

STANDARD NOT FOR PROFIT SECTOR FUNDED SERVICES AGREEMENT



Government
of South Australia

AGREEMENT made on <insert day> of <insert year>

BETWEEN:

THE GOVERNMENT PARTY NAMED IN ITEM 1 OF ATTACHMENT 1 ("the Government Party")

AND:

THE NOT FOR PROFIT ORGANISATION NAMED IN ITEM 2 OF ATTACHMENT 1 ("NFP")

IT IS AGREED

- A. The Government Party wishes to provide Block Funding to the NFP for the purposes of providing the Funded Services to the community on the terms and conditions of this Agreement.

INSERT EXECUTION BLOCKS BELOW

Attachment 1 – Agreement Details

Item 1	Government Party	<insert name> <insert address>
Item 2	Not for Profit Organisation (NFP)	<insert name> <insert address>
Item 3	Commencement Date	<insert date>
Item 4	Expiry Date	<insert date>
Item 5	Extension Period	<insert period or insert “not applicable”>
Item 6	NFP’s ABN	<insert ABN> Registered for GST: <Yes/No>
Item 7	Contract Managers	Government Party: <insert name> NFP: <insert name>
Item 8	Named Persons	<insert names and positions or insert “not applicable”>
Item 9	Purpose	<insert brief description of Purpose>
Item 10	Reports and Materials	<insert description or reports etc> <insert delivery dates>
Item 11	Block Funding and Payment Details	Block Funding: \$<insert> (GST inclusive unless clause 9.2 applies) Manner of Payment: <insert details> Payment Dates: <insert details> Address for invoices: <insert details> <i>If required include detailed description of funding and payment in Attachment 5</i>
Item 12	NFP Sector Indexation Rate	<insert indexation rate>
Item 13	Tax Invoice Issuing Party	<input type="checkbox"/> Government Party <input type="checkbox"/> NFP
Item 14	Quality Standards	<insert description>
Item 15	Insurances Public Liability Insurance Professional Indemnity Insurance	Not less than \$1,000,000 <input type="checkbox"/> Professional Indemnity Insurance required <insert amount> The Professional Indemnity Insurance held by the NFP must include a minimum run off period of 3 years

Item 16	Liability Limit	<p>The following Liability Limit has been approved by Cabinet (25 July 2016) for low and medium risk contracts</p> <p><insert between [1 and 5] x [the Total Block Funding Amount (inc. GST)]. Multiple to be based on Government Party's risk assessment></p> <p>For high risk contracts please contact Crown Solicitor's Office</p>
Item 17	Intellectual Property	<p>Indicate below which option applies:</p> <p><input type="checkbox"/> Government Party ownership</p> <p><input type="checkbox"/> NFP ownership</p>
Item 18	Other Termination Rights	<p><e.g. failure to meet [insert number] Service Levels or insert "not applicable"></p>
Item 19	Approved Subcontractors	<p><insert relevant details or insert "not applicable"></p>
Item 20	Additional Personnel Checks	<p><e.g. DCSI Screening Unit screening or insert "not applicable"></p>
Item 21	Notice Period for Termination for Convenience	<p><insert period or "not applicable"></p>

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Attachment 2 - Standard Terms & Conditions

AGREED TERMS

1. CONTRACT LENGTH

- 1.1 This Agreement commences on the Commencement Date and continues until the Expiry Date, unless terminated earlier or extended under clause 1.2.
- 1.2 This Agreement may be extended by the Government Party for the Extension Period by giving reasonable notice prior to the Expiry Date.

2. CONTRACT MANAGERS

The persons named in Attachment 1 as the Contract Managers are the first point of contact between the Parties and are responsible for overseeing the effective administration of the Agreement including variations and extensions.

3. PURPOSE

- 3.1 The NFP must use the Block Funding solely for the Purpose to achieve the Outcomes.

4. SUPPLY OF FUNDED SERVICES

- 4.1 The NFP must ensure that the NFP's Personnel provides the Funded Services described in Attachment 4 in accordance with the terms and conditions of this Agreement.
- 4.2 Where Attachment 1 specifies Named Persons then the Funded Services must be delivered by those Named Persons.
- 4.3 The NFP may substitute a Named Person with the consent of the Government Party, subject to the Government Party being satisfied as to the expertise, experience and suitability of the substitute.
- 4.4 The NFP must ensure that Funded Services are delivered:
- (a) to a standard that meets or exceeds the Service Levels;
 - (b) in accordance with the quality standards specified in Attachment 1;
 - (c) in accordance with the warranties in clause 6; and
 - (d) in accordance with any policies and directions given by the Government Party from time to time; and
 - (e) by any Milestone Dates.
- 4.5 The Government Party's remedies for the NFP's failure to meet a Service Level or for a breach of a warranty, includes resupply of the Funded Services, a reduction of the price, termination, rebates or any other remedy specified in the Special Conditions.

5. SERVICE VARIATION

- 5.1 If either Party wishes to vary the scope of the Funded Services ("**Variation**"), it must issue a written request to the other Party and the other Party must within 5 Business Days (or such other period as agreed) provide a written quote ("**Quote**") setting out:
- (a) any impacts on the timing of or completion of tasks;
 - (b) any variation to the funding and payment arrangements; and
 - (c) any changes to the terms that apply to the performance of the Funded Services.
- 5.2 The Parties must negotiate in good faith to agree on the price and other terms applicable to the Variation.
- 5.3 If the Parties agree in writing to the terms of the Variation then:
- (a) the NFP must ensure that the Funded Services are performed as varied by the Variation;
 - (b) the Government Party must pay the varied Block Funding; and

- (c) the terms and conditions of the Agreement are varied by the terms of the Variation.

6. NFP'S WARRANTIES

- 6.1 The NFP warrants that the Funded Services will:
- (a) comply with the description of the Funded Services in Attachment 4;
 - (b) be provided with due care and skill;
 - (c) be provided in a timely and efficient manner;
 - (d) be provided in accordance with the best practices current in the not-for-profit sector;
 - (e) be supplied without infringing any person's Intellectual Property Rights; and
 - (f) be supplied in the most cost effective manner consistent with the required level of quality and performance.

7. NFP'S PERSONNEL AND APPROVED SUBCONTRACTORS

- 7.1 The NFP, if required by the Government Party, must give its consent to and procure the consent of the NFP's Personnel, to the conduct of a police check or any Additional Personnel Checks specified in Attachment 1.
- 7.2 If the Government Party acting reasonably, considers any one or more of the NFP's Personnel to be unsuitable then the Government Party may give the NFP notice in writing requiring those persons to be withdrawn from supplying the Funded Services and the NFP must immediately comply with the notice and provide replacement Personnel acceptable to the Government Party.

8. FUNDING AND INVOICING

- 8.1 The Government Party will pay the Block Funding in the amounts and at the times specified in Attachment 1 upon receipt of a Tax Invoice.
- 8.2 If the Tax Invoice Issuing Party is the Government Party:
- (a) the Parties must have a written agreement specifying the supplies to which the Recipient Created Tax Invoice ("**RCTI**") relates;
 - (b) the Government Party must provide a copy of the Tax Invoice to the NFP within 28 days of the making, or determining of the value, of the Taxable Supply; and
 - (c) The NFP must not issue a Tax Invoice in respect of a Taxable Supply the subject of the RCTI.
- 8.3 If the Tax Invoice Issuing Party is the NFP, the NFP may invoice the Government Party for payment in respect of Funded Services, in advance of the supply of the Funded Services.
- 8.4 The NFP must ensure that it can properly account for the Block Funding received under the Agreement.
- 8.5 Subject to clause 8.6, the Block Funding will increase by the NFP Sector Indexation Rate on each anniversary of the Commencement Date during the period of the Agreement.
- 8.6 Clause 8.5 does not apply if the Block Funding payable for each year of the Agreement has already been indexed by the NFP Sector Indexation Rate.
- 8.7 The NFP must ensure that it can properly account for the Block Funding received under the Agreement.
- 8.8 The NFP must create accruals and provisions that are consistent with prudent management and proper accounting practice, and set monies aside to meet such obligations.

9. GST

- 9.1 Subject to clause 9.2 the NFP represents that:
- (a) the ABN shown in Attachment 1 is the NFP's ABN; and

- (b) it is registered under the *A New Tax System (Australian Business Number) Act 1999* (Cth).
- 9.2 If the NFP is not registered for GST, then GST must not be charged on supplies made under this Agreement.
- 10. REPAYMENT OF UNALLOCATED OR MISUSED FUNDS**
- 10.1 Upon each anniversary of the Commencement Date during the Agreement and at the end of the Agreement, if the NFP has not expended all of the Block Funding, it must notify the Government Party of the unexpended amount and may submit a written request for retention or carryover of unexpended amounts specifying:
- (a) the amount to be retained or carried over; and
- (b) the purpose for which the unexpended amount will be used.
- 10.2 The Government Party must consider the NFP's request and notify the NFP in writing whether it:
- (a) agrees that the NFP may retain or carry over all or part of the unexpended amount; or
- (b) requires the NFP to repay all or part of that amount as notified by the Government Party, to the Government Party within 30 days of receipt of the notice from the Government Party.
- 10.3 If the NFP misuses any part of the Block Funding the Government Party may require the NFP to repay the portion of misused Block Funding within 30 days of a written demand from the Government Party.
- 11. PROVISION OF INFORMATION AND AUDIT**
- 11.1 The NFP must provide such information as is necessary (including documents, records, management accounts, financial statements, annual reports, and the Material and Reports listed in Attachment 1) to enable the Government Party:
- (a) to be satisfied that the Block Funding is being used effectively and efficiently and only for the Purpose to achieve the Outcomes; and
- (b) to make an informed assessment of the ongoing financial position of the NFP; and
- (c) to assess and monitor the NFP's compliance with the terms of this Agreement.
- 11.2 The NFP must provide the information referred to in clause 11.1 to the Government Party or if so directed to the Government Party's auditors or financial advisers.
- 11.3 The NFP must immediately inform the Government Party of any significant changes to the nature and/or scope of the activities conducted by the NFP which would impact on the Purpose or the Outcomes under this Agreement.
- 11.4 The NFP agrees the Government Party may direct that the financial accounts of the NFP be audited at the Government Party's cost, and the Government Party may specify the minimum qualifications which must be held by the person appointed to conduct the audit.
- 12. INSURANCE**
- 12.1 The NFP must effect and maintain the policies of insurance specified in Attachment 1 for not less than the amounts specified in Attachment 1.
- 12.2 The policies of insurance referred to in clause 12.1 must be held during the Agreement and for any applicable run off period.
- 13. LIABILITY LIMIT**
- 13.1 The NFP's liability to the Government Party under this Agreement is limited to the amount specified in Attachment 1.
- 14. INTELLECTUAL PROPERTY RIGHTS**
- 14.1 Nothing in this Agreement affects the ownership of Intellectual Property Rights created before the Commencement Date.
- 14.2 The NFP grants to the Government Party and the Crown in right of the State of South Australia a perpetual, irrevocable, royalty free, fee free licence to use, copy, modify and adapt any Intellectual Property Rights in any reports or manuals required to be supplied under this Agreement.
- 14.3 The NFP must not infringe the Intellectual Property rights of any person in delivering the Funded Services.
- 15. CONFIDENTIAL INFORMATION**
- 15.1 Subject to this clause 15, neither Party may disclose any Confidential Information belonging to the other Party except as genuinely and necessarily required for the purpose of this Agreement.
- 15.2 A Party may disclose Confidential Information belonging to the other Party:
- (a) to an employee, agent or adviser of that Party, on a "need to know" and confidential basis;
- (b) as required by law or a court order;
- (c) in accordance with any Parliamentary or constitutional convention;
- (d) for the purposes of prosecuting or defending proceedings.
- 15.3 The Parties may mutually agree to disclose Confidential Information.
- 16. PRIVACY**
- 16.1 The NFP must:
- (a) comply with the South Australian Government Information Privacy Principles (a copy of which can be found at <http://www.dpc.sa.gov.au/documents/rendition/B17711#sthash.s76QhRX6.dpuf>) ("IPPs") as if the Service Provider were an "agency" for the purposes of the IPPs, in undertaking its obligations under this Agreement including in relation to all Personal Information received, created or held by it for the purposes of this Agreement; and
- (b) allow the Government Party to undertake, and cooperate with any audit or investigation which the Government Party deems necessary to verify that the NFP is complying with the IPPs.
- 16.2 The NFP must promptly notify the Government Party if it fails to comply with this clause or if it becomes aware of any actual or threatened disclosure of or unauthorised access to Personal Information.
- 17. INSPECTION**
- 17.1 Where the Government Party reasonably suspects that the Block Funding has not been used for the Purpose the Government Party may on giving reasonable notice to the NFP, enter the premises of and inspect the operations of the NFP (including equipment, premises, accounting records, documents and information) and interview the NFP's Personnel on matters pertaining to the operations and reporting obligations of the NFP under this Agreement.
- 18. SET-OFF**
- Any claim the Government Party may have against the NFP may be set off against monies owed to the NFP under this Agreement.
- 19. DISPUTE RESOLUTION**
- 19.1 Subject to clause 19.4 a Party may not commence legal proceedings without first referring the dispute to the other Party under this clause.
- 19.2 Either Party may give the other a notice in writing ("**dispute notice**") setting out the details of the dispute.
- 19.3 Within 5 Business Days or such other period as may be agreed by the Parties, the Contract Managers must meet and use reasonable endeavours to resolve the dispute.

19.4 A Party may seek immediate interlocutory relief or other interim remedy in case of genuine urgency.

20. ENDING THIS AGREEMENT

- 20.1 The Government Party may terminate this Agreement immediately upon giving notice in writing to the NFP if:
- (a) the Government Party reasonably forms the opinion that the NFP will be unable to perform its obligations under this Agreement;
 - (b) the NFP is in breach of this Agreement and has not rectified such breach within 10 Business Days of the Government Party giving notice in writing to the NFP requiring the rectification of such breach;
 - (c) the NFP does not use the Block Funding for the Purpose to achieve the Outcomes (if specified in Attachment 1);
 - (d) the Government Party becomes aware that the NFP is in breach of its statutory obligations with respect to its employees;
 - (e) the NFP fails to comply with a notice issued under clause 7.2; or
 - (f) the NFP fails to disclose a conflict of interest;
 - (g) any Other Termination Right occurs; or
 - (h) the NFP suffers or, in the reasonable opinion of the Government Party, is in jeopardy of becoming subject to any form of insolvency administration or bankruptcy.
- 20.2 Either Party may terminate this Agreement without cause by giving the other Party the period of notice specified in Attachment 1 ("**Notice Period for Termination for Convenience**").
- 20.3 If the Government Party terminates this Agreement in accordance with clause 20.2:
- (a) the NFP has no claim against the Government Party arising out of or in relation to such termination other than the right to be paid for Funded Services provided before the effective termination date; and
 - (b) the NFP must comply with all reasonable directions given by the Government Party.
- 20.4 The NFP may terminate this Agreement immediately upon giving notice in writing to the Government Party if the Government Party is in breach of this Agreement and has not rectified such breach within 10 Business Days of the NFP giving notice in writing to the Government Party requiring the rectification of such breach and the NFP is entitled to be paid for Funded Services provided before the effective termination date.
- ## **21. EFFECT OF ENDING THIS AGREEMENT**
- 21.1 Any termination of this Agreement by either Party does not affect any accrued right of either Party.
- 21.2 Despite termination or expiry of this Agreement, this clause 21 and clauses 6, 10, 11, 12.2 (where there is a requirement to maintain professional indemnity insurance), 14, 15, 17 and those Special Conditions that by their nature remain in force, will survive.
- ## **22. SUBCONTRACTING**
- 22.1 With the exception of the Approved Subcontractors described in Attachment 1, the NFP must not engage any subcontractor without the prior written permission of the Government Party.
- 22.2 The NFP remains responsible for obligations performed by the subcontractors' personnel to the same extent as if such obligations were performed by the NFP.
- ## **23. WORK HEALTH & SAFETY**
- 23.1 The NFP must comply with the *Work Health and Safety Act 2012* (SA) at all times, regardless of whether the Government Party issues direction in that regard or not.
- 23.2 If all or part of the Funded Services under this Agreement is to be provided on the premises of the Government Party

and under the direction of the Government Party, the NFP must comply and must ensure that the NFP's Personnel complies with the Government Party's work health and safety policies, procedures and instructions. If the NFP becomes aware of any potentially hazardous situation on the Government Party's premises, the NFP must immediately bring it to the Government Party's attention.

24. TRANSITION

- 24.1 Upon the commencement of this Agreement and as and when otherwise required, the NFP must, if applicable, co-operate with the Government Party and the previous provider of the Funded Services and do all things necessary for the effective, smooth and efficient handover of the Funded Services to the NFP to ensure that the standard and delivery of the Funded Services do not suffer.
- 24.2 Upon the expiry or earlier termination of the Agreement if required by the Government Party, the NFP must co-operate with the Government Party and do all things necessary, and provide all relevant information and records, for the effective, smooth and efficient handover of the Funded Services to the Government Party or any incoming service provider to ensure that the standard and delivery of the Funded Services do not suffer.
- 24.3 Without limiting this clause 24.3, the NFP must comply with the additional transition requirements (if any) set out in the Agreement.

25. CONFLICT OF INTEREST

- 25.1 The NFP must disclose in writing to the Government Party all actual and potential conflicts of interest that exist, arise or may arise (either for the NFP or the NFP's Personnel) in the course of performing its obligations under this Agreement as soon as practical after it becomes aware of that conflict.

26. COMPLIANCE WITH LAWS

The NFP must comply with the laws in force in the State of South Australia in performing its obligations under this Agreement.

27. GOVERNING LAW AND JURISDICTION

- 27.1 This Agreement is governed by the laws in the State of South Australia.
- 27.2 The courts of the State of South Australia have exclusive jurisdiction in connection with this Agreement.

28. ENTIRE AGREEMENT

The Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with in this Agreement and supersedes all prior agreements, understanding and negotiations in respect of the matters dealt with in this Agreement.

29. NO ASSIGNMENT

- 29.1 The NFP must not assign, encumber or otherwise transfer any of its rights or obligations under this Agreement without the written approval of the Government Party which approval will not be unreasonably withheld.
- 29.2 Subject to any contrary legislative intention, the Parties agree that if there is any Machinery of Government Change, this Agreement is deemed to refer to the new entity succeeding or replacing the Government Party and all of the Government Party's rights and obligations under this Agreement will continue and will become rights and obligations of that new entity.

30. MODIFICATION

No addition to or modification of any provision of this Agreement will be binding upon the Parties unless made by written instrument signed by the Parties.

- 31. SEVERANCE**
- 31.1 Each word, phrase, sentence, paragraph and clause of this Agreement is severable.
- 31.2 Severance of any part of this Agreement will not affect any other part of this Agreement.
- 32. COUNTERPARTS**
- This Agreement may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one (1) instrument. An executed counterpart may be delivered by email.
- 33. PUBLICITY**
- 33.1 The NFP will acknowledge the Block Funding by the Government Party in any advertising, publicity or promotional material relating to this Agreement.
- 33.2 The NFP will participate in promotional or publicity activity in relation to this Agreement as is reasonably required by the Government Party.
- 33.3 The NFP and the Government Party must use their best endeavour to mutually agree on the content of any public announcements or media releases about this Agreement.
- 33.4 Notwithstanding clause 33.3, if in the reasonable opinion of either party it is impossible to provide prior notice of an announcement or media release to the other party due to the urgency of the circumstances, or due to the nature and timing of the request being made by a relevant media body, then the party making the announcement or media release must notify the other party of the making of the announcement or media release and provide a summary of the announcement or a copy of the media release as soon as possible after making the announcement or media release.
- 33.5 Nothing in this clause derogates from the operation of the *Not-for-Profit Sector Freedom to Advocate Act 2013*.
- 34. NO FURTHER OBLIGATION**
- 34.1 The NFP acknowledges the Government Party will not be liable to reimburse the NFP for any losses or cost over runs that may result from the operation of this Agreement or the carrying out of the Purpose.
- 35. FEEDBACK AND COMPLAINTS**
- 35.1 The NFP will establish a feedback and complaints process for recipients of the relevant Funded Services and other stakeholders ("**stakeholders**") which:
- is user friendly and stakeholder-focussed;
 - responds to feedback and complaints promptly objectively, fairly and confidentially;
 - resolves issues raised by stakeholders who are dissatisfied in a timely and cost-effective way;
 - provides remedies if a complaint is substantiated;
 - provides a system for review of decisions; and
 - includes a system to capture data about feedback and complaints.
- 35.2 The NFP must use feedback and complaint information to identify and implement improvements to the Funded Services.
- 36. DISPUTE RESOLUTION**
- Disputes and complaints under this Agreement are to be managed and resolved in accordance with the Supplier Complaints Policy issued by the State Procurement Board.
- 37. INFORMATION SHARING**
- 37.1 "ISG" means the Government of South Australia's updated Information Sharing Guidelines for Promoting Safety and Wellbeing strategy endorsed by Cabinet in 2008 and 2013, as amended from time to time.
- 37.2 Where applicable, to the full extent permitted by law and subject to the NFP's Privacy Obligations, the NFP agrees to share information in accordance with the ISG.
- 37.3 The NFP will, in consultation with a representative from Ombudsman SA, develop an ISG appendix for the NFP ("**NFP's ISG Appendix**"), as prescribed by the ISG (<http://www.ombudsman.sa.gov.au/isg/>).
- 37.4 If requested by the Government Party, the NFP will provide written information detailing the NFP's compliance with the ISG including details of the NFP's progress in developing and implementing the NFP's ISG Appendix.
- 37.5 The Parties acknowledge that this Agreement constitutes a 'State contract' for the purpose of the *Privacy Act 1998* (Commonwealth).
- 38. INTERPRETATION**
- 38.1 All Attachments form part of this Agreement and in resolving inconsistencies in this Agreement, the Attachments have the following order of priority:
- Special Conditions (Attachment 3);
 - Standard Terms and Conditions (Attachment 2); and
 - Any other Attachments.
- 38.2 In this Agreement (unless the context requires otherwise):
- a reference to any legislation includes:
 - all legislation, regulations and other forms of statutory instrument issued under that legislation; and
 - any modification, consolidation, amendment, re-enactment or substitution of that legislation;
 - a word in the singular includes the plural and a word in the plural includes the singular;
 - a reference to two or more persons is a reference to those persons jointly and severally;
 - a reference to dollars is to Australian dollars;
 - a reference to a Party includes that party's administrators, successors and permitted assigns.
- 39. DEFINITIONS**
- In this Agreement:
- "**Approved Subcontractors**" means those subcontractors specified in Attachment 1;
 - "**Block Funding**" means the funds payable under this Agreement specified in Attachment 1 and includes any variation to the funds under clause 5;
 - "**Business Day**" means any day that is not a Saturday or Sunday or a public holiday in South Australia;
 - "**Confidential Information**" means information which is identified as confidential information by a Party, but does not include this Agreement;
 - "**Extension Period**" means the period by which the Agreement is extended as specified in Attachment 1;
 - "**Funded Services**" means services that are provided in exchange for lump sum payments as specified in Attachment 4;
 - "**GST**" means the tax imposed by the GST Law;
 - "**GST Law**" has the meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - "**Intellectual Property Rights**" means all intellectual property rights, including but not limited to:
 - patents, copyright, registered designs, trademarks, know-how and any right to have Confidential Information kept confidential; and
 - any application or right to apply for registration of any of the rights referred to in paragraph (a), but for the avoidance of doubt excludes moral rights and performers' rights;

- (j) **“Machinery of Government Change”** means a change to the structure, function or operations of the South Australian Government or the Government Party as a result of any government reorganisation, restructuring or other organisational or functional change;
- (k) **“Milestone Dates”** means dates by which Funded Services or Reports must be delivered as specified in Attachment 4;
- (l) **“Named Persons”** means the persons specified in Attachment 1;
- (m) **“NFP’s Personnel”** means any Approved Subcontractors, employees, agents, subcontractors engaged under clause 22 and any other person employed or engaged by the NFP to perform this Agreement and includes the Named Persons.
- (n) **“Notice Period for Termination for Convenience”** means the time period specified in Attachment 1;
- (o) **“Other Termination Right”** means the termination rights specified in Attachment 1;
- (p) **“Outcomes”** means the public benefits to be achieved by the provision of the Funded Services as specified in Attachment 4;
- (q) **“Party”** means a party to this Agreement;
- (r) **“Personal Information”** means information or an opinion, whether true or not, relating to a natural person or the affairs of a natural person whose identity is apparent, or can reasonable be ascertained, from the information or opinion;
- (s) **“Privacy Obligations”** means the NFP’s obligations in relation to personal information specified in clause 16;
- (t) **“Service Levels”** means the service levels specified in Attachment 4; and
- (u) **“Tax Invoice”** has the meaning attributable in the GST Law; and
- (v) **“Tax Invoice Issuing Party”** is the Party that will issue Tax Invoices nominated in Attachment 1.

40. SPECIAL CONDITIONS

The special conditions (if any) in Attachment 3 form part of this Agreement and to the extent of any inconsistency, take precedence over the other terms of this Agreement.

Attachment 3 - Special Conditions

<insert Special Conditions or insert "not used">

Attachment 4 – Funded Services

<e.g. insert Service Levels, Outcomes, Milestone Dates>

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Attachment 5 - Block Funding and Payment

<insert details or insert "not used">

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NFP FUNDED SERVICES SPECIAL CONDITIONS CLAUSE BANK

PLEASE NOTE: THIS IS NOT AN EXHAUSTIVE LIST OF SPECIAL CONDITIONS. PLEASE CONTACT YOUR AGENCY'S PROCUREMENT BRANCH IF ADDITIONAL AGENCY SPECIFIC CLAUSES ARE REQUIRED.

*Is this a high risk and/or complex (e.g. complicated) procurement? If **Yes** contact the Crown Solicitor's Office. If **No** proceed to next question.*

S1. NON-EXCLUSIVITY

S1.1 This Agreement is entered into on a non-exclusive basis.

S1.2 The Government Party may purchase other services similar to the Funded Services from other providers.

*Is (a) the value of the contract >\$500,000 (inc. GST)? If **Yes** insert the following clause as a Special Condition in Attachment 4. If **No** proceed to next question.*

S2. CONTRACT DISCLOSURE

S2.1 The Government Party may disclose this Agreement and/or information in relation to this Agreement in either printed or electronic form, and either generally to the public or to a particular person as a result of a specific request.

S2.2 Nothing in this clause derogates from:

S2.2.1 the NFP's obligations under any provisions of this Agreement; or

S2.2.2 the provisions of the *Freedom of Information Act 1991* (SA).

*Is the value of the contract between \$4 million (inc. GST) (\$1 million (inc. GST) in regional SA) and \$50 million (inc. GST)? If **Yes** insert the following clause as a Special Condition in Attachment 3. If **No** proceed to next question.*

S3. INDUSTRY PARTICIPATION POLICY

S3.1 The NFP must implement the NFP's Standard Industry Participation Plan ("**SIPP**").

S3.2 The NFP must provide an Industry Participation Report ("**IPP Report**") in respect of each Industry Participation Reporting Period to the Government Party within two weeks of the end of each period, in the format set out <http://www.industryadvocate.sa.gov.au/resources-and-downloads>.

S3.3 An Industry Participation Reporting Period is:

S3.3.1 the period between the Commencement Date and the first anniversary of the Commencement Date;

S3.3.2 each subsequent 12 month period during the Term;

S3.3.3 if the Agreement ends on a date other than an anniversary of the Commencement Date, the period from the conclusion of the preceding Industry Participation Reporting Period until the date of termination or expiry of the Agreement; and

S3.3.4 where the Term is for a period less than 12 months, the Term.

NFP FUNDED SERVICES SPECIAL CONDITIONS CLAUSE BANK

- S3.4 The NFP must attend any meeting scheduled by the Industry Participation Advocate (“**IPA**”) during the Term to review how the SIPP is being implemented and advanced, and for this purpose, the NFP must provide all information reasonably requested by the IPA. The IPA must give the NFP not less than ten (10) Business Days’ notice of any such meeting.
- S3.5 The NFP’s failure to comply, in whole or in part, with the commitments contained within the SIPP will be a factor taken into account in the award of future contracts for the Government of South Australia.
- S3.6 In this clause, “Industry Participation Advocate” or “IPA” means the person who from time to time has been appointed to the position of Industry Participation Advocate within the Office of the Industry Advocate, situated within the Department of State Development, or his/her successor and “Term” means the period of the Agreement.

*Is the value of the contract over \$50 million (inc. GST)? If **Yes** insert the following clause as a Special Condition in Attachment 3. If **No** proceed to next question.*

S4. **INDUSTRY PARTICIPATION POLICY**

- S4.1 The NFP must implement the NFP’s Tailored Industry Participation Plan (“**TIPP**”).
- S4.2 The NFP must provide an Industry Participation Report (IPP Report) in respect of each Industry Participation Reporting Period within two weeks of the end of each period, in the format set out in <http://www.industryadvocate.sa.gov.au/resources-and-downloads>.
- S4.3 The Industry Participation Reporting Period is¹:
- S4.3.1 the period between the Commencement Date and the date six (6) months after the Commencement Date;
 - S4.3.2 each subsequent six (6) month period during the Term;
 - S4.3.3 if the Agreement ends on a date that is not an anniversary of the Commencement Date or an anniversary of the date in Special Condition S4.3.2, the period from the conclusion of the preceding Industry Participation Reporting Period until the date of termination or expiry of the Agreement; and
 - S4.3.4 where the Term is for a period less than six (6) months, the entire Term.
- S4.4 The NFP must attend any meeting scheduled by the Industry Participation Advocate (“**IPA**”) during the Term to review how the TIPP is being implemented and advanced, and for this purpose, the NFP must provide all information reasonably requested by the IPA. The IPA must give the NFP not less than ten (10) Business Days’ notice of any such meeting.
- S4.5 The NFP’s failure to comply, in whole or in part, with the commitments contained within the TIPP will be a factor taken into account in the award of future contracts for the Government of South Australia.
- S4.6 In this clause, “Industry Participation Advocate” or “IPA” means the person who from time to time has been appointed to the position of Industry Participation Advocate within the Office of the Industry Advocate, situated within the Department of State Development, or his/her successor and “Term” means the period of the Agreement.

¹ where more frequent reporting requirements are negotiated during contract award this sub-clause must be adjusted to accord with the agreed requirements.

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*Are the Funded Services to be provided at sites where children may be present? If **Yes** the following clauses may be inserted as special conditions in Attachment 3 (this clause is mandated for DECD). If **No** proceed to next question.*

S5. SUITABILITY OF PERSONS

S5.1 Fundamental Term

Despite any other clause, the Parties acknowledge that the rights and obligations under this clause are fundamental to this Agreement.

S5.2 Definition of Government Party's Sites

In this clause "**Government Party's Sites**" means any site of the Government Party at which children are or may be present.

S5.3 Definition of Relevant Activity

In this clause "**Relevant Activity**" means the provision of the Funded Services or other activities by the NFP or its Relevant Personnel at or in relation to the Government Party's Sites.

S5.4 Definition of Relevant History Information

In this clause "**Relevant History Information**" means:

S5.4.1 an assessment of a person's history within the meaning of section 8B of the *Children's Protection Act 1993* (SA) by the authorised screening unit established under the *Children's Protection Regulations 2010* (SA) or a screening unit otherwise prescribed by regulations made under the *Children's Protection Act 1993* (SA) or such other screening unit as the Government Party directs;

S5.4.2 consent from the Relevant Personnel to use that assessment for the purposes of this clause; and

S5.4.3 any other information reasonably required by the Government Party to enable it to establish whether the Relevant Personnel is a suitable person to be involved in the Relevant Activity.

S5.5 Definition of Relevant Personnel

In this clause "**Relevant Personnel**" means in relation to the NFP the following persons insofar as they are involved in the Relevant Activity:

S5.5.1 itself (where it is an individual);

S5.5.2 all of its directors, officers, employees, agents, volunteers and invitees;

S5.5.3 all of its contractors (where they are individuals); and

S5.5.4 all of its directors, officers, employees, agents, volunteers and invitees of its contractors.

S5.6 Definition of Unsuitable Persons

In this clause "**Unsuitable Person**" means a person who is the subject of any allegation, arrest, charge or conviction for a sexual offence or an offence of indecency.

S5.7 Relevant History Information

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The NFP must:

S5.7.1 prior to its first use of a Government Party's Site; and

S5.7.2 at such other times as either or both the NFP and the Government Party determine are necessary or desirable for the purpose of establishing or maintaining child safe environments,

provide complete and current Relevant History Information to the Government Party in relation to:

S5.7.3 all of its Relevant Personnel appointed to or engaged to act in prescribed positions within the meaning of section 8B of the *Children's Protection Act 1993* where the Relevant Activity is provided wholly or partly for children; and

S5.7.4 any of its Relevant Personnel as required by the Government Party.

S5.7.5 The Government Party may (but need not) conduct any investigations it considers necessary in respect of any matter contained in Relevant History Information and the NFP must ensure that it and its Relevant Personnel cooperate fully with any such investigation.

S5.8 **No Unsuitable Persons**

The NFP must not permit or allow, and must procure that its contractors do not permit or allow, an Unsuitable Person who is a Relevant Personnel to:

S5.8.1 be involved in the Relevant Activity; or

S5.8.2 otherwise be present at any of the Government Party's Sites.

S5.9 **Steps Required where Unsuitable Person**

Without limiting anything else in this clause, if the NFP is or becomes aware that it or any Relevant Personnel is an Unsuitable Person, it must:

S5.9.1 procure the immediate removal (where relevant) and ongoing exclusion of the Unsuitable Person from the Government Party's Sites;

S5.9.2 procure the immediate and ongoing exclusion of the Unsuitable Person from involvement in the Relevant Activity;

S5.9.3 take all immediate and ongoing steps necessary to protect any children on, or who have been on, the Government Party's Sites from harm as a consequence of the presence, removal or ongoing exclusion of the Unsuitable Person, including without limitation:

- (a) notifying South Australia Police about the Unsuitable Person as necessary;
- (b) making a notification of abuse or neglect in accordance with the *Children's Protection Act 1993 (SA)* as necessary including by means of the Child Abuse Report Line maintained by Department for Child Protection (131 478) or such other report line as the Government Party or South Australian Government publicly notifies;
- (c) providing support to children and families as necessary;
- (d) providing supervision of any children for which the NFP provides the Relevant Activity on the Government Party's Sites;
- (e) all other steps otherwise required under this clause; and

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(f) any other protective action as necessary;

S5.9.4 immediately notify the Government Party in writing of all known facts about the circumstances in which the Unsuitable Person has been in any way involved in the Government Party's Sites;

S5.9.5 provide on an ongoing basis full details to the Government Party of the circumstances relating to the Unsuitable Person as and when those details become known to the NFP; and

S5.9.6 comply with any reasonable direction of the Government Party with respect to the Unsuitable Person.

S5.10 Imposing Obligations on Relevant Personnel

The NFP must ensure that:

S5.10.1 all Relevant Personnel are aware of and act in a manner consistent with the provisions of this clause at all times; and

S5.10.2 all Relevant Personnel (not being the NFP) immediately inform the NFP if the Relevant Personnel is the subject of any allegation, arrest, charge or conviction for a sexual offence or an offence of indecency.

S5.11 Child Safe Environments

In addition to all other obligations under this Agreement, where the NFP is an organisation to which section 8C of the *Children's Protection Act 1993 (SA)* applies, the NFP must:

S5.11.1 have in place appropriate policies and procedures to ensure that, as required by the *Children's Protection Act 1993 (SA)*:

(a) child safe environments are established and maintained; and

(b) appropriate reports of child abuse and neglect are made;

S5.11.2 lodge the statement required by the *Children's Protection Act 1993 (SA)* about the NFP's child safe policies and procedures with Department for Child Protection, or such other government agency as the Government Party or South Australian Government publicly notifies ("**Successor Children's Protection Agency**"), within 10 business days after putting in place those policies and procedures;

S5.11.3 respond, as soon as reasonably practicable (and in any case within 10 business days), to any written request by Department for Child Protection, Successor Children's Protection Agency or the Government Party for information relating to the NFP's compliance with the requirements of this clause; and

S5.11.4 execute and provide to the Government Party prior to the NFP's first use of a Government Party's Site a truthful declaration in the following terms:

"I/We declare that the NFP:

- *has appropriate policies and procedures in place to:*
 - *ensure that child safe environments are established and maintained as required by the Children's Protection Act 1993 (SA); and*

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- ensure that appropriate reports of child abuse and neglect are made as required by the Children’s Protection Act 1993 (SA);
- has obtained and provided to the Government Party Relevant History Information in relation to:
 - all Relevant Personnel appointed to or engaged to act in prescribed positions within the meaning of section 8B of the Children’s Protection Act 1993 (SA) where the Relevant Activity is provided wholly or partly for children; and
 - any of its Relevant Personnel as required by the Government Party;
- has lodged a statement setting out its child safe policies and procedures with Department for Child Protection or Successor Children’s Protection Agency; and
- will notify the Government Party of any change in the Relevant History Information in relation to any Relevant Personnel or suitability of any Relevant Personnel.

In this declaration capitalised terms have the meaning given in the contract under which this declaration is required.

I/We declare that I/we have full authority to execute this declaration for and on behalf of the NFP

.....(signature)

.....(name and title)

.....(date)”

S5.12 Effect of Non-Compliance

S5.12.1 If:

- (a) the NFP is an Unsuitable Person; or
- (b) any Relevant Personnel (not being the NFP) is an Unsuitable Person and the NFP does not strictly, fully and immediately comply with any or all of its obligations under this clause,

then the Government Party may in its absolute discretion, without limiting any other remedy, suspend or terminate this Agreement and following such suspension or termination the NFP must for so long as the Government Party directs:

- (c) provide on an ongoing basis full details to the Government Party of the circumstances relating to the Unsuitable Person as and when those details become known to the NFP; and
- (d) comply with any reasonable direction of the Government Party with respect to the Unsuitable Person.

S5.12.2 Any exercise by the Government Party of its rights under this clause:

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- (a) does not limit the Government Party's right to pursue any claim against the NFP arising in respect of a breach by the NFP of its obligations under this Agreement; and
- (b) will not give rise to any liability owing to the NFP or the Relevant Personnel.

S5.13 Compliance with Security Practices and Procedures

The Government Party may inform the NFP of any security practices and procedures in relation to child safe environments implemented by the Government Party or the South Australian Government and the NFP must comply with those procedures at all times.

S5.14 References to Legislation

A reference to any legislation or to any provision of any legislation includes:

- S5.14.1 all legislation, regulations, proclamations, ordinances, by-laws and instruments issued under that legislation or provision; and
- S5.14.2 any modification, consolidation, amendment, re-enactment or substitution of that legislation or provision.

S5.15 No Derogation

Nothing in this clause relieves the NFP of any obligation under this Agreement.

S5.16 Priority

To the extent of any inconsistency between the rights and obligations under this clause and under the provisions of any other clause in this Agreement, including any provisions relating to termination or remedies, this clause prevails.

S6. SUITABILITY OF PERSONS (OTHER OFFENCES)

S6.1 Other Offences

In addition to any other rights of the Government Party and obligations of the NFP under this Agreement, if any Relevant Personnel as defined in this Agreement is the subject of an allegation, arrest, charge or conviction for:

- S6.1.1 any offence of violence or deprivation of liberty (whether indictable or not) or other indictable offence; or
- S6.1.2 any other offence that the Government Party notifies the NFP in writing the Government Party considers renders the Relevant Personnel unsuitable to be involved in the provision of Goods/Services,

("Other Offence") that Relevant Personnel will be an Unsuitable Person for the purposes of this Agreement and the NFP must treat that Relevant Personnel as an Unsuitable Person, subject to the Additional Matters below.

S6.2 Additional Matters

The NFP's obligations under the Suitability of Persons clause, are extended to apply in relation to Relevant Personnel who are the subject of any allegation, arrest, charge or conviction for an Other Offence.

Is your agency White Ribbon Accredited? If Yes insert the following clauses as special conditions in Attachment 3.

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S7. RESPECTFUL BEHAVIOURS

S7.1 The NFP acknowledges the Government Party's zero tolerance towards men's violence against women in the workplace and the broader community.

S7.2 The NFP agrees that, in performing the Funded Services, the NFP's Personnel will at all times:

S7.2.1 act in a manner that is non-threatening, courteous and respectful; and

S7.2.2 comply with any instructions, policies, procedures or guidelines issued by the Government Party regarding acceptable workplace behaviour.

S7.3 If the Government Party believes that the NFP's Personnel are failing to comply with the behavioural standards specified in this clause, then the Government Party may in its absolute discretion:

S7.3.1 prohibit access by the relevant NFP's Personnel to the Government Party's premises; and

S7.3.2 direct the NFP to withdraw the relevant NFP's Personnel from providing the Funded Services.