



Grant Agreement

Interim Home Based Carer Subsidy Programme (Nanny Pilot Programme)

Agreement number *[insert]*

Department of Social Services

and

[insert service provider name]

Version 6.0 17 August 2015

[Note: This is a template grant agreement for Activities under the Nanny Pilot Programme. It is subject to change, including as a result of any future change that may occur in relation to the Programme or its Guidelines.]

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Definitions and Duration

1. Definitions

- 1.1 In this Agreement, certain words and phrases have defined meanings. They are indicated by initial capital letters (e.g., Activity and Activity Period). However, "we" and "you" are not capitalised in this way.
- 1.2 Where a defined word or phrase is used in one clause only, it is usually defined in that clause. Otherwise, the definitions are in clause 49.

2. Duration of the Agreement and Activity

- 2.1 This Agreement starts on the Commencement Date and ends on the Completion Date, unless terminated earlier.
- 2.2 The Activity starts on the Activity Start Date and ends on the Activity End Date, unless terminated earlier.

What you must do

3. Your obligations in carrying out the Activity

- 3.1 You must carry out the Activity as required by this Agreement, including meeting all objectives, timeframes and milestones.
- 3.2 In carrying out the Activity, you must:
- (a) use all proper care; and
 - (b) comply with any codes of ethics, regulations or other industry standards relevant to the Activity; and
 - (c) comply with all relevant laws and in particular, take all reasonable actions to ensure no fraud occurs; and
 - (d) pay all taxes, duties and government charges imposed in Australia or overseas in connection with this Agreement; and
 - (e) comply with the Programme Guidelines, any operational guidelines, Departmental policy or Commonwealth policy notified to you in writing; and
 - (f) notify us immediately if a conflict of interest arises, or could reasonably be perceived by others to have arisen, that may restrict you undertaking the Activity in a fair and independent way; and
 - (g) communicate with us, especially if there is an issue that may delay, stop or adversely affect the Activity; and
 - (h) provide information and documents we reasonably require.
- 3.3 You must establish and publicise the existence of a documented complaints process which you must use to deal with any complaints by Families or Nannies unless otherwise required by another part of this Agreement and:
- (a) If a Family or Nanny is dissatisfied with the results following their complaint/s you must refer the Family or Nanny to our complaints service, unless otherwise required by another part of this Agreement, for further investigation of the complaint and you must assist us in the investigation of the complaint. Details of our complaints service can be found on our website.
 - (b) You must, on our request, give to us access to or copies of your complaints register in accordance with clause 5.6.

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- (c) Copies of all correspondence and other materials received or created by you in connection with any of the above must be kept in accordance with clause 5.3.

4. Your obligation to acknowledge our support

- 4.1 In all Agreement Material you publish, you must acknowledge our financial and other support.
- 4.2 When doing so, you must use any form of acknowledgment we reasonably specify.

5. Your obligation to keep records and provide reports

- 5.1 You must keep accurate records and accounts including:
 - (a) receipts, proof of purchase and invoices, to show how you spend the Grant and carry out the Activity; and
 - (b) Family, Nanny and Period of Care records in accordance with this Agreement and any legislative requirements.
- 5.2 You acknowledge that giving false or misleading information to the Department is a serious offence under section 137.1 of the *Criminal Code Act 1995* (Cth).
- 5.3 You must keep these records and accounts in their original form for at least 5 years after the Activity Period or other period as required by legislation.
- 5.4 You must prepare and give us the reports required and specified in Schedule 3 or as otherwise requested by us.
- 5.5 If we consider that the form or content of a report is not adequate for our purposes, we can request you to submit a revised report. You must submit that revised report within 30 Business Days of our request, unless we specify a shorter or longer time.
- 5.6 You must, at all reasonable times, allow access to all records, accounts, documents and papers relating to this Agreement, including those relating to how you are carrying out, and receiving or spending the Grant and allow copies of these materials to be taken by the following:
 - (a) us, or an Authorised Person; or
 - (b) the Commonwealth Auditor-General (including his or her delegate); or
 - (c) an information officer appointed under the *Australian Information Commissioner Act 2010* (Cth) who is performing 'privacy functions' as defined in that Act.

For the purpose of clause 5.6 the parties agree that:

- (a) '**access**' includes access to your premises (which means premises occupied by you or where any obligation under this Agreement is undertaken and/or wherever any Assets may be located); and
 - (b) you must provide such assistance as may be needed to allow access to all records, accounts, documents and papers relating to this Agreement.
- 5.7 However, you do not have to allow access to, or copies to be made of, Secret and Sacred Material.
 - 5.8 You must include provisions in all of your Subcontracts that will enable you to comply with your obligations under this clause 5.

6. Your obligation to enter complying agreements

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- 6.1 You must enter an agreement with each Nanny who will provide services in connection with you delivering the Activity.
- (a) The agreement must be entered into by you and the Nanny prior to the Nanny providing services in connection with the Activity.
 - (b) The agreement with each Nanny must include the minimum requirements specified in Item 7 of Schedule 2.
 - (c) You must only enter an agreement with a Nanny who satisfies all the requirements specified in Item 6 of Schedule 2.
- 6.2 You must enter an agreement with each Family who will receive services from you in connection with the Activity.
- (a) The agreement must be entered into by you and the Family prior to the Family receiving services from you in connection with the Activity.
 - (b) The agreement with each Family must include the minimum requirements specified in Item 5 of Schedule 2.
 - (c) You must only enter an agreement with a Family who satisfies all the requirements specified in Item 3 and Item 4 of Schedule 2.
- 6.3 You must include provisions in all of your Subcontracts that will enable you to comply with your obligations under this clause 6.
- 7. Your obligation to prioritise the placement of Nannies**
- You must prioritise the placement of Nannies with Families in accordance with the requirements specified in Item 2 of Schedule 2.
- 8. Your obligation to provide services to Families in allocated Region**
- During the Activity Period you must only provide services to Families in the Region that you have been allocated.
- 9. Your obligation to submit Period of Care data**
- 9.1 You must obtain and use the Data Capture System specified by us from time to time for the purpose of submitting Period of Care data.
- 9.2 For each Period of Care you provide you must submit data and maintain records in accordance with the requirements specified in Item 8 of Schedule 2.
- 10. Your obligations for Fees, invoicing and fee reduction**
- 10.1 The maximum Fees you are able charge Families in connection with the Activity are specified in Schedule 5.
- 10.2 You must not increase any Fee specified in Schedule 5, or charge a Family for any other amount for services in connection with the Activity, without first seeking our written approval.
- 10.3 Subject to clause 10.4, you must ensure the entire Subsidy amount relating to a Period of Care, as determined by us, is passed-through to the relevant Family through a fee reduction for each Period of Care provided by you in connection with the Activity.
- 10.4 You must ensure that the fee reduction resulting from a Subsidy amount for a Period of Care is no more than 85 per cent of the total fees (excluding GST) assigned to a Family for a Period of Care.

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10.5 You must invoice Families at regular intervals for services you have provided in connection with the Activity.

- (a) Each invoice must contain the following minimum information:
 - (i) the date of each Period of Care provided to the Family; and
 - (ii) the hours of care provided to each child during each Period of Care; and
 - (iii) the total amount of Fees charged for each Period of Care; and
 - (iv) the total amount of Subsidy paid by us for each child for each Period of Care; and
 - (v) Any other information specified by us from time to time.

11. Your obligation to notify us

11.1 In addition to any other notice requirements specified in this Agreement, you must notify us immediately of any of the following:

- (a) if you are unable to comply with the requirements of this Agreement or are otherwise unable to deliver any aspect of the Activity; or
- (b) if you are subject to an Insolvency Event; or
- (c) if you determine that a Family is not eligible to enter an agreement with you under the criteria specified in Item 3 and Item 4 of Schedule 2; or
- (d) if you intend to withdraw services in connection with the Activity from a Family for any reason; or
- (e) if you are aware of fraud, or suspected fraud, in connection with the Activity; or
- (f) if you become aware that you have entered incorrect information to the Data Capture System that may affect the amount of Subsidy paid by us; or
- (g) if you or any of your officers, employees or Subcontractors are the subject of investigation or action by a law enforcement agency, child welfare agency, or a state or Commonwealth government department or agency that may affect your ability to comply with the requirements of this Agreement or deliver any aspect of the Activity; or
- (h) if you become aware that a Family or Nanny with whom you have an agreement is the subject of a law enforcement agency or child welfare agency investigation; or
- (i) if you are aware of any Serious Incident specified in Item 5.5 of Schedule 3.

11.2 In addition to any other notice requirement specified in this Agreement you must notify us of any Notifiable Events specified in Item 5 of Schedule 3.

About the Grant

12. Paying the Grant

Subject to parliamentary appropriation, clause 14 (withholding payment) and your compliance with this Agreement, we will pay you the Subsidy and Administration Fee in accordance with Schedule 4.

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13. Assessment of Period of Care data

- 13.1 Within 5 Business Days of receiving Period of Care data from you in accordance with clause 9, we will:
- (a) approve the Period of Care data and determine a Subsidy amount payable in respect of each Period of Care;
 - (b) reject the Period of Care data; or
 - (c) seek further supporting evidence or information from you so that we may either approve or reject the Period of Care data under paragraph 13.1(a) or (b).
- 13.2 If we seek further evidence or information under paragraph 13.1(c), you must provide the additional evidence or information within 5 Business Days after our request.

14. When can we withhold payment?

- 14.1 We can withhold any or all of a Subsidy or Administration Fee payment if we consider that you:
- (a) have not carried out Activities in accordance with this Agreement; or
 - (b) have not complied with your reporting obligations under Schedule 3, or any other obligations owed by you under this Agreement; or
 - (c) have not spent the Grant in accordance with this Agreement; or
 - (d) have breached any other term of this Agreement; or
 - (e) have breached any other agreement.
- 14.2 We will pay the withheld payment under clause 14.1(a) when you have carried out the Activities and obligations to which the payment relates, according to the requirements of the Agreement.
- 14.3 For the purposes of clause 14.1(e), being in breach of any other Agreement means being in serious breach of any other agreement under which you receive Grants from the Commonwealth (a "serious breach" is one which would entitle the Commonwealth to terminate the other agreement).

15. Spending the Grant

- 15.1 You must spend the Grant:
- (a) only on carrying out the Activity; and
 - (b) only in accordance with this Agreement (including the requirements specified in the Item 9 of Schedule 2 for the Administration Fee).
- 15.2 You agree to hold the Grant payments for the Activity in the Nominated Bank Account, which must be:
- (a) an account in your name;
 - (b) an account that you solely control;
 - (c) held with a deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia; and

16. Accounting for the Grant

- 16.1 You must provide the reports in the form and at the times set out in the Schedules or otherwise notified to you in writing.
- 16.2 Where the report is a financial declaration it must:

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- (a) verify that you have spent the Grant on the Activity in accordance with the Agreement; and
 - (b) specify the amount, if any, of the Grant provided for the Activity that remains unspent and uncommitted for that financial year; and
 - (c) be certified by:
 - (i) your board;
 - (ii) your chief executive officer; or
 - (iii) an officer with authority to do so.
- 16.3 Where the report is a financial report, we may, at our discretion, require it to be independently audited, non-audited or in any other form.
- 16.4 A financial report consists of an income and expenditure statement in relation to each Grant. Each financial report must:
- (a) be in accordance with the Agreement, applicable Australian Accounting Standards¹ and based on proper accounts and records; and
 - (b) verify that you have spent the Grant provided on the Activity and in accordance with this Agreement; and
 - (c) specify the amount, if any, of the Grant provided for the Activity that remains unspent and uncommitted; and
 - (d) include any other matters (in addition to the matters set out in the Schedule) we require to allow us to meet obligations under the Commonwealth financial framework; and
 - (e) be certified by:
 - (i) your board;
 - (ii) your chief executive officer; or
 - (iii) an officer with authority to do so.
- 16.5 If we request an independently audited financial report it must be audited by:
- (a) a Registered Company Auditor under the *Corporations Act 2001* (Cth); or
 - (b) a member of CPA Australia; or
 - (c) a member of the Institute of Public Accountants in Australia; or
 - (d) a member of the Institute of Chartered Accountants in Australia.
- The auditor must not be a principal member, shareholder, officer or employee of yours or of a Related Body Corporate as defined in the *Corporations Act 2001* (Cth). Reports must be audited in accordance with Australian Audit Standards² and the income and expense statement must be accompanied by the auditor's opinion.
- 16.6 At any time up to 5 years after the Activity End Date, we may ask you to send us:
- (a) original receipts or other documents which account for the expenditure of the Grant; and/or

¹ Refer Australian Accounting Standards Board [Australian Accounting Standards Board website](#)

² As maintained by the Auditing and Assurance Standards Board(AASB) [AASB Website](#)

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- (b) a statutory declaration made in accordance with the *Statutory Declarations Act 1959* (Cth) accounting for the expenditure of the Grant.

17. Repaying the Grant

17.1 If:

- (a) we overpay you an amount; or
- (b) we pay you an amount that you incorrectly claim; or
- (c) we pay you an amount that you are unable to spend in accordance with this Agreement; or
- (d) you spend an amount other than in accordance with this Agreement

you must pay us that amount of the Grant (or any lesser amount of which we notify you in writing).

17.2 If you must repay an amount under clause 17.1:

- (a) you must do so within 20 Business Days after we give you a notice in writing; and
- (b) you must pay interest on any part of the amount that is outstanding after the end of the 20 Business Days until the date that the outstanding amount is repaid in full; and
- (c) we may recover the amount and any Interest as a debt due to the Commonwealth.

17.3 We can recover all or any of the amount and Interest by deducting it from subsequent amounts we pay you under this Agreement or any other agreement we have with you.

18. GST

18.1 This clause 18 applies if you are registered or required to be registered, for GST and the Grant is a payment for a Taxable Supply.

18.2 Any Grant payment amount specified in this Agreement is a GST exclusive amount.

18.3 If you make a Taxable Supply to us under this Agreement, we will pay you without set-off an additional amount equal to the GST imposed on the supply in question.

18.4 If you are entitled to claim an amount as an Input Tax Credit or Decreasing Adjustment, you must not Claim a Grant payment for that amount.

18.5 In this clause 18, the terms “**GST**”, “**Decreasing Adjustment**”, “**Input Tax Credit**” and “**Taxable Supply**” have the same meaning as they have in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or any other relevant legislation, regulations, or rulings issued by the Australian Taxation Office.

Assets

19. Assets

19.1 This clause only applies if Assets are purchased with the Grant.

19.2 You can only use the Grant to purchase the Assets we have specified in Item 10 of Schedule 1.

19.3 You must obtain our prior approval in writing if you want to use the Grant to purchase Assets not specified in Item 10 of Schedule 1.

- 19.4 You own the Assets purchased with the Grant unless Item 10 of Schedule 1 states otherwise.

Material and Information

20. Intellectual Property Rights

- 20.1 You own the Intellectual Property Rights in all Agreement Material subject to clause 20.2.
- 20.2 We own all Commonwealth Material, including Intellectual Property Rights in that Material.
- 20.3 You grant us a licence to use, reproduce, publish, adapt and exploit the Intellectual Property Rights in Agreement Material and Existing Material, (excluding Secret and Sacred Material) for any Commonwealth purpose. This licence is permanent, irrevocable, free, worldwide, non-exclusive and includes a right of sublicense.
- 20.4 We license you to use the Commonwealth Material (including copying it and supplying it to others), but only for the purposes of this Agreement.
- 20.5 You must ensure that you have the right, or will have the right at the relevant time, to deal with the Intellectual Property Rights in the Agreement Material and any Existing Material under this clause 20.
- 20.6 If we require, you must bring into existence, sign or otherwise deal with any document which we consider is necessary or desirable to give effect to this clause 20.
- 20.7 You must obtain, from each author of any Agreement Material or Existing Material, a written consent to the Specified Acts. The consent must cover Specified Acts done before or after the date of the consent, and whether done by us or by someone claiming under or through us. If we ask, you must give us the original of the consent.

21. Safekeeping and return of Commonwealth Material

- 21.1 You must keep safe and maintain all Commonwealth Material. You accept all risk relating to that Material.
- 21.2 Unless we otherwise direct, you must promptly return all Commonwealth Material when this Agreement ends or is terminated.

22. Privacy Issues

- 22.1 You agree, in conducting each Activity:
- (a) not to do anything which, if done by the Commonwealth, would be a breach of the requirements of Division 2 of Part III of the *Privacy Act 1988* (Cth); and
 - (b) to comply with any of our directions, guidelines, determinations or recommendations, to the extent that they are consistent with your obligations referred to in clause 22.1(a).
- 22.2 If you become aware of any breach or possible breach of this clause 22, you must notify us immediately.
- 22.3 You acknowledge that the Commonwealth (including us) may disclose or publish details about this Agreement or an Activity. The details may include (but are not limited to) your name, the Grant amount for this Agreement and/or the Activity and the location where the Activity is being delivered or performed.

- 22.4 You must obtain any Subcontractor's express consent for the disclosure to us of the Subcontractor's identity (and their Personal Information, if the Subcontractor is an individual). The consent obtained must extend to allowing us to disclose for reporting purposes the Subcontractor's identity and the existence and nature of the Subcontract.

Disclosure of Information

23. Confidential Information

- 23.1 In this clause 23, "Confidential Information" means information that:
- (a) the parties know, or ought to know is confidential; or
 - (b) is described in Item 12 of Schedule 1; or
 - (c) the parties agree in writing after the date of this Agreement is confidential information for the purposes of this Agreement; or
 - (d) is Secret and Sacred Material.
- 23.2 Subject to clause 23.3, a party must not disclose Confidential Information to anyone, without the prior written consent of the other party.
- 23.3 A party can disclose Confidential Information to the extent that it:
- (a) is disclosed to its internal management personnel, solely to enable effective management or auditing of Agreement-related activities; or
 - (b) is disclosed by us to the responsible Minister; or
 - (c) is disclosed by us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia; or
 - (d) is shared within a party, or with another agency, where this serves the Commonwealth's legitimate interests; or
 - (e) is authorised or required by law to be disclosed; or
 - (f) is in the public domain otherwise than due to a breach of this clause 23.
- 23.4 Where a party discloses Confidential Information to another person under clause 23.3 they must:
- (a) notify the receiving party that the information is confidential; and
 - (b) not provide the information unless the receiving person agrees to keep the information confidential.
- 23.5 You agree to secure all of our Confidential Information against loss and unauthorised access, use, modification or disclosure.
- #### 24. Freedom of Information
- 24.1 In this clause 24, "document" and "Commonwealth contract" have the same meaning as in the *Freedom of Information Act 1982* (Cth).
- 24.2 This clause 24 applies to the extent that this Agreement is a Commonwealth contract.
- 24.3 Where we have received a request for access to a document created by you or a Subcontractor, or in your possession or that of your Subcontractor, which relates to the performance of this Agreement (and not to the entry into this Agreement), we may at any time by written notice require you to provide the document to us and you must, at no additional cost to us, promptly comply with the notice.

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24.4 You must include provisions in all of your Subcontracts that will enable you to comply with your obligations under this clause 24.

25. Confidentiality Deeds

25.1 If we ask, you must promptly arrange for any of your Subcontractors, employees, and volunteers to promptly give us a signed confidentiality deed relating to the use and non-disclosure of our Confidential Information.

25.2 You must use the form of confidentiality deed we provide.

Working with Vulnerable Persons

26. Vulnerable Persons, Police Checks and Criminal Offences

26.1 Unless otherwise specified in the Schedule, this clause 26 applies if the Activity or any part of the Activity involves working with, or contact with, Vulnerable Persons.

26.2 Before engaging or deploying any Person (whether as an officer, employee, contractor, or volunteer) in relation to any part of the Activity, you must:

- (a) conduct a Police Check for that Person or where relevant, confirm a similar check by appropriate authorities has occurred;
- (b) confirm that no Commonwealth, State or Territory law prohibits that Person from being engaged in a capacity where they may have contact with Vulnerable Persons; and
- (c) comply with all other legal requirements of the place where the Activity, or part of the Activity, is being conducted in relation to engaging or deploying persons in a capacity where they may have contact with Vulnerable Persons.

26.3 For the purposes of clause 26.2(a) you do not have to conduct a Police Check for a Person where they have a current Working with Children (NSW) check or an equivalent check in another jurisdiction that is current.

26.4 You agree:

- (a) if a Police Check or other relevant check by authorities indicates that a Person has a Serious Record, or a Criminal or Court Record, not to engage, deploy or redeploy the Person unless you have conducted and documented a risk assessment of that Person;
- (b) within 24 hours of becoming aware of a Person being charged or convicted of any Serious Offence or Other Offence, to conduct and document a risk assessment in accordance with clauses 26.5 to 26.6 to determine whether to allow that Person to continue performing the Activity or any part of the Activity; and
- (c) to document the actions you will take as a result of conducting the risk assessment.

26.5 You will be wholly responsible for conducting any risk assessment, assessing its outcome and deciding to engage, deploy or redeploy a Person with a Serious Record, Criminal or Court Record, to work on any Activity, or any part of an Activity.

26.6 In undertaking your risk assessment under clauses 26.4 and 26.5 you agree to take into account the following factors:

- (a) whether the Person's Serious Record, Criminal or Court Record is directly relevant to the role the Person will or is likely to perform in relation to the Activity or any part of the Activity;

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- (b) the length of time that has passed since the Person's conviction and the Person's record since that time;
 - (c) the nature of the offence pertaining to the Serious Record, Criminal or Court Record and the circumstances in which it occurred;
 - (d) whether the offence involved Vulnerable Persons;
 - (e) the nature of the Activity and the circumstances in which the Person will or is likely to have contact with Vulnerable Persons;
 - (f) the particular role the Person is proposed to undertake or is currently undertaking in relation to the Activity and whether the fact the Person has a Serious Record, Criminal or Court Record is reasonably likely to impair the Person's ability to perform or continue to perform the inherent requirements of that role; and
 - (g) the Person's suitability based on their merit, experience and references to perform the role they are proposed to undertake or are currently undertaking in relation to the Activity or any part of the Activity.
- 26.7 After taking into account the factors set out in clause 26.6, you agree to then determine whether it is reasonably necessary to:
- (a) not engage, deploy or redeploy the Person in relation to the Activity or any part of the Activity; or
 - (b) remove the Person from working in any position or acting in any capacity in relation to the Activity or any part of the Activity which involves working or having contact with Vulnerable Persons; or
 - (c) make particular arrangements or impose conditions under which the Person's role in relation to the Activity or any part of the Activity and, where relevant, contact with Vulnerable Persons is to occur; or
 - (d) take steps to protect the physical, psychological or emotional wellbeing of the Vulnerable Persons to whom the Activity relates.
- 26.8 If we require you must promptly provide evidence, in a form we require, that you have complied with the requirements of this clause 26.
- 26.9 You agree to reflect your obligations under clause 26 in all Subcontracts you enter into in relation to the Activity or part of the Activity.
- 26.10 In this clause 26:
- (a) **"Child"** means an individual under the age of 18;
 - (b) **"Criminal or Court Record"** means any record of any Other Offence;
 - (c) **"Other Offence"** means a conviction, finding of guilt, on-the-spot fine for, or court order relating to:
 - (i) an apprehended violence or protection order made against the Person; or
 - (ii) one or more traffic offences involving speeding more than 30 kilometres over the speed limit, injury to a person or damage to property; or
 - (iii) a crime or offence involving the consumption, dealing in, possession or handling of alcohol, a prohibited drug, narcotic or other prohibited substance; or

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- (iv) a crime or offence involving violence against or the injury, but excluding the death of a person; or
- (v) a minor crime or offence involving dishonesty, other than those crimes or offences referred to in paragraph (c) of this clause.
- (d) **"Person"** means each of your officers, employees, contractors and volunteers;
- (e) **"Police Check"** means a formal inquiry made to the relevant police authority in each Australian State or Territory where you know the Person has resided, designed to obtain details of the Person's criminal conviction or a finding of guilt in all places (within and outside Australia);
- (f) **"Serious Record"** means a conviction or any finding of guilt for a Serious Offence;
- (g) **"Serious Offence"** means:
 - (i) a crime or offence involving the death of a person;
 - (ii) a sex-related offence or a crime, including sexual assault (whether against an adult or Child); Child pornography, or an indecent act involving a Child;
 - (iii) a crime or offence involving dishonesty that is not minor;
 - (iv) fraud, money laundering, insider dealing or any other financial offence or crime, including those under legislation relating to companies, banking, insurance or other financial services.
- (h) **"Vulnerable Person"** means:
 - (i) a Child; or
 - (ii) an individual aged 18 years and above who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation by reason of age, illness, trauma or disability, or any other reason.

Work health and safety

27. Work health and safety

27.1 In this clause 27:

- (a) **"Inspector"** means a person appointed as such under the WHS Act.
- (b) **"Notifiable Incident"** has the meaning given in the WHS Act.
- (c) **"Regulator"** means the person who is the regulator within the meaning of the WHS Act.
- (d) **"WHS Act"** means the *Work Health and Safety Act 2011* (Cth) and any corresponding WHS law within the meaning of section 4 of the WHS Act.
- (e) **"WHS Code of Practice"** means any Code of Practice approved for the purposes of the WHS Act.
- (f) **"WHS Entry Permit Holder"** has the same meaning as that given in the WHS Act.
- (g) **"WHS Laws"** means the WHS Act and WHS Regulations.
- (h) **"WHS Regulations"** means the regulations made under the WHS Act.

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27.2 Safety obligations:

You and your personnel must at all times:

- (a) ensure that the Activity is carried out in a safe manner;
- (b) comply with the WHS Laws in relation to the Activity and related tasks performed by your personnel;
- (c) ensure that you and your personnel do not, by act or omission place us in breach of our obligations under the WHS Laws;
- (d) be aware of, understand and comply with our work health and safety policy and procedures, whether specifically drawn to your attention or as might reasonably be inferred from the circumstances, that are in any way applicable to this Agreement or the performance of the Activity under this Agreement;
- (e) comply with any reasonable instruction from us relating to work health and safety;
- (f) implement and comply with policies and procedures in relation to the Activity in order to discharge your duties and obligations under WHS Laws;
- (g) immediately comply with directions on health and safety issued by any person having authority under the WHS Laws to do so;
- (h) where the health and safety of other persons may be affected by the Activity, ensure full communication and coordination occurs on health and safety matters with those persons and us;
- (i) communicate any issue or concern that you have regarding work health and safety matters, as soon as practicable, with us;
- (j) when requested by us provide evidence of your ongoing compliance with the WHS Laws;

27.3 Notifying us:

- (a) You must notify us as soon as practicable of any concern you have regarding work health and safety in relation to the performance of the Activity.
- (b) You must immediately inform us of the full details of:
 - (i) any suspected contravention of the WHS Laws;
 - (ii) any cessation or direction to cease work relating to the Activity, due to unsafe work, immediately upon you being informed of any such cessation or direction;
 - (iii) any workplace entry by a WHS Entry Permit Holder, or an Inspector, to any place where the Activity is being performed or undertaken; and / or
 - (iv) any proceedings against you, or any decision or request by the Regulator given to you, or your personnel, under the WHS Laws; and
- (c) provide us with copies of all notices and correspondence issued to you by any person under the WHS Laws in relation to the performance of the Activity, as soon as possible, and in any event within 24 hours of receiving any such notice or correspondence.

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- (d) if you are required by the WHS Act to report a Notifiable Incident to the Regulator in relation to the performance of the Activity you must:
 - (i) at the same time, or as soon as is possible in the circumstances, give notice of such incident, and a copy of any written notice provided to the Regulator, to us; and
 - (ii) provide to us, within such time as we specify, a report detailing the circumstances of the incident, the results of investigations into its cause, and any recommendations or strategies for prevention in the future.

27.4 Documentation:

If you are required by the WHS Laws to:

- (a) prepare, submit, supply or obtain any document, including but not limited to a WHS management plan, a risk assessment, a safe work method statement, a work method statement, an emergency plan, safety data sheets, a notice to the Regulator, or a register (together '**WHS Safety Documents**'), or review any existing WHS Safety Documents;
- (b) obtain or sight any licence, permit, or authorisation (together '**WHS Licences**'); or
- (c) display or install any sign, or barrier,

specific to the performance of the Activity, you must before commencing or continuing work:

- (d) prepare, submit, supply, review, sight or obtain any such WHS Safety Documents or WHS Licences tailored to the Activity and in compliance with the WHS Laws;
- (e) provide us a copy of any such WHS Safety Documents or WHS Licences with sufficient time for us to review the same and consult as we consider appropriate, including with you, regarding the same; and
- (f) display or install any such sign or barrier.

27.5 Monitoring:

We may monitor your compliance with the WHS Laws, including but not limited to:

- (a) conducting audits of your work health and safety performance; and
- (b) requiring you to provide us with whatever documents or other information we reasonably require relating to work health and safety matters.

27.6 Investigations:

- (a) You must cooperate with any investigation undertaken by us concerning any Notifiable Incident, or breach or alleged breach of the WHS Laws.
- (b) The requirement for, and cooperation with, investigations does not in any way reduce your responsibility to perform your obligations in accordance with this Agreement.

27.7 Suspension:

- (a) Without limiting any other right or remedy we may have, if we are not satisfied that you are performing the Activity in compliance with your work health and safety obligations under this clause or relevant legislation, we may direct you to suspend work on part or all of the Activity.

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- (b) If we direct you under clause 27.7(a), you must suspend work on the Activity as directed until you satisfy us that the Activity will be performed in compliance with work health and safety obligations.
- 27.8 Relationship to other obligations:
- (a) Where there is any inconsistency or ambiguity between this clause 27 and the WHS Laws, the WHS Laws will prevail.
 - (b) You acknowledge that you are responsible for:
 - (i) complying with your obligations under WHS Law; and
 - (ii) providing the Activity in accordance with this Agreement, and will not be relieved of that responsibility because of:
 - (iii) anything in this clause 27 or in any policy or procedure referred to in this clause 27;
 - (iv) any instruction or direction or failure to give an instruction or direction under this clause 27;
 - (v) any exercise of, or failure to exercise, our rights under this clause 27;
 - (vi) any notice or other document or communication from you under this clause 27.
 - (c) To the extent permitted by law, we are not liable to you for any loss in connection with work health and safety in relation to your personnel performing the Activity.

Dealing with Risk

28. Indemnity

28.1 You indemnify us against the following:

- (a) all liability; and
- (b) all losses, costs, and expenses

(including those set out in clause 28.2 if caused by the circumstances set out in clause 28.3.)

28.2 The losses, costs, and expenses against which you indemnify us include:

- (a) loss of or damage to our property; and
- (b) loss or expense in dealing with any claim against us (including legal costs on a solicitor/own client basis, the cost of time spent, resources used and disbursements paid).

28.3 For the purposes of clause 28.1, you indemnify us in circumstances where our liability, loss, cost or expense was caused by:

- (a) your act or omission in carrying out this Agreement, but only where you were at fault; or
- (b) your breach of this Agreement; or
- (c) our use of the Agreement Material or Existing Material (including where third parties make claims against us over the ownership of or right to use Intellectual Property Rights or Moral Rights in the Agreement Material or Existing Material).

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- 28.4 Your liability to indemnify us under this clause 28 is reduced proportionately to the extent that our own fault caused our loss.
- 28.5 Our right to be indemnified under this clause 28 is in addition to any other remedy we have at law or under this Agreement. However, we are not entitled to be compensated for more than our actual loss.

29. Insurance

- 29.1 You agree to have current and adequate insurance appropriate to the Activity. Any additional requirements are specified in Item 11 of Schedule 1.
- 29.2 If we ask, you must provide certificates of currency for the insurance and/or a warranty from your insurer that the policy extends to and will cover potential liability arising under this Agreement.
- 29.3 This clause 29 continues to operate for as long as any obligations remain in connection with this Agreement.

Terminating this Agreement

30. Our right to terminate, or reduce the scope of, the Agreement

- 30.1 Even though you are not in default, we can terminate this Agreement, or reduce its scope, at any time by giving you written notice.
- 30.2 If, under clause 30.1, we terminate this Agreement or reduce its scope, we are only liable to you for:
- (a) payments that were due to you before the date of termination or reduction; and
 - (b) reasonable costs you incur as a direct result of the termination or reduction (but subject to clauses 30.4, 30.5 and 30.6).
- 30.3 If we terminate or reduce the scope of this Agreement under clause 30.1, you must:
- (a) immediately stop carrying out your obligations under this Agreement (or, in the case of a reduction in scope, the obligations removed by the reduction); and
 - (b) immediately do everything you can to lessen all losses, costs and expenses that you may suffer from the termination or reduction; and
 - (c) repay the Grant or the relevant part of it as if we had given you a notice to repay under clause 17.2.
- 30.4 We need only pay you the reasonable costs in clause 30.2(b) if you:
- (a) comply strictly with this clause 30; and
 - (b) provide written evidence to satisfy us of the amounts claimed.
- 30.5 We are not liable to pay you compensation for any loss of profits or benefits that you would have received had the termination or reduction not occurred.
- 30.6 We will not be liable to pay any amount under clause 30.2(a) or 30.2(b) in respect of an Activity which would, when added to any Grant amount already paid to you under this Agreement for that Activity, together exceed the Grant amount otherwise payable under Schedule 4.

31. Our right to terminate for your default or financial circumstances

- 31.1 We can terminate this Agreement immediately by notice to you if any of the following occur:

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- (a) you breach any of your obligations under this Agreement and we consider that the breach cannot be rectified;
 - (b) you breach any of your obligations under this Agreement and you do not rectify the breach within 10 Business Days after we give you a notice to rectify it;
 - (c) we are satisfied on reasonable grounds that you are unable or unwilling to satisfy the terms of this Agreement;
 - (d) in relation to this Agreement or Activity, you breach a law of the Commonwealth, or of a State or Territory;
 - (e) we consider that our decision to approve the Grant was affected by a statement in your application for Grant that was incorrect, incomplete, false or misleading;
 - (f) we consider that you are subject to an Insolvency Event.
- 31.2 If we terminate this Agreement under this clause 31, we can recover from you as a debt due to the Commonwealth any part of the Grant that:
- (a) we consider you have not spent in accordance with the Agreement; or
 - (b) you have not legally committed for spending under the Agreement and that is not payable by you as a current liability by the time the notice is given.
- 31.3 If we purport to terminate the Agreement under this clause 31 (Our right to terminate for your default or financial circumstances) and that termination is determined by a competent authority not to be properly a termination under this clause 31, then that termination by us will be deemed to be a termination under clause 30 (Our right to terminate, or reduce the scope of, the Agreement) effective from the date of the notice of termination referred to in clause 31.1.
- 31.4 This clause 31 does not affect our other rights under this Agreement, or otherwise at law.
- 32. Dispute Resolution**
- 32.1 Unless otherwise specified in the Schedule, if a dispute or difference (called collectively a "dispute" in this clause 32, and in clauses 33 and 34) arises between you and us, both parties agree to deal with the dispute in the following way:
- (a) the party who claims that a dispute exists will give the other party a notice setting out the nature of the dispute;
 - (b) the parties will then try to resolve the dispute by negotiation, within 20 Business Days from when the notice is given, and for that purpose may authorise persons to act for them.
- 32.2 If the dispute is not resolved within 20 Business Days from when the notice is given, a party may submit the dispute to a form of alternative dispute resolution (including mediation).
- 32.3 A party cannot start legal proceedings in relation to the dispute unless:
- (a) the negotiations fail to resolve the dispute within 20 Business Days of when the notice is given; or
 - (b) where a party submits the dispute to alternative dispute resolution under clause 32.2 — the dispute is not resolved within 20 Business Days of that submission (or any extended time the parties have agreed in writing before the expiry of the 20 Business Days).

33. Exemptions to clause 32

- 33.1 A party does not need to follow the dispute resolution procedures set out in clause 32.2 if they are seeking urgent interlocutory³ relief from a court.
- 33.2 We need not follow the procedures set out in clause 32 in relation to actions we take under clauses 12 to 17, 30 (Termination, or reduction in scope, where you are not in default) or 31 (Termination for your default or for your financial circumstances).

34. Obligation to perform despite dispute

Whether or not a dispute exists, each party must continue to perform its obligations under this Agreement.

Other Legal Matters

35. Relationship between the parties

- 35.1 This Agreement does not make you our partner, agent or employee.
- 35.2 You must not misrepresent your relationship with us.
- 35.3 Neither party is authorised to legally commit or represent the other party in any way.
- 35.4 Neither party may attempt to bind or represent the other in any way.

36. Subcontractors

- 36.1 You agree not to Subcontract any of your obligations under this Agreement without first getting our written consent.
- (a) You must also ensure that a Subcontractor does not enter an agreement with any other contractor, person or organisation in connection with the Activity.
- (b) Our consent is not required where you or a Subcontractor enter an agreement with an individual person to work as a Nanny.
- 36.2 If we give our consent, we may impose any conditions we consider appropriate, and you must comply with them.
- 36.3 You must ensure that the terms of any agreement binding you and a Subcontractor are not varied, supplemented or deleted in any material respect without our prior written consent.
- 36.4 You must notify us immediately if an Insolvency Event occurs in relation to a Subcontractor.
- 36.5 You are not relieved of your obligation to carry out the Activity as required by this Agreement merely because you Subcontract any part of the Agreement.
- 36.6 You agree to ensure that any Subcontracts entered into by you for the purposes of this Agreement are consistent with the obligations binding on you under this Agreement.
- 36.7 If we terminate or reduce the scope of this Agreement under either clauses 30.1 or 31.1, you must exercise any right of termination or reduction you have against any of your Subcontractors.

³ Interlocutory relief is an interim order, made by a court, issued provisionally and without finally deciding the rights of the parties

37. Use of Specified Personnel

- 37.1 If we give you written notice, you must remove any personnel, including Specified Personnel, specified in that notice, and replace such person with other Specified Personnel satisfactory to us.
- 37.2 If any Specified Personnel is unavailable or unable to undertake the services, you must notify us in writing and you must replace that person with another Specified Personnel agreed by us.

38. Change in Control

You must ensure there is no Change in Control of you without our prior written consent, such consent will not be reasonably withheld.

39. Entire Agreement

This Agreement comprises the entire agreement between the parties about the subject matter of this Agreement. It supersedes all prior communications, negotiations and agreements, whether oral or written, about the subject matter of this Agreement.

40. Governing Law

This Agreement is governed by the law of the Australian Capital Territory.

41. Variation to this Agreement

This Agreement may only be varied in writing, signed by both parties.

42. Enforcement of part does not prevent enforcement of another part

We are not prevented from enforcing any part of this Agreement merely because:

- (a) we did not enforce that part on an earlier occasion; or
- (b) we do not enforce another part.

43. You must not assign your rights

- 43.1 You must not assign your rights under this Agreement without first getting our written consent.
- 43.2 In this clause 43, "assign" includes novate or transfer, in whole or in part.

44. Effect of invalidity of part

If part of this Agreement is found to be invalid, the rest of the Agreement continues in effect as if the invalid part were excluded.

45. Certain clauses continue after this Agreement ends

The termination or expiry of this Agreement, for any reason, does not affect:

- (a) the continued operation of the following clauses:
 - (i) clause 3.2(h) (Your obligation to provide information and documents);
 - (ii) clause 4 (Your obligation to acknowledge our support);
 - (iii) clause 5 (Your obligation to keep records and provide reports);
 - (iv) clause 15 (Spending the Grant);
 - (v) clause 16 (Accounting for the Grant);
 - (vi) clause 17 (Repaying the Grant);

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- (vii) clause 18 (GST);
 - (viii) clause 19 (Assets);
 - (ix) clause 20 (Intellectual Property Rights);
 - (x) clause 21 (Safekeeping and return of Commonwealth Material);
 - (xi) clause 22 (Privacy Issues);
 - (xii) clause 23 - 25 (Disclosure of Information);
 - (xiii) clause 26 (Vulnerable Persons, Police Checks and Criminal Offences);
 - (xiv) clause 28 (Indemnity);
 - (xv) clause 29 (Insurance); or
- (b) the continued operation of any other clauses that by their nature, survive termination or expiry.

46. Priority of documents

If there is any conflict or inconsistency, the provisions in documents forming part of this Agreement take priority in the following order:

- (a) the Terms and Conditions;
- (b) the Schedules;
- (c) the Programme Guidelines.

47. Notices

47.1 A notice under this Agreement is ineffective unless it is in writing.

47.2 Also, a notice under this Agreement is ineffective unless it meets the following requirements:

- (a) where you give it to us—you address it, and forward it, to the address specified in Item 13 of Schedule 1, or as we otherwise direct;
- (b) where we give it to you—we address it, and forward it, as specified in Item 13 of Schedule 1, or as you otherwise direct; and
- (c) in either case, it is signed by, or on behalf of, the person giving it.

47.3 A notice may be given:

- (a) by hand delivery; or
- (b) by prepaid post; or
- (c) by electronic transmission, including by email or by facsimile.

47.4 A notice is treated as having been given if:

- (a) delivered by hand—on delivery to the relevant address;
- (b) sent by post—on delivery to the relevant address, or 5 Business Days after it was posted, whichever is earlier;
- (c) transmitted electronically—when received by the addressee.

48. Interpretation General

48.1 In this Agreement:

- (a) headings are for convenience only and have no effect on interpretation; and

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- (b) footnotes are for information only and are not part of the Agreement; and
- (c) a provision is not to be interpreted against a party merely because that party proposed it.

48.2 Also in this Agreement, unless the contrary appears:

- (a) where a word or phrase has a defined meaning, any grammatical form of that word has a corresponding meaning; and
- (b) a reference to legislation or a legislative provision includes a reference to any amendment, substitution or re-enactment of that legislation or provision; and
- (c) 'includes' in any of its forms is not a word of limitation; and
- (d) a reference to \$ or dollars is a reference to Australian currency; and
- (e) the singular includes the plural and vice versa.

49. Defined Terms

49.1 In this Agreement, unless the contrary appears:

- (a) **we** or **us** (and grammatical variations such as ours) means the Commonwealth of Australia represented by the Department(s) or Entity(ies) specified in the Agreement and includes our officers, delegates, employees, other contractors and agents;
- (b) **you** (and grammatical variations such as your) means the legal entity set out in Item 1 of Schedule 1, and includes your officers, employees, agents, volunteers, Subcontractors, and successors.

49.2 Also in this Agreement, unless the contrary appears:

Activity means any tasks, activities, services or other purposes for which this Grant is provided. The Activity is described in this Agreement and the Programme Guidelines.

Activity Period means the period commencing on the Activity Start Date and ending on the Activity End Date.

Activity End Date means the date specified in Item 5 of Schedule 1.

Activity Start Date means the date specified in Item 4 of Schedule 1.

Administration Fee means an amount determined by us and paid to you as set out in Item 3 of Schedule 4.

Agreement comprises these Terms and Conditions, the Schedules (which is a separate document signed by you and us), and any documents incorporated by reference into these Terms and Conditions or the Schedules.

Agreement Material means all Material:

- (a) which you bring into existence in performing this Agreement; and
- (b) copied or derived from Material referred to in paragraph (a).

Asset means any item of personal, real or intangible⁴ property, with a price or value of \$10,000 or more, inclusive of GST, and which has been created, acquired or

⁴ Intangible assets are those assets that lack a physical presence, but are constituted by a right enforceable in a court of law or equity. Intellectual property is an example of intangible property

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leased wholly or in part with the Grant, except Intellectual Property Rights and licences provided for in clause 20.

Authorised Person means a person or entity appointed by us to undertake tasks in relation to the Activity.

Business Day means any day other than a Saturday, Sunday, public or bank holiday in the place where the relevant act is to be done.

Change in Control means a change in the direct or indirect power or capacity of a person to:

- (a) determine the outcome of decisions about the financial and operating policies of the entity; or
- (b) control the membership of the board of directors of the entity.

Change in Circumstance means any change in the details or eligibility of a Family specified in Item 5.1 of Schedule 3.

Commonwealth Auditor-General means the holder of the position including members of staff of the Auditor General's office.

Commonwealth Material means any Material that we give you for the purposes of this Agreement or that is copied or derived from that Material, but does not include Agreement Material.

Commencement Date means the date specified in Item 2 of Schedule 1.

Completion Date means the date specified in Item 3 of Schedule 1, or the day after you have done, to our satisfaction, all that you are required to do under this Agreement, whichever is the later.

Data Capture System means the system specified by us from time to time for the purpose of submitting Period of Care data.

Existing Material means all Material in existence before the execution of this Agreement or developed independently of this Agreement that is:

- (a) incorporated in the Agreement Material; or
- (b) supplied with, or as part of, the Agreement Material; or
- (c) required to be supplied with, or as part of, the Agreement Material.

Family means a person or persons whom we notify you are prioritised to participate in the Programme, subject to you entering an agreement with them in accordance with Item 3, Item 4 and Item 5 of Schedule 2.

Family Assistance Law has the meaning in Section 3 of the *A New Tax System (Family Assistance) (Administration Act) 1999* (Cth).

Fee means an amount charged by you to a Family.

Grant means the Subsidy and Administration Fee as determined by us and paid to you as set out in Schedule 4.

Insolvency Event means:

- (a) you dispose of the whole or any part of your assets, operations or business other than in the ordinary course of business;
- (b) you cease to carry on a business;
- (c) you cease to be able to pay your debts as they become due;

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- (d) proceedings are initiated with a view to obtaining an order for the winding up of the entity, or any person convenes a meeting for the purpose of considering or passing any resolution for the winding up of the entity;
- (e) you apply to come under, you receive a notice requiring you to show cause why you should not come under, an order has been made for the purpose of placing you under, or you otherwise come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or equivalent provisions in State or Territory legislation in relation to incorporated associations;
- (f) where you are a natural person, you are declared bankrupt or assign your estate for the benefit of creditors;
- (g) where you are a partnership, any step is taken to dissolve that partnership; or
- (h) anything analogous to an event referred to in paragraph (d), (e), (f) or (g) occurs in relation to you.

Instalment Payment means the periodic payments of the Administration Fee as specified in Table A at Item 3 of Schedule 4.

Intellectual Property Rights means all copyright, rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from intellectual activity in industrial, scientific, literary or artistic fields, but does not include Moral Rights.

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

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

Moral Rights includes the following rights of an author of copyright Material:

- (a) the right of attribution of authorship; and
- (b) the right of integrity of authorship; and
- (c) the right not to have authorship falsely attributed.

Nanny means a person who enters an agreement with you in accordance with Item 6 and Item 7 of Schedule 2.

Nominated Bank Account means the bank account specified in Item 4 of Schedule 4.

Notifiable Event means the events specified in Item 5 of Schedule 3.

Period of Care means an individual session of care provided by you to a Family in connection with the Activity.

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

Programme means the Interim Home Based Carer Subsidy Programme, also known as the Nanny Pilot Programme.

Programme Guidelines means the document specified in Item 6 of Schedule 1.

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Region means the geographical area identified in Item 14 of Schedule 1 that has been allocated to you to provide services in connection with the Activity.

Schedule means schedules 1 to 5 of this Agreement. It may include annexures and incorporate other documents by reference.

Secret and Sacred Material means all information and knowledge of special religious, spiritual or customary significance considered to be secret, exclusive or restricted by an Aboriginal person or according to Aboriginal Tradition as defined in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

Serious Incident means the incidents specified in Item 5.5 of Schedule 3.

Specified Acts means any of the following acts or omissions by or on behalf of the Commonwealth:

- (a) using, reproducing, adapting or exploiting all or any part of the Agreement Material, with or without attribution or authorship;
- (b) supplementing Agreement Material with any other Material;
- (c) using the Agreement Material in a different context to that originally envisaged,

but does not include false attribution of authorship.

Specified Personnel means the personnel, if any, (whether your officers, employees, Subcontractors or volunteers of you) required to undertake the Activity or any part of the Activity as set out in Item 9 of Schedule 1, or such personnel replaced in accordance with clause 37.

Subcontractor means any contractor, person or organisation who is engaged by you to undertake the relevant Activity (and any of that contractor's, person's or organisation's employees, agents and Subcontractors), including the persons or entities specified in Item 8 of Schedule 1. 'Subcontracts' has a corresponding meaning.

Subsidy means an amount determined by us for a Period of Care provided by you, and paid to you as set out in Item 2 of Schedule 4.

Terms and Conditions means all clauses of this document.