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| **ANNEXURE to the Australian Standard General** Conditions of Contract for Engagement of **Consultants** | PART B |

**DELETIONS, AMENDMENTS AND ADDITIONS**

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

Nil

1. The following Clauses have been amended and differ from the corresponding Clauses in AS 4122-2000:
   1. Clause **1 INTERPRETATION**

Clause 1 is amended by adding the following paragraphs.

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

*Subcontractor* means *Subconsultant* and is a term that is used in the context of the South Australian Government reporting framework.

*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;

* 1. Clause **3 RESPONSIBILITIES AND OBLIGATIONS OF THE CONSULTANT**
     1. Clause 3 is amended to delete subclauses (b), (c), (m) and (o) and in lieu thereof to substitute the following new subclauses (b), (c), (m) and (o).

1. 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);
2. 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;
3. 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;
4. 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*;
   * 1. Clause 3 is amended by adding the following new subclauses:

(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;

(t) immediately notify the Client of any conflict of interest or any circumstances which may give rise to a conflict of interest for the Consultant in respect of the Contract.

* 1. 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:

1. to Parliament, the Governor, Cabinet, any Minister of the Crown or Parliamentary or Cabinet Committee or sub-committee having an interest in this agreement;
2. one which must be made by the Government as a consequence of constitutional convention or law including Freedom of Information Act requirements; or
3. 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*.
4. one which the law requires the *Client* to make, or
5. for the purposes of prosecuting or defending any legal proceedings.

Where the *Contract* exceeds $4,000,000 in value the *Consultant* consents to the public disclosure of this *Contract* in its entirety including:

1. all schedules to the *Contract*
2. all documents exhibited or annexed to the *Contract*
3. 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.

Where the *Contract* exceeds $500,000 but does not exceed $4,000,000 in value the *Consultant* consents to the preparation by the *Client* or the Department of Planning, Transport and Infrastructure of a summary of the *Contract* and the public disclosure of such summary. For the purposes of this clause the *Contract* includes:

1. all schedules to the *Contract*
2. all documents exhibited or annexed to the *Contract*
3. 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.

* 1. Clause **7 ASSIGNMENT AND THE ENGAGEMENT OF SUBCONSULTANTS**

Clause 7 is amended by adding the following:

The *Consultant* must enter into subcontracts with subconsultants 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.

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

* 1. Clause **9.2 Indemnity by Consultant**

Clause 9.2 is amended to read:

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

1. loss or damage to property of the Client including the Contract Material; and
2. 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*.

* 1. 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.*

* 1. Clause **14 TERMINATION, DEFAULT, SUSPENSION AND FRUSTRATION**
     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.

* + 1. 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*.

* 1. 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.

1. The following clauses have been added to those of AS 4122-2000:
   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 thee A New Tax System (Goods & Services Tax) Act 1999, Commonwealth.

* 1. **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:

1. reproduce the work without attribution to the author;
2. reproduce, publish or transmit the work with attribution to the *Consultant*;
3. 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.

* 1. **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.

* 1. **20 AUDITOR GENERAL**

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

* 1. **21 NOT USED**
  2. **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, within the last three years, has received a separation package from the South Australian Government under its various schemes where the service may breach the conditions under which the separation package was paid to the former public sector employee.

* 1. **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-consultant*s* comply with the *Equal Opportunity for Women in the Workplace Act 1999 (Cth)* if that sub-consultan*t* 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*.

Delete the options that are not applicable.

Option (a) where an IPP (Tailored) Plan was submitted with the Contractor’s tender. Delete options (b) and (c) below.

* 1. **24 INDUSTRY PARTICIPATION PLAN**

**24.1 Industry Participation Plan**

The Contractor must implement the Contractor’s Industry Participation Plan as submitted as part of its tender and accepted by the Principal, which is attached to the Contract.

**24.2 Industry Participation Reports**

The Contractor must provide an Industry Participation Report (IPP Report) in respect of each Industry Participation Reporting Period within two weeks of the end of each period, in the format set out in the IPP (Tailored) Plan Implementation Report template which is attached to the Contract, including all the information indicated in that template.

The Industry Participation Reporting Period is:

1. the period between the date of commencement of the Contract and the date six (6) months after the date of commencement;
2. each subsequent six (6) month period during the term of the Contract;
3. the Date of Practical Completion.

**24.3 Industry Participation Meetings**

The Contractor must attend any meeting scheduled by the Industry Participation Advocate during the term of the Contract to review how the Contractor’s Industry Participation Plan is being implemented and advanced, and for this purpose, the Contractor must provide all information reasonably requested by the IPA. The IPA must give the Contractor not less than ten (10) Business Days’ notice of any such meeting.

**24.4 Failure to Comply**

The Contractor’s failure to comply, in whole or in part, with the commitments contained within the Contractor’s Industry Participation Plan may be a factor taken into account in the award of future contracts for the Government of South Australia.

**24.5 General**

In this clause, ‘Industry Participation Advocate’ or ‘IPA’ means the person who from time to time has been appointed to the position of Industry Participation Advocate within the Office of the Industry Advocate, situated within the Department of the Premier and Cabinet, or his/her successor;

Option (b) where an IPP (Standard) Plan was submitted with the Contractor’s tender. Delete option (a) above and option (c) below.

* 1. **24 INDUSTRY PARTICIPATION PLAN**

**24.1 Industry Participation Plan**

The Contractor must implement the Contractor’s Industry Participation Plan as submitted as part of its tender and accepted by the Principal, which is attached to the Contract.

**24.2 Industry Participation Reports**

The Contractor must provide an Industry Participation Report (IPP Report) in respect of each Industry Participation Reporting Period within two weeks of the end of each period, in the format set out in the IPP (Standard) Plan Implementation Report template which is attached to the Contract, including all the information indicated in that template.

The Industry Participation Reporting Period is:

1. the period between the date of commencement of the Contract and the first anniversary of the date of commencement;
2. each subsequent 12 month period during the term of the Contract;
3. the Date of Practical Completion.

**24.3 Industry Participation Meetings**

The Contractor must attend any meeting scheduled by the Industry Participation Advocate during the term of the Contract to review how the Contractor’s Industry Participation Plan is being implemented and advanced, and for this purpose, the Contractor must provide all information reasonably requested by the IPA. The IPA must give the Contractor not less than ten (10) Business Days’ notice of any such meeting.

**24.4 Failure to Comply**

The Contractor’s failure to comply, in whole or in part, with the commitments contained within the Contractor’s Industry Participation Plan may be a factor taken into account in the award of future contracts for the Government of South Australia.

**24.5 General**

In this clause, ‘Industry Participation Advocate’ or ‘IPA’ means the person who from time to time has been appointed to the position of Industry Participation Advocate within the Office of the Industry Advocate, situated within the Department of the Premier and Cabinet, or his/her successor;

Option (c) where no IPP Plan was submitted with the Contractor’s tender. Delete options (a) and (b) above.

* 1. **24 INDUSTRY PARTICIPATION PLAN**

**NOT USED**

* 1. **25 COMPLIANCE WITH BUILDING CODE 2013**

For the purpose of this clause 25, the following definitions shall apply:

‘the Building Code’ means the Building Code 2013. The Building Code can be downloaded from <http://www.fwbc.gov.au/building-code/>;

‘the Supporting Guidelines’ means the Supporting Guidelines for the Building Code 2013;

‘the Organisation’ means the State of South Australia to which the Commonwealth has directed the Program Expenditure;

‘the Program Expenditure’ mean the funding provided by the Commonwealth for the Project;

‘the Project Parties’ means all contractors, subcontractors, consultants, and employees who perform on Site work in relation to the Project;

‘the Project’ means the works to be executed through the Program Expenditure.

The Contractor must comply with the Building Code.

Compliance with the Building Code shall not relieve the Contractor from responsibility to perform the Contract, or from liability for any defect in the works arising from compliance with the Building Code.

Where a change in the Contract is proposed and that change would affect compliance with the Building Code, the Contractor must submit a report to the Commonwealth specifying the extent to which the Contractor’s compliance with the Building Code will be affected.

The Contractor must maintain adequate records of the compliance with the Building Code by:

1. the Contractor;
2. its subcontractors;
3. consultants; and
4. its Related Entities (refer Section 8 of the Building Code).

If the Contractor does not comply with the requirements of the Building Code in the performance of this Contract such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Contractor or a related entity in respect of work funded by the Commonwealth or its agencies.

The Contractor must not appoint a subcontractor or consultant in relation to the Project where:

1. the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
2. the subcontractor or consultant has had an adverse Court or Tribunal decision (not including decisions under appeal) for a breach of workplace relations law, work health and safety law, or workers’ compensation law and the tenderer has not fully complied, or is not fully complying, with the order.

The Contractor agrees to require that it and its subcontractors or consultants and its related entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, with access to:

1. inspect any work, material, machinery, appliance, article or facility;
2. inspect and copy any record relevant to the Project the subject of this Contract; and
3. interview any person

as is necessary to demonstrate its compliance with the Building Code.

The Contractor agrees that the Contractor and its related entities will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, to produce a specified document within a specified period, in person, by fax or by post.

The Contractor must ensure that all subcontracts impose obligations on subcontractors equivalent to the obligations under this clause 25.

Note that this is an optional clause. If deleting this clause from the annexure, ensure that the related delegation listed in Schedule 1 is also deleted.

* 1. **26 AUSTRALIAN GOVERNMENT AGREEMENT**

For the purpose of this clause 26 the following definitions shall apply:

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

‘Project’ means the project to construct the project name.

The Contractor acknowledges that the State will enter into an Agreement.

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

1. preserve the confidentiality of the Commonwealth Funding Agreement;
2. not do anything or permit anything to be done (whether by act or omission) which may cause or contribute towards a breach of the Agreement by the State or otherwise prejudice the Agreement;
3. provide any information requested by the Commonwealth pursuant to the Agreement.

In the event that the Commonwealth either:

1. terminates the Agreement; or
2. otherwise withdraws funding for the Project,

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

* 1. **27 Respectful Behaviour**

The Contractor acknowledges the Principal’s zero tolerance towards men’s violence against women in the workplace and the broader community.

The Contractor agrees that, in undertaking the work, its 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 Principal regarding acceptable workplace behaviour.

If the Principal believes that Personnel are failing to comply with the behavioural standards specified in this clause, then the Principal may in its absolute discretion:

1. prohibit access by the relevant personnel to the Site;  and
2. direct the Contractor to withdraw  the relevant personnel from undertaking the work under the Contract.

**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, 1C and 1D. Such delegation shall not prevent the *Client* from exercising any function.

| **DELEGATION SCHEDULE 1A** | | | | |
| --- | --- | --- | --- | --- |
| **Client’s Representative, Chief Corporate Officer**  **Department of Planning, Transport and Infrastructure** | | | | |
| **Clause** | | **Subclause** | | **Function** |
| 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 *Services*, give reasonable notice to recommence |
| 14.4 | Insolvency | Inform in writing, terminate the *Contract* |
| **ANNEXURE PART B** | | | | |
| **Item No** | **Clause** | **Subclause** | | **Function** |
| 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 |
| 3.10 | 26 AUSTRALIAN GOVERNMENT AGREEMENT |  |  | Terminate Contract |

| **DELEGATION SCHEDULE 1B** | | | | |
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| **Client’s Representative, Chief Corporate Officer**  **Department of Planning, Transport and Infrastructure** | | | | |
| **Clause** | | **Subclause** | | **Function** |
| 15 | DISPUTE RESOLUTION | 15.1 | Notice of Dispute | Give written notice |
| 15.4 | Expert Determination | Agree in writing |
| **ANNEXURE PART B** | | | | |
| **Item No** | **Clause** | **Subclause** | | **Function** |
| 2.4 | 7 ASSIGNMENT AND THE ENGAGEMENT OF SUBCONSULTANTS |  |  | Give written approval and advise terms and conditions in writing |
| 2.8 | 15 DISPUTE RESOLUTION | 15.2 | Conference | Confer to resolve dispute or agree on method, agree in writing to refer dispute |

| **DELEGATION SCHEDULE 1C** | | | | |
| --- | --- | --- | --- | --- |
| **Client’s Representative, Project Manager**  **Department of Planning, Transport and Infrastructure** | | | | |
| **Clause** | | **Subclause** | | **Function** |
| 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 *documents,* 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. |
| 11.3 | Variations which Change the Scope of Services | Accept *Consultant*’s proposal, give direction |
| 12 | DELAY AND EXTENSION OF TIME |  |  | Extend time for carrying out services, direct in what order and at what time |
| **ANNEXURE PART B** | | | | |
| **Item No** | **Clause** | **Subclause** | | **Function** |
| 2.2 | 3 RESPONSIBILITIES AND OBLIGATIONS OF THE CONSULTANT | (s) |  | Give approval |

| **DELEGATION SCHEDULE 1D** | | | | |
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| **Client’s Representative, Principal Cost Manager**  **Department of Planning, Transport and Infrastructure** | | | | |
| **Clause** | | **Subclause** | | **Function** |
| 3 | 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 *Consultant*, provide written statement |
| 14 | TERMINATION, DEFAULT, SUSPENSION AND FRUSTRATION | 14.1 | Termination Other than Due to Default | Pay *Consultant* |
| 14.3 | Suspension for Convenience | Pay *Consultant* |
| 14.5 | Frustration | Pay *Consultant* |
| **ANNEXURE PART B** | | | | |
| **Item No** | **Clause** | **Subclause** | | **Function** |
| 3.10 | 26 AUSTRALIAN GOVERNMENT AGREEMENT |  |  | Pay for services rendered |