

**STANDARD AGREEMENT**

**FOR**

**THE SUPPLY OF PLANT**

**Attachment 1 - Agreement Details**

|  |  |  |
| --- | --- | --- |
|  | **Principal** | Minister for Transport, Infrastructure and Local GovernmentofTerrace Towers178 North TerraceADELAIDE SA 5000 |
|  | **Contractor** | The company named in the letter of acceptance of offer |
|  | **Commencement Date** | <the date of acceptance of offer or insert> |
|  | **Expiry Date** | <insert date (e.g. date that Plant is accepted or the expiry of any applicable Plant warranty or last date for performance of Services)> |
|  | **Extension Period** | <insert period or insert “not applicable”> |
|  | **Contractor’s ABN** | As indicated in the Contractor’s tender |
|  | **Contract Managers** | Principal: <insert>Contractor: As indicated in the Contractor’s tender |
|  | **Named Persons** | <insert names and positions or insert “not applicable”> |
|  | **Details of Plant**  | <Refer Specification or “not applicable”>  |
|  | **Delivery Date** **Delivery Point** | <insert date if Plant is being supplied or insert “not applicable”><insert delivery point details or insert “not applicable”> |
|  | **Installation Date**  | Not Applicable |
|  | **Warranty Period** | <insert period>  |
|  | **Details of Services** |  <Refer Specification or “not applicable”>  |
|  | **Reports and Manuals** | Refer Specification  |
|  | **Milestone Dates** | <Refer Specification or “not applicable”> |
|  | **Price and Payment (refer SC2)** | Refer to the payment schedules for prices and rates. |
|  | **Insurances**Public Liability InsuranceProduct Liability Insurance | Not less than $10,000,000<insert the amount of cover or not applicable |
|  | **Liability Limit** | *The following Liability Limit has been approved by Cabinet (25 July 2016)* <insert between [1 and 5] x [the aggregated value of the contract (inc. GST)]. Multiple to be based on Principal’s risk assessment> |
|  | **Other Termination Rights** | <insert relevant details or insert “not applicable”> |
|  | **Approved Subcontractors** | Not Applicable |
|  | **Additional Personnel Checks** | Not Applicable |
|  | **Notice Period for Termination for Convenience** | Not Applicable |

**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 PLANT (if applicable)

## If Plant is being supplied under this Agreement then the Contractor must:

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

### sell the Plant without encumbrance;

### deliver the Plant 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 Plant delivered;

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

### if indicated in Attachment 1, install the Plant 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 plant (if applicable)

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

## The Principal must accept the Plant if it conforms with the requirements of this Agreement.

## Subject to clause 4.4, the Plant is deemed to be accepted either:

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

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

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

## If the Principal rejects the Plant 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 Plant and remove the non-conforming Plant from the Delivery Point; or

### repair the Plant.

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

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

# warranty period (if applicable)

## If during the Warranty Period the Plant fail to comply with the warranties in clause 9.1 then the Contractor must promptly rectify the non-compliance.

# 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 Plant is being supplied under this Agreement then the Contractor warrants that it has good and unencumbered title to the Plant and the Plant:

### 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 Plant.

## During any Warranty Period any defects in the Plant 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 Plant 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 Plant 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 Plant and/or Services, when the Plant 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 Plant 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 Plant 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**

# NOTE: Not all terms may be used for a particular procurement

In this Agreement:

### “**Acceptance Date**” means the date that the Plant is 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 Plant;

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

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

### “**Plant**” means the plant specified in Attachment 1;

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

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

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

### “**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;

### “**Purchase Order**” means an order for Plant 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;

### **“Principal’s Representative”** is defined in SC6.

### “**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 Plant/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.

**Attachment 4 - Special Conditions**

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:

### act in a manner that is non-threatening, courteous, and respectful; and

### 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:

### prohibit access by the relevant Contractor’s personnel to the Principal’s premises;  and

### direct the Contractor to withdraw the relevant Contractor’s personnel from providing the Plant or Services.

1. DELIVERABLES

## 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. ACCEPTANCE OF THE 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. WARRANTY PERIOD

## 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.

## 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 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 SC5.2, 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 Clause SC5 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.

1. PRINCIPAL’S REPRESENTATIVE

## The Principal’s Representative is the person occupying the position of Director, Contracting at the Department of Planning, Transport and Infrastructure, 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.