

Contract Terms and Conditions

This terms and conditions schedule is an extension of the Purchase Order and the Supply Statement (if applicable) issued in relation to the supply of goods and services for South West Catchments Council. It is to be read in conjunction with those documents and acceptance of the Purchase Order will be deemed acceptance of any conditions contained within the Purchase Order and Supply Statement (if applicable), including this document.

PREAMBLE

South West Catchments Council has identified the Contractor as an appropriate entity to manage the activity and address the priorities identified in SWCC Regional bid to the Australian Government. The Purchase Order and Supply Statement (if applicable) are initiated in the following context:

- (1) South West Catchments Council is responsible and empowered to administer Australian Government funding, and
- (2) The parties hereto ('the Parties') have agreed that the contractor will provide the service/supply for the price and according to the conditions specified in the Purchase Order and Supply Statement (if applicable) and any attached Schedule(s).

1. Interpretation

- (1) For the purpose of this Agreement the following definitions apply:

"ABN" has the meaning given to it in the *A New tax System (Goods and Services Tax) Act 1999*.

"Activity" means the undertaking by the Contractor in regard to achieving the negotiated Deliverable Outcomes and Milestones which are specified in the Purchase Order and the Supply Statement (if applicable).

"Activity Material" means documents and any other material, in any form, created or a copy thereof or in any other way brought into existence as part of, or in the performance of, the activity, and includes: new, enhanced or derived data; documents; equipment; software; goods; information and publications produced as a result of the Activity and stored by any means.

"Commonwealth" means the Australian Government [Commonwealth of Australia].

"Contract" means the Purchase Order, Supply Statement, Occupation Safety Health Form and any schedule(s) [including these terms and conditions] between SWCC and the Contractor.

"Contractor" means the party so described in the Contract.

"Deliverable Outcomes" means the outcomes for the Activity as specified in the Contract.

"Financial Year" means the financial year from 1 July to 30 June, inclusive.

"Funding" means Australian Government funding provided by SWCC to the Contractor to undertake the activity in accordance with the Contract and associated schedule(s).

"GST" has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999*.

"GST Registered" means registered for the purposes of GST under the *A New Tax System (Goods and Services Tax) Act 1999*.

"Intellectual Property" includes all copyright, (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields as well as traditional Indigenous knowledge but does not include moral rights.

"Materials" refers to all inputs and outputs related to the execution of the Contract.

"Milestones" means the milestones agreed between SWCC and the Contractor, to monitor the progress of the activity as specified in the Contract or any schedules associated with the Contract.

"NRM" means natural resource management.

"Parties" means SWCC and the Contractor.

"SWCC" means the South West Catchments Council.

“Schedule” refers to any document associated with the contract which details the Activity which the Parties agree to be undertaken and for which Funding is paid. It (they) includes the Deliverable Outcomes, Milestones, Deliverables and Payment Timeline, and Special Conditions (if any) relating to this Contract.

“State” means the State of Western Australia [Government of Western Australia].

“Supply” has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999*.

“Tax Invoice” has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999*.

2. General Interpretation

In this Contract, unless the contrary intention appears:

- (1) words importing a gender include each gender;
- (2) words in the singular number include the plural and words in the plural number include the singular;
- (3) words importing persons include a partnership and a body whether corporate or otherwise;
- (4) clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer; and
- (5) all references to clauses are clauses in this Contract unless otherwise specified.

3. Commencement and Operation

- (1) The Contract [including any Schedule(s)] shall only come into force when a purchase order is issued and will expire on the date specified in the Contract or on such other date as the Parties agree in writing. It is recognised by the Parties that the completion of other arrangements under the Contract, such as monitoring and evaluation and reporting, may continue beyond the agreed termination date.
- (2) Nothing in the Contract affects any other existing Contracts between the Contractor and SWCC.
- (3) The Contract [including Schedule(s)] may only be amended by further agreement in writing between the Parties.
- (4) Without limiting the previous clause, the Parties will notify and consult each other on matters that come to their attention that may improve or otherwise alter the operation of the Contract.
- (5) The Contractor agrees not to represent itself, and is to use its best endeavours to ensure that its officers, employees, agents and subcontractors do not represent themselves, as being an officer or employee, partner or agent of the Australian Government, or as otherwise able to bind or represent the Australian Government.

4. Compliance

- (1) The laws applicable to this Contract shall be those in force in the Australian Government and where relevant the State. The Contractor must ensure that it and its agents comply with the laws of the Commonwealth and the State.
- (2) With respect to any activity funded through the Contract, both Parties agree:
 - (a) to be subject to the Commonwealth's right to disclose any matter with respect to the Funding within the Australian government sector and in Parliament;
 - (b) to be subject to the provisions of the Freedom of Information Act 1992; and
 - (c) to comply with the Information Privacy Principles set out in section 14 of the Commonwealth *Privacy Act 1988* and to comply in so far as is practicable with any policy guidelines laid down by the Commonwealth or issued by the Privacy Commissioner from time to time, relating to the handling of personal information.
- (3) Breach of any of the terms and conditions may result in suspension or termination of the Contract.
- (4) If Funding has been spent in a way which is not authorised by the Contract, SWCC may recover the Funding as a debt due to SWCC.

5. No Assignment

The Contractor shall not assign, sub contract or otherwise deal with its rights and obligations under the Contract without the prior written consent of SWCC.

6. Non-Performance, Suspension or Termination

- (1) SWCC, its officers, employees and agents may review an Activity in whole, or in part, according to the provisions provided in this clause where the Contractor:
 - (a) is considered to have failed to comply with the Contract;
 - (b) is considered to have failed to comply with a direction given by SWCC that is consistent with the purpose of the Funding and in accordance with the Contract;
 - (c) is considered to have ceased providing the service or supply; or
 - (d) is being wound up or dissolved, or proceedings are being taken against the Contractor to have it wound up or dissolved.
- (2) Where the contractor is considered to have not fulfilled, or is considered not capable of fulfilling the conditions of the Contract, SWCC will provide notice to the Contractor to suspend or cease work on the Activity, nominating an appropriate course of action to rectify the situation. This may include, but is not limited to, termination of this Contract.
- (3) Upon receipt of such notice the Contractor must immediately implement the action(s) specified in the notice.
- (4) Where, due to the contractor failing to deliver the goods or supply the services in conformity with the Contract, SWCC terminates the Contract (as provided for in clause 6(2) above), SWCC may refuse to accept delivery of any remaining goods or services and obtain replacement goods and services from a third party. SWCC may claim from the contractor damages arising from the contractor's failure to comply with the terms and conditions of the Contract, including indirect and consequential loss.
- (5) Within 14 days of the Contract being terminated, the Contractor must:
 - (a) reimburse SWCC for any Funding that was not used exclusively for the Activity; and
 - (b) pass the right, title and interest in Activity Material, Intellectual Property and assets acquired using Funding provided for the Activity to SWCC. For the purpose of this clause:
 - the Contractor must take steps to protect Activity Material (including Intellectual Property) and assets and minimise any loss resulting from the suspension or termination of the Activity;
 - the Contractor must provide SWCC and/or their agent with access to the Activity Material (including Intellectual Property); and
 - SWCC will determine the relocation or disposal of such Activity Material (including Intellectual Property).
- (6) If an Activity is terminated wholly or in part, SWCC will be liable only for:
 - (a) payments under the payment provisions of the Contract for work undertaken before the effective date of termination which has commercial value to South West Catchments Council; and
 - (b) payments proportional to the extent of work undertaken and contractually committed to before the effective date of termination, where such work provides a commercially usable or valuable product for South West Catchments Council.

7. Notices

A Party giving notice under the Contract must do so in writing.

8. Pre-condition to Payment of Funding

SWCC will not make any payments to the contractor until provided with:

- (1) evidence of the legal status of the Contractor;
- (2) a Tax invoice which includes the organisation's ABN, the relevant amount identified in the Contract and the relevant GST associated with that amount
- (3) other compliance requirements.

Payment of invoices does not affect the right of SWCC to dispute invoices or to make claims against you in respect to goods or services; and

9. Use of Funding

- (1) The Funding must only be used to undertake the Activity described in the Contract.
- (2) The Contractor must ensure that any activities funded through the Contract do not knowingly cause any detrimental long term change to the environment or to natural resources.

10. Taxes, Duties and Government Charges

- (1) The amounts specified in or calculated under the Contract are exclusive of GST unless stated otherwise.
- (2) SWCC will pay the Contractor the amount of GST that the Contractor pays or is liable to pay in relation to the Funding at the same time and in the same manner as paying the Funding.
- (3) Subject to this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the Contract must be borne by the Contractor.

11. Reporting Requirements

- (1) Where it is an expressed term of the Contract the Contractor must provide all reports as required.
- (2) All reports are to be signed off by the Contractor's authorised representatives.
- (3) Reports which are of inadequate quality, or do not contain the required information, will not be accepted and payments dependent upon completion of the report will be withheld until the required information has been provided and approved.

12. Inspections and Publicity

The Contractor shall meet all reasonable requests from SWCC and the Commonwealth or their agents for access to the Activity for any purpose including publicity, free information sharing and inspection of the performance of the Activity.

13. Acknowledgment of Funding

The Contractor acknowledges that as Funding is public monies then for accountability purposes details of the recipient, the purpose of the Funding and the amount of Funding are matters of public record.

14. Intellectual Property Rights

- (1) Ownership of Intellectual Property in relation to Materials created in connection with the Contract will vest with and be administered by SWCC Inc, on behalf of the Australian Government (as the ultimate funder of the project), unless the parties, in consultation with the Australian Government specifically agree otherwise.
- (2) Ownership of Intellectual Property in any pre-existing Material owned by the Commonwealth, the State, SWCC, the Contractor or a third party is unaffected by this clause, unless otherwise agreed.
- (3) The Contractor, or a third party engaged to provide any part of the Activity to which the Contract refers must grant to the Australian Government, and SWCC an irrevocable, royalty-free, world-wide, non-exclusive licence to use, reproduce and adapt pre-existing Intellectual Property Materials to the extent that such materials are integral in the achievement of the activity or the intellectual property created in connection with the Contract.
- (4) Where the Contractor engages a third party for the purposes of undertaking any part of the Activity, the third party must be engaged on the express condition that SWCC will own the Intellectual Property relating to any Materials created as part of their engagement.
- (5) To the extent that Material or pre-existing Material comprises traditional indigenous knowledge which is culturally sensitive to indigenous groups or people the Parties agree that they will not disclose such Material to persons or bodies outside the Australian Government, SWCC or the Contractor without the agreement of the relevant custodian(s).

CONTRACTOR RESPONSIBILITIES

15. Expected Behaviour and Ethical Conduct

As recipients and beneficiaries of public funding, the Contractor and its officers, members, employees and agents must:

- (1) conduct themselves with integrity, probity and in an open and transparent manner;
- (2) operate in accordance with the law;

16. Risk Management, Insurance and Indemnity

- (1) The Contractor must ensure that appropriate risk management techniques are applied to ensure the Activity is delivered as agreed and in accordance with agreed timelines.
- (2) The Contractor must at all times indemnify, hold harmless and defend the Australian Government, SWCC, their officers, employees and agents from and against any loss including legal costs and expenses or liability reasonably incurred by the Australian Government, SWCC, their officers, employees and agents arising from any claim, suit, demand, action or proceeding against the Australian Government, SWCC, their officers, employees and agents where such loss or liability was caused by the negligent or unlawful act or omission of the Contractor arising out of or in connection with conducting activities funded in part or in full through the Contract. This obligation remains in force after SWCC has discharged its funding liability under the Contract and after the activity is completed.
- (3) The Contractor must maintain sufficient insurances to cover its liability in conducting activities funded in part or in full through the Contract and its obligation to indemnify the Australian Government, SWCC, their officers, employees and agents. Insurances would include but not be limited to public liability insurance, workers' compensation insurance [where employment of others is involved] and, personal accident insurance for volunteers, if applicable. Where workers' compensation insurance is not applicable, proof of alternative insurance (personal accident and/or income protection) may be required.
- (4) The Contractor shall provide, upon request by SWCC, proof of the existence and currency of the insurance required by this clause.

17. Workplace Health and Safety

The contractor will be required to complete the "Contractor OSH Form" provided by SWCC and provide appropriate and adequate documentation, supporting answers provided, as required.

18. Confidentiality of Intellectual Property

The Contractor must ensure that Intellectual Property is managed confidentially.

19. Human Resource Management

The Contractor must comply with all legislation in relation to employment and human resource management.

20. Procurement of Goods and Services

The Contractor must use its best endeavours when procuring goods and services to ensure the highest standards of integrity and ethics are applied and consistent with maintaining environmentally sustainable procurement practices.

21. Enforcement of Terms and Conditions

If part or all of any provision of these terms and conditions or its application to any person or circumstance is illegal or unenforceable, the provision will be interpreted as may be necessary to ensure it is not illegal or unenforceable. If any provision or part of it cannot be interpreted in that way, the provision or part of it will be severed from these terms and conditions and the remaining provisions continue in force.

22. Special Conditions

Any Special Conditions form part of the Contract, and to the extent that they are consistent with any clause hereto contained, the Special Conditions will prevail.