

MW21 (as Amended)

General Conditions of Contract

Spa

#### Formal Instrument of Agreement

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| **MW21 (as Amended) General Conditions of Contract** |  |
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**Dated Day of 2024**

**Formal Instrument of Agreement**

This Contract is made between:

**MINISTER FOR INFRASTRUCTURE AND TRANSPORT [ABN 92 366 288 135], a body corporate established pursuant to the *Administrative Arrangements Act 1994* (SA)**

**COMMISSIONER OF HIGHWAYS [ABN 45 751 448 902], a body corporate established pursuant to the *Highways Act 1929* (SA)**

**RAIL COMMISSIONER [ABN 23 251 040 528], a body corporate established pursuant to the *Rail Commissioner Act 2009* (SA)**

***(“The Principal”)***

**and:**

**[insert] [ACN insert] of [Registered Address]**

***(“The Contractor”)***

**Contract Name: [insert]**

**Contract No: [insert]**

**The Parties agree:**

1. The Contract comprises this Formal Instrument of Agreement, together with all the other documents comprising the Contract, as defined in the attached MW21 General Conditions of Contract.
2. The Contractor must:
	1. perform the Contractor’s design obligations specified in the Contract;
	2. construct the Works in accordance with the Contract; and
	3. perform and observe all of its other obligations under the Contract.
3. The Principal must:

3.1 pay the Contractor the Contract Price for its performance, in accordance with
and subject to the Contract; and

3.2 perform and observe all of its other obligations under the Contract.

1. Words not otherwise defined in this Contract have the meanings given to them in the attached MW21 General Conditions of Contract.

**Execution**

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

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## MW21 General Conditions of Contract

**ACKNOWLEDGMENT**

This is an amended form of the New South Wales Government MW21 General Conditions of Contract

### Definitions and Interpretation

### Definitions

#### 1.1 Authorised Person

The person stated in Contract Information - **Item 1** who is appointed by the Principal to act with its full authority in all matters relating to the Contract and any delegates. The Authorised Person may delegate any of its contractual functions and powers to others by written notice to the Contractor.

#### 1.1A Arrangement

Means:

* any agreement or understanding (whether written or unwritten); or
* any practice of acquiescing to a direction or request of a third party in respect of the Contract or the Works, where compliance with the direction or request is not required by law or this Agreement and is not otherwise in the best interests of the Project and lawful.

#### 1.2 Business Day

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

#### 1.3 CITB Levy

The levy imposed by the *Construction Industry Training Fund Act 1993* (SA).

#### 1.4 Completion

The state of the work under the Contract or any Milestone when:

1. the Principal’s Requirements have been completed;
2. it is capable of use for the purpose stated in the Contract Information;
3. it has passed all required tests and is free from any known Defects;
4. the Contractor has provided all the required documents; and
5. the Contractor has made good the Site and surroundings.

#### 1.5 Completion Undertaking

The Undertaking required under **clause 13.10**, for the percentage of the Contract Price (at the Date of Contract) stated in Contract Information - **Item 16**.

#### 1.6 Contract

The agreement between the parties for the carrying out of the work under the Contract, as set out in the Contract Documents and accepted in writing by the Principal.

#### 1.7 Contractor

The entity specified as the Contractor in the Formal Instrument of Agreement, being the entity that is to carry out the work under the Contract.

1.8 **Contractor’s Representative**

The person stated in Contract Information - **Item 19** who is appointed by the Contractor to act with its full authority in all matters relating to the Contract.

#### 1.9 Contract Documents

1. Formal Instrument of Agreement;
2. these MW21 General Conditions of Contract;
3. the annexed MW21 Contract Information;
4. the annexed Schedules; and
5. any variations to the documents in (a) to (d) agreed to by the parties in writing or made under the Contract.

#### 1.10 Contract Price

1. where the Principal accepted only a lump sum, the lump sum; or

(b) where the Principal accepted rates, the sum of the products of the quantity and the relevant rate for each item in the schedule of rates, plus any lump sums in the schedule of rates.

as stated in Contract Information - **Item 5** and adjusted in accordance with the **Contract**.

#### 1.11 Date of Contract

The date specified on the Formal Instrument of Agreement and in the absence of a specified date, the date on which the last of the Parties executes the Formal Instrument of Agreement.

#### 1.12 Day

A calendar day.

#### 1.12A Declared Organisation

Has the meaning given in section 3 of the *Serious and Organised Crime (Control) Act 2008* (SA).

#### 1.13 Defect

Any aspect of the work under the Contract that does not conform with the Contract.

#### 1.14 Direct Costs

Costs incurred by the Contractor excluding costs of supervision, site establishment, general tools, administration, overheads, fees, delay, disruption and profit.

#### 1.15 Encumbrance

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

#### 1.16 Formal Instrument of Agreement

The Formal Instrument of Agreement to which these MW21 General Conditions of Contract are attached.

#### 1.17 ICAC Act

The *Independent Commissioner Against Corruption Act 2012* (SA).

#### 1.17A Irrelevant Factor

Any or all of the following, none of which are mutually exclusive:

* any Arrangement with a third party (other than an Arrangement expressly permitted by this Contract or required by law) which, whether intentionally or not, limits the range of persons or entities that the Contractor may select or engage as a Subcontractor, Consultant or Supplier based on criteria unrelated to price, capability or capacity to deliver the Works; and
* any Arrangement with a third party (other than an Arrangement expressly permitted by this Contract or required by law) which, whether intentionally or not, limits the selection or engagement of persons or entities as a Subcontractor, Consultant or Supplier based on union membership or affiliation, compliance with union requirements, or the industrial instrument that covers the person or entity.

#### 1.18 Materials

Includes materials, plant, equipment and other goods.

#### 1.19 Milestone

A part of the work under the Contract that is specified as a Milestone in Contract Information - **Item 3**.

#### 1.20 Notifiable Incident

Has the meaning given to it in the WHS Act.

#### 1.21 Parties

The Principal and the Contractor.

#### 1.22 Post Completion Period(s)

The period(s) stated in Contract Information - **Item 4**.

#### 1.23 Post Completion Undertaking

The Undertaking required under **clause 13.10**, for the percentage of the Contract Price (at the Date of Contract) stated in Contract Information - **Item 16**.

#### 1.24 Prescribed Heads of Liability

Any liability for:

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

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

#### 1.25 Principal

The entity specified as the Principal in the Formal Instrument of Agreement.

#### 1.26 Principal Contractor

Has the meaning given to it in the WHS Regulations.

#### 1.27 Principal’s Controlled Site

Any site controlled by the Principal or under the direction of the Principal.

#### 1.28 Principal’s Requirements

The Principal’s requirements described in Schedule 8.

#### 1.29 Provisional Allowance

An amount included in the Contract Price for work for which payment will be made as a Provisional Sum or a Provisional Quantity.

#### 1.30 Provisional Quantity

An amount included in the Contract Price, based on a rate tendered for a provisional item of work.

#### 1.31 Provisional Sum

An amount included in the Contract Price, which is identified as a provision for the work specified in the Contract against that Provisional Sum.

#### 1.32 Senior Executives

The persons stated in Contract Information - **Item 6**.

#### 1.33 Separable Portion

Each of the portions of the Works set out in Schedule 9 and any other portion of the Works directed by the Principal to be a separable portion pursuant to **clause 2.11**.

#### 1.34 Site

The lands and other places made available to the Contractor by the Principal for the purpose of the Contract.

#### 1.35 Site Conditions

The physical conditions on, about or below the Site, excluding conditions resulting from weather.

#### 1.35A Statutory Requirements

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

#### 1.36 SoPA

The version of the *Building and Construction Industry Security of Payment Act 2009* (SA) current at the date the Contract commenced, except where otherwise required by the relevant Regulations.

#### 1.37 Undertaking

An unconditional undertaking to pay on demand, in the relevant form of Schedule 1 (Unconditional Undertaking).

#### 1.38 Variation

Any change to the Works including additions, increases, omissions and reductions to and from the Works instructed or accepted in writing by the Principal, but not including such changes in respect of the development by the Contractor of the design for the Works in accordance with the requirements of the Contract. A Variation shall not invalidate the Contract.

#### 1.39 WHS

Work health and safety.

#### 1.40 WHS Act

*Work Health and Safety Act 2012* (SA).

#### 1.41 WHS Law

All workplace, health and safety related laws, codes of practice, other compliance codes, directions on safety or notices issued by any relevant authority and standards where any part of the Works is being performed and includes the WHS Act, the WHS Regulations and any codes of practice in force under the WHS Act.

#### 1.42 WHS Regulations

*Work Health and Safety Regulations 2012* (SA).

#### 1.43 Works

The works to be designed and constructed under the Contract.

#### 1.44 Workplace

Has the meaning given to it in the WHS Act.

### Interpretation

**1.45** In this Contract (unless the context requires otherwise):

1. 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;
2. a word in the singular includes the plural and a word in the plural includes the singular;
3. a reference to two or more persons is a reference to those persons jointly and severally;
4. a reference to dollars is to Australian dollars;
5. a reference to the Contract is a reference to the Contract as amended, varied, novated or substituted from time to time;
6. a reference to a party includes that party’s administrators, successors and permitted assigns;
7. a reference to the Contractor includes its officers, employees, agents and contractors; and
8. in resolving inconsistencies in this Contract, this Contract will be construed by reference to the following order of priority:

i the Formal Instrument of Agreement;

ii these MW21 General Conditions of Contract;

iii the annexed MW21 Contract Information;

iv Schedule 8 – Principal’s Requirements and

v the remaining annexed Schedules.

### 1A SA Government Policies and Requirements

**Compliance with Laws**

* + 1. The Contractor must comply with the laws in force in South Australia in performing its obligations under this Contract.

**Licences and Registrations**

* + 1. The Contractor must obtain and hold, and ensure that its subcontractors, agents and employees obtain and hold, all licences, registrations, permits, approvals and certificates required by law in order to carry out the Works.

**SA Government Requirements**

* + 1. The Principal is a public authority for the purposes of theICAC Act. For the term of this Contract the Contractor is considered a public officer under the ICAC Act and must comply with the ICAC Act and the directions and guidelines published by the Independent Commissioner Against Corruption.
		2. The Contractor warrants, represents and undertakes to the Principal that it will 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 issued under the *Public Sector Act 2009* (SA).

**Construction Industry Training Fund**

* + 1. Payment of the CITB Levy (if applicable) shall be the responsibility of the Contractor. Proof of payment of the CITB Levy may be required prior to the first or any progress payment being made under this Contract.

**Respectful Behaviour**

* + 1. The Contractor acknowledges the Principal’s zero tolerance towards gender based violence, discrimination and all forms of unacceptable behaviours in the workplace and the broader community.
		2. The Contractor agrees that, in performing the Works, the Contractor’s personnel will at all times:
			1. act in a manner that is non-threatening, courteous, and respectful; and
			2. comply with any instructions, policies, procedures or guidelines issued by the Principal regarding acceptable workplace behaviour.
		3. If the Principal believes that the Contractor’s personnel are failing to comply with the behavioural standards specified in this clause, then the Principal may in its absolute discretion:
			1. prohibit access by the relevant Contractor’s personnel to the Site and/or the Principal's Controlled Site; and
			2. direct the Contractor to withdraw the relevant Contractor’s personnel from providing the Works.

**Disclosure**

* + 1. The Contractor agrees to disclosure of this Contract in accordance with Premier and Cabinet Circular PC027 either generally to the public, or to a particular person as a result of a specific request.
		2. Nothing in this clause 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* (SA).

 **Media**

* + 1. The Contractor must not disclose any information concerning the Works or this Contract for distribution through any communications media without the Principal's prior written approval (which may be withheld at the Principal's discretion). The Contractor shall refer to the Principal any enquiries from any media concerning the Works or this Contract.

**Co-operation**

* + 1. The parties must do all they reasonably can to co-operate in all matters relating to this Contract, but their rights and responsibilities under this Contract (or otherwise) remain unchanged unless the parties agree in writing to change them.

**Information documents**

* + 1. Where a document (or part thereof) is designated as an “information document” or “for information only”, the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of such documents and the Contractor acknowledges that it has taken this into account.
		2. The Principal may have carried out investigations for the primary purposes of project planning, estimating, feasibility studies and obtaining statutory approvals. Any such investigation or resulting documentation:
			1. has not been undertaken for the purpose of determining methods of providing the Works;
			2. is deemed to be an "information document" in accordance with this clause;
		3. The Contractor warrants that it has not relied on any such interpretations, opinions or documentation. The use of any such information, opinions and documents is entirely at the Contractor's risk.

**Waiver**

* + 1. A waiver of a right under this Contract:
			1. must be in writing signed by the party giving the waiver;
			2. is effective only to the extent set out in the written waiver.
		2. The failure of either party to enforce at any time any of the provisions of this Contract shall not be interpreted as a waiver of that provision. A waiver by either party in respect of a breach of a provision of this Contract by the other party is not a waiver in respect of any other breach of that or any other provision of this Contract.

**Novation**

* + 1. The Contractor must, at its own cost, within 5 Business Days of a request from the Principal, enter into a deed of novation in a form to be agreed by the Principal which novates this Contract from the Principal to another party.
		2. The Contractor must not assign or purport to novate any of its rights or obligations under this Contract without the written consent of the Principal.

**Contractor as Trustee**

* + 1. If the Contractor is acting as trustee of a trust, then in relation to this Contract:
			1. the Contractor is liable both personally and in its capacity as a trustee of that trust;
			2. it must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust (but, for the avoidance of doubt, may apply its right of indemnity out of the assets of the trust to any of its liabilities including those arising in relation to this Contract);
			3. it must not retire, resign nor by act or omission effect or facilitate a change to its status as the sole trustee of that trust; and
			4. it represents and warrants that:
				1. such trust has been duly established and currently exists;
				2. it is the duly appointed, current and only trustee of that trust;
				3. as trustee it has the power to enter into and perform its obligations under this Contract;
				4. it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;
				5. it either has no conflict of interest affecting it as trustee (and/or its directors, if any) or such conflict is otherwise overcome by the terms of the relevant trust agreement; and
				6. no breach of the relevant trust agreement exists or would arise.

**Fraud Control**

* + 1. The Contractor must proactively take all necessary:
			1. measures to prevent, detect, investigate and mitigate the effect of any fraud that may occur, is occurring or has occurred in connection with this Contract or any Subcontract, including all measures or corrective action directed by the Principal; and
			2. measures to ensure that its selection or engagement of Subcontractors or Suppliers is not influenced by an Irrelevant Factor.
		2. The obligation under clause 1A(u) includes taking all necessary measures to prevent, detect and investigate any fraud which has or may be committed by any person employed or engaged by the Contractor.
		3. If the Contractor knows or suspects that any fraud is occurring or has occurred it must immediately provide a written notice to the Principal:
			1. the known or suspected fraud and how it occurred;
			2. the actions the Contractor will take under clause 1A(u) including actions necessary to ensure that the fraud does not occur again; and
			3. such further information and assistance required by the Principal, or any person authorised by the Principal.
		4. Clause 1A(u) to 1A(w) (inclusive) do not limit the operation of clause 1A(c).

**Anti Corruption**

* + 1. Without limiting clause 1A(c), within 10 Business Days after a request by the Principal, the Contractor must provide the Principal with written confirmation that, to the best of the Contractor’s knowledge and based on reasonable enquiries undertaken by it, the Contractor and all persons employed or engaged by the Contractor are compliant with all Statutory Requirements (including foreign anti-corruption legislation) regarding the offering of unlawful inducements whether in Australia or otherwise in connection with the performance of the Contract and any Subcontract.
		2. The Contractor:
			1. warrants that it has not as at the Date of Contract entered; and
			2. will not at any time enter,

into any Arrangement in respect of the Contract or the Works that is influenced by an Irrelevant Factor.

* + 1. The Contractor must take reasonable steps to prevent against engaging any Subcontractor or Supplier whose owner, officer(s) of employee(s) are members of, associates of, or associated with a member of, a Declared Organisation.
		2. The Contractor must take all reasonable steps to ensure that its Subcontractors and Suppliers have not, and will not at any stage, enter into any Arrangement in respect of the Contract or the Works that would contravene clause 1A(z) or 1A(aa) if the Arrangement was entered into by the Contractor.
		3. Without limiting any other provision of this Agreement, if:
			1. the Contractor breaches an obligation under clause 1A(z), 1A(aa) or 1A(bb); or
			2. the Principal considers that the Contractor has engaged a Subcontractor or Supplier whose owner, officer(s) or employee(s) are members of, associates of, or associated with a member of, a Declared Organisation,

the Principal may issue a written notice to the Contractor which must specify:

* + - 1. the particulars of the alleged breach or engagement;
			2. the reasonable requirements of the Principal to overcome the alleged breach or engagement (which may include exclusion of the relevant Subcontractor or Supplier personnel from Site or termination of the Arrangement); and
			3. the date by which the Contractor must comply with those requirements (which must allow for a reasonable period of time to comply with the Principal’s requirement in the circumstances),

and the Contractor must comply with such written notice.

### 1B Industry Participation Policy

* + 1. This **Clause 1B** only applies if the Contractor is required to implement an Industry Participation Plan, as specified in Contract Information - **Item 17B**.
		2. Agencies and private parties contracting to the Government of South Australia are required to comply with the South Australian Industry Participation Policy (**SAIPP**) and the supporting procedural and reporting requirements.
		3. The Contractor must implement the Contractor’s Standard or Tailored Industry Participation Plan (**SIPP** or **TIPP**) approved by the Industry Advocate in the annexed Schedule 4 – Industry Participation Plan.
		4. The Contractor must provide an Industry Participation Report (**IPP Report**) in respect of each Industry Participation Reporting Period to the IA within two weeks of the end of each period.
		5. An Industry Participation Reporting Period is:
			1. the period between the Date of Contract and the date six (6) months after the Date of Contract;
			2. each subsequent 6 month period during the term of the Contract;
			3. if Completion of the Works occurs on a date other than an anniversary of the Date of Contract or an anniversary of the date in **clause 1(e)ii**, the period from the conclusion of the preceding Industry Participation Reporting Period until the date of Completion of the Works;
			4. for short-term projects of strategic importance to the State, the period notified by IA to the Contractor in writing; and
			5. where the term of the Contract is for a period less than 6 months, the term of the Contract.
		6. The Contractor’s Representative must attend any meeting scheduled by the IA during the term of the Contractto review how the SIPP or TIPP is being implemented and advanced, and for this purpose, the Contractormust provide all information reasonably requested by the IA. The IA must give the Contractor not less than ten (10) Business Days’ notice of any such meeting.
		7. The IA may, by written notice require that the Contractor within a reasonable time specified in the notice, provide information or documents to enable the IA to assess the Contractor’s compliance with this **Clause 1B**.
		8. If the IA reasonably believes that the Contractor is not complying with the requirements of this **Clause 1B**, the IA may by notice in writing direct that the Contractor comply with those requirements.
		9. Upon receipt of the notice, if the Contractor is of the opinion that its noncompliance is reasonable and justified, the Contractor may provide a response to the IA outlining that opinion and the reasons for it.
		10. The Contractor’s failure to comply, in whole or in part, with the commitments contained within the SIPP or TIPP will be a factor taken into account in the award of future contracts for the Government of South Australia.
		11. In this clause, “Industry Advocate” or “IA” means the person from time to time appointed by the Governor to the position of Industry Advocate under section 5 of the *Industry Advocate Act 2017* (SA).

### The Contract

2.1The Contract Documents are mutually explanatory, and anything contained in one document but not in another shall be treated as if contained in all.

Headings, arrows and guidance notes are for convenience only and do not affect interpretation.

2.2 If the Contractor finds any error, discrepancy or ambiguity in the Contract Documents, then the Contractor is to inform the Principal in writing before commencing the affected work and follow any instructions given by the Principal.

2.3 The Principal may give an instruction in relation to the Contract. The Contractor is to comply with the instruction within the time stated in the instruction or, if no time is stated, within a reasonable time. All instructions by the Principal must be in writing or, if given orally, must be confirmed in writing by the Principal, as soon as practicable.

2.4 All notices must be in writing. Notices are to be sent to:

(a) in the case of the Principal, to the Authorised Person; and

(b) in the case of the Contractor, to the Contractor’s Representative..

A copy of a notice sent to a postal address must also be emailed to the addressee.

2.5 If the Contractor is a corporation (not being a company with its shares listed on any Stock Exchange in Australia), any change in the beneficial ownership of 50% or more of the voting shares in the corporation or any change in the effective control of the corporation, is deemed to be an assignment of this Contract requiring the Principal’s prior written approval.

2.6 The Contractor is solely responsible for all subcontractors and for their acts and omissions. Subcontracting does not relieve the Contractor of its responsibility and liability under this Contract.

The Contractor must not:

(a) subcontract all the work under the Contract; or

(b) enter into a single subcontract for the majority of the work under the Contract without first obtaining the Principal’s written consent.

2.7 During claim and dispute resolution procedures undertaken under **Clauses 15** and **16**, the parties must continue to perform their obligations under the Contract.

2.8 This Contract is governed by the laws of South Australia. The courts of the State of South Australia have exclusive jurisdiction in connection with this Contract.

2.9 Without limiting the survival of any clause by operation of law, **Clauses 1A(i)-(k), 3.7, 5.4, 14 and 15** and each indemnity and other term capable of taking effect after the expiration or termination of this Contract, remains in force after the expiration or termination of this Contract.

2.10 The interpretation and application of:

* + - * 1. Completion;
				2. the date for Completion;
				3. the date of actual Completion; and
				4. any other items specified within a Separable Portion,

 and **clauses 11, 12,** and **14** apply separately to each Separable Portion and references to the Works and the work in connection with the Contract means those parts of the Works or the work in connection with the Contract comprised in the relevant Separable Portion.

2.11 Additional Separable Portions may be directed by the Authorised Person from time to time who will clearly identify (acting reasonably), for each Separable Portion, the:

1. scope of Works;
2. the date for Completion; and
3. rate of liquidated damages.

### Design and Construction

3.1 The allocation of design responsibilities between the parties shall be as stated in Contract Information - **Item 7** and will be one of the following alternatives:

1. the Contractor must carry out all design necessary in connection with the Works; or

2. the Contractor must complete the design provided by the Principal and carry out all other design necessary in connection with the Works.

3. the Principal must carry out all design necessary in connection with the Works.

3.2 Where the Contractor is required to complete the design provided by the Principal, the Contractor is not to depart from the Principal’s initial design except to the extent stated in the Contract Information - **Item 7** - or unless instructed by the Principal.

3.3 Except for where it is stated in Contract Information - **Item 7** that the Principal must carry out all the design works, the Contractor has sole responsibility for the design including any design work undertaken by or on behalf of the Principal. The Principal relies on the Contractor’s care, knowledge and skill in carrying out this responsibility.

3.4 The completed design is to conform with the Contract and be fit for the purpose of the Works stated in Contract Information - **Item 2**.

3.5 The Contractor is to progressively submit the completed design, comprising drawings, specifications, calculations and any statutory certificates required, to the Principal in accordance with Contract Information - **Item 8**.

3.6 The Principal is not bound to check the completed design for errors, omissions or conformance with the Contract. Nothing the Principal does or omits to do in connection with the completed design relieves the Contractor of the Contractor’s obligations and liabilities under the Contract.

The Principal is not liable to the Contractor for any claim whatsoever that relates to the Principal not detecting or notifying the Contractor of any error, omission or non-conformance with the Contract in the completed design.

3.7 All intellectual property and moral rights in any design created specifically for the Contract shall vest in the Principal upon their creation.

The Contractor grants to the Principal an unconditional and irrevocable licence to use any other design provided by or for the Contractor, to the extent necessary for the Works, including any subsequent repairs, maintenance or servicing (including the supply of replacement parts) or additions or alterations to the Works.

3.8 The Contractor is to construct the Works in accordance with the Principal’s Requirements, and make good the Site and surroundings.

3.10 Notwithstanding any other provision in this **Clause 3**, the parties acknowledge that the Contractor will have some design responsibility, including (without limitation) design coordination, management, constructability, and shop detailing.

3.11 The Contractor is to provide minor items not included in the design that are needed to satisfactorily complete the Works.

3.12 The Contractor is to carry out work that is the subject of a Provisional Allowance only as instructed by the Principal and under the terms specified in the instruction.

If the Principal requests the Contractor to submit a price for work that is the subject of a Provisional Sum, then the Contractor is to comply within 14 Days after the request.

3.13 The Contractor must set out and construct the Works in accordance with the Contract.

3.14 The Contractor must give the Principal a copy of a survey showing the Works as constructed on the Site, including the relationship of the Works to any relevant property boundaries, easements (including any right of way) and improvements on the Site. The survey must be carried out by a registered surveyor or other surveyor to whom the Principal has no objection.

3.15 The Contractor must perform all incidental and related work which is reasonably contemplated to arise from the description of the Works in the Principal’s Requirements at no additional cost to the Principal.

### Work, Health and Safety and Care of People, Property and the Environment

* 1. From the time access to any part of the Site is given to the Contractor until the date of Completion of the Works, the Contractor is responsible for the care of, and is to make good, at the Contractor’s expense, any loss or damage which occurs to:

(a) the Works;

(b) the construction plant; and

(c) things entrusted to the Contractor by the Principal for the purpose of carrying out the work under the Contract.

In carrying out the work under the Contract, the Contractor is to minimise inconvenience to the public and others.

The Contractor is liable for any loss or damage caused by the Contractor whilst making good Defects.

* 1. The Contractor indemnifies the Principal against any action, claim, demand, expense, loss, cost (including legal costs), penalty, fine or other liability (including in tort) arising from or in connection with:

(a) injury, accident, safety related incident or death;

(b) harm to the environment;

(c) where the Contractor is appointed as Principal Contractor under **clause 4.13**, any failure by the Contractor to discharge the duties of a principal contractor under the WHS Regulations or under the Contract;

(d) breach of intellectual property rights in relation to material provided by or for the Contractor; and

(e) loss of, or damage to, property of the Principal or others,

arising out of the work under the Contract.

The Contractor’s liability to indemnify the Principal is reduced to the extent that an act or omission of the Principal has contributed to the injury, loss or damage.

* 1. The Contractor is to set reasonable standards of conduct and ensure they are met by persons engaged in carrying out the work under the Contract.
	2. The Principal may instruct the Contractor to remove a person from the Site and surroundings for failing to meet reasonable standards of conduct and the Contractor must comply with this instruction.
	3. Nothing in **Clause 4** relieves the Principal of liability for acts and omissions of the Principal.
	4. If:

(a) action is required to avoid injury, death, harm to the environment or loss of, or damage to property, and the Contractor does not take the necessary action; or

(b) urgent action is required,

then the Principal may take the action, without relieving the Contractor of its obligations or liabilities.

The Principal’s costs in relation to any such action, as certified by the Principal, are a debt due and payable by the Contractor to the Principal.

* 1. The Principal is committed to the provision of a safe working environment and expects the Contractor to apply the same commitment to WHS. The Contractor must:

(a) comply with the WHS Law as varied from time to time and the requirements of the Contract;

(b) comply with (and ensure that its employees, agents, subcontractors and representatives comply) any reasonable instruction issued by the Principal in relation to WHS;

(c) if requested by the Principal, provide evidence satisfactory to the Principal of its compliance with the WHS Law (including the provision of any Safe Work Method Statements required by the WHS Regulations);

(d) provide the Contractor’s ReturntoWorkSA registration number to the Principal;

(e) provide the Principal with a copy of its WHS management plan (as defined in the WHS Regulations) prior to commencing the Works, and

(f) without derogating from the generality of the preceding provisions, provide all things and take all reasonably practicable measures to protect people and property in connection with the Works, including erection, maintenance and removal of barricades and signs where necessary for the safety of the public and others.

For the purpose of this clause “reasonably practicable” has the meaning given to it in the WHS Act.

* 1. The Contractor must comply with the requirements of the document entitled “Master Specification PC -WHS1 Work Health and Safety”.
	2. Where the Contractor has not been appointed as the Principal Contractor and they are working on a Principal Controlled Site, then the Contractor must comply with the Principal’s WHS Management System.
	3. Without limiting any other provision of this Contract, the Contractor must immediately notify the Principal of:
1. all work health and safety incidents arising during the performance of the Works; and
2. any potentially hazardous situation on or at the Principal’s Controlled Site of which the Contractor becomes aware. In the event that the Contractor notifies the Principal of a potentially hazardous situation at the Principal’s Controlled Site, the Principal may determine, in its absolute discretion, to give a direction to the Contractor in respect of such hazardous situation.
	1. The Contractor must comply with its obligations under the WHS Law to consult, cooperate and coordinate activities with the Principal, including where the parties have a work health and safety duty in relation to the same matter.
	2. If Contract Information – **Item 17A** specifies that the Contractor is appointed as Principal Contractor, then the Contractor:

(a) is engaged as Principal Contractor for the Works in accordance with regulation 293 of the WHS Regulations and the Contractor accepts that engagement;

(b) is authorised to have management and control of the Site necessary to enable it to discharge its obligations as Principal Contractor and of a person having management and control of a workplace; and

(c) must perform the duties of:

* 1. a Principal Contractor, as specified in the WHS Regulations; and
	2. a person with management or control of a Workplace as specified in the WHS Law; and

(d) must notify the Principal promptly of any matter affecting work health and safety where consultation with the Principal is necessary,

and the Contractor's engagement as Principal Contractor will continue until Completion, unless earlier revoked by the Principal.

* 1. If the Contractor fails to comply with any of its obligations in **clause 4.12**, the Principal may:

(a) have the Principal Contractor obligations carried out by the Principal or by others and the cost incurred by the Principal in having those obligations carried out will be a debt due from the Contractor to the Principal; or

(b) do one or more of the following:

* + - 1. initiate discussions with the Contractor regarding its safety culture, and make recommendations that the Contractor implements improvements;
			2. issue a formal notice requesting that the Contractor give reasons why the Principal should not take further action for any practice, process or procedure used in performance of the work under the Contract, and if the Principal is not satisfied with the response, direct the Contractor to remedy that practice, process or procedure immediately;
			3. conduct an Audit pursuant to **clause 14.15(c)**;
			4. direct the Contractor to change or cease any practice, process or procedure used in performing the work under the Contract immediately if it creates a risk to health or safety;
			5. direct that all or part of the work under the Contract is suspended immediately pending satisfactory compliance; or
			6. terminate this contract immediately by giving the Contractor notice.

The Contractor must promptly comply with any direction under this **Clause 4.13(b)** at no additional cost to the Principal.

Failure by the Contractor to comply with a direction under **Clause 4.13(b)** will be deemed a substantial breach of this Contract. In this event, the Principal may, notwithstanding **Clause 17.1**, terminate this Contract immediately by giving the Contractor notice.

* 1. **SAFETY EXPECTATIONS AND SAFETY AUDITS**

(a) **General**

For the purposes of this **Clause 4.14** **Expectations** means the requirements set out in the document entitled “Minimum Construction Safety Expectations” available at <https://www.dit.sa.gov.au/contractor_documents/whs> (as amended from time to time by the Principal).

The document described in this **Clause 4.14(a)** is subject to change during performance of this Contract.

(b) **Principal’s Minimum Construction Safety Expectations**

The Contractor must meet or exceed the Expectations. The Expectations operate in addition to the WHS Act and do not vary any rights or obligations under the WHS Act or any other applicable law. In the event of any inconsistency between the Expectations and any applicable law, the applicable law will prevail to the extent of that inconsistency.

(c) **Safety Audits**

* + - 1. The Principal may conduct a work, health and safety audit (**Audit**) at any time during performance of this Contract. This could include an audit of the Contractor’s:
1. performance against any of the Expectations;
2. implementation of and compliance with the WHS Management Plan; and/or
3. compliance with its work health and safety obligations under this Contract and/or the WHS Law.
	* + 1. To facilitate an Audit, the Contractor must, at no additional cost to the Principal:
4. give the Principal or its agents full and immediate access to the Site without prior notice being required;
5. allow the Principal and/or its agents to inspect the performance of the work under the Contract;
6. provide access to or copies of any documents or records related to the safety of the work under the Contract or as may be necessary to establish the Contractor’s compliance with this **clause 4** and allow copies to be made of those documents or records; and
7. promptly comply with all reasonable requests from the Principal or its agents arising from the Audit.
	* + 1. During an Audit, the Principal may use any method it considers appropriate to document evidence of compliance.
			2. If, following an Audit, the Principal determines that there has been any non-compliance with an applicable law or this Contract or that the Contractor’s performance against any of the Expectations is unsatisfactory, then the Principal may do one or more of the following:
8. initiate discussions with the Contractor regarding its safety culture, and make recommendations that the Contractor implements improvements;
9. issue a formal notice requesting that the Contractor give reasons why the Principal should not take further action for any practice, process or procedure used in performance of the work under the Contract, and if the Principal is not satisfied with the response, direct the Contractor to remedy that practice, process or procedure immediately;
10. perform subsequent Audits;
11. direct the Contractor to change or cease any practice, process or procedure used in performing the work under the Contract immediately if it creates a risk to health or safety;
12. direct that all or part of the work under the Contract is suspended immediately pending satisfactory compliance with the Expectations; or
13. terminate this contract immediately by giving the Contractor notice.

The Contractor must promptly comply with any direction under this **Clause 4.15(c)(iv**) at no additional cost to the Principal.

* + - 1. Failure by the Contractor to comply with a direction under **Clause 4.14(c)(iv)(B)**, **4.14(c)(iv)(D)** or **4.14(c)(iv)(E)** or repeated unsatisfactory performance by the Contractor against any of the Expectations will be deemed a substantial breach of this Contract. In this event, the Principal may, notwithstanding **Clause 17.1**, terminate this Contract immediately by giving the Contractor notice.

### Insurance

5.1Before commencing any work in connection with the Contract, the Contractor must hold workers compensation insurance as required by law. The Contractor must also ensure that every subcontractor, before commencing any work in connection with the Contract, holds equivalent insurance where applicable.

**Principal**

5.2 If Contract Information - **Item 9** states that the Principal has arranged, or is to arrange, insurance of the Works and/or public liability insurance, then a policy of insurance for the Works and/or public liability (as the case may be) covering the Contractor, Principal and subcontractors will come into effect on the Date of Contract. The Principal is to pay the insurance premium.

Information about the policy that the Principal is required to arrange is available as specified in Contract Information – **Item 9**.

**Contractor**

5.3 If Contract Information - **Item 9** states that the Contractor is to arrange insurance of the Works and/or public liability insurance then, before commencing work on the Site, the Contractor is to hold the required policies of insurance covering the Contractor, Principal and subcontractors as insured entities for:

(a) public liability to an amount of not less than the amount specified in **Item 9** for any single occurrence and in aggregate; and

(b) loss of, or damage to, the Works, any temporary works and all materials, construction plant and other things that are brought onto the Site by or on behalf of the Contractor or are entrusted to the Contractor by the Principal. The amount insured for any single occurrence is to be not less than the Contract Price at the Date of Contract.

The policies are to include cross liability and waiver of subrogation clauses under which the insurer, in respect of liability, agrees that the term ‘insured’ applies to each of the entities covered as if a separate insurance policy had been issued to each of them, and generally agrees to waive all rights of subrogation or action against any of the entities covered.

The required policies are to be with insurers and in terms approved by the Principal. Approvals will not be unreasonably withheld.

5.4 Unless otherwise advised by the Principal, the Contractor or relevant subcontractor is to hold the following additional insurance policies:

(a) marine liability insurance, if stated in Contract Information - **Item 10**; and

(b) professional indemnity insurance, if stated in Contract Information – **Item 10**.

The policies are to be in place before commencing the relevant work.

The policy under (a) is to be:

(i) in the name of the party responsible for procuring the insurance and cover the Contractor, Principal and subcontractors, as insured entities, for their respective rights, interests and liabilities to third parties; and

(ii) for an amount not less than the relevant amount in Contract Information - **Item 10** for any single occurrence and in aggregate and include cross-liability and waiver of subrogation clauses under which the insurer, in respect of liability, agrees that the term ‘insured’ applies to each of the entities covered as if a separate insurance policy had been issued to each of them, and generally agrees to waive all rights of subrogation or action against any of the entities covered.

The policy under (b) is to cover the Contractor for liability to the Principal for an amount not less than the relevant amount in Contract Information - **Item 10** for loss (whether economic loss or any other loss) for any single occurrence and in aggregate arising from errors or omissions in the design of the Works carried out by or on behalf of the Contractor. The insurance is to be held for a period of at least one year after the work under the Contract reaches Completion.

5.5 For any insurance the Contractor is required to hold under the Contract, the Contractor is:

(a) responsible for the payment of premiums;

(b) to maintain all the policies, other than professional indemnity insurance, until the work under the Contract reaches Completion or the end of the Post Completion Period, whichever is later; and

(c) to provide evidence of the currency of the policies and copies of the Works, public liability and marine liability insurance policies to the Principal before commencing the relevant work.

5.6 If the Contractor fails, within 7 days after a written request from the Principal, to provide satisfactory evidence of having paid insurance premiums and compliance with other insurance obligations under the Contract, then the Principal may effect or maintain the insurance and pay any premiums. The Contractor is to pay the Principal the amount of any premiums or deductibles paid by the Principal plus, in each and every case, $500 to cover the Principal’s costs. These amounts, once notified, are a debt due and payable by the Contractor to the Principal.

5.7 The Contractor is responsible for making and managing any claims and meeting the costs of any deductibles.

### Site Access

6.1 The Principal is to give the Contractor access to sufficient of the Site to allow the Contractor to start the work under the Contract, by the time(s) stated in Contract Information – **Item 11**.

6.2 The Principal is to act reasonably for the purposes of **Clause 6.1** but is not required to give the Contractor sole or uninterrupted possession of, or access, to the Site.

6.3 The Contractor is to start work on the Site as soon as practicable after being given access to sufficient of the Site, but not before satisfying all necessary requirements.

6.4 The Contractor is to give the Principal, and any third party authorised by the Principal, reasonable access to the Site for any purpose.

### Site Conditions

7.1 With regard to the work under the Contract, the Contractor warrants that, before the close of tenders, it has:

1. examined the Site and surrounds;
2. made enquiries concerning the Site; and
3. not relied on the completeness of information provided by the Principal.

7.2 The Contractor is solely responsible for dealing with Site Conditions and is to minimise any additional time and cost.

The Contractor must inform the Principal prior to taking any action to deal with the Site Conditions.

The Principal may instruct the Contractor to cease or not take any action until it decides how to deal with the Site Conditions.

7.2A If the Contractor encounters Site Conditions that differ materially and adversely from what should reasonably have been expected at close of tenders, then the Contractor is to notify the Principal forthwith in writing and in any event within 7 Days after encountering them.

The notification is to include details of the materially adverse Site Conditions and the additional time and cost the Contractor estimates will be required to deal with them.

7.3 If the Principal agrees with the Contractor's contentions in its notification under **clause 7.2A**, then from the time the Principal receives the notification complying with **Clause 7.2A**, the Contractor is entitled to:

(a) payment of the Contractor’s reasonable additional Direct Costs plus a margin calculated as the percentage stated in Contract Information - **Item 18**; and

(b) an extension of time for delays in reaching Completion,

where the additional cost or delay are necessarily incurred as a result of the materially adverse Site Conditions.

This entitlement is reduced to the extent that the Contractor has not minimised additional time and costs.

The Contractor has no entitlement to additional payment or an extension of time in relation to the period prior to the date of receipt of notification under **Clause 7.2**.

The Contractor has no other entitlements due to materially adverse site conditions except under **Clause 7.5**.

7.4 The Contractor is to claim any additional Direct Costs and extensions of time to which it is entitled under **Clause 7.3** within 28 days after completing the relevant work.

The claim is to be made in accordance with **Clause 15.2**.

7.5 If a Variation is instructed as a result of materially adverse Site Conditions, the Contractor’s entitlements under **Clause 7.3** cease from the time of the instruction and **Clause 9** applies to the Variation.

### Materials and Work

8.1 The Contractor is to:

(a) supply materials which are new (unless otherwise specified), free from defects and fit for purpose; and

(b) use standards of workmanship (including design) and work methods,

which conform with the Contract, the National Construction Code, relevant Australian Standards and codes of practice, and the lawful requirements of any authority. Where the Contract requires compliance with a standard or code, unless otherwise specified that standard or code shall be the one current at close of tenders, except for the National Construction Code, which shall be the one current at Completion.

8.2 When instructed by the Principal, the Contractor is to:

(a) uncover and re-cover work; and/or

(b) carry out additional testing.

8.3 The Contractor is not entitled to additional payment or an extension of time in respect of an instruction under **Clause 8.2** unless the work uncovered or tested conforms with the Contract, in which case the instruction will be dealt with as an instruction under **Clause 9**.

8.4 The Contractor is to make good any Defect when it becomes apparent.

The Principal may, in its absolute discretion, propose to accept work under the Contract with any specified Defect not made good, on specified terms.

If the Contractor does not accept the Principal’s proposal, then the Contractor is to make good the Defect.

8.5 Nothing in **Clause 8** relieves the Contractor of any obligations or liabilities under the Contract.

### Variations

9.1 The Contractor is not to change the Works without an instruction from the Principal or written acceptance by the Principal of a proposal from the Contractor.

9.2 The Contractor is to take all reasonable steps to carry out any Variation concurrently with other work and to otherwise minimise any delays.

9.3 If the Contractor proposes a Variation for the Contractor’s convenience the Principal may, in its absolute discretion, accept the proposal on specified terms.

9.4 If, in respect of a possible Variation, the Principal requests the Contractor to submit a proposal, including the effect on the Contract Price, the time required to reach Completion and any other implications for the Contract, the Contractor is to comply with the request within 14 Days: and

1. If the Variation will involve additional work, the proposal should include a margin of no more than the percentage stated in Contract Information - **Item 18** on Direct Costs; or
2. If the Variation will involve less work, the proposal should include the reduction in Direct Costs as a result of the possible Variation and a margin of no more than 5% on the reduction in Direct Costs.

9.5 If the Principal accepts a proposal submitted under **Clause 9.4**, then within 14 Days after receiving the proposal, the Principal is to notify the Contractor in writing that the proposal is accepted as a Variation.

9.6 If the Principal does not accept a proposal submitted under **Clause 9.4**, then within 14 Days after receiving the proposal, the Principal is to notify the Contractor in writing that the proposal is not accepted.

9.7 Nothing in **Clause 9.4** or **Clause 9.6** prevents the Principal from instructing a Variation under **Clause 9.8**.

9.8(a)If the Principal instructs the Contractor to carry out a Variation, the Contractor is to comply in accordance with **Clause 2.3** and within 14 Days after the instruction, notify the Principal in writing of the price for the Variation (including for any delay), how the amount is calculated and any effect on the time required to reach Completion.

9.8(b) In calculating the price for the Variation:

1. Where the Contract Prices was determined based on rates, the price for the Variation must be calculated by applying the rates to the relevant quantities of work carried out; or

(ii) Where the Contract Price was not determined based on rates, the price for the Variation must be calculated as the reasonable net Direct Costs of the Variation**.**

9.9 If the Principal accepts the price and effect on the time required to reach Completion, if any, notified under **Clause 9.8**, then within 14 Days after receiving the notification, the Principal is to advise the Contractor in writing of the acceptance.

9.10 If the Principal does not accept the price or effect on the time required to reach Completion, if any, notified under **Clause 9.8** then, within 14 Days after receiving the notification, the Principal is to assess the Contractor’s entitlements arising from the Variation and notify the Contractor in writing of the assessment.

If the Variation

1. delays the Contractor in reaching Completion, then to the extent that the delay is not concurrent with delay caused by the Contractor, the Contractor is entitled to an extension of time;
2. causes the Contractor to incur additional cost, then the Contractor is entitled to payment of the reasonable net Direct Costs of the Variation work plus a margin calculated as the percentage stated in Contract Information - **Item 18**, whether or not there is an entitlement to an extension of time; or
3. causes the Contractor to incur less cost, then the Contract Price is to be reduced by 105% of the reasonable net reduction in Direct Costs arising from the Variation.

9.11 The parties agree that the provisions of this **Clause 9.10** fully compensate the Parties for all costs and losses arising from supervision, overheads, delay, disruption and interference resulting from the Variation.

The Contractor has no other entitlements in relation to the Variation.

9.12 If the Contractor does not accept the net Direct Cost or extension of time assessed under **Clause 9.10**, then the Contractor is to make a claim in accordance with **Clause 15.2**.

### Suspension

10.1 The Principal may instruct the Contractor to suspend carrying out all or part of the work under the Contract and the Contractor is to comply with the instruction.

10.2 If the need for the suspension arises from the Principal’s act or omission, then the Contractor is to restart the suspended work when instructed by the Principal.

10.3 If the need for the suspension arises from the Principal’s act or omission, then the Contractor is entitled to:

(a) an extension of time to the extent that the suspension causes a delay that is not concurrent with any delay caused by the Contractor; and

(b) the Contractor’s reasonable Direct Costs of the suspension, unavoidably incurred, having taken all reasonable steps to minimise the costs, plus a margin calculated as the percentage stated in Contract Information - **Item 18**.

The Contractor’s maximum entitlement under **Clause 10.3(b)** is the period of suspension in days multiplied by the rate per day for delay costs stated in Contract Information **- Item 13**.

Within 14 Days after the suspended work is restarted, the Contractor is to make any claim for this entitlement.

The claim is to be made in accordance with **Clause 15.2**.

10.4 If the need for the suspension does not arise from the Principal’s act or omission then, when the cause of the suspension has been satisfactorily resolved, the Contractor is to restart the suspended work and notify the Principal.

10.5 The Contractor has no other entitlements in connection with a suspension.

### Completion

11.1 The Contractor is to bring the work under the Contract and any Milestones to Completion by the date(s) or within the time(s) (as applicable) stated in Contract Information - **Item 12**, as extended under the Contract.

11.2 The Contractor is to notify the Principal in writing when, in the Contractor’s opinion, the work under the Contract or any Milestone has reached Completion. When the Contract includes Milestones, the work under the Contract will have reached Completion when all Milestones have reached Completion.

11.3 Upon receipt of notification under **Clause 11.2**, the Principal is to:

(a) determine if the work under the Contract or Milestone has reached Completion and, if so, the date Completion was reached; and

(b) promptly give the Contractor written notice of the determination.

11.4 Before Completion, the Principal may use or occupy any part of the Works which is sufficiently complete, and then:

(a) the Contractor’s responsibilities are not affected, except to the extent that the Principal causes the Contractor’s work to be hindered; and

(b) the Principal becomes responsible for any additional insurance required.

11.5 The Principal is to give the Contractor not less than 7 Days notice in writing that the Principal (or a third party authorised by the Principal) will be using or occupying a part of the Works and is to specify the part(s) to be used or occupied.

11.6 The Contractor is to provide to the Principal, no more than 14 Days after receiving the Principal’s notice, all documents and other things relevant to the part(s) of the Works specified in the notice. The Contractor is to provide full assistance and cooperation to the Principal in the use and occupation of the parts specified in the notice.

11.7 The Principal may, in its absolute discretion, notify the Contractor that the work under the Contract or any Milestone has reached Completion.

### Delay to Completion

12.1 If the Contractor will be delayed in reaching Completion, the Contractor is to immediately notify the Principal and, within 5 Business Days after the delay starts, advise the Principal in writing of the cause, relevant facts and actual or expected delay. The immediate notification of the delay may allow the Principal to take action to reduce the delay.

12.2 If a delay in reaching Completion is not concurrent with delay caused by the Contractor, and is caused by:

(a) an instruction given by the Principal;

(b) a breach of the Contract by the Principal; or

(c) any event beyond the control of the Contractor to the extent the Contractor has not contributed to the delay,

then, subject to any applicable conditions under **Clauses 7, 8, 9 or 10** and the Contractor’s obligation to minimise any delay,the Contractor may be entitled to an extension of the time for Completion, to the extent that the instruction, breach or event caused delay.

12.3 **Clauses 7, 8, 9 and 10** include allowances for the costs of delay subject to applicable conditions.

Where **Clause 7, 8, 9 or 10** does not apply to the relevant event and:

(a) an entitlement to an extension of the time for Completion arises under **Clause 12.2 (a) or (b)**; and

(b) the Contractor is delayed in reaching Completion of the work under the Contract,

then the Contractor is entitled to delay costs at the rate per day stated in Contract Information - **Item 13.**

The Contractor has no entitlement to costs arising from delays due to causes that are beyond the control of the Principal.

The Contractor has no other entitlement for costs in relation to delays.

12.4 Within 10 Business Days after a delay ends, the Contractor is to make a claim in providing the information referenced in **Clause 15.2** that applies to its claim.

Subject to sufficient information being provided, the Principal is to assess the Contractor’s entitlements in accordance with **clause 15.2** and notify the Contractor in writing of the assessment and the adjusted time for Completion, if any.

12.5 If the Contractor does not accept the assessed entitlements, the Contractor is to proceed in accordance with **Clause 15.3.**

12.6 If the Contractor does not complete a Milestone or the work under the Contract in accordance with **Clause 11.1**, then:

(a) if a rate is stated in Contract Information - **Item 14**, the Contractor is to pay to the Principal liquidated damages at that rate from the date immediately after the date for Completion to, and including, the date Completion is reached; or

(b) if no rate is stated in Contract Information - **Item 14**, then common law damages will apply.

The damages, once notified, are a debt due and payable by the Contractor to the Principal.

12.7 The Principal may for any reason and at any time extend any time for Completion by written notice.

### Payment and Retention

13.1 The Contractor is to give a written payment claim to the Principal at the times specified in Contract Information - **Item 15**. The claim is to identify the work carried out, the amount claimed and how the amount is calculated.

The amount the Contractor is entitled to claim is the sum of:

(a) for work for which the Principal accepted rates, an amount calculated by applying the rates to the relevant quantities of work carried out;

(b) for work for which the Principal accepted a lump sum, the percentage of the lump sum that reflects the value of the work carried out;

(c) for completed work for which the Contract Price includes a Provisional Allowance, the amount calculated in accordance with **Clause 13.9**; and

(d) for any extra entitlement claimed for which the Principal has agreed or assessed an amount in writing, or for which an amount has been finally determined by an expert under **Clause 16** the percentage of that amount which reflects the value of the entitlement,

at the date of the payment claim, less amounts previously paid, amounts payable by the Contractor to the Principal and any amounts the Principal is entitled to deduct, including retentions, set-offs and liquidated damages.

13.2 With each payment claim, the Contractor is to give to the Principal:

(i) the conformance records and other information required under the Contract; and

(ii) a completed and true Statutory Declaration in the form of Schedule 2 to these General Conditions; executed on the date of the payment claim.

13.3 Within 10 Days after receipt of the Contractor’s payment claim, the Principal is to give to the Contractor a payment schedule identifying the payment claim to which it relates and stating the payment, if any, which the Principal will be making. If the payment is to be less than the amount claimed, the payment schedule is to state the reasons why it is less.

13.4 Payment by the Principal of the scheduled amount shown in the payment schedule is to be made within ten (10) Business Days after receipt of the Contractor’s payment claim.

The Principal may withhold any payment to the Contractor until **clause 13.2** is complied with.

13.5 Unless otherwise stated, all payments by the Principal to the Contractor are to be made by Electronic Funds Transfer to a bank, building society or credit union account nominated by the Contractor.

No payment is due to the Contractor until sufficient details of the nominated account are notified in writing to the Principal. The Contractor is to give the Principal a minimum of 7 Days written notice of any changes to the nominated account. The Principal is otherwise not responsible for any payments made into a previously nominated account.

13.6 Payment is not evidence of the value of work or that the work is satisfactory or an admission of liability, but is payment on account only.

13.7 **Goods and Services Tax**

(a) Unless otherwise expressly stated in the Contract, the Contract Price includes an amount for GST.

(b) The Principal will issue a tax invoice for each taxable supply it makes to the Contractor.

(c) The Principal will issue to the Contractor a Recipient Created Tax Invoice (RCTI) for each taxable supply (other than an excluded supply) made by the Contractor to the Principal, and will issue an adjustment note for any adjustment event. The parties may agree in writing from time to time which supplies are excluded supplies.

(d) The Contractor must not issue a tax invoice in respect of any supply it makes to the Principal, other than for an excluded supply. The Contractor must give the Principal a tax invoice for an excluded supply at or before the time the Contractor makes a payment claim or otherwise invoices the Principal for that supply.

(e) Each party must be registered for GST and must notify the other party if it ceases to be registered for GST or to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

13.8 **Unfixed Materials**

(a) Payment claims must not include any amount for Materials intended for incorporation in the Works but not yet incorporated unless all of the following conditions are satisfied:

* 1. the Principal has agreed in writing to pay the Contractor for the unincorporated Materials;
	2. where the value of the unincorporated Materials is greater than $100,000, the Contractor provides before or with the Payment Claim:
		+ 1. an Undertaking in the form set out in Schedule 1 – **Unconditional Undertaking** equal to the value of the unincorporated Materials (to be returned when the Materials are incorporated into the Works); and
			2. a statement in the form set out in Schedule 5 (Statement Regarding Materials);
			3. evidence that:
			4. the unincorporated Materials are, or upon payment will become, the property of the Principal free of any Encumbrance;
			5. the unincorporated Materials are clearly identified as the property of the Principal and are insured for their full value; and
			6. for any unincorporated Materials imported or to be imported into Australia, the Contractor has given the Principal a clean on board bill of lading drawn or endorsed to the order of the Principal, appropriate insurance certificates and a customs invoice.

(b) The Contractor warrants that no Encumbrance exists over any Materials paid for by the Principal or incorporated into the Works.

(c) Upon the Materials becoming the property of the Principal, they are entrusted to the Contractor for the purpose of carrying out the Works and the Contractor is solely liable for their care.

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

13.9 **Provisional Allowances**

 If the Principal instructs the Contractor to carry out work that is the subject of a Provisional Allowance, then the Contract Price is to be adjusted as follows:

(a) the amount of the Provisional Allowance is to be deducted from the Contract Price; and

(b) where the Provisional Allowance is a Provisional Sum, the reasonable Direct Costs to the Contractor of work carried out in relation to the Provisional Sum plus a margin calculated as the percentage stated in Contract Information item 18, is to be added to the Contract Price; or

(c) where the Provisional Allowance is a Provisional Quantity, the amount calculated by applying the tendered rate to the measured quantity of work carried out, up to the specified limit, is to be added to the Contract Price.

If the Principal does not instruct the Contractor to carry out work which is subject to any Provisional Allowance, then the Provisional Allowance is to be deducted from the Contract Price.

13.10 **Undertakings**

 Unless the Principal specifies at Contract Information - **Item 16** that Undertakings are to be provided or other arrangements apply, the Principal may retain the percentage of the Contract Price specified in Contract Information - **Item 16** as security for the Contractor’s performance.

If it is specified at Contract Information - **Item 16** that Undertakings are to be provided, the Contractor must within 14 days after the Date of Contract, instead of the retention, provide to the Principal the Completion Undertaking and the Post-Completion Undertaking for amounts calculated in accordance with Contract Information- **Item 16**. The Undertakingsmust be in the form specified in **Schedule 1 –** **Unconditional Undertaking**.

All Undertakings must:

1. not have an expiry date;
2. be provided by a bank, building society, credit union or insurance company with a Standard and Poor credit rating of at least A-;
3. where provided by a bank, building society or credit union, be issued by an entity authorised to carry on the business of banking in Australia under the *Banking Act 1959*;
4. where provided by an insurance company, be issued by an entity that is registered with ASIC, authorised by APRA, and is fully compliant with Australia’s regulatory and legal requirements, including holding an Australian financial services licence under the *Corporations Act 2001*;
5. be redeemable in the Adelaide CBD; and
6. be otherwise acceptable to the Principal

The Principal may make a demand against an Undertaking or retention in payment of any debt due from the Contractor to the Principal.

Unless the Principal has made or intends to make a demand against an Undertaking or retention, the Principal must return the Undertakings or retention (or, if applicable, the balance remaining after a demand on the Undertakings or retention) to the Contractor as follows:

1. the Completion Undertaking or 50% or the retention within 14 days after the work under the Contract reaches Completion; and
2. the Post-Completion Undertaking or 50% or the retention at the end of the Post Completion Period provided that at that time there are no outstanding Defects or unresolved claims; and there are no moneys of any nature, including debts, damages and indemnity claims, payable by the Contractor to the Principal.

13.11 **Final Payment**

 Within 60 Business Days after:

(a) the work under the Contract reaches Completion;

(b) the rectification or resolution of all Defects identified prior to the end of the final Post Completion Period (if any); or

(c) the resolution of all claims made under **Clause 15**,

whichever is the latter, the Principal is to issue a final payment schedule accounting for the payment of any retention held under **Clause 13.10** and any amounts the Principal demands from the Contractor, and stating the amount payable by one party to the other.

If payment is due to the Contractor then, within 15 Days after the date of issue of the final payment schedule, the Principal is to pay the Contractor any money due in accordance with the final payment schedule.

If payment is due to the Principal from the Contractor then the payment is a debt due and payable by the Contractor to the Principal. Within 20 Business Days after the date of issue of the final payment schedule, the Contractor is to pay the Principal any money due in accordance with the final payment schedule.

13.12 **Set Off**

If the Principal claims a sum, including a debt due, in connection with the Contract or any other contract between the Principal and the Contractor, the Principal may:

(a) withhold, deduct or set-off the claimed sum against any amount to which the Contractor is otherwise entitled in connection with the Contract; and

(b) make a demand against the Undertakings provided under the Contract for any amount of the claimed sum in excess of the amount to which the Contractor is otherwise entitled.

13.13 **Payment of Subcontractors**

The Contractor must ensure that all subcontractor and supplier invoices are paid within 15 Days of the date on which the subcontractor has issued an invoice in accordance with the subcontract.

### After Completion

14.1 At any time after Completion is reached, the Principal may instruct the Contractor to make good a Defect within a specified time and at a time convenient to the Principal.

All costs associated with making good a Defect are payable by the Contractor.

14.2 If the Contractor does not make good the Defect within the time specified, then the Principal may have the Defect made good by others. The Contractor remains responsible for the work under the Contract.

14.3 The Principal is to assess the reasonable cost of having the Defect made good by others and the assessed cost, once notified, is a debt due and payable by the Contractor to the Principal.

### Claims

15.1 The Contractor may make a claim for an entitlement in connection with the Contract.

Any claim, other than a claim made under **Clause 13**, is to be made in accordance with this **Clause 15**.

15.2 A claim by the Contractor on the Principal is to be in writing and contain sufficient information for the Principal to assess the claim, including:

(a) the legal and factual basis of the claim;

(b) how the quantum of the claim is calculated; and

(c) evidence supporting the claim, including applicable subcontractor documentation.

The claim must also include the effect of the event giving rise to the claim on both the Contract Price and time required to reach Completion.

A claim must be submitted within 28 days after the later of the start of the event giving rise to the claim; and the time the event should have become known to the Contractor, with reasonable diligence on its part.

The Contractor acknowledges that it has an obligation to submit any claim in a timely manner to enable the Principal to assess its options and work with the Contractor to minimise and mitigate the impact to the Principal. Consequently, the Contractor agrees that if it does not raise a claim within the time specified in this clause the Contractor will have no entitlement and will be barred from making a claim any time afterwards.

15.3 Within 10 Business Days after receiving a claim that meets the requirements of **Clause 15.2**, the Authorised Person is to assess both:

(a) the validity of the claimed entitlement under the Contract; and

(b) the value, if any, of that entitlement,

and notify the Contractor with reasons.

If the Contractor does not consider that the Authorised Person’s assessment is reasonable and can provide additional information to support its claim, then the Contractor and Authorised Person are to confer and endeavour to reach agreement on the claimed entitlements.

If agreement is not reached within:

(a) 20 Business Days after the Authorised Person’s assessment; or

(b) 35 Business Days after a complying claim was received,

whichever is the later, **Clause 16** will apply.

Notwithstanding the application of **Clause 16**, the Contractor may include the Authorised Person’s assessment in its payment claim and **Clause 13** will then apply.

15.4 Unless otherwise provided for in the Contract, any claim by the Contractor on the Principal, in relation to events that occurred before the work under the Contract reached Completion, is to be received by the Principal within 28 Days after the Contractor receives the Principal’s written notice of Completion of the work under the Contract under **Clause 11.3**. Otherwise the claim is barred.

If the Contract includes a Post Completion Period, then any claim by the Contractor on the Principal, in relation to events that occurred during a Post Completion Period, is to be made within 28 days after the end of the final Post Completion Period. Otherwise the claim is barred.

### Disputes

16.1 The Contractor may dispute an assessment, determination or instruction of the Principal, or seek resolution of an unresolved claim, by giving notice to the Authorised Person within 28 Days after notification of the assessment, determination or instruction, or within 28 Days after it becomes an unresolved claim.

16.2 If the matter has not been resolved within 28 Days of the notice being given to the Authorised Person, the dispute must be referred to the Senior Executive, and the Senior Executives must confer to try to resolve the dispute.

16.3 The Senior Executives must meet as soon as possible to resolve the dispute, but in any case within 7 Days of its reference to the Senior Executives. Each Party must authorise and inform its representatives sufficiently so that he or she can undertake that meeting without detailed reference to another person.

16.4 If within 28 Days of the dispute being referred to the Senior Executives, the dispute is not resolved by agreement or a means to resolve the dispute agreed upon, either Party may refer the dispute to a suitably qualified independent expert agreed by the Parties who shall determine the rules to conduct an expert determination to resolve the matter, and then proceed to determine the dispute. If the Parties cannot agree an expert within 14 Days attempting to do so, the expert will be appointed by the Principal. The costs of the expert will be borne equally by each of the Parties. The parties must treat each determination of an expert as final and binding and a party that owes money to the other pursuant to the determination must pay that amount to the other party within 28 Days after receiving the determination.

16.5 If the Contractor notifies a dispute, but not within the time provided by **Clause 16.1**, then the Contractor is not entitled to interest, in respect of that matter, prior to notification.

### Contractor’s Default and Insolvency

**Committed a Substantial Breach**

17.1 Without prejudice to any other rights the Principal has, if the Contractor commits a substantial breach of the Contract, including:

(a) failing to carry out an instruction of the Principal within the time specified or, if no time is specified, within a reasonable time;

(b) not carrying out the work under the Contract with due expedition and without delay (including but not limited to a failure to reach Completion of the works or Milestones within the timeframes required under this Agreement);

(c) abandoning the carrying out of the Works;

(d) suspending progress of the carrying out of the Works in whole or part without the written agreement or instruction of the Principal, except for suspension under **clause 10**;

(e) failing to carry out the Works with professional skill, care and competence;

(f) failing to maintain any registration or licence required by law to carry on activities required under the Contract; or

(g) failing to effect and maintain insurance policies as required under the Contract,

then the Principal may issue a notice specifying the breach and requesting the Contractor to give reasons why the Principal should not take further action. Those reasons are to include proposals to remedy the breach if the breach remains.

17.2 If the Contractor fails to provide a satisfactory written response within 7 Days after receiving the Principal’s notice under **Clause 17.1**, then the Principal may either take over carrying out the work under the Contract or terminate the Contract.

**In Serious Financial Difficulty**

17.3 If the Contractor is wound up, declared insolvent, has an administrator or receiver appointed or notifies the Principal that it is unable to perform its obligations under the Contract, then, subject to the requirements of the *Corporations Act 2001* (Cth), the Principal may either take over carrying out the work under the Contract and/or terminate the Contract.

**Terminate the Contract**

17.4 If the Principal elects to terminate the Contract under this **clause 17**, the Principal is to notify the Contractor in writing.

(a) The Contractor is to comply with any instructions in the notice.

(b) The respective rights and liabilities of the Parties are the same as they would be at common law if the Contractor had wrongfully repudiated the Contract.

**Take over carrying out the work under the Contract**

17.5 If the Principal elects to take over carrying out the work under the Contract, the Principal is to:

(a) terminate the Contractor’s engagement under the Contract by written notice to the Contractor and take over carrying out the work under the Contract with effect from the date stated in the notice;

(b) suspend payments due or which would become due to the Contractor; and

(c) have the work under the Contract completed by others.

The Contractor is to leave the Site by the date stated in the notice and comply with any other instructions in the notice.

17.6 When the work under the Contract reaches Completion, the Principal is to calculate the difference between:

(a) the costs of having the work under the Contract completed by others; and

(b) the amount that would have been paid to the Contractor to complete the work under the Contract, including any suspended payments and retentions held by the Principal.

17.7 If the calculation results in a shortfall to the Principal, then the shortfall is a debt due from the Contractor to the Principal, payable within 10 Business Days after a written demand for payment.

17.8 If the calculation results in an excess to the Principal, then the Principal is to pay the amount of the excess to the Contractor.

Prior to payment the Contractor is to comply with **clause 13.2**.

### Termination for the Principal’s Convenience

18.1 The Principal may terminate the Contract for convenience and without giving reasons by giving written notice to the Contractor, with effect from the date stated in the notice. The Contractor is to leave the Site by the date stated and comply with any other instructions in the notice.

If the Contract is terminated for the Principal’s convenience, then the Contractor’s total entitlement in respect of the Contract is the sum of:

(a) the value of all work carried out up to the date stated in the notice, determined in accordance with **Clauses 13** and **16**; plus

(b) 2% of the difference between the Contract Price and the total of all amounts paid and payable to the Contractor under (a); plus

(c) the costs reasonably incurred by the Contractor in demobilisation of its project resources

The payments referred to in this **Clause 18** are full compensation for termination under this **Clause 18**, and the Contractor has no claim for damages or other entitlement whether under the Contract or otherwise.

18.2 Wherever possible, the Contractor is to include a provision equivalent to this **Clause 18** in all subcontracts, including supply agreements.

### Termination for the Principal’s Default

19.1 If the Principal fails to pay the Contractor any amount that is in accordance with the Contract, and not in dispute, or commits a fundamental breach of the Contract, then the Contractor may give notice requiring the Principal to remedy the default within 28 Days after receiving the notice.

19.2 If, within 28 Days after receiving the Contractor’s notice under **Clause 19.1**, the Principal fails to remedy the default, or fails to propose steps reasonably acceptable to the Contractor to do so, the Contractor may issue a notice terminating the Contract.

19.3 Following termination under **Clause 19**, the Contractor’s total entitlement in respect of the Contract is the sum of:

(a) the value of all work carried out up to the date of the termination notice, determined in accordance with **Clauses 13** and **16**; plus

(b) 4% of the difference between the Contract Price and the total of all amounts paid and payable to the Contractor under (a).

The payments referred to in this **Clause 19.3** are full compensation for termination under this **Clause 19**, and the Contractor has no claim for damages or other entitlements whether under the Contract or otherwise.

19.4 The Contractor has no other right to terminate the Contract, under common law or otherwise.

19.5 Wherever possible, the Contractor is to include a provision equivalent to this **Clause 19** in all subcontracts, including supply agreements.

### Limitation of liability

20.1 Except for any liability in respect of the Prescribed Heads of Liability (which remain unlimited), the Principal and the Contractor agree to limit the liability of either party to the other party in respect of to the amount equal to the higher of:

* + - * 1. the minimum cover specified in Contract Information - **Item 9**;
				2. the minimum cover specified in Contract Information - **Item 10**; and
				3. one times the Contract Price.

20.2 The liability of a party for loss or damage sustained by the other party will be reduced to the extent that such loss or damage has been caused by the other party’s breach of Contract, wrongful act or omission or negligence.

### Exclusion of Consequential Loss

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

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

### Commonwealth WHS Accreditation

* 1. If required by Contract Information – **Item 20**, the Contractor must maintain accreditation under the Australian Government Building and Construction Work Health and Safety Accreditation Scheme (Scheme) established by the *Federal Safety Commissioner Act 2022* (Cth) (FSC Act) for all times while building work (as defined in section 6 of the FSC Act) is carried out under the Contract.

22.2 The Contractor must at all times comply with all conditions of Scheme accreditation and the National Construction Code performance requirements in relation to building materials.

## MW21 Contract Information

### Authorised Person

Mentioned in Clause 1.1

|  |  |
| --- | --- |
| The Authorised Person is: | Person occupying the position of: |
|  | Director, Contract Management |
| Office address:(for delivery by hand) | Level 8, 83 Pirie Street, Adelaide SA 5000 |
|  |  |
| Postal address:(for delivery by post) | GPO Box 1533, Adelaide SA 5000 |
| e-mail address: | Cameron.Billinghurst@sa.gov.au |

The Principal may for any reason and at any time change the Authorised Person by giving notice in writing.

### Purpose of the Works

Mentioned in Clause 3.4

|  |  |
| --- | --- |
| The purpose of the Works is: | [Insert] |

If no purpose is stated, then the purpose of the Works is as reasonably inferred from the Contract Documents.

### Milestones

Mentioned in Clause 1.19

|  |  |
| --- | --- |
| Milestone 1:  | Completion of » |
| Milestone 2:  | Completion of » and all of the work and obligations under the Contract not included in any other Milestone. |

### Post Completion Period

Mentioned in Clause 1.22

|  |  |
| --- | --- |
| The Post Completion Period, which starts when the work under the Contract reaches Completion, is:  | 12 months |

If no time is stated, then no Post Completion Period applies.

|  |  |
| --- | --- |
| [or]The Post Completion Period, which starts when Milestone [insert] reaches Completion, is: | [insert] calendar weeks/ months. |

If no time is stated, then no Post Completion Period applies.

[or]

The Post Completion Periods for the Milestones are:

|  |  |
| --- | --- |
| Milestone 1:  | » weeks commencing when Milestone 1 reaches Completion. |
| Milestone 2:  | » weeks commencing when Milestone 2 reaches Completion. |
| Milestone »:  | » weeks commencing when Milestone » reaches Completion. |

If no time is stated for a Milestone, then no Post Completion Period applies to that Milestone.

### Contract Price

|  |  |
| --- | --- |
| The *Contract Price* (which is inclusive of GST) at the Date of Contract: | $.........................(including GST), as set out in the Tender Form in Schedule 6 |
| The basis of payment is:(Lump sum/Schedule of Rates as set out in Schedule 7/Lump sum with Schedule of Rates) | Lump sum/Schedule of Rates as set out in Schedule 7/Lump sum with Schedule of Rates |

### Senior Executives

Mentioned in Clause 1.32

|  |  |
| --- | --- |
| The Principal’s Senior Executive is: | Executive Director, Commercial and Contract Management |

Where specified, documents must be copied to the Principal’s Senior Executive at the address or number shown here.

|  |  |
| --- | --- |
| Office address:(for delivery by hand) | Level 8, 83 Pirie Street, Adelaide SA 5000 |
|  |  |
| Postal address:(for delivery by post) | GPO Box 1533, Adelaide SA 5000 |
|  |  |
| e-mail address: | »brian.roche@sa.gov.au |

The Principal may for any reason and at any time change its Senior Executive by giving notice in writing.

Mentioned in Clause 1.32

|  |  |
| --- | --- |
| The Contractor’s Senior Executive is: | [insert] |

Where specified, documents must be copied to the Contractor’s senior executive at the address or number shown here.

|  |  |
| --- | --- |
| Office address:(for delivery by hand) | [insert] |
|  |  |
| Postal address:(for delivery by post) | [insert] |
|  |  |
| e-mail address: | [insert] |

The Contractor may for any reason and at any time change its Senior Executive by giving notice in writing.

### Extent of Design

Mentioned in Clause 3.1

|  |  |
| --- | --- |
| Must the Contractor carry out all design necessary in connection with the Works?  | [insert Yes or No] |

|  |  |
| --- | --- |
| Must the Principal carry out all design necessary in connection with the Works? | [insert Yes or No] |

|  |  |
| --- | --- |
| Must the Contractor complete the design provided by the Principal? | [insert Yes or No] |

### Design Documents

Mentioned in Clause 3.5

|  |  |
| --- | --- |
| The time to submit the completed design is: | Not applicable. The Contractor need not submit the completed design. |
|  |

[or]

|  |  |
| --- | --- |
| The time to submit the completed design is: | [insert] Days before it is to be used for construction. |
|  |

If no time is stated, then it is 7 Days before the completed design is to be used for construction.

### Works and Public Liability Insurance

Mentioned in Clause 5.2 and 5.3

|  |  |
| --- | --- |
| **Works Insurance**Insurance of the Works to be arranged by: | the Principal |
| Minimum Cover is:  | The *Contract Price* |

**Public Liability Insurance**

|  |  |
| --- | --- |
| Public liability insurance to be arranged by: | the Contractor |
| Minimum cover is: | $10,000,000 if the *Contract Price* is $10,000,000 or less and in any case, the above amount is per occurrence and in aggregate. |

Where the Principal is required to arrange insurance, information about those Principal arranged insurance policies are set out in Schedule 10.

### Marine Liability and Professional Indemnity Insurance

Mentioned in Clause 5.4

**Marine Liability**

|  |  |
| --- | --- |
| Is a marine liability insurance policy to be held by the Contractor and/or relevant subcontractors? | » Yes/No |
|  | (“No” applies if not filled in) |
| Minimum Cover is: |  |

**Professional Indemnity**

|  |  |
| --- | --- |
| Is a professional indemnity insurance policy to be held by the Contractor and/or relevant subcontractors? | » Yes/No |
|  | (“No” applies if not filled in) |
| Minimum Cover is: | $5,000,000 if the *Contract Price* is $5,000,000 or less, and in any case, the above amount is per occurrence and in aggregate. |

### Site Access

Mentioned in Clause 6.1

|  |  |
| --- | --- |
| The time to give access to the Site is: | Within [insert] days after release of the Pre-Commencement Hold Points  |

[or]

The times to give access to the Site are:

|  |  |
| --- | --- |
| Milestone 1: | » days after the Date of Contract. |
| Milestone 2: | » days after » |
| Milestone »: | » days after » |

### Date or time for Completion

Mentioned in Clause 11.1

|  |  |
| --- | --- |
| The date or time for Completion is: | [insert] calendar weeks from the date of the Date of Contract. |

[or]

The dates or times for Completion are:

|  |  |
| --- | --- |
| Milestone 1: | [insert] calendar weeks from the Date of Contract. |
| Milestone 2: | [insert] calendar weeks »  |
| Milestone »: | [insert] calendar weeks » |

### Delay Costs

Mentioned in Clause 12.3

|  |  |
| --- | --- |
| The rate per day for delay costs is: | $[insert] |

[or]

|  |  |
| --- | --- |
| The rate per day for delay is: | $[insert], except for delay that occurs after Completion of Milestone [insert] when the rate per day is $10. |

### Liquidated Damages

Mentioned in Clause 12.6

|  |  |
| --- | --- |
| The rate per day for liquidated damages is: | $[insert] |

If no rate or “Nil” or “0” or “N/A” is stated, then common law damages apply.

[or]

The rate per day for liquidated damages is:

|  |  |
| --- | --- |
| Milestone 1: | $[insert] |
| Milestone 2: | $[insert]  |
| Milestone »: | $[insert] |

If no rate is stated for a Milestone, then common law damages apply for that Milestone.

### Payment Claims

Mentioned in Clause 13.1

|  |  |
| --- | --- |
| Payment claims are to be made: | monthly, on the first Business Day of each calendar month. |
| [or]A payment claim is to be made: | when Completion is reached. |

|  |  |
| --- | --- |
| [or]Payment claims are to be made:[or] | when Completion of each Milestone is reached.  |

Payment claims are to be made:

|  |  |
| --- | --- |
| For Milestones », », »: | monthly, on the first Business Day of each calendar month. |
| [or]For Milestones », », »: | [insert] % Complete; [insert]% Complete; [insert]% Complete; andwhen Completion is reached.  |

### Security

Mentioned in Clause 13.10

|  |  |
| --- | --- |
| Is the Contractor required to provide a Completion Undertaking and Post Completion Undertaking? | Yes |
| The amount of the Completion Undertaking is?The amount of the Post Completion Undertaking is? | [2.5% of the *Contract Price* (excluding GST) at the Date of Contract.][2.5% of the *Contract Price* (excluding GST) at the Date of Contract.] |
| A retention amount equal to 5% of the Contract Price. |  |
|  | (“No” applies if not filled in) |

### Compliance with SA Government Guidelines

A - Work Health and Safety

Mentioned in Clause 4.13

|  |  |  |
| --- | --- | --- |
| Is the Contractor appointed as principal contractor? |  | Yes/No |

B – Industry Participation Policy

Mentioned in Clause 1B

|  |  |
| --- | --- |
| Is the Contractor required to implement an Industry Participation Plan?  | Yes/No |

### Contractor’s Margin

A – Site Conditions

Mentioned in Clause 7.3(a)

|  |  |  |
| --- | --- | --- |
| Margin on reasonable additional Direct Costs of dealing with adverse Site Conditions. |  | 10% |

B – Variations

Mentioned in Clause 9.4

|  |  |
| --- | --- |
| Margin on Variation involving additional work.  | 10% |
|  |  |

C – Suspension

Mentioned in Clause 10.3(b)

|  |  |
| --- | --- |
| Margin on costs of suspension.  | 10% |

D – Provisional Sum

Mentioned in Clause 13.9(b)

|  |  |
| --- | --- |
| Margin on Provisional Sum.  | 10% or Nil |
|  |  |

### Contractor’s Representative

Mentioned in Clause 1.8

|  |  |
| --- | --- |
| The Contractor’s Representative is: | [insert] |
|  |  |
| Office address:(for delivery by hand) | [insert] |
|  |  |
| Postal address:(for delivery by post) | [insert] |
| e-mail address: | [insert] |

The Contractor may for any reason and at any time change the Contractor’s Representative by giving notice in writing.

1. Requirements for Commonwealth Funded projects

Australian Government Building and Construction WHS Accreditation Scheme

*Mentioned in clause 22*

|  |  |
| --- | --- |
| Is the Contractor required to maintain accreditation under the Australian Government Building and Construction WHS Accreditation Scheme? | [insert Yes or No] |

## Schedule 1 – Unconditional Undertaking

Refer to Clauses 13.8 and 13.11 of the MW21 General Conditions of Contract.

|  |  |
| --- | --- |
| Name of Financial Institution: | ...……………………….………………………………………….. |
| The Principal: | …………………………………………………………………….. |
| The Contractor: | ...…………………….………….……………………………….…ABN ...………………………………………….………………… |
| Security Amount | $ ..…………………………………………….…............................ |
| The Contract: | The Contract between the Principal and the Contractor |
| Contract Name: | …………………………………………………………………….. |
| Contract Number: | …………………………………………………………………….. |

Other words and phrases in this Undertaking have the meaning given in the MW21 General Conditions of Contract.

#### Undertaking

* + 1. At the request of the Contractor and the Financial Institution, and in consideration of the Principal accepting this Undertaking from the Financial Institution in connection with the Contract, the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Principal to the maximum aggregate sum of the Security Amount.
		2. The Financial Institution unconditionally agrees that, if notified in writing by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Contractor and despite any notice from the Contractor not to pay.
		3. The Financial Institution confirms that at the date of issuing this Undertaking its Standard and Poors credit rating was not less than A-.
		4. The Principal must not assign this Undertaking without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
		5. This Undertaking continues until one of the following occurs:
			1. the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;
			2. this Undertaking is returned to the Financial Institution; or
			3. the Financial Institution pays the Principal the whole of the Security Amount, or as much as the Principal may require overall.
		6. At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this Undertaking (or a lesser sum specified by the Principal), and the liability of the Financial Institution will then immediately end.
		7. This Undertaking shall be governed by the laws of the State of South Australia and is redeemable in the Adelaide CBD.

|  |  |
| --- | --- |
| Dated ……………………...… | at ……………….…………………….…………………………… |

**Execution by the Financial Institution:**

## Schedule 2 – Statutory Declaration

**DEFINITIONS**

The Principal is: .................................................................................

The Contractor is: ….............................................................................

The Contract: The contract between the Principal and the Contractor

Contract Title:

Contract Number:

Dated: (Date of Contract) between the party identified as the Principal and the party identified as the Contractor.

*Declaration*

Full Name: I .................................................................................

of .................................................................................

....................................................................................

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

1. I am the Director or Project Manager of the Contractor and authorised by the Contractor to make this statutory declaration on its behalf.

2. I am in a position to make this statutory declaration about the facts attested to.

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

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

**Workers Compensation Insurance of the Contractor's workers**

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

**Workers Compensation insurance for workers of Subcontractors**

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

**Payments to Subcontractors**

6. The Contractor has paid (not including any amount identified in Table 2 below which is in dispute) every subcontractor, supplier, contractor and consultant all amounts payable to each of them by the Contractor (as described in Table 1 below) as at the date of this statutory declaration with respect to engagement of each of them for the performance of work or the supply of materials for or in connection with the Contract.

7. No payment claim made by a subcontractor, supplier, contractor or consultant (not including those identified in Table 2 below which is in dispute) who has performed work or supplied materials for or in connection with the Contract is unpaid by more than 15 Days after the subcontractor has issued an invoice in accordance with the Subcontract.

8. The Contractor confirms that all of their employees have been paid all remuneration and benefits due and payable to them by, and had accrued to their account all benefits to which they are entitled, in respect of any work for or in connection with the Contract.

**Subcontract Cash Security**

9. All subcontract security held in the form of cash and all cash retentions from subcontractor payments are held in trust by the Contractor. The cash security and retentions are held in trust for whichever Party is entitled to them, until payment is made to that Party.

10. The Contractor is maintaining complete records to account for the cash. The records are available to the relevant subcontractors and the Principal on request.

**Industry Participation Report**

12. All Industry Participation Reports that have become due prior to the date of this statutory declaration have been provided to the Principal.

**Subcontractor Engagement**

13. The Contractor’s selection or engagement of Subcontractors, Consultants and Suppliers has not been influenced by an Irrelevant Factor.

14. The Contractor has not at any time, entered into any Arrangement in respect of the Contract that is influenced by an Irrelevant Factor.

15. The Contractor has not engaged any Subcontractor, Consultant or Supplier whose owner, officer(s) or employee(s) are members of, associates of, or associated with a member of, a Declared Organisation, and the Contractor has taken all reasonable steps to ensure it does not breach this obligation.

**Status of Subcontractor Payments**

**Table 1**

|  |
| --- |
| **Schedule of subcontractors paid all amounts due and payable** |
| **Subcontractor** | **ABN** | **Contract number/identifier** | **Date of works (period)** | **Payment claim date** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

**Table 2**

|  |
| --- |
| **Schedule of subcontractors for which an amount is in dispute and has not been paid** |
| **Subcontractor Name and ACN/ABN** | **Contract No.** | **Date of works (period)** | **Payment claim date** | **Amount of payment claim**  | **Amount in dispute** | **Reasons for Dispute** | **Length of time overdue** |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |

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

Signature of Declarant: ..............................................................

**declared at:**

Place: ..........................................................................................

on ...............................................................................................

before me:

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

…………………………………………………………….…...

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

………………………………………………………………....

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

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

*(i) a justice of the peace of the State of South Australia;*

*(ii) a solicitor of the Supreme Court of South Australia with a current practising certificate;*

1. *a notary public; or*
2. *another prescribed person legally authorised to administer an oath under the Oaths Act 1936,*

*or*

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

*(i) a notary public; or*

*(ii) any person having authority to administer an oath in that place.*

## Schedule 3 – Contract Price

[Where contract price is a lump sum include this amount and where contract price is determined on rates include Schedule of Rates. Include details of any Provisional Allowance, Provisional Sum or Provisional Quantity as relevant]

## Schedule 4 - Industry Participation Plan

[insert]

## Schedule 5 – Statement Regarding Materials

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

SCHEDULE

Materials

*[list the Materials]*

Principal

*[insert name of the Principal]*

SIGNED…………………………………..

DATE …………………………………….

## Schedule 6 – Tender Form

[insert]

## Schedule 7 – Schedule of Rates

[insert]

## Schedule 8 – Principal’s Requirements

[insert]

## Schedule 9 – Separable Portions

Refer to Clause 2.10 of the MW21 General Conditions of Contract.

[Not Used]

Or

[The Works shall comprise Separable Portion A, and, if requested by the Principal (in its absolute discretion), Separable Portions B and C, each of which are included in this Schedule 9.

The Contract Price for each Separable Portion is specified in Contract Information Item 5.]

Separable Portion A

 REFER TO CONTRACT SPECIFIC

1. Separable Portion

*Defined in clause 2.10.*

|  |  |
| --- | --- |
| The Separable Portion is: |  |

### 2. Purpose of the Works

Mentioned in Clause 3.4

|  |  |
| --- | --- |
| The purpose of the Works is: | [Insert] |

If no purpose is stated, then the purpose of the Works is as reasonably inferred from the Contract Documents.

### 3. Milestones

Mentioned in Clause 1.17

|  |  |
| --- | --- |
| Milestone 1:  | Completion of » |
| Milestone 2:  | Completion of » and all of the work and obligations under the Contract not included in any other Milestone. |

### 4. Post Completion Period

Mentioned in Clause 1.20

|  |  |
| --- | --- |
| The Post Completion Period, which starts when the work under the Contract reaches Completion, is:  | 12 months |

If no time is stated, then no Post Completion Period applies.

|  |  |
| --- | --- |
| [or]The Post Completion Period, which starts when Milestone [insert] reaches Completion, is: | [insert] calendar weeks/ months. |

If no time is stated, then no Post Completion Period applies.

[or]

The Post Completion Periods for the Milestones are:

|  |  |
| --- | --- |
| Milestone 1:  | » weeks commencing when Milestone 1 reaches Completion. |
| Milestone 2:  | » weeks commencing when Milestone 2 reaches Completion. |
| Milestone »:  | » weeks commencing when Milestone » reaches Completion. |

If no time is stated for a Milestone, then no Post Completion Period applies to that Milestone.

### 5. Contract Price

|  |  |
| --- | --- |
| The *Contract Price* (which is inclusive of GST) at the Date of Contract: | $.........................(including GST), as set out in the Tender Form in Schedule 6 |
| The basis of payment is:(Lump sum/Schedule of Rates as set out in Schedule 7/Lump sum with Schedule of Rates) | Lump sum/Schedule of Rates as set out in Schedule 7/Lump sum with Schedule of Rates |

### Extent of Design

Mentioned in Clause 3.1

|  |  |
| --- | --- |
| Must the Contractor carry out all design necessary in connection with the Works?  | [insert Yes or No] |

|  |  |
| --- | --- |
| Must the Pricipal carry out all design necessary in connection with the Works? | [insert Yes or No] |

|  |  |
| --- | --- |
| Must the Contractor complete the design provided by the Principal? | [insert Yes or No] |

### Design Documents

Mentioned in Clause 3.5

|  |  |
| --- | --- |
| The time to submit the completed design is: | Not applicable. The Contractor need not submit the completed design. |
|  |

[or]

|  |  |
| --- | --- |
| The time to submit the completed design is: | [insert] Days before it is to be used for construction. |
|  |

If no time is stated, then it is 7 Days before the completed design is to be used for construction.

### Site Access

Mentioned in Clause 6.1

|  |  |
| --- | --- |
| The time to give access to the Site is: | [insert] days after the Date of Contract  |

[or]

The times to give access to the Site are:

|  |  |
| --- | --- |
| Milestone 1: | » days after the Date of Contract. |
| Milestone 2: | » days after » |
| Milestone »: | » days after » |

### Date or time for Completion

Mentioned in Clause 11.1

|  |  |
| --- | --- |
| The date or time for Completion is: | [insert] calendar weeks from the date of the Date of Contract. |

[or]

The dates or times for Completion are:

|  |  |
| --- | --- |
| Milestone 1: | [insert] calendar weeks from the Date of Contract. |
| Milestone 2: | [insert] calendar weeks »  |
| Milestone »: | [insert] calendar weeks » |

### Delay Costs

Mentioned in Clause 12.3

|  |  |
| --- | --- |
| The rate per day for delay costs is: | $[insert] |

[or]

|  |  |
| --- | --- |
| The rate per day for delay is: | $[insert], except for delay that occurs after Completion of Milestone [insert] when the rate per day is $10. |

### 14. Liquidated Damages

Mentioned in Clause 12.6

|  |  |
| --- | --- |
| The rate per day for liquidated damages is: | $[insert] |

If no rate or “Nil” or “0” or “N/A” is stated, then common law damages apply.

[or]

The rate per day for liquidated damages is:

|  |  |
| --- | --- |
| Milestone 1: | $[insert] |
| Milestone 2: | $[insert]  |
| Milestone »: | $[insert] |

If no rate is stated for a Milestone, then common law damages apply for that Milestone.

### Security

Mentioned in Clause 13.11

|  |  |
| --- | --- |
| Is the Contractor required to provide a Completion Undertaking and Post Completion Undertaking? | [insert Yes or No] |
| The amount of the Completion Undertaking is?The amount of the Post Completion Undertaking is? | [xx% of the *Contract Price* (excluding GST) at the Date of Contract.][xx% of the *Contract Price* (excluding GST) at the Date of Contract.] |
|  |  |
|  |  |
| A retention amount equal to 5% of the Contract Price. |  |
|  | (“No” applies if not filled in) |

Separable Portion B

 REFER TO CONTRACT SPECIFIC

1. Separable Portion

*Defined in clause 2.10.*

|  |  |
| --- | --- |
| The Separable Portion is: |  |

### 2. Purpose of the Works

Mentioned in Clause 3.4

|  |  |
| --- | --- |
| The purpose of the Works is: | [Insert] |

If no purpose is stated, then the purpose of the Works is as reasonably inferred from the Contract Documents.

### 3. Milestones

Mentioned in Clause 1.17

|  |  |
| --- | --- |
| Milestone 1:  | Completion of » |
| Milestone 2:  | Completion of » and all of the work and obligations under the Contract not included in any other Milestone. |

### 4. Post Completion Period

Mentioned in Clause 1.20

|  |  |
| --- | --- |
| The Post Completion Period, which starts when the work under the Contract reaches Completion, is:  | 12 months |

If no time is stated, then no Post Completion Period applies.

|  |  |
| --- | --- |
| [or]The Post Completion Period, which starts when Milestone [insert] reaches Completion, is: | [insert] calendar weeks/ months. |

If no time is stated, then no Post Completion Period applies.

[or]

The Post Completion Periods for the Milestones are:

|  |  |
| --- | --- |
| Milestone 1:  | » weeks commencing when Milestone 1 reaches Completion. |
| Milestone 2:  | » weeks commencing when Milestone 2 reaches Completion. |
| Milestone »:  | » weeks commencing when Milestone » reaches Completion. |

If no time is stated for a Milestone, then no Post Completion Period applies to that Milestone.

### 5. Contract Price

|  |  |
| --- | --- |
| The *Contract Price* (which is inclusive of GST) at the Date of Contract: | $.........................(including GST), as set out in the Tender Form in Schedule 6 |
| The basis of payment is:(Lump sum/Schedule of Rates as set out in Schedule 7/Lump sum with Schedule of Rates) | Lump sum/Schedule of Rates as set out in Schedule 7/Lump sum with Schedule of Rates |

### Extent of Design

Mentioned in Clause 3.1

|  |  |
| --- | --- |
| Must the Contractor carry out all design necessary in connection with the Works?  | [insert Yes or No] |

|  |  |
| --- | --- |
| Must the Pricipal carry out all design necessary in connection with the Works? | [insert Yes or No] |

|  |  |
| --- | --- |
| Must the Contractor complete the design provided by the Principal? | [insert Yes or No] |

### Design Documents

Mentioned in Clause 3.5

|  |  |
| --- | --- |
| The time to submit the completed design is: | Not applicable. The Contractor need not submit the completed design. |
|  |

[or]

|  |  |
| --- | --- |
| The time to submit the completed design is: | [insert] Days before it is to be used for construction. |
|  |

If no time is stated, then it is 7 Days before the completed design is to be used for construction.

### Site Access

Mentioned in Clause 6.1

|  |  |
| --- | --- |
| The time to give access to the Site is: | [insert] days after the Date of Contract  |

[or]

The times to give access to the Site are:

|  |  |
| --- | --- |
| Milestone 1: | » days after the Date of Contract. |
| Milestone 2: | » days after » |
| Milestone »: | » days after » |

### Date or time for Completion

Mentioned in Clause 11.1

|  |  |
| --- | --- |
| The date or time for Completion is: | [insert] calendar weeks from the date of the Date of Contract. |

[or]

The dates or times for Completion are:

|  |  |
| --- | --- |
| Milestone 1: | [insert] calendar weeks from the Date of Contract. |
| Milestone 2: | [insert] calendar weeks »  |
| Milestone »: | [insert] calendar weeks » |

### Delay Costs

Mentioned in Clause 12.3

|  |  |
| --- | --- |
| The rate per day for delay costs is: | $[insert] |

[or]

|  |  |
| --- | --- |
| The rate per day for delay is: | $[insert], except for delay that occurs after Completion of Milestone [insert] when the rate per day is $10. |

### 14. Liquidated Damages

Mentioned in Clause 12.6

|  |  |
| --- | --- |
| The rate per day for liquidated damages is: | $[insert] |

If no rate or “Nil” or “0” or “N/A” is stated, then common law damages apply.

[or]

The rate per day for liquidated damages is:

|  |  |
| --- | --- |
| Milestone 1: | $[insert] |
| Milestone 2: | $[insert]  |
| Milestone »: | $[insert] |

If no rate is stated for a Milestone, then common law damages apply for that Milestone.

### Security

Mentioned in Clause 13.11

|  |  |
| --- | --- |
| Is the Contractor required to provide a Completion Undertaking and Post Completion Undertaking? | [insert Yes or No] |
| The amount of the Completion Undertaking is?The amount of the Post Completion Undertaking is? | [xx% of the *Contract Price* (excluding GST) at the Date of Contract.][xx% of the *Contract Price* (excluding GST) at the Date of Contract.] |
| A retention amount equal to 5% of the Contract Price. |  |
|  | (“No” applies if not filled in) |

## Schedule 10 – Principal Arranged Insurances

Details of the Principal Arranged Insurances are shown below.

### Works insurance

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

### Public liability insurance

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