



**Government
of South Australia**

Minor Works Agreement

Version 2.2

September 2017

DATED _____

**MINOR WORKS AGREEMENT FOR [#1 INSERT THE NAME OF
CONSTRUCTION PROJECT]**

BETWEEN

[#2 INSERT NAME OF OWNER]

("Principal")

-AND-

#3 INSERT NAME OF BUILDER

#4 INSERT ABN / ACN

("Contractor")

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Example Only

MINOR WORKS AGREEMENT

AGREEMENT dated **#5 insert date**

PARTIES

#6 insert Principal's name

("Principal")

AND

#7 insert Contractor's name

("Contractor").

IT IS AGREED:

1. INTENT

This Agreement is for the Contractor to build the construction project ("**the Work**") described in the Specification.

2. DEFINITIONS

In this Agreement unless a contrary intention is evident:

- 2.1 "**Agency**" means the agency named in the Schedule;
- 2.2 "**Business Day**" means any day that is not a Saturday or Sunday or a public holiday;
- 2.3 "**Contract Price**" means the price specified in the Schedule;
- 2.4 "**Contractor's Activities**" means all work and other things that the Contractor must do or provide in order to build the Work, including without limitation the provision of plant, equipment, temporary works;
- 2.5 "**Contractor's Representative**" means the person named in the Schedule;
- 2.6 "**Commencement Date**" means the date specified in the Schedule;
- 2.7 "**Completion**" has the meaning attributed in clause 13;
- 2.8 "**Defects Liability Period**" has the meaning attributed in clause 14;
- 2.9 "**Document**" means any embodiment of any text or image however recorded;
- 2.10 "**GST**" means the tax imposed under the GST Law;

2.11 “**GST Law**” has the meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

2.12 “**Insolvency Administration**” means:

2.12.1 if the Contractor is a body corporate:

- (a) an administrator is appointed to the Contractor;
- (b) the Contractor resolves to be wound up;
- (c) a court order is made that the Contractor be wound up (for insolvency or otherwise);
- (d) the Contractor ceases business;
- (e) a receiver or manager is appointed to the Contractor;
- (f) a liquidator or provisional liquidator of the Contractor is appointed;
- (g) the Contractor enters into an arrangement with its creditors; and/or
- (h) the Contractor is unable to pay its debts when they are due;

2.12.2 if the Contractor is a natural person:

- (a) the Contractor has committed an act of bankruptcy as contemplated by the *Bankruptcy Act 1966 (Cth)*;
- (b) the Contractor is unable to pay his or her debts as and when they become due and payable;
- (c) the court has made a sequestration order against the Contractor's estate;
- (d) a creditors' petition has been presented against the Contractor;
- (e) the Contractor has presented to the official receiver a declaration of intention to present a debtor's petition;
- (f) the Contractor becomes a bankrupt;
- (g) a meeting of creditors of the Contractor is convened; or
- (h) the Contractor lodges with his or her trustee a proposal to his or her creditors for a composition in satisfaction of his or her debts or a scheme of arrangement of his or her affairs;

2.12.3 if the Contractor is trading as a partnership, the occurrence of any of the events described in clause 2.12.2 in relation to any of the partners of the partnership;

2.13 “**Principal's Representative**” means the person named in the Schedule;

2.14 “**Site**” means the site identified in the Schedule;

2.15 “**Specification**” means the document attached with that title;

2.16 “**Taxable Supply**” has the meaning attributed in the GST Law, and also means any component of a Taxable Supply that is treated as a separate supply under the GST Law; and

2.17 “**Work**” means the structure or project to be built or carried out on the Site described in the Specification.

3. INTERPRETATION

- 3.1 In this Agreement unless a contrary intention is evident:
- 3.1.1 the clause headings are for convenient reference only and they do not form part of this Agreement;
 - 3.1.2 a reference to a clause number is a reference to all of its sub-clauses;
 - 3.1.3 a reference to a clause, sub-clause, schedule or annexure is a reference to a clause, sub-clause, schedule or annexure of this Agreement;
 - 3.1.4 a word in the singular includes the plural and a word in the plural includes the singular;
 - 3.1.5 a word importing a gender includes any other gender;
 - 3.1.6 a reference to a person includes a partnership and a body corporate;
 - 3.1.7 a reference to legislation includes legislation repealing, replacing or amending that legislation;
 - 3.1.8 a reference to dollars is a reference to Australian dollars; and
 - 3.1.9 where a word or phrase is given a particular meaning other parts of speech or grammatical forms of that word or phrase have corresponding meanings.
- 3.2 If the Contractor consists of two or more persons, the Contractor's rights and obligations under this Agreement bind them jointly and severally.
- 3.3 This Agreement between the parties comprises these standard terms and conditions and all the documents comprised in, and incorporated by reference to, the Annexures. If any of the documents comprising this Agreement are inconsistent, they shall take priority in the following order:
- 3.3.1 the Special Conditions (if any) (Annexure 1);
 - 3.3.2 these standard terms and conditions (excluding the Schedule and Annexure 2);
 - 3.3.3 the Schedule; and
 - 3.3.4 the Specification (Annexure 2).

4. CONTRACT ADMINISTRATION

- 4.1 The Parties appoint the persons named in the Schedule as their respective Representatives. Each Representative has authority to:
- 4.1.1 exercise all of the powers and functions of his or her party under this Agreement other than the power to amend this Agreement;
 - 4.1.2 bind his or her party in relation to any matter arising out of or in connection with this Agreement; and
 - 4.1.3 if indicated in the Schedule, amend the Schedule and Annexures to this Agreement.
- 4.2 A notice served on a Representative is taken to be notice to that Representative's party.
- 4.3 The Contractor must comply with all reasonable instructions given by the Principal's Representative.

4.4 Either party may change its Representative, by giving written notice to the other.

5. **GENERAL OBLIGATIONS OF THE CONTRACTOR**

5.1 The Contractor must construct and complete the Work and the Contractor's Activities in accordance with the Specification and within the time required by this Agreement.

5.2 The Contractor remains responsible for the Work and the Contractor's Activities regardless of whether the Contractor has sub-contracted any part of the Work.

5.3 The Contractor must perform its obligations under this Agreement carefully, skilfully and competently, in a workmanlike manner.

5.4 The Contractor must use new materials unless otherwise specified.

6. **SUBCONTRACTING**

6.1 The Contractor must not subcontract the performance of the Work or any part of the Work except with the prior written agreement of the Principal. No agreement to subcontract by the Principal will relieve the Contractor of any responsibility under this Agreement.

6.2 It is acknowledged that the Principal has approved the use of any sub-contractors listed as "Approved Sub-contractors" in the schedule, subject to any limitations indicated in the Schedule.

7. **VARIATIONS**

7.1 The Principal may vary the Work and the Contractor's Activities by adding to, changing or deleting part of it by written instruction to the Contractor, provided that the variation does not fundamentally change the character or scope of the Work.

7.2 The Contract Price must be varied to take account of such a variation by the addition or deduction of an amount that represents the reasonable value of the variation having regard to the cost of materials and labour, administrative overheads and the profit margin nominated in the Schedule.

7.3 The value of a variation in accordance with this clause must be:

7.3.1 agreed between the parties; or

7.3.2 determined by an agreed independent third party selected by the parties for that purpose.

8. **DISCREPANCIES**

8.1 The Contractor must notify the Principal promptly if any information or any document provided by the Principal is insufficient, inaccurate or unclear.

8.2 The Principal must promptly clarify or supply sufficient information for the Contractor to proceed with the Work.

9. LEGISLATIVE REQUIREMENTS

The Contractor must, at its cost, ensure that in carrying out the Contractor's Activities, all legislative requirements including without limitation the *Development Act 1993* (SA) are complied with.

10. THE SITE

Within the time indicated in the Schedule the Principal must give the Contractor sufficient access to the Site to commence, and continue the Work.

11. CARE OF THE WORKS AND REINSTATEMENT OF DAMAGE

11.1 From the time the Contractor is given access to the Site until the Contractor vacates the Site following Completion, the Contractor is responsible for the care of the Site, the Work, and all equipment and materials on the Site..

11.2 The Contractor must at its cost rectify and reinstate any loss or damage to the Site, the Work, and equipment and materials on the Site, except to the extent such damage is caused by the Principal.

12. PUBLIC SAFETY

12.1 The Contractor must do everything reasonable to prevent damage to persons or property that may come onto, or adjacent to the Site.

12.2 The Contractor indemnifies the Principal against any claim in respect of injury or loss to a person or property arising from activity on or the condition of the Site or the Work.

13. COMMENCEMENT AND COMPLETION

13.1 The Contractor must commence the Work immediately upon being given possession of the Site.

13.2 The Contractor must ensure the Work is Complete by the Date for Completion in the Schedule. "Complete" means the Work is finished, with no omissions and no known defects.

13.3 When, in the Contractor's view, the Work is Complete, the Contractor must give the Principal written notice of the fact ("Notice of Claimed Completion").

13.4 The Principal may respond to a Notice of Claimed Completion by:

13.4.1 a notice setting out work that remains to be done in order to achieve Completion (a "Notice of outstanding work"); or

13.4.2 a notice acknowledging Completion ("Notice acknowledging Completion").

13.5 The Principal may issue a Notice acknowledging Completion without having received a Notice of Claimed Completion.

13.6 For the purposes of determining any matter, date or period of time that depends on the date of Completion of the Work, the date is taken to be:

- 13.6.1 if the Contractor has issued a Notice of Claimed Completion and the Principal has not within 15 Business Days responded with a Notice of outstanding work, the date of the Notice of Claimed Completion;
- 13.6.2 if the Principal issues a notice acknowledging Completion without there having been any prior issue of a Notice of Claimed Completion, the date of the Notice acknowledging Completion;
- 13.6.3 if the Principal issues a Notice of outstanding work and the Contractor asserts that the Work is nevertheless Complete, the date when the Work is actually Complete according to any agreement eventually reached by the parties, or according to the finding of any third party by whom the parties agree to be bound in the matter of Completion, or according to the finding of a court of competent jurisdiction.

14. DEFECTS LIABILITY

- 14.1 The Contractor must rectify any defect that becomes apparent in the Work during the Defects Liability Period.
- 14.2 The Defects Liability Period is the period nominated in the Schedule commencing upon the date of Completion of the Work.
- 14.3 For the purposes of this clause, a “defect” means any failure of the Work to meet the Specification, or to be fit for its intended purpose, and “rectify” means to repair or replace the defective part of the Work so that it meets the Specification and is fit for its intended purpose.
- 14.4 The Principal must notify the Contractor of any defect that becomes apparent in the Work during the Defects Liability Period.
- 14.5 If the Contractor fails to rectify a defect in accordance with this clause, the Principal may (without being obliged to):
 - 14.5.1 rectify the defect or engage another contractor to rectify the defect,
 - 14.5.2 claim from the Contractor as a debt the cost of rectifying the defect,
 - 14.5.3 claim from the Contractor as a debt an amount that reflects the diminution in value or usefulness of the Work as a result of the defect.

None of the above options are to be taken to be mutually exclusive.

15. DELAY

If the Contractor is unavoidably delayed in Completion of the Work by an event or circumstance outside the Contractor’s control, the Contractor is entitled to have the date for Completion varied to the extent of the unavoidable delay.

16. LATENT CONDITIONS

- 16.1 If the Contractor finds conditions on site (“Site Conditions”) that:
 - 16.1.1 were not disclosed in any information available to the Contractor at time of tender,
 - 16.1.2 were not and could not reasonably have been anticipated by the Contractor at tender, and

16.1.3 will make it necessary to do more work ("**Site Conditions Work**") to complete the Works than would have been necessary had the Site Condition not existed;

the Contractor is entitled to be paid the cost of any Site Conditions Work actually undertaken, provided that the Contractor complies with the provisions of this clause.

16.2 Immediately on finding Site Conditions, the Contractor must:

16.2.1 take any action immediately required to protect the safety of persons and to avoid immediate damage to the Works,

16.2.2 not proceed with any Site Conditions Work; and

16.2.3 immediately notify the Principal of the Site Conditions, the nature of anticipated Site Conditions Work, and the extent of any action taken in accordance with this clause.

16.3 On receiving notice under this clause from the Contractor, the Principal must

16.3.1 issue a Variation that addresses the Site Condition, (which may include changing the design, or deleting part of the work, or authorising additional work); or

16.3.2 notify the Contractor that the Principal disputes that there is a Site Condition (whether on the basis that the conditions found were or could reasonably have been anticipated, or will not make additional work necessary) and instruct the Contractor whether the work notified by the Contractor as Site Conditions Work is required to be carried out.

16.4 If the existence of a Site Condition is disputed:

16.4.1 the Contractor must proceed with the Work, including any work instructed by the Principal under the preceding sub-clause, and excluding any work which the Principal instructs is not required to be carried out;

16.4.2 the parties must undertake the dispute resolution procedure under this Agreement in an endeavour to resolve the dispute; and

16.4.3 the Contractor remains entitled to payment for the costs of any work that is ultimately determined to be Site Conditions Work, either by agreement of the parties or by the determination of a court or the determination of any third party the parties may agree to appoint to make a final and binding determination on the matter.

17. CONTRACT PRICE AND RETENTION

17.1 The Contract Price payable for the Work is set out in the Schedule.

17.2 The Contract Price is inclusive of GST, and not subject to adjustment except as expressly provided in this Agreement.

17.3 The Contract Price is payable by the Principal in accordance with the terms set out in the Schedule, in a single lump sum payment or in instalments in accordance with the Schedule, subject to:

17.3.1 the Completion of the Work, or in respect of instalments, completion of the stage indicated for the relevant instalment;

17.3.2 the Principal's right to retain retention moneys.

17.4 The Principal will deduct by way of retention money from any payment an amount equivalent to ten percent of the amount otherwise payable, subject to an aggregate limit of five percent of the Contract Price. The retention money is payable to the Contractor in full upon the expiry of Defects Liability Period and completion by the Contractor of all work including rectification of defects.

17.5 The Principal is not liable to pay government rates, duties, taxes and charges payable in respect of the Work.

17.6 The parties acknowledge and agree that the Work constitutes a Taxable Supply.

18. RECIPIENT CREATED INVOICE

18.1 This clause concerning recipient created tax invoices ("RCTIs") applies if it is indicated in the Schedule that the Principal will issue RCTIs.

18.2 The Principal acknowledges and represents that:

18.2.1 it (or the Agency) is registered as a Government Related Entity under the GST law; and

18.2.2 it satisfies the criteria under the Taxation Commissioner's determination under subsection 29-7-(3) of the GST law, as set out in Australian Tax Office ruling GSTR 2000/10 for a recipient to be entitled to issue a RCTI.

18.3 The Principal must inform the Contractor immediately if it (or if applicable, the Agency) ceases to be registered under the GST law, or if any other representation made in the preceding subclause ceases to be true.

18.4 The Contractor must inform the Principal immediately if it ceases to be registered under the GST law.

18.5 The Principal may issue an RCTI in respect of the work, or portions of the work for which instalments of the contract price are payable.

18.6 The Contractor must not issue any Tax Invoice in respect of the work.

19. PAYMENT

19.1 At the intervals specified in the Schedule (whether monthly intervals or upon completion of milestones in the work) the Contractor will issue a Payment Claim, setting out the amount or instalment of the contract price the Contractor claims is payable.

19.2 The Principal must, within 12 Business Days of receipt of a Payment Claim, deliver a Payment Schedule certifying the amount that the Principal considers is payable, and if that is different from the amount claimed by the Contractor, setting out the reasons for the difference.

19.3 Following delivery by the Principal of the Payment Schedule, either:

19.3.1 If the Agreement does not provide for the Principal to issue RCTIs, the Contractor may issue a Tax Invoice for the amount certified by the Principal as payable, or

19.3.2 If the Agreement provides for the Principal to issue RCTIs the Principal must within 5 Business Days issue an RCTI for the amount certified by the Principal as payable.

19.4 If the Contractor disputes the amount certified as payable in the Payment Schedule, the Resolution of Disputes clause (clause 23) applies.

19.5 The Principal must make payment within 30 days on a valid tax invoice issued in accordance with clause 19.3

20. **ABN, GST REGISTRATION**

20.1 The Contractor represents that:

20.1.1 it is registered under the *A New Tax System (Australian Business Number) Act 1999 (Cth)*, and the ABN shown in the Schedule is the Contractor's ABN;

20.1.2 it is registered under the *A New Tax System Goods and Services Tax Act 1999*; and

20.1.3 the supply of the Work under this Agreement is a Taxable Supply.

20.2 This clause applies if the Schedule identifies an Agency. The Agency is the government entity administering this Agreement on behalf of the Principal, is registered under the GST Law, and its ABN is set out in the Schedule. The Agency is to be treated as the maker of supplies and acquisitions under the contract instead of the Principal for the purposes only of the GST law. The Agency may do anything that the Principal is required or permitted to do under this Agreement in respect of GST, including if applicable the issue of recipient created tax invoices.

21. **INSURANCE**

21.1 The Contractor must effect and maintain the following policies of insurance covering the Contractor for commercially insurable risks of the nature usually covered by such a policy, for amounts not less than those stated in the Schedule:

21.1.1 Works insurance; and

21.1.2 Public Liability.

22. **LIABILITY**

22.1 The Contractor's liability to the Principal under this Agreement is limited to the amount specified in the Schedule.

23. **RESOLUTION OF DISPUTES**

23.1 Except in a case of genuine urgency where a party seeks immediate interlocutory relief or an interim remedy, neither party may take legal proceedings in respect of any dispute in relation to this Agreement without first attempting resolution in accordance with this clause.

23.2 In the event of a dispute, a party may issue to the other party a written notice of dispute ("dispute notice"), describing the issue in dispute and requiring that the process in this clause be followed.

23.3 The parties' representatives must attempt to resolve any dispute by negotiating in good faith, commencing not later than fourteen days after the dispute notice.

23.4 A party may nominate an additional or alternative representative for the purposes of negotiating a resolution of the dispute.

- 23.5 If the parties' representatives cannot resolve the dispute within fourteen days of commencing negotiations, either party may require that the representatives meet to consider adopting any alternative dispute resolution process, which may include (without limitation) conciliation, mediation, binding or non binding expert determination, or arbitration.
- 23.6 The parties must consider in good faith, but are not bound to adopt any form of alternative dispute resolution.
- 23.7 Notwithstanding the existence of a dispute each party must continue to perform its obligations under this Agreement.
- 23.8 This clause survives any expiry or termination of this Agreement.

24. **TERMINATION BY THE PRINCIPAL**

- 24.1 The Principal may terminate this Agreement on seven (7) days notice to the Contractor if the Contractor enters into any form of Insolvency Administration.
- 24.2 If the Contractor:
- 24.2.1 merges with another company;
 - 24.2.2 undergoes a change in the effective control of the Contractor; or
 - 24.2.3 is the subject of a takeover by another company;
- then:
- 24.2.4 the Contractor must notify the Principal within seven days of any of the above events taking place and give full details of the events; and
 - 24.2.5 the Principal may terminate this Agreement on seven days notice to the Contractor.
- 24.3 The Principal may terminate this Agreement on seven days notice to the Contractor if the Contractor purports to assign any of its rights or obligations under this Agreement in breach of this Agreement.
- 24.4 The Principal may terminate this Agreement immediately by notice to the Contractor if:
- 24.4.1 the Contractor has failed, within the time specified in a default notice served on the Contractor, to remedy a breach of any of its obligations under this Agreement; or
 - 24.4.2 the Principal has served on the Contractor default notices on more than two occasions in respect of the same breach of a provision of this Agreement irrespective of whether the Contractor has remedied the breaches.
- 24.5 Termination under this clause 24 has the following effect:
- 24.5.1 The Principal is not liable to make any payment to the Contractor save as provided in this clause;
 - 24.5.2 The Principal may Complete the Works by itself or by another builder, and must keep an account of the expense of so doing;
 - 24.5.3 Upon Completion of the Work and expiry of a period equivalent to the Defects Liability Period and rectification of all Defects, the Principal must calculate the cost of Completion and rectification;

24.5.4 If the cost of Completion and rectification exceeds the unpaid amount of the Contract Price, the Contractor must pay the Principal the difference; and

24.5.5 If the unpaid balance of the Contract Price exceeds the cost of Completion and rectification, the Principal must pay the difference to the Contractor; and

24.5.6 Termination of this Agreement by the Principal does not affect any accrued right of either Party.

25. **TERMINATION BY THE CONTRACTOR**

25.1 The Contractor may terminate this Agreement immediately by notice to the Principal if:

25.1.1 the Principal has failed, within the time specified in a default notice served on the Principal, to remedy a breach of any of its obligations under this Agreement; or

25.1.2 the Contractor has served on the Principal default notices on more than two occasions in respect of the same breach of a provision of this Agreement irrespective of whether the Principal has remedied the breaches.

25.2 Termination under this clause 25 has the following effect:

25.2.1 the Contractor is entitled to be paid for all work completed up to the date of termination; and

25.2.2 termination of this Agreement by the Contractor does not affect any accrued right of either Party.

26. **PUBLICITY**

The Contractor must not make or permit to be made a public announcement or media release about any aspect of this Agreement unless the Principal first gives the Contractor its written consent.

27. **CONTRACT DISCLOSURE - GOVERNMENT POLICY**

The Principal may disclose this Contract and/or information in relation to this Contract in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request. Nothing in this clause derogates from the Contractor's obligations under any provision of this Contract or from the provisions of the *Freedom of Information Act 1991* (SA).

28. **NO ASSIGNMENT**

The Contractor must not assign or encumber any of its rights and obligations under this Agreement.

29. **RELATIONSHIP BETWEEN THE PARTIES**

29.1 Nothing in this Agreement constitutes any relationship of employer and employee or partnership between the parties.

- 29.2 No party has any authority to bind the other party in any manner without the prior consent of the other party.
- 29.3 The Principal has no obligations to the Contractor's Staff.
- 29.4 The Contractor must pay all remuneration claims and other entitlements payable to the Contractor's Staff.
- 29.5 The Contractor is responsible for complying with the requirements of the *Income Tax Assessment Act 1997* (Cth) in respect of the Contractor's employees.

30. **PROPER LAW AND JURISDICTION OF COURTS**

- 30.1 The laws in force in South Australia, including law with respect to capacity to contract and manner of performance, apply to this Agreement.
- 30.2 The courts of South Australia have exclusive jurisdiction to determine any proceeding in relation to this Agreement.
- 30.3 Any proceeding brought in a Federal Court must be instituted in the Adelaide Registry of that Federal Court, and neither party may apply to transfer any proceedings to another registry of the Federal Court.

31. **COMPLIANCE WITH LAWS**

The Contractor must comply with the laws in force in South Australia in the course of performing this Agreement.

32. **AUDITOR-GENERAL**

Nothing in this Agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).

33. **NOTICES**

33.1 A notice, consent, approval or other communication required to be in writing under this Agreement must in writing and signed by, or on behalf of, the sender addressed to the recipient and:

- 33.1.1 delivered to the recipient's address; or
- 33.1.2 sent by pre-paid mail to the recipient's address; or
- 33.1.3 transmitted by facsimile to the recipient's address.

33.2 A notice given to a person in accordance with this clause is treated as having been given and received:

- 33.2.1 on the day of delivery if delivered before 5.00 pm on a Business Day, otherwise on the next Business Day;
- 33.2.2 if sent by pre-paid mail, on the third Business Day after posting;

or

- 33.2.3 if transmitted by facsimile and a correct and complete transmission report is received on the day of transmission: on that day if the report states that transmission was completed before 5.00 pm on a Business Day, otherwise on the next Business Day, provided that:

33.2.4 if the recipient receives by facsimile transmission a notice that is illegible, the recipient must notify the sender immediately and the sender must continue to retransmit the notice until the recipient confirms that it has received a legible notice. The rules in relation to transmission reports as stated above apply.

33.3 The address and facsimile number of a person are those set out below that person's name in the relevant schedule.

33.4 A person may from time to time notify its change of address or facsimile number by written notice to the other party.

34. **WAIVER**

34.1 Any waiver of any provision of this Agreement is ineffective unless it is in writing and signed by the party waiving its rights.

34.2 A waiver by either party in respect of a breach of a provision of this Agreement by the other party is not a waiver in respect of any other breach of that or any other provision.

34.3 The failure of either party to enforce at any time any of the provisions of this Agreement must not be interpreted as a waiver of such provision.

35. **MODIFICATION**

Any modification of this Agreement must be in writing and signed by an authorised representative of each party.

36. **SEVERANCE**

If any provision or part of a provision of this Agreement is invalid or unenforceable in any relevant jurisdiction:

36.1 the provision must be read down for the purposes of the operation of that provision in that jurisdiction, if possible, so as to be valid and enforceable; or

36.2 if the provision cannot be read down, it must be severed if it is capable of being severed without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction and the parties must consult in good faith to determine whether any amendment or substituted provision is required.

37. **TIME OF THE ESSENCE**

Time is of the essence in respect of any time, date, or period specified either in this Agreement or in any notice served under this Agreement.

38. **SET OFF**

The Principal may set off any undisputed amounts due to it pursuant to this Agreement as a credit against any amounts payable by the Contractor pursuant to this Agreement.

39. **ACTING ETHICALLY**

In carrying out the Work, the Contractor will conduct itself in a manner that does not invite, directly or indirectly, the Principal's officers, employees or agents or any public sector employee (as defined in the Public Sector Act 2009) to behave unethically, to prefer private interests over the Principal's interests or to otherwise contravene the *Code of Ethics for the South Australian Public Sector*.

EXECUTED AS AN AGREEMENT

#8 insert appropriate execution clauses

SCHEDULE

1. Agency: #9 insert name of agency administering the contract; if the agency is the owner, insert "not applicable"
2. Date for possession of Site handover: #10 insert date or other indication as to time
3. Site: #11 identify Site
4. Date for Completion: #12 insert date
5. Defects Liability Period: #13 insert defects liability period eg 6 months
6. Contract Price and payment
 - Contract Price: #14 insert amount
 - Terms: #15 insert terms eg 30 days by cheque or electronic transfer
 - Instalments: #16 if applicable, stipulate the stages at which instalments are to be payable and the amount or percentage of the price payable at each stage; if the price is not payable in instalments, insert "not applicable"
 - Periodic claims: #16a if applicable stipulate the intervals at which progress payments are to be made eg monthly
 - Retention Moneys: #16b the Principal will deduct 10% of each instalment up to an aggregate limit of 5% of the Contract Price. Payable upon expiry of defects Liability Period if all works including rectification of defects have been completed by the Contractor
 - Tax invoices: #16c stipulate if the Principal is to issue RCTIs or will the Contractor issue tax invoices
7. Approved Subcontractors: #17 insert details

8. Insurances

- Works insurance: #18 insert amount
- Public Liability Insurance: #19 insert amount

9. Limitation of Liability

The following Liability Limit has been approved by Cabinet (25 July 2016):

#20 insert between [1 and 5] x [the aggregated value of the contract (inc. GST)].
Multiple to be based on Principal's risk assessment

10. Representatives

- Principal's Representative: #21 insert details
- Contractor's Representative: #22 insert details

11. ABN

- Contractor's ABN: #23 insert ABN
- Principal's/Agency's ABN: #24 insert ABN

12. Variations

- Administrative Overheads: #25 insert percentage%
- Profit Margin: #26 insert percentage%

13. Addresses for notice

- Principal: #27 insert details
- Contractor: #28 insert details

ANNEXURE 1

SPECIAL AMENDMENTS TO CONTRACT TERMS & CONDITIONS

Example Only

ANNEXURE 2
SPECIFICATION

Example Only