**DPTI NOMINATED SUBCONTRACTOR – DEED OF NOVATION**

(AS 2124⎯1992 Clause 10.1(c) and 10.3)

**THIS DEED** is made on the ……………….…………...…….day of …………….….…………………... ………….

Between **Minister for Transport and Infrastructure** ("the Principal") of Level 12 Roma Mitchell House, 136 North Terrace, ADELAIDE SA 5000

and …………………………………………………………..……………………….("the Nominated Subcontractor")

of ………………………………………………….……………………………...….……… ACN ………………………

and ……………………………………………….…………..………………….........………………("the Contractor") of …………………………………………………………………….….……..…......…….. ACN ………………......….

**WHEREAS**

1. The Principal has called tenders for the construction of ………………………….……………………………………………………………………………………………at ………………………………………………………………..…………………………..……. (“the Project”);
2. The Principal and the Nominated Subcontractor have entered into a contract (“Nominated Subcontract”) whereby the Nominated Subcontractor will execute and complete certain work more particularly described in the Nominated Subcontract (which work is herein called the Nominated Subcontract Work) and which will form part of the Project;
3. The Nominated Subcontract has been entered into between the Principal and the Nominated Subcontractor prior to the execution of a contract between the Principal and the successful tenderer for the construction of the Project;
4. The Nominated Subcontract provides that the Nominated Subcontractor will enter into this Deed of Novation with the successful tenderer for the Project;
5. The Contractor is the successful tenderer on the Project and has executed a contract for the construction for the Project with the Principal; and
6. The Contractor has been directed by the Superintendent named in the said contract for the construction of the Project between the Principal and the Contractor to enter into this Deed on Novation with the Nominated Subcontractor.

**THIS DEED WITNESSES** that in consideration of the mutual promises contained in this Deed, the parties agree:

1. The Contractor shall punctually perform, execute and carry out all of the obligations of the Principal under the Nominated Subcontract so far as they are not performed. The Contractor acknowledges itself to be bound by the terms and conditions of the Nominated Subcontract in all respects and in every way as if the Contractor had originally been named in the Nominated Subcontract as a party to the Nominated Subcontract in place of the Principal.
2. The Nominated Subcontractor hereby releases and forever discharges the Principal from the further performance of the Nominated Subcontract and from all claims and demands whatsoever in respect of the Nominated Subcontract and accepts the liability of the Contractor upon the Nominated Subcontract in place of the liability of the Principal.
3. The Nominated Subcontractor shall punctually perform, execute and carry out all of its obligations under the Nominated Subcontract and be bound by the terms of the Nominated Subcontract in each and every way as if the Contractor had originally been named in the Nominated Subcontract as a party to the Nominated Subcontract in place of the Principal.
4. The Nominated Subcontractor acknowledges and agrees that under the Nominated Subcontract:

(a) it is entitled to receive the sum of $\*\* plus GST;

(b) it has been paid the sum of $\*\* plus GST; and

(c) an amount of $\*\* plus GST remains to be paid.

1. Clause 1 will not operate to require the Contractor to assume any obligations of the Principal under the Nominated Subcontract to pay the Nominated Subcontractor for any period prior to the date of this Deed.
2. The Nominated Subcontractor shall not be subject to any set-off, withholding or counterclaim by the Contractor which arises out of circumstances which relate to the period prior to the date of this Deed.
3. This Deed shall be governed by the laws in force in the State or Territory stated in the provisions of the agreement between the Principal and Contractor.

THE COMMON SEAL of the MINISTER FOR )

TRANSPORT AND INFRASTRUCTURE was )

affixed hereto by authority of the Minister )

in the presence of: )

……………………………………………………………….

Witness

……………………………………………………………….

Name of Witness

THE COMMON SEAL of NOMINATED SUBCONTRACTOR )

NAME (ACN XXX XXX XXX) was affixed hereto in the )

presence of: )

………………………………………………………………

Secretary/Director

………………………………………………………………

Name of Secretary/Director

………………………………………………………………

Director

…………………………………………………………….

Name of Director

THE COMMON SEAL of CONTRACTOR NAME )

(ACN XXX XXX XXX) was affixed hereto in the )

presence of: )

………………………………………………………….

Secretary/Director

………………………………………………………….

Name of Secretary/Director

………………………………………………………….

Director

………………………………………………………….

Name of Director