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Mid-Western Regional Council
P O Box 156
MUDGEES NSW 2850

Agreement Ref: 1-LU03FJ

30 May 2011

Letter of Offer – Funding under the Community Support Program

Dear Sir/Madam,

I am pleased to advise that We (the Department of Education, Employment and Workplace Relations) have approved funding under Our Community Support Program for You (Mid-Western Regional Council) to undertake the Activity in accordance with the attached Agreement.

If You believe that You will have difficulties complying with any part of the Agreement, You must resolve these before executing this Agreement. If You are uncertain about any aspects of this Agreement You should seek independent legal advice before execution.

If You wish to undertake the Activity on the terms and conditions set out in the Agreement, please:

- (a) check and if necessary, amend or complete the bank account details in the table at item A1.1 of each Activity Schedule;
- (b) complete the details at items T2.1 and T2.2 of each Activity Schedule specifying the details of Your contact person for the Activity Schedule. The contact person must be a person who is appropriate to receive notices under this Agreement which We send to You; and
- (c) complete the execution page (page 3 of this document) on both copies of the Agreement by:
 - (i) having person(s) authorised by You to enter into a legally binding contract (in accordance with any requirements You have for executing a legally binding contract) sign in the appropriate place(s); and
 - (ii) entering the date You sign the Agreement in the appropriate place;

You should return one copy of the Agreement, signed and completed as set out in paragraphs (a) to (c) above, to Us within 30 days of the date of this letter. The Agreement will commence on the day We receive one copy of this Agreement signed and dated by You.

If You have any questions about this offer, please contact the Departmental Officer who is specified in Item T of each Activity Schedule. We may also nominate another Departmental Officer if We notify You in writing.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Janine Pitt'. The signature is written in a cursive, flowing style with a large initial 'J' and a stylized 'Pitt'.

Janine Pitt
NSW State Manager

for and on behalf of the Commonwealth of Australia

PARTIES

THE COMMONWEALTH OF AUSTRALIA ('Commonwealth') represented by and acting through the Department of Education, Employment and Workplace Relations ABN 63 578 775 294 ('We', 'Us', 'Our')

and

MID-WESTERN REGIONAL COUNCIL ABN 96 149 391 332 ('You', 'Your').

YOUR SIGNATURE(S)

Executed by the parties as an agreement on day of 2011

(Please insert date, above)

Signed for and on behalf of **MID-WESTERN REGIONAL COUNCIL** by:

in the presence of:

ACTIVITY SCHEDULE FOR FAMILY DAY CARE CHILD CARE SERVICES**A. Application of this Activity Schedule and interpretation (clause 40)***Application of this Activity Schedule*

A1.1 This Activity Schedule applies to each of the following family day care child care services:

Agreement Schedule ID	Service name	Service address	Payee name	Account BSB	Account Number	Payment type
1-LU03FO	Mid-Western Regional Family Day Care	82-84 Market Street MUDGEES NSW 2850	Mid-Western Regional Family Day Care	062-577	000 000 856	Operational Support

A1.2 In this Activity Schedule:

'CCMS IT systems' means Our computer systems accessible, whether directly or indirectly, by You for the purpose of providing information to Us required under the family assistance law;

'service' means a family day care child care service specified in the table in item A1.1. a reference to a service receiving 'Operational Support' or 'Sustainability Assistance' refers to the 'Payment Type' of the service as specified in the table at item A1.1.

B Program and Guidelines (clause 7)

B1.1 The Program is the Community Support Program.

B1.2 The Guidelines are the *Community Support Program Guidelines*.

B1.3 We may, from time to time:

- (a) change the name; or
 - (b) amend the content,
- of the document listed in item B1.2.

B1.4 The Guidelines as in force from time to time are available at Our website.

C Activity (clause 7)

Description of the Activity

C1.1 The name of the Activity is: 'Assistance in operating Your family day care child care service(s)'.

C1.2 The Activity consists of, in relation to each service, You operating that service in accordance with this Agreement. As part of the Activity, You must deliver the Milestones specified in item F1.1.

Purposes for which the Funding may be spent

- C2.1 In undertaking the Activity You must ensure that the amount of the Funding provided by Us for each service is spent only in relation to that service and only for day to day costs of operating the service, but You must not spend any of the Funding on any of the following:
- (a) reducing the amount of fees charged for the provision of child care;
 - (b) costs of Your incorporation or incorporating any service;
 - (c) payments to fund organisations;
 - (d) programs or the provision of services that are not essential for the core operation of the service;

- (e) support for political activities (for example, phone calls, printing);
- (f) paying rent to sponsor organisations, other than a nominal charge; or
- (g) any capital works.

Eligibility to receive the Funding

C3.1 You must, throughout the Term, in relation to each service, deliver the service at the 'Service address' for the service, as specified in the table at item A1.1, and comply to Our satisfaction with:

- (a) all the requirements of:
 - (i) the family assistance law; and
 - (ii) all instruments made under the family assistance law, applicable to the service; and
 - (b) the Guidelines,
- and You must ensure that every sub-contractor, including every carer engaged by the service, obtains and maintains insurance of the types and for the amounts specified in clause 25.1(c), (d) and (e).

C3.2 If, in relation to a service, You fail to comply, at any time during the Term, with all the requirements in item C3.1, You cease to be eligible to receive Funding under this Agreement for that service and We may terminate this Agreement or reduce its scope in accordance with clause 29 [Termination with costs and reduction] of this Agreement, with effect on and from the day on which the failure to comply first occurred.

D Activity Period (clause 7)

D1.1 Unless item D1.2 applies, the Activity Period for each service starts on 1 July 2011.

D1.2 Not applicable.

D2.1 Unless item D2.2 applies, the Activity Period for each service ends on the later of:

- (a) 30 June 2012; or
 - (b) unless otherwise specified in accordance with clause 5, the last day of any extension of this Agreement made in accordance with clause 5,
- unless this Agreement is earlier terminated, in which case the Activity Period ends on the day on which this Agreement is terminated.

D2.2 Not applicable.

E Budget (clause 7)

E1.1 Not applicable.

F Milestones and Funding (clauses 7, 8 and 9) Milestones

F1.1 You must:

- (a) carry out the Activity in relation to each service to Our satisfaction and in accordance with, and by the due dates for, the Milestones set out in whichever of the following tables applies:
- (i) if the service receives Operational Support:

Milestone number	Due date of Milestone, in each financial year of the Term	Description of Milestone
1.	31 December	Completion to Our satisfaction of Your Financial Report for the preceding financial year (if applicable).
2.	15 January	Completion to Our satisfaction of Your Activity Report for the period 1 July to 31 December.
3.	15 July in the next financial year	Completion to Our satisfaction of Your Activity Report for the period 1 January to 30 June.

- (ii) if the service receives Sustainability Assistance:

Milestone number	Due date of Milestone or payment, in each financial year of the Term	Description of Milestone or payment
1.	31 July	Completion to Our satisfaction of Your Utilisation Report for the period 1 April to 30 June in the preceding financial year.
	Completion of Milestone 1	Payment of a Quarterly Funding Amount (see item F3.1).
2.	31 October	Completion to Our satisfaction of Your Utilisation Report for the period 1 July to 30 September.
	Completion of Milestone 2	Payment of a Quarterly Funding Amount (see item F3.1).
3.	31 December	Completion to Our satisfaction of Your Financial Report for the preceding financial year (if applicable).
4.	15 January	Completion to Our satisfaction of Your Activity Report for the period 1 July to 31 December.
5.	31 January	Completion to Our satisfaction of Your Utilisation Report for the period 1 October to 31 December.
	Completion of Milestone 5	Payment of a Quarterly Funding Amount (see item F3.1).
6.	30 April	Completion to Our satisfaction of Your Utilisation Report for the period 1 January to 31 March.

Milestone number	Due date of Milestone or payment, in each financial year of the Term	Description of Milestone or payment
	Completion of Milestone 6	Payment of a Quarterly Funding Amount (see item F3.1).
7.	15 July in the next financial year	Completion to Our satisfaction of Your Activity Report for the period 1 January to 30 June.

and

- (b) within six calendar months after the last day of the Activity Period, provide Us with a Financial Report to Our satisfaction in relation to the last financial year of the Activity Period;
- (c) if the service:
- (i) receives Operational Support under this Agreement; and
- (ii) received Funding from Us in the 2010-2011 financial year,
- provide to Us to Our satisfaction by 31 July 2011 Your Utilisation Report for the period 1 April to 30 June 2011.

Funding – services receiving Operational Support

F2.1 If a service receives Operational Support and You comply with this Agreement, including:

- (a) delivering the Milestones as specified in the table in item F1.1(a)(i) to Our satisfaction; and
- (b) providing reports to the CCMS IT systems as required under the family assistance law,

We will pay You amounts of Funding for the service using the utilisation rates We calculate based on the actual utilisation data We obtain from the Attendance Record Reports You submit to the CCMS IT systems as follows:

A * B
<p>where:</p> <p><i>A = total hours of care charged by the service during the applicable period, and</i></p> <p><i>B = the calculated hourly rate (per week of the applicable period) applicable to the service, as specified in the table below:</i></p>

Table of calculated hourly rates – family day care service receiving Operational Support

Geographic Location of the service (see item F2.2) according to the ARIA Plus category (see clause 40.3) for the service	Calculated hourly rate for the 2011-2012 financial year
Major City	\$0.67
Inner Regional	\$0.69
Outer Regional	\$0.87
Remote	\$1.18
Very Remote	\$1.37

F2.2 The geographic location of a service for the purposes of determining the applicable calculated hourly rate in the table in item F2.1 is determined by Us, based on the location of the service's co-ordination unit and the location of its carers.

Funding – services receiving Sustainability Assistance

F3.1 If a service receives Sustainability Assistance and You comply with this Agreement, including delivering the Milestones as specified in the table in item F1.1(a)(ii) to Our satisfaction, We will pay You quarterly instalments of the Funding for the service ('**Quarterly Funding Amount**'), as specified in the following table, according to:

- (a) whether the service is 'FDC Stand Alone' or 'FDC Component of Multiple Care Service', as defined in the Guidelines; and
- (b) the EFT Utilised Places for the service, calculated according to item F3.2.

Service characteristic	EFT Utilised Places	Quarterly Funding Amount
'FDC Stand Alone'	Less than 50.0	\$14,162.00
'FDC Stand Alone'	Equal to or greater than 50.0	\$0.00
'FDC Component of Multiple Care Service'	Less than 1.00	\$0.00
'FDC Component of Multiple Care Service'	Equal to or greater than 1.0 and less than 16.0	\$6,928.75
'FDC Component of Multiple Care Service'	Equal to or greater than 16.0 and less than 25.0	\$9,700.25
'FDC Component of Multiple Care Service'	Equal to or greater than 25.0 and less than or equal to 50.0	\$11,085.75
'FDC Component of Multiple Care Service'	Greater than 50.0	\$0.00

F3.2 The **EFT Utilised Places** for a service is calculated using the following formula:

$$(A \div B) \div 35$$

where:

A = total hours of care charged by the service during the applicable quarter, and

B = number of weeks service is open during the applicable quarter.

Funding – general

F4.1 In relation to the payment of an instalment of the Funding payable to You in accordance with item F2.1 or item F3.1, either:

- (a) We may issue You with a recipient created tax invoice in accordance with clause 9.4, and if We do so, We will pay You the amount of the instalment not later than 30 days after We issue You with the recipient created tax invoice; or
- (b) if We do not issue You with a recipient created tax invoice in accordance with clause 9.4, You must provide Us with a tax invoice properly rendered in accordance with item G, and We will pay You the amount of the instalment not later than 30 days after We receive it.

F4.2 Notwithstanding items F2.1 or F3.1, if an Activity Period for a service starts during a financial year:

- (a) the amount of Funding payable in that financial year in relation to that service is reduced pro rata; and
- (b) for that financial year, You are only required to complete the Milestones in table F1.1 for that service which fall due after the start of the Activity Period.

Funding to assist with travel costs – Regional Travel Assistance Grant

F5.1 Items F5.2 to F5.4 only apply to a service if more than 51.0 per cent of the carers for the service provide child care in a location defined by Us as a regional or remote area.

F5.2 Subject to Your compliance with items F5.3 and F5.4, We will pay You Funding on a quarterly basis to assist You with the cost of staff of a service's coordination unit undertaking travel for the sole purpose of monitoring, training or supporting the service's carers as follows:

- (a) travel by car – at a rate for the 2011-2012 financial year of \$0.69 for every kilometre travelled above the applicable quarterly threshold below:

EFT Utilised Places for the service for the quarter, calculated in accordance with item F2.2	Quarterly threshold, kilometres
Less than or equal to 50.0	975
Greater than 50.0 and less than or equal to 150.0	1,950
Greater than 150.0	2,925

- (b) travel by air, if this is the most cost-effective and convenient method of travel to remote locations – either:
- (i) an amount equal to the cost of an economy airfare; or
- (ii) at a rate of \$0.69 per kilometre for the 2011-2012 financial year, as if the travel had been undertaken by road, using estimates of the distance(s), whichever is the lesser amount.

F5.3 You must submit any claims to be paid the Funding set out in item F5.2 using Our RTAG application form by the following dates, for the applicable quarter, as set out below:

Quarter	Date for submitting RTAG form
1 July – 30 September	30 November
1 October – 31 December	28 February
1 January – 31 March	31 May
1 April – 30 June	31 August in the next financial year

F5.4 It is a condition of Us providing the Funding in accordance with item F5.2 that in relation to the travel You must ensure that:

- (a) each person who drives hold a current driver's licence and every vehicle that is driven has current comprehensive and third party insurance;
- (b) all travel is undertaken by the shortest practicable route;
- (c) all travel is recorded in a logbook which records the following information:
- (i) name of driver(s) and position in the service;
- (ii) registration, make, model, engine capacity of the vehicle;
- (iii) date of each journey;
- (iv) start point and destination of each journey;
- (v) odometer start and finish figures, and kilometres travelled, for each journey; and
- (vi) purpose of each journey, including the name and address of each carer visited.

G Invoice requirements (clause 9)

G1.1 Invoices forwarded by You must be correctly addressed to Us.

G1.2 If an invoice relates to a taxable supply made under this Agreement, the invoice must comply with the requirements for a tax invoice, as specified in the *A New Tax System (Goods and Services Tax) Act 1999*.

H Accounts (clause 10)

H1.1 The account details for each service are specified in item A1.1.

I Assets (clause 12)

Description of Assets

I1.1 None specified.

Assets register

I2.1 Not applicable.

J Subcontractors (clause 13)

J1.1 None specified at the Start Date.

K Specified personnel (clause 14)

K1.1 None specified at the Start Date.

L Acknowledgement and publicity (clause 15)

L1.1 You must acknowledge Our support as follows:

“The Australian Government provides financial support for this family day care child care service under the Community Support Program”.

M Reports (clause 17)

General

M1.1 You must provide Us with the following Reports each financial year for each service:

(a) one Financial Report; and

(b) two Activity Reports,

and, if the service receives Sustainability Assistance, four Utilisation Reports.

M1.2 If item F1.1(c) applies to a service, You must also provide the Utilisation Report required to be provided for the service under that item in accordance with the requirements for Utilisation Reports in this item M.

Note: this item M does not apply to the ‘Attendance Record Reports’ required to be provided by a service which receives Operational Support. These reports must be provided in accordance with the requirements of the family assistance law.

M1.3 You must provide Us with one electronic copy (in the format specified by Us from time to time) of each Report, unless We agree to accept submission of the Reports in hard copy form because electronic submission is impractical for You.

M1.4 You must provide each Report by its due date as specified in the table in item F1.1.

Financial Report

M2.1 For each service for each financial year, You must provide Us with a completed Financial Report, using the form which We provide to You and complying with any directions We make in relation to the form.

M2.2 If You comply to Our satisfaction with the requirements of item M2.1, You will be deemed to have satisfied Your obligations under clause 17.2, or clause 17.6, if applicable, in relation to the applicable service for the applicable financial year.

Utilisation Reports

M3.1 Each Utilisation Report must provide the information which We specify in the form of the report which We specify in accordance with item M1.3.

Activity Reports

M4.1 Each Activity Report must provide the information which We specify in the form of the report which We specify in accordance with item M1.3.

N Commonwealth Material (clause 18)

N1.1 None specified.

N1.2 [Reserved].

O Activity Material (clause 19)

Activity Material

O1.1 Not specified.

P Confidential Information (clause 20)

Our Confidential Information

P1.1 None specified.

Your Confidential Information

P2.1 None specified.

Q Protection of Personal Information (clause 21)

Q1.1 Not specified.

R Insurance (clause 25)

R1.1 None specified.

S Compliance with laws and policies (clause 36)

Compliance with Laws

S1.1 You acknowledge that:

- (a) You must comply with any obligations You have under the *Equal Opportunity for Women in the Workplace Act 1999*;
- (b) when dealing with Your employees, You must comply with the *Workplace Relations Act 1996*, and obligations under relevant occupational health and safety laws;
- (c) Chapter 7 of the *Criminal Code* provides for offences which attract substantial penalties, including theft of Commonwealth property and other property offences, obtaining property or financial advantage by deception, offences involving fraudulent conduct, bribery, forgery and falsification of documents;
- (d) giving false or misleading information is a serious offence under the Criminal Code;
- (e) the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this agreement (other than a person to whom You are authorised to publish or disclose that fact or document) may be an offence under section 70 of the Crimes Act 1914, punishment for which may be a maximum of two years imprisonment;
- (f) in respect of data, including personal information, held in connection with this agreement, any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of the data stored in any computer in the course of performing this agreement is an offence under Part 10.7 of the Criminal Code which may attract a substantial penalty, including imprisonment;
- (g) You are aware of the provisions of section 79 of the *Crimes Act 1914* relating to official secrets;
- (h) You are aware of Your obligations under Part 4 of the *Charter of United Nations Act 1945* and the *Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2002*; and
- (i) You may be subject to the provisions of the *Competition and Consumer Act 2010* and the *Archives Act 1983*.

Note: more information about the Charter of United Nations Act and the Charter of United Nations (Terrorism and Dealing with Assets) Regulations is available at http://www.dfat.gov.au/ictat/freezing_terrorist_assets.html.

Compliance with Policies

S2.1 You must:

- (a) when using Our premises or facilities (including information systems), comply with Our directions and procedures relating to occupational health and safety,

environmental management and security (which You acknowledge may change during the Term); and

(b) ensure that any person who will have access to official secrets within the meaning of section 79 of the *Crimes Act 1914* signs an acknowledgment that he or she is aware of the provisions of that section.

Protective Security

S3.1 Not applicable.

Environmental Protection and Biodiversity

S4.1 Not applicable.

Other Laws and Policies

S5.1 Not applicable.

T Notices (clause 38)

T1.1 Our Departmental Officer is the person occupying or for the time being performing the duties of the position specified below:

Name of position: Funding Agreement Manager

Office address: Level 8, 255 Elizabeth Street
SYDNEY NSW 2001

Postal address: GPO Box 9880
SYDNEY NSW 2001

Phone: (02) 9297 9324

Email: sonja.marte@deewr.gov.au

Fax: (02) 9246 0796

T1.2 At the Start Date that person was Sonja Marte.

T2.1 The person who can accept Notices for You is the person occupying or for the time being performing the duties of the position specified below:

Name of position:

Office address:

Postal address:

Phone:

Phone:

Email:

.....

Fax:

.....

T2.2 At the Start Date the name of that person is:

T2.3 You must Notify Us in writing of any changes to the details in item T2.1 or T2.2.



Australian Government

Department of Education, Employment and Workplace Relations

Funding Agreement

regarding funding under the
Community Support Program

Terms and conditions

16-18 Mort Street, Canberra ACT 2601

GPO Box 9880, Canberra ACT 2601 | Phone (02) 6121 6000

www.deewr.gov.au | ABN 63 578 775 294



Table of Contents

PURPOSE	2
OPERATIVE PROVISIONS	2
PART A INTRODUCTION	2
1 Definitions	2
2 Interpretation	5
3 Precedence	6
4 Term	6
5 Extension	6
6 Survival of clauses	7
PART B ACTIVITY AND FUNDING	7
7 Activity	7
8 Funding	8
9 Goods and Services Tax	8
10 Management of Funding	9
11 Repayment of Funding	9
12 Assets	12
13 Subcontracting	13
14 Specified Personnel	14
15 Acknowledgement and publicity	14
16 Liaison and monitoring	14
17 Reports	15
PART C MATERIAL AND INFORMATION	17
18 Commonwealth Material	17
19 Activity Material	17
20 Confidential Information	19
21 Personal Information	19
22 Records	20
23 Access to premises and records	20
PART D MANAGING RISK	21
24 Indemnity	21
25 Insurance	21
26 Conflict of interest	22
PART E DISPUTES AND TERMINATION	22

27	Dispute resolution.....	22
28	Remedies for breach.....	23
29	Termination with costs and reduction.....	24
30	Termination for default.....	25
PART F	ADMINISTRATION.....	26
31	Negation of employment, partnership or agency.....	26
32	Entire agreement, variation and severance.....	26
33	Waiver.....	26
34	Assignment and novation.....	27
35	Incorporation.....	27
36	Compliance with laws and policies.....	27
37	Applicable law and jurisdiction.....	27
38	Notices.....	27
PART G	PROVISION OF CHILD CARE SERVICES.....	28
39	Working with children checks.....	28
PART H	ACTIVITY SCHEDULES.....	28
40	Activity Schedules.....	29

Reader's guide to this Agreement

This Agreement consists of this document (the terms and conditions), the Letter of Offer and one or more Activity Schedules, as agreed between the parties.

The Letter of Offer identifies the parties to this Agreement (We and You) and contains the signatures of the parties.

This document contains the terms and conditions which are the general obligations of the parties under this Agreement and they apply to the delivery of the Activity as set out in the Activity Schedules.

The Agreement contains one or more Activity Schedules, as agreed by the parties (see clauses 40.1 and 40.2).

There is one Activity Schedule for each type of child care service for which You may receive Funding under this Agreement.

Each Activity Schedule identifies the one or more child care service(s) of that type which are the subject of this Agreement. Each Activity Schedule specifies obligations of the parties under this Agreement which are specific to the particular child care service type covered by the Activity Schedule.

Please read the terms and conditions document and each Activity Schedule carefully.

You must, for each financial year, acquit the Funding which You receive for each child care service (see clause 17). Details of what You must do are specified in item M (under the heading 'Financial Report') in each Activity Schedule.

Unless We expressly direct You to do so (see clause 10.1(b)), You are not required to maintain a separate account for the Funding. We will pay the Funding in relation to each child care service specified in an Activity Schedule to the account specified in item A1.1 of the applicable Activity Schedule for that child care service.

We may extend this Agreement one financial year at a time for up to three years beyond the End Date originally specified for this Agreement (see clause 5).

The information in this box is provided for guidance only and does not form part of the legal obligations under this Agreement (see clause 2.3). You must in all instances rely on the provisions of this Agreement and not on the content of this Reader's guide.

PURPOSE

- A. We operate the Program.
- B. You are committed to helping achieve the Program through Your conduct of the Activity.
- C. As a result of this commitment, We agree to support the Activity by providing the Funding to You, subject to the terms and conditions of this Agreement.
- D. We are required by law to ensure accountability for public money, and You are required to be accountable to Us for the Funding.
- E. You agree to accept the Funding on the terms and conditions set out in this Agreement.

OPERATIVE PROVISIONS

PART A INTRODUCTION

1 Definitions

- 1.1 In this Agreement, unless the contrary intention appears:

'Activity' means the activities specified in item C of the Activity Schedule, and includes the provision of Activity Material.

'Activity Material' means:

- (a) any Material specified to be 'Activity Material' in item O of the Activity Schedule;
 - (b) any other Material (including Reports) produced by, or for, You in carrying out Your obligations under this Agreement; and
 - (c) any other Material incorporated in, or supplied with, or as part of the Material referred to in paragraphs (a) and (b),
- but does not include Existing Material.

'Activity Period' means the period specified in item D of the Activity Schedule.

'Activity Schedule' means the schedule(s) of that name.

'Agreement' means this document, the Activity Schedule(s), the Letter of Offer and any attachments or annexures and any documents incorporated by reference.

'Asset' means any item of tangible property with a value of more than \$5000.00, inclusive of GST.

'Auditor-General' means the office established under the *Auditor-General Act 1997* and includes any other entity that may, from time to time, perform the functions of that office.

'Australian Accounting Standards' means the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001*.

'Australian Auditing Standards' means the standards prepared by the Auditing Standards Board of the Australian Accounting Research Foundation and generally accepted audit practices to the extent they are not inconsistent with those standards.

'Author' means a person who is an author of any Activity Material or Existing Material for the purposes of Part IX of the *Copyright Act 1968* (Moral Rights).

'Budget' means the budget, if any, specified at item E of the Activity Schedule.

'Commonwealth Material' means any Material provided by Us to You for the purposes of this Agreement or which is copied from that Material, except for Activity Material.

'Conflict' means a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through You engaging in any activity or obtaining any interest that is likely to interfere with or restrict You in providing the Activity to Us fairly and independently.

'Departmental Officer' means the person specified in item T of the Activity Schedule who can receive Notices on Our behalf.

'Electronic Communication' has the same meaning as it has in section 5 of the *Electronic Transactions Act 1999*.

'End Date' means the later of:

- (a) 31 March 2013; or
- (b) if We extend this Agreement in accordance with clause 5, the day on which the last extension ends,

unless this Agreement is terminated earlier, in which case the End Date is the day on which this Agreement is terminated.

'Existing IPR' means the Intellectual Property Rights in the Existing Material.

'Existing Material' means any Material in existence prior to execution of this Agreement or developed independently of this Agreement.

'Funding' means the amount or amounts payable by Us under this Agreement as specified in item F of the Activity Schedule.

'GST' has the same meaning as it has in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

'Guidelines' means the guidelines specified in item B of the Activity Schedule.

'Information Privacy Principle' has the meaning given in the Privacy Act.

'Intellectual Property Rights' includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

'Interest' means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953*, on a daily compounding basis.

'Letter of Offer' means the letter of offer from Us to You inviting You to enter into this Agreement.

'Material' includes documents, reports, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same.

'Milestone' means a stage of completion of the Activity, as specified in item F of the Activity Schedule.

'National Privacy Principle' has the meaning given in the Privacy Act.

'Notice' means a notice sent from one party to the other party in accordance with the requirements of clause 38 and **'Notify'** means the action of sending a Notice in accordance with the requirements of clause 38.

'Our Confidential Information' means information that:

- (a) is described in item P1.1 of the Activity Schedule;
- (b) We identify, by Notice to You after the Date of this Agreement, as confidential information for the purposes of this agreement; or
- (c) You know or ought to know is confidential to Us;

'Personal Information' has the same meaning as it has in section 6 of the Privacy Act.

'Privacy Act' means the *Privacy Act 1988*.

'Privacy Commissioner' means the Office of the Privacy Commissioner established under the Privacy Act and includes any other entity that may, from time to time, perform the functions of that Office.

'Program' means the program specified in item B of the Activity Schedule.

“Records” includes documents, information and data stored by any means and all copies and extracts of the same.

“Report” means the reports specified in item M of the Activity Schedule.

“Secretary” means a person for the time being performing the duties of the office of Secretary to the Department and includes a person designated in writing by the Secretary to exercise any of the Secretary’s powers under this agreement.

“Serious Event” means any circumstance in which a child, worker or any other person suffers an injury during or as a result of the Activity for which treatment from a doctor or other medical practitioner was sought or ought reasonably have been sought, or an incident that draws the attention of the police, or where the child, worker or any other person dies during or as a result of the Activity.

“Specified Acts” means any of the following acts or omissions by or on behalf of Us:

- (a) using, reproducing, adapting or exploiting all or any part of the Activity Material, with or without attribution of authorship;
- (b) supplementing the Activity Material with any other Material; or
- (c) using the Activity Material in a different context to that originally envisaged, but does not include false attribution of authorship.

“Specified Personnel” means the personnel (whether Your employees or subcontractors), or people with specific skills, specified in item K of the Activity Schedule as personnel required to undertake the Activity or any part of the work constituting the Activity.

“Start Date” means the day on which We receive a copy of this Agreement signed by You.

“Term” means the period of time specified in clause 4.

“We”, “Us”, “Our” includes the Commonwealth’s officers, delegates, employees and agents, and Our successors.

“You”, “Your” includes, where the context admits, Your officers, employees, agents and subcontractors and Your successors.

“Your Confidential Information” means Information that is described in item P2.1 of the Activity Schedule.

2 Interpretation

2.1 In this Agreement:

- (a) words in the singular include the plural, and vice versa;
- (b) words importing a gender include the other gender;

- (c) a reference to a person includes a partnership and a body whether corporate or otherwise;
 - (d) clause headings or words in bold format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
 - (e) all references to dollars are to Australian dollars;
 - (f) unless stated otherwise, a reference to legislation is to legislation of the Commonwealth, as amended from time to time;
 - (g) an uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a party just because that party prepared the provision; and
 - (h) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.
- 2.2 No right or obligation in this Agreement is to be read or understood as limiting Your rights to enter into public debate or criticism of Us.
- 2.3 Material contained in the Reader's guide to this Agreement on page 1 of this document is inserted for convenience only, and has no effect in limiting or extending the language of provisions.
- 2.4 If a reference in this Agreement to a day is to a Saturday, a Sunday or a public holiday in the relevant place, then the reference is to be taken to mean the next following day which is not a Saturday, a Sunday or a public holiday in that place.

3 Precedence

- 3.1 In the event of any conflict or inconsistency between any part of:
- (a) the clauses of this Agreement;
 - (b) the items in the Activity Schedule;
 - (c) any annexure to this document;
 - (d) any attachment to this document;
 - (e) any document incorporated by reference in this Agreement,
- then the material in any one of paragraphs (a) to (d) above prevails, to the extent of any conflict or inconsistency, over the material in a subsequent paragraph.

4 Term

- 4.1 This Agreement starts on the Start Date and ends on the End Date.

5 Extension

- 5.1 We may extend this Agreement as follows:

- (a) number of extensions: three;
 - (b) period of time of each extension: one financial year;
 - (c) manner of advising You of each extension: by Notice in accordance with clause 38 sent to You not less than 30 days before the start of the extension;
 - (d) additional terms and conditions:
 - (i) We may increase the amount of Funding payable to You by the amount specified in the Notice We send You in accordance with clause 5.1(c);
 - (ii) We may extend the Activity Period as specified in the Notice We send You in accordance with clause 5.1(c); and
 - (iii) We may, acting in good faith and reasonably, impose additional terms and conditions, or vary existing terms and conditions, as specified in the Notice We send You in accordance with clause 5.1(c).
- 6 Survival of clauses**
- 6.1 The termination or expiry of this Agreement for any reason does not extinguish or otherwise affect any provision of this Agreement which by its nature survives expiry or termination, including the following clauses: 10 [Management of Funding], 11 [Repayment of Funding], 12 [Assets], 17 [Reports], 18 [Commonwealth Material], 19 [Activity Material], 20 [Confidential Information], 21 [Personal Information], 22.1 [Records] and 24 [Indemnity].
- 6.2 Clauses 15 [Acknowledgment and publicity], 22.2 [Records] and 23 [Access to premises and records] apply during the Term and for 7 years from the End Date.

PART B ACTIVITY AND FUNDING

7 Activity

- 7.1 You must carry out the Activity:
- (a) at the times and in the manner specified in the Activity Schedule;
 - (b) within the Activity Period;
 - (c) in accordance with this Agreement and the Guidelines; and
 - (d) diligently, effectively and to a high professional standard.
- 7.2 You must expend the Funding only in accordance with this Agreement and only in accordance with the Budget, if any, specified at item E of the Activity Schedule.
- 7.3 You must not act in a way that may bring the Activity into disrepute.
- 7.4 We are not responsible for the provision of any additional money in excess of the Funding.

8 Funding

- 8.1 Subject to sufficient funds being available for the Program, and compliance by You with this Agreement (including the invoicing requirements, if any, specified in item G of the Activity Schedule), We will provide You with the Funding at the times and in the manner specified in item F of the Activity Schedule.
- 8.2 In addition to any other rights We may have under this Agreement, We may suspend a payment of Funding in whole or in part if We form the opinion, in good faith, that You may not be performing one or more of Your obligations in accordance with this Agreement, including but not limited to fraudulent conduct.
- 8.3 If We exercise Our rights under clause 8.2, You must continue to perform any obligations under this Agreement, unless We direct You otherwise in writing.
- 8.4 If You earn any amount of interest on the Funding, You must, for the purposes of this Agreement, treat that amount as if it were Funding.

9 Goods and Services Tax

General

- 9.1 Unless otherwise indicated, all consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.
- 9.2 If one party (*the supplier*) makes a taxable supply to the other party (*the recipient*) under this Agreement, the recipient on receipt of a tax invoice from the supplier must pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 9.3 No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

Recipient Created Tax Invoice

- 9.4 You agree to allow Us, if in Our sole discretion We choose to do so, to issue You with a recipient created tax invoice for any taxable supply made under this Agreement within 28 days of determining the value of the taxable supply to which the recipient created tax invoice relates.
- 9.5 If We do not issue You with a recipient created tax invoice within the time period specified in clause 9.4, You must as soon as practicable provide us with a tax invoice in relation to that taxable supply.
- 9.6 Subject to clause 9.5, You must not use a tax invoice in relation to a taxable supply to which a recipient created tax invoice applies.

Adjustment notes

- 9.7 You must provide Us with an adjustment note if required by the *A New Tax System (Goods and Services Tax) Act 1999*, including where You repay some or all of the Funding to Us.

Interpretation

- 9.8 A term used in this clause 9 has the same meaning as the corresponding term in the *A New Tax System (Goods and Services Tax) 1999*.

10 Management of Funding

- 10.1 You must:

- (a) ensure that the Funding is held in an account in Your name, and which You solely control, with an authorised deposit-taking institution authorised under the *Banking Act 1959* to carry on a banking business in Australia;
 - (b) if directed in writing by Us, ensure that the account is:
 - (i) established solely to account for and administer the Funding; and
 - (ii) separate from Your other accounts;
 - (c) on request from Us, provide Us and the authorised deposit-taking institution with an authority for Us to obtain all details relating to any use of the account; and
 - (d) identify the receipt and expenditure of the Funding separately within Your accounting Records so that at all times the Funding is identifiable and ascertainable.
- 10.2 You must keep financial Records relating to the Activity to enable:
- (a) all income and expenditure related to the Activity to be identified in Your accounts;
 - (b) the preparation of financial statements in accordance with Australian Accounting Standards; and
 - (c) the audit of those Records in accordance with Australian Auditing Standards.
- 10.3 You must not use the Funding:
- (a) as security to obtain, or comply with, any form of loan, credit, payment or other interest; or
 - (b) for the preparation of, or in the course of, any litigation.

11 Repayment of Funding

Definition of 'Surplus Amount'

- 11.1 If:

- (a) at any time, We in Our sole discretion determine that:

- (i) an overpayment has occurred, including where an invoice is found to have been incorrectly rendered after payment; or
 - (ii) some or all of the Funding has not been dealt with by You in accordance with this Agreement to Our satisfaction; or
- (b) at the End Date, or, if another date is specified in Item C of the Activity Schedule, that date, some or all of the Funding has not been:
- (i) spent in accordance with this Agreement; or
 - (ii) acquitted to Our satisfaction,
- then the amount in paragraph (a) or (b) is a **Surplus Amount** for the purposes of this clause 11.
- 11.2 We may, in Our sole discretion, divide a Surplus Amount into two amounts and:
- (a) require You to comply with clause 11.3 in relation to one of the two amounts; and
 - (b) send You a Notice in accordance with clause 11.4 in relation to the other of the two amounts,
- and if We do this, then a reference to 'Surplus Amount' in clauses 11.3 and 11.4, respectively, is to whichever of the two amounts the clause applies to in accordance with clauses 11.2(a) and 11.2(b).

We may recover a Surplus Amount

- 11.3 Unless We issue You with a Notice in accordance with clause 11.4, a Surplus Amount, and any Interest owed under clause 11.3(c), is a debt due to Us from You, and:
- (a) We may recover the debt from You without further proof of the debt by Us;
 - (b) You must repay Us the Surplus Amount within 20 business days of receiving a written Notice from Us, or within any other time period which We specify in the Notice or which We subsequently approve in writing;
 - (c) if the Surplus Amount is not repaid to Us within the period of notice referred to in clause 11.3(b), Interest accrues on that Surplus Amount, and is payable by You to Us, from the end date of the period of notice until the Surplus Amount is paid in full;
 - (d) We may recover a Surplus Amount, including any Interest owed under clause 11.3(c), by offsetting part or all of the Surplus Amount and Interest owed under clause 11.3(c) against any amount subsequently due to You under:
 - (i) this Agreement;
 - (ii) any other arrangement between You and Us;

- (iii) any arrangement between You and any agency of the Commonwealth other than Us; or
- (iv) any two or more of (i), (ii) or (iii).

We may issue You with directions regarding the Surplus Amount

11.4 Instead of requiring You to repay a Surplus Amount in accordance with clause 11.3, We may, in Our sole discretion, by Notice to You issue You with directions to deal with the Surplus Amount in accordance with the terms and conditions set out in Our Notice and if We do so, the following provisions apply to the Surplus Amount:

- (a) if You accept, within the period of notice specified in Our Notice, the terms and conditions of Our Notice in relation to the Surplus Amount:
 - (i) this Agreement is varied in accordance with Our Notice;
 - (ii) You must deal with the Surplus Amount in accordance with all the requirements:
 - (A) applying to Funding under this Agreement as if the Surplus Amount were an additional amount of Funding; and
 - (B) specified in Our Notice; and
 - (iii) on and from the day You accept the terms and conditions of Our Notice, We may exercise Our rights under this clause 11 as if the Surplus Amount were part of the Funding; or

(b) if You:

- (i) do not accept the terms and conditions of Our Notice; or
- (ii) fail to accept the terms and conditions of Our Notice within the period of notice referred to in Our Notice,

We may send You a Notice in accordance with clause 11.3(a) in relation to the Surplus Amount and clause 11.3 will apply to the Surplus Amount.

Offsetting under this Agreement other debts You owe to Us

11.5 Without limiting Our rights under this Agreement, under statute, at law or in equity, if You:

- (a) owe the Commonwealth any debt; or
- (b) have any outstanding or unacquitted money,

under any other arrangement with Us or the Commonwealth, We may offset or deduct an amount equal to part or all of the debt or outstanding or unacquitted money against any amounts payable to You under this Agreement.

Note: clause 9.7 sets out Your obligations in relation to GST in connection with this clause 11.

12 Assets

- 12.1 You must not use the Funding to purchase or create any Asset, apart from those detailed in item 1 of the Activity Schedule, without getting Our prior written approval. Our approval may be subject to conditions. Clauses 12.4 to 12.8 apply only to Assets purchased or created with the Funding.
- 12.2 Unless specified otherwise in item 1 of the Activity Schedule, subject to this clause 12, You own any Asset purchased or created with the Funding.
- 12.3 Clauses 12.5, 12.6 and 12.7 do not apply to any Asset which We own.
- 12.4 During the Activity Period You must:
- (a) use each Asset in accordance with this Agreement and for the purposes of the Activity;
 - (b) not, without Our prior written approval, encumber or dispose of any Asset, or deal with or use any Asset, other than in accordance with this clause 12;
 - (c) safeguard all Assets against theft, loss, damage, or unauthorised use;
 - (d) maintain all Assets in good working order;
 - (e) maintain all appropriate insurances for all Assets to their full replacement value, noting Our interest in the Asset under this Agreement, and provide satisfactory evidence of this on request from Us;
 - (f) maintain registration and licensing of each Asset required by law to be registered or licensed;
 - (g) take full responsibility for, and bear all risks relating to, the use or disposal of all Assets;
 - (h) if required in item 1 of the Activity Schedule, maintain an Assets register in the form and containing the details as specified in item 1 of the Activity Schedule; and
 - (i) as and when requested by Us, provide copies of the Assets register to Us.
- 12.5 We may require You to pay to Us a proportion of the market value of an Asset which is equivalent to Our contribution to the purchase of the Asset:
- (a) if You sell or otherwise dispose of the Asset during the Activity Period (which must be with Our prior written consent and subject to any conditions We may impose); or
 - (b) on completion of the Activity Period or earlier termination of this Agreement.
- 12.6 If You fail to make payment as required by clause 12.5 within 20 business days of receiving written Notice from Us:

- (a) You must pay Us the Interest on the amount from the date it was due, for the period it remains unpaid; and
 - (b) the amount and Interest are recoverable by Us as a debt due to Us by You, without further proof of the debt by Us.
- 12.7 If an Asset is lost, damaged or destroyed, You must reinstate the Asset including from the proceeds of the insurance and this clause 12 continues to apply to the reinstated Asset. Any surplus from the proceeds of the insurance must be Notified to Us and used and accounted for as Funding under this agreement.
- 12.8 On completion of the Activity or earlier termination of this Agreement We may require You to deal with Assets as We may, at Our sole discretion, direct in writing.
- 13 Subcontracting**
- 13.1 You must not, without Our prior written approval, subcontract the performance of any obligations under this Agreement. In giving approval, We may impose terms and conditions as We think fit.
- 13.2 The subcontractors We have approved at the Start Date, and any terms and conditions relating to their use, are identified in item J of the Activity Schedule.
- 13.3 You must ensure that in any subcontract You:
 - (a) reserve a right of termination to take account of Our right of termination under clauses 29 [Termination with costs and reduction] and 30 [Termination for default] of this Agreement and Our right of revocation of approval of a subcontractor under clause 13.6 of this Agreement; and
 - (b) bind the subcontractor, with respect to Us, to all relevant terms and conditions of this Agreement including, but not limited to, clauses: 19.10 [Activity Material], 20 [Confidential information], 21 [Personal Information], 22 [Records], 23 [Access to premises and records], 25 [Insurance], 31 [Negation of employment, partnership or agency] and 36 [Compliance with laws and policies].
- 13.4 You are fully responsible for the performance of Your obligations under this Agreement, even if You subcontract some or all of Your obligations.
- 13.5 Despite any approval given by Us under clause 13.1, You are responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that the work meets the requirements of this Agreement.
- 13.6 We may revoke Our approval of a subcontractor on any reasonable ground by giving written notice to You. On receipt of the notice You must, at Your own cost, promptly cease using that subcontractor and arrange their replacement with personnel or another subcontractor acceptable to Us.

13.6 If We revoke Our approval of a subcontractor, You remain liable under this Agreement for the past acts or omissions of Your subcontractors as if they were current subcontractors.

13.7 You must not enter into a subcontract under this Agreement with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999*.

14 Specified Personnel

14.1 You must ensure that the Specified Personnel, if any, listed in item K of the Activity Schedule undertake activities on the Activity in accordance with the terms of this Agreement.

14.2 If Specified Personnel are unable to undertake activities on the Activity, You must notify Us immediately. You must, if requested by Us, provide replacement personnel acceptable to Us without additional payment and at the earliest reasonable opportunity.

14.3 We may give notice on reasonable grounds related to performance of the Activity requiring You to remove personnel (including Specified Personnel) from work on the Activity. If We do so, You must, at Your own cost, promptly arrange for the removal of the personnel from work on the Activity and their replacement with personnel acceptable to Us.

14.4 If You are unable to provide acceptable replacement personnel, We may terminate this Agreement under clause 31 [Termination for default].

15 Acknowledgement and publicity

15.1 You must, in all publications, promotional and advertising materials, public announcements and activities by You or on Your behalf in relation to the Activity, or any products, processes or inventions developed as a result of the Activity, acknowledge the financial and other support You have received from Us, in the manner set out in item L of the Activity Schedule.

15.2 You must ensure that all advertisements, promotional activities and any other public relations matters in relation to this agreement are consistent with the requirements set out in item L of the Activity Schedule and the Guidelines.

15.3 We reserve the right to publicise and report on the awarding of Funding to You, including Your name, the amount of the Funds given to You and the title and a brief description of the Activity.

16 Liaison and monitoring

Liaison and monitoring

16.1 You must:

(a) liaise with and provide information to the Departmental Officer, or a person nominated by the Departmental Officer, as reasonably required by the Departmental Officer;

(b) comply with all reasonable requests, directions, or monitoring requirements received from the Departmental Officer;

- (c) immediately notify Us of a Serious Event or any circumstance that could have resulted in the occurrence of a Serious Event but did not; and
- (d) provide any other information to Us as specified in the Activity Schedule.

Delay

16.2 You must take all reasonable steps to minimise delay in meeting Your obligations under this Agreement.

16.3 If You become aware that You may be delayed in meeting any of Your obligations under this Agreement, You must immediately Notify Us of the:

- (a) cause and nature of the delay; and
- (b) steps You will take to limit the delay.

16.4 If We approve the steps You Notify to Us in accordance with clause 16.3(b), You must comply with them.

16.5 You must comply with any reasonable direction We give to You in relation to limiting the delay.

17 Reports

17.1 You must provide Us with the Reports specified in item M of the Activity Schedule.

17.2 Subject to clause 17.6, unless item M of the Activity Schedule provides otherwise, You must provide Us with:

- (a) a certificate that all Funding received was expended for the Activity and in accordance with this Agreement;
- (b) an audited detailed statement of income and expenditure in respect of the Funding, which must include:
 - (i) a definitive statement as to whether the financial accounts are true and fair; and
 - (ii) if You are required to hold the Funding in a separate account in accordance with clause 10.1(b), a statement of the balance of that account; and
- (c) an audit statement that the Funding was expended for the Activity and in accordance with this agreement.

17.3 The certificate referred to in clause 17.2(a) and the audits referred to in clauses 17.2(b) and (c) must:

- (a) contain the details, if any, specified in item M of the Activity Schedule;

- (b) be provided to the Departmental Officer:
- (i) within one month (or other period specified in item F of the Activity Schedule) of the end of the Activity Period; and
 - (ii) at the other times specified in item F of the Activity Schedule, if any.
- 17.4 The certificate referred to in clause 17.2(a) must be provided by the person specified in item M of the Activity Schedule or, if no person is specified, by Your chief executive officer, chief internal auditor or board member.
- 17.5 Subject to clause 17.6, the audits referred to in clauses 17.2(b) and (c) must:
- (a) comply with the Australian Auditing Standards; and
 - (b) be carried out by a person who is:
 - (i) registered as a company auditor under the *Corporations Act 2001*, or a member of the Institute of Chartered Accountants in Australia (who is entitled to use the letters CA or FCA), or of CPA Australia (who is entitled to use the letters CPA or FCPA) or the National Institute of Accountants (who is entitled to use the letters MNIA, FNIA, PNA or FPNA); and
 - (ii) not a principal, member, shareholder, officer or employee of You (Your holding company or a subsidiary of You or Your holding company).
- 17.6 If You are audited by the Auditor-General or a State or Territory Auditor-General:
- (a) for all of the Term; and
 - (b) the Funding is included in the income and expenditure which is subject to the audit, then, instead of the certificate and audits referred to in clause 17.2, You may provide Us with:
 - (c) a detailed statement of income and expenditure for the Funding, which must include:
 - (i) a definitive statement as to whether the financial accounts are true and fair; and
 - (ii) if You are required to hold the Funding in a separate account in accordance with clause 10.1(b), a statement of the balance of that account; and
 - (d) a statement that the Funding was expended for the Activity and in accordance with this Agreement.
- 17.7 The statements referred to in clauses 17.6(c) and (d) must be:

- (a) certified by:
 - (i) Your chief executive officer; and
 - (ii) the senior executive officer employed by You who has primary responsibility for managing Your audit functions; and
- (b) delivered at the times and in the manner specified in clause 17.3.

17.8 In addition to any other rights We have under this Agreement, We may at any time direct You to provide Us with any information We may reasonably require to determine to Our satisfaction that You have sufficient financial resources to continue carrying on business, and You must comply with Our direction within the time frame We specify.

PART C MATERIAL AND INFORMATION

18 Commonwealth Material

- 18.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in Us but We grant You a licence to use, copy and reproduce that Material only for the purposes of this Agreement and in accordance with any conditions or restrictions specified in item N of the Activity Schedule.
- 18.2 You must keep safely and maintain Commonwealth Material You have been given for the purposes of this Agreement.
- 18.3 Unless We direct You otherwise in writing, You must, unless specified otherwise in item N of the Activity Schedule:
 - (a) return to Us; or
 - (b) destroy,all Commonwealth Material remaining in Your possession at the End Date, not later than 10 business days after the End Date.

19 Activity Material Ownership

- 19.1 Subject to this clause 19, You own the Activity Material and the Intellectual Property Rights in Activity Material immediately on their creation. The Existing Material and the Existing IPR may be owned by You or a third party.

Licences

- 19.2 You grant Us a permanent, irrevocable, free, world wide, non-exclusive licence including a right of sublicence to use, reproduce, adapt and exploit the Intellectual Property Rights in the Activity Material for any purpose.

19.3 If for any reason You are unable to comply with clause 19.2, You must arrange for the grant to Us of the licence in clause 19.2.

19.4 You must not include any Existing Material in the Activity Material unless You grant Us, or arrange for the grant to Us of, a permanent, irrevocable, free, world wide, non-exclusive licence including a right of sublicence to use, reproduce, adapt and exploit the Intellectual Property Rights in the Existing Material for any purpose.

Use of Activity Material

19.5 If You are an Author, whether You are the sole Author or a joint Author, of any Activity Material or Existing Material, You consent to the performance of the Specified Acts by Us or any person licensed by Us to use, reproduce, adapt and exploit that Activity Material or Existing Material.

19.6 You agree:

- (a) to obtain from each Author other than You of any Activity Material or Existing Material a written consent to the performance of the Specified Acts, whether occurring before or after the consent is given, by Us or any person licensed by Us to use, reproduce, adapt and exploit that Activity Material or Existing Material; and
- (b) upon request, to provide the executed original of each consent to Us.

General

19.7 You must comply with any request that We make of You at any time to bring into existence, sign, execute or otherwise deal with any document that may be necessary or desirable to give effect to this clause 19.

19.8 You warrant that You are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Activity Material in accordance with this clause 19.

19.9 If requested by Us, You must provide Us with a copy of the Activity Material in the form requested by Us and within the time frame We specify.

Our compliance with section 6C of the Freedom of Information Act 1982 (Cth)

19.10 If this Agreement is a Commonwealth contract, and We receive a request for access to a document relating to the performance of this Agreement which was created by, or is in the possession of:

- (a) You; or
- (b) any of Your subcontractors,

You must immediately on receipt of a written Notice from Us provide Us with the document as specified in the Notice.

19.11 In clause 19.10, 'document', 'Commonwealth contract' and 'subcontractor' have the same meaning as in the *Freedom of Information Act 1982*.

20 Confidential Information

20.1 Subject to clause 20.5:

- (a) You must not, without Our prior written approval, disclose any of Our Confidential Information to a third party; and
- (b) We must not, without Your prior written approval, disclose any of Your Confidential Information to a third party.

20.2 In giving written approval to disclosure, a party may impose conditions as it thinks fit, and the other party agrees to comply with the conditions.

20.3 We may at any time require You to arrange for any person engaged in, or in relation to, the performance or management of this agreement to give written undertakings, in a form required by Us, relating to the non-disclosure of Our Confidential Information.

20.4 If You receive a request under clause 20.3, You must promptly arrange for all undertakings to be given and if We request it, promptly provide Us with a copy of the undertakings.

20.5 The obligations on the parties under this clause 20 will not be breached if information:

- (a) is disclosed by Us to the responsible Minister;
- (b) is disclosed by Us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (c) is authorised or required by law to be disclosed; or
- (d) is in the public domain otherwise than due to a breach of this clause 20.

20.6 Nothing in this clause 20 limits Your obligations under clause 21 [Personal Information] or clause 23 [Access to Premises and Records].

21 Personal Information

21.1 You agree to:

- (a) comply with the Information Privacy Principles when doing any act or engaging in any practice in relation to Personal Information for the purposes of this Agreement, as if You were an agency as defined in the Privacy Act; and
- (b) deal with Personal Information received, created or held by You for the purposes of this Agreement only to fulfil Your obligations under this Agreement and in accordance with any conditions or restrictions specified in item Q of the Activity Schedule.

- 21.2 An act done or a practice engaged in by You or a subcontractor to meet (directly or indirectly) an obligation under this Agreement:
- (a) is authorised by this clause 21 for the purposes of sub-sections 6A(2) and 6B(2) of the Privacy Act even if the act or practice is inconsistent with a National Privacy Principle or an approved privacy code (as defined in the Privacy Act) that applies to You or the subcontractor; but
 - (b) is subject to the other obligations in this Agreement including this clause 21.

- 21.3 In this clause 21, "received" includes "collected".

22 Records

- 22.1 You must make and keep full and accurate Records of the conduct of the Activity including progress against the Milestones (if any), the receipt and use of Funding (in accordance with Australian Accounting Standards), the acquisition of Assets and the creation of Intellectual Property Rights in Activity Material (other than Reports).

- 22.2 Subject to Your obligations under clause 21, Records must be retained by You for 7 years after the End Date.

23 Access to premises and records

- 23.1 You must at all reasonable times give the Auditor-General, the Privacy Commissioner, the Departmental Officer, a member of Our Investigations Branch on production of photo identification, or any person authorised in writing by the Secretary:

- (a) reasonable access to:
 - (i) Your employees and equipment;
 - (ii) premises occupied by You;
 - (iii) Material; and
- (b) reasonable assistance to
 - (i) inspect the performance of the Activity;
 - (ii) locate and inspect Material;
 - (iii) make copies of Material and remove those copies, relevant to the Activity.

- 23.2 You agree that We do not have to provide You with notice of Our exercise of the rights referred to in clause 23.1.

- 23.3 [Reserved].

- 23.4 The requirement for access specified in clause 23.1 does not in any way reduce Your responsibility to perform Your obligations under this Agreement.
- 23.5 A breach of Your obligations under clause 23.1 is, for the purposes of clauses 28 [Remedies] and 30 [Termination for breach], a breach which is not capable of being rectified.

PART D MANAGING RISK

24 Indemnity

- 24.1 You agree to indemnify Us against any:
- (a) loss or liability incurred by Us;
 - (b) loss of or damage to Our property; or
 - (c) loss or expense incurred by Us in dealing with any claim against Us, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by Us, arising from:
 - (d) any act or omission by You, or any of Your employees, agents, or subcontractors in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
 - (e) any breach by You or any of Your employees, agents, or subcontractors of obligations or warranties under this Agreement;
 - (f) any use or disclosure by You, Your officers, employees, agents or subcontractors of Personal Information held or controlled in connection with this Agreement; or
 - (g) the use by Us of the Activity Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights (including moral rights) in Activity Material.
- 24.2 Your liability to indemnify Us under this clause 24 will be reduced proportionately to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.
- 24.3 Our right to be indemnified under this clause 24 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant loss, damage, expense or liability.
- 24.4 In this clause 24, “fault” means any negligent or unlawful act or omission or willful misconduct.

25 Insurance

- 25.1 You must, for as long as any obligations remain in connection with the Activity, either:

- (a) maintain with an insurance company authorised by the Australian Prudential Regulatory Authority established under the *Australian Prudential Regulatory Authority Act 1988*; or
- (b) warrant that you have, if You are a self-insurer and We agree that You may self-insure to satisfy Your obligations under this Agreement, the following insurance:
 - (c) public liability for not less than \$10 million for each claim;
 - (d) worker's compensation as required by law; and
 - (e) professional indemnity for not less than \$5 million for each claim, and in the aggregate, for each year,unless otherwise specified in item R of the Activity Schedule.

25.2 When requested, You must provide Us, within 10 business days of the request, with evidence satisfactory to Us that You have complied with Your obligation to insure.

26 Conflict of interest

26.1 You warrant that, to the best of Your knowledge after making reasonable inquiries, at the Start Date no Conflict exists or is likely to arise in the performance of Your obligations under this Agreement.

26.2 If during the Term, a Conflict arises, or is likely to arise, You must:

- (a) immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;
- (b) make full disclosure to Us of all relevant information relating to the Conflict; and
- (c) take steps as We may, if We choose to, reasonably require to resolve or otherwise deal with that Conflict.

26.3 If You fail to notify Us under this clause 26, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate this agreement under clause 30 [Termination for default].

PART E DISPUTES AND TERMINATION

27 Dispute resolution

27.1 Subject to clause 27.3, the parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement, which cannot be resolved by informal discussion, until the procedure provided by this clause 27 has been used.

27.2 The parties agree that any dispute arising during the course of this Agreement is dealt with as follows:

- (a) the party claiming that there is a dispute will send the other party a written Notice setting out the nature of the dispute;
 - (b) the parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute; and
 - (c) the parties have 10 business days from the receipt of the Notice by the other party to reach a resolution or to agree that the dispute is to be submitted to mediation or some other alternative dispute resolution procedure,
- and if:
- (d) there is no resolution of the dispute;
 - (e) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - (f) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 business days of the submission, or extended time as the parties may agree in writing before the expiration of the 15 business days,
- then either party may commence legal proceedings.

27.3 This clause 27 does not apply if:

- (a) either party commences legal proceedings for urgent interlocutory relief;
 - (b) action is taken by Us under clauses 11 [Repayment of Funding], 23 [Access to premises and records], 28 [Remedies for breach], 29 [Termination with costs or reduction], 30 [Termination for default], or
 - (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.
- 27.4 Despite the existence of a dispute, both parties must (unless requested in writing by the other party not to do so) continue to perform obligations under this Agreement.

28 Remedies for breach

28.1 Notwithstanding any other rights available to Us under this Agreement, if:

- (a) You fail to rectify a breach of this Agreement within 10 business days of receiving a Notice from Us, or within such other period We specify;
- (b) You fail to fulfil, or You are in breach of, any of Your obligations under this Agreement that are not capable of being rectified, as determined by Us; or

- (c) an event has occurred which would entitle Us to terminate this Agreement in whole or in part under clause 30 [Termination for default],

We may, by providing Notice to You, immediately exercise one or more of the remedies set out in clause 28.2.

28.2 The remedies We may exercise are:

- (a) suspending, withholding, or deferring any payment payable under this Agreement;
- (b) imposing additional conditions on the payment of the Funding under this Agreement as specified by Notice to You;
- (c) reducing the scope of this Agreement, but without Us being liable to make any payment to You which would be payable to You if the reduction in scope were made under clause 29 [Termination with costs and reduction].

Note: We will exercise Our rights under this clause 28 reasonably and in good faith, taking account the nature of the relevant breach.

28.3 If We take action under this clause 28, We will set out in Our Notice to You:

- (a) the reasons for the action;
- (b) the duration, if applicable, of the action; and
- (c) any corresponding variation to this Agreement.

29 Termination with costs and reduction

29.1 We may, at any time by written notice to You, terminate this Agreement in whole or reduce

the scope of this Agreement without prejudice to the rights, liabilities, or obligations of either party accruing prior to the date of termination. If We terminate or reduce in scope this Agreement We will only be liable for:

- (a) payments under the payment provisions of this Agreement that were due before the effective date of termination; and
- (b) subject to clauses 29.3 and 29.4, any reasonable costs incurred by You and directly attributable to the termination or partial termination of this Agreement

29.2 On receipt of a Notice of termination or reduction in scope You must:

- (a) stop work as specified in the Notice;
- (b) take all available steps to:
 - (i) minimise loss resulting from the termination or reduction in scope; and
 - (ii) protect Commonwealth Material and Activity Material; and
- (c) continue work on any part of the Activity not affected by the Notice.

29.3 If there is a reduction in scope of the obligations under this Agreement, Our liability to pay any part of the Funding will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this Agreement.

29.4 We are not liable to pay compensation for:

- (a) loss of Your prospective profits for a termination or reduction in scope under this clause 29; or
- (b) loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

30 Termination for default

30.1 We may immediately terminate this Agreement by giving written Notice to You of the termination if:

- (a) We are satisfied that any statement made in Your application for Funding is incorrect, incomplete, false or misleading in a way which may have affected:
 - (i) the original decision to approve the Funding;
 - (ii) the terms and conditions of this Agreement; or
 - (iii) action taken by Us under this Agreement;
- (b) You fail to fulfil, or are in breach of any of Your obligations under this Agreement and either:
 - (i) if the breach is rectifiable, You do not rectify the omission or breach within 10 business days of receiving a Notice in writing from Us to do so; or
 - (ii) the breach is not capable of being rectified;
- (c) You are unable to pay all Your debts when they become due;
- (d) if You are an incorporated body:
 - (i) You fail to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*;
 - (ii) proceedings are initiated to obtain an order for Your winding up or any shareholder, member or director convenes a meeting to consider a resolution for Your winding up;
 - (iii) You come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* or equivalent provisions in other legislation, or an order has been made to place You under external administration; or

- (iv) notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity;
- (e) if You are an individual, You become bankrupt or enter into a scheme of arrangement with creditors;
- (f) You cease to carry on a business relevant to the performance of the Activity; or
- (g) We become expressly entitled to terminate this Agreement under any other provision of this Agreement.

PART F ADMINISTRATION

31 Negation of employment, partnership or agency

- 31.1 You are not, by virtue of this Agreement, or for any purpose to be deemed to be Our employees, partners or agents.
- 31.2 You must not represent Yourself, and must ensure that Your employees, partners, agents or sub-contractors do not represent themselves, as being Our employees, partners or agents.

32 Entire agreement, variation and severance

- 32.1 This Agreement records the entire agreement between the parties in relation to its subject matter.
- 32.2 Except for action We are expressly authorised to take elsewhere in this Agreement, no variation of this Agreement is binding unless it is agreed in writing and signed by the parties.
- 32.3 If a court or tribunal says any provision of this Agreement has no effect or interprets a provision to reduce an obligation or right, this does not invalidate, or restrict the operation of, any other provision.

33 Waiver

- 33.1 If either party does not exercise (or delays in exercising) any rights under this Agreement, that failure or delay does not operate as a waiver of those rights.
- 33.2 A single or partial exercise by either party of any of its rights under this Agreement does not prevent the further exercise of that right.
- 33.3 Waiver of any provision of, or right under, this Agreement:
 - (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
 - (b) is effective only to the extent set out in the written waiver.
- 33.4 In this clause 33, 'rights' means rights or remedies provided by this Agreement or at law.

34 Assignment and novation

- 34.1 You must not assign Your rights under this Agreement without prior written approval from Us.
- 34.2 You agree not to negotiate with any other person to enter into an arrangement that will require novation of this Agreement without first consulting Us.

35 Incorporation

- 35.1 If You are a body corporate, You warrant that Your constitution is not inconsistent with this Agreement.
- 35.2 You must notify Us if You intend to amend Your constitution in a way which affects Your ability to comply with this Agreement.

- 35.3 If You alter Your constitution in a way which affects Your ability to comply with this Agreement, We may terminate this Agreement under clause 30.1(g) [Termination for default].

36 Compliance with laws and policies

- 36.1 You must, in carrying out Your obligations under this Agreement, comply with:
- (a) all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority; and
 - (b) any of Our policies notified by Us to You in writing, including those listed in item S of the Activity Schedule.

37 Applicable law and jurisdiction

- 37.1 The laws of the Australian Capital Territory apply to the interpretation of this Agreement.
- 37.2 The parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect to any dispute under this Agreement.

38 Notices

- 38.1 A party giving a Notice under this agreement must do so in writing or by Electronic Communication:
- (a) if given by You, marked for the attention of the Departmental Officer specified in item T1.1 of the Activity Schedule; or
 - (b) if given by Us, marked for the attention of the person specified in item T2.1 of the Activity Schedule,
- and hand delivered or sent by pre-paid post or Electronic Communication to the address of the other party specified in the Activity Schedule.

- 38.2 A Notice given under clause 38.1 is taken to be received:

- (a) if hand delivered, on delivery;

- (b) if sent by pre-paid post, 5 business days after the date of posting; or
- (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* if a notice was being given under a law of the Commonwealth.

PART G PROVISION OF CHILD CARE SERVICES

39 Working with children checks

Complying with applicable state and territory requirements

- 39.1 In connection with the Activity, You must not involve a person in Working with Children Activities unless:
- (a) the person is not prohibited by law from being employed or otherwise involved in Working with Children Activities; and
 - (b) You and the person have complied with all Commonwealth and State or Territory legal requirements which apply to the person's employment or engagement in Working with Children Activities.

Failure to comply with this clause

- 39.2 If You fail to comply with clause 39.1 We may at Our sole discretion immediately terminate this Agreement, in accordance with clause 30.1(g).

Definitions

- 39.3 In this clause 39, 'Working with Children Activities' means the performance for You, or on Your behalf, of any of Your obligations under this Agreement which involves contact, regardless of whether that contact is:
- (a) supervised or not; and
 - (b) physical or non-physical (including over the internet, via telephone or any other form of communication),
- with an individual or a group of individuals where the individual, or at least one member of the group, is:
- (c) under the age of 18 years; or
 - (d) a person who may be unable to take care of themselves, or are unable to protect themselves against harm or exploitation by reason of age, illness, trauma or disability, or any other reason.

PART H ACTIVITY SCHEDULES

40 Activity Schedules

Activity Schedules

- 40.1 This Agreement includes one or more Activity Schedules, as agreed between the parties.
- 40.2 Each Activity Schedule identifies:
- (a) the child care service(s) to which that Activity Schedule applies; and
 - (b) the account to which Funding in relation to each child care service is to be paid.
- 40.3 A reference in the Activity Schedules to 'ARIA Plus' or to 'SEIFA' is a reference, respectively, to the geographical classification and to the index known under those acronyms, as published by the Australian Bureau of Statistics from time to time. At the Start Date, We are using the 2001 versions of these. We may, in Our sole discretion, at any time use a later version of these.
- 40.4 Notwithstanding clause 10.1(a), if an account specified in a table at item A1.1 of an Activity Schedule is not in Your name, You agree that:
- (a) You have directed Us to pay amounts of Funding to that account in relation to the applicable child care service;
 - (b) You are responsible for complying with all the requirements under this Agreement in relation to the account and to the Funding paid by Us to that account as if the account were in Your name; and
 - (c) any payment by Us of an amount of Funding to that account fully discharges Our obligations under this Agreement in relation to paying that amount of Funding to You.