

## Port Pirie Regional Council

### Conditions of Engagement for the Horticulture & Arboriculture Services Panel

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Horticulture and Arboriculture Services include but are not limited to:

- Turf Management
- Tree Management
- Landscaping & Irrigation
- Weed Management
- Mowing and Slashing

Contractors to indicate which services they are applying for in tender response

***Contract Number : 2016/28***

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Annexure A – Services

Annexure B – Fees

Annexure C – Conditions of Engagement

## Schedule

<b>Item 1</b> Council	Port Pirie Regional Council, 115 Ellen Street (P.O Box 45), Port Pirie SA 5540 ABN 11 548 839 129 Fax: (08) 8632 5801 Email: <a href="mailto:council@pirie.sa.gov.au">council@pirie.sa.gov.au</a> Phone: (08) 8563 9666
<b>Item 2</b> Contractor	Insert name of Contractor Address: insert address ABN: insert ABN of Contractor Fax: insert fax number Email: insert email address Phone: insert phone number
<b>Item 3</b> Contract Sum	See Schedule of Rates in Annexure E
<b>Item 4</b> Contract Works	As per contractor's tender response
<b>Item 5</b> Date for Commencement	1 September 2016
<b>Item 6</b> Date for Completion	31 August 2018 with possible extension for a further two (2) periods of one (1) year duration each
<b>Item 7</b> Defects Liability Period	26 calendar weeks commencing on Completion of the Contract Works
<b>Item 8</b> Contractor's Representative	[Insert name & position of representative] and any other person as may be advised by the Contractor in writing
<b>Item 9</b> Rates for valuation of Variations	As per tendered schedule of rates (All expressed exclusive of any GST)
<b>Item 10</b> Provisional sums	Not Applicable
<b>Item 11</b> Payment of Contract Sum	The Council must pay to the Contractor, within 30 days of the end of the month in which the Final Certificate is issued, the Contract Sum as adjusted by this agreement.

<b>Item 12</b> Council's Representative	Allan Henderson (Parks & Rec Supervisor) and any other person as may be advised by the Council in writing
<b>Item 13</b> Reimbursable Expenses	Not Applicable

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## Date

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1 September 2016

## Parties

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**Port Pirie Regional Council** ABN 11 548 839 129 of 115 Ellen Street (P.O Box 45), Port Pirie SA 5540 (the **Council**)

The person specified in Item 2 of the Schedule (**Contractor**)

## Background

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- A. Pursuant to a Request for Tender, the Council sought tenders from suitably qualified parties for the provision of the type of works specified in Annexure A for the purpose of establishing the Panel.
- B. The Contractor submitted a tender for inclusion on the Panel to provide the Works specified in Annexure A (Works) to the Council from time to time, and the Council accepted it.
- C. The Contractor agrees to be appointed to the Panel and provide those Works to the Council from time to time on the basis of the standing offer in this deed.

## Agreed Terms

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### 1. Definitions and Interpretation

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#### 1.1 Definitions

In this deed:

**Authorised Officer** means the Chief Executive Officer of the Council or any other officer appointed by the Council from time to time and notified in writing to the Contractor.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in South Australia.

**End Date** means 31 August 2018.

**Official Order** means the written notice of engagement issued by the Council to the Contractor under clause 3.2.

**Operative Period** means the period commencing on 1 September 2016 and concluding on the End Date.

**Panel** means the panel established by the Council of persons with expertise in the provision of the type of Works specified in Annexure A who meet prequalifying criteria (as assessed by the Council).

**Works** means the range and type of works listed in Annexure A.

## 1.2 Interpretation

In this agreement, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 words of one gender include any gender;
- 1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.6 a reference to the Contractor includes any person comprising the Contractor;
- 1.2.7 a reference to this agreement includes any schedules and annexures to this agreement;
- 1.2.8 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.9 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.10 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.11 a provision is not construed against a party only because that party drafted it;
- 1.2.12 an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement;

- 1.2.13 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.2.14 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by that Act at the date of this agreement;
- 1.2.15 an expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given by that Act at the date of this agreement.

### 1.3 Background

The Background forms part of this deed and is correct.

## 2. Engagement of Contractor

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- 2.1 The Council engages the Contractor who accepts the engagement for the Term to perform the Works on the terms of this agreement.
- 2.2 The parties acknowledge that nothing in this agreement creates or infers a relationship between the parties of partnership or employer/employee.

## 3. Basis of Engagement

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### 3.1 Panel Arrangement

- 3.1.1 The Council appoints the Contractor to the Panel, in respect of the Works, for the Operative Period. The Contractor accepts that appointment on the terms in this deed.
- 3.1.2 The Council may, at its sole discretion and by written notice to the Contractor not less than three months prior to the End Date, extend the term of this deed for two further periods not exceeding one year each.
- 3.1.3 The parties acknowledge that nothing in this agreement creates or infers a relationship between the parties of partnership or employer/employee.

### 3.2 Standing Offer Arrangement

- 3.2.1 The Contractor hereby irrevocably grants the Council with a Standing Offer during the Term to provide the Works for the Fee at the times requested by the Council.
- 3.2.2 The Council may place an order for the Works at any time during the Term by sending an Official Order to the Contractor.
- 3.2.3 Each Official Order by the Council constitutes an acceptance of the Standing Offer by the Contractor to provide the Works and will constitute an agreement for the Contractor to provide the Works to the Council in

accordance with the Official Order and the terms and conditions of this agreement.

3.2.4 The Council is not obliged to request any or any minimum number of Works from the Contractor under this agreement.

3.2.5 The arrangements contemplated by this agreement are not an exclusive arrangement and the Council may, at its discretion, engage other Contractors to provide the Works.

3.2.6 The Works must be provided as and when required by the Council in accordance with an Official Order.

### 3.3 **No Guarantee of Engagement**

3.3.1 The Council and the Contractor mutually acknowledge and agree that the inclusion of the Contractor on the Panel for the provision of the Works does not guarantee that the Contractor will be engaged by the Council to provide the Works to the Council during the Term.

3.3.2 The Council may, in its absolute discretion, invite public expressions of interest in applying or call for applications for the provision of the Works to the Council during the Operative Period, despite the existence of the Panel.

3.3.3 The Contractor has no claim against the Council:

3.3.3.1 if the Council does not engage the Contractor to provide any Works to the Council during the Operative Period, despite the Contractor's inclusion on the Panel; or

3.3.3.2 if the Council procures the Works without using the Panel.

### **3.4 Publicity and Changes**

3.4.1 The Contractor must not (without the written consent of the Council) advertise, promote or publish in any form the fact that the Contractor is on the Panel or that it has provided the Works to the Council pursuant to this deed.

3.4.2 The Contractor must immediately notify in writing the Council about any change in the financial or technical capacity of the Contractor which a reasonable person would consider adversely affects the Contractor's ability to provide the Works to the Council.

## **4. Invoicing and Payment**

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### **4.1 Payment of Fee**

4.1.1 The Council will pay to the Contractor the Fee for the provision of the Works in accordance with the provisions of each Official Order and the fees specified in Annexure B or any lower fees.

4.1.2 The Contractor will issue the Council with an invoice and completed Official Order at the completion of the works.

### **4.2 Reimbursable Expenses**

4.2.1 Subject to clause 4.3.2.4, the Council must pay to the Contractor the Reimbursable Expenses specified by the Council in the Official Order and directly incurred by the Contractor in the supply of the Works.

### **4.3 Payment terms**

4.3.1 Payment of the Fee and Reimbursable Expenses will be due within 30 days from the end of the month in which the Council receives a correctly rendered tax invoice from the Contractor.

4.3.2 A tax invoice is correctly rendered when it:

4.3.2.1 describes the Works provided and the period to which the Works relate;

4.3.2.2 displays the Council's Official Order number;

4.3.2.3 displays the terms of payment of the Fee described in the invoice;

4.3.2.4 displays the terms of payment of the Reimbursable Expenses and attaches receipts for all Reimbursable Expenses claimed for the period;

4.3.2.5 is addressed to the Council's address specified in the Schedule;  
and

4.3.2.6 sets out in reasonable detail the manner and basis of the calculation of the Fee and Reimbursable Expenses, including the component of GST.

#### 4.4 **Effect of payment**

A payment of all or part of the Fee is not an acceptance of the Works or a waiver of a right or action of the Council.

#### 4.5 **Right of set off**

The Council may deduct from amounts otherwise payable to the Contractor any amount due from the Contractor to the Council.

### 5. **Removal from Panel**

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5.1 If the Council (acting reasonably) considers that the Contractor:

5.1.1 has breached a term in this deed and has not remedied that breach within 21 days of written notification from the Council of that breach;

5.1.2 performs any Works for the Council in an unsatisfactory manner; or

5.1.3 suffers an adverse change in its capacity to perform the Works,

the Council may, in their absolute discretion, immediately remove the Contractor from the Panel on written notice to the Contractor and/or immediately terminate any Order on foot at that time.

5.2 Before taking that action, the Council must:

5.2.1 serve written notice on the Contractor, setting out the matters upon which the Council proposes to remove the Contractor from the Panel; and

5.2.2 give the Contractor an opportunity to show cause as to why the Contractor should not be removed from the Panel.

### 6. **Inclusion of Additional Panel Members**

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The Council may, at any time in its absolute discretion, make additional appointments to the Panel, even if the additional appointees did not participate in the RFT process referred to in the Background to this deed.

## 7. **Miscellaneous**

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### 7.1 **Alteration**

This deed may be altered only in writing signed by each party.

### 7.2 **Approvals and consents**

Unless otherwise provided, a party may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under this agreement.

### 7.3 **Assignment**

The Contractor must not assign this deed or any right under it without the written consent of the Council.

### 7.4 **Governing law**

7.4.1 This deed is governed by the law in South Australia.

7.4.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

### 7.5 **ICAC**

The Contractor acknowledges and agrees that by entering into this agreement with the Council the Contractor will be considered to be a public officer for the purposes of the Independent Commissioner Against Corruption Act, 2012 (SA) (ICAC Act) and is obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

## 8. **Notices**

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8.1 A notice, demand, consent, approval or communication under this deed (Notice) must be:

8.1.1 in writing, in English and signed by a person authorised by the sender; and

8.1.2 hand delivered or sent by pre-paid post or facsimile or electronic communication to the recipient's address or facsimile number specified below, as varied by any Notice given by the recipient to the sender.

8.2 A Notice is deemed to be received:

8.2.1 if hand delivered, on delivery;

8.2.2 if sent by prepaid mail, two Business Days after posting (or seven Business Days after posting if posting to or from a place outside Australia);

8.2.3 if sent by facsimile, at the time and on the day shown in the sender's transmission report, if it shows that the entire Notice was sent to the recipient's facsimile number last Notified by the recipient to the sender;

8.2.4 if sent by electronic communication, at the time deemed to be the time of receipt under the Electronic Transactions Act 1999 (Cth) if the notice was being given under a law of the Commonwealth of Australia.

However if the Notice is deemed to be received on a day that is not a Business Day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next Business Day.

8.3 If two or more people comprise a party, Notice to one is effective Notice to all.

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## EXECUTED as a deed

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By the Council

<b>SIGNED</b> by <b>[Insert name]</b> under delegated authority in the presence of:	
..... Signature	..... Signature of witness
..... Date	..... Name of witness (print)

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If the Contractor is a company, the document must be executed as follows:

<b>Executed by</b> <b>insert company name</b> pursuant to section 127 of the Corporations Act 2001	
..... Signature of Director	..... Signature of Director/Company Secretary <i>(Please delete as applicable)</i>
..... Name of Director (print)	..... Name of Director/Company Secretary (print)
<b>OR</b>	
..... Signature of Sole Director and Sole Company Secretary	
..... Name of Sole Director and Sole Company Secretary (print)	
<b>OR</b> <b>Signed for</b> ..... <b>by an authorised representative</b> <b>in the presence of:</b>	
..... Signature of witness	..... Signature of authorised representative
..... Name of witness (print)	..... Name of authorised representative (print)
	..... Position of authorised representative (print)

If the Contractor is an individual, the document must be executed as follows:

<b>Signed by</b> insert name <b>in the presence of:</b>	
..... Signature of witness	..... Contractor
..... Name of witness (print)	

If the Contractor is a partnership, the document must be executed as follows:  
(Add extra execution clauses for additional partners as necessary.)

**Partner 1:**

<b>Signed by</b> insert name <b>in the presence of:</b>	
..... Signature of witness	..... Signature of partner
..... Name of witness (print)	
..... Address of witness (print)	

**Partner 2:**

<b>Signed by</b> ..... <b>in</b> <b>the presence of:</b>	
..... Signature of witness	..... Signature of partner
..... Name of witness (print)	
..... Address of witness (print)	

## Annexure C Works

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### 1.1 CATEGORIES OF SERVICES

**Tree Management** – including but not limited to:

- Pruning – General;
- Clearances – Footpath, Road, Street Light & Signage;
- General Crown Maintenance;
- Tree Trimming & Removal (include rural roadside);
- Stump Grinding; and
- Arboricultural Consultancy (tree assessment, technical written reports, tree surveys, audit tree work or reports, utilisation of specialist assessment tools).

**Turf Management** - including but not limited to: –

- Fertilizing;
- Coring/Aerating/Dethatching;
- Pest Management; and
- Turf Consultancy.

**Landscaping Maintenance** - including but not limited to: –

- Irrigation – supply, install and repair; and
- Plantings.

**Weed Management** - including but not limited to:-

- Vegetation poisoning; and
- Roadside Shoulder Spraying.

**Mowing & Slashing** - including but not limited to:-

- Roadside slashing;
- Mowing; and
- Block Slashing

### 1.2 STANDARDS OF WORK

All work must be undertaken in a manner that accords to:-

- Any applicable legislation;
- Any relevant Australian Standards;
- Any Council Policies and Guidelines;
- This specification;
- Any relevant industry standards, only on the written agreement of the parties; and

- Any local requirements ie pest or disease control management.

Where a discrepancy exists between this specification and the Australian Standards the former shall prevail.

No horticultural or arboriculture service are to be undertaken on days of "extreme" fire danger as determined by the Country Fire Services, unless otherwise approved by the Principal's Representative.

### 1.3 **LOCATION OF SERVICES**

The Contractor shall be responsible for locating existing services (electricity, gas, water, telephone, drains etc) prior to the commencement of work.

### 1.4 **PROPERTY DAMAGE**

Any damage to public or private property that results from the Contractor's works or services is to be made good at the Contractor's expense.

### 1.5 **SITE CLEANING**

The Contractor must ensure the site is maintained in a clean, tidy and safe condition.

All cleared vegetation must be removed from site at the completion of works on the same day or as agreed to by Council.

The work site shall at all times be made safe for pedestrian traffic.

The site shall have all leaf litter, twigs and sawdust swept/raked from the footpath, road kerb or park, leaving the area in a clean, safe manner for pedestrians, road and park users.

All tree pruning shall be chipped. The Council may elect to accept wood chips at no cost subject to the Contractor arranging delivery to a nominated site in the Council area or otherwise the woodchips will be disposed of by the Contractor at the Contractor's expense.

No cleared vegetation is to be left hanging or wedged in any tree. Cleared vegetation includes all stubs, limbs, branches, twigs, leaves, chips and sawdust created as a result of any tree pruning or removal works.

### 1.6 **PLANT AND EQUIPMENT**

The Contractor shall provide all plant and equipment necessary for carrying out of the work, unless otherwise directed by the Council.

Vehicles and machines used in connection with the operation and which may form a hazard on the road, shall be fitted with two clearly displayed rotating flashing amber warning lamps on the roof of the cabin or, if this is not practicable, in some other suitable position.

Operators must carry a water filled knapsack and shovel at all times. The engine is fitted with an exhaust system that complies with art 3 Division 4 Sub Division 3 of the Fire & Emergency Services Regulations 2005

All machines shall be fitted with sufficient guards to prevent material being ejected in a dangerous manner.

#### 1.7 CHEMICAL AND CONSUMABLE SUPPLY

The Contractor is required to provide all chemicals and consumables applicable to the services tendered for and it is their responsibility to ensure that they are transported, stored and handled in accordance with any legislative requirements.

Only Class 1 chemicals are to be used.

#### 1.8 TRAFFIC MANAGEMENT

The Contractor shall take the necessary precautions to ensure the safety of workers in accordance with AS1742 part 3 (1996) "Traffic Control Devices for Works on Roads" as modified by the "Code of Practice for the Installation of Traffic Control devices in South Australia."

The Contractor must also provide records of work zone signage placements in accordance with AS 1742.3. This may be subject to period audits.

#### 1.9 KPI'S AND REPORTING

As part of the Council's requirements, all contractors must demonstrate capability of an effective reporting system that will include, but not be limited to the following:

- Ability to update (engaging them) on the progress of work on a regular basis (as per arrangement) or as requested.
- Track and report progress on any maintenance programs
- Demonstrate compliance to relevant Australian Standards, for evidence to external bodies/agencies as required.
- The completion or confirmation of each work request to be reported to the Council.

#### **Location of the Services**

Works may occur at a variety of Council sites and community reserves, including but not limited to:

- Council roads and footpaths
- Administration buildings
- Works Depots
- Libraries/Cultural Precinct
- Structures within Council parks and reserves
- Public toilets
- Council owned buildings leased to community organisations

- Cemeteries
- Playgrounds

**Exclusivity**

Tenderers are advised that should they be successful in entering into a contract for the Services that they will not be the sole provider for that particular service to the Council but will be placed on a register for the Council to use their services, when and if required. Any canvassing of the Council or receipt of any notifications that Companies are promoting their services as the sole provider will result in removal from the Building Maintenance Works Panel.

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## Annexure D Fees

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### Schedule of Rates

<b>Standard Hourly Rate</b>	
<b>After Hours Hourly Rate</b> <b>(1700 – 0700)</b>	
<b>Public Holiday Hourly Rate</b>	
<b>Emergency Callout Availability</b>	
<b>Minimum Callout Hours</b>	
<b>Callout Fee</b>	
<b>Material Markup Rate*</b>	
<b>Plant &amp; Equipment Hire</b>	
*Third party invoice to be attached to all payment claims	

Rates stated on the previous page:

- (1) Are fixed for the first year of the Contract. The prices will be reviewed by the Supplier and Council's Representative prior to each anniversary date to take into account changes in CPI (for Adelaide).
- (2) Are before any GST. In addition to those rates, the Tenderer may recover from the Council any GST for which the Tenderer is liable on account of a taxable supply to the Council.
- (3) The nominated rates will be inclusive of all overheads and profit and expenses for work to which the schedule of rates applies, including without limitation:
  - costs of all direct and indirect labour (including on-costs);
  - in case of goods, any weighing, packaging, delivery, installation, commissioning - in case of services, any fee, levy (including CITB levy), duty, cost, expense or tax incurred by the Contractor in providing the service.
  - Any item not specifically covered by the schedule of rates may be compared with other similar items in that schedule to determine the acceptability or otherwise of a claim by the successful Tenderer for that item.

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## **Annexure E Conditions of Engagement**

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### **Conditions of Engagement for the Provision of a Horticulture & Arboriculture Services Panel**

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# 1 Definitions and Interpretation

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## 1.1 Definitions

In this agreement:

**Authorisation** means any authorisation, agreement, approval, licence, permit, consent, qualification, accreditation, filing, registration, certificate, resolution, direction, declaration or exemption and any renewal and variation of them by or with a Governmental Agency.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in South Australia.

**Contractor** means the person specified in the Official Order.

**Contractor's Representative** means the person specified in the Official Order.

**Council's Work Health and Safety Policy** means the policy attached to the Request for Tender for the Services and as otherwise amended by the Council from time to time.

**Council's Representative** means the person specified in the Official Order.

**Date for Commencement** means the date specified in the Programme, or if there is no Programme, the date specified in the Official Order.

**Defect** means any defect, error or omission in the Services.

**Defects Liability Period** means the period specified in the Official Order.

**Estimated Hours** means the hours estimated to complete a specified aspect of the Services as set out in the Official Order.

**Governmental Agency** means any government or any government, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity including any self-regulatory organisation established under statute or any stock exchange.

**Law** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.

**Official Order** means the formal agreement between the Contractor and the Council.

**Price** means the price specified in the Official Order.

**Works** means the works specified in the Official Order including any authorised Variation.

**Site** means the site (if any) specified in the Official Order.

**Term** means the term commencing on the Date for Commencement and expiring on the date specified in the Official Order.

**Variation** means any change in the Works as specified in the Official Order, being:

- (a) any increase of, decrease in, or omission from such services;
- (b) any change in the character or quality of any such services; or
- (c) any supply of additional services.

## 1.2 Interpretation

In these conditions, unless the context otherwise requires:

- 1.2.1 a reference to this agreement means the Panel Deed between the Council and the Contractor, these conditions and any Official Order;
- 1.2.2 headings do not affect interpretation;
- 1.2.3 singular includes plural and plural includes singular;
- 1.2.4 words of one gender include any gender;
- 1.2.5 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.6 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.7 a reference to the Contractor includes each person comprising the Contractor;
- 1.2.8 a reference to this agreement includes any schedules and annexures to this agreement;
- 1.2.9 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.10 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.11 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.12 a provision is not construed against a party only because that party drafted it;
- 1.2.13 an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement;

- 1.2.14 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.2.15 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by that Act at the date of this agreement;
- 1.2.16 an expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given by that Act at the date of this agreement.

## 2 Performance of Works

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In consideration for the payment of the Price, the Contractor must:

- 2.1 perform and complete the works in accordance with this agreement during the Term in accordance with any Programme, or if there is no Programme in a timely manner, and to the reasonable satisfaction of the Council, and perform its other obligations under this agreement;
- 2.2 supply at the Contractor's expense all facilities and services required at or about the Site for the performance of the works. Those facilities and services must comply with all Authorisations and the standards and other requirements of all applicable Laws and of any relevant Governmental Agency;
- 2.3 comply with reasonable directions of the Council in the performance of the Works;
- 2.4 comply with all Laws and Authorisations affecting or applicable to the Works or the performance of the Works;
- 2.5 not interfere with or damage the Council's property or property on or adjacent to the Site;
- 2.6 repair all damage caused to the Council's property or property on or adjacent to the Site by the Contractor, its employees, agents or subcontractors or their respective employees, and provide any necessary temporary protection;
- 2.7 pay all fees in respect of the performance of the Works to any Governmental Agency, and procure any Authorisation required in respect of the performance of the Works;
- 2.8 throughout the Term:
  - 2.8.1 keep the Site clean and tidy;
  - 2.8.2 regularly remove from the Site all surplus materials;
  - 2.8.3 clean up rubbish on a daily basis;
  - 2.8.4 place all rubbish in a bin provided on-site or other areas as directed by the Council.

Failure to do so may result in the Council carrying out this work at the cost of the Contractor without notice;

- 2.9 unless otherwise agreed with the Council in writing, perform the Works only between the working hours set out in the Official Order.

### **3 Access, Work Health and Safety**

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#### **3.1 Access to Site and Works**

- 3.1.1 The Council must provide the Contractor with sufficient access to the Site to enable the Contractor to perform the Works.
- 3.1.2 The Contractor must allow the Council access to the Site and the Works at all times.

#### **3.2 Work Health and Safety**

- 3.2.1 The Contractor must comply with the Work Health and Safety Act 2012 (SA), any regulations made under it and the Council's Work Health and Safety Policies, including the implementation of safety requirements and a safe system of work.

#### **3.3 Contractor Responsible**

- 3.3.1 Without limiting its other obligations under this agreement, the Contractor has complete responsibility and liability for health and safety on the Site while performing the Works. In this regard the Contractor must develop and implement appropriate rules, systems and procedures and generally monitor, manage and administer the operations of the Site and the Works in a proper and professional manner and, without limiting this, the Contractor must take and enforce all necessary or desirable measures to ensure safety in respect of persons and property while performing its obligations under this agreement.
- 3.3.2 Without limiting clause 3.3.1, the Contractor must at its own cost:
- 3.3.2.1 erect and at all times during the day and night maintain in or around the Site suitable signs warning the public of the performance of the Works; and
- 3.3.2.2 during all hours of darkness keep all machinery and other obstructions or traps created in the performance of the Works adequately illuminated for the protection of the public.

#### **3.4 Suspension of Works**

- 3.4.1 If the Council considers that the suspension of the whole or part of the Works is necessary because of a breach of this clause by the Contractor or for any other reason, the Council may direct the Contractor to suspend the whole or part of the Works for such time as the Council thinks fit.

- 3.4.2 As soon as the Council becomes aware that the reason for suspension no longer exists, the Council must direct the Contractor to recommence the whole or relevant part of the Works.
- 3.4.3 The Contractor bears any cost incurred by it by reason of a suspension under this clause.

## **4 Materials and Works**

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- 4.1 Unless otherwise specified in this agreement or the Official Order, the Contractor must supply at its own cost everything necessary for the performance of the Works and its obligations under this agreement.
- 4.2 Unless otherwise specified in this agreement or the Official Order, materials used in the Works and standards of workmanship must be suitable for their purpose and consistent with the nature and character of the Works.
- 4.3 Unless otherwise specified in this agreement or the Official Order, materials to be incorporated in the Works must be new and, where applicable, materials and workmanship must comply with the relevant standard of Standards Australia International Limited.
- 4.4 At any time the Council may reject any material or work which does not comply with this agreement and may direct its removal, correction or replacement, whether it has been the subject of a payment or not. The Council must make any such rejection or give any such direction as soon as practicable after discovering the non-compliance.
- 4.5 If the removal, correction or replacement directed by the Council requires the removal of, or damage to, works or materials of other contractors, the Contractor must also remove, replace and/or reinstate those other works or materials.
- 4.6 If the Council directs the Contractor to correct or replace any material or work the Contractor must commence the work of correction or replacement within seven days after the receipt by the Contractor of the direction and must complete the work properly and to the satisfaction of the Council. If the Council directs the Contractor to remove from the Site any material which does not comply with this agreement, the Contractor must do so promptly.
- 4.7 The Contractor must bear the cost of all such removals, corrections, replacements and reinstatements.
- 4.8 If the Contractor fails to comply with this clause, the Council may have the removal, correction or replacement carried out by other persons. The cost incurred by the Council in having the work so carried out is a debt due from the Contractor to the Council.

## 5 Assignment and Subcontracting

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### 5.1 No Assignment

The Contractor must not assign this agreement or sublet the whole of the Works without the Council's written consent.

### 5.2 No Subletting

The Contractor must not sublet any part of the Works without the Council's written consent.

### 5.3 Not to Terminate Subcontracts

The Contractor must not without prior notice to and discussion with the Council cancel or rescind any subcontract or terminate the subcontractor's engagement thereunder.

## 6 Workforce

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### 6.1 Control of Employees

6.1.1 The Contractor must employ, and must ensure that its subcontractors employ, only persons who are careful, skilled and experienced in their respective trades and callings.

6.1.2 The Council may object to and direct the Contractor to remove or have removed from the Site or from any activity connected with the Works within such time as the Council directs any person employed by the Contractor or by any subcontractor who (in the Council's opinion) is incompetent or negligent in the performance of that person's duties or whose conduct is (in the Council's opinion) prejudicial to the competent, safe and timely performance of the Works.

6.1.3 The Contractor must comply with such direction and any such person must not again be employed on the Site or on activities connected with the Works without the prior approval of the Council.

### 6.2 Industrial Relations

6.2.1 The Contractor is responsible for industrial relations with all workers engaged in and about the performance of the Works.

6.2.2 The Contractor must keep the Council fully informed of any disputes with or demands by workers or their representatives and any other circumstances which could result in industrial action affecting the normal working of the Site or otherwise affecting the competent and timely performance of the Works.

6.2.3 If the workers of the Contractor or the workers of any subcontractor of the Contractor take industrial action which affects the normal working of the Site or otherwise affects the competent and timely performance of the Works and

that industrial action is prohibited by Law, then the Contractor must at its own cost take all action necessary to seek urgent injunctive relief preventing such industrial action and must at all times keep the Council fully informed of the progress of such action.

- 6.2.4 If the Contractor fails to seek injunctive relief in accordance with this clause, or if the Contractor does not do so with all expedience, the Council may take such action, and the Contractor is liable to the Council for all costs incurred in so doing.

## **7 Variations**

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### **7.1 Variations**

No Variation invalidates this agreement.

### **7.2 No Unauthorised Variation**

The Contractor must not make any Variation of the Works except a Variation instructed by the Council.

### **7.3 Execute Variations**

The Contractor must carry out as part of the Works or omit from the Works (as is required) any Variation instructed by the Council.

### **7.4 Adjustment of Price**

If the Price is a fixed lump sum and is not calculated pursuant to a schedule of rates, any adjustment of the Price for a Variation must be agreed by the Contractor and the Council before the Contractor commences to execute the Variation.

## **8 Time**

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### **8.1 Commencement of Works**

The Contractor must commence the performance of the Works on or before the Date for Commencement and must continue to provide the Works with due diligence, and maintain a rate of progress appropriate to any Programme, or if there is no Programme in a timely manner.

### **8.2 Completion of Works**

The Contractor must cease providing the Works on or before the end of the Term.

## 9 **Inspection of Services**

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The Contractor must notify the Council to arrange inspections of the Works at any times requested by the Council.

## 10 **Defects Liability**

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### 10.1 **Defects Liability Period**

The Defects Liability Period for the Works commences on completion of the Works and continues until expiry of the period stated in the Official Order.

### 10.2 **Remedy Defects**

If, before the expiry of the Defects Liability Period, in the Council's opinion, a Defect is apparent or has been detected in the Works, the Council may give notice in writing to the Contractor requiring the Contractor to remedy that Defect (**Defects Notice**). The Defects Notice must state:

10.2.1 the Defect which is required to be remedied; and

10.2.2 the date by which the Defect is to be remedied.

### 10.3 **Carry Out Instructions**

The Contractor must promptly and competently carry out instructions of the Council given in a Defects Notice, in strict accordance with that Defects Notice.

### 10.4 **Council May Rectify**

If any Defect is not rectified within the time specified in the Defects Notice, the Council may rectify the Defect at the Contractor's cost, without prejudice to any other rights that the Council has against the Contractor in respect of that Defect. The costs incurred by the Council in so rectifying the Defect are a debt due from the Contractor to the Council.

### 10.5 **Further Defects Liability Period**

If the Contractor performs remedial services under this clause, the Council may by written notice to the Contractor fix a further Defects Liability Period in respect of the remedial services (being no longer than the initial Defects Liability Period) commencing upon the date of completion of the remedial services. This clause applies to those remedial services as if the further Defects Liability Period was the Defects Liability Period referred to in clause 10.1.

### 10.6 **Access for Remedial Services**

The Council must provide reasonable access to the Site for the Contractor to execute remedial services at times reasonably convenient to the Council and occupiers of the

Site. The Contractor must execute remedial works in such manner as minimises inconvenience to the Council and occupiers of the Site.

## 10.7 Deemed Variation

If it is established that a Defect identified as such by the Council is not a Defect or is a Defect in the design of the Works as prepared by a consultant of the Council, the services carried out by the Contractor pursuant to an instruction under clause 10.2 are deemed a Variation.

## 11 Adjustment of Price

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### 11.1 No Adjustment Unless Authorised

If the Price is a fixed lump sum, it is not subject to rise and fall, and includes allowance for all services incidentally or contingently necessary to perform the Works and for all the Contractor's risks and responsibilities. Without limiting this, it includes allowance for all the Contractor's costs of and incidental to any special payment or allowance made to or for the benefit of workers engaged upon performance of the Works including any project or site allowance, any disability allowance, any redundancy payment or redundancy pay scheme, or any payment or contribution or allowance for or on account of superannuation or long service leave.

A lump sum Price will not be adjusted or varied except in accordance with provisions of this agreement providing expressly for an adjustment of the Price.

### 11.2 Adjustment for Variations

If the Council instructs a Variation and the Price is a fixed lump sum, the Price is adjusted by adding or deducting (as the case requires) the value of the Variation as agreed between the Contractor and the Council or as determined by the Council. However the Price must not increase unless:

- 11.2.1 the Council has expressly stated in writing that the instruction is a Variation;
- 11.2.2 the Council has expressly stated in writing that the Price will be adjusted for the Variation; or
- 11.2.3 the services carried out are deemed a Variation under clause 10.7.

## 12 Payment of Price

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The Council must pay the Contractor the Price in the memo set out in the Official Order.

## 13 Right of Council to Recover Money

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Without limiting the Council's other rights, the Council may deduct any debt due from the Contractor to the Council under this agreement from any money which is or becomes payable to the Contractor by the Council, including any Security. This clause does not affect the Council's right to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.

## 14 Risks, Indemnities and Insurances

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### 14.1 Contractor's Risk

- 14.1.1 Any works forming part of the Works are at the Contractor's risk for the Date for Commencement until the end of the Defects Liability Period.
- 14.1.2 The Council's insurance does not cover material loss or damage to any property, plant or equipment or materials of the Contractor. The Contractor must take out appropriate insurance.
- 14.1.3 Security for plant, equipment and unfixed materials on Site used in the provision of the Works is the sole responsibility of the Contractor.

### 14.2 Property Damage

The Contractor must indemnify the Council against any loss or liability (including the payment of excesses on insurance effected by the Council) incurred by the Council in respect of the loss or destruction of, or damage to, or interference with, any property of the Council or of any person, if and to the extent that it is caused or contributed to by the Contractor or its employees or agents or any subcontractor or any person supplying work or services in and about the performance of the Works by the Contractor.

### 14.3 Public Risk

The Contractor must indemnify the Council against any liability incurred by the Council in respect of personal injury to, or death of, any person arising out of, or in the course of, the performance of the Works if and to the extent that it is caused or contributed to by the Contractor or its employees or agents or any subcontractor or any person supplying work or services in and about the performance of the Works.

### 14.4 Contractor's Insurance

- 14.4.1 The Contractor must effect and maintain at all material times during the currency of this agreement insurance in the joint names or otherwise for the benefit of the Council, the Contractor and all subcontractors and suppliers (Insured). The insurance must at all times cover liability to the public (including the Council) for at least \$10,000,000 in respect of personal injury to or death arising by accident to any person and in respect of any injury loss or damage arising by accident to any property real or personal including property

belonging to the Council or in which the Council is interested and where the accident arises out of or is caused by the performance of the Works.

14.4.2 The Contractor must keep the insurance current until the expiry of the Defects Liability Period.

14.4.3 The Contractor must ensure that each policy of insurance required by this clause contains provisions acceptable to the Council that:

14.4.3.1 require the insurer to accept the term 'insured' as applying to each of the persons comprising the Insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby); and

14.4.3.2 require the insurer, whenever the insurer gives to the Contractor a notice of cancellation or any other notice under or in relation to the policy, at the same time to inform the Council in writing that the notice has been given to the Contractor; and

14.4.3.3 provide that a notice of the occurrence of an event out of which the particular Insured giving the notice alleges that it has suffered or could suffer a loss or damage must be accepted by the insurer as a notice of the occurrence given by the Insured. If an event occurs which in the opinion of the Contractor may give rise to a claim involving the Council or the Contractor under the policy of insurance effected by the Contractor it must notify the Council and must ensure that the Council is kept fully informed of subsequent action and developments concerning the claim.

## 14.5 WorkCover

14.5.1 Subject to clause 14.5.2, the Contractor must ensure that it is at all times registered as an employer under the Return to Work Act 2014 (Act) and that it pays all monthly levies due under it in respect of its employees engaged in and about the Works. The Contractor must produce to the Council on execution of this agreement a current Certificate of Registration as an employer under the Act. The Contractor must ensure that all subcontractors engaged by it have at all times current Certificates of Registration as employers under the Act, and must produce them to the Council upon request in writing by the Council.

14.5.2 Notwithstanding clause 14.5.1, if the Contractor (or any subcontractor) is unable to register as an employer under the Act, then the Contractor must instead adequately insure against accident, personal injury and disability. The Contractor must maintain such insurance at all times during the Term and must produce evidence of:

14.5.2.1 the existence and adequacy of such insurance; and

14.5.2.2 the Contractor's (and/or any sub-contractor's) inability to register as an employer under the Act.

## 14.6 Inspection of Insurance Policies

- 14.6.1 Whenever requested to do so by the Council, the Contractor must produce evidence (to the satisfaction of the Council) of the insurances effected and maintained by the Contractor pursuant to this clause.
- 14.6.2 If the Contractor fails to do so, the Council may effect and maintain any such insurance and pay the premiums. The amount paid is a debt due from the Contractor to the Council.

## 15 Termination by Council

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### 15.1 If:

- 15.1.1 the Contractor becomes an externally-administered body corporate or an insolvent under administration;
- 15.1.2 execution is levied against the Contractor or its assets for more than \$1,000 and execution is not stayed or satisfied within 14 days;
- 15.1.3 the Contractor fails, or ceases, to hold an Authorisation required by Law for providing the Works;
- 15.1.4 any industrial action affects the execution or progress of the Works or any industrial action which may affect the execution or progress of the Works is threatened, except industrial action of a general application throughout the relevant industry or industries;
- 15.1.5 the Contractor's engagement under any other agreement with the Council in respect of the Site or any adjacent site is terminated or if the Council lawfully excludes the Contractor from the Site or any adjacent site under any such agreement;
- 15.1.6 the Contractor:
  - 15.1.6.1 when requested, fails to provide the Security;
  - 15.1.6.2 fails to proceed diligently and competently with the performance of the Works in accordance with the Official Order;
  - 15.1.6.3 commits a breach of this agreement; or
  - 15.1.6.4 fails to comply with an instruction or direction of the Council; andthe Council gives written notice to the Contractor specifying the breach and requiring it to be remedied within seven days or such shorter reasonable period specified in the notice, and stating the Council's intention to terminate the Contractor's engagement under this agreement if the breach is not remedied within that period, and the Contractor does not remedy the breach within that period;

without limiting its other rights, the Council may:

- 15.1.7 take over the whole or any part of the Works remaining to be completed;
  - 15.1.8 retake possession of the Council's property in the Contractor's possession (whether the Works have been fully or partly completed); and/or
  - 15.1.9 terminate the Contractor's engagement under this agreement by written notice to the Contractor.
- 15.2 If the Council exercises these rights, insofar as is necessary, the Council may exclude from the Site the Contractor and any other person concerned in the performance of the Works.
- 15.3 If the Council takes over the whole or any part of the Works remaining to be completed, the Council may:
- 15.3.1 complete the Works or part of them;
  - 15.3.2 let a contract for the Works or part of them; or
  - 15.3.3 engage or employ any person other than the Contractor to perform them or part of them.
- 15.4 After a taking over of the Works or part of them, on expiry of the Term, the Council must ascertain the cost of the Works to the Council, comprising payments to the Contractor and all losses, costs, charges and expenses incurred by the Council in performing the Works. The Council must certify that amount to the Contractor. A certificate signed by the Council stating the costs of the Works to the Council is prima facie evidence of the matters stated in the certificate. If the amount certified is greater than the amount which would have been paid to the Contractor if the whole of the Works had been completed by the Contractor pursuant to this agreement, the difference between the two amounts is a debt due from the Contractor to the Council.
- 15.5 Upon termination of the Contractor's engagement under this clause, the Contractor is liable to the Council for all losses, costs and expenses caused by the termination of the Contractor's engagement, as if this agreement had been repudiated by the Contractor and rescinded by the Council's acceptance of such repudiation.

## 16 Termination by Contractor

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16.1 If:

- 16.1.1 the Council fails to make a payment to the Contractor on the due date; or
- 16.1.2 the Council commits any other breach of this agreement which is seriously prejudicial to the proper performance of the Works in accordance with this agreement, and the Contractor gives written notice to the Council specifying the breach and requiring it to be remedied to the Contractor's reasonable satisfaction within 14 days of receipt, and stating the Contractor's intention to

terminate the Contractor's engagement under this agreement if the breach is not remedied within that period, and the Council does not remedy the breach within that period;

without limiting its other rights, the Contractor may by written notice to the Council terminate the Contractor's engagement under this agreement.

- 16.2 If the Contractor exercises this right, the Council is liable to the Contractor for all losses costs and expenses caused by the termination of the Contractor's engagement, as if this agreement had been repudiated by the Council and rescinded by the Contractor's acceptance of such repudiation.

## 17 Freedom of Information

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- 17.1 The Freedom of Information Act 1991 (SA) (FOI Act) gives members of the public rights to access the Council's documents. The FOI Act promotes openness in governance and accountability of government agencies and to achieve these objects confers on members of the public a legally enforceable right to be given access to documents, including agreements, held by the Council subject but not limited to such restrictions as are consistent with the public interest, commercial in confidence and/or the preservation of personal privacy in respect of those from whom information is collected and held by the Council and other public authorities.
- 17.2 The Contractor consents to any disclosures made as a result of the Council complying with its obligations under the FOI Act, subject to any legally required consultation.

## 18 Representatives

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- 18.1 The Council nominates the Council's Representatives as its agent for the purpose of this agreement.
- 18.2 The Contractor nominates the Contractor's Representative as its agent for the purposes of this agreement.
- 18.3 Each party's representatives have the authority to make or give instructions, approvals and decisions in respect of the Works, unless a party notifies the other in writing of limits on the powers of its representative.

## 19 Dispute Resolution

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### 19.1 General

- 19.1.1 A party must not commence arbitration or court proceedings (except for urgent equitable or injunctive relief) in respect of a dispute under this agreement, unless it first attempts to resolve the dispute by negotiation and mediation under this clause.
- 19.1.2 A party claiming that a dispute has arisen under this agreement must give written notice to the other party specifying the nature and details of the dispute.
- 19.1.3 On receipt of that notice by the other party, the parties must negotiate in good faith to resolve the dispute.
- 19.1.4 If the parties are unable to resolve the dispute within 10 Business Days, they must promptly refer the dispute:
  - 19.1.4.1 in the case of the Council to the Chief Executive Officer; and
  - 19.1.4.2 in the case of the Contractor to the Contractor's Representative.
- 19.1.5 Those persons must meet to resolve the dispute and must be authorised to resolve the dispute.

### 19.2 Mediation

- 19.2.1 If those persons are unable to resolve the dispute within 10 Business days of referral, a party may refer the dispute for mediation under the mediation rules of the Law Society of South Australia Inc to:
  - 19.2.1.1 a mediator agreed by the parties; or
  - 19.2.1.2 if the parties are unable to agree a mediator within five Business Days, a mediator nominated by the President of the Law Society or the President's nominee.
- 19.2.2 The role of a mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has agreed in writing.
- 19.2.3 Any information or documents disclosed by a party under this clause:
  - 19.2.3.1 must be kept confidential; and
  - 19.2.3.2 may not be used except to attempt to resolve the dispute.
- 19.2.4 Each party must bear its own mediation costs. The parties must bear equally the costs of any mediator.

### 19.3 Arbitration

19.3.1 If the dispute is not resolved within 10 Business Days of appointment of the mediator, a party may refer the dispute to:

19.3.1.1 an arbitrator agreed by the parties; or

19.3.1.2 if the parties are unable to agree an arbitrator within five Business Days, an arbitrator nominated by the Chairperson of the South Australian Chapter of The Institute of Arbitrators and Mediators Australia or the Chairperson's nominee.

19.3.2 A referral to arbitration is a submission to arbitration within the meaning of the Commercial Arbitration and Industrial Referral Agreements Act 1986 (SA).

19.3.3 The party serving the notice of arbitration must lodge with the arbitrator a security deposit for the cost of the arbitration proceedings.

19.3.4 The arbitrator may determine the amount of costs, how costs are to be apportioned and by whom they must be paid.

### 19.4 Performance

If possible, each party must perform its obligations under this agreement during negotiations, mediation and arbitration proceedings.

## 20 Relationship

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This agreement does not create a relationship of employment, agency or partnership between the parties.

## 21 Miscellaneous

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### 21.1 Special Conditions

If there is an inconsistency between a special condition in an Official Order and the rest of this agreement, the special condition governs to the extent of the inconsistency.

### 21.2 Business Days

Except for the performance of Works, if the day on which an act is to be done under this agreement is not a Business Day, that act may be done on the next Business Day.

### 21.3 Alteration

This agreement may be altered only in writing signed by each party.

### 21.4 Approvals and Consents

Unless otherwise provided, a party may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under this agreement.

## 21.5 Entire Agreement

This agreement:

- 21.5.1 constitutes the entire agreement between the parties about its subject matter;
- 21.5.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

## 21.6 Waiver

A waiver of a provision of or right under this agreement:

- 21.6.1 must be in writing signed by the party giving the waiver;
- 21.6.2 is effective only to the extent set out in the written waiver.

## 21.7 Exercise of Power

- 21.7.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right.
- 21.7.2 An exercise of a power or right under this agreement does not preclude a further exercise of it or the exercise of another right or power.

## 21.8 Survival

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this agreement, remains in force after the expiration or termination of this agreement.

## 21.9 Governing law

- 21.9.1 This agreement is governed by the law in South Australia.
- 21.9.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

## 21.10 Ombudsman

The Contractor acknowledges that the *Ombudsman Act 1972 (SA)* empowers the Ombudsman to investigate matters in the public interest. The Contractor must ensure compliance with all obligations arising under that or any other Act.

## 22 Goods and Services Tax

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### 22.1 Consideration Does Not Include GST

Unless specifically described as 'GST inclusive', any payment or consideration under this agreement does not include GST.

## 22.2 Gross Up of Consideration

Where a supply by one party (**Supplier**) to another party (**Recipient**) under this agreement is subject to GST (other than a supply specifically described as 'GST inclusive'):

- 22.2.1 the expressed consideration for that supply must be increased by, and the Recipient must pay to the Supplier, an amount equal to the GST payable by the Supplier in respect of that supply; and
- 22.2.2 the Recipient must pay that additional amount at the same time and in the same manner as the expressed consideration.

## 22.3 Reimbursements

If a payment to a party under this agreement is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such reduction to be effected before any increase in accordance with the previous subclause.

## 22.4 Tax Invoices

Notwithstanding any other provision of this agreement, the Recipient need not make any payment for a taxable supply made by the Supplier under this agreement until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.

## 22.5 Adjustments

If an adjustment event has occurred in respect of a taxable supply made under this agreement, any party that becomes aware of the occurrence of that adjustment event must notify each other party to that taxable supply as soon as practicable, and all of those parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that taxable supply, or any refund of GST (or part thereof), is paid no later than 28 days after the Supplier first becomes aware that the adjustment event has occurred.

## 23 Notices

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23.1 A notice, demand, consent, approval or communication under this agreement (Notice) must be:

- 23.1.1 in writing, in English and signed by a person authorised by the sender; and

23.1.2 hand delivered or sent by pre-paid post or facsimile or electronic communication to the recipient's address or facsimile number specified in this agreement, as varied by any Notice given by the recipient to the sender.

23.2 A Notice is deemed to be received:

23.2.1 if hand delivered, on delivery;

23.2.2 if sent by prepaid mail, two Business Days after posting (or seven Business Days after posting if posting to or from a place outside Australia);

23.2.3 if sent by facsimile, at the time and on the day shown in the sender's transmission report, if it shows that the entire Notice was sent to the recipient's facsimile number last Notified by the recipient to the sender;

23.2.4 if sent by electronic communication, at the time deemed to be the time of receipt under the Electronic Transactions Act 1999 (Cth) if the notice was being given under a law of the Commonwealth of Australia.

23.2.5 However if the Notice is deemed to be received on a day that is not a Business Day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next Business Day.

23.3 If two or more people comprise a party, Notice to one is effective Notice to all.