



Department for Infrastructure and Transport

Infrastructure Delivery Division

Building Projects Directorate

# GC21 MANAGING CONTRACTOR GENERAL CONDITIONS OF CONTRACT

## Including Contract Information Template

Template Document Revision Status					
Ver	Date	Details	Endorsed By	Approved By	kNet Ref
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**[insert project name]**

## CONTRACT

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CONTRACT NO: **XXXX-MC-20XX**

BETWEEN

MINISTER FOR INFRASTRUCTURE AND TRANSPORT  
("Principal")

-AND-

[ XX ]  
(the "Contractor")

**GC21**

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Template: kNet #17607449 v10C

Project Version: dd mm yyyy vx kNet# xxx [delete if not used]

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## Contents

Formal Instrument of Agreement  
Recital and Preamble (Information only)  
General Conditions of Contract (Managing Contractor Contract)  
Contract Information  
All annexed Schedules

### **Separate documents include (not attached)**

Government Buildings Energy Strategy  
Department for Infrastructure and Transport Publications and Guidenotes  
Code of Practice for the SA Construction Industry  
Building Projects WHS Requirements “PC-WHS1 and BPWHSR Work Health and Safety”  
available at [https://www.dit.sa.gov.au/\\_data/assets/pdf\\_file/0020/1423343/PC-WHS1-and-BPWHSR-WORK-HEALTH-AND-SAFETY.pdf](https://www.dit.sa.gov.au/_data/assets/pdf_file/0020/1423343/PC-WHS1-and-BPWHSR-WORK-HEALTH-AND-SAFETY.pdf)  
Completion Requirements for Managing Contractor GC21 Building Projects (G182-2)  
available at [bpims.sa.gov.au](https://www.bpims.sa.gov.au)

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## FORMAL INSTRUMENT OF AGREEMENT



Government of  
South Australia

[insert project name]  
XXXX-MC-20XX

**BETWEEN:**

**PRINCIPAL:** The Minister for Infrastructure and Transport  
Level 14  
83 Pirie Street  
Adelaide, South Australia  
ABN 92 366 288 135  
(the **Principal**)

**AND:**

**CONTRACTOR:**

**Address:**

**ACN:**

(the **Contractor**)

**THE PARTIES AGREE:**

1. The Contractor must perform and observe all its obligations under the Contract.
2. The Principal must perform and observe all its obligations under the Contract.
3. The *Contract* and other words in this instrument have the meanings given to them in the attached General Conditions of Contract (Managing Contractor Contract).

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

.....  
Witness signature

.....  
Authorised officer signature

.....  
Witness name

.....  
Authorised officer name

.....  
Date

.....  
Date

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

.....  
Director signature

.....  
Director/Company Secretary signature

.....  
Director name

.....  
Director/Company Secretary name

.....  
Date

.....  
Date

---

## Recital

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

For the internal purposes of the State the Minister will deliver the project for the benefit of the State and in particular for the benefit of Minister for XXXX.

However, nothing in this Agreement imposes any legal obligations on or vests any legal rights in the Minister for XXXX.

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## Preamble

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

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

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

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

# Government of South Australia

## MANAGING CONTRACTOR - GENERAL CONDITIONS OF CONTRACT

Department for Infrastructure and Transport

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### ACKNOWLEDGMENT

This is an amended form of the New South Wales Government GC21 (Edition 1) General Conditions of Contract (originally authorised for use by the former Department of Public Works and Services).

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## CONTRACT FRAMEWORK

### Roles and relationships

#### 1. General responsibilities

- 1.1 The Contractor must:
  - 1.1.1 perform as a managing contractor;
  - 1.1.2 collaborate with the Principal's Design Team, from the commencement of the Contract, providing Buildability Input and advice on construction aspects of the Design as it is developed;
  - 1.1.3 perform the Contractor's Design obligations as specified in clause 68 and Contract Information items 41 and 42;
  - 1.1.4 manage and coordinate Subcontracts and the interface between the Design of the Works and the construction of the Works;
  - 1.1.5 construct the Works including any required Design to Completion in accordance with the Contract;
  - 1.1.6 participate collaboratively in the meetings of the working groups set out in Schedule 14 (Working Groups) as required by the Contract;
  - 1.1.7 perform the Management Services; and
  - 1.1.8 perform and observe all its other obligations under the Contract.
- 1.2 The Principal must:
  - 1.2.1 pay the Contractor the Contract Price for its performance, in accordance with and subject to the Contract; and
  - 1.2.2 perform and observe all its other obligations under the Contract.
- 1.3 The Principal may give instructions to the Contractor concerning the Works and anything connected with the Works, and the Contractor must comply at its own cost unless an entitlement to payment is specified under clause 100.1.

#### 2. Authorised persons

- 2.1 The Contractor must ensure that at all times there is a person appointed to act with its full authority in all matters relating to the Contract as the Contractor's Authorised Person and must keep the Principal informed in writing of the name of that person, and of any change. If the Principal reasonably objects to the person appointed from time to time, the Contractor must replace that person.
- 2.2 The Principal must ensure that there is a person appointed to act on behalf of the Principal in relation to the Contract as the Principal's Authorised Person and will advise the Contractor in writing of any limitations or qualifications to the powers of the Principal's Authorised Person. The Principal must keep the Contractor informed in writing of the name of that person and of any change. The person does not act as independent certifier, assessor or valuer. The person acts only as an agent of the Principal.
- 2.3 The Principal delegates its powers to others as set out in Schedule 10

(Principal's Delegations). The Principal's Authorised Person will advise the Contractor in writing if the powers delegated under Schedule 10 (Principal's Delegations) changes.

### **3. Co-operation**

- 3.1 The parties must do all they reasonably can to co-operate in all matters relating to the Contract, but their rights and responsibilities under the Contract (or otherwise) remain unchanged unless the parties agree in writing to change them.

### **4. Duty not to hinder performance**

- 4.1 Each party must do all it reasonably can to avoid hindering the performance of the other under the Contract.

### **5. Early warning**

- 5.1 Each party must do all it reasonably can to promptly inform the other of anything of which it becomes aware which is likely to affect the time for Completion, cost or Quality of the Works, and the parties must then investigate how to avoid or minimise any adverse effect on the Works and Scheduled Progress.
- 5.2 Clause 5.1 does not change the rights and responsibilities of either party under the Contract, unless they agree in writing to change them.
- 5.3 Neither party may disclose in any Issue resolution proceedings (including Expert Determination and litigation) anything discussed or provided under clause 5.1.

## **GCS Offer**

### **6. Confirmation of Project Construction Cost Estimate**

- 6.1 The Contractor shall provide a GCS Offer if stated in Contract Information item 16. If Contract Information item 16 states that a GCS Offer is not required, then the Contractor shall carry out the Part A Services until the earlier of the Date for Part A Services Completion or a direction from the Principal pursuant to clause 8.3.1.
- 6.2 If Contract Information item 16 states that the Contractor is required to provide a GCS Offer:
- 6.2.1 during Part A of the Contract, and in any event within the number of days specified in Contract Information item 15 from the Date of Contract, the Contractor must provide a Cost Plan to the Principal confirming whether it will be in a position to provide a GCS Offer that is less than the Project Construction Cost Estimate by the Date for GCS Offer;
- 6.2.2 failure to provide the Cost Plan in accordance with clause 6.2.1 will be deemed to be confirmation that the Contractor agrees and acknowledges that it will provide a GCS Offer in accordance with clause 6.2.1;
- 6.2.3 If the Contractor's written Cost Plan referred to in clause 6.2.1 does not confirm that the Contractor will be in a position to provide a GCS Offer that is less than the Project Construction Cost Estimate, then the Contractor and the Principal agree to meet

within 10 Business Days of receipt of such Cost Plan (or such longer period agreed to between the parties) to discuss whether any changes can be made to the Project that would allow the Contractor to provide a GCS Offer that is less than the Project Construction Cost Estimate, including the possibility of revising the scope of the Project and any proposed amendments to the Contract;

- 6.2.4 If the Principal and the Contractor meet to discuss whether any changes can be made to the Project in accordance with clause 6.2.3, the Principal, in its absolute discretion, is not bound to accept any suggestions of the Contractor in relation to changes proposed to the Project but shall, without any obligation to act reasonably or in good faith, be free to accept, reject or negotiate any suggested changes proposed by the Contractor;
- 6.2.5 If the meeting referred to in clause 6.2.3 does not occur within the required time period specified in clause 6.2.3, or no agreement can be reached on changes to the Project that are acceptable to the Principal within 20 Business Days of the meeting, then at any time prior to commencement of Part B, the Principal may by written notice to the Contractor elect to:
- (a) direct the Contractor to proceed to complete the Part A Services and then proceed to *Part B* in which case:
    - (1) the Contractor shall not be required to submit a GCS offer;
    - (2) the Principal's written notice must specify the commencement date for Part B (or if no such date is specified, Part B commences on the date of the notice);
    - (3) the Contractor must provide to the Principal the Completion and Post-Completion Undertakings in accordance with clause 62;
    - (4) the Contractor must commence and carry out its obligations during Part B as a managing contractor in accordance with the terms of the Contract;
    - (5) the Contractor must use its best endeavours to ensure that it achieves Completion so that the Contract Price does not exceed the Project Construction Cost Estimate;
    - (6) the Contractor shall not be entitled to an adjustment of the Fixed Management Services Fee or the Fixed Preliminaries Fee on account of such a direction unless:
      - (A) in the case of the Fixed Management Services Fee, there are material changes to:
        - (a) the scope of the Works;
        - (b) the Project Construction Cost Estimate prior to any adjustments pursuant to clause 6.3; or
        - (c) the Contract Program,

- which result in a material effect on the tendered amount; or
- (B) in the case of the Fixed Preliminaries Fee, there are material changes to the scope of the Works or the Contract Program which result in a material effect on the On Site Overheads,
- (7) and provided that all increases are reasonable and proportional to the change in circumstances; or
- (b) terminate the Contract, in which case the Contractor will have no Claim, entitlement or remedy, other than for payment of any outstanding amount by the Principal in respect of the Part A Services Fee and payment of any amounts in respect of any Early Works carried out;
- 6.2.6 Where the Contractor provides (or is deemed to have provided) a Cost Plan which indicates that it will be in a position to submit a GCS Offer less than the Project Construction Cost Estimate, then the Contractor will have no Claim, entitlement or remedy, in relation to the value, completeness or adequacy of the Project Construction Cost Estimate and agrees and acknowledges that it will be bound to comply with the balance of the Contract provisions in relation to the GCS Offer, including the requirements of clause 6 to 9 inclusive.
- 6.3 The Principal may adjust the Project Construction Cost Estimate at any time until the date that is 14 days prior to the Date for GCS Offer, or, if the Contractor is not required to provide a GCS Offer, the Date for Part A Services Completion.

## **7. Contractor's GCS Offer**

- 7.1 If Contract Information item 16 states that the Contractor is required to provide a GCS Offer:
- 7.1.1 unless the Contractor provides a Cost Plan in accordance with clause 6.2.1 confirming it will not be able to provide a GCS Offer that is less than the Project Construction Cost Estimate, the Contractor represents and warrants that during Part A of the Contract, and in any event by the Date for GCS Offer, it shall provide a GCS Offer that is less than the Project Construction Cost Estimate and meets the requirements set out in Schedule 11 (GCS Offer);
- 7.1.2 the Contractor must not increase the amounts specified for the Fixed Management Services Fee and Fixed Preliminaries Fee in the GCS Offer or Alternative GCS Offer (if any) from the amount submitted as part of the Contractor's original tender unless:
- (a) in the case of the Fixed Management Services Fee, there are material changes to:
- (1) the scope of the Works;
- (2) the Project Construction Cost Estimate prior to any adjustments pursuant to clause 6.3; or
- (3) the Contract Program
- which result in a material effect on the tendered amount; or

- (b) in the case of the Fixed Preliminaries Fee, there are material changes to the scope of the Works or the Contract Program which result in a material effect on the On Site Overheads, and provided that all increases are reasonable and proportional to the change in circumstances;
- 7.1.3 failure to comply with clause 7.1 will constitute a Contractor's Default;
- 7.1.4 the Contractor acknowledges and agrees that the Principal is relying on the Contractor's representation in clause 7.1 in electing to proceed with this Contract, and the Principal will incur additional costs, expenses and be delayed in completing the Project if the Contractor does not comply with this clause;
- 7.2 If the Contractor has provided a GCS Offer in accordance with clause 7.1.1 and 7.1.2, the Contractor may also provide to the Principal an Alternative GCS Offer for its consideration in parallel with the compliant GCS Offer (but such Alternative GCS Offer must also be submitted by the Date for GCS Offer). The Contractor must ensure that the GCS Offer and any Alternative GCS offer includes the information set out in Schedule 11 (GCS Offer).
- 7.3 The Contractor's GCS Offer and Alternative GCS Offer (if any) shall remain open for acceptance until the Principal notifies the Contractor in writing of the Principal's acceptance or rejection of the GCS Offer and/or Alternative GCS Offer (if any) in accordance with clause 8, which shall be given within a reasonable time (being no more than the period specified in Contract Information item 60).
- 7.4 Until such time as the GCS Offer or Alternative GCS Offer (if any) is accepted or rejected by the Principal, the Principal's Design Team will continue to progress the Design and the Contractor must continue to perform the Part A Services. If, as the Design progresses, the Contractor becomes aware of changes to any assumptions it has made as part of the GCS Offer or Alternative GCS Offer (if any), it must promptly notify the Principal of these in writing.
- 7.5 In submitting a GCS Offer, the Contractor warrants that it has investigated and satisfied itself of the adequacy and suitability of the GCS Offer and the Contract to enable the Contractor to perform all the work and services under the Contract without limitation in accordance with the Contract. In particular, the Contractor warrants the sufficiency of the Guaranteed Construction Sum.

## 8. Principal's Options

- 8.1 If the Contractor submits a GCS Offer or Alternative GCS Offer, the Principal shall not be bound to accept the Contractor's GCS Offer or Alternative GCS Offer but must by notice in writing given to the Contractor elect to:
  - 8.1.1 accept the Contractor's GCS Offer or Alternative GCS Offer (if any);
  - 8.1.2 reject the GCS offer and direct the Contractor to proceed to *Part B* in which case clause 6.2.5(a) will apply; or
  - 8.1.3 reject the Contractor's GCS Offer and Alternative GCS Offer (if any) and terminate the Contract.



- 8.2 If the Principal elects to reject the Contractor's GCS Offer and Alternative GCS Offer and terminate the Contract, the Contractor will have no further Claim, entitlement or remedy, other than for payment of any outstanding amount by the Principal for the Works in respect of the Part A Services Fee and payment of any amounts in respect of any Early Works Fees in accordance with clause 77.2.
- 8.3 If the Contractor is not required to provide a GCS Offer, the Principal must by no later than 5 Business Days prior to the Date for Part A Services Completion, by notice in writing given to the Contractor elect to do one of the following:
- 8.3.1 direct the Contractor to proceed to complete the Part A Services and then proceed to *Part B* in which case:
- (1) the Principal's written notice must specify the commencement date for Part B (or if no such date is specified, Part B commences on the date of the notice);
  - (2) the Contractor must provide to the Principal the Completion and Post-Completion Undertakings in accordance with clause 62;
  - (3) the Contractor must commence and carry out its obligations during Part B as a managing contractor in accordance with the terms of the Contract;
  - (4) the Contractor must use its best endeavours to ensure that it achieves Completion so that the Contract Price does not exceed the Project Construction Cost Estimate;
  - (5) the Contractor shall not be entitled to an adjustment of the Fixed Management Services Fee or the Fixed Preliminaries Fee on account of such a direction, unless:
    - (A) in the case of the Fixed Management Services Fee, there are material changes to:
      - (a) the scope of the Works;
      - (b) the Project Construction Cost Estimate prior to any adjustments pursuant to clause 6.3; or
      - (c) the Contract Program,which result in a material effect on the tendered amount; or
    - (B) in the case of the Fixed Preliminaries Fee, there are material changes to the scope of the Works or the Contract Program which result in a material effect on the On Site Overheads,
  - (6) and provided that all increases are reasonable and proportional to the change in circumstances; or
- 8.3.2 terminate the Contract, in which case the Contractor will have no Claim, entitlement or remedy, other than for payment of any outstanding amount by the Principal in respect of the Part A

Services Fee and payment of any amounts in respect of any Early Works carried out.

## **9. Adjustment of fees at time of GCS Offer/Alternative GCS Offer**

If Contract Information item 16 states that the Contractor is required to provide a GCS Offer:

- 9.1 and the Principal elects to accept either the GCS Offer or an Alternative GCS Offer (if any):
  - 9.1.1 the Principal must by written notice to the Contractor:
    - (a) indicate that the GCS Offer or Alternative GCS Offer (as applicable) is accepted; and
    - (b) specify a commencement date for the Part B services to commence (which it may do in the notice referred to in clause 9.1.1 or in a subsequent notice) and if no date is specified, then the Contractor must commence Part B services on the date which is 10 Business Days after the notice referred to clause 9.1.1;
- 9.2 and the Principal elects to accept a GCS Offer or an Alternative GCS Offer, subject to clause 9.3, the sum accepted will be the Guaranteed Construction Sum (and the maximum Contract Price);
- 9.3 the Fixed Management Services Fee and Fixed Preliminaries Fee are not subject to adjustment after the time of acceptance of the GCS Offer or Alternative GCS Offer (if any).

## **Warranties**

### **10. Contractor's warranties**

- 10.1 The Contractor warrants that at all times the Contractor shall be suitably qualified and experienced and shall exercise the degree of skill, care and diligence in the execution and completion of the Works expected of a Relevant Managing Contractor. The Contractor further warrants to the Principal the following:
  - 10.1.1 those things referred to in clause 22;
  - 10.1.2 the Contractor has assessed the potential for delays, disruption, suspension and extra costs in the performance of the Works from any cause associated with noise, vibration, dust and other nuisances, the presence of other contracts that are notified by the Principal to the Contractor before the time of submission of the GCS Offer (if requested), and the use of the premises in which the Site is located and has made due allowance in its GCS Offer (if requested) and will not Claim any extra amount or extension of time from the Principal on account of such matters;
  - 10.1.3 the Contractor will:
    - (a) ensure that the Works can be completed for no more than the Guaranteed Construction Sum (if the GCS Offer is accepted) or where a GCS Offer is not accepted or not required pursuant to Contract Information Item 16, use best endeavours to manage all aspects of the Design so that the

Works can be completed for no more than the Project Construction Cost Estimate;

- (b) assist the Principal to manage and co-ordinate the services performed by the PPSCs including by consulting with the PPSCs as frequently as is necessary to ensure that the design development process is co-ordinated in a logical, integrated and efficient manner; and
- (c) proactively participate in the design development process in a way sufficient to enable the Contractor to provide expert advice on buildability and staging issues including:
  - (1) methods of construction;
  - (2) maintaining or improving Quality;
  - (3) avoiding Buildability Issues;
  - (4) opportunities for cost savings, or value engineering, including leading formal value management workshops;
  - (5) coordination of the Design documents;
  - (6) temporary works requirements;
  - (7) safety; and
  - (8) sequencing and duration; and
  - (9) packaging of the Works, including separable portions.

10.2 The Contractor will:

10.2.1 ensure that the Subcontract documentation will be:

- (a) free from errors, ambiguities or discrepancies;
- (b) consistent with the Quality required by the Design; and
- (c) suitable, appropriate and adequate;
  - (A) for the purposes stated in or reasonably ascertainable from the Project Brief and the Contract; and
  - (B) to produce an end product that meets the requirements of the Project Brief and the Contract;
- (d) not modify the Design except insofar as it is necessary to overcome any ambiguity, discrepancy or inconsistency in accordance with clause 69 (and having complied with clause 69); and
- (e) have sufficient resources (including other consultants) to maintain efficient and timely production and verification of all Subcontract documentation.

10.2.2 Subject to Part B proceeding:

- (a) the Works when constructed will be in accordance with the Subcontract construction documentation, all other

requirements of the Contract, Statutory Requirements and the requirements of all authorities;

- (b) the Work will comply with the National Construction Code any relevant standards of Standards Australia or the Contract, and if more than one, the highest such standard;
- (c) if the Subcontract documentation does not specify the standard of workmanship, material, finish or any other aspect of the Works then the standard of such workmanship, material, finish, or other aspect will be in accordance with the Design, and will be fit for their intended purpose as stated in or reasonably ascertainable from the Project Brief and consistent with the nature and character of the Works; and
- (d) all Works will, when completed be free from Defects and fit for their intended purpose stated in or reasonably ascertainable from the Project Brief and the Contract, subject to clauses 70.4 and 81.2.

10.2.3 If the GCS Offer is accepted by the Principal, the Principal will not pay as the aggregate of all components that make up the Contract Price any greater amount than the Guaranteed Construction Sum, and that the Contractor shall meet, pay and discharge to the satisfaction of the Principal all moneys, payments, obligations and liabilities whatsoever over and above the Guaranteed Construction Sum.

#### **Warranties and indemnities unaffected**

10.3 The Contractor acknowledges that all warranties and indemnities given under the Contract will remain unaffected notwithstanding:

- 10.3.1 any advice, review, comment, approval or direction by the Principal, the Principal's Authorised Person or the employees, consultants or agents of the Principal in respect of:
  - (a) any matter which the Contractor has an obligation under the Contract to undertake its own investigations; and
  - (b) Design work, documentation work or construction work produced by the Contractor;
- 10.3.2 any Variation under clause 86;
- 10.3.3 any changes to the Project pursuant to clause 6.2.3; and
- 10.3.4 that the Contractor engages any Subcontractor, Supplier or any Contractor's Consultant in connection with any of the Works (whether with or without the consent of the Principal).

## **The Contract**

### **11. The Contract**

11.1 The Contract is made up solely of the Contract Documents, which supersede all understandings, representations and communications between the parties related to the subject matter of the Contract made before the Date of Contract. The Contract Documents are:

- 11.1.1 these General Conditions of Contract;
- 11.1.2 the Contract Information;
- 11.1.3 all annexed Schedules;
- 11.1.4 the Principal's Documents; and
- 11.1.5 any other Contract Documents listed in Contract Information item 25.
- 11.2 The Contract Documents must be read as a whole, and anything in one such document must be read as included in all other such documents, unless the context requires otherwise.
- 11.3 Unless this Contract expressly provides otherwise, the terms of the Contract cannot be amended or waived unless both parties agree in writing.
- 11.4 The Principal must give the Contractor the number of copies of the Principal's Documents in Contract Information item 24.
- 11.5 This Contract shall be formed by the Principal sending an Acceptance of Tender after which this Contract must be signed by the parties.
- 11.6 Where an Acceptance of Tender is used to form the Contract in accordance with clause 11.5, the Contractor must also execute two copies of a formal instrument of agreement and return them to the Principal within 5 Business Days of these being forwarded by the Principal. The Principal will return an executed copy to the Contractor.
- 11.7 Where the Contractor does not return two executed copies of the formal instrument of agreement within the timeframe specified in clause 11.6, then, unless advised otherwise in writing by the Principal, the Principal's Acceptance of Tender will be deemed withdrawn, and the Contract terminated, with no compensation payable by the Principal to the Contractor, including for any work under the Contract performed by the Contractor prior to the withdrawal.
- 11.8 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 responsible for the acts and omissions (including breaches of this Contract) of the other as if those acts or omissions were its own.
- 11.9 All communications and documentation exchanged between the Principal and Contractor must be in the English language.
- 11.10 Measurements of physical quantities must be in Australian legal units of measurement within the meaning of the National Measurement Act 1960 (Cth), as amended from time to time.
- 11.11 Unless otherwise provided, prices are in Australian currency and payments must be made in Australian currency.
- 11.12 The Contract 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 instrument. An executed counterpart may be delivered by email.

## 12. Part A and Part B

- 12.1 The scope of the Contract encompasses:
  - 12.1.1 Part A; and

- 12.1.2 unless the Principal elects to terminate the Contract pursuant to clauses 6.2.5(b), 8.1.3 or 8.3.2, Part B.
- 12.2 Part A includes:
  - 12.2.1 If Contract Information item 16 states that the Contractor is required to provide a GCS Offer, the provision of the GCS Offer and/or Alternative GCS Offer (if any) by the Contractor in accordance with clauses 6 to 9 (inclusive);
  - 12.2.2 the performance of the Planning Phase Services;
  - 12.2.3 the preparation and provision of the Contractor's incremental cost plan for the Works, in accordance with the format in Schedule 20 (GCS Offer Pricing Schedule), to be provided on a regular basis and at any time as requested by the Principal;
  - 12.2.4 the undertaking of the Part A Site Condition Investigations in accordance with clause 67;
  - 12.2.5 the Contractor reviewing the Contract Documents, in particular the Principal's Documents, and notifying the Principal of any Faults in accordance with clause 69.2;
  - 12.2.6 program planning and the preparation of a contractual program in accordance with clause 47.1;
  - 12.2.7 preparation of a KPI Proposal if required in accordance with clause 95; and
  - 12.2.8 the performance of the Early Works by the Contractor if directed pursuant to clause 76.
- 12.3 Part B includes:
  - 12.3.1 the drafting, finalising and submitting of the Contractor's Documents in clauses 70 to 72 inclusive;
  - 12.3.2 tendering and awarding Subcontracts in respect of, the performance of the Works in accordance with the terms of this Contract;
  - 12.3.3 managing the performance of the Works in accordance with the term of this Contract;
  - 12.3.4 the performance of all other works and services under the Contract not completed or performed (as the case may be) by the Contractor in relation to Part A; and
  - 12.3.5 undertaking commissioning and handover of Works to the Principal.
- 12.4 Notwithstanding any other provisions of the Contract, the Contractor must not commence the works and services the subject of Part B before the Principal has given notice pursuant to clause 6.2.5(a), 8.1.2, 8.3.1 or 9.1 or such other date deemed to apply as referred to in clause 8.3.1(1) or 9.1.1(b).
- 12.5 If the Principal elects to terminate the Contract pursuant to clauses 6.2.5(b), 8.1.3, or 8.3.2, Part B shall be deemed deleted from the scope of the Contract and then all of the following apply:
  - 12.5.1 the Principal will not be obliged to pay any part of the Contract Price attributable to Part B;

- 12.5.2 the Contractor will have no further entitlement or remedy other than pursuant to clause 8.2;
- 12.5.3 the Principal will be at liberty to have Part B or any part of it undertaken by a third party using the Contractor's Documents and any other Design, working drawings, shop drawings and Data developed by the Contractor;
- 12.5.4 the Contractor must leave the Site as soon as reasonably practicable and remove all Temporary Work and Materials it has brought onto the Site, but must leave any Temporary Work and Materials required by the Principal to have the Works completed; and
- 12.5.5 the Principal may direct the Contractor, in its absolute discretion, to do one or more of the following:
  - (a) continue to carry out and complete some or all of the Early Works;
  - (b) terminate all or some of the Early Works Subcontracts;
  - (c) assign or novate (at no cost to the Principal) all or some of the Early Works Subcontracts to the Principal or its nominee on terms acceptable to the Principal.
- 12.5.6 The Contractor must do everything and sign all documents necessary to give effect to clause 12.5.5(c) and it irrevocably appoints the Principal as its attorney to do this in its name if it fails to do so.
- 12.5.7 The parties acknowledge that the rejection of the Contractor's GCS Offer and a termination pursuant to clauses 6.2.5(b), 8.1.3, or 8.3.2 is not a termination for convenience under clause 123.

### **13. Assignment**

- 13.1 The Contractor must not assign a right or benefit under the Contract without first obtaining the Principal's consent in writing.

### **14. Governing law of the Contract**

- 14.1 The Contract is governed by the laws of South Australia, and the parties submit to the non-exclusive jurisdiction of the courts of South Australia.

## **Scope of the Works, Temporary Work and Work Methods**

### **15. The Works**

- 15.1 The scope of the Works is described in the Project Brief and includes:
  - 15.1.1 all the work specifically referred to in or otherwise contemplated by the Contract;
  - 15.1.2 all items not specifically referred to or described in the Contract which nonetheless are required to complete the Works and achieve the effective and efficient use and operation of the Works;
  - 15.1.3 all items referred to in one or more of the Contract Documents or otherwise necessary for the Works to be fit for the purposes required by the Contract but omitted from the Contract Documents



(those omitted items are included in the scope of the Works, unless the context requires otherwise); and

- 15.1.4 all items of work reasonably inferred from the Contract Documents as necessary to properly execute and complete the Works.
- 15.2 The Contractor acknowledges that:
  - 15.2.1 it is both experienced and expert in work of the type and scale of the Works; and
  - 15.2.2 it has made full allowance in the Contract Price for the matters referred to in clause 15.1.
- 15.3 The Contractor acknowledges that Variations instructed by the Principal will cause the scope of the Works to change.
- 15.4 If the Principal requires the Works to be broken up into different Milestones (without materially changing the overall scope of the Works), then the Contractor must undertake those new Milestones as instructed and for the avoidance of doubt such a change will not constitute a Variation.

## **16. Temporary Work**

- 16.1 The Contractor must carry out and be responsible for all Temporary Work, carry out, perform, provide and do everything necessary including all ancillary or other work for or in connection with the Contractor's Design obligations (to the extent applicable) and construction of the Works, subject to the following:
  - 16.1.1 The Principal may instruct the Contractor at any time to use a particular method or type of Temporary Work and the Contractor must comply with the Principal's instruction.
  - 16.1.2 Subject to clause 16.1.3, if the Principal's instruction directly causes the Contractor to incur necessarily and unavoidably any extra costs when compared with the costs the Contractor would have incurred had the Principal not given the instruction, the Contractor may be entitled to those extra costs, and an extension of time under clause 88 (if applicable).
  - 16.1.3 If the need for the instruction in clause 16.1.1 arises from the Contractor's own act or omission, then the Contractor is not entitled to those extra costs or extensions of time.

## **17. Work Methods**

- 17.1 The Contractor is free to use any work method, subject to the following:
  - 17.1.1 The Contractor is solely responsible for all work methods, whether specified in the Contract or not.
  - 17.1.2 The Contractor warrants that it has undertaken all necessary investigation and inquiry to satisfy itself that all work methods specified in the Contract or which the Contractor otherwise proposes to use are appropriate for the purposes of the Contract.
  - 17.1.3 If a particular work method is specified in the Contract, the Contractor must use it.
  - 17.1.4 If a particular work method is specified in the Contract but it is not possible to use that method, the Contractor must use another



method without entitlement to extra cost or an extension of time.

- 17.1.5 If a particular work method for which the Contractor is responsible is impractical and the Contractor, with or without the instruction of the Principal, uses another work method by necessity to complete the Works, the Contractor is not entitled to an extension of time or extra cost.
- 17.1.6 The Principal may instruct the Contractor at any time to use a particular work method.
- 17.1.7 Subject to clauses 17.1.4 and 17.1.5, if the Principal's instruction directly causes the Contractor to incur necessarily and unavoidably any extra costs when compared with the costs the Contractor would have incurred had the Principal not given the instruction, the Contractor is entitled to those extra costs as an addition to the Contract Price if it demonstrates to the reasonable satisfaction of the Principal that it incurred such extra costs) and may be entitled to an extension of time under clause 88 (if applicable).
- 17.1.8 The Contractor must ensure that the persons listed in Contract Information item 13 are the key personnel assigned to carry out the Contractor's obligations under the Contract (except to the extent that any such person ceases to be employed or otherwise engaged by the Contractor as a result of that person's own decision or for proper cause such as termination of employment for failure to perform duties).

## Statutory Requirements and Guidelines

### 18. Statutory Requirements and guidelines

- 18.1 The Contractor is responsible for:
  - 18.1.1 compliance with all Statutory Requirements, subject to clause 87, except if (because of the nature of the requirement) only the Principal can comply; and
  - 18.1.2 the giving of all notices necessary to comply with Statutory Requirements and the payment of all necessary fees, charges and other imposts, other than those notices and imposts to be given or paid by the Principal under the Contract (or given or paid by the Principal prior to the Date of Contract).
- 18.2 Upon request by the Principal and as a condition of achieving Completion, the Contractor must give to the Principal all original documents issued by authorities or providers of services, including those evidencing approvals, authorisations and consents in connection with the Works and the Site.

### 19. Goods and Services Tax

- 19.1 In this clause 19 the expressions "adjustment note", "consideration", "Goods and Services Tax", "GST", "input tax credit", "supply", "tax invoice", "recipient", "Recipient Created Tax Invoice" ("RCTI") and "taxable supply" have the meanings given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

#### Calculation of GST

- 19.2 Unless otherwise expressly stated in the Contract, all prices, rates or other sums payable or for which payment is to be made under or in accordance

with the Contract, include an amount for GST.

- 19.3 No additional amount on account of GST is payable by a party who receives a taxable supply under or in connection with the Contract. All amounts payable reflect the GST-inclusive market value of the taxable supply.
- 19.4 Any contract entered into by a party to the Contract with a third party which involves supplies being made, the cost of which will affect the cost of any supplies made under or in connection with the Contract, must include a clause including equivalent terms to clauses 19.2, 19.3 and 19.4.

### **GST Invoices**

- 19.5 The Principal will issue a tax invoice for any taxable supply it makes to the Contractor without request.
- 19.6 The Principal will issue to the Contractor an RCTI for each taxable supply (other than an excluded supply) made by the Contractor to the Principal, and will issue an adjustment note for any adjustment event. The parties may agree in writing from time to time which supplies are excluded supplies.
- 19.7 The Contractor must not issue a tax invoice in respect of any supply it makes to the Principal, other than for an excluded supply. The Contractor must give the Principal a tax invoice for an excluded supply at or before the time the Contractor invoices the Principal for that supply.
- 19.8 Each party must immediately notify the other party if it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.
- 19.9 Each party acknowledges and warrants that at the time of entering into the Contract, it is registered for the GST.
- 19.10 The Principal will not issue a document that will otherwise be an RCTI, on or after the date when the Contractor or the Australian Taxation Office notifies the Principal that the Contractor does not comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

### **Reimbursable expenses**

- 19.11 If the Contract requires a party to pay for, reimburse or contribute to any expense, loss or outgoing ("reimbursable expense") suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party must be the sum of:
- 19.11.1 the amount of the reimbursable expense net of input tax credits (if any) to which the other party (or its representative member) is entitled in respect of the reimbursable expense; and
- 19.11.2 to the extent that the other party's recovery from the first party is consideration for a taxable supply to the first party, any GST payable in respect of that supply.

### **Principal supplies**

- 19.12 If the Principal makes any supply to the Contractor as a consequence of any matter arising under or in connection with this Contract, the Contractor must pay to the Principal on demand an amount equal to any GST payable

in relation to that supply.

### **Pay As You Go**

- 19.13 If the Contractor does not quote its ABN in its tender (to be provided in Contract Information item 10) or on its *Payment Claims* or invoices, or the Contractor does not otherwise advise the Principal of its ABN relating to the service, the Principal will withhold tax from payments in accordance with the *A New Tax System (Pay As You Go) Act 1999* (Cth).

### **Recipient Created Tax Invoice**

- 19.14 References in clause 19 to Recipient Created Tax Invoices apply notwithstanding any other provision unless:
- 19.14.1 the Contractor is not required to be registered for GST under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and is not registered for GST, and has so notified the Principal before entering into the Contract; or
- 19.14.2 the Contractor and the Principal enter into a Voluntary Agreement for the withholding of Pay as You Go taxation in accordance with the *A New Tax System (Pay As You Go) Act 1999* (Cth).

### **Fines and penalties**

- 19.15 Nothing in this clause requires the Principal to pay any amount on account of a fine, penalty, interest or other amount for which the Contractor is liable as a consequence of failure by the Contractor to comply with legislation which governs GST.

## **20. South Australia policy matters**

- 20.1 Nothing in the Contract derogates from the powers of the Auditor General under the *Public Finance and Audit Act 1987* (SA).
- 20.2 The Contractor must, if it is a relevant employer within the meaning of the *Equal Opportunity for Women in the Workplace Act 1999* (Cth) comply with its obligations under that Act, and use its best endeavours to ensure that any Sub-contractor, Contractor's Consultant or Supplier who is a relevant employer complies with its obligations under that Act.
- 20.3 The Contractor must not accept the services of any person who, either directly or through an independent contractor or third party, within the last three years, has received a separation package from the South Australian Government under its various schemes where the service may breach the conditions under which the separation package was paid to the former public sector employee.
- 20.4 The Principal is a public authority for the purposes of the 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 Commission Against Corruption.

## **21. Compliance with codes**

- 21.1 Subject to the express provisions of the Contract, the parties must comply with the relevant provisions of the codes of practice listed in Contract

Information item 20.

## **22. Collusive arrangements**

- 22.1 The Contractor warrants and represents to the Principal and agrees with the Principal that it is a fundamental condition of the Contract that:
  - 22.1.1 the Contractor has no knowledge of the tender price of any other tenderer for the Contract;
  - 22.1.2 except as disclosed in its tender, and by agreement in writing with the Principal, it has not entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to a trade or industry association or to or on behalf of any other tenderer in relation to its tender or this Contract, nor paid or allowed any money on that account, nor will it pay or allow any money on that account; and
  - 22.1.3 if the Contractor pays to a trade association, industry association or another tenderer or pays to anyone on behalf of a trade association, industry association or another tenderer any money in breach of clause 22.1, the Contractor must immediately give the Principal written notice of such an event and such money is deemed to be held on trust for and becomes immediately payable to the Principal. The Contractor must use its best endeavours to recover the money and pay it to the Principal. If it fails to do so within the time specified in a notice by the Principal to the Contractor or otherwise (in the absence of a notice) within a reasonable time, the Principal will be entitled to withhold, deduct or set off from any payment due to the Contractor on any account an equivalent sum or make a demand against the Undertakings provided under clause 62.

## **23. Industrial relations management**

- 23.1 The Contractor must manage all aspects of industrial relations on the Site and otherwise in connection with the Contract, and keep the Principal informed of industrial relations issues which affect or are likely to affect the carrying out of the Works.

## **24. Quality management**

- 24.1 The Contractor must and it must also ensure that its Subcontractors, Suppliers and Contractor's Consultants systematically plan and manage their work to achieve specified Quality outcomes, reduce the occurrence and costs of error and waste and to achieve continuous improvement in the Quality of the product or service provided.
- 24.2 The Contractor must systematically manage its processes in accordance with the quality management systems, plans, standards and codes specified in the Contract.
- 24.3 The Contractor must:
  - 24.3.1 submit documentation required by the Contract by the time or times specified in the Contract;
  - 24.3.2 review and update the Contractor's quality management procedures and documentation so they remain adequate at all times to manage and ensure the Quality of the Works complies

with the requirements of the Contract;

- 24.3.3 control non-conforming services and/or products and undertake corrective and preventative action as and when necessary;
- 24.3.4 establish, maintain and keep records of all activities related to the management of Quality; and
- 24.3.5 provide sufficient access to the workplace, and to information, records and other relevant documentation, resources (including personnel), and all other things necessary to allow the Principal to carry out reviews, surveillance and audit of the Contractor's procedures and conformance with the contractual quality management requirements.

- 24.4 The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under clauses 24.1 to 24.3.

## **25. Environmental management**

- 25.1 Where applicable, as indicated in Contract Information item 22, at least 10 Business Days before starting the Contractor's Design (if applicable) and construction, the Contractor must document, submit and implement an Environmental Management Plan which complies with all applicable laws, any applicable development authorisation, and any other requirement of the Contract.
- 25.2 The Contractor must systematically manage its environmental management processes in accordance with the systems, plans, standards and codes specified in the Contract.
- 25.3 The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under clauses 25.1 to 25.2.

## **26. Not Used**

## **27. Not used or Australian Government Agreement**

- 27.1 The Contractor acknowledges that the Principal will enter into an Agreement with the Commonwealth of Australia for the provision of funds for the Works (the "Commonwealth Funding Agreement"). The Contractor agrees to cooperate in all respects during the term of the Contract to enable the Principal to perform its obligations under the Commonwealth Funding Agreement and without limitation the Contractor will:
  - 27.1.1 preserve the confidentiality of the Commonwealth Funding Agreement;
  - 27.1.2 not do anything or permit anything to be done (whether by act or omission) which may cause or contribute towards a breach of the Commonwealth Funding Agreement by the Principal or otherwise prejudice its rights under the Commonwealth Funding Agreement;
  - 27.1.3 provide any information requested by the Commonwealth pursuant to the Commonwealth Funding Agreement.
- 27.2 In the event that the Commonwealth either

- 27.2.1 terminates the Commonwealth Funding Agreement; or
  - 27.2.2 otherwise withdraws funding for the Works,
- then the Principal has the right to terminate this Contract with no liability to the Contractor, except that the Principal will pay the Contractor for services rendered prior to such termination.

**28. Not used or Australian Government Work Health and Safety Accreditation Scheme**

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

**29. South Australian Industry Participation Policy**

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

- 29.1 Where applicable, as indicated in Contract Information item 22, the Contractor must comply with the requirements of the Standard or Tailored Industry Participation Plan ("SIPP" or "TIPP") in Schedule 19 (Industry Participation Policy Plan).

The Contractor must submit, an Industry Participation Plan with its GCS Offer, or if a GCS Offer is not required, 10 Business Days prior to the Date for Part A Services Completion.
- 29.2 A copy of the IPP Plan must be submitted to the IA concurrently with submission under clause 29.1.
- 29.3 The Contractor must implement the Contractor's SIPP or TIPP (as applicable).
- 29.4 The Contractor must provide to the IA, an Industry Participation Report ("IPP Report") in respect of each Industry Participation Reporting Period within two weeks of the end of each period, in the format set out in the report template available at: <https://industryadvocate.sa.gov.au/policy-and-resources>. The Contractor must provide evidence to the Principal that it has provided IPP Reports to the IA as soon as practicable and in any event no later than 5 Business Days after submission to the IA.
- 29.5 An Industry Participation Reporting Period is:
  - 29.5.1 the period between the Date of Contract and the date six (6) months after the Date of Contract;
  - 29.5.2 each subsequent six (6) month period during the term of the Contract;
  - 29.5.3 if the Contract ends on a date other than an anniversary of the Date of Contract or an anniversary of the date in subclause 29.5.2, the period from the conclusion of the preceding Industry Participation Reporting Period until the date of termination or expiry of the Contract;

- 29.5.4 for short-term projects of strategic importance to the State, the period notified by the Industry Advocate (“IA”) to the Contractor in writing; and
- 29.5.5 where the term of the Contract is for a period less than six (6) months, the term of the Contract.
- 29.6 The Contractor must attend any meeting scheduled by the IA during the term of the Contract to review how the SIPP or TIPP is being implemented and advanced, and for this purpose, the Contractor must provide all information reasonably requested by the IA. The IA must give the Contractor not less than 10 Business Days’ notice of any such meeting.
- 29.7 The IA may, by written notice require that the Contractor within a reasonable time specified in the notice, provide information or documents to enable the Industry Advocate to assess the Contractor’s compliance with this clause 29.
- 29.8 If the IA reasonably believes that the Contractor is not complying with the requirements of this clause 29, the IA may by notice in writing direct that the Contractor comply with those requirements.
- 29.9 Upon receipt of the notice, if the Contractor is of the opinion that its noncompliance is reasonable and justified, the Contractor may provide a response to the IA outlining that opinion and the reasons for it.
- 29.10 The Contractor’s failure to comply, in whole or in part, with the commitments contained within the SIPP or TIPP will be a factor taken into account in the award of future contracts for the Government of South Australia.
- 29.11 In this clause, ‘Industry Advocate’ or ‘IA’ means the person who from time to time has been appointed by the Governor to the position of Industry Advocate under s. 5 of the *Industry Advocate Act 2017* (SA).

### **30. Respectful Behaviour**

- 30.1 The Contractor acknowledges the Principal’s zero tolerance towards gender based violence, discrimination and all forms of unacceptable behaviour in the workplace and the broader community.
- 30.2 The Contractor agrees that, in performing the Works, the Contractor’s personnel will at all times:
  - 30.2.1 act in a manner that is non-threatening, courteous, and respectful; and
  - 30.2.2 comply with any instructions, policies, procedures or guidelines issued by the Principal regarding acceptable workplace behaviour.
- 30.3 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:
  - 30.3.1 prohibit access by the relevant Contractor’s personnel to the Site and the Principal’s premises; and
  - 30.3.2 direct the Contractor to withdraw the relevant Contractor’s personnel from providing the Works.



**31. Local Workers**

- 31.1 Subclauses 31.1 to 31.8 (inclusive) apply where Contract Information Item 70 states that the project is a Major Infrastructure Project.
- 31.2 An objective of this Contract is to increase the employment of Local Workers.
- 31.3 Where the Contractor fails to comply in part or in whole with the requirements of subclauses 31.1 to 31.8 (inclusive), the Principal may suspend the Contractor from the Department Prequalification System for a period determined by the Principal. Any such failure may also be a factor taken into account in the award of future contracts by the South Australian Government. The Contractor has no claim for damages or other entitlement whether under the Contract or otherwise for any such action taken by the Principal.

**Targets**

- 31.4 The Contractor must, subject to subclauses 31.1 to 31.8 (inclusive), ensure that the On-Site Hours performed by Local Workers (engaged by either the Contractor or its subcontractors) in the execution of work under the Contract is no less than 90% of the On-Site Hours required to execute the work under the Contract.

**Reporting**

- 31.5 The Contractor must submit to the Principal, such information and reports as the Principal may require to verify the Contractor's compliance with clause 31.4.
- 31.6 The Contractor must (and must ensure that its subcontractors) keep records of compliance with clauses 31.1 to 31.8 (inclusive) and provide the Principal with such assistance, including the provision of information, as it may reasonably require in connection with it carrying out an audit of the Contractor's compliance with subclauses 31.1 to 31.8 (inclusive).

**Other**

- 31.7 The Contractor must not (and must ensure that its subcontractors do not) contravene the *Privacy Act 1988* (Cth) or the South Australian Government's Information Privacy Principles and must ensure that it and its subcontractors obtain all necessary consents required to disclose a person's personal information as required by or in connection with subclauses 31.1 to 31.8 (inclusive).
- 31.8 In this clause 31:
- 31.8.1 "Local Worker" means an employee whose principal place of residence for taxation purposes is in South Australia.
- 31.8.2 "On-Site Hour" means an hour of work performed by a person on the Site.

**32. Trainees, Aboriginal People and Long Term Unemployed****General**

- 32.1 Subclauses 32.1 to 32.9 (inclusive) apply where Contract Information Item 70 states that the project is a Major Infrastructure Project.



- 32.2 An objective of this Contract is to increase the employment and training of Apprentices and Trainees, Aboriginal people and Long Term Unemployed (the "Target Group").
- 32.3 The Contractor formally declares its intent to work in conjunction with the South Australian Government to meet the South Australian Government's policy targets by employing and training people from the Target Group, including through on-Site work by subcontractors.
- 32.4 Where the Contractor fails to comply in part or in whole with the requirements of subclauses 32.1 to 32.9 (inclusive), the Principal may suspend the Contractor from the Department Prequalification System for a period determined by the Principal. Any such failure may also be a factor taken into account in the award of future contracts by the South Australian Government. The Contractor has no claim for damages or other entitlement whether under the Contract or otherwise for any such action taken by the Principal.

### Target

- 32.5 The Contractor must, subject to subclauses 32.1 to 32.9 (inclusive), ensure that the total labour hours performed by people in the Target Group (engaged by either the Contractor or its subcontractors) in the execution of work under the Contract is no less than 20% of the total labour hours required to execute the work under the Contract.

### Reporting

- 32.6 The Contractor must submit to the Principal such information and reports as the Principal may require to verify the Contractor's compliance with clause 32.6.
- 32.7 The Contractor must (and must ensure that its subcontractors) keep records of compliance with subclauses 32.1 to 32.9 (inclusive) and provide the Principal with such assistance, including the provision of information, as it may reasonably require in connection with it carrying out an audit of the Contractor's compliance with this clause.

### Other

- 32.8 The Contractor must not (and must ensure that its subcontractors do not) contravene the *Privacy Act 1988* (Cth) or the South Australian Government's Information Privacy Principles and must ensure that it, and its subcontractors, obtain all necessary consents required to disclosing a person's personal information as required by or in connection with subclauses 32.1 to 32.9 (inclusive).

### Definitions

- 32.9 For the purpose of this clause:
- 32.9.1 "Aboriginal person" means a person who identifies as being Aboriginal and/or is considered by members of his or her community as being Aboriginal. This definition includes Torres Strait Islander people;
- 32.9.2 "Apprentice/Trainee" means a person (who may be either an apprentice or a trainee) undertaking training in a trade or declared vocation under a training contract as provided.
- 32.9.3 "Long Term Unemployed" means any person residing in South Australia who, at the time of commencing employment with the

Contractor (or its subcontractor), has been unemployed for a continuous period of 12 months. A Long Term Unemployed person includes a person who is:

- (a) registered with Centrelink or a Job Services Australia provider;
- (b) registered with the Disability Employment Services;
- (c) a skilled migrant job seeker holding a General Skilled Migrant visa;
- (d) a participant in a South Australia Works program (being the initiative of the South Australian Government which links people with skills and jobs through a range of learning, training and work programs).

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

### **33. Authorisation for access to other records**

#### **Release of information**

- 33.1 The Principal may make information concerning the Contractor available to other South Australian Government authorities. This information may include, but is not limited to, any information provided by the Contractor to the Principal and any information relating to the Contractor's performance under the Contract.

#### **Use of information**

- 33.2 Information about the Contractor from any source, including substantiated reports of unsatisfactory performance, may be taken into account by the South Australian Government authorities in considering whether to offer the Contractor future opportunities for South Australian Government work.

#### **Qualified privilege**

- 33.3 In making available any information under clause 33.1, the Contractor acknowledges that the Principal will be entitled to rely on the defence of qualified privilege for the purposes of section 28 of the *Defamation Act 2005* (SA).

#### **Release and indemnity**

- 33.4 The Contractor releases the Principal from and against any *Claim* in respect of any matter arising out of:
- 33.4.1 information being made available under clause 33.1; and
  - 33.4.2 the use of such information by a recipient of the information.

### **34. Construction training fund levy**

- 34.1 If the Principal authorises the Contractor to commence the Works, the Contractor must:
- 34.1.1 comply with the *Construction Industry Training Fund Act 1993* (SA) and must pay to the Construction Industry Training Board the levy imposed under the Act in respect of this project;
  - 34.1.2 produce to the Principal documentary evidence of payment of the

levy,

before commencing the Works.

- 34.2 If the Contractor fails to provide the documentary evidence required under clause 34.1.2 before commencing the Works, then notwithstanding any other provision of this Contract, the Principal may withhold payment of moneys due to the Contractor until the documentary evidence is received by the Principal.

### **35. Media releases, enquiries, disclosure and confidentiality**

- 35.1 The Contractor must obtain the Principal's prior written consent for:
- 35.1.1 any press release or advertisement it wishes to make or place concerning the Contract, the Principal or the Works; or
  - 35.1.2 the release for publication in any media of any information, publication, document or article concerning the Contract, the Principal or the Works.
- 35.2 The Contractor must refer any media enquiries concerning the Contract, the Principal or the Works to the Principal, for the Principal's prior written consent to any response, which consent may be given or withheld, in the Principal's absolute discretion.
- 35.3 The Contractor must ensure that all Contractor's Consultants, Subcontractors and Suppliers engaged by the Contractor for the performance of the Contract, comply with the requirements of this clause 35 and obtain the Principal's prior written consent (through the Contractor) before responding to enquiries or publishing anything of the type referred to in clause 35.
- 35.4 The Contractor agrees to disclosure of this Contract in either printed or electronic form and either generally to the public, or to a particular person as a result of a specific request.
- 35.5 Nothing in this clause derogates from:
- 35.5.1 the Contractor's obligations under any other provision of this Contract; or
  - 35.5.2 the provisions of the *Freedom of Information Act 1991* (SA).

### **36. Registration and licences**

- 36.1 All vehicles and plant used in performing work in connection with the Contract must be properly registered by the Contractor, if required by law to be registered.
- 36.2 The Contractor must ensure that all drivers who operate vehicles or plant in performing work in connection with the Contract must be properly and appropriately licensed as required by law to operate those vehicles or plant.
- 36.3 Whenever requested by the Principal, the Contractor must provide promptly, documentary evidence of compliance with clauses 36.1 and 36.2.

### **37. Movement of Workers**

- 37.1 The Contractor must have in place appropriate policies and procedures to manage and monitor the movement of Workers on the Site and on any areas adjacent to or near the Site and to ensure compliance with the

matters in this Clause 37.

- 37.2 The Contractor must and must ensure that each Worker, in relation to the Site and any areas adjacent to or near the Site:
- 37.2.1 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 work under the Contract;
  - 37.2.2 complies with any other reasonable instructions or restrictions imposed by the person in charge of the relevant area; and
  - 37.2.3 does not enter any area that it does not have authority to enter.
- 37.3 The Contractor must and must ensure that each Worker submits to such police checks, Working with Children Checks and such other enquiries as may be required by the Contract or otherwise notified to the Contractor by the Principal. 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.
- 37.4 The Contractor must, on an ongoing basis:
- 37.4.1 monitor all Workers to ensure that they do not present a potential security risk;
  - 37.4.2 immediately inform the Principal upon becoming aware of any such risk;
  - 37.4.3 take all immediate and ongoing steps necessary to protect any person from harm; and
  - 37.4.4 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 Site and from any involvement in the work under the Contract).
- 37.5 This Clause 37 is not intended to limit the Principal's rights or the Contractor's obligations as set out in the Contract.

### **38. Child Safety**

#### **38.1 General**

- 38.1.1 This clause 38 applies to all Projects being delivered for the Department for Education or otherwise where the Contractor is required by the Contract to procure Working with Children Checks of Workers.
- 38.1.2 Notwithstanding any clause in this Contract, the parties acknowledge that the rights and obligations under this clause 38 are fundamental to this Contract.
- 38.1.3 For the purpose of this Clause 38:
  - (a) "Prohibited Person" has the meaning given in the Prohibited Persons Act;
  - (b) "Prohibited Persons Act" means the *Child Safety (Prohibited Persons) Act 2016* (SA); and

- (c) "Prohibition Notice" has the meaning given in the Prohibited Persons Act.

### 38.2 Contractor's Obligations

#### 38.2.1 The Contractor must:

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

until such time as the relevant Worker is found to be a Prohibited Person (in which case clause 38.2.1(a) will apply) or the Principal consents in writing to the return of the Worker to the Site.

#### 38.2.2 Unless such notification causes the Contractor to be in breach of the Prohibited Persons Act the Contractor must promptly notify the Principal if it becomes aware that any Worker:

- (a) a Prohibited Person for the purposes of the Prohibited Persons Act; or
- (b) the subject of an allegation, arrest, charge or conviction for an offence as set out in clause 38.2.1(b).

#### 38.2.3 The Contractor must ensure that:

- (a) Workers are aware of and act in a manner consistent with the Contractor's obligations under this clause at all times;
- (b) Workers (not being the Contractor) immediately inform the Contractor if the Worker is or becomes a Prohibited Person; and
- (c) Workers (not being the Contractor) immediately inform the Contractor if the Worker is the subject of any allegation, arrest, charge or conviction for an offence as set out in clause 38.2.1(b) (whilst not being the subject of a Prohibition Notice).

### 38.3 Compliance with Policies and Procedures

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

### 38.4 Effect of Non-Compliance

- 38.4.1 If the Contractor does not strictly, fully and immediately comply with any or all of its obligations under this clause, the Principal may terminate this Contract with immediate effect.
- 38.4.2 Any exercise by the Principal of the Principal's rights under this clause:
  - (a) does not limit the Principal's rights to pursue any Claim against the Contractor arising in respect of a breach by the Contractor of the Contractor's obligations under this Contract; and
  - (b) will not give rise to any liability owing to the Contractor or Worker.

**39. Not used or Opportunities for School Students**

- 39.1 In addition to the Contractor's obligations to comply with the Industry Participation Policy requirements pursuant to clause 39, the Contractor shall encourage its Subcontractors to, wherever possible, engage School enrolled students as apprentices.
- 39.2 Within 30 days of the Date of Acceptance of Tender, the Contractor shall, in conjunction with the School Representative, develop and implement an Industry Engagement Plan which shall:
  - 39.2.1 include a minimum of three (3) hours per month of immersion activities for the Contractor to participate in during the Works and until the Completion of the whole of the Works;
  - 39.2.2 be facilitated by the Department for Education's industry engagement consultants; and
  - 39.2.3 be based on the immersion activity options outlined in the Specifications.
- 39.3 The Contractor shall:
  - 39.3.1 comply with the *Children and Young People Safety Act 2017 (SA)* and *Child Safety (Prohibited Persons) Act 2016 (SA)*; and
  - 39.3.2 comply with all the work placement provider/employer requirements in the Workplace Learning Procedures as applicable to the relevant activities in the Industry Engagement Plan, including without limitation:
    - (a) complete the Work Health Safety Checklist;
    - (b) assist the School Representative to conduct a risk assessment using the Worksite Risk Assessment Summary Form for each student undertaking a work placement;
    - (c) complete and sign a Workplace Learning Agreement Form;
    - (d) ensure the student is directly supervised by persons who are suitably qualified and/or experienced, and competent in the relevant task a student is undertaking;
    - (e) follow the Guide to Workplace Learning for Work Placement Provider which outlines the conditions for providing a safe environment for the student;

- (f) ensure the work site is safe, and ensure that hazards associated with work placement are identified prior to the commencement of placement;
  - (g) comply with its obligations under the provisions of the *Work Health and Safety Act 2012* (SA).
- 39.4 Complying with this clause 39 does not entitle the Contractor to additional cost or time for the completion of the Works.
- 39.5 In this clause:
  - 39.5.1 "School" means [insert name of school];
  - 39.5.2 "School Representative" means [insert title of school representative].
  - 39.5.3 "Guide to Workplace Learning for Work Placement Providers" means the Department for Education, Catholic Education South Australia and Association of Independent Schools of South Australia guide to workplace learning available at: [https://ais.sa.edu.au/wp-content/uploads/Pages/Vocational\\_Education/Guide-for-Work-Placement-Providers.pdf](https://ais.sa.edu.au/wp-content/uploads/Pages/Vocational_Education/Guide-for-Work-Placement-Providers.pdf);
  - 39.5.4 "Work Health Safety Checklist" means Department for Education work health and safety checklist available at: <https://www.education.sa.gov.au/sites/default/files/workplace-learning-work-health-safety-checklist.pdf>;
  - 39.5.5 "Workplace Learning Agreement Form" means the Department for Education workplace learning agreement for available at: <https://www.education.sa.gov.au/sites/default/files/workplace-learning-agreement-form.pdf>; and
  - 39.5.6 "Worksite Risk Assessment Summary Form" means the Department for Education worksite risk assessment summary form available at: <https://www.education.sa.gov.au/sites/default/files/worksite-risk-assessment-summary.pdf>.

## Safety

### 40. Work health and safety management - General

- 40.1 The Contractor is responsible for and must comply with the requirements of the Contract for work health and safety and the WHS Law.
- 40.2 The Contractor must systematically manage its work health and safety management processes in accordance with the systems, plans, standards and codes specified in the Contract.
- 40.3 The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under clauses 40 to 45.
- 40.4 The Contractor must, to the extent permitted by law, indemnify and keep indemnified the Principal and its officers, employees and agents against any action, claim, demand, expense, loss, cost (including legal costs), penalty, fine or other liability (including in tort) arising from or in connection with:
  - 40.4.1 any injury, accident or safety related incident on or adjacent to the Site;



- 40.4.2 any failure by the Contractor to discharge the duties of a Principal Contractor under the WHS Law or under the Contract; or
- 40.4.3 the enforcement of any penalty or other requirements arising from any breach by the Contractor of its obligations under clauses 40 to 45.
- 40.5 The Contractor is not entitled to make any Claim in connection with complying with the WHS Law or the work health and safety requirements under this Contract. The Contractor acknowledges that it has allowed for the cost of compliance in the Fixed Management Services Fee and the Guaranteed Construction Sum (if a GCS Offer has been accepted).

#### **41. Appointment as Principal Contractor**

- 41.1 Unless specified otherwise in Contract Information item 21, the Contractor:
  - 41.1.1 is engaged as Principal Contractor in accordance with regulation 293 of the WHS Regulations;
  - 41.1.2 is authorised to have management and control of the workplace as necessary to enable it to discharge the duties of a Principal Contractor and of a person having management or control of a workplace;
  - 41.1.3 must perform the duties of:
    - (a) a Principal Contractor, as specified in the WHS Regulations; and
    - (b) a person with management or control of a workplace as specified in the WHS Act and the WHS Regulations; and
  - 41.1.4 must notify the Principal promptly of any matter affecting work health and safety where consultation with the Principal is necessary.
- 41.2 The Contractor's engagement as Principal Contractor will continue until the Actual Completion Date of the whole of the Works, unless earlier revoked by the Principal.
- 41.3 If the Contractor fails to comply with any of its obligations in this clause 41, the Principal may have the Principal Contractor obligations carried out by the Principal or by others and the cost incurred by the Principal in having those obligations carried out will be a debt due from the Contractor to the Principal.

#### **42. Work health and safety management plan**

- 42.1 Where applicable, as indicated in Contract Information item 22, the Contractor shall:
  - 42.1.1 prepare (and as required review and revise) and implement, a work health and safety management plan (WHS Management Plan) that complies with the Contractor's obligations as Principal Contractor under the WHS Law and under the Contract (including the Building Projects WHS Requirements);
  - 42.1.2 provide a copy of the WHS Management Plan to the Principal at least 10 Business Days before starting the Contractor's Design (if applicable) or construction.
- 42.2 The Contractor must not commence any activities on the Site until the



Principal has advised that the WHS Management Plan is suitable.

- 42.3 The Contractor is not entitled to make any Claim in connection with any direction as to suitability, review, approval of, or modification to, the WHS Management Plan as directed by the Superintendent.
- 42.4 Without in any way limiting its obligations under the WHS Law, the Contractor must comply (and ensure that its employees, agents, Subcontractors and representatives comply) with the WHS Management Plan.

#### **43. Safety Requirements**

- 43.1 Without limiting any other provision in the Contract, the Contractor must:
  - 43.1.1 comply (and ensure that its employees, agents, Subcontractors, Suppliers, Contractor's Consultants and representatives comply) with all requirements of the Contract relating to work health and safety (including the Building Projects WHS Requirements) and the WHS Law;
  - 43.1.2 undertake site management including site access, inductions and pre-start meetings;
  - 43.1.3 ensure that all workers performing work on the Site in relation to the work under the Contract have the appropriate competencies, are trained in relevant procedures and have the appropriate qualifications, certificates and licences to assist the Contractor to perform the work under the Contract;
  - 43.1.4 ensure that all work health and safety plans, policies, procedures and safe work method statements are prepared and maintained in accordance with the WHS Law and the Building Projects WHS Requirements;
  - 43.1.5 comply with any reasonable and lawful direction by the Principal with respect to work health and safety at the Site;
  - 43.1.6 consult, cooperate and coordinate with the Principal where overlapping work health and safety obligations exist with respect to the work under the Contract; and
  - 43.1.7 if the Contractor subcontracts any part of the work under the Contract, include all relevant provisions of clauses 40 to 45 in the subcontract.

#### **44. Plant Safety**

- 44.1 The Contractor must:
  - 44.1.1 ensure that all plant is safe to use and properly maintained;
  - 44.1.2 provide specific information with all plant about how to operate it safely; and
  - 44.1.3 provides operator(s) who shall:
    - (a) provide and use all safety and protective equipment necessary for the safe operation of the plant and the safety of the operator;
    - (b) be qualified (and licensed if required by law), skilled and competent to operate the plant; and

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

#### **45. Safety Audits**

- 45.1 The Principal or his/her agents may, at any time, audit the Contractor's:
- 45.1.1 performance against any of the Expectations or Measures;
  - 45.1.2 implementation of and compliance with the WHS Management Plan; and/or
  - 45.1.3 compliance with its work health and safety obligations under this Contract and/or the WHS Law,
- (**'Audit'**)
- 45.2 To facilitate an Audit, the Contractor must, at no additional cost to the Principal:
- 45.2.1 give the Principal or its agents full and immediate access to the Site without prior notice being required;
  - 45.2.2 allow the Principal and/or its agents to inspect the performance of the work under the Contract;
  - 45.2.3 provide access to or copies of any documents or records related to the safety of the work under the Contract or as may be necessary to establish the Contractor's compliance with clauses 40 to 45 and allow copies to be made of those documents or records; and
  - 45.2.4 promptly comply with all reasonable requests from the Principal or its agents arising from the Audit.
- 45.3 During an Audit, the Principal may use the Tool or any other method to document evidence of compliance.
- 45.4 If, following an Audit, the Principal determines that there has been any non-conformance or that the Contractor's performance against any of the Expectations or Measures is unsatisfactory, then the Principal may do one or more of the following:
- 45.4.1 initiate discussions with the Contractor regarding its safety culture, and make recommendations for improvement;
  - 45.4.2 issue a formal notice requesting that the Contractor show cause for any practice, process or procedure used in performance of the work under the Contract, and if the Principal is not satisfied with the response, direct the Contractor to remedy that practice, process or procedure immediately;
  - 45.4.3 perform subsequent Audits;
  - 45.4.4 direct the Contractor to change or cease any practice, process or procedure used in performing the work under the Contract immediately if it creates a risk to health or safety;
  - 45.4.5 direct that all or part of the work under the Contract is suspended immediately pending satisfactory compliance; or
  - 45.4.6 terminate the Contract, provided that the Principal must not terminate the Contract under this clause 45.4.6 without first issuing a show cause notice under clause 45.4.2 and giving the Contractor at least one Business Day to show cause.

- 45.5 The Contractor must promptly comply with any direction under clause 45.4 at no additional cost to the Principal.
- 45.6 Failure by the Contractor to comply with a direction under clause 45.4.2 , 45.4.4 or 45.4.5 or repeated unsatisfactory performance by the Contractor against any of the Expectations or Measures will be deemed a Contractor's Default for the purposes of clause 122, and the notice provisions under clause 122 will not apply.
- 45.7 In this clause 45, "Expectations", "Measures" and "Tools" have the meanings given to them in the Building Projects WHS Requirements.

## Management duties

### 46. Time management

- 46.1 The Contractor must commence the Contractor's Design (if applicable) and construction of the Works on-Site in accordance with the Contract Program (or the baselined program as referred to in clause 47.1, as applicable).
- 46.2 The Contractor must carry out the Contractor's Design obligations (to the extent applicable) and construction of the Works in accordance with Scheduled Progress.
- 46.3 Whenever requested, the Contractor must demonstrate to the Principal that it is achieving Scheduled Progress.
- 46.4 For these purposes and without limiting the generality of the foregoing, the Contractor shall be obliged, in consultation with the Principal's Authorised Person, to take such positive steps to re-schedule, re program, expedite and adjust activities and subcontract work packages, sequences and the carrying out and execution of the Works generally so as to ensure that Scheduled Progress satisfactory to the Principal's Authorised Person is maintained.
- 46.5 If the Contractor is not achieving Scheduled Progress, the Principal may instruct the Contractor to take all reasonable steps to achieve Scheduled Progress, at the Contractor's cost.
- 46.6 The parties acknowledge that an instruction under clause 46.5 is not an Acceleration Notice.

### 47. Contract Program

- 47.1 The Contractor must submit to the Principal a baselined program which complies with this clause 47 either as part of its GCS Offer (or Alternative GCS Offer) or not later than 7 Business Days prior to the Date for Part A Services Completion, whichever is the earlier. Until the Contractor provides a compliant program, the program submitted by the Contractor with its tender shall be the Contract Program, if the Principal so advises the Contractor in writing.
- 47.2 The Principal need not respond to the Contractor about the program submitted. If the Principal raises no objection and the program submitted by the Contractor under this clause 47 complies with this clause 47, it becomes the Contract Program. If the program does not comply with this clause 47, the Contractor must promptly and in any event within 10 Business Days of being notified by the Principal of the non-compliance, submit to the Principal a further program complying with the requirements

for the Contract Program in this clause 47.

- 47.3 The Contractor must update and resubmit the Contract Program in accordance with Schedule 21 (Contract Program Requirements) and when directed by the Principal acting reasonably, taking into account actual progress, any changed circumstances and the effects of delays and approved extensions of time.
- 47.4 Revisions to the Contract Program (baseline) must only be made with approval of the Principal and must not include progress update to activities;
- 47.5 Progress updates to the Contract Program are for information only and must not include revision or changes to the Contract Program other than to schedule progress of the activities;
- 47.6 The Contract Program must comply with Schedule 21 (Contract Program Requirements).
- 47.7 When requested by the Principal, the Contractor must provide the Contract Program in electronic form to the Principal. All of the requirements of this clause 47 and Schedule 21 (Contract Program Requirements) must be accessible and clearly shown in the electronic form of the Contract Program. The software used by the Contractor must be acceptable to the Principal.
- 47.8 The Contractor will not be entitled to Claim an extension of time under clause 88 or otherwise, until the Contractor has submitted to the Principal a Contract Program in conformance with this clause 47, notwithstanding the references to the contractual program in clauses 46.1 and 47.1. The Contract Program submitted in respect of a Claim for an extension of time must be the Contract Program current (as adjusted under clause 47.3) at the time of the event or events giving rise to the Claim.
- 47.9 All extension of time Claims must show how the Contractor has been or will be delayed in reaching Completion, by specific reference to an activity or activities on the then current (as adjusted under clause 47.3) critical path or paths of the Contract Program.
- 47.10 Provision of the Contract Program does not relieve the Contractor of any of its obligations under the Contract.
- 47.11 The Contractor acknowledges that in regard to any Contract Program provided by the Contractor to the Principal:
  - 47.11.1 the provision of any program is solely for the purpose of monitoring the performance of the Contractor and the progress of the Contract;
  - 47.11.2 the Principal owes no duty to the Contractor to review any program for accuracy or compliance with the requirements of this Contract;
  - 47.11.3 the Principal's receipt, review, comment, request for change, endorsement, approval, acceptance or deemed acceptance in relation to any program:
    - (a) does not affect the time for carrying out any obligation of the Principal under this Contract or impose additional obligations on the Principal;
    - (b) shall not be interpreted as an instruction of the Principal unless it is specifically identified, in writing, as an instruction; and

- (c) does not constitute the granting of an extension of time;
- 47.11.4 the display of a critical path on a program does not, by itself, necessarily constitute evidence of the critical path; and
- 47.11.5 the Principal may use a program to assist with the determination of an extension of time, but is under no obligation to do so.
- 47.12 In the event that the actual time or resources vary from those stated in the Contract Program, this does not:
  - 47.12.1 constitute any amendment to the Contract Price; or
  - 47.12.2 give any grounds for the Contractor to claim any amendment of the Contract Price,unless provided for elsewhere under the Contract.
- 47.13 The Contract Program shall not include programming activities or methodologies which have the effect of creating false criticality or inhibiting an efficient response to changed circumstances.

#### **48. Working days and hours of work**

- 48.1 The working days shall be as stated in the Contract and if not so stated as notified by the Contractor to the Principal prior to commencement of work on Site and shall not be varied without the prior approval of the Principal except when in the interests of safety of the work under the Contract or to protect life or property the Contractor finds it necessary to carry out work outside the working hours or on other than the working days stated in the Contract. In such cases the Contractor shall notify the Principal in writing of the circumstances as early as possible.
- 48.2 The Contractor must observe Statutory Requirements which regulate working days and hours of work and any requirements of the Principal which regulate working days and hours of work, as specified in Contract Information item 43.

#### **49. Intellectual property**

- 49.1 The Contractor assigns or otherwise transfers Intellectual Property Rights in all Data created specifically for the Contract, upon its creation, to the Principal. The Contractor, at its own cost, will do all things necessary, including execution of all necessary documentation, to vest ownership of all such Intellectual Property Rights in the Principal.
- 49.2 The Contractor must include provisions in all Subcontracts and agreements with Contractor's Consultants to ensure that Intellectual Property Rights in all Data created specifically for the Contract is assigned or otherwise transferred to the Principal upon its creation. The Contractor, Subcontractors, Suppliers and Contractor's Consultants are granted licences to use the Data for the purposes of the Contract.
- 49.3 For Data provided by or for the Contractor, but not created specifically for the Contract, the Contractor must obtain irrevocable royalty-free licences to allow the Principal to use, operate, maintain, modify and decommission the Works.
- 49.4 Licences referred to in clause 49.3 must apply from the Date of Contract or (if the Data has not been created or is not then available) from the date the

Data is created or becomes available (as applicable) in perpetuity.

- 49.5 The Contractor is responsible for the timely payment of all royalties and fees for Intellectual Property Rights in connection with the Contract and the Works. The Contractor indemnifies the Principal against any claims (including Claims), actions, and loss or damage arising out of any failure to make these payments or any infringement or alleged infringement of Intellectual Property Rights in relation to the Data provided by or for the Contractor and used under the Contract or required to use, operate, maintain, modify or decommission the Works.
- 49.6 The Contractor must ensure that Data created specifically for the Contract by or for the Contractor is only used by the Contractor and Subcontractors, Suppliers and Contractor's Consultants for the purposes of the Contract.
- 49.7 The Contractor must maintain all Data secret and confidential and disclose it only to those persons to whom disclosure is reasonably necessary for the purposes of the Contract. This provision does not relate to Data which is generally available to the public or which is required to be disclosed by law. This provision survives termination or expiry of the Contract or of the Contractor's employment under the Contract.

## **50. Licences and approvals**

- 50.1 The Contractor must obtain at its own cost all licences, authorisations, approvals and consents necessary to carry out the Works in accordance with the Contract.

## **51. Care of people, property and the environment**

- 51.1 The Contractor is liable for and indemnifies the Principal against loss or damage to:
- 51.1.1 the Works, from the date the Contractor begins carrying out the Works; and
  - 51.1.2 the Site and anything brought onto the Site for the purposes of the Contract, from the date the Contractor is given possession of the Site (or the relevant part of the Site), arising out of carrying out work for or in connection with the Contract,
- until and including the *Actual Completion Date* of the whole of the Works.
- 51.2 After the Actual Completion Date of the whole of the Works, the Contractor remains liable for and indemnifies the Principal against loss or damage arising out of performing Variations, making good Defects, and removing Materials from the Site.
- 51.3 The Contractor is liable for and indemnifies the Principal against all claims (including Claims), actions, and loss or damage and all other liability arising out of carrying out the Works:
- 51.3.1 to or in connection with any property (other than property covered under clause 51.1); and
  - 51.3.2 arising out of personal injury or death.
- 51.4 The Contractor's liability for and responsibility to indemnify the Principal under clauses 51.1, 51.2 and 51.3 is reduced to the extent that an Excepted Risk contributes to an injury or death or loss or damage to

property.

- 51.5 The Contractor is responsible for all of the following:
- 51.5.1 preventing personal injury or death, or loss or damage to the Site, the Works and the Temporary Work;
  - 51.5.2 preventing loss or damage to adjoining and other properties and the environment arising out of carrying out the Works;
  - 51.5.3 the locating and care of existing services;
  - 51.5.4 repairing or making good loss or damage to the Works, the environment and the Site arising out of carrying out the Works; and
  - 51.5.5 bearing the cost of repairing, or making good, loss or damage to adjoining and other properties and the environment arising out of carrying out the Works.
- 51.6 If urgent action is required to avoid death, injury, loss or damage, and the Contractor does not take the necessary action immediately when the Principal requests it, the Principal may take the action (without relieving the Contractor of its obligations), at the Contractor's cost with the Principal's costs being recoverable as a deduction from the Contract Price.
- 51.7 This clause shall not apply to:
- 51.7.1 exclude any other right of the Principal to be indemnified by the Contractor; or
  - 51.7.2 claims in respect of the Principal's right to have the Works carried out.

## **52. Notices and instructions in writing**

- 52.1 Where stated in Contract Information item 69 that an electronic Information Management System (IMS) will be used for the management of documents, any consent, demand, instruction or other notice required or authorised to be given in connection with this Contract must be in writing and sent or transmitted by the IMS to:
- 52.1.1 in the case of the Principal, the Principal's Authorised Person; and
  - 52.1.2 in the case of the Contractor, the Contractor's Authorised Person.
- 52.2 A notice (and other documents) given by IMS shall be deemed to have been given upon the IMS indicating that the correspondence has been sent, provided that if that notice was given on a non-Business Day or after 5.00pm on a Business Day, then the notice will be deemed to have been given at 9:00am the next Business Day.
- 52.3 Where stated in Contract Information item 69 that an IMS will not be used:
- 52.3.1 notices must be sent to the relevant persons at the relevant postal or other addresses specified in Contract Information items 6 to 14;
  - 52.3.2 all notices must be in writing, and all instructions by the Principal must be in writing or confirmed in writing as soon as practicable, where given orally when urgent action is required;
  - 52.3.3 a notice (and other documents) shall be deemed to have been given and received:



- (a) if addressed or delivered to the relevant address in the Contract Information items 6 to 14 or last communicated in writing to the person giving the notice, on the earlier:
  - (1) the date of actual receipt;
  - (2) the date 3 days after posting.
- (b) in the case of email, on the earlier of:
  - (1) the date of receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
  - (2) the date that the communication enters an information system which is under the control of the addressee; and
  - (3) the date that the communication is first opened or read by the addressee.

provided that if delivery was given on a non-Business Day or after 5:00pm (South Australian time) on a Business Day, then the notice will be deemed to have been given at 9:00am the next Business Day.

- 52.4 In addition to the requirement under clauses 52.1 and 52.3.3(b) any notice under clauses 94 (Contractor's suspension), 118 (Notification of issue), 119 (Resolution by senior executives), 120 (Expert determination) or 125 (Termination notices) must also be delivered in writing by hand, registered post or equivalent.

## Subcontractors, Suppliers and Consultants

### 53. Subcontractor relationships

- 53.1 The Contractor is solely responsible for all Subcontractors (including any Prequalified Subcontractors) and for their acts and omissions, and for the termination of any Subcontract and replacement of any Subcontractor.
- 53.2 For the avoidance of doubt, the fact that a Subcontractor is a Prequalified Subcontractor does not reduce or in any way minimise the Contractor's sole responsibility for any such Prequalified Subcontractor and their acts or omissions.
- 53.3 The Contractor indemnifies the Principal against all claims (including Claims), actions, and loss or damage and all other liability arising out of any acts or omissions of Subcontractors.
- 53.4 Without limiting clauses 53.1 and 53.2, where a Subcontract is terminated or insolvency occurs in relation to a Subcontractor, the Contractor must:
  - 53.4.1 promptly notify the Principal;
  - 53.4.2 complete the work the subject of the Subcontract; and
  - 53.4.3 bear the cost incurred by the Contractor in completing the work and such costs will not form part of the Actual Construction Sum, except to the extent that they do not exceed the amount of Actual



Construction Sum which would have been payable had the termination or insolvency not have occurred,  
and clauses 53.1 to 53.2 (inclusive) apply to any replacement Subcontract.

- 53.5 For the avoidance of doubt, if a Subcontract is terminated and another Subcontractor engaged:
- 53.5.1 the Guaranteed Construction Sum (if the GCS Offer is accepted) shall not be adjusted;  
and
  - 53.5.2 the Actual Construction Sum and the Contract Price shall not be increased; and
  - 53.5.3 the Contractor shall not be entitled to an extension of time under Clause 88.

#### **54. Requirements of Subcontracts**

- 54.1 The Contractor must:
- 54.1.1 for all Subcontracts valued at or over the amount in Contract Information item 26, use Subcontract conditions that:
    - (a) reflect all the terms and conditions of this Contract, without changing the intent or effect, subject only to such amendments and appropriate changes in detail as are necessary to reflect the conditions of this Contract; and
    - (b) do not impose terms or conditions or risk that is materially different to those imposed on the Contractor under this Contract and include as a minimum those provisions referred to in clause 54.2;
  - 54.1.2 in all Subcontracts valued below the amount in Contract Information item 26, use Subcontract conditions that do not impose terms or conditions or risk that is materially different to those imposed on the Contractor under this Contract and include as a minimum those provisions referred to in clause 54.2;
  - 54.1.3 in all Subcontracts include an entitlement for the Subcontractor to claim a fixed margin on variations of up to a maximum of 10%;  
and
  - 54.1.4 in all Subcontracts include provisions equivalent to clauses 130 (Modern Slavery), 131 (Fraud Control) and 132 (Anti-Corruption).
- 54.2 The Contractor must:
- 54.2.1 include in all Subcontracts:
    - (a) terms setting out clearly the obligations of the Subcontractor;
    - (b) the requirement for the Subcontractor to achieve a specified result or outcome in relation to the Works;
    - (c) the relevant provisions of clauses 20 (South Australian policy matters), 21 (Compliance with codes), 22 (Collusive arrangements), 35 (Media Releases, enquiries etc.), 49 (Intellectual Property), and clause 102.5.2 (statutory declarations);

- (d) an obligation on the Contractor to pay the Subcontractor within the number of days stated in Contract Information item 27 of the Subcontractor claiming payment in accordance with the Subcontract;
- (e) consent for the Subcontract to be novated to the Principal or its nominee on the terms set out in Schedule 18 (Subcontract Deed of Novation);
- (f) the requirement for the subcontractor to be joined in an expert determination initiated under this Contract, if the Principal requires or permits (and not otherwise);
- (g) where possible a right of termination for convenience;
- (h) where a requirement for Undertakings is included in the Subcontract, the requirements shall align with those set out in Contract Information items 38C and 38D and the value of undertakings shall not exceed a total of 3% of the total Subcontract sum; and

54.2.2 ensure that Subcontracts do not contain provisions that allow the Contractor to 'pay when paid' or 'pay if paid'.

54.3 To ensure that the risk of ambiguities in the documents is consistent with this Contract, the Contractor must ensure that its Subcontractors include clauses equivalent to clauses 69 to 72 inclusive of this Contract (to the extent relevant) in all Subcontracts and Sub-Subcontracts.

54.4 The Contractor must prepare all proposed Subcontracts and tender documents and advise on the accuracy and clarity of these documents to ensure errors, omissions, discrepancies and conflict between documents are minimised for the executed Subcontracts.

54.5 The Contractor must maintain proper records to account for all money received in trust under any Subcontract conditions, and show them to the Principal on request.

54.6 The Contractor acknowledges that:

54.6.1 it is the Contractor's responsibility to ensure that any Subcontract complies with all of the provisions of this Contract;

54.6.2 the Subcontract conditions may need to be amended by the Contractor to ensure that they comply with the Contract; and

54.6.3 the Principal owes no duty to the Contractor to review any Subcontract for accuracy or compliance with the requirements of this Contract.

## **55. Engaging Subcontractors**

55.1 The Contractor must not subcontract the whole of the Works, but may subcontract parts of the Works in accordance with this clause 55.

55.2 The Contractor may, if a GCS Offer is required, identify in the GCS Offer subcontractors it proposes to engage to carry out the works or provide the services the subject of Part B, however;

55.2.1 the Contractor must comply with the tender process pursuant to this clause 55;

- 55.2.2 any such identification of a proposed subcontractor in the GCS Offer does not constitute any approval by the Principal pursuant to clause 55 of the identified subcontractor; and
- 55.2.3 any such identified subcontractor's shall not be engaged as a Subcontractor to carry out any of the works and services the subject of Part B until after the commencement of Part B, if applicable, unless otherwise agreed in writing with the Principal's Authorised Person.
- 55.3 When the Principal considers that Design is sufficiently complete so that a Subcontract for construction can be awarded, the Principal will advise the Contractor in writing and give approval to the calling of tenders for construction.
- 55.4 With appropriate changes in detail, the Contractor will follow the documentation and procedures used by the Principal in calling tenders, including tender and contract conditions. The risk allocation between the Contractor and the Subcontractor must accord with that adopted by the Principal.
- 55.5 Not less than 10 Business Days before calling any tender for a Subcontract, unless otherwise agreed, the Contractor must provide a copy of the tender and subcontract documentation to the Principal including a list of proposed tenderers (minimum of 3 unless specified otherwise in the Contract). The Principal is under no obligation to check the documentation but will have the right to direct the Contractor to change the documentation for the purposes of ensuring completeness and consistency with the Contract. In addition, provided that the change does not require the Contractor to accept a liability to the Subcontractor which the Principal does not accept when the Principal awards contracts in similar situations, the Principal may direct other changes to the documentation.
- 55.6 When requested, before engaging any Subcontractors and at any other times, the Contractor must provide to the Principal copies of any Subcontracts, the names and addresses of proposed Subcontractors and the names and addresses of Subcontractors. The Principal may object to the appointment of any proposed Subcontractor on reasonable grounds. If the Principal objects to any proposed Subcontractor, the Contractor must at its own cost propose another Subcontractor.
- 55.7 The objection by the Principal to the appointment of a proposed Subcontractor shall not be deemed unreasonable if:
- 55.7.1 the Contract requires the Subcontractor to be registered in the Department Prequalification System and the proposed Subcontractor is not registered in the Department Prequalification System (or is not registered in the appropriate category in the Department Prequalification System as determined by the Principal);
- 55.7.2 the proposed Subcontract does not comply with the Contract (including, without limitation, clause 54).
- 55.8 For Subcontracts valued at or over the amount in Contract Information item 26 the Contractor must provide a written report to the Principal with a recommendation on which subcontractors are to be invited to tender (minimum of 5 tenderers) and:
- 55.8.1 unless within 5 Business Days after receipt of the

- recommendation, the Principal directs the Contractor not to invite a tenderer; or
- 55.8.2 if within 5 Business Days after receipt of the recommendation, the Principal notifies the Contractor that it does not intend to so direct the Contractor,
- the Contractor may proceed with the list as recommended.
- 55.9 The Contractor shall provide the Principal and the Principal's Professional Service Contractors with the opportunity to participate in the process of opening subcontract tenders, tender appraisal and in the briefing of Subcontractors.
- 55.10 The Contractor must provide a written report to the Principal, including:
- (a) details of all tenders received including pricing on an Open Book Basis;
  - (b) a statement confirming that when calling the tenders referred to in the report, the Contractor complied with clause 55.4 and ran a transparent and fair procurement process which gave tenderers equal opportunity to tender and information exchanged between the Contractor and the tenderers was exchanged appropriately so as not to advantage or disadvantage any tenderer;
  - (c) , a recommendation on which tender the Contractor considers should be accepted and:
- 55.10.2 unless within 5 Business Days after receipt of the recommendation, the Principal directs the Contractor not to accept the tender; or
- 55.10.3 if within 5 Business Days after receipt of the recommendation, the Principal notifies the Contractor that it does not intend to object,
- the Contractor must proceed to accept the tender recommended by the Contractor
- 55.11 For each trade or area of work specified in Contract Information item 28 as a type requiring use of a Prequalified Contractor, the Contractor must use only Subcontractors prequalified in the appropriate category in the Department Prequalification System. The Contractor must, in collaboration with the Principal's Design Team which may include PPSCs, determine the appropriate category by undertaking a risk assessment in accordance with Schedule 2 (Subcontractor Category and Risk Assessment).
- 55.12 Upon request, the Principal will provide to the Contractor a list of Prequalified Contractors for each specified category.
- 55.13 Notwithstanding clause 55.11, if no Prequalified Contractor will subcontract to perform the work, or where it is agreed with the Principal that the list cannot provide a suitable tender field for a trade or area of work, the Contractor must:
- 55.13.1 if requested by the Principal, obtain quotes from one or more subcontractors nominated by the Principal for the work;
  - 55.13.2 otherwise, arrange for a registration of interest from appropriately qualified and experienced subcontractors interested in undertaking

the work.

- 55.14 When there has been a public registration of interest for the work, the Contractor must provide a written report to the Principal with a recommendation on which registrants are to be invited to tender, and:
- 55.14.1 unless within 5 Business Days after receipt of the recommendation, the Principal directs the Contractor not to invite a registrant, or
- 55.14.2 if within 5 Business Days after receipt of the recommendation, the Principal notifies the Contractor that it does not intend to object, the Contractor may proceed with the list as recommended.
- 55.15 If the Contractor terminates a Subcontract, clauses 53, 54 and 55 apply to any replacement Subcontract.

## **56. Subcontractors' warranties**

- 56.1 For each trade or area of work listed in Contract Information item 29, the Contractor must obtain from each relevant Subcontractor, before that Subcontractor completes its work, a warranty to the Principal in the form of Schedule 1 (Subcontractor's Warranty) to remedy any Defects and to remedy or replace Design, Materials or workmanship which does not comply with the Contract.
- 56.2 Clause 56.1 does not affect any of the Contractor's other obligations under the Contract.

## **57. Contractor's Consultant and Supplier relationships**

- 57.1 Clause 53 applies in respect of Contractor's Consultants in the same way they apply to Subcontractors, unless the context requires otherwise.
- 57.2 Clauses 53 and 54 (excluding clause 54.1.1 and 54.3) and 56 apply in respect of Suppliers in the same way they apply to Subcontractors, unless the context requires otherwise.

## **58. Subcontracts for Early Works**

- 58.1 Subject to clause 58.2, the Contractor may engage subcontractors to carry out the Early Works prior to the acceptance of the GCS Offer by the Principal, or if no GCS Offer is required, prior to the Date for Part A Services Completion.
- 58.2 The Contractor must not enter into any Early Works Subcontracts without the prior written approval of the Principal. In all other respects the Contractor must fully comply with the provisions of clauses 53 to 58 inclusive in respect of subcontracts entered into for Early Works.
- 58.3 Without limiting clause 54, Subcontracts for Early Works must include:
- 58.3.1 a right to terminate for convenience; and
- 58.3.2 consent for the subcontract to be novated to the Principal or its nominee on the terms set out in Schedule 18 (Subcontractor Deed of Novation).

## CARRYING OUT THE WORKS

### Starting

#### 59. Start-up workshop

- 59.1 The Principal must convene a start-up workshop within 20 Business Days after the Date of Contract or such other period as the parties agree. A simple guide to the start-up workshop is set out in Schedule 17 (Start-up Workshop).
- 59.2 The parties must attend the start-up workshop and must jointly decide who else will attend.
- 59.3 The start-up workshop will be conducted so as to promote a culture of co-operation and teamwork for the management of the Contract.
- 59.4 Each party and any others who participate in the workshop must meet their own costs for attendance at the start-up workshop, and the parties will share equally the other costs.

#### 60. Insurance

- 60.1 Before starting any work for or in connection with the Contract, the Contractor must arrange and have in place insurance (irrespective of whether it has then been invoiced by or on behalf of the insurer for the cost of the insurance premiums) for the minimum amounts specified in Contract Information items 31 to 37, and pay all premiums for:
  - 60.1.1 Workers Compensation and related liability insurance in accordance with the requirements of the *Return to Work Act 2014* (SA) and/or any equivalent legislation applicable to employees of the Contractor who are connected with another State from time to time, as specified in Contract Information item 33, and where possible, extended to indemnify the Principal against statutory liability to persons employed by the Contractor; and
  - 60.1.2 a professional indemnity policy of insurance to cover liability for breach of professional duty (whether in contract or otherwise) arising out of any negligence, whether in relation to errors in design, documentation, supervision or other professional duties of the Contractor (whether in contract or otherwise), as specified in Contract Information item 35.
- 60.2 The Contractor must ensure that every Subcontractor, Supplier and Contractor's Consultant is insured at all times:
  - 60.2.1 for Workers Compensation and related liability in accordance with the requirements of the *Return to Work Act 2015* (SA) and/or any equivalent legislation applicable to employees who are connected with another State from time to time; or
  - 60.2.2 (if Workers Compensation cover cannot legally be obtained) under a personal accident policy of insurance to cover personal accidents and related liability, as specified in Contract Information item 34.
- 60.3 If any work for or in connection with the Contract includes asbestos decontamination, the Contractor must pay all premiums and insure under

an asbestos liability policy of insurance to cover risks with asbestos decontamination work, as specified in Contract Information item 36. Where the Contractor subcontracts any such work, the Contractor must ensure that its Subcontractor pays all premiums and insures under an asbestos liability policy of insurance to cover risks with asbestos decontamination work, as specified in Contract Information item 36.

- 60.4 If any work for or in connection with the Contract includes the use of waterborne craft of 8 or more metres in length, the Contractor must pay all premiums and insure under a marine liability policy of insurance to cover the use of such craft, as specified in Contract Information item 37.
- 60.5 The Contractor must obtain the written approval of the Principal for all insurers and for the terms and conditions of the policies and provide copies of the approved policies to the Principal.
- 60.6 The Contractor must ensure that each policy required to be effected and maintained under the Contract or under Subcontracts is in effect for the relevant period specified in the Contract Information.
- 60.7 All policies must:
- 60.7.1 require the insurer to notify the Principal (other than in relation to Workers Compensation and professional indemnity) at the same time as the insurer receives or gives any notice concerning the policy, and at least 5 Business Days before any proposed cancellation of a policy; and
  - 60.7.2 provide that a notice of claim given to the insurer by the Principal, the Contractor, or a Subcontractor, Supplier or Contractor's Consultant will be accepted by the insurer as a notice of claim given by all of the insured.
- 60.8 The policies referred to in clauses 60.3 and 60.4 must be in the name of the Contractor with the Principal as an additional named insured and must cover the Contractor, the Principal, the Principal's Authorised Person and all Subcontractors, Suppliers and Contractor's Consultants employed from time to time for or in relation to the Contract and the Works for their respective rights and interests and cover their liabilities to third parties.
- 60.9 The policies must include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons covered and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons covered as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result).
- 60.10 The Contractor must:
- 60.10.1 ensure that in respect of each insurance required to be effected or taken out as required by clause 60 by the Contractor or any Subcontractor, Supplier or Contractor's Consultant, it:
    - i. complies with its obligations under a policy of insurance;
    - ii. does not do anything which prejudices any insurance;
    - iii. if necessary, rectifies anything which might prejudice any insurance;
    - iv. reinstates an insurance policy if it lapses;



- v. does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal;
  - vi. immediately notifies the Principal of any event which may result in an insurance policy lapsing or being cancelled; and
  - vii. gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance;
- 60.10.2 ensure that any insurance required to provide coverage to Subcontractors acknowledges that the same coverage applies to Suppliers and Contractor's Consultants;
- 60.10.3 ensure that any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
- 60.10.4 ensure that a notice to the insurer by one insured will be deemed to be notice by all insured parties.
- 60.11 All such policies must be effected before commencing work and be maintained until the Final Payment Schedule is issued under clause 105.2.
- 60.12 Before the Contractor starts any work for or in connection with the Contract and whenever requested in writing by the Principal, the Contractor must supply proof that all insurance policies required under the Contract and under Subcontracts and Contractor's Consultant Agreements are current. However, for asbestos decontamination work, the proof must be supplied initially within 40 Business Days after starting that work.
- 60.13 The Principal need not make any payment under the Contract to the Contractor unless the Contractor has complied with and continues to comply with clause 60.11.
- 60.14 If the Contractor fails to comply with any of clauses 60.3, 60.4 and 60.12 the Principal may effect and maintain that insurance and pay the necessary premiums. The Principal may recover from the Contractor the cost of the premiums and the Principal's reasonable costs of effecting and maintaining the insurance, as a debt due by the Contractor.
- 60.15 The Contractor must, as soon as practicable, inform the Principal in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Contract and must ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim. The Contractor must take such steps as are necessary or appropriate to ensure that a Subcontractor, Supplier or Contractor's Consultant (as applicable) will, in respect to an event or claim of a like nature arising out of or relating to the operations or responsibilities of the Subcontractor, Supplier or Contractor's Consultant (as applicable), take in relation to the Principal similar action to that which the Contractor is required to take under this clause 60.15.
- 60.16 The requirements for insurance to be effected and maintained do not affect or limit the Contractor's liabilities or other obligations under the Contract.

## **61. Works and third party (public) liability insurance**

- 61.1 Contract Information item 30 indicates whether the Principal or the Contractor is required to place insurance for the works and for third party



(public) liability. The party required to place that insurance is referred to in this clause as the Responsible Party.

- 61.2 If the Contractor is the Responsible Party, the Contractor must, before commencement of work by the Contractor on Site, establish, and must, until issues of the Final Payment Schedule, maintain:
- 61.2.1 a Works policy of insurance to cover loss or damage to the Works and the *Temporary Work*, as specified in Contract Information item 31 ("the Works Policy");
  - 61.2.2 a third party (public) liability policy of insurance to cover loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Works, as specified in Contract Information item 32 ("the TP Policy").
- 61.3 The Contractor must comply with the provisions of the Works Policy and the TP Policy, compliance with which is a precondition to entitlement to make a claim under the policy.
- 61.4 If there is a claim for significant damage or destruction under the Works Policy (as determined by the Principal, acting reasonably):
- 61.4.1 all settlement amounts must be paid by the insurer directly to the Principal;
  - 61.4.2 the Principal may decide to have the Works reinstated, or may decide not to proceed with the Works, without creating any default by the Principal under the Contract; and
  - 61.4.3 the Contractor must reinstate the Works if instructed to by the Principal and except as otherwise provided in the Contract may only make a Claim for payment for reinstatement of the Works up to the amount of any insurance settlement.
- 61.5 In the event of any occurrence for which a claim under the Works or TP Policy may be made the Contractor:
- 61.5.1 must take immediate action to avoid loss of life or damage to property;
  - 61.5.2 must as soon as practicable, inform the Principal, if the person making a claim is the Contractor, Subcontractor, Supplier or Contractor's Consultant or an employee, agent or person under the control of the Contractor, Subcontractor, Supplier or Contractor's Consultant;
  - 61.5.3 must (if the Principal is the Responsible Party) as soon as practicable, inform the Principal's insurance broker nominated in the document which is available at [https://www.dit.sa.gov.au/contractor\\_documents/principal\\_arranged\\_insurance2](https://www.dit.sa.gov.au/contractor_documents/principal_arranged_insurance2) or otherwise notified by the Principal;
  - 61.5.4 must take all reasonable steps to prevent further loss or damage;
  - 61.5.5 must provide full details of the occurrence giving rise to the claim as required by the insurer(s);
  - 61.5.6 must issue a signed claim statement;
  - 61.5.7 may proceed immediately with repairs and reinstatement if the estimated loss is less than \$10,000 in addition to the amount of the

- applicable excess, promptly report the incident and preserve all evidence required to substantiate a claim;
- 61.5.8 must defer repairs if the estimated loss exceeds \$10,000 in addition to the amount of the applicable excess and preserve all evidence required to substantiate a claim; and
- 61.5.9 must make no admissions of liability to any potential claimant in respect of the occurrence.
- 61.6 If the Principal is the Responsible Party, the premium for any policy of insurance required under this clause shall be paid by the Principal, but the Principal reserves the right to charge additional premium to the Contractor should such charge be levied by the Principal's insurer(s) if such premium charge is the direct result of the Contractor's action or inaction in breach of the Contract.
- 61.7 The Contractor shall bear the cost of any loss or liability the subject of a claim under the Works Policy or the TP Policy to the extent that such loss or liability is not covered by reason of 'excess' provisions in the policy.
- 61.8 If the Principal is the Responsible Party:
- 61.8.1 the Principal has taken out and will maintain policies of insurance on terms not less beneficial to the Contractor than those described in the insurance policy or policies or other details of insurance provided or made available to the Contractor by the Principal before the Date of Contract;
- 61.8.2 the Principal must provide or make available to the Contractor a copy of the relevant insurance policy;
- 61.8.3 the provision of insurance by the Principal does not derogate in any way from the Contractor's obligations under the Contract, nor shall the Principal be liable in respect of any loss suffered by the Contractor as the result of refusal by the insurer(s) to pay any claim (save for the reason that the policy has lapsed for non-payment or default by the Principal);
- 61.8.4 the Contractor will not be released or excused from any obligation under the Contract by reason of the Principal's obligations to effect insurance or by the Principal's performance or non-performance of those obligations, or by reason of any exclusion in the policies of insurance effected by the Principal. The Principal shall not be liable to the Contractor in respect of any loss or damage not covered by the policies by reason of exclusions in the policies. The Contractor is taken to have examined the policies of insurance effected by the Principal, and is responsible to acquire on its behalf and that of its Subcontractors, Suppliers and Contractor's Consultants any additional cover it may consider necessary; and
- 61.8.5 the insurance policies maintained by the Principal pursuant to this clause are available for scrutiny on request. Details of those insurance policies are available at [https://www.dit.sa.gov.au/contractor\\_documents/principal\\_arranged\\_insurance2](https://www.dit.sa.gov.au/contractor_documents/principal_arranged_insurance2). The Contractor and all of its Subcontractors, Suppliers and Contractor's Consultants shall fully inspect the policy to ascertain the level of protection afforded and the obligations imposed.

**62. Undertakings**

- 62.1 Within 10 Business Days after the Date of Contract the Contractor must give the Principal the Part A Completion Undertaking for the amount calculated as specified in Contract Information item 38.A.
- 62.2 Within 10 Business Days after a direction to commence Early Works pursuant to clause 76, the Contractor must give the Principal the Early Works Completion Undertaking for the amount calculated as specified in Contract Information item 38.B.
- 62.3 Within 10 Business Days after the Principal electing to:
- 62.3.1 accept the GCS Offer or Alternative GCS Offer (if requested) in accordance with clause 8.1.1; or
  - 62.3.2 direct the Contractor to proceed to *Part B* in accordance with clause 6.2.5(a), 8.1.2, 8.3.1, or 9.1,
- (if applicable) the Contractor must give the Principal the Part B Completion Undertaking and the Post-Completion Undertaking for the amounts calculated as specified in Contract Information items 38.C and 38.D.
- 62.4 The Contractor must provide each Undertaking in the form specified in Schedule 3 (Undertaking on behalf of Contractor).
- 62.5 Unless the Principal has made or intends to then make a demand against any Undertaking, the Principal must return Undertakings to the Contractor as follows:
- 62.5.1 the Part A Completion Undertaking within 10 Business Days of the Principal electing to terminate the Contract pursuant to clauses 6.2.5(b), 8.1.3, or 8.3.2, or receipt of the Part B Completion Undertaking and Post Completion Undertakings;
  - 62.5.2 the Part B Completion Undertaking within 10 Business Days after the later of the Actual Completion Date of the whole of the Works and the completion of all Outstanding Items identified in accordance with clause 111;
  - 62.5.3 the Early Works Completion Undertaking within 10 Business Days after the Actual Completion Date of the relevant Early Works or termination of this Contract; and
  - 62.5.4 the Post-Completion Undertaking at the latter of:
    - (a) the end of the period in Contract Information item 39; or
    - (b) 12 months (if no period is specified there),after the Actual Completion Date of the whole of the Works provided all Defects and Outstanding Items then known have been remedied, and otherwise when all Defects and Outstanding Items then known are remedied.
- 62.6 When Completion of a Milestone is achieved, the Principal may (in its absolute discretion) agree to a proportionate reduction in the level of security held, based on the proportion of the Works in the Milestone.
- 62.7 All Undertakings must be provided by a bank, building society, credit union or insurance company acceptable to the Principal and must be redeemable

at a location in Adelaide CBD.

- 62.8 The Contractor must not prevent the Principal making any demand against the Undertakings, or prevent the provider of an Undertaking complying with the Undertaking or any demand by the Principal.

### 63. Site access

#### Possession of the Site

- 63.1 Subject to compliance by the Contractor with the provisions of clause 63.3 and 63.4 within the time period stated in Contract Information item 19, or, if no time period is stated, then within 10 Business Days of the Date of Contract, the Principal must give the Contractor possession of the Site, or enough of it to allow for start of the work for which commencement has been authorised.
- 63.2 If the Principal does not give the Contractor possession of the Site or enough of it to allow for start of work for which commencement has been authorised by the time specified in clause 63.1, the Contractor may be entitled to an extension of time under clause 88 as its sole remedy and, notwithstanding clause 89, will not be entitled to any costs, losses, expenses or damages under clause 89, or otherwise.
- 63.3 The Contractor must meet all its obligations under the Contract to provide Undertakings and effect insurance before it is entitled to start any work for or in connection with the Contract.
- 63.4 Before any construction work commences, the Contractor must comply with all requirements for industrial relations, environmental, safety including under all work health and safety legislation and acting as principal contractor and controller of work sites under the WHS Regulations and quality management, other Statutory Requirements and any other requirements. The Contractor is not entitled to possession of the Site or any part of the Site until the Contractor demonstrates to the Principal that it complies with those requirements.

#### Access for the Principal

- 63.5 Where required for the purposes of the Contract, at all reasonable times the Contractor must permit the Principal (including its authorised employees and agents) to have access to the Site and to the premises of the Contractor and must arrange for such access to the premises of Subcontractors, Suppliers and Contractor's Consultants. This may include for the purpose of surveillance, audit, inspection, Testing, certification and recording of information in any form or for any other reasonable purpose required by the Principal in connection with the Contract.

#### Access for Principal's contractors

- 63.6 If required by the Principal (by written notice to the Contractor), the Contractor must permit persons engaged by the Principal ("**Principal's contractors**") to have access to the Site, to deliver and store materials on the Site and to carry out work on the Site and must take all reasonable measures to cooperate with them and coordinate the Contractor's work with their work.

### 64. Engagement of Valuer

- 64.1 If indicated in Contract Information item 56.A, the Valuer must be engaged for the purposes of clauses 84 and 86 and the following provisions of this

clause 64 will apply:

- 64.1.1 The parties acting reasonably must endeavour to agree in writing on the Valuer within 15 Business Days after the Date of Contract or, failing agreement, the Principal must request the person named in Contract Information item 56.B to select the Valuer.
  - 64.1.2 The Principal and the Contractor must jointly engage the Valuer under the form of Schedule 7 (Agreement with Valuer) within a further 15 Business Days from the date of selection of the Valuer.
  - 64.1.3 The Valuer must make determinations under clauses 84 and 86.
  - 64.1.4 The Valuer's certificate will be final and binding unless a party has a right to commence litigation under clause 64.1.5.
  - 64.1.5 If the net amount of the Valuer's determination exceeds the amount in Contract Information item 56.C (calculating the amount without including interest on it), then either party may commence litigation in respect of the Variation, but only within 40 Business Days after receiving the determination.
- 64.2 If a Valuer is not engaged the assessment and determination of a value or the effect on the time for Completion is governed by the procedures in clause 86 and by clauses 115 to 120, as applicable.

## The site

### 65. Site information

- 65.1 The parties acknowledge that:
- 65.1.1 at the Date of Contract, the Principal has (if applicable) provided in good faith geotechnical or other information concerning the Site;
  - 65.1.2 the geotechnical or other information concerning the Site provided by the Principal (even if attached to this Contract) does not form part of the Contract;
  - 65.1.3 the Principal does not guarantee the accuracy, Quality or completeness of the information specified in Contract Information item 40;
  - 65.1.4 the Principal accepts no duty of care in connection with information specified in Contract Information item 40 (or with having provided it);
  - 65.1.5 the Contractor warrants that it:
    - (a) has made its own inquiries (including the checking of information provided by the Principal) concerning the Site;
    - (b) did not in any way rely on the information (which information could contain errors, omissions and other inaccuracies) provided by the Principal, as specified in Contract Information item 40; and
  - 65.1.6 the Contractor also warrants that it has made its own interpretations, deductions and conclusions from the information provided by the Principal and did not in any way rely on interpretations, deductions and conclusions made by

or for the Principal.

- 65.2 The Contractor warrants that it has:
- 65.2.1 examined the Site and surrounds and satisfied itself through its own investigation as to the condition and characteristics which may be encountered on, in or under the Site (including sub-surface conditions) and as to the further geotechnical or other information for the Site that may be required to be obtained by the Contractor; and
  - 65.2.2 if a GCS Offer is requested, made its own assessment of the risks, contingencies and other circumstances which might affect the Works and has allowed fully for these in the GCS Offer and hence the Contract Price (subject to clause 65.3).
- 65.3 If the Contractor considers that further geo-technical or other information for the Site is required, it may obtain Further Site Information and must give the Principal details of Further Site Information as it is obtained.
- 65.4 Further Site Information does not include any information in the Contract Documents or information which by the Contract the Contractor is required to otherwise obtain.
- 65.5 Except if the Contract provides otherwise, the Contractor must bear the cost of obtaining Further Site Information.

## **66. Site Conditions**

- 66.1 The Contractor agrees that it has no other entitlement arising out of or in connection with Site Conditions other than as referred to in this clause 66.
- 66.2 Notwithstanding, and in addition to, the warranties provided in clauses 65.1.5, 65.1.6 and 65.2, and subject to clause 66.3, the Contractor must use its best endeavours to determine the existence of all Site Conditions before the earlier of:
- 66.2.1 the Date for GCS Offer (if required); and
  - 66.2.2 the Date for Part A Services Completion.
- 66.3 Where Early Works are directed, the Contractor must use its best endeavours to reasonably determine the existence of all Site Conditions in the area of the Early Works prior to commencing Early Works and if the Contractor encounters site conditions which are materially adverse in comparison to the Site Conditions which the Contractor should have reasonably foreseen at the time of the Early Works direction, having regard to the warranties in clauses 65.1.5, 65.1.6 and 65.2, then the Contractor shall notify the Principal in accordance with clause 66.4.
- 66.4 If the Contractor encounters, in the execution of the Works (including when obtaining Further Site Information), Site Conditions which are materially adverse in comparison to the Site Conditions which the Contractor should have reasonably foreseen at the time of the earlier of the dates referred to in clause 66.2.1 and 66.2.2, having regard to the warranties in clauses 65.1.5, 65.1.6 and 65.2, the Contractor must notify the Principal in writing forthwith and in any event within 5 Business Days of encountering these Site Conditions (and prior to making any related Claim), giving full details

of:

- 66.4.1 the Site Conditions encountered;
- 66.4.2 the manner in which they are said to be materially adverse (having regard to the warranties in clauses 65.1.5, 65.1.6 and 65.2), together with information supporting this contention;
- 66.4.3 the effect on the Works;
- 66.4.4 subject to clause 66.10, the estimated additional cost (if any) of dealing with the Site Conditions encountered and the additional work and resources involved;
- 66.4.5 the delay (if any) to progress of the Works; and
- 66.4.6 any other relevant matters.

The Principal may request the Contractor to provide any further information relating to the circumstances of the Site Conditions encountered.

- 66.5 The Contractor is solely responsible for dealing with the Site Conditions encountered in a manner so as to minimise any extra costs and in a manner to which the Principal has no objection.
- 66.6 Provided that the Contractor has complied with clauses 66.2 and 66.3 and subject to clause 66.10:
  - 66.6.1 the Contractor will be entitled as an adjustment to the Contract Price to its direct, reasonable additional costs (including costs of delay or disruption), necessarily and unavoidably incurred by the Contractor in dealing with materially adverse Site Conditions, from the date of provision to the Principal of the written notice required by clause 66.4, having taken all reasonable steps to minimise the costs in dealing with materially adverse Site Conditions; and
  - 66.6.2 the Contractor may also be entitled to an extension of time for Completion under clause 88 for delays caused by the materially adverse Site Conditions occurring from the date of provision to the Principal of the written notice required by clause 66.4.
- 66.7 If a Variation is instructed or agreed as a result of Site Conditions shown by Further Site Information given to the Principal no later than 15 Business Days before construction on the relevant part of the Site would have started, but for the Variation, it must be dealt with (including the matters of value and extension of time for Completion) under the Variation procedures in clause 86.
- 66.8 If a Variation is instructed or agreed as a result of Site Conditions, but the Contractor does not give to the Principal the Further Site Information within the time provided in clause 66.7:
  - 66.8.1 the Variation must be valued under clause 86 but the value of the Variation must exclude the costs of any aborted work arising out of the Variation; and
  - 66.8.2 no payment will be made to the Contractor for costs of delay or any aborted work under any other provision of the Contract or otherwise.
- 66.9 Clause 66.7 applies regardless of any provisions to the contrary in the Contract.
- 66.10 Notwithstanding anything in this clause 66, when specified in Contract



Information item 45 that the Contractor is to bear the full risk of encountering and dealing with materially adverse Site Conditions:

- 66.10.1 the Contractor is not entitled to the costs of dealing with materially adverse Site Conditions; and
  - 66.10.2 notwithstanding clause 88, if the Contractor is or will be delayed in reaching Completion as a result of dealing with materially adverse Site Conditions, the Contractor will not be entitled to an extension of time for Completion.
- 66.11 If a Variation is instructed or agreed as a result of Site Conditions, the parties' rights and obligations are not affected by clause 66.10.

## **67. Part A Site Condition Investigations**

- 67.1 The Contractor must perform Part A Site Condition Investigations as required to comply with clause 66.2. To the extent that additional consultants are required to be engaged in the performance of a Part A Site Condition Investigation, the Contractor must obtain a quote and submit a recommendation to the Principal's Authorised Person including a description of the risk(s) which will be mitigated in undertaking the Part A Site Condition Investigation recommended.
- 67.2 Subject to written direction of the Principal's Authorised Person to proceed with a Part A Site Condition Investigation, the Contractor will be entitled to the direct cost incurred by the Contractor arising from the engagement of additional consultant(s) not exceeding the quote submitted under clause 67.1 as an adjustment to the Part A Services Fee.
- 67.3 For the avoidance of doubt the Contractor's management, supervision, overheads, margin and any other self-performed work associated with Part A Site Condition Investigations is included in the Part A Service Fee and the Contractor will not be entitled to any Claims for reimbursement of such costs.

## **Design**

### **68. Collaboration in design, planning and cost control**

- 68.1 The Contractor must: with the skill, care and diligence of a Relevant Managing Contractor:
  - 68.1.1 contribute to deliberations of the Principal's Project Team on all matters concerning planning, plant, structural methods, constructability, servicing systems, programming, progressive cost control and coordination of the work of the Subcontractors, Suppliers and Contractor's Consultants. In this role, the Contractor is required to become an interactive agent in the Principal's Project Team's decision making, providing input before design and documentation solutions are finalised. This will be the primary role of the Contractor up to the time of calling and awarding subcontracts;
  - 68.1.2 assist the Principal and the Principal's Project Team to evaluate and initiate alternative construction methods and actively assist with the documentation of the selected scheme so the Principal's Project Team may collectively achieve an economic solution that



- satisfies the aesthetic and functional design requirements of the Project Brief.
- 68.1.3 provide Buildability Input and value engineering advice, including but not limited to buildability options, project staging, construction methodology input, work methods and operation requirements, aimed at achieving efficient functionality and site operation during all stages of construction;
  - 68.1.4 assist to manage the PPSCs in the production of the Design and do everything that would reasonably be expected of a Relevant Managing Contractor to manage the production of the Design;
  - 68.1.5 develop, in conjunction with the Principal's Project Team, a plan for the pro-active investigation and management of potential site and building conditions with the objective of minimising the impact on budget and program through comprehensive documentation of the requirements.
- 68.2 The Contractor must develop staging plans and construction programs incorporating the maximum possible flexibility and in the development of these plans must consult fully with the Principal's Project Team and with nominated representatives of the Principal including consultation when there are any proposed amendments to the plans and programs.
- 68.3 In addition to the Contractor's obligations to collaborate and participate in the working groups set out in Schedule 14 (Working Groups), the Contractor must attend meetings with the Principal's Project Team on matters of design, construction, budget and program as required. The Contractor must provide to the Principal's Project Team information on a monthly basis (in a project summary report) on the status on time, cost and specification issues, identifying any risks which require attention and making proposals for risk management of those issues.
- 68.4 The Contractor must contribute advice to the Principal's Project Team to handle sensitive political and media issues that may arise during the course of the project and liaise with surrounding and adjacent building owners and users.
- 68.5 The Contractor must do everything in its power to:
- 68.5.1 assist the Principal to minimise Variations;
  - 68.5.2 minimise the cost of Variations; and
  - 68.5.3 complete the Works within the Project Construction Cost Estimate if a GCS Offer is not accepted or not required pursuant to Contract Information item 16.
- 68.6 The Contractor must:
- 68.6.1 advise on design and constructability before the Subcontracts are let;
  - 68.6.2 provide advice on design and construction problems as they arise;
  - 68.6.3 provide costing advice to the Principal's Professional Service Contractors during the preparation of progressive estimates of cost;
  - 68.6.4 assist in the costing of acceptable alternatives to enable budgets to be achieved and participate in value management exercises and savings strategies as required;

- 68.6.5 propose innovations;
- 68.6.6 obtain the best price for each Subcontract consistent with Quality and value, and within the budget set for the Subcontract;
- 68.6.7 work collaboratively with the Principal and the Principal's Professional Service Contractors to minimise delays and to resolve design and construction problems arising from any cause;
- 68.6.8 attend and participate in meetings of the working groups set out in Schedule 14 (Working Groups) and any other group, as required by the Principal; and
- 68.6.9 provide whole of life facilities management advice.

## 69. Faults

- 69.1 This clause 69 applies to all Contract Documents, including Principal's Documents.
- 69.2 The Contractor, in addition to any responsibility to check Principal's Documents under clause 71 (if applicable), must check the Contract Documents, and in particular the Principal's Documents, and, subject to clause 69.4.1, notify the Principal's Authorised Person of any Faults by the earlier of the Date for GCS Offer and the Date for Part A Services Completion.
- 69.3 If a Fault (howsoever discovered) that involves ambiguity, inconsistency or discrepancy in or between the documents comprising the Contract (but not any omission, error or other fault in the documents comprising the Contract), is identified:
  - 69.3.1 the higher or more onerous standard or Quality shall apply and figures shall prevail over scaled dimensions in a discrepancy;
  - 69.3.2 the Principal's Authorised Person shall direct the Contractor as to the interpretation and construction to be followed and the Contractor shall, at the Contractor's own cost and expense comply with the direction;
  - 69.3.3 the Contractor acknowledges that:
    - (a) it assumes the risk of all delays and increased costs, losses and expenses caused or resulting from any such Fault and that any direction given pursuant to clause 69.3.2 shall in no event, constitute an approved Variation and the Contractor shall not be entitled to:
      - (i) make any Claim including for reimbursement or monetary compensation whether for damage for breach of contract or otherwise in respect of the direction or any such Fault; or
      - (ii) adjustment to the Actual Construction Sum or any fees whatsoever payable under this Contract
    - and
    - (b) no rule of construction shall apply to the disadvantage of one party on the basis that, that party put forward the documents comprising the Contract or any of them.

- 69.4 If a Fault (howsoever discovered) that involves an omission, error or other fault in the documents comprising the Contract (but not any ambiguity, inconsistency or discrepancy in or between the documents comprising the Contract), is identified, then provided that:
- 69.4.1 if the Fault was discovered by the Contractor, the Contractor has notified the Principal's Authorised Person within two (2) business days of discovery;
  - 69.4.2 the Contractor has incurred extra cost in complying with a Variation directed by the Principal's Authorised Person in relation to the Fault;
  - 69.4.3 the Fault is caused solely by an error in the Principal's Documents;
  - 69.4.4 the Fault is not in relation to a Buildability Issue; and
  - 69.4.5 the Fault could not have been avoided by a Relevant Managing Contractor complying with all of its obligations under this Contract,
- the Principal must instruct a Variation if the Principal requires a change to the Works as a result and the Contractor will be entitled to:
- (a) the cost of complying with a Variation;
  - (b) the reasonable and unavoidable cost of any aborted work (including Design); and
  - (c) the cost of delay if an entitlement to delay costs arises under clause 69.5.
- 69.5 The Contractor shall be entitled to delay costs associated with complying with a Variation instructed by the Principal where a Fault pursuant to this clause 69.4 is discovered by the Contractor after the Date for GCS Offer or the Date for Part A Services Completion and could not reasonably have been discovered by the Contractor prior to the Date for GCS Offer or the Date for Part A Services Completion by complying with its responsibility to check Contract Documents pursuant to clause 69.2.
- 69.6 The Contractor shall not be entitled to delay costs associated with complying with a Variation instructed by the Principal where a Fault pursuant to this clause 69.4 is discovered by the Contractor:
- 69.6.1 before the Date for GCS Offer or the Date for Part A Services Completion; or
  - 69.6.2 after the Date for GCS Offer or the Date for Part A Services Completion and should reasonably have been discovered by the Contractor prior to the Date for GCS Offer or the Date for Part A Services Completion by complying with its responsibility to check Contract Documents pursuant to clause 69.2.
- 69.7 If clause 71 is applicable the Contractor's only relief (including without limitation costs for delay, any aborted work, or the cost of complying with a Variation) in respect of Faults in the Contract Documents shall be as specified in clause 71.

## **70. Contractor's Documents**

- 70.1 The Contractor must produce Contractor's Documents which meet the

requirements of all of the following:

- 70.1.1 the Contract;
  - 70.1.2 Principal's instructions;
  - 70.1.3 Statutory Requirements;
  - 70.1.4 not used;
  - 70.1.5 the National Construction Code, and relevant Australian Standards; and
  - 70.1.6 if no other standard is specified in the Contract, then good industry standards applicable to the Works.
- 70.2 The Contractor acknowledges that the Contractor must not change the Principal's design in the Principal's Documents without the Principal's prior written approval. Whenever requested by the Principal, the Contractor must promptly confirm in writing that Contractor's Documents are consistent with and comply with the Principal's Documents and other relevant Contract Documents. If the Principal's design is required to be changed (with the Principal's prior written approval), the Variation must be dealt with under the procedures in clause 86.
- 70.3 The Contractor warrants that Contractor's Documents and any related Contractor's Design, materials, documents and methods of working will not infringe any Intellectual Property Rights.
- 70.4 The Contractor must produce Contractor's Documents which will ensure that the Works and every part of them are fit for the purposes required by the Contract. This responsibility is reduced to the extent that the Contractor's Documents are not fit because of design work by the Principal for which the Principal retains responsibility as stated in Contract Information Item 42.
- 70.5 The Principal retains responsibility for design work by the Principal except as provided by clause 71, if it applies.
- 70.6 The requirements of clause 70 are not reduced or affected by any Variations.
- 70.7 The Contractor is licensed to use the Principal's design and the Principal's Documents, only to the extent necessary for the purposes of complying with the Contractor's obligations under the Contract.

## **71. Adopting and Completing Principal's Documents**

- 71.1 If Contract Information item 42 specifies that the Contractor must accept full responsibility for Design carried out by the Principal, then before submitting Contractor's Documents to the Principal in accordance with clause 72 the Contractor (at its own cost) must:
- 71.1.1 check, and notify the Principal of details (together with appropriate supporting documents) of any Fault in the Principal's Documents;
  - 71.1.2 amend the documents to correct Faults so that, on Completion, the Works and every part will be fit for the purposes required by the Contract; and
  - 71.1.3 accept and adopt the Principal's Documents as if the Contractor prepared them so that they (amended by the Contractor as necessary) become Contractor's Documents when submitted

under clause 72.

- 71.2 Subject to any provisions of the Contract which provide for change to the Principal's Documents and clause 69 the Principal must instruct a Variation if the Contractor notifies the Principal of a Fault in the Principal's Documents and the Principal requires a change to the Works as a result.
- 71.3 If Principal's Documents adopted by the Contractor contain a Fault not notified to the Principal by the Contractor in accordance with clause 71.1.1:
- 71.3.1 the Contractor will be responsible for, and not entitled to payment for delays or the cost of any aborted work arising out of the Fault; and
  - 71.3.2 the value of any Variation the Principal instructs as a result of the Fault must not include the cost of such delays or aborted work.
- 71.4 The Contractor acknowledges that the Principal's design may be incomplete and may contain Faults or conflict with Statutory Requirements or the National Construction Code or other codes or standards which the Contractor is required to comply with under the Contract.
- 71.5 The Principal makes no representation concerning Principal's design and the Contractor is not entitled to rely on the completeness or accuracy of the Principal's design.
- 71.6 The Principal relies on the Contractor to identify and remedy Faults in the Principal's Documents.
- 71.7 If Contract Information item 42 specifies that the Contractor is required to assume responsibility for design carried out by the Principal, upon request by the Principal, the Contractor must, without being entitled to compensation, accept a novation of the Principal's Novated Consultant to the Contractor, and within 7 days of the Principal's request, execute a Consultant Deed of Novation.
- 71.8 If the Contractor does not execute a Consultant Deed of Novation within the timeframe specified in clause 71.7 the Contractor irrevocably appoints the Principal's Authorised Person its attorney and the Principal's Authorised Person may in the name of the Contractor execute the Consultant Deed of Novation.
- 71.9 Where the Principal's Novated Consultant has been novated to the Contractor:
- 71.9.1 the Contractor accepts full responsibility for Design carried out by the Principal and the Principal's Novated Consultant;
  - 71.9.2 the Contractor is solely responsible for the Principal's Novated Consultant and for its acts and omissions;
  - 71.9.3 the Contractor indemnifies the Principal against all claims (including Claims), actions, and loss or damage and all other liability arising out of any acts or omissions of the Principal's Novated Consultant;
  - 71.9.4 the Contractor's obligations under clause 68 are not limited;
  - 71.9.5 the Contractor must:
    - (a) not amend an agreement with a Principal's Novated Consultant without the written consent of the Principal;

- (b) not terminate an agreement with a Principal's Novated Consultant without the written consent of the Principal;
  - (c) engage a replacement Contractor's Consultant having appropriate professional qualifications and membership of appropriate professional associations where an agreement with a Principal's Novated Consultant or Contractor's Consultant has been terminated or frustrated;
  - (d) ensure that the Principal's Novated Consultant complete the design and construction of the Works;
  - (e) allow communication to occur between the Principal's Novated Consultant and the Principal and end users; and
  - (f) ensure that the Principal's Novated Consultant attends and participates in meetings, if required by the Principal.
- 71.9.6 the Contractor warrants that the costs payable to a Principal's Novated Consultant is an agreed not to exceed upper limit sum and that the Principal's Novated Consultant must provide evidence of all costs, fees and disbursements claimed for completed services and must provide invoices and receipts for the costs actually claimed.
- 71.9.7 the Contractor shall have no entitlement to any claim for:
- (a) any amounts in excess of the Principal's Novated Consultant's "not to exceed upper limit sum" (as adjusted by approved variations in accordance with the Contract);
  - (b) any costs, fees or disbursements not incurred by the Principal's Novated Consultants.

## **72. Submitting Contractor's Documents**

- 72.1 The Contractor must submit Contractor's Documents (as developed progressively and in stages, but so that each part is complete and in sufficient detail to explain what is proposed) to the Principal in electronic form at least 15 Business Days before the date the Contractor proposes to use them for construction (including procurement, manufacture or fabrication) of any part of the Works.
- 72.2 To the extent specified in the Contract, the Contractor must undertake design review and consider the Design with those persons specified in the Contract Documents, or those persons identified by the Principal, including those involved in using or occupying any part of the Works as end users. The Contractor must carry out such design review and consideration with the Principal and those other persons, and develop the Design and Contractor's Documents using the outcomes of this review and consideration. The Contractor must then submit to the Principal for its consideration any necessary amendments to the Principal's Documents proposed by the Contractor, including those arising out of the design review and consideration, prior to the Contractor submitting Contractor's Documents, as referred to in clause 72.1.
- 72.3 The Principal need not respond to the Contractor about the Contractor's Documents submitted.
- 72.4 If the Principal objects to the Contractor's Documents, the Contractor must take the objections into account and discuss them with the Principal. The

Contractor must correct any Fault in the Contractor's Documents.

- 72.5 Notwithstanding the design review and consideration by others under clause 72, the Contractor remains fully responsible for all Contractor's Documents.
- 72.6 Nothing the Principal does or omits to do in connection with this clause 72 makes the Principal liable for Contractor's Documents, or prevents the Principal from relying on or enforcing a right, under the Contract or otherwise.

## **Governance / Working Groups**

### **73. Collaboration**

- 73.1 The Parties are committed to working together in a cooperative and collaborative manner with a view to:
- 73.1.1 encouraging cooperation and innovation;
  - 73.1.2 establishing and maintaining an environment which encourages honest, open and timely sharing of information;
  - 73.1.3 sharing and transferring such behavioural aspects to all persons associated with the Works to achieve a successful outcome in all respects;
  - 73.1.4 delivering the Project for less than the Guaranteed Construction Sum (if the GCS Offer is accepted) or where a GCS offer is not accepted, for less than the Project Construction Cost Estimate;
  - 73.1.5 delivering the Project objectives including in relation to Quality and Completion before the Contractual Completion Date;
  - 73.1.6 achieving Value for Money for the Principal;
  - 73.1.7 the Project exceeding industry standards in relation to safety;
  - 73.1.8 the Project fostering excellent workplace relations and reflecting a positive culture of work;
  - 73.1.9 the project producing facilities that are ecologically responsible;
  - 73.1.10 the project receiving a high level of local and national public interest and recognition from building industry professional and construction organisations for excellence; and
  - 73.1.11 effectively managing risks and achieving all project objectives (the "**Project Objectives**").

### **74. Working Groups**

The Parties agree to establish and maintain working groups in accordance with Schedule 14 (Working Groups).

### **75. Interaction with Agency Personnel**

- 75.1 The Contractor may not contact any Agency Users directly outside of the agreed project communication protocols approved by the Principal. Any other communication by the Contractor with the Agency personnel must be conducted through the Principal's Authorised Person.



## Early Works

### 76. Early Works Direction

- 76.1 The Principal's Authorised Person may direct the Contractor to commence any part, parts or the whole of the Early Works prior to the Completion of Part A. If the Contractor has provided to the Principal a fixed price for a package or part of the Early Works, then the Principal may elect to accept that fixed price in respect of that package or part of Early Works.
- 76.2 A direction by the Principal's Authorised Person pursuant to clause 76.1 shall not be a direction to accelerate pursuant to clause 91.
- 76.3 The Contractor shall not be entitled to an adjustment of:
  - 76.3.1 the Part A Services Fee;
  - 76.3.2 the Fixed Management Services Fee;
  - 76.3.3 the Fixed Preliminaries Fee; or
  - 76.3.4 for the avoidance of doubt, the Guaranteed Construction Sum (if the GCS Offer is accepted by the Principal);on account of the Principal's Authorised Person issuing a direction pursuant to clause 76.1.
- 76.4 For the purpose of carrying out the Early Works, the Principal shall provide access to the Site in accordance with clause 63.
- 76.5 The Contractor must achieve Completion of an Early Works Milestone by the Contractual Completion Date in Contract Information item 19.

### 77. Payment of Early Works Fees

- 77.1 If the Principal issues a direction pursuant to clause 76.1, the Early Works Fees will be payable by the Principal to the Contractor in accordance with this clause 77 and clauses 97 to 108 (inclusive) of this Contract.
- 77.2 Where the Early Works or a part of the Early Works has been performed and the Principal elects to terminate this Contract pursuant to clause 6.2.5(b), 8.1.3, or 8.3.2, the Contractor will be paid that part of the Early Works Fees for any part of the Early Works that has been completed or performed. In the case of a fixed fee being accepted by the Principal and payable for the Early Works, the Principal will pay to the Contractor:
  - 77.2.1 that part of the fixed fee for the Early Works which equates to the value of work which has been completed or performed;
  - 77.2.2 the cost of Materials reasonably ordered by the contract for the Early Works which it is legally liable to accept, but only if on payment, those unfixed Materials become the property of the Principal, free from any Encumbrance;
  - 77.2.3 the reasonable, direct costs of removal of the Temporary Work and other things from the Site incurred by the Contractor, but only if the Contractor complies with a strict duty to mitigate costs; and
  - 77.2.4 costs reasonably incurred by the Contractor in the expectation of completing that part of the Early Works and not included in any other payment by the Principal.



**78. Possession of the Site**

If the Principal has not given the Contractor possession of the Site, the Principal must give the Contractor access to the Site sufficient to enable the Contractor to commence and carry out the Early Works for which commencement has been authorised subject to terms of this Contract.

**Construction****79. Setting out the Works**

- 79.1 The Contractor must set out and construct the Works at the locations and levels specified in or required by the Contract.
- 79.2 The Contractor may request in writing from the Principal any necessary additional information to be provided by the Principal relating to setting out the Works not included in the Contract Documents. The Contractor must make the request at least 10 Business Days prior to the date the Contractor proposes to use the information for set out for construction of the part of the Works to which the information applies. As soon as practicable, the Principal must provide any additional information which it has or can reasonably obtain.
- 79.3 While carrying out the Works, if the Contractor discovers or is made aware of any error in the location, level, dimension or alignment of the Works:
  - 79.3.1 the Contractor must notify the Principal;
  - 79.3.2 the Principal need not respond to the Contractor about any error;
  - 79.3.3 the Principal may instruct the Contractor regarding necessary rectification work and the Contractor must comply;
  - 79.3.4 the Contractor must rectify any error to ensure that the Works comply with the Contract; and
  - 79.3.5 subject to clause 69, if an error occurs because of the Principal's design for which the Principal retains responsibility and causes the Contractor to incur necessarily and unavoidably any extra costs, the Contractor may be entitled to those extra costs and an extension of time under clause 88.
- 79.4 The Contractor must give the Principal a copy of a survey showing the Works as constructed on the Site, including the relationship of the Works to any relevant property boundaries, easements, (including any right of way) and improvements on the Site. If requested in writing by the Contractor, the Principal may agree (but is not obliged to do so) by notice in writing that certain matters can be excluded from the survey. The survey must be performed by a registered surveyor or other surveyor to whom the Principal has no objection.

**80. Sequential Completion of Milestones**

- 80.1 If Contract Information item 18 specifies that this clause 80 is to apply, the Contractor must not commence the Works that are the subject of a Milestone until Completion of any nominated preceding Milestone in Contract Information item 19 has been achieved ("Predecessor Milestone") and the Principal has given possession of Site for the Works included in the Milestone pursuant to clause 63.

- 80.2 The Contractor will not be entitled to any Claims, extensions of time or delay costs where the Contractor is unable to or not permitted to commence the Works the subject of a Milestone because of a failure on the part of the Contractor to achieve Completion of a Predecessor Milestone. For the avoidance of doubt, the Contractor must still meet the Contractual Completion Date for each Milestone that follows a Predecessor Milestone, notwithstanding the delay, and bear any additional costs in relation to ensuring that such Contractual Completion Dates are met.

## **81. Construction**

- 81.1 The Contractor must supply all Materials and construct the Works in accordance with all of the following:
- 81.1.1 the Contract;
  - 81.1.2 the Contractor's Documents;
  - 81.1.3 the Principal's instructions concerning the works;
  - 81.1.4 Statutory Requirements;
  - 81.1.5 not used;
  - 81.1.6 the National Construction Code, and relevant Australian Standards; and
  - 81.1.7 if no other standard is specified in the Contract, then good industry standards applicable to the Works.
- 81.2 The Contractor must comply with this clause 81 and ensure that the Works and every part of them are fit for the purposes required by the Contract. This responsibility is reduced to the extent that the Works are not fit because of design work by the Principal for which the Principal retains responsibility.
- 81.3 The provisions of clause 81.2 are not reduced or affected by any Variations.

## **82. Testing**

- 82.1 The Contractor must:
- 82.1.1 Test (at its own cost) all parts of the Works specified in the Contract to be Tested;
  - 82.1.2 give the Principal the opportunity to witness the Tests by giving reasonable notice; and
  - 82.1.3 make the results available to the Principal.
- 82.2 The Principal may instruct the Contractor at any time to Test any part of the Works. The Principal must pay for the Tests (as an addition to the Contract Price) if the results of the Tests show full compliance with the Contract. Otherwise, the Contractor must pay.
- 82.3 The Contractor must repeat the Tests (at its own cost) of all parts of the Works where Defects have been found, until the results of these Tests, as reported in writing to the Principal, confirm that all Defects have been made good and that the Works comply with the Contract.

## **83. Defects**

- 83.1 The Contractor must identify and promptly make good all Defects so that

the works comply with the Contract. This requirement does not affect any other remedy or right of the Principal.

- 83.2 At any time before Completion, the Principal may instruct the Contractor to make good Defects within the time specified in a Defect Notice issued by the Principal.
- 83.3 If the Contractor fails to make good the Defects in the time specified in the Defect Notice, the Principal may have the Defects made good by others and then:
  - 83.3.1 the cost will be a debt due to the Principal and may be deducted from the Contract Price; and
  - 83.3.2 the Contractor will be responsible for the work involved in making good the Defects as if the Contractor had performed the work.
- 83.4 Nothing in this clause 83:
  - 83.4.1 reduces the Contractor's warranties and other liabilities and obligations under the Contract; or
  - 83.4.2 affects the Principal's common law right of damages.
- 83.5 If at any time before Completion the Contractor becomes aware of any defect which results from design or other work or actions for which it is not responsible, it must:
  - 83.5.1 promptly notify the Principal; and
  - 83.5.2 make good the defect as a Variation under clause 86 if instructed to by the Principal.

#### **84. Acceptance with Defects not made good**

- 84.1 The Principal, in its absolute discretion (and at any time, whether before or after Completion), may accept that specific Defects defined by the Principal need not be made good.
- 84.2 Before the Principal does so:
  - 84.2.1 the Principal may propose deductions from the Contract Price, and any terms it requires;
  - 84.2.2 if the Contractor agrees with the deductions and the terms, the Contract Price will be adjusted accordingly; and
  - 84.2.3 if the Contractor agrees with the terms but not with the proposed deductions:
    - (a) the Valuer must decide the value of the deductions as if a Variation applied under clauses 86.4 and 86.5, and the Contract Price must be adjusted accordingly; or
    - (b) if no Valuer is engaged (as may be specified in Contract Information item 56.A), the provisions of clauses 115 to 120 will apply, as appropriate.
- 84.3 If the parties do not agree in writing on the Principal's terms, the Contractor must make good the Defects defined by the Principal.
- 84.4 The Contractor remains liable for Defects whether known or not known at the time the Principal accepts that defined Defects need not be made good

under this clause 84.

## **85. Continuing Facility Functions**

- 85.1 The Contractor acknowledges that the Facility will continue to conduct Facility Functions within, on and around the Site.
- 85.2 The Contractor must ensure that any interruption to the Facility Functions caused by the Works is minimised to the fullest extent possible and that any unavoidable interruption is notified to the Principal's Authorised Person within a reasonable period prior to the proposed interruption, and the timing and duration of any interruption and reasonable mitigation steps to be employed are agreed with Principal's Authorised Person prior to such interruption.
- 85.3 The Contractor must submit to the Principal's Authorised Person, at the times and in the form directed by the Principal's Authorised Person, the Contractor's proposed procedures to ensure that the requirements in this clause 85 are achieved.
- 85.4 The Contractor shall not have any Claim against the Principal by reason of the continuation of the Facility Functions or the Agency's business within, on or around the Site or in relation to any directions pursuant to clause 85.5.
- 85.5 The Principal may direct the Contractor to take action to minimise disruption to the Facility Functions, including restrictions on vibrations, working hours and noisy works.

## **Changes to work**

### **86. Variations**

- 86.1 The Principal may instruct Variations in writing at any time before Completion (and after Completion in accordance with clause 113.1), and the Contractor must comply with these instructions.
- 86.2 Unless the Principal considers that urgent or special circumstances exist and instructs the Contractor to proceed, the Contractor must not begin to carry out a Variation until:
  - 86.2.1 the parties have agreed on its value (including delay costs under clause 89.1) and time implications; or
  - 86.2.2 a party has made a request to the Valuer, if a Valuer is engaged; or
  - 86.2.3 where no Valuer is engaged, the Principal instructs the Contractor to proceed.in each case in accordance with clause 86.4.
- 86.3 When requested to by the Principal, the Contractor must advise the Principal of its price (including amounts for any delay costs claimed in accordance with clause 89.1) for a proposed Variation and its effect (if any) on the time for Completion, or on any other matter specified, within the time specified in the request. In advising the Principal of its effect on the time for Completion, the Contractor thereby acknowledges its responsibility to take

all reasonable steps:

- 86.3.1 to carry out the work concurrently with other work whenever possible; and
  - 86.3.2 to otherwise minimise the effects of the Variation on the Contractual Completion Date, including for any Milestone.
- 86.4 If the parties agree that a Variation applies, they must endeavour to agree in writing on its value and effect on the time for Completion (if any). Failing agreement on value or time, either may request the Valuer to decide. If no Valuer is engaged (as may be specified in Contract Information item 56.A), then:
- 86.4.1 the provisions of clauses 118 to 120 apply, as appropriate and the principles for valuation and calculating time in clauses 3 and 4 of Schedule 7 (Agreement with Valuer) apply even though the Valuer is not involved; or
  - 86.4.2 the Principal may instruct the Contractor to carry out some or all the work involved as Daywork for the Daywork amount agreed prior to that work commencing.
- 86.5 The Contractor must only charge the Principal the value of the Variation that is agreed or calculated in accordance with clause 86.4 (as part of the Actual Construction Sum).
- 86.6 If the parties do not agree that a Variation applies, all issues relating to the claimed Variation must be dealt with under clauses 118 to 120. The principles for valuation and calculating time in clauses 3 and 4 of Schedule 7 (Agreement with Valuer) apply even though the Valuer is not involved.
- 86.7 The Contractor acknowledges that the development of the Contractor's Design (including developing the requirements for and detailed scope of the Works) (if applicable) by the Contractor does not constitute a Variation.
- 86.8 Regardless of any other provision of the Contract, if the Contractor considers that a Variation applies but the Principal has not instructed a Variation, the Contractor must make its Claim for a Variation within 5 Business Days from the start of the event giving rise to the Variation, or from the time when the event should have become known to the Contractor with reasonable diligence on its part.
- 86.9 Variations instructed by the Principal must be generally consistent with or of a similar nature to the type of work included in the Works.
- 86.10 The Contractor may propose in writing to the Principal a Variation for the Contractor's convenience. The Principal may approve the Variation but is not obliged to do so. The Principal's approval may be conditional. Subject to the conditions of the Principal's approval, the other relevant provisions of clause 86 and Schedule 7 (Agreement with Valuer) apply to any Variation proposed by the Contractor and approved as a Variation by the Principal.
- 86.11 The value of a Variation must not include any amount for the costs of delay or disruption (including in respect of the Contractor or any Subcontractor, Supplier or Contractor's Consultant) caused by the Variation.

## **87. Changes in Statutory Requirements**

- 87.1 If Statutory Requirements change after the closing date for the tender for the Contract and a change to the Works may be required as a result, the Contractor must promptly notify the Principal. The Principal must instruct a

Variation under clause 86 if the Principal requires a change to the Works as a result.

## Changes to time

### 88. Extension of time

- 88.1 If the Contractor is or will be delayed in reaching Completion, and subject to clause 80.2, the Contractor will be entitled to an extension of time for Completion for the number of days assessed by the Principal, if the Contractor satisfies the Principal that all the following conditions apply:
  - 88.1.1 the cause of the delay was beyond the control of the Contractor (including an act, default or omission of the Principal, but not including a Variation instructed or agreed by the Principal or otherwise determined);
  - 88.1.2 the Contractor has taken all reasonable steps to avoid and minimise the delay and its effects;
  - 88.1.3 the Contractor has given to the Principal each of the notices required under clauses 88.2 and 88.3; and
  - 88.1.4 the delay occurred to an activity or activities on a critical path of the then current Contract Program, as provided for in clause 46, and the Contractor has submitted this Contract Program with the notice required under clause 88.3.
- 88.2 The Contractor must give the Principal notice of the delay, its cause, relevant facts, and its expected impact, as soon as practicable and within 5 Business Days of it becoming evident to the Contractor that it is or will be delayed in reaching Completion.
- 88.3 Within 10 Business Days of commencement of the delay, the Contractor must give the Principal notice of the extension of time claimed, together with:
  - 88.3.1 the information required under clause 47.9;
  - 88.3.2 whether the Contractor considers that it is entitled to extra costs under clause 89 in respect of the delay (and the estimated amount of such extra costs); and
  - 88.3.3 other information sufficient for the Principal to assess the Claim.
- 88.4 If the delay continues for more than 10 Business Days, the Contractor must give a further notice every 10 Business Days thereafter, until after the delay ends, if the Contractor wishes to claim a further extension of time, together with further information of the kind required by clause 88.3.
- 88.5 An extension of time is only given for delays occurring on days on which the Contractor usually carries out work for the Contract.
- 88.6 When concurrent events cause a delay in reaching Completion and one or more of the events is within the control of the Contractor, then to the extent that the events are concurrent, the Contractor will not be entitled to an extension of time for Completion notwithstanding that another cause of the delay is such that the Contractor would have had an entitlement to an extension of time.
- 88.7 The Principal may in its absolute discretion for the benefit of the Principal extend the time for Completion at any time and for any reason, whether or

not the Contractor has claimed an extension of time. The Contractor is not entitled to an extension of time for Completion under this clause 88.7 unless the Principal exercises its discretion to extend the time for Completion.

- 88.8 The Contractor is only entitled to an extension of time for inclement weather under this clause 88 where each such relevant inclement weather event subsists for a continuous period of half of one full working Day. For the avoidance of doubt, the parties acknowledge and agree that, notwithstanding the foregoing, under no circumstances is the Contractor entitled to any delay costs under this Contract in respect of any delay caused by inclement weather.
- 88.9 This clause 88 is subject to the provisions of any other clause in the Contract which entitles the Contractor to an extension of time for Completion.

## 89. Delay costs

### Delays caused by the Principal

- 89.1 Subject to clause 80.2 and 89.2, the Contractor is entitled to delay costs up to the applicable amount set out in Contract Information item 55.A (**Daily Cap**) for each day in respect of which the time for Completion is extended because of a delay caused by:
- 89.1.1 a Variation, other than a Variation for which there is no payment for delays (including under clauses 66.8 (Site Conditions), 69.7 (Ambiguities) and 71.3.1 (Adopting Principal's Documents));
  - 89.1.2 a breach of the Contract by the Principal which causes delay, disruption or interference to the Contractor carrying out the Works;
  - 89.1.3 a statutory requirement to close the Site in its entirety due to Covid-19 cases on the Site; or
  - 89.1.4 a direction issued by the State Co-ordinator for South Australia pursuant to the *Emergency Management Act 2004* (SA) in respect of the Covid-19 pandemic.
- 89.2 Any payment under clause 89.1 is subject to all of the following exceptions and conditions:
- 89.2.1 it is a condition precedent to the Contractor's entitlement to payment of costs under clause 89.1 that the Contractor identifies in its written claim for an extension of time under clause 88.3 that the Contractor considers that it is entitled to extra costs in respect of the delay under clause 89.1 and provides an estimate of such extra costs;
  - 89.2.2 the Principal shall not be obliged to pay under clause 89.1 any more than one of the daily caps specified in Contract Information item 55.A in respect of any day (applied once only), such Daily Cap to be determined in accordance with clauses 89.2.3 and 89.2.4 (and this includes where there are concurrent delays to more than one Milestone);
  - 89.2.3 where an amount is payable under clause 89.1 in respect of a delay to the whole of the Works, the Daily Cap applicable to the whole of the Works applies and no separate amount is payable under clause 89.1 for a delay to any Milestone;



- 89.2.4 where clause 89.2.3 does not apply and an amount is payable under clause 89.1 in respect of a delay to:
- (a) only one Milestone, the Daily Cap applicable to that Milestone applies;
  - (b) more than one Milestone (each an "Impacted Milestone"), the highest Daily Cap specified for the Impacted Milestones shall apply (and if they are the same, the amount shall only apply once) as the maximum amount payable by the Principal under clause 89.1 in respect of all the Impacted Milestones;
- 89.2.5 delay costs shall only be calculated for working days on which the Contractor carries out work for the Contract, as determined in accordance with clause 48;
- 89.2.6 nothing in clause 89.1 shall oblige the Principal to pay extra costs for delay or disruption which have already been included in the value of a Variation or any other payment under the Contract;
- 89.2.7 the Contractor must take all reasonable steps to minimise its delay costs;
- 89.2.8 any costs claimed under clause 89.1 must be:
- (a) reasonable direct costs necessarily and unavoidably incurred by the Contractor as a result of the relevant delay; and
  - (b) attributable to the day in respect of which payment is claimed under clause 89.1;
- 89.2.9 the Contractor must provide documentary evidence, to the satisfaction of the Principal, that it has incurred the costs claimed and that the costs meet the requirements of clause 89.2.8; and
- 89.2.10 in the case of delays caused by compliance with a statutory requirement referred to in clause 89.1.3 or a direction referred to in clause 89.1.4, the Contractor's entitlement under clause 89.1 is also subject to clause 90.
- 89.3 The amount in Contract Information item 55.A will be reduced where the Principal (or anyone authorised by the Principal) is using or occupying any part of the Works prior to Completion, under clause 110. The reduction in the amount will be determined by the Principal acting reasonably. The reduced amount will be the same proportion of the full amount as is the value (as agreed by the parties or failing agreement, as determined reasonably by the Principal) of the remaining work to achieve Completion to the Contract Price.
- 89.4 Notwithstanding any other provision of this Contract, the Contractor's only remedies for delay, disruption or interference of any nature whatsoever caused by the Principal (including for a breach of the Contract by the Principal, as referred to in clause 89.1.2) whether under the Contract, at law or otherwise, are an extension of time for Completion under clauses 66 (Site conditions), 86 (Variations) or 88 (Extension of time), and delay costs under clause 89.1 and 89.2. For the avoidance of doubt, any amounts payable by the Contractor to Subcontractors, Suppliers or Contractor's Consultants for delay, disruption or interference of any nature whatsoever will not form part of the Actual Construction Sum and the Contractor will have no entitlement to be paid any additional amount by the Principal on



account of incurring such costs.

### **Delay to Completion**

- 89.5 If the Contractor fails to achieve Completion by the Contractual Completion Date as required by clause 111, the Contractor will be liable to pay the Principal liquidated damages as a debt due and owing at the rate stated in Contract Information item 55.B for every day after the Contractual Completion Date to and including the Actual Completion Date. If, however, the Contract is terminated under clauses 123 or 124, before the Contractor reaches Completion, any applicable liquidated damages for failure to achieve Completion by the Contractual Completion Date will run to the date of termination of the Contract.
- 89.6 The Principal, in its absolute discretion, may demand payment of the liquidated damages amount from the Contractor or may deduct, withhold or set-off the liquidated damages amount from any amount otherwise payable to, or security provided by the Contractor. A failure by the Principal at any time to demand payment or to deduct, withhold or set-off the liquidated damages will not amount to a waiver of or otherwise affect the Principal's rights and entitlements.
- 89.7 If the Contractual Completion Date is extended after the Contractor has paid or the Principal has deducted liquidated damages, the excess amount of liquidated damages paid by the Contractor or deducted by the Principal will be payable by the Principal to the Contractor, subject to any right of set-off which the Principal may have.
- 89.8 The amount of liquidated damages will be reduced where the Principal (or anyone authorised by the Principal) is using or occupying any part of the Works prior to Completion, under clause 110. This reduction in the amount of liquidated damages otherwise payable under the Contract will be determined by the Principal acting reasonably. The reduced amount will be an amount which is in the same proportion to the full amount of liquidated damages otherwise payable as is the value (as agreed by the parties or failing agreement, as determined reasonably by the Principal) of that part of the Works used or occupied is to the Contract Price.
- 89.9 The Contractor acknowledges that the rate for liquidated damages set out in Contract Information item 55.B represents a genuine pre-estimate of the amount of loss or damage, as calculated at the Date of Contract, which the Principal is likely to suffer if the Contractor fails to reach Completion by the Contractual Completion Date. The Contractor warrants that it will not challenge the rate for liquidated damages as being in the nature of a penalty.
- 89.10 The provisions of clauses 89.5 to 89.9 apply to a failure by the Contractor to achieve Completion by the Contractual Completion Date, in respect of the Works and also in respect of any Milestones.

## **90. Covid-19**

- 90.1 If the Contractor is or will be delayed in reaching Completion because of:
- 90.1.1 a Statutory Requirement to close the Site in its entirety due to Covid-19 cases on the Site; and
  - 90.1.2 a direction issued by the State Co-ordinator for South Australia pursuant to the *Emergency Management Act 2004* (SA) in respect of the Covid-19 pandemic,

the Contractor may be entitled to an extension of time for Completion under subclause 88.1.1 (subject to and in accordance with all the conditions in clause 88).

- 90.2 In the case of delays caused by compliance with a Statutory Requirement referred to in clause 90.1.1 whether as a single event or multiple events, the Contractor shall not be entitled to delay costs under clause 89 where the aggregate period of delay is 7 clear days or less after the closure of the Site in its entirety. If the duration of delay caused by compliance with a Statutory Requirement referred to in clause 90.1.1 as either a single event or multiple events exceeds 7 clear days in the aggregate the Contractor shall be entitled to delay costs under clause 89 (subject to the exceptions and conditions of that clause) for each working day in respect of which the time for Completion is extended, excluding the initial 7 clear days.
- 90.3 In the case of delay caused by a direction referred to in clause 90.1.2, the Contractor shall not be entitled to any delay costs where the delay is for a period of 7 clear days or less after the direction is issued. If the delay exceeds 7 continuous clear days in duration the Contractor shall be entitled to delay costs under clause 89 (subject to the exceptions and conditions of that clause) for each working day in respect of which the time for Completion is extended, including any working days in the initial 7 clear days.

## **91. Acceleration**

- 91.1 The Principal may instruct the Contractor to accelerate progress of the carrying out of the Works. The instruction must be in the form of an Acceleration Notice, and the Contractor must comply unless, before taking any steps to accelerate, it demonstrates to the satisfaction of the Principal that the acceleration as instructed cannot be reasonably achieved.
- 91.2 The Contractor is not entitled to payment under this clause 91 if no Acceleration Notice is issued.
- 91.3 Whenever possible, the parties must agree on the steps to be taken and basis for payment for acceleration before the Contractor takes those steps, or failing agreement the Principal must determine a reasonable value.
- 91.4 The Principal must pay the Contractor for acceleration (as an addition to the Contract Price) if it achieves the acceleration instructed by the Principal, but the value must take into account any relevant extensions of time which may be granted under clauses 66 (Site Conditions), 86 (Variations) or 88 (Extensions of time) for delay during the period of acceleration.

## **92. Principal's suspension**

- 92.1 The Principal may instruct in writing, pursuant to this clause, the Contractor to suspend progress of the Works and Temporary Work, and the Contractor must comply.
- 92.2 The Contractor must resume carrying out the Works and Temporary Work when instructed to by the Principal.
- 92.3 If the need for the suspension arises from the Principal's own act or omission, then the Contractor will be entitled to:
- 92.3.1 any extension of time granted under clause 86 (Variations) or 88 (Extensions of time); and
- 92.3.2 (as an addition to the Contract Price) its reasonable, direct Site

and off-Site costs of the suspension, unavoidably incurred, having taken all reasonable steps to minimise the costs.

92.4 The Contractor has no other remedies in connection with the suspension.

### **93. Suspension for disruption to Facility Functions**

93.1 In addition to the rights conferred on the Principal under clause 92 and for the avoidance of doubt, if, in the reasonable opinion of the Principal, the Contractor disrupts the Facility Functions in whole or part the Principal may instruct the Contractor to suspend progress of the Works in whole or part and the Temporary Works, and the Contractor must comply.

93.2 The Contractor must resume carrying out the Works in whole or part and Temporary Work when instructed to by the Principal.

93.3 In the event the Principal instructs the Contractor to suspend the Works or the Temporary Works in accordance with this clause 93, the Contractor will not be entitled to any costs, losses, expenses or damages costs, including delay costs or to any extension of time in respect of such suspension.

### **94. Contractor's suspension**

94.1 The Contractor may suspend work for or in connection with the Contract if the Principal:

94.1.1 has both;

(a) become liable to pay the Contractor the full amount of a Payment Claim made in accordance with clause 102 (excluding payments already made), or the Scheduled Amount; and

(b) failed to pay it within the time prescribed by clause 103.

94.2 Before it suspends work under this clause 94, the Contractor must give the Principal at least 2 Business Days' notice of its intention to do so. The Contractor may suspend work on expiry of the 2 Business Days if it has still not been paid.

94.3 The Contractor must resume all work within 3 Business Days of having been paid the amount referred to in clause 94.1.

94.4 If the Contractor elects to suspend work under this clause 94, then it may be entitled to an extension of time under clause 88, but despite clause 89, the Contractor will not be entitled to delay costs or damages under clause 89.

## **Key Performance Indicators**

### **95. KPIs**

If Contract Information item 67 specifies that this clause 95 is to apply:

95.1 during Part A the parties will discuss potential KPIs and work together to agree Key Performance Indicators that will apply to the services in Part B;

95.2 the Contractor will use the outcomes and suggestions from those discussions in Part A to submit as part of its GCS Offer (if applicable) a KPI Proposal;

95.3 the KPI Proposal must include the elements set out in Schedule 13 (KPIs);

- 95.4 if the KPI Proposal is accepted as part of the GCS Offer, then the KPIs in the KPI Proposal (or as otherwise agreed to by the Principal) will apply to the services provided in Part B (and clause 95.5, 95.6 and 95.8 will apply);
- 95.5 the Contractor acknowledges and agrees that Key Performance Indicators have been developed to align with the Project Objectives and the objectives of the Principal. The KPIs have been chosen to reflect aspects of the performance of the Work of particular importance to the Principal. The Contractor must meet each Key Performance Indicator set out in the agreed KPI Proposal;
- 95.6 within two weeks of the end of each KPI Period the Contractor must provide a progress report on its performance against the KPI's using the performance scoring system in the KPI Proposal;
- 95.7 if the Contractor achieves a KPI set out in the agreed KPI Proposal during the provision of Part B services, then the reward or payment set out in that agreed KPI Proposal will apply (if applicable); and
- 95.8 any additional amounts payable by the Principal by application of the KPI regime, do not preclude the Principal from making any claim against the Contractor (including for any monetary claim) to the extent that the Principal has not been compensated for such losses.

## Contract Bonus

### 96. Construction Bonus

- 96.1 Clause 96.2 will apply only if stated in Contract Information item 52A.
- 96.2 If the Contract Price specified in the Final Payment Schedule is less than the Guaranteed Construction Sum adjusted in accordance with the Contract, the Contractor shall be entitled to a bonus (**Construction Bonus**) equal to the amount calculated in accordance with the formula set out in Contract Information item 52B.

## Payment

### 97. The Contract Price

- 97.1 The Contract Price is the total moneys that is or becomes payable under this Contract.
- 97.2 If the GCS Offer is accepted by the Principal, the Contract Price referred to in clause 97.1 must not exceed an amount equal to the Guaranteed Construction Sum.
- 97.3 Unless the Principal elects to terminate the Contract in accordance with clauses 6.2.5(b), 8.1.3 or 8.3.2, the Contract Price will, subject to clause 97.2, be:

- 97.3.1 the Part A Services Fee;
- 97.3.2 the Early Works Fees (if applicable);
- 97.3.3 the Fixed Management Services Fee;
- 97.3.4 the Fixed Preliminaries Fee;
- 97.3.5 the Actual Construction Sum;

and is subject to:

- 97.3.6 the increases to the Contract Price if and to the extent required under the clauses referred to in clause 100.1; and
- 97.3.7 The decreases to the Contract Price if and to the extent required under the clauses referred to in clause 100.2.

- 97.4 The Contract Price, and any rates and/or lump sums it includes, are not to be adjusted for rise or fall in the cost of labour or Materials provided by the Contractor, or for new, changed or increased taxes, duties or other imposts.

## **98. Schedules of Rates**

- 98.1 At the Date of Contract, quantities in a Schedule of Rates are estimated only, and the Principal does not guarantee either the estimated quantities or the descriptions of the items.
- 98.2 If a Schedule of Rates is included in the Contract and the Contract stipulates that it is a Schedule of Rates contract, the Contract Price is the sum of the products of the actual quantities measured in accordance with the contract and the relevant rate for each item in the Schedule or Rates, plus all lump sums (if any). Before an item is completed, the estimated quantity will be used in the calculation of the Contract Price. After an item is completed, the actual quantity measured in accordance with the Contract will be used in the calculation of the Contract Price.

## **99. Provisional Sums and Provisional Quantities**

- 99.1 If the Contract includes a Provisional Sum, then the Provisional Sum shall not itself be payable to the Contractor and must not be included in the Contract Price.
- 99.2 The Contractor must carry out work which is the subject of a Provisional Sum as instructed in writing by the Principal, on the terms the Principal specifies in the instruction.
- 99.3 If the Principal instructs the Contractor pursuant to clause 99.2, to carry out work which will be subject of a Provisional Sum the Contract Price will be adjusted as follows:
  - 99.3.1 where the work or item to which the Provisional Sum relates is performed by a Subcontractor or a Supplier under a Subcontract or by a Contractor's Consultant, the Contract Price will be adjusted by the effect on the Actual Construction Sum in carrying out the work specified against the Provisional Sum, provided that the Contractor furnishes evidence of the incurring of such costs to the satisfaction of the Principal;
  - 99.3.2 where the work or item to which the Provisional Sum relates is performed or supplied directly by the Contractor, the additional reasonable cost to the Contractor of the work specified against the Provisional Sum, being the direct costs of labour, Materials and

plant plus an amount calculated by applying the margin specified in Contract information item 49 to that cost must be added to the Contract Price but without any further margin.

- 99.4 The Part A Services Fee or Fixed Services Management Fee (as applicable) and the Fixed Preliminaries Fee (as applicable) are deemed to include for work the subject of Provisional Sums (including risk, profit, preliminaries, supervision and overheads) and must not be adjusted on account of an instruction under clause 99.3 (other than to the extent permitted under clause 99.3.2).
- 99.5 If the Principal does not instruct the Contractor to carry out work which is the subject of a Provisional Sum the amount allowed must not be included in the Contract Price.
- 99.6 If the Principal instructs the Contractor to carry out work which is the subject of a Provisional Quantity and that instruction requires the Contractor to carry out a greater or lesser quantity of work than the Provisional Quantity, including that no work the subject of the Provisional Quantity will be carried out, the Contract Price must be adjusted by the amount calculated by multiplying the contract rate applicable to the Provisional Quantity work by the difference between the Provisional Quantity and the quantity of work carried out.

## **100. Entitlements**

- 100.1 The Contract Price is only to be increased if and to the extent required under any of the following clauses:
  - 100.1.1 clause 16.1 (Temporary Work);
  - 100.1.2 clause 17.1 (Work Methods);
  - 100.1.3 clause 66 (Site Conditions);
  - 100.1.4 clause 67 (Part A Site Condition Investigations);
  - 100.1.5 clause 69 (Faults);
  - 100.1.6 clause 79.3.5 (Errors)
  - 100.1.7 clause 82 (Testing);
  - 100.1.8 clause 86.5 (Variations);
  - 100.1.9 clause 89.1 (Delay costs);
  - 100.1.10 clause 91 (Acceleration);
  - 100.1.11 clause 92.3 (Principal's suspension);
  - 100.1.12 clause 98.2 (The Contract Price - Schedule or Rates);
  - 100.1.13 clause 99 (Provisional Sums); and
  - 100.1.14 clause 107 (Interest on late payments).
- 100.2 The Contract Price may be decreased if required by the Contract. Clauses

that allow decreases in the Contract Price include:

- 100.2.1 clause 69 (Faults);
  - 100.2.2 clause 83.3 (Defects);
  - 100.2.3 clause 84.2 (Acceptance with Defects not made good);
  - 100.2.4 clause 86.5 (Variations);
  - 100.2.5 clause 98.2 (The Contract Price - Schedules of Rates);
  - 100.2.6 clause 99 (Provisional Sums); and
  - 100.2.7 clause 113.1 (After Completion).
- 100.3 The Contractor is not entitled to any other payments related to the subject matter of the Contract, under the Contract or otherwise, except:
- 100.3.1 under clauses 96, 123 and 124;
  - 100.3.2 for breach of the Contract by the Principal; or
  - 100.3.3 where this exclusion is not permitted by law.
- 100.4 Subject to clause 100.5 and 100.7, the Guaranteed Construction Sum (if the GCS Offer is accepted) will only increase if and to the extent that the Contract Price increases as the result of the operation of any of the clauses specified in clause 100.1 after the submission of the GCS Offer.
- 100.5 The Guaranteed Construction Sum (if the GCS Offer is accepted) will not, in any circumstance, increase as the result of a Variation, proposed and approved, for the Contractor's convenience under clause 86.10.
- 100.6 The Guaranteed Construction Sum (if the GCS Offer is accepted) will only decrease if and to the extent that the Contract Price decreases as the result of the operation of any of the clauses specified in 100.2 after the submission of the GCS Offer.
- 100.7 Any increase in the Guaranteed Construction Sum (if the GCS Offer is accepted) pursuant to clause 100.4 must be equal to the amount by which the Contract Price increases as applicable.
- 100.8 Any decrease in the Guaranteed Construction Sum (if the GCS Offer is accepted) must be equal to the amount by which the Contract Price decreases as applicable.

## **101. Prepayment**

- 101.1 The Contractor may claim Prepayment, as advance payment against the Contract Price (separate from Payment Claims) at any time before achieving Completion if all the following apply:
- 101.1.1 the total amount claimed for Prepayment is no more than the amount in Contract Information item 47;
  - 101.1.2 in consideration of the Principal accepting the Undertakings and providing the Prepayment, the Contractor has provided separate Undertakings to the Principal for the amounts of the Prepayment, including those arranged and provided by Subcontractors, Suppliers and Contractor's Consultants, for each of the Contractor, Subcontractor, Supplier and Contractor's Consultant amounts assigned;
  - 101.1.3 the Contractor has assigned those Prepayment amounts directly to



- the Subcontractors, Suppliers and Contractor's Consultants in writing, and has notified the Principal of the assignments; and
- 101.1.4 the Subcontractor's Suppliers and Contractor's Consultants on whose behalf Undertakings have been provided have acknowledged in writing to the Principal that they understand the Principal may make a demand against the Undertakings in the circumstances provided for in this clause 101.
- 101.2 The Contractor may claim for itself no more than one-third of the Prepayment amount in Contract Information item 47.
- 101.3 The Principal must pay the amount claimed within 10 Business Days after all the conditions in clauses 101.1 and 101.2 have been met.
- 101.4 The Principal must return Undertakings provided for Prepayment, after deducting the value of the Prepayment made (as adjusted by any earlier such deductions) from payments otherwise payable to the Contractor, as follows:
- 101.4.1 on achieving Completion of the whole of the Works;
- 101.4.2 as requested in writing by the Contractor; or
- 101.4.3 when the total of the Prepayment made (as adjusted by such deductions) and Payment Claims to date equals or exceeds the Contract Price.
- 101.5 If, following achieving Completion of the whole of the Works or the earlier termination of the Contract (as applicable) or when the Contractor requests the return of Undertakings, the full amount of the Undertakings has not been deducted from payments otherwise payable to the Contractor, the Principal may make a demand against the Undertakings for any amount which has not been deducted.

## **102. Payment Claims**

- 102.1 Unless otherwise specified in the Contract, the Contractor must make Payment claims for the Claimed Amount based on the Value Completed and as specified in clause 102. Subject to clause 102.2, Payment Claims must be made monthly on the date in each month specified in Contract Information item 53.A, starting no earlier than the 14th day after the Date of Contract and ending with the Final Payment Claim referred to in clause 105. Payment Claims made monthly are to include amounts for work carried out to the end of the month in which the Payment Claim is made.
- 102.2 The Contractor must submit Payment Claims in the form of Schedule 5 (Payment Claim Worksheet), or in such other form to which the Principal agrees.
- 102.3 The amount the Contractor is entitled to claim by way of a Progress Payment will be comprised of the following:
- 102.3.1 a proportion of the Fixed Preliminaries Fee equivalent to the proportion of the construction completed (provided that the aggregate of all amounts claimed by the Contractor under this clause 102.3 shall not exceed the Fixed Preliminaries Fee);
- 102.3.2 a proportion of the Actual Construction Sum equivalent to the proportion of the construction (or design if clause 71 applies) completed as at the date of the Payment Claim;



- 102.3.3 a proportion of the Fixed Management Services Fee calculated by applying to the Fixed Management Services Fee a percentage equivalent to the proportion that the Actual Construction Sum incurred to the date of the Payment Claim bears to the projected total of Actual Construction Sum (provided that the aggregate of all amounts claimed by the Contractor under this clause 102.3 shall not exceed the Fixed Management Services Fee);
  - 102.3.4 a proportion of the Early Works Fees equivalent to the proportion of the construction completed (provided that the aggregate of all amounts claimed by the Contractor under this clause 102.3 shall not exceed the Early Works Fees); and
  - 102.3.5 a proportion of the Part A Services Fee equivalent to the proportion of the services provided (provided that the aggregate of all amounts claimed by the Contractor under this clause 102.3 shall not exceed the Part A Services Fee);
- 102.4 A Payment Claim must:
- 102.4.1 identify the amount the Contractor is entitled to at the time of the Payment Claim; and
  - 102.4.2 claim that amount less previous payments made.
- 102.5 Payment Claims must be accompanied by:
- 102.5.1 all relevant calculations;
  - 102.5.2 a completed and true statutory declaration executed on the date of the Payment Claim, in the form of Schedule 9 (Statutory Declaration) relating to payment of employees, Subcontractors, Suppliers and Contractor's Consultants, workers compensation insurance premiums, payroll tax payments and to all Subcontract monies held in trust by the Contractor.
  - 102.5.3 Conformance Records showing conformance with particular requirements of the Contract, as provided in the Contract, and the certificates in the form of Schedule 6 (Certificate of Compliance), signed by the Contractor and also by any Contractor's Consultants involved in the work, verifying that all work that has been done including Contractor's Design and construction with Materials that have been supplied are in accordance with the Contract;
  - 102.5.4 evidence of Principal's Novated Consultant's claimed costs for completed services including fees and disbursements (including but not limited to invoices and receipts); and
  - 102.5.5 any other information specified in the Contract.
- 102.6 Payment Claims, the Claimed Amount and the Value Completed must not include amounts for:
- 102.6.1 subject to the provisions of clause 102.7, work or Materials not yet incorporated into the Works; or
  - 102.6.2 Claims (including Claims for Variations not agreed to by the Principal, nor determined by the Valuer, nor determined under clause 120 or otherwise) not agreed to by the Principal or Claims not yet determined, as referred to in clauses 119 to 120.
- 102.7 Subject to all of the following conditions, the Contractor may include an amount in a Payment Claim for Materials intended for incorporation in the

Works but not yet incorporated, if:

- 102.7.1 prior to the Contractor giving the Payment Claim, the Principal agrees in writing to pay the Contractor for Materials not yet incorporated into the Works;
  - 102.7.2 the Contractor provides a detailed schedule of the specified Materials and evidence that the Materials are marked in the name of the Principal and are insured for their full value, no later than 10 Business Days before submitting the Payment Claim;
  - 102.7.3 where the value of the Materials exceeds \$100,000, prior to submitting the Payment Claim, the Contractor provides an Undertaking equal to the amount to be included in the Payment Claim for the specified Materials not yet incorporated into the Works;
  - 102.7.4 the only unfixed Materials included in the valuation are those that have become or, on payment for Materials still unfixed, will become the property of the Principal free of any Encumbrance;
  - 102.7.5 the Contractor provides to the Principal evidence of the Contractor's ownership; and
  - 102.7.6 for any such Materials imported or to be imported into Australia the Contractor has given the Principal a clean on board bill of lading for the Materials, drawn or endorsed to the order of the Principal, appropriate insurance certificates and a Customs invoice for the Materials.
- 102.8 The Contractor warrants for itself and for and on behalf of Subcontractors and Suppliers that no Encumbrance exists over any Materials incorporated into the Works by the Contractor. If the Contract or the Contractor's employment under the Contract is terminated by the Principal, the Contractor must ensure that the Principal, in respect of any unfixed Materials for which payment has been made or which have been appropriated to the Contract, may enter upon any premises where the Materials are stored and take possession of these Materials.
- 102.9 Upon unfixed Materials becoming the property of the Principal pursuant to clause 102.7.4, they are thereby entrusted to the Contractor for the purpose of carrying out the Works and the Contractor is solely liable for their care.
- 102.10 For work carried out and allowed in each Payment Claim, the following applies in calculating the Claimed Amount and the Value Completed:
- 102.10.1 For work covered by a lump sum
    - (a) The Contractor may claim a lump sum by instalments with each Payment Claim calculated as follows. The total of the lump sum instalments must never exceed the total of the lump sum.
    - (b) For each activity or element of the Works listed in Schedule 5 (Payment Claim Worksheet) under "activity" (column 1), record the percentage completed under "activity completed%" (column 4). The value of work claimed for that activity is the percentage of the "value of activity" or lump sum (column 3) and is recorded under "Value Completed \$" (column 5). The subtotal of "Value Completed \$" amounts

for all activities is recorded in column 5.

102.10.2 For work covered by a Schedule of Rates:

- (a) For each item carried out listed in Schedule 5 (Payment Claim Worksheet) under “activity” (column 1), calculate the product of the “quantity completed” (column 4) actually carried out (measured in accordance with the Contract) and its rate (column 3) in the Schedule of Rates as the “Value Completed \$” and record it in column 5.
- (b) The subtotal of “Value Completed \$” of work for all Schedule of Rates items is recorded in the Payment Claim Worksheet under “Value Completed \$” (column 5).
- (c) The Value Completed at the time of the Payment Claim is the sum of the values of work completed (and subtotal “Value Completed \$” amounts).

102.11 Where the payment has been made by the Principal for unfixed Materials and the Principal acting reasonably believes that the Contractor is in breach of:

102.11.1 its obligation to ensure that the Principal is able to enter upon any premises where Materials are stored and take possession of these Materials; or

102.11.2 its warranty that no Encumbrance exists over Materials, the Principal will be entitled to withhold, deduct or set off from any payment due to the Contractor on any account an amount equivalent to value of the unfixed Materials the subject of the breach until such time as the Contractor’s breach under sub-clause 102.11.1 or 102.11.2 is rectified.

### 103. Payments

103.1 When given a Payment Claim by the Contractor, the Principal must within 4 Business Days:

103.1.1 if it agrees with the Payment Claim, adopt it as its assessment; or

103.1.2 if it disagrees with the Payment Claim, prepare its own assessment, in consultation with the Contractor if appropriate, and give to the Contractor a Payment Schedule.

103.2 The Principal’s assessment in the Payment Schedule must:

103.2.1 identify the Payment Claim to which it relates;

103.2.2 indicate the amount of the payment (if any) that the Principal proposes to make as the Scheduled Amount; and

103.2.3 if the Scheduled Amount is less than the Claimed Amount (excluding payments already made) indicate why it is less and (if it is less because the Principal is withholding payment for any reason), the Principal’s reasons for withholding payment.

103.3 If the Scheduled Amount which the Principal proposes to pay is less than the Claimed Amount (excluding payments already made), the Contractor may give notice of an Issue under clause 118.

103.4 Reasons why the Scheduled Amount may be less than the Claimed Amount (excluding payments already made) or for withholding payment

include:

- 103.4.1 disagreement with the Claimed Amount;
  - 103.4.2 progressive retention of the Completion Amount under clause 104;
  - 103.4.3 the costs and estimated costs associated with remedying Defects;
  - 103.4.4 amounts the Principal is otherwise entitled to withhold, set-off or otherwise deduct;
  - 103.4.5 Prepayment deductions in accordance with clause 102; and/or
  - 103.4.6 exclusion of amounts the Principal has not agreed, or is not required, to pay in connection with a Claim under clause 115 or another provision of the Contract.
- 103.5 The Principal must pay to the Contractor as a Progress Payment the Scheduled Amount by the later of:
- 103.5.1 the number of days specified in Contract Information item 53.C (or if no period is specified then 6 Business Days) after expiry of the 4 Business Day period in clause 103.1; and
  - 103.5.2 the period specified in the Contract, after the Contractor takes any other actions and complies with any other obligations required which are stated in the Contract to be pre-conditions to payment before any payment is payable.
- 103.6 Unless stated otherwise in the Contract, all payments to the Contractor must be made by electronic funds transfer to the Contractor's account specified in the relevant Payment Claim Worksheet provided by the Contractor.
- 103.7 Payment by the Principal is not evidence that the Principal accepts the value, quantity or Quality of work or that the Contractor has complied with the Contract or that the Contractor has any particular entitlement, and is payment on account only. Payments made by the Principal do not affect or prejudice any of the Principal's rights, powers, remedies or defences and are subject to review pursuant to the provisions of clauses 118 to 120 or otherwise as permitted by the Contract (including by litigation).

#### **104. Completion Amount**

- 104.1 The Completion Amount, if one is specified in Contract Information item 48, becomes an entitlement of the Contractor on Completion of the whole of the Works. The Contractor may then claim it in the next Payment Claim, subject to the Principal's right to set-off under clause 108.
- 104.2 The Principal will retain the Completion Amount from Payment Claims when the Value Completed exceeds the Project Construction Cost Estimate less the Completion Amount.
- 104.3 The Principal will own any interest earned on the monies retained for the Completion Amount.
- 104.4 The Contractor may claim the balance of any Completion Amount upon Completion.

#### **105. Final Payments**

- 105.1 The Contractor must submit a Final Payment Claim within 65 Business Days after achieving Completion of the whole of the Works. The Final

Payment Claim must include any Claim not previously claimed in a Payment Claim, and which is then permitted under clauses 102 and 105 of the Contract, being a Claim agreed to by the Principal or if not agreed, having been determined in accordance with the Contract.

- 105.2 Within 15 Business Days of receiving the Final Payment Claim (or, if the Contractor has not submitted a Final Payment Claim, within 75 Business Days after the Contractor has achieved Completion of the whole of the Works), the Principal must give the Contractor a Final Payment Schedule stating the amount payable by one party to the other and where the Contractor has submitted a Final Payment Claim, complying with the relevant provisions of clause 103.
- 105.3 Any payments by the Contractor to the Principal in accordance with the Final Payment Schedule must be made within a further 10 Business Days after it is issued.
- 105.4 Any other Claim not previously brought which the Contractor is then entitled under the Contract to bring must be made (separate from the Final Payment Claim) within 65 Business Days after achieving Completion of the whole of the Works. Otherwise it is barred. If the Principal agrees to a Claim involving money under this clause 105.4, the Principal will make payment within 20 Business Days of such agreement or of it being determined in accordance with the Contract.
- 105.5 The issue of the Final Payment Schedule is conclusive evidence that all necessary increases to the Contract Price or to any other entitlement of the Contractor have been made, except for those required by:
- 105.5.1 arithmetical error; or
- 105.5.2 valuation of Variations under clause 86 relating to a Claim made in accordance with clause 105.4; and
- 105.5.3 resolution under clauses 115 to 120 (as applicable) of:
- (a) any Claim (other than Variations valued under clause 86 made in accordance with clause 105.4; or
- (b) any other Issue raised which may properly be raised in accordance with the Contract during a period of 20 Business Days following the issue of the Final Payment Schedule.
- 105.6 The Contractor's liability under the Contract or otherwise is not affected by the issue of the Final Payment Schedule. The Contractor's liability continues until any limitation period under statute expires.

## **106. Audit**

- 106.1 The Principal may, at its own expense, at any time prior to Completion and for 12 months thereafter carry out or cause to be carried out in a fair and reasonable manner an audit of any aspect of the operations of the Contractor relating to this Contract. The scope of the audit shall not include:
- 106.1.1 the Contractor's profitability;
- 106.1.2 confidential personal information; and
- 106.1.3 Intellectual Property Rights such as designs, methods or innovations that do not have a direct link to the Contract deliverables.

- 106.2 As per the Principal's rights pursuant to clause 106.1, the Principal may at any time undertake an audit (on an Open Book Basis) in respect of all matters pertaining to the Actual Construction Sum including but not limited to the value of Subcontracts and Contractor's Consultant contracts comprising the Actual Construction Sum and the Contractor must comply and facilitate in all respects with any request for information and further information which the Principal may make.
- 106.3 Upon production of the written authorisation or appointment by the Principal, the Contractor must, for the purpose of any such audit, permit the Principal or any person engaged by the Principal for that purpose:
- 106.3.1 to question and observe any Contractor's personnel engaged in relation to this Contract in the presence of a representative of the Contractor; and
  - 106.3.2 to have full and sufficient access to any premises, storage facilities, records (including personnel records) and books relevant to the performance by the Contractor of its obligations under this Contract.
- 106.4 The Principal may for the purpose of auditing the Contractor's performance under this Contract carry out such investigations as it considers necessary and may carry out such investigations with or without providing to the Contractor notice or identification.
- 106.5 In the exercise of its rights under this clause the Principal must minimise, so far as is practicable, any inconvenience or interruptions to the business of the Contractor or the performance by the Contractor of its obligations under this Contract.
- 106.6 If an audit carried out under this clause reveals a material breach of the Contractor's obligations under this Contract or confirms a default previously denied by the Contractor, then the Contractor must pay all costs and expenses incurred by the Principal in relation to the audit.
- 106.7 Following completion of any audit, the Contractor must meet with the Principal to discuss in good faith any recommendations made.
- 106.8 The Contractor will at its own cost act upon and implement any reasonable recommendations made by the Principal arising from the results of an audit under this clause.

#### **107. Interest on late payments**

A party which fails to make a payment by the time or by the last day of the period prescribed by the Contract must pay interest to the other party, at the rate in Contract Information item 54, for the period the payment is late.

#### **108. Set-off**

- 108.1 If the Principal claims a sum under or arising out of the Contract or any other contract between the Principal and the Contractor, the Principal may:
- 108.1.1 withhold, deduct or set-off the claimed sum against any sum to which the Contractor is otherwise entitled under or arising out of the Contract; and
  - 108.1.2 make a demand against the Undertakings provided under clause 62 for any amount of the claimed sum in excess of the sum to



which the Contractor is then otherwise entitled.

## **109. Security of Payments Act (South Australia)**

109.1 In this clause 109:

- 109.1.1 **“SOP Act”** means the Building and Construction Industry Security of Payment Act 2009 (SA);
- 109.1.2 **“Subcontractor”** means any party engaged by or on behalf of the Contractor, or a contractor of the Contractor (including at any subcontract level), to carry out work which forms part of the Works or related goods and services;
- 109.1.3 Any other term which is not expressly defined in this Contract will, unless the context otherwise requires, have the meaning given to it in the SOP Act.

109.2 The Contractor must:

- 109.2.1 notwithstanding any other provision of the Contract, serve a copy of any notice or application under the SOP Act on the Principal by hand delivery at the address for the Principal stated in the Contract, or such other address as may be notified by the Principal to the Contractor from time to time;
- 109.2.2 when the Contractor becomes aware of any claim or lien made, including when a Subcontractor is entitled to suspend work pursuant to the SOP Act, within 24 hours after any notice is given or received, give the Principal a copy of any written communication of whatever nature in relation to the SOP Act which the Contractor receives from such Subcontractor, and the Contractor acknowledges that this obligation represents a fundamental term of the Contract, a breach of which is a breach of the Contract by the Contractor; and
- 109.2.3 ensure that any subcontract or any arrangement that the Contractor has with a Subcontractor contains terms equivalent to the terms of this clause 109, so as to enable the Contractor to comply with its obligations under this clause 109.

109.3 A payment claim for the purposes of the SOP Act is a Payment Claim pursuant to clause 102. However, a Payment Claim pursuant to clause 102 is only a payment claim for the purposes of the SOP Act if it meets the requirements of the SOP Act for such a claim.

109.4 The date prescribed in clause 102 as the time at which the Contractor may deliver payment claims is, for the purpose of the SOP Act, the reference date.

109.5 Failure by the Principal to set out in a Payment Schedule an amount which the Principal is entitled to retain, deduct, withhold or set-off (whether under the Contract or otherwise) from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise that right to retain, deduct, withhold or set-off any amount.

109.6 Payment of moneys for which the Principal has become liable to pay the Contractor by reason of the SOP Act shall not be evidence of the value of the Works or related goods and services, an admission of liability or evidence

that the Works or related goods and services has been executed satisfactorily, but shall be payment on account only.

109.7 If the Contractor suspends the whole or part of the carrying out of the Works pursuant to the SOP Act:

109.7.1 the suspension shall not affect the Contractual Completion Date; and

109.7.2 except to the extent that section 28(3) of the SOP Act applies, the Principal shall not be liable for any costs, expenses, damages, losses or other liability including delay or disruption costs whatsoever suffered or incurred by the Contractor as a result of the suspension.

109.8 If the Principal becomes aware that a Subcontractor is or is likely to become entitled to:

109.8.1 suspend work or the supply of related goods and services (forming part of the Works or related goods and services) under section 28 of the SOP Act; or

109.8.2 exercise a statutory lien under section 11(3) of the SOP Act over any unfixed plant and materials supplied by the Subcontractor for use in connection with the carrying out of work forming part of the Works or related goods and services,

109.8.3 the Principal may at its absolute discretion, pay the Subcontractor such money that is or may be owing under the SOP Act to the Subcontractor in respect of the work forming part of the Works or the supply of goods or services related to the Works . Any such amount paid by the Principal is recoverable from the Contractor as a debt due and payable to the Principal on demand and the Principal may set off that amount from money otherwise payable to the Contractor.

109.9 The Contractor must indemnify the Principal from and against any claim, demand, action, suit or proceeding and all damages, losses (including financial losses), expenses or costs (including legal costs on a full indemnity basis) suffered or incurred by the Principal arising out of and in connection with:

109.9.1 a suspension by a Subcontractor of work (which forms part of the Works or related goods and services) under the SOP Act;

109.9.2 a Subcontractor exercising a statutory lien under the SOP Act over unfixed plant and materials supplied by the Subcontractor for use in connection with the carrying out of work forming part of the Works or related goods and services;

109.9.3 a failure by the Contractor to comply with any of its obligations under clause 109.2;

109.9.4 a failure by the Contractor to pay any Subcontractor; or

109.9.5 the Principal exercising its rights under clause 109.8.

## Completion

### 110. Early use

110.1 Before the Contractor achieves Completion, the Principal (and anyone



authorised by the Principal) may use or occupy (but is not obligated to) any part of the Works which is sufficiently complete, or the whole of the Works and then:

110.1.1 the Contractor's responsibilities are not affected, except if they are reduced under clause 51.4 or if the Principal (or anyone authorised by it to use or occupy any part of the Works) causes the Contractor's work to be hindered; and

110.1.2 the Principal becomes responsible for any additional insurance required.

110.2 If the Principal requires to use or occupy any part or the whole of the Works before the Contractor achieves Completion, as provided in clause 110.1, the Principal must give not less than 15 Business Days' notice in writing to the Contractor that the Principal will be using or occupying a part or parts, or the whole of the Works and must specify those parts, or that the whole of the Works is, to be so used or occupied.

110.3 The Contractor must do everything necessary to provide to the Principal promptly, but in any event no later than 15 Business Days after receipt of the notice in clause 110.2, all documents and other things relevant to the parts to be used or occupied as are listed in the second paragraph of the definition of Completion, and to otherwise provide full assistance and co-operation to the Principal (and anyone authorised by the Principal) in the use and occupation of the Works.

## **111. Completion**

111.1 The Contractor must achieve Completion by the Contractual Completion Date.

111.2 When the parties agree that Completion has been achieved, each party acting reasonably, the Principal must give the Contractor a notice stating the Actual Completion Date.

111.3 The Principal may in its absolute discretion attach a List of Outstanding Items to the notice given pursuant to clause 111.2.

111.4 The List of Outstanding Items must identify all Outstanding Items which must be executed, remedied, addressed or completed by the Contractor, and the timeframes for completion of each item.

111.5 The Contractor must complete the Outstanding Items within the timeframes in the List of Outstanding Items, and otherwise, to the satisfaction of the Principal.

## **112. Close-out workshop**

112.1 The Principal may convene a close-out workshop within 20 Business Days after achieving Completion of the whole of the Works. .

112.2 The parties must attend the close-out workshop and must jointly decide who else will attend.

112.3 Each party and any others who participate in the workshop must meet their own costs for attendance at the close-out workshop, and the parties will

share equally the other costs.

### **113. After Completion**

- 113.1 At any time after Completion:
  - 113.1.1 the Principal may instruct the Contractor to make good Defects within the time specified in a Defect Notice;
  - 113.1.2 if the Contractor fails to make good the Defects in the time specified in the Defect Notice, the provisions of clauses 83.3 and 83.4 will apply; and
  - 113.1.3 the Principal may instruct a Variation in connection with any Defect instead of requiring the Defect to be made good under clause 113.1.1.
- 113.2 This clause 113 does not reduce the Contractor's liability, whether arising under the Contract or otherwise. The Contractor's liability continues until any limitation period under statute expires.
- 113.3 This clause 113 does not affect the Principal's rights under clause 84.

## **Limitation and Exclusion of Liability**

### **114. Limitation and Exclusion of Liability**

- 114.1 Except for any liability in respect of the Prescribed Heads of Liability (which remain unlimited), the Principal and the Contractor agree to limit the liability of each party to the other party (whether arising out of breach of contract, tort or otherwise at law or in equity) to an amount equal to the greater of:
  - 114.1.1 the Guaranteed Contract Sum (or in the absence of a Guaranteed Construction Sum, the Project Construction Cost Estimate); and
  - 114.1.2 the sum of all amounts which the party is entitled to recover under the insurance policies required to be held by the Contractor or Principal under this Contract in respect of liability to the other party (or would have been entitled to recover, acting as a Model Claimant).
- 114.2 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, wrongful act, omission or negligence.
- 114.3 Subject to clause 114.4, a party will not be liable to the other party for:
  - 114.3.1 loss of business opportunity;
  - 114.3.2 loss of goodwill;
  - 114.3.3 loss of profit;
  - 114.3.4 loss of contracts;
  - 114.3.5 loss of anticipated savings;
  - 114.3.6 loss of revenue; or
  - 114.3.7 the cost of capital or other financing costs,

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

114.4 The exclusion of liability in clause 114.3 does not apply to a party's liability:

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

114.4.2 for any liquidated damages or any other payment of loss or damages expressly provided for under this Contract.

## CLAIM AND ISSUE RESOLUTION

### Claim resolution

#### 115. Contractor's Claims

115.1 Any Claim not made, assessed and determined under another provision of the Contract must be made, assessed and determined under this clause 115 (unless determination of the Claim is regulated by a separate procedure under any applicable legislation).

115.2 The following clauses deal with Claims made, assessed and determined under another provision of the Contract:

clause 66 (Site conditions);

clause 69 (Faults) (in part);

clause 71 (Adopting Principal's Documents);

clause 82 (Testing);

clause 84 (Acceptance with Defects not made good);

clause 86 (Variations) (in part);

clause 87 (Changes in Statutory Requirements);

clause 88 (Extensions of time);

clause 89 (Delay costs);

clause 101 (Prepayment);

clause 102 (Payment Claims);

clause 104 (Completion Amount); and

clause 105 (Final Payments) (in part)

115.3 Where the Contractor is entitled to make a Claim under a provision of the Contract, including under clause 105.4, which does not specify a time for making the Claim or otherwise in relation to the Contract or the Works, then the Claim must be made within 20 Business Days from

115.3.1 the start of the event giving rise to it; or

115.3.2 the time the event should have become known to the Contractor, with reasonable diligence on its part.

115.4 If the Contractor fails to make a Claim within the specified time, the Contractor will not be entitled to interest on any amount involved in the Claim for the period before the Contractor made the Claim. However, any

Claim not made within the times specified in clause 105 is barred.

- 115.5 Each Claim must include information sufficient for the Principal to assess the Claim, without the need for further information. This includes the factual and legal basis, detailed quantification and responses by the Contractor to the questions set out in paragraphs 1.1 and 1.2 of the Schedule 8 (Expert Determination Procedure).
- 115.6 The Principal must assess a Claim, and reach agreement about it with the Contractor or reject it, within 20 Business Days after receiving the Claim with all information required by clause 115.5.
- 115.7 If the Principal agrees to a Claim involving money, the Contractor may claim the agreed amount only by including it in a Payment Claim under clause 102.9 or 105.1 (excluding a Claim made under clause 105.4, for which the Principal will make payment within 20 Business Days of such agreement or of it being determined in accordance with the Contract).
- 115.8 If a Claim is rejected or not agreed it will be an Unresolved Claim, and then the Contractor may notify the Principal that it disputes the rejection or failure to agree as an Issue, within 10 Business Days after the end of the 20 Business Day period referred to in clause 115.6.
- 115.9 The provisions of clauses 115.3 to 115.8 (where no alternative provision applies or these provisions are consistent with the context) apply generally to all Claims whether made under clause 115 or under another provision of the Contract.

#### **116. Exclusion of proportionate liability**

- 116.1 To the extent permitted by law, the operation of Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA), and any equivalent statutory provision, is excluded in relation to all rights, obligations and liabilities in connection with the Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise. The Contractor acknowledges that clauses 116.1 to 116.3 constitute a special limitation for the purposes of Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) (Proportionate Liability) Amendment Act 2005* (SA).
- 116.2 If the Contractor breaches any of its obligations under this Contract, and the operation of any legislation results in the Principal being unable to recover some part of the consequential loss or damage from the Contractor ("the Apportioned Loss"), as a separate obligation under the Contract, the Contractor indemnifies the Principal in respect of the Apportioned Loss and must pay the Principal the amount of the Apportioned Loss immediately on demand by the Principal.
- 116.3 The Contractor must ensure that its Subcontracts, include provisions that are functionally equivalent to this clause 116.1 to 116.3.

#### **117. PPSA**

- 117.1 The parties acknowledge that the Contract may constitute a Security Interest in favour of the Principal.
- 117.2 If the Principal determines that the Contract (or a transaction in connection with it) is or contains a Security Interest, the Contractor agrees to do anything (including obtaining consents, signing and producing documents,

getting documents completed and signed and supplying information) which the Principal asks and considers necessary for the purposes of:

- 117.2.1 ensuring that the Security Interest is enforceable, perfected and otherwise effective;
  - 117.2.2 enabling the Principal to apply for any registration, complete any Financing Statement or give any notification, in connection with the Security Interest; or
  - 117.2.3 enabling the Principal to exercise rights in connection with the Security Interest.
- 117.3 The Principal is not required to give any notice under the PPSA (including notice of a Verification Statement) unless the notice is required by the PPSA to be given (even though the parties have waived the right to receive notice).
- 117.4 The Contractor shall notify the Principal as soon as the Contractor becomes aware of any of the following:
- 117.4.1 if any Personal Property which does not form part of the Principal's Personal Property becomes an Accession to the Principal's Personal Property and is subject to a Security Interest in favour of a third party, that has attached at the time it becomes an Accession;
  - 117.4.2 if any of the Principal's Personal Property is located or situated outside Australia or, upon request by the Principal, of the present location or situation of any of the Principal's Personal Property; or
  - 117.4.3 if the Contractor parts with possession of the Principal's Personal Property.
- 117.5 The Contractor shall not:
- 117.5.1 create any security interest or lien over any of the Principal's Personal Property whatsoever (other than Security Interests granted in favour of the Principal);
  - 117.5.2 sell, lease or dispose of its interest in the Principal's Personal Property;
  - 117.5.3 give possession of the Principal's Personal Property to another person except where the Principal expressly authorises it to do so;
  - 117.5.4 permit any of the Principal's Personal Property to become an Accession to or Commingled with any asset that is not part of the Works or the Site; or
  - 117.5.5 change its name without first giving the Principal 15 Business Days' notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.
- 117.6 The Contractor shall not be entitled to Claim any costs or expenses arising from or in connection with its compliance with this clause 117.
- 117.7 Neither the Principal nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Contractor will not authorise, and will ensure that no other party authorises, the disclosure of such information. This clause 117 does not prevent disclosure where such

disclosure is required under section 275 of the PPSA because of the operation of sections 275(7) (b), (d) and (e) of the PPSA.

117.8 In this clause 117:

117.8.1 PPSA means the *Personal Property Securities Act 2009* (Cth) as amended from time to time, and any of its regulations; and

117.8.2 the expressions "Accession", "Commingle", "Financing Statement", "Personal Property", "Security Interest" and "Verification Statement" have the meanings given in the PPSA.

## Issue resolution

### 118. Notification of Issue

118.1 The Contractor may dispute an assessment, determination or instruction of the Principal, or an Unresolved Claim, by giving notice to the Principal (copies to the Principal's senior executive named in Contract Information item 9.A) of an Issue within 20 Business Days after the assessment, determination or instruction, or within 10 Business Days as provided in clause 115.8 for an Unresolved Claim.

118.2 Either party may give notice to the other (copied to that party's senior executive) of an Issue (excluding an Issue referred to in clause 118.1, but including a claim by the Principal) about the meaning or effect of the Contract, or about any matter arising under, out of or in any way connected with the Contract, within 20 Business Days after becoming aware of the Issue.

118.3 The parties must follow the Issue resolution procedure in clauses 118, 119 and 120 before either commences proceedings or takes similar action.

118.4 Subject to clauses 105 and 115, if the Principal or the Contractor (as applicable) gives notice of an Issue but not within the time provided by clauses 118.1 and 118.2, (in the case of the Contractor) or within the time provided by the clause 118.2 (in the case of the Principal) and it is resolved in favour of the party giving notice of the Issue, that party will not be entitled to interest on any amount involved in the Issue for the period before notice of the Issue was given.

118.5 The Principal is not liable to pay damages (whether in contract, for negligence or otherwise) for making an incorrect assessment, determination or instruction.

118.6 The Principal's assessments, determinations or instructions may, subject to this Contract, be reviewed and revised in any Expert Determination or court proceedings which might follow this Issue resolution procedure.

118.7 This Issue resolution procedure does not prevent a party from seeking an urgent declaration or injunction from a court.

118.8 Notwithstanding any other provision in the Contract, if an Issue relates to a Claim or a potential Claim then the Principal is not obliged to proceed with any procedure in clause 118, 119 or 120 for the resolution of the Issue until the Contractor has fully particularised the Claim by providing the information required in respect of a Claim under clause 115.5 (that is, information establishing the factual and legal basis of the Claim, detailed quantification and responses by the Contractor to the questions set out in

paragraphs 1.1 and 1.2 of Schedule 8 (Expert Determination Procedure)).

#### **119. Resolution by senior executives**

- 119.1 If a party gives notice of an Issue under clause 118, the senior executives named in Contract Information items 9.A and 12 must promptly confer to try to resolve the Issue.
- 119.2 A party is not entitled to refer an Issue to Expert Determination until 15 Business Days after giving notice of an Issue under clause 118.
- 119.3 A party may only refer an Issue to Expert Determination by giving notice to the other party (specifying the Issue to be decided and copied to that party's senior executive) within the number of days specified in Contract Information item 57 or if no such period is specified, then within 20 Business Days of becoming entitled to under clause 119.2.
- 119.4 An Issue for which notice has not been given within the time limited by and in the form prescribed by clause 119.3 is barred from Expert Determination or any other action or proceedings (including court proceedings).

#### **120. Expert Determination**

- 120.1 If an Issue is to be referred to Expert Determination under clause 119, the parties must endeavour to agree on the Expert to be engaged. If they cannot agree within 20 Business Days of the receipt of a notice under clause 119.3, the Expert will be nominated (on the application of either party) by the person named in Contract Information item 58. That person must not nominate:
  - 120.1.1 an employee of the Principal or the Contractor;
  - 120.1.2 a person who has been connected with the Works or the Contract; or
  - 120.1.3 a person who the Principal and the Contractor have discussed and have not been able to agree on.
- 120.2 When the person to be the Expert has been agreed or nominated, the Principal, on behalf of both parties, must engage the Expert by letter of engagement (copied to the Contractor) setting out:
  - 120.2.1 the Issues referred to the Expert for determination;
  - 120.2.2 the Expert's fees;
  - 120.2.3 the procedure for Expert Determination in Schedule 8 (Expert Determination Procedure); and
  - 120.2.4 any other matters which are relevant to the engagement.
- 120.3 The Principal and the Contractor must pay in equal measure the fees and out-of-pocket expenses of the Expert for the determination, and bear their own costs, but if issues arising under a subcontract are also determined in the determination, then that part of the Expert's fees and expenses commensurate with the proportion of time spent and expenses incurred relating to the subcontract issues must be borne between the Contractor and the subcontractor, and the balance must be paid in equal measure by the Principal and the Contractor and all parties must bear their own costs.
- 120.4 If required by either party, before the procedure for Expert Determination is commenced, or at any subsequent stage, each party must, in equal shares, place sufficient funds in a trust account or provide to the other party other



adequate security for the payment of the fees and out of pocket expenses of the Expert for the determination.

- 120.5 The procedure for Expert Determination is set out in Schedule 8 (Expert Determination Procedure).
- 120.6 In answer to any Issue referred to the Expert by a party, the other party may raise any defence, set-off or cross-claim.
- 120.7 If the Expert determines that one party must pay the other an aggregated amount exceeding the amount in Contract Information item 59 (calculating the amount without including interest on it, and after allowing for set-offs), or if the Expert's determination involves a finding which does not involve paying a sum of money, then either party may commence litigation in respect of the amount referred to above (which amount exceeds the amount in Contract Information item 59) or the finding which does not involve paying a sum of money, as applicable, but only within 40 Business Days after receiving the determination.
- 120.8 If the Expert fails (without the agreement of both parties) to follow the procedure set out in Schedule 8 (Expert Determination Procedure), or exhibits bias, and if the parties cannot agree to measures that rectify the failure or bias, then either party has the right to require the Expert's engagement to be terminated and to require that the Expert's determination or determinations (if any have been made) be set aside, and may commence legal proceedings for an order to that effect, but only within a period ending on the expiry of 40 Business Days after the Expert has issued a determination.
- 120.9 Unless a party has a right to commence litigation under this clause 120:
- 120.9.1 the parties must treat each determination of the Expert as final and binding and give effect to it; and
- 120.9.2 if the Expert determines that one party owes the other money, that party must pay the money within 20 Business Days.
- 120.10 The representative of the Principal for all of the purposes of this clause 120 is the person specified in Contract Information item 61. This person (and his/her address) may differ from the person (and his/her address) for the giving of notices to the Principal, as specified in clause 52.

## **121. Parties to perform the Contract**

- 121.1 During Claim and Issue resolution procedures under clauses 115 to 120, the parties must continue to perform their obligations under the Contract.

## **TERMINATION**

### **122. Termination for Contractor's Default or Insolvency**

- 122.1 The Principal may terminate the Contractor's employment under the Contract for Contractor's Default or Contractor's Insolvency by giving notice, as set out in this clause 122.
- 122.2 In the case of Contractor's Default, the Principal must first give notice to the Contractor that it has 5 Business Days after the notice is given to the Contractor to remedy the Contractor's Default.
- 122.3 If the Contractor fails to give the Principal a notice containing clear



evidence that it has remedied a Contractor's Default, or fails to propose steps reasonably acceptable to the Principal to remedy the Contractor's Default, the Principal may give the Contractor a notice terminating its employment under the Contract.

- 122.4 Nothing in this clause 122 affects or negates the Principal's common law rights to terminate or for damages.

If a right to terminate exists at common law, a notice to terminate at common law may be given without first giving notice to remedy a default.

- 122.5 If the Contractor:

122.5.1 Fails to comply with the requirements for Subcontracts set out in clause 54, 57 and 58 of the Contract;

122.5.2 Fails to obtain the Subcontractor or Supplier warranty required under clauses 56 and 57.2 of the Contract; or

122.5.3 Otherwise fails to comply with any provision in relation to Subcontractors in clauses 53 to 58 of the Contract;

the Principal may remove or suspend (for a period determined by the Principal) the Contractor from the Department Prequalification System. The Contractor has no claim for damages or other entitlement whether under the Contract or otherwise for any such action taken by the Principal.

- 122.6 Clause 122.5 does not limit any rights or remedies of the Principal either under this Contract, the Department Prequalification System "Conditions of Prequalification" or otherwise.

- 122.7 In the case of Contractor's Insolvency, the Principal may give the Contractor a notice terminating its employment under the Contract.

- 122.8 If the Principal terminates the Contractor's employment under this clause 122, it may at its sole discretion, employ others to complete the Works and all the following will then apply:

122.8.1 The Contractor must leave the Site as soon as reasonably practicable and remove all Temporary Work and Materials it has brought onto the Site, but must leave any Temporary Work and Materials required by the Principal to have the Works completed.

122.8.2 The Contractor must assign to the Principal the Contractor's rights and benefits in all its contracts concerning the Works, warranties and unconditional undertakings, bank guarantees, insurance bond, other security of a similar nature or purpose and retention held by the Contractor, with effect from the date of termination of its employment under the Contract.

122.8.3 The Contractor must consent to a novation to the Principal or its nominee of all Subcontracts and its other contracts concerning the Works, as required by the Principal and must procure at the time of entering into each Subcontract and other contracts, the consent in writing of all of its Subcontractors, Suppliers and Contractor's Consultants to the novation. The Principal may at any time make payments and may deduct, withhold or set-off any amounts to be paid under the novated contracts from amounts otherwise payable to the Contractor or from any Undertakings given on the Contractor's behalf.

122.8.4 The Contractor must do everything and sign all documents

necessary to give effect to this clause 122, and it irrevocably appoints the Principal as its attorney to do this in its name if it fails to do so.

122.8.5 If, on Completion, the cost to the Principal of completing the Works exceeds the amount that would have been paid to the Contractor to complete them, taking into account any Prepayments, then the difference will be a debt due by the Contractor to the Principal.

122.8.6 The Principal may make provisional assessments of the amounts payable to the Principal under clause 122.8.5 and may demand them under the Undertakings.

### **123. Termination for Principal's convenience**

123.1 The Principal may terminate the Contract, by giving notice with effect from the date stated in the notice, for its convenience and without the need to give reasons.

123.2 The Contractor must comply with any instructions of the Principal to wind down and stop work.

123.3 The Contractor must leave the Site by the date stated in the termination notice and removal all Temporary Work it has brought onto the Site for constructing the Works, except for those items identified in the termination notice as to be retained on the Site.

123.4 If the Principal terminates the Contract pursuant to clause 123.1, subject to the Principal's rights under the Contract, including to withhold or set off payments and recover damages, and subject to any other legal rights or obligations of the Principal, the Principal must pay the Contractor:

123.4.1 the Value Completed for all work carried out (as determined under clauses 102 and 103) to the date the termination notice takes effect, after taking into account previous payments and any Prepayments, and any deductions, retentions or set-offs to which the Principal is entitled under this Contract;

123.4.2 the cost of Materials reasonably ordered by the Contractor for the Works which it is legally liable to accept, but only if on payment these unfixed Materials become the property of the Principal, free of any Encumbrance;

123.4.3 the reasonable, direct costs of removal of the Temporary Work and other things from the Site incurred by the Contractor, but only if the Contractor complies with a strict duty to mitigate costs;

123.4.4 an amount of 2% of the unpaid portion of the Contract Price, (which in the case of termination prior to a GCS Offer being submitted will be calculated as 2% of the unpaid portion of the Part A Services Fee, the Early Works Fees (if applicable), the Fixed management Services Fee and the Fixed Preliminaries Fee only), after taking into account the amount payable under clause 123.4.1; and

123.4.5 costs reasonably incurred by the Contractor in the expectation of completing the Works and not included in any other payment by the Principal.

123.5 The Principal must return the Undertakings, subject to its rights under the

Contract.

- 123.6 The payments referred to in clause 123.4 are full compensation for termination under this clause 123, and the Contractor has no Claim for damages or other entitlement whether under the Contract or otherwise.
- 123.7 The Contractor must, wherever possible, include in all Subcontracts and other contracts an equivalent provision to this clause 123.

#### **124. Termination for Principal's default**

- 124.1 If the Principal fails to pay the Contractor any amount in accordance with the Contract which is not in dispute, or commits any fundamental breach of the Contract, then the Contractor may give notice requiring the Principal to remedy the default within 20 Business Days after receiving the notice.
- 124.2 If the Principal fails to remedy the default, or fails to propose steps reasonably acceptable to the Contractor to do so, the Contractor may issue a notice terminating the Contract and clauses 123.3 to 123.6 will then apply and the Principal must pay the Contractor the applicable amounts referred to in clause 123.4 as its sole remedy and in full compensation for the Principal's breach.
- 124.3 The Contractor has no other right to terminate the Contract, under the common law or otherwise.

#### **125. Termination notices**

Notices under clauses 122, 123 and 124, must be in writing and be delivered by hand, registered post or equivalent

### **MEANINGS**

#### **126. Interpretation**

- 126.1 Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender.
- 126.2 No legal interpretation applies to the disadvantage of any party on the basis that the party provided the Contract Documents, or any part of them.
- 126.3 Notes are provided to guide the parties and do not form part of the Contract.

#### **127. Definitions**

Some words and phrases have special meanings in the Contract. In some cases, the defined meaning is different from the meaning that the word or phrase might have in ordinary usage, or it might include conditions that don't normally apply. In order to understand the Contract, you need to take these special meanings into account.

All defined words and phrases have initial capitals (except for 'day' and 'end users') in these General Conditions of Contract unless they are one of the following 12 basic terms:

• day	• Contractor's Consultant
• Contract	• Contractor
• Date of Contract	• Subcontractor
• Site	• Principal
• Subcontract	• Supplier
• Works	• Valuer

## 128. Meanings of words and phrases

Wherever the following words and phrases are used in this Contract with initial capitals (except for 'day' and 'end users'), they have the special meaning set out below them in this clause 128 unless the context requires otherwise.

### **Acceleration Notice**

A written instruction under clause 90 by the Principal to the Contractor to accelerate progress of the Works, titled "Acceleration Notice".

### **Acceptance of Tender**

A letter sent by the Principal to the Contractor accepting the Contractor's tender for the Works the subject of this Contract as referred to in clause 11.

### **Actual Completion Date**

The date on which Completion of the Works or of a Milestone (as applicable) is achieved by the Contractor.

### **Actual Construction**

This expression has the same meaning as in section 16A of the *Parliamentary Committees Act 1991*.

### **Actual Construction Sum**

The costs of the Contractor properly and actually incurred by the Contractor, comprising a total of the Contractor's Consultant fees subject to clauses 71.9 and 102.5.4, tendered cost of Subcontracts, inclusive of GST, plus (or less) valid adjustments pursuant to the terms of the Subcontracts, including the costs of Variations which the Principal has directed the Contractor to execute and the cost of amounts payable by the Contractor to the Subcontractor, Supplier or Contractor's Consultant on account of negligent acts or omissions for which the Principal is liable to the Contractor but excluding:

1. the cost of rectifying non-complying or defective work;
2. the cost of rectifying any damage caused by the act or omission of any Subcontractor, Supplier or Contractor's Consultant;
3. any other costs not properly incurred in respect this Contract (including for the carrying out of any variations which are not the subject of a Variation or acceleration other than where the Principal has provided a direction to accelerate in accordance with clause 90);
4. any costs attributable to a termination of a Contractor's Consultant or Subcontract and the engagement of another Subcontractor, Supplier or

Contractor's Consultant;

5. any of the costs contemplated by clause 53.4.3; and
6. the costs of Variations proposed by the Contractor for the Contractor's convenience in accordance with clause 86.10,

and, for the avoidance of doubt, shall not include any Excluded Costs.

**Agency**

Means the South Australian Government Agency named in Contract Information item 63.

**Alternative GCS Offer**

An offer by the Contractor under clause 7.2 that offers Value for Money to the Principal and materially meets the requirements of this Contract for a GCS Offer but which differs in its price, timing or scope such that it does not meet all of the requirements of a GCS Offer.

**Arrangement**

Means:

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

**Buildability Input**

Includes input of the kind reasonably to be expected of a Relevant Managing Contractor, and which input:

1. identifies and resolves Buildability Issues;
2. identifies whether the Design is, and how it can be made consistent with the proposed methods, techniques and staging of construction to be used by the Contractor; and
3. identifies whether and how, if the Works were to be built by the Design they would enable the use of sound construction techniques and otherwise enable construction in a manner consistent with achieving the outcomes required by the Contract.

**Buildability Issue**

Any ambiguity, discrepancy, inconsistency or lack of co-ordination or integration of, between or within any documents comprising the Contract, the Design documents or the Contractor's Design documents which are likely to increase the cost, reduce or adversely affect the Quality or delay the completion of the Works.

**Building Projects WHS Requirements**

The document entitled "PC-WHS1 and BPWHSR Work Health and Safety" available at [https://www.dit.sa.gov.au/\\_data/assets/pdf\\_file/0020/1423343/PC-WHS1-and-BPWHSR-WORK-HEALTH-AND-SAFETY.pdf](https://www.dit.sa.gov.au/_data/assets/pdf_file/0020/1423343/PC-WHS1-and-BPWHSR-WORK-HEALTH-AND-SAFETY.pdf) forming part of the Contract Documents.

**Business Day**

Any day other than a Saturday, Sunday, public holiday in South Australia, or 27,

28, 29, 30 or 31 December.

**Certificates of Compliance**

Certificates in the form of Schedule 6 (Certificate of Compliance), as referred to in clause 102.5.3.

**Claim**

A claimed entitlement of the Contractor under or arising out of or connected with the Contract, in tort, in equity, under any statute, or otherwise. It includes a claimed entitlement to an extension of time or for breach of Contract by the Principal.

**Claimed Amount**

The amount claimed by the Contractor in a Payment Claim.

**Completion**

The state of the Works or a Milestone (as applicable) being complete, except for Defects not known.

This includes, without limitation:

1. the supply to the Principal of all Schedule 1 Subcontractor's Warranties, operating and maintenance manuals, licences, access codes, as-built drawings or work-as-executed drawings;
2. certificates, authorisations, approvals and consents from statutory authorities and service providers;
3. those certificates required for the occupation, use and maintenance of the Works; and
4. all other documents, Testing, training and other requirements specified in the Contract.

**Completion Amount**

An amount stated in Contract Information item 48 and included in the Contract Price, which under clause 104 may be claimed by the Contractor after the Actual Completion Date of the whole of the Works.

**Conformance Records**

Records which show conformance by the Contractor with particular requirements of the Contract, as provided in the Contract and as referred to in clause 102.

**Consultant Deed of Novation**

The deed of novation in the form of Schedule 16 (Consultant Deed of Novation) (completed with all relevant particulars) between the Principal, the Contractor and the Principal's Novated Consultant.

**Contract**

The agreement between the Contractor and the Principal constituted by the Contract Documents.

**Contract Documents**

All the documents listed or referred to in clause 11.1.

**Contract Information**

The document described as such in the Contract Documents, which sets out

information for the purposes of the Contract.

**Contract Price**

The amount determined in accordance with clause 97 and 6 to 9, subject to adjustment in accordance with the Contract.

**Contract Program**

The program described in clause 47.

**Contractor**

The party named as such in Contract Information item 10, and including its successors and permitted assigns.

**Contractor's Authorised Person**

The person appointed to act for the Contractor under clause 2, including as named in Contract Information item 11.

**Contractor's Consultant**

A consultant engaged by the Contractor to design parts of the Works or to provide other professional services. It includes a consultant whose contract with the Principal is novated to one with the Contractor.

**Contractor's Default**

A substantial breach of the Contract by the Contractor, including, without limitation, any of the following:

1. abandoning the carrying out of the Works;
2. suspending progress of the carrying out of the Works in whole or part without the written agreement of the Principal, except for suspension under clause 94;
3. significantly failing to achieve Scheduled Progress;
4. failing to comply with an instruction in writing or confirmed in writing by the Principal;
5. failing to carry out the Works with professional skill and care and competence;
6. failing to maintain any registration or licence required by law to carry on activities required under the Contract;
7. failing to comply with the requirements for Subcontracts set out in clauses 54, 57 and 58 of the Contract;
8. failing to obtain the Subcontractor or Supplier warranty required under clauses 56 and 57.2 of the Contract;
9. otherwise failing to comply with any provision in relation to Subcontracts in clauses 53 to 58 of the Contract;
10. failing to provide security as required under clause 62 of the Contract;
11. failing to effect and maintain insurance policies as required under the Contract;
12. the Principal has served on the Contractor default notices on more than three (3) occasions in respect of the same breach of a Key Performance Indicator irrespective of whether the Contractor has remedied the breaches;
13. failing to complete Outstanding Items to the satisfaction of the Principal



within the timeframes in the List of Outstanding Items;

14. failing to comply with clause 7.1;
15. failing to comply in part or in whole with the requirements of subclauses 130.2 to 130.5 (inclusive) in relation to Modern Slavery; or
16. failing to comply in part or in whole with the requirements of subclauses 131.1 and 131.3 in relation to fraud control; or
17. failing to comply in part or in whole with the requirements of subclauses 132.2 to 132.5 (inclusive) in relation to corruption.

### **Contractor's Design**

Design of the works to be carried out by the Contractor, including the completion of any of the Principal's design work which is described in the Principal's Documents, to the extent specified in Contract Information item 41.

### **Contractor's Documents**

Both:

1. drawings, specifications, calculations and other documents and information, meeting the requirements of clause 70, which the Contractor must produce for the Design and construction of the Works in accordance with the Contract; and
2. documents which become Contractor's Documents under the Contract, including Principal's Documents checked, accepted and adopted under clause 71.

### **Contractor's Insolvency**

Any of the following applying to the Contractor:

1. insolvency;
2. the Contractor indicates it does not have the resources to perform the Contract;
3. an application for winding up is made which is not stayed within 14 Business Days;
4. a winding-up order is made;
5. a controller, administrator, receiver, receiver and manager, provisional liquidator, or liquidator is appointed;
6. a mortgagee enters into possession of any property of the Contractor;
7. notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
8. any actions having a similar effect are taken.

### **Contractor's Margin**

An amount or proportion added for profit and additional overhead costs (including administration, supervision, establishment and attendance costs) incurred solely as a result of a Variation, but not including any overhead costs relating to delay, disruption or interference caused by the Variation.

### **Contractual Completion Date**

The date (or the last day of the period) specified in Contract Information item 19 on, or by which, the Contractor must achieve Completion of the Works or of a

Milestone (as applicable), as may be adjusted under clauses 66 (Site Conditions), 86 (Variations) and 88 (Extension of Time).

**Cost Plan**

A plan provided in accordance with clause 6.2.1, in a format reasonably acceptable to the Principal.

**Data**

Drawings, sketches, specifications, digital records and computer software and all other data and information (including without limitation the Contractor's Documents) relating to the Contract.

**Date for GCS Offer**

The date specified in Contract Information item 16 by which the GCS Offer (if required) must be submitted by the Contractor.

**Date for Part A Services Completion**

The date specified in Contract Information item 19.

**Date of Contract**

The date of the Acceptance of Tender letter.

**Date of Possession**

The date that the Principal grants to the Contractor possession of the Site (or enough of it to allow for start of the work for which commencement has been authorised).

**Day**

A calendar day, including all Business Days and non-Business Days.

**Daywork**

Work for a Variation carried out by the Contractor for which payment is made on the basis of daily job time and cost records for workmen, constructional plan, Materials, services and other cost-related work.

**Declared Organisation**

Has the meaning given in section 3 of the *Serious and Organised Crime (Control) Act 2008* (SA).

**Defect**

Includes an error, omission, shrinkage, blemish in appearance or other fault in the Works or which affects the Works, which results from a failure of the Contractor to comply with the Contract.

**Defect Notice**

A notice issued by the Principal under clause 83.2 or 113.1 instructing that specified Defects be made good within a given period.

**Design**

Design of the Works, whether carried out by the Contractor or the Principal, but not including working drawings or shop drawings, which are taken not to constitute design work; Designed, the Design, and other derivatives of Design have a

corresponding meaning.

**Department**

Department for Infrastructure and Transport.

**Department Prequalification System**

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

**Direct Loss**

Any cost or expense that a party reasonably incurs as a direct result of, and flowing naturally from the other party's breach of Contract, act, omission or negligence, including any liquidated damages or any other payment of loss or damages expressly provided for under this Contract.

**Early Works**

Those parts of the Works identified as Early Works in Contract Information item 17 and any other parts of the Works that the Principal's Authorised Person may direct the Contractor to undertake in accordance with clause 76.

**Early Works Completion Undertaking**

The Undertaking required under clause 62.3, for the percentage of the Early Works Fees specified in Contract Information item 38.B.

**Early Works Fees**

The fees payable to the Contractor for performance of the Early Works either:

1. in accordance with the schedule of rates contained in Schedule 12 (Early Works Schedule of Rates); or
2. in accordance with the fixed price agreed to in writing by the Principal prior to those applicable works commencing.

**Early Works Milestones**

That part of the Early Works described as an "Early Works Milestone" in Contract Information item 19.

**Early Works Subcontracts**

The Subcontracts entered into by the Contractor for Early Works.

**Encumbrance**

Any mortgage, charge, lien, title retention, trust, power or other encumbrance.

**End users**

Persons to be involved in using or occupying any part of the Works.

**Excepted Risk**

Any of the following:

1. any negligent act or omission of the Principal, the Principal's Authorised Person or the employees, consultants or agents of the Principal;
2. damage which is the unavoidable result of the construction of the Works in accordance with the Contract;
3. any risk specifically excepted in the Contract;
4. war, invasion, act of foreign enemies, hostilities, (whether war be declared or

not), act of terrorism, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority; or

5. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or the Contractor's employees or agents.

### **Excluded Costs**

The following amounts paid or payable by the Contractor or incurred by the Contractor:

1. amounts in respect of which the Part A Services Fee, Fixed Management Services Fee, the Fixed Preliminaries Fee and the Early Works Fees are paid;
2. liquidated damages;
3. amounts which are recovered or but for the Contractor's failure to comply with the relevant insurance policy would have been reimbursed under insurance policies;
4. amounts which are in respect of remedial or rectification work, or repairing damage, to the Works;
5. amounts which are, pursuant to an express provision of the Contract, to be borne or paid by the Contractor or are due by the Contractor to the Principal (including under an indemnity);
6. costs not actually and properly and reasonably incurred or which the Contractor cannot substantiate on an Open Book Basis;
7. amounts not incurred on an arm's length basis;
8. any costs attributable to a termination of a Contractor's Consultant or a Subcontract and the engagement of another Subcontractor, Supplier or Contractor's Consultant;
9. payments to Subcontractors, Suppliers or Contractor's Consultants in relation to work or costs for which the Contractor is not entitled to receive payment from the Principal under this Contract including any amounts for the carrying out of any variations which are not referable to the works the subject of a Variation directed to be performed in accordance this Contract;
10. amounts incurred due to the Contractor's unlawful or negligent acts or omissions, breach or default;
11. any amount payable by the Contractor under clause 115, 118, 119 or 120; and
12. any difference in conditions (DIC) insurance effected by the Contractor in relation to the Project.

### **Expert**

A person engaged to determine Issues under clause 120.

### **Expert Determination**

The process of determination of an Issue by an Expert, under clause 120 and the procedure in Schedule 8 (Expert Determination Procedure).

### **Facility**

The facility named in Contract Information item 62.

**Facility Functions**

The functions as described in Contract Information item 64.

**Facility User**

The user described in Contract Information item 65.

**Fault**

Ambiguity, inconsistency, discrepancy, omission, error or other fault.

**Final Payment Claim**

A Payment Claim given by the Contractor to the Principal under clause 105.1.

**Final Payment Schedule**

A Payment Schedule given by the Principal to the Contractor under clause 105.2.

**Fixed Management Services Fee**

The fixed management fee for the Management Services (inclusive of all overheads and profit) set out at Contract Information item 46 being the lump sum amount (inclusive of GST) contained in Schedule 15 (Tender Form) as adjusted (if at all) in accordance with clause 7.1.2 but excluding all fees for the performance of any Management Services in Part A.

**Fixed Preliminaries Fee**

The fixed preliminaries fee for all costs associated with all On Site Overheads set out at Contract Information item 46 being the lump sum amount (inclusive of GST) contained Schedule 15 (Tender Form) as adjusted (if at all) in accordance with clause 7.1.2 but excluding all fees for costs associated with On Site Overheads incurred during Part A.

**Further Site Information**

Site information obtained after the earlier of the Date for GCS Offer and the Date of Part A Services Completion by the Contractor.

**GCS Offer**

Means the Guaranteed Construction Sum offer to be submitted, if stated in Contract Information Item 16, by the Contractor to the Principal by Date for GCS Offer in accordance with clause 7 and the requirements set out in Schedule 11 (GCS Offer).

**Guaranteed Construction Sum (GCS)**

The sum, inclusive of GST, contained in the GCS Offer and accepted in writing by the Principal as the maximum price that may be payable by the Principal to the Contractor for all Works, comprising:

1. the Part A Services Fee;
2. the Early Works Fees (if applicable);
3. the Fixed Preliminaries Fee;
4. the Fixed Management Services Fee; and
5. the Actual Construction Sum,

and Included Matters, adjusted in accordance with clause 100 which allows for an

adjustment to the Guaranteed Construction Sum.

**ICAC Act**

The *Independent Commission Against Corruption Act 2012* (SA).

**IMS (Information Management System)**

The system that must be used for the management of the transmission of documents between the parties.

**Included Matter**

Any work or activity necessary or incidental to the performance of the Works, to comply with the Contract, correct a Defect or address a Buildability Issue.

**Intellectual Property Rights**

Includes copyright, patent right, registered design, trade mark or name and other protected rights.

**Irrelevant Factor**

Any or all of the following, none of which are mutually exclusive:

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

**Issue**

Any issue, dispute or difference raised by either party under clause 118.

**Key Performance Indicators**

A service level or standard to which the Contractor must provide the Services, as set out in Schedule 13 (KPIs).

**KPI Period**

A period at the end of which a KPI is measured.

**List of Outstanding Items**

The list contemplated by clause 111.3.

**Management Services**

All the activities, services, work, items and Materials to be performed, undertaken or provided for the actual construction of the Works by the Contractor itself or at the Contractor's own cost or risk (rather than by engaging Subcontractors, Suppliers or the Contractor's Consultants), including (without limitation):

1. collaboration in design and documentation and the provision of advice to the Principal's Design Team;
2. survey work;

3. development of a project program and planning work;
4. development of project documentation;
5. development of subcontract and trade package documentation and conduct of tendering processes for subcontracts;
6. procurement, manufacture or fabrication of materials or components of the Works;
7. labour on site;
8. management activities, and
9. entry (by the Contractor) into contracts with subcontractors, consultants and suppliers,  
and excluding:
10. any activities, services, work, items and Materials in respect of which the Early Works Fee, Fixed Preliminaries Fee or Actual Construction Sum are paid.

**Material Variation**

Any single Variation in respect of which all of the following apply:

1. the Principal has instructed the Variation under clause 86.1;
2. the Variation involves additional scope to the Works;
3. the Principal is satisfied that the Variation places increased management obligations on the Contractor;
4. the Actual Construction Sum incurred and to be incurred to carry out the relevant Variation exceeds the amount set out in Contract Information item 51 (exclusive of GST);
5. the Variation has not arisen in connection with any of the following:
  - clause 72.2 (approval given to change Principal's design));
  - clause 86.8 (no instruction given) where the Contractor has not made its Claim within the 5 Business Days required by that clause;
  - clause 86.10 (Contractor initiated Variation);
  - any act or omission of the Contractor (including any act or omission of its Subcontractors, Suppliers, Contractor's Consultants and other agents);
  - anything else for which the Contractor is responsible.

**Materials**

Includes materials, plant, equipment and other goods.

**Milestone**

A part of the Works specified as such in Contract Information item 19 or otherwise declared as such by the Principal (and includes an Early Works Milestone).

**Milestone Payment**

A payment to the Contractor on Completion of a Milestone.

**Model Claimant**

One who:

- (a) complies with its insurance obligations under the Contract;



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

**National Construction Code**

The National Construction Code that applies in South Australia, as amended from time to time, produced and maintained by the Australian Building Codes Board.

**On Site Overheads**

All work and items required for the construction of the Works, but excluding any items or work the subject of the Fixed Management Services Fee and the Actual Construction Sum.

**Open Book Basis**

The provision of pricing, costing and other information on an open book basis to enable an assessment of actual costs and profit margins, including a breakdown of all relevant:

1. preliminaries;
2. insurances;
3. labour;
4. equipment;
5. materials;
6. Subcontract costs;
7. overheads and margins; and
8. discount rates used to calculate net present values,

in a clear, transparent and fully auditable manner.

**Outstanding Items**

Minor Defects in the Works which do not prevent a Works from being lawfully used in accordance with their intended purposes, and the existence and rectification of which, in the opinion of the Principal, will not materially adversely affect the use of the Works.

**Part A**

Those parts of the Project described at clause 12.2.

**Part A Completion Undertaking**

The Undertaking required under clause 62.1, for the percentage of the Part A Services Fee (at the Date of Contract) specified in Contract Information item 38.A.

**Part A Services**

The Planning Phase Services, all Management Services performed in Part A and all other services, activities, services, work, items and Materials in respect of which the Part A Services Fee is paid.

**Part A Services Fee**

The fixed fee payable for the services provided by the Contractor in Part A and specified in Contract Information item 46, including the fees for all Management Services performed during Part A and the fees for all costs associated with On Site Overhead incurred during Part A inclusive of the management and performance of

Early Works listed in Contract Information Item 17, but excluding any Early Works Fees for Early Works not listed in Contract Information Item 17.

**Part A Site Condition Investigations**

Those investigations to determine the existence of Site Conditions as required by clause 66.2.

**Part B**

Those parts of the Project described at clause 12.3.

**Part B Completion Undertaking**

The Undertaking required under clause 62.3, for the amount specified in Contract Information item 38.C.

**Payment Claim**

A Claim for payment made by the Contractor to the Principal under clauses 102 or 105.

**Payment Schedule**

A payment schedule containing the Principal's assessment of a Payment Claim and stating the amount the Principal proposes to pay as the Scheduled Amount, as referred to in clause 103.

**Planning Phase Services**

Includes Design management, construction methodology advice such as buildability options, project staging and operational requirements, a costed list of recommended Part A Site Condition Investigations and other planning services including those set out under clauses 68 to 69 (inclusive) such as detailed Design review and Fault management.

**Post-Completion Undertaking**

The Undertaking required under clause 62.3, for the amount specified in Contract Information item 38.D.

**Prepayment**

The amount to be advanced by the Principal in accordance with clause 101 and Contract Information item 47.

**Prequalified Contractor**

A potential Subcontractor that is registered in the Department Prequalification System as having met the prequalification criteria for the type of work involved.

**Prescribed Heads of Liability**

Any liability for:

1. personal injury including sickness and death;
2. loss of or damage to tangible property;
3. infringement of intellectual property rights;
4. any liability to a third party arising from:
  - a. a negligent or wrongful act or omission by the Contractor, its employees, agents or subcontractors (including Subcontractors, Suppliers or Contractor's Consultants); or
  - b. any breach of the Contractor's contractual obligation to the Principal;

5. an intentional tort;
6. a breach of trust;
7. breach of confidentiality; and
8. fraud or dishonesty

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

**Principal**

The entity named as such in Contract Information item 6.

**Principal's Authorised Person**

The person appointed to act for the Principal in terms of clause 2 including as named in Contract Information item 7.

**Principal Contractor**

Has the meaning given to it under the WHS Regulations.

**Principal's Design Team**

The persons nominated by the Principal from time to time as comprising the Principal's Design Team (being a subset of the Principal's Project Team), and includes where applicable, the Principal's Novated Consultant.

**Principal's Documents**

The design and other documents prepared by the Principal for the Contract and provided to the Contractor at the Date of Contract and included in the Contract Documents, and any modified or further such documents later provided by the Principal to the Contractor for the Contract. The Principal's Documents include the Principal's Project Requirements and the Concept Report.

**Principal's Novated Consultant**

The Principal's design consultant or consultants described in Contract Information item 42, to be novated to the Contractor if requested by the Principal.

**Principal's Professional Service Contractor (or PPSC)**

A person or entity engaged by the Principal to provide professional services in relation to the Design or the Works.

**Principal's Project Requirements**

Those documents which set out the purpose of the Works or the requirements for the Works and includes (without limitation) any Principal's design (including concept design and drawings) and any documents setting out Quality standards or timing and cost objectives for the Works. It also includes (without limitation) any documents provided to the Contractor for the purpose of the GCS Offer (and any documents referred to in those documents) and any subsequent modifications to those documents or further documents later developed which set out the purpose or requirements for the Works.

**Principal's Project Team**

The persons nominated by the Principal from time to time as comprising the Principal's Project Team.

**Project**

All of the Works and services contemplated by this Contract for the Agency's project as described in brief in Contract Information item 4 and in more detail in the

Principal's Documents.

**Project Objectives**

Those objectives for the Project set out in clause 73.

**Progress Payment**

A payment by the Principal in response to a Payment Claim, on account of the Contract Price.

**Project Brief**

The project brief described in the Principal's Documents and other Contract Documents (as applicable), and if and when a GCS Offer or Alternative GCS Offer (if applicable) is accepted by the Principal, includes any revisions to that project brief as at the Date of the GCS Offer or Alternative GSC Offer (as applicable).

**Project Construction Cost Estimate**

The Principal's total estimated costs and expenses for all of the work and services under the Contract as determined by the Principal in its absolute discretion and advised to the Contractor in writing.

**Provisional Quantity**

The quantity of an item of work specified in the Contract for which it is not known, at the Date of Contract, whether the work will be required or what the actual quantity will be.

**Provisional Sum**

A sum identified in the Contract as a provisional, monetary, prime cost, contingency or other such sum or allowance for the work specified in the Contract against that sum.

**Quality**

Quality includes whole of life performance, specification, capacity, durability, maintainability, aesthetics of visible features, user benefits, safety, design life, finish, scope, functionality and fitness for purpose.

**Relevant Managing Contractor**

An experienced and professional managing contractor of high skill and quality undertaking work of the same or substantially similar scope, complexity and standard as the Works.

**Schedule of Rates**

Any schedule in the Contract stated to be a Schedule or Rates, and which shows rates payable for carrying out items of work described in the schedule.

**Scheduled Amount**

The amount of payment (if any) stated in a Payment Schedule, that the Principal proposes to make in relation to a Payment Claim as referred to in clause 103.2.2.

**Scheduled Progress**

The rate of progress to be achieved by the Contractor in carrying out the Contractor's Design obligations and constructing the Works, such that the Contractor is proceeding with due expedition and without undue delay (other than a delay for which the Contractual Completion Date is adjusted under the Contract), so that it will complete the Works and all Milestones by their respective Contractual

Completion Dates.

**Site**

The lands and other places to be made available by the Principal to the Contractor for the purpose of executing the Works, and including any existing buildings, services or other improvements, as specified in Contract Information item 3.

**Site Conditions**

Any physical conditions of the Site (including sub-surface conditions but excluding weather conditions or physical conditions which are a consequence of weather conditions) encountered in the execution of the Works.

**Statutory Requirements**

The laws relating to the Works, the Site, or the environment or the lawful requirements of any authority or provider of services having jurisdiction over the Works, the Site, or anyone or anything connected with the Works, the Site or otherwise relating to the Contract.

**Subcontract**

An agreement between the Contractor and a Subcontractor or a Supplier including any Early Works Subcontract.

**Subcontractor**

An entity engaged by the Contractor to carry out part of the Works or the Temporary Work, or both, other than a Contractor's Consultant or a Supplier.

**Sub-Subcontract**

An agreement between a Subcontractor or Supplier and its subcontractor or supplier.

**Supplier**

An entity engaged by the Contractor to supply part of the Works or Temporary Work, or both.

**Temporary Work**

Temporary structures, amenities, physical services and other work, including Materials, plant and equipment used in or in relation to the carrying out of the Works but not forming part of the Works.

**Test**

Examine, inspect, measure, prove and trial, including opening up of any part covered up, if necessary; Testing and other derivatives of Test have a corresponding meaning.

**Undertaking**

An unconditional undertaking to pay on demand, in the form of Schedule 3 (Undertaking on behalf of the Contractor) or where provided by a Subcontractor, Supplier or Contractor's Consultant under clause 101.1.2, Schedule 4 (Undertaking on behalf of Subcontractor, Supplier or Contractor's Consultant), provided as

security to the Principal.

**Unresolved Claim**

A Claim rejected or not agreed under clause 115.8.

**Value Completed**

The value of work (including the Contractor's Design, if applicable) carried out by the Contractor and incorporated into the Works, as referred to in clause 102.

**Value for Money**

An approach that balances quality levels, performance standards, risk, price and whole of life costs, having regard to the requirements of this Contract.

**Valuer**

The entity engaged to determine time and cost matters under clause 64.

**Variation**

Any change to the Works including additions, increases, omissions and reductions to and from the Works, but not including such changes or otherwise in respect of the development by the Contractor of Design (including without limitation development of shop drawings and other Contractor's Documents) in accordance with the requirements of the Contract, and not including omissions of the type referred to in clause 15.1.3.

**WHS**

Work health and safety.

**WHS Act**

The *Work Health and Safety Act 2012* (SA).

**WHS Law**

The WHS Act and the WHS Regulations.

**WHS Regulations**

The *Work Health and Safety Regulations 2012* (SA).

**Worker**

1. The Contractor, its directors, officers, employees, agents, volunteers and invitees; and
  2. all Subcontractors, Suppliers, Contractor's Consultants, their directors, officers, employees, agents, volunteers and invitees,
- who attend on the Site.

**Working with Children Check**

Has the meaning given in the *Child Safety (Prohibited Persons) Act 2016*.

**Works**

The work to be Designed (to the extent applicable) and constructed by the Contractor, as referred to in clause 15, including all work and items of the type referred to in clause 15.1 and Variations and Included Matters, but excluding Temporary Work; it applies to the Works as a whole and also to any part of the Works unless stated otherwise or the context requires otherwise.

**129. General**

129.1 In addition to the definitions stated in clause 128, some terms, specific to a

clause, are defined in that clause.

- 129.2 The clause headings in the Contract shall not form part of the Contract and shall not be used in the interpretation of the Contract.
- 129.3 A reference to a Statutory Requirement or any section or provision of a Statutory Requirement includes all modification, re-enactment or substitution of such Statutory Requirement.
- 129.4 A reference to weblinks or URLs includes successor weblinks, in the case where weblinks or URLs have been updated or moved by the Principal.
- 129.5 If any part of this Contract is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of the Contract will not be affected and the Contract will be read as if the part had been deleted.
- 129.6 References to the Schedules shall be read as a reference Schedules to this Contract.
- 129.7 When the Principal 'may' exercise a right or remedy, the Principal has an absolute discretion whether or not to do so, and is not required to exercise the discretion in good faith or having regard to, or for the benefit of, the Contractor.
- 129.8 Unless stated otherwise, the word 'loss' means all loss, cost or damage of any nature whatsoever and however arising, and the word 'liability' means all liability of any nature whatsoever (including negligence) and however arising.
- 129.9 All obligations to indemnify under this Contract are independent and survive termination of the Contract and crystallise immediately on the occurrence of the event the subject of the indemnity, whether or not the Principal has yet incurred any loss or liability.
- 129.10 The rights and remedies conferred on the Principal under the Contract are in addition to and not in substitution or limitation of its rights and remedies elsewhere under the Contract or otherwise at law.
- 129.11 Where, in this Contract, it is stated that the Contractor does not have any Claim against the Principal or words to this effect, then the Contractor releases absolutely the Principal from any Claim whatsoever and however arising (including in negligence) which the Contractor had or, but for this Contract, might have had in connection with the subject matter for which the Contract states that the Contractor has no Claim.
- 129.12 The Contractor is not entitled to be paid or reimbursed for payments which the Contractor may be obliged to make on behalf of its employees in respect of any superannuation fund, scheme or arrangement for the benefit of workers or any other similar employee fund which is in existence at the effective date or which comes into existence after the effective date.
- 129.13 Nothing in, or contemplated by, this Contract will be construed or interpreted as unlawfully restricting or otherwise unlawfully affecting the unfettered discretion of the Principal to exercise any of its executive or statutory powers or functions under any law.
- 129.14 The expressions 'includes', 'including' and 'include' have the same meaning as if followed by 'without limitation.'
- 129.15 References to the Contractor are to include its officers, employees, agents and contractors (including Subcontractors, Suppliers and Contractor's



Consultants).

- 129.16 References to a 'related party' or 'related parties' has the same meaning as given to that term in the *Corporations Act 2001* (Cth).
- 129.17 References to a 'claim' include any suit, action, demand, proceeding, penalty, cost, charge or expense.
- 129.18 All pricing information required or costs claimed by the Contractor in relation to this Contract must be provided on an Open Book Basis.
- 129.19 Neither the Principal's, nor the Principal's Authorised Person's review of, comments upon, rejection of, failure to review or comment upon or reject, acknowledgement of, approval of, any designs, drawings, documents, information or samples prepared by the Contractor or any other direction by the Principal or Principal's Authorised Person regarding such will:
- 129.19.1 impose any obligation or duty upon the Principal or Principal's Authorised Person;
- 129.19.2 give rise to any Claim against the Principal or Principal's Authorised Person including for an increase in the Guaranteed Construction Sum (if the GCS Offer is accepted), payment of money (including damages) or an extension of time or relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether under the Contract or otherwise according to law;
- 129.19.3 prejudice the Principal's rights against the Contractor whether under the Contract or otherwise according to law; or
- 129.19.4 relieve the Contractor from responsibility to carry out the Works in accordance with the Contract.

### 130. Modern Slavery

- 130.1 For the purposes of this clause:
- 130.1.1 Modern Slavery Act means the *Modern Slavery Act 2018* (Cth);
- 130.1.2 Modern Slavery has the meaning given in section 4 of the Modern Slavery Act.
- 130.2 In performing its obligations under this Contract, the Contractor will, and will ensure all of its Subcontractors, Consultants and Suppliers:
- 130.2.1 comply with all applicable laws, statutes, regulations in force from time to time, including but not limited to the Modern Slavery Act; and
- 130.2.2 take reasonable steps to ensure that there is no Modern Slavery in the Subcontractor's Subcontractors, Consultants and/or Suppliers supply chains or in any part of their business.
- 130.3 The Contractor represents and warrants that:
- 130.3.1 it conducts its business in a manner that is consistent with the principles of the Modern Slavery Act; and
- 130.3.2 neither it, nor any of its officers, employees or other persons associated with the Subcontractor:

- 130.3.3 has been convicted of any offence involving Modern Slavery; and
- 130.3.4 having made reasonable enquiries, to the best of its knowledge has not been or is not the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with Modern Slavery.
- 130.4 The Contractor will implement due diligence procedures for its own Subcontractors, Consultants and Suppliers, and other participants to ensure that there is no Modern Slavery in its supply chains.
- 130.5 The Contractor will deliver to the Principal no later than 3 calendar months from December 31 each year, an annual statement prepared in accordance with section 16(1) of the Modern Slavery Act, including, but not limited to, the steps it has taken to ensure that Modern Slavery is not taking place in any of its supply chains or in any part of its business.
- 130.6 For the purposes of clause 130.5, any reference to obligations imposed upon a 'reporting entity' in section 16(1) of the Modern Slavery Act will be taken to mean obligations imposed upon the Contractor, to the extent that those obligations apply to the Contractor.
- 130.7 The Contractor will notify the Principal as soon as it becomes aware of any actual or suspected Modern Slavery in a supply chain, which has a connection with this Contract.

### **131. Fraud Control**

- 131.1 The Contractor must proactively take all necessary:
  - 131.1.1 measures to prevent, detect and investigate any fraud that may occur, is occurring or has occurred in connection with this Contract or any Subcontract, including all measures directed by the Principal;
  - 131.1.2 corrective action to mitigate any loss suffered or incurred by the Principal resulting from any fraud that is occurring or has occurred in connection with this Contract or any Subcontract, to the extent the fraud was caused or contributed to by the Contractor, Subcontractors, or Suppliers including all corrective action directed by the Principal; and
  - 131.1.3 measures to ensure that its selection or engagement of Subcontractors or Suppliers is not influenced by an Irrelevant Factor.
- 131.2 The Contractor acknowledges and agrees that its obligation under clause 131.1 extends to taking all necessary measures to prevent, detect and investigate any fraud which has or may be committed by any person employed or engaged by the Contractor.
- 131.3 If the Contractor knows or suspects that any fraud is occurring or has occurred it must immediately provide a detailed written notice to the Principal including details of:
  - 131.3.1 the known or suspected fraud;
  - 131.3.2 how the known or suspected fraud occurred;

- 131.3.3 the proactive corrective action the Contractor will take under clause 131.1; and
- 131.3.4 the proactive measures which the Contractor will take under clause 131.1 to ensure that the fraud does not occur again, and
- 131.3.5 such further information and assistance as the Principal, or any person authorised by the Principal, requires in relation to the fraud.

131.4 Clause 131.1 to 131.3 (inclusive) do not limit the operation of clause 20.4.

## **132. Anti-Corruption**

- 132.1 Without limiting clause 20.4, within 10 Business Days after a request by the Principal, the Contractor must provide the Principal with a written confirmation that, to the best of the Contractor's knowledge and based on reasonable enquiries undertaken by it, the Contractor and all persons employed or engaged by the Contractor are compliant with all Statutory Requirements (including foreign anti-corruption legislation) regarding the offering of unlawful inducements whether in Australia or otherwise in connection with the performance of the Contract and any Subcontract.
- 132.2 The Contractor:
  - 132.2.1 warrants that it has not as at the Date of Contract entered; and
  - 132.2.2 will not at any time enter,
  - 132.2.3 into any Arrangement in respect of the Contract or the Works that is influenced by an Irrelevant Factor.
- 132.3 The Contractor must take reasonable steps to prevent against engaging any Subcontractor or Supplier whose owner, officer(s) or employee(s) are members of, associates of, or associated with a member of, a Declared Organisation.
- 132.4 The Contractor must take all reasonable steps to ensure that its Subcontractors and Suppliers have not, and will not at any stage, enter into any Arrangement in respect of the Contract or the Works that would contravene clause 132.2 or 132.3 if the Arrangement was entered into by the Contractor.
- 132.5 Without limiting any other provision of this Agreement, if:
  - 132.5.1 the Contractor breaches an obligation under clause 132.2, 132.3 or 132.4; or
  - 132.5.2 the Principal considers that the Contractor has engaged a Subcontractor or Supplier whose owner, officer(s) or employee(s) are members of, associates of, or associated with a member of, a Declared Organisation,the Principal may issue a written notice to the Contractor which must specify:
  - 132.5.3 the particulars of the alleged breach or engagement;
  - 132.5.4 the reasonable requirements of the Principal to overcome the alleged breach or engagement (which may include exclusion

of the relevant Subcontractor or Supplier personnel from Site or termination of the Arrangement); and

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

and the Contractor must comply with such written notice.

## CONTRACT INFORMATION

The Contract Information is part of the Contract. Words and phrases are defined in clause 128.

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### Project and Contract

#### Item

**1. Contract Number**

The Contract number is: XXXX-MC-20XX

**2. Project and Contract Name**

The Project and Contract name is: [insert]

**3. Site**

The Site is: [insert] *Mentioned in clause 128*

**4. Brief description of the Project**

*Mentioned in clauses 6.2, 7.1.4, 10.3.3, 15, 73 & 128*

The Project is: The scope of the [insert project name] is to:

**5. Project Construction Cost Estimate**

The Project Construction Cost Estimate is: \$XXXXXX (excluding GST) *Mentioned in clause 128*

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**Principal's details****6. Principal**

The Principal is: Minister for Infrastructure and Transport

**7. Principal's Authorised Person**

The Principal's Authorised Person is: *Mentioned in clause 2*  
Director, Building Projects,  
Infrastructure Delivery Division  
Department for Infrastructure and  
Transport

**8. Notices to the Principal**

*Notices must go to the Principal's Authorised Person listed above, at the address or number shown here. Mentioned in clause 52*

Office address: Level 13, 83 Pirie Street  
(for delivery by hand) Adelaide SA 5000

Postal Address: GPO Box 1533,  
(for delivery by post) Adelaide SA 5001

**9. Senior executive****A. Nomination**

*Mentioned in clauses 118 & 119*

The Principal's senior executive is: Executive Director,  
Infrastructure Delivery Division  
Department for Infrastructure and  
Transport

**B. Documents copied to the senior executive**

*When notices must be copied to the Principal's senior executive the address is as follows: Mentioned in clause 118*

Office address: Level 12, 83 Pirie Street  
(for delivery by hand) Adelaide SA 5000

Postal Address: GPO Box 967,  
(for delivery by post) Adelaide SA 5001

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**Contractor's details****10. Contractor**

The Contractor is: »  
ACN  
ABN

**11. Contractor's Authorised Person**

The Contractor 's Authorised Person is: » *Mentioned in clause 2*

**12. Senior executive**

The Contractor 's senior executive is: » *Mentioned in clause 118*

**13. Contractor's key personnel**

The Contractor 's key personnel are: » *Mentioned in clause 17.1.8*  
»  
»  
»

**14. Notices to Contractor**

*Mentioned in clause 52*  
*Notices must go to the personnel listed above, at the address or number shown here.*

Office address: »  
(for delivery by hand) »  
»

Postal Address: »  
(for delivery by post) »  
»

e-mail address: »



## Dates and times

### 15. Confirmation of PCCE

*Mentioned in clause 6*

Number of days within which the Contractor must provide a Cost Plan pursuant to clause 6.2.1:

30 Business Days

### 16. GCS Offer

*Mentioned in clause 6 and 128*

Is the Contractor required to provide a GCS Offer (Yes/No)

Yes / No

The date for submission of the Contractor's GCS Offer (if required) is:

90 Business Days from the Date of Contract.

### 17. Early Works

*Mentioned in clause 76 and 128*

The Early Works include:

### 18. Sequential Completion of Milestones

Clause 80 (Sequential Completion of Milestones) applies:

Yes / No

### 19. Contractual Completion Date and times

*Mentioned in clause 128*

*The time periods for Completion include the 10 Business Days or other time periods referred to in Clause 63.*

**Date for Part A Services Completion**

the date XX calendar weeks from the Date of Contract.

#### Early Works Milestone EW1

Description of Milestone:

Time period for access of the Site is:

Date the Principal's Authorised Person directs the works pursuant to clause 76.1.

Time for Completion is:

the date XX calendar weeks from the date of a direction by the Principal's Authorised Person pursuant to clause 76.1.

#### Early Works Milestone EW2

Description of Milestone:

Time period for access of the Site is: Date the Principal's Authorised Person directs the works pursuant to clause 76.1.

Time for Completion is: the **date XX** calendar weeks from the date of a direction by the Principal's Authorised Person pursuant to clause 76.1.

### **Whole of the Works**

Time period for possession of the Site is: Date the Principal authorises Part B commence via notice pursuant to clause 6.2.5(a)(2) or 8.1.2 or 8.3.1(1) or 9.1.1(b) as applicable.

Time for Completion is: .

the date **XX** calendar weeks from the commencement date of Part B as determined in accordance with clause 6.2.5(a)(2) or 8.1.2 or 8.3.1(1) or 9.1.1(b) as applicable.

### **Whole of the Works and Milestones**

#### **Milestone 1**

Description of Milestone:

Time period for possession of the Site is: Date the Principal authorises Part B commence via notice pursuant to clause 6.2.5(a)(2) or 8.1.2 or 8.3.1(1) or 9.1.1(b) as applicable **subject to Completion of Early Works Milestone EW1.**

Time for Completion is: the date **XX** calendar weeks from the commencement date of Part B as determined in accordance with clause 6.2.5(a)(2) or 8.1.2 or 8.3.1(1) or 9.1.1(b) as applicable.

#### **Milestone 2**

Description of Milestone:

Time period for possession of the Site is: Date the Principal authorises Part B commence via notice pursuant to clause 6.2.5(a)(2) or 8.1.2 or 8.3.1(1) or 9.1.1(b) as applicable **but not before the expiration of 5 Business Days after Completion of Early Works Milestone EW2.**

Time for Completion is: the date **XX** calendar weeks from the commencement date of Part B as determined in accordance with clause 6.2.5(a)(2) or 8.1.2 or 8.3.1(1) or 9.1.1(b) as applicable.

## SA Government requirements

### 20. Codes

The SA Government codes that apply are:

Code of Practice for the South Australian Construction Industry

*Mentioned in clause 21*

### 21. Principal contractor

Is the Contractor appointed as principal contractor (Yes/No)      Yes

*Mentioned in clause 41*

### 22. SA Government construction guidelines requirements

#### A - WHS Management Plan

Is the Contractor required to submit a Project WHS Management Plan? (Yes/No)      Yes

*Mentioned in clause 42*

#### B - Environmental Management Plan

Is the Contractor required to submit an Environmental Management Plan? (Yes/No)      Yes

*Mentioned in clause 25.1*

#### C - Industry Participation Policy

Is the Contractor required to comply with an Industry Participation Plan? Refer Clause 29      Yes

*Mentioned in clause 29.1*

## Principal's Documents

### 23. Principal's Documents

The Principal's Documents as at the Date of Contract include:

- Mentioned in clause 11.1.4 and 128*
- Principal's Project Requirements (Schedule 25)
  - Specification (based on NATSPEC) (Schedule 25);
  - Drawings (Schedule 25)
  - Preliminaries (Schedule 23)
  - General Requirements (Schedule 24)
  - Government Buildings Energy Strategy
  - Relevant Department for Infrastructure and Transport Publications and Guidenotes
  - Concept Report Dated xx/xx/xxxx (Schedule 22)
  - Brief (Schedule 25)
  - Add Agency specific documents (Schedule X)

### 24. Copies of Principal's Documents

The number of copies of the Principal's Documents to be provided to the Contractor is

*Mentioned in clause 11.1.4*  
An electronic copy on CD

## Other Contract Documents

### 25. Other Contract Documents

The other Contract Documents include:

- Mentioned in clause 11.1.5*
- Relevant Department for Infrastructure and Transport Publications and Guidenotes
  - Code of Practice for the South Australian Building and Construction Industry
  - Building Projects WHS Requirements (PC-WHS1 and BPWHSR Work Health and Safety)
  - Completion Requirements for Managing Contractor GC21 Building Projects (G182-2)

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**Subcontract work****26. Use of Subcontract conditions***Mentioned in clause 54.1 and 55.8*

Subcontract value requiring use of Subcontract conditions in accordance with clause 54.1 is: \$100,000

**27. Payment for Subcontract***Mentioned in clause 54.2*

Maximum period for payment under Subcontract: 10 Business Days

**28. Prequalified contractors***Mentioned in clause 55.11*

Subcontracts, trades or areas of work requiring use of *Prequalified Contractors* are: The Contractor shall assess each trade or work package in accordance with Department Building and Construction Prequalification system (see Schedule 2 (Subcontract Category and Risk Assessment)) and apply it to the particular trade or work package in order to determine the category of prequalified subcontractors required.

**29. Subcontractor's warranty***Mentioned in clause 56.1*

Trades or areas of work requiring a Subcontractor's warranty are: All unless excluded in writing by the Principal.

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**Insurance - General***Mentioned in clauses 60 and 61***30. Responsible party for works and public liability insurance**

Party responsible: Principal

**31. Works insurance (by Contractor as responsible party)**

Minimum cover: Not Applicable

**32. Public liability insurance (by Contractor as responsible party)**

Minimum cover: Not Applicable

**33. Workers compensation insurance**

Minimum cover: As required by law.

**34. Personal accident insurance**

Minimum cover: Contractor to determine  
Period of cover: Contract duration

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**Insurance - Specific**

*Mentioned in clauses 60.1.2, 60.3 and 60.4*

**35. Professional indemnity insurance**

Minimum cover: **\$5,000,000**

And in any case, the above amount is per occurrence and in aggregate.

Period of cover: From the date of Contract execution until the date that is seven years after the Actual Completion Date of the whole of the Works.

In addition to the above, where the Principal's Novated Consultant has been novated to the Contractor, the Contractor must ensure that the Principal's Novated Consultant continues to maintain the professional indemnity and other insurance required under the relevant agreement with the Principal's Novated Consultant. The Principal's Novated Consultant Professional Indemnity Insurance requirement is a minimum of **\$XXXXXX**

**36. Asbestos liability insurance**

Minimum cover: \$5,000,000  
Insurer: To be provided by the relevant trade subcontractor  
Policy Number: »

**37. Marine liability insurance**

Minimum cover: Not Applicable  
Period of cover: Not Applicable

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**Security**

[Contract Title]

Contract No. [Contract Number]

**38. Security****A. Part A Completion Undertaking***Mentioned in clause 62.1*

Percentage of the Part A Services Fee (GST exclusive portion)	5%
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**B. Early Works Completion Undertaking***Mentioned in clause 62.2*

Percentage of the Early Works Fee (GST exclusive portion)	5%
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**C. Completion Undertaking***Mentioned in clause 62.3 and 128*

Percentage of the Guaranteed Construction Sum or Project Construction Cost Estimate if no Guaranteed Construction Sum (GST exclusive portion):	2%
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**D. Post-Completion Undertaking***Mentioned in clause 62.3 and 128*

Percentage of the Guaranteed Construction Sum or Project Construction Cost Estimate if no Guaranteed Construction Sum (GST exclusive portion):	1%
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**39. Return of Post-Completion Undertaking***Mentioned in clause 62.5.4*

Period for return of the Post-Completion Undertaking is:	12 months
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**Site information****40. Site information***Mentioned in clause 65**Geotechnical or other information concerning the Site contained in the documents listed in Contract Information item 40 does not form part of the Contract (even if attached to the Contract).***Documents not guaranteed for accuracy, quality or completeness**

Documents not guaranteed for accuracy, quality or completeness are:	All geotechnical or other information concerning the Site issued by or on behalf of the Principal.
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## Scope of activities

### 41. Scope of Design activities

*Mentioned in clause 1.1*

#### A. Extent of Contractor's Design obligations

*Mentioned in clauses 1.1 and 128*

Extent of Design by the Contractor is All necessary design for or in respect of the Works not performed (or to be performed) by the Principal, as described in the Principal's Documents including but not limited to all design development, documentation and co-ordination of the design of the various engineering and architectural disciplines, workshop detailing and finalisation of the Design of the Works in all respects, in accordance with the Contract Documents.

The Principal's Professional Services Contractors are contracted to provide for construction drawings which will be provided to the Contractor.

The Contractor must complete trade related Design including Temporary Works Design and the interaction between all these and other components of the Principal's design, as referred to in the Principal's Documents.

The Contractor must amend the Principal's Documents to ensure that the Contractor's Design and documentation is compatible with all other components of the Works.

Any such changes to the Principal's Documents must not adversely impact upon the Quality, required performance or fitness for purpose of the Works.

Amendments to the Principal's Documents become part of the Contractor's Documents.

Under no circumstances may the Contractor otherwise change the Principal's design without the Principal's prior written approval.

The Contractor is responsible for all design work undertaken by the Contractor, its Subcontractors, Suppliers and Contractor's Consultants.

#### B. Not Used

### 42. Responsibility for Design

*Mentioned in clause 70 and 71*

Is the Contractor to assume responsibility for design carried out by the Principal and does clause 71 apply? (Yes/No)

Yes / No

[insert name of novated consultant]



If Yes, the name of the Principal's  
Novated Design Consultant.

#### 43. Working days and hours of work

*Mentioned in clause 48*

Working days and hours of work:

Comply with Statutory Requirements  
and the following:

Generally **Monday to Friday 7am to 5pm**. Work outside of these days and  
hours requires authorisation by the  
Principal's Authorised Person.

#### 44. Rise and fall adjustments

*Mentioned in clause 97.4*

Are rise or fall adjustments applicable  
to the Contract (excluding Daywork)?

No

#### 45. Site Conditions

*Mentioned in clause 66.10*

Is the Contractor to bear the full risk  
including cost and time implications, of  
encountering and dealing with materially  
adverse Site Conditions? (Yes/No)

No

### Payments

#### 46. Contract Price at the Date of Contract

*Mentioned in clause 97 and 128*

Contract Price at the Date of Contract is inclusive of the following fixed components:

Part A Services Fee	\$
Fixed Management Services Fee	\$
Fixed Preliminaries Fee	\$

#### 47. Amount of Prepayment

*Mentioned in clause 101.1*

Amount of Prepayment is:

Nil

#### 48. Completion Amount

*Mentioned in clause 104 and 128*

The Completion Amount is:

Nil

#### 49. Provisional Sums

*Mentioned in clause 99*

[Contract Title]

Contract No. [Contract Number]

Provisional Sums items referred to in clause 99: Nil

*Mentioned in clause 99.3.2*

Margin for Provisional Sum work performed directly by the Contractor: 3%

## 50. Contractor's Margin on Variations

*Mentioned in clause 128 and Schedule 7*

The percentage for Contractor's Margin on Variations is:

- 3% for Material Variations; and
- 0% for all other Variations.

## 51. Material Variations

*Mentioned in clause 128*

The amount which must be exceeded (refer definition of Material Variation point no.4): **\$[insert amount]** (excluding GST).

## 52. Construction Bonus

*Mentioned in clause 96.1*

### A – Application of clause

**Yes / No**

Does clause 96 (Construction Bonus) apply? (yes / no)

### B – Formula

The formula for the calculation of the Construction Bonus is:

"If Guaranteed Construction Sum – Contract Price = \$X (where X is a positive value)" then the contractor shall be entitled to receive:  
30% of \$X up to maximum of the amount equal to 2% of the Contract Price included in the Final Payment Schedule.

## 53. Payment date and method

### A. Date of Payment Claims

*Mentioned in clause 102.1*

Date in month for making Payment Claims is:

The last Business Day prior to the end of each calendar month

### B. Type of payment

*Mentioned in clause 102.2*

The method of payment will be by: Monthly Progress Payments  
(Progress Payment / Milestone Payment)

### C. Time for payment

*Mentioned in clause 103.5*

Time that a payment becomes payable subject to clause 103.5 is: 6 Business Days

### 54. Interest on late payments

*Mentioned in clause 107*

Rate of interest per annum is: 8% per annum

## Delay costs

### 55. Delay costs

*Mentioned in clauses 89.1 to 89.3*

#### A. Delay costs

The maximum rate per day for delay costs for the whole of the Works is: \$[tenderer to submit] (GST inclusive)

The maximum rate per day for delay costs for Milestones\* is: [insert for each Milestone]

#### B. Delay to Completion and liquidated damages

*Mentioned in clauses 89.5 to 89.10*

Clause 89.5 applies to this Contract? (Yes / No) Yes  
(“If “No” applies, the Principal reserves its rights to claim general damages if the Contractor fails to achieve *Completion* by the *Contractual Completion Date*).

The rate per day for liquidated damages for the whole of the Works\* is: \$XXXXXXX (GST inclusive)

The rate per day for liquidated damages for Milestones\* is:  
Milestone 1: [insert amount or Nil]  
Milestone 2: [insert amount or Nil]  
Milestone 3: [insert amount or Nil]

*\*The rates for each are separate and distinct from each other.*

## Engagement of Valuer

**56. Engagement of Valuer****A. Engagement of Valuer***Mentioned in clauses 64*

The Valuer must be engaged? (Yes/No) No

**B. Person to nominate the Valuer***Mentioned in clauses 64.1.1*

The person to nominate the Valuer is: President  
 Australian Institute of Quantity  
 Surveyors (South Australian Branch)  
 C/O  
 Canberra Office  
 PO Box 301  
 Deakin West ACT 2600

Telephone (08) 8212 0799

**C. Litigation Threshold***Mentioned in clause 64.1.5*

Threshold amount for litigation following  
 a Valuer's determination is: \$100,000

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**Expert Determination**
**57. Time to refer Issue to Expert Determination***Mentioned in clause 119.3*

Maximum number of days for either  
 party to refer an Issue to Expert  
 Determination is: Within 28 days of becoming entitled to  
 refer an Issue to Expert Determination  
 under clause 117.2.

**58. Person to nominate Expert***Mentioned in clause 120.1*

The person to nominate Expert is: President of the Law Society of South  
 Australia  
 Level 10  
 178 North Terrace  
 Adelaide, SA. 5000

**59. Threshold amount for litigation***Mentioned in clause 120.7*

Threshold amount for litigation following  
 a determination is: \$250,000

**60. GCS Offer Validity Period***Mentioned in clause 7.3*

50 Business Days from the date of receipt.

**61. Representative of Principal for purposes of clause 120***Mentioned in clause 120.10*

Representative:

The person specified for the giving of notice to the Principal pursuant to clause 50, unless notified otherwise by the Principal.

**62. Facility Name***Mentioned in clauses 85 and 128*

[insert name and address]

**63. Agency Name***Mentioned in clause 75, 85 and 128*

[insert either DCS or SA Health or other relevant Agency name]

**64. Facility Functions***Mentioned in clause 128*

Where the Facility is a prison, all correctional services, maintenance and administration functions undertaken at, or in the immediate vicinity of, the prison Facility or which are incidental to such functions or activities, or which are incidental to the care, treatment and rehabilitation of prisoners and accommodation of visitors.

Where the Facility is a hospital, all clinical, medical imaging, research, education, clinical support, non-clinical support maintenance and administration functions undertaken at, or in the immediate vicinity of, the hospital Facility or which are incidental to such functions or activities, or which are incidental to the care, treatment and rehabilitation of patients,

accommodation of patients and visitors.

**65. Facility User**

*Mentioned in clause 128*

Where the Facility is a prison, any prisoner residing at the prison Facility or visitors to the prison Facility; DCS, and its employees; and any person who has dealings with DCS in relation to the prison Facility.

Where the Facility is a hospital, any patient being treated at the hospital Facility or visitors to the hospital Facility; SA Health, and its employees, volunteers and students; members of professional groups, medical practitioners and researchers having business at the hospital Facility; and any person who has dealings with SA Health in relation to the hospital Facility.

**66. Report to PSC/ELT**

*Mentioned in Schedule 14*

Is a monthly report required? (Yes/No) Yes / No

**67. KPIs**

*Mentioned in clause 95*

Does clause 95 apply? (Yes/No) Yes / No

**68. Working Groups**

*Mentioned in Schedule 14*

The working groups are designated as: [PCG and PSC]  
[IMT and ELT]

**69. Information Management System (IMS)**

*Mentioned in clause 52*

An IMS will be used for the management of documents: Yes / No

**70. Major Infrastructure Project**

*Mentioned in clause 31 and 32*

Is the Project a Major Infrastructure  
Project?

Yes / No

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## SCHEDULES

Schedule 1	Subcontractor's Warranty
Schedule 2	Subcontractor Category and Risk Assessment
Schedule 3	Undertaking (on behalf of the Contractor)
Schedule 4	Undertaking (on behalf of Subcontractor, Supplier or Contractor's Consultant)
Schedule 5	Payment Claim Worksheet
Schedule 6	Certificate of Compliance
Schedule 7	Agreement with Valuer
Schedule 8	Expert Determination Procedure
Schedule 9	Statutory Declaration
Schedule 10	Principal's Delegations
Schedule 11	GCS Offer
Schedule 12	Early Works Schedule of Rates
Schedule 13	KPIs
Schedule 14	Working Groups
Schedule 15	Tender Form
Schedule 16	Consultant Deed of Novation
Schedule 17	Start-up Workshop
Schedule 18	Subcontract Deed of Novation
Schedule 19	Industry Participation Policy Plan
Schedule 20	GCS Offer Pricing Schedule
Schedule 21	Contract Program Requirements
Schedule 22	Concept Report dated XX XX 20XX
Schedule 23	Preliminaries
Schedule 24	General Requirements
Schedule 25	Principal's Documents



## SCHEDULE 1

### Subcontractor's Warranty

The Contractor has entered into the Contract with the Principal for the carrying out of the Works. The Subcontractor has entered into an agreement with the Contractor for the Subcontract Work or Products, which are a part of the Works.

In return for the Principal allowing the Subcontract Work or Products to be used in the Works, the Subcontractor agrees to give the warranties, indemnities and other promises in this Deed. The obligations created by this Deed are in addition to the obligations of the Subcontractor to the Contractor and do not affect any other rights or remedies available to the Principal against the Contractor or the Subcontractor.

Refer to clause 56.1 and 128 of the General Conditions of Contract.

### DEFINITIONS

Deed dated:	» ..... <b>between</b>
Subcontractor or Supplier:	» ..... » ..... ABN » ..... <b>and</b>
The Principal:	» ..... <b>concerning</b>
The Contract:	The contract between the Principal and the Contractor
Contract Title:	» .....
Contract Number:	» .....
Works:	The works to be <i>Designed</i> and constructed by the Contractor, as described in the Contract.
The Contractor:	» ..... ABN» .....
Subcontract Work or Products:	» .....
Warranty Period:	» .....years from the <i>Actual Completion Date</i> of the whole of the Works.

Other words and phrases in this Deed have the meanings given in the General Conditions of Contract.

In this Deed, the term Subcontractor includes Supplier. The terms Subcontractor, Contractor and Principal include their successors and permitted assigns.

## **TERMS OF DEED**

### **1. WARRANTY**

- 1.1 The Subcontractor warrants that all work performed and all *Materials* supplied by the Subcontractor as part of the Subcontract Work or Products will:
  - 1.1.1 comply in all respects with the requirements of the Contract;
  - 1.1.2 comply with the applicable industry standards, including (without limitation) the National Construction Code of Australia and any applicable Australian Standards, to the extent that the quality of *Materials* or standard of workmanship is not specified in the Contract; and
  - 1.1.3 be fit for the purposes for which they are required.
- 1.2 The Subcontractor warrants that it will use reasonable skill and care in performing all work associated with the Subcontract Work or Products.

### **2. REPLACEMENT OR MAKING GOOD**

- 2.1 The Subcontractor promises to replace or make good, to the reasonable satisfaction of the Principal, any of the Subcontract Work or Products which, within the Warranty Period, are found to:
  - 2.1.1 be of a lower standard or quality than referred to in clause 1 of this Deed; or
  - 2.1.2 have deteriorated to such an extent that they are no longer fit for the purposes for which they were required.
- 2.2 Nothing in this clause 2 affects the Subcontractor's liability until any limitation period under statute expires.
- 2.3 The liability of the Subcontractor under this clause is reduced to the extent that deterioration is caused by:
  - 2.3.1 mishandling, damage before installation, or incorrect installation, in each case caused by others;
  - 2.3.2 normal wear and tear;
  - 2.3.3 incorrect operational procedures or maintenance, in each case not attributable to the Subcontractor; or
  - 2.3.4 any other cause beyond the control of the Subcontractor.

**3. COSTS**

- 3.1 The Subcontractor promises to undertake and meet the reasonable cost of any work necessary:
- 3.1.1 to carry out any part of the Works to enable the requirements of clause 2 of this Deed to be carried out; or
- 3.1.2 restore or make good the Works after carrying out those requirements, whichever the Principal requires.

**4. INDEMNITY**

- 4.1 The Subcontractor indemnifies the Principal against claims (including *Claims*, actions and loss or damage arising out of breach by the Subcontractor of clauses 1 or 2 of this Deed.

**5. NOTICE OF DEFECTS**

- 5.1 The Principal may notify the Subcontractor in writing if it considers there has been any breach of any provision of this Deed.

**6. TIME TO REMEDY**

- 6.1 The Subcontractor must do everything to remedy the breaches notified to it under clause 5 of this Deed within a reasonable time after the Principal's notice.

**7. FAILURE TO REMEDY**

- 7.1 If the Subcontractor fails to carry out and complete the work specified in the Principal's notice under clause 5 of this Deed within a period determined by the Principal to be reasonable in the circumstances, the Principal may give written notice to the Subcontractor that the Principal intends to have that work carried out by others. This notice must allow a reasonable period for the Subcontractor to respond.
- 7.2 If the Subcontractor fails to complete the work by the date specified in clause 7.1, or another date agreed by the parties, the Principal may have the work carried out by others, and the Subcontractor indemnifies the Principal for the reasonable costs and expenses of doing so.

**8. URGENT ACTION BY PRINCIPAL**

- 8.1 The Principal may take any urgent action necessary to protect the Works, other property or people as a result of a breach of clause 1 of this Deed.
- 8.2 The Subcontractor agrees that the Principal taking such action does not affect any obligation of the Subcontractor under this Deed.
- 8.3 The Subcontractor indemnifies the Principal for the reasonable costs and expenses paid or payable in taking that action.

**9. ASSIGNMENT**

- 9.1 The Principal may assign the benefit of this Deed to the owner or operating authority of the Works and must give notice of that assignment to the Subcontractor.

## 10. OPERATION OF DEED

- 10.1 This Deed comes into effect when executed by the Subcontractor, and is effective whether or not executed by the Principal.

### Executed as a deed

The common seal of the Subcontractor was affixed in accordance with its Articles of Association in the presence of:

Signature of Director/Secretary: » .....

Name of Director: » .....

Signature of Director: » .....

Name of Director: » .....

or (if the Subcontractor is not a corporation)

Signed, sealed and delivered on behalf of the Subcontractor by:

Signature of Authorised Person: » .....

Name of Authorised Person: » .....

### and witnessed by:

Signature of witness: » .....

Name of witness (in full): » .....

Signed, sealed and delivered on behalf of the Principal by:

Signature of Authorised Person: » .....

Name of Authorised Person: » .....

### and witnessed by:

Signature of witness: » .....

Name of witness (in full): » .....

Place: » .....

**SCHEDULE 2****Subcontract Category and Risk Assessment**

Refer to clause 55 of the General Conditions of Contract

**Overall assessment of the trade or area of work value, delivery and technical risks.****VALUE**

<b>Level 1 Simple</b>	<b>Level 2 Medium</b>	<b>Level 3 Complex</b>
<input type="checkbox"/> \$0 to <\$1.0m	<input type="checkbox"/> \$1.0m<\$3.0m	<input type="checkbox"/> >\$3.0m

**RISKS**

<b>Delivery Risks</b> (Select and check appropriate Delivery Risk box)		<b>Technical risks</b> (select and check appropriate Technical Risk box)	
Cost/quality issues are critical Program is critical National political issues Impact of failure is extreme	<b>Extreme Risk</b> <input type="checkbox"/>	Innovative and highly complex construction Cutting edge technology Multiple contractors with detailed interface and/or competing objectives Complex design discipline interfaces with new/uncommon disciplines in team	<b>Extreme Risk</b> <input type="checkbox"/>
Cost/quality issues are very important	<b>High Risk</b> <input type="checkbox"/>	Highly complex construction New technology Detailed interface with other trades Detailed design discipline interfaces	<b>High Risk</b> <input type="checkbox"/>
Cost/quality issues are important Program is important Local member political issues Impact of failure is high	<b>Medium Risk</b> <input type="checkbox"/>	Complex construction Current/proven technology Limited interface with other trades Standard design discipline interfaces	<b>Medium Risk</b> <input type="checkbox"/>
Cost/quality issues are routine	<b>Low Risk</b>	Simple construction	<b>Low Risk</b>

[Contract Title]

Contract No. [Contract Number]

<b>Delivery Risks</b> (Select and check appropriate Delivery Risk box)		<b>Technical risks</b> (select and check appropriate Technical Risk box)	
Program is routine	<input type="checkbox"/>	Standard technology	<input type="checkbox"/>
Site political issues		Routine or stand alone installation	
Impact of failure is routine		Limited design discipline interfaces	

### PREQUALIFICATION CATEGORY FOR SUB CONTRACTOR TENDER

(Select and check appropriate Category box)

☐ Level 1 – Simple

☐ Level 2 - Medium

☐ Level 3 - Complex

### NOTES ON THE USE OF THE RISK ASSESSMENT MATRIX

The selection of the prequalification category for a particular professional service or construction contractor need not be governed by the value of the project only.

While often this will be an appropriate test, it is possible that the value of the project does not represent the higher or lower risk profile of the project e.g.:

1. a <\$1.0 million value trade may have a low risk delivery and technical risks profile, and Simple sub-contractors are judged as capable of undertaking the work.
2. a >\$3 million value trade may have an extreme risk delivery and high technical risks profile, and Complex sub-contractors are judged as more capable of undertaking the work.

If having undertaken an assessment, either delivery or technical risk group is classified as extreme or high then the tender call must be from at least the Category value contractors e.g.:

1. a <\$1.0 million, value trade may have a low risk delivery and extreme technical risks profile. In this instance the call must be from at least Simple sub-contractors with consideration of the merits of Medium/Complex sub-contractors given the extreme risk aspect.

The table below gives a guide to the appropriate category given a range of value and risk combinations. The DIT Project Manager or assessor may, based on risk assessment, make a case to the Director, Building Projects for a different category to be called.

**PREQUALIFICATION CATEGORY SELECTION GUIDE**

<b>VALUE</b>	<b>Delivery Risks</b>	<b>Technical Risks</b>	<b>Guideline Category</b>
>\$3.0M	Extreme	Extreme	Level 3
	Extreme	High	Level 3
	High	Extreme	Level 3
	High	High	Level 3
	Medium	High	Level 3
	Medium	Medium	Level 3
	Low	Medium	Level 3
	Medium	Low	Level 2
	Low	Low	Level 2

If either risk group is classified as extreme or high then the tender call must be from Level 3 (Complex) sub-contractors.

<b>Value</b>	<b>Delivery Risks</b>	<b>Technical Risks</b>	<b>Guideline Category</b>
\$1.0M<\$3.0M	Extreme	Extreme	Level 3
	Extreme	High	Level 3
	High	Extreme	Level 3
	High	High	Level 2
	High	Medium	Level 2
	Medium	High	Level 2
	Medium	Medium	Level 2
	Low	Medium	Level 2
	Medium	Low	Level 1
	Low	Low	Level 1

If either risk group is classified as extreme or high then the tender call must be from at least Level 2 (Medium) sub-contractors.

<b>Value</b>	<b>Delivery Risks</b>	<b>Technical Risks</b>	<b>Guideline Category</b>
\$500k<\$1.0M	Extreme	Extreme	Level 2
	Extreme	High	Level 2
	High	Extreme	Level 2
	High	High	Level 2
	High	Medium	Level 1
	Medium	High	Level 1
	Medium	Medium	Level 1
	Low	Medium	Level 1
	Medium	Low	Level 1
	Low	Low	Level 1

## SCHEDULE 3

### Undertaking

Refer to clause 62.4 and definition of "Undertaking" in clause 128 of the General Conditions of Contract

#### ON BEHALF OF THE CONTRACTOR

Name of Financial Institution: » .....

The Principal: **Minister for Infrastructure and Transport** a body corporate established pursuant to the *Administrative Arrangements Act 1994* (SA), ABN: 92 366 288 135.

The Contractor: » .....

ABN » .....

Security Amount \$ » .....

The Contract: The contract between the Principal and the Contractor

Contract Title: »

Contract Number: »

Other words and phrases in this *Undertaking* have the meanings given in the General Conditions of Contract.

#### 1. UNDERTAKING

- 1.1 At the request of the Contractor and the Financial Institution, and in consideration of the Principal accepting this *Undertaking* from the Financial Institution in connection with the Contract, the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Principal to the maximum aggregate sum of the Security Amount.
- 1.2 The Financial Institution unconditionally agrees that, if notified in writing by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Contractor and despite any notice from the Contractor not to pay.
- 1.3 The Principal must not assign this *Undertaking* without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
- 1.4 This *Undertaking* continues until one of the following occurs:



- 1.4.1 the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;
  - 1.4.2 this *Undertaking* is returned to the Financial Institution; or
  - 1.4.3 the Financial Institution pays the Principal the whole of the Security Amount, or as much as the Principal may require overall.
- 1.5 At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this *Undertaking* (or a lesser sum specified by the Principal), and the liability of the Financial Institution will then immediately end.
- 1.6 This *Undertaking* shall be governed by the laws of the State of South Australia and is redeemable in the Adelaide CBD.

Dated »..... at » .....

**Execution by the Financial Institution:**

## SCHEDULE 4

### Undertaking

Refer to definition of "Undertaking" in clause 128 of the General Conditions of Contract

#### ON BEHALF OF THE SUBCONTRACTOR, SUPPLIER OR CONTRACTOR'S CONSULTANT

Name of Financial Institution: » .....

The Principal: **Minister for Infrastructure and Transport** a body corporate established pursuant to the *Administrative Arrangements Act 1994* (SA),  
 ABN: 92 366 288 135.

The Contractor: » .....

ABN» .....

Subcontractor, Supplier or » .....

Contractor's Consultant: ABN» .....

Security Amount \$» .....

The Contract: The contract between the Principal and the Contractor

Contract Title: »

Contract Number: »

Other words and phrases in this *Undertaking* have the meanings given in the General Conditions of Contract.

#### 1. UNDERTAKING

- 1.1 At the request of the Subcontractor, Supplier or Contractor's Consultant (as applicable) and the Financial Institution, and in consideration of the Principal accepting this *Undertaking* from the Financial Institution in connection with the Contract and the agreement between the Contractor and the Subcontractor, Supplier or Contractor's Consultant (as applicable), the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Principal to the maximum aggregate sum of the Security Amount.
- 1.2 The Financial Institution unconditionally agrees that, if notified in writing by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once,

without reference to the Subcontractor, Supplier or Contractor's Consultant (as applicable) and despite any notice from the Subcontractor, Supplier or Contractor's Consultant (as applicable) not to pay.

- 1.3 The Principal must not assign this *Undertaking* without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
- 1.4 This *Undertaking* continues until one of the following occurs:
  - 1.4.1 the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;
  - 1.4.2 this *Undertaking* is returned to the Financial Institution; or
  - 1.4.3 the Financial Institution pays the Principal the whole of the Security Amount, or as much as the Principal may require overall.
- 1.5 At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this *Undertaking* (or a lesser sum specified by the Principal) and the liability of the Financial Institution will then immediately end.
- 1.6 This *Undertaking* shall be governed by the laws of the State of South Australia and is redeemable in the Adelaide CBD.

Dated » ..... at »

.....

**Execution by the Financial Institution:**

**SCHEDULE 5****Payment Claim Worksheet**

Refer to clause 102 of the General Conditions of Contract

The Contractor: ».....

ABN» .....

The Contract: »

Contract Title: »

Contract Number: »

Name of Financial Institution: ».....

Account Name: ».....

Account Number ».....

1	2	3	4	5
---	---	---	---	---

<b>Activity (&amp; Milestone) to suit Schedule of prices and/or activities</b>	<b>Milestone &amp; activity number</b>	<b>Value of activity (&amp; Milestone) \$</b>	<b>Activity completed %</b>	<b>Value Completed \$</b>
Amount brought forward from previous sheet		\$		\$
Amount carried forward to next sheet		\$		\$

1	2	3	4	5
---	---	---	---	---

<b>Activity (&amp; Milestone) to suit Schedule of prices and/or activities</b>	<b>Milestone &amp; activity number</b>	<b>Value of activity (&amp; Milestone) \$</b>	<b>Activity completed %</b>	<b>Value Completed \$</b>
Amount brought forward from previous sheet				\$

[Contract Title]

Contract No. [Contract Number]

---

Amount carried forward to next sheet				\$
--------------------------------------	--	--	--	----

Complete this section on the last sheet only

Subtotal for any <i>Schedule of Rates</i> items		\$
	\$	\$
	\$	\$
<b>Value Completed</b>		\$
Less payments already made		\$
Less retention for the <i>Completion Amount</i> under clause 102, if applicable		\$
<b>Claimed Amount</b>		\$

**SCHEDULE 6**

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**Certificate of Compliance**

Refer to clause 102.5.3 and 128 of the General Conditions of Contract

**CONTRACT**

The contract: The contract between the Principal and the Contractor

Contract Title: »

Contract Number: »

Dated: » .....

**CERTIFICATE****To:**

»

**From:**

The Contractor: » .....

ABN» .....

Consultant: » .....

ABN» .....

Consultant (2) » .....

ABN» .....

In accordance with clause 100.5.3 of the Contract, we certify that all design work done (and all construction work\* relating to the *Contractor's Design* to the date of this *Certificate of Compliance*) is in accordance with the Contract.

**Signed by the Consultant(s):**

Signature of Authorised Person: » .....

Name of Authorised Person: » .....

Date: » .....

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**[Contract Title]**Contract No. **[Contract Number]**

Consultant (2)\*:

Signature of Authorised Person: » .....

Name of Authorised Person: » .....

Date: » .....

\* delete if not applicable

In accordance with clause 100.5.3 of the Contract, we certify that all work done (including the *Contractor's Design* and construction work done and *Materials* supplied) to the date of this *Certificate of Compliance* is in accordance with the Contract.

**Signed by the Contractor:**

Signature of Authorised Person: » .....

Name of Authorised Person: » .....

Date: » .....

**SCHEDULE 7****Agreement with Valuer**

The Principal has engaged the Contractor under the Contract to carry out the Contractor's Design obligations and construct and complete the Works.

The parties have agreed under the Contract to refer certain matters to the Valuer for determination. Refer to clauses 64 and 86 of the General Conditions of Contract.

**Definitions**

Agreement dated: ».....

**between:**

The Valuer: ».....

ABN» .....

**and:**

The Contractor: ».....

ABN» .....

**concerning:**

The Contract: the contract between the Principal and the Contractor

Contract Title: ».....

Contract Number: ».....

Dated: ».....

The Works: the works to be designed and constructed by the Contractor, as described in the Contract.

Other words and phrases in this agreement have the meanings given in the General Conditions of Contract.

The terms Contractor and Principal include their successors and permitted assignees.

**TERMS OF AGREEMENT****1. REQUEST TO DETERMINE AND ACCEPTANCE**

- 1.1 The parties request the Valuer to determine the value and time associated with *Variations* and other matters referred to the Valuer under the Contract. The Valuer agrees to comply with this request in accordance with this agreement.

**2. DETERMINATION BY VALUER**

[Contract Title]

Contract No. [Contract Number]



- 2.1 When a matter is referred to the Valuer by either party, the Valuer must consult with both parties, determine the matter in accordance with this agreement and as specified in the Contract, and issue a certificate stating the determination within 28 days, or another time agreed by the parties, of the matter being referred to the Valuer.
- 2.2 If a certificate issued by the Valuer contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Valuer must correct the certificate.

### 3. PRINCIPLES FOR VALUATION

- 3.1 If a *Variation* involves additional or increased work, the Valuer must determine its value as the sum of the following:
  - 3.1.1 the additional reasonable costs not including Excluded Costs to the Contractor of Subcontract work involved in carrying out the *Variation*; and
  - 3.1.2 the additional amount calculated as the relevant percentage in *Contract Information* item 50 of the total of the costs under clause 3.1.1 of this agreement, which allows for the *Contractor's Margin*.
- 3.2 If a *Variation* involves decreased or omitted work, the Valuer must determine its value as that of the work included in the *Contract Price*:
  - 3.2.1 as specified in the Contract, or otherwise as valued by the Valuer based on the rates and lump sums in the Contract or otherwise applying at the closing time of tender; and
  - 3.2.2 including a reasonable *Contractor's Margin* and a reasonable allowance for any time-dependent costs not included in the *Contractor's Margin* which will not be incurred as a result of the decreased or omitted work.
- 3.3 The Valuer must not include any *Contractor's Margin* in the costs determined under clause 3.1.1 of this agreement.
- 3.4 The Valuer must not include any amount in the valuation of Subcontract work under clause 3.1.1 of this agreement for extra costs, losses or expenses attributable to:
  - 3.4.1 delay, disruption or interference;
  - 3.4.2 any variations not ordered by the Principal;
  - 3.4.3 anything arising from the acts or omissions of the Contractor;
  - 3.4.4 any *Management Services*;
  - 3.4.5 any amounts which are not costs of the Contractor properly and actually incurred by the Contractor by virtue of any provision of the Contract;
  - 3.4.6 doing anything else which under the Contract the Contractor must provide at the Contractor's own expense.

- 3.5 The Valuer must not include any amount in the valuation of a *Variation* for the costs of delay, disruption or interference caused by the *Variation*.

- *Delay costs are dealt with in clause 87 of the General Conditions of Contract.*

- 3.6 If the *Variation* is one for which, under the Contract, the Contractor is not entitled to payment from the Principal, the Valuer must determine its value as nil.

- 3.7 If the Contract specifies a different valuation method to that in clause 3.1 of this agreement, the Valuer must determine its value using the method specified in the Contract.

#### **4. PRINCIPLES FOR CALCULATING TIME**

- 4.1 If the *Variation* involves additional or increased work and extra time is required for *Completion*, the Valuer must determine a reasonable extension to the time for *Completion*, using the provisions of clause 86 (other than clause 86.1.1) of the General Conditions of Contract, taking into account that the Contractor must take all reasonable steps:

4.1.1 to carry out the work concurrently with other work whenever possible; and

4.1.2 to otherwise minimise the effects of the *Variation* or new item of work on *Completion* by the applicable *Contractual Completion Date*.

Only delays which have or will delay the Contractor in reaching *Completion* will entitle the Contractor to an extension of time for *Completion* as a result of a *Variation*.

- 4.2 If the *Variation* leads to less time being required for *Completion*, the Valuer must determine a reasonable reduction to the time for *Completion*.

- 4.3 If the *Variation* is one for which, under the Contract, the Contractor is not entitled to an extension of time, the Valuer must not make a determination under clause 86 of this agreement

#### **5. MEETING**

- 5.1 The Valuer may meet with the parties together to discuss the referred matter. The parties agree that such a meeting is not a hearing which would give anything under this agreement the character of an arbitration.

#### **6. DOCUMENTS**

- 6.1 The Valuer will take into consideration:

6.1.1 documents, information and other written material which has been exchanged by the parties before the request to the Valuer;

6.1.2 any submission or submission in reply by a party to the Valuer (copied to the other party); and

6.1.3 information or material as provided in clause 7.1.2 below.

- 6.2 The Valuer will fix appropriate times for the provision of any submissions and submissions in reply as referred to above.
- 6.3 The parties acknowledge that when a matter referred to the Valuer involves a Subcontractor, Supplier or Contractor's Consultant's claim, the Valuer will give the relevant Subcontractor, Supplier or Contractor's Consultant the opportunity to be involved in the valuation process. The Valuer must wherever possible include in the certificate a breakdown of each Subcontractor, Supplier or Contractor's Consultant's entitlement in the determination.

## 7. ROLE OF VALUER

- 7.1 The Valuer:
- 7.1.1 acts as an expert and not as an arbitrator;
- 7.1.2 is not expected or required to obtain or refer to any information or material relating to trade information or other third party material but may do so if the Valuer wishes; and
- 7.1.3 must issue a certificate in a form the Valuer considers appropriate, stating the Valuer's determination, with reasons.

## 8. CERTIFICATE FINAL

- 8.1 Subject to clause 64.1.5 of the General Conditions of Contract, the parties agree to accept the determination in the Valuer's certificate as final and binding.

## 9. LIABILITY OF VALUER

- 9.1 The Valuer is not liable for anything done or omitted by the Valuer under this agreement, other than fraud.

## 10. FEES AND EXPENSES

- 10.1 The Principal and the Contractor must share equally the fees and out-of-pocket expenses of the Valuer for the determination. However, the Principal alone must pay all such fees and out-of-pocket expenses related to any *Variation* which the Principal proposes but does not later instruct.

- 10.2 The fees payable to the Valuer under this agreement are:

10.2.1 an administration fee of \$» for reviewing the *Contract Documents*

10.2.2 an amount for the time involved in performing the Valuer's duties under this agreement based on these hourly rates:

Director	\$»	/hour
Associate	\$»	/hour
Senior Quantity Surveyor / Engineer	\$»	/hour
Quantity Surveyor / Engineer	\$»	/hour
Technician	\$»	/hour

10.2.3 substantiated out-of-pocket expenses.

## **11. CONFIDENTIALITY**

- 11.1 The parties and the Valuer must keep confidential all proceedings and submissions relating to a determination by the Valuer. They must not divulge information to any other person except with the previous written consent of the other party, or as required by law, or in order to enforce a determination of the Valuer.

## **12. TERMINATION OF AGREEMENT**

- 12.1 This agreement may be terminated by a written notice to the Valuer signed by both the Principal and the Contractor. The Principal and the Contractor may then, separately or together, recover all documents each had provided to the Valuer. They must then pay all the Valuer's outstanding fees and expenses in accordance with clause 10 of this agreement.

## **13. PAYMENT**

- 13.1 The Principal and the Contractor must pay the Valuer within 14 days of receiving an invoice which complies with this agreement.
- 13.2 The Principal and the Contractor must advise the Valuer of the necessary details for invoicing if they have agreed that one of them will make payments to the Valuer on behalf of both.

## **14. PERIOD OF ENGAGEMENT OF VALUER**

- 14.1 Unless this agreement is terminated under clause 12 of this agreement, the Valuer is engaged until the time of issue of the *Final Payment Schedule*, plus any further period of time required for any referred matter which has not been determined by the Valuer by the time of issue of the *Final Payment Schedule*.

### **Signed by the Contractor:**

Signature of Authorised Person: » .....

Name of Authorised Person: » .....

Date: » .....

### **Signed by the Principal:**

Signature of Authorised Person: » .....

Name of Authorised Person: » .....

Date: » .....

### **Signed by the Valuer:**

Signature of Valuer: » .....

Name of Valuer: » .....

Date: » .....

## SCHEDULE 8

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### Expert Determination Procedure

Refer to clause 115, 118, 120 and 128 of the General Conditions of Contract

#### 1. QUESTIONS TO BE DETERMINED BY THE EXPERT

1.1 The *Expert* must determine for each *Issue* the following questions (to the extent that they are applicable to the *Issue*):

1.1.1 Is there an event, act or omission which gives the claimant a right to compensation, or otherwise assists in resolving the *Issue* if no compensation is claimed:

- under the Contract
- for damages for breach of the Contract, or
- otherwise in law?

1.2 If so:

- (a) what is the event, act or omission?
- (b) on what date did the event, act or omission occur?
- (c) what is the legal right which gives rise to the liability to compensation or resolution otherwise of the *Issue*?
- (d) is that right extinguished, barred or reduced by any provision of the Contract, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?

1.3 In the light of the answers to clauses 1.1.1 and 1.1.2 of this Expert Determination Procedure:

- (a) what compensation, if any, is payable from one party to the other and when did it become payable?
- (b) applying the rate of interest specified in the Contract, what interest, if any, is payable when the *Expert* determines that compensation?
- (c) if compensation is not claimed, what otherwise is the resolution of the *Issue*?

1.4 The *Expert* must determine for each *Issue* any other questions identified or required by the parties, having regard to the nature of the *Issue*.

#### 2. SUBMISSIONS

2.1 The procedure for submissions to the *Expert* is as follows:

- 2.1.1 The party to the Contract which has referred the *Issue* to *Expert Determination* must make a submission in respect of the *Issue*, within 15 *Business Days* after the date of the letter of engagement of the *Expert* referred to in clause 120.2 of the General Conditions of Contract.
- 2.1.2 The other party must respond within 15 *Business Days* after receiving a copy of that submission or such longer period as the other party may reasonably require, having regard to the nature and complexity of the *Issue* and the volume of the submission. If the parties do not agree on that longer period, the *Expert* will promptly determine any extra time permitted, following a submission on the point by a party desiring to make a submission, within the time specified by the *Expert*. The response to the submission in clause 2.1.1 may include cross-claims.
- 2.1.3 The party referred to in clause 2.1.1 may reply to the response of the other party but must do so within 10 *Business Days* or such longer period as that party may reasonably require (in the same terms as in clause 2.1.2) after receiving the response, and must not raise new matters.
- 2.1.4 The other party may comment on the reply but must do so within 10 *Business Days* or such longer period as that party may reasonably require (in the same terms as in clause 2.1.2) after receiving the reply and must not raise new matters.
- 2.2 The *Expert* must ignore any submission, response, reply, or comment not made within the time given in clause 2.1 of this Expert Determination Procedure, unless the Principal and the Contractor agree otherwise.
- 2.3 The *Expert* may request further information from either party. The request must be in writing, with a time limit for the response. The *Expert* must send a copy of the request and the response to the other party and give the other party a reasonable opportunity to comment on the response.
- 2.4 All submissions, responses, replies, requests and comments must be in writing. If a party to the Contract gives information to the *Expert*, it must at the same time give a copy to the other party. All documents to be copied to the Principal under this Expert Determination Procedure must be sent to the relevant person at the relevant postal or other address specified in *Contract Information* item 58. This address may be different to the address for the giving of notices to the Principal under clause 52.1.

### **3. CONFERENCE**

- 3.1 The *Expert* may request a conference with both parties to the Contract. The request must be in writing, setting out the matters to be discussed.
- 3.2 The parties agree that such a conference is not to be a hearing which would give anything under this Expert Determination Procedure the character of an arbitration.

### **4. ROLE OF EXPERT**

- 4.1 The Expert:

- 4.1.1 acts as an *Expert* and not as an arbitrator;
  - 4.1.2 must make its determination on the basis of the submissions of the parties, including documents and witness statements, and the *Expert's* own expertise; and
  - 4.1.3 must issue a certificate in a form the *Expert* considers appropriate, stating the *Expert's* determination and giving reasons, within 16 weeks, or as otherwise agreed by the parties, after the date of the letter of engagement of the *Expert* referred to in clause 118.2 of the General Conditions of Contract.
- 4.2 If a certificate issued by the *Expert* contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the *Expert* must correct the certificate.



## SCHEDULE 9

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### Statutory Declaration

Refer to clause 102.5.2 of the General Conditions of Contract

DIT Statutory Declaration Template for Payment Claims available at:

[https://www.dit.sa.gov.au/contractor\\_documents/example\\_contractual\\_agreements\\_and\\_templates](https://www.dit.sa.gov.au/contractor_documents/example_contractual_agreements_and_templates)

## SCHEDULE 10

### Principal's Delegations

- In accordance with clause 2.3 of General Conditions of Contract, the Contractor is hereby notified that the *Principal's Authorised Person* has delegated the powers, duties, discretions and authorities vested in the Principal (and delegated to the *Principal's Authorised Person*) under the clauses specified in:
- List 9A to the person occupying the position of Project Manager, Building Projects, Infrastructure Delivery Division, Department for Infrastructure and Transport and;
- List 9B to the person occupying the position of Principal Cost Manager, Building Projects, Infrastructure Delivery Division, Department for Infrastructure and Transport;
- Any limitations or qualifications to the delegated powers are specified in the tables below.
- Where the Principal's Authorised Person has delegated a power to more than one person, the power may be exercised by either person, independently of the other.
- Delegation shall not prevent the Principal or the *Principal Authorised Person* from exercising any power or function.
- The powers not specified in the following lists have not been delegated by the *Principal's Authorised Person* and as such will remain with the *Principal's Authorised Person*.
- The clauses referenced in the lists below are clauses in the General Conditions of Contract.

#### LIST 9A

***Principal's Authorised Person – Delegate*** (Project Manager, Building Projects, Infrastructure Delivery Division, Department for Infrastructure and Transport)

Clause	Title	Subclause	Action
5	Early warning	.1	inform other party
6	Confirmation of PCCE	.2.4	accept, reject or negotiate suggested changes
11	The Contract	.4,.5, .6	give Contractor copies
15	Scope of the works	.4	instruct Milestones
16	Temporary Work	.1.1	instruct Contractor
17	Work methods	1.6	instruct Contractor
18	Statutory Requirements and guidelines	.2	request original documents
25	Environmental management	.3	request demonstration
27	Australian Government Agreement		Pay for services rendered
34	Construction training fund levy	2	Withhold payment
36	Registration and licences	.3	request evidence
46	Time management	.3, .4, .5	all actions
47	Contract Program	.1, .2, .3, .4, .7, .8, .9, .11	all actions

Clause	Title	Subclause	Action
48	Working days and hours of work	.1	approval of adjustment to working days or hours
51	Care of people, property and the environment	.6	request to take action take action
54	Requirements of Subcontracts	.5	request to be shown records
55	Engaging Subcontractors		all actions
58	Subcontracts for Early Works	.2	approve Early Works Subcontracts
59	Start-up workshop	.1	convene workshop
63	Site access	.1	give possession of site
66	Site Conditions	.4	request further information
67	Part A Site Condition Investigations	.2	direct Part A Site Condition Investigation
69	Faults	.3 .4	resolve Faults give instruction
70	Contractor's Documents	.2	request confirmation
75	Interaction with Agency Personnel	.1	provide approval of project communication protocols.
76	Early Works		instruct Early Works
78	Possession of Site for Early Works		give access
79	Setting out the Works	.2 .3.3 .4	provide additional information instruct give notice
82	Testing	.2	instruct retesting
83	Defects	.2, .3, .5.2	all actions
85	Continuing Facility Functions		all actions
86	Variations	.1, .2.3, .3, .4.2, .10	all actions
87	Changes in Statutory Requirements	.1	instruct variation
88	Extension of time	.1, .6	extend time for Completion
89	Delay costs	.3 .6	make determination demand payment
91	Acceleration	.1, .3, .4	all actions
99	Provisional Sums and Provisional Quantities	.2, .3, .6	instruct
102	Payment Claims	.7.1	agrees to pay
103	Payments	1	give Payment Schedule
105	Final Payments	2	Issue Final Payment Schedule
106	Audit of Actual Construction Sum		all actions
110	Early use	.2	give notice
112	Close-out workshop	.1	convene workshop
113	After Completion	.1.1 .1.3	instruct to make good instruct variation
115	Contractor's Claims	.6	assess claim
117	PPSA	.2	request action by the Contractor

Clause	Title	Subclause	Action
Schedule 11	GCS Offer		all actions

**LIST 9B**

**Principal's Authorised Person - Delegate** (Principal Cost Manager, Building Projects, Infrastructure Delivery Division, Department for Infrastructure and Transport)

Clause	Title	Subclause	Action
19	Goods and Services Tax	.5, .6, .13	all actions
27	Australian Government Agreement		pay for services rendered
34	Construction training fund levy	.2	withhold payment
103	Payments	.1	give Payment Schedule
105	Final Payments	.2	issue Final Payment Schedule

## SCHEDULE 11

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### Requirements for GCS Offer

Refer to clause 7 and 128 of the General Conditions of Contract

A GCS Offer submitted by the Contractor during Part A must include:

- a Guaranteed Construction Sum for the work under the Contract which must include:
  - a. Part A Services Fee
  - b. the Early Work Fees (identifying costs incurred to the date of the GCS Offer and any remaining costs to finalise Early Work);
  - c. the Fixed Preliminaries Fee;
  - d. the Fixed Management Services Fee and;
  - e. the estimated Actual Construction Sum

which in no circumstances shall exceed the Project Construction Cost Estimate;

- confirmation of the Date for Completion of each Milestone;
- Contract Programs in accordance with the requirements of the Contract and in electronic form;
- the documentation to the satisfaction of the Principal upon which the Guaranteed Construction Sum is to be based;
- the Contractor's proposed trade package break up and budget for each trade package, including full details of all tendered subcontract packages, trade contingencies and any preferred subcontractors for future trade packages and such further information as may be reasonably required by the Principal or the Principal's Authorised Person;
- a break up of the trade packages into each Milestone to identify the total budget for each Milestone;
- details of and any reasons for any adjustments to the Fixed Management Services Fee and the Fixed Preliminaries Fee as applicable and in accordance with the requirements of clause 7.1.2 of the General Conditions of Contract;
- a commissioning plan, including details of all tests required by the Contract and those that would be expected to be performed by the Contractor to demonstrate the Works have reached Completion;
- a KPI Proposal pursuant to clause 95 of the General Conditions of Contract;
- an Industry Participation Policy Plan; and
- all pricing information must be included in the prescribed pricing schedule included in the RFT.

**SCHEDULE 12**

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**Early Works Schedule of Rates**

Refer to clause 128 of the General Conditions of Contract

*[to be inserted post RFT prior to contract award]*

## SCHEDULE 13

### KPIs

Refer to clause 95 and 128 of the General Conditions of Contract

Pursuant to clause 95 of the General Conditions of Contract , the following elements must be included in the KPI Proposal:

- Details of the proposed Key Result Areas (KRAs) and Key Performance Indicators (KPIs) which the Contractor's performance will be assessed against;
- KPIs must be aligned with the Project Objectives and the objectives of the Principal;
- KRA and KPI weightings and basis for calculation of performance (eg performance scoring system);
- KPI Proposal must include the minimum 'business as usual' requirement for each KPI for the purpose of clause 95.5 and clause 122 ('Contractor's Default');
- KPI Periods (set out the timing for the assessment period)
- Proposed incentive and reward for achievement of KPIs and exceptional level performance by the Contractor ("Performance Entitlement");
- Method of assessment of performance including the frequency of review and responsible parties;
- The Contractor shall have no entitlement to any Performance Entitlement if
  - (a) the Contractor is in substantial breach of the Contract;
  - (b) a Contractor's Default has occurred; or
  - (c) Contractor's Insolvency has occurred.
- The objectives of the Principal include (but are not limited to) the following:

KRAs	KPIS		
• Time & Program	Milestone Completion	Overall Completion	Unplanned Outages
• Value for Money	Contract Price vs GCS	Maximising Principal Contingency / Value adds	
• Safety & Quality	MC Safety Stats (LTIs / MTIs)	User Safety (complaints and risks)	Post Occupancy Changes / Defects

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## **SCHEDULE 14**

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### **Working Groups**

Refer to clause 1, 68 and 74 of the General Conditions of Contract

#### **1. INTERPRETATION**

- 1.1 This Schedule must be read and construed as nominated in Contract Information Item 68.

#### **2. PCG / IMT - ESTABLISHMENT, DURATION AND PURPOSE**

- 2.1 Within seven (7) days after the Date of the Contract, a Project Control Group (PCG)/ Integrated Management Team (IMT) will be established.
- 2.2 The PCG/IMT will monitor all aspects of the Works.
- 2.3 The main purpose of the PCG/IMT is to establish and maintain a positive and good working relationship between the Principal and the Contractor with the aim of resolving the project issues before and as they arise.
- 2.4 The first meeting of the PCG/IMT will be convened by the Principal's Authorised Person within fourteen (14) days of the Date of the Contract and thereafter meetings will be held once during each month provided that special meetings may be convened by the Principal.
- 2.5 During Part A, the PCG/IMT will draft and agree a "project charter" which will set out how the Parties will work together as a collaborative and high performance team. Such project charter must reflect the Project Objectives.
- 2.6 The PCG/IMT will operate until the issue of all certificates required to certify Completion have been provided by the Contractor or such other time determined by the Principal's Authorised Person.

#### **3. MEMBERSHIP**

- 3.1 The PCG/IMT will be constituted by the following representatives:
- Principal's Authorised Person – Delegate, Project Manager (Chairperson)
  - Contractor's Authorised Person
  - LPSC Representative
  - Cost Manager Representative
  - End User Representative
  - Discipline Professional Service Consultants as required
- 3.2 The Contractor's Authorised Person will be one of the Contractor's attendees.

- 3.3 Each party will by notice in writing advise the other party of the names, addresses and telephone numbers of its delegates / attendees.
- 3.4 The Chairperson may, at the request of either party, include as attendees of PCG/IMT meetings, representatives of Contractor's Consultants and Subcontractors involved as well as other individuals who may be able to assist the PCG/IMT in the performance of its functions.
- 3.5 The Chairperson may, at the request of any delegate to the PCG/IMT and at the cost of that delegate, call upon any person for a report or other advice to assist the PCG/IMT in the PCG's/IMT's deliberations.

#### **4. MEETINGS**

- 4.1 A quorum for the PCG/IMT will be the Principal's Authorised Person and the Contractor's Authorised Person.
- 4.2 The Principal's Authorised Person will determine the agenda and the Chairperson will chair and take minutes of the meetings of the PCG/IMT.
- 4.3 Agenda items may include reviews of:
  - 4.3.1 the Contractor's activities;
  - 4.3.2 the Principal's duties and the performance of Contractor's Consultants;
  - 4.3.3 programming and in particular programming for the period until the next meeting of the PCG/IMT;
  - 4.3.4 budgeting and costs;
  - 4.3.5 Quality;
  - 4.3.6 safety;
  - 4.3.7 documents related to the Design;
  - 4.3.8 Variations which in the opinion of the Contractor require adjustment to the Guaranteed Construction Sum; and
  - 4.3.9 any other items identified by the Principal's Authorised Person.
- 4.4 The Contractor must at least one Business Day prior to each PCG/IMT meeting provide its project summary report in accordance with clause 66.3 of the General Conditions of Contract to the Principal's Authorised Person, Delegate – Project Manager for discussion at the PCG/IMT meeting. The report must include cash flow reports and a Status Contract Program in accordance with Schedule 21 (Contract Program Requirements).

#### **5. DECISIONS OF THE PCG/IMT**

- 5.1 All matters arising at a meeting of the PCG/IMT will be non-binding on both parties.

**6. PROJECT STEERING COMMITTEE (PSC) /EXECUTIVE LEADERSHIP TEAM (ELT)  
GROUP MEETINGS**

- 6.1 The Principal will establish an internal PSC/ELT which the Contractor must report to or attend the meetings of, if requested.
- 6.2 The Contractor's Authorised Person must provide a monthly report to the PSC/ELT unless the Principal's Authorised Person advises that a report is not required.

**SCHEDULE 15**

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**Tender Form**

Refer to clause 128 of the General Conditions of Contract

**SCHEDULE 16****Consultant Deed of Novation**

Refer to clause 71 and 128 of the General Conditions of Contract

This Deed made the .....day of .....

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

and .....("the Contractor")

of ..... ACN .....

and .....("the subcontractor")

of ..... ACN .....

witness that -

1 From the date of this Deed -

(a) the Contractor shall punctually perform the obligations of the Principal under the prior contract prescribed in item 1 of the schedule hereto as far as they are not performed. The Contractor acknowledges itself bound by the provisions of the prior contract as if the Contractor had been named as the Principal in the prior contract and the Contractor:

(i) assumes liability for all claims; and

(ii) enjoys all rights and benefits,

of the Principal under the prior contract, including those which accrued prior to the date of this Deed;

(b) the subcontractor shall punctually perform like obligations and be bound to the Contractor as if the provisions of the prior contract were incorporated herein; and

(c) other than the obligation to pay the amount set out in item 2 of the schedule, and without limiting clause 1(a), the Principal and subcontractor shall each release and forever discharge the other from the further performance of the prior contract and from all claims and demands in connection with the prior contract.

2 The amount set out in item 3 of the schedule is the balance payable by the Contractor to the subcontractor for the services remaining to be performed by the subcontractor under the prior contract

3 The subcontractor warrants to the Contractor that preliminary design carried out to the date hereof, is in accordance with the provisions of the prior contract.

4 From the date of this Deed, the prior contract is varied as follows:

(a) the definition of "Prescribed Heads of Liability" in clause 1 (as amended by clause 2.1 of Annexure Part B) is deleted and the following is substituted:

*"Prescribed Heads of Liability means any liability for:*

(a) personal injury including sickness and death;

(b) loss of or damage to tangible property, arising as a result of a claim made by, or on behalf of, an agency or instrumentality of the Crown in right of the State of South

Australia (Crown) (including as a result of a claim against the *Client* by the Crown), whether or not that property is owned by the Crown arising from:

- (i) a negligent or wrongful act or omission by the *Consultant*, its employees, agents or *Subcontractors*; or
- (ii) any breach of the *Consultant's* contractual obligation to the *Client*;
- (c) infringement of any *Intellectual Property Right*;
- (d) or in respect of any claims made by, or on behalf of, the Crown (including as a result of a claim against the *Client* by the Crown) arising from:
  - (i) a negligent or wrongful act or omission by the *Consultant*, its employees, agents or *Subcontractors*; or
  - (ii) any breach of the *Consultant's* contractual obligation to the *Client*;
- (e) an intentional tort;
- (f) a breach of trust;
- (g) wilful default;
- (h) breach of confidentiality; and
- (i) fraud or dishonesty,

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

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

**"9.1.2 Exclusion of Liability**

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

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

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

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

### SCHEDULE

**Item 1      Prior Contract**                      Contract No. \_\_\_\_\_ between the Principal and the subcontractor under which the subcontractor is required to perform design and related services in relation to the project known as "....." project.

**Item 2      Amount payable  
by the Principal**                      \$[                      ]

**Item 3      Balance payable  
by the Contractor**                      \$[                      ]

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

.....  
Witness

.....  
Name of Witness

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

.....  
Secretary/Director

.....  
Name of Secretary/Director

.....  
Director

.....  
Name of Director

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

.....  
Secretary/Director

.....  
Name of Secretary/Director

.....  
Director

.....  
Name of Director

[Contract Title]

Contract No. [Contract Number]

## **SCHEDULE 17**

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### **The Start-Up Workshop**

Refer to clause 59 of the General Conditions of Contract

The start-up workshop is held to encourage the parties and others concerned with the Contract and the Works to work co-operatively to achieve a successful project. This Schedule 17 is intended as a simple guide for the participants.

The workshop takes place within 28 days of the Date of Contract. The workshop should take half a day, although large or complex projects may require longer.

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### **Participants**

The workshop includes representatives of the Principal and Contractor together with others concerned with the Works. This might include representatives of authorities, eventual users of the Works, the local community, Contractor's Consultants, Subcontractors and Suppliers.

### **Agenda**

The sample agenda, which is a guideline for a Start-up workshop, includes:

- welcome by the facilitator;
- introduction of participants;
- workshop purpose, agenda review, workshop guidelines;
- project overview;
- Part A Site Condition Investigations;
- co-operative contracting - overview;
- monitoring and evaluation;
- co-operative contracting applied to the Contract;
- develop communications framework and directory;
- identify key concerns and solutions;
- opportunities for Innovation;
- prioritisation and review;
- closing comments and feedback; and
- close of workshop.



## SCHEDULE 18

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### Subcontract Deed of Novation

Refer to clause 54.2 and 58.3.2 of the General Conditions of Contract

#### DEED OF NOVATION

**DEED** dated *[insert date]*

#### **BETWEEN:**

*[Insert Contractor's details]*

(**"Contractor"**)

#### **AND**

*[Insert Principal's details (or those of its nominee)]*

(**"[Principal/New Party]"**)

#### **AND**

*[Insert Subcontractor's details]*

(**"Subcontractor"**)

#### **BACKGROUND**

- [A. The Contractor and the Principal entered into a contract dated *[insert date]* entitled *[insert name of head contract]*, contract number *[insert contract number]* (**"Head Contract"**).] *[Only include this paragraph if the Principal is the new party.]*
- B. The Contractor and the Subcontractor entered into a subcontract dated *[insert date]* for the *[insert the subject matter of the Original Subcontract]* (**"Original Subcontract"**).
- C. *[Insert a description of the circumstances that have resulted in the novation being required.]*
- D. The Subcontractor and the Contractor agree to novate the Original Subcontract.
- E. The Subcontractor agrees to the release and discharge of the Contractor from the operation of the Original Subcontract.
- F. The *[Principal/New Party]* undertakes pursuant to this Deed to perform the obligations of the Contractor.

#### **AGREED TERMS:**

##### • **NOVATION**

- The parties agree that the Original Subcontract is novated.
- A new contract is substituted for the Original Subcontract on the same terms and conditions as the Original Subcontract except:

- the Contractor ceases to be a party to the contract;
  - the [Principal/New Party] becomes a party to the contract.
- **RELEASE OF CONTRACTOR AND OBLIGATIONS OF [PRINCIPAL/NEW PARTY]**
    - The Contractor is released and discharged from:
      - its obligations under the Original Subcontract from the date of this Deed; and
      - any claims arising from the Original Subcontract from the date of this Deed for which it would have been liable had it continued to be a party to the Original Subcontract.
    - The [Principal/New Party] indemnifies the Contractor in respect of the obligations and claims referred to in clause 2.1.
    - The Contractor:
      - remains liable for all of its obligations under the Original Subcontract which arose before the date of this Deed; and
      - must keep the [Principal/New Party] indemnified against any claim, loss, cost or expense which the [Principal/New Party] suffers or incurs or is liable for in respect of any act or omission by the Contractor in respect of the Original Subcontract, which occurred before the date of this Deed.
    - [Nothing in clauses □□ or □□ affect the rights and liabilities of the Principal and the Contractor under the Head Contract.] *[Only include where the Principal is the new party]*
    - The [Principal/New Party]:
      - on and from the date of this Deed, must comply with the Original Subcontract;
      - obtains all the rights of the Contractor under the Original Subcontract including all rights which arose prior to the date of this Deed; and
      - assumes the obligations and the liabilities of the Contractor under the Original Subcontract arising after the date of this Deed.
  - **[AMENDMENTS TO THE ORIGINAL SUBCONTRACT]**

As from the date of this Deed, the Original Subcontract is varied by inserting the following clause:

*“[Insert the name used for the Contractor in the Original Subcontract] may disclose this Deed and/or information in relation to this Deed in either printed or electronic form and either generally to public or to a particular person as a result of a specific request. Nothing in this clause derogates from the [insert the name used for the Contractor in the Original Subcontract]’s obligations under any provisions of this Deed or from the provisions of the Freedom of Information Act, 1991”.]*

*[Only include the above clause if the Principal is the new party. The Principal may require other amendment to the Original Subcontract arising as a result of South Australian policy or other requirements.]*

- **COSTS OF THIS DEED**

- Each party must pay its own costs arising from the preparation and execution of this Deed.
- The [Principal/New Party] must pay the stamp duty (if any) assessed on this Deed.

**EXECUTED AS A DEED**

*[Insert appropriate execution clauses]*

**SCHEDULE 19**

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**Industry Participation Policy Plan**

Refer to clause 29 of the General Conditions of Contract

*[insert as included in RFT]*

**SCHEDULE 20**

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**GCS Offer Pricing Schedule**

Refer to clause 12.2 of the General Conditions of Contract.

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**SCHEDULE 21**

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**Contract Program Requirements**

Refer to clause 47 of the General Conditions of Contract

The Contractor must submit a Contract Program and any Contract Program progress updates electronically in both pdf electronic format and .mpp electronic format (using Microsoft Project 2013 or later) using GANTT Chart layout.

The Contract Program and any Contract Program progress updates must:

- 1) Show the dates of, or, in the case of future activities and events, the dates for commencement and completion of Design and construction activities (including but not limited to detailed Design reviews consistent with clauses 68 and 69 of the General Conditions of Contract, development and submission of Cost Plans, Part A Site Condition Investigations), other significant events, Milestones and the Works and also include Contractual Completion Dates;
- 2) Reflect Scheduled Progress (measured against the baselined program submitted under clause 45.1 of the General Conditions of Contract) and be consistent with all constraints on access, performance and co-ordination;
- 3) Show the logical relationship between activities and events shown in the program, identify time leads and lags, resource and other constraints and the sequence of activities which constitute the critical path or critical paths;
- 4) Show the dates when the Contractor will require information, documents, materials or instructions from the Principal and the dates when the Contractor will provide information or documents to the Principal. These dates are to be consistent with dates which the Principal could reasonably have anticipated at the Date of Contract that this information, documents, materials and instructions would be required and provided;
- 5) Must be clearly and uniquely labelled with version control convention and in a manner which demonstrates the purpose of the program as demonstrated below:
  - a) CP.001.00 = Contract Program Revision 1, original baseline
  - b) CP.001.01 = Contract Program Revision 1, progress update 1
  - c) CP.001.02 = Contract Program Revision 1, progress update 2
  - d) CP.002.00 = Contract Program Revision 2, revised baseline
  - e) CP.002.01 = Contract Program Revision 2, progress update 1
  - f) CP.002.02 = Contract Program Revision 2, progress update 2; etc.
- 6) Clearly identify the Contractor's working and non-working days (i.e. public holidays, RDO's etc.);
- 7) Include construction methodology, cash flow, labour histogram and fully detailed reasons for any departures or changes from the tender program; and
- 8) Be in such form and include such detail as the Principal reasonably requires and be accurate, comprehensive and complete in all respects.

- 
- 9) Show the following:
- a) calendar details including calendar utilised for each activity;
  - b) sequence of work.
  - c) critical paths of activities related to the work.
  - d) details of each activity's float;
  - e) details of any constraints applied;
  - f) allowance for holidays.
  - g) activity inter-relationships including full details on all predecessors and successors;
  - h) external dependencies including provision of access, document approvals and work by others.
  - i) Contractual Completion Date
  - j) Contractor's anticipated Date of Completion
  - k) key approvals / hold points
  - l) full details of both pre-construction (including procurement, shop drawings, fabrication and lead times) and pre-completion activities (including defect inspections, preparation and approvals of Completion documents (ie. Operation and maintenance manuals, testing and commissioning) in addition to general construction activities; and
  - m) details of float and contingency where applicable;
- 10) Comply with the following:
- a) all activities to have a start and finish link (excluding first and last activity);
  - b) all activities are to be scheduled "as soon as possible";
  - c) all activities to be generally less than 10-day durations;
  - d) program to be split into areas reflecting as a minimum, levels and manageable stages or areas;
  - e) include a separate section of required deliverables to be provided by the Principal (as applicable);
  - f) constraints such as Must Start, Must Finish are to be avoided in the Program.
- 11) Updated program :(Status Contract Program) : As a minimum, on a fortnightly basis (and as otherwise required by the Contract), provide a status program complying with this Schedule 21 and in the following format:
- a) The Contract Program per clause 47.1 of the General Conditions of Contract is to be set as a Baseline with each activity bar split horizontally in two;
  - b) Actual Starts, Actual Finish, Remaining Durations and % Complete are to be entered and shown on the program;

- c) The three column fields of Actual Start, Actual Finish, Remaining Durations and % Complete are to be shown in addition to the Activity ID and Description and in addition to the Baseline Duration, Baseline Start and Baseline Finish;
  - d) All status programs are to identify the “data date” in the tile block and display a “data date line” clearly demonstrating the date of the status data;
  - e) Where the construction methodology has departed from the Contract Program, a narrative is to be provided with Status Contract Program.
- 12) Handover Plan submission and other deliverables and requirements described in Guidenote G182 - “Practical Completion Requirements - Building Projects” (available at [bpims.sa.gov.au](http://bpims.sa.gov.au)), including submission of training and induction plan, training sessions, submission of Commissioning Plan and defect inspections, testing, commissioning and proofing activities. Due 8 weeks prior to Completion.
- 13) Program Reporting – Monthly Project Reporting (every 2nd Status Contract Program)
- 14) At each monthly project management meeting distribute in hard copy and electronically an up-to-date copy of the detailed project program which accurately reflects the current status of project construction activities, provides details of changes to the program in the preceding month, and provides a status Actual versus Forecast Manpower and Cash Flow.

#### Program Reporting – Extension of Time Claims

- 15) With each extension of time claim provide relevant program information including applicable bar chart and network diagram which clearly communicate:
- a) the status of the project immediately prior to the time of the delay
  - b) details of the delay including cause and affected trades
  - c) the effect of the delay upon the critical path activities.
  - d) The delay is to be referenced as a new activity and linked where applicable to the activities impacted to demonstrate the effect on the critical path.

Purpose of submissions: information only.

- 16) Program chart: Display in the contractor’s site office an up-to-date bar chart and network diagram based on Contract Program.



**SCHEDULE 22**

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**Concept Report XX XX 20XX**

**SCHEDULE 23**

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**Preliminaries**

**SCHEDULE 24**

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**General Requirements**

## SCHEDULE 25

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### Principal's Documents

Examples where applicable:

- Principal's Project Requirements document
- Specification (based on NATSPEC)
- Drawings
- Brief