



## SPECIAL CONDITIONS – PART A

### Specific Conditions of Contract

#### References from clauses in the General Conditions of Contract for Consultancy Services

##### 6.2 Limitation of liability

The maximum aggregate amount payable, shall be five (5) times the fee (exclusive of GST and disbursements) with a maximum limit of \$2,000,000, except in respect of weathertightness claims where the maximum aggregate amount payable shall be five (5) times the fee with a maximum limit of \$250,000.

##### 6.4 Duration of liability

Without limiting any defences a Party may have under the Limitation Act 2010, the duration of liability shall be six (6) years from the date of completion of the Services.

##### 6.5 Insurance

The minimum amount of public liability insurance required is \$5,000,000 per occurrence. The time for maintaining the public liability insurance will be until the date on which all of the Services have been completed.

The minimum amount of professional indemnity insurance required shall be an amount equal to five (5) times the fee with a maximum limit of \$2,000,000 per occurrence. The time for maintaining the professional indemnity insurance will be the duration of liability in 6.4 above.

# SPECIAL CONDITIONS – PART B

## Other Conditions of Contract

The General Conditions of Contract for Consultancy Services (Fourth Edition, December 2017) are amended as follows:

### Section 1: Definitions and Interpretation

#### Clause 1.1 (Definitions)

The following new definition is inserted in clause 1.1:

***“Prior Services***

*Prior Services means any of the Services that have been provided by the Consultant to the Client under any arrangement between the Parties which was made in contemplation of this Agreement.”*

### Section 2: Obligations of the Consultant

#### Clause 2.1 (The Services)

The following bullet points are inserted at the end of clause 2.1:

- *“provide sufficient employees (including Key Personnel) with the necessary qualifications, licenses, skills and experience to perform the Services to the standard required by this Agreement; and*
- *co-operate with the Client and use all reasonable endeavours to co-operate with any Other Consultants (as applicable); and*
- *at the Consultant’s cost, correct any errors, omissions or both in any documentation prepared as part of the Services by the Consultant where the error or omission is the result of the Consultant failing to exercise the duty of care required by clause 2.2; and*
- *comply with all applicable legislation, regulations and any of the Client’s rules, policies and standards that the Client may notify to the Consultant in writing from time to time, except to the extent that compliance with any of the Client’s rules, policies or standards would constitute a breach of the Consultant’s duty of care under this Agreement. The Consultant may notify the Client where it considers any rule, policy or standard notified after the commencement of the Services results in a material increase in the Consultant’s costs and such shall be treated as notice of a Variation for the purposes of clauses 2.13 and 7.”*

#### Clause 2.2 (Duty of Care)

Clause 2.2 is amended by inserting the following at the end of the clause:

*“for a project of a similar type and size to the Client’s Project.”*

### Section 3: Obligations of the Client

#### Clause 3.3 (Client Decisions)

A new paragraph is inserted after the second paragraph in clause 3.3 as follows:

*“The Consultant shall, in every case where it requires the Client to make a decision, accompany the request for a decision with a reasonable level of information to enable the Client to consider the matter at issue. The Client is entitled to request further information as may be reasonably required by the Client to assist it in making the relevant decision. The provision of information pursuant to this clause 3.3 shall be at no additional cost to the Client except where such is beyond what would reasonably be expected to be provided by the Consultant as part of the Services.”*

### **Clause 3.6 (Instructions to Others)**

A new sentence is added to the end of clause 3.6 as follows:

*“Notwithstanding the forgoing, in an urgent or emergency situation the Client may give instructions directly to Other Consultants and/or Third Parties directly contracted to the Client but in such an event the Client, as soon as reasonably practicable, must notify the Consultant that instructions have been given.”*

### **Clause 3.7 (Client to Give Early Warning)**

The words “, as soon as reasonably practicable,” are inserted in the first sentence of clause 3.7 after the word “must”.

A new paragraph is inserted after the first paragraph in clause 3.7 as follows:

*“Where the Secretary for Education is the Client under this Agreement, the Client shall not be required to inform the Consultant of anything which will affect the scope or timing of the Services that is related to another Government agency or entity outside of the direct matters for which the Client is responsible as a Government agency or entity.”*

### **Clause 3.9 (Approvals)**

A new paragraph is inserted after the second paragraph in clause 3.9 as follows:

*“Without limitation to the Client’s obligations in the 4<sup>th</sup> bullet point of clause 3.2, any approval by the Client of information submitted to it by the Consultant (such information must in all cases be provided by email or in hard copy by the Consultant) shall not be taken to signify that the Client has checked the accuracy or completeness of such information received from the Consultant and shall not relieve the Consultant of any of its obligations under this Agreement unless approval is expressly given on that basis or the Parties expressly agree such in writing.”*

## **Section 4: Personnel**

### **Clause 4.3 (Key Personnel)**

Clause 4.3 is deleted in its entirety and replaced with the following:

*“The Consultant must obtain the Client’s prior written consent before replacing or substituting any of the Key Personnel, including where the Client has required the replacement in accordance with this clause 4.3, such consent not to be unreasonably withheld or delayed.*

*The Client may, for good reason, require the Consultant to replace any Key Personnel, any other person engaged by either the Consultant or any Subconsultant if they are unsuitable or are not sufficiently available to perform the Services by giving written notice to the Consultant specifying the Client’s reason(s). The cost of replacing any person pursuant to this clause shall be borne solely by the Consultant and any replacement or substitute person proposed must be no less skilled and experienced than the Key Personnel to be replaced.”*

## **Section 6: Liability and Insurance**

### **Clause 6.5 (Insurance)**

The first bullet point in clause 6.5 is deleted and replaced with the following:

- *“professional indemnity insurance for the amount as set out in the Special Conditions;”*

Two new paragraphs are inserted after the second paragraph in clause 6.5 as follows:

*“The Consultant’s public liability insurance shall include the Client (which shall include the Client’s officers and employees) as an additional insured in respect of their vicarious liability arising from the Consultant’s negligence in relation to the performance of this Agreement.*

*The Consultant insurances required to be taken out by the Consultant shall be with insurers with a minimum unsecured credit rating of least “A-” from Standard & Poor’s (or equivalent) immediately on the execution of this Agreement. The Consultant shall keep them in force for the length of time set out in the Special Conditions – Part A.”*

## **Section 8: Confidentiality**

### **Clause 8.3 (Exclusions)**

A new paragraph is inserted after the third paragraph in clause 8.3 as follows:

*“Where the Client is the Secretary for Education, the Consultant acknowledges that the Client may disclose Confidential Information to another Government agency or entity.”*

## **Section 9: Intellectual Property**

### **Clause 9.1**

Clause 9.1 is amended by inserting the following at the end of the clause:

*“Notwithstanding the foregoing, where any New Intellectual Property includes Confidential Information, the Client’s or the Consultant’s use of that New Intellectual Property is subject to ensuring compliance with clause 8.1 or 8.2 (as applicable). For example, any Confidential Information is to be redacted or removed from the New Intellectual Property prior to any further use.”*

### **Clause 9.2**

Delete the words *“to the extent reasonably required to enable the Client to make use of the Services or use, adapt, update or amend the Works”* and replace with the following:

*“in relation to or in connection with this Agreement, the Services, the Works or the Client’s Project, including for the planning, design, engineering, procurement, construction, testing, commissioning, completion, operation, maintenance, repair, replacement, modification, renewal, expansion and/or alteration of the Services, Works or the Client’s Project.”*

### **Clause 9.3**

Clause 9.3 is amended by inserting the words: *“part of the”* after the words *“concerning the”* on the fourth line.

## **Section 10: Disputes**

### **Clause 10.1**

Clause 10.1 is amended by deleting the words *“best endeavours”* and replacing them with *“reasonable endeavours”*.

### **Clause 10.2**

Clause 10.2 is deleted in its entirety and replaced with the following:

*“If the Parties cannot resolve the dispute themselves within a reasonable time (but in any event within 20 Working Days or such longer period agreed in writing), then either Party may require that the dispute be referred to mediation by serving written notice on the other.”*

### **Clause 10.3**

Clause 10.3 is amended by deleting the words *“a reasonable time”* and replacing them with:

*“20 Working Days of the date of either Party’s notice requiring mediation issued pursuant to clause 10.2 (or such longer or shorter period as may be expressly agreed by the Parties)”*

### **Clause 10.6**

A new clause 10.6 is inserted as follows:

*“Nothing in this clause 10 shall prevent or prejudice the ability of either Party to apply to any court in order to seek interim injunctive relief against the other.”*

## **Section 12: General Provisions**

### **Clause 12.6: Advertising**

Clause 12.6 is amended by inserting the following words at the end of the clause:

*“, or otherwise wishes to publicise or promote its involvement in the Client’s Project in any way.”*

**Clause 12.10: Survival of Provisions**

Add the following after the reference to “9” in clause 12.10:

*“and 10, 11 and 12”*

**Clause 12.16: Entire Agreement**

Clause 12.16 is amended by inserting the following at the end of the clause:

*“by any pre-existing written agreement between the Parties relating to the provision of professional services to the Client (for example, a panel agreement, or master services agreement).”*

**Clause 12.19: Prior Services**

A new clause 12.19 is inserted as follows:

*“For the avoidance of doubt, where the Consultant has performed any Prior Services, this Agreement will retrospectively apply to those Prior Services from the date that it is executed by both Parties.”*

**Clause 12.20: Privity**

A new clause 12.20 is inserted as follows:

*“The Consultant acknowledges and accepts that, for the purposes of the Contract and Commercial Law Act 2017, the rights and benefits conferred on the Client by this Agreement are also for the benefit of, and enforceable by, the Sovereign in right of New Zealand acting by and through the Secretary for Education. For the avoidance of doubt, there will be no double recovery from the Consultant in respect of the same matter as a result of the Secretary for Education enforcing his or her rights as beneficiary under that Act.”*