



Australian Government

Department of Education

Long Day Care Professional Development Programme

Funding Agreement

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PURPOSE

- A. We operate the Programme.
- B. You are committed to helping achieve the 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+' means the *Accessibility and Remoteness Indicator of Australia* (ARIA+) or its most recent equivalent as administered by the Australian Population and Migration Research Centre (APMRC). See www.adelaide.edu.au/apmrc for further information.

'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.

'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.

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

'Eligible Staff' means, in relation to a service listed in the 'Applicable Service(s)' table in the Letter of Offer:

(a) the director of the service; or

(b) an individual:

(i) who works in the service;

(ii) whose work involves direct contact with children in providing child care to the children attending the service; and

(iii) who has, or is working towards obtaining, a child care qualification that is included in a list published in accordance with regulation 137 of the National Regulations.

Note: these lists are published by the Australian Children's Education and Care Quality Authority

'End Date' means whichever of the following applies:

(a) 31 December 2017; or

(b) if this Agreement is terminated earlier, 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*.

'Funding' means the amount or amounts specified in clause 8.

'Funding Period' means the period specified in clause 5.

'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 Long Day Care Professional Development Programme Funding Guidelines.

Note: Currently, the Guidelines are available at: www.education.gov.au/ldcpdp

'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.

'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.

'Objectives of the NQF' are to:

- (a) ensure the safety, health and wellbeing of children attending education and care services;
- (b) improve the educational and developmental outcomes for children attending education and care services;
- (c) promote continuous improvement in the provision of quality education and care services;
- (d) establish a system of national integration and shared responsibility between participating jurisdictions and the Commonwealth in the administration of the national education and care services quality framework;
- (e) improve public knowledge, and access to information, about the quality of education and care services; and
- (f) reduce the regulatory and administrative burden for education and care services by enabling information to be shared between participating jurisdictions.

Source: *National Law* (go to www.acecqa.gov.au/National-Law)

'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*.

'Programme' means the Long Day Care Professional Development Programme.

'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.

'Start Date' means the day on which we receive from You a completed and signed acceptance of Our offer of Funding to 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.

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; and
- (j) a reference to an ARIA+ classification is to the relevant remoteness classification in the ABS Remoteness Structure, which is one of seven structures in the Australian Statistical Geography Standard published by the Australian Bureau of Statistics: see www.abs.gov.au/websitedbs/D3310114.nsf/home/remoteness+structure.

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 approved centre based long day 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) 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.

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; or
- (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 Funding Period

- 5.1 The Funding Period starts on the Start Date and ends on the earlier of:
- (a) 30 June 2017; or
 - (b) the End Date.

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 We publish the amendment on Our website.

Note: Currently, the Guidelines are available at: www.education.gov.au/lcdpdp

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.
- 7.8A You acknowledge and agree that We have no obligation to consent to You assigning any rights under this Agreement or to any novation of this Agreement.

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.
- 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 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 during the Funding Period and in accordance with this Agreement.

Conditions for receiving any Funding

- 8.7 We will pay You an amount of Funding due under this Agreement for a period in relation to Your service only if, at the time of payment, the service in relation to which the Funding is provided is a centre based long day care service that is approved for the purposes of the family assistance law.
- 8.8 If, at any time during the Funding Period, Your service ceases to be approved for the purposes of the family assistance law, We may immediately terminate this Agreement in accordance with clause 28 [Termination for default].

Purposes for which the Funding may be spent

- 8.9 You must ensure that the Funding provided to You under this Agreement is spent only in relation to professional development activities, as described in clauses 8.9A and 8.9B, for Eligible Staff at Your service.

Note: Section 3.3 of the Guidelines gives examples of appropriate professional development activities.

- 8.9A The professional development activities mentioned in clause 8.9 must be consistent with those described in the requirements set out section 3.3 of the Guidelines. These include:
- (a) Formal training
 - (b) Training offered by Registered Training Organisations (RTOs)
 - (c) Informal training
 - (d) Resources
 - (e) Travel to attend training courses
- 8.9B For the avoidance of doubt, You may spend the Funding for the purpose of paying for the cost of either:
- (a) minor equipment or other resources relevant to undertaking professional development activities, as listed in section 3.3 of the Guidelines (under 'Resources'); or
 - (b) staff You use to replace Eligible Staff who are absent while undertaking a professional development activity.

Purposes for which the Funding must not be spent

- 8.10 You must not spend any of the Funding on any of the following:
- (a) wage increases or any other form of increased remuneration of Your employees or contractors, including overtime payments;

- (b) any professional development activities that are not, in Our opinion, acting reasonably, directly related to the work of Your employees or contractors in providing child care to children attending Your service;
Note: if You are not sure whether a proposed professional development activity is directly related to the work of Your employees or contractors in providing child care to children attending Your service, You may seek Our approval of the activity in writing.
- (c) any professional development activity undertaken outside the Funding Period;
- (d) any professional development activity already funded or otherwise provided or paid for by another person, including the Commonwealth or a state or territory government;
- (e) purchase of major capital equipment (a physical item that is over \$3000) or undertaking capital works or renovations;
- (f) any professional development activity that is not related to the Early Years Learning Framework or the National Quality Framework;
- (g) any professional development activity provided overseas which requires Eligible Staff to travel overseas; or
- (h) any activity which in Our opinion, acting reasonably, is not a professional development activity.

Instalments of Funding

- 8.11 We will pay You the Funding for each of Your services in three instalments, in the amounts set out in the Letter of Offer, subject to:
- (a) in the case of the second instalment, Our satisfaction with Progress Report 1; and
 - (b) in the case of the third instalment, Our satisfaction with Progress Report 2.

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.*
- 10.5 If You specify that Funding is to be paid into an account that 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, using the Funding for professional development activities for Eligible Staff at Your service in accordance with clauses 8.9, 8.9A and 8.9B.

Your conduct of the Activity

- 12.2 You must carry out the Activity in Your 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.
- 12.4 You must, throughout the Funding Period, plan professional development activities (within the meaning of clauses 8.9, 8.9A and 8.9B) to be provided using the Funding to Eligible Staff at Your service (***your service's staff***) in a way that:
- (a) meets the professional development needs of your service's staff;
 - (b) makes good and reasonable use of the Funding with respect to the professional development needs of your service's staff taking into account the amount of the Funding for Your service;
 - (c) represents value for money in the sense of being an effective, efficient and ethical use of the Funding; and

- (d) would withstand independent scrutiny if Your expenditure of the Funding were analysed with respect to paragraphs (a), (b) and (c).

13 Reports (SC7)

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

General Reports

13.2 You must provide Us with the following Reports for Your service, which must be delivered to Us by the due date and contain the information specified as follows:

- (a) **Progress Report 1** is due on 31 March **2015** and must:
- (i) provide details of Your expenditure of the Funding under this Agreement covering the period from the Funding Period Start date to 28 February 2015;
 - (ii) describe how the Funding has assisted You to implement the Objectives of the NQF and achieve outcomes for educators and children to date; and
 - (iii) provide details about Your plans for the total Funding payable under this Agreement; and
- (b) **Progress Report 2** is due on **31 March 2016** and must:
- (i) provide details of Your expenditure of the Funding under this Agreement covering the period from 1 March 2015 to 29 February 2016;
 - (ii) describe how the Funding has assisted You to implement the Objectives of the NQF and achieve outcomes for educators and children to date; and
 - (iii) provide details about Your plans for the total Funding payable under this Agreement; and
- (f) **Final Report** is due on **30 September 2017** and must:
- (i) describe how the Funding was used;
 - (ii) describe in detail the outcomes of the Funding for educators and children;
 - (iii) include copies of all original receipts and invoices in respect of Your expenditure of the Funding, if directed by Us; and
 - (iv) describe how the Funding has assisted You to implement the Objectives of the NQF; and
- (g) **Financial Report** is due on the earlier of:
- (i) the day which is 3 months after the day the total amount of Funding under this Agreement has been spent in full; or
 - (ii) 30 September 2017,
- and, subject to clause 13.5, must contain:
- (iii) a certificate that all Funding received was expended for the Activity and in accordance with this Agreement;
 - (iv) an audited detailed statement of income and expenditure in respect of the Funding, which must include:
 - a. a definitive statement as to whether the financial accounts are true and fair; and
 - b. 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
 - (v) an audit statement that all Funding received was expended for the Activity and in accordance with this Agreement.

13.3 The certificate referred to in clause 13.2(d) (iii) must be provided by Your chief executive officer, chief internal auditor or board member.

13.4 Subject to clause 13.5, the audits referred to in clauses 13.2(d) (iv) and (v) must:

- (a) comply with the Australian Auditing Standards; and
- (b) be carried out by a person who is a Recognised Auditor.

- 13.5 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 13.2(d), 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.
- 13.6 The statements referred to in clauses 13.5(c) and (d) must be certified by:
- (a) Your chief executive officer; and
 - (b) the senior executive officer employed by You who has primary responsibility for managing Your audit functions.
- 13.7 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.

Format of Reports

- 13.8 You must provide Reports as follows:
- (a) using the template(s) specified by Us from time to time, available at www.education.gov.au/ldcpdp; 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 Activity Material (SC)

- 14.1 Reserved.

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) Your conduct of the Activity; and
 - (b) Your 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 and Records (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 8.2 [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; and
 - (c) provide any other information to Us that We require.

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 must not subcontract the performance of any obligations under this Agreement unless We give prior approval in writing. We may, if We approve any subcontracting, give Our approval subject to any conditions that We, in Our sole discretion, consider appropriate.

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 Long Day Care Professional Development 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.

23A Release if You applied for funding under the Early Years Quality Fund

- 23A.1 If You applied for funding under the Early Years Quality Fund (**EYQF**) and received a letter of conditional offer in relation to the EYQF, then You acknowledge and agree that, by entering into this Agreement, You:
- (a) release absolutely and forever discharge the Commonwealth from any claim by You arising out of, from, in, or in connection with Your application for funding under the EYQF; and
 - (b) agree not to bring, commence, seek, enforce or continue any claim against the Commonwealth in relation to the EYQF.

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 On Our 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.