1. Statement
This Standard provides guidance on contracts as well as examples of generic GST Clauses for contracts.

2. Scope
Compliance with this standard is mandatory.
This standard shall apply to all employees, contractors and consultants within the Department of Health divisions and commercialised business units as well as Hospital and Health Services.

3. Requirements

Introduction
A contract is a legally binding agreement that is regarded as containing all rights and obligations of the parties involved. It is differentiated from a “Memorandum of Understanding”, which is not intended to create a legally binding relationship between the parties or is used where legally binding agreements are unable to be undertaken (i.e. between government departments).

It is not possible to ‘contract out’ of a tax liability. If a contract involves consideration for a taxable supply, the supplier is liable for GST regardless of any terms that may be omitted from the contract. What can be achieved through the terms of the contract is to determine whether the agreed price includes GST or not, and whether the contract will create a right of the supplier to seek compensation for GST from the other party in the event of an unforeseen GST liability.

New Contracts
New contracts will need to contain specific clauses with respect to GST, to ensure that the department is not financially disadvantaged by the application of the GST.

If allowance is not made for the provision of GST in the prices, then the supplier of the goods or services will generally have to pay one-eleventh of the price / monies received to the Australian Taxation Office (ATO), with no automatic right to increase the price to the recipient.

The Queensland Health Legal Unit has provided generic clauses to use in contracts that relate to procurement activities and staff involved in contracting activities must ensure that these clauses are incorporated into any new contracts (Refer to the Appendix for example clauses).

QH/HHS as a Supplier
In situations where QH/HHS is the supplier of the goods or services the contract wording is especially important. This is due to the fact that when the department/HHS enters into a contract as a supplier of goods & services, it will want to ensure that it is able to recover GST from its customers. This is because it is the supplier who is under the obligation to remit the GST to the ATO. Therefore, failure by the department/HHS to include in its contracts an ability to recover the
GST from its customers will leave the department “out of pocket” by one-eleventh of the price charged.

**QH/HHS as a Recipient**

Where the department is the recipient of goods or services, then the onus is on the supplier to ensure that GST is correctly provided for. Generic contract clauses were initially provided by Crown Law during the GST implementation. Reviews of these clauses have been undertaken periodically by the QH Legal Unit.

**Please note:** It is imperative that as a supplier, QH/HHS includes the relevant GST clauses in a contract along with clear identification of any price within the contract as GST inclusive or exclusive. It is advisable that the price mentioned in the contract is exclusive of GST to allow for transaction specific flexibility in applying GST. If GST clauses have not been incorporated, it may result in adverse effect on QH’s budgeted funds.

**Use of Standard Clauses**

Any standard GST clause provided in this advice (as found in the Appendix) is provided as an example for reference and guidance purposes only. Each transaction and contract must be considered individually as no two contracts or transactions are alike.

Based on the nature of these types of transactions and agreements between parties, it may be necessary to:

- Review and amend these clauses to ensure that they are relevant,
- Correctly reflect the transaction and the intentions of the parties,
- Ensure they are appropriate and do not conflict with any other provision of the contract.

**Please note:** The standard GST clauses should not simply be used in every case without giving proper consideration to all the issues of each transaction.

Should there be any doubt whatsoever; advice should be sought from the QH Legal Unit.

**Sale and Purchase of Property**

The GST treatment of the sale and purchase of property can be complex, e.g. the use of the Margin Scheme, commercial versus residential property, etc.

Staff entering into such contracts may wish to contact the GST team for advice.
Example: Standard Consultancy Contract – GST Clauses

1. Standard Consultancy Contract

1.1 In this clause “adjustment event”, “adjustment note”, “GST”, “supply”, “supplier” and “tax invoice” have the same meaning as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) (“the GST legislation”).

1.2 The Consultant acknowledges that in terms of the GST legislation it will, under this Agreement, be a “supplier” and may be required to pay GST to the Commissioner of Taxation.

1.3 The parties agree that the agreed prices for the goods or services under the Agreement are GST exclusive prices.

1.4 The Consultant will ensure that all tax invoices and adjustment notes rendered to the Principal under the Agreement are in a format that identifies any GST paid, and which permits the Principal to claim an input tax credit.

1.5 Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled.

1.6 The Consultant must issue an adjustment note to the Principal on or before 7 days after the occurrence of an adjustment event. The Principal’s request for an adjustment note shall be deemed to have occurred on the date of the adjustment event. The adjustment note must identify the goods or services relevant to the adjustment event. Adjustment notes issued to the Principal must comply with the requirements of the GST legislation. Where an adjustment event occurs, the amount of GST payable under clause 27.5 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

1.7 If the amount of GST recovered from the Principal under this Agreement differs, for any reason, from the amount of GST paid or payable by the Consultant to the Commissioner of Taxation, including by reason of:
   (a) An amendment to the GST legislation;
   (b) The issue of or an alteration in a ruling or advice of the Commissioner of Taxation;
   (c) A refund of GST to the Consultant in respect of any supply made under this Agreement;
   (d) A decision of any tribunal or court,

then, subject to obtaining the written approval or instruction from the Principal, the difference in amounts will be paid by or to the Principal as the case may be.
Example: Standard Grant Agreement – GST Clauses

1. GST Clauses

1.1 In this clause “adjustment event”, “adjustment note”, “GST”, “supply”, “supplier” and “tax invoice” have the same meaning as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) (“the GST legislation”).

1.2 The parties agree that the agreed prices for the goods or services under the Agreement are GST exclusive prices.

1.3 The Grantee (grant recipient) will ensure that all tax invoices and adjustment notes rendered to the Grantor (grant provider) under the Agreement are in a format that identifies any GST paid, and which permits the Grantor to claim an input tax credit.

1.4 The Grantee must issue an adjustment note to the Grantor on or before 7 days after the occurrence of an adjustment event. The Grantor’s request for an adjustment note shall be deemed to have occurred on the date of the adjustment event. The adjustment note must identify the goods or services relevant to the adjustment event. Adjustment notes issued to the Grantor must comply with the requirements of the GST legislation. Where an adjustment event occurs, the amount of GST payable will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

1.5 If the amount of GST recovered from the Grantor under this Agreement differs, for any reason, from the amount of GST paid or payable by the Grantee to the Commissioner of Taxation, including by reason of:

(a) An amendment to the GST legislation;
(b) The issue of or an alteration in a ruling or advice of the Commissioner of Taxation;
(c) A refund of GST to the Grantee in respect of any supply made under this Agreement;
(d) A decision of any tribunal or court,

then, subject to obtaining the written approval or instruction from the Grantor, the difference in amounts will be paid by or to the Grantor as the case may be.

Example: Request for Tender (Consultancy) – GST Clauses

1.1 Prices shall be in Australian currency.

1.2 The tendered prices shall be the costs to Queensland Health. If there is a range of prices/costs to be applied to different products or services then these shall be detailed.

1.3 The tendered prices shall be exclusive of GST and shall include all royalties, levies, duties, other taxes and charges required for supplying the products or services.

1.4 In this clause “adjustment event”, “adjustment note”, “GST”, “supply”, “supplier” and “tax invoice” have the same meaning as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) (“the GST legislation”).

1.5 As a goods and services tax-registered entity (ABN 66 329 169 412), Queensland Health will be entitled to input tax credits on most GST amounts paid. All contracts entered into shall be at pricing exclusive of GST. Queensland Health agrees to pay to the supplier the applicable GST for a supply under a contract upon presentation of a valid tax invoice.
1.6 The supplier will ensure that all tax invoices and adjustment notes rendered to Queensland Health under a contract are in a format that identifies any GST paid or payable, and which permits Queensland Health to claim an input tax credit.

Where a party is required under the contract to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled.

1.7 The supplier must issue an adjustment note to Queensland Health on or before 7 days after the occurrence of an adjustment event. Queensland Health’s request for an adjustment note shall be deemed to have occurred on the date of the adjustment event. The adjustment note must identify the goods or services relevant to the adjustment event. Adjustment notes issued to Queensland Health must comply with the requirements of the GST legislation. Where an adjustment event occurs, the amount of GST payable for a supply will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

1.8 If the amount of GST recovered from Queensland Health under the contract differs, for any reason, from the amount of GST paid or payable by the supplier to the Commissioner of Taxation, including by reason of:

(a) An amendment to the GST legislation;
(b) The issue of or an alteration in a ruling or advice of the Commissioner of Taxation;
(c) A refund of GST to the Consultant in respect of any supply made under the contract;
(d) A decision of any tribunal or court,

then, subject to obtaining the written approval or instruction from Queensland Health, the difference in amounts will be paid by or to Queensland Health as the case may be.

Example: Conditions of Contract - Queensland Government Chief Procurement Office 2009 - GST Clauses

5.1 If the Price is exclusive of GST the:

(a) Agency will pay the GST Amount to the Contractor in addition to the Price; and
(b) Contractor must remit the GST Amount to the Commissioner for Taxation in accordance with the GST Legislation.

5.2 If the Price is inclusive of GST the:

(a) Agency is not required to pay the GST Amount in addition to the Price; and
(b) Contractor must remit the GST Amount to the Commissioner for Taxation in accordance with the GST Legislation.

5.3 Where the amount of GST collected by the Agency under this Contract differs, for any reason, from the amount of GST paid or payable by the Contractor, including but not limited to:

(a) an amendment to the GST Legislation;
(b) the issue of a ruling or advice by the Commissioner for Taxation;
(c) a refund of GST to the Contractor in respect of any supply made under this Contract; or
(d) a decision of any tribunal or court;

then the Contractor must issue an appropriate GST adjustment note and the difference must be paid by or to the Agency as the case may be.

**Example: Conditions of Contract - General**

1 **GST**

1.1 In this clause 1:

(a) words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law; and

(b) “GST Law” has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

1.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

1.3 If GST is payable by a supplier or by the representative member for a GST group of which the supplier is a member, on any supply made under this Agreement, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

1.4 The recipient will pay the amount referred to in clause 1.3 in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

1.5 The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 1.3. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.

1.6 If an adjustment event arises in respect of a taxable supply made by a supplier under this Agreement, the amount payable by the recipient under clause 1.3 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

1.7 Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

(a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and

(b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

1.8 If the supplier does not provide Queensland Health with a valid Australian Business Number, Queensland Health will deduct from any payments made pursuant to this Agreement such amounts as are required under the Taxation Administration Act 1953 (Cth).

4. Related legislation and documents

- GST Business Procedure – Property Margin Scheme
- GST Business Procedure – Construction, Purchase & Sale of Commercial Property
- GST Business Procedure – Construction, Purchase & Sale of Residential Property
- GST Business Procedure – Property Transactions - Vacant Land

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