

**<#PROJECT.PROJECT\_NAME>**

**Contract No: Contract Number**

**MDW-12 Conditions of Contract for Medium Works**

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# Definitions and Interpretation

In this Contract:

"**Commencement Date**" means the date which appears on the letter of acceptance or such other date as agreed to by the Parties;

"**Contract**" means the agreement between the Principal and the Contractor and includes these MDW-12 Conditions of Contract for Medium Works and Annexure, the specification, drawings, the tender, the letter of acceptance of tender and any other applicable documents;

"**Contract Sum**" means the amount inclusive of GST stated in the Annexure and is a sum not subject to adjustment except as expressly provided in this Contract.

"**Contractor**" means the party bound to execute the work under the Contract;

"**Date for Practical Completion**" means the date specified in the Annexure, or where a period of time is specified in the Annexure, the last day of the period;

"**Date of Practical Completion**" means the date on which Practical Completion was reached;

"**Day**" means working day excluding applicable rostered and paid days off and will be based on a five day week unless otherwise specified;

"**Practical Completion**" means the Works are complete except for minor omissions and defects that do not prevent the Works from being reasonable capable of use for their intended purpose.

"**Principal**" means the Minister for Transport and Infrastructure and includes any person to whom the Principal has delegated its functions and powers for the purposes of this Contract or for the purpose of any negotiations, consultations, or approvals that may be required for the work to be performed under this Contract;

"**Principal’s Representative**" means the person named and described in the Annexure or such other person as the Principal may nominate in writing from time to time to the Contractor;

"**Private Certifier**" or “**Certifier**” means a certifier registered as a Private Certifier in South Australia under the *Development Act 1993* nominated by the contractor to provide building certification;

"**Record**"means a document (either hard copy or electronic) that the Contractor is required to prepare under this Contract and includes supporting calculations and data, but excludes the Contractor’s internal administrative records;

"**Services**" means the Services to be provided by the Contractor to the Principal under this Contract and all other services expressly or impliedly required to be provided by the Contractor by this Contract.

"**Site**” means the Site stated in the Annexure;

"**Superintendent**" means the person occupying the position stated in the Annexure;

"**Works**" means the whole of the work and/or service to be executed in accordance with the Contract, including all variations provided for by the Contract;

Headings are for reference purposes only and do not form part of the Contract. Words in the singular include the plural and vice-versa;

The Contract shall be governed by and construed with reference to the laws for the time being in force in the State of South Australia.

# Evidence of Contract

The Contract is evidenced by the agreement in writing between the parties which includes the MDW-12 Conditions of Contract for Medium Works and Annexure, the specification, drawings, the tender, the letter of acceptance of tender and any other applicable documents. This Contract contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreement, understandings or representation of the parties on the subject matter. Any modification of this Agreement must be in writing and signed by each party.

# Assignment and Subcontracting

Neither party shall assign, subcontract or otherwise transfer any of its rights or obligations pursuant to this Contract whether in whole or in part without the prior written consent of the other party.

The Contractor shall be permitted to subcontract a portion of the work provided that the Contractor shall at all times remain responsible for the performance of the Services. Each component of the Works is to be limited to one subcontractor as far as practicable.

The Superintendent may require subcontract work to be undertaken by trade/sub contractors registered in the Department of Planning, Transport and Infrastructure Building and Construction Project Prequalification System (DPTI Prequalification System) and if required the Contractor must ensure that the designated subcontract work is undertaken by a trade/sub contractor registered in the DPTI Prequalification System.

Any refusal of the Superintendent to approve a subcontractor shall not be deemed to have been unreasonably withheld if a subcontractor proposed is not registered in the DPTI Prequalification System.

# Performance

The Contractor shall execute and complete the work under the Contract in accordance with the Contract and in accordance with any directions given by the Superintendent pursuant to the provisions of the Contract.

The Contractor shall be deemed to have provided in its Contract Sum for the cost of compliance with all its obligations under the Contract, of obvious work not documented and of all matters and things necessary for the due and proper performance and completion of the Contract.

The Contractor shall be deemed to have inspected the Site and satisfied itself as to the exact amount of work required to be done and to have made allowance in its Contract Sum for any difficulties of access, limitation of extent, position of working space and proximity of services and for minor and incidental work not particularly mentioned but which may be necessary to perform satisfactorily and carry out the proper performance and completion of the Contract. Failure by the Contractor to have complied with the obligations under this clause will not relieve the Contractor of its liability to perform and complete the Contract in accordance with the terms and conditions thereof and no consideration will be given to any claim arising from neglect of the above.

The Contractor, until the Superintendent has certified that the Works have been finally completed in accordance with the Contract, shall be responsible for executing the Works in accordance with the Contract and shall be liable for any loss or damage to the Works from any cause whatsoever, except loss or damage caused by any negligent act, omission or default of the Principal, or the servants or agents of the Principal, and shall make good any such loss or damage at no cost to the Principal.

The Contractor shall comply with the requirements of all relevant legislation and the lawful requirements of public or other authorities affecting the Works and shall co-operate and co-ordinate the work with other contractors lawfully employed on the Site.

Should any ambiguity or discrepancy be discovered in any document prepared for the purpose of executing the work under the Contract, the Superintendent shall direct the Contractor as to its interpretation. If the direction causes the Contractor to incur more or less cost than the Contractor could reasonably have anticipated at the time of tendering, the difference shall be valued under clause 20.

# Principal’s Representative

The Principal may from time to time appoint individuals to exercise any functions of the Principal under the Contract. The appointment of a Principal’s Representative shall not prevent the Principal from exercising any function. The appointment may allow for further delegation by the Principal’s Representative.

Where it is a requirement that approval in writing or a notice in writing be given by the Principal or an action be taken by the Principal, for administrative purposes the powers, duties, discretions and authorities vested in the Principal under the clauses of the Contract may alternatively be exercised by the Principal’s Representative.

# Contractor’s Representative

The Contractor shall at all times have a representative who has authority to bind the Contractor in relation to any matter arising out of or in connection with this Contract. The Contractor’s Representative will be that person nominated in writing by the Contractor to the Superintendent from time to time.

The Superintendent may arrange periodic meetings to discuss performance of the services. The Contractor shall ensure that its authorised representative is present at all meetings.

The Contractor shall maintain (and provide copies to the Principal) of all Records and other information in respect of the Services as required by this Contract.

# Superintendent

The Principal shall ensure that at all times there is a Superintendent and that in the exercise of the functions of the Superintendent under the Contract, the Superintendent:

1. acts honestly and fairly;
2. acts within a reasonable time; and
3. arrives at a reasonable measure or value of work, quantities or time.

Any direction, requirement, decision or determination given by the Superintendent pursuant to the Contract shall be binding upon the Contractor. When given orally, the Superintendent or the authorised Representative shall, within seven Days, confirm it in writing to the Contractor.

# Protection of Property and Contractor's Liability

Insofar as compliance with the requirements of the Contract permits, the Contractor shall:

1. provide all things and take all measures necessary to protect people and property, including the erection, maintenance and removal of barricades and signs, for the safety and convenience of the public and others;
2. avoid unnecessary interference with the passage of people and vehicles; and
3. prevent nuisance and unreasonable noise and disturbance.

# Care of the Work and Statutory Requirements

From the date of commencement of the work under the Contract until the Works are completed and handed over to the Principal, the Contractor shall be responsible for the care of the whole of the work under the Contract and shall be liable for any loss or damage to the work from any cause whatsoever, except loss or damage caused by any negligent act, omission or default of the Principal, the Superintendent or the employees, professional service contractors or agents of the Principal, and shall at the Contractor’s own cost make good any such loss or damage. The Superintendent may direct the Contractor to make good loss or damage to work for which the Contractor is responsible for the care thereof.

The Contractor shall comply with the requirements of public and all other authorities having jurisdiction by law over any matter affecting the work under the Contract, and shall pay all fees and obtain all certificates required.

# Indemnity by the Contractor

The Contractor indemnifies the Principal against:

1. loss of or damage to the Principal’s property; and
2. claims by any person in respect of injury, death or loss of or damage to any property,

resulting from or in any way connected with the Contractor carrying out the work under the Contract, but the Contractor’s liability to indemnify the Principal shall be reduced proportionally to the extent that an act or omission of the Principal, or its employees or agents, contributed to the loss, damage, death or injury.

# Insurance of the Works and Third Party Liability (by Principal)

The Principal has effected a policy of insurance in relation to the work under the Contract.

The Contract Works Material Damage (Material Damage) and Third Party Legal Liability Insurance Policy is included in the Contract. Details are provided in Schedule 2 to the Annexure.

Details provided are a guide only and do not detail all terms, conditions and exclusions, nor do they provide a substitute for the policy of insurance. The Contractor and all subcontractors shall fully inspect the policy to ascertain the level of protection afforded and the obligations imposed.

The effecting of insurance shall not limit the liabilities or obligations of any party under other provisions of the Contract.

# Notice of Potential Insurance Claims

The Contractor shall comply with the provisions of the policy of insurance required by clause 11, compliance with which is a precondition to entitlement to make a claim under the policy. In particular, in the event of any occurrence for which a claim under the policy may be made the Contractor shall:

1. as soon as practicable, inform both the Superintendent and the Principal’s
2. Insurance Broker, AON Risk Services Australia Ltd;
3. take reasonable steps to prevent damage;
4. provide full details of the occurrence as required by the Insurer(s);
5. defer repairs if the estimated loss exceeds $5,000 in addition to the amount of the applicable excess and preserve all evidence required to substantiate a claim; and
6. make no admissions of liability to any potential claimant in respect of the occurrence.

# Not Used

# Workers Compensation

The Contractor must comply with all of its obligations under the *Workers Rehabilitation and Compensation Act 1986* (in this clause 14 referred to as “the Act”) in relation to all employees of the Contractor, and in particular and without limiting the generality of this obligation must:

1. be registered by the Workcover Corporation (“Workcover”) as required under the Act;
2. pay any levy required to be paid to Workcover under the Act;
3. furnish monthly returns to Workcover as required under the Act; and
4. pay compensation to any injured worker in accordance with the Act.

The Contractor must comply with all of its obligations under any corresponding law as defined in the Act (being a law of the Commonwealth, a State, a Territory of the commonwealth or of another country that provides for compensation for disabilities arising from employment.

The Contractor must ensure that any sub-contractor complies with its obligations under the Act and any corresponding law in relation to all employees of the sub-contractor employed in the work under the Contract.”

The Contractor must provide, on request by the Superintendent, evidence of its compliance with this clause, including evidence that it is an exempt employer under the Act.

# Commencement of Work

The Contractor shall commence work under the Contract within the time stated in the Annexure and shall, unless otherwise specified, give at least two working days notice to the Superintendent prior to the commencement of work.

# Security

The Contractor shall provide security in the amount stated in the Annexure and in the form of cash or an unconditional undertaking. The Principal shall have the discretion to approve or disapprove the form of an unconditional undertaking and the financial institution or insurance company giving it. Security shall be lodged within 28 days of the Acceptance of Tender and held until the issue of the Final Certificate.

A party may have recourse to cash security and/or may convert into money immediately (and without notice to the other party) security that does not consist of money where the party has become entitled to exercise a right under the Contract in respect of the security. The Principal shall not be liable in any way for any loss occasioned by such conversion. If, after the issue of the Certificate of Practical Completion and in the opinion of the Superintendent it is reasonable to reduce the Principal’s entitlement to security that entitlement shall be reduced to the amount which the Superintendent determines to be reasonable. The Principal shall, within 14 days of the Superintendent making such a determination, release security in excess of the entitlement.

# Materials and Work

All materials used in the work under the Contract and the standards of workmanship shall be in conformity with the provisions of the Contract. In the absence of such provisions in the Contract in respect of any material or standard of workmanship, that material or standard of workmanship, as the case may be, shall be of a kind which is suitable for its purpose and is consistent with the nature and character of the Works. Any materials not otherwise specified shall be new and, where applicable, materials and workmanship shall be in accordance with the relevant Australian Standard.

All work considered by the Superintendent not to be in accordance with the Contract requirements shall be made good to the satisfaction of the Superintendent and at no cost to the Principal.

# Unfixed Plant and Materials

If the Contractor claims payment for plant and materials intended for incorporation in the Works but not incorporated the Principal shall not make payment for such plant and materials.

If transportable project only

With regard to the nature of work under Contract, the Contractor may construct a significant portion of the Works at a place under the ownership of the Contractor other than the Site (‘Contractor’s Site’) and transport work under Contract to the Site for incorporation into the Works.

Approval by the Principal to construct any or all of the Works at the Contractor’s Site does not derogate in any way from the Contractor’s obligations under these conditions, nor shall the Principal be liable in respect to loss or damage.

The Principal may make payment for work under Contract constructed at Contractor’s Site if the Contractor:

1. establishes to the satisfaction of the Superintendent, including written evidence from any relevant sub-contractor, that ownership of completed work under Contract on the Contractor’s Site will pass to the Principal upon the making of the payment claimed;
2. establishes to the satisfaction of the Superintendent that such work completed is properly stored and adequately protected, including the provision of proof of separate insurance for materials and work on the Contractor’s Site and inland transit insurance;
3. ensures that such work is in a clearly identified area at the Contractor’s Site and all work, plant or materials are labelled the property of the Principal;
4. provides a written statement with each claim for payment, of work completed on the Contractor’s Site for which ownership will pass to the Principal upon payment by the Principal;
5. provides unconditional licence for the Principal to enter upon the Contractor’s Site with vehicles, other persons or equipment to inspect and or remove the Principal’s property at all times and provides to the Principal a key to the Contractor’s Site for access by the Principal.

Upon payment to the Contractor of the amount claimed, the plant or materials the subject of the claim shall be the property of the Principal free of any lien or charge.

# Cleaning Up by Contractor

The Contractor shall keep the Works clean and tidy as they proceed and regularly remove from the site rubbish and surplus material arising from the execution of the Works. On completion of the Works the Contractor shall clear away and remove from the Site all constructional plant, surplus materials, rubbish and temporary works of every kind and shall leave the Site, existing structures and areas adjacent thereto in a state of repair to the satisfaction of the Superintendent.

# Variations

The Superintendent may direct a variation to the work under the Contract and such direction shall not invalidate the Contract. The variation shall be valued by mutual agreement between the Contractor and the Superintendent or failing such agreement, by the Superintendent to arrive at the rate or price payable for a variation is as follows:

1. by actual valuation of the work calculated as the total of:
2. labour at a rate not exceeding the DPTI Star Rate (the rate payable, as defined by DPTI from time to time, for the hourly cost of labour on a trade by trade basis);
3. net cost of materials;
4. net hiring rates plant.
5. net cost of sub-contractor claim made up of labour at a rate not exceeding the DPTI Star Rate, net cost of materials, net hiring rates of plant, with an allowance of 10% of the net costs for the sub-contractor’s profit and overhead costs and an allowance of 5% of the net costs for the sub-contractor’ administration inclusive of all supervision and attendance:
6. an allowance of 10% of the labour, material, plant and sub-contractor cost for the Contractor’s profit and overhead costs, including any applicable Construction Industry Training Fund levy;
7. an allowance of 5% of the labour, material, plant and sub-contractor cost for the Contractor's administration, inclusive of all supervision and attendance; and

In determining the deduction to be made for work which is taken out of the Contract the deduction shall include an additional allowance for the Contractor's administration calculated as 5% of the value of the variation; and the Contract Sum adjusted accordingly.

# Extension of Time for Practical Completion

The Contractor shall complete the Works to the satisfaction of the Superintendent within the time stated in the Annexure or within such extended time as agreed to in writing by the Superintendent.

The Contractor shall be entitled to an extension of time if it is or will be delayed in reaching Practical Completion by the Date for Practical Completion by

1. any act, default or omission of the Principal, the Superintendent or an employee, contractor or agent of the Principal; or
2. those causes other than:
3. acts or omissions of the Contractor (including its employees, agents and subcontractors); and
4. industrial conditions or inclement weather occurring after the Date for Practical Completion,

and within 28 days after the delay occurs the Contractor gives the Superintendent a written claim for an extension of time for Practical Completion setting out the facts on which the claim is based.

Where more than one event causes concurrent delays and the cause of at least one of those events does not entitle the Contractor to an extension of time, then to the extent that the delays are concurrent the Contractor shall not be entitled to an extension of time for Practical Completion.

If the Contractor is entitled to an extension of time for Practical Completion the Superintendent shall, within 28 days after receipt of the written claim, grant a reasonable extension of time, or if the Superintendent does not grant the full extension of time claim, the Superintendent shall give the Contractor notice in writing of the reason.

The Superintendent may extend the Date for Practical Completion for any reason.

# Delay or Disruption Costs

Where the Contractor has been granted an extension of the time under Clause 21 for any delay or disruption caused by the Superintendent, the Principal or the Principal's other contractors, employees, consultants, or agents, the Principal shall pay the Contractor extra costs by multiplying the amount stated in the Annexure by the number of days extension granted in respect of the event.

Nothing in this Clause 22 shall oblige the Principal to pay extra costs for delay or disruption which have already been included in the value of a variation or any other payment under the Contract Completion of the Works.

# Practical Completion

The Contractor shall complete the Works to the satisfaction of the Superintendent within the time stated in the Annexure or within such extended time as agreed to in writing by the Superintendent. When the Superintendent is of the opinion that Practical Completion has been reached, the Superintendent will issue a Certificate of Practical Completion.

On or before the Date for Practical Completion the Contractor shall ensure that the Works have been built in accordance with this Contract, are fully equipped with all fixtures and fittings and are fit to be occupied. The Contractor shall provide an Operating and Maintenance Manual providing necessary instructions to the Principal on the operation of the Works and as-constructed drawings in accordance with the specified requirements.

The Contractor shall provide a certificate of occupancy to the Superintendent that the Works have been completed in accordance with the Contract and requirements under section 49 (14A) of the *Development Act 1993*, all duly executed by a Private Certifier.

Should the Principal or other persons authorised by it occupy the Works or any portion thereof before Practical Completion of the Works, such area so occupied and used shall be at the sole risk of the Principal in respect of injury to or death of such persons and damage to property.

# Defects Liability

From the Date of Practical Completion of the Works, the Contractor shall maintain the Works for the Defects Liability Period stated in the Annexure and shall make good at no cost to the Principal all defective workmanship or materials and all loss or damage to the Works occasioned by faulty workmanship or materials.

# Final Certificate

Not earlier than 7 days after the expiration of the defects liability period, and when all the Contractor's obligations under the Contract have been fulfilled, including evidence that the rectification of omissions and defects has been satisfactorily completed and the Operating and Maintenance Manual and as-constructed drawings updated, the Superintendent shall issue a Final Certificate to the Contractor and to the Principal, certifying that the Works have been satisfactorily completed and setting out any amount which, in the opinion of the Superintendent, is finally due from one party to the other. The Principal shall forthwith release any security still held by the Principal.

# Payments

The Principal shall pay the Contractor the Contract Sum, adjusted by any additions or deductions made pursuant to the Contract, subject to the work under the Contract being satisfactorily executed.

Each month the Contractor shall submit to the Superintendent a claim for payment stating the amount due to the Contractor in respect of the work carried out in performance of the Contract and incorporated into the Works in the preceding month.

Within fourteen days after the receipt by the Superintendent of such a claim, the Superintendent shall determine the value of the work so carried out and incorporated and issue a progress payment schedule in accordance with the *Building and Construction Industry Security of Payment Act 2009 (SA)* and a progress payment certificate.

The Principal shall make progress payments of moneys due under a progress payment certificate within fourteen days after the issue of a progress payment certificate. The amount of the progress payment will be the total gross value approved under the progress payment certificate less:

1. any sum retained as security;
2. any progress payment already made in respect of work covered by the claim for payment;
3. such sum as may be required to cover work to be done during the Defects Liability Period; and
4. any other amount that the Principal may be entitled to deduct.

The payment of moneys under a progress payment certificate shall not be taken as evidence against or as an admission by the Principal that any work specified in any progress payment certificate has been executed in accordance with the Contract but shall be taken to be payment on account only.

# GST

**ABN, GST Registration**

* + 1. The Contractor represents that:

1. it is registered under the *A New Tax System (Australian Business Number) Act 1999 (Cth)* and that the ABN shown in the Schedule is the Contractor’s ABN;
2. it is registered under the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*; and
3. the supply of the Work is a taxable supply.
   * 1. The Contractor acknowledges that should these representations be or become incorrect:
4. the Principal may be obliged under the *Taxation Administration Act 1953 (Cth)* to deduct a withholding from the Contract Sum and will not be obliged to gross up the Contract Sum or make any compensation to the Contractor;
5. if the supply of the work is not a Taxable Supply the Principal is entitled to reduce the Contract Sum by the amount which would have been attributable to GST had the supply been a Taxable Supply.

**Contract Sum Inclusive of GST**

* + 1. The Contract Sum is inclusive of GST and not subject to adjustment except as expressly provided in this Contract.

**Tax Invoices - Recipient Created**

* + 1. The Principal undertakes and represents that:

1. it is registered as a Government Entity under the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*; and
2. its ABN is 72 288 544 143;

and is entitled to issue RCTIs in respect of supplies under this Contract.

* + 1. The Principal must inform the Contractor immediately if it ceases to be registered under the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* or if any undertaking given in the preceding subclause is not performed, or if any representation made in the preceding subclause ceases to be true.
    2. The Contractor undertakes and represents that it is registered under the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and that its ABN is as shown on the Tender Form.
    3. The Contractor must inform the Principal immediately if it ceases to be registered under the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
    4. The Principal may issue an RCTI in respect of any Taxable Supply under this Contract.
    5. The Contractor must not issue any Tax Invoice in respect of any Taxable Supply under this Contract.
    6. The Principal must issue a copy of any RCTI which it issues under or in respect of this Contract to the Contractor and the Principal must retain the original. Each party is responsible for keeping the original or copy of the RCTI in its possession for the period required under the *Taxation Administration Act 1953 (Cth)*.
    7. The Principal must issue an adjustment note to the Contractor in relation to any adjustment event as defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
    8. The Principal must reasonably comply with its obligations under the taxation laws of Australia.
    9. The Principal must not issue a document that would otherwise be a RCTI on or after the date when the Principal or Contractor has failed to comply with any of the requirements of the proposed determination by the Taxation Commissioner.

# Construction Industry Training Levy

The Contractor shall comply with the *Construction Industry Training Fund Act 1993* and pay any levy imposed by that Act in respect of the Works. Prior to the commencement of the work under the Contract the Contractor shall provide written evidence to the Superintendent that the Contractor has either paid the above levy or been exempted from paying it under the Act. Failure to provide such written evidence may result in the Contractor being refused access to the Site and will entitle the Principal to withhold any payment due and payable under the Contract until such time as the Contractor has provided written evidence of payment of the levy.

# Work Health and Safety (WH&S)

The Principal is committed to the provision of a healthy and safe working environment and expects the Contractor to demonstrate the same level of commitment to work health and safety. The Contractor warrants that it (and its employees, agents and sub-contractors) will comply with the *Work Health and Safety Act 2012* and shall ensure that:

1. all workers including professional and supervisory personnel are informed of safe work practices; and
2. policies relating to work health and safety in the workplace are maintained in accordance with the regulations of the *Work Health and Safety Act 2012*.

If the Contractor sub-contracts any part of the work under the Contract, the Contractor shall include the provisions of this clause in the sub-contract.

If requested by the Principal, the Contractor shall:

1. provide evidence satisfactory to the Principal of its capacity to comply with the *Work Health and Safety Act 2012*;
2. provide evidence that its employees, agents and sub-contractors have received appropriate training in and are aware of their legal obligation and responsibilities in relation to work health and safety; and
3. provide the Contractor’s Workcover Registration Number.

If all or part of the work under this Contract is to be provided on the premises of the Principal and under the direction of the Principal, the Contractor shall comply with the Principal’s WH&S policies, procedures and instructions while on the Principal’s premises. If the Contractor becomes aware of any potentially hazardous situation on the premises of the Principal, the Contractor shall immediately bring it to the Principal’s attention for a direction regarding the matter.

If the Principal has additional requirements regarding the preparation and implementation of WH&S systems and plans, these will be detailed in the specification which forms part of the contract documents.

# Workforce Participation in Government Construction Procurement

**General**

* + 1. This clause 30 applies where the Contract Value is more than $150,000.
    2. An objective of this Contract is to increase the employment and training of people in the Target Group and to Upskill people engaged directly in connection with the performance of the Contract.
    3. The Contractor formally declares its intent to work in conjunction with the South Australian Government to meet the South Australian Government’s policy targets by employing and training people from the Target Group, including through on-site work by sub-contractors and Upskilling people engaged directly in connection with the performance of the Contract.
    4. The Contractor is encouraged (but is not required) to meet the obligations set out in the Implementation Guidelines applicable to building and civil construction contracts with a Contract Value of $5,000,000 or more and a contract duration of six months or more.
    5. The Contractor must (and must ensure that its sub-contractors) do not contravene the Privacy Act 1988 (Cth). This may require the Contractor (or its sub-contractor) to obtain a person’s consent prior to disclosing that person’s personal information in connection with this clause.
    6. Without limiting other remedies available to the Principal, the Contractor acknowledges that failure to comply in part or in whole with the requirements of this clause may be a factor that will be taken into account in the award of future contracts by the South Australian Government.

**Definitions**

* + 1. For the purpose of this clause:

“Aboriginal person” means a person who identifies as being Aboriginal and/or is considered by members of his or her community as being Aboriginal. This definition includes Torres Strait Islander people;

“Apprentice/Trainee” means a person (who may be either an apprentice or a trainee) undertaking training in a trade or declared vocation under a training contract as provided for in the *Training and Skills Development Act 2008* whether on a full-time or part-time basis;

“Cadet” means a person undertaking tertiary or post-graduate study linked to paid employment with the Contractor (or its sub-contractor), provided that both the person’s employment and study are linked to the building and civil construction industry (for example, employment and training in civil engineering, structural engineering, mechanic engineering, architecture, surveying or construction management);

“CITB” means the Construction Industry Training Board;

“Contract Value” and “Contract Price” both mean:

1. the lump sum price; or
2. the sum resulting from calculating the products of the rates and corresponding quantities in the Schedule of Rates; or

where both lump sum and schedule of rates apply, the aggregate of the sums referred to in (a) and (b); or

the anticipated Guaranteed Construction Sum, Guaranteed Maximum Price or Target Construction Sum together with management fees and all overheads at the time of acceptance of the tender as agreed by the parties; or

if none of the above is applicable, the amount agreed by the parties as the nominal price being an amount likely to approximate the total moneys likely to be payable to the Contractor under the contract,

excluding GST;

“Implementation Guidelines” means the Workforce Participation in Government Construction Procurement Implementation Guidelines For Contractors and Contracting Agencies from time to time which can be accessed at <http://www.dpti.sa.gov.au/wpgcp>;

“Local Person With Barriers to Employment” means any person residing in South Australia who is unemployed at the time he or she commences employment with the Contractor (or its sub-contractor). A Local Person with Barriers to Employment includes a person who is:

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

A person maintains his or her status as a Local Person with Barriers to Employment for 12 months from the commencement of employment with the Contractor or sub-contractor (as the case may be);

“Target Group” means Apprentices and Trainees, Cadets, Aboriginal people and Local Persons with Barriers to Employment; and

“Upskilling” means training where:

1. the training is:
2. on the list of courses eligible for CITB funding support;
3. provided by an organisation [approved](https://talas.citb.org.au/tlc/pages/training/public/provider/search_results.jsp?providerName=) by the CITB (a list of eligible courses and approved providers is available from the CITB; and
4. is relevant to the employment and skills required for the performance of the Contract; or
5. the training is otherwise approved by CITB as eligible to be included in the Upskilling Component.

Notwithstanding this definition, Upskilling does not include any off-Site training undertaken by Cadets.

# Employment of Ex-Government Employees

The Contractor must not accept the services of any person who, either directly or through an independent contractor or third party, within the last three years, has received a separation package from the South Australian Government under its various schemes where the service may breach the conditions under which the separation package was paid to the former public sector employee.

# Affirmative Action Legislation

This clause applies if the Contractor is a relevant employer within the meaning of the *Equal Opportunity for Women in the Workplace Act 1999 (Cth)* (‘the Act’).

The Contractor must comply with its obligations under the Act and remain compliant until the expiry or termination of the Contract.

The Contractor must take reasonable steps to ensure that any sub-contractors comply with the *Equal Opportunity for Women in the Workplace Act 1999 (Cth)* if that sub-contractor is a relevant employer within the meaning of the *Equal Opportunity for Women in the Workplace Act 1999 (Cth)*.

# Disclosure and Confidentiality

The Contractor agrees to disclosure of this Contract in accordance with Premier and Cabinet Circular PC027, a copy of which is exhibited in either printed or electronic form and either generally to the public, or to a particular person as a result of a specific request.

Nothing in this clause 33 derogates from:

1. the Contractor’s obligations under any other provision of this Contract; or
2. the provisions of the *Freedom of Information Act 1991*.

The Contractor agrees to disclosure of this Contract in accordance with Treasurer’s Instruction 27, a copy of which is exhibited either generally to the public, or to a particular person as a result of a specific request. Nothing in this clause 33 derogates from:

1. the Contractor’s obligations under any other provision of this Contract; or
2. the provisions of the *Freedom of Information Act 1991*.

# Remedies

If the Contractor fails to provide Services to the standard required under this Contract or at all and:

1. notice has been given to the Contractor to rectify the default and it has not been rectified within 14 days of the notice or such other time as permitted by the Principal; or
2. the standard of performance of the Services or lack of performance of the Services by the Contractor is such that the Principal’s efficiency or the proper, safe and cost effective performance of the Principal’s functions is affected;

then the Principal may engage another Contractor to provide the Services or any part of the Services, and in that event:

1. shall not be liable to pay to the Contractor charges associated with the Services to the Principal; and
2. will have the Services carried out at the Contractor’s expense and the cost of the Services incurred shall be a debt due from the Contractor.

# Default or Bankruptcy of Contractor

If the Contractor fails to commence the work under the Contract within the time stated in the Annexure or fails to carry on the work at a reasonable rate or commits any breach of the Contract or intimates an unwillingness or inability to complete the Works or becomes insolvent or bankrupt, or being a company has a receiver appointed to it or goes into liquidation, the Principal may suspend payment under the Contract and may call upon the Contractor, by notice in writing specifying the default, to show cause within a period specified in the notice, why the powers hereinafter contained should not be exercised. Such notice shall not be unreasonably given.

If the Contractor fails within the period specified in the notice in writing to show cause to the satisfaction of the Principal then the Principal, without prejudice to any other rights and remedies that the Principal may possess, may by notice in writing to the Contractor determine the Contract.

In the event of determination, all moneys and security that would otherwise be payable or refundable to the Contractor may be used by the Principal for the purpose of completing the Works.

# Default of Principal

Without prejudice to any other rights and remedies which the Contractor may possess if the Principal fails to make any payment due under the provisions of clause 26 or if the Principal or the servants or agents of the Principal seriously interfere with or obstruct the carrying out of the work under the Contract, then the Contractor may give written notice to the Principal specifying the default and calling on the Principal to show cause within a period specified in the notice, why the powers hereinafter contained should not be exercised. Such notice shall not be unreasonably given.

If the Principal fails within the period specified in the notice in writing to show cause to the reasonable satisfaction of the Contractor then the Contractor may by notice in writing to the Principal suspend the execution of the work, or determine employment under the Contract.

Such notice shall not be unreasonably given.

# Settlement of Disputes

Within 14 days of a dispute arising either party may refer it to the Superintendent. Within 28 days of receiving notice of dispute the Superintendent shall give its written decision to each party. If the Superintendent fails to give the decision, or if either party is dissatisfied with it, the parties shall within 14 days of receipt of the decision, or the date upon which it should have been given, confer at least once to attempt to resolve the dispute.

All unresolved disputes or differences between the Principal and the Contractor arising out of the Contract or concerning the performance or non-performance by either party of their obligations under the Contract whether raised during the execution of the work under the Contract or after the completion of the Works shall be referred to an arbitrator who shall be either:

1. mutually agreed upon by the parties in writing; or
2. in the absence of that agreement one of at least three persons, none of whom shall be an employee of the Principal or the Contractor or have had any association with the work under the Contract, whose names are submitted in writing by the Principal for selection by the Contractor; or
3. in the absence of that selection, by an arbitrator appointed in accordance with the provisions of the laws of South Australia.

The party requesting arbitration shall give notice in writing to the other party within twenty eight days of the dispute or difference arising.

Nothing in this Clause 37 is intended to preclude the parties from agreeing at any time to use any form of arbitration or alternative dispute resolution at their mutual discretion.

Include clause below where an IPP (Standard) Plan was submitted with the Contractor’s tender otherwise use 38 Not used.

# Industry Participation Plan

Industry Participation Plan

The Contractor must implement the Contractor’s Industry Participation Plan submitted as part of its tender and accepted by the Principal, which is attached to the Contract.

Industry Participation Reports

The Contractor must provide an Industry Participation Report (IPP Report) in respect of each Industry Participation Reporting Period within two weeks of the end of each period, in the format set out in the IPP (Standard) Plan Implementation Report template which is attached to the Contract, including all the information indicated in that template

The Industry Participation Reporting Period is:

1. the period between the date of commencement of the Contract and the first anniversary of the date of commencement;
2. each subsequent 12 month period during the term of the Contract;
3. if the date of expiry of the Defects Liability Period is a date other than an anniversary of the date of commencement of the Contract, the period from the conclusion of the preceding Industry Participation Reporting Period until the date of expiry of the Defects Liability Period; and
4. where the term of the Contract is for a period less than 12 months, the term.

Industry Participation Meetings

The Contractor must attend any meeting scheduled by the Industry Participation Advocate during the term of the Contract to review how the Contractor’s Industry Participation Plan is being implemented and advanced, and for this purpose, the Contractor must provide all information reasonably requested by the IPA. The IPA must give the Contractor not less than ten (10) Business Days’ notice of any such meeting.

Failure to Comply

The Contractor’s failure to comply, in whole or in part, with the commitments contained within the Contractor’s Industry Participation Plan may be a factor taken into account in the award of future contracts for the Government of South Australia.

General

In this clause, ‘Industry Participation Advocate’ or ‘IPA’ means the person who from time to time has been appointed to the position of Industry Participation Advocate within the Office of the Industry Advocate, situated within the Department of the Premier and Cabinet, or his/her successor.

# Respectful Behaviours

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

The Contractor agrees that, in performing the Services, the Personnel will at all times:

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

If the Customer believes that Personnel are failing to comply with the behavioural standards specified in this clause, then the Customer may in its absolute discretion:

1. prohibit access by the relevant Personnel to the Customer’s premises; and
2. direct the Contractor to withdraw the relevant Personnel from providing the Services.

# Annexure to MDW-12 Conditions of Contract for Medium Works

This Annexure is to be read in conjunction with the MDW-12 Conditions of Contract for Medium Works and shall form part of the Contract.

|  |  |
| --- | --- |
| 1. The law applicable is that of the State of: | South Australia |
| 1. All payments made under the Contract shall be made at: | Adelaide, South Australia |
| 1. The Contract shall be lump sum and the Contract Sum is: | $ |
| 1. The Principal is: | Minister for Transport and Infrastructure |
| 1. The address of the Principal is: | Level 12, Roma Mitchell House 136 North Terrace ADELAIDE SA 5000 |
| 1. The Principal’s Representative is: | Chief Corporate Officer People and Business Division Department of Planning, Transport and Infrastructure |
| 1. The address of the Principal’s Representative is: | Level 9, Roma Mitchell House 136 North Terrace ADELAIDE SA 5000 |
| 1. The Superintendent is: | Manager Construction Contracting Safety and Service Division Department of Planning, Transport and Infrastructure |
| 1. The address of the Superintendent is: | Level 3, 77 Grenfell Street ADELAIDE SA 5000 |
| 1. The amount of Third Party Liability Insurance for any one occurrence shall be not less than: | $25 million (by Principal) |
| 1. Security shall be: | 3% of the Contract Sum (excl. GST) |
| 1. The Site is: | Address of Site |
| 1. Work to commence: | Date of acceptance of Tender |
| 1. Date for Practical Completion: | Date or Within Number Working Weeks from commencement |
| 1. Extra costs for Delay or Disruption: | Rate is $00,000 (inclusive of GST) per each day  of Extension of Time for Practical Completion |
| 1. The Defects Liability Period for the Works shall be: | Number months (6 months is standard) |
| 1. Direction as to suitability of documents | 7 working days |

# Schedule 1 to Annexure

**PRINCIPAL’S DELEGATIONS**

It is hereby declared that the functions vested in the Principal under the clauses of   
MDW-12: Conditions of Contract for Medium Works listed in this schedule, may alternatively be exercised by the delegate indicated in delegation schedules 1A, 1B, 1C and 1D. Such delegation shall not prevent the Principal from exercising any function.

|  |  |  |  |
| --- | --- | --- | --- |
| **DELEGATION SCHEDULE 1A** | | | |
| **Principal’s Representative, Chief Corporate Officer**  **Department of Planning, Transport and Infrastructure** | | | |
| **Clause** | | **Subclause** | **Function** |
| 7 | Superintendent | 7.1 | Obligations regarding the Superintendent |
| 16 | Security | 16.2 | Recourse to security, convert security into money |
| 18 | Unfixed Plant and Materials | 18.3 | Approve |
| 34 | Remedies | 34.1 | Give notice of time, engage another Contractor |
| 35 | Default or Bankruptcy of Contractor | 35.1 | Suspend payment, notify in writing to show cause |
| 35.2 | Determine the contract |
| 36 | Default of Principal | 36.1 | Show cause |
| 37 | Settlement of Disputes | 37.1 | Confer to resolve dispute |
| 37.2 | Mutually agree, submit in writing |
| 37.3 | Give notice in writing |

|  |  |  |  |
| --- | --- | --- | --- |
| **DELEGATION SCHEDULE 1B** | | | |
| **Principal’s Representative, Manager Building Contracts**  **Department of Planning, Transport and Infrastructure** | | | |
| **Clause** | | **Subclause** | **Function** |
| 11 | Insurance of the Works and Third Party Liability (by Principal) | 11.1 | Effect a policy of insurance |
| 16 | Security | 16.1 | Approve or disapprove |
| 16.2 | Release security |
| 25 | Final Certificate |  | Release security |

| **DELEGATION SCHEDULE 1C** | | | |
| --- | --- | --- | --- |
| **Principal’s Representative, Principal Cost Manager**  **Department of Planning, Transport and Infrastructure** | | | |
| **Clause** | | **Subclause** | **Function** |
| 18 | Unfixed Plant and Materials | 18.4 | Make payment |
| 22 | Delay or Disruption Costs | 22.1 | Pay the Contractor |
| 26 | Payments | 26.1 | Pay the Contractor |
| 26.4 | Make progress payments |
| 27 | GST | 27.3.2 | Inform the Contractor |
| 27.3.5 | Issue an RCTI |
| 27.3.7 | Issue a copy of an RCTI and retain the original |
| 27.3.8 | Issue an adjustment note |
| 28 | Construction Industry Training Levy |  | Withhold payment |

|  |  |  |  |
| --- | --- | --- | --- |
| **DELEGATION SCHEDULE 1D** | | | |
| **Superintendent, Manager Construction Contracting**  **Department of Planning, Transport and Infrastructure** | | | |
| **Clause** | | **Subclause** | **Function** |
| 29 | Work Health and Safety (WH&S) | 29.3 | Request |

**SCHEDULE 2 TO ANNEXURE**

**INSURANCE DETAILS**

|  |  |  |  |
| --- | --- | --- | --- |
| **Item** | | **Policy particulars** | |
| **Insured**:  all for their respective rights, interests and liabilities | | Minister for Transport and Infrastructure as Principal | |
| Project representatives of the Department of Planning, Transport and Infrastructure, other government agencies and client groups | |
| Contractor or Construction Manager | |
| Sub-contractor(s) or Trade Contractor(s). | |
| Professional Service Contractor(s). | |
|  | | | |
| **Insurer**(**s**): | | Contract Works Material Damage - Vero Insurance Limited | |
|  | | General Liability (Third Party Liability) - Liberty International Underwriters. | |
|  | | | |
| **Limit of Liability**:  Material damage to the Works (Contract Works): | |  | |
|  | **Limit of Liability for any one Event at any one Worksite** | Contract Works | $125,000,000 |
| Existing Property | $1,000,000 |
| Constructional Plant and Equipment (limit any one item) | Not covered |
|  | **Sub-limits of Liability: These sub-limits will apply in addition to the above Limits of Liability** | Removal of debris | $12, 500,000 |
| Temporary protection shoring, propping and other costs | $3,750,000 |
| Expediting expenses | 20% of loss up to maximum $7,500,000 |
| Search and locate costs | Not covered |
| Professionals’ fees | $10,000,000 |
| Mitigation expenses | $5,000,000 |
| Plant hire charges | Not covered |
| Claim preparation costs | $500,000 |
| Government and other fees | $2,500,000 |
|  | **Sub-limits of Liability: The following sub-limits are included within the Limits of Liability** | Off-site storage | $5,000,000 |
| Insured Property whilst in transit | $2,000,000 |
| Aggregate Limit of Liability per Event for all Damage in respect of Named Cyclone | $125,000,000 |
|  | | | |
| **Third Party Liability**: | | $25,000,000 for any one occurrence | |
|  | | | |
| **Excess**(**es**) **Material Damage**: | |  | |
|  | **Excess Category** | **Initial Estimated Project Value** | |
|  |  | **$0 to <$10 million** | **$10 to $50 million** |
|  | Each loss except as below | $5,000 | $10,000 |
|  | Testing and Commissioning | $5,000 | $25,000 |
|  | Earthquake, subsidence, collapse, Storm, tempest, Flood, Named Cyclone | $5,000 | $10,000 |
|  | Civil Contracts | $5,000 | $50,000 |
|  | | | |
| **Excess(es)Third Party**: | |  | |
|  | Worker to Worker Liability | $100,000 | |
|  | All other claims | $25,000 (costs inclusive) | |
|  | | | |
| **Insuring**: | |  | |
| (a) | Material Damage to the Works includes all contracts declared to the Insurer(s) including the whole of the Contract Works, temporary works, removal of debris and/or expediting expenses and all as defined in the Insurance Policy, but excluding: | loss of use, consequential loss, penalties for non-completion or delay; | |
| wear and tear; | |
| defective materials, workmanship, design, plan or specification; | |
| aircraft or watercraft or equipment mounted thereon; | |
| inventory shortage; | |
| money; | |
| transit outside Australia; | |
| electronic data; | |
| breakdown of construction plant | |
| unsealed roads; | |
| nuclear risks; | |
| war and terrorism | |
| dewatering | |
| overtopping of coffer dams | |
| haul roads and borrow pits | |
| pipelines | |
| directional drilling | |
| piling and retaining wall works in respect of:   * rectifying or replacing piles or retaining wall elements which have become misplaced or jammed or are lost or abandoned or damaged during driving or extraction or have become obstructed by jammed or damaged piling equipment or casings; * rectifying or disconnecting declutched sheet piles; * rectifying any leakage or infiltration of material of any kind; * filling voids or replacing lost bentonite; * pile or foundation elements having failed to pass a load bearing test or otherwise not having achieved the design load bearing capacity or that cannot be driven to the required depth; * reinstating profiles or dimensions. | |
| (b) | Third Party Liability is legal liability of the contracting parties against the costs of liability to third parties arising from the Contract, but excluding: | insurance of workers compensation | |
| industrial awards | |
| aircraft and watercraft | |
| registered vehicles | |
| loss of used contract works | |
| damage to products and work performed | |
| professional liability | |
| pollution and contamination | |
| fines and penalties | |
| advertising injury | |
| property owned and damage to the works | |
| products liability | |
| nuclear risk | |
| war and terrorism | |
| mould | |
| asbestos liability | |
|  | | ‘Asbestos’ means;   1. that group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysolite, Crocidolite and Tremolite; 2. that group of man made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres; and 3. includes Asbestos products and products containing Asbestos. | |