



k20 Architecture

SERVICE LINE AGREEMENT BETWEEN K20.AU PTY LTD & SUB-CONSULTANT
TERMS & CONDITIONS OF ENGAGEMENT

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SERVICE LINE AGREEMENT BETWEEN K20.AU PTY LTD & SUB-CONSULTANT TERMS & CONDITIONS

1. ROLE OF THE SUBCONSULTANT

- 1.1 In performing the Services, the Subconsultant shall exercise the degree of skill, care and diligence normally exercised by members of their profession performing services of a similar nature in accordance with the ethics of their profession.
- 1.2 The Subconsultant shall use all reasonable efforts to inform themselves of K20AU's requirements for the project and for that purpose they shall consult K20AU throughout the performance of the Services.
- 1.3 If the Subconsultant considers that the information, documents and other particulars made available to them by K20AU are not sufficient to enable the Subconsultant to provide the Services in accordance with this Agreement it is the Subconsultant's responsibility to advise K20AU who shall then provide such further assistance, information, or other particulars as necessary in the circumstances.
- 1.4 If the Subconsultant becomes aware of any matter which will change or which has changed the scope or timing of the Services then they will give notice to K20AU of the changes.
- 1.5 The Subconsultant shall not assign the rights, powers, benefit, remedies or obligations or any of the same under the terms of this Agreement without first obtaining the written consent of K20AU who at its sole discretion may refuse consent without in any way being bound to give any reason for such refusal.
- 1.6 The Subconsultant shall perform the Services in a timely manner to the extent that it is within their control and notice having been given under Item 1.4.

2. ROLE OF K20AU

- 2.1 K20AU shall as soon as practicable make available to the Subconsultant all information, documents and other particulars relating to K20AU's requirements for the Project.
- 2.2 K20AU shall as soon as practicable make arrangements to enable the Subconsultant to enter upon the Site and other lands as necessary to enable the Subconsultant to perform the Services.
- 2.3 Unless the agreement specifically states otherwise K20AU shall as soon as practicable obtain all approvals, authorities, licences and permits which are required from government, municipal or other responsible authorities for the lawful implementation and completion of the Project.
- 2.4 K20AU shall advise the Subconsultant of the name of the person appointed by K20AU to act as their representative and agrees that the representative shall have the authority to act on the behalf of K20AU for all purposes in accordance with this Agreement.
- 2.5 If K20AU becomes aware of any matter which may change the scope or timing of the Services, or the Project, then K20AU will give written notice to the Subconsultant.

3. PAYMENT TO THE SUBCONSULTANT FOR SERVICES

- 3.1 In consideration of the promise by the Subconsultant, to Subconsultant the Fee and the Reimbursable Expenses as provided in the Agreement at the times and in the manner set out in this Agreement.
- 3.2 At or about the end of each agreed payment period the Subconsultant shall submit to K20AU an account for the Services performed, for Reimbursable Expenses incurred and for any applicable GST amount, during this period in accordance with agreed budgets.
- 3.3 If K20AU disputes the whole or any portion of the amount claimed in an account submitted by the Subconsultant, it shall pay that portion not in dispute and shall notify the Subconsultant in writing of the reasons for disputing the account. If the parties are unable to reach agreement within seven (7) days of K20AU's notice, the dispute may be determined in accordance with this Agreement.
- 3.4 If the engagement of the Subconsultant is terminated for any reason other than for breach of this Agreement by the Subconsultant, the Subconsultant shall be entitled to payment for

the Services carried out for the period up to and including the date of termination.

The Fee for the Services performed under this Agreement has been calculated on the assumption of both parties that the Services are to be provided under circumstances normally pertaining to the carrying out of the type of project in question. The parties agree that if the Subconsultant is required to perform the Services in circumstances other than those normally pertaining to such a project or if there is a change in the scope, timing or order of the services initiated and agreed to by the client, then the Subconsultant shall be entitled to additional payment of an amount which is reasonable in the circumstances and conditioned by clause 16 of this contract.

4. SCOPE OF LIABILITY AND INSURANCE

- 4.1 The Subconsultant shall indemnify K20AU against any claim liability or action arising out of or resulting from any lack of skill, care and diligence on the part of the Subconsultant in the performance or non-performance of the Services.
- 4.2 The Subconsultant shall effect and maintain with an approved insurance company the following policies,
 - i. Professional Indemnity Insurance in an approved form for not less than \$5,000,000 (\$5 Million) & maintain the insurance for a minimum period of fifteen (15) years from the date of completion of your service for which you have been contracted for any one event claim and to cover any liability of the Subconsultant, K20AU and K20AU's client arising out of lack of skill, care and diligence in the performance or non-performance of the Services by the Subconsultant.
 - ii. Public Liability Insurance in an approved form including a minimum \$10,000,000 (\$10 Million) cover for each claim, against the Subconsultant's, K20AU's and K20AU client's liability for damage or injury to any person or property and against all actions and expenses arising in connection therewith which shall have been occasioned by the Subconsultant or their servants or agents.
 - iii. Workers Compensation Insurance in an approved form against the Subconsultant's, K20AU's and K20AU client's liability, whether arising at common law or by virtue of any relevant status relating to workers compensation employer's liability or the like by any person employed by the Subconsultant.
 - iv. Motor Vehicle Insurance for each vehicle owned, used, leased, hired or operated by the Subconsultant or their servants and agents in an approved form including \$1,000,000 legal liability (personal and property) and \$1,000,000 non-owned or supplied vehicle liability cover for each claim against the Subconsultant's, K20AU's and K20AU client's liability for damage or injury to any person or property and against all actions and expenses arising in connection therewith which shall have been occasioned by the Subconsultant or their servants or agents.

5. DISPUTE DETERMINATION

- 5.1 If K20AU and the Subconsultant are in dispute regarding any matter arising out of the Agreement, then either party may by notice in writing served on the other require that such dispute be resolved by the determination of an independent third party acceptable to both parties. If the parties cannot agree on an independent third party within seven (7) days of the date of service of the notice then either party may request the President of the Australian Institute of Arbitrators, to nominate the third party. The third party who has been agreed upon or appointed shall act as an expert and not as an arbitrator and their decision shall be final and binding upon K20AU and the Subconsultant.

6. TERMINATION OF SERVICES

- 6.1 K20AU may by notice in writing served on the Subconsultant terminate K20AU's obligations under this Agreement:
 - v. If the Subconsultant is in breach of the terms of this Agreement and the breach has not been remedied within twenty-eight (28) days (or

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- longer period as K20AU may allow) of the service by K20AU on the Subconsultant of a notice requiring the breach to be remedied; or
- vi. If K20AU serves on the Subconsultant a notice requiring that this Agreement be terminated on a date specified in the notice.
 - 6.2 The Subconsultant may by notice in writing served on K20AU terminate the Subconsultant's obligations under the Agreement:
 - vii. If K20AU is in breach of the conditions of Part 3 of the Agreement; or
 - viii. If K20AU is in breach of the provisions of any other Part of the Agreement and the breach has not been remedied within twenty-eight (28) days (or such longer period as the Subconsultant may allow) of the service by the Subconsultant on K20AU of a notice requiring the breach to be remedied; or
 - ix. If the Subconsultant serves on K20AU a notice requiring that the Agreement be terminated on a date specified in the notice.
 - 6.3 Termination shall be without prejudice to any claim which either party may have against the other in respect of any breach of terms of the Agreement which occurred prior to the date of determination.
 - 6.4 If an insolvency event occurs in relation to either K20AU or the Subconsultant either party may immediately terminate the agreement. The party terminating the agreement must give written notice of termination to the other party and state it is given under this clause.

7. DELIVERABLES

- 7.1 The Subconsultant shall prepare and update all Deliverables in accordance with high quality industry standards in terms of scope and accuracy, as required to perform its services in accordance with this Agreement.
- 7.2 The approval of Deliverables by K20AU or K20AU 's client shall not necessarily constitute finalisation of the Deliverables and further work amendments or alternatives may be required. Any approval by K20AU or K20AU 's client shall not in any way relieve the Subconsultant of their obligation under this Agreement.
- 7.3 The Subconsultant shall not make any amendments to approved Deliverables without obtaining prior written agreement from K20AU. The Subconsultant shall immediately give notice to K20AU upon discovering any error, inconsistency, omission or defect in any Deliverable and shall carry out promptly such amendments as may be necessary to perform their services in accordance with this Agreement.
- 7.4 The Subconsultant shall be responsible for costs incurred by K20AU or others as a result of errors or omissions in the Subconsultants Deliverables unless the documents are clearly issued as 'preliminary'.

8. QUALITY ASSURANCE

- 8.1 The Subconsultant shall implement a quality assurance system to ensure that all services provided are carried out in accordance with this Agreement and project requirements. On request from K20AU the Subconsultant shall submit for review and acceptance the Sub consultancy quality system, including a quality manual and related documents providing details of the system, and originals of quality records. K20AU may undertake quality audits of the quality system and its implementation as and when required to verify conformance with the quality assurance requirements of this Agreement. The Subconsultant shall cooperate with, and provide access and reasonable facility for the purpose of these audits.
- 8.2 The Subconsultant shall ensure that any equipment is fully calibrated before use on the project
- 8.3 The implementation of a quality system in accordance with this Agreement shall not in any way limit the responsibilities and obligations of the Subconsultant under other provisions of this Agreement.

9. CONFIDENTIALITY AND COPYRIGHT

- 9.1 The Subconsultant shall not disclose any details or information to a third party, during or after the term of this Agreement, without the prior written approval of K20AU. The above provision shall not apply to technical information and data that is generally available to the public or was in the Subconsultant's possession prior to the date of this Agreement.
- 9.2 The ownership of and copyright in all designs, drawings, specifications, CAD files, catalogues, calculations, data, materials and other property (whether tangible or intangible) whatsoever conceived, produced or used by any of the Subconsultant's employees pursuant to or in any way whatsoever arising out of the performance of this Agreement shall be and remain the absolute property of K20AU which shall be at liberty to use, apply, exploit, register, protect or otherwise turn to account the same in such manner as it shall see fit and the Subconsultant shall not suffer or permit any of their employees to copy or remove the same or to divulge to any party any information with respect thereto or with respect to K20AU 's work, business, clients, facilities or operations without K20AU's prior consent in writing.

10. MORAL RIGHTS

- 10.1 The Subconsultant will only be attributed in any Public Information about the project promulgated by, or on behalf of, the client or K20AU, where requested by the sub consultant and agreed upon by K20AU.
- 10.2 The form of attribution will, subsequent to clause 10.1, be as agreed by both parties. The consultant agrees to provide written consent as required by the Copyright ACT 1968

11. GENERAL MATTERS

- 11.1 The Subconsultant and K20AU each binds themselves and their partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of the other party in respect to all covenants and obligations of this Agreement.
- 11.2 Neither the Subconsultant nor K20AU shall assign, sublet or transfer any right or obligation under the Agreement without the written consent of the other party. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any obligation under the Agreement.
- 11.3 A notice purported to be served under this Agreement shall be deemed to have been properly served if the same is in writing and is sent to the usual business address of the recipient by mail, email, telegram or facsimile message or personal delivery for which a receipt is obtained.

12. DEFINITIONS

Unless the context otherwise requires, then in construing the Agreement:

- 12.1 Agreement means the entire contractual agreement between K20AU and the Subconsultant.
- 12.2 K20AU means the particular Company of the K20.AU Pty Ltd Group or Joint Ventures which is referred to in the Agreement and with which the Subconsultant has agreed to provide the Services.
- 12.3 GST Means the tax imposed under the A New Tax System (Goods & Services Tax) Act 1999 and includes any goods and services or value added tax or any tax or charge of a like nature levied or imposed in relation to a supply (which includes any deemed supply) of any goods, property, services or any other thing and "GST Law" means that Act.
- 12.4 GST Amount

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is the amount calculated by multiplying the consideration provided (or deemed to be provided) for the relevant supply by the rate or rates at which that GST is levied or imposed (if it is imposed at all).

12.5 Project

means the work described in the Agreement in respect of which K20AU has engaged the Subconsultant to provide the Services.

12.6 The Services

means those services included in the Agreement between K20AU and the Subconsultant and defined by correspondence.

12.7 Subconsultant

means the company, person or firm named in the Agreement who has agreed with K20AU to provide the Services.

12.8 Deliverables

means the documents and services to be delivered by the Subconsultant as detailed or implied in the Agreement or attachments to the Contract.

12.9 Insolvency event

Is defined as:

- x. in relation to a person, means anything that indicates that the person is or will become unable to pay their debts as and when they become due or payable including:
 - xi. the person is declared, made or becomes insolvent
 - xii. an execution or distress process is levied against the person's assets which include the person's income
 - xiii. the person enters into a deed of company arrangement with the person's creditors
 - xiv. the person fails to comply with a bankruptcy notice or a statutory demand served under the corporations law a provisional liquidator, liquidator, receiver, receiver and manager, administrator, scheme administrator, controller or other such administrator is appointed (whether by a court, creditor or otherwise) to the person or over the person's assets
 - xv. a trustee in bankruptcy, interim receiver, controlling trustee or other such administrator is appointed (whether by a court, creditor or otherwise) to the person or over the person's assets.

13. GOODS AND SERVICES TAX

- 13.1 Any amount referred to in this agreement which is relevant in determining a payment to be made by one of the parties to the other party is exclusive of GST to the extent that GST is not otherwise expressly included.
- 13.2 If GST is levied or imposed on or in respect of any supply made under or in connection with this agreement then, subject to the provisions of Clause 13.3 K20AU must, in relation to the consideration provided (or deemed to be provided) for that supply, pay the GST amount to the subconsultant at the same time at which the consideration for the supply is payable (or deemed payable).
- 13.3 No GST amount is payable until the Subconsultant has given the recipient a Tax Invoice (as defined in the GST Law).

14. REVISIONS TO CONSULT AUSTRALIA TERMS AND CONDITIONS OF ENGAGEMENT

- 14.1 The following points are revisions to the guideline terms and conditions of engagement published by the Consult Australia; the body representing Consulting Engineer's in Australia. By undertaking work for K20AU the subconsultant agrees too and accepts the following points as superseding any terms and conditions provided by the sub consultant in their terms and conditions. The clauses listed below are in reference to the Consulting Engineers of Australia guideline terms and conditions
 - i. Any decision given by the President under the provision of Clause 6.2 shall be deemed to be an opinion only and shall not be binding on the parties to this agreement.

- ii. The period of liability in relation to Clause 4.3 shall be the period for which the K20AU remains liable to their client in respect of works for which the consulting engineer is responsible.
- iii. As soon as any dispute arises which could lead to a claim, K20AU will inform their insurance brokers. Discussions or correspondence, including any under Consult Australia Guidelines should not contravene General Condition 2 of the policy. Further, before making any request under Consult Australia Guidelines for the President of the Institute of Engineers to nominate an arbitrator or panel of names, architects should obtain the written consent of their insurers.

15. RELEASE OF ELECTRONIC COMPUTER AIDED DESIGN FILES (CAD)

- 15.1 The Subconsultant agrees to release all electronic Computer Aided Design (CAD) files prepared for and relating to these works to K20AU at no cost for their use and distribution when requested by K20AU. The files are to be provided in working order to an agreed export format.

16. SERVICES ADDITIONAL TO THE SUB CONSULTANT'S SCOPE

- 16.1 If the sub consultant believes what they have been requested to undertake by k20AU is in addition to the original scope of works then the sub consultant is to notify K20AU prior to undertaking the works for which the sub consultant believes they have an additional claim.
- 16.2 K20AU will advise the sub consultant in writing if the works are to proceed and/or negotiate with the Subconsultant the fee applicable.
- 16.3 If the sub consultant commences or undertakes the works without notifying k20AU prior to undertaking the works and /or does not receive written confirmation from k20AU then the payment and the amount of payment for the additional fee requested by the sub consultant is at the discretion of k20AU. This is applicable even if the works for which the Subconsultant believes they have a claim has been completed.

17. ELECTRONIC DATA TRANSFER

- 17.1 The sub consultant agrees that:
 - i. K20AU may issue data electronically to it and to others involved in the project;
 - ii. K20AU is not responsible for the accuracy, completeness or any contamination of electronically transmitted data;
- 17.2 In the instance K20AU's electronic files are used as a basis to the sub consultant's work, the sub consultant is to check and confirm the accuracy of all information shown on the electronic files provided by K20AU specific and relevant to the consultant's specialised area of expertise that they have been engaged for.