

New South Wales Government

GC21 (Edition 2)

General Conditions of Contract

Preface

GC21 (Edition 2) General Conditions of Contract

- Contract framework
- Carrying out the Works
- Claim and Issue resolution
- Termination
- Meanings

Contract Agreement

Contract Information

Schedules

Attachments

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GC21 (Edition 2) General Conditions of Contract was developed in consultation with representatives of:

- Department of Finance & Services
- Land and Housing Corporation
- Roads and Maritime Services
- Health Infrastructure
- Sydney Water Corporation

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Preface

The GC21 Edition 2 General Conditions of Contract

The GC21 Edition 2 General Conditions of Contract build on the experience and project success delivered with Edition 1 which had a highly effective emphasis on co-operative contracting and enhanced communication between the parties.

Edition 2 focuses on streamlining, updating and improving the operation of the contract to reflect experience and practice.

The requirement for Contractors to use the GC21 Subcontract has been discontinued in Edition 2, and replaced with a short list of mandatory requirements to give the Contractor and subcontractors flexibility in their commercial arrangements.

The Department for Infrastructure and Transport has adapted this version of GC21 Edition 2 General Conditions to meet its requirements.

Using this document

All defined words and phrases have initial capitals

Attachments 1, 2, and 3 do form part of the Contract.

Contract framework

Roles and relationships

1 General responsibilities

1. The Contractor must:
 1. design the Works in accordance with the Contract, as stated in Contract Information Item 38;
 2. construct the Works in accordance with the Contract; and
 3. perform and observe all its other obligations under the Contract.
2. The Principal must:
 1. pay the Contractor the *Contract Price* for its performance, in accordance with and subject to the Contract; and
 2. perform and observe all its other obligations under the Contract.
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 the Contract expressly provides otherwise.

2 Authorised persons

Contractor's Authorised Person

1. The Contractor must ensure that, at all times, there is a person appointed to act as the Contractor's Authorised Person. The Contractor's Authorised Person acts with the Contractor's full authority in all matters relating to the Contract. The Contractor must promptly notify the Principal of the name and contact details of the Contractor's Authorised Person and of any change in those details. If the Principal reasonably objects to the Contractor's Authorised Person at any time, the Contractor must replace that person.

Principal's Authorised Person

2. The Principal must ensure that, at all times, there is a person appointed to act as the Principal's Authorised Person. The Principal must promptly notify the Contractor of the name and contact details of the Principal's Authorised Person and of any change in those details.
3. The Principal's Authorised Person does not act as an independent certifier, assessor or Valuer. The Principal's Authorised Person acts only as an agent of the Principal.
4. The Principal's Authorised Person may delegate any of its contractual functions and powers to others by written notice to the Contractor.

3 Co-operation

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

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

5 Early warning

1. Each party must promptly inform the other if it becomes aware of anything that is likely to affect the time for Completion, or the cost or quality of the Works. The parties must then investigate how to avoid or minimise any adverse effect on the Works and Scheduled Progress.
2. Information provided by a party under clause 5.1 must not be used against that party in any Claim or Issue resolution proceedings.

6 Evaluation and monitoring

1. The parties must meet regularly to evaluate and monitor performance of the Contract.
2. The parties must decide jointly who will participate in the meetings. Participants may include Subcontractors, Suppliers, Consultants and, if appropriate, representatives of government authorities, end users and local communities. Participation in meetings does not give the participants any additional rights or responsibilities.
3. Nothing concerning or in connection with completed evaluation forms changes either party's rights and responsibilities, or can be relied on or used by one party against another in any proceedings.
4. Participants in the evaluation and monitoring meetings must meet their own costs for attendance, and the parties must share equally the other costs.

Collaborative Governance Team

5. The Parties agree to establish a Collaborative Governance Team (CGT). The role of the CGT is to:
 1. provide guidance and leadership for the project;
 2. provide a forum for regular and formal interaction between senior executives of the Principal and the Contractor;
 3. establish and implement a governance plan and encourage and monitor the use of the principles developed in the plan; and
 4. monitor and review progress and performance.
6. At a minimum, the membership of the CGT shall comprise of:
 1. two senior representatives from the Principal; and
 2. two senior representatives from the Contractor.
7. A Party may only change its representative under exceptional circumstances, such as illness, resignation from employment or a conflict of interest arising. In the case of the Contractor, such replacement is subject to the Principal's prior written approval.
8. A quorum for the CGT requires the attendance of all representatives. Unless agreed otherwise by the CGT, meetings of the CGT will be held at least fortnightly while design development is taking place and monthly at other times.

No Reliance

9. Nothing that occurs at any meeting, workshop or other process in connection with this clause 6 (whether oral, written or by conduct) will:
 1. relieve either party, or alter or affect their liabilities, rights, obligations or responsibilities under or arising out of this Contract; or
 2. be construed as an instruction by the Principal to do or not do anything,

unless it is clearly documented in writing as an amendment to the Contract or an instruction from the Principal. Any minutes of any meeting or workshop held in connection with this clause do not form part of the Contract and are for information only.

The Contract

7 The Contract

1. The Contract is made up solely of the *Contract Documents*, which supersede all understandings, representations and communications made between the parties before the Date of Contract in relation to the subject matter of the Contract. The *Contract Documents* are:
 1. these GC21 General Conditions of Contract;
 2. the Contract Information;
 3. the annexed Schedules;
 4. the Principal's Documents as at the Date of Contract;

5. the other Contract Documents listed in Contract Information item 26; and
 6. the Formal Instrument of Agreement.
2. The *Contract Documents* must be read as a whole, and anything included in, or reasonably to be inferred from, one or more documents must be read as included in all other documents, unless the context requires otherwise.
 3. The terms of the Contract cannot be amended or waived unless both parties agree in writing.
 4. The Principal must give the Contractor the number of copies of the Principal's Documents stated in Contract Information item 27.
 5. The Contractor must execute and return to the Principal the formal instrument of agreement within 5 *Business Days* after the Principal's written request for its execution. The Principal will return an executed copy to the Contractor
 6. 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.
 7. All communications and documentation exchanged between the Principal and Contractor must be in the English language.
 8. 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.
 9. Unless otherwise provided, prices are in Australian currency and payments must be made in Australian currency.
- #### 8 Scope of the Works, Temporary Work and work methods
1. The Works are described in brief in Contract Information item 3 and in more detail in the *Contract Documents*, and include:
 1. all work specifically referred to in or contemplated by the Contract;
 2. all work and items necessary to achieve the effective and efficient use and operation of the Works; and
 3. all work and items necessary for the Works to be fit for the purposes required by the Contract.
 2. Other work required in connection with the Contract includes:
 1. all work and items, other than the Works, specifically referred to in or contemplated by the Contract;
 2. all work and items necessary to carry out and complete the Works properly; and
 3. all work and items reasonably inferred from the *Contract Documents* as necessary to properly perform the other obligations of the Contractor under the Contract.
 3. The Contractor acknowledges that:
 1. it is both experienced and expert in work of the type, complexity and scale of the Works;
 2. it has made full allowance in the *Contract Price* for the matters referred to in clauses 8.1 and 8.2; and
 3. unless the Contract expressly provides an entitlement to payment, everything required to be done by the Contractor under the Contract is to be done at the Contractor's own cost.
 4. The Contractor warrants to the Principal that, subject to clauses 28 to 31 (inclusive), the Contractor shall engage and retain the Consultants and Subcontractors identified in the Contractor's tender and who are suitably qualified and experienced.

5. The Contractor acknowledges that *Variations* instructed by the Principal may change the scope of the Works.
6. Unless the Contract specifies, or the Principal instructs, that the Contractor use a particular work method or perform particular *Temporary Work*, the Contractor is solely responsible for determining the work methods and the requirements for all *Temporary Work*.
7. If requested in writing by the Principal, the Contractor must, within the time specified in the request, advise the Principal of:
 1. its price (excluding all costs of delay or disruption) for any proposal by the Principal to use a particular work method or perform particular *Temporary Work* proposed by the Principal or to change a work method or *Temporary Work* specified in the Contract;
 2. the anticipated effect of the Principal's proposal on achieving *Completion*; and
 3. the effect of the Principal's proposal on any other matter specified by the Principal.
8. If the parties agree in writing on the effects of the Principal's proposal and the Principal instructs the Contractor to carry out the proposal, any affected *Contractual Completion Dates* and the *Contract Price* must be adjusted as agreed.
9. Subject to clause 8.10, if the Principal instructs the Contractor to use a particular work method or perform particular *Temporary Work* or to change a specified work method or *Temporary Work* without first agreeing in writing with the Contractor the effects of the instruction, the Contractor may make a *Claim* for:
 1. an extension of time in accordance with clause 50 and delay costs in accordance with clause 51, subject to the requirements of those clauses; and
 2. an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable costs incurred by the Contractor additional to what it would have incurred if the Principal had not given the instruction.
10. If the need for the instruction given under clause 8.9 arises from the Contractor's own act or omission, the Contractor is not entitled to any extension of time or adjustment to the *Contract Price*.

8A Contractor's Warranties

1. The Contractor warrants to the Principal that it has checked and carefully considered all information and documents made available to the Contractor by, or on behalf of, the Principal and that they are proper, adequate and suitable for the purpose for which the work under the Contract is intended (as contemplated by the Principal's Documents).

9 Assignment

1. The Contractor must not assign a right or benefit under the Contract or seek to novate the Contract without first obtaining the Principal's written consent.

10 Governing law of the Contract

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

11 Notices and instructions

1. Notices must be sent to the relevant persons at the addresses in Contract Information items 4 to 11 or 52, or at the address for service most recently notified in writing by the addressee.
2. All notices must be in writing, and all instructions by the Principal must be in writing or, if given orally, must be confirmed in writing as soon as practicable.
3. Notwithstanding Clause 11.1, where stated in the Principal's Documents that the Principal will implement an electronic Information Management System (IMS) for the

management of documents the Contract, the IMS must be used for the transmission of all notices and other *documents between the parties*

Statutory and Government Requirements

12 Statutory Requirements

1. The Principal must ensure that the licences, authorisations, approvals and consents listed in Contract Information item 14 are obtained and paid for.
2. The Contractor is responsible for:
 1. compliance with all *Statutory Requirements*, subject to clause 49, except if, because of the nature of the requirement, only the Principal can comply (in which case the Contractor will perform the Works so as not to put the Principal in breach of any Statutory Requirements) ;
 2. giving all notices necessary to comply with *Statutory Requirements*;
 3. obtaining all licences, authorisations, approvals and consents necessary to carry out the work in connection with the Contract, other than those listed in Contract Information item 14; and
 4. the payment of all necessary fees and charges, other than those listed in Contract Information item 14.
3. As a condition of achieving Completion, the Contractor must give to the Principal originals of all licences, authorisations, approvals, consents and other documents issued by authorities or providers of services in connection with the Works or the Site.

13 Codes of Practice and Implementation Guidelines

1. If required by Contract Information item 16A, the Contractor must comply with the requirements of the Commonwealth Building Code 2016 and Schedule 12 (Compliance with Building Code 2016) applies.

Australian Government Agreement (where applicable)

2. 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").
3. The Contractor agrees to cooperate in all respects during the term of the Contract to enable the Principal to perform its obligations under the Agreement and without limitation the Contractor will:
 1. preserve the confidentiality of the Commonwealth Funding Agreement;
 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;
 3. provide any information requested by the Commonwealth pursuant to the Commonwealth Funding Agreement.
4. In the event that the Commonwealth either
 1. terminates the Commonwealth Funding Agreement; or
 2. otherwise withdraws funding for the Works,
 3. 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.

- 14 No collusive arrangements
1. The Contractor warrants that it has not engaged in any collusive or anti-competitive arrangement or understanding in connection with its tender for, or entry into, or during the period of the Contract.
 2. Without limiting any other right or remedy, the Principal may recover from the Contractor the value of any payment or other benefit made directly or indirectly to an unsuccessful tenderer or a trade or industry association if the Contractor is in breach of the warranty in clause 14.1.
- 15 Compliance with SA Government Requirements
1. The Contractor agrees to disclosure of this Contract in accordance with Department of Premier and Cabinet Circular 27 (PCO27). "Disclosure of Government Contracts", available from: <https://www.dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars>. The Contractor's attention is drawn to the Freedom of Information Act 1991 (SA). No exemption from the provisions of this Act applies to this Contract.
 2. Where required by the *Building Work Contractors Act 1995* (SA), the Contractor shall hold an appropriate Builders Licence. Evidence of compliance with this clause shall be submitted to the Principal's Authorised Person on request.
 3. Attention is drawn to the *Construction Industry Training Fund Act 1993* (SA), which imposes a levy of 0.25% of the value of building and construction works in South Australia. The Contractor shall pay the levy, calculated on the basis of the Contract Price less any Provisional Sums, Provisional Quantities and Principal controlled amounts. The Principal will not make separate payment to the Contractor for the levy, the cost of which is deemed to be included in the Contract Price. Proof of payment of the levy may be required prior to the first or any progress payment being made under this Contract.
 4. The Contractor must conduct itself in a manner that does not invite, directly or indirectly, the Principal's officers, employees or agents or any public sector employee (as defined in the *Public Sector Act 2009*) to behave unethically, to prefer private interests over the Principal's interests or to otherwise contravene the Code of Ethics for the South Australian Public Sector.
 5. The Contractor must not engage any former public sector employee, either directly or through a third party, who has, received a separation package from the South Australian government, where such engagement may breach the conditions under which the separation package was paid to the former public sector employee.
 6. The Contractor shall comply with the Code of Practice for the South Australian Construction Industry (the "Code") during the term of the Contract. Failure to comply with the Code will be taken into account by the South Australian Government and its agencies when considering a future tender from the Contractor and may result in such tender being passed over and/or a change in the status of the Contractor on any State Government register of contractors. The Contractor shall ensure that all subcontracts contain a requirement to comply with the Code.

Respectful Behaviour.

7. The Contractor acknowledges the Principal's zero tolerance towards men's violence against women in the workplace and the broader community.
8. The Contractor agrees that, in performing the Works, the Contractor's personnel will at all times:
 1. act in a manner that is non-threatening, courteous, and respectful; and
 2. comply with any instructions, policies, procedures or guidelines issued by the Principal regarding acceptable workplace behaviour.
9. If the Principal believes that the Contractor's personnel are failing to comply with the behavioural standards specified in this clause, then the Principal may in its absolute discretion:

1. prohibit access by the relevant Contractor's personnel to the Principal's premises; and
2. direct the Contractor to withdraw the relevant Contractor's personnel from providing the Services.

Industry Participation Plan

10. Agencies and private parties contracting to the Government of South Australia are required to comply with the South Australian Industry Participation Policy (SAIPP) and the supporting procedural and reporting requirements.
11. The Contractor must implement the Contractor's Standard or Tailored Industry Participation Plan ("SIPP" or "TIPP") approved by the Industry Advocate ("IA").
12. The Contractor must provide an Industry Participation Report ("IPP Report") in respect of each Industry Participation Reporting Period to the Principal within two weeks of the end of each period, in the form set out at <https://industryadvocate.sa.gov.au/wp-content/uploads/2020/02/Industry-Participation-Report-Template.xlsx>
13. An Industry Participation Reporting Period is:
 1. the period between the Date of Contract and the first anniversary of the Date of Contract;
 2. each subsequent 12 month period during the term of the Contract;
 3. if the Contract ends on a date other than an anniversary of the Date of Contract, the period from the conclusion of the preceding Industry Participation Reporting Period until the date of termination or expiry of the Contract;
 4. for short-term projects of strategic importance to the State, the period notified by IA to the Contractor in writing; and
 5. where the term of the Contract is for a period less than 12 months, the term of the Contract.
14. The Contractor must attend any meeting scheduled by the IA during the term of the Contract to review how the SIPP or TIPP is being implemented and advanced, and for this purpose, the Contractor must provide all information reasonably requested by the IA. The IA must give the Contractor not less than ten (10) Business Days' notice of any such meeting.
15. The IA may, by written notice require that the Contractor within a reasonable time specified in the notice, provide information or documents to enable the IA to assess the Contractor's compliance with this clause 15.
16. If the IA reasonably believes that the Contractor is not complying with the requirements of this clause 15, the IA may by notice in writing direct that the supply comply with those requirements.
17. 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.
18. 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.
19. In this clause, "Industry Advocate" or "IA" means the person from time to time appointed by the Governor to the position of Industry Advocate under s.5 of the Industry Advocate Act 2017.

Further Systems and Plans

20. If required by Contract Information item 15, the Contractor must implement the following systems in accordance with the requirements of the Principal's Documents:
 1. a Corporate WHS Management System;

2. a certified Quality Management System;
 3. an accredited Environmental Management System.
21. If required by Contract Information item 15, the Contractor must provide the following plans in accordance with the requirements of the Principal's Documents:
1. a WHS Management Plan;
 2. a Workplace Relations Management Plan;
 3. a Quality Management Plan;
 4. an Environmental Management Plan.

16 Appointment of principal contractor for WHS

1. Unless otherwise stated in the Contract the Contractor:
 1. is engaged as principal contractor for the construction project in accordance with section 293 of the Work Health and Safety (WHS) Regulations 2012 (SA);
 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;

must perform the duties of:

 3. a principal contractor, as specified in the WHS Regulations 2012 (SA); and
 4. a person with management or control of a workplace as specified in the Work Health and Safety Act 2012 (SA) and the WHS Regulations 2012 (SA); and
 5. must notify the Principal promptly of any matter affecting WHS where consultation with the Principal is necessary.
2. The Contractor shall, 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:
 1. any injury, accident or safety related incident on or adjacent to the *Site*, and
 2. the enforcement of any breach by the Contractor of its obligations under this clause 16.

16A. Safety Culture Assessment General

1. For the purposes of this clause 16A:
 1. **“Expectations”** means the Principal's Minimum Construction Safety Expectations;
 2. **“Measures”** means the Principal's Outcome Based Safety Culture Measures; and
 3. **“Tool”** means the Principal's Safety Culture Assessment Tool,

each provided at https://www.dpti.sa.gov.au/contractor_documents/whs.
2. The documents set out in clause 16A.1.1 are subject to change during performance of the Contract.
3. Minimum Construction Safety Expectations
 1. The Expectations operate in addition to the Work Health and Safety Act 2012 (the **“Act”**), and do not vary any rights or obligations under the Act or any other applicable law. In the event of any inconsistency between the Expectations and any applicable law, the applicable law will prevail to the extent of that inconsistency.
4. Safety Audits
 1. The Contractor must, at all times during the performance of the Contract:

- .1 meet or exceed the Expectations; and
 - .2 comply with the Measures to the Principal's satisfaction.
5. The Principal may conduct an on-site safety culture audit (“**Audit**”) at any time, and without notice, during performance of the Contract. To facilitate an Audit, the Contractor must, at no additional cost to the Principal:
 1. give the Principal or its agents full access to the Site;
 2. provide access to or copies of any document related to the safety of the Works; and
 3. promptly comply with all reasonable requests from the Principal or its agents regarding the Audit.
 6. During an Audit, the Principal may use the Tool or any other method to document evidence of compliance with the Expectations and Measures.
 7. Following an Audit, if the Principal determines that the Contractor's performance against any of the Expectations or Measures is unsatisfactory, then the Principal may:
 1. initiate discussions with the Contractor regarding its safety culture, and make recommendations for improvement;
 2. issue a formal notice requesting that the Contractor show cause for any practice, process or procedure used in performance of the Works, and if the Principal is not satisfied with the response, require the Contractor to remedy that practice, process or procedure;
 3. perform subsequent Audits;
 4. direct the Contractor to change or cease any practice, process or procedure used in performing the Works;
 5. direct that all or part of the Works are suspended pending satisfactory compliance with the Expectations or Measures; or
 6. terminate the Contract.
 8. The Contractor must promptly comply with any direction under this clause 16A at no additional cost to the Principal.
 9. Failure by the Contractor to comply with a direction under clause 16A 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 73, and the notice provisions under clauses 73.3 – 73.4.2 will not apply.
- 17 Commonwealth WHS Accreditation
1. If required by Contract Information item 16B, the Contractor must maintain accreditation under the Australian Government Building and Construction Work Health and Safety Accreditation Scheme (the Scheme) established by the *Building and Construction Industry (Improving Productivity) Act 2016* (Cwlth) (BCII Act) while building work (as defined in section 5 of the BCII Act) is carried out.
 2. The Contractor must comply with all conditions of Scheme accreditation and the National Construction Code performance requirements in relation to building materials.
- 18 Working hours and working days
1. The Contractor must observe:
 1. *Statutory Requirements* which regulate working hours and working days; and
 2. state in Contract Information Item 18, the actual working hours and working days allowed, that correspond to the Contractor's program.
- 19 Authorisation to release and use information
1. The Contractor authorises the Principal to:
 1. provide information about the Contractor, including information provided by the Contractor and information related to the

Contractor's performance, to other Commonwealth, State or local government agencies at any time or for any reason; and

2. take account of information about the Contractor, including reports of unsatisfactory performance, from any government agency or other reputable source, when deciding whether to offer the Contractor future opportunities for work.
 2. The Contractor agrees and acknowledges that the Principal is entitled to rely on the defence of qualified privilege for the purposes of section 30 of the *Defamation Act 2005* (SA) in making information available to others as contemplated by clause 19.1.1.
 3. The Contractor releases and indemnifies the Principal from and against any claim, action, loss, damage, expense or liability the Principal may sustain or incur in connection with anything authorised by clause 19 or anything done by a recipient of the information.
- 20 Long service levy

Not Used

21 Registration and licences

1. All vehicles and plant used in carrying out work in connection with the Contract must be registered as required by law.
2. All drivers who operate vehicles or plant in carrying out work in connection with the Contract must be licensed and hold the appropriate ticket to operate those vehicles or plant as required by law.
3. Whenever requested, the Contractor must promptly provide documentary evidence of compliance with clause 27.

Management duties

22 Time management

Contract Program

1. Prior to the commencement of work under the Contract, the Contractor shall prepare and submit a baseline *Contract Program*, which includes a construction program. The *Contract Program* shall be detailed to show the following:
 1. each item or element of work under the Contract;
 2. dependencies between items or element of work as normally identified in Critical Path Analysis methods (in either precedence PERT or precedence GANTT form);
 3. the minimum duration of each item of work under the Contract;
 4. the critical path;
 5. the proposed human resources and plant for each item of work on the critical path;
 6. monthly cash flow;
 7. design activities;
 - and
 8. needs to be provided in the native file form (P6 etc.) and in a .pdf form.
2. Each month the Contractor shall submit a revised *Contract Program* to the Principal. In addition, the Principal may direct that a revised *Contract Program* is required at any time, in which case the Contractor shall submit a revised program within 7 days of the direction. Updated *Contract Program's* must take account of the Contractor's actual progress to the date of the update and must be submitted promptly to the Principal.
3. The Principal need not respond to the Contractor about a *Contract Program*, but if the Principal advises the Contractor that the *Contract Program* submitted does not comply with the requirements of the Contract, or otherwise instructs the Contractor, the Contractor must revise the *Contract Program* so that it complies with the requirements

of the Contract and the instructions of the Principal, and must submit the revised *Contract Program* to the Principal within 7 days after receiving the Principal's advice or instructions.

Scheduled Progress

4. The Contractor must carry out all work in connection with the Contract so as to achieve *Scheduled Progress*.
5. Whenever requested, the Contractor must demonstrate to the Principal that it is achieving *Scheduled Progress*.
6. If the Contractor does not demonstrate to the Principal that it is achieving *Scheduled Progress*, the Principal may instruct the Contractor to take all reasonable steps to achieve *Scheduled Progress* at its own cost. An instruction under this clause is not an *Acceleration Notice*.

Minimisation of delay

7. When there is any change in work in connection with the Contract, or the program or sequence of the work, the Contractor must take all reasonable steps to:
 1. carry out any additional work concurrently with other work; and
 2. otherwise minimise and mitigate any effects on the time for *Completion*.

23 Intellectual property

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.
2. The Contractor must include provisions in all Subcontracts and agreements with Consultants to ensure that *Intellectual Property Rights* in all *Data* created specifically for the Contract are assigned or otherwise transferred to the Principal upon their creation.
3. The Contractor, Subcontractors and Consultants are granted royalty-free licences to use the *Data* for the purposes of the Contract.
4. For *Data* not created specifically for the Contract but required to use, operate, maintain, modify and decommission the Works, the Contractor must obtain irrevocable royalty-free licences to allow the Principal to use that *Data* for those purposes, including a right to sub-licence.
5. Licences referred to in clause 23.4 apply in perpetuity from the Date of Contract or (if the *Data* has not then been created) from the date the *Data* is created.
6. The Contractor is responsible for the timely payment of all royalties and fees for *Intellectual Property Rights* it uses in connection with the Contract and the Works.
7. The Contractor indemnifies the Principal against any claims (including *Claims*), actions, loss or damage arising out of any failure to make such payments or any infringement or alleged infringement of *Intellectual Property Rights* in relation to *Data* created or provided by the Contractor in connection with the Contract, including any related design, materials, documents or methods of working, or otherwise in the course of the Contractor's performance of the Contract.
8. The Contractor warrants that the *Data* created or provided by the Contractor under the Contract, including any related design, materials, documents and methods of working, will not infringe any *Intellectual Property Rights*.
9. The Contractor must ensure that *Data* created specifically for the Contract by or for the Contractor is only used for the purposes of the Contract.
10. The Principal may grant the Contractor a royalty-free licence to use innovations developed during the course of the Contract for purposes agreed by the Principal.
11. The Contractor must procure from every person who is an author for the purposes of Part IX of the Copyright Act 1968 (Cth) of *Data* a written consent which is valid and effective under the Copyright Act and signed by that person by which that person irrevocably and unconditionally consents to the Principal:

1. using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to the Data anywhere in the world in whatever form any of the Principal thinks fit, including the making of any distortions, additions or alterations to the Data or any adaption thereof, or to any part of the Data in a manner which, but for the consent, infringes or may infringe that person's moral rights (as defined in the Copyright Act or equivalent laws world-wide) in the Data; and
2. taking any action referred to in clause 23.11.1 without making any identification of the author of the Data.

24 Confidentiality

1. 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.

25 Media releases and enquiries

1. The Contractor must obtain the Principal's prior written consent to:
 1. any press release or promotional advertisement it wishes to make or place concerning the Contract, the Principal or the Works; and
 2. the release for publication in any media of any information concerning the Contract, the Principal or the Works.
2. The Contractor must refer any media enquiries concerning the Contract, the Principal or the Works to the Principal. The Contractor must not respond to any media enquiry without the Principal's prior written consent.
3. The Contractor must ensure that all Consultants, Subcontractors and Suppliers comply with clause 25 and obtain the Principal's prior written consent (through the Contractor) before doing anything which, if done by the Contractor, would require the Principal's prior written consent.
4. The Principal may give or refuse its consent, in its absolute discretion.

26 Care of people, property and the environment, indemnities and limitations

Obligations of care

1. The Contractor is responsible for all of the following:
 1. preventing personal injury or death;
 2. preventing loss or damage to the Site and the Works;
 3. preventing loss or damage to adjoining and other properties and the environment arising in connection with carrying out the Works;
 4. locating and caring for existing services;
 5. repairing or making good loss or damage to the Works and the Site; and
 6. bearing the cost of repairing, or making good, loss or damage to adjoining and other properties and the environment arising in connection with carrying out the Works.
2. If, in the opinion of the Principal, 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, and the Principal's costs of doing so will be recoverable as a deduction from the *Contract Price*.

Indemnities for property, personal injury or death

3. The Contractor indemnifies the Principal against loss or damage to:
 1. the Works, from the date the Contractor begins carrying out the Works; and
 2. the Site and anything brought onto the Site for the purposes of the Contract from the date the Contractor is given access to the Site, or the relevant part of the Site,
until and including the *Actual Completion Date* of the whole of the Works except that, in respect of any part of the Works which is occupied or taken into use by the Principal under clause 64, this indemnity ceases when that part is occupied or taken into use and the indemnity in clause 26.4 then applies as if the *Actual Completion Date* had been achieved with respect to that part.
4. After the *Actual Completion Date* of the whole of the Works, the Contractor indemnifies the Principal against loss or damage to the Works, the Site, and anything brought onto the Site for the purposes of the Contract:
 1. arising out of carrying out its obligations under the Contract, including carrying out *Variations*, making good *Defects* and removing *Materials* from the Site; or
 2. which occurred while the Contractor indemnified the Principal under clause 26.3.
5. The Contractor's liability for loss or damage under clauses 26.3 and 26.4 is reduced to the extent that the loss or damage is contributed to or caused by:
 1. any act or omission of the Principal or its agents, excluding the Contractor and its subcontractors;
 2. any risk specifically excepted in the Contract;
 3. 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
 4. 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 any of its Subcontractors, Consultants or Suppliers.
6. The Contractor indemnifies the Principal against the following where they arise in connection with carrying out the Works:
 1. all damage to property other than property covered under clause 26.3;
 2. all claims (including *Claims*), actions, other liability, and loss, including loss of use, in connection with property other than property covered under clause 26.3; and
 3. all claims (including *Claims*), actions, other liability, and loss in connection with personal injury, or death.
7. The Contractor's liability to indemnify the Principal under clause 26.6 is reduced to the extent that the loss, damage, injury or death is contributed to or caused by an act or omission by the Principal.

Contractor's safety and environmental obligations

8. The Contractor acknowledges the importance that the Principal places on care of the environment and the provision of a safe workplace. Without derogating from any other provision in this clause 26, the Contractor must:

1. comply with all requirements of the Contract, applicable Australian Standards and all relevant law relating to protection of the environment and Work Health and Safety;
2. ensure, in connection with the execution of the work under the Contract, the health and safety of all persons including without limitation, members of the public, the Principal's Authorised Person, the Principal's employees, consultants and agents and the Contractor's employees, subcontractors and agents;
3. perform its obligations under this Contract in an environmentally responsible manner so as to protect and preserve the environment (including from harm or damage arising from or in connection with the carrying out of the work under the Contract, except to the extent such harm or damage was a direct and unavoidable result of carrying out and completing the work in accordance with the Contract); and
4. except to the extent prohibited by law, indemnify and keep indemnified the Principal against any loss that the Principal suffers or incurs arising out of or in any way in connection with a failure by the Contractor to comply with any of its environmental or safety obligations.

Limitation of liability

9. Except for any liability in respect of the *Prescribed Heads of Liability* (which remain unlimited), the Principal and the Contractor agree to limit the liability of either party to the other party in respect of *Direct Loss* to the amount equal to the higher of:
 1. the minimum cover specified in Contract Information item 21
 2. the minimum cover specified in Contract Information item 24; and
 3. one times the *Contract Price*.
10. The liability of a party for loss or damage sustained by the other party will be reduced to the extent that such loss or damage has been caused by the other party's breach of Contract, wrongful act or omission or negligence.

Exclusion of Liability

11. A party will not be liable to the other party for:
 1. loss of business opportunity;
 2. loss of goodwill;
 3. loss of profit;
 4. loss of contracts;
 5. loss arising from business interruption;
 6. loss of or corruption of data;
 7. loss of anticipated savings;
 8. loss of revenue;
 9. the cost of capital or other financing costs, or
 10. loss of production,

other than a loss in connection with any of the *Prescribed Heads of Liability* or loss that should have been covered by insurance required under the Contract to be held by the Principal or Contractor, or which would have been covered but for an act or omission of the Contractor or any of its employees, agents, subcontractors, suppliers or Contractors.

Operation of Proportionate Liability Legislation

12. If Contract Information item 20 states that proportionate liability is excluded from the Contract then to the extent permitted by law, the operation of Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) (Proportionate Liability) Amendment Act 2005* (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 26.12 – 26.14 constitute a special limitation for the purposes of Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) (Proportionate Liability) Amendment Act*.

13. 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.
14. The Contractor must ensure that its subcontracts, including contracts with material suppliers, include provisions that are functionally equivalent to this clause 26.12 – 26.14.

27 Insurance

1. If Contract Information item 21 or 22 states that the Principal is responsible to effect insurance covering the Works or public liability, the Principal must, not later than the Date of Contract, effect that insurance in accordance with the Contract Information item, 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. The Principal must provide or make available to the Contractor a copy of the relevant insurance policy.
2. If Contract Information item 21 or 22 states that the Contractor is responsible to effect insurance covering the Works or public liability, the Contractor must, before starting work in connection with the Contract, effect that insurance in accordance with the Contract Information item, as follows:
 1. a Works policy of insurance to cover loss or damage to the Works; and
 2. a 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.
3. Before starting work in connection with the Contract, the Contractor must effect any insurance required in accordance with Contract Information items 23, 24 and 25 as follows:
 1. workers compensation and related liability insurance in accordance with the requirements of the *Return to Work Act 2014* (SA);
 2. if stated in Contract Information item 24, 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); and
 3. if any work in connection with the Contract includes the use of waterborne craft of 8 or more metres in length, a marine liability policy of insurance to cover the use of such craft, as specified in Contract Information item 25.
4. The party that is required to effect insurance must pay all necessary premiums and maintain the insurance in accordance with the requirements of the relevant Contract Information item.
5. Unless otherwise instructed by the Principal, the Contractor must make and manage all insurance claims.
6. The Contractor must meet the costs of all excesses or deductibles and if not promptly paid by the Contractor, the Principal may pay them and deduct those amounts from any payments to be made to the Contractor under this Contract.
7. All policies must:

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 7 days before any proposed cancellation of a policy; and
 2. provide that a notice of claim given to the insurer by the Principal, the Contractor, or a Subcontractor, Supplier or Consultant will be accepted by the insurer as a notice of claim given by all of the insured.
8. Each policy referred to in clauses 27.2 and 27.3.3 must:
1. name or otherwise identify the Principal and the Contractor as persons covered by the policy or to whom the insurance cover provided by the policy extends; and
 2. include a cross-liability clause under which the insurer agrees that the term “insured” applies to each of the persons covered as if a separate policy of insurance had been issued to each of them, and a waiver of subrogation clause, under which the insurer agrees to waive all rights of subrogation or action
9. The Contractor must:
1. ensure that in respect of each policy of insurance required to be effected or taken out as required by clause 27 by the Contractor or any Subcontractor, Supplier or Consultant, it:
 - .1 does not do anything which prejudices any insurance;
 - .2 if necessary, rectifies anything which might prejudice any insurance;
 - .3 reinstates an insurance policy if it lapses;
 - .4 does not cancel, materially vary or allow an insurance policy to lapse without the prior written consent of the Principal;
 - .5 immediately notifies the Principal of any event which may result in an insurance policy lapsing or being cancelled; and
 - .6 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; and
 - .7 ensure that any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
 - .8 ensure that a notice to the insurer by one insured will be deemed to be a notice by all insured parties.
10. The Contractor must give the Principal proof that all insurance policies required to be effected by the Contractor under the Contract are current:
1. before starting work in connection with the Contract; and
 2. whenever requested in writing by the Principal.
11. The Contractor must give the Principal certificates of currency of all insurance policies it is required to effect and maintain whenever requested in writing by the Principal.
12. If the Principal has a reasonable objection to an insurer or to any conditions of an insurance policy, and notifies the Contractor of the objection and the reasons for the objection, the Contractor must, within five Business Days after receiving the notification, either obtain insurance from another insurer or arrange changes to the insurance policy, so that the Principal has no objections.
13. If the Contractor fails to comply with clauses 27.10, 27.11 or 27.12, the Principal may effect and maintain the relevant insurance policy 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 from the Contractor to the Principal.

14. 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 by the Principal and must ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim.
15. If there is a claim under the Works policy of insurance for damage or destruction that is significant, as determined by the Principal acting reasonably:
 1. all settlement amounts must be paid by the insurer directly to the Principal;
 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
 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, or such amount that would have been recoverable from insurance had the Principal actively pursued a claim under that policy of insurance

Subcontractors, Suppliers and Consultants

28 Subcontractor relationships

1. The Contractor is solely responsible for all Subcontractors (including Subcontractors engaged in accordance with clause 29.3) and is liable for their acts and omissions as if such acts or omissions were those of the Contractor. Subcontracting of any obligation under the Contract does not affect the Contractor's obligations or liability under the Contract.
2. The Contractor indemnifies the Principal against:
 1. all claims (including Claims), actions, loss or damage and all other liability arising out of any acts or omissions of Subcontractors; and
 2. any claim by a Subcontractor against the Principal in respect of a breach of this clause 28 by the Contractor.
3. The Contractor must include in every Subcontract:
 1. details of the Contractor's obligations in connection with the Contract which are to be carried out by the Subcontractor;
 2. the relevant provisions of clauses 13, 14, 15, 23, 24, and 25;
 3. consent for the Subcontract to be novated to the Principal or its nominee, if required by the Principal in the circumstances contemplated by clause 73.5.3; and
 4. the right for the Principal to contact the Subcontractor directly to satisfy itself that payment is occurring in accordance with the conditions of the Subcontract.
4. In addition, the Contractor must include:
 1. in each Subcontract with a Subcontractor valued at or over the amount stated in Contract Information item 29, written provisions giving effect to the requirements set out in Schedule 9 (Subcontract requirements); and
 2. in each Subcontract with a Subcontractor valued below the amount stated in Contract Information item 29, a written provision requiring the Contractor to pay the Subcontractor within the number of days stated in Contract Information item 30 after the Subcontractor has claimed payment in accordance with the Subcontract.

29 Engaging Subcontractors

1. The Contractor must not subcontract the whole of the Works, but may subcontract parts of the Works in accordance with clauses 28 and 29.
2. If requested, before engaging any Subcontractor and at any other time, the Contractor must provide the Principal with the name and address of the proposed Subcontractor. 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 propose another Subcontractor.
3. If Contract Information item 31 includes a list of *Preferred Subcontractors* for a particular class of work, the Contractor must only engage a Subcontractor from that list for work of that class. If no *Preferred Subcontractor* on the list will subcontract to carry out the work, the Contractor must provide a revised list and the provisions of clause 29.2 will apply.

Where there is a Department for Infrastructure and Transport prequalification system applicable to subcontract work, the subcontractor must be prequalified with the Department for Infrastructure and Transport. A list of companies who are prequalified with the Department for Infrastructure and Transport may be obtained from the following internet site: https://www.dpti.sa.gov.au/contractor_documents/prequalification

30 Subcontractor warranties

1. For each trade, item or area of work listed in Contract Information item 32, 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).
2. Clause 30.1 does not affect any of the Contractor's other obligations under the Contract.

31 Consultant and Supplier relationships

1. Clauses 28.1, 28.2, 28.3 and 29 apply to Consultants in the same way they apply to Subcontractors.
2. Clauses 28, 29 and 30 apply to Suppliers in the same way they apply to Subcontractors, unless the context requires otherwise.

Carrying out the Works

Starting

32 Start-up workshop

1. The Principal must convene a start-up workshop within 28 days after the Date of Contract or such other period as the parties agree.
2. The parties must attend the start-up workshop and must jointly decide who else will attend. Clause 6.4 applies to the costs of the workshop.
3. The objective of the start-up workshop is to promote a culture of co-operation and teamwork for the management of the Contract. The parties agree to conduct the workshop collaboratively so as to achieve this objective.

33 Undertaking

- 1 Within 14 days after the Date of Contract (and before starting work on the Site), the Contractor must give the Principal the *Completion Undertaking* and the *Post-Completion Undertaking* for amounts calculated in accordance with Contract Information items 33 and 34 respectively. The *Undertakings* must be in the form specified in Schedule 2 (Undertaking).
 - 2 If the Contractor does not comply with clause 33.1 the Principal may withhold from any payment to the Contractor an amount up to the total amount of *Unconditional Undertakings* that the Contractor has not given to the Principal in accordance with clause 33.1 until the Contractor gives the *Unconditional Undertakings* to the Principal or the Principal is required to return the *Unconditional Undertakings*, whichever is earlier.
 - 3 Unless the Principal has made or intends to make a demand against an *Undertaking*, the Principal must return the *Undertakings* (or, if applicable, the balance remaining after a demand on the *Undertakings*) to the Contractor as follows:
 1. the *Completion Undertaking* within 14 days after the *Actual Completion Date* of the whole of the Works; and
 2. the *Post-Completion Undertaking* at the end of the period stated in Contract Information item 35 after the *Actual Completion Date* of the whole of the Works provided that at that time:
 1. there are no outstanding *Defects* or unresolved *Issues*; and
 2. there are no moneys of any nature, including debts, damages and indemnity claims, payable by the Contractor to the Principal.
 4. When any of the circumstances in clause 33.3.2 apply, the *Post-Completion Undertaking* will be returned when those circumstances no longer apply.
 5. When *Completion* of a *Milestone* is achieved, the Principal may (in its absolute discretion) agree to a proportionate reduction in the amount held as *Undertakings*, based on the proportion of the Works included in the *Milestone*.
 6. *Undertakings* must be provided by a bank, building society, credit union or insurance company acceptable to the Principal and must be redeemable in the Adelaide CBD.
 7. The Contractor must not take any steps to prevent the Principal making a demand against the *Undertakings*, or to prevent the provider of an *Undertaking* from complying with the *Undertaking* or any demand by the Principal.
- Cash Security – Subcontracts
8. If the Contractor receives or retains security in cash or converts security to cash under any of its Subcontracts, that security is held in trust by the Contractor from the time it receives, retains or converts it.
 9. If the Contractor receives payment under the Contract for, or on account of, work done or *Materials* supplied by any Subcontractor, and does not pay the Subcontractor the whole amount to which the Subcontractor is entitled under the relevant Subcontract, the difference is held in trust for payment for the work done or *Materials* supplied.

10. The Contractor must deposit all money it receives in trust, as described in clauses 33.8 and 33.9, into a trust account in a bank selected by the Contractor no later than the next Business Day, and:
 1. the money must be held in trust for whichever party is entitled to receive it until it is paid in favour of that party;
 2. the Contractor must maintain proper records to account for this money and make them available to the Subcontractor on request;
 3. any interest earned by the trust account is owned by the party which becomes entitled to the money held in trust; and
 4. the Contractor must allow the Principal to audit the trust account if requested by the Principal.

34 Site access

1. The Principal must give the Contractor access to sufficient of the Site to allow the Contractor to start work by the later of:
 1. when the Contractor has complied with relevant requirements of the Contract; and
 2. the time stated in Contract Information item 13.
2. The Principal is not required to provide access to the whole of the Site from the Contract Date but may progressively provide access as is reasonably required to carry out the Works. If the Principal is not able to provide the Contractor any site access the Contractor has no remedy or entitlement other than:
 - .1 an extension of time in accordance with clause 50 and delay costs in accordance with clause 51 but only to the extent that the Principal has firstly agreed that the Contractor has no ability to mitigate the delay by resequencing the works and any cost implication are notified to, and agreed by the Principal before any additional costs are incurred; and
 - .2 when an entitlement arises under clause 75, to terminate the Contract.
3. 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 at all reasonable times and must arrange for equivalent access to premises of Subcontractors, Suppliers and Consultants. The Principal may require access for any reasonable purpose connected with the Contract, including surveillance, audit, inspection, *Testing*, certification and recording of information.

35 Engagement and role of Valuer

1. If Contract Information item 50A states that a Valuer must be engaged or if the parties agree to engage a Valuer, then:
 1. the parties, acting reasonably, must endeavour to agree in writing on the identity of the Valuer within 21 days after the Date of Contract or, failing agreement, the Principal must request the person named in Contract Information item 50B to select the Valuer;
 2. within a further 21 days after the date of selection of the Valuer, the Principal and the Contractor must jointly engage the Valuer using the form in Schedule 4 (Agreement with Valuer); and
 3. a Valuer's certificate will be final and binding unless the net amount of the Valuer's determination (excluding any amount for interest) exceeds the amount stated in Contract Information item 50C, in which case either party may commence litigation in respect of the matters referred to the Valuer, but only within 56 days after receiving the determination.

2. The parties may agree at any time to engage a Valuer in accordance with this clause, either for a single valuation or on an ongoing basis. When the parties agree to engage a Valuer after the Date of Contract, “Date of Contract” for the purposes of clause 35.1.1 refers to the date the parties agree to appoint the Valuer.

The Site

36 Site information

1. The parties acknowledge that:
 1. at the Date of Contract, the Principal has provided in good faith the information concerning the Site identified in Contract Information items 36A and 36B;
 2. the information identified in Contract Information items 36A and 36B does not form part of the Contract;
 3. the Principal does not guarantee the completeness of the information identified in Contract Information item 36A;
 4. the Principal does not guarantee the accuracy, quality or completeness of the information identified in Contract Information item 36B; and
 5. the Principal has no duty of care in connection with information identified in Contract Information item 36B, or with having provided it.
2. The Contractor warrants that it:
 1. has made its own inquiries concerning the Site, including checking information provided by the Principal;
 2. has examined the Site and surrounds and satisfied itself through its own investigation as to the *Site Conditions* which might reasonably be expected;
 3. has made its own assessment of the risks, contingencies and other circumstances which might affect the work in connection with the Contract and has allowed fully for these in the *Contract Price* (subject to clause 37);
 4. did not in any way rely on the completeness of the information identified in Contract Information item 36A other than as a guide for ascertaining what further Site information the Contractor considers it needs to obtain;
 5. did not rely on the accuracy, quality or completeness of information identified in Contract Information item 36B; and
 6. has made its own interpretations, deductions and conclusions and did not in any way rely on interpretations, deductions and conclusions made by or for the Principal.

37 Site Conditions

1. The Contractor is solely responsible for dealing with any adverse *Site Conditions*:
 1. so as to minimise delay;
 2. so as to minimise increased costs; and
 3. without awaiting any instruction from the Principal,
 4. but must comply with any instruction given by the Principal
2. Clauses 37.3 to 37.8 do not apply to
 1. an adverse Site Condition if it is stated in Contract Information item 37 that the Contractor is to bear the risk of adverse Site Conditions.
 2. An adverse Site Condition which is outside the “footprint” of the Works shown in the Reference Design.

3. If the Contractor becomes aware of adverse *Site Conditions* that differ materially from those it should reasonably have expected at close of tenders, the Contractor must notify the Principal in writing as soon as possible and in any event within 7 days after becoming aware of those *Site Conditions*. Where practicable, the notification should be given before the *Site Conditions* are disturbed. The notification must include details of:
 1. the *Site Conditions* the Contractor claims are adverse;
 2. the manner in which the Contractor contends they differ materially from the *Site Conditions* the Contractor should reasonably have expected at close of tenders (having regard to the warranty in clause 36.2), including any information supporting this contention;
 3. the effect on the Works;
 4. the effect on achieving *Completion*;
 5. the additional work and resources involved and the Contractor's estimate of its entitlement to any adjustment to the *Contract Price*; and
 6. any other matters the Contractor considers relevant.
4. The Principal may request the Contractor to provide further information about the matters notified under clause 37.3.
5. After considering the Contractor's notification under clause 37.3, the Principal must notify the Contractor whether it agrees with the Contractor's contentions under clause 37.3.1. and 37.3.2 as to the nature of the conditions encountered and whether or not the Contractor should reasonably have expected them.
6. If the Principal agrees that there are adverse *Site Conditions* that differ materially from those the Contractor should reasonably have expected at the close of tenders and the Contractor has given the notice required by clause 37.3 then:
 1. the parties may agree in writing on the effects of the unexpected adverse *Site Conditions* (including any *Variation* instructed by the Principal), and any affected *Contractual Completion Dates* and the *Contract Price* must be adjusted as agreed; or
 2. if the parties have not agreed as to the effects of the unexpected adverse *Site Conditions*:
 - .1 if the Principal instructs a *Variation* in connection with the adverse *Site Condition*, in addition to the entitlements the Contractor has under clause 48, the Contractor may also make a *Claim* for:
 - .2 an extension of time in accordance with clause 50 and delay costs in accordance with clause 51, for any delay incurred by it as a result of the unexpected adverse *Site Conditions* that has not been taken into account in any extension of time granted as a result of the *Variation*; and
 - .3 an increase in the *Contract Price* to be valued in accordance with clause 47, for any unavoidable additional costs incurred by the Contractor as a result of the unexpected adverse *Site Conditions*, but excluding any costs included in the valuation of the *Variation*; or
 - .4 if no *Variation* in connection with the adverse *Site Condition* is instructed, the Contractor may make a *Claim* for:
 - .5 an extension of time in accordance with clause 50 and delay costs in accordance with clause 51, subject to the requirements of those clauses; and
 - .6 an increase in the *Contract Price*, to be valued in accordance with clause 47, for any unavoidable additional costs incurred by the Contractor as a result of the unexpected adverse *Site Conditions*.

7. If the Principal does not agree with the Contractor's contentions under clauses 37.3.1 and 37.3.2, the Contractor may notify an *Issue* under clause 69.
8. Costs and delay incurred by the Contractor as a result of unexpected adverse *Site Conditions* before it gave the notice required by clause 37.3 must not be counted in any valuation or extension of time.

Design

38 Faults in Contract Documents

1. This Clause 38 does not apply:
 1. information concerning the Site identified in Contract Information items 36A and 36B; and
 2. where the Contractor has caused or contributed to the *Fault*.
2. The Contractor must check the *Contract Documents*. At least 21 days before the Contractor proposes to use a *Contract Document*, the Contractor must notify the Principal of any *Fault* in that *Contract Document* and any *related Contract Documents*.
3. The Principal must resolve any *Fault* notified under clause 38.2.
4. If the Principal resolves a *Fault* in the *Contract Documents*, then, subject to clause 38.5:
 1. to the extent that the Principal resolves the *Fault* by instructing a *Variation*, clause 48 applies; and
 2. to the extent that the Principal resolves the *Fault* other than by instructing a *Variation*:
 - .1 if the resolution has an effect on the time to achieve *Completion*, the Contractor may make a Claim for an extension of time under clause 50 and delay costs in accordance with clause 51, or the Principal may assess a reduction of time in accordance with clause 50; and
 - .2 if the resolution results in the Contractor incurring costs that are greater or less than the Contractor should reasonably have foreseen at the close of tenders, the parties may agree in writing on an adjustment to the *Contract Price* or if not agreed the Contractor may make a Claim for an adjustment to the *Contract Price* to be valued in accordance with clause 47.
5. If the Principal resolves a *Fault* in the *Contract Documents* that was not notified in accordance with clause 38.1, the Contractor is not entitled to any costs for delay or the cost of any aborted work.

39 Design

Design responsibilities

1. The allocation of design responsibilities between the parties shall be as stated in Contract Information item 38 and will be one of the following alternatives:
 1. the Contractor must carry out all design necessary in connection with the Works, as specified in Contract Information item 38A;
 2. the Contractor must complete the design provided by the Principal and carry out all other design necessary in connection with the Works, as specified in Contract Information item 38C; or
 3. the Principal must carry out all design necessary in connection with the Works, as specified in Contract Information item 38B, and subject to clause 39.2.
2. Where Contract Information item 38B states that the Principal must carry out all design necessary in connection with the Works, the parties acknowledge that the Contractor will

have some design responsibility (e.g. coordination, management, constructability, shop detailing, etc.), and the Contractor provides the warranties in clauses 39.5.1, 39.5.2, 39.5.3, and 39.5.4 in relation to the design activities that it has performed.

3. Where the Contractor is required to complete the design provided by the Principal, the Contractor's design obligations include, but are not limited to:
 1. completion of design, documentation and workshop detailing for design provided by the Principal, including coordination of design activities and the interaction of the various disciplines;
 2. development of the design provided by the Principal for elements referred to in Contract Information item 38A.1; and
 3. full design by the Contractor of elements referred to in Contract Information item 38A.2.
4. Where the Contractor is required to complete the design provided by the Principal, the Contractor's design responsibilities are not reduced to the extent that the Works are not fit for the purposes required by the Contract because of the design provided by the Principal.
5. The Contractor acknowledges and agrees that where the Contractor is required to carry out all design necessary in connection with the Works, or complete the design provided by the Principal, the Contractor is solely responsible for producing the design and it warrants to the Principal that:
 1. the Contractor at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the execution and completion of the work under the Contract;
 2. the design is fit for the purposes required by the Contract;
 3. the Contractor has examined and carefully checked any design (including without limitation the design provided by the Principal) and that such design is suitable, appropriate and adequate for the purpose stated in the Contract;
 4. the Contractor shall execute and complete the Contractor's design obligations and produce the design and Contractor's Documents to accordance with the Principal's Documents; and
 5. the Contractor shall, as between the Principal and the Contractor, be solely responsible for and assume all risk in relation to the design of the whole of the Works (including the design provided by the Principal), and for any further design work, delays, cost increases, losses and expenses caused by or resulting from any deficiencies in design;
 6. the Contractor shall execute and complete the work under the Contract in accordance with the design and Contractor's Documents so that the Works, when completed, shall:
 - .1 be fit for purpose; and
 - .2 comply with all the requirements of the Contract and all Statutory Requirements

Design review

6. To the extent specified in the Contract, the Contractor must review its design in consultation with persons nominated by the Principal, and develop the design and the *Contractor's Documents* allowing for any matters identified in the review.

Contractor's Documents

7. The Contractor must produce *Contractor's Documents* which:
 1. will ensure that the Works are fit for the purposes required by the Contract; and
 2. meet the requirements of all of the following:
 - .1 the Contract;

- .2 Statutory Requirements;
 - .3 the Principal's instructions;
 - .4 the National Construction Code (if stated in Contract Information item 38D) and relevant Australian Standards; and
 - .5 If no other standard is specified in the Contract, good industry standards applicable to the Works.
8. The requirements of clause 39.1 are not affected by any *Variation*.
- 40 Submitting Contractor's Documents
- 1. Unless the Contract provides otherwise, the Contractor must submit Contractor's Documents to the Principal at least 21 days before the date the Contractor proposes to use them for procurement, manufacture, fabrication or construction. Contractor's Documents must be submitted progressively with sufficient detail to demonstrate what is proposed. The number of copies must be as stated in Contract Information item 28.
 - 2. The Principal need not respond to the Contractor about the Contractor's Documents other than as specified in the Principal's Documents.
 - 3. 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, error or omission in the Contractor's Documents.
 - 4. Nothing the Principal does or omits to do in connection with the Contractor's Documents makes the Principal responsible for the Contractor's Documents, or prevents the Principal from relying on or enforcing any right under the Contract or otherwise.
- 41 Novation
- 3. Where the Contractor is required to complete the design provided 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.
 - 4. If the Contractor does not execute a Consultant Deed of Novation within the timeframe specified in clause 41.5 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.
 - 5. Where the Principal's Novated Consultant has been novated to the Contractor:
 - 1. the Contractor is solely responsible for the Principal's Novated Consultant and for its acts and omissions;
 - 2. 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;
 - 3. the Contractor's obligations under clause 39.1 are not limited;
 - 4. the Contractor must:
 - .1 ensure that the Principal's Novated Consultant complete the design and construction of the Works;
 - .2 allow communication to occur between the Principal's Novated Consultant and the Principal and end users;
 - .3 ensure that the Principal's Novated Consultant attends and participates in meetings, if required by the Principal.

Construction

42 Setting out the Works and survey

1. The Contractor must set out the Works in accordance with the Contract.
2. Not used
3. If at any time the Contractor discovers or is made aware of any error in the location, level, dimensions or alignment of the Works:
 1. the Contractor must notify the Principal; and
 2. unless instructed otherwise by the Principal, the Contractor must rectify the error to ensure that the Works comply with the Contract.
4. If an error notified in accordance with clause 42.3.1 is due to a Fault in the Contract Documents, clause 38 applies.
5. 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 in writing that certain matters can be excluded from the survey. The survey must be carried out by a registered surveyor or other surveyor to whom the Principal has no objection.

43 Construction

1. The Contractor must supply all *Materials* and construct the Works in accordance with all of the following:
 1. the Contract;
 2. the *Principal's Documents*;
 3. the *Contractor's Documents*;
 4. Statutory Requirements;
 5. the Principal's instructions;
 6. the National Construction Code (if stated in Contract Information item 38D) and relevant Australian Standards; and
 7. if no other standard is specified in the Contract, good industry standards applicable to the Works.

44 Testing

1. The Contractor must *Test* all parts of the Works that are specified in the Contract to be *Tested*, give the Principal the opportunity to witness the *Tests* by giving reasonable notice, and make the results available to the Principal.
2. The Principal may instruct the Contractor at any time to carry out any other *Test* of any part of the Works.
3. If the results of any *Test* instructed by the Principal under clause 44.2 show compliance with the Contract, the Contractor may only make a *Claim* for an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable additional costs incurred by the Contractor in carrying out the *Test*. Otherwise the Contractor bears the cost and time, including any costs of opening up and reinstating any part covered up.
4. The Contractor must make good any part of the Works where *Testing* has not shown compliance with the Contract and must repeat the *Testing*, at its own cost, until the results of the *Tests*, as reported in writing to the Principal, confirm that the Works comply with the Contract.

45 Defects

1. The Contractor must identify and promptly make good all *Defects* so that the Works comply with the Contract.
2. At any time before *Completion*, the Principal may instruct the Contractor to make good *Defects* within the time specified in a *Defect Notice*.

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:
 1. the cost of doing so will be a debt due from the Contractor to the Principal; and
 2. the Contractor will be responsible for the work involved in making good the *Defects* as if the Contractor had carried out the work.
 4. Nothing in clause 45 reduces the Contractor's warranties and other liabilities and obligations under the Contract, or affects the Principal's common law right to damages or any other right or remedy.
 5. If at any time before *Completion* the Contractor becomes aware of any *Defect* or deficiency which results from design or other work or actions for which it is not responsible, it must:
 1. promptly notify the Principal; and
 2. carry out any *Variation* instructed by the Principal to make good the *Defect* or deficiency.
- 46 Acceptance with Defects not made good
1. The Principal, in its absolute discretion, may agree that specific *Defects* need not be made good.
 2. Before the Principal does so, the Principal may propose deductions from the *Contract Price* and any terms it requires.
 3. If the Contractor agrees with the proposed deductions and terms, the *Contract Price* must be adjusted as agreed.
 4. If the Contractor agrees with the proposed terms but not with the proposed deductions:
 1. if no Valuer is engaged at the relevant time, the parties may agree to engage a Valuer for the purpose of making this single valuation;
 2. if a Valuer is engaged, the Principal may request the Valuer to determine the value of the deductions in accordance with clause 47.7, taking into account any increased future costs, loss of income or reduction in asset life, and the *Contract Price* will be adjusted accordingly; or
 3. if no Valuer is engaged and the parties do not agree to engage a Valuer then the Principal is to assess the value of the adjustment in accordance with clause 47.7 and advise the Contractor in writing. The Contractor may dispute the assessment of the Principal in accordance with clause 69.
 5. If the parties do not agree in writing on the Principal's proposed terms, the Contractor must make good the specified Defects.
 6. The Contractor remains liable for all Defects (whether known or not known) other than the specific Defects identified in a written agreement made under clause 46 as not to be made good.

Changes to work and time

- 47 Valuation of changes
1. If the Contractor submits a Claim complying with clause 68.3 and the Principal agrees that the Contractor is entitled to an adjustment to the Contract Price or Contractual Completion Date(s), then the parties must endeavour to reach agreement on the adjustments. If agreement cannot be reached then:
 1. if a Valuer is engaged, either party may by giving notice to the other party and to the Valuer, request the Valuer to determine the adjustment;

2. if no Valuer is engaged at the relevant time, the parties may agree to engage a Valuer for the purpose of making this single valuation; or
 3. if no Valuer is engaged and the parties do not agree to engage a Valuer then, within 28 days after the Contractor has provided the information specified in clause 68.3, the Principal is to assess the value of the adjustments in accordance with clause 47 and advise the Contractor in writing. The Contractor may dispute the assessment under clause 69.
2. The Principal is not required to assess a Claim nor is a Claim to be referred to the Valuer until the Contractor provides all the information specified in clause 68.3.
 3. If an event entitles the Contractor to adjustments to both the Contract Price and any Contractual Completion Date, these adjustments are to be dealt with together.
 4. If the Principal does not agree that any entitlement exists, the Principal must advise the Contractor in writing and clauses 69 to 71 apply.

Valuation principles

5. When the Contract requires an adjustment to the *Contract Price* to be valued in accordance with clause 47, the principles set out below apply.
6. Subject to clause 47.8, if the Contractor is entitled to an increase in the *Contract Price* for additional work or for unavoidable additional costs, the value of the increase is to be assessed or determined as the sum of:
 1. the additional reasonable direct cost to the Contractor including labour, *Materials* and plant (not including the *Contractor's Margin*) provided that the Contractor furnishes evidence of the incurring of such costs to the satisfaction of the Principal;
 2. the additional reasonable costs to the Contractor of Subcontractor and Consultant work involved in carrying out the additional work or in responding to the unavoidable circumstances (not including the *Contractor's Margin*) provided that the Contractor furnishes evidence of the incurring of such costs to the satisfaction of the Principal;
 3. an additional amount for the *Contractor's Margin*, calculated as the percentage stated in Contract Information item 44 of the total of the costs under clauses 47.6.1 and 47.6.2; and
 4. any delay costs due in accordance with clause 51, subject to the requirements of clause 50.
7. The value of decreased or omitted work or of any reduction in costs under clause 38, is to be assessed or determined on the basis of rates and lump sums in the Contract or, if there are no applicable rates or lump sums in the Contract, based on reasonable rates and prices applying at the close of tenders. The deduction must include a reasonable amount for any time-dependent costs which will not be incurred by the Contractor and any profit on the decreased or omitted work.
8. A valuation under clause 47.6 must not include:
 1. any costs, losses or expenses attributable to any default, negligence or failure to minimise additional costs of the Contractor, Subcontractors or Consultants;
 2. any amount for costs that the Contractor would have incurred anyway or should reasonably have allowed for at the Date of Contract; or
 3. any amount that the Contractor is not entitled to claim under clause 37.8, 38.5, 49.6 or 68.2.
9. A valuation under clause 46 must take into account the specific matters required by that clause.

Application of adjustments

10. The *Contract Price* and any relevant *Contractual Completion Date(s)* must be adjusted as agreed, assessed or determined under clause 47

48 Variations

Instructing and commencing Variations

1. The Principal may instruct a *Variation* in writing at any time before *Completion* of the whole of the Works (and after *Completion* in accordance with clause 67.1.3) and the Contractor must comply.
7. If requested in writing by the Principal, the Contractor must, within the time specified in the request, advise the Principal of:
 1. its price (including all costs of delay or disruption) for a proposed *Variation*;
 1. the anticipated effect of the proposed *Variation* on achieving *Completion*; and
 2. the effect of the proposed *Variation* on any other matter specified by the Principal.
 2. If the parties have agreed in writing on the effects of a proposed *Variation*, and the Principal instructs the Contractor to carry out the *Variation*, any affected *Contractual Completion Dates* and the *Contract Price* must be adjusted as agreed.
 3. If the parties have not agreed in writing on the effects of a proposed *Variation* or the Principal has not made a request under clause 48.2, the Principal may:
 1. instruct the Contractor to carry out the *Variation*, in which case the Contractor may make a *Claim* for:
 - .1 an extension of time under clause 50 and delay costs in accordance with clause 51, or the Principal may assess a reduction in time in accordance with clause 50; and
 - .2 either party can seek an adjustment to the *Contract Price* to be valued in accordance with clause 47 within 28 days, or the Principal may assess a deduction from the *Contract Price* to be valued in accordance with clause 47; or
 2. alternatively, instruct the Contractor to carry out any additional work as *Daywork*, in which case the requirements of Schedule 8 (Daywork) apply.
4. If the parties have not agreed on whether particular work is a *Variation*, the Principal may instruct the Contractor to carry out the work and the Contractor must comply within the timeframe indicated in the instruction. If the parties have not agreed whether the work is a *Variation* within 28 days of the instruction, the Contractor may give notice of an *Issue* in accordance with Clause 69.1

Variations proposed by the Contractor

5. The Contractor may make a written proposal for a *Variation* for the Contractor's convenience.
6. In regard to a *Variation* for the Contractor's convenience, unless the Principal agrees otherwise, the Contractor:
 1. bears all costs associated with proposing the *Variation*; including those reasonably incurred by the Principal in assessing the proposal (such costs to be a debt due from the Contractor to the Principal);
 2. bears all costs associated with carrying out the *Variation* and any consequential effects from the *Variation* ;
 3. is not entitled to adjustment to the *Contract Price*;
 4. is not entitled to an adjustment to the *Contractual Completion Dates*; and

5. warrants that the *Variation* will not adversely affect the functional integrity, performance standards or quality standards of the Works
7. The Principal may accept the Contractor's proposal but is not obliged to do so. The Principal's acceptance may be subject to conditions, including that the *Variation* is at the Contractor's risk. If the Principal accepts the Contractor's proposal, the Principal must instruct a *Variation*, stating any conditions, and make any agreed adjustments to the affected *Contractual Completion Dates* and the *Contract Price*.
8. If the Contractor considers that a *Variation* is necessary but the Principal has not instructed a *Variation*, the Contractor must notify the Principal within 7 days after the Contractor should reasonably have known that a *Variation* was necessary.
9. If the Principal does not agree that a *Variation* is necessary, all issues relating to the claimed *Variation* must be dealt with under clauses 68 to 71.
10. The Contractor acknowledges that development of the design does not constitute a *Variation*.

49 Changes to Statutory Requirements

1. If the Contractor becomes aware of changes in *Statutory Requirements* that require a change to work in connection with the Contract (not including changes that the Contractor should reasonably have expected at close of tenders), the Contractor must notify the Principal in writing as soon as possible and in any event within 7 days after becoming aware of the changes in *Statutory Requirements*. The notification must include details of:
 1. the changes to *Statutory Requirements*;
 2. why the changes to *Statutory Requirements* should not reasonably have been expected by the Contractor at close of tenders;
 3. the changes to work in connection with the Contract that the Contractor considers necessary;
 4. any delays in achieving *Completion*;
 5. any additional work and resources involved and the Contractor's estimate of its entitlement to any adjustment to the *Contract Price*; and
 6. any other matters the Contractor considers relevant.
2. The Principal may request the Contractor to provide further information about the matters notified under clause 49.1.
3. After considering the Contractor's notification under clause 49.1, the Principal must notify the Contractor whether it agrees with the Contractor's contentions under clause 49.1.1 and 49.1.2 as to the change in *Statutory Requirements* and whether or not the Contractor should reasonably have expected them.
4. If the Principal agrees that there are changes in *Statutory Requirements* that require changes to the work in connection with the Contract (that the Contractor should not reasonably have expected at the close of tenders) and if the Contractor has given the notice required by clause 49.1 then:
 1. the parties may agree in writing on the effects of the change in *Statutory Requirements* (including any *Variation* instructed by the Principal), and any affected *Contractual Completion Dates* and the *Contract Price* must be adjusted as agreed; and
 2. if the parties have not agreed in writing as to the effects of the unexpected change in *Statutory Requirements*:
 - .1 if the Principal instructs a *Variation*, in connection with the change in *Statutory Requirements*, in addition to the entitlements the Contractor has under clause 48, the Contractor may also make a *Claim* for:
 - .1 an extension of time in accordance with clause 50 and delay costs in accordance with clause 51, for any

delay incurred by it as a result of the unexpected change in *Statutory Requirements* that has not been taken into account in any extension of time granted as a result of the *Variation*; and

- .2 an increase in the *Contract Price* to be valued in accordance with clause 47 for unavoidable additional costs incurred by the Contractor as a result of the unexpected change in *Statutory Requirements*, but excluding any additional or increased work included in the *Variation*; or
- .2 if no *Variation* in connection with the change in *Statutory Requirements* is instructed, the Contractor may make a Claim for:
 - .1 an extension of time in accordance with clause 50 and delay costs in accordance with clause 51, subject to the requirements of those clauses; and
 - .2 an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable additional costs incurred by the Contractor because of the unexpected change in *Statutory Requirements*.
- 5. If the Principal does not agree with the Contractor's contentions under clauses 49.1.1 and 49.1.2, the Contractor may notify an *Issue* under clause 69.
- 6. Costs and delay incurred by the Contractor as a result of changes in *Statutory Requirements* before it gave the notice required by clause 49.1 must not be counted in any valuation or extension of time.

50 Changes to Contractual Completion Dates

Extensions of time

- 1. The Contractor is only entitled to an extension of time for *Completion* and an adjustment to the related *Contractual Completion Dates* if:
 - 1. the Contractor is or will be delayed in achieving *Completion* by a cause beyond the control of the Contractor, including an act, default or omission of the Principal, but not including any cause which the Contract expressly states is at the Contractor's risk or for which the Contract expressly precludes an entitlement for extension of time;
 - 2. the delay is to an activity or activities on the critical path of the then current *Contract Program* and work is proceeding in accordance with this program;
 - 3. the Contractor has given the Principal an initial notice in writing within 7 days after the start of the delay, setting out the cause of the delay, any relevant facts and including a copy of the *Contract Program*, that has already been issued to the Principal, and that existed immediately prior to the start of the delay, updated to demonstrate how the delay affects the critical path and shows the expected effects of the delay;
 - 4. the Contractor has given the Principal the *Claim* and other information required by clauses 50.3 and 50.4.
- 1A. The Contractor is not entitled to an extension of time for *Completion* and an adjustment to the related *Contractual Completion Dates* if the Contractor is delayed as a consequence of the following causes:
 - 1. The weather and any consequential effects
 - 2. Materially adverse Site Conditions other than:
 - 1. carrying out *Variations* instructed by the Principal; and
 - 2. the matters specified in Contract Information item 37

- 1B. If the Contractor is delayed as a consequence of unknown services, the Contractor must adhere to the requirements of clauses 50.2 – 50.7 and 50.9.
2. The Contractor must take all reasonable steps to avoid delay and its effects including resequencing of works.
3. If the Contractor is delayed, it may make a *Claim* for an extension of time in accordance with clause 50. The *Claim* must:
 1. identify the extension of time claimed and include other information sufficient for the Principal to assess the Claim; and
 2. be submitted within 28 days after the start of the delay; and
 3. be updated every subsequent 28 days while the delay continues
4. With every claim made under clause 50.3 the Contractor must submit a copy of the then current *Contract Program* which shows the effects of the delay on the critical path and to the time required to achieve *Completion*.
5. The Contractor is only entitled to an extension of time for delays occurring on days on which the Contractor usually carries out work for the Contract.
6. When concurrent events cause a delay in achieving *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.
7. The Contractor is not entitled to an extension of time for any days which are expressly not to be counted under clause 37.8 or 49.6.
8. The Principal may, in its absolute discretion but without any obligation to do so, extend any *Contractual Completion Date* at any time and for any reason, whether or not the Contractor has claimed an extension of time.
9. If the initial notice referred to in clause 50.1.3 is provided later than 7 days after the start of the delay, any entitlement to an extension of time applies only to the period of delay from the date 7 days prior to the date of provision to the Principal of the initial notice.

Reductions in time

10. If a *Variation* or resolution of a *Fault* under clause 38 leads to less time being required for *Completion*, the Principal may assess a reasonable adjustment to the affected *Contractual Completion Date*.

Adjustment to Contractual Completion Dates

11. The relevant *Contractual Completion Dates* must be adjusted in accordance with clause 47 to account for any extension or reduction of time assessed under clause 50.

51 Delay costs and liquidated damages

Delay costs

1. The Contractor is entitled to delay costs only for delay or disruption caused by:
 1. a *Variation* (other than a *Variation* for the Contractor's convenience);
 2. failure to give the Contractor access to the Site within the time stated in Contract Information item 13;
 3. subject to clause 8.10, an instruction under clause 8.9;
 4. adverse *Site Conditions* that differ materially from those the Contractor should reasonably have expected at the close of tenders (subject to clause 37.8 and Contract Information item 37);
 5. resolution of a *Fault* notified in accordance with clause 38.2;
 6. changes in *Statutory Requirements* that the Contractor should not reasonably have expected at the close of tenders and that require changes to work in connection with the Contract (subject to clause 49.6);

7. a suspension instruction under clause 53 if the need for the suspension arises from the Principal's act or omission; or
 8. a breach of the Contract by the Principal.
2. Delay costs are calculated at the applicable rate in Contract Information item 49A for the number of working days by which the time for achieving *Completion* is extended because of a cause listed in clause 51.1, subject to the limitations in clause 37.8, 38.5 and 49.6.
 3. The rate or rates stated in Contract Information item 49A1 apply where the delay is caused by the Principal's failure to give the Contractor access to sufficient of the Site to allow the Contractor to start work, in accordance with clause 34.
 4. The rate or rates stated in Contract Information Item 49A2 apply for any other delays for which the Contractor is entitled to delay costs. Where a delay costs rate is stated for the whole of the Works, it does not apply to delays to any individual *Milestone*. If delay costs rates are stated for *Milestones*, no separate delay costs rate applies for delays to the whole of the Works.
 5. Notwithstanding clause 51.2, the Contractor is not entitled to delay costs for any days on which it would have been delayed anyway by a cause for which it has no entitlement to delay costs.
 6. The applicable rate of delay costs will be reduced where any part of the Works is being used or occupied prior to *Completion* under clause 64. The reduced rate of delay costs will be in the same proportion to the original rate as the value of the remaining work is to the *Contract Price* (as adjusted to the time of occupation). The value of the remaining work will be assessed by the Principal, acting reasonably.
 7. The Contractor has no remedy or entitlement under this Contract or at law connected with a delay or disruption related claim, including for disruption, loss of productivity, inefficient work practices and the like, other than:
 1. the amounts to be paid in accordance with clause 51;
 2. an extension of time to any *Contractual Completion Date* to which it is entitled under clauses 48 or 50; or
 3. any remedy it may have under clause 74 or 75;
 - 7A Nothing in this Clause 51 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.

Liquidated damages

8. If Contract Information item 49B states that liquidated damages do not apply, the Principal may claim general damages if the Contractor fails to achieve Completion of the Works or any Milestone by its Contractual Completion Date.
9. If Contract Information item 49B states that liquidated damages apply and the Contractor fails to achieve Completion of the Works or any Milestone by a Contractual Completion Date to which liquidated damages apply, the Contractor will be liable to pay the Principal liquidated damages at the rate stated in Contract Information item 49B, for every day after the Contractual Completion Date, up to and including the Actual Completion Date.
10. If, however, the Contract is terminated before the Contractor achieves Completion, any liquidated damages will apply only up to the date of termination of the Contract.
11. A failure by the Principal at any time to demand payment or to deduct, withhold or set-off the liquidated damages does not amount to a waiver of, or otherwise affect, the Principal's rights and entitlements.
12. If any *Contractual Completion Date* is extended after the Contractor has paid or the Principal has deducted liquidated damages, the Principal must re-pay any excess liquidated damages to the Contractor, subject to any right of set-off.
13. The applicable rate of liquidated damages will be reduced where any part of the Works is being used or occupied prior to *Completion*, under clause 64. The reduced rate of liquidated damages will be in the same proportion to the original rate as the value of the remaining work is to the *Contract Price* (as adjusted to the time of occupation). The value of the remaining work will be assessed by the Principal, acting reasonably.

14. The Contractor acknowledges and agrees that the rates for liquidated damages in Contract Information item 49B are a genuine pre-estimate of the Principal's loss and agrees that it will not challenge any rate for liquidated damages as being in the nature of a penalty.
15. If Contract Information item 49B states that liquidated damages apply, such liquidated damages are the Principal's sole remedy (apart from termination) in respect of the Contractor failing to achieve *Completion* of the Works or any Milestone by a *Contractual Completion Date* to which liquidated damages apply

52 Acceleration

1. The Principal may issue an *Acceleration Notice* instructing the Contractor to accelerate progress of the Works. The Contractor must comply unless, before taking any steps to accelerate, it demonstrates to the satisfaction of the Principal that the acceleration instructed cannot reasonably be achieved.
2. If requested in writing by the Principal, the Contractor must, within the time specified in the request, advise the Principal of:
 1. its price (excluding all costs of delay or disruption) for a proposed acceleration; and
 2. the effect of a proposed acceleration on any other matter specified by the Principal.
3. Whenever possible, the parties must agree on the steps to be taken, and the basis for reimbursing the Contractor's costs for acceleration, before the Contractor takes those steps.
4. If the Contractor achieves the acceleration instructed, taking into account any relevant extension of time that has been given, the *Contract Price* must be adjusted as agreed, or if not agreed, by a valuation made in accordance with clause 47 for any unavoidable costs incurred by the Contractor additional to what it would have incurred if the Principal had not given the instruction, which cannot be in excess of the amount referred to in Clause 52.2.1
5. Rather than granting an extension of time under Clause 50, the Principal may instruct acceleration under this Clause 52.

53 Principal's suspension

1. The Principal may instruct the Contractor to suspend progress of the Works, and the Contractor must comply with that instruction.
2. The Contractor must resume carrying out the Works when instructed by the Principal.
3. If the need for the suspension arises from the Principal's act or omission (other than to deal with the Contractor's failure to comply with the Contract), and causes the Contractor delay, or unavoidable costs, additional to what the Contractor would have incurred had the suspension not been instructed, the Contractor may make a *Claim* for:
 1. an extension of time in accordance with clause 50, without the Contractor meeting the preconditions required by clause 50 other than provision of an updated *Contract Program* demonstrating the delays caused by the suspension;
 2. delay costs in accordance with clause 51; and
 3. an increase in the *Contract Price*, to be valued in accordance with clause 47.
 4. The Contractor has no other remedy or entitlement in connection with a suspension by the Principal.

54 Contractor's suspension

1. If the Contractor suspends work at any time in accordance with the Building and Construction Industry Security of Payment Act 2009 (SA) it may be entitled to an extension of time under clause 50, but despite clause 51, it will not be entitled to any payment for delay or disruption.
2. Clause 54 is not intended to limit any rights of the Contractor under the Building and Construction Industry Security of Payment Act 2009 (SA).

Payment

55 The Contract Price

1. The *Contract Price* (at the Date of Contract) and the basis for payment are stated in Contract Information item 40.
2. If stated in Contract Information item 41, the *Contract Price* (and the rates and/or lump sums it includes) will be adjusted for rise or fall in costs, on the terms set out in Schedule 7 (Costs Adjustment Formula).

Schedules of Rates

3. If the Contract includes *Rate Items* then, without limiting clause 8:
 1. the *Contract Price* is determined by adding:
 - .1 any lump sums in the *Schedule of Rates* or Schedule of Prices – Lump Sum, including *Provisional Sums*; and
 - .2 the products of the quantity and the relevant rate for each *Rate Item*;
 2. at the Date of Contract, all quantities for *Rate Items* are estimated, and none are guaranteed;
 3. some of the *Rate Items* may be provisional (that is, they may not be required at all);
 4. before a *Rate Item* is completed, the estimated quantity is used in calculating the *Contract Price* and after it is completed, the actual quantity measured in accordance with the Contract is used;
 5. for each *Rate Item*, the Contractor will be paid for the measured quantity of work actually carried out in accordance with the Contract; and
 6. the Contractor will not be entitled to delay costs where the measured quantity of work for any *Rate Item* exceeds the estimated quantity.

Provisional Sums

4. If Contract Information item 42 states that the *Contract Price* includes a *Provisional Sum*, then:
 1. the Contractor must not carry out the work specified against that *Provisional Sum* unless instructed by the Principal;
 2. if the Principal does not instruct the Contractor to carry out the work, the *Provisional Sum* for that work must be deducted from the *Contract Price*; and
 3. if the Principal instructs the Contractor to carry out the work:
 - .1 the Contractor must comply with the instruction; and
 - .2 the *Contract Price* must be adjusted by deducting the *Provisional Sum* and adding:
 - .1 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 the costs of Subcontractor and Consultant work (excluding any amount payable due to default or negligence on their part or that of the Contractor) but excluding profit and overheads specified by Contract Information item 43 as included in the *Provisional Sum* margin; and
 - .2 the *Provisional Sum* margin calculated by applying the percentage stated in Contract Information item 43 to the cost specified in clause 55.4.3.2.1.

Provisional Quantities

5. 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*, 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.
6. If a *Schedule of Prices* is included in this Contract, its purpose is to assist with the calculation of the *Scheduled Amount*. A *Schedule of Prices* does not alter the *Contract Price*.

56 Goods and Services Tax (GST)

1. Unless otherwise expressly stated in the Contract, all prices, rates or other sums payable in accordance with the Contract include an amount for GST.
2. The Principal will issue a tax invoice for each taxable supply it makes to the Contractor.
3. The Principal will issue to the Contractor a Recipient Created Tax Invoice (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.
4. 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 makes a *Payment Claim* or otherwise invoices the Principal for that supply.
5. Each party must be registered for GST and must notify the other party if it ceases to be registered for GST or to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

Reimbursable expenses

6. 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:
 1. the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense; and
 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.

57 Prepayment

1. The Contractor may claim *Prepayment*, as a once only advance payment against the *Contract Price* (but not as a *Payment Claim*), at any time within six months of being awarded the Contract, if all the following apply:
 1. the total amount claimed for *Prepayment* is no more than the amount stated in Contract Information item 45;
 2. the *Prepayment* does not exceed the remaining balance of the *Contract Price* less any amount that the Principal considers payable by the Contractor to the Principal;
 3. no more than one-third of the *Prepayment* amount is retained by the Contractor and the balance is assigned directly to Subcontractors, Suppliers and Consultants in the proportions notified to the Principal;
 4. the Contractor has established to the Principal’s satisfaction that the *Prepayment* will be utilised for a purpose related to the Contract;
 5. the Contractor has provided *Undertakings* to the Principal for the amounts of the *Prepayment*; and

6. the Contractor has assigned to Subcontractors, Suppliers and Consultants their respective shares of the *Prepayment* by effective written assignments, and has notified the Principal of the assignments, including the amounts assigned to each Subcontractor.
2. The Principal must pay the amount claimed within 14 days after the Contractor provides evidence that all the conditions in clause 57.1 have been met.
3. The Contractor must repay the *Prepayment* by way of progressive deductions from payments otherwise due under the Contract in the first month after the *Prepayment* was made at an amount determined by the Principal.
4. The Principal must return *Undertakings* provided for *Prepayment* when the amount of the *Prepayment* has been fully repaid.
5. The Principal may have recourse to the *Undertakings* provided for *Prepayment* if the *Prepayment* has not been fully repaid and:
 1. the unpaid balance of the *Contract Price* is insufficient to cover the outstanding balance of the *Prepayment*;
 2. the Contract is terminated; or
 3. the Contractor's employment under the Contract is terminated.

58 Payment Claims

1. Subject to clauses 58.2 and 58.3, the Contractor must submit a *Payment Claim* each month, on the date in the month specified in Contract Information item 46A, for work carried out up to that date.
2. For *Milestones* for which Contract Information item 46B states that payments will be made after they reach *Completion*, each *Payment Claim* may only include the value of work in those *Milestones* if they reached *Completion* before the specified submission date.
3. The Contractor must submit the *Final Payment Claim* within the time specified in clause 61.
4. *Payment Claims* must be in the form of, and include all of the information required by, Schedule 3 (Payment Claim Worksheet) or in another form agreed by the Principal.
5. Every *Payment Claim* must:
 1. identify the work and *Materials* to which the *Payment Claim* relates;
 2. state the value of that work and those *Materials*;
 3. identify and state the amount the Contractor claims for any other *Claim* that the Principal has agreed or is required to pay under clause 68 or any other provision of the Contract;
 4. state the amount of interest, if any, that the Contractor claims under clause 62; and
 5. state the *Claimed Amount*, after allowing for retention of the *Completion Amount* specified in clause 60 and for payments already made.
6. Every *Payment Claim* must be accompanied by:
 1. a completed and true Statutory Declaration in the form of Schedule 6, executed on the date of the *Payment Claim*;
 2. all relevant calculations;
 3. all relevant *Conformance Records*;
 4. confirmation that the Contractor has complied with clause 28.4; and
 5. any other information specified in the Contract.
7. By making a *Payment Claim* the Contractor warrants to the Principal that:
 1. it has performed the work which is the subject of the *Payment Claim*;

2. there are no obvious Defects in the work which is the subject of the Payment Claim;
3. it has paid the Subcontractors all moneys in respect of work carried out and materials supplied in relation to the work which was the subject of the immediately preceding Payment Claim in accordance with the Subcontractors' terms and conditions of engagement;
4. it has paid the Contractor's employees all moneys in respect of the work which is the subject of the Payment Claim;
5. the figures appearing in the Payment Claim are accurate;
6. the Contractor has complied with all of the obligations imposed on the Contractor by any Subcontract where those obligations have failed to be complied with at the time of the making of the Payment Claim;
7. the Contractor is not aware of any *Claim* against the Principal which is not included in the Payment Claim or could have been included in an earlier Payment Claim or notice of which should have been issued to the Principal in respect of any potential *Claim*; and
8. agrees to provide the Principal (on request) with a list of subcontractors and suppliers who are to be paid under this Payment Claim and allows the Principal to contact them to confirm the accuracy of the Statutory Declaration.

Unfixed Materials

8. *Payment Claims* must not include any amount for *Materials* intended for incorporation in the Works but not yet incorporated unless all of the following conditions are satisfied:
 1. the Principal has agreed in writing to pay the Contractor for the unincorporated *Materials*;
 2. where the value of the unincorporated *Materials* is greater than \$100,000, the Contractor provides before or with the *Payment Claim*:
 - .1 an Undertaking equal to the value of the unincorporated *Materials* (to be returned when the *Materials* are incorporated into the Works); and
 - .2 a statement in the terms in Schedule 11 (Statement regarding *Materials*);
 - .3 the Contractor provides evidence before or with the *Payment Claim* that:
 - .1 the unincorporated *Materials* are, or upon payment will become, the property of the Principal free of any *Encumbrance*; and
 - .2 the unincorporated *Materials* are clearly identified as the property of the Principal and are insured for their full value; and
 - .3 for any unincorporated *Materials* imported or to be imported into Australia, the Contractor has given the Principal a clean on board bill of lading drawn or endorsed to the order of the Principal, appropriate insurance certificates and a Customs invoice.
9. The Contractor warrants that no *Encumbrance* exists over any *Materials* paid for by the Principal or incorporated into the Works.
10. Upon the *Materials* becoming the property of the Principal, they are entrusted to the Contractor for the purpose of carrying out the Works and the Contractor is solely liable for their care.

11. If the Contract or the Contractor's employment under the Contract is terminated by the Principal, the Contractor must ensure that, in respect of any unincorporated *Materials* for which payment has been made or which have been appropriated to the Contract, the Principal may enter upon any premises where the *Materials* are stored and take possession of these *Materials*.

59. Payments

1. Within 15 *Business Days* after being served a *Payment Claim* by the Contractor, the Principal must provide a *Payment Schedule* to the Contractor that:
 1. identifies the *Payment Claim* to which it relates;
 2. indicates the amount the Principal proposes to pay, as the *Scheduled Amount*; and
 3. if the *Scheduled Amount* is less than the *Claimed Amount*, provides reasons explaining why it is less and why any money is being withheld. Reasons why the *Scheduled Amount* is less than the *Claimed Amount* may include failure by the Contractor to comply with any outstanding obligations under:
 - .1 clause 33 (Undertaking);
 - .2 clause 27 (Insurance);
 - .3 clause 58.6.1 (Statutory Declaration - Schedule 6);
 - .4 clauses 58.6.2 to 58.6.4 (other items to accompany a *Payment Claim*); and
 - .5 clause 58.8 (Unfixed Materials).
2. The Principal must pay the Contractor the *Scheduled Amount* within 15 *Business Days* after being served with the *Payment Claim*.
3. Unless stated otherwise in the Contract, all payments to the Contractor must be made by electronic funds transfer to the Contractor's account notified to the Principal for that purpose. Changes to the Contractor's account details must be notified in accordance with protocols established by the Principal.
4. Payment by the Principal is payment on account only and 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.

59A Security of Payments Act (South Australia)

1. In this clause 59A:
 1. **"SOP Act"** means the Building and Construction Industry Security of Payment Act 2009 (SA);
 2. **"Subcontractor"** means any party engaged by or on behalf of:
 - .1 the Contractor; or
 - .2 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;
 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.
2. The *Contractor* must:
 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;
 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
3. ensure that any subcontract or any arrangement that the Contractor has with a Subcontractor contains terms equivalent to the terms of this clause 59A, so as to enable the Contractor to comply with its obligations under this clause 59A.
3. A payment claim for the purposes of the SOP Act is a Payment Claim pursuant to clause 58.
 4. The date prescribed in clause 58 as the time at which the Contractor may deliver payment claims is, for the purpose of the SOP Act, the reference date.
 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.
 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.
 7. If the Contractor suspends the whole or part of the carrying out of the Works pursuant to the SOP Act:
 1. the suspension shall not affect the Contractual Completion Date; and
 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.
 8. If the Principal becomes aware that a Subcontractor is or is likely to become entitled to:
 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
 2. exercise a statutory lien under section 11(3) of the SOP Act over any unfixated 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,
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.
 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:
 1. a suspension by a Subcontractor of work (which forms part of the Works or related goods and services) under the SOP Act;
 2. a Subcontractor exercising a statutory lien under the SOP Act over unfixated 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;

3. a failure by the Contractor to comply with any of its obligations under clause 59A.1;
4. a failure by the Contractor to pay any Subcontractor; or
5. the Principal exercising its rights under clause 59A.8.

60 Completion Amount

1. If Contract Information item 47 specifies a *Completion Amount*, the Contractor may claim it in the next *Payment Claim* after *Completion* of the whole of the Works or, if applicable, a specified *Milestone*, subject to the Principal's right to set-off under clause 63.
2. The Principal will retain the *Completion Amount* from payments when the amount paid to the Contractor exceeds 50% of the *Contract Price* at the Date of Contract. Until the *Completion Amount* has been retained in full, the amount retained against each payment must not exceed 50% of the value of the payment. Thereafter, the *Completion Amount* will be held until the Contractor claims it in accordance with clause 60.1.
3. The Principal will own any interest earned on the monies retained for the *Completion Amount*.

61 Final payment

1. The Contractor must submit a *Final Payment Claim* within 28 days after achieving *Completion* of the whole of the Works. The *Final Payment Claim* must include any *Claim* not previously included in a *Payment Claim*. Any *Claim* not submitted before or with the *Final Payment Claim* is barred.
2. Within 10 *Business Days* after receiving the *Final Payment Claim* or, if the Contractor has not submitted a *Final Payment Claim*, within 15 weeks after the whole of the Works reaches *Completion*, the Principal must provide a *Final Payment Schedule* to the Contractor.
3. If the Principal proposes to make no payment to the Contractor and claims that the Contractor must pay the Principal money, the *Final Payment Schedule* must state the amount that the Principal claims the Contractor must pay, and include reasons and particulars supporting that claim.
4. Payments identified in the *Final Payment Schedule* as due from the Contractor to the Principal must be made within 14 days after the *Final Payment Schedule* is provided. Payments due from the Principal to the Contractor must be made in accordance with clause 59.
5. The issue of the *Final Payment Schedule* is conclusive evidence that all necessary adjustments to the *Contract Price* have been made and all entitlements of the Contractor have been met, except for those required by:
 1. arithmetical error; or
 2. resolution of:
 - .1 any *Claim* made in accordance with clause 61.1;
 - .2 any Issue properly notified under clause 69 prior to the *Final Payment Claim*; or
 - .3 any Issue arising out of the *Final Payment Schedule*, but only if it is notified to the Principal within 28 days after the date of the *Final Payment Schedule*.
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.

62 Interest On Late Payments

1. A party which fails to make a payment within the time specified in the Contract must pay interest to the other party on the unpaid amount, at the rate stated in Contract Information item 48, for the period the payment is late.

63 Set-off

1. If the Principal claims a sum, including a debt due, in connection with the Contract or any other contract between the Principal and the Contractor, the Principal may:
 1. withhold, deduct or set-off the claimed sum against any amount to which the Contractor is otherwise entitled in connection with the Contract; and
 2. make a demand against the *Undertakings* provided under the Contract for any amount of the claimed sum in excess of the amount to which the Contractor is otherwise entitled.

Completion

64 Early use

1. Before the Contractor achieves *Completion*, the Principal, or anyone authorised by the Principal, may use or occupy all or any part of the Works which is sufficiently complete before *Completion* is achieved ("*Early Use*") and then:
 1. the Contractor's responsibilities are not affected, except if they are reduced under clause 26.3 or 26.7 or if the Principal, or anyone authorised by the Principal to use or occupy any part of the Works, causes the Contractor's work to be hindered; and
 2. the Principal becomes responsible for any additional insurance required.
 3. If the Principal requires *Early Use*, the Principal must give not less than 21 days' notice in writing to the Contractor and must specify the date on which *Early Use* is required and those parts of the Works to be used or occupied.
 4. The Contractor must assist and cooperate with those using or occupying *Early Use* Works.
 5. No later than 21 days after receipt of such a notice, the Contractor must provide to the Principal all the documents and complete all other things listed in the definition of *Completion* that are relevant to the part of the Works to be used or occupied to the satisfaction of the Principal.

65 Completion

1. The Contractor must achieve Completion by the Contractual Completion Date.
2. When the parties, each acting reasonably, agree that *Completion* has been achieved, the Principal must give the Contractor a notice stating the *Actual Completion Date*.

66 Close-out workshop.

1. The Principal must convene a close-out workshop within 21 days after *Completion* of the whole of the Works.
2. The parties must attend the close-out workshop and must jointly decide who else will attend. Clause 6.4 applies to the costs of the workshop.

67 Defects after Completion

1. Subject to clause 67.4, at any time after *Completion*:
 1. the Principal may instruct the Contractor to make good any *Defect* within the time specified in a *Defect Notice*;
 2. if the Contractor fails to make good the *Defect* in the time specified in the *Defect Notice*, the provisions of clauses 45.3 and 45.4 will apply; and
 3. the Principal may instruct a *Variation* in connection with any *Defect* instead of requiring the *Defect* to be made good under clause 67.1.1.

2. Clause 67 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.
3. Clause 67 does not affect the Principal's rights under clause 46
4. In the case of the items listed in Schedule "Warranty Items", but not otherwise, the Contractor's liability under clause 67 continues from the Actual Completion Date until the expiration of the Warranty Period for the defective item described in the Schedule "Warranty Items"..

Claim resolution

68. Contractor's Claims

1. If the Contractor makes:
 1. a *Claim* under a provision of the Contract that does not specify a time for making the *Claim*; or
 2. a *Claim* in connection with the Contract or the Works, but not under a provision of the Contract,

the *Claim* must be submitted within 28 days after the later of the start of the event giving rise to the *Claim*; and the time the event should have become known to the Contractor, with reasonable diligence on its part.
2. The Contractor acknowledges that it has an obligation to submit any *Claim* in a timely manner to enable the Principal to assess its options and work with the Contractor to minimise and mitigate the impact to the Principal. Consequently, the Contractor agrees that if it does not raise a *Claim* as contemplated in clause 68.1 within the time specified in clause 68.1 the Contractor will have no entitlement and will be barred from making a *Claim* any time afterwards.
3. Each *Claim* must include information sufficient for the Principal to assess the *Claim*, including the factual and legal basis, detailed quantification and responses by the Contractor to the questions set out in paragraphs 1.1.1 and 1.1.2 of Schedule 5 (Expert Determination Procedure). The *Claim* must also include the effect of the event giving rise to the *Claim* on both the *Contract Price* and *Contractual Completion Date(s)*.
4. If a *Claim* does not comply with clause 68.3, the Principal may, but is not obliged to, give the Contractor an opportunity to make the *Claim* compliant. Clause 68.7 applies to a claim that does not comply with clause 68.3.
5. If a *Claim* complies with clause 68.3 and the Principal agrees that the Contractor is entitled to a money adjustment or an adjustment to *Contractual Completion Date(s)*:
 1. if the *Claim* involves money it must be valued in accordance with clause 47; and
 2. if the *Claim* involves adjustment to *Contractual Completion Date(s)* it must be dealt with under clause 50.
6. If the Principal agrees to a *Claim* involving money, the Contractor may claim the agreed amount only by including it in a *Payment Claim*.
7. If a *Claim* is rejected, not agreed or has not been referred to a Valuer within 28 days after the Contractor has provided the information specified in clause 68.3 in a form acceptable to the Principal it will become an *Unresolved Claim*, and the Contractor may notify the Principal of an *Issue* under clause 69.1.
8. The provisions of clauses 68.2 to 68.7 apply generally to all *Claims*, whether made under clause 68 or under another provision of the Contract, unless determination of the *Claim* is regulated by a separate procedure under any applicable legislation.

Issue resolution

69 Notification of Issue

1. The Contractor may dispute an assessment or instruction of the Principal, or seek resolution of an *Unresolved Claim*, by giving notice to the Principal (with a copy to the Principal's senior executive named in Contract Information item 7) of an *Issue* within 28 days after notification of the assessment or instruction, or within 28 days after it becomes an *Unresolved Claim*.
2. Either party may give notice to the other (with a copy to that party's senior executive) of an *Issue* (excluding an *Issue* referred to in clause 69.1, but including a claim by the Principal) about the meaning or effect of the Contract, or about any matter connected with the Contract, within 28 days after becoming aware of the *Issue*.
3. Subject to clause 69.6, the parties must follow the *Issue* resolution procedures in clauses 69, 70 and 71 before either commences litigation or takes similar action.
4. If notice of an *Issue* under clause 69.1 or 69.2 is given outside the time prescribed by those clauses, the party giving the notice is not entitled to claim or recover interest for the period before the notice was given. This clause does not affect the absolute time bar in clause 61.
5. The Principal is not liable to pay damages (whether in contract, for negligence or otherwise) for making an incorrect assessment or instruction.
6. The *Issue* resolution procedure in clauses 69, 70 and 71 does not prevent a party from seeking an urgent declaration or injunction from a court.

70 Resolution by senior executives

1. If a party gives notice of an *Issue* under clause 69, the senior executives named in Contract Information items 7 and 11 must promptly confer to try to resolve the *Issue*.
2. A party is not entitled to refer an *Issue* to *Expert Determination* until 28 days after giving notice of an *Issue*.
3. A party may only refer an *Issue* to *Expert Determination* by giving a notice specifying the *Issue* to the other party (with a copy to that party's senior executive) within the time stated in Contract Information item 51.
4. Subject to clause 69.6, an *Issue* for which notice has not been given in accordance with clause 70.3 is barred from *Expert Determination* or litigation or similar action.

71 Expert Determination

1. The representative of the Principal for the purposes of clause 71 is the person named in Contract Information item 52. This person may differ from the *Principal's Authorised Person*.
2. If an *Issue* is to be referred to *Expert Determination* under clause 70, the parties must endeavour to agree on the *Expert* to be engaged. If they cannot agree within 28 days after receipt of a notice under clause 70.3, the *Expert* will be nominated (on the application of either party) by the person named in Contract Information item 53. That person must not nominate:
 1. an employee of the Principal or the Contractor;
 2. a person who has been connected with the Works or the Contract; or
 3. a person who the Principal and the Contractor have already considered and not been able to agree on.
3. When the person to be the *Expert* has been agreed or nominated, the Principal, on behalf of both parties, must engage the *Expert* by a letter of engagement (with a copy to the Contractor) that sets out:
 1. the *Issues* referred to the *Expert* for determination;
 2. the *Expert's* fees;

3. the procedure for *Expert Determination* in Schedule 5 (Expert Determination Procedure); and
 4. any other matters which are relevant to the engagement.
4. The cost of the *Expert* will be borne equally by each of the parties unless the determination is made against the party who referred the *Issue* to *Expert Determination*, in which case the *Expert* may determine that that party will bear all the *Expert's* costs in respect of that matter. The Principal and Contractor must bear their own costs.
5. The procedure for *Expert Determination* is set out in Schedule 5 (Expert Determination Procedure).
6. In response to any *Issue* referred to the *Expert* by a party, the other party may raise any defence, set-off or cross-claim.
7. Subject to clauses 71.8 and 71.9, the parties must treat each determination of an *Expert* as final and binding and a party that owes money to the other pursuant to the determination must pay that amount to the other party within 28 days after receiving the determination.
8. Neither party may commence litigation in respect of the matters determined by the *Expert* unless the determination:
 1. does not involve paying a sum of money; or
 2. requires one party to pay the other an amount in excess of the amount stated in Contract Information item 54, calculated without having regard to:
 - .1 any interest that may be payable; and
 - .2 any amount that has been paid pursuant to the Building and Construction Industry Security of Payment Act 2009 (SA).
9. Neither party may commence litigation in respect of the matters determined by the *Expert* unless they do so within 56 days after receiving the determination.

72 Parties to perform the Contract

1. The parties must continue to perform their obligations under the Contract at all times, regardless of any *Claim* or *Issue* or the conduct of any *Issue* resolution procedures under clauses 69 to 71.

Termination

73 Termination for Contractor's Default or Insolvency

1. The Principal may terminate the Contractor's employment under the Contract for *Contractor's Default* or *Contractor's Insolvency* by giving notice in accordance with clause 73.
2. Nothing in clause 73 affects or negates the Principal's common law rights to terminate or for damages.
3. In the case of *Contractor's Default*, the Principal must first give the Contractor notice that it has 7 days after receipt of that notice to remedy the *Contractor's Default*.
4. If the Contractor fails to:
 1. give the Principal a notice containing clear evidence that it has remedied a *Contractor's Default*; or
 2. propose steps reasonably acceptable to the Principal to remedy the *Contractor's Default*,
 3. the Principal may give the Contractor a notice terminating its employment under the Contract.
 4. In the case of *Contractor's Insolvency*, the Principal may give the Contractor a notice terminating its employment under the Contract.
5. If the Principal terminates the Contractor's employment under clause 73 it may, at its sole discretion, employ others to complete the Works and all the following will then apply:
 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, apart from any *Temporary Work* and *Materials* identified by the Principal as being necessary to have the Works completed.
 2. The Contractor must assign to the Principal the Contractor's rights and benefits in all its contracts and agreements in connection with the Works, warranties and unconditional undertakings, bank guarantees, insurance bonds, 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.
 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. 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.
 4. The Contractor must do everything and sign all documents necessary to give effect to clause 73, and it irrevocably appoints the Principal as its attorney to do this in its name if it fails to do so.
 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 the Works, then the difference will be a debt due from the Contractor to the Principal.
 6. The Principal may make provisional assessments of the amounts payable to the Principal under clause 73.6.5 and may, without limiting any other right of recourse, demand them against the *Undertakings*.

73A Termination for Change in Control

1. Unless it is a Permitted Change in Control, the Contractor must not, without the Principal's prior written approval (acting reasonably), allow a Substantial Change in Control of the Contractor.
2. The Principal reserves the right to terminate the Contract if there is a Substantial Change in the Control of the Contractor, that is not a Permitted Change in Control.
3. The Contractor must notify the Principal in writing within twenty eight (28) days notice of any Substantial Change in Control of the Contractor.

74 Termination for Principal's convenience

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.
2. The Contractor must comply with any instructions of the Principal to wind down and stop work.
3. The Contractor must leave the Site by the date stated in the termination notice and remove all *Temporary Work, Materials* and other unfixed things it has brought onto the Site apart from *Materials* for which payment has been made or is due under clause 59 and any other items identified in the termination notice as to be retained on the Site.
4. After termination under clause 74.1, subject to its rights under the Contract (including clause 63), the Principal must pay the Contractor:
 1. the amount due to the Contractor for all work carried out (as determined under clauses 58 and 59) to the date the termination notice takes effect, after taking into account previous payments including any *Prepayments* and any deductions, retentions or set-offs under clauses 59, 60 and 63;
 2. the cost of *Materials* reasonably ordered by the Contractor for the Works which the Contractor is legally liable to accept, but only if on payment these unincorporated *Materials* become the property of the Principal, free of any *Encumbrance*;
 3. the reasonable, direct costs incurred by the Contractor for the removal of the *Temporary Work* and other things from the Site in accordance with clause 74.3, but only to the extent that the Contractor complies with a strict duty to mitigate costs;
 4. an amount of 2% of the unpaid portion of the *Contract Price*, less the amounts payable under clauses 74.4.1 and 74.4.2; and
 5. the costs reasonably incurred by the Contractor prior to receiving notice of termination in the expectation of completing the Works, where those costs have not been recovered through any other payment by the Principal, but only to the extent that the Contractor complies with a strict duty to mitigate costs.
5. The Principal must return the *Undertakings*, subject to its rights under the Contract.
6. The payments referred to in clause 74.4 are full compensation for termination under clause 74 and the Contractor has no *Claim* for damages or other entitlement, whether under the Contract or otherwise.

75 Termination for Principal's default

1. If the Principal:
 1. fails to pay the Contractor any amount in accordance with the Contract which is not in dispute;
 2. commits any fundamental breach of the Contract; or
 3. fails to give the Contractor access to the Site sufficient to start work required by the Contract within 3 months after the Date of Contract (or longer period specified in the Contract or agreed by the parties),

4. the Contractor may give a notice requiring the Principal to remedy the default within 28 days after receiving the notice.
2. If the Principal fails to remedy the default, or to propose steps reasonably acceptable to the Contractor to do so, the Contractor may issue a notice terminating the Contract and clauses 74.3 to 74.6 will then apply. The Contractor's sole remedy for the Principal's breach will be the applicable amounts referred to in clause 74.4.

76 Termination notices

1. Notices under clauses 73, 74 and 75 must be in writing and be delivered by hand, registered post or equivalent, or facsimile.

77 Survival

1. Without limiting the survival of any clause by operation of law, clauses 23, 24, 25 and 26 and all indemnities in the Contract survive termination.

77A Severance

1. If any provision or part of a provision of the Contract is invalid or unenforceable in any relevant jurisdiction:
 1. the provision must be read down for the purposes of the operation of that provision in that jurisdiction, if possible, so as to be valid and enforceable; or
 2. if the provision cannot be read down, it must be severed if it is capable of being severed without affecting the remaining provisions of the Contract or affecting the validity or enforceability of that provision in any other jurisdiction and the parties must consult in good faith to determine whether any amendment or substituted provision is required.

77B Personal Property Securities Act

1. A term defined in the *Personal Property Securities Act 2009* (Cth) ("PPSA") has the same meaning when used in this Clause 77B.
2. The Principal may, by notice to the Contractor at any time, require the Contractor to take all steps, provide all information (including serial numbers) or do any other thing that the Principal considers necessary or desirable to:
 1. ensure that the Contract (or any related document) or any security interest arising under it, is enforceable against the Contractor or any third party;
 2. protect, perfect, record or better secure, or obtain or preserve the priority of, the security position of the Principal under the Contract (or any related document); or
 3. overcome any defect or adverse effect arising from the PPSA on the Principal's security interest and priority or the rights or obligations of the Principal under or in connection with the Contract or any encumbrance or document contemplated by the Contract.
3. The Contractor must comply with the requirements of a notice under this Clause 77B within the time stated in the notice at the cost of the Contractor
4. Subject to any other Clause of the Contract which expressly permits the disclosure of such information, the parties agree that neither of them will disclose any information of the kind mentioned in section 275(1) of the PPSA. The Contractor waives any right it has under section 275(7)(c) of the PPSA to authorise disclosure of such information. This Clause 77B.4 survives the termination of the Contract.
5. To the extent permitted by the PPSA, the Principal has no obligation to give, and the Contractor waives any rights to receive, any notice, statement or copies of any documents under the PPSA, including any notice or statement referred to in sections 95, 118, 121(4), 130, 135 or 157 of the PPSA.

6. To the extent that Chapter 4 of the PPSA would otherwise apply to enforcement by the Principal of any security interest in collateral, the parties agree that the following provisions of the PPSA are excluded:
 1. to the extent section 115(1) of the PPSA allows them to be excluded: sections 125, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA; and
 2. to the extent section 115(7) of the PPSA allows them to be excluded: sections 129(2) and (3), 132, 133(1)(b) (as it relates to the security interest of the Principal), 134(2), 135, 136(3)(4) and (5).
7. The Contractor consents to the waiver of the requirement for notice under any other provision of the PPSA that the Principal may notify to the Contractor after the date of this Contract and waives any rights it has to receive that notice.
8. The Contractor must perfect and maintain continuous perfection of any security interests under the PPSA that it may at any time hold, including purchase money security interests, if failure to do so could materially adversely affect:
 1. the Contractor's business; or
 2. in the opinion of the Principal, the Principal's security position under the Contract, including the Principal's security position relative to other secured parties in relation to any personal property to which any security interest of the Principal under the Contract attaches.
9. At the written request of the Contractor, the Principal will release and discharge any security interest created by the Contract if:
 1. the Contractor's obligations to pay money and/or perform all of the Contractor's other obligations under this and/or any other agreement between the parties are satisfied; and
 2. the Principal believes on reasonable grounds that the Contractor will not incur further obligations (to pay money or otherwise) under this or any other agreement between the parties,
 3. and, if necessary, the Principal will register a financing statement or financing change statement on the Personal Property Securities Register in relation to that security interest

78 Meanings

Interpretation

Words in the singular include the plural, and vice versa.

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.

"Including" and similar words are not words of limitation.

The word "day", unless qualified, for example as "Working Day" or "Business Day", has its common English meaning according to context, namely a period of 24 hours or a calendar day.

Headings and notes are provided to guide the parties and do not form part of the Contract.

The word "or" is not exclusive.

Unless stated otherwise, a reference in this Contract to a document that is not a Contract Document (such as a standard), shall be a reference to the edition of that document current at the date 14 days prior to the date of submission of tender.

Where the contract period overlaps a Christmas period, all parties acknowledge and agree, for the purposes of any time frames for submission or responses to documents or notices (both contractually and statutory) an industry stand down period applies and each party will be given an additional nominal 14 calendar days to comply if a response to a notice obligation falls during the industry stand down period.

79 Definitions

All defined words and phrases have initial capitals and are in italics in the GC21 General Conditions of Contract unless they are one of the following basic terms, which appear too often for italics to be used:

- Contract
- Contract Information
- Contractor
- Consultant
- Date of Contract
- Principal
- Site
- Subcontract
- Subcontractor
- Supplier
- Valuer
- Works

Wherever the following words and phrases are used in this Contract with initial capitals, they have the special meanings set out in clause 79.

Acceleration Notice

A written instruction under clause 52.1, from the Principal to the Contractor, to accelerate progress of the Works, identified as an “Acceleration Notice”.

Actual Completion Date

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

Business Day

Any day other than a Saturday, Sunday, public holiday in South Australia or 27, 28, 29, 30 or 31 December.

Claim

A claimed entitlement of the Contractor in connection 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* being complete, with no Defects or omissions, except for Defects not known.

This includes:

1. the supply to the Principal of:
 - .1 all Subcontractor’s Warranties, operation and maintenance manuals, licences, access codes, as-built drawings or work-as-executed drawings required by the Contract or required for the use and maintenance of the Works;
 - .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 required to be provided to the Principal under this Contract
2. *Testing* required by the Contract;
3. the provision of all training required by the Contract; and
4. all other requirements specified in the Contract.

Completion Amount

An amount stated in Contract Information item 47 and included in the Contract Price, which becomes payable only after Completion of the whole of the Works or, if applicable, a specified *Milestone*.

Completion Undertaking

The *Undertaking* required under clause 33.1, for the percentage of the *Contract Price* (at the Date of Contract) stated in Contract Information item 33.

Conformance Records

Records which show conformance by the Contractor with particular requirements of the Contract.

Consultant

A consultant engaged by the Contractor to design parts of the Works (if stated in Contract Information 39) or to provide other professional services. It includes a consultant whose contract with the Principal is novated to the Contractor.

Consultant Deed of Novation

The deed of novation in the form of Attachment 4, (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 7.1.

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 stated as such in Contract Information item 40, subject to adjustment in accordance with the Contract and re-calculation where the Contract includes *Rate Items*).

Contract Program

The program described in clause 22.

Contractor

The party named in Contract Information item 8, including its successors and permitted assignees.

Contractor's Authorised Person

The person appointed to act on behalf of the Contractor under clause 2, named in Contract Information item 9 or as subsequently notified to the Principal.

Contractor's Default

A substantial breach of the Contract by the Contractor, including 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 or instruction of the Principal, except for suspension under clause 54;
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, 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 provide *Undertakings* as required under clause 33; or
8. failing to effect and maintain insurance policies as required under the Contract.

Contractor's Documents

Drawings, specifications, calculations and other documents and information, meeting the requirements of clause 39, which the Contractor must produce to design (if stated in Contract Information 38 or as created under clause 39.2) and construct the Works in accordance with the Contract.

Contractor's Insolvency

Any of the following applying to the Contractor:

1. the Contractor is insolvent;
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 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 added to the costs calculated under clauses 47.6.1 and 47.6.2, to allow for profit and overhead costs, but not overhead costs relating to delay or disruption.

Contractual Completion Date

The last day of the period stated in Contract Information item 13, by which the Contractor must achieve *Completion* of the Works or of a *Milestone* (as applicable), as adjusted under the Contract.

Data

The *Contractor's Documents* and all other drawings, sketches, specifications, digital records, computer software, data and information relating to the Contract.

Date of Contract

If a specific date is nominated in Contract Information item 12, Date of Contract means that date.

If no specific date is nominated in Contract Information item 12, Date of Contract is to be determined as follows:

Unless the Principal expressly states, in the Letter of Award or any other document given to the Contractor before the Letter of Award, that no contract is formed until a formal agreement or deed is executed, Date of Contract means the date of the Letter of Award, irrespective of whether the Letter of Award is conditional or unconditional and irrespective of whether the Principal also requires execution of a formal agreement or deed.

If the Principal has expressly stated that no contract is formed until a formal agreement or deed is executed, Date of Contract means the date the formal agreement or deed is signed by the Principal after the Contractor has executed it.

Daywork

Work carried out by the Contractor for which payment is made on the basis of daily time and cost records for labour, plant, *Materials*, services and other items as provided in Schedule 8 (Daywork).

Defect

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

Defect Notice

A notice issued by the Principal under clause 45.2 or 67.1.

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.

Encumbrance

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

Expert

A person engaged to determine *Issues* under clause 71.

Expert Determination

The process of determination of an *Issue* by an *Expert*, under clause 71 and the procedure in Schedule 5 (Expert Determination Procedure).

Fault

Ambiguity, inconsistency or discrepancy.

Final Payment Claim

A *Payment Claim* given by the Contractor to the Principal under clause 61.1.

Final Payment Schedule

A *Payment Schedule* given by the Principal to the Contractor under clause 61.2.

IMS (Information Management System)

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

Intellectual Property Rights

Any copyright, patent right, registered design or other protected right.

Issue

Any issue, dispute or difference raised by either party under clause 69.

Letter of Award

A letter from the Principal to the Contractor awarding the Contract to the Contractor.

Materials

Includes materials, plant, equipment and other goods.

Milestone

A part of the Works specified as such in Contract Information item 13.

National Construction Code

Means the National Construction Code produced and maintained by the Australian Building Codes Board, as in force from time to time.

Non Recurring Onsite Overheads

Those Onsite Overheads costs listed in Schedule 4.

Onsite Overheads

Those recurrent costs, which by the normally accepted standards of accounting, are incurred by the Contractor on site but cannot be directly attributed to a specific item of work, including rent and maintenance of the site office accommodation, general site office administration, security, power, site water rates and telephone expenses and excluding any cost included in the *Contractor's Margin*;

Payment Claim

A claim for payment made by the Contractor to the Principal under clauses 58 or 61.

Payment Schedule

A schedule containing the Principal's assessment of a *Payment Claim* and stating the amount the Principal proposes to pay, as referred to in clauses 59 and 61.

Post-Completion Undertaking

The *Undertaking* required under clause 33.1, for the percentage of the *Contract Price* (at the Date of Contract) stated in Contract Information item 34.

Permitted Change in Control

A Substantial Change in Control of the Contractor arising from the trade in the securities of a corporation listed on the stock exchange, or a corporate restructure where there is no material adverse change on the ability of the Contractor to perform its obligations under the Contract and the Contractor remains a subsidiary of its parent company (if any)

Preferred Subcontractor

A Subcontractor, Supplier or Consultant listed in Contract Information item 31 for a specified trade or area of work.

Prepayment

The amount to be advanced by the Principal in accordance with clause 57 and Contract Information item 45.

Prescribed Heads of Liability

Any liability for:

- personal injury including sickness and death;
- loss of or damage to tangible property;
- infringement of intellectual property rights;
- any liability to a third party arising from:
 - a negligent or wrongful act or omission by the Contractor, its employees, agents or subcontractors; or
 - any breach of the Contractor's contractual obligation to the Principal;
- an intentional tort;
- a breach of trust;
- wilful default;
- breach of confidentiality; and
- fraud or dishonesty,

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

Principal

The entity named in Contract Information item 4, including its successors and assignees.

Principal's Authorised Person

The person appointed to act on behalf of the Principal under clause 2, named in Contract Information item 5 or as subsequently notified to the Contractor.

Principal's Documents

The designs (if stated in Contract Information 38), drawings, specifications and other documents provided to the Contractor and containing the Principal's requirements in respect of the Works.

Principal's Novated Consultant

The Principal's design and construction Consultant described in Contract Information item 39, to be novated to the Contractor if requested by the Principal.

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

Rate Item

An item of work for which payment will be calculated by multiplying the measured quantity of work, carried out in accordance with the Contract, by the rate accepted for that work. A *Rate Item* may appear in the *Schedule of Rates* or be identified in the *Schedule of Prices – Lump Sum*.

Reference Design

The meaning in the *Principal's Documents*

Schedule of Prices

The schedule in respect of the work for which the Principal has accepted a lump sum, showing prices for items of work to be done and materials to be supplied including any provisional sums and provisional quantities, and may also include quantities and rates.

Schedule of Rates

Any document included in the Contract identified as a *Schedule of Rates*, or which shows rates payable for carrying out items of work described in that document.

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 59.1.2.

Scheduled Progress

The rate of progress consistent with carrying out the work required by the Contract expeditiously and without undue delay, so that the Works and all *Milestones* will be completed 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, including any existing buildings, services or other improvements, as briefly described in Contract Information item 2.

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 carrying out work in connection with the Contract.

Statutory Requirements

The laws relating to the Works or the Site, or the lawful and legislative requirements of any authority or provider of services having jurisdiction over the Works, the Site, the environment or the Contract, or anyone or anything connected with the Works or the Site or the Contract, including Directions issued by the State Coordinator under the Emergency Management Act 2004.

Subcontract

An agreement between the Contractor and a Subcontractor or a Supplier.

Subcontractor

An entity (including one engaged in accordance with clause 29.3) engaged by the Contractor to carry out part of the Works or the *Temporary Work*, or both, other than a Consultant or a Supplier.

Substantial Change in Control of the Contractor

A change of fifty-one percent (51%) of the legal or beneficial shareholding of the Contractor.

Supplier

An entity engaged by the Contractor to supply *Materials* in connection with the Works.

Temporary Work

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

Test

Examine, inspect, measure, prove and trial, including uncovering 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 relevant form of Schedule 2 (Undertaking).

Unresolved Claim

A *Claim* rejected or not agreed under clause 68.7.

Value Completed

The value of work (including design work) carried out by the Contractor and included in a *Payment Claim*, as referred to in Schedule 3 (Payment Claim Worksheet).

Valuer

The entity engaged to determine time and value matters under clause 35.

Variation

Any change to the Works including additions, increases, omissions and reductions to and from the Works, but not including such changes in respect of the development by the Contractor of the design for the Works (including development of shop drawings and other *Contractor's Documents*) in accordance with the requirements of the Contract.

Warranty Period

In respect of a component of the Works, the period after *Actual Completion* (specified in this Contract) during which the Contractor must correct defective or non-complying Works.

Works

The works to be designed (if stated in Contract Information 38), constructed and handed over to the Principal on *Completion* by the Contractor, including all work and items of the types referred to in clause 8.1 and *Variations*, but excluding *Temporary Work*. The term applies to the Works as a whole and also to any part of the Works unless the context requires otherwise. Contract Information item 3 briefly describes the Works.

Contract Information

REFER TO CONTRACT SPECIFIC

Contract

Item

1 Contract name

The Contract name is:

The Contract number is:

2 Site

Defined in clause 79

The Site is:

3 Description of the Works

Mentioned in clause 8

The Works are:

Principal's details

4 Principal

Defined in clause 79

The Principal is:

5 Principal's Authorised Person

Mentioned in clause 2

The *Principal's Authorised Person* is:

6 Notices to the Principal

Mentioned in clause 11

Notices must go to the *Principal's Authorised Person* named above, at the address or number shown here.

Office address:
(for delivery by hand)

Postal address:
(for delivery by post)

Facsimile number:

e-mail address:

7 Principal's Senior executive

Mentioned in clauses 69 & 70

The Principal's senior executive is:

Office address:
(for delivery by hand)

Postal address:
(for delivery by post)

Facsimile number:

e-mail address:

Contractor's details

8 Contractor

The Contractor is:
.....
.....
ABN

9 Contractor's Authorised Person

Mentioned in clause 2

The Contractor's Authorised Person is:

10 Notices to the Contractor

Mentioned in clause 11

Notices must go to the Contractor's Authorised Person named above, at the address or number shown here.

Office address: (for delivery by hand)

Postal address: (for delivery by post)

Facsimile number:

e-mail address:

11 Contractor's senior executive

Mentioned in clause 70

The Contractor's senior executive is:

Office address: (for delivery by hand)

Postal address: (for delivery by post)

Facsimile number:

e-mail address:

Dates and times

12 Date of Contract

Defined in clause 79

The Date of Contract is:
(If left blank date of execution of the last party)

13 Times for Site access and Completion

Site access: Mentioned in clause 34

Contractual Completion Date and Completion: Mentioned in clause 65

Time periods for Site access and for calculating *Contractual Completion Dates* are as shown.

Description	Time Period for giving Site access	Time Period for Completion
The whole of the Works:		

Statutory and Government requirements

14 Fees, charges and approvals

Mentioned in clause 12

Approvals that have been obtained or will be obtained, and fees and charges that have been paid or will be paid, by the Principal are:

15 Compliance with SA Government guidelines

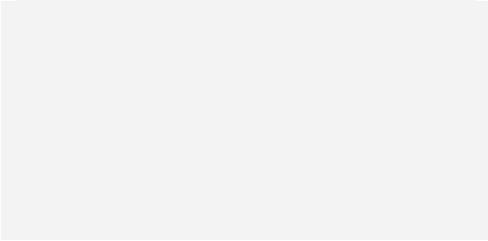
A - Work Health and Safety (WHS)

Mentioned in clause 15

Work Health and Safety Management Systems and Auditing Guidelines

Is the Contractor required to implement a Corporate WHS safety management system acceptable to the Principal? (Yes/No)

Is the Contractor required to submit a WHS Management Plan in accordance with the WHS Regulations 2012 (SA) (Yes/No)

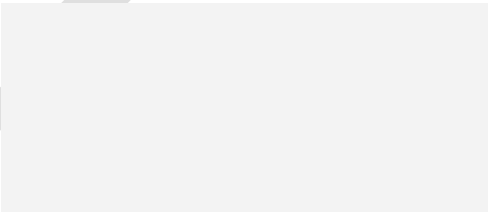


If required, the WHS Management Plan must be provided:

B - Workplace Relations

Mentioned in clause 15

Is the Contractor required to submit a Workplace Relations Management Plan? (Yes/No)

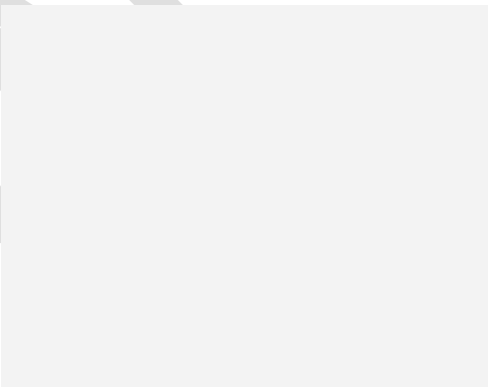


If required, the Workplace Relations Management Plan must be provided:

C - Quality Management

Mentioned in clause 15

Is the Contractor required to implement a certified Quality Management System? (Yes/No)



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

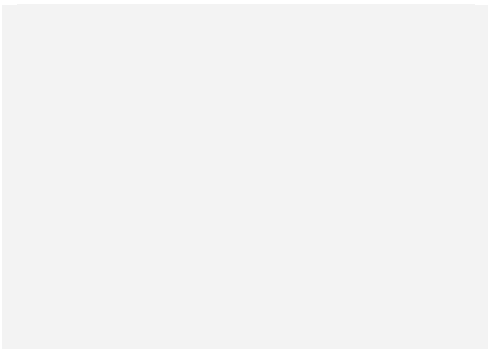
If required, the Quality Management Plan must be provided:

D - Environmental Management

Mentioned in clause 15

Environmental Management systems Guidelines

Is the Contractor required to implement an accredited Environmental Management System? (Yes/No)



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

If required, the Environmental Management Plan must be provided:

E - Industry Participation Plan

Is the Contractor required to implement an Industry Participation Plan? (Yes/No)

Mentioned in clause 15

16 Requirements for Commonwealth Funded projects

A - Building Code 2016

Is the Contractor required to comply with the Building Code 2016?

Mentioned in clause 13.2

B - Australian Government Building and Construction OHS Accreditation Scheme

Is the Contractor required to maintain accreditation under the Australian Government Building and Construction OHS Accreditation Scheme?

Yes

Mentioned in clause 17

17 Principal contractor

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

Yes

Mentioned in clause 16

18 Working hours and working days

Mentioned in clause 18

Working hours and working days are:

to comply with *Statutory Requirements and the following agreed working hours and working days:*

To be completed

Liability

19 Limitation of liability

Mentioned in clause 26.9

Subject to clause 26.9, the limit of the Contractor's liability to the Principal in respect of any one occurrence in connection with loss or liability other than personal injury or death is:

- \$ »
- ("The Contractor's liability is unlimited" applies if not filled in)

20 Proportionate liability

Mentioned in clause 26.12

Is proportionate liability excluded from the Contract? (Yes/No)

»
("Yes" applies if not filled in).

Insurance

21 Works Insurance

Mentioned in clauses 27.1 & 27.2

The party responsible for effecting Works insurance is:

Minimum cover is:

Period of cover is:

22 Public liability insurance

Mentioned in clauses 27.1 & 27.2

The party responsible for effecting public liability insurance is:

Minimum cover is:

Period of cover is:

23 Workers compensation insurance

Mentioned in clause 27.3

Minimum cover is:

Period of cover is:

24 Professional indemnity insurance

Mentioned in clause 27.3.2

Is a professional indemnity insurance policy to be held by the Contractor? (Yes/No)

Minimum cover is:

Period of cover is:

25 Marine liability insurance

Mentioned in clause 27.3.3

Minimum cover is:

Period of cover is:

Contract Documents

26 Other Contract Documents

Mentioned in clause 7.1.5

Other *Contract Documents* (not listed in clause 7) are:

Principal's Documents

27 Copies of Principal's Documents

Mentioned in clause 7.4

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

Contractor's Documents

28 Copies of Contractor's Documents

Mentioned in clause 40.1

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

Subcontract work

29 Inclusion of consistent requirements in Subcontracts

Mentioned in clause 28.4

The Subcontract value requiring inclusion of the provisions set out in Schedule 9 (Subcontract requirements) is:

30 Payment period for Subcontracts

Mentioned in clause 28.4.2

The maximum period before payment, is:

31 Preferred Subcontractors

Mentioned in clause 29.3

The *Preferred Subcontractors* referred to in clause 29 are:

Class of work	Subcontractors
<hr/>	

32 Subcontractor's Warranty

Mentioned in clause 30.1

Trades or areas of work requiring a
Subcontractor's warranty are:

Undertakings

33 Completion Undertaking

Mentioned in clause 33.1

A - For Contractors selected to tender for the Contract from the Office of Finance & Services 'Best Practice' Contractor Accreditation Scheme

The amount of the *Completion Undertaking* is:

B - For All Other Contractors

The amount of the *Completion Undertaking* is:

34 Post-Completion Undertaking

Mentioned in clause 33.1

The Amount of *Post-Completion Undertaking* is:

35 Return of Post-Completion Undertaking

Mentioned in clause 33.2.2

The period at the end of which the *Post-Completion Undertaking* must be returned is:

Site information

36 Site information

Mentioned in clause 36

Information contained in the documents identified in Contract Information items 36A and 36B does not form part of the Contract.

A - Documents not guaranteed for completeness

Documents not guaranteed for
completeness are:

B - Documents not guaranteed for accuracy, quality or
completeness

Variations instructed by the
Principal? (Yes/No)

Design and documentation

38 Scope of design activities

A - Design by the Contractor

Mentioned in clause 39

Must the Contractor carry out all design
necessary in connection with the
Works? (clause 39.1.1):

[insert Yes or No]

B - Design by the Principal

Must the Principal carry out all design
necessary in connection with the Works?
(clause 39.1.2):

[insert Yes or No]

C - Contractor to complete Design provided by the Principal

Must the Contractor complete the
design provided by the Principal?
(clause 39.1.3):

[insert Yes or No]

D - National Construction Code

Mentioned in clauses 39 & 43

Does the National Construction
Code apply? (Yes/No)

Novation

39 Novation

Mentioned in clause 41

Will there be a novation of the
Principal's Novated Consultant to
the Contractor?

[Insert Yes or no]

Name of Novated Consultant?

Principal's Novated Consultant:
[insert]

Payments

40 Contract Price at the Date of Contract

Mentioned in clauses 55.1 and 55.3

The *Contract Price* which is inclusive of GST)at the Date of Contract is:

\$
.....

Basis of payment

The basis of payment is:
(Lump sum / *Schedule of Rates* / Lump sum with *Rate Items*)

.....

41 Rise or fall adjustments

Mentioned in clause 55.2

Are rise or fall adjustments applicable to the Contract (excluding *Daywork*)? (Yes/No)

.....

42 Provisional Sums

Mentioned in clause 55.4

Provisional Sum items referred to in clause 55.4 are:

.....

43 Provisional Sum margin

Mentioned in clause 55.4

The *Provisional Sum* margin (including profit and off site overheads) is :

.....

44 Contractor's Margin

Mentioned in clauses 47 and 79

The *Contractor's Margin* (including profit and off site overheads) is :

[Redacted]

45 Amount of Prepayment

Mentioned in clause 57.1.1

The amount of *Prepayment* is:

[Redacted]

46 Payment date and method

A - Date for Payment Claims

Mentioned in clause 58.1

The date in the month for making *Payment Claims* is:

[Redacted]

B - Method of payment

Mentioned in clause 58.2

Milestones for which payment will not be made until after they reach *Completion*:

[Redacted]

47 Completion Amount

Mentioned in clause 60

The *Completion Amount* is:

[Redacted]

The *Completion Amount* is payable after:

(*Completion* of the whole of the Works/*Completion* of *Milestone* »)

[Redacted]

48 Interest on late payments

Mentioned in clause 62

The rate of interest per annum is:

[Redacted]

Delay costs

49 Delay costs and liquidated damages

Mentioned in clauses 34 & 51

A1 - Delay costs for delay in access to the Site

The rate in item 49A1 applies only if the Principal fails to give initial access to the Site as required by clause 34. The rate does not apply where the Principal fails to give Site access for a *Milestone* by the required time, unless that *Milestone* is the first to proceed after the Contractor has established on the Site.

The rate per day for delay costs due to the Principal's failure to give the Contractor initial access to the Site in accordance with clause 34 is:

A2 - Delay costs for delay other than in access to the Site

The rate or rates in item 49A2 apply when the rate in item 49A1 is not applicable, in accordance with clause 51.

The rate per day for delay costs payable when *Completion* of the whole of the Works is delayed is:

The rates per day for delay costs payable when there are delays to *Completion of Milestones** are:

**The rate for each Milestone is separate and distinct from the others.*

B - Liquidated damages

Mentioned in clauses 51.8 and 51.9

Do liquidated damages apply to this Contract? (Yes/No)

The rate per day for liquidated damages for the whole of the Works only applies where there are no rates specified for *Milestones* and is:

The rates per day for liquidated damages for *Milestones** are:

**The rate for each Milestone is separate and distinct from the others.*

Engagement of Valuer

50 Engagement of Valuer

A - Engagement of Valuer

Mentioned in clause 35

Must a Valuer be engaged?
(Yes/No)

B - Person to select the Valuer

Mentioned in clause 35

The person is:

Telephone number:

Facsimile number:

C - Litigation Threshold

Mentioned in clause 35

The threshold amount for litigation following a Valuer's determination is:

Expert Determination

51 Time to refer Issue to Expert Determination

Mentioned in clause 70

The time within which either party may refer an *Issue* to *Expert Determination* is:

52 Expert Determination representative

Mentioned in clause 71

The representative of the Principal for all of the purposes in clause 71, and under Schedule 5 (Expert Determination Procedure) is:

Office address:
(for delivery by hand)

Postal address:
(for delivery by post)

Facsimile number:

e-mail address:

53 Person to nominate an Expert

Mentioned in clause 71

The person is:

Telephone number:

Facsimile number:

54 Threshold amount for litigation

Mentioned in clause 71

The threshold amount for litigation following an *Expert's* determination is:

DRAFT

Schedules

Schedule 1	Subcontractor's Warranty
Schedule 2	Undertaking
Schedule 3	Payment Claim Worksheet
Schedule 4	Agreement with Valuer
Schedule 5	Expert Determination Procedure
Schedule 6	Statutory Declaration
Schedule 7	Costs Adjustment Formula
Schedule 8	Daywork
Schedule 9	Subcontract requirements
Schedule 10	Principal Arranged Insurances
Schedule 11	Statement regarding Materials
Schedule 12	Compliance with Building Code 2016
Schedule 13	Retention Money Trust Account Obligations

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 to be used by the Contractor in performing the Contract.

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 30.1 of the GC21 General Conditions of Contract and the Principal's Documents

Definitions

Deed dated:

between

Subcontractor or Supplier:

ABN
.....

And

The Principal: »

concerning

The Contract: The contract between the Principal and the Contractor

Contract Name: »

Contract Number: »

Works: The works to be designed (if stated in Contract Information 38) constructed by the Contractor, as described in the Contract.

The Contractor:

ABN
.....

Subcontract Work or Products:

Warranty Period:years from the *Actual Completion Date* of the whole of the Works.

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

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

Terms of Deed

a. Warranty

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

b. Replacement or making good

- i. The Subcontractor promises to replace or make good, to the reasonable satisfaction of the Principal, any of the Subcontract Work or Products which are found, within the Warranty Period, to:
 1. be of a lower standard or quality than referred to in clause 1 of this Deed; or
 2. have deteriorated to such an extent that they are no longer fit for the purposes for which they were required.
- ii. The liability of the Subcontractor is reduced to the extent that deterioration is caused by:
 1. mishandling, damage before installation, or incorrect installation, in each case caused by others;
 2. normal wear and tear;
 3. incorrect operational procedures or maintenance, in each case not attributable to the Subcontractor; or
 4. any other cause beyond the control of the Subcontractor.
- iii. Nothing in this Deed affects the Subcontractor's liability with respect to the Subcontract Work or Products.

c. Costs

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

d. Indemnity

- i. 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.

e. Notice of Defects

- i. The Principal may notify the Subcontractor in writing if it considers there has been any breach of the warranty in clause 1 of this Deed or if the Principal requires the Subcontractor to replace or make good any of the Subcontract Work or Products under clause 2 of this Deed.

- f. Time to remedy
 - i. The Subcontractor must do everything to remedy any breach notified to it, or to carry out any replacement or making good required under clause 5 of this Deed, within a reasonable time after receiving the Principal’s notice.
- g. Failure to remedy
 - i. If the Subcontractor fails to 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.
 - ii. If the Subcontractor fails to complete the work by the date specified in clause 7.1 of this Deed, 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.
- h. Urgent action by Principal
 - i. 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.
 - ii. The Subcontractor agrees that the Principal taking such action does not affect the warranty or any other obligation of the Subcontractor under this Deed.
 - iii. The Subcontractor indemnifies the Principal for the reasonable costs and expenses paid or payable in taking that action.
- i. Assignment
 - i. The Principal may assign its rights and benefits under this Deed to the owner or operating authority of the Works and must give notice of that assignment to the Subcontractor.
- j. Operation of Deed
 - i. 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/Secretary:

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:

Full name of witness:

Place:

DRAFT

Schedule 2

Undertaking

Refer to clauses 33, 57 and 58 of the GC21 General Conditions of Contract.

On behalf of the Contractor

Name of Financial Institution:

The Principal: »

The Contractor:

ABN

Security Amount: \$

The Contract: The contract between the Principal and the Contractor

Contract Name: »

Contract Number: »

Undertaking

- i. 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.
- ii. 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.
- iii. The Principal must not assign this *Undertaking* without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
- iv. This *Undertaking* continues until one of the following occurs:
 1. the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;
 2. this *Undertaking* is returned to the Financial Institution; or
 3. the Financial Institution pays the Principal the whole of the Security Amount, or as much as the Principal may require overall.
- v. 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.

Dated at

Execution by the Financial Institution:

Schedule 3

Payment Claim Worksheet

Refer to clause 58 of the GC21 General Conditions of Contract.

The Contractor:
 ABN
 The Contract: The contract between the Principal and the Contractor
 Contract Name: »
 Contract Number: »

1	2	3	4	5
Activity (& Milestone) to suit schedule of prices and/or activities	Milestone & activity number	Value of activity (or Milestone) \$	Activity (or Milestone) completed %	Activity (or Milestone) completed value \$ (col 3 x col 4)
Amount brought forward from previous sheet				\$
Amount carried forward to next sheet				\$

1	2	3	4	5
Item or activity to suit <i>Schedule of Rates</i>	Item or activity number	Price or rate for item or activity \$	Quantity completed	Item or activity completed value \$ (col 3 x col 4)
Amount brought forward from previous sheet				\$
Amount carried forward to next sheet				\$

Complete this section on the last sheet only

Subtotal for any <i>Schedule of Rates</i> items	\$
Subtotal for any lump sum items	\$
\$	\$
\$	\$
Value Completed	\$
Less payments already made	\$
Less retention for the <i>Completion Amount</i> under clause 60, if applicable	\$
Claimed Amount	\$

Schedule 4

Agreement with Valuer

Refer to clause 35 of the GC21 General Conditions of Contract.

Definitions

Agreement dated:
	between:
The Valuer:
	ABN
	and:
The Principal:	»
	and:
The Contractor:
	ABN
	concerning:
The Contract:	The contract between the Principal and the Contractor
Contract Name:	»
Contract Number:	»
Dated:
The Works:	The works to be designed (if stated in Contract Information 38) and constructed by the Contractor, as described in the Contract.

Unless the context requires otherwise, other words and phrases in this agreement have the meanings given in the Contract.

The terms Contractor and Principal include their successors and permitted assignees.

Terms of agreement

- a. Request to determine and acceptance
 - i. 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.
- b. Determination by Valuer
 - i. 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 period agreed by the parties) after the matter is referred to the Valuer.
 - ii. 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.

Associate	\$...../hour
Senior Quantity Surveyor / Engineer	\$...../hour
Quantity Surveyor / Engineer	\$...../hour
Technician	\$...../hour

3. Substantiated out-of-pocket expenses.

j. Confidentiality

- i. 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 prior written consent of the other party, or as required by law, or in order to enforce a determination of the Valuer.

k. Termination of agreement

- i. 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 9 of this agreement.

l. Payment

- i. The Principal and the Contractor must pay the Valuer within 14 days after receiving an invoice which complies with this agreement.
- ii. 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.

m. Period of engagement of Valuer

- i. Unless this agreement is terminated under clause 11 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 the *Final Payment Schedule* is issued.

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:

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Schedule 5

Expert Determination Procedure

Refer to clause 71 of the GC21 General Conditions of Contract.

a. Questions to be determined by the Expert

- i. For each *Issue*, the *Expert* must determine the following questions, to the extent that they are applicable to the *Issue* and unless otherwise agreed by the parties:
 1. Is there an event, act or omission which gives the claimant a right to compensation, or assists in otherwise resolving the *Issue* if no compensation is claimed:
 - a. under the Contract,
 - b. for damages for breach of the Contract, or
 - c. otherwise in law?
 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?
 3. In light of the answers to the questions in clauses 1.1.1 and 1.1.2 of this Expert Determination Procedure:
 - a. what compensation, if any, is payable by 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*?
- ii. The *Expert* must determine, for each *Issue*, any other questions identified or required by the parties, having regard to the nature of the *Issue*.

b. Submissions

- i. The procedure for submissions to the *Expert* is as follows:
 1. The party to the Contract which 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 71.3 of the GC21 General Conditions of Contract.
 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 party desiring the longer period may make a submission on the point to the *Expert*, within the time specified by the *Expert*, and the *Expert* will promptly determine any extra time permitted. The response to the submission in clause 2.1.1 may include cross-claims.
 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.

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.
- ii. 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.
- iii. 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.
- iv. 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 sent to the Principal under this Expert Determination Procedure must be sent to the relevant person at the relevant postal or other address stated in Contract Information item 52.

c. Conference

- i. 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.
- ii. 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.

d. Role of Expert

- i. The *Expert*:
 1. acts as an *Expert* and not as an arbitrator;
 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
 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 71.3 of the GC21 General Conditions of Contract.
- ii. 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 6

Statutory Declaration

DEFINITIONS

The Principal is: ».....
 The Contractor is: ».....
 The Contract: The contract between the Principal and the Contractor
 Contract Title: »
 Contract Number: »
 Dated: ».....(Date of Contract) between the party identified as the Principal and the party identified as the Contractor.
 Contractor.

Declaration

Full Name: I ».....
 of ».....
 ».....

do hereby truly and solemnly declare the following and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1936 (SA):

1. I am the director or project manager of the Contractor and authorised by the Contractor to make this statutory declaration on its behalf.
2. I am in a position to make this statutory declaration about the facts attested to.

Remuneration of Contractor's employees engaged to carry out work in connection with the Contract

3. All remuneration payable to the Contractor's relevant employees for work done in connection with the Contract to the date of this statutory declaration has been paid and the Contractor has made provision for all other benefits accrued in respect of the employees. Relevant employees are those engaged in carrying out the work done in connection with the Contract. Remuneration means remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees and subcontractors.

Workers Compensation Insurance of the Contractor's workers

4. All workers compensation insurance premiums payable by the Contractor to the date of this statutory declaration in respect of the work done in connection with the Contract have been paid. The Certificate of Currency for that insurance is attached to this statutory declaration.

Workers Compensation insurance for workers of Subcontractors

5. The Contractor has been given a written statement that all workers compensation insurance premiums payable by each subcontractor in respect of that work done to the date of this statutory declaration have been paid, accompanied by a copy of any relevant certificate of currency in respect of that insurance.

Payments to Subcontractors

6. The Contractor has paid (not including any amount identified in the Table below which is in dispute) every subcontractor, supplier, contractor and consultant all amounts payable to each of them by the

Contractor as at the date of this statutory declaration with respect to engagement of each of them for the performance of work or the supply of materials for or in connection with the Contract.

7. No payment claim made by a subcontractor, supplier, contractor or consultant (not including those identified in the Table below which is in dispute) who has performed of work or supplied materials for or in connection with the Contract is unpaid by:
 - a. more than number of days stated in Contract Information item 30, in the case of each Subcontract with a Subcontractor valued below the amount stated in Contract Information item 29; or
 - b. more than 15 Business Days in the case of each Subcontract with a Subcontractor valued above the amount stated in Contract Information item 29.
8. The provisions of the clause entitled "Subcontractor relationships", or "Subcontracting" if included in the Contract, have been complied with by the Contractor.
9. The Contractor confirms;
 - a. that their sub-contracts with subcontractors, consultants and suppliers comply with the requirements of the clause entitled "Subcontractor relationships" or "Subcontracting" if included in the Contract as they apply to them (except for subcontracts and agreements not exceeding \$25,000 at their commencement); and
 - b. that all of their employees have been paid all remuneration and benefits due and payable to them by, and had accrued to their account all benefits to which they are entitled, (except for subcontracts and agreements not exceeding \$25,000 at their commencement) in respect of any work for or in connection with the Contract.

Subcontract Cash Security

10. All subcontract security held in the form of cash and all cash retentions from subcontractor payments are held in trust by the Contractor. The cash security and retentions are held in trust for whichever party is entitled to them, until payment is made to that party.
11. The Contractor is maintaining complete records to account for the cash. The records are available to the relevant subcontractors and the Principal on request.

Status of Subcontractor Payments

Table

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid						
Subcontractor Name and ACN/ABN	Contract No.	Date of works (period)	Payment claim dated (head contractor claim)	Amount of claim	Amount	Reasons for Difference

I acknowledge that this declaration is true and correct and I make it with the understanding and believe that a person who makes a false declaration may be guilty of an offence.

Signature of Declarant:

declared at:

Place: »

on»

before me:

Signature of legally authorised person* before whom the declaration is made:

.....

Name and title of person* before whom the declaration is made

.....

* *"The declaration must be made before one of the following persons:*

1. *where the declaration is sworn within the State of South Australia:*

- (i) a justice of the peace of the State of South Australia;*
- (ii) a solicitor of the Supreme Court of South Australia with a current practising certificate;*
- (iii) a notary public; or*
- (iv) another prescribed person legally authorised to administer an oath under the Oaths Act 1936, or.*

2. *where the declaration is sworn in a place outside the State of South Australia:*

- (i) a notary public; or*

any person having authority to administer an oath in that place.

Schedule 7

Costs Adjustment Formula

Refer to clause 55.2 of the GC21 General Conditions of Contract

1 General

The Principal will pay or deduct an amount for rise and fall on the bituminous binder, polymer modified binder and cutter used in this Contract. Adjustment of payment for rise and fall will not be paid for any other part of the work or supply of materials under this Contract.

This amount will be determined by the following formula:

$$\text{Amount} = \text{EV}_{\text{bit}} \times \text{A}_{\text{bit}} + \text{EV}_{\text{PMB}} \times \text{A}_{\text{PMB}} + \text{EV}_{\text{cut}} \times \text{A}_{\text{cut}}$$

where:

EV_{bit} =	Effective Value for C170/C320 Bituminous Binder
A_{bit} =	Cost Adjustment Factor for C170/C320 Bituminous Binder
EV_{PMB} =	Effective Value for Polymer Modified Binder
A_{PMB} =	Cost Adjustment Factor for Polymer Modified Binder
EV_{cut} =	Effective Value for Bituminous Cutter
A_{cut} =	Cost Adjustment Factor for Bituminous Cutter

Where the Cost Adjustment Factor is positive, the amount calculated for rise and fall shall be added to the value of the payment to be made in respect of the progress certificate or the final certificate.

Where the Cost Adjustment Factor is negative, the amount calculated for rise and fall shall be subtracted from the value of the payment to be made in respect of the progress certificate or the final certificate.

2 Calculation of The Effective Value

The Effective Value is the value of C170/C320 bituminous binder, Polymer Modified Bitumen and Cutter (as applicable) incorporated into the work included in the progress certificate or the final certificate, less the Effective Value in respect of previous progress payments, disregarding any increase or decrease under this Clause.

3 Calculation of the Cost Adjustment Factors

The Cost Adjustment Factor will be determined by the following formulae:

$$A_{bit} = \left(\frac{Bn - Bo}{Bo} \right)$$

$$A_{PMB} = \left(\frac{PMBn - PMBo}{PMBo} \right)$$

$$A_{cut} = \left(\frac{Cn - Co}{Co} \right)$$

where:

Bn = Current Bitumen Index Number, which shall be the Published List Selling Price for C170/C320 bitumen from the bitumen supplier for the work, applicable at the date that the work subject of the certificate was carried out.

Bo = Base Bitumen Index Number, which shall be the Published List Selling Price for C170/C320 bitumen from the bitumen supplier for the work, applicable at the date of close of tenders.

PMBn = Current Polymer Modified Bitumen Index Number, which shall be the Published List Selling Prices for polymer modified bitumen from the bitumen supplier for the work under the Contract, applicable at the date that the work subject of the certificate was carried out.

PMBo = Base Polymer Modified Bitumen Index Number, which shall be the Published List Selling Prices for polymer modified bitumen from the bitumen supplier for the work under the Contract, applicable at the date of close of tenders.

Cn = Current Cutter Index Number, which shall be the Published List Selling Prices for the cutter from the supplier for the work under the Contract, applicable at the date that the work subject of the certificate was carried out.

Co = Base Cutter Index Number, which shall be the Published List Selling Prices for the cutter from the supplier for the work under the Contract, applicable at the date of close of tenders.

Where the Contractor sources bituminous products from more than one supplier, the appropriate Index Number from each supplier shall be used to calculate Rise and Fall for that proportion of the bituminous product supplied by that supplier.

The base index numbers shall be as listed in Schedule 7 “Published List Selling Prices of Bituminous Products”.

4 Cost Adjustment on Work Completed After the Date for Practical Completion

Where a payment is made to the Contractor in respect of any work under the Contract executed subsequent to the Date for Practical Completion then an amount for rise and fall for any such work will be calculated using Bn, PMBn and Cn applicable at the Date for Practical Completion.

Schedule 8

Daywork

Refer to clause 48.4 of the GC21 General Conditions of Contract.

1. Daywork procedure and determination

- i. If the Principal instructs that a *Variation* be carried out as *Daywork*, the Principal and Contractor must agree the amount, type and conditions of use of labour, plant and materials to be used in the *Variation*.
- ii. Contractor must record the particulars of all resources used by the Contractor each day in carrying out the *Variation*. The method of recording the resources and their hours must be agreed by the Contractor and Principal.
- iii. When submitting a claim for payment for the *Variation* in a *Payment Claim* under clause 58, the Contractor must submit records including all time sheets, wages sheets, invoices, receipts and other documents that are necessary to support this *Payment Claim*.
- iv. The Principal must assess the value of the *Variation* amount to be paid to the Contractor in respect of each *Payment Claim* and in making its assessment under clause 59 must have regard to the following:
 1. the amount of wages and allowances for labour paid or payable by the Contractor at the rates obtaining on the Site at the time, as approved by the Principal;
 2. the amount paid or payable by the Contractor in accordance with any statute or award applicable to day labour additional to the wages paid or payable under 1.4.1 of this *Daywork* procedure;
 3. the amount of hire charges for construction plant approved by the Principal for use on the work;
 4. the reasonable actual mobilisation and demobilisation costs of construction plant and vehicles (where brought for the sole purpose of the instructed *Daywork*);
 5. the reasonable amounts paid by the Contractor for Subcontracts and for Consultant work involved in carrying out the *Variation*;
 6. the reasonable actual cost to the Contractor at the Site of all materials supplied and required for the *Variation* work.
- v. In addition to the amounts assessed for the items under clause 1.4 above, the value of the *Variation* will include an additional amount for overheads, administrative costs, site supervision, establishment costs, attendance and profit calculated as 10% of the total of the assessed costs under clause 1.4.
- vi. The amounts payable for *Daywork* will not be subject to adjustment for rise and fall in costs notwithstanding that the Contract may provide for adjustment for rise and fall in costs.

2. Amounts included in and excluded from Daywork

- i. Assessment by the Principal of the valuation of a *Variation* carried out as *Daywork* will include valuation of all reasonable and necessary costs incurred of personnel,

plant, vehicles, Subcontractor, Consultant and *Materials* used by the Contractor in carrying out the *Variation* as instructed by the Principal, subject to:

1. the valuation of the *Variation* will only include costs for actual time of any resources which are employed on the *Variation*; and
2. the costs of supervisory, technical and administrative personnel that are normally engaged on the Works and continue to be so during the *Daywork* will not be included in the Principal's assessment of the valuation of the *Variation*.

3. Principles for calculating time

- i. If the parties do not agree on the effect on the time for *Completion* of the *Variation* carried out as *Daywork*, the extension of time for *Completion* due if any, must be dealt with under clauses 68 to 71 based on the principles contained in clause 50.

Schedule 9

Subcontract requirements

Refer to clause 28.4.1 of the GC21 General Conditions of Contract.

General requirements for specified subcontracts

In addition to its obligations under clause 28.3, for all Subcontracts valued at or over the amount stated in Contract Information item 29, the Contractor must include requirements consistent with the provisions of the following clauses and schedules of this Contract:

1. clause 3 - Co-operation
2. clause 4 - Duty not to hinder performance
3. clause 5 - Early warning
4. clause 6 - Evaluation and monitoring
5. clause 10 - Governing law of the Contract
6. clause 14 – No collusive arrangements
7. clause 23 – Intellectual Property
8. clause 24 - Confidentiality
9. clause 25 – Media releases and enquiries
10. clause 26 – Care of people, property and the environment, indemnities and limitations
11. clauses 27.13, 27.10.1.1, 27.10.1.2, 27.10.1.5 and 27.10.1.6 - Insurances
12. clause 28 – Subcontractor relationships
13. clause 58 – Payment Claims
14. clause 59 – Payments
15. Schedule 1 (Subcontractor's Warranty) together with an obligation to execute and deliver the Warranty to the Principal (only if the Subcontractor is required by clause 30 to provide the warranty)
16. Schedule 9 (Subcontract requirements)

Schedule 10

Principal Arranged Insurances

Details of the Principal Arranged Insurances are shown below.

1 Works insurance

Maximum cover:	The <i>Contract Price</i> plus the additional benefits stated in the Policy
Insurer:	Various Australian and overseas insurers
Policy Terms and Conditions:	Available on: https://www.dpti.sa.gov.au/contractor_documents/principal_arranged_insurance2
Period of cover:	Cover continues for the duration of the Construction Period (up to a maximum of 36 months) followed by the Defects Liability Period (up to a maximum of 24 months) as defined within the policy document.

2 Public liability insurance

Maximum cover:	\$250,000,000
Insurer:	Various Australian Insurers
Policy Terms and Conditions:	Available on: https://www.dpti.sa.gov.au/contractor_documents/principal_arranged_insurance2
Period of cover:	Cover continues for the duration of the Construction Period (up to a maximum of 36 months) followed by the Defects Liability Period (up to a maximum of 24 months) as defined within the policy document..

Schedule 11

Statement regarding Materials

Refer to clause 58.8 of the GC21 General Conditions of Contract.

I am a representative of *[name of company/entity with custody of the Materials or on whose land the Materials are stored]* in the capacity of *[insert position]* and I am authorised to make this statement on behalf of the Company. I confirm that the Company has no lien, charge or other encumbrance over the *Materials* listed in the schedule to this statement (“*Materials*”). I acknowledge that the *Materials* are the property of the Principal named in the schedule to this statement (“*Principal*”) and I hereby irrevocably authorise the Principal or its officers or others acting with its authority to enter the premises where the *Materials* are stored at any reasonable hour to inspect or remove the *Materials*. I undertake to make no claim or charge against the Principal in respect of the storage of the *Materials*.

SCHEDULE

Materials

[list the Materials]

Principal

[insert name of the Principal]

SIGNED.....

DATE:.....

Schedule 12

Compliance with Building Code 2016

Refer to clause 13.15 of the GC21 General Conditions of Contract.

1. In these clauses:

ABCC	means the body referred to in subsection 29(2) of the Act.
ABC Commissioner	means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the Act.
Act	means the Building and Construction Industry (Improving Productivity) Act 2016.
Building Code	means the Code for the Tendering and Performance of Building Work 2016, which is available at https://www.legislation.gov.au/Details/F2017C00668 .
Building Contractor	has the same meaning as in the Act.
Building Industry Participant	has the same meaning as in the Act.
Building Work	has the same meaning as in subsection 3(4) of the Building Code.
Commonwealth Funded Building Work	means Building Work in items 1-8 of Schedule 1 of the Building Code.
Enterprise Agreement	has the same meaning as in the Fair Work Act 2009.
Exclusion Sanction	has the same meaning as in subsection 3(3) of the Building Code.
Related Entity	has the same meaning as in subsection 3(2) of the Building Code.
Sub-subcontractor	means a Building Contractor or Building Industry Participant who the Contractor has entered, or proposes to enter, into a sub-subcontract with to undertake any of the Works.
Works	means Commonwealth Funded Building Work that is the subject of this Contract.

2. The Contractor declares as at the date of commencement of this Contract in relation to the Works, that it:

- (a) is not subject to an Exclusion Sanction; and
- (b) unless approved otherwise by the ABC Commissioner, is not excluded from performing Building Work funded by a state or territory government.
- (c) is not covered by, and does not have Related Entities covered by, an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code;

3. The Contractor:

- (a) declares as at the date of commencement of this Contract in relation to the Works; and
- (b) must ensure that during the term of this Contract in relation to the Works, that it and its Sub-subcontractors:
 - (i) comply with the Building Code;
 - (ii) will only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards

Australia

4. Without limiting and notwithstanding clause 3(b), the Contractor will ensure that remedial action is taken to rectify any behaviour on the part of it and its Sub-subcontractors that is non-compliant with the Building Code.
5. The Contractor must every six months during the term of this Contract advise the Contractor whether:
 - (a) it has in the preceding 6 months or since it last advised the Contractor, whichever is the earliest, had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or the Migration Act 1958; or
 - (b) it has in the preceding 6 months or since it last advised the Contractor, whichever is the earliest:
 - (i) been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) to a Building Contractor or Building Industry Participant; or
 - (ii) owed any unsatisfied judgement debts to a Building Contractor or Building Industry Participant.
6. Compliance with the Building Code does not relieve the Contractor from responsibility to perform this Contract, or from liability for any defect in the Works arising from compliance with the Building Code.
7. The Contractor must notify the ABCC of any breach or suspected breach of the Building Code as soon as practicable but no later than 2 working days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
8. The Contractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the Act and the Building Code and will ensure that it and its Sub-subcontractors comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the Act, requests to interview any person under section 74 of the Act, requests to produce records or documents under sections 74 and 77 of the of the Act and responding to requests for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
9. The Contractor must only enter into a sub-subcontract for any of the Works where:
 - (a) the Sub-subcontractor has submitted a declaration of compliance, including the further information outlined in Attachment A to the declaration of compliance, in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code (located in Part 4 in the document titled Model Clauses Type B, available on the ABCC website (www.abcc.gov.au)); and
 - (b) the sub-subcontract with the Sub-subcontractor contains clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the Building Code.
10. The Contractor must ensure that it and its Sub-subcontractor comply with clauses contained in the sub-subcontract referred to in clause 9(b).

Schedule 13

Retention Money Trust Account Obligations

Refer to clause 33.11 of the GC21 General Conditions of Contract.

Not applicable in South Australia

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Attachments

Attachments 1, 2, 2A and 3 form part of the Contract.

Attachment 1	GC21 Start-up Workshop
Attachment 2	Performance Evaluation (Example)
Attachment 2A	Performance Evaluation
Attachment 3	Performance Evaluation Record

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Attachment 1

The GC21 Start-up Workshop

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 contract. This Attachment 1 forms part of the Contract.

The workshop takes place within 28 days after the Date of Contract. The workshop should take half a day, although large or complex contracts may require longer.

Refer to clause 32 of the GC21 General Conditions of Contract.

Participants

The workshop participants include representatives of the Principal, the Contractor and others concerned with the Works. This might include representatives of authorities, eventual users of the Works, the local community, Consultants, Subcontractors and Suppliers.

Agenda

The agenda should include:

- welcome by the facilitator;
- introduction of participants;
- workshop purpose and, guidelines;
- review of the proposed workshop agenda;
- overview of the Contract;
- co-operative contracting - overview;
- co-operative contracting applied to the Contract;
- monitoring and evaluation;
- development of a communications framework and directory;
- identification of key concerns and solutions;
- opportunities for innovation;
- closing comments and feedback; and
- close of workshop.

A copy of the Procurement Practice Guide *GC21 meetings and workshops* may be obtained from the NSW Government Procurement System for Construction on the ProcurePoint website.

Attachment 2

Performance Evaluation (example)

Refer to clause 6 of the GC21 General Conditions of Contract.

Evaluation and monitoring meetings should focus on achievable improvements in contract communication and management. Attachments 1 and 2 provide a structure for evaluation and discussion

Attachment 2 indicates topics that are suitable for assessing performance and monitoring progress as the Contract proceeds.

They are provided for guidance only, and the topics are suggestions only. Each evaluation team should choose its own topics to reflect issues specific to the Contract. Use Attachment 2A on the next page to develop a Contract-specific Performance Evaluation form

Contract name:	Rating system 5 excellent 4 above expectation 3 meeting expectation 2 below expectation 1 unsatisfactory
Contract number:	
Date:	

Topic	Objectives	Your rating (this period)	Team rating (this period)	Main Issue & Agreed Action
Communication	<ul style="list-style-type: none"> • co-operation between parties • duty not to hinder performance • early warning • evaluation and monitoring 	<input type="checkbox"/>	<input type="checkbox"/>	
Time	<ul style="list-style-type: none"> • issues affecting time • extensions of time • expected completion dates 	<input type="checkbox"/>	<input type="checkbox"/>	
Financial	<ul style="list-style-type: none"> • issues affecting the budget • extra work • payments • additional information required 	<input type="checkbox"/>	<input type="checkbox"/>	
Quality	<ul style="list-style-type: none"> • quality standards • design requirements • fitness for purpose, innovation • Faults, Defects rectification 	<input type="checkbox"/>	<input type="checkbox"/>	
Safety	<ul style="list-style-type: none"> • issues affecting safety on the Site • safety outside the Site. • safety risks • safety equipment 	<input type="checkbox"/>	<input type="checkbox"/>	
Relationships	<ul style="list-style-type: none"> • open discussion • actions effective • working together • attendance 	<input type="checkbox"/>	<input type="checkbox"/>	
Environment	<ul style="list-style-type: none"> • issues affecting the environment • noise and dust issues • healthy environment • waste management, 	<input type="checkbox"/>	<input type="checkbox"/>	
Contract Relations	<ul style="list-style-type: none"> • Subcontractor and Supplier issues • workplace relations and Site amenities • interaction of workers with others 	<input type="checkbox"/>	<input type="checkbox"/>	

- **IMPORTANT:** During each meeting, the evaluation team should decide on an action plan for items needing improvement.

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Attachment 2A Performance Evaluation

Insert in the form below topics that are important to the Contract.

Contract name:

Contract number:

Date:

Rating system
 5 excellent
 4 above expectation
 3 meeting expectation
 2 below expectation
 1 unsatisfactory

Topic	Objectives	Your rating (this period)	Team rating (this period)	Main Issue & Agreed Action
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	

Suggested topics are: Communication, Time, Relationships with others affected by the Works, Budget and Financial Issues, Scope Management, Quality, Safety, Environment, Contract Relations, Community Consultation, Aboriginal Participation, Maintenance of Asset Operation.

- IMPORTANT:** During each meeting, the evaluation team should decide on an action plan for topics needing improvement.

Attachment 3

Performance Evaluation Record

Insert the Contract-specific topics. Record the participants' ratings for each topic to illustrate trends in the Team's performance.

Contract name:
 Contract number:
 Date:

Rating system
 5 excellent
 4 above expectation
 3 meeting expectation
 2 below expectation
 1 unsatisfactory

Meeting	Number Month Year	1	2	3	4	5	6	7	8	9	10	11	12

TOPIC													
Communication	1												
	2												
	3												
	4												
	5												
	1												
	2												
	3												
	4												
	5												
	1												
	2												
	3												
	4												
	5												
	1												
	2												
	3												
	4												
	5												
	1												
	2												
	3												
	4												
	5												

Evaluation trends: scenarios

The Team ratings for each topic are recorded here so that overall performance can be assessed.

Contract name:

Contract number:

Date:

Rating system

5 excellent

4 above expectation

3 meeting expectation

2 below expectation

1 unsatisfactory

Meeting number month year	1	2	3	4	5	6	7	8	9	10	11	12

Deteriorating Performance

Communication	5												
	4	■											
	3	■	■										
	2	■	■	■	■	■							
	1	■	■	■	■	■	■	■					

Steady Performance

Communication	5												
	4												
	3	■	■	■	■	■	■	■					
	2	■	■	■	■	■	■	■					
	1	■	■	■	■	■	■	■					

Improving Performance

Communication	5					■	■						
	4			■	■	■	■						
	3	■	■	■	■	■	■						
	2	■	■	■	■	■	■						
	1	■	■	■	■	■	■						

Attachment 4

Deed of Novation

DEED dated**BETWEEN:**

MINISTER FOR INFRASTRUCTURE AND TRANSPORT of 136 North Terrace ADELAIDE SA
5000 (“the Minister”)

AND

[**Head Contractor** details] (“New Party”)

AND

[.....] **PTY LTD** of (“Continuing
Party”)

BACKGROUND

- A. The Minister and the Continuing Party entered into a contract on [insert] in relation to the [insert] (“Project”) (“Original Contract”) under which the Continuing Party is required to perform services which include professional design services.
- B. The Minister and the New Party entered into a contract dated [XXX] for the design and construction of the Project (**D&C Contract**).
- C. Under the D&C Contract, the New Party is required to accept a novation and retain the Continuing Party for any work the subject of the Original Contract, if requested by the Minister.
- D. The Minister has requested a novation of the Original Contract to the New Party.
- E. The Continuing Party and the Minister agree to novate the Original Contract.
- F. The Continuing Party agrees to the release and discharge of the Minister from the operation of the Original Contract.
- G. The New Party undertakes pursuant to this Deed to perform the obligations of the Minister.

AGREED TERMS:**1. NOVATION**

- (a) The parties agree that the Original Contract is novated.
- (b) A new contract is substituted for the Original Contract on the same terms and conditions as the Original Contract except:
 - (i) the Minister ceases to be a party to the contract;
 - (ii) the New Party becomes a party to the contract.

2. RELEASE OF THE MINISTER AND OBLIGATIONS OF NEW PARTY

- (a) The Minister is released and discharged from:
 - (i) its obligations under the Original Contract;
 - (ii) any claims arising under the Original Contract that have accrued before the date of this Deed; and
 - (iii) any claims arising under the Original Contract from the date of this Deed

for which it could have been liable had it continued to be a party to the Original Contract.

- (b) From the date of this Deed, the New Party is bound by the terms of the Original Contract and must perform the obligations of the Minister as if it were named in the Original Contract as a party to the Original Contract in place of the Minister.
- (c) From the date of this Deed, the New Party assumes liability for claims:
 - (i) which accrued before the date of this Deed for which the Minister would have been liable had it not been released by this Deed; and
 - (ii) that arise on or after the date of this Deed for which the Minister would have been liable had it not been released by this Deed.
- (d) The New Party indemnifies the Minister in respect of each of the claims (including payment claims) referred to in clause 2(c).

3. COSTS OF THIS DEED

Each party must pay its own costs arising from the preparation and execution of this Deed.

EXECUTED AS A DEED

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

.....
 Witness (Authorised Officer)

Print name

EXECUTED by **ARCHITECTS**)
PTY LTD (A.C.N.....))
 in accordance with Section 127 of the)
Corporations Act 2001 and its Constitution)

.....
 Signature of Director Signature of Director/Secretary*

.....
 Print Name of Director Print Name of Director/Secretary*
 (*delete the inapplicable)

EXECUTED by **[HEAD**)
CONTRACTOR] (ABN [)
 in accordance with Section 127 of the)
Corporations Act 2001 and its Constitution)

.....
 Signature of Director

.....
 Signature of Director/Secretary*

.....
 Print Name of Director

.....
 Print Name of Director/Secretary*

(*delete the inapplicable)

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