



Government
of South Australia
SA Housing Authority

South Australian Housing Authority

Provision of: **[Insert]**

[Insert Contract Reference No.]

Good and Services

Standard Goods and Services Contract

The South Australian State Procurement Board's Standard Good and Services Agreement

STANDARD GOODS AND SERVICES AGREEMENT

<insert title>

<insert No.>



**Government
of South Australia**

AGREEMENT made on <insert day> of <insert year>

BETWEEN:

THE GOVERNMENT PARTY NAMED IN ITEM 1 OF ATTACHMENT 1 (“the Government Party”)

AND:

THE PARTY NAMED IN ITEM 2 OF ATTACHMENT 1 (“the Supplier”)

IT IS AGREED that this Execution Page, the Agreement Details (Attachment 1), the Terms and Conditions (Attachment 2), the Glossary of Defined Terms (Attachment 3), the Special Conditions (Attachment 4), the Specifications (Attachment 5) and the Pricing and Payment (Attachment 6), will together comprise the Agreement between the Parties for the provision of the Goods and/or Services specified in Attachment 1.

EXECUTED AS AN AGREEMENT

INSERT EXECUTION BLOCKS BELOW

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Attachment 1 - Agreement Details

Item 1	Government Party	South Australian Housing Trust, operating as SA Housing Authority 17 545 435 789 Riverside Centre North Terrace Adelaide SA 5000
Item 2	Supplier	<insert name> <insert ACN> <insert address> Where trustee: <insert name of trust>
Item 3	Commencement Date	Upon execution of this Agreement
Item 4	Expiry Date	<insert date (e.g. date that Goods are accepted or the expiry of any applicable Goods warranty or last date for performance of Services)>
Item 5	Extension Period	not applicable
Item 6	Supplier's ABN	<insert ABN> Registered for GST: <Yes/No>
Item 7	Contract Managers	Government Party: [insert name] [Insert Position] [Insert contact no.] [Insert email] Supplier: [insert name] [Insert Position] [Insert contact no.] [Insert email]
Item 8	Named Persons	[insert or 'not applicable']
Item 9	Details of Goods	[insert or 'not applicable']
Item 10	Delivery Date	[insert or 'not applicable']
	Delivery Point	[insert or 'not applicable']

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Item 11	Installation Date	[insert or 'not applicable']
Item 12	Warranty Period	<insert period>
Item 13	Details of Services	<insert brief description of Services> refer Attachment 5.
Item 14	Delivery Date Delivery Point	<Insert Date> <Insert Delivery Address>
Item 15	Reports and Manuals	<insert description> <insert delivery>
Item 16	Milestone Dates	<insert dates or insert "not applicable">
Item 17	Price and Payment (including address for invoices)	<insert relevant details> Price: \$<insert> (GST inclusive) Manner of Payment: <e.g. instalments, payments attached to achievement of milestones> If required include detailed pricing information in Attachment 6
Item 18	Insurances Public Liability Insurance Product Liability Insurance Professional Indemnity Insurance	Not less than \$20,000,000 [insert or not applicable] [insert or not applicable] (to be determined by the Government Party)
Item 19	Liability Limit	5 x the aggregated value of the contract (inc. GST).
Item 20	Other Termination Rights	the Supplier has no claim against the Government Party arising out of or in relation to such termination other than the right to be paid for the Deliverables provided before the termination date; and the Supplier must comply with all reasonable directions given by the Customer.
Item 21	Approved Subcontractors	not applicable
Item 22	Additional Personnel Checks	not applicable
Item 23	Notice Period for Termination for Convenience	30 days from issuing written notice to Terminate.
Item 24	S.13 Supplier's Design applies	No

Attachment 2 - Standard Terms & Conditions

AGREED TERMS

1. CONTRACT LENGTH

- 1.1 This Agreement commences on the Commencement Date and continues until the Expiry Date, unless terminated earlier or extended under clause 1.2.
- 1.2 This Agreement may be extended by the Government Party for the Extension Period by giving reasonable notice prior to the Expiry Date.

2. CONTRACT MANAGERS

The persons named in Attachment 1 as the Contract Managers are the first point of contact between the Parties and are responsible for overseeing the effective administration of the Agreement including variations and extensions.

3. SUPPLY OF GOODS (IF APPLICABLE)

- 3.1 If Goods are being supplied under this Agreement then the Supplier must:
- (a) supply the Goods in accordance with this Agreement;
 - (b) sell the Goods without encumbrance;
 - (c) deliver the Goods to the Delivery Point on or before the Delivery Date;
 - (d) comply with the Government Party's reasonable directions and delivery instructions;
 - (e) if requested by the Government Party, provide the Government Party with material safety data sheets with respect to the Goods delivered;
 - (f) provide test evidence for the Goods if required; and
 - (g) if indicated in Attachment 1, install the Goods on or before the Installation Date.
- 3.2 If the Supplier cannot comply with any of its obligations under clause 3.1, the Supplier must notify the Government Party in writing immediately.

4. INSPECTION AND ACCEPTANCE OF GOODS (IF APPLICABLE)

- 4.1 The Government Party may inspect the Goods to determine whether to accept or reject the Goods.
- 4.2 The Government Party must accept the Goods if they conform with the requirements of this Agreement.
- 4.3 Subject to clause 4.4, the Goods are deemed to be accepted either:
- (a) on delivery, if the Government Party notifies the Supplier that it accepts the goods; or
 - (b) if no notice is issued by the Government Party, then 5 Business Days after delivery of the Goods to the Delivery Point.
- 4.4 If the Goods are consumable products and the Goods are found to be defective when first used, then the Government Party may reject the Goods under clause 4.5.
- 4.5 If the Government Party rejects the Goods due to non-conformity with the requirements of this Agreement, then the Government Party must notify the Supplier as soon as possible and require the Supplier at its sole cost, and at the Government Party's election to either:
- (a) resupply the Goods and remove the non-conforming Goods from the Delivery Point; or
 - (b) repair the Goods.
- 4.6 Acceptance of the Goods does not relieve the Supplier of any of its obligations under this Agreement.
- 4.7 The Supplier bears the risk in the Goods until delivery to the Delivery Point. Title in the Goods will pass to the Government Party upon the Government Party's acceptance of the Goods.

5. WARRANTY PERIOD (IF APPLICABLE)

- 5.1 If during the Warranty Period the Goods fail to comply with the warranties in clause 9.1 then the Government Party may in its absolute discretion require that the Supplier at its expense:

- (a) replace the Goods within 10 Business Days of notification by the Government Party (or such other time as is agreed); or
- (b) refund the Price.

6. SUPPLY OF SERVICES (IF APPLICABLE)

- 6.1 If Services are being supplied under this Agreement then the Supplier must ensure that the Supplier's Personnel provide the Services described in Attachment 1 in accordance with the terms and conditions of this Agreement.
- 6.2 The Supplier must perform the Services in accordance with this Agreement.
- 6.3 The Supplier shall commence the Services promptly upon execution of this Agreement and shall proceed with due expedition and without delay, and complete the Services by the agreed date for completion.
- 6.4 Where Attachment 1 specifies Named Persons then the Services must be delivered by those Named Persons.
- A. The Supplier may substitute a Named Person with the consent of the Government Party subject to the Government Party being satisfied as to the expertise, experience and suitability of the substitute.
- 6.5 The Supplier must ensure that Services are delivered:
- (a) to a standard that meets or exceeds the Service Levels;
 - (b) in accordance with the warranties in clause 9.4; and
 - (c) by any Milestone Dates.
- 6.6 The Government Party's remedies for the Supplier's failure to meet a Service Level or for a breach of a warranty, includes resupply of the Services, a reduction of the price, termination, rebates or any other remedy specified in the Special Conditions.

7. REPORTS AND MANUALS (IF APPLICABLE)

The Supplier must provide those reports, manuals or other materials specified in Attachment 1.

8. SERVICE VARIATION (IF APPLICABLE)

- 8.1 If the Government Party wishes to vary the scope of the Services ("**Variation**"), it must issue a written request to the Supplier and the Supplier must within 5 Business Days (or such other period as agreed) provide a written quote ("**Quote**") setting out:
- (a) any impacts on the timing of or completion of tasks;
 - (b) the varied price and payment arrangements; and
 - (c) any changes to the terms that apply to the performance of the Services.
- 8.2 The Parties must negotiate in good faith to agree on the price and other terms applicable to the Variation.
- 8.3 If the Parties agree in writing to the terms of the Variation then:
- (a) the Supplier must perform the Services as varied by the Variation;
 - (b) the Government Party must pay the varied price;
 - (c) the terms and conditions of the Agreement are varied by the terms of the Variation.

9. SUPPLIER'S WARRANTIES

- 9.1 If Goods are being supplied under this Agreement then the Supplier warrants that it has good and unencumbered title to the Goods and the Goods:
- (a) conform with any description applied and any sample provided by the Supplier;
 - (b) are new (unless otherwise specified);
 - (c) are free from defects in materials, manufacture and workmanship;
 - (d) conform to any applicable Australian Standards or other standards nominated in this Agreement;
 - (e) conform to the Specifications and any technical Specifications provided by the Supplier;

- (f) are of merchantable quality;
 - (g) are installed correctly (if the Supplier is responsible for installation);
 - (h) are fit for their intended purpose; and
 - (i) are manufactured and supplied without infringing any person's Intellectual Property Rights.
- 9.2 The Supplier must ensure that the Government Party receives the full benefit of any manufacturer's warranties in respect of the Goods.
- 9.3 During any Warranty Period any defects in the Goods must be rectified at the Supplier's expense.
- 9.4 If Services are being supplied under this Agreement then the Supplier warrants that the Services will:
- (a) comply with the description of the Services in Attachment 1;
 - (b) be provided with due care and skill;
 - (c) be provided in a timely and efficient manner;
 - (d) be provided in accordance with the best practices current in the Supplier's industry;
 - (e) be supplied without infringing any person's Intellectual Property Rights;
 - (f) be performed by the Supplier and/or the Supplier's Personnel; and
 - (g) be supplied in the most cost effective manner consistent with the required level of quality and performance.
- 10. SUPPLIER'S PERSONNEL**
- 10.1 The Supplier, if required by the Government Party, must give its consent to and procure the consent of the Supplier's Personnel, to the conduct of a police check or any Additional Personnel Checks specified in Attachment 1.
- 10.2 If the Government Party gives the Supplier notice in writing requiring those persons to be withdrawn from supplying the Goods or providing the Services, and the Supplier must immediately comply with the notice and provide replacement Personnel acceptable to the Government Party.
- 10.3 The Supplier and the Supplier's Personnel must only use the Government Party's computer systems with the specific authorisation of the Government Party and only in the manner as directed by the Government Party from time to time.
- 10.4 The Government Party reserves the right to refuse entry to any of the Government Party's premises to any of the Supplier's Personnel.
- 11. PRICE AND PAYMENT**
- 11.1 In consideration for the supply of the Goods and/or the Services, the Government Party will pay the Price.
- 11.2 Unless otherwise expressly stated the Price is inclusive of GST.
- 11.3 The Supplier is entitled to invoice the Government Party for payment in respect of the Goods and/or Services, when the Goods have been supplied and accepted under clause 4, and the Services have been supplied in accordance with this Agreement.
- 12. GST**
- 12.1 Subject to clause 12.2 the Supplier represents that:
- (a) the ABN shown in Attachment 1 is the Supplier's ABN; and
 - (b) it is registered under the *A New Tax System (Australian Business Number) Act 1999* (Cth),
- 12.2 If the Supplier is not registered for GST, then GST must not be charged on supplies made under this Agreement.
- 13. INTELLECTUAL PROPERTY RIGHTS**
- 13.1 Nothing in this Agreement affects the ownership of Intellectual Property Rights created before the Commencement Date.
- 13.2 Subject to clause 13.1, title and all Intellectual Property Rights in the Deliverables vests in the Government Party on creation.
- 13.3 The Supplier must do anything necessary to vest all Intellectual Property Rights in the reports and other materials in the Government Party.
- 13.4 The Government Party grants to the Supplier the right to access and use the reports and other materials solely for the purpose of providing the Services.
- 13.5 The Supplier releases and indemnifies the Government Party from and against all actions which may be brought or made against the Government Party by any person, including the Government Party, arising from any infringement or alleged infringement of any Intellectual Property Rights or moral rights in respect of the Deliverables.
- 14. INSURANCE**
- 14.1 The Supplier must effect and maintain the policies of insurance specified in Attachment 1 for not less than the amounts specified in Attachment 1.
- 14.2 The policies of insurance referred to in clause 14.1 must be held until the expiry of the Agreement.
- 15. LIABILITY LIMIT**
- 15.1 The Supplier's liability to the Government Party under this Agreement is limited to the amount specified in Attachment 1.
- 16. CONFIDENTIAL INFORMATION**
- 16.1 Subject to this clause 16, neither Party may disclose any Confidential Information belonging to the other Party except as genuinely and necessarily required for the purpose of this Agreement.
- 16.2 A Party may disclose Confidential Information belonging to the other Party:
- (a) to an employee, agent or adviser of that Party, on a "need to know" and confidential basis;
 - (b) as required by law or a court order;
 - (c) in accordance with any Parliamentary or constitutional convention;
 - (d) to the Australian Competition and Consumer Commission (ACCC) if the party reasonably suspects, or is notified by the ACCC that it reasonably suspects, that there is Cartel Conduct or unlawful collusion in connection with the supply of Goods or Services under this Agreement; or
 - (e) for the purposes of prosecuting or defending proceedings.
- 16.3 The Parties may mutually agree to disclose Confidential Information.
- 17. SET-OFF**
- Any claim the Government Party may have against the Supplier may be set off against monies owed to the Supplier under this Agreement.
- 18. DISPUTE RESOLUTION**
- 18.1 Subject to clause 18.4 a Party may not commence legal proceedings without first referring the dispute to the other Party under this clause.
- 18.2 Either Party may give the other a notice in writing ("**dispute notice**") setting out the details of the dispute.
- 18.3 Within 5 Business Days or such other period as may be agreed by the Parties, representatives must meet and use reasonable endeavours to resolve the dispute.
- 18.4 A Party may seek immediate interlocutory relief or other interim remedy in case of genuine urgency.
- 19. ENDING THIS CONTRACT**
- 19.1 The Government Party may terminate this Agreement immediately upon giving notice in writing to the Supplier if:
- (a) the Government Party reasonably forms the opinion that the Supplier will be unable to perform its obligations under this Agreement;
 - (b) the Supplier is in breach of this Agreement and has not rectified such breach within 10 Business Days of the Government Party giving notice in writing to the Supplier requiring the rectification of such breach;

- (c) the work performed by the Supplier is otherwise unsatisfactory to the Government Party (in the Government Party's reasonable opinion);
 - (d) the Supplier abandons or refuses to proceed with the supply of Services whether or not it has commenced work;
 - (e) the Supplier is not able to reasonably satisfy the Government Party that the Supplier will be able to complete the Services by the date for completion or reach previously agreed significant milestones;
 - (f) the Government Party becomes aware that the Supplier is in breach of its statutory obligations with respect to its employees;
 - (g) the Supplier fails to comply with a notice issued under clause 10.2; or
 - (h) the Supplier fails to disclose a conflict of interest;
 - (i) any Other Termination Right occurs; or
 - (j) the Supplier suffers or, in the reasonable opinion of the Government Party, is in jeopardy of becoming subject to any form of insolvency administration or bankruptcy.
- 19.2 The Government Party may terminate this Agreement without cause by giving the Supplier the period of notice specified in Attachment 1 ("**Notice Period for Termination for Convenience**").
- 19.3 If the Government Party terminates this Agreement in accordance with clause 19.2:
- (a) the Supplier has no claim against the Government Party arising out of or in relation to such termination other than the right to be paid for Goods accepted and/or Services provided before the effective termination date; and
 - (b) the Supplier must comply with all reasonable directions given by the Government Party.
- 19.4 The Supplier may terminate this Agreement immediately upon giving notice in writing to the Government Party if the Government Party is in breach of this Agreement and has not rectified such breach within 14 days of the Supplier giving notice in writing to the Purchaser requiring the rectification of such breach.
- 20. EFFECT OF ENDING THIS CONTRACT**
- 20.1 Any termination of this Agreement by either Party does not affect any accrued right of either Party.
- 20.2 Despite termination or completion of this Agreement, this clause 20 and clauses 9, 13, 14, 15, 16, 17 and those Special Conditions that by their nature remain in force, shall survive.
- 21. SUBCONTRACTING**
- 21.1 With the exception of the Approved Subcontractors described in Attachment 1, the Supplier must not engage any subcontractor without the prior written permission of the Government Party.
- 21.2 The Supplier remains responsible for obligations performed by the Approved Subcontractors to the same extent as if such obligations were performed by the Supplier.
- 22. CONFLICT OF INTEREST**
- 22.1 The Supplier must disclose in writing to the Government Party all actual and potential conflicts of interest that exist, arise or may arise (either for the Supplier or the Supplier's Personnel) in the course of performing its obligations under this Agreement as soon as practical after it becomes aware of that conflict.
- 23. COMPLIANCE WITH LAWS**
- The Supplier must comply with the laws in force in the State of South Australia in performing its obligations under this Agreement.
- 24. GOVERNING LAW AND JURISDICTION**
- 24.1 This Agreement is governed by the laws in the State of South Australia.
- 24.2 The courts of the State of South Australia have exclusive jurisdiction in connection with this Agreement.

- 25. ENTIRE AGREEMENT**
- The Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with in this Agreement and supersedes all prior agreements, understanding and negotiations in respect of the matters dealt with in this Agreement.
- 26. NO ASSIGNMENT**
- 26.1 The Supplier must not assign, encumber or otherwise transfer any of its rights or obligations under this Agreement without the written approval of the Government Party which approval shall not be unreasonably withheld.
- 26.2 Subject to any contrary legislative intention, the Parties agree that if there is any Machinery of Government Change, this Agreement is deemed to refer to the new entity succeeding or replacing the Government Party and all of the Government Party's rights and obligations under this Agreement will continue and will become rights and obligations of that new entity.
- 27. MODIFICATION**
- No addition to or modification of any provision of this Agreement will be binding upon the Parties unless made by written instrument signed by the Parties.
- 28. SEVERANCE**
- 28.1 Each word, phrase, sentence, paragraph and clause of this Agreement is severable.
- 28.2 Severance of any part of this Agreement will not affect any other part of this Agreement.
- 29. COUNTERPARTS**
- This Agreement may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one (1) instrument. An executed counterpart may be delivered by email.
- 30. WORK HEALTH & SAFETY**
- 30.1 The Supplier must comply with the *Work Health and Safety Act 2012* (SA) at all times, regardless of whether the Government Party issues direction in that regard or not.
- 30.2 If all or part of the work under this Agreement is to be provided on the premises of the Government Party and under the direction of the Government Party, the Supplier must comply with the Government Party's work health and safety policies, procedures and instructions. If the Supplier becomes aware of any potentially hazardous situation on the Government Party's premises, the Supplier must immediately bring it to the Government Party's attention.
- 31. ACTING ETHICALLY**
- The Supplier must conduct itself in a manner that does not invite, directly or indirectly, the Government Party'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 Government Party's interests or to otherwise contravene the Code of Ethics for the South Australian Public Sector.
- 32. INTERPRETATION**
- 32.1 Defined terms are set out in the Glossary of Defined Terms in Attachment 3.
- 32.2 In resolving inconsistencies in this Agreement, the documents have the following order of priority:
- (a) Special Conditions (Attachment 4);
 - (b) Standard Terms and Conditions (Attachment 2); and
 - (c) the other Attachments.
- 32.3 In this Agreement (unless the context requires otherwise):
- (a) a reference to any legislation includes:
 - (i) all legislation, regulations and other forms of statutory instrument issued under that legislation; and

- (ii) any modification, consolidation, amendment, re-enactment or substitution of that legislation;
- (b) a word in the singular includes the plural and a word in the plural includes the singular;
- (c) a reference to two or more persons is a reference to those persons jointly and severally;
- (d) a reference to dollars is to Australian dollars;

- (e) a reference to a Party includes that party's administrators, successors and permitted assigns.

33. SPECIAL CONDITIONS

The special conditions (if any) form part of this Agreement and to the extent of any inconsistency, take precedence over the other terms of this Agreement.

Attachment 3 - Glossary of Defined Terms

NOTE: Not all terms may be required for a particular procurement

In this Agreement:

- (a) **“Acceptance Date”** means the date that the Goods are accepted by the Government Party;
- (b) **“Approved Subcontractors”** means those subcontractors specified in Attachment 1;
- (c) **“Business Day”** means any day that is not a Saturday or Sunday or a public holiday in South Australia;
- (d) **“Cartel Conduct”** means conduct by two or more parties who are competitors (or would be but for the conduct) who enter into a contract, arrangement or understanding that involves price fixing, output restrictions, allocating customers, suppliers or territories, or bid-rigging, as defined in s44ZZRD of the *Competition and Consumer Act 2010* (Cth);
- (e) **“Code of Ethics for the South Australian Public Sector”** is the code of ethics for the purposes of the *Public Sector Act 2009* (SA);
- (f) **“Confidential Information”** means information which is identified either as confidential information (if disclosed by the Government Party) or proprietary information (if disclosed by the Supplier), but does not include this Agreement;
- (g) **“Consultancy Services”** means services provided by Consultants;
- (h) **“Consultant”** has the same meaning as in DPC027 *Disclosure of Government Contracts* and means a person or entity that is engaged by a public authority for a specified period to carry out a task that requires specialist skills and knowledge not available in the public authority. The objectives of the task will be achieved by the consultant free from direction by the public authority as to the way it is performed and in circumstances in which the engagement of a person under normal circumstances is not a feasible alternative;
- (i) **“Deliverables”** means those documents and things required under this Agreement to be handed over to the Government Party by the Supplier and includes plans, outputs, drawings, reports, records, sketches, photographs, designs, estimates, specifications, calculations and models, but excludes the Supplier’s internal administrative records;
- (j) **“Delivery Date”** means the date and time specified in Attachment 1 for delivery of the Goods;
- (k) **“Delivery Point”** means the location(s) specified in Attachment 1, where the Goods and/or Services will be delivered;
- (l) **“Extension Period”** means the period by which the Agreement is extended as specified in Attachment 1;
- (m) **“Goods”** means the goods specified in Attachment 1;
- (n) **“GST”** means the tax imposed by the GST Law;
- (o) **“GST Law”** has the meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (p) **“Installation Date”** means the date specified in Attachment 1 for the installation of the Goods;
- (q) **“Intellectual Property Rights”** means all intellectual property rights, including but not limited to:
 - (i) patents, copyright, registered designs, trademarks, know-how and any right to have Confidential Information kept confidential; and
 - (ii) any application or right to apply for registration of any of the rights referred to in paragraph (a), but for the avoidance of doubt excludes moral rights and performers’ rights;
- (r) **“Machinery of Government Change”** means a change to the structure, function or operations of the South Australian Government or the Government Party as a result of any government reorganisation, restructuring or other organisational or functional change;
- (s) **“Measurement Period”** means the period over which the performance of a Service Level is measured;
- (t) **“Milestone Dates”** means dates by which Services must be delivered as specified in Attachment 1;
- (u) **“Named Persons”** means the persons specified in Attachment 1;
- (v) **“Notice Period for Termination for Convenience”** means the time period specified in Attachment 1;
- (w) **“Other Termination Right”** means the termination rights specified in Attachment 1;
- (x) **“Party”** means a party to this Agreement;
- (y) **“Personal Information”** means information or an opinion, whether true or not, relating to a natural person or the affairs of a natural person whose identity is apparent, or can reasonable be ascertained, from the information or opinion;
- (z) **“Purchase Order”** means an order for Goods and/or Services submitted by the Government Party to the Supplier;
- (aa) **“Price”** means the price payable under this Agreement specified in Attachment 1 and includes any price varied under clause 8;
- (bb) **“Service Levels”** means the service levels (if any) specified in the Specifications;
- (cc) **“Services”** means the services specified in Attachment 1;
- (dd) **“Special Conditions”** means the conditions in Attachment 4 and where relevant includes agency specific Special Conditions;
- (ee) **“Specifications”** means the detailed description of the Goods/Services in Attachment 5;
- (ff) **“Supplier Personnel”** means any Approved Subcontractors, employees, agents and any other person employed or engaged by the Supplier to perform this Agreement and includes the Named Persons;
- (gg) **“Term”** means the period commencing on the Commencement and ending on the Expiry Date unless terminated earlier and includes any extension and;
- (hh) **“Warranty Period”** means the period specified in Attachment 1.

Attachment 4 - Special Conditions

[Clauses to be removed if deemed 'not applicable' by the Government Party]

S1 SERVICES

- S1.1 The Supplier shall ensure that:
 - S1.1 it has the necessary skills, and experience to complete the Services and provide the Deliverables in accordance with the Agreement;
 - S1.2 its employees, subcontractors and agents have the necessary skills and experience to perform those obligations of the Supplier which are allotted to them by the Supplier, and
 - S1.3 the Deliverables and the subject matter of the Services shall be free from defects and errors and appropriate for the intended use.

S2 SCOPE

- S2.1 The Deliverables must be provided to the Government Party in hard copy and in electronic files.
- S2.2 The electronic files must be in an editable format which is acceptable to the Government Party, and also in Portable Document Format (.pdf).
- S2.3 The Supplier agrees and acknowledges that the Government Party, in its absolute discretion, may provide the Deliverables to third parties.
- S2.4 The Supplier shall at all reasonable times give to the Government Party, or to any other persons authorised in writing by the Government Party, access to premises occupied by the Supplier where the Services are being undertaken and shall permit those persons to inspect the performance of the Services and anything brought into existence in association with this Agreement.

S3 VARIATIONS

- S3.1 The Government Party may direct the Supplier to do any one or more of the following:
 - S3.1.1 increase, decrease or omit any part of the Services or Deliverables;
 - S3.1.2 change the character or quality of any material or work or of anything described in the Specifications;
 - S3.1.3 change the levels, lines, positions or dimensions of anything described in the Specifications or any part of the Services or Deliverables; and
 - S3.1.4 execute additional Services ("Variations").
- S3.2 The Supplier shall not vary the Services or Deliverables except as directed by the Government Party pursuant to Special Condition S3.1 or approved in writing by the Government Party.
- S3.3 The Supplier is bound only to execute a Variation which is within the general scope of the Agreement.
- S3.3 Within 14 days of receipt of the direction referred to in Special Condition S3.1, the Supplier shall prepare and furnish to the Government Party a written statement setting out:
 - S3.3.1 detailed particulars of any such Variation (including the reasons for the Variation if proposed by the Supplier);
 - S3.3.2 the work required or no longer required;
 - S3.3.3 an estimate of the increase or decrease in the Price;
 - S3.3.4 any proposed adjustment to the Delivery Date or Expiry Date; and
 - S3.3.5 any proposed modifications to the Specifications if the contemplated Variation is effected, as the case may be.
- S3.4 The Supplier shall only be entitled to any payment (pursuant to the Agreement or otherwise at common law or equity or in restitution) in relation to any Variation where the Supplier:
 - S3.4.1 has been instructed to carry out the Variation pursuant to Special Condition S3.1;
 - S3.4.2 has given notice of the estimated impact of the Variation on delivery timeframes, the Price including delay or disruption costs, if any, and the cost or effect on any applicable warranty;
 - S3.4.3 has received notice in writing from the Government Party that the price of the variation is agreed and that the Supplier must proceed to implement the Variation.
- S3.5 If the Supplier:
 - S3.5.1 becomes aware of a potential Variation; or
 - S3.5.2 considers that additional services are required and that these additional services are not within the scope of the Agreement,

the Supplier must forthwith and before performing any additional services to which the potential Variation relates, give written notice thereof to the Government Party. The notice must include a description of the additional Services and an estimate of the value of the Variation. The Supplier must not proceed with the varied Services unless the Government Party's written approval has been provided. If requested by the Government Party, the Supplier must provide a proposed lump sum price or Upper Limiting Fee for the varied Services.

S3.6 The Supplier agrees and acknowledges that:

S3.6.1 the Government Party is not liable to make payment to the Supplier for any of the additional services referred to in Special Condition S3.5 if the Supplier has not received written approval from the Government Party prior to providing the additional services; and

S3.6.2 compliance with the requirements of Special Condition S3.6.1 is a condition precedent for payment for the provision of any additional services which are not within the Scope.

S4 PAYMENT

S4.1 For Services for which the Government Party has accepted a lump sum price:

S4.1.1 the Government Party will pay the lump sum price, adjusted by any additions or deletions made pursuant to this Agreement;

S4.1.2 payment will not exceed the lump sum price unless the Government Party has directed a Variation; and

S4.1.3 the lump sum price is deemed to be full payment for the provision of all supplies, tasks, services, activities, incidentals, overheads, fees and disbursements relating to the lump sum price part of the Agreement, regardless of whether or not these are mentioned in any Schedule of Prices.

S4.2 For Services for which the Government Party has accepted a schedule of rates:

S4.2.1 the Government Party will pay the sum ascertained by multiplying the measured quantity of each item of service actually carried out under this Agreement by the rate accepted by the Government Party for the item of service, adjusted by any additions or deletions made pursuant to this Agreement; and

S4.2.2 except where a disbursement has been specifically included in the schedules, the rates are deemed to allow for all supplies, tasks, services, activities, incidentals, overheads, fees and disbursements relating to the item of service listed in the schedule. No separate payment will be made for any work or expense required for the item of service listed in the schedule but not specifically mentioned in the description of the item of service. A change in the measured quantity provided does not entitle the Supplier to amend the applicable rate.

S4.3 For Services for which the Government Party has accepted an upper limiting fee, the Government Party will pay an amount ascertained on the same basis as a schedule of rates, up to the amount of the upper limiting fee. The Services will be completed in return for payment not exceeding the upper limiting fee unless the Government Party has directed a Variation that requires additional payment.

S5 Programs

S5.1 The Government Party may direct the Supplier to furnish to the Government Party a program within the time and in the form directed by the Government Party. The Supplier shall not, without reasonable cause, depart from:

S5.1.1 a program included in the Agreement; or

S5.1.2 a program furnished to the Government Party.

S5.2 The Supplier may voluntarily furnish a program to the Government Party at any time.

S5.3 A program shall not affect the rights or obligations in this Special Condition 5, including the obligation not to depart from an earlier program.

S5.4 A program does not form part of the Agreement and shall only be used for the purpose of enabling the Government Party to monitor the progress of the Supplier in the provision of the Services.

S6 Delay

S6.1 Where a Party ("First Party") is delayed or prevented from performing an obligation in accordance with the terms of this Agreement due to the other Party or a third party over whom the First Party has no control (excluding the Supplier's sub-contractors) ("Second Party") not performing a task for which it is responsible:

- S6.1.1 the First Party shall be allowed an extension of time at least equal to the period of delay caused by the Second Party; and
- S6.1.2 the First Party shall not be in breach of this Agreement as a result of the failure to perform the relevant obligation.

S7 SUPPLIER'S CONDUCT

- S7.1 The Supplier warrants, represents and undertakes to the Government Party that it will conduct itself in a manner that does not invite, directly or indirectly, the Government Party'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 Government Party's interests or to otherwise contravene the Code of Ethics for the South Australian Public Sector.
- S7.2 The Government Party is a public authority for the purposes of the Independent Commissioner Against Corruption Act 2012 (SA) ("ICAC Act"). For the term of the Agreement the Supplier 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.

S8 WH&S

- S8.1 The Government Party is committed to the provision of a healthy and safe working environment and expects the Supplier to demonstrate the same level of commitment to work health and safety. The Supplier must comply with the Work Health and Safety Act 2012 (SA) and Regulations.
- S8.2 If requested by the Government Party, the Supplier must:
 - S8.2.1 provide evidence satisfactory to the Government Party of its capacity to comply with the Work Health and Safety Act 2012 (SA) and Regulations;
 - S8.2.2 provide evidence that its personnel, agents and subcontractors have received appropriate training in and are aware of their legal obligation and responsibilities in relation to work health and safety; and
 - S8.2.3 provide the Supplier's registration number with the Return to Work Corporation.
- S8.3 If all or part of the work under this Agreement is to be provided on the premises of the Government Party and under the direction of the Government Party, the Supplier must comply with the Government Party's work health and safety policies, directions, procedures and instructions applicable to and in effect at the premises.
- S8.4 If the Supplier becomes aware of any potentially hazardous situation on the premises of the Government Party, the Supplier must immediately bring it to the Government Party's attention for a direction regarding the matter.

S9 EVALUATION OF SUPPLIER'S PERFORMANCE

- S9.1 The Government Party may undertake an ongoing evaluation of the Supplier's performance in providing the Services and compliance with the requirements of this Agreement. A copy of any such evaluation will be forwarded to the Supplier.
- S9.2 If the Supplier disagrees with the evaluation, it may forward a request to the Government Party for a review, along with reasons why it should be reviewed. The Government Party's decision will then be final. The evaluation may be taken into account in the assessment of future tenders with the Government Party or other government agencies.

S10 FAULTS IN DELIVERABLES

- S10.1 In this Special Condition a "Fault" means a defect, error, omission, or an amendment that is necessary to the Deliverables because they are inappropriate for their intended use.
 - S10.2 If it is necessary to subsequently amend the Deliverables due to a Fault, then the Supplier shall rectify the relevant Deliverables and shall be responsible for that part of the cost, including Government Party's costs, of rectifying the Deliverables which may reasonably be attributed to the Supplier, its employees, subcontractors or agents.
 - S10.3 As soon as possible after discovery of the Fault:
 - S10.3.1 the party that identified the Fault will notify the other party of the Fault;
 - S10.3.2 The Government Party shall provide the Supplier an opportunity to respond to the existence of the Fault and, where agreement is reached, the Supplier shall prepare or be involved in the preparation of details of the rectification work to be performed, so that the Supplier has the
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- opportunity to minimise the costs and delays resulting from rectification works. Such response by the Supplier shall be within 3 Business Days of receipt of the notice in S10.3.1 above;
- S10.3.3 where agreement is not reached within 5 Business Days of the notice in S10.3.1 above or where urgency precludes the opportunity for Supplier response, the Government Party shall carry out the rectification work and the costs shall become a debt due and owing to the Government Party by the Supplier; and
- S10.3.4 to the degree to which the Supplier, its employees and agents were responsible for the Fault, the Supplier will be responsible for the reasonable cost of rectification works including costs of delays associated with the rectification works.

S11 COLLUSIVE ARRANGEMENTS

The Supplier warrants and represents to the Government Party that:

- S11.1 it had no knowledge of any offered or tendered fee or price of any other tenderer or offerer for the Services at the time of the tender or offer;
- S11.2 except as disclosed in its tender or offer, it has not entered into any contract, arrangement or understanding to pay or allow to be paid any money directly or indirectly to a trade or industry association (above the published standard membership fee) or to or on behalf of any other tenderer or offerer in relation to its tender or offer for this Agreement, nor paid or allowed to be paid any money on that account;
- S11.3 except by prior agreement with the Government Party, it has not paid or allowed to be paid or entered into any contract, arrangement or understanding to pay or allow to be paid any money directly or indirectly to or on behalf of any other tenderer or offerer nor received any money or allowance from or on behalf of any other tenderer in relation to its tender or this Agreement, nor will it pay or allow or receive any such money, and
- S11.4 if, without the Government Party's prior agreement, it receives or has received any money or allowance from any other offerer or tenderer in relation to its tender, the other tenderer's tender or this Agreement, then without prejudice to any other right or remedy of the Government Party, such money or allowance shall be deemed to be held by the Supplier on trust for the Government Party and shall be paid to the Government Party immediately.

S12 WARRANTIES

- S12.1 The Supplier warrants that it has and it shall be deemed to have:
- S12.1 examined carefully and to have acquired actual knowledge of the contents of the Agreement documents, the Government Party's requirements, the tender documents and any other information made available in writing by the Government Party or any other person on the Government Party's behalf to the Supplier for the purpose of preparing and submitting the Supplier's tender;
- S12.2 examined all information relevant to the risks, contingencies and other circumstances which could affect the Supplier's tender and which was obtainable by the making of detailed enquiries;
- S12.3 informed itself of the nature of the work and materials necessary for the execution of the Services;
- S12.4 satisfied itself as to the correctness and sufficiency of the Price and that the Price covers the cost of complying with all its obligations under the Agreement and of all matters and things necessary for the due and proper performance and completion of the Services;
- S12.5 informed itself of all requirements of any government authorities in relation to the Services generally;
- S12.6 obtained all appropriate professional and technical advice on all matters and circumstances with respect to the matters referred to in this Special Conditions prior to submitting its tender for the Services, and
- S12.7 entered into this Agreement based on its own investigations, interpretations, deductions, information and determinations and the Supplier acknowledges that it is aware that the Government Party has entered into the Agreement relying upon this acknowledgment and warranty.
- S12.2 Failure by the Supplier to do all or any of the things it is deemed to have done under this Special Condition will not relieve the Supplier of any of its obligations or liabilities under the Agreement, including its obligation to perform and complete the Services in accordance with the Agreement.

S13 SUPPLIER'S DESIGN

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- S13.1 This Special Condition shall only apply if stated to apply at Item 24 of Attachment 1.
- S13.2 The parties agree that the Government Party may act in its absolute discretion when exercising any of its rights under this Special Condition.

Definitions

- S13.3 Unless the context requires otherwise, in this Special Condition and any other part of the Agreement relating to work to be designed by the Supplier:
- S13.3.1 'Supplier's Construction Drawings' means the drawings prepared by, or on behalf of, the Supplier which are necessary for the construction and/or installation of the Works.
- S13.3.2 'Supplier's Construction Specifications' means the specifications prepared by, or on behalf of, the Supplier which are necessary for the construction and/or installation of the Works.
- S13.3.3 'Supplier's Design' means the design for the Works which has been accepted pursuant to Special Condition 13.11 or is deemed to have been accepted pursuant to Special Condition 13.13 and includes:
- S13.3.3.1 the Deliverables;
- S13.3.3.2 the Supplier's Construction Drawings, the Supplier's Construction Specifications and all other drawings, specifications, manuals, designs (including systems designs) and other information, calculations, samples, models, patterns and the like, and
- S13.3.3.3 any new software and any customised, modified or extended parts of any existing software (including associated data and documentation) required for the construction and/or installation of the Works or which the Agreement requires the Supplier to create or cause to be created or to provide (in all forms, including electronic) and which has become the Supplier's Design in accordance with Special Condition 13.14.
- S13.3.4 'Government Party's Requirements' means the Specifications and any written summary or outline of the Government Party's requirements for the Services, Deliverables and Works provided by the Government Party.
- S13.3.4 "Works" means any construction works which have flowed from any design works that are part of the Services

Supplier's warranties

- S13.4 The Supplier warrants that:
- S13.4.1 it shall at all times be suitably qualified and experienced, and shall exercise due skill, care and diligence in the execution and completion of the design of the Works;
- S13.4.2 the design of the Works will be carried out and completed in accordance with the requirements of the Agreement;
- S13.4.3 such design will satisfy the Government Party's Requirements and be fit and adequate for the purposes stated in, or that can be reasonably implied from the Agreement, and suitable and adequate for the site;
- S13.4.4 construction in accordance with such design will comply with the standards and other requirements specified by this Agreement;
- S13.4.5 the Works will, if constructed in accordance with the Supplier's Design:
- S13.4.5.1 satisfy the Government Party's Requirements and be fit and adequate for the purposes stated in, or that can be reasonably implied from, the Agreement and be suitable and adequate for the site; and
- S13.4.5.2 comply with all the requirements of the Agreement, including all legislative requirements and the requirements of all government authorities.

Supplier's liabilities, obligations and warranties unaffected

- S13.5 The warranties in Special Condition 13.4 shall remain unaffected, notwithstanding:
- S13.5.1 any design work in respect of the Works may have been carried out by, or on behalf of, the Government Party;
- S13.5.2 any comment upon, response to, review or acceptance of, giving or withholding of permission to use, approval to proceed with, Direction or query in relation to or request to vary any Supplier's Construction Drawing or Supplier's Construction Specification or any part of the quality assurance system (in so far as it relates to the Works), by the Government Party, or any agent, employee or Supplier of the Government Party;
- S13.5.3 any acceptance of a drawing or specification pursuant to Special Condition 13.11 or deemed acceptance pursuant to Special Condition 13.13;

S13.5.4 any variation directed or approved by the Government Party in accordance with Special Condition 3 or the provision of any warranty.

The Design

S13.6 The Supplier shall ensure the Supplier's Design is carried out and completed in accordance with the Agreement and that the Supplier's Design, the Supplier's Construction Drawings and the Supplier's Construction Specifications:

S13.6.1 are in accordance with the Government Party's Requirements;

S13.6.2 are consistent with the Supplier's tender for the Services (except to the extent that the Supplier's tender is inconsistent with the Government Party's Requirements or the Contract Documents or provides for standards of finish, workmanship or materials of a lesser standard than that required by the Government Party's Requirements or the Contract Documents, in which case the Supplier's Design shall be in accordance with the Government Party's Requirements and the Contract Documents), and

S13.6.3 are sufficient to enable the Government Party to construct and complete the Works.

Submission of Supplier's Construction Drawings, Specifications

S13.7 The Supplier shall, in accordance with the program, submit to the Government Party five copies of the Supplier's Drawings and Supplier's Specifications for the Works or as otherwise directed by the Government Party.

No obligations to review or check Drawings and Specifications

S13.8 The Government Party is not required to review or check any Supplier's Drawings or Supplier's Specifications submitted by the Supplier under Special Condition 13.7 or any reasons or supporting information submitted by the Supplier under Special Condition 13.12:

S13.8.1 for errors, omissions or compliance with the Agreement (including the Government Party's Requirements), or

S13.8.2 for any other purpose whatsoever.

S13.9 The Supplier acknowledges that in considering and responding to any Supplier's Drawings or Supplier's Specifications submitted by the Supplier (if any such consideration occurs or response is given), the Government Party will be relying upon:

S13.9.1 the advice, skill and judgment of the Supplier;

S13.9.2 any reasons and supporting information given by the Supplier under Special Condition 13.12, and

S13.9.3 the warranties given by the Supplier under the Agreement.

S13.10 No review of, comments upon, rejection of, or failure to review or comment upon or reject, any Supplier's Drawings or Supplier's Specifications submitted by the Supplier or any other direction by the Government Party about such Supplier's Drawings or Supplier's Specifications forming part of the Supplier's Design will:

S13.10.1 relieve the Supplier from, or alter or affect, the Supplier's liabilities or responsibilities whether under the Agreement or otherwise according to law, or

S13.10.1 prejudice the Government Party's rights against the Supplier whether under the Agreement or otherwise according to law.

Giving and withholding permission to use

S13.11 Within 10 Business Days after the submission by the Supplier to the Government Party of:

S13.11.1 Supplier's Drawings and Supplier's Specifications resubmitted Supplier's Drawings and Supplier's Specifications, or

S13.11.2 reasons and supporting information in accordance with Special Condition 13.12 concerning Supplier's Drawings and Supplier's Specifications for which the Government Party has previously withheld permission to use;

as the case may be, the Government Party may either:

S13.11.3 give the Supplier notice in writing that it accepts use of the relevant Supplier's Drawings and Supplier's Specifications by the Supplier for the construction of the Works, or

S13.11.4 advise the Supplier in writing that it does not accept such Supplier's Drawings or Supplier's Specifications and give the Supplier brief reasons for withholding permission.

Where permission to use is withheld

- S13.12 If the Government Party advises the Supplier under Special Condition 13.11 that it does not accept the Supplier's Drawings or Supplier's Specification, the Supplier shall either:
- S13.12.1 amend the Supplier's Drawing or Supplier's Specification and resubmit it to the Government Party; or
 - S13.12.3 submit written reasons and supporting information to the Government Party stating why use of the Supplier's Drawing or Supplier's Specification should be accepted.

Deemed permission to use

- S13.13 If within 10 Business Days after submission by the Supplier to the Government Party of:
- S13.13.1 a Supplier's Drawing or Supplier's Specification;
 - S13.13.2 a resubmitted Supplier's Drawing or Supplier's Specification; or
 - S13.13.3 reasons and supporting information in accordance with Special Condition 13.12 concerning a Supplier's Drawing or Supplier's Specification for which the Government Party has previously withheld permission to use, as the case may be,
- the Government Party has not responded to the Supplier as provided in Special Condition 13.11 or 13.12, then upon the expiration of the relevant 10 Business Day period, the Government Party shall be deemed to have accepted the use of the relevant Supplier's Drawing or Supplier's Specification by the for the construction of the Works to the extent that the document complies with the requirements of the Agreement.

Documents become part of the Supplier's Design

- S13.14 A Supplier's Drawing or Supplier's Specification submitted under Special Condition 13.11 or resubmitted in accordance with Special Condition 13.12 shall become part of the Supplier's Design:
- S13.14.1 when the Government Party has accepted that the Supplier's Drawing or Supplier's Specification may be used by the for the construction of the Works pursuant to Special Condition 13.11, or
 - S13.14.2 where such acceptance is deemed to have occurred pursuant to Special Condition 13.13.

Documentation program

- S13.15 The Supplier shall, as part of any program which it is obliged to provide pursuant to Special Condition 5, submit a documentation program to the Government Party setting out the order in which and times by which Supplier's Drawings and Supplier's Specifications for the construction of the Works are to be completed and submitted to the Government Party.
- S13.16 The Supplier shall ensure that the documentation program provides for, and makes due allowance for, those Supplier's Drawings and Supplier's Specifications to be prepared and supplied to the Government Party within the time required by and at a rate consistent with the maintenance of progress of the Works as advised by the Government Party.
- S13.17 The Supplier shall, if requested by the Government Party, hand over the following to the Government Party three sets of "for construction" Supplier's Construction Drawings and Supplier's Construction Specifications in a form and containing such details as may be required by the Government Party.

Attachment 5 - Specifications

<insert detailed Specifications or insert "not used">

Attachment 6 – Pricing and Payment

<insert detailed pricing and payment or insert “not used”>