

# Model Terms and Conditions - IPPs and Records Management

These model terms and conditions have been developed by the Crown Solicitor's Office to assist agencies to meet their obligations under the [Information Privacy Principles Instruction](#), issued as Premier and Cabinet Circular 12 and the [Contracting and Official Records Standard](#) issued under the *State Records Act 1997*.

Agencies can choose between a short clause or a longer clause of the model terms and conditions depending on the type of contract and the service being delivered.

Generally the short clause is to be used for basic or simple contracts, such as a letter of engagement, where the risk to information is assessed as low. The longer clause is recommended for more detailed contracts particularly where sensitive or personal information is involved.

## **CONTRACTING AND OFFICIAL RECORDS STANDARD AND PERSONAL INFORMATION - Short Clause**

1. The Service Provider agrees that in performing its obligations under this agreement it will act in a manner that ensures that the Customer is able to comply with the Contracting and Official Records Standard.
2. The Service Provider acknowledges that the Information Privacy Principles as they relate to the collection, storage, access to, correction, use and disclosure, of personal information, apply to the Customer. The Service Provider agrees that in performing its obligations under this agreement it will act in a manner that ensures that the Customer is able to comply with the Information Privacy Principles. The Service Provider must only collect, use and disclose Personal Information for the purpose of fulfilling its obligations under this agreement unless otherwise permitted under this agreement or the Information Privacy Principles.

Add the following definitions:

**Contracting and Official Records Standard** means the standard relating to record management amended by the Manager (Director), State Records pursuant to section 14(1) of the *State Records Act 1997* and which can be found at <http://www.archives.sa.gov.au>.

**Information Privacy Principles** means the Cabinet Administrative Instruction No 1 of 1989, which can be found at <http://www.premcab.sa.gov.au/pdf/circulars/Privacy.pdf>

**CONTRACTING AND OFFICIAL RECORDS STANDARD AND PERSONAL INFORMATION - Long Clause**

1. The Service Provider agrees that in performing its obligations under this agreement it will act in a manner that ensures that the Customer is able to comply with the Contracting and Official Records Standard. Further, the Service Provider acknowledges that the Information Privacy Principles as they relate to the collection, storage, access to, correction, use and disclosure, of personal information, apply to the Customer. The Service Provider agrees that in performing its obligations under this agreement it will act in a manner that ensures that the Customer is able to comply with the Information Privacy Principles. To give effect to this clause, the Services Provider must, without limitation:
  - 1.1 acknowledge and agree that the Customer retains ownership of all Official Records relating to, arising out of, or in connection with, the provision of the Services by the Service Provider under this agreement, unless the Customer transfers ownership to the Service Provider by written notice;
  - 1.2 take all reasonable steps to ensure that before it collects Personal Information (or as soon as practicable after it has collected the information) the record-subject is told:
    - 1.2.1 the purpose for which the information is being collected, unless that purpose is obvious;
    - 1.2.2 if the collection is authorised or required by or under law, that the collection is so authorised; and
    - 1.2.3 in general terms, the way in which the information will be used and stored;
  - 1.3 only collect, use and disclose Personal Information for the purpose of fulfilling its obligations under this agreement unless otherwise permitted under this agreement or the Information Privacy Principles;
  - 1.4 create and manage Official Records in a format approved by the Customer and maintain them in good order and condition;
  - 1.5 maintain a recordkeeping system approved by the Customer;
  - 1.6 where required by the Customer, dispose of Official Records in accordance with the Customer's directions;
  - 1.7 maintain a written schedule recording all Official Records disposed of by the Service Provider in the conduct of this agreement;
  - 1.8 retain all Official Records in which ownership has been transferred to the Service Provider under this agreement for [insert number] years after termination or expiration of this agreement;
  - 1.9 take all reasonable measures to ensure that all information relevant to this agreement in its possession or under its control is kept in a secure area (within the Service Provider's premises or other location approved by the

Customer), is securely stored and sufficient security measures are employed by the Service Provider to protect it against unauthorised access, physical harm, disclosure or other misuse and the Service Provider must initiate and maintain an information security classification system;

- 1.10 deliver Official Records in the Service Provider's custody to the Customer on notice of not more than 48 hours (or such shorter period as may be otherwise agreed);
  - 1.11 establish a disaster management plan that includes the recovery of Official Records;
  - 1.12 comply with the Customer's requirements to enable the Customer to respond to a request under the *Freedom of Information Act 1991*;
  - 1.13 immediately refer any complaints received by the Service Provider about the Service Provider's obligations under this agreement to the Customer;
  - 1.14 as soon as practicable, notify the Customer of any unauthorised disclosure to third parties or of any breach of this agreement in respect of Official Records or Personal Information;
  - 1.15 ensure that if the Service Provider subcontracts any of its obligations under this agreement, these terms and conditions are incorporated into any contract for service between the Service Provider and a subcontractor;
  - 1.16 indemnify the Customer for any liability, loss or damage arising from a breach of the obligations set out in this clause;
  - 1.17 without limiting any other remedy, pay all costs incurred by the Customer in reinstating lost or destroyed Official Records unless that loss or destruction resulted from the Customer's negligence or the destruction occurred at the Customer's request; and
  - 1.18 return Official Records to the Customer in the manner and form notified by the Customer.
2. The obligations in this clause dealing with the collection, use or disclosure of Personal Information survive the termination or expiration of this agreement.
  3. The Customer may at any time, at its own cost, appoint a person to conduct an audit to ensure that the Service Provider is complying with its obligations under this agreement.

Add the following definitions:

**Contracting and Official Records Standard** means the standard relating to record management amended by the Manager (Director), State Records pursuant to section 14(1) of the *State Records Act 1997* and which can be found at <http://www.archives.sa.gov.au>.

**disposal** or **dispose** of an Official Record means to:

- (a) destroy or abandon the record;

- (b) carry out an act or process as a result of which it is no longer possible or reasonably practicable to reproduce the whole or a part of the information contained in the record; or
- (c) transfer or deliver ownership or possession of or sell the record, or purport to do so,

but does not include the transfer or delivery of the record to State Records.

**Information Privacy Principles** means the Cabinet Administrative Instruction No 1 of 1989 which can be found at <http://www.archives.sa.gov.au>.

**ownership** means the possession of all property rights in an Official Record despite any change in the custodial arrangements in relation to that Official Record.

**Official Record** means a record made by or for the Customer or received by the Customer in the conduct of this agreement, which includes:

[insert a list of documents to which you want these provisions to apply. If there are existing Official Records that will be relinquished to the Service Provider (ie you intend to give up control and will effectively dispose of these) do not include. when compiling the list of Official Records ensure that it includes reports etc that are sufficient to establish -

- whether the Service Provider has complied with the KPIs;
- whether the Service Provider has complied with the service levels;'
- that all expenditure and revenue is recorded and accounted correctly; and
- such other statistical or other information to enable the Customer to monitor the Service Provider's performance]

An Official Record does not include -

- (a) a record made by or for the customer or received by the customer in the conduct of this agreement for delivery or transmission to another person or body (other than a government agency) and so delivered or transmitted; or
- (b) a record made by or for the Customer as a draft only and not for further use or reference.

**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 reasonably be ascertained, from the information or opinion.

**record-subject** means a person to whom Personal Information relates.