[Contract Name]

[Contract Number]

**Infrastructure Maintenance Services**

General Conditions of Contract

Template Edition: 5 August 2020

**FORMAL INSTRUMENT OF AGREEMENT**



**[Contract Name]**

**[Contract Number]**

**AGREEMENT** made the date it is signed by the last party

**BETWEEN:**

|  |  |
| --- | --- |
| **PRINCIPAL:** | The Minister for Infrastructure and Transport a body corporate established pursuant to the Administrative Arrangements Act 1994 (SA)136 North TerraceAdelaide, South Australia 5000ABN 92 366 288 135orThe Commissioner of Highways a body corporate established pursuant to the Highways Act 1926 (SA)50 Flinders StreetAdelaide, South Australia 5000ABN 45 751 448 902orThe Rail Commissioner a body corporate established pursuant to the Rail Commissioner Act 2009 (SA)50 Flinders StreetAdelaide, South Australia 5000ABN 23 251 040 528(the **Principal**) |

**AND:**

|  |  |
| --- | --- |
| **CONTRACTOR:** | [insert] |
| **Address:** | [insert] |
| **ACN:** | [insert] |
| **ABN:** | [insert] |
|  | (the **Contractor**) |

**IT IS AGREED THAT:**

1. The Contract consists of the following documents:
	1. this Formal Instrument of Agreement;
	2. the General Conditions of Contract and their Annexure;
	3. The Tender Form, set out at Attachment 1 and
	4. The Specification, set out in Attachment 2,

in descending order of precedence.

1. The documents which comprise the Contract shall be read as a whole. Anything included, defined or reasonably inferred from one or more of the documents forming part of the Contract shall be read as included in the Contract unless the context requires otherwise.
2. Any modification to the terms of this Contract must be in writing and signed by each party.
3. The obligations of the Contractor, if more than one person, under this Contract, are joint and several and each person constituting the Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breach of this Contract) of the other as if those acts or omissions were its own.
4. A waiver by either party in respect of a breach of a provision of the Contract by the other party is not a waiver in respect of any other breach of that or any other provision of the Contract. The failure of either party to enforce at any time any of the provisions of the Contract shall not be interpreted as a waiver of that provision.

|  |  |  |
| --- | --- | --- |
| **SIGNED** by a duly authorised officer for and on behalf of **THE PRINCIPAL** in the presence of: |  |  |
|  Witness signature Witness name Date |  Authorised officer signature Authorised officer name 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 name Date |  Director/Company Secretary signature Director/Company Secretary name Date |  |

**GENERAL CONDITIONS OF CONTRACT**

1. **DEFINITIONS AND INTERPRETATIONS**

In this Contract:

**Annexure** means the annexure to this Contract.

**Assets** means the asset or assets stated in the Annexure the subject of the Services.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in South Australia.

**Completion Date** means the date by which the Services must be completed by Contractor in accordance with clause 10 of this Contract.

**Contract** means this document and includes those documents listed in the Schedule of Contract Documents (if used).

**Contractor** means the person so described in the letter of acceptance of tender or purchase order.

**Department** means the Department for Infrastructure and Transport.

**Extension Period** means a period stated in the annexure by which the Completion Date may be extended according to clause 10(b).

**Goods** means any goods referred to in Attachment 2 and any other minor or incidental goods required for performance of the Services, and includes Plant.

**Plant** means any Goods that are machinery, equipment or fixtures used for construction, manufacturing, transport, storage or industrial purposes, and any Goods that are described as plant in Attachment 2.

**Price** means the price stated in the Annexure.

**Principal** means the person named in the Formal Instrument of Agreement.

**Principal’s Authorised Person** means the person named in the Annexure.

**Services** means the whole of the maintenance services to be performed by the Contractor in accordance with this Contract, including variations provided for in this Contract, and includes supply and installation of any Goods.

**Specification** means the documents set out in Attachment 2.

**Worker** means:

1. the Contractor, its directors, officers, employees, agents, volunteers or invitees; and
2. all the Contractor’s subcontractors, their directors, officers, employees, agents, volunteers and invitees,

who attend the site.

1. **NATURE OF CONTRACT**
2. The Contractor must perform and complete the Services set out in the Specification and in accordance with any direction given by the Principal’s Authorised Person.
3. The Principal must pay the Contractor the Price:
	1. for any part of the Services for which the Principal accepted a lump sum, the lump sum; or
	2. for any part of the Services for which the Principal accepted rates, the sum ascertained by multiplying the measured quantity of each part of the Services actually performed under this Contract by the rate accepted by the Principal for that part,

adjusted by any additions or deductions made under to this Contract.

1. **PRINCIPAL’S AUTHORISED PERSON**
2. The Principal must:
	1. ensure that there is a person appointed to act as the Principal’s Authorised Person at all times; and
	2. promptly notify the Contractor if the name and/or contact details of the Principal’s Authorised Person change.
3. The Principal’s Authorised Person:
	1. is authorised to act on behalf of the Principal; and
	2. by notice in writing to the Contractor, may further delegate any of the Principal’s functions and powers under this Contract, except those under clause 21 or clause 27(d)(iv)(D).
4. Any reference to the Superintendent in the Specification is a reference to the Principal’s Authorised Person.
5. With regard to any matter that affects or has the potential to affect the safety of the Adelaide Metropolitan Rail Network, the powers, duties, discretions and authorities vested in the Principal under this Contractmay also be exercised by the Rail Commissioner established according to the *Rail Commissioner Act 2009* (SA).
6. **ASSIGNMENT AND SUBCONTRACTING**
7. The Contractor must not assign this Contract or subcontract the whole or any part of the Services under this Contract without the prior written approval of the Principal. Subcontracting does not relieve the Contractor of its responsibility and liability under this Contract.

## If the Contractor is a corporation (not being a company with its shares listed on any Stock Exchange in Australia), any change in the beneficial ownership of 50% or more of the voting shares in the corporation or any change in the effective control of the corporation, is deemed to be an assignment of this Contract requiring the Principal’s prior written approval.

1. **INSURANCE**
2. Unless advised otherwise by the Principal, the Contractor, before commencing the Services, must hold or effect a policy of insurance as specified in the Annexure.
3. The policy must be maintained until the Services have been completed. The Contractor must, on request of the Principal, promptly produce evidence of the insurance required under this clause. If the Contractor does not provide evidence of compliance satisfactory to the Principal, the Principal may obtain the relevant insurances and any costs and expenses incurred by the Principal in doing so will be a debt due and payable by the Contractor to the Principal. The Principal may withhold payment until evidence of compliance with the Contractor’s obligations under this clause is produced by the Contractor.
4. **PROTECTION OF PERSONS AND PROPERTY**
5. Unless directed otherwise by the Principal, the Contractor:
	1. must provide all things and take all measures necessary to protect people and property in connection with the Services, including erection, maintenance and removal of barricades and signs where necessary for the safety and convenience of the public and others;
	2. must avoid unnecessary interference with the passage of people and vehicles (where applicable);
	3. must prevent nuisance and unreasonable noise and disturbance;
	4. is responsible for the care of the whole of the Assets under this Contract from the time the Assets are handed over to the Contractor to commence the services to the time the Assets are handed back to the Principal upon expiry or termination of this Contract;
	5. must make good at its own cost any loss or damage for which the Contractor is responsible;
	6. must ensure that quantity of any spare parts, materials or other physical resources stored at the Asset and not owned by the Contractor is the same or greater upon expiry or termination of this Contract than it was at the date of execution of this Contract.
6. The Contractor indemnifies the Principal in respect of for any death, personal injury, loss or damage to any property arising out of, or as a consequence of, the Contractor carrying out any of its obligations under this Contract, but the Contractor’s liability under this clause shall be reduced proportionately to the extent that the Principal or its employees, agents, consultants or other Contractors of the Principal contributed to death, personal injury, loss or damage to the Assets.
7. **QUALITY OF SERVICES**
8. The Services must comply with the Specification, and the Contractor must rectify any known defect or non-compliant Services prior to the Completion Date.
9. The Contractor must ensure that upon expiry or termination of this Contract the condition of the Asset is equal to or better than it was at the date of execution of this Contract, except to the extent of natural deterioration and wear and tear to the Asset over time.
10. The Contractor must rectify as soon as reasonably practicable and at its own cost any damage to or defect in the Asset that is caused or contributed to by any act or omission of the Contractor or the Contractor’s employees, officers, contractors or agents.
11. Unless otherwise specified, the Services must be performed in accordance with all relevant Australian Standards, and all laws and codes applicable to the Contractor’s provision of the Services.
12. The Services must be performed with due care and skill by appropriately experienced, trained and qualified persons in accordance with industry recognised methods, and by an adequate number of such persons to perform the Services as determined by the Principal.
13. **SUPPLY AND INSTALLATION OF GOODS**
14. The Contractor must supply and install the Goods as and when necessary to ensure operation of the Asset. With regard to supply and installation of the Goods, the Contractor must:
	* 1. unless specified otherwise, provide all labour, machinery, materials and other things necessary to install the Goods;
		2. provide the Goods without encumbrance;
		3. provide all relevant material safety data sheets;
		4. provide all relevant test evidence.
		5. reasonably cooperate with the Principal and its agents during the installation;
		6. install the Goods in accordance with applicable standard industry practice or better; and
		7. comply with any of the Principal’s requirements regarding Asset access and security.
15. Unless otherwise specified, the Goods must be new and suitable for the purpose and consistent with the nature and character of the Asset.
16. The Contractor must undertake any design necessary to ensure that the Goods will comply with this Contract when installed.
17. The Contractor warrants that it has inspected the Asset and made all reasonable enquires necessary to ensure that the Goods can be satisfactorily installed without detriment to the operation, serviceability or structural integrity of the Asset.
18. All Goods and must be provided with a warranty against defects and defective installation for the Warranty Period set out in the Annexure. This warranty will not apply to the extent that these defects were caused or contributed to by the Principal, or caused by reasonable wear and tear. The Warranty Period commences upon completion of installation of the relevant Goods.

The Contractor must also ensure that the Principal has the full benefit of any manufacturer’s warranties applicable to the Goods. For the avoidance of doubt, any manufacturer’s warranties operate in addition to the Contractor’s warranty provided pursuant to the first paragraph of this clause 8(e).

If during the Warranty Period or a manufacturer’s warranty period the Goods fail to comply with this Contract, the Contractor must repair or replace the Goods at its own expense to rectify the non-compliance. With regard to this rectification, the Contractor must:

* + 1. provide reasonable notice to the Principal of its program to undertake the rectification work; and
		2. perform the rectification work so as to minimise interference and disruption to the occupiers and users of the Asset, which may require rectification work to be performed outside of usual business hours.

Where the Contractor elects to repair the Goods, the method of repair is subject to written approval by the Principal, who may require evidence that the repair will not be to the detriment of the performance of the Goods or the Asset. Any such approval does not relieve the Contractor from its obligations under this Contract.

All costs incurred by the Contractor as a consequence of any Goods being non-conforming with this Contract must be borne by the Contractor.

1. If the Contractor fails to comply with its obligations under clause 8(e), the Principal may have the repair or replacement of the Goods carried out by others, provided that it provides five Business Days’ written notice to the Contractor of its intention to do so. The cost of having this repair or replacement performed will be a debt due and payable from the Contractor to the Principal.

Nothing in this clause 8(f) prejudices any other right which the Principal may have against the Contractor arising out of the failure of the Contractor to provide Goods in accordance with the Contract.

1. Prior to expiry or termination of this Contract, the Contractor must provide the Principal with:
	* 1. all records, test results and certificates demonstrating the Goods’ compliance with this Contract;
		2. electronic copies of all manuals and instructions necessary to operate and maintain the Goods to the standards required by this Contract;
		3. any training necessary for the Principal’s personnel and/or agents to operate the Goods; and
		4. copies of any manufacturer’s warranty in respect of the Goods.
2. **SUPPLY AND INSTALLATION OF PLANT**
3. The provisions specific to Plant pursuant to this clause 9 apply in addition to the provisions applicable to Goods under this Contract. In the event of any inconsistency between the provisions specific to Plant and the provisions applicable to all Goods, the provisions specific to Plant will prevail to the extent of the inconsistency.
4. The Contractor must install the Plant at the relevant Asset by the date that is agreed in writing between the Principal and the Contractor.
5. If requested by the Principal, the Contractor must provide a copy of its program for the procurement, fabrication and installation of the Plant (“Delivery Program”) within 14 days of this request.

The Delivery Program must include details of the following:

1. sub-order milestones;
2. delivery period of sub-orders;
3. manufacturing program (where applicable);
4. dispatch date;
5. delivery period;
6. installation period; and
7. testing and commissioning period.

The Contractor must promptly provide a revised Delivery Program to the Principal if any dates shown on the Delivery Program change or are likely to change.

1. The Contractor must undertake all testing and commissioning necessary to demonstrate that the Plant complies with this Contract.

If requested by the Principal, the Contractor must prepare and implement an inspection and test plan for the Plant, and provide a copy to the Principal. The inspection and test plan must describe in detail all testing and inspection to be performed to demonstrate the Plant’s compliance with this Contract, including:

* + 1. clear cross referencing to the applicable clauses of the Specification and/or applicable standards:
		2. test frequency, acceptance criteria and records produced demonstrating compliance; and
		3. any stage testing, such as factory acceptance testing, site / static tests and system integration tests.

The Contractor must provide to Principal all inspection and test records and results, including any results showing non-compliance and the proposed actions to rectify the non-compliance.

1. On or prior to commissioning of the Plant, the Contractor must supply the following documents to the Principal:
2. all technical information, manuals and other documents which may reasonably be required for the operation and maintenance of the Plant and the training of personnel who use the Plant;
3. a completed “Plant Detail and Service Record Sheet” which lists the make, model, serial and part numbers of components and attachments and capacities and dimensions of each item of the Plant;
4. operator, parts and service manuals, including all schematic and wiring diagrams showing all electrical and electronic components and interconnecting wiring and any applicable hydraulic and pneumatic system schematic diagrams of the Plant; and
5. documents to demonstrate that the Plant complies with this Contract, if required by the Specification.

The Principal’s receipt or approval of any of these documents does not relieve the Contractor from responsibility for the Contractor’s errors or omissions in these documents, or compliance with this Contract.

The Contractor grants the Principal a royalty free, non-exclusive, transferable, perpetual licence to use the intellectual property in the documents referred to in this clause 9(e) for the purposes of operation, maintenance, repair or alteration of the Plant by or on behalf of the Principal.

1. The Principal may inspect the Plant to determine whether to accept or reject the Plant. The provision of all documentation required by clause 9(e) is a condition precedent to the Principal’s acceptance of the Plant.

Acceptance of the Plant does not relieve the Contractor of any of its obligations under this Contract.

1. The Principal must accept the Plant if it conforms to this Contract. The Principal’s acceptance or rejection of the Plant must be in writing.

1. If the Principal rejects the Plant due to non-conformity with this Contract, then the Principal must notify the Contractor in writing as soon as reasonably practicable, stating the reasons for the rejection. Upon receipt of that notification, the Contractor at its cost and at the Principal’s discretion must either:
2. replace the Plant and remove the non-conforming Plant from the Asset; or
3. repair the Plant.

The method of repair is subject to written approval by the Principal, who may require evidence that the repair will not be to the detriment of the performance of the Goods or the Asset. Any such approval does not relieve the Contractor from its obligations under this Contract.

1. With regard to any repair or replacement works under clause 9(h), the Contractor must:
2. provide reasonable notice to the Principal of its program to undertake the repair or replacement works; and
3. perform the repair or replacement works so as to minimise interference and disruption to the Principal and the occupiers or users of the Asset, which may require the repair or replacement works to be performed outside of usual business hours.
4. The Contractor bears all risk in the Plant until it is accepted by the Principal, at which time the Plant becomes part of the overall Asset for the purposes of this Contract.

Title in the Plant will pass to the Principal upon the Principal’s acceptance of the Plant.

1. The Contractor must supply and fit in a conspicuous position on the Plant a servicing chart showing service points, lubricants and time intervals between services. Quantities and dimensions on gauges, service and data plates must be in SI units.
2. With respect to Plant that is subject to the *Road Traffic Act 1961 (SA)* and its Regulations, the Contractor must ensure that that Plant complies in all respects with the current requirements of that legislation.
3. The Contractor must maintain and retain, for a period of six years after termination or expiry of this Contract, records of all Plant maintenance services and warranty claim responses performed under this Contract. These records must include all data used in the creation of invoices issued under this Contract.

Upon reasonable notice being given, the Contractor must make these records available to the Principal and allow the inspection and copying of such records. This clause 9(m) will survive termination or expiry of this Contract.

1. **COMPLETION OF SERVICES**
2. The Contractor must complete the Services in accordance with this Contract by the Completion Date.
3. The Completion Date may be extended for an Extension Period referred to in the Annexure at the Principal’s discretion. The Principal may exercise an Extension Period by providing 30 days’ written notice to the Contractor.
4. **COMPLIANCE WITH LAWS**

The Contractor must comply with the laws in force in the State of South Australia in performing its obligations under this Contract.

The Contractor must obtain and hold, and ensure that its subcontractors, agents and employees obtain and hold, all licences, registrations, permits, approvals and certificates required by law in order to carry out the Services, and in respect of the use and occupation of the Asset.

The Contractor must give the Principal copies of documents issued to the Contractor by any authority in respect of the Services and, in particular, any approvals of relevant parts of the Services.

The Principal is a public authority for the purposes of the *Independent Commissioner Against Corruption Act 2012* (SA) (“ICAC Act”). For the term of this 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.

1. **CONTRACTOR’S CONDUCT**

The Contractor warrants, represents and undertakes to the Principal that it will conduct itself in a manner that does not invite, directly or indirectly, the Principal’s officers, employees or agents or any public sector employee (as defined in the *Public Sector Act 2009*) to behave unethically, to prefer private interests over the Principal’s interests or to otherwise contravene the Code of Ethics for the South Australian Public Sector issued under the *Public Sector Act 2009* (SA)

1. **VARIATIONS**

The Principal may direct the Contractor to vary the Services under this Contract or execute additional Services (**Variation**). Unless otherwise agreed, the Variation must be valued by the Principal using the following methods in the following descending order of precedence:

1. Where a schedule of rates contained in Attachment 1 is applicable, the valuation will be made by using that schedule of rates, or where no rate is directly applicable, a rate calculated by inference, proportion or interpolation from that schedule of rates, plus an allowance of 10% of that rate for the Contractor's profit, overheads, administration, supervision and attendance.
2. Where a schedule of rates is not applicable, the value of the Variation will be the sum of:
	1. actual value of the work calculated as the total of:
* labour at a rate not exceeding the Department’s 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; and
* net cost of subcontractor claim made up of labour at a rate not exceeding the Department’s 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, overhead, administration, supervision and attendance costs;
	1. an allowance of 10% on the labour, material, plant and subcontractor cost for the Contractor’s profit, overhead, administration, supervision and attendance costs.

In determining the deduction to the Price to be made for a Variation in which a portion of the Services is removed from the Specification, the deduction shall include an additional allowance for the Contractor's administration calculated as 5% of the value of the Variation.

1. **PAYMENT**
2. Unless the Principal directs otherwise, the Contractor must submit an invoice to the Principal at monthly intervals for the part of the Services performed in accordance with this Contract. These invoices must be consistent with the Price. Within 10 business days of receipt of an invoice, the Principal’s Authorised Person will:
	1. assess the amount claimed;
	2. determine the amount to be paid to the Contractor for the relevant part of the Services satisfactorily performed; and
	3. if the amount to be paid if is different from the amount claimed by the Contractor, provide a payment schedule to the Contractor which includes the reasons for the difference.
3. Within 30 days of the receipt of the payment claim, the Principal will pay the Contractor the amount determined by the Principal’s Authorised Person.
4. Payment shall be payment on account only and shall not be evidence that the relevant part of the Services has been performed satisfactorily.
5. If the Contractor claims payment for plant or materials intended for incorporation into the Asset as part of the Services but not yet incorporated, the Principal will not be obliged to make payment for such plant or materials but the Principal may make payment, if the Contractor:
6. provides additional Contract Security in the form set out in the Annexure in an amount equal to the payment claimed for the plant or materials;
7. provides an ownership statement substantially in the form required by the *Principal* and available from: [Example DIT Contractual Templates & Pro-formas](https://dit.sa.gov.au/contractor_documents/example-contractual-templates-and-pro-formas)
8. establishes to the satisfaction of the Principalthat ownership of such plant and materials will pass to the Principal upon the making of the payment claimed; and
9. establishes to the satisfaction of the Principal 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.

1. **GOODS AND SERVICES TAX**

Payment from the Principal to the Contractor will include the GST payable. Any invoice for payment under this Contract must be a Tax Invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999* (Cth)*.* The Principal is not obliged to make any payment under this Contract unless the Contractor has provided a Tax Invoice in respect of that payment. The Contractor represents that it is registered under the *A New Tax System (Australian Business Number) Act* and that the ABN provided is the Contractor’s ABN.

1. **CLEANING OF ASSETS**

The Contractor must:

1. ensure that the Assets remains in a condition no worse than that encountered at the commencement of this Contract;
2. keep the Assets tidy and regularly remove any rubbish or surplus material arising from the performance of the Services; and
3. on completion of the Services, remove from the Assets:
4. all plant and equipment and all temporary works; and
5. all rubbish and surplus material resulting from the performance of the Services.
6. **CO-OPERATING WITH OTHERS**

The Contractor must cooperate in a courteous manner with the Principal’s employees, members of the public, business proprietors and all other Contractors during the course of performing the Services. The Contractor must permit the performance of other services or works on the Assets by other Contractors engaged by the Principal.

1. **MEETINGS**

The Contractor must attend any meetings as reasonably required by the Principal. During these meetings the Contractor’s performance, Work Health and Safety (**WHS**), environmental matters and any other relevant issues may be discussed.

1. **CONTRACTOR’S PERFORMANCE**
2. At any time during the term of this Contract, the Principal may undertake:
3. an audit of the Contractor’s compliance with any requirement of this Contract or applicable laws; and
4. an evaluation of the Contractor’s performance using a Department Contractor performance evaluation procedure.
5. A copy of the evaluation procedure will be made available to the Contractor if requested. Any evaluation report, which will include reasons for any below acceptable scores, will be forwarded to the Contractor when completed. If the Contractor disagrees with the evaluation, they may forward a request to the Principal for a review, along with reasons why it should be reviewed. Following reasonable consideration of the request, the Principal’s decision will be final. The evaluation may be taken into account in the assessment of future tenders.
6. **CONTRACTOR DEFAULT AND KEY PERFORMANCE INDICATORS**
7. If:
8. In the reasonable opinion of the Principal the Contractor fails to perform the Services to the standard required under this Contract;
9. notice has been given to the Contractor to rectify the default and it has not been rectified within 14 days of the notice or such other time as permitted by the Principal; or
10. the standard of performance in performing the Services is such that the Principal’s efficiency or the proper, safe and cost effective performance of the Principal’s functions is affected,

the Principal may engage another Contractor to perform the Services or any part of the Services. In this event, the cost of having the Services so performed will be deducted from the amount owing to the Contractor.

1. The Contractor must comply with the key performance indicators set out in Attachment 4 (**KPIs**). The Principal may assess the Contractor’s performance against the KPIs at the frequency set out in Attachment 4.

If such an assessment indicates that the Contractor has not complied with the KPIs, the Principal may provide written notice and details of this non-compliance to the Contractor.

If after fourteen days of receipt of such a notice the Contractor still does not comply with the KPIs, the Principal will be entitled to a five percent reduction in all the Contractor’s subsequent payment claims until the Contractor complies with the KPIs.

Following receipt of such a notice, if the Contractor remains non-compliant with the KPIs for three consecutive monthly assessments, this will constitute a “substantial, repeated or persistent breach by the Contractor of any provision of this Contract” according to clause 21(a)(i).

1. **TERMINATION**
2. This Contract may be terminated by the Principal if, in its reasonable opinion, any of the following events occur:
3. a substantial, repeated or persistent breach by the Contractor of any provision of this Contract;
4. the Contractor has failed to effect specific remedial action within the time specified by the Principal in a written notice;
5. the Contractor suffers or is in jeopardy of becoming subject to any form of insolvency administration; or
6. the Contractor fails to comply with any of its obligations under any applicable WHS legislation or any applicable safety policies of the Principal or any other relevant authority.
7. If the Principal terminates this Contract pursuant to this clause 21, it must pay the Contractor for that part of the Services performed by the Contractor in accordance with this Contract up to the date of termination.
8. **REPUDIATION**
9. If the Contractor’s conduct (whether by act or omission) constitutes a repudiation of this Contract (or of the Contractor’s obligations under this Contract) the Principal can elect to accept that repudiation and rescind this Contract.
10. If the Contractor repudiates this Contract (or the Contractor’s obligations under this Contract) and the Principal accepts that repudiation and rescinds this Contract, then the Contractor must compensate the Principal for the damage or loss suffered by the Principal because of the Contractor’s repudiation.
11. In the event that the Contractor repudiates this Contract (or the Contractor’s obligations under this Contract) the Principal must take reasonable steps to mitigate its losses.
12. **ISSUES AND DISPUTES**
13. The Contractor may dispute an assessment, determination or instruction of the Principal, or seek resolution of an unresolved claim, by giving notice to the Principal’s Authorised Person within 28 days after notification of the assessment, determination or instruction, or within 28 days after it becomes an unresolved claim.
14. If the matter has not been resolved within 28 days of the notice being given to the Principal’s Authorised Person, each party must submit the dispute to one of its senior executives who has not previously been involved in the dispute and has the authority to resolve the dispute.
15. The senior executives must meet as soon as possible to resolve the dispute, but in any case within 7 days of its reference to them. Each party must authorise and inform its senior executives sufficiently so that he or she can undertake that meeting without detailed reference to another person.
16. If within 28 days of the dispute being referred to the senior executives, the dispute is not resolved by agreement or a means to resolve the dispute agreed upon, either party may refer the dispute to the Chairperson or President for the time being of the Institute of Arbitrators and Mediators Australia (SA Chapter) to appoint an arbitrator and determine the rules to conduct an arbitration to resolve the matter.
17. **WORK HEALTH AND SAFETY**
18. The Principal is committed to the provision of a safe working environment and expects the Contractor to accept the same commitment to WHS. The Contractor must:
19. comply with the *Work Health and Safety Act 2012* (SA) (**WHS Act**) and the *Work Health and Safety Regulations 2012* (SA) (**WHS Regulations**) as varied from time to time;
20. comply with any reasonable instruction issued by the Principal in relation to WHS;
21. if requested by the Principal, provide evidence satisfactory to the Principal of its capacity to comply with the WHS Act and WHS Regulations (including the provision of any Safe Work Method Statements required by the WHS Regulations); and
22. provide the Contractor’s Return to Work registration number.
23. The Contractor must permit the Principal to carry out any inspections which are reasonably necessary to verify that the Contractor is complying with the WHS Act and the WHS Regulations.
24. If all or part of the Services under this Contract are to be provided on any Assets controlled by the Principal or under the direction of the Principal (**Principal’s Premises**), then the Contractor must comply with the Principal’s WHS policies, procedures and instructions.
25. The Contractor must immediately notify the Principal of any potentially hazardous situation on or at the Principal’s Premises of which the Contract becomes aware. In the event that the Contractor notifies the Principal of a potentially hazardous situation at the Principal’s Premises, the Principal may determine, in its absolute discretion, to give a direction to the Contractor in respect of such hazardous situation.

1. **CONTRACTOR’S REPRESENTATION**

The Contractor represents that before entering this Contract it has made such enquiries and examined such information as it considers necessary to satisfy itself of:

1. the nature, scope, extent and degree of difficulty of the Services to be performed by it under this Contract;
2. its ability to undertake the Services to a high standard and within the time specified in this Contract; and
3. the availability of suitably qualified and experienced personnel, and all other facilities and information which it is required to provide for the purpose of performing the Services.

1. **RESPECTFUL BEHAVIOUR**

1. The Contractor acknowledges the Principal’s zero tolerance towards men’s violence against women in the workplace and the broader community.
2. The Contractor agrees that, in performing the Services, the Contractor*’s* personnel will at all times:
3. act in a manner that is non-threatening, courteous, and respectful; and
4. comply with any instructions, policies, procedures or guidelines issued by the Principal regarding acceptable workplace behaviour.

1. 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:
2. prohibit access by the relevant Contractor’s personnel to the Principal’s premises; and
3. direct the Contractor to withdraw the relevant Contractor’s personnel from providing the Services.
4. **SAFETY CULTURE**
5. General
6. For the purposes of this clause 27:
7. **Expectations** means the Principal’s Minimum Construction Safety Expectations;
8. **Measures** means the Principal’s Outcome Based Safety Culture Measures; and
9. **Tool** means the Principal’s Safety Culture Assessment Tool,

 each provided at [https://www.dpti.sa.gov.au/Contractor\_documents/whs](https://www.dpti.sa.gov.au/contractor_documents/whs).

1. The documents set out in clause 27(a)(i) are subject to change during performance of this Contract.
2. Minimum Construction Safety Expectations

The Expectations operate in addition to the WHS Act and do not vary any rights or obligations under the WHS Act or any other applicable law. In the event of any inconsistency between the Expectations and any applicable law, the applicable law will prevail to the extent of that inconsistency.

1. Self-Assessment

The Contractor must provide a completed Tool within ten working days of execution of this Contract, showing a self-assessment of how it will comply with the Measures. If the Tool is not completed to the Principal’s satisfaction, the Contractor must act on all feedback from the Principal to bring the Tool up to a satisfactory standard as soon as practicable. Site access to the Assets will not be granted until the Principal approves this version of the Tool.

1. Safety Audits
2. The Contractor must:
3. meet or exceed the Expectations; and
4. comply with the Measures to the Principal’s satisfaction,

 at all times during performance of this Contract.

1. The Principal may conduct an on-site safety culture audit (Audit) at any time during performance of this Contract. To facilitate an Audit, the Contractor must, at no additional cost to the Principal:
2. give the Principal or its agents full access to the site where the Assets are located, within two business days of notification of the Audit;
3. provide access to or copies of any document related to the safety of the Services or the Assets; and
4. promptly comply with all reasonable requests from the Principal or its agents regarding the Audit.
5. During an Audit, the Principal may use the Tool or any other method to document evidence of compliance with the Expectations and Measures.
6. Following an Audit, if the Principal determines that the Contractor’s performance against any of the Expectations or Measures is unsatisfactory, then the Principal may:
7. initiate discussions with the Contractor regarding its safety culture, and make recommendations for improvement;
8. issue a formal notice requesting that the Contractor show cause for any practice, process or procedure used in performance of the Services, and if the Principal is not satisfied with the response, direct the Contractor to remedy that practice, process or procedure immediately;
9. perform subsequent Audits;
10. direct the Contractor to change or cease any practice, process or procedure used in performing the Services immediately;
11. direct that all or part of the Services are suspended immediately pending satisfactory compliance with the Expectations or Measures; or
12. terminate this Contract.

The Contractor must promptly comply with any direction under this clause 27(d)(iv) at no additional cost to the Principal.

1. Failure by the Contractor to comply with a direction under clause 27(d)(iv)(B), 27(d)(iv)(D) or 27(d)(iv)(E) or repeated unsatisfactory performance by the Contractor against any of the Expectations or Measures will be deemed a fundamental breach of this Contract. In this event, the Principal may terminate this Contract without notice.
2. **INDEMNITY**
3. The Contractor indemnifies the Principal and its employees, officers and consultants against all claims, demands, expenses, loss or damage in respect of loss or damage to any property, or the death of or personal injury to any person, caused or contributed to by the Contractor, a breach by the Contractor of this Contract, a breach of any permit, authorisation, licence or other rights granted to the Principal under the *Environmental Protection Act 1993* (SA) caused or contributed to by the Contractor, a wilful unlawful or negligent act or omission of the Contractor, and any claim action or proceeding by a third party against the Principal or its employees officers and consultants caused or contributed to by the Contractor.
4. This indemnity is reduced by the extent to which the Principal contributes to the event giving rise to the claim for the indemnity.
5. The Contractor undertakes the Services at its own risk in all things and releases the Contractor and its employees, officers, members and consultants from all claims, actions, proceedings, costs, expenses, losses, suffering, and liabilities incurred by the Contractor or its employees, agents, Subcontractors and third parties which arise from the undertaking of the Services.
6. **NOTICE**
7. A notice under this Contract (**Notice**) must be:
8. in writing, in the English language and signed by a person authorised by the sender of the Notice; and
9. hand delivered or sent by pre-paid post to the recipient’s address specified below, as varied by any Notice given by the recipient to the sender.
10. At the date of this Contract, the addresses for Notices are as set out in the Annexure. These addresses can be varied by a Notice.
11. A Notice is deemed to be received:
12. if hand delivered, on delivery; or
13. if sent by prepaid mail, two Business Days after posting (or seven Business Days after posting if posting to or from a place outside Australia);

## However if the Notice is deemed to be received on a day that is not a Business Day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next Business Day.

1. If two or more people comprise a party, Notice to one is effective Notice to all.
2. **LIMITATION OF LIABILITY**
3. For the purposes of this clause 30:
	1. **Direct Loss** means any cost or expense that a party reasonably incurs as a direct result of, and flowing naturally from the other party’s breach of contract, act, omission or negligence, including any liquidated damages or any other payment of loss or damages expressly provided for under this Contract;
	2. **Prescribed Heads of Liability** means any liability for:
	3. personal injury including sickness and death;
	4. loss of or damage to tangible property;
	5. infringement of any Intellectual Property Right;
	6. any liability to a third party arising from:
		1. a negligent or wrongful act or omission by the Contractor, its employees, agents or Subcontractors; or
		2. any breach of the Contractor’s contractual obligation to the Principal;
	7. an intentional tort;
	8. a breach of trust;
	9. wilful default;
	10. breach of confidentiality; and
	11. fraud or dishonesty,

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

1. Except for any liability in respect of the Prescribed Heads of Liability (which remain unlimited), the Principaland the Contractoragree to limit the liability of either party to the other party in respect of direct loss to the amount equal to the greater of the total contract value or the amount of the relevant insurance that the Contractoris required to maintain under this Contract regardless of what the Principalis indemnified for or actually recovers.
2. 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, act, omission or negligence.
3. A party will not be liable to the other party for:
4. loss of business opportunity;
5. loss of goodwill;
6. loss of profit;
7. loss of contracts;
8. loss arising from business interruption;
9. loss of or corruption of data;
10. loss of anticipated savings;
11. loss of revenue;
12. the cost of capital or other financing costs; or
13. loss of production,

 which loss or cost arises due to the party's breach of this Contract, act, omission or negligence.

1. **CONTRACT SECURITY**
2. The Contractor must provide contract security in the amount set out in the Annexure, in one of the two forms provided in Attachment 3 (**Contract Security**).
3. Contract Security may be converted by the Principal in the event that the Principal is entitled to payment from the Contractor, that payment has not been received when due, and the Principal has given at least five days’ notice to the Contractor of intention to convert the Contract Security.
4. Upon termination or expiry of this Contract, and the Contractor fulfilling all its remaining obligations under the Contract, the Principal must release and return the Contract Security within 14 days.
5. Where the Contractor has failed to lodge the Contract Security in accordance with this Contract, the Principal may deduct an amount equivalent to the Contract Security from any payment due to the Contractor and hold this amount as retention.
6. **NOVATION**

The Contractor must, at its own cost, within 20 Business Days of a request from the Principal, enter into a deed of novation in a form to be agreed by the Principal which novates this Contract from the Principal to another party.

1. **APPROVALS AND NOTICES**

Notwithstanding any approval or acceptance granted by the Principal:

1. the Contractor is not relieved of its responsibilities and obligations under the Contract;
2. the Principal does not owe any duty to the Contractor to review the Contractor’s work or documentation for errors or omissions; and
3. the Principal has no liability to the Contractor by reason of any errors, deficiencies, defects or omissions in any work or documentation which has been provided by the Contractor.
4. **MOVEMENT OF WORKERS**

The Contractor must have in place appropriate policies and procedures to manage and monitor the movement of Workers on the Asset sites and on any areas adjacent to or near the Assets and to ensure compliance with the matters in this clause 34.

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

1. 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 Services;
2. complies with any other reasonable instructions or restrictions imposed by the person in charge of the relevant area; and
3. 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 and such other enquiries as may be notified to the Contractor by the Principal 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:

1. monitor all Workers to ensure that they do not present a potential security risk;
2. (immediately inform the Principal upon becoming aware of any such risk:
3. take all immediate and ongoing steps necessary to protect any person from harm; and
4. take the steps reasonably required by the Principal to avoid or minimise that risk (which may include a direction to procure the immediate removal and ongoing exclusion of the person from the Asset and from any involvement in the Services).

This clause 34 does not limit any other rights or obligations under this Contract.

1. **MISCELLANEOUS**
2. Entire Agreement

## This Contract:

1. constitutes the entire agreement between the parties about the Services; and
2. supersedes any prior understanding, agreement, condition, or representation about the Services.
3. Approvals and consents

## Unless otherwise provided in this Contract, the Principal must act reasonably in giving (conditionally or unconditionally) or withholding any approval or consent under this Contract.

1. Alteration to Contract

This Contract may only be altered by written instrument executed by each party to this Contract.

1. Waiver

A waiver of a right under this Contract:

1. must be in writing signed by the party giving the waiver;
2. is effective only to the extent set out in the written waiver.
3. Principal’s exercise of power
4. The failure or delay by the Principal in exercising a power or right under this Contract is not a waiver of that power or right by the Principal.
5. An exercise of a power or right under this Contract by the Principal does not preclude a further exercise of it or the exercise of another right or power.
6. Survival

## Each indemnity and other term capable of taking effect after the expiration or termination of this Contract, remains in force after the expiration or termination of this Contract.

1. Interpretation

In this Contract, wording in the singular includes the plural, and vice versa.

1. Information Documents

Where a document (or part thereof) is designated as an “information document” or “for information only”, the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of such documents and the Contractor acknowledges that it has taken this into account.

The Principal may have carried out investigations for the primary purposes of project planning, estimating, feasibility studies and obtaining statutory approvals. Any such investigation or resulting documentation:

1. has not been undertaken for the purpose of determining methods of providing the Services;
2. is deemed to be an "information document" in accordance with this clause 35(h);

The Contractor warrants that it has not relied on any such interpretations, opinions or documentation. The use of any such information, opinions and documents is entirely at the Contractor's risk.

1. Media

The Contractormust not disclose any information concerning theServices or this Contract for distribution through any communications media without the Principal'sprior written approval (which may be withheld at the Principal's discretion). The Contractor shall refer to the Principal any enquiries from any media concerning theServices or this Contract.

1. Disclosure

The Contractor agrees to disclosure of this Contract in accordance with Premier and Cabinet Circular PC027 either generally to the public, or to a particular person as a result of a specific request.

Nothing in this clause derogates from:

1. the *Contractor’s* obligations under any other provision of this *Contract*; or
2. the provisions of the *Freedom of Information Act 1991* (SA).

**ANNEXURE TO THE GENERAL CONDITIONS OF CONTRACT**

|  |  |
| --- | --- |
| **The Price**:  | As set out in the Tender Form at Attachment 1 unless varied in accordance with this Contract, and in any case not to exceed [insert] (including GST). |
| **Principal’s Authorised Person**:  | The person occupying the position of:Director, Project Procurement and Contracts of77 Grenfell Street, ADELAIDE SA 5000 |
| **Principal’s Address for Notices** | Address: 77 Grenfell Street, ADELAIDE SA 5000Attention: Director, Project Procurement and Contracts  |
| **Contractor’s Address for Notices** | Address: [insert]Attention: [insert] |
| **Insurance Required**:  | Public Liability: [insert]Products Liability: [insert]Professional Indemnity: [insert] |
| **Completion Date**:  | and in any case, all of the above are per occurrence and in aggregate[insert] from the execution of this Contract, unless extended pursuant to clause 10(b) or otherwise agreed between the parties. |
| **Extension Periods** | [insert] |
| **Assets** | [insert] |
| **Warranty Period for Goods** | [One year] |
| **Contract Security** | [insert]% of the Price |
|  |  |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ATTACHMENT 1**

**TENDER FORM**

[insert]

**ATTACHMENT 2**

**SPECIFICATION**

[insert]

**ATTACHMENT 3**

**APPROVED FORMS OF UNCONDITIONAL UNDERTAKING**

**TO**: **MINISTER FOR INFRASTRUCTURE AND TRANSPORT**

("the *Principal*")

Attention: Chief Corporate Officer

 Department for Infrastructure and Transport

 GPO Box 1533

 ADELAIDE SA 5001

**UNCONDITIONAL UNDERTAKING**

At the request of

................................................................................................................................... (Name of *Contractor*)

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

……....................................................................................................................................................................

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

.......................................................................................................................... (Name of Financial Institution)

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

The undertaking is to continue until notification has been received from the *Principal* that the sum is no longer required by the *Principal* or until this undertaking is returned to the Financial Institution or until payment to the *Principal* by the *Financial Institution* of the whole of the sum or such part as the *Principal* may require.

Should the *Financial Institution* be notified in writing, purporting to be signed by the Chief Corporate Officer, Department for Infrastructure and Transport for and on behalf of the *Principal* that the *Principal* desires payment to be made of the whole or any part or parts of the sum, 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.

Provided always that the *Financial Institution* may at any time without being required so to do pay to the Principal the sum of:

.....................................................................……………………………….. ($.......................................……..)

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.

Dated at:…………………………………………………………….

this………………………day of………………………………20

**TO**: **MINISTER FOR INFRASTRUCTURE AND TRANSPORT**

("the Principal")

Attention: Chief Corporate Officer

 Department for Infrastructure and Transport

 GPO Box 1533

 ADELAIDE SA 5001

**UNCONDITIONAL UNDERTAKING**

At the request of

................................................................................................................................... (Name of *Contractor*)

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

……………………................................................................................................................................................

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

...................................................................................................................... (Name of Insurance Company)

(‘the Insurance Company’) 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:.....................................................................………………………........ ($...............................................)

The undertaking is to continue until notification has been received from the *Principal* that the sum is no longer required by the *Principal* or until this undertaking is returned to the Insurance Company or until payment to the *Principal* by the Insurance Company of the whole of the sum or such part as the *Principal* may require.

Should the Insurance Company be notified in writing, purporting to be signed by the Chief Corporate Officer, Department for Infrastructure and Transport for and on behalf of the *Principal* that the *Principal* desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Insurance Company 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.

Provided always that the Insurance Company may at any time without being required so to do pay to the *Principal* the sum of:

.....................................................................……………………………….. ($.......................................……..)

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 Insurance Company hereunder shall immediately cease.

Dated at:…………………………………………………………….

this………………………day of………………………………20

**ATTACHMENT 4**

**KEY PERFORMANCE INDICATORS**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **KPI No** | **KPI** | **KPI Assessment Method** | **Threshold Level** | **Frequency of Assessment** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

**Scorecard Assessments**

## The Principal may utilise KPI data from this Contract to facilitate a Scorecard Assessment of the Contractor. A Scorecard Assessment is a tool used by the Principal to track the performance of a contractor for the duration of one or multiple contracts.

## Scorecard Assessments can be combined across multiple contracts performed by a contractor, to produce a historical record of the contractor’s overall performance. This record may be used to determine the suitability of a contractor for future projects.