



Department for Infrastructure and Transport

APPLICATION FOR:
Preferred Supply Arrangement – Project Management and Contract
Management (PSA-PMCM)
(PSA No. 19C171)

**APPLICATIONS AND
FURTHER INFORMATION**

E-mail: DIT.PSA@sa.gov.au

INSTRUCTIONS

General

Companies (Applicants) wishing to apply for 19C171 Preferred Supplier Arrangement – Project Management and Contract Management with the Department for Infrastructure and Transport (the Department) **must** fill out this Application Form and attach the information requested.

- Complete the Application Form and save as a .docx or .pdf file (without these instructions).
- Save the attachments as .pdf files. Where the files are small, they should be combined so that an absolute maximum of 10 files in total are submitted. Strictly follow the numbering system in this form when preparing the attachments.

Further guidance on applying for membership can be found in the Application Guidelines: 19C171 Preferred Supply Arrangement, Project Management and Contract Management.

The submission of an Application is deemed agreement by the Applicant to the terms and conditions of the Guidelines.

Submitting the Application

Applications must:

- a) include all documentation outlined in this Application Form, together with any other supporting technical or financial information;
- b) include file names which clearly indicate the applicable section numbers of this application that are addressed in the file; and be submitted electronically at www.tenders.sa.gov.au
- c) with the following subject line:

NEW APPLICATION – 19C171 Preferred Supplier Arrangement – Project Management and Contract Management.

Do not submit a hard copy.

Do not submit information not specifically requested in this Application.

Enquiries may be directed to DIT.PSA@sa.gov.au.

Publication of Details

Once accepted in the PSAPMCM, the contact details provided in this Application Form will be published on the following internet site: https://dit.sa.gov.au/contractor_documents/prequalification.

It is the Applicant's responsibility to ensure that the contact details provided are up to date.

SCHEDULE CHECKLIST FOR APPLICATION

For each item please tick the box to indicate that the Schedule has been completed and included with your Application.

1	Supplier Information	<input type="checkbox"/>
2	Compliance	<input type="checkbox"/>
3	Insurances	<input type="checkbox"/>
4	Application Requirements	<input type="checkbox"/>
5	Statement of Intent for Industry Participation Plan (IPP)	<input type="checkbox"/>
6	Registration with Tenders SA	<input type="checkbox"/>

APPLICATION FORM

Schedule 1. Supplier Information

Trading Name	<insert name>
Registered Name	<insert name>
ACN	<insert number>
ABN	<insert number>
Address of registered office	<insert address>
Place of business in South Australia (if relevant)	<insert address>
Type of entity (e.g. company, trust, partnership, sole trader, other)	<insert entity>
Key Personnel (e.g. directors, chief executive officer, principal of business etc.)	<insert names and positions>
Telephone	<insert phone number>
Website	<insert URL>

Contact Details

Contact Person	<insert name>
Position	<insert position>
Address	<insert address>
Postal address	<insert address, if different to the above>
E-mail (provide 2 e-mail addresses. These must also be registered with Tenders SA – Schedule 7)	<insert email address> <insert email address>
Telephone	<insert phone number>

Conflict Of Interest

You must provide details of any actual or perceived interests, relationships or clients which may cause a conflict of interest or potential conflict of interest, and actions to prevent or manage the conflicts of interest.

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Schedule 2: Compliance

Terms and Conditions	
Confirm that you agree to comply with the proposed Preferred Supply Arrangement - Project Management and Contract Management Terms and Conditions outlined in Attachment 1 without any further amendment.	Yes/No
<p>Consultant's Name:</p> <p><u>SIGNED</u> for and on behalf of <u>THE CONSULTANT</u>) by a duly authorised officer in the presence of:)</p> <p>.....</p> <p>Witness signature Authorised officer signature</p> <p>.....</p> <p>Witness name Authorised officer name</p> <p>.....</p> <p>Date Authorised officer position</p> <p>.....</p> <p>Date</p>	

FOR OFFICE USE ONLY

<p>.....Application(s) opened on/...../2020</p>	
<p>By: (Signature of Authorised Officer)</p>	<p>..... (Printed Name of Authorised Officer)</p>
<p>And: (Signature of Authorised Officer)</p>	<p>..... (Printed Name of Authorised Officer)</p>

Schedule 3: Insurances

Provide details of each insurance policy relevant to the PSAPMCM.

Public Liability Insurance	
Certificate of Currency of Public Liability Insurance to \$10 million attached to this response document	Yes/No
Value of Insurance	
Date of Insurance expiry	
Professional Indemnity Insurance	
Certificate of Currency of Professional Indemnity Insurance to \$5 million attached to this response document	Yes/No
Value of Insurance	
Date of Insurance expiry	
Other Insurance	
ReturnToWorkSA Certificate of Workers Compensation	Yes/No

Schedule 4: Application Requirements

4.1 The Applicant is required to nominate candidates matching the following categories, candidate descriptions, proposed rates and indicative usage. Please provide CVs for all nominated personnel.

PROJECT MANAGEMENT AND CONTRACT MANAGEMENT				
Category	Candidate Descriptions	Proposed Rates	Indicative Usage	Nominated Candidate and associated CVs*
A	<p>The Candidate will possess strong commercial and technical capability to effectively undertake highly complex Project Management and Contract Management roles, for the Department. The Registrant will perform SAES equivalent standard upon commencement.</p> <p>This role is reserved for:</p> <ul style="list-style-type: none"> • Project Director; or • Specialised Commercial Manager; or • Specialised Procurement Director. 	By negotiation	Limited	<i>List nominated candidates here. Please provide relevant CVs as an attachment.</i>
B	<p>The Candidate will have demonstrated capability to undertake Project Management and Contract Management roles for the Department immediately. Successful Registrants will need to deliver services at Manager equivalent level.</p> <p>This role is reserved for:</p> <ul style="list-style-type: none"> • Senior Project Manager; or • Senior Contract Manager; or • Senior Procurement Manager. 	Up to \$180 plus GST per hour	Routine	<i>List nominated candidates here. Please provide relevant CVs as an attachment.</i>
C	<p>The Candidate will have demonstrated capability to undertake client-side Project Management and Contract Management roles. Successful applicants will need to deliver client-side services at a senior level. This will require experience working client-side and preferably with the Department.</p> <p>This role is reserved for:</p> <ul style="list-style-type: none"> • Project Manager; • Contract Manager; and • Procurement Manager. 	Up to \$150 plus GST per hour	Routine	<i>List nominated candidates here. Please provide relevant CVs as an attachment.</i>
D	<p>The Candidate will have the ability to undertake client-side Project Management and Contract Management or Site Manager roles. Successful Registrants will need to have experience working client-side or extensive experience working on the Department projects as a Project Engineer / Contract Manager or Site Engineer.</p> <p>This role is reserved for:</p> <ul style="list-style-type: none"> • Project Officer; or • Site Engineer/Contract Administrator; or • Procurement Adviser. 	Up to \$120 plus GST per hour	Routine	<i>List nominated candidates here. Please provide relevant CVs as an attachment.</i>
E	<p>The Candidate will have highly technical skills and capability and extensive experience in a specialised field of engineering, project management or contract management. This may include experience in delivering complex, road or bridge projects. The Registrant is not required to have past Department experience.</p>	By negotiation	Limited	<i>List nominated candidates here. Please provide relevant CVs as an attachment.</i>

*Refer to 4.2 below for guidance on nominating for the appropriate Category.

4.2 Secondary procurement candidate selection criteria matrix

During the secondary procurement process, members of the PSAPMCM shall be invited make submissions to provide services based on the following categories, mandatory requirements and core capabilities.

Category	Mandatory requirements	Core capabilities
A	<ul style="list-style-type: none"> a) Minimum 12 years the Department and / or industry experience, involving transport and / or building infrastructure project delivery and contract management; b) Relevant tertiary qualification; c) Approach to mentoring staff and supporting the Department succession planning requirements 	<ul style="list-style-type: none"> a) Recognised as a senior leader within the construction sector and demonstrate experience in procuring or leading high value, high risk and complex projects, \$100 million and above. b) Demonstrated experience in leading a multi-discipline team to achieve project objectives and meet community needs. c) Demonstrated commercial acumen skills and the ability to negotiate outcomes with complex stakeholders.
B	<ul style="list-style-type: none"> a) Minimum 7 years the Department and / or industry experience, involving transport and / or building infrastructure project delivery and contract management. b) Relevant tertiary qualification c) Approach to mentoring staff and supporting the Department succession planning requirements. 	<ul style="list-style-type: none"> a) Demonstrated experience in procuring, leading or contract managing high risk and complex projects, \$50 million and above. b) Demonstrated experience in leading a multi-discipline team to achieve project objectives and meet community needs. c) Demonstrated commercial acumen skills and the ability to negotiate outcomes with complex stakeholders.
C	<ul style="list-style-type: none"> a) Minimum 5 years the Department and / or industry experience, involving transport and / or building infrastructure project delivery and contract management. b) Relevant tertiary qualification c) Approach to mentoring staff and supporting the Department succession planning requirements. 	<ul style="list-style-type: none"> a) Demonstrated experience in procuring, leading or contract managing projects up to \$50 million. b) Demonstrated experience in leading a multi-discipline team to achieve project objectives and meet community needs. c) Demonstrated commercial acumen skills and the ability to negotiate outcomes with complex stakeholders.
D	<ul style="list-style-type: none"> a) Minimum 3 years the Department and / or industry experience, involving transport and / or building infrastructure project delivery and contract management. b) Relevant tertiary qualification; or extensive industry experience. 	<ul style="list-style-type: none"> a) Demonstrated experience in leading, contract managing or provide site management services to projects up to \$20 million. b) Demonstrated experience in contributing to a highly diverse team to achieve project objectives and meet community needs. c) Demonstrated ability to negotiate outcomes with stakeholders.
E	<ul style="list-style-type: none"> a) Minimum 10 years Industry experience, involving transport and / or building infrastructure project delivery and contract management; b) Specialist Technical Advisor 	<ul style="list-style-type: none"> a) Demonstrated experience in providing highly specialised and technical services to high value, high risk and complex projects. b) Demonstrated experience in contributing to multi-discipline team to achieve project objectives and meet community needs. c) Demonstrated ability to negotiate outcomes with stakeholders.

Schedule 5: Industry Participation Plan - Statement of Intent

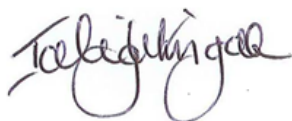
This statement of intent is specifically designed for **DIT – 19C171 - Project & Contract Management Services**

Guiding documents including the South Australian Industry Participation Policy, Procedural Guidelines and Frequently Asked Questions are available at <http://www.saipp.sa.gov.au>.

The Industry Advocate, under the functions of the Industry Advocate Act 2017 has the discretion to review and assist in the negotiations for Industry Participation Plans to ensure that they comply with the SAIPP prior to the finalisation of contract conditions.

If you need assistance please contact the Office of the Industry Advocate on (08) 8226 8956 or email: uia@sa.gov.au

INDUSTRY ADVOCATE APPROVAL:



DATE: 03/11/2020

Please note: This document is invalid without the Industry Advocate's signature

GENERAL ADMINISTRATION

Business Name		Project Manager	
Telephone		Email	
Are you an Aboriginal owned business?		<input type="checkbox"/> YES	<input type="checkbox"/> NO
Will you engage Aboriginal-owned businesses in the delivery of this contract?		<input type="checkbox"/> YES	<input type="checkbox"/> NO
Declaration As a duly authorised officer of the Business, I am familiar with the South Australian Industry Participation Policy, <i>Industry Advocate Act 2017</i> and the business's responsibilities under this policy. By signing this I also declare that all information contained in this Statement of Intent is true and accurate to the best of my knowledge.			
Signature:		Date:	
Name (print):		Position:	
NOTE: Your Business is expected to complete an Industry Participation Plan if successfully down selected.			

BACKGROUND:

The South Australian Industry Participation Policy (SAIPP) establishes the framework by which obligations to provide opportunities for capable South Australian enterprises are given full, fair and reasonable opportunity to tender and/or participate in a government contracts.

The SAIPP acknowledges the direct influence design and specifications can have on industry participation outcomes and economic contribution to the State.

The Industry Advocate supports the Government's long-term objective of building resilience into the supply chains of Government contracts. Of course, resilience in supply chains can be achieved in many ways from diversifying the supplier base to utilising innovation and technology to improve productivity.

The Aboriginal economic participation section of the SAIPP aims to increase the level of Aboriginal engagement and participation through employment and economic opportunities arising out of Government's expenditure.

Industry Participation Plans (IP Plans) are used to measure the economic contribution to the State or region through three key indicators labour, supply inputs and capital associated with the contract.

It should be noted an Industry Participation Plan is invalid without a signature from the Industry Advocate.

OBJECTIVE:

This Statement of Intent forms part of Industry Participation process and the information provided will be used to benchmark Industry Participation Plans submitted at Stage 2. The Participant will be required to complete the following documents for evaluation of economic contribution purposes consistent with the SAIPP.

The South Australian Industry Participation Policy applies to all panel contracts.

An IPP process is a mandatory requirement.

- A Statement of Intent will form Stage 1 of the Industry Participation process and the information provided will be used to benchmark an Industry Participation Plan submitted at Stage 2 (secondary procurements from the panel).
- An IPP Plan is required for any secondary procurement over and equal to \$550,000 (GST inclusive) and IPP weightings will apply.

The Industry Advocate, under the functions of the *Industry Advocate Act 2017* has the discretion to review and assist in the negotiations for Industry Participation Plans to ensure that they comply with the SAIPP prior to the finalisation of contract conditions.

SECTION A: LABOUR AND SOURCING FROM SA

The purpose of this section is to measure the potential economic benefit to the State through the use of labour sourced from within South Australia.

The following questions establish your intentions through the delivery of this contract:

A1. Will the Participant be creating new jobs or retaining positions in South Australia over the life of the contract? ☐ Yes ☐ No

SECTION B: INVESTMENT IN SOUTH AUSTRALIA

Capital expenditure and other associated investment can provide a significant and long-term stimulus to the South Australian economy, unlocking or increasing the capacity or capability of local enterprises to deliver more services to and from South Australia.

The Participant will be asked in the future Industry Participation Plan to estimate the investments located or to be located permanently in the State or regional South Australia to deliver the contract and assess how such investment provides a tangible benefit to the sector and the State.

The following questions establish your intentions through the delivery of this contract:

B1. Will the Participant have (or does the Participant currently have) an office, warehousing or other facilities permanently located in South Australia? ☐ Yes ☐ No

B2. Will the Participant have (or does the Participant currently have) have a program for the training and skills development of South Australian employees either direct or indirectly employed? ☐ Yes ☐ No

SECTION C: ABORIGINAL ECONOMIC PARTICIPATION AND EMPLOYMENT

The SAIPP incorporates Aboriginal economic participation objectives with the aim to improve the level of Aboriginal people's participation in, and benefit from, employment and economic opportunities arising out of Government's expenditure.

The Participant will be asked in the future Industry Participation Plan to demonstrate how they will maximise Aboriginal employment in the delivery of this contract.

The following questions establish your intentions through the delivery of this contract:

C1. Will the Participant develop strategies for the retention and skill development of an Aboriginal workforce during delivery of this contract? ☐ Yes ☐ No

C2. Will (or does) the Participant have an Aboriginal Reconciliation Action Plan? ☐ Yes ☐ No

SECTION D: APPRENTICESHIPS, TRAINEES AND GRADUATES - STATEWIDE

The South Australian Government is committed to the creation of an extra 20,800 apprenticeships and traineeships by 2022. This objective is part of the Skilling South Australia initiative which is now reflected in the State's Industry Participation Plan requirements.

The contract can provide further opportunities for a contractor to support new, or the continuation of, existing traineeships, apprenticeships and cadetships, or graduate recruitment/employment programs (above the mandated minimum requirements).

The Participant will be asked in the future Industry Participation Plan to detail proposed engagement and support of trainees, apprentices and/or cadets (either directly or through Group Training Organisation Schemes (GTOs)).

The following questions establish your intentions through the delivery of this contract:

D1. Will the Participant have (or does the Participant currently have) trainees or apprentices located in South Australia? ☐ Yes ☐ No

D2. Will the Participant encourage capacity partners and sub-contractors to strongly consider the engagement of trainees and apprenticeships? ☐ Yes ☐ No

SCHEDULE 6 SA Tenders and Contracts Contact Details

All Preferred Supply Arrangement work packages will be issued via the Tenders SA and Contracts website <https://www.tenders.sa.gov.au> to the person/s nominated in the Application Form.

The Applicant shall provide contact details for the nominated person/s registered on the website for the release of work packages relevant to this Preferred Supply Arrangement via the SA Tenders and Contracts website.

For this purpose applicants shall ensure all contacts nominated below are accurate and maintained on the website as these will be referred to when releasing packages on the website.

Should you require assistance with updating details on the website please contact the Helpdesk on (08) 8462 1401.

Applicants shall advise of any changes to the below nominated person/s to the relevant PSA contact e-mail address in Schedule 1 of this Application Form.

Name	Company Name	Email Address

ATTACHMENT 1 – TERMS AND CONDITION



[Contract Name]

[Contract Number]

AS4122-2010

Special Conditions of Contract and Annexure

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

Template Edition: 10 January 2022

KNET #18155391

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ATTACHMENT 1 – INDUSTRY PARTICIPATION POLICY PLAN

ATTACHMENT 2 – DESIGNER'S CERTIFICATE

Copyright

These Special Conditions adapt clauses from the Transport Infrastructure Contract by the State of Queensland (Department of Transport and Main Roads) 2017, which is available from <https://www.tmr.qld.gov.au/business-industry/Technical-standards-publications/Transport-Infrastructure-Contract>

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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: 136 North Terrace
Adelaide, South Australia 5000

92 366 288 135

ABN: or
The Commissioner of Highways a body corporate established pursuant to the *Highways Act 1926 (SA)*

50 Flinders Street
Adelaide, South Australia 5000
45 751 448 902

or
The Rail Commissioner a body corporate established pursuant to the *Rail Commissioner Act 2009 (SA)*

50 Flinders Street
Adelaide, South Australia 5000
23 251 040 528

(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:

BCISP Act	means the <i>Building and Construction Industry Security of Payment Act 2009</i> (SA);
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 the <i>Contract</i> becomes binding, or the date the <i>Consultant</i> commences the <i>Services</i> , whichever is earlier;
Consultant's Industry Participation Plan	means the <i>Consultant's</i> plan included at Attachment 1 to these Special Conditions;
Date for Completion	means the date stated in <i>Item 13</i> ;
Deed of Novation	means the deed at Attachment 5 to these Special Conditions;
Direct Loss	means any cost or expense that a party reasonably incurs as a direct result of, and flowing naturally from the other party's breach of contract, act, omission or negligence, including any liquidated damages or any other payment of loss or damages expressly provided for under this <i>Contract</i> ;
Fault	means: <ul style="list-style-type: none"> • a defect, error, omission; 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;
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;
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;
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	<p>means any liability for:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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, <p>and none of the <i>Prescribed Heads of Liability</i> limits any of the others.</p>
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;
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> ;
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 *Services* as set out at clause 10.1C;

WGE Act means the *Workplace Gender Equality Act 2012* (Cth);

WHS Act means the *Work Health and Safety Act 2012* (SA);

WHS Law means:

- (a) the *WHS Act*;
- (b) any regulations made at any time under the *WHS Act*;
- (c) any provision of the *WHS Act* 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 *WHS Act*, made at any time;

WHS Regulations means the *Work Health and Safety Regulations 2012* (SA);

Works means any construction works which have flowed from any design works that are part of the *Services*;

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 *Contract* and weekends;

Deliverables means those *Documents* and things required under this *Contract* to be handed over to the *Client* by the *Consultant*.

1.2 Interpretation

Add the following subclauses after clause 1.2(e):

- (f) references to any party to the *Contract* 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 works 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 to ensure that the subject matter of the *Services* or *Deliverables* shall be 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.

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*.

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 forthwith 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 9.2 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.

9.3A In determining the deduction to be made for work which is taken out of the *Contract* the deduction shall include an additional allowance for the *Consultant's* administration calculated as 5% of the value of the *Variation*.

Add the following clauses after clause 9.4:

Client Initiated Variation

9.6 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*.

9.7 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.

9.8 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*.

9.9 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.

9.10 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 *Lump Sum*, adjusted by any additions or deletions made pursuant to this *Contract*;
- (b) payment will not exceed the *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 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. Unless specified otherwise, progress payments will be made as a portion of the *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 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 pay an amount ascertained on the same basis as a *Schedule of Rates*, up to the amount of the *Upper Limiting Fee*. Payment will not exceed the *Upper Limiting Fee* unless the *Client* has directed a *Variation* that requires additional payment.

10.1D For work for which the *Client* has accepted a *Provisional Sum*, the *Client* will pay the amount of the *Provisional Sum* only if the *Client* directs the *Consultant* to perform the *Services* or item to which the *Provisional Sum* relates and the *Consultant* performs the *Services* or item.

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 contain:

- (a) full details of any approved *Variations* which have been completed or partially completed;
- (b) the estimated cost to complete the *Services*, including approved *Variations* and any anticipated future *Variations* that the *Consultant* is aware of; and
- (c) if requested by the *Client*, an earned value report in accordance with AS 4817-2006 'Project Performance Measurement Using Earned Value'.

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*.

Programs

12.2 The *Client* may direct the *Consultant* to furnish to the *Client* a *Program* within the time and in the form directed by the *Client*. 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* by a cause identified in clause 12.5 or *Item 13* and 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*.

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*.

12.11 Notwithstanding that the *Consultant* is not entitled to or 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 *Consultant* warrants that the key personnel (including any *subcontractor's* key personnel) nominated in the *Consultant's* tender will 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 PAYE 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

No amendment

20 SUBCONTRACTING AND ASSIGNMENT

No amendment

20A NOVATION

Add a new clause 20A as follows:

20A NOVATION

The *Consultant* must, at its own cost, within 5 *Business Days* of a request from the *Client*, enter into a deed of novation in substantially the same form as the *Deed of Novation*.

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, 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', available from: http://www.premcab.sa.gov.au/dpc/publications_circulars.html. 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; or,
- (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.

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

28.1 The *Consultant* releases and indemnifies the *Client* and the *Client's* employees and agents ("The *Indemnified*") from and against all actions whatsoever which may be brought or made against *The Indemnified* by any person, including the *Consultant*, arising, directly or indirectly from:

- (a) any breach of a duty owed in a professional capacity in connection with the performance of the *Services* by the *Consultant* or its *subcontractors*, or any person for whose conduct the *Consultant* is liable;
- (b) any other negligent professional act, error or omission on the part of the *Consultant*, or any person for whose conduct the *Consultant* is liable, arising out of the performance (or attempted or purported performance or non-performance) of the *Services* by the *Consultant*;

- (c) any contravention of any *Legislative Requirements* or any unlawful or negligent act or omission by the *Consultant*, its agents or its *subcontractors*, or any person for whose conduct the *Consultant* is liable;
- (d) any unlawful or negligent act or omission of the visitors, invitees or licensees of the *Consultant*;
- (e) any death, personal injury, loss or damage suffered by the *Client* or the *Consultant* (or any of its *subcontractors*, employees, agents, visitors, invitees or licensees) or any other person, arising from an unlawful or negligent act or omission of the *Consultant* in the course of the performance (or attempted or purported performance) of the *Contract*;
- (f) any loss of or damage to tangible property caused or contributed by the unlawful or negligent act or omission of the *Consultant*, its agents or its *subcontractors* or any person for whose conduct the *Consultant* is liable; or
- (g) any breach of this *Contract* by the *Consultant*.

28.2 The indemnity in this clause 28 shall not apply to:

- (a) exclude any other right of the *Client's* to be indemnified by the *Consultant*, or
- (b) claims in respect of the *Client's* right to have the *Services* carried out.

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 in respect of *Direct Loss* 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 arising from business interruption;

- (f) loss of or corruption of data;
- (g) loss of anticipated savings;
- (h) loss of revenue;
- (i) the cost of capital or other financing costs; or
- (j) 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

Delete the last sentence of clause 30.4 beginning with "*The policy must include...*"

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* warrants, 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.

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.

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 men's violence against women 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 *Client* within two weeks of the end of each period, in the form set out at <https://industryadvocate.sa.gov.au/wp-content/uploads/2020/02/Industry-Participation-Report-Template.xlsx>
- 41.3 An Industry Participation Reporting Period is:
- a) the period between the Commencement Date and the first anniversary of the Commencement Date;
 - b) each subsequent 12 month period during the term of the *Contract*;
 - c) if the *Contract* ends on a date other than an anniversary of the Commencement Date, 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 12 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* results 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*; and
- (d) 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.

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* warrants 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 and warranty.

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*.

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

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 execution and completion of the design of the *Works*;
- (b) 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 be fit and adequate for the purposes stated in, or that can be reasonably implied from the *Contract*, and suitable and adequate for the *Site*; and
 - b. construction in accordance with such design will comply with the standards and other requirements specified by this *Contract*, and
- (c) the *Works* will, if constructed in accordance with the *Consultant's Design*:
 - a. 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*; and

- b. comply with all the requirements of the *Contract*, including all *Legislative Requirements* and the requirements of all government authorities.

45.3 Consultant's liabilities, obligations and warranties unaffected

The warranties 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.

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) five copies of the *Consultant's Drawings* and *Consultant's Specifications* for the *Works* or as otherwise directed by the *Client*, and
- (b) with the copies of the *Consultant's Drawings* and *Consultant's Specifications* for the *Works* submitted under clause 45.5(a), five copies 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* by the 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 *Consultant's Drawing* or *Consultant's Specification* may be used by the 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 Certification 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 “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* certifying that the as-constructed *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*.

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 *Client*
(clause 1.1)

The Minister for Infrastructure and Transport
ABN 92 366 288 135

The Commissioner of Highways
ABN 45 751 448 902

The Rail Commissioner
ABN 23 251 040 528

- 2 *Consultant*
(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 *Scope*

- 4 *The Scope is described in the following Documents, set out at Attachment 4:*
(Clause 1.1)

.....
.....

- 5 *The purpose(s) for which the Services will be suitable is/are:*
(Clause 5.1)

.....
.....
.....

- 6 *The Client's Representative*
(Clause 6.1)

.....
Phone
Email

- 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: **\$ insert (including GST) OR Not applicable**

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**

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

Claims for payment will be:

Paid as a single Lump Sum

OR

Paid upon completion of stages

OR

Paid monthly

If paid as a single *Lump Sum*, specify when it will be paid:

.....

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*

.....

.....

.....

- 9 Disbursements for which the *Consultant* may claim payment: (Clause 10.2) **Refer to Schedule of Rates at Attachment 3 OR Not applicable**

- 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:
(Clause 10.6)

30 calendar days after receipt of a payment claim.
- 12

The rate of interest for overdue payment is:
(Clause 10.9)

8% per annum
- 13

The *Date for Completion* is:
(Clause 12.1)

insert date

OR

insert time period from the *Commencement Date*
- 14

Other causes of delay for which the *Consultant* may notify an extension of time:
(Clause 12.7)

None.
- 15

The *Approvals* to be obtained by the *Consultant* are:
(Clause 13.2)
- 16

The key personnel are:
(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:
(Clause 21.3)

Alternative Two

- 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: Not applicable
(Clause 21.4, Alternative Two)
- 21 Does Clause 22 (*Moral Rights*) apply? No
(Clause 22.1)
- 22 Not Used.
- 23 Not Used
- 24 The *Consultant's* liability is limited to: 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.
(Clause 29.1)
- 25 *The amount of public liability insurance is:* \$10,000,000 if the *Fee* is \$10,000,000 or less.
(Clause 30.2) \$20,000,000 if the *Fee* is greater than \$10,000,000.
and in any case, the above amount is per occurrence and in aggregate.
- 26 *The amount of professional indemnity insurance is:* \$5,000,000 if the *Fee* is \$5,000,000 or less.
(Clause 30.4) \$10,000,000 if the *Fee* is greater than \$5,000,000 but equal to or less than 10,000,000.
\$20,000,000 if the *Fee* is greater than \$10,000,000.
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: 7 years from completion of the *Services*.
(Clause 30.4)
- 28 The *Client* must effect the following insurances and maintain them for the following periods: Not applicable
(Clause 30.7)

- 34 Are monthly reports required? **Yes** **OR** **No**
(Clause 47)

**ATTACHMENT 1 - INDUSTRY PARTICIPATION POLICY OR ECONOMIC CONTRIBUTION
TEST**

ATTACHMENT 2 - DESIGNER'S CERTIFICATE OR NOT USED



Government of
South Australia

DESIGNER'S CERTIFICATE

To:

Name and address of *Client*

From:

Name and address of *Consultant*

Please tick applicable boxes below

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

<input type="checkbox"/>	<p>Submission of Drawings</p> <p>I certify that the Drawings and Specifications detailed from Page 2 of this <i>Designer's Certificate</i>:</p> <ul style="list-style-type: none"> • 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.
<input type="checkbox"/>	<p>Completion of Works- clause 45.12 of General Conditions of Contract</p> <p>I certify that</p> <ul style="list-style-type: none"> • the design of the <i>Works</i> complies with the <i>Contract</i> • the drawings and specifications comply with the <i>Contract</i>

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

Authorisation		
(Must be a principal of the Consultant)		
Name/Position	Signature	Date

Drawing/Specification reference	Description

ATTACHMENT 3 – SCHEDULE OF RATES OR NOT USED

ATTACHMENT 4 - SCOPE

ATTACHMENT 5 – DEED OF NOVATION

DEED OF NOVATION

between

[INSERT CONSULTANT]

(ACN **[INSERT]**)

(“Continuing Party”)

and

[INSERT]

(ACN **[INSERT]**)

(“New Party”)

and

MINISTER FOR INFRASTRUCTURE AND TRANSPORT

Or

COMMISSIONER OF HIGHWAYS

Or

RAIL COMMISSIONER

(“Retiring Party”)

DEED OF NOVATION made on thisday of 20...

BETWEEN:

[INSERT CONSULTANT] (“Continuing Party”)

AND

[INSERT] (“New Party”)

AND

COMMISSIONER OF HIGHWAYS

Or

RAIL COMMISSIONER

Or

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 beforeon 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

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.

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 **INSERT**
Print Name:

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 XCXXX,
Contract Name,
Dated
- 2. Contract No XCXXX,
Contract Name,
Dated