

## **CROWN AGENCY COLLABORATION – PROJECT SPECIFIC CCCS AMENDMENTS**

**NOTE: Consider whether to include the below amendments on a case-by-case basis depending on the scale and nature of the particular project. Where applicable, insert chosen amendments alongside the 'Core' Crown amendments to the general conditions of CCCS.**

### **Section 5: Payments**

#### **5.5 Set-off**

Add a new clause 5.5 as follows:

##### **5.5 (Set-off)**

“Provided that it first gives written notice to the Consultant, the Client is entitled to set-off against any sums that would otherwise be due to the Consultant under the Agreement any actual amount owing as a debt due and payable in respect of any claims the Client has against the Consultant in relation to the Client’s Project. This right of set-off, deduction and withholding is without prejudice to any other right of set-off, deduction or withholding provided for pursuant to this Agreement or otherwise.”

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

#### **Clause 6.2 (Limitation of Liability)**

The following paragraphs are added to clause 6.2:

“However, such limitation shall not apply to the Client’s liability to pay the Consultant’s fee or any liability of either party which arises:

- in relation to any unauthorised use of the other party’s Intellectual Property or Confidential Information in breach of this Agreement; or
- in relation to an indemnity provided by the Consultant under clause 9.4.”

### **Section 7: Variations**

#### **Clause 7.4**

Add a new clause 7.4 as follows:

##### **7.4 (Reduction in Scope)**

“The Client may reduce either or both of the scope of the Project, and the scope of the Services, and may engage another party to undertake any such works so removed from the scope, and in any such event the Consultant shall not be entitled to claim any breach, damages or loss of profits against the Client.

Within 15 days of any notice under this clause, the Consultant shall forward to the Client:

- (a) the proposed reduction in the consultancy fee for the reduction in the Services, such amount to be agreed in accordance with Clauses 7.2 and 7.3; and
- (b) the proposed amount of any reasonable out of pocket costs that the Consultant incurs solely because of the reduction in Services.

Upon determination of the reduction of the consultancy fee in accordance with this clause the consultancy fee shall be reduced accordingly.”

### **Section 9: Copyright of Documents**

#### **Clause 9.1**

Clause 9.1 is deleted and replaced with the following:

"All New Intellectual Property held in any medium, whether electronic or otherwise shall be solely owned by the Client. The Consultant may not copy, use, disclose, distribute or sell any New Intellectual Property without the express written consent of the Client (which it may grant or withhold in the Client's sole and absolute discretion on whatever conditions the Client deems appropriate) except as required for the purpose of delivering the Services."

#### **Clause 9.4**

Clause 9.4 is amended by adding the following at the end:

"The Consultant will indemnify the Client against any loss, claim, damage, expense, liability or proceeding suffered or incurred at any time by the Client as a direct result of any breach of any of the Consultant's obligations, undertakings or warranties contained or implied in this clause 9.4."

### **Section 11: Termination**

#### **Clause 11.2 (Payment on Early Termination)**

Add the following paragraph at the end of clause 11.2

"The Client will not in any circumstances be responsible for abandonment costs or lost fees for stages of the Services not performed as at the date of termination (including without limitation any loss of profit, or lost opportunity costs or claims suffered by the Consultant) or for any fees for any Services for which the Client had not, as at the date of termination, instructed the Consultant to proceed with."

#### **Clause 11.6 (Suspension)**

Add a new clause 11.6 as follows:

"The Client may suspend the performance of the Services by the Consultant at any time by written notice specifying the reasons why the Services are suspended. As soon as such notice is received by the Consultant, the Consultant will stop the performance of the Services. The Client may withdraw the suspension of the Services at any time by giving further written notice to the Consultant.

Suspension of the performance of the Services will not prejudice or affect the accrued rights or claims and liabilities of the Parties.

Where the Services are suspended other than for the default of the Consultant the Client shall:

- grant the Consultant additional time to complete the Services commensurate with the period of suspension plus the period of time reasonably required by the Consultant to remobilise should the Client later withdraw the suspension, and the Consultant shall not be entitled to a Variation due to suspension under this clause 11.6;
- pay the Consultant for the Services provided to the date of suspension and any reasonable costs incurred by the Consultant solely as a result of such suspension (the Consultant will take all reasonable steps to minimise all such costs);
- have no claim against the Consultant solely by reason of any delay caused by or arising from the suspension; and
- not be responsible for any costs or losses resulting from any such suspension other than the reasonable costs which may be payable under the 2<sup>nd</sup> bullet above.

The Consultant may terminate this Agreement by written notice to the Client where the Services remain suspended for a continuous period of more than three months and the Client has not withdrawn the suspension or the parties have not agreed a further extension of the suspension.

Where the Client gives notice to the Consultant withdrawing a suspension the Consultant must remobilise, and as far as reasonably possible reassign Key Personnel to the Project and 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 within a reasonable time from the date it receives the Client's notice."

## **Section 12: General Provisions**

### **Clause 12.9 (Assignment and Novation)**

Clause 12.9 is deleted and replaced with the Following:

#### **"12.9.1**

The Client may novate all or any part of its rights and/or obligations under this Agreement to the Contractor with the prior consent of the Consultant, such consent shall be deemed to be provided ten Working Days following the Client's request unless the Consultant can provide reasonable evidence (prior to the expiry of the ten Working Days) that:

- (a) the Contractor will be unable to fulfil its financial obligations to Consultant under this Agreement;
- (b) an actual conflict of interest exists between the Consultant and the Contractor;
- (c) the Consultant is currently engaged in litigation or other legal proceedings against with the Contractor; or

The Consultant must, within a further ten Workings Days of providing its consent to the Client's proposed novation, duly execute and deliver to the Client, in triplicate, a deed of novation, such deed of novation to be in the form provided by the Client in the form set out in Appendix H.

Where the Consultant fails to comply with the foregoing provisions of this clause 12.9.1, then the Client may withhold payment of any amounts otherwise due and payable by the Client to the Consultant under this Agreement until the failure has been rectified.

12.9.2 In the event the Client novates all or part of its rights and obligations under this Agreement to the Contractor pursuant to clause 12.9.1, the Consultant:

- (a) acknowledges it will, as a result of such novation, become a 'consultant' of the Contractor;
- (b) acknowledges that the terms of the construction contract to be entered into between the Contractor and the Client will include a provision requiring the Contractor to deliver subconsultant continuity guarantee deeds for the benefit of the Client; and
- (c) agrees to deliver an executed subconsultant continuity deed to the Client in the form set out in Appendix I."

### **Clause 12.15 (Client's Regulatory Functions)**

The following is added to the end of clause 12.15:

"For the avoidance of doubt, any exercise of a regulatory function by the Client shall not constitute a breach of this Agreement."