**Government of South Australia**

**GC21 (Edition 1 as amended)**

**Agreement with Valuer**

for Design (to the extent specified) and Construction

Space

The Principal has engaged the Contractor under the Contract to *Design* and construct and complete the Works.

The parties have agreed under the Contract to refer certain matters to the Valuer for determination.

Refer to clauses 39, 51 and 52 of the GC21 General Conditions of Contract.

Space

# Definitions

**Agreement dated:** day month year

 Between

**The Valuer:** Valuer Name

 ABN: XX XXX XXX XXX

 and

**The Principal:** Minister for Transport and Infrastructure

 and

**The Contractor:** Contractor Name

 ABN: XX XXX XXX XXX

 concerning:

**The Contract:** the contract between the Principal and the Contractor

**Contract Title:** Contract Name

**Contract Number:** Contract Number

**Dated:** day month year

**The Works:** the works to be designed and constructed by the Contractor as described in the Contract.

Other words and phrases in this agreement have the meanings given in the General Conditions of Contract.

The terms Contractor and Principal include their successors and permitted assignees.

# Terms of Agreement

## Request to determine and acceptance

The parties request the Valuer to determine the value and time associated with *Variations* and other matters referred to the Valuer under the Contract. The Valuer agrees to comply with this request in accordance with this agreement.

## Determination by Valuer

When a matter is referred to the Valuer by either party, the Valuer must consult with both parties, determine the matter in accordance with this agreement and as specified in the Contract, and issue a certificate stating the determination within 28 days, or another time agreed by the parties, of the matter being referred to the Valuer.

If a certificate issued by the Valuer contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Valuer must correct the certificate.

## Principles for valuation

If a *Variation* involves additional or increased work, the Valuer must determine its value as the sum of the following:

* the additional reasonable direct labour, material and plant costs of the Contractor;
* the additional reasonable costs to the Contractor of Subcontract and Consultant work involved in carrying out the *Variation*; and
* the additional amount calculated as the percentage in *Contract Information* item 48 of the total of the costs under clauses 3.1.1 and 3.1.2 of this agreement, which allows for the *Contractor’s Margin*.

If a *Variation* involves decreased or omitted work, the Valuer must determine its value as that of the work included in the *Contract Price*:

* as specified in the Contract, or otherwise as valued by the Valuer based on the rates and lump sums in the Contract or otherwise applying at the closing time of tender; and
* including a reasonable *Contractor’s Margin* and a reasonable allowance for any time-dependent costs not included in the *Contractor’s Margin* which will not be incurred as a result of the decreased or omitted work.

The Valuer must not include any *Contractor’s Margin* in the costs determined under clauses 3.1.1 and 3.1.2. of this agreement.

The Valuer must not include any amount in the valuation of Subcontract work under clause 3.1.2 of this agreement for extra costs, losses or expenses attributable to any default or negligence of the Contractor.

The Valuer must not include any amount in the valuation of a *Variation* for the costs of delay or disruption caused by the *Variation*.

Delay costs are dealt with in clause 56 of the General Conditions of Contract.

## Principles for calculating time

If the *Variation* involves additional or increased work and extra time is required for *Completion*, the Valuer must determine a reasonable extension to the time for *Completion*, using the provisions of clause 54 (other than clause 54.1.1) of the General Conditions of Contract, taking into account that the Contractor must take all reasonable steps:

* to carry out the work concurrently with other work whenever possible; and
* to otherwise minimise the effects of the *Variation* or new item of work on *Completion* by the applicable *Contractual Completion Date*.

Only delays which have or will delay the Contractor in reaching *Completion* will entitle the Contractor to an extension of time for *Completion* as a result of a *Variation*.

If the *Variation* leads to less time being required for *Completion*, the Valuer must determine a reasonable reduction to the time for *Completion*.

## Meeting

The Valuer may meet with the parties together to discuss the referred matter. The parties agree that such a meeting is not a hearing which would give anything under this agreement the character of an arbitration.

## Documents

The Valuer will take into consideration:

* documents, information and other written material which has been exchanged by the parties before the request to the Valuer;
* any submission or submission in reply by a party to the Valuer (copied to the other party); and
* information or material as provided in clause 7.2 below.

The Valuer will fix appropriate times for the provision of any submissions and submissions in reply as referred to above.

The parties acknowledge that when a matter referred to the Valuer involves a Subcontractor, Supplier or Consultant’s claim, the Valuer will give the relevant Subcontractor, Supplier or Consultant the opportunity to be involved in the valuation process. The Valuer must wherever possible include in the certificate a breakdown of each Subcontractor, Supplier or Consultant’s entitlement in the determination.

## Role of Valuer

The Valuer:

* acts as an expert and not as an arbitrator;
* is not expected or required to obtain or refer to any information or material relating to trade information or other third party material but may do so if the Valuer wishes; and
* must issue a certificate in a form the Valuer considers appropriate, stating the Valuer’s determination, with reasons.

## Certificate final

Subject to clause 39.1.5 of the General Conditions of Contract, the parties agree to accept the determination in the Valuer’s certificate as final and binding.

## Liability of Valuer

The Valuer is not liable for anything done or omitted by the Valuer under this agreement, other than fraud.

## Fees and expenses

The Principal and the Contractor must share equally the fees and out-of-pocket expenses of the Valuer for the determination. However, the Principal alone must pay all such fees and out-of-pocket expenses related to any *Variation* which the Principal proposes but does not later instruct.

The fees payable to the Valuer under this agreement are:

* an administration fee of $0,000 for reviewing the *Contract Documents*
* an amount for the time involved in performing the Valuer’s duties under this agreement based on these hourly rates:

|  |  |
| --- | --- |
| Director | $000/hour |
| Associate | $000/hour |
| Senior Quantity Surveyor/Engineer | $000/hour |
| Quantity Surveyor/Engineer | $000/hour |
| Technician | $000/hour |

* substantiated out-of-pocket expenses.

## Confidentiality

The parties and the Valuer must keep confidential all proceedings and submissions relating to a determination by the Valuer. They must not divulge information to any other person except with the previous written consent of the other party, or as required by law, or in order to enforce a determination of the Valuer.

## Termination of agreement

This agreement may be terminated by a written notice to the Valuer signed by both the Principal and the Contractor. The Principal and the Contractor may then, separately or together, recover all documents each had provided to the Valuer. They must then pay all the Valuer’s outstanding fees and expenses in accordance with clause 10 of this agreement.

## Payment

The Principal and the Contractor must pay the Valuer within 14 days of receiving an invoice which complies with this agreement.

The Principal and the Contractor must advise the Valuer of the necessary details for invoicing if they have agreed that one of them will make payments to the Valuer on behalf of both.

## Period of engagement of Valuer

Unless this agreement is terminated under clause 12 of this agreement, the Valuer is engaged until the time of issue of the *Final Payment Schedule*, plus any further period of time required for any referred matter which has not been determined by the Valuer by the time of issue of the *Final Payment Schedule*.

 **Signed by the Contractor**

Signature of Authorised Person: …………………………………………………

Name of Authorised Person: …………………………………………………

Date: …………………………………………………

 **Signed by the Principal**

Signature of Authorised Person: …………………………………………………

Name of Authorised Person: …………………………………………………

Date: …………………………………………………

 **Signed by the Valuer**

Signature of Valuer: …………………………………………………

Name of Valuer: …………………………………………………

Date: …………………………………………………