



**Tender Description**  
**Maribyrnong River Child Care Redevelopment Works**

**Tender No**  
**803-16**

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**TENDER DOCUMENTS - MAJOR BUILDING WORKS (AS 4000-1997)**

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Comprising:

- Tender Details
- Tender Conditions
- Tender Schedules

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## TENDER DETAILS

- The work to be performed under the contract is:

Redevelopment works at the existing childcare centre
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- The work is to be performed at:

Maribyrnong River Child Care Centre at 6 Wests Road, Maribyrnong
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- The time and date by which tenders must be lodged are:

2pm Monday, 3 August 2015
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- The contact person for the tender process is:

Sudha Venkatesh, Contracts & Procurement Advisor Telephone: 03 96880362 Email: sudha.venkatesh@maribyrnong.vic.gov.au
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- The Tender Documents are available on Maribyrnong City Council's e-tendering website at <https://www.tendersearch.com.au/maribyrnong>. Any potential tenderer downloading the Tender Documents from the Internet must complete the Registration Form. Any addenda to the Tender Documents (revisions, clarifications and the like) will be forwarded to the return address shown on the Registration Form.
- The tenderer must complete and submit the Tender Schedules (including submitting any documents required to be submitted by the Tender Schedules).
- The tender evaluation criteria are :

Professional competence	
1.1	Resources
1.2	Past Performance, Current Work & Capability
1.3	Program
1.4	Methodology
Commercial	
2.1	Financial Viability
2.2	Risk & Insurance
2.3	Compliance with proposed contract
OHS & EMS & Quality Systems	
3.1	OHS – Demonstrated safety management plans
3.2	EMS – Demonstrated environmental management systems
3.3	Quality systems for deliverables
Financial	
4.1	Tender Price

Please note that clause 5.1 of the Tender Conditions set out the full process for evaluation of tenders.

## TENDER CONDITIONS

### 1 INTRODUCTION

#### 1.1 Definitions

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

**"Attachment"** means an attachment to these Tender Conditions;

**"Closing Time for Tenders"** has the meaning ascribed to it by clause 3.2.1;

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

**"Contact Person"** means the person nominated as such in the Tender Details;

**"Contract"** means the contract between the Principal and the successful tenderer to be evidenced by the:

1.1.1 Formal Instrument of Agreement;

1.1.2 General Conditions of Contract;

1.1.3 Specification;

1.1.4 Drawings; and

1.1.5 Other Contract Documents;

**"Drawings"** means the drawings as such listed in the Formal Instrument of Agreement;

**"Electronic Tender Box"** has the meaning ascribed to it by clause 3.2.2;

**"Formal Instrument of Agreement"** means the Formal Instrument of Agreement contained in Attachment A to these Tender Conditions;

**"General Conditions of Contract"** means the Australian Standard General Conditions of Contract AS 4000-1997, with the Annexure in the form contained in Appendix B to the Formal Instrument of Agreement;

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

1.1.6 does not comply with any requirement specified in these Tender Condition; or

1.1.7 contains any qualification, condition or other indication that the tenderer is not willing to perform the Contract in strict accordance with the Contract;

**"Other Contract Documents"** means the other documents listed as such in the Formal Instrument of Agreement;

**"Personal Information"** means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

**"Principal"** means the Maribyrnong City Council;

**"Schedule"** means a schedule forming part of the Tender Schedules;

**"Specification"** means the documents listed as such in the Formal Instrument of Agreement; and

## **1.2 Interpretation**

Terms defined in the General Conditions of Contract have the same meaning in these Tender Conditions, unless inconsistent with the context.

# **2 NATURE OF CONTRACT**

## **2.1 Work To Be Performed**

The work to be performed under the Contract is described in general terms in the Tender Details. Tenderers should, however, ensure that they read the Contract fully to ascertain the work to be performed as the terms on which the work is to be performed will be evidenced solely by the Contract.

## **2.2 Tenderer To Make Enquiries**

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

## **2.3 Additional Information**

Additional information and documentation relevant to the Contract is contained in Attachment B. This information and documentation will not form part of the Contract and the Principal does not warrant its accuracy.

## **2.4 Contact Person**

All enquiries regarding the tender process or the Contract must be sent, in writing, to the Contact Person.

## **2.5 Form of Contract**

A copy of AS 4000-1997 is not included in the Tender Documents and will not be included in the Contract. Tenderers may inspect a copy by contacting the Contact Person, but are advised to obtain their own copies.

Standard specifications or drawings of the Principal may be listed in the Formal Instrument of Agreement. The versions to be applied are those current at the Closing Time for Tenders.

## **2.6 Selected Sub-contractors**

Tenderers are advised that the work nominated in Attachment C must be performed by one (1) of the sub-contractors nominated in Attachment C with respect to that work. If only one (1) sub-contractor is nominated with respect to any type of work, that sub-contractor must be engaged to perform the relevant work. Attachment C also indicates whether or not it is possible for a tenderer to submit a non-conforming tender which proposes the use of a sub-contractor other than one named in Attachment C. A tender must nominate the sub-contractor to which the tenderer proposes to engage to perform any selected sub-contract

work and confirm that the tenderer has made arrangements for such work should its tender be successful. For the avoidance of doubt, it is acknowledged that any work nominated in Attachment C shall constitute "selected sub-contract work" and the sub-contractors nominated in Attachment C constitute "selected sub-contractors" for the purposes of clause 9 of AS 4000-1997.

### 3 TENDERS

#### 3.1 Form of Tenders

The Tender Schedules -

- 3.1.1 with Schedules 1, 2, 4, 5, 6, 7 and 8 completed; and
  - 3.1.2 any information submitted for the purposes of Schedule 3 -
- will constitute a tender.

#### 3.2 Lodgement of Tenders

- 3.2.1 Tenders will be received only until the time and date stated in the Tender Details ("**Closing Time for Tenders**").
- 3.2.2 Tenders **must** be lodged in the electronic tender box through Maribyrnong City Council's e-tendering website at <https://www.tendersearch.com.au/maribyrnong> ("**Electronic Tender Box**").
- 3.2.3 If the tenderer experiences any difficulties logging on, downloading or uploading any documents from the e-tendering website, the tenderer should contact TenderSearch on 1800 836 337.
- 3.2.4 Tenderers should be aware that the electronic lodgement of files may take time, and the tenderer must make its own assessment of the time required for full transmission of its offer.
- 3.2.5 The Principal expressly disclaims any liability for any failure of the electronic tendering service, or any failed, rejected, incorrect or incomplete lodgement or lateness of a tender arising from the Tenderer's use of the electronic tendering service.

#### 3.3 Principal not Bound to Accept Tender

The Principal is not bound to accept the lowest or any tender and may determine:

- 3.3.1 not to proceed with any of the tenders;
- 3.3.2 to re-tender the work under the Contract;
- 3.3.3 to proceed with an arrangement other than a tender process to have the work under the Contract executed;
- 3.3.4 to negotiate with a preferred tenderer; or
- 3.3.5 not to proceed with the work under the Contract.

### **3.4 Non-Conforming Tenders**

The Principal is not required to consider a Non-Conforming Tender, but reserves the right to consider and accept a Non-Conforming Tender without offering any other tenderer the opportunity to re-tender on the same basis.

Tenderers are required to complete Schedule 4 for each tender submitted (whether a Conforming Tender or a Non-Conforming Tender).

### **3.5 Discrepancies and Inadequate Information**

If a tenderer -

- 3.5.1 finds any discrepancy, error or omission in the Tender Documents;
- 3.5.2 considers that any work necessary for the completion of the Contract has not been adequately described or included in the Tender Documents; or
- 3.5.3 has any doubt as to the meaning or completeness of any portion of the Tender Documents -

it must notify the Contact Person, in writing, and seek clarification as soon as possible and, in no case, less than five (5) business days before the Closing Time for Tenders.

Any clarification provided pursuant to this clause may be given in the form of an addendum to all tenderers.

### **3.6 Tender Addenda**

The Principal may issue to each tenderer addenda to the Tender Documents at any time prior to the Closing Time for Tenders.

Tenderers must refer to each tender addendum in their tenders by completing Schedule 5.

The Contact Person has no authority to make any representation or give any explanation to tenderers as to the meaning of anything contained in the Tender Documents or anything to be done or not to be done by a tenderer, other than by a written addendum.

### **3.7 Changes to the Tendering Process**

The Principal may at any time, by notice in writing to tenderers, change -

- 3.7.1 the Closing Time for Tenders;
- 3.7.2 the tendering procedure; or
- 3.7.3 the scope of the Contract -

outlined in the Tender Documents.

### **3.8 Withdrawal of Tenders**

Tenders may not be withdrawn within 60 days after the Closing Time for Tenders without the consent of the Principal.

### **3.9 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 Principal expressly disclaims any intention to enter into any such contract.

### **3.10 Costs Associated with Preparing Tenders**

All costs and expenses incurred by tenderers in any way associated with the development, preparation and submission of a tender, including attendance at meetings and the provision of additional information required by the Principal, will be borne entirely by the tenderers. No tenderer, whether successful or unsuccessful, will be entitled to make any claim against the Principal for such costs and expenses.

## **4 INFORMATION**

### **4.1 Questionnaire**

Tenderers must complete the questionnaire contained in Schedule 2 as part of their tenders.

### **4.2 Conflict of Interest**

When submitting its tender, the tenderer must declare any actual or potential conflicts of interest which may arise between the tenderer and the Principal or the Principal and any sub-contractor which the tenderer proposes to engage in respect of the work under the Contract.

## **5 EVALUATION OF TENDERS**

### **5.1 Evaluation Criteria**

The tender evaluation panel will evaluate tenders in accordance with evaluation criteria and weightings of such criteria listed in the Tender Details.

The tender evaluation panel may determine not to fully evaluate any tender if, in the opinion of the tender evaluation panel, the tender does not adequately address or meet any of the evaluation criteria.

The tender evaluation panel may, at any stage during the tender evaluation process, elect to not further evaluate any tender if the tender evaluation panel comes to the conclusion that the tender is unlikely to be recommended as the preferred tender even if the tender was fully evaluated.

Tenderers should ensure that sufficient information is included in their tenders to facilitate proper evaluation in accordance with the stated criteria. Without limiting the information to be submitted by tenderers, a tenderer should address the matters indicated in Schedule 3 with respect to the evaluation criteria.

The Principal will award the tender on the basis of the best quality and value for money for the community. In determining the best quality and value for money for the community, the Principal 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 tender evaluation panel or Principal 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 -

- 5.2.1 submit the additional information so required by; or
- 5.2.2 attend personally to discuss its tender at -
- 5.2.3 the date and time stipulated by the Principal, its tender may not be further considered.

## **5.3 Rectification of Errors and Omissions**

The Principal 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.

# **6 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. The successful tenderer must execute and return to the Principal a formal agreement in the form of the Formal Instrument of Agreement, as amended by the insertion of any details which are intended to form part of the Contract, within seven (7) days of its receipt from the Principal.

# **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 Principal's staff; or
- 7.2.2 councillor of the Principal –

individually or collectively:

- 7.2.3 to solicit support for their tenders; or
- 7.2.4 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 Principal.

## **8 DISCLOSURE OF TENDER INFORMATION**

Tenderers are advised that a report on the tender process may be presented at an open meeting of the councillors of the Principal. Consequently, information from the tender of the tenderer may become publicly available.

Unless and until tenders are considered at a meeting of the councillors of the Principal, the Principal will endeavour to maintain confidentiality of price and other information submitted by each tenderer.

Following award of a tender, unsuccessful tenderers will be notified of the name and awarded tender price of the successful tenderer. No other information regarding the successful tender will be provided.

Tenderers should, however, be aware that the Principal may be legally required to disclose information concerning a tender to a third party through a court order or otherwise.

All documents and other material submitted in response to this tender become the property of the Principal, on submission, and the Principal may use such documents and other material for any purpose it sees fit.

## **9 LIMITATION OF LIABILITY**

Except for such conditions or warranties as are implied by the *Competition and Consumer Act 2010* or the laws of a State or Territory, no warranty is given and no representation is made by the Principal (whether by its employees, agents, advisers or otherwise) in relation to:

- 9.1 the accuracy or reliability of any document provided by the Principal to a tenderer in connection with the tender (including the Tender Documents); or
- 9.2 the conduct of the tender process or selection of the successful tenderer.

Save for any liability arising from a breach of any condition or warranty which is implied by virtue of legislation and which cannot be excluded, the Principal expressly disclaims any liability to any tenderer or any other person (including liability based on any wilful or negligent act or omission) for:

- 9.3 any losses or damages arising out of or in connection with the provision of any document (including the Tender Documents) provided by the Principal to a tenderer in connection with the tender; or
- 9.4 the conduct of the tender process or selection of the successful tenderer.

## **10 PRIVACY**

If a tenderer is required or chooses to disclose any Personal Information to the Principal in its tender (including, without limitation, any Personal Information pertaining to any employee of the tenderer, any proposed sub-contractor to the tenderer, any employee of any proposed sub-contractor to the tenderer or any other person), the tenderer warrants that:

- 10.1 it has complied with the *Privacy Act 1988* (Cth), the *Information Privacy Act 2000* (Vic) and any other relevant legislation with respect to the collection, use and disclosure of such Personal Information; and
- 10.2 at the time of collecting the Personal Information, it obtained all necessary consents and authorisations from the persons to whom that Personal Information relates to enable disclosure of the Personal Information to the Principal, the Principal's employees and any advisors to the Principal.

The tenderer must indemnify, keep indemnified and hold harmless the Principal, in respect of any loss, liability or expense suffered or incurred by the Principal arising out of, or in connection with, any breach of the tenderer's obligations under this clause.

**ATTACHMENT A**  
**FORMAL INSTRUMENT OF AGREEMENT**

**MARIBYRNONG CITY COUNCIL**

**Contract Description**

**Maribyrnong River Child Care Redevelopment Works**

**Contract No.**

**803-16**

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**FORMAL INSTRUMENT OF AGREEMENT**

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**THIS AGREEMENT** is made on

2015

**BETWEEN**

**1      MARIBYRNONG CITY COUNCIL**  
at the corner of Hyde and Napier Streets, Footscray, Victoria  
("Principal")

**2      \_\_\_\_\_**  
ABN \_\_\_\_\_  
of \_\_\_\_\_  
("Contractor")

**1      AGREEMENT**

It is agreed that -

- 1.1      this Formal Instrument of Agreement;
- 1.2      the General Conditions of Contract;
- 1.3      the Specification;
- 1.4      the Drawings; and
- 1.5      the Other Contract Documents -

together comprise and evidence the contract between the parties.

**2      DEFINITIONS**

In this Formal Instrument of Agreement:

"**Appendix**" means an appendix to this Formal Instrument of Agreement;

"**Drawings**" means the drawings listed in Appendix A;

"**General Conditions of Contract**" means the Australian Standard General Conditions of Contract AS 4000-1997 (with the Annexure in the form contained in Appendix B);

"**Other Contract Documents**" means the documents listed in Appendix C; and

"**Specification**" means the documents listed in Appendix D.

**3      FORM OF CONTRACT**

A copy of AS 4000-1997 is not included in the contract documents. The Contractor must obtain its own copy.

Appendices A, C and D may contain documents which are listed in those Appendices. Other documents may be listed, but are not contained in the Appendices. Such documents are incorporated into the Contract by reference.

#### 4 ENTIRE AGREEMENT

The Contract constitutes the entire agreement between the Principal and the Contractor with respect to the work under the Contract and the Works. The Contract supersedes and extinguishes all prior agreements, representations and understandings between the parties.

#### 5 CONTRACT SUM

The Contract Sum is \$\_\_\_\_\_ (exclusive of GST).

The Contract Sum is inclusive of the following provisional sums:

ITEM	PROVISIONAL SUM (exclusive of GST)

Details of the work to which the provisional sums apply are contained in the Specification and Drawings.

#### 6 BREAKDOWN

The breakdown of the Contract Sum contained in Appendix E may, at the discretion of the Superintendent, be used solely in assessing payment claims and valuing variations. The breakdown of the Contract Sum does not constitute a bill of quantities and the Principal does not warrant the accuracy of any information stated in the breakdown of the Contract Sum.

#### 7 RATES FOR VARIATIONS

The rates and prices contained in Appendix F may be used by the Superintendent to value variations in accordance with clause 36.4 of the General Conditions of Contract.

#### 8 CONTRACTOR AS TRUSTEE

##### 8.1 Capacity and application of trust provisions

If the Contractor has entered into this Contract in the capacity as trustee of any trust ("**Trust**") under any trust deed, deed of settlement or other instrument ("**Trust Deed**"):

- 8.1.1 the Contractor is bound both personally and in its capacity as trustee of the Trust;
- 8.1.2 clause 8 will apply; and
- 8.1.3 in interpreting clause 8, the terms "Trust" and "Trust Deed" will have the meanings stated in clause 8.1.

##### 8.2 Disclosure of Trust terms

- 8.2.1 On request, the Contractor must disclose all of the terms of the Trust to the Principal, including providing the Principal with a certified copy of the stamped Trust Deed.

- 8.2.2 The Contractor must immediately advise the Principal in writing of any proposed variation to the terms of the Trust in force as at the date of this Contract, including any proposed variation of the Trust Deed.

### **8.3 Trustee warranties**

In addition to any other warranty or indemnity from the Contractor under this Contract, the Contractor warrants that:

- 8.3.1 all information and materials provided to the Principal under clause 8.2 are accurate, complete and current;
- 8.3.2 it has been validly appointed as the trustee of the Trust and is the only trustee of the Trust;
- 8.3.3 it is not aware of any action to remove it as trustee of the Trust and will not take any action to resign as trustee before the completion of all obligations of the Contractor under this Contract;
- 8.3.4 the Trust Deed is valid and enforceable;
- 8.3.5 all stamp duty and taxes payable on Trust Deed, including any penalties, have been paid in full;
- 8.3.6 it has the power under the Trust Deed to enter into and observe its obligations under this Contract personally and its capacity as trustee of the Trust and has formed the view that it is prudent to enter into this Contract;
- 8.3.7 it has in full force and effect the authorisations necessary to enter into this Contract, perform obligations under this Contract and allow this Contract to be enforced;
- 8.3.8 it is not in material default under the Trust Deed and is not aware of any action proposed to terminate or vest the Trust;
- 8.3.9 there is no determination or declaration to terminate or vest the Trust in the period commencing on date of this Contract and ending seven (7) years after the completion of all obligations of the Contractor under this Contract;
- 8.3.10 it will not take any action or permit a third party to take any action to determine or declare that the Trust is to terminate or vest in the period commencing on the date of this Contract and ending seven (7) years after the completion of all obligations of the Contractor under this Contract;
- 8.3.11 the entry into and the performance of this Contract is for the benefit of the beneficiaries of the Trust, whose consents (if necessary) have been obtained;
- 8.3.12 it has in its capacity as trustee and will continue to have the right to be indemnified fully out of the assets of the Trust in respect of all of the obligations and liabilities incurred by it under this Contract;
- 8.3.13 it will not do anything to prejudice its right of indemnity out of the assets of the Trust;



- 8.3.14 all policies of insurance maintained by the Contractor under or in connection with this Contract:
- (a) extend to the Contractor acting personally and as trustee of the Trust; and
  - (b) do not include an exclusion or limitation on liability incurred by the Contractor as trustee;
- 8.3.15 it is not now in breach of the Trust and will not breach the Trust;
- 8.3.16 it will do all things necessary to make the assets of the Trust available to:
- (a) satisfy each indemnity given in favour of the Principal under the Contract; and
  - (b) rectify any breach of this Contract and compensate the Principal for the breach; and
- 8.3.17 there is no material fact or circumstance relating to the assets, matters or affairs of the Trust that might, if expressly disclosed to the Principal, be expected to affect the decision of the Principal to enter into this Contract.

#### **8.4 Trust interest to be noted**

Any permits, approvals, endorsements and certifications to be held, provided or evidenced by the Contractor under this Contract, including certificates of currency of insurance, must include a notation that rights and benefits are held by the Contractor personally and as trustee, in a form and manner directed by the Principal.

#### **8.5 Deemed breach**

Without limiting any other term of the Contract, the Contractor will be in breach of the Contract if a change of the terms of the Trust in force as at the date of this Contract, including a variation of the Trust Deed:

- 8.5.1 materially alters, limits or impedes the powers of the Contractor as trustee or the right of the Contractor to be indemnified out of the Trust as trustee;
- 8.5.2 alters, qualifies or limits or purports to alter, qualify or limit:
- (a) the Contractor's liability under this Contract; or
  - (b) the enforcement of an undertaking, including warranties and indemnities, by the Principal; or
- 8.5.3 renders a warranty under clause 8.3 to be false.

#### **8.6 Deemed assignment**

The Contractor will be deemed to have assigned this Contract if any of the following occur:

- 8.6.1 there is a change of trustee of the Trust;

- 8.6.2 the Trust is a unit trust and there is a change in the person(s) who:
- (a) are in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units at that meeting; or
  - (b) hold more than one half of the issued units of the Trust;
- 8.6.3 there is a change in the beneficiary or beneficiaries of the Trust entitled directly or indirectly to more than one half of the corpus or profits of the Trust; or
- 8.6.4 there is a change in the person(s) who are entitled to or whose consent is required to:
- (a) appoint or change the trustee;
  - (b) give directions to the trustee;
  - (c) vary the Trust Deed;
  - (d) appoint or remove beneficiaries of the Trust; or
  - (e) decide to whom any distribution is made or the amount of any distribution.

## **8.7 Sub-contractor as trustee**

Without limiting the procedures to apply in the event that the Contractor seeks to sub-contract all or part of its obligations under this Contract, the Contractor must:

- 8.7.1 ascertain and disclose to the Principal whether, in connection with the sub-contracted obligations, the sub-contractor will act as a trustee; and
- 8.7.2 if the sub-contractor will act as a trustee, obtain from the sub-contractor, trustee undertakings in favour of the Contractor and the Principal, in the form of those specified in clause 8 (modified as necessary).

## **9 NO TRUST OR AGENCY UNLESS EXPRESSLY STATED**

The Contractor warrants that, unless expressly stated otherwise in the details of the parties at the beginning of this Formal Instrument of Agreement, it has not entered into this Contract as trustee of a trust or agent of a third party.

Executed by the parties on the date set out at the commencement of this Formal Instrument of Agreement:

1 Execution clause for the Principal

1.1 If the Contract must be executed under seal:

1.2 If the Contract can be executed under delegation:

**SIGNED** by \_\_\_\_\_ on \_\_\_\_\_  
behalf of the Principal )

\_\_\_\_\_  
[insert title]

\_\_\_\_\_  
Witness

2 Execution clause for the Contractor (strike out alternatives which are not applicable):

2.1 If the Contractor is a company:

**EXECUTED** by \_\_\_\_\_ in \_\_\_\_\_  
accordance with section 127(1) of the \_\_\_\_\_  
*Corporations Act 2001* by being signed by \_\_\_\_\_  
authorised persons: \_\_\_\_\_

\_\_\_\_\_  
Director

\_\_\_\_\_  
\*Director/company secretary

\*Delete whichever is inapplicable

\_\_\_\_\_  
Full Name

\_\_\_\_\_  
Full Name

\_\_\_\_\_  
Usual Address

\_\_\_\_\_  
Usual Address

2.2 If the Contractor is an individual:

**SIGNED SEALED AND DELIVERED** )  
 by \_\_\_\_\_ )  
 in the presence of: \_\_\_\_\_

\_\_\_\_\_  
 Witness

2.3 If the Contractor is a partnership (add extra execution clauses for each partner, as necessary):

**SIGNED SEALED AND DELIVERED** )  
 by \_\_\_\_\_ )  
 in the presence of: \_\_\_\_\_

\_\_\_\_\_  
 Witness

**SIGNED SEALED AND DELIVERED** )  
 by \_\_\_\_\_ )  
 in the presence of: \_\_\_\_\_

\_\_\_\_\_  
 Witness

**APPENDIX A****DRAWINGS**

Refer to the attached:

- 803-16 - Maribyrnong River Childcare Redevelopment - RFT Issue - Appendix A1 - Architectural T02
- 803-16 - Maribyrnong River Childcare Redevelopment - RFT Issue - Appendix A2 - Land Survey 803-16 - Maribyrnong River Childcare Redevelopment - RFT Issue - Appendix A3 – Mechanical
- 803-16 - Maribyrnong River Childcare Redevelopment - RFT Issue - Appendix A4 - Electrical
- 803-16 - Maribyrnong River Childcare Redevelopment - RFT Issue - Appendix A5 - Hydraulic
- 803-16 - Maribyrnong River Childcare Redevelopment - RFT Issue - Appendix A6 - Structural Civil

**APPENDIX B  
ANNEXURE TO AS 4000-1997**

# PART A

Annexure to the Australian Standard General Conditions of Contract AS 4000-1997

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 General Conditions of Contract and shall be read as part of the *Contract*.

Item

†7	a) <i>Date for practical completion</i> (clause 1)	Estimated : Commencement : 8 <sup>th</sup> September 2015 Completion : 31 December 2015
10	<i>Bills of quantities</i> (subclause 2.2)  a) Alternative applying (subclause 2.2) b) If Alternative 2 applies, is the <i>bill of quantities</i> to be priced? (subclause 2.2)	Alternate 2 Yes
12	<i>Provisional sum</i> , percentage for profit and attendance (clause 3)	N-A%
†13	<i>Contractor's security</i> a) Form (clause 5)  b) Amount or maximum percentage of <i>contract sum</i> (clause 5) d) Time for provision (except for retention moneys) (clause 5)  f) <i>Contractor's security</i> upon <i>certificate of practical completion</i> is reduced by (subclause 5.4)	2 x Unconditional, irrevocable and perpetual bank guarantees, each 5% of contract sum 10% of contract sum (2 x 5% each)  14 days after <i>date of acceptance of tender</i>  50% of amount held
†14.	<i>Principal's security</i> a) Form (clause 5)	N-A
17	Subcontract <i>work</i> requiring approval (subclause 9.2)	All
20	Insurance of <i>the Works</i> (clause 16) a) Alternative applying	Alternate 1
21	Public liability insurance (clause 17) a) Alternative applying b) Amount per occurrence shall be not less than	Alternate 1 Minimum \$20 Million
23	Qualifying causes of delay	N-A
†24	Liquidated damages, rate (subclause 34.7)	\$500 per day
†26	Delay damages, other compensable clauses (page 1, clause 1 and subclause 34.9)	N-A
27	<i>Defects liability period</i> (clause 35)	12 Months
30	Interest rate on overdue payments (subclause 37.5)	N-A

# PART B

Annexure to the  
Australian Standard General Conditions of Contract  
AS 4000-1997

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## Deletions, amendments and additions

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

See following pages

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

See following pages

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

See following pages

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## ANNEXURE TO AS 4000 - PART B (SPECIAL CONDITIONS)

### AMENDMENTS

<b>Throughout AS 4000- 1997</b>	All references to the words "progress certificate" are deleted wherever occurring and replaced with the words "payment schedule".
	The words "progress claim" are deleted wherever occurring and replaced with the words "payment claim".
<b>Amend clause 1</b>	<p>The following new definitions are inserted in clause 1:</p> <p><b>Adjustment</b> has the meaning set out in section 195-1 of the GST Act;</p> <p><b>Adjustment Note</b> has the meaning set out in section 195-1 of the GST Act;</p> <p><b>business day</b> means a day that is not:</p> <ul style="list-style-type: none"> <li>(a) a Saturday or Sunday; or</li> <li>(b) a day that is wholly or partly observed as a public holiday throughout Victoria;</li> </ul> <p><b>GST</b> means the goods and services tax within the meaning of the GST Act;</p> <p><b>GST Act</b> means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);</p> <p><b>OH&amp;S</b> means occupational health and safety;</p> <p><b>OH&amp;S Act</b> means the <i>Occupational Health And Safety Act 2004</i> (Vic);</p> <p><b>OH&amp;S Laws</b> means all statutory and regulatory requirements concerning OH&amp;S, including, without limitation –</p> <ul style="list-style-type: none"> <li>(a) the OH&amp;S Act;</li> <li>(b) the OH&amp;S Regs;</li> <li>(c) the <i>Dangerous Goods Act 1985</i> (Vic) and all regulations made under that Act; and</li> <li>(d) the <i>Equipment (Public Safety) Act 1994</i> (Vic) and all regulations made under that Act -</li> </ul> <p>as amended or replaced from time to time;</p> <p><b>OH&amp;S Regs</b> means the <i>Occupational Health and Safety Regulations 2007</i> (Vic);</p> <p><b>Security of Payment Act</b> means the <i>Building and Construction Industry Security of Payment Act 2002</i> (Vic);</p> <p><b>Tax Invoice</b> has the meaning set out in section 195-1 of the GST Act;</p> <p><b>Taxable Supply</b> has the meaning set out in section 195-1 of the GST Act;".</p> <p>The word "and" at the conclusion of paragraph (b) in the definition of "Practical Completion" in clause 1 is deleted and the following is inserted at the conclusion of the definition:</p>



- "d) all certificates and approvals required to be given or issued under a legislative requirement before the Works can be occupied and used for their intended purposes, have been issued to and received by the Principal;
- e) the Contractor has provided to the Superintendent a certificate from a licensed surveyor certifying that the Works are located on the site in accordance with the requirements of the Contract;
- f) the Contractor has successfully completed to the Superintendent's satisfaction, all commissioning required by the Contract and provided all required warranties; and
- g) the Contractor has undertaken full and detailed cleaning of the Works to the reasonable satisfaction of the Superintendent."

The following words are inserted at the conclusion of the definition of "WUC":

"and shall include all items of work reasonably to be inferred therefrom for the proper execution and completion of the Works to the reasonable satisfaction of the Superintendent and for the proper performance by the Contractor of its obligations under this Contract, whether or not such items have been shown or described in any of the documents comprising this Contract."

**Amend  
clause 2**

The following words are inserted at the conclusion of subclause 2.1:

", subject to the WUC being performed in accordance with the Contract and being fit for its purpose to the reasonable satisfaction of the Superintendent."

In the final line of clause 2.5, the amount "\$400" is deleted and replaced by the amount "\$2,000".

A new subclause 2.6 is inserted to read as follows:

"The Contractor will remain responsible for the performance of the WUC, the execution of the Works in accordance with the Contract and compliance with all other obligations under the Contract notwithstanding any review, approval or acceptance by the Principal, the Superintendent or the Principal's employees, contractors or consultants of any document, process, sample, work or other thing."

**Amend  
clause 5**

The following paragraph is inserted at the conclusion of subclause 5.1:

"If the Contractor fails to comply with subclause 5.1, the Principal may terminate the Contract and subclause 39.10, to the extent that it is applicable, shall operate as if the termination had been made pursuant to subclause 39.4(b)."

The following paragraph is inserted at the conclusion of subclause 5.2:

"A party is not entitled to commence any proceeding, seeking relief by way of injunction or any other relief, which has as its objective the obtaining of an order preventing the other party from having recourse to security even though the party contemplating the commencement of proceedings may assert that there is no right to have recourse to security."

The third paragraph of subclause 5.4 is deleted and replaced with the following:

"A party's entitlement otherwise to security shall cease 14 days after

rectification by the Contractor of all defects identified during the defects liability period and any further defects liability period."

**Amend  
clause 6**

Clause 6 is deleted (except the heading) and replaced by:

"The Contract consists of and is evidenced by the documents listed in the Formal Instrument of Agreement."

**Amend  
clause 8**

The second paragraph of subclause 8.1 is deleted and replaced with the following:

"For the purposes of interpreting the Contract under this clause, the Superintendent must give precedence to the documents comprising the Contract in the order in which they are listed in the Formal Instrument of Agreement.

The Contractor is not entitled to any additional payment with respect to any inconsistency, ambiguity or discrepancy in any document, or any compliance with a direction given by the Superintendent under this clause.

The Contractor is deemed to have reviewed all plans and specification forming part of the Contract and to have satisfied itself that such plans and specifications are accurate and will enable the Works to be constructed in accordance with the intent of the Contract and all legal and practical requirements without alteration to the plans and specifications. Notwithstanding clauses 34 and 36, the Contractor shall not be entitled to any payment, extension of time or delay costs with respect to any variation to the plans and specifications considered necessary by the Superintendent to enable the Works to be constructed in accordance with the intent of the Contract and all legal and practical requirements. For the purposes of this clause, the Contractor releases, to the fullest extent possible at law, the Principal, the Superintendent and the Principal's employees, contractors and consultants, from any claims which the Contractor has or may have at any future date with respect to any deficiency, ambiguity or inconsistency in the plans and specifications forming part of the Contract, whether under this Contract, at common law, in equity, under statute or otherwise."

**Amend  
clause 9**

Subclause 9.1 is amended by adding the following paragraph at the end of the subclause:

"For the purposes of subclause 9.1, an assignment of the Contract includes:

- a) any change in the beneficial ownership of the share capital of the Contractor, if it is a company, which alters the effective control of the Contractor; and
- b) any deemed assignment under clause 8.6 of the Formal Instrument of Agreement."

**Amend  
clause 18**

The first sentence of clause 18 is deleted and replaced by:

"Before commencing WUC, the Contractor shall insure against statutory and common law liability for death of or injury to persons employed, or deemed to be employed, by the Contractor."

**Amend  
clause 20**

In the second line of clause 20, the words "independent certifying" are inserted after the word "all".

**Amend  
clause 24**

The following is inserted at the conclusion of subclause 24.1:

"Prior to commencing any WUC on the site, the Contractor must establish the locations of and fully document all utility service pipes, mains, cables, conduits, pits connections and other infrastructure on, under or above the site and submit such documentation to the Superintendent for approval."

**Amend  
clause 25**

Lines 5 to 7 of subclause 25.1 are amended to read:

"which differ materially and substantially from those physical conditions which should reasonably have been anticipated by an experienced and competent contractor at the time of the Contractor's tender if the Contractor had inspected:"

The following is added to the conclusion of subclause 25.1:

"Without limiting any other requirement for the existence of a latent condition, rock shall not constitute a latent condition unless the rock is not capable of being lifted or ripped by a CCF Class 35 excavator (or equivalent) using appropriate attachments.

If any rock does constitute a latent condition, payment shall be made for the removal of the rock at any rate stated in Appendix F to the Formal Instrument of Agreement (which is deemed to include all costs of breaking up, removing and disposing of the rock). For payment purposes, the rock shall be measured in the ground before removal."

The words "and substantially" are added at the conclusion of subclause 25.2(a).

**Amend  
clause 26**

Clause 26 is deleted.

**Amend  
clause 31**

The following is inserted at the conclusion of clause 31:

"In approving a variation to the working hours or working days, the Superintendent may attach conditions which may preclude the performance of WUC requiring inspection or attendance by or on behalf of the Principal or may include a requirement that the Contractor meets the Principal's costs of inspection or attendance at the WUC during the varied times approved by the Superintendent."

**Amend  
clause 32**

The final three paragraphs of Clause 32 (page 26, Lines 5 - 13) are deleted and replaced with the following:

"Within 14 days of the execution of the Formal Instrument of Agreement, the Contractor shall submit to the Superintendent a construction program comprising at least a time scaled bar chart detailing the dates by which, or times within which, the various stages or portions of WUC are to be carried out or completed and the method proposed for completion of WUC.

The construction program shall clearly show for each item of work or activity, its planned start and finish date. It shall contain information including but not limited to:

- a) a clearly indicated critical path which shall indicate the sequence of activities which constitute the critical path;
- b) a break up of the WUC to enable the Superintendent to accurately monitor progress of WUC both on and off the Site;

- c) all activities necessary for the completion of WUC;
- d) the time for provision of required shop drawings, prototypes and samples;
- e) the times for commissioning, final inspections and handovers;
- f) off-site activities including prefabrication and equipment orders; and
- g) the date for practical completion.

The Contractor shall not, without reasonable cause, depart from the construction program. Any construction program prepared or provided by the Contractor shall not be used as a construction program for the purposes of this clause unless it has been approved by the Superintendent.

The Contractor acknowledges and agrees that any amendments to the construction program shall not entitle the Contractor to an extension of time unless the Superintendent, in its absolute discretion, otherwise determines or the Contractor is otherwise entitled to an extension of time pursuant to clause 34. The Contractor must allow in the construction program for 15 days of delays in activities forming the critical path on the construction program caused by a qualifying cause of delay for which the Contractor will not be entitled to an EOT."

**Amend  
clause 34**

The following words are added following the word "delay" in subclause 34.3(a):

"which has caused a delay on the activities forming the critical path on the construction program".

The following new paragraph is added after the first paragraph of clause 34.7:

"It is acknowledged and agreed that the liquidated damages stated in Item 24 may include, without limitation allowances for:

- (I) additional monetary costs which the Principal may incur;
- (II) monetary losses and expenses that the Principal may sustain or incur;
- (III) damage to the Principal's reputation; and
- (IV) loss of opportunity by the Principal –

through failure by the Contractor to complete the WUC by the date for practical completion."

Clause 34 is amended by adding the following new subclause 34.10:

**"34.10 Matters to be attended to before practical completion**

Prior to practical completion, the Contractor shall deliver to the Superintendent the following:

- a) all shop drawings and as built drawings as required by the Contract; and
- b) the originals of all operating and maintenance manuals for all plant and equipment forming part of the Works."

**Amend  
clause 35**

The following words are inserted at the conclusion of the second paragraph of clause 35:

"and otherwise in accordance with the directions of the Principal or the Superintendent".

**Amend  
clause 36**

The text in subclause 36.2 is deleted and replaced by the following:

"The Superintendent may direct the Contractor to submit a price for a proposed variation. The Contractor shall submit the price within the time frame specified in the direction or, if no time is specified, within 7 days of the direction.

The Contractor shall provide the following information with the price submitted in response to such a direction:

- a) a detailed scope of the proposed variation including drawings where applicable;
- b) a detailed breakdown of the price for which the Contractor would carry out the proposed variation, including any delay or disruption costs which may be incurred by the Contractor as a consequence of the proposed variation;
- c) the effect, if any, of the proposed variation on the date for practical completion; and
- d) the expiry period for acceptance of the variation proposal – which shall be not less than 7 days (or for urgent work, such shorter time as the Superintendent may allow) from the date of receipt by the Superintendent of the variation proposal.

Upon receipt of a variation proposal provided in this clause, the Superintendent may, in his or her sole discretion, do any one of the following:

- a) direct the Contractor to provide further information;
- b) accept the variation proposal and give the Contractor a direction to carry out the variation on the terms contained in the variation proposal in which case a valuation under subclause 36.4 shall not be made and the addition or deduction to the contract sum shall be the amount contained in the variation proposal;
- c) negotiate different terms with the Contractor upon which the variation shall be carried out;
- d) give the Contractor a direction to carry out the variation, but on terms calculated in accordance with subclause 36.4; or
- e) reject the variation proposal."

In the second line of subclause 36.4(d), the expression "a reasonable amount for profit overheads" is deleted and replaced with "an allowance of a maximum of 10% of the cost of the work to cover profit, preliminaries and overheads".

The following subclause 36.5 is inserted at the conclusion of subclause 36.4:

**"36.5 Notices**

This subclause 36.5 applies notwithstanding any other provision of the Contract to the contrary.

The Principal shall only be liable to the Contractor for an amount calculated under subclause 36.4 or for an EOT for practical completion for a variation where either:

- a) the direction to perform the variation given by the Superintendent is in writing, expressly states that the direction constitutes a direction for a variation and identifies the work the subject of the direction; or
- b) before performing the variation and in any event within 7 days of receiving the direction to perform the variation, the Contractor has given the Superintendent a notice in writing which identifies:
  - i) the date the direction was given;
  - ii) whether the direction was verbal or in writing;
  - iii) the substance of the direction (if in writing, a copy must be attached);
  - iv) the approximate cost of the variation including a detailed breakdown calculated in accordance with subclause 36.4; and
  - v) whether a claim will be made for an EOT as a result of the variation and, if so, an estimate of the period.

Except where the Contractor is entitled to make a claim under this clause, the Contractor shall have no entitlement to payment, an EOT or delay costs as a consequence of complying with a direction for a variation.

Where the Contractor wishes to make a claim for an EOT as a consequence of a variation, in addition to the notices it is required to give under this subclause, the Contractor shall give all notices required under subclause 34.3."

**Amend  
clause 37**

The number "14" is deleted from lines 6 and 18 of page 31 and replaced with "10 business".

The number "21" is deleted from line 22 of page 31 and replaced with "15 business".

At the conclusion of subclause 37.2, the following paragraphs are inserted:

"If, Item 13(a) specifies any form of Contractor's security other than retention moneys and the Contractor has failed to comply with clause 5.1, then, notwithstanding any other provision of this Contract, the Superintendent shall not certify any moneys as payable to the Contractor and the Principal shall not be obliged to make any payment to the Contractor until the Contractor shall so comply.

In so far as necessary to ensure compliance with the Security of Payment Act, the Superintendent is deemed to issue any payment schedule under clause 37.2 or final payment schedule under clause 37.4 as the agent of the Principal and each such schedule shall constitute a payment schedule for the purposes

of the Security of Payment Act.

If the Contractor makes any payment claim under the Security of Payment Act, the Contractor must separately identify any excluded amount (within the meaning of the Security of Payment Act) and state that the excluded amount is not claimed under the Security of Payment Act."

The words "expiry of the last defects liability period" are deleted from the first line of the first paragraph and first line of the second paragraph of clause 37.4 and replaced by the words "last to occur of the expiry of the last defects liability period or the completion of the rectification of the last defect which the Contractor has been directed to rectify under clause 35".

**Amend  
clause 38**

The following is inserted at the conclusion of subclause 38.1:

"Documentary evidence of payment of moneys to any sub-contractor with a subcontract of a value in excess of the amount stated in Item 31A shall be in the form of written and signed confirmation from the sub-contractor confirming that it has been paid all moneys due and payable to the sub-contractor at the date of the payment claim."

**Amend  
clause 41**

The text of subclause 41.2 is deleted and replaced with the following:

"The Principal shall not be liable upon any claim by the Contractor in respect of or arising out of a breach of the Contract or arising out of or related to the Works (including claims in tort, for quantum meruit or pursuant to statute) unless within 28 days after the first day upon which a competent and experienced contractor could reasonably have been aware of the circumstances which might give rise to any such claim, the Contractor has given to the Principal and to the Superintendent the prescribed notice."

**Amend  
clause 42**

In the second line of the second paragraph of subclause 42.2, the words "that dispute shall be and is hereby referred to arbitration" are deleted and replaced with the words "either party may litigate the dispute".

Subclause 42.3 is deleted.

**ADDITIONS**

The following clauses have been added to those of AS 4000:

**Add clause  
44**

**"44 NOTICES AND SUSPENSION OF WORK UNDER THE CONTRACT UNDER THE BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2002**

**44.1 Copies of Communications**

The Contractor shall ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the Security of Payment Act (including, without limitation, a payment claim under the Security of Payment Act), is provided to the Superintendent at the same time.

**44.2 Suspension under the Security of Payment Act**

**(a) Notice of Intention to Suspend**

The Contractor shall first give the Superintendent, as the Principal's nominee for this purpose, at least two business days notice of its intention to suspend the WUC under the Security of Payment Act.

(b) **Suspension of work under the Contract by a sub-contractor under the Security of Payment Act**

If the Contractor becomes aware that a sub-contractor is entitled to suspend work pursuant to the Security of Payment Act, the Contractor shall promptly and without delay give to the Superintendent a copy of any written communication of whatever nature that the Contractor receives from the sub-contractor pursuant to the Security of Payment Act.

If a sub-contractor under its subcontract for work under the Contract suspends the whole or part of its subcontract work pursuant to the Security of Payment Act:

- (i) the suspension shall not of itself affect the date for practical completion of this Contract, but may be a ground for an extension of time for the Contractor under subclause 34.3;
- (ii) the Principal shall not be liable for any costs, expenses, losses or other liability including delay or disruption costs whatsoever suffered or incurred by the Contractor as a result of a suspension pursuant to this subclause; and
- (iii) the circumstances of such suspension is a substantial breach of this Contract to which subclause 39.2 applies.

(c) **Contractor's Further Indemnity**

Except for a payment default by the Principal, the Contractor indemnifies and shall keep indemnified the Principal against all damage, expense (including legal costs and the Principal's administrative costs), loss (including consequential and economic loss) or liability of any nature suffered or incurred by the Principal arising out of:

- (i) a wrongful suspension by the Contractor, or a suspension pursuant to the Security of Payment Act by a sub-contractor of work under the Contract; or
- (ii) a failure by the Contractor to comply with this clause 44.

Such sum shall be a debt due by the Contractor to the Principal to which subclause 37.2 or 37.4 applies."

**Add clause 45**      **"45**

**REPRESENTATIONS AND ACKNOWLEDGMENTS**

The Contractor makes the following representations and acknowledgments to the Principal:

- (a) it has the skills and experience necessary to execute and complete the Works;
- (b) it is aware of all relevant statutes, regulations, local laws, by-laws and requirements of competent authorities and insofar as they affect or are applicable to the WUC and the Works; and
- (c) it has inspected the site and the areas surrounding the site and is aware of any constraints which will be imposed by the site, the access to the site, or structures adjoining the site upon its ability to



execute the Works."

**Add clause  
46**      **"46**

**GST**

To the extent that anything to be done under the Contract by the Contractor constitutes a Taxable Supply:

- (a) if any corresponding payment under the Contract is calculated on a basis which is described as exclusive of GST, the payment must be increased by the applicable amount of GST ("GST Amount") (which will be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST);
- (b) the Contractor must provide to the Principal a valid Tax Invoice at or prior to the time of, and as a condition of, payment of any GST Amount; and
- (c) if any Adjustment occurs in relation to the Taxable Supply, the Contractor must issue an Adjustment Note to the Principal within seven (7) days of becoming aware of the Adjustment and any payment necessary to give effect to such Adjustment must be made within seven (7) days after the date of receipt of the Adjustment Note."

**Add clause  
47**      **"47**

**OCCUPATIONAL HEALTH AND SAFETY**

**47.1 Definitions**

Words and phrases in clause 47 have the same meaning given to them in the OH&S Act or the OH&S Regs.

**47.2 General OH&S**

The Contractor must:

- (a) comply with the OH&S Laws and any other legal requirements with respect to OH&S;
- (b) comply with all relevant compliance codes approved under section 149 of the OH&S Act; and
- (c) implement and maintain a system of obtaining and updating information on OH&S Laws and compliance codes with respect to OH&S.

**47.3 Specific Occupational Health and Safety Obligations**

Without limiting the general nature of clause 11 or clause 47, the Contractor must (at its own cost):

- (a) in carrying out the WUC, eliminate risks to health and safety in so far as is reasonably practicable to do so, and, if it is not reasonably practicable to eliminate risks to health and safety, reduce those risks as far as is reasonably practicable;
- (b) in accordance with section 23 of the OH&S Act, take all appropriate steps to ensure, in so far as is reasonably practicable, that persons other than employees of the

Contractor are not exposed to risks to their health or safety arising from the WUC;

- (c) in accordance with section 26 of the OH&S Act, take all appropriate steps to ensure, in so far as is reasonably practicable, that the Workplace and the means of entering and leaving it are safe and without risks to health;
- (d) in accordance with section 38 of the OH&S Act, notify the Victorian WorkCover Authority and the Superintendent immediately after becoming aware of the occurrence of an incident to which Part 5 of the OH&S Act applies;
- (e) promptly notify the Superintendent of any accident, injury or breach of any OH&S Law that occurs in connection with or arising out of the WUC;
- (f) establish a safety induction and training programme and ensure that all persons admitted to the Workplace participate in the program prior to being permitted to carry out any work at the workplace;
- (g) ensure that construction induction training is provided to any person employed to perform WUC, as required by regulation 5.1.20 of the OH&S Regs;
- (h) take all appropriate steps to ensure that there is a high level of awareness and compliance with OH&S Laws and compliance codes among all persons admitted to the Workplace;
- (i) comply with the Principal's requirements and any directions given by the Principal or the Superintendent from time to time in respect of health and safety which may include, without limitation, a direction to suspend the whole or part of the WUC in accordance with subclause 33.1;
- (j) develop and maintain a specific and current OH&S policy showing the Contractor's commitment to OH&S and allocating responsibilities for the management and facilitation of health and safety at the Workplace; and
- (k) regularly monitor and update its OH&S policies and procedures.

For the avoidance of doubt, it is acknowledged and agreed that any suspension of the whole or part of the WUC by the Superintendent in response to or in connection with any breach of clause 47 by the Contractor is deemed to be made because of an act, default or omission on the part of the Contractor for the purposes of clause 33.

With respect to any breach of a requirement of clause 47 by the Contractor, a representative of the Principal may exercise any rights of the Superintendent under clause 33 and subclause 47.3 to direct the Contractor to suspend the carrying out of the whole or part of the WUC for such time as the Principal's representative thinks fit and any such exercise of rights by the Principal's representative is deemed to have been performed by the Superintendent.

#### 47.4 **Safe Work Method Statement**

This clause 47.4 applies where the WUC includes any "high risk construction work" within the meaning of regulation 5.1.3 of the OH&S Regs.

- (a) The Contractor must comply with its obligations under the OH&S Regs with respect to high risk construction work, including, without limitation, the preparation of a safe work method statement, ensuring that the work is performed in accordance with the safe work method statement and reviewing and, if necessary, revising the safe work method statement in accordance with regulation 5.1.10 of the OH&S Regs.
- (b) Prior to any high risk construction work commencing, the Contractor must deliver to the Superintendent a copy of the safe work method statement and thereafter promptly deliver to the Superintendent copies of any revised safe work method statement.

#### 47.5 **Control of the Site**

For the purposes of sections 22(1) (b) and 26 of the OH&S Act and Division 2 (Subdivision 2) of Part 5.1 of the OH&S Regs, the parties acknowledge and agree that the Contractor has the management and control of the Workplace and is responsible for ensuring that the Workplace and the means of entering and leaving it are safe and without risks to health.

#### 47.6 **Indemnity**

To the extent permitted by law, the Contractor must indemnify, keep indemnified and hold harmless the Principal from and against any claim, proceedings, liability damages, penalty or costs (including, without limitation, all legal costs on a full indemnity basis) against or incurred by the Principal arising out of or in any way connected to any breach by the Contractor of its obligations under the OH&S Laws and clause 47.

#### 47.7 **Occupational Health and Safety Reports**

The Contractor must provide an OH&S report to the Superintendent monthly or at such other periods as may be directed or approved by the Superintendent. Each report must describe:

- (a) any accidents or injuries to the Contractor's employees or subcontractors, or other persons at the Workplace or other incidents to which Part 5 of the OH&S Act applies;
- (b) the implementation and maintenance of an incident notification process for internal and external notification;
- (c) any breach by the Contractor or a subcontractor or supplier of any OH&S Laws or compliance codes approved under section 149 of the OH&S Act (including copies of any incident reports required to be sent to the Victorian WorkCover Authority under the OH&S Act or notices or

warnings received by the Contractor or a subcontractor or supplier from the Victorian WorkCover Authority while performing the WUC);

- (d) all actions taken by the Contractor to comply with any notices or warnings; and
- (e) all action by the Contractor to prevent or remedy conditions at the Workplace which present or are likely to present a risk to health or safety.

#### **47.8 Failure to Provide Occupational Health and Safety Documents and Reports**

Notwithstanding any other provision of this Contract, if the Contractor does not provide -

- (a) a safe work method statement as required by subclause 47.4; or
- (b) a monthly OH&S report as required by subclause 47.7 -

the Principal will, in addition to any other right or remedy that it may have under the Contract or at law, be entitled to withhold payment of any money due to the Contractor under or in connection with the Contract until such time as the Contractor has complied with the relevant obligation.

#### **47.9 Principal**

- (a) The parties acknowledge and agree that:
  - (i) the Principal has appointed the Contractor as principal contractor for the purposes of Division 2 (Subdivision 2) of Part 5.1 of the OH&S Regs; and
  - (ii) the Principal authorises the Contractor to, and the Contractor must, manage or control the Workplace to the extent necessary to discharge the duties imposed on a principal contractor under the OH&S Regs; and
  - (iii) the Contractor must comply with all of its obligations as a principal contractor pursuant to Division 2 (Subdivision 2) of Part 5.1 of the OH&S Regs.
- (b) Within 14 days of the date of the Contract, and prior to any work commencing on the Site, the Contractor must deliver to the Superintendent a copy of the health and safety co-ordination plan prepared by the Contractor pursuant to regulation 5.1.16 of the OH&S Regs.

#### **47.10 OH&S Consultant**

If, in the reasonable opinion of the Superintendent, the Contractor has committed any substantive breach of the Contractor's obligations under clause 47, the Superintendent may direct the Contractor to engage an OH&S consultant nominated by the Superintendent.

If the Contractor is directed to engage an OH&S consultant by the Superintendent under this subclause 47.10, the Contractor must:

- (a) engage the OH&S consultant within two (2) days of the direction by the Superintendent and retain the services of the OH&S consultant until at least the completion of the Date of Practical Completion; and
- (b) comply with the OH&S consultant's recommendations with respect to all OH&S matters, except to the extent that they are inconsistent with this Contract.

If the Contractor is unable to engage the OH&S consultant nominated by the Superintendent on terms acceptable to the Contractor, the Contractor may request the Superintendent to nominate an alternative OH&S consultant. It is, however, acknowledged and agreed that any suspension of the whole or part of the WUC by the Superintendent in response to the breach of clause 47 may be continued until an OH&S consultant is engaged by the Contractor and the recommendations of the OH&S consultant are implemented by the Contractor. Such suspension is deemed to be made because of an act, default or omission on the part of the Contractor for the purposes of clause 33."

Add clause  
48

## "48 CARBON OBLIGATIONS

### 48.1 Carbon Laws

In this clause 48, "**Carbon Laws**" means any law, regulation, instrument, code, administrative programme or other mandatory scheme of any state, territory or country which has the purpose of directly or indirectly regulating -

- 48.1.1 greenhouse gas emissions or energy use (including energy efficiency); or
- 48.1.2 the reporting of greenhouse gas emissions or energy use (including energy efficiency) -

or similar matters and includes, without limitation, the –

- 48.1.3 *National Greenhouse and Energy Reporting Act 2007* (Cth); and
- 48.1.4 *Clean Energy Act 2011* (Cth) and related legislation known as the Clean Energy Legislative Package.

### 48.2 Contractor's Representation and Warranty

The Contractor represents and warrants in favour of the Principal that, in respect of this Contract (including the payments to be made by the Principal to the Contractor under this Contract), the Contractor has taken into account, or has had the opportunity to take into account –

- 48.2.1 the obligation to comply with the Carbon Laws; and
- 48.2.2 the costs, expenses, fees, charges, liabilities, taxes,

levies, surcharges, duties, imposts, interest, penalties, shortfall payments and any other cost or liability arising directly or indirectly from the Carbon Laws –

and acknowledges that all such matters are the Contractor's responsibility.

#### **48.3 Repeal of Carbon Laws**

If the Carbon Laws in force at the date of this Contract are changed or repealed, then the Principal will be entitled to reduce payment from the Principal to the Contractor by the following amounts under the changed or repealed Carbon Laws, as reasonably determined by the Superintendent –

- 48.3.1 any decrease to the costs, expenses, fees, charges, liabilities, taxes, levies, surcharges, duties, imposts, interest, penalties, shortfall payments or any other cost or liability arising directly or indirectly from the Carbon Laws which are payable or incurred by the Contractor; and
- 48.3.2. any increase to the Contractor's direct or indirect right or entitlement to carbon credits, industry assistance, compensation, rebates, allowances or other benefits.

To assist the Superintendent to make his or her determination under this clause 48.3, the Contractor must provide to the Superintendent any information and documents requested by the Superintendent.”

## **APPENDIX C**

### **OTHER CONTRACT DOCUMENTS**

Refer to the attached:

- 803-16 - Maribyrnong River Childcare Redevelopment - RFT Issue - Appendix C1 - Geotechnical
- 803-16 - Maribyrnong River Childcare Redevelopment - RFT Issue - Appendix C2 - Dial Before you Dig
- 803-16 - Maribyrnong River Childcare Redevelopment - RFT Issue - Appendix C3 – Miscellaneous Items

## **APPENDIX D**

### **SPECIFICATION**

Refer to the attached:

- 803-16 - Maribyrnong River Childcare Redevelopment - RFT Issue - Appendix D1 - Specification T2
- 803-16 - Maribyrnong River Childcare Redevelopment - RFT Issue - Appendix D2 - Architectural Project Schedule T02
- 803-16 - Maribyrnong River Childcare Redevelopment - RFT Issue - Appendix D3 - Door Hardware Schedule



## **APPENDIX E**

### **PRICING STRUCTURE**

Refer to the attached:

- 803-16 - Maribyrnong River Childcare Redevelopment - RFT Issue - Appendix E1 - Pricing Schedule
- 803-16 - Maribyrnong River Childcare Redevelopment - RFT Issue - Appendix E2 - Schedule of Alternate Products

**APPENDIX F**  
**RATES FOR VARIATIONS**

Refer to the attached:

- 803-16 - Maribyrnong River Childcare Redevelopment - RFT Issue - Appendix E1 - Pricing Schedule

**ATTACHMENT B**  
**ADDITIONAL INFORMATION AND DOCUMENTATION**

N-A

**ATTACHMENT C**  
**SELECTED SUB-CONTRACTORS**

<b>Work / Supply</b>	<b>Selected sub-contractors</b>	<b>May a non-conforming tender propose the use of another sub contractor?</b>  <b>Yes/No</b>
N-A		