or

- (ii) notwithstanding the Contractor has not demonstrated to the reasonable satisfaction of the Superintendent and the Principal that the design amendment meets the requirements set out of this Clause 8.6, the Principal, in its absolute discretion, consents to the change in writing (such consent may be conditional on terms set out in the consent).

8.7 Submission of design amendments

The Contractor must:

- (a) promptly and progressively submit for the Superintendent's review, at least 3 hard copies and 1 electronic copy of all proposed design amendments, together with:
 - (i) details of the proposed design amendment including:
 - (A) any savings to the Principal and corresponding reduction to the Contract Sum arising out of or in connection with the design amendment; and
 - (B) any proposed amendment to the Date for Practical Completion arising out of or in connection with the design amendment;
 - (ii) details of the reasons for the proposed design amendment;
 - (iii) details demonstrating the design amendment meets the requirements set out in Clause 8.6;
 - (iv) a signed statement from each Consultant certifying that the change meets each of the requirements set out in Clause 8.6; and
 - (v) any other information and supporting documentation the Superintendent reasonably requires,

in a timely manner and at such times so that the submission and review of the design amendment in accordance with this clause will not delay to the Works; and

- (b) allow the Superintendent and the Principal at least 28 days to review and comment on the design amendment.

Where the Contractor proposes a design amendment in accordance with this Clause 8.7, the Superintendent may, in its absolute discretion, by written notice to the Contractor:

- (c) reject the proposed design amendment on the basis that the change does not meet the requirements set out in Clause 8.6;
- (d) request that the Contractor amend and resubmit the proposed design amendment in accordance with this Clause 8.7 on the basis that the Contractor has not provided all of the

detail and information required, in which case the Contractor must resubmit the proposed design amendment in accordance with this Clause 8.7;

- (e) notify the Contractor that the Superintendent and the Principal are satisfied that the change meets the requirements set out in Clause 8.6 and that they have no objection to the proposed design amendment; or
- (f) notwithstanding the Contractor has not demonstrated to the satisfaction of the Superintendent and the Principal that the change meets the requirements set out in Clause 8.6 notify the Contractor that the Principal, in its absolute discretion, consents to the change on terms set out in the written consent.

If the Superintendent does not provide the Contractor a written response to the proposed design amendment within 21 days, the Contractor must provide a further written notice to the Superintendent, requesting that the Superintendent respond to the requested design amendment. The Superintendent must then respond within 14 days of the date of the further written notice.

8.8 Acknowledgements re design amendments

The Contractor acknowledges and agrees that:

- (a) neither the Superintendent nor the Principal are obliged to accept any proposed design amendment;
- (b) it will not be entitled to claim any additional cost or expense or any adjustment to the Contract Sum associated with any costs it incurs arising out of or in connection with the development of any proposed design amendment and the Contractor's compliance with this clause irrespective of whether or not the Superintendent or Principal accept the proposed design amendment; and
- (c) any notices, submission, review, rejection, acceptance, request for an amended design amendment or resubmission of a proposed design amendment, will not:
 - (i) relieve the Contractor of its responsibility to properly program and execute the Works and to bring the Works to Practical Completion by the Date for Practical Completion; or
 - (ii) constitute a variation or give rise to any additional cost or expense, any adjustment to the Contract Sum, any extension of time or to any claim otherwise at law.

8.9 Availability of documents

Whilst work under the Contract is being performed, one complete set of the Principal's Project Requirements, the Design Documents and other written information supplied by the Principal, the Superintendent and the Contractor, the Contractor's Consultants and subcontractors, shall be kept by the Contractor at the Site or other location approved in writing by the Principal and shall be available at all times for reference by the Principal, the Superintendent and any persons nominated in writing by either of them.

During the manufacture or assembly of any significant part of the work under the Contract away from the part of the Site where the Works are to be constructed, a set of the drawings and written information relevant to that part of the work shall be kept by the Contractor at the place of manufacture or assembly and shall be available for reference by the Principal, the Superintendent and any persons nominated in writing by either of them.

8.10 Shop Drawings

The Contractor shall prepare shop drawings as part of the Design Documents as required by the Contract which shall—

- (a) be provided in relation to all trades and services requested by the Superintendent including but not limited to structural steel, precast concrete units, windows, fire services, mechanical services, electrical services, hydraulic services, air conditioning services and ventilation services, doors and security systems;
- (b) take account of Site dimensions, actual dimensions and access requirements for installation and servicing of particular brands and models of equipment supplied;
- (c) co-ordinate with the building structure, finishes and other services in accordance with the design, details and general arrangements;

- (d) comply with the requirements of Authorities;
- (e) show sufficient information to enable the Superintendent and other appropriate consultants to check that the equipment can be installed, operated, adjusted and maintained in the manner for which the system into which they are to be incorporated was designed;
- (f) have all building details such as columns, stairways, floors, service and plant and the like numbered in accordance with the architectural drawings; and
- (g) be submitted in a suitable scale and on standard sheet sizes as agreed with the Superintendent.

8.11 Design risk

The Contractor assumes all risks and sole responsibility for the design of the Works including without limitation all risks in relation to:

- (a) the Preliminary Design; and
- (b) the co-ordination of all Design Documents;

notwithstanding the preparation by others of the Preliminary Design and notwithstanding any review, comment upon, changes requested by, and/or approval of any Approved Design Documents by or on behalf of the Principal, the Superintendent or any Authority.

8.12 Signage

The Contractor must not erect any signage which publicises its association with the Works and the Site without the prior written approval of the Principal, which approval may be withheld in the absolute discretion of the Principal.

8.13 Confidential information

The Contractor must not, and must ensure that its Consultants, subcontractors, employees and agents do not, use or disclose to any person or make public the Confidential Information, for any purposes other than performance of the work under the Contract except:

- (a) if the disclosure is to a Consultant or subcontractor for the purposes of the Contract, and the Contractor has obtained an undertaking of non-disclosure in favour of the Principal on the same terms as this Clause 8.13;
- (b) if the information is in the public domain (other than as a result of a breach of the Contract by the Contractor);
- (c) if necessary for the performance of the Works;
- (d) as required by law;
- (e) if disclosure is made for the purpose of obtaining legal advice; or
- (f) if disclosure is authorised in writing by the Principal.

The Contractor must take or cause to be taken reasonable precautions as necessary to maintain secrecy and confidentiality and prevent disclosure, including if required by the Principal by obtaining confidentiality agreements in a form satisfactory to the Principal with its Consultants, subcontractors, employees and agents.

This Clause 8.13 shall survive termination of the Contract.

8.14 Media releases

The Contractor shall not issue any information, publication, document or article for publication concerning the project in any media (including the company website) without prior approval of the Principal, which approval shall be in the Principal's sole discretion. The Contractor shall refer to the Principal any enquiries concerning the project from any media."

9 ASSIGNMENT AND SUBCONTRACTING

9.1 Assignment

Delete the Clause and substitute the following:

“The Contractor shall not, without the prior written consent of the Principal:

- (a) assign, novate or otherwise transfer or dispose of, or encumber or grant a security interest in respect of, the Contract or the rights of the Contractor under or in connection with the Contract; or
- (b) allow a Change of Control to occur in relation to the Contractor.”

9.2 Subcontracting (Including Work Performed by Consultants)

Delete Clause 9.2 and substitute the following:

“9.2 Subcontracting (Including Work Performed by Consultants)

The Contractor shall not without the written approval of the Superintendent, which approval shall not be unreasonably withheld—

- (a) allow a subcontractor to assign a subcontract or any payment or any right, benefit or interest thereunder; or
- (b) subcontract or allow a subcontractor to subcontract any work described in the Annexure Item 23.

If the value of work under the Contract subcontracted to a subcontractor exceeds \$50,000, the subcontract for that work shall incorporate AS 4303—1995 General conditions of subcontract, AS 2545—1993 Subcontract conditions or AS 4122—2000 General conditions of contract for engagement of consultants, subject only to such amendments and annexure entries as are necessary to reflect the conditions of this Contract.

If the value of work under the Contract subcontracted to a subcontractor is less than \$50,000, the subcontract for that work shall incorporate:

- (i) payment provisions with the same times for payment as the payment provisions in AS 4303—1995 General conditions of subcontract, AS 2545—1993 Subcontract conditions or AS 4122—2000 General conditions of contract for engagement of consultants (as applicable); and
- (ii) security provisions as in AS 4303—1995 General conditions of subcontract, AS 2545—1993 Subcontract conditions or AS 4122—2000 General conditions of contract for engagement of consultants (as applicable);

subject only to such amendments and annexure entries as are necessary to reflect the conditions of this Contract.

Any Subcontract Conditions shall not impose terms, conditions or risk on a subcontractor that is materially different to those imposed on the Contractor under this Contract.

The Superintendent may require Selected Subcontract Work to be undertaken by trade/subcontractors registered in the Department for Infrastructure and Transport Building and Construction Project Prequalification System (the Department Prequalification System).

With a request for approval under this Clause 9.2, and at any time during the construction of the Works when directed, the Contractor shall provide to the Superintendent particulars in writing of the work to be subcontracted and the name and the address of the proposed subcontractor and include the Department Prequalification System registration details as required.

The Contractor shall provide to the Superintendent other information that the Superintendent reasonably requests, including the proposed subcontract documents without prices.

If the Superintendent’s approval is given subject to any conditions, including the requirement for a subcontractor to be registered in the Department Prequalification System, the Contractor must not subcontract the work except in accordance with the conditions of the approval.

Where the contract requires certain parts of the work to be undertaken by subcontractors registered in the Department Prequalification System, the refusal of the Superintendent to approve a subcontractor shall not be deemed to have been unreasonably withheld if the subcontractor proposed is not registered in the Department Prequalification System.

Within 14 days after a request by the Contractor for approval, the Superintendent shall advise the Contractor of approval or the reasons why approval is not given.

Approval may be conditional upon the subcontract including—

- (A) provision that the subcontractor shall not assign or subcontract without the consent in writing of the Contractor;
- (B) a condition that the subcontract must include provisions stipulated by the Superintendent which the Superintendent considers reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Principal;
- (C) provisions that if the Contract is terminated and upon the subcontractor being paid the sum certified by the Superintendent as owing to the subcontractor, the Contractor and the subcontractor shall, after the Principal has done so, promptly execute a deed of novation in the form set out in Attachment 3 to these Special Conditions of Contract.

For the purpose of effecting such novation only, the Contractor hereby irrevocably appoints the Superintendent to be the Contractor's attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the Contractor accordingly; and

- (D) where the subcontractor is a Consultant, provision that the subcontractor shall effect and maintain professional indemnity insurance on the same terms as are required of the Contractor under Clause 21.

9.3 Contractor's Responsibility

No amendment.

9.4 Selected Subcontract Work

No amendment.

9.5 Provisions Applying Generally to Selected Subcontract Work

No amendment.

9.6 Termination of Selected Subcontract

No amendment.

9.7 Subcontractor Warranties

Insert the following new Clause 9.7:

"9.7 Subcontractor Warranties

The Contractor shall:

- (a) deliver to the Principal before Practical Completion, Subcontractor Warranty Deeds from the subcontractors and suppliers who provide the work and materials identified in Attachment 8. The warranty periods specified in the Subcontractor Warranty Deeds must be for the periods identified for that subcontractor or supplier in the Subcontractor Warranties; and
- (b) deliver to the Principal before Practical Completion, subcontractor warranties from any other subcontractor or supplier for any part of the Works with warranty periods consistent with the periods specified in the Subcontractor Warranties or, if not specified, as are reasonably and commercially obtainable.

If prior to entering into a subcontract or supply agreement, a subcontractor or supplier identified in Attachment 8 informs the Contractor that it will not provide the form of the Subcontractor Warranty Deed, the Contractor must submit to the Superintendent for approval (which approval must not be unreasonably withheld) the form of warranty that the subcontractor or supplier is willing to provide in lieu of the Subcontractor Warranty Deed.

The Contractor shall use its best endeavours to ensure that each such warranty is capable of assignment to any successor in title of the Principal and shall ensure that each such warranty is on normal commercial terms in accordance with industry standards and is of the type typically obtained by a principal in the position of the Principal for projects of the size and value commensurate with the Project.

Where any subcontractor or supplier has provided warranties or guarantees in relation to any work, plant, equipment or material incorporated into the Works (other than work and materials identified in Attachment 8 in relation to which the preceding paragraph applies) which have not expired within 10 Business Days after the expiration of the Defects Liability Period then—

- (c) so far as they are capable of assignment, the Contractor shall, within 10 Business Days of the expiration of the Defects Liability Period, assign to the Principal the benefit of such warranties and guarantees; and
- (d) so far as they are not capable of assignment, the Contractor by this Clause 9.7 irrevocably appoints the Principal its attorney for the purposes of enforcing the benefit of those warranties and guarantees and shall provide the Principal with copies of those warranties and guarantees prior to the Date of Practical Completion or within 5 Business Days of an earlier request from the Principal.”

10 NOVATION

Delete Clause 10 and substitute the following:

- “(a) The Contractor must:
 - (i) when directed by the Principal, execute a Deed of Novation for each of the Novated Consultants in the form of Attachment 4;
 - (ii) not amend an agreement with a Novated Consultant without the written consent of the Principal;
 - (iii) not terminate an agreement with a Novated Consultant without the written consent of the Principal;
 - (iv) before the appointment of any Consultant:
 - (A) notify the Superintendent in writing of the name of the proposed consultant; and
 - (B) provide any information reasonably required by the Superintendent concerning the proposed consultant;
 - (v) notify the Superintendent in writing of its intention to terminate an agreement with a Consultant as soon as practicable and provide reasons for its decision;
 - (vi) engage a replacement Consultant having appropriate professional qualifications and membership of appropriate professional associations where an agreement with a Consultant has been terminated or frustrated; and
 - (vii) allow the Principal access to meet with any of the Consultants for the purpose of consultation in relation to the work under the Contract at no cost to the Principal.
- (b) The Contractor warrants to the Principal that, by executing any Deed of Novation, the Contractor has undertaken all necessary enquires and satisfied itself that the Novated Consultant is suitable to perform the relevant consultancy services, and that the Contractor’s costs (including any profit, overheads, attendance and all other mark-ups) for and arising out of such novation are included in the Contract Sum.
- (c) The Contractor warrants that the costs payable to a Novated Consultant is an agreed not to exceed upper limit sum, and that the Novated Consultant must provide evidence of all costs, fees and disbursements claimed for completed services and must provide invoices and receipts for the costs actually claimed.
- (d) The Contractor shall have no entitlement to any claim for:
 - (i) any amounts in excess of the Novated Consultant’s “not to exceed upper limit sum” (as adjusted by approved variations in accordance with the contract);
 - (ii) any costs, fees or disbursements not incurred by the Novated Consultant and the Contract Sum shall be adjusted accordingly.
- (e) The Principal will have no obligation or liability to the Contractor for any act, omission, default, breach of contract by or insolvency of a Novated Consultant.
- (f) The Contractor irrevocably appoints the Principal as its attorney with full power and authority to execute the Deeds of Novation referred to in this Clause 10 on behalf of the Contractor if the Contractor fails to execute that Deed of Novation within 3 Business Days of being requested in writing to do so by the Principal. (g) Where a novation has occurred, the Contractor acknowledges that it consents to any Novated Consultant who has design responsibilities, notifying the Principal (or any of the Principal’s representatives or delegates

under the Contract) of any change to the design where the Novated Consultant is of the view that the change has the potential to:

- (i) be inconsistent with or otherwise not satisfy the project outcomes or other Principal's requirements, including as set out in the Principal's Project Requirements;
- (ii) have an impact on whether the Works are fit for their purpose;
- (iii) materially affect the end user requirements, including but not limited to performance, life cycle costing, operational requirements, functionality, warranties and maintenance requirements,

and any such notification by the Novated Consultant does not, in whole or in part, relieve the Contractor from its obligation to comply with the requirements of the Contract.

11 PROVISIONAL SUMS

No amendment.

12 LATENT CONDITIONS

Delete Clause 12 and substitute the following:

“12.1 Notification

If during the execution of the work under the Contract, the Contractor encounters on the Site or its surroundings physical conditions (other than climatic conditions or conditions arising from climatic conditions) including artificial obstructions, which the Contractor considers:

- (a) differ materially from the conditions which would have been ascertainable by the Contractor if the Contractor had:
 - (i) examined all information made available in writing by the Principal to the Contractor for the purpose of tendering; and
 - (ii) examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and
 - (iii) inspected the Site and its surroundings; and
- (b) could not reasonably have been anticipated at the time of the submission by the Contractor of the TFP Offer by a person experienced and competent in carrying out work of the type with which the Contract is concerned,

the Contractor must, as soon as practicable and no longer than 7 days after encountering the conditions and where possible before the physical conditions are disturbed, give written notice of the conditions to the Superintendent.

12.2 Provision of Details

Where the Contractor provides written notice to the Superintendent pursuant to Clause 12.1, the Contractor must specify in the written notice:

- (a) the physical conditions encountered, in what respects they differ materially and why they could not reasonably have been anticipated;
- (b) the additional work and additional resources which the Contractor considers necessary to deal with the physical conditions;
- (c) the time the Contractor anticipates will be required to deal with the physical conditions and the expected delay in the completion of the Works; and
- (d) the Contractor's estimate of the cost of the measures necessary to deal with the physical conditions.

In the event the Superintendent reasonably requires other details, those details shall be provided by the Contractor to the Superintendent.

12.3 Superintendent's Direction

After receipt from the Contractor of a notice under Clause 12.1 the Superintendent must determine whether it is satisfied that the physical conditions are physical conditions to which Clauses 12.1 applies. If the Superintendent determines that the physical conditions are physical conditions to which Clauses 12.1 applies and:

- (a) the Superintendent considers that a variation to the work under the Contract is necessary, the Superintendent must, upon making the determination, order a variation under Clause 40 of the General Conditions of Contract;
- (b) the Superintendent does not consider that that a variation to the work is necessary but is satisfied that the physical conditions have or will cause the Contractor to unavoidably incur more cost than the Contractor could reasonably have anticipated at the time of tendering, the Superintendent must determine that a valuation must be made under clause 40.5.

12.4 Time Bar

In making a valuation for the purposes of a variation ordered by the Superintendent under Clause 12.3 or a determination under clause 12.3(b), regard shall not be had to the value of additional work carried out, additional Constructional Plant used or extra cost incurred more than 28 days before the date on which the Contractor gives the written notice required by Clause 12.1.

13 PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

Delete Clause 13 and substitute the following:

“13 INTELLECTUAL PROPERTY RIGHTS

13.1 Foreground IP

- (a) All rights in, and title to, the Foreground IP vests in the Principal upon its creation.
- (b) The Contractor will do all things (including signing documents and procuring the signing of documents by third parties) to give effect to clause 13.1(a).
- (c) The Principal grants the Contractor a licence to use the Foreground IP for the sole purpose of performing its obligations under the Contract.
- (d) The Contractor represents and warrants that the Foreground IP does not infringe the IP rights of any third party and will indemnify and keep indemnified the Principal against any such Claims.

13.2 Background IP

- (a) The Contractor grants the Principal an irrevocable, royalty-free, world-wide, non-exclusive licence to use apply, develop, manufacture, use, reproduce, adapt or otherwise modify Background IP for the purposes of the Works including the modification, repair, maintenance and upgrade of the Works throughout its life.
- (b) The Principal may sub-licence its rights under clause 13.2(a) and may assign its rights under clause 13.2(a) to the owner of the site, on such terms as it thinks fit.
- (c) The Contractor will ensure that all subcontractors and consultants of the Contractor grant the Contractor such rights as may be necessary to give effect to clause 13.2(a).
- (d) The Contractor represents and warrants that the Background IP does not infringe the IP rights of any third party and will indemnify and keep indemnified the Principal against any such Claims.

13.3 Delivery of IP

- (a) Without limiting any other provision of the Contract, the Contractor will promptly upon request by the Superintendent provide the Principal with written details of all Foreground IP, Background IP and Build Information.
- (b) Upon request by the Superintendent, the Contractor will promptly deliver copies of the Foreground IP, Background IP and Build Information to the Principal in hard copy and/or electronic form, as directed by the Superintendent.

13.4 Moral rights

The Contractor must procure from every person who is an author for the purposes of Part IX of the *Copyright Act 1968* (Cth) of Foreground IP or Background IP, a written consent which is valid and effective under the *Copyright Act 1968* (Cth) and signed by that person by which that person irrevocably and unconditionally consents to the Principal:

- (a) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to the Foreground IP and Background IP anywhere in the world in whatever form any of the Principal thinks fit, including the making of any distortions, additions or alterations to the Foreground IP and Background IP or any adaptation thereof, or to any part of the Foreground IP or Background IP in a manner which, but for the consent, infringes or may infringe that person's moral rights (as defined in *Copyright Act 1968* (Cth) or equivalent laws world-wide) in the Foreground IP or Background IP; and
- (b) taking any action referred to in clause 13.4(a) without making any identification of the author of the Foreground IP or Background IP."

14 LEGISLATIVE REQUIREMENTS

Delete Clause 14 and substitute the following:

“14.1 Compliance

The Contractor shall satisfy all Legislative Requirements except those in Annexure Item 27 or directed by the Superintendent to be satisfied by or on behalf of the Principal.

The Contractor, upon finding that a Legislative Requirement is at variance with the Contract or the Principal's Project Requirements, shall promptly give the Superintendent written notice thereof.

Nothing in this Contract derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).

14.2 Changes

If a Legislative Requirement:

- (a) necessitates a change:
 - (i) to the Principal's Project Requirements;
 - (ii) to the Works;
 - (iii) being the provision of services by an Authority in connection with work under the Contract; or
 - (iv) in the Total Fixed Price;
- (b) comes into effect after the time of submission of the Contractor's TFP Offer but could not reasonably then have been anticipated by a competent contractor if it had exercised Good Construction Practices; and
- (c) causes the Contractor to incur more or less cost than otherwise would have been incurred, except to the extent that the Contract provides for reimbursement in respect of a requirement referred to in this Clause 14.2, the Contractor shall bear the cost of complying with the requirement, whether or not the requirement existed at the time of submission of the Contractor's TFP Offer.

In order for the Contractor to have a valid Claim for an amendment to the Contract Sum under this Clause 14.2, the Contractor must, prior to commencing any works or incurring any costs, in connection with any Legislative Requirement which has the effect specified in paragraphs (a) to (c) above, comply with the process specified in Clause 40.

14.3 Compliance with Safety Legislation and Instructions

The Contractor:

- (a) must carry out the Work in a safe manner and in accordance with *the Work Health and Safety Act 2012* (SA) and the WHS Regulations (**WHS Law**), including all relevant Codes of Practice under the WHS Law and ensure that all subcontractors and other workers (including professional and supervisory personnel) are informed of safe work practices;
- (b) must immediately comply with any directions on safety issued by any relevant authority or by the Superintendent;

- (c) must comply with all legislative requirements relating to the safety of persons on or about the Works (including the WHS Law);
- (d) must ensure that the Contractor's sub-consultants and sub-contractors comply with the requirements of Clause 14.3(a) to (c);
- (e) acknowledges that for the purposes of the WHS Law:
 - (i) that the Contractor is the person in control of the workplace in connection with the work under the Contract; and
 - (ii) that the Principal does not have control of the workplace in connection with the work under the Contract;
- (f) must accept its appointment as, and comply with the obligations of, 'Principal Contractor' for the Site under the WHS Law and in that regard the Principal appoints the Contractor as the 'Principal Contractor' for the purpose of WHS Law from the date of this Contract to the date of Practical Completion unless revoked earlier by the Principal;
- (g) must, to the extent that the work under the Contract involves the design of a structure:
 - (i) ensure that the work under the Contract complies with the 'Safe Design of Structures' Code of Practice approved under section 274 of the WHS Law or as amended or varied from time to time;
 - (ii) ensure, so far as is reasonably practicable, that the structure is designed to be without risks to the health and safety of persons when the structure is manufactured, assembled or used;
 - (iii) carry out, or arrange for the carrying out, of any calculations, analysis, testing or examination that may be necessary for the contractor to discharge its obligations under this clause; and
 - (iv) provide all relevant and requested information relating to the design of the structure under Clause 14.3(g)(i) or the testing of the structure under Clause 14.3(g)(ii) to each person who is provided with the design for the purposes of the work under the Contract;
- (h) must put in place a safety management plan that adequately addresses its obligations under this Contract and the WHS Law and provide a copy of that plan to the Principal; and
- (i) must ensure that:
 - (i) the Site is maintained in a safe condition;
 - (ii) the means of access to and egress from the Site are safe; and
 - (iii) the Site, and any fixtures or fittings within the site are in a condition that allows people who might work in, on or about the site to be safe from injury and risks to health.
- (j) must notify the Superintendent promptly of any matter affecting work health and safety where consultation with the Superintendent is necessary; and
- (k) must consult, cooperate and coordinate with the Superintendent and his/her delegate and in accordance with the WHS Law.

If the Contractor fails to comply with any of its obligations as a Principal Contractor, the Principal may have the Principal Contractor obligations carried out by the Principal or by others and the cost incurred by the Principal in having those obligations carried out will be a debt due from the Contractor to the Principal.

Further, the Principal may have the Principal Contractor obligations carried out by the Principal or by others for any other reason.

The Contractor must comply with any directions of the Principal (as Principal Contractor) or any other Principal Contractor appointed by the Principal.

14.4 Hazardous Substances

- (a) Where the Contractor intends to bring onto the Site any material or substance which may be hazardous to health and safety, the Contractor must, prior to doing so, give information to the Principal and to the Superintendent in respect of such substances.
- (b) The information must include plans for the safe handling, storage and use of the substance and precautions to be taken.

- (c) Where the substance to be introduced is a chemical, the information given to the Principal and Superintendent must include a material safety data sheet.

14.5 Environmental Matters Generally

- (a) Without derogating from the Contractor's responsibilities as set out elsewhere in this Contract the Contractor must observe and comply with every legislative requirement relating to the protection of the environment, nature conservation, vegetation management, planning and development approvals or dangerous goods management (**Environmental Law**) that applies to any location where work under the Contract is to be carried out or which is in any way applicable to the work under the Contract.
- (b) The Contractor must ensure that the Works on the site are left in such a condition that they comply with all Environmental Laws or requirements under Environmental Laws of any authorities having jurisdiction in relation to matters concerning the environment or the Site, and are suitable for their stated purpose.
- (c) In addition to the requirements of Clause 14.4 if the Contractor causes or permits any Hazardous Contaminant (as that term is defined in the *Environment Protection Act 1993 (SA)*) to contaminate either the Site or the surrounding environment, the Contractor must promptly notify the Principal and the Superintendent of the details and promptly remediate the relevant contamination to the satisfaction of the Principal.
- (d) If the Contractor receives any notice, order or direction from a government authority under an Environmental Law or any complaint, claim or notice from any person relating to environmental management, the Contractor must forthwith provide a copy to the Principal and to the Superintendent together with details of the action taken or proposed to be taken by the Contractor in response.

14.6 Noise and Vibration

- (a) Without limiting the Contractor's obligations with respect to noise set out in the Contract Documents, the Contractor must comply with the requirements of Australian Standard AS2436 'Guides to Noise Control on Construction, Maintenance and Demolition Sites'.
- (b) Without limiting any other obligations under this Contract, the Contractor must conform to the provisions of all legislative requirements relating to noise control during construction, with particular reference to the nature of the work under the Contract.

14.7 Air Pollution

- (a) The Contractor must comply with all legislative requirements concerning air pollution.
- (b) The Contractor must ensure that all construction facilities erected on the site by the Contractor or any subcontractors are designed and operated to minimise the emission of smoke, dust, cement dust and other objectionable matter into the atmosphere.

14.8 Discharge of Liquids

- (a) The Contractor must take all proper precautions to minimise the impact of discharge of water containing visible suspended matter into waterways on or adjacent to the site.
- (b) The Contractor shall take all precautions necessary to prevent the discharge into waterways of any oils or similar materials or of any foaming or non-biodegradable detergents. All plant and equipment maintenance must be carried out on a paved area, the drainage from which must be provided with approved oil separation traps before discharge into any waterway. The Contractor is responsible for regular removal of deleterious matter from such traps and its disposal by approved methods."

14.9 Development approval and Certification

Before building work is undertaken, the Contractor must, at its cost:

- (a) obtain development approval under the *Planning, Development and Infrastructure Act 2016 (SA)* for the Works; and
- (b) have the building work or building work stage certified by a private certifier as complying with the provisions of the Building Rules (as if such certification was required under the *Planning, Development and Infrastructure Act 2016 (SA)*) and provide a copy of the certification to the Principal. In this clause "building certifier" and "Building Rules" have the meanings given to them in the *Planning, Development and Infrastructure Act 2016 (SA)*.

The Contractor must provide evidence to the Principal that the building certifier is independent and is able to act and exercise the functions of a building certifier in accordance with the *Planning, Development and Infrastructure Act 2016 (SA)*.

14.10 ICAC

The Principal is a public authority for the purposes of the *Independent Commissioner Against Corruption Act 2012 (SA)* ("ICAC Act"). For the term of the Contract the Contractor is considered a public officer under the ICAC Act and must comply with the ICAC Act and the directions and guidelines published by the Independent Commissioner Against Corruption."

15 PROTECTION OF PEOPLE AND PROPERTY

Insert before the first paragraph new subclause "15.1 Protection of People and Property"

Insert the following at the end of the Clause:

"Without limiting the generality of the foregoing, the Contractor shall:

- (a) provide barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, traffic lighting, safety helmets and clothing, remove obstructions and protect the services;
- (b) strictly conform to all other legislative requirements relating to the safety of persons on or about the site;
- (c) ensure that all tackle, gear, stagings, scaffolding, ladders, winding arrangements and other equipment used in conjunction with the works shall conform to the requirements of any authority and any reasonable requirements imposed by the Superintendent;
- (d) immediately discontinue any practice or remove any equipment considered by the Superintendent to be dangerous;
- (e) remove from the works promptly any representative of a person employed by the Contractor who shall in the opinion of the Superintendent, create any danger on or about the works, or may be guilty of misconduct;
- (f) comply in all respects with all prudent industry standards of accident control and safety and any reasonable directions of the Principal or the Superintendent in respect of accident control and safety;
- (g) supply personal safety equipment for the Contractor's workers at its own expense; and
- (h) supply a full-time site safety supervisor at its own expense."

Insert the following new subclauses:

15.2 Work Health and Safety Management Plan

The Contractor must:

- (a) prepare, implement and maintain (including as required, review and revise) a Work Health and Safety Management Plan in accordance with the requirements of the Contract (including the Building Projects WHS Requirements) and the WHS Law ("WHS Management Plan");
- (b) without in any way limiting its obligations under the WHS Law or this Contract, comply (and ensure that its employees, agents, subcontractors and representatives comply) with the WHS Management Plan;
- (c) provide a copy of the WHS Management Plan to the Superintendent before commencing the work under the Contract; and
- (d) not commence the work under the Contract until the Superintendent has advised that the WHS Management Plan is suitable.

The Contractor is not entitled to make any Claim in connection with any direction as to suitability, review, approval of, or modification to, the WHS Management Plan as directed by the Superintendent.

15.3 Safety Requirements

Without limiting any other provision in the Contract, the Contractor must:–

- (a) comply (and ensure that its employees, agents, subcontractors and representatives comply) with all requirements in the Contract relating to work health and safety (including the Building Projects WHS Requirements) and the WHS Law;
- (b) undertake site management including but not limited to site access, inductions and pre-start meetings;
- (c) ensure that all workers performing work on the Site or in relation to the work under the Contract have the appropriate competencies, are trained in relevant procedures and have the appropriate qualifications, certificates and licences to assist the Contractor to perform the work under the Contract;
- (d) ensure that all workers (including any subcontractors engaged by the Contractor and any including professional and supervisory personnel) are informed of safe work practices applicable to their performance of the work under the Contract;
- (e) ensure that all work health and safety plans, policies, procedures and safe work method statements are prepared and maintained in accordance with the WHS Law and the Building Projects WHS Requirements;
- (f) comply with any reasonable and lawful direction by the Principal with respect to work health and safety at the Site;
 - i. consult, cooperate and coordinate with the Principal where overlapping work health and safety obligations exist with respect to the work under the Contract; and
 - ii. if the Contractor subcontracts any part of the work under the Contract, include the relevant provisions of this Clause 15 in the subcontract.

15.4 Plant Safety

The Contractor must:

- (a) ensure that all plant is safe to use and properly maintained;
- (b) provide specific information with all plant about how to operate it safely; and
- (c) provide operator(s) who shall:
 - i. provide and use all safety and protective equipment necessary for the safe operation of the plant and the safety of the operator;
 - ii. be qualified (and licensed if required by law), skilled and competent to operate the plant; and
- (d) use reasonable skill and care in operating the plant.

15.5 Work Health and Safety Audits

- (a) The Principal or his/her agents may, at any time, audit the Contractor's:
 - (i) performance against any of the Expectations or Measures;
 - (ii) implementation of and compliance with the WHS Management Plan; and/or
 - (iii) compliance with its work health and safety obligations under this Contract and/or the WHS Law, ("Audit").
- (b) To facilitate an *Audit*, the Contractor must, at no additional cost to the Principal:
 - (i) give the Principal and/or its agents full and immediate access to the Site, without prior notice being required,
 - (ii) allow the Principal and/or its agents to inspect the performance of the WUC;
 - (iii) provide access to or copies of any documents or records related to the safety of the WUC, or as may be necessary to establish the Contractor's compliance with its obligations under this Clause 15 and allow copies to be made of those documents or records; and
 - (iv) promptly comply with all reasonable request from the Principal or its agents arising from the *Audit*.
- (c) During an *Audit*, the Principal may use the *Tool* or any other method to document evidence of compliance with the *Expectations* and *Measures*.
- (d) If, following an *Audit*, if the Principal determines that there has been any non-conformance or that the Contractor's performance against any of the *Expectations* or *Measures* is unsatisfactory, then the Principal may do one or more of the following:

- i) initiate discussions with the Contractor regarding its safety culture, and make recommendations for improvement;
- ii) issue a formal notice requesting that the Contractor show cause for any practice, process or procedure used in performance of the WUC, and if the Principal is not satisfied with the response, direct the Contractor to remedy that practice, process or procedure immediately;
- iii) perform subsequent *Audits*;
- iv) direct the Contractor to change or cease any practice, process or procedure used in performing the WUC immediately if it creates a risk to health or safety;
- v) direct that all or part of the WUC is suspended immediately pending satisfactory compliance with the *Expectations* or *Measures*; or
- vi) terminate the Contract, provided that the Principal must not terminate the Contract under this clause 15.5(d)(vi) without first issuing a show cause notice under clause 15.5(d)(ii) and giving the Contractor at least one Business Day to show cause.

The Contractor must promptly comply with any direction under this clause 15.5(d) at no additional cost to the Principal.

- (e) Failure by the Contractor to comply with a direction under clause 15.5(d)(ii), 15.5(d)(iv) or 15.5(d)(v) or repeated unsatisfactory performance by the Contractor against any of the *Expectations* or *Measures* will be deemed a fundamental breach of the Contract. In this event the notice provisions under clause 44.2, 44.3 and 44.4 will not apply, and the Principal may:
 - (i) take out of the Contractor's hands the whole or part of the WUC remaining to be completed, assign it internally or to another party, and suspend payment until it becomes due and payable pursuant to subclause 44.6, or
 - (ii) terminate the Contract by giving notice to the Contractor.

In this Clause 15.5, "Expectations", "Measures" and "Tools" have the meanings given to them in the Building Projects WHS Requirements.

15.6 Incidents or failures

The Contractor must, to the extent permitted by law, indemnify and keep indemnified the Principal and its officers, employees and agents against any action, claim, demand, expense, loss, cost (including legal costs), penalty, fine or other liability (including in tort) arising from or in connection with:

- (a) any injury, accident or safety related incident on or adjacent to the Site;
- (b) if the Contractor is appointed Principal Contractor, any failure by the Contractor to discharge the duties of a Principal Contractor under the WHS Law or under the Contract; or
- (c) the enforcement of any penalty or other requirements arising from any breach by the Contractor of its obligations under this Clause 15.

This Clause 15.6 survives the termination or expiry of the Contract.

15.7 No separate payment for compliance with work health and safety requirements

The Contractor is not entitled to make any Claim in connection with complying with the WHS Law or the work health and safety requirements under this Contract. The Contractor acknowledges that it has allowed for the cost of compliance in the Contract Sum."

16 CARE OF THE WORK AND REINSTATEMENT OF DAMAGE

16.1 Care of the Work under the Contract

No amendment.

16.2 Reinstatement

No amendment.

16.3 Excepted Risks

Delete Clauses 16.3(e) and 16.3(f).

17 DAMAGE TO PERSONS AND PROPERTY

Delete Clause 17 and substitute the following:

“17.1 Indemnity by Contractor

So far as this Clause 17 applies to property, it applies to property except the work under the Contract.

The Contractor indemnifies the Principal against any Claim arising out of or in connection with—

- (a) any breach or failure to observe the Contract including any of the obligations, agreements and conditions to be observed and performed under the Contract by the Contractor;
- (b) loss of use (whether total or partial), destruction or damage to any real or personal property of the Principal or others, or other improvements on or adjacent to the Site, arising out of or in connection with or caused by the execution of the work under the Contract or any activity for which the Contractor is responsible and which is directly or indirectly associated with the Works (including remedying any defect in the Works); and
- (c) in respect of personal injury (which expression includes illness) or death of any person (other than in respect of an employee of the Contractor) arising out of or in connection with, or caused by, the execution of the work under the Contract or any activity for which the Contractor is responsible and which is directly or indirectly associated with the Works (including remedying any defect in the Works), whether arising under statute or common law,

but the Contractor's liability to indemnify the Principal must be reduced proportionally to the extent that the act or omission of the Principal, the Superintendent or the employees or agents of the Principal contributed to the loss, damage, death or injury.

This Clause 17.1 shall not apply to:

- (i) the extent that the liability of the Contractor is limited by another provision of the Contract;
- (ii) exclude any other right of the Principal to be indemnified by the Contractor; and
- (iii) things for the care of which the Contractor is responsible under Clause 16.1.

17.2 Further Indemnity by the Contractor

In addition to the Contractor's obligation to indemnify the Principal under Clause 17.1, the Contractor unconditionally and irrevocably indemnifies the Principal against any loss the Principal may suffer because:

- (a) the liability to perform or observe the Contract including any of the obligations, agreements and conditions to be observed and performed under the Contract by the Contractor is unenforceable in whole or in part as a result of a lack of capacity, power or authority or improper exercise of power or authority;
- (b) the Contractor does not observe or perform or comply with, in full or in part, the Contract including any of the obligations, agreements and conditions to be observed and performed under the Contract by the Contractor;
- (c) any of the obligations, agreements and conditions to be observed and performed under the Contract by the Contractor are rescinded or terminated by the Contractor for any reason; or
- (d) the Contractor disregards an order for specific performance of any of the obligations, agreements and conditions to be observed and performed under the Contract by the Contractor.”

18 INSURANCE OF THE WORK UNDER THE CONTRACT

No amendment.

19 PUBLIC LIABILITY INSURANCE

No amendment

20 INSURANCE OF EMPLOYEES

Delete Clause 20 and substitute the following new Clause:

“20 WORKERS’ COMPENSATION

The Contractor must comply with all of its obligations under the *Return to Work Act 2014 (SA)* (in this clause referred to as ‘the Act’) in relation to all employees of the Contractor, and in particular and without limiting the generality of this obligation must:

- (a) be registered by the Return to Work Corporation of South Australia (“Corporation”) as required under the Act;
- (b) pay any levy required to be paid to Corporation under the Act;
- (c) furnish monthly returns to Corporation as required under the Act;
- (d) pay compensation to any injured worker in accordance with the Act.

The Contractor must comply with all of its obligations under any corresponding law as defined in the Act (including a law of the Commonwealth, a State or a Territory of the Commonwealth or of another country that provides for compensation for disabilities arising from employment).

The Contractor must ensure that any subcontractor complies with its obligations under the Act and any corresponding law in relation to all employees of the subcontractor employed in the work under the Contract.

The Contractor must provide, on request by the Superintendent, evidence of its compliance with this clause, including evidence that it is an exempt employer under the Act.”

21 PROFESSIONAL INDEMNITY INSURANCE

No amendment

22 INSPECTION AND PROVISIONS OF INSURANCE POLICIES

22.1 Proof of Insurance

Delete Clause 22.1 and substitute the following:

“22.1 Proof of Insurance

The Principal has effected a policy of insurance in relation to the work under the Contract to cover insurance obligations under Clauses 18 and 19 and having regard to Clauses 16 and 17 except as the policy of insurance may differ.

Details of the insurance policies effected by the Principal are available at https://www.dit.sa.gov.au/contractor_documents/principal_arranged_insurance2. Some policy wording documents contained in the link are password protected. The password for access to these documents is available on written request to the Project Manager, Building Projects. The Contractor and all subcontractors shall fully inspect the policy to ascertain the level of protection afforded and the obligations imposed.

The effecting of insurance by the Principal shall not limit the liabilities or obligations of any party under other provisions of the Contract.”

22.2 Failure to Produce Proof of Insurance

No amendment.

22.3 Notices from or to the Insurer

No amendment.

22.4 Notices of Potential Claims

Delete Clause 22.4 and substitute the following:

“22.4 Notices of Potential Claims

The Contractor shall comply with the provisions of the policy of insurance required by Clause 18 or 19, compliance with which is a precondition to entitlement to make a claim under the policy. In particular, in the event of any occurrence for which a claim under the policy may be made the Contractor shall -

- (a) in all cases, take immediate action to avoid loss of life or damage to property;
- (b) as soon as practicable, inform:
 - (i) the Superintendent, if the person making a claim is the Contractor or a subcontractor or an employee, agent or person under the control of the Contractor or subcontractor; and
 - (ii) the Principal's insurance broker, as specified in the document which is available at https://www.dit.sa.gov.au/contractor_documents/principal_arranged_insurance2;
- (c) take all reasonable steps to prevent further loss or damage;
- (d) provide full details of the occurrence giving rise to the claim as required by the Insurer(s);
- (e) issue a signed claim statement;
- (f) may proceed immediately if the estimated loss is less than \$10,000 in addition to the amount of the applicable excess, promptly report the incident and preserve all evidence required to substantiate a claim;
- (g) defer repairs if the estimated loss exceeds \$10,000 in addition to the amount of the applicable excess and preserve all evidence required to substantiate a claim; and
- (h) make no admissions of liability to any potential claimant in respect of the occurrence."

22.5 Settlement of Claims

No amendment

22.6 Cross Liability

No amendment.

22.7 General

Insert the following new Clause:

"22.7 General

The premium for the policies of insurance effected by the Principal under clause 18 and 19 shall be paid by the Principal, however the Principal reserves the right to charge additional premium to the Contractor should such charge be levied by the Principal's Insurer(s) as the result of the Contractor not executing the work under the Contract to Practical Completion by the Date for Practical Completion or for any other reason such premium charge is the direct result of the Contractor's action or inaction in breach of Contract.

The provision of insurance by the Principal does not derogate in any way from the Contractor's obligations hereunder, nor shall the Principal be liable in respect of any loss suffered by the Contractor as the result of refusal by the Insurer(s) to pay any claim (save for the reason that the policy has lapsed for non-payment or default by the Principal).

The Contractor shall bear or pay:

- (a) any excess or deductible which is applicable to any claim on any Principal Arranged Insurance, except where the claim is with respect to loss or damage which is the direct consequence, without fault or omission on the part of the Contractor, of an Excepted Risk; and
- (b) the cost of any loss or liability the subject of a claim under an insurance policy effected by the Principal to the extent that such loss or liability is not covered by reason of 'excess' provisions in the policy and or noted exclusions to the policy.

The policy of insurance effected by the Principal in no way affects the contractual responsibilities of the Contractor and the Contractor should become fully acquainted with the scope of insurance provided and purchase any additional cover deemed to be appropriate."

23 SUPERINTENDENT

After Clause 23(c), insert the following:

"The Superintendent is entitled to rely upon advice from a quantity surveyor and such other professional consultants or other experts as the Superintendent considers appropriate.

At the end of the second paragraph, insert the following:

"The Contractor's obligation to comply with a provision of the Contract is not dependent on the Superintendent giving such a direction. The failure of the Contractor to comply with such a direction shall be a substantial breach of contract for the purposes of clause 44.2."

24 SUPERINTENDENT'S REPRESENTATIVE

Delete the last paragraph of Clause 24.

25 CONTRACTOR'S REPRESENTATIVE

No amendment.

26 CONTROL OF CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS

Renumber the existing paragraph as "26.1 Removal from Site" and insert the following after it:

"26.2 Key Personnel

Notwithstanding the provisions of Clause 26.1, the Contractor shall—

- (a) ensure that each of the key personnel listed in Annexure Item 34A are engaged in the provision of the work under the Contract in the capacity set out in Annexure Item 34A;
- (b) always have employed during the performance of the work under the Contract, persons in the positions of the key personnel who are approved by the Superintendent and who have at least the equivalent skill and experience of those persons listed in Annexure Item 34A; and
- (c) only replace the key personnel in circumstances of death, serious illness, change of employment or a request by the Superintendent.

26.3 Industrial Relations

- (a) The Contractor is responsible for industrial relations with all persons for whom it is responsible and must implement and maintain a best practice workplace relations program.
- (b) The Contractor must, and must procure its subcontractors to, use best endeavours to cooperate with any separate contractor(s) appointed by the Principal and their subcontractors and employees on the Site and its surrounding areas in order to maintain industrial practices that are consistent with industrial relations laws and the maintenance of a harmonious industrial relations environment at the Site.
- (c) The Contractor must promptly inform the Superintendent of any industrial action or industrial dispute, or potential industrial action or industrial dispute involving employees of the Contractor or employees of a subcontractor which will or could affect the Works.
- (d) The Contractor must take all steps to minimise the consequences of industrial action or industrial disputes.
- (e) The Contractor shall have no Entitlement in respect of industrial action or industrial disputes. Any cost and time consequences of industrial action or industrial disputes will be deemed to be included in the Contract Sum and the Date for Practical Completion.
- (f) The Contractor indemnifies the Principal in respect of any loss, costs, liability or expenses which the Principal incurs or may incur as a result of any industrial action or industrial dispute which affect the Works and for which the Contractor is responsible or which is caused by an act or omission of the Contractor. The loss, costs, liability or expenses will be recoverable by the Principal from the Contractor as a debt payable.

26.4 Respectful Behaviour

- (a) The Contractor acknowledges the Principal's zero tolerance towards men's violence against women in the workplace and the broader community.
- (b) The Contractor agrees that, in carrying out the Works, the Contractors officer, employees, agents and contractors ("Personnel") will at all times:

- (i) act in a manner that is non-threatening, courteous, and respectful; and
 - (ii) comply with any instructions, policies, procedures or guidelines issued by the Principal regarding acceptable workplace behaviour.
- (c) If the Principal believes that Personnel are failing to comply with the behavioural standards specified in this Clause, then the Principal may in its absolute discretion:
- (i) prohibit access by the relevant Personnel to the Principal's premises; and
 - (ii) direct the Contractor to withdraw the relevant Personnel from carrying out the Works.

27 SITE

27.1 Access to and Possession of the Site

No amendment.

27.2 Access for the Principal and Others

No amendment.

27.3 Deliver of Materials to and Work on the Site Before Possession

No amendment.

27.4 Use of the Site by the Contractor

No amendment.

27.5 Finding of Minerals, Fossils and Relics

No amendment.

27.6 Security

Insert the following new Clause 27.6:

"27.6 Security

The Contractor must ensure that all areas of the Site where works are being undertaken are secure and adequately protected from unauthorised personnel during the construction of the Works. The Contractor must:

- (a) cover any parts of the Works which may be liable to suffer damage from exposure to the weather;
- (b) provide proper fencing, guarding, lighting, and watching of the Works;
- (c) provide temporary roadways, footways, guards, drains and fences to the extent necessary by reason of the Works and for the accommodation and protection of pedestrians and vehicles;
- (d) at all times ensure that boundary fences of properties adjoining the Works are secure and kept in good repair in order to prevent any unauthorised access to the Works or to any of those properties; and
- (e) take all other measures for the protection of persons and property at or in the vicinity of the Works."

27.7 Dealing with Adjoining Land Owners

Insert the following new Clause 27.7:

"27.7 Dealing with Adjoining Owners

- (a) The Contractor must act reasonably when dealing with owners and occupiers of properties adjoining or in the vicinity of the Site. The Contractor must make its own arrangements for any access to or over or under or upon or for use of any adjoining land or property.
- (b) Where protection work is required, the Contractor must lodge all necessary paperwork, obtain approvals and undertake the protection works and comply with all conditions attaching to approvals, permissions and consents for that work, without any adjustment to the Contract Sum or any extension of time or any other relief or remedy.

- (c) The Contractor must comply with all requirements of Authorities regarding access to or over or under or upon or for use of any adjoining land or property and any requirements concerning the use, parking, loading and unloading of motor vehicles.
- (d) Except to the extent expressly permitted by an Authority, the Contractor must keep, and ensure that its subcontractors and their respective servants and agents keep, roadways, laneways and paths adjacent to the Site free of obstructions so that they remain open to vehicular and pedestrian traffic at all times.
- (e) The Contractor must, at its cost and as agent for and on behalf of the Principal make a full and adequate dilapidation survey (including photographic record) of any adjoining properties, roads, footpaths and other features adjacent to or in the vicinity of the Site and existing improvements on the Site to the satisfaction of the Superintendent. The dilapidation survey must be recorded in writing. The Contractor will use best endeavours to ensure the dilapidation survey is signed by the relevant owner and the Contractor on behalf of the Principal as a true record of the condition of the relevant property. The Contractor must, within 7 days of completion of the relevant surveys, provide a copy to the Principal, the Superintendent and (only at the direction of the Superintendent) owners of adjacent properties and any interested parties.”

28 SETTING OUT THE WORKS

28.1 Setting Out

Clause 28.1 is deleted and the following substituted:

“The Contractor shall be responsible for identifying and obtaining all necessary information, data and survey marks necessary to enable the Contractor to set out the Works.

Without limiting the foregoing, the Contractor shall be responsible for checking the accuracy and adequacy of any information and survey marks provided by the Principal and the Contractor will not be entitled to any adjustment to the Contract Sum or to any additional cost or compensation or to any extension of Date for Practical Completion, as a consequence of any inaccuracy or inadequacy relating to the information or survey marks provided by the Principal.”

28.2 Care of Survey Marks

No amendment.

28.3 Errors in Setting Out

Clause 28.3 is amended by inserting the words “at its own cost” at the end of the first paragraph and deleting the second paragraph.

29 MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT

No amendment.

30 MATERIALS AND WORK

30.1 Quality of Material and Work

Clause 30.1 is deleted and substituted with the following:

“30.1 Quality of materials and work

The Contractor must execute and complete the Works as follows:

- (a) in accordance with the provisions of this Contract, with no substitution of materials, fixtures or finishes expressly required by or specified in the Principal’s Project Requirements;
- (b) in a proper and workmanlike manner and ensuring that the standard and quality of the workmanship and materials to be incorporated in the Works are at least of the standard and quality specified in the Approved Design Documents;
- (c) in the absence of any other express provision in this Contract, any material or standard of workmanship, as the case may be, shall be of a kind which is both suitable for its purpose and consistent with the nature and character of that part of the Works in which it is to be used;
- (d) any materials not otherwise specified shall be first quality and new; and

- (e) the Works shall comply with the National Construction Code and in the absence of any standard being specified, the Works shall comply with the relevant standard of Standards Australia.

The Contractor must not substitute materials which are specified in the Contract unless it has the prior written approval of the Principal, such approval to be at the Principal's absolute discretion. With any request for approval, the Contractor must provide a Consultant's Certificate endorsing the proposed material substitute, samples and technical specifications of all materials to be substituted to the Superintendent. Within 14 days of a request by the Contractor for approval, the Superintendent will notify the Contractor of approval or the reasons why approval is not given. Materials ordered and/or delivered to Site prior to approval of samples by the Superintendent will be at the Contractor's risk.

If there are savings in construction costs achieved by the Contractor in the substitution of materials or standards of workmanship approved by the Principal under this Clause 30.1, those savings may, in the Principal's absolute discretion, be retained by the Principal in their entirety, resulting in a reduction in the Contract Sum by the amount of the cost saving."

30.2 Quality Assurance

Clause 30.2 is deleted and substituted with the following:

(a) Quality Systems

The Contractor shall implement and maintain quality systems which conform to AS 3901, ISO 9000 or equivalent as approved by the Superintendent. The Contractor must provide evidence of conformity at the request of the Superintendent.

(b) Quality Plan

Within 14 days of the Principal providing access to the Site, the Contractor shall provide for the approval of the Superintendent a project specific quality assurance plan which details all quality assurance procedures to be followed for the Works and which must include:

- (i) an organisation chart with a description of the quality assurance responsibilities and authorities for each person;
- (ii) quality assurance associated with design and finalisation of design documentation;
- (iii) documentation control procedures;
- (iv) a flow chart detailing the stages of the Works and the major milestones for quality assurance with a summary of the procedures to be followed;
- (v) a time and responsibility schedule for the preparation of inspection and test plans;
- (vi) procedures to apply to quality assurance of purchased and/or subcontracted parts of the Works;
- (vii) quality audit procedures to apply to the Works;
- (viii) corrective action procedures; and
- (ix) all general requirements described in the Specifications.

Following approval by the Superintendent the quality plan submitted by the Contractor shall become the "Project Quality Plan".

(c) Changes to the Project Quality Plan

Once approved, the Project Quality Plan must not be changed without the approval of the Superintendent.

(d) Quality Reports

The Contractor must provide quality reports in writing to the Superintendent monthly at least 5 Working Days prior to each monthly project control group meeting as follows:

- (i) the quality assurance status of the Works (in reference to the Project Quality Plan);
- (ii) a description of any problems or defective work and the corrective action being undertaken;

- (iii) a list of all shop drawings approved by the design Consultants and/or the Superintendent during the period covered by the report and the name of the design Consultant or firm who or which approved the shop drawing;
- (iv) a list of all samples approved by the design Consultants during the period covered by the report; and
- (v) subject to the Superintendent approving otherwise, such approval not to be unreasonably withheld, a Consultant's Certificate signed by each design Consultant confirming that as far as the Consultant is aware, the construction accords in all material respects with the design or detailing any material non-conformance of construction of which the Consultant is aware as at the end of the period covered by the report and which has arisen or occurred since the last certificate or statement was signed by the relevant design Consultant.

(e) **Inspections by Superintendent**

The Superintendent and the Principal may:

- (i) inspect the Works at any time subject to giving reasonable prior notice to the Contractor;
- (ii) advise the Contractor of any particular stage or milestone in the Works where the Superintendent's acceptance of the Works is required before work may proceed in which case the Contractor shall not proceed past that milestone or stage until the Superintendent's acceptance is so obtained;
- (iii) audit the Contractor's undertaking of the Project Quality Plan; and
- (iv) advise in writing the Contractor of any defect(s) in the Works or any deficiency(s) in undertaking the Project Quality Plan in which case the Contractor shall promptly correct the defect(s) or deficiency(s) at no cost to the Principal whether or not the Superintendent has directed the Contractor to do so under Clause 37.

Any inspections of the Works by the Superintendent or its nominee and any acceptance of work as constructed arising therefrom shall not relieve the Contractor of its obligations under the Contract.

(f) **Provision of test results and reports**

The Contractor must on request by the Superintendent provide to the Superintendent copies of all test results, reports and other documents recording or reporting on the quality or standard of any part or component of the Works."

30.3 Defective Material or Work

No amendment.

30.4 Variations due to Defective Material or Work

No amendment.

30.5 Acceptance of Defective Material or Work

No amendment.

30.6 Generally

No amendment.

31 EXAMINATION AND TESTING

No amendment

32 WORKING HOURS

Insert the following at the end of Clause 32:

"The Contractor shall not be entitled to any payment whatsoever from the Principal by reason of the Contractor carrying out any of the work under the Contract outside the working hours or on any day other than the working days stated in the Contract notwithstanding that the Superintendent may have

approved the carrying out of work during those times unless the carrying out of such works comprises a variation in which case Clause 40 will apply.

The Contractor warrants that it has taken into account all restrictions that have or may be placed on working hours for carrying out the work under the Contract by any, legislative requirement, governmental authority or court.

Restrictions on working hours and the necessity for carrying out work under the Contract outside of the working hours will not entitle the Contractor to any Claim (including any claim for additional costs or extensions of time).”

33 PROGRESS AND PROGRAMMING OF THE WORKS

“33.1 Rate of progress

No amendment.

33.2 Contractor’s Program

Clause 33.2 is deleted and substituted with the following:

“The *Contractor* shall:

- (a) prepare, implement and maintain a Construction Program in accordance with this clause 33.2.;
- (b) prepare and submit its baseline Construction Program in accordance with this clause 33.2 with its TFP Offer; and
- (c) be fully responsible for maintaining the progress of all work under the Contract in accordance with its Construction Program, including works carried out by the Contractor and by its subcontractors.

The Contractor shall not, without reasonable cause, depart from:

- (d) a Construction Program included in the Contract, or
- (e) a Construction Program furnished to the Superintendent.

The content of, or furnishing of a Construction Program, or of a further Construction Program, shall not affect the rights and obligations under clause 33, nor relieve the Contractor of any obligations under the Contract, including the obligation to not, without reasonable cause, depart from an earlier Construction Program.

The Construction Program shall:

- (f) comply with the minimum program requirements under clause 33.3;
- (g) be derived from a critical path network analysis;
- (h) be submitted in hard and soft copy Microsoft Project 2013 (or later) format;
- (i) include a cash flow, labour histogram and construction methodology;
- (j) be consistent with the program which was submitted with the Contractor's tender (any key departures from the submitted tender program are to be fully detailed including the reason(s) for the departures);
- (k) show the Contractor's bona fide planned work activities and sequences for bringing the work under the Contract to Practical Completion by the Date for Practical Completion; and
- (l) not affect the time for performance by the Principal or the Superintendent of any of their obligations or oblige either of them to do anything earlier than is necessary to enable the Contractor to bring the work under the Contract to Practical Completion on the Date for Practical Completion.

The Contractor may implement and revise, as necessary, its Construction Program while carrying out work under the Contract.

The Principal is not obliged to make any payment under the Contract until the Contractor provides the Construction Program in accordance with this clause 33.2.

Insert the following new subclauses:

“33.3 Minimum Program Requirements

A Construction Program must comply with the following minimum program requirements:

- (a) Be developed in GANTT Chart format;
- (b) Show for each main or key activity the activity name, duration, early start and finish dates, late start and finish dates, float and predecessor activities and start and finish link (excluding first and last activity);
- (c) All activities are to be scheduled “as soon as possible”;
- (d) All activities to be generally less than 10 day durations;
- (e) Clearly show the sequence of activities which constitute the critical path;
- (f) Program is to be split into areas reflecting, as a minimum, levels and manageable stages or areas;
- (g) Program is to include full details of pre-construction (including but not limited to procurement, shop drawings, fabrication and lead times), pre-completion activities (including but not limited to defect inspections, preparation and approvals of Completion Documents (eg Operation Manuals, As-Built (Record) Drawings and Maintenance Manuals), testing and commissioning) and provisional sum works in addition to general construction activities;
- (h) Program is to include a separate section of all required deliverables to be provided by the Principal (as applicable);
- (i) Key approvals / hold points;
- (j) External dependencies including provision of access, document approvals and work by others;
- (k) Program calendar is to detail all non-working days including but not limited to RDOs, public holidays, industry shutdowns;
- (l) Detail float and contingency where applicable;
- (m) Constraints such as “Must Start”, “Must Finish” are to be avoided;
- (n) Contractor’s anticipated Date of Practical Completion; and
- (o) Contractual Date for Practical Completion.

33.4 Current Program

The Superintendent need not respond to the Contractor about the Construction Program submitted. If the Superintendent raises no objection and the Construction Program submitted by the Contractor under this clause 33 complies with clause 33.2, it becomes the Current Program. If the Construction Program does not comply with clause 33.2, the Contractor must promptly and in any event within 7 days of being notified by the Superintendent of the non-compliance, submit to the Superintendent an amended Construction Program complying with clause 33.2.

No changes shall be made to the Current Program without the Superintendent’s prior written agreement.

Until the Contractor provides a Construction Program complying with clause 33.2, the Superintendent may have regard, as necessary, to the program submitted with the Contractor’s tender.

If the Superintendent considers that any part of a Construction Program submitted pursuant to Clause 33.2 is unsatisfactory or requires amendment or updating the Superintendent will advise the Contractor within 14 days of receipt of the Construction Program and the Contractor must provide an amended Construction Program within 7 days of being requested to do so by the Superintendent or such additional time as the Superintendent may allow and if the Contractor fails to provide an amended Construction Program within this timeframe the Principal shall be entitled to withhold payment of monies which but for this clause would have been due and payable.

33.5 Contractor’s liabilities and obligations not relieved

No direction as to use of nor any other comment or direction by the Superintendent regarding the suitability of or any change to any Construction Program submitted under clause 33, any revised program submitted under clause 33.7 or any Status Program submitted under clause 33.8 shall:

- (a) relieve, limit or exclude any of the Contractor’s liabilities or obligations under the Contract, including its obligation to ensure the work under the Contract reaches Practical Completion by the Date for Practical Completion and its responsibility for all planning, scheduling, sequences, methods and techniques necessary for the due performance of its obligations under the Contract;

- (b) constitute a direction to accelerate, disrupt, prolong or vary any, or all, of the Contractor's activities or the work under the Contract or any part of the work under the Contract;
- (c) constitute a direction to change the order or timing of the work under the Contract;
- (d) constitute the granting of an EOT or a determination in relation to any application for an EOT to the Date for Practical Completion; or
- (e) affect the time for performance by the Principal or the Superintendent of any of their obligations or oblige either of them to do anything earlier than is necessary to enable the Contractor to bring the work under the Contract WUC to Practical Completion by the Date for Practical Completion.

33.6 Current Program not part of Contract

Under no circumstances does a direction by the Superintendent regarding the suitability of, or any change to, any Construction Program submitted under clause 33, nor any revised program submitted under clause 33.7, or any Status Program submitted under clause 33.8, confer any ownership whatsoever regarding any Construction Program, to the Principal, nor deem any such program to form part of the Contract.

The Current Program may be used by the Superintendent to monitor the progress of the work under the Contract and assess claims for an EOT.

33.7 Contractor's revisions of Current Program

If the actual progress of the work under the Contract varies significantly from that shown in the Current Program, the Contractor shall submit a revised program which shall indicate how the Contractor proposes to implement all reasonable steps at the Contractor's own cost to execute the Works in order to meet the Date for Practical Completion. A revised program shall comply with the provisions of clause 33 and subject to compliance with clause 33.2 shall become the Current Program.

Notwithstanding any direction given or not given by the Superintendent under this clause 33.7 the Contractor must take all reasonable steps to minimise and mitigate the consequences of a delay to the carrying out of the Works.

33.8 Status Construction Program

The Contractor shall provide to the Superintendent a Status Program in electronic copy every four weeks. The Status Program shall be provided in the following format:

- (a) the Current Program is to be set as a baseline with each activity bar split horizontally in two;
- (b) 'Actual starts', 'actual finish', remaining durations and percentage complete are to be entered and shown on the program;
- (c) The three column fields of 'actual start', 'actual finish', 'remaining durations' and 'percentage complete' are to be shown in addition to the 'activity ID' and 'description' and in addition to the 'baseline duration', 'baseline start' and 'baseline finish';
- (d) Any EOTs are to be referenced as a new activity and linked where applicable to the activity delayed';
- (e) The program is to be provided with a "Data Date Line" clearly showing where the project is tracking against the baseline activities;
- (f) Where the construction methodology has departed from the Current Program construction methodology, a narrative is to be provided with the Status Program;
- (g) Show the estimated percentage of completion for each item of work; and
- (h) On a monthly basis (every second Status Program) a status 'Actual' versus 'Forecast labour' and cash flow is to be provided.

33.9 Reports and Information

The Contractor must:

- (f) provide to the Superintendent and the Principal, a written monthly report on the Works in a form reasonably approved by the Superintendent. The report must include:
 - (i) details of the activities of the Contractor and the progress made in respect of the Works in the preceding month;

- (ii) a summary of the status of any variations, listing all approved and pending variations; and
 - (iii) all matters in respect of which the Contractor requires instructions, directions or information with recommendations as to the action required. The report must clearly state when any instruction, direction or information is required urgently;
 - (g) if requested by the Superintendent, provide monthly photographic evidence to the Superintendent of the progress of the Works;
 - (h) promptly notify the Superintendent and the Principal of any notice served on the Contractor by any Authority relating to the Site or the Works;
 - (i) identify and comment upon any potential changes in the Works which may be either of benefit to the Principal or which the Principal may request; and
- at any time requested by the Superintendent provide information in relation to the Project, which may be required by the Principal to satisfy the Principal's reporting obligations, including, without limitation, in relation to time, cost, specification issues, Industry Participation Plan related matters and risks associated with the Project."

34 SUSPENSION OF THE WORKS

No amendment.

35 TIMES FOR COMMENCEMENT AND PRACTICAL COMPLETION

35.1 Commencement

No amendment.

35.2 Time for Practical Completion

Clause 35.2 is deleted and substituted with the following:

If the Principal accepts the TFP Offer the Contractor shall execute the work under the Contract to Practical Completion by the Date for Practical Completion.

Upon the date of Practical Completion the Contractor shall give possession of the Site and the Works to the Principal.

35.3 Separable Portions

No amendment.

35.4 Use of Partly Completed Works

No amendment.

35.4A Superintendent may extend

Insert the following new Clause 35.4A:

"35.4A Superintendent may extend

The Superintendent may, at any time, from time to time, and for any reason, by notice in writing to the Contractor, extend the Date for Practical Completion. The Superintendent is under no obligation to exercise this discretion reasonably, fairly or for the benefit of the Contractor, including where the Contractor is delayed by any cause listed in Clause 35.5(c) but has failed to satisfy the requirements of Clause 35.5(a)."

35.5 Extension of Time for Practical Completion

Clause 35.5 is deleted and substituted with the following:

- "(a) Notwithstanding Clause 35.4A, the Contractor shall be entitled to an extension to the time for Practical Completion only when:
 - (i) it can demonstrate to the satisfaction of the Superintendent that it has been delayed in reaching Practical Completion by a cause in Clause 35.5(c) (having regard to Clauses 35.5(d), (e) and (f)) being a delay which affects the critical path of the Current Program;

- (ii) the Contract does not prohibit the Contractor from having an Entitlement in relation to that cause; and
 - (iii) it has given all the notices required by, and strictly in accordance with, the requirements of this Clause 35.5.
- (b) The Contractor shall not be entitled to an extension of time for Practical Completion for a particular delay unless it has satisfied the requirements of Clause 35.5(a) in relation to that delay.
- (c) Subject to Clauses 35.5(d), (e) and (f) the causes of delay referred to in Clause 35.5(a) are:
- (i) an act of public enemy, terrorism or a declaration of war;
 - (ii) an earthquake, fire or other catastrophic event by natural causes;
 - (iii) subject to Clause 35.5(e), an industrial action or industrial dispute;
 - (iv) a civil commotion or riot;
 - (v) a Latent Condition;
 - (vi) a direction for a variation where either a direction has been given by the Superintendent in accordance with Clause 40.1A(a) or a notice has been given by the Contractor strictly in accordance with Clause 40.1A(b);
 - (vii) delays by Authorities which a competent and experienced contractor could not reasonably have anticipated at the time of submission of the TFP Offer, except if the delay:
 - A. relates to an Approval that under the Contract is the responsibility of the Contractor to obtain; or
 - B. in the opinion of the Superintendent, the Contractor failed to take proper and reasonable steps both to preclude or minimise the occurrence of the delay; or
 - C. is a delay by a local government authority (including regional or city municipal council) but not where the delay arose from the failure of the Contractor to comply with a requirement referred to in clause 14.
 - (viii) an order of a court which restrains the Contractor from or disrupts the Contractor in carrying out the Works (except where the order arises as a consequence of a breach of a duty owed at law by the Contractor to any person);
 - (ix) any material breach of the Contract by the Principal;
 - (x) any act or omission of the Superintendent, or any employee, subcontractor or agent of the Superintendent or the Principal (excluding a Novated Consultant) other than an act or omission expressly permitted under this Contract;
 - (xi) any other cause which is expressly stated in the Contract to justify an extension of Date for Practical Completion;
 - (xii) inclement weather occurring on or before the date for Practical Completion.
- (d) The causes of delay referred to in Clause 35.5(c) shall give rise to an entitlement to an extension of time only when:
- (i) the cause was beyond the reasonable control of the Contractor and affects the critical path of the activities required to complete the work under the Contract as shown on the Current Program;
 - (ii) the Contractor or others for whom it is responsible did not contribute to the cause;
 - (iii) the Superintendent is satisfied that the work under the Contract was on the critical path of the Current Program and was actually delayed; and
 - (iv) the Contractor has taken all reasonable steps to mitigate the effect of the delay.
- (e) An industrial action or industrial dispute is only a delay if the industrial action or industrial dispute:
- (i) is of a state wide or nation wide character and is not specific to the Site or the Contractor;
 - (ii) affects the Works;

- (iii) has not been caused by an act or omission of the Contractor and does not result from any industrial action on any other building site on which the Contractor is engaged; and
- (iv) is beyond the reasonable control of the Contractor.
- (f) Where more than one event causes concurrent delays and the cause of at least one of those events but not all of them is not a cause referred to in Clause 35.5(c), then to the extent that those delays are concurrent, the Contractor shall not be entitled to an extension of time for those delays.
- (g) Within 5 Business Days of it becoming evident to the Contractor that it has been or might be delayed in reaching Practical Completion, the Contractor shall give the Superintendent notice in writing which contains full details of the cause of the delay, the date the delay might commence (or, if the delay has already commenced, the date the delay commenced), the estimated period of the delay and whether the Contractor shall be making a claim for an extension of time in relation to that delay.
- (h) Where the Contractor wishes to make a claim for an extension of time and it is delayed by one cause for a period of 10 days or more then the Contractor shall give the Superintendent the following written notices:
 - (i) every 10 Business Days from the commencement of the delay, a notice which contains full details of all the facts and matters on which the claim is based, including the date the delay commenced, the cause of the delay, the period of the delay already suffered and the estimated total period of the delay; and
 - (ii) within 5 Business Days of the date that the delay ceases, a notice which contains details of the notices already provided by the Contractor in relation to that delay (by identifying number or date), and full details of all the facts and matters on which the claim is based, including the cause of the delay, the date that the delay commenced, the date that the delay ceased and the claimed period of the extension of time.
- (i) Where the Contractor wishes to make a claim for an extension of time for a delay which is for a period of less than 10 days, then within 10 Business Days of the commencement of the delay the Contractor shall give the Superintendent a written notice which contains full details of all the facts and matters on which the claim is based including details of the cause of the delay, the date the delay commenced, the date that the delay ceased and the claimed period of the extension of time.
- (j) The Contractor's written claim for an extension of time must also set out whether the Contractor considers that it is entitled to extra costs under Clause 36 in respect of the delay and the estimated amount of such extra costs.
- (k) If the Contractor has an entitlement to an extension of time under Clause 35.5(a) the Superintendent shall, within 20 Business Days of receiving a claim for an extension of time under this Clause, determine the period of the extension of time to which the Contractor is entitled (which shall be reasonable) and the Date for Practical Completion shall be extended by that period.
- (l) In determining whether the Contractor is or will be delayed in reaching Practical Completion, it is not relevant to consider whether the Contractor can:
 - (i) reach Practical Completion by the Date for Practical Completion without an extension of time; or
 - (ii) by committing extra resources or incurring extra expenditure, make up the time lost.
- (m) A delay by the Principal or the failure of the Superintendent to grant a reasonable extension of time shall not cause the Date for Practical Completion to be set at large but nothing in this subclause shall prejudice any right of the Contractor to damages."

35.6 Liquidated Damages for Delay in Reaching Practical Completion

After the last paragraph insert the following new paragraph:

"The parties agree that the liquidated damages at the rate stated in the Annexure Part A constitute a fair and reasonable pre-estimate of the loss that will be suffered by the Principal as a result of the Delay."

35.7 Limit on Liquidated Damages

No amendment.

35.8 Bonus for Early Practical Completion

No amendment.

35.9 Acceleration

Insert the following clause:

“35.9 Acceleration

(a) Direction to accelerate

The Superintendent may (subject to the Superintendent accepting the extra costs and expenses referred to in Clause 35.9(b)), direct the Contractor to accelerate the Works whether as an alternative to granting part or all of an extension of time to the Date for Practical Completion which but for the direction to accelerate the Contractor would have been entitled to or for any other reason, provided that such direction may be withdrawn by the Principal or the Superintendent at any time before the Contractor commences to accelerate the Works. The direction must be in writing and specify steps or a method or manner of accelerating the Works which is reasonably achievable.

(b) Estimate of cost of acceleration

Upon receipt of a written direction from the Superintendent to accelerate, the Contractor must immediately and in any event within 7 days provide to the Superintendent the following information:

- (i) details of additional labour and construction plant which the Contractor considers will be required to comply with the direction;
- (ii) an estimate of the hours of work which will be required to be performed by the Contractor outside the usual working hours to enable the Contractor to comply with the direction;
- (iii) details of additional supervision which the Contractor will be required to provide to comply with the direction;
- (iv) the Contractor's estimate of the extra costs and expenses (including any consultancy fees) which it may incur in complying with the direction; and
- (v) a revised construction program for the period which will elapse between the date on which the acceleration of the Works commences, and the date notified by the Principal in the direction as being the date for the completion of the Works or any part of the Works.

(c) Acceptance or determination of costs

Within 28 days of receipt of the information referred to in Clause 35.9(b) the Superintendent must inform the Contractor whether it accepts the estimate of costs and expenses referred to in Clause 35.9(b). If such costs and expenses are accepted the Contract Sum will be adjusted accordingly and the Contractor will not be entitled to any additional costs and expenses in relation to the acceleration. If the Superintendent does not accept the Contractor's estimate of the costs and expenses of acceleration the Superintendent may confirm the instruction to the Contractor and Clause 40 will apply.”

36 DELAY OR DISRUPTION COSTS

Delete Clause 36 and substitute the following:

“36 DELAY OR DISRUPTION COSTS

36.1 Delay or Disruption Costs

Where:

- (a) the Contractor has been granted an extension of time under Clause 35.5 for any delay caused by any of the events referred to in Clause 35.5(c)(v), (vii), (viii), (ix) or (x), the Principal shall pay to the Contractor extra costs by multiplying the amount stated in the Annexure Item 43 by the number of days extension granted in respect of the event;
- (b) the Contractor has been granted an extension of time under Clause 35.5 for any delay under Clause 35.5(c)(vi) (i.e. variations directed under Clause 40) and the variation is required to be

valued under clause 40.5 (and not otherwise) the Principal shall pay to the Contractor such extra costs as are valued under clause 40.5;

- (c) the Contractor has been granted an extension of time under Clause 35.5 for any delay caused by any other event for which payment of extra costs for delay or disruption is provided for in the Annexure or elsewhere in the Contract the Principal shall pay to the Contractor extra costs by applying the amount stated in the Annexure to the number of days extension granted in respect of the event,

subject however to all of the following exceptions, conditions and limitations:

- (i) it is a condition precedent to the Contractor's entitlement to payment of extra costs under this Clause 36.1 that the Contractor identifies in its written claim for an extension of time under Clause 35.5 that the Contractor considers that it is entitled to extra costs in respect of the delay;
- (ii) where the Contract provides for Separable Portions each with a separate Date for Practical Completion, an amount shall only be payable under this Clause 36 where the Contractor has been granted an extension of time in respect of the Date for Practical Completion which is latest in time (and not otherwise);
- (iii) the Principal's liability under this Clause 36 in respect of any relevant day is limited, in aggregate, to the applicable amount specified in Annexure Item 43;
- (iv) nothing in this clause 36 shall oblige the Principal to pay any more than the applicable amount specified in Annexure Item 43 where there are concurrent delays to more than one Separable Portion;
- (v) the applicable delay rate shall only apply for working days on which the Contractor carries out work for the Contract, as determined under clause 32;
- (vi) nothing in this Clause 36 shall oblige the Principal to pay extra costs for delay or disruption which have already been included in the value of a variation or any other payment under the Contract;
- (vii) the Contractor will not be entitled to any delay costs for any delay caused or contributed to by inclement weather; and
- (viii) in the case of delays caused by compliance with a statutory requirement referred to in clause 36.2(a)(i) or a direction referred to in clause 36.2(a)(ii), the Contractor's entitlement under clause 36.1 is also subject to clause 36.2.

For the purposes of this Clause 36.1, an event referred to in Clause 35.5(c) shall be an event which relates solely to the Contract.

The Contractor agrees that the limit of the Principal's liability for damages for breach of contract for any delay or disruption is limited to any sum recoverable by the Contractor pursuant to this Clause 36 and (to the extent permitted by law) the Principal shall not be liable to pay to the Contractor any other sum whatsoever, in respect of such delay or disruption, whether as damages for breach of the Contract or under any other principle of law, equity or statute.

36.2 Cap on Covid-19 Relief

- (a) Both:
- (i) a statutory requirement to close the Site in its entirety due to Covid-19 cases on the Site; and
- (ii) a direction issued by the State Co-ordinator for South Australia pursuant to the *Emergency Management Act 2004* (SA) in respect of the Covid-19 pandemic,
- are causes for extension of time for Practical Completion for the purposes of subclause 35.5(c)(xi).
- (b) In the case of delays caused by compliance with a statutory requirement referred to in Clause 36.2(a)(i) whether as a single event or multiple events, the Contractor shall not be entitled to delay costs where the aggregate period of delay is 7 clear days or less after the closure of the Site in its entirety. If the duration of delay caused by compliance with a statutory requirement referred to in Clause 36.2(a)(i) as either a single event or multiple events exceeds 7 clear days in the aggregate the Contractor shall be entitled to delay costs under this clause 36 for each working day in respect of which the Date for Practical Completion is extended, excluding the initial 7 clear days.

- (c) In the case of delay caused by a direction referred to in Clause 36.2(a)(ii), the Contractor shall not be entitled to any delay costs where the delay is for a period of 7 clear days or less after the direction is issued. If the delay exceeds 7 continuous clear days in duration the Contractor shall be entitled to delay costs under this clause 36 for each working day in respect of which the Date for Practical Completion is extended, including any working days in the initial 7 clear days.”

37 DEFECTS LIABILITY

No amendment.

38 CLEANING UP

No amendment.

39 URGENT PROTECTION

No amendment.

40 VARIATIONS

40.1 Variations to the Work under the Contract

After the second paragraph, insert the following paragraph:

“A direction does not constitute a variation if:

- (i) it is not a material scope change; or
- (ii) it requires a change which is minor or immaterial; or
- (iii) it is made necessary due to an ambiguity, omission, discrepancy or inconsistency in the Contract Documents; or
- (iv) it relates to work or materials which are not shown in the Contract Documents which are necessary to complete or render operable any part of the Works shown in the Contract Documents.”

40.1A Notices

Insert the following new Clause 40.1A:

“40.1A Notices

This Clause 40.1A applies notwithstanding any other provision of the Contract to the contrary.

The Principal shall only be liable to the Contractor for an amount calculated under Clause 40.5 or for an extension of time for Practical Completion for a variation where either:

- (a) the direction to perform the variation given by the Superintendent is in writing, expressly states that the direction constitutes a direction for a variation and identifies the work the subject of the direction; or
- (b) before performing the variation and in any event within 10 Business Days of receiving the direction to perform the variation, the Contractor has given the Superintendent a notice in writing which identifies:
 - (i) the date the direction was given;
 - (ii) whether the direction was given orally or in writing;
 - (iii) the substance of the direction (if it was in writing a copy must be attached);
 - (iv) the cost of the variation including a detailed breakdown calculated in accordance with Clause 40.5;
 - (v) whether a claim will be made for an extension of time as a consequence of the variation and if so, the period; and
 - (vi) where the variation relates to the Design Documents or the Principal’s Project Requirements, by identifying the relevant requirement and the change to that requirement.

Except where the Contractor is entitled to make a claim under this Clause 40.1A, the Contractor shall have no Entitlement as a consequence of complying with a direction for a variation.

Where the Contractor wishes to make a claim for an extension of time as a consequence of a variation, in addition to the notices it is required to give under this Clause 40.1A, the Contractor shall give all notices required under Clause 35.5.”

40.2 Proposed Variations

Delete Clause 40.2 and substitute the following:

“The Superintendent may direct the Contractor to submit a price for a proposed variation. The Contractor shall submit the price within the time specified in the direction or, if no time is specified, within 10 Business Days of the direction.

The Contractor shall provide the following information with the price submitted in response to such a direction:

- (a) a detailed scope of the proposed variation (including any drawings or technical details);
- (b) a detailed breakdown of the price for which the Contractor would carry out the proposed variation (including any delay or disruption costs which may be incurred by the Contractor as a consequence of the proposed variation);
- (c) the effect (if any) of the proposed variation on the Date for Practical Completion; and
- (d) the expiry period for acceptance of the variation proposal which shall be not less than 5 Business Days (or, for urgent work, such shorter time as the Superintendent may, in writing, allow) from the date of receipt by the Superintendent of the variation proposal.

Upon receipt of a variation proposal provided under this Clause 40.2, the Superintendent may in the sole discretion of the Superintendent do any one of the following:

- (i) direct the Contractor to provide further information;
- (ii) accept the variation proposal and give the Contractor a direction to carry out the variation on the terms contained in the variation proposal in which case a valuation under Clause 40.5 shall not be made and the addition or deduction to the Contract Sum shall be the amount contained in the variation proposal;
- (iii) negotiate different terms with the Contractor upon which the variation shall be carried out;
- (iv) give the Contractor a direction to carry out the variation but on the terms contained in the Contract with a valuation to be made under Clause 40.5; or
- (v) reject the variation proposal, in which case the Principal may retain another person to carry out the variation contemplated by the variation proposal.

The Principal shall use reasonable endeavours to ensure that the Superintendent responds to a variation proposal within 10 Business Days.”

40.3 Pricing the Variation

No amendment.

40.4 Variations for the Convenience of the Contractor

No amendment.

40.5 Valuation

Delete subclauses (a), (b) and (c) and substitute the following new subclauses:

- “(a) Where a Schedule of Rates is applicable, the valuation will be made:
 - A. by using the Schedule of Rates, or where no rate is directly applicable, a rate calculated by inference, proportion or interpolation;
 - B. subject to Clause 36, when the variation attracts an extension of time, by applying costs for delay or disruption by applying the daily rate set out in the Annexure to the number of days extension granted, and
 - C. by applying an allowance of 5% of the schedule rate for the Contractor's administration, inclusive of all supervision and attendance.
- (b) Where Priced Bill of Quantities rates are applicable, the valuation will be made:

- A. by using the Priced Bill of Quantities rates, or where no unit rate is directly applicable, a rate calculated by inference, proportion or interpolation;
 - B. subject to Clause 36, when the variation attracts an extension of time, by applying costs for delay or disruption by applying the daily rate set out in the Annexure to the number of days extension granted; and
 - C. by applying an allowance of 5% of the Priced Bill of Quantities rate for the Contractor's administration, inclusive of all supervision and attendance.
- (c) Where neither a Schedule of Rates nor a Priced Bill of Quantities is applicable the valuation will be the sum of:
- A. actual value of the work calculated as the total of :
 - labour at a rate not exceeding the Department for Infrastructure and Transport Star Rate (the rate payable, as defined by the Department from time to time, for the hourly cost of labour on a trade by trade basis);
 - net cost of materials;
 - net hiring rates for plant;
 - net cost of subcontractor claim made up of labour at a rate not exceeding the Department Star Rate, net cost of materials, and net hiring rates of plant, plus an allowance of 10% of the net costs for the subcontractor's profit and overhead costs and an allowance of 5% of the net costs for the subcontractor' administration inclusive of all supervision and attendance;
 - B. an allowance of 10% of the labour, material, plant and subcontractor cost for the Contractor's profit and overhead costs;
 - C. an allowance of 5% of the labour, material, plant and subcontractor cost for the Contractor's administration, inclusive of all supervision and attendance; and
 - D. in accordance with and subject to the exceptions, conditions and limitations in Clause 36, when the variation gives rise to an extension of time, extra costs calculated by multiplying the daily rate set out in the Annexure by the number of days extension granted;

Delete subclauses (i) and (ii) and substitute the following new subclauses:

- “(i) in determining the deduction to be made for work which is taken out of the Contract the deduction shall include an additional allowance for the Contractor's administration calculated as 5% of the value of the variation;
- (ii) not used.”

41 DAYWORK

No amendment

42 CERTIFICATES AND PAYMENTS

42.1 Payment Claims, Certificates, Calculations and Time for Payment

Delete the first paragraph and insert the following:

“During Stage One, the Contractor shall deliver to the Superintendent claims for payment at the times for payment claims stated in Annexure Part A up to the Stage One End Date.

During Stage Two, the Contractor shall deliver to the Superintendent claims for payment:

- (a) at the times for payment claims stated in Annexure Part A up to the Date of Practical Completion;
- (b) within 10 Business Days of the Date of Practical Completion; and
- (c) to the extent that any claim remains due after the Date of Practical Completion, in accordance with Clause 42.5.

Claims for payment must be supported by evidence of the amount due to the Contractor and such information as the Superintendent may reasonably require and must include:

- (d) the value of work carried out by the Contractor in the performance of the Contract to that time together with all amounts then otherwise due to the Contractor arising out of the Contract;
- (e) details of the total amount of all prior claims made and the total paid to the Contractor;
- (f) a cash flow forecast for the remainder of the Works;
- (g) a properly signed statement of compliance in the form set out in Attachment 5;
- (h) a properly signed statutory declaration in the form set out in Attachment 6;
- (i) a properly signed Consultant's Certificate from the Contractor's consultant/s who are responsible for the design of the Works in the form set out in Attachment 11; and
- (j) evidence of Novated Consultant claimed costs for completed services including fees and disbursements (including but not limited to invoices and receipts).

In receiving payment claims or issuing payment schedules pursuant to the *Building and Construction Industry Security of Payment Act 2009* (SA), the Superintendent acts as the agent of the Principal."

In the fourth paragraph, line 1, delete "Within 14 days" and replace with "Within 10 Business Days".

42.1A Payment Warranty

Insert the following new Clause 42.1A:

"42.1A Payment Warranty

By making a Claim for payment the Contractor warrants to the Principal that:

- (a) it has performed the work which is the subject of the Claim;
- (b) there are no Defects in the work which is the subject of the Claim;
- (c) it has paid the Contractor's suppliers and any subcontractor all moneys in respect of work carried out and materials supplied in relation to the work which was the subject of the immediately preceding Claim for payment in accordance with the suppliers' and subcontractors' terms and conditions of engagement;
- (d) it has paid the Contractor's employees all moneys in respect of the work which is the subject of the claim for payment;
- (e) the figures appearing in the Claim for payment are accurate;
- (f) the Contractor has complied with all of the obligations imposed on the Contractor by any subcontract where those obligations have failed to be complied with at the time of the making of the Claim for payment; and
- (g) the Contractor has no Claim against the Principal which is not identified in the Claim for payment or in an earlier claim for payment or notice of which has not previously been given to the Principal.

The Contractor shall be liable for and shall indemnify the Principal against any loss, cost or damage incurred by the Principal as a result of the Contractor being in breach of any warranty given by the Contractor under this clause 42.1A."

42.2 Unfixed Plant and Materials

Delete Clause 42.2 and substitute the following new Clause:

"42.2 Unfixed Plant and Materials

If the Contractor claims payment for plant or materials intended for incorporation in the Works but not incorporated, the Principal shall not be obliged to make payment for such plant or materials but the Principal may make payment, if the Contractor:

- (a) provides additional security in one of the forms provided by Clause 5.3 in an amount equal to the payment claimed for the plant or materials; and
- (b) establishes to the satisfaction of the Superintendent that ownership of such plant and materials will pass to the Principal upon the making of the payment claimed; and
- (c) establishes to the satisfaction of the Superintendent that such plant or materials are properly stored, labelled the property of the Principal and adequately protected.

Upon payment to the Contractor of the amount claimed, the plant or materials the subject of the claim shall be the property of the Principal free of any lien or charge.”

“42.2 Payment for Transportable work not on Site

With regard to the nature of work under Contract, the Contractor may construct a significant portion of the Works at a place under the ownership of the Contractor other than the Site (‘Contractor’s Site’) and then transport work under Contract to the Site for incorporation into the Works.

The Principal may approve that any or all of the Works are constructed at the Contractor’s Site which does not derogate in any way from the Contractor’s obligations under the Contract, nor shall the Principal be liable in respect to loss or damage.

If the Contractor claims payment for work completed at the Contractor’s Site (whether or not that part of the works is partially or completely constructed), the Principal shall not be obliged to make payment for such work completed but the Principal may make payment, if the Contractor:

- (a) has provided security in accordance with Clause 5 of the General conditions of contract;
- (b) establishes to the satisfaction of the Superintendent, including written evidence from any relevant subcontractor, that ownership of such work completed under Contract on the Contractor’s Site will pass to the Principal upon the making of the payment claimed;
- (c) establishes to the satisfaction of the Superintendent that such work completed is properly stored and adequately protected, including the provision of proof of separate insurance for materials and work on the Contractor’s Site and inland transit insurance in accordance with Clauses 18 and 19 Alternative 1.
- (d) ensures that such work is in a clearly identified area at the Contractor’s Site and all work, plant or materials relating to the work completed are labelled the property of the Principal;
- (e) provides a written statement with each claim for payment, of work completed on the Contractor’s site for which ownership will pass to the Principal upon payment by the Principal;
- (f) provides unconditional licence for the Principal to enter upon the Contractor’s Site with vehicles, other persons or equipment to inspect and or remove the Principal’s property at all times and provides to the Principal a key to the Contractor’s Site for access by the Principal.

Upon payment to the Contractor of the amount claimed, the completed work that is the subject of the claim shall be the property of the Principal free of any lien or charge.”

42.3 Certificate of Practical Completion

No amendment

42.4 Effect of Certificates

No amendment.

42.5 Final Payment Claim

No amendment.

42.6 Final Certificate

Delete the first paragraph, commencing with: ‘Within 14 days after receipt’, and finishing with: ‘..... or any alleged breach thereof.’, and substitute the following new paragraphs:

“When the last of the following occurs:

- (a) the expiration of 30 days after receipt of the Contractor’s Final Payment Claim;
- (b) where the Contractor fails to lodge such claim, the expiration of the period specified in Clause 42.5 for the lodgement of the Final Payment Claim by the Contractor; and
- (c) all work under the Contract has been finally and satisfactorily executed and the Contractor has fulfilled all the Contractor’s other obligations under the Contract,

the Superintendent shall issue to the Contractor and to the Principal a final payment certificate endorsed ‘Final Certificate’. In the certificate the Superintendent shall certify the amount which in the Superintendent’s opinion is finally due from the Principal to the Contractor or from the Contractor to the Principal under or arising out of the Contract or any alleged breach thereof. In such Final Certificate the

Superintendent shall also set out such of the allowances in Clause 42.1(a) to (f) inclusive as are appropriate to such Final Certificate.”

At the end of the last paragraph, insert the words “subject to the Contractor signing and delivering a final release in the form set out in Attachment 7”.

42.7 Interest on Overdue Payments

No amendment.

42.8 Set Offs by the Principal

No amendment.

42.9 Recourse for Unpaid Moneys

Delete Clause 42.9 and substitute the following new Clause:

“42.9 Recourse to Unpaid Moneys

Where a party fails to pay the other party an amount due and payable under the Contract within the time provided by the Contract or a party fails to pay the other party any money due otherwise than under the Contract, the other party may, subject to Clause 5.6, have recourse to retention moneys, if any, and, if those moneys are insufficient, then to security under the Contract and any deficiency remaining may be recovered by the other party as a debt due and payable.”

42.10 Personal Property Securities Act

Insert the following new Clause 42.10:

“42.10 Personal Properties Securities Act

- (a) A term defined in the PPSA has the same meaning when used in this clause.
- (b) The Principal may, by notice to the Contractor at any time, require the Contractor to take all steps, provide all information (including serial numbers) or do any other thing that the Principal considers necessary or desirable to:
 - (i) ensure that the Contract (or any related document) or any security interest arising under it, is enforceable against the Contractor or any third party;
 - (ii) protect, perfect, record or better secure, or obtain or preserve the priority of, the security position of the Principal under the Contract (or any related document); or
 - (iii) overcome any defect or adverse effect arising from the PPS Law on the Principal's security interest and priority or the rights or obligations of the Principal under or in connection with the Contract or any encumbrance or document contemplated by the Contract.
- (c) The Contractor must comply with the requirements of a notice under this clause 42.10 within the time stated in the notice at the cost of the Contractor.
- (d) Subject to any other clause of the Contract which expressly permits the disclosure of such information, the parties agree that neither of them will disclose any information of the kind mentioned in section 275(1) of the PPSA. The Contractor waives any right it has under section 275(7)(c) of the PPSA to authorise disclosure of such information. This clause 42.10(d) survives the termination of the Contract.
- (e) To the extent permitted by the PPSA, the Principal has no obligation to give, and the Contractor waives any rights to receive, any notice, statement or copies of any documents under the PPSA, including any notice or statement referred to in sections 95, 118, 121(4), 130, 135 or 157 of the PPSA.
- (f) To the extent that Chapter 4 of the PPSA would otherwise apply to enforcement by the Principal of any security interest in collateral, the parties agree that the following provisions of the PPSA are excluded:
 - (i) to the extent section 115(1) of the PPSA allows them to be excluded: sections 125, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA; and
 - (ii) to the extent section 115(7) of the PPSA allows them to be excluded: sections 129(2) and (3), 132, 133(1)(b) (as it relates to the security interest of the Principal), 134(2), 135, 136(3)(4) and (5).

- (g) The Contractor consents to the waiver of the requirement for notice under any other provision of the PPSA that the Principal may notify to the Contractor after the date of this Contract and waives any rights it has to receive that notice.
- (h) The Contractor must perfect and maintain continuous perfection of any security interests under the PPSA that it may at any time hold, including purchase money security interests, if failure to do so could materially adversely affect:
- (i) the Contractor's business; or
 - (ii) in the opinion of the Principal, the Principal's security position under the Contract, including the Principal's security position relative to other secured parties in relation to any personal property to which any security interest of the Principal under the Contract attaches.
- (i) At the written request of the Contractor, the Principal will release and discharge any security interest created by the Contract if:
- (i) the Contractor's obligations to pay money and/or perform all of the Contractor's other obligations under this and/or any other agreement between the parties are satisfied; and
 - (ii) the Principal believes on reasonable grounds that the Contractor will not incur further obligations (to pay money or otherwise) under this or any other agreement between the parties,
- and, if necessary, the Principal will register a financing statement or financing change statement on the Personal Property Securities Register in relation to that security interest to reflect such release and discharge."

43 PAYMENT OF WORKERS AND SUBCONTRACTORS

43.1 Payment of Workers

The first sentence of paragraph 1 is deleted and replaced with: "With each payment claim and before the Principal makes each payment to the Contractor, the Contractor shall:"

Insert the following at the end of the clause:

"The Principal may provide the documentary evidence provided in accordance with this clause and clause 42.1(d) to the South Australian Small Business Commissioner ("Commissioner"). The Commissioner may audit the documentary evidence and make associated enquiries to ensure that the Contractor has complied with the representation made in the documentary evidence."

43.2 Payment of Subcontractors

The first sentence of paragraph 1 is amended to delete "Not earlier than 14 days after the Contractor has made" and is replaced with "With"

43.3 Withholding of Payment

No amendment

43.4 Direct Payment

43.3(a) is amended to delete "within 5 days of the direction by the Superintendent".

44 DEFAULT OR INSOLVENCY

44.1 Preservation of Other Rights

No amendment.

44.2 Default by the Contractor

Delete the second paragraph and substitute the following:

"Substantial breaches include, but are not limited to:

- (a) failing to:
 - (i) perform properly the Contractor's design obligations;
 - (ii) provide security;

- (iii) provide evidence of insurance;
- (iv) comply with a direction of the Superintendent pursuant to Clause 29.3; or
- (v) use the materials or standards of work required by the Contract;
- (b) suspension of work;
- (c) departure from a Current Program without reasonable cause or the Superintendent's approval;
- (d) failing to proceed with due expedition and without delay; and
- (e) in respect of Clause 42, knowingly providing documentary evidence containing an untrue statement;
- (f) the Contractor failing to commence work under the Contract within 14 days after the date that the Principal has made the site available under Clause 27.1;
- (g) the failure by the Contractor to achieve Practical Completion by the Date for Practical Completion;
- (h) a breach by the Contractor which may, in the opinion of the Superintendent have a material adverse effect on the Contractor's ability to achieve Practical Completion by the Date for Practical Completion;
- (i) the failure by the Contractor to effect or maintain any insurance required by this Contract;
- (j) the failure by the Contractor to pay any monies owing to the Principal whether by way of liquidated damages or otherwise;
- (k) the breach by the Contractor of any undertaking, warranty or representation in the Contract;
- (l) a Change of Control occurs in relation to the Contractor; or
- (m) any failure to comply with Clause 9.2 (or any part of it), including where any subcontract conditions do not meet the requirements of Clause 9.2.

44.3 Requirements of a Notice by the Principal to Show Cause

No amendment.

44.4 Rights of the Principal

No amendment.

44.5 Procedure when the Principal Takes Over Work

No amendment.

44.6 Adjustment on Completion of the Work Taken Out of the Hands of the Contractor

No amendment.

44.7 Default by the Principal

No amendment.

44.8 Requirements of a Notice by the Contractor to Show Cause

No amendment.

44.9 Rights of the Contractor

No amendment.

44.10 Rights of the Parties on Termination

No amendment.

44.11 Insolvency

Delete the Clause 44.11(d) and substitute the following:

“(d) in relation to a party being a corporation:

- (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
- (ii) the party enters a deed of company arrangement with creditors;

- (iii) a controller or administrator is appointed;
- (iv) an application is made to a court for the winding up of the party and not stayed within 14 days;
- (v) a winding up order is made in respect of the party;
- (vi) it resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up);
- (vii) a mortgagee of any property of the party takes possession of that property,
- (viii) the Contractor suspends payment generally or ceases or threatens to cease to carry on business or is, or states that it is, unable to pay its debts as they fall due or is taken to fail to comply with a statutory demand in accordance with Section 459F of the *Corporations Act 2001* (Cth); or
- (ix) anything occurs which is analogous or has a substantially similar effect to any of the events specified above,"

44.12 Quantum Meruit

Insert the following new Clause 44.12:

"44.12 Quantum meruit

If the Principal repudiates the Contract and the Contractor terminates the Contract, the Contractor is:

- (a) only entitled to claim damages for breach of Contract (subject to any limitations on liability under the Contract); and
- (b) not entitled to claim or be paid on a quantum meruit.

This clause survives termination of the Contract."

44.13 Removal or suspension from Department Prequalification System

Insert the following new Clause 44.13:

"44.13 Removal or suspension from Department Prequalification System

If the Contractor fails to comply with Clause 9.2 (or any part of it), including where any subcontract conditions do not meet the requirements of Clause 9.2, the Principal may remove or suspend (for a period determined by the Principal) the Contractor from the Department Prequalification System. The Contractor has no claim for damages or other entitlement whether under the Contract or otherwise for any such action taken by the Principal.

This clause does not limit any rights of remedies of the Principal either under this Contract, the Department Prequalification System "Conditions of Prequalification" or otherwise."

45 TERMINATION BY FRUSTRATION

No amendment.

45A TERMINATION FOR CONVENIENCE

Insert the following clause:

"45A TERMINATION BY THE PRINCIPAL FOR CONVENIENCE

- (a) At any time after the date of the Contract, the Principal may give the Contractor written notice terminating the Contract.
- (b) Where a notice is given under Clause 45A(a):
 - (i) the Principal must pay the Contractor the amount determined by the Superintendent being:
 - (A) the value of the work under the Contract executed to the date that notice is given; and
 - (B) the margin for profit and overheads specified in Annexure Item 51A on the value of the work under the Contract which remains to be executed to the date that notice is given;

- (ii) the Contractor must perform the work specified in Annexure Item 51B for which it is entitled to payment of the amount specified in Annexure Item 51B;
 - (iii) the Principal is entitled to take possession of the Contractor's equipment specified in Annexure Item 51C on terms acceptable to the parties; and
 - (iv) the Contractor must sign and deliver a final release in the form set out in Attachment 7.
- (c) Payment of the amounts referred to in Clause 45A(b) is made in full and final satisfaction of all Claims of the Contractor under or in connection with the Contract and the Works.
- (d) The Contractor releases and forever holds the Principal (including its officers and employees) and the Superintendent harmless from all liabilities, Claims, damages, expenses and costs arising out of or in connection with the termination of the Contract under this Clause 45A whether such liabilities, Claims, damages, expenses and costs be direct or indirect or consequential or past or present or future or certain or contingent or ascertained or not ascertained and whether for moneys payable pursuant to the Contract or arising out of the Contract and the Contractor agrees to indemnify and keep indemnified the Principal (including its officers and employees) and the Superintendent from all such liabilities, Claims, damages, expenses and costs."

46 NOTIFICATION OF CLAIMS

Clause 46 is deleted and substituted with the following:

46.1 Notice of Claims

Except for claims for a variation expressly directed under Clause 40.1, the Contractor must give the Superintendent the notices required by Clause 46.2 if it wishes to make a Claim against the Principal in respect of any direction by the Superintendent or any other thing (including a breach of the Contract by the Principal) under, arising out of, or in any way in connection with, the work under the Contract or the Contract, including anything in respect of which:

- (d) it is otherwise given an express entitlement under the Contract; or
- (e) the Contract provides that the Contract Sum will be increased.

46.2 Prescribed Notices

The notices referred to in Clause 46.1 are:

- (a) a written notice within 5 Business Days after the first occurrence of the direction or other fact, matter or thing upon which the Claim is based expressly specifying:
 - (i) that the Contractor proposes to make a Claim; and
 - (ii) the direction or other fact, matter or thing upon which the Claim will be based;
- (b) a written Claim within 10 Business Days after giving the written notice under paragraph (a), which must include:
 - (i) particulars concerning the direction or other fact, matter or thing upon which the Claim is based;
 - (ii) the legal basis for the Claim, whether based on a term of the Contract or otherwise, and if based on a term of the Contract, clearly identifying the specific term;
- (c) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
- (d) details of the amount claimed and how it has been calculated.

46.3 Continuing Events

If the direction or fact, matter or thing upon which the Claim under Clause 46.1 is based or the consequences of the direction or fact, matter or thing are continuing, the Contractor must continue to give the information required by Clause 46.2(b) every 20 Business Days after the written Claim under Clause 46.2(b) was submitted or given to the Superintendent, until after the direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof, have ceased.

46.4 Time Bar

If the Contractor fails to comply with Clause 46.2:

- (a) the Principal is not liable (so far as it is possible to exclude liability) for any Claim by the Contractor; and

- (b) the Contractor is absolutely barred from making any Claim against the Principal, arising out of, or in any way in connection with, the relevant direction or fact, matter or thing (as the case may be) to which Clause 46.2 applies.

46.5 Other provisions unaffected

Nothing in Clauses 46.1 to 46.3 limits the operation or effect of any other provision of the Contract which requires the Contractor to give notice to the Superintendent in order to preserve an entitlement to make a Claim against the Principal.”

47 DISPUTE RESOLUTION

Delete Clause 47 and substitute the following:

47.1 Notice of Dispute

If there is a dispute between the parties relating to or arising under the Contract, including a dispute concerning a direction given by the Superintendent, then either party shall issue to the other party and to the Superintendent a notice of dispute in writing adequately identifying and providing details of the dispute.

Notwithstanding the existence of a dispute, the Principal and the Contractor shall continue to perform their obligations under the Contract, and subject to Clause 44, the Contractor shall continue with the work under the Contract and the Principal and the Contractor shall continue to comply with Clauses 42.1 to 42.10 (inclusive).

47.2 Summary Relief

Nothing in this Clause 47 shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek urgent injunctive or declaratory relief in respect of a dispute under Clause 47 or any matter arising under the Contract.

47.3 Negotiation

If there is a dispute between the parties relating to or arising out of the Contract (other than a dispute to which Clause 47.5 applies) and a party delivers a notice of dispute to the other party and the Superintendent then:

- (a) within 10 Business Days after the delivery of that notice, representatives of the parties must meet and use reasonable endeavours acting in good faith to resolve the dispute by joint discussions; and
- (b) if the dispute is not resolved in accordance with Clause 47.3(a), the dispute must be referred to the senior executives of the parties who must meet and use reasonable endeavours acting in good faith to resolve the dispute by joint discussions.

47.4 Mediation

- (a) If the dispute is not resolved within 28 days after the meeting of senior executives under Clause 47.3(b), the parties must endeavour to settle the dispute or difference by mediation before having recourse to arbitration or litigation. The mediator must be a person agreed by the parties or failing agreement either party may request the Australian Commercial Disputes Centre (“**ACDC**”) to appoint a mediator and the mediator will be so appointed.
- (b) The mediator may conduct proceedings under this Clause 47.4 in such manner as the mediator thinks fit including, if considered appropriate, the adoption of all or part of the Guidelines for Commercial Mediation of the ACDC. During the course of any mediation each party must be represented by a person having authority to agree to a resolution of the dispute. The parties will share the costs of the mediator and costs of hiring rooms for the mediation equally.
- (c) In the event that the dispute has not been settled within 14 days or such other period as agreed to in writing between the parties, after the appointment of the mediator, the parties may agree that the dispute should be resolved under Clause 47.5 or Clause 47.6 may apply.

47.5 Expert determination

If the parties agree that a dispute should be resolved by an independent expert, then the parties will submit to the following procedure to resolve the dispute:

- (a) the parties will choose and appoint an independent expert;

- (b) in the absence of agreement by the parties as to the independent expert within 10 Business Days after written notice of a dispute to which this Clause 47 applies has been given, the independent expert will be appointed on the application of either party by the president or other senior office bearer of the Institute of Arbitrators and Mediators Australia in the State or Territory stated in Annexure Item 1;
- (c) the independent expert must:
 - (i) have reasonable qualifications and commercial and practical experience in the area of the dispute;
 - (ii) have no interest or duty which conflicts or may conflict with his or her functions as an independent expert, he or she being required to fully disclose any interest or duty before his or her appointment; and
 - (iii) not be an employee or former employee of either party;
- (d) the independent expert will act as an expert and not as an arbitrator and may adopt those procedures as he or she sees fit, including as to:
 - (i) fixing a time and place for hearing the dispute or receiving submissions or information from the parties or any other person; and
 - (ii) the form of any submissions or information required by the independent expert from the parties or any other person;
- (e) the independent expert will not be bound by the rules of evidence;
- (f) the independent expert will have the following powers:
 - (i) to inform himself or herself independently as to all matters relevant to the dispute;
 - (ii) to request and receive submissions (whether oral or in writing) or other information from the parties; and
 - (iii) to consult with any other persons as the independent expert in his or her absolute discretion thinks fit in relation to resolving the dispute provided that any person consulted provides to the parties an undertaking to keep confidential all matters coming to the person's knowledge by reason of his or her consultation with the independent expert;
- (g) the parties must give the independent expert all of the information and assistance which the independent expert may reasonably require;
- (h) the independent expert must make a determination or finding on the issues in dispute as soon as practicable and in any event within 20 Business Days after being appointed, or any longer period as may be agreed between the parties;
- (i) the independent expert's decision will be final and binding on the parties;
- (j) the independent expert will be required to undertake to the parties to keep confidential all matters coming to the independent expert's knowledge by reason of his or her appointment, the performance of his or her duties and the exercise of his or her powers; and
- (k) the costs of the independent expert will be borne by the parties equally or as the independent expert may otherwise determine and each party will bear its own costs relating to the expert determination and independent expert's decision.

47.6 Litigation

If the dispute is not resolved in accordance with Clauses 47.3 or 47.4 and is not referred to expert determination under Clause 47.5, either party may refer the dispute to any court of competent jurisdiction.

48 WAIVER OF CONDITIONS

No amendment.

The following clauses are added to those of Australian Standard General conditions of contract for design and construct (AS 4300—1995):

49 INDUSTRIAL RELATIONS

The Contractor and any subcontractor who is at any time engaged on work under the Contract shall ensure that -

- (a) all workers other than professional and supervisory personnel are paid not less than the award classification and conditions applicable to the work being carried out;
- (b) all workers including professional and supervisory personnel are informed of safe work practices; and
- (c) policies relating to work health and safety in the workplace are maintained in accordance with the regulations of the *Work Health and Safety Act 2012* (SA).

If the Contractor subcontracts any part of the work under the Contract, the Contractor shall include the provisions of this Clause in the subcontract.

50 CONSTRUCTION INDUSTRY TRAINING LEVY

The Contractor shall comply with the *Construction Industry Training Fund Act 1993* (SA) (in this clause referred to as 'the Act') and pay any levy imposed by that Act in respect of the Works. Prior to the commencement of the work under the Contract the Contractor shall provide written evidence to the Superintendent that the Contractor has either paid the above levy or been exempted from paying it under the Act. Failure to provide such written evidence may result in the Contractor being refused access to the Site and will entitle the Principal to withhold any payment due and payable under the Contract until such time as the Contractor has provided written evidence of payment of the levy.

51 GST**51.1 Definitions**

In this Clause 51:

'GST Law' has the meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

'GST' means the tax imposed by the GST Law;

'RCTI' means recipient created tax invoice, as defined in the GST Law;

'Tax Invoice' has the meaning given to it in the GST Law; and

'Taxable Supply' has the meaning given to it in the GST Act, and also means any component of a Taxable Supply that is treated as a separate supply under the GST Law.

51.2 ABN, GST Registration

The Contractor represents that:

- (a) it is registered under the GST Law and that the ABN shown in the contract documents is the Contractor's ABN; and
- (b) the supply of the Work is a taxable supply.

The Contractor acknowledges that should these representations be or become incorrect:

- (i) the Principal may be obliged under the *Taxation Administration Act 1953* (Cth) to deduct a withholding from the Contract Sum and will not be obliged to gross up the Contract Sum or make any compensation to the Contractor;
- (ii) if the supply of the work is not a Taxable Supply the Principal is entitled to reduce the Contract Sum by the amount which would have been attributable to GST had the supply been a Taxable Supply.

51.3 Contract Sum Inclusive of GST

The Contract Sum is inclusive of GST and not subject to adjustment except as expressly provided in this Contract.

51.4 Tax Invoices - Recipient Created

The Principal undertakes and represents that:

- (a) it is registered as a Government Entity under the GST Act; and

(b) its ABN is 72 288 544 143;

and is entitled to issue RCTIs in respect of supplies under this Contract.

The Principal must inform the Contractor immediately if it ceases to be registered under the GST Act or if any undertaking given in the preceding subclause is not performed, or if any representation made in the preceding subclause ceases to be true.

The Contractor undertakes and represents that it is registered under the GST Act and that its ABN is as shown on the Tender Form.

The Contractor must inform the Principal immediately if it ceases to be registered under the GST Act.

The Principal may issue an RCTI in respect of any Taxable Supply under this Contract.

The Contractor must not issue any Tax Invoice in respect of any Taxable Supply under this Contract.

The Principal must issue a copy of any RCTI which it issues under or in respect of this Contract to the Contractor and the Principal must retain the original. Each party is responsible for keeping the original or copy of the RCTI in its possession for the period required under the *Taxation Administration Act 1953* (Cth).

The Principal must issue an adjustment note to the Contractor in relation to any adjustment event as defined in the GST Act.

The Principal must reasonably comply with its obligations under the taxation laws of Australia.

The Principal must not issue a document that would otherwise be a RCTI on or after the date when the Principal or Contractor has failed to comply with any of the requirements of the proposed determination by the Taxation Commissioner.

52 PRINCIPAL’S REPRESENTATIVE

The Principal may from time to time appoint individuals to exercise any functions of the Principal under the Contract. The appointment of a Principal’s Representative shall not prevent the Principal from exercising any function. The appointment may allow for further authorisation by the Principal’s Representative.

Where it is a requirement that approval in writing or a notice in writing be given by the Principal or an action be taken by the Principal, for administrative purposes the powers, duties, discretions and authorities vested in the Principal under the listed clauses of the Conditions of contract for design and construct may alternatively be exercised by those authorised by the Principal as set out in the Authorities Schedules 1A, 1B, 1C and 1D in this Clause 52.

AUTHORITIES SCHEDULE 1A				
Principal’s Representative, Executive Director, Infrastructure Delivery Department for Infrastructure and Transport				
Clause	Subclause			Function
3.5	STAGE ONE AND STAGE TWO	(d) (e)		Give direction
3.7	PAYMENT FOR EARLY WORKS			Approve Early Works Fees
3.8	PERFORMANCE MANAGMENT SYSTEM	(a)		Submit a Performance Management System
3.8	TFP OFFER	(g)		Provide written notice accepting or rejecting the TFP Offer
5	SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS	5.6	Conversion of Security and Recourse to Retention Moneys	Recourse to retention moneys and/or security

9	ASSIGNMENT AND SUBCONTRACTING	9.2(iii)	Subcontracting (Including Work Performed by Consultants)	Execute a Deed of Novation
22	INSPECTION AND PROVISION OF INSURANCE POLICIES	22.1	Proof of Insurance	Produce evidence
		22.4	Notices of Potential Claims	Inform Contractor
23	SUPERINTENDENT			Obligations regarding the Superintendent
26	RESPECTFUL BEHAVIOUR	26.4		Give direction
30.5	ACCEPTANCE OF DEFECTIVE MATERIAL OR WORK			Elect to accept the material or work
35	TIMES FOR COMMENCEMENT AND PRACTICAL COMPLETION	35.5	Extension of Time for Practical Completion	Give notice
42	CERTIFICATES AND PAYMENTS	42.8	Set Offs by the Principal	Deduct moneys
		42.9	Recourse for Unpaid Moneys	Recourse to retention moneys and if insufficient security
44	DEFAULT OR INSOLVENCY	44.2	Default by the Contractor	Give written notice to show cause
		44.4	Rights of the Principal	Take work out of the hands of the Contractor, terminate Contract, suspend payments
		44.5	Procedure when the Principal Takes Over Work	Complete work taken out of the hands of the Contractor, take possession of the Contractor's Constructional Plant
		44.6	Adjustment on Completion of the Work Taken Out of the Hands of the Contractor	Keep records, sell constructional plant or other things
		44.10	Rights of the Parties on Termination	Take possession of Design Documents
		44.13	Removal or suspension from Department Prequalification System	Remove or suspend
45A	TERMINATION BY THE PRINCIPAL FOR CONVENIENCE			Give written notice terminating the contract, take possession of the Contractor's equipment.

47	DISPUTE RESOLUTION	47.1	Dispute Procedure	Nominate a Dispute Representative, serve a Dispute Resolution Notice, give written response to Dispute Resolution Notice
48	WAIVER OF CONDITIONS			Consent in writing
51	GST	51.4	Tax Invoices- Recipient Created	Inform Contractor

AUTHORITIES SCHEDULE 1B

**Principal's Representative, Manager Procurement & Commercial Advisory (Pre-Contract),
Transport Project Delivery
Department for Infrastructure and Transport**

Clause	Subclause	Function
18	INSURANCE OF THE WORK UNDER THE CONTRACT	Effect policy of insurance
19	PUBLIC LIABILITY INSURANCE	Effect policy of insurance

AUTHORITIES SCHEDULE 1C

**Principal's Representative, Principal Cost Manager, Building Projects
Department for Infrastructure and Transport**

Clause	Subclause	Function
3	NATURE OF CONTRACT 3.1	Performance and Payment Pay Contractor
11	PROVISIONAL SUMS	Pay Contractor
22	INSPECTION AND PROVISIONS OF INSURANCE POLICIES 22.2	Failure to Produce Proof of Insurance Pay premiums, refuse payment
	22.7	General Pay premium
31	EXAMINATION AND TESTING 31.7	Costs of Testing Pay Contractor
35	TIMES FOR COMMENCEMENT AND PRACTICAL COMPLETION 35.6	Liquidated Damages for Delay in Reaching Practical Completion Repay Contractor
	35.8	Bonus for Early Practical Completion Pay Contractor
	36	DELAY OR DISRUPTION COSTS Pay Contractor extra costs
40	VARIATIONS 40.2	Proposed Variations Reimburse Contractor, pay Contractor
	40.5	Valuation Pay Contractor

AUTHORITIES SCHEDULE 1C				
Principal's Representative, Principal Cost Manager, Building Projects Department for Infrastructure and Transport				
Clause		Subclause		Function
42	CERTIFICATES AND PAYMENTS	42.1	Payment Claims, Certificates, Calculations and Time for Payment	Pay Contractor
		42.2	Unfixed Plant and Materials	Make payment
43	PAYMENT OF WORKERS AND SUBCONTRACTORS	43.3	Withholding of Payment	Withhold payment
		43.4	Direct Payment	Pay subcontractor or worker
45	TERMINATION BY FRUSTRATION	45(a), 45(b), 45(c), 45(e), 45(f); and 45(g)		Pay Contractor
45A	TERMINATION BY THE PRINCIPAL FOR CONVENIENCE	45A(b)		Pay Contractor
51	GST	51.4	Tax Invoices - Recipient Created	Issue RCTI, issue copy of RCTI, issue adjustment note

AUTHORITIES SCHEDULE 1D				
Superintendent, Director Building Projects Department for Infrastructure and Transport				
Clause		Subclause		Function
3.6	EARLY WORKS	(a)		Direct Early Works Give access to the Site Approve Early Works Subcontracts
3.8	TOTAL FIXED PRICE OFFER AND PERFORMANCE MANAGEMENT SYSTEM	(f)		Negotiate adjustments to the Construction Program Object to possible subcontractors Request that the Contractor perform further inspections and make further enquiries, and request that further information be included in an updated report
3.8	TOTAL FIXED PRICE OFFER AND PERFORMANCE MANAGEMENT SYSTEM	(g)		Provide written notice accepting or rejecting the TFP Offer
5	SECURITY, RETENTION	5.3	Form of Security	Approve or disapprove the form of security

AUTHORITIES SCHEDULE 1D				
Superintendent, Director Building Projects Department for Infrastructure and Transport				
Clause		Subclause		Function
	MONEYS AND PERFORMANCE UNDERTAKINGS	5.7	Substitution of Security for Retention Moneys	Release retention moneys
		5.9	Release of Security and Retention Moneys	Release security and retention moneys
7	SERVICE OF NOTICES			Notify change of address
8	CONTRACT DOCUMENTS	8.3	Supply of Documents by Principal	Supply copies, demand in writing, give written approval
		8.5	Contractor's Design Obligations	Approve in writing
		8.14	Media Releases	Give approval
10	NOVATION			Give direction
13	PATENTS, COPYRIGHTS AND OTHER INTELLECTUAL PROPERTY RIGHTS	13.2	Delivery of IP	Make request. Give direction
15	PROTECTION OF PEOPLE AND PROPERTY AND SAFETY CULTURE			Perform obligation on Contractor's behalf (15.1) Give directions under clause 15.2
27	SITE	27.1	Possession of Site	Give possession of Site or sufficient of the Site, or part of Site, advise date in writing, refuse possession of Site or part of Site
		27.2	Access for the Principal and Others	Give notice, authorise persons
30	MATERIALS AND WORK	30.3	Defective Material or Work	Have work carried out by other persons
31	EXAMINATION AND TESTING	31.8	Access for Testing	Assert material or work not in accordance with Contract
40	VARIATIONS	40.2	Proposed Variations	Agree terms, give written notice
42	CERTIFICATES AND PAYMENTS	42.6	Final Certificate	Release Security, Retention Moneys or both
45	TERMINATION BY FRUSTRATION	45(e)		Release Security, Retention Moneys or both

53 DISCLOSURE AND CONFIDENTIALITY

The Contractor agrees to disclosure of this Contract in accordance with Premier and Cabinet Circular PC027, a copy of which is exhibited in either printed or electronic form and either generally to the public, or to a particular person as a result of a specific request;

Nothing in this clause derogates from:

- (a) the Contractor's obligations under any other provision of this Contract; or
- (b) the provisions of the *Freedom of Information Act 1991* (SA).

54 NOT USED

55 EMPLOYMENT OF EX-GOVERNMENT EMPLOYEES

The Contractor must not accept the services of any person who, either directly or through an independent contractor or third party, within the last three years, has received a separation package from the South Australian Government under its various schemes where the service may breach the conditions under which the separation package was paid to the former public sector employee.

56 WORKPLACE GENDER EQUALITY

This clause applies if the Contractor is a relevant employer within the meaning of the *Workplace Gender Equality Act 2012* (Cth).

The Contractor must comply with its obligations under the *Workplace Gender Equality Act 2012* (Cth) and remain compliant until the expiry or termination of the Contract.

The Contractor must take reasonable steps to ensure that any subcontractors comply with the *Workplace Gender Equality Act 2012* (Cth) if that subcontractor is a relevant employer within the meaning of the *Workplace Gender Equality Act 2012* (Cth).

57 CODE OF PRACTICE

The Contractor shall comply with the Code of Practice for the South Australian Construction Industry (the 'Code') during the term of the Contract. Failure to comply will be taken into account by the South Australian Government and its agencies when considering a future tender from the Contractor and may result in such tender being passed over and/or a change in the status of the Contractor on any State Government register of contractors. The Contractor shall ensure that all subcontracts contain a requirement to comply with the Code.

58 INDUSTRY PARTICIPATION POLICY

Agencies and private parties contracting to the Government of South Australia are required to comply with the South Australian Industry Participation Policy (SAIPP) and the supporting procedural and reporting requirements.

58.1 Industry Participation Plan

The Contractor must comply with the requirements of the Standard or Tailored Industry Participation Plan – Stage 1 in Attachment 2 and submit an Industry Participation Plan – Stage 2 with its TFP Offer.

The Contractor must implement the Contractor's Industry Participation Plan – Stage 2 as submitted as part of its TFP Offer and accepted by the Principal.

58.2 Industry Participation Reports

The Contractor must provide to the IA, an Industry Participation Report (IPP Report) in respect of each Industry Participation Reporting Period within two weeks of the end of each period, in the format set out in the report template available at: <https://industryadvocate.sa.gov.au/policy-and-resources/>. The Contractor must provide evidence to the Principal that it has provided IPP Reports to the IA as soon as practicable and in any event no later than 5 Business Days after submission to the IA.

The Industry Participation Reporting Period is:

- (a) the period between the date of commencement of the Contract and the date six (6) months after the date of commencement;
- (b) each subsequent six (6) month period during the term of the Contract;
- (c) if the date of expiry of the Defects Liability Period is a date that is not an anniversary of the date of commencement of the Contract or an anniversary of the date in sub-clause 58.2(b), the period from the conclusion of the preceding Industry Participation Reporting Period until the date of termination or expiry of the Defects Liability Period;

- (d) for short-term projects of strategic importance to the State, the period notified by the Industry Advocate (IA) to the Contractor in writing; and
- (e) where the term of the Contract is for a period less than six (6) months, the entire term.

58.3 Industry Participation Meetings

The Contractor must attend any meeting scheduled by the IA during the term of the Contract to review how the SIPP is being implemented and advanced, and for this purpose, the Contractor must provide all information reasonably requested by the IA. The IA must give the Contractor not less than ten (10) Business Days' notice of any such meeting.

58.4 Compliance

The IA may, by written notice require that the Contractor within a reasonable time specified in the notice provide information or documents to enable the Industry Advocate to assess the Contractor's compliance with this clause 58.

If the IA reasonably believes that the Contractor is not complying with the requirements of this clause 58, the IA may be notice in writing direct that the Contractor comply with those requirements.

Upon receipt of the notice, if the Contractor is of the opinion that its noncompliance is reasonable and justified, the Contractor may provide a response to the Industry Advocate outlining that opinion and the reasons for it.

The Contractor's failure to comply, in whole or in part, with the commitments contained within the SIPP will be a factor taken into account in the award of future contracts for the Government of South Australia.

58.5 General

In this clause, 'Industry Advocate' or 'IA' means the person who from time to time has been appointed to the position of Industry Advocate under s.5 of the *Industry Advocate Act 2017* (SA).

59 NOT USED

59A NOT USED or AUSTRALIAN GOVERNMENT AGREEMENT

The Contractor acknowledges that the Principal will enter into an agreement with the Commonwealth of Australia for the provision of funds for the Works (the "Commonwealth Funding Agreement"). The Contractor agrees to cooperate in all respects during the term of the Contract to enable the Principal to perform its obligations under the Commonwealth Funding Agreement and without limitation the Contractor will:

- (a) preserve the confidentiality of the Commonwealth Funding Agreement;
- (b) not do anything or permit anything to be done (whether by act or omission) which may cause or contribute towards a breach of the Commonwealth Funding Agreement by the Principal or otherwise prejudice its rights under the Commonwealth Funding Agreement;
- (c) provide any information requested by the Commonwealth pursuant to the Commonwealth Funding Agreement.

In the event that the Commonwealth either:

- (i) terminates the Commonwealth Funding Agreement; or
- (ii) otherwise withdraws funding for the Works,

then the Principal has the right to terminate this Contract with no liability to the Contractor, except that the Principal will pay the Contractor for services rendered prior to such termination.

59B NOT USED AUSTRALIAN GOVERNMENT WORK HEALTH AND SAFETY ACCREDITATION SCHEME

The Contractor shall be accredited under the Australian Government Work Health and Safety Accreditation Scheme (the Scheme) (established by the *Federal Safety Commissioner Act 2022* and specified in the *Federal Safety Commissioner (Accreditation Scheme) Amendment Rules 2023*) while building work is carried out, and shall maintain accreditation under the Scheme while the Works are being carried out and for the duration of the Contract, and the Contractor shall comply with all conditions of the Scheme accreditation.

60 BOOKS AND RECORDS**60.1 Keeping Records**

The Contractor must make and keep, and must ensure all secondary subcontractors, agents, consultants, officers or employees make and keep all records as are typically prepared and maintained in relation to a project of the type and nature of the Works ("Records"), such Records to be retained in writing or stored in any other medium whatsoever. The Records will include:

- (a) all documents referred to in the Contract and the Annexures;
- (b) records as to progress of the work including diary records of daily tasks, complete photographic records and manning and equipment records;
- (c) quality system documents and records, results of the examination and testing of any work;
- (d) time records, all cost records relating in any way to delays, variations and any work the remuneration for which is based on actual cost, loss or damage;
- (e) all consultants' reports and opinions obtained by the Contractor in relation to the matters referred to in this clause; and
- (f) all necessary supporting correspondence, internal memoranda, minutes, technical and other documents, invoices, records and related financial statements.

60.2 Right to Inspect Records

- (a) Each of the Principal and the Superintendent have the right to inspect and to copy the whole or part of any Record, and to conduct an audit of the Records and the work under the Contract (other than Records relating generally to the financial conduct of the Contractor's whole business, internal estimates of costs and board minutes) during usual business hours and upon giving prior reasonable notice in writing.
- (b) If a Record is stored on a medium other than in writing, the Contractor must use all reasonable endeavours to provide at the appointed time for inspection and copying, or such other reasonable time, such facilities as may be necessary to enable a legible reproduction of the Record to be produced to each and all of the Principal or the Superintendent.
- (c) Where a Record is in electronic format, the Contractor must provide an inspecting party with a non-exclusive licence to use the software necessary to view and, where relevant, analyse, the information.
- (d) The Contractor will procure a right of inspection and copying of any and all Records in the possession or control of any secondary subcontractors, agents and consultants on terms mirroring the provisions of this clause 60.2.

60.3 No Right to Refuse Inspection

- (a) The Contractor is not entitled to unreasonably refuse inspection of any Record. For the purpose of this clause, it will be reasonable for the Contractor to refuse inspection and copying on the basis of legal professional privilege.
- (b) If a Record is confidential information, the Contractor may refuse inspection of the Record until the person who is conducting the inspection has executed an undertaking to keep the confidential information confidential.

60.4 Co-operation

The Contractor must act reasonably and co-operate with each and all of the Contractor, the Principal or the Superintendent when they are conducting an inspection. For the purposes of this Clause 60, the subcontractor may be required to explain all filing and costing systems and the extraction of requested categories of documentation from files.

60.5 Maintenance and Destruction of Records

- (a) The Contractor must keep the Principal informed as and when requested to do so, about the location of the Records.
- (b) The Records must be maintained in the case of manufacturing Records of suppliers who manufactured equipment overseas, at their place of business overseas and otherwise, within Australia.

- (c) The following Records should not be destroyed but should be handed to the Principal at the issue of the Final Certificate or earlier termination of the Contract:
- (i) design documents actually used in construction, as built drawings, and commissioning information; and
 - (ii) Records relating to or reporting on compliance with the requirements of a Government Agency and Approvals.
- (d) The Records not referred to in clause 60.5(c) may only be destroyed seven (7) years after the last to occur of:
- (i) the issue of the Final Certificate;
 - (ii) the termination of the Contract if that occurs before the issue of the Final Certificate; or
- the resolution of all claims and disputes under or arising out of the Contract that are first notified before the milestones referred to at subclauses 60.5(d)(i) and 60.5(d)(ii).

61 OPERATION OF PROPORTIONATE LIABILITY LEGISLATION

- (a) If the parties' rights, obligations or liabilities arise out of or otherwise relating to this Contract are subject to legislation that apportions liability for apportionable claims between concurrent wrongdoers including Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA), then to the extent permitted by law, that legislation is excluded and does not apply. The Contractor acknowledges this clause 61 constitutes a special limitation for the purposes of Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA).
- (b) If the Contractor breaches any of its obligations under this Contract, and the operation of any legislation results in the Principal being unable to recover some part of the consequential loss or damage from the Contractor ("the Apportioned Loss"), as a separate obligation under the Contract, the Contractor indemnifies the Principal in respect of the Apportioned Loss and must pay the Principal the amount of the Apportioned Loss immediately on demand by the Principal.
- (c) The Contractor must ensure that its subcontracts, including contracts with material suppliers, include provisions that are functionally equivalent to this clause 61.

62 MOVEMENT OF WORKERS

The Contractor must have in place appropriate policies and procedures to manage and monitor the movement of Workers on the Site and on any areas adjacent to or near the Site and to ensure compliance with the matters in this Clause 62.

The Contractor must and must ensure that each Worker, in relation to the Site and any areas adjacent to or near the Site:

- (a) understands and complies with the notice and security requirements and any other conditions of entry applicable to any area upon which a Worker is required to enter in connection with the work under the Contract;
- (b) complies with any other reasonable instructions or restrictions imposed by the person in charge of the relevant area; and
- (c) does not enter any area that it does not have authority to enter.

The Contractor must and must ensure that each Worker submits to such police checks, Working with Children Checks and such other enquiries as may be specified in the Contract or otherwise notified to the Contractor by the Superintendent or the person in charge of the relevant area. The Contractor consents to and must procure the consent of any Worker to the conduct of any such enquiry and upon request, the Contractor shall supply details of any Worker, including the name (including former names), address, and date of birth and any other information that may be required to conduct the enquiry.

The Contractor must, on an ongoing basis:

- (i) monitor all Workers to ensure that they do not present a potential security risk;
- (ii) immediately inform the Superintendent upon becoming aware of any such risk;
- (iii) take all immediate and ongoing steps necessary to protect any person from harm; and

- (iv) take the steps reasonably required by the Superintendent to avoid or minimise that risk (which may include a direction to procure the immediate removal and ongoing exclusion of the person from the Site and from any involvement in the work under the Contract).

This Clause 62 is not intended to limit the Principal's rights or the Contractor's obligations as set out in the Contract.

For the purpose of this Clause 62 "Workers" means:

- the Contractor, its directors, officers, employees, agents, volunteers and invitees; and
- all subcontractors, their directors, officers, employees, agents, volunteers and invitees, who attend on the Site.

63 CHILD SAFETY

63.1 General

This clause 63 applies where the Contractor is required by the Contract to procure Working with Children Checks of Workers.

Notwithstanding any clause in this Contract, the parties acknowledge that the rights and obligations under this clause 63 are fundamental to this Contract.

For the purpose of this Clause 63:

- (a) "Prohibited Person" has the meaning given in the *Prohibited Persons Act*;
- (b) "Prohibited Persons Act" means the *Child Safety (Prohibited Persons) Act 2016 (SA)*;
- (c) "Prohibition Notice" has the meaning given in the *Prohibited Persons Act*; and
- (d) "Workers" has the same meaning given to it in Clause 62.

63.2 Contractor's Obligations

The Contractor must:

- (a) immediately exclude and remove from the Site any Worker who is a Prohibited Person;
- (b) immediately exclude and remove from the Site any Worker that is the subject of an allegation, arrest, charge or conviction (whilst not being the subject of a Prohibition Notice) for:
 - (i) a sexual offence or an offence of indecency;
 - (ii) any offence of violence or deprivation of liberty;
 - (iii) any offence involving child pornography or child exploitation;
 - (iv) any other major indictable offence; or
 - (v) any conspiracy to commit, or an attempt to commit, an offence referred to in any of the preceding paragraphs.

until such time as the relevant Worker is found to be a Prohibited Person (in which case clause 63.2(a) will apply) or the Principal consents in writing to the return of the Worker to the Site.

Unless such notification causes the Contractor to be in breach of the Prohibited Persons Act the Contractor must promptly notify the Principal if it becomes aware that any Worker is a Prohibited Person for the purposes of the Prohibited Persons Act or is the subject of an allegation, arrest, charge or conviction for an offence as set out in clause 63.2(b).

The Contractor must ensure that:

- A. Workers are aware of and act in a manner consistent with the Contractor's obligations under this clause at all times;
- B. Workers (not being the Contractor) immediately inform the Contractor if the Worker is or becomes a Prohibited Person; and
- C. Workers (not being the Contractor) immediately inform the Contractor if the Worker is the subject of any allegation, arrest, charge or conviction for an offence as set out in clause 63.2(b) (whilst not being the subject of a Prohibition Notice).

63.3 Compliance with Policies and Procedures

The Contractor must at all times comply with any practices, policies and procedures in relation to child safe environments notified in writing by the Principal.

63.4 Effect of Non-Compliance

If the Contractor does not strictly, fully and immediately comply with any or all of its obligations under this clause, the Principal may terminate this Contract with immediate effect.

Any exercise by the Principal of the Principal's rights under this clause:

- (a) does not limit the Principal's rights to pursue any Claim against the Contractor arising in respect of a breach by the Contractor of the Contractor's obligations under this Contract; and
- (b) will not give rise to any liability owing to the Contractor or Worker.

64 VERIFIER

The Principal may appoint one or more persons to verify that:

- (a) the Design Documents comply with and meets the requirements of the Principal's Project Requirements and the Contract; and/or
- (b) the Works carried out under the Contract are in accordance with the plans and specifications which were certified for compliance with the Building Rules under Clause 14.9.

The Contractor must co-operate with any person appointed under this Clause 64, including by providing the person access to such documents, works and sites as the verifier shall require to discharge of its obligations of its engagement to the Principal.

The appointment of a person under this Clause 64 or that person's verification shall not limit the Contractor's liabilities or obligations under the Contract.

65 LIMITATION AND EXCLUSION OF LIABILITY

65.1 Limitation of liability

Except for any liability in respect of the Prescribed Heads of Liability (which remain unlimited), the Principal and the Contractor agree to limit the liability of either party to the other party (whether arising out of breach of contract, tort or otherwise at law or in equity) to an amount equal to the greater of:

- (a) the Contract Sum; or
- (b) the sum of all amounts which the party is entitled to recover under the insurance policies required to be held by the Contractor or Principal under this Contract in respect of liability to the other party (or would have been entitled to recover, acting as a Model Claimant).

The liability of a party for loss or damage sustained by the other party will be reduced to the extent that such loss or damage has been caused by the other party's breach of the Contract, wrongful act, omission or negligence.

65.2 Exclusion of Liability

Subject to this clause 65.2, a party will not be liable to the other party for:

- (a) loss of business opportunity;
- (b) loss of goodwill;
- (c) loss of profit;
- (d) loss of contracts;
- (e) loss of anticipated savings;
- (f) loss of revenue; or
- (g) the cost of capital or other financing costs

which loss or cost arises due to the other party's breach of Contract, act, omission or negligence. However, the exclusion of liability in this clause 65.2 does not apply to a party's liability:

- i. in connection with the Prescribed Heads of Liability (which remain unlimited); or
- ii. for any liquidated damages or any other payment of loss or damages expressly provided for under this Contract.

65.3 Priority and Survival

In resolving inconsistencies in the Contract, the provisions of this clause 65 shall take priority.

This clause 65 will survive the expiry or termination of this Contract.

66 **NOT USED** OR OPPORTUNITIES FOR SCHOOL STUDENTS

In addition to the Contractor's obligations to comply with the Industry Participation Policy requirements pursuant to clause 58, the Contractor shall encourage its subcontractors to, wherever possible, engage School enrolled students as apprentices.

Within 30 days of the Date of Acceptance of Tender, the Contractor shall, in conjunction with the School Representative, develop and implement an Industry Engagement Plan which shall:

- (a) include a minimum of three (3) hours per month of immersion activities for the Contractor to participate in during the Works and until the Date of Practical Completion;
- (b) be facilitated by the Department for Education's industry engagement consultants; and
- (c) be based on the immersion activity options outlined in the Specifications.

The Contractor shall:

- (i) comply with the *Children and Young People Safety Act 2017 (SA)* and *Child Safety (Prohibited Persons) Act 2016 (SA)*; and
- (ii) comply with all the work placement provider/employer requirements in the Workplace Learning Procedures as applicable to the relevant activities in the Industry Engagement Plan, including without limitation:
 - complete the Work Health Safety Checklist;
 - assist the School Representative to conduct a risk assessment using the Worksite Risk Assessment Summary Form for each student undertaking a work placement;
 - complete and sign a Workplace Learning Agreement Form;
 - ensure the student is directly supervised by persons who are suitably qualified and/or experienced, and competent in the relevant task a student is undertaking;
 - follow the Guide to Workplace Learning for Work Placement Provider which outlines the conditions for providing a safe environment for the student;
 - ensure the work site is safe, and ensure that hazards associated with work placement are identified prior to the commencement of placement;
 - comply with its obligations under the provisions of the *Work Health and Safety Act 2012 (SA)*.

Complying with this clause 66 does not entitle the Contractor to additional cost or time for the completion of the Works.

In this clause 66:

"School" means [insert name of school];

"School Representative" means [insert title of school representative].

"Guide to Workplace Learning for Work Placement Providers" means the Department for Education, Catholic Education South Australia and Association of Independent Schools of South Australia guide to workplace learning available at: https://ais.sa.edu.au/wp-content/uploads/Pages/Vocational_Education/Guide-for-Work-Placement-Providers.pdf;

"Work Health Safety Checklist" means Department for Education work health and safety checklist available at: <https://www.education.sa.gov.au/sites/default/files/workplace-learning-work-health-safety->

[checklist.pdf](#);

“Workplace Learning Agreement Form” means the Department for Education workplace learning agreement for available at: <https://www.education.sa.gov.au/sites/default/files/workplace-learning-agreement-form.pdf>; and

“Worksite Risk Assessment Summary Form” means the Department for Education worksite risk assessment summary form available at: <https://www.education.sa.gov.au/sites/default/files/worksite-risk-assessment-summary.pdf>

67 LOCAL WORKERS

67.1 Subclauses 67.1 to 67.8 (inclusive) apply where Annexure Item 54 states that the project is a Major Infrastructure Project.

67.2 An objective of this Contract is to increase the employment of Local Workers.

67.3 Where the Contractor fails to comply in part or in whole with the requirements of subclauses 67.1 to 67.8 (inclusive), the Principal may suspend the Contractor from the Department Prequalification System for a period determined by the Principal. Any such failure may be a factor taken into account in the award of future contracts by the South Australian Government. The Contractor has no claim for damages or other entitlement whether under the Contract or otherwise for any such action taken by the Principal.

Targets

67.4 The Contractor must, subject to subclauses 67.1 to 67.8 (inclusive), ensure that the On-Site Hours performed by Local Workers (engaged by either the Contractor or its subcontractors) in the execution of work under the Contract is no less than 90% of the On-Site Hours required to execute the work under the Contract.

Reporting

67.5 The Contractor must submit to the Principal, such information and reports as the Principal may require to verify the Contractor’s compliance with clause 67.4.

67.6 The Contractor must (and must ensure that its subcontractors) keep records of compliance with clauses 67.1 to 67.8 (inclusive) and provide the Principal with such assistance, including the provision of information, as it may reasonably require in connection with it carrying out an audit of the Contractor’s compliance with subclauses 67.1 to 67.8 (inclusive).

Other

67.7 The Contractor must not (and must ensure that its subcontractors do not) contravene the *Privacy Act 1988* (Cth) or the South Australian Government’s Information Privacy Principles and must ensure that it and its subcontractors obtain all necessary consents required to disclose a person’s personal information as required by or in connection with subclauses 67.1 to 67.8 (inclusive).

67.8 In this clause 67:

- (a) “Local Worker” means an employee whose principal place of residence for taxation purposes is in South Australia.
- (b) “On-Site Hour” means an hour of work performed by a person on the Site.

68 TRAINEES, ABORIGINAL PEOPLE AND LONG TERM UNEMPLOYED

General

68.1 Subclauses 68.1 to 68.9 (inclusive) apply where Annexure Item 54 states that the project is a Major Infrastructure Project.

- 68.2** An objective of this Contract is to increase the employment and training of Apprentices and Trainees, Aboriginal people and Long Term Unemployed (the “Target Group”).
- 68.3** The Contractor formally declares its intent to work in conjunction with the South Australian Government to meet the South Australian Government’s policy targets by employing and training people from the Target Group, including through on-Site work by subcontractors.
- 68.4** Where the Contractor fails to comply in part or in whole with the requirements of subclauses 68.1 to 68.9 (inclusive), the Principal may suspend the Contractor from the Department Prequalification System for a period determined by the Principal. Any such failure may be a factor taken into account in the award of future contracts by the South Australian Government. The Contractor has no claim for damages or other entitlement whether under the Contract or otherwise for any such action taken by the Principal.

Target

- 68.5** The Contractor must, subject to subclauses 68.1 to 68.9 (inclusive), ensure that the total labour hours performed by people in the Target Group (engaged by either the Contractor or its subcontractors) in the execution of work under the Contract is no less than 20% of the total labour hours required to execute the work under the Contract.

Reporting

- 68.6** The Contractor must submit to the Principal such information and reports as the Principal may require to verify the Contractor’s compliance with clause 68.5.
- 68.7** The Contractor must (and must ensure that its subcontractors) keep records of compliance with subclauses 68.1 to 68.9 (inclusive) and provide the Principal with such assistance, including the provision of information, as it may reasonably require in connection with it carrying out an audit of the Contractor’s compliance with this clause.

Other

- 68.8** The Contractor must not (and must ensure that its subcontractors do not) contravene the *Privacy Act 1988* (Cth) or the South Australian Government’s Information Privacy Principles and must ensure that it, and its subcontractors, obtain all necessary consents required to disclosing a person’s personal information as required by or in connection with subclauses 68.1 to 68.9 (inclusive).

Definitions

- 68.9** For the purpose of this clause:

- (a) “Aboriginal person” means a person who identifies as being Aboriginal and/or is considered by members of his or her community as being Aboriginal. This definition includes Torres Strait Islander people;
- (b) “Apprentice/Trainee” means a person (who may be either an apprentice or a trainee) undertaking training in a trade or declared vocation under a training contract as provided.
- (c) “Long Term Unemployed” means any person residing in South Australia who, at the time of commencing employment with the Contractor (or its subcontractor), has been unemployed for a continuous period of 12 months. A Long Term Unemployed person includes a person who is:
- (i) registered with Centrelink or a Job Services Australia provider;
 - (ii) registered with the Disability Employment Services;
 - (iii) a skilled migrant job seeker holding a General Skilled Migrant visa;
 - (iv) a participant in a South Australia Works program (being the initiative of the South Australian Government which links people with skills and jobs through a range of learning, training and work programs).

A person maintains his or her status as a Long Term Unemployed for 12 months from the commencement of employment with the Contractor or subcontractor (as the case may be).

ANNEXURE

This annexure takes the place of Part A of the Annexure to the General conditions of contract for design and construct (AS 4300—1995).

1. The law applicable is that of the State or Territory of: (Clause 1)	South Australia
2. Payments under the Contract shall be made at: (Clause 1)	Adelaide, South Australia
2A. Stage One Fixed Fee (Clause 3.5(b))	[\$insert] GST Inclusive
2B. Contractor's Margin (Clause 3.8(d))	[insert %] (offsite overheads includes the following: X X X X
2C. Principal's Construction Cost Estimate (Clause 3.8)	[\$insert] GST Inclusive
3. The Principal: (Clause 2)	Minister for Infrastructure and Transport
4. The address of the Principal: (Clause 2)	Level 14 83 Pirie Street ADELAIDE SA 5000
5. The Contractor: (Clause 2)	[INSERT CONTRACTOR] ACN: ABN:
6. The address of the Contractor:	
6A. Contractor's Representative	Name: Email:
7. The Superintendent: (Clause 2)	Director Building Projects Department for Infrastructure and Transport
8. The address of the Superintendent: (Clause 2)	Level 13, 83 Pirie Street ADELAIDE SA 5000
8A. Superintendent's Representative	Project Manager Email: [insert]
9. The Date for Practical Completion Clause 2) OR The period of time for Practical Completion (Clause 2)	[for the purpose of RFT calendar weeks may be used, noting the date should be agreed with the Tenderer and converted to a date prior to issue of the Contract Refer also to Separable Portion]
10. Preliminary Design (Clause 2)	(A) A Preliminary Design is included In the Principal's Project Requirements (B) If a Preliminary Design is included in the Principal's Project Requirements, the documents stating the preliminary Design are: described in Item 11.
11. The Principal's Project Requirements are described in the following documents	Documents describing the Principal's Project Requirements are:

<p>(additional to those listed in the Annexure item for Preliminary design): (Clause 2)</p>	<ul style="list-style-type: none"> Principal's Project Requirements Brief Concept Report Specifications (based on NATSPEC and DIT amended NATSPEC sections) and Schedules Drawings Code of Practice for the South Australian Construction Industry Government Building Energy Strategy 2013-2020 DIT Guidenote G182 [DECD Facilities Design Standards and Guidelines (DfE project) or SAH Facilities Design Standards and Guidelines (if provided by SAH).] [list any other documents specific to the project] 																								
<p>12. Time for TFP Offer (Clause 3.8(c))</p>	<p>XX Business Days from Date of Acceptance of Tender</p>																								
<p>13. Contractor shall provide security in the amount of: (Clause 5.2)</p>	<p>Unconditional bank guarantees as follows:</p> <ul style="list-style-type: none"> Stage One: 5% of Stage One Fixed Fee Early Works: 5% of Early Works Fee Stage Two: 5% of the Contract Sum (GST exclusive portion) (can be provided as 2 separate items of security, each with a value of 2.5%) 																								
<p>14. Principal shall provide security in the amount of: (Clause 5.2)</p>	<p>Nil</p>																								
<p>15. Retention moneys shall be deducted progressively as follows: (Clauses 5.5 and 42.1)</p>	<p>Not applicable</p>																								
<p>16. Not used</p>																									
<p>17. Not used</p>																									
<p>18. Not used:</p>																									
<p>19. Holding of and interest on cash security and retention moneys – the alternative applying: (Clause 5.10)</p>	<p>Alternative 2</p>																								
<p>20. Not used</p>																									
<p>21. Documents, number of copies and the times or design stages at which they are to be supplied by the Contractor (clause 8.4):</p>	<p>Refer table below</p>																								
<table border="1"> <thead> <tr> <th>DOCUMENTS</th> <th>NUMBER OF COPIES</th> <th>TIME/DESIGN STAGE</th> </tr> </thead> <tbody> <tr> <td>Design Documents - Drawings and Specification</td> <td>1</td> <td>Design development stage (approx. 60% design complete)</td> </tr> <tr> <td>Design Documents – Drawings, Specification (including list of Completion Documents) and Principal's Project Requirements Brief</td> <td>1</td> <td>With TFP Offer</td> </tr> <tr> <td>Design Documents - Drawings and Specification</td> <td>1</td> <td>Pre-construction (100% design complete)</td> </tr> <tr> <td>For construction documents</td> <td>3</td> <td>Prior to construction</td> </tr> <tr> <td>Building Rules Consent (including certified documents)</td> <td>1</td> <td>Prior to on-site construction</td> </tr> <tr> <td>Final on-site construction program</td> <td>1</td> <td>Prior to on-site construction</td> </tr> <tr> <td>Certificates and Written Statement (General</td> <td>1</td> <td>Prior to Practical Completion</td> </tr> </tbody> </table>	DOCUMENTS	NUMBER OF COPIES	TIME/DESIGN STAGE	Design Documents - Drawings and Specification	1	Design development stage (approx. 60% design complete)	Design Documents – Drawings, Specification (including list of Completion Documents) and Principal's Project Requirements Brief	1	With TFP Offer	Design Documents - Drawings and Specification	1	Pre-construction (100% design complete)	For construction documents	3	Prior to construction	Building Rules Consent (including certified documents)	1	Prior to on-site construction	Final on-site construction program	1	Prior to on-site construction	Certificates and Written Statement (General	1	Prior to Practical Completion	
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Certificates and Written Statement (General	1	Prior to Practical Completion																							

Requirements Clause 6.2)			
Completion Documents including as built drawings (refer Specification)		Electronic	Prior to Practical Completion
22.	Not used		
23.	Work which cannot be subcontracted without approval: (Clause 9.2)	Work by Consultants Work by others	
24.	Novated Consultants (whose contracts the Principal may direct be novated): (Clause 10)	LPSC Consultant name: [insert name] Consultant ABN: [insert ABN] [insert name of key personnel] [insert name of key personnel] and its sub-consultants.	
25.	The percentage for profit and attendance: (Clause 11(b))	5%	
26.	Not used		
27.	Legislative requirements not required to be satisfied by Contractor: (Clause 14.1)	Not applicable	
28.	Insurance of the Works - the alternative applying: (Clause 18)	Alternative 2	
29.	Public Liability policy of insurance – the alternative applying: (Clause 19)	Alternative 2 – Refer to the amended Clause 22.1 in the Special Conditions of Contract.	
30.	If Alternative 1 applies, the amount of public liability insurance shall be not less than: (Clause 19)	Not applicable	
31.	Amount of Contractor's professional indemnity insurance shall be not less than: (Clause 21)	<u>\$5,000,000</u> if the Contract Sum is \$5,000,000 or less. <u>\$10,000,000</u> if the Contract Sum is greater than \$5,000,000 but equal to or less than 10,000,000. <u>\$20,000,000</u> if the Contract Sum is greater than \$10,000,000. And in any case, the above amount is per occurrence and in aggregate.	
32.	Period for which Contractor's professional indemnity insurance shall be maintained after issue of the Final Certificate: (Clause 21)	7 years	
33.	Categories of Professional Service Contractors and amounts of Professional Service Contractors' professional indemnity insurance: (Clause 21)	<u>\$5,000,000</u> if the Contract Sum is \$5,000,000 or less. <u>\$10,000,000</u> if the Contract Sum is greater than \$5,000,000 but equal to or less than 10,000,000. <u>\$20,000,000</u> if the Contract Sum is greater than \$10,000,000. And in any case, the above amount is per occurrence and in aggregate.	

	For Novated Consultants, the specified amounts in the novated Contract
34. Period for which each Professional Service Contractor's professional indemnity insurance shall be maintained after issue of the Final Certificate: (Clause 21)	7 years
34A Key Personnel (clause 26.2)	[insert list]
35. The time by which access to the Site shall be given: (Clause 27.1)	Subject to clauses 5.4 and 27.1: Date of Acceptance of Tender OR Insert a date Stage 1 – Date of Acceptance of Tender Stage 2 – Within 1 calendar week following Practical Completion of Stage 1 Stage 3 – Within 1 calendar week following Practical Completion of Stage 2
36. The time for giving possession of the Site to enable commencement of further work: (Clause 27.1)	On the Stage Two Start Date
37. Not used	
38. Not used	
39. Rate of liquidated damages: (Clause 35.6)	\$(insert) per day (GST inclusive)
40. Limit of liquidated damages: (Clause 35.7)	Not used
41. Bonus for early Practical Completion: (Clause 35.8)	Not used
42. Limit of bonus: (Clause 35.8)	Not used
43. Daily rate for delay costs: (Clause 36)	\$(insert) per day (GST inclusive)
44. The Defects Liability Period: (Clause 37)	12 months
45. The charge for overheads, administrative costs, site supervision, establishment costs attendance and profit for Daywork: (Clause 41(f))	Not used
46. (a) Times under the Contract for payment claims: (Clause 42.1) OR	Monthly, on the last Business Day of each month

(b) Stages of the work under the Contract for payment claims: (Clause 42.1)	Not applicable
47. Unfixed plant and materials for which payment claims may be made before they are incorporated in the Works: (Clause 42.2)	Not used
48. Not used	
49. The rate of interest on overdue payments: (Clause 42.7)	3% above the RBA's published cash rate as at the date of original payment claim
50. The delay in giving possession of the Site which shall be a substantial breach: (Clause 44.7 (c))	3 months
51. The delay in giving possession of the Site or sufficient of the Site which shall be a substantial breach: (Clause 44.7 (d))	3 months
51A Margin for profit and overheads (Clause 45A(b)(i)(B))	2.5%
51B Additional work and payment (Clause 45A(b)(ii))	Work
	Equipment
51C Contactor's equipment (Clause 45A(b)(iii))	As required to complete Works
52. The Principal's Dispute Representative: (Clause 47)	Executive Director Infrastructure Delivery Division Department for Infrastructure and Transport
53. The Contractor's Dispute Representative: (Clause 47)	[insert position/name]
54. The Project is a Major Infrastructure Project (Clauses 67 and 68)	Yes / No

Separable Portion

- | | |
|---|--|
| 1. Separable Portion: | [insert] |
| 2. The Date for Practical Completion:
(Clause 2)
OR
The Period of time for Practical Completion:
(Clause 2) | [for the purpose of RFT calendar weeks may be used, noting the date should be agreed with the Tenderer and converted to a date prior to issue of the Contract] |
| 3. Contractor shall provide security in the amount of:
(Clause 5.2) | Security is on the total Contract Sum refer Annexure Part A Item 13 |
| 4. Principal shall provide security in the amount of:
(Clause 5.2) | Not applicable |
| 5. Rate of liquidated damages per day:
(Clause 35.6) | \$XXXX per day (GST inclusive) |
| 6. Limit of Liquidated Damages:
(Clause 35.7) | Not Applicable |
| 7. Bonus per day for early Practical Completion:
(Clause 35.8) | Not Applicable |
| 8. Limit of bonus:
(Clause 35.8) | Not Applicable |
| 9. Other events for which extra costs for delay or disruption are payable:
(Clause 36) | Not Applicable |
| 10. Defects Liability Period (Clause 37) | 12 months or 12 months from the Date of Practical Completion of the Separable Portion the latest in time |

Separable Portion

- | | |
|---|--|
| 1. Separable Portion: | [insert] |
| 2. The Date for Practical Completion:
(Clause 2)
OR
The Period of time for Practical Completion:
(Clause 2) | [for the purpose of RFT calendar weeks may be used, noting the date should be agreed with the Tenderer and converted to a date prior to issue of the Contract] |
| 3. Contractor shall provide security in the amount of:
(Clause 5.2) | Security is on the total Contract Sum refer Annexure Part A Item 13 |
| 4. Principal shall provide security in the amount of:
(Clause 5.2) | Not applicable |
| 5. Rate of liquidated damages per day:
(Clause 35.6) | \$XXXX per day (GST inclusive) |
| 6. Limit of Liquidated Damages:
(Clause 35.7) | Not Applicable |
| 7. Bonus per day for early Practical Completion:
(Clause 35.8) | Not Applicable |
| 8. Limit of bonus:
(Clause 35.8) | Not Applicable |
| 9. Other events for which extra costs for delay or disruption are payable:
(Clause 36) | Not Applicable |
| 10. Defects Liability Period (Clause 37) | 12 months or 12 months from the Date of Practical Completion of the Separable Portion the latest in time |

ATTACHMENT 1 – APPROVED FORMS OF UNCONDITIONAL UNDERTAKING

(Clause 5.3)

TO: MINISTER FOR INFRASTRUCTURE AND TRANSPORT a body corporate established pursuant to the *Administrative Arrangements Act 1994* (SA) of Level 14, 83 Pirie Street, Adelaide, South Australia 5000, ABN: 92 366 288 135 ("the Principal")

Attention: Building Projects - Administration
Department for Infrastructure and Transport
Level 13, 83 Pirie Street
ADELAIDE SA 5001

UNCONDITIONAL UNDERTAKING

At the request of

..... (Name of Contractor)

('the Contractor') and in consideration of the Principal accepting this undertaking in respect of the contract for:

..... Contract No:.....

..... (Name of Financial Institution)

('the Financial Institution') undertakes unconditionally to pay on demand any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate sum of:

..... (\$.....)

(Security Amount).

The undertaking is to continue until one of the following occurs:

- (a) notification has been received from the Principal that the sum is no longer required by the Principal;
- (b) this undertaking is returned to the Financial Institution; or
- (c) payment to the Principal by the Financial Institution of the whole of the Security Amount or such part as the Principal may require overall.

Should the Financial Institution be notified in writing by the Principal (or someone authorised by the Principal) that it requires payment to be made of the whole or any part or parts of the Security Amount, it is unconditionally agreed that the Financial Institution will make the payment or payments to the Principal forthwith without reference to the Contractor and notwithstanding any notice given by the Contractor not to pay same.

At any time, without being required to, the Financial Institution may pay the Principal the Security Amount, less any amounts previously paid under this Undertaking (or a lesser sum specified by the Principal), and the liability of the Financial Institution hereunder shall immediately cease.

This undertaking shall be governed by the laws of the State of South Australia and is redeemable in the Adelaide CBD.

Dated at:.....

this..... day of.....20

ATTACHMENT 2 – INDUSTRY PARTICIPATION PLAN – STAGE 1

(Clause 58.1)

ATTACHMENT 3 – DEED OF NOVATION

(Clause 9.2 (C))

THIS DEED is made on theday of between the **Minister for Infrastructure and Transport** ("the Principal") of Level 14, 83 Pirie Street, ADELAIDE SA 5000 and ("the Contractor") of ACN and ("the subcontractor") of ACN and ("the Incoming Contractor") of ACN

THIS DEED WITNESSES that:

- 1 Upon receipt by the subcontractor of the sum certified by the Superintendent as owing under the prior contract prescribed in the Schedule hereto -
 - (a) the prior contract shall be discharged;
 - (b) the subcontractor shall release the Contractor from the further performance of the prior contract and from all claims and demands in connection with the prior contract;
 - (c) the Incoming Contractor shall punctually perform the obligations of the Contractor under the prior contract as far as they are not performed. The Incoming Contractor acknowledges itself bound by the provisions of the prior contract as if the Incoming Contractor had been named in the prior contract; and
 - (d) the subcontractor shall punctually perform like obligations and be bound to the Incoming Contractor as if the provisions of the prior contract were incorporated herein.
- 2 The Principal and subcontractor each warrant to the Incoming Contractor that -
 - (a) subcontract work carried out to the date hereof is in accordance with the provisions of the prior contract; and
 - (b) all claims and demands in connection with the prior contract have been made to the Contractor.
- 3 The Principal and subcontractor each indemnifies the Incoming Contractor from all claims and demands of the Contractor, Principal and subcontractor in connection with the prior contract.
- 4 A dispute or difference between -
 - (a) the Principal and the subcontractor in connection with the Superintendent's certification of the sum owing under the prior contract; or
 - (b) the Incoming Contractor and the subcontractor in connection with Clause 1(c) or 1(d),
 shall be resolved pursuant to the provisions of AS4303-1995 General Conditions of Subcontract for Design and Construct which for the purposes of the Clause 4 are incorporated herein.
- 5 This Deed shall be governed by the laws in force in the State or Territory stated in the provisions of the agreement between the Principal and Contractor and in the event that no State or Territory is so stated then in accordance with the law for the time being in force in that State or Territory in which the project is being carried out.

SCHEDULE

Documents

.....

.....

.....

In witness whereof the parties have executed this Deed of Novation by affixing their seals.

THE COMMON SEAL of the MINISTER FOR)
INFRASTRUCTURE AND TRANSPORT was affixed hereto)
by authority of the Minister in the presence of:)

.....
Witness

.....
Name of Witness

EXECUTED by **CONTRACTOR NAME** (ACN **XXX XXX XXX**) in accordance with Section 127 of the *Corporations Act 2001* (Cth) and its Constitution:

.....
Secretary/Director

.....
Name of Secretary/Director

.....
Director

.....
Name of Director

ATTACHMENT 4 - DEED OF NOVATION

(Clause 10)

THIS DEED is made on theday of
Between **Minister for Infrastructure and Transport** ("the Principal") of Level 14, 83 Pirie Street, ADELAIDE SA 5000

and ("the Contractor")
of ACN
and ("the subcontractor")
of ACN

THIS DEED WITNESSES THAT:

- 1 From the date of this Deed -
 - (a) the Contractor shall punctually perform the obligations of the Principal under the prior contract prescribed in item 1 of the schedule hereto as far as they are not performed. The Contractor acknowledges itself bound by the provisions of the prior contract as if the Contractor had been named as the Principal in the prior contract and the Contractor;
 - (i) assumes liability for all claims; and
 - (ii) enjoys all rights and benefits,
 of the Principal under the prior contract, including those which accrued prior to the date of this Deed;
 - (b) the subcontractor shall punctually perform like obligations and be bound to the Contractor as if the provisions of the prior contract were incorporated herein; and
 - (c) other than the obligation to pay the amount in item 2 of the schedule, the Principal and subcontractor shall each release and forever discharge the other from the further performance of the prior contract and from all claims and demands in connection with the prior contract.
- 2 The amount set out in item 3 of the schedule is the balance payable by the Contractor to the subcontractor for the services remaining to be performed by the subcontractor under the prior contract.
- 3 The subcontractor warrants to the Contractor that preliminary design carried out to the date hereof, is in accordance with the provisions of the prior contract.
- 4 From the date of this Deed, the prior contract is varied as follows:
 - (a) the definition of "Prescribed Heads of Liability" in clause 1 (as amended by clause 2.1 of Annexure Part B) is deleted and the following is substituted:
"Prescribed Heads of Liability means any liability for:
 - (a) personal injury including sickness and death;
 - (b) loss of or damage to tangible property, arising as a result of a claim made by, or on behalf of, an agency or instrumentality of the Crown in right of the State of South Australia (Crown) (including as a result of a claim against the *Client* by the Crown), whether or not that property is owned by the Crown arising from:
 - (i) a negligent or wrongful act or omission by the *Consultant*, its employees, agents or *Subcontractors*; or
 - (ii) any breach of the *Consultant's* contractual obligation to the *Client*;
 - (c) infringement of any *Intellectual Property Right*;
 - (d) or in respect of any claims made by, or on behalf of, the Crown (including as a result of a

claim against the *Client* by the Crown) arising from:

- (i) a negligent or wrongful act or omission by the *Consultant*, its employees, agents or *Subcontractors*; or
- (ii) any breach of the *Consultant's* contractual obligation to the *Client*;
- (e) an intentional tort;
- (f) a breach of trust;
- (g) wilful default;
- (h) breach of confidentiality; and
- (i) fraud or dishonesty,

and none of the *Prescribed Heads of Liability* limits any of the others.”

- (b) clause 9.1.2 (as amended by clause 9 of Annexure Part B) is deleted and the following is substituted:

“9.1.2 Exclusion of Liability

Subject to this clause 9.1.2, a party will not be liable to the other party for:

- (a) loss of business opportunity;
- (b) loss of goodwill;
- (c) loss of profit;
- (d) loss of contracts;
- (e) loss arising from business interruption;
- (f) loss of anticipated savings;
- (g) loss of revenue; or
- (h) the cost of capital or other financing costs,

which loss or cost arises due to the party's breach of this Contract, act, omission or negligence. However, the exclusion of liability in this clause 9.1.2 does not apply to a party's liability in connection with the *Prescribed Heads of Liability* (which remain unlimited).”

- 5 This Deed shall be governed by the laws in force in South Australia.

ATTACHMENT 5 – STATEMENT OF COMPLIANCE

(Clause 42.1(g))

STATEMENT OF COMPLIANCE

This Annexure should be read in conjunction with the General Conditions of Contract and shall form part of the Contract.

To: The Superintendent

For the period from:

..... ("**the Relevant Period**")

I, (insert name), the ("**Contractor's Representative**"), hereby solemnly and sincerely declare to the best of my knowledge at the date of making this declaration that:

1. I am authorised to make this declaration on behalf of the Contractor.
2. All work under the Contract performed during the Relevant Period has been carried out and completed in accordance with the Principal's Project Requirements, the General Conditions and all documents which the Contractor has prepared to discharge the Contractor's obligations under the Contract.
3. All work under the Contract completed during the Relevant Period has been completed in accordance with all relevant and applicable Legislative Requirements and otherwise in keeping with Good Construction Practices.
4. The work under the Contract is being carried out and completed in accordance with the requirements of the Current Program.
5. The Contractor has completed all work under the Contract for which payment is claimed in the progress claim in respect of which this Statement of Compliance is provided.
6. During the Relevant Period, the Contractor has given all notices that it is required to give under the Contract in respect of any matters that may entitle the Contractor to make a Claim and apart from any Claims in respect of the matters disclosed in notices issued during the Relevant Period, the Contractor does not have an entitlement to make any other Claim relating to the Relevant Period.
7. All subcontractors and Consultants have been paid applicable salaries, contract price and entitlements for work or services they have performed progressively in connection with the work under the Contract.

AND I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1936 (SA)*.

DECLARED at)
 This day of 20)
 Before me:)
)
 Justice of the Peace/Commissioner for taking Affidavits

ATTACHMENT 6 – STATUTORY DECLARATION

(Clause 42.1(h))

Department for Infrastructure and Transport Statutory Declaration Template for Payment Claims available at:
https://www.dpti.sa.gov.au/contractor_documents/example_contractual_agreements_and_templates

ATTACHMENT 7 – FINAL RELEASE

(Clause 42.6)

DEED OF RELEASE

This Annexure should be read in conjunction with the General Conditions of Contract and shall form part of the Contract.

TO: The MINISTER FOR INFRASTRUCTURE AND TRANSPORT ('the Principal') a body corporate pursuant to the *Administrative Arrangements Act, 1994* (Cth) whose office is situated at Level 14, 83 Pirie Street, ADELAIDE SA 5000 (**Principal**)

CONTRACTOR: [INSERT NAME AND ACN OF CONTRACTOR] (**Contractor**)
Construction Contract between the Principal and the Contractor dated ** (**Contract**)

1. Terms defined under the Contract have the same meaning when used in this deed.
2. The Contractor agrees that the total of all moneys payable by the Principal under or in any way arising out of the Contract is \$[insert amount] (**words**) of which the Contractor acknowledges having received the sum of \$[insert amount] (**words**) plus GST of \$[insert amount] (**words**) leaving a final payment of \$[insert amount] (**words**) due to the Contractor.
3. The Contractor acknowledges that the sum of \$[insert amount] (**words**) is accepted as the final payment of the Contract Sum in connection with the Contract. The Contractor releases and forever holds the Principal (including its officers and employees) and the Superintendent harmless from all liabilities, Claims, damages, expenses and costs arising out of the Contract whether such liabilities, Claims, damages, expenses and costs be direct or indirect or consequential or past or present or future or certain or contingent or ascertained or not ascertained and whether for moneys payable pursuant to the Contract or arising out of the Contract and the Contractor agrees to indemnify and keep indemnified the Principal (including its officers and employees) and the Superintendent from all such liabilities, Claims, damages, expenses and costs.
4. The Contractor acknowledges that this release is given in accordance with the Contractor's obligations under clause 42.6 of the Contract.
5. The Principal acknowledges that this release does not preclude the Contractor from exercising rights of contribution and indemnity against any consultant engaged by the Principal in either the design of the work under the Contract or to give advice to the Principal in relation to any design or construction aspect of the work under the Contract.
6. The Contractor hereby certifies that:
 - 6.1 All wages and allowances which become due and payable to all employees of the Contractor, its subcontractors and consultants who were at any time engaged on the work under the Contract have been paid in full; and
 - 6.2 All subcontractors and consultants engaged by the Contractor on the work under the Contract and suppliers to the subcontractors of plant hire, equipment and material for work under the Contract have been paid in full.
 - 6.3 All Legislative Requirements, including but not limited to long service leave provisions, public liability and worker's compensation insurance premiums, taxation requirements and any superannuation and redundancy requirements, severance pay and such contribution payments have been paid in full.
 - 6.4 All Defects noted during the Defects Liability Period have been remedied.
 - 6.5 Subcontractor Warranty Deeds for each and every Subcontractor Warranty have been delivered up to the Principal.

EXECUTED unconditionally as a deed poll

DATED 20

Executed by

.....
Signature of director

.....
Signature of director/company secretary
(Please delete as applicable)

.....
Name of director (print)

.....
Name of director/company secretary (print)

ATTACHMENT 8 – SUBCONTRACTOR WARRANTIES

(Clause 9.7)

For trades identified in the Principal’s Project Requirements and Specification based on DIT amended NATSPEC a warranty shall be provided on the following terms:

THIS DEED POLL is made on _____, of _____ (“Supplier”).
by _____ ACN _____

RECITALS:

- A. The Supplier wishes to supply _____ (“Product”) to _____ (“Contractor”) for the project known as _____ (“Works”).
- B. It is a requirement imposed by _____ (“Principal”) on the Contractor that certain of its suppliers must warrant that their Product will satisfy the relevant requirements of the Specification.
- C. The Specification is dated _____, titled _____ and consists of [] pages.
- D. The Supplier has agreed to execute this Deed.

THE SUPPLIER COVENANTS, WARRANTIES AND AGREES with and for the benefit of the persons named in the Schedule as follows:

- 1. Commencing on the Date of Practical Completion of the Works, the Product will satisfy the requirements of the Specification.
- 2. The persons named in the Schedule may assign the benefits and rights accrued under this Deed.
- 3. This Deed Poll is governed by the laws of South Australia

PERSONS NAMED IN THE SCHEDULE TO THE DEED

[]

SIGNED as a deed poll.

EXECUTED by _____)
by or in the presence of: _____)
_____)

Director/Secretary	Director
Name (please print)	Name (please print)

ATTACHMENT 9 – CURRENT OWNERSHIP STRUCTURE

(Clause 4.1(p), 9.1, 44.2)

ATTACHMENT 10 – SITE CONDITION REPORT

Included in the Project Brief and Principal's Project Requirements.

ATTACHMENT 11 – CONSULTANT’S CERTIFICATE

(Clause 8.4(b), 42.1(i))

To:

Name and address of Contractor

From:

Name and address of design Consultant

Instructions for use of this certificate:
<p>Section 1: Only required to be completed when submitting Design Documents to the Principal in accordance with the Contract. The tick box is to be checked and the Section 1 table on page 3 must also be completed.</p> <p>Section 2: Only required to be completed when material substitutes are being proposed to the Principal in accordance with the Contract. The tick box is to be checked and the details of the proposed material substitute are to be included.</p> <p>Section 3: Required to be completed monthly in time for submission with the Contractor’s payment claim to the Principal. The tick box is to be checked and details of the most recent site inspection including any identified non compliances or defects are to be included.</p> <p>Section 4: Only required to be completed for Practical Completion. The tick box is to be checked and the details of any identified non compliances or defects are to be included.</p>

Please tick only the applicable boxes below

(Clause references are to the General and Special Conditions of Contract in the Contract between the Principal and the Contractor)

<input type="checkbox"/>	<p>Section 1: Submission of Design Documents</p> <p>I certify that the drawings and specifications detailed from Page 3 of this Consultant's Certificate meet the requirements of the Principal's Project Requirements and all Legislative Requirements.</p> <p><i>[note aligns with LPSC contract schedule 1 clause 1.4, schedule 5 and compliance statement CCL 5]</i></p>
<input type="checkbox"/>	<p>Section 2: Material Substitutes (clause 30.1)</p> <p>I endorse the following proposed material substitute:</p> <p>[insert details of material substitute]</p> <p><i>[note aligns with contract schedule 1 clause 1.4 and schedule 5]</i></p>

<input type="checkbox"/>	<p>Section 3:</p> <p>Monthly certificate of compliance statement (clause 42.1(i) of Special Conditions of Contract)</p> <p>I certify that the <i>Works</i> have been designed in accordance with all relevant Legislative Requirements and the Principal’s Project Requirements. <i>[aligns with clause 28 of Annexure Part B]</i></p> <p>I confirm that the Works have been inspected on [insert date(s)] and based on what is readily apparent from visual observation the construction work relating to the Design Documents to the date of this Certificate is in accordance with the Contract. <i>[note aligns with schedule 5 PIP 5.5 and clause 1.15 of Schedule 1]</i></p> <p>Any identified non compliances / defects have been advised to the Contractor and are listed below:</p> <p>[insert list]</p>
<input type="checkbox"/>	<p>Section 4:</p> <p>Practical Completion - clause 2 (definition of Practical Completion) of Special Conditions of Contract</p> <p>I certify that</p> <ul style="list-style-type: none"> • the <i>Works</i> have been designed in accordance with all relevant Legislative Requirements and the Principal’s Project Requirements; • the drawings and specifications comply with the Contract; • operation and maintenance manuals comply with the Contract; <p>Any identified non compliances / defects have been advised to the Contractor and are listed below:</p> <p>[insert list]</p> <p><i>[note aligns with clause 28 of Annexure Part B, Schedule 5 PIP 5.5 and compliance statement CCL 11]</i></p>

Terms used in this certificate bear the meanings given to them in the Contract between the Principal and the Contractor.

Authorisation		
(Must be a principal of the Contractor's Designer)		
Name/Position	Signature	Date

Section 1: Submission of Design Documents

Drawing/Specification reference	Description

[REVISED] TENDER FORM

**[AGREED POST TENDER
AMENDMENTS]**

[ADDENDUMS]

CONCEPT DESIGN

SPECIFICATION

To be provided by the Contractor in accordance with clauses 3.8 and 8 of the Contract.

DRAWINGS

To be provided by the Contractor in accordance with clauses 3.8 and 8 of the Contract.