



# Human Services

## Community Services

MID-WESTERN REGIONAL COUNCIL  
RECORDS  
RECEIVED

26 MAY 2011

SCANNED  
 REGISTERED

FUN10/131976

Dear Service Provider

I am writing to advise you about funding for services auspiced by your organisation for the 2011-12 financial year.

We have written to you separately in relation to Out of Home Care funding arrangements.

Administrative Orders announced following the NSW election and effective from 3<sup>rd</sup> April 2011 have transferred responsibility for Children's Services functions from the Department of Family and Community Services (DFACS) to the Department of Education and Communities (DEC). This includes the regulation of children's services and the funding of children's services.

DFACS and DEC have agreed that on an interim basis at least, DFACS will continue to administer funding of the Children's Services Program on behalf of DEC, undertaking work that occurs across regions between Partnership and Planning teams and Children's Services program funded organisations, and administering payments. However, major policy and funding decisions are now the responsibility of the Minister for Education.

Both DFACS and DEC are determined that none of these changes to administrative arrangements within Government should cause delay to payments under the Program, or extra paper work for funded organisations. To ensure that there is no delay in 1 July 2011 payments, preschool services will receive 2010/11 funding levels, and variations will be sent out shortly with funding for the 2011/12 year based on the August 2010 data collection.

For Childrens Services Program (CSP) funded organisations, the intention is that until other arrangements are announced, you will continue to liaise with the same people and the same parts of DFACS as was the case before the changes. If there are further changes to how CSP is to be administered within Government, then I will write to you at that time.

In relation to other services auspiced by your organisation, I am pleased to inform you that Community Services has approved funding for the 2011/12 financial year. This letter provides you with two copies of the Service Agreement and draws your attention to three necessary changes that have been made in response to recent policy decisions.

The first change is to Section 5: Service Provision and Access. Arising from an inquiry undertaken by the NSW Ombudsman, Community Services has reviewed clause 5.2 of the Service Agreement. This clause requires a service provider to 'take all reasonable action' to ensure that any premises at which Service Activities are conducted are physically accessible to people with disabilities. The clause has been expanded to provide details on the factors, including cost, that could impact on a service provider's capacity to make their premises accessible. These factors would be taken into consideration should a complaint be made against a service provider under the Anti-discrimination Act, 1977.

The second change has to do with Section 7: Financial Reporting. Community Services has for some years made a distinction in its financial reporting requirements between service specifications above or below a threshold of \$25,000 annual funding. On 5 August 2010, the then Executive Director Funding and Contracting Strategy and Reform wrote to service providers to inform them of simplified reporting requirements for service specifications. There are two requirements:-

- (1) For each service specification, the service provider must submit a certificate stating that the funds have been properly spent as agreed, and
- (2) For each specification valued over \$25,000, the service provider must submit a separate Income & Expenditure statement. No such statement is required for specifications valued below this amount, irrespective of their combined value.

These requirements have now been written into the Service Agreement.

The third change reflects a decision on new administrative arrangements for the public sector and resulting changes in agency names. We have dealt with this issue in the Service Agreement by clarifying that reference to 'Community Services' or 'Community Services, Department of Human Services' is to be read as reference to the new Department of Family & Community Services.

As is our usual practice, Community Services will contact your organisation later in the year with detailed advice about annual accountability requirements.

Two copies of the 2011/12 Service Agreement are included in this package. The 2011/12 Service Agreement also covers:-

- Schedule A – a list of all the services auspiced by your organisation, with details on the amount(s) of funding approved, whether the funding is renewable, etc., as well as any special conditions relating to the use of these funds.
- Schedule B – (not included in this package) the Service Specification(s) that your organisation has agreed with the relevant Community Services staff form part of your agreement with Community Services.

Please arrange for both copies of the Service Agreement to be signed by authorised representatives of your organisation and returned within one month of the date of this letter to the Community Services addressee nominated on the front page of the Agreement. Community Services will countersign the Agreements and return one copy to you for your records.

Community Services will make quarterly payments into your nominated bank account by electronic funds transfer when the signed Service Agreement is in place. No payments will be made until the Service Agreement is signed and received by the Community Services office that manages your Service Agreement.

Thank you for your cooperation and continued commitment to delivering high quality services to the people of New South Wales.

Yours sincerely



Helen Boyton  
A/Executive Director, Funding and Contracting Strategy and Reform  
20 May 2011



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**COMMUNITY SERVICES, DEPARTMENT OF HUMAN SERVICES NSW  
SERVICE AGREEMENT**

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This Agreement is between:

**The Minister for Community Services, for and on behalf of the State of New South Wales,  
acting through the Community Services, Department of Human Services NSW  
and**

**Mid-Western Regional Council ("Service Provider").**

Organisation Details	Address	PO Box 156 Mudgee 2850
	ABN	96149391332
	Incorporation details	Certificate of Incorporation Number: Not Required
		Incorporated Under: Local Government Body

**Both copies of this Agreement should be signed by Authorised Representatives of the  
Agencies and should be returned to the:**

**Director  
Central West  
PO Box 2165, Orange NSW 2800  
02 6361 6990**

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- Privacy: a Guide to the Principles of the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*

## **Introduction**

The community sector, Community Services, Department of Human Services NSW and other Government agencies work together to plan and provide social and community services in NSW.

Community Services' Funding Policy was released in August 2005. This policy can be found at [www.community.nsw.gov.au](http://www.community.nsw.gov.au).

This Agreement is governed by the laws of the State. The State, acting through Community Services, enters into Agreements to support the provision of social and community services. This Agreement outlines responsibilities and processes to facilitate the achievement of beneficial outcomes for individuals, families and communities.

This Agreement is based on community partnership principles and Community Services' values of fairness, excellence, integrity, openness, respect, teamwork and trust.

## **Section 1. Interpretation of terms**

- 1.1 "Agreement" means the terms and conditions of this Agreement and any schedules, as varied from time to time in accordance with its provisions.
- 1.2 "Authorised Representative" is a person identified in the Service Provider's constitution, or holding a position that is identified as being authorised to commit the organisation to the conditions as described in this Agreement.
- 1.3 In this agreement, "Community Services" or "Community Services, Department of Human Services" is to be read as the "Department of Family and Community Services", and means the State acting through and, where context permits, its officers and employees.
- 1.4 "Chief Executive" means the Chief Executive (or any person so acting) for the time being of Community Services, Department of Human Services NSW.
- 1.5 "Fixed Term Funding" means funding provided for a fixed period, with no provision in the agreement for any continuation of funding after the expiry of this fixed term. Fixed term funding can span multiple financial periods. This funding allocation type may attract indexation.
- 1.6 "GST" means a tax, levy, duty, charge, deduction imposed by the GST Law together with any related additional tax, interest, penalty, fine, or other charge calculated by reference to the value of anything supplied other than one imposed on net income.
- 1.7 "GST Law" means any law imposing a GST and includes *A New Tax System (Goods and Services Tax) Act 1999*, or if that Act does not exist for any reason, means any Act imposing, or relating, to a GST and any regulation made pursuant to any such Acts.
- 1.8 "Minister" means the Minister (or any person so acting) for the time being responsible for Community Services, Department of Human Services NSW.

1. 9 "One-off funding" means a one-off grant provided to a new or existing Project. This funding allocation type will not attract indexation.
- 1.10 "Payments" means the payments to be paid under this Agreement for the provision of services.
- 1.11 "Privacy Legislation" means Privacy and Personal Information Protection Act 1998, Health Records and Information Privacy Act 2002, Children and Young Persons (Care and Protection) Act 1998 and Community Welfare Act 1987.
- 1.12 "Project" is the activity undertaken by an organisation which, when combined with other activities with a common purpose that are funded under certain programs, will comprise the Service.
- 1.13 A "Prohibited Person" means a person prohibited from seeking, obtaining, undertaking or remaining in child related employment under either the *Commission for Children and Young People Act 1998* or the *Child Protection (Offenders Registration) Act 2000*
1. 14 "Program" means the Agency Program through which the payments are allocated for this Agreement.
1. 15 A "Recipient Created Tax Invoice" has the same meaning given to it in the GST law.
1. 16 "Regional Director" means the Regional Director (or any person so acting), for the time being, of Community Services, Department of Human Services NSW. The Community Services Representative specified in Schedule B may be the substitute for the Regional Director for state-wide services or services managed by Community Services Head Office.
1. 17 "Renewable funding" means funding provided on a renewable basis, with renewal being subject to a continuation of the funding review process.
1. 18 Schedule A is the list attached to this Agreement of the Service Specification(s) to which the Agreement refers.
1. 19 Schedule B contains the Service Specification(s) or Work Plan funded under Programs.
1. 20 "Service(s)" means the aggregated activities for which payments are advanced as outlined in the Service Specification.
1. 21 "Service Provider" means the organisation to which payments are advanced under this Agreement.
1. 22 "Service Specification" is the mechanism or work plan by which the Agency's and the Service Provider's plans for service provision are translated into contractual terms and describes the types of activities planned and the anticipated achievements..
1. 23 "State" or "State of New South Wales" means the Crown in right of the State of New South Wales.

- 1.24 "Unexpended Payments" means payments advanced by Community Services, which were proposed for expenditure or commitment over a particular period in the Service Specification budget and were not expended or committed for those purposes during that period.

## **Section 2. *Community Services agrees to:***

- 2.1 Work with the service provider towards a joint, strategic, community activity, based on co-responsibility and reflected in:
- building shared goals
  - working together to shape policy, planning and program delivery practices and to improve Service Agreements
  - mutual respect for the knowledge, skills and expertise which each contributes
  - good communication in which each can effectively engage in negotiation and collaboration
  - meeting our obligations under this Agreement.
- 2.2 Make payments to the Service Provider in accordance with this Agreement to support the provision of the services:
- provided it complies with the requirements of this Agreement; and
  - subject to Community Services receiving an appropriate annual allocation from Parliament.
- 2.3 Make all payments to the Service Provider by electronic funds transfer directly into a bank account nominated by the Service Provider. These payments will be deemed to have been paid by Community Services, when Community Services' bank indicates that it has sent the payments.

## **Section 3. *The Service Provider agrees:***

- 3.1 To provide services:
- in accordance with all requirements of this Agreement and the attached Schedules, for the agreed amount of funding and for the agreed period
  - in accordance with the Service Specification(s) which relate to the period of this Agreement
  - in a timely manner
  - exercising due care, skill and judgement and at all times in accord with applicable professional ethics, principles and standards and ensuring the organisation's employees and agents do likewise
  - in accordance with its constitution
  - in accordance with State and Federal laws, including the legislation, guidelines and policies described in this Agreement and particularly with due regard to the Child Wellbeing and Child Protection - NSW Interagency Guidelines.

3.2 To provide the Community Services Regional Director or relevant Head Office Director with written notification of any proposal to change the organisation's constitution. Such notice should be provided at the same time as the organisation's members are notified of the proposed change. Within 14 days of receiving such notice the Regional Director or relevant Head Office Director, will advise whether the proposed changes are inconsistent with Community Services' requirements and values;

The Regional Director or relevant Head Office Director must be notified of any decision to alter the constitution within 28 days of the decision being made. If the constituting document is changed, notwithstanding the Regional Director or relevant Head Office Director's advice on a matter of inconsistency, Community Services will initiate the dispute resolution process outlined in Section 14.

3.3 To ensure that the provisions of this Agreement are reflected either in the service standards or written policies of the organisation and that these will be either prominently displayed in the premises where the service activities are provided or made readily accessible to clients and staff of the service outlet.

3.4 To provide input to the Community Services Regional planning processes (where requested).

3.5 That the State of NSW is under no obligation to provide:

- any additional funding to the Service Provider during the term of this Agreement
- any future funding to the Service Provider after this Agreement expires or is terminated by either party.

3.6 To give prompt written notification to the Regional Director or relevant Head Office Director of any change in the organisation's address.

3.7 To notify the Regional Director or relevant Head Office Director in writing of any change in the organisation's bank account details, such notice to be signed by two Authorised Representatives.

3.8 Not assign or novate the Agreement without first obtaining Community Services' prior consent.

3.9 To implement the Good Practice Guidelines for Community Services Funded Services (or other comparable quality framework) in the development and delivery of its services.

#### **Section 4.           *Status of the Service Provider***

4.1 The Service Provider guarantees to Community Services that the organisation is:

- an incorporated body (Aboriginal Council/Association, incorporated association, company, cooperative or statutory body corporate such as a local council operating under the Local Government Act, 1993 (NSW))
- financially solvent
- properly managed



- capable of meeting the requirements of the Service Specification.
- 4.2 The Service Provider will give written notice to Community Services by close of business on the next working day after being notified that the organisation has ceased to be (or that it is proposed to commence action resulting in the organisation ceasing to be) an incorporated body or otherwise be registered.
- 4.3 If the Service Provider is funded under the Out of Home Care Program and should be accredited as a designated agency then it must:
- (i) be an accredited designated agency in accordance with Section 139, Children and Young Persons (Care and Protection) Act 1998;
  - (ii) give written notice to Community Services within three working days of being advised that the Children's Guardian has:
    - a) suspended or cancelled the Service Provider's status as a designated agency;
    - b) reported a failure of the Service Provider as a designated agency in accordance with Section 22C(7) Children and Young Persons (Savings and Transitional) Regulation 2000 (NSW);
    - c) terminated the Service Provider's application for accreditation in accordance with Section 22C(8) and (9) Children and Young Persons (Savings and Transitional) Regulation 2000 (NSW).
  - (iii) where a situation described under sub-clause (i) exists, then the Service Provider will co-operate with Community Services regarding the ongoing and future placement of children and young people who are placed with the Service Provider or whose placement is supervised by the Service Provider.
  - (iv) where Community Services determines that this Agreement is to be terminated in accordance with Section 16 then Community Services will work with the Children's Guardian and the Service Provider in developing transition plans for the children and young people whose placement is supervised by the Service Provider so that an accredited designated agency may continue to supervise their placement.
- 4.4 Both parties recognise that we are autonomous organisations and we acknowledge that, during the course of this Agreement:
- we are not the agent of the other
  - we are not in partnership in the legal sense of the word
  - no recipient of the payment is an employee or officer of the Minister
  - the Service Provider is not a contractor or subcontractor of the Agency or the Minister for the purposes of the certification process that is a requirement of Section 127 of the Industrial Relations Act 1996.
- 4.5 The Service Provider will encourage and enable clients (to whom activities and services are provided under this Agreement) and, where appropriate, their guardians or advocates, to exercise their rights. In particular, the right to:
- a) information about assistance available and appropriate referral for other services which they need
  - b) privacy, to be treated with respect and dignity and to refuse assistance

- c) negotiate how services are delivered to them
- d) have access, without fear of recrimination, to an effective complaints mechanism which the Service Provider must provide.

## **Section 5.            *Service provision and access***

- 5.1        The Service Provider will undertake the activities identified in the Service Specification in a way which provides reasonable access to all people in the identified client group (as set out in Schedule B) regardless of race, gender, age, pregnancy, marital status, disability, sexual preference, religion, philosophy, cultural background, transgender or health status including HIV status. Provision of reasonable access may require the use of interpreters and translators for clients from diverse linguistic and cultural backgrounds.
- 5.2        The Service Provider will take all reasonable action to ensure that any premises at which service activities are conducted are physically accessible to people with disabilities. In determining what constitutes reasonable action, consideration is to be given to all the circumstances of a particular case, including the needs of the client, the consequences for the client of exclusion from the service, the financial circumstances of the service provider and the estimated amount of expenditure required to be made by the service provider to achieve accessibility.
- 5.3        Subject to Clause 5.4, the Service Provider will not implement policies or practices that exclude services for individuals in the identified client group with high and/or complex needs, particularly those with drug and alcohol and/or mental health issues.
- 5.4        The Service Provider may only exclude individuals in the identified client group from using its services where it can demonstrate to the reasonable satisfaction of Community Services that the exclusion is supported by a client assessment of current risk and that it has made reasonable attempts to manage the identified risk.
- 5.5        The Service Provider will notify the Regional Director or relevant Head Office Director in writing immediately upon becoming aware that the service outlet may not be accessible to clients for five, or more, consecutive days on which services would normally be provided. Community Services may give notice under Clause 14.2 in response to this notification. The Service Provider will direct people with knowledge of the Project , and of the reasons for the inaccessibility, to attend meetings with Community Services and to discuss these issues with Community Services as reasonably required by Community Services.

## **Section 6.            *Performance monitoring and review***

- 6.1        **Cooperation with monitoring processes**
- 6.2        Service outlet visits: The Service Provider agrees that a Community Services representative may visit the service outlet premises and inspect the

implementation of the Service Specification at any reasonable time, upon giving reasonable notice (at least 48 hours). Where service activities take place at a client's or carer's private home, Community Services will provide a written request to the client or carer at least 14 days before the visit. Such a visit to a private home will take place only with the agreement of the client or carer (See 6.1.4, Inspections without notice).

6.2.1 If the Service Provider is a Licensed Children's Service, a delegated officer from Community Services may visit the service outlet at any time without notice.

6.3 Access to records: the Service Provider agrees to:

- a) make available all requested Project records and documents for inspection by a Community Services representative upon seven days written notice from Community Services, and to provide all necessary assistance to the Community Services representative in carrying out the inspection
- b) permit and assist a Community Services representative to take extracts from Project records and documents and to make such copies as they consider appropriate. Community Services will provide, within 28 days of completion, a copy of any report written as a result of the inspection.

6.4 Inspections without notice: If Community Services holds serious concerns about the operation of the Project then a Community Services Representative may undertake a visit or inspection of records without notice. Such a visit or inspection will be authorised by the Regional Director or Head Office Director. Community Services will provide reasons for the inspection, in writing, upon entering the premises.

6.5 Financial or performance audits: Community Services may conduct an audit of the Service Provider's compliance with its obligations under this Agreement at any reasonable time. In conducting an audit Community Services will provide the Service Provider with:

- a) written advice at least 10 working days prior to commencing an audit
- b) clear terms of reference for the audit in writing
- c) clear instructions about the organisation's obligations during the audit
- d) a copy of the report arising from the audit
- e) an opportunity to respond to the audit report.

The Service Provider agrees:

- a) that Community Services may appoint an independent person to assist in or conduct the audits
- b) to participate promptly and cooperatively in any audits of the Project conducted by Community Services or its nominees.

## **6.6 Assessing and improving performance**

- 6.6.1 The Service Provider agrees to cooperate with Community Services in collecting and providing the information needed to assess and improve performance, as specified in Schedule B.
- 6.6.2 The Service Provider agrees to:
- a) assist Community Services to monitor, review and report on the Service Provider's performance under this Agreement through the Performance Monitoring Framework
  - b) complete an annual Self Assessment
  - c) implement a Performance Improvement Plan as requested and agreed to by Community Services
  - d) Community Services reviewing the Service Provider's performance at any time.
- 6.6.3 If the Service Provider is funded under the Out of Home Care Program, and should be accredited as a designated agency, the service provider must maintain accreditation or quality improvement status with the Office of the Children's Guardian and continue to meet respective requirements as stipulated by the Office of the Children's Guardian.

## **Section 7. Financial reporting requirements**

- 7.1 Community Services has statutory obligations to ensure the accountability of funds and, accordingly, the Service Provider is required to be accountable for all payments received under this Agreement.
- 7.2 Requirements for organisation-level financial reporting:-
- 7.2.1 Where the Service Provider is required, under the law, to prepare audited financial statements, the Service Provider is required to provide Community Services with copies. These statements will be at the level of the organisation as a whole.
- If an audited financial statement is required it must be accompanied by an audit certificate signed by an auditor who is a member of any professional accounting or auditing body that meets Australian Auditing Standards. The auditor must be independent of the Service Provider and not have any financial interest in the Service Provider. The certificate must include a statement that the examination of the records of the organisation being audited has been completed in accordance with Australian Accounting Standards.
- 7.2.2 Where the Service Provider is not required, under the law, to prepare audited financial statements, the Service Provider is required to provide Community Services with the following financial statements at the level of the organisation as a whole:-
- (i) a balance sheet, and
  - (ii) an income and expenditure statement, and
  - (iii) a statement of changes in equity for the financial year

These statements are to be certified by two members of the Service Provider's Board of Management (or equivalent).

These documents must be forwarded to the Community Services representative who manages the Service Providers funding within four months of the end of the Service Provider's financial year.

7.2.3 A Service Provider is not required to provide financial reporting as set out in Sections 7.2.1 and 7.2.2 of this Agreement where that Service Provider is a local council, university or other body created by State Government legislation.

**7.3** Requirements for financial reporting on Service Specifications:-

7.3.1 Service Providers receiving payments from Community Services are required to certify that the funds have been properly spent as agreed. A separate certificate is required for each service specification.

The certificate must be signed by two members of the Service Provider's Board of Management (or equivalent). In the case of local government, this must be the Chief Executive and the Chief Financial Officer (or equivalents).

The certificate must be forwarded to the Community Services representative who manages the Service Providers funding within four months of the end of the Service Provider's financial year.

7.3.2 Service Providers must also provide Community Services with a separate income and expenditure statement for each service specification valued above \$25,000.

Where a number of Service Specifications are funded under the same funding program and achieve similar client outcomes or results, the Service Provider has the option of providing a combined income and expenditure statement for these Service Specifications. A combined statement can be provided only after written approval from the Community Services representative who manages the Service Providers funding. The approval must be granted prior to the commencement of the new year in which the income and expenditure statement will be combined.

These documents must be forwarded to the Community Services representative who manages the Service Providers funding within four months of the end of the Service Provider's financial year.

## **Section 8.            *Financial obligations***

8.1 The Service Provider will not enter into any arrangements or commitments in relation to the funded Service Specification which are incompatible or inconsistent with this Agreement and will notify Community Services in writing in the event that financial assistance is approved by any other agency or authority towards meeting the cost of the Project.

- 8.2 Any interest earned by the Service Provider on payments received in accordance with this Agreement must be applied towards the Project, as if this interest comprised part of the payments made by Community Services.
- 8.3 Payments received by the Service Provider under this Agreement must be disbursed in accordance with this Agreement and may only be used for the purpose for which the payments were provided.
- 8.4 The Service Provider will immediately notify the relevant Community Services Regional Director or head office Director in writing if:
- a) the activities identified in the Service Specification will not commence within 60 days from the agreed commencement date
  - b) the Project has not been operating for a period of 5 consecutive working days or more
  - c) the Project has ceased to operate.
- 8.5 Unless there is written agreement by Community Services on the use of any unexpended amount of any payment made, this amount will be deducted from any future payment(s). If there is no further payment to be made under this Agreement then the Service Provider must return the unexpended amount to Community Services. The amount to be returned will be calculated on the agreed level of surplus identified through the financial report and based on the payments made as a percentage of total Service Specification income.
- 8.6 In the event that the payments were used contrary to the terms and conditions of this Agreement, then an amount equal to those payments which were used contrary to the terms and conditions of this Agreement will be returned to Community Services within 14 days of written notification being received from Community Services.
- 8.7 If a funded Project ceases to operate, the Service Provider will return any unexpended payments to Community Services in accordance with clause 10.2.

## **Section 9. *Records and Intellectual Property***

### **9.1 Records**

The Service Provider agrees to:

- 9.1.1 establish and maintain clear Project operational records and documents throughout the funding term, in a form that meets appropriate record-keeping standards and all applicable legislative requirements.
- 9.1.2 retain the records referred to in this section throughout the Term and for 7 years after the expiry, or termination, of this Agreement, or as otherwise specified in writing by Community Services.
- 9.1.3 ensure that, in the event that the Service Provider ceases to operate, the records referred to in this Section 9 remain accessible to Community Services for 7 years after the expiry, or termination, of this Agreement.

9.1.4 dispose of the records referred to in this section in accordance with sound records management practice, or as otherwise specified in writing by Community Services.

9.1.5 Client Records (Out of Home Care only): comply with Section 5.6 of the OOHC Service Provision Guidelines (Section 170 of the *Children and Young Persons (Care and Protection) Act 1998*) which requires that service providers funded under the Out of Home Care Program maintain files of a child or young person in an OOHC placement for seven years after the placement has ended.

## **9.2 Information Use**

9.2.1 Grant of licence: The Service Provider grants, and will ensure third parties grant to Community Services, without cost, a perpetual, royalty-free, non-exclusive, irrevocable and transferable licence to use, copy, and reproduce, information contained in the reports and certificates prepared by the Service Provider (in respect of funded activities), and any audited financial statements that must be supplied to Community Services under this Agreement. Such information will only be used in compiling non-identifying aggregated data.

9.2.2 The licence granted pursuant to Clause 9.2.1 does not merge on completion but survives the expiration or earlier termination of this Agreement.

## **Section 10. *Withholding of payments and return of unspent funds***

### **10.1 Withholding Payments**

10.1.1 Community Services may withhold Payments (or part of the Payments) made under this Agreement immediately upon issuing the Service Provider with a written notice of breach (Clauses 14.1-14.3), a notice of dispute (Clause 14.4) or a notice of termination (Section 16).

10.1.2 Community Services may withhold Payments for the Service Specifications listed in Schedule A until the Service Provider has provided a satisfactory annual certificate or audited statement for any Funding received from Community Services in the previous year. The certificate or statement must meet the audit requirements set out in Attachment 1.

10.1.3 If Community Services takes such action to withhold Payments, Community Services will immediately advise the Service Provider in the written notice of breach, dispute or termination, or in a separate written notice, of:

- a) the reasons for this action; and
- b) the amount of Payments to be withheld.

### **10.2 Return of Unexpended Funds**

At Community Services' written request, the Service Provider must repay to Community Services, within 30 working days, or as otherwise agreed:

- a) any unexpended Funds if the Project is not operating, as described in Clause 8.4 (b);
- b) any unexpended Funds if the Project has ceased to operate; and
- c) any unexpended Funds at the expiration or termination of this Agreement.

- 10.3 The amount of unexpended Funds returned must be certified by the Service Provider in its financial certificate or audited financial report for the relevant period.
- 10.4 If a payment is unexpended (wholly or partly), Community Services may deduct the unexpended amount from any future payment(s). If there is no further payment to make under this Agreement, the Service Provider must return the unexpended funds to Community Services in accordance with Clause 10.2.

## **Section 11.           *Asset management***

- 11.1 The Service Provider will maintain a register of each asset valued (at the time of acquisition) at \$10,000 or more purchased, whether wholly or partly, from the payments or purchased using funds realised from the sale of any such asset. The register shall be kept according to Australian Accounting Standards and must be audited annually.
- 11.2 The Service Provider acknowledges that each asset purchased wholly from payments made under this Agreement is to be held and maintained for the purpose of providing the services agreed in this Agreement. Where an asset is purchased partially with payments made under this Agreement then the Service Provider shall do all things as may be reasonably requested by Community Services, including the execution of any necessary documents (such as a floating charge) to give full effect to, and protect, this arrangement.
- 11.3 Community Services funded assets listed in the Asset Register may only be sold with Community Services' written approval. The Service Provider agrees to pay Community Services the full amount of the sale proceeds or the agreed value of its proportionate share of any assets sold.

At the expiration or termination of this Agreement the Service Provider will immediately, unless Community Services gives notice to the contrary:

- a) follow Community Services' written directions regarding disposal of all assets that were wholly or partially purchased from the payments;
- b) pay to Community Services the agreed value of its proportionate share of any asset wholly or partially purchased from the payments; and
- c) provide to Community Services a current audited copy of the organisation's asset register.

## **Section 12.           *Goods and Services Tax***

- 12.1 Where the Service Provider is a registered organisation for the purposes of the Goods and Services Tax (GST), all payments made by Community Services include an amount to be forwarded, by the Service Provider, to the Australian Tax Office (ATO) to meet our respective responsibilities under the legislation establishing the goods and services tax.
- 12.2 With respect to the necessary associated administrative arrangements, the Service Provider agrees:



- a) that Community Services will issue a Recipient Created Tax Invoice for the payments that are made to the Service Provider in respect of the Service Specification(s) identified under this Agreement.
- b) not to issue a Tax Invoice to Community Services for the Service Specification(s) provided under this Agreement.
- c) the organisation is currently a registered supplier. The Service Provider will notify Community Services within one week if it ceases to be registered or if it ceases to satisfy any of the requirements of this Clause.
- d) to provide, at Community Services written request, access to GST returns and any GST assessments and accounting records relating to the funding to satisfy Community Services that GST is payable and has been paid under this Agreement in accordance with GST Law.

12.3 Community Services will indemnify the Service Provider for any liability for additional GST and any penalty that may arise if Community Services understates the GST payable on the Service Specification(s) identified under this Agreement for which a Recipient Created Tax Invoice is issued.

12.4 The Service Provider warrants that the ABN recorded on the front of this Agreement is the correct ABN for the organisation receiving funds under this Agreement. The Service Provider will indemnify Community Services for any loss that Community Services suffers as a result of any break of this warranty.

### **Section 13. Insurance**

13.1 The Service Provider must make sure that when carrying out the obligations under this Agreement the Service Provider exercises the highest level of care and skill so that the Service Provider will not cause loss or damage to the property, or personal injury, or death to any person.

The Service Provider agrees that the Service Provider has undertaken an assessment of risk and arranged and maintains adequate insurance cover to protect:

- (a) The Service Provider's physical assets against loss and/or damage;
- (b) The Minister's interest in property and/or other assets purchased wholly or partially with Funding provided under this Agreement.
- (c) The Service Provider against legal liability risk for personal injury and/or property damage or other financial loss claims including, without limitation:
  - (i) public liability; and
  - (ii) directors' and officers' liability; and
  - (iii) professional indemnity;
- (d) The Service Provider's volunteers for personal injury risk arising during voluntary duties.
- (e) The Service Provider's employees by maintaining all insurance required under the Workers Compensation Act 1987.

- 13.2** The Service Provider shall provide Community Services with proof of the Service Provider's insurance cover and a certificate of currency upon request.
- 13.3** Should any of the required insurance policies lapse or be cancelled, the Service Provider will immediately notify Community Services in writing of the new arrangements.
- 13.4** Where the Service Provider is managing property funded under the Service, the Service Provider will ensure that the interest of the State of New South Wales is noted on all insurances pertaining to the property; OR
- 13.5** Where the Service Provider is managing property funded under a joint state/Australian Government initiative, the Service Provider will ensure that the interest of the State of New South Wales and the Australian Government is noted on all insurances for the property.

## **Section 14. Breach of Agreement and Dispute resolution**

### **14.1 Breach of Agreement**

- 14.1.2** If the Service Provider considers that Community Services has not met its obligations under this Agreement, then it may:
- a) raise any concerns with the staff member most directly responsible for the Service Specification
  - b) submit any concerns in writing to the next most senior officer if the staff member cannot resolve the matter satisfactorily
  - c) initiate the dispute resolution process set out in Clause 14.6, if an agreement on the remedial action to be taken cannot be reached with the Community Services staff involved.

### **14.2 Breaches that can be remedied**

- 14.2.1** If Community Services considers that:
- a) the Service Provider has breached this Agreement, and
  - b) the breach can be fixed
- then Community Services may issue a written notice of breach ('Notice of Breach') of this Agreement.
- 14.2.2** If a Notice of Breach is received from Community Services, the Service Provider must:
- a) discuss the breach with a Community Services Representative within five working days of receiving the Notice and comply with any other requirements specified in the Notice
  - b) seek to reach agreement on the remedial action to be taken
  - c) implement the agreed action within the agreed timeframe.

### **14.3 Breaches that cannot be remedied ("terminable breach")**

- 14.3.1 If the Service Provider and Community Services cannot agree to remedial action under Clause 14.2, then Community Services may:
- a) initiate the Dispute Resolution Process referred to in Clause 14.4.1 or
  - b) terminate this Agreement in accordance with Section 16, Termination.

- 14.3.2 If Community Services, in its sole discretion, identifies that a breach of this Agreement cannot be fixed, Community Services may terminate this Agreement in accordance with Section 16, (Termination).

#### **14.4 Dispute Resolution**

- 14.4.1 If a Dispute arises between the Service Provider and Community Services concerning:
- a) the terms and conditions of this Agreement
  - b) the provision of Services under this Agreement, or
  - c) any other matter arising under this Agreement

either Party may initiate the Dispute Resolution Process set out in Attachment 2 This occurs by notifying the other Party in writing ('Notice of Dispute'), within 10 working days of becoming aware of the issue.

- 14.4.2 Both parties agree that the Dispute Resolution Process cannot be used to determine:
- a) a variation in funding
  - b) a variation in service levels
  - c) casework disputes regarding an individual/family client and the Service Provider, or
  - d) complaints against Community Services not directly related to the terms and conditions of this Agreement.

- 14.4.3 Notwithstanding any dispute, Community Services and the Service Provider will, subject to this or any other provision of this Agreement, each continue performing obligations under this Agreement while a dispute resolution process is being followed. Community Services may request that the Service Provider cease performing obligations under this Agreement while a dispute resolution process is being followed and, upon receipt of such a request, the Service Provider will cease performing obligations. Community Services will only withhold payments while a dispute resolution process is being followed in accordance with Section 10 or vary arrangements for payment in accordance with Section 15 and if funds are otherwise withheld or payment arrangements varied then the Service Provider may advise Community Services that it will cease to perform obligations under this Agreement from a nominated date (being not less than 3 days from the date of the advice) and then proceed to cease provision from that date unless Community Services has rectified its actions in the interim.

- 14.4.4 Information relating to the dispute shall remain confidential, as far as possible. However, this requirement for confidentiality will not prevent either party from disclosing necessary information to legal advisers, insurers or other necessary parties such as its board of directors, its employer, or another member of a group which is party to the dispute. Any person involved in the Dispute

Resolution Process may be required to sign a confidentiality agreement as a precondition to their involvement.

- 14.4.5 This section in no way limits the Minister's right to invoke Section 16 (Termination).

## **Section 15.           *Variation***

- 15.1 This Agreement may only be varied in writing signed by both Community Services and the Service Provider. Following signature by both parties, each party will be bound by such variation.
- 15.2 A waiver to comply with any provision of this Agreement on one occasion will not result in any variation of this Agreement or any implication that future performance has also been waived.
- 15.3 It is not a waiver or a breach of the Minister's rights under this Agreement if the Minister, whether acting personally or through Community Services, does not exercise, or delays in exercising, any right, power or remedy under this Agreement.

## **Section 16.           *Termination***

- 16.1 If this Agreement is terminated, or the obligation to provide Services under this Agreement is terminated, the Service Provider will not be entitled to any payment as a consequence of the termination, this includes payment of consequential losses, loss of profit, loss of opportunity, breakage costs and employment termination costs.
- 16.2 Termination without fault**
- 16.2.1 This Agreement may be terminated at any time if both parties so agree, in writing ("Notice of Termination").
- 16.2.2 The Service Provider may terminate this Agreement on provision of three months notice, in writing ("Notice of Termination").
- 16.2.3 Community Services may terminate this Agreement if funds for the provision of services are no longer available to Community Services.
- 16.3 Termination for cause**
- 16.3.1 Community Services may immediately terminate this Agreement by giving written notice ("Notice of Termination for Cause") if one or more of the following occurs:
- a) The Service Provider breaches a provision of this Agreement in a manner that, in Community Services' opinion, is not able to be remedied
  - b) The Service Provider breaches this Agreement in a manner that, in Community Services' opinion, is capable of remedy and the Service Provider does not comply with a notice to remedy the breach within the period specified in that notice or

- c) The Service Provider breaches this Agreement in a manner that, in Community Services' opinion, is capable of remedy and the Service Provider and Community Services cannot agree to remedial action.

16.3.2 The Notice of Termination for Cause will specify:  
a) an appeal period of at least 20 days, and  
b) the effective termination date, which will be within 60 days from the date of the Notice, unless otherwise specified.

16.3.3 During the appeal period the Service Provider may make written submissions to the Chief Executive concerning the decision to terminate this Agreement. The Chief Executive may set aside that decision or extend the appeal period to allow further consideration of the matter. Any decision by Community Services to then proceed to terminate the Agreement shall be final.

16.3.4 The Service Provider and Community Services agree that the written notice, any written submissions and all related information (whether in writing or oral) shall be kept confidential during the appeal period, except to allow either party to seek legal advice.

#### **16.4 Termination by the Minister**

16.4.1 This Agreement may be terminated by the Minister without the need to give reasons. The Minister may do this by notifying the Service Provider in writing of the decision to terminate this Agreement ("Ministerial Notice of Termination"). During the appeal period the Service Provider may make written submissions to the Minister concerning the decision to terminate. The Minister may, if considered appropriate, set aside that decision or extend the appeal period to allow further consideration of the matter by the Minister.

16.4.2 Any decision by the Minister to then proceed to terminate the Agreement shall be final. Except to assist the Minister's deliberations, the Service Provider agrees that the written notice, any written submissions and all related information (whether in writing or oral) shall be kept confidential during the appeal period.

### **Section 17. *Management and conflict of interest***

17.1 The Service Provider will ensure that it maintains a management structure which is responsive to the community to be served.

17.2 The Service Provider agrees to ensure that:

- a) committee/board members, staff, volunteers and agents of the organisation declare any potential conflict of interest between their role in the Project and any other activities in which they may participate
- b) effective practices to manage potential conflicts of interest are put in place
- c) no person votes on matters at board/committee meetings in which they have a conflict of interest
- d) staff do not have voting rights at board/committee meetings in matters relating to their own salary or conditions.

- 17.3 Community Services employees will not be voting members of the Service Provider's committee/board. Subject to Clause 17.2 (c) it remains open to the Service Provider to invite relevant Community Services staff to participate in activities of committees or boards provided that they are not voting members.

## **Section 18. Staff and volunteers**

### **18.1 Human resource management**

- 18.1.1 The Service Provider will comply with all State laws concerning equal employment opportunity, anti-discrimination and affirmative action in all staffing matters relating to the implementation of Service Specifications that are funded by Community Services. Staff matters include advertising, selection procedures, staff training, employment practices and separation practices.
- 18.1.2 When staff positions established from payments under this Agreement become vacant, whether for replacement of existing staff or for a new position, recruitment action must be undertaken to ensure that the position is actively and demonstrably promoted to all prospective applicants in the surrounding metropolitan area, provincial city or region. Such advertisement may be undertaken through some or all accessible media sources such as newspapers, employment agencies and Internet advertising.

The vacant position need not be advertised in the accessible media sources in any of the following circumstances:

- a) the proposed employment is for a period of no more than 6 months
- b) an existing permanent staff member is transferred to a position at a salary level no greater than their current salary
- c) an appointment is made from an eligibility list or pool of casual employees which was created for the position after advertisement within the previous 6 months
- d) the proposed employment is for one day per week or less
- e) a temporary appointment is made for an existing employee to replace an employee on leave. Where the leave is expected to extend beyond 12 months, the Service Provider must notify the Regional Director or relevant Head Office Director of this appointment;
- f) the Regional Director or relevant Head Office Director has granted in writing an exemption from advertising the position at that time.

Copies of any advertisement are to be retained by the Service Provider and are to be made available to the Regional Director or relevant Head Office Director within 7 days of a written request being made.

- 18.1.3 If the services of volunteers are used in delivering services under this Agreement, the Service Provider will operate in accordance with the practice described under the heading "Volunteers in Service Outlets Funded by Community Services, Department of Human Services NSW" in the Information Pages at the end of this Agreement.

## **18.2 Child protection responsibilities**

- 18.2.1 If the Service Provider is a 'designated non-government agency' as described in Part 3A of the *Ombudsman Act 1974* it must ensure that all of the obligations required of 'designated non-government agency' under Part 3A are met.
- 18.2.2 If the Service Provider is an employer as defined in Section 33 of the *Commission for Children and Young People, 1998* (the Act) the Service Provider and its agents must complete mandatory employment screening ("the working with children check") on all staff employed to work in "primary child-related employment" as described in the Act, prior to such staff commencing to perform the work.
- 18.2.3 The Service Provider will ensure that a Prohibited Person, or a person who is the subject of a child abuse allegation or investigation, does not undertake child-related employment under this Agreement.

## **Section 19. Sub-contracting**

- 19.1 With the prior written consent of Community Services (which consent shall not be unreasonably withheld) the Service Provider may sub-contract the Service Specification(s) specified in the Schedule(s), or any part of them, to a third party, provided that the Service Provider:
- a) satisfies Community Services that the third party can satisfactorily provide the services being sub contracted
  - b) remains solely responsible and accountable to Community Services for the supply of the Services and for achieving each performance standard and target
  - c) contracts with the third party so that the third party is bound to comply with, and undertake, the Service Provider's obligations under this Agreement including (without limiting the foregoing) any provision relating to confidential information
  - d) warrants that this sub-contracting complies with all relevant NSW legislation and Community Services policies
  - e) contracts with the third party to indemnify Community Services, the Minister, the State of New South Wales and all Community Services staff in the same terms as Clause 23.1 of this Agreement.

## **Section 20. Confidentiality**

- 20.1 Both parties will ensure that the rights and confidentiality of clients and staff are protected in policy and practice in accordance with State and Commonwealth legislation. Notwithstanding this, the Service Provider will ensure that, in the event of an investigation or monitoring undertaken by or on behalf of Community Services regarding the records or activities of the funded Project(s), all relevant Project records and documents will be made available to whomever is authorised in writing by the Regional Director or relevant Head Office Director.

- 20.2 The Service Provider acknowledges that it is subject to Section 76 of the Community Welfare Act 1987 and that, as a result, a breach of confidentiality under this Agreement may be an offence under that section.
- 20.3 Other than with the consent of the particular client or in accordance with a legislative requirement, Agency officers will not disclose any information concerning clients of the Service Provider made available to them in monitoring or investigating the implementation of the Service Specification.
- 20.4 The Service Provider will comply with the Privacy and Personal Information Protection Act, 1998 (as if it were a State Government Agency) and the Commonwealth Privacy Act, 1988. In addition, the Service Provider will comply with the Health Records and Information Privacy Act 2002 when dealing with health information.
- 20.5 The Service Provider will develop and implement policies and procedures that are consistent with the Privacy Legislation and principles.
- 20.6 This Agreement sets out the privacy understanding as to how each party will operate in relation to these Services. Where there is a conflict between this Agreement and any other document or information then this Agreement has priority and will prevail.
- 20.7 A guide to the principles of the Privacy and Personal Information Protection Act, 1998 and the Health Records and Information Privacy Act 2002 appears in the Information Pages at the end of this Agreement.

## **Section 21. Correspondence**

- 21.1 Any notice or other communication required to be made under this Agreement must be in writing, addressed and issued by or sent under the authority of the appropriate officer of the relevant party.
- 21.2 Such notice or other communication must be delivered by hand, sent by prepaid post, transmitted electronically or by facsimile.
- 21.3 A notice or other communication will be taken to be received:
- a) if delivered by hand, upon delivery
  - b) if sent by pre-paid ordinary post within Australia, upon the expiry of 4 business days after the date on which it was sent
  - c) if transmitted electronically or by facsimile, upon receipt by the sender of an electronic or facsimile acknowledgment that the communication has been properly transmitted to the recipient.

## **Section 22. Data collection and exchange of information**

### **22.1 Additional research, evaluation and data collection**

- 22.1.1 The Service Provider agrees to meet the research, evaluation and data collection requirements of the Program(s) which fund any Project under this Agreement and co-operate in the provision of other statistical and Project information for surveys or other research authorised by Community Services.



22.1.2 Community Services will make available to the Service Provider within 28 days of receiving a written request for such a copy, any public information or report compiled by Community Services as a result of such surveys or of any annual report compiled from ongoing data collections.

22.1.3 The Service Provider will promptly notify Community Services if it, or any third party intends to conduct research into services that receive funds under this Agreement. The Service Provider agrees that any such research must comply with provisions in Community Services' Guidelines for External Researchers which are available on the Community Services website at [www.community.nsw.gov.au](http://www.community.nsw.gov.au).

## **22.2 Exchange of information**

22.2.1 If the Service Provider is funded under the Out of Home Care Program:

- a) the Service Provider authorises Community Services to make available to the Office for Children any information relevant to the accreditation of its service
- b) the Service Provider authorises the Office for Children to make available to Community Services any information relating to the provision of its Services
- c) it is agreed that the provision of information under this clause is privileged within Section 22, Defamation Act 1974 (NSW)
- d) in addition to the indemnities contained in Section 23, the Service Provider agrees to release and indemnify the State of NSW (which includes its officers, employees and agents) from any claim in respect of any matter arising out of the provision of information. Without limiting the above, the Service Provider releases the State of NSW from any claim that it may have for any loss arising out of the provision of information relating to the use of such information by the recipient of the information.

## **Section 23. Indemnity**

23.1 In addition to the indemnity contained in Clause 22.2.1 c), the Service Provider agrees to release and indemnify, and keep indemnified, Community Services, the Minister, the State of New South Wales and all employees and other staff and agents of Community Services from and against all liability for and in respect of injury (including death), illness, loss or defamation to persons or damage to property, arising out of or in connection with any direct or indirect act or omission by the Service Provider, its employees and other staff or agents, done or omitted in the course of any part of a Service Specification funded under this Agreement or otherwise arising out of or in connection with this Agreement except where, and to the extent that, such liability arises out of any wilful, unlawful or negligent act or omission on the part of Community Services.

23.2 Without limiting Clause 23.1, the Service Provider agrees to release and indemnify, and keep indemnified, Community Services, the Minister, the State of New South Wales and all employees and other staff and agents of Community

Services against any liability arising as a result of the Service Provider's failure to pay its employees or the failure of any of its contractors or subcontractors to pay their employees, in accordance with any relevant industrial instrument, including loss resulting from any fines or penalties for failure to make such payments.

- 23.3 In the event that Community Services becomes aware of a claim or proceedings dealing with matters in respect of which this indemnity applies, Community Services shall advise the Service Provider of the claim or proceedings so that it can give effect to these releases and indemnities.

## **Section 24.            *Obligations to publicise this arrangement***

- 24.1 The Service Provider will acknowledge the financial support received from Community Services in its annual report and in any publications or materials produced as part of any Service Specification arising from this Agreement.
- 24.2 The Service Provider will not use the Community Services trademark unless expressly agreed by Community Services in writing.

## **Section 25.            *What happens when this Agreement ends***

- 25.1 Client transition: If requested by Community Services, the Service Provider agrees to work with Community Services to ensure the orderly transition of clients to a new service provider.
- 25.2 Delivery of reports and return of Confidential Information: The Service Provider must, unless otherwise agreed in writing, provide to Community Services within five working days of termination or expiry of this Agreement:
- a) any reports due to Community Services under this Agreement or otherwise requested by Community Services; and
  - b) all Community Services Confidential Information used by the Service Provider or its employees, agents or contractors or otherwise in their possession and all copies of such information.
- 25.3 Retention of client records (Out of Home Care only): The Service Provider must make arrangements to comply with the requirements of the *Children and Young Persons (Care and Protection Act) 1998*



### Schedule A

#### Mid-Western Regional Council

1-1QUN-92

Service Specification	Funding Term	2011/2012 Renewable Funds	2011/2012 Fixed Funds	2011/2012 One-off Funds
<i>Mid-Western Regional Council Community Project Officer (1-1707549272)</i> Strengthening Communities (SC) <i>Term Start Date: 01/07/2011 Expiry Date: 30/06/2014 - Renewable</i>  SPECIAL CONDITION:	36 months	\$60,745	\$38,273	\$0

We, the undersigned, warrant that we have full power and authority to enter into this Agreement. As duly Authorised Representatives of the organisation, we have read and accept on behalf of the organisation the terms of this Agreement.

The Common Seal of the organisation was hereunto  
Affixed by authority of the

**Stamp Seal Here**

If Your organisation is an Incorporated Association the Seal of the organisation should appear here. If Your organisation is a Council the Seal or proof of the delegated authority should be provided where indicated.

**(Board of Directors/Executive/Management Committee/Council, etc)**

(Name) .....  
(Please Print Name)

(Signature) ..... **Authorised Representative (or Mayor)**

(Name) .....  
(Please Print Name)

(Signature) ..... **Authorised Representative (or General Manager)**

**This section is for Agency use only**

IN WITNESS WHEREOF the parties have executed this Agreement on this  
..... day of ..... 20.....

Signed, sealed and delivered by

(Name).....

(Signature).....

pursuant to the authority vested in him/her under an instrument of delegation executed by the Minister for Family and Community Services, New South Wales.

before me ..... (Name of witness)

(Signature) .....

## Attachment 1

**PLEASE NOTE: This attachment forms part of the Agreement between Community Services and your organisation for the delivery of funded services.**

### Dispute Resolution

#### ***Service Agreement Reference: Section 14***

This Dispute Resolution Process is to be followed when either party has issued a "Notice of Dispute" under Clause 14.6 of this Agreement. A dispute is a situation in which the Parties cannot agree on a solution to a matter of concern. This matter of concern may be related to the:

- terms and conditions of the Service Agreement,
- the provision of services under the Agreement, or
- other matters related to performing the obligations under the Agreement

and the matter of concern might otherwise be referred to a court of law for resolution.

The underlying principle of the Dispute Resolution Process is that of Alternative Dispute Resolution (ADR). ADR emphasises a non-adversarial approach to dispute resolution, avoiding recourse to court proceedings or other legal action. ADR is an important tool for decision making and a significant initiative in the *Children and Young People's Care and Protection Act 1998*. The Guidelines describes ADR as a "non-threatening, non-legalistic flexible process" which "can be used to facilitate workable outcomes in resolving concerns", primarily in relation to child protection intervention but also, by extension, in the planning and delivery of services.

Both Parties agree to adhere to the principles for ADR expressed in the Interagency Guidelines for Child Protection Intervention:

- respect what the other Party is saying
- seek to clarify and identify the key issues for each Party
- listen: do not reject the ideas of the other Party
- seek to explore options which meet the interests of both Parties
- build solutions: don't work from pre-established positions
- define agreements carefully and document them
- build processes for review

The Dispute Resolution Process gives a time-limited, staged approach to managing a dispute. The Process should only be initiated when:

- Discussions between Community Services and the Service Provider have failed to resolve a matter of concern, or
- Community Services and the Service Provider cannot agree on appropriate remedial action following issuing of a written "Notice of Breach"

The Dispute Resolution Process does not prevent the Agreement being terminated pursuant to Section 16.

All Parties will make every effort to act reasonably and in good faith to resolve the dispute at each stage of the Dispute Resolution Process. A staged process is used to provide a clear path, with time limitations, to escalate a dispute where issues can't be resolved at an operational level. The process provides access to objective third party involvement where needed.

All forms of communication throughout the Dispute Resolution Process must be fully documented and meetings minuted. All information regarding the dispute is to be treated as confidential between the Parties, with disclosure only permitted to those people directly involved in the Dispute Resolution Process.

## **Steps to be Followed in Resolving a Dispute**

### **Stage 1: *Notice of Dispute (Day 1 of the Dispute)***

- Must be given in writing – the 'Notice of Dispute' - within a reasonable time of the Party becoming aware of an issue. For the purpose of these stages Day 1 of the Dispute is the day upon which the Notice of Dispute is received by the other party or two business days after issuing the Notice of Dispute, whichever is the earlier.
- In accordance with clause 14.6 the Notice of Dispute must be received by the other Party within 10 days of the issuing Party becoming aware that a dispute has arisen.
- The Notice of Dispute will:
  - state who will be the nominated senior representative(s) of the Party issuing the Notice in the Dispute Resolution Process for the purpose of participating in the Dispute Resolution Process
  - require the other Party to immediately advise in writing who will be their nominated senior representative(s) for the purpose of participating in the Dispute Resolution Process.
- The nominated senior representatives must include those people authorised to make decisions on behalf of the organisation. For Community Services this will be the Community Services representative who manages the Service Providers funding. Community Services may at any time request that a dispute be referred to the Community Services Executive to continue the resolution process.
- Each Party must ensure that its nominated senior representatives are reasonably available to discuss the Dispute throughout all stages of the process.

### **Stage 2: *Negotiated Resolution***

- The Parties will meet within 21 days of Day 1 of the Dispute.
- The meeting will include the nominated senior representatives of each Party.
- Additional meetings and other communication may take place after the initial meeting.
- The Parties have 28 days from Day 1 of the Dispute to reach agreement. If an agreement is reached, it is to be documented and signed by both Parties within this timeframe.
- If the Parties cannot reach an agreement within 28 days of Day 1:
  - either Party may refer the matter to Stage 3 – Assisted Amicable Negotiated Resolution (this will require the agreement of both Parties), or
  - if agreement to proceed to Stage 3 cannot be reached, Community Services must refer the matter directly to Stage 4 or to Stage 5.

### **Stage 3: *Assisted Amicable Negotiated Resolution***

- Proceeding with Stage 3 requires the agreement of both Parties. Where either Party wishes to commence legal proceedings, then they agree not to do so until Mediation, as provided for in this Stage, has been attempted. In the case of compulsory agreed mediation:
  - The Mediator must be jointly appointed

- If no agreement can be reached regarding a joint appointment, then the Mediator must be a person appointed by the Secretary of the Australian Commercial Disputes Centre (or other third party as otherwise nominated by Community Services).
- Subject to the immediately preceding point, if both Parties agree, one, or a combination of, the following processes may be used as part of Stage 3:

**Mediation** – mediation is an informal process to assist people to sort disputes out between themselves. The Mediator helps both Parties to find a solution to the dispute by:

- encouraging those in dispute to talk about their concerns to each other,
- isolating the issues and developing options for reaching an agreement.

The Mediator does not impose a solution or provide legal advice. The Parties retain control over the process, but the Mediator helps to ensure that proceedings remain amicable.

**Conciliation** – conciliation is similar to mediation, but would involve both Parties agreeing that the Conciliator (a neutral person) will play a more active role in reaching agreement

**Facilitation** – facilitation is a process of assisted communication, especially useful if large numbers of people need to be involved. It is a way of keeping meetings on track, reducing conflict, clarifying issues, developing consensus and protecting relationships

- If assisted amicable negotiations fail within a reasonable period of time (being no later than 42 days from Day 1 unless otherwise agreed) Community Services may, on behalf of both Parties, initiate a Independent Review of the dispute, with terms of reference to examine and make a determination regarding the matters of concern. Community Services also has the discretion to proceed directly to Stage 5.

#### **Stage 4: *Independent Review***

- If resolution is not attained pursuant to Stages 2 or 3 within a reasonable period of time (being no later than 42 days from Day 1 of the Dispute, unless otherwise agreed), then Community Services may establish an Independent Review of the Dispute to examine and make decisions on the matters of concern.
- Community Services will issue a written notice to the other Party within 7 days of the decision to refer the matter to Stage 4, advising who will be on the Independent Review Panel and when the Independent Review will commence. The Independent Review will commence within 60 days of Day 1 of the Dispute.
- The Independent Review shall be conducted by at least two people (the Independent Review Panel), selected by the Executive Director Funding and Contracting Strategy and Reform, with a view to procedural fairness and avoidance of any conflict of interest. At least one person will not be an officer of Community Services.
- The Independent Review Panel shall be instructed to act as experts, not as arbitrators.
- 
- The process for the Independent Review shall be:
  - Full information relevant to the Dispute to be submitted by each Party in a timely manner (and being within 3 days unless otherwise stated)
  - Right of reply to the other Party's submitted information (and being within 3 days unless otherwise stated)

- Within the absolute discretion of the Independent Review Panel hold a conference with the Parties (with a minimum 3 days notice being given of the date of the conference, unless otherwise agreed), or request further information or clarification of any information submitted (responses required within 3 days unless otherwise advised)
- The Independent Review Panel will consider all relevant material to make a determination on the basis of all the information received, including all submissions, meetings, interviews and witness statements subject to the situation where information is not supplied within the stipulated timeframe - in which case the Independent Review Panel will proceed on the basis of the information held
- The Independent Review Panel will then write a report setting out its decision (if any) and the reasons for reaching that decision and provide it to both Parties for written response within seven days (unless otherwise advised by the Independent Review Panel and in any event, subject to the next point, no later than 21 days)
- Any decision of the Independent Review Panel will (subject to the power of the Minister referred to in Stage 5) be binding on each Party
- The Independent Review is to be completed within 42 days of the date of commencement set out in the written notice of referral to Stage 4.

#### **Stage 5: Ministerial Resolution**

- It is agreed that the Minister has the power to make a determination to resolve any dispute and that any such determination is final and binding upon the Parties.
- If Stage 4 has been followed then the report of the Independent Review Panel and any responses by either Party to the report will be promptly (and in any event no later than 5 days after the report is completed) forwarded to the Minister for consideration. The Minister will then advise each Party of the resolution of the dispute that has been determined by the Minister.
- If Community Services has referred the matter to the Minister at the conclusion of Stages 2 or 3 Community Services will issue a written notice to the other Party within 7 days of the referral the matter to Stage 5. The Minister will then advise each Party of the resolution of the dispute that has been determined by the Minister.
- The Minister may, but need not, give reasons for any determination.
- The Minister's determination of the resolution of the dispute may, but need not, be in accord with the decision of the Independent Review Panel. Without limiting the Minister's determination, the Minister may terminate the Service Agreement pursuant to Section 16 or direct Community Services to withhold payments to the Service Provider pursuant to Section 10 or make a determination subject to conditions that are consistent with this Agreement. If the Minister determines that Community Services should withhold payments, the Minister will specify the actions required of the Service Provider prior to any recommencement of the Payments.

Without giving to the Service Provider any new rights or powers, it is noted that this process does not prevent the Service Provider at any time:

- asking Community Services to review any decision of Community Services
- referring any matter to the NSW Ombudsman
- terminating the Service Agreement pursuant to Section 16.



## Attachment 2

**PLEASE NOTE** – the following information pages on Key Documents, Volunteers and the Privacy Act are for information only and do not form part of the contract between the Service Provider and Community Services.

### Key Documents Relevant to this Agreement

#### Legislation

Document	Internet Source
<i>Anti-Discrimination Act 1977</i>	<a href="http://www.legislation.nsw.gov.au">www.legislation.nsw.gov.au</a>
<i>Children (Care and Protection) Act 1987</i>	<a href="http://www.legislation.nsw.gov.au">www.legislation.nsw.gov.au</a>
<i>Children and Young Persons (Care and Protection) Act 1998</i>	<a href="http://www.legislation.nsw.gov.au">www.legislation.nsw.gov.au</a> - <b>NB</b> – replaces much of the Children (Care and Protection) Act 1987.
<i>Commission for Children and Young People Act 1998</i>	<a href="http://www.legislation.nsw.gov.au">www.legislation.nsw.gov.au</a>
<i>Community Welfare Act 1987</i>	<a href="http://www.legislation.nsw.gov.au">www.legislation.nsw.gov.au</a>
<i>Health Records and Information Privacy Act 2002</i>	<a href="http://www.legislation.nsw.gov.au">www.legislation.nsw.gov.au</a>
<i>Occupational Health and Safety Act 2000</i>	<a href="http://www.legislation.nsw.gov.au">www.legislation.nsw.gov.au</a>
<i>Privacy and Personal Information Protection Act 1998</i>	<a href="http://www.legislation.nsw.gov.au">www.legislation.nsw.gov.au</a>
<i>Commonwealth Privacy Act, 1988</i>	<a href="http://www.law.gov.au">www.law.gov.au</a>
<i>Supported Accommodation and Assistance Program (SAAP) Act, 1994</i>	<a href="http://www.law.gov.au">www.law.gov.au</a>

#### Community Services, Department of Human Services NSW Policies

Document	Internet Source
The Right to Better Service – Aboriginal Policy Directions – 1999	<a href="http://www.community.nsw.gov.au">www.community.nsw.gov.au</a>
The Right to Better Service – Ethnic Affairs Policy Directions – 1999	<a href="http://www.community.nsw.gov.au">www.community.nsw.gov.au</a>
The Right to Better Service – Rural and Remote Policy Directions – 1999	<a href="http://www.community.nsw.gov.au">www.community.nsw.gov.au</a>
Supported Accommodation Assistance Program Standards – September, 1998	<a href="http://www.community.nsw.gov.au">www.community.nsw.gov.au</a>
Guide for Fraud Risk Assessment for Service Providers	<a href="http://www.community.nsw.gov.au">www.community.nsw.gov.au</a>
Performance Monitoring Framework for Funded Services 2006/2007	<a href="http://www.community.nsw.gov.au">www.community.nsw.gov.au</a>
The Good Practice Guidelines for Community Services Funded Services 2006	<a href="http://www.community.nsw.gov.au">www.community.nsw.gov.au</a>
Community Services Funding Policy	<a href="http://www.community.nsw.gov.au">www.community.nsw.gov.au</a>

#### NSW Government Policies

Document	Internet or Other Source
Early Childhood Services Policy	Contact the Office of Childcare – 9716 2100
Fair Go, Fair Share, Fair Say – NSW Social Justice Statement	Library Reference 361.61 NEW
Child Wellbeing and Child Protection - NSW Interagency Guidelines	<a href="http://www.kids.nsw.gov.au">www.kids.nsw.gov.au</a>
NSW Out of Home Care Standards - 2001	<a href="http://www.kidsguardian.nsw.gov.au">www.kidsguardian.nsw.gov.au</a> – see <a href="http://www.kidsguardian.nsw.gov.au/accreditation/acc-standards.php">accreditation/acc-standards.php</a>
Memorandum of Understanding for SAAP 2000 – 2005	<a href="http://www.faCommunityServices.gov.au">www.faCommunityServices.gov.au</a>
Families First – a Support Network for Families Raising Children	<a href="http://www.familiesfirst.nsw.gov.au">www.familiesfirst.nsw.gov.au</a> – see “Families First Policy Framework”

#### **NB**

1. As an organisation You need to also be aware of other relevant legislation that You are required to comply with.
2. The requirement to comply with the legislation listed above includes all regulations and policies arising out of this legislation.

# **Volunteers in Service Outlets Funded by Community Services, Department of Human Services NSW**

This Project will be conducted in accordance with the principles and philosophies of volunteering, endorsed by Volunteering NSW and incorporated into Volunteering Australia's National Standards for Volunteer Involvement.

## **Guidelines**

- The volunteer should be placed in a support role only, not be referred to, or placed in, a position where they would replace a paid staff member. In some cases a volunteer could undertake a small part of a paid workers position, i.e., one or two tasks allocated from that position.
- A volunteer should be placed in a clearly delineated position, and not placed in a position that could be the source of dispute with other staff.
- Volunteering should always be a matter of personal choice.
- Volunteers are entitled to proper management where volunteer programs are effectively developed and coordinated. Organisations should develop codes of practice which recognise the mutual interests of volunteer and paid workers.

## **Definition of formal volunteering**

Formal volunteering is an activity which takes place through not for profit organisations or service outlets and is undertaken:

- to be of benefit to the community and the volunteer
- of the volunteer's own free will
- for no financial payment
- in designated volunteer positions only

## **Principles of Volunteering**

- Volunteering benefits the community and the volunteer.
- Volunteer work is unpaid.
- Volunteering is always a matter of choice.
- Volunteering is a legitimate way in which citizens can participate in the activities of their community.
- Volunteering is a vehicle for individuals or groups to address human, environmental and social needs.
- Volunteering is an activity performed in the not for profit sector only.
- Volunteering is not a substitute for paid work.
- Volunteers do not replace paid workers nor constitute a threat to the job security of paid workers.
- Volunteering respects the rights, dignity and culture of others.
- Volunteering promotes human rights and equality.

(Continued next page)

## ***Rights and Responsibilities of Volunteers and Voluntary Organisations***

Both the volunteer and the organisation have responsibilities to each other. The volunteer contracts to perform a specific job and the organisation contracts to provide the volunteer with a worthwhile and rewarding experience. In return, each has the right to some basic expectations of the other.

### **Volunteers have the right to:**

- Be asked for their permission before any job-related reference, police or other checks are conducted.
- A task or job worthwhile to them, for no more than 16 hours a week in any one role, where the role is on a regular long term basis.
- Know the purpose and "ground rules" of the organisation.
- Appropriate orientation and training for the job.
- Be kept informed of organisation changes and the reasons.
- A safe place to work and suitable tools.
- Reimbursement of agreed expenses.
- Be heard and make suggestions.
- Personal accident insurance in place of workers compensation insurance.
- A verbal reference or statement of service, if appropriate.

### **Organisations have the right to:**

- Receive as much effort and service from a volunteer worker as a paid worker, even on a short term basis.
- To select the best volunteer for the job by interviewing and screening all applicants. This might include reference & police checks and, where appropriate, a prohibited employment declaration for roles which involve working directly with children.
- Expect volunteers to adhere to their job descriptions/outlines and the organisation's code of practice.
- Expect volunteers to undertake training provided for them and observe safety rules.
- Make the decision regarding the best placement of a volunteer.
- Express opinions about poor volunteer effort in a diplomatic way.
- Expect loyalty to the organisation and only constructive criticism.
- Expect clear and open communication from the volunteer.
- Negotiate work assignments.
- Release volunteers under certain circumstances.

These guidelines and principles were developed by The Centre for Volunteering (incorporating Volunteering NSW and the School of Volunteer Management). If You have any enquiries about these principles, The Centre for Volunteering can be contacted by telephone on 9261 3600 or fax 9261 4033.

## ***Guide to the Principles of the Privacy and Personal Information Protection Act, 1998 (PPIPA) and the Health Records and Information Privacy Act 2002 (HRIPA)***

PPIPA sets out privacy standards for the NSW Public Sector; HRIPA sets out privacy standards for health information for the public and private sector. While You should refer to the Acts for an accurate description, as a general rule personal and health information includes information or opinion about an individual whose identity is apparent, or can reasonably be worked out, from what is supplied.

The basic Principles of both Acts are similar. Where You have personal and health information then the Acts set out what You can or cannot do. The basic Principles of the Acts say that You shall:

- only collect information for lawful purposes;
- collect it directly from the individual concerned;
- let the person know that You are collecting information, that its supply is voluntary, what it will be used for, who might receive it and how they can access or correct it;
- only use and pass on information that is reasonably necessary for the particular function or activity You are engaged in with the individual concerned, and only with that person's expressed consent; and
- keep the information securely and only for so long as You need to.



# Human Services

## Community Services

FUN10/131976

Dear Service Provider

I am writing to advise you about funding for services auspiced by your organisation for the 2011-12 financial year.

We have written to you separately in relation to Out of Home Care funding arrangements.

Administrative Orders announced following the NSW election and effective from 3<sup>rd</sup> April 2011 have transferred responsibility for Children's Services functions from the Department of Family and Community Services (DFACS) to the Department of Education and Communities (DEC). This includes the regulation of children's services and the funding of children's services.

DFACS and DEC have agreed that on an interim basis at least, DFACS will continue to administer funding of the Children's Services Program on behalf of DEC, undertaking work that occurs across regions between Partnership and Planning teams and Children's Services program funded organisations, and administering payments. However, major policy and funding decisions are now the responsibility of the Minister for Education.

Both DFACS and DEC are determined that none of these changes to administrative arrangements within Government should cause delay to payments under the Program, or extra paper work for funded organisations. To ensure that there is no delay in 1 July 2011 payments, preschool services will receive 2010/11 funding levels, and variations will be sent out shortly with funding for the 2011/12 year based on the August 2010 data collection.

For Children's Services Program (CSP) funded organisations, the intention is that until other arrangements are announced, you will continue to liaise with the same people and the same parts of DFACS as was the case before the changes. If there are further changes to how CSP is to be administered within Government, then I will write to you at that time.

In relation to other services auspiced by your organisation, I am pleased to inform you that Community Services has approved funding for the 2011/12 financial year. This letter provides you with two copies of the Service Agreement and draws your attention to three necessary changes that have been made in response to recent policy decisions.

The first change is to Section 5: Service Provision and Access. Arising from an inquiry undertaken by the NSW Ombudsman, Community Services has reviewed clause 5.2 of the Service Agreement. This clause requires a service provider to 'take all reasonable action' to ensure that any premises at which Service Activities are conducted are physically accessible to people with disabilities. The clause has been expanded to provide details on the factors, including cost, that could impact on a service provider's capacity to make their premises accessible. These factors would be taken into consideration should a complaint be made against a service provider under the Anti-discrimination Act, 1977.

The second change has to do with Section 7: Financial Reporting. Community Services has for some years made a distinction in its financial reporting requirements between service specifications above or below a threshold of \$25,000 annual funding. On 5 August 2010, the then Executive Director Funding and Contracting Strategy and Reform wrote to service providers to inform them of simplified reporting requirements for service specifications. There are two requirements:-

- (1) For each service specification, the service provider must submit a certificate stating that the funds have been properly spent as agreed, and
- (2) For each specification valued over \$25,000, the service provider must submit a separate Income & Expenditure statement. No such statement is required for specifications valued below this amount, irrespective of their combined value.

These requirements have now been written into the Service Agreement.

The third change reflects a decision on new administrative arrangements for the public sector and resulting changes in agency names. We have dealt with this issue in the Service Agreement by clarifying that reference to 'Community Services' or 'Community Services, Department of Human Services' is to be read as reference to the new Department of Family & Community Services.

As is our usual practice, Community Services will contact your organisation later in the year with detailed advice about annual accountability requirements.

Two copies of the 2011/12 Service Agreement are included in this package. The 2011/12 Service Agreement also covers:-

- Schedule A – a list of all the services auspiced by your organisation, with details on the amount(s) of funding approved, whether the funding is renewable, etc., as well as any special conditions relating to the use of these funds.
- Schedule B – (not included in this package) the Service Specification(s) that your organisation has agreed with the relevant Community Services staff form part of your agreement with Community Services.

Please arrange for both copies of the Service Agreement to be signed by authorised representatives of your organisation and returned within one month of the date of this letter to the Community Services addressee nominated on the front page of the Agreement. Community Services will countersign the Agreements and return one copy to you for your records.

Community Services will make quarterly payments into your nominated bank account by electronic funds transfer when the signed Service Agreement is in place. No payments will be made until the Service Agreement is signed and received by the Community Services office that manages your Service Agreement.

Thank you for your cooperation and continued commitment to delivering high quality services to the people of New South Wales.

Yours sincerely



Helen Boyton  
A/Executive Director, Funding and Contracting Strategy and Reform  
20 May 2011