



## **PART 4**

### **GENERAL CONDITIONS OF CONTRACT**

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***For the Provision of Works (Principal Administered) by Tender***

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## **1. CONSTRUCTION OF CONTRACT**

- 1.1 A reference to a party to the Contract includes:
- (a) in the case of a natural person, that person and his/her personal representatives and assigns (transferees); and
  - (b) in the case of a corporation, the corporation, its successors and assigns (transferees).
- 1.2 Where a party is composed of 2 or more persons, each item of agreement by the party binds:
- (a) all of those persons collectively; and
  - (b) each of them as an individual.
- 1.3 A reference to:
- (a) the singular includes the plural, and vice versa;
  - (b) a gender includes each other gender;
  - (c) a person includes a corporation, a firm, and a voluntary association;
  - (d) an Act includes an Act that amends, consolidates or replaces the Act;
  - (e) a section or other provision of an Act includes a section or provision that amends, consolidates or replaces the section or provision;
  - (f) money is a reference to Australian dollars and cents;
  - (g) a time of day is a reference to Australian Central Standard Time;
  - (h) a document includes, but is not limited to, any drawing, specification, material, record or other means by which information can be stored or reproduced.
- 1.4 Clause headings exist for convenience only and are to be disregarded when interpreting the Contract.
- 1.5 All information supplied under the Contract must be written in English. Where any document is a translation into English, the translation must be accurate.
- 1.6 Measurements of physical quantity must be in Australian legal units of measurement within the meaning of the *National Measurement Act 1960*.
- 1.7 If a provision of the Contract is void, voidable, illegal or unenforceable, the provision will be deemed deleted from the Contract.

## **2. DEFINITIONS**

- 2.1 In the Contract, except where the context otherwise requires:

**‘Act’** means an Act passed by the Commonwealth Parliament or the South Australian Parliament and includes subordinate legislation under an Act.

**‘Authorised Officer’** means Arthur Johnstone.

**‘Clause’** means a clause of the Contract.

**‘Contract’** means the document which constitutes or evidences or, as the case may be, all the documents which constitute or evidence the final and concluded agreement between the Principal and the Contractor.

**‘Contract Price’** means:

- (a) where payment is to be made on a lump sum basis, the sum which is stated in the Contract to be payable to the Contractor for the execution and completion of the Work and the performance of the obligations of the Contractor under the Contract;
- (b) where payment is to be made on a bill of quantities or schedule of rates basis, the sum ascertained by multiplying the measured quantity of each item specified in the bill of quantities or schedule of rates, as the case may be, which has been executed under the



Contract, by the rate for the item specified in the bill of quantities or schedule of rates, as the case may be;

- (c) where payment is to be made on a lump sum and a bill of quantities or schedule of rates basis, the aggregate of the sums referred to in paragraphs (a) and (b), but subject to any additions or deductions required to be made under the Contract.

**‘Contractor’** means the party whose Offer to execute and complete the Work is accepted by the Principal (by Letter of Acceptance).

**‘Date for Practical Completion’** means: 30.03.2018

**‘Date of Practical Completion’** means the date on which the Work reaches Practical Completion.

**‘Direction’** includes any direction, permission, decision, certification, demand, notice, approval, refusal, requirement or authorization and “Directed” has a corresponding meaning.

**‘Dispute Notice’** see Clause 28.2.

**‘Force Majeure’** means anything outside the control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, and acts (including laws, regulations, disapprovals or failures to approve) of any statutory authority.

**‘General Conditions of Contract’** means these General Conditions of Contract.

**‘GST’** means the goods and services tax under the GST Act.

**‘GST Act’** means *A New Tax System (Goods and Services Tax) Act 1999* and includes other GST related legislation.

**‘Intellectual Property Rights’** means all copyright, patents and all rights in relation to inventions, trademarks and designs or any rights to registration of such rights, whether created before, on or after the date of the Contract.

**‘Letter of Acceptance’** means a letter from the Principal to the Contractor advising the Contractor of the Principal’s acceptance of the Offer.

**‘Licensed Bank’** means a bank, licensed as such under Commonwealth or South Australian legislation regulating banking.

**‘Local Government’** means a council constituted under the South Australian *Local Government Act 1999*.

**‘Obligor’** means the Licensed Bank providing the Bank Guarantee the subject of Clause 25.1.

**‘Offer’** means the written offer submitted to the Principal by the Contractor to execute and complete the Work and, if applicable, as amended in writing by any post offer negotiations.

**‘Practical Completion’** means the stage of execution of the Work under the Contract when the Work is complete and ready for use except for minor omissions and defects which will not affect the use or occupation of the Work.

**‘Principal’** means The District Council of Elliston

**‘Quality Assurance System’** means, if no quality assurance level is specified, a self-assessed and documented quality assurance system.



**‘Request for Tender’** means the Request for Tender given to prospective tenderers inviting offers to tender for the execution and completion of the Work of which these General Conditions of Contract form part.

**‘Security Account’** means an interest-bearing account with a Licensed Bank.

**‘Security Deposit’** means the cash sum of delivered by the Contractor to the Principal pursuant to Clause 23.

**‘Site’** means the lands and other places to be made available to the Contractor by the Principal for the purpose of the execution and completion of the Work under the Contract.

**‘Site Access Date’** means To be advised by the Principal.

**‘Special Conditions of Contract’** means the Special Conditions of Contract (if any) included in the Request for Tender.

**‘Specification’** includes any specification included in the Request for Tender.

**‘Work’** means all of the work described in the Specification and the Special Conditions of Contract which is to be executed and completed by the Contractor in accordance with the Contract, including all variations and remedial work which is directed or provided for by the Contract.

### **3. EVIDENCE OF CONTRACT**

- 3.1 The Contract between the Principal and the Contractor is constituted by the following documents:
- (a) Letter of Acceptance;
  - (b) Specification;
  - (c) Special Conditions of Contract;
  - (d) General Conditions of Contract;
  - (e) Offer; and
  - (f) correspondence passing between the Principal and the Contractor clarifying any aspect of the Request for Tender.
- 3.2 Where there arises any inconsistency or ambiguity between provisions in the different documents which constitute the Contract, the order of precedence to resolve the inconsistency or ambiguity shall be from document (a) to (f) in Clause 3.1.
- 3.3 After formation of the Contract, the Principal may deliver a completed Contract to the Contractor. Within 14 days after the date of delivery of the completed Contract to the Contractor, the Contractor must execute and return the completed Contract to the Principal for execution by the Principal. The Principal may extend the period for execution of the completed Contract by giving written notice to the Contractor. Failure to comply with this provision does not affect the validity of the contract formed on the acceptance of the offer.

### **4. EXECUTION AND COMPLETION OF THE WORK**

- 4.1 The Contractor must, until the Authorised Officer has certified that the Work has reached Practical Completion in accordance with the Contract, execute and complete the Work in accordance with the Contract and any Directions given by the Authorised Officer under the Contract.
- 4.2 The Contractor must execute and complete the Work in accordance with the Quality Assurance System.





- 4.3 Unless otherwise stated in the Special Conditions of Contract, the Contractor must supply all things and items required to execute and complete the Work including, without limitation, things and items not expressly mentioned in the Contract.
- 4.4 The Contractor must comply with all relevant laws and the requirements of any relevant statutory authority affecting the execution and completion of the Work including, without limitation, paying all fees and obtaining all necessary consents of or incidental to the execution and completion of the Work.

## **5. CONTRACT PRICE**

- 5.1 The Principal must pay the Contractor the Contract Price for execution and completion of the Work in accordance with the Contract and Directions given under the Contract.
- 5.2 Where payment is to be made on a lump sum basis, the Principal must pay the Contractor the lump sum.
- 5.3 Where payment is to be made on a bill of quantities or schedule of rates basis:
- (a) the quantities in the bill of quantities or schedule of rates, as the case may be, are an estimated quantity only ; and
  - (b) if the quantities in the bill of quantities or schedule of rates, as the case may be, are fixed and not an estimated quantity only, items included in the bill of quantities or schedule of rates, as the case may be, must be priced by the Contractor and must, on addition, equal the Contract Price accepted by the Principal for the execution and completion of the whole of the Work; and
  - (c) if the quantities in the bill of quantities or schedule of rates, as the case may be, are estimated quantities only, the Principal must pay to the Contractor the sum ascertained by multiplying the measured quantity of each item specified in the bill of quantities or schedule of rates, as the case may be, which has been executed under the Contract, by the rate for the item specified in the bill of quantities or schedule of rates, as the case may be.
- 5.4 Where payment is to be made on a lump sum and a bill of quantities or schedule of rates basis, the Principal must pay to the Contractor the aggregate of the sums referred to in Clauses 5.2 and 5.3.
- 5.5 The quantities in the bill of quantities or schedule of rates, as the case may be, are estimated quantities only and the Principal does not guarantee that the Contractor will receive any minimum work or value under the Contract.
- 5.6 If:
- (a) no part of the Contract Price is payable on a lump sum basis; and
  - (b) an item of Work is not identified in the bill of quantities or schedule of rates, as the case may be; and
  - (c) the Principal gives a Direction to the Contractor to execute the item under the Contract, the execution of the item under the Contract shall be deemed to be a variation of the Work for the purposes of Clause 17.
- 5.7 Despite Clauses 5.1 to 5.6 inclusive, the Principal may adjust an amount otherwise payable by the Principal to the Contractor by any addition or deduction which may be required to be made under the Contract.



## **6. NOTICES**

- 6.1 Notices under the Contract may be delivered by pre-paid postage or registered mail, by hand or by facsimile transmission (followed by a posted copy as confirmation). Notices are deemed given 5 days after deposit in the mail with postage pre-paid or registered, when delivered by hand, or if sent by facsimile transmission, upon completion as evidenced by a facsimile transmission record. Where a notice is given by facsimile the original document must be posted on the same day as the transmission is sent. The addresses for service of notices are:
- (a) for the Principal, PO Box 46, Elliston SA 5670 Fax 08/86879176
  - (b) for the Contractor – the address for service and facsimile number (if any) of the Contractor specified in the Offer.
- 6.2 A party may change its address for service of notices by giving written notice to every other party to the Contract.

## **7. ASSIGNMENT AND SUBCONTRACTING**

- 7.1 The Contractor must not assign or subcontract, or allow any subcontractor to subcontract, any of the rights or obligations of the Contractor under the Contract (either for the execution and completion of the Work or otherwise) without the prior written consent of the Principal. Any consent given by the Principal:
- (a) may be conditional; and
  - (b) will not relieve the Contractor from any of its liabilities or obligations under the Contract.
- 7.2 The Contractor is liable to the Principal for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were the acts or omissions of the Contractor.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1 The Principal warrants that, unless otherwise stated in the Special Conditions of Contract, use of materials, documents, methods of work and designs provided by the Principal under the Contract will not infringe the Intellectual Property Rights of any third party.
- 8.2 The Contractor warrants that use of materials, documents, methods of work and designs provided by the Contractor under the Contract of or incidental to the execution and completion of the Work will not infringe the Intellectual Property Rights of any third party.

## **9. CARE OF WORK**

- 9.1 From the date of commencement of the Work until the Date of Practical Completion, the Contractor will be responsible for the care of the Work.
- 9.2 The Contractor must:
- (a) liaise and collaborate with all persons performing work on the Site; and
  - (b) not damage any work on the Site being undertaken by persons other than the Contractor.
- 9.3 The Contractor must promptly give written notice to the Principal if the Contractor damages:
- (a) any of the Work; or
  - (b) any property of the Contractor or any other person on the Site or any land adjoining the Site.
- 9.4 If damage under Clause 9.3 occurs, the Contractor must, at the Contractor's expense, promptly repair and reinstate, as the case may be, the damaged Work or property.





- 9.5 This Clause 9 does not apply to loss or damage caused by:
- (a) the negligence or other wrongful act or omission of the Principal or any officer, servant or agent of the Principal; or
  - (b) Force Majeure.

## **10. STATUTORY OBLIGATIONS**

### **10.1 General**

- (a) The Contractor must comply with and give all notices required by any Act of Parliament, ordinances, regulations or by-laws relating to the Works.

### **10.2 Variances**

- (a) If, in the opinion of the Contractor, the provisions of any document forming part of the Contract are at variance with anything covered by this clause 10, then the Contractor shall give written notice to the Principal specifying the departure from any such provisions which he considers necessary to comply with the legislation, notices, ordinances, by laws and the like.

### **10.3 Work Health Safety**

- (a) Without limiting in any way the generality of the foregoing, the Contractor agrees to comply with the provisions of the Work Health Safety Act 1986 and all associated regulations (as amended from time to time) and will ensure that its own contractors and employees will comply with the Act and all regulations, improvement notices, prohibition notices and codes of practice issued thereunder and having application to this contract.
- (b) The Contractor acknowledges that the Principal has duties imposed upon it by Section 4(2) of the Work Health Safety Act 1986 and as such the Principal has the right:
  - (i) to ensure that the Contractor complies with the Act;
  - (ii) to inspect safety measures and documentation; and
  - (iii) to interrupt or suspend the Works if safety standards are violated.
- (c) The Principal must provide its Contracting Work Health Safety Policy and may provide other Work Health Safety documents to the Contractor and the Contractor must acknowledge that it has been provided with and has read and understands such policies and documents of the Principal. The Contractor also undertakes to ensure that such policies and documents (as amended from time to time) will be brought to the attention of the Contractor's employees or any sub-contractors.
- (d) The Contractor agrees to immediately notify the Principal of any incident or accident occurring on or in relation to the site or arising from the undertaking of the contract including those involving the public.

### **10.4 WorkCover**

- (a) The Contractor must ensure that it is registered as an employer under the Workers Rehabilitation and Compensation Act 1986 ("the Act") and that it must pay all monthly levies due thereunder in respect of its employees engaged in and about the works.
- (b) The Contractor must produce to the Principal on the execution of this Agreement a current certificate of registration as an employer under the Act.
- (c) The Contractor must ensure that all Sub-Contractors engaged by it have current certificates of registration as employers under the Act and must produce the same to the Principal upon request in writing by the Principal.
- (d) The Contractor must indemnify the Principal in respect of any action, claim, demand, suit or proceedings made by any employee brought in connection with the Act.
- (e) Insurance effected by the contractor pursuant to this clause is limited only by the amount stated in any statute and is in all other respects unlimited.



## **11. INDEMNITIES AND INSURANCES**

### **11.1 Indemnity**

- (a) The Contractor shall indemnify and keep indemnified the Principal against all loss or damage to the property of the Principal and from all actions, costs, claims, damages, charges and expenses whatsoever that may be made or brought by any person against the Principal, the Superintendent or the employees, professional consultants or agents of the Principal or any of them in respect of personal injury to or the death of any person whomsoever or loss or damage to any property whatsoever, arising out of or as a consequence of the construction or maintenance of the Works by the Contractor or the Contractor's employees, agents or Sub-Contractors and also from any costs and expense that may be incurred in connection with any such actions, costs, claims, damages, charges or expenses.
- (b) The Contractor shall not be rendered liable for, or in respect of, personal injury to or the death of any person or the loss of or damage to property resulting from any breach by the Principal of any provision of the Contract or any negligent act or omission of the Principal, the Superintendent or the employees, professional consultants or agents of the Principal for or in respect of any claims, demands, actions whatsoever in respect thereof or in relation thereto.

### **11.2 Employee Indemnity**

- (a) The Contractor shall indemnify and keep indemnified the Principal against liability for all loss or damage resulting from personal injury to or the death of the Contractor or any Sub-Contractor or any employee or agent of the Contractor or of any Sub-Contractor (other than such injury or death resulting from any breach by the Principal of any of the provisions of the Contract or any negligent act or omission of the Principal, or the employees, professional consultants or agents of the Principal) occurring during the currency of the Contract and arising out of or in connection with the execution of the works under the Contract or the performance of the Contract and against all claims, demands, actions, suits or proceedings, costs and expenses whatsoever in respect thereof or in relation thereto, whether at Common Law or under any applicable statute.

### **11.3 Public Liability Insurance**

- (a) The Contractor shall take out and keep current a Public Liability Policy of insurance in the name of the Contractor which covers the Principal, the Contractor and all sub-Contractors employed from time to time in relation to the works under the Contract to cover their liabilities to third parties including any liability under Clause 11.1. The policy shall be for an amount not less than the sum stated in the Annexure.
- (b) The Contractor shall not commence the works until confirmation of the Public Liability Policy of insurance is given to the Principal. Such Policy shall bear the endorsement of the Insurer indicating the Insurer accepts the indemnity given by the Contractor.

### **11.4 Contract Works Insurance**

- (a) The Contractor shall, whenever required to do so, take out Contracts works insurance for an amount not less than \$10 million. The policy shall be maintained for the currency of the Contract.

### **11.5 Contractor Fails to Insure**

- (a) If on demand, the Contractor fails to produce evidence of compliance with clauses 11.3 and 11.4, the Principal, may effect such insurance and recover the costs thereof from money otherwise payable by the Principal to the Contractor.

### **11.6 Notices of Claim**

- (a) The contractor shall give immediate notice in writing to the principal following any occurrence which may result in a claim against any of the insurances required in clauses 11.3 and 11.4 above.



## **12. AUTHORISED OFFICER**

- 12.1 The Principal appoints the Authorised Officer to administer the Contract on behalf of the Principal. The Principal may change the identity of the Authorised Officer from time to time. The Principal must give written notice to the Contractor of any change in the identity of the Authorised Officer from time to time. The appointment of the Authorised Officer does not prevent the Principal from exercising any of its rights under the Contract.
- 12.2 The Contractor must, prior to commencing execution of the Work, appoint a representative (the "Contractor's representative") who shall be responsible for administering the Contract on behalf of the Contractor by giving written notice to the Principal. The Contractor may change the identity of the Contractor's representative from time to time. The Contractor must give written notice to the Principal of any change in the identity of the Contractor's representative from time to time.
- 12.3 The Contractor's representative must have a detailed knowledge of all activities associated with the execution and completion of the Work and be authorised by the Contractor to make decisions and act on behalf of the Contractor.
- 12.4 The Contractor's representative must:
- (a) liaise with and report to the Authorised Officer; and
  - (b) be available for discussions with, and attend briefings when reasonably requested by, the Authorised Officer; and
  - (c) reply promptly to any correspondence from the Authorised Officer dealing with the Contract.

## **13. DIRECTIONS**

- 13.1 The Principal or the Authorised Officer may give a Direction to the Contractor orally or in writing.
- 13.2 If a Direction is given orally, the person giving the Direction must promptly confirm the Direction in writing in accordance with Clause 6.
- 13.3 The Contractor and its employees must comply with any Direction within the time set out in the Direction or, if no time is stipulated, promptly after receipt of the Direction, unless otherwise specified in the Contract.
- 13.4 However, no Direction can alter or change the Contractor's fundamental rights under the Contract.

## **14. SITE**

- 14.1 The Principal must use reasonable endeavours to provide the Contractor with access to the Site:
- (a) from the Site Access Date; and
  - (b) as is necessary to enable the Contractor to execute and complete the Work.
- 14.2 The Principal may defer the Site Access Date by giving written notice to the Contractor.
- 14.3 If the Principal defers the Site Access Date under Clause 14.2 for a specified period, the Date for Practical Completion must be deferred for the specified period.
- 14.4 If the Principal defers the Site Access Date by giving written notice under Clause 14.2:
- (a) the Contractor may claim a variation of the Contract Price; and
  - (b) the deferral of the Site Access Date under Clause 14.2 is not a breach of the Contract by the Principal.



- 14.5 If the Contractor claims a variation of the Contract Price under Clause 14.4(a), the variation of the Contract Price must be:
- (a) reasonable compensation for loss or damage suffered by the Contractor resulting from the deferral of the Site Access Date; and
  - (b) an amount mutually agreed between the Principal and the Contractor or, failing agreement, as determined in accordance with Clause 28 and the Contract Price must be varied accordingly.
- 14.6 In any event, the Contractor must use its best endeavours to mitigate any loss or damage suffered by the Contractor resulting from the deferral of the Site Access Date.
- 14.7 The Contractor may only access the Site so far as is necessary to enable the Contractor to execute and complete the Work.
- 14.8 The Contractor shall be deemed to have satisfied itself of and be responsible for the physical condition of the Site and in particular the suitability of the Site for the execution and completion of the Work.
- 14.9 The Contractor shall not be entitled to any extension of the Date for Practical Completion or any increase in the Contract Price by reason, directly or indirectly, of the physical condition of the Site.

## **15. TIME**

- 15.1 The Contractor must substantially commence the execution of the Work at the Site within 14 days after the Site Access Date.
- 15.2 The Contractor must execute the Work in a manner and according to a program so that the Work reaches Practical Completion on or before the Date for Practical Completion.
- 15.3 Each party must promptly give to the other written notice of any delay of or incidental to the execution of the Work.
- 15.4 If the Contractor determines that execution of the Work will be delayed by any act or omission of the Principal or any agent or employee of the Principal, other than an employee of the Contractor, the Contractor must give written notice to the Principal within 7 days after the delay occurs and provide details of the delay and its cause.
- 15.5 If the Contractor gives written notice to the Principal under Clause 15.4, the Contractor shall be entitled to an extension of time for execution and completion of the Work (including the reaching of Practical Completion) as determined by the Authorised Officer acting reasonably.
- 15.6 In any event, the Contractor must take all reasonable steps to prevent and minimise delays.
- 15.7 If the Authorised Officer determines that the Contractor is entitled to an extension of time for execution and completion of the Work, the Authorised Officer must give written notice to the Contractor evidencing the extension of time so determined by the Authorised Officer.
- 15.8 If the Authorised Officer does not give written notice under Clause 15.7, the Contractor shall not be entitled to an extension of time for the delay claimed by notice in writing given under Clause 15.4.
- 15.9 If the Authorised Officer gives the Contractor written notice of an extension of time under Clause 15.7, the Contractor may give written notice to the Principal of the Contractor's claim for a variation of the Contract Price.





- 15.10 For the purposes of Clause 15.9 the variation of the Contract Price must be:
- (a) reasonable compensation for loss or damage suffered by the Contractor resulting from the delay; and
  - (b) an amount mutually agreed between the Principal and the Contractor or, failing agreement, as determined in accordance with Clause 28 and the Contract Price must be varied accordingly.

## **16. COMPLETION**

- 16.1 The Contractor must execute the Work to the stage of Practical Completion to the satisfaction of the Authorised Officer on or before the Date for Practical Completion.
- 16.2 Promptly after receipt of a written request from the Contractor for the issue of a Certificate of Practical Completion, the Authorised Officer must inspect the Work and give to the Contractor:
- (a) a Certificate of Practical Completion evidencing the Date of Practical Completion; or
  - (b) written reasons for not doing so.
- 16.3 The Authorised Officer must not issue a Certificate of Practical Completion unless he/she is satisfied that Practical Completion of the Work has been reached.
- 16.4 The issue of the Certificate of Practical Completion under the Contract:
- (a) is not evidence that the Work has been executed satisfactorily; and
  - (b) does not release or discharge the Contractor from any present or prospective liability of the Contractor either under the Contract or otherwise.

## **17. SUSPENSION, ACCELERATION AND VARIATION OF WORK**

- 17.1 The Authorised Officer may give a Direction to the Contractor requiring the Contractor to accelerate, suspend or vary the Work or any part of the Work under the Contract.
- 17.2 The giving of a Direction under Clause 17.1 does not invalidate the Contract.
- 17.3 If the Authorised Officer gives a Direction under Clause 17.1 requiring the Contractor to suspend or vary (by way of addition) the Work or any part of the Work, the Contractor shall be entitled to a reasonable extension of time for execution and completion of the Work (including the reaching of Practical Completion) as determined by the Authorised Officer acting reasonably.
- 17.4 If the Authorised Officer gives the Contractor a Direction under Clause 17.1, the Contractor shall be entitled to reasonable compensation for loss, damage or expense suffered by the Contractor resulting from compliance with the requirements of the Direction as mutually agreed between the Principal and the Contractor or, failing agreement, as determined in accordance with Clause 28 and the Contract Price must be varied accordingly.
- 17.5 In any event the Contractor must take all reasonable steps to minimise any loss, damage or expense suffered by the Contractor.

## **18. LIQUIDATED DAMAGES**

- 18.1 If the Contractor fails to reach Practical Completion by the Date for Practical Completion, the Contractor must pay to the Principal the Liquidated Damages Amount for every day between the Date for Practical Completion and the Date of Practical Completion.
- 18.2 The liability of the Contractor calculated in accordance with Clause 18.1 is a genuine pre-estimate of liquidated damages suffered by the Principal and not a penalty.
- 18.3 The liability of the Contractor calculated in accordance with Clause 18.1 may be set off by the Principal against any monies owing by the Principal to the Contractor.





## **19. MATERIALS AND WORKMANSHIP**

- 19.1 In the execution and completion of the Work under the Contract, all materials used and the standard of workmanship must comply with the requirements of the Contract. In the absence of such provisions, in the execution and completion of the Work under the Contract, the material or standard of workmanship, as the case may be, must be of a kind which is suitable for its purpose and consistent with the nature and character of the Work.
- 19.2 Unless stated otherwise in the Specification or the Special Conditions of Contract:
- (a) all materials used in the execution and completion of the Work must be new; and
  - (b) all workmanship must be in accordance with the relevant manufacturer's recommendations or, if there are no relevant manufacturer's recommendations, the relevant Australian Standard where applicable.

## **20. EXAMINATION AND TESTING**

- 20.1 The Authorised Officer may, at any time, give a Direction that any materials or workmanship executed or completed under the Contract by the Contractor be examined or tested.
- 20.2 The Contractor must provide all such assistance and samples and make accessible such parts of the Work under the Contract as may be required by the Authorised Officer.
- 20.3 If the Authorised Officer, acting reasonably, determines that any materials or workmanship do not comply with the requirements of the Contract, the Contractor must remedy the non-compliance within a period of time stipulated in writing in a Direction given by the Authorised Officer acting reasonably, failing which, the Principal may have such materials or workmanship remedied by persons other than the Contractor at the Contractor's expense. Alternatively, the Principal may accept the materials or workmanship and deduct any reduced value or additional costs from payments due to the Contractor or recover the reduced value or additional costs as a debt due and payable by the Contractor to the Principal.

## **21. DEFECTS LIABILITY PERIOD**

- 21.1 Defect Liability Period is for a term of 24 months from Practical Completion
- 21.2 The Defects Liability Period commences on the date on which the Authorised Officer gives a Certificate of Practical Completion to the Contractor under Clause 16 and expires at the end of the period stated as the Defects Liability Period in Clause 21.1.
- 21.3 At any time during the Defects Liability Period, the Authorised Officer may give the Contractor a Direction requiring the Contractor to remedy any omission, defective workmanship or materials, damage, loss or injury of or incidental to the Work occasioned by faulty workmanship or materials.
- 21.4 The Contractor must, at the Contractor's expense, comply with the requirements of any Direction given to the Contractor under Clause 21.3.
- 21.5 If the Contractor does not comply with the requirements of a Direction given under Clause 21.3, the Principal may have the omission, defect, damage, loss, or injury or that part of the omission, defect, damage, loss or injury as remains outstanding remedied by other persons and the costs so incurred shall be a debt due and payable by the Contractor to the Principal which may be deducted from payments otherwise owing by the Principal to the Contractor under the Contract.



## **22. CLEANING OF SITE**

- 22.1 At all times during the execution of the Work the Contractor must clear away and remove from the Site all surplus material and rubbish arising from the execution of the Work.
- 22.2 On completion of the Work, the Contractor must clear away and remove from the Site all constructional plant, surplus material, rubbish and temporary works of every kind and leave the whole of the Site and the Work in a clean and tidy condition.

## **23. SECURITY (CASH DEPOSIT)**

- REMOVED INTENTIONALLY

## **24. SECURITY (BANK GUARANTEE)**

- REMOVED INTENTIONALLY

## **25. PAYMENT**

- 25.1 Subject to Clause 29, from each reference date under the Contract, the Contractor is entitled to a progress payment if the Contractor has undertaken to carry out construction work, or supply related goods and services, under the Contract.
- 25.2 The amount of the progress payment to which the Contractor is entitled under Clause 25.1 is the amount calculated on the basis of the value of the construction work carried out or undertaken to be carried out, or related goods and services supplied or undertaken to be supplied, by the Contractor under the Contract.
- 25.3 A progress payment under the Contract becomes payable 14 days after a payment claim for the progress payment is made.
- 25.4 For the purposes of the calculation of progress payments under the Contract, the Principal and the Contractor must take into account the deduction of:
- (a) retention monies (if any); and
  - (b) any amount which the Principal is or may be entitled to deduct under the Contract; and
  - (c) any amount which is due and payable by the Contractor to the Principal under the Contract or any other contract entered into between the Principal and the Contractor.
- 25.5 If the total of the monies to be deducted under Clause 25.4 exceeds the liability of the Principal to the Contractor, the Principal may have recourse to any Security Deposit or Bank Guarantee held by the Principal under the Contract.
- 25.6 The payment of monies by the Principal to the Contractor under this Clause 25 is not:
- (a) evidence of the value of the construction work carried out or undertaken to be carried out under the Contract; or
  - (b) evidence of the value of the related goods and services supplied or undertaken to be supplied under the Contract; or
  - (c) an admission of liability of the Principal; or
  - (d) evidence that the Work has been executed or executed and completed to the satisfaction of the Principal.
- 25.7 For the purposes of this Clause 25:
- (a) "reference date" means the last day of the month in which the construction work was first carried out, or the related goods and services were first supplied, under the Contract and the last day of each subsequent month.



## **26. GOODS AND SERVICES TAX**

- 26.1 Words and phrases defined in the GST Act have the same meaning in this Contract unless the context indicates otherwise.
- 26.2 The Contract Price includes the Principal's liability for GST on each taxable supply made under the Contract. The Principal is not obliged to pay any additional amount to the Contractor on account of GST on any taxable supply made under the Contract.
- 26.3 The Contractor must ensure that all invoices rendered to the Principal under the Contract are in a format that identifies any GST paid, and which permits the Principal to claim an input tax credit. However, this Clause 26.3 does not apply if a supply made under the Contract is not a taxable supply.

## **27. PAYG WITHHOLDING**

- 27.1 This Clause applies if either the Contractor is not registered for GST and does not have an ABN or the parties are bound by a Pay As You Go voluntary agreement under section 12-55 of Schedule 1, Part 2-5 of the *Taxation Administration Act 1953*.
- 27.2 Where this Clause applies, the Principal is entitled to withhold from any payment tax calculated and to be held in accordance with the Pay As You Go withholding system.

## **28. SETTLEMENT OF DISPUTES**

- 28.1 The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Contract.
- 28.2 If a dispute arises between the parties regarding the Contract, a party may give written notice of the dispute to the other party (a "Dispute Notice"). A Dispute Notice must adequately identify and provide details of the dispute.
- 28.3 A Dispute Notice must be referred to a panel consisting of a representative of the Contractor who is authorised to settle the dispute and the Authorised Officer.
- 28.4 Within 7 days of the giving of the Dispute Notice, the panel must confer at least once to attempt to resolve the dispute or to agree on resolving the dispute by other means.
- 28.5 If the dispute has not been resolved within 28 days of the giving of the Dispute Notice, it shall be referred to an expert selected by mutual agreement for a determination. If the parties fail to agree on selection of the expert within 7 days of one Party giving notice in writing, then the expert shall be selected by the President for the time being of the Law Society of South Australia Inc. The expert's findings shall be final and binding on the Parties and his or her fees shall be paid by the Parties in equal shares. Notwithstanding the existence of a dispute, each Party shall continue to perform its obligations under this Contract. This Clause survives the expiration or termination of this Contract.
- 28.6 Nothing in this Clause shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief in respect of a dispute under this Clause 28 or any matter arising under the Contract.

## **29. BREACHES AND TERMINATION**

- 29.1 If the Contractor commits a substantial breach of the Contract, the Principal may give a written notice to the Contractor requiring the Contractor to show cause.



- 29.2 For the purposes of Clause 29.1, the Contractor commits a substantial breach of the Contract if the Contractor:
- (a) fails to substantially commence the execution of the Work at the Site within 14 days after the Site Access Date; or
  - (b) fails to proceed with the Work at a reasonable rate of progress; or
  - (c) commits any other substantial breach of the Contract; or
  - (d) indicates that it is unable or unwilling to complete the Work.
- 29.3 A notice given under clause 29.1 must state:
- (a) that the notice is given under Clause 29.1; and
  - (b) the alleged substantial breach of the Contract; and
  - (c) that the Contractor is required to show cause in writing why the Principal should not exercise a right referred to in Clause 29.4; and
  - (d) the date and time by which the Contractor must show cause (which must be a reasonable time after receipt of the notice by the Contractor); and
  - (e) the place at which the Contractor must show cause.
- 29.4 If the Contractor fails to show reasonable cause by the date and time stated in Clause 29.3(d), the Principal may, by giving written notice to the Contractor:
- (a) terminate the Contract; or
  - (b) suspend payment and take the Work remaining to be completed wholly or partly out of the hands of the Contractor without prejudice to any rights of the Principal under the Contract or at common law.
- 29.5 If the Contractor commits an event of default, the Principal may, without giving a notice to show cause under Clause 29.1, exercise a right under Clause 29.4.
- 29.6 For the purposes of Clause 29.5, the Contractor commits an event of default if the Contractor:
- (a) suspends payment of its debts or is insolvent; or
  - (b) has execution levied on any of the assets of the Contractor and the execution is not satisfied within 28 days; or
  - (c) enters into an arrangement, reconstruction or compromise with its creditors or any of them; or
  - (d) has a receiver appointed for all or any part of the assets of the Contractor; or
  - (e) has an application made or order filed for the Contractor's administration, voluntary or compulsory liquidation, winding-up, dissolution or bankruptcy; or
  - (f) ceases to carry on business.
- 29.7 If the Principal takes the Work remaining to be completed wholly or partly out of the hands of the Contractor, the Principal may itself or by means of other persons:
- (a) complete wholly or partly the Work remaining to be completed; and
  - (b) without payment of compensation, take possession of the constructional plant, equipment and other things on or in the vicinity of the Site as are the property of the Contractor.
- 29.8 If the costs incurred by the Principal in completing the Work under Clause 29.7 exceed the amount which would have been paid to the Contractor if the Contractor had completed the Work under the Contract, the excess shall be a debt due and payable by the Contractor to the Principal, otherwise, any difference shall be a debt due and payable by the Principal to the Contractor.

## **30. CLAUSES TO SURVIVE TERMINATION**

- 30.1 The following Clauses survive the termination of the Contract:
- (a) Clause 0 – Statutory Obligations; and
  - (b) Clause 31 – Set Off; and
  - (c) Clause 33 – Confidentiality.





### **31. SET OFF**

- 31.1 The Principal may deduct from moneys due to the Contractor under the Contract or on any other account, any moneys due from the Contractor to the Principal under the Contract or on any other account, and if those moneys are insufficient, the Principal may have recourse to any Security Deposit or Bank Guarantee held by the Principal under the Contract. Nothing in this Clause shall affect the right of the Principal to recover from the Contractor any moneys due from the Contractor to the Principal or any balance that remains owing after the deduction of moneys due from the Contractor to the Principal.

### **32. CONFLICT OF INTEREST**

- 32.1 The Contractor warrants that, to the best of its knowledge, information and belief, at the time of commencement of the Work, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract. If, during the execution and completion of the Work, a conflict of interest or risk of such conflict arises because of work undertaken for any person other than Principal, the Contractor must promptly give written notice to the Authorised Officer of that conflict of interest or risk of it.
- 32.2 The Contractor must take all reasonable measures to ensure that its employees, agents and sub-contractors do not, during the execution and completion of the Work, engage in any activity or obtain any interest, which is in conflict with the execution and completion of the Work for the Principal under the Contract. Any such activity must be disclosed in writing to the Authorised Officer immediately.
- 32.3 Where the Authorised Officer receives a notice of conflict of interest under this Clause, the Principal may give the Contractor a written notice to show cause under Clause 29.1.

### **33. CONFIDENTIALITY**

- 33.1 The Contractor must, and must ensure that its employees, agents and approved subcontractors, keep confidential any information obtained in the course of performing the Contract.
- 33.2 If required by the Special Conditions of Contract, the Contractor's employees, agents and approved subcontractors must deliver to the Principal a confidentiality undertaking in the form required by the Principal.
- 33.3 In the event of a breach of a confidentiality undertaking entered into pursuant to Clause 33.2, the Principal may terminate the Contract by giving written notice to the Contractor.
- 33.4 However, the Contractor may disclose any information:
- (a) which it is legally required or entitled to disclose; or
  - (b) to its legal and accounting advisers for the purposes of obtaining advice in relation to the Contract or any matter arising from the Contract.

### **34. MISCELLANEOUS**

- 34.1 The Contractor must comply with all relevant laws and the requirements of any relevant statutory authority in executing and completing the Work.
- 34.2 The Contract is governed by and construed in accordance with the laws of the State of South Australia, and the parties submit to the jurisdiction of the Courts of that State and all Courts competent to hear appeals therefrom.
- 34.3 No agreement or understanding that varies or amends the Contract will bind any party unless and until agreed to in writing by all parties.





- 34.4 None of the conditions of the Contract will be waived or deemed waived, except by notice in writing signed by the party waiving the right.
- 34.5 The Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements either oral or written between the parties with respect to the subject matter referred to in the Contract.
- 34.6 The parties to the Contract are independent contractors and nothing in the Contract will appoint the Contractor as agent or employee of the Principal.

### **35. DISTURBANCE**

- 35.1 The Site may be occupied during the currency of the Contract. The Contractor must ensure minimal inconvenience and disturbance to the occupants of the Site.

### **36. WORK NOT INCLUDED**

- 36.1 The following work is not included in the Contract and will be carried out concurrently by others:
- (a) N/A

### **37. PUBLICITY**

- 37.1 The Contractor must not issue any information, publication, document or article for publication in any media which includes details of the Work under the Contract without the prior written approval of the Principal.

### **38. DOCUMENTS GENERALLY, DRAWINGS AND SPECIFICATION**

- 38.1 Where the Contractor requires copies of documents in addition to its entitlement to two(2), such additional copies of the documents will be available to the Contractor at the charge current at the time of request.
- 38.2 The drawings comprise the following sheets:  
N/A  
and detail drawings as specified herein and any additional drawings supplied to the Contractor during the progress of the Work.

### **39. ENVIRONMENTAL PROTECTION**

- 39.1 The Contractor must, at all times, take adequate measures to control noise on the Site.
- 39.2 The Contractor must comply with all statutory requirements relating to the control of noise levels on the Site and take all necessary precautions to minimise nuisance from noise and vibration and ensure that all subcontractors observe similar care.
- 39.3 The Contractor must arrange his operations and provide silencing equipment to his plant, at his own expense, to whatever extent is necessary to satisfy the applicable statutory requirements in relation to the sound level arising from the Contractor's operations near the boundaries of the Site.
- 39.4 The Contractor must at all times:
- (a) comply with the requirements imposed by the Authorised Officer relating to the storage of materials, the routing of construction traffic, the interruption of existing services and facilities and any other statutory requirements applicable to the Site; and
  - (b) comply with all statutes, regulations and local laws relating to the protection of the environment; and



- (c) obtain the prior written approval of the Authorised Officer for the formation of any temporary roads, the erection of temporary structures or any Site clearing not specifically documented; and
- (d) ensure that no trees or shrubs are removed or destroyed without the prior written approval of the Authorised Officer; and
- (e) ensure that no fire is lit without the prior written approval of the Authorised Officer; and
- (f) store flammable or explosive products in accordance with the relevant statutes and to the approval of the Authorised Officer.

- 39.5 The Contractor must take all proper precautions to prevent soil erosion from any land used or occupied by the Contractor in the execution of the Work under the Contract.
- 39.6 The Contractor must prevent any nuisance occurring through the discharge of dust dirt, water, fumes and the like onto persons or property.
- 39.7 All debris, spoil, rubbish and materials must be suitably contained and covered in vehicles during transportation to or from the Site to prevent spillage or contamination of adjoining and other areas or property.
- 39.8 The Contractor must maintain vehicles, wheels and tracks in a suitable clean condition to prevent transfer of mud onto adjacent streets or other areas.
- 39.9 All Site refuse (including foodstuffs) must be handled and disposed of in accordance with the requirements of relevant statutes and to the approval of the Authorised Officer.

#### **40. CONTRACTOR'S REPRESENTATIVE**

- 40.1 The Contractor's representative must have sufficient command of the English language and of Australian construction and technical terminology, to be able to read, converse and receive instructions in English.

#### **41. EXISTING IMPROVEMENTS**

- 41.1 Where, within the Site, there are a range of existing improvements, roads, drainage and other services, the Contractor must protect and maintain the same throughout the execution of the Work under the Contract.
- 41.2 The Contractor must implement traffic control measures so as to maintain all roads on the Site in a safe trafficable condition.

#### **42. WORKMENS' AMENITIES**

- 42.1 The Contractor must provide all statutory and necessary amenities and sanitary facilities for workmen and other persons lawfully upon the Site and remove them on Practical Completion of the Work.
- 42.2 Occupation of any part of the Work and Site for the provision of workmen's' amenities shall not be permitted without the prior written approval of the Authorised Officer.

#### **43. TRADE NAMES**

- 43.1 Where a trade name, brand or catalogue number is referred to in the Contract, the Contractor may substitute equivalent material or equipment provided that in the opinion of the Authorised Officer the characteristics of type, quality, finish, appearance, method of construction and performance are not less than that specified, and are approved by the Authorised Officer.



- 43.2 The approval of the Authorised Officer must not be anticipated because the Authorised Officer has given a similar approval under a previous contract.

#### **44. SAFETY MANAGEMENT PLAN**

- 44.1 The Contractor must, throughout the execution of the Work, implement and maintain a "Safety Management Plan".
- 44.2 The Contractor must prepare the Safety Management Plan in conjunction with a person suitably experienced and qualified in safety matters.
- 44.3 Prior to the commencement of the Work, the Contractor must supply to the Authorised Officer in writing, its Safety Management Plan.

#### **45. INDUCTION TRAINING**

- 45.1 Employees of the Contractor and its subcontractors and employees of subcontractors must not commence work on the Site until they have been inducted by the Principal.
- 45.2 Upon commencement of work on the Site, the Contractor must induct each employee with regard to all significant hazards associated with their particular activity and area of employment on the Site and, where relevant, must include the use of powered plant, tools and equipment.

#### **46. PRE-JOB PLANNING**

- 46.1 Where legislation or codes of practice identify particularly hazardous activities including but not limited to work in confined spaces, asbestos removal, demolition work, excavation work, working near power lines and live conductors and working at heights, the Contractor must supply to the Authorised Officer a Safe Work Procedure ("SWP") prior to commencing such activity or type of work on the Site.
- 46.2 The Contractor must induct its employees and its subcontractors and employees of its subcontractors with regard to the SWP and must prepare "Training Session Attendance" sheets signed by each attendee verifying that such induction has occurred.

#### **47. SITE AND PUBLIC SECURITY**

- 47.1 Notwithstanding the Contractors' obligations to Site and public security as stated elsewhere in this Contract, the Contractor must monitor and control wherever practical, the access of all persons to the Site.
- 47.2 The Contractor must ensure that no persons, including without limitation friends and relatives (particularly children) of employees and the representatives of organisations unrelated to the Contractor, enter the Site without the express permission of the Contractor.

#### **48. OCCUPIED SITES**

- 48.1 In the event of the Site being a partially occupied Site, the Contractor must liaise with the occupier regarding safety and health requirements.
- 48.2 The Authorised Officer will arrange a safety co-ordination meeting between the occupiers and the Contractor. The occupiers will provide to the Contractor their occupation requirements on and/or adjacent to the Site to assist the Contractor in the development of a Site specific Safety Management Plan addressing the Contractors and occupiers operational interface requirements. The Safety Management Plan must incorporate the Contractor's own operations and interface with the occupiers' operations.



48.3 The Contractor shall be responsible for the implementation of the safety and health standards on the occupied Site for the duration of the Contract and must co-ordinate and integrate the Work.

**49. MATERIALS TO BE SUPPLIED BY THE PRINCIPAL**

49.1 The materials stated in the Specification to be supplied by the Principal will be supplied free of charge to the Contractor for use only in the execution of the Work under the Contract. The Contractor shall take delivery of the materials under the conditions set out in the Contract.

**50. SERVICES INSTALLATION**

- REMOVED INTENTIONALLY

**51. WORKING DAYS AND HOURS**

51.1 Working days and hours shall be taken as Monday to Friday inclusive between the hours of 7.00 a.m. and 6.00 p.m. (excluding public holidays). These shall be the "Standard Days and Hours" for the purposes of the Contract. No work shall occur on Christmas Day, Boxing Day, New Year's Day or Good Friday.

51.2 Unless provided for elsewhere in the Contract or approved by the Authorised Officer no Work shall be executed outside of the Standard Days and Hours except in emergent circumstances or where a particular construction activity dictates that Work is necessary outside the Standard Days and Hours. Where Work is executed outside of the Standard Days and Hours by reason of necessity, the Contractor must obtain the written approval of the Authorised Officer prior to executing the Work.

51.3 The Authorised Officer may approve the execution of Work outside the Standard Days and Hours if he considers that it will not cause undue interference, disturbance or other nuisance to residents in the vicinity of the Site.

51.4 The Principal may recover all costs properly incurred by the Principal in respect of providing any necessary supervision of construction operations undertaken outside the Standard Days and Hours as a debt due from the Contractor. However, no such cost shall be recoverable from the Contractor where:

- (a) working outside the Standard Days and Hours is specifically provided for elsewhere in the Contract; or
- (b) working outside the Standard Days and Hours (for the relevant Work) has been approved by the Authorised Officer prior to commencement of the relevant Work; or
- (c) the relevant Work is of an emergent nature, for safety of the public or protection of the Work, resulting from an event beyond the control of the Contractor.

**52. SCHEDULE OF WARRANTIES**

52.1 The Contractor must obtain and ensure that the Principal will have the benefit of all warranties specified in the Contract including the following items of work, materials and equipment:

- (a) N/A

**53. BRANDS OF MATERIAL SCHEDULES**

53.1 The Contractor must, within 14 days of acceptance of the Tender, notify the Authorised Officer of the brand or make of materials it intends to use for which the Contractor has a choice of brand or make and which can affect the colour selections such as paint, fabrics, vinyl sheets and tiles, ceramic tiles, laminated plastics and like materials.

53.2 The Contractor must not depart from the brands or makes nominated in its advice to the Authorised Officer unless authorised by the Authorised Officer so to do.





- 53.3 If the Contractor fails to notify the Authorised Officer within the specified time of the brand or make of materials he intends to use, the Authorised Officer may nominate the brand or make of materials to be used and the Contractor must then use the brand or make nominated by the Authorised Officer and must add no claim for any extra costs incurred.

#### **54. ADVERTISEMENTS AND PROMOTIONS ON SITE**

- 54.1 The Contractor may erect on the Site, or permit to be erected on the Site, only those signs:
- (a) required by law; or
  - (b) specified in the Contract.
- 54.2 The Contractor must not erect on the Site, or permit to be erected on the Site, any other sign, advertisement, promotion or other display without the prior written approval of the Authorised Officer.

#### **55. OMBUDSMAN**

- 55.1 Without limiting the Contractor's obligations under this Contract, the *Ombudsman Act, 1976* provides that the Ombudsman may investigate any act of an individual or organisation done in the performance of functions conferred under a contract with certain public authorities. The Contractor agrees to ensure timely compliance with all obligations arising under the *Ombudsman Act, 1976*, and any other applicable law, in relation to any such investigation involving the Council.

#### **56. CONFIDENTIAL INFORMATION AND FREEDOM OF INFORMATION**

- 56.1 Each of the Council and the Contractor agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose whatsoever, except for the purposes of and in the manner contemplated by this Contract, and agrees that it will:
- 56.1.1 keep confidential;
  - 56.1.2 take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;
  - 56.1.3 maintain proper and secure custody of; and
  - 56.1.4 not use or reproduce in any form, any Confidential Information belonging to the other party.
- 56.2 The duty of confidence referred to in Clause 33.1 will not extend to such of the Confidential Information as:
- 56.2.1 was known to the Receiving Party as at the date of this Contract otherwise than as a result of disclosure by the Disclosing Party;
  - 56.2.2 was in or becomes part of the public domain otherwise than as a result of a breach by the Receiving Party of its obligations under this Contract;
  - 56.2.3 is disclosed to the Receiving Party by any third party which does not owe any obligation to the Disclosing Party (directly or indirectly); or
  - 56.2.4 is required by law to be disclosed by the Receiving Party provided that the Receiving Party will immediately notify the Disclosing Party of any such requirement – if possible before making the disclosure.
- 56.3 The onus of proof of the matters referred to in clause 56.1 is on the Receiving Party.
- 56.4 Notwithstanding the provisions of clause 33.1 Confidential Information may be disclosed by the Receiving Party:
- 56.4.1 to employees, legal advisers, auditors and other consultants of a party requiring the information for the purposes of this Contract; or
  - 56.4.2 with the consent of the Disclosing Party, which consent may be given or withheld at the Disclosing Party's absolute discretion.





56.4.3 If the Receiving Party proposes to release or provide access to Confidential Information under clause 56.1, it will not do so until it has obtained from such employers, legal advisors, auditors or other consultants a written undertaking to keep that information confidential and not to release it to any other party.

56.5 *The Freedom of Information Act 1991 (SA)* (“**FOI Act**”) gives members of the public rights to access Council documents. The FOI Act promotes openness in governance and accountability of government agencies and to achieve these objects confers on members of the public a legally enforceable right to be given access to documents, including contracts, held by the Council subject but not limited to such restrictions as are consistent with the public interest, commercial in confidence and/or the preservation of personal privacy in respect of those from whom information is collected and held by the Council and other public authorities.

56.6 For the purposes of the FOI Act, the following clauses, annexures, schedules and appendices of this Contract are confidential:

*Nil*

(“confidential clauses”).

56.7 Unauthorised disclosure of the confidential clauses and the subject matter contained therein constitutes a breach of a party’s obligations under this Contract.

56.8 For the purposes of this clause:

56.8.1 “Confidential Information” means any information (in whatever form and whether recorded or not) which is:

56.8.1.1 designated as confidential;

56.8.1.2 confidential by its nature; or

56.8.1.3 disclosed or obtained in circumstances importing an obligation of confidence; and specifically includes (but is not limited to) the information specified in clause 0;

56.8.2 “Disclosing Party” means a party who discloses its Confidential Information under this Contract and “Receiving Party” means a party who receives Confidential Information under this Contract; and

56.8.3 “third party” means and includes all persons, including all consultants, agents, officers, directors and employees of a party.