**SPECIAL CONDITIONS OF CONTRACT**

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Annexure to the General Conditions of Contract

**1. GENERAL**

These Special Conditions of Contract delete, amend or add to the clauses in the General Conditions of Contract and replace Annexure Part B to the General Conditions of Contract. In the event of an inconsistency, these Special Conditions of Contract shall take precedence over the General Conditions of Contract to the extent of that inconsistency.

**2. DEFINITIONS AND INTERPRETATION**

**“Business Day”** excludes 27, 28, 29, 30 and 31 December.

**"Contractor"**means the *Consultant*.

**"Deliverables"** includes plans, outputs, drawings, reports, records, sketches, photographs, designs, estimates, specifications, calculations and models, but excludes the Contractor’s internal administrative records.

**"Principal"**means the *Client*.

**"Provisional Sum"** means a monetary sum that may be included in the payment schedule(s) for specific services that will only be undertaken by the Contractor if directed by the Principal’s Representative.

**“WHS Act”**means the *Work Health and Safety Act 2012* (SA).

**“WHS Regulations”** means the *Work Health and Safety Regulations 2012* (SA).

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 date of submission of tender.

**3. CONFIDENTIAL INFORMATION AND PUBLICITY**

3.1 Clause 23.1 is replaced with:

Subject to Clause 23.2, the Contractor must treat as confidential:

(a) all Documents generated by this Contract; and

(b) all other information which of its nature is confidential or which the Contractor ought reasonably to know is confidential.

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

3.2 Notwithstanding Clause 23.3 of the General Conditions of Contract, the Contractor must not permit or contribute to any publicity in respect of this *Contract* or any related matter unless the Contractor has obtained the Principal's approval, which may be withheld at the Principal’s sole and unfettered discretion.

**4. INSURANCE**

The last sentence of Clause 30.4 of the General Conditions of Contract, beginning with “The policy must include…” is deleted from this *Contract*.

**5. CONTRACTOR’S CONDUCT**

The Contractor warrants, represents and undertakes to the Principal that it will conduct itself in a manner that does not invite, directly or indirectly, the Principal’s officers, employees or agents or any public sector employee (as defined in the Public Sector Act 2009) to behave unethically, to prefer private interests over the Principal’s interests or to otherwise contravene the Code of Ethics for the South Australian Public Sector.

**6. CONTRACTOR’S REPRESENTATIVE**

The Contractor’s Representative must have the authority to make binding decisions on behalf of the Contractor and at a minimum, must be contactable by the Principal at any time during normal business hours.

**7. DELIVERABLES**

7.1 Unless specified otherwise, the Contractor is entitled to retain the original *Deliverables.*

7.2 *Deliverables* must be provided to the Principal in hard copy and in editable electronic files. The electronic files must be in a format which is acceptable to the Principal.

7.3 The Contractor agrees and acknowledges that the Principal, in its absolute discretion, may provide the *Deliverables* to third parties.

**8.** **WORK HEALTH AND SAFETY**

8.1 The Principal is committed to the provision of a healthy and safe working environment and expects the Contractor to demonstrate the same level of commitment to Work Health and Safety. The Contractor must comply with the WHS Act and the WHS Regulations.

8.2 If requested by the Principal, the Contractor must:

1. provide evidence satisfactory to the Principal of its capacity to comply with the WHS Act;
2. provide 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. provide the Contractor’s Workcover Registration Number.

8.3 If all or part of the work under this Contract is to be provided on the premises of the Principal and under the direction of the Principal, the Contractor must comply with the Principal’s Work Health and Safety policies, procedures and instructions while on the Principal’s premises. If the Contractor becomes aware of any potentially hazardous situation on the premises of the Principal, the Contractor must immediately bring it to the Principal’s attention for a direction regarding the matter.

**9. THE CONTRACTOR’S PERSONNEL**

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

9.2 The Contractor acknowledges and agrees that:

1. there is no contract of any nature in existence pursuant to this *Contract* between the Principal and any person employed or engaged by the Contractor for purposes of this *Contract*;
2. the Contractor is liable for all remuneration, claims and other entitlements payable to the Contractor's personnel; and
3. the Contractor is responsible for complying with the requirements with the *Income Tax Assessment Act 1936* (Cwth) pursuant to this *Contract* to the extent that the Principal is not thereby required to make PAYE deductions from any amount payable for the *Services*.

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

9.4 If the Principal forms the reasonable opinion that any of the Contractor’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 Principal may notify the Contractor accordingly, and thereupon such Contractor’s personnel must be withdrawn from undertaking further work involved in the Services.

**10. GOODS AND SERVICES TAX**

10.1 Payment from the Principal to the Contractor will include the GST payable.

10.2 Any invoice for payment under this Contract shall be a Tax Invoice in accordance with "A New Tax System (Goods and Services Tax) Act 1999". The Principal is not obliged to make any payment under this Contract unless the Contractor has provided a Tax Invoice in respect of that payment.

**11. PAYMENT**

11.1 The amount payable to the Contractor under this *Contract* will be ascertained in accordance with the following methods, as stated in Item8:

Lump Sum

For work for which the Principal has accepted a Lump Sum, the Principal will pay the Lump Sum, adjusted by any additions or deletions made pursuant to this *Contract*. Payment will not exceed the Lump Sum unless the Principal has directed a *Variation*.

The Lump Sum is be deemed to 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.

Schedule of Rates

For work for which the Principal has accepted a Schedule of Rates, the Principal 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 Principal for the item of service, adjusted by any additions or deletions made pursuant to this *Contract*.

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 Contractor to amend the applicable rate.

Upper Limiting Fee

For work for which the Principal has accepted an Upper Limiting Fee, the Principal 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 Principal has directed a *Variation.*

11.2 The Contractor must provide written payment claims which include:

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 Contractor is aware of; and
3. if requested by the Principal, an Earned Value report in accordance with AS 4817 “Project Performance Measurement Using Earned Value”.

11.3 If the *Building and Construction Industry Security of Payment Act 2009* (SA) applies to the payment claim, the respondent’s address for the service of notices is the address of the Principal’s Representative or such other address advised by the Principal’s Representative.

**12. VARIATIONS**

12.1 If the Contractor:

1. becomes aware of a potential *Variation*; or
2. considers that additional services are required and that these services are not within the Scope of Contract and / or Statement of Requirements,

the Contractor must forthwith and before performing anyservices to which the potential *Variation* relates, give written notice thereof to the Principal. The notice must include a description of the additional servicesand an estimate of the value of the *Variation*. The Contractor must not proceed with the varied *Services* unless the Principal’s written approval has been provided. If requested by the Principal, the Contractor must provide a proposed Lump Sum or Upper Limiting Fee for the varied *Services*.

12.2 The Contractor agrees and acknowledges that:

1. the Principal is not liable to make payment to the Contractor for any of the additional services referred to in Clause 12.1 if the Contractor has not given written notice to the Principal prior to providing the services; and
2. compliance with the requirements of this Clause 12 is a condition precedent for payment for the provision of any services which are not within the Scope of Contract and / or Statement of Requirements.

**13. DISCLOSURE OF CONTRACT**

The Contractor agrees to disclosure of this *Contract* in accordance with Department of Premier and Cabinet Circular 27 (PCO27)."Disclosure of Government Contracts", available from:<http://www.premcab.sa.gov.au/dpc/publications_circulars.html>. The Contractor’s attention is drawn to the *Freedom of Information Act 1991(SA)*. No exemption from the provisions of this Act applies to this *Contract*.

**14. EVALUATION OF CONTRACTOR’S PERFORMANCE**

The Principal may undertake an ongoing evaluation of the Contractor’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 Contractor. If the Contractor disagrees with the evaluation, it may forward a request to the Principal for a review, along with reasons why it should be reviewed. The Principal’s decision will then be final. The evaluation may be taken into account in the assessment of future tenders with the Principal or other government agencies.

**15. LIABILITY OF CONTRACTOR**

Clause 29 “Limitation of Liability” of the General Conditions of Contract is deleted and replaced with the following:

**29.1 Definitions**

“**Prescribed Heads of Liability**” means any liability for:

1. personal injury including sickness and death;
2. loss of or damage to tangible property;
3. infringement of intellectual property rights;
4. any liability to a third party arising from:
	1. a negligent or wrongful act or omission by the Contractor, its employees, agents or subcontractors; or
	2. any breach of the Contractor's contractual obligation to the Principal;
5. an intentional tort;
6. a breach of trust; and
7. fraud or dishonesty,

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

**29.2 Limitation of Liability**

The liability of the Contractor for negligence in connection with this *Contract* or breach of this *Contract* shall be limited, in aggregate, to the amount specified in *Item* 24, except to the extent that the liability arises from, or is referable to, any of the Prescribed Heads of Liability (and to that extent, the Contractor’s liability is not limited).

**16. 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 performing the Works, the Contractor*’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 Principal regarding acceptable workplace behaviour.

If the Principal believes that the Contractor*’s* 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 Contractor’s personnel to the Principal’s premises;  and
2. direct the Contractor to withdraw  the relevant Contractor’s personnel from providing the *Services*.

**17. INDUSTRY PARTICIPATION POLICY**

This clause 18 only applies if stated in Annexure *Item* 32.

18.1 The Contractor must implement the Contractor’s Industry Participation Plan (“CIPP”) included in the Schedules.

18.2 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 in the template available from [www.dpc.sa.gov.au/office-industry-advocate](http://www.dpc.sa.gov.au/office-industry-advocate), including all the information indicated in that schedule.

18.3 An Industry Participation Reporting Period is:

1. the period between the Commencement Date and the first anniversary of the Commencement Date;
2. each subsequent 12 month period during the Term;
3. if the Agreement 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 Agreement; and
4. where the Term is for a period less than 12 months, the Term.

18.4 The Contractor must attend any meeting scheduled by the Industry Participation Advocate (“IPA”) during the Term to review how the SIPP 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 10 Business Days’ notice of any such meeting.

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

18.6 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.

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