



Australian Government

Department of Education

Community Support Programme

Funding Agreement

April 2014

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- A. We operate the Community Support Programme.
- B. You are committed to helping achieve the Community Support Programme's objectives 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.

PART A: INTERPRETATION AND ADMINISTRATION OF AGREEMENT

1 Definitions

1.1 In this Agreement, unless the contrary intention appears:

'Activity' means the activities specified in clause 12.1.

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

'ARIA+' refers to the geographic measure of remoteness known by that name and used by the ABS as a basis for its "Remoteness Structure" component of the Australian Standard Geographical Classification. For information about ARIA+, see www.adelaide.edu.au/apmrc/research/projects/category/about_aria.html.

'Attendance Report' means the report You submit on the CCMS IT Systems in accordance with section 219N of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

'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.

'CCB Quarter' means the quarterly period used by the CCMS IT Systems – this period is closely aligned to a calendar quarter, and always starts on a Monday, usually the first Monday in a quarter.

'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.

'Commonwealth Coat of Arms' means the Commonwealth Coat of Arms as detailed at *It's an Honour – Commonwealth Coat of Arms* available at www.itsanhonour.gov.au/coat-arms

'Commonwealth Material' means any Material in which the Intellectual Property Rights are owned by Us which We provide to You for the purposes of this Agreement or any Material which is copied from that Material, except for the Commonwealth Coat of Arms.

'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 for, or to, Us fairly and independently.

'CSP' means the Community Support Programme.

'CSP Review' has the meaning given in clause 14.

'CSP Review Form' means the form You must complete in accordance with clause 13.2(c).

'Departmental Officer' means the person specified in the Letter of Offer who can send and receive Notices on Our behalf.

'End Date' means the later of:

(a) 30 June 2015; 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.

'Family Assistance Law' has the same meaning as the definition of 'family assistance law' in subsection 3(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

'For-Profit Organisation' means an organisation that does not meet the Australian Taxation Office definition of a Non-Profit Organisation as detailed at www.ato.gov.au/non-profit

'Funding' means the amount or amounts payable by Us under this Agreement as specified in clause 8.

'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 Community Support Programme Guidelines.

'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.

'National Law' means the *Education and Care Services National Law* set out in the Schedule to the *Education and Care Services National Law Act 2010* (Vic) as applying in each state or territory.

'National Regulations' means the regulations made in each state and territory under the National Law.

'New Service' means a child care service:

- (a) that has not come into being as a result of the:
 - (i) decentralisation, compartmentalisation or (dis)aggregation of; or
 - (ii) restructuring, reorganisation or relocation of; or
 - (iii) centralisation of, merger with, or acquisition by, an existing child care service or service provider, as determined by Us in Our sole discretion; and
- (b) in relation to which a service approval has been granted under section 48 of the National Law not more than eight weeks before the application for Funding under CSP was made; and
- (c) that has not yet commenced providing child care, or has operated for not more than eight weeks on the day the application for Funding under CSP was made; and
- (d) if the application is for Set Up Assistance that is in a location, as determined by Us in Our sole discretion, within which no child care service of the same type has operated within the preceding 12 months.

'Not-For-Profit Organisation' means those organisations that meet the Australian Taxation Office definition of a Non-Profit Organisation (see www.ato.gov.au/non-profit).

'Notice' means a notice sent from one party to the other party in accordance with the requirements of clauses 7.13, 7.14 and 7.15 and **'Notify'** means the action of sending a Notice.

'Our Confidential Information' means information that:

- (a) We identify, by Notice to You after the Date of this Agreement, as confidential information for the purposes of this Agreement; or
- (b) You know or ought to know is confidential to Us.

'Personal Information' has the same meaning as in the *Privacy Act 1988*.

'Recognised Auditor' means an auditor who is:

- (a) registered as:
 - (i) a company auditor under the *Corporations Act 2001*; or
 - (ii) a member of:
 - A. the Institute of Chartered Accountants in Australia (entitled to use the letters CA or FCA);
 - B. CPA Australia (entitled to use the letters CPA or FCPA);
 - C. the National Institute of Accountants (entitled to use the letters MNIA, FNIA, PNA or FPNA);
 - D. an equivalent organisation, subject to Our approval; and
- (b) not any of the following: a principal, a member, a shareholder, an officer or employee of You, Your holding company or any subsidiary of You or Your holding company.

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

'Report' means a report specified in clause 13.

'SA2' and 'SA3' mean, respectively, the Statistical Area Two and Statistical Area 3 boundary as defined by the Australian Bureau of Statistics.

'SEIFA' means the *Socio-economic Index for Areas* (index of Relative Socio-economic Disadvantage (IRSD)) as administered by the Australian Bureau of Statistics.

'Serious Incident' has the same meaning as in regulation 12 of the National Regulations.

'Service Address' means the address of a child care service as specified in the Letter of Offer for that child care service.

'Small Service Provider' means a child care service provider that has less than ten (10) approved child care services (of any type).

'Start Date' means the day on which We receive from You a completed and signed acceptance of Our offer to enter into this Agreement with You, unless an alternative Start Date is defined in the Letter of Offer.

'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.

2 Interpretation

General

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 is not to be interpreted against a party just because that party prepared the provision;
 - (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;
 - (i) a reference to a clause is to a clause of this Agreement;
 - (j) a reference to a 'quarter' means the relevant period of three months in a financial year which starts on 1 June, 1 October, 1 January or 1 April; and
- 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 If a reference in this Agreement is to a Saturday, a Sunday or a public holiday in the relevant place, then the reference is to be taken to mean the first day after that day which is not a Saturday, a Sunday or a public holiday in that place.

Application of this Agreement to child care services

2.4 This Agreement applies, and every obligation or arrangement specified in this Agreement applies, separately to each child care service listed in the 'Applicable Service(s)' table in the Letter of Offer. You and We acknowledge and agree that:

- (a) a separate funding agreement, on the terms and conditions set out in this Agreement, exists between You and Us in respect of each child care service listed in the 'Applicable Service(s)' table in the Letter of Offer; and
- (b) a reference in this Agreement to 'Agreement' is a reference to this Agreement as it applies separately in relation to each child care service listed in the 'Applicable Service(s)' table in the Letter of Offer.

2.5 In this Agreement, the use of an abbreviation listed in column 2 of the table in clause 2.6 has the same meaning as the corresponding name of the type of child care service specified in column 1 of that table.

- 2.6 The types of child care service, and abbreviations for each, and the types of Funding that may be paid (depending on eligibility and other requirements specified in this Agreement) in respect of each kind of child care service, for the purposes of this Agreement, are set out in the following table:

Type of child care service ¹	Abbr.	Funding that may be paid under this Agreement			
		Set Up Assistance	Sustainability Assistance	Operational Support	Regional Travel Assistance Grant
Approved centre based long day care	LDC	-	Yes	-	-
Approved family day care	FDC	Yes	Yes	Yes	Yes
Approved in-home care	IHC	Yes	-	Yes	Yes
Approved occasional care	OCC	-	-	Yes	-
Approved outside school hours care ²	OSHC	Yes	Yes	-	-
Non-formula funding occasional care ³	NFF-OCC	-	-	Yes	-

Note 1: 'Approved' means approved for the purposes of the Family Assistance Law.

Note 2: See also clause 2.7.

Note 3: NFF-OCC is a type of occasional care child care service which is not approved for the purposes of the Family Assistance Law.

- 2.7 Each OSHC service is either:

- (a) a before school care ('BSC') service;
- (b) an after school care ('ASC') service; or
- (c) a vacation care ('VAC') service,

and each such OSHC service is a separate child care service for the purposes of this Agreement, even if two or more such services operate at the same Service Address.

3 Precedence

- 3.1 In the event of any conflict or inconsistency between any part of:

- (a) the clauses of this Agreement;
- (b) the Guidelines
- (c) the Letter of Offer;
- (d) any annexure;
- (e) any attachment;
- (f) any document incorporated by reference in this Agreement,

then the material in any one of paragraphs (a) to (e) 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) maximum number of extensions: unlimited;
- (b) period of time of each extension: up to three years;
- (c) manner of advising You of each extension: by Notice, specifying the period of the extension and any additional terms or conditions We set in accordance with clause 5.1(d), sent to You not less than 30 days before the start of the extension; and
- (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); and
 - (ii) We may, acting in good faith and reasonably, impose additional terms and conditions, or remove 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 operation of each of the following survives the expiration or earlier termination of this Agreement:

- (a) any clause whose clause heading has the suffix of “SC”;
 - (b) any other provision that is expressly specified as surviving this Agreement;
 - (c) any provision that by implication is intended to survive this Agreement.
- 6.2 The whole of any clause whose clause heading has the suffix of “SC7”, applies during the Term and for 7 years from the End Date.

7 Administration of Agreement

Variation of Guidelines

- 7.1 We may, at Our sole discretion, amend the Guidelines at any time.
- 7.2 Unless expressly stated otherwise, any amendment to the Guidelines takes effect on the day when We publish the amendment online.

Note: Currently, the guidelines are available at: www.education.gov.au/community-support-programme

Variation of Agreement

- 7.3 This Agreement records the entire agreement between the parties in relation to its subject matter and, 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.

Severance

- 7.4 If a court or tribunal says any provision of this Agreement or the Guidelines 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.

Negation of employment, partnership or agency

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

Assignment and novation

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

Waiver

- 7.9 If a 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.
- 7.10 A single or partial exercise by a party of any of its rights under this Agreement does not prevent the further exercise of that right.
- 7.11 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.
- 7.12 In clauses 7.9, 7.10 and 7.11, ‘rights’ means rights or remedies provided by this Agreement or at law.

Notices

- 7.13 A party giving a Notice under this Agreement must do so in writing and the Notice must be:
- (a) hand delivered or sent by prepaid post to the street address;
 - (b) sent by facsimile transmission to the facsimile address; or
 - (c) sent by email to the email address,
- of the person authorised to accept Notices for the other party.
- 7.14 A Notice given under clause 7.13 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;

- (c) if sent by facsimile transmission, on receipt by the sender of a facsimile transmission confirmation receipt; or
- (d) if sent by email, on actual receipt by the addressee.

7.15 The person authorised to accept Notices is:

- (a) for Us, Our Departmental Officer, specified in the Letter of Offer; and
 - (b) for You, the person to whom Our Letter of Offer is addressed,
- unless one party notifies the other party in writing of a different person.

Applicable law and jurisdiction

7.16 The laws of the Australian Capital Territory apply to the interpretation of this Agreement.

7.17 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.

Compliance with laws and policies

7.18 You must, in carrying out Your obligations under this Agreement, comply with all relevant statutes, regulations, by-laws and requirements of the Commonwealth, a state or territory government or a local government authority, and specifically all the requirements of:

- (a) the Family Assistance Law;
- (b) the National Law;
- (c) the National Regulations;
- (d) any of Our policies notified by Us to You in writing,
- (e) any obligations You have under the *Workplace Gender Equality Act 2012*;
- (f) when dealing with Your employees, the *Fair Work Act 2009*, and obligations under relevant work health and safety laws; and
- (g) in addition, for IHC services only – the *Interim Standards for In Home Care*.

7.19 You acknowledge that:

- (a) 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;
- (b) giving false or misleading information is a serious offence under the *Criminal Code*;
- (c) 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;
- (d) 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;
- (e) You are aware of the provisions of section 79 of the *Crimes Act 1914* relating to official secrets;
- (f) You are aware of Your obligations under Part 4 of the *Charter of United Nations Act 1945* and the *Charter of United Nations (Dealing with Assets) Regulations 2008*; and
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/icat/UNSC_financial_sanctions.html.
- (g) You may be subject to the provisions of the *Competition and Consumer Act 2010* and the *Archives Act 1983*.

PART B: FUNDING

8 Funding

General

- 8.1 Subject to sufficient funds being available for the Community Support Programme, and compliance by You with this Agreement, We will provide You with the Funding at the times and in the manner specified in this clause 8.
- 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 with immediate effect 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.
- 8.5 We are not responsible for the provision of any additional money in excess of the Funding.
- 8.6 You must expend the Funding only in accordance with this Agreement.

Purposes for which the Funding may be spent

- 8.7 You must ensure that Funding provided by Us for Your child care service is spent only in relation to that child care service and only for the following day to day operating costs of that child care service:
- (a) staff costs, including wages, superannuation, training and other human resources costs;
 - (b) utilities costs, including electricity, gas, and water directly incurred in the delivery of child care;
 - (c) equipment and supplies required for the delivery of child care, including teacher resources, toys, and games;
 - (d) purchase of IT hardware and software necessary for the delivery of child care; or
 - (e) any other expenditure which is, in Our opinion, reasonable and necessary for the day to day operation of Your child care service.

Conditions for receiving any Funding

- 8.8 We will pay You an amount of Funding for a period in relation to Your child care service only if:
- (a) the child care service satisfies the eligibility requirements specified in the Guidelines for that type of child care service and that type of Funding at the time We assess Your service's eligibility,

Note: for the effect of changes in eligibility, see clause 8.9.

and, throughout the period:

- (b) You meet all Your obligations under this Agreement; and
- (c) the child care service delivers child care at the Service Address for the child care, or such other address that We in Our sole discretion approve,

and an amount of Funding greater than nil is payable for the period in accordance with:

- (d) any entitlement rules; and
- (e) the calculation rules,

specified in this clause 8 applicable to the type of child care service and the type of Funding.

Note: entitlement rules are in clause 8.10, calculation rules are in clause 8.11.

Change in eligibility, failure to comply with this Agreement

- 8.9 Notwithstanding any other rights available to Us under this Agreement, if We become aware, or determine in good faith, that:
- (a) You or Your child care service is failing to comply with all the requirements of this Agreement to Our satisfaction, including but not limited to:
 - (i) if You fail to rectify a breach of this Agreement within 10 business days of receiving a Notice from Us, or within such other period as We specify;
 - (ii) 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
 - (iii) an event has occurred which would entitle Us to terminate this Agreement in whole or in part under clause 28 [Termination for default]; or
 - (b) Your child care service ceases to meet the eligibility requirements specified in the Guidelines applicable to that child care service and the type(s) of Funding for that child care service,

We may, acting reasonably, proportionately and in good faith, do one or more of the following:

- (c) suspend, alter or cease payments (wholly or in part) of Funding immediately, without being required to give You notice;
- (d) reduce the scope of this Agreement in accordance with clause 28 [Termination with costs and reduction];
- (e) impose additional conditions on the payment of the Funding under this Agreement, as specified by Notice to You,

with effect on and from the day on which the matter in paragraph (a) or (b) first occurred and You must continue to perform all Your obligations under this Agreement, unless We direct You otherwise in writing.

Entitlement rules for the payment of Funding – Set Up Assistance and Sustainability Assistance

- 8.10 Subject to clause 8.8, You are entitled to receive payments of Funding under this Agreement in relation to:
- (a) **Set Up Assistance for an OSHC child care service** – if You operate the child care service:
 - (i) for a BSC or an ASC – for at least two school terms; or
 - (ii) for a VAC service – for at least two school vacation periods,
applicable in the place where the service is located, and You start providing child care in the child care service:
 - (iii) for a BSC or an ASC – not later than three months; or
 - (iv) for a VAC service – not later than the beginning of the first school vacation period, after the Start Date;
 - (b) **Set Up Assistance for a FDC or an IHC child care service** – if You:
 - (i) start operating the child care service at the Service Address for the child care service on a day no later than three months after the Start Date; and
 - (ii) operate the child care service continuously for six months after the first day that child care is provided;
 - (c) **Sustainability Assistance for an OSHC child care service** – if You are a ‘For-Profit Organisation’ – for a period of 12 months starting on the Start Date.

Note: eligibility for Sustainability Assistance for an OSHC child care service continues after 12 months if You are a Not-For-Profit Organisation, subject to the calculation rules.

Reader's Guide to calculation of, timing of payment of, and adjustment to, amounts of Funding

Clause 8.11 sets out the rules by which We calculate the amount of Funding payable for a period for each type of Funding.

Clause 8.12 sets out the time when We will pay an amount of Funding calculated in accordance with clause 8.11, for each type of Funding.

Clause 8.14 sets out certain circumstances where We will adjust the amount of Funding paid in relation to a period, where amendment(s) to your Attendance Reports causes the basis for calculating the amount of Funding payable for a period to change. This affects only:

* Sustainability Assistance for LDC or OSHC;

* Operational Support for FDC or IHC; and

* RTAG for FDC or IHC [if the amendment to the Attendance Report changes the relevant amount of EFT Utilised Places for the purposes of the table at clause 8.11(e)(ii)(A)].

Calculation rules for payment of Funding – all types of Funding

8.11 Subject to clauses 8.12 and 8.14, the amount of Funding payable in relation to Your child care service for a period is calculated for the type of Funding applicable to the child care service as follows, where the values for the various rates and amounts in the tables in this clause 8.11 are as specified in the *CSP Payment rates Fact Sheet* published from time to time by Us and available at: www.education.gov.au/community-support-programme

Note: We review the rates and amounts annually before the beginning of each financial year.

(a) Set Up Assistance – FDC and IHC child care services:

(i) if the service is:

(A) as determined by Us, not supported by an existing service – a single one-off payment at the rate in the table;

(B) otherwise – a single one-off payment at half the rate in the table:

Care Type	Rate
FDC and IHC	HB-SUA

Note: As Set Up Assistance is a one-off payment there is no period that applies to the calculation or payment of the Funding.

(b) Set Up Assistance – OSHC child care services only:

(i) a single one-off payment at the applicable rate in the following table:

Number of OSHC services at a single Service Address	Rate
A single BSC or ASC or VAC child care service	OSHC-SUA
Two of BSC, ASC or VAC child care services	OSHC-SUA * 2
All three of BSC, ASC or VAC child care services	OSHC-SUA * 3

Note: As Set Up Assistance is a one-off payment there is no period that applies to the calculation or payment of the Funding.

(c) Operational Support – FDC and IHC child care services:

(i) subject to (ii), an amount each fortnight, paid in arrears, calculated from Your Attendance Reports as follows:

Calculation	Description
A x B	A = total hours of care charged by the child care service during the relevant fortnight; B = the Calculated Hourly Rate applicable to the service.

where:

(A) the Calculated Hourly Rate is:

ARIA+ classification of the Service Address	Calculated Hourly Rate for FDC	Calculated Hourly Rate for IHC
Major City	FDC-OS-MC	IHC-OS-MC
Inner Regional	FDC-OS-IR	IHC-OS-IR
Outer Regional	FDC-OS-OR	IHC-OS-OR
Remote	FDC-OS-RE	FDC-OS-RE
Very Remote	FDC-OS-VR	FDC-OS-VR

(B) the ARIA+ classification of the Service Address for Your child care service is determined by Us in Our sole discretion, based on the location of the service's co-ordination unit and the location of its educators;

(C) if the geographical location of 51.0 per cent or more of an FDC child care service's educators are in a geographical location which would attract a different Calculated Hourly Rate than the Calculated Hourly Rate for Your child care service's co-ordination unit, We may, in Our sole discretion, decide to pay that different Calculated Hourly Rate;

(D) in relation to the geographical location of an IHC child care service, without limiting in any way Our discretion to determine the Calculated Hourly Rate for an IHC child care service, We may determine that the Calculated Hourly Rate is to be assessed as follows:

IHC child care service's circumstances		Relevant CHR
% of educators providing care	In ARIA+	
21.0 per cent or more	Very Remote	Very Remote (IHC-OS-VR)
21.0 per cent or more	Remote	Remote (IHC-OS-RE)
51.0 per cent or more	Outer Regional	Outer Regional (IHC-OS-OR)
51.0 per cent or more	Inner Regional	Inner Regional (IHC-OS-IR)

(E) You may, at any time, request a review of the Calculated Hourly Rate(s) that apply to Your FDC or IHC child care service(s) receiving Operational Support by contacting a child care officer in Our office in the state of territory where Your child care service is located; and

(F) We may in Our sole discretion affirm or vary the Calculated Hourly Rate(s) that You request Us to review;

(ii) an IHC child care service must not exceed a total of 35 hours of care per week for each child care place approved for the child care service under the Family Assistance Law (see note); and

Note: section 197 of the A New Tax System (Family Assistance) (Administration) Act 1999 provides that it is a condition for the continued approval of an approved child care service that the service does not provide child care places in excess of number of any child care places allocated to the service under section 207.

(iii) if You report attendance in relation to an IHC service which exceeds the amount referred to in (ii), Operational Support will be automatically calculated and paid accordingly and the difference between:

(A) the amount of Operational Support actually paid for a fortnight if You report attendance in excess of 35 hours of care per week for each child care place approved for Your child care service under the Family Assistance Law; and

(B) the amount that would have been paid if You had reported 35 hours of care per week for each child care place for that fortnight,

is an 'overpayment' for the purposes of clause 11 [Repayment of Funding] and We may recover the amount of that overpayment from You in accordance with that clause.

(d) Sustainability Assistance – FDC child care services only:

- (i) provided You give a Utilisation Report, in accordance with clause 13.5, to Our state or territory office within four weeks of the end of the applicable quarter, an amount for each quarter as specified in the following table:

Service characteristic	EFT Utilised Places	Quarterly Funding Amount
FDC Standalone	Less than 50.0	FDC-SA1
	Equal to or greater than 50.0	\$0.00
FDC Integrated	Less than 1.00	\$0.00
	Equal to or greater than 1.0 and less than 16.0	FDC-SA2
	Equal to or greater than 16.0 and less than 25.0	FDC-SA3
	Equal to or greater than 25.0 and less than or equal to 50.0	FDC-SA4
	Greater than 50.0	\$0.00

where **EFT Utilised Places** is calculated as follows:

EFT Utilised Places	
Formula	Description of terms
$(A \div B) \div 35$	A = service's total hours of care charged during the applicable quarter. B = number of weeks service is open during the applicable quarter.

and where '**FDC Standalone**' and '**FDC Integrated**' refer to a child care service so designated in the Letter of Offer.

Note: An FDC Standalone service is one that is not supported in any manner by an existing child care service of any care type and an FDC Integrated service is one that is supported by an existing child care service of any care type.

- (ii) We determine in Our sole discretion whether an FDC child care service receiving Sustainability Assistance is 'FDC Standalone' or 'FDC Integrated'.

(e) Regional Travel Assistance Grant (RTAG) – FDC and IHC child care services:

- (i) an amount each quarter, as specified in (ii), provided that:

(A) You comply with all the following requirements;

- (1) You submit any claims for RTAG using Our *RTAG Claim Form*, which can be found at www.education.gov.au/community-support-programme-guidelines by the following dates in each financial year:

Quarter	Due Date for submitting RTA Claim
1 April – 30 June	31 July
1 July – 30 September	31 October
1 October – 31 December	31 January
1 January – 31 March	30 April

- (2) You ensure that in relation to all travel claimed:

- I. the travel is undertaken for the sole purpose of monitoring, training or supporting Your child care service's educators;
- II. each person who drives during the course of the travel holds a current driver's licence;
- III. current comprehensive and third party insurance is held in relation to every vehicle that is driven during the time the travel takes place;
- IV. all travel is undertaken by the shortest practicable route; and
- V. all travel is recorded in a logbook which records the following information for each journey:
 - a) name of driver(s) and position in the service;
 - b) registration, make, model, engine capacity of the vehicle;
 - c) date of each journey;
 - d) start point and destination of each journey;
 - e) odometer start and finish figures, and kilometres travelled; and
 - f) purpose of each journey, including the name and address of each educator visited.

- (B) the FDC child care service in relation to which a claim for RTAG is made has 51.0 per cent or more of its educators in locations defined by Us as Outer Regional, Remote or Very Remote areas according to ARIA+ Remoteness classifications; or
- (C) the IHC child care service in relation to which a claim for RTAG is made has 51.0 per cent or more of its educators in locations defined by Us as Outer Regional or has 21.0 per cent or more of its educators in locations defined by Us as Remote or Very Remote areas according to ARIA+ Remoteness classifications.

(ii) for:

- (A) travel by car – **RTAG rate multiplied by the number of kilometres travelled** above the applicable quarterly threshold in the table below:

EFT Utilised Places for the child care service for the applicable quarter	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

where EFT Utilised Places for the child care service is calculated as follows:

Calculation	Description
$(A \div B) \div 35$	A = total hours of care charged by the service during the applicable period, B = number of weeks service is open during the applicable quarter, 35 = the service's normal weekly operating hours for the purposes of CSP.

- (B) travel by air, rail or ferry, but only if this is the most cost-effective and convenient method of travel to remote locations, the lesser of:
 - (1) an amount equal to the cost of an economy ticket;
 - (2) **RTAG rate multiplied by the number of kilometres travelled** above the applicable quarterly threshold, as if the travel had been undertaken by road, using estimates of the distance(s).

(f) Operational Support – OCC and NFF OCC child care services

(i) an amount each quarter, as follows:

NFF OCC child care service

- (A) for a NFF OCC child care service – one quarter of the total amount of Funding payable in relation to that child care service for the financial year, as specified:
 - (1) for the first financial year of this Agreement – in the Letter of Offer; and
 - (2) for subsequent financial years – as notified to You by Us after the annual CSP Review of the child care service;

OCC child care service

(B) for an OCC child care service, an amount calculated as follows:

Calculation	Description
$A \times B \times C$	A = rate per place; B = service's number of approved places at the start of the applicable period; C = number of weeks the service is open during the applicable quarter

where the rate per place is determined as follows:

ARIA+ category for the service	Rate per place
Major City or Inner Regional	OCC-1
Outer Regional	OCC-2
Remote or Very Remote	OCC-3

(g) Sustainability Assistance – LDC and OSHC child care services

(i) subject to (ii), an amount each quarter, as follows:

(A) for an LDC child care service:

EFT Utilised Places number for the CCB Quarter	ARIA+ category for the service		
	Major City or Inner Regional	Outer Regional	Remote or Very Remote
Less than 1.0	\$0.00	\$0.00	\$0.00
Equal to or greater than 1.0 and less than 21.0	LDC-SA-MC1	LDC-SA-OR1	LDC-SA-RE1
Equal to or greater than 21.0 and less than 40.0	LDC-SA-MC2	LDC-SA-OR2	LDC-SA-RE2
Equal to or greater than 40.0 and less than 50.0	LDC-SA-MC3	LDC-SA-OR3	LDC-SA-RE3
Equal to or greater than 50.0	\$0.00	\$0.00	\$0.00

(B) for an ASC or a VAC OSHC child care service:

EFT Utilised Places number for the CCB Quarter	ARIA+ category for the service:		
	Major City or Inner Regional	Outer Regional	Remote or Very Remote
Less than 1.0	\$0.00	\$0.00	\$0.00
Equal to or greater than 1.0 and less than 21.0	OSHC-SA-MC1	OSHC-SA-OR1	OSHC-SA-RE1
Equal to or greater than 21.0 and less than 31.0	OSHC-SA-MC2	OSHC-SA-OR2	OSHC-SA-RE2
Equal to or greater than 31.0	\$0.00	\$0.00	\$0.00

(C) for a BSC OSHC service:

EFT Utilised Places number for the CCB Quarter	ARIA+ category for the service:		
	Major City or Inner Regional	Outer Regional	Remote or Very Remote
Less than 1.0	\$0.00	\$0.00	\$0.00
Equal to or greater than 1.0 and less than 21.0	OSHC-SA-MC3	OSHC-SA-OR3	OSHC-SA-RE3
Equal to or greater than 21.0 and less than 31.0	OSHC-SA-MC4	OSHC-SA-OR4	OSHC-SA-RE4
Equal to or greater than 31.0	\$0.00	\$0.00	\$0.00

where the Equivalent Full Time (EFT) Utilised Places Number for the CCB Quarter is calculated as follows, using the data in Your Attendance Reports for the child care service:

Calculation	Description
$(A \div B) \div C$	A = total hours of care charged by the service during the CCB Quarter; B = number of weeks service is open during the CCB Quarter; and C = the normal weekly operating hours of the service

When We will make payments

8.12 Subject to clause 8.13, We will make payments of Funding as follows:

- (a) for Set Up Assistance for an FDC, an IHC or an OSHC child care service –within 30 days of the Start Date;
- (b) for Operational Support for an FDC or an IHC child care service for each fortnightly period – every two weeks based on Your Attendance Report for the service for the previous fortnight, provided You give the Attendance Report within the time frame specified in the Family Assistance Law;
- (c) for Sustainability Assistance for an FDC child care service for each quarterly period – once We have approved Your Utilisation Report for the relevant quarter;
Note: see clause 13.5 for the due dates for providing Your Utilisation Reports.
- (d) for Regional Travel Assistance Grant for an FDC or an IHC child care service for each quarterly period – within 30 business days of receiving the completed claim form for a quarter;
- (e) for Operational Support for an OCC or a NFF OCC child care service for each quarterly period – once We have approved Your Utilisation Report for the relevant quarter;

- (f) for Sustainability Assistance for LDC and OSHC child care services for each quarterly period – during each financial year as follows:

Payment dates for Sustainability Assistance for LDC and OSHC child care services		
No.	Due Date	Calculation of amount of payment uses Attendance Report data from CCB Quarter:
1.	15 August	April to June CCB Quarter
2.	15 November	July to September CCB Quarter
3.	15 February	October to December CCB Quarter
4.	15 May	January to March CCB Quarter

Note: CCB Quarters usually do not align exactly with calendar quarters as they always begin on a Monday – see definition of ‘CCB Quarter’ in clause 1.1.

Note: When a LDC or OSHC service first receives a payment after the Start Date depends on when the Start Date falls and whether the service has made any Attendance Reports for the relevant CCB Quarter. For example:

(i) Start Date is 15 October, new service commenced operating 7 October. No payment due on 15 November. First payment will be on 15 February following, for data in Attendance Reports in the CCB Quarter for October to December.

(ii) Start Date is 15 October, service commenced operating 1 September. First payment on 15 November for data in Attendance Reports in the CCB Quarter for July to September.

(iii) Start Date is 20 November, new service commenced operating 1 November. First payment on 15 February, for data in Attendance Reports in the CCB Quarter for October to December.

- 8.13 If the due date for a payment of Funding mentioned in clause 8.12 falls on a weekend or a public holiday, We may make the payment on the next business day.

Amended Attendance Reports – effect on amount of Funding payable for a period

- 8.14 If, in relation to:

- (a) Sustainability Assistance for an LDC child care service or an OSHC child care service; or
- (b) Operational Support for an FDC child care service or an IHC child care service; or
- (c) Regional Travel Assistance Grant for an FDC child care service or an IHC child care service,

You amend any Attendance Report in relation to a period in a financial year, at any time during that financial year or before 30 September of the following financial year, and the result of the amendment to the Attendance Report is that the amount of Funding payable in relation to that child care service, as calculated in accordance with clause 8.11 using the amended Attendance Report, is:

- (d) greater than the amount We paid You in relation to that period for that child care service – then We will pay You the difference between the two amounts by 31 October of the following financial year; or
- (e) less than the amount We paid You in relation to that period for that child care service – then the difference between the two amounts is an overpayment for the purposes of clause 11 and We may recover the amount of that overpayment in accordance with clause 11.

9 Goods and Services Tax (GST) and Invoices

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 set-off, 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 30 days of determining the value of the taxable supply to which the recipient created tax invoice relates.

Note: It is Our intention, wherever practicable, to issue recipient created tax invoices for all payments of Funding under this Agreement.

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.

Invoices forwarded by You must be correctly addressed to Us.

9.7 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*.

Adjustment notes

9.8 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

9.9 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) Act 1999*.

10 Management and expenditure of Funding (SC)

Management of the 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 for the preparation of, or in the course of, any litigation.

10.4 You must provide to Us appropriate details of Your accounts, including the details of Your deposit-taking institution, including its BSB, and the account number(s) and account name(s) into which the Funding is to be paid.

Note: We may use Your bank details if We already have them in Our records or You may provide or update these details to Us by using the relevant place provided in Our Letter of Offer.

10.5 If You specify that Funding is to be paid into an account specified 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.

11 Repayment of Funding (SC)

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 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 and the Surplus Amount is a debt due to Us from You.

We may recover a Surplus Amount

11.2 We may recover any Surplus Amount and any Interest owed under clause 11.3 from You:

- (a) as a debt without further proof of the debt by Us; or
- (b) by offsetting part or all of the Surplus Amount and Interest against any amount subsequently due to You under:
 - (i) this Agreement or any other arrangement between You and Us; or
 - (ii) any arrangement between You and any Commonwealth agency other than Us; or
 - (iii) both (i) and (ii).

11.3 We may issue You with a Notice in relation to a Surplus Amount, and if We do so:

- (a) You must repay Us the Surplus Amount within 20 business days of receiving the Notice from Us, or within any other period of time which We specify in the Notice or which We subsequently approve in writing; and
- (b) if You do not repay Us the Surplus Amount in accordance with, and within the period of time specified in, Our Notice, Interest payable by You to Us accrues on the Surplus Amount on and from the day after the end of the period of time specified in Our Notice until the Surplus Amount is paid in full.

Offsetting under this Agreement other debts You owe to Us

11.4 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 any other agency of 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.

PART C: CARRYING OUT THE ACTIVITY

12 Activity

Description of Activity

- 12.1 The Activity consists of You, to Our satisfaction:
- (a) either:
 - (i) establishing a new child care service – in the case of Funding for Set Up Assistance; or
 - (ii) operating Your child care service – in the case of all other types of Funding; and
 - (b) using the Funding in accordance with clause 8.7.

Your conduct of the Activity

- 12.2 You must carry out the Activity in Your child care service:
- (a) throughout the Term;
 - (b) in accordance with this Agreement; and
 - (c) diligently, effectively and to a high professional standard.
- 12.3 You must not act in a way that may bring the Activity into disrepute.

13 Reports (SC7)

- 13.1 You must provide Us with the Reports specified in this clause 13.

General Reports

- 13.2 You must, when requested, provide Us with the following Report(s) for Your child care service, which must be delivered by the date and in the manner We specify in Our request:
- (a) a completed CSP Review Form, that:
 - (i) confirms that You have carried out the Activity in accordance with this Agreement;
 - (ii) reports whether the circumstances relating to Your eligibility for CSP (as set out in the Guidelines and which are a condition of Funding imposed under clause 8.8 of this Agreement) have remained the same or changed, since You last submitted a CSP Review Form;
 - (iii) states whether all Funding received was expended for the Activity and in accordance with this Agreement; and
 - (iv) if You are required to hold the Funding in a separate account in accordance with clause 10.1(b), reports the balance of that account; and
 - (b) if requested by Us, an Audit Report covering a period specified by Us, that must:
 - (i) comply with the Australian Auditing Standards;
 - (ii) be carried out by a person who is a Recognised Auditor; and
 - (iii) be certified by Your chief executive officer or the senior executive officer employed by You who has primary responsibility for managing Your audit functions, or any other person acceptable to and approved by Us.
- 13.3 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 a Report referred to in clause 13.2, 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.

- 13.4 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 for the purpose of determining, 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.

Utilisation Reports

- 13.5 In each financial year, for each:

- (a) FDC child care service that receives Sustainability Assistance; and
- (b) OCC child care service and NFF-OCC child care service that receives Operational Support,

You must provide Us with Utilisation Reports for the service, using Our template utilisation report form, for the periods and by the due dates in the following table:

Report	Due Date	Description
1	31 July	Utilisation Report for the period 1 April to 30 June
2	31 October	Utilisation Report for the period 1 July to 30 September
3	31 January	Utilisation Report for the period 1 October to 31 December
4	30 April	Utilisation Report for the period 1 January to 31 March

but if the Start Date for this Agreement is after 1 July in a financial year, You are only required to provide the Utilisation Reports for that financial year which have a due date in the table above which is after the Start Date.

Format of Reports

- 13.6 You must provide Reports as follows:

- (a) using the template(s) specified by Us from time to time, available at www.education.gov.au/community-support-programme; and
- (b) one electronic copy of each Report, unless We agree to accept submission of the Report(s) in hard copy form, because electronic submission is impractical for You.

14 CSP Reviews

- 14.1 At any time during the Term, We may, at Our sole discretion, carry out a CSP Review of You in connection with this Agreement. The CSP Review may:

- (a) involve Us examining and assessing any of the following:
 - (i) the eligibility of Your child care services in accordance with the Guidelines;
 - (ii) the level and type of payments of Funding You receive;
 - (iii) how You have used the Funding; or
 - (iv) Your compliance with this Agreement;
- (b) involve Us referring to any information:
 - (i) held by Us or any other Commonwealth agency or authority;
 - (ii) held by any state, territory or local government agency or authority; or
 - (iii) available in the public domain;
- (c) require You to provide to Us, on Our request:
 - (i) a signed confirmation that You have complied with this Agreement;
 - (ii) details of any changes to Your circumstances or those of Your service(s);
 - (iii) insurance documentation relating to You, Your service(s) or any of Your employees, subcontractors, agents or associates;
 - (iv) financial Report(s) in accordance with clause 13.2, 13.3, or 13.4; or
 - (v) any reports or additional information specified in Our request.

- 14.2 Within 30 days of the completion of the CSP Review or as soon as practicable thereafter, We will provide you with a Review Report, which details the CSP Review's findings.

- 14.3 If the Review Report identifies:

- (a) any changes in Your circumstances, the Review Report will, if applicable:

- (i) explain how these changes affect Your eligibility for Funding under this Agreement and when any changes to the Funding may come into effect;
- (ii) provide you with an opportunity to respond to the Review Report's findings and, if necessary, allow for the submission of additional information; and
- (iii) inform you of the date of the next planned CSP Review, if required; or
- (b) no changes in Your circumstances, the Review Report will:
 - (i) provide you with information on the payment rates for the Funding You may receive between the date of the Review Report and Your next CSP Review; and,
 - (ii) inform You of the likely date of the next CSP Review.

14.4 If the Review Report requests, or allows for the submission of, additional information in relation to its findings, We will:

- (a) allow 30 days from the date of the Review Report for the provision of the information; and
- (b) detail the required format(s), if any, for the provision of the information.

Note: A CSP Review is separate from Your obligation to submit a CSP Review Form (a Report) in accordance with clause 13.2

15 Commonwealth Material (SC)

- 15.1 We grant You a licence to use, copy and reproduce Commonwealth Material only for the purposes of this Agreement.
- 15.2 You must keep Commonwealth Material safe.
- 15.3 Unless directed otherwise by Us in accordance with clause 15.4, You must return to Us or destroy the Commonwealth Material remaining in Your possession within 10 business days of the End Date.
- 15.4 If at any time We provide You with a written direction in relation to Commonwealth Material, You must comply with the direction.

16 Confidential Information (SC)

- 16.1 You must not, without Our prior written approval, disclose any of Our Confidential Information to a third party.
- 16.2 We must not, without Your prior written approval, disclose any of Your Confidential Information to a third party except where We disclose it:
 - (a) to the responsible Minister;
 - (b) in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - (c) the disclosure is authorised or required by law; or
 - (d) the information is in the public domain otherwise than due to a breach of this clause 16.
- 16.3 In giving written approval to a disclosure for the purposes of clauses 16.1 or 16.2, a party may impose conditions as it thinks fit, and the other party must comply with the conditions.
- 16.4 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.
- 16.5 If required under clause 16.4, You must promptly arrange for all undertakings to be given and if We request it, promptly provide Us with a copy of the undertakings.
- 16.6 Nothing in this clause 16 limits Your obligations under clause 19 [Access to premises and Records].

17 Personal Information (SC)

- 17.1 You must comply with the the requirements in Division 2 of Part III of the *Privacy Act 1988* as if You were an agency within the meaning of that term in that Act.

Note: You can find information about these requirements on the Office of the Australian Information Commissioner website at: www.oaic.gov.au. You may wish to obtain independent legal advice about these requirements.

18 Retention of Records (SC)

- 18.1 You must make and keep full and accurate Records of:
- (a) the conduct of the Activity, including but not limited to log books and records of claimed journeys in relation to claims for the Regional Travel Assistance Grant; and
 - (b) the receipt and use of Funding (in accordance with Australian Accounting Standards).
- 18.2 You must keep the Records referred to in clause 18.1 for as long as You are required by any law to retain them.

19 Access to premises (SC7)

- 19.1 You must at all reasonable times give any employee of Us on production of photo identification, or any person authorised in writing by Us:
- (a) reasonable access to:
 - (i) Your employees and equipment;
 - (ii) premises occupied by You; and
 - (iii) Material; and
 - (b) reasonable assistance to:
 - (i) inspect the performance of the Activity;
 - (ii) locate and inspect Material; and
 - (iii) make copies of Material and remove those copies, relevant to the Activity.
- 19.2 You agree that We do not have to provide You with notice of Our exercise of the rights referred to in this clause 19.
- 19.3 The requirement for access specified in clause 19.1 does not in any way reduce Your responsibility to perform Your obligations under this Agreement.
- 19.4 A breach of Your obligations under clause 19.1 is, for the purposes of clauses 8.9 [Funding] and 28 [Termination for default], a breach which is not capable of being rectified.

20 Liaison and monitoring, and delay

Liaison and monitoring

- 20.1 You must:
- (a) liaise with and provide information to Us, as reasonably required by Us;
 - (b) comply with all reasonable requests, directions, or monitoring requirements received from the Departmental Officer;
 - (c) notify Us in writing by using the Australian Children's Education and Care Quality Authority (ACECQA) form (*S101*) *Notification of Serious Incident*, within 24 hours of:
 - (i) a Serious Incident occurring; or
 - (ii) any circumstance that could have resulted in a Serious Incident but did not;
 - (d) provide any other information to Us that We require.

Note: the ACECQA form S101 can be found and downloaded online at www.acecqa.gov.au

Delay

- 20.2 You must take all reasonable steps to minimise delay in meeting Your obligations under this Agreement.
- 20.3 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.
- 20.4 If We approve the steps You Notify to Us in accordance with clause 20.3(b), You must comply with them.
- 20.5 You must comply with any reasonable direction We give to You in relation to limiting the delay.

21 Subcontracting

21.1 You may subcontract the performance of any obligations under this Agreement.

22 Acknowledgement and publicity (SC7)

22.1 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 following manner:

“The Australian Government provides [or provided] financial support for this child care service under the Community Support Programme”.

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

22.3 If You wish to use the Commonwealth Coat of Arms for the purposes of this Agreement, you must follow the instructions and guidelines published by the Department of Prime Minister and Cabinet online at www.dpmc.gov.au.

PART D: MANAGING RISK, DISPUTES AND TERMINATION

23 Indemnity (SC)

23.1 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, including 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, including any of Your employees, agents or subcontractors, of obligations or warranties under this Agreement;
- (f) any use or disclosure by You, including 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.

23.2 Your liability to indemnify Us under this clause 23 will be reduced proportionately to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.

23.3 Our right to be indemnified under this clause 23 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.

23.4 In this clause 23, “fault” means any negligent or unlawful act or omission or wilful misconduct.

24 Insurance

24.1 You must, for as long as any obligations remain in connection with the Activity satisfy all requirements for insurance imposed on You and on any approved child care service You operate by the National Law and the National Regulations.

24.2 You acknowledge that the Commonwealth does not carry or provide insurance on private vehicles and will not accept responsibility for any financial liability or loss (including through the operation of an ‘excess’ clause or loss of ‘no claim’ bonus) that may be incurred as a result of an accident or theft while using a private motor vehicle for travel claimed in relation to the Regional Travel Assistance Grant.

24.3 If We request, You must, within 10 business days of receiving the request, provide Us with evidence satisfactory to Us that You have complied with clause 24.1.

25 Conflict of interest

- 25.1 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.
- 25.2 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 such steps as We may reasonably require to resolve or otherwise deal with that Conflict.
- 25.3 If You fail to notify Us under this clause 25, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate this agreement under clause 28 [Termination for default].

26 Dispute resolution (SC)

- 26.1 Subject to clause 26.3, 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 specified in clause 26.2 has been undertaken.
- 26.2 The parties agree that any dispute arising under or in relation to this Agreement is to be dealt with as follows:
- (a) the party claiming that there is a dispute will send the other party a 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.
- 26.3 Clauses 26.1 and 26.2 do not apply if:
- (a) either party commences legal proceedings for urgent interlocutory relief;
 - (b) action is taken by Us under clauses 8.9 [Funding], 11 [Repayment of Funding], 19 [Access to premises and Records], 27 [Termination with costs and reduction] or 28 [Termination for default]; or
 - (c) an authority of the Commonwealth, a state or a territory is investigating a breach or suspected breach of the law by You.
- 26.4 Despite the existence of a dispute, both parties must (unless requested in writing by the other party not to do so) continue to perform their obligations under this Agreement.

27 Termination with costs and reduction

- 27.1 We may, at any time by 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 the scope of 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 27.3 and 27.4, any reasonable costs incurred by You and directly attributable to the termination or partial termination of this Agreement.
- 27.2 On receipt of a Notice of termination or reduction in scope given by Us under clause 27.1, 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
 - (c) continue work on any part of the Activity not affected by the Notice.
- 27.3 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 Your obligations under this Agreement.
- 27.4 We are not liable to pay compensation for:
- (a) loss of Your prospective profits for a termination or reduction in scope under this clause 27; or
 - (b) loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

28 Termination for default

- 28.1 We may immediately terminate this Agreement by giving You Notice 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 from Us to do so, or within such other period We specify; or
 - (ii) the breach is not capable of being rectified, as determined by Us;
 - (c) You are unable to pay all Your debts as and when they become due and payable;
 - (d) if You are a body corporate:
 - (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.