

NFP FUNDED SERVICES SPECIAL CONDITIONS CLAUSE BANK

PLEASE NOTE: ADDITIONAL AGENCY SPECIFIC CLAUSES MAY ONLY BE INCLUDED AS SPECIAL CONDITIONS IF APPROVED BY THE DEPARTMENT OF TREASURY AND FINANCE.

*Are Funded Services being provided by a panel of providers? If **Yes** insert the following clause as Special Conditions in Attachment 3. 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 the NFP providing Funded Services to children or young people? If **Yes** insert the following clause as a Special Condition in Attachment 3. If **No** proceed to next question.*

S2. COOPERATING WITH INVESTIGATIONS

- S2.1 The NFP acknowledges that the Chief Executive of the Department for Child Protection and the Special Investigations Unit of the Department for Child Protection ("**Government Investigators**") have the authority to institute investigations under child protection legislation.
- S2.2 The NFP must in relation to the Funded Services:
 - S2.2.1 cooperate with any investigation instituted by a Government Investigator; and
 - S2.2.2 use its best endeavours to ensure the co-operation of its officers, employees; and
 - S2.2.3 seek the cooperation of its volunteers, agents and sub-contractors.
- S2.3 Where the Government Investigator is entitled either by law or by the South Australian Government Information Privacy Principles to personal information and records containing personal information held by the NFP it may request and the NFP must provide, copies of the personal information and records.

*Does an Industry Participation Plan (Standard or Tailored) apply to this contract? 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 Industry Participation Plan ("**IPP**") approved by the Industry Advocate ("**IA**").
- S3.2 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

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- S3.3 The Industry Participation Reporting Period is¹:
- S3.3.1 the period between the Commencement Date and the date six (6) months after the Commencement Date;
 - S3.3.2 each subsequent six (6) month period during the Term;
 - S3.3.3 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 S3.3.2, the period from the conclusion of the preceding Industry Participation Reporting Period until the date of termination or expiry of the Agreement;
 - S3.3.1 for short-term projects of strategic importance to the State the period notified by the IA to the NFP in writing; and
 - S3.3.2 where the Term is for a period less than six (6) months, the entire Term.
- S3.4 The NFP must attend any meeting scheduled by the IA during the Term to review how the IPP is being implemented and advanced, and for this purpose, the NFP must provide all information reasonably requested by the IA. The IA must give the NFP not less than ten (10) Business Days' notice of any such meeting.
- S3.5 The IA may, by written notice require that the NFP within a reasonable time specified in the notice, provide information or documents to enable the IA to assess the NFP's compliance with this special condition.
- S3.6 If the IA reasonably believes that the NFP is not complying with the requirements of this special condition, the IA may by notice in writing direct that the supply comply with those requirements.
- S3.7 Upon receipt of the notice, if the NFP is of the opinion that its noncompliance is reasonable and justified, the NFP may provide a response to the IA outlining that opinion and the reasons for it.
- S3.8 The NFP's failure to comply, in whole or in part, with the commitments contained within the IPP will be a factor taken into account in the award of future contracts for the Government of South Australia.
- S3.9 In this special condition, "**Industry Advocate**" or "**IA**" means the person who from time to time has been appointed to the position of Industry Advocate and "**Term**" means the period of the Agreement.

Are the Services to be provided to children? If Yes, the following clauses may be inserted as special conditions in Attachment 3. If No, proceed to next question.

S4. CHILD SAFETY

S4.1 Additional Definitions

- S4.1.1 **Child Safety Act** means the *Children and Young People Safety Act 2017* (SA);
- S4.1.2 **Prescribed Offence** has the meaning given in the Prohibited Persons Act;
- S4.1.3 **Prescribed Position** has the meaning given in the Prohibited Persons Act;
- S4.1.4 **Presumptive Disqualification Offence** has the meaning given in the Prohibited Persons Act;

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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- S4.1.5 **Prohibited Person** has the meaning given in the Prohibited Persons Act;
- S4.1.6 **Prohibited Persons Act** means the *Child Safety (Prohibited Persons) Act 2016* (SA);
- S4.1.7 **Prohibition Notice** has the meaning given in the Prohibited Persons Act;
- S4.1.8 **Working with Children Check** has the meaning given in the Prohibited Persons Act.

S4.2 Fundamental Term

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

S4.3 No Prohibited Persons

S4.3.1 The NFP must:

- (a) comply with the obligations of employers under Division 2 Part 4 of Prohibited Persons Act in relation to NFP Personnel that are employed in Prescribed Positions and delivering Services;
- (b) as required by the Government Party's Contract Manager, verify that a Working with Children Check has been conducted in relation to the NFP Personnel in Prescribed Positions that are delivering Services; and
- (c) subject to clause S4.3.3, immediately procure the ongoing exclusion of any NFP Personnel that are employed in Prescribed Positions from involvement in delivery of the Services, if they are found to be a Prohibited Person.

S4.3.2 Unless such notification causes the NFP to be in breach of the Prohibited Persons Act the NFP must promptly notify the Government Party's Contract Manager if it becomes aware that NFP Personnel who are involved in the delivery of the Services:

- (a) is a Prohibited Person; or
- (b) is the subject of any allegation, arrest, charge or conviction for a Prescribed Offence or a Presumptive Disqualification Offence (whilst not being the subject of a Prohibition Notice),

S4.3.3 The NFP will not be in breach of its obligation under clause S4.3.1(c) where the NFP has complied with its obligations under the Prohibited Persons Act and the central assessment unit has failed to provide notification to the NFP in accordance with section 41(1) of the Prohibited Persons Act.

S4.3.4 As often as reasonably requested by the Government Party, the NFP must give the State evidence satisfactory to the State of the NFP's compliance with the obligations of employers under Division 2 Part 4 of Prohibited Persons Act.

S4.4 Imposing Obligations on NFP Personnel

The NFP must ensure that:

- S4.4.1 NFP Personnel involved in the delivery of Services are aware of and act in a manner consistent with the provisions of this clause at all times; and
- S4.4.2 NFP Personnel (not being the NFP) immediately inform the NFP if the NFP Personnel is the subject of any allegation, arrest, charge or conviction for a Prescribed Offence.

S4.5 Child Safe Environment

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In addition to all other obligations under this Agreement, where the NFP is an organisation to which section 114 of the Child Safety Act applies, the NFP must:

S4.5.1 (**policies and procedures**): have in place appropriate policies and procedures to ensure that, as required by the Child Safety Act:

- (a) safe environments for children and young people are established and maintained; and
- (b) appropriate reports of child abuse and neglect are made;

S4.5.2 (**lodge statement**): lodge the statement required by section 114 of the Child Safety Act about the NFP's child safe policies and procedures with the Chief Executive of the Department for Child Protection, or such other government agency as the State or South Australian Government publicly notifies (**Successor Children's Protection Agency**), within 10 Business Days after putting in place those policies and procedures; and

S4.5.3 (**response**): respond, as soon as reasonably practicable (and in any event 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 S4.

S4.6 Compliance with Child Safety Practices and Procedures

The NFP must at all times comply with any practices, policies and procedures in relation to child safe environments notified in writing by the Government Party's Contract Manager.

S4.7 Effect of Non-Compliance

If the NFP does not strictly, fully and immediately comply with any or all of its obligations under clauses S4.3.1 and S4.3.2, then such failure to comply will constitute a fundamental breach of the Agreement entitling the Government Party to terminate the agreement immediately upon giving notice in writing to the NFP.

Does this procurement involve 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 (IPPS) Instructions? If Yes insert the following clause as a Special Condition in Attachment 3.

S5. INFORMATION SHARING

S5.1 "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.

S5.2 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.

S5.3 The NFP will, in consultation with a representative from the Department of the Premier and Cabinet, develop an ISG appendix for the NFP ("**NFP's ISG Appendix**"), as prescribed by the ISG (<https://www.dpc.sa.gov.au/responsibilities/information-sharing-guidelines/about-the-information-sharing-guidelines>).

S5.4 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.

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S5.5 The Parties acknowledge that this Agreement constitutes a 'State contract' for the purpose of the Privacy Act 1998 (Commonwealth).

Has a supplier requested that the contract includes a Force Majeure clause or is there a genuine possibility that the supply will be affected by a Force Majeure event such as COVID-19? If Yes insert the following clause as a Special Condition in Attachment 4. If No proceed to next question.

Please note that as this clause has the effect of suspending performance of a party's obligations under a contract, a party must be genuinely unable to perform its obligations and must have done everything possible to mitigate the effects of the Force Majeure. If you are uncertain as to whether or not to include a Force Majeure clause in a contract please contact the Crown Solicitor's Office.

S6. FORCE MAJEURE

S6.1 "Force Majeure" means the following events or circumstances:

- S6.1.1 fire, flood, earthquake, elements of nature, acts of God, malicious damage, epidemic, explosion, sabotage, riot, civil disorder, rebellion or revolution; or
- S6.1.2 any change of law, executive or administrative order or act of either general or particular application of any government, or of any official acting under the authority of that government, prohibition or restriction by domestic or foreign laws, regulations or policies, quarantine or customs restrictions,

which the affected party:

- S6.1.3 did not cause; and
- S6.1.4 cannot prevent, control or influence; and
- S6.1.5 the effect of which prevents that party from complying with any of its material obligations under this Agreement.

S6.2 The affected party's obligations directly affected by a Force Majeure and any corresponding entitlement of the other party will be suspended to the extent and for so long as the performance of the affected party's obligations are prevented by the Force Majeure.

S6.3 The affected party must as soon as it becomes aware of the Force Majeure notify the other party in writing providing details of:

- S6.3.1 the nature and extent of the obligations affected;
- S6.3.2 if known, the expected effect of the Force Majeure on the other party;
- S6.3.3 action that the affected party has taken or will take to avoid or mitigate the expected effect of the Force Majeure; and
- S6.3.4 details of insurance policies on which the party may be able to rely to compensate or mitigate the financial effect of the Force Majeure.

S6.4 The affected party must:

- S6.4.1 use its best endeavours to prevent, avoid, remedy, work around or overcome the effect of the Force Majeure as quickly as possible through prudent management processes, policies and precautions, including the use of alternative resources, the procuring of goods or services from another source, and work around plans;
- S6.4.2 keep the other party informed of the continuation and expected duration of the Force Majeure and of measures taken to comply with this clause; and

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- S6.4.3 recommence performance of its obligations as soon as possible without delay after the Force Majeure ceases to affect the affected party's performance under this Agreement.
- S6.5 If a Force Majeure causes the affected party to allocate limited resources between or among its other customers, the affected party must not place the other party lower in priority to any other similarly affected customer of the affected party.
- S6.6 During any period in which the affected party is not performing obligations because of a claimed Force Majeure, the other party may (but need not) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation which the affected party is not performing without incurring any liability to the affected party.
- S6.7 If the affected party is materially unable to perform its obligations under this Agreement by reason of a Force Majeure for a continuous period of [*insert months*] or a cumulative period of [*insert months*], then the other party may terminate this Agreement by written notice without prejudice to the terminating party.

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