Government of South Australia
Department for Infrastructure and Transport

Department for Infrastructure and Transport
Infrastructure Delivery Division
Building Projects

AS2124-1992 SPECIAL CONDITIONS OF CONTRACT – TEMPLATE

(including ANNEXURES and ATTACHMENTS)

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Government of South Australia
Department for Infrastructure and Transport

AGREEMENT

FOR

[CONTRACT NAME]
[CONTRACT NO.]

BETWEEN

MINISTER FOR INFRASTRUCTURE AND TRANSPORT

ABN 92 366 288 135

(PRINCIPAL)

AND

[CONTRACTOR]

ACN [INSERT]

(CONTRACTOR)

AS2124-1992

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SCHEDULE OF CONTRACT DOCUMENTS

This Contract consists of the following documents, in descending order of precedence:

(1) Formal Instrument of Agreement

(2) Special Conditions of Contract including the Annexure and attachments

(3) AS 2124-1992 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) Specification and Appendices

(8) Drawings

_____

_____

* 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 Schedule of Contract Documents and other documents to which reference may properly be made in relation to **[Insert Contract Name]**, **Contract No: [Insert Contract No.]** at the lump sum of [Insert Contract Price In Words] ($[Insert Contract Price In Numbers] GST inclusive) 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 for [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 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 Department for [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

AS2124-1992

To be read in conjunction with Australian Standard General Conditions of Contract AS 2124—1992

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CONDITIONS OF CONTRACT

1 GENERAL

The Conditions of Contract shall be the Australian Standard General Conditions of Contract (AS 2124—1992) 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 (AS 2124—1992) and the Special Conditions of Contract, the Special Conditions of Contract shall take precedence.

References to "Annexures" in AS 2124—1992 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

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 in alphabetical order:

"Arrangement" means:

(a) any agreement or understanding (whether written or unwritten); or
(b) any practice of acquiescing to a direction or request of a third party in respect of the Contract or the Works.

"Building Projects WHS Requirements" means the document entitled "*PC-WHS1 and BPWHSR Work Health and Safety"* available at:
(a) the document link: PC-WHS1-and-BPWHSR-WORK-HEALTH-AND-SAFETY.pdf, and
(b) the following URL: 'https://www.dit.sa.gov.au/__data/assets/pdf_file/0020/1423343/PC-WHS1-and-BPWHSR-WORK-HEALTH-AND-SAFETY.pdf'.

"Business Day" means any day other than a Saturday, Sunday, public holiday or 27, 28, 29, 30 or 31 December.

"Construction Program" means the program described in clause 33.2.

"Criminal Organisation" has the meaning given in Section 83D or Section 83GA of the *Criminal Law Consolidation Act 1935* (as applicable);

"Date of Acceptance of Tender" means the date of the acceptance of tender letter.

"Declared Organisation" has the meaning given in section 3 of the *Serious and Organised Crime (Control) Act 2008* (SA).

"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;

"Irrelevant Factor" means any or all of the following, none of which are mutually exclusive:

(a) any Arrangement with a third party (other than an Arrangement expressly permitted by this Contract or required by Law) which, whether intentionally or not, limits the range of persons or entities that the Contractor may select or engage as a subcontractor, consultant or supplier based on criteria unrelated to price, capability or capacity to deliver the Works; and
(b) any Arrangement with a third party (other than an Arrangement expressly permitted by this Contract or required by Law) which, whether intentionally or not, limits the selection or engagement of persons or entities as a subcontractor, consultant or supplier based on union membership or affiliation, compliance with union requirements, or the industrial instrument that covers the person or entity.

"List of Outstanding Items" means the list contemplated by clause 42.5.

'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.

"Outstanding Items" means items within the scope of the Works which the Superintendent (in its discretion) considers do not prevent the Works from being lawfully used in accordance with their intended purposes and the existence and rectification or completion of which, in the opinion of the Superintendent, will not materially adversely affect the convenient use of the Works.

"Participant" means:

1. a person participating in a Criminal Organisation as captured by Section 83D of the *Criminal Law Consolidation Act 1935*; and/or
2. a participant as defined by Section 83GA of the *Criminal Law Consolidation Act 1935.*

"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 right;

(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.

"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).

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 includes all 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."

3 NATURE OF CONTRACT

No amendment.

4 BILL OF QUANTITIES

No amendment.

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 Lodgement of Security**

Delete Clause 5.4 and substitute the following:

"5.4 Time for Lodgement of Security

Security must be provided within 14 days of the Date of Acceptance of Tender. 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 **Recourse to Retention Moneys and Conversion of Security**

Delete Clause 5.5 and substitute the following new Clause:

"5.5 Recourse to Retention Moneys and Conversion of Security

A party may immediately (and without notice to the other party) have recourse to retention moneys and/or cash security and/or may convert into money security that does not consist of money where the party has become entitled to exercise a right under the Contract in respect of the retention moneys and/or security."

5.6 **Substitution of Security for Retention Moneys**

No amendment.

5.7 **Reduction of Security and Retention Moneys**

Delete Clause 5.7 and substitute the following new Clause:

"**5.7 Reduction of Security and Retention Moneys**

5.7.1 Upon the later of:

(a) the Date of Practical Completion of all of the Works under the Contract;

(b) 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),

(c) the date on which the Contractor has given to the Superintendent all operating manuals, warranties and guarantees for the Works; and

(d) the date on which the Contractor completes all Outstanding Items as identified pursuant to clause 42.5.

the Principal's entitlement to security and retention monies will be reduced to 1% of the Contract Sum.

The Principal shall, within 14 days of the entitlement reduction, release security and retention moneys in excess of the entitlement.

5.7.2 Notwithstanding clause 5.7.1, at the Superintendent's discretion, if, in the opinion of the Superintendent it is reasonable to further reduce the Principal's entitlement to security and retention moneys, that entitlement shall be reduced to the amount which the Superintendent determines to be reasonable. The Principal shall, within 14 days of the Superintendent making such a determination, release security and retention moneys in excess of the entitlement."

5.8 **Release of Security**

No amendment.

5.9 **Interest on Security and Retention Moneys**

No amendment.

5.10 **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**

In paragraph 2 “14 days” is replaced with “7 days”

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

No amendment.

8 CONTRACT DOCUMENTS

No amendment.

9 ASSIGNMENT AND SUBCONTRACTING

9.1 **Assignment**

No amendment.

9.2 **Subcontracting**

Delete Clause 9.2 and substitute the following new Clause:

“**9.2 Subcontracting**

The Contractor shall not without the written approval of the Superintendent, which approval shall not be unreasonably withheld, subcontract or allow a subcontractor to assign or subcontract any of the work under the Contract.

If the value of work under the Contract subcontracted to a subcontractor exceeds $50,000, the subcontract for that work shall incorporate AS 2545—1993 as the general conditions of subcontract, 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 equivalent security provisions as in AS 2545—1993.

All subcontract conditions must include payment provisions which reflect that the Contractor must pay the subcontractor within (and no later than) 10 Business Days from payment claim.

All subcontract conditions must include provisions equivalent to clauses 66 (Modern Slavery), 67 (Fraud Control) and 68 (Anti-Corruption).

All subcontract conditions shall incorporate security provisions which align with those set out in clause 5 and the value of subcontractor security must not exceed a total of 3% of the subcontract sum.

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.

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.

The Superintendent may give approval subject to conditions including any of the following:

(a) a condition requiring that the subcontract must include provision that the subcontractor may 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) if the subcontract price for the work to be subcontracted exceeds $50,000 a condition that the subcontract must incorporate AS 2545—1993 as the general condition of subcontract, subject only to such amendments as are necessary to reflect the conditions of this Contract;

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.

Each component of the Works is to be limited to one subcontractor as far as practicable."

9.3 Contractor's Responsibility

No amendment.

10 SELECTED AND NOMINATED SUBCONTRACTORS

10.1 Definitions

No amendment.

10.2 Selected Subcontract

No amendment.

10.3 Nominated Subcontract

No amendment.

10.4 Provisions Applying Generally to Selected Nominated Subcontract Work

No amendment.

10.5 Direct Payment of Nominated Subcontractor

Deleted.

10.6 **Termination of Nominated Subcontract**

Delete Clause 10.6 and substitute the following new Clause:

"**10.6 Termination of Nominated Subcontract**

The Contractor shall not unreasonably terminate a subcontract for Nominated Subcontract Work and as early as possible the Contractor shall notify the Superintendent of the Contractor's intention to terminate and the reasons. If a Nominated Subcontractor repudiates or abandons a subcontract or it is terminated, the Contractor shall forthwith notify the Superintendent in writing and the Superintendent shall proceed under Clause 10.3 to nominate a Nominated Subcontractor to complete the subcontract work. Alternatively, the Contractor may notify the Superintendent that the Contractor elects to complete the subcontract work without the use of a further Nominated Subcontractor.

Clause 11(b) shall apply only where the Contractor has terminated the subcontract due to insolvency of the subcontractor for any of the reasons listed in Clause 44.11(a) to (l). In all other circumstances the Contractor shall be paid only the amount which the Contractor would have been paid pursuant to Clause 11(b) if the subcontract had not been terminated."

11 PROVISIONAL SUMS

No amendment.

12 LATENT CONDITIONS

Insert a new definition – "Latent Conditions" means physical conditions on the Site or its surroundings in respect of which the Superintendent has determined that Clause 12.1 applies.

Clause 12.1 to 12.4 of the General Conditions of Contract is deleted and replaced with 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 date of the Contractor's tender 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

No amendment.

14 STATUTORY REQUIREMENTS

14.1 Complying with Statutory Requirements

At end of clause 14.1 insert new paragraph as follows:

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

14.2 Payment Where There is No Variation

No amendment.

14.3 Notices and Fees

No amendment.

14.4 Documents Evidencing Approvals of Authorities

No amendment.

Insert new subclause **"14.5 "ICAC"**

"**14.5 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

Rename clause 15 "**WORK HEALTH AND SAFETY AND PROTECTION OF PROPERTY**"

Insert before the first paragraph new sub-heading "**15.1 Protection of People and Property".**

At the end of clause 15, insert new subclauses 15.2 to 15.9, as follows**:**

15.2 Responsibility for Work Health and Safety

(a) The Contractor is responsible for and must comply with the requirements of the Contract for work health and safety and the WHS Law.

(b) The Contractor is responsible for the safe and orderly passage of all vehicular and pedestrian traffic through and around the Site at all times from the date of access to the Site to the Date of Practical Completion.

15.3 Appointment of Principal Contractor

If the Annexure states that the Contractor is appointed as Principal Contractor, the Contractor:

(a) is engaged as Principal Contractor for the work under the Contract in accordance with section 293 of the WHS Regulations;

(b) is authorised to have management and control of the Site as necessary to enable it to discharge the duties of a Principal Contractor and of a person having management or control of a workplace;

(c) must perform the duties of:

(i) a Principal Contractor, as specified in the WHS Law;

(ii) a person with management or control of a workplace as specified in the WHS Law; and

(d) must notify the Superintendent promptly of any matter affecting work health and safety where consultation with the Superintendent is necessary; and

(e) must consult, cooperate and coordinate with the Superintendent and his/her delegate and in accordance with the WHS Law.

The Contractor's engagement as Principal Contractor will continue until the Date of Practical Completion, unless earlier revoked by the Principal.

If the Contractor fails to comply with any of its obligations in this Clause 15.3, 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.

15.4 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.

15.5 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;

(g) consult, cooperate and coordinate with the Principal where overlapping work health and safety obligations exist with respect to the work under the Contract; and

(h) if the Contractor subcontracts any part of the work under the Contract, include the relevant provisions of this Clause 15 in the subcontract.

15.6 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

(iii) use reasonable skill and care in operating the plant.

15.7 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 work under the Contract;

(iii) provide access to or copies of any documents or records related to the safety of the work under the Contract 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.

(d) If, following an Audit, 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 work under the Contract, 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 work under the Contract immediately if it creates a risk to health or safety;

(v) direct that all or part of the work under the Contract is suspended immediately pending satisfactory compliance; or

(vi) terminate the Contract.

The Contractor must promptly comply with any direction under this Clause 15.7(d) at no additional cost to the Principal.

(e) Failure by the Contractor to comply with a direction under Clause 15.7(d)(ii), 15.7(d)(iv) or 15.7(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. The notice provisions under Clauses 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 work under the Contract remaining to be completed 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.

(f) In this Clause 15.7, "Expectations", "Measures" and "Tools" have the meanings given to them in the Building Projects WHS Requirements.

15.8 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 15.8 survives the termination or expiry of the Contract.

15.9 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

No amendment.

17 DAMAGE TO PERSONS AND PROPERTY OTHER THAN THE WORKS

No amendment.

18 INSURANCE OF THE WORKS

No amendment.

At end of clause 18.1 insert new paragraph as follows:

"Before commencing work under the Contract, the Contractor shall effect a Building Indemnity Insurance policy in the joint names of the Principal and the Contractor and covering the Works in accordance with the *Building Work Contractors Act 1995* (SA) and Regulations 1996. A separate policy for each semi-detached house in any duplex housing will be effected and maintained."

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 the Corporation under the Act;

(c) furnish monthly returns to the 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, 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 INSPECTION AND PROVISIONS OF INSURANCE POLICIES

21.1 Proof of Insurance

Delete Clause 21.1 Proof of Insurance and substitute the following new Clause:

"21.1 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://dit.sa.gov.au/contractor_documents/principal_arranged_insurance2. 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."

21.2 Failure to Produce Proof of Insurance

No amendment.

21.3 Notices from or to the Insurer

No amendment.

21.4 **Notices of Potential Claims**

Delete Clause 21.4 and substitute the following new Clause:

"21.4 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://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."

21.5 **Settlement of Claims**

No amendment

21.6 **Cross Liability**

No amendment.

After Clause 21.6 Cross Liability insert the following new Clause:

"**21.7 General**

The premium for the policy of insurance effected by the Principal under Clauses 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 the cost of any loss or liability the subject of a claim under the 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."

22 CLERK OF WORKS AND INSPECTORS

No amendment.

23 SUPERINTENDENT

No amendment.

24 SUPERINTENDENT'S REPRESENTATIVE

No amendment.

25 CONTRACTOR'S REPRESENTATIVE

No amendment.

26 CONTROL OF CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS

No amendment.

27 SITE

No amendment.

28 SETTING OUT THE WORKS

No amendment.

29 MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT

No amendment.

30 MATERIALS AND WORK

30.1 Quality of Materials and Work

Delete Clause 30.1 Quality of Materials and Work and substitute the following new Clause:

"30.1 **Quality of Materials and Work**

The Contractor shall:

(a) use the materials and standards of workmanship required by the Contract. In the absence of any requirement to the contrary, the Contractor shall use suitable new materials; and

(b) comply with (and ensure that the materials and standards of workmanship comply with) applicable industry standards, including (without limitation) the National Construction Code and all relevant standards of Standards Australia."

30.2 Quality Assurance

After clause 30.2(b) insert the following new paragraph:

"Within 28 days of the Date of Acceptance of Tender, the Contractor must prepare, submit to the Superintendent, and implement a Quality Plan, which is specific to the Contract and not generic. The 'Quality Plan' is a plan that must indicate how the quality processes of the Contractor are to be applied to achieve the requirements of the Contract, without reference to other documents except such other standard Contractor documentation that is relevant to the Contract and readily available to the Superintendent and Principal. The Superintendent may undertake a 'Quality Audit' during the course of the Works, to measure the Contractor's performance of the work under the Contract against the requirements of the Quality Plan."

30.3 Defective Materials or Work

No amendment.

30.4 Variations due to Defective Materials 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

No amendment.

33 PROGRESS AND PROGRAMMING OF THE WORKS

33.1 Rate of Progress

No amendment

33.2 Construction 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) within 14 days from the Date of Acceptance of Tender and prior to commencement of the Works, prepare and submit its baseline Construction Program to the Superintendent; 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 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 two 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:

(a) 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;

(b) if requested by the Superintendent, provide monthly photographic evidence to the Superintendent of the progress of the Works;

(c) promptly notify the Superintendent and the Principal of any notice served on the Contractor by any Authority relating to the Site or the Works;

(d) 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 Time for Commencement of Work on the Site

No amendment.

35.2 Time for Practical Completion

No amendment.

35.3 Separable Portions

No amendment.

35.4 Use of Partly Completed Works

No amendment.

35.5 Extension of Time for Practical Completion

Delete the third paragraph, beginning with "If the Contractor is or will be delayed in reaching Practical Completion…" and substitute the following:

"Subject to this clause 35.5, if

a. the Contractor is or will be delayed in reaching Practical Completion by a cause described in sub-Clauses (a) or (b);

b. within 28 days after the delay occurs the Contractor gives the Superintendent a written claim for an extension of time for Practical Completion setting out the facts on which the claim is based;

c. 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;

d. the Contractor or others for whom it is responsible did not contribute to the cause;

e. the Superintendent is satisfied that the work under the Contract was on the critical path of the Current Program and was actually delayed; and

f. the Contractor has taken all reasonable steps to mitigate the effect of the delay,

the Contractor shall be entitled to an extension of time for Practical Completion. 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."

Amend the wording of lines 39 and 40 on page 29 of the General Conditions as follows:

"Notwithstanding that the Contractor is not entitled to, or has not claimed, an extension of time, the Superintendent may at any time ……"

Insert at the end of Clause 35.5, the following new paragraph:

"Where the Contract provides for Separable Portions each with a separate Date for Practical Completion, an extension of time in respect of one Date for Practical Completion shall not entitle the Contractor to an extension of time in respect of any other Date for Practical Completion, unless the Contractor satisfies the requirements of this Clause 35.5 in respect of each of the Dates for Practical Completion, as the case may be, separately."

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.

36 DELAY OR DISRUPTION COSTS

Delete Clause 36 and substitute the following new Clause:

"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(b)(i), the Principal shall pay to the Contractor extra costs by multiplying the amount stated in the Annexure 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(b)(iv) (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 under this Clause 36.1;

(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) nothing in this clause 36 shall oblige the Principal to pay any more than the applicable amount specified in Annexure item 35 where there are concurrent delays to more than one Separable Portion;

(iv) 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 35;

(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 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; and

(vii) 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 Clause 36.1, an event referred to in Clause 35.5(b)(i) 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(b)(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

Delete the first sentence of clause 37 commencing with 'The Defects Liability Period stated in the Annexure ...' and substitute:

"The Defects Liability Period stated in the Annexure shall commence at 4.00pm on the Date of Practical Completion."

38 CLEANING UP

No amendment.

39 URGENT PROTECTION

No amendment.

40 VARIATIONS

40.1 Variations to the Work

No amendment.

40.2 Proposed Variations

No amendment.

40.3 Pricing the Variation

No amendment.

40.4 Variations for the Convenience of the Contractor

No Amendment.

40.5 Valuation

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

"(a) Where a Schedule of Rates is applicable, the valuation will be made:

(i) by using the Schedule of Rates, or where no rate is directly applicable, a rate calculated by inference, proportion or interpolation;

(ii) 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

(iii) 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:

(i) by using the Priced Bill of Quantities rates, or where no unit rate is directly applicable, a rate calculated by inference, proportion or interpolation;

(ii) 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

(iii) 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:

(i) 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 for Infrastructure and Transport 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;

(ii) an allowance of 10% of the labour, material, plant and subcontractor cost for the Contractor's profit and overhead costs;

(iii) an allowance of 5% of the labour, material, plant and subcontractor cost for the Contractor's administration, inclusive of all supervision and attendance; and

(iv) in accordance with and subject to 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;

(d) 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;"

Delete paragraph (f) and substitute the following new paragraph:

"(f) not used."

41 DAYWORK

No amendment

42 CERTIFICATES AND PAYMENTS

42.1 Payment Claims, Certificates, Calculations and Time for Payment

In the first paragraph, line 4, after "due to the Contractor" insert ", a properly signed statutory declaration in the form set out in Clause 43".

In the second paragraph, line 1, delete "Within 14 days" and replace with "Within 4 Business Days".

In the fourth paragraph:

(a) line 1, delete "within 28 days" and replace with "within 10 Business Days"; and
(b) line 2, delete "within 14 days" and replace with "within 6 Business Days".

Delete the sixth and seventh paragraphs, commencing with: 'Notwithstanding Clause 42.4, the Principal shall …..', and finishing with: '….. free of any lien or charge.'

Insert new paragraph at the end of clause 42.1:

"The Principal shall not make payment for any Outstanding Items identified pursuant to clause 42.5 until such time as they are completed by the Contractor."

42.2 Correction of Payment Certificates

No amendment.

42.3 Retention Moneys

No amendment

42.4 Unfixed Plant and Materials

Delete Clause 42.4 and substitute the following new Clause:

"42.4 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."

"42.4 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."

42.5 **Certificate of Practical Completion**

Add the following to the end of clause 42.5:

"The Superintendent may in its absolute discretion attach a List of Outstanding Items to the Certificate of Practical Completion. The List of Outstanding Items must identify all Outstanding Items which must be executed, remedied, addressed or completed by the Contractor, and the timeframes for completion of each item. The Contractor must complete the Outstanding Items within the timeframes in the List of Outstanding Items, and otherwise, to the satisfaction of the Superintendent."

42.6 **Effect of Certificates**

No amendment.

42.7 Final Payment Claim

No amendment.

42.8 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 14 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 42.7 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.

42.9 Interest on Overdue Payments

No amendment.

42.10 Set Offs by the Principal

No amendment.

42.11 Recourse for Unpaid Moneys

Delete Clause 42.11 and substitute the following new Clause:

"**42.11 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 5.5, 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."

43 PAYMENT OF WORKERS AND SUBCONTRACTORS

Clause 43 is amended as follows:

The first sentence in subparagraph (a) is deleted and replaced with: "With each payment claim and before the Principal makes each payment to the Contractor, the Contractor shall:"

43(a)(i) is amended to delete "to" at the start of the paragraph

43(a)(ii) is amended to delete "to" at the start of the paragraph

43(b) is amended to delete "Not earlier than 14 days after the Contractor has made" and is replaced with "With"

43(c)(i) is amended to delete "within five days after a request by the Superintendent under clause 43(a)"

New paragraph is inserted after paragraph 43(c) as follows:

"The statutory declaration must be substantially in the form of the Department for Infrastructure and Transport Statutory Declaration Template for Payment Claims, available from: https://www.dit.sa.gov.au/contractor_documents/example_contractual_agreements_and_templates."

At the end of Clause 43 the following new paragraph is inserted:
"The Principal may provide the documentary evidence provided in accordance with this clause 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."

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) suspension of work, in breach of Clause 33.1;

(b) failing to proceed with due expedition and without delay, in breach of Clause 33.1;

(c) failing to lodge security in breach of Clause 5;

(d) failing to use materials or standards of workmanship required by the Contract, in breach of Clause 30.1;

(e) failing to comply with a direction of the Superintendent under Clause 30.3, in breach of Clause 23;

(f) failing to provide evidence of insurance, in breach of Clause 21.1;

(g) in respect of Clause 43, knowingly providing a statutory declaration or documentary evidence which contains a statement that is untrue;

(h) 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;

(i) failing to comply in part or in whole with the requirements of subclauses 67.1 and 67.3 in relation to fraud control; or

(j) failing to comply in part or in whole with the requirements of subclauses 68.2 to 68.5 (inclusive) in relation to corruption.

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 Works Taken Out of the hands of the Contractor

No amendment

44.7 Default of 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 to Termination

No amendment

44.11 **Insolvency**

No amendment

44.12 **Removal or suspension from Department Prequalification System**

Insert the following new Clause 44.12:

> **"44.12 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.

46 TIME FOR NOTIFICATION OF CLAIMS

46.1 **Contractor's Prescribed Notice**

In the second paragraph, delete the expression "42 days" and insert "28 days".

46.2 **Time for Disputing Superintendent's Direction**

Delete Clause 46.2 and substitute the following new Clause:

> "**46.2 Time for Disputing Superintendent's Direction**
>
> If the Superintendent:
>
> (a) has given a direction (other than a decision under Clause 47.1) pursuant to the Contract; and
>
> (b) has served a notice in writing on each party that if a party wishes to dispute the direction then that party is required to do so under Clause 47,
>
> the direction shall not be disputed unless a notice of dispute in accordance with Clause 47.1 is given by a party to the Superintendent and a copy of the notice of dispute is given to the other party within 28 days after the date of service on that party of the notice pursuant to Clause 46.2 (b)."

47 DISPUTE RESOLUTION

Delete Clause 47 and substitute the following new Clause:

> "**47 DISPUTE RESOLUTION**
>
> **47.1 Dispute Procedure**
>
> It is the intention of this clause to provide a procedure to enable the parties to ensure that a dispute is dealt with, and to encourage the parties to explore the possibilities for resolving a dispute before considering legal proceedings.
>
> Except in the case of genuine urgency requiring immediate interlocutory or interim relief or remedy, or where a party seeks to enforce payment due under a certificate issued under Clause 42, neither party may commence legal proceedings in relation to any dispute, or other matter arising out of the Contract, including, without limitation, a dispute as to a determination, decision or direction of the Superintendent, ('a disputed matter') without first doing everything in that party's power to comply with the procedure set out in this Clause 47.1.
>
> In this clause, Dispute Representative means, each of the persons nominated in the annexure or otherwise nominated by the Principal as the Principal's Dispute Representative and by the Contractor as the Contractor's Dispute Representative.

A disputed matter must first be referred to the Superintendent by delivering to the Superintendent a notice of dispute. The notice of dispute must be in writing, setting out full particulars of the subject of the dispute including information establishing the factual and legal basis of the matter and a detailed quantification of the claim. The notice of dispute must also be supported by evidentiary material. A copy of the notice of dispute and supporting evidentiary material must be delivered to the other party to the dispute.

The other party to the dispute may provide submissions and evidentiary material relating to the disputed matter to the Superintendent.

The Superintendent must make enquiry as to the facts of the matter as necessary, and either:

(a) make a written determination as to the rights of the parties; or

(b) if the Superintendent considers there is insufficient evidence for the Superintendent to make a determination, in a written notice, decline to make a determination,

as soon as possible and in any event no later than 42 days from receipt of the notice of dispute. The Superintendent's written determination or notice must be delivered to the Contractor and the Principal.

Following a Superintendent's determination, or a notice declining to make a determination, if the Principal or Contractor is dissatisfied with the determination or the lack of a determination, the Principal or the Contractor ('disputing party') may send to the other party ('other party') and to the Superintendent a written notice by Certified Mail, requiring the implementation of dispute resolution procedures under this Clause 47.1 ('a dispute resolution notice').

Despite any other provision of this Clause 47, the other party is not obliged to proceed with the dispute resolution procedures under this Clause 47.1 unless the disputing party has fully particularised the claim by providing information establishing the factual and legal basis of the claim, a detailed quantification of the claim and supporting evidentiary material as required in this Clause 47.1.

Within 21 days after receipt of a dispute resolution notice by the other party, the other party must provide a written response to the disputing party and to the Superintendent, such response addressing the matters set out in the dispute resolution notice ('written response').

Within 21 days after receipt of the written response by the disputing party (or such longer period as the parties may agree), the Dispute Representatives must meet and attempt to resolve the disputed matter.

Each of the Dispute Representatives must be sufficiently authorised by the relevant party to meet and endeavour to resolve the dispute without detailed reference to another person. In so doing they may be supported (at their election) by legal, financial, technical or other experts.

47.2 ADR

Nothing in this Clause 47 is intended to either:

(a) require a party to be involved in any form of arbitration or alternative dispute resolution (other than the procedures set out in Clause 47.1) before commencing legal proceedings; or

(b) preclude the parties from agreeing at any time to use any form of arbitration or alternative dispute resolution at their mutual discretion.

47.3 Continuing Obligation to Work

Notwithstanding any dispute or proceedings, the Contractor must, if the work under the Contract has not been completed, at all times (unless otherwise provided for in the Contract) proceed without delay to continue to execute the work under the Contract and perform the Contractor's obligations under the Contract, and in so doing shall comply with all directions given to the Contractor under the provisions of the Contract either by the Principal in writing or by the Superintendent, and the Principal must pay to the Contractor any moneys due under the Contract from time to time."

48 WAIVER OF CONDITIONS

No amendment.

The following clauses are added to those of Australian Standard General Conditions of Contract (AS 2124-1992):

49 CONSTRUCTION INDUSTRY TRAINING LEVY

Attention is drawn to the *Construction Industry Training Fund Act 1993* (SA), which imposes a levy of 0.25% of the value of building and construction works in South Australia. In any instance where the payment of the levy is applicable to the Works, the Principal must pay the levy when and as required by the *Construction Industry Training Fund Act 1993* (SA). The levy amount must not be included in the Contract Sum and is not otherwise payable to the Contractor

50 GST

50.1 Definitions

In this Clause 50:

'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.

50.2 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.

50.3 Contract Sum Inclusive of GST

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

50.4 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 92 366 288 135;

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.

50.4 Tax Invoice

If any supply under the Contract is a Taxable Supply:

(a) any invoice for payment under the Contract shall be a Tax Invoice, (and any prescribed form of invoice under the Contract is amended accordingly); and

(b) the Principal is not obliged to make payment under the Contract unless the Contractor has provided a Tax Invoice in respect of that payment.

51 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 authorisations 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 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 51.

AUTHORITIES SCHEDULE 1A				
Principal's Representative, Executive Director, Infrastructure Delivery Department for Infrastructure and Transport				
Clause		**Subclause**		**Function**
5	SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS	5.5	Recourse to Retention Moneys and Conversion of Security	Recourse to retention moneys and/or security
8	CONTRACT DOCUMENTS	8.1	Discrepancies	Notify in writing
10	SELECTED AND NOMINATED SUBCONTRACTORS	10.3	Nominated subcontract	Assign prior contract, novate prior contract
23	SUPERINTENDENT			Obligations regarding the Superintendent
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
37	DEFECTS LIABILITY			Have work of rectification carried out

AUTHORITIES SCHEDULE 1A				
Principal's Representative, Executive Director, Infrastructure Delivery Department for Infrastructure and Transport				
Clause		**Subclause**		**Function**
42	CERTIFICATES AND PAYMENTS	42.4	Unfixed Plant and Materials	Approve any or all of the works are constructed at Contractor's site
		42.10	Set Offs by the Principal	Deduct moneys, recourse to retention moneys and if insufficient security
		42.11	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
		44.11	Insolvency	Take work out of the hands of the Contractor
		44.12	Removal or suspension from Department Prequalification System	Remove or suspend
46	TIME FOR NOTIFICATION OF CLAIMS	46.2	Time for Disputing Superintendent's Direction	Give notice of dispute
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
50	GST	50.4	Tax Invoices- Recipient Created	Inform Contractor
56	AUSTRALIAN GOVERNMENT AGREEMENT			Terminate Contract
60	RESPECTFUL BEHAVIOUR			Give direction
67	FRAUD CONTROL			Give direction

AUTHORITIES SCHEDULE 1A				
Principal's Representative, Executive Director, Infrastructure Delivery Department for Infrastructure and Transport				
Clause		**Subclause**		**Function**
68	ANTI-CORRUPTION			Request confirmation, issue written notice

AUTHORITIES SCHEDULE 1B				
Principal's Representative - Manager, Procurement & Commercial Advisory (Pre-Contract), Department for Infrastructure and Transport				
Clause		**Subclause**		**Function**
18	INSURANCE OF THE WORK UNDER THE CONTRACT			Effect policy of insurance
19	PUBLIC (THIRD PARTY) 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
4	BILL OF QUANTITIES	4.3	Errors in Pricing	Notify errors
10	SELECTED AND NOMINATED SUBCONTRACTORS	10.3(e)(ii)	Nominated subcontract	Pay contractor
11	PROVISIONAL SUMS			Pay Contractor
14	STATUTORY REQUIREMENTS	14.3	Notices and Fees	Reimburse fee or charge
21	INSPECTION AND PROVISIONS OF INSURANCE POLICIES	21.2	Failure to Produce Proof of Insurance	Pay premiums, refuse payment
		21.7	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
		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
		42.3	Retention Moneys	Deduct amounts
		42.4	Unfixed Plant and Materials	Make payment
43	PAYMENT OF WORKERS AND SUBCONTRACTORS			Withhold payment, pay worker or subcontractor, pay amount of order
45	TERMINATION BY FRUSTRATION	45(a),45(b),45(c),45(e) and 45(f)		Pay Contractor
50	GST	50.4	Tax Invoices - Recipient Created	Issue RCTI, issue copy of RCTI, issue adjustment note
56	AUSTRALIAN GOVERNMENT AGREEMENT			Pay for services rendered

AUTHORITIES SCHEDULE 1D				
Superintendent, Director, Building Projects Department for Infrastructure and Transport				
Clause		**Subclause**		**Function**
5	SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS	5.3	Form of Security	Approve or disapprove the form of security
		5.6	Substitution of Security for Retention Moneys	Release retention moneys
		5.7	Reduction of Security and Retention Moneys	Release security and retention moneys
		5.8	Release of Security	Release additional security
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	Availability of Documents	Approve in writing
		8.7	Media Releases	Give approval
13	PATENTS, COPYRIGHTS AND OTHER INTELLECTUAL PROPERTY RIGHTS			Give direction

AUTHORITIES SCHEDULE 1D				
Superintendent, Director, Building Projects Department for Infrastructure and Transport				
Clause		**Subclause**		**Function**
15	PROTECTION OF PEOPLE AND PROPERTY AND SAFETY CULTURE			Perform obligation on Contractor's behalf Give directions under clause15.2
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
30	MATERIALS AND WORK	30.3	Defective Materials 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
39	URGENT PROTECTION			Take necessary action
42	CERTIFICATES AND PAYMENTS	42.8	Final Certificate	Release Security, Retention Moneys or both
45	TERMINATION BY FRUSTRATION	45(d)		Release Security, Retention Moneys or both
69	AUDIT			Carry out audit, meet to discuss recommendations

52 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).

53 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.

54 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.

54.1 The Contractor must implement the Contractor's Standard or Tailored Industry Participation Plan ("SIPP" or "TIPP") approved by the Industry Advocate ("IA") in Attachment 2 to these Special Conditions.

54.2 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 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.

54.3 An Industry Participation Reporting Period is:

a) the period between the Commencement Date and the date 6 months after the Commencement Date;
b) each subsequent 6 month period during the term of the Contract;
c) if the Contract ends on a date other than an anniversary of the Commencement Date or an anniversary of the date in subclause 54.3(b), the period from the conclusion of the preceding Industry Participation Reporting Period until the date of termination or expiry of the *Contract*;
d) for short-term projects of strategic importance to the State, the period notified by IA to the Contractor in writing; and
e) where the term of the Contract is for a period less than 6 months, the term of the Contract.

54.4 The Contractor must attend any meeting scheduled by the IA during the term of the Contract to review how the SIPP or TIPP 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.

54.5 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 IA to assess the Contractor's compliance with this clause 54.

54.6 If the IA reasonably believes that the Contractor is not complying with the requirements of this clause 54, the IA may by notice in writing direct that the supply comply with those requirements.

54.7 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 IA outlining that opinion and the reasons for it.

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

In this clause, "Industry Advocate" or "IA" means the person from time to time appointed by the Governor to the position of Industry Advocate under s.5 of the *Industry Advocate Act 2017* (SA).

55 NOT USED

56 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.

57 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.

58 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 58.

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 58 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 58 "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.

59 CHILD SAFETY

59.1 General

This clause 59 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 59 are fundamental to this Contract.

For the purpose of this Clause 59:

(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 58.

59.2 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 59.2(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 59.2(b).

The Contractor must ensure that:

- Workers are aware of and act in a manner consistent with the Contractor's obligations under this clause at all times;
- Workers (not being the Contractor) immediately inform the Contractor if the Worker is or becomes a Prohibited Person; and
- 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 59.2(b) (whilst not being the subject of a Prohibition Notice).

59.3 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.

59.4 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.

60 RESPECTFUL BEHAVIOUR

The Contractor acknowledges the Principal's zero tolerance towards gender based violence, discrimination and all forms of unacceptable behaviour in the workplace and the broader community.

The Contractor agrees that, in performing the Works, the Contractor's personnel will at all times:

(a) act in a manner that is non-threatening, courteous, and respectful; and

(b) comply with any instructions, policies, procedures or guidelines issued by the Principal regarding acceptable workplace behaviour.

If the Principal believes that the Contractor's personnel are failing to comply with the behavioural standards specified in this clause, then the Principal may in its absolute discretion:

(a) prohibit access by the relevant Contractor's personnel to Site and the Principal's premises; and
(b) direct the Contractor to withdraw the relevant Contractor's personnel from providing the Works.

61 EXCLUSION OF PROPORTIONATE LIABILITY

To the extent permitted by law, the operation of Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA), and any equivalent statutory provision, is excluded in relation to all rights, obligations and liabilities in connection with the Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise. The Contractor acknowledges that clause 61 constitutes a special limitation for the purposes of Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) (Proportionate Liability) Amendment Act 2005 (SA).*

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.

The Contractor must ensure that its Subcontracts, include provisions that are functionally equivalent to this clause 61.

62 LIMITATION AND EXCLUSION OF LIABILITY

62.1 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; and

(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 contract, wrongful act, omission or negligence.

62.2 Exclusion of Liability

Subject to this clause 62.2, 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 party's breach of contract, act, omission or negligence. However, the exclusion of liability in this clause 62.2 does not apply to a party's liability:

(i) in connection with the Prescribed Heads of Liability (which remain unlimited);

(ii) for any liquidated damages or any other payment of loss or damages expressly provided for under this Contract.

62.3 **Priority and Survival**

In resolving inconsistencies in this Contract, the provisions of this clause 62 shall take priority.

This clause 62 will survive the expiry or termination of this Contract.

63 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 54, 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 Specification.

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 63 does not entitle the Contractor to additional cost or time for the

completion of the Works.

In this clause 63:

"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

64 LOCAL WORKERS

64.1 Subclauses 64.1 to 64.8 (inclusive) apply where Annexure Item 46 states that the project is a Major Infrastructure Project.

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

64.3 Where the Contractor fails to comply in part or in whole with the requirements of subclauses 64.1 to 64.8 (inclusive), the Principal may suspend the Contractor from the Department Prequalification System for a period determined by the Principal. Any such failure may also 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

64.4 The Contractor must, subject to subclauses 64.1 to 64.8 (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

64.5 The Contractor must submit to the Principal, such information and reports as the Principal may require to verify the Contractor's compliance with clause 64.4.

64.6 The Contractor must (and must ensure that its subcontractors) keep records of compliance with clauses 64.1 to 64.8 (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 64.1 to 64.8 (inclusive).

Other

64.7 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 64.1 to 64.8 (inclusive).

64.8 In this clause 64:

(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.

65 TRAINEES, ABORIGINAL PEOPLE AND LONG TERM UNEMPLOYED

General

65.1 Subclauses 65.1 to 65.9 (inclusive) apply where Annexure Item 46 states that the project is a Major Infrastructure Project.

65.2 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").

65.3 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.

65.4 Where the Contractor fails to comply in part or in whole with the requirements of subclauses 65.1 to 65.9 (inclusive), the Principal may suspend the Contractor from the Department Prequalification System for a period determined by the Principal. Any such failure may also 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

65.5 The Contractor must, subject to subclauses 65.1 to 65.9 (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

65.6 The Contractor must submit to the Principal such information and reports as the Principal may require to verify the Contractor's compliance with clause 65.5.

65.7 The Contractor must (and must ensure that its subcontractors) keep records of compliance with subclauses 65.1 to 65.9 (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

65.8 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 65.1 to 65.9 (inclusive).

Definitions

65.9 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).

66 MODERN SLAVERY

66.1 For the purposes of this clause:

(a) Modern Slavery Act means the *Modern Slavery Act 2018* (Cth);

(b) Modern Slavery has the meaning given in section 4 of the Modern Slavery Act.

66.2 In performing its obligations under this Contract, the Contractor will, and will ensure all of its subcontractors, consultants and suppliers:

(a) comply with all applicable laws, statutes, regulations in force from time to time, including but not limited to the Modern Slavery Act; and

(b) take reasonable steps to ensure that there is no Modern Slavery in the Subcontractor's subcontractors, consultants and/or suppliers supply chains or in any part of their business.

66.3 The Contractor represents and warrants that:

(a) it conducts its business in a manner that is consistent with the principles of the Modern Slavery Act; and

(b) neither it, nor any of its officers, employees or other persons associated with the Subcontractor:

(c) has been convicted of any offence involving Modern Slavery; and

(d) having made reasonable enquiries, to the best of its knowledge has not been or is not the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with Modern Slavery.

66.4 The Contractor will implement due diligence procedures for its own subcontractors, consultants and suppliers, and other participants to ensure that there is no Modern Slavery in its supply chains.

66.5 The Contractor will deliver to the Principal no later than 3 calendar months from December 31 each year, an annual statement prepared in accordance with section 16(1) of the Modern

Slavery Act, including, but not limited to, the steps it has taken to ensure that Modern Slavery is not taking place in any of its supply chains or in any part of its business.

66.6 For the purposes of clause 66.5, any reference to obligations imposed upon a 'reporting entity' in section 16(1) of the Modern Slavery Act will be taken to mean obligations imposed upon the Contractor, to the extent that those obligations apply to the Contractor.

66.7 The Contractor will notify the Principal as soon as it becomes aware of any actual or suspected Modern Slavery in a supply chain, which has a connection with this Contract.

67 FRAUD CONTROL

67.1 The Contractor must proactively take all necessary:

(a) measures to prevent, detect and investigate any fraud that may occur, is occurring or has occurred in connection with this Contract or any Subcontract, including all measures directed by the Principal;

(b) corrective action to mitigate any loss suffered or incurred by the Principal resulting from any fraud that is occurring or has occurred in connection with this Contract or any Subcontract, to the extent the fraud was caused or contributed to by the contractor, subcontractors, or suppliers including all corrective action directed by the Principal; and

(c) measures to ensure that its selection or engagement of subcontractors or suppliers is not influenced by an Irrelevant Factor.

67.2 The Contractor acknowledges and agrees that its obligation under clause 67.1 extends to taking all necessary measures to prevent, detect and investigate any fraud which has or may be committed by any person employed or engaged by the Contractor.

67.3 If the Contractor knows or suspects that any fraud is occurring or has occurred it must immediately provide a detailed written notice to the Principal including details of:

(a) the known or suspected fraud;

(b) how the known or suspected fraud occurred;

(c) the proactive corrective action the Contractor will take under clause 67.1; and

(d) the proactive measures which the Contractor will take under clause 67.1 to ensure that the fraud does not occur again, and

(e) such further information and assistance as the Principal, or any person authorised by the Principal, requires in relation to the fraud.

67.4 Clause 67.1 to 67.3 (inclusive) do not limit the operation of clause 14.5.

68 ANTI-CORRUPTION

68.1 Without limiting clause 14.5, within 10 Business Days after a request by the Principal, the Contractor must provide the Principal with a written confirmation that, to the best of the Contractor's knowledge and based on reasonable enquiries undertaken by it, the Contractor and all persons employed or engaged by the Contractor are compliant with all Statutory Requirements (including foreign anti-corruption legislation) regarding the offering of unlawful

inducements whether in Australia or otherwise in connection with the performance of the Contract and any Subcontract.

68.2 The Contractor:

(a) warrants that it has not as at the Date of Contract entered; and

(b) will not at any time enter,

(c) into any Arrangement in respect of the Contract or the Works that is influenced by an Irrelevant Factor.

68.3 The Contractor must use best endeavours to prevent against engaging any subcontractor or supplier whose owner, officer(s) or employee(s) are Participants or associated with Participants of a Declared Organisation and/or a Criminal Organisation.

68.4 The Contractor must take all reasonable steps to ensure that its subcontractors and suppliers have not, and will not at any stage, enter into any Arrangement in respect of the Contract or the Works that would contravene clause 68.2 or 68.3 if the Arrangement was entered into by the Contractor.

68.5 Without limiting any other provision of this Agreement, if:

68.5.1 the Contractor breaches an obligation under clause 68.2, 68.3 or 68.4; or

68.5.2 the Principal considers that the Contractor has engaged a subcontractor or supplier whose owner, officer(s) or employee(s) are Participants or associated with Participants of a Declared Organisation and/or Criminal Organisation,

the Principal may issue a written notice to the Contractor which must specify:

68.5.3 the particulars of the alleged breach or engagement;

68.5.4 the reasonable requirements of the Principal to overcome the alleged breach or engagement (which may include exclusion of the relevant subcontractor or supplier personnel from Site or termination of the Arrangement); and

68.5.5 the date by which the Contractor must comply with those requirements (which must allow for a reasonable period of time to comply with the Principal's requirements in the circumstances),

and the Contractor must comply with such written notice.

69 AUDIT

69.5 The Principal may, at its own expense, at any time prior to Practical Completion and for 12 months thereafter carry out or cause to be carried out in a fair and reasonable manner an audit of any aspect of the operations of the Contractor relating to this Contract. The scope of the audit shall not include:

69.5.1 the Contractor's profitability;

69.5.2 confidential personal information; and

69.5.3 Intellectual Property Rights such as designs, methods or innovations that do not have a direct link to the Contract deliverables.

69.6 Upon production of the written authorisation or appointment by the Principal, the Contractor must, for the purpose of any such audit, permit the Principal or any person engaged by the Principal for that purpose:

69.6.1 to question and observe any Contractor's personnel engaged in relation to this Contract in the presence of a representative of the Contractor; and

69.6.2 to have full and sufficient access to any premises, storage facilities, records (including personnel records) and books relevant to the performance by the Contractor of its obligations under this Contract.

69.7 The Principal may for the purpose of auditing the Contractor's performance under this Contract carry out such investigations as it considers necessary and may carry out such investigations with or without providing to the Contractor notice or identification.

69.8 In the exercise of its rights under this clause the Principal must minimise, so far as is practicable, any inconvenience or interruptions to the business of the Contractor or the performance by the Contractor of its obligations under this Contract.

69.9 If an audit carried out under this clause reveals a material breach of the Contractor's obligations under this Contract or confirms a default previously denied by the Contractor, then the Contractor must pay all costs and expenses incurred by the Principal in relation to the audit.

69.10 Following completion of any audit, the Contractor must meet with the Principal to discuss in good faith any recommendations made.

69.11 The Contractor will at its own cost act upon and implement any reasonable recommendations made by the Principal arising from the results of an audit under this clause.

ANNEXURE

This annexure takes the place of Part A of the Annexure to the General Conditions of Contract (AS2124-1992).

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 Contract Sum	The GST inclusive sum set out in the Tender Form, and not to exceed $[insert] except as varied in accordance with this Contract.
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 Superintendent: (Clause 2)	Director Building Projects Department for Infrastructure and Transport
6. The address of the Superintendent: (Clause 2)	Level 13, 83 Pirie Street ADELAIDE SA 5000
7. Limits of accuracy applying to quantities for which the Principal accepted a rate or rates: (Clause 3.3(b))	Not Applicable
8. Bill of Quantities - the alternative applying: (Clause 4.1)	Alternative 2
9. The time for lodgement of the priced copy of the Bill of Quantities: (Clause 4.2)	Not Applicable
10. Contractor shall provide security in the amount of: (Clause 5.2)	3% of the Contract Sum (GST exclusive portion) to be provided as 2 separate undertakings, with values of 2% and 1% of the Contract Sum.
11. Principal shall provide security in the amount of: (Clause 5.2)	Nil
12. The period of notice required of a party's intention to have recourse to retention moneys and/or to convert security; (Clause 5.5)	Refer to the amended Clause 5.5 in the Special Conditions of Contract
13. The percentage to which the entitlement to security and retention moneys is reduced: (Clause 5.7)	Refer to the amended Clause 5.7 in the Special Conditions of Contract
14. Interest on security and retention moneys – the alternative applying: (Clause 5.9)	Alternative 2
15. The number of copies to be supplied by the Principal	1 copy

(Clause 8.3)	
16. The number of copies to be supplied by the Contractor (Clause 8.4)	3 copies
17. The time within which the Superintendent must give a direction as to the suitability and return the Contractor's copies (Clause 8.4)	14 days
18. Work which cannot be subcontracted without approval: (Clause 9.2)	Refer to the amended Clause 9.2 in the Special Conditions of Contract
19. The percentage for profit and attendance: (Clause 11(b))	5%
20. The amount or percentage for profit and attendance: (Clause 11(c))	5%
20A. Is the Contractor appointed as Principal Contractor? (*Yes, if left blank*) (clause 15.3)	Yes
21. Insurance of the Works - the alternative applying: (Clause 18)	Alternative 2
22. The assessment for insurance purposes of the costs of demolition and removal of debris: (Clause 18(ii))	Not applicable
23. The assessment for insurance purposes of consultant's fees: (Clause 18 (iii))	Not applicable
24. The value of materials to be supplied by the Principal: (Clause 18(iv))	Not applicable
25. The additional amount or percentage: (Clause 18(v))	Not applicable
26. Public Liability Insurance - the alternative applying: (Clause 19)	Alternative 2
27. The amount of Public Liability Insurance shall be not less than: (Clause 19)	Not applicable
28. The time for giving possession of the Site: (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 Week following Practical Completion of Stage 1 Stage 3 – Within 1 Week following Practical Completion of Stage 2

29. Requirements for Quality Assurance (Clause 30.2)	Required
30. The Date for Practical Completion: (Clause 35.2)	[insert date] or [xx weeks from the Date of Acceptance of Tender]
31. Liquidated Damages per day: (Clause 35.6)	$[insert amount] for the whole of the Works
32. Limit of Liquidated Damages: (Clause 35.7)	Not Used
33. Bonus per day for early Practical Completion: (Clause 35.8)	Not Applicable
34. Limit of bonus: (Clause 35.8)	Not Applicable
35. Extra costs for Delay or Disruption: (Clause 36)	Rate is $00,000 (inclusive of GST) per each day of Extension of Time for Practical Completion Event Events under clause 35.5(b)(i), 35.5(b)(iv), 35.5(b)(v), 35.5(b)(vi), 35.5(b)(x) and 36.2.
36. The Defects Liability Period: (Clause 37)	12 months
37. The Charge for overheads, profit, etc. for Daywork: (Clause 41(f))	5%
38. Times for Payment Claims: (Clause 42.1)	Monthly, on the last Business Day for each month
39. Unfixed Plant and Materials for which payment claims may be made notwithstanding that they are not incorporated in the Works: (Clause 42.1)	Refer to the amended Clause 42.1 in the Special Conditions of Contract
40. Retention Moneys: (Clause 42.3)	Nil
41. Unfixed Plant or Materials - the alternative applying: (Clause 42.4)	Refer to the amended Clause 42.4 in the Special Conditions of Contract
42. The rate of interest on overdue payments: (Clause 42.9)	10% per annum
43. The delay in giving possession of the Site which shall be a substantial breach: (Clause 44.7)	3 months
44. The Principal's Dispute Representative: (Clause 47)	Executive Director Infrastructure Delivery Division Department for Infrastructure and Transport
45. The Contractor's Dispute Representative: (Clause 47)	TBA
46. The Project is a Major Infrastructure Project (Clauses 64 and 65)	Yes / No

Separable Portion	
1. Separable Portion:	Describe Separable Portion
2. Contractor shall provide security in the amount of: (Clause 5.2)	Security is on the total Contract Sum Refer Annexure Item 10
3. Principal shall provide security in the amount of: (Clause 5.2)	Not applicable
4. The period of notice required of a party's intention to have recourse to retention moneys and/or to convert security (Clause 5.5)	Refer to the amended Clause 5.5 in the Special Conditions of Contract
5. The Date for Practical Completion: (Clause 35.2)	[insert date] or [xx weeks from the Date of Acceptance of Tender]
6. Liquidated Damages per day: (Clause 35.6)	Nil, subject to Annexure item 31
7. Limit of Liquidated Damages: (Clause 35.7)	Not Applicable
8. Bonus per day for early Practical Completion: (Clause 35.8)	Not Applicable
9. Limit of bonus: (Clause 35.8)	Not Applicable
10. Extra costs for Delay or Disruption: (Clause 36)	Rate is $00,000 (inclusive of GST) per each day of Extension of Time for Practical Completion Event Events under clause 35.5(b)(i), 35.5(b)(iv), 35.5(b)(v), 35.5(b)(vi), 35.5(b)(x), 36.2.
11. Defects Liability Period	12 months

ATTACHMENT 1 – APPROVED FORM 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 5000

UNCONDITIONAL UNDERTAKING

At the request of

..... (Name of Contractor)
ACN: ### ### ### ('the Contractor') and in consideration of the Principal accepting this undertaking in respect of the contract for:
…….....

..... Contract Title and 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.

The Financial Institution may at any time without being required so to do pay to the Principal the Security Amount. less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon 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……202

ATTACHMENT 2 – INDUSTRY PARTICIPATION POLICY PLAN NOT USED

ATTACHMENT 3 – DEED OF NOVATION

(AS 2124—1992 Clause 10.1(c) and 10.3)

THIS DEED is made on the ……..……...…….day of ……..……... ……

Between **Minister for Infrastructure and Transport** ("the Principal") of Level 14, 83 Pirie Street, ADELAIDE SA 5000

and ……..……("the Nominated Subcontractor")

of ……..……..…… ACN ……

and ……..……..……("the Contractor")

of ……..……..…….. ACN ……..…

WHEREAS

A. The Principal has called tenders for the construction of ……..……

at ……..……..……. ("the Project");

B. The Principal and the Nominated Subcontractor have entered into a contract ("Nominated Subcontract") whereby the Nominated Subcontractor will execute and complete certain work more particularly described in the Nominated Subcontract (which work is herein called the Nominated Subcontract Work) and which will form part of the Project;

C. The Nominated Subcontract has been entered into between the Principal and the Nominated Subcontractor prior to the execution of a contract between the Principal and the successful tenderer for the construction of the Project;

D. The Nominated Subcontract provides that the Nominated Subcontractor will enter into this Deed of Novation with the successful tenderer for the Project;

E. The Contractor is the successful tenderer on the Project and has executed a contract for the construction for the Project with the Principal; and

F. The Contractor has been directed by the Superintendent named in the said contract for the construction of the Project between the Principal and the Contractor to enter into this Deed on Novation with the Nominated Subcontractor.

THIS DEED WITNESSES that in consideration of the mutual promises contained in this Deed, the parties agree:

1. The Contractor shall punctually perform, execute and carry out all of the obligations of the Principal under the Nominated Subcontract so far as they are not performed. The Contractor acknowledges itself to be bound by the terms and conditions of the Nominated Subcontract in all respects and in every way as if the Contractor had originally been named in the Nominated Subcontract as a party to the Nominated Subcontract in place of the Principal.

2. The Nominated Subcontractor hereby releases and forever discharges the Principal from the further performance of the Nominated Subcontract and from all claims and demands whatsoever in respect of the Nominated Subcontract and accepts the liability of the Contractor upon the Nominated Subcontract in place of the liability of the Principal.

3. The Subcontractor shall punctually perform, execute and carry out all of its obligations under the Nominated Subcontract and be bound by the terms of the Nominated Subcontract in each and every way as if the Contractor had originally been named in the Nominated Subcontract as a party to the Nominated Subcontract in place of the Principal.

4. 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.

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

THE COMMON SEAL of NOMINATED SUBCONTRACTOR NAME (ACN XXX XXX XXX) was affixed hereto in the presence of:)

……
Secretary/Director

……
Name of Secretary/Director

……
Director

……
Name of Director

THE COMMON SEAL of CONTRACTOR NAME (ACN XXX XXX XXX) was affixed hereto in the presence of:)

……
Secretary/Director

……
Name of Secretary/Director

……
Director

……
Name of Director

[REVISED] TENDER FORM

AGREED POST TENDER AMENDMENTS

ADDENDUMS

SPECIFICATION AND APPENDICES

DRAWINGS