

# Checklist 8: Things to consider before entering into a sub-contract agreement

Information for organisations delivering human services in New South Wales

## This fact sheet covers:

- ▶ What is the Template Sub-contract Agreement?
- ▶ What should parties consider before deciding to enter into a sub-contracting agreement?
- ▶ What do both parties need to understand before signing or negotiating the Template Sub-contract Agreement?
- ▶ How do both parties complete Schedule 1 of the Template Sub-contract Agreement?
- ▶ How do both parties sign the Template Sub-contract Agreement?

**This checklist is part of the Guide to the Human Services Agreement (Guide). The Guide provides information on organisations' key legal obligations under the Human Services Agreement. The Guide includes a suite of resources to help organisations meet their obligations.**



### Caution

The information contained in this document is intended as a guide only and is not legal advice. Interpreting contract terms is complex. If your organisation has a legal problem you should talk to a lawyer before making a decision about what to do. Refer to [our webpage on legal advice](#) to see if your organisation may be eligible for free legal advice.

This checklist has been prepared on the basis of the Agreement for Funding of Services – Standard Terms dated 16 October 2019 (**Standard Terms**) and Agreement for Funding of Services – Schedule dated 31 March 2017 (**Schedule**), published on the ProcurePoint website (together referred to as the **Human Services Agreement** or **Agreement**).

If the terms on which your Human Services Agreement is based have been amended, please review the information in this document carefully to make sure they are consistent where necessary.



### Note: organisations funded by the Department of Communities and Justice

The Department of Communities and Justice (**DCJ**) has added supplementary conditions to the standard form Schedule. [The most recent DCJ Schedule, dated 16 October 2019 is available on the DCJ website.](#)

This factsheet has not been amended to take into account the DCJ Schedule. If your organisation uses the DCJ Schedule, refer to Not-for-profit Law's [fact sheet on the DCJ's supplementary conditions](#) to understand how the DCJ conditions apply to your organisation's obligations under the Agreement.



### Tip

Read this checklist with the Human Services Agreement and the Guide at hand for reference.

## What is the Template Sub-contract Agreement?

Where an organisation (the Prime Contractor - sometimes referred to in the sector as the lead contractor) is funded by a NSW government agency to provide services under the Human Services Agreement, it may decide to sub-contract some or all of its obligations to another organisation (the Sub-contractor) in exchange for a fee. To do this, it must first get written approval from the NSW government agency.

Under the Human Services Agreement, the Prime Contractor is responsible for making sure that its Sub-contractor complies with the terms of the Human Services Agreement as if they were a party to that Agreement. In this situation, the Prime Contractor and Sub-contractor are required to enter into a written contract setting out the obligations of both parties.

A Template Sub-contract Agreement has been developed by Not-for-profit Law to help the Prime Contractor and Sub-contractor better understand and negotiate their obligations to each other.

### The Template Sub-contract Agreement is made up of two parts:

- Sub-contract Agreement (referred to as **the Agreement** in this checklist), and
- Schedule 1 to the Sub-contract Agreement (referred to as **Schedule 1** in this checklist)

In this checklist we will refer to all of the above component documents as the Template Sub-contract Agreement.

The Template Sub-contract Agreement is a generic agreement which will not suit all arrangements.

### Parties should:

- review each clause carefully
- decide whether each clause is appropriate in the circumstances, and
- decide whether it should be deleted, changed or kept

### This checklist provides:

- guidance on the kinds of issues Prime Contractors and Sub-contractors must address before entering into a sub-contract agreement, and
- tips on tailoring the Template Sub-Contract Agreement to meet each party's needs



### Note to Prime Contractors

Sub-contracting Services, or any part of the Services under the Human Services Agreement does not in any way reduce the Prime Contractor's responsibility for those Services.

The Prime Contractor is ultimately responsible for the Sub-contractor's acts or omissions as if they are its own. It's the Prime Contractor's responsibility to make sure the sub-contract is consistent with the Human Services Agreement and that the Sub-contractor complies with the Human Services Agreement as if it were a party to it.

## What should parties consider before deciding to enter into a sub-contracting agreement?

Issue	Explanation	Reviewed <input checked="" type="checkbox"/>
<b>Consent</b>	Under the Human Services Agreement the Prime Contractor must get written consent from the NSW government agency before sub-contracting any part of the Services	<input type="checkbox"/>
<b>Authority and power</b>	<p>Parties should check their internal process for entering into a contract before negotiating or signing the Template Sub-contract. For example, does your organisation's constitution allow you to enter into a contract of this nature? Who has authority to negotiate and execute the Template Sub-contract? Does the Template Sub-contract require approval of the board?</p> <p> <b>Tip</b> Approval processes for contracts vary by organisation. At some organisations, for example, all contracts, or contracts that fall into certain categories, must be approved by the board. Find out what approval processes apply when you start to negotiate a contract, so that you can arrange those approvals in time and avoid delays in the process.</p>	<input type="checkbox"/>
<b>Working together – culture and communication</b>	<p>Sub-contracting arrangements require ongoing good communication and collaborative working. Both parties should consider the nature of the organisation that they are contracting with, conduct some due diligence and think practically about how the organisations will work together.</p> <p>The Template Sub-contract Agreement includes a clause on collaborative working to help parties collaborate, communicate and meet their respective obligations under the Template Sub-contract Agreement (see clause 27). It also includes a clause that the Sub-contractor provide all reasonable assistance and information to the Prime Contractor so the Prime Contractor is able to meet its obligations under the Human Services Agreement (see clause 4.1(b)).</p> <p> <b>Tip</b> Both parties can always ask sector contacts about what it's like to work with a particular organisation. You could also search online for information about the other organisation and conduct searches to check if there is any pending litigation against it.</p>	<input type="checkbox"/>



Issue	Explanation	Reviewed <input checked="" type="checkbox"/>
	<p> <b>Tip</b></p> <p>The Prime Contractor should also verify that the Sub-contractor (and its Personnel) has the correct, licenses, approvals, consents, accreditations and registrations to perform the Services (see clause 6.1).</p>	
<b>Negotiation</b>	<p>The Prime Contractor is not able to negotiate certain clauses in the Template Sub-contract Agreement. These are clauses that flow through from the arrangement they have with the NSW government agency. However, it may be possible to negotiate other terms of the Template Sub-contract Agreement.</p> <p>You may want to seek advice from a lawyer about the meaning or consequences of clauses in the Template Sub-Contract Agreement. Lawyers can also draft alternative clauses proposed as part of negotiations.</p>	<input type="checkbox"/>

**Note**

The list above is not complete, and you should always seek legal advice about any agreement your organisation intends to sign.

## What do both parties need to understand before signing or negotiating the Template Sub-contract Agreement?

The negotiating parties should carefully consider and make sure they understand all the terms of the Template Sub-contract Agreement before signing it.

However, the Template Sub-contract Agreement is not a tailored agreement, so it will not suit all arrangements. Parties should use the Template Sub-contract Agreement as a starting point in discussions with each other and negotiate specific changes to the terms as needed and appropriate.

We have listed some of the terms to look out for and to 'check off' that you understand below. We have also provided tips to help organisations work with the Template Sub-contract Agreement.

This checklist is not a complete summary of the Template Sub-contract Agreement – organisations should carefully read all the clauses in the Template Sub-contract Agreement. Always get legal advice before entering into a contract.

**Caution for the Prime Contractor**

As mentioned above, the Prime Contractor can't negotiate certain clauses if they are clauses that reflect obligations the Prime Contractor has under their funding arrangement with the NSW government agency.

If the parties negotiate clauses in the Template Sub-contract Agreement, the Prime Contractor should get legal advice to make sure the Sub-contractor is still obliged to comply with the obligations in the Human Services Agreement as if they were the Prime Contractor.



Clause in Template Sub-contract Agreement	Explanation	Reviewed <input checked="" type="checkbox"/>
<b>Performance and Outcome Measures (clause 7)</b>	<p>The Sub-contractor should understand, in detail, the Performance and Outcome Measures that the provision of Services will be measured against. The Performance and Outcome Measures are outlined in Item 19 of Schedule 1</p> <p> <b>Tip</b> Sub-contractors must make sure that they have systems in place to monitor and report on their performance against the Performance and Outcome Measures</p> <p> <b>Tip</b> Prime Contractors must make sure that the Performance and Outcome Measures listed in Item 19 of Schedule 1 fit with those listed in the Funding Schedule</p>	<input type="checkbox"/>
<b>Personnel (clauses 10 and 11)</b>	<p>The Sub-contractor is responsible for all Personnel engaged by it to provide the Services, including payment of any wages and other entitlements. The Sub-contractor must engage appropriate Personnel, conducting necessary checks where appropriate and required under the template Sub-contract Agreement</p> <p> <b>Tip</b> The definition of Personnel is broad – it includes officers, employees, volunteers, agents, contractors or sub-contractors. Sub-contractors should make sure they have appropriate recruitment, screening, training and supervision for all these different types of Personnel. The Template Sub-contract Agreement also contains a definition of Officer to mirror the Human Services Agreement</p> <p>The Prime Contractor may object to the Sub-contractor engaging particular Personnel to deliver the Services in certain circumstances, for example if they have engaged in misconduct (see clause 11.1), or if they don't have the required authorisations, accreditations, permits and clearances necessary to carry out their roles in relation to the Services (see clause 10.2)</p> <p> <b>Tip</b> The Sub-contractor must communicate with the Prime Contractor about staff changes to help continued collaboration and enhance transparency between the parties</p> <p> <b>Tip</b> The Prime Contractor should consult the Human Services Agreement, the NSW government agency or Notified Policies, for guidance on the required authorisations, accreditations, permits and clearances for the Sub-contractor's Personnel</p>	<input type="checkbox"/>
<b>Notifications (clause 12, 13.1, 20.1, 28, 29.1, 30.2, 33.4, 34.3, 35.2, 43.9, 46.1, 50, 56 and 57)</b>	<p>Before the parties enter into the Template Sub-contract Agreement, it's important to understand when you need to notify the other party of certain matters, and when the other party is required to notify you.</p> <p>It's important that the Sub-contractor provides notices where required. This is because, failing to provide a notice, can be a breach of the Agreement (and certain breaches allow the Prime Contractor to terminate the Agreement)</p>	<input type="checkbox"/>
<b>Use of Funds and Interest (clauses 15 and 16)</b>	<p>The Prime Contractor is responsible for paying the Sub-contractor the Funds. Funds paid to the Sub-contractor, including any interest earned on the Funds, can only be used for the provision of the Services, or to obtain any property needed to provide the Services.</p>	<input type="checkbox"/>



Clause in Template Sub-contract Agreement	Explanation	Reviewed <input checked="" type="checkbox"/>
	<p>Sub-contractors need to be very clear about the scope of the Services and the Funds in Items 7 and 11 of Schedule 1</p> <p>The use of the Funds, and any interest earned on the Funds, must also comply with the Budget (if any) set out in Item 14 of Schedule 1</p> <p>Funds should not be committed where payment will occur after the end of the Template Sub-contract Agreement</p>	<input checked="" type="checkbox"/>
<p><b>Review of Services (clause 25)</b></p>	<p>This clause imposes obligations both during and after the Term of the Template Sub-contract Agreement</p> <p>It is particularly important that the Sub-contractor is aware that - for 7 years after the end of the Template Sub-contract Agreement, the Sub-contractor must allow the Prime Contractor (and certain other persons) access to its premises or relevant records</p> <p> <b>Tip</b></p> <p>This is an important clause. There is a specific requirement in clause 15.2(d) of the Human Services Agreement for the Prime Contractor to make sure any sub-contract it enters into includes clause 25.2 of the Template Sub-contract Agreement</p> <p>If the Sub-contractor enters into a sub-contracting arrangement, it must make sure the arrangement gives the Prime Contractor (and any persons nominated by the Prime Contractor, and any Public Accountability Body) the right to access the sub-sub-contractor's premises or relevant records (see clause 25.5)</p>	<input type="checkbox"/>
<p><b>Conflict of interest (clause 30)</b></p>	<p>It's usual practice to include a clause in a sub-contract that outlines how the parties will manage actual or perceived conflicts of interest</p> <p>Clause 30 of the Template Sub-contract Agreement requires the Sub-contractor to:</p> <ul style="list-style-type: none"> <li>• take all steps as reasonably practical to make sure it has no conflicts of interest, and</li> <li>• immediately notify the Prime Contractor if an actual or possible conflict of interest arise</li> </ul> <p>Under the Template Sub-contract Agreement, the Prime Contractor is also able to notify the Sub-contractor of an actual or possible conflict of interest, and require the Sub-contractor to take steps to deal with the conflict of interest to the Prime Contractor's satisfaction.</p>	<input type="checkbox"/>
<p><b>Sub-contracting (clause 31)</b></p>	<p>The Prime Contractor is responsible to the NSW government agency for the actions of the Sub-contractor. It's usual practice to include a clause that the Sub-contractor must not delegate any of its obligations to another party without the express written consent of the Prime Contractor (ie. it must not sub-contract any of its obligations). This is an important clause</p>	<input type="checkbox"/>
<p><b>Dispute resolution (clause 32)</b></p>	<p>It's vital to include a clause that sets out how disputes will be managed and addressed clearly. A good dispute resolution procedure will encourage open communication and resolution of the matter in a timely and inexpensive manner</p> <p>The Template Sub-contract Agreement requires prompt notification of a dispute in writing, followed by a face-to-face meeting between senior representatives, and then formal mediation</p>	<input type="checkbox"/>



Clause in Template Sub-contract Agreement	Explanation	Reviewed <input checked="" type="checkbox"/>
	<p>The parties must follow the dispute resolution procedure before taking legal action</p> <p> <b>Tip</b> Negotiating or mediating a dispute is likely to be easier and more cost effective for all parties than litigation in court</p> <p> <b>Tip</b> Clause 32.6 of the Template Sub-contract Agreement allows the parties to nominate an independent party to appoint a mediator if they can't agree on a mediator.</p>	
<p><b>Insurance and indemnities (clauses 33 &amp; 34)</b></p>	<p>It's usual practice to include clauses in a sub-contract that deal with insurance and indemnity. This includes:</p> <ul style="list-style-type: none"> <li>• whether insurance is required and which party is required to take out appropriate insurances (and at what value), and</li> <li>• whether one or both parties agrees to (wholly or partly) indemnify (pay back) or protect the other party from any loss or liability associated with the activities</li> </ul> <p>The insurance clause in the Template Sub-contract Agreement outlines the required insurance policies</p> <p>The indemnity clause in the Template Sub-contract Agreement also outlines circumstances where both the Sub-contractor and Prime Contractor agree to indemnify (pay back) the other party for any losses. In the interests of having a balanced agreement, this has been drafted as a 'mutual indemnity' - that is both parties agree to indemnify the other in certain circumstances, rather than a 'one-sided' obligation. Both parties should consider whether an alternative indemnity arrangement is more appropriate</p> <p> <b>Tip</b> It's important to understand your organisation's obligations for obtaining insurance and indemnifying the other party. Think about:</p> <ul style="list-style-type: none"> <li>• Is the party bearing the risk in the best position to prevent loss?</li> <li>• Are both parties willing to accept the proposed indemnities?</li> <li>• Will you be able to obtain the required insurance in your budget?</li> <li>• Does entering into the sub-contract affect your insurances? Have you notified your insurer?</li> </ul> <p>If you are not sure about these obligations, get legal advice or speak to your insurance broker</p> <p> <b>Tip</b> If the Prime Contractor has specific insurance policies that the Sub-contractor is required to obtain, these should be listed in Item 20 of Schedule 1</p>	<input type="checkbox"/>
<p><b>Privacy and information sharing (clause 38)</b></p>	<p>The Sub-contractor must review its privacy obligations and current privacy practices in detail. This includes having an appropriate privacy policy, collection notices, consents and record management practices in place. Failure to comply with Privacy Laws could result in legal and financial penalty and amount to a breach of the Template Sub-Contract Agreement</p> <p>Sub-contractors are required to make certain information available to the NSW government agency (via the Prime Contractor) to comply with the NSW government agency's obligations under the</p>	<input type="checkbox"/>



Clause in Template Sub-contract Agreement	Explanation	Reviewed <input checked="" type="checkbox"/>
	<p><i>Government Information (Public Access) Act 2009</i> (NSW). This should also be disclosed in a Sub-contractor's Privacy Policy</p> <p> <b>Tip</b> If your organisation is not sure about its obligations around privacy and information-sharing, it should get legal advice</p>	<input checked="" type="checkbox"/>
<p><b>Record keeping (clause 40)</b></p>	<p>The Template Sub-contract Agreement requires the Sub-contractor to keep full and accurate Records in relation to the Template Sub-contract Agreement, during the Term, and for 7 years after the end of the Agreement.</p> <p>Records must be of a sufficient standard. Sub-contractors must meet the standard that is required of their Records, particularly financial Records</p> <p>The Sub-contractor must dispose of the Records 7 years after the end of the Template Sub-contract Agreement (unless they are otherwise required to retain the Record for internal governance and compliance purposes)</p> <p> <b>Tip</b> There are legal requirements about the disposal of certain types of records. It's helpful to have clear document management policies in place that address these issues</p> <p> <b>Tip</b> The Prime Contractor should consult the Human Services Agreement, the NSW government agency or program guidelines, for guidance on the retention, return, destruction and ownership of the Sub-contractor's Records and make sure this is reflected in the Template Sub-contract Agreement</p>	<input type="checkbox"/>
<p><b>Reports and Information (clause 42)</b></p>	<p>Before the Sub-contractor enters into the Template Sub-contract Agreement, think about how the organisation will meet its reporting obligations</p> <p> <b>Tip</b> It's a good idea to add the reporting obligations listed in clause 42 of the Template Sub-contract Agreement and Item 24 of Schedule 1 into any organisational policies and procedures on record management</p>	<input type="checkbox"/>
<p><b>Intellectual Property (clause 43)</b></p>	<p>It's usual practice for sub-contracts to have a clause dealing with who owns the intellectual property (<b>IP</b>) created through the contract. IP is a legal term that refers to property created through intellectual effort</p> <p>IP will exist in materials created under the Template Sub-contract Agreement, including in any written materials such as reports</p> <p>The Template Sub-contract Agreement provides that unless otherwise agreed, IP rights are owned by the Sub-contractor, who grants the Prime Contractor an ongoing licence to use and exploit that IP. If Services involve or impact on the cultural and IP rights or Aboriginal or Torres Strait Islander Persons, both parties must take measures to protect those rights</p> <p>Sub-contractors must make sure they own all relevant IP prior to agreeing to this clause in the Template Sub-contract Agreement</p>	<input type="checkbox"/>



Clause in Template Sub-contract Agreement	Explanation	Reviewed <input checked="" type="checkbox"/>
	<p> <b>Tip</b></p> <p>When reviewing an IP clause consider:</p> <ul style="list-style-type: none"> <li>• What does the Human Services Agreement contemplate? Prime Contractors must make sure the IP clause in the Template Sub-contract Agreement (including Schedule 1 of the Template Sub-contract Agreement) reflects what they have agreed with the relevant NSW government agency under the Human Services Agreement</li> <li>• What IP will be created by the Services?</li> <li>• Who will be creating the IP? Will it be employees, officers, volunteers, agents, contractors or sub-contractors? Can the Sub-contractor obtain the correct licenses, consents or assignments to the IP?</li> <li>• Has the Sub-contractor made sure that it owns any pre-existing IP used as part of providing the Services (for example, through staff contracts)?</li> <li>• How will the IP be used? Who will need to be able to use it?</li> </ul> <p>Any licence granted by the Sub-contractor to Prime Contractor must include the right to sub-licence the Sub-contractor's IP to the relevant NSW government agency</p>	
<p><b>Termination (clause 44)</b></p>	<p>It's usual practice for sub-contracts to include clauses that allow parties to terminate the agreement, particularly if one party fails to fulfil its obligations and is not in a position to fix the breach</p> <p>The Template Sub-contract Agreement sets out the circumstances in which both parties can terminate. The termination clause in the Template Sub-contract Agreement includes:</p> <ul style="list-style-type: none"> <li>• the right for the Prime Contractor to terminate immediately in certain circumstances, such as breach of the Agreement. This is to make sure the Prime Contractor can meet its obligations under the Human Services Agreement</li> <li>• the right for the Prime Contractor to terminate at any time by providing 85 days' notice. This is to allow the Prime Contractor to terminate if the Human Services Agreement is terminated by the NSW government agency</li> <li>• the right for Sub-contractor to terminate for any reason by providing 7 months' notice. This is to allow the Prime Contractor enough time to terminate the Human Services Agreement if they are no longer able to deliver the Services because of the Sub-contractor's termination</li> </ul> <p> <b>Tip</b></p> <p>Think carefully about the circumstances when each party may terminate the Template Sub-contract Agreement. You may decide that there are other circumstances in which you should be able to terminate</p>	<input type="checkbox"/>
<p><b>Security Procedures (clause 56 and 57)</b></p>	<p>The Template Sub-contract Agreement requires the Sub-contractor to put safety, security and privacy procedures in place as set out in the Notified Policies and keep the Prime Contractor updated on its safety, security and privacy procedures.</p> <p>The Sub-contractor must immediately notify the Prime Contractor if there is a Security Breach. It must also investigate the Security</p>	



Clause in Template Sub-contract Agreement	Explanation	Reviewed <input checked="" type="checkbox"/>
	Breach with 24 hours, remedy the Security Breach as soon as reasonably practicable and notify the Prime Contractor as soon as the remedy has been applied.	

## How do both parties complete Schedule 1 of the Template Sub-contract Agreement?

Schedule 1 in the Template Sub-contract Agreement includes details specific to the parties.

Parties should take their time to make sure the information in Schedule 1 is correct.

The table below provides some guidance on how to complete Schedule 1.

Item	Explanation	Reviewed <input checked="" type="checkbox"/>
<b>Parties (Items 1 and 2)</b>	<p>Schedule 1 must clearly name the correct contracting parties, including the ABN and contact details</p> <p> <b>Tip</b> We recommend check each organisation's correct name and ABN using the <a href="#">ABN Lookup tool</a></p>	<input type="checkbox"/>
<b>Individual contacts (Items 3 , 4, 5 and 6)</b>	<p>Include the correct name and contact details for the nominated people to make sure both parties receive communications and notices under the Template Sub-contract Agreement</p> <p> <b>Tip</b> Put an internal policy or procedure in place to make sure you let the other party know if the nominated people change</p>	<input type="checkbox"/>
<b>Services (Item 7)</b>	<p>Clause 5 of the Template Sub-contract Agreement imposes obligations on the Sub-contractor for delivery of the Services</p> <p>Item 7 of Schedule 1 provides space for the parties to describe the Services to be delivered. Make sure this is done clearly and comprehensively. Identify what will be done, when, by who, and how. Make sure the description of the Services includes all the elements that have been agreed. This is the final record of your negotiations and it must be comprehensive and correct</p> <p> <b>Tip</b> The Prime Contractor must make sure this matches with its obligations under the Human Services Agreement</p>	<input type="checkbox"/>
<b>Term (Item 10)</b>	<p>Make it clear when the Template Sub-contract Agreement starts and ends, and whether the commencement is conditional on any particular event occurring (such as the start of the Human Services Agreement). Include any options or extension provisions that the parties have negotiated</p> <p> <b>Tip</b> Keep a calendar and reminder of dates. You may have an option to extend that can only be exercised in a certain time window</p>	<input type="checkbox"/>



Item	Explanation	Reviewed <input checked="" type="checkbox"/>
<b>Funds and Invoicing (Items 11 and 12)</b>	Set out the agreed Funds, the basis for payment of Funds, the Sub-contractor's bank account details and any particular time frames for use and invoicing of the Funds	<input type="checkbox"/>
<b>Management Fees (Item 13)</b>	<p>Include any fee the parties have agreed the Sub-contractor must pay the Prime Contractor to cover its administration expenses. Whether a Management Fee is applied will depend on what the parties have negotiated and the level of Services provided by the Prime Contractor to the Sub-contractor</p> <p> <b>Tip</b> Sub-contractors can seek an itemised breakdown of the anticipated administration and other costs for transparency around what the management fee relates to</p>	<input type="checkbox"/>
<b>Budget (Item 14)</b>	<p>A budget does not have to be set, but where it is, the details should be set out clearly, including whether the Sub-contractor is required to submit an updated budget and timeframes for submission of an updated budget</p> <p> <b>Tip</b> If the Prime Contractor must provide a Budget to the relevant NSW government agency using a particular template or program or in a particular way, the Sub-contractor should provide a Budget in the same format and be notified of this from the start</p>	<input type="checkbox"/>
<b>Reporting requirements (Item 24)</b>	<p>Clause 42 of the Template Sub-contract Agreement imposes reporting obligations on the Sub-contractor. Item 24 of Schedule 1 includes details, such as the form and timing, of those reports</p> <p> <b>Tip</b> If the Prime Contractor must report to the relevant NSW government agency using a particular template or program or in a particular way, the Sub-contractor should report in the same format and be notified of this from the start. Keep a calendar and reminders of reporting dates</p> <p> <b>Tip</b> If the Prime Contractor must provide a Budget to the relevant NSW government agency using a particular template or program or in a particular way, the Sub-contractor should provide a Budget in the same format and be notified of this from the start</p>	<input type="checkbox"/>
<b>Intellectual Property Rights (Item 25)</b>	<p>Under clause 43 of the Template Sub-contract Agreement, the Sub-contractor owns the IP in material created in connection with the Template Sub-contract Agreement</p> <p> <b>Tip</b> This may be reversed if specified in this Item (ie. that the Prime Contractor owns the IP). If the Prime Contractor wants to reverse the position in clause 43 of the Template Sub-contract Agreement, the Sub-contractor should carefully consider the implications of this, particularly if they want to use any relevant material in the future</p>	<input type="checkbox"/>



## How do both parties sign the Template Sub-contract Agreement?

Both parties must sign the Template Sub-contract Agreement in order to make it binding (enforceable against the other party).

### Top tips

Step	Reviewed <input checked="" type="checkbox"/>
If changes have been negotiated, make sure you are signing the final version. If there are any last minute changes to the sub-contract, both parties must initial any changes	<input type="checkbox"/>
If the Template Sub-contract Agreement can be signed in 'counterpart' (the Template Sub-contract Agreement provides for this at clause 52), this means the parties can each sign their own copy of the contract and exchange (or swap) them. Parties must sign the full copy of the Template Sub-contract Agreement, they can't just print the 'signing page'	<input type="checkbox"/>
<p>Make sure the signature block properly identifies the person signing the document on behalf of the organisation</p> <p>Make sure the signatory has the appropriate authority to sign on behalf of the organisation</p>	<input type="checkbox"/>
If using electronic signatures, follow appropriate validity and security processes	<input type="checkbox"/>
Signatories should write the date on which they sign the Template Sub-contract Agreement on the document. It's not a problem if the parties sign on different dates. The Template Sub-contract Agreement should be dated the date that the final signatory signed	<input type="checkbox"/>

# Resources

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## Not-for-profit Law resources

Not-for-profit Law has developed a Guide to the Human Services Agreement which includes a fact sheet, a template sub-contract agreement, and a range of checklists which should be read together. See Not-for-profit Law's page on [Government Funding Agreements](#):

- ▶ [Fact sheet - Human Services Agreement: Department of Communities and Justice Supplementary Conditions](#)
- ▶ [Fact sheet – Human Services Agreement: Important clauses](#)
- ▶ [Checklist 1 – How do we meet our notification obligations?](#)
- ▶ [Checklist 2 – How do we meet our reporting obligations?](#)
- ▶ [Checklist 3 – How do we practically comply with the Human Services Agreement?](#)
- ▶ [Checklist 4 – How do we meet our privacy obligations?](#)
- ▶ [Checklist 5 – How do we meet our intellectual property obligations?](#)
- ▶ [Checklist 6 – What are our obligations when engaging Personnel?](#)
- ▶ [Checklist 7 – What records and registers do we need to keep?](#)
- ▶ [Checklist 8 – Things to consider before entering into a sub-contract agreement](#)
- ▶ [Template Sub-contract Agreement](#)

In addition, we have resources on the following related topics:

- ▶ [Conflicts of interest and other duties](#)
- ▶ [Dispute resolution and mediation](#)
- ▶ [Documents and records](#)
- ▶ [Employment](#)
- ▶ [Financial reporting](#)
- ▶ [Intellectual property](#)
- ▶ [Privacy](#)
- ▶ [Risk and Insurance](#)

## Other related resources

- ▶ [NSW Government ProcurePoint](#)

## Legislation

- ▶ [Government Information \(Public Access\) Act 2009](#) (NSW)



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