

## Guideline for Use of Standard Government Contracts

### Annexure A – User Guide for the Standard Goods and Services Agreement

#### Attachment 1 – Agreement Details

A description of each item in *Attachment 1 – Agreement Details* of the *Standard Goods and Services Agreement* template is set out below:

| Item No. | Item Title                                  | Guidance Notes   |
|----------|---|--|
| 1.       | Government Party                            | Insert the name, ABN and contact details of the Government Party.<br>For departments and statutory authorities that are not established as bodies corporate, insert the responsible Minister.<br>For statutory authorities that are established as bodies corporate, insert the statutory authority. |
| 2.       | Supplier                                    | Insert the name, ACN and contact details of the contracting party. If the contracting party is a trustee, also specify the name of the trust.  |
| 3.       | Commencement Date                           | Insert the date that the contract takes effect. This can be the date of last party execution or a specified date.  |
| 4.       | Expiry Date                                 | Insert the date that the contract will come to an end. This can be a specified period or can be linked to the occurrence of a particular event e.g. the end of the warranty period.  |
| 5.       | Extension Period                            | If an extension period has been approved the contract can be extended at the election of the Government Party. If so, insert the term of any extension period. If not insert “not applicable”.   |
| 6.       | Supplier’s ABN                              | An ABN is required otherwise the Government Party is required to withhold tax at the rate prescribed in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).   |
| 7.       | Contract Managers                           | Each party must nominate a Contract Manager. Insert a telephone number and email address.  |
| 8.       | Named Persons                               | This is most relevant to a consultancy where the Government Party is contracting the services of particular person(s) for their expertise.   |
| 9.       | Details of Goods                            | If Goods are being purchased under the contract, a brief functional description can be included here. If there is a detailed specification, this should be attached in Attachment 5.   |
| 10.      | Delivery Date and Delivery Point – Goods    | If Goods are being purchased under the contract then specify the date and location for delivery.   |
| 11.      | Installation Date                           | If Goods are being purchased under the contract and the goods require installation, include a date for installation. If installation is not required then insert “not applicable”.   |
| 12.      | Warranty Period                             | This is only relevant if Goods are being purchased under the contract. During a Warranty Period the Supplier is required to rectify any defects in the goods.  |
| 13.      | Details of Services                         | If Services are being purchased under the contract a brief functional description can be included here. If there is a detailed specification this should be attached in Attachment 5.  |
| 14.      | Delivery Date and Delivery Point – Services | If Services are being purchased under the contract then specify the date and location for delivery.  |
| 15.      | Reports and Manuals                         | Please specify reports that the Supplier must provide as part of the Services or any user manuals that the Supplier must provide with the  |

## Guideline for Use of Standard Government Contracts

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|     |   | goods.  |
| 16. | Milestone Dates                               | These are critical dates during the period of the contract by which Goods and Services must be supplied.  |
| 17. | Price and Payment                             | If the pricing and payment information is simple, this detail can be included in this item. If the pricing and payment information is more detailed then it can be inserted into Attachment 6. If you do not need to use Attachment 6 please insert "not used" in that attachment.  |
| 18. | Insurances                                    | The only mandated insurance is public liability insurance. All suppliers must have a minimum of \$1 million public liability insurance coverage.<br><br>If Goods are being supplied then the level of product liability insurance actually held by the Supplier is to be included where indicated. For example if a Supplier has \$5,000,000 product liability insurance then that is the amount that should be included in this item (see guidance notes for Insurance clause below for further details).  |
| 19. | Liability Limit                               | On 25 July 2016 the South Australian Cabinet approved a policy that for low to medium risk low complexity (standard) government procurement contracts, a Supplier's liability will be capped at a multiple of between 1 and 5 of the total contract value with the multiple to be based on a risk assessment conducted by the Government Party. The global cap applies to all heads of liability and all types of damage or loss (see guidance notes for Liability Limit clause below for further details). |
| 20. | Other Termination Rights                      | The Standard Terms & Conditions provide a comprehensive list of rights for the Government Party to end the contract. If it is necessary due to the nature of the particular procurement to have other rights to end the contract, they can be included in this item.  |
| 21. | Approved Subcontractors                       | If the Supplier has indicated as part of their offer to provide goods and services that it will be using subcontractors then the names and contact details of those subcontractors can be included in this item.  |
| 22. | Additional Personnel Checks                   | The Standard Terms & Conditions include a right for the Government Party to require police checks of Supplier personnel. If, due to the nature of the procurement (e.g. delivery of services or goods at schools), it is necessary for further suitability checks of Supplier's personnel, these can be included in this item.  |
| 23. | Notice Period for Termination for Convenience | The Standard Terms & Conditions includes a right for the Government Party to terminate for convenience. The period should not be less than 30 days unless the contract itself is for a very short period.   |

## Guideline for Use of Standard Government Contracts

### Attachment 2 - Standard Terms & Conditions

A description of the legal effect of each contract term of Attachment 2 – *Standard Terms and Conditions* of the *Standard Goods and Services Agreement* template is set out below:

| Clause No. | Clause Title                                       | Guidance Notes  |
|------------|--|---|
| 1.         | Contract Length                                    | This is the period during which the contract will have legal force and effect. If, as part of the acquisition approval process, an extension of the contract has been approved, then clause 1.2 will give effect to the extension.  |
| 2.         | Contract Managers                                  | These are the persons who are responsible for the day to day management of the relationship between the parties.  |
| 3.         | Supply of Goods (If Applicable)                    | This clause is only relevant if Goods are being purchased. The clause sets out all of the obligations of the Supplier in relation to the supply and delivery of the Goods.  |
| 4.         | Inspection and Acceptance of Goods (If Applicable) | <p>This clause is only relevant if Goods are being purchased. Inspection of Goods is not mandated but recommended to determine whether or not there are any obvious defects or lack of conformity with the stated requirements. More complex goods may need to be more rigorously tested. The Government Party is required to notify the Supplier that it either accepts or rejects the goods. Notification does not need to be in writing. If no notice is received then the goods are deemed to have been accepted 5 business days after delivery, with the exception of consumables which may be rejected when first used.</p> <p>The Standard Terms &amp; Conditions provides for the passing of risk in the goods to the Government Party on delivery of the goods and for the passing of ownership in the goods to the Government Party on acceptance of the goods.</p> |
| 5.         | Warranty Period (If Applicable)                    | If the Supplier has offered a goods warranty period as part of its offer, then this period will commence upon acceptance of the goods by the Government Party. During the Warranty Period if the Goods are defective or are in any other way not compliant with the warranties in clause 9 then the Government Party can elect either to receive a refund of the price or to receive replacement Goods from the Supplier.   |
| 6.         | Supply of Services (If Applicable)                 | <p>This clause is only relevant if Services are being purchased. Any service levels and milestone dates need to be specified in Attachment 5.</p> <p>Please note that if the Government Party is procuring “professional services” (i.e. consultancy services) that there are a number of special conditions in the Special Conditions Clause Bank that should be included in Attachment 4. These special conditions include, amongst other things, the requirement to comply with specific government policies.</p>  |
| 7.         | Reports and Manuals (If Applicable)                | This clause applies if the Supplier is required to provide user manuals (usually required in relation to the supply of goods) or reports or other materials (usually required in relation to the supply of services).   |
| 8.         | Service Variation (If Applicable)                  | This clause enables a Government Party to request a variation to the Services. The Government Party issues a written request to which the Supplier is required to respond by providing a quote and  |

## Guideline for Use of Standard Government Contracts

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|     |                              | other information about the impact of the variation on the services. The parties must negotiate in good faith to agree on the price and other terms.  |
| 9.  | Supplier's Warranties        | This clause contains all of the contractual warranties that apply to both the provision of Goods and Services. There may be other warranties that apply as a matter of law.   |
| 10. | Supplier's Personnel         | This clause sets out the requirements for police and other checks such as Working With Children checks of Supplier Personnel. The Government Party has an absolute right to require the withdrawal of Supplier Personnel from providing Goods or Services. This clause also deals with security requirements in relation to the Government Party's computer systems and premises.   |
| 11. | Price and Payment            | This clause provides that the Supplier is entitled to invoice the Government Party when the Goods and Services have been supplied. The Price is GST inclusive unless stated otherwise.  |
| 12. | GST                          | The default position is that a Supplier has both an Australian Business Number (ABN) and is registered for GST. If the Supplier is not registered for GST then no GST must be charged on supplies made under the Agreement.   |
| 13. | Intellectual Property Rights | Ownership of intellectual property in existence before the contract is entered into is not impacted by the contract.<br>The default position for intellectual property in reports and manuals created during the contract is that the Supplier will own the intellectual property and grant a broad licence to enable the Government Party to use any reports or manuals required to be supplied under the contract (note that the default position for intellectual property created by a consultant is different (see Special Conditions Guidance Notes)).<br>If the Government Party wishes to own IP in the reports and manuals then a special condition to that effect will need to be included in Attachment 4.<br>If the Government Party wishes to own IP or be granted a licence to use IP in any deliverables that are not a report or manual then an additional special condition to that effect will need to be included in Attachment 4. |
| 14. | Insurance                    | The default position under the Standard Terms & Conditions is that the Supplier is in the best position to assess its liability and to manage its risks under the contract whether by insurance or otherwise. The only mandated insurance is public liability insurance which has been set at the lowest amount available from insurers.<br>If Goods are being supplied then the product liability insurance that is held by the Supplier is the level of coverage that will apply under the contract.<br>If professional services (e.g. consultancy) are being supplied then the level of professional indemnity insurance held by the consultant will apply (see Special Conditions Guidance Notes).  |
| 15. | Liability Limit              | The 25 July 2016, South Australian Cabinet decision replaces the previous Cabinet Approved Default Liability Limit for low risk contracts up to a value of \$1 million (GST inclusive) and takes precedence over any across government or agency specific liability frameworks that established a liability position for the procurement of low to medium risk low complexity (i.e. standard) procurements of goods and services. This means that for all low to medium risk  |

## Guideline for Use of Standard Government Contracts

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|     |                                | contracts the supplier's liability will be limited to between 1 and 5 times the total contract value.  |
| 16. | Confidential Information       | Each party has obligations in relation to the use and disclosure of Confidential Information.  |
| 17. | Set-Off                        | This clause enables the Government Party to subtract money owed to it by the Supplier from the amount due and owing to the Supplier.   |
| 18. | Dispute Resolution             | This clause requires the parties to at least attempt to resolve any disputes between them before either party has recourse to the courts. This is subject to a carve-out where it is necessary for a party to seek interlocutory relief in the case of genuine urgency.  |
| 19. | Ending this Contract           | <p>This clause sets out the contractual grounds under which each party may terminate the Agreement. The Standard Terms &amp; Conditions do not exclude any common law or statutory rights to terminate.</p> <p>There is a right for the Government Party to terminate for convenience. It is recommended that this right should only be exercised where there is a genuine need to terminate the contract due to a change in Government policy or in the Government Party's requirements.</p> <p>There is the option for the Government Party to include further termination rights in Attachment 1.</p> |
| 20. | Effect of Ending this Contract | <p>This clause operates to preserve each party's rights even though the contract has been brought to an end.</p> <p>This clause also specifies those clauses that survive termination of the contract (for example, the obligation to not disclose Confidential Information).</p>  |
| 21. | Subcontracting                 | This clause limits the right of the Supplier to subcontract its obligations under the contract.  |
| 22. | Conflict of Interest           | The Supplier is required to declare any potential or actual conflicts. Failure to disclose may give rise to a right to terminate the contract.   |
| 23. | Compliance with Laws           | The Supplier must comply with all laws that apply to the performance of the Supplier's obligations under the contract.   |
| 24. | Governing Law and Jurisdiction | The law governing the contract is South Australian law and the courts of South Australia including the Federal Court have the right to adjudicate on any issue arising under the contract.   |
| 25. | Entire Agreement               | This clause excludes all prior agreements between the parties from having contractual force and effect and affirms that the terms and conditions of the contract are the only terms that govern the bargain between the parties.   |
| 26. | No Assignment                  | <p>The Supplier must obtain the Government Party's written approval if it wishes to assign any rights or obligations under the contract.</p> <p>The clause also provides that if there is a Machinery of Government Change the entity that replaces the Government Party will be bound as if it was the Government Party.</p>  |
| 27. | Modification                   | For a variation to the contract to be effective the variation must be made in writing and signed by both parties.  |
| 28. | Severance                      | If a court determines that a part of the contract is void for any reason, then the parties agree that invalidity of that part does not affect the validity of the rest of the contract.  |
| 29. | Counterparts                   | This clause gives the parties the option of executing the contract by each party signing a copy of the contract and then providing that  |

## Guideline for Use of Standard Government Contracts

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|     |                      | signed copy to the other party.   |
| 30. | Work Health & Safety | If the Supplier is required to work at the Government Party's premises the Supplier is required to comply with the Government Party's work health and safety policies and to report any hazards to the Government Party.  |
| 31. | Acting Ethically     | There is a general requirement that a Supplier does not offer inducements or other benefits to public sector employees that may contravene the Code of Ethics for the South Australian Public Sector.   |
| 32. | Interpretation       | This clause sets out the basic rules for interpreting the terms and conditions of the contract.   |
| 33. | Special Conditions   | The effect of this clause is to bring within the scope of the contract any special conditions that are inserted into Attachment 4. Care must be taken in inserting special conditions as they will take precedence over the other terms and conditions of the contract. |

# Guideline for the Use of Standard Template Contracts

## Attachment 4 – Special Conditions

A description of the legal impact of each special condition in the Special Conditions Clause Bank for the *Standard Goods and Services Agreement* template is set out below:

| Clause No. | Special Condition Title | Guidance Notes   |
|------------|-------------------------|--|
| 1.         | Purchase Order          | This Special Condition is to be inserted into Attachment 4 if the procurement of Goods and/or Services is by way of a standing offer, either as a sole supplier arrangement or as part of a panel. Under a standing offer, the parties agree that the Government Party may, but is not obliged to, purchase goods and/or services by issuing a Purchase Order. The Standard Goods and Services Agreement terms and conditions apply to purchase orders issued under a standing offer and take priority over any terms and conditions that are included with a purchase order (e.g. Basware terms and conditions).                                  |
| 2.         | No Minimum Purchase     | This Special Condition is to be inserted into Attachment 4 if the procurement of Goods and/or Services is by way of a standing offer, either as a sole supplier arrangement or as part of a panel. There is no requirement that the Government Party purchase any Goods and/or Services.   |
| 3.         | Non-Exclusivity         | The Government Party is able to purchase Goods and Services from another supplier.   |
| 4.         | Consultancy             | This Special Condition is to be inserted where the Government Party is procuring consultancy services (e.g. auditing, accounting, financial and economic analysis). All references to “Supplier” and “Price” are deemed to be references to “Consultant” and “Fees” respectively.<br><br>The Special Condition requires the Consultant to maintain professional indemnity insurance to the minimum level of cover required in the ordinary course of the Consultant’s business.<br><br>The Special Condition also grants ownership to the Government Party in any reports or other materials created by the Consultant as part of the consultancy. |
| 5.         | Liability               | This Special Condition recognises that under the <i>Professional Standards Act 2004</i> (SA), occupational associations may seek to have a scheme limiting its members’ civil liability approved under the Act. If the limitation of liability under that scheme is more favourable than the Cabinet-approved global liability cap, then the Consultant may request that this clause is inserted into Attachment 4.  |
| 6.         | Contract Disclosure     | This Special Condition is to be inserted into Attachment 4 if the procurement has a value greater than \$500,000 (inc. GST) or is a consultancy agreement of any value. This clause enables the contract to be disclosed on the Tenders SA website or to a particular person as a result of a specific request.  |



# Guideline for the Use of Standard Template Contracts

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| 7.  | Privacy                       | If the procurement of Services involves the Supplier dealing with personal information then this Special Condition should be inserted into Attachment 4. The clause requires the Supplier to comply with South Australian Government Information Privacy Principles in relation to the collection, storage, disclosure or other use of personal information under the Agreement.                     |
| 8.  | Supplier as Trustee           | There is an increased risk in dealing with a Supplier that is a trustee of a trust. This clause requires the Supplier to make certain representations about its status as trustee and to ensure that in the event that the Government Party has a claim against the Supplier that the Supplier is able to be indemnified out of the assets of the trust.   |
| 9.  | Industry Participation Policy | If the procurement meets the threshold for an Industry Participation Plan (Standard or Tailored IPP), the NFP must report against that IPP during the period of the contract.  |
| 10. | Performance Guarantee         | If the Supplier is a subsidiary and there is a concern about its ability to fully perform the contract, then a guarantee can be required to be given by the Supplier's parent company.   |
| 11. | Bank Guarantee                | If there is a concern about the ability of the Supplier to fully perform the contract then the an unconditional and irrevocable  |
| 12. | Child Safety                  | If the Supplier is providing Services to children or otherwise working with children within the meaning of the <i>Child Safety (Prohibited Persons) Act</i> , then this clause should be included in the contract.   |
| 13. | Respectful Behaviours         | This clause applies if the Government Party is White Ribbon Accredited.  |
| 14. | Information Sharing           | This clause applies to procurements involving the delivery of services where the sharing of information may assist in preventing harm or threats to the safety and wellbeing of vulnerable people (including children) and where such sharing is permitted by DPC012 Information Privacy Principles Instructions.  |
| 15. | Force Majeure                 | A Force Majeure is an even that is outside the control of either or both parties which affects either or both parties' ability to perform its obligations under the contract. The clause has the effect of suspending performance during the Force Majeure event provided the affected party notifies the other party and does everything possible to mitigate the effect of the Force Majeure Event |





# Guideline for the Use of Standard Template Contracts

## Annexure B – User Guide for the Standard Not for Profit Funded Services Agreement

### Attachment 1 – Agreement Details

A description of each item *Attachment 1 – Agreement Details* section of the *Standard Not for Profit Funded Services Agreement* template is set out below:

| Item No. | Item Title                        | Guidance Notes   |
|----------|-----------------------------------|--|
| 1.       | Government Party                  | Insert the name, ABN and contact details of the Government Party.<br><br>For departments and statutory authorities that are not established as body corporates, insert the responsible Minister.<br><br>For statutory authorities that are established as body corporates, insert the name of the statutory authority. |
| 2.       | Not for Profit Organisation (NFP) | Insert the name and contact details of the NFP.  |
| 3.       | Commencement Date                 | Insert the date that the contract takes effect. This can be the date of last party execution or a specified date.  |
| 4.       | Expiry Date                       | Insert the date that the contract will come to an end. This can be a specified period or can be linked to the occurrence of a particular event e.g. the provision of a final report or acquittal.  |
| 5.       | Extension Period(s)               | If extension periods have been approved, the contract can be extended at the election of the Government Party. If not insert “not applicable”.   |
| 6.       | NFP’s ABN                         | An ABN is required otherwise the Government Party may be required to withhold tax at the rate prescribed in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).<br><br>Also confirm whether the NFP is registered for GST.  |
| 7.       | Contract Managers                 | Each party must nominate a Contract Manager. Insert a telephone number and email address.  |
| 8.       | Named Persons                     | This is most relevant where particular person(s)’ expertise is required or where due to security or safety reasons, only named personnel can be engaged to provide the Funded Services.  |
| 9.       | Purpose                           | Include a brief functional description of the Funded Services being funded under the contract here. If there is a detailed specification this should be attached in Attachment 4.  |
| 10.      | Reports and Meetings              | Insert description of reports and delivery dates as well as any specific meetings that must be attended.   |
| 11.      | Block Funding and Payment Details | If the Block Funding and payment information is simple, this detail can be included in this item otherwise insert more detail into Attachment 5. If you do not need to use Attachment 5 please insert “not used” in that attachment.   |
| 12.      | Tax Invoice Issuing Party         | If the NFP organisation and the Government Party have agreed that the Government Party will issue a Recipient Created Tax Invoice (RCTI) then the Government Party is the Tax Invoice Issuing Party.   |



## Guideline for the Use of Standard Template Contracts

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|     |  | In all other cases the Tax Invoice Issuing Party will be the NFP organisation.   |
| 13. | Block Funding Reconciliation Dates   | If the date on which the NFP organisation must reconcile its costs of providing the Funded Services against the Block Funding amount is not the anniversary of the Commencement Date, then please insert alternative date here.  |
| 14. | Additional NFP Financial Information   | If the NFP organisation is not required by law to prepare audited financial statements, the Government Party can specify here that the optional financial information specified in clause 12.3 is required.  |
| 15. | Service Credit/ Abatement  | Service Credit/Abatement are a form of agreed liquidated damages for non-performance or for a failure to perform to the required level or standard. The amount of the Service Credit/Abatement must be a reasonable pre-estimate of the loss to the Government Party of the benefit of the NFP organisation's performance.   |
| 16. | Quality Standards  | If there are particular industry or sector standards that apply to the delivery of the Funded Services, they should be inserted here.  |
| 17. | Insurances<br>Public Liability Insurance<br>Professional Indemnity Insurance | The only mandated insurance is public liability insurance. All NFP organisations must have a minimum of \$1 million public liability insurance coverage.<br><br>Professional Indemnity (PI) insurance is optional and will depend on the nature of the Funded Services. PI insurance is issued on a "claims-made basis", meaning that the policy only covers claims made during the policy period. Therefore to cover liability incurred during the policy period but claimed after the expiry of that policy period, the PI Policy must cover claims made up to 3 years after expiry of the insurance cover.          |
| 18. | Liability Limit  | The NFP Sector Funded Services Agreement is a procurement contract. On 25 July 2016 the South Australian Cabinet approved a policy that for low to medium risk low complexity (standard) government procurement contracts, a supplier's liability will be capped at a multiple of between 1 and 5 of the total contract value with the multiple to be based on a risk assessment conducted by the Government Party. The global cap applies to all heads of liability and all types of damage or loss.<br><br>For high risk contracts the Crown Solicitor's Office can assist by drafting bespoke liability provisions. |
| 19. | Additional Transition Requirements   | If there are additional requirements to those specified in clause 24 (Transition) then they can be inserted here (e.g. requirement for NFP organisation to have a written transition plan).  |
| 20. | Approved Subcontractors  | If the NFP organisation has indicated as part of their offer to provide Funded Services that it will be using subcontractors, then the names and contact details of those subcontractors can be included in this item.   |
| 21. | Additional Personnel Checks  | The Government Party may require police checks of NFP organisation personnel. If due to the nature of the funding (e.g. delivery of Funded Services where children or other vulnerable persons are present) it is necessary for further suitability checks of the NFP's personnel, these can be included in this item.   |

# Guideline for the Use of Standard Template Contracts

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| 22. | Notice Period for Termination for Convenience | Either party may Government Party terminate for convenience. The period should not be less than 3 months.   |
| 23. | Form of Block Funding Acknowledgement         | The Government Party can stipulate if acknowledgement of support from the South Australian Government is required and what type of acknowledgement; for example government branding on all paper documents related to the service that is being undertaken. |



## Guideline for the Use of Standard Template Contracts

### Attachment 2 - Standard Terms & Conditions

A description of the legal effect of each contract term of Attachment 2 – *Standard Terms and Conditions* of the *Standard Not for Profit Funded Services Agreement* template is set out below:

| Clause No. | Clause Title                              | Guidance Notes   |
|------------|---|--|
| 1.         | Contract Length                           | This is the period during which the contract will generally have legal force and effect. If as part of the acquisition approval process, extensions of the contract have been approved, then clause 1.2 will give effect to the extension(s).  |
| 2.         | Contract Managers                         | These are the persons who are responsible for the day to day management of the relationship between the parties.   |
| 3.         | Purpose                                   | The Block Funding must only be used for the agreed purpose to achieve the agreed outcomes.   |
| 4.         | Supply of Funded Services                 | This clause sets out the basis on which the NFP organisation is to supply the Funded Services.   |
| 5.         | Service Variation                         | This clause enables either party to request a variation to the Funded Services.<br>The Government Party may request a variation by issuing a written request to the NFP organisation which then responds by providing a quote and other information about the impact of the variation on the Funded Services.<br>The NFP organisation may request a variation by issuing a Quote. In both cases the parties must negotiate in good faith to agree on the varied terms. |
| 6.         | NFP's Warranties                          | This clause contains all of the contractual warranties that apply to the provision of the Funded Services. There may be other warranties that apply as a matter of law.  |
| 7.         | NFP's Personnel                           | This clause sets out the requirements for police and other checks of the NFP's Personnel.<br>The Government Party has an absolute right to require the withdrawal of NFP Personnel from providing Funded Services.<br>This clause also deals with security requirements in relation to the Government Party's computer systems and premises.   |
| 8.         | Funding and Invoicing                     | If the period of the contract is greater than 12 months, the Block Funding payable from the first anniversary of the Commencement Date will be indexed against the applicable NFP Sector Indexation Rate during the period of the contract.  |
| 9.         | GST                                       | The default position is that a NFP organisation has both an Australian Business Number (ABN) and is registered for GST. If the NFP organisation is not registered for GST, then no GST may be charged for supplies. If an NFP organisation does not have an ABN, then tax at 46.5% must be withheld and paid to the ATO.   |
| 10.        | Repayment of Unallocated or Misused Funds | As Block Funding is paid in advance and there is no "price" for the services, any unexpended funds must be repaid to the Government Party when specified in the contract, unless the NFP organisation  |

# Guideline for the Use of Standard Template Contracts

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|     |                                  | has requested the right to retain or carryover unexpended amounts.   |
| 11. | Provision of Information         | <p>As Block Funding is paid in advance in sizeable lump sums, it is necessary that the Government Party is able to confirm that the Block Funding is being used for the Purpose to achieve the Outcomes. Confirmation can occur through the NFP organisation providing reports on its use of the funding.</p> <p>If the Government Party requires additional reports, it can request that the NFP provides a quote of the NFP's reasonable costs in providing the additional reports.</p>  |
| 12. | Financial Reporting and Auditing | <p>The NFP organisation is required to provide a written acquittal of its expenditure of the Block Funding at the times specified in the Agreement using the form in Attachment 6.</p> <p>Where an NFP organisation is required by law to prepare audited Financial Statements, then it can provide a copy of these to satisfy the reporting requirements in this clause.</p> <p>Where an NFP organisation is not required by law to prepare audited Financial Statements, the Government Party has the option of requiring the NFP organisation to provide its balance sheet, income and expenditure statement and statement of changes in equity for the financial year.</p> <p>The Government Party may require the financial accounts of the NFP organisation to be audited and if the Block Funding has not been used for the Purpose the NFP organisation must pay the costs of the audit.</p> |
| 13. | Inspection                       | To ensure that the Block Funding is being used for the agreed Purpose the Government Party has the right to inspect premises, records and interview NFP Personnel.   |
| 14. | Intellectual Property Rights     | <p>Ownership of intellectual property in existence before the contract is entered into is unchanged.</p> <p>The default position for intellectual property created during the contract, is that the NFP organisation will own the intellectual property and grant a broad licence to enable the Government Party to use any reports, manuals or other deliverables required to be supplied under the contract.</p>   |
| 15. | Confidential Information         | Each party has obligations in relation to the use and disclosure of information that the other party has designated as "Confidential Information".   |
| 16. | Privacy                          | <p>The clause recognises that the NFP organisation is a "contracted service provider" and so is required to comply with South Australian Government Information Privacy Principles (<a href="https://www.dpc.sa.gov.au/documents/rendition/DPC-Circular-Information-Privacy-Principles-IPPS-Instruction.pdf">https://www.dpc.sa.gov.au/documents/rendition/DPC-Circular-Information-Privacy-Principles-IPPS-Instruction.pdf</a>) in relation to the collection, storage, disclosure or other use of personal information under the contract.</p>   |
| 17. | Publicity                        | <p>The NFP organisation must acknowledge the Government Party's financial support in any advertising, publicity or promotional material.</p> <p>The NFP organisation and the Government Party must cooperate in terms of the content and timing of any public announcements or media releases about the contract.</p>  |



# Guideline for the Use of Standard Template Contracts

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| 18. | Insurance                       | The default position under the Standard Terms & Conditions is that the NFP organisation is in the best position to assess its liability and to manage its risks under the contract whether by insurance or otherwise. The only mandated insurance is public liability insurance which has been set at the lowest amount available from insurers. If required in delivering the Funded Services the NFP organisation must hold professional indemnity insurance. |
| 19. | Liability Limit                 | The 25 July 2016 South Australian Cabinet decision replaces the previous Guidelines for the Limitation of Liability of Suppliers, Consultants and Contractors which have been revoked (see commentary on Attachment 1 for more detail).   |
| 20. | Set-Off                         | This clause enables the Government Party to subtract money owed to it by the NFP organisation from any amount due and owing to the NFP organisation.  |
| 21. | Dispute Resolution              | This clause requires the parties to at least attempt to resolve any disputes between them before either party has recourse to the courts. This is subject to a party seeking interlocutory relief in the case of genuine urgency.   |
| 22. | Ending this Agreement           | This clause sets out the contractual grounds under which each party may terminate the contract. The Standard Terms & Conditions do not exclude any common law or statutory rights to terminate. There is a right for either party to terminate for convenience.   |
| 23. | Effect of Ending this Agreement | This clause operates to preserve each party's rights even though the contract has been brought to an end.<br>This clause also specifies those clauses that survive termination of the contract. For example the obligation to not disclose Confidential Information.  |
| 24. | Transition                      | The NFP organisation must assist the Government Party to ensure continuity of service during transition-in if the NFP organisation is providing the Funded Services for the first time and on transition-out if the Funded Services are to be handed over to another service provider (or the Government Party). The NFP must comply with transition arrangements identified in Attachment 1 Item 19.   |
| 25. | Subcontracting                  | This clause limits the right of the NFP organisation to subcontract its obligations under the contract.   |
| 26. | Work Health & Safety            | Under this clause if the NFP organisation is required to work at the Government Party's premises, the NFP organisation is required to comply with the Government Party's work health and safety policies and to report any hazards to the Government Party.   |
| 27. | Conflict of Interest            | The NFP organisation must disclose any potential or actual conflict between the private interests of the NFP organisation or any of its Personnel and the NFP and its Personnel's obligations to the Government Party under this Agreement.   |
| 28. | Contract Disclosure             | The terms of the Agreement are not confidential information and may be provided to the public on request.   |
| 29. | Compliance with Laws            | The NFP organisation must comply with all laws that apply to the performance of the NFP organisation's obligations under the contract.  |



# Guideline for the Use of Standard Template Contracts

|     |                                |  |
|-----|--------------------------------|--|
| 30. | Governing Law and Jurisdiction | The law of the contract is South Australian law and the courts of South Australia including the Federal Court, have the exclusive right to adjudicate on any issue arising under the contract.   |
| 31. | Entire Agreement               | This clause excludes all prior agreements between the parties from having contractual force and effect and affirms that the terms and conditions of the contract are the only terms that govern the bargain between the parties.   |
| 32. | No Assignment                  | Except for pre-approved subcontractors the NFP organisation must obtain the Government Party's written approval if it wishes to assign any rights or obligations under the contract.<br><br>The clause also provides that if there is a Machinery of Government Change, the entity that replaces the Government Party will be bound as if it was the Government Party. |
| 33. | Modification                   | For a variation to the contract to be effective the variation must be agreed in writing by both parties.   |
| 34. | Severance                      | If a court determines that a part of the contract is void for any reason, then the parties agree that invalidity of that part does not affect the validity of the rest of the contract.  |
| 35. | Counterparts                   | This clause gives the parties the option of executing the contract by each party signing a copy of the contract and then providing that signed copy to the other party.  |
| 36. | No Further Obligation          | The Government Party's obligations in terms of funding the NFP organisation are limited to the express terms of the contract and the Government Party is not responsible if the cost of providing the Funded Services exceeds the Block Funding.   |
| 37. | Feedback and Complaints        | The NFP organisation must enable recipients of the Funded Services and other stakeholders to provide feedback on its performance and delivery of the Funded Services.  |
| 38. | Interpretation                 | This clause sets out the basic rules for interpreting the terms and conditions of the contract.  |
| 39. | Special Conditions             | The effect of this clause is to bring within the scope of the contract any special conditions that are inserted into Attachment 3.   |

# Guideline for the Use of Standard Template Contracts

## Attachment 4 – Special Conditions

A description of the legal impact of each special condition in the Special Conditions Clause Bank for the *Standard Not for Profit Funded Services Agreement* is set out below:

| Clause No. | Special Condition Title         | Guidance Notes   |
|------------|---------------------------------|--|
| 1.         | Non-Exclusivity                 | The Government Party is able to purchase Funded Services from another supplier.  |
| 2.         | Cooperating with Investigations | If the NFP organisation is providing Funded Services to children or young people then this clause requires the NFP organisation to cooperate with any investigation authorised by the child protection legislation.  |
| 3.         | Industry Participation Policy   | If the value of the procurement meets the threshold for an Industry Participation Plan (Standard or Tailored IPP), the NFP must report against that IPP during the period of the contract.   |
| 4.         | Child Safety                    | This clause applies where the Funded Services are to be provided to children. If uncertain as to whether or not to include the Child Safety clause in a contract please contact the Crown Solicitor's Office.  |
| 5.         | Information Sharing             | This clause applies if the sharing of information may assist in preventing harm or threats to the safety and wellbeing of vulnerable people (including children) and where such sharing is permitted by DPC012 Information Privacy Principles (IPPS) Instructions.   |
| 6.         | Force Majeure                   | If a supplier requested that the contract includes a Force Majeure clause or there is a genuine possibility that the supply will be affected by a Force Majeure event such as COVID-19 insert the clause as a Special Condition in Attachment 3.<br><br>As this clause has the effect of suspending performance of a party's obligations under a contract, a party must be genuinely unable to perform its obligations and must have done everything possible to mitigate the effects of the Force Majeure. If uncertain as to whether or not to include the Force Majeure clause in a contract please contact the Crown Solicitor's Office. |

## Attachment 5 – Block Funding & Payment Details

When and how the block funding is payable is to be inserted here.

### Mandatory Indexation rates for the Not-For Profit Sector

Please see Annexure C for more information.



# Guideline for the Use of Standard Template Contracts

## Annexure C – Pricing

### Indexation

It is recommended that CSO advice is obtained when considering the use of any of the following, so that a bespoke contract or additional Special Conditions can be drafted where necessary.

Public authorities should identify whether indexation is applicable to the pricing and payment.

Indexation clauses should specify the frequency at which price adjustments are to be made, such as quarterly, half yearly, annually etc. It may be useful to set out the method to be used in calculating the indexation factor, particularly if the indexation is half-yearly or annually.

| Concern                                       | Notes  |
|---|--|
| Accessibility and identification of the index | <p>At the very least, the index should be publicly accessible via the internet and not rely on a membership to obtain access.</p> <p>The description of the index should be unambiguous. Be as specific as necessary to ensure all parties are agreeing to the same index. For example,<br/> <i>6401.0 Consumer Price Index, weighted average of capital cities (all groups) as published by the Australian Bureau of Statistics (ABS) (or if that index ceases to be published then such other index published by the ABS which reflects changes in the cost of living in Australia at the relevant time).</i></p> <p>This description has multiple elements to be considered complete (in this case):<br/>                     the publisher (ABS)<br/>                     The index (6401.0)<br/>                     The applicable cities (weighted average of all capital cities)<br/>                     The applicable groups (all groups)</p> |
| Reliability of the publishing authority       | <p>Avoid indices that have a dubious reputation. This could be because the publishing authority is not reliable when collecting the data, the index definition or collection has changed too much over time, or the authority has a conflict of interest.</p> <p>Where possible, use indices that are derived from the Australian Bureau of Statistics or some other widely-recognised and trusted authority.</p>  |
| Index volatility                              | <p>Having an escalation formula provides certainty for all parties. However, linking a formula to a volatile index provides minimal budget certainty for the public authority. For this reason, be wary of formulae using foreign exchange, fuel pricing or other volatile indices. Alternatively, consider a cap to increases. For example:<br/> <i>On each anniversary of the Commencement Date the Rates will be adjusted by applying the formula [insert formula] to that amount. Where the formula results in a price increase or decrease in excess of 3%, the price variation will be capped at 3% for that period.</i></p>   |
| Untested or confusing formula                 | <p>It is worth providing a formula for an index plus an example within the contract and trialling a few examples to ensure that the intended result is achieved.</p> <p>Formulae which is poorly recorded in the contract may be unenforceable due to ambiguity.</p> <p>Translating a formula to a spreadsheet can result in different interpretations. For absolute certainty, drafters can include an agreed and tested spreadsheet to ensure that both parties are using the same formula and can expect the same result.</p>   |



## Guideline for the Use of Standard Template Contracts

### Consumer Price Index

The Consumer Price Index (CPI) is frequently used to make price adjustments. This index measures household inflation and includes statistics about price change for categories of household expenditure. The Australian Bureau of Statistics (ABS) publishes price indexes which summarise the movements in various categories of prices over time. These price indexes are also often used in contracts by businesses and government to adjust payments and/or charges to take account of changes in categories of prices.

### Mandatory Indexation rates for the Not-For Profit Sector

Mandatory indexation applies to all multi-year funding agreements between South Australian Government agencies and NFP organisations, with some exceptions. Mandatory standard indexation, as a rolling four-year agreed indexation rate, is linked to the forward estimates and is published on the [Department of Treasury and Finance \(DTF\) website](#).

The setting and publication of NFP indexation rates four years in advance provides certainty to the NFP Sector when considering multi-year contracts, aligns with the principles of [PC044](#) and is a key recommendation of the South Australian Government's Response to the Review of the Effectiveness of the Not-for-Profit Funding Policy.

### Price and Cost Models

There are a number of different approaches to determining the cost of delivery of goods and services and hence what may be an acceptable price. The chosen model will depend on a number of factors including the quality of market information available, the extent of supply market competition and the risk appetite of the public authority. Before settling on a cost model the public authority should conduct a risk assessment.

A couple of examples of cost models are set out below and in the following table.

### Fixed Price Contracts

Fixed price contracts are suitable where the goods are standard and the services can be benchmarked in a competitive supplier market. The advantages are that a price can be 'locked in' for an agreed period and generally will not be subject to increases in the cost base for the supplier (as costs usually increase rather than decrease over time this is advantageous from a risk perspective).

# Guideline for the Use of Standard Template Contracts

## Cost plus contracts

Where this model is used, the price is based on the actual cost for goods and services plus a margin for overheads and profit.

The advantages and disadvantages of each of these models are included in the table below.

| Contract Cost Type | Detail  | Pros  | Cons   | Who bears most risk |
|--------------------|---|---|--|---------------------|
| Fixed cost         | Total costs agreed upfront.<br>Could be paid as a lump sum or instalments   | Contract price is known at the beginning.<br>Risk is on the supplier to deliver the goods or services on time and for the agreed cost.<br>Cost will be higher as risks will be built into the price.<br>Encourages the supplier to find the most efficient way to deliver the goods and/or services as savings are retained by the supplier.<br>Less labour-intensive for the public authority to manage price. | Risk on public authority to ensure scope and delivery risks are well known and described, to avoid variations.<br>Each variation creates an opportunity for parties to revisit price.<br>Supplier may reduce quality if price and time are not realistic.  | Supplier            |
| Cost plus          | Labour, material and overhead costs are incurred by the supplier and passed through to public authority usually with an additional amount for a profit margin (e.g. cost plus 10%). | Cost may be lower as risk is not built into the price.<br>Enables work to begin where a scope is not well-known, variations are likely or flexibility is required.<br>All costs are transparent, as they are passed through to the public authority. May be helpful to determine costs to perform a similar contract in the future.   | Cost may be higher as market competition does not set the price – if supplier’s costs are high and not benchmarked against the market, then this will be passed through to public authority.<br>If costs are volatile e.g. fuel then the government will have no certainty as to what it will be required to pay.<br>Needs to be closely contract managed by the public authority to prevent cost or schedule overruns.<br>Costs need to be controlled in contract, so that it is clear which types of costs are acceptable. This can be difficult with complex services such as labour pass-through.<br>No natural incentive for suppliers to obtain competitive pricing.<br>Each cost needs to be verified (with evidence) before reimbursing. This creates more opportunities for dispute.<br>Open to exploitation by unscrupulous suppliers. | Public authority    |



## Guideline for the Use of Standard Template Contracts

### Price Review Clauses

Price review clauses are generally used to adjust the price of goods and or services supplied under a long-term contract. Often a buyer will prefer not to vary the price (on an assumption that it is likely that prices will increase over time), while a seller will prefer a formal and binding mechanism to permit price increases. These price review clauses ensure that over time, the price for goods and services supplied reflect market driven changes in underlying costs.

Generally, a party may initiate the process to adjust all or part of the contract price for the goods or services supplied. The following issues are the important considerations to be taken into account in drafting price review clauses.

Price review clauses commonly include the following features:

- A description of the trigger event
- A procedure for arriving at the adjusted price
- A description of the factors to consider when adjusting the price
- The consequences if an agreement on price is not reached
- A description as to how the adjusted price is to apply under the contract

### Contracts using foreign currencies

Foreign Exchange risk (also known as FX risk) is the financial risk of a change in price due to changes in currency exchange rates. FX risks, if not identified and managed appropriately, can have significant financial impacts for public authorities and the State. These impacts mostly flow from the sale or purchase of international goods or services due to the inherent volatility of FX markets.

Identifying FX risk will assist the government to manage any exposure to unfavourable currency changes appropriately. It also helps improve cost certainty for government spending by reducing the risk that public authorities may have to either reprioritise spending or forgo spending altogether should costs be higher than budgeted.

Public authorities as defined in the [Public Finance and Audit Act 1987](#), are required to comply with [Treasurer's Instruction 23](#) which prescribes the appropriate management of foreign currency exposures incurred by public authorities.

As a control against fluctuations in currency exchange rates, where the purchase price for goods and/or services is in a foreign currency or converted into AUD based on a foreign exchange rate at a particular time and the purchase price exceeds the equivalent of AU\$250,000, a public authority must obtain foreign exchange cover or implement another hedging strategy. This must be implemented through SAFA unless the prior approval of the Treasurer has been given for the public authority to obtain the forward cover, or implement another hedging strategy, through a financial

## Guideline for the Use of Standard Template Contracts

institution licensed under the laws of Australia to conduct foreign exchange business.

SAFA can advise/arrange the hedge in accordance with the [South Australian Government Risk Management Guide](#). Queries can be directed to the South Australian Government Financing Authority (SAFA) Tel: (08) 8226 9441.

