# GRS Model Contract Clause - Heightened

**December 2023**

|  |
| --- |
| **Explanatory Note:** These GRS Model Contract Clauses on modern slavery have been prepared by the Office of the NSW Anti-slavery Commissioner. They were prepared with generous support from the Responsible Contracting Project ([RCP](https://urldefense.com/v3/__https%3A/www.responsiblecontracting.org/__;!!MuTgN5zQqgRwsA!BSGJ6_lLX8h1W1Dft4KP1of4PDkn6gX4GQIDYRiWmDZsvrQ4Wa428VmWVcHnf7pbfaN45tfnxXa_A_-w6AcbOFrrVfyVU9Z_j4EOi-L1$)) and their pro bono counsel, Allens. The GRS Model Contract Clauses are intended as a resource for entities implementing the NSW Anti-slavery Commissioner’s *Guidance on Reasonable Steps*. The concepts and identification of ‘Heightened’, ‘Standard’, ‘Light’ and ‘Minimal’ modern slavery due diligence procurements are set out in that Guidance.  |

***Drafting Note****: This clause is designed to be used in conjunction with the NSW Anti-slavery Commissioner’s Guidance on Reasonable Steps (‘GRS’).*

*It is an expectation that a reporting entity will use this clause where it determines, in conformance with the GRS, that the procurement requires Heightened Due Diligence.*

*This clause may be subject to negotiation with counterparties, but covered entities should avoid fundamentally altering or removing any of the parties’ obligations and should ensure that any adapted version of this clause maintains the ‘shared responsibility’ approach to modern slavery risk management provided for here.*

*This clause assists the reporting entity to discharge its statutory responsibility to take reasonable steps to ensure it is not procuring goods or services that are products of modern slavery.*

*It does this by creating a framework for shared responsibility for modern slavery risk management between the parties to the contract.*

*In this clause, the reporting entity is referred to as the ‘Buyer’ and the counterparty is referred to as the ‘Supplier’. This terminology should be adjusted for consistency with the agreement in which this clause will be inserted.*

## Modern Slavery

### Definitions

**Contract** means this agreement.

**Contract Date** means the date of execution of this agreement.

**Core Obligations** means those obligations set out in clause 1.2 (Core Obligations).

**Engaged Entity** of a party means any first tier (direct) suppliers, subcontractors, consultants and contractors engaged by that party (or that party's directors, officers and employees) in connection with this Contract. For the avoidance of doubt, 'Engaged Entities' includes independent contractors (whether an individual or body corporate), secondees, consultants and any other workers (however described) who may be engaged for the purposes of this Contract but are not employed by the relevant party.

**Grievance Mechanism** means a process for handling a complaint or grievance about Modern Slavery that is consistent with the criteria set out in Principle 31 of the 2011 United Nations Guiding Principles on Business and Human Rights.

**Management Plan** means a plan to take reasonable steps to manage risks of Modern Slavery in the Supplier's operations and supply chains (including in the operations and supply chains of Supplier’s Engaged Entities).

**Material Breach** has the meaning given in clause 1.8.

**Modern Slavery**:

* + 1. means any conduct that constitutes or would constitute a modern slavery offence, namely an offence against one of the following provisions, or an offence of attempting or incitement to commit an offence against one or more of the following provisions:

|  |
| --- |
| An offence against the following sections of the [*Crimes Act 1900*](https://legislation.nsw.gov.au/view/html/inforce/current/act-1900-040)— |
| **Section** | **Description of offence** |
| 80D | Causing sexual servitude |
| 80E | Conduct of business involving sexual servitude |
| 91G (1) and (2) | Children not to be used for production of child abuse material |
| 91G (3) | Aggravated offence of using children for production of child abuse material |
| 91H | Production, dissemination or possession of child abuse material |
| 91HAA | Administering a digital platform used to deal with child abuse material |
| 93AA–93AC | Slavery and slavery-like offences |
| An offence against the following section of the [*Human Tissue Act 1983*](https://legislation.nsw.gov.au/view/html/inforce/current/act-1983-164)— |
| **Section** | **Description of offence** |
| 32, but only in relation to tissue that is an organ | Trading in tissue prohibited |
| An offence against any of the following sections of the Commonwealth Criminal Code— |
| **Section** | **Description of offence** |
| 270.3 | Slavery offences |
| 270.5 | Servitude offences |
| 270.6A | Forced labour offences |
| 270.7 | Deceptive recruiting for labour or services |
| 270.7B | Forced marriage offences |
| 270.7C | Offence of debt bondage |
| 270.8 | Slavery-like offences—aggravated offences |
| 271.2 | Offence of trafficking in persons |
| 271.3 | Trafficking in persons—aggravated offence |
| 271.4 | Offence of trafficking in children |
| 271.5 | Offence of domestic trafficking in persons |
| 271.6 | Domestic trafficking in persons—aggravated offence |
| 271.7 | Offence of domestic trafficking in children |
| 271.7B | Offence of organ trafficking—entry into and exit from Australia |
| 271.7C | Organ trafficking—aggravated offence |
| 271.7D | Offence of domestic organ trafficking |
| 271.7E | Domestic organ trafficking—aggravated offence |

* + 1. includes any conduct that constitutes or would constitute an offence under any of the Modern Slavery Laws as amended from time to time, including an offence of attempting or incitement to commit such an offence; and
		2. includes conduct engaged in elsewhere than in New South Wales that, if it occurred in New South Wales, would constitute a modern slavery offence under paragraphs (a) or (b).

**Modern Slavery Laws** means:

* + 1. the Modern *Slavery Act 2018* (Cth);
		2. the Modern *Slavery Act 2018* (NSW);
		3. Divisions 270 and 271 of the Commonwealth Criminal Code;
		4. section 176(1A) of the *Public Works and Procurement Act 1912* (NSW);
		5. section 438ZE of the *Local Government Act 1993* (NSW); and
		6. any other laws, regulations, codes and international conventions aimed at combatting modern slavery, forced labour or human trafficking, from time to time in force in or ratified by Australia and, where relevant, in or by other jurisdictions in which the parties operate,

each as amended from time to time.

**Price** means [the price specified in clause [\*] / the rates for the supply of the goods specified in Schedule [\*] / the performance of the services specified in Schedule [\*]].

**RBA Code** means the Responsible Business Alliance Code of Conduct version 7.0 (2021), or as revised from time to time.

**RBA Definition of Fees** means the ‘Definition of Fees’ published by the Responsible Business Alliance, as revised from time to time.

**reasonable steps** means those steps that are reasonable in the circumstances to prevent, identify, mitigate and remedy modern slavery. In assessing whether steps are reasonable, the parties may refer to the NSW Anti-slavery Commissioner’s Guidance on Reasonable Steps and related information and resources published by the Anti-slavery Commissioner.

**Recruitment Fee** means any fee, expense or similar financial obligation paid or incurred in the recruitment process by a worker or jobseeker in order for a worker or jobseeker to secure or retain employment or placement, regardless of the manner, timing or location of its imposition or collection. It includes the recruitment and service fees and related costs set out in sections IV.3 and IV.4 of the RBA Definition of Fees.

**Related Body Corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth).

**Related Entity** means, in respect of a party, a Related Body Corporate of such party.

**Remediation Plan** has the meaning given to it in clause 1.9.

**Remediation Steps** has the meaning given to it in clause 1.9.

**Terminable Material Breach** has the meaning given to it in clause 1.8.

### Core Obligations

Each party must:

* + 1. not engage in Modern Slavery;
		2. take reasonable steps to ensure that it, its directors, officers, employees, Related Entities and Engaged Entities comply with Modern Slavery Laws as applicable;
		3. take reasonable steps to ensure that its Engaged Entities include provisions equivalent to the Core Obligations (including this sub-clause) in their contracts with their suppliers; and
		4. take reasonable steps to ensure that its Engaged Entities provide their respective directors, officers, employees and suppliers with at least the minimum level of wages and other entitlements required by law.

### Price

Each party acknowledges and agrees that the Price supports each Party to comply with its Core Obligations.

### Systems and policies

Each party agrees that it will establish, implement, and maintain for the term of this Contract, appropriate systems and policies as required to meet its Core Obligations.

### Implementation

Without limiting the Core Obligations and clause 1.4 (Systems and policies), the parties agree that:

* + 1. [**Management Plan**] the parties will work cooperatively to prepare a Management Plan as soon as reasonably practicable (and, in any event, within [\*] weeks of the Contract Date). The Management Plan must outline, at a minimum:
1. the steps each party will take to identify and assess Modern Slavery risks in its operations and supply chain on an ongoing basis;
2. the processes each party has in place to address any identified Modern Slavery risks;
3. the content and timing of any training relating to Modern Slavery; and
4. any Grievance Mechanism or other remediation process each party has instituted in relation to Modern Slavery.
	* 1. [**Notification]** to the extent permitted by law, each party will notify the other party immediately with adequate particulars of the Modern Slavery and the actions taken, or being taken, to remedy the Modern Slavery if the party becomes aware of any actual or reasonably suspected Modern Slavery engaged in, or any notices, investigations, proceedings or claims arising in any jurisdiction in relation to any actual or reasonably suspected breach of Modern Slavery Laws:
5. by the party, the party's directors, officers, employees, or Related Entities;
6. by any Engaged Entity involved in the performance of the Contract, whether or not the Modern Slavery occurs or is suspected to occur in the performance of the Contract.
	* 1. [**Common Preventive measures**] Each party must:
7. provide training necessary to meet obligations of Modern Slavery risk identification, management and remediation under the Contract to its relevant directors, officers and employees;
8. take reasonable steps to progressively implement the Migrant Worker Standard contained in Appendix O Migrant Worker Standard, of the NSW Anti-slavery Commissioner’s Guidance on Reasonable Steps;
9. ensure that no Recruitment Fees or related costs are charged to, or otherwise borne by, any worker engaged by the party, including its Engaged Entities where such Engaged Entities are individuals;
10. not destroy or exclusively possess (without informed consent), whether permanently or otherwise, the travel or identity documents of its directors, officers, employees or Engaged Entities (where such Engaged Entities are individuals); and
11. ensure that workers involved in performance of the contract who are provided accommodation are provided with ready access to clean toilet facilities, potable water and sanitary food preparation, storage, and eating facilities. Worker dormitories provided by the party, its Engaged Entities or by a labour agent on their behalf are to be maintained to be clean and safe. Such workers are to be provided with appropriate emergency egress, hot water for bathing and showering, adequate lighting and heat and ventilation, individually secured accommodations for storing personal and valuable items, and reasonable personal space along with reasonable entry and exit privileges.
	* 1. [**Supplier’s Preventive Measures**] The Supplier agrees that it will:
12. ensure access to an effective Grievance Mechanism for any worker in its operations;
13. to the extent permitted by law, notify the Buyer of any Modern Slavery related grievances submitted through the Grievance Mechanisms that the Supplier or the Supplier's Engaged Entities have in place and provide, at least once every six (6) months for the duration of the Contract, reports regarding the operation of the Supplier's internal Grievance Mechanism with sufficient detail to demonstrate that it is operational and accessible to impacted stakeholders (including persons potentially or actually adversely impacted by the Supplier's activities); and
14. provide the Buyer with such access, information and documentation as the Buyer (or its nominee) reasonably requires to enable the Buyer (or its nominee) to:
* verify that the Supplier, and the Supplier's directors, officers and employees, comply with this Contract; and
* undertake due diligence on the Buyer's supply chains with respect to this Contract; and
* comply with the Buyer's reporting obligations under any Modern Slavery Laws; and
* cooperate and comply fully with any audit required by law.

### Assistance

Without limiting the Core Obligations, clause 1.4 (Systems and policies) and clause 1.5 (Implementation) each party must provide, and use reasonable endeavours to ensure its directors, officers, employees, Related Entities and Engaged Entities provide, all reasonable assistance to the other party to enable the other party to comply with its obligations under this clause 1.6 (Modern Slavery) and under applicable Modern Slavery Laws.

### Disclosure

The Supplier represents and warrants to, and for the benefit of, the Buyer that, as at the Contract Date and on a continuing basis for the duration of the term of this Contract, the Supplier has disclosed, in accordance with clause 1.5:

* + 1. to the extent the Supplier is aware, any:
1. actual or reasonably suspected Modern Slavery engaged in; and
2. notices, investigations, proceedings or claims arising in any jurisdiction in relation to any actual or reasonably suspected breach of Modern Slavery Laws,

by the Supplier, the Supplier's directors, officers, employees, or Related Entities, or by any of the Supplier’s Engaged Entities while performing any contract with the Supplier, whether or not the Modern Slavery arises in the performance of the Contract; and

* + 1. all actions taken to remedy said Modern Slavery or breach of Modern Slavery Laws.

### Material Breach and termination

Without limiting the parties’ rights under this Contract, including recourse to other remedies:

* + 1. the parties agree that a breach of:
1. either party’s obligations under clause 1.2 (Core Obligations), 1.4 (Systems and policies), 1.5 (Implementation), 1.6 (Assistance), 1.7 (Disclosure), or 1.9 (Remediation Plan); or
2. the Supplier’s obligations under clause 1.2 (Core Obligations), 1.4 (Systems and policies), 1.5 (Implementation), 1.6 (Assistance), 1.7 (Disclosure), or 1.9 (Remediation Plan), which the Buyer reasonably suspects to have occurred, and which the Supplier has not, within a commercially reasonable timeframe, confirmed to the Buyer's satisfaction is not in fact a breach,

will be taken to be a **Material Breach** of this Contract.

* + 1. Where a Material Breach (other than a breach of clause 1.9 (Remediation Plan)) is, in the non-breaching party's reasonable assessment, capable of being remedied and the non-breaching party has notified the breaching party of the same, the non-breaching party must afford the breaching party an opportunity to provide a Remediation Plan in accordance with clause 1.9 (Remediation Plan) and remedy the Material Breach within [\*] days or such other timeframe as agreed by the parties.
		2. Where a Material Breach is a breach of the Supplier’s obligations under clause 1.9 (Remediation Plan), or is otherwise a Material Breach by the Supplier that is, in the Buyer’s reasonable assessment, incapable of being remedied, and the Buyer has notified the party of the same, such Material Breach shall constitute a **Terminable Material Breach**.
		3. Prior to exercising, and in deciding whether to exercise, any of its termination rights under this clause, the non-breaching party must:
1. assess, including through consultation with relevant stakeholders, whether termination would increase the risk of Modern Slavery occurring (whether or not linked to the non-breaching party); and
2. take reasonable steps to prevent or mitigate such Modern Slavery.
	* 1. Provided that its obligations under clause 1.8(d) have been fulfilled, the Buyer may terminate the Contract immediately upon the provision of notice to the Supplier that a Terminable Material Breach has occurred.

### Remediation Plan

* + 1. This clause applies if:
1. a party forms the view that there is a Material Breach, as defined in clause 1.8 (Material Breach and Termination); and
2. the Material Breach is, in the non-breaching party's reasonable assessment, reasonably capable of being remedied.
	* 1. If this clause applies, the non-breaching party must notify the other party of the following matters:
3. that the non-breaching party has formed the view that there is a Material Breach and the reasons for that view;
4. reasonable details of the Material Breach;
5. that the non-breaching party has formed the view that the Material Breach is capable of being remedied; and
6. that the breaching party must prepare and implement a Remediation Plan in accordance with this clause 1.9.
	* 1. Upon receiving notice under clause 1.9, the breaching party must prepare, and submit to the non-breaching party within [\*] days, or such other timeframe as agreed by the parties, a **Remediation Plan** that includes:
7. the steps that the breaching party proposes to take (the **Remediation Steps**) to remedy the Material Breach;
8. a timeline for the completion of the Remediation Steps, to be agreed between the parties;
9. an explanation as to how the Remediation Steps will remedy the Material Breach; and
10. quantitative and/or qualitative indicators for determining when the Remediation Steps are completed.
	* 1. The breaching party must make all reasonable efforts to implement the Remediation Plan within the timeframe agreed between the parties and must provide to the non-breaching party reasonable evidence of the Remediation Plan’s implementation.
		2. The non-breaching party must provide reasonable assistance to the breaching party in preparing and implementing the Remediation Plan, on request, and the non-breaching party acknowledges and agrees that it shall provide assistance in the preparation and implementation of the Remediation Plan that is at least proportionate to the non-breaching party’s contribution to the relevant Material Breach, which may include in-kind contributions, capacity-building and reasonable technical or financial assistance.
		3. A failure by the breaching party to prepare, or properly implement, a Remediation Plan is a Terminable Material Breach of this Contract for the purposes of clause 1.8 (Material Breach and Termination) and triggers the non-breaching party’s termination rights unless the breaching party can demonstrate, to the non-breaching party’s reasonable satisfaction, that:
11. despite the breaching party’s best efforts, the Remediation Plan cannot be implemented; and
12. to the extent possible, the initial Material Breach the subject of the Remediation Plan is not ongoing.