**STANDARD GOODS AND SERVICES AGREEMENT**

[Contract Name]

[Contract Number]

***Note:***

***All green highlighted sections throughout this document must be addressed prior to this draft contract being released with the Request for Quote or Invitation to Supply documents.***

***Please ensure that no items are left highlighted in green when released.***

***Items highlighted in yellow can remain until the contract is ready to be finalised.***

Template Edition: June 2024

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

between

**THE GOVERNMENT PARTY NAMED IN ITEM 1 OF ATTACHMENT 1** (“**Principal**”)

and

**THE PARTY NAMED IN ITEM 2 OF ATTACHMENT 1** (“**Contractor**”)

**IT IS AGREED** that this Execution Page, the Agreement Details (Attachment 1), the Standard Terms and Conditions (Attachment 2), the Glossary of Defined Terms (Attachment 3), the Special Conditions (Attachment 4), the Pricing and Payment (Attachment 5), and the Specification (Attachment 6), will together comprise the Agreement between the Parties.

**EXECUTED AS A CONTRACT**

|  |  |  |
| --- | --- | --- |
| **EXECUTED** 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 |
| **EXECUTED** bythe **Contractor** in accordance with section 127 of the *Corporations Act 2001* (Cth) by two directors or by one director and the company secretary: *[Update below to the appropriate execution block based on supplier’s response to business structure]* | )) |
|  Director signature Director name Date |  Director/Company Secretary signature Director/Company Secretary name Date |

**Attachment 1 – Agreement Details**

|  |  |  |
| --- | --- | --- |
|  | **Principal** | The Minister for Infrastructure and Transport, a body corporate established pursuant to the *Administrative Arrangements Act 1994* (SA), of 83 Pirie Street, Adelaide, South Australia, 5000ABN 92 366 288 135or The Commissioner of Highways, a body corporate established pursuant to the *Highways Act 1926* (SA), of 83 Pirie Street, Adelaide, South Australia, 5000 *[to be used for contracts involving roadworks]*ABN 45 751 448 902or The Rail Commissioner, a body corporate established pursuant to the *Rail Commissioner Act 2009* (SA), of 83 Pirie Street, Adelaide, South Australia, 5000 *[to be used for contracts involving rail infrastructure]*ABN 23 251 040 528 |
|  | **Contractor****Place of Business in South Australia (if applicable)** | insert nameinsert addressinsert South Australian address (if applicable).ACN insertABN insertRegistered for GST: Yes or No |
|  | **Commencement Date** | insert specific date or The date on which the last of the parties executes this Agreement.  |
|  | **Expiry Date** | insert specific date or period of time from Commencement Date |
|  | **Extension Period** | Insert period or Not applicable  |
|  | **Contract Managers** | Principal: insert namepositionemailphoneContractor: insert namepositionemailphone |
|  | **Named Persons** | Where services are required from a specific individual(s) insert name(s) and position(s) or Not applicable |
|  | **Details of Goods**  | Refer Attachment 6 – Specification or Not applicable |
|  | **Delivery Date**for Goods**Delivery Point**for Goods | insert date or Not applicableinsert delivery point or Not applicable |
|  | **Installation Date**for Goods | insert or Not applicable |
|  | **Warranty Period**for Goods | insert or Not applicable |
|  | **Details of Services** | Refer to Attachment 6 – SpecificationorNot applicable |
|  | **Delivery Date** for Services**Delivery Point**for Services | insert date or Not applicableinsert delivery point or Not applicable |
|  | **Milestone Dates** | Refer to Attachment 6 – Specification or Not applicable |
|  | **Reports and Manuals** | insert details of documentation requiredorRefer to Attachment 6 – Specification or Not applicable |
|  | **Price and Payment**  | The Price is as set out in Attachment 5 – Pricing and Payment and is not to exceed $[insert] (including GST).Payments will be made in accordance with Attachment 4 – Special Conditions (SC 5 Payment and Invoicing).  |
|  | **Insurances**Public Liability InsuranceProduct Liability InsuranceProfessional Indemnity InsuranceCyber Liability Insurance | Not less than $10,000,000 *(insert $20m if contract value is greater than $10m)*Not less than $10,000,000 *(insert $20m if contract value is greater than $10m)* or Not applicableNot less than $1,000,000 *(insert $5m if contract value is greater than $1m, insert $10m if contract value is greater than $5m)* or Not applicableNot less than $1,000,000 *(insert $5m if contract value is greater than $1m, insert $10m if contract value is greater than $5m)* or Not applicableIn any case, the above amounts are per occurrence and in the aggregate. *Note: The insurance levels in this item should exceed the Liability Limit set out in Item 18 below.*  |
|  | **Liability Limit** | *if the expected value is up to $1,000,000 (inc. GST), then insert:* [1 – 5] x the aggregated value of the Agreement.*(Determined by the Complexity Assessment Risk Score <20 = 1 x; 21-40 = 2 x; 41-60 = 3 x; 61-80 = 4 x; >80 = 5x)*or *if the expected value is greater than $1,000,000 (inc. GST), then delete above and insert:*The greater of the aggregated value of the Agreement or the amount of the relevant insurances in Item 17. |
|  | **Other Termination Rights** | insert or Not applicable |
|  | **Approved Subcontractors** | insert or Not applicable |
|  | **Additional Personnel Checks** | insert details where police checks and/or other special clearances (e.g. DCSI Unsuitable Person Screening) are required or Not applicable |
|  | **Notice Period for Termination for Convenience** | 30 days |

**Attachment 2 – Standard Terms & Conditions**

# AGREED TERMS

# contract length

## This Agreement commences on the Commencement Date and continues until the Expiry Date, unless terminated earlier or extended under clause 1.2.

## This Agreement may be extended by the Principal for the Extension Period by giving reasonable notice prior to the Expiry Date.

# contract managers

## The persons named in Attachment 1 as the Contract Managers are the first point of contact between the Parties and are responsible for overseeing the effective administration of the Agreement including variations and extensions.

## The Principal may change its Contract Manager by notice in writing to the Contractor.

# SUPPLY OF GOODS (if applicable)

## If Goods are being supplied under this Agreement then the Contractor must:

### supply the Goods in accordance with this Agreement;

### sell the Goods without encumbrance;

### deliver the Goods to the Delivery Point on or before the Delivery Date;

### comply with the Principal’s reasonable directions and delivery instructions;

### if requested by the Principal, provide the Principal with material safety data sheets with respect to the Goods delivered;

### provide test evidence for the Goods if required; and

### if indicated in Attachment 1, install the Goods on or before the Installation Date.

## If the Contractor cannot comply with any of its obligations under clause 3.1, the Contractor must notify the Principal in writing immediately.

# inspection and acceptance of goods (if applicable)

## The Principal may inspect the Goods to determine whether to accept or reject the Goods.

## The Principal must accept the Goods if they conform with the requirements of this Agreement.

## Subject to clause 4.4, the Goods are deemed to be accepted either:

### on delivery, if the Principal notifies the Contractor that it accepts the goods; or

### if no notice is issued by the Principal, then 5 Business Days after delivery of the Goods to the Delivery Point.

## If the Goods are consumable products and the Goods are found to be defective when first used, then the Principal may reject the Goods under clause 4.5.

## If the Principal rejects the Goods due to non-conformity with the requirements of this Agreement, then the Principal must notify the Contractor as soon as possible and require the Contractor at its sole cost, and at the Principal’s election to either:

### resupply the Goods and remove the non-conforming Goods from the Delivery Point; or

### repair the Goods.

## Acceptance of the Goods does not relieve the Contractor of any of its obligations under this Agreement.

## The Contractor bears the risk in the Goods until delivery to the Delivery Point. Title in the Goods will pass to the Principal upon the Principal’s acceptance of the Goods.

# warranty period (if applicable)

## If during the Warranty Period the Goods fail to comply with the warranties in clause 9.1 then the Principal may in its absolute discretion require that the Contractor at its expense:

### replace the Goods within 10 Business Days of notification by the Principal (or such other time as is agreed); or

### refund the Price.

# supply OF SERVICES (if applicable)

## If Services are being supplied under this Agreement then the Contractor must ensure that the Contractor’s Personnel provide the Services described in Attachment 1 in accordance with the terms and conditions of this Agreement.

## Where Attachment 1 specifies Named Persons then the Services must be delivered by those Named Persons.

### The Contractor may substitute a Named Person with the consent of the Principal subject to the Principal being satisfied as to the expertise, experience and suitability of the substitute.

## The Contractor must ensure that Services are delivered:

### to a standard that meets or exceeds the Service Levels;

### in accordance with the warranties in clause 9.4; and

### by any Milestone Dates.

## The Principal’s remedies for the Contractor’s failure to meet a Service Level or for a breach of a warranty, includes resupply of the Services, a reduction of the price, termination, rebates or any other remedy specified in the Special Conditions.

# reports and manuals (if applicable)

## The Contractor must provide those reports, manuals or other materials specified in Attachment 1.

# Service variation (if applicable)

## If the Principal wishes to vary the scope of the Services (“**Variation**”), it must issue a written request to the Contractor and the Contractor must within 5 Business Days (or such other period as agreed) provide a written quote (“**Quote**”) setting out:

### any impacts on the timing of or completion of tasks;

### the varied price and payment arrangements; and

### any changes to the terms that apply to the performance of the Services.

## The Parties must negotiate in good faith to agree on the price and other terms applicable to the Variation.

## If the Parties agree in writing to the terms of the Variation then:

### the Contractor must perform the Services as varied by the Variation;

### the Principal must pay the varied price;

### the terms and conditions of the Agreement are varied by the terms of the Variation.

# CONTRACTOR’S WARRANTIES

## If Goods are being supplied under this Agreement then the Contractor warrants that it has good and unencumbered title to the Goods and the Goods:

### conform with any description applied and any sample provided by the Contractor;

### are new (unless otherwise specified);

### are free from defects in materials, manufacture and workmanship;

### conform to any applicable Australian Standards or other standards nominated in this Agreement;

### conform to the Specifications and any technical Specifications provided by the Contractor;

### are of merchantable quality;

### are installed correctly (if the Contractor is responsible for installation);

### are fit for their intended purpose; and

### are manufactured and supplied without infringing any person’s Intellectual Property Rights.

## The Contractor must ensure that the Principal receives the full benefit of any manufacturer’s warranties in respect of the Goods.

## During any Warranty Period any defects in the Goods must be rectified at the Contractor’s expense.

## If Services are being supplied under this Agreement then the Contractor warrants that the Services will:

### comply with the description of the Services in Attachment 1;

### be provided with due care and skill;

### be provided in a timely and efficient manner;

### be provided in accordance with the best practices current in the Contractor’s industry;

### be supplied without infringing any person’s Intellectual Property Rights;

### be performed by the Contractor and/or the Contractor’s Personnel; and

### be supplied in the most cost effective manner consistent with the required level of quality and performance.

# CONTRACTOR’s PERSONNEl

## The Contractor, if required by the Principal, must give its consent to and procure the consent of the Contractor’s Personnel, to the conduct of a police check or any Additional Personnel Checks specified in Attachment 1.

## If the Principal gives the Contractor notice in writing requiring any one or more of the Contractor’s Personnel to be withdrawn from supplying the Goods or providing the Services, the Contractor must immediately comply with the notice and provide replacement Personnel acceptable to the Principal.

## The Contractor and the Contractor’s Personnel must only use the Principal’s computer systems with the specific authorisation of the Principal and only in the manner as directed by the Principal from time to time.

## The Principal reserves the right to refuse entry to any of the Principal’s premises to any of the Contractor’s Personnel.

# PRICE AND PAYMENT

## In consideration for the supply of the Goods and/or the Services, the Principal will pay the Price.

## Unless otherwise expressly stated the Price is inclusive of GST.

## The Contractor is entitled to invoice the Principal for payment in respect of the Goods and/or Services, when the Goods have been supplied and accepted under clause 4, and the Services have been supplied in accordance with this Agreement.

# GST

## Subject to clause 12.2 the Contractor represents that:

### the ABN shown in Attachment 1 is the Contractor’s ABN; and

### it is registered under the *A New Tax System (Australian Business Number) Act 1999* (Cth),

## If the Contractor is not registered for GST, then GST must not be charged on supplies made under this Agreement.

# INTELLECTUAL PROPERTY RIGHTS

## Nothing in this Agreement affects the ownership of Intellectual Property Rights created before the Commencement Date.

## The Contractor grants to the Principal and the Crown in right of the State of South Australia a perpetual, irrevocable, royalty free, fee free licence to use, copy, modify and adapt any Intellectual Property Rights in any reports or manuals required to be supplied under this Agreement.

# INSURANCE

## The Contractor must effect and maintain the policies of insurance specified in Attachment 1 for not less than the amounts specified in Attachment 1.

## Subject to clause 14.3, the policies of insurance referred to in clause 14.1 must be held until the expiry of the Agreement.

## Insurances for Professional Indemnity and Cyber Liability referred to in clause 14.1 must be maintained for a period of three years after the expiration or termination of the Agreement.

# liability limit

## The Contractor’s liability to the Principal under this Agreement is limited to the amount specified in Attachment 1.

# CONFIDENTIAL INFORMATION

## Subject to this clause 16, neither Party may disclose any Confidential Information belonging to the other Party except as genuinely and necessarily required for the purpose of this Agreement.

## A Party may disclose Confidential Information belonging to the other Party:

### to an employee, agent or adviser of that Party, on a “need to know” and confidential basis;

### as required by law or a court order;

### in accordance with any Parliamentary or constitutional convention;

### to the Australian Competition and Consumer Commission (ACCC) if the party reasonably suspects, or is notified by the ACCC that it reasonably suspects, that there is Cartel Conduct or unlawful collusion in connection with the supply of Goods or Services under this Agreement; or

### for the purposes of prosecuting or defending proceedings.

## The Parties may mutually agree to disclose Confidential Information.

# set-off

## Any claim the Principal may have against the Contractor may be set off against monies owed to the Contractor under this Agreement.

# dispute resolution

## Subject to clause 18.4 a Party may not commence legal proceedings without first referring the dispute to the other Party under this clause.

## Either Party may give the other a notice in writing (“**Dispute Notice**”) setting out the details of the dispute.

## Within 5 Business Days or such other period as may be agreed by the Parties, representatives must meet and use reasonable endeavours to resolve the dispute.

## A Party may seek immediate interlocutory relief or other interim remedy in case of genuine urgency.

# ending this contract

## The Principal may terminate this Agreement immediately upon giving notice in writing to the Contractor if:

### the Principal reasonably forms the opinion that the Contractor will be unable to perform its obligations under this Agreement;

### the Contractor is in breach of this Agreement and has not rectified such breach within 10 Business Days of the Principal giving notice in writing to the Contractor requiring the rectification of such breach;

### the Principal becomes aware that the Contractor is in breach of its statutory obligations with respect to its employees;

### the Contractor fails to comply with a notice issued under clause 10.2; or

### the Contractor fails to disclose a conflict of interest;

### any Other Termination Right occurs; or

### the Contractor suffers or, in the reasonable opinion of the Principal, is in jeopardy of becoming subject to any form of insolvency administration or bankruptcy.

## The Principal may terminate this Agreement without cause by giving the Contractor the period of notice specified in Attachment 1 (“**Notice Period for Termination for Convenience**”).

## If the Principal terminates this Agreement in accordance with clause 19.2:

### the Contractor has no claim against the Principal arising out of or in relation to such termination other than the right to be paid for Goods accepted and/or Services provided before the effective termination date; and

### the Contractor must comply with all reasonable directions given by the Principal.

## The Contractor may terminate this Agreement immediately upon giving notice in writing to the Principal if the Principal is in breach of this Agreement and has not rectified such breach within 14 days of the Contractor giving notice in writing to the Principal requiring the rectification of such breach.

# EFFECT OF ending THIS contract

## Any termination of this Agreement by either Party does not affect any accrued right of either Party.

## Despite termination or completion of this Agreement, this clause 20 and clauses 9, 13, 14, 15, 16, 17 and those Special Conditions that by their nature remain in force, shall survive.

# SUBCONTRACTING

## With the exception of the Approved Subcontractors described in Attachment 1, the Contractor must not engage any subcontractor without the prior written permission of the Principal.

## The Contractor remains responsible for obligations performed by the Approved Subcontractors to the same extent as if such obligations were performed by the Contractor.

# Conflict of Interest

## The Contractor must disclose in writing to the Principal all actual and potential conflicts of interest that exist, arise or may arise (either for the Contractor or the Contractor’s Personnel) in the course of performing its obligations under this Agreement as soon as practical after it becomes aware of that conflict.

# Compliance with Laws

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

# Governing Law and Jurisdiction

## This Agreement is governed by the laws in the State of South Australia.

## The courts of the State of South Australia have exclusive jurisdiction in connection with this Agreement.

# Entire Agreement

## The Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with in this Agreement and supersedes all prior agreements, understanding and negotiations in respect of the matters dealt with in this Agreement.

# No Assignment

## The Contractor must not assign, encumber or otherwise transfer any of its rights or obligations under this Agreement without the written approval of the Principal which approval shall not be unreasonably withheld.

## Subject to any contrary legislative intention, the Parties agree that if there is any Machinery of Government Change, this Agreement is deemed to refer to the new entity succeeding or replacing the Principal and all of the Principal’s rights and obligations under this Agreement will continue and will become rights and obligations of that new entity.

# Modification

## No addition to or modification of any provision of this Agreement will be binding upon the Parties unless made by written instrument signed by the Parties.

# Severance

## Each word, phrase, sentence, paragraph and clause of this Agreement is severable.

## Severance of any part of this Agreement will not affect any other part of this Agreement.

# COUNTERPARTS

## This Agreement may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one (1) instrument. An executed counterpart may be delivered by email.

# Work Health & Safety

## The Contractor must comply with the *Work Health and Safety Act 2012* (SA) at all times, regardless of whether the Principal issues direction in that regard or not.

## If all or part of the work under this Agreement is to be provided on the premises of the Principal and under the direction of the Principal, the Contractor must comply with the Principal’s work health and safety policies, procedures and instructions. If the Contractor becomes aware of any potentially hazardous situation on the Principal’s premises, the Contractor must immediately bring it to the Principal’s attention.

# acting ethically

## The Contractor must 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* (SA)) 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.

# INTERPRETATION

## Defined terms are set out in the Glossary of Defined Terms in Attachment 3.

## In resolving inconsistencies in this Agreement, the documents have the following order of priority:

### Special Conditions (Attachment 4);

### Standard Terms and Conditions (Attachment 2); and

### the other Attachments.

## In this Agreement (unless the context requires otherwise):

### a reference to any legislation includes:

#### all legislation, regulations and other forms of statutory instrument issued under that legislation; and

#### any modification, consolidation, amendment, re-enactment or substitution of that legislation;

###  word in the singular includes the plural and a word in the plural includes the singular;

### a reference to two or more persons is a reference to those persons jointly and severally;

### a reference to dollars is to Australian dollars;

### a reference to a Party includes that party’s administrators, successors and permitted assigns.

# SPECIAL CONDITIONS

## The special conditions (if any) form part of this Agreement and to the extent of any inconsistency, take precedence over the other terms of this Agreement.

**Attachment 3 – Glossary of Defined Terms**

In this Agreement:

### “**Acceptance Date**” means the date that the Goods are accepted by the Principal;

### “**Approved Subcontractors**” means those subcontractors specified in Attachment 1;

### “**Business Day**” means any day that is not a Saturday or Sunday or a public holiday in South Australia;

### “**Cartel Conduct**” means conduct by two or more parties who are competitors (or would be but for the conduct) who enter into a contract, arrangement or understanding that involves price fixing, output restrictions, allocating customers, Contractors or territories, or bid-rigging, as defined in s44ZZRD of the *Competition and Consumer Act* *2010* (Cth);

### “**Code of Ethics for the South Australian Public Sector**” is the code of ethics for the purposes of the *Public Sector Act 2009* (SA);

### “**Confidential Information**”means information which is identified either as confidential information (if disclosed by the Principal) or proprietary information (if disclosed by the Contractor), but does not include this Agreement;

### “**Consultancy Services**” means services provided by Consultants;

### “**Consultant**” has the same meaning as in DPC027 *Disclosure of Government Contracts* and means a person or entity that is engaged by a public authority for a specified period to carry out a task that requires specialist skills and knowledge not available in the public authority. The objectives of the task will be achieved by the consultant free from direction by the public authority as to the way it is performed and in circumstances in which the engagement of a person under normal circumstances is not a feasible alternative;

### “**Contractor’s** **Personnel**” means any Approved Subcontractors, employees, agents and any other person employed or engaged by the Contractor to perform this Agreement and includes the Named Persons;

### “**Delivery Date**” means the date and time specified in Attachment 1 for delivery of the Goods or provision of the Services;

### “**Delivery Point**” means the location(s) specified in Attachment 1, where the Goods will be delivered or the Services will be provided;

### **“Dispute Notice”** means the notice setting out details of a dispute specified in clause 18 of Attachment 2;

### “**Extension Period**” means the period by which the Agreement is extended as specified in Attachment 1;

### “**Goods**” means the goods specified in Attachment 1;

### “**GST**” means the tax imposed by the GST Law;

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

### “**Installation Date**” means the date specified in Attachment 1 for the installation of the Goods;

### “**Intellectual Property Rights**” means all intellectual property rights, including but not limited to:

#### patents, copyright, registered designs, trademarks, know-how and any right to have Confidential Information kept confidential; and

#### any application or right to apply for registration of any of the rights referred to in paragraph (a),

### but for the avoidance of doubt excludes moral rights and performers’ rights;

### “**Machinery of Government Change**” means a change to the structure, function or operations of the South Australian Government or the Principal as a result of any government reorganisation, restructuring or other organisational or functional change;

### “**Measurement Period**” means the period over which the performance of a Service Level is measured;

### “**Milestone Dates**” means dates by which Services must be delivered as specified in Attachment 1;

### “**Named Persons**” means the persons specified in Attachment 1;

### “**Notice Period for Termination for Convenience**” means the time period specified in Attachment 1;

### “**Other Termination Right**” means the termination rights specified in Attachment 1;

### “**Party**” means a party to this Agreement;

### “**Personal Information**” means information or an opinion, whether true or not, relating to a natural person or the affairs of a natural person whose identity is apparent, or can reasonable be ascertained, from the information or opinion;

### **“Plant”** means any Goods set out in Attachment 6 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 6.

### “**Provisional Sum**” means a sum included in the Agreement for goods or services which is not payable unless the Principal directs the Contractor to provide the goods or perform the services.

### “**Purchase Order**” means an order for Goods and/or Services submitted by the Principal to the Contractor;

### “**Price**” means the price payable under this Agreement specified in Attachment 1 and includes any price varied under clause 8;

### “**Service Levels**” means the service levels (if any) specified in the Specifications;

### “**Services**” means the services specified in Attachment 1;

### “**Special Conditions**” means the conditions in Attachment 4 and where relevant includes agency specific Special Conditions;

### “**Specifications**” means the detailed description of the Goods/Services;

### “**Term**” means the period commencing on the Commencement and ending on the Expiry Date unless terminated earlier and includes any extension and;

### “**Warranty Period**” means the period specified in Attachment 1.

# Not all of the above terms may be used in this Agreement.

**Attachment 4 – Special Conditions**

1. RESPECTFUL BEHAVIOUR

The Contractor acknowledges the Principal’s zero tolerance towards men’s violence against women, and any other form of violence in the workplace and the broader community.

The Contractor agrees that, in performing its obligations under the Agreement, the Contractor’s Personnel will at all times:

1. act in a manner that is non-threatening, courteous, and respectful; and
2. 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:

1. prohibit access by the relevant Contractor’s Personnel to the Principal’s premises; and
2. direct the Contractor to withdraw the relevant Contractor’s Personnel from providing the Goods or Services.
3. ICAC

The Principal is a public authority for the purposes of the *Independent Commissioner Against Corruption Act 2012* (SA) (“ICAC Act”). 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. THE CONTRACTOR’S PERSONNEL

 The Contractor acknowledges and agrees that:

1. there is no contract of any nature in existence pursuant to this Agreement between the Principal and any person employed or engaged by the Contractor for purposes of this Agreement;
2. the Contractor is liable for all remuneration, claims and other entitlements payable to the Contractor's Personnel; and
3. the Contractor is responsible for complying with the requirements with the *Income Tax Assessment Act 1936 (Cth)* pursuant to this Agreement to the extent that the Principal is not thereby required to make PAYG deductions from any amount payable for the Services.

The Contractor indemnifies the Principal and must keep the Principal indemnified against any claims by any person who is employed by or is an agent of the Contractor that it may be held or asserted that a relationship of employer and employee has been created under this Agreement.

1. PRINCIPAL’S REPRESENTATIVE

The Principal’s Representative is the person occupying the position of Director, Financial and Procurement Services at the Department for Infrastructure and Transport, of 83 Pirie St, Adelaide SA 5000.

The Principal must promptly notify the Contractor if the name and/or contact details of the Principal’s Representative change.

The Principal’s Representative:

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 the Agreement, except those under clause 19 “Ending this Contract”.

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 Agreement may also be exercised by the Rail Commissioner established according to the *Rail Commissioner Act 2009 (SA)*.

1. PAYMENT AND INVOICING

Payment shall be made within 15 days of submission of an invoice in accordance with Clause 11.1 of Attachment 2.

The Contractor’s invoices must clearly identify:

1. clear, itemised details of all work requiring payment;
2. the Purchase Order number, if provided by the Principal;
3. the Agreement (Contract) Number and Title; and
4. the name of the Department’s Section and/or the Department Contract Manager.

Invoices shall be submitted via the following method:

Email (attached as a PDF) to: APinvoices@sharedservices.sa.gov.au

1. FORCE MAJEURE
2. **Definition**

“**Force Majeure**” means the following events or circumstances:

* + - 1. fire, flood, earthquake, elements of nature, acts of God, malicious damage, epidemic, explosion, sabotage, riot, civil disorder, rebellion or revolution;
			2. any change of law executive or administrative order or act of either general or particular application of any government, or of any official acting under the authority of that government, prohibition or restriction by domestic or foreign laws, regulations or policies, quarantine or customs restrictions, which the affected party:
			3. did not cause; and
			4. cannot prevent, control or influence, and
			5. the effect of which prevents that party from complying with any of its material obligations under this Agreement.
1. The affected party’s obligations directly affected by a Force Majeure and any corresponding entitlement of the other party will be suspended to the extent and for so long as the performance of the affected party’s obligations are prevented by the Force Majeure.
2. The affected party must as soon as it becomes aware of the Force Majeure notify the other party in writing providing details of:

#### the nature and extent of the obligations affected;

* + - 1. if known, the expected effect of the Force Majeure on the other party;
			2. action that the affected party has taken or will take to avoid or mitigate the expected effect of the Force Majeure; and
			3. details of insurance policies on which the party may be able to rely to compensate or mitigate the financial effect of the Force Majeure.
1. The affected party must:

#### use its best endeavours to prevent, avoid, remedy, work around or overcome the effect of the Force Majeure as quickly as possible through prudent management processes, policies and precautions, including the use of alternative resources, the procuring of goods or services from another source, and work around plans;

* + - 1. keep the other party informed of the continuation and expected duration of the Force Majeure and of measures taken to comply with this clause; and
			2. recommence performance of its obligations as soon as possible without delay after the Force Majeure ceases to affect the affected party’s performance under this Agreement.
1. If a Force Majeure causes the affected party to allocate limited resources between or among its other customers, the affected party must not place the other party lower in priority to any other similarly effected customer of the affected party.
2. During any period in which the affected party is not performing obligations because of a claimed Force Majeure, the other party may (but need not) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation which the affected party is not performing without incurring any liability to the affected party.
3. If the affected party is materially unable to perform its obligations under this Agreement by reason of a Force Majeure for a continuous or a cumulative period of three (3) months then the other party may terminate this Agreement by written notice without prejudice to the terminating party.
4. NOTIFIABLE INCIDENTS

The Contractor must report any Notifiable Incident that occurs in relation to the Contract to the safety regulator (SafeWork SA) and any other regulator as relevant to the nature of the incident and related statutory requirements. This may include The Office of the Technical Regulator in relation to incidents involving gas or electricity, the Australian Maritime Safety Authority, or the South Australian Environmental Protection Authority (EPA).

The term “Notifiable Incident” has the same meaning as provided under the *Work Health and Safety Act 2012*.

The Contractor must report all Notifiable Incidents to the Principal’s Contract Manager as soon as practicable after becoming aware of the incident (effectively immediately after the regulator is notified).

1. CONTRACTOR AS TRUSTEE

If the Contractor is acting as trustee of a trust, then in relation to this Agreement:

1. the Contractor is liable both personally and in its capacity as a trustee of that trust;
2. it must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust (but, for the avoidance of doubt, may apply its right of indemnity out of the assets of the trust to any of its liabilities including those arising in relation to this Agreement);
3. it must not retire, resign nor by act or omission effect or facilitate a change to its status as the sole trustee of that trust; and
4. it represents and warrants that:

#### such trust has been duly established and currently exists;

* + - 1. it is the duly appointed, current and only trustee of that trust;
			2. as trustee it has the power to enter into and perform its obligations under this Agreement;
			3. it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;
			4. it either has no conflict of interest affecting it as trustee (and/or its directors, if any) or such conflict is otherwise overcome by the terms of the relevant trust deed; and
			5. no breach of the relevant trust deed exists or would arise.
1. PRIVACY
2. Where the Contractor has access to Personal Information, the Contractor must:

#### comply with the South Australian Government Information Privacy Principles (a copy of which can be found at <http://www.dpc.sa.gov.au/documents/rendition/B17711#sthash.s76QhRX6.dpuf>) (“**IPPs**”) as if the Contractor were an “agency” for the purposes of the IPPs, in undertaking its obligations under this Agreement including in relation to all Personal Information received, created or held by it for the purposes of this Agreement; and

#### allow the Principal to undertake, and cooperate with any audit or investigation which the Principal deems necessary to verify that the Contractor is complying with the IPPs.

1. The Contractor must promptly notify the Principal if it fails to comply with this clause or if it becomes aware of any actual or threatened disclosure of or unauthorised access to Personal Information.
2. PURCHASE ORDERS
3. The Principal may purchase Goods and Services under this Agreement by issuing a Purchase Order to the Contractor.
4. A Purchase Order must be in writing, be approved by the Principal, and contain as a minimum:

#### Purchase Order Number;

* + - 1. Date of Issue;
			2. Description of Goods and/or Services;
			3. Quantity of Goods (if any);
			4. Delivery Point for Goods (if required);
			5. Installation Date for Goods (if required);
			6. Reports and other materials (if any); and
			7. Unit Price and total Price.
1. The Contractor must supply the Goods and the Services ordered by the Principal under a Purchase Order in accordance with the terms of this Agreement.
2. The terms of the Standard Goods and Services Agreement will take priority over any purchase order terms and conditions that may be included with a Purchase Order.

**The following highlighted Special Conditions are optional depending on individual circumstances. If they are not required for the specific procurement contract, then they should be deleted. If assistance is required, contact the Goods and Services Contracts team, or the Crown Solicitor’s Office.**

*Is this Agreement in the form of a Standing Offer, either as a sole supplier arrangement or Panel Arrangement? If* ***Yes*** *insert the following clauses as Special Conditions in Attachment 4. If* ***No*** *then delete the following* ***three*** *Special Conditions.*

1. STANDING OFFER AND PANEL ARRANGEMENTS

The Contractor has been engaged by the Principal as a preferred supplier, and the Contractor may be a member of a panel of contractors ("**Panel**") to provide the Goods and Services under this Agreement. The Contractor agrees that:

1. The offer by the Contractor to supply Goods and Services at the Price, and on the terms of the Agreement, is good and sufficient legal consideration.
2. Any engagements for Goods and Services under this Agreement will be by individual Purchase Order provided to the Contractor by the Principal.
3. The Principal may select any member of the Panel to provide the Goods and Services. If selected by the Principal, the Contractor shall provide the Goods and Services upon the terms and conditions of this Agreement.
4. The Principal may:

#### issue the Contractor a Request for Quotation (RFQ) for the provision of Goods and Services

* + - 1. request that all or any members of the Panel provide a quotation for the provision of the Goods and Services, notwithstanding that pre-agreed Prices may form part of this Agreement;
			2. seek a quotation from providers not on the Panel; or
			3. appoint new providers as members of the Panel at any time.
1. If the Principal engages the Contractor to provide the Goods and Services and does not seek a quotation, the Goods and Services shall be paid for at any pre-agreed Prices forming part of this Agreement.
2. NO MINIMUM PURCHASE

The Principal is under no obligation to purchase a minimum quantity of Goods or Services from the Contractor during the Term.

1. NON-EXCLUSIVITY
2. This Agreement is entered into on a non-exclusive basis.
3. The Principal may purchase other goods and services similar to the Goods and Services from other providers.

*Is this Agreement for Goods or Services that will result in a bespoke deliverable being created specifically for the Department where the Department requires full ownership of the deliverable(s)?* *[examples include but are not limited to artwork or other creative work, reports and other documents prepared specifically for government, in particular where reliance needs to be placed on those reports, agreements which create some form of intellectual property which government would want to own as opposed to just licence].*

*If* ***Yes*** *insert the following clause as a Special Condition in Attachment 4. If* ***No*** *then delete this Special Condition. (Note this SC is* ***NOT*** *required if the “****CONSULTANCY****”* ***SC*** *is required)*

1. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

Clause 13 of Attachment 2 is deleted and replaced with this Special Condition.

1. Nothing in this Agreement affects the ownership of Intellectual Property Rights created before the Commencement Date.
2. All Intellectual Property Rights in all Goods and Services including all deliverables, works, materials or other forms of intellectual property provided, created or modified as a result of the Services (“**Deliverables**”) are vested in the Principal for and on behalf of the Crown in right of the State of South Australia.
3. The Contractor must do anything necessary to vest all Intellectual Property Rights in the Deliverables, and any reports and other materials in the Principal.
4. The Contractor warrants that the use of the Deliverables by the Principal will not infringe the Intellectual Property Rights of any third party.
5. The Principal does not own the Contractor’s Background IP but the Contractor grants the Principal and the Crown in right of the State of South Australia a perpetual, irrevocable, royalty free, fee free licence to use, copy, modify and adapt the Contractor’s Background IP when incorporated in, or necessary for use of, the Deliverables to the extent necessary for the purposes of government operations or public administration.
6. The Principal grants to the Contractor the right to access and use the Deliverables solely for the purpose of providing the Services to the Principal.
7. Each party grants the other only the licences and rights specified. No other licenses or rights (including licences or rights under patents) are granted.
8. “**Background IP**” means Intellectual Property Rights which are developed or owned by a party (or its related bodies corporate) prior to or independently of this Agreement, including any modifications, enhancements or improvements made to those Intellectual Property Rights independently of this Agreement.

*Is this Agreement for consultancy services, where tasks will be achieved by the consultant free from direction by the public authority as to the way it is performed (e.g. advisory, auditing, accounting, financial analysis)? If* ***Yes*** *insert the following clause as a Special Condition in Attachment 4. If* ***No*** *then delete the following* ***two*** *Special Conditions.*

1. CONSULTANCY
2. All references to “the Contractor” are replaced by “Consultant” and all references to “Price” are replaced by “Fees” in the Agreement.
3. The Services must be performed personally by the Named Persons.
4. The Principal may give reasonable instructions to the Consultant about the performance of the Services and the Consultant must comply with those instructions, including provision of additional reports, attendance at meetings and the making of presentations.
5. The Consultant must effect and maintain professional indemnity insurance during the Agreement at the minimum level of cover required in the ordinary course of the Consultant’s business and such cover must continue for three years after the expiry of the Agreement.
6. Clause 13 of Attachment 2 is deleted and replaced with:

#### Nothing in this Agreement affects the ownership of Intellectual Property Rights created before the Commencement Date.

#### All Intellectual Property Rights in all Goods and Services including all deliverables, works, materials or other forms of intellectual property provided, created or modified as a result of the Services (“**Deliverables**”) are vested in the Principal and the Crown in right of the State of South Australia.

#### The Contractor must do anything necessary to vest all Intellectual Property Rights in the Deliverables, and any reports and other materials in the Principal.

#### The Contractor warrants that the use of the Deliverables by the Principal will not infringe the Intellectual Property Rights of any third party.

#### The Principal does not own the Contractor’s Background IP but the Contractor grants the Principal and the Crown in right of the State of South Australia a perpetual, irrevocable, royalty free, fee free licence to use, copy, modify and adapt the Contractor’s Background IP when incorporated in, or necessary for use of, the Deliverables to the extent necessary for the purposes of government operations or public administration.

#### The Principal grants to the Contractor the right to access and use the Deliverables solely for the purpose of providing the Services to the Principal.

#### Each party grants the other only the licences and rights specified. No other licenses or rights (including licences or rights under patents) are granted.

#### “**Background IP**” means Intellectual Property Rights which are developed or owned by a party (or its related bodies corporate) prior to or independently of this Agreement, including any modifications, enhancements or improvements made to those Intellectual Property Rights independently of this Agreement.

*See above note for Consultancy.*

1. LIABILITY

Where a scheme approved under the *Professional Standards Act 2004 (SA)* applies to the Contractor, the limitation of liability set out in Item 18 of Attachment 1 will not apply and the Contractor’s liability to the Principal for any loss or causes of action arising in relation to the provision of Services is limited in the manner provided by the scheme.

*Is a bank guarantee required to secure the obligations of the Contractor and reduce the financial risk from Contractor insolvency or breach of contract (i.e. to cover the additional costs of arranging another contractor to complete or rectify the situation)? If* ***Yes*** *insert the following clause as a Special Condition in Attachment 4. If* ***No*** *then delete this Special Condition.*

1. BANK GUARANTEE
2. The Contractor must arrange for a bank or financial institution acceptable to the Principal, and with a branch in Adelaide, to give the Principal an undertaking in the form of an unconditional and irrevocable financial undertaking for <insert amount or 10% of the total payable Price> (“**Financial Undertaking**”) and must:

#### be made out to the Principal;

#### include the Agreement name and Agreement number;

#### not have an expiry date;

#### be from a commonly recognised financial institution which is operating in Australia and registered under Australian law;

#### be in writing;

#### be irrevocable and unconditional;

#### be payable, in part or in whole, immediately on demand;

#### be payable without reference to any other person;

#### not be contingent on any other right or obligation appearing in other documentation;

#### be free of a requirement to prove the demand;

#### be governed under the laws of South Australia; and

#### confer the benefit of the security on the Principal until the requirement for the security has been released by the Principal

1. All charges incurred in obtaining and maintaining the Financial Undertaking must be borne by the Contractor.
2. The Contractor must advise the Principal (as soon as practicable and in any event within five (5) Business Days), if at any time during the Term, the Financial Undertaking required by this clause ceases to have effect for any reason.
3. Subject to its rights to have recourse to the Financial Undertaking, the Principal must release the balance of the Financial Undertaking then held within three (3) months after the expiration of the Agreement.
4. If the Contractor commits any breach of this Agreement or the Principal is otherwise entitled to terminate this Agreement, then the Principal is entitled to exercise its rights in relation to the Financial Undertaking and require payment under the Financial Undertaking to the extent it considers necessary to rectify the relevant breach and to cover any liability of the Contractor to the Principal in respect of that breach.
5. The Principal’s entitlement to exercise its rights in relation to the Financial Undertaking is not subject to any impediment by reason of the fact that the Parties are engaged in a dispute resolution procedure.
6. The provision of a Financial Undertaking for the Principal in accordance with this clause is a condition precedent to this Agreement, and the parties have no rights or obligations under this Agreement unless that condition has been either satisfied, or waived by the Principal, within one (1) month of the execution of this Agreement or such later date as determined by the Principal. Immediately on satisfaction of this condition precedent, the Agreement comes into full force and effect and binds the Parties.
7. This condition precedent is for the sole benefit of the Principal.

*Does an Industry Participation Plan (Standard or Tailored) apply to this Agreement? If* ***Yes*** *insert the following clause as a Special Condition in Attachment 4. If* ***No*** *then delete this Special Condition.*

1. INDUSTRY PARTICIPATION POLICY
2. The Contractor must implement the Contractor’s Industry Participation Plan (“**IPP**”) approved by the Industry Advocate (“**IA**”).
3. The Contractor must provide an Industry Participation Report (“**IPP Report**”) in respect of each Industry Participation Reporting Period within two weeks of the end of each period.
4. An Industry Participation Reporting Period is:

#### the period between the Commencement Date and the date six (6) months after the Commencement Date;

* + - 1. each subsequent six (6) month period during the Term;
			2. if the Agreement ends on a date that is not an anniversary of the Commencement Date or an anniversary of the date of a subsequent six (6) month period, the period from the conclusion of the preceding Industry Participation Reporting Period until the date of termination or expiry of the Agreement;
			3. for short-term projects of strategic importance to the State the period notified by the IA to the Contractor in writing; and
			4. where the Term is for a period less than six (6) months, the entire Term.
1. The Contractor must attend any meeting scheduled by the IA during the Term to review how the IPP 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.
2. The IA may, by written notice require that the Contractor within a reasonable time specified in the notice, provide information or documents to enable the Industry Advocate to assess the Contractor’s compliance with this special condition.
3. If the IA reasonably believes that the Contractor is not complying with the requirements of this special condition, the IA may by notice in writing direct that the supply comply with those requirements.
4. Upon receipt of the notice, if the Contractor is of the opinion that its noncompliance is reasonable and justified, the Contractor may provide a response to the Industry Advocate outlining that opinion and the reasons for it.
5. The Contractor’s failure to comply, in whole or in part, with the commitments contained within the IPP will be a factor taken into account in the award of future contracts for the Government of South Australia.
6. In this clause, “Industry Advocate” or “IA” means the person from time to time appointed to the position of Industry Advocate under s. 5 of the *Industry Advocate Act 2017*.

*Does the Contractor have access to, or storage of the Principal’s data? If* ***Yes*** *insert the following clause as a Special Condition in Attachment 4* ***and include Cyber Liability Insurance in Attachment 1, Item 17****. If* ***No*** *then delete this Special Condition.*

1. STATE DATA
	1. Definitions
2. “**Cyber Security Event**” means an occurrence of a system, service or network state or incident which involves or indicated an actual or possible breach of a system, program, database or security policy, a failure of safeguards or a previously unknown situation that may be relevant to system, data or personal security;
3. “**Data Security Breach**” means any actual or potential misappropriation or accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or unauthorised access to, State Data, and includes a Cyber Security Event;
4. “**Protective Security Framework**” means the South Australian Protective Security Framework issued under Department of Premier and Cabinet Circular PC030 as updated or replaced from time to time;
5. “**State Data**” means data (including metadata) and information relating to the Principal, an agency or instrumentality of the Crown in right of the State of South Australia or third parties (including Confidential Information and Personal Information) and the operations, facilities, customers, clients, personnel, assets and programs of the Principal, in whatever form that information may exist and whether created, captured, collected, entered into, stored in, generated by, controlled, managed, retrieved, transferred, transmitted, printed, processed as part of the provision of Goods or Services, and not limited to, any content, materials, data and information provided by the Principal to the Contractor or developed by the Contractor in connection with this Agreement.
	1. Access to Information
6. The Contractor must at all times ensure that the Principal is able to access and download all State Data at any time during the Term at no cost, and in a manner and format that is acceptable, to the Principal, whether or not any dispute exists between the Principal and the Contractor.
7. To the extent required to allow the Principal to exercise its rights under special condition 19.2(a), the Contractor must provide software designed to facilitate the storage, organisation and retrieval of the Principal’s information.
8. The Contractor must ensure that access controls are in place to ensure that access to State Data is restricted to those of the Contractor’s Personnel who require access for the purpose of complying with the Contractor’s obligations under this Agreement,
	1. State Data Security
9. The Contractor acknowledges that:

#### by virtue of this Agreement it may be in possession of State Data;

#### it is only the custodian of the State Data, and must deliver that data to the Principal on demand, regardless of any other legal right or remedy that the Contractor may then have;

#### it may only use the State Data for the purposes of complying with its obligations under this Agreement or as otherwise expressly approved by the Principal;

#### nothing in this Agreement has the effect of transferring ownership, title, interest or any other right over the State Data to the Contractor; and

#### the Protective Security Framework applies to State Data including the State Data that the Contractor may generate, collect, store or have access in connection with this Agreement.

1. With respect to any State Data created, collected or accessed by the Contractor in the course of the Services, the Contractor must:

#### treat State Data:

* + 1. securely and in accordance with the standards outlined in the Protective Security Framework; and
		2. in accordance with any other reasonable directions of the Principal in relation to information security under or connected to the Protective Security Framework;

#### as directed from time to time, take all reasonable steps necessary to facilitate the Principal complying with its obligations under the Protective Security Framework;

#### ensure that the State Data is not corrupted, deleted or subjected to unauthorised use;

#### ensure that no errors are introduced into the State Data;

#### maintain the confidentiality, integrity and availability of the State Data at all times and not use, access or process the State Data following the expiry or termination of this Agreement;

#### maintain appropriate data and software security protections against the destruction, unauthorised disclosure or access, loss or alteration of the State Data in the course of delivering the Services;

#### implement all technical and organisational measures necessary to meet the requirements of any applicable data protection laws and protect the State Data against any misuse; and

#### implement all technical and organisational measures necessary to meet the requirements of any applicable data protection laws and to protect the State Data against any destruction, loss, alteration, unauthorised access or disclosure, or unauthorised access;

#### ensure that the State Data is backed up in accordance with any requirements notified by the Principal;

#### not send, store, host or transfer State Data outside of Australia unless expressly approved by the Principal in writing;

#### not perform any data analytics on State Data, except to the extent permitted by this Agreement;

#### not sell, assign, lease or commercially transfer or exploit any State Data;

#### promptly notify the Principal in writing if the Contractor no longer requires access to some or all of the State Data in order to perform this Agreement; and

#### on request, produce evidence to the Principal of the Contractor’s compliance with the requirements of this clause.

1. The Contractor must notify the Principal immediately and comply with all directions of the Principal if the Contractor becomes aware of any breach of confidentiality, integrity or availability, unauthorised access to State Data or a failure by the Contractor (including by the Contractor’s staff or any other persons who have access to the State Data) to comply with the requirements of this Special Condition.
2. The Contractor must comply with all relevant SA Government and the Principal’s ICT and data security policies.
3. At the request of the Principal, the Contractor must provide to the Principal a full copy of all State Data held by it at no cost to the Principal and in a form and on media reasonably requested by the Principal.
4. Upon expiry or termination of this Agreement, or otherwise upon the written request of the Principal, the Contractor must a no cost to the Principal:

#### immediately return to the Principal all State Data and copies of that State Data, to the Principal in the form and on media reasonably requested by the Principal;

#### following the return of such State Data, destroy or permanently and irrevocably remove, purge or overwrite all copies of State Data held by the Contractor; and

#### comply with all laws, this Agreement and reasonable directions of the Principal in respect of the storage and/or destruction of the State Data.

1. Specifically, and without limiting any of the Principal’s rights, the Contractor acknowledges:

#### it has no right to withhold State Data from the Principal;

* + - 1. the Principal may seek immediate injunctive relief to secure access to State Data.
	1. Data Security Breach
1. If the Contractor becomes aware that a Data Security Breach has or may have occurred, the Contractor must:

#### notify the Principal as soon as possible (and in any event within 24hours);

#### promptly provide to the Principal:

* + 1. a description of the nature and anticipated consequences of the Data Security Breach;
		2. where known, details about the type of information the subject of the Data Security Breach; and
		3. other information concerning the Data Security Breach reasonably known or available to the Contractor that the Principal is required to disclose to a supervisory authority or data subjects as notified from time to time;

#### implement appropriate measures to manage and contain the Data Security Breach and mitigate the impact of the Data Security Breach and prevent a recurrence;

#### reimburse the Principal for any costs reasonably and necessarily inc8urred by the Principal in responding to the Data Security Breach; and

#### comply with any reasonable directions of the Principal.

1. At the request of the Principal in the event of a Data Security Breach, the Contractor must:

#### work with the representatives of the State of South Australia to coordinate a joint response to the Data Security Breach and take all reasonable measures necessary to implement the joint response; and

#### attend and genuinely participate in meetings including post incident review meetings with representatives of the State.

*Does this Agreement require Key Performance Indicators**? If* ***Yes*** *insert the following clause as a Special Condition in Attachment 4 and ensure that the KPIs are provided in the Specification in the Invitation to Supply documents. If* ***No*** *then delete this Special Condition* ***and delete the KPI Table in Attachment 6 (Specification)****.*

1. PERFORMANCE REQUIREMENTS

For the purpose of this Agreement:

1. The Key Performance Indicators set out in the Specification constitute Service Levels as defined in Attachment 2.
2. **Assessment Period** means the assessment periods set out in the KPI Table in the Specification.
	1. Performance Assessment

The Contractor must ensure that its performance under the Agreement meets all of the Key Performance Indicator (**KPI**) targets set out in the KPI Table in the Specification (**KPI Targets**), for every Assessment Period throughout the Term. To demonstrate satisfaction of this requirement, the Contractor must:

1. Ensure that systems are in place to recognise, identify, measure and record the data associated with the KPIs outlined in the KPI Table;
2. Provide KPI Reports electronically in Microsoft Excel using an agreed template, abbreviations and cell formats;
3. Provide KPI Reports quarterly by close of business on the 10th Business Day of the month following each Assessment Period;
4. Provide a response to queries on the KPI data within three (3) Business Days of receipt of the query;
5. Provide satisfactory evidence in the KPI Report demonstrating where any non-compliance was not wholly attributable to a fault on the part of the Contractor for it to be reported as compliant by the Contractor; and
6. Allow the Principal, at any time and at its own expense 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 Agreement. Except where an audit identifies a KPI Failure, in which case the Contractor will be liable to pay the Principal’s reasonable costs of the audit.
	1. Performance Management

If the Contractor fails to meet a KPI Target in an Assessment Period (**KPI Failure**), without limiting any other remedy the Principal may have, the Contractor must:

1. Investigate the underlying causes of the failure to meet the KPI Target and preserve any data detailing or explaining those underlying causes;
2. Prepare and deliver to the Principal a Corrective Action Report identifying the underlying causes and proposed remedial action within seven (7) days of the KPI Report or such other time agreed by the Principal;
3. Take all remedial action is necessary to rectify the underlying cause(s) of the KPI Failure so as to rectify the failure and comply with the KPIs; and
4. Advise the Principal in writing of the status of the remedial efforts.

No additional payment will be made to the Contractor for compliance with this clause.

* 1. Rebates
1. Where a KPI Failure has occurred for the same KPI in consecutive Assessment Periods (**Repeated KPI Failure**), a rebate will be paid by the Contractor to the Principal, such rebate to be calculated in accordance with this clause.
2. The rebate amount for each Repeated KPI Failure will be equivalent to 1% of the total value of the invoices received during each Assessment Period in which the Repeated KPI Failure occurred.
3. For the avoidance of doubt, a rebate will be payable in respect of each Repeated KPI Failure by the Contractor, even if they occur within the same Assessment Period (for example, if the Contractor fails to meet 2 KPI Targets in the same 2 consecutive Assessment Periods, a rebate of 2% would apply for the relevant Assessment Period).
4. The Contractor must pay these Rebates through a deduction from the amount payable by the Principal on the next invoice issued to the Principal under this Agreement. The invoice must clearly identify the rebate amount(s) deducted in each invoice.
5. Rebates arising under this clause are:

#### liquidated damages for a failure to comply with required service levels, and represent a fair and reasonable amount for underperformance; and

* + - 1. not an exclusive remedy and do not prevent the Principal from making or pursuing any other claim as a result of any breach of this Agreement or failure to meet the KPI Targets.
1. The Principal has the right to offset any rebates owing to it under this clause against any amounts due and payable to the Contractor in accordance with this Contract.
2. Without limiting any other right under this Agreement, if the Contractor’s performance results in:

#### KPI Failures for the same KPI in four consecutive Assessment Periods; or

#### KPI Failures of 50% or more of the KPIs in any Assessment Period,

the Principal may in its absolute discretion terminate the Agreement immediately on written notice to the Contractor.

*Is this Agreement for Goods or Services with a term of* ***3 years or more*** *(including extension options)? If* ***Yes*** *insert the following clauses as a Special Condition in Attachment 4. If* ***No*** *then delete this Special Condition.*

1. ANNUAL ADJUSTMENT OF PRICE

The Contractor may, no more than 30 days after each anniversary of the Commencement Date of this Agreement (“**Review Date**”), give written notice to the Principal of an increase in the Price for the Goods and Services, up to a maximum of 2.5% per annum to take effect from the relevant Review Date, determined by the following formulas:

* 1. The percentage increase is calculated as follows:

E = (A - B) / B

If the calculation results in “**E**” being greater than 2.5% then the maximum of 2.5% will apply

Where:

“**A**” is the Consumer Price Index (All Groups) Adelaide in the quarter ending immediately preceding the relevant Review Date; and

“**B**” is the Consumer Price Index (All Groups) Adelaide in the quarter ending immediately preceding the date of execution of this Contract or the last Review Date, whichever is the later.

“**E**” is the CPI Percentage Increase to a maximum of limit of 2.5%

* 1. The percentage increase determined above is applied to calculate the new price as follows:

NP = CP × (1+ E)

Where:

“**CP**” is the price for the Goods and Services prior to the Review Date;

“**NP**” is the new price for the Goods and Services to take effect from the Review Date;

“**E**” is the Percentage Increase to a maximum of limit of 2.5%

*Does this Agreement have a value greater than $500,000 (incl. GST) or is it a consultancy agreement of any value? If* ***Yes*** *insert the following clause as a Special Condition in Attachment 4. Note that this clause enables the contract to be disclosed on the Tenders SA website or to a particular person as a result of a specific request. If* ***No*** *then delete this Special Condition.*

1. CONTRACTS DISCLOSURE

### The Principal may disclose this Agreement 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:

#### the Contractor’s obligations under any other provision of this Agreement; or

#### the provisions of the *Freedom of Information Act 1991* (SA).

*Will the Services to be provided to children? If* ***Yes*** *insert the following clauses as a Special Condition in Attachment 4. If* ***No*** *then delete this Special Condition.*

1. CHILD SAFETY
	1. Additional Definitions

### **Child Safety Act** means the *Children and Young People Safety Act 2017* (SA);

### **Prescribed Offence** has the meaning given in the Prohibited Persons Act;

### **Prescribed Position** has the meaning given in the Prohibited Persons Act;

### **Presumptive Disqualification Offence** has the meaning given in the Prohibited Persons Act;

### **Prohibited Person** has the meaning given in the Prohibited Persons Act;

### **Prohibited Persons Act** means the *Child Safety (Prohibited Persons) Act 2016* (SA);

### **Prohibition Notice** has the meaning given in the Prohibited Persons Act;

### **Working with Children Check** has the meaning given in the Prohibited Persons Act.

* 1. Fundamental Term

Despite any other clause, the Parties acknowledge that the rights and obligations under this clause are fundamental to this Agreement.

* 1. No Prohibited Persons

### The Contractor must:

#### comply with the obligations of employers under Division 2 Part 4 of Prohibited Persons Act in relation to Contractor Personnel that are employed in Prescribed Positions and delivering Services;

#### as required by the Principal’s Contract Manager, verify that a Working with Children Check has been conducted in relation to the Contractor Personnel in Prescribed Positions that are delivering Services; and

#### subject to clause 23.3(c), immediately procure the ongoing exclusion of any Contractor Personnel that are employed in Prescribed Positions from involvement in delivery of the Services if they are found to be a Prohibited Person.

### Unless such notification causes the Contractor to be in breach of the Prohibited Persons Act the Contractor must promptly notify the Principal’s Contract Manager if it becomes aware that Contractor Personnel who are involved in the delivery of the Services:

#### is a Prohibited Person; or

#### is the subject of any allegation, arrest, charge or conviction for a Prescribed Offence or a Presumptive Disqualification Offence (whilst not being the subject of a Prohibition Notice),

### The Contractor will not be in breach of its obligation under clause 23.3(a)(iii) where the Contractor has complied with its obligations under the Prohibited Persons Act and the central assessment unit has failed to provide notification to the Contractor in accordance with section 41(1) of the Prohibited Persons Act.

### As often as reasonably requested by the Principal, The Contractor must give the State evidence satisfactory to the State of The Contractor’s compliance with the obligations of employers under Division 2 Part 4 of Prohibited Persons Act.

* 1. Imposing Obligations on Contractor Personnel

The Contractor must ensure that:

### Contractor Personnel involved in the delivery of Services are aware of and act in a manner consistent with the provisions of this clause at all times; and

### Contractor Personnel (not being The Contractor) immediately inform the Contractor if the Contractor Personnel is the subject of any allegation, arrest, charge or conviction for a Prescribed Offence.

* 1. Child Safe Environment

## In addition to all other obligations under this Agreement, where the Contractor is an organisation to which section 114 of the Child Safety Act applies, the Contractor must:

### (**policies and procedures**): have in place appropriate policies and procedures to ensure that, as required by the Child Safety Act:

#### safe environments for children and young people are established and maintained; and

#### appropriate reports of child abuse and neglect are made;

### (**lodge statement**): lodge the statement required by section 114 of the Child Safety Act about the Contractor's child safe policies and procedures with the Chief Executive of the Department for Child Protection, or such other government agency as the State or South Australian Government publicly notifies (**Successor Children's Protection Agency**), within 10 Business Days after putting in place those policies and procedures; and

### (**response**): respond, as soon as reasonably practicable (and in any event within 10 Business Days), to any written request by Department for Child Protection, Successor Children's Protection Agency or the Principal for information relating to the Contractor's compliance with the requirements of this clause.

* 1. Compliance with Child Safety Practices 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’s Contract Manager.

* 1. Effect of Non-Compliance

## If the Contractor does not strictly, fully and immediately comply with any or all of its obligations under clause 23.3, then such failure to comply will constitute a fundamental breach of the Agreement entitling the Principal to terminate the agreement immediately upon giving notice in writing to the Contractor.

*Does this Agreement require continuity of service/supply beyond the end date of this current contract? If* ***Yes*** *insert the following clause as a Special Condition in Attachment 4. If* ***No*** *then delete this Special Condition. Note: this contract provides for a basic transition out arrangement which places limited high-level obligations on the Contractor. In the event that a more detailed bespoke clause is required for more complex transition requirements, please seek further advice.*

1. TRANSITION OUT ARRANGEMENTS

The Contractor agrees to provide all reasonable assistance to the Principal to ensure the seamless and orderly transfer of the Services to any incoming service provider (or the Principal), including:

### Provide to the Principal all required data, records, documents, manuals, equipment, site access passes, reports, confidential information and any other relevant items developed during the term of the contract, in such formats as required by the Principal.

### If requested by the Principal, the Contractor will provide a Transition Out Plan to the Principal within 30 days after the commencement of this Contract (or such other timeframe as determined by the Principal) which includes a description of all activities required for the transition out process including timeframes, the responsibilities of each Party and any other matters required by the Principal. The Contractor’s obligations under this clause and its compliance with any Transition Out Plan are provided inclusive of the Price paid for Goods and Services under this Agreement and at no additional cost or fee to the Principal.

### The Contractor must cooperate with the Principal and an incoming contractor to help facilitate a smooth transition of the Services from the Contractor to an incoming contractor.

### Upon expiry or termination of this Agreement, the Contractor must, if requested by the Principal in writing:

#### continue to provide the Goods and Services to the Principal for a period of up to 90 days (or such shorter period as requested by the Principal) after the date of expiry or termination; and

#### continue to cooperate with the Principal to assist the Principal in transitioning from the Goods and Services to new services used by the Principal as a replacement for the Goods and Services.

### Where the Principal exercises its rights under special condition 24(d), the provision of Goods and Services under that clause will be on the terms and conditions of this Agreement, other than clause 24(d) or any other provision providing for the extension of this Agreement.

*Is a parent company guarantee required to secure the obligations of the Contractor under the Agreement? If Yes insert the following clause as a Special Condition in Attachment 4 and include “****Schedule 1 – Parent Company Guarantee*** *(Knet # 20703894) with this Agreement. If* ***No*** *then delete this Special Condition.*

1. PERFORMANCE GUARANTEE

### The Contractor must provide a performance guarantee from <insert name of the Parent Company of the Contractor> (“**Guarantor**”), pursuant to which the Guarantor undertakes to fulfil the Contractor’s obligations under this Agreement in the event of default by the Contractor.

### The Contractor must, within 14 days of receipt of a written request from the Principal, procure that the Guarantor execute the Deed of Guarantee in the form shown in Schedule 1.

### If during the duration of the Agreement, the Guarantor ceases to be the Parent Company of the Contractor, the Contractor must procure a substitute deed of guarantee in favour of the Principal by a party determined as acceptable by the Principal or equivalent security in substitution as determined by the Principal. Upon the provision of the substitute Deed of Guarantee or equivalent security as determined by the Principal:

#### the substituted guarantor will be released and discharged from any and all liabilities in respect of that Deed of Guarantee and the Principal acknowledges that it will not make and releases and discharges the substituted guarantor from any claim the Principal has or may have against the substituted guarantor; and

#### the Principal will simultaneously return the substituted Deed of Guarantee to the substituted guarantor.

### The Deed of Guarantee will provide that the obligations and liabilities of the Guarantor under the Deed of Guarantee will not exceed the obligations and liabilities of the Contractor arising out of the Agreement or its non-performance.

### Any agreement between the provider of the Deed of Guarantee and the Principal with respect to any amounts to be paid to the Principal under the Deed of Guarantee is without prejudice to the Principal's right to make continuing claims against the Contractor in relation to any matters which are covered by the Deed of Guarantee.

**Attachment 5 – Pricing and Payment**

[insert pricing and payment details and arrangements, including any milestone payments and schedule of rates where applicable]

**Attachment 6 – Specification**

[insert specification / statement of requirements / other scope documents]

*If this contract has KPIs, add this section, if not, then delete:*

KPI Table

The Contractor must ensure that its performance of the Services satisfies (and continues to satisfy throughout the Term) each KPI set out in the table below in accordance with Performance Requirements Special Condition in Attachment 4.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **KPI #** | **KEY PERFORMANCE INDICATOR** | **DESCRIPTION** | **TARGET** | **ASSESSMENT PERIOD** |
| 1 |  |  |  |  |
| 2 |  |  |  |  |
| 3 |  |  |  |  |
| 4 |  |  |  |  |
| 5 |  |  |  |  |
| 6 |  |  |  |  |
| 7 |  |  |  |  |