



TENDER NO. 2017 / 18 - 04

**CONSTRUCT NETBALL CHANGEROOMS IN
DIMBOOLA**

**REQUEST FOR TENDER, CONDITIONS OF TENDERING,
TENDER SCHEDULES,
SERVICES - GENERAL CONDITIONS, & SPECIFICATION**

Tenders Close at 2:00 pm on Friday 6th October 2017

**Hindmarsh Shire Council invites Tenders for the:
CONSTRUCT NETBALL CHANGEROOMS IN DIMBOOLA**

BRIEF DESCRIPTION OF WORKS UNDER THE CONTRACT

Tenders are invited from suitably experienced and qualified Commercial Builders to provide building construction services for a female change room facility at the Recreation Reserve in Dimboola. Preliminary plans and technical specification have been developed for tender purposes.

TYPE OF CONTRACT

The Contract will be a Lump Sum contract not subject to price adjustment for rise and fall in prices.

The General Conditions are the AS4000 Contract with modifications in annexures.

PRE-TENDER BRIEFING

A pre-tender briefing will not be held for this Contract; however, pre-close of tender meetings can be arranged with Hindmarsh Shire Council.

CLOSING OF TENDERS

Tenders shall be lodged in the Tender Box located in the foyer, Hindmarsh Shire Council, Nhill Customer Service Office, 92 Nelson Street, Nhill by 2.00pm on Friday 6th October 2017.

ENQUIRIES

Any enquiries regarding this Request for Tender may be directed to Daniel Haile-Michael, Community Project Engineer, Hindmarsh Shire Council, 92 Nelson Street, Nhill, 3418, telephone 5391 4403, email dhailemichael@hindmarsh.vic.gov.au.

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Hindmarsh Shire Council

CONSTRUCT NETBALL CHANGEROOMS IN DIMBOOLA

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SECTION 1 CONDITIONS OF TENDERING

1. INTRODUCTION

1.1 INTERPRETATION

Terms defined in the *Services General Conditions* annexed to these *Tender Conditions* have the same meaning in these *Tender Conditions*, unless inconsistent with the context.

1.2 DEFINITIONS

In these *Tender Conditions*, the following terms have the meanings indicated, unless inconsistent with the context:

"**Best Value Principles**" means the Best Value Principles described in section 208B of the *Local Government Act 1989*;

"**Closing Time for Tenders**" has the meaning ascribed to it by clause 3.3;

"**Conforming Tender**" means a tender which is not a Non-Conforming Tender;

"**the Guidelines**" has the meaning ascribed to it by clause 5.4;

"**Non-Conforming Tender**" means a tender which:

- (a) does not comply with any requirement specified in these *Tender Conditions*; or
- (b) contains any qualification, condition or other indication that the tenderer is not willing to perform the Contract in strict accordance with the Contract Documents;

"**Schedule**" means a schedule to these *Tender Conditions*; and

"**the Tender Box**" has the meaning ascribed to it by clause 3.

2. NATURE OF CONTRACT

2.1 SERVICES TO BE PERFORMED

The Services are described in general terms in *Schedule 1*. Tenderers should, however, ensure that they read the Contract Documents fully to ascertain the Services to be performed and the terms on which the Services are to be performed, as the Contract will be evidenced solely by the Contract Documents.

2.2 LOCATION OF SERVICES

The Services are to be performed at the location stated in *Schedule 1*.

2.3 TENDERER TO MAKE ENQUIRIES

Tenderers are advised and expected to ascertain for themselves the actual extent and nature of the Services, as the Council will not entertain any claim arising from a failure to do so.

Council expects each tenderer to make its own enquiries, seek its own advice and form its own opinion as to the application of the *Fair Work (Registered Organisations) Act 2009* to the tender, and in particular as to whether the Contract may give rise to a transmission of business.

2.4 CONTACT STAFF

All enquiries regarding the tender process or the Contract must be directed to the member or members of the Council's staff specified in *Schedule 1*.

3. TENDERS

3.1 FORM OF TENDERS

These *Tender Conditions*, *Schedules 2, 3, 6 and 7* completed will constitute a tender.

3.2 PLACE TO LODGE TENDERS

Tenders are to be lodged only in the tender box, at the place stated in *Schedule 1* ("the TenderBox").

3.3 TIME FOR LODGING TENDERS

Tenders will be received in the Tender Box only until the time and date stated in *Schedule 1* ("Closing Time for Tenders").

3.4 NUMBER OF COPIES

The number of copies of the tender stated in *Schedule 1* must be lodged in the Tender Box.

3.5 FACSIMILE OR E-MAIL TENDERES

Tenders received in a facsimile form or via an E-Mail system will not be accepted.

3.6 LATE TENDERS

The Council will not consider late tenders.

3.7 TENDER BID

All Tender Bids to remain valid for 90 days after the submission date.

3.8 COUNCIL NOT BOUND TO ACCEPT TENDER

The Council is not bound to accept the lowest or any tender.

3.9 NON-CONFORMING TENDERS

The Council reserves the right to accept or reject any Non-Conforming Tender.

3.10 ALTERATION TO TENDER DOCUMENTS

Any unauthorised alteration to these tender documents will render any tender submitted ineligible for acceptance.

3.11 WITHDRAWAL OF TENDERS

Tenders may not be withdrawn within 90 days after Closing Time for Tenders without the consent of the Council.

3.12 NO COLLATERAL CONTRACT

The submission of a tender by a tenderer will not give rise to any contract governing, or in any way concerning, the tender process, or any aspect of the tender process, for the Contract. The Council expressly disclaims any intention to enter into any such contract.

4. INFORMATION**4.1 QUESTIONNAIRE**

Tenderers must:

4.1.1 complete the questionnaire contained in Schedule 3 and submit it as part of their tenders; and

4.1.2 supply any information or documents specified at the conclusion of the questionnaire.

While the information and documents will be used in the evaluation of tenders, they will not form part of the Contract.

4.2 ADDITIONAL DOCUMENTATION AND INFORMATION

Tenderers are required to submit the documents or information specified in *Schedule 1* as part of their tenders. On acceptance by the Council, the documents or information will form part of the Contract.

5. EVALUATION OF TENDERS**5.1 EVALUATION CRITERIA**

The tender evaluation panel will evaluate tenders in accordance with evaluation criteria listed (in order of importance) in *Schedule 1*.

The Council will award the tender by applying the Best Value Principles. In applying the Best Value Principles, the Council will have regard to the report prepared by the tender evaluation panel and any other factors which it considers relevant.

5.2 POST-TENDER SUBMISSIONS

The Council may require a tenderer to submit additional information concerning its tender or to personally discuss its tender before any tender is accepted.

Should a tenderer fail to -

5.3.1 submit the additional information so required by; or

5.3.2 attend personally to discuss its tender at -

the date and time stipulated by the Council, its tender may not be further considered.

5.3 RECTIFICATION OF ERRORS AND OMISSIONS

The Council reserves the right to:

5.3.1 check tenders for errors and omissions;

5.3.2 by agreement with a tenderer, amend a tender price or rate submitted by a tenderer to remedy the effect of any errors or omissions in the calculation of the tender price or rate; and

5.3.3 by agreement with a tenderer, otherwise amend the tender of the tenderer to remedy the effect of any errors or omissions.

5.4 COMPETITIVE NEUTRALITY

The competitive neutrality requirements of the *Competition Principles Agreement* between and among the Commonwealth, State and Territory Governments impose obligations on the Council in relation to the evaluation of tenders submitted by members of its staff. The Council will comply with these obligations and the *Competitive Neutrality Policy Victoria 2012*.

6. ACCEPTANCE OF TENDER

6.1 ACCEPTANCE OF TENDER

The successful tenderer will be notified in writing of the acceptance of its tender. The notification of the acceptance of tender will create a contract between the parties on the basis of the successful tenderer's tender and the Contract Documents. The successful tenderer must execute and return to the Council a formal agreement in the form of the Contract Documents, as amended by the insertion of any details which tenderers are required to include in tenders (including any documents or information provided to the Council for the purposes of clause 4.2) within seven (7) days of its receipt from the Council.

6.2 GUARANTEE

Tenderers are advised that the Council may accept a tender on condition that a guarantee in respect of the Contractor's obligations under the Contract, in the form of the Deed of Guarantee annexed to the Services General Conditions - Long Form forming part of the Contract Documents, is executed by persons or bodies corporate specified in the Council's acceptance. The successful tenderer will be required to determine if it is willing to undertake the Contract on this condition within a fixed time.

7. PROBITY OF TENDER PROCESS

7.1 STATUTORY DECLARATION

A statutory declaration in the form of *Schedule 6* must be made by a person authorised to make such a declaration on behalf of the tenderer and submitted with its tender.

7.2 CANVASSING

Tenderers must not approach, or request any other person to approach -

7.2.1 any member of the Council's staff; or

7.2.2 councillor of the Council -

individually;

7.2.3 to solicit support for their tenders; or

7.2.5 otherwise seek to influence the outcome of the tender process.

The tender of any tenderer which engages in conduct prohibited under clause 7.2 may not be considered by the Council.



Hindmarsh Shire Council

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SECTION 2 TENDER SCHEDULES

**This section is to be returned as the basis of your tender submission.
Please ensure all schedules are signed, dated and witnessed where necessary,
and all documentation requested herein is attached.**

SCHEDULE 1 - TENDER INFORMATION**TENDER NO. 2017 / 18 - 04**

The Services to be provided under the Contract are:	CONSTRUCT NETBALL CHANGEROOMS IN DIMBOOLA
The Project Manager for this Contract is:	Daniel Haile-Michael
The location of the Tender Box is:	Hindmarsh Shire Council PO Box 250 or 92 Nelson Street NHILL VIC 3418
The time and date by which tenders must be lodged are:	2:00 pm Friday 6th October 2017
The number of copies of the tender to be lodged in the Tender Box is:	2 hard copies and 1 electronic copy (USB)
The documents and information to be supplied by the tenderer are:	<ul style="list-style-type: none"> * The completed Tender Schedules; * Evidence of insurances held; * Other information as requested in the Specification.
The date for acceptance by Council:	3 rd November 2017
The date for Commencement of the Contract is:	20 th November 2018 or sooner if applicable
The date for Completion of the Contract is:	30 th March 2019
The Defect Liability Period is:	12 months from date of completion
The Evaluation Criteria are:	<ul style="list-style-type: none"> A) Tender price/Whole of Life Cost; 40% B) Demonstrated performance in the provision of similar services; 30% C) Available resources and capacity for timely completion of project; 20% D) Compliance with and appreciation of Occupational Health and Safety legislation requirements.10%

SCHEDULE 2 - TENDER SUBMISSION

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The party/parties (*delete whichever is not applicable*) specified below hereby tender to undertake the Contract in consideration of Council making the following payments:

It is acknowledged that this document shall evidence the Contract between the parties until formal contract documents are signed and sealed.

Signed:

Name:

Tenderer's Name:

ABN:

Head Office Address:

Local/Site Address:

Telephone No:

Mobile No:

Facsimile No:

Email Address:

SCHEDULE 3 - TENDERER SUBMISSION**TENDER NO. 2017 / 18 - 04****TENDER SUBMISSION COST SUMMARY**

I/We _____ (tenderer's name)

Licence no. _____ Registration no. _____

of _____

hereby tender(s) to perform the work for (proprietor name):

in accordance with the following documents and specifications:

(add extra pages if needed)

For the lump sum (including GST) of:

_____ Dollars \$ _____ .00

The above lump sum quotation includes the following itemised costings (inc GST):

No	Item	Amount
Design		
1	Plumbing services plan and documentation	\$.00
2	Electrical services plan and documentation	\$.00
Construct		
3	General site inc Excavation, concrete footings, ramps, stairs, hand railing as per specification	\$.00
4	Frame inc cladding, door, windows and associated fixtures and fixings as per specification.	\$.00
5	Floor inc subfloor & flooring cover as per specification	\$.00
6	Roof inc water proofing & drainage as per specification	\$.00
7	Electrical inc electrical distribution, mechanical ventilation, lighting and fixtures as per specification	\$.00
8	Plumbing inc water distribution, sewerage & associated fixtures as per specification	\$.00

Schedule of working days The number of working days required from date of Letter of Acceptance to complete the work is _____ working days.

Signed by _____ (Company Directors)

Dated this _____ (day) _____ (month) 20_____

COMPANY SEAL

1. TENDER BID

Tender bids are to remain valid for a period of 90 days from the date the tender submission period closes unless otherwise specified.

The tender price shall be inclusive of all expenses of the contractor, including (but not limited to) labour, analytical testing, loading, transport **and GST**.

2. COMPETITIVELY NEUTRAL PRICING

The National Competition Policy requires that where Government business units are involved in competition with private sector business, the net competitive advantages that accrue to Government shall be offset.

Government business units tendering for this service are therefore required to apply competitively neutral pricing principles and to quote prices inclusive of all competitive advantages attributable to the tenderer being Government owned.

Tenders received from Government business units will be evaluated on the basis of the competitively neutral adjusted price.

3.1 COMPLIANCE CERTIFICATION BY GOVERNMENT BUSINESS UNITS

Tenders submitted by Government business units (including other councils) are to be certified as competitively neutral compliant by their chief executive or principal accounting officer.

Tenders not supported by this certification will be considered non-conforming.

<p style="text-align: center;">COMPLIANCE CERTIFICATE</p> <p>I certify that the tender submitted to Hindmarsh Shire Council in respect of Contract No 2017 / 18 - 04 has been prepared in accordance with competitively neutral pricing principles and is inclusive of all competitive advantages attributable to the tenderer being Government owned.</p> <p>Signed:</p> <p style="text-align: center;">Chief Executive Officer/Principal Accounting Officer</p> <p>Dated:</p>

SCHEDULE 3 - TENDERER INFORMATION
TENDER NO. 2017 / 18 - 04

The following information is required to enable the Council to assess the suitability of the tenderer to undertake the Service on Council's behalf.

1. Is the tenderer an individual, partnership, company limited by shares or other form of body corporate? Please state.

If a partnership, give names and addresses of partners:

If a company, give names and addresses of directors:

2. Please provide details of how many years' experience the Tenderer, and all staff employed by the Tenderer who will work on this project **including subcontractors**, have in the provision of the Service which he/she proposes to provide?

Names, Addresses & Contact Numbers of Persons to be Engaged	Relevant Qualification/ Training	Relevant Experience	Years of Experience	Sub-Contractor? Yes/No

Names, Addresses & Contact Numbers of Persons to be Engaged	Relevant Qualification/ Training	Relevant Experience	Years of Experience	Sub-Contractor? Yes/No

3. List services of a similar type that the Tenderer has undertaken in the past, or is currently undertaking.

For whom was the work performed?	When Undertaken	Type of Service Provided	Contact Name & Number

4. What plant and/or equipment does the tenderer possess that will be used in the delivery of the service?

5. Please provide names and telephone numbers of at least four professional/character referees.

Name and Position	Organisation	Telephone

6. What is the location of the premises from which the tenderer proposes to conduct its business under this Contract?

7. Please provide details of the tenderers current WorkCover or Personal Accident Insurance Policy and supply a Certificate of Currency for this policy with your submission.

Insurer _____

Policy No. _____

Expiry Date _____

8. Please provide details of the tenderers Public Liability Insurance and supply a copy of the Certificate of Currency for this policy with your submission.

Insurer _____

Policy No. _____

Limit of Indemnity _____

Expiry Date _____

9. Please provide details of the tenderers Professional Indemnity Insurance and supply a copy of the Certificate of Currency for this policy with your submission.

Insurer _____

Policy No. _____

Limit of Indemnity _____

Expiry Date _____

10. Please provide details and supply a copy of all licences, permits and approvals with your submission.

11. How will any waste generated during this project be dealt with? i.e. Will all waste from this project be put into landfill?

12. Tenderers are encouraged to detail any environmental sustainability aspects of their proposal for delivery of the service. For example energy efficiency, emissions control, water saving.

SCHEDULE 4 - STATUTORY DECLARATION

TENDER NO. 2017 / 18 - 04

I, _____ do solemnly and sincerely declare that:

Definitions

1. In this Statutory Declaration:

"**Bidders**" means any tenderers for the Contract and includes the Tenderer;

"**the Contract**" means the contract that the Tender Conditions to which this Statutory Declaration is a schedule pertains;

"**Industry Association**" means any organisation of which Bidders are members;

"**the Tenderer**" means [*insert name of company, other body corporate, firm, or individual*]

"**Tender Price**" means the amount indicated by a Bidder as the lowest amount for which that Bidder is prepared to perform the Contract.

***Introduction**

2. I am the Tenderer and make this declaration on my own behalf.

***Introduction**

2.1 I hold the position of _____ [*insert Managing Director or other title*] of the Tenderer and am duly authorised by the Tenderer to make this declaration on its behalf.

2.2 I make this declaration on behalf of the Tenderer and on behalf of myself.
[**Delete alternative which is not applicable*]

No knowledge of Tender Prices

3. Prior to the Tenderer submitting its tender for the Contract, neither the Tenderer, nor any of its employees or agents, had knowledge of the Tender Price, or proposed Tender Price, of any other Bidder who submitted, or of any person, company, other body corporate or firm that proposed to submit, a tender for the Contract.

Disclosure of Tender Price

4. Prior to the close of tenders for the Contract, neither the Tenderer, nor any of its employees or agents, disclosed the Tenderer's Tender Price to:

4.1 any other Bidder who submitted a tender for the Contract;

4.2 any person, company, other body corporate or firm proposing to submit a tender for the Contract; or

4.3 any person or organisation connected or associated with a Bidder, person, company, other body corporate or firm of a kind referred to in clauses 4.1 or 4.2.

Provision of Information

- 5. Neither the Tenderer, nor any of its employees or agents, has provided information, except for a published catalogue or price list normally made available to customers of the Tenderer, to:
 - 5.1. any other Bidder who has submitted a tender for the Contract;
 - 5.2. any person, company, other body corporate or firm proposing to submit a tender for the Contract; or
 - 5.3. any other person, company, other body corporate or firm for the purpose of assisting in the preparation of a tender for the Contract.

Genuine Competition

- 6. The Tenderer is genuinely competing for the Contract.

Industry Association Agreements

- 7. Neither the Tenderer, nor any of its employees or agents, has entered into any contract, agreement, arrangement or understanding, other than as disclosed to the Council in the Tenderer's tender, that the successful Bidder for the Contract will pay any money to, or provide any other benefit or other financial advantage to, an Industry Association in respect of the Contract.

Unsuccessful Tenderers' Fees

- 8. Neither the Tenderer, nor any of its employees or agents, has entered into any contract, agreement, arrangement or understanding that the successful Bidder for the Contract will pay any money to, or provide any other benefit or other financial advantage to, any other Bidder who or which unsuccessfully tendered for the Contract.

Qualifications to Tenders

- 9. Neither the Tenderer, nor any of its employees or agents, has entered into any contract, agreement, arrangement or understanding that Bidders for the Contract would include an identical or similar condition or qualification in their tenders for the Contract.

I acknowledge that this declaration is true and correct and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

NAME OF TENDERER: _____

SIGNATURE OF TENDERER: _____
(or authorised representative)

DECLARED at _____ in the state of _____ on __ ____ 2017.

Before Me:
Signature: _____

Full Name: _____

Address: _____

Qualifications: _____

[insert details of basis on which entitled to witness a Statutory Declaration under section 107A(1) of the *Evidence Act* 1958.]

SCHEDULE 5 - INSURANCE DETAILS**TENDER NO. 2017 / 18 - 04**

Tenderers are required to sign this Schedule and return it only after having read and fully understood the requirements of *Clause 9* of the *Services General Conditions*.

The signing of this Schedule confirms that the insurance requirements of the Hindmarsh Shire Council are fully understood by the tenderer, and that the tenderer is prepared to comply with the requirements.

The minimum insurance requirements are as follows:

Type of Insurance	Minimum amount of Cover
• Public Liability	\$20 million
• Professional Indemnity Insurance	\$10 million
• Motor Vehicle	3 rd Party Property minimum
• WorkCover (if employing others)	

The Insurance policy documents shall:

- a) For Public Liability Insurance, be in the joint names of the Contractor, Council and Sub-contractors (including a cross-liability clause to operate as if a separate insurance policy has been issued to each of the parties comprising the 'insured');
- b) Provide the amount of cover stated above;
- c) For Public Liability Insurance, include a subrogation clause under which the Insurer agrees to waive all rights of subrogation that it may have or acquire against all parties comprising the 'insured' under the policy;
- d) provide for Council to be given notice of:
 - i cancellation of the policy;
 - ii renewal notices; and
 - iii notices of claim.

PLEASE NOTE : Copies of existing insurance policy documents held are required as part of your submission.

NAME OF TENDERER: _____

SIGNATURE OF TENDERER: _____
 (or authorised representative)
 (or authorised representative)

SCHEDULE 6 - OCCUPATIONAL HEALTH & SAFETY

TENDER NO. 2017 / 18 - 04

PLEASE NOTE: The tenderer is required to complete the attached OH&S Management System questionnaire to be submitted.

Tenderers must provide evidence of their ability and capacity to comply with the requirements of the Occupational Health and Safety Act (2004), Part III, Duties of Employers. The signing of this Schedule confirms that the Occupational Health & Safety requirements of Contract No. TENDER NO. 2017 / 18 - 04 CONSTRUCT NETBALL CHANGEROOMS IN DIMBOOLA are fully understood by the tenderer.

The Tenderer may be required to submit further information in the following areas during the tender evaluation period :

- a) systems of work;
- b) safe plant and equipment operation and maintenance;
- c) chemical storage and handling;
- d) expert advice available relating to OH&S;
- e) management of OH&S in relation to sub-contractors; and
- f) organisational structure in relation to OH&S.

Any Policy or Procedure must not be inconsistent with Council's Occupational Health and Safety Policy. A copy of this Policy is available for inspection on request.

NAME OF TENDERER: _____

SIGNATURE OF TENDERER: _____

(or authorised representative)

(or authorised representative)

OCCUPATIONAL HEALTH & SAFETY MANAGEMENT SYSTEM QUESTIONNAIRE

This questionnaire forms part of Council’s tender evaluation process and is to be completed by tenderers and submitted with their tender. The objective of the questionnaire is to provide an overview of the status of the tenderer’s OH&S management system. Tenderers will be required to verify their responses noted in their questionnaire by providing evidence of their ability and capacity in relevant matters.

	Yes	No
1 OHS Policy and Management		
1.1 Does the tenderer have a written health and safety policy? <i>If yes provide a copy of policy.</i> <i>Comments.</i>	<input type="checkbox"/>	<input type="checkbox"/>
1.2 Does the tenderer have an OHS Management System certified by a recognised independent authority (eg: SafetyMAP)? <i>If Yes provide details</i>	<input type="checkbox"/>	<input type="checkbox"/>
1.3 Does the tenderer have an OHS Management System manual or plan? <i>If yes provide a copy of contents page(s).</i> <i>Comments.....</i>	<input type="checkbox"/>	<input type="checkbox"/>
1.4 Are health and safety responsibilities clearly identified for all levels of staff? I.e. on Organisational Charts or First Aid Representatives Identification Posters. <i>If Yes provide details:</i>	<input type="checkbox"/>	<input type="checkbox"/>
2 Safe Work Practices and Procedures		
2.1 Has the tenderer prepared safe operating procedures or specific safety instructions relevant to its operations? <i>If yes, provide a summary listing of procedures or instructions.</i> <i>Comments.....</i>	<input type="checkbox"/>	<input type="checkbox"/>
2.2 Does the tenderer have any permit to work systems? <i>If Yes, provide a summary listing or permits:</i>	<input type="checkbox"/>	<input type="checkbox"/>
2.3 Is there a documented incident investigation procedure? <i>If Yes provide a copy of a standard incident report form.</i>	<input type="checkbox"/>	<input type="checkbox"/>
2.4 Are there procedures for maintaining, inspecting and assessing the hazards of plant operated/owned by the tenderer? <i>If Yes, provide details</i>	<input type="checkbox"/>	<input type="checkbox"/>

		Yes	No
2.5	Are there procedures for storing and handling hazardous substances? <i>If Yes, provide details.....</i>	<input type="checkbox"/>	<input type="checkbox"/>
2.6	Are there procedures for identifying, assessing and controlling risks associated with manual handling? <i>If Yes, provide details.</i>	<input type="checkbox"/>	<input type="checkbox"/>
3 OHS Training			
3.1	Describe how health and safety training is conducted in your company.		
3.2	Is a record maintained of all training and induction programs undertaken for employees of the tenderer? <i>If Yes, provide examples of safety training records.....</i>	<input type="checkbox"/>	<input type="checkbox"/>
4 Health and Safety Workplace Inspection			
4.1	Are regular internal health and safety inspections at worksites undertaken? <i>If Yes, provide details:</i>	<input type="checkbox"/>	<input type="checkbox"/>
4.2	Is there a procedure by which employees can report hazards at workplaces? <i>If Yes, provide details</i>	<input type="checkbox"/>	<input type="checkbox"/>
5 Health and Safety Consultation			
5.1	Is there a workplace health and safety representative?	<input type="checkbox"/>	<input type="checkbox"/>
5.2	Are employees involved in decision making over OHS matters? <i>If Yes, please provide details.....</i>	<input type="checkbox"/>	<input type="checkbox"/>
6 OHS Performance Monitoring			
6.1	Has the tenderer ever been convicted of an occupational health and safety offence? <i>If Yes, provide details.</i>	<input type="checkbox"/>	<input type="checkbox"/>

NAME OF TENDERER: _____

SIGNATURE OF TENDERER: _____
(or authorised representative)

SCHEDULE 7 - SCHEDULE OF DEVIATIONS
TENDER NO. 2017 / 18 - 04

A *Schedule of Deviations* is to be provided by the tenderer and submitted as part of the tender.

The tenderer shall detail below or in an attachment, every point in which the tender deviates from the tender documentation and shall sign the certificate below. Where an equivalent type or process to that specified is used, details shall be shown below.

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I/We certify the foregoing to be a true and complete list of the deviations from the requirements of the specification and tender schedule that I/we propose to incorporate in the above project now offered.

NAME OF TENDERER: _____

SIGNATURE OF TENDERER: _____ **DATE:** _____
(or authorised representative)

CHECKLIST

Please ensure Schedules are signed and dated, and all other documentation requested herein is attached.

No.	Information	Yes	No
1.	Schedule 2 – Tender Submission		
2.	Schedule 3 – Contractor Information including copies all Insurance Certificates of Currency and Licences, Permits and Approvals etc.		
3.	Schedule 4 – Statutory Declaration		
4.	Schedule 5 – Insurance Details (including copies)		
5.	Schedule 6 – Occupational Health & Safety including Occupational Health & Safety Management System Questionnaire		
6.	Schedule 7 – Schedule of Deviations		

I confirm that I have read, understood and complied with Council's Conditions of Tendering in Section 1 of these Tender Documents.

NAME OF TENDERER: _____

SIGNATURE OF TENDERER:
(or authorised representative) _____



Hindmarsh Shire Council

CONSTRUCT NETBALL CHANGEROOMS IN DIMBOOLA

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SECTION 3 SERVICES - GENERAL CONDITIONS AS4000

CONSTRUCT NETBALL CHANGEROOMS IN DIMBOOLA

CONSTRUCTION CONTRACT NO. 2017/18 - 4

Hindmarsh Shire Council

and

[]
ACN []

Formal Instrument of Agreement

Parties

Name	Hindmarsh Shire Council
Address	92 Nelson Street, Nhill, Victoria, 3418
Facsimile	03 5381 5391
Short name	<i>Principal</i>

Name	[	]	ACN	[]
Address	[]			
Facsimile	[]			
Short name	<i>Contractor</i>				

Background

- A. The *Principal* wishes to engage a contractor to undertake *the Works*.
- B. The *Contractor* has represented to the *Principal* that it has experience and expertise in the undertaking of works equivalent to *the Works*.
- C. The *Principal* has agreed to engage the *Contractor* to undertake *the Works*.
- D. The *Contractor* has agreed to execute *the Works* in accordance with the terms and conditions of the *Contract*.

It Is Agreed

1. Agreement

The *Principal* and the *Contractor* agree to perform their respective obligations in accordance with the *Contract*.

2. Definitions

Terms that are defined in the *Conditions of Contract* have the same meaning in this *formal instrument of agreement* unless the context otherwise requires.

3. Evidence of Agreement

The following documents comprise the *Contract*:

- (a) this *formal instrument of agreement*,

- (b) *Annexure Part B* to Standards Australia's General Conditions of Contract AS 4000-1997 (**AS 4000**) as attached to this *formal instrument of agreement*;
- (c) AS 4000 (as amended in the manner described in *Annexure Part B*) which is deemed to be incorporated into the *Contract* by reference (**Conditions of Contract**);
- (d) *Annexure Part A* to AS 4000 as attached to this *formal instrument of agreement*;
- (e) the *drawings*; and
- (f) the *specification*.

4. Operation of Contract

Where any part of *WUC* is performed prior to the *date of contract*:

- (a) that work shall be deemed to have been performed pursuant to the *Contract*; and
- (b) payments made by the *Principal* to the *Contractor* in connection with that work shall be deemed to be payments on account of the *contract sum*.

5. Entire Agreement

To the full extent permitted by law, in relation to its subject matter the *Contract*:

- (a) embodies the entire agreement of the parties; and
- (b) supersedes any prior written or other agreement, understanding, representation or warranty of the parties,

and any prior agreement, understanding, representation or warranty shall terminate on the *date of contract*.

6. Commencement

The *Contract* comes into effect on the *date of contract*.

7. Counterparts

The *Contract* may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

8. Further Assurances

Each party shall do all things (including executing all documents) necessary or desirable to give full effect to the terms of the *Contract*.

9. Severance

Any provision of the *Contract* which is illegal, void or unenforceable:

- (a) will be read down so as to be valid and enforceable;**
- (b) if not capable of being read down, will be ineffective only to the extent of such illegality, voidness or unenforceability; and**
- (c) will not invalidate the other provisions of the *Contract*.**

Signing Page

Executed by the parties.

Dated this day of 20____

Hindmarsh Shire Council)
)
)
)

..... Chief Executive Officer

..... Date

in the presence of:

..... Witness

..... Date

Alternative 1

Executed by [])
ACN [])
in accordance with section 127(1) of
the *Corporations Act 2001*:

..... Signature of Director
Secretary Signature of Director/Company

..... Print full name Print full name

Alternative 2

Executed by [])
ACN []in)
accordance with s 127(1) of the
Corporations Act 2001:

..... **Signature of Sole Director and Sole
Company Secretary**

..... **Print full name**

Alternative 3

The Common Seal of [])
ACN [])
was affixed in accordance with)
section 127(2) of the *Corporations*
Act 2001 in the presence of:

..... **Signature of Sole Director and Sole
Company Secretary**

..... **Print full name**

Alternative 4

The Common Seal of [i])
] ACN [])
was affixed in accordance with)
section 127(2) of the *Corporations*
Act 2001 in the presence of:

.....
**Signature of Director
Secretary**

.....
Print full name

.....
**Signature of Director/Company
Secretary**

.....
Print full name

Alternative 5

EXECUTED by [])
by being signed by [],)
a partner, in the presence of:)
)

.....
Witness

EXECUTED by [])
by being signed by [],)
a partner, in the presence of:)
)

.....
Witness

[]
EXECUTED by [])
ACN [])
by its Attorney [])
under a power of Attorney dated [],)
in the presence of:

.....
Witness

Amended from Australian Standard General Conditions of Contract AS4000 - 1997

AS 4000 - 1997
Australian Standard™

Incorporating:
Amdt 1 – 1999
Amdt 2 – 2000
Amdt 3 - 2005

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Annexure Part A

Annexure to the Conditions of Contract

This *Annexure* shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to the *Conditions of Contract* and shall be read as part of the *Contract*.

Item

1.	Principal (clause 1)	Hindmarsh Shire Council
2.	Principal's address	92 Nelson Street, Nhill, Victoria, 3418
	Facsimile number of the Principal	03 5391 1376
3.	Contractor (clause 1)	..... ..... ACN
4.	Contractor's address	..... .....
	Facsimile number of the Contractor	.....
5.	Superintendent (clause 1)	Daniel Haile-Michael ACN
6.	Superintendent's address	92 Nelson Street, Nhill, Victoria, 3418
	Facsimile number of the Superintendent	03 5391 1376
6A	contract sum (clause 1)	\$.....(GST inclusive) \$.....(GST exclusive)

7. † (a) **Date for practical completion (clause 1)** 30 March 2018
- OR**
- (b) **Period of time for practical completion (clause 1)** 5 months.....
8. **Governing law (page 7, clause 1(h))** Victoria
9. (a) **Currency (page 7 clause 1(g))** Australian
- (b) **Place for payments (page 7 clause 1(g))** Melbourne
- (c) **Place of business of bank (page 5 clause 1(d), definition of *security*)** Melbourne
10. **Bills of quantities (subclause 2.2)**
- (a) **Alternative applying (subclause 2.2)** Alternative 2
- (b) **If Alternative 2 applies, is the *bill of quantities* to be priced? (subclause 2.2)** No)
- (c) **Lodgement time (subclause 2.3(b))** Not applicable
11. **Quantities in *schedule of rates*, limits of accuracy (subclause 2.5(b))** Upper Limit
- Lower Limit

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

- 11 A **Contract Documents – order of precedence (subclause 8.1)**
- (a) the *formal instrument of agreement*;
 - (b) AS 4000 as attached to the *formal instrument of agreement*;
 - (c) the *Conditions of Contract*;
 - (d) *Annexure Part A* to AS 4000 as attached to the *formal instrument of agreement*;
 - (e) the *drawings*; and
 - (f) the *specification*.
12. **Provisional sum, percentage for profit and attendance (clause 3)** **10%**
13. † **Contractor’s security**
- (a) **Form (clause 5)**
 - (b) **Amount or maximum percentage of contract sum (clause 5)**
If nothing stated, 5% of the *contract sum*
 - (c) **If retention moneys, percentage of each progress certificate (clause 5 and subclause 37.2)**
If nothing stated, 10% until the limit in *Item 13(b)*
 - (d) **Time for provision (except for retention moneys) (clause 5)**
If nothing stated, within 5 days after the *date of contract*
 - (e) **Additional security for unfixed plant and materials (subclauses 5.4 and 37.3)**
..... \$
If nothing stated, 100%
 - (f) **Contractor’s security upon certificate of practical completion is reduced by (subclause 5.4)** % of amount held
If nothing stated, 50% of amount held
14. † **Not used**

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

15.	Principal-supplied documents (subclause 8.2)	Document	No. of copies
		1.	
		2.	
		3.	
		4.	
		5.	
		6.	
		If nothing stated, 5 copies of the drawings, specification, bill of quantities or schedule of rates (if any)	
16.	Time for Superintendent's direction about documents (subclause 8.3)	.....	days
		If nothing stated, 14 days	
17.	Subcontract requiring (subclause 9.2)	work approval	....................
18.	Novation (subclause 9.4)	Subcontractor	Particular part of WUC
		
		Selected subcontractor	
		
19.	Legislative requirements	.....
	(a) Those excepted (subclause 11.1)	.....
	(b) Identified WUC (subclause 11.2(a)(ii))	Not applicable	

20. **Insurance of *the Works* (clause 16)**
- (a) **Alternative applying** **Alternative 1**
If Alternative 1 applies
- (b) **Provision for demolition and removal of debris**
..... \$
- OR**
..... % of the *contract sum*
- (c) **Provision for consultants' fees**
..... \$
- OR**
..... % of the *contract sum*
- (d) **Value of materials or things to be supplied by the *Principal***
..... \$
- (e) **Additional amount or percentage**
..... \$
- OR**
.....% of the total of paragraphs (a) to (d) in clause 16
21. **Public liability insurance (clause 17)**
- (a) **Alternative applying** **\$20 million**
If Alternative 1 applies If nothing stated, Alternative 1 applies
- (b) **Amount per occurrence shall be not less than**
..... \$
If nothing stated, then not less than the *contract sum*
22. **Time for giving possession (subclause 24.1)** **within 30..... days of *date of contract***
If nothing stated, 14 days

23. **Other qualifying causes of delay**
(paragraph (b) of the definition of 'qualifying cause of delay', clause 1)
24. † **Liquidated damages, rate**
(subclause 34.7) per day \$..... per day (GST exclusive)
25. † **Bonus for early practical completion**
(subclause 34.8)
(a) **Rate** per day \$..... per day (GST exclusive)
(b) **Limit**
..... \$
(GST exclusive)
- OR**
- **% of contract sum**
If nothing stated, there is no waiver
26. † **The maximum daily amount** \$.....
(clause 1 and subclause 34.9) **(GST exclusive)**
27. **Defects liability period** **12 months**.....
(clause 35) **If nothing stated, 12 months**

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

28. **Payment Claims (subclause 37.1)**
- (a) **Times for payment claims** 2nd..... day of each month for *WUC*
- OR** done to the last..... day of the previous month.
- (b) **Stages of *WUC* for payment claims**
-
-
-
29. **Unfixed plant and materials for which payment claims may be made (subclause 37.3)**
-
-
-
- If nothing stated, None
30. **Interest rate on overdue payments (subclause 37.5)** 0% per annum
- If nothing stated, 6% per annum
31. **Time for *Principal* to rectify inadequate possession (subclause 39.7)** 30days
- If nothing stated, 14 days
32. **Arbitration (subclause 42.3)**
- (a) **Person to nominate an arbitrator** The Chairperson from time to time of the Resolution Institute, Victorian Chapter

- (b) **Rules for arbitration**
-
-
-
- If nothing stated:**
- (a) **Resolution Institute Arbitration Rules 2016 ;**
- OR**
- (b) **if one or more of the parties are nationals of and habitually resident in, incorporated in, or where the central management and control is exercised in, different countries as between the parties, then the UNCITRAL Arbitration Rules shall apply and the appointing authority shall be the person provided in Item 32(c)**
- (c) **Appointing Authority under UNCITRAL Arbitration Rules** **The Chairperson for the time being of the Resolution Institute, Victorian Chapter**
- (d) **Location of arbitration** **Melbourne**
33. **Authorised nominating authorities (subclause 47.3(d))**
- (i) **Resolution Institute**
- (ii) **Royal Institution of Chartered Surveyors (RICS) Dispute Resolution Service**
- (iii) **Rialto Adjudications Pty Ltd**

Separable portions

This section should only be completed if the *Contract* provides for *separable portions*.

Complete a separate page for each *separable portion* which should be numbered appropriately. Any balance of *the Works* should also be a *separable portion*.

Separable portion (clause 1)	No.
Description of separable portion (clause 1)	..... ..... .....
Item	
7. (a) Date for practical completion (clause 1)	.....
OR	
(b) Period of time for practical completion (clause 1)	.....
13. Contractor's security	
(a) Form (clause 5)	.....
(b) Amount or maximum percentage value of this separable portion (clause 5)	..... If nothing stated, 5% of value of this <i>separable portion</i>
(c) If retention moneys, percentage of each progress certificate applicable to this separable portion (clause 5 and subclause 37.2)	..... If nothing stated, 10%, until the limit in <i>Item 13(b)</i>
(d) Time for provision (except for retention moneys) (clause 5)	5 days after the date of contract If nothing stated, within 5 days after <i>date of contract</i>

(e) **Additional security for unfixed plant and materials (subclause 5.4 and 37.3)**
.....
If nothing stated, 100%

(f) **Contractor's security upon certificate of practical completion is reduced by (subclause 5.4)** % of amount held
If nothing stated, 50% of amount held

14. **Not Used**

24. **Liquidated damages, rate (subclause 34.7)**
..... per day \$..... per day
(GST exclusive)

25. **Bonus for early practical completion (subclause 34.8)**

(a) **Rate**
..... per day \$..... per day
(GST exclusive)

(b) **Limit**
..... \$
(GST exclusive)

OR

..... % of value of *separable portion*
If nothing stated, there is no waiver

26. **The maximum daily amount (clause 1 and subclause 34.9)** \$
(GST exclusive)

27. **Defects liability period (clause 35)**
If nothing stated, 12 months

Annexure Part B

ANNEXURE PART B

Annexure to the *Conditions of Contract*

DELETIONS, AMENDMENTS AND ADDITIONS

1. The following clauses have been deleted from the General Conditions in AS 4000-1997

1.1 Clause 6.

Note: The above deleted clause should be treated as though it had been deleted and replaced with the words 'Not used'.

2. The following clauses have been amended and differ from the corresponding clauses in AS 4000-1997:

2.1 The phrase '*date of acceptance of tender*' is deleted wherever it appears in the *Contract* and is replaced by the words '*date of contract*'.

2.2 Wherever the phrase '*General Conditions of Contract*' appears in the *Contract*, the word '*General*' is deleted.

2.3 Clause 2 is amended by:

(a) amending the definition of '*compensable cause*' by:

- (i) deleting the paragraph lettering (a);
- (ii) at the end of former paragraph (a), deleting '; or' and substituting a full stop;
- (iii) substituting 'contractors' in lieu of 'Contractors' where it appears; and
- (iv) deleting paragraph (b);

(b) amending the definition of '*Contract*' by deleting 'has the meaning in clause 6' and substituting the words 'means the contract between the *Principal* and the *Contractor* constituted by the *Contract Documents*.';

(c) amending the definition of '*contract sum*' by inserting the words 'as set out or described in *Item 6A*,' before the word 'including' in the final paragraph of this definition;

(d) amending the definition of '*date of acceptance of tender*' by:

- (i) deleting the words 'acceptance of tender' and replacing these words with '*contract*'; and
- (ii) deleting the words 'the date which appears on the written notice of acceptance of the tender.' and replacing these words with:

'if counterparts of the *Contract*.

- (a) are not used, the date on which the *formal instrument of agreement* is executed by the last of the parties; or
- (b) are executed, the date on which those executed counterparts are exchanged.';

- (e) amending the definition of '*date for practical completion*' by adding the words '*or the Principal*' after '*Superintendent*';
- (f) delete the definition of '**Item**' where it appears and re-insert in alphabetical order;
- (g) amending paragraph (c) of the definition of '*practical completion*' by inserting after the words 'have been supplied' the words '(which will be deemed to include, where relevant, any required occupancy permit or certificate of final inspection and any required as-built drawings and operational and maintenance manuals)';
- (h) amending the definition of '*qualifying cause of delay*' by:
 - (i) in paragraph (a), amending "other Contractors" to read "other contractors" and adding after "(not being employed by the *Contractor*)" the words ",whether occurring before, on or after the *date for practical completion*";
 - (ii) deleting paragraph (b) in its current form and substituting:
 'any of those causes stated in *Item 23*, provided that they:
 - (i) occur on or before the *date for practical completion*;
 - (ii) are not attributable to an act or omission of the *Contractor* or any of its officers, employees, agents, subcontractors, consultants, nominees or licensees; and
 - (iii) are beyond the reasonable control of the *Contractor*.';
- (i) amending the definition of '*schedule of rates*' by deleting all words in this definition after the word 'means' and replacing them with 'the schedule or schedules set out in Annexure Part F';
- (j) after the words '*In the Contract*' (at the end of the list of defined terms):
 - (i) amending paragraph (b) by:
 - (A) adding 'the' before 'time for';
 - (B) adding 'day that is not a *Business Day*' after 'ends on a';
 - (C) deleting 'Saturday, Sunday or Statutory or Public Holiday' before ', be deemed';
 - (D) inserting 'a *Business Day*' after 'next following which is'; and
 - (E) deleting 'not a Saturday, Sunday or Statutory or Public Holiday';
 - (ii) amending paragraph (c) by deleting the words 'in these General Conditions of Contract' and 'these General Conditions and shall not' and insert 'or' before 'be used'; and
 - (iii) amending paragraph (i) by deleting 'General' where it appears in three instances and inserting 'of *Contract*' after the second and third instances of the word 'Conditions'; and
- (k) inserting the following definitions in alphabetical order:

adjudication application means an application for adjudication of a 'payment claim' (as referred to in section 14 of the *Security of Payment Act*) made pursuant to section 18 of the *Security of Payment Act*.

alleged variation order means any order, *direction* or response to a request for information given by or on behalf of the *Principal* or the *Superintendent* which, whilst not given as a *direction* pursuant to subclause 36.1, the *Contractor* (acting reasonably) considers to amount to a *direction* to vary *WUC*.

Annexure means an annexure to these *Conditions of Contract*.

Australian Privacy Principles has the meaning in the *Privacy Act 1988* (Cth).

Business Day has the meaning in the *Security of Payment Act*.

claim includes any claim, action, demand or proceeding (including by way of contribution or indemnity) against the *Principal*, including for:

- A. an EOT;
- B. an adjustment to the contract sum;
- C. any loss; or
- D. any other relief or remedy arising out of or in connection with the Contract, WUC or the Works,

whether under or arising out of the *Contract* or otherwise at law or in equity (including in tort (for negligence or otherwise, including negligent misrepresentation), by statute (including breach of statutory duty), on a quantum meruit or for restitution (including restitution based on unjust enrichment)).

commencement date means the earlier of:

- (a) the date on which the *Contractor* commenced performance of *WUC*; and
- (b) the *date of contract*.

concurrent wrongdoer has the meaning in Part IVAA of the *Wrongs Act*.

Conditions of Contract means this document, together with the *Annexures*.

continuously perfected has the meaning in sections 10 and 56 of the *PPSA*.

Contract Documents means the documents listed in clause 3 of the *formal instrument of agreement*.

Discrepancy means any error, omission, discrepancy, inconsistency or ambiguity.

drawings means the drawings set out, identified or listed in *Annexure Part D*.

financing change statement has the meaning in section 10 of the *PPSA*.

formal instrument of agreement means the formal instrument of agreement to which these *Conditions of Contract* are attached.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Amount has the meaning in subclause 46.3.

information privacy principles means the 'Information Privacy Principles' set out in Schedule 1 to the *Privacy and Data Protection Act 2014* (Vic) together with any 'applicable code of practice' as defined in that Act.

loss includes any cost, loss, expense, debt, damage (including damages at common law or in equity), fine or penalty (where permitted by law) or liability of any kind, whether direct, indirect or consequential (including pure economic loss), present or future, ascertained or unascertained, actual, prospective or contingent.

maximum daily amount means that amount stated in *Item 26*.

OH&S Act means the *Occupational Health and Safety Act 2004* (Vic).

OH&S Laws means all lawful requirements concerning health, safety and welfare, including the *OH&S Act* and the *OH&S Regulations*.

OH&S Regulations means the *Occupational Health and Safety Regulations 2017* (Vic).

perfected has the meaning in sections 10 and 21 of the *PPSA*.

personal information has the meaning in the *Privacy Act 1988* (Cth).

PPSA means the *Personal Property Securities Act 2009* (Cth).

principal contractor has the meaning given to the term 'principal contractor' in the *OH&S Regulations*.

Privacy Laws means any law which relates to the privacy of information about individuals and with which the *Contractor* must comply, including the *Australian Privacy Principles* and any applicable code of practice.

reference date has the meaning in section 9(2) of the *Security of Payment Act*.

register means the 'register' as defined in section 10 of the *PPSA*.

registrar has the meaning in section 10 of the *PPSA*.

security interest means a 'security interest' as defined in sections 10 and 12 of the *PPSA*.

Security of Payment Act means the *Building and Construction Industry Security of Payment Act 2002* (Vic).

site conditions means the physical conditions on, above or below the surface of the *site*.

specification means the specification set out or identified in in *Annexure Part E*.

transaction document means the *Contract* and any:

- (a) subcontract between the *Contractor* and a subcontractor in connection with the performance of any part of *WUC*; and
- (b) agreement or instrument created under or in connection with any of the foregoing.

verification statement has the meaning in section 155 of the *PPSA*.

Wrongs Act means the *Wrongs Act 1958* (Vic).

2.4 Subclause 5.1 is amended by deleting "or 14".

2.5 Subclause 5.4 is amended by deleting "or 14(d) as applicable".

2.6 Subclause 5.6 is amended by:

- (a) deleting "14 days" and substituting "5 *Business Days*";
- (b) deleting "receiving a written request from";
- (c) inserting "*date of contract*" after "the" in the final paragraph; and
- (d) deleting "other party".

2.7 Subclause 8.1 is deleted and replaced with the following:

8.1 Discrepancies

If either party discovers a *Discrepancy* in or between any one or more of the *Contract Documents* or documents prepared for the purpose of carrying out *WUC*, that party shall give the *Superintendent* written notice of it. The *Superintendent*, thereupon, and upon otherwise becoming aware, shall direct the *Contractor* as to the interpretation and construction to be followed and in so directing, the *Superintendent* shall:

- (a) apply the following rules in descending order of precedence:
 - (i) the documents shall be construed according to the order of precedence stated in *Item 11A*; or
 - (ii) to the extent subclause 8.1(a)(i) does not resolve the *Discrepancy*, figured dimensions shall prevail over scaled dimensions; and
- (b) if it considers that a *Discrepancy* cannot be resolved according to the rules of interpretation in subclause 8.1(a), give the *Contractor* a *direction* expressly stated to be a *direction* under this subclause 8.1(b), resolving the *Discrepancy*.

If:

- (c) the *Superintendent* has given a *direction* expressly stated to be a *direction* under subclause 8.1(b); and
- (d) compliance with any such *direction* under subclause 8.1(b) causes the *Contractor* to incur more or less cost than the *Contractor* would have incurred had the *direction* not been given,

then the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*. The *Contractor* shall not otherwise be entitled to make any claim arising out of or in connection with a *Discrepancy*.'

2.8 Subclause 9.5 is amended by:

- (a) in the first paragraph of the subclause:
 - (i) inserting at the commencement the words 'Despite any other provision of';
 - (ii) deleting the words 'Except where' and 'otherwise provides'; and
 - (iii) adding at the end of the paragraph after 'those of the *Contractor*' the words 'and any matter within the control of subcontractors and employees and agents of subcontractors shall be taken to be within the control of the *Contractor*.'; and
- (b) adding the following new paragraph before the final paragraph commencing 'Approval to':

'The *Contractor* shall ensure that any part of *WUC* performed by the *Contractor's* subcontractors and employees and agents of those subcontractors is performed:

- (a) in a proper and workmanlike manner; and
- (b) using reasonable care.'

- 2.9 Subclause 14.1(a) is amended by deleting the words 'date of *commencement* of *WUC*' in the first paragraph and replacing them with the words '*commencement date*'.
- 2.10 Subclause 15.2 is amended by deleting "(d)" where it appears and substituting "(f)" and by deleting "(e)" where it appears and substituting "(g)".
- 2.11 Clause 16 is amended by deleting the words 'commencing *WUC*' in the first paragraph of Alternative 1 and replacing them with the words 'the *commencement date*'.
- 2.12 Clause 17 is amended by deleting the words 'commencing *WUC*' in the first paragraph of Alternative 1 and replacing them with the words 'the *commencement date*'.
- 2.13 Clause 18 is amended by deleting the words 'commencing *WUC*' in the first paragraph and replacing them with the words 'the *commencement date*'.
- 2.14 Subclause 25.1 is amended by:
- (a) deleting the words 'physical conditions on the *site* and its near surrounds' and substituting the words '*site conditions*';
 - (b) deleting the words 'physical conditions' where they next appear and substituting '*site conditions*'; and
 - (c) deleting the words 'time of the *Contractor's* tender' and replacing them with the words '*date of contract*'.
- 2.15 Subclause 25.2 is amended by:
- (a) deleting the word 'upon' and replacing it with the words 'within 7 days of';
 - (b) deleting the words 'shall promptly,';
 - (c) deleting the words 'of the general nature';
 - (d) inserting the word 'including' after 'thereof'; and
 - (e) deleting the full-stop and return from the first paragraph and deleting the following words from the start of the second paragraph:

'If required by the *Superintendent* promptly after receiving that notice, the *Contractor* shall, as soon as practicable, give the *Superintendent*'.
- 2.16 Subclause 25.3 is amended by:
- (a) deleting the heading 'Deemed variation' and substituting 'Time and cost of latent condition';
 - (b) deleting the words 'The effect of the' and substituting 'If a';
 - (c) deleting the words 'shall be a deemed *variation*, priced having no regard to additional cost incurred more than 28 days before the date on' and substituting 'in respect of';
 - (d) deleting the words 'gave the' and substituting 'has given';

- (e) deleting the words 'required by the first paragraph of' and substituting 'in accordance with';
- (f) inserting after the words 'subclause 25.2' the following:

'causes the *Contractor* to:

- (a) carry out additional *work*;
- (b) use additional *construction plant*; or
- (c) incur extra cost (including but not limited to the cost of delay or disruption),

which the *Contractor* could not reasonably have anticipated at the *date of contract* then a valuation shall be made by the *Superintendent* under subclause 36.4. In making such valuation regard shall not be had to the value of additional *work* carried out, additional *construction plant* used or extra cost incurred more than 28 days before the date on which the *Contractor* gave the notice required by subclause 25.2';

- (g) deleting the words 'but so as to include the *Contractor's* other costs for each compliance with subclause 25.2'; and
- (h) adding a new final paragraph in subclause 25.3 reading:

'If delay caused by a *latent condition* is a cause stated in *Item 23*, such delay may justify an *EOT* under subclause 34.5.'

- 2.17 Subclause 33.2 is amended by inserting the words 'or pursuant to its statutory rights under the *Security of Payment Act*' after the words 'subclause 39.9'.
- 2.18 Subclause 33.3 is amended by inserting the words 'or pursuant to the *Contractor's* statutory rights under the *Security of Payment Act*' after the words 'subclauses 33.2 or 39.9' in the second paragraph.
- 2.19 Subclause 33.4 is amended by inserting the words ', but in no case shall these costs exceed the *maximum daily amount*' after the words 'deducted from the *contract sum*'.
- 2.20 Subclause 34.2 is amended by:
 - (a) deleting the words 'A party becoming' and substituting 'If the *Contractor* becomes';
 - (b) inserting 'it' after '*WUC*'; and
 - (c) deleting the words 'other party' and substituting '*Principal*'.
- 2.21 Subclause 34.3 is amended by:
 - (a) in paragraph (a), inserting a colon and return after the words 'reaching *practical completion*', deleting the words 'by a *qualifying cause of delay*; and' and then inserting the following:
 - (i) prior to the *date for practical completion*, by a *qualifying cause of delay* in a manner that will prevent the *Contractor* from achieving *practical completion* by the *date for practical completion*; and
 - (ii) on or after the *date for practical completion*, by a *qualifying cause of delay* in a manner that will delay the *Contractor* in reaching *practical completion*; and
 - (b) in paragraph (b), deleting '28' and substituting '14'.

- 2.22 Subclause 34.4 is amended by deleting, in the second paragraph, the words 'disregard questions of' through to and including 'but shall'.
- 2.23 Subclause 34.5 is amended by:
- (a) in the first paragraph, deleting the entirety of the sentence reading 'If the *Superintendent* does not do so, there shall be a deemed assessment and *direction* for an *EOT* as claimed' and substituting 'Any failure or delay by the *Superintendent* in giving such written *direction* (within 28 days or at all) shall not cause the *date for practical completion* to be set at large.';
 - (b) in the paragraph commencing with the words 'Notwithstanding that the *Contractor* is not', deleting '*Superintendent*' and substituting '*Principal*' and then inserting after 'may' the words ', in its absolute and unfettered discretion,'; and
 - (c) at the end of the subclause, inserting the following paragraph:

'If the *Contractor* fails to comply with subclauses 34.2 and 34.3, the *Contractor* shall be barred absolutely from making any *claim* for an *EOT* and shall release and discharge the *Principal* from all *claims* arising out of the relevant delay.'
- 2.24 Subclause 34.9 is amended by:
- (a) inserting after 'subject of an *EOT*' the words 'granted by the *Superintendent*';
 - (b) inserting after 'subclause 41.1,' the words 'such extra costs as are necessarily and reasonably incurred by the *Contractor* by reason of the delay, as determined';
 - (c) deleting the words 'damages certified' and 'due and' where they appear; and
 - (d) inserting after 'payable to the *Contractor*' at the end of the subclause the words 'by the *Principal*, but in no case shall those costs exceed the *maximum daily amount*.'
- 2.25 Subclause 37.1 is amended as follows:
- (a) in the first paragraph, deleting 'claim payment progressively in accordance with *Item 28*' and inserting the following after 'shall':

'submit claims for payment to the *Superintendent*.'

 - (a) progressively in accordance with *Item 28* up until the *date of practical completion*;
 - (b) upon the issue of a *certificate of practical completion*; and
 - (c) within the time prescribed by subclause 37.4.';
 - (b) in the second paragraph, deleting 'progress' after 'early', inserting 'for payment' after 'claim' where it first appears, inserting 'relevant' before 'date for' and substituting 'submission of' in lieu of 'making'; and
 - (c) in the third paragraph:
 - (i) deleting 'progress' after 'Each' and inserting 'for payment' after 'claim';
 - (ii) inserting a colon and return after 'include';
 - (iii) inserting a subparagraph (d) before 'details' then adding after '*WUC* done' the words 'in the performance of the *Contract* to that time;';
 - (iv) inserting new subparagraphs (e), (f) and (g) as follows:

- (e) evidence of the amount due to the *Contractor*,
- (f) any information and documents required by the *Security of Payment Act*;
- (g) such information as the *Superintendent* may reasonably require;'
- (v) deleting the words 'may include'; and
- (vi) inserting a subparagraph (h) before 'details of other moneys', adding 'all' before 'other', deleting 'pursuant to provisions of' and substituting 'arising out of or in connection with', and then adding 'or for any alleged breach thereof' after 'the *Contract*'.

2.26 Subclause 37.2 is amended by deleting the first four paragraphs (that is, the paragraphs prior to but not including the paragraph commencing 'Neither a') and substituting the following:

'The *Superintendent* shall, within 10 *Business Days* after receiving such a claim for payment, issue to the *Principal* and the *Contractor* a certificate (**progress certificate**) which sets out the *Superintendent's* determination of the moneys due from the *Principal* to the *Contractor* or by the *Contractor* to the *Principal* (as the case may be) and in which the *Superintendent* sets out and allows:

- (a) amounts paid under the *Contract*;
- (b) any amounts that the *Principal* may be entitled to retain, deduct, withhold or set-off arising out of or in connection with the *Contract* or otherwise;
- (c) the value deducted for omitted material or *work* or the cost to the *Principal*, as assessed by the *Superintendent*, of rectifying any material or *work* that is defective or not in accordance with the *Contract*; and
- (d) amounts otherwise due from the *Principal* to the *Contractor* and/or due from the *Contractor* to the *Principal* arising out of or in connection with the *Contract* including but not limited to any amount due or to be credited under any provision of the *Contract*,

and if the *Superintendent's* determination of the moneys due for payment is more or less than the amount claimed by the *Contractor*, the *Superintendent* shall include reasons for the difference. If the *Contractor* does not make a claim for payment in accordance with subclause 37.1, the *Superintendent* may nevertheless issue the *progress certificate*.

If the *Superintendent* does not issue the *progress certificate* within 10 *Business Days* of receiving a claim for payment in accordance with subclause 37.1, that claim for payment shall be deemed to be the relevant *progress certificate*.

Within 10 *Business Days* after receiving a *progress certificate*, or within 15 *Business Days* after the *Superintendent* receives the claim for payment, the *Principal* shall pay to the *Contractor*, or the *Contractor* shall pay to the *Principal*, as the case may be, the amount shown in the *progress certificate*.'

2.27 Subclause 37.3 is amended as follows:

- (a) deleting 'and' at the end of paragraph (a);
- (b) in paragraph (b) inserting 'reasonably but not prematurely delivered to or adjacent to the *site*,' before 'properly' and a new 'and' at the end of that paragraph (b); and
- (c) inserting a new paragraph (c) reading:

'has taken all such steps (including signing documents, providing information and giving and obtaining consents) as are necessary to enable the *Principal* to register and perfect a *security interest* in the item on the *register* or otherwise perfect the *security interest*.';

- (d) in the last paragraph of subclause 37.3:
 - (i) inserting after 'Upon' the words 'the earlier of incorporation in *WUC* of items or';
 - (ii) deleting 'and the release of any additional *security* in paragraph (a),' and substituting 'of the amount claimed, title in';
 - (iii) deleting 'be' before 'the unencumbered' and substituting 'pass, and the *Contractor* shall procure that it passes to the *Principal* and that such plant or materials are'; and
 - (iv) adding after '*Principal*' where it last appears the words 'free of any lien, charge or competing *security interest*'.

2.28 Subclause 37.4 is amended as follows:

- (a) in the first paragraph, deleting 'progress' before 'claim' and inserting 'for payment' after 'claim'; and
- (b) in the second paragraph, substituting '10 *Business Days*' in lieu of '42 days'.

2.29 Subclause 37.6 is amended by deleting the subclause heading 'Other moneys due' and substituting 'Set off', and then by deleting the existing paragraph in its entirety and replacing it with the following:

'Without limiting any other right that the *Principal* may have under the *Contract* or otherwise at law or in equity, the *Principal* may deduct, withhold or set-off from moneys otherwise due to the *Contractor*.

- (a) any money due from the *Contractor* to the *Principal* or that the *Principal* asserts is or may become payable by the *Contractor* to the *Principal*, under or in connection with the *Contract* or otherwise; or
- (b) any amount that the *Principal* is obliged to withhold from payment to the *Contractor* pursuant to the *Security of Payment Act*,

and if those moneys are insufficient, the *Principal* may, subject to subclause 5.2, have recourse to retention moneys and, if they are insufficient, then to security under the *Contract*.'

2.30 Subclause 39.11 is amended by inserting after 'If' the following:

', in relation to a party, any of the following events occurs:

- (a) the party assigns any of its property for the benefit of creditors or any class of them;
- (b) the party's interest in or under the *Contract* or in the subject matter of the *Contract* becomes attached or taken in execution or under any legal process;
- (c) an encumbrancee takes any step towards taking possession or takes possession of any assets of the party or exercises any power of sale;

- (d) the party ceases, suspends or threatens to cease or suspend the conduct of a majority of its business, or disposes of or threatens to dispose of its assets, except for the purposes of a solvent reconstruction or amalgamation previously approved by the other party;
- (e) any security interest (as defined in section 51A of the *Corporations Act*) becomes enforceable or is enforced against the party;
- (f) a distress, attachment or other execution is levied or enforced against the party in excess of \$10,000.00;
- (g) the party has a judgment or order given against it in an amount exceeding \$10,000.00 (or the equivalent in another currency) and that judgment or order is not satisfied or quashed or stayed within 20 *Business Days* after being given;
- (h) the party takes any step to obtain protection or is granted protection from its creditors under any applicable legislation;
- (i) a resolution is passed by the party to appoint an administrator or an administrator of the party is appointed;
- (j) an order is made that the party be wound up;
- (k) an order is made appointing a liquidator or a provisional liquidator of the party;
- (l) the party resolves to wind itself up or otherwise dissolve itself, or gives notice of its intention to do so, except for the purposes of a solvent reconstruction or amalgamation previously approved by the other party, or is otherwise wound up or dissolved;
- (m) an order is made or a resolution is passed for the party to enter into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them, except for the purposes of a solvent reconstruction or amalgamation previously approved by the other party;
- (n) the party is, or states that it is, or under applicable legislation is taken to be, unable to pay its debts (other than as a result of a failure to pay a debt or claim the subject of a dispute in good faith) or stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (o) a receiver, receiver and manager, administrator, controller or similar officer of any of the assets or the whole or any part of the undertaking of the party is appointed;
- (p) the party is or makes a statement from which it may be reasonably deduced by the other party that the party is the subject of an event described in section 459C(2) of the *Corporations Act*;
- (q) any event that is analogous or having a substantially similar effect to any of the events specified in this definition;
- (r) the party, being an individual, commits an act of bankruptcy or becomes insolvent; or
- (s) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Contract*,'

and then by deleting (the original) paragraphs (a) to (d) (both inclusive).

- 2.31 Subclause 42.1 is amended by inserting '; or' after '*Contract*' in paragraph (b), inserting a new paragraph (c) reading 'a *claim*', and then by substituting 'registered post' in lieu of 'certified mail where it appears.
- 2.32 Subclause 42.2 is amended by:
- (a) deleting the words 'at least once';
 - (b) deleting the word 'resolve' and replacing it with the words 'undertake genuine good faith negotiations with a view to resolving';
 - (c) deleting the words 'or to agree on methods of doing so';
 - (d) in the second sentence, deleting the word 'every' where it appears after 'At' and the words 'or methods' where they appear after 'such resolution'; and
 - (e) in the second paragraph, inserting after 'notice of *dispute*' the words 'then either party may, by notice in writing delivered by hand or sent by registered post to the other party, refer' and then deleting after 'that *dispute*' the words 'shall be and is hereby referred'.
- 2.33 Subclause 42.3 is amended as follows:
- (a) in the first paragraph:
 - (i) deleting the word 'If' at the commencement of the paragraph and substituting 'Where a *dispute* the subject of a notice of *dispute* under subclause 42.1 is referred to arbitration pursuant to subclause 42.2, such arbitration shall be effected by a single arbitrator who shall be the person agreed by the parties or if';
 - (ii) deleting '14 days' and substituting '10 *Business Days* after receipt of the notice under subclause 42.2'; and
 - (iii) inserting after '*Item* 32(b)' the words 'and held in the location stated in *Item* 32(d);
 - (b) inserting the following new second paragraph:

'Despite anything to the contrary, where permitted by law an arbitrator appointed pursuant to this subclause 42.3 shall have no power to apply or to have regard to the provisions of any proportional liability legislation (including Part IVAA of the *Wrongs Act*) which might, in the absence of this provision, have applied to any *dispute* referred to arbitration pursuant to this *Contract*.'

3. The following clauses have been added to those of AS 4000-1997:

3.1 The following new subclause is inserted after subclause 9.5:

'9.6 Proportionate Liability

To the full extent permitted by law:

- (a) the *Contractor* agrees that, without limiting subclause 9.5:
 - (i) for the purposes of Part IVAA of the *Wrongs Act* (in particular for the purpose of determining the liability of the *Contractor* under that Part), the *Contractor* is responsible to the *Principal* for, and

obligated to the *Principal* to prevent, any of the *Contractor's* subcontractors, and employees and agents of those subcontractors, from failing to take reasonable care in connection with *the Works* or *WUC*; and

- (ii) to the extent any of the *Contractor's* subcontractors and/or employees and/or agents of those subcontractors fail to take reasonable care, the *Contractor* shall be directly liable to the *Principal* for such failure; and
- (b) if despite subclause 9.6(a), a claim by the *Principal* against the *Contractor* is apportioned pursuant to Part IVAA of the *Wrongs Act* (whether by a court, tribunal or arbitrator), the *Contractor* shall indemnify the *Principal* on demand for an amount equal to the aggregate liability of any other *concurrent wrongdoers* (as determined by that court, tribunal or arbitrator), save to the extent the *Principal* in fact recovers amounts so apportioned from any of the other *concurrent wrongdoers*.'

3.2 The following new subclause is inserted after subclause 25.3:

'25.4 Site conditions

Except to the extent expressly stated in subclause 25.3, the *Contractor*:

- (a) accepts all responsibility for and assumes the risk of any and all delays, increased costs and *losses*, arising out of or in any way in connection with any *site conditions* which are encountered at any time during the performance of *WUC*;
- (b) shall not be entitled to make any *claim* arising out of or in any way in connection with encountering any *site condition*; and
- (c) shall perform at its cost any *work* necessary to overcome the effect of any *site conditions*.'

3.3 The following new subclause is inserted after subclause 36.4:

'36.5 Variations and directions

If the *Contractor* considers that an *alleged variation order*, whilst not a *direction* given under subclause 36.1, requires the performance of a *variation*, then:

- (a) the *Contractor* shall give written notice to the *Superintendent* within 2 *Business Days* of receipt of (and in any event before implementing) the *alleged variation order*, stating that it considers the *alleged variation order* involves a *variation*; and
- (b) as soon as practicable after receipt of a notice from the *Contractor* under subclause 36.5(a), the *Superintendent* shall:
 - (i) give a *direction* under subclause 36.1;
 - (ii) withdraw the *alleged variation order* by written notice to the *Contractor*; or
 - (iii) advise the *Contractor* in writing that it does not consider the *alleged variation order* requires the performance of a *variation* in which event the *Contractor* shall comply with the *alleged variation order* but, subject to

having strictly complied with the notice requirements in subclause 36.5(a), the *Contractor's* right to refer the issue for dispute resolution is preserved.

The *Contractor* agrees that should it fail to give notice in accordance with subclause 36.5(a), the *Contractor*.

- (c) will be deemed to agree that the relevant *alleged variation order* does not constitute a *variation*; and
- (d) cannot later claim that the relevant *alleged variation order* amounted to a *variation* and the *Contractor* shall not be entitled to make any *claim* on the basis that the *alleged variation order* amounts to a *variation*.'

3.4 After clause 43, the following new clauses are inserted:

'44. PPSA

44.1 Defined terms

Except as otherwise provided in clause 1, all terms used in this clause 44 and subclause 37.3 have the meanings given to them in the *PPSA*.

44.2 Acknowledgements and agreements

To the full extent permitted by law, the *Contractor* acknowledges and agrees as follows:

- (a) if the *Principal* considers that a *transaction document* (or any of the transactions contemplated by any of them) gives rise or will give rise to a *security interest*, then the *Contractor* must take such steps (including signing documents, providing information and giving consents) as are required by the *Principal* for the purposes of enabling the *Principal* to:
 - (i) register the *security interest* on the *register* or otherwise perfect the *security interest*;
 - (ii) ensure that the *security interest* is *perfected* (and *continuously perfected*, where relevant);
 - (iii) achieve the highest ranking security position that the *Principal* considers necessary or desirable under the *PPSA*; and
 - (iv) enforce and exercise its rights in connection with the *security interest*;
- (b) the *Contractor* must not register, and must use its best endeavours to ensure that neither its employees, agents or subcontractors nor any third party register, a *security interest* on the *register* or take any steps to enforce or exercise rights in connection with a *security interest* if and to the extent that such action would adversely impact the:
 - (i) security position of the *Principal* referred to in subclause 44.2(a)(iii); or
 - (ii) *Principal's* rights under the *Contract*;
- (c) the *Contractor* must promptly notify the *Principal* in writing should it become aware of any registration or step of the nature contemplated by subclause 44.2(b) and do anything that is required by the *Principal* for the purpose of overcoming any adverse impacts; and

- (d) without limiting subclause 9.2, the *Contractor* must include in subcontracts with its subcontractors and in any agreements that it enters into for the supply of goods and materials or the hire of plant and equipment, such provisions as are necessary to ensure that in the event *work* is taken out of the hands of the *Contractor* under subclause 39.4(a), the *Principal* is not precluded from exercising its rights under subclause 39.5 or subclause 39.6 by reason of any competing *security interests*.

44.3 Contracting out and undertakings

The *Contractor*:

- (a) waives its rights under section 157 of the *PPSA* to receive notice of any verification statement given to the *Principal* by the *registrar*; and
- (b) in accordance with section 115 of the *PPSA*, agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the *PPSA* do not apply to the enforcement of *security interests* by the *Principal*.

44.4 PPSA information

To the full extent permitted by law:

- (a) the parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the *PPSA* and that this subclause 44.4 constitutes a confidentiality agreement within the meaning of the *PPSA*; and
- (b) the *Contractor* agrees to waive any right it may have or, but for this subclause 44.4 may have had, under section 275(7)(c) of the *PPSA* to authorise the disclosure of information of the kind referred to in section 275(1) of the *PPSA*.

44.5 Indemnity

The *Contractor* shall indemnify the *Principal* on demand from and against any claim or loss suffered or incurred by the *Principal* arising out of or in connection with any breach by the *Contractor* of its obligations under subclause 37.3 or subclause 44.2.

45. OH&S Laws

Except as otherwise provided in clause 1, all terms used in this clause 45 have the meanings given to them in the *OH&S Act* and the *OH&S Regulations*.

45.1 Acknowledgments and agreements

The *Contractor* acknowledges and agrees that:

- (a) it is responsible for all aspects of health and safety in the performance of *WUC* and shall:
 - (i) comply with all *OH&S Laws*; and
 - (ii) do all things necessary to ensure that the *Contractor's* employees, agents, subcontractors and consultants comply with all *OH&S Laws*;

- (b) without limiting its obligations under subclause 45.1(a), in the performance of *WUC* the *Contractor* shall:
 - (i) eliminate risks to health and safety so far as is reasonably practicable (and if not reasonably practicable, reduce those risks so far as is reasonably practicable);
 - (ii) provide such information, instruction, training and supervision to the *Contractor's* employees, agents or subcontractors as is necessary to enable those persons to perform their work in a way that is safe and without risks to health;
 - (iii) develop, implement and maintain an occupational health and safety system describing how the *Contractor* will comply with *OH&S Laws*, which system shall include appropriate occupational health and safety management and site safety plans and hazard and risk assessments; and
 - (iv) carry out *WUC* in a manner and otherwise provide such assistance to the *Principal* as is necessary to ensure that the *Principal* satisfies its obligations under the *OH&S Laws* in connection with *WUC*;
- (c) the *Principal* appoints the *Contractor* to be, and the *Contractor* accepts its appointment as, the *principal contractor* for all works carried out and activities undertaken at the *site* in the performance of *WUC*;
- (d) it shall perform and satisfy all of the functions, duties and obligations of *principal contractor* under the *OH&S Laws*;
- (e) it is authorised by the *Principal* to manage and control the *site* to the extent necessary to ensure that the *Contractor* complies with the *OH&S Laws* and performs and satisfies all of the functions, duties and obligations of *principal contractor* under the *OH&S Laws*; and
- (f) for the purposes of occupational health and safety, the *Principal* does not control the manner in which *WUC* is performed.

45.2 Indemnity

To the full extent permitted by law the *Contractor* shall indemnify the *Principal* on demand from and against any claim or loss suffered or incurred by the *Principal* arising out of or in connection with any breach by the *Contractor*, or by any of its employees, agents, subcontractors or consultants, of the *OH&S Laws* or of clause 45, including any claim arising out of or in connection with a claim for workers' compensation or other costs, expenses or indemnification under the *Accident Compensation Act 1985* (Vic).

46. GST

46.1 General definition

Except as otherwise provided in clause 1, all terms used in this clause 46 have the meanings given to them in the *GST Act*.

46.2 Exclusive of GST

Except as otherwise provided by this clause 46, all consideration payable under the *Contract* in relation to any supply is, unless otherwise stated, exclusive of GST.

46.3 Recipient must pay

To the extent that GST is payable in respect of any supply made by a party ('**Supplier**') under or in connection with the *Contract*, subject to subclause 46.4, the recipient of the taxable supply ('**Recipient**') shall pay to the Supplier an amount equal to the GST payable on the taxable supply ('**GST Amount**').

46.4 Tax invoice

The Recipient shall pay the GST Amount at the same time and in the same manner as the consideration for the taxable supply is to be provided under the *Contract*, save that the GST Amount shall not be payable unless the Supplier has first provided the Recipient with a tax invoice in respect of the taxable supply.

46.5 Reimbursement of GST

If the *Contract* requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party shall be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

46.6 Adjustment event

If an adjustment event occurs in relation to a taxable supply under the *Contract*:

- (a) the Supplier shall provide an adjustment note to the Recipient within 5 *Business Days* after becoming aware of the adjustment; and
- (b) any payment necessary to give effect to the adjustment shall be made within 5 *Business Days* after the date of receipt of the adjustment note.

47. Security of Payment Act

47.1 Subcontractors and the Security of Payment Act

In relation to subcontractors engaged by the *Contractor* in the performance of *WUC*:

- (a) the *Contractor* shall:
 - (i) immediately give the *Principal* a copy of any notice the *Contractor* receives from a subcontractor under the *Security of Payment Act*;
 - (ii) ensure that each subcontractor immediately gives the *Principal* a copy of any notice that the subcontractor receives from another party under the *Security of Payment Act* (including the *Contractor*); and
 - (iii) immediately notify the *Principal* if it becomes aware that a subcontractor intends:
 - A. suspending work under a subcontract pursuant to the *Security of Payment Act*; or
 - B. exercising a statutory lien over unfixed plant or materials; and

- (b) if the *Principal* becomes aware that a subcontractor is entitled to suspend work which forms part of *WUC* pursuant to the *Security of Payment Act*, the *Principal*:
 - (i) may pay to the subcontractor the amount owing to the subcontractor in respect of that work and any amount so paid by the *Principal* is recoverable from the *Contractor* as a debt due and payable immediately from the *Contractor* to the *Principal*; and
 - (ii) shall notify the *Contractor* prior to making the payment referred to in subclause 47.1(b)(i).

47.2 Indemnity

To the full extent permitted by law, the *Contractor* shall indemnify the *Principal* on demand from and against any claim or loss suffered or incurred by the *Principal* arising out of or in connection with any:

- (a) breach by the *Contractor* of its obligations under subclause 9.2;
- (b) suspension by a subcontractor of work (which forms part of *WUC*) pursuant to the *Security of Payment Act*;
- (c) failure by the *Contractor* to comply with subclause 47.1(a);
- (d) notice or claim under the *Security of Payment Act* being served on the *Principal* by a subcontractor exercising a lien or charge over any part of *WUC*; or
- (e) insolvency or incapacity on the part of a *concurrent wrongdoer*,

save that the *Contractor's* liability to indemnify the *Principal* shall be reduced proportionally to the extent that an act or omission of the *Principal* or employees or agents of the *Principal* contributed to the claim or loss.

47.3 Payment claims

For the purposes of and to the extent permitted by the *Security of Payment Act*:

- (a) each of the dates for delivery of a claim for payment in subclause 37.1 constitutes a reference date;
- (b) a reference to a:
 - (i) claim for payment under subclause 37.1 or a *final payment claim* under subclause 37.4 is a reference to a 'payment claim' as defined in Section 14 of the *Security of Payment Act*; and
 - (ii) *progress certificate* under subclause 37.2 or a *final certificate* under subclause 37.4 is a reference to a 'payment schedule' as defined in section 15 of the *Security of Payment Act*,

(except that solely for the purposes of the *Security of Payment Act*, any 'excluded amounts' (as defined in section 10B of the *Security of Payment Act*) included in any such claim or certificate will be deemed to be omitted);

- (c) in receiving 'payment claims' and issuing 'payment schedules' under the *Security of Payment Act*, the *Superintendent* acts as agent for the *Principal*; and

- (d) the authorised nominating authorities to which an *adjudication application* may be made are as stated in *Item 33(d)*.

47.4 Excluded variations

The parties acknowledge and agree that subclause 42.2 constitutes a method of resolving *disputes* under the *Contract* for the purposes of section 10A of the *Security of Payment Act* (including disputes of the nature referred to in section 10A(3)(c) of the *Security of Payment Act*).

48. Privacy

48.1 Australian Privacy Principles

The *Contractor* shall:

- (a) in respect of *personal information* held in connection with the *Contract* and whether received from the *Principal* or otherwise:
 - (i) comply, and procure that its subcontractors, employees and agents comply, with the *Privacy Laws*;
 - (ii) immediately notify the *Principal* where it becomes aware of a breach of subclause 48.1(a) by the *Contractor* or of any investigation by the Office of the Australian Information Commissioner; and
 - (iii) indemnify the *Principal* on demand from and against any claim or *loss* suffered or incurred by the *Principal* arising out of or in connection with a breach of subclause 48.1(a) by the *Contractor* or its subcontractors, employees or agents; and
- (b) if the *Principal* gives notice to the *Contractor* that it proposes to audit, either directly or through its auditors, the *Contractor's* information handling practices, provide all reasonable assistance to the party conducting such an audit.

48.2 Information Privacy Principles

The *Contractor*:

- (a) is bound by, and shall procure that its employees, consultants, agents and subcontractors are bound by, the *information privacy principles* with respect to any act done or practice engaged in by it or its employees, consultants, agents and subcontractors for the purposes of the *Contract* in the same way the *Principal* would be bound by the *information privacy principles*;
- (b) must not, and must procure that its employees, consultants, agents and subcontractors do not, cause the *Principal* to be in breach of its obligations under the *Privacy and Data Protection Act 2014 (Vic)*; and
- (c) must comply with all procedures for the enforcement of the *information privacy principles* set out in the *Privacy and Data Protection Act 2014 (Vic)* (including complying with any compliance notices or other notices given by the Commissioner, attending before the Commissioner, producing documents and attending conciliations).

Annexure Part D

Drawings (Clause 1)

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Annexure Part E

Specification (Clause 1)

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Annexure Part F

Schedule of Rates (Clause 1)

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