

STANDARD GOODS AND SERVICES AGREEMENT



**Government
of South Australia**

TITLE: «Contract Title»

NUMBER: «Contract Number»

AGREEMENT made on

BETWEEN:

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

AND:

THE PARTY NAMED IN ITEM 2 OF ATTACHMENT 1 (“the Supplier”)

IT IS AGREED that this Execution Page, the Agreement Details (Attachment 1), the Terms and Conditions (Attachment 2), the Glossary of Defined Terms (Attachment 3), the Special Conditions (Attachment 4), the Specifications (Attachment 5) and the Pricing and Payment (Attachment 6), will together comprise the Agreement between the Parties for the provision of the Goods and/or Services specified in Attachment 1.

EXECUTED AS AN AGREEMENT

SIGNED by a duly authorised officer for and on behalf)
of THE GOVERNMENT PARTY NAMED IN ITEM 1)
OF ATTACHMENT 1)

Authorised officer signature

«Contract Execution Delegation»

Authorised officer name

EXECUTED by **THE PARTY NAMED IN ITEM 2**)
OF ATTACHMENT 1 by a duly authorised officer)
in accordance with section 126 of the)
Corporations Act 2001 (Cth):)

.....
Authorised officer signature

.....
Authorised officer name

*This signature block is reflective of the
supplier being a company in
accordance with section 126 of the
Corporations Act 2001*

Attachment 1 – Agreement Details

Item 1	Government Party	Minister for Child Protection ABN 54 598 525 171 Level 12 North, 1 King William St, Adelaide SA 5000			
Item 2	Supplier	«Service Provider» «Service Provider Address» Where trustee: «Trustee»			
Item 3	Commencement Date	«Commencement Date»			
Item 4	Expiry Date	«Contract End Date»			
Item 5	Extension Period(s)	Number of extensions: «Extensions Length»			
		Extension	Period	Start Date	End Date
Item 6	Supplier's ABN	«ABN»			
		Registered for GST:		«Registered for GST»	
Item 7	Contract Managers	Government Party:	Contract Manager	«Government Party»	
		Supplier:	Contract Manager	«NFP»	
Item 8	Named Persons	«Named Persons»			
Item 9	Details of Goods	«Details of Goods»			
Item 10	Delivery Date Delivery Point	«Goods Delivery Date and Point»			
Item 11	Installation Date	«Installation Date»			
Item 12	Warranty Period	«Warranty Period»			
Item 13	Details of Services	NOTE: All Service Specifications and Service Provision Requirements in this agreement may change at the discretion of the Government Party with reasonable notice. It is the Service Provider's responsibility to remain aware and compliant with the most recent version throughout the provision of services. «Details of Services»			
Item 14	Delivery Date Delivery Point	«Services Delivery Date and Point»			
Item 15	Reports and Manuals	«Reports and Manuals»			
Item 16	Milestone Dates	«Milestone Date»			

Item 17	Price and Payment (including address for invoices)	« Total Max Price (Incl. GST) » Max Total Price (Incl. GST) Manner of Payment: Subject to the provisions of this Goods and Services Contract, the Government Party will pay in accordance with Attachment 6 - Price and Payment.
Item 18	Insurances	
	Public Liability Insurance	
	Product Liability Insurance	
	Other	
Item 19	Liability Limit	«Liability Limit» x the Total Max Price (Incl. GST if applicable)
Item 20	Other Termination Rights	«Other Termination Rights»
Item 21	Approved Subcontractors	«Approved Subcontractors»
Item 22	Additional Personnel Checks	«Additional Personnel Checks»
Item 23	Notice Period for Termination for Convenience	«G&S Notice Period for Termination for Co»

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. SUPPLY OF GOODS (IF APPLICABLE)**
 - 3.1 If Goods are being supplied under this Agreement then the Supplier must:
 - (a) supply the Goods in accordance with this Agreement;
 - (b) sell the Goods without encumbrance;
 - (c) deliver the Goods to the Delivery Point on or before the Delivery Date;
 - (d) comply with the Government Party's reasonable directions and delivery instructions;
 - (e) if requested by the Government Party, provide the Government Party with material safety data sheets with respect to the Goods delivered;
 - (f) provide test evidence for the Goods if required; and
 - (g) if indicated in Attachment 1, install the Goods on or before the Installation Date.
 - 3.2 If the Supplier cannot comply with any of its obligations under clause 3.1, the Supplier must notify the Government Party in writing immediately.
- 4. INSPECTION AND ACCEPTANCE OF GOODS (IF APPLICABLE)**
 - 4.1 The Government Party may inspect the Goods to determine whether to accept or reject the Goods.
 - 4.2 The Government Party must accept the Goods if they conform with the requirements of this Agreement.
 - 4.3 Subject to clause 4.4, the Goods are deemed to be accepted either:
 - (a) on delivery, if the Government Party notifies the Supplier that it accepts the goods; or
 - (b) if no notice is issued by the Government Party, then 5 Business Days after delivery of the Goods to the Delivery Point.
 - 4.4 If the Goods are consumable products and the Goods are found to be defective when first used, then the Government Party may reject the Goods under clause 4.5.
 - 4.5 If the Government Party rejects the Goods due to non-conformity with the requirements of this Agreement, then the Government Party must notify the Supplier as soon as possible and require the Supplier at its sole cost, and at the Government Party's election to either:
 - (a) resupply the Goods and remove the non-conforming Goods from the Delivery Point; or
 - (b) repair the Goods.
 - 4.6 Acceptance of the Goods does not relieve the Supplier of any of its obligations under this Agreement.
 - 4.7 The Supplier bears the risk in the Goods until delivery to the Delivery Point. Title in the Goods will pass to the Government Party upon the Government Party's acceptance of the Goods.
- 5. WARRANTY PERIOD (IF APPLICABLE)**
 - 5.1 If during the Warranty Period the Goods fail to comply with the warranties in clause 9.1 then the Government Party may in its absolute discretion require that the Supplier at its expense:
 - (a) replace the Goods within 10 Business Days of notification by the Government Party (or such other time as is agreed); or
 - (b) refund the Price.
- 6. SUPPLY OF SERVICES (IF APPLICABLE)**
 - 6.1 If Services are being supplied under this Agreement then the Supplier must ensure that the Supplier's Personnel provide the Services described in Attachment 1 in accordance with the terms and conditions of this Agreement.
 - 6.2 Where Attachment 1 specifies Named Persons then the Services must be delivered by those Named Persons.
 - A. The Supplier 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.
 - 6.3 The Supplier must ensure that Services are delivered:
 - (a) to a standard that meets or exceeds the Service Levels;
 - (b) in accordance with the warranties in clause 9.4; and
 - (c) by any Milestone Dates.
 - 6.4 The Government Party's remedies for the Supplier's failure to meet a Service Level or for a breach of a warranty, includes resupply of the Services, a reduction of the price, termination, rebates or any other remedy specified in the Special Conditions.
- 7. REPORTS AND MANUALS (IF APPLICABLE)**

The Supplier must provide those reports, manuals or other materials specified in Attachment 1.
- 8. SERVICE VARIATION (IF APPLICABLE)**
 - 8.1 If the Government Party wishes to vary the scope of the Services ("Variation"), it must issue a written request to the Supplier and the Supplier 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) the varied price and payment arrangements; and
 - (c) any changes to the terms that apply to the performance of the Services.
 - 8.2 The Parties must negotiate in good faith to agree on the price and other terms applicable to the Variation.
 - 8.3 If the Parties agree in writing to the terms of the Variation then:
 - (a) the Supplier must perform the Services as varied by the Variation;
 - (b) the Government Party must pay the varied price;
 - (c) the terms and conditions of the Agreement are varied by the terms of the Variation.
- 9. SUPPLIER'S WARRANTIES**
 - 9.1 If Goods are being supplied under this Agreement then the Supplier warrants that it has good and unencumbered title to the Goods and the Goods:
 - (a) conform with any description applied and any sample provided by the Supplier;
 - (b) are new (unless otherwise specified);
 - (c) are free from defects in materials, manufacture and workmanship;
 - (d) conform to any applicable Australian Standards or other standards nominated in this Agreement;
 - (e) conform to the Specifications and any technical Specifications provided by the Supplier;
 - (f) are of merchantable quality;
 - (g) are installed correctly (if the Supplier is responsible for installation);
 - (h) are fit for their intended purpose; and
 - (i) are manufactured and supplied without infringing any person's Intellectual Property Rights.

- 9.2 The Supplier must ensure that the Government Party receives the full benefit of any manufacturer's warranties in respect of the Goods.
- 9.3 During any Warranty Period any defects in the Goods must be rectified at the Supplier's expense.
- 9.4 If Services are being supplied under this Agreement then the Supplier warrants that the Services will:
- comply with the description of the Services in Attachment 1;
 - be provided with due care and skill;
 - be provided in a timely and efficient manner;
 - be provided in accordance with the best practices current in the Supplier's industry;
 - be supplied without infringing any person's Intellectual Property Rights;
 - be performed by the Supplier and/or the Supplier's Personnel; and
 - be supplied in the most cost effective manner consistent with the required level of quality and performance.
- 10. SUPPLIER'S PERSONNEL**
- 10.1 The Supplier, if required by the Government Party, must give its consent to and procure the consent of the Supplier's Personnel, to the conduct of a police check or any Additional Personnel Checks specified in Attachment 1.
- 10.2 If the Government Party gives the Supplier notice in writing requiring those persons to be withdrawn from supplying the Goods or providing the Services, and the Supplier must immediately comply with the notice and provide replacement Personnel acceptable to the Government Party.
- 10.3 The Supplier and the Supplier's Personnel must only use the Government Party's computer systems with the specific authorisation of the Government Party and only in the manner as directed by the Government Party from time to time.
- 10.4 The Government Party reserves the right to refuse entry to any of the Government Party's premises to any of the Supplier's Personnel.
- 11. PRICE AND PAYMENT**
- 11.1 In consideration for the supply of the Goods and/or the Services, the Government Party will pay the Price.
- 11.2 Unless otherwise expressly stated the Price is inclusive of GST.
- 11.3 The Supplier is entitled to invoice the Government Party for payment in respect of the Goods and/or Services, when the Goods have been supplied and accepted under clause 4, and the Services have been supplied in accordance with this Agreement.
- 12. GST**
- 12.1 Subject to clause 12.2 the Supplier represents that:
- the ABN shown in Attachment 1 is the Supplier's ABN; and
 - it is registered under the *A New Tax System (Australian Business Number) Act 1999* (Cth),
- 12.2 If the Supplier is not registered for GST, then GST must not be charged on supplies made under this Agreement.
- 13. INTELLECTUAL PROPERTY RIGHTS**
- 13.1 Nothing in this Agreement affects the ownership of Intellectual Property Rights created before the Commencement Date.
- 13.2 The Supplier 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. INSURANCE**
- 14.1 The Supplier must effect and maintain the policies of insurance specified in Attachment 1 for not less than the amounts specified in Attachment 1.
- 14.2 The policies of insurance referred to in clause 14.1 must be held until the expiry of the Agreement.
- 15. LIABILITY LIMIT**
- 15.1 The Supplier's liability to the Government Party under this Agreement is limited to the amount specified in Attachment 1.
- 16. CONFIDENTIAL INFORMATION**
- 16.1 Subject to this clause 16, neither Party may disclose any Confidential Information belonging to the other Party except as genuinely and necessarily required for the purpose of this Agreement.
- 16.2 A Party may disclose Confidential Information belonging to the other Party:
- to an employee, agent or adviser of that Party, on a "need to know" and confidential basis;
 - as required by law or a court order;
 - in accordance with any Parliamentary or constitutional convention;
 - to the Australian Competition and Consumer Commission (ACCC) if the party reasonably suspects, or is notified by the ACCC that it reasonably suspects, that there is Cartel Conduct or unlawful collusion in connection with the supply of Goods or Services under this Agreement; or
 - for the purposes of prosecuting or defending proceedings.
- 16.3 The Parties may mutually agree to disclose Confidential Information.
- 17. SET-OFF**
- Any claim the Government Party may have against the Supplier may be set off against monies owed to the Supplier under this Agreement.
- 18. DISPUTE RESOLUTION**
- 18.1 Subject to clause 18.4 a Party may not commence legal proceedings without first referring the dispute to the other Party under this clause.
- 18.2 Either Party may give the other a notice in writing ("**dispute notice**") setting out the details of the dispute.
- 18.3 Within 5 Business Days or such other period as may be agreed by the Parties, representatives must meet and use reasonable endeavours to resolve the dispute.
- 18.4 A Party may seek immediate interlocutory relief or other interim remedy in case of genuine urgency.
- 19. ENDING THIS CONTRACT**
- 19.1 The Government Party may terminate this Agreement immediately upon giving notice in writing to the Supplier if:
- the Government Party reasonably forms the opinion that the Supplier will be unable to perform its obligations under this Agreement;
 - the Supplier 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 Supplier requiring the rectification of such breach;
 - the Government Party becomes aware that the Supplier is in breach of its statutory obligations with respect to its employees;
 - the Supplier fails to comply with a notice issued under clause 10.2; or
 - the Supplier fails to disclose a conflict of interest;
 - any Other Termination Right occurs; or
 - the Supplier suffers or, in the reasonable opinion of the Government Party, is in jeopardy of becoming subject to any form of insolvency administration or bankruptcy.
- 19.2 The Government Party may terminate this Agreement without cause by giving the Supplier the period of notice specified in Attachment 1 ("**Notice Period for Termination for Convenience**").
- 19.3 If the Government Party terminates this Agreement in accordance with clause 19.2:
- the Supplier has no claim against the Government Party arising out of or in relation to such termination other than the right to be paid for Goods accepted and/or Services provided before the effective termination date; and
 - the Supplier must comply with all reasonable directions given by the Government Party.
- 19.4 The Supplier 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 14 days of the Supplier giving notice in writing to the Purchaser requiring the rectification of such breach.

20. EFFECT OF ENDING THIS CONTRACT

- 20.1 Any termination of this Agreement by either Party does not affect any accrued right of either Party.
- 20.2 Despite termination or completion of this Agreement, this clause 20 and clauses 9, 13, 14, 15, 16, 17 and those Special Conditions that by their nature remain in force, shall survive.

21. SUBCONTRACTING

- 21.1 With the exception of the Approved Subcontractors described in Attachment 1, the Supplier must not engage any subcontractor without the prior written permission of the Government Party.
- 21.2 The Supplier remains responsible for obligations performed by the Approved Subcontractors to the same extent as if such obligations were performed by the Supplier.

22. CONFLICT OF INTEREST

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

23. COMPLIANCE WITH LAWS

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

24. GOVERNING LAW AND JURISDICTION

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

25. 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.

26. NO ASSIGNMENT

- 26.1 The Supplier 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.
- 26.2 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.

27. 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.

28. SEVERANCE

- 28.1 Each word, phrase, sentence, paragraph and clause of this Agreement is severable.

- 28.2 Severance of any part of this Agreement will not affect any other part of this Agreement.

29. 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.

30. WORK HEALTH & SAFETY

- 30.1 The Supplier 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.
- 30.2 If all or part of the work under this Agreement is to be provided on the premises of the Government Party and under the direction of the Government Party, the Supplier must comply with the Government Party's work health and safety policies, procedures and instructions. If the Supplier becomes aware of any potentially hazardous situation on the Government Party's premises, the Supplier must immediately bring it to the Government Party's attention.

31. ACTING ETHICALLY

The Supplier must conduct itself in a manner that does not invite, directly or indirectly, the Government Party's officers, employees or agents or any public sector employee (as defined in the *Public Sector Act 2009 (SA)*) to behave unethically, to prefer private interests over the Government Party's interests or to otherwise contravene the Code of Ethics for the South Australian Public Sector.

32. INTERPRETATION

- 32.1 Defined terms are set out in the Glossary of Defined Terms in Attachment 3.
- 32.2 In resolving inconsistencies in this Agreement, the documents have the following order of priority:
- (a) Special Conditions (Attachment 4);
 - (b) Standard Terms and Conditions (Attachment 2); and
 - (c) the other Attachments.
- 32.3 In this Agreement (unless the context requires otherwise):
- (a) a reference to any legislation includes:
 - (i) all legislation, regulations and other forms of statutory instrument issued under that legislation; and
 - (ii) any modification, consolidation, amendment, re-enactment or substitution of that legislation;
 - (b) a word in the singular includes the plural and a word in the plural includes the singular;
 - (c) a reference to two or more persons is a reference to those persons jointly and severally;
 - (d) a reference to dollars is to Australian dollars;
 - (e) a reference to a Party includes that party's administrators, successors and permitted assigns.

33. SPECIAL CONDITIONS

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

Attachment 3 – Glossary of Defined Terms

In this Agreement:

- (a) **“Acceptance Date”** means the date that the Goods are accepted by the Government Party;
- (b) **“Approved Subcontractors”** means those subcontractors specified in Attachment 1;
- (c) **“Business Day”** means any day that is not a Saturday or Sunday or a public holiday in South Australia;
- (d) **“Cartel Conduct”** means conduct by two or more parties who are competitors (or would be but for the conduct) who enter into a contract, arrangement or understanding that involves price fixing, output restrictions, allocating customers, suppliers or territories, or bid-rigging, as defined in s44ZZRD of the *Competition and Consumer Act 2010* (Cth);
- (e) **“Code of Ethics for the South Australian Public Sector”** is the code of ethics for the purposes of the *Public Sector Act 2009* (SA);
- (f) **“Confidential Information”** means information which is identified either as confidential information (if disclosed by the Government Party) or proprietary information (if disclosed by the Supplier), but does not include this Agreement;
- (g) **“Consultancy Services”** means services provided by Consultants;
- (h) **“Consultant”** has the same meaning as in DPC027 *Disclosure of Government Contracts* and means a person or entity that is engaged by a public authority for a specified period to carry out a task that requires specialist skills and knowledge not available in the public authority. The objectives of the task will be achieved by the consultant free from direction by the public authority as to the way it is performed and in circumstances in which the engagement of a person under normal circumstances is not a feasible alternative;
- (i) **“Delivery Date”** means the date and time specified in Attachment 1 for delivery of the Goods;
- (j) **“Delivery Point”** means the location(s) specified in Attachment 1, where the Goods and/or Services will be delivered;
- (k) **“Extension Period”** means the period by which the Agreement is extended as specified in Attachment 1;
- (l) **“Goods”** means the goods specified in Attachment 1;
- (m) **“GST”** means the tax imposed by the GST Law;
- (n) **“GST Law”** has the meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (o) **“Installation Date”** means the date specified in Attachment 1 for the installation of the Goods;
- (p) **“Intellectual Property Rights”** means all intellectual property rights, including but not limited to:
 - (i) patents, copyright, registered designs, trademarks, know-how and any right to have Confidential Information kept confidential; and
 - (ii) 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;
- (q) **“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;
- (r) **“Measurement Period”** means the period over which the performance of a Service Level is measured;
- (s) **“Milestone Dates”** means dates by which Services must be delivered as specified in Attachment 1;
- (t) **“Named Persons”** means the persons specified in Attachment 1;
- (u) **“Notice Period for Termination for Convenience”** means the time period specified in Attachment 1;
- (v) **“Other Termination Right”** means the termination rights specified in Attachment 1;
- (w) **“Party”** means a party to this Agreement;
- (x) **“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;
- (y) **“Purchase Order”** means an order for Goods and/or Services submitted by the Government Party to the Supplier;
- (z) **“Price”** means the price payable under this Agreement specified in Attachment 1 and includes any price varied under clause 8;
- (aa) **“Service Levels”** means the service levels (if any) specified in the Specifications;
- (bb) **“Services”** means the services specified in Attachment 1;
- (cc) **“Special Conditions”** means the conditions in Attachment 4 and where relevant includes agency specific Special Conditions;
- (dd) **“Specifications”** means the detailed description of the Goods/Services in Attachment 5;
- (ee) **“Supplier Personnel”** means any Approved Subcontractors, employees, agents and any other person employed or engaged by the Supplier to perform this Agreement and includes the Named Persons;
- (ff) **“Term”** means the period commencing on the Commencement and ending on the Expiry Date unless terminated earlier and includes any extension and;
- (gg) **“Warranty Period”** means the period specified in Attachment 1.

Attachment 4 – Special Conditions

Special conditions are provided by Procurement Services SA, refer to <https://www.procurement.sa.gov.au/>.

Special Conditions **excluded** from this Agreement are: «Excluded Special Conditions».

Special Conditions **included** in this agreement are listed below:

- S1. PURCHASE ORDERS**
- S1.1 The Government Party may purchase Goods and Services under this Agreement by issuing a Purchase Order to the Supplier.
- S1.2 The Parties agree that the engagement of the Supplier by the Government Party as a preferred supplier and the offer by the Supplier to supply Goods and Services at the Price and on the terms of the Agreement, is good and sufficient legal consideration.
- S1.3 A Purchase Order must be in writing, be approved by the Government Party, and contain as a minimum:
- S1.3.1 Purchase Order Number;
- S1.3.2 Date of Issue;
- S1.3.3 Description of Goods and/or Services;
- S1.3.4 Quantity of Goods (if any);
- S1.3.5 Delivery Point for Goods (if required);
- S1.3.6 Installation Date for Goods (if required);
- S1.3.7 Reports and other materials (if any); and
- S1.3.8 Unit Price and total Price.
- S1.4 The Supplier must supply the Goods and the Services ordered by the Government Party under a Purchase Order in accordance with the terms of this Agreement.
- S1.5 The terms of the Standard Goods and Services Agreement will take priority over any purchase order terms and conditions that may be included with a Purchase Order.
- S2. NO MINIMUM PURCHASE**
- S2.1 The Government Party is under no obligation to purchase a minimum quantity of Goods or Services from the Supplier during the Term.
- S3. NON-EXCLUSIVITY**
- S3.1 This Agreement is entered into on a non-exclusive basis.
- S3.2 The Government Party may purchase other goods and services similar to the Goods and Services from other providers.
- S4. CONSULTANCY**
- S4.1 All references to “the Supplier” are replaced by “Consultant” and all references to “Price” are replaced by “Fees” in the Agreement.
- S4.2 The Services must be performed personally by the Named Persons.
- S4.3 The Government Party may give reasonable instructions to the Consultant about the performance of the Services and the Consultant must comply with those instructions, including provision of additional reports, attendance at meetings and the making of presentations.
- S4.4 The Consultant must effect and maintain professional indemnity insurance during the Agreement at the minimum level of cover required in the ordinary course of the Consultant’s business and such cover must continue for three years after the expiry of the Agreement.
- S4.5 The following paragraphs replace the second subclause of the Intellectual Property Rights clause in the Agreement:
- S4.5.1 Subject to the first subclause of the Intellectual Property Rights clause in the Agreement, title and all Intellectual Property Rights in the reports and other materials vests in the Government Party on creation.
- S4.5.2 The Consultant must do anything necessary to vest all Intellectual Property Rights in the reports and other materials in the Government Party.
- S4.5.3 The Consultant grants to the Government Party a perpetual, irrevocable,

royalty free, fee free licence to use those of the Consultant's Intellectual Property Rights as necessary for the purpose of using the reports and other materials.

S4.5.4 The Government Party grants to the Supplier the right to access and use the reports and other materials solely for the purpose of providing the Consultancy Services to the Government Party in accordance with the delivery of the services contained within Attachment 1, Item 13.

S4.5.5 Each party grants the other only the licences and rights specified. No other licenses or rights (including licences or rights under patents) are granted.

S5. LIABILITY

S5.1 Where a scheme approved under the Professional Standards Act 2004 (SA) applies, the Consultant's liability to the Government Party for any loss or causes of action arising in relation to the provision of Services is limited in the manner provided by the scheme.

S6. CONTRACT DISCLOSURE

S6.1 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.

S6.2 Nothing in this clause derogates from:

S6.2.1 the Supplier's obligations under any provisions of this Agreement; or

S6.2.2 the provisions of the Freedom of Information Act 1991 (SA).

S7. PRIVACY

S7.1 The Supplier must:

S7.1.1 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 Supplier 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

S7.1.2 allow the Government Party to undertake, and cooperate with any audit or investigation which the Government Party deems necessary to verify that the Supplier is complying with the IPPs.

S7.2 The Supplier 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.

S8. SUPPLIER AS TRUSTEE

S8.1 If the Supplier is acting as trustee of a trust, then in relation to this Agreement:

S8.1.1 the Supplier is liable both personally and in its capacity as a trustee of that trust;

S8.1.2 it must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust (but, for the avoidance of doubt, may apply its right of indemnity out of the assets of the trust to any of its liabilities including those arising in relation to this Agreement);

S8.1.3 it must not retire, resign nor by act or omission effect or facilitate a change to its status as the sole trustee of that trust; and

S8.1.4 it represents and warrants that:

(a) such trust has been duly established and currently exists;

(b) it is the duly appointed, current and only trustee of that trust;

(c) as trustee it has the power to enter into and perform its obligations under this Agreement;

(d) it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;

(e) it either has no conflict of interest affecting it as trustee (and/or its directors,

if any) or such conflict is otherwise overcome by the terms of the relevant trust Agreement; and

(f) no breach of the relevant trust Agreement exists or would arise.

S9. S9. INDUSTRY PARTICIPATION POLICY (TEST)

S9.1 The Supplier must implement the Supplier's Industry Participation Plan ("IPP") approved by the Industry Advocate ("IA").

S9.2 The Supplier 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.

S9.3 An Industry Participation Reporting Period is:

S9.3.1 the period between the Commencement Date and the date six (6) months after the Commencement Date;

S9.3.2 each subsequent six (6) month period during the Term;

S9.3.3 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 S9.3.2, the period from the conclusion of the preceding Industry Participation Reporting Period until the date of termination or expiry of the Agreement;

S9.3.4 for short-term projects of strategic importance to the State the period notified by the IA to the Supplier in writing; and

S9.3.5 where the Term is for a period less than six (6) months, the entire Term.

S9.4 The Supplier 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 Supplier must provide all information reasonably requested by the IA. The IA must give the Supplier not less than ten (10) Business Days' notice of any such meeting.

S9.5 The IA may, by written notice require that the Supplier within a reasonable time specified in the notice, provide information or documents to enable the Industry Advocate to assess the Supplier's compliance with this special condition.

S9.6 If the IA reasonably believes that the Supplier 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.

S9.7 Upon receipt of the notice, if the Supplier is of the opinion that its noncompliance is reasonable and justified, the Supplier may provide a response to the Industry Advocate outlining that opinion and the reasons for it.

S9.8 The Supplier'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.

S9.9 In this clause, "Industry Advocate" or "IA" means the person from time to time appointed to the position of Industry Advocate under s. 5 of the Industry Advocate Act 2017.

S10. PERFORMANCE GUARANTEE

S10.1 The Supplier must provide a performance guarantee from <insert name of related corporation of the Supplier> ("Guarantor"), pursuant to which the Guarantor undertakes to fulfil the Supplier's obligations under this Agreement in the event of default by the Supplier.

S11. BANK GUARANTEE

S11.1 The Supplier must arrange for a bank or financial institution acceptable to the Government Party, and with a branch in Adelaide, to give the Government Party an undertaking in the form of an unconditional and irrevocable financial undertaking for <insert amount> ("Financial Undertaking").

S11.2 All charges incurred in obtaining and maintaining the Financial Undertaking must be borne by the Supplier.

S11.3 The Supplier must advise the Government Party (as soon as practicable and in any event within five (5) Business Days), if at any time during the Term, the Financial Undertaking required by this clause ceases to have effect for any

reason.

S11.4 Subject to its rights to have recourse to the Financial Undertaking, the Government Party must release the balance of the Financial Undertaking then held within three (3) months after the expiration of the Agreement.

S11.5 If the Supplier commits any breach of this Agreement or the Government Party is otherwise entitled to terminate this Agreement, then the Government Party is entitled to exercise its rights in relation to the Financial Undertaking and require payment under the Financial Undertaking to the extent it considers necessary to rectify the relevant breach and to cover any liability of the Supplier to the Government Party in respect of that breach.

S11.6 The Government Party's entitlement to exercise its rights in relation to the Financial Undertaking is not subject to any impediment by reason of the fact that the Parties are engaged in a dispute resolution procedure.

S11.7 The provision of a Financial Undertaking for the Government Party in accordance with this clause is a condition precedent to this Agreement, and the parties have no rights or obligations under this Agreement unless that condition has been either satisfied, or waived by the Government Party, within one (1) month of the execution of this Agreement or such later date as determined by the Government Party. Immediately on satisfaction of this condition precedent, the Agreement comes into full force and effect and binds the Parties.

S11.8 This condition precedent is for the sole benefit of the Government Party.

S12. CHILD SAFETY

S12.1 Additional Definitions

S12.1.1 Child Safety Act means the Children and Young People Safety Act 2017 (SA);

S12.1.2 Prescribed Offence has the meaning given in the Prohibited Persons Act;

S12.1.3 Prescribed Position has the meaning given in the Prohibited Persons Act;

S12.1.4 Presumptive Disqualification Offence has the meaning given in the Prohibited Persons Act;

S12.1.5 Prohibited Person has the meaning given in the Prohibited Persons Act;

S12.1.6 Prohibited Persons Act means the Child Safety (Prohibited Persons) Act 2016 (SA);

S12.1.7 Prohibition Notice has the meaning given in the Prohibited Persons Act;

S12.1.8 Working with Children Check has the meaning given in the Prohibited Persons Act.

S12.2 Fundamental Term

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

S12.3 No Prohibited Persons

S12.3.1 The Supplier must:

(a) comply with the obligations of employers under Division 2 Part 4 of Prohibited Persons Act in relation to Supplier 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 Supplier Personnel in Prescribed Positions that are delivering Services; and

(c) subject to clause S13.3.4, immediately procure the ongoing exclusion of any Supplier Personnel that are employed in Prescribed Positions from involvement in delivery of the Services, if they are found to be a Prohibited Person.

S12.3.2 Unless such notification causes the Supplier to be in breach of the Prohibited Persons Act the Supplier must promptly notify the Government Party's Contract Manager if it becomes aware that Supplier 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),

S12.3.3 The Supplier will not be in breach of its obligation under clause S13.3.1(c) where the Supplier has complied with its obligations under the Prohibited Persons Act and the central assessment unit has failed to provide notification to the Supplier in accordance with section 41(1) of the Prohibited Persons Act.

S12.3.4 As often as reasonably requested by the Government Party, The Supplier must give the State evidence satisfactory to the State of The Supplier's compliance with the obligations of employers under Division 2 Part 4 of Prohibited Persons Act.

S12.4 Imposing Obligations on Supplier Personnel

The Supplier must ensure that:

S12.4.1 Supplier 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

S12.4.2 Supplier Personnel (not being The Supplier) immediately inform the Supplier if the Supplier Personnel is the subject of any allegation, arrest, charge or conviction for a Prescribed Offence.

S12.5 Child Safe Environment

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

S12.5.1 (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;

S12.5.2 (lodge statement): lodge the statement required by section 114 of the Child Safety Act about the Supplier'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

S12.5.3 (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 Supplier's compliance with the requirements of this clause S13.

S12.6 Compliance with Child Safety Practices and Procedures

The Supplier 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.

S12.7 Effect of Non-Compliance

If the Supplier does not strictly, fully and immediately comply with any or all of its obligations under clauses S13.3.1 and S13.3.2, 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 Supplier.

S13. RESPECTFUL BEHAVIOURS S13.1 The Supplier acknowledges the Government Party's zero tolerance towards men's violence against women in the workplace and the broader community.

S13.2 The Supplier agrees that, in performing the Services, the Supplier's Personnel will at all times:

S13.2.1 act in a manner that is non-threatening, courteous and respectful; and
S13.2.2 comply with any instructions, policies, procedures or guidelines issued by the Government Party regarding acceptable workplace behaviour.

S13.3 If the Government Party believes that the Supplier's Personnel are failing to comply with the behavioural standards specified in this clause, then the Government Party may in its absolute discretion:

S13.3.1 prohibit access by the relevant Supplier's Personnel to the Government Party's premises; and

S13.3.2 direct the Supplier to withdraw the relevant Supplier's Personnel from providing the Services.

S14. INFORMATION SHARING

S14.1 "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.

S14.2 To the full extent permitted by law the Supplier agrees to share information in accordance with the ISG.

S14.3 The Supplier will, in consultation with a representative from the Department of the Premier and Cabinet, develop an ISG appendix for the Supplier ("Supplier's ISG Appendix"), as prescribed by the ISG (<https://www.dpc.sa.gov.au/responsibilities/information-sharing-guidelines/about-the-information-sharing-guidelines>).

S14.4 If requested by the Minister, the Supplier will provide written information detailing the Supplier's compliance with the ISG including details of the Supplier's progress in developing and implementing the Supplier's ISG Appendix.

S14.5 The Parties acknowledge that this Agreement constitutes a 'State contract' for the purpose of the Privacy Act 1998 (Commonwealth).

S15. FORCE MAJEURE

S15.1 Definition

"Force Majeure" means the following events or circumstances:

S15.1.1 fire, flood, earthquake, elements of nature, acts of God, malicious damage, epidemic, explosion, sabotage, riot, civil disorder, rebellion or revolution;

S15.1.2 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 that party:

S15.1.3 did not cause; and

S15.1.4 cannot prevent, control or influence, and the effect of which prevents that party from complying with any of its material obligations under this Agreement.

S15.2 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.

S15.3 The affected party must as soon as it becomes aware of the Force Majeure notify the other party in writing providing details of:

S15.3.1 the nature and extent of the obligations affected;

S15.3.2 if known, the expected effect of the Force Majeure on the other party;

S15.3.3 action that the affected party has taken or will take to avoid or mitigate the expected effect of the Force Majeure; and

S15.3.4 details of insurance policies on which the party may be able to rely to

compensate or mitigate the financial effect of the Force Majeure.

S15.4 The affected party must:

S15.4.1 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;

S15.4.2 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

S15.4.3 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.

S15.5 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 effected customer of the affected party.

S15.6 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.

S15.7 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.

Attachment 5 – Specifications

ITEM 1 **Specification**

«G&S Specification»

ITEM 2 **Contract Performance Management**

The Supplier's contract performance will be monitored against specified Service Levels (KPIs). Contract performance management will be completed in accordance with the Government Party's Contract Performance Management Framework that is available at <https://www.childprotection.sa.gov.au/service-providers/service-provision-requirements/contract-performance-management>.

Performance Management Tiers:

- Tier 1 – KPIs are specified in the table below
- Tier 2 – KPIs are specified in the Contract Performance Specification

Tier 1 Service Levels (KPIs)					
KPI ID Number	KPI Description	KPI Target	KPI Reporting Responsibility	KPI Information Reporting Frequency	KPI Performance Assessment Frequency
Additional Service Level Conditions					
«Additional Service Level Conditions»					

Attachment 6 – Pricing and Payment

«Pricing and Payment»