

[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: September 2022

Knet Ref. # 19257330

**CONTENTS**

*Page*

FORMAL INSTRUMENT OF AGREEMENT 4

SPECIAL CONDITIONS OF CONTRACT 7

1 INTERPRETATION AND CONSTRUCTION OF CONTRACT 7

2 CONSULTANT TO PERFORM SERVICES 10

3 CLIENT TO PAY 10

4 STANDARD OF CARE 10

5 SCOPE 10

6 CLIENT'S REPRESENTATIVE AND CONSULTANT'S REPRESENTATIVE 10

7 INFORMATION 10

8 DIRECTIONS 11

9 VARIATIONS 11

10 PAYMENT 12

11 GST 13

12 TIME 13

13 LAW AND APPROVALS 14

14 CONSULTATION AND MEETINGS 14

15 REVIEW AND ACCEPTANCE 14

16 ADVERSE EVENT 14

17 COOPERATION WITH OTHERS 14

18 KEY PERSONNEL 14

19 CONFLICT OF INTEREST 15

20 SUBCONTRACTING AND ASSIGNMENT 15

21 COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS 15

22 MORAL RIGHTS 15

23 CONFIDENTIALITY 15

24 SUSPENSION BY THE CLIENT 16

25 SUSPENSION BY THE CONSULTANT 16

26 TERMINATION WITHOUT CAUSE 16

27 TERMINATION DUE TO DEFAULT OF EITHER PARTY 16

28 INDEMNITY 16

29 LIMITATION OF LIABILITY 17

30 INSURANCE 17

31 INSOLVENCY 17

32 DISPUTE RESOLUTION 17

33 SERVICE OF NOTICES 18

34 SURVIVAL OF TERMINATION 18

35 GOVERNING LAW 18

36 STANDARD FORM NATURE OF CONTRACT 18

37 CONSULTANT'S CONDUCT 18

38 WORK HEALTH AND SAFETY 19

39 EVALUATION OF CONSULTANT'S PERFORMANCE 19

40 RESPECTFUL BEHAVIOUR 19

41 INDUSTRY PARTICIPATION POLICY 20

42 FAULTS IN DELIVERABLES 20

43 COLLUSIVE ARRANGEMENTS 21

44 CONSULTANT WARRANTIES 21

45 CONSULTANT'S DESIGN 22

46 WORKPLACE GENDER EQUALITY 26

47 MONTHLY REPORT 26

ANNEXURE 27

ATTACHMENT 1 – INDUSTRY PARTICIPATION POLICY PLAN OR NOT USED

ATTACHMENT 2 – DESIGNER'S CERTIFICATE OR NOT USED

ATTACHMENT 3 – SCHEDULE OF RATES

ATTACHMENT 4 – SCOPE

ATTACHMENT 5 – DEED OF NOVATION

**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 [Infrastructure Contracts (Department of Transport and Main Roads) (tmr.qld.gov.au)](https://www.tmr.qld.gov.au/business-industry/Technical-standards-publications/Infrastructure-Contract)

It is licensed by the South Australian Department for Infrastructure and Transport under a Creative Commons Attribution 3.0 Australia license: <http://creativecommons.org/licences/by/3.0/au/>

# FORMAL INSTRUMENT OF AGREEMENT



**AGREEMENT FOR CONSULTANCY SERVICES**

**[Contract Name]**

**[Contract Number]**

**AGREEMENT** made the date it is executed by the last party

**BETWEEN:**

|  |  |
| --- | --- |
| **CLIENT:**  **Address:**  **ABN:** | The Minister for Infrastructure and Transport a body corporate established pursuant to the *Administrative Arrangements Act 1994* (SA)  136 North Terrace  Adelaide, South Australia 5000  92 366 288 135  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:
   1. Annexure Part A in AS4122-2010 is the Annexure to these Special Conditions; and
   2. 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    Witness name    Date | | Authorised officer signature    Authorised officer name    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 name    Date | | Director/Company Secretary signature    Director/Company Secretary name    Date |  |

# SPECIAL CONDITIONS OF CONTRACT

# INTERPRETATION AND CONSTRUCTION OF CONTRACT

**Add** the following definitions to clause 1.1:

|  |  |
| --- | --- |
| BCISP Act | means the *Building and Construction Industry Security of Payment Act 2009* (SA); |
| Business Day | has the meaning set out in the *Building and Construction Industry Security of Payment Act 2009* (SA); |
| Commencement Date | means the date the *Contract* becomes binding, or the date the *Consultant* commences the *Services*, whichever is earlier; |
| Consultant's Industry Participation Plan | means the *Consultant's* plan included at Attachment 1 to these Special Conditions; |
| Date for Completion | means the date stated in *Item* 13*;* |
| 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 *Contract;* |
| Fault | means:   * a defect, error, omission; or * an amendment is necessary to the *Deliverables* because they are inappropriate for their intended use with regard to the assumptions that the *Consultant* can reasonably be expected to make in accordance with sound engineering principles; |
| FOI Act | means the *Freedom of Information Act 1991* (SA); |
| GST Law | has the meaning set out in *A New Tax System (Goods and Services Tax) Act 1999* (Cth); |
| Industry Participation Report | means a completed report prepared by the *Consultant* 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 *Services* as set out at clause 10.1A; |
| notice | means request, consent, approval, direction or other communication under or for the purposes of the *Contract;* |
| Obligations of the Consultant | means the obligations expressed in this *Contract* to be performed by the *Consultant* or reasonably necessary to the performance by the *Consultant* of this *Contract;* |
| otherwise at law | means in the context of claim, a claim in any legal jurisdiction, including but not limited to a claim under the *Contract* 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 *Contract* for *Services* or an item which is not payable unless the *Client* directs the *Consultant* to perform the related *Services* 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 *Intellectual Property Right*;  (d) any liability to a third party 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*;  (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. |
| Program | means a statement in writing showing the dates by which, or the times within which, the various stages of the *Services* are to be executed or completed; |
| Schedule of Rates | means the method of payment for the *Services* as set out at clause 10.1B; |
| Schedule of Prices | means a schedule (other than a *Schedule of Rates*) which provides an itemised and priced breakdown of any *Services;* |
| Site | means the location of the *Work*s; |
| subcontractor | means any contractor, consultant or supplier (including their personnel), engaged by or on behalf of the *Consultant* and includes any supplier or hirer of materials, plant or equipment; |
| Tax Invoice | has the meaning set out in *A New Tax System (Goods and Services Tax) Act 1999* (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:   * + 1. the *WHS Act*;     2. any regulations made at any time under the *WHS Act*;     3. 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. |

# 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:   1. it has the necessary skills, and experience to complete the *Services* in accordance with the *Contract*; 2. 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 3. 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. |

# CLIENT TO PAY

No amendment

# STANDARD OF CARE

No amendment

# 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*. |

# 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. |

# INFORMATION

No amendment

# DIRECTIONS

No amendment

# VARIATIONS

**Add** the following subclauses after clause 9.2 as follows:

|  |
| --- |
| 9.2A If the *Consultant*:   1. becomes aware of a potential *Variation*; or 2. considers that additional services are required and that these additional services are not within the *Scope*,   the *Consultant* must forthwith and before performing anyadditional services to which the potential *Variation* relates, give written *notice* thereof to the *Client*. The *notice* must include a description of the additional servicesand 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:   1. 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 2. 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:   1. if the *Contract* prescribes specific rates or prices to be applied in determining the value of *Variations*, those rates or prices shall be used; 2. 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 3. 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:   1. the *Client* and the *Consultant* cannot agree upon the price and/or timing for a proposed *Variation*, or 2. 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. |

# PAYMENT

**Add** the following subclauses after clause 10.1 as follows:

|  |
| --- |
| 10.1A For *Services* for which the *Client* has accepted a *Lump Sum*:   1. the *Client* will pay the *Lump Sum*, adjusted by any additions or deletions made pursuant to this *Contract;* 2. payment will not exceed the *Lump Sum* unless the *Client* has directed a *Variation;* 3. 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*:   1. 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 2. 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:   1. full details of any approved *Variations* which have been completed or partially completed; 2. the estimated cost to complete the *Services*, including approved *Variations* and any anticipated future *Variations* that the *Consultant* is aware of; and 3. 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.* |

# GST

**Delete** clause 11and **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. |

# 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:   1. a *Program* included in the *Contract;* or 2. 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 Day*s 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 Day*s 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 form time to time by *notice* in writing to the *Consultant* extend the *Date for Completion* for any reason. |

# LAW AND APPROVALS

No amendment

# CONSULTATION AND MEETINGS

No amendment

# REVIEW AND ACCEPTANCE

No amendment

# ADVERSE EVENT

No amendment

# COOPERATION WITH OTHERS

No amendment

# 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:   1. 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*; 2. the *Consultant* is liable for all remuneration, claims and other entitlements payable to the *Consultant's* personnel; and 3. 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*. |

# CONFLICT OF INTEREST

No amendment

# SUBCONTRACTING AND ASSIGNMENT

No amendment

# 20A NOVATION

**Add** a new clause 20A as follows:

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

# 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*. |

# MORAL RIGHTS

No amendment

# CONFIDENTIALITY

**Delete** clause 23.1 and replace it as follows:

|  |
| --- |
| 23.1 Subject to clause 23.2, the *Consultant* must treat as confidential:   1. all *Documents* generated by this *Contract*; and 2. 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: [PC027 Disclosure of Government Contracts](https://www.dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars/PC-027-Disclosure-of-Government-Contracts.pdf) The *Consultant*'s attention is drawn to the *FOI Act*. No exemption from the provisions of the *FOI Act* applies to this *Contract*. |

# SUSPENSION BY THE CLIENT

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

# SUSPENSION BY THE CONSULTANT

No amendment

# TERMINATION WITHOUT CAUSE

No amendment

# TERMINATION DUE TO DEFAULT OF EITHER PARTY

**Add** the following subclauses after 27.2(d):

|  |
| --- |
| 1. 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); 2. the *Consultant* fails to comply with a *Direction* of the *Client* given in accordance with the provisions of the *Contract;* 3. 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*; 4. the *Consultant* abandons or refuses to proceed with the supply of *Services* whether or not it has commenced work; or, 5. 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. |

# 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:   1. 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; 2. 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*; 3. 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; 4. any unlawful or negligent act or omission of the visitors, invitees or licensees of the *Consultant;* 5. 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*; 6. any loss of or damage to tangible property caused or contributed by the unlawful or negligent act or omission of the *Consultant,* its agentsor its *subcontractors* or any person for whose conduct the *Consultant* is liable; or 7. any breach of this *Contract* by the *Consultant*.   28.2 The indemnity in this clause 28 shall not apply to:   1. exclude any other right of the *Client's* to be indemnified by the *Consultant*, or 2. claims in respect of the *Client's* right to have the *Services* carried out. |

# LIMITATION OF LIABILITY

**Delete** clause 29 and **replace** it with the following:

|  |
| --- |
| **29. LIMITATION OF LIABILITY**  **29.1 Limitation**   1. 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. 2. 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:   1. loss of business opportunity; 2. loss of goodwill; 3. loss of profit; 4. loss of contracts; 5. loss arising from business interruption; 6. loss of or corruption of data; 7. loss of anticipated savings; 8. loss of revenue; 9. the cost of capital or other financing costs; or 10. 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. |

# INSURANCE

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

# INSOLVENCY

No amendment

# DISPUTE RESOLUTION

No amendment

# 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:   1. sent by registered post to or left at the address specified in *Item* 29; 2. handed to the other party's representatives identified in clause 6 and *Item* 6 or *Item* 7; 3. sent by email to the email address specified in *Item* 29, or 4. 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:   1. 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; 2. if delivered personally, upon delivery 3. if sent by email:    1. on a *Business Day*, on dispatch of the transmission, or    2. 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   1. 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*.* |

# SURVIVAL OF TERMINATION

No amendment

# GOVERNING LAW

No amendment

# STANDARD FORM NATURE OF CONTRACT

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

# 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. |

# WORK HEALTH AND SAFETY

**Add** the following new clause 38:

|  |
| --- |
| **38 WORK HEALTH AND SAFETY** 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*.If requested by the *Client*, the *Consultant* must provide:  1. evidence satisfactory to the *Client* of its capacity to comply with the *WHS Act*; 2. 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 3. the *Consultant’s* registration number with the Return to Work Corporation.  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.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.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. |

# 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. |

# 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:   1. act in a manner that is non-threatening, courteous, and respectful; and 2. 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:   1. prohibit access by the relevant *Consultant*'s personnel to the *Client's* premises;  and 2. direct the *Consultant* to withdraw  the relevant *Consultant*'s personnel from providing the *Services*. |

# 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. 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.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://www.industryadvocate.sa.gov.au/policy-and-resources>.An Industry Participation Reporting Period is:the period between the Commencement Date and the first anniversary of the Commencement Date;each subsequent 12 month period during the term of the *Contract*;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;for short-term projects of strategic importance to the State, the period notified by IA to the *Consultant* in writing; andwhere the term of the *Contract* is for a period less than 12 months, the term of the *Contract*.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.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.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.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.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. |

# 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:   1. as soon as possible after discovery of the *Fault*, the party that identified the *Fault* will notify the other party; 2. 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; 3. 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 4. 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. |

# COLLUSIVE ARRANGEMENTS

**Add** the following new clause 43:

|  |
| --- |
| **43. COLLUSIVE ARRANGEMENTS**  The *Consultant* warrants and represents to the *Client* that:   1. 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; 2. 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; 3. 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 4. 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. |

# CONSULTANT WARRANTIES

**Add** the following new clause 44:

|  |
| --- |
| 44.1 The *Consultant* warrants that it has and it shall be deemed to have:   1. 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; 2. 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; 3. informed itself of the nature of the work and materials necessary for the execution of the *Services;* 4. 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*; 5. informed itself of all requirements of any government authorities in relation to the *Services* generally; 6. obtained all appropriate professional and technical advice on all matters and circumstances with respect to the matters referred to in this cluse prior to submitting its tender for the *Services*, and 7. 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*.  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**  The *Consultant* further warrants that:   1. it shall at all times be suitably qualified and experienced, and shall exercise due skill, care and diligence in the performance of the *Services*; 2. the *Services* will be carried out and completed in accordance with the requirements of the *Contract*, and that such *Services*: 3. 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 Project; and 4. will be provided using good industry practices; and 5. will comply with the standards and other requirements specified by this *Contract*, including all *Legislative Requirements* and the requirements of all government authorities.   **44.4 Consultant's liabilities, obligations and warranties unaffected**  The warranties in clause 44.3 shall remain unaffected, notwithstanding:   1. any *Services* thatmay have been carried out by, or on behalf of, the *Client*; 2. 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*; 3. any acceptance of the *Services*; 4. any variation directed or approved by the *Client* in accordance with clause 9, or 5. the provision of any warranty. |

# 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*:   1. *'Consultant's* *Construction Drawing*s' means the drawings prepared by, or on behalf of, the *Consultant* which are necessary for the construction and/or installation of the *Works*. 2. *'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*. 3. *'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:    1. the *Deliverables;*    2. 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    3. 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. 4. *'Designer's Certificate'* means a certificate in the form of Attachment 2 to these Special Conditions. 5. *'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:   1. 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;* 2. the design of the *Works* will be carried out and completed in accordance with the requirements of the *Contract*, and that:    1. 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    2. construction in accordance with such design will comply with the standards and other requirements specified by this *Contract*, and 3. the *Works* will, if constructed in accordance with the *Consultant's Design*:    1. 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    2. 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:   1. any design work in respect of the *Works* may have been carried out by, or on behalf of, the *Client*; 2. 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*; 3. any acceptance of a drawing or specification pursuant to clause 45.7(d) or deemed acceptance pursuant to clause 45.9; 4. any variation directed or approved by the *Client* in accordance with clause 9, or 5. 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*:   1. are in accordance with the *Client's Requirements;* 2. 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 3. 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*:   1. five copies of the *Consultant's Drawings* and *Consultant's Specifications* for the *Works* or as otherwise directed by the *Client*, and 2. 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:   1. for errors, omissions or compliance with the *Contract* (including the *Client's Requirements*), or 2. 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:   1. the advice, skill and judgment of the *Consultant*; 2. the *Designer's Certificate* provided under clause 45.5 3. any reasons and supporting information given by the *Consultant* under clause 45, and 4. 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:   1. relieve the *Consultant* from, or alter or affect, the *Consultant's* liabilities or responsibilities whether under the *Contract* or otherwise according to law, or 2. 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 Day*s after the submission by the *Consultant* to the *Client* of:   1. *Consultant's Drawings* and *Consultant's Specifications* and the accompanying *Designer's Certificate* in accordance with clause 45.5; 2. resubmitted *Consultant's Drawings* and *Consultant's Specifications* and the accompanying *Designer's Certificate* in accordance with clause 45.8(a), or 3. 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:   1. 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 2. 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:   1. 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 2. 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 Day*s after submission by the *Consultant* to the *Client* of:   1. a *Consultant's Drawing* or *Consultant's Specification* and the *accompanying Designer's Certificate* in accordance with clause 45.5; 2. a resubmitted *Consultant's Drawing* or *Consultant's Specification* and the accompanying *Designer's Certificate* in accordance with clause 45.7(a); or 3. 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*:   1. 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 2. 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*:   1. 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 2. 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:   1. 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 2. 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. |

# 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*. |

# 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:   1. the activities carried out during that month; 2. the overall progress of the *Services* in accordance with the *Program*; and 3. 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: (Clause 10.3) | Last *Business Day* of each month | |
|  |  |  |  | |
|  | 11 | The time for payment is no later than: (Clause 10.6) | 15 *Business 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*: (Clause 21.3, Alternative Two) | None. | |
|  |  |  |  | |
|  |  |  |  | |
|  |  |  |  | |
|  | 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 if the *Fee* is $10,000,000 or less.  $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: (Clause 30.4) | $1,000,000 if the *Fee* is $1,000,000 or less.  $5,000,000 if the *Fee* is greater than $1,000,000 but equal to or less than $5,000,000.  $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: (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: (clause 33.1) | Director, Project Procurement and Contracts  Department for Infrastructure and Transport  77 Grenfell St, Adelaide SA 5000 | |
|  |  |  |  | |
|  |  | The address for service of *Notices* on the *Consultant* is: (Clause 33.3) |  | |
|  |  |  |  | |
|  |  |  |  | |
|  |  |  |  | |
|  | 30 | The law governing this *Contract* is: (Clause 35) | South Australia | |
|  |  |  |  | |
|  | 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 OR No | |

**ATTACHMENT 1 - INDUSTRY PARTICIPATION POLICY**

**ATTACHMENT 2 - DESIGNER'S CERTIFICATE** OR **NOT USED**



**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*) | |
|  | **Submission of Drawings**  **I certify that the Drawings and Specifications detailed from Page 2 of this *Designer's Certificate*:**   * **comply in all respects with the requirements of clause 45 of the *General Conditions of Contract*** * **were prepared in accordance with the quality assurance system implemented by the *Consultant* relating to design.** |
|  | **Completion of Works- clause 45.12 of General Conditions of Contract**  **I certify that**   * **the design of the *Works* complies with the *Contract*** * **the drawings and specifications comply with the *Contract*** |

**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 OTHER SA GOVERNMENT ENTITY]**

**(ACN [INSERT])**

**(“New Party”)**

**and**

**MINISTER FOR INFRASTRUCTURE AND TRANSPORT**

**Or**

**COMMISSIONER OF HIGHWAYS**

**Or**

**RAIL COMMISSIONER**

**(“Retiring Party”)**

**DEED OF NOVATION** made on this ………......…..day 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:**

# 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:

## the Retiring Party ceases to be a party to the Contracts;

## the New Party becomes a party to the Contracts; and

## the Continuing Party continues to be a party to the Contracts.

# RELEASE OF RETIRING PARTY

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

## its obligations under the Contracts; and

## any claims accruing under the Contracts before the date of this Deed;

## 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.

# OBLIGATIONS OF THE NEW PARTY

## 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.

## 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.

# 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.

# 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: )

)

|  |
| --- |
| …………………………………………… |
| **[INSERT]** |

Witness

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:

# Contract No XCXXX,

# Contract Name,

Dated

# Contract No XCXXX,

# Contract Name,

Dated