



## User Guide: Standard Grant Agreement

### 1. Overview

The *Standard Grant Agreement* Template is suitable for use for all low to medium risk, non-complex government grants.

This User Guide provides instructions for using the template and a clause by clause description of the legal impact of each contract term of the *Standard Grant Agreement* Template.

This User Guide is not a substitute for legal advice. Public authorities need to refer specific legal issues to the Crown Solicitor's Office.

### 2. Contract Structure

The *Standard Grant Agreement* Template has the following parts:

- Letter and Acknowledgement and Acceptance of Offer
- Attachment 1 - Grant Details
- Attachment 2 - Standard Terms & Conditions
- Attachment 3 - Special Conditions
- Attachment 4 - Acquittal Form

Supplementing these documents is a clause bank:

- Grant Special Conditions Clause Bank

### 3. Completing a Contract

#### Letter and Acknowledgement and Acceptance of Offer

This part of the *Standard Grant Agreement* Template is in letter format and specifies the offer which the successful recipient may accept by signing the 'Acknowledgement & Acceptance of Offer', making the offer legally binding.

#### Attachment 1 - Grant Details

The variable content of the contract is to be inserted into this Attachment. Insert "not applicable" against items if they are not required for the specific Grant.

Item No.	Item Title	Guidance Notes
1.	Government Party	Insert the name, ABN and contact details of the government party. For departments and statutory authorities that are not established as body corporates, insert the responsible Minister. For statutory authorities that are established as body corporates, insert the statutory authority.
2.	Recipient	Insert the name, ACN (where relevant) and contact details of the contracting party. If the contracting party is a trustee, also specify the name of the trust.



Item No.	Item Title	Guidance Notes
3.	Commencement Date	Insert the date that the contract takes effect. This can be the date of last party execution or a specified date.
4.	Expiry Date	Insert the date that the contract will come to an end. This can be a specified period or can be linked to the occurrence of a particular event e.g. the provision of a final report or acquittal.
5.	Extension Period(s)	If extension periods have been approved, the contract can be extended at the election of the government party. If not insert "not applicable".
6.	Recipient's ABN	An ABN is required otherwise the government party is required to withhold tax at the rate prescribed in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth). Also confirm whether the recipient is registered for GST.
7.	Contact Persons	Each party must nominate a Contact Person. Insert a telephone number and email address.
8.	Purpose	Include a brief functional description of the purpose of the grant here.
9.	Outcomes	Include the social, economic or environmental outcomes to be achieved using the grant funding.
10.	Reports and Meetings	Insert description of reports and delivery dates as well as any specific meetings that must be attended.
11.	Grant Amount	The government party must determine whether the Grant Amount is inclusive or exclusive of GST or no GST is payable.
12.	Payment Details	Insert payment details including amounts to be paid, due dates and method of payment (e.g. electronic funds transfer).
13.	Tax Invoice Issuing Party	If the recipient and the government party have agreed that the government party will issue a Recipient Created Tax Invoice (RCTI) then the government party is the Tax Invoice Issuing Party. In all other cases the Tax Invoice Issuing Party will be the recipient.
14.	Grant Reconciliation Date (s)	If the date on which the recipient must acquit expenditure of the grant is not the anniversary of the Commencement Date, then please insert alternative date here.
15.	Additional Recipient Financial Information	If the recipient is not required by law to prepare audited financial statements, the government party can specify here that the optional financial information specified in clause 8.3 is required.
16.	Government Party IP Licence	If the government party requires a licence to use IP created by the recipient using the grant then it can indicate this here.
17.	Insurances	The only mandated insurance is public liability insurance. A recipient must have a minimum of \$1 million public liability insurance coverage.
18.	Liability Limit	As most grants are low risk the liability limit has been set at the lowest multiplier of total contract value (1x). For high risk contracts the Crown Solicitor's Office can assist by drafting bespoke liability provisions.
19.	Notice Period for Termination for Convenience	Either party can specify whether it requires a right to terminate for convenience. The period should not be less than 30 days unless the contract itself is for a very short period.
20.	Form of Funding Acknowledgement	The government party can specify the form and content of the acknowledgement of Government funding here.



## Attachment 2 - Standard Terms & Conditions

These terms and conditions are fair and are not modifiable without Crown Solicitor's Office approval. If additional clauses are required these are to be included in **Attachment 3 - Special Conditions**.

Clause No.	Clause Title	Guidance Notes
1.	Funding Period	This is the period during which the contract will generally have legal force and effect. If as part of the grant approval process, extensions of the contract have been approved, then clause 1.2 will give effect to the extension(s).
2.	Contact Persons	These are the persons who are responsible for the day to day management of the relationship between the parties.
3.	Purpose	The Grant must only be used for the agreed purpose.
4.	Funding and Invoicing	If the period of the contract is greater than 12 months the Grant payable from the first anniversary of the Commencement Date will be indexed against the applicable NFP Sector Indexation Rate during the period of the contract.
5.	GST	The default position is that a recipient has both an Australian Business Number (ABN) and is registered for GST. If the Recipient is not registered for GST then no GST may be charged for supplies. If an NFP organisation does not have an ABN, then tax at 46.5% must be withheld and paid to the ATO.
6.	Repayment of Unallocated Funds	As a grant is provided for a specific purpose, any unexpended funds must be repaid to the government party when specified in the contract, unless the recipient has requested the right to retain or carryover unexpended amounts.
7.	Provision of Information	It is necessary that the government party is able to confirm that the grant funding is being used for the Purpose. Confirmation can occur through the recipient providing reports.
8.	Financial Reporting and Auditing	<p>The recipient is required to provide a written acquittal of its expenditure of the grant at the times specified in the contract.</p> <p>Where a recipient is required by law to prepare audited Financial Statements then it can provide a copy of these to satisfy the reporting requirements in this clause.</p> <p>Where a recipient is not required by law to prepare audited Financial Statements, the government party has the option of requiring the recipient to provide its balance sheet, income and expenditure statement and statement of changes in equity for the financial year.</p> <p>The government party may require the financial accounts of the recipient to be audited and if the grant has not been used for the Purpose the recipient must pay the costs of the audit.</p>
9.	Inspection	To ensure that the grant is being used for the agreed Purpose the government party has the right to inspect premises, records and interview recipient Personnel.
10.	Intellectual Property Rights	<p>Ownership of intellectual property in existence before the contract is entered into is unchanged.</p> <p>If specified in Attachment 1 the recipient grants a broad licence to enable the government party to use any reports or other</p>



Clause No.	Clause Title	Guidance Notes
		deliverables required to be supplied under the contract.
11.	Confidential Information	Each party has obligations in relation to the use and disclosure of information that the other party has designated as "Confidential Information".
12.	Privacy	As a grant recipient is not a contracted service provider within the meaning of the South Australian Government Information Privacy Principles ( <a href="https://www.dpc.sa.gov.au/documents/rendition/DPC-Circular-Information-Privacy-Principles-IPPS-Instruction.pdf">https://www.dpc.sa.gov.au/documents/rendition/DPC-Circular-Information-Privacy-Principles-IPPS-Instruction.pdf</a> ), the grant recipient is required to comply with the requirements in the <i>Privacy Act 1988</i> (Cth) in relation to the collection, storage, disclosure or other use of personal information under the contract.
13.	Publicity	The recipient must acknowledge the government party's financial support in any advertising, publicity or promotional material. The recipient and the government party must cooperate in terms of the content and timing of any public announcements or media releases about the contract.
14.	Insurance	The default position under the Standard Terms & Conditions is that the recipient is in the best position to assess its liability and to manage its risks under the contract whether by insurance or otherwise. The only mandated insurance is public liability insurance which has been set at the lowest amount available from insurers.
15.	Liability Limit	As most grants are low risk the liability limit has been set at the lowest multiplier of total contract value. The global cap applies to all heads of liability and all types of damage or loss.
16.	Dispute Resolution	This clause requires the parties to at least attempt to resolve any disputes between them before either party has recourse to the courts. This is subject to a carve-out where it is necessary for a party to seek interlocutory relief in the case of genuine urgency.
17.	Default and Termination	This clause sets out the consequences of the recipient failing to comply with its obligations under the contract. The Standard Terms & Conditions do not exclude any common law or statutory rights to terminate. The clause also provides a right to either party to terminate without cause.
18.	Effect of Ending This Agreement	This clause operates to preserve each party's rights even though the contract has been brought to an end. This clause also specifies those clauses that survive termination of the contract. For example the obligation to not disclose Confidential Information.
19.	Contract Disclosure	The terms of the Agreement are not confidential information and may be provided to the public on request.
20.	Compliance with Laws and Policies	The recipient must comply with all laws that apply to the performance of the recipient's obligations under the contract and those policies that are notified to the recipient at the commencement of the Agreement.
21.	Governing Law	The law of the contract is South Australian law and the courts of



Clause No.	Clause Title	Guidance Notes
	and Jurisdiction	South Australia including the Federal Court have the exclusive right to adjudicate on any issue arising under the contract.
22.	Entire Agreement	This clause excludes all prior agreements between the parties from having contractual force and effect and affirms that the terms and conditions of the contract are the only terms that govern the bargain between the parties.
23.	No Assignment	The recipient must obtain the government party's written approval if it wishes to assign any rights or obligations under the contract.  The clause also provides that if there is a Machinery of Government Change, the entity that replaces the government party will be bound as if it was the government party.
24.	Modification	For a variation to the contract to be effective the variation must be agreed in writing by both parties.
25.	Severance	If a court determines that a part of the contract is void for any reason, then the parties agree that invalidity of that part does not affect the validity of the rest of the contract.
26.	Counterparts	This clause gives the parties the option of executing the contract by each party signing a copy of the contract and then providing that signed copy to the other party.
27.	No Further Obligation	The government party's obligations in terms of funding the recipient are limited to the express terms of the contract and the government party is not responsible if the cost of undertaking the grant exceeds the grant funding.
28.	Interpretation	This clause sets out the basic rules for interpreting the terms and conditions of the contract.
29.	Definitions	Includes all defined terms (in capitals) used in the contract.
30.	Special Conditions	The effect of this clause is to bring within the scope of the contract any special conditions that are inserted into Attachment 3.

### Attachment 3 - Special Conditions

Additional terms from the **Grant Special Conditions Clause Bank** can be included in Attachment 3 (Special Conditions).

Additional agency specific clauses may only be included as special conditions if approved by the Accounting Services Branch in the Department of Treasury and Finance. The Crown Solicitor's Office can assist with drafting additional terms.

If additional terms are not required insert "not used" in Attachment 3.

Clause No.	Special Condition Title	Guidance Notes
1.	Additional Definitions	If the grant is to be used for the purposes of constructing or redeveloping facilities then this special condition contains additional definitions.
2.	Conditions	If the grant is to be used for the purposes of constructing or



Clause No.	Special Condition Title	Guidance Notes
	Precedent	redeveloping facilities then the recipient needs to satisfy a number of conditions before the Grant is paid e.g. provide a copy of the development approval to the government party.
3.	Facilities Funding	If the grant is to be used for the purposes of constructing or redeveloping facilities, this clause imposes additional accounting requirements on the recipient.
4.	Construction of Facility	If the grant is to be used for the purposes of constructing or redeveloping facilities, then the recipient is obliged to complete the construction or redevelopment of the facility before the Date for Practical Completion or such other date agreed by the government party.
5.	Use of Facility	If the grant is to be used for the purposes of constructing or redeveloping facilities, this clause imposes limitations on the use of the facility.
6.	Additional Insurances	If the grant is to be used for the purposes of constructing or redeveloping facilities, this clause requires the recipient to hold building insurance.
7.	Smoke Free Environment	This clause requires recipients to ensure that events funded by the grant are smoke free.

#### Attachment 4 – Acquittal Form

The Government Party can attach its preferred acquittal form in Attachment 4.

#### **4. Contract Completion Checklist**

##### Step 1 Complete Variable Content for Contract

- Insert the relevant details in Attachment 1
- Insert “not applicable” for those items that are not relevant to the grant
- Delete all drafting prompts (identified by coloured highlighting)
- Insert any applicable Special Conditions in Attachment 3
- Attach Acquittal Form in Attachment 4

##### Step 2 Execution of Contract

- Ensure that the recipient is a legal entity (e.g. a body corporate)
- To accept the contract either:
  - each party must have a fully executed copy of the contract, or
  - each party must ensure that the other party has a copy of the contract which contains the first party’s execution (known as counter party execution).