



**ADELAIDE SHORES RESORT  
HOLIDAY UNIT REFURBISHMENT**

**Part C**

**Standard Contract Terms and Conditions:**

**Simple Services Agreement**

**Version 1.1**

**November 2009**

**DRAFT**

DATED

DAY OF

20...

**Standard Contract Terms and Conditions:  
Simple Services Agreement**

**BETWEEN**

**WEST BEACH TRUST**

**TRADING AS ADELAIDE SHORES**

**("Principal")**

**-AND-**

**[INSERT CONTRACTOR'S NAME]**

**("Contractor")**

[This Contract is a DRAFT provided only for the purposes of furthering negotiations between the parties. No party will be legally bound unless and until this Contract is executed by the parties and any actions taken in anticipation of such formal execution is at the risk of the person taking them.]

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**SCHEDULE**

**ANNEXURE - Special Conditions**

**AGREEMENT** dated \_\_\_\_\_ day of \_\_\_\_\_ 20..

**PARTIES**

**WEST BEACH TRUST trading as ADELAIDE SHORES (“Principal”)**

**AND**

**THE PERSON/S DESCRIBED IN ITEM 2 OF THE SCHEDULE (“Contractor”)**

**IT IS AGREED**

**1. DEFINITIONS**

- 1.1 **“Commencement Date”** means the date specified in Item 4 of the Schedule;
- 1.2 **“Completion Date”** means the date specified in Item 5 of the Schedule;
- 1.3 **“Confidential Information”** means information which is identified either as confidential information (if disclosed by the Principal) or proprietary information (if disclosed by the Contractor), but does not include this Agreement;
- 1.4 **“Conflict of Interest”** means any interest or duty which conflicts or potentially conflicts with the obligations, liabilities or rights of either party as written in this Agreement;
- 1.5 **“Deliverables”** means the reports and any data or other material specified in the Schedule required to be delivered throughout the performance of the Services;
- 1.6 **“GST Law”** has the meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- 1.7 **“GST Rate”** has the meaning attributed in the GST Law;
- 1.8 **“Intellectual Property Rights”** means all intellectual property rights, including:
  - 1.8.1 patents, plant breeders’ rights, copyright, rights in circuit layouts, registered designs, trade marks, know-how and any right to have Confidential Information kept confidential; and
  - 1.8.2 any application or right to apply for registration of any of the rights referred to in subclause 1.8.1,but for the avoidance of doubt excludes moral rights and performers’ rights;
- 1.9 **“Prices”** means the prices set out in or determined in accordance with Item 6 of the Schedule;

- 1.10 “**Services**” means the services specified in the Schedule and includes the Deliverables;
- 1.11 “**Taxable Supply**” has the meaning attributed in the GST Law; and
- 1.12 “**Tax Invoice**” has the meaning attributed in the GST Law.

## 2. **INTERPRETATION**

- 2.1 In this Agreement unless a contrary intention is meant:
  - 2.1.1 the clause headings are for convenient reference only and do not form part of this Agreement;
  - 2.1.2 a reference to a clause number is a reference to all its subclauses;
  - 2.1.3 a reference to a clause, subclause, schedule or attachment is a reference to a clause, subclause, schedule or attachment of this Agreement;
  - 2.1.4 a word in the singular includes the plural and a word in the plural includes the singular;
  - 2.1.5 a word importing a gender includes any other gender;
  - 2.1.6 a reference to a person includes a partnership and a body corporate;
  - 2.1.7 a reference to legislation includes legislation repealing, replacing or amending that legislation;
  - 2.1.8 a reference to dollars is a reference to Australian dollars;
  - 2.1.9 where a word or phrase is given a particular meaning other parts of speech or grammatical forms of that word or phrase have corresponding meanings.
- 2.2 This Agreement between the parties comprises these standard terms and conditions and all the documents comprised in, and incorporated by reference to, the Annexure. If any of the documents comprising this Agreement are inconsistent, they shall take priority in the following order:
  - 2.2.1 the agency specific terms and conditions (if any) in the Annexure;
  - 2.2.2 these standard terms and conditions (excluding the Schedule); and
  - 2.2.3 the Schedule.

## 3. **TERM**

The Contractor must commence the Services by the Commencement Date and complete the Services by the Completion Date (“**Term**”). The Completion Date may only be extended by written agreement between the parties.

## 4. **SERVICES**

The Contractor must provide the services described in Item 3 of the Schedule (“**Services**”) in accordance with the terms and conditions of this Agreement.

**5. THE DELIVERABLES**

- 5.1 If the Contractor is to provide Deliverables then the details of the Deliverables (if any) set out in the Schedule including the delivery dates and the form and content requirements, must be complied with by the Contractor.
- 5.2 Title in the Deliverables will vest in the Principal on their delivery to the Principal.

**6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1 This clause 6.1 contains two options; (A) and (B); only the option that is selected in Item 8 of the Schedule applies to this Agreement. Where no option is selected in Item 8 of the Schedule, only option (A) applies to this Agreement.

**(A)**

- 6.1.1 *Subject to this clause 6.1 the Crown will own all Intellectual Property Rights in any thing that is delivered to the Principal or otherwise produced in the course of the provision of the Services (including without limitation, Deliverables specified in Item 3 of the Schedule).*

**(B)**

- 6.1.2 *The Crown does not own the Contractor's Intellectual Property Rights existing at, or prior to, the date of this Agreement, however, to the extent necessary for the provision of the Services, the Contractor grants the Principal and the Crown a perpetual, irrevocable, royalty free, fee free licence to use, copy, modify and adapt any such Intellectual Property Rights in relation to the provision of the Services.*
- 6.1.3 *Subject to clause 6.1.2, all Intellectual Property Rights created in anything that is delivered to the Principal or otherwise produced in the course of the provision of the Services (including without limitation, Deliverables specified in Item 3 of the Schedule) vests in and remains with the Contractor.*
- 6.1.4 *The Contractor grants to the Principal and the Crown, a perpetual, irrevocable, royalty free, fee free licence to use, copy, modify and adapt the Intellectual Property Rights in anything that is described in clause 6.1.3.*

- 6.2 The Contractor must not infringe the Intellectual Property Rights of any person in performing its obligations under this Agreement.

**7. CONFLICTS OF INTEREST**

- 7.1 The Contractor warrants to the Principal that neither it, nor any of its Personnel, have a Conflict of Interest under this Agreement.
- 7.2 If the Contractor becomes aware that it or any of its Personnel do have or will have a Conflict of Interest, then the Contractor shall immediately inform the Principal, in writing, with full details of that Conflict of Interest.
- 7.3 The Contractor shall comply with all reasonable directions of the Principal requiring it to resolve or otherwise deal with any Conflict of Interest.

- 7.4 The provision of this clause will operate without prejudice to any other rights which the Principal may have arising out, or in respect of, the existence of any Conflict of Interest or potential Conflict of Interest.

**8. CONFIDENTIAL INFORMATION**

- 8.1 Subject to this clause 8, neither party may disclose any Confidential Information of the other party except as genuinely and necessarily required for the purpose of this Agreement.
- 8.2 Neither party may disclose any Confidential Information of the other party except:
- 8.2.1 to an employee or agent of that party, on a “need to know” and confidential basis;
  - 8.2.2 as required by law or a court order; or
  - 8.2.3 in accordance with any parliamentary or constitutional convention.

**9. PRICE AND PAYMENT**

- 9.1 The Prices apply to the provision of the Services, except the extent otherwise provided in this Agreement.
- 9.2 Subject to clause 10, the Prices include all taxes, duties or government charges imposed or levied in Australia or overseas in connection with this Agreement.
- 9.3 The Prices include all costs of compliance with the Contractor’s obligations under this Agreement. No other costs or expenses are payable by the Principal.
- 9.4 The Contractor is entitled to invoice the Principal for payment in respect of a Service, only on a monthly basis, when the Service has been provided.
- 9.5 The Principal does not have to pay a Contractor’s invoice unless the invoice is properly rendered. An invoice is properly rendered if it:
- 9.5.1 is issued in respect of Services for which the Contractor is entitled to invoice under this Agreement;
  - 9.5.2 reflects the correct price for the Services under this Agreement;
  - 9.5.3 is a valid Tax Invoice within the meaning of the GST Law; and
  - 9.5.4 complies with any other requirements stipulated in the Schedule.

**10. GST**

- 10.1 The Contractor represents that:
- 10.1.1 it is registered under the *A New Tax System (Australian Business Number) Act 1999* (Cth), and that the ABN shown in Item 2 of the Schedule is the Contractor’s ABN; and
  - 10.1.2 it is registered under the GST Law.

- 10.2 If the Prices in Item 6 of the Schedule are expressed as being GST exclusive and the supply for which payment is claimed is a Taxable Supply then, in addition to any amount payable by the Principal by reference to the price (the “**base consideration**”), the Principal must pay to the Contractor, an additional amount of consideration (“**GST consideration**”) for the Taxable Supply calculated by multiplying the GST Rate by the base consideration. The GST consideration is payable at the same time and subject to the same conditions as the base consideration. In this Agreement, “**Taxable Supply**”, and “**GST Rate**” have the meaning attributed to it in the GST Law.

## 11. **INSURANCE**

- 11.1 The Contractor must effect and maintain all insurance policies set out in Item 7 of the Schedule.
- 11.2 The insurance policies set out in Item 7 of the Schedule must:
- 11.2.1 if required as indicated in Item 7 of the Schedule, note the interest of the Principal; and
  - 11.2.2 be with insurers satisfactory to the Principal.
- 11.3 The policies referred to in Item 7 of the Schedule must be in the name of the Contractor and must cover the Contractor and all subcontractors for their respective rights, interests and liabilities.
- 11.4 Before supplying Services under this Agreement, the Contractor must provide the Principal with insurance certificates of currency for the insurances required under this clause. At any time during the Term, the Principal may require the Contractor to provide proof that the policies of insurance have been effective and maintained.
- 11.5 The Principal, in specifying levels of insurance in this Agreement accepts no liability for the completeness of their listing, the adequacy of the sum insured, limit of liability, scope of coverage, conditions or exclusions of those insurances in respect to how they may or may not respond to any loss, damage or liability.
- 11.6 The Contractor acknowledges and agrees that it is the Contractor’s responsibility to assess and consider the risks and scope of insurances required under this Agreement.

## 12. **INDEMNITY**

- 12.1 The Contractor indemnifies and must keep indemnified the Principal and its employees from and against all costs, losses, damages, expenses (including legal expenses) or other liabilities suffered or incurred by the Principal or its employees arising out of or in respect of this Agreement as a consequence of:
- 12.1.1 any negligence, wrongful act or omission or breach of duty of or by the Contractor;
  - 12.1.2 any breach by the Contractor of any of the provisions of this Agreement; or

12.1.3 any claim that the provision of the Services by the Contractor infringes the Intellectual Property Rights of any person.

12.2 This clause will survive the termination of this Agreement.

### 13. **TERMINATION**

13.1 The Principal may terminate this Agreement immediately upon giving notice in writing to the Contractor if:

13.1.1 The Principal reasonably forms the opinion that the Contractor will be unable to perform its obligations pursuant to this Agreement;

13.1.2 the Contractor is in breach of this Agreement and has not rectified such breach within fourteen (14) days of the Principal giving notice in writing to the Contractor requiring the rectification of such breach;

13.1.3 the Principal becomes aware that the Contractor is in breach of its statutory obligations with respect to its employees; or

13.1.4 the Contractor suffers or, in the reasonable opinion of the Principal, is in jeopardy of becoming subject to any form of insolvency administration or bankruptcy.

13.2 The Principal may terminate this Agreement for convenience upon twenty-eight (28) days written notice.

13.3 Any termination of this Agreement by the Principal is without prejudice to any rights, remedies or actions the Principal may have against the Contractor which may have arisen prior to the date of termination.

13.4 If the Principal terminates this Agreement it will pay the Contractor for that part of the Services authorised by the Principal and delivered by the Contractor to the Principal's satisfaction prior to the Contractor receiving the Principal's notice.

### 14. **SUBCONTRACTING**

14.1 The Contractor must not engage any sub-contractor without approval of the Principal.

14.2 The Contractor must apply to the Principal in writing for approval to appoint a sub-contractor and the application must include details of the name of the proposed sub-contractor and the tasks that the Contractor proposes that it performs.

14.3 The Principal may request other information about the proposed sub-contractor.

14.4 If the Principal grants its approval then the approval may be given on such conditions as the Principal reasonably considers appropriate.

### 15. **COMPLIANCE WITH THE PRINCIPAL'S DIRECTIONS**

The Contractor, and the Contractor's employees must comply with the Principal's reasonable directions when supplying the Services.

16. **GENERAL**

16.1 **Compliance with Laws**

The Contractor must comply with the laws in force in the State in the performing its obligations under this Agreement. The Contractor undertakes to comply with all South Australian Government policies of which the Principal informs the Contractor which relate to the performance of the Contractor's obligations under this Agreement.

16.2 **Governing Law**

16.2.1 This Agreement is governed by the laws in the State of South Australia.

16.2.2 The courts of the State of South Australia have exclusive jurisdiction in connection with this Agreement.

16.3 **Relationship Between the Parties**

16.3.1 The parties acknowledge and agree that nothing in this Agreement:

- (a) constitutes a partnership or joint venture of any kind between the parties; or
- (b) constitutes any relationship of employer and employee or principal and agent between the Principal and the Contractor or between the Principal and any employees, agents, sub-contractors, members or volunteers of the Contractor.

16.3.2 No party has any authority to bind the other Party in any manner whatever except with the express approval by notice in writing of the other party.

16.4 **No Waivers by the Principal**

16.4.1 The Principal waives a right under this Agreement only by written notice to that effect.

16.4.2 Nothing else done or omitted to be done by the Principal in relation to the Principal's rights under the Agreement will have the effect of a waiver.

16.5 **Entire Agreement**

This Agreement constitutes the entire agreement between the parties in respect of the matters dealt with in this Agreement and supersedes all prior agreements, understandings and negotiations in respect of the matters dealt with in this Agreement.

16.6 **No assignment**

The Contractor must not assign or encumber any of its rights under this Agreement

16.7 **Modification**

No addition to or modification of any provision of this Agreement will be binding upon the parties unless made by written instrument signed by the parties.

**16.8 Auditor-General**

Nothing in this Agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).

**16.9 Disclosure of Government Contracts**

The Contractor acknowledges that the Principal may disclose this Agreement either generally to the public, or to a particular person as a result of a specific request. Nothing in this clause derogates from the Contractor's obligations under any other provision of this Agreement or the provisions of the *Freedom of Information Act 1991* (SA).

**16.10 Publicity**

The Contractor must not make any public announcement or media release in respect of any aspect of this Agreement or the Goods without the prior written approval by the Principal.

**17. OCCUPATIONAL HEALTH, SAFETY AND WELFARE**

17.1 If requested by the Principal, the Contractor must:

17.1.1 provide evidence satisfactory to the Principal of its capacity to comply with the *Occupational Health, Safety and Welfare Act* (SA);

17.1.2 provide evidence that its employees, agents and subcontractors have received appropriate training in and are aware of their legal obligations and responsibilities in relation to occupational health, safety and welfare; and

17.1.3 provide the Contractor's WorkCover Registration Number.

17.2 The Contractor must permit the Principal to carry out any inspections the Principal deems necessary to ensure that the Contractor is complying with the occupational health and safety practices referred to in this Agreement.

17.3 If all or part of the work under this Agreement is to be provided on the premises of the Principal and under the direction of the Principal, the Contractor must comply with the Principal's OHS&W policies, procedures and instructions. If the Contractor becomes aware of any potentially hazardous situation on the premises of the Principal, the Contractor must immediately bring it to the Principal's attention.

17.4 If the Principal has additional requirements regarding the preparation and implementation of OHS&W systems and plans, these will be detailed in the description of services in the Schedule.

17.5 The Contractor must comply with the *Occupational Health, Safety and Welfare Act 1986* (SA) at all times, regardless of whether the Principal issues direction in that regard or not.

**18. INSKILL**

18.1 This clause applies to sub-contracts which satisfy both of the following criteria:

18.1.1 the value of the services (as distinct from goods) supplied by the sub-contractor represents at least one half of the total value of the sub-contract; and

- 18.1.2 the total value of the sub-contract (both goods and services) is at least **TWO HUNDRED AND FIFTY THOUSAND DOLLARS** (\$250,000.00).
- 18.2 For the purposes of this clause, the value of a sub-contract is:
  - 18.2.1 the total amount, or estimated amount, which the Contractor will become liable to pay to the sub-contractor over the term of the sub-contract (and, in determining the term, it shall be assumed that any option to extend the term will be exercised); or
  - 18.2.2 the annual value of the sub-contract (being the amount, or estimated amount, referred to in clause 18.1.2, divided by the term of the sub-contract in years),whichever is the lesser.
- 18.3 The Contractor shall not enter into a sub-contract to which this clause applies unless the intended sub-contractor is registered with InSkill SA and produces evidence of registration (in the form of the InSkill SA registration number and date of expiry) to the Contractor prior to execution of the sub-contract.
- 18.4 Upon request by the Principal or the agency of the South Australian Government responsible for the InSkill SA program, the Contractor shall supply details of the InSkill SA registration number and expiry date for any person with whom the Contractor has entered into a sub-contract to which this clause applies.

**EXECUTED AS AN AGREEMENT**

**INSERT GOVERNMENT PARTY'S EXECUTION CLAUSE**

**EXECUTED** by.....)

in accordance with Section 127 of the )

*Corporations Act 2001* (Cth) and its Constitution )

.....

Signature of Director

[Print Name of Director.....]

.....

Signature of Director/Secretary

[Print Name of

Director/Secretary.....]

**SCHEDULE**

- ITEM 1      Principal**  
(Government Party's name, description of incorporation, and address)  
[fill in]
- ITEM 2      Contractor's Name**  
(Contractor's Name, ABN, ACN (if any) & Business Address)  
[fill in]
- ITEM 3      Details of Services to be provided (including Deliverables)**  
Provide services as described in the Specification – Part B
- ITEM 4      Commencement Date**  
[fill in]
- ITEM 5      Completion Date**  
8<sup>th</sup> June 2010
- ITEM 6      Price and Payment**  
Price: [fill in]  
GST Inclusive or Exclusive: [fill in]  
Address for invoices:  
Asset System Coordinator, PO Box 69, Glenelg, SA 5045. Reference T331
- ITEM 7      Insurances**  
Public Liability Insurance - [fill in]  
Professional Indemnity Insurance - [fill in]  
Required to note the interests of the Principal?: Yes / No
- ITEM 8      Intellectual Property Rights**  
(Cross out option that does not apply)
- Select option from contract  
Option A or  
Option B

**ANNEXURE**  
**SPECIAL CONDITIONS**