

## STANDARD CONDITIONS OF CONTRACT

### 1. Provision of services

- 1.1 The organisation agrees to perform the services to a standard recognised as a high professional standard by the industry to which the organisation belongs, and to meet or exceed the timeframe and any other specific requirements set out in the contract details or otherwise in the documents referred to in clause 18.2.
- 1.2 The organisation agrees to liaise with the project manager as reasonably required and to comply with any directions of the project manager, which are consistent with this contract.
- 1.3 The organisation agrees that the specified personnel will perform work in relation to the services in accordance with the contract.
- 1.4 The organisation agrees not to subcontract the performance of any part of the services.
- 1.5 ACARA agrees to provide material and assistance to the organisation as specified in the contract details.

### 2. Fees

- 2.1 ACARA agrees to pay the organisation the fees in the amounts and in the manner specified in the contract details (which the organisation acknowledges are an all-inclusive price for all matters relating to this contract), provided that the organisation has fully and properly complied with its obligations under this contract and the invoicing procedure specified in the contract details.
- 2.2 An invoice is not correctly rendered where it includes amounts that are not properly payable under this contract or are incorrectly calculated.
- 2.3 The due date for payment by ACARA is 30 calendar days after the delivery of a correctly rendered invoice. If this period ends on a day that is not a business day, the due date for payment is the next business day.
- 2.4 The due date for payment by ACARA is 30 calendar days after the delivery of a correctly rendered invoice. If this period ends on a day that is not a business day, the due date for payment is the next business day.

### 3. Taxes and charges

- 3.1 Any taxes or charges imposed in connection with this contract must be borne by the organisation.
- 3.2 Unless otherwise indicated, all consideration for a supply under this contract is exclusive of any GST.
- 3.3 The recipient of a supply under this contract must pay the supplier any GST imposed on receipt of a tax invoice.

- 3.4 No party may claim from the other an amount for which an input tax credit or decreasing adjustment can be obtained.

### 4. Intellectual property

- 4.1 The organisation agrees that all intellectual property rights, arising as a result and in the course of performing the project and residing in the results of the project (project results), will vest exclusively in ACARA, and the organisation will ensure that all things necessary or desirable are done to give effect to ownership of intellectual property rights vesting in ACARA.
- 4.2 The specified personnel must not incorporate intellectual property owned by the organisation or a third party in any of the project results, unless:
  - a. the specified personnel has first provided ACARA in writing a full description of the organisation's intellectual property proposed to be incorporated; or
  - b. the specified personnel has first provided ACARA in writing a full description of a third party's intellectual property proposed to be incorporated (including full details of the third party owner); and
  - c. ACARA has approved of such incorporation in writing.
- 4.3 If the specified personnel includes existing material in the project results, in which the intellectual property rights are owned by the organisation, the organisation grants to ACARA a permanent, irrevocable, free, worldwide, non-exclusive licence (including a right to sublicense) to use, reproduce, adapt and exploit such intellectual property rights for any purpose, and a right to licence the existing material in conjunction with the project results to the public under an open access licence (including a Creative Commons Attribution licence).
- 4.4 The organisation will ensure that the specified personnel complies with the obligations contained in the specified personnel's undertaking (in particular, the obligations relating to the licensing and ownership of intellectual property rights in respect of the project and the requirement to provide consents relating to moral rights).

### 5. Confidentiality and other security obligations

- 5.1 The organisation will not, and will ensure that the specified personnel will not, disclose or use

for a purpose other than the performance of the project any ACARA confidential information.

5.2 The organisation acknowledges and agrees that:

- a it will not disclose any ACARA's confidential information to any third party;
- b at the completion of the project, it will return to ACARA all ACARA documents that contain confidential information.
- c it will permanently delete any ACARA confidential information stored by it so that this information is incapable of retrieval;
- d it will notify ACARA immediately if it becomes aware of, or suspects, any disclosure, use or copying of ACARA confidential information that is not authorised by this contract and will take all steps reasonably required by the ACARA to stop that unauthorised disclosure, use or copying;
- e it will ensure that the specified personnel comply with the above requirements as though a reference to 'it' is a reference to 'the specified personnel';
- f strict compliance with obligations of confidentiality are a critical element in its performance of this project; and
- g its confidentiality obligations in relation to ACARA confidential information continue after the term of this contract terminates or expires.

5.3 The organisation will not, without prior written authorisation from ACARA, disclose any official information to any person other than those organisation personnel who require access for the purposes of this contract (unless required to do so by law).

5.4 The organisation agrees to secure all official information against loss and unauthorised access, use, modification or disclosure.

5.5 The organisation agrees to comply with any other security requirements notified by ACARA from time to time.

5.6 The obligations of the organisation under this clause 5 are subject to any rights that the organisation and specified personnel may have under the *Public Interest Disclosure Act 2013*.

## 6. Privacy

6.1 The organisation agrees not to act, or engage in, any practice that, if done or engaged in by ACARA, would be a breach of the requirements of Division 2 of Part III of the Privacy Act.

## 7. Indemnity

7.1 The organisation indemnifies ACARA from and against any:

- a cost or liability incurred by ACARA;

- b loss of or damage to property of ACARA; or
- c loss or expense incurred by ACARA in dealing with any claim against it including legal costs and expenses on a solicitor / own client basis and the cost of time spent, resources used or disbursements paid by ACARA, arising from either:
  - d a breach by the organisation of this contract;
  - e a breach by the specified personnel of the specified personnel undertaking; or
  - f an act or omission involving fault on the part of the organisation or its personnel in connection with this contract.

7.2 The organisation's liability to indemnify ACARA under clause 7.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of ACARA or its personnel contributed to the relevant cost, liability, loss, damage or expense.

## 8. Warranties

8.1 The organisation warrants to ACARA that the organisation and the specified personnel:

- a possess and will use the requisite skills and experience to perform the project;
- b have the right to undertake the obligations and commitments contained in this agreement including, without limitation, being in a position with respect to ownership of intellectual property rights to ensure the vesting of all intellectual property rights in the project results in ACARA; and
- c will perform the project in accordance with the project brief.

## 9. Termination

9.1 Either party may terminate this contract by giving two-weeks' notice in writing to the other party.

9.2 Upon termination or expiry of this contract, the organisation will deliver to ACARA all material and information made available by ACARA to the organisation or to specified personnel and all project results, even if not complete.

## 10. Conflict of interest

10.1 The organisation warrants that, at the date of entering into this contract, no conflict of interest exists or is likely to arise for the organisation or its specified personnel in the performance of the services.

10.2 If during the period of the contract a conflict arises, or appears likely to arise, the organisation agrees:

- a to notify ACARA; and
- b to take any steps ACARA reasonably requires to resolve or otherwise deal with the conflict.

## 11. Relationship of parties

11.1 The organisation is not, by virtue of this contract, an officer, an employee, a partner or an agent of ACARA, nor does the organisation have any power or authority to bind or represent ACARA.

11.2 The organisation agrees:

- a not to misrepresent its relationship with ACARA; and
- b not to engage in any misleading or deceptive conduct in relation to the services.

## 12. Dispute resolution

12.1 All issues, disputes and differences between the parties in relation to the interpretation or performance of this contract will, in the first instance, be attempted to be resolved at the earliest opportunity and within 14 days of the issue or dispute arising.

12.2 If an issue or dispute remains unresolved or requires further adjudication, the issue or dispute is to be referred to the parties' chief executive officers or their delegates or persons of the equivalent position for resolution within 28 days of referral.

## 13. Variation

13.1 A variation of this contract is binding only if agreed in writing and signed by the parties.

## 14. Assignment

14.1 The organisation cannot assign its obligations, and agrees not to assign its rights, under this contract.

14.2 If the administrative arrangements regarding ACARA are altered such that the object of this contract is transferred to another government entity, ACARA may assign its rights under this contract to that entity, subject to that entity assuming ACARA's obligations under this contract. The organisation shall have no objection to any such assignment or assumption.

## 15. Compliance with laws

15.1 The organisation agrees, in carrying out this contract, to comply with all local laws.

## 16. Applicable law

16.1 Claims under this contract are to be determined in accordance with the law of the state or territory specified in the contract details.

16.2 The parties submit to the jurisdiction of the courts of that state or territory.

## 17. Working with children

17.1 If the provision of the services requires the organisation or its personnel to come into contact with children or vulnerable people, the organisation must comply with all local laws related to working with children or vulnerable

people and ensure that its personnel also comply

17.2 The organisation must provide such evidence as ACARA reasonably requires confirming that the organisation and its personnel have the requisite approvals to work with children or vulnerable people.

## 18. Definitions and interpretation

18.1 In addition to the terms described in the contract detail:

- **Contract details** means the relevant document headed 'Contract details'.
- **Project results** means any material:
  - a. created for the purposes of this contract
  - b. provided or required to be provided to ACARA as part of the services, or
  - c. derived at any time from the material referred to in paragraphs a or b;

**GST** has the meaning that it has in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- **intellectual property** includes all copyright (including rights in relation to phonograms and broadcasts); all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include: moral rights; the non-proprietary rights of performers; or rights in relation to confidential information; and
- **local laws** means all statutory and regulatory requirements applying in the jurisdiction where the services will be performed (including applicable Commonwealth statutory and regulatory requirements); and
- **official information** means any information developed, received or collected by, or on behalf of, ACARA to which the organisation gains access under, or in connection with, this contract, and includes the project results and the terms of the contract.

18.2 This contract comprises, in order of descending priority:

- a. these standard conditions of contract;
- b. the contract details;
- c. any attachments to these standard conditions of contract; and
- d. any other document incorporated by reference.

18.3 If any conflict arises between the terms and conditions contained in this contract, the order of priority will be as set out in clause 18.2.