[Contract Name]

[Contract Number]

**Construction Goods and Services**

General Conditions of Contract

Adapted from the South Australian State Procurement Board’s Standard Goods and Services Agreement

Template Edition: 5 August 2020

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

between

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

and

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

**IT IS AGREED** that this Execution Page, the Agreement Details (Attachment 1), the Terms and Conditions (Attachment 2), the Glossary of Defined Terms (Attachment 3), the Special Conditions (Attachment 4), the Tender Form (Attachment 5) and the Specifications / Statement of Requirements (Attachment 6), will together comprise the Agreement between the Parties.

**EXECUTED AS A CONTRACT**

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by a duly authorised officer for and on behalf of **the Principal** in the presence of: | )))) |  |
|  Witness signature Witness name Date |  Authorised officer signature Authorised officer name Date |
| **EXECUTED** by **the Contractor** in accordance with section 127 of the *Corporations Act 2001* (Cth) by two directors or by one director and the company secretary: | )))) |  |
|  Director signature Director name Date |  Director/Company Secretary signature Director/Company Secretary name Date |  |

**Attachment 1 - Agreement Details**

|  |  |  |
| --- | --- | --- |
|  | **Principal** | The Minister for Infrastructure and Transport a body corporate established pursuant to the Administrative Arrangements Act 1994 (SA)136 North TerraceAdelaide, South Australia 5000ABN 92 366 288 135orThe Commissioner of Highways a body corporate established pursuant to the Highways Act 1926 (SA)50 Flinders StreetAdelaide, South Australia 5000ABN 45 751 448 902orThe Rail Commissioner a body corporate established pursuant to the Rail Commissioner Act 2009 (SA)50 Flinders StreetAdelaide, South Australia 5000ABN 23 251 040 528 |
|  | **Contractor** | insert nameinsert addressACN insertABN insert |
|  | **Commencement Date** | Upon execution of this agreement, or the date the Contractor’s offer is otherwise accepted in writing by the Principal, whichever is earlier. |
|  | **Expiry Date** | insert specific date or period of time from Commencement Date, unless otherwise agreed in writing between the parties. |
|  | **Extension Period** | insert or Not applicable |
|  | **Contract Managers** | Principal: insertContractor: insert |
|  | **Named Persons** | insert names and positions or Not applicable |
|  | **Details of Goods**  | insertorRefer Attachment 6 – SpecificationorNot applicable |
|  | **Delivery Date** for Goods**Delivery Point**for Goods | insert date or Not applicableinsert delivery point or Not applicable |
|  | **Installation Date**for Goods | insert or Not applicable |
|  | **Warranty Period**for Goods | insert or Not applicable |
|  | **Details of Services** | insertorRefer to Attachment 6 – Statement of RequirementsorNot applicable |
|  | **Delivery Date** for Services**Delivery Point**for Services | insert date or Not applicableinsert delivery point or Not applicable |
|  | **Milestone Dates**for Services | Refer to Attachment 6 – Specification / Statement of Requirements orNot applicable |
|  | **Reports and Manuals** | insert detailsorRefer to Attachment 6- Specification / Statement of RequirementsorNot applicable |
|  | **Price and Payment**  | The Price is as set out in the Tender Form at Attachment 5, and is not to exceed $[insert] (including GST).Payment will be made by:* 1. Lump Sum / Upper Limiting Fee; and
	2. Schedule of Rates.

Lump Sum: $[insert] (including GST), as set out in Attachment 5 – Tender Form orUpper Limiting Fee: $[insert] (including GST), as set out in Attachment 5 – Tender FormorRefer to Attachment 5 – Tender Form for Schedule of Rates |
|  | **Insurances**Public Liability InsuranceProduct Liability InsuranceProfessional Indemnity Insurance | Not less than $10,000,000Not less than $10,000,000 or Not applicableNot less than $1,000,000 or Not applicablein any case, all of the above are per occurrence and in aggregate |
|  | **Liability Limit** | The greater of an amount equal to [X] times the aggregated paid and payable Price, or the amount of the proceeds of the relevant insurances in Item 17  |
|  | **Other Termination Rights** | insert or Not applicable |
|  | **Approved Subcontractors** | insert or Not applicable |
|  | **Additional Personnel Checks** | insert or Not applicable |
|  | **Notice Period for Termination for Convenience** | insert period or Not applicable |

**Attachment 2 - Standard Terms & Conditions**

# AGREED TERMS

# contract length

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

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

# contract managers

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

# SUPPLY OF GOODS (if applicable)

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

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

### sell the Goods without encumbrance;

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

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

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

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

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

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

# inspection and acceptance of goods (if applicable)

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

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

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

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

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

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

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

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

### repair the Goods.

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

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

# warranty period (if applicable)

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

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

### refund the Price.

# supply OF SERVICES (if applicable)

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

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

## The Contractor must ensure that Services are delivered:

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

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

### by any Milestone Dates.

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

# reports and manuals (if applicable)

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

# Service variation (if applicable)

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

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

### the varied price and payment arrangements; and

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

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

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

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

### the Principal must pay the varied price;

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

# CONTRACTOR’S WARRANTIES

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

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

### are new (unless otherwise specified);

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

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

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

### are of merchantable quality;

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

### are fit for their intended purpose; and

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

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

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

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

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

### be provided with due care and skill;

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

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

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

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

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

# CONTRACTOR’s PERSONNEl

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

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

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

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

# PRICE AND PAYMENT

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

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

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

# GST

## Subject to clause 12.2 the Contractor represents that:

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

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

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

# INTELLECTUAL PROPERTY RIGHTS

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

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

# INSURANCE

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

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

# liability limit

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

# CONFIDENTIAL INFORMATION

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

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

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

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

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

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

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

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

# set-off

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

# dispute resolution

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

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

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

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

# ending this contract

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

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

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

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

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

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

### any Other Termination Right occurs; or

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

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

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

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

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

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

# EFFECT OF ending THIS contract

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

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

# SUBCONTRACTING

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

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

# Conflict of Interest

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

# Compliance with Laws

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

# Governing Law and Jurisdiction

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

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

# Entire Agreement

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

# No Assignment

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

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

# Modification

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

# Severance

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

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

# COUNTERPARTS

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

# Work Health & Safety

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

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

# acting ethically

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

# INTERPRETATION

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

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

### Special Conditions (Attachment 4);

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

### the other Attachments.

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

### a reference to any legislation includes:

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

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

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

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

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

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

# SPECIAL CONDITIONS

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

**Attachment 3 - Glossary of Defined Terms**

In this Agreement:

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

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

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

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

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

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

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

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

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

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

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

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

### “**Goods**” means the goods specified in Attachment 6;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **“Plant”** means any Goods set out in Attachment 6 that are machinery, equipment or fixtures used for construction, manufacturing, transport, storage or industrial purposes, and any Goods that are described as plant in Attachment 6.

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

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

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

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

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

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

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

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

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

**Attachment 4 - Special Conditions**

1. DEFINED TERMS

In these Special Conditions:

A reference to “Statement of Requirements” is a reference to the Specification.

1. RESPECTFUL BEHAVIOUR

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

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

1. act in a manner that is non-threatening, courteous, and respectful; and
2. comply with any instructions, policies, procedures or guidelines issued by the Principal regarding acceptable workplace behaviour.

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

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

The Principal is a public authority for the purposes of the *Independent Commissioner Against Corruption Act 2012* (SA) (“ICAC Act”). For the term of this Agreement the Contractor is considered a public officer under the ICAC Act and must comply with the ICAC Act and the directions and guidelines published by the Independent Commissioner Against Corruption.

1. THE CONTRACTOR’S PERSONNEL

The Contractor acknowledges and agrees that:

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

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

1. PRINCIPAL’S REPRESENTATIVE

The Principal’s Representative is the person occupying the position of Director, Project Procurement and Contracts at the Department for Infrastructure and Transport, of 77 Grenfell St, Adelaide SA 5000.

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

The Principal’s Representative:

(a) is authorised to act on behalf of the Principal; and

(b) by notice in writing to the Contractor, may further delegate any of the Principal’s functions and powers under the Contract, except those under clause 19 “Ending this Contract”.

Any reference to the Superintendent in a specification or statement of requirements is a reference to the Principal’s Representative.

With regard to any matter that affects or has the potential to affect the safety of the Adelaide Metropolitan Rail Network, the powers, duties, discretions and authorities vested in the Principal under this Contract may also be exercised by the Rail Commissioner established according to the *Rail Commissioner Act 2009* (SA).

1. CONTRACTOR AS TRUSTEE

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

### the Contractor is liable both personally and in its capacity as a trustee of that trust;

### it must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust (but, for the avoidance of doubt, may apply its right of indemnity out of the assets of the trust to any of its liabilities including those arising in relation to this Agreement);

### it must not retire, resign nor by act or omission effect or facilitate a change to its status as the sole trustee of that trust; and

### it represents and warrants that:

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

#### it is the duly appointed, current and only trustee of that trust;

#### as trustee it has the power to enter into and perform its obligations under this Agreement;

#### it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;

#### it either has no conflict of interest affecting it as trustee (and/or its directors, if any) or such conflict is otherwise overcome by the terms of the relevant trust deed; and

#### no breach of the relevant trust deed exists or would arise.

1. PAYMENT

The amount payable to the Contractor under this *Contract* will be ascertained in accordance with the following methods, as stated in the Attachment 1.

Lump Sum

For work for which the Principal has accepted a Lump Sum, the Principal will pay the Lump Sum, adjusted by any additions or deletions made pursuant to this Contract. Payment will not exceed the Lump Sum unless the Principal has directed a Variation.

The Lump Sum is be deemed to full payment for the provision of all supplies, tasks, services, activities, incidentals, overheads, fees and disbursements relating to the Lump Sum part of the Contract, regardless of whether or not these are mentioned in any Schedule of Prices. If a Schedule of Prices has been provided, it will only be used for the purpose of assisting in the determination of progress payments. Unless specified otherwise, progress payments will be made as a portion of the Lump Sum commensurate with the amount of Goods or Services provided as of the date of invoice.

Upper Limiting Fee

For work for which the Principal has accepted an Upper Limiting Fee, the Principal will pay an amount ascertained on the same basis as a Schedule of Rates, up to the amount of the Upper Limiting Fee. Payment will not exceed the Upper Limiting Fee unless the Principal has directed a Variation.

Schedule of Rates

For work for which the Principal has accepted a Schedule of Rates, the Principal will pay the sum ascertained by multiplying the measured quantity of each item of service actually carried out under this Contract by the rate accepted by the Principal for the item of service, adjusted by any additions or deletions made pursuant to this Contract.

Except where a disbursement has been specifically included in the schedules, the rates are deemed to allow for all supplies, tasks, services, activities, incidentals, overheads, fees and disbursements relating to the item of service listed in the schedule. No separate payment will be made for any work or expense required for the item of service listed in the schedule but not specifically mentioned in the description of the item of service. A change in the measured quantity provided does not entitle the Contractor to amend the applicable rate.

The Contractor must provide written payment claims which include:

1. full details of any approved Variations which have been completed or partially completed; and
2. the estimated cost to complete the Services, including approved Variations and any anticipated future Variations that the Contractor is aware of.
3. STANDING OFFER

The Principal may purchase Goods or Services under this Agreement by issuing a Purchase Order to the Contractor. Purchase Orders must be in writing, be approved by the Principal, and contain all of the information listed in the Specification or Statement of Requirements, whichever is applicable. The Contractor must supply the Goods or Services ordered by the Principal in accordance with the terms of this Agreement.

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

This Agreement is entered into on a non-exclusive basis. The Principal may purchase other goods or services the same as or similar to the Goods or Services from other providers.

1. PROFESSIONAL SERVICES OR CONSULTANCY

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

The Principal may give reasonable instructions to the Contractor about the performance of the Services and the Contractor must comply with those instructions, including provision of additional reports, attendance at meetings and the making of presentations.

The Contractor must effect and maintain professional indemnity insurance during the Agreement as set out in Item 17 of Attachment 1 and such cover must continue for a minimum of three years after the expiry of the Agreement.

The Principal may disclose this Agreement and/or information in relation to this Agreement in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request. Nothing in this clause derogates from the Contractor’s obligations under any provisions of this Agreement or the provisions of the Freedom of Information Act 1991 (SA).

The following paragraphs replace the second subclause of the Intellectual Property Rights clause in Attachment 2 – Standard Terms and Conditions:

1. Subject to the first subclause of the Intellectual Property Rights clause in the Agreement, title and all Intellectual Property Rights in the reports and other materials vests in the Principal on creation.
2. The Contractor must do anything necessary to vest all Intellectual Property Rights in the reports and other materials in the Principal.
3. The Contractor grants to the Principal a perpetual, irrevocable, royalty free, fee free licence to use those of the Contractor’s Intellectual Property Rights as necessary for the purpose of using the reports and other materials.
4. The Principal grants to the Contractor the right to access and use the reports and other materials solely for the purpose of providing the Services to the Principal.
5. Each party grants the other only the licences and rights specified. No other licenses or rights (including licences or rights under patents) are granted.
6. INSTALLATION OF GOODS

# additional DEFINed terms

“**Site**” means the place, building, structure or vehicle made available to the Contractor by the Principal for the purpose of this Contract.

# CONTRACTOR’S WARRANTIES

## The Contractor warrants that it has inspect the Site and made reasonable enquires (where necessary) to ensure that the Goods can be satisfactorily installed in the premises.

# DESIGN

## The Contractor must:

### undertake all design necessary to ensure that the Goods will comply with the specified requirements when installed;

### where the Goods are being installed in an existing building / structure, verify that the building / structure can support the imposed loading in accordance with the Building Code of Australia and any applicable Australian Standard;

### if necessary, design and install additional strengthening in the building / structure to support the Goods; and

### provide the Principal with a copy of drawings and specifications relevant to the installation.

# INSTALLATION OF GOODS

## The Contractor must:

### supply and install the Goods by the Installation Date or by such other date as is agreed in writing between the Principal and the Contractor;

### provide all things and take all measures necessary to protect people and property;

### avoid unnecessary interference with the passage of people and vehicles (where applicable);

### prevent nuisance and unreasonable noise and disturbance;

### unless specified otherwise, provide all labour, machinery, materials and other things necessary to install the Goods;

### reasonably cooperate with the Principal and its agents during the installation;

### install the Goods in accordance with applicable standard industry practice (or better); and

### comply with any of the Principal’s requirements regarding Site access and security.

## The Contractor is entitled to only such use and control of the Site as is necessary to enable the Contractor to undertake the installation of the Goods. While the Contractor is installing the Goods, the Contractor is responsible for the care and control of the Goods and that part of the Site which is reasonably necessary for installation of the Goods.

## The serviceability and integrity of any building / structure must not be degraded by the installation of the Goods.

# testing and COMMISSIONING

## The Contractor must undertake all testing and commissioning necessary to demonstrate that the goods comply with the requirements of this contract.

## If requested by the Principal, the Contractor must prepare and implement an inspection and test plan and provide a copy to the Principal. The inspection and test plan must describe in detail all testing and inspection to be undertaken to demonstrate compliance with the requirements of this Contract, including:

### clear cross referencing to the applicable clauses of the specification and/or applicable standards:

### test frequency, acceptance criteria and records produced demonstrating compliance; and

### any stage testing, such as factory acceptance testing, site / static tests and system integration tests.

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

# MANUFACTURER'S WARRANTY

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

# HANDOVER

## Prior to the Installation Date, the Contractor must provide the Principal with:

### all records, test results and certificates demonstrating compliance with this Contract;

### copies (in electronic and hard copy form) of all manuals and instructions necessary to operate and maintain the Goods to the specified standard;

### any training necessary for the Principal’s personnel and/or agents to operate the Goods; and

### copies of any manufacturer’s warranty in respect of the Goods.

# RECTIFICATION OF DEFECTS DURING THE WARRANTY PERIOD

## If a non-compliance with a specified requirement is identified during the Warranty Period, the Contractor must provide all repairs, replacement parts and labour at its own expense to rectify the non-compliance.

## The Contractor must:

### provide reasonable notice to the Principal of its program to undertake the repair / rectification; and

### undertake the rectification work so as to minimise interference and disruption to the Principal and / or the occupiers / users of the infrastructure. The Contractor acknowledges that this may require rectification work to be undertaken outside of usual business hours.

1. DELIVERABLES RELEVANT TO PLANT

## On or prior to the Date for Delivery, the Contractor must supply the following to the Principal’s Representative:

### all technical information, manuals and other documents which may reasonably be required for the operation and maintenance of the Plant and the training of personnel who use the Plant; and

### a completed “Plant Detail and Service Record Sheet” which lists the make, model, serial and part numbers of components and attachments and capacities and dimensions of each item of the Plant;

## The Contractor must supply operator, parts and service manuals, including all schematic and wiring diagrams showing all electrical and electronic components and interconnecting wiring and any applicable hydraulic and pneumatic system schematic diagrams of the Plant.

## The Contractor grants the Principal a royalty free, non-exclusive, transferable, perpetual licence to use those intellectual property rights associated with the Plant which may be necessary for the operation, maintenance, repair or alteration of the Plant by or on behalf of the Principal.

## The Contractor must supply and fit in a conspicuous position on each item of Plant delivered, a servicing chart for the complete item showing service points, lubricants and time intervals between lubrications. Quantities and dimensions on gauges, service and data plates must be in SI units.

## The Contractor must maintain and retain, for a period of 6 years, full and proper records of all Plant and Warranty Services provided under this Contract. Such records will include all data used in the creation of invoices issued pursuant to this Contract.

## The Specification may require the Contractor to generate records or reports which demonstrate that the Plant complies with this Contract. The Contractor must provide a copy of all such records (in electronic and hard copy) to the Principal. The Principal’s receipt and / or approval of these records or reports does not relieve the Contractor from responsibility for the Contractor’s errors or omissions or compliance with the requirements of this Contract.

## Upon reasonable notice being given, the Contractor will make the records referred to in this clause available to the Principal and allow the inspection and copying of such records.

1. DELIVERY OF PLANT
2. The Contractor must deliver the Plant to the Delivery Point by the Delivery Date or by such other date as is agreed in writing between the Principal and the Contractor. If requested by the Principal, the Contractor must give reasonable notice of the date it will deliver the Plant.
3. If requested by the Principal, the Contractor must submit a reproducible copy of its program for procurement, fabrication and delivery of Plant (“Delivery Program”) within 14 days of acceptance of tender. The program must be updated if any dates shown on the program are amended and must include details of the following:
4. placing sub-orders milestones;
5. delivery period of sub-orders;
6. manufacturing Program (where applicable);
7. dispatch date;
8. delivery period and Delivery Date.
9. When delivered, each item of Plant and attachments must:
10. be fully lubricated;
11. have all adjusting threads and mechanisms coated with an efficient rust inhibitor;
12. be provided with number of sets of keys as stated in the Annexure; and
13. have all reservoirs at maximum capacity for immediate use.
14. With respect to items of Plant that are subject to the *Road Traffic Act 1961 (SA)*, the Contractor must ensure that the Plant supplied complies in all respects with the current requirements of the Road Traffic Act and Regulations. The Contractor must, where required under the Motor Vehicles Act and Regulations:
15. register the Plant with continuous Government motor vehicle registration;
16. supply the registration papers with each item of Plant; and
17. supply and fit number plates.

The Principal will pay for the initial registration fee.

1. If the Contractor fails to provide the Plant by the Delivery Date and the Principal necessarily hires other plant as a direct consequence of the late delivery, the Contractor shall be indebted to the Principal an amount equal to the daily cost of hiring equivalent plant for every day after the Delivery Date by which the supply of the Plant remains outstanding.
2. ACCEPTANCE OF PLANT

## The provision of all necessary documentation, including evidence of conforming compliance tests (if any), maintenance manuals and operating instructions is a condition precedent to acceptance of the Plant.

1. VARIATIONS REGARDING PLANT
2. The Principal may propose varying the Specifications or any other matter associated with the supply of Plant under this Agreement by notice in writing to the Contractor setting out the proposed variation.
3. If the Contractor considers that the proposed variation would affect the Price or Delivery Date, within a reasonable time (and before implementing the variation) the Contractor must provide to the Principal a written quotation indicating the change to the Price and / or Delivery Date if the proposed variation is implemented.
4. If the Principal issues a variation order, the Contractor must comply with that variation order and:
	1. if the quotation provided by the Contractor pursuant to Clause SC14.2 is accepted by the Principal, the Price and / or Delivery Date shall be amended accordingly; or
	2. if the quotation provided by the Contractor pursuant to Clause SC14.2 is not accepted by the Principal or no quotation is provided, the Representatives must meet to discuss any change to the Price and / or Delivery Date.
5. If the Contractor considers that any direction issued by the Principal is a variation and the direction has not been identified as a variation, the Contractor must inform the Principal as soon as practicable. The Principal is not liable for payment for any additional Plant supplied or work undertaken by the Contractor if the Principal has not been notified of the Contractor’s intent for the additional Plant or work undertaken to be classified as a variation.
6. WARRANTY PERIOD FOR PLANT

## In respect of each item of Plant, the Warranty Period is as stated in the Annexure and starts on the Acceptance Date.

## The Warranty Period expires with the earlier of:

### the expiration of the period specified in the Annexure (plus any time the item is inoperative during that period due to a Defect); and

### the date when the number of kilometres specified in the Annexure is reached.

## The Contractor must rectify any Defect that occurs during the Warranty Period, except where the Defect is caused by:

### a failure by the Principal to operate, take care of, or maintain the Plant in accordance with the manufacturer’s instructions; or

### fair wear and tear.

## The Contractor must carry out Warranty Services during the Warranty Period. The number and extent of Warranty Services must be in accordance with the manufacturer’s recommendations and any relevant schedules provided in the Contractor’s tender.

## After each Warranty Service or repair under warranty, the Contractor must forward copies of the repair, inspection and servicing reports to the Principal’s Representative.

## Where an item of Plant is operated within 200 km of the Contractor’s nearest repair depot, the Contractor bears the full expense of undertaking Warranty Services, inspection, reports and repairs during the Warranty Period. Where an item of Plant is operated at a location over 200 km from the Contractor’s nearest repair depot and provided that the Contractor necessarily incurs additional expense due to the location, the Contractor and the Principal's Representative must agree on price prior to the undertaking of the Warranty Service. The Principal will not approve any payments for expenses that could have been avoided by the Contractor taking appropriate action or that are unnecessarily incurred.

## The Contractor must advise the Principal of the locations of all their repair depots for the purposes of this clause SC15.

## Warranty Services must be conducted at a nominated location in South Australia as agreed between the Contractor and the Principal’s Representative. The cost of these services shall be borne by the Contractor. All lubricants required must be supplied by the Contractor.

## At the time of these services the Contractor must inspect the Plant item in regard to general performance and condition and must arrange to instruct the operator and other persons nominated by the Principal in the proper operation, care and maintenance of the Plant item.

1. DEFECTIVE PLANT

## The Contractor’s obligations under this clause SC16 continue until the expiry of the Warranty Period.

## The repair or replacement of non-conforming Plant must be carried out as soon as practicable and within any timeframe specified elsewhere in this Contract. The Principal may issue a Non Compliance Notice stipulating the times within which the Contractor must commence and complete the repair or replacement.

## Where the Contractor elects to repair the Plant, the method of repair shall be subject to the approval of the Principal, who may require evidence that the repair will not be to the detriment of the performance of the Plant. Any such approval does not relieve the Contractor from responsibility for compliance with the requirements of the Contract.

## All costs incurred by the Contractor as a consequence of the Plant being non-conforming shall be borne by the Contractor.

## If the Contractor fails to comply with the written direction in clause SC16.2, the Principal may elect to have the repair or replacement carried out by others, provided that it provides 5 Business Days written notice to the Contractor of its intention to do so. The cost of having the repair or replacement so carried out shall be deducted from the amount owing to the Contractor.

## Nothing in this SC16 shall prejudice any other right which the Principal may have against the Contractor arising out of the failure of the Contractor to provide Plant in accordance with the Contract.

**Attachment 5 – Tender Form**

[insert tender form]

**Attachment 6 – Specification/Statement of Requirements**

[insert final specification/statement of requirements]