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Briefing Note for the Not-for-Profit Sector

SA Government 2019 Standard NFP Funded Services Agreement and Standard Grant Agreement

Introduction and Summary of Terms and Conditions

Prepared by Dr Greg Ogle, Senior Policy Officer, South Australian Council of Social Service

Note: This Briefing is designed as general information about the contracts. It was not written by lawyers and does not constitute legal advice.

Standard NFP Sector Funded Services Agreement		Grant Agreement		Comments for NFPs
Attachment One – Agreement Details		Attachment One – Grant Details		
Item 1 Government Party	<insert name> <insert ABN> <insert address>	Item 1 Government Party	<insert name> <insert ABN> <insert address>	
Item 2 Not for Profit Organisation (NFP)	<insert name> <insert address>	Item 2 Recipient	<insert name> <insert address>	
Item 3 Commencement Date	<insert date>	Item 3 Commencement Date	<insert date>	
Item 4 Expiry Date	<insert date>	Item 4 Expiry Date	<insert date>	Note implications for Indexation: SA 8.5, G4.4
Item 5 Extension Period(s)	<insert period(s) or insert “not applicable”>	Item 5 Extension Period(s)	<insert period(s) or insert “not applicable”>	This is a possible extension as per SA2 & G1.2. Also note indexation implications.
Item 6 NFP’s ABN	<insert ABN> Registered for GST: <Yes/No>	Item 6 Recipient’s ABN	Recipient has an ABN <Yes/No> <insert ABN > Registered for GST: <Yes/No>	You need an ABN for Service Agreement, but not for grant
Item 7 Contract Managers	Government Party: <insert contact details> NFP: <insert contact details>	Item 7 Contact Persons	Government Party: <insert contact details> Recipient: <insert contact details>	
Item 8 Named Persons	<insert names and positions or insert “not applicable”>			See SA4.2 – this is where you put the name of the person if service must be provided by a particular person

Standard NFP Sector Funded Services Agreement		Grant Agreement		Comments for NFPs
Item 9 Purpose	<insert brief description of Funded Services>	Item 8 Purpose	Details of Program/Project <insert brief description of Program/Project >	SA has an appendix 4 for full description of services, outcomes, milestones, so this should be fairly generic, possibly just "Deliver services outlined in App 4". There is no similar Appendix for Grants so something more needed.
		Item 9 Outcomes	<insert description of Outcomes >	As above, although note you may agree outcomes and then much bigger discussion re measuring/reporting those outcomes.
Item 10 Reports and Meetings	<insert description > <insert dates>	Item 10 Reports and Meetings	<insert description> <insert dates>	This is substantial and should list all reports required. You should not be required to report more than this (or (eg. see SA 11.1, but slightly different G7.2) other than financials.
Item 11 Block Funding and Payment Details	Block Funding: \$<insert> (GST inclusive unless clause 9.2 applies) Manner of Payment: <insert details> Schedule of Payments: <insert payment dates and amounts> Address for invoices: <insert details> <i>If required include detailed description of funding and payment in Attachment 5</i>	Item 11 Grant Amount	\$<insert> <input type="checkbox"/> GST inclusive <input type="checkbox"/> GST exclusive <input type="checkbox"/> no GST payable	
		Item 12 Payment Details	Schedule of Payments <insert payment date and amounts> <include any other payment details, e.g. instalments, payments attached to achievement of milestones>	

Standard NFP Sector Funded Services Agreement		Grant Agreement		Comments for NFPs
Item 12 Tax Invoice Issuing Party	<input type="checkbox"/> Government Party <input type="checkbox"/> NFP	Item 13 Tax Invoice Issuing Party	<input type="checkbox"/> Government Party <input type="checkbox"/> Recipient	<p>Can be either – beware Late Payments Act. If you are under the Corporations Act, you should issue your own invoices.</p> <p>Note: any existing RCTI are irrelevant to this contract (clause 31), so you have option to negotiate what you want regardless of past agreements.</p>
Item 13 Block Funding Reconciliation Dates	<insert dates>	Item 14 Grant Reconciliation Date(s)	<insert dates>	<p>See SA10.1 – this sets how often you have to notify unexpended funds. Default is 12 months, but this box can be longer or shorter.</p> <p>Grants different as govt has no right to demand refund of unexpended funds till the end of grant. However, this box can still require reporting (to trigger investigation), but also to help get around “hard date” locked in G8.1(c). E.g. if contract is May to May, you would have to report after 2 months unless this box sets different dates.</p>
Item 14 Additional NFP Financial Information	<input type="checkbox"/> Yes <input type="checkbox"/> No	Item 15 Additional Recipient Financial Information	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>The contracts stipulate base level reporting. This box is for anything extra they want – but beyond this, you are under no obligation to report further. Advantage is that Govt must stipulate up front what info it wants so you know the cost. (Note: they can seek further info under different clauses G7.2, S11.2 [paying costs], but not as standard reports).</p>
Item 15 Service Credit/Abatement	<insert service credit or abatement for failure to meet a Service Level or insert “not applicable”>			<p>See SA4.5. Basically, contract sets out the standards you need to meet, if not, this box sets penalties.</p>

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Item 16 Quality Standards	<insert description>			See 4.4b – for instance, ASES. Note: not applicable/possible for a grant – due to different logic.
		Item 16 Government Party IP Licence	<input type="checkbox"/> Yes <input type="checkbox"/> No	Choice in Grants – see G10.1. For SA, IP is with the NFP (see SA14.2). Note: different to current Master Agreement.
Item 17 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 17 Insurances Public Liability Insurance	Not less than \$1,000,000	These are the only insurances that can be required by the govt. This is a big change from intrusive MA. (NFPs now get to decide how to manage their own risk).
Item 18 Liability Limit	<i>The following Liability Limit has been approved by Cabinet (25 July 2016) for low and medium risk contracts:</i> <insert between [1 and 5] x [the Total Block Funding Amount (inc. GST)]. Multiple to be based on Government Party's risk assessment. High risk, contact Crown Solicitor.	Item 18 Liability Limit	1 x Total Grant Amount	Basically, if you stuff up and cost govt money, what is the extent of your liability? Previous liability was unlimited so this is an advance. Liability in grants is now limited to value of grant, liability in SA is now between 1 and 5 times value of contract
Item 19 Additional Transition Requirements	<insert additional transition requirements or insert "not applicable">			SA 24 requires you to ensure smooth transition on picking up and handing over services at beginning or end of contract. This is where the govt can list extra specific things it requires on transition (SA24.3). Costs can be negotiated for these, and for want of somewhere else to put them, should be recorded as a "requirement" (by you, of govt).

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Item 20 Approved Subcontractors	<insert relevant details or insert “not applicable”>			SA 25.1 says you can’t engage subcontractors to do the funded service without prior permission, but if you know in advance you will and who you will get, their names go here and it is all fine.
Item 21 Additional Personnel Checks	<e.g. Authorised Screening Unit screening or insert “not applicable”>			Complicated story with SA 7.1, also Special Clausebank for children, and legislation. Essentially, this is a miscellaneous category where govt can insist on screening even if other clauses and legislation don’t require it. But at least it is upfront. Note: none of this applies to Grants – but legislative requirements still apply.
Item 22 Notice Period for Termination for Convenience	<insert period or “not applicable”>	Item 19 Notice Period for Termination for Convenience	<insert period or “not applicable”>	Either party may terminate even where there is no breach of contract (e.g. because they change policy) reason, but they must give the notice stipulated here. SA22.3, G17.2
		Item 18 Form of Funding Acknowledgement	<insert requirements>	This should say the words/images etc you need to use to acknowledge govt funding

Standard NFP Sector Funded Services Agreement		Grant Agreement		Comments for NFPs
Attachment 2 - Standard Terms & Conditions AGREED TERMS		Attachment 2 - Standard Terms & Conditions AGREED TERMS		
1. Contract Length	<p>1.1 This Agreement commences on the Commencement Date and continues until the Expiry Date, unless terminated earlier or extended under clause 1.2.</p> <p>1.2 This Agreement may be extended by the Government Party for the Extension Period(s) by giving reasonable notice prior to the Expiry Date.</p>	1. Funding period	<p>1.1 This Agreement commences on the Commencement Date and continues until the Expiry Date, unless terminated earlier or extended under clause 1.2.</p> <p>1.2 This Agreement may be extended by the Government Party for the Extension Period(s) by giving reasonable notice in writing prior to the Expiry Date.</p>	
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.	2. Contact Persons	The persons named in Attachment 1 as the Contact Persons 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	The NFP must use the Block Funding solely for the Purpose to achieve the Outcomes.	3. Purpose	The Recipient must use the Grant solely for the Purpose to achieve the Outcomes.	
4. Supply Of Funded Services	<p>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.</p> <p>4.2 Where Attachment 1 specifies Named Persons, then the Funded Services must be delivered by those Named Persons.</p> <p>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</p>			<p>Provide the services as described (4.1), if named using specific named persons notify them (4.2) and if changed (4.3).</p> <p>4.4 is crucial in enabling govt to require service levels and standards, and abide by govt policies.</p> <p>However, policies only as notified at start – so you know what you are contracting to do. (Change from current govt notify policies any time). If Govt wants to add new policy requirement, they need to vary contract under clause 5 – including</p>

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<p>of the substitute.</p> <p>4.4 The NFP must ensure that Funded Services are delivered:</p> <p>(a) to a standard that meets or exceeds the Service Levels;</p> <p>(b) in accordance with the quality standards specified in Attachment 1;</p> <p>(c) in accordance with the warranties in clause 6; and</p> <p>(d) in accordance with any policies and directions notified in writing by the Government Party to the NFP at the Commencement Date; and</p> <p>(e) by any Milestone Dates.</p> <p>4.5 If service credits or fee abatements are specified in Attachment 1 and if the NFP fails to meet a Service Level the Government Party's remedy will be the payment of that service credit or fee abatement.</p>			<p>ability to negotiate more money to pay for changes.</p> <p>The Grants Contract has a similar clause requiring abiding by policies (G20).</p> <p>Clause 4.5 is financial penalty if you don't deliver.</p>
<p>5. Service Variation</p> <p>5.1 If either Party wishes to vary the scope of the Funded Services ("Variation"), it must follow the procedure set out below.</p> <p>5.2 If the Government Party requires a Variation it must issue a written request to the NFP and the NFP must within 10 Business Days (or such other period as agreed) provide a written quote ("Quote") setting out the information specified in clause 5.4.</p> <p>5.3 If the NFP requires a variation it must issue a Quote to the Government setting out the information specified in clause 5.4.</p>			<p>So, if govt wants to vary contract to require you to see 20% more clients, they notify you and within 14 days you submit a quote saying, "ok, but it means we will not do A, B or C under the contract, or it will cost govt a further \$X, or whatever change is required for you to do the proposed variation.</p> <p>Both sides must negotiate in good faith (ie. govt can just say, "do it or we won't fund you". If you don't agree, the original contract remains.</p> <p>If you agree, the variation goes in writing and are the new deliverables.</p>

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	<p>5.4 A Quote must contain the following information</p> <ul style="list-style-type: none"> (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. <p>5.5 The Parties must negotiate in good faith to agree on the change to the funding and other terms applicable to the Variation.</p> <p>5.6 If the Parties agree in writing to the terms of the Variation then:</p> <ul style="list-style-type: none"> (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. 			
<p>6. NFP's Warranties</p>	<p>6.1 The NFP warrants that the Funded Services will:</p> <ul style="list-style-type: none"> (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 supplied without infringing any person's Intellectual Property Rights; and (e) be supplied in the most cost effective manner consistent with the required level 			<p>This is the mechanism where you guarantee quality and efficiency, so if you don't do that you will be in breach of contract (given grounds for dispute, etc).</p>

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	<p>of quality and performance.</p> <p>6.2 The NFP warrants that it has all rights, title, licences (including where relevant a labour hire licence), authorisations, consents and other approvals necessary to provide the Funded Services.</p>			
<p>7 NFP's Personnel</p>	<p>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.</p> <p>7.2 If the Government Party acting reasonably, considers any one or more of the NFP's Personnel to be an Unsuitable Person 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.</p>			<p>This clause is in addition to any Special Clauses re child screening, and also in addition to any legislative requirement.</p> <p>Clause 7.2 also provides the mechanism for Govt to require no unsuitable people work on services.</p> <p>Note: definition of Unsuitable Person (clause 39z) is broader than just screening.</p> <p>Note though – in all this, govt must “act reasonably”, so they can't for instance exclude someone for political or personal reasons.</p> <p>This clause does not apply to Grants, so no screening can be required in a Grant contract. However, grant recipients still bound by legislation requiring screening.</p>
<p>8. Funding and Invoicing</p>	<p>8.1 If the Tax Invoice Issuing Party is the Government Party:</p> <p>(a) the Parties agree that this Agreement satisfied the requirement for a written agreement specifying the supplies to which the Recipient Created Tax Invoice (“RCTI”) relates;</p> <p>(b) the Government Party must provide a copy of the Tax Invoice to the NFP within 30 days of the making, or determining of</p>	<p>4. Funding and Invoicing</p>	<p>4.1 If the Tax Invoice Issuing Party is the Government Party:</p> <p>(a) the Parties agree that this Agreement satisfies the requirement for a written agreement specifying the supplies to which the Recipient Created Tax Invoice (“RCTI”) relates;</p> <p>(b) the Government Party must provide a copy of the Tax Invoice to the Recipient within 30 days of the making, or determining of the value, of the Taxable</p>	<p>8/4.1(a) enables govt to issue invoices to itself <i>if that box is ticked in Attachment 1</i>. Note the impact of this on payment timing and interest on late payments.</p> <p>Note: any existing RCTI agreement are irrelevant to this contract (clause 31), so you have option to negotiate what you want regardless of past agreements.</p>

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<p>the value, of the Taxable Supply; and</p> <p>(c) The NFP must not issue a Tax Invoice in respect of a Taxable Supply the subject of the RCTI.</p> <p>8.2 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.</p> <p>8.3 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.</p> <p>8.4 The NFP must ensure that it can properly account for the Block Funding received under the Agreement.</p> <p>8.5 For agreements greater than 12 months, on each anniversary of the Commencement Date during the period of this Agreement,</p> <p>(a) the amount of unpaid Block Funding will increase by the NFP Sector Indexation Rate for that Financial Year; and</p> <p>(b) the Government Party must issue a revised Schedule of Payments (including past amounts paid and indexed instalments payable for the remaining funding period).</p> <p>8.6 Clause 8.5 does not apply if the Government Party advises the NFP that the Block Funding payable for each year of the Agreement has already been indexed by the NFP Sector Indexation Rate.</p> <p>8.7 The NFP must create accruals and provisions that are consistent with</p>	<p>Supply; and</p> <p>(c) The Recipient must not issue a Tax Invoice in respect of a Taxable Supply the subject of the RCTI.</p> <p>4.2 If the Tax Invoice Issuing Party is the Recipient, the Recipient may invoice the Government Party for payment in respect of the Grant after the Commencement Date.</p> <p>4.3 The Government Party will pay the Grant in the amounts and at the times specified in Attachment 1 upon receipt of a Tax Invoice.</p> <p>4.4 For agreements greater than 12 months, on each anniversary of the Commencement Date during the period of this Agreement,</p> <p>(a) the amount of unpaid Grant will increase by the NFP Sector Indexation Rate for that Financial Year; and</p> <p>(b) the Government Party must issue a revised Schedule of Payments (including past amounts paid and indexed instalments payable for the remaining funding period).</p> <p>4.5 Clause 4.4 does not apply if the Government Party advises the NFP that the Grant payable for each year of the Agreement has already been indexed by the NFP Sector Indexation Rate.</p> <p>4.6 The Recipient must ensure that it can properly account for the Grant received under the Agreement.</p>	<p>SA8.5, G4.4 crucial indexation clauses. Govt depts have no choice but to pass this on (even if their funding bucket is not indexed). This includes when a contract is extended (e.g. if a 12 month contract extended for 6 months – the extra 6 months will be paid including indexation).</p> <p>Note: Govt can simply issue series of new 1 year (or shorter) contracts, but this would be breach Procurement Board policies (although these don't apply to Grants).</p> <p>Note: SA8.6, G4.5 just means indexation does not apply if the agreed funding (for same service level) is \$100K first year, \$102.5K second year etc. Otherwise, indexation must apply.</p> <p>SA 8.4 and G4.6 just obvious transparency clauses and needed for acquittals.</p>

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	prudent management and proper accounting practice to meet such obligations.			
9. GST	<p>9.1 Subject to clause Error! Reference source not found.9.2 the NFP represents that:</p> <p>(a) the ABN shown in Attachment 1 is the NFP's ABN; and</p> <p>(b) it is registered under the <i>A New Tax System (Australian Business Number) Act 1999</i> (Cth).</p> <p>9.2 If the NFP is not registered for GST, then GST must not be charged on supplies made under this Agreement.</p>	5. GST	<p>5.1 Subject to clause 5.2 and 5.3 the Recipient represents that:</p> <p>(a) the ABN shown in Attachment 1 is the Recipient's ABN; and</p> <p>(b) it is registered under the A New Tax System (Australian Business Number) Act 1999 (Cth).</p> <p>5.2 If the Recipient is not registered for GST, then GST must not be charged on supplies made under this Agreement.</p> <p>5.3 If the Recipient does not have an ABN it must submit an ATO <i>Statement by a Supplier</i> to the Government Party otherwise the Government Party may be obliged under the <i>Taxation Administration Act 1953</i> to deduct a withholding from the Grant and will not be obliged to gross up the Grant or provide any other compensation to the Recipient.</p>	
10. Repayment of unallocated funds	<p>10.1 Upon each anniversary of the Commencement Date during the Agreement or other date as may be specified in Attachment 1 ("Block Funding Reconciliation Date") 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:</p> <p>(a) the amount to be retained or carried over; and</p>	6. Repayment of unallocated funds	<p>6.1 At the end of the Funding Period, if the Recipient has not expended all of the Grant, it must notify the Government Party of the unexpended amount and may submit a written request for retention or carryover of unexpended amounts specifying:</p> <p>(a) the amount to be retained or carried over; and</p> <p>(b) the purpose for which the unexpended amount will be used.</p> <p>6.2 The Government Party must consider the Recipient's request and</p>	<p>SA is yearly reporting and accounting to zero otherwise potentially hand back \$ (although you can ask for flexibility to retain \$). However, Attachment 1 offers ability to change reporting period, so you could ask for end of contract.</p> <p>Unused grant payback is only at end of grant period (not yearly).</p> <p>In both cases Govt must consider request to keep \$ on merit – can't just say it is policy to require handback.</p> <p>This is different if there is use of \$ for</p>

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	<p>(b) the purpose for which the unexpended amount will be used.</p> <p>10.2 The Government Party must consider the NFP's request and notify the NFP in writing whether it:</p> <p>(a) agrees that the NFP may retain or carry over all or part of the unexpended amount; or</p> <p>(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.</p>	<p>notify the Recipient in writing whether it:</p> <p>(a) agrees that the Recipient may retain or carry over all or part of the unexpended amount; or</p> <p>(b) requires the Recipient 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.</p>	<p>another purpose: SA 10.3, G17.1.</p>
<p>11. Provision of Information</p>	<p>11.1 The NFP must provide those reports and other documents and must attend meetings as specified in Attachment 1.</p> <p>11.2 If the Government Party requires additional reports to those specified in clause 11.1, the NFP must provide those reports and may charge a reasonable fee for providing those reports.</p> <p>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.</p>	<p>7 Provision of Information</p> <p>7.1 The Recipient must provide those reports and other documents and must attend meetings, as specified in Attachment 1.</p> <p>7.2 If the Government Party reasonably suspects that the Grant is not being used for the Purpose, it may request additional information from the Recipient.</p> <p>7.3 The Recipient must immediately inform the Government Party of any significant changes to the nature and/or scope of the activities conducted by the Recipient which would impact on the Purposes or the Outcomes under this Agreement.</p>	<p>You have to supply the reports/info agreed in Attachment 1.</p> <p>Govt can ask for more reports and you have to provide, but:</p> <ul style="list-style-type: none"> • If a SA, you can charge govt the cost of those extra reports • If a Grant, you can't charge to govt, but it can only ask for more if it reasonably expects dodginess (ie. not just because they have a new policy) <p>Point 3 is just commonsense notification.</p>
<p>12. Financial Reporting And Auditing</p>	<p>12.1 The NFP must provide an acquittal in relation to the expenditure of all Block Funding under this Agreement:</p> <p>(a) certifying that the Block Funding has been properly spent, in accordance with the requirements of the Agreement</p> <p>(b) signed by two persons authorised by</p>	<p>8. Financial Reporting And Auditing</p> <p>8.1 The Recipient must provide an acquittal in relation to the expenditure of all funds under this Agreement:</p> <p>(a) certifying that the Grant has been properly spent, in accordance with the requirements of the Agreement</p> <p>(b) signed by two persons authorised by</p>	<p>You have to do acquittal of funds within 3 mths of end of year or other date specified in Attach 1.</p> <p>Note: the 3 month acquittal is not audited accounts, and does not have to be signed off by Board – just by people authorised to do it.</p>

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<p>the NFP's board of management (or equivalent); and</p> <p>(c) within 3 months of the end of each Financial Year during the Term or other dates as may be specified in Attachment 1 ("Block Funding Reconciliation Dates").</p> <p>12.2 If the NFP is required by law to prepare audited financial statements, the NFP must provide the Government Party with copies of such audited financial statements, within 6 months of the end of each Financial Year during the Term.</p> <p>12.3 If the NFP is not required by law to prepare audited financial statements, and only if specified in Attachment 1, the NFP must provide the Government Party with the following financial statements, within 6 months of the end of each Financial Year during the Term:</p> <p>(a) A balance sheet;</p> <p>(b) An income and expenditure statement; and</p> <p>(c) A statement of changes in equity for the financial year.</p> <p>12.4 The NFP agrees the Government Party may direct that the financial accounts of the NFP be audited at the Government Party's cost, and that the Government Party may specify the minimum qualification that must be held by the person appointed to conduct the audit.</p> <p>12.6 If the audit discloses that the NFP has applied the Block Funding for a purpose other than the Purpose then the recipient will be required to reimburse the Government Party the costs of the</p>	<p>the Recipient's board of management (or equivalent); and</p> <p>(c) within three months of the end of each Financial Year during the Term or other dates as may be specified in Attachment 1 ("Grant Reconciliation Date(s)").</p> <p>8.2 If the Recipient is required by law to prepare audited financial statements, the Recipient must provide the Government Party with copies of such audited financial statements, within 6 months of the end of each Financial Year during the Term.</p> <p>8.3 If the Recipient is not required by law to prepare audited financial statements, and only if specified in Attachment 1, the Recipient must provide the Government Party with the following financial statements, within 6 months of the end of each Financial Year during the Term:</p> <p>(a) A balance sheet;</p> <p>(b) An income and expenditure statement; and</p> <p>(c) A statement of changes in equity for the financial year.</p> <p>8.4 The Recipient agrees the Government Party may direct that the financial accounts of the Recipient be audited at the Government Party's cost, and the Government Party may specify the minimum qualifications that must be held by the person appointed to conduct the audit.</p> <p>8.5 If the audit discloses that the Recipient has applied the Grant for a purpose other than the Purpose then the</p>	<p>Note: importance of being able to vary reporting date for contracts straddling EOFY:e.g. if contract is May to August, you would have to report after 2 months unless this box sets different dates, and then possibly 12 months after project finished (or not at all at finish). Use Attach 1 to make common sense date.</p> <p>Note requirements in SA12.3 and G8.3 are not automatic – only if required in Attach 1.</p> <p>If the government wants to audit your financial accounts (presumably because it thinks you are not spending the money properly) it has to pay for the audit (a nice disincentive to intervention), but if it does the audit and you have been dodgy – you pay (a disincentive for you to go down this track).</p> <p>(Note very different to current MA where govt can just barge in and rack up your \$ in audit).</p>

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	audit and clause 10.3 will apply.		Recipient will be required to reimburse the Government Party the costs of the audit and the provisions of clause 17.1 will apply.	
13. Inspection	13.1 Where the Government Party reasonably suspects that the Block Funding has not been used for the Purpose the Government Party may on giving reasonable written 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..	9. Inspection	9.1 The Recipient must allow any officer or person authorised by the Government Party on the giving of reasonable notice, to enter the premises of and to inspect the operations of the Recipient (including equipment, premises, accounting records, documents and information) and interview the Recipient's Personnel on matters pertaining to the operations and reporting obligations of the Recipient under this Agreement.	<p>This gives govt wide powers to put invade your space, but note:</p> <ul style="list-style-type: none"> • For SA it only has powers if it reasonably expects misuse of money (Grants has no such constraint) • Must give notice of entry in writing, not just barge in anytime • Investigation is limited to matter pertaining to this Agreement. <p>This is very different from current MA which appallingly gives any govt agency total licence to barge in and do any unrelated investigation.</p>
14. Intellectual Property Rights	<p>14.1 Nothing in this Agreement affects the ownership of Intellectual Property Rights created before the Commencement Date.</p> <p>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.</p>	10. Intellectual Property Rights	<p>10.1 Nothing in this Agreement affects the ownership of Intellectual Property Rights created before the Commencement Date.</p> <p>10.2 If specified in Attachment 1, the Recipient grants the Government Party and the State of South Australia a non-exclusive, perpetual, royalty free licence to use any intellectual property created as part of the Purpose.</p>	<p>For SA – IP is held by you (with govt right to use it).</p> <p>For Grants, if boxed is ticked so recipient owns IP, govt has right to use it. If box is ticked so govt owns, NFP has no rights to use IP! (Stuff up – or bargaining tool).</p> <p>If no box I ticked, default is <i>probably</i> that you own the IP.</p>
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	11. Confidential Information	10.1 Subject to this clause 10, neither Party may disclose any Confidential Information belonging to the other Party except as genuinely and necessarily required for the purpose of this	Note “Confidential Information” is defined in SA 39(c) and G29(a) and is basically whatever either party says is confidential.

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<p>Agreement.</p> <p>15.2 A Party may disclose Confidential Information belonging to the other Party:</p> <p>(a) to an employee, agent or adviser of that Party, on a “need to know” and confidential basis;</p> <p>(b) as required by law or a court order;</p> <p>(c) in accordance with any Parliamentary or constitutional convention; or</p> <p>(d) for the purposes of prosecuting or defending proceedings.</p> <p>15.3 Nothing in this clause requires either Party to commit an unlawful act, or expose itself to proceedings for contempt or other lawful penalties.</p> <p>15.4 The Parties may mutually agree to disclose Confidential Information.</p>	<p>Agreement.</p> <p>10.2 A Party may disclose Confidential Information belonging to the other Party:</p> <p>(a) to an employee, agent or adviser of that Party, on a “need to know” and confidential basis;</p> <p>(b) as required by law or a court order;</p> <p>(c) in accordance with any Parliamentary or constitutional convention;</p> <p>(d) for the purposes of prosecuting or defending proceedings.</p> <p>10.3 The Parties may mutually agree to disclose Confidential Information.</p>	<p>Clause is pretty common sense after that.</p>
<p>16. Privacy</p> <p>16.1 The NFP must:</p> <p>(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/ren-dition/B17711#sthash.s76QhRX6.dpuf) (“IPPs”) as if the NFP 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</p> <p>(b) allow the Government Party to undertake, and cooperate with any audit or investigation which the Government Party deems necessary to verify that the</p>	<p>11. Privacy</p> <p>11.1 The Recipient mustbli comply with the Privacy Act 1988 (Cth) (“Privacy Act”) and the Australian Privacy Principles established under that Act 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.</p> <p>11.2 The Recipient 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.</p> <p>11.3 For the purposes of this special condition, “Personal Information” has the</p>	<p>Note these clauses are different.</p> <p>SA requires compliance to SA govt policy (which can be changed – only example of open-ended clause in contract)</p> <p>Grants require compliance with Act and principles under Act.</p>

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	<p>NFP is complying with the IPPs.</p> <p>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.</p>		<p>same meaning as in the Privacy Act.</p>	
<p>17. Publicity</p>	<p>17.1 The NFP will acknowledge the Block Funding by the Government Party in any advertising, publicity or promotional material relating to this Agreement in the manner specified in Attachment 1.</p> <p>17.2 The NFP will participate in promotional or publicity activity in relation to this Agreement as is reasonably required by the Government Party.</p> <p>17.3 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.</p> <p>17.4 If due to urgent circumstances or due to the nature and timing of the media request, it is not possible to provide prior notice of an announcement or media release to the other party, then the party making the announcement or media release must notify the other party 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.</p> <p>17.5 Nothing in this clause derogates from the operation of the <i>Not-for-Profit Sector Freedom to Advocate Act 2013</i>.</p>	<p>12. Publicity</p>	<p>12.1 The Recipient will acknowledge the Grant by the Government Party in any advertising, publicity or promotional material relating to this Agreement in the manner specified in Attachment 1.</p> <p>12.2 The Recipient will participate in promotional or publicity activity in relation to this Agreement as is reasonably required by the Government Party.</p> <p>12.3 The Recipient 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.</p> <p>12.4 If due to urgent circumstances or due to the nature and timing of the media request, it is not possible to provide prior notice of an announcement or media release to the other party, then the party making the announcement or media release must notify the other party 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.</p> <p>12.5 Nothing in this clause derogates from the operation of the <i>Not-for-Profit Sector Freedom to Advocate Act 2013</i>.</p>	<p>Lots of words to say you need to acknowledge that the govt is stumping up the money, you have to help their marketing (but only to reasonable extent) and should check publicity about Agreement with them.</p> <p>This is about marketing, not political content and both agreements are subject to the Freedom to Advocate Act – so anything in this clause that constrains political comment is automatically void.</p>

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18. Insurance	<p>18.1 The NFP must effect and maintain the policies of insurance specified in Attachment 1 for not less than the amounts specified in Attachment 1.</p> <p>18.2 The policies of insurance referred to in clause 18.1 must be held during the Agreement and for any applicable run off period.</p>	14. Insurance	<p>14.1 The Recipient must effect and maintain the insurance specified in Attachment 1 for not less than the amount specified in Attachment 1.</p>	<p>This just empowers the tick box in Attach 1, but importantly limits the insurances required. There can be no others required.</p> <p>This is a big change from current MA, which lists many other insurances. Now you get to decide how to manage risk and your organisation.</p>
19. Liability Limit	<p>19.1 The NFP's liability to the Government Party under this Agreement is limited to the amount specified in Attachment 1.</p>	15. Liability limit	<p>15.1 The Recipient's liability to the Government Party under this Agreement is limited to the amount specified in Attachment 1.</p>	<p>Again, this just empowers the tick box in Attach 1. See comments there.</p>
20. Set-Off	<p>Any claim the Government Party may have against the NFP may be set off against monies owed to the NFP under this Agreement.</p>			
21. Dispute Resolution	<p>21.1 Subject to clause 21.4 a Party may not commence legal proceedings without first referring the dispute to the other Party under this clause.</p> <p>21.2 Either Party may give the other a notice in writing ("dispute notice") setting out the details of the dispute.</p> <p>21.3 Within 7 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.</p> <p>21.4 A Party may seek immediate interlocutory relief or other interim remedy in case of genuine urgency.</p>	16. Dispute Resolution	<p>16.1 Subject to clause 16.4 a Party may not commence legal proceedings without first referring the dispute to the other Party under this clause.</p> <p>16.2 Either Party may give the other a notice in writing ("dispute notice") setting out the details of the dispute.</p> <p>16.3 Within 7 days or such other period as may be agreed by the Parties, the Contact Persons must meet and use reasonable endeavours to resolve the dispute.</p> <p>16.4 A Party may seek immediate interlocutory relief or other interim remedy in case of genuine urgency.</p>	<p>Either party can launch dispute (eg. you can if they are not paying on time).</p> <p>The process here is complain, resolve – and if not, go to court. The SANFRAG principles (PC 044) outline a bit more consultation, and Treasury has complaints process that can be utilised. These can be used for this contract, they are just mandated/required by it.</p>
22. Ending This Contract	<p>22.1 The Government Party may terminate this Agreement immediately upon giving notice in writing to the NFP</p>	17. Default and termination	<p>17.1 If the Recipient does not apply any part of the Grant for the Purpose or if the Recipient materially fails to comply with this Agreement at any time, the</p>	<p>These clauses are very different.</p> <p>SA lists various reasons why govt can immediately terminate contract.</p>

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<p>if:</p> <p>(a) the Government Party reasonably forms the opinion that the NFP will be unable to perform its obligations under this Agreement;</p> <p>(b) the NFP is in breach of this Agreement and has not rectified such breach within 14 Business Days of the Government Party giving notice in writing to the NFP requiring the rectification of such breach;</p> <p>(c) the NFP does not use the Block Funding for the Purpose to achieve the Outcomes (if specified in Attachment 1);</p> <p>(d) the Government Party becomes aware that the NFP is in material breach of its statutory obligations with respect to its employees;</p> <p>(e) the NFP fails to comply with a notice issued under clause 7.2; or</p> <p>(f) the NFP fails to disclose a conflict of interest;</p> <p style="text-align: center;">or</p> <p>(g) 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.</p> <p>22.2 Either Party may terminate this Agreement without cause by giving the other Party the period of notice specified in Attachment 1 which must not be less than 3 months (“Notice Period for Termination for Convenience”).</p> <p>22.3 If the Government Party terminates this Agreement in accordance with</p>	<p>Government Party may upon giving written notice to the Recipient:</p> <p>(a) require the Recipient to repay either the whole or a portion of the Grant (whether expended or not) within 30 days of a written demand from the Government Party;</p> <p>(b) withhold funds not already paid;</p> <p>(c) withhold future funding from the Recipient; and/or</p> <p>(d) terminate this Agreement.</p> <p>17.2 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”).</p>	<p>Grant can only be terminated immediately if money not being used for purpose or for material breach of agreement (ie. not just a technical breach).</p> <p>For a grant govt can demand repayment of whole grant – even if 99% of it has been properly expended. (Sorry, could not get this changed). Other remedies more reasonable.</p> <p>If either parties want to end agreement for a different reason (ie. not a breach, just change of circumstance), they need to give notice set out in Attach 1 – but at least 3 months for SA, no minimum for Grant.</p> <p>Note: under S22.3, if govt changes policy and terminates, you may be able recoup some money for outlays made and now redundant (eg. you sign 12 month vehicle lease for remote visits, and govt terminates after 6 months). No similar clause for Grants.</p> <p>Ignore S22.5 – it was just sport to ensure Agreement was reciprocal! 😊</p>

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	<p>clause 22.2:</p> <p>(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:</p> <p>(i) for Funded Services provided before the effective termination date; and</p> <p>(ii) subject to clause 22.4, any reasonable unavoidable costs directly attributable to the termination of the Agreement but the Government Party shall have no liability for any lost earnings or opportunity costs; and</p> <p>(b) the NFP must comply with all reasonable directions given by the Government Party.</p> <p>22.4 The NFP must provide to the Government Party documentary evidence that it has incurred the costs referred to in clause 22.30 and if the claim is not disputed the Government Party must pay such claim within 30 days of receipt of the claim.</p> <p>22.5 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.</p>			
<p>23. Effect of Ending this Contract</p>	<p>23.1 Any termination of this Agreement by either Party does not affect any</p>	<p>18. Effect Of Ending This agreement</p>	<p>Any termination of this Agreement does not affect any accrued right of either</p>	<p>These are standard legal-type clauses and mainly common sense.</p>

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	<p>accrued right of either Party.</p> <p>23.2 Despite termination or expiry of this Agreement, this clause 23 and clauses 6, 10, 11, 0 (where there is a requirement to maintain professional indemnity insurance), 13.1, 15, 18.2, 19 and those Special Conditions that by their nature remain in force, will survive.</p>		<p>Party.</p> <p>Despite termination or expiry of this Agreement, this clause 18 and clauses 6, 7, 8, 9, 10, 13 and those Special Conditions that by their nature remain in force, will survive.</p>	
<p>24. Transition</p>	<p>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.</p> <p>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.</p> <p>24.3 The NFP may submit to the Government Party a documented claim for reimbursement of its reasonable unavoidable costs incurred by it in complying with this clause and if the claim is not disputed the Government Party must pay such claim within 30 days of receipt of the claim.</p>			<p>Self-explanatory clauses largely designed to minimise disturbance to clients moving from one service to another.</p> <p>Note: extra transition requirements can be added via Attach 1.</p> <p>There are no similar clauses for Grants due to different logic – it is your activity, not to be handed over to someone else.</p>

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	24.4 Without limiting this clause 24.40, the NFP must comply with the additional transition requirements (if any) set out in Attachment 1 of the Agreement. 3		
25. Subcontracting	<p>25.1 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.</p> <p>25.2 The NFP remains responsible for obligations performed by the subcontractors' personnel to the same extent as if such obligations were performed by the NFP.</p>		<p>You can't engage subcontractors to do the funded service without prior permission, but if you know in advance you will and who you will get, their names go in Attach 1 and it is all fine.</p>
26. Work Health & Safety	<p>26.1 The NFP must comply with the <i>Work Health and Safety Act 2012 (SA)</i> at all times, regardless of whether the Government Party issues direction in that regard or not.</p> <p>26.2 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.</p>		<p>You must abide by the law – hey surprise!</p> <p>26.2 is common sense and also probably unnecessary.</p>
27. Conflict Of Interest	27.1 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		<p>Requirement to declare, but unclear what follows from this – except that failure to declare is grounds for termination of contract.</p>

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	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.			
28. Contract Disclosure	<p>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.</p> <p>28.2 Nothing in this clause derogates from:</p> <p>(a) the NFP's obligations under any provisions of this Agreement; or</p> <p>(b) the provisions of the Freedom of Information Act 1991 (SA).</p>	19. Contract Disclosure	<p>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.</p> <p>19.2 Nothing in this clause derogates from:</p> <p>(a) the Recipient's obligations under any provisions of this Agreement; or</p> <p>(b) the provisions of the <i>Freedom of Information Act 1991 (SA)</i>.</p>	We questioned this due to "commercial in confidence", but were told it was a government requirement locked in by another process.
29. 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.	20. Compliance with Laws and Policies	<p>20.1 The Recipient must comply with the laws in force in the State of South Australia in performing its obligations under this Agreement.</p> <p>20.2 The Recipient must comply with any policies notified by the Government Party in writing at the Commencement Date.</p>	<p>Yes, you have to abide by the law!</p> <p>Actually, this means that if you don't abide by the law, apart from being a breach of the law with whatever penalty, it is also a breach of contract and can be grounds for immediate termination of contract.</p> <p>Note 20.2 (same as SA4.4(d)), but only to policies notified at the start. Govt can't add requirements later.</p>
30. Governing Law And Jurisdiction	<p>30.1 This Agreement is governed by the laws in the State of South Australia.</p> <p>30.2 The courts of the State of South Australia have exclusive jurisdiction in connection with this Agreement.</p>	21. Governing Law and Jurisdiction	<p>21.1 This Agreement is governed by the laws in the State of South Australia.</p> <p>21.2 The courts of the State of South Australia have exclusive jurisdiction in connection with this Agreement.</p>	Straightforward.

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31. 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.	22. 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.	This is legalese, but crucial. This is the clause that means the Master Agreement does not apply, and that nothing outside what is written here counts in this contract. If you were told/promised something about the contract (eg. “we won’t do that”, “we will do this as well”) it does not count and you are not contractually bound by anything unless it is written in the contract (or you agree to vary the contract).
32. No Assignment	<p>31.1 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.</p> <p>31.2 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.</p>	23. No Assignment	<p>23.1 The Recipient 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 shall not be unreasonably withheld.</p> <p>23.2 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.</p>	Standard legalese – mostly harmless.
33. Modification	No addition to or modification of any provision of this Agreement will be binding upon the Parties unless agreed by the Parties in writing.	24. Modification	No addition to or modification of any provision of this Agreement will be binding upon the Parties unless agreed by the Parties in writing.	You can’t vary the contract by verbal agreement. The change can simply be a letter signed by both agreeing to change something in one of the Attachments. You probably can’t agree to vary these terms and conditions – because it won’t then be an approved contract.

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34. Severance	<p>34.1 Each word, phrase, sentence, paragraph and clause of this Agreement is severable.</p> <p>34.2 Severance of any part of this Agreement will not affect any other part of this Agreement.</p>	25. Severance	<p>25.1 Each word, phrase, sentence, paragraph and clause of this Agreement is severable.</p> <p>25.2 Severance of any part of this Agreement will not affect any other part of this Agreement.</p>	Legalese which you will probably never need/use, but basically, even if one part of the contract is legally invalid, the rest of the contract is still valid.
34. 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.	25. 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 instrument. An executed counterpart may be delivered by email.	Legalese for you don't all have to sign the same piece of paper. You can sign one, the government can sign the other – but it probably won't happen that way anyway!
36. No Further Obligation	36.1 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.	27. No Further Obligation	<p>27.1 The Recipient acknowledges that the Grant represents a one-off contribution by the Government Party towards the Purpose, and the Recipient agrees any request for subsequent funding will require a new application to the Government Party. The Government Party is under no obligation to agree to pay any subsequent funding to the Recipient.</p> <p>27.2 The Recipient acknowledges the Government Party will not be liable to reimburse the Recipient for any losses or cost over runs that may result from the operation of this Agreement or the carrying out of the Purpose.</p>	<p>Straightforward in the SA – govt not responsible for cost blow-outs.</p> <p>Clause 27.1 in the Grant Contract is problematic and probably should not have survived given that some grants can be multi-year funding.</p> <p>However, you could read it as the contract-as-a-whole being the one-off contribution and proceed on that basis – in which case it is fine, and just says that the govt has no obligation to renew a grant (although they can extend the grant as per Attachment 1 (eg. a 3 year grant, with a 3 + 3 year extension).</p>
37. Feedback And Complaints	<p>37.1 The NFP will establish a feedback and complaints process for recipients of the relevant Funded Services and other stakeholders (“stakeholders”) which:</p> <p>(a) is user friendly and stakeholder-focussed;</p> <p>(b) responds to feedback and complaints promptly objectively, fairly and</p>			Basic and probably part of quality accreditation anyway.

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	<p>confidentially;</p> <p>(c) resolves issues raised by stakeholders who are dissatisfied in a timely and cost-effective way;</p> <p>(d) provides remedies if a complaint is substantiated;</p> <p>(e) provides a system for review of decisions; and</p> <p>(f) includes a system to capture data about feedback and complaints.</p> <p>37.2 The NFP must use feedback and complaint information to identify and implement improvements to the Funded Services.</p>			
38. Interpretation	<p>38.1 In this Agreement (unless the context requires otherwise):</p> <p>(a) a reference to any legislation includes:</p> <p>(i) all legislation, regulations and other forms of statutory instrument issued under that legislation; and</p> <p>(ii) any modification, consolidation, amendment, re-enactment or substitution of that legislation;</p> <p>(b) a word in the singular includes the plural and a word in the plural includes the singular;</p> <p>(c) a reference to two or more persons is a reference to those persons jointly and severally;</p> <p>(d) a reference to dollars is to Aust \$;</p> <p>(e) a reference to a Party includes that party's administrators, successors and permitted assigns.</p>	28. Interpretation	<p>28.1 In this Agreement (unless the context requires otherwise):</p> <p>(a) a reference to any legislation includes:</p> <p>(i) all legislation, regulations and other forms of statutory instrument issued under that legislation; and</p> <p>(ii) any modification, consolidation, amendment, re-enactment or substitution of that legislation;</p> <p>(b) a word in the singular includes the plural and a word in the plural includes the singular;</p> <p>(c) a reference to two or more persons is a reference to those persons jointly and severally;</p> <p>(d) a reference to dollars is to Aust \$;</p> <p>(e) a reference to a Party includes that party's administrators, successors and permitted assigns.</p>	Legalese stating the obvious. Ignore it.

Standard NFP Sector Funded Services Agreement	Grant Agreement	Comments for NFPs
<p>39. Definitions</p> <p>In this Agreement:</p> <p>(c) “Confidential Information” means information which is identified as confidential information by a Party, but does not include this Agreement;</p> <p>(i) “Intellectual Property Rights” means all intellectual property rights, including but not limited to:</p> <p>(i) patents, copyright, registered designs, trademarks, know-how and any right to have Confidential Information kept confidential; and</p> <p>(ii) any application or right to apply for registration of any of the rights referred to in paragraph (a),</p> <p>but for the avoidance of doubt excludes moral rights and performers’ rights;</p> <p>(m) “NFP Sector Indexation Rate” is the annual rate as published on the Department of Treasury and Finance [insert web address];</p> <p>(n) “NFP’s Personnel” means any Approved Subcontractors, employees, agents, subcontractors engaged under clause 25 and any other person employed or engaged by the NFP to perform this Agreement and includes the Named Persons.</p> <p>(s) “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 reasonably be ascertained, from the information or opinion;</p> <p>(z) “Unsuitable Person” means a person who:</p> <p>(i) is the subject of any arrest, charge or conviction for:</p> <p>A. a sexual offence or an offence of indecency;</p> <p>B. any offence of violence or deprivation of liberty (whether indictable or not) or other indictable offence; or</p> <p>C. any other offence that the Government Party notifies the NFP in writing the Government Party considers renders the NFP Personnel unsuitable to be involved</p>	<p>28. Definitions</p> <p>In this Agreement:</p> <p>(a) “Confidential Information” means information which is identified as confidential information by a Party, but does not include this Agreement;</p> <p>(g) “Intellectual Property Rights” means all intellectual property rights, including but not limited to:</p> <p>(i) patents, copyright, registered designs, trademarks, know-how and any right to have Confidential Information kept confidential; and</p> <p>(ii) any application or right to apply for registration of any of the rights referred to in paragraph (a),</p> <p>but for the avoidance of doubt excludes moral rights and performers’ rights;</p> <p>(i) “NFP Sector Indexation Rate” is the annual rate as published on the Department of Treasury and Finance <insert web address>;</p>	<p>The fun legal fine print in any contract, mostly just stating the obvious.</p> <p>Only the substantive ones are reproduced here.</p> <p>Note:</p> <ul style="list-style-type: none"> • Confidential Info – whatever you say is confidential • NFP Sector Indexation Rate – published on website. Now at 2.5%, and should be set at the same level as the government indexation rate (so changing it will be a big deal). A govt dept can’t set its own rate. • Unsuitable Persons – much wider definition than just those who fail screening and dispenses with quaint notions like innocent until proven guilty.

Standard NFP Sector Funded Services Agreement		Grant Agreement		Comments for NFPs
	in the provision of Services; or (ii) fails to pass any additional personnel checks specified in Attachment 1.			
40. Special Conditions	The special conditions (if any) in Attachment 3 form part of this Agreement.	30. Special Conditions	The special conditions (if any) in Attachment 3 form part of this Agreement.	Issue 18: Should the special conditions clause be more consistent?

Standard NFP Funded Services Special Conditions Clause Bank		Comments for NFPs
S1. Non-Exclusivity <i>Are Funded Services Being Provided by a panel of members? If YES, insert the following clause as Special Conditions in Attachment 3.</i> [Clause not reproduced here]	Clause just allows govt to fund a range of organisations to provide similar services. You don't have a monopoly!	
S2. Cooperating With Investigations <i>Is the NFP providing Funded Services to children or young people? If YES</i> [Clauses not reproduced here]	The first clause acknowledging their authority is probably redundant, but the rest of the clauses require you to cooperate with any investigation and seek the cooperation of your staff and volunteers. [Note: you are not required to compel their cooperation as they may have their own legal rights].	
S3. Industry Participation Policy <i>Is the value of the contract between \$4m (inc GST) (\$1m in regional SA) and \$50m? If YES ...</i> [Clauses not reproduced here]	These are standard in SA commercial contracts, but may not have been part of NFP funding. Note: the thresholds of \$4m - \$50m, and (\$1m - \$50m regional) are the total value of the contract – not per annum. So if you have a 3 year contract for \$1.5m per year, this clause will apply. (We were unsuccessful in arguing about this). Requires you to implement a “Standard Industry Participation Policy” with yearly reporting – plus meetings the Industry Advocate to explain. These clauses are oppressive and often irrelevant for human services, but as they are locked-in to commercial procurement, we were unsuccessful in arguing they should not apply.	
S4. Industry Participation Policy <i>Is the value of the contract over \$50m (inc GST)? If YES ...</i> [Clauses not reproduced here]	Again note the \$ threshold here is total contract value, not annual payment. This is a more onerous regime for very large contracts, but probably won't apply to much NFP funding.	
S5. Suitability of Persons <i>Are the Funded Services to be provided where children may be present? If YES ...</i> Note: this clause is mandatory for Dept of Education and Dept for Child Protection [Clauses not reproduced here]	This is a long and onerous set of procedures that go beyond (but in some cases replicate) the requirements in legislation. It also requires reporting to government and imposes extra procedures. Note: the threshold here is if children “may be present”, which is very broad and could capture non-children's services. It is different to S2 above which is only for children's services, and much higher than the legislative threshold which is unsupervised contact with children. The Acts do not require reporting results of screening to govt (though you are bound to Act on them according to legislation. This clause requires the reporting of your Personnel's Relevant Histories to govt. However Children and Young People (Ministerial Safety Act) 2017 also requires policies and procedures to be put into place, and notification of these to govt.	

Standard NFP Funded Services Special Conditions Clause Bank		Comments for NFPs
		<p>Essentially this contract clause is trying to require screening of everyone involved at any level with any service where children may be present, and require their removal from the service. However, it only applies to that funded service: for instance, a Board member would not require screening if they have no involvement in the funded service.</p> <p>Note though, the clause is badly drafted so while all such persons must be screened, the only ones who are required to be removed are those the “subject of any allegation, arrest, charge or conviction for a sexual offence or an offence of indecency” (S5.5). So, (particularly with the govt now advertising on TV that drink-driving may impact on your screening) a person could fail their screening, but need not be removed under this section (although legislation may still apply). By contrast, if you want to remove someone, you could just allege that they used indecent language at a footy game and that may suffice!</p> <p>Note that in the event of an NFP finding that one of their personnel (staff/vollies/Board) is Unsuitable, clause S5.8 imposes particular requirements about notification and support that are not set out elsewhere.</p> <p>S5.10 seems intent on repeating the requirements of the Act, but also includes the form and wording of your undertakings to govt.</p> <p>Despite their power to terminate for breaches of contract in the main body of the contract, apparently they require S5.11 to re-state the govt’s ability to terminate the contract. However, the clause also gives the govt the ability to suspend the contract and imposes reporting/compliance obligations on the NFP beyond the life of the contract.</p>
S5. Suitability of Persons (Other Offences)	<p><i>Are the Funded Services to be provided where children may be present? If YES ...</i></p> <p>[Clauses not reproduced here]</p>	<p>S6 appears to completely duplicate the process under clause 7.2 in the main contract.</p>
S7. Information Sharing	<p><i>Does this procurement involved the delivery of Funded 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 PC012 Information Privacy Principles Instructions?</i></p> <p>[Clauses not reproduced here]</p>	<p>This basically implements the Information Sharing Guidelines already in use in human services (and probably not relevant in other area).</p>

Grant Agreement Special Conditions Clause Bank		Comments for NFPs
Special Conditions	<i>Is this a high risk and/or complex Grant? If Yes, contact the Crown Solicitor's Office.</i>	This probably means that there may be other clauses/terms imposed where the contract is high risk or complicated. However, this does not mean the Dept can simply add new clause and requirements. Clauses would need to be drafted by Crown Law and approved by Treasury.
S1-6. Construction Clauses	<p><i>Is the Grant to be used for the purposes of constructing or redeveloping facilities e.g. clubrooms, gymnasiums, etc? If YES, insert the following clauses as Special Conditions in Attachment 3.</i></p> <p>[Clauses not reproduced here]</p>	These are all clauses to provide extra procedures and safeguards for major capital works. Essentially, you must have all relevant approvals in place, quarantine the funding, meet any cost blow-outs (but repay an unexpended funds), get on with the job and meet the timetables once you have the money, maintain the facility once it is built and not change its purpose without govt approval. Additional insurances will also be required.
S7. Smoke Free Environment	<p><i>Is the Grant to be used for the purposes of funding an Outdoor Event? If YES ...</i></p> <p>[Clauses not reproduced here]</p>	<p>This relates particularly to sports and arts events/festivals, but note the obligation is to use "best endeavours" to make it smoke free. Hence, accepting tobacco sponsorship would be hard to explain and a breach of contract, but if the toilet mechanic smokes it is not an immediate breach of contract.</p> <p>Note: this clause may be problematic for some events where a blanket ban may discourage the target audience (e.g. a fair for homeless people), but there should be room to negotiate what "best endeavours" looks like in that instance.</p>