South West NRM Ltd
Achieving sustainable landscapes for rural communities

Standard Terms and Conditions of Supply

Version 201601

Purpose

This document details the standard terms and conditions of supply for products and services to The South West NRM Ltd (ABN: 95 111 225 293), herein referred to as *'SWNRM'*.

The Terms and Conditions set out in this document apply to products and services sourced from external parties for the delivery of company outcomes and objectives. These parties are herein referred to as *'Supplier' and t*he products and or services delivered are herein referred to as *"Services"*.

1. Products and Services

1.1. The Supplier agrees to deliver the Services detailed in the request to supply document (contract, purchase order, e-mail, letter or other written agreement), as negotiated and agreed by both parties within the timeframe specified, herein referred to as the *'Agreement'*.

2. Rate of Payment

2.1. SWNRM agrees to pay the Supplier for Services in accordance with the Agreement as executed by both parties.

2.2. The Supplier agrees to deliver the Services incurring expenses only in accordance with the Agreement

a) Any expenditure for any Services outside of the Agreement will not be honored by SWNRM

2.3. Any superannuation contributions required to be made to the Supplier (as amended by legislation from time to time) will be absorbed into the cost of Services as executed in the Agreement.

2.4. The Supplier shall submit a legal Tax Invoice including the prescribed rate of GST to SWNRM according agreed schedule of payment.

2.5. SWNRM shall pay the amounts agreed upon receipt of Tax Invoices within 30 days

3. Record Keeping

3.1. The Supplier must:

a) keep comprehensive records of the conduct and provision of the services required under the agreement and;

b) retain all records referred to in this clause for the Agreement period and a further period of twelve years from the expiry or termination of the Agreement or such longer period as may be required by Law.

4. Audits and Access

4.1. The Supplier acknowledges and agrees that SWNRM, and any persons otherwise nominated by SWNRM may, at reasonable times and on giving reasonable notice to the Supplier:

a) Access and inspect the Supplier's premises, service delivery locations and any Assets, wherever they may be located, to the extent relevant to the performance of the Agreement; and

b) Require the Supplier (including its personnel) to provide records, documents and information relevant to the performance of the Agreement in a data format and storage medium accessible by all parties.

4.2. Each party must bear its own costs of any inspections, reviews and audits and enquiries conducted pursuant to this clause.

4.3. This clause applies for the duration of the Agreement Period and for a period of seven years from the termination or expiry of the Agreement.

5. Appointment of Subcontractors

5.1. Where the Supplier wishes to engage another party to deliver or assist in the delivery of any of the Services required in the agreement, the Supplier must:

a) Obtain written approval from SWNRM

b) Enter into a contract/agreement with that party and the contract/agreement must be consistent with the terms of this Agreement, including with regard to clause 12 (*Workplace Health & Safety*)

c) Upon request provide SWNRM a copy of all executed sub-contract agreements

d) When entering into an approved sub-contracting arrangement the Supplier agrees to pay the sub-contractor within 30 days of the receipt of a tax invoice

6. Independent Contractor

6.1. The Supplier is an independent contractor and neither the Supplier nor Supplier's staff is or shall be deemed to be employed by SWNRM.

6.2. SWNRM is hereby contracting with the Supplier for the services described in the Agreement and the Supplier reserves the right to determine the method, manner and mean by which the services will be performed. The Supplier is not required to perform the services during a fixed hourly or daily time and if the services are performed at SWNRM's premises, then the Supplier's time spent at the premises is to be at the discretion of the Supplier; subject to SWNRM's normal business hours and security requirements. The Supplier shall not be required to devote the Supplier's full time nor the full time of the Supplier's staff to the performance of the services required hereunder, and it is acknowledged that the Supplier has other clients and the Supplier offers services to the general public. The order or sequence in which the work is to be performed shall be under the control of the Supplier.

6.3. The Supplier hereby confirms that SWNRM will not be required to furnish or provide any training to the Supplier to enable the Supplier to perform the services required hereunder. The services shall be performed by the Supplier or Supplier's staff, and SWNRM shall not be required to hire, supervise or pay any assistants to help the Supplier who performs the services under this agreement. Except to the extent that the Supplier's work must be performed on or with SWNRM's computers or SWNRM's existing software, all materials used in providing the services shall be provided by the Supplier.

6.4. The Supplier's services hereunder can be terminated or cancelled:

a) At any time for convenience and without giving reasons by giving written notice to the Supplier.

b) due to the Supplier's failure to deliver the Services as agreed.

c) Upon receipt of a notice of termination or reduction from SWNRM pursuant to clause 6.4, the Supplier must cease carrying out the Agreement to the extent specified in the notice, take all available steps to minimise any losses resulting from that termination or reduction and continue carrying out those parts of the Project not affected by the notice.

6.5. SWNRM shall not provide any insurance coverage of any kind for the Supplier or Supplier's staff, and SWNRM will not withhold any amount that would normally be withheld from an employee's pay.

6.6. The Supplier shall take appropriate measures to ensure that the Supplier's staff is competent.

6.7. Each of the parties hereto agrees that, while performing Services under the Agreement, and for a period of six (6) months following the termination of the Agreement, neither party will, except with the other party's written approval, solicit or offer employment to the other party's employees or staff engaged in any efforts under the Agreement.

7. Confidential Information

7.1. Each party shall hold in trust for the other party, and shall not disclose to any non-party to the Agreement, any confidential information of such Other Party. Confidential information is information which relates to research, development, trade secrets or business affairs, but does not include information which is generally known or easily ascertainable by non-parties of ordinary skill in computer systems design and programming.

7.2. The Supplier hereby acknowledges that during the performance of this contract, the Supplier may learn or receive confidential SWNRM information and therefore the Supplier hereby confirms that all such information relating to the SWNRM's business will be kept confidential by the Supplier, except to the extent that such information is required to be divulged to the Supplier's clerical or support staff or associates in order to enable the Supplier to perform the Supplier's contractual obligation/s.

8. Privacy and Personal Information

8.1. The Supplier must:

a) If it obtains Personal Information while delivering the Services or otherwise performing its obligations under the Agreement, use or disclose that Personal Information only for the purposes of the Agreement.

b) Comply with the Australian Privacy Principles as if the Supplier were an agency under the Privacy Act and otherwise comply with the Privacy Act.

9. Collateral

9.1. The Supplier is required to obtain written approval (hardcopy or electronic) from SWNRM's Communications Officer for all collateral and media releases which are produced under this Agreement before its use. Collateral includes all promotional material relating to the Agreement, including but not limited to brochures, factsheets, invitations, and posters.

a) Requests for SWNRM approval are to be sent to the Communications Officer, PO Box 630, Charleville Queensland 4470 or pm@swnrm.org.au.

b) SWNRM shall provide signoff or feedback within 14 days of receipt of the request.

9.2. The Supplier agrees to provide electronically (on CD or USB drive) any and all images collected during the life of the Agreement as applicable. Images must be correctly labeled including but not limited to identifying persons, places and events. SWNRM and other nominated parties in relation to clause 10 will retain the right to use, reproduce, adapt and exploit the images in any reporting or promotional activities.

10. Project Material and Intellectual Property Rights

10.1. Intellectual Property Rights in Project material

a) Subject to clause 10.2, all Intellectual Property Rights in the Project Material created by the Supplier will vest, upon creation, in the Supplier.

b) The agreement does not affect the ownership of the Intellectual Property Rights in any Third Party Material

10.2. Licensing of Project Material under a Creative Commons License

a) The Supplier must make, or must procure for the making of, all Project material (excluding Secret and Sacred Material) available under a perpetual Creative Commons Attribution License (CC-BY 3.0)

b) For the purpose of the Agreement, the Creative Commons Attribution License (CC-BY 3.0) is the form of license detailed at www.creativecommons.org.au

10.3. Licensing of Project material generally

a) Notwithstanding any other provision of the Agreement, the Supplier grants, or must procure for, SWNRM and any other nominated party a perpetual, irrevocable, royalty free, worldwide, non-exclusive license (including the right to sub license) to use, reproduce, modify, adapt, communicate, publish, broadcast and exploit the

Project Material (excluding Secret and Sacred Material) for any non-commercial purpose.

10.4. Third Party Material

a) The Supplier must provide Third Party Material necessary or appropriate to perform its obligations under the Agreement.
b) If the Supplier cannot obtain the licenses as described in clauses 10.2 and 10.3 for any Third Party Material, the Supplier must:
c) Notify SWNRM of the best alternative license terms for that Third Party Material and not use that Third Party Material unless SWNRM consents to those terms; and
d) If SWNRM does not consent to those terms, notify SWNRM of any comparable Third Party Material and comply with its obligations under this clause 10.4(c) in respect of comparable Third Party Material.

10.5. Project Material Copies

a) On termination or expiry of the Agreement, or earlier if requested by SWNRM the Supplier must promptly deliver a copy of all Agreement and service related material that is in existence to SWNRM in an agreed format (including in an electronic format), or as otherwise directed by SWNRM.

10.6. Intellectual Property Rights warranties

a) The Supplier warrants that anything done by the Supplier in the course of the Agreement including in developing the reports, will not infringe the Intellectual Property Rights of any person.
b) The Supplier further warrants that SWNRM nor any other nominated party nor any of their sublicenses will not, at any time, be infringing the Intellectual Property Rights of any person when undertaking an activity allowed for under the Agreement or using Project Material (excluding Secret and Sacred Material) in a manner consistent with the licenses granted or to be granted, to SWNRM and the other nominated parties under this clause.
c) If SWNRM reasonably believes that someone claims, or is likely to claim, that all or part of the Materials warranted by the Supplier under this clause infringe their Intellectual Property rights, the Supplier must, in addition to the indemnity under clause 16 and to any other rights that SWNRM or the nominated other parties may have against it, promptly, at the Suppliers expense:
    i. Use its best efforts to secure the rights for the SWNRM and other nominated parties to continue to use the affected Materials free of any claim or liability for infringement; or
    ii. Replace or modify the affected materials so that the Material or use of them does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of the affected Materials.

11. Conflict Of Interest

11.1. The Supplier warrants, to the best of its knowledge, as at the Commencement Date, that no Conflict of Interest exists or is likely to arise in the performance of the Supplier's obligations under the agreement.

11.2. If during the Agreement Period, a Conflict of Interest arises, or appears likely to arise the Supplier must immediately notify SWNRM in writing if the Conflict of Interest making a full disclosure of all relevant information relating to the Conflict of Interest and setting out the steps the Supplier proposes to take to resolve or otherwise deal with the Conflict of Interest, and take such steps as the SWNRM may reasonably require to resolve or otherwise deal with that Conflict of Interest.

11.3. The Supplier is responsible for the performance of the Supplier's responsibilities under the Agreement regardless of whether the Supplier has subcontracted any of its obligations.

11.4. The Supplier must not enter into a subcontract under this Agreement with a subcontractor that is not compliant with the Workplace General Equality Act 2012 (Cth).

11.5. If requested the Supplier must promptly provide to SWNRM a copy of any contract or any material relating to the engagement of the subcontractor.

12. Work, Health and Safety

12.1. The Supplier acknowledges and agrees that workplace health and safety is of paramount importance to them, their work colleagues, South West NRM Ltd and its business.

12.2. The Supplier must in carrying out its obligations under the Agreement, comply, with the provisions of all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority including those arising under a WHS Law in respect of occupational health and safety.

12.3. The Supplier must use reasonable endeavours to ensure that its subcontractors also comply and meet their obligations as required.

12.4. If the Supplier is required by a WHS Law to report to a Regulator an incident arising out of the services provided for this Agreement:

a) At the same time, or as soon as is possible in the circumstances, the Supplier must give notice of such incident, and a copy of any written notice provided to a Regulator, to SWNRM; and

b) The Supplier must provide to SWNRM, within such time as is specified by SWNRM, a report detailing the circumstances of the incident, the results of investigations into its use, and any recommendations or strategies for prevention in the future.

12.5. The Supplier must inform SWNRM the full details of:

a) Any suspected contravention of a WHS Law relating to this provision of services under the Agreement, within 24 hours of becoming aware of any such suspected contravention;

b) Any cessation of direction to cease work related to the provision of services under this agreement, due to unsafe work, immediately upon being informed of any such cessation or direction;
c) Any workplace entry by a WHS entry permit holder, or an inspector, to any place where the services are being performed or undertaken, within 24 hours of becoming aware of an such workplace entry; and
d) Any proceedings against the Supplier of its officers, or an decisions or request by the Regulator given to the Supplier of its Personnel, under a WHS Law, within 24 hours of becoming aware of any such preceding, decision or request.

13. Property and Equipment

13.1. SWNRM may provide equipment and property to the Supplier to assist in the delivery of Services. SWNRM reserves the right to record the equipment and or property provided under the Personal Properties and Securities Act 2009 (Cth).

13.2. As collateral for: the return of each Item; and the performance of the Suppliers' obligations under the Agreement. The Supplier grants to SWNRM a Security Interest over the equipment and or provided.

a) Nothing in the agreement gives the Supplier the right, title or interest in the SWNRM's equipment and or property other than the right of possession and use of such pursuant to the terms of the Agreement.
b) If the Supplier is in default of any provision of the agreement SWNRM may seize the property by any method permitted by law.
c) The Supplier gives its consent to the registration of the SWNRM's Security Interest on the Personal Property Securities Register.
d) The Supplier waives its right pursuant to section 157 (3) of the Act to receive a notice in relation to registration events to which this clause applies.
e) The Supplier shall do anything and co-operate fully at all times to enable SWNRM to perfect and maintain the perfection of its Security Interest.

14. SWNRM Representative

14.1. The following individual, Phil McCullough, Chief Executive Officer, shall represent SWNRM during the performance of the Agreement with respect to the services and deliverables and has authority to execute written modifications or additions to the agreement as defined in Sections 16 and 23.

15. Disputes

15.1. SWNRM and the Supplier must make every effort to avoid disputes arising but acknowledge that despite those efforts disputes may still arise.

15.2. If a dispute or difference arises between SWNRM and the Supplier at any time as to the construction of the Agreement or as to any matter or thing of whatever nature arising under or in connection with the Agreement, then either Party must promptly

give to the other notice in writing adequately identifying the matters of that dispute or difference.

15.3. If the dispute or difference has not been settled within five days after receipt by a Party of a notice of dispute, the dispute must be referred to a mediator agreed to by the Parties or if the Parties are unable to agree on a mediator, then a mediator appointed by the President of the Queensland Law Society. Such mediation is to be conducted on such terms as agreed by the Parties, or if the Parties are unable to agree, then on such terms as directed by the appointed mediator.

16. Defective Works

16.1. The Supplier agrees to indemnify SWNRM against all costs and expenses that SWNRM incurs or sustains in relation to this Agreement which result from or in relation to any defective Services of the Supplier.

16.2. SWNRM will issue a Notice to Rectify to the Supplier stipulating the rectification Services required and the time in which such rectification is to be effected. The Supplier agrees that any such rectification work will be conducted at the Supplier's own expense and within the timeframe stipulated in the Notice to Rectify.

16.3. In the event that the Supplier fails to rectify the defect within the stipulated timeframe, then SWNRM reserves the right to engage another contractor or Supplier to complete the rectification work and to recover the costs of same from the Supplier.

16.4. The indemnity under clause 16.1 is a continuing obligation separate and independent of each Party's other obligations and will survive the expiration or, where relevant, the earlier termination of this Agreement.

17. Indemnity

17.1. The Supplier indemnifies SWNRM, their employees, servants and agents against all damages, costs, expenses, loss or damage which they may incur or sustain in relation to the Agreement and all actions, proceedings, claims and demands whatsoever which may be brought or made against it or any person in respect of, by reason of or arising out of:

a) the performance by or on behalf of the Supplier;
b) any negligence or other wrongful act or omission of the Supplier or its employees, sub-contractors or sub-Suppliers or of any other persons for whose acts or omissions the Supplier is vicariously liable;
c) any negligence or other wrongful act or omission of the Supplier's visitors, invitees or licensees;
d) the death, injury, loss of or damage to the Supplier, its employees, agents, sub-Suppliers, licensees, invitees or visitors; and
e) any breach of this Agreement by the Supplier.

17.2. The indemnity under clause 16.1 is a continuing obligation separate and independent of each Party's other obligations and shall survive the expiration or, where relevant, the earlier termination of the Agreement.

17.3. The Supplier may engage contractors, Suppliers or organisations entirely at its own risk and SWNRM will not be liable for any loss, cost, damage, expense or other liability incurred or suffered by the Supplier in engaging any contractor, Supplier or organisation except as explicitly set out in the Agreement or arising as a direct consequence of any deliberately wrongful or negligent act or omission of SWNRM.

18. Insurance

18.1. The Supplier shall effect and maintain for itself and ensure similarly that any Suppliers or contractors it engages for any Activity effect and maintain the following insurances in connection with the Services being supplied:

a) Public Liability Insurance;
b) Professional Indemnity Insurance; and
c) Workers' Compensation Insurance.

18.2. The Public Liability Insurance and Professional Indemnity Insurance must be maintained for the duration of the Agreement and must be for the amount of $1 million for each event.

18.3. If requested in writing by SWNRM to do so, the Supplier must produce evidence to SWNRM's satisfaction and approval that the insurance required by this clause has been affected and maintained. If the Supplier fails to produce evidence of compliance with insurance obligations to the satisfaction and approval of SWNRM, SWNRM may effect and maintain the insurance, pay the premiums and deduct these payments from the fees payable for Services delivered.

18.4. The effecting and maintaining of insurance shall not limit the liabilities or obligations of the Supplier under other provisions of the Agreement.

18.5. Wherever possible, the Supplier shall require professional Suppliers and contractors to maintain Professional Indemnity insurance for the amount of loss likely to be suffered by the Supplier in the event that the Supplier or contractor provides services in a negligent manner.

19. Environmental Management

19.1. The Supplier acknowledges and agrees that environmental management is of paramount importance to them, their work colleagues, South West NRM Ltd and its business.

19.2. To give effect to clause 18.1, the Supplier agrees to do all things necessary to implement environmental management practices and procedures whilst delivering the Services as specified in the Agreement.

20. Complete Agreement

20.1. The agreement to supply consists of the following documents the Agreement and Standard Supply Terms and Conditions, these documents together contain the entire agreement between the parties hereto with respect to the matters covered

herein. No other agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of Supplier by any of its employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof. SWNRM acknowledges that it is entering into the Agreement solely on the basis of the representations contained herein.

21. Applicable Law

21.1. The Agreement shall be governed by and construed in accordance with the law of the State of Queensland and the Parties submit to the jurisdiction of the courts of that State.

22. Scope of Agreement

22.1. If the scope of any of the provisions of the Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provisions shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but that the scope of such provisions shall be curtailed only to the extent necessary to conform to law.

23. Additional Work

23.1. After receipt of a SWNRM Agreement variation which adds to the Services, the Supplier may take reasonable action and expend reasonable amounts of time and money based on the agreed contract variation.

23.2. SWNRM agrees to pay the Supplier for such action and expenditure as set forth in the variation of the original Agreement for payments related to Services.

24. Special Conditions

24.1. Where the supply of Services requires additional conditions of supply, the conditions will be specified in the documented Agreement and are considered to be in addition to these Standard Supply Terms and Conditions.

25. Notices

25.1. Notices to SWNRM should be sent to: Chief Executive Officer, PO Box 630, Charleville Queensland 4470, 07 4656 8500 or e-mail: pm@swnrm.org.au

26. Assignment

26.1. The Agreement may not be assigned by either party without the prior written consent of the other party. Except for the prohibition on assignment contained in the preceding sentence, the Agreement shall be binding upon and inure to the benefits of the heirs, successors and assigns of the parties hereto.

27. Disclosure

27.1. By executing a supply Agreement, the Supplier agrees that SWNRM may release information regarding the Agreement including: the Supplier name, Funding Source/s, Funding Group, Nature of Support provided, Value of Contract and Value of In-Kind Contribution/s to funding providers and other key stakeholders.

27.2. The Supplier may access their personal information or find out if South West NRM Ltd holds personal information about the Supplier, by contacting SWNRM in writing as per clause 25. SWNRM will endeavour to comply with your request, but may refuse access if they have a legal right or requirement to do so in accordance with the Privacy Act.

27.3. If the Supplier believes that the personal information held is incorrect, they may request that it be corrected. This request should be in writing and be directed as per clause 25. SWNRM will endeavour to comply with your request to correct information; if SWNRM is unable to comply, SWNRM will notify that the correction has not been made and the reason why.