

**ANNEXURE to the Australian Standard General  
Conditions of Contract for Engagement of  
Consultants****PART B****DELETIONS, AMENDMENTS AND ADDITIONS**

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1. The following Clauses or parts of Clauses have been deleted from the General Conditions in AS 4122-2000:

Nil

2. The following Clauses have been amended and differ from the corresponding Clauses in AS 4122-2000:

2.1 **Clause 1 INTERPRETATION**

Clause 1 is amended by adding the following paragraphs.

*Acceptance of Tender* means a letter sent by the Client to the Consultant accepting the Consultant's tender for the Services as referred to in clause 2A.

*Consultant's Fee* means the total of all the fees specified in Item 18.

*date of the Contract* means:

- (a) if an Acceptance of Tender is issued to the Consultant, the date of the Acceptance of Tender; or
- (b) if an Acceptance of Tender is not issued to the Consultant, the date on which the last of the parties signs the Formal Instrument of Agreement.

*Industry Participation Report or IPP* means the completed report by the Consultant set out in clause 24.

*Industry Participation Reporting Period* means the period of time calculated at either clauses 24.3.

*Formal Instrument of Agreement* means the document described as such and signed (or to be signed in accordance with clause 2A) by both of the parties and to which this document is attached.

*Prescribed Heads of Liability* means any liability for:

- (a) personal injury including sickness and death;
- (b) loss of or damage to tangible property, arising from:
  - (i) a negligent or wrongful act or omission by the *Consultant*, its employees, agents or *Subcontractors*; or
  - (ii) any breach of the *Consultant's* contractual obligation to the *Client*;
- (c) infringement of any *Intellectual Property Right*;
- (d) 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.

*Professional Service Contractor* means *Consultant* and is a term that is used in the context of the South Australian Government reporting framework.

*Subcontractor* means subcontractor or subconsultant.

*Project* means the project being or to be undertaken by the Client and in respect of which the Services are being provided;

*Project Program* means the project program (if any) referred to and included in the Schedules, setting out the *Client's* program for the project for which the *Services* are required;

*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.

## 2.2 Clause 2A CONTRACT FORMED BY ACCEPTANCE OF TENDER

Insert immediately after clause 2, the following new clause 2A:

### 2A CONTRACT FORMED BY ACCEPTANCE OF TENDER

- a) The Contract may be formed by the *Client* sending an *Acceptance of Tender* to the *Consultant* after which this *Contract* must be signed by the parties.
- b) Where an *Acceptance of Tender* is used to form the *Contract*, the *Consultant* must also execute two copies of a *Formal Instrument of Agreement* and return them to the *Client* within 7 days of these being forwarded by the *Client*. The *Client* will return an executed copy to the *Consultant*.
- c) Where the *Consultant* does not return two executed copies of the *Formal Instrument of Agreement* within the timeframe specified in the previous paragraph, then, unless advised otherwise in writing by the *Client*, the *Acceptance of Tender* will be deemed withdrawn, and the *Contract* terminated, with no compensation payable by the *Client* to the *Consultant*, including for any work under the *Contract* performed by the *Consultant* prior to the withdrawal.

## 2.3 Clause 3 RESPONSIBILITIES AND OBLIGATIONS OF THE CONSULTANT

2.3.1 Clause 3 is amended to delete subclauses (b), (c), (m), (o) and (p) and in lieu thereof to substitute the following new subclauses (b), (c), (m), (o) and (p).

- (b) if stated in item 6 and within the time and in the form stated in item 6, submit to the *Client* a *Program* for carrying out the *Services* consistent with the *Project Program* (if any);

- (c) with due expedition and without delay and in accordance with the *Program* if any, and in any event in accordance with the *Project Program* if any, carry out the *Services* using all professional skill and advice required;
- (m) when on any site owned, occupied or controlled by a State Government Agency, comply with all directions, procedures and policies relating to work health, safety and security requirements as determined by the person who has management and control of the site at the relevant time;
- (o) except as required by law, treat as confidential all information provided by the *Client* to the *Consultant*, and if requested by the *Client* ensure that any individuals identified by the *Client* enter into a confidentiality deed acceptable to the *Client*, before that individual commences work in relation to the *Services*;
- (p) immediately notify the *Client* of any actual, potential or perceived conflict of interest or any circumstances which may give rise to an actual, potential or perceived conflict of interest for the *Consultant* in respect of the *Contract* and comply with any reasonable direction of the *Client* with respect to such conflict of interest.

2.3.2 Clause 3 is amended by adding the following new subclause:

- (s) not permit or contribute to any publicity in respect of the *Contract* or any related matter unless the *Consultant* has obtained the *Client's* approval.

#### 2.4 Clause 4 RESPONSIBILITIES AND OBLIGATIONS OF THE CLIENT

Clause 4 is amended by adding to clause 4(e) after .... the *Consultant*. as follows.

Notwithstanding the *Client's* obligation in the preceding sub-clause, the *Client* may disclose any information if the disclosure is:

- (a) to Parliament, the Governor, Cabinet, any Minister of the Crown or Parliamentary or Cabinet Committee or sub-committee having an interest in this agreement;
- (b) one which must be made by the Government as a consequence of constitutional convention or law including Freedom of Information Act requirements; or
- (c) one which it is reasonable for the *Client* to make the purpose of performing its own obligations under the *Contract* or monitoring the performance of the *Consultant*.
- (d) one which the law requires the *Client* to make, or
- (e) for the purposes of prosecuting or defending any legal proceedings.

The *Consultant* consents to the public disclosure of this *Contract* in its entirety including:

- i) all schedules to the *Contract*
- ii) all documents exhibited or annexed to the *Contract*
- iii) all documents incorporated by reference into the *Contract* together with their respective schedules, exhibits, and annexures

and disclosure may be in either printed or electronic form, either generally to the public, or to a particular person as a result of a specific request.

## 2.5 Clause 7 ASSIGNMENT AND THE ENGAGEMENT OF SUBCONSULTANTS

Clause 7 is amended by adding the following:

The *Consultant* must enter into subcontracts with *Subcontractors* on the same terms and conditions as this Contract without changing the intent or effect, subject only to such amendments and appropriate changes in detail as are necessary to reflect the conditions of that subcontract.

Without limiting the foregoing, the *Consultant* must ensure that all subcontracts include payment provisions which reflect that the *Consultant* must pay the *Subcontractor* within (and by no later than) 15 days from the date of submission of a claim for payment.

The *Client* may require subconsultant work to be undertaken by professional service contractors registered in the Department for Infrastructure and Transport Building and Construction Project Prequalification System (the Department Prequalification System) and if required the *Consultant* must ensure that the designated subconsultant work is undertaken by professional service contractors registered in the Department Prequalification System.

The *Client* may assign the *Contract* to another Minister of the Crown in right of the State of South Australia by notice to the *Consultant*.

## 2.6 Clause 9 LIABILITY OF CONSULTANT

Clause 9.1 is deleted and replaced with the following:

### 9.1 Liability

#### 9.1.1 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 connection with the Contract (whether arising out of breach of contract, tort or otherwise at law or in equity) to an amount equal to the greater of:

- i. the *Consultant's Fee*; or
- ii. an amount equal to the professional indemnity insurance cover that the *Consultant* is required to maintain under this *Contract* (as specified in Item 15(a) of Annexure Part A), 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, wrongful act, omission or negligence.

#### 9.1.2 Exclusion of Liability

Subject to this clause 9.1.2, a party will not be liable to the other party for:

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

which loss or cost arises due to the party's breach of this Contract, act, omission or negligence. However, the exclusion of liability in this clause 9.1.2 does not apply to a party's liability in connection with the *Prescribed Heads of Liability* (which remain unlimited).

### 9.1.3 Priority of Clause 9.1

In resolving inconsistencies in the *Contract*, the provisions of this clause 9.1 shall take priority.

### 9.1.4 Survival of this Clause

This clause 9.1 will survive the expiry or termination of this *Contract*.

**Clause 9.2** is amended to read:

Subject to Clause 9.1 the *Consultant* shall indemnify the *Client* against:

- (a) loss or damage to property of the Client including the Contract Material; and
- (b) claims by any person against the Client in respect of personal injury or death or loss of or damage to any other property,

arising out of or in consequence of the negligent acts, errors or omissions or breach of *Contract* of the *Consultant* but the *Consultant's* liability to indemnify the *Client* shall be reduced proportionally to the extent that the act or omission of the *Client* or the employees, agents or other contractors of the *Client* contributed to the loss, damage, death or injury. The indemnity under this Clause 9.2 shall not apply to the extent that the liability of the *Consultant* is limited by another provision of the Contract or exclude any other right of the *Client* to be indemnified by the *Consultant*.

## 2.7 Clause 10 INSURANCE

Clause 10.2 is amended by deleting the last sentence and substituting the following:

The policy shall cover the *Consultant* in respect of liability to the *Client* and third parties in respect of any claim for loss of or damage to property or death or injury to any person arising from the acts or omissions of the *Consultant*, its employees and subconsultants in the course of carrying out the *Services*, and shall extend to indemnify the Client and the Client's vicarious liability to the extent arising out of or connected with the *Consultant's* performance of the *Services*, but not in respect of liability to the extent that the loss, damage, death or injury is due to or results from an act or omission of the *Client*.

## 2.8 Clause 13 PAYMENT

Clause 13 is amended by adding after clause 13.4 the following clause 13.5 Statutory Declaration:

### 13.5 Statutory Declaration

If stated in Item 20A of Annexure Part A, before the *Client* makes each payment the *Consultant* shall give the *Client* a statutory declaration by the *Consultant*, or where the *Consultant* is a corporation, by a representative of the *Consultant* who is in a position to know the facts declared, that all subconsultants who have at any time been engaged by the

*Consultant* on work under the *Contract* have at the date of the claim for payment been paid all moneys due and payable to them in respect of their engagement on work under the *Contract*.

## 2.9 Clause 14 TERMINATION, DEFAULT, SUSPENSION AND FRUSTRATION

2.9.1 Clause 14 is amended by adding after the last paragraph of subclause 14.2 **Termination due to Default by Either Party** the following paragraph:

Notwithstanding anything in this clause 14.2, if a failure or refusal to make payment claimed by the *Consultant* is an alleged breach of the *Contract* by the *Client*, the *Consultant* has no right to terminate pursuant to clause 14 until the parties have gone through the dispute resolution procedure in clause 15. This clause confers no additional right to terminate.

2.9.2 Clause 14 is amended by adding a sub-clause as follows:

### **14.8 Delivery of Contract Material**

On completion of the services or on termination or frustration of the *Contract* the *Consultant* must promptly deliver to the *Client* the *Contract Material* including sketches, plans, designs, estimates, calculations, reports, models, computer sourced codes, articles, information, files and data produced by the *Consultant* in the course of the contract regardless of their stage of completion but without any liability in respect of *Contract Material* which is incomplete by reason only of frustration or termination of the *Contract*.

## 2.10 Clause 15.2 Conference

Clause 15.2 is amended by deleting the last sentence and substituting the following:

If the dispute has not been resolved within 28 days of service of the Notice of Dispute, then the parties may by agreement in writing refer the dispute to arbitration. Nothing in this *Contract* requires the parties to submit to arbitration or expert determination.

3. The following clauses have been added to those of AS 4122-2000:

### 3.1 17 GST

#### **17.1 GST Inclusive Fees**

The fees and any other payments required under the contract are not subject to any adjustment in respect of GST under the GST Law or any other tax.

#### **17.2 Tax Invoice**

The *Client* is not obliged to make any payment unless the claim for payment submitted by the *Consultant* is in the form of a Tax Invoice in accordance with the requirements of GST Law

"GST Law" has the meaning attributed in the A New Tax System (Goods & Services Tax) Act 1999, Commonwealth.

### 3.2 18 MORAL RIGHTS

The *Consultant* must provide to the *Client* a list of all the persons who are authors in relation to the *Contract Material*. The *Consultant* must obtain from every author a consent in respect of the author's moral rights in relation to the contract material permitting the *Client* to:

- (a) reproduce the work without attribution to the author;
- (b) reproduce, publish or transmit the work with attribution to the *Consultant*;
- (c) alter or destroy the work, including any reproduction of the work in a material form.

The *Consultant* must ensure that the consent applies to any act on behalf of the Crown in Right of the State of South Australia, and any Minister, servant or contractor of the Crown.

The *Consultant's* indemnity in clause 8.3 extends to any liability, loss or damage arising from any infringement of moral rights under the Copyright Act 1968.

### 3.3 19 QUALITY ASSURANCE

The *Consultant* shall prepare and implement a Quality Plan, which is specific to the Contract and not generic. The Quality Plan shall reference (or include) other standard consultant documentation that is relevant to the Contract. The Quality Plan shall clearly indicate how the quality processes shall be applied to meet the requirements of the Contract without reference to other documents. The Quality Plan for the Services shall be prepared and submitted to the *Client* within 28 days of the date of acceptance of tender. The *Client* may undertake a Quality Audit during the course of the Services.

### 3.4 20 AUDITOR GENERAL

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

### 3.5 21 NOT USED

### 3.6 22 EMPLOYMENT OF EX-GOVERNMENT EMPLOYEES

The *Consultant* must not accept the services of any person who, either directly or through an independent contractor or third party has received a separation package from the South Australian Government under its various schemes where the service will breach the conditions under which the separation package was paid to the former public sector employee.

### 3.7 23 AFFIRMATIVE ACTION LEGISLATION

This clause applies if the *Consultant* is a relevant employer within the meaning of the *Equal Opportunity for Women in the Workplace Act 1999 (Cth)* ("the Act"). The *Client* must comply with its obligations under the Act and remain compliant until the expiry or termination of this Agreement.

The *Consultant* must take reasonable steps to ensure that any sub-consultants comply with the *Equal Opportunity for Women in the Workplace Act 1999 (Cth)* if that sub-consultant is a relevant employer within the meaning of the *Equal Opportunity for Women in the Workplace Act 1999 (Cth)*.

If the *Consultant* (or an approved sub-consultant to the *Consultant* fails to comply with any of its obligations under the *Equal Opportunity for Women in the Workplace Act 1999 (Cth)*, the *Client* may terminate this Agreement on 28 days written Notice to the *Consultant* without prejudice to any other rights or remedies of the *Client*.

### 3.8 24 INDUSTRY PARTICIPATION PLAN

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.

**24.1** The *Consultant* must implement the *Consultant's* Industry Participation Plan ("IPP") approved by the Industry Advocate ("IA") in Attachment 4 to these Special Conditions.

**24.2** The *Consultant* must provide an Industry Participation Report ("IPP Report") in respect of each Industry Participation Reporting Period to the IA (and copied to the *Client*) within two weeks of the end of each period.

**24.3** An Industry Participation Reporting Period is:

- a) the period between the date of the Contract and the date 6 months after the date of the Contract;
- b) each subsequent 6 month period during the term of the *Contract*
- c) if the Contract ends on a date other than an anniversary of the date of the Contract or an anniversary of the date in clause 24.3(b), the period from the conclusion of the preceding Industry Participation Reporting Period until the date of termination or expiry of the Contract;
- d) for short-term projects of strategic importance to the State, the period notified by IA to the *Consultant* in writing; and
- e) where the term of the *Contract* is for a period less than 6 months, the term of the *Contract*.

**24.4** The *Consultant* must attend any meeting scheduled by the IA during the term of the Contract to review how the IPP 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.

**24.5** 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 24.

**24.6** If the IA reasonably believes that the *Consultant* is not complying with the requirements of this clause 24, the IA may by notice in writing direct that the supply comply with those requirements.

**24.7** 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.

**24.8** The *Consultant's* failure to comply, in whole or in part, with the commitments contained within the IPP 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.

### 3.9 25 NOT USED

### 3.10 26 AUSTRALIAN GOVERNMENT AGREEMENT

The *Consultant* acknowledges that the *Client* will enter into an agreement with the Commonwealth of Australia for the provision of funds for the Project (the “Commonwealth Funding Agreement”). The *Consultant* agrees to cooperate in all respects during the term of the *Contract* to enable the *Client* to perform its obligations under the Commonwealth Funding Agreement and without limitation the *Consultant* will:

- (a) preserve the confidentiality of the Commonwealth Funding Agreement;
- (b) not do anything or permit anything to be done (whether by act or omission) which may cause or contribute towards a breach of the Commonwealth Funding Agreement by the *Client* or otherwise prejudice its rights under the Commonwealth Funding Agreement;
- (c) provide any information requested by the Commonwealth pursuant to the Commonwealth Funding Agreement.

In the event that the Commonwealth either:

- (i) terminates the Commonwealth Funding Agreement; or
- (ii) otherwise withdraws funding for the *Project*,

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

### 3.11 27 RESPECTFUL BEHAVIOUR

The *Consultant* acknowledges the *White Ribbon Australia – Primary Prevention Strategies* towards violence against any person in the workplace and the broader community.

White Ribbon Australia Workplaces promote respectful relationships and gender equality within the workplace and demonstrate a culture of a zero tolerance of violence against women.

The *Consultant* agrees that, in undertaking the work, its 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 Personnel are failing to comply with the behavioural standards specified in this clause, then the *Client* may in its absolute discretion:

- (a) prohibit access by the relevant personnel to the Site; and
- (b) direct the *Consultant* to withdraw the relevant personnel from undertaking the work under the *Contract*.

### 3.12 28 NOVATION

When directed by the *Client*, the *Consultant*, without being entitled to compensation, shall promptly execute a deed of novation in the form of the attached Annexure Part C, between the *Client*, the *Consultant* and a general building contractor (“Contractor”).

As part of the Services after novation to the Contractor the *Consultant* shall certify to the *Contractor* that the design conforms fully with all Legislative Requirements and the Principal’s Project Requirements (as defined in the design and construction contract for the Project (“D & C Contract”)).

Notwithstanding any other provision of this *Contract*, following a novation referred to above, the *Client* consents to the *Consultant* notifying the Minister for Transport and Infrastructure (“Principal”) (or any of the Principal’s representatives or delegates under the D & C Contract) of any changes to the design where the *Consultant* is of the view that the change has the potential to:

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

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

### 3.13 29 WORK HEALTH AND SAFETY

29.1 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*.

29.2 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 and/or evidence of any equivalent registration applicable to employees of the *Consultant* who are connected with another State from time to time.

29.3 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.

- 29.4 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.
- 29.5 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 (pursuant to clause 11. 1) regarding the matter.
- 29.6 The *Consultant* must provide the *Client* with a safe design review report that includes all necessary information regarding the safe use of any plant, substance or structure designed as part of the *Services*, including:
- (a) the purpose(s) for which it was designed; and
  - (b) any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for the purpose(s) for which it was designed or any reasonably foreseeable related activities.

### 3.14 30 ICAC

The *Client* is a public authority for the purposes of the *Independent Commissioner Against Corruption Act 2012* (SA) (“ICAC Act”). For the term of this *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.

### 3.15 31 OPERATION OF PROPORTIONATE LIABILITY LEGISLATION

This clause 31 applies where specified in Item 23 of Annexure Part A.

To the extent permitted by law, the operation of Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) (Proportionate Liability) Amendment Act 2005* (SA), and any equivalent statutory provision is excluded in relation to all rights, obligations and liabilities in connection with the *Contract* whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise. The *Consultant* acknowledges that this clause 31 constitutes a special limitation for the purposes of Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) (Proportionate Liability) Amendment Act 2005* (SA).

If the *Consultant* breaches any of its obligations under this *Contract*, and the operation of any legislation results in the *Client* being unable to recover some part of the consequential loss or damage from the *Consultant* (“the Apportioned Loss”), as a separate obligation under the *Contract*, the *Consultant* indemnifies the *Client* in respect of the Apportioned Loss and must pay the *Client* the amount of the Apportioned Loss immediately on demand by the *Client*.

### 3.16 32 CONSULTANT AS LOCAL PROVIDER

This clause 32 applies where specified in Item 24 of Annexure Part A.

The *Consultant* must ensure that at all times during the term it is a Local Provider, unless a written exemption is provided by the *Client*.

Where the *Consultant* fails to comply in part or in whole with the requirements of this clause 32, the *Client* may suspend the *Consultant* from the Department Prequalification System for a period determined by the *Client*. Any such failure may also be a factor taken into account in the award of future contracts for the Government of South Australia. The *Consultant* has no claim for damages or other entitlement whether under the Contract or otherwise for any such action taken by the *Client*.

The *Consultant* must provide to the *Client*, such information as the *Client* may require to verify the *Consultant's* compliance with this clause.

The *Consultant* authorises the *Client* and its nominated agent to obtain information about the *Consultant* relevant to assessing the *Consultant's* compliance with this clause, that may be held by any Government department or instrumentality.

The *Consultant* must, as soon as it becomes aware, notify the *Client* in writing of any change in circumstances that will or may cause the *Consultant* to be in breach of its requirement under this clause 32 to be a Local Provider.

In this clause:

- (a) “Local Provider” means a business that operates in South Australia, where greater than 50% of the workforce to deliver the Services are residents of South Australia; and
- (b) “Department Prequalification System” means the Building and Construction Project Prequalification System, being a register of Contractors maintained by the *Client* assessed as suitable to contract with the South Australian Government.

**SCHEDULE 1 TO ANNEXURE PART B****CLIENT'S DELEGATIONS**

It is hereby declared that the functions vested in the *Client* under the clauses of AS 4122—2000 General conditions of contract for engagement of consultants listed in this schedule, including those amended by Annexure Part B, may alternatively be exercised by the delegate indicated in delegation schedules 1A, 1B and 1C. Such delegation shall not prevent the *Client* from exercising any function.

<b>DELEGATION SCHEDULE 1A</b>				
<b>Client's Representative, Executive Director, Infrastructure Delivery Department for Infrastructure and Transport</b>				
<b>Clause</b>		<b>Subclause</b>		<b>Function</b>
6	CLIENT'S REPRESENTATIVE AND CONSULTANT'S REPRESENTATIVE	6.1	Client's Representative	Give written notice
14	TERMINATION, DEFAULT, SUSPENSION AND FRUSTRATION	14.1	Termination Other than Due to Default	Agree termination, give written notice
		14.3	Suspension for Convenience	Suspend carrying out of the <i>Services</i> , give reasonable notice to recommence
		14.4	Insolvency	Inform in writing, terminate the <i>Contract</i>
15	DISPUTE RESOLUTION	15.1	Notice of Dispute	Give written notice
		15.4	Expert Determination	Agree in writing
<b>ANNEXURE PART B</b>				
<b>Item No</b>	<b>Clause</b>	<b>Subclause</b>		<b>Function</b>
2.4	7 ASSIGNMENT AND THE ENGAGEMENT OF SUBCONSULTANTS			Give written approval and advise terms and conditions in writing
2.7	14 TERMINATION, DEFAULT, SUSPENSION AND FRUSTRATION	14.2	Termination due to Default by Either Party	Show cause, terminate contract or suspend obligations to perform, lift suspension
2.8	15 DISPUTE RESOLUTION	15.2	Conference	Confer to resolve dispute or agree on method, agree in writing to refer dispute

<b>DELEGATION SCHEDULE 1A</b>				
<b>Client's Representative, Executive Director, Infrastructure Delivery Department for Infrastructure and Transport</b>				
<b>Clause</b>		<b>Subclause</b>		<b>Function</b>
3.10	26 AUSTRALIAN GOVERNMENT AGREEMENT			Terminate Contract
3.13	27 RESPECTFUL BEHAVIOUR			Prohibit access and/or direct to withdraw personnel
3.16	32 CONSULTANT AS LOCAL PROVIDER			Suspend from the Department Prequalification System

<b>DELEGATION SCHEDULE 1B</b>				
<b>Client's Representative, Project Manager, Building Projects Department for Infrastructure and Transport</b>				
<b>Clause</b>		<b>Subclause</b>		<b>Function</b>
3	RESPONSIBILITIES AND OBLIGATIONS OF THE CONSULTANT	(d)		Give direction
		(g)		Give approval
		(n)		Give written notice
4	RESPONSIBILITIES AND OBLIGATIONS OF THE CLIENT	(b)		Provide relevant <i>documents</i> , samples, patterns, moulds and other information
		(c)		Give directions, instructions, decisions and information
		(d)		Provide access
5	SERVICE OF NOTICES			Notify change of address
6	CLIENT'S REPRESENTATIVE AND CONSULTANT'S REPRESENTATIVE	6.2	Consultant's Representative	Give consent
8	COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS	8.2	Warranty and Indemnity by Client	Authorise
11	DIRECTIONS AND VARIATIONS	11.1	Directions by the Client	Confirm in writing
		11.2	Variations	Give direction by written notice, agree fee.

<b>DELEGATION SCHEDULE 1B</b>				
<b>Client's Representative, Project Manager, Building Projects Department for Infrastructure and Transport</b>				
<b>Clause</b>		<b>Subclause</b>		<b>Function</b>
		11.3	Variations which Change the Scope of Services	Accept <i>Consultant's</i> proposal, give direction
12	DELAY AND EXTENSION OF TIME			Extend time for carrying out services, direct in what order and at what time
<b>ANNEXURE PART B</b>				
<b>Item No</b>	<b>Clause</b>	<b>Subclause</b>		<b>Function</b>
2.2	3 RESPONSIBILITIES AND OBLIGATIONS OF THE CONSULTANT	(s)		Give approval
3.12	28 NOVATION			Give direction
3.13	29 WORK HEALTH AND SAFETY	29.2		Request evidence / information
		29.4		Give direction

<b>DELEGATION SCHEDULE 1C</b>				
<b>Client's Representative, Principal Cost Manager, Building Projects Department for Infrastructure and Transport</b>				
<b>Clause</b>		<b>Subclause</b>		<b>Function</b>
4	RESPONSIBILITIES AND OBLIGATIONS OF THE CLIENT	(a)		Make payment
12	DELAY AND EXTENSION OF TIME			Pay extra costs
13	PAYMENT	13.1	Claims for Payment	Advise information and documentation required
		13.3	Time and Place for Payment	Assess the claim, pay the <i>Consultant</i> , provide written statement
14	TERMINATION, DEFAULT, SUSPENSION AND FRUSTRATION	14.1	Termination Other than Due to Default	Pay <i>Consultant</i>
		14.3	Suspension for Convenience	Pay <i>Consultant</i>
		14.5	Frustration	Pay <i>Consultant</i>
<b>ANNEXURE PART B</b>				
<b>Item No</b>	<b>Clause</b>	<b>Subclause</b>		<b>Function</b>

DELEGATION SCHEDULE 1C				
Client's Representative, Principal Cost Manager, Building Projects Department for Infrastructure and Transport				
Clause		Subclause		Function
3.10	26 AUSTRALIAN GOVERNMENT AGREEMENT	26		Pay for services rendered



**Annexure to the Australian Standard  
General Conditions of Contract for  
Engagement of Consultants**

# PART C

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

**DEED OF NOVATION  
(Clause 28)**

This Deed made the .....day of .....

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

and .....("the Contractor")

of ..... ACN .....

and .....("the subcontractor")

of ..... ACN .....

witness that -

1 From the date of this Deed -

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

(i) assumes liability for all claims; and

(ii) enjoys all rights and benefits,

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

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

(c) other than the obligation to pay the amount set out in item 2 of the schedule, and without limiting clause 1(a), the Principal and subcontractor shall each release and forever discharge the other from the further performance of the prior contract.

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

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

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

(a) the definition of "Prescribed Heads of Liability" in clause 1 (as amended by clause 2.1 of Annexure Part B) is deleted and the following is substituted:

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

(a) personal injury including sickness and death;

(b) loss of or damage to tangible property, arising as a result of a claim made by, or on behalf of, an agency or instrumentality of the Crown in right of the State of South

Australia (Crown) (including as a result of a claim against the *Client* by the Crown), whether or not that property is owned by the Crown arising from:

- (i) a negligent or wrongful act or omission by the *Consultant*, its employees, agents or *Subcontractors*; or
  - (ii) any breach of the *Consultant's* contractual obligation to the *Client*;
- (c) infringement of any *Intellectual Property Right*;
- (d) or in respect of any claims made by, or on behalf of, the Crown (including as a result of a claim against the *Client* by the Crown) 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.”

- (b) clause 9.1.2 (as amended by clause 9 of Annexure Part B) is deleted and the following is substituted:

**“9.1.2 Exclusion of Liability**

Subject to this clause 9.1.2, a party will not be liable to the other party for:

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

which loss or cost arises due to the party’s breach of this Contract, act, omission or negligence. However, the exclusion of liability in this clause 9.1.2 does not apply to a party’s liability in connection with the *Prescribed Heads of Liability* (which remain unlimited).”

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

**SCHEDULE**

**Item 1 Prior Contract** Contract No. \_\_\_\_\_ between the Principal and the subcontractor under which the subcontractor is required to perform design and related services in relation to the project known as "....." project.

**Item 2 Amount payable by the Principal** \$[ ]

**Item 3 Balance payable by the Contractor** \$[ ]

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

.....  
Witness

.....  
Name of Witness

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

.....  
Secretary/Director

.....  
Name of Secretary/Director

.....  
Director

.....  
Name of Director

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

.....  
Secretary/Director

.....  
Name of Secretary/Director

.....  
Director

.....  
Name of Director