

**Part C**

**Standard Contract Terms and Conditions:**

**Simple Services Agreement**

**(One Off Purchase)**

**Version 2.2**

**May 2015**

DATED DAY OF 20…

**Standard Contract Terms and Conditions:**

**Simple Services Agreement**

**(One-off purchase)**

**BETWEEN**

**[INSERT Government party’s name]**

**(**“**Principal**”**)**

**-AND-**

**[INSERT CONTRACTOR'S NAME]**

**(**“**Contractor**”**)**

**[This Contract is a DRAFT provided only for the purposes of furthering negotiations between the parties. No party will be legally bound unless and until this Contract is executed by the parties and any actions taken in anticipation of such formal execution is at the risk of the person taking them.]**

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**SCHEDULE**

**ANNEXURE - Special Conditions**

**Agreement** dated day of 20..

PARTIES

**THE SOUTH AUSTRALIAN GOVERNMENT ENTITY DESCRIBED IN ITEM 1 OF the SCHEDULE** **(**“**Principal**”**)**

**AND**

**The Person/s Described in Item 2 of the Schedule** **(**“**Contractor**”**)**

**IT IS AGREED**

# DEFINITIONS

## “**Agreement**” means this Agreement between the parties as described in clause 2.2;

## “**Business Day**” means any day that is not a Saturday or Sunday or a public holiday in South Australia;

## “**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;

## “**Commencement Date**” means the date specified in Item 4 of the Schedule;

## “**Completion Date**” means the date specified in Item 5 of the Schedule;

## “**Confidential Information**” means information which is identified either as confidential information (if disclosed by the Principal) or proprietary information (if disclosed by the Contractor), but does not include this Agreement;

## “**Crown**” means the Crown in right in the State of South Australia;

## “**Declaration in Relation to Unlawful Collusion**” means a declaration in relation to unlawful collusion submitted by the Contractor to the Principal in the procurement process preceding this Agreement;

## “**Deliverables**” means the reports and any data or other material specified in the Schedule required to be delivered throughout the performance of the Services;

## “**GST Law**“ has the meaning attributed in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

## “**GST Rate**” has the meaning attributed in the GST Law;

## “**Intellectual Property Rights**” means all intellectual property rights, including:

### patents, plant breeders’ rights, copyright, rights in circuit layouts, registered designs, trade marks, know-how and any right to have Confidential Information kept confidential; and

### any application or right to apply for registration of any of the rights referred to in subclause 1.12.1,

### but for the avoidance of doubt excludes moral rights and performers’ rights;

## ”**Personnel**” means any subcontractors, employees, agents and any other person employed or engaged by the Contractor to perform this Agreement, and includes the Contractor’s Representative;

## “**Prices**” means the prices set out in or determined in accordance with Item 6 of the Schedule;

## “**Services**” means the services specified in the Schedule and includes the Deliverables;

## “**Taxable Supply**” has the meaning attributed in the GST Law; and

## “**Tax Invoice**” has the meaning attributed in the GST Law.

# INTERPRETATION

## In this Agreement (unless the context requires otherwise):

### A reference to any legislation includes:

#### All legislation, regulations, proclamations, ordinances, by-laws and instruments issued under that legislation; and

#### Any modification, consolidation, amendment, re-enactment or substitution of that legislation;

### the clause headings are for convenient reference only and do not form part of this Agreement;

### a reference to a clause number is a reference to all its subclauses;

### a reference to a clause, subclause, schedule or attachment is a reference to a clause, subclause, schedule or attachment of this Agreement;

### a word in the singular includes the plural and a word in the plural includes the singular;

### a word importing a gender includes any other gender;

### a reference to two or more persons means all of them together;

### a reference to persons includes corporations, unincorporated associations, partnerships, trusts and joint ventures;

### a reference to legislation includes legislation repealing, replacing or amending that legislation;

### a reference to dollars is a reference to Australian dollars;

### where a word or phrase is given a particular meaning other parts of speech or grammatical forms of that word or phrase have corresponding meanings;

### a reference to a party includes that party’s administrators, successors and permitted assigns;

### where the day on or by which something is to be done is not a Business Day, that thing may be done on or by the next Business Day;

## This Agreement between the parties comprises these standard terms and conditions and all the documents comprised in, and incorporated by reference to, the Annexure. If any of the documents comprising this Agreement are inconsistent, they shall take priority in the following order:

### the agency specific terms and conditions (if any) in the Annexure;

### these standard terms and conditions (excluding the Schedule); and

### the Schedule.

# TERM

## The Contractor must commence the Services by the Commencement Date and complete the Services by the Completion Date (“**Term**”). The Completion Date may only be extended by written agreement between the parties.

# contract administration

## Each party nominates as its Representative the person designated in the Schedule, and confirms that its Representative has authority to:

### exercise all of the powers and functions of his or her party under this Agreement other than the power to amend this Agreement; and

### bind his or her party in relation to any matter arising out of or in connection with this Agreement.

## Either party may change its Representative, by giving written notice to the other party.

# SERVICES

## The Contractor must provide the Services described in Item 3 of the Schedule (“Services”) in accordance with the terms and conditions of this Agreement.

## The Principal may at any time give written notice to the Contractor proposing a variation (“Variation Proposal”) to the scope of the Services (“Varied Services”).

## The Principal and the Contractor must negotiate in good faith to agree in writing the price for the Varied Services as contained in the Principal’s Variation Proposal.

## The Variation Proposal does not take effect unless and until the parties reach a written agreement as contemplated in clause 5.3, and the Contractor must still perform the Services as required under this Agreement.

## The Contractor must use its best efforts to perform the Services in the most cost effective manner consistent with the required level of quality and performance.

# the deliverables

## If the Contractor is to provide Deliverables then the details of the Deliverables (if any) set out in the Schedule including the delivery dates and the form and content requirements, must be complied with by the Contractor.

## Title in the Deliverables will vest in the Principal on their delivery to the Principal.

# warranty

The Contractor warrants that the Services will:

## comply with the description of the Services in the Schedule;

## be provided with due care and skill;

## be supplied without infringing any person’s Intellectual Property Rights; and

## be performed by the Contractor and/or its nominated Personnel.

# Contractor personnel

## The Contractor must ensure that when supplying the Services:

### it will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the Services;

### Personnel observe and comply with the provisions of this Agreement.

## The Contractor, if required by the Principal, must give its consent to the conduct of a police check or any other enquiry and the Contractor, if required by the Principal, must procure the consent of Personnel to the conduct of a police check or any other enquiry.

## If the Principal gives the Contractor notice in writing requiring any one or more of the Personnel to be withdrawn from providing the Services, the Contractor must immediately comply with the notice and provide replacements acceptable to the Principal. If the Contractor fails to comply with that notice then the Principal may terminate this Agreement immediately by written notice to the Contractor.

## The Principal reserves the right to refuse entry onto any of the Principal’s premises to any Personnel.

## The Contractor represents that it:

### enters into this Agreement after having carried out its own diligent investigations into all matters relating to the provision of the Services, not relying on any representations made by the Principal, its agents or employees; and

### is fully informed in respect of its obligations under this Agreement.

# INTELLECTUAL PROPERTY RIGHTS

## This clause 9.1 contains two options; (A) and (B); only the option that is selected in Item 8 of the Schedule applies to this Agreement. Where no option is selected in Item 8 of the Schedule, only option (A) applies to this Agreement.

## ***(A)***

### The Crown will own all Intellectual Property Rights in any thing that is delivered to the Principal or otherwise produced in the course of the provision of the Services (including without limitation, Deliverables specified in Item 3 of the Schedule).

#### ***(B)***

### The Crown does not own the Contractor’s Intellectual Property Rights existing at, or prior to, the date of this Agreement, however, to the extent necessary for the provision of the Services, the Contractor grants the Principal and the Crown a perpetual, irrevocable, royalty free, fee free licence to use, copy, modify and adapt any such Intellectual Property Rights in relation to the provision of the Services.

### Subject to clause 9.1.2, all Intellectual Property Rights created in anything that is delivered to the Principal or otherwise produced in the course of the provision of the Services (including without limitation, Deliverables specified in Item 3 of the Schedule) vests in and remains with the Contractor.

### The Contractor grants to the Principal and the Crown, a perpetual, irrevocable, royalty free, fee free licence to use, copy, modify and adapt the Intellectual Property Rights in anything that is described in clause 9.1.3.

# CONFIDENTIAL INFORMATION

## Subject to this clause 10, neither party may disclose any Confidential Information of the other party except as genuinely and necessarily required for the purpose of this Agreement.

## Neither party may disclose any Confidential Information of the other party except:

### to an employee, agent or adviser of that party, on a “need to know” and confidential basis;

### to the Australian Competition and Consumer Commission (ACCC) if the Principal 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;

### as required by law or a court order;

### in accordance with any parliamentary or constitutional convention, or

### for the purposes of prosecuting or defending proceedings.

# PRICE AND PAYMENT

## In consideration of the supply of Services, the Principal will pay the Prices.

## Subject to clause 12, the Prices include all taxes, duties or government charges imposed or levied in Australia or overseas in connection with this Agreement.

## The Prices include all costs of compliance with the Contractor’s obligations under this Agreement. No other costs or expenses are payable by the Principal.

## The Contractor is entitled to invoice the Principal for payment in respect of a Service, only on a monthly basis, when the Service has been provided.

## The Principal must pay on a Contractor’s invoice if the invoice is properly rendered, but not otherwise. An invoice is properly rendered if it:

### is issued in respect of Services for which the Contractor is entitled to invoice under this Agreement;

### reflects the correct price for the Services under this Agreement;

### is a valid Tax Invoice within the meaning of the GST Law; and

### complies with any other requirements stipulated in the Schedule.

# GST

## The Contractor represents that:

### it is registered under the A New Tax System (Australian Business Number) Act 1999 (Cth), and that the ABN shown in Item 2 of the Schedule is the Contractor’s ABN; and

### it is registered under the GST Law.

## If the Prices in Item 6 of the Schedule are expressed as being GST exclusive and the supply for which payment is claimed is a Taxable Supply then, in addition to any amount payable by the Principal by reference to the price (the “base consideration”), the Principal must pay to the Contractor, an additional amount of consideration (“GST consideration”) for the Taxable Supply calculated by multiplying the GST Rate by the base consideration. The GST consideration is payable at the same time and subject to the same conditions as the base consideration. In this Agreement, “Taxable Supply”, and “GST Rate” have the meaning attributed to it in the GST Law.

# INSURANCE

## The Contractor must effect and maintain all insurance policies set out in Item 7 of the Schedule.

## The insurance policies set out in Item 7 of the Schedule must:

### if required as indicated in Item 7 of the Schedule, note the interest of the Principal; and

### be with insurers satisfactory to the Principal.

## The policies referred to in Item 7 of the Schedule must be in the name of the Contractor and must cover the Contractor and all subcontractors for their respective rights, interests and liabilities.

## Before supplying Services under this Agreement, the Contractor must provide the Principal with insurance certificates of currency for the insurances required under this clause. At any time during the Term, the Principal may require the Contractor to provide proof that the policies of insurance have been effected and maintained.

## The Principal, in specifying levels of insurance in this Agreement accepts no liability for the completeness of their listing, the adequacy of the sum insured, limit of liability, scope of coverage, conditions or exclusions of those insurances in respect of how they may or may not respond to any loss, damage or liability.

## The Contractor acknowledges and agrees that it is the Contractor’s responsibility to assess and consider the risks and scope of insurances required under this Agreement.

# liability

Note: In accordance with the Guidelines for the Limitation of Liability of Suppliers, Consultants and Contractors (1 February 2014), where a contract has a value of up to $1 million and has been assessed as having a low risk (after risk treatments) as determined by the Principal’s risk management matrix, the following Cabinet Approved Default Liability Limit applies. If the Cabinet Approved Default Liability Limit does not apply to this contract please delete this clause.

## Except in relation to the prescribed heads of liability in clause 14.2, the Contractor’s liability to the Principal in contract (excluding under an indemnity), unintentional torts (including negligence), breach of statutory duty or otherwise in respect of any loss damage or expense is limited to five (5) times the contract value.

## The limitation of liability in clause 14.1 does not apply to liability:

## for personal injury including sickness and death;

## for loss of or damage to tangible property;

## for infringement of intellectual property rights;

## for any liability to a third party arising from any negligent or wrongful act or omission of the Contractor, its employees, agents or subcontractors, or arising from any breach of the Contractor’s contractual obligations to the public authority;

## for an intentional tort;

## for a breach of trust; and

## for fraud or dishonesty.

# INDEMNITY

## The Contractor indemnifies and must keep indemnified the Principal and its employees from and against all costs, losses, damages, expenses (including legal expenses) or other liabilities suffered or incurred by the Principal or its employees as the result of a claim made or threatened by a third party arising out of or in respect of:

## any negligence, wrongful act or omission or breach of duty of or by the Contractor; or

## any breach of the Contractor’s contractual obligations under the Agreement.

## The Contractor’s liability to indemnify the Principal under clause 15.1 will be reduced proportionately to the extent that the loss or liability indemnified was contributed to by negligence or default by the Principal.

## This clause will survive the termination of this Agreement.

# TERMINATION

## The Principal may terminate this Agreement immediately upon giving notice in writing to the Contractor if:

### the Principal reasonably forms the opinion that the Contractor will be unable to perform its obligations pursuant to this Agreement;

### the Contractor is in breach of this Agreement and has not rectified such breach within 14 days of the Principal giving notice in writing to the Contractor requiring the rectification of such breach;

### the Principal becomes aware that the Contractor is in breach of its statutory obligations with respect to its employees;

### the Contractor has submitted a Declaration in Relation to Unlawful Collusion which is found to be false in any particular;

### clause 8.3 applies; or

### the Contractor suffers or, in the reasonable opinion of the Principal, is in jeopardy of becoming subject to any form of insolvency administration or bankruptcy.

# effect of expiry or TERMINATION of this agreement

## Any termination of this Agreement by the Principal does not affect any accrued right of either party.

## Despite termination or completion of this Agreement, clauses 7, 9, 10, 13, 14, 15, 16, 17, 19, 20 and 22 survive.

# subcontracting

## The Contractor must not engage any sub-contractor without approval of the Principal, which approval may be given at the Principal’s entire discretion and subject to any conditions..

## The Contractor remains responsible for obligations performed by subcontractors to the same extent as if such obligations were performed by the Contractor.

# remedies

## Any claim the Principal may have against the Contractor may be set off against monies owed to the Contractor under this Agreement.

## The rights and remedies provided under this Agreement are cumulative and not exclusive of any remedies provide by law or any other right or remedy.

# no representations

To the maximum extent permitted by law, the Contactor acknowledges and agrees that no representation, warranty, guarantee or other statement, express or implied, was made or given to the Contractor by the Principal prior to entering into his Agreement as to any benefits which the Contractor might enjoy as a result of entering into this Agreement.

# notices

Any notice relating to this Agreement must be:

## in writing:

## signed by the Representative of the sender or directly from their email address; and

## given to the other party:

### by hand delivery;

### by prepaid mail; or

### by facsimile or email transmission.

## For the purposes of delivery of notice:

### mail must be sent to the address of the recipient party set out in the Schedule; and

### facsimile or email messages must be marked for the attention of the person specified in the Schedule.

## If a party changes its contact details, then it must provide written notice to the other party within 5 Business Days.

## A notice sent for the purposes of this clause will be considered received:

### if delivered before 5.00pm on a Business Day, otherwise on the next Business Day;

### if sent by pre-paid mail, on the third Business Day after posting; or

### if transmitted by facsimile before 5.00pm on a Business day and a complete transmission report is received on the day of transmission, otherwise on the next Business Day, provided that:

#### if the recipient receives by facsimile transmission a notice that is illegible, the recipient must notify the sender immediately and the sender must continue to retransmit the notice until the recipient confirms that it has received a legible notice; and

#### if transmitted by email before 5.00pm on a Business Day and the Sender receives a message-opened response, otherwise on the next Business Day, subject always to the sender received a message opened response.

# GENERAL

## **Compliance with Laws**

The Contractor must comply with the laws in force in the State in the performing its obligations under this Agreement. The Contractor undertakes to comply with all South Australian Government policies of which the Principal informs the Contractor which relate to the performance of the Contractor’s obligations under this Agreement.

## **Governing Law**

### This Agreement is governed by the laws in the State of South Australia.

### The courts of the State of South Australia have exclusive jurisdiction in connection with this Agreement.

## **Relationship Between the Parties**

### The parties acknowledge and agree that nothing in this Agreement:

#### constitutes a partnership or joint venture of any kind between the parties; or

#### constitutes any relationship of employer and employee or principal and agent between the Principal and the Contractor or between the Principal and any employees, agents, sub-contractors, members or volunteers of the Contractor.

### No party has any authority to bind the other Party in any manner whatever except with the express approval by notice in writing of the other party.

## **No Waivers by the Principal**

### The Principal waives a right under this Agreement only by written notice to that effect.

### Nothing else done or omitted to be done by the Principal in relation to the Principal’s rights under the Agreement will have the effect of a waiver.

## **Entire Agreement**

This Agreement constitutes the entire agreement between the parties in respect of the matters dealt with in this Agreement and supersedes all prior agreements, understandings and negotiations in respect of the matters dealt with in this Agreement.

## **No assignment**

The Contractor must not assign or encumber any of its rights under this Agreement

## **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.

## **Severance**

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

### If a court determines that a part of this Agreement is unenforceable, invalid, illegal, void or voidable that court may sever that part.

### Severance of a part of this Agreement will not affect any other part of this Agreement.

## **Reading Down**

Where a word, phrase, sentence, paragraph, clause or other provision of this Agreement would otherwise be unenforceable, illegal, void or voidable the effect of that provision shall so far as possible, be limited and read down so that it is not unenforceable, illegal, void or voidable.

## **Auditor-General**

Nothing in this Agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).

## **Disclosure of Government Contracts**

The Contractor acknowledges that the Principal may disclose this Agreement either generally to the public, or to a particular person as a result of a specific request. Nothing in this clause derogates from the Contractor’s obligations under any other provision of this Agreement or the provisions of the *Freedom of Information Act 1991* (SA).

## **Publicity**

### The Contractor must not make any public announcement or media release in respect of any aspect of this Agreement or the Services without the prior written approval by the Principal.

## **Acting Ethically**

### In delivering the services the Contractor will conduct itself in a manner that does not invite, directly or indirectly, the Principal’s officers, employees or agents or any public sector employee (as defined in the Public Sector Act 2009) to behave unethically, to prefer private interests over the Principal’s interests or to otherwise contravene the *Code of Ethics for the South Australian Public Sector*.

# work health and safety

## If requested by the Principal, the Contractor must:

### provide evidence satisfactory to the Principal of its capacity to comply with the *Work Health and Safety Act 2012* (SA);

### provide evidence that its employees, agents and subcontractors have received appropriate training in and are aware of their legal obligations and responsibilities in relation to work health and safety; and

### provide the Contractor’s WorkCover Registration Number.

## The Contractor must permit the Principal to carry out any inspections the Principal deems necessary to ensure that the Contractor is complying with the work health and safety practices referred to in this Agreement.

## If all or part of the work under this Agreement is to be provided on the premises of the Principal and under the direction of the Principal, the Contractor must comply with the Principal’s work health and safety policies, procedures and instructions. If the Contractor becomes aware of any potentially hazardous situation on the premises of the Principal, the Contractor must immediately bring it to the Principal’s attention.

## If the Principal has additional requirements regarding the preparation and implementation of work health and safety systems and plans, these will be detailed in the description of services in the Schedule.

## The Contractor must comply with the *Work Health and Safety Act* *2012* (SA) at all times, regardless of whether the Principal issues direction in that regard or not.

## 

**EXECUTED AS AN Agreement**

**[INSERT GOVERNMENT PARTY’S EXECUTION CLAUSE]**

**EXECUTED** by…………………………………………..)

in accordance with Section 127 of the )

*Corporations Act 2001* (Cth)and its Constitution )

…………………………………………………………….

Signature of Director

[Print Name of Director………………...………………]

……………………………………………………………

Signature of Director/Secretary

[Print Name of

Director/Secretary………………………………………]

**SCHEDULE**

1. Principal

(Government Party’s name, description of incorporation, and address)

[fill in]

**Principal’s representative**

[fill in]

1. Contractor’s Name

(Contractor’s Name, ABN, ACN (if any) & Business Address)

[fill in]

**Contractor’s representative**

[fill in]

1. Details of Services to be provided (including Deliverables)

[fill in]

1. Commencement Date

[fill in]

1. Completion Date

[fill in]

1. Price and Payment

Price: [fill in]

GST Inclusive or Exclusive: [fill in]

Address for invoices: [fill in]

Other requirements:

1. Insurances

Public Liability Insurance - [fill in]

Professional Indemnity Insurance - [fill in]

Required to note the interests of the Principal?: Yes / No

1. Intellectual Property Rights

(Cross out option that does not apply)

Select option from contract

Option A or Option B

**ANNEXURE**

**SPECIAL CONDITIONS**