



Department for Infrastructure and Transport

Infrastructure Delivery Division

Building Projects Directorate

AS4122-2010

SPECIAL CONDITIONS OF CONTRACT FOR CONSULTANTS - TEMPLATE

Including Annexure

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Government
of South Australia

Department for Infrastructure
and Transport

[Contract Name]

[Contract Number]

BP/PFO AS4122-2010

Special Conditions of Contract and Annexure

To be read in conjunction with Australian Standard General Conditions of Contract AS 4122—2010

BP Template: 24881299 - v1A

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These Special Conditions adapt clauses from the Transport Infrastructure Contract by the State of Queensland (Department of Transport and Main Roads) 2017.

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FORMAL INSTRUMENT OF AGREEMENT



Government of
South Australia

AGREEMENT FOR CONSULTANCY SERVICES

[Contract Name]

[Contract Number]

AGREEMENT made the date it is executed by the last party

BETWEEN:

CLIENT: The Minister for Infrastructure and Transport a body corporate established pursuant to the *Administrative Arrangements Act 1994* (SA)

Address: Level 14, 83 Pirie Street
Adelaide, South Australia 5000

ABN: 92 366 288 135

(the **Client**)

AND:

CONSULTANT: [insert]

Address: [insert]

ACN [insert]

(the **Consultant**)

IT IS AGREED THAT:

1. The *Consultant* shall perform the *Services* and otherwise perform its obligations in accordance with the *Contract*.
2. The *Client* shall pay the *Consultant* in accordance with the *Contract*.
3. The *Contract* is comprised of the documents listed in Annexure item 3.
4. In the event of conflict or inconsistency between the provisions of the Australian Standard General Conditions of Contract for Consultants (**AS4122-2010**) and the Special Conditions, the Special Conditions shall take precedence.
5. References to the "Annexures" in AS4122-2010 shall be read as Annexures to the Special Conditions as follows:

- (i) Annexure Part A in AS4122-2010 is the Annexure to these Special Conditions; and
 - (ii) Annexure Part B in AS4122-2010 is these Special Conditions.
- 6. References to "attached to these Special Conditions" shall be read as a reference to the attachments to the Special Conditions.
- 7. This *Contract* constitutes the entire agreement of the parties in respect of the matters dealt with in this *Contract* and supersedes all prior agreements, understandings, representations or negotiations in respect of the matters dealt with in this *Contract*.
- 8. Any modification to the terms of this *Contract* must be in writing and signed by each party.
- 9. The *Obligations of the Consultant*, if more than one person, under this *Contract*, are joint and several and each person constituting the *Consultant* acknowledges and agrees that it will be causally responsible for the acts and omissions (including breach of this *Contract*) of the other as if those acts or omissions were its own.
- 10. A waiver by either party in respect of a breach of a provision of the *Contract* by the other party is not a waiver in respect of any other breach of that or any other provision of the *Contract*. The failure of either party to enforce at any time any of the provisions of the *Contract* shall not be interpreted as a waiver of that provision.

SIGNED by a duly authorised officer for and on
behalf of **THE CLIENT** in the presence of:

.....

Witness signature

.....

Authorised officer signature

.....

Witness name

.....

Authorised officer name

.....

Date

.....

Date

SIGNED by **THE CONSULTANT** in accordance with
section 127 of the *Corporations Act 2001* (Cth) by
two directors or by one director and the company
secretary:

.....

Director signature

.....

Director/Company Secretary signature

.....

Director name

.....

Director/Company Secretary name

.....

Date

.....

Date

SPECIAL CONDITIONS OF CONTRACT

1 INTERPRETATION AND CONSTRUCTION OF CONTRACT

Add the following definitions to clause 1.1:

Acceptance of Tender	means the letter from the Client to the Consultant formally notifying the Consultant that its tender for the Services has been accepted subject to execution by the Consultant of the Formal Instrument of Agreement accompanying the letter (for Building Projects only).
BCISP Act	means the <i>Building and Construction Industry Security of Payment Act 2009</i> (SA);
Building Projects	is a reference to Works undertaken by the Building Projects directorate within the Department for Infrastructure and Transport (SA). The Works shall be deemed to be Building Projects Works when the Client's Representative is the DIT Director, Building Projects;
Business Day	has the meaning set out in the <i>Building and Construction Industry Security of Payment Act 2009</i> (SA);
Commencement Date	means the date: (a) the Contract becomes binding; or (b) the Consultant commences the Services; or (c) the Acceptance of Tender if an Acceptance of Tender is issued to the Consultant; or (d) the last of the parties signs the Formal Instrument of Agreement if an Acceptance of Tender is not issued; whichever is earlier;
Consultant's Industry Participation Plan	means the <i>Consultant's</i> plan included at Attachment 1 to these Special Conditions;
Consultant's Personnel	means the employees, agents, officers, subcontractors and representatives of the <i>Consultant</i> involved in delivering the <i>Services</i> ;
Date for Completion	means the date stated in <i>Item 13</i> ;
Deliverables	means those <i>Documents</i> and things required under this <i>Contract</i> to be handed over to the <i>Client</i> by the <i>Consultant</i> and includes plans, outputs, drawings, reports, records, sketches, photographs, designs, estimates, specifications, computer sourced codes, articles, information, calculations, models and files and data produced by the <i>Consultant</i> in the course of the <i>Contract</i> , but excludes the <i>Consultant's</i> internal administrative records.

Deed of Novation to SA Government Entity	means the deed at Attachment 5A to these Special Conditions;
Deed of Novation to Builder	means the deed at Attachment 5B to these Special Conditions;
Discipline Professional Service Contractors (DPSC)	means subconsultants directly engaged or to be engaged by the <i>Consultant</i> as outlined in Attachment 4.
Fault	means: • a defect, error, omission in the <i>Deliverables</i>; or • an amendment is necessary to the <i>Deliverables</i> because they are inappropriate for their intended use with regard to the assumptions that the <i>Consultant</i> can reasonably be expected to make in accordance with sound engineering principles;
Formal Instrument of Agreement	means the document described as such and signed (or to be signed in accordance with clause 2A) by both of the parties and to which this document is attached.
FOI Act	means the <i>Freedom of Information Act 1991</i> (SA);
GST Law	has the meaning set out in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Industry Participation Report	means a completed report prepared by the <i>Consultant</i> in either the standard plan report or tailored plan report, set out at clause 41.
Industry Participation Reporting Period	means the period of time calculated at clause 41.3;
LPSC	means a lead professional services contractor;
Lump Sum	means the method of payment for the <i>Services</i> as set out at clause 10.1A;
notice	means request, consent, approval, direction or other communication under or for the purposes of the <i>Contract</i> ;
Obligations of the Consultant	means the obligations expressed in this <i>Contract</i> to be performed by the <i>Consultant</i> or reasonably necessary to the performance by the <i>Consultant</i> of this <i>Contract</i> ;

otherwise at law	means in the context of claim, a claim in any legal jurisdiction, including but not limited to a claim under the <i>Contract</i> or for breach of contract, in tort, under statute, for a quantum meruit, for restitution based on unjust enrichment, for rectification or frustration or for any other legal or equitable remedy;
Property Fit Out	is a reference to Works undertaken by the Fit Out Construction team in the Property directorate within the Department for Infrastructure and Transport (SA) The Works shall be deemed to be Property Fit Out Works when the Client's Representative is the DIT Director, Property;
Provisional Sum	means a sum included in the <i>Contract</i> for <i>Services</i> or an item which is not payable unless the <i>Client</i> directs the <i>Consultant</i> to perform the related <i>Services</i> or item;
Prescribed Heads of Liability	means any liability for: (a) personal injury including sickness and death; (b) loss of or damage to tangible property; (c) infringement of any <i>Intellectual Property Right</i>; (d) any liability to a third party arising from: (i) a negligent or wrongful act or omission by the <i>Consultant</i>, its employees, agents or <i>subcontractors</i>; or (ii) any breach of the <i>Consultant's</i> contractual obligation to the <i>Client</i>; (e) an intentional tort; (f) a breach of trust; (g) wilful default; (h) breach of confidentiality; and (i) fraud or dishonesty, and none of the <i>Prescribed Heads of Liability</i> limits any of the others.
Professional Service Contractor	means <i>Consultant</i> and is a term that is used in the context of the South Australian Government reporting framework.
Program	means a statement in writing showing the dates by which, or the times within which, the various stages of the <i>Services</i> are to be executed or completed;
Project	means the project being or to be undertaken by the <i>Client</i> and in respect of which the <i>Services</i> are being provided.
Schedule of Rates	means the method of payment for the <i>Services</i> as set out at clause 10.1B;
Schedule of Prices	means a schedule (other than a <i>Schedule of Rates</i>) which provides an itemised and priced breakdown of any <i>Services</i> ;
Site	means the location of the <i>Works</i> ;

Scheduled Progress	The rate of progress to be achieved by the Consultant in carrying out the Services, such that the Consultant is proceeding with due expedition and without undue delay (other than a delay for which the Date for Completion is adjusted under the Contract), so that it will complete the Services by the Date for Completion.
subcontractor	means any contractor, consultant or supplier (including their personnel), engaged by or on behalf of the <i>Consultant</i> and includes any supplier or hirer of materials, plant or equipment;
Tax Invoice	has the meaning set out in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
The Indemnified	has the meaning given in clause 28.1, as replaced by these Special Conditions;
Upper Limiting Fee	means the method of payment for the <i>Services</i> as set out at clause 10.1C;
WGE Act	means the <i>Workplace Gender Equality Act 2012</i> (Cth);
WHS Act	means the <i>Work Health and Safety Act 2012</i> (SA);
WHS Law	means: (a) the <i>WHS Act</i>; (b) any regulations made at any time under the <i>WHS Act</i>; (c) any provision of the <i>WHS Act</i> or regulations referred to in paragraph (b); any amendment to any of the above or any other legislation in connection with the implementation or as a consequence of the <i>WHS Act</i> , made at any time;
WHS Regulations	means the <i>Work Health and Safety Regulations 2012</i> (SA);
Works	means any construction works which have flowed from any design works that are part of the <i>Services</i> ;

Delete the following definitions in clause 1.1:

Business Day	means calendar day but excludes public holidays as defined by the governing law of this <i>Contract</i> and weekends;
Deliverables	means those <i>Documents</i> and things required under this <i>Contract</i> to be handed over to the <i>Client</i> by the <i>Consultant</i> .

1.2 Interpretation

Add the following subclauses after clause 1.2(e):

(f)	references to any party to the <i>Contract</i> includes references to successors or permitted assignees;
-----	--

- (g) the words 'such as,' 'particularly,' 'including' and 'includes', and any variants of those words are not used as nor are intended to be words of limitation and will be read as if followed by the words "without limitation";
- (h) unless stated otherwise, a reference to a document that is not a *Contract Document* (such as an Australian Standard) in this *Contract* is a reference to the edition of that document current at the date 14 days prior to the *Consultant's* submission of tender for the *Contract*; and
- (i) prices, sums of money and payments under the *Contract* shall be in Australian currency.

2 CONSULTANT TO PERFORM SERVICES

Delete the sentence under clause 2 and **replace** it with the following:

- 2.1 The *Consultant* must perform the *Services* in accordance with this *Contract*.
- 2.2 The *Consultant* shall take reasonable actions to ensure that:
 - (a) it has the necessary skills, and experience to complete the *Services* in accordance with the *Contract*;
 - (b) its employees, *subcontractors* and agents have the necessary skills and experience to perform those *Obligations of the Consultant* which are allotted to them by the *Consultant*, and
 - (c) in accordance with the standard of care in clause 4, the subject matter of the *Services* or *Deliverables* shall be complete, correct, free from defects and errors and appropriate for the intended use with regard to the assumptions that the *Consultant* can be reasonably expected to make in accordance with sound engineering principles and with a view to omitting any ambiguity.
- 2A.1 For Building Projects only, the Contract may be formed by the Client sending an Acceptance of Tender to the Consultant after which this Contract must be signed by the parties.
- 2A.2 Where an Acceptance of Tender is used to form the Contract, the Consultant must also execute one copy of a Formal Instrument of Agreement and return to the Client within 7 days of being forwarded by the Client. The Client will provide an electronic copy of the executed Formal Instrument of Agreement to the Consultant for its records.
- 2A.3 Where the Consultant does not return one executed copy of the Formal Instrument of Agreement within the timeframe specified in the previous paragraph, then, unless advised otherwise in writing by the Client, the Acceptance of Tender will be deemed withdrawn, and the Contract terminated, with no compensation payable by the Client to the Consultant, including for any work under the Contract performed by the Consultant prior to the withdrawal.

3 CLIENT TO PAY

No amendment

4 STANDARD OF CARE

No amendment

5 SCOPE

Add the following new subclauses after clause 5.4:

- 5.5 Unless specified otherwise, the *Consultant* is entitled to retain the original *Deliverables*.

- 5.6 *Deliverables* must be provided to the *Client* in hard copy and in electronic files. The electronic files must be in an editable format which is acceptable to the *Client*, and also in Portable Document Format (.pdf).
- 5.7 The *Consultant* agrees and acknowledges that the *Client*, in its absolute discretion, may provide the *Deliverables* to third parties.
- 5.8 The *Consultant* shall at all reasonable times give to the *Client*, or to any other persons authorised in writing by the *Client*, access to premises occupied by the *Consultant* where the *Services* are being undertaken and shall permit those persons to inspect the performance of the *Services* and anything brought into existence in association with this *Contract*.
- 5.9 If stated in Item 38, the Consultant must comply with the obligations in Attachment 8, 9 and/or 10.
- 5.10 The *Client* may at any time prior to *Completion* request a copy of the *Deliverables* in the state they are in at the time of the request and the *Consultant* shall promptly comply with such request.

6 CLIENT'S REPRESENTATIVE AND CONSULTANT'S REPRESENTATIVE

Add the following sentence to clause 6.2:

The *Consultant's* representative must have the authority to make binding decisions on behalf of the *Consultant* and at a minimum, must be contactable by the *Client* at any time during normal business hours.

7 INFORMATION

No amendment

8 DIRECTIONS

No amendment

9 VARIATIONS

Add the following subclauses after clause 9.2 as follows:

- 9.2A If the *Consultant*:
- (a) becomes aware of a potential *Variation*; or
 - (b) considers that additional services are required and that these additional services are not within the *Scope*,
- the *Consultant* must as soon as practicable and before performing any additional services to which the potential *Variation* relates, give written *notice* thereof to the *Client*. The *notice* must include a description of the additional services and an estimate of the value of the *Variation*. The *Consultant* must not proceed with the varied *Services* unless the *Client's* written approval has been provided. If requested by the *Client*, the *Consultant* must provide a proposed *Lump Sum* or *Upper Limiting Fee* for the varied *Services*.
- 9.2B The *Consultant* agrees and acknowledges that:
- (a) the *Client* is not liable to make payment to the *Consultant* for any of the additional services referred to in clause 9.2A or 9.2B if the *Consultant* has not given written *notice* to the *Client* prior to providing the additional services; and
 - (b) compliance with the requirements of clause 9.2A is a condition precedent for payment for the provision of any additional services which are not within the *Scope*.

Delete clause 9.3 and **replace** it with the following:

- 9.3 The *Fee* must be adjusted for each *Variation*. Unless the amount of the adjustment is agreed, the adjustment must be calculated using the following order of precedence:
- (a) if the *Contract* prescribes specific rates or prices to be applied in determining the value of *Variations*, those rates or prices shall be used;
 - (b) if clause (a) does not apply, then if a *Schedule of Rates* is identified at *Item 8* and is applicable, the valuation will be made by using the *Schedule of Rates*, or where no rate is directly applicable, a rate calculated by inference, proportion or interpolation; and
 - (c) to the extent that neither clause (a) nor (b) apply, then the valuation will be made using reasonable rates or prices.

Add the following clauses after clause 9.4:

Client Initiated Variation

- 9.5 The *Consultant* shall advise the *Client* of the effect which the *Consultant* anticipates that a proposed *Variation* will have on the *Program* and the *Date for Completion* and provide an estimate of the cost (including delay costs, if any) of the proposed *Variation*.
- 9.6 If the *Consultant* considers that the proposed *Variation* cannot be reasonably implemented, the *Consultant* shall advise the *Client* of the reasons for its conclusion as soon as reasonably possible.
- 9.7 Where the *Consultant* advises that the proposed *Variation* can be reasonably implemented, the parties shall meet and attempt to agree on the price and timing for the proposed *Variation*.
- 9.8 Where the *Client* and the *Consultant* agree on a proposed *Variation*, the *Client* may direct the *Consultant* by delivery of a written *Variation* order, to carry out the *Variation* for the agreed price and according to the agreed timing.
- 9.9 Where:
- (a) the *Client* and the *Consultant* cannot agree upon the price and/or timing for a proposed *Variation*, or
 - (b) the *Consultant* considers that the proposed *Variation* within a certain time (acting reasonably) cannot be reasonably implemented,
- the *Client* may direct the *Consultant* by delivery of a written *Variation* order, to carry out the *Variation*, which shall be valued under clause 9.3.

10 PAYMENT

Add the following subclauses after clause 10.1 as follows:

- 10.1A For *Services* for which the *Client* has accepted a *Lump Sum*:
- (a) the *Client* will pay the agreed fixed *Lump Sum*, adjusted by any additions or deletions made pursuant to this *Contract*.
 - (b) payment will not exceed the fixed *Lump Sum* unless the *Client* has directed a *Variation*.

(c) the *Lump Sum* is deemed to be full payment for the provision of all supplies, tasks, services, activities, incidentals, overheads, fees, escalation and disbursements relating to the *Lump Sum* part of the *Contract*, regardless of whether or not these are mentioned in any *Schedule of Prices*. If a *Schedule of Prices* has been provided, it will only be used for the purpose of assisting in the determination of progress payments.

(d) Unless specified otherwise, progress payments will be made as a portion of the agreed fixed *Lump Sum* commensurate with the amount of *Services* provided as of the date of invoice.

10.1B For *Services* for which the *Client* has accepted a *Schedule of Rates*:

(a) the *Client* will pay the sum ascertained by multiplying the measured quantity of each item of service actually carried out under this *Contract* by the rate accepted by the *Client* for the item of service, adjusted by any additions or deletions made pursuant to this *Contract*; and

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

10.1C For work for which the *Client* has accepted an *Upper Limiting Fee*, the *Client* will:

(a) where the Upper Limiting Fee is associated with Schedule of Rates, pay an amount ascertained on the same basis as a *Schedule of Rates*, up to the amount of the *Upper Limiting Fee*. Payment for completion of the *Services* will not exceed the *Upper Limiting Fee* unless the *Client* has directed a *Variation* to the *Scope of Services* that requires additional payment; and

(b) unless otherwise provided in this *Contract*, where the Upper Limiting Fee is associated with disbursements listed at Annexure Item 8 and Attachment 4, pay an amount based on the actual costs incurred on an open book basis to a maximum of the *Upper Limiting Fee*. The *Consultant* shall provide evidence of disbursement expenditure including but not limited to invoices and receipts and any other documentation as is reasonably required by the *Client* to verify the claim for payment. Payment will not exceed the *Upper Limiting Fee* unless the *Client* has directed a *Variation* to the *Scope of Services* that requires additional payment.

10.1D The fixed or indicative fee component and disbursement fee component of the Fees shall include GST.

10.1E The fixed and indicative fee includes (but is not limited to):

(a) (for Building Projects only) the *Consultant's* time (including hours spent in country, interstate and international travel) in the performance of the *Scope of Services*;

(b) all general administration costs including telephone calls, courier services, photocopying, presentation material, printing (except tender/contract documentation);

(c) interstate and/or international travel costs for attendance in Adelaide required as part of the *Consultant's* provision of the *Services*;

(d) travel costs in the Adelaide metropolitan area (within 32 kms of the Adelaide GPO) including car parking;

(e) any item not listed as a disbursement but necessary and necessarily incidental for the proper performance of the *Consultant's* obligations under the *Contract*.

No additional fee payment will be made for these items.

10.1F The fixed and indicative Disbursement fee includes:

(a) those items set out in Annexure item 9.

(b) travel by motor vehicle to attend the Site, where the Site is located more than 32 kms radius from the Adelaide GPO, calculated by multiplying the distance travelled in excess of 32 kms radius from the Adelaide GPO by the travel rates (cents per kilometre method) published by the Fair Work Commission in the Professional Employees Award 2020 for the applicable

financial year in which the travel occurred.

(c) costs associated with travel to the Site when the *Consultant* is required to travel to the Site by flight.

(d) country, interstate and international travel and accommodation costs (excluding *Consultant* time and excluding travel and accommodation costs where incurred for attendance in Adelaide as part of the *Consultant's* provision of the *Services*), and

(e) printing (tender/contract documentation) and other costs as agreed by the *Client*.

(f) Payment of disbursements will be made as the expenditure is incurred and for actual amounts incurred. The *Consultant* shall provide evidence of disbursement expenditure including but not limited to invoices and receipts and any other documentation as is reasonably required by the *Client* to verify the claim for payment.

10.1G For the engagement of LPSC's, the fixed or indicative disbursement component of the contract price may include costs for the preparation of perspectives and models, costs for soils testing, survey, statutory fees and dilapidation reports.

10.1H For Building Projects only, the *Consultant's* time in relation to the Disbursements is included in the fixed Lump Sum Fees. Accordingly, the Disbursements Fee included in Item 9 must not include the *Consultant's* time associated with the Disbursement.

10.1I If after execution of the Contract there is a requirement for the *Consultant* to undertake additional work, the *Consultant* must if required submit a revised fee on the basis of the fixed and indicative fees and disbursements. Revised fees which are not consistent with the Fees or with Department for Infrastructure and Transport (the Department) market data on fees and disbursements for similar projects may be rejected.

Add a new subclause after clause 10.4 as follows:

10.4A Without limiting the effect of subclause 10.4 herein, the payment claim must:

- (a) contain full details of any approved *Variations* which have been completed or partially completed;
- (b) contain the estimated cost to complete the *Services*, including approved *Variations* and any anticipated future *Variations* that the *Consultant* is aware of;
- (c) contain if requested by the *Client*, an earned value report in accordance with AS 4817-2006 'Project Performance Measurement Using Earned Value';
- (d) if stated as being required in Annexure Item 37, contain a completed and true Statutory Declaration in the form of Attachment 7, executed on the date of the payment claim; and
- (e) be in the format specified in clause 1.10 of Attachment 8.

Delete clause 10.8 and replace it as follows:

10.8 Where the *Consultant* submits a payment claim that satisfies the requirements of clause 10.4 and clause 10.4A and the *Client* fails to make the payment that is due and payable in accordance with clause 10.6, the *Consultant* may notify the *Client* in writing that it will suspend performance of the *Services*, after expiry of at least 5 *Business Days* written notice to the *Client*. Unless the payment has been made, the *Consultant* may suspend performance of the *Services* any time after expiration of the notice period. The *Consultant* must promptly lift the suspension after the *Client* has made the payment.

Add new clauses 10.11 to 10.12 as follows:

10.11 If the *BCISP Act* applies to the payment claim, the *Client's* address for the service of *notices* is the address of the *Client's* representative or such other address advised by the *Client's* representative.

- 10.12 Unless set out in the *Contract* or otherwise agreed in writing, the *Consultant* shall be responsible for all travelling expenses, costs of consumables and office expenses incurred in providing the *Services*.

11 GST

Delete clause 11 and **replace** it with the following:

11. GOODS AND SERVICES TAX

- 11.1 Payment from the *Client* to the *Consultant* will include the GST payable.
- 11.2 Any invoice for payment under this *Contract* shall be a *Tax Invoice* in accordance with the *GST Law*. The *Client* is not obliged to make any payment under this *Contract* unless the *Consultant* has provided a *Tax Invoice* in respect of that payment.

12 TIME

Delete clause 12 and **replace** it with the following:

12. TIME

- 12.1 The *Consultant* shall commence the *Services* promptly upon execution of this *Contract* and shall proceed with due expedition and without delay and complete the *Services* by the *Date for Completion*.
- 12.1A The *Consultant* must carry out the *Services* in accordance with *Scheduled Progress*.
- 12.1B Whenever requested, the *Consultant* must demonstrate to the *Client* that it is achieving *Scheduled Progress*.
- 12.1C For these purposes and without limiting the generality of the foregoing, the *Consultant* shall be obliged, in consultation with the *Client's Representative*, to take such positive steps to re-schedule, re program, expedite and adjust activities, sequences and the carrying out and execution of the *Services* generally so as to ensure that *Scheduled Progress* is maintained.
- 12.1D If the *Consultant* is not achieving *Scheduled Progress*, the *Client* may instruct the *Consultant* to take all reasonable steps to achieve *Scheduled Progress*, at the *Consultant's* cost.

Programs

- 12.2 If required by Annexure Item 41, the *Consultant* must provide a *Program* that complies with any requirements set out in Attachment 10 within the time and in the form directed by the *Client*. The *Program* must include a schedule of key dates, which can be adjusted at the *Client's* request. The *Consultant* shall not, without reasonable cause, depart from:
- (a) a *Program* included in the *Contract*; or
 - (b) a *Program* furnished to the *Client*.
- 12.3 The *Consultant* may voluntarily furnish a *Program* to the *Client* at any time. A *Program* shall not affect the rights or obligations in this clause 12, including the obligation not to depart from an earlier *Program*.
- 12.4 A *Program* does not form part of the *Contract* and shall only be used for the purpose of enabling the *Client* to monitor the progress of the *Consultant* in the provision of the *Services*.

Delay

- 12.5 Within 10 *Business Days* of it becoming evident to the *Consultant* that anything, including an act or omission of the *Client*, *Client's* employees, consultants, *subcontractors* or agents may delay the *Consultant*, the *Consultant* shall notify the *Client* in writing with details of the possible delay and the cause. The *notice* shall be endorsed '*Consultant's Notice of Possible Delay Under Clause 12.5*'.

- 12.6 When it becomes evident to the *Client* that anything which the *Client* is obliged to do or provide under the *Contract* may be delayed, the *Client* shall give *notice* to the *Consultant* in writing of the extent of the likely delay.
- 12.7 If the *Consultant* is, or will be delayed in, reaching the *Date for Completion* and satisfies the *Client* that all the following conditions apply:
- (a) the cause of the delay was a cause identified in clause 12.5 or *Item 14*;
 - (b) the cause of the delay was beyond the control of the *Consultant*;
 - (c) the *Consultant* has taken all reasonable steps to avoid and minimise the delay and its effects; and
 - (d) within 20 *Business Days* after the commencement of that cause the *Consultant* gives the *Client* a written claim for an extension of time to the *Date for Completion* endorsed '*Consultant's Extension of Time Claim Under Clause 12.7*' and setting out the facts on which the claim is based,
- the *Consultant* shall be entitled to an extension of time to the *Date for Completion* for the number of days assessed by the *Client*.
- 12.8 With any claim for an extension of time to the *Date for Completion*, or as soon as practicable thereafter, the *Consultant* shall give the *Client* written *notice* of the number of days extension claimed.
- 12.9 If the *Consultant* is entitled to an extension to the *Date for Completion*, the *Client* shall within 10 *Business Days* after receipt of the *notice* of the number of days extension claimed, grant a reasonable extension of time. If within the 10 *Business Days* the *Client* does not grant the full extension of time claimed, the *Client* shall, before the expiration of the 10 *Business Days*, give the *Consultant* *notice* in writing of the reason.
- 12.10 Where an extension of time is granted following notice under clause 12.7, and the delay is caused solely by the *Client*, the *Consultant* may apply for a Variation under clause 9 of the *Contract* as if the extension of time was a Direction by the *Client*. Where the *Client* agrees that a Variation is appropriate and that the Variation will involve the *Consultant* incurring additional cost, the following shall apply:
- (a) the additional cost payable by the *Client* shall be determined by using the following order of precedence:
 - a. by applying a pro-rata rate of the Part 3 Fee for the PIP 5.5 Services during construction;
 - b. If clause 12.10(a)a. does not apply due to the extension of time occurring during a Part other than Part 3 PIP 5.5, then the costs shall be determined by agreement or in accordance with clause 9.3; and
 - (b) the cost determined under clause 12.10(a) shall be payable after completion of the *Services* and only if completion of the *Services* was actually delayed for the number of days assessed by the *Client* when granted the relevant extension of time.
- 12.11 Notwithstanding that the *Consultant* is not entitled to or has not claimed an extension of time the *Client* may at any time and from time to time by *notice* in writing to the *Consultant* extend the *Date for Completion* for any reason.

13 LAW AND APPROVALS

No amendment

14 CONSULTATION AND MEETINGS

No amendment

15 REVIEW AND ACCEPTANCE

No amendment

16 ADVERSE EVENT

No amendment

17 COOPERATION WITH OTHERS

No amendment

18 KEY PERSONNEL

Add the following paragraphs to clause 18:

The key personnel (including any *subcontractor's* key personnel) nominated in the *Consultant's* tender must perform the *Services*, unless they are on leave or have resigned from the *Consultant's* or *subcontractor's* employment. The skills and experience of the alternative personnel must not be less than the personnel that they are replacing.

The *Consultant* acknowledges and agrees that:

- (a) there is no contract of any nature in existence pursuant to this *Contract* between the *Client* and any person employed or engaged by the *Consultant* for the purposes of this *Contract*;
- (b) the *Consultant* is liable for all remuneration, claims and other entitlements payable to the *Consultant's* Personnel; and
- (c) the *Consultant* is responsible for complying with the requirements with the *Income Tax Assessment Act 1936* (Cth) pursuant to this *Contract* to the extent that the *Client* is not thereby required to make PAYG deductions from any amount payable for the *Services*.

The *Consultant* indemnifies the *Client* and must keep the *Client* indemnified against any claims by any person who is employed by or is an agent of the *Consultant* that it may be held or asserted that a relationship of employer and employee has been created under this *Contract*.

If the *Client* forms the reasonable opinion that any of the *Consultant's* Personnel do not have the capacity to adequately undertake the tasks to be performed pursuant to this *Contract* or do not maintain the standard of work required by this *Contract* or are responsible for any disruption of work being undertaken as part of this *Contract*, the *Client* may notify the *Consultant* accordingly, and thereupon such *Consultant's* Personnel must be withdrawn from undertaking further work involved in the *Services*.

19 CONFLICT OF INTEREST

Delete clause 19.4 and **replace** it as follows:

- 19.4 The *Consultant* must immediately notify the *Client* of any conflict of interest or any circumstances which may give rise to a conflict of interest for the *Consultant* in respect of the *Contract* and comply with any reasonable direction of the *Client* with respect to such conflict of interest.

Add the following clauses after clause 19.5 as follows:

- 19.6 The *Consultant* must not permit or contribute to any publicity in respect of the *Contract* or any related matter unless the *Consultant* has obtained the *Client's* approval.
- 19.7 For the avoidance of doubt, a conflict of interest includes a potential, actual or perceived conflict of interest.

20 SUBCONTRACTING AND ASSIGNMENT

Add the following new clauses after clause 20.4:

- | | |
|------|---|
| 20.5 | The <i>Consultant</i> must enter into subcontracts with subconsultants on the same terms and conditions as this <i>Contract</i> (other than clause 53 (Audit) which may be deleted at the <i>Consultant's</i> discretion) without changing the intent or effect, subject only to such amendments and appropriate changes in detail as are necessary to reflect the conditions of that subcontract. |
| 20.6 | The <i>Client</i> may assign the <i>Contract</i> to another Minister of the Crown in right of the State of South Australia by notice to the <i>Consultant</i> . |
| 20.7 | The <i>Client</i> may require subconsultant work to be undertaken by professional service contractors registered in the Department for Infrastructure and Transport Building and Construction Project Prequalification System (the Department Prequalification System) and if required the <i>Consultant</i> must ensure that the designated subconsultant work is undertaken by professional service contractors registered in the Department Prequalification System. |
| 20.8 | Without limiting the foregoing, the <i>Consultant</i> must ensure that all subcontracts include payment provisions which reflect that the <i>Consultant</i> must pay the <i>Subcontractor</i> within (and by no later than) 15 days from the date of submission of a claim for payment. |

20A NOVATION TO SA GOVERNMENT ENTITY

Add a new clause 20A as follows:

- | | |
|---------------------|--|
| 20A NOVATION | |
| 20A.1 | If the <i>Client</i> wishes to novate this <i>Contract</i> to another South Australian Government entity, the <i>Client</i> will issue a written request to the <i>Consultant</i> . |
| 20A.2 | Within 5 <i>Business Days</i> of a request from the <i>Client</i> in accordance with clause 20A.1, the <i>Consultant</i> must, at its own cost enter into a deed of novation in substantially the same form as the <i>Deed of Novation to SA Government Entity</i> . |

20B NOVATION

Add a new clause 20B as follows:

- | | |
|--------------------------------|---|
| 20B NOVATION TO BUILDER | |
| 20B.1 | When directed by the <i>Client</i> , the <i>Consultant</i> , without being entitled to compensation, shall promptly and within not longer than 5 Business Days execute a deed of novation in the same form as the <i>Deed of Novation to Builder</i> (but with blank sections completed), between the <i>Client</i> , the <i>Consultant</i> and a general building contractor ("Contractor"). |
| 20B.2 | The <i>Consultant</i> must act reasonably and within a timely manner to finalise Fees for inclusion into the Deed of Novation to enable novation to occur. |
| 20B.3 | As part of the Services after novation to the <i>Contractor</i> the <i>Consultant</i> shall certify to the <i>Contractor</i> that the design conforms fully with all Legislative Requirements and the Principal's Project Requirements (as defined in the design and construction contract for the Project ("D & C Contract"))". |
| 20B.4 | Notwithstanding any other provision of this <i>Contract</i> , following a novation referred to above, the <i>Client</i> consents to the notifying the Minister for Transport and Infrastructure ("Principal") (or any of the Principal's representatives or delegates under the D & C Contract) of any changes to the design where the <i>Consultant</i> is of the view that the change has the potential to: |

- (a) be inconsistent with or otherwise not satisfy the project outcomes or other Principal's requirements, including as set out in the Principal's Project Requirements (as defined in the design and construction contract for the Project ("D & C Contract"));
- (b) have an impact on whether the works under the D & C Contract are fit for their purpose;
- (c) materially affect the end user requirements, including but not limited to performance, life cycle costing, operational requirements, functionality, warranties and maintenance requirements.

20B.5 Any notification by the Consultant under this clause does not, in whole or in part, relieve the Client from its obligation to comply with the requirements of this *Contract* or the D & C Contract.

21 COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

Add a new clause 21.7 as follows:

21.7 The *Consultant* releases and indemnifies the *Client* from and against all actions which may be brought or made against the *Client* by any person, including the *Client*, arising from any infringement or alleged infringement of any *Intellectual Property Rights* or moral rights in respect of the *Deliverables*.

22 MORAL RIGHTS

No amendment

23 CONFIDENTIALITY

Delete clause 23.1 and replace it as follows:

23.1 Subject to clause 23.2, the *Consultant* must treat as confidential:

- (a) all *Documents* generated by this *Contract*; and
- (b) all other information which of its nature is confidential or which the *Consultant* ought reasonably to know is confidential.

The *Client* is not obliged to treat the *Deliverables* as confidential, but will treat other *Documents* as confidential.

Delete clause 23.3 and replace it as follows:

23.3 The *Consultant* must not publish or enable others to publish any information connected with the *Services* or this *Contract* without the consent of the *Client*, which may be withheld at the *Client's* sole and unfettered discretion.

Add a new clause 23.5 as follows

23.5 The *Consultant* agrees to disclosure of this *Contract* in accordance with Department of Premier and Cabinet Circular 27 (PCO27) 'Disclosure of Government Contracts'. The *Consultant's* attention is drawn to the *FOI Act*. No exemption from the provisions of the *FOI Act* applies to this *Contract*.

24 SUSPENSION BY THE CLIENT

Delete clause 24.4 and **replace** it with "Not Used."

25 SUSPENSION BY THE CONSULTANT

No amendment

26 TERMINATION WITHOUT CAUSE

No amendment

27 TERMINATION DUE TO DEFAULT OF EITHER PARTY

Add the following subclauses after 27.2(d):

- (e) the *Consultant* fails to observe or perform a material *Obligation of the Consultant* or the work performed by the *Consultant* is otherwise unsatisfactory to the *Client* (in the *Client's* reasonable opinion);
- (f) the *Consultant* fails to comply with a *Direction* of the *Client* given in accordance with the provisions of the *Contract*;
- (g) the *Consultant* assigns any of its benefits or purports to assign, sub-let or otherwise divest itself of any of the *Obligations of the Consultant* without the written consent of the *Client*;
- (h) the *Consultant* abandons or refuses to proceed with the supply of *Services* whether or not it has commenced work;
- (i) the *Consultant* is not able to reasonably satisfy the *Client* that the *Consultant* will be able to complete the *Services* by the *Date for Completion* or reach previously agreed significant milestones;
- (j) failing to comply with the requirements of subclause 20B.1 in relation to novation;
- (k) failing to comply in part or in whole with the requirements of subclause 48.2 to 48.7 (inclusive) in relation to Local Providers; or
- (l) significantly failing to achieve *Scheduled Progress*.

Add the following new subclause 27.5:

- 27.5 On expiry, termination or frustration of the *Contract*, the *Consultant* must promptly deliver to the *Client* the *Deliverables* produced by the *Consultant* in the course of the *Contract* (including any incomplete *Deliverables* and any materials which would have been prepared by the *Consultant* which would have formed part of the *Deliverables* had the *Contract* not been terminated or frustrated and the *Consultant* had met its obligations under the *Contract*).

28 INDEMNITY

Delete clauses 28.1 and 28.2 and **replace** it with the following:

- 28.1 Subject to Clause 29 the *Consultant* shall indemnify the *Client* against:
- (a) loss or damage to property of the *Client* including the *Deliverables*; and
 - (b) claims by any person against the *Client* in respect of personal injury or death or loss of or damage to any other property,
- arising out of or in consequence of the negligent acts, errors or omissions or breach of *Contract* of the *Consultant* or its subcontractors, employees, agents, visitors, invitees or licensees but the *Consultant's* liability to indemnify the *Client* shall be reduced proportionally to the extent that the act or omission of the *Client* or the employees, agents or other contractors of the *Client* contributed to the loss, damage, death or injury. The indemnity under this Clause 28.1 shall not apply to the extent that:
- (a) the liability of the *Consultant* is limited by another provision of the *Contract*;
 - (b) the *Contract* excludes any other right of the *Client* to be indemnified by the *Consultant*; and/or

- (c) the Client fails to act reasonably to mitigate the liability, loss or damage, cost or expense.

28.2 The indemnity in this clause 28 shall survive expiry or termination of the *Contract*.

29 LIMITATION OF LIABILITY

Delete clause 29 and replace it with the following:

29. LIMITATION OF LIABILITY

29.1 Limitation

- (a) Except for any liability in respect of the *Prescribed Heads of Liability* (which remain unlimited), the *Client* and the *Consultant* agree to limit the liability of either party to the other party to the amount equal to the greater of the *Fee* or the amount of the relevant insurance that the *Consultant* is required to maintain under this *Contract* regardless of what the *Client* is indemnified for or actually recovers.
- (b) The liability of a party for loss or damage sustained by the other party will be reduced to the extent that such loss or damage has been caused by the other party's breach of contract, act, omission or negligence.

29.2 Exclusion of Liability

A party will not be liable to the other party for:

- (a) loss of business opportunity;
- (b) loss of goodwill;
- (c) loss of profit;
- (d) loss of contracts;
- (e) loss of or corruption of data;
- (f) loss of anticipated savings;
- (g) loss of revenue;
- (h) the cost of capital or other financing costs; or
- (i) loss of production,

which loss or cost arises due to the party's breach of this *Contract*, act, omission or negligence.

29.3 Priority of Clause 29

In resolving inconsistencies in the *Contract*, the provisions of this clause 29 shall take priority.

30 INSURANCE

No amendment

31 INSOLVENCY

No amendment

32 DISPUTE RESOLUTION

No amendment

33 SERVICE OF NOTICES

Delete clause 33 and replace it as follows:

33 SERVICE OF NOTICES

- 33.1 A *notice*, shall be in writing, in English and addressed to the receiving party, and either:
- (a) sent by registered post to or left at the address specified in *Item 29*;
 - (b) handed to the other party's representatives identified in clause 6 and *Item 6* or *Item 7*;
 - (c) sent by email to the email address specified in *Item 29*, or
 - (d) sent via a proprietary document management system which the parties have agreed in writing may be used for the purpose of giving a *notice* under the *Contract*.
- 33.2 A *notice* is deemed to have been received:
- (a) if sent by registered post, on the third *Business Day* (or the 10th *Business Day* if posted to or from a place outside Australia) after posting;
 - (b) if delivered personally, upon delivery
 - (c) if sent by email:
 - a. on a *Business Day*, on dispatch of the transmission, or
 - b. on a day other than a *Business Day*, on the next *Business Day*,
unless the sender's server indicates a malfunction or error in transmission or the recipient immediately notifies the sender of an incomplete transmission, or
 - (d) if sent via any proprietary document management system which the parties have agreed may be used for the purpose of giving a *notice* under the *Contract*, upon notification from that system to the recipient of the *notice* having been delivered on the proprietary document management system.
- 33.3 A party may specify another address or email address for the purposes of this clause 33, by *notice* to the other party.
- 33.4 Any *notice* served after 5pm on any *Business Day* or on a day which is not a *Business Day* is deemed to be served on the next *Business Day*.
- 33.5 Service of payment claims under the *BCISP Act* by the *Consultant* on the *Client* shall be made by forwarding or serving such claims to the *Client's* representative identified at *Item 6*.

34 SURVIVAL OF TERMINATION

No amendment

35 GOVERNING LAW

No amendment

36 STANDARD FORM NATURE OF CONTRACT

Delete this clause and replace it with "Not Used."

37 CONSULTANT'S CONDUCT

Add the following new clause 37:

37. CONSULTANT'S CONDUCT

- 37.1 The *Consultant* represents and undertakes to the *Client* that it will conduct itself in a manner that does not invite, directly or indirectly, the *Client's* officers, employees or agents or any public sector employee (as defined in the *Public Sector Act 2009* (SA)) to behave unethically, to prefer private interests over the *Client's* interests or to otherwise contravene the Code of Ethics for the South Australian Public Sector.
- 37.2 The *Client* is a public authority for the purposes of the *Independent Commissioner Against Corruption Act 2012* (SA) ("ICAC Act"). For the term of the *Contract* the *Consultant* is

- considered a public officer under the ICAC Act and must comply with the ICAC Act and the directions and guidelines published by the Independent Commissioner Against Corruption.
- 37.3 The *Consultant* must comply with the Code of Practice for the South Australian Construction Industry. Lodgement of a tender will be evidence of the *Consultant's* agreement to comply with the Code for the duration of any resulting contract that may be awarded. If any *Consultant* fails to comply, the failure will be taken into account by the Government of South Australia and its Agencies when considering this or any subsequent tender by the *Consultant* and may result in such tender being passed over and or a change in the status of the *Consultant* on any South Australian Government register of consultants.

38 WORK HEALTH AND SAFETY

Add the following new clause 38:

38 WORK HEALTH AND SAFETY

- 38.1 The *Client* is committed to the provision of a healthy and safe working environment and expects the *Consultant* to demonstrate the same level of commitment to work health and safety. The *Consultant* must ensure all *Services* are carried out safely and in a manner that does not put the health and safety of persons at risk and comply with the *WHS Law*.
- 38.2 If requested by the *Client*, the *Consultant* must provide:
- (a) evidence satisfactory to the *Client* of its capacity to comply with the *WHS Act*;
 - (b) evidence that its personnel, agents and *subcontractors* have received appropriate training in and are aware of their legal obligation and responsibilities in relation to work health and safety; and
 - (c) the *Consultant's* registration number with the Return to Work Corporation.
- 38.3 The *Consultant* must when on the premises occupied by the *Client* and when using the *Client's* facilities, comply with the *Client's* work health and safety policies, directions, procedures and instructions relating to work health and safety that are in effect at those premises and facilities.
- 38.4 The *Consultant* must comply with its duty under the *WHS Law* to consult, cooperate and coordinate activities with all persons who have a work health and safety duty in relation to the same matter.
- 38.5 If the *Consultant* becomes aware of any potentially hazardous situation on the premises of the *Client*, the *Consultant* must immediately bring it to the *Client's* attention for a *Direction* regarding the matter.
- 38.6 If required by Annexure Item 39, the *Consultant* must provide the *Client* with a safe design review report in accordance with the requirements set out in Attachments 4 and 10.

39 EVALUATION OF CONSULTANT'S PERFORMANCE

Add the following new clause 39:

39. EVALUATION OF CONSULTANT'S PERFORMANCE

The *Client* may undertake an ongoing evaluation of the *Consultant's* performance in providing the *Services* and compliance with the requirements of this *Contract*. A copy of any such evaluation will be forwarded to the *Consultant*.

If the *Consultant* disagrees with the evaluation, it may forward a request to the *Client* for a review, along with reasons why it should be reviewed. The *Client's* decision will then be final. The evaluation may be taken into account in the assessment of future tenders with the *Client* or other government agencies.

40 RESPECTFUL BEHAVIOUR

Add the following new clause 40:

40. RESPECTFUL BEHAVIOUR

The *Consultant* acknowledges the *Client's* zero tolerance towards gender based violence, discrimination and all forms of unacceptable behaviours in the workplace and the broader community.

The *Consultant* agrees that, in performing the *Works*, the *Consultant's* Personnel will at all times:

- (a) act in a manner that is non-threatening, courteous, and respectful; and
- (b) comply with any instructions, policies, procedures or guidelines issued by the *Client* regarding acceptable workplace behaviour.

If the *Client* believes that the *Consultant's* Personnel are failing to comply with the behavioural standards specified in this clause, then the *Client* may in its absolute discretion:

- (c) prohibit access by the relevant *Consultant's* Personnel to the *Client's* premises; and
- (d) direct the *Consultant* to withdraw the relevant *Consultant's* Personnel from providing the *Services*.

41 INDUSTRY PARTICIPATION POLICY

Add the following new clause 41:

41. INDUSTRY PARTICIPATION POLICY

This clause 41 only applies if stated in Annexure *Item* 32.

Agencies and private parties contracting to the Government of South Australia are required to comply with the South Australian Industry Participation Policy (SAIPP) and the supporting procedural and reporting requirements.

41.1 The *Consultant* must implement the *Consultant's* Standard or Tailored Industry Participation Plan ("SIPP" or "TIPP") approved by the Industry Advocate ("IA") in Attachment 1 to these Special Conditions.

41.2 The *Consultant* must provide an Industry Participation Report ("IPP Report") in respect of each Industry Participation Reporting Period to the IA within two weeks of the end of each period, in the form set out at <https://www.industryadvocate.sa.gov.au/policy-and-resources>.

41.3 An Industry Participation Reporting Period is:

- (a) the period between the Commencement Date and the date six (6) months after the Commencement Date;
- (b) each subsequent 6 month period during the term of the *Contract*;
- (c) if the *Contract* ends on a date other than an anniversary of the Commencement Date or an anniversary of the date in 41.3(a), the period from the conclusion of the preceding Industry Participation Reporting Period until the date of termination or expiry of the *Contract*;
- (d) for short-term projects of strategic importance to the State, the period notified by IA to the *Consultant* in writing; and
- (e) where the term of the *Contract* is for a period less than 6 months, the term of the *Contract*.

41.4 The *Consultant* must attend any meeting scheduled by the IA during the term of the *Contract* to review how the SIPP or TIPP is being implemented and advanced, and for this purpose,

- the *Consultant* must provide all information reasonably requested by the IA. The IA must give the *Consultant* not less than ten (10) Business Days' notice of any such meeting.
- 41.5** The IA may, by written notice require that the *Consultant* within a reasonable time specified in the notice, provide information or documents to enable the IA to assess the *Consultant's* compliance with this clause 41.
- 41.6** If the IA reasonably believes that the *Consultant* is not complying with the requirements of this clause 41, the IA may by notice in writing direct that the supply comply with those requirements.
- 41.7** Upon receipt of the notice, if the *Consultant* is of the opinion that its noncompliance is reasonable and justified, the *Consultant* may provide a response to the IA outlining that opinion and the reasons for it.
- 41.8** The *Consultant's* failure to comply, in whole or in part, with the commitments contained within the SIPP or TIPP will be a factor taken into account in the award of future contracts for the Government of South Australia.
- In this clause, "Industry Advocate" or "IA" means the person from time to time appointed by the Governor to the position of Industry Advocate under s.5 of the Industry Advocate Act 2017.

42 FAULTS IN DELIVERABLES

Add the following new clause 42:

42. FAULTS IN DELIVERABLES

- 42.1** If it is necessary to subsequently amend the Deliverables due to a Fault, then the Consultant shall rectify the relevant Deliverables and shall be responsible for that part of the cost, including Client's costs, of rectifying the Deliverables which may reasonably be attributed to the Consultant, its employees, subcontractors or agents.
- 42.2** As soon as possible after discovery of the Fault, where there do not appear to be any construction rectification cost implications, the party that identified the Fault will notify the other party of the Fault.
- 42.3** Where Works result from the Deliverables, and a Fault is subsequently discovered after construction, the following will apply:
- (a) as soon as possible after discovery of the Fault, the party that identified the Fault will notify the other party;
 - (b) following notification in (a) above, except in cases of urgency, the *Client* shall provide the *Consultant* an opportunity to respond to the existence of the *Fault* and, where agreement is reached, the *Consultant* shall prepare or be involved in the preparation of details of the rectification work to be performed, so that the *Consultant* has the opportunity to minimise the costs and delays resulting from rectification works. Such response by the *Consultant* shall be within 3 *Business Days* of receipt of the *notice* in (a) above;
 - (c) where agreement is not reached within 5 *Business Days* of the *notice* in (a) above or where urgency precludes the opportunity for *Consultant* response, the *Client* shall carry out the rectification work and the costs shall become a debt due and owing to the *Client* by the *Consultant*, payable within 30 days if requested by the *Client*; and
- to the degree to which the *Consultant*, its employees and agents were responsible for the *Fault*, the *Consultant* will be responsible for the reasonable cost of rectification works including costs of delays associated with the rectification works.
- 42.4** Any omission by the *Client* to require revision or amendment of any *Deliverables* shall not constitute an acknowledgment or admission that such *Deliverables* are correct in detail as to measurement dimensions materials or in any other particular, the responsibility for which shall remain the *Consultant's*. Nothing the *Client* does or omits to do in connection with the

Deliverables makes the *Client* responsible for the *Deliverables*, or prevents the *Client* from relying on or enforcing any right under the *Contract* or otherwise.

43 COLLUSIVE ARRANGEMENTS

Add the following new clause 43:

43. COLLUSIVE ARRANGEMENTS

The *Consultant* warrants and represents to the *Client* that:

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

44 CONSULTANT WARRANTIES

Add the following new clause 44:

44.1 The *Consultant* acknowledges and agrees that it has and it shall be deemed to have:

- (a) examined carefully and to have acquired actual knowledge of the contents of the *Contract Documents*, the *Client's* requirements, the tender documents and any other information made available in writing by the *Client* or any other person on the *Client's* behalf to the *Consultant* for the purpose of preparing and submitting the *Consultant's* tender;
- (b) examined all information relevant to the risks, contingencies and other circumstances which could affect the *Consultant's* tender and which was obtainable by the making of detailed enquiries;
- (c) informed itself of the nature of the work and materials necessary for the execution of the *Services*;
- (d) satisfied itself as to the correctness and sufficiency of the *Fee* and that the *Fee* covers the cost of complying with all its obligations under the *Contract* and of all matters and things necessary for the due and proper performance and completion of the *Services*;
- (e) informed itself of all requirements of any government authorities in relation to the *Services* generally;
- (f) obtained all appropriate professional and technical advice on all matters and circumstances with respect to the matters referred to in this clause prior to submitting its tender for the *Services*, and

- (g) entered into this *Contract* based on its own investigations, interpretations, deductions, information and determinations and the *Consultant* acknowledges that it is aware that the *Client* has entered into the *Contract* relying upon this acknowledgment.

44.2 Failure by the *Consultant* to do all or any of the things it is deemed to have done under this clause will not relieve the *Consultant* of any of its obligations or liabilities under the *Contract*, including its obligation to perform and complete the *Services* in accordance with the *Contract*.

Clause 44.3 shall only apply if the *Services* are not design related and *Item* 31 states that clause 45 does not apply.

44.3 Consultant's warranties and obligations

- (a) The *Consultant* warrants that:
- a. it shall at all times be suitably qualified and experienced, and shall exercise due skill, care and diligence in the performance of the *Services*;
 - b. the *Services* will be carried out and completed in accordance with the requirements of the *Contract*, and that such *Services*:
 - i. will satisfy the *Client's Requirements*; and
 - ii. will be provided using good industry practices; and
 - iii. will comply with the standards and other requirements specified by this *Contract*, including all *Legislative Requirements* and the requirements of all government authorities.
- (b) The *Consultant* must ensure that the *Services* are fit and adequate for the purposes stated in, or that can be reasonably implied from the *Contract*, and suitable and adequate for the Project.

44.4 Consultant's liabilities, obligations and warranties unaffected

The warranties and obligations in clause 44.3 shall remain unaffected, notwithstanding:

- (a) any *Services* that may have been carried out by, or on behalf of, the *Client*;
- (b) any comment upon, response to, review or acceptance of, giving or withholding of permission to use, approval to proceed with, *Direction* or query in relation to or request to vary any of the *Services*, by the *Client*, or any agent, employee or consultant of the *Client*;
- (c) any acceptance of the *Services*;
- (d) any variation directed or approved by the *Client* in accordance with clause 9, or
- (e) the provision of any warranty or obligation.

45 CONSULTANT'S DESIGN

ADD a new clause "45 CONSULTANT'S DESIGN" as follows:

45 CONSULTANT'S DESIGN

This clause 45 shall only apply if stated to apply at *Item* 31.

The parties agree that the *Client* may act in its absolute discretion when exercising any of its rights under clause 45.

45.1 Definitions

Unless the context requires otherwise, in this clause 45 and any other part of the *Contract* relating to work to be designed by the *Consultant*:

- (a) '*Consultant's Construction Drawings*' means the drawings prepared by, or on behalf of, the *Consultant* which are necessary for the construction and/or installation of the *Works*.

- (b) '*Consultant's Construction Specifications*' means the specifications prepared by, or on behalf of, the *Consultant* which are necessary for the construction and/or installation of the *Works*.
- (c) '*Consultant's Design*' means the design for the *Works* which has been accepted pursuant to clause 45.7(d) or is deemed to have been accepted pursuant to clause 45.9 and includes:
 - a. the *Deliverables*;
 - b. the *Consultant's Construction Drawings*, the *Consultant's Construction Specifications* and all other drawings, specifications, manuals, designs (including systems designs) and other information, calculations, samples, models, patterns and the like, and
 - c. any new software and any customised, modified or extended parts of any existing software (including associated data and documentation) required for the construction and/or installation of the *Works* or which the *Contract* requires the *Consultant* to create or cause to be created or to provide (in all forms, including electronic) and which has become the *Consultant's Design* in accordance with clause 45.10.
- (d) '*Designer's Certificate*' means a certificate in the form of Attachment 2 to these Special Conditions.
- (e) '*Client's Requirements*' means any written summary or outline of the *Client's* requirements for the *Services*, *Deliverables* and *Works* provided by the *Client*.

45.2 Consultant's warranties and obligations

- (a) The *Consultant* warrants that:
- (b) it shall at all times be suitably qualified and experienced, and shall exercise due skill, care and diligence in the execution and completion of the design of the *Works*;
- (c) the design of the *Works* will be carried out and completed in accordance with the requirements of the *Contract*, and that:
 - a. such design will satisfy the *Client's Requirements*; and
 - b. construction in accordance with such design will comply with the standards and other requirements specified by this *Contract*, and
- (d) the *Works* will, if constructed in accordance with the *Consultant's Design*:
 - a. satisfy the *Client's Requirements*; and
 - b. comply with all the requirements of the *Contract*, including all *Legislative Requirements* and the requirements of all government authorities.
- (e) The *Consultant* must ensure that the *design* of the *Works* is fit and adequate for the purposes stated in, or that can be reasonably implied from the *Contract*, and suitable and adequate for the *Site*;
- (f) The *Consultant* must ensure that the *Works* will, if constructed in accordance with the *Consultant's Design*, satisfy the *Client's Requirements* and be fit and adequate for the purposes stated in, or that can be reasonably implied from, the *Contract* and be suitable and adequate for the *Site*.

45.3 Consultant's liabilities, obligations and warranties and obligations unaffected

The warranties and obligations in clause 45.2 shall remain unaffected, notwithstanding:

- (a) any design work in respect of the *Works* may have been carried out by, or on behalf of, the *Client*;
- (b) any comment upon, response to, review or acceptance of, giving or withholding of permission to use, approval to proceed with, *Direction* or query in relation to or request to vary any *Consultant's Construction Drawing* or *Consultant's Construction Specification* or any part of the quality assurance system (in so far as it relates to the *Works*), by the *Client*, or any agent, employee or consultant of the *Client*;

- (c) any acceptance of a drawing or specification pursuant to clause 45.7(d) or deemed acceptance pursuant to clause 45.9;
- (d) any variation directed or approved by the *Client* in accordance with clause 9, or
- (e) the provision of any warranty or obligation.

45.4 The Design

The *Consultant* shall ensure the *Consultant's Design* is carried out and completed in accordance with the *Contract* and that the *Consultant's Design*, the *Consultant's Construction Drawings* and the *Consultant's Construction Specifications*:

- (a) are in accordance with the *Client's Requirements*;
- (b) are consistent with the *Consultant's* tender for the *Services* (except to the extent that the *Consultant's* tender is inconsistent with the *Client's Requirements* or the *Contract Documents* or provides for standards of finish, workmanship or materials of a lesser standard than that required by the *Client's Requirements* or the *Contract Documents*, in which case the *Consultant's Design* shall be in accordance with the *Client's Requirements* and the *Contract Documents*), and
- (c) are sufficient to enable the *Client* to construct and complete the *Works*.

45.5 Submission of *Consultant's Construction Drawings, Specifications and certificate*

The *Consultant* shall, in accordance with the *Program*, submit to the *Client*:

- (a) a copy of the *Consultant's Drawings* and *Consultant's Specifications* for the *Works* or as otherwise directed by the *Client*, and
- (b) with the copy of the *Consultant's Drawings* and *Consultant's Specifications* for the *Works* submitted under clause 45.5(a), a copy of a *Designer's Certificate* (signed by a principal of the *Consultant*).

45.6 No obligations to review or check Drawings and Specifications

The *Client* is not required to review or check any *Consultant's Drawings* or *Consultant's Specifications* submitted by the *Consultant* under clause 45 or any reasons or supporting information submitted by the *Consultant* under clause 45:

- (a) for errors, omissions or compliance with the *Contract* (including the *Client's Requirements*), or
- (b) for any other purpose whatsoever.

The *Consultant* acknowledges that in considering and responding to any *Consultant's Drawings* or *Consultant's Specifications* submitted by the *Consultant* (if any such consideration occurs or response is given), the *Client* will be relying upon:

- (c) the advice, skill and judgment of the *Consultant*;
- (d) the *Designer's Certificate* provided under clause 45.5
- (e) any reasons and supporting information given by the *Consultant* under clause 45, and
- (f) the warranties given by the *Consultant* under the *Contract*.

No review of, comments upon, rejection of, or failure to review or comment upon or reject, any *Consultant's Drawings* or *Consultant's Specifications* submitted by the *Consultant* or any other direction by the *Client* about such *Consultant's Drawings* or *Consultant's Specifications* forming part of the *Consultant's Design* will:

- (g) relieve the *Consultant* from, or alter or affect, the *Consultant's* liabilities or responsibilities whether under the *Contract* or otherwise according to law, or
- (h) prejudice the *Client's* rights against the *Consultant* whether under the *Contract* or otherwise according to law.

45.7 Giving and withholding permission to use

Within 10 *Business Days* after the submission by the *Consultant* to the *Client* of:

- (a) *Consultant's Drawings* and *Consultant's Specifications* and the accompanying *Designer's Certificate* in accordance with clause 45.5;
- (b) resubmitted *Consultant's Drawings* and *Consultant's Specifications* and the accompanying *Designer's Certificate* in accordance with clause 45.8(a), or
- (c) reasons and supporting information in accordance with clause 45.8(b) concerning *Consultant's Drawings* and *Consultant's Specifications* for which the *Client* has previously withheld permission to use;

as the case may be, the *Client* may either:

- (d) give the *Consultant* notice in writing that it accepts use of the relevant *Consultant's Drawings* and *Consultant's Specifications* by the *Consultant* for the construction of the *Works*, or
- (e) advise the *Consultant* in writing that it does not accept such *Consultant's Drawings* or *Consultant's Specifications* and give the *Consultant* brief reasons for withholding permission.

45.8 Where permission to use is withheld

If the *Client* advises the *Consultant* under clause 45.7(e) that it does not accept the *Consultant's Drawings* or *Consultant's Specification*, the *Consultant* shall either:

- (a) amend the *Consultant's Drawing* or *Consultant's Specification* and resubmit it to the *Client* together with an accompanying *Designer's Certificate* in accordance with clause 45.5, or
- (b) submit written reasons and supporting information to the *Client* stating why use of the *Consultant's Drawing* or *Consultant's Specification* should be accepted.

45.9 Deemed permission to use

If within 10 *Business Days* after submission by the *Consultant* to the *Client* of:

- (a) a *Consultant's Drawing* or *Consultant's Specification* and the accompanying *Designer's Certificate* in accordance with clause 45.5;
- (b) a resubmitted *Consultant's Drawing* or *Consultant's Specification* and the accompanying *Designer's Certificate* in accordance with clause 45.7(a); or
- (c) reasons and supporting information in accordance with clause 45.7(b) concerning a *Consultant's Drawing* or *Consultant's Specification* for which the *Client* has previously withheld permission to use,

as the case may be, the *Client* has not responded to the *Consultant* as provided in clause 45.7(d) or 45.7(e), then upon the expiration of the relevant 10 *Business Day* period, the *Client* shall be deemed to have accepted the use of the relevant *Consultant's Drawing* or *Consultant's Specification* for the construction of the *Works* to the extent that the document complies with the requirements of the *Contract*.

45.10 Documents become part of the *Consultant's Design*

A *Consultant's Drawing* or *Consultant's Specification* submitted under clause 45.5 or resubmitted in accordance with clause 45.8(a) shall become part of the *Consultant's Design*:

- (a) when the *Client* has accepted that the *Consultant's Drawing* or *Consultant's Specification* may be used for the construction of the *Works* pursuant to clause 45.7(d), or
- (b) where such acceptance is deemed to have occurred pursuant to clause 45.9.

45.11 Documentation program

The *Consultant* shall, as part of any *Program* which it is obliged to provide pursuant to clause 12, submit a documentation program to the *Client* setting out the order in which and times by which *Consultant's Drawings* and *Consultant's Specifications* for the construction of the *Works* are to be completed and submitted to the *Client*.

The *Consultant* shall ensure that the documentation program provides for, and makes due allowance for, those *Consultant's Drawings* and *Consultant's Specifications* to be prepared and supplied to the

Client within the time required by and at a rate consistent with the maintenance of progress of the *Works* as advised by the *Client*.

45.12 Confirmation of the Works

The *Consultant* shall, if required under *Item 33* or requested by the *Client*, hand over the following to the *Client*:

- (a) three sets of "final for construction" *Consultant's Construction Drawings* and *Consultant's Construction Specifications* in a form and containing such details as may be required by the *Client*, and
- (b) a *Designer's Certificate* confirming that the "final for construction" *Consultant's Construction Drawings* and *Consultant's Construction Specifications* comply with the requirements of the *Contract* and the *Consultant's Design*.

45.13 Ambiguities and discrepancies in the Consultant's Design

Clause 5.2 shall apply to *Deliverables* only where the ambiguity or discrepancy is in the *Client Information*. Where the ambiguity or discrepancy is

- (a) in the *Consultant's Design* or any drawing or specification produced by the *Consultant* in respect of *the Works* (including in or between any of the *Consultant's Construction Drawings* or the *Consultant's Construction Specifications*), or
- (b) between the *Consultant's Design* or any drawing or specification produced by the *Consultant* in respect of the *Services* (including any *Consultant's Construction Drawings* or the *Consultant's Construction Specifications*) and the *Client's Requirements*,

such ambiguity or discrepancy shall be at the *Consultant's* risk and the *Direction* under clause 5.3 shall not entitle the *Consultant* to any extra payment or an extension of time.

46 WORKPLACE GENDER EQUALITY

Add a new clause 46 as follows:

46 WORKPLACE GENDER EQUALITY

This clause applies if the *Consultant* is a relevant employer within the meaning of the *WGE Act*.

The *Consultant* must comply with its obligations under the *WGE Act* and remain compliant until the expiry or termination of the *Contract*.

The *Consultant* must take reasonable steps to ensure that any *subcontractors* comply with the *WGE Act* if that *subcontractor* is a relevant employer within the meaning of the *WGE Act*.

47 MONTHLY REPORT

Add a new clause 47 as follows:

47 MONTHLY REPORT

This clause only applies if stated at *Item 34*.

On or before the end of each calendar month the *Consultant* shall give the *Client* a written report on the progress of the *Services* in the form and containing the detail required by the *Client*, which includes but is not limited to a summary of:

- (a) the activities carried out during that month;
- (b) the overall progress of the *Services* in accordance with the *Program*; and
- (c) any issues relating to the *Fee*, including any variations to the *Services* which may increase or have increased the *Fee*.

48 CONSULTANT AS LOCAL PROVIDER

Add a new clause 48 as follows:

48 CONSULTANT AS LOCAL PROVIDER

- 48.1 This clause 48 applies where the total Fee payable under this Contract exceeds \$55,000.00 (including GST).
- 48.2 The *Consultant* must ensure that at all times during the term it is a Local Provider, unless a written exemption is provided by the Client.
- 48.3 The *Consultant* acknowledges that the *Consultant's* failure to comply, in whole or in part, with the requirements of this clause 48 may result in suspension from the Department prequalification system for a period determined by the Client and shall constitute a substantial breach of the Contract by the Consultant for the purposes of clause 27.2, and may be a factor taken into account in the award of future contracts for the Government of South Australia, in addition to any other remedies available to the *Client* under this *Contract*.
- 48.4 The *Consultant* must provide to the *Client*, such information as the *Client* may require to verify the *Consultant's* compliance with this clause.
- 48.5 The *Consultant* authorises the *Client* and its nominated agent to obtain information about the *Consultant* relevant to assessing the *Consultant's* compliance with this clause, that may be held by any Government department or instrumentality.
- 48.6 In this clause "Local Provider" means a business that operates in South Australia, where greater than 50% of the workforce to deliver the Services are residents of South Australia.

49 SECURITY

Add a new clause 49 as follows:

49 SECURITY

This clause 49 only applies if stated in Annexure *Item* 35.

- 49.1 The *Consultant* must ensure that all the *Consultant's Personnel* involved in delivering the Services have the appropriate checks and security clearances before commencing any work on the Services.
- 49.2 Without limiting any of the requirements of clause 49.1, the *Consultant* must:
- (a) complete a National Police Check for all *Consultant's Personnel* delivering the Services; and
 - (b) obtain and provide to the Client such other checks and security clearances specified in Annexure Item 36 and as otherwise reasonably required by the *Client*.
- 49.3 The details of the checks and clearances under clause 49.2(b) must be agreed by the *Client* and conducted and provided to the *Client* prior to the commencement of each *Consultant's Personnel's* involvement in the Services and thereafter at such other times required by the *Client* and notified to the *Consultant*.
- 49.4 Following receipt of any check or security clearance required under this clause 49, the *Client* may conduct further investigations of *Consultant's Personnel*, including criminal history, habits, associations, referee, character, security, and financial checks, in order to determine whether in the *Client's* opinion the *Consultant's Personnel* is suitable to be involved in providing the

Services. If, after having conducted the further investigations, the *Client* is of the opinion that the *Consultant's Personnel* is not suitable to be involved in the *Services*, the *Client* may notify the *Consultant* in writing of its determination, and on receipt of such notice the *Consultant* must cease to use the *Consultant's Personnel* in the provision of the *Services*. In making a determination pursuant to this clause the *Client* is not obliged to act in good faith or give procedural fairness or give reasons for its decision. The *Client* will not be liable in respect of any claim against the *Client* in connection with a determination made by the *Client* pursuant to this clause, and the *Consultant* will indemnify and keep indemnified the *Client* against every such claim.

49.5 All clearances and checks required will be at the *Consultant's* cost.

49.6 The *Client* may require the *Consultant* to not commence using any *Consultant's Personnel* or to cease to use any *Consultant's Personnel* in the provision of the *Services* who in the opinion of the *Client*:

- (a) do not comply with clauses 49.2 or 49.3; or
- (b) should not be used in the provision of the *Services*.

49.7 If the *Client* takes action under clause 49.6:

- (a) the *Consultant* must immediately take action to replace the relevant *Consultant's Personnel* member; and
- (b) the *Client* will not be liable in respect of any associated claim and the *Consultant* will indemnify and keep indemnified the *Client* against every such claim.

50 AUDITOR GENERAL

Add a new clause 50 as follows:

50 AUDITOR GENERAL

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

51 AUSTRALIAN GOVERNMENT AGREEMENT

Add a new clause 51 as follows:

51 AUSTRALIAN GOVERNMENT AGREEMENT

This clause 51 shall only apply if stated to apply at *Item 42*.

For the purpose of this clause 51 the following definitions shall apply:

'Agreement' means the agreement between the Commonwealth of Australia and State of South Australia that will be entered for the provision of funds for the *Project*;

The *Consultant* acknowledges that the State will enter into an *Agreement*.

The *Consultant* agrees to cooperate in all respects during the life of the *Contract* to enable the State to perform its obligations under the *Agreement* and without limitation, the *Consultant* will:

- a) preserve the confidentiality of the Commonwealth Funding Agreement;
- b) not do anything or permit anything to be done (whether by act or omission) which may cause or contribute towards a breach of the *Agreement* by the State or otherwise

- prejudice the *Agreement*;
- c) provide any information requested by the Commonwealth pursuant to the *Agreement*.
In the event that the Commonwealth either:
- (i) terminates the *Agreement*; or
 - (ii) otherwise withdraws funding for the *Project*,

then the *Client* has the right to terminate this Contract with no liability to the *Client*, except that the *Client* will pay the Consultant for services rendered prior to such termination.

52 QUALITY ASSURANCE

Add a new clause 52 as follows:

52 QUALITY ASSURANCE

If required by Annexure Item 40, the *Consultant* shall prepare and implement a Quality Plan, which is specific to the Contract and not generic. The Quality Plan shall reference (or include) other standard consultant documentation that is relevant to the Contract. The Quality Plan shall clearly indicate how the quality processes shall be applied to meet the requirements of the *Contract* without reference to other documents. The Quality Plan for the *Services* shall be prepared and submitted to the *Client* within 28 days of the date of the *Commencement Date*.

53 AUDIT

Add a new clause 53 as follows:

53 AUDIT

- 53.1 The *Client* may, at its own expense, at any time prior to *Completion* and for 12 months thereafter carry out or cause to be carried out an audit of any aspect of the operations of the *Consultant* relating to this *Contract*. The scope of the audit shall not include:
- (i) the Consultant's profitability;
 - (ii) confidential personal information; and
 - (iii) Intellectual Property Rights such as designs, methods or innovations that do not have a direct link to the Contract deliverables.
- 53.2 Upon production of the written authorisation or appointment by the *Client*, the *Consultant* must, for the purpose of any such audit, permit the *Client* or any person engaged by the *Client* for that purpose:
- (i) to question and observe any *Consultant's Personnel* engaged in relation to this *Contract* in the presence of a representative of the *Consultant*; and
 - (ii) to have full and sufficient access to any premises, storage facilities, records (excluding personnel records), Books and Records relevant to the performance by the *Consultant* of its obligations under this *Contract*.
- 53.3 The *Client* may for the purpose of auditing the *Consultant's* performance under this *Contract* carry out such investigations as it considers necessary. The *Client* will provide reasonable notice and identification when conducting such investigations.
- 53.4 In the exercise of its rights under this clause the *Client* must minimise, so far as is practicable, any inconvenience or interruptions to the business of the *Consultant* or the performance by the *Consultant* of its obligations under this *Contract*.
- 53.5 If an audit carried out under this clause reveals a material breach of the *Consultant's* obligations under this *Contract* or confirms a default previously denied by the *Consultant*, then the *Consultant* must pay all costs and expenses incurred by the *Client* in relation to the audit.

- 53.6 If an audit carried out under this clause does not identify a material breach of the *Consultant's* obligations under this *Contract* or any non-conformance by the *Consultant*, the *Consultant* is entitled to reimbursement by the *Client* of its actual and reasonably incurred costs of the audit to be evidenced on an open book basis.
- 53.7 Following completion of any audit, the *Consultant* must meet with the *Client* to discuss in good faith any recommendations made.
- 53.8 The *Consultant* will at its own cost act upon and implement any reasonable recommendations made by the *Client* arising from the results of an audit under this clause.

54 OPERATION OF PROPORTIONATE LIABILITY LEGISLATION

Add a new clause 54 as follows:

54 OPERATION OF PROPORTIONATE LIABILITY LEGISLATION

- 54.1 To the extent permitted by law, the operation of Part 3 of the Law Reform (Contributory Negligence and Apportionment of Liability) (Proportionate Liability) Act 2001 (SA), and any equivalent statutory provision is excluded in relation to all rights, obligations and liabilities in connection with the *Contract* whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- 54.2 The *Consultant* acknowledges that this clause 54 constitutes a special limitation for the purposes of Part 3 of the Law Reform (Contributory Negligence and Apportionment of Liability) (Proportionate Liability) Act 2001 (SA).
- 54.3 Subject to clause 29, if the *Consultant* breaches any of its obligations under this *Contract*, and the operation of any legislation results in the *Client* being unable to recover some part of the consequential loss or damage from the *Consultant* ("the Apportioned Loss"), as a separate obligation under the *Contract*, the *Consultant* indemnifies the *Client* in respect of the Apportioned Loss and must pay the *Client* the amount of the Apportioned Loss if demanded by the *Client*.

ANNEXURE

This annexure takes the place of Part A of the Annexure to the General Conditions of Contract for Consultants (AS 4122—2010).

Item

- | | | |
|---|---|---|
| 1 | <i>Client</i>
(clause 1.1) | The Minister for Infrastructure and Transport
ABN 92 366 288 135 |
| 2 | <i>Consultant</i>
(clause 1.1) |
ACN ABN |
| 3 | The Contract Documents are:
(Clause 1.1) | 1. These Special Conditions of Contract for Consultants to AS4122-2010, including their annexure and attachments

2. The General Conditions of Contract for Consultants (as amended) AS4122-2010

3. The <i>Scope</i> |
| 4 | The <i>Scope</i> is described in the following <i>Documents</i> :

(Clause 1.1) | Attachment 4 – Scope including all Appendices
The project brief documents included at Attachment 13
.....
..... |
| 5 | The purpose(s) for which the <i>Services</i> will be suitable is/are:
(Clause 5.1) |
.....
..... |
| 6 | <i>The Client's Representative</i>
(Clause 6.1) | Director Building Projects
Phone 08 7133 1720
Email Abigail.Parry2@sa.gov.au |

7 *The Consultant's Representative*
(Clause 6.2)

Phone

Email

8 Basis for payment

Lump Sum OR Schedule of Rates OR Upper Limiting Fee, with the *Fee* not to exceed **[insert]** (including GST).

If *Lump Sum* is applicable, *Lump Sum* is determined as follows:

<u>Part</u>	<u>Type</u>	<u>Lump Sum Fee (including GST)</u>
0. Planning	Fixed / Indicative	\$
1. Concept	Fixed / Indicative	\$
2. Design, Documentation & Tender	Fixed / Indicative	\$
3. Construction	Fixed / Indicative	\$
N/A	Provisional Sum for DPSCs	\$

If *Schedule of Rates* is applicable, specify rates, or location of attached or agreed *Schedule of Rates*:

Refer to Schedule of Rates at Attachment 3 OR Not applicable

<u>Part</u>	<u>Type</u>	<u>Rates (including GST)</u>
0. Planning	SOR	Refer Attachment 3
1. Concept	SOR	Refer Attachment 3
2. Design, Documentation & Tender	SOR	Refer Attachment 3
3. Construction	SOR	Refer Attachment 3

If *Upper Limiting Fee* is applicable, \$ **insert (including GST)** OR **Not applicable**
Upper Limiting Fee is:

<u>Part</u>	<u>Type</u>	<u>Upper Limiting Fee (including GST)</u>
0. Planning	SOR	\$
1. Concept	SOR	\$
2. Design, Documentation & Tender	SOR	\$
3. Construction	SOR	\$

Claims for payment will be: **Paid monthly**, on the last Business Day

If paid as a single *Lump Sum*, specify when it will be paid: Not applicable.....

If paid upon completion of stages, specify stages and percentage of Fee to be paid on completion of each stage:

Stage/Task	Percentage of Fee
-------------------	--------------------------

Not Applicable.....

.....

.....

- 9 Disbursements for which the *Consultant* may claim payment: (Clause 10.2)

Refer to Schedule of Rates at Attachment 3 OR **Not applicable**

<u>Part</u>	<u>Type</u>	<u>Upper Limiting Fee (including GST)</u>
0. Planning	Fixed / Indicative	\$
1. Concept	Fixed / Indicative	\$
2. Design, Documentation & Tender	Fixed / Indicative	\$
3. Construction	Fixed / Indicative	\$

- 10 Time to claim payment is no later than: Last *Business Day* of each month
 (Clause 10.3)

- 11 The time for payment is no later than: 15 days from receipt of a compliant invoice.
 (Clause 10.6)

12 The rate of interest for overdue payment is: 8% per annum
(Clause 10.9)

13 The *Date for Completion* is: insert date
(Clause 12.1)
OR
insert time period from the *Commencement Date*

14 Other causes of delay for which the *Consultant* may notify an extension of time: None.
(Clause 12.7)

15 The *Approvals* to be obtained by the *Consultant* are:
(Clause 13.2)

.....

.....

16 The key personnel are: Name Role
(Clause 18)

Name	Role
.....	
.....	
.....	
.....	
.....	

17 Existing Conflicts of Interest
(Clause 19.2)

18 The alternative that applies to Copyright and other *Intellectual Property Rights* is: Alternative Two
(Clause 21.3)

19 List of excluded *Intellectual Property Rights*: None.
(Clause 21.3, Alternative Two)

- 20 The additional amount payable to the *Consultant* for granting of *Intellectual Property Rights* to the *Client* is:
(Clause 21.4, Alternative Two) Not applicable
- 21 Does Clause 22 (*Moral Rights*) apply?
(Clause 22.1) No
- 22 Not Used.
- 23 Not Used
- 24 The *Consultant's* liability is limited to:
(Clause 29.1) The greater of 100% of the *Fee* or the amount of the relevant insurance in *Item 25* or *Item 26* as the case may be.
- 25 The amount of public liability insurance is:
(Clause 30.2) \$10,000,000
OR
\$20,000,000 and in any case, the above amount is per occurrence and in aggregate.
- 26 The amount of professional indemnity insurance is:
(Clause 30.4) \$1,000,000 Choose one amount based on highest pre tender estimate value
OR
\$5,000,000
OR
\$10,000,000
OR
\$20,000,000
and in any case, the above amount is per occurrence and in aggregate.
- 27 The professional indemnity insurance must be maintained for the following period:
(Clause 30.4) 7 years from completion of the *Services*.
- 28 The *Client* must effect the following insurances and maintain them for the following periods:
(Clause 30.7) Not applicable

- 29 The address of service of *Notices* on the *Client* is: Director, **Building Projects**
 (clause 33.1) Department for Infrastructure and Transport
 Level 13, 83 Pirie St, Adelaide SA 5000

The address for service of *Notices*
 on the *Consultant* is:
 (Clause 33.3)

.....

- 30 The law governing this *Contract* is: South Australia
 (Clause 35)

- 31 *Consultants Design*: Does clause
 45 apply?
 (Clause 45)

Yes OR **No**

- 32 *Consultant's Industry Participation*
Plan: Does clause 41 apply?
 (Clause 41)

Yes OR **No**

- 33 Are the documents referred to in
 clause 45.12 required?
 (Clause 45.12)

Yes OR **No**

- 34 Are monthly reports required?
 (Clause 47)

Yes

- 35 Are checks and security
 clearances required?
 (Clause 49)

Yes OR **No**

- 36 Checks and security clearances
 required include:
 (Clause 49)

National Police Check

**[Insert other checks and clearances required (eg
 negative vetting) and specify level (if appropriate)]**

- 37 Is a Statutory Declaration
 Required? (Clause 10.4A(d))

Yes

- 38 Must the Consultant comply with
 the obligations in Attachment 8
 (General Requirements)? (Clause
 5.9)

Yes

Must the Consultant comply with
 the obligations in Attachment 9
 (Project Specific Requirements
 Works)? (Clause 5.9)

Yes

Must the Consultant comply with the obligations in Attachment 10 (Role Specific Obligations)? (Clause 5.9)

Yes

39 Is a safe design review report required under the contract? (Clause 38.6)

Yes OR No

40 Is a Quality Plan required under the contract? (Clause 52)

Yes OR No

41 Is a Program required to be provided to the Client under the contract in accordance with any requirements set out in Attachment 10? (Clause 12.2)

Yes OR No

(If 'yes', the Consultant must furnish to the Client a Program within 14 days of the Commencement Date in the form agreed with the Client.

If 'no', the Client may direct the Consultant to furnish to the Client a Program within the time and in the form directed by the Client in accordance with clause 12.2.)

42 Australian Government Agreement – does Clause 51 apply? (Clause 51)

Yes OR No

ATTACHMENT 1 - INDUSTRY PARTICIPATION PLAN OR NOT USED

ATTACHMENT 2 - DESIGNER'S CERTIFICATE OR NOT USED



**Government of
South Australia**

DESIGNER'S CERTIFICATE

To:

Name and address of <i>Client</i>

From:

Name and address of Consultant

This Certificate is issued pursuant to and subject to the Contract.

Please tick applicable boxes below

(Clause references are to the General Conditions of Contract in the *Contract* between the *Client* and the *Consultant*)

☐	Submission of Drawings I certify that the Drawings and Specifications detailed from Page 2 of this <i>Designer's Certificate</i>: • comply in all respects with the requirements of clause 45 of the <i>General Conditions of Contract</i> • were prepared in accordance with the quality assurance system implemented by the <i>Consultant</i> relating to design.
☐	Completion of Works- clause 45.12 of General Conditions of Contract I confirm that • the design of the <i>Works</i> complies with the <i>Contract</i> • the drawings and specifications comply with the <i>Contract</i> Any identified non compliances are listed below: [insert list]

Terms used in this certificate bear the meanings given to them in the *Contract* between the *Client* and the *Consultant*.

Authorisation for and on behalf of the Consultant		
(Must be a principal of the Consultant)		
Name/Position	Signature	Date

Drawing/Specification reference	Description

ATTACHMENT 2A – CONSULTANT'S CERTIFICATE (clause 20B.3) or 'NOT USED'
Applicable to Building Projects only.

Refer D&C Contracts for Building Projects available at:

[Buildings - AS4300 - Standard Template - Department for Infrastructure and Transport - South Australia](#)

[Buildings - AS4300 - ECI - Department for Infrastructure and Transport - South Australia](#)

[Buildings - GC21 Managing Contractor - Department for Infrastructure and Transport - South Australia](#)

ATTACHMENT 3 – SCHEDULE OF RATES OR NOT USED

ATTACHMENT 4 - SCOPE

INSERT

|

ATTACHMENT 5A – DEED OF NOVATION TO SA GOVERNMENT ENTITY

DEED OF NOVATION

between

[INSERT CONSULTANT]

(ACN [INSERT])

(“Continuing Party”)

and

[INSERT OTHER SA GOVERNMENT ENTITY]

(ACN [INSERT])

(“New Party”)

and

MINISTER FOR INFRASTRUCTURE AND TRANSPORT

(“Retiring Party”)

DEED OF NOVATION made on thisday of 20...

BETWEEN:

[INSERT CONSULTANT] ("Continuing Party")

AND

[INSERT]
("New Party")

AND

MINISTER FOR INFRASTRUCTURE AND TRANSPORT ("Retiring Party")

BACKGROUND

- A.** The Retiring Party and the Continuing Party entered into contracts specified in the Schedule for the provision of **[insert description of services]** ("Contracts").
- B.** The Continuing Party and the Retiring Party agree to novate the Contracts.
- C.** The Continuing Party agrees to release and discharge the Retiring Party from the operation of the Contracts.
- D.** The New Party undertakes to perform the obligations of the Retiring Party under the Contracts in accordance with the terms and conditions of this Deed.

THE PARTIES AGREE AS FOLLOWS:

1. NOVATION

The parties agree that the Contracts are novated on the basis that the Contracts continue in existence except that as at the date of this Deed:

- 1.1 the Retiring Party ceases to be a party to the Contracts;
- 1.2 the New Party becomes a party to the Contracts; and
- 1.3 the Continuing Party continues to be a party to the Contracts.

2. RELEASE OF RETIRING PARTY

The Retiring Party is released and discharged from the date of this Deed from:

- 2.1 its obligations under the Contracts; and
- 2.2 any claims accruing under the Contracts before the date of this Deed;
- 2.3 any claims accruing under the Contracts from the date of this Deed for which it would have been liable had it continued to be a party to the Contracts.

3. OBLIGATIONS OF THE NEW PARTY

- 3.1 From the date of this Deed, the New Party is bound by the terms of the Contracts and must perform the obligations of the Retiring Party as if it were named in the Contracts as a party to those Contracts in place of the Retiring Party.
- 3.2 From the date of this Deed, the New Party assumes liability for claims which accrued before on or after the date of this Deed for which the Retiring Party would have been liable had it continued to be a party to the Contracts.

4. INDEMNITY BY RETIRING PARTY

- 4.1 The Retiring Party must keep the New Party indemnified from all claims against the New Party arising from liabilities which accrued before the date of this Deed for which the Retiring Party is, or would have been, liable had it continued to be a party to the Contracts.
- 4.2 For clarity, only the New Party is entitled to make a claim against the Continuing Party in connection with the Contracts.

5. COSTS OF THIS DEED

Each party must pay its own costs arising from the preparation and execution of this Deed. The New Party must pay the stamp duty assessed on this Deed.

EXECUTED AS A DEED

THE COMMON SEAL of **[INSERT]**

(ACN [INSERT])

was affixed hereto

in the presence of:

.....
Witness

Print Name:

.....
[INSERT]

THE COMMON SEAL of **[INSERT]**

(ACN [INSERT])

was hereunto affixed

in the presence of:

.....
Director

Print Name:

.....
Director/Secretary

Print Name:

THE COMMON SEAL of **[INSERT]**

(ACN [INSERT])

was hereunto affixed

in the presence of:

.....
Director

Print Name:

.....
Director/Secretary

Print Name:

SCHEDULE

Contracts entered into between Continuing Party and the Retiring Party:

1. Contract No XXXX,
Contract Name,
Dated
2. Contract No XXXX,
Contract Name,
Dated

ATTACHMENT 5B – DEED OF NOVATION TO BUILDER

For the purposes of this Deed "the Contractor" is the General Building Contractor to be appointed by the Principal, and "the subcontractor" is the Lead Professional Services Contractor.

**DEED OF NOVATION
(Clause 20B)**

This Deed made theday of
Between Minister for Infrastructure and Transport ("the Principal") of Level 14, 83 Pirie Street, ADELAIDE SA 5000

and("the Contractor")

of ACN

and("the subcontractor")

of ACN

witness that –

1 From the date of this Deed –

(a) the Contractor shall punctually perform the obligations of the Principal under the prior contract prescribed in item 1 of the schedule hereto as far as they are not performed. The Contractor acknowledges itself bound by the provisions of the prior contract as if the Contractor had been named as the Principal in the prior contract and the Contractor

(i) assumes liability for all claims; and

(ii) enjoys all rights and benefits,

of the Principal under the prior contract, including those which accrued prior to the date of this Deed;

(b) the subcontractor shall punctually perform like obligations and be bound to the Contractor as if the provisions of the prior contract were incorporated herein;

(c) other than the obligation to pay the amount set out in item 2 of the schedule, and without limiting clause 1(a), the subcontractor shall release and forever discharge the Principal from the further performance of the prior contract and from any claims arising under the prior contract that have accrued before the date of this Deed;

(d) subject to clauses 1(e) and 1(f) of this Deed, and without limiting clause 1(a), the Principal releases and forever discharges the subcontractor from the further performance of the prior contract;

(e) subject to clause 1(f) of this Deed, any claims against the subcontractor for liabilities, rights or benefits which accrued under the prior contract prior to the date of this Deed may only be made by the Contractor; and

(f) the Principal may make claims against the subcontractor for liabilities, rights or benefits which accrued under the prior contract prior to the date of this Deed in the event of Contractor insolvency or to enforce the Principal's rights under clauses 21 (Intellectual property) and clause 23 (Confidentiality) of the prior contract.

2 The amount set out in item 3 of the schedule is the balance payable by the Contractor to the subcontractor for the services remaining to be performed by the subcontractor under the prior contract.

3 The subcontractor warrants to the Contractor that preliminary design carried out to the date hereof, is in accordance with the provisions of the prior contract.

4 From the date of this Deed, the prior contract is varied as follows:

- (a) the definition of "Prescribed Heads of Liability" in clause 1.1 is deleted and the following is substituted:

"*Prescribed Heads of Liability* means any liability for:

- (a) personal injury including sickness and death;
- (b) loss of or damage to tangible property, arising as a result of a claim made by, or on behalf of, an agency or instrumentality of the Crown in right of the State of South Australia (Crown) (including as a result of a claim against the Client by the Crown), whether or not that property is owned by the Crown arising from:
 - (i) a negligent or wrongful act or omission by the Consultant, its employees, agents or *Subcontractors*; or
 - (ii) any breach of the *Consultant's* contractual obligation to the *Client*;
- (c) infringement of any *Intellectual Property Right*;
- (d) or in respect of any claims made by, or on behalf of, the Crown (including as a result of a claim against the Client by the Crown) where:
 - (i) any such claims are the result of, or are related to, any action, allegation, demand or proceeding by a third party against the Crown (Primary Claim); and
 - (ii) the Primary Claim arises from:
 - (A) a negligent or wrongful act or omission by the *Consultant*, its employees, agents or *Subcontractors*; or
 - (B) any breach of the *Consultant's* contractual obligation to the *Client*;
- (e) an intentional tort;
- (f) a breach of trust;
- (g) wilful default;
- (h) breach of confidentiality; and
- (i) fraud or dishonesty,

and none of the *Prescribed Heads of Liability* limits any of the others."

- (b) clause 29.2 is deleted and the following is substituted:

"29.2 Exclusion of Liability

Subject to this clause 29.2, a party will not be liable to the other party for:

- (a) loss of business opportunity;
- (b) loss of goodwill;
- (c) loss of profit;
- (d) loss of contracts;
- (e) loss arising from business interruption;
- (f) loss of anticipated savings;
- (g) loss of revenue; or
- (h) the cost of capital or other financing costs,

which loss or cost arises due to the party's breach of this Contract, act, omission or negligence. However, the exclusion of liability in this clause 29.2 does not apply to a party's liability in connection with the *Prescribed Heads of Liability* (which remain unlimited)."

(c) clause 53 (Audit) is deleted.

5 This Deed shall be governed by the laws in force in South Australia.

SCHEDULE

- Item 1 Prior Contract Contract No. _____ between the Principal and the subcontractor under which the subcontractor is required to perform design and related services in relation to the project known as "....." project.
- Item 2 Amount payable by the Principal \$[]
- Item 3 Balance payable by the Contractor \$[]

THE COMMON SEAL of the **MINISTER FOR**)
INFRASTRUCTURE AND TRANSPORT was affixed hereto)
 by authority of the Minister in the presence of:)

.....
 Witness

.....
 Name of Witness

EXECUTED by **SUBCONTRACTOR NAME (ACN XXX XXX XXX)**)
 in accordance with Section 127 of the Corporations Act 2001 and its Constitution :)

.....
 Secretary/Director

.....
 Name of Secretary/Director

.....
 Director

.....
 Name of Director

EXECUTED by **CONTRACTOR NAME (ACN XXX XXX XXX)**)
 in accordance with Section 127 of the Corporations Act 2001 and its Constitution:)

.....
 Secretary/Director

.....
 Name of Secretary/Director

.....
 Director

.....
 Name of Secretary/Director

ATTACHMENT 6 – TENDER FORM

[insert]]

ATTACHMENT 7 - STATUTORY DECLARATION**STATUTORY DECLARATION
Oaths Act 1936(SA)****DEFINITIONS**

The Client is: »
 The Consultant is: »
 The Contract: The contract between the Client and the . Consultant
 Contract Title: »
 Contract Number: »
 Dated: ».....(Commencement Date) between the party
 identified as the Client and the party identified as the
 Consultant.

Declaration

Full Name: I ».....
 of»
 »

do hereby truly and solemnly declare the following and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1936 (SA):

1. I am the director or project manager of the Consultant and authorised by the Consultant to make this statutory declaration on its behalf.
2. I am in a position to make this statutory declaration about the facts attested to.
3. On each day during the period from the Commencement Date until the date of this statutory declaration:
 - a. the Consultant has operated as a business in South Australia; and
 - b. greater than 50% of the Consultant's workforce involved in delivering the Services were residents of South Australia.
4. All remuneration payable to the Consultant's relevant employees for work done in connection with the Contract to the date of this statutory declaration has been paid and the Consultant has made provision for all other benefits accrued in respect of the employees. Relevant employees are those engaged in carrying out the work done in connection with the Contract. Remuneration means remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees and subcontractors.
5. The Consultant has paid (not including any amount identified in Table 2 below which is in dispute) every subcontractor, supplier, contractor and sub-consultant all amounts due and payable to each of them by the Consultant (as described in Table 1 below) as at the date of this statutory declaration with respect to engagement of each of them for the performance of services in connection with the Contract.
6. No payment claim or invoice made by a subcontractor (not including those identified in Table 2 below which is in dispute) who has performed services for or in connection with the Contract is unpaid by more than the number of days within which the Consultant is required by the Contract to pay subcontractors.

Table 1

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim date

--	--	--	--	--

Table 2

Schedule of subcontractors for which an amount is in dispute and has not been paid							
Subcontractor Name and ACN/ABN	Contract No.	Date of works (period)	Payment claim date	Amount of payment claim	Amount in dispute	Reasons for Dispute	Length of time overdue

I acknowledge that this declaration is true and correct and I make it with the understanding and believe that a person who makes a false declaration may be guilty of an offence.

Signature of Declarant:

declared at:

Place: »
on»

before me:

Signature of legally authorised person* before whom the declaration is made:

Name and title of person* before whom the declaration is made

Date

This declaration was signed/ initialled by electronic means. **[Statement to be included if the declaration was signed electronically]**

This declaration was taken remotely under the observation of the authorised witness through an audio-visual link and the requirements under the Oaths Act 1936 for taking declarations by audio visual link were complied with. **[Statement to be included if the declaration was witnessed remotely online]**

I certify that the following modifications were made to the witnessing process:

[Details to be included of any assistance the witness provided to the declarant. For example, state here that the statement was read to the declarant and/or they nodded their agreement]

Signature of legally authorised person* before whom the declaration is made:

[Name and address of any other person who assisted the declarant to make the declaration (not including assistance in a professional capacity to prepare/ write the declaration on the instructions of the declarant)]

[Nature of assistance the other person provided, eg translation assistance]

** The declaration must be made before one of the following persons:*

- a Commissioner for taking affidavits in the Supreme Court
- a person who is registered as a conveyancer under the Conveyancers Act 1994
- a justice of the peace
- a police officer, other than a police officer who is a probationary constable
- persons admitted and enrolled as a notary public of the Supreme Court;
- an agent of the Australian Postal Corporation in charge of an office supplying postal services to the public
- an Australian Consular Officer or an Australian Diplomatic Officer within the meaning of the Consular Fees Act 1955 of the Commonwealth
- a bailiff
- a bank officer who has 5 or more years of continuous service
- a building society officer who has 5 or more years of continuous service
- a chief executive officer of a Commonwealth court
- a clerk of a court
- a credit union officer who has 5 or more years of continuous service
- an employee of the Australian Trade and Investment Commission who is in a country or place outside Australia; and is authorised under paragraph 3(d) of the Consular Fees Act 1955 of the Commonwealth; and is exercising their function in that place
- an employee of the Commonwealth who is (i) in a country or place outside Australia; and (ii) authorised under paragraph 3(c) of the Consular Fees Act 1955 of the Commonwealth; and (iii) exercising their function in that place
- a fellow of the National Tax and Accountants' Association
- a registered health practitioner
- a finance company officer who has 5 or more years of continuous service
- a marriage celebrant registered under Part IV Division 1 Subdivision C of the Marriage Act 1961 of the Commonwealth
- a member of the Governance Institute of Australia
- a member of Engineers Australia, other than at the student grade
- a member of the Association of Taxation and Management Accountants
- a member of the Australasian Institute of Mining and Metallurgy
- a member of the Australian Defence Force who is— (i) an officer; or (ii) a non-commissioned officer within the meaning of the Defence Force Discipline Act 1982 of the Commonwealth who has 5 or more years of continuous service; or (iii) a warrant officer within the meaning of the Defence Force Discipline Act 1982 of the Commonwealth
- a member of the Institute of Chartered Accountants in Australia, CPA Australia (Certified Public Accountants) or the Institute of Public Accountants;
- a Member of— (i) the Parliament of the Commonwealth; or (ii) the Parliament of a State; or (iii) a Territory legislature; or (iv) a local government authority of a State or Territory
- a minister of religion registered under Part IV Division 1 Subdivision A of the Marriage Act 1961 of the Commonwealth
- a patent attorney or a trade marks attorneys
- a permanent employee of the Australian Postal Corporation who has 5 or more years of continuous service who is employed in an office supplying postal services to the public
- a permanent employee of
- the Commonwealth or a Commonwealth authority
- a State or Territory or a State or Territory authority
- a local government authority, with 5 or more years of continuous service who is not specified in another item in this list
- a Senior Executive Service employee of— (i) the Commonwealth or a Commonwealth authority; or (ii) a State or Territory or a State or Territory authority
- a sheriff
- a sheriff's officer
- a teacher employed on a full-time basis at a school or tertiary education institution
- a veterinary surgeon.

ATTACHMENT 8 - GENERAL REQUIREMENTS

1. SERVICES – GENERAL

1.1 Terminology

This document is intended for use in conjunction with AS 4122—2010 General conditions of contract for engagement of consultants (General Conditions). Terminology defined in the General Conditions has the same meaning in Attachments 8 - 10.

The South Australian Government describes organisations delivering professional services associated with construction as Professional Service Contractors and this term has the same meaning as *Consultant*.

1.2 Services

The *Consultant* shall carry out the Services in accordance with the General Conditions, the Scope and all relevant policies of the South Australian Government, in particular the 5-step Infrastructure Planning and Delivery Framework and the PC028 Construction Procurement Policy: Project Implementation Process.

1.3 Department for Infrastructure and Transport Publications, Policies

For Building Projects:

The *Consultant* shall comply with all relevant Department for Infrastructure and Transport publications, policies and guide notes.

Refer to Attachment 11 for Notes on Publications, Policies and Guide Notes for Consultants.

1.4 Project Budget

The *Consultant*, in carrying out the Services, having regard for the budgeted cost, shall if any cost report indicates that the cost of construction of the project will exceed the budgeted amount, revise and alter the *Deliverables* so that the cost, having regard to the cost report may be reasonably expected not to exceed the budgeted amount. Any impact on the life cycle cost of the building arising from changes to the *Deliverables* shall also be advised, with the *Deliverables* revised where necessary to achieve the optimum life cycle cost outcome. If in the *Consultant's* opinion no such alteration or revision of the *Deliverables* within the requirements of the Scope is feasible or would sufficiently reduce the cost, the *Consultant* shall advise the *Client* accordingly.

When acting as a cost manager or in the role of services engineer preparing estimates, the *Consultant* shall meet the requirements of DIT Guidenote G44 Ecologically Sustainable Development – Planning, Design and Delivery in regard to the preparation of life cycle assessment for the recommended plant and at least one alternative.

If, when tenders for the construction contract(s) are called, the lowest conforming tender exceeds the budgeted amount, the Consultant shall, upon written request by the *Client*, amend the *Deliverables* to reduce the cost of the project to the budgeted amount. Where the tender has exceeded the budgeted amount due to a failure to perform the Services to that standard of care and skill to be expected of a Consultant who regularly acts in the capacity in which the *Consultant* is engaged or due to errors or omissions in the *Deliverables* the Consultant shall correct the *Deliverables* at its own expense.

The *Consultant* shall participate in strategic value management and value management exercises convened to manage the project budget and delivery of value to the *Client*.

1.5 Statutory Approvals

Subject to Item 15 of the Annexure, the *Consultant* will arrange and obtain all necessary statutory approvals during the project. The fees associated with these approvals will be reimbursed by the *Client* as a disbursement.

1.6 Construction Contract Tenders, Contracts and Administration

The conditions for construction contracts will generally be based on the following:

- (a) MW21 General Conditions of Contract (South Australia) (for Property Fit Out only)

- (b) AS 2124—1992 General conditions of contract (for Building Projects only);
- (c) GC21 (Edition 1 as amended) General Conditions of Contract (for Building Projects only);
- (d) AS 4300—1995 General conditions of contract for design and construct (for Building Projects only).

The *Consultant* shall not amend these conditions or any other construction contract conditions without the *Client's* approval in writing.

The *Consultant* shall not include any provisional sums and nominated sub-contractors without the *Client's* approval in writing.

When requested by the *Client* to participate in the evaluation of tenders for a Department for Infrastructure and Transport contract the *Consultant* shall undertake the evaluation of the tender in strict accordance with the Department policies, practices and systems for tender evaluation.

The *Consultant* shall refer to the conditions of contract for the construction contract for an understanding of the delegations from the Client in regard to administering the contract. The *Consultant* will strictly adhere to the authorities set out in the delegations letter in administering the construction contract. Delegations may be revoked or varied at any time.

If the *Consultant* is delegated a formal administration role under the construction contract, the *Consultant* shall carry out such functions as are delegated to the *Consultant* from time to time until the issue of the final certificate or equivalent to the construction contractor.

When acting as a valuer, certifier or assessor the *Consultant* shall be unbiased, fair and reasonable.

The *Consultant* shall at all times administer the construction contract according to its terms, with diligence and promptitude and in accordance with the Department procedures.

The *Consultant* shall report in writing with respect to the progress of the *Services* and work under the construction contract not less than monthly, and at any time requested by the *Client*, supplying with each such report copies of all notices instructions and correspondence referred to therein and with respect to the following issues:

- (i) adherence by the construction contractor to the construction contract;
- (ii) adherence by the construction contractor to the construction program;
- (iii) adherence to budget and cash flow projections;
- (iv) variations and value of variations;
- (v) extensions of time;
- (vi) latent conditions;
- (vii) quality of the work under the construction contract;
- (viii) any instructions issued by the *Consultant* to the construction contractor.

The *Consultant* shall:

- A issue from time to time, using the Department procedure and forms, such instructions as are necessary and appropriate which shall, if complied with, result in the proper performance by the construction contractor of the construction contract, and shall forward copies of all written instructions and communications to the construction contractor immediately upon issue of such instructions and communications;
- B maintain records reasonably necessary for proper administration of the construction contract. The records shall be available for inspection at all times and shall be handed to the *Client* upon the completion of the *Services* or earlier termination;
- C promptly inform the Client of the occurrence or imminence of any matter which may give rise to a claim for additional payment by the construction contractor;
- D advise in respect of any such matter of the course of action, consistent with the successful completion of the project, which is most likely to minimise the construction contract Principal's liability;
- E promptly refer any applications or claims by the construction contractor with respect to extensions of time, valuation of variations, latent conditions and any other matter together with copies of all relevant documents and correspondence to the relevant party under the construction contract for consideration; or

- if authorised promptly deal with any such applications or claims;
- F promptly refer to the *Client* or construction contract Principal any claim application or notice forwarded by the construction contractor to the *Consultant* which should under the construction contract have been directed to the *Client* or construction contract Principal;
 - G not exceed the powers vested in the *Client* under the construction contract and delegated to the *Consultant* and not waive or vary any of the Principal's rights under the construction contract without prior written approval;
 - H on request, be available on reasonable notice to consult with the *Client* of the construction contract;
 - I on request, advise the construction contractor on the intended meaning of any part of the *Deliverables* and on the rationale and calculations on which any part of the *Deliverables* is based;
 - J subject to clause 1.7(K), provide such assistance and deliver such Deliverables as the Client and construction contract Principal require in the event of any arbitration or other proceedings arising in respect of the construction contract. If the claim or dispute, the subject of such proceedings, is caused or substantially contributed to by any breach of this Contract, such assistance shall be provided free of charge, but shall otherwise be paid for by the Client at the rates provided for in the Annexure Clause 18A or if no rate is provided, at a reasonable rate;
 - K not be required to comply with clause 1.7(J) where to do so may breach obligations owed by the Consultant to its insurers; and
 - L comply with any directions issued by the Client or construction contract Principal in respect of its functions as delegate of the Client.

1.7 Performance Reports

If requested by the *Client*, three months after completion or equivalent of the construction contract the *Consultant* shall provide, on the standard form, a report that will be entered into the Department for Infrastructure and Transport Prequalification System on the performance of the construction contractor and its major subcontractors.

1.8 Records

On completion of the *Services* and in order to meet the requirements of the *State Records Act 1997* (SA), the *Consultant* and all subcontractors shall provide to the *Client* the *Deliverables* including sketches, plans, designs, estimates, calculations, reports, models, computer sourced codes, articles, information, files and data produced by the *Consultant* in the course of the contract.

1.9 Payment Claim Format

In addition to the requirements for payment claims in accordance with the Contract, the Consultant shall ensure all claims for payment comply with the following:

- All Parts (0, 1, 2 and 3) costs are identified separately;
- Each Part identifies fees, disbursements and variations separately;
- Part 3 fee must be identified as two separate amounts as follows: an amount for Construction PIP 5.5 and an amount for Review PIP 5.6 (Per Attachment 9, Clause 2.3);
- Each amount identifies percentage complete, previously paid amounts and amounts being claimed in the payment claim;
- Is in a tabular format;
- Is in the form of the DIT payment claim template available at [Professional Services \(AS4122\) - Department for Infrastructure and Transport - South Australia](#) or alternative format (subject to such alternative format including all required information as set out in DIT payment claim template);
- Includes adequate description of the *Services* for which payment is being claimed; and
- Is accompanied by a signed Monthly Compliance Statement using the form available at [Professional Services \(AS4122\) - Department for Infrastructure and Transport - South Australia](#) (required for Building Projects only).

1.10 Client's ICT Project Management System (BPIMS)

For Building Projects:

The *Client* has an ICT system that manages critical information on the project that is the subject of this Contract.

The Building Project Information Management System (BPIMS) provides the project management framework that governs the delivery of major building construction projects by the Department.

BPIMS promotes and supports the implementation of government policies and practices and facilitates communication and sharing of knowledge among government agencies, the Department and industry participants. BPIMS enables the electronic collection, collation and consistent management of information, providing project specific information in real time.

Throughout the term of the Contract, the *Consultant* is required to utilise BPIMS on a regular and ongoing basis as directed by the *Client* including but not limited to uploading of contract information and data, uploading of compliance statements, use of the *Client*'s on-line contract instructions system (variation orders and contract memorandums) and use of the *Client*'s on-line payment claim system.

BPIMS makes available to the *Consultant* a range of resources including guide notes, forms and proformas that will be relevant during the construction. By accessing the Contract 'Home Page' using BPIMS, the *Consultant* shall regularly review these resources and obtain project information electronically.

The *Consultant* shall electronically upload information, lodge forms and payment claims, utilise proformas and upload other documents in the form and at the times as specified or directed by the *Client*.

Refer to the BPIMS "Help" suite of documents available in the BPIMS Project Library at:
<http://www.bpims.sa.gov.au/bpims/library/showLibrary.do?searchText=pretender>

ATTACHMENT 9 - PROJECT SPECIFIC REQUIREMENTS

1. SERVICES – PROJECT SPECIFIC

1.1. Terminology

This document is intended for use in conjunction with AS 4122—2010 General conditions of contract for engagement of consultants (General Conditions). Terminology defined in the General Conditions has the same meaning in this Attachment 9.

1.2. Project Delivery Framework

The project will be delivered in accordance with the Construction Procurement Policy: Project Implementation Process (PIP) for the delivery of building construction projects which has several phases:

PIP Phases 1-4	Project Planning
PIP Phase 5.1	Concept
PIP Phase 5.2	Design
PIP Phase 5.3	Documentation
PIP Phase 5.4	Tender
PIP Phase 5.5	Construction
PIP Phase 5.6	Review

1.3. Services Parts

The Attachment 4 – Scope sets out the Service Parts applicable to the Scope of Services. This Attachment 9 must be read in conjunction with Attachment 4 – Scope.

The Consultant must perform the Services in accordance with the General Conditions, Annexures and Attachments to this Contract which sets out the Services allocated to the *Consultant* and other roles as set out below.

Subject to the provisions of this Contract, the Services will be performed in parts as identified in Attachment 4 – Scope. Each Part (as applicable) is further described below:

- (a) Project planning (Part 0);
- (b) Concept Services (Part 1);
- (c) Design, Documentation and Tender Services (Part 2); and
- (d) Construction and Review Services (Part 3).

1.3.1. Project planning – (Part 0)

The *Consultant* must perform the Part 0 Services if included in Attachment 4 - Scope, for the fixed price tendered by the Consultant and accepted by the Client.

For clarity, Part 1 Services will not commence until scope and budget are aligned.

1.3.2. Concept Services (Part 1)

If the basis for payment set out in Annexure item 8 indicates Part 1 Fee is indicative, Alternative 1 applies.

If the basis for payment set out in Annexure item 8 indicates Part 1 Fee is fixed, Alternative 2 applies.

Alternative 1

The Consultant must perform the Part 1 Services for the price accepted by the *Client*, which is based on the indicative price tendered by the Consultant, as set out in the *Contract* and its

Attachments.

The Consultant must not commence the Part 1 Services unless and until:

- a) The parties have reached agreement in writing on the fixed amount of the price payable for the Concept Services, the time frames for performance, and any other necessary terms; and
- b) The Client's Representative (in the Client's absolute discretion) has expressly requested in writing, the Consultant to commence performance of the Concept Services.

If the parties reach agreement in writing on the fixed amount of the price payable for the Part 1 Services, the Fee will be adjusted accordingly. The Fee, as adjusted is based on the scope and duration of Services and is not linked to the project budget.

If the parties cannot reach agreement in writing on the fixed amount of the price payable for the Part 1 Services, the Client may terminate the Contract on 7 days' notice in writing, with no liability other than for outstanding amounts for Part 0 Services completed.

Alternative 2

The Consultant must perform the Part 1 Services for the fixed price tendered by the Consultant and accepted by the Client.

1.3.3. Design, Documentation and Tender Services (Part 2)

If the basis for payment set out in Annexure item 8 indicates Part 2 Fee is indicative, Alternative 1 applies.

If the basis for payment set out in Annexure item 8 indicates Part 2 Fee is fixed, Alternative 2 applies.

Alternative 1

The Consultant must perform the Part 2 Services for the price accepted by the Client which is based on the indicative price tendered by the Consultant, as set out in the Contract.

The Consultant must not commence the Part 2 Services unless and until:

- a) the parties have reached agreement in writing on the fixed amount of the price payable for the Design, Documentation and Tender Services, the time frames for performance, and any other necessary terms; and
- b) the Client's Representative (in the Client's absolute discretion) has expressly requested in writing, the Consultant to commence performance of the Design, Documentation and Tender Services.

If the parties reach agreement in writing on the fixed amount of the price payable for the Part 2 Services, the Fee will be adjusted accordingly. The Fee, as adjusted, is based on the scope and duration of Services and is not linked to the project budget.

If the parties cannot reach agreement in writing on the fixed amount of the price payable for the Part 2 Services, the Client may terminate the Contract on 7 days' notice in writing, with no liability other than for outstanding amounts for Part 0 and Part 1 Services completed as applicable.

Alternative 2

The Consultant must perform the Part 2 Services for the fixed price tendered by the Consultant and accepted by the Client.

1.3.4. Construction and Review Services (Part 3)

If the basis for payment set out in Annexure item 8 indicates Part 3 Fee is indicative, Alternative 1 applies.

If the basis for payment set out in Annexure item 8 indicates Part 3 Fee is fixed, Alternative 2 applies.

Alternative 1

The Consultant must perform the Part 3 Services for the price accepted by the Client which is

based on the indicative price tendered by the Consultant, as set out in the Contract.

The Consultant must not commence the Part 3 Services unless and until:

- a) The parties have reached agreement in writing on the fixed amount of the price payable for the Construction and Review services, the time frame for performance, and any other necessary terms; and
- b) the Client's Representative (in the Client's absolute discretion) has expressly requested in writing, the Consultant to commence performance of the Construction and Review Services.

If the parties reach agreement in writing on the fixed amount of the price payable for the Part 3 Services the Fee will be adjusted accordingly. The Fee, as adjusted, is based on the scope and duration of Services and is not linked to the project budget.

If the parties cannot reach agreement in writing on the fixed amount of the price payable for the Part 3 Services, the Client may terminate the Contract on 7 days' notice in writing, with no liability other than for outstanding amounts for Part 0, Part 1, and Part 2 Services completed as applicable.

The price for the Part 3 Services must clearly identify the fixed amount for Services during Construction (PIP 5.5) and the fixed amount for Services during Review (PIP 5.6). Unless reasonably negotiated otherwise, an amount of 15% of the total Part 3 fee shall apply to the fixed amount for Services during Review PIP 5.6.

Alternative 2

If the basis for payment set out in Annexure item 8 indicates that the Part 3 Fee is Fixed, the Consultant must perform the Part 3 services for the fixed price tendered by the Consultant and accepted by the Client.

1.4. General

Notwithstanding any other provision of the Contract, the Client may, entirely at the Client's own discretion and without cause, delete services from the scope of the Contract provided the Client has not yet authorised the Consultant to commence any part of those Services.

The *Consultant* acknowledges that:

- (a) Each Part of the Services are subject to obtaining additional Government approvals;
- (b) neither this Contract nor the undertaking any Part of the Services, in any way commits the *Client* to, or represents that the *Client* will, undertake any subsequent Part of the Services; and
- (c) the *Client* reserves all rights, including without limitation its rights for whatever reason to withdraw, cancel or modify any Part of the Services, or enter into negotiations and/or a contract with any other person or persons for the performance of any subsequent Part of the Services, without incurring any liability to the *Consultant*.

For the avoidance of doubt, if the *Client* deletes Services from the scope of the Contract:

- the Client will not be obliged to pay any amount attributable to the relevant Services; and
- the Client will be at liberty to have the relevant Services or any part of them undertaken by a third party.

The *Client* reserves the right to review and if necessary amend the extent and nature of consultancy services required for any Part.

ATTACHMENT 10 – ROLE SPECIFIC OBLIGATIONS**1. Terminology**

This document is intended for use in conjunction with AS 4122—2010 General conditions of contract for engagement of consultants (General Conditions). Terminology defined in the General Conditions has the same meaning in Attachment 10.

The South Australian Government describes organisations delivering professional services associated with construction as Professional Service Contractors and this term has the same meaning as *Consultant*.

LPSC OBLIGATIONS

The obligations in clauses 2 to 14 (inclusive) of this Attachment 10 apply only where the *Consultant* is a LPSC:

2. Deliverables

The *Consultant* shall prepare the *Deliverables* consistent with the 5-step Infrastructure Planning and Delivery Framework and the PC028 Construction Procurement Policy: Project Implementation Process.

The *Consultant* shall as part of the *Services* and when requested submit alternative schemes and options for the architectural engineering or other components of the *Deliverables* indicating the design process and an analysis of the advantages and disadvantages of each alternative with a view to determining the optimum economic solutions on the basis of both capital and operational costs for the project. The *Consultant* shall exercise diligence when determining material selections for incorporation into the *Deliverables* and shall ensure the *Deliverables* clearly articulates the quality requirements (e.g. samples, testing, hold points, acceptable tolerances in the standard of workmanship, etc.).

During the construction contract administration phase the *Consultant* shall arrange as the work progresses for the design team to modify all drawings to include approved variations.

3. NATSPEC**For Property Fit Out:**

The *Consultant* shall subscribe to the appropriate NATSPEC package and shall prepare all construction specifications using the appropriate NATSPEC work sections. The *Consultant* shall utilise the Department amended NATSPEC work sections if directed by the *Client*.

For Building Projects:

The *Consultant* shall subscribe to the appropriate NATSPEC package and shall prepare all construction specifications using the appropriate NATSPEC work sections and the Department amended NATSPEC work sections.

4. Site Investigation

The *Consultant* shall investigate and report on site and ownership details, boundary issues, change of land use, risk to people and the environment due to contamination of the soil and/or groundwater.

The *Consultant* shall carry out an assessment of the impact of the proposed project on any aboriginal land or sacred site, any listed (or proposed) heritage site or building and any significant trees.

The *Consultant* shall arrange all surveys required to complete the *Services*. The fees associated with these surveys will be reimbursed by the *Client* as a disbursement.

The *Consultant* shall exercise diligence to inform itself of the site to ensure the *Deliverables* are adequate for the purpose stated in the *Scope*.

5. Design for Access

In accordance with government policy it is necessary for the *Consultant* to manage that the design complies with accessibility provisions under the National Construction Code of Australia (NCCA) and the Disability (Access to Premises – Buildings) Standards 2010 under subsection 31 (1) of the *Disability Discrimination Act 1992* (Cth). It is also a requirement that the *Consultant* reviews the *Scope* to identify any access

requirements specified that will be in conflict with the requirements under the Act and Standards and draw the matter to the attention of the *Client*.

6. Project Plans

Prior to commencing any *Services* the *Consultant* shall prepare and submit to the *Client* the following project specific plans:

- (a) a Work Health & Safety Plan (WH&S plan) setting out in adequate detail the procedures the *Consultant* will implement to manage the *Consultant's* activities from a work health and safety perspective and describe how the *Consultant* proposes to ensure the *Consultant's* activities are performed consistently with all statutory and the Department requirements in relation to work health and safety;
- (b) a 'Safe Design of Structures' plan which shall include the establishment of a risk matrix and the program and process for safe design reviews and reporting on any issues identified and action taken to rectify issues identified (if any); and
- (c) a Quality Plan which indicates how the quality processes of the *Consultant* are to be applied to achieve the requirements of the *Services*, without reference to other documents except such other standard *Consultant* documentation that is relevant to the *Services* and is readily available to the *Client*.

The *Consultant* shall regularly review its project plans, report to the *Client* any issues identified and actions taken to rectify issues identified and update the plans accordingly. The *Consultant* must provide the *Client* with any updated plans.

7. Local Content

Consistent with the Australian Industry Participation National Framework, the South Australian Government is committed to maximising Australian industry participation to encourage greater opportunities for local and regional suppliers. The *Consultant* must include in the *Deliverables* preference for goods and services of South Australian, Australian and New Zealand origin which offer value for money over the life cycle of the project.

Consistent with the South Australian Industry Participation Policy:

- Project design and tender specifications must not be an obstacle to the South Australian supply of required goods or services.
- Design and tender specifications must use Australian standards, or standards regularly used in Australia and be performance oriented rather than design specific where possible.
- References to a specific brand or product made should only be used in exceptional circumstances and followed by the words "or equivalent".

The *Consultant* may use the confidential services of the Industry Capability Network South Australia to identify ways of determining local industry capabilities for import replacement and local industry participation opportunities. The contact details are as follows:

Industry Capability Network South Australia

Web: www.icnsa.org.au

OR

The South Australian Product and Services Register

Office of the Industry Advocate

Web: www.industryadvocate.sa.gov.au/sa-product-and-service-register

8. Program

For Property Fit Out:

If required by clause 12.2 and Annexure Item 41, the *Consultant* shall provide a detailed design program for the *Services*, outlining the order and times for key activities, workshops, meetings, milestones, landlord approvals and other *Client* required items that aligns with the *Program*. The *Consultant* shall provide a statused

Program monthly as required, or at any time requested by the *Client*.

For Building Projects:

If required by clause 12.2 and Annexure Item 41, the *Consultant* shall provide a *Program* compliant with the following requirements:

The *Program* must include;

- A detailed design program including as a minimum:
 - the milestone dates for the development and submission of the fully coordinated Masterplan, Concept, Detailed, and Final Design Documents;
 - the time allowed for review by the Independent Design Certifier and the Client;
 - the time allowed for the release of Hold Points;
 - Approval and governance points;
 - Procurement dates.
- a detailed documentation program setting out the order in which and the times by which Consultant's Drawings and Consultant's Specifications for the construction of the Works are to be completed and submitted to the Client in compliance with clause 45.11 of the Special Conditions.
- Times for key activities, workshops, meetings, milestones.
- Times for delivery of Deliverables required under the Contract.

The Consultant shall status the *Program* as required and provide a copy with each Monthly Report.

9. Site Visits

The *Consultant* and each of the subcontractors shall as part of the *Services* regularly visit the construction site during the construction phase. The exact frequency and type of inspection will be determined by the progress and nature of site activity and will include visits necessary to effectively achieve completion (or equivalent) of the construction contract, monitor rectification of defects and issue the Final Certificate.

During visits to the construction site, the *Consultant* shall monitor and report on construction contractor's and/or subcontractor's compliance with safe work practices as required by the *Work Health and Safety Act 2012* (SA).

For Building Projects only - A written report shall be submitted to the *Client* within two (2) Business Days of each site visit.

10. Design Reviews

The responsibility for completeness, accuracy and coordination of documents resides with the *Consultant*, notwithstanding the *Client* has a design review process at the end of the Concept and Documentation phases as identified in the Services Matrix in Attachment 4 - Scope. The *Consultant* and where relevant or requested the subcontractors shall provide all services necessary to participate in and to address all issues listed in the design review report prepared by the *Client*.

If required services related to design reviews have not been provided by the *Consultant*, the *Client* may withhold any payment that falls due.

11. Compliance Statements

For Building Projects:

The *Consultant* and where relevant or requested subcontractors shall provide monthly a signed statement of compliance appropriate to the phase of the project and as identified in Attachment 4.

If at a later date it is clear that a statement of compliance was incorrect the *Client* may by written request require the *Consultant* to provide all services necessary to achieve compliancy, including any amendment to the *Deliverables*, at its own expense.

If required statements of compliance are not received from the *Consultant* the *Client* may withhold any payment that falls due.

12. CAD, REVIT Files and Manuals

The Consultant must:

- before the tender call for the construction contract(s) (which will be a date to be notified by the *Client* to the *Consultant*) supply AutoCAD or REVIT as .dwg or .rvt and .pdf files of all registered drawings that form part of the construction contract documents;
- ensure that before Practical Completion (or where the construction contract does not recognise Practical Completion, before “Completion”) is due to occur, AutoCAD or REVIT files of all required “Record” drawings (having the same meaning as as-installed drawings, as-built drawings and work-as-executed drawings) are provided to the *Client*;
- ensure that the construction contractor meets its contractual obligations in regard to the provision, timing and content of Record drawings (whether incorporated into Operations Manuals, Maintenance Manuals or otherwise);
- fully specify the requirements for Operations Manuals and Maintenance Manuals in the “General Requirements” section of the construction contract and ensure there is no repetition of the specification (or inconsistency) for Operations Manuals and Maintenance Manuals in the trade specifications;
- obtain the Operation Manuals and Maintenance Manuals from the construction contractor and review them for compliance and completeness and approval, prior to submitting to the *Client*;
- for Building Projects only - ensure approved Operation Manuals and Maintenance Manuals are submitted to the *Client* six weeks before Practical Completion (or where the construction contract does not recognise Practical Completion, before ‘Completion’) is due to occur.

13. Certifier

The *Client* will engage a Certifier for the project. The *Consultant* shall liaise and coordinate with the certifier on all relevant matters including ensuring that liaison occurs at the completion of schematic design and in the final stages of documentation prior to construction contract tenders being called. The *Consultant* shall manage that the works obtain Certification of Compliance with the Building Rules in accordance with section 131(21) of the *Planning, Development and Infrastructure Act 2016* (SA).

As the Client’s certifier must remain independent in order to exercise the functions of a private certifier in accordance with the *Planning, Development and Infrastructure Act 2016* (SA), the Consultant may be required to engage a building surveyor or DDA/NCC advisor as a subcontractor to provide advice as required by the Consultant.

14. Record Drawings

The Consultant shall:

- ensure that “Record” drawings (which has the same meaning as as-installed drawings, as-built drawings and work-as-executed drawings) are prepared progressively throughout the life of the construction contract; and
- ensure that a comprehensive set of Record drawings are submitted to the *Client* before Practical Completion (or where the construction contract does not recognise Practical Completion, before “Completion”) is due to occur.

In addition, where Record drawings are required to be prepared by the construction contractor, the *Consultant* must provide the construction contractor with base AutoCAD or REVIT contract drawings at the commencement of the construction contract, and progressively thereafter as required by the construction contractor.

Drawings must be prepared in accordance with the requirements of the Department.

Where drawings are for a Building Project, drawings must be prepared in accordance with the requirements of guide note Electronic Document Requirements (G65) which is available in the BPIMS Project Library.

COST MANAGER

The obligations in clauses 15 to 22 (inclusive) of this Attachment 10 apply only where the *Consultant* is a Cost Manager:

15. Cash Flows, Project Estimates and NPV Analysis

The *Consultant* shall establish cash flow budgets for the project, and monitor, review and update the cash flow regularly.

The *Consultant* shall provide cost estimates and progressively review and report on project costs during all phases of the Project. The format for presentation of estimates shall be in accordance with the standard provided by the Department.

The *Consultant* shall provide detailed elemental cost analysis at the pre-tender stage of the Project. All items in the analysis will be provided as \$/m² rates for the gross floor area. In the case of a project with a number of facility types (e.g. office and warehouse, school redevelopment etc) the cost analysis shall be split into the facility types if requested by the Principal.

The *Consultant* shall provide a detailed elemental cost analysis of the preferred tender as \$/m² rates for the gross floor area.

The *Consultant* shall, where applicable, meet the requirements of DIT Guidenote G44 Ecologically Sustainable Development – Planning, Design and Delivery in regard to the preparation of life cycle assessment for the recommended plant and at least one alternative.

The *Consultant* shall, where requested by the *Client*, prepare net present value (NPV) analysis for Parliamentary Committees and Cabinet approval.

The *Consultant* shall:

- (a) monitor and report on project costs during the development of *Deliverables*;
- (b) prepare monthly financial reports covering cost of work executed to date, cost of variations to date and the cost of any anticipated claims projecting a final account end cost;
- (c) attend meetings, liaise with the *Client's* other *Consultants* and contractors and provide advice on materials costs alternative methods scope adjustments and construction systems during the design and construction process to ensure that all cost implications are considered in decision making.

16. Construction for Contract Tenders, Contracts and Administration

The *Consultant* shall prepare pre-tender estimates of the construction contract cost based on the *Deliverables* for the project.

The *Consultant* shall assess the cost implications of tenders received for the construction contract and provide a reconciliation and tender recommendation report.

17. Site Visits

The *Consultant* and each of the subcontractors shall as part of the *Services* regularly visit the construction site during the construction phase for the purposes of determining progress and verifying claims for payment from the construction contractor.

18. Consultant Contract Administration

When requested by the *Client* to participate in the evaluation of tenders for another contract the *Consultant* shall undertake the evaluation of the tender in strict accordance with the *Client's* policies, practices and systems for tender evaluation.

The *Consultant* shall at all times assist in the administration of the *Client's* other consultant contracts according to its terms, with diligence and promptitude and in accordance with the *Client's* procedures.

The *Consultant* shall report in writing with respect to the progress of the *Client's* other consultant contracts and project budgets not less than monthly with respect to the following issues: (a) adherence to budget and cash flow projections; (b) variations and value of variations; (c) extensions of time; (d) predicted costs on completion; (e) project budget risks.

The *Consultant* shall:

- (i) promptly inform of the occurrence or imminence of any matter which may give rise to a claim for

- additional payment by the *Consultant* and the *Client's* other consultants;
- (ii) advise in respect of any such matter or course of action, consistent with the successful completion of the Project, which is most likely to minimise the *Client's* liability;
 - (iii) prepare estimates of the *Client's* other consultants' contract variations, discuss with the consultants as necessary and make recommendation;
 - (iv) prepare and recommend the financial finalisation of contracts with the *Client's* other consultants;
 - (v) promptly refer to the *Client* any claim application or notice forwarded by the *Client's* other consultants which should under the construction contract have been directed to the *Client*;
 - (vi) not waive or vary any of the *Client's* rights under the consultant contract without prior written approval;
 - (vii) on request, be available on reasonable notice to consult with the *Client* on the other consultant contracts;
 - (viii) provide such assistance and deliver such *Deliverables* as the *Client* requires in the event of any arbitration or other proceedings arising in respect of the *Client's* other consultant contracts.

19. Budget Reviews

The responsibility for completeness, accuracy and coordination of documents resides with the *Consultant*, notwithstanding the *Client* has a budget review process. The *Consultant* and, where relevant or requested, the subcontractors shall provide all services necessary to participate in and to address all issues listed in the budget review report prepared by the *Client*.

If required services related to budget reviews have not been provided by the *Consultant*, the *Client* may withhold any payment that falls due.

20. Compliance Statements

For Building Projects:

The *Consultant* and where relevant or requested subcontractors shall provide monthly a signed statement of compliance appropriate to the phase of the project and as identified in Attachment 4.

If at a later date it is clear that a statement of compliance was incorrect the *Client* may by written request require the *Consultant* to provide all services necessary to achieve compliancy, including any amendment to the *Deliverables*, at its own expense.

If required statements of compliance are not received from the *Consultant*, the *Client* may withhold any payment that falls due.

21. Lead Professional Service Contractor (Architecture)

The *Consultant* is advised that a lead *professional service contractor* (Architecture) may be engaged directly by the *Client* to provide services in each Part of the *project*. The *Consultant* shall liaise and coordinate with the lead *professional service contractor* on all relevant matters.

22. Project Manager

The *Consultant* is advised that a project manager may be engaged directly by the *Client* to provide project management services to the project. The *Consultant* shall liaise and coordinate with the project manager on all relevant matters.

ATTACHMENT 11 – NOTES ON PUBLICATIONS, POLICIES AND GUIDE NOTES FOR CONSULTANTS

This document is intended for use in conjunction with contracts based on AS 4122—2010 General conditions of contract for engagement of consultants, as amended (General Conditions). Terminology defined in the General Conditions has the same meaning in this Attachment 11.

The *Consultant* shall comply with all relevant Department for Infrastructure and Transport (DIT) publications, policies and guide notes in carrying out the *Services*. They can be found in the Department Building Project Information Management System library at http://www.bpims.sa.gov.au/bpims/library/library_frameset_1.htm

The notes below provide an overview of information contained in the guide notes.

1. Approval for Construction Contract Tender Call

Before calling tenders for the construction contract the *Consultant* shall provide the Department project manager with the completed Pre-Tender Call Declaration form in accordance with the proforma “Pre-Tender Call Declaration (200)”.

2. All Record Drawings

All “Record” drawings (having the same meaning as as-installed drawings, as-built drawings and work-as-executed drawings) shall be provided in accordance with the guide notes “As Built Documentation, Operations Manuals and Maintenance Manual (G54)” and “Electronic Document Requirements (G65)”.

3. Building Certification

The guide note “Development Approval (G31)” clarifies the roles of the *Consultant* and the Certifier. Refer to Ministerial Building Standard MBS 001 Upgrading health and safety in existing buildings July 2019.

4. Building Information Modelling (BIM)

All BIM Information and 3D Modelling undertaken in accordance with the Department Project BIM Brief shall be developed in accordance with the following Department BIM guide notes and requirements.

- Building Information Modelling - Core Brief (232)
- Building Information Modelling - Project Specific Brief (231)
- Building Information Modelling Requirements (G168)

5. Completion Documents

As part of Design, Documentation and Tender services (Part 2), the *Consultant* shall comply with “Documentation for Project Completion (G178)” in the compilation of maintenance and operations manual checklists (otherwise known as the Required Documents lists) by using BPIMS to develop the checklists and inserting both checklists into section 6 of the Department amended NATSPEC General Requirements work section, or as an appendix.

6. Construction Detailing and Site Inspection Guide

The guide note “Construction Detailing and Site Inspection Guide (G16)” is a checklist of constructability and construction quality issues which the *Consultant* should review during design and site inspection of the Works.

7. Construction Contract Documentation

The *Consultant* shall prepare documents for the construction contract in accordance with the guide note “Construction Contract Tender Documents Format (G4)”.

8. Construction Site Visits

The *Consultant* shall visit the construction site in accordance with the guide note “Construction Site Visits (G18)” and as directed by the Contractor.

9. Cost Management

The guide note “Cost Management Reporting (G40)” advises on the format and required detail for cost management reports and the like.

10. Critical Work Plans (CWPs)

The guide note “Critical Work Plans” (G169) describes the requirements in carefully planning and

documenting operations that are high or catastrophic risk, with consultation and approval from all relevant stakeholders. The *Consultant*'s role is to provide assistance in identifying such risky operations and then to review CWP's that have been prepared by the Contractor.

11. Department for Education Design Standards

Where the project on which the *Consultant* is providing services is a project for the Department for Education refer to the "Education facilities design standards" available at

<https://www.education.sa.gov.au/doc/design-standards-education-facilities>.

12. Design Review Process

The *Consultant* shall refer to the guide note "Design Review Process (G29)" and shall address all issues listed in the design review report prepared at the end of Concept, Design and Documentation phases and as identified in Attachment 4 Appendix 2 Services Matrix. Design teams shall make contact with the nominated Department construction adviser (via the Department project manager) to provide progressive reviews at agreed points, nominally 40%, 60% and tender release documents.

13. Development Approval

The Department procedures shall be followed when the project reaches the development and certification stages in accordance with the guide note "Development Approval (G31)".

14. Dispute Resolution

The guide note "AS2124 Administration of Disputes (G22)" gives background and detail to the role and its delivery as required by the Department, particularly in the circumstances of a dispute. The guide note "AS2124 Dispute resolution (G20)" gives a flow chart of the process and helpful notes.

15. Earthquake Issues

There are issues that must be considered regarding the impact of earthquake on buildings during the design phase. Importance Level 4 projects must seek advice from DIT's Manager Professional and Advisory Services (via DIT's project manager). Refer to [Ministers Specification SA "Upgrading health and safety in existing buildings" August 2017 Part 2, Appendix A](#).

16. Ecologically Sustainable Development (ESD) Planning and Design

Government has a policy in regard to ESD. The *Consultant* shall plan and design the asset in accordance with the guide note "Ecologically Sustainable Development Planning, Design and Delivery & Sustainment (G44)".

17. Electrical Cable Jointing

The guide note "Electrical Cable Jointing (G175)" specifies requirements for jointing of major electrical cables when full replacement is not possible.

18. Electronic Document Requirements

The *Consultant* shall prepare all drawings for the construction contract and for future asset management in accordance with the guide note "Electronic Document Requirements (G65)".

19. Existing Trees

Where there are large trees on the proposed building site the *Consultant* shall refer to the guide note "Existing Trees (G33)".

20. Facilities Planning Study

Where the consultant services are to prepare a facilities planning study refer to the guide note "Preparation of Facilities Planning Study (G63)".

21. In-Floor Electrical Services Boxes

Where in-floor boxes for electrical services are used on government building construction projects, the

Consultant shall refer to the guide note “In-Floor Electrical Boxes (G167)”.

22. Hazardous Substances

An inspection report, management plan and register may be available for information and the *Consultant* shall make appropriate enquiries to the Department Project Manager. Prior to any considerations or work associated with hazardous substances contact the Department Asbestos Management Unit on 8226 4455.

23. Health Assets Design

The Department for Health and Wellbeing and SA Health have specific requirements relating to asset management and building design in accordance with the following documents:

- Australian Health Facility Guidelines (AusHFGs);
- NSW Health Engineering Services Guidelines;
- Guidelines for Legionella control in the operation and maintenance of water distribution systems in health and aged care facilities;
- In House Green Rating Tool (IGRAT) and associated rating process;
- SA Health – Security Service – Minimum Specification;
- SA Health – Protective Security Plan;
- SA Health – Signage Standards;
- SA Health – Installation of a Structured Cabling System Specification – ICT Services Version 7.0;
- SA Health – Medical Gas Policy Directive;
- SA Health – Bedside Monitor Mounting Installation Guide for New SA Health Hospital Sites;
- Project Completion Requirements (copies available through the Department project manager);
- SA Health – Security Minimum Standards;
- SA Health – ICT Communications Infrastructure Design Guide and Specifications; and
- SA Health complies with legislation and SA Government Policy requirements for criminal and relevant history screening. Appropriate criminal and relevant history screening is required prior to commencement of services to or on behalf of SA Health; and prior to accessing SA Health premises or information systems for work, study or research.

24. Impairment to Fire Services

Where there are existing fire services on the proposed building site it is a requirement that the South Australian Government Captive Insurance Corporation (SAICORP) (Ph: 8226 2270) is advised in writing prior to the impairment of those services for a period of four calendar days or more. The *Consultant* shall manage that the standard Department for Infrastructure and Transport Preliminaries requirement to advise SAICORP is included in the construction contract and is referred to in the relevant trade specification sections of the construction contract. The *Consultant* shall ensure that contractors are cognisant of this requirement during construction.

25. Legionella Control in Heated Water Systems

The *Consultant* shall design all heated water systems in accordance with the requirements of “The Guidelines for the Control of Legionella in Manufactured Water Systems in South Australia” and “South Australian Public Health (Legionella) Regulations 2013”.

26. Operations Manuals and Maintenance Manual

The *Consultant* shall ensure that:

- the requirements for Operations Manuals and Maintenance Manual are fully specified in the “General Requirements” section of the construction contract;
- there is no repetition of the specification (or inconsistency) for Operations Manuals and Maintenance Manuals in the trade specifications;
- the General Requirements requires the Operations Manuals and the Maintenance Manuals to be prepared in accordance with the guide note “As Built Documentation, Operations Manuals and Maintenance Manual (G54)”;
- the Operations Manuals and the Maintenance Manuals are compliant and complete prior to submitting them to the Department.

27. Nominated Subcontractors

The Department policy is that nominated subcontractors are not used, refer to guide note “Nominated and

Selected Subcontractors (G7)" for details.

28. Performance Based Specification

It is the Department policy that the use of performance-based specification is strictly limited. The *Consultant* shall refer to the guide note "Performance Based Specification (G6)" and discuss with the Department Project Manager before using this form of specification.

29. Planting Indigenous Species

Under government policy it is necessary for priority to be given to the planting of indigenous species in accordance with the "Planting Indigenous Species Policy". The policy can be found at the Department for Environment and Water website: www.environment.sa.gov.au.

30. Project Review

After the project is handed over to the client there is a requirement to conduct a post construction review. Refer to the proforma "Post Construction Review Survey (193)". Later after final completion there is a requirement to conduct a post occupancy review. Refer to the proforma "Post Occupancy Evaluation Survey (195)". For projects up to the value of \$11 million, the Department often manages review through a combined post construction/post occupancy review three months after handover. Refer to the guide note "Post Construction Review and Post Occupancy Evaluation (G79)" for further information.

31. Publicity Brochures

When preparing brochures refer to the guide note "Publicity Brochures (G23)" for requirements.

32. Recycled Pavement Materials

Refer to the guide note "Recycled Pavement Materials (G36)".

33. Removal/Demolition of Buildings

If any buildings are removed or demolished, implement the requirements outlined in the guide note "Assessment and Management of DECD Sites Treated with Termiticides (G32)" to determine if the soil is contaminated by chemicals used for the control of termite infestation. Also refer to the guide note "Site Contamination (G37)".

34. Safety in Design Matrix

The *Consultant* shall meet the requirements of the Principles of Safe Design for Building Projects. Details can be found in the guide note "Principles of Safe Design (G125)". Safety in Design documentation shall be prepared in accordance with and shall meet the requirements of the *Work Health and Safety Act 2012* (SA), WHS Regulations 2012 (SA) and the Safe Work Australia Safe Design of Structures – Code of Practice (2012).

35. Seismic Restraint of Engineering Services

Australian Standard 1170.4 – Earthquake actions in Australia, requires that certain engineering services be restrained against seismic loads. Requirements are specified in the guide note "Seismic Restraint of Engineering Services (G172)" and drawings "Examples of Seismic Bracing for Services – Detail Sheets 1 and 2" (DG51 and DG52). A key requirement of the guide note is that *Consultants* design and document the required seismic restraint of services in detail as part of producing documents for tender.

36. Seismic Restraint of Suspended Ceilings

Australian Standard 1170.4 – Earthquake actions in Australia, requires that suspended ceilings be restrained against seismic loads. Requirements are specified in the guide note "Seismic Restraint of Suspended Ceilings (G173)" and drawings "Examples of Seismic Bracing for Suspended Ceilings – Detail Sheet" (DG53). A key requirement of the guide note is that *Consultants* design and document the required seismic restraints of services in detail as part of producing documents for tender.

37. Shop Drawings

Shop drawings are to be reviewed, not approved, and the appropriate wording should be included in the specification. This applies to the *Consultant* and all subconsultants. Refer to the guide note "Shop

Drawings (G21)".

38. Site Contamination

The guide note "Site Contamination (G37)" provides information on the procedures that apply when soil contamination is found.

39. Solar Panels for Government Funded Building Projects

The SA Government has a policy in regard to the installation of solar panels in new or substantially refurbished building construction projects. The *Consultant* shall plan and design the asset in accordance with the guide note "Solar Panels for Government Funded Building Projects (G140)". The guide note is referenced in "Ecologically Sustainable Development Planning, Design and Delivery & Sustainment (G44)".

40. Spare Capacity and Maximum Demand setting for Electrical Installations on Government Sites

The guide note "Spare Capacity and Maximum Demand setting for Electrical Installations on Government Sites (G177)" gives direction on how Maximum Demand is to be set when modifying an electrical supply for a Government site.

41. Stormwater Pollution Control

The Department endorses the "General Code of Practice for State and Federal Government Agencies for stormwater pollution control" which has been issued under the auspices to the South Australian Office of the Environment Protection Authority (EPA). The application of the Code is to be an integral part of the design and construction process. In particular the use of soil erosion and sediment control structures and the preparation of a Soil Erosion and Management Plan are to be addressed.

42. Tender Evaluation

There are a number of guide notes that assist the *Consultant* in the process of tender evaluation and recommendation. They are "Evaluation of Construction Contract Tenders (G12)", "Evaluation of Construction Contract Tenders Notes" and "Pre Tender Call Declaration (200)".

43. Termite Management

The guide note "Termite Management (G38)" gives advice on the options under Australian Standards for differing flooring systems.

44. Underground Oil Tanks in Schools

If there are underground oil tanks in the vicinity of a redevelopment particularly on a school site contact the Department Senior Civil Engineer on (08) 8343 2460. Also refer to the guide note "Site Contamination (G37)".

45. Access for Maintenance

Safe maintenance access shall be provided for all serviceable plant and equipment installed off ground, above ceiling, on roof, in-wall or in any other confined or prohibitive locations. The Consultant must comply with the guide note "Access for Maintenance (G189)", which gives direction on the requirements for safe maintenance access, to ensure a safe and compliant installation. Further details can be found in the guide note "Principles of Safe Design (G125)".

46. Thermostatic Mixing Valves (TMV) and Plumbing equipment

The locations and enclosures for TMV's, valves and equipment shall be designed & installed so they can be accessed easily for maintenance or servicing.

ATTACHMENT 12 – CLIENT’S REPRESENTATIVE DELEGATIONS

It is hereby declared that the functions vested in the *Client’s Representative* under the clauses of AS 4122—2010 General Conditions of Contract for engagement of consultants listed in this schedule, including those amended by the Special Conditions of Contract and Annexure, may alternatively be exercised by the delegate indicated in delegation schedules 1A and 1B. Such delegation shall not prevent the *Client’s Representative* from exercising any function.

DELEGATION SCHEDULE 1A				
Client’s Representative - Delegate, For Building Projects: Project Manager, Building Projects For Property Fit Out: Project Manager, Property Fit Out Department for Infrastructure and Transport				
Clause		Subclause		Function
5	SCOPE	5.3		Give notice
6	CONSULTANT’S REPRESENTATIVE	6.4		Object
7	INFORMATION			Provide Client Information
8	DIRECTIONS			Give direction
9	VARIATIONS	9.1	Variation	Give direction
		9.8	Client initiated variation	Give direction
		9.9	Client initiated variation	Give direction
10	PAYMENT	10.1F	Payment of disbursements	Request documentation
12	TIME	12.1D	Scheduled Progress	Instruct to take all reasonable steps
		12.2	Programs	Direct to furnish a Program
		12.6	Client delay	Give notice
		12.9	Extension of Time	Grant extension of time
		12.10	Variation	Agree a Variation
		12.11	Extend time	Give notice to extend
16	ADVERSE EVENT			Notify
18	KEY PERSONNEL			Give approval
19	CONFLICT OF INTEREST	19.4	Conflict of interest	Give direction
		19.6	Publicity	Give approval
20	SUBCONTRACTING	20.3	Approval to subcontract	Give approval
20B	NOVATION TO BUILDER	20B.1		Give direction
22	MORAL RIGHTS	22.3(d)	Copies of consents	Request copies
23	CONFIDENTIALITY	23.3	Publish information	Provide consent

33	SERVICE OF NOTICES	33.3		Notify change of address or email address
38	WORK HEALTH AND SAFETY	38.2		Request evidence / information
		38.5		Give direction
39	EVALUATION OF CONSULTANT'S PERFORMANCE			Provide copy of evaluation
42	FAULTS IN DELIVERABLES	42.2 42.3(a)		Notify of a Fault
		42.3(c)		Rectify
45	CONSULTANT'S DESIGN	45.7	Permission to use drawings and specifications	Give notice of acceptance or rejection
		45.11	Documentation program	Advise
		45.12	Confirmation of the Works	Request documents
48	CONSULTANT AS LOCAL PROVIDER	48.4		Request information
49	SECURITY	49.2(b)		Request checks / security clearances
		49.3		Agree checks / security clearances. Notify of requirement for checks/security clearances.

DELEGATION SCHEDULE 1B

Client's Representative - Delegate,
For Building Projects: Principal Cost Manager, Building Projects
For Property Fit Out: Project Manager, Property Fit Out
Department for Infrastructure and Transport

Clause		Subclause		Function
4	STANDARD OF CARE			Make payment
10	PAYMENT	10.4A		Request EV report Advise information required
		10.5		Make payment or issue a statement stating the lesser amount
12	TIME	12.10		Pay consultant
24	SUSPENSION BY CLIENT	24.2		Pay consultant
26	TERMINATION WITHOUT CAUSE	26.2		Pay consultant
51	AUSTRALIAN GOVERNMENT AGREEMENT			Pay for services rendered

ATTACHMENT 13 – PROJECT BRIEF DOCUMENTS

The following documents form the project brief documents.

Document Title	Prepared By	Revision	Date